

<p>1 Wednesday, 20 November 2013</p> <p>2 (10.00 am)</p> <p>3 Reply submissions by MR WOLFSON</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes, Mr Wolfson.</p> <p>5 MR WOLFSON: Good morning, my Lord. I am addressing your</p> <p>6 Lordship from here.</p> <p>7 MR JUSTICE DAVID RICHARDS: That's fine.</p> <p>8 MR WOLFSON: These reply submissions will be short. I am</p> <p>9 conscious that my role this morning is something of</p> <p>10 a warm-up act for Mr Trower.</p> <p>11 MR JUSTICE DAVID RICHARDS: But not the graveyards.</p> <p>12 MR WOLFSON: My Lord, Yes. We have a few points of reply</p> <p>13 and of course they arise out of submissions made by my</p> <p>14 learned friends Mr Trace and Mr Isaacs.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR WOLFSON: But we will keep it short because your Lordship</p> <p>17 plainly has the thrust of our submissions in any event.</p> <p>18 Just therefore to run through the few points we do make</p> <p>19 at this stage by way of reply. First, Mr Trace appeared</p> <p>20 to say that there was a difference between his approach</p> <p>21 and my approach as to how to approach the</p> <p>22 interrelationship between insolvency set-off and the</p> <p>23 contributory rule. This was on Friday afternoon at</p> <p>24 page 163 of the transcript. That's Day 4, line 16 to</p> <p>25 page 164, line 20. His approach was that the</p> <p style="text-align: center;">Page 1</p>	<p>1 point. At page 164, line --</p> <p>2 MR JUSTICE DAVID RICHARDS: This is again Day 4.</p> <p>3 MR WOLFSON: This is again Day 4, my Lord, Friday. On</p> <p>4 page 164, if I can just mention it, my Lord, lines 18 to</p> <p>5 20, the transcript says "reference" and it should be</p> <p>6 "Auriferous".</p> <p>7 MR JUSTICE DAVID RICHARDS: Can I just correct it.</p> <p>8 MR WOLFSON: This is just where my learned friend referred</p> <p>9 to it, and of course if your Lordship were to use the</p> <p>10 index it wouldn't appear in the index. My Lord, of</p> <p>11 course I am afraid I was not here, but I understand that</p> <p>12 when my learned friend said -- if your Lordship has it?</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes, I see. Yes, it clearly</p> <p>14 means Auriferous.</p> <p>15 MR WOLFSON: Exactly. "We have a rather different approach</p> <p>16 to Auriferous number 1."</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR WOLFSON: Now, just so we understand how this point</p> <p>19 arises on my learned friend's case, this point would be</p> <p>20 relevant on my learned friend's primary case, which</p> <p>21 would be that the contributory rule does not apply while</p> <p>22 LBIE is in administration and there is no insolvency</p> <p>23 set-off in LBIE's administration. So on that case one</p> <p>24 would then have to ask whether there is insolvency</p> <p>25 set-off in LBHI2's administration.</p> <p style="text-align: center;">Page 3</p>
<p>1 contributory rule dis-applies mandatory set-off and that</p> <p>2 that leaves room for the operation of the equitable</p> <p>3 rule, ie the rule in Cherry v Boulton. My learned</p> <p>4 friend did not, in my absence, rely on any authority for</p> <p>5 that approach but rather, with what I may say is</p> <p>6 characteristic modesty, relied only on his own</p> <p>7 background in insolvency.</p> <p>8 My Lord, I am not convinced there is actually</p> <p>9 anything between us. I submitted and, my Lord, we do</p> <p>10 submit that the correct approach is to ask whether there</p> <p>11 is insolvency set-off because that's mandatory and</p> <p>12 self-executing. It does, however, seem that we get to</p> <p>13 the same place ultimately as my learned friend. He, we</p> <p>14 say, starts off with the answer, ie the contributory</p> <p>15 rule dis-applies mandatory set-off, rather than what we</p> <p>16 say is the question does insolvency set-off apply. But,</p> <p>17 my Lord, I am not convinced that there actually is an</p> <p>18 ultimate difference between where we get to.</p> <p>19 My Lord, the second point takes us back to our old</p> <p>20 friend Re Auriferous number 1, the decision of</p> <p>21 Mr Justice Wright. Again, on Friday afternoon my</p> <p>22 learned friend suggested that he took a different</p> <p>23 approach to us on this case and said that he would come</p> <p>24 back to this point later. Your Lordship may wish just</p> <p>25 to note that there is an error in the transcript on this</p> <p style="text-align: center;">Page 2</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR WOLFSON: Or if there was going to be a distribution or</p> <p>3 it was wound up in LBHI2's liquidation. So it's in that</p> <p>4 context that, on my learned friend's case, Auriferous</p> <p>5 number 1 becomes relevant.</p> <p>6 While on Friday my learned friend said that he took</p> <p>7 a different approach to us on this point, again in my</p> <p>8 absence, once I was back on Monday he said -- and the</p> <p>9 reference is transcript Day 5, Monday, page 3 -- that it</p> <p>10 wasn't actually relevant for the purposes of this case</p> <p>11 and your Lordship didn't have to decide the point,</p> <p>12 although for good forensic reasons he went on to say</p> <p>13 that if your Lordship did decide the point he would take</p> <p>14 the benefit of it. So we are not sure where we end up</p> <p>15 with really with LBHI2's stance on Auriferous number 1,</p> <p>16 but your Lordship knows from our primary submissions and</p> <p>17 our original submissions that we say, with respect to</p> <p>18 Mr Justice Wright, for the reasons we have set out, it</p> <p>19 was wrongly decided.</p> <p>20 On that point, my Lord, I am conscious that although</p> <p>21 we have said in writing on a number of occasions that</p> <p>22 Auriferous number 1 was wrongly decided and that,</p> <p>23 contrary to LBIE's submissions, the Court of Appeal in</p> <p>24 Re White Star Line had not approved the judgment of</p> <p>25 Mr Justice Wright in Re Auriferous number 1, that point</p> <p style="text-align: center;">Page 4</p>

<p>1 wasn't dealt with orally by Mr Trower. No doubt he will 2 deal with it today. I just put a marker down that it 3 may be I will have something to say about that and I 4 will have to --</p> <p>5 MR JUSTICE DAVID RICHARDS: I think he accepted that the 6 reference in White Star was to Auriferous number 2, but 7 there is I think a reference to Auriferous number 1 in 8 Lord Walker's judgment in Kaupthing.</p> <p>9 MR WOLFSON: Yes, there is. He refers to it, but he does 10 not pass comment on it either way. He notes that that's 11 what was decided.</p> <p>12 MR JUSTICE DAVID RICHARDS: Presumably no one was submitting 13 in the Supreme Court in Kaupthing that Auriferous number 14 1 was wrong.</p> <p>15 MR WOLFSON: I was not there, but it certainly doesn't 16 appear that that was the case from the arguments. It 17 was not necessary to decide the point in Kaupthing.</p> <p>18 My Lord, I mention that of course because, without 19 wishing to get into an argument about who speaks when, 20 we are all applicants. I doubt I will have to say 21 anything or I would want to say anything after Mr Trower 22 on this, but I just want to put a marker down because so 23 far we have not actually heard anything from Mr Trower 24 in response to our point, whether orally or in writing, 25 on Auriferous number 1. My Lord, that's all I propose</p> <p style="text-align: center;">Page 5</p>	<p>1 obligation to contribute but without the benefit of the 2 right to adjustment to which that gives rise.</p> <p>3 My Lord, the penultimate point is a short point on 4 the sub-debt in the context of the section 74 liability. 5 This comes back to a point made by my learned friend 6 Mr Trace on Day 4, Friday, pages 165 to 169, when he 7 submitted that, assuming all provable debts were paid 8 and that LBHI2 was met with that point in respect of the 9 LBHI2 sub-debt, and there was an insufficient surplus to 10 pay all of the sub-debt, a call could be made on LBHI2. 11 But that since LBHI2 was the member as well as the 12 debtor, the Grissell's Case, objection to set-off, 13 wouldn't apply as LBHI2 would, so to speak, be the only 14 player in the game. That was my learned friend 15 Mr Trace's submission.</p> <p>16 Of course that means that if there are not 17 sufficient assets in LBIE, whether or not a call is made 18 on LBHI2 in respect of the LBHI2 sub-debt, the effect 19 would be the same, namely that, because of LBHI2's 20 obligation or potential obligation to contribute to fund 21 the very claim that is being made against LBIE, there 22 will be a netting off and neither LBIE nor LBHI2 would 23 end up paying anything. As we have discussed, my Lord, 24 one way of looking at this is that LBHI2 is effectively 25 paid through its own contribution or notional</p> <p style="text-align: center;">Page 7</p>
<p>1 to say about that now.</p> <p>2 My Lord, moving on to a separate issue, which is the 3 contribution claim, this is a point which your Lordship 4 debated with Mr Isaacs yesterday and to which I again 5 draw the court's attention. This is in the context of 6 responding to a point LBHI makes, which is that if 7 a proof could be made in respect of a liability under 8 section 74 before the company is in liquidation the 9 contributories might lose out on the right of adjustment 10 of the right of contributories inter se. Mr Isaacs 11 referred back to what Mr Trower accepted in his oral 12 submissions; that in proving in a members' insolvencies, 13 "The valuation of LBIE's contingent claim to prove would 14 take into account the fact that any call made by the 15 liquidator exercising the court's power under 16 section 150 would affect the right to adjust." That was 17 the transcript on Day 1, page 86.</p> <p>18 Now, it seems to us that, if contrary of course to 19 our primary position, LBIE can prove for contingent 20 liability, we submit that that approach of Mr Trower is 21 right, and that's because of the point made by my 22 learned friend Mr Isaacs which is that it cannot be 23 right that a proof can be made by LBIE's administrators 24 for the contingent liability if that would have the 25 result that the contributories are subjected to the</p> <p style="text-align: center;">Page 6</p>	<p>1 contribution. Of course, just to take it a stage 2 further, from LBL's perspective that would obviously 3 mean that whether, in those circumstances, a section 74 4 liability extends to the sub-debt would appear to be 5 irrelevant insofar as LBHI2 is effectively paid by 6 reference to its own contribution because, insofar as 7 that amounts to payment, there could be no call on LBL 8 either.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes. I mean, given the fact 10 that your client holds one share, this isn't terribly 11 material probably. But if you postulated a case where 12 you had two members, each with 50 per cent of the 13 shares, with the subordinated debt owed to only one of 14 them, query whether the netting off would have that 15 affect.</p> <p>16 MR WOLFSON: My Lord, your Lordship is right. One can 17 postulate a number of scenarios, and it would depend on 18 the relative amounts of the debt and the call, the 19 number of members and the ratio of shares between them, 20 my Lord, yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes, I follow.</p> <p>22 MR WOLFSON: But certainly in this case, as your Lordship, 23 with respect, rightly says, given the proportion of the 24 shareholdings of LBL and LBHI2 respectively and the way 25 in which they would ultimately inter se have to share</p> <p style="text-align: center;">Page 8</p>

<p>1 the liability for the shortfall, in our respectful</p> <p>2 submission, it would be absurd for LBL to have to pay</p> <p>3 anything to LBIE to fund its co-contributor's sub-debt.</p> <p>4 Your Lordship has that point.</p> <p>5 MR JUSTICE DAVID RICHARDS: It might have to pay a small</p> <p>6 amount. I have not done the maths.</p> <p>7 MR WOLFSON: It depends upon the sums but, my Lord, yes.</p> <p>8 Finally, my Lord, if I can come back to what's been</p> <p>9 called the lacuna point, though of course that does beg</p> <p>10 the question whether there is a lacuna or not.</p> <p>11 MR JUSTICE DAVID RICHARDS: The alleged lacuna.</p> <p>12 MR WOLFSON: And whether the post-administration interest</p> <p>13 survives a winding-up. My learned friend Mr Trace</p> <p>14 submitted that your Lordship should not start where one</p> <p>15 might want to end up; in other words, one shouldn't</p> <p>16 assume what Parliament did or did not intend. In this</p> <p>17 regard, we would respectfully draw attention to the fact</p> <p>18 that there may be an important difference between</p> <p>19 construing contracts and construing statutes in this</p> <p>20 regard in this case. It comes down to the discussion</p> <p>21 I had with your Lordship as to whether what</p> <p>22 Mr Justice Briggs was doing was adopting, so to speak,</p> <p>23 a one-stage or a two-stage approach. In other words, is</p> <p>24 there an approach of saying, "I am going to construe the</p> <p>25 statute, and if it doesn't work in construction one can</p> <p style="text-align: center;">Page 9</p>	<p>1 now of course the court will say, "Even if the language</p> <p>2 is clear as a matter of language in a commercial</p> <p>3 contract, if it really does not make much commercial</p> <p>4 sense or possibly even if there is a better objectively</p> <p>5 ascertained commercial construction of the words, that</p> <p>6 is the approach I am going to adopt." Certainly,</p> <p>7 my Lord, that was not the approach Mr Justice Briggs is</p> <p>8 using in Bloom to approach the construction of statutes.</p> <p>9 He appears to be saying, "If the words are clear, I am</p> <p>10 then in Lord Nicholls's approach where I have to be</p> <p>11 abundantly sure." Of course you have to be abundantly</p> <p>12 sure of three things, according to Lord Nicholls: first</p> <p>13 of all, (1), what was the intention; second, that there</p> <p>14 has been a mistake; third, and perhaps most critically,</p> <p>15 exactly what Parliament would have done about it.</p> <p>16 Now, for the reasons I submitted earlier, and I am</p> <p>17 not going to repeat, we submit, with respect, that my</p> <p>18 learned friend Mr Trower's suggested solution is simply</p> <p>19 not an available construction of the Act. It's simply</p> <p>20 not what the Act says in terms or, to put that more</p> <p>21 clearly, in terms it's not what the Act says.</p> <p>22 Therefore, in order for your Lordship to get to</p> <p>23 where Mr Trower wants your Lordship to get to, your</p> <p>24 Lordship does effectively have to rewrite the Act.</p> <p>25 MR JUSTICE DAVID RICHARDS: Mr Trower focuses on the</p> <p style="text-align: center;">Page 11</p>
<p>1 then say, well, can I take the much more radical</p> <p>2 approach, in which case the dictum of Lord Nicholls</p> <p>3 comes in, or is that actually part of the first stage of</p> <p>4 construction?"</p> <p>5 Let me explain what I mean, my Lord. When it comes</p> <p>6 to contracts, as we all know, there is no limit to the</p> <p>7 amount of red ink which can be used, and that's been now</p> <p>8 stated in a number of cases with which your Lordship is</p> <p>9 very familiar. But, my Lord, the issue here is of</p> <p>10 course not the rules but section 189. That's the</p> <p>11 problem, so to speak.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR WOLFSON: The first point we make is that you cannot</p> <p>14 glean Parliament's intention in relation to a prior Act</p> <p>15 from later changes to the rules.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR WOLFSON: My Lord, we do submit that it's that which</p> <p>18 accounts for Mr Justice Briggs's approach in the Bloom v</p> <p>19 The Pensions Regulator case where, to use the phrase the</p> <p>20 learned judge used, "sorely tempted" though he was</p> <p>21 effectively to rewrite the rules, he was unable to</p> <p>22 conclude that the Lord Nicholls's abundantly sure test</p> <p>23 was satisfied in circumstances where the language is</p> <p>24 clear. So it may be that there is an important</p> <p>25 difference here between contracts and statutes because</p> <p style="text-align: center;">Page 10</p>	<p>1 construction of the rule, doesn't he, not the Act?</p> <p>2 MR WOLFSON: He does, but his construction of the rules, for</p> <p>3 the reasons we submitted earlier, brings you into clear</p> <p>4 conflict with the words of the Act. I am not going to</p> <p>5 repeat those submission, my Lord. But of course</p> <p>6 Mr Trower proposes a solution to your Lordship where he</p> <p>7 says, "Well, read 2.88(7) in a different way." But the</p> <p>8 problem with that is once you read section 189 it's</p> <p>9 clear what section 189 is doing. For the reasons I</p> <p>10 submitted earlier, Mr Trower's reinterpretation of rule</p> <p>11 288(7), in our respectful submission, conflicts clearly</p> <p>12 with section 189. Therefore, for those reasons we do</p> <p>13 urge upon your Lordship the approach of</p> <p>14 Mr Justice Briggs in Bloom v The Pensions Regulator.</p> <p>15 I am not going to go back to the case, my Lord,</p> <p>16 unless your Lordship want me to.</p> <p>17 MR JUSTICE DAVID RICHARDS: No.</p> <p>18 MR WOLFSON: But the relevant paragraphs, for your</p> <p>19 Lordship's note, are paragraphs 115 to the end of that</p> <p>20 judgment.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR WOLFSON: My Lord, unless I can assist your Lordship</p> <p>23 further, those are our submissions in reply.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes. Can I tell you one thing.</p> <p>25 Sometimes it's quite difficult to get the grid right in</p> <p style="text-align: center;">Page 12</p>

<p>1 my mind as to whose position is on what. There is just 2 one aspect you may be able to help me with by reference 3 to your position and the position of the other parties. 4 It's on this issue of proving and set-off. 5 Now, just assume for the moment that the 6 contributory rule doesn't apply to a company in the case 7 of a company in administration or indeed to a company in 8 liquidation before a court, just because otherwise these 9 issues are not so important obviously. Let us look at 10 it, first of all, from the point of view of the 11 distributing administration of LBIE or indeed 12 a liquidation of LBIE. You have members with provable 13 claims, unsubordinated provable claims. If a call has 14 not been made, clearly if it's in administration a call 15 cannot have been made, what do you say about the 16 operation of set-off? 17 MR WOLFSON: So, my Lord -- 18 MR JUSTICE DAVID RICHARDS: So we are looking at your client 19 lodges a proof in the administration of LBIE. 20 MR WOLFSON: Yes. 21 MR JUSTICE DAVID RICHARDS: Is there any set-off? 22 MR WOLFSON: No. 23 MR JUSTICE DAVID RICHARDS: No. 24 MR WOLFSON: No set-off in LBIE. 25 MR JUSTICE DAVID RICHARDS: No set-off of a contingent claim</p> <p style="text-align: center;">Page 13</p>	<p>1 forward. Yes, thank you. 2 Now, in the administration or liquidation of LBL or 3 LBHI2, what's the position there? 4 MR WOLFSON: In those circumstances, our primary case is 5 that there is set-off. Essentially for the reason that 6 when one looks at that administration, that estate, the 7 LBIE claim ought not to be treated any better than any 8 other claim into that estate from any other creditor. 9 It's on that point of course where we say Re Auriferous 10 number 1 is wrong. 11 MR JUSTICE DAVID RICHARDS: Yes. 12 MR WOLFSON: Your Lordship was referred to it, I don't think 13 we actually went to it in the text, but for your 14 Lordship's note there is an interesting discussion in 15 Dr Derham's book -- from memory, I think the passages 16 are 11.06 to 11.11 -- where he discusses how and why you 17 can have a different result in the other estate. 18 MR JUSTICE DAVID RICHARDS: Perhaps that's the point it 19 gives rise to. 20 MR WOLFSON: Yes. We set this out in writing. I can give 21 your Lordship the reference in a moment to our written 22 submissions. 23 MR JUSTICE DAVID RICHARDS: Okay. 24 MR WOLFSON: But perhaps at a convenient time we can just 25 put in a little sheet of paper with the relevant</p> <p style="text-align: center;">Page 15</p>
<p>1 to a call. 2 MR WOLFSON: Against our -- exactly. My Lord, I hesitate to 3 tread on other people's toes. But since your Lordship 4 put it in terms of grid, that's where I think we differ 5 from Mr Trace. I had understood Mr Trace's position 6 that he was saying there was a set-off for LBIE, but I 7 am now told he isn't. I will let Mr Trace speak for 8 himself then. 9 MR JUSTICE DAVID RICHARDS: Okay. 10 MR WOLFSON: We say no set-off in LBIE. 11 MR JUSTICE DAVID RICHARDS: Right. Just hold on. No 12 set-off. Just headline the reasons for that are? 13 MR WOLFSON: That the contingent liability for the call 14 isn't set-off against the immediately provable debt. 15 MR JUSTICE DAVID RICHARDS: Because? 16 MR WOLFSON: Because the policy reasons which would mandate 17 a set-off don't apply in the circumstances where the 18 liability for the call is only contingent. Your 19 Lordship will recall we had the discussion that if you 20 are setting off contingent you are setting off actual. 21 MR JUSTICE DAVID RICHARDS: And because if it was actual you 22 wouldn't have a set-off, then therefore you don't when 23 it's contingent. 24 MR WOLFSON: Exactly. 25 MR JUSTICE DAVID RICHARDS: Yes. That is the reason you put</p> <p style="text-align: center;">Page 14</p>	<p>1 references for your Lordship, but we have dealt with 2 this in writing and we have cited Dr Derham's book. 3 Of course, just to be clear, my Lord, if, contrary 4 to my submissions, there is a set-off in, so to speak, 5 the first estate, ie LBIE's estate, necessarily you have 6 answered the question of a set-off in the second estate. 7 MR JUSTICE DAVID RICHARDS: That I do follow. 8 MR WOLFSON: Yes, that's obvious. 9 MR JUSTICE DAVID RICHARDS: There is a sort of conceptual 10 difficulty -- and no doubt this is what Dr Derham 11 addresses -- in having different results in the two 12 insolvencies. 13 MR WOLFSON: My Lord, with respect, we submit there is no 14 conceptual difficulty once one realises that one is 15 answering a separate question, which is: is there 16 a set-off in this estate? One looks at the policy 17 factors which would bear on the question of whether 18 there is set-off in that estate. I am conscious that 19 Mr Trower has a lot to say, but your Lordship will see 20 that -- I think it's in 11.11 -- Dr Derham gives an 21 example. 22 MR JUSTICE DAVID RICHARDS: Don't worry. I will look at 23 that. That's fine. This is just by way of summary. 24 MR WOLFSON: Exactly. 25 MR JUSTICE DAVID RICHARDS: That's your position.</p> <p style="text-align: center;">Page 16</p>

<p>1 MR WOLFSON: For your Lordship's note, it's paragraphs 75 to 2 78 in our initial submissions.</p> <p>3 MR JUSTICE DAVID RICHARDS: In your submissions. Thank you 4 very much, Mr Wolfson. That's very helpful.</p> <p>5 Mr Trace, would you mind if I just asked you the 6 same question.</p> <p>7 MR TRACE: My Lord, yes. Just for your Lordship's note on 8 that, I did set this out --</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes, I know you have.</p> <p>10 MR TRACE: -- at the beginning of my submissions. Your 11 Lordship will see it there in the transcript, but just 12 to remind your Lordship the position is that, in 13 relation to LBIE's administration, our position is we 14 say that LBH12, our clients, is not under any contingent 15 liability in respect of section 74 whilst LBIE remains 16 in administration.</p> <p>17 MR JUSTICE DAVID RICHARDS: Right.</p> <p>18 MR TRACE: That's because they cannot make a call.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TRACE: There is therefore nothing to set-off.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TRACE: So that's why we take issue with what my learned 23 friend has just said. We say nothing is set-off because 24 there is no contingent liability.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 17</p>	<p>1 therefore, if LBIE were in liquidation and a call had 2 been made, then there couldn't be set-off in LBIE's 3 liquidation but there would be set-off in yours.</p> <p>4 MR TRACE: That's right.</p> <p>5 MR JUSTICE DAVID RICHARDS: Thank you very much indeed.</p> <p>6 MR TRACE: In ours, it would be the question of valuing and 7 netting off.</p> <p>8 MR JUSTICE DAVID RICHARDS: Once a call had been made in 9 yours, there would be set-off.</p> <p>10 MR TRACE: Exactly.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes, I see.</p> <p>12 MR TRACE: In relation to what Mr Wolfson has said, my Lord, 13 I am not entitled to reply on anything, save in respect 14 of the matter inter se. There is nothing that he said, 15 in our respectful submission, to gainsay what I had 16 submitted. But just for your Lordship's note, we have 17 set it out in two places. Obviously I won't repeat the 18 transcript references, but in our submissions it was in 19 our opening submissions at paragraphs 93 and following 20 and in our supplemental submissions at paragraph 13 and 21 following.</p> <p>22 MR JUSTICE DAVID RICHARDS: Thank you very much. Thank you, 23 Mr Trace.</p> <p>24 Mr Isaacs, can I just ask you. So do you support 25 their positions?</p> <p style="text-align: center;">Page 19</p>
<p>1 MR TRACE: For the reasons that Mr Isaacs was saying, that 2 liability only arises when the call is made.</p> <p>3 MR JUSTICE DAVID RICHARDS: When the call is made. So, in 4 other words, your position would be the same if LBIE 5 were in liquidation before a call is made.</p> <p>6 MR TRACE: Quite.</p> <p>7 MR JUSTICE DAVID RICHARDS: Then once a call is made, there 8 cannot be set-off any way.</p> <p>9 MR TRACE: That's right.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>11 MR TRACE: In relation to our administration, again I have 12 set that out. Our primary position is that there is 13 nothing for them to prove in our administration because 14 they cannot make any calls --</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes, same point.</p> <p>16 MR TRACE: -- while in administration. It is the same point 17 but the mirror.</p> <p>18 Our secondary position is that if they can prove, 19 set-off operates. Your Lordship will remember what we 20 said was that there would be setting off what we said 21 was a very tiny liability as a contributory.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes, indeed, absolutely.</p> <p>23 MR TRACE: The value would be very low because LBIE, we say, 24 is not going to go into liquidation.</p> <p>25 MR JUSTICE DAVID RICHARDS: Just to be clear about it</p> <p style="text-align: center;">Page 18</p>	<p>1 MR ISAACS: I have no position, my Lord. On set-off, I have 2 no position.</p> <p>3 MR JUSTICE DAVID RICHARDS: On proving.</p> <p>4 MR ISAACS: If your Lordship accepts what I have said in 5 relation to the non-applicability of the contributory 6 rule, it obviously has implications for those questions.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes, of course.</p> <p>8 MR ISAACS: But I don't, myself, make any submissions beyond 9 that.</p> <p>10 MR JUSTICE DAVID RICHARDS: That's very helpful.</p> <p>11 MR ISAACS: Thank you.</p> <p>12 MR JUSTICE DAVID RICHARDS: Just before I call on Mr Trower, 13 would you mind if I just ... No, thank you very much 14 indeed.</p> <p>15 Mr Trower, are you going before Mr Zacaroli?</p> <p>16 MR TROWER: I am going first, my Lord, and the idea is that 17 in principle I shall deal with everything except foreign 18 currency conversion.</p> <p>19 MR JUSTICE DAVID RICHARDS: You will leave that to 20 Mr Zacaroli.</p> <p>21 MR TROWER: I will leave that to Mr Zacaroli to deal with. 22 But he does reserve the right to sweep up on other 23 matters, without repeating me, insofar as it's necessary 24 to do so.</p> <p>25 MR JUSTICE DAVID RICHARDS: The image of the Lord Mayor's</p> <p style="text-align: center;">Page 20</p>

<p>1 show comes to mind.</p> <p>2 MR TROWER: I suppose that's one way of putting it, my Lord.</p> <p>3 Reply submissions by MR TROWER</p> <p>4 MR TROWER: My Lord, it may be helpful, particularly in the</p> <p>5 light of the questions you have just asked my learned</p> <p>6 friends, if I outline right at the beginning of my reply</p> <p>7 submissions what our position is in relation to our</p> <p>8 overall case on the interplay between the contributory</p> <p>9 rule and set-off. That's actually was where I was going</p> <p>10 to start anyway and it chimes with what your Lordship</p> <p>11 has just been asking my learned friends.</p> <p>12 We say that the contributory rule applies in</p> <p>13 administration to prevent the member from claiming any</p> <p>14 dividend while there is a possibility of it having to</p> <p>15 contribute to the assets. If that is wrong, then, while</p> <p>16 LBIE is still in distributing administration, it has</p> <p>17 a contingent claim against the member which is available</p> <p>18 for set-off in LBIE's administration against the</p> <p>19 member's debt claim against LBIE.</p> <p>20 Thirdly, if the member goes into distributing</p> <p>21 administration or liquidation, then our first position</p> <p>22 is that the contributory rule still applies to prevent</p> <p>23 the member claiming its debt from LBIE and that this</p> <p>24 trumps set-off in the member's insolvency; and</p> <p>25 that's Auriferous number 1 and we will be saying that's</p> <p style="text-align: center;">Page 21</p>	<p>1 Lord Walker said the equitable rule may be said to fill</p> <p>2 a gap left by dis-application of set-off, but he's there</p> <p>3 referring to the rule in <i>Cherry v Boulton</i>. He's not</p> <p>4 referring to the contributory rule, and that's quite an</p> <p>5 important point because there is a problem which</p> <p>6 underpins -- and it may be that my learned friend did</p> <p>7 not say it is to the contrary, but it does undermine his</p> <p>8 whole approach to the interface between set-off and the</p> <p>9 contributory rule.</p> <p>10 The first part of what I want to say in reply is</p> <p>11 this. It relates to the fact that it's said against us</p> <p>12 that the contributory rule does not apply pre-call and</p> <p>13 thus does not apply in an administration at all. When</p> <p>14 one picked apart the submissions that were made on this</p> <p>15 area by my learned friends, there were two arguments</p> <p>16 that were advanced. The first is because the rule in</p> <p>17 <i>Cherry v Boulton</i> doesn't apply where the debt owed to</p> <p>18 the fund is a future liability. The second is, slightly</p> <p>19 more specifically in relation to the contributory rule,</p> <p>20 what was said in <i>Grissell's Case</i>. Submissions were</p> <p>21 based on that.</p> <p>22 Can I take those points separately. So far as the</p> <p>23 first one is concerned, because the rule in <i>Cherry v</i></p> <p>24 <i>Boulton</i> doesn't apply where the debt owed to the fund</p> <p>25 is future, it's critical to bear in mind that the rule</p> <p style="text-align: center;">Page 23</p>
<p>1 right. We have said that is right. I will be making</p> <p>2 a few submissions on that to your Lordship.</p> <p>3 The fourth stage is if that's wrong, then there is</p> <p>4 set-off in the member's insolvency with the same</p> <p>5 consequences as if there was set-off in LBIE's</p> <p>6 administration. So there is an equivalence there, as</p> <p>7 one would expect; there is set-off in both.</p> <p>8 Then the final stage in the analysis: if LBIE goes</p> <p>9 into liquidation and a call is made, then the</p> <p>10 contributory rule applies; there is no question of</p> <p>11 set-off; the member must wait to prove until it has paid</p> <p>12 everything that it owes. That's clear and I don't think</p> <p>13 anyone really contends to the contrary.</p> <p>14 Before I just develop each of those parts of the</p> <p>15 analysis by reference to what my learned friends have</p> <p>16 said, can I just make one initial comment about my</p> <p>17 learned friend Mr Wolfson's position in relation to the</p> <p>18 interplay between the two because we say that his</p> <p>19 structure is flawed at the very outset. He says that</p> <p>20 you have to look first at set-off and then at the</p> <p>21 equitable rule, by which we think he means the</p> <p>22 contributory rule because that's what Lord Walker says</p> <p>23 in <i>Kaupthing</i>. Now, it's true -- and I think it's worth</p> <p>24 just looking at <i>Kaupthing</i> fairly shortly anyway but not</p> <p>25 now, I will take your Lordship to it in a moment -- that</p> <p style="text-align: center;">Page 22</p>	<p>1 in <i>Cherry v Boulton</i> is different from the contributory</p> <p>2 rule. The rule in <i>Cherry v Boulton</i> is a rule of</p> <p>3 retainer, enabling payment to be made to the person</p> <p>4 liable to swell the fund, that's the contributor --</p> <p>5 I will call him that rather than contributory -- by</p> <p>6 holding in his own hand the part of the mass which, if</p> <p>7 completed, he would receive back. That's the way it's</p> <p>8 put in <i>Kaupthing</i>, as your Lordship will recall.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR TROWER: Now, the contributory rule, on the other hand,</p> <p>11 is directed at preventing payment being made via</p> <p>12 set-off. It's necessary to make sure that there is no</p> <p>13 payment to the member until he has contributed all that</p> <p>14 he's undertaken to contribute. Put another way, payment</p> <p>15 of the call is a condition precedent to the</p> <p>16 shareholder's participation. I think it's worth just</p> <p>17 reminding your Lordship of what was said in <i>Kaupthing</i> on</p> <p>18 this point. We can go to it in the bundle at tab 94.</p> <p>19 It's a section right at the end of Lord Walker's</p> <p>20 judgment in paragraph 52.</p> <p>21 MR JUSTICE DAVID RICHARDS: Condition precedent, yes.</p> <p>22 MR TROWER: It's the very last sentence.</p> <p>23 Now, the reason for the difference is that the</p> <p>24 shareholder is obliged to fund the insolvent estate for</p> <p>25 the very purpose of enabling the assets to be applied in</p> <p style="text-align: center;">Page 24</p>

<p>1 accordance with the statutory scheme, including a pari 2 passu distribution. It's the very fund which he has 3 undertaken to complete, which is a clear conceptual 4 difference from the rule in <i>Cherry v Boulton</i>. We 5 respectfully submit that a lot of what my learned 6 friends have said in their cases doesn't give adequate 7 recognition to that fundamental distinction between the 8 two principles.</p> <p>9 Mr Justice Swinfen Eady, your Lordship may remember, 10 in the <i>Rhodesia Goldfields</i> case talks about a strange 11 travesty of equity cited by Lord Walker in paragraph 18 12 in <i>Kaupthing</i>. We say that would be applicable if LBL 13 and LBHI2 were entitled to be paid at once all that was 14 due to them, in circumstances in which there is 15 a possibility that the deficit in the insolvency which 16 is now proceeding might be greater than the amount owed 17 to them and therefore irrecoverable from them in full, 18 notwithstanding the payment has already been made.</p> <p>19 So not only do the <i>Cherry v Boulton</i> line of cases 20 not assist the shareholders, they emphasise the reason, 21 we say, why the contributory rule should apply in an 22 administration, because the fundamental principle that 23 a shareholder of an unlimited company is liable to 24 contribute to the assets of the company on its 25 winding-up for the purposes of enabling the statutory</p> <p style="text-align: center;">Page 25</p>	<p>1 estate.</p> <p>2 Now, there are two quite short answers to that. The 3 first is the question simply doesn't arise in the 4 present case because they cannot do what is required of 5 them anyway as they are insolvent and there is no 6 suggestion that they can fund the entirety of the 7 deficiency in order to pay what's required.</p> <p>8 But the second and more general point is that the 9 reason for that, in any event, is they have undertaken 10 the obligations of a member with unlimited liability. 11 It is not surprising, nor is it objectionable in 12 principle, that they cannot work out what to do by way 13 of contribution at this stage. They have undertaken the 14 liabilities of unlimited liability. The company in 15 respect of which they have undertaken that liability is 16 subject to a distributing insolvency process. It is 17 entirely adventitious on this point that it happens to 18 be administration rather than liquidation so far as they 19 are concerned.</p> <p>20 Mr Trace also made some submissions that it was 21 contrary to the GHE case for the rule to be applied in 22 administration, but we didn't really understand that 23 submission. GHE was simply concerned with the issue of 24 how best to protect the interests of creditors taken as 25 a whole and we didn't understand why a contributory</p> <p style="text-align: center;">Page 27</p>
<p>1 scheme to be worked through, including, in particular, a 2 pari passu distribution, would be breached if the member 3 received any dividend where it turns out that he was in 4 fact liable to contribute to the assets and hasn't so 5 contributed. On that basis, the fact that you cannot 6 make a call until winding-up is actually irrelevant.</p> <p>7 Of course we recognise, my Lord, that there isn't 8 any specific authority which supports the application of 9 this principle in the context of administration. We 10 understand that. But it's in this context that what the 11 Master of the Rolls Lord Jessel said in <i>Hallett's</i> 12 <i>Estate</i>, which we have cited in our supplemental 13 submissions, is important. Even if the contributory 14 rule was restricted to accrued debts at the time 15 a dividend is declared, as an established principle it's 16 well capable of being developed in a principled manner 17 to the present circumstances, given the introduction of 18 distributing administrations into English law.</p> <p>19 Now, one of the points that was made -- and I think 20 it was probably made most forcefully by my learned 21 friend Mr Trace -- was that LBHI2, in these sort of 22 circumstances, cannot do what is required to participate 23 because it won't know what to do by way of contribution. 24 Put another way, it's said there is nothing that LBHI2 25 can do to improve their position by completing the</p> <p style="text-align: center;">Page 26</p>	<p>1 should be entitled to take the benefit of the principal 2 in that case.</p> <p>3 Now, as to the second point in relation to the 4 contributory rule, ie why it doesn't apply pre-call and 5 doesn't apply in an administration at all, as my learned 6 friends would have it, they relied on what was actually 7 said in <i>Grissell's Case</i>. Mr Wolfson, in particular, 8 I think took your Lordship to the bottom of page 536 of 9 the judgment in <i>Grissell's Case</i>. Perhaps we could just 10 turn that up so your Lordship can see what it's talking 11 about.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes. That's tab?</p> <p>13 MR TROWER: Sorry, tab 10. Your Lordship has looked at this 14 judgment on a number of occasions, but the bit I think 15 that is probably relevant on this point is the last 16 paragraph and, in particular, the bit that goes over the 17 page, the sentence starting the -- yes, the last 18 paragraph of page 536 and it goes over the page.</p> <p>19 The submission on the back of that was made that 20 <i>Grissell's Case</i> is a circumstance in which it was clear, 21 so it is said, that the contributory rule was only 22 applicable in respect of an accrued liability to call. 23 Now, it's right -- and I think your Lordship pointed 24 out -- that the issue was at least potentially live in 25 the case because the call was made, I think it's £10 per</p> <p style="text-align: center;">Page 28</p>

<p>1 £50 share, on which only £15 had been paid up. The</p> <p>2 court did not actually have to decide whether a debt</p> <p>3 could be set-off against a future call. It doesn't</p> <p>4 appear that argument was addressed on the point.</p> <p>5 Neither in this case, nor in any later contributory rule</p> <p>6 case, was the point in issue.</p> <p>7 Now, the way in which the power to call is</p> <p>8 structured makes the point anyway a non-issue in any</p> <p>9 liquidation for two reasons, which is perhaps one of the</p> <p>10 reasons why it has not actually been addressed.</p> <p>11 MR JUSTICE DAVID RICHARDS: Can I just ask you this.</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: Had Mr Grissell paid the call on</p> <p>14 his shares or not?</p> <p>15 MR TROWER: The £10?</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR TROWER: I don't know, my Lord, is the short answer.</p> <p>18 MR JUSTICE DAVID RICHARDS: No, I think actually because his</p> <p>19 summons -- we see this at the foot of page 528 -- was</p> <p>20 that he should be paid the amount of the proposed</p> <p>21 dividend after deducting the amount of any call that</p> <p>22 should have been made.</p> <p>23 MR TROWER: No, that must be right, because actually this</p> <p>24 case is simply about Mr Grissell seeking a set-off.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 29</p>	<p>1 Thank you.</p> <p>2 MR TROWER: Now, the way in which the power to call is</p> <p>3 structured makes the point a bit of a non-issue in any</p> <p>4 liquidation for two reasons anyway, which is one of the</p> <p>5 reasons why it's not been addressed. The liquidator, as</p> <p>6 your Lordship may recall, can make a call for the full</p> <p>7 amount before the sufficiency of the company's assets</p> <p>8 has been ascertained. That's something which you get</p> <p>9 from section 150(1), which has always been the law. So</p> <p>10 the form of the section which was under consideration in</p> <p>11 Grissell's Case, section 102, which your Lordship has in</p> <p>12 the bundle, is in exactly the same form on this point as</p> <p>13 section 150(1). The liquidator can, in any event, delay</p> <p>14 making distributions until he knows the extent of the</p> <p>15 call he will need to make. So it may be it's not that</p> <p>16 surprising that this point hasn't arisen in the context</p> <p>17 of a liquidation before.</p> <p>18 But, as a matter of principle, Grissell's Case was</p> <p>19 of course long before any concept of distributing</p> <p>20 administrations arose. If it is right, and we say it</p> <p>21 plainly is, that the contributory rule should be seen as</p> <p>22 protecting the company's right to call upon its members</p> <p>23 to fund distributions to creditors in accordance with</p> <p>24 the statutory scheme, which is what we say it's all</p> <p>25 about, then it must be the case that the contributory</p> <p style="text-align: center;">Page 31</p>
<p>1 MR TROWER: That was the issue.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes, of the actual call that had</p> <p>3 been made.</p> <p>4 MR TROWER: Yes.</p> <p>5 MR JUSTICE DAVID RICHARDS: Then he took out another summons</p> <p>6 that the liquidators be ordered to pay to him a dividend</p> <p>7 of the same rate upon the amount of his debt, deducting</p> <p>8 from the dividend the amount of any call that should</p> <p>9 have been made. Yes, okay, it seems to be much the same</p> <p>10 point.</p> <p>11 MR WOLFSON: It also appears from the end of the argument.</p> <p>12 MR JUSTICE DAVID RICHARDS: Does it?</p> <p>13 MR TROWER: Yes, it is 534.</p> <p>14 MR JUSTICE DAVID RICHARDS: 534, thank you.</p> <p>15 MR WOLFSON: And 533 as well at the end of the argument.</p> <p>16 MR TROWER: At the top of 534:</p> <p>17 "Those applications may be regarded as raising the</p> <p>18 question whether a shareholder is also" --</p> <p>19 MR JUSTICE DAVID RICHARDS: Sorry, where are you reading?</p> <p>20 MR TROWER: I am at the top of 534, that paragraph.</p> <p>21 MR JUSTICE DAVID RICHARDS: 534, I see, sorry.</p> <p>22 MR TROWER: Beginning, "Those applications may be regarded</p> <p>23 ..."</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes, that's right. Yes, we</p> <p>25 looked at it and Mr Wolfson took me to that passage.</p> <p style="text-align: center;">Page 30</p>	<p>1 rule, as a matter of principle, is equally applicable in</p> <p>2 a distributing administration, because it's from that</p> <p>3 moment in time that the need to protect the right to</p> <p>4 call against the member arises. You have, from the</p> <p>5 moment of the commencement of the administration, the</p> <p>6 whole panoply of a distributing regime, the <i>pari passu</i></p> <p>7 distribution, the valuation of claims as at the</p> <p>8 commencement of the administration, the ascertainment of</p> <p>9 claims as at that date and so on and so forth.</p> <p>10 Now, there is one point in relation to the</p> <p>11 contributory rule which arose out of something that your</p> <p>12 Lordship said on Day 3, pages 125 to 129, and it's</p> <p>13 relevant I think just to mention it at this stage. Your</p> <p>14 Lordship might have considered that if a member's</p> <p>15 ordinary unsubordinated debt was next to be paid in the</p> <p>16 Neuberger waterfall, then no call should be made because</p> <p>17 the call would simply be paid straight back to the</p> <p>18 member. The reason I am raising that at this stage is</p> <p>19 because we do suggest this isn't the correct way of</p> <p>20 looking at it because the contributory rule requires the</p> <p>21 member to contribute everything before it gets paid</p> <p>22 anything. Lord Walker stresses that, in terms, in</p> <p>23 paragraph 52 of his judgment. "Everything" includes all</p> <p>24 liabilities which rank below the member's debt in the</p> <p>25 liquidation. So we do suggest that it's important to</p> <p style="text-align: center;">Page 32</p>

<p>1 bear in mind -- and it helps inform as well, amongst 2 other things, the interrelationship with the set-off 3 principle -- that the way in which Lord Walker puts it 4 in paragraph 52 is quite important. Those words 5 "everything" and "anything" are actually stressed in 6 italics in his judgment.</p> <p>7 If the contributory rule doesn't apply in 8 administration, we say that there is a set-off in LBIE's 9 administration between the contingent call liability and 10 the debt due to the member. Now, Mr Wolfson's argument 11 that there is no set-off in LBIE's administration if the 12 contributory rule doesn't apply --</p> <p>13 MR JUSTICE DAVID RICHARDS: Just hold on. 14 MR TROWER: I think Mr Wolfson says that there is no set-off 15 in LBIE's administration if the contributory rule 16 doesn't apply. 17 MR JUSTICE DAVID RICHARDS: Yes. 18 MR TROWER: That argument depends on two points, as we 19 understand it. The first is the proposition that the 20 contingent call liability cannot be proved in the 21 insolvency of the member. He says there is no ability 22 to prove in the insolvency of the member. There is 23 nothing -- 24 MR JUSTICE DAVID RICHARDS: Mr Wolfson? 25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 33</p>	<p>1 it. It's there in the transcript, Day 2, page 129. It 2 is put again in that way in his skeleton argument at 3 paragraph 61.</p> <p>4 We respectfully submit there is a very short answer 5 on this point. He is wrong because he turns the 6 principles underlying the contributory rule on their 7 head. It's to protect the creditors of the company 8 against the member being paid when he still owes money 9 that the contributory rule has been developed. It works 10 so as to enable LBIE to claim from the member without 11 the member setting off, but you cannot possibly, we 12 respectfully suggest, rely on that very principle to 13 permit the member to receive a dividend in LBIE's 14 insolvency by preventing LBIE from setting off its 15 claim.</p> <p>16 MR JUSTICE DAVID RICHARDS: I think the one area of this 17 which I would like you to address is this. If there is 18 set-off in the administration of LBIE. 19 MR TROWER: Yes. 20 MR JUSTICE DAVID RICHARDS: Let me start again. This isn't 21 much of a problem, I don't think it's any problem, in an 22 unlimited company. But the same rule I think must apply 23 in the case of a limited company where there is unpaid 24 capital. 25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 35</p>
<p>1 MR JUSTICE DAVID RICHARDS: No, he says you can, because he 2 says Auriferous is wrong. 3 MR TROWER: Well, okay. If that's right, the only reason -- 4 MR JUSTICE DAVID RICHARDS: I think he says that there is no 5 set-off in the administration of LBIE, but he says that 6 LBIE can prove and therefore there would be set-off in 7 the administration or liquidation of LBL. 8 MR TROWER: Well, maybe I don't need to -- if he says that 9 we can prove in the insolvency of the member, the only 10 reason then that there cannot be a set-off must be the 11 other proposition, which is it's precluded by the 12 principles underlying the contributory rule. 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR TROWER: If it's as simple as that, I just need to 15 address that. 16 MR JUSTICE DAVID RICHARDS: Right. 17 MR TROWER: I think the clearest way I found it was being 18 put was at Day 2, page 129, where he said this, if one 19 turns up the transcript. He says because of the rule in 20 Grissell's Case there cannot be set-off in the company's 21 administration between the liability for calls, on the 22 one hand, and an independent debt owing by the company 23 to the contributory, on the other, because that gives 24 the contributory 100p in the pound when the other 25 creditors are getting less. So that's the way he puts</p> <p style="text-align: center;">Page 34</p>	<p>1 MR JUSTICE DAVID RICHARDS: Now, if in administration there 2 is a set-off between the contingent liability to calls 3 on shares and the debt, then that will, to some extent, 4 discharge the liability for a call made in the future. 5 MR TROWER: Yes, but it may -- sorry. 6 MR JUSTICE DAVID RICHARDS: That would perhaps undermine the 7 contributory rule. 8 MR TROWER: Although don't forget that -- yes, two points 9 immediately occur. The first of course is that in the 10 hypothetical example posited by your Lordship the 11 company in administration would be able to make calls. 12 MR JUSTICE DAVID RICHARDS: Yes. 13 MR TROWER: In those circumstances, you would simply then 14 have the operation of the contributory rule in the 15 ordinary way. 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR TROWER: So I am not sure that the problem would ever 18 arise in the form posited by your Lordship. 19 MR JUSTICE DAVID RICHARDS: It only would if the 20 administrator didn't make a call. Why wouldn't he? 21 MR TROWER: Why wouldn't he? It seems very odd. I can't 22 think of any reason why he wouldn't, in those 23 circumstances, exercise the power to call. 24 MR JUSTICE DAVID RICHARDS: Yes. 25 MR TROWER: My Lord, would you give me just a moment?</p> <p style="text-align: center;">Page 36</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: I should make clear, in the light of what was</p> <p>3 said from my left, that the power to call is the power</p> <p>4 to call under the Articles.</p> <p>5 MR JUSTICE DAVID RICHARDS: Indeed. No, I understand.</p> <p>6 MR TROWER: So far as Mr Wolfson's submissions are</p> <p>7 concerned, we say what comes first -- and this is</p> <p>8 another way of looking at it, is the pari passu rule and</p> <p>9 the other mandatory aspects of the statutory scheme,</p> <p>10 not, as Mr Wolfson would say, the question of whether or</p> <p>11 not you have set-off. You get that actually -- I don't</p> <p>12 know whether your Lordship still has Kaupthing open.</p> <p>13 MR JUSTICE DAVID RICHARDS: No.</p> <p>14 MR TROWER: You get that quite clearly from paragraph 53 in</p> <p>15 Kaupthing, the one we have just looked at. What one</p> <p>16 gets from that paragraph is that there are three</p> <p>17 concepts at work and they need to be worked through in</p> <p>18 the following order. The first one is: what is the</p> <p>19 cogent principle of the contributory rule? That's one</p> <p>20 of the cogent principles. The second one is set-off,</p> <p>21 which may or may not be dis-applied in any particular</p> <p>22 case. The third is the equitable rule, as described in</p> <p>23 paragraph 13, which fills the gap where set-off is</p> <p>24 dis-applied.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 37</p>	<p>1 of claims by both a limited and unlimited company other</p> <p>2 than calls made in a winding-up initially, although</p> <p>3 section 149 now excludes any call, which is</p> <p>4 a significant difference. We will come back to that.</p> <p>5 It then permits set-off in the case of an unlimited</p> <p>6 company as between the company's claims, whether</p> <p>7 a pre-liquidation call or other claim, and the member's</p> <p>8 debt. By implication, it's been held that this</p> <p>9 therefore precludes a set-off against a pre-liquidation</p> <p>10 call in the case of a limited company; that's Grissell's</p> <p>11 Case and Calisher's Case, the Breech-Loading case. That</p> <p>12 is all dealt with in the opening skeletons.</p> <p>13 Now, 101 says nothing at all, and nor does 149,</p> <p>14 about calls made in the winding-up. 149 actually</p> <p>15 doesn't say anything about calls at all now because all</p> <p>16 calls, whether under the Companies Act or the Insolvency</p> <p>17 Act, are simply excluded from its ambit. So it's not</p> <p>18 correct to say, when 149 doesn't deal with calls at all,</p> <p>19 that in providing for set-off for an unlimited company</p> <p>20 against claims other than a call it must have implicitly</p> <p>21 excluded set-off against calls.</p> <p>22 In this context, I think it's fair to say that the</p> <p>23 way we put our case in paragraph 152 of our opening</p> <p>24 skeleton does rather overstate the position.</p> <p>25 Section 101 does not imply that there is no set-off</p> <p style="text-align: center;">Page 39</p>
<p>1 MR TROWER: So the reference back to paragraph 13 is simply</p> <p>2 a reference back to Akerman, which was approved by Lord</p> <p>3 Walker as being the description of the rule in Cherry v</p> <p>4 Boulton, the equitable rule.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: It is very important, when reading what Lord</p> <p>7 Walker actually says in paragraphs 51 to 53, to bear in</p> <p>8 mind, we respectfully submit, that three-staged approach</p> <p>9 and the fact that there are three quite separate</p> <p>10 concepts at work here; the contributory rule, set-off</p> <p>11 and the rule in Cherry v Boulton.</p> <p>12 Now, there is a slightly different point on which</p> <p>13 submissions were made by my learned friends, namely that</p> <p>14 set-off is precluded between a call and the member's</p> <p>15 debt claim as a matter of statutory construction, which</p> <p>16 is the section 101 and 149 point, 101 of the 1862 Act</p> <p>17 and 149 of the 1986 Act; such that even if the</p> <p>18 contributory rule doesn't apply, then there can be no</p> <p>19 set-off between LBIE's contingent call claim and the</p> <p>20 member's debt claim. That's the way it's put. We say</p> <p>21 that point is wrong.</p> <p>22 What I thought I would do, if it's helpful for your</p> <p>23 Lordship, is just explain how we say 149 operates and</p> <p>24 its relevance to set-off against calls. The first thing</p> <p>25 it does is it provides a summary remedy only in respect</p> <p style="text-align: center;">Page 38</p>	<p>1 against a post-liquidation call. The most that can be</p> <p>2 said is that in not dealing with post-liquidation calls</p> <p>3 at all, and thus necessarily not providing any set-off</p> <p>4 against post-liquidation calls, it acknowledges the</p> <p>5 premise that there is no set-off against</p> <p>6 post-liquidation calls. That's all it does. So it's</p> <p>7 actually irrelevant to the debate. All one gets out of</p> <p>8 it is that it doesn't provide a source for set-off or</p> <p>9 the call against a member's debt claim, but so what.</p> <p>10 So we go back to first principles. There isn't a</p> <p>11 set-off between a call and a member's debt claim solely</p> <p>12 because of the contributory rule, as explained in</p> <p>13 Grissell's Case. That's where we go back to. If, which</p> <p>14 is the whole premise of this part of the case, the</p> <p>15 contributory rule doesn't apply, there is no other</p> <p>16 reason to conclude that insolvency set-off cannot apply,</p> <p>17 we would respectfully say. In short, the only reason</p> <p>18 for dis-applying insolvency set-off is the contributory</p> <p>19 rule. If the contributory rule doesn't apply, there is</p> <p>20 no reason to prevent insolvency set-off from operating.</p> <p>21 It's not more complicated than that.</p> <p>22 Can I next make some short submissions on how it is</p> <p>23 that set-off works for an unlimited liability company.</p> <p>24 This is, in particular, in response to some submissions</p> <p>25 that were made by my learned friend Mr Wolfson. Because</p> <p style="text-align: center;">Page 40</p>

<p>1 LBIE is an unlimited liability company, the member's</p> <p>2 obligation to contribute includes the obligation to</p> <p>3 contribute to enable LBIE's debt to the member to be</p> <p>4 paid.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: Such that set-off will always lead to the</p> <p>7 member's debt being paid by being set-off against that</p> <p>8 portion of the member's liability which relates to its</p> <p>9 own debt.</p> <p>10 Now, that was sought to be answered by Mr Wolfson by</p> <p>11 saying that the set-off is against the dividend only and</p> <p>12 not the full claim. He made quite extensive submissions</p> <p>13 on this point. We respectfully submit that he is simply</p> <p>14 wrong on this. Set-off is as between debts and not as</p> <p>15 between debts and dividends or as between dividends.</p> <p>16 That's quite clear from the wording of rule 2.85 and</p> <p>17 rule 4.90. An account is taken of what is due and what</p> <p>18 is due is the debt, not the dividend.</p> <p>19 Mr Wolfson relied in support of his submission on</p> <p>20 a number of authorities which were referred to in his</p> <p>21 argument, but they have nothing to do with set-off.</p> <p>22 They are all about the way in which the rule in Cherry v</p> <p>23 Boulton operates, which is an entirely different point.</p> <p>24 The mere fact that the rule in Cherry v Boulton might,</p> <p>25 in some circumstances, entitle the claimant to the fund</p> <p style="text-align: center;">Page 41</p>	<p>1 of an ordinary creditor of a fund, does not require him</p> <p>2 to do more than bring his dividend into account before</p> <p>3 he's able to pursue his creditor's right to payment, but</p> <p>4 that's all it is. Set-off is based on an entirely</p> <p>5 different principle and is simply about setting debts</p> <p>6 off against each other. So we suggest there is simply</p> <p>7 a fundamental misapprehension applying the principles</p> <p>8 which are to be derived from Cherry v Boulton when</p> <p>9 looking at questions of set-off.</p> <p>10 MR JUSTICE DAVID RICHARDS: I mean, those were cases where</p> <p>11 they were time critical as to when the debt occurred or</p> <p>12 the bankruptcy occurred.</p> <p>13 MR TROWER: Yes.</p> <p>14 MR JUSTICE DAVID RICHARDS: So the debt due to the estate,</p> <p>15 as it were, to the testator was the dividend.</p> <p>16 MR TROWER: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: That seemed to be the important</p> <p>18 point there.</p> <p>19 MR TROWER: Lord Walker explains in precisely that way in</p> <p>20 Kaupthing and tells you why there were different results</p> <p>21 I think in different cases, based on that.</p> <p>22 MR JUSTICE DAVID RICHARDS: He does. That's quite right,</p> <p>23 yes. Sorry, this is taking you out of your way. Is</p> <p>24 your basic submission in relation to Cherry v Boulton</p> <p>25 that it has no application in the case of companies</p> <p style="text-align: center;">Page 43</p>
<p>1 to participate, once his estate is treated as having</p> <p>2 paid a dividend on the amount to be contributed, is</p> <p>3 neither here nor there on the question of set-off. It's</p> <p>4 precisely the circumstance in which, as I think Lord</p> <p>5 Walker makes explicitly clear in Kaupthing, the rule in</p> <p>6 Cherry v Boulton produces a different result from</p> <p>7 set-off.</p> <p>8 There was discussion during the course of</p> <p>9 Mr Wolfson's submissions about the Peruvian Railway</p> <p>10 case, which he heavily relied on, but as your Lordship</p> <p>11 indicated I think that was a case on Cherry v Boulton,</p> <p>12 as were all the others on which he relied. In fact, in</p> <p>13 this particular case, I don't think it was -- I mean,</p> <p>14 your Lordship pointed out I think that the cases in</p> <p>15 which only a dividend had to be contributed were all</p> <p>16 ones where the contributor to the fund was an individual</p> <p>17 bankrupt before the testator had died, which is one</p> <p>18 explanation as to why the rule might have applied in the</p> <p>19 way it did. But there is actually, we respectfully</p> <p>20 suggest, a slightly more fundamental point or more</p> <p>21 fundamental way of looking at it. The rule in Cherry v</p> <p>22 Boulton is all about a contributor to a fund receiving</p> <p>23 payment of a debt owed to him by holding in his own hand</p> <p>24 the part of the mass which, if completed, he would</p> <p>25 receive back. It's a rule of equity which, in the case</p> <p style="text-align: center;">Page 42</p>	<p>1 incorporated under the Companies Act?</p> <p>2 MR TROWER: Yes, my Lord, it is our basic submission. What</p> <p>3 has happened in Kaupthing --</p> <p>4 MR JUSTICE DAVID RICHARDS: It's a rule which applies, is</p> <p>5 this what you would say, to distributions of</p> <p>6 unincorporated funds?</p> <p>7 MR TROWER: It undoubtedly arose originally in the context</p> <p>8 of wills and distributions by testators. That's where</p> <p>9 it arose from.</p> <p>10 MR JUSTICE DAVID RICHARDS: It originates -- one can</p> <p>11 understand it might then be applied to corporate funds.</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: But is your submission, well,</p> <p>14 actually the statutory provisions relating to companies</p> <p>15 and their liquidation really preclude the operation,</p> <p>16 because you have the obligation to contribute and the</p> <p>17 contributory rule and you have the mandatory set-off.</p> <p>18 MR TROWER: Yes.</p> <p>19 MR JUSTICE DAVID RICHARDS: So what is left for Cherry v</p> <p>20 Boulton?</p> <p>21 MR TROWER: Yes. That's important, and one actually gets</p> <p>22 that from Grissell's Case, looked at properly, because</p> <p>23 Grissell's Case makes clear that the contributory rule</p> <p>24 and its incidence are derived from the statutory scheme.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 44</p>

<p>1 MR TROWER: That's what it's all about.</p> <p>2 MR JUSTICE DAVID RICHARDS: They are explicitly stated.</p> <p>3 MR TROWER: They are explicitly stated. So it's a mechanism</p> <p>4 for ensuring that the statutory scheme in certain</p> <p>5 defined circumstances is not undermined, which is why we</p> <p>6 say that it is so clear, with respect, that it is</p> <p>7 capable of application in an administration.</p> <p>8 MR JUSTICE DAVID RICHARDS: Anyway, sorry, I just wanted to</p> <p>9 ask you that. Thank you.</p> <p>10 MR TROWER: So far as set-off in the member's insolvency is</p> <p>11 concerned -- that's all I was going to say about set-off</p> <p>12 in LBIE's insolvency by way of response to submissions.</p> <p>13 There are just a couple of points on set-off in the</p> <p>14 member's insolvency because it was treated differently.</p> <p>15 Our primary case is that there is no set-off in</p> <p>16 a member's insolvency while a contribution is</p> <p>17 outstanding, whether actual or contingent, ie the</p> <p>18 contributory rule. It prevents set-off in either</p> <p>19 estate.</p> <p>20 This was the point I think at which Mr Wolfson</p> <p>21 sought to say that Auriferous number 1 is wrongly</p> <p>22 decided in part because --</p> <p>23 MR JUSTICE DAVID RICHARDS: Sorry, you are talking about</p> <p>24 a set-off in a member's insolvency.</p> <p>25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 45</p>	<p>1 MR JUSTICE DAVID RICHARDS: That's Auriferous number 1, yes.</p> <p>2 MR TROWER: Auriferous number 2 was all about the ability to</p> <p>3 take a dividend in the insolvency of the company.</p> <p>4 MR JUSTICE DAVID RICHARDS: That's clearly not a question at</p> <p>5 all, yes.</p> <p>6 MR TROWER: Now, we need to go back. We say that Auriferous</p> <p>7 number 1 is correct and it's Duckworth which is</p> <p>8 anomalous. The best reason for saying that Auriferous</p> <p>9 number 1 is correct it's because of the way it's cited</p> <p>10 in Kaupthing actually when it comes to it, and this was</p> <p>11 a point that Mr Wolfson identified I was likely to be</p> <p>12 saying and I am indeed saying it.</p> <p>13 If your Lordship would turn back to Kaupthing again,</p> <p>14 I am afraid, paragraph 52. What I need to say is this.</p> <p>15 It's true that set-off wasn't part of the actual --</p> <p>16 well, what he says here is that it wasn't part of the</p> <p>17 actual formal ratio of the case, but it was plainly</p> <p>18 cited with approval and it was cited with approval in</p> <p>19 the context of an explanation of why it was that</p> <p>20 Lord Justice Chadwick had missed the point of the</p> <p>21 contributory rule cases.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: It was directly relevant to Lord Walker's</p> <p>24 explanation that it would be wrong to treat the rule</p> <p>25 against double proof, which he described as similar to</p> <p style="text-align: center;">Page 47</p>
<p>1 MR JUSTICE DAVID RICHARDS: And your basic position is, on</p> <p>2 that, that there is, you said, no set-off.</p> <p>3 MR TROWER: There is no set-off because of the contributory</p> <p>4 rule.</p> <p>5 MR JUSTICE DAVID RICHARDS: Because of the contributory</p> <p>6 rule, yes.</p> <p>7 MR TROWER: I think it's on this point that Mr Wolfson</p> <p>8 sought to say that Auriferous number 1 is wrongly</p> <p>9 decided, in part because of its inconsistency with</p> <p>10 Duckworth.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes. Auriferous, just to be</p> <p>12 clear about this, I am right, aren't I, arises in</p> <p>13 circumstances where there is an outstanding call?</p> <p>14 MR TROWER: Yes.</p> <p>15 MR JUSTICE DAVID RICHARDS: So what Auriferous decides is</p> <p>16 that if the company is in liquidation, the liquidator</p> <p>17 makes a call, there is no set-off in the member's</p> <p>18 bankruptcy.</p> <p>19 MR TROWER: Yes.</p> <p>20 MR JUSTICE DAVID RICHARDS: No, sorry, the member's</p> <p>21 liquidation.</p> <p>22 MR TROWER: In the member's liquidation, that's right.</p> <p>23 MR JUSTICE DAVID RICHARDS: Between the liability on the</p> <p>24 call and the debt owed by the company to the member.</p> <p>25 MR TROWER: Yes. That's Auriferous number 1.</p> <p style="text-align: center;">Page 46</p>	<p>1 the contributory rule, ie a cogent principle, as</p> <p>2 trumping set-off but as not trumping the rule in Cherry</p> <p>3 v Boulton, which was the underlying point. We do</p> <p>4 respectfully submit that he used this as an illustration</p> <p>5 of a particular principle within a line of authority</p> <p>6 that was necessary for him to go through in order for</p> <p>7 him to explain why it was that Lord Justice Chadwick had</p> <p>8 gone wrong in his treatment of this particular area.</p> <p>9 The way one gets there is paragraph 51 of his judgment</p> <p>10 refers back to paragraph 98 of Lord Justice Chadwick's</p> <p>11 judgment on the line of authority dealing with special</p> <p>12 case of shareholders liable for calls on shares which</p> <p>13 are not fully paid.</p> <p>14 "Lord Justice Chadwick sets out a fuller citation of</p> <p>15 the cases, but I have to say, with respect, he seems to</p> <p>16 have missed their point."</p> <p>17 So what he's doing here in this part of his judgment</p> <p>18 is explaining why it was that Lord Justice Chadwick had</p> <p>19 missed the point of the cases that he had cited in</p> <p>20 paragraph 98 of his judgment, those themselves being</p> <p>21 cases which underpinned the analysis in the decision of</p> <p>22 the Court of Appeal. If you go back to paragraph 44 of</p> <p>23 Lord Walker's judgment, you can see that because he</p> <p>24 describes in paragraph 44 the scheme of</p> <p>25 Lord Justice Chadwick's judgment. In 6, he says what</p> <p style="text-align: center;">Page 48</p>

<p>1 paragraphs 98 to 117 do:</p> <p>2 "Discuss and answer the three questions left</p> <p>3 unanswered in re Milton, the first being whether the</p> <p>4 equitable rule applies in a situation where statutory</p> <p>5 set-off is excluded by the rule against double proof."</p> <p>6 He goes on in paragraph 51, as I say, to start to</p> <p>7 deal with that bit of Lord Justice Chadwick's judgment.</p> <p>8 So it is actually pretty fundamental to his analysis</p> <p>9 that he should accurately describe, with citations, the</p> <p>10 way in which the contributory rule works and its</p> <p>11 manifestations. So we do respectfully submit that</p> <p>12 Auriferous number 1 has been cited in a context that is</p> <p>13 relevant to the actual result in the case, with apparent</p> <p>14 approval, as an illustration of the proposition that</p> <p>15 Lord Walker was advancing. So while it may be that, on</p> <p>16 a very strict approach to questions of what is and is</p> <p>17 not a ratio, your Lordship might be able to say, well,</p> <p>18 it's open to me not to follow Auriferous number 1 or say</p> <p>19 Auriferous number 1 is wrongly decided, notwithstanding</p> <p>20 what Lord Walker has said, we respectfully suggest that</p> <p>21 it would be stretching principles of prior precedence to</p> <p>22 a fairly extreme extent if your Lordship were to reach</p> <p>23 that conclusion. So we do respectfully suggest that</p> <p>24 Auriferous number 1 has, to all intents and purposes,</p> <p>25 been approved by the Supreme Court in Kaupthing.</p> <p style="text-align: center;">Page 49</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes, I see.</p> <p>2 MR TROWER: My Lord, in short, we say that the contributory</p> <p>3 rule applies as between member and insolvent company,</p> <p>4 and the insolvency of the member is no reason to depart</p> <p>5 from that rule. Auriferous 1 was right, as a matter of</p> <p>6 principle, and your Lordship shouldn't and indeed cannot</p> <p>7 find that it was plainly wrong, which is what your</p> <p>8 Lordship was invited to conclude by Mr Wolfson.</p> <p>9 I think I ought also just to deal with the GEB case,</p> <p>10 where Lord Justice Romer touched on this area, because</p> <p>11 your Lordship was taken to it. GEB is at tab 42. This</p> <p>12 was the case of the bankruptcy notice where the Court of</p> <p>13 Appeal was rather sympathetic to the position of the --</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR TROWER: I don't know whether your Lordship remembers the</p> <p>16 facts. Now, it's important just to bear in mind what</p> <p>17 was going on here and the assumptions on which the Court</p> <p>18 of Appeal was working. If your Lordship starts in the</p> <p>19 judgment of Lord Justice Vaughan-Williams on page 346.</p> <p>20 MR JUSTICE DAVID RICHARDS: I mean, they were sympathetic</p> <p>21 because the debtor couldn't obtain the benefit of the</p> <p>22 set-off which would arise once he was made bankrupt.</p> <p>23 MR TROWER: Correct.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes, page 346.</p> <p>25 MR TROWER: Now, this company is in liquidation, the result</p> <p style="text-align: center;">Page 51</p>
<p>1 MR JUSTICE DAVID RICHARDS: Yes. Interestingly, I don't</p> <p>2 think -- I just note it -- that Lord Justice Chadwick</p> <p>3 referred to Auriferous number 1.</p> <p>4 MR TROWER: No, I think that may be right, my Lord.</p> <p>5 MR JUSTICE DAVID RICHARDS: He referred to Auriferous number</p> <p>6 2.</p> <p>7 MR TROWER: Yes. Now, your Lordship asked -- I think it</p> <p>8 must have been my learned friend Mr Wolfson -- for help</p> <p>9 on any analysis about Duckworth and Auriferous number 1</p> <p>10 and what authority there was on it. The only extra</p> <p>11 thing we have been able to find is there is a bit in</p> <p>12 McPherson. Your Lordship may recall that I think it's</p> <p>13 Derham says that he prefers the Duckworth approach.</p> <p>14 McPherson adopts an alternative. We have some bits of</p> <p>15 McPherson already in the bundle.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR TROWER: Perhaps we could slot it in behind tab 104.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: What we have handed up is pages 642 to 644. The</p> <p>20 bit that's relevant on this point is the last paragraph</p> <p>21 under numbered 10036, immediately on page 644. It's,</p> <p>22 "But like all general rules", about two-thirds of the</p> <p>23 way down, which expresses the view that it's in fact the</p> <p>24 Duckworth exception which is anomalous and not the other</p> <p>25 way round.</p> <p style="text-align: center;">Page 50</p>	<p>1 of which is this:</p> <p>2 "The statute in relation to the Companies Act makes</p> <p>3 such provisions as to what should be done in the event</p> <p>4 of liquidation ...(Reading to the words)... by him in</p> <p>5 the action. The real reason for that is that in such</p> <p>6 a case, although the action even after the liquidation</p> <p>7 is an action which is brought in the name of the</p> <p>8 company, in substance it is an action which is brought</p> <p>9 by the liquidator on behalf of the creditors of the</p> <p>10 company for the amount due from the shareholder to the</p> <p>11 company."</p> <p>12 Now, it appears that the Court of Appeal was working</p> <p>13 on the assumption that the only reason there was no</p> <p>14 set-off in the company's insolvency was because of</p> <p>15 a lack of mutuality. That appears to be the case.</p> <p>16 MR JUSTICE DAVID RICHARDS: Maybe.</p> <p>17 MR TROWER: You get that from, I think, Lord Justice Romer</p> <p>18 at 352 as well, at the top of the page 352.</p> <p>19 Now, one can see why they might have got to that</p> <p>20 conclusion from the argument you can see on page 345.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: Lord Justice Vaughan-Williams refers to</p> <p>23 Whitehouse.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>25 MR TROWER: As disapproving Brighton Arcade on this point,</p> <p style="text-align: center;">Page 52</p>

<p>1 but there is no mention of Pyle which, as your Lordship</p> <p>2 may recall, is rather different.</p> <p>3 Now, it's also the case that this assumption</p> <p>4 actually proceeded on the back of what appears to have</p> <p>5 been the common ground of the parties. You can get that</p> <p>6 from the bottom of page 347. You get that much more</p> <p>7 clearly I think in Lord Justice Vaughan-Williams, the</p> <p>8 last paragraph at the bottom of page 347. It's not</p> <p>9 disputed.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes. He couldn't use the</p> <p>11 set-off in the action. I see, he could not do so by</p> <p>12 reason of the want of mutuality.</p> <p>13 MR TROWER: But that was common ground. The contrary wasn't</p> <p>14 argued, possibly on the back of Whitehouse, who knows.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR TROWER: When one then goes and looks at what</p> <p>17 Lord Justice Romer says on page 352 and the passage</p> <p>18 that's relied on by my learned friend, the principled</p> <p>19 basis for there being ...</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR TROWER: For the set-off, it's undermined when the true</p> <p>22 reason there is no set-off in the company's liquidation</p> <p>23 is understood. The true reason is Grissell's Case</p> <p>24 because to allow set-off would result in the member</p> <p>25 being paid in competition with outside creditors,</p> <p style="text-align: center;">Page 53</p>	<p>1 wasn't entitled to in the action.</p> <p>2 MR TROWER: Indeed. We do respectfully, as a matter of</p> <p>3 principle, challenge the way in which Lord Justice Romer</p> <p>4 puts the equality of rights as well. The creditors of</p> <p>5 the member are creditors of a company which has</p> <p>6 undertaken the obligations of unlimited liability in</p> <p>7 a case such as ours. It's a bit difficult to see why --</p> <p>8 MR JUSTICE DAVID RICHARDS: So you say, well, that's just</p> <p>9 the incident which follows from being a member of an</p> <p>10 unlimited company.</p> <p>11 MR TROWER: Yes.</p> <p>12 MR JUSTICE DAVID RICHARDS: You are not going to be able to</p> <p>13 recover your debt from the company until you have made</p> <p>14 good your liability as contributory.</p> <p>15 MR TROWER: Indeed. They have no better standing in</p> <p>16 relation to recovery of the member's debts from the</p> <p>17 company than the member itself.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: So there is a principled objection, we would</p> <p>20 respectfully suggest, to looking at it through the</p> <p>21 spectacles of Lord Justice Romer in GEB. Your Lordship</p> <p>22 does not need to grapple with the question of whether</p> <p>23 this is right or wrong.</p> <p>24 MR JUSTICE DAVID RICHARDS: No.</p> <p>25 MR TROWER: But we do respectfully suggest that, as a matter</p> <p style="text-align: center;">Page 55</p>
<p>1 which breaches the principle.</p> <p>2 MR JUSTICE DAVID RICHARDS: I am just looking at this</p> <p>3 passage. This is in the passage relied on by</p> <p>4 Mr Wolfson. The first sentence is an interesting, very</p> <p>5 sort of broad principle, not rooted in detailed analysis</p> <p>6 of the precise position. It's a broad principle, sort</p> <p>7 of producing an equitable result. You have two groups</p> <p>8 of innocent creditors.</p> <p>9 MR TROWER: Yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: You have to achieve justice</p> <p>11 between those two groups of innocent creditors. That</p> <p>12 strikes me as to how that sentence reads. He says those</p> <p>13 rights are equal. Then he is providing the sort of</p> <p>14 legal underpinning for the equitable result.</p> <p>15 MR TROWER: Yes.</p> <p>16 MR JUSTICE DAVID RICHARDS: He says the only way of dealing</p> <p>17 with the difficulty is to treat the mutual rights as if</p> <p>18 they were the old rights of the debtor in his individual</p> <p>19 capacity and the company in its individual capacity, and</p> <p>20 so the right of set-off accrues and must be enforced.</p> <p>21 I have some difficulty with that because of Grissell's</p> <p>22 Case.</p> <p>23 MR TROWER: My Lord, indeed. Indeed, one needs to take the</p> <p>24 analysis one stage --</p> <p>25 MR JUSTICE DAVID RICHARDS: That's precisely the set-off he</p> <p style="text-align: center;">Page 54</p>	<p>1 of principle, it doesn't actually advance matters very</p> <p>2 much further.</p> <p>3 MR JUSTICE DAVID RICHARDS: It's relevant when considering</p> <p>4 whether Auriferous number 1 is right or wrong.</p> <p>5 MR TROWER: Yes.</p> <p>6 MR JUSTICE DAVID RICHARDS: That's the other -- but clearly</p> <p>7 I don't have to decide whether this is wrong. If you</p> <p>8 are moving away from GEB, that might be a convenient</p> <p>9 moment.</p> <p>10 MR TROWER: I was. Actually I was next going to move on to</p> <p>11 the next stage in the submissions, which was to say</p> <p>12 something about non-provable liabilities and interest as</p> <p>13 concepts. So I was moving away from the contributory</p> <p>14 rule and set-off.</p> <p>15 MR JUSTICE DAVID RICHARDS: Before we move away from set-off</p> <p>16 completely, I will just pose the question now. It arose</p> <p>17 I think earlier with Mr Wolfson. It is the lack of</p> <p>18 symmetry that I would quite like you to say anything you</p> <p>19 wish to say about, but you could have a situation where</p> <p>20 set off in one estate means that there is no debt but</p> <p>21 there isn't set off in the other, so there is still</p> <p>22 a debt. I just would like to hear if there is anything</p> <p>23 you have to say about that. Mr Wolfson says, well, you</p> <p>24 have to focus on what you are doing here, you are</p> <p>25 looking at the position in two different estates.</p> <p style="text-align: center;">Page 56</p>

<p>1 MR TROWER: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: But if there is anything you</p> <p>3 want to say about that, I would be grateful to hear it.</p> <p>4 DEFENCE COUNSEL: I will cogitate that in the break.</p> <p>5 MR JUSTICE DAVID RICHARDS: You don't have to come back when</p> <p>6 we come back now, you can come back later if you wish.</p> <p>7 I will rise for five minutes.</p> <p>8 (11.30 am)</p> <p>9 (A short break)</p> <p>10 (11.35 am)</p> <p>11 MR TROWER: My Lord, before going to the sub-debt agreement</p> <p>12 of section 74, can I say something generally about</p> <p>13 non-provable liabilities and interest because both these</p> <p>14 things your Lordship has heard quite a lot of</p> <p>15 submissions on, I think largely from Mr Isaacs but there</p> <p>16 were also submissions from others of my learned friends</p> <p>17 as well on some of these points. So far as non-provable</p> <p>18 liability is concerned, despite what Mr Isaacs said,</p> <p>19 this category of liability is well recognised as</p> <p>20 an established liability in the legislation and the</p> <p>21 authorities. While it is undoubtedly the case that the</p> <p>22 legislature has moved to make more and more liabilities</p> <p>23 provable, and the wide wording of 13.12 itself is</p> <p>24 a pretty good illustration of the approach that needs to</p> <p>25 be taken. It has always been recognised that not all</p> <p style="text-align: center;">Page 57</p>	<p>1 explore the boundaries of 13.12.2, but I think it is</p> <p>2 worth noting that there could be some difficult issues,</p> <p>3 in particular, for example, I suppose, where the</p> <p>4 ultimate claim is the result of the sequential</p> <p>5 negligence of two parties, the negligence of the company</p> <p>6 in liquidation coming first and the other party coming</p> <p>7 second but there being no possibility of damage until</p> <p>8 both have occurred.</p> <p>9 MR TROWER: Yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: It would but bold to say,</p> <p>11 without exploring various factual circumstances, that</p> <p>12 there is no claim in tort which is not capable of proof.</p> <p>13 MR TROWER: Yes.</p> <p>14 MR JUSTICE DAVID RICHARDS: It may be that is the case but</p> <p>15 clearly there are some tricky issues.</p> <p>16 MR TROWER: All I say is that clearly a decision has been</p> <p>17 made as to where to draw the line and the very fact that</p> <p>18 there is a line being drawn of itself indicates that the</p> <p>19 legislature contemplated the possibility of</p> <p>20 non-provability in relation to this.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: Now, with respect to my learned friend on the</p> <p>23 authorities, it simply is not right to suggest that the</p> <p>24 Supreme Court in Nortel had in mind, Lord Neuberger had</p> <p>25 in mind, only the postponed claims dealt with in rule</p> <p style="text-align: center;">Page 59</p>
<p>1 liabilities can or should be proved. As to the</p> <p>2 legislation, and can I just deal with the response to my</p> <p>3 learned friend's points in two stages, legislation</p> <p>4 first, then the authorities, it is not the case that</p> <p>5 non-provable liabilities are really only to be found in</p> <p>6 the list of postponed liabilities, which your Lordship</p> <p>7 was taken to at 12.32 or that is the exclusive place in</p> <p>8 which they are found. That is actually obvious when you</p> <p>9 go on and read the next sub-rule, 12.33, which makes</p> <p>10 specifically clear that the earlier provisions of rule</p> <p>11 12.3 are without prejudice to the position in relation</p> <p>12 to any other principle of law or enactment which would</p> <p>13 make a liability non-provable. It is not more</p> <p>14 complicated than that.</p> <p>15 That is the first legislative point. The second</p> <p>16 legislative point is actually the amendment of rule 13.2</p> <p>17 to exclude the provability of claims in tort in the</p> <p>18 light of T&N, left unprovable all tort claims where not</p> <p>19 all of the elements, apart from damage, were present at</p> <p>20 the insolvency date. Doubtless the legislators hoped to</p> <p>21 have picked up everything that ought to be provable but</p> <p>22 the very wording of the rule itself contemplates that</p> <p>23 not everything would be provable. So far as the</p> <p>24 authorities are concerned --</p> <p>25 MR JUSTICE DAVID RICHARDS: I mean, clearly I am not here to</p> <p style="text-align: center;">Page 58</p>	<p>1 12.2 when he talked about non-provable claims in the</p> <p>2 waterfall. For all I know, Lord Neuberger may have had</p> <p>3 those claims in mind as well but that was certainly not</p> <p>4 the focus of the argument.</p> <p>5 MR JUSTICE DAVID RICHARDS: I think that Mr Isaacs suggested</p> <p>6 that he may have had in mind the postponed claims of</p> <p>7 members, (inaudible) members.</p> <p>8 MR TROWER: He may have done.</p> <p>9 MR JUSTICE DAVID RICHARDS: I don't know if he refers to</p> <p>10 those.</p> <p>11 MR TROWER: Under 72.4F.</p> <p>12 MR JUSTICE DAVID RICHARDS: Exactly. Does he refer to those</p> <p>13 at all in his judgment?</p> <p>14 MR TROWER: I don't remember, I am afraid, Mr Bayfield is</p> <p>15 going to have a look while I carry on, if is that all</p> <p>16 right. I do not remember him doing so. What we know he</p> <p>17 had in mind, because it is referred to, is the</p> <p>18 discussion in T&N on this area. He also had very</p> <p>19 lengthy submissions from the Lehman's companies</p> <p>20 represented by Mr Phillips, who was making the burden of</p> <p>21 this argument, which trace through the history of</p> <p>22 non-provable claims. We know that there was</p> <p>23 a substantive issue as to whether the contribution</p> <p>24 notice liability was to fall down what was redefined as</p> <p>25 the dark grey hole and be treated as a non-provable</p> <p style="text-align: center;">Page 60</p>

<p>1 claim. So, that there was no suggestion that such</p> <p>2 a category was not a substantive category of claim in</p> <p>3 its own right, we know that. The point was simply that</p> <p>4 greater clarity would have been required from the</p> <p>5 liability creating legislation if that was to be the</p> <p>6 conclusion, so the question -- and you get that,</p> <p>7 I think, most clearly from Lord Neuberger at</p> <p>8 paragraph 63 of his judgment.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR TROWER: So the focus here was simply that greater</p> <p>11 clarity would have been required from the liability</p> <p>12 creating legislation if the conclusion was to be that it</p> <p>13 was a non-provable claim.</p> <p>14 MR JUSTICE DAVID RICHARDS: But I mean I think that</p> <p>15 paragraph 39, as I read it, is saying that this is the</p> <p>16 state of the law as we have reached.</p> <p>17 MR TROWER: Yes.</p> <p>18 MR JUSTICE DAVID RICHARDS: This is the effect of the rules</p> <p>19 as interpreted and extended by the courts --</p> <p>20 MR TROWER: Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: -- that we have the following</p> <p>22 order of priority. Now, it may be when you get to 7,</p> <p>23 non-provable liabilities, that he possibly included</p> <p>24 within that the section 74.2F type claims, or it would</p> <p>25 not be strictly accurate because they are provable but</p> <p style="text-align: center;">Page 61</p>	<p>1 so but the purpose of interest is obviously to</p> <p>2 compensate a creditor for the use which is being made of</p> <p>3 his money. In the context of a contract, it may be</p> <p>4 because the relationship between lender and borrower is</p> <p>5 one under which the payment of interest is at the core</p> <p>6 of the bargain, or it may simply be because the parties</p> <p>7 have agreed that it should be payable if payment is not</p> <p>8 made in time. Those are the two normal contexts in</p> <p>9 which one thinks of interest.</p> <p>10 Where there is not a contract but judgment has been</p> <p>11 obtained, which is another situation in which this issue</p> <p>12 might arise, the right to interest derives from the</p> <p>13 judgment either because of the operation of section 35A</p> <p>14 or because the Judgments Act, depending on how you look</p> <p>15 at it, depending on the pre- or post-judgment period.</p> <p>16 Then it fulfills a slightly different but closely</p> <p>17 analogous function. It is a simple question of interest</p> <p>18 being payable to reflect the fact that a creditor has</p> <p>19 been kept out of his money. Whatever their source</p> <p>20 though, they are liabilities like any other. So,</p> <p>21 whether it derives from the contract or whether it</p> <p>22 derives from the judgment, it is a liability like any</p> <p>23 other.</p> <p>24 What we say happens under rule 2.88 and section 189</p> <p>25 is no more and no less than a simple exclusion of the</p> <p style="text-align: center;">Page 63</p>
<p>1 he may have had those. In fact they would rank -- no,</p> <p>2 they are provable but only once everything has been</p> <p>3 paid, but the point I was going to make is this, that he</p> <p>4 is stating this, if you like, before he gets to</p> <p>5 <i>Glenister v Rowe</i>. So, on the present state of the</p> <p>6 authorities, as they exist before the Supreme Court</p> <p>7 decision in <i>Nortel</i>, there is clearly one category of</p> <p>8 debt which falls within it, which is adverse costs</p> <p>9 orders. All right, they overrule those cases but does</p> <p>10 it follow from that that he has now abolished that</p> <p>11 category, apart from those expressed in the insolvency</p> <p>12 rules? He certainly does not say so, does he?</p> <p>13 MR TROWER: Plainly not.</p> <p>14 MR JUSTICE DAVID RICHARDS: No.</p> <p>15 MR TROWER: So we respectfully suggest that, really, my</p> <p>16 learned friend cannot get out of <i>Nortel</i> anything</p> <p>17 approaching the proposition that non-provable</p> <p>18 liabilities are no longer recognised as a concept,</p> <p>19 indeed quite the contrary. They are confirmatory, the</p> <p>20 decision is confirmatory of the fact that they exist,</p> <p>21 albeit as a rump category of liabilities in most</p> <p>22 insolvencies.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: So far as statutory interest is concerned, can</p> <p>25 I just make these submissions. It may be trite to say</p> <p style="text-align: center;">Page 62</p>	<p>1 right to prove for interest in respect of such part of</p> <p>2 the underlying claim as relates to the period post the</p> <p>3 commencement of the insolvency. The exclusion is to</p> <p>4 enable and facilitate the process of collective</p> <p>5 execution identified by Lord Hoffmann in <i>Wight v</i></p> <p>6 <i>Eckhardt Marine</i> and therefore operates in a manner which</p> <p>7 is entirely consistent with the common law position</p> <p>8 before the introduction of these rules into the</p> <p>9 company's legislation as exemplified by <i>Humber Iron</i>. We</p> <p>10 submit that neither the creditors right nor the</p> <p>11 company's liability is affected in any other way. What</p> <p>12 then happens is that the right is given value again in</p> <p>13 the process of collective execution by operation of</p> <p>14 rule 2.88.7.</p> <p>15 So, in the case of circumstances where there is</p> <p>16 an existing contract or an existing judgment and</p> <p>17 an entitlement that has been interfered with by</p> <p>18 operation of the rule, if you like, the company's</p> <p>19 continuing liability to pay interest and the creditors</p> <p>20 continuing, albeit unenforceable, right is simply</p> <p>21 vindicated by the occurrence of a condition, namely the</p> <p>22 existence of a surplus. What the statute also does,</p> <p>23 whether looking at it through 2.88 or 189 spectacles, is</p> <p>24 to grant an additional right to those not hitherto</p> <p>25 entitled to receive interest at what will be the</p> <p style="text-align: center;">Page 64</p>

<p>1 judgment rate because, in that situation, of course,</p> <p>2 there is no existing contractual right so one does not</p> <p>3 get into the question of which is the higher. That rate</p> <p>4 has been chosen, we submit, because it reflects the fact</p> <p>5 that the interest now payable is to compensate the</p> <p>6 creditor for being prevented by the statutory moratorium</p> <p>7 from obtaining a judgment and for being kept out of the</p> <p>8 money to which he has also been entitled.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR TROWER: Now the right to payment, when the condition of</p> <p>11 the existence of the surplus is satisfied, includes the</p> <p>12 right to have the surplus applied in a particular manner</p> <p>13 but it does not go beyond that. It certainly does not</p> <p>14 mean that the company does not have a liability. The</p> <p>15 liability, whether derived simply from, in the case of</p> <p>16 admin, 2.88.7 alone or from a contract or prior judgment</p> <p>17 rendered enforceable by 2.88.7 is still a liability of</p> <p>18 the companies, albeit one in respect of which the</p> <p>19 creditor's rights are only capable of being vindicated</p> <p>20 in a particular way.</p> <p>21 Just to add a little bit of flesh on one aspect of</p> <p>22 this, it has not been and could not have been suggested</p> <p>23 that the creditors have any form of beneficial interest</p> <p>24 in the surplus. An awful lot of play has been made</p> <p>25 around this concept of the surplus, which indicates that</p> <p style="text-align: center;">Page 65</p>	<p>1 to interest is suspended not extinguished, then assume</p> <p>2 there is a surplus which is applied in accordance with</p> <p>3 rule 2.88.</p> <p>4 MR TROWER: Yes.</p> <p>5 MR JUSTICE DAVID RICHARDS: Then one analysis is that all</p> <p>6 creditors, whether they have a pre-existing entitlement</p> <p>7 to interest or not, are entitled to the application of</p> <p>8 the surplus in that way --</p> <p>9 MR TROWER: Yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: -- to the extent that they had</p> <p>11 a pre-existing right, or if they had a pre-existing</p> <p>12 right, whether to judgment rate or to a higher</p> <p>13 contractual rate, it has been satisfied by the</p> <p>14 application of the statutory regime. In other words, if</p> <p>15 they were to assert their contractual claim, well, there</p> <p>16 would be nothing because they have received payment or,</p> <p>17 to the extent they could still assert it, there is</p> <p>18 nothing to pay it because the surplus was not sufficient</p> <p>19 to pay all the interest.</p> <p>20 MR TROWER: That obviously is one way.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: But that has exactly the same --</p> <p>23 MR JUSTICE DAVID RICHARDS: The same result.</p> <p>24 MR TROWER: -- result as extinguishing the liability. The</p> <p>25 reason this operates at different levels on our case</p> <p style="text-align: center;">Page 67</p>
<p>1 there is no liability there and you are simply talking</p> <p>2 about the distribution of a fund. That is not what you</p> <p>3 are talking about in the context of corporate</p> <p>4 insolvency. It would be inconsistent with the whole</p> <p>5 approach to the statutory scheme, apart from anything</p> <p>6 else, were that to be so; it would be inconsistent with</p> <p>7 AS v CK Construction for starters. So we submit the</p> <p>8 structure is simply that the rule operates so as to do</p> <p>9 two things: to resurrect an existing liability, in the</p> <p>10 sense of render it payable immediately, and to impose</p> <p>11 a new liability in such defined circumstances. That is</p> <p>12 the way the rule works and ought to be analysed. It is</p> <p>13 consistent with the whole approach to not interfering</p> <p>14 with existing contractual rights, save and insofar as is</p> <p>15 necessary for the purpose of enforcing the process of</p> <p>16 collective execution, which is described by</p> <p>17 Lord Hoffmann in Wight v Eckhardt. If what one were to</p> <p>18 find was that the rule actually took away existing</p> <p>19 rights, it ought to be expressed far more clearly than</p> <p>20 it is. This is not a removal and replacement. This is</p> <p>21 a suspension and then followed by -- well, I use the</p> <p>22 word resurrection, I am not sure whether that is quite</p> <p>23 the right word -- but followed by a rendering</p> <p>24 enforceable again.</p> <p>25 MR JUSTICE DAVID RICHARDS: If you are right that the right</p> <p style="text-align: center;">Page 66</p>	<p>1 and, just so your Lordship knows how it fits, if it is</p> <p>2 not obvious, the first is we say it goes to support the</p> <p>3 concept of a liability in the first place.</p> <p>4 MR JUSTICE DAVID RICHARDS: I understand, yes.</p> <p>5 MR TROWER: The second is it is important in relation to the</p> <p>6 lacuna --</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes, I understand that too.</p> <p>8 MR TROWER: -- because it strengthens my hand, if I can put</p> <p>9 it that way, in relation to the contractual or</p> <p>10 pre-existing entitlements.</p> <p>11 MR JUSTICE DAVID RICHARDS: You would say, presumably, if</p> <p>12 the right is suspended and then, to the extent it is</p> <p>13 satisfied by the application of 2.88 and 1.89, okay,</p> <p>14 there is nothing left but, to the extent it is not</p> <p>15 satisfied, you still have your contractual right.</p> <p>16 MR TROWER: Indeed. It is a non-provable claim, probably,</p> <p>17 is where it comes. That is what we were going to say.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes, I follow.</p> <p>19 MR TROWER: Your Lordship asked, just before I go on, about</p> <p>20 74.2F in the context of Nortel, whether it was actually</p> <p>21 referred to anywhere in the judgment.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: It is not. We have made use of electronic</p> <p>24 facilities.</p> <p>25 MR JUSTICE DAVID RICHARDS: Thank you. Right.</p> <p style="text-align: center;">Page 68</p>

<p>1 MR TROWER: Having said that about interest and non-provable</p> <p>2 debt, can I just move on to some submissions in reply to</p> <p>3 what was said about the sub-debt agreement.</p> <p>4 MR JUSTICE DAVID RICHARDS: Certainly.</p> <p>5 MR TROWER: Now, the first series of points just relates to</p> <p>6 Mr Trace's submissions in relation to subordination</p> <p>7 being legally impossible, and I will take it quite</p> <p>8 quickly but there is one point I just need to draw your</p> <p>9 Lordship's attention to, which is quite important, we</p> <p>10 submit. Now, the points made against us were that</p> <p>11 subordination to the bottom of the list is a step too</p> <p>12 far and they have not been able to find any case in</p> <p>13 which subordination of statutory interest has been</p> <p>14 recognised. Now, we say there is nothing in the first</p> <p>15 point, there can be no principle distinction between</p> <p>16 a subordination of a preferential claim that was</p> <p>17 recognised in MCC and a subordination of a creditor</p> <p>18 claim to the bottom of the waterfall, why should there</p> <p>19 be? Both the preferential rights under section 175 and</p> <p>20 the rights in relation to interest under section 189 use</p> <p>21 the word "shall". It is plain, we submit, that, as</p> <p>22 a matter of principle, the same principle should apply.</p> <p>23 As to the second point, that they had not been able</p> <p>24 to find any case in which subordination of statutory</p> <p>25 interest was recognised, in our written opening, to just</p> <p style="text-align: center;">Page 69</p>	<p>1 (Pause)</p> <p>2 Yes?</p> <p>3 MR TROWER: The subordination provision that we need to just</p> <p>4 look at is at page 60 and this was a trust subordination</p> <p>5 but that does not matter for this point. It is page 60,</p> <p>6 tab 7, letter G. If you read 5A(ii), that will be all</p> <p>7 you will need to read.</p> <p>8 MR JUSTICE DAVID RICHARDS: Hold on. (Pause)</p> <p>9 Sorry, I have read clause 5A of the trust.</p> <p>10 MR TROWER: I think that is probably all you need to read</p> <p>11 for the moment. If we then go on to where this point is</p> <p>12 dealt with in the judgment, which is at page 65,</p> <p>13 Mr Blackburn's alternative submission, 65B to F.</p> <p>14 (Pause)</p> <p>15 MR JUSTICE DAVID RICHARDS: Sorry, I am going to have to</p> <p>16 reread this.</p> <p>17 MR TROWER: Yes, it is quite dense.</p> <p>18 MR JUSTICE DAVID RICHARDS: Mr Blackburn's submission was:</p> <p>19 "Although under the scheme, the claims of the scheme</p> <p>20 creditors include interest up to and not beyond the</p> <p>21 effective date, the scheme creditors will be entitled in</p> <p>22 a winding up [I see] to prove for interest from the</p> <p>23 effective date up to the date of winding up and will be</p> <p>24 entitled under 189.2 to have any surplus applied and</p> <p>25 payment of interest on their debts thereafter."</p> <p style="text-align: center;">Page 71</p>
<p>1 draw your Lordship's attention to this, we referred not</p> <p>2 just to Maxwell but to B v C, which your Lordship has</p> <p>3 not been taken to but it is referred to in paragraph 40,</p> <p>4 footnote 15, of our opening submissions. It is in the</p> <p>5 bundle behind tab 68.</p> <p>6 MR JUSTICE DAVID RICHARDS: Sorry, tab?</p> <p>7 MR TROWER: Tab 68.</p> <p>8 MR JUSTICE DAVID RICHARDS: Sorry, I misheard.</p> <p>9 MR TROWER: The issue in B v C was whether administrators</p> <p>10 should apply for orders convening scheme meetings, not</p> <p>11 including subordinated creditors, on the grounds they</p> <p>12 had no interest. It was a sort of Tea Corporation type</p> <p>13 point. The subordinated creditors argued that they were</p> <p>14 affected because, in the event of payment in (inaudible)</p> <p>15 principle, they would not on the true construction of</p> <p>16 the subordination provisions in the trustee be</p> <p>17 subordinated in respect of their claims to statutory</p> <p>18 interest. That was their argument.</p> <p>19 Mr Justice Vinelott disagreed and held that</p> <p>20 subordination in relation to statutory interest worked.</p> <p>21 MR JUSTICE DAVID RICHARDS: I remember this case but let me</p> <p>22 just read the headnote to myself, first.</p> <p>23 MR TROWER: Yes, you ought to read the headnote and then go</p> <p>24 to 60 at G, the subordination provision.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes, hold on I will read this.</p> <p style="text-align: center;">Page 70</p>	<p>1 MR TROWER: So that was under the scheme.</p> <p>2 MR JUSTICE DAVID RICHARDS: He is contrasting, isn't he,</p> <p>3 there the position under the scheme with the position in</p> <p>4 a liquidation. Then it is said:</p> <p>5 "Under 5A(ii) the claims of subordinated creditors</p> <p>6 are subordinated to the claims of other creditors</p> <p>7 admitted to proof and not to interest under 189.2."</p> <p>8 MR TROWER: So the question there, for the purposes of</p> <p>9 Mr Blackburn's submission, was that it was directly</p> <p>10 relevant to know whether or not the trustee actually did</p> <p>11 have that effect.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes. Then he says:</p> <p>13 "However, it is misconceived. The effect of 5A(ii)</p> <p>14 is to subordinate the holders of claims to the claims of</p> <p>15 other creditors, including claims to interest prior to</p> <p>16 winding up and admitted to proof, or under</p> <p>17 section 189.2, in respect of claims admitted to proof.</p> <p>18 It would otherwise conflict with the opening words the</p> <p>19 claims of all other creditors."</p> <p>20 So he is very much fastening on the word "claims"</p> <p>21 there, isn't he?</p> <p>22 MR TROWER: Yes.</p> <p>23 MR JUSTICE DAVID RICHARDS: I see. It is quite interesting.</p> <p>24 I think it may be important that this is a traditional</p> <p>25 subordination trust --</p> <p style="text-align: center;">Page 72</p>

<p>1 MR TROWER: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: -- because I think that</p> <p>3 Mr Trace's argument is that you cannot by agreement</p> <p>4 reach the result for which you contend, rather than you</p> <p>5 cannot do it by way of trust.</p> <p>6 MR TROWER: I understand that, my Lord, but that point was</p> <p>7 put to bed in Maxwell, in MCC.</p> <p>8 MR JUSTICE DAVID RICHARDS: Mr Trace says it was put to bed</p> <p>9 to the extent that Maxwell decided, but no further.</p> <p>10 MR TROWER: Yes. Well, it is really very difficult to see</p> <p>11 because it could only be on policy grounds and the</p> <p>12 argument in relation to Maxwell was simply a point of</p> <p>13 construction.</p> <p>14 MR JUSTICE DAVID RICHARDS: It is interesting. Yes,</p> <p>15 I follow that. It is not actually an agreement -- well,</p> <p>16 it is in one sense an agreement to subordinate but it</p> <p>17 achieves the subordination through the use of a trust,</p> <p>18 rather than just resting in contract.</p> <p>19 MR TROWER: Absolutely, and it really is very difficult to</p> <p>20 see how, where you have a combination of what was said</p> <p>21 in MCC in relation to the general principles of a</p> <p>22 subordination contract working, where we are talking in</p> <p>23 the way that was expressed and the ability to</p> <p>24 subordinate through a trust mechanism which, on any</p> <p>25 view, was what B v C was actually about in relation to</p> <p style="text-align: center;">Page 73</p>	<p>1 forth, and he said there could not be a proper analysis</p> <p>2 of the factual matrix without looking at them.</p> <p>3 Now, two fairly basic points. Of course it is the</p> <p>4 case that the sub-debt agreement must be construed with</p> <p>5 those materials in mind. The regulatory context plainly</p> <p>6 informs the construction, not least because this is</p> <p>7 a standard form agreement which is provided for under</p> <p>8 the FSA rules. The second sort of basic point is that</p> <p>9 they, although my learned friend took your Lordship to</p> <p>10 the Basle materials and the directive and so on, we</p> <p>11 submit that, if this is what it was designed to do, they</p> <p>12 do not actually support any proposition that interest is</p> <p>13 not caught by the concept of subordination.</p> <p>14 So, so far as those materials go, there were two</p> <p>15 things in particular that came out of them which we</p> <p>16 would suggest support our case rather than Mr Isaacs'</p> <p>17 case. The first is that sub-debt is treated as capital,</p> <p>18 like preference shares -- your Lordship saw a number of</p> <p>19 references to that -- which is obviously a member</p> <p>20 interest. The second is that the ranking is intended to</p> <p>21 be after the claims without qualification of all other</p> <p>22 creditors. I think you got that most clearly from</p> <p>23 paragraph 64 of the last of the directives. I don't</p> <p>24 need to go back to it but it simply talks about the</p> <p>25 claims of all other creditors.</p> <p style="text-align: center;">Page 75</p>
<p>1 statutory interest. It is very difficult to see why, in</p> <p>2 those circumstances, it might be said that there was</p> <p>3 a particular problem in relation to subordination of</p> <p>4 statutory interest achieved through the mechanism of</p> <p>5 a mere subordination agreement, as opposed to a trust.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes. I mean it is interesting</p> <p>7 that Mr Justice Vinelott construed the word "claims" of</p> <p>8 all other creditors as not being informed by the</p> <p>9 subordination trust that then followed, because the</p> <p>10 subordination trust is limited to the extent that such</p> <p>11 claims are admitted to proof in the winding up --</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: -- which, I think, everyone is</p> <p>14 agreed that 189 interest is not the subject of proof.</p> <p>15 MR TROWER: No.</p> <p>16 MR JUSTICE DAVID RICHARDS: He read "claims" as having</p> <p>17 a wider meaning than the trust expressly provided.</p> <p>18 MR TROWER: Yes, and he had little difficulty in seeing the</p> <p>19 concept of claims was capable in those circumstances of</p> <p>20 extending to 189 interest.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes, I see. Yes.</p> <p>22 MR TROWER: Now, there were some submissions made by</p> <p>23 Mr Isaacs in relation to the purpose of the sub-debt</p> <p>24 agreement and he took your Lordship to all the materials</p> <p>25 derived from the directives and IPRU, and so on and so</p> <p style="text-align: center;">Page 74</p>	<p>1 MR JUSTICE DAVID RICHARDS: Actually, can I just see that.</p> <p>2 MR TROWER: Of course. I think it is in 3A, the last of the</p> <p>3 directives is at tab 6.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR TROWER: That is the wrong one. Tab 5?</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes, right.</p> <p>7 MR TROWER: Tab 5, article 64.</p> <p>8 MR JUSTICE DAVID RICHARDS: Incidentally, is LIBIE a credit</p> <p>9 institution or an investment firm? Oh, it is</p> <p>10 a different --</p> <p>11 MR TROWER: It is not a credit institution, no.</p> <p>12 MR JUSTICE DAVID RICHARDS: Anyway, 3A, tab 5, did you say?</p> <p>13 MR TROWER: It is 3A, tab 5, article 64.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR TROWER: You were taken to 3.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR TROWER: They rank after the account all other creditors.</p> <p>18 MR JUSTICE DAVID RICHARDS: All other creditors.</p> <p>19 MR TROWER: It is not a more complicated point than that.</p> <p>20 MR JUSTICE DAVID RICHARDS: No.</p> <p>21 MR TROWER: From a regulatory perspective, we submit that it</p> <p>22 is difficult to see why a creditor claim should not</p> <p>23 include interest, given that interest is compensation to</p> <p>24 the creditor for being kept out of his money or for the</p> <p>25 use of his money. It is intended, on any view, to be</p> <p style="text-align: center;">Page 76</p>

<p>1 loss absorbing capital, this, so it is difficult to see 2 why the losses it is designed to absolve should not 3 include the costs a creditor should bare through late 4 payment. It is not really more complicated than that as 5 a submission of ours.</p> <p>6 MR JUSTICE DAVID RICHARDS: The reason I asked about the 7 status of LIBIE is because the directive at tab 5 8 relates to credit institutions, according to its title, 9 relating to the taking up and pursuit of the business of 10 credit institutions, and the capital adequacy directive 11 at tab 6, promulgated on the same day, relates to 12 investment firms and credit institutions.</p> <p>13 MR TROWER: Yes.</p> <p>14 MR JUSTICE DAVID RICHARDS: I think you are saying LIBIE is 15 an investment firm.</p> <p>16 MR TROWER: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: A question I had had in mind to 18 ask, anyway, was whether the template subordinated loan 19 agreements we have here, do the FSA use the same 20 template for banks?</p> <p>21 MR TROWER: I will find out, my Lord. I certainly do not 22 know the answer here.</p> <p>23 MR JUSTICE DAVID RICHARDS: No. Anyway, you see why I am 24 asking the point.</p> <p>25 MR TROWER: I see entirely why your Lordship is asking.</p> <p style="text-align: center;">Page 77</p>	<p>1 MR JUSTICE DAVID RICHARDS: I just want to be absolutely 2 certain of the regulatory background.</p> <p>3 MR TROWER: Mr Isaacs thinks he can answer.</p> <p>4 MR ISAACS: It may be I can, my Lord, and just save some 5 time. At tab 6, my Lord, your Lordship has article 6 13.1. Subject to paragraphs 2 to 5 and article 4 7 (inaudible) 17, the owner(?) funds shall be determined 8 in accordance. Then, if your Lordship goes down to 9 paragraph 2C, there is a reference to subordinated loan 10 capital and another one at 3, I should say, and then 11 again at 4 and again at 5.</p> <p>12 MR JUSTICE DAVID RICHARDS: Mr Isaacs, you took me to these 13 provisions and I mean, obviously, you did so on the 14 basis that they applied here but that seems to provide 15 the sort of express link, doesn't it? It does? I am 16 very grateful, thank you.</p> <p>17 Yes. Nonetheless, if you are able to provide me 18 an answer to that question about the template, I would 19 be grateful.</p> <p>20 MR TROWER: We will certainly see if we can find the answer 21 to that.</p> <p>22 My Lord, that is all I was going to say about the 23 purpose of the agreement. The next topic was Mr Isaacs' 24 submissions on the meaning of the word liabilities in 25 the subject agreement, in particular as they related to</p> <p style="text-align: center;">Page 79</p>
<p>1 MR JUSTICE DAVID RICHARDS: What is the regulatory regime 2 for capital adequacy for investment firms?</p> <p>3 MR TROWER: Yes. My Lord, I see entirely why your Lordship 4 is asking. I cannot tell your Lordship now but I will 5 endeavour to be able to do so after the short 6 adjournment.</p> <p>7 MR JUSTICE DAVID RICHARDS: The 1989 directive, which is at 8 tab 2, relates to -- well, that related to credit 9 institutions but the one at tab 3 related to investment 10 firms and credit institutions. Then the one at tab 6, 11 in a sense, is that one recast.</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: So what does the one at tab 6 14 say about capital adequacy -- I mean about 15 subordinated -- what is the equivalent, sorry, to 16 article 54?</p> <p>17 MR TROWER: I wonder whether --</p> <p>18 MR JUSTICE DAVID RICHARDS: Do I mean 54? Yes, I do. 64, 19 sorry.</p> <p>20 MR TROWER: Unfortunately we don't have all of them in here, 21 all of each of these directives. So we will try a do 22 a bit of homework on that.</p> <p>23 MR JUSTICE DAVID RICHARDS: We have the whole of this one, 24 don't we, or not? No, we don't.</p> <p>25 MR TROWER: We don't I am afraid. It may be here.</p> <p style="text-align: center;">Page 78</p>	<p>1 interest. Now, it is not an issue, and I have sort of 2 touched on this already, that, prior to an insolvency, 3 contractual interest is the liability of the borrower to 4 which the sub-debt is subordinated. It can't be. It is 5 a present and future sum payable by the borrower. But 6 it is said nonetheless that statutory interest is not 7 a liability as defined and we respectfully suggest that 8 that doesn't make any commercial sense. Really, neither 9 Mr Isaacs nor Mr Trace, when questioned on this by your 10 Lordship, had a satisfactory answer to your Lordship's 11 description of the consequences of their case on the 12 difference between a creditor's position in relation to 13 pre-admin interest entitlement, when they would rank 14 ahead of the sub-debt on any view, and the creditor's 15 position in relation to their interest entitlement 16 post-admin, when they rank behind it. Indeed, not only 17 can there really be no satisfactory positive explanation 18 for that, the effect would be to preserve and protect 19 the other creditors' rights to interest free insolvency 20 when it doesn't matter, because LIBIE can pay, but to 21 drop them in the ranking behind the sub-debt 22 post-insolvency, which is the real circumstance in which 23 it does.</p> <p>24 The justification given by Mr Isaacs was based on 25 what he said were the different characteristics of</p> <p style="text-align: center;">Page 80</p>

<p>1 statutory interest. I noted down four anyway -- I have 2 not, I am afraid, gone back to check in the 3 transcript -- but the first was that it is not a right 4 in respect of which a creditor can at any stage sue the 5 company. The second is that, prior to administration, 6 their entitlement arises because it is only payable, if 7 at all, thereafter. I think I have misnoted this point. 8 I think it is because, prior to administration, there is 9 no statutory entitlement because it is only payable, if 10 at all, thereafter and there is a surplus. I think that 11 was the point. The third point is that no creditor has 12 the right to prove in respect of it, and the fourth 13 point is that the amount of interest is limited to the 14 amount of the surplus.</p> <p>15 Those were all points as to the characteristics of 16 the statutory entitlement to interest in circumstances 17 where there is no pre-existing contractual entitlement. 18 We say that those points don't actually justify the 19 conclusion that statutory interest is not a liability as 20 defined as a matter of principle. I don't need to 21 repeat the point I think I have already made, that, 22 where the creditor has a pre-insolvency contractual 23 right, it continues to be a liability. That is 24 the point I have already made.</p> <p>25 As to the non-contractual element, we respectfully</p> <p style="text-align: center;">Page 81</p>	<p>1 excluded by 5.2A if it is not provable and we simply say 2 that is wrong. We say it is plain that what is payable 3 is a quite different concept from what is provable. So 4 if your Lordship has the wording there in front of 5 you --</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: -- we say, on any view, looked at through -- and 8 I will deal with it -- looked at through English 9 spectacles and then looked at through foreign 10 spectacles, because they are both relevant in the 11 context of construing this agreement given the nature of 12 insolvency proceedings as defined, but, on any view, 13 interest is payable in the insolvency of LIBIE because 14 rule 2.88 and section 189 provide for that to be the 15 case and we really do not understand how it could be 16 suggested that it is not payable in the insolvency of 17 the borrower.</p> <p>18 The same could also be said about all non-provable 19 liabilities because, although the analysis is slightly 20 different, they are payable out of the assets before a 21 return to members in accordance with the sort of ideas 22 that your Lordship was floating in T&N and which were 23 considered in Nortel. So they are payable in the 24 insolvency of the borrower in that sense. Even if it 25 were to be the case that provability was a satisfactory</p> <p style="text-align: center;">Page 83</p>
<p>1 suggest that exactly the same analysis arises, save that 2 the right is derived from the statute rather than the 3 contract and it the liability is a liability on the 4 company that derives from the statute rather than the 5 contract, but it has all of the incidence of the 6 liability of the borrower, we would say. The surplus 7 referred to as, I have indicated in 189 and 2.88, is no 8 more and no less than the measure of the creditors' 9 entitlement to be paid an amount quantified in 10 accordance with the rules. With respect, we don't 11 understand why it might be thought that creditors whose 12 principal claims have been unpaid should not rank ahead 13 of capital in respect of that element of their claim, 14 which may be very important in a case like this, being 15 that element which reflects the loss of the use of their 16 money.</p> <p>17 He also made submissions on paragraph 5.2A and how 18 that works, and it might just be worth turning that up, 19 if your Lordship has it open while I just make my 20 submissions on what he had to say about this.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: The essence of the submission was that, for the 23 borrower to be solvent, it must be able to pay its 24 liabilities in full except for the excluded items. We 25 agree so far. But he said that an obligation will be</p> <p style="text-align: center;">Page 82</p>	<p>1 touchstone looked at through English spectacles, which, 2 for the reasons I have given, we say it is not, it is 3 particularly unsatisfactory in the context of 4 an agreement which contemplates formal insolvency 5 agreements in other jurisdictions. In fact, that is 6 a very strong point against the provability test because 7 what is provable in some countries may not be provable 8 in others. What is payable out of the assets is a far 9 more appropriate concept to describe a generic category 10 of liabilities which are intended to be senior to the 11 subordinated liabilities. So it is all claims of other 12 creditors, however arising and however described, come 13 first. This, we say, clearly is statutory interest.</p> <p>14 Just on the point about insolvency, your Lordship, 15 the way it works is that the definition of insolvency on 16 page 1 explicitly refers to the equivalent in any other 17 jurisdiction to which the borrower may be subject.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes. Yes. So, for example, 19 chapter 11, proceedings would be a rehabilitation 20 I suppose?</p> <p>21 MR TROWER: Indeed, and, in a LIBIE type context, that is 22 the most obvious context in which this issue might 23 arise.</p> <p>24 MR JUSTICE DAVID RICHARDS: Actually, the term insolvency is 25 defined in a manner which is not specific to any</p> <p style="text-align: center;">Page 84</p>

<p>1 jurisdiction --</p> <p>2 MR TROWER: Correct.</p> <p>3 MR JUSTICE DAVID RICHARDS: -- in the sense that terms are</p> <p>4 used there, particularly sequestration and</p> <p>5 rehabilitation that are not a part of our law.</p> <p>6 MR TROWER: Indeed. Indeed.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR TROWER: There was another submission made in this</p> <p>9 context and I am not sure I fully understood exactly</p> <p>10 where it went as a submission but it was that contingent</p> <p>11 and future liabilities are not paid in full in an</p> <p>12 insolvency because the operation of the insolvency rules</p> <p>13 may mean that the debt is discharged without payment in</p> <p>14 full being made. I don't know whether your Lordship</p> <p>15 remembers those submissions? I was not quite sure</p> <p>16 exactly where they went but they are in any event, we</p> <p>17 respectfully suggest, just wrong on contingent liability</p> <p>18 and future liability.</p> <p>19 MR JUSTICE DAVID RICHARDS: It is particularly relevant,</p> <p>20 I think, to the foreign currency conversion claims.</p> <p>21 MR TROWER: Yes.</p> <p>22 MR JUSTICE DAVID RICHARDS: It came in here as well, yes.</p> <p>23 MR TROWER: Because of the phrase "in full", I think in 5.2.</p> <p>24 MR JUSTICE DAVID RICHARDS: You are quite right, the</p> <p>25 submission was that it can't be read literally because</p> <p style="text-align: center;">Page 85</p>	<p>1 resurrected for the purposes of some form of catch up on</p> <p>2 a revaluation. So it is conceptually different.</p> <p>3 So far as future liabilities are concerned, it is</p> <p>4 again wrong to suggest that future liabilities are not</p> <p>5 paid in full. The full amount is proved and the</p> <p>6 dividend payable on the proof is simply reduced by</p> <p>7 operation of rule 2.105 to reflect early payment. It is</p> <p>8 still payment in full. You are getting earlier that</p> <p>9 which you would otherwise get at the time you were</p> <p>10 entitled to receive it, subject to a deduction in</p> <p>11 respect of the discount. It is still payment in full.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR TROWER: So we respectfully suggest that there is not</p> <p>14 anything in that submission, insofar as we understood</p> <p>15 the submission.</p> <p>16 MR JUSTICE DAVID RICHARDS: I don't know, I was asking,</p> <p>17 wasn't I, how clause 5.1B is operated in practice with</p> <p>18 a going concern.</p> <p>19 MR TROWER: Yes.</p> <p>20 MR JUSTICE DAVID RICHARDS: Well, we just don't know.</p> <p>21 I mean the evidence doesn't tell me how it is applied.</p> <p>22 MR TROWER: No.</p> <p>23 MR JUSTICE DAVID RICHARDS: I don't know whether there are</p> <p>24 some --</p> <p>25 MR TROWER: The problem is with excluded --</p> <p style="text-align: center;">Page 87</p>
<p>1 a future claim in an insolvency, it was submitted, would</p> <p>2 not be paid in full.</p> <p>3 MR TROWER: The only thing I just wanted to say about those</p> <p>4 two points is that, actually, the contingent liability</p> <p>5 and the future liability, they are not good examples.</p> <p>6 The reason they're not, so far as contingent liabilities</p> <p>7 is concerned, is that an estimation is made of the</p> <p>8 extent of the liability which can then be revised from</p> <p>9 time to time, if necessary taking advantage of the</p> <p>10 hindsight principle. Conceptually because of the</p> <p>11 ability of the court to revalue and the operation of the</p> <p>12 hindsight principle, payment of a dividend of 100 pence</p> <p>13 in the pound on the admitted proof will, ipso facto,</p> <p>14 discharge the full amount for which the creditor can</p> <p>15 ever be entitled. There isn't anything in the so-called</p> <p>16 unpaid element of the contingent liability. In practice</p> <p>17 it maybe that a distribution will have been made out of</p> <p>18 the available assets and then, at some future moment in</p> <p>19 time, an event occurs which causes the liability to be</p> <p>20 increased in some way but that is dealt with</p> <p>21 conceptually. All that has happened there is that the</p> <p>22 assets of the company have been used pursuant to the</p> <p>23 statutory scheme in order to discharge the liability</p> <p>24 established at the prior moment in time. Subsequently,</p> <p>25 if further assets come in, then the company can be</p> <p style="text-align: center;">Page 86</p>	<p>1 MR JUSTICE DAVID RICHARDS: -- returns which are used for</p> <p>2 this purpose or quite how it is done.</p> <p>3 MR TROWER: I think one the problems with the operation of</p> <p>4 5.1B in the context of a company still a going concern</p> <p>5 is actually working out how you define excluded</p> <p>6 liabilities or how excluded liabilities work. You need</p> <p>7 to disregard excluded liabilities for the purposes of</p> <p>8 insolvency. Excluded liabilities require the opinion of</p> <p>9 an insolvency office holder.</p> <p>10 MR JUSTICE DAVID RICHARDS: There is a slight oddity there.</p> <p>11 MR TROWER: There is a slight oddity there but your Lordship</p> <p>12 was on a slightly broader point.</p> <p>13 MR JUSTICE DAVID RICHARDS: I was, actually.</p> <p>14 MR TROWER: I know. It does seem in the light of Mr Isaacs'</p> <p>15 submissions in relation to the financial resources</p> <p>16 requirement that the prime focus of this subordination</p> <p>17 provision is that the going concern question is to be</p> <p>18 answered in accordance with 5.1A --</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TROWER: -- and the insolvency proceedings question is to</p> <p>21 be answered in accordance with 5.1B. Doubtless there</p> <p>22 was a strong supposition that, if you got over 5.1A, you</p> <p>23 wouldn't also get over the solvency test. I think that</p> <p>24 is likely to be the reality.</p> <p>25 MR JUSTICE DAVID RICHARDS: Right.</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 MR TROWER: The only other submission I just wanted to deal 2 with, very briefly, in relation to the sub-debt 3 agreement was this. It was said that the mechanism for 4 achieving subordination does not refer to proof, in 5 other words it does not of itself, there is nothing 6 within the subordination agreement that explicitly 7 restricts the right to prove in circumstances --</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: -- by way of effectively of enforcement of the 10 subordination. So it was said there is no restriction 11 on LBHI2 for proving its sub-debt. We say this 12 submission is wrong because exactly the same result is 13 achieved by 7D and 7E. Now, they are wider than proof, 14 they go far beyond that, but they are presumably drafted 15 in the way they were because of the need for this 16 agreement to have a sort of broad application in 17 relation to insolvency proceedings both inside and 18 outside England.</p> <p>19 I think the way Mr Isaacs put his submissions on 20 this point is that 7E is not part of the subordination 21 provision but simply preserves the effect of 22 paragraph 5 -- I think is that is what he said -- but, 23 just to remind your Lordship, 7E restricts the taking or 24 omitting to take of any action whereby the subordination 25 might be terminated, impaired or adversely affected. We</p> <p style="text-align: center;">Page 89</p>	<p>1 of winding up is to pay interest if there are sufficient 2 assets to do so and to apply the remaining surplus to 3 members, after ensuring that any remaining claims have 4 been discharged in accordance with principles discussed 5 in T&N.</p> <p>6 It is also said that the phrase "debts and 7 liabilities" could not extend to interest because 8 section 189 is only a direction to a liquidator as how 9 to apply the surplus. Our starting point is that that 10 is wrong as a matter of language and I have already 11 really made submissions to your Lordship about that, in 12 the context of what I had to say about interest and 13 non-provable debts generally.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR TROWER: But it is also plainly incorrect if there is any 16 payment which can be enforced under section 74 which 17 falls below interest in the Nortel waterfall.</p> <p>18 Otherwise, once a recovery has been made from 19 a contributory in respect of that element, it would have 20 to be applied first in paying interest and so a further 21 recovery would have to be made in respect of that 22 liability and so on. It can be best illustrated by the 23 member adjustment provisions in section 74, which I will 24 turn to in a moment, but it is also the consequence of 25 the fact that the legislation in the Neuberger waterfall</p> <p style="text-align: center;">Page 91</p>
<p>1 simply say this: if the consequence of proving is that 2 the sub-debt is paid before statutory interest, the 3 effect is to adversely effect the subordination, which 4 is therefore contrary to 7E. It is not more complicated 5 than that. So it fortifies the restriction on proof -- 6 it fortifies the subordination in that way by 7 restricting proof.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: I was not going say anything else specifically 10 on the subordination agreement, unless your Lordship has 11 any further questions for me on it?</p> <p>12 MR JUSTICE DAVID RICHARDS: I don't think so, no.</p> <p>13 MR TROWER: I was going to turn now to the extent and 14 characteristics of the section 74 liability.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>16 MR TROWER: I think Mr Wolfson said on a number of occasions 17 that section 74 has to be construed against the 18 background that the point of winding up is to pay the 19 provable debts, that is the way he put it on a number of 20 occasions. This was all in support of a more general 21 approach that was taken by all of my learned friends 22 that debts and liabilities within section 74 is 23 restricted -- improvable debts and liabilities -- but, 24 as a starting point, that is of course an incomplete 25 description of the position because part of the purpose</p> <p style="text-align: center;">Page 90</p>	<p>1 contemplate that there may be liabilities that rank 2 after interest but before the members.</p> <p>3 So, just dealing with the adjustment provisions, 4 adjusting rights between contributories, we say, means 5 in practice the following type of situation: you make 6 a call on Member A, whose £100 share is only £10 paid 7 up, in order to repay something to Member B, whose £100 8 share is fully paid up.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes?</p> <p>10 MR TROWER: That sort of example may arise where the only 11 source for equalising the position between shareholders 12 is by making a call on Member A, because that may be the 13 only way of doing it. Despite what was submitted, 14 I think by Mr Isaacs, the money received from Member A 15 in response to that call would not be held on any sort 16 of purpose trust for paying Member B. It would simply 17 be a contribution to the assets of the company. One 18 place one can get that is a case which your Lordship has 19 seen, and had cited to you by all parties, I think, or 20 most parties, which is Pyle, volume 1A, tab 34.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: Lord Justice Cotton at page 575, commenting on 23 Webb v Wiffin -- your Lordship has not had the pleasure 24 of seeing Webb v Wiffin and I don't think it is 25 necessary for your Lordship to go there.</p> <p style="text-align: center;">Page 92</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: Would your Lordship just read from "Then Webb v Wiffin", until halfway down the 576.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes. (Pause)</p> <p>4 Read to?</p> <p>5 MR TROWER: To "Fund per payment of the creditors", the</p> <p>6 bottom of -- about two-thirds of the way down, I am</p> <p>7 afraid.</p> <p>8 MR JUSTICE DAVID RICHARDS: Okay. (Pause)</p> <p>9 Yes.</p> <p>10 MR TROWER: What is going on here is you are creating a fund</p> <p>11 out of which everything is then paid.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR TROWER: That fund is taken into account in computing,</p> <p>14 amongst other things, a surplus within the meaning of</p> <p>15 section 189.2 or rule 2.88.7. It must be applied before</p> <p>16 being applied for any other purpose than payment of</p> <p>17 a statutory interest.</p> <p>18 MR JUSTICE DAVID RICHARDS: This was presumably an argument</p> <p>19 in Webb v Wiffin by creditors whose contracts were made</p> <p>20 before the B contributories had ceased to be members,</p> <p>21 saying, "Ah, well, their contributions should come to</p> <p>22 us."</p> <p>23 MR TROWER: Yes, it was at a time -- it was a very early</p> <p>24 stage when people had not quite got to grips with how it</p> <p>25</p> <p style="text-align: center;">Page 93</p>	<p>1 MR TROWER: Yes. That is certainly the point. I think your</p> <p>2 Lordship made a slightly different point during the</p> <p>3 course of argument, as we recall, which is that the</p> <p>4 liquidator ought not to make a call if it would result</p> <p>5 in the money being used for the purpose of paying</p> <p>6 interest, if he was going to call, for example, on --</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR TROWER: But the problem with respect to that is that it</p> <p>9 would mean the right to make a call on a member to</p> <p>10 adjust the rights between contributories could in</p> <p>11 practice never arise, because there will never be</p> <p>12 a liquidation which is completed within a day, there</p> <p>13 will always be a liability in the event of a surplus to</p> <p>14 face liquidation interest.</p> <p>15 MR JUSTICE DAVID RICHARDS: You say, well, you have paid all</p> <p>16 the provable dates, you have then got statutory</p> <p>17 interest?</p> <p>18 MR TROWER: Yes.</p> <p>19 MR JUSTICE DAVID RICHARDS: If there is a call --</p> <p>20 MR TROWER: Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: -- then the fund constituted by</p> <p>22 the calls is a surplus that goes to pay interest. So if</p> <p>23 he has it, therefore, as you say, he could never -- if</p> <p>24 it is right that statutory interest falls outside</p> <p>25 section 74 -- he could never adjust the rights.</p> <p style="text-align: center;">Page 95</p>
<p>1 was that filling the company's coffers should be dealt</p> <p>2 with.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR TROWER: Now, Mr Trace I think it was who said that</p> <p>5 section 74 is solely concerned with the adjustment</p> <p>6 between fully paid and partly paid shares. On one level</p> <p>7 we agreed with that. That is really what is going on</p> <p>8 here, but it is not an answer to the point that we make.</p> <p>9 The point that we make is that the fact that section 74</p> <p>10 contains within it this process for bringing into the</p> <p>11 company assets which are then going to be used for the</p> <p>12 purposes of adjusting the rights of contributories</p> <p>13 between themselves means that you have to look at the</p> <p>14 section 74 call also being used for the purpose of</p> <p>15 discharging liabilities that rank above that in the</p> <p>16 statutory waterfall.</p> <p>17 MR JUSTICE DAVID RICHARDS: There is no problem about</p> <p>18 a liquidator making a number of calls, is there? It</p> <p>19 does not have to do it once and for all?</p> <p>20 MR TROWER: That's right, my Lord. Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: So he is going to pursue all the</p> <p>22 contributories as far as he can for liabilities to which</p> <p>23 section 74 applies. So it is only when he is satisfied</p> <p>24 that he has extracted as much as he needs that he will</p> <p>25 start to think about adjusting rights.</p> <p style="text-align: center;">Page 94</p>	<p>1 MR TROWER: Yes. Indeed. It is as simple as that.</p> <p>2 Your Lordship gets a little bit of further</p> <p>3 assistance in this context from section 74.2F as well,</p> <p>4 and the way it works on this point. Let us just remind</p> <p>5 ourselves about 74.2F. The section 74.2F debt was</p> <p>6 a member claim, so take for example an unpaid dividend,</p> <p>7 not deemed to be a debt of the company payable to a</p> <p>8 member in the case of competition between himself and</p> <p>9 any other creditors. We touched on this, actually,</p> <p>10 a little while ago, my Lord, and the way it is expressed</p> <p>11 is slightly different from the way in which your</p> <p>12 Lordship characterised it in the discussion, but I don't</p> <p>13 think it matters for present purposes.</p> <p>14 MR JUSTICE DAVID RICHARDS: The important point about the</p> <p>15 language is it is deemed not to be a debt.</p> <p>16 MR TROWER: Precisely. The debt can, however, be taken into</p> <p>17 account as part of the process of adjusting the rights</p> <p>18 of contributories amongst themselves. You get that from</p> <p>19 the end of F.</p> <p>20 MR JUSTICE DAVID RICHARDS: "Any such sum may" -- oh, yes.</p> <p>21 MR TROWER: In a sense this is by way -- does your Lordship</p> <p>22 see the point?</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: A call can be made for the purpose of adjusting</p> <p>25 member rights in respect of member claims of this sort.</p> <p style="text-align: center;">Page 96</p>

<p>1 Then the same argument follows.</p> <p>2 MR JUSTICE DAVID RICHARDS: I think that may have in mind,</p> <p>3 mightn't it, that you have a shareholder who has paid</p> <p>4 out less on his shares than other shareholders but more</p> <p>5 is owed to him by way of an unpaid dividend?</p> <p>6 MR TROWER: It is that sort of context in which it arises.</p> <p>7 MR JUSTICE DAVID RICHARDS: But, on the other hand,</p> <p>8 supposing you had a number of shareholders with fully</p> <p>9 paid shares, and other shareholders with partly paid</p> <p>10 shares, dividends owed to the members or certainly those</p> <p>11 with fully paid shares --</p> <p>12 MR TROWER: Yes?</p> <p>13 MR JUSTICE DAVID RICHARDS: -- there presumably could be</p> <p>14 a call on the unpaid, those with partly paid shares, to</p> <p>15 fund the payment of dividends, these dividends, to fully</p> <p>16 paid shareholders? It would be more than just adjusting</p> <p>17 the rights of contributories, it would actually be</p> <p>18 providing a fund to pay a debt. At that point, assume</p> <p>19 all creditors have been paid, there is now a debt.</p> <p>20 MR TROWER: Correct. So it is a sort of second stage in the</p> <p>21 argument. Because there is no longer a competition, so</p> <p>22 as to mean it is no longer a deemed debt, yes, so it</p> <p>23 becomes a liability.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes. Yes.</p> <p>25 MR TROWER: The same argument can be made in relation to any</p> <p style="text-align: center;">Page 97</p>	<p>1 purposes of funding interest.</p> <p>2 My Lord, that was all I was going to say in relation</p> <p>3 to the component parts of the section 74 liability.</p> <p>4 Your Lordship has, in our written submissions, rather</p> <p>5 more detail as to why it is that we say both interest</p> <p>6 and non-provable liabilities fall within it, within the</p> <p>7 concept of debts and liabilities. I was going to move</p> <p>8 next on to the nature the section 74 liability and</p> <p>9 Mr Isaac's submissions about the extent to which it is</p> <p>10 provable as a liability in the insolvency of the members</p> <p>11 and those sorts of questions.</p> <p>12 MR JUSTICE DAVID RICHARDS: I don't know whether you are</p> <p>13 going to address anything beyond what you have already</p> <p>14 as to what is meant by the word surplus in rule 2.88 in</p> <p>15 relation to or in the context of an unlimited company.</p> <p>16 So let's assume for the moment that we have no liability</p> <p>17 ranking below statutory interest.</p> <p>18 MR TROWER: Yes.</p> <p>19 MR JUSTICE DAVID RICHARDS: Let us assume the total amount</p> <p>20 of statutory interest payable, if there were a surplus</p> <p>21 sufficient to cover it, would be let's say a million,</p> <p>22 but the surplus of assets actually held by the</p> <p>23 administrators is let's say 100,000, so what is the</p> <p>24 surplus for the purposes of rule 2.88 where we are</p> <p>25 dealing with an unlimited company?</p> <p style="text-align: center;">Page 99</p>
<p>1 lower ranking liability as against interest. So, even</p> <p>2 if we park for a moment the reference to adjustment of</p> <p>3 the rights of contributories, the way in which the</p> <p>4 section operates means that if a call can be made as a</p> <p>5 result of an insufficiency in the company's ability to</p> <p>6 pay a lower ranging claim, and this is one of the places</p> <p>7 in which non-provable liabilities becomes relevant, it</p> <p>8 must follow that the higher ranking liability will be</p> <p>9 paid out of the proceeds of the call first. This really</p> <p>10 is a point that deals with the specific argument against</p> <p>11 me in relation to interest. So it is said that interest</p> <p>12 is not a debt or liability, but if there is anything</p> <p>13 that constitutes a liability that ranks below interest,</p> <p>14 exactly the same analysis applies as does apply in</p> <p>15 relation to the adjustment of the rights of</p> <p>16 contributories. So, if your Lordship, for example, were</p> <p>17 to be uncomfortable with the idea that interest,</p> <p>18 statutory interest, is a liability within the meaning of</p> <p>19 section 74, and of course we say your Lordship need have</p> <p>20 no such discomfort, but, if you were to be, but were</p> <p>21 comfortable nonetheless that non-provable liabilities</p> <p>22 was conceptually called, the consequence of the way in</p> <p>23 which section 74 works is that a call can be made for</p> <p>24 the purposes of paying non-provable liabilities which</p> <p>25 would inevitably bring money into the estate for the</p> <p style="text-align: center;">Page 98</p>	<p>1 Well, the answer to that is you say the right to</p> <p>2 interest is a liability, so you call for that under</p> <p>3 section 74 from the members.</p> <p>4 MR TROWER: Yes.</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: I mean it is -- yes.</p> <p>7 MR JUSTICE DAVID RICHARDS: They say, no that is wrong</p> <p>8 because liability exists, if at all, to the extent of</p> <p>9 the surplus, that is to say to the extent the</p> <p>10 administrator actually holds the funds, there would be</p> <p>11 some sort of liability at that point. The point I am</p> <p>12 driving at is, do you say it is right to analyse the</p> <p>13 surplus as being the assets held by the administrator or</p> <p>14 is one of the assets held by the administrator the claim</p> <p>15 it has against the members?</p> <p>16 MR TROWER: Well, the way I would put it is it is actually</p> <p>17 the company's asset which is within the management of</p> <p>18 the company's affairs, business and property by the</p> <p>19 administrator at that moment in time.</p> <p>20 MR JUSTICE DAVID RICHARDS: Sorry, I am getting confused</p> <p>21 because we are talking -- the actual call, of course, is</p> <p>22 in the liquidation, so I was wrong to refer to the</p> <p>23 administrators there. So can I rephrase it and put it</p> <p>24 in the context of liquidation.</p> <p>25 MR TROWER: If one was in a pure liquidation context, yes,</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 we do say that, that the entitlement to call is a right 2 which is available to the company, the exercise in 3 accordance with the procedures laid down which is 4 realised into the company's estate -- 5 MR JUSTICE DAVID RICHARDS: Yes. 6 MR TROWER: -- by making and recovering on the call. 7 MR JUSTICE DAVID RICHARDS: Yes. Okay. 8 MR TROWER: I mean that point does actually come up again in 9 a slightly different way in the next series of 10 submissions because what I am next going to address is 11 the question of what you can do with the actual 12 section 74 liability, where you go with it -- 13 MR JUSTICE DAVID RICHARDS: Yes. 14 MR TROWER: -- and in particular the question of whether or 15 not it is provable when the company is still in 16 administration. 17 MR JUSTICE DAVID RICHARDS: All right. 18 Mr Trower, how are you doing? 19 MR TROWER: I think I am doing quite well. Looking at my 20 notes, I am making reasonably good progress in fact. In 21 fact I am making really very good progress. 22 MR JUSTICE DAVID RICHARDS: Would it be a problem if we were 23 to rise now and sit at 2.05? 24 MR TROWER: My Lord, I don't think it would at all because 25 I think I should not think I will be much more than</p> <p style="text-align: center;">Page 101</p>	<p>1 different, one can conceive it could have been, before 2 the rules were changed in relation to set-off which 3 allowed an outwards contingent claim by the company to 4 be taken into account for set-off purposes, because one 5 could see there might be timing questions which would 6 arise. 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR TROWER: Now that they have been changed so that inwards 9 and outwards contingent plans can be taken into account 10 in both estates, it is very difficult to see how 11 you should not end up with exactly the same result on 12 set-off in both estates. We cannot conceive on the 13 basis that what we are here looking at is a circumstance 14 in which the contributory rule does not apply and so 15 one is simply looking at set-off in the two estates. 16 We respectively submit as a matter of principle 17 there cannot be any good reason why you should not 18 simply have an identical set-off in both estates. 19 MR JUSTICE DAVID RICHARDS: Yes. 20 MR TROWER: Assuming you have two insolvent estates. 21 MR JUSTICE DAVID RICHARDS: Two insolvent estates. 22 MR TROWER: Yes. 23 MR JUSTICE DAVID RICHARDS: If the company which has a claim 24 to call capital -- 25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 103</p>
<p>1 another hour, I would guess. 2 MR JUSTICE DAVID RICHARDS: Good. Well, I will rise now and 3 we will resume at 2.05. 4 (12.58 pm) 5 (The Luncheon Adjournment) 6 (2.05 pm) 7 MR TROWER: My Lord, two points from this morning. First 8 was the question in relation to the template, if any, 9 which was applicable in relation to facts. Two points. 10 IPRU(INV) does not apply to banks. It only applies to 11 investment firms. There is something called IPRU Bank 12 which does apply to banks, call it institutions, 13 there is no template, but there are requirements which 14 are set out in IPRU Bank in relation to banks. 15 MR JUSTICE DAVID RICHARDS: As regards -- 16 MR TROWER: As regards -- 17 MR JUSTICE DAVID RICHARDS: -- subordinated debt. 18 MR TROWER: -- subordinated debt. 19 MR JUSTICE DAVID RICHARDS: Thank you. 20 MR TROWER: That is as far as we got at the moment but there 21 is not a template. 22 MR JUSTICE DAVID RICHARDS: No. 23 MR TROWER: The second point, your Lordship asked me about 24 if I can put it this way symmetry in relation to set-off 25 in two estates. Now, the position might have been</p> <p style="text-align: center;">Page 102</p>	<p>1 MR JUSTICE DAVID RICHARDS: -- either a limited or an 2 unlimited company has gone into liquidation but a call 3 has not yet been made. Leave aside -- again assume 4 against you contributory rule does not apply until 5 a call has been made. 6 MR TROWER: Yes. 7 MR JUSTICE DAVID RICHARDS: It would seem odd if there was 8 set-off in that liquidation. 9 MR TROWER: There would not be then because a contributory 10 rule on that analysis would apply the company having 11 gone into liquidation since. 12 MR JUSTICE DAVID RICHARDS: Yes, well it is said against 13 you it does, the contributory rule as such does not 14 apply until a call is made. 15 MR TROWER: Yes, although for -- 16 MR JUSTICE DAVID RICHARDS: But of course one has that 17 section whatever it is. 18 MR TROWER: It is most unlikely it would ever arise this 19 point because the liquidator can make a call at any time 20 irrespective of the surplus. 21 MR JUSTICE DAVID RICHARDS: He is likely to make a call 22 before. The question I suppose is if there is a time 23 lag and after all it notionally takes effect as at the 24 date of liquidation when there will not have been 25 a call.</p> <p style="text-align: center;">Page 104</p>

<p>1 MR TROWER: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: It would seem inconsistent with</p> <p>3 whatever the section now is which restricts set-off, one</p> <p>4 that permits it to the limited extent of?</p> <p>5 MR TROWER: 149.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes, 149.</p> <p>7 MR TROWER: Yes. I am not sure I see that my Lord. This is</p> <p>8 in the circumstance where there is no contributory rule</p> <p>9 and the simple question is whether or not you have --</p> <p>10 MR JUSTICE DAVID RICHARDS: No contributory rule until</p> <p>11 a call was made.</p> <p>12 MR TROWER: Until a call is made.</p> <p>13 MR JUSTICE DAVID RICHARDS: It seems strange, does it not,</p> <p>14 that a company in liquidation which could make a call</p> <p>15 would assert a contingent claim for the call?</p> <p>16 MR TROWER: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: Either the liquidator is going</p> <p>18 to make a call or he is not. That in a sense was your</p> <p>19 point.</p> <p>20 MR TROWER: Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: But conceptually it does not</p> <p>22 seem right it should be a set-off in that circumstance.</p> <p>23 MR TROWER: I am being --</p> <p>24 MR JUSTICE DAVID RICHARDS: If you cannot set-off an actual</p> <p>25 call which you cannot, section 149, it would be odd if</p> <p style="text-align: center;">Page 105</p>	<p>1 MR TROWER: Yes and we gave -- I think I slightly had</p> <p>2 misunderstood your Lordship's question then because</p> <p>3 we had thought the answer lay simply in the fact that</p> <p>4 the liquidator is always able to make the call.</p> <p>5 Perhaps I can think again on that.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes, I mean you gave me an</p> <p>7 answer to the symmetry question I put. What I put to</p> <p>8 you now is a development of that.</p> <p>9 MR TROWER: Is a slight development of that.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>11 MR TROWER: I realise I do not have very long to do so but</p> <p>12 if I can come back to that or perhaps I could leave it</p> <p>13 to -- no, I better not say that to Mr Zacaroli. No,</p> <p>14 I will definitely come back to it. Where I was going to</p> <p>15 go next, my Lord, was Mr Issacs' submissions on the</p> <p>16 nature of the section 74 liability and particular, is it</p> <p>17 provable?</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: It was a central part of his submissions on</p> <p>20 section 74 that liability under it is not a contingent</p> <p>21 liability of LBHI2s within the Nortel test. That is</p> <p>22 what this is all going to.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: In particular he said that the statutory</p> <p>25 liability differs from the contractual liability to pay</p> <p style="text-align: center;">Page 107</p>
<p>1 you could set-off a contingent claim for a call in the</p> <p>2 liquidation, would it not?</p> <p>3 MR TROWER: But 149 does not prohibit the call, the set-off</p> <p>4 per se.</p> <p>5 MR JUSTICE DAVID RICHARDS: One view of the authorities is</p> <p>6 that it does.</p> <p>7 MR TROWER: It is in the context of --</p> <p>8 MR JUSTICE DAVID RICHARDS: Or the authorities seem to say</p> <p>9 it does.</p> <p>10 MR TROWER: It in the context of the contributory rule</p> <p>11 though.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes, that is true. That is</p> <p>13 where the --</p> <p>14 MR TROWER: So once one has swept aside the contributory</p> <p>15 rule this point does not apply.</p> <p>16 MR JUSTICE DAVID RICHARDS: No-one is suggesting the</p> <p>17 contributory rule is swept aside completely because</p> <p>18 everyone agrees that it applies at the latest from the</p> <p>19 point of the call.</p> <p>20 MR TROWER: Yes. So your Lordship is positing the</p> <p>21 situation -- so this is only a question which is capable</p> <p>22 of arising in relation to that period between the</p> <p>23 commencement of the liquidation and the making of the</p> <p>24 call.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 106</p>	<p>1 unpaid capital and he identified a number of</p> <p>2 differences.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR TROWER: Those, just so your Lordship remembers the</p> <p>5 context, he said they were statutory not contractual.</p> <p>6 He says that it is a statutory liability which exists</p> <p>7 only in a winding-up. It is only enforceable by a</p> <p>8 liquidator. It does not form part of the capital of an</p> <p>9 unlimited company. He said it is a liability to</p> <p>10 contribute to the assets and not a liability owed to the</p> <p>11 company. So he was identifying a number of conceptual</p> <p>12 differences.</p> <p>13 Now, what he did accept though was the statutory</p> <p>14 liability did what he called springs back to the time of</p> <p>15 membership, but he said that it only springs back once</p> <p>16 the winding up order has been made. It is a sort of</p> <p>17 concept of springing or relating back and, in</p> <p>18 particular, he pointed out the particle is only ever in</p> <p>19 the hands of the liquidators and never in the hands of</p> <p>20 the directors or administrators. It is all that kind of</p> <p>21 area. Now, we say that the correct analysis is</p> <p>22 relatively straightforward and it goes through the</p> <p>23 following steps: step one is it is clear from the</p> <p>24 Canwell case and the Harding case, and Harding was the</p> <p>25 House of Lords case your Lordship will remember.</p> <p style="text-align: center;">Page 108</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: That the section 80 liability commences at the</p> <p>3 time of membership. It is also clear from Pyle and I am</p> <p>4 not sure your Lordship remembers Pyle on this point.</p> <p>5 MR JUSTICE DAVID RICHARDS: No.</p> <p>6 MR TROWER: It is the way Lord Justice Lindley puts it at</p> <p>7 page 582, it is tab 34. I think my learned friend took</p> <p>8 your Lordship to a passage at the top of page 582 when</p> <p>9 he was making submissions to your Lordship about</p> <p>10 capital. The bit that matters on this point is the next</p> <p>11 paragraph starting "the sections which relate to calls"</p> <p>12 and it is just that paragraph.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR TROWER: And really the next paragraph too as well.</p> <p>15 MR JUSTICE DAVID RICHARDS: Okay, I will just look at it.</p> <p>16 (Pause). Yes, I see. "The debt due to the company</p> <p>17 accrue in respect of each (inaudible) from the time of</p> <p>18 its acquisition". Just to confirm the various sections</p> <p>19 referred to are, they do not just relate to the</p> <p>20 liability --</p> <p>21 MR TROWER: No.</p> <p>22 MR JUSTICE DAVID RICHARDS: -- to pay calls on unpaid</p> <p>23 shares. I do not think it can be.</p> <p>24 MR TROWER: No, it is 38. 38 and 75 are the two that</p> <p>25 matter.</p> <p style="text-align: center;">Page 109</p>	<p>1 we say in Nortel at paragraph 77 where he looks at the</p> <p>2 nature of contingent liabilities. It is recognisably</p> <p>3 a contingent liability to the company at the time the</p> <p>4 membership commences. There is nothing in the wording</p> <p>5 of the section which suggests that the liability springs</p> <p>6 up once the winding-up order has been made or possibly</p> <p>7 once the call has been made. One just does not see that</p> <p>8 anywhere. The closest analogy I could think of was to</p> <p>9 the sort of relation back, the old relation back</p> <p>10 provisions in bankruptcy where you can see very clearly</p> <p>11 the relation back but there is nothing in the wording</p> <p>12 here which fits with it. Apart from anything else the</p> <p>13 submission made by Mr Issacs give no weight to the fact</p> <p>14 that the section provides for a simple staged approach</p> <p>15 as to when a liability is due and when it is payable.</p> <p>16 So it is already within the section. So we respectfully</p> <p>17 suggest that section 80 is not really capable of bearing</p> <p>18 the meaning attributed to it by Mr Issacs.</p> <p>19 Now, the parts of Whitehouse which you were taken to</p> <p>20 by Mr Issacs on this point really cannot stand with</p> <p>21 Pyle. We have looked at Whitehouse and Pyle on a number</p> <p>22 of occasions. I am not going to go back to that.</p> <p>23 In particular, as I say it is not correct to say the</p> <p>24 statutory liability is not owed to the company. On this</p> <p>25 point, just to clear up one minor issue, you were taken</p> <p style="text-align: center;">Page 111</p>
<p>1 MR JUSTICE DAVID RICHARDS: They are the liquidation.</p> <p>2 MR TROWER: They are the liquidation ones.</p> <p>3 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>4 MR TROWER: Very well let me just -- we have them in</p> <p>5 the bundles. I will give your Lordship them. Yes, 75</p> <p>6 is the one that matters on this point. It is behind</p> <p>7 tab 3 of bundle 2.</p> <p>8 MR JUSTICE DAVID RICHARDS: Thank you. That relates to</p> <p>9 a winding-up.</p> <p>10 MR TROWER: Yes.</p> <p>11 MR JUSTICE DAVID RICHARDS: Okay, thank you. Yes, I see</p> <p>12 that one.</p> <p>13 MR TROWER: So that is stage 1. So that is when</p> <p>14 it commences. The liability we say is to the company.</p> <p>15 It is enforceable by call in the liquidation. There is</p> <p>16 no reason in principle why it cannot be in force by</p> <p>17 proof in the insolvency of a member pre-liquidation.</p> <p>18 We must always bear in mind in this analysis that we are</p> <p>19 only of course concerned with a situation in which the</p> <p>20 member is subject to a formal insolvency process.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: For the purposes of these submissions we are</p> <p>23 looking at life through the spectacles of the insolvent</p> <p>24 member Mr Issacs, Mr Wolfson and Mr Trace. Now, this</p> <p>25 approach chimes with the approach of Lord Neuberger</p> <p style="text-align: center;">Page 110</p>	<p>1 to a case called Branwhite Re West of England Bank which</p> <p>2 adds little to Whitehouse and cannot stand insofar as</p> <p>3 it is inconsistent with Pyle for obvious reasons.</p> <p>4 It was only a first instance decision. I should just</p> <p>5 make one point. Mr Issacs said that Branwhite had</p> <p>6 itself been approved in White Star which was a decision</p> <p>7 in the Court of Appeal. That is not actually right.</p> <p>8 It was another West of England Bank case that was</p> <p>9 approved in White Star. It is perfectly understandable</p> <p>10 why it was not got right because they are described in</p> <p>11 the same way. It is the same liquidation but actually</p> <p>12 it is a different decision. We have that just to go in</p> <p>13 your Lordship's bundle. It is called West of England</p> <p>14 Bank Ex Parte Brown. That is the one that was referred</p> <p>15 to. The reason it was referred to was because it was on</p> <p>16 the same line of authorities as Auriferous No 2 which</p> <p>17 was being referred to in White Star at that time.</p> <p>18 Your Lordship may recall that there was an exchange at</p> <p>19 one stage I think during Mr Trace's submissions where</p> <p>20 he drew attention to the fact that I had said that</p> <p>21 White Star had approved Auriferous No 1 and said I got</p> <p>22 it wrong. It was Auriferous No 2 and we had a little</p> <p>23 bit of debate about that. It is actually exactly that</p> <p>24 same passage of White Star. This is another</p> <p>25 Auriferous No 2 case.</p> <p style="text-align: center;">Page 112</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR TROWER: But just so you have it.</p> <p>3 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>4 MR TROWER: That is that. So going back to the Nortel test.</p> <p>5 It was said that the relationship was not sufficient to</p> <p>6 engage stage 1. Your Lordship will recall the way</p> <p>7 Lord Neuberger developed in paragraph 77 of his judgment</p> <p>8 the stages of assessing a contingent liability.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR TROWER: Shall we perhaps turn it up while I am making</p> <p>11 these submissions.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR TROWER: It is volume 1D again. It is paragraph 77 on</p> <p>14 this point and the sentence beginning:</p> <p>15 "However it is normally ...(Reading to the words)...</p> <p>16 legal relationship."</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR TROWER: As I understood it one of the points that was</p> <p>19 made was that because the liquidator who is able to</p> <p>20 enforce a liability is not in office and the company is</p> <p>21 not in liquidation, you cannot actually see the</p> <p>22 relationship. I think some sort of analogy was drawn</p> <p>23 with what your Lordship had said in T&N in relation to</p> <p>24 my submissions as it happened as to the future</p> <p>25 dependents. Now, in fact we respectively suggest that</p> <p style="text-align: center;">Page 113</p>	<p>1 inconsistency.</p> <p>2 Now, one of Mr Issacs' objections was that if</p> <p>3 we were correct the directors of a company could claim</p> <p>4 to enforce a call without the contributories having the</p> <p>5 benefit of the protections granted by the scheme.</p> <p>6 He said once you start to advance away from the call</p> <p>7 itself you run into that kind of issue. It is quite</p> <p>8 important though to bear in mind the context in which</p> <p>9 this point arises though. It only arises as a complaint</p> <p>10 at all because the contributories have unlimited</p> <p>11 liability. If this was just a case in which the members</p> <p>12 had limited liability but there were unpaid shares,</p> <p>13 of course the directors could make calls in any event</p> <p>14 under the articles. It also only arises in the context</p> <p>15 of a proof in the liquidation or administration of the</p> <p>16 members when the directors of the company on Mr Issacs'</p> <p>17 hypothetical situation are able to establish a real</p> <p>18 possibility of insolvency because that is one of the</p> <p>19 conditions, because otherwise they will not be able to</p> <p>20 show the necessary contingency, the need to contribute</p> <p>21 in amount sufficient to pay the debts and liabilities.</p> <p>22 So it is in that context one has to think about what</p> <p>23 would you have to show if you were a company still under</p> <p>24 the control of the directors in order to get home in</p> <p>25 proving in the administration of the member. That is</p> <p style="text-align: center;">Page 115</p>
<p>1 is no answer the way my learned friend put it in this</p> <p>2 kind of case from -- one can see that from the Nortel</p> <p>3 case itself. Because the relationship which mattered in</p> <p>4 Nortel was the relationship between the members of the</p> <p>5 group which gave rise to the potential for a future</p> <p>6 contribution notice claim by the Pensions Regulator.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR TROWER: So that is not really what is being contemplated</p> <p>9 here. Now, we simply say that the relationship that is</p> <p>10 sufficient in the present case is the membership which</p> <p>11 these two members have of LBIE and their exposure to</p> <p>12 unlimited liability by reason of the fact that LBIE is</p> <p>13 an unlimited liability company and it is really not more</p> <p>14 complicated than that. It plainly leads that</p> <p>15 relationship to LBIE being vulnerable to the specific</p> <p>16 liability in question of that there can be no doubt.</p> <p>17 We do respectfully suggest, partly for reasons that I am</p> <p>18 just going to develop in a moment, that it would be</p> <p>19 entirely consistent with the regime under which the</p> <p>20 liability is imposed to conclude that the step or</p> <p>21 combination of steps gives rise to an obligation.</p> <p>22 Of course it is inconsistent in the very narrow sense</p> <p>23 that there is not actually at this particular moment in</p> <p>24 time in place the person who is able to make the call.</p> <p>25 It is only in that sense that there is any</p> <p style="text-align: center;">Page 114</p>	<p>1 the first stage. It is then said, well there are not in</p> <p>2 the context of the proof all those protections that the</p> <p>3 members get. He took your Lordship at some length</p> <p>4 through all the stages in the process of getting on to</p> <p>5 the list of contributories and the calling process</p> <p>6 et cetera, et cetera, if what one is doing is simply as</p> <p>7 a company proving in the liquidation or administration</p> <p>8 of a member, but it has to be borne in mind that it is</p> <p>9 only if the company can establish a properly estimated</p> <p>10 provable claim with the intervention of the court, if</p> <p>11 necessary, that that claim will be admitted to proof.</p> <p>12 It is very difficult to see why that process might</p> <p>13 disadvantage the member in anyway as compared to what</p> <p>14 they would be entitled to were all the procedural hoops</p> <p>15 to be gone through for making a call. Because you still</p> <p>16 have that process albeit in the administration of the</p> <p>17 member where there is a control going on.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes, the estimate under the</p> <p>19 rules would be by the administrator or liquidator</p> <p>20 subject to appeal to the court.</p> <p>21 MR TROWER: Subject to appeal to the court.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes, I see.</p> <p>23 MR TROWER: Slightly more importantly in our submission,</p> <p>24 what if this were not to be a provable contingent</p> <p>25 liability in an appropriate case, there would be nothing</p> <p style="text-align: center;">Page 116</p>

<p>1 to stop an insolvent member with unlimited liability</p> <p>2 from going into liquidation and distributing its assets</p> <p>3 to its own members without regard to the company's</p> <p>4 claims unless the company itself were to go into</p> <p>5 liquidation, notwithstanding the fact that on this</p> <p>6 hypothesis the company itself is in severe financial</p> <p>7 distress. So what we are talking about here is</p> <p>8 a situation where either the present one where the</p> <p>9 company is in administration or the company, albeit</p> <p>10 subject to the control of the directors, is in</p> <p>11 sufficient financial distress to be able to have</p> <p>12 satisfied the contingency that the unlimited liability</p> <p>13 is going to have to be called on. That is the situation</p> <p>14 we are in. It would be very surprising, we say, in</p> <p>15 those circumstances if there was no mechanism for</p> <p>16 ensuring that the company in an appropriate case was</p> <p>17 able to share in the distribution of its members' assets</p> <p>18 by proving in the normal way in circumstances in which</p> <p>19 the member has undertaken unlimited liability without</p> <p>20 the company itself having to go into liquidation in</p> <p>21 order to achieve that result.</p> <p>22 MR JUSTICE DAVID RICHARDS: I am just wondering if you have</p> <p>23 a company, let us say a company in liquidation which</p> <p>24 owns shares in an unlimited company --</p> <p>25 MR TROWER: Yes.</p> <p style="text-align: center;">Page 117</p>	<p>1 a value to the company doubtless there will be the -- if</p> <p>2 they are of value doubtless there is an opportunity to</p> <p>3 sell them.</p> <p>4 MR JUSTICE DAVID RICHARDS: Of course if it is an unlimited</p> <p>5 company there is not any problem about, you can just</p> <p>6 cancel the share, so there is not as if there is any</p> <p>7 difficulty about a reduction of capital of the company.</p> <p>8 MR TROWER: Yes.</p> <p>9 MR JUSTICE DAVID RICHARDS: So there is no -- an unlimited</p> <p>10 company can cancel issued shares without needing to go</p> <p>11 to court and so on.</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes, I see, thank you. I do not</p> <p>14 suppose the Crown will be very happy.</p> <p>15 MR TROWER: No.</p> <p>16 MR JUSTICE DAVID RICHARDS: Vested in the Crown to</p> <p>17 (inaudible).</p> <p>18 MR TROWER: I do not know.</p> <p>19 MR JUSTICE DAVID RICHARDS: I do not know whether liability</p> <p>20 go with assets vesting in the trial, I do not know.</p> <p>21 MR TROWER: Yes, I am afraid I cannot tell your Lordship the</p> <p>22 answer to that. I was just...</p> <p>23 MR JUSTICE DAVID RICHARDS: All right.</p> <p>24 MR TROWER: Mr Issacs then in this area made some</p> <p>25 submissions about certain surprising consequences if</p> <p style="text-align: center;">Page 119</p>
<p>1 MR JUSTICE DAVID RICHARDS: -- what does the liquidator do</p> <p>2 with those shares?</p> <p>3 MR TROWER: He may try and disclaim them is one possibility</p> <p>4 he might do.</p> <p>5 MR JUSTICE DAVID RICHARDS: If he did that then of course</p> <p>6 then the company, I mean whether that is, assume that is</p> <p>7 possible the company would then have a claim in damages.</p> <p>8 MR TROWER: Indeed and would prove.</p> <p>9 MR JUSTICE DAVID RICHARDS: Which will be the same way of</p> <p>10 reaching the same result.</p> <p>11 MR TROWER: Yes, but that is the way he could --</p> <p>12 MR JUSTICE DAVID RICHARDS: Of course he might be able to</p> <p>13 dispose of the shares to a transferee of whom the</p> <p>14 company approves.</p> <p>15 MR TROWER: Yes, that is one possibility.</p> <p>16 MR JUSTICE DAVID RICHARDS: In which case that is the end of</p> <p>17 that problem really.</p> <p>18 MR TROWER: It is really they are, the shares in an</p> <p>19 unlimited liability company are quite a good example,</p> <p>20 one would have thought at first blush anyway, of onerous</p> <p>21 property.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes, they could well be.</p> <p>23 MR TROWER: So they might be or they may not.</p> <p>24 MR JUSTICE DAVID RICHARDS: They may or may not be.</p> <p>25 MR TROWER: It may depend on the circumstances. So if it is</p> <p style="text-align: center;">Page 118</p>	<p>1 he was wrong. Can I address one or two of those if</p> <p>2 he is wrong on his point that we cannot prove? The</p> <p>3 first point he made was that where a company in</p> <p>4 administration proves in the insolvency of its member</p> <p>5 for a contingent section 74 liability it would mean that</p> <p>6 the recovery would be first applied in paying the costs</p> <p>7 of the administration. He said that is not contemplated</p> <p>8 by section 74. So he says in comes the money pursuant</p> <p>9 to the proof in the administration. He says that would</p> <p>10 lead to the slightly surprising consequence that the</p> <p>11 assets once they came into the administration would</p> <p>12 first be applied in payment of the costs of the</p> <p>13 administration.</p> <p>14 Now, the short answer to that is that we agree this</p> <p>15 would be the result but we disagree that there is</p> <p>16 anything surprising or problematic about that being the</p> <p>17 result. The costs and expenses of the administration</p> <p>18 will almost all, in any event, be a debtor liability</p> <p>19 within section 74 which is not a particularly surprising</p> <p>20 proposition. They are either pure liabilities of the</p> <p>21 company in administration and they become costs as</p> <p>22 a result, or they may be liabilities of the</p> <p>23 administrator incurred by them in their capacity as</p> <p>24 agent of the company and in respect of which they will</p> <p>25 have no indemnity against the company, qua agent. So it</p> <p style="text-align: center;">Page 120</p>

<p>1 is not very surprising to consider that that is what is 2 likely to happen.</p> <p>3 Now, there may be one or two peripheral expenses 4 which drop into neither of those two boxes but they are 5 not expenses of any significance. We respectfully 6 suggest that that simply is not an anomaly or 7 a surprising result. He also gave your Lordship an 8 illustration of a surprising result, as he put it, in 9 relation to past members. I do not know whether 10 your Lordship remembers but he posited a situation in 11 which the company went into administration in 12 September 08. In January 14 he ceased to be a member or 13 X ceased to be a member and in October 15 the company 14 was wound up. He said on that hypothesis the past 15 member would not be liable to contribute but if we were 16 right section 74 would impose a liability to do so if 17 we were proving at an earlier stage. We respectfully 18 suggest that is simply the wrong way of looking at it. 19 The contingent liability is already there. One of the 20 contingencies is that the member continues to be 21 a member which he may or may not be and just on a very 22 small point. I hope your Lordship has the note on that. 23 In the present case it is likely to be satisfied because 24 article 7 of the company's articles of association would 25 make it difficult for LBHI2 to transfer its shares to,</p> <p style="text-align: center;">Page 121</p>	<p>1 an appropriate case.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR TROWER: I think the third surprising consequence was one 4 I have already really dealt with which was that proof 5 could be submitted by a company such as LBIE and not 6 subject to an insolvency regime. That point I have 7 already dealt with. We say that the consequence of our 8 submission is yes in theory that might arise but we say 9 it is not surprising for reasons I have already 10 addressed your Lordship on.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR TROWER: The fourth consequence was said to be that the 13 members would not be able to take the benefit of the 14 protective rights under the statutory scheme including, 15 in particular, the adjustment rights. I have touched on 16 some of those but I have not touched I think on the 17 adjustment rights. I have touched on the practical 18 point. So far as the adjustment rights are concerned 19 just for your Lordship's note, and maybe it is just 20 worth briefly turning this up. McMahon which is a case 21 your Lordship has looked at --</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: -- which is behind tab 41 touched on this point. 24 Now, McMahon was a bankruptcy case and so what was in 25 issue here was the then equivalent of section 82(4)</p> <p style="text-align: center;">Page 123</p>
<p>1 certainly, a man of straw.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR TROWER: That is a contingency which is taken into 4 account like any other in estimating the value of the 5 claim. He then submitted that there was a possibility 6 that --</p> <p>7 MR JUSTICE DAVID RICHARDS: I mean I am probably wrong to 8 but if a company holding shares in an unlimited company 9 goes into administration then the administrator cannot 10 of course disclaim the shares.</p> <p>11 MR TROWER: No.</p> <p>12 MR JUSTICE DAVID RICHARDS: So if the administration is 13 completed but it still holds the shares it will probably 14 have to go into liquidation.</p> <p>15 MR TROWER: It probably would.</p> <p>16 MR JUSTICE DAVID RICHARDS: So that there could be 17 a disclaimer.</p> <p>18 MR TROWER: Yes unless it --</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes, sorry.</p> <p>20 MR TROWER: No, sorry.</p> <p>21 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>22 MR TROWER: If disclaimer was the way out. I mean I suppose 23 it is possible that, I am not quite sure how it would be 24 achieved. It is like one can imagine that there may be 25 consensual options apart from going into liquidation in</p> <p style="text-align: center;">Page 122</p>	<p>1 which was contained within section 75 of the 1862 Act.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR TROWER: Which is the section which permits proof in 4 respect of future calls in the bankruptcy of 5 the contributory. Does your Lordship recall the 6 section?</p> <p>7 MR JUSTICE DAVID RICHARDS: I do.</p> <p>8 MR TROWER: I think we have looked at this before but the 9 passage on this point is on page 178 of 10 Mr Justice Sterling's judgment. It was also said the 11 difficulties would or might arise. If your Lordship can 12 just read that.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes. (Pause). Yes, just that 14 paragraph.</p> <p>15 MR TROWER: Just that paragraph on the point. I just draw 16 to your Lordship because there is an analogy 17 there obviously. What is happening is that, but it is 18 important to bear in mind how far this goes and how far 19 it does not go, it is dealing with the present 20 equivalent to section 82 which as I said provides 21 a procedural mechanism by which a proof can be made in 22 the bankruptcy state in respect of future calls in 23 circumstances in which, as your Lordship will recall the 24 contributory, the trustee has become a contributory 25 under the earlier parts of the sections and so we say</p> <p style="text-align: center;">Page 124</p>

<p>1 that that is the explanation for entitlement in respect 2 of future calls. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR TROWER: So what McMahon says is that, well there may be 5 adjustment issues that would arise in these 6 circumstances but that is no ground for thinking that 7 a statutory right to prove in respect of contingent 8 future liability could be circumscribed in any way. 9 Now, of course one does not have the section 82(4) right 10 to prove in respect of the insolvency of a corporate 11 contributory, but we simply say that exactly the same 12 principle arises where the legislation plainly 13 contemplates, as interpreted by Nortel, an ability to 14 prove in respect of contingent liabilities generally. 15 I think the final point on this section is this: 16 it was said by Mr Issacs that a section 74 claim in the 17 insolvency of LBHI2 derived from LBIE's own inability to 18 pay interest would itself fall foul of rule 2.88(7) in 19 the insolvency of LBHI2 because it would be a debt 20 bearing interest and payable in respect of a period 21 after LBHI2 entered administration. Does your Lordship 22 remember the point? The submission we say is wrong 23 simply because LBIE section 74 proof in those 24 circumstances in LBHI2s admin is not itself a proof of 25 a debt bearing interest. It is a claim by which LBIE</p> <p style="text-align: center;">Page 125</p>	<p>1 in which it appears. Yes, it starts at paragraph 36 2 where we are dealing with section 107 and then goes on 3 to deal with the position in relation to statements of 4 affairs, then there are the provisions where insolvency 5 is required to be established. None of them at the end 6 of the day go anywhere, we respectfully suggest, towards 7 the submission that whenever the draftsman uses or 8 intends to cover statutory interest he uses that phrase 9 and wherever he does not it is plain that statutory 10 interest is not included. I am very happy to go through 11 them in a bit more detail. 12 MR JUSTICE DAVID RICHARDS: No, I will tell you what, I am 13 just, let me just -- the provision about a declaration 14 of solvency. 15 MR TROWER: Yes. That is section 89. 16 MR JUSTICE DAVID RICHARDS: 89, is it, thank you. 17 MR TROWER: That is not one that is on the list. 18 MR JUSTICE DAVID RICHARDS: That is actually a slightly 19 different formula because that just talks about its 20 debts in full. 21 MR TROWER: Yes. 22 MR JUSTICE DAVID RICHARDS: Together with interest of the 23 official rate as the finding. 24 MR TROWER: What is interesting, and we make the submission 25 in our written submission, that we were unable to find</p> <p style="text-align: center;">Page 127</p>
<p>1 seeks a contribution remedy to indemnify itself against 2 and enable itself to satisfy its own obligation to pay 3 interest. It is not relevant that one of the 4 constituent parts of that claim relates to interest. 5 That does not work with the wording of the words "debt 6 bearing interest". 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR TROWER: Now, your Lordship was also taken by 9 Mr Issacs -- and I am not going to go over them again 10 because they are dealt with in detail in our written 11 submissions -- a whole series of sections within the 12 legislation which he said are inconsistent with the idea 13 that where the phrase "debts and liabilities" is used in 14 section 74 it does not extend to statutory interest. 15 Does your Lordship remember? 16 MR JUSTICE DAVID RICHARDS: I do. 17 MR TROWER: We dealt with that extensively in our 18 submissions. Can I just simply say that your Lordship 19 will find our answers in relation to that there. Can 20 I just tell you where they are. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR TROWER: It is 36 onwards of our supplemental 23 submissions. In general terms the general proposition 24 is one obviously has to look at what amounts to a debt 25 or a liability in any particular context in the context</p> <p style="text-align: center;">Page 126</p>	<p>1 any example of a case when the draftsman had used words 2 "liabilities" he has also used the word "statutory 3 interest". 4 MR JUSTICE DAVID RICHARDS: I think that was probably 5 exactly the point I was on. 6 MR TROWER: Yes. 7 MR JUSTICE DAVID RICHARDS: Because what I had in mind was 8 to put to you the point made by Mr Issacs that when 9 statutory interest was enacted, whenever that was, 86 -- 10 MR TROWER: Yes, 86. 11 MR JUSTICE DAVID RICHARDS: -- that section 74 was reenacted 12 without any reference after dates and liabilities to 13 statutory interest. 14 MR TROWER: Yes. 15 MR JUSTICE DAVID RICHARDS: Section 89 was one that just 16 occurred to me as a contrast, but you will say, ah yes 17 but it does not say debts and liabilities, it says 18 debts. You say, well debts mean provable. That is 19 actually your basic submissions. 20 MR TROWER: It is. 21 MR JUSTICE DAVID RICHARDS: You say there are no provisions 22 using the phrase "debts and liabilities" which then goes 23 on to say "and statutory interest". 24 MR TROWER: We could not find one. 25 MR JUSTICE DAVID RICHARDS: Yes, okay. So you say, well the</p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)

<p>1 short point is statutory interest is included within the 2 definition of liabilities.</p> <p>3 MR TROWER: Yes, it is as simple as that. It piggybacks on 4 the point we made in our opening submissions about debts 5 being provable debts and liabilities being something 6 other than provable debts. Very often when it is used 7 in that it may include debts but it very often includes 8 something other than provable debts.</p> <p>9 MR JUSTICE DAVID RICHARDS: Quite what debts and other 10 liabilities means I am not sure.</p> <p>11 MR TROWER: I cannot really make a logically coherent 12 submission to your Lordship about the distinction 13 between cases where it says debts and liabilities and 14 debts and other liabilities because there does not seem 15 to be any consistency.</p> <p>16 MR JUSTICE DAVID RICHARDS: I forget, are there some 17 provisions which say debts and other liabilities --</p> <p>18 MR TROWER: Yes, there are one or two.</p> <p>19 MR JUSTICE DAVID RICHARDS: -- including interest, debts or 20 interest? No.</p> <p>21 MR TROWER: No, there is no --</p> <p>22 MR JUSTICE DAVID RICHARDS: But there are, somewhere 23 it clearly does not include provable interest. It is 24 like statements of affairs.</p> <p>25 MR TROWER: Yes, that is right.</p> <p style="text-align: center;">Page 129</p>	<p>1 liquidation moratorium. That, I have already mentioned 2 this to your Lordship, is the reason, we submit, why the 3 judgment rate is used in both the insolvency rules and 4 section 189 when describing the rate as an alternative 5 to the contractual rate.</p> <p>6 Now, the effect of the submissions is that, and one 7 must always bear this in mind, if they are right 8 whenever a company goes into administration a creditor's 9 right to statutory interest thereafter will be lost 10 unless a distribution is made in the administration. So 11 the poor old administrator when he is asking himself the 12 GHE question as to whether to move from administration 13 into liquidation or not, by reference to what is in the 14 best interests of the creditors generally, is given what 15 we submit is a wholly irrational added additional 16 consideration to put into the melting pot when deciding 17 what to do next.</p> <p>18 Now, the way Mr Trace I think, and I think it was 19 Mr Trace who put it this way, sought to meet that point 20 was to say that the scheme contemplates that once 21 you have gone into a distributing administration 22 you should not ever go into a liquidation.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: I think he says no-one -- and it is to meet the 25 point that I have made. He said that no-one would ever</p> <p style="text-align: center;">Page 131</p>
<p>1 MR JUSTICE DAVID RICHARDS: It all depends on the context 2 from that point of view, yes.</p> <p>3 MR TROWER: It depends on the context. Of course I accept 4 that you could not have statutory interest in the 5 statement of affairs. It does not make any sense. But 6 that does not really take matters very far.</p> <p>7 MR JUSTICE DAVID RICHARDS: Thank you, yes.</p> <p>8 MR TROWER: Where I was going to go next, and I think it is 9 very nearly my last topic, is the so-called lacuna.</p> <p>10 MR JUSTICE DAVID RICHARDS: Oh yes.</p> <p>11 MR TROWER: Which we of course say is not a lacuna at all, 12 although doubtless it could have been done differently. 13 Now, before I just go through the construction aspect of 14 this with your Lordship there were a number of points 15 advanced I think by both Mr Trace and Mr Issacs as to 16 why interest ought to be treated differently in 17 liquidations and administrations. They all went to the 18 proposition at the end of the day that administration is 19 an alternative to liquidation, a precursor to it, but 20 there really at the end of the day is no policy 21 explanation that has been given to your Lordship which 22 stands up to any form of scrutiny. The starting point 23 is that it is obvious that interest is to compensate for 24 the inability of creditors to obtain and execute on 25 judgments by reason of both an administration and the</p> <p style="text-align: center;">Page 130</p>	<p>1 have envisaged moving from administration to liquidation 2 and that is why section 189 is drafted in the way it is.</p> <p>3 Now, there are a number of answers to this. There 4 is a short point that your Lordship I cannot remember 5 may or may not already have seen which is that 6 submission is actually completely inconsistent with 7 rule 4.7.3 which is a rule I am going to have to come 8 back to on the construction argument anyway where 9 rule 4.7.3(8) specifically contemplates that you will 10 have both a distributing administration might be 11 succeeded by a liquidation.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>13 MR TROWER: Now, it is also obviously the case that 14 there may be many other reasons why it is appropriate 15 for a company to go into liquidation after 16 a distributing administration. Disclaimer is one, 17 wrongful trading is another. There are things that 18 sometimes have to happen which as the code presently 19 works can only be done through a liquidation. It simply 20 is not credible, we suggest, to think that the 21 legislator might have sought to achieve a result which 22 meant that once you had determined to go into 23 distributing administration your prospects of going into 24 liquidation were then to come to an end which is 25 effectively what Mr Trace's submission boils down to.</p> <p style="text-align: center;">Page 132</p>

<p>1 It really boils down to a submission that the 2 company has a choice in that kind of circumstance to go 3 into liquidation to achieve the benefit of something 4 like disclaimer or wrongful trading, but the quid pro 5 quo for that is that creditors are going to lose their 6 rights to statutory interest in respect of the period 7 the company was in administration. That just does not 8 stand up as a rational legislative policy. Indeed the 9 explanatory notes to which your Lordship was taken by 10 Mr Issacs I think support our submission, we suggest, 11 that the legislator thought that it had solved the 12 interface between liquidation and distributing 13 administration regimes in a manner which preserved 14 a logical coherence as to the cut off dates for the time 15 at which interest and foreign currency issues were to be 16 computed. So we do respectfully suggest that 17 your Lordship has a legislative pointer to there being 18 an intention that there should be a possibility to move 19 seamlessly from one to the other, your Lordship has 20 explanatory notes which explain what in broad terms was 21 intended.</p> <p>22 MR JUSTICE DAVID RICHARDS: Can we just have a quick look at 23 those, please.</p> <p>24 MR TROWER: Yes, indeed. They went into the bundles I think 25 behind the further authorities 3B I think. Let me just</p> <p style="text-align: center;">Page 133</p>	<p>1 thereafter and provides for the payment of interest 2 accruing since the commencement of the administration. 3 That is what 2.88(7) does. Stage 3 is that 2.88(7) does 4 not cease to apply.</p> <p>5 MR JUSTICE DAVID RICHARDS: Just give me a minute. So 6 it addresses debts proved in the administration.</p> <p>7 MR TROWER: Yes.</p> <p>8 MR JUSTICE DAVID RICHARDS: I think you added something 9 there.</p> <p>10 MR TROWER: It --</p> <p>11 MR JUSTICE DAVID RICHARDS: Provides for interest from --</p> <p>12 MR TROWER: And provides for the payment of interest 13 accruing since the commencement.</p> <p>14 MR JUSTICE DAVID RICHARDS: Sorry, yes. Yes, the third 15 stage.</p> <p>16 MR TROWER: The third stage is that it does not cease to 17 apply merely because the distributing administration is 18 succeeded by a winding-up before creditors' proofs of 19 debt are paid in full.</p> <p>20 MR JUSTICE DAVID RICHARDS: Right.</p> <p>21 MR TROWER: So there is nothing there in the wording which 22 requires it to cease to apply on conversion or, indeed, 23 which limits the surplus remaining as a concept to 24 a surplus remaining in the hands of the administrators. 25 It is simply a surplus remaining. We respectfully</p> <p style="text-align: center;">Page 135</p>
<p>1 check. No, maybe I have that wrong. They are behind 2 tab 18 of 2.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes, this is the notes to the 4 rule.</p> <p>5 MR TROWER: The notes to the rule.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR TROWER: Page 87. The passage your Lordship was taken to 8 was as a result of the changes.</p> <p>9 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>10 MR TROWER: Now, can I against that background take 11 your Lordship through the way we say your Lordship 12 should construe this rule because we have set it out in 13 our written submissions at paragraph 107. Your Lordship 14 may find it helpful to have that open as well as the 15 rule while I am taking you through it. We need 189 as 16 well. There is 2.88 to this exercise. Now, the first 17 stage in the argument is that section 189 addresses only 18 what occurs in a winding-up.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TROWER: It does not contemplate a prior administration. 21 It is limited to interest accruing on debts since the 22 company went into liquidation. Stage 2 of the argument 23 is rule 2.88(7) applies once the administration has 24 become a distributive administration because notice had 25 been given. It addresses interest on debts proved</p> <p style="text-align: center;">Page 134</p>	<p>1 submit that what that means is a surplus of the 2 company's assets over its liabilities.</p> <p>3 MR JUSTICE DAVID RICHARDS: So any surplus remaining and 4 that, either in the hands of either the administrators 5 or a liquidator --</p> <p>6 MR TROWER: Anybody else. Or a liquidator.</p> <p>7 MR JUSTICE DAVID RICHARDS: -- Supersedes.</p> <p>8 MR TROWER: Yes.</p> <p>9 MR JUSTICE DAVID RICHARDS: After payment of the debts 10 proved does that mean, is that restricted to debts 11 proved in the administration or does that include debts 12 proved in the subsequent liquidation?</p> <p>13 MR TROWER: Both.</p> <p>14 MR JUSTICE DAVID RICHARDS: Both.</p> <p>15 "Shall before being applied for any purpose be 16 applied in paying interest in those debts in respect of 17 the periods during which they have been outstanding 18 since the relevant date."</p> <p>19 That means either administration or an earlier 20 liquidation because that is A1.</p> <p>21 MR TROWER: Yes, although actually --</p> <p>22 MR JUSTICE DAVID RICHARDS: Or that was a later addition. 23 It does not apply to this case.</p> <p>24 MR TROWER: It does not, it is since the company entered 25 administration. So that particular thing which does not</p> <p style="text-align: center;">Page 136</p>

<p>1 matter on the facts of this case, it does not --</p> <p>2 MR JUSTICE DAVID RICHARDS: So what did, so --</p> <p>3 MR TROWER: It is entered administration.</p> <p>4 MR JUSTICE DAVID RICHARDS: Since it entered administration.</p> <p>5 Fine, do not worry, I think I have it in the notes here.</p> <p>6 MR TROWER: It is behind tab 15 in bundle 2.</p> <p>7 MR JUSTICE DAVID RICHARDS: Actually I have it in the notes</p> <p>8 in the red book, yes. The interesting thing there is</p> <p>9 that the amendment which does not apply in this case to</p> <p>10 include the relevant date takes account of the possible</p> <p>11 though unlikely eventuality of a prior liquidation.</p> <p>12 MR TROWER: Yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: Suggesting that there was</p> <p>14 perceived to be some lacuna before that amendment was</p> <p>15 made unless it was taken case in some other way. The</p> <p>16 lacuna being the case where there is a prior</p> <p>17 liquidation.</p> <p>18 MR TROWER: Yes, although actually --</p> <p>19 MR JUSTICE DAVID RICHARDS: It may be it was taken care of</p> <p>20 by some other route, I do not know.</p> <p>21 MR TROWER: I think the difference, what was slightly, the</p> <p>22 form -- I think for this point one does need,</p> <p>23 you probably do need to go to tab 15.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes, I will certainly, this</p> <p>25 is 2.</p> <p style="text-align: center;">Page 137</p>	<p>1 MR TROWER: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: Which is the addition of the</p> <p>3 words at the end of 1.</p> <p>4 MR TROWER: Correct. Then --</p> <p>5 MR JUSTICE DAVID RICHARDS: Then but there was then, is this</p> <p>6 right do you think, some problem in that case of the</p> <p>7 prior liquidation that the interest was payable only</p> <p>8 since the company went into administration and so the</p> <p>9 relevant date was introduced to take care of that?</p> <p>10 MR TROWER: To cover both points, yes. That seems to have</p> <p>11 been what happened.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes, I see. Right.</p> <p>13 MR TROWER: Yes. Then the next point in the argument that</p> <p>14 I have to deal with is this: is the rule that we were</p> <p>15 looking at just now, 4.73(8), which was the rule that</p> <p>16 I took you to just now which clearly contemplates a move</p> <p>17 from a distributing administration to a liquidation.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: Which is deemed to have proved.</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR TROWER: So that such debts -- the consequence of that</p> <p>22 would appear to be that such debts in respect of such</p> <p>23 debts it can be said that a proof has been submitted in</p> <p>24 the winding-up by reason of their submission in the</p> <p>25 administration. What we say about that is that rule is</p> <p style="text-align: center;">Page 139</p>
<p>1 MR TROWER: Something went wrong but it may not have been</p> <p>2 quite the point.</p> <p>3 MR JUSTICE DAVID RICHARDS: No, it may not have been,</p> <p>4 certainly may not have been the point in time of. Yes,</p> <p>5 right.</p> <p>6 MR TROWER: Now, this is the form in force at the time and</p> <p>7 does your Lordship see at the beginning of one.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: Sorry, in one you have an amendment which --</p> <p>10 MR JUSTICE DAVID RICHARDS: Oh I see.</p> <p>11 MR TROWER: What was not picked up at that stage was the 7,</p> <p>12 the amendment in 7.</p> <p>13 MR JUSTICE DAVID RICHARDS: I see.</p> <p>14 MR TROWER: If your Lordship sees what happened. The point</p> <p>15 was dealt with in order to make 7 consistent with 1 when</p> <p>16 there was a change in 2010.</p> <p>17 MR JUSTICE DAVID RICHARDS: So originally this rule was</p> <p>18 introduced in 2003 presumably coinciding with the</p> <p>19 Enterprise Act.</p> <p>20 MR TROWER: Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: Changes to the administration</p> <p>22 regime.</p> <p>23 MR TROWER: Yes.</p> <p>24 MR JUSTICE DAVID RICHARDS: Then there is an amendment in</p> <p>25 2005.</p> <p style="text-align: center;">Page 138</p>	<p>1 dealing with the proving mechanics and certainly should</p> <p>2 not be read, which is the way I think it was read by my</p> <p>3 learned friends, so to as deprive a creditor who had</p> <p>4 actually proved in the administration and so fell within</p> <p>5 rule 2.88(7) from the benefit of receiving interest on</p> <p>6 any surplus arising before any return is made to</p> <p>7 members.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR TROWER: We say that the effect of this construction is</p> <p>10 that if an administrator is given notice of an intention</p> <p>11 to make a distribution to creditors, which is where we</p> <p>12 are now, the company then goes into liquidation before</p> <p>13 all proofs of debt have been paid, but there is then</p> <p>14 a surplus of the company's assets over its liabilities</p> <p>15 in the hands of the liquidator after payment of all the</p> <p>16 debts proved. Under rule 2.88(7) the creditors who</p> <p>17 actually proved during the administration get their</p> <p>18 interest, while section 1892 applies to those creditors</p> <p>19 who actually prove during the winding-up.</p> <p>20 MR JUSTICE DAVID RICHARDS: So they do not get interest for</p> <p>21 the period of the administration.</p> <p>22 MR TROWER: No, they do not.</p> <p>23 MR JUSTICE DAVID RICHARDS: I think I asked you earlier</p> <p>24 whether --</p> <p>25 MR TROWER: Maybe I got that --</p> <p style="text-align: center;">Page 140</p>

<p>1 MR JUSTICE DAVID RICHARDS: -- in 2.88(7) where it says --</p> <p>2 MR TROWER: There are two ways of looking at it actually.</p> <p>3 MR JUSTICE DAVID RICHARDS: Sorry, yes.</p> <p>4 MR TROWER: Yes, I am sorry, Mr Bayfield quite correctly</p> <p>5 identified that in paragraph 1075 of our analysis,</p> <p>6 we put two separate approaches and perhaps I can commend</p> <p>7 either of them to your Lordship.</p> <p>8 MR JUSTICE DAVID RICHARDS: I think I asked you a question,</p> <p>9 because 228(7), the question I asked you, was any</p> <p>10 surplus remaining after payment of the debts proved and</p> <p>11 I asked you did that mean administration and</p> <p>12 liquidation, you said yes.</p> <p>13 MR TROWER: Yes.</p> <p>14 MR JUSTICE DAVID RICHARDS: Shall before being applied for</p> <p>15 any purpose be applied in paying interest on those debts</p> <p>16 in, on those debts.</p> <p>17 MR TROWER: Those debts. Well, that then --</p> <p>18 MR JUSTICE DAVID RICHARDS: It clearly is the same debts.</p> <p>19 MR TROWER: Yes.</p> <p>20 MR JUSTICE DAVID RICHARDS: Your argument I think has to be.</p> <p>21 MR TROWER: Has to be.</p> <p>22 MR JUSTICE DAVID RICHARDS: Be it both administration, debts</p> <p>23 proved in both.</p> <p>24 MR TROWER: Yes, that must be right.</p> <p>25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 141</p>	<p>1 MR TROWER: Can I -- would your Lordship just give me,</p> <p>2 I think would your Lordship mind rising because I think</p> <p>3 there may be one point --</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR TROWER: -- that I need to come back on but I need to</p> <p>6 understand it.</p> <p>7 MR JUSTICE DAVID RICHARDS: Very well, I will rise now.</p> <p>8 (3.10 pm)</p> <p>9 (A short adjournment)</p> <p>10 (3.20 pm)</p> <p>11 MR TROWER: My Lord, subject to your Lordship, just one</p> <p>12 point to go back on.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR TROWER: Which related I think to the interface between</p> <p>15 the contributory rule and set-off. As I understand it,</p> <p>16 the issue is simply this. Posit a situation where we</p> <p>17 are wrong in relation to the contributory rule applying</p> <p>18 in the context of an administration but, as everybody</p> <p>19 knows, we would be right in any event in relation to the</p> <p>20 contributory rule applying in a liquidation. You then</p> <p>21 have a period of time within the liquidation between the</p> <p>22 commencement and the point of call.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR TROWER: The question is whether or not the mandatory</p> <p>25 set-off, which took place at the commencement of the</p> <p style="text-align: center;">Page 143</p>
<p>1 MR TROWER: That is why there was a certain amount of</p> <p>2 agitation on my left because actually it was the first</p> <p>3 way we put it in our written submission.</p> <p>4 MR JUSTICE DAVID RICHARDS: I see, so there are two ways.</p> <p>5 MR TROWER: Yes.</p> <p>6 MR JUSTICE DAVID RICHARDS: So two ways it is put and that</p> <p>7 is in paragraph?</p> <p>8 MR TROWER: 1075 A.</p> <p>9 MR JUSTICE DAVID RICHARDS: Okay.</p> <p>10 MR TROWER: On this point, my Lord, if we were to be wrong</p> <p>11 on this, just so your Lordship gets the complete</p> <p>12 picture --</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR TROWER: -- we say so far as the contractual interest</p> <p>15 element of the statutory interest right is concerned</p> <p>16 that would be unaffected by this problem, as I think</p> <p>17 I indicated earlier.</p> <p>18 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>19 MR TROWER: The liability survives and Humber Iron applies</p> <p>20 in the way one would expect and it is simply</p> <p>21 a non-provable claim.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR TROWER: I see what the time is, I have actually nearly</p> <p>24 finished.</p> <p>25 MR JUSTICE DAVID RICHARDS: Why do you not carry on.</p> <p style="text-align: center;">Page 142</p>	<p>1 liquidation, somehow affected the way in which or how</p> <p>2 that relates to the operation of the contributory rule.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>4 MR TROWER: Now, we respectfully suggest that in that</p> <p>5 circumstance all that is really happening is that the</p> <p>6 contributory rule would, if necessary, operate so as to</p> <p>7 undo the impact of the mandatory set-off that took place</p> <p>8 at the commencement of the liquidation. So it does not</p> <p>9 cut across our submission on our alternative case that</p> <p>10 set-off operates in the event that the contributory rule</p> <p>11 doesn't apply to an administration because the</p> <p>12 contributory rule is one of those cogent principles, as</p> <p>13 we know from Kaupthing.</p> <p>14 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>15 MR TROWER: Effectively, it prevents the member from relying</p> <p>16 on the right of set-off in these circumstances.</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes. I mean, if one had in mind</p> <p>18 section 149 -- sorry, I am just going back to this --</p> <p>19 section 149 at any rate before it was amended, that</p> <p>20 would suggest, given that there cannot be, as that seems</p> <p>21 to presuppose, a set-off between a call, some call,</p> <p>22 whether in a limited or unlimited company, after the</p> <p>23 winding-up has commenced and a debt owed to the</p> <p>24 contributory, might suggest, well, that's enough to say</p> <p>25 that there cannot be a set-off of, as it were, a</p> <p style="text-align: center;">Page 144</p>

<p>1 contingent claim by the company to make a call.</p> <p>2 MR TROWER: Post-liquidation.</p> <p>3 MR JUSTICE DAVID RICHARDS: Post-liquidation. It's just</p> <p>4 inconsistent to start introducing mandatory set-off in</p> <p>5 respect of either actual or contingent calls.</p> <p>6 MR TROWER: There is one point I just want to ...</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes, certainly. I am happy for</p> <p>8 you to give me an answer after Mr Zacaroli.</p> <p>9 MR TROWER: I think I may just cogitate a little more. It</p> <p>10 may be Mr Zacaroli will say something, it may be he</p> <p>11 won't, but I will have a cogitate on that, yes.</p> <p>12 MR JUSTICE DAVID RICHARDS: Very well. Thank you,</p> <p>13 Mr Trower.</p> <p>14 MR TROWER: Unless you have any further --</p> <p>15 MR JUSTICE DAVID RICHARDS: No, that's fine. Thank you.</p> <p>16 Mr Zacaroli.</p> <p>17 Reply submissions by MR ZACAROLI</p> <p>18 MR ZACAROLI: My Lord, I am not going to deal with that, at</p> <p>19 least now.</p> <p>20 MR JUSTICE DAVID RICHARDS: No.</p> <p>21 MR ZACAROLI: I am going to just focus then purely on the</p> <p>22 currency conversion claim issue.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>24 MR ZACAROLI: Each of my learned friends have addressed</p> <p>25 my Lord on this. I propose to deal with it in the</p> <p style="text-align: center;">Page 145</p>	<p>1 The second reason was my learned friend divided up a</p> <p>2 foreign currency claim into two parts, an actual and</p> <p>3 a contingent part, and said that the currency conversion</p> <p>4 claim was itself a contingent claim, thus provable under</p> <p>5 the principles in Nortel if it existed. Now, I think</p> <p>6 that was meant to illustrate that it cannot exist</p> <p>7 because if it did exist it would be provable and it's</p> <p>8 not provable. It's slightly circular. He relied upon</p> <p>9 an example which my Lord picked up on was, in essence,</p> <p>10 an example which divorced the sterling claims entirely</p> <p>11 from any foreign currency claim, and of course those</p> <p>12 claims would clearly be provable claims. They are</p> <p>13 simply hedge claims.</p> <p>14 We accept the currency conversion claim is</p> <p>15 contingent. We accept that contingent claims are prima</p> <p>16 facie provable. But this one is not; and it's not for</p> <p>17 the policy reason expressed in Lines Bros, in</p> <p>18 particular, that it would interfere with the pari passu</p> <p>19 distribution to other creditors.</p> <p>20 The third reason I can deal with very shortly. It's</p> <p>21 said that the same currency conversion claim must exist</p> <p>22 in liquidation and administration. We agree. We don't</p> <p>23 draw a distinction there.</p> <p>24 Fourthly, and perhaps more substantively, it was</p> <p>25 said that the currency conversion claim would render</p> <p style="text-align: center;">Page 147</p>
<p>1 following way; that's to respond primarily to Mr</p> <p>2 Isaacs's seven reasons why there is no such claim, which</p> <p>3 will deal with most points that various of my learned</p> <p>4 friends have made, leaving a couple of points to pick up</p> <p>5 at the end that are not dealt with in there. In the</p> <p>6 course of that, there are a few worked examples that may</p> <p>7 take a little time, but I will deal with them in the</p> <p>8 course of that.</p> <p>9 My Lord, the first reason why the foreign currency</p> <p>10 claim does not exist is because, so it is said, it's the</p> <p>11 policy of the law for the last 300 years to strive to</p> <p>12 make sure that all debts are provable, relying on</p> <p>13 Harding v Fothergill and Nortel. My Lord, Mr Trower has</p> <p>14 dealt with this point generally in his submissions to</p> <p>15 my Lord this afternoon. I adopt what he's said and</p> <p>16 I don't need to repeat what he's said about that. I</p> <p>17 would just emphasise, however, rule 12.3(3), which was</p> <p>18 the rule which said that this is without prejudice to</p> <p>19 either enactment or rule of law.</p> <p>20 MR JUSTICE DAVID RICHARDS: Or rule of law.</p> <p>21 MR ZACAROLI: Based upon policy, for example, that excludes</p> <p>22 something from being provable. We would say that</p> <p>23 encapsulates precisely the foreign currency claim</p> <p>24 because it's a matter of policy that it cannot be proved</p> <p>25 in order to preserve the pari passu distribution rule.</p> <p style="text-align: center;">Page 146</p>	<p>1 set-off unworkable. We disagree, and if I can explain</p> <p>2 why we say that by reference to my learned friend's</p> <p>3 example, and then I will come on to my Lord's example of</p> <p>4 a different problem. My learned friend's example was</p> <p>5 the following. LBIE owes a creditor \$100 million, which</p> <p>6 at the notice date is worth £70 million. The creditor</p> <p>7 owes LBIE £100 million. Set-off results in £30 million</p> <p>8 being owed by the creditor to LBIE. It's then</p> <p>9 postulated that because of movements in currency there</p> <p>10 is a currency conversion claim of \$10 million owing to</p> <p>11 the creditor. My learned friend says, well, there would</p> <p>12 have to be a further set-off. My Lord, the example</p> <p>13 falls down because, as I accepted in opening, there can</p> <p>14 be no set-off of the foreign currency conversion claim.</p> <p>15 Set-off works in relation to provable debts only. The</p> <p>16 claim is not provable, a fortiori it's not available for</p> <p>17 set-off under the Act.</p> <p>18 Just to go back to first principles, if we, the</p> <p>19 creditor, were to claim set-off, we would be interfering</p> <p>20 with the rights of other creditors. We would be seeking</p> <p>21 not to contribute what we owe, which would be available</p> <p>22 to all creditors pari passu. So we accept there is no</p> <p>23 set-off. There is no interfering with set-off: it's</p> <p>24 simply not available for set-off.</p> <p>25 Now, my Lord's example raises a different question.</p> <p style="text-align: center;">Page 148</p>

<p>1 I am not sure how much my Lord wants me to go into this.</p> <p>2 I will remind my Lord of the problem. It was LBIE owes</p> <p>3 a creditor 40 million euros. The creditor owes LBIE</p> <p>4 \$100 million. Both are converted to sterling. So</p> <p>5 LBIE's claim is assumed to be £70 million. The</p> <p>6 creditor's claim is assumed to be £36 million. My Lord</p> <p>7 was minded to think that this leaves a balance owing</p> <p>8 from the creditor to LBIE of £34 million and that's what</p> <p>9 would be claimable after the operation of set-off. In</p> <p>10 other words, LBIE has no remaining dollar claim against</p> <p>11 the creditor -- sorry, yes, a dollar claim.</p> <p>12 Now, we suggest my Lord's initial conclusion is</p> <p>13 wrong on that. We rely upon, by analogy, one of the</p> <p>14 Kaupthing cases in the Court of Appeal. I can offer</p> <p>15 my Lord an alternative solution.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR ZACAROLI: The solution being, to get to the finish</p> <p>18 first, that there remains such dollar debt, less only</p> <p>19 that amount of dollars required to be offset, to be</p> <p>20 converted into sterling, equal to the 36 million as at</p> <p>21 the date of set-off. But I can explain that in some</p> <p>22 more steps.</p> <p>23 My Lord, one starts with the rule, rule 2.85(6),</p> <p>24 which says rules 2.86 to 2.88 (sic) shall apply for the</p> <p>25 purposes of this rule in relation to any sums due to the</p> <p style="text-align: center;">Page 149</p>	<p>1 first instance agreed with that.</p> <p>2 The Court of Appeal disagreed. In essence, they</p> <p>3 held that the words in rule 2.85(7), "for the purposes</p> <p>4 of this rule", meant that the incorporation of rule</p> <p>5 2.105 is confined to working out what is payable by way</p> <p>6 of dividend to the creditor and for making the set-off,</p> <p>7 but otherwise it doesn't touch at all upon what remains</p> <p>8 due to the company after insolvency has taken place.</p> <p>9 That's made good if my Lord just reads the headnote,</p> <p>10 and then there are a couple of passages in the judgment</p> <p>11 I will take my Lord to.</p> <p>12 MR JUSTICE DAVID RICHARDS: Yes, I have read the facts.</p> <p>13 Shall I read the holding as well?</p> <p>14 MR ZACAROLI: Please, my Lord, yes.</p> <p>15 MR JUSTICE DAVID RICHARDS: Yes, thank you.</p> <p>16 MR ZACAROLI: My Lord, Lord Justice Etherton gave the lead</p> <p>17 judgment with which both other members of the court</p> <p>18 agreed. Can I pick up just a few passages.</p> <p>19 Paragraph 32 in which he has recited the facts and</p> <p>20 various arguments. At 32, he says he will allow the</p> <p>21 appeal.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR ZACAROLI: The particular sentence I rely upon is five</p> <p>24 lines in:</p> <p>25 "It is not a policy objective for the procedures for</p> <p style="text-align: center;">Page 151</p>
<p>1 company which -- and then (a) "are payable in a currency</p> <p>2 other than sterling".</p> <p>3 Can I highlight the words "for the purposes of this</p> <p>4 rule".</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR ZACAROLI: Then can I take my Lord to rule 2.85(7)</p> <p>7 because I am illustrating this by analogy with</p> <p>8 a different case. But 2.85(7) is a similar rule in</p> <p>9 relation to future debts:</p> <p>10 "Rule 2.105 shall apply for the purposes of this</p> <p>11 rule to any sum due to or from the company which is</p> <p>12 payable in the future."</p> <p>13 That rule has been the subject of consideration in</p> <p>14 Kaupthing, which is at 1D, tab 90. Before asking</p> <p>15 my Lord to read anything, I will just explain briefly</p> <p>16 what the case was. The case involved debts payable to</p> <p>17 the company in the future and present debts owed by the</p> <p>18 company. So posit one debtor for this purpose. It was</p> <p>19 of general application in relation to many but just</p> <p>20 assume one debtor. The companies owes that debtor a</p> <p>21 future claim. The argument that was advanced by the</p> <p>22 creditor was that the application of the rule for</p> <p>23 discounting the value of the future debt to the company</p> <p>24 meant that after set-off only the discounted sum was</p> <p>25 left due to the company. Indeed, Mr Justice Morris at</p> <p style="text-align: center;">Page 150</p>	<p>1 administration or liquidation of an insolvent company to</p> <p>2 remove or diminish the indebtedness of those liable to</p> <p>3 the company."</p> <p>4 I would add to that "or adjust in any way", because</p> <p>5 in our case it could adjust upwards or downwards; it</p> <p>6 depends on foreign currency movements.</p> <p>7 Then he deals with what the position was prior to</p> <p>8 2005 in paragraph 33. In 34, he regards it as perfectly</p> <p>9 possible to interpret the rule in the way that as I have</p> <p>10 explained he has done. If you look three lines below</p> <p>11 letter H, the end of the line begins:</p> <p>12 "I see no difficulty in the circumstances in reading</p> <p>13 the words for the purposes of this rule in 2.85 as</p> <p>14 confining the effect of the incorporation of rule 2.105</p> <p>15 to what is necessary to calculate what should be paid by</p> <p>16 way of dividend to the creditor and for that purpose the</p> <p>17 making of the insolvency set-off and was not touching at</p> <p>18 all upon what remains due to the company after the</p> <p>19 insolvency has taken place."</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR ZACAROLI: Then in paragraph 35, in the indented section,</p> <p>22 he gives an example of how it works. It might just be</p> <p>23 instructive to see how it does work.</p> <p>24 "The deposit of £100 due to the customer and</p> <p>25 repayable in July is discounted back to May 2009 and</p> <p style="text-align: center;">Page 152</p>

<p>1 produces the sum of £94.34. That part of the loan of</p> <p>2 £1,000 due to the bank payable in July 2018 which was</p> <p>3 required to produce a figure of £94.34, when discounted,</p> <p>4 is 147. The 94.34 figure which represents the present</p> <p>5 value ...(Reading to the words)... both.</p> <p>6 "Then the remainder of the loan of 85,250, ie 1,000</p> <p>7 less what is used for set-off, which is not required for</p> <p>8 the purpose of set-off, remains due and payable by the</p> <p>9 customer in July 2018 in accordance with rule 2.85(8).</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>11 MR ZACAROLI: Can my Lord read the next paragraph, 36. It's</p> <p>12 dealing with an argument based upon Stein v Blake which</p> <p>13 I think Mr Isaacs referred to. He referred to Stein v</p> <p>14 Blake as the reason why there would be set-off, leaving</p> <p>15 a net balance in pounds.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR ZACAROLI: My Lord, we say the same approach in principle</p> <p>18 should be taken to rule 2.85(6) where the same words</p> <p>19 "for the purposes of this rule" are used. So the</p> <p>20 conversion of the foreign currency claim takes place for</p> <p>21 the purposes of this rule. How that works in practice</p> <p>22 here then, taking my Lord's example, LBIE's claim of</p> <p>23 \$100 against the creditor has been partially discharged.</p> <p>24 MR JUSTICE DAVID RICHARDS: Sorry, can I just get the facts</p> <p>25 down again.</p> <p style="text-align: center;">Page 153</p>	<p>1 instance.</p> <p>2 MR JUSTICE DAVID RICHARDS: Right. Okay.</p> <p>3 MR ZACAROLI: My Lord will notice some symmetry. The</p> <p>4 argument here is that the use of the words "for the</p> <p>5 purposes of this rule" limit the extent to which</p> <p>6 conversion operates. Of course we say overall the same</p> <p>7 thing applies in relation to 286: conversion happens for</p> <p>8 the purposes of proving, which is part of our larger</p> <p>9 argument that the Act and the rules as a whole envisage</p> <p>10 the foreign currency claim, insofar as it's not</p> <p>11 converted for the purposes of proving, as remaining out</p> <p>12 there.</p> <p>13 My Lord, the fifth reason, Mr Isaacs's fifth reason</p> <p>14 why there is no foreign currency claim, is that Lines</p> <p>15 Bros was based on two premises that are no longer</p> <p>16 relevant. The first was the perceived injustice then</p> <p>17 because the foreign currency creditor got the worst of</p> <p>18 both world's, but that's not true now. My Lord, so far</p> <p>19 as that's concerned, the currency claim exists to remedy</p> <p>20 simply the fact that the foreign currency creditor gets</p> <p>21 less than full payment in dollars. That's the only</p> <p>22 reason for it being there. That was as true then in</p> <p>23 Lines Bros as it is now. The fact that, as a matter of</p> <p>24 background, the Court of Appeal referred to some other</p> <p>25 perceived injustice the foreign currency creditor might</p> <p style="text-align: center;">Page 155</p>
<p>1 MR ZACAROLI: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: So LBIE owes creditor?</p> <p>3 MR ZACAROLI: 40 million euros, which equals £36 million.</p> <p>4 The creditor owes LBIE \$100 million, which equals</p> <p>5 £70 million.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR ZACAROLI: So what we say happens is this. LBIE's claim</p> <p>8 of \$100 million against the creditor has been partially</p> <p>9 discharged by an offset valued in pounds at 36 million.</p> <p>10 So £36 million worth of LBIE's claim of 100 million has</p> <p>11 been converted into sterling for the purposes of that</p> <p>12 set-off.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR ZACAROLI: So there remains a debt due from the creditor</p> <p>15 expressed in dollars and calculated as \$100 million less</p> <p>16 the dollar equivalent of £36 million as at the date of</p> <p>17 set-off.</p> <p>18 MR JUSTICE DAVID RICHARDS: So there remains a debt of</p> <p>19 100 million minus or less the dollar equivalent --</p> <p>20 MR ZACAROLI: Of the £36 million as at --</p> <p>21 MR JUSTICE DAVID RICHARDS: Of £36 million at date of</p> <p>22 set-off.</p> <p>23 MR ZACAROLI: Yes, which is the notice date.</p> <p>24 MR JUSTICE DAVID RICHARDS: Ie the notice date.</p> <p>25 MR ZACAROLI: My Lord, that's what we say happened in that</p> <p style="text-align: center;">Page 154</p>	<p>1 suffer is irrelevant to the analysis. It's no part of</p> <p>2 our case.</p> <p>3 The second premise was Lord Justice Brightman's</p> <p>4 reasoning on reversion to contractual rights and was</p> <p>5 based upon Humber Ironworks, but that's now been</p> <p>6 replaced by statute. My Lord, so we say that's also</p> <p>7 irrelevant because the fact that that has been remedied</p> <p>8 or --</p> <p>9 MR JUSTICE DAVID RICHARDS: You say the general principle</p> <p>10 remains.</p> <p>11 MR ZACAROLI: It does.</p> <p>12 MR JUSTICE DAVID RICHARDS: Albeit that that particular</p> <p>13 example has been met.</p> <p>14 MR ZACAROLI: Yes, and so the principle in that case of</p> <p>15 being remitted to your creditor, your rights as</p> <p>16 creditor, once the proof process has been explored and</p> <p>17 finished is as good law now as it was then and indeed</p> <p>18 supported by Lord Hoffmann in Wight v Eckhardt.</p> <p>19 My Lord, the sixth reason was reliance based upon</p> <p>20 Mr Justice Slade at first instance in Lines Bros where</p> <p>21 he appeared to -- well, he did deal with the concept of</p> <p>22 creditors' rights remaining and in the context of</p> <p>23 foreign currency claims. It's at 1C, tab 65. The</p> <p>24 passage my Lord was shown on this context is on page 25,</p> <p>25 the very last double page.</p> <p style="text-align: center;">Page 156</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: When the winding up occurs, that paragraph and</p> <p>3 the next Mr Isaacs took my Lord to. Can I start though</p> <p>4 by identifying what submission Mr Justice Slade was here</p> <p>5 dealing with, which is on page 24, the second paragraph</p> <p>6 under question 2. The submission was that:</p> <p>7 "Competition between different creditors should be</p> <p>8 resolved in favour of those foreign currency creditors</p> <p>9 who have suffered a shortfall on the ground that it is</p> <p>10 a fundamental principle of bankruptcy and liquidation</p> <p>11 that there was nothing to be paid to any creditor in</p> <p>12 respect of post-bankruptcy or post-liquidation interest</p> <p>13 unless and until the substantive rights of all creditors</p> <p>14 in respect of the pre-liquidation debts have been</p> <p>15 satisfied in full."</p> <p>16 So he was arguing for a proposition which would cut</p> <p>17 across the rights inter se given to that creditor which</p> <p>18 would create competition between creditors.</p> <p>19 Mr Justice Slade says:</p> <p>20 "I cannot accept this wide proposition."</p> <p>21 So that is what he is dealing with here. He's not</p> <p>22 dealing with the question of the contractual rights</p> <p>23 being reverted to once all the proof process has taken</p> <p>24 place, once you are no longer competing with creditors</p> <p>25 at all and all that is left is a return to members.</p> <p style="text-align: center;">Page 157</p>	<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: My Lord, in any event, the concept of</p> <p>3 reversion to the contractual rights is one which the</p> <p>4 Court of Appeal expressly acknowledged with approval,</p> <p>5 because Lord Justice Brightman, in the next tab, at</p> <p>6 page 21 -- and my Lord has seen this many times --</p> <p>7 referred back, as part of the reasoning for the currency</p> <p>8 conversion possible claim, that part of the reasoning</p> <p>9 was Lord Justice Gifford in Humber Ironworks. So he</p> <p>10 expressly approves that at paragraph F on that page. He</p> <p>11 refers to Lord Justice Gifford and says:</p> <p>12 "He does this on the basis that obligations under</p> <p>13 the contract are not necessarily discharged, despite the</p> <p>14 fact that all provable debts have been paid the 100p in</p> <p>15 the pound."</p> <p>16 So, whatever Mr Justice Slade may have said about</p> <p>17 it, the Court of Appeal clearly acknowledged that as an</p> <p>18 existing and continuing principle of law.</p> <p>19 Of course, as I referred earlier, Lord Hoffmann in</p> <p>20 Wight v Eckhardt makes specific reference to that.</p> <p>21 That's very high authority in favour of that proposition</p> <p>22 for the reversion to contractual rights or leaving</p> <p>23 contractual rights untouched through the proof process,</p> <p>24 save insofar as of course they are discharged by</p> <p>25 payment. That is what distinguishes the other two</p> <p style="text-align: center;">Page 159</p>
<p>1 That is not an issue he's addressing. He's relies in</p> <p>2 the passage that my Lord was shown on the new rights</p> <p>3 that creditors get under the statutory scheme. We see</p> <p>4 that at the beginning of the paragraph, "When the</p> <p>5 winding-up occurs ..."</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR ZACAROLI: I am just looking for the phrase. He uses the</p> <p>8 phrase "the two central features of the statutory</p> <p>9 scheme", somewhere in this passage.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes, it's line five.</p> <p>11 MR ZACAROLI: That is right, line 5. So he's focusing here</p> <p>12 on the two central features of the statutory scheme. He</p> <p>13 identifies those on page 16. It's the last</p> <p>14 two paragraphs on page 16.</p> <p>15 MR JUSTICE DAVID RICHARDS: That's right, yes.</p> <p>16 MR ZACAROLI: I think my Lord has been shown them.</p> <p>17 MR JUSTICE DAVID RICHARDS: I was, yes. Soon as reasonably</p> <p>18 practicable.</p> <p>19 MR ZACAROLI: Yes, and then pari passu.</p> <p>20 MR JUSTICE DAVID RICHARDS: And then pari passu, yes.</p> <p>21 MR ZACAROLI: So, rather like the Court of Appeal, he's</p> <p>22 focusing on the fact that to allow this claim would</p> <p>23 interfere with the central features of the statutory</p> <p>24 scheme; collection of assets and pari passu distribution</p> <p>25 to all creditors.</p> <p style="text-align: center;">Page 158</p>	<p>1 examples given by my learned friend of the future debts</p> <p>2 and the contingent debts. Mr Trower again has dealt</p> <p>3 with that. I will not repeat what he has said. I will</p> <p>4 just make this point. In both those cases, the proof</p> <p>5 process or the statutory scheme results in payment in</p> <p>6 full of the contingent claim and the future debt,</p> <p>7 assuming there is enough money in the estate to do so,</p> <p>8 the contingent claim because it's paid at whatever value</p> <p>9 it actually has.</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>11 MR ZACAROLI: If you pay the value it has, you pay in full.</p> <p>12 If the value changes, you pay more. So far as a future</p> <p>13 debt is concerned, as my Lord knows, for purposes of</p> <p>14 dividend only it's discounted back.</p> <p>15 Now, my Lord raised the question of what about such</p> <p>16 a creditor who waits five years for payment; he is</p> <p>17 having his debt discounted back to the date of the</p> <p>18 administration or liquidation. The answer, my Lord, is</p> <p>19 again that the statutory scheme provides the answer, not</p> <p>20 first time round in this case, not as part of the</p> <p>21 provable claim, but he gets interest. If there is a</p> <p>22 surplus, that creditor will get interest from the date</p> <p>23 of the administration at 8 per cent minimum on the whole</p> <p>24 of its proved claim, not the discounted amount, because</p> <p>25 the discount is just for the purposes of dividend. Its</p> <p style="text-align: center;">Page 160</p>

<p>1 provable claim remains 100 per cent. It gets interest</p> <p>2 on that. So any loss it suffers through waiting for</p> <p>3 payment is completely remedied by the statutory scheme</p> <p>4 for interest. So the scheme results in payment in full</p> <p>5 of both contingent and future creditors.</p> <p>6 MR JUSTICE DAVID RICHARDS: And it does involve the</p> <p>7 discharge. I mean, really the statutory scheme replaces</p> <p>8 the contractual right, doesn't it, in those cases?</p> <p>9 MR ZACAROLI: By payment, yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: By payment in accordance with</p> <p>11 the scheme.</p> <p>12 MR ZACAROLI: Yes. But the scheme results in full payment.</p> <p>13 So it's no different from any debt which you submit and</p> <p>14 gets paid in full: the debt is now discharged through</p> <p>15 payment. As Lord Hoffmann made clear, debts remain</p> <p>16 untouched, except to the extent they are paid,</p> <p>17 discharged in full, through payment under the statutory</p> <p>18 scheme.</p> <p>19 MR JUSTICE DAVID RICHARDS: I may have floated this with Mr</p> <p>20 Isaacs, I am not sure, but you have the long dated debt</p> <p>21 carrying an above market rate of interest. You apply a</p> <p>22 5 per cent discounted rate to achieve the principal.</p> <p>23 MR ZACAROLI: Yes.</p> <p>24 MR JUSTICE DAVID RICHARDS: If you cannot prove for</p> <p>25 interest, you get your interest out of the surplus.</p> <p style="text-align: center;">Page 161</p>	<p>1 there could be a difference, couldn't there, between the</p> <p>2 market value, the value, what you are losing, and what</p> <p>3 you get under the statutory scheme?</p> <p>4 MR ZACAROLI: Let me just be clear, my Lord is envisaging</p> <p>5 a debt payable in, say, 20 years' time that carries</p> <p>6 a particular rate of interest.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR ZACAROLI: In which case --</p> <p>9 MR JUSTICE DAVID RICHARDS: I mean, if you discount it at</p> <p>10 a rate which took account of the above market interest</p> <p>11 rate, then you might not suffer a loss. But that's not</p> <p>12 necessarily going to be the case, obviously not.</p> <p>13 MR ZACAROLI: Well, I am just --</p> <p>14 MR JUSTICE DAVID RICHARDS: You are struggling with my</p> <p>15 example.</p> <p>16 MR ZACAROLI: No, I am not. The answer may be -- and I</p> <p>17 would like to put this out there tentatively -- that if</p> <p>18 you have a contractual right to interest for a number of</p> <p>19 years going into the future, then your debt includes</p> <p>20 that.</p> <p>21 MR JUSTICE DAVID RICHARDS: How would that work?</p> <p>22 MR ZACAROLI: Because you would --</p> <p>23 MR JUSTICE DAVID RICHARDS: Because you prove for the</p> <p>24 principal.</p> <p>25 MR ZACAROLI: Yes.</p> <p style="text-align: center;">Page 163</p>
<p>1 MR ZACAROLI: Yes.</p> <p>2 MR JUSTICE DAVID RICHARDS: But you have lost, haven't you?</p> <p>3 MR ZACAROLI: Yes, but to the extent you have lost you get</p> <p>4 it back through interest. The scheme then provides the</p> <p>5 answer.</p> <p>6 MR JUSTICE DAVID RICHARDS: You get the interest from the</p> <p>7 date of administration.</p> <p>8 MR ZACAROLI: Yes.</p> <p>9 MR JUSTICE DAVID RICHARDS: The date of payment. You don't</p> <p>10 get any future interest.</p> <p>11 MR ZACAROLI: I see. I misunderstood.</p> <p>12 MR JUSTICE DAVID RICHARDS: I mean, take the case of a debt</p> <p>13 which, like some of the debts of LBIE, are trading at</p> <p>14 significantly above par because, let us take</p> <p>15 a straightforward case, the interest rate is</p> <p>16 significantly above current market rates. Now, the</p> <p>17 statutory scheme replaces those rights, doesn't it, and</p> <p>18 it may involve a loss, might it not?</p> <p>19 MR ZACAROLI: Well, it values those rates.</p> <p>20 MR JUSTICE DAVID RICHARDS: It all depends on the</p> <p>21 relationship between the statutory discount rate and the</p> <p>22 interest rate on the loan.</p> <p>23 MR ZACAROLI: What it's done is it has valued that right.</p> <p>24 MR JUSTICE DAVID RICHARDS: I know, but it's valued it in an</p> <p>25 arbitrary way -- well, in a statutory way. But clearly</p> <p style="text-align: center;">Page 162</p>	<p>1 MR JUSTICE DAVID RICHARDS: But you receive a dividend on</p> <p>2 the discounted amount.</p> <p>3 MR ZACAROLI: Of principal.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes. You cannot prove for the</p> <p>5 interest, whether accrued since administration or</p> <p>6 a fortiori for the future.</p> <p>7 MR ZACAROLI: Yes, I see that.</p> <p>8 MR JUSTICE DAVID RICHARDS: You get compensated for the</p> <p>9 period since administration of the contractual rate, let</p> <p>10 us say it's higher than the judgment rate, but you have</p> <p>11 lost the benefit of the high future interest rate.</p> <p>12 MR ZACAROLI: I think that must be right. I can't --</p> <p>13 MR JUSTICE DAVID RICHARDS: Anyway, that is a case where the</p> <p>14 statutory scheme replaces the contractual right, even</p> <p>15 though its loss involves a loss.</p> <p>16 MR ZACAROLI: That may be so. Yes, I see the point,</p> <p>17 my Lord. But the difference of course is that the whole</p> <p>18 claim is subject to the statutory scheme in that case.</p> <p>19 As such, you may have got it slightly wrong because it</p> <p>20 has undervalued -- what the statute has done is value</p> <p>21 that claim at a particular amount and may have</p> <p>22 undervalued it.</p> <p>23 MR JUSTICE DAVID RICHARDS: Yes, it may sometimes work to</p> <p>24 the advantage of the creditor but at other times it's to</p> <p>25 the disadvantage.</p> <p style="text-align: center;">Page 164</p>

<p>1 MR ZACAROLI: Yes. I can't provide an immediate answer to</p> <p>2 that particular glitch, but it does not affect, I would</p> <p>3 submit, the position in relation to the currency</p> <p>4 conversion claims because the whole point is it's not</p> <p>5 provable, you don't have the right to prove for your</p> <p>6 loss on currency.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR ZACAROLI: My Lord, the seventh and final objection was</p> <p>9 it placed the officeholder in a predicament because</p> <p>10 there were difficulties about timing of making</p> <p>11 distributions if it gave rise to foreign currency claims</p> <p>12 dependent on the time you distribute. All I say about</p> <p>13 this is that an officeholder already has a predicament</p> <p>14 in this sense, because when ever distribution is made in</p> <p>15 sterling to all the creditors there will be winners and</p> <p>16 losers amongst the foreign currency constituents. So</p> <p>17 the problem is already there, if it be a problem. The</p> <p>18 fact that there may be a compensation in the event of</p> <p>19 a surplus for some of those creditors is irrelevant; it</p> <p>20 simply redresses part of the problem that has already</p> <p>21 been there. So allowing a currency conversion claim</p> <p>22 does not create a problem that doesn't already exist.</p> <p>23 My Lord, that's to deal with Mr Isaacs's</p> <p>24 submissions. Dealing then with a couple of points which</p> <p>25 Mr Wolfson made.</p> <p style="text-align: center;">Page 165</p>	<p>1 learned friend Mr Wolfson about what credit should be</p> <p>2 given by a foreign currency creditor. I make only two</p> <p>3 points here. The first to make is that this is not</p> <p>4 a damages claim, it's a debt claim. I don't know if</p> <p>5 my Lord wants to turn it up now, but there are two short</p> <p>6 references; Mr Justice Slade in Lines Bros at page 14</p> <p>7 and Lord Justice Oliver in Lines Bros at page 22, E to</p> <p>8 F.</p> <p>9 MR JUSTICE DAVID RICHARDS: Sorry?</p> <p>10 MR ZACAROLI: Mr Justice Slade at page 14.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: And Lord Justice Oliver at page 22, E to F.</p> <p>13 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>14 MR ZACAROLI: So we are not into calculation of loss, we are</p> <p>15 simply into debt.</p> <p>16 The second point: however, we accept of course that</p> <p>17 the creditor must give credit for the amount of sterling</p> <p>18 it has paid, converted into dollars or whatever the</p> <p>19 currency is at the relevant date of payment. Now,</p> <p>20 whether and in what circumstances a creditor needs to</p> <p>21 give credit under this claim for gains in other respects</p> <p>22 we respectfully submit is beyond the scope of this</p> <p>23 application. The simple reason being that it could</p> <p>24 raise issues between different types of creditor. We</p> <p>25 don't have those creditors before the court to argue</p> <p style="text-align: center;">Page 167</p>
<p>1 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>2 MR ZACAROLI: Insofar as they weren't covered by Mr Isaacs.</p> <p>3 The first is the example he gave of a foreign currency</p> <p>4 creditor doing better than he would have done if you</p> <p>5 look at the foreign conversion rate at the date of</p> <p>6 payment. So what he postulated was a payment due, a</p> <p>7 \$1,000 debt due on 1 January, administration on 1 March</p> <p>8 and a payment on 1 July. His premise is the sterling</p> <p>9 equivalent in July is lower than in March but higher</p> <p>10 than in January.</p> <p>11 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>12 MR ZACAROLI: So he has a claim on our theory because the</p> <p>13 date of valuation produces a sterling figure of X; he</p> <p>14 has more than that, sorry, less than that in July, but</p> <p>15 more than he would have got in January.</p> <p>16 My Lord, the flaw -- I think my Lord had this -- is</p> <p>17 that throughout the creditor is entitled to payment in</p> <p>18 dollars. You can see the flaw by this very simple</p> <p>19 point. If the sterling equivalent in January was lower,</p> <p>20 the point is that on that date that lower amount would</p> <p>21 have got him \$1,000.</p> <p>22 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>23 MR ZACAROLI: That's the short answer to it: it doesn't</p> <p>24 work.</p> <p>25 Now, that led to a discussion between my Lord and my</p> <p style="text-align: center;">Page 166</p>	<p>1 those points. There may be differences, depending on if</p> <p>2 it's a higher interest rate or a discounted debt. There</p> <p>3 may be differences between creditors as to what they</p> <p>4 should or shouldn't bring into account. The basic</p> <p>5 principle we accept, we have to, is that whatever you</p> <p>6 get in sterling that's referable to your principal debt</p> <p>7 is taken into account and credit given for it.</p> <p>8 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>9 MR ZACAROLI: My Lord, two final points. First of all, we</p> <p>10 provided in opening or sought to provide in opening to</p> <p>11 my Lord a principled underpinning for this currency</p> <p>12 conversion claim. My Lord will remember, and I will</p> <p>13 summarise, the policy reason for excluding a currency</p> <p>14 conversion claim from the provable process, the proving</p> <p>15 process, was because it's the company, not the</p> <p>16 creditors, who were at fault.</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>18 MR ZACAROLI: That logically provides we say, and I repeat,</p> <p>19 the rationale for allowing the claim back in once all</p> <p>20 other creditors are out of the picture and you are</p> <p>21 simply dealing with the company (inaudible). My Lord,</p> <p>22 we have not heard a response to that. There has been no</p> <p>23 answer to that principled underpinning of the claim.</p> <p>24 My Lord, my final point is I have taken admonishment</p> <p>25 very seriously, and by Mr Trace even more seriously. We</p> <p style="text-align: center;">Page 168</p>

<p>1 were admonished on Day 3 I think for not having referred 2 to the research that had been done in relation to 3 Commonwealth authorities. Indeed, the transcript I 4 think complains that Mr Zacaroli was supposed to come 5 along and answer this point. I have asked but, my Lord, 6 the short answer is what Mr Trower said was correct. My 7 instructing solicitors did that research at the outset 8 of this and uncovered nothing either way. So there is 9 nothing there to assist my Lord.</p> <p>10 My Lord, unless I can assist further, those are my 11 submissions.</p> <p>12 MR JUSTICE DAVID RICHARDS: Just two points. Just going 13 back to rule 2.85, can we just look at 2.85(8). So we 14 have the balance, if any, of the account owed to the 15 creditor is provable. So that we understand.</p> <p>16 I am just looking at the next bit:</p> <p>17 "Alternatively, the balance, if any, owed to the 18 company shall be paid to the administrator as part of 19 the assets."</p> <p>20 Now, this it seems applies once we have converted 21 foreign currency liabilities into sterling.</p> <p>22 MR ZACAROLI: Yes.</p> <p>23 MR JUSTICE DAVID RICHARDS: So what this seems to say, and 24 I am just inviting your submissions on this, is if, 25 following the set-off, there is an amount owed by the</p> <p style="text-align: center;">Page 169</p>	<p>1 MR JUSTICE DAVID RICHARDS: Obviously I will look closely at 2 Kaupthing. But, on the face of it, it seems to say for 3 the purposes of this rule you convert everything into 4 sterling.</p> <p>5 MR ZACAROLI: Yes.</p> <p>6 MR JUSTICE DAVID RICHARDS: So you then have a set-off and 7 you have a balance, one way or the other, and the 8 balance which has to be a balance expressed in sterling, 9 and that is what is then due, owed to the company.</p> <p>10 MR ZACAROLI: Yes.</p> <p>11 MR JUSTICE DAVID RICHARDS: But you say, no, actually it's 12 the foreign currency amount that's owed to the company. 13 What do you do, you convert the balance back into the 14 foreign currency and that is what is due.</p> <p>15 MR ZACAROLI: Yes. It was the analysis I went through with 16 my Lord about the euro and the dollar debt.</p> <p>17 MR JUSTICE DAVID RICHARDS: I know, but I am looking 18 specifically at sub-rule 8, you see.</p> <p>19 MR ZACAROLI: Yes. So what's due is -- one has to add in 20 here the reasoning in Kaupthing. One does not just get 21 there by the rule itself. You have to add in that step 22 which is the purpose of conversion is for the purposes 23 of the rule, but the purpose of the statute overall is 24 not to affect the rights of the company against its 25 debtors. So it should leave in tact, it shouldn't</p> <p style="text-align: center;">Page 171</p>
<p>1 creditor to the company, what is that amount? Is it an 2 amount in sterling? I mean, to take my euros and 3 dollars example, what is the effect of 2.85(8) on the 4 amount owed to the company?</p> <p>5 MR ZACAROLI: Assuming that it is a foreign currency amount 6 owed to the company.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>8 MR ZACAROLI: My Lord, the example I went through with my 9 Lord .</p> <p>10 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>11 MR ZACAROLI: The answer is because of Kaupthing, what 12 remains is the existing dollar amount.</p> <p>13 MR JUSTICE DAVID RICHARDS: But it does here say, "The 14 balance, if any, owed to the company shall be paid to 15 the administrator."</p> <p>16 MR ZACAROLI: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: What balance is that?</p> <p>18 MR ZACAROLI: The answer here is that this rule for 19 conversion of the debt only applies for the purposes of 20 the set-off.</p> <p>21 MR JUSTICE DAVID RICHARDS: No, the purposes of this rule.</p> <p>22 MR ZACAROLI: Yes.</p> <p>23 MR JUSTICE DAVID RICHARDS: That's what sub-rule 6 says.</p> <p>24 MR ZACAROLI: Yes, but it's as expanded or explained in the 25 Kaupthing decision.</p> <p style="text-align: center;">Page 170</p>	<p>1 reduce or affect, the amount of the debt owed by the 2 creditor to the company. So if you build in that policy 3 consideration, what this means then is that it's 4 converted the set-off but the balance remains.</p> <p>5 MR JUSTICE DAVID RICHARDS: The balance in the original 6 currency --</p> <p>7 MR ZACAROLI: Exactly.</p> <p>8 MR JUSTICE DAVID RICHARDS: -- is owed.</p> <p>9 MR ZACAROLI: Yes.</p> <p>10 MR JUSTICE DAVID RICHARDS: And that's what you say 11 Kaupthing makes clear.</p> <p>12 MR ZACAROLI: My Lord, yes.</p> <p>13 MR JUSTICE DAVID RICHARDS: Thank you.</p> <p>14 The other point I just wanted to ask you was this.</p> <p>15 You recall the Law Commission papers we looked at.</p> <p>16 MR ZACAROLI: Yes.</p> <p>17 MR JUSTICE DAVID RICHARDS: The final Law Commission Paper, 18 I think we might just want to turn it up, but basically 19 said, "We think our original proposal was right."</p> <p>20 MR ZACAROLI: Yes.</p> <p>21 MR JUSTICE DAVID RICHARDS: "There should only be one date 22 of conversion, and it should apply in both solvent and 23 insolvent companies."</p> <p>24 MR ZACAROLI: Yes.</p> <p>25 MR JUSTICE DAVID RICHARDS: Now, I am just wondering whether</p> <p style="text-align: center;">Page 172</p>

<p>1 that's expounding a different approach to that of 2 Lord Justice Brightman and Lord Justice Olive in Re 3 Lines. 4 MR ZACAROLI: My response to that is two things. First of 5 all, I made these points before but just to repeat them, 6 the Law Commission was simply considering the date 7 within the statutory scheme for conversion of claims 8 into sterling. It was considering whether there should 9 be one or two dates. It was not addressing the 10 different question of whether, once the statutory scheme 11 for distribution to creditors has taken place, does 12 there remain out there the possibility of a claim for 13 the loss suffered. 14 MR JUSTICE DAVID RICHARDS: They were not considering? 15 MR ZACAROLI: They were not considering that, no. 16 MR JUSTICE DAVID RICHARDS: But the point of the second date 17 would be to meet the point of the currency loss, 18 wouldn't it? 19 MR ZACAROLI: It would meet the same -- I think it would 20 meet -- 21 MR JUSTICE DAVID RICHARDS: They were against having a 22 second date. 23 MR ZACAROLI: But the other point about it is -- and again 24 I have made this point before -- at that stage the 25 reasoning they gave in the original paper, and I think</p> <p style="text-align: center;">Page 173</p>	<p>1 competing with the rights of creditors to interest. 2 That was the whole issue in Lines Bros. So it is not 3 surprising when they were talking about competition and 4 discrimination that's the explanation for it. They were 5 saying that Lines Bros is right; there shouldn't be that 6 discrimination and competition. So they were not 7 focusing on the next stage, the passage in 8 Lord Justice Brightman and Lord Justice Oliver's 9 decision dealing with a separate question. 10 MR JUSTICE DAVID RICHARDS: I see. Yes, thank you, 11 Mr Zacaroli. 12 Mr Trower. 13 Further submissions by MR TROWER 14 MR TROWER: My Lord, just very briefly on 149, which is the 15 one ... 16 MR JUSTICE DAVID RICHARDS: Yes. 17 MR TROWER: Just bear in mind, my Lord, that we submit that 18 149 is simply a debt collecting section. That's what 19 it's all about. It gives the court a limited ability to 20 apply a set-off in circumstances in which 2(a) is 21 engaged. 22 Now, some of the old cases refer to this as part of 23 the scheme pursuant to the justification of the 24 contributory rule, but it's clear from Grissell that the 25 justification for the contributory rule derives from the</p> <p style="text-align: center;">Page 175</p>
<p>1 the Cork Report gave the same reasoning, was that it 2 would otherwise create discrimination between creditors, 3 ie the reasoning for their conclusion was because of the 4 risk of competition between creditors over this issue, 5 which was exactly the point made in Lines Bros. Of 6 course the competition between creditors in relation to 7 a solvent company in those days would have been between 8 foreign currency conversion creditors and creditors 9 entitled to interest, because the world in which they 10 were living at that time -- and Mr Justice Mervyn-Davies 11 in Lines Bros himself on that particular application 12 made the same point -- the company was solvent even 13 though it had not paid any statutory interest. 14 MR JUSTICE DAVID RICHARDS: The discrimination, you say, 15 would have been between -- I find that discrimination 16 reference difficult to follow really, but you say it was 17 between the foreign currency creditors and the interest, 18 for example, the interest creditors. 19 MR ZACAROLI: Yes, which was of course the reasoning in 20 Lines Bros. It's not surprising that the second Cork 21 Report, well, depending on timing, but the second Law 22 Commission report would take that view, because they 23 were faced with a decision of the Court of Appeal -- and 24 indeed Mr Justice Slade made the same point -- that said 25 you shouldn't have a foreign currency conversion claim</p> <p style="text-align: center;">Page 174</p>	<p>1 statutory scheme generally. The impact which this 2 section had on set-off rights is one of the aspects of 3 it, but it's only one of them. So it doesn't really 4 provide, we suggest, the answer to the question of 5 set-off in that period between the liquidation date and 6 the call. The real justification for our case is the 7 application of the contributory rule and the way it 8 works. It's not really more complicated than that. 9 Well, perhaps that's a -- 10 MR JUSTICE DAVID RICHARDS: Those words will be emblazoned 11 on my mind. 12 MR ZACAROLI: I am very glad to have achieved that right at 13 the end of my submissions, my Lord. 14 MR JUSTICE DAVID RICHARDS: Thank you very much indeed. 15 I think I have spotted a couple of the new authorities 16 referred to. I don't know in which order you want to 17 go. 18 Further submissions by MR ISAACS 19 MR ISAACS: Yes, my Lord. I will be brief, if I may. There 20 are a couple of points that my learned friend made on 21 which I would like to respond. The first relates to 22 Kaupthing. 23 MR JUSTICE DAVID RICHARDS: This is at 1D. 24 MR ISAACS: 1D/94. 25 MR JUSTICE DAVID RICHARDS: 90.</p> <p style="text-align: center;">Page 176</p>

<p>1 MR ISAACS: No, Lord Walker.</p> <p>2 MR JUSTICE DAVID RICHARDS: I think we have been through</p> <p>3 that many times, Mr Isaacs.</p> <p>4 MR ISAACS: We have.</p> <p>5 MR JUSTICE DAVID RICHARDS: Am I to indulge you?</p> <p>6 MR ISAACS: Can I say what the point is on which I would</p> <p>7 like you to indulge me before you decide.</p> <p>8 MR JUSTICE DAVID RICHARDS: All right. You know that</p> <p>9 Mr Trower is going to have a right of reply to your</p> <p>10 reply.</p> <p>11 MR ISAACS: Yes, I understand. It's a very short point,</p> <p>12 my Lord.</p> <p>13 MR JUSTICE DAVID RICHARDS: It had better be.</p> <p>14 MR ISAACS: My learned friend relied on the sentence at</p> <p>15 826B. The reason I submit that I should be entitled to</p> <p>16 respond is I have looked through the transcript and I</p> <p>17 don't believe that he read this to you first time round.</p> <p>18 It's the sentence that says, "Payment of the call is a</p> <p>19 condition precedent to the shareholder's participation."</p> <p>20 MR JUSTICE DAVID RICHARDS: He did read it to me and</p> <p>21 I marked it.</p> <p>22 MR ISAACS: He did. I am sorry, my Lord, it's not in the</p> <p>23 transcript.</p> <p>24 MR JUSTICE DAVID RICHARDS: I think actually most of the</p> <p>25 quotes are not in the transcript.</p> <p style="text-align: center;">Page 177</p>	<p>1 MR ISAACS: Yes, for the contractual call, by the liquidator</p> <p>2 for a contractual call for unpaid capital, not a call</p> <p>3 under section 74. That's the entire distinction that I</p> <p>4 was drawing on my Lord.</p> <p>5 MR JUSTICE DAVID RICHARDS: In that case --</p> <p>6 MR ISAACS: It says here "to make his shares fully paid up".</p> <p>7 MR JUSTICE DAVID RICHARDS: I am sorry, when the liquidator</p> <p>8 makes a call he does so under section 74, because</p> <p>9 section 74 actually says that the liability of members</p> <p>10 in a limited company is limited to the amount unpaid on</p> <p>11 his shares. So you are quite right there is</p> <p>12 a contractual liability, but it's the directors who call</p> <p>13 that, superseded, all right?</p> <p>14 MR ISAACS: Yes, that's correct, my Lord. I wish I had not</p> <p>15 made that point.</p> <p>16 MR JUSTICE DAVID RICHARDS: I thought possibly -- anyway,</p> <p>17 there we go.</p> <p>18 MR ISAACS: I hope I have more success with my second short</p> <p>19 point, which at least has this virtue which is that it's</p> <p>20 certainly one I am entitled to make. It's a response to</p> <p>21 the point that I made for the first time that 288(1)</p> <p>22 excludes a proof for post-administration interest. The</p> <p>23 section 74 liability therefore, insofar as it includes</p> <p>24 post-administration interest, cannot be proved in</p> <p>25 LBHI2's administration. My learned friend Mr Trower</p> <p style="text-align: center;">Page 179</p>
<p>1 MR ISAACS: Right.</p> <p>2 MR JUSTICE DAVID RICHARDS: Anyway, he read it to me.</p> <p>3 MR ISAACS: I have one sentence to make.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR ISAACS: Is it's this, my Lord. It may be a long</p> <p>6 sentence. I made a submission that my learned friend</p> <p>7 failed to have regard to the difference between the</p> <p>8 contractual liability to pay up uncalled capital and the</p> <p>9 statutory liability under section 74. I submitted that</p> <p>10 my learned friend referred to a number of cases which</p> <p>11 were distinguishable on the basis that he didn't have</p> <p>12 regard to that distinction, and this is another one</p> <p>13 because if your Lordship looks at paragraph 52 Lord</p> <p>14 Walker says very clearly the situation in this line of</p> <p>15 authority is that a shareholder is a creditor of an</p> <p>16 insolvent company but his shares are not fully paid up,</p> <p>17 so that -- and he goes on -- the call is on him to make</p> <p>18 his shares fully paid up. So this point applies -- the</p> <p>19 same point is made here. The sentence referred to by my</p> <p>20 learned friend makes sense in the context of contractual</p> <p>21 liability.</p> <p>22 MR JUSTICE DAVID RICHARDS: No. No. What, this paragraph?</p> <p>23 In this paragraph, Lord Walker is talking about</p> <p>24 statutory liability. He's talking about calls made by</p> <p>25 the liquidator.</p> <p style="text-align: center;">Page 178</p>	<p>1 responded to that by saying that that doesn't apply</p> <p>2 because the section 74 liability is for an indemnity.</p> <p>3 MR JUSTICE DAVID RICHARDS: Yes. Sorry, I am with you on</p> <p>4 the point. Yes, I understand the point.</p> <p>5 MR ISAACS: That's a point that I took first and he has</p> <p>6 responded to.</p> <p>7 MR JUSTICE DAVID RICHARDS: Yes, he's responded to by saying</p> <p>8 it's not a claim for interest on a provable debt; it's</p> <p>9 a claim for a debt which happens to incorporate</p> <p>10 indirectly an interest element.</p> <p>11 MR ISAACS: Yes. He says it's a claim for indemnity, that's</p> <p>12 the word he used.</p> <p>13 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>14 MR ISAACS: The point I wanted to make in relation to that</p> <p>15 is referable to a case which isn't in the bundle.</p> <p>16 MR TROWER: My Lord --</p> <p>17 MR ISAACS: My Lord, it's a point that is addressed in this</p> <p>18 case, and it was referred to -- the indemnity point was</p> <p>19 taken for the first time by my learned friend.</p> <p>20 MR JUSTICE DAVID RICHARDS: The point that you made is that</p> <p>21 if the liquidator, let us say it's the liquidator, makes</p> <p>22 a call to enable him to pay statutory interest, which</p> <p>23 necessarily has arisen since the commencement of his</p> <p>24 liquidation, and if he makes it against a company in</p> <p>25 administration or liquidation, then at any rate since</p> <p style="text-align: center;">Page 180</p>

<p>1 the start of the administration or liquidation of the</p> <p>2 member it's a proof for interest, is the way you put it.</p> <p>3 MR ISAACS: Yes.</p> <p>4 MR JUSTICE DAVID RICHARDS: Now, on any footing technically</p> <p>5 that's not the case, but you really are saying as</p> <p>6 a matter of substance that's the way it should be</p> <p>7 viewed.</p> <p>8 MR ISAACS: Yes.</p> <p>9 MR JUSTICE DAVID RICHARDS: What Mr Trower has come back and</p> <p>10 said is, well, you cannot ignore -- you cannot treat it</p> <p>11 as a sort of matter of substance in that way. You have</p> <p>12 to look and see what the nature of the claim being made</p> <p>13 by the liquidator is, and it's a call for a sum of money</p> <p>14 to pay debts not of your company but of his company.</p> <p>15 MR ISAACS: Yes.</p> <p>16 MR JUSTICE DAVID RICHARDS: That is not a claim for interest</p> <p>17 on the principal.</p> <p>18 MR ISAACS: Yes.</p> <p>19 MR JUSTICE DAVID RICHARDS: Within 288.</p> <p>20 MR ISAACS: Yes, and there is a case --</p> <p>21 MR JUSTICE DAVID RICHARDS: Whether the word "indemnity" is</p> <p>22 right or not is another matter.</p> <p>23 Now, is the case that you are seeking to cite now</p> <p>24 one that you have wished you had cited before because it</p> <p>25 goes to make your point that this is a claim for</p> <p style="text-align: center;">Page 181</p>	<p>1 nominee trustee for International Contract Company.</p> <p>2 A call was made and then the company was wound up, the</p> <p>3 call still being unpaid. Then another call was made and</p> <p>4 the liquidator brought an action against Mr Hughes for</p> <p>5 the calls. He obtained judgment for that amount.</p> <p>6 Mr Hughes paid the amounts and proved against</p> <p>7 International Contract Company. The claim came before</p> <p>8 the Vice Chancellor and was allowed as to principal and</p> <p>9 interest. The liquidator of the company appealed</p> <p>10 against the allowance of the interest. Then the Vice</p> <p>11 Chancellor explains that he allowed the interest on the</p> <p>12 simple ground that the contract was to indemnify against</p> <p>13 both principal and interest, and that the right to sue</p> <p>14 for the amount actually paid could not be affected by</p> <p>15 the question whether the payment was for one or the</p> <p>16 other.</p> <p>17 Then if your Lordship goes to 631, in the middle of</p> <p>18 the page, does your Lordship see the sentence that</p> <p>19 begins, "The question before me"?</p> <p>20 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>21 MR ISAACS: "The question before me at present is whether</p> <p>22 this rule [and that's the rule in the Warrant Finance</p> <p>23 Companies case, which is the Humber Ironworks case],</p> <p>24 relieving as it does for certain purposes an insolvent</p> <p>25 company in liquidation from a liability to pay interest,</p> <p style="text-align: center;">Page 183</p>
<p>1 interest in substance?</p> <p>2 MR ISAACS: My Lord, it's one that I considered before and</p> <p>3 decided I didn't need to cite.</p> <p>4 MR JUSTICE DAVID RICHARDS: What does it say? I had better</p> <p>5 see it because I can't --</p> <p>6 MR ISAACS: I wasn't proposing to refer to it.</p> <p>7 MR JUSTICE DAVID RICHARDS: You would like me to see it?</p> <p>8 MR ISAACS: I would, my Lord.</p> <p>9 MR JUSTICE DAVID RICHARDS: I will see it.</p> <p>10 MR ISAACS: I would not like my Lord to decide this without</p> <p>11 knowing what the case is.</p> <p>12 MR JUSTICE DAVID RICHARDS: I understand, yes.</p> <p>13 MR ISAACS: Your Lordship may decide it's of no relevance.</p> <p>14 (Handed)</p> <p>15 It's an old decision, my Lord, called International</p> <p>16 Contract Company. It's the decision of the Vice</p> <p>17 Chancellor Sir John Wickens. Could your Lordship please</p> <p>18 read the headnote.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes, I have read that.</p> <p>20 MR ISAACS: Would your Lordship like me to go ahead with the</p> <p>21 submissions?</p> <p>22 MR JUSTICE DAVID RICHARDS: Go ahead, yes.</p> <p>23 MR ISAACS: 630, my Lord, where the judgment starts, what</p> <p>24 happened, and I am taking it from the first full</p> <p>25 paragraph, is Mr Hughes took shares in a company as</p> <p style="text-align: center;">Page 182</p>	<p>1 relieves it also for the same purposes from a contract</p> <p>2 to indemnify a third person against the payment of</p> <p>3 interest."</p> <p>4 Then he picks it up lower down the page with the</p> <p>5 sentence:</p> <p>6 "The assumed principle on which the Warrant Finance</p> <p>7 Companies case is made to rest seems to be that every</p> <p>8 delay in paying debts after the winding-up order is to</p> <p>9 be considered as a delay occasioned by the court which,</p> <p>10 pending that delay, prevents creditors whose debts do</p> <p>11 not bear interest from converting them into</p> <p>12 interest-bearing debts and consequently the rights of</p> <p>13 the creditors as between themselves are definitively</p> <p>14 fixed when the winding-up order is made."</p> <p>15 He goes on to discuss whether that is binding on</p> <p>16 him. He says at the bottom of 633 that his own view in</p> <p>17 Chambers is unmaintainable and he disallows the claim</p> <p>18 for interest.</p> <p>19 MR JUSTICE DAVID RICHARDS: Because it's not provable.</p> <p>20 MR ISAACS: Yes, my Lord.</p> <p>21 MR JUSTICE DAVID RICHARDS: Just let me see again the facts.</p> <p>22 Yes, okay.</p> <p>23 MR ISAACS: I am grateful, my Lord.</p> <p>24 MR JUSTICE DAVID RICHARDS: Yes, Mr Trace.</p> <p>25</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

<p>1 Further submissions by MR TRACE</p> <p>2 MR TRACE: My Lord, three short points. First of all, GHE,</p> <p>3 your Lordship will recall. This came out of the</p> <p>4 homework your Lordship set us on Friday, your Lordship</p> <p>5 will recall. You referred to GHE, the decision of</p> <p>6 Mr Justice Rimer, as he then was. Can I just remind</p> <p>7 your Lordship that Mr Trower basically says he didn't</p> <p>8 really understand our point and therefore said nothing</p> <p>9 against it. The short point was, in relation to GHE,</p> <p>10 that what the court has to do, when deciding whether to</p> <p>11 allow an administration to turn into a distributing</p> <p>12 administration, is to look at all the advantages and</p> <p>13 disadvantages. Your Lordship will recall because the</p> <p>14 file has been sealed in this case we don't know what was</p> <p>15 said, but what we urge upon your Lordship is that</p> <p>16 effectively all those balancing matters must have been</p> <p>17 taken into account. Therefore, if it then turns out</p> <p>18 that there are downsides as well as upsides of having</p> <p>19 gone into distributing administration, then effectively</p> <p>20 tough. But in our respectful submission, that's no</p> <p>21 reason to say -- to bend to fill some alleged lacuna or</p> <p>22 whatever. That balancing exercise has already been</p> <p>23 done. Tellingly, my Lord, there has been no suggestion</p> <p>24 about trying to open the file. The court could have got</p> <p>25 into private to look at that.</p> <p style="text-align: center;">Page 185</p>	<p>1 respectful submission, what the effect of Mr Trower's</p> <p>2 submission is, if the subordination is as he says it is,</p> <p>3 is that effectively the debt no longer becomes debt,</p> <p>4 effectively it becomes capital. So, my Lord, we</p> <p>5 respectfully submit, with respect, that the B&C case is</p> <p>6 absolutely no answer whatsoever, in fact quite the</p> <p>7 reverse, because if that's the best they can come up</p> <p>8 with, ie a subordination trust case, we say a fortiori</p> <p>9 it proves our case there isn't anything out there.</p> <p>10 My Lord, the third and last position was my learned</p> <p>11 friend made a new point, as we understand it. What he</p> <p>12 said -- this is in relation to netting off. Your</p> <p>13 Lordship will recall in our subsidiary submission we say</p> <p>14 that netting off provides the answers, not on set-off,</p> <p>15 netting off as per Lord Walker in Kaupthing. What my</p> <p>16 learned friend said was that it was appropriate for the</p> <p>17 contributory rule to apply to prohibit not only set-off</p> <p>18 but also netting off -- this is what he said this</p> <p>19 morning -- as described by Lord Walker in Kaupthing,</p> <p>20 because a member would always be a net contributor, ie a</p> <p>21 debtor rather than a creditor. Your Lordship will</p> <p>22 remember that point.</p> <p>23 My Lord, that of course is not the case in this</p> <p>24 particular case. Because in the factual scenario where</p> <p>25 we are here, LBIE apparently is going to have assets in</p> <p style="text-align: center;">Page 187</p>
<p>1 My Lord, the second matter was B&C (?). Your</p> <p>2 Lordship recalled that was mentioned in some detail by</p> <p>3 my learned friend.</p> <p>4 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>5 MR TRACE: My Lord, in relation to that, just a few short</p> <p>6 points. First of all, ironically it was said against us</p> <p>7 that we had not found any authority to show that there</p> <p>8 was power to do what, by way of subordination, my</p> <p>9 learned friend Mr Trower says there can be authority.</p> <p>10 My Lord, it's not for us, it's for my learned friend to</p> <p>11 show that there is a case that supports it. The best</p> <p>12 he's been able to show is B&C but, as your Lordship</p> <p>13 knows, we distinguish that in a number of ways. We</p> <p>14 distinguished it, just for your Lordship's note, in the</p> <p>15 supplemental submissions, that's paragraph 3. I won't</p> <p>16 turn it up again now: it's late.</p> <p>17 Secondly, my Lord, as your Lordship rightly pointed</p> <p>18 out, that was a trust case.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>20 MR TRACE: Thirdly, my Lord, when one looks at the nature of</p> <p>21 that trust, subordination by a trust is entirely</p> <p>22 different. It's much more like the situation of</p> <p>23 a turnover trust where effectively the allocation of the</p> <p>24 proceeds takes place behind the scenes. It doesn't</p> <p>25 impact on how or when the surplus arises. In our</p> <p style="text-align: center;">Page 186</p>	<p>1 its hands after payment of all non-member contributories</p> <p>2 to pay everybody effectively 100p in the pound. So it's</p> <p>3 not right, as LBIE would suggest, to say that any claim</p> <p>4 that we may have may be overtopped by any liability to</p> <p>5 contribute. Netting off in that situation, we</p> <p>6 respectfully submit, would produce a balance in our</p> <p>7 favour.</p> <p>8 My Lord, we have a very simple example, if I can</p> <p>9 just give it to your Lordship so it's on the transcript.</p> <p>10 If a company has assets of £70 million and the aggregate</p> <p>11 value of its debts to independent creditors is</p> <p>12 £50 million, then you have a member with an unlimited</p> <p>13 liability to contribute, as this case, who has a claim</p> <p>14 against the company for £50 million, then the member's</p> <p>15 liability to contribute is equal to the total liability</p> <p>16 of the company, less its available assets, ie</p> <p>17 £30 million, which is arrived at with £100 million of</p> <p>18 liabilities to independent creditors and the member</p> <p>19 itself less the £70 million available assets.</p> <p>20 My Lord, in that situation, on our subsidiary case,</p> <p>21 netting off between the member and company will result</p> <p>22 in £20 million owed to the member, that member being</p> <p>23 entitled to share in any distribution of the company's</p> <p>24 assets. So the short point, my Lord, is that it simply</p> <p>25 is not right for LBIE to say or Mr Trower to say that,</p> <p style="text-align: center;">Page 188</p>

<p>1 whatever the position is, it does not allow for netting 2 off. We respectfully submit that when one has a netting 3 off situation, here we have a situation where we will 4 still be somebody to whom money is owed, ie that we can 5 prove and get something back now, and what we shouldn't 6 have to do is have to just wait and wait and wait, which 7 seem to be the net corollary of Mr Trower's submission. 8 My Lord, that's all we wanted to say, and nothing 9 against Mr Zacaroli. 10 MR JUSTICE DAVID RICHARDS: Mr Wolfson, is there anything 11 you want to reply on? 12 MR WOLFSON: My Lord, no. 13 MR JUSTICE DAVID RICHARDS: Mr Trower, do you want to say 14 anything, first of all, about Mr Isaacs's case? 15 MR TROWER: I am not entirely sure that I have got to grips 16 with this case yet. My Lord, I don't think I want to 17 say anything about it but, given the circumstances and 18 the way in which this case has come in, I would be 19 grateful if your Lordship would give us the indulgence 20 to put a note in in writing if we want to say anything 21 about it. At the moment I don't think I do, but I am 22 not completely sure that's right. I mean, I don't think 23 it's quite right to say that this came in as 24 a legitimate response to my case anyway, but there we 25 are. I am not going to quibble about that. Your Page 189</p>	<p>1 MR TROWER: Your Lordship is. 2 MR JUSTICE DAVID RICHARDS: Yes, you may submit, if you 3 wish, a note. Presumably you can do that quickly. 4 MR TROWER: We will do that within the next day or two. 5 MR JUSTICE DAVID RICHARDS: Good. Thank you all very much. 6 There is just one matter I wanted to raise and that's 7 really just a question of mechanics if we get to it of 8 circulating a judgment in draft. I think you will 9 understand the point I am going to raise. I raised it 10 at the previous hearing Mr Arnold was in and there isn't 11 any problem there. But here, as I understand it, my 12 decision is potentially price sensitive information. 13 MR TROWER: Indeed. 14 MR JUSTICE DAVID RICHARDS: So what I would like the parties 15 to consider -- and you may have done so already, I don't 16 know -- is a regime which will ensure no leakage of that 17 information beyond a tight circle. 18 MR TROWER: Yes. One sensible approach might be for it not 19 to go beyond named individuals and then everybody knows 20 exactly how far it can go and there can be no doubt. 21 But can we talk amongst ourselves and let your Lordship 22 know through the usual channels as to what we suggest. 23 MR JUSTICE DAVID RICHARDS: Yes. I mean, the purpose of 24 seeing the judgment in draft -- and one is always 25 extremely grateful for picking up of typos because there Page 191</p>
<p>1 Lordship has seen it. Would your Lordship give us the 2 liberty to put in a very short piece of paper on the 3 case, should we be so advised? 4 MR JUSTICE DAVID RICHARDS: Did you want to say anything 5 about Mr Trace's last rather rapidly stated example with 6 many figures? 7 MR TROWER: My Lord, no. 8 MR JUSTICE DAVID RICHARDS: No. 9 MR TROWER: The only thing I did want to say about what 10 Mr Trace said, just so your Lordship is aware of it, 11 because he started off by launching into the position in 12 relation I think to the evidence in respect of the 13 application for rule -- 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR TROWER: But that Stop Order was lifted two years ago, 16 my Lord. 17 MR JUSTICE DAVID RICHARDS: In any event -- 18 MR TROWER: I simply don't know why such a lot is being made 19 of this. It was raised in the evidence. They have 20 never raised it again with us. The Stop Order was 21 lifted two years ago, so quite why so much -- 22 MR JUSTICE DAVID RICHARDS: Mr Trace may have mentioned it 23 in the course of his previous submissions, but in any 24 event I am really looking at matters of some principle 25 here. Page 190</p>	<p>1 always are some and other obvious errors. The other 2 point, this sometimes happens, is that the judge has 3 simply failed to address an argument that was put. 4 Again, that could happen here, given the plethora of 5 arguments. The first point, as it were, the proof 6 reading and so on, that's something that anyone well 7 familiar with the case, counsel, can do. The latter is 8 certainly something that counsel can do. 9 MR TROWER: Yes. 10 MR JUSTICE DAVID RICHARDS: I think the named individuals is 11 the right approach, but it does need to be as small 12 a group as possible. 13 MR TROWER: Yes. 14 MR JUSTICE DAVID RICHARDS: There isn't a need with a 15 judgment like this, given the point of the circulation, 16 to go to a wider group. In terms of formulating the 17 order that is to be made following delivery of judgment, 18 that plainly may involve more people and the 19 actual formulation of the order can perhaps be delayed 20 somewhat, provided people know what the decisions on the 21 various points are, and then that will be out in the 22 open. 23 MR TROWER: Yes. I suspect it is one of those cases where 24 your Lordship will want to simply postpone and adjourn 25 the argument in relation to form of order. Page 192</p>

<p>1 MR JUSTICE DAVID RICHARDS: Yes, because it may or may not</p> <p>2 be quite complex to work out what directions and</p> <p>3 declarations should follow.</p> <p>4 MR TROWER: What we sort of initially suggest is counsel</p> <p>5 plus two named solicitors, but perhaps we can discuss it</p> <p>6 amongst ourselves.</p> <p>7 MR ISAACS: My Lord, one last point, if I may. Mr Trower</p> <p>8 said he would like a day or two to put in a note, which</p> <p>9 seems fair enough. My Lord, would it be possible to say</p> <p>10 that he puts in a note within a couple of days, by the</p> <p>11 end of week, so at least we know where we stand?</p> <p>12 MR TROWER: I am sure we will do it as soon as we reasonably</p> <p>13 can.</p> <p>14 MR JUSTICE DAVID RICHARDS: I am sure this week because you</p> <p>15 won't want it hanging around.</p> <p>16 MR TROWER: I am sure we will not, my Lord.</p> <p>17 MR ISAACS: Exactly. Thank you.</p> <p>18 MR JUSTICE DAVID RICHARDS: Very well. Thank you all very</p> <p>19 much. I will reserve judgment.</p> <p>20 (4.35 pm)</p> <p>21 (The court adjourned)</p> <p>22</p> <p>23</p> <p>24 Reply submissions by MR WOLFSON1</p> <p>25 Reply submissions by MR TROWER21</p> <p>Page 193</p>	
<p>1</p> <p>2 Further submissions by MR TROWER175</p> <p>3</p> <p>4 Further submissions by MR ISAACS176</p> <p>5</p> <p>6 Further submissions by MR TRACE185</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 194</p>	

A	12:1,4 38:16	23:13 25:22	advantages	144:9 149:15	76:12 77:18,23	38:18 40:15,16
ability 33:21	38:17 39:16,17	26:9 27:18,22	185:12	Alternatively	81:1 116:13	40:19 69:22
47:2 73:23	44:1 52:2	28:5 32:2,5,8	adventitious	169:17	118:20 132:8	70:10 91:2,9
86:11 98:5	63:14 124:1	33:8,9,11,15	27:17	ambit 39:17	164:13 178:2	98:14 102:10
125:13 175:19	138:19 148:17	34:5,7,21	adverse 62:8	amended 144:19	179:16 189:24	102:12 103:14
able 13:2 36:11	155:9	35:18 36:1,11	adversely 89:25	amendment	apart 23:14	104:4,10,14
43:3 49:17	action 52:5,6,7,8	45:7 81:5,8	90:3	58:16 137:9,14	58:19 62:11	106:15 135:4
50:11 55:12	53:11 55:1	101:16 115:15	advised 190:3	138:9,12,24	66:5 111:12	135:17,22
69:12,23 78:5	89:24 183:4	115:25 116:7	affairs 100:18	amount 9:6 10:7	122:25	136:23 137:9
79:17 82:23	actual 14:20,21	116:16 117:9	127:4 129:24	25:16 29:20,21	apparent 49:13	144:11 149:24
107:4 113:19	30:2 45:17	120:4,7,9,11	130:5	30:7,8 31:7	apparently	150:10 161:21
114:24 115:17	47:15,17 49:13	120:13,17,21	affect 6:16 8:15	42:2 52:10	187:25	172:22 175:20
115:19 117:11	100:21 101:11	121:11 122:9	165:2 171:24	81:13,14 82:9	appeal 4:23	180:1 187:17
117:17 118:12	105:24 145:5	122:12 125:21	172:1	86:14 87:5	48:22 51:13,18	applying 43:7
123:13 186:12	147:2 192:19	130:18,25	afraid 3:11	99:19 115:21	52:12 112:7	143:17,20
abolished 62:10	add 65:21 152:4	131:8,10,12,21	47:14 60:14	142:1 149:19	116:20,21	approach 1:20
absence 2:4 4:8	171:19,21	132:1,10,16,23	78:25 81:2	160:24 164:2	149:14 151:2	1:21,21,25 2:5
absolutely 18:22	added 131:15	133:7,13	93:8 119:21	164:21 166:20	151:21 155:24	2:10,23 3:15
73:19 79:1	135:8	134:20,23,24	afternoon 1:23	167:17 169:25	158:21 159:4	4:7 6:20 9:23
187:6	addition 136:22	135:2,6,17	2:21 146:15	170:1,2,4,5,12	159:17 174:23	9:24 10:2,18
absolve 77:2	139:2	136:11,19,25	agent 120:24,25	171:12 172:1	appealed 183:9	11:6,7,8,10
absorbing 77:1	additional 64:24	137:3,4 138:21	aggregate	179:10 183:5	appear 3:10 5:16	12:13 23:8
absurd 9:2	131:15	139:8,17,25	188:10	183:14	8:4 29:4	38:8 49:16
abundantly	address 34:15	140:4,17,21	agitation 142:2	amounts 8:7,18	139:22	50:13 57:24
10:22 11:11,11	35:17 99:13	141:11,22	ago 96:10 190:15	126:24 183:6	appeared 1:19	66:5,13 90:21
accept 108:13	101:10 120:1	143:18 144:11	190:21	analogous 63:17	156:21	110:25,25
130:3 147:14	192:3	147:22 152:1	agree 82:25	analogy 111:8	appears 11:9	111:14 153:17
147:15 148:22	addressed 29:4	160:18,23	120:14 147:22	113:22 124:16	30:11 52:12,15	173:1 191:18
157:20 167:16	29:10 31:5	162:7 164:5,9	agreed 63:7	149:13 150:7	53:4 127:1	192:11
168:5	123:10 145:24	166:7 179:25	74:14 94:7	analyse 100:12	applicable 25:12	approaches
accepted 5:5	180:17	180:25 181:1	151:1,18	analysed 66:12	28:22 32:1	141:6
6:11 148:13	addresses 16:11	185:11,12,19	agreement 57:11	analysis 22:8,15	102:9	approaching
accepts 20:4	134:17,25	administrations	69:3 73:3,15	48:21 49:8	applicants 5:20	62:17
account 6:14	135:6	26:18 31:20	73:16 74:5,24	50:9 54:5,24	application 26:8	appropriate
41:17 43:2	addressing 1:5	130:17	75:4,7 79:23	67:5 75:1 82:1	43:25 45:7	84:9 116:25
76:17 93:14	158:1 173:9	administrator	79:25 83:11	83:19 98:14	67:7,14 68:13	117:16 123:1
96:17 103:4,9	adds 112:2	100:10,13,14	84:4 89:3,6,16	104:10 108:21	89:16 150:19	132:14 187:16
122:4 137:10	adequacy 77:10	100:19 116:19	90:10	110:18 141:5	150:22 167:23	approval 47:18
163:10 168:4,7	78:2,14	120:23 122:9	agreements	156:1 171:15	174:11 176:7	47:18 49:14
169:14 185:17	adequate 25:6	131:11 140:10	77:19 84:5	anomalous 47:8	190:13	159:4
accounts 10:18	adjourn 192:24	169:18 170:15	agrees 106:18	50:24	applications	approved 4:24
accrue 109:17	adjourned	administrators	ah 93:22 128:16	anomaly 121:6	30:17,22	38:2 49:25
accrued 26:14	193:21	6:23 70:9	ahead 80:14	answer 2:14	applied 24:25	116:6,9,21
28:22 164:5	adjournment	99:23 100:23	82:12 182:20	29:17 35:4	27:21 42:18	approves 118:14
accrues 54:20	78:6 102:5	108:20 135:24	182:22	49:2 77:22	44:11 65:12	159:10
accruing 134:21	143:9	136:4	Akerman 38:2	79:3,18,20	67:2 71:24	arbitrary 162:25
135:2,13	adjust 6:16	adminstrator	albeit 62:21	80:10 94:8	79:14 87:21	Arcade 52:25
accurate 61:25	95:10,25 152:4	36:20	64:20 65:18	100:1 107:3,7	91:20 93:16,17	area 23:15 35:16
accurately 49:9	152:5	admitted 72:7,16	116:16 117:9	114:1 119:22	120:6,12	48:8 51:10
achieve 54:10	adjusting 92:4	72:17 74:11	156:12	120:14 145:8	136:15,16	60:18 108:21
117:21 132:21	94:12,25 96:17	86:13 116:11	alleged 9:11	160:18,19	141:14,15	119:24
133:3 161:22	96:24 97:16	admonished	185:21	162:5 163:16	applies 21:12,22	argue 167:25
achieved 74:4	adjustment 6:9	169:1	allocation	165:1 166:23	22:10 44:4	argued 53:14
89:13 122:24	7:2 91:23 92:3	admonishment	186:23	168:23 169:5,6	49:4 51:3	70:13
176:12	94:5 98:2,15	168:24	allow 53:24	170:11,18	94:23 98:14	arguing 157:16
achieves 73:17	123:15,17,18	adopt 11:6	151:20 158:22	176:4 187:6	102:10 106:18	argument 5:19
achieving 89:4	125:5	146:15	185:11 189:1	answered 16:6	134:23 140:18	29:4 30:11,15
acknowledged	admin 65:16	adopting 9:22	allowance	41:10 88:18,21	142:19 155:7	33:10,18 35:2
159:4,17	125:24	adopts 50:14	183:10	answering 16:15	169:20 170:19	41:21 52:20
acknowledges	administration	advance 56:1	allowed 103:3	answers 27:2	178:18	60:4,21 70:18
40:4	3:22,23,25	115:6	183:8,11	126:19 132:3	apply 2:16 3:21	73:3,12 93:19
acquisition	13:7,11,14,19	advanced 23:16	allowing 165:21	187:14	7:13 13:6	95:3 97:1,21
109:18	15:2,6 17:13	130:15 150:21	168:19	Anybody 136:6	14:17 23:12,13	97:25 98:10
act 1:10 10:14	17:16 18:11,13	advancing 49:15	alternative	anyway 21:10	23:17,24 25:21	132:8 134:17
11:19,20,21,24	18:16 21:13,16	advantage 86:9	50:14 71:13	22:24 27:5	28:4,5 33:7,12	134:22 139:13
	21:18,21 22:6	164:24	130:19 131:4	29:8 31:4 45:8	33:16 35:22	141:20 150:21

153:12 155:4,9 192:3,25 arguments 5:16 23:15 151:20 192:5 arisen 31:16 180:23 arises 3:19 18:2 32:4 46:12 81:6 82:1 97:6 115:9,9,14 125:12 186:25 arising 84:12 106:22 140:6 Arnold 191:10 arose 31:20 32:11 44:7,9 56:16 arrived 188:17 article 76:7,13 78:16 79:5,6 121:24 articles 37:4 115:14 121:24 ascertained 11:5 31:8 ascertainment 32:8 aside 104:3 106:14,17 asked 17:5 21:5 50:7 68:19 77:6 102:23 140:23 141:8,9 141:11 169:5 asking 21:11 77:24,25 78:4 87:16 131:11 150:14 aspect 13:2 65:21 130:13 aspects 37:9 176:2 assert 67:15,17 105:15 assessing 113:8 asset 100:17 assets 7:17 21:15 24:25 25:24 26:4 31:7 83:20 84:8 86:18,22,25 91:2 92:17 94:11 99:22 100:13,14 108:10 117:2 117:17 119:20 120:11 136:2 140:14 158:24 169:19 187:25 188:10,16,19 188:24 assist 12:22 25:20 169:9,10 assistance 96:3 association	121:24 assume 9:16 13:5 67:1 97:18 99:16,19 104:3 118:6 150:20 assumed 149:5,6 184:6 assuming 7:7 103:20 160:7 170:5 assumption 52:13 53:3 assumptions 51:17 attention 6:5 9:17 69:9 70:1 112:20 attributed 111:18 Auriferous 2:20 3:6,14,16 4:4 4:15,22,25 5:6 5:7,13,25 15:9 21:25 34:2 45:21 46:8,11 46:15,25 47:1 47:2,6,8 49:12 49:18,19,24 50:3,5,9 51:5 56:4 112:16,21 112:22,25 authorities 41:20 57:21 58:4,24 59:23 62:6 106:5,8 112:16 133:25 169:3 176:15 authority 2:4 26:8 48:5,11 50:10 159:21 178:15 186:7,9 available 11:19 21:17 86:18 101:2 148:16 148:21,24 188:16,19 aware 190:10 awful 65:24 A1 136:20 B B 70:2,9 73:25 92:7,16 93:21 back 2:19,24 4:8 6:11 7:5 9:8 12:15 24:7 28:19 32:17 38:1,2 39:4 40:10,13 42:25 47:6,13 48:10 48:22 53:4,14 57:5,6,6 75:24 81:2 107:12,14 108:14,15,17 111:9,9,11,22	113:4 132:8 143:5,12 144:18 148:18 152:25 159:7 160:14,17 162:4 168:19 169:13 171:13 181:9 189:5 background 2:7 79:2 90:18 134:10 155:24 balance 149:7 153:15 169:14 169:17 170:14 170:17 171:7,8 171:8,13 172:4 172:5 188:6 balancing 185:16,22 bank 102:11,14 112:1,8,14 153:2 bankrupt 42:17 51:22 bankruptcy 43:12 46:18 51:12 111:10 123:24 124:4 124:22 157:10 banks 77:20 102:10,12,14 bare 77:3 bargain 63:6 based 23:21 43:4 43:21 80:24 146:21 153:12 155:15 156:5 156:19 basic 43:24 44:2 46:1 75:3,8 128:19 168:4 basically 172:18 185:7 basis 26:5 53:19 79:14 103:13 159:12 178:11 Basle 75:10 Bayfield 60:14 141:4 bear 16:17 23:25 33:1 38:7 51:16 110:18 115:8 124:18 131:7 175:17 184:11 bearing 111:17 125:20,25 126:6 bed 73:7,8 beg 9:9 beginning 17:10 21:6 30:22 113:14 138:7 158:4 begins 152:11 183:19	behalf 52:9 believe 177:17 bend 185:21 beneficial 65:23 benefit 4:14 7:1 28:1 51:21 115:5 123:13 133:3 140:5 164:11 best 27:24 47:8 91:22 131:14 186:11 187:7 better 11:4 15:7 55:15 107:13 166:4 177:13 182:4 beyond 20:8 65:13 71:20 89:14 99:13 167:22 191:17 191:19 binding 184:15 bit 28:14,16 31:3 49:7 50:11,20 55:7 65:21 78:22 96:2 109:10 112:23 127:11 169:16 bits 50:14 Blackburn's 71:13,18 72:9 Blake 153:12,14 Bloom 10:18 11:8 12:14 blush 118:20 boils 132:25 133:1 bold 59:10 book 15:15 16:2 137:8 borne 116:8 borrower 63:4 80:3,5 82:6,23 83:17,24 84:17 bottom 28:8 53:6 53:8 69:11,18 93:7 184:16 Boulton 2:3 23:3,17,24 24:1,2 25:4,19 38:4,11 41:23 41:24 42:6,11 42:22 43:8,24 44:20 48:3 boundaries 59:1 boxes 121:4 Branwhite 112:1 112:5 breached 26:2 breaches 54:1 break 57:4,9 Breech-Loading 39:11 brief 176:19 briefly 89:2 123:20 150:15	175:14 Briggs 9:22 11:7 12:14 Briggs's 10:18 Brightman 159:5 173:2 175:8 Brightman's 156:3 Brighton 52:25 bring 43:2 98:25 168:4 bringing 94:10 brings 12:3 broad 54:5,6 89:16 133:20 broader 88:12 Bros 147:17 155:15,23 156:20 167:6,7 174:5,11,20 175:2,5 brought 52:7,8 183:4 Brown 112:14 build 172:2 bundle 24:18 31:12 50:15 70:5 110:7 112:13 137:6 180:15 bundles 110:5 133:24 burden 60:20 business 77:9 100:18 B&C 186:1,12 187:5 C C 70:2,9 73:25 calculate 152:15 calculated 154:15 calculation 167:14 Calisher's 39:11 call 6:14 7:10,17 8:7,18 13:13 13:14 14:1,13 14:18 17:18 18:2,3,5,7 19:1 19:8 20:12 22:9 24:5,15 26:6 28:22,25 29:3,7,13,21 30:2,8 31:2,6 31:15,22 32:4 32:16,17 33:9 33:20 36:4,20 36:23 37:3,4 38:14,19 39:3 39:7,10,20 40:1,9,11 46:13,17,24 92:6,12,15	94:14 95:4,6,9 95:19 96:24 97:14 98:4,9 98:23 100:2,21 101:1,6 102:12 103:24 104:2,5 104:14,19,21 104:25 105:11 105:12,14,15 105:18,25 106:1,3,19,24 107:4 110:15 111:7 114:24 115:4,6 116:15 143:22 144:21 144:21 145:1 176:6 177:18 178:17 179:1,2 179:2,8,12 180:22 181:13 183:2,3,3 called 9:9 98:22 102:11 108:14 112:1,13 117:13 182:15 calling 116:5 calls 18:14 34:21 36:2,11 38:24 39:2,14,15,16 39:18,21 40:2 40:4,6 48:12 94:18 95:22 109:11,22 115:13 124:4 124:22 125:2 145:5 178:24 183:5 cancel 119:6,10 Canwell 108:24 capable 26:16 45:7 59:12 65:19 74:19 106:21 111:17 capacity 54:19 54:19 120:23 capital 35:24 75:17 77:1,10 78:2,14 79:10 82:13 103:24 108:1,8 109:10 119:7 178:8 179:2 187:4 care 137:19 139:9 carries 163:5 carry 60:15 142:25 carrying 161:21 case 2:23 3:19,20 3:23 4:4,10 5:16 7:12 8:11 8:22 9:20 10:2 10:19 12:15 13:6 15:4 21:8 23:20 25:10 27:4,21 28:2,7	28:9,20,25 29:5,6,24 31:11,18,25 34:20 35:23 37:22 39:5,10 39:11,11,11,23 40:13,14 42:10 42:11,13,25 43:25 44:22,23 45:15 47:17 48:12 49:13 51:9,12 52:6 52:15 53:3,23 54:22 55:7 57:21 58:4 59:14 64:15 65:15 67:25 69:12,24 70:21 75:4,16,17 80:11 82:14 83:15,25 92:18 96:8 108:24,24 108:25 112:1,8 112:25 114:2,3 114:10 115:11 116:25 117:16 118:16 121:23 123:1,20,24 128:1 132:13 136:12 137:1,9 137:15,16 139:6 144:9 150:8,16,16 152:5 156:2,14 160:20 162:12 162:15 163:8 163:12 164:13 164:18 176:6 179:5 180:15 180:18 181:5 181:20,23 182:11 183:23 183:23 184:7 185:14 186:11 186:18 187:5,8 187:9,23,24 188:13,20 189:14,16,18 189:24 190:3 192:7 cases 10:8 25:6 25:19 42:14 43:10,21 47:21 48:15,19,21 62:9 129:13 149:14 160:4 161:8 175:22 178:10 192:23 catch 87:1 category 57:19 61:2,2 62:7,11 62:21 84:9 caught 75:13 causes 86:19 cease 135:4,16 135:22
---	---	---	---	---	--	---

ceased 93:21 121:12,13	80:22 103:13 105:8,22 133:2 144:5	180:8,9,11 181:12,16,25 183:7 184:17 188:3,13	coinciding 138:18	59:5 65:14 81:5 82:4	complains 169:4 complaint 115:9	62:19,20 conflict 12:4
cent 8:12 160:23 161:1,22	circumstances 8:3 10:23 14:17 15:4	claimable 149:9 claimant 41:25 claiming 21:13 21:23	collecting 175:18 collection 158:24	86:22,25 88:4 92:17 94:11	complete 25:3 142:11	72:18 conflicts 12:11
central 107:19 158:8,12,23	25:14 26:17,22 36:13,23 41:25 45:5 46:13	claims 13:13,13 32:7,9 39:1,6 39:20 58:17,18	collective 64:4 64:13 66:16	96:7 99:15,25 101:2,15 103:3 103:23 104:2	completed 24:7 42:24 95:12 122:13	confused 100:20 conscious 1:9 4:20 16:18
certain 45:4 79:2 119:25 142:1 183:24	59:11 64:15 66:11 74:2,19 81:16 89:7	60:22 61:24 70:17 71:19 72:5,6,14,15 72:17,19,20	combination 73:20 114:21	104:10 105:14 108:9,11 109:16 110:14 111:3,24	completely 56:16 106:17 132:6 161:3 189:22	consensual 122:25 consequence 90:1 91:24 98:22 120:10 123:3,7,12 139:21
certainly 5:15 8:22 11:6 60:3 62:12 65:13 69:4 77:21 79:20 95:1 97:10 122:1 137:24 138:4 140:1 145:7 179:20 192:8	117:15,18 118:25 124:23 125:6,24 144:16 152:12 167:20 175:20 189:17	75:21,25 82:12 84:11 85:20 91:3 96:25 117:4 147:10 147:12,12,13 147:15 156:23 165:4,11 173:7	come 2:23 9:8 39:4 57:5,6,6 84:12 86:25 93:22 101:8 107:12,14 132:7,24 143:5 148:3 169:4 181:9 187:7 189:18	113:20 114:13 115:3,16,23 116:7,9 117:4 117:6,9,9,16 117:20,23,23 117:24 118:6,7 118:14,19 119:1,5,7,10 120:3,21,24,25 121:11,13 122:8,8 123:5 131:8 132:15 133:2,7 134:22 136:24 139:8 140:12 144:22 145:1 150:1,11 150:17,18,23 150:25 151:8 152:1,3,18 168:15,21 169:18 170:1,4 170:6,14 171:9 171:12,24 172:2 174:7,12 178:16 179:10 180:24 181:14 181:14 182:16 182:25 183:1,2 183:7,9,25 188:10,14,16 188:21	complex 193:2 complicated 40:21 58:14 76:19 77:4 90:4 114:14 176:8 component 99:3 computed 133:16 computing 93:14 conceive 103:1 103:12 concept 31:19 62:18 65:25 68:3 74:19 75:13 83:3 84:9 99:7 108:17 135:23 156:21 159:2 concepts 37:17 38:10 56:13 conceptual 16:9 16:14 25:3 108:11 conceptually 86:10,21 87:2 98:22 105:21 concern 87:18 88:4,17 concerned 23:23 27:19,23 37:7 45:11 57:18 58:24 62:24 86:7 87:3 94:5 110:19 123:18 142:15 155:19 160:13 conclude 10:22 40:16 51:8 114:20 conclusion 49:23 52:20 61:6,12 81:19 149:12 174:3 condition 24:15 24:21 64:21 65:10 177:19 conditions 115:19 confined 151:5 confining 152:14 confirm 109:18 confirmatory	consequently 184:12 consider 121:1 191:15 consideration 31:10 131:16 150:13 172:3 considered 32:14 83:23 182:2 184:9 considering 56:3 173:6,8,14,15 consistency 129:15 consistent 64:7 66:13 114:19 138:15 constituent 126:4 constituents 165:16 constituted 95:21 constitutes 98:13 construction 9:25 10:4 11:5 11:8,19 12:1,2 38:15 66:7 70:15 73:13 75:6 130:13 132:8 140:9 construe 9:24 134:12 construed 74:7 75:4 90:17 construing 9:19 9:19 83:11 contained 124:1 contains 94:10 contemplate 92:1 134:20 contemplated 59:19 114:8 120:7 contemplates 58:22 84:4 125:13 131:20 132:9 139:16 contend 73:4
Chadwick 47:20 48:7,14,18 50:2	citation 48:14 citations 49:9 cite 181:23 182:3 cited 16:2 25:11 26:12 47:9,18 47:18 48:19 49:12 92:19 181:24	clarity 61:4,11 clause 71:9 87:17	comes 7:5 9:20 10:3,5 21:1 37:7 47:10 68:17 120:8	coming 59:6,6 commenced 144:23 commencement 32:5,8 64:3 106:23 135:2 135:13 143:22 143:25 144:8 180:23 commences 109:2 110:14 111:4 commend 141:6 comment 5:10 22:16 commenting 92:22 commercial 11:2 11:3,5 80:8 Commission 172:15,17 173:6 174:22 common 53:5,13 64:7 Commonwealth 169:3 companies 39:16 43:25 44:1,14 52:2 60:19 65:18 150:20 172:23 183:23 184:7 company 6:8 13:6,7,7 25:23 25:24 27:14 34:22 35:7,22 35:23 36:11 39:1,6,10,19 40:23 41:1 46:16,24 47:3 51:3,25 52:8 52:10,11 54:19 55:5,10,13,17	completing 26:25 complex 193:2 complicated 40:21 58:14 76:19 77:4 90:4 114:14 176:8 component 99:3 computed 133:16 computing 93:14 conceive 103:1 103:12 concept 31:19 62:18 65:25 68:3 74:19 75:13 83:3 84:9 99:7 108:17 135:23 156:21 159:2 concepts 37:17 38:10 56:13 conceptual 16:9 16:14 25:3 108:11 conceptually 86:10,21 87:2 98:22 105:21 concern 87:18 88:4,17 concerned 23:23 27:19,23 37:7 45:11 57:18 58:24 62:24 86:7 87:3 94:5 110:19 123:18 142:15 155:19 160:13 conclude 10:22 40:16 51:8 114:20 conclusion 49:23 52:20 61:6,12 81:19 149:12 174:3 condition 24:15 24:21 64:21 65:10 177:19 conditions 115:19 confined 151:5 confining 152:14 confirm 109:18 confirmatory	consequently 184:12 consider 121:1 191:15 consideration 31:10 131:16 150:13 172:3 considered 32:14 83:23 182:2 184:9 considering 56:3 173:6,8,14,15 consistency 129:15 consistent 64:7 66:13 114:19 138:15 constituent 126:4 constituents 165:16 constituted 95:21 constitutes 98:13 construction 9:25 10:4 11:5 11:8,19 12:1,2 38:15 66:7 70:15 73:13 75:6 130:13 132:8 140:9 construe 9:24 134:12 construed 74:7 75:4 90:17 construing 9:19 9:19 83:11 contained 124:1 contains 94:10 contemplate 92:1 134:20 contemplated 59:19 114:8 120:7 contemplates 58:22 84:4 125:13 131:20 132:9 139:16 contend 73:4
Chadwick's 48:10,25 49:7	claim 6:3,13 7:21 13:25 15:7,8 21:17 21:19 35:10,15 38:15,19,20 39:7 40:9,11 41:12 59:4,12 61:1,2,13 64:2 67:15 68:16 69:16,18 76:22 82:13 86:1 96:6 98:6 100:14 103:3 103:23 105:15 106:1 114:6 115:3 116:10 116:11 118:7 122:5 125:16 125:25 126:4 142:21 145:1 145:22 146:2 146:10,23 147:2,4,4,11 147:14,21,25 148:10,14,16 148:19 149:5,6 149:10,11 150:21 153:20 153:22 154:7 154:10 155:10 155:14,19 158:22 159:8 160:6,8,21,24 161:1 164:18 164:21 165:21 166:12 167:4,4 167:21 168:12 168:14,19,23 173:12 174:25	clear 10:24 11:2 11:9 12:3,9 16:3 18:25 22:12 25:3 28:20 37:2 41:16 42:5 44:23 45:6 46:12 58:10 108:23 109:3 111:25 161:15 163:4 172:11 175:24 clearest 34:17 clearly 3:13 11:21 12:11 13:14 37:14 47:4 53:7 56:6 58:25 59:15,16 61:7 62:7 66:19 75:22 84:13 111:10 129:23 139:16 141:18 147:12 159:17 162:25 178:14 client 8:10 13:18 clients 17:14 closely 63:16 171:1 closest 111:8 code 132:18 coffers 94:1 cogent 37:19,20 48:1 144:12 cogitate 57:4 145:9,11 coherence 133:14 coherent 129:11	coinciding 138:18 collecting 175:18 collection 158:24 collective 64:4 64:13 66:16 combination 73:20 114:21 come 2:23 9:8 39:4 57:5,6,6 84:12 86:25 93:22 101:8 107:12,14 132:7,24 143:5 148:3 169:4 181:9 187:7 189:18 comes 7:5 9:20 10:3,5 21:1 37:7 47:10 68:17 120:8 comfortable 98:21 coming 59:6,6 commenced 144:23 commencement 32:5,8 64:3 106:23 135:2 135:13 143:22 143:25 144:8 180:23 commences 109:2 110:14 111:4 commend 141:6 comment 5:10 22:16 commenting 92:22 commercial 11:2 11:3,5 80:8 Commission 172:15,17 173:6 174:22 common 53:5,13 64:7 Commonwealth 169:3 companies 39:16 43:25 44:1,14 52:2 60:19 65:18 150:20 172:23 183:23 184:7 company 6:8 13:6,7,7 25:23 25:24 27:14 34:22 35:7,22 35:23 36:11 39:1,6,10,19 40:23 41:1 46:16,24 47:3 51:3,25 52:8 52:10,11 54:19 55:5,10,13,17	completing 26:25 complex 193:2 complicated 40:21 58:14 76:19 77:4 90:4 114:14 176:8 component 99:3 computed 133:16 computing 93:14 conceive 103:1 103:12 concept 31:19 62:18 65:25 68:3 74:19 75:13 83:3 84:9 99:7 108:17 135:23 156:21 159:2 concepts 37:17 38:10 56:13 conceptual 16:9 16:14 25:3 108:11 conceptually 86:10,21 87:2 98:22 105:21 concern 87:18 88:4,17 concerned 23:23 27:19,23 37:7 45:11 57:18 58:24 62:24 86:7 87:3 94:5 110:19 123:18 142:15 155:19 160:13 conclude 10:22 40:16 51:8 114:20 conclusion 49:23 52:20 61:6,12 81:19 149:12 174:3 condition 24:15 24:21 64:21 65:10 177:19 conditions 115:19 confined 151:5 confining 152:14 confirm 109:18 confirmatory	consequently 184:12 consider 121:1 191:15 consideration 31:10 131:16 150:13 172:3 considered 32:14 83:23 182:2 184:9 considering 56:3 173:6,8,14,15 consistency 129:15 consistent 64:7 66:13 114:19 138:15 constituent 126:4 constituents 165:16 constituted 95:21 constitutes 98:13 construction 9:25 10:4 11:5 11:8,19 12:1,2 38:15 66:7 70:15 73:13 75:6 130:13 132:8 140:9 construe 9:24 134:12 construed 74:7 75:4 90:17 construing 9:19 9:19 83:11 contained 124:1 contains 94:10 contemplate 92:1 134:20 contemplated 59:19 114:8 120:7 contemplates 58:22 84:4 125:13 131:20 132:9 139:16 contend 73:4	
Chadwick's 48:10,25 49:7	claim 6:3,13 7:21 13:25 15:7,8 21:17 21:19 35:10,15 38:15,19,20 39:7 40:9,11 41:12 59:4,12 61:1,2,13 64:2 67:15 68:16 69:16,18 76:22 82:13 86:1 96:6 98:6 100:14 103:3 103:23 105:15 106:1 114:6 115:3 116:10 116:11 118:7 122:5 125:16 125:25 126:4 142:21 145:1 145:22 146:2 146:10,23 147:2,4,4,11 147:14,21,25 148:10,14,16 148:19 149:5,6 149:10,11 150:21 153:20 153:22 154:7 154:10 155:10 155:14,19 158:22 159:8 160:6,8,21,24 161:1 164:18 164:21 165:21 166:12 167:4,4 167:21 168:12 168:14,19,23 173:12 174:25	clear 10:24 11:2 11:9 12:3,9 16:3 18:25 22:12 25:3 28:20 37:2 41:16 42:5 44:23 45:6 46:12 58:10 108:23 109:3 111:25 161:15 163:4 172:11 175:24 clearest 34:17 clearly 3:13 11:21 12:11 13:14 37:14 47:4 53:7 56:6 58:25 59:15,16 61:7 62:7 66:19 75:22 84:13 111:10 129:23 139:16 141:18 147:12 159:17 162:25 178:14 client 8:10 13:18 clients 17:14 closely 63:16 171:1 closest 111:8 code 132:18 coffers 94:1 cogent 37:19,20 48:1 144:12 cogitate 57:4 145:9,11 coherence 133:14 coherent 129:11	coinciding 138:18 collecting 175:18 collection 158:24 collective 64:4 64:13 66:16 combination 73:20 114:21 come 2:23 9:8 39:4 57:5,6,6 84:12 86:25 93:22 101:8 107:12,14 132:7,24 143:5 148:3 169:4 181:9 187:7 189:18 comes 7:5 9:20 10:3,5 21:1 37:7 47:10 68:17 120:8 comfortable 98:21 coming 59:6,6 commenced 144:23 commencement 32:5,8 64:3 106:23 135:2 135:13 143:22 143:25 144:8 180:23 commences 109:2 110:14 111:4 commend 141:6 comment 5:10 22:16 commenting 92:22 commercial 11:2 11:3,5 80:8 Commission 172:15,17 173:6 174:22 common 53:5,13 64:7 Commonwealth 169:3 companies 39:16 43:25 44:1,14 52:2 60:19 65:18 150:20 172:23 183:23 184:7 company 6:8 13:6,7,7 25:23 25:24 27:14 34:22 35:7,22 35:23 36:11 39:1,6,10,19 40:23 41:1 46:16,24 47:3 51:3,25 52:8 52:10,11 54:19 55:5,10,13,17	completing 26:25 complex 193:2 complicated 40:21 58:14 76:19 77:4 90:4 114:14 176:8 component 99:3 computed 133:16 computing 93:14 conceive 103:1 103:12 concept 31:19 62:18 65:25 68:3 74:19 75:13 83:3 84:9 99:7 108:17 135:23 156:21 159:2 concepts 37:17 38:10 56:13 conceptual 16:9 16:14 25:3 108:11 conceptually 86:10,21 87:2 98:22 105:21 concern 87:18 88:4,17 concerned 23:23 27:19,23 37:7 45:11 57:18 58:24 62:24 86:7 87:3 94:5 110:19 123:18 142:15 155:19 160:13 conclude 10:22 40:16 51:8 114:20 conclusion 49:23 52:20 61:6,12 81:19 149:12 174:3 condition 24:15 24:21 64:21 65:10 177:19 conditions 115:19 confined 151:5 confining 152:14 confirm 109:18 confirmatory	consequently 184:12 consider 121:1 191:15 consideration 31:10 131:16 150:13 172:3 considered 32:14 83:23 182:2 184:9 considering 56:3 173:6,8,14,15 consistency 129:15 consistent 64:7 66:13 114:19 138:15 constituent 126:4 constituents 165:16 constituted 95:21 constitutes 98:13 construction 9:25 10:4 11:5 11:8,19 12:1,2 38:15 66:7 70:15 73:13 75:6 130:13 132:8 140:9 construe 9:24 134:12 construed 74:7 75:4 90:17 construing 9:19 9:19 83:11 contained 124:1 contains 94:10 contemplate 92:1 134:20 contemplated 59:19 114:8 120:7 contemplates 58:22 84:4 125:13 131:20 132:9 139:16 contend 73:4	
Chadwick's 48:10,25 49:7	claim 6:3,13 7:21 13:25 15:7,8 21:17 21:19 35:10,15 38:15,19,20 39:7 40:9,11 41:12 59:4,12 61:1,2,13 64:2 67:15 68:16 69:16,18 76:22 82:13 86:1 96:6 98:6 100:14 103:3 103:23 105:15 106:1 114:6 115:3 116:10 116:11 118:7 122:5 125:16 125:25 126:4 142:21 145:1 145:22 146:2 146:10,23 147:2,4,4,11 147:14,21,25 148:10,14,16 148:19 149:5,6 149:10,11 150:21 153:20 153:22 154:7 154:10 155:10 155:14,19 158:22 159:8 160:6,8,21,24 161:1 164:18 164:21 165:21 166:12 167:4,4 167:21 168:12 168:14,19,23 173:12 174:25	clear 10:24 11:2 11:9 12:3,9 16:3				

contends 22:13	179:12	144:2,6,10,12	118:12 119:4	53:25 54:8,11	167:4	68:7,11,18,22
context 4:4 6:5	contrary 4:23	144:24 175:24	122:10 125:9	55:4,5 64:10	dark 60:25	68:25 69:4
7:4 26:9,10	6:18 16:3	175:25 176:7	130:3,11 146:6	64:19 65:23	date 32:9 58:20	70:6,8,21,25
31:16 39:22	22:13 23:7	187:17	146:8 147:11	67:6 70:11,13	71:21,23,23	71:8,15,18
44:7 47:19	27:21 53:13	control 115:24	155:6 159:19	71:20,21 72:5	104:24 136:18	72:2,12,23
49:12 63:3	62:19 90:4	116:17 117:10	159:24 164:17	72:6,15,19	137:10 139:9	73:2,8,14 74:6
66:3 68:20	contrast 128:16	convenient	167:16 174:6	74:8 75:22,25	148:6 149:21	74:13,16,21
75:5 83:11	contrasting 72:2	15:24 56:8	174:19 187:23	76:17,18 80:19	154:16,21,23	76:1,4,6,8,12
84:3,21,22	contribute 7:1	convening 70:10	190:23	82:8,11 84:12	154:24 160:17	76:14,16,18,20
85:9 88:4	7:20 21:15	conversion	court 4:23 5:13	93:6,20 96:9	160:22 162:7,9	77:6,14,17,23
91:12 96:3	24:14 25:24	20:18 85:20	11:1 13:8 29:2	97:19 130:24	166:5,13,20	78:1,7,13,18
97:6 99:15	26:4 32:21	135:22 145:22	48:22 49:25	131:14 133:5	167:19 172:21	78:23 79:1,12
100:24,25	41:2,3 44:16	147:3,14,21,25	51:12,17 52:12	135:18 140:11	173:6,16,22	82:21 83:6
106:7,10 108:5	108:10 115:20	148:10,14	59:24 62:6	140:16,18	176:5	84:18,24 85:3
115:8,14,22	121:15 148:21	153:20 155:6,7	86:11 112:7	147:19 148:20	dated 161:20	85:7,19,22,24
116:2 126:25	188:5,13,15	159:8 165:4,21	116:10,20,21	148:22 156:22	dates 95:16	87:12,16,20,23
126:25 130:1,3	contributed	166:5 168:12	119:11 149:14	157:7,8,13,18	128:12 133:14	88:1,10,13,19
143:18 156:22	24:13 26:5	168:14 170:19	151:2,17	157:24 158:3	173:9	88:25 89:8
156:24 178:20	42:2,15	171:22 172:22	155:24 158:21	158:25 161:5	DAVID 1:4,7,11	90:8,12,15
contexts 63:8	contribution 6:3	173:7 174:8,25	159:4,17	165:15,19	1:15 3:2,7,13	91:14 92:9,21
contingencies	7:25 8:1,6	convert 171:3,13	167:25 174:23	167:25 168:3	3:17 4:1 5:5,12	93:1,4,9,13,19
121:20	26:23 27:13	converted 149:4	175:19 184:9	168:16,20	8:9,21 9:5,11	94:3,17,21
contingency	45:16 60:23	149:20 154:11	185:10,24	173:11 174:2,4	10:12,16 11:25	95:7,15,19,21
115:20 117:12	92:17 114:6	155:11 167:18	193:21	174:6,8,8,17	12:17,21,24	96:14,20,23
122:3	126:1	169:20 172:4	courts 61:19	174:18 175:1	13:18,21,23,25	97:2,7,13,24
contingent 6:13	contributions	converting	court's 6:5,15	184:10,13	14:9,11,15,21	99:12,19 100:5
6:19,24 13:25	93:22	184:11	cover 99:21	188:11,18	14:25 15:11,18	100:7,20 101:5
14:13,18,20,23	contributor 24:4	convinced 2:8,17	127:8 139:10	creditor's 43:3	15:23 16:7,9	101:7,13,17,22
17:14,24 21:17	42:16,22	core 63:5	covered 166:2	65:19 80:12,14	16:22,25 17:3	102:2,15,17,19
33:9,20 36:2	187:20	Cork 174:1,20	co-contributor's	131:8 149:6	17:9,17,19,21	102:22 103:7
38:19 45:17	contributories	corollary 189:7	9:3	critical 23:25	17:25 18:3,7	103:19,21,23
85:10,17 86:4	6:9,10,25 92:4	corporate 44:11	create 157:18	43:11	18:10,15,22,25	104:1,7,12,16
86:6,16 103:3	93:21 94:12,22	66:3 125:10	165:22 174:2	critically 11:14	19:5,8,11,22	104:21 105:2,6
103:9 105:15	95:10 96:18	Corporation	creating 61:5,12	Crown 119:14	20:3,7,10,12	105:10,13,17
106:1 107:20	97:17 98:3,16	70:12	93:11	119:16	20:19,25 24:9	105:21,24
111:2,3 113:8	115:4,10 116:5	correct 2:10 3:7	credible 132:20	culls 72:14	24:21 28:12	106:5,8,12,16
116:24 120:5	188:1	32:19 39:18	credit 76:8,11	currency 20:18	29:11,13,16,18	106:25 107:6
121:19 125:7	contributory	47:7,9 51:23	77:8,10,12	85:20 133:15	29:25 30:2,5	107:10,18,23
125:14 145:1,5	1:23 2:1,14	85:2 97:20	78:8,10 167:1	145:22 146:9	30:12,14,19,21	108:3 109:1,5
147:3,4,15,15	3:21 13:6	108:21 111:23	167:17,21	146:23 147:2,3	30:24 33:13,17	109:13,15,22
160:2,6,8	18:21 20:5	115:3 139:4	168:7	147:11,14,21	33:24 34:1,4	110:1,3,8,11
161:5	21:8,12,22	169:6 179:14	creditor 15:8	147:25 148:9	34:13,16 35:16	110:21 113:1,3
continues 81:23	22:10,22 23:4	correctly 141:4	43:1 63:2,18	148:10,14	35:20 36:1,6	113:9,12,17
121:20	23:9,12,19	costs 62:8 77:3	65:6 69:17	150:1 152:6	36:12,16,19,24	114:7 116:18
continuing 64:19	24:1,5,10	120:6,12,17,21	76:22,24 77:3	153:20 155:10	37:1,5,13,25	116:22 117:22
64:20 159:18	25:21 26:13	Cotton 92:22	81:4,11,22	155:14,17,19	38:5 41:5	118:1,5,9,12
contract 11:3	27:25 28:4,21	counsel 57:4	86:14 140:3	155:20,25	43:10,14,17,22	118:16,22,24
63:3,10,21	29:5 31:21,25	192:7,8 193:4	148:5,6,8,11	156:23 157:8	44:4,10,13,19	119:4,9,13,16
64:16 65:16	32:11,20 33:7	countries 84:7	148:19 149:3,3	159:7 165:3,6	44:25 45:2,8	119:19,23
73:18,22 82:3	33:12,15 34:12	couple 45:13	149:8,11	165:11,16,21	45:23 46:1,5	122:2,7,12,16
82:5 159:13	34:23,24 35:6	146:4 151:10	150:22 151:6	166:3 167:2,19	46:11,15,20,23	122:19,21
182:16 183:1,7	35:9 36:7,14	165:24 176:15	152:16 153:23	168:11,13	47:1,4,22 50:1	123:2,11,22
183:12 184:1	37:19 38:10,18	176:20 193:10	154:2,4,8,14	169:21 170:5	50:5,16,18	124:2,7,13
contracts 9:19	40:12,15,18,19	course 1:13 3:9	155:17,20,25	171:12,14	51:1,14,20,24	125:3 126:7,16
10:6,25 93:20	44:17,23 45:18	3:11 5:18 6:18	156:15,16	172:6 173:17	52:16,21,24	126:21 127:12
contractual 65:2	46:3,5 47:21	7:16 8:1 9:9	157:11,17	174:8,17,25	53:10,15,20	127:16,18,22
66:14 67:13,15	48:1 49:10	10:10 11:1,11	160:16,22	current 162:16	54:2,10,16,25	128:4,7,11,15
68:9,15 80:3	51:2 55:14	12:5 15:9 16:3	164:24 166:4	customer 152:24	55:8,12,18,24	128:21,25
81:17,22	56:13 91:19	20:7 26:7	166:17 167:2	153:9	56:3,6,15 57:2	129:9,16,19,22
107:25 108:5	103:14 104:4,9	31:19 36:9	167:17,20,24	cut 133:14 144:9	57:5 58:25	130:1,7,10
131:5 142:14	104:13 105:8	42:8 65:1 75:3	169:15 170:1	157:16	59:10,14,21	131:23 132:12
156:4 157:22	105:10 106:10	76:2 90:24	172:2 178:15		60:5,9,12 61:9	133:22 134:3,6
159:3,22,23	106:14,17	95:3 98:19	187:21	D	61:14,18,21	134:9,19 135:5
161:8 163:18	124:5,24,24	100:21 104:16	creditors 27:24	damage 58:19	62:14,23 65:9	135:8,11,14,20
164:9,14 178:8	125:11 143:15	110:19 114:22	31:23 34:25	59:7	66:25 67:5,10	136:3,7,9,14
178:20 179:1,2	143:17,20	115:13 118:5	35:7 52:9	damages 118:7	67:21,23 68:4	136:22 137:2,4

137:7,13,19,24	35:1 77:11	debtor 7:12	81:20 83:12	differ 14:4	disapproving	139:17 185:11
138:3,8,10,13	95:12 127:6	51:21 54:18	84:25	difference 1:20	52:25	185:19
138:17,21,24	130:18,20	120:18 150:18	definitely 107:14	2:18 9:18	discharge 36:4	distribution 4:2
139:2,5,12,18	169:1 191:4	150:20,20	definition 84:15	10:25 24:23	86:14,23 161:7	25:2 26:2 32:7
139:20 140:8	193:8	187:21	129:2	25:4 39:4	discharged	66:2 86:17
140:20,23	days 174:7	debtors 171:25	definitively	80:12 137:21	85:13 91:4	117:17 131:10
141:1,3,8,14	193:10	debts 7:7 26:14	184:13	163:1 164:17	153:23 154:9	140:11 146:25
141:18,20,22	deal 5:2 20:17,21	41:14,15 43:5	delay 31:13	178:7	159:13,24	147:19 158:24
141:25 142:4,6	39:18 49:7	55:16 71:25	184:8,9,10	differences	161:14,17	165:14 173:11
142:9,13,18,22	51:9 58:2 83:8	90:19,22,23	delayed 192:19	108:2,12 168:1	discharging	188:23
142:25 143:4,7	89:1 127:3	91:6,13 99:7	delivery 192:17	168:3	94:15	distributions
143:13,23	139:14 145:18	115:21 126:13	dense 71:17	different 2:22	disclaim 118:3	31:14,23 44:5
144:3,14,17	145:25 146:3,7	127:20 128:17	depart 51:4	3:15 4:7 12:7	122:10	44:8 165:11
145:3,7,12,15	147:20 156:21	128:18,18,22	depend 8:17	15:17 16:11	disclaimer	distributive
145:20,23	165:23	129:4,5,6,7,8,9	118:25	24:1 38:12	122:17,22	134:24
146:20 149:16	dealing 40:2	129:13,14,17	dependent	41:23 42:6	132:16 133:4	dis-application
150:5 151:12	48:11 54:16	129:19 134:21	165:12	43:5,20,21	discomfort	23:2
151:15,22	92:3 99:25	134:25 135:6	dependents	53:2 56:25	98:20	dis-applied
152:20 153:10	124:19 127:2	136:9,10,11,16	113:25	63:16 67:25	discount 87:11	37:21,24
153:16,24	140:1 153:12	139:21,22,23	depending 63:14	76:10 80:25	160:25 162:21	dis-applies 2:1
154:2,6,13,18	157:5,21,22	140:16 141:10	63:15 168:1	83:3,20 87:2	163:9	2:15
154:21,24	165:24 168:21	141:15,16,17	174:21	95:2 96:11	discounted	dis-applying
155:2 156:9,12	175:9	141:18,22	depends 9:7	101:9 103:1	150:24 152:25	40:18
157:1 158:6,10	deals 98:10	146:12 148:15	33:18 130:1,3	112:12 127:19	153:3 160:14	divided 147:1
158:15,17,20	152:7	150:9,16,17	152:6 162:20	148:4,25 150:8	160:17,24	dividend 21:14
159:1 160:10	dealt 5:1 16:1	157:14 159:14	deposit 152:24	157:7 161:13	161:22 164:2	26:3,15 29:21
161:6,10,19,24	39:12 59:25	160:1,2 161:15	deprive 140:3	167:24 173:1	168:2	30:6,8 35:13
162:2,6,9,12	71:12 86:20	162:13 181:14	Derham 16:10	173:10 186:22	discounting	41:11,18 42:2
162:20,24	94:1 123:4,7	184:8,10,12	16:20 50:13	differently 45:14	150:23	42:15 43:2,15
163:7,9,14,21	126:10,17	188:11	Derham's 15:15	130:12,16	discrimination	47:3 86:12
163:23 164:1,4	138:15 146:5	decide 4:11,13	16:2	differs 107:25	174:2,14,15	87:6 96:6 97:5
164:8,13,23	146:14 160:2	5:17 29:2 56:7	derived 43:8	difficult 12:25	175:4,6	151:6 152:16
165:7 166:1,11	debate 40:7	177:7 182:10	44:24 65:15	55:7 59:2	discuss 49:2	160:14,25
166:22 167:9	112:23	182:13	74:25 82:2	73:10,19 74:1	184:15 193:5	164:1
167:11,13	debated 6:4	decided 4:19,22	125:17	76:22 77:1	discussed 7:23	dividends 41:15
168:8,17	debt 8:13,18	5:11 45:22	derives 63:12,21	103:10 116:12	91:4	41:15 97:10,15
169:12,23	14:14 21:19,23	46:9 49:19	63:22 82:4	121:25 174:16	discusses 15:16	97:15
170:7,10,13,17	23:17,24 29:2	73:9 182:3	175:25	difficulties	discussion 9:20	divorced 147:10
170:21,23	30:7 32:15,24	decides 46:15	describe 49:9	124:11 165:10	14:19 15:14	doing 9:22 12:9
171:1,6,11,17	33:10 34:22	deciding 131:16	84:9	difficulty 16:10	42:8 60:18	48:17 56:24
172:5,8,10,13	36:3 38:15,20	185:10	described 37:22	16:14 54:17,21	96:12 166:25	60:16 92:13
172:17,21,25	39:8 40:9,11	decision 2:20	47:25 66:16	74:18 119:7	dispose 118:13	101:18,19
173:14,16,21	41:3,7,9,18	48:21 59:16	84:12 112:10	152:12	disputed 53:9	116:6 166:4
174:14 175:10	42:23 43:11,14	62:7,20 112:4	187:19	diminish 152:2	disregard 88:7	dollar 149:10,11
175:16 176:10	46:24 55:13	112:6,12	describes 48:24	directed 24:11	distinction 25:7	149:18 154:16
176:14,23,25	56:20,22 62:8	170:25 174:23	describing 131:4	direction 91:8	69:15 129:12	154:19 170:12
177:2,5,8,13	69:2 85:13	175:9 182:15	description 38:3	directions 193:2	147:23 178:12	171:16
177:20,24	96:5,7,15,16	182:16 185:5	80:11 90:25	directive 75:10	179:3	dollars 149:19
178:2,4,22	97:18,19,22	191:12	designed 75:11	77:7,10 78:7	distinguish	154:15 155:21
179:5,7,16	98:12 102:17	decisions 192:20	77:2	directives 74:25	186:13	166:18 167:18
180:3,7,13,20	102:18 109:16	declaration	despite 57:18	75:23 76:3	distinguishable	170:3
181:4,9,16,19	125:19,25	127:13	92:13 159:13	78:21	178:11	double 47:25
181:21 182:4,7	126:5,24	declarations	detail 99:5	directly 47:23	distinguished	49:5 156:25
182:9,12,19,22	135:19 140:13	193:3	126:10 127:11	72:9	186:14	doubt 5:1,20
183:20 184:19	144:23 149:18	declared 26:15	186:2	directors 108:20	distinguishes	16:10 114:16
184:21,24	150:23 154:14	deducting 29:21	detailed 54:5	115:3,13,16,24	159:25	191:20
186:4,19	154:18 160:6	30:7	determined 79:7	117:10 179:12	distress 117:7,11	doubtless 58:20
189:10,13	160:13,17	deduction 87:10	132:22	disadvantage	distribute	88:21 119:1,2
190:4,8,14,17	161:13,14,20	deemed 96:7,15	develop 22:14	116:13 164:25	165:12	130:12
190:22 191:2,5	162:12 163:5	97:22 139:19	114:18	disadvantages	distributing	downsides
191:14,23	163:19 166:7	DEFENCE 57:4	developed 26:16	185:13	13:11 21:16,20	185:18
192:10,14	167:4,15 168:2	deficiency 27:7	35:9 113:7	disagree 120:15	26:18 27:16	downwards
193:1,14,18	168:6 170:19	deficit 25:15	development	148:1	31:19 32:2,6	152:5
day 1:24 3:2,3	171:16 172:1	define 88:5	107:8,9	disagreed 70:19	117:2 131:21	Dr 15:15 16:2,10
4:9 6:17 7:6	175:18 180:8,9	defined 45:5	dictum 10:2	151:2	132:10,16,23	16:20
32:12 34:18	187:3,3	66:11 80:7	died 42:17	disallows 184:17	133:12 135:17	draft 191:8,24

drafted 89:14 132:2	180:10	envisage 155:9	Ex 112:14	expenses 120:17 121:3,5	faced 174:23	fills 37:23
draftsman 127:7 128:1	elements 58:19 emblazoned 176:10	envisaged 132:1	exactly 3:15	explain 10:5 38:23 48:7	facie 147:16	final 22:8 125:15 165:8 168:9,24 172:17
draw 6:5 9:17 59:17 69:8 70:1 124:15 147:23	emphasise 25:20 146:17	envisaging 163:4 equal 54:13 149:20 188:15	11:15 14:2,24 16:24 19:10 31:12 60:12 67:22 82:1 85:9,16 89:12 98:14 103:11 112:23 125:11 128:5 172:7 174:5 191:20 193:17	explained 40:12 152:10 170:24 explaining 48:18 explains 43:19 183:11	facilities 68:24 fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	Finally 9:8 Finance 183:22 184:6 financial 88:15 117:6,11 find 50:11 51:7 66:18 69:12,24 77:21 79:20 126:19 127:25 128:24 134:14 174:15
drawing 179:4	enable 35:10 41:3 64:4 126:2 180:22	equality 55:4 equally 32:1 equals 154:3,4 equitable 2:2 22:21 23:1 37:22 38:4 49:4 54:7,14	example 16:21 36:10 59:3 84:18 92:10 95:6 96:6 98:16 118:19 128:1 146:21 147:9,10 148:3 148:3,4,12,25 152:22 153:22 156:13 163:15 166:3 170:3,8 174:18 188:8 190:5	explanation 42:18 47:19,24 80:17 125:1 130:21 175:4 explanatory 133:9,20 explicitly 42:5 45:2,3 84:16 89:6	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	finished 142:24 156:17 firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
drawn 59:18 113:22	enabling 24:3,25 25:25	equity 25:11 42:25	examples 86:5 146:6 160:1	explore 59:1 explored 156:16 exploring 59:11 exposure 114:11 expounding 173:1	facto 86:13 factors 16:17 facts 51:16 102:9 137:1 151:12 151:19 153:24 184:21	finding 127:23 fine 1:7 16:23 137:5 145:15 finish 149:17
drew 112:20	enacted 128:9	error 2:25	exchange 112:18	express 79:15	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	finished 142:24 156:17 firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
driving 100:12	enactment 58:12 146:19	errors 192:1	excluded 39:17 39:21 49:5 82:24 83:1 87:25 88:5,6,7 88:8	expressed 62:11 66:19 73:23 96:10 147:17 154:15 171:8	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
drop 80:21 121:4	encapsulates 146:23	essence 82:22 147:9 151:2	excluding 168:13	expressly 74:17 159:4,10	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
Duckworth 46:10 47:7 50:9,13,24	engage 113:6	Essentially 15:5	examples 86:5 146:6 160:1	extend 91:7 126:14	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
due 25:14 33:10 41:17,18 43:14 52:10 109:16 111:15 149:25 150:11,25 151:8 152:18 152:24 153:2,8 154:14 166:6,7 171:9,14,19	England 89:18 112:1,8,13 English 26:18 83:8 84:1 ensure 191:16 ensuring 45:4 91:3 117:16 entered 125:21 136:24 137:3,4 Enterprise 138:19 entire 179:3 entirely 27:17 41:23 43:4 64:7 77:25 78:3 114:19 147:10 186:21 189:15 entirety 27:6 entitle 41:25 entitled 19:13 25:13 28:1 55:1 64:25 65:8 67:7 71:21,24 86:15 87:10 116:14 166:17 174:9 177:15 179:20 188:23 entitlement 64:17 67:6 80:13,15 81:6 81:9,16,17 82:9 101:1 125:1 entitlements 68:10	establish 115:17 116:9 established 26:15 57:20 86:24 127:5 estate 15:6,8,17 16:5,5,6,16,18 24:24 26:12 27:1 42:1 43:14 45:19 56:20 98:25 101:4 160:7 estates 56:25 102:25 103:10 103:12,15,18 103:20,21 estimate 116:18 estimated 116:9 estimating 122:4 estimation 86:7 et 116:6,6 Etherton 151:16 euro 171:16 euros 149:3 154:3 170:2 event 1:17 27:9 31:13 52:3 70:14 85:16 86:19 95:13 115:13 120:18 143:19 144:10 159:2 165:18 190:17,24 eventuality 137:11 everybody 143:18 188:2 191:19 evidence 87:21 190:12,19	exchange 112:18 exclude 58:17 excluded 39:17 39:21 49:5 82:24 83:1 87:25 88:5,6,7 88:8 excludes 39:3 146:21 179:22 excluding 168:13 exclusion 63:25 64:3 exclusive 58:7 execution 130:24 execute 64:5 64:13 66:16 exemplified 64:9 exercise 36:23 101:2 134:16 185:22 exercising 6:15 exist 62:6,20 146:10 147:6,7 147:21 165:22 existed 147:5 existence 64:22 65:11 existing 64:16,16 65:2 66:9,14 66:18 159:18 170:12 exists 100:8 108:6 155:19 expanded 170:24 expect 22:7 142:20	explore 59:1 explored 156:16 exploring 59:11 exposure 114:11 expounding 173:1 express 79:15 expressed 62:11 66:19 73:23 96:10 147:17 154:15 171:8 expresses 50:23 expressly 74:17 159:4,10 extend 91:7 126:14 extended 61:19 extending 74:20 extends 8:4 extensive 41:12 extensively 126:17 extent 31:14 36:3 49:22 67:10,17 68:12 68:14 73:9 74:10 86:8 90:13 99:9 100:8,9 105:4 155:5 161:16 162:3 extinguished 67:1 extinguishing 67:24 extra 50:10 extracted 94:24 extreme 49:22 extremely 191:25	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6 facto 86:13 factors 16:17 facts 51:16 102:9 137:1 151:12 151:19 153:24 184:21 factual 59:11 75:2 187:24 failed 178:7 192:3 fair 39:22 193:9 fairly 22:24 49:22 75:3 fall 60:24 99:6 125:18 falls 62:8 91:17 95:24 148:13 familiar 10:9 192:7 far 5:23 23:22 27:18 37:6 45:10 57:17 58:23 62:24 66:19 69:12 75:14 82:25 84:8 86:6 87:3 89:14 94:22 102:20 123:18 124:18,18 130:6 142:14 155:18 160:12 191:20 fastening 72:20 fault 168:16 favour 157:8 159:21 188:7 features 158:8 158:12,23 fell 140:4 fifth 155:13,13 figure 153:3,4 166:13 figures 190:6 file 185:14,24 fill 23:1 185:21 filling 94:1	fills 37:23 final 22:8 125:15 165:8 168:9,24 172:17 Finally 9:8 Finance 183:22 184:6 financial 88:15 117:6,11 find 50:11 51:7 66:18 69:12,24 77:21 79:20 126:19 127:25 128:24 134:14 174:15 finding 127:23 fine 1:7 16:23 137:5 145:15 finish 149:17 finished 142:24 156:17 firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5 fits 68:1 111:12 five 57:7 151:23 158:10 160:16 fixed 184:14 flaw 166:16,18 flawed 22:19 flesh 65:21 floated 161:19 floating 83:22 focus 56:24 60:4 61:10 88:16 145:21 focuses 11:25
E						
E 167:7,12	engage 113:6	establish 115:17 116:9	exception 50:24	express 79:15	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
Eady 25:9	engaged 175:21	established 26:15 57:20 86:24 127:5	exchange 112:18	expressed 62:11 66:19 73:23 96:10 147:17 154:15 171:8	fact 6:14 8:9 9:17 23:11 26:4,5 38:9 41:24 42:12 50:23 59:17 62:1,20 63:18 65:4 84:5 91:25 94:9 101:20,21 107:3 111:13 112:20 113:25 114:12 117:5 155:20,23 156:7 158:22 159:14 165:18 187:6	firm 76:9 77:15 firms 77:12 78:2 78:10 102:11 first 1:19 10:3,13 11:12 13:10 16:5 20:16 21:21 22:20 23:10,16,23 27:3 33:19 36:9 37:7,18 38:24 40:10 49:3 54:4 58:4 58:15 59:6 68:2,3 69:5,14 70:22 75:17 81:3 84:13 91:20 98:9 102:7 112:4 116:1 118:20 120:3,6,12 134:16 142:2 146:9 148:18 149:18 151:1 155:16 156:20 160:20 166:3 167:3 168:9 173:4 176:21 177:17 179:21 180:5,19 182:24 185:2 186:6 189:14 192:5
earlier 11:16 12:3,10 56:17 58:10 87:8 121:17 124:25 136:19 140:23 142:17 159:19	England 89:18 112:1,8,13 English 26:18 83:8 84:1 ensure 191:16 ensuring 45:4 91:3 117:16 entered 125:21 136:24 137:3,4 Enterprise 138:19 entire 179:3 entirely 27:17 41:23 43:4 64:7 77:25 78:3 114:19 147:10 186:21 189:15 entirety 27:6 entitle 41:25 entitled 19:13 25:13 28:1 55:1 64:25 65:8 67:7 71:21,24 86:15 87:10 116:14 166:17 174:9 177:15 179:20 188:23 entitlement 64:17 67:6 80:13,15 81:6 81:9,16,17 82:9 101:1 125:1 entitlements 68:10	estate 15:6,8,17 16:5,5,6,16,18 24:24 26:12 27:1 42:1 43:14 45:19 56:20 98:25 101:4 160:7 estates 56:25 102:25 103:10 103:12,15,18 103:20,21 estimate 116:18 estimated 116:9 estimating 122:4 estimation 86:7 et 116:6,6 Etherton 151:16 euro 171:16 euros 149:3 154:3 170:2 event 1:17 27:9 31:13 52:3 70:14 85:16 86:19 95:13 115:13 120:18 143:19 144:10 159:2 165:18 190:17,24 eventuality 137:11 everybody 143:18 188:2 191:19 evidence 87:				

focusing 158:11 158:22 175:7 follow 8:21 16:7 49:18 62:10 68:18 73:15 98:8 174:16 193:3 followed 66:21 66:23 74:9 following 19:19 19:21 37:18 61:21 92:5 108:23 146:1 148:5 169:25 192:17 follows 55:9 97:1 foot 29:19 footing 181:4 footnote 70:4 force 110:16 138:6 forcefully 26:20 foreign 20:17 83:9 85:20 133:15 146:9 146:23 147:2 147:11 148:14 152:6 153:20 155:10,14,17 155:20,25 156:23 157:8 165:11,16 166:3,5 167:2 169:21 170:5 171:12,14 174:8,17,25 forensic 4:12 forget 36:8 129:16 form 31:10,12 36:18 65:23 75:7 87:1 108:8 130:22 137:22 138:6 192:25 formal 47:17 84:4 110:20 formula 127:19 formulating 192:16 formulation 192:19 forth 32:9 75:1 fortifies 90:5,6 fortiori 148:16 164:6 187:8 forward 15:1 Fothergill 146:13 foul 125:18 found 34:17 58:5 58:8 186:7 four 81:1 fourth 22:3 81:12 123:12 Fourthly 147:24	free 80:19 Friday 1:23 2:21 3:3 4:6 7:6 185:4 friend 2:4,13,20 2:22 3:8,12 4:6 6:22 7:5,14 9:13 11:18 17:23 22:17 23:6 26:21 40:25 50:8 53:18 59:22 62:16 75:9 109:7 114:1 147:1 148:11 160:1 167:1 176:20 177:14 178:6,10,20 179:25 180:19 186:3,9,10 187:11,16 friends 1:14 21:6 21:11 22:15 23:15 25:6 28:6 38:13 57:16 90:21 140:3 145:24 146:4 friend's 3:19,20 4:4 58:3 148:2 148:4 front 83:4 FSA 75:8 77:19 fulfills 63:16 full 25:17 31:6 41:12 82:24 85:11,14,23 86:2,14 87:5,5 87:8,11 127:20 135:19 155:21 157:15 160:6 160:11 161:4 161:12,14,17 182:24 fuller 48:14 fully 48:13 85:9 92:8 94:6 97:8 97:11,15 178:16,18 179:6 fun 97:15 function 63:17 fund 7:20 9:3 23:18,24 24:4 24:24 25:2 27:6 31:23 41:25 42:16,22 43:1 66:2 93:6 93:11,14 95:21 97:18 fundamental 25:7,22 42:20 42:21 43:7 49:8 157:10 funding 99:1 funds 44:6,11	79:7 100:10 further 8:2 12:23 56:2 73:9 86:25 90:11 91:20 96:2 133:25 145:14 148:12 169:10 175:13 176:18 185:1 194:1,2,3 future 23:18,25 29:3 36:4 80:5 85:11,18 86:1 86:5,18 87:3,4 113:24 114:5 124:4,22 125:2 125:8 150:9,12 150:17,21,23 160:1,6,12 161:5 162:10 163:19 164:6 164:11 <hr/> G G 70:24 71:6 gains 167:21 gainsay 19:15 game 7:14 gap 23:2 37:23 GEB 51:9,11 55:21 56:8 general 27:8 50:22 73:21 90:20 126:23 126:23 150:19 156:9 generally 57:12 91:13 125:14 131:14 146:14 176:1 generic 84:9 getting 34:25 87:8 100:20 116:4 GHE 27:21,23 131:12 185:2,5 185:9 Gifford 159:9,11 give 15:20 25:6 36:25 110:5 111:13 135:5 143:1 145:8 167:17,21 188:9 189:19 190:1 given 8:9,23 26:17 64:12 76:23 80:24 83:11 84:2 130:21 131:14 134:25 140:10 144:20 157:17 160:1 167:2 168:7 189:17 192:4,15 gives 7:2 15:19	16:20 34:23 114:21 152:22 175:19 glad 176:12 glean 10:14 Glenister 62:5 glitch 165:2 go 12:15 18:24 24:18 40:10,13 47:6 48:6,22 58:9 65:13 68:19 70:23 71:11 75:14,24 89:14 92:25 101:12 107:15 111:22 112:12 117:4,20 119:10,20 122:14 124:19 126:9 127:6,10 130:8,13 131:22 132:15 132:22 133:2 137:23 143:12 148:18 149:1 176:17 179:17 182:20,22 191:19,20 192:16 goes 21:20 22:8 28:16,18 49:6 53:16 68:2 79:8 95:22 108:22 122:9 124:18 127:2 128:22 131:8 140:12 178:17 181:25 183:17 184:15 going 4:2 9:24 11:6,17 12:4 12:15 18:24 20:15,16 21:9 45:11 51:17 55:12 56:10 57:11 60:15 62:3 68:17 71:15 79:22 87:18 88:4,17 90:9,13 93:11 94:7,11,21 95:6 99:2,7,13 101:10 105:17 107:14,22 111:22 113:4 114:18 116:17 117:2,13 122:25 126:9 130:8 132:7,23 133:5 144:18 145:18,21 163:12,19 169:12 177:9 187:25 189:25 191:9 Goldfields 25:10	good 1:5 4:12 55:14 57:24 86:5 101:20,21 102:2 103:17 118:19 151:9 156:17 191:5 grant 64:24 granted 115:5 grapple 55:22 grateful 57:3 79:16,19 184:23 189:19 191:25 graveyards 1:11 greater 25:16 61:4,10 grey 60:25 grid 12:25 14:4 grips 93:25 189:15 Grissell 29:13,24 175:24 Grissell's 7:12 23:20 28:7,9 28:20 31:11,18 34:20 39:10 40:13 44:22,23 53:23 54:21 ground 53:5,13 125:6 157:9 183:12 grounds 70:11 73:11 group 114:5 192:12,16 groups 54:7,11 guess 102:1 <hr/> H H 152:11 halfway 93:3 Hallett's 26:11 hand 24:6,10 34:22 42:23 68:8 97:7 handed 50:19 182:14 hands 108:19,19 135:24 136:4 140:15 188:1 hanging 193:15 happen 121:2 132:18 192:4 happened 44:3 86:21 113:24 138:14 139:11 154:25 182:24 happening 124:17 144:5 happens 27:17 63:24 64:12 154:7 155:7 180:9 192:2 happy 119:14 127:10 145:7 Harding 108:24	108:24 146:13 head 35:7 headline 14:12 headnote 70:22 70:23 151:9 182:18 hear 56:22 57:3 heard 5:23 57:14 168:22 hearing 191:10 heavily 42:10 hedge 147:13 held 39:8 70:19 92:15 99:22 100:13,14 151:3 help 13:2 50:8 helpful 17:4 20:10 21:4 38:22 134:14 helps 33:1 hesitate 14:2 high 159:21 164:11 higher 65:3 67:12 98:8 164:10 166:9 168:2 highlight 150:3 hindsight 86:10 86:12 history 60:21 hitherto 64:24 Hoffmann 64:5 66:17 156:18 159:19 161:15 hold 14:11 33:13 70:25 71:8 holder 88:9 holders 72:14 holding 24:6 42:23 122:8 151:13 holds 8:10 100:10 122:13 hole 60:25 home 115:24 homework 78:22 185:4 hoops 116:14 hope 121:22 179:18 hoped 58:20 hour 102:1 House 108:25 Hughes 182:25 183:4,6 Humber 64:9 142:19 156:5 159:9 183:23 hypothesis 117:6 121:14 hypothetical 36:10 115:17 <hr/> I	idea 20:16 98:17 126:12 ideas 83:21 identical 103:18 identified 47:11 64:5 108:1 141:5 identifies 158:13 identifying 108:11 157:4 ignore 181:10 illustrate 147:6 illustrated 91:22 illustrating 150:7 illustration 48:4 49:14 57:24 121:8 image 20:25 imagine 122:24 immediate 165:1 immediately 14:14 36:9 50:21 66:10 impact 144:7 176:1 186:25 impaired 89:25 implication 39:8 implications 20:6 implicitly 39:20 imply 39:25 important 9:18 10:24 13:9 23:5 26:13 32:25 33:4 38:6 43:17 44:21 51:16 68:5 69:9 72:24 82:14 96:14 115:8 124:18 importantly 116:23 impose 66:10 121:16 imposed 114:20 impossible 69:7 improvable 90:23 improve 26:25 inability 125:17 130:24 inaudible 60:7 70:14 79:7 109:17 119:17 168:21 incidence 44:24 82:5 incident 55:9 Incidentally 76:8 include 71:20 76:23 77:3 129:7,23 136:11 137:10
---	--	---	--	--	---	--

included 61:23 127:10 129:1	ink 10:7	19:14 157:17	158:23	180:5,11,14,17	jurisdiction	73:14 74:6,7
includes 32:23 41:2 65:11	innocent 54:8,11	interest 9:12	interfered 64:17	181:3,8,15,18	84:17 85:1	74:13,16,21
129:7 163:19	inside 89:17	56:12 57:13	interfering	181:20 182:2,6	jurisdictions	76:1,4,6,8,12
179:23	inssofar 8:5,6	62:24 63:1,5,9	66:13 148:19	182:8,10,13,20	84:5	76:14,16,18,20
including 25:1	20:23 66:14	63:12,17 64:1	148:23	182:23 183:21	justice 1:4,7,11	77:6,14,17,23
26:1 70:11	87:14 112:2	64:19,25 65:5	International	184:20,23	1:15 2:21 3:2,7	78:1,7,13,18
72:15 123:14	155:10 159:24	65:23 67:1,7	182:15 183:1,7	193:7,17 194:2	3:13,17 4:1,18	78:23 79:1,12
129:19	166:2 179:23	67:19 69:1,13	interplay 21:8	Isaacs's 146:2	4:25 5:5,12 8:9	82:21 83:6
incomplete	insolence 120:4	69:20,25 70:12	22:18	155:13 165:23	8:21 9:5,11,22	84:18,24 85:3
90:24	insolvencies 6:12	70:18,20 71:20	interpret 152:9	189:14	10:12,16,18	85:7,19,22,24
inconsistency	16:12 62:22	71:22,25 72:7	interpreted	Isaac's 99:9	11:7,25 12:14	87:12,16,20,23
46:9 115:1	insolvency 1:22	72:15 74:1,4	61:19 125:13	Issacs 107:15	12:17,21,24	88:1,10,13,19
inconsistent 66:4	2:7,11,16 3:22	74:14,20 75:12	interrelationsh...	110:24 111:13	13:18,21,23,25	88:25 89:8
66:6 105:2	3:24 21:24	75:20 76:23,23	1:22 33:2	111:18,20	14:9,11,15,21	90:8,12,15
112:3 114:22	22:4 25:15	80:1,3,6,13,15	intervention	112:5 115:2,16	14:25 15:11,18	91:14 92:9,21
126:12 132:6	27:16 33:21,22	80:19 81:1,13	116:10	119:24 125:16	15:23 16:7,9	92:22 93:1,4,9
145:4	34:9 35:14	81:16,19 83:13	introduced	126:9 128:8	16:22,25 17:3	93:13,19 94:3
incorporate	39:16 40:16,18	84:13 90:2	138:18 139:9	130:15 133:10	17:9,17,19,21	94:17,21 95:7
180:9	40:20 45:10,12	91:1,7,12,17	introducing	issue 6:2 10:9	17:25 18:3,7	95:15,19,21
incorporated	45:14,16,24	91:20 92:2	145:4	13:4 17:22	18:10,15,22,25	96:14,20,23
44:1	47:3 51:4	93:18 95:6,14	introduction	27:23 28:24	19:5,8,11,22	97:2,7,13,24
incorporation	52:14 58:20	95:17,22,24	26:17 64:8	29:6 30:1	20:3,7,10,12	99:12,19 100:5
151:4 152:14	62:11 64:3	98:1,11,11,13	investment 76:9	60:23 63:11	20:19,25 24:9	100:7,20 101:5
incorrect 91:15	66:4 80:2,19	98:17,18 99:1	77:12,15 78:2	70:9 80:1	24:21 25:9	101:7,13,17,22
increased 86:20	83:12,13,16,24	99:5,17,20	78:9 102:11	84:22 111:25	28:12 29:11,13	102:2,15,17,19
incurred 120:23	84:4,14,15,24	100:2 125:18	invited 51:8	115:7 123:25	29:16,18,25	102:22 103:7
indebtedness	85:12,12 86:1	125:20,25	inviting 169:24	143:16 145:22	30:2,5,12,14	103:19,21,23
152:2	88:8,9,20	126:3,4,6,14	involve 161:6	158:1 174:4	30:19,21,24	104:1,7,12,16
indemnify 126:1	89:17 99:10	127:8,10,22	162:18 192:18	175:2	33:13,17,24	104:21 105:2,6
183:12 184:2	110:17,20	128:3,9,13,23	involved 150:16	issued 119:10	34:1,4,13,16	105:10,13,17
indemnity	115:18 123:6	129:1,19,20,23	involves 164:15	issues 13:9 59:2	35:16,20 36:1	105:21,24
120:25 180:2	125:10,17,19	130:4,16,23	inwards 103:8	59:15 125:5	36:6,12,16,19	106:5,8,12,16
180:11,18	127:4 131:3	131:9 133:6,15	IPRU 74:25	133:15 167:24	36:24 37:1,5	106:25 107:6
181:21	151:8 152:17	134:21,25	102:11,14	italics 33:6	37:13,25 38:5	107:10,18,23
indented 152:21	152:19	135:1,11,12	IPRU(INV)	items 82:24	41:5 43:10,14	108:3 109:1,5
independent	insolvent 24:24	136:16 139:7	102:10	J	43:17,22 44:4	109:6,13,15,22
34:22 188:11	27:5 51:3	140:5,18,20	ipso 86:13	January 121:12	44:10,13,19,25	110:1,3,8,11
188:18	103:20,21	141:15 142:14	Iron 64:9 142:19	166:7,10,15,19	45:2,8,23 46:1	110:21 113:1,3
index 3:10,10	110:23 117:1	142:15 157:12	ironically 186:6	Jessel 26:11	46:5,11,15,20	113:9,12,17
indicated 42:11	152:1 172:23	160:21,22	Ironworks 156:5	John 182:17	46:23 47:1,4	114:7 116:18
82:7 142:17	178:16 183:24	161:1,4,21,25	159:9 183:23	judge 10:20	47:20,22 48:7	116:22 117:22
indicates 59:18	instance 112:4	161:25 162:4,6	irrational	192:2	48:10,14,18,25	118:1,5,9,12
65:25	151:1 155:1	162:10,15,22	131:15	judgment 4:24	49:7 50:1,2,5	118:16,22,24
indirectly	156:20	163:6,10,18	irrecoverable	5:8 12:20	50:16,18 51:1	119:4,9,13,16
180:10	institution 76:9	164:5,11 168:2	25:17	24:20 28:9,14	51:10,14,19,20	119:19,23
individual 42:16	76:11	174:9,13,17,18	irrelevant 8:5	32:23 33:6	51:24 52:16,17	122:2,7,12,16
54:18,19	institutions 77:8	175:1 179:22	26:6 40:7	48:9,11,17,20	52:21,22,24	122:19,21
individuals	77:10,12 78:9	179:24 180:8	156:1,7 165:19	48:23,25 49:7	53:7,10,15,17	123:2,11,22
191:19 192:10	78:10 102:12	180:10,22	irrespective	51:19 60:13	53:20 54:2,10	124:2,7,10,13
indulge 177:5,7	instructing	181:2,16 182:1	104:20	61:8 63:10,13	54:10,16,25	125:3 126:7,16
indulgence	169:7	183:9,10,11,13	Isaacs 1:14 6:4	63:22 64:16	55:3,8,12,18	126:21 127:12
189:19	instructive	183:25 184:3	6:10,22 18:1	65:1,7,16	55:21,24 56:3	127:16,18,22
inevitably 98:25	152:23	184:11,18	19:24 20:1,4,8	67:12 68:21	56:6,15 57:2,5	128:4,7,11,15
inform 33:1	insufficiency	interesting 15:14	20:11 57:15,18	71:12 113:7	58:25 59:10,14	128:21,25
information	98:5	54:4 72:23	60:5 74:23	124:10 131:3	59:21 60:5,9	129:9,16,19,22
191:12,17	insufficient 7:9	73:14 74:6	75:16 79:3,4	151:10,17	60:12 61:9,14	130:1,7,10
informed 74:8	intend 9:16	127:24 137:8	79:12,23 80:9	164:10 182:23	61:18,21 62:14	131:23 132:12
informs 75:6	intended 75:20	Interestingly	80:24 88:14	183:5 191:8,24	62:23 65:9	133:22 134:3,6
initial 17:2 22:16	76:25 84:10	50:1	89:19 92:14	192:15,17	66:25 67:5,10	134:9,19 135:5
149:12	133:21	interests 27:24	153:13 157:3	193:19	67:21,23 68:4	135:8,11,14,20
initially 39:2	intends 127:8	131:14	161:20 166:2	judgments 63:14	68:7,11,18,22	136:3,7,9,14
193:4	intention 10:14	interest-bearing	176:18,19,24	130:25	68:25 69:4	136:22 137:2,4
injustice 155:16	11:13 133:18	184:12	177:1,3,4,6,11	July 152:25	70:6,8,19,21	137:7,13,19,24
155:25	140:10	interface 23:8	177:14,22	153:2,9 166:8	70:25 71:8,15	138:3,8,10,13
	intents 49:24	133:12 143:14	178:1,3,5	166:9,14	71:18 72:2,12	138:17,21,24
	inter 6:10 8:25	interfere 147:18	179:1,6,14,18		72:23 73:2,8	139:2,5,12,18

139:20 140:8	175:25 176:6	146:11,19,20	62:16 75:9	128:12,17,22	39:1,10 74:10	118:1 136:5,6
140:20,23	justify 81:18	156:17 159:18	90:21 109:7	129:2,5,10,13	81:13 104:1	140:15 178:25
141:1,3,8,14		172:15,17	114:1 140:3	129:14,17	105:4 115:12	179:1,7 180:21
141:18,20,22	K	173:6 174:21	145:24 146:3	136:2 140:14	134:21 144:22	180:21 181:13
141:25 142:4,6	Kaupthing 5:8	lay 107:3	147:1 148:2,4	169:21 188:18	175:19 179:10	183:4,9
142:9,13,18,22	5:13,17 22:23	LBHI 6:6	148:11 160:1	liability 6:7,20	179:10	liquidators 30:6
142:25 143:4,7	22:24 24:8,17	LBHI2 7:8,9,10	167:1 176:20	6:24 7:4 8:4	limits 135:23	108:19
143:13,23	25:12 37:12,15	7:11,13,18,18	177:14 178:6	9:1 14:13,18	Lindley 109:6	list 58:6 69:11
144:3,14,17	42:5 43:20	7:22,24 8:5,24	178:10,20	17:15,24 18:2	line 1:24,25 3:1	116:5 127:17
145:3,7,12,15	44:3 47:10,13	15:3 17:14	179:25 180:19	18:21 23:18	4:24 25:19	literally 85:25
145:20,23	49:25 144:13	25:13 26:21,24	186:3,9,10	27:10,14,15	48:5,11 59:17	little 15:25 65:21
146:20 149:16	149:14 150:14	89:11 121:25	187:10,16	28:22 33:9,20	59:18 112:16	74:18 96:2,10
150:5,25	170:11,25	125:17,19,21	leave 20:19,21	34:21 36:2,4	152:11 158:10	112:2,22 145:9
151:12,15,16	171:2,20	LBHI2s 107:21	104:3 107:12	40:23 41:1,8	158:11 178:14	146:7
151:22 152:20	172:11 176:22	125:24	171:25	46:23 55:6,14	lines 3:4 147:17	live 28:24
153:10,16,24	187:15,19	LBHI2's 3:25	leaves 2:2 149:7	57:18,19,20	151:24 152:10	living 174:10
154:2,6,13,18	keep 1:16	4:3,15 7:19	leaving 146:4	58:13 60:24	155:14,23	loan 77:18 79:9
154:21,24	kept 63:19 65:7	179:25	153:14 159:22	61:5,11 63:22	156:20 167:6,7	153:1,6 162:22
155:2 156:3,9	76:24	LBIE 3:22 6:19	led 166:25	64:11,19 65:14	173:3 174:5,11	lodges 13:19
156:12,20	kind 108:20	7:17,21,22 9:3	left 23:2 37:3	65:15,17 66:1	174:20 175:2,5	logical 133:14
157:1,4,19	114:2 115:7	13:11,12,19,24	44:19 49:2	66:9,11 67:24	link 79:15	logically 129:11
158:6,10,15,17	133:2	14:6,10 15:7	58:18 68:14	68:3 80:3,7	liquidation 4:3	168:18
158:20 159:1,5	know 10:6 17:9	17:15 18:4,23	142:2 150:25	81:19,23 82:3	6:8 13:8,12	long 31:19
159:9,11,16	26:23 29:17	19:1 21:16,19	157:25	82:3,6 85:17	15:2 18:5,24	107:11 161:20
160:10 161:6	37:12 51:15	21:23 22:8	legal 54:14	85:18 86:4,5,8	19:1,3 21:21	178:5
161:10,19,24	60:2,9,16,22	34:5,6 35:10	113:16	86:16,19,23	22:9 27:18	longer 62:18
162:2,6,9,12	61:3 72:10	35:14,18 41:1	legally 69:7	90:14 91:22	29:9 31:4,17	97:21,22
162:20,24	77:22 85:14	114:11,12,15	legislation 57:20	95:13 97:23	32:25 34:7	155:15 157:24
163:7,9,14,21	87:16,20,23	123:5 125:23	58:2,3 61:5,12	98:1,8,12,13	44:15 46:16,21	187:3
163:23 164:1,4	88:14 99:12	125:25 148:5,7	64:9 91:25	98:18 99:3,8	46:22 51:25	look 13:9 16:22
164:8,13,23	119:18,19,20	148:8 149:2,3	125:12 126:12	99:10,16 100:2	52:4,6 53:22	22:20 60:15
165:7 166:1,11	121:9 137:20	149:8,10 154:2	legislative 58:15	100:8,11	59:6 72:4	63:14 71:4
166:22 167:6,7	144:13 162:24	154:4 162:13	58:16 133:8,17	101:12 107:16	95:12,14	94:13 109:15
167:9,10,11,12	167:4 171:17	187:25 188:3	legislator 132:21	107:20,21,25	100:22,24,25	126:24 133:22
167:13 168:8	176:16 177:8	188:25	133:11	107:25 108:6,9	104:2,8,11,24	152:10 166:5
168:17 169:12	185:14 190:18	LBIE's 3:23 4:23	legislators 58:20	108:10,14	105:14 106:2	169:13 171:1
169:23 170:7	191:16,22	6:13,23 16:5	legislature 57:22	109:2,20	106:23 110:1,2	181:12 185:12
170:10,13,17	192:20 193:11	17:13 19:2	59:19	110:14 111:3,5	110:15 112:11	185:25
170:21,23	knowing 182:11	21:18 22:5	legitimate	111:15,24	113:21 115:15	looked 28:13
171:1,6,11,17	knows 4:16	33:8,11,15	189:24	113:8,20	116:7 117:2,5	30:25 37:15
172:5,8,10,13	31:14 53:14	35:13 38:19	Lehmans 60:19	114:12,13,16	117:20,23	44:22 83:7,8,9
172:17,21,25	68:1 143:19	41:3 45:12	lender 63:4	114:20 115:11	122:14,25	84:1 111:21
173:2,2,14,16	160:13 186:13	125:17 149:5	length 116:3	115:12 116:25	130:19 131:1	123:21 124:8
173:21 174:10	191:19	153:22 154:7	lengthy 60:19	117:1,12,19	131:13,22	172:15 177:16
174:14,24		154:10	letter 71:6	118:19 119:19	132:1,11,15,19	looking 7:24
175:8,8,10,16	L	LBL 8:7,24 9:2	152:11	120:5,18	132:24 133:3	13:18 22:24
176:10,14,23	lack 52:15 56:17	15:2 25:12	let's 99:16,21,23	121:16,19	133:12 134:22	32:20 37:8
176:25 177:2,5	lacuna 9:9,10,11	34:7	level 94:6	125:8 126:25	136:12,20	42:21 43:9
177:8,13,20,24	68:6 130:9,11	LBL's 8:2	levels 67:25	142:19 178:8,9	137:11,17	54:2 55:20
178:2,4,22	137:14,16	lead 41:6 120:10	liabilities 27:14	178:21,24	139:7,17	56:25 64:23
179:5,7,16	185:21	151:16	32:24 56:12	179:9,12,23	140:12 141:12	75:2 101:19
180:3,7,13,20	lag 104:23	leads 114:14	57:13,22 58:1	180:2 183:25	143:20,21	103:13,15
181:4,9,16,19	laid 101:3	leakage 191:16	58:5,6 61:23	188:4,13,15,15	144:1,8 147:22	110:23 121:18
181:21 182:4,7	language 10:23	learned 1:14 2:3	62:18,21 63:20	liable 24:4 25:23	152:1 157:10	139:15 141:2
182:9,12,19,22	11:1,2 91:10	2:13,22 3:8,12	79:24 82:24	26:4 48:12	160:18 176:5	158:7 169:16
183:20 184:19	96:15	3:19,20 4:4,6	83:19 84:10,11	121:15 152:2	180:24,25	171:17 190:24
184:21,24	largely 57:15	6:22 7:5,14	85:11 86:6	liberty 190:2	181:1 183:25	looks 15:6 16:16
185:6 186:4,19	larger 155:8	9:13 10:20	87:3,4 88:6,6,7	LIBIE 76:8 77:7	liquidations	53:16 111:1
189:10,13	late 77:3 186:16	11:18 17:22	88:8 90:22,23	77:14 80:20	130:17	178:13 186:20
190:4,8,14,17	latest 106:18	21:5,11 22:15	91:7 92:1	83:13 84:21	liquidator 6:15	Lord 1:5,12 2:8
190:22 191:2,5	launching	22:17 23:6,15	94:15,22 98:7	life 110:23	31:5,13 46:16	2:9,17,19 3:3,4
191:14,23	190:11	25:5 26:20	98:21,24 99:6	lifted 190:15,21	52:9 91:8	3:10 4:20 5:8
192:10,14	law 26:18 31:9	28:5 38:13	99:7 111:2	light 21:5 37:2	94:18 95:4	5:18,25 6:2 7:3
193:1,14,18	58:12 61:16	40:25 50:8	115:21 120:20	58:18 88:14	104:19 105:17	7:23 8:16,20
justification	64:7 85:5	53:18 57:16	120:22 125:14	limit 10:6 155:5	107:4 108:8	9:7,8 10:2,5,9
80:24 175:23		58:3 59:22	126:13 128:2	limited 35:23	113:19 116:19	10:17,22 11:7

11:10,12 12:5 12:15,22 13:17 14:2 16:3,13 17:7 19:12 20:1,16,25 21:2,4 22:22 23:1 24:19 25:11 26:7,11 29:17 32:22 33:3 36:25 38:2,6 42:4 43:19 44:2 47:20,23 48:7 48:10,14,18,23 48:25 49:7,15 49:20 50:2,4 51:2 10,19 52:17,22 53:7 53:17 54:23 55:3,21 57:11 59:24 60:2 61:7 64:5 66:17 73:6 77:21 78:3 79:4,5,22 92:22 94:20 96:10 99:2 101:24 102:7 105:7 107:15 109:6 110:25 113:7 142:10 143:11 145:18 145:25 146:9 146:13,15 147:9 148:12 149:1,2,6,15 149:23 150:6 150:15 151:9 151:11,14,16 151:16 153:11 153:17 154:25 155:3,13,18 156:3,6,18,19 156:24 157:3 158:2,16 159:2 159:5,6,9,11 159:19 160:13 160:15,18 161:15 163:4 164:17 165:8 165:23 166:16 166:16,25 167:5,7,12 168:9,11,12,21 168:24 169:5,9 169:10 170:8,9 171:16 172:12 173:2,2 175:8 175:8,14,17 176:13,19 177:1,12,22 178:5,13,23 179:4,14 180:16,17 182:2,8,10,15 182:23 184:20	184:23 185:2 185:23 186:1,5 186:10,17,20 187:4,10,15,19 187:23 188:8 188:20,24 189:8,12,16 190:7,16 193:7 193:9,16 Lords 108:25 Lordship 1:6,16 2:24 3:9,12 4:11,13,16 6:3 8:16,22 9:4,14 9:21 10:8 11:22,23,24 12:6,13,16,22 14:3,19 15:12 15:21 16:1,19 17:11,12 18:19 20:4 21:10 22:2,25 24:8 24:17 25:9 28:8,10,13,23 31:6,11 32:12 32:14 36:10,18 37:12 38:23 42:10,14 47:13 49:17,22 50:7 50:12 51:6,8 51:11,15,18 53:1 55:21 57:14 58:6 68:1,19 70:2 74:24 75:9,18 77:25 78:3,4 79:5,8 80:10 82:19 83:4,22 84:14 85:14 88:11 89:23 90:10 91:11 92:18,23,25 93:2 95:2 96:2 96:12,21 98:16 98:19 99:4 102:23 106:20 108:4,25 109:4 109:8,9 110:5 112:18 113:6 113:23 116:3 119:21 121:7 121:10,22 123:10,21 124:5,11,16,23 125:21 126:8 126:15,18 129:12 130:14 130:21 131:2 132:4 133:9,17 133:19 134:7 134:11,11,13 138:7,14 141:7 142:11 143:1,2 143:11 178:13 182:13,17,20 183:17,18	185:3,4,4,7,13 185:15 186:2 186:12,17 187:13,21 188:9 189:19 190:1,1,10 191:1,21 192:24 Lordship's 12:19 15:14 17:1,7 19:16 69:9 70:1 80:10 107:2 112:13 123:19 186:14 Lord's 148:3,25 149:12 153:22 lose 6:9 133:5 losers 165:16 losing 163:2 loss 77:1 82:15 161:2 162:18 163:11 164:15 164:15 165:6 167:14 173:13 173:17 losses 77:2 lost 131:9 162:2 162:3 164:11 lot 16:19 25:5 57:14 65:24 190:18 low 18:23 lower 98:1,6 166:9,19,20 184:4 Luncheon 102:5 M making 22:1 31:14 60:20 92:12 94:18 101:6,20,21 106:23 109:9 113:10 116:15 151:6 152:17 165:10 man 122:1 management 100:17 mandate 14:16 mandatory 2:1 2:11,15 37:9 44:17 143:24 144:7 145:4 manifestations 49:11 manner 26:16 64:6 65:12 84:25 133:13 March 166:7,9 Marine 64:6 marked 177:21 marker 5:2,22 market 161:21 162:16 163:2	163:10 mass 24:6 42:24 Master 26:11 material 8:11 materials 74:24 75:5,10,14 maths 9:6 matrix 75:2 matter 11:2 19:14 31:18 32:1 38:15 51:5 55:2,25 69:22 71:5 80:20 81:20 91:10 103:16 109:25 137:1 146:24 155:23 181:6,11,22 186:1 191:6 mattered 114:3 matters 20:23 56:1 96:13 109:10 110:6 130:6 185:16 190:24 Maxwell 70:2 73:7,9,12 Mayor's 20:25 MCC 69:17 73:7 73:21 McMahon 123:20,24 125:4 McPherson 50:12,14,15 mean 8:3,9 10:5 42:13 43:10 51:20 58:25 61:14 65:14 74:6 78:14,18 79:13 85:13 87:21 95:9 97:22 100:6 101:8 107:6 118:6 120:5 122:7,22 128:18 136:10 141:11 144:17 161:7 162:12 163:9 170:2 189:22 191:23 meaning 74:17 79:24 93:15 98:18 111:18 means 3:14 7:16 22:21 56:20 92:4 94:13 98:4 129:10 136:1,19 172:3 meant 99:14 132:22 147:6 150:24 151:4 measure 82:8 mechanics 140:1 191:7 mechanism 45:3	73:24 74:4 89:3 117:15 124:21 meet 131:19,24 173:17,19,20 meetings 70:10 melting 131:16 member 7:11 21:13,17,20,23 22:11 24:13 26:2 27:10 32:4,18,21 33:10,21,22 34:9 35:8,10 35:11,13 41:3 46:24 51:3,4 53:24 55:5,9 55:17 75:19 91:23 92:6,7 92:12,14,16 95:9 96:6,8,25 96:25 110:17 110:20,24 115:25 116:8 116:13,17 117:1,19 120:4 121:12,13,15 121:20,21 144:15 181:2 187:20 188:12 188:18,21,22 188:22 members 6:12 8:12,19 13:12 31:22 60:7,7 83:21 91:3 92:2 93:21 97:10 99:10 100:3,15 114:4 114:11 115:11 115:16 116:3 117:3,17 121:9 123:13 140:7 151:17 157:25 179:9 membership 108:15 109:3 111:4 114:10 member's 21:19 21:24 22:4 32:14,24 38:14 38:20 39:7 40:9,11 41:1,7 41:8 45:10,14 45:16,24 46:17 46:20,22 55:16 188:14 memory 15:15 mention 3:4 5:18 32:13 53:1 mentioned 131:1 186:2 190:22 mere 41:24 74:5 merely 135:17 Mervyn-Davies 174:10	met 7:8 156:13 middle 183:17 mighn't 97:3 million 99:21 148:5,6,7,7,10 149:3,4,5,6,8 149:20 154:3,3 154:4,5,8,9,10 154:10,15,16 154:19,20,21 188:10,12,14 188:17,17,19 188:22 Milton 49:3 mind 13:1 17:5 20:13 21:1 23:25 33:1 38:8 51:16 59:24,25 60:3 60:6,17 75:5 77:17 97:2 110:18 115:8 116:8 124:18 128:7 131:7 143:2 144:17 175:17 176:11 mindful 149:7 minimum 160:23 minor 111:25 minus 154:19 minute 135:5 minutes 57:7 mirror 18:17 misapprehensi... 43:7 misconceived 72:13 misheard 70:8 misnoted 81:7 missed 47:20 48:16,19 mistake 11:14 misunderstood 107:2 162:11 modesty 2:6 moment 13:5 15:21 22:25 32:3,5 36:25 56:9 71:11 86:18,24 91:24 98:2 99:16 100:19 102:20 114:18,23 189:21 Monday 4:8,9 money 35:8 63:3 63:19 65:8 76:24,25 82:16 92:14 95:5 98:25 120:8 160:7 181:13 189:4 moratorium 65:6 131:1 morning 1:5,9	102:7 187:19 Morris 150:25 move 56:10,15 69:2 99:7 131:12 133:18 139:16 moved 57:22 movements 148:9 152:6 moving 6:2 56:8 56:13 132:1 mutual 54:17 mutuality 52:15 53:12 N name 52:7 named 191:19 192:10 193:5 narrow 114:22 nature 83:11 99:8 107:16 111:2 181:12 186:20 nearly 130:9 142:23 necessarily 16:5 40:3 159:13 163:12 180:23 necessary 5:17 20:23 24:12 48:6 66:15 86:9 92:25 115:20 116:11 144:6 152:15 need 31:15 32:3 34:8,14 37:17 47:6,14 55:22 69:8 71:3,7,10 75:24 81:20 88:6 89:15 98:19 115:20 134:15 137:22 137:23 143:5,5 146:16 182:3 192:11,14 needing 119:10 needs 54:23 57:24 94:24 167:20 negligence 59:5 59:5 neither 7:22 29:5 42:3 64:10 80:8 121:4 net 153:15 187:20 189:7 netting 7:22 8:14 19:7 187:12,14 187:15,18 188:5,21 189:1 189:2 Neuberger 32:16 59:24 60:2 61:7 91:25 110:25 113:7
---	--	--	--	--	---	--

never 95:11,11 95:23,25 108:19 190:20 new 66:11 158:2 176:15 187:11 Nicholls 10:2 11:12 Nicholls's 10:22 11:10 nominee 183:1 non-applicabil... 20:5 non-contractual 81:25 non-issue 29:8 31:3 non-member 188:1 non-provability 59:20 non-provable 56:12 57:13,17 58:5,13 60:1 60:22,25 61:13 61:23 62:17 68:16 69:1 83:18 91:13 98:7,21,24 99:6 142:21 normal 63:8 117:18 normally 113:15 Nortel 59:24 62:7,16 68:20 83:23 91:17 107:21 111:1 113:4 114:2,4 125:13 146:13 147:5 note 2:25 12:19 15:14 17:1,7 19:16 50:2 121:22 123:19 186:14 189:20 191:3 193:8,10 noted 81:1 notes 5:10 101:20 133:9 133:20 134:3,5 137:5,7 notice 51:12 60:24 114:6 134:24 140:10 148:6 154:23 154:24 155:3 noting 59:2 notional 7:25 notionally 104:23 notwithstanding 25:18 49:19 117:5 November 1:1 no-one 106:16 131:24,25 number 2:20	3:16 4:5,15,21 4:22,25 5:6,7 5:13,25 8:17 8:19 10:8 15:10 21:25 28:14 41:20 45:21 46:8,25 47:1,2,7,9 49:12,18,19,24 50:3,5,9 56:4 75:18 90:16,19 94:18 97:8 108:1,11 111:21 130:14 132:3 163:18 178:10 186:13 numbered 50:21 O objection 7:12 55:19 165:8 objectionable 27:11 objections 115:2 objective 151:25 objectively 11:4 obligation 7:1,20 7:20 41:2,2 44:16 82:25 114:21 126:2 obligations 27:10 55:6 159:12 obliged 24:24 obtain 51:21 130:24 obtained 63:11 183:5 obtaining 65:7 obvious 16:8 58:8 68:2 84:22 112:3 130:23 192:1 obviously 8:2 13:9 19:17 20:6 63:1 67:20 75:19 79:13 124:17 126:24 132:13 163:12 171:1 occasioned 184:9 occasions 4:21 28:14 90:16,20 111:22 occur 36:9 occurred 43:11 43:12 59:8 128:16 occurrence 64:21 occurs 86:19 134:18 157:2 158:5 October 121:13 odd 36:21 104:7	105:25 oddity 88:10,11 offer 149:14 office 88:9 113:20 officeholder 165:9,13 official 127:23 offset 149:19 154:9 oh 76:9 96:20 130:10 138:10 okay 14:9 15:23 30:9 34:3 68:13 93:9 101:7 109:15 110:11 128:25 142:9 155:2 184:22 old 2:19 54:18 111:9 131:11 175:22 182:15 Olive 173:2 Oliver 167:7,12 Oliver's 175:8 omitting 89:24 once 4:8 12:8 16:14 18:7 19:8 25:13 42:1 51:22 62:2 91:18 94:19 106:14 108:15 111:6,7 115:6 120:11 131:20 132:22 134:23 156:16 157:23,24 168:19 169:20 173:10 onerous 118:20 ones 42:16 110:2 one-stage 9:23 onwards 126:22 open 37:12 49:18 82:19 134:14 185:24 192:22 opening 19:19 39:12,23 69:25 70:4 72:18 129:4 148:13 168:10,10 operate 144:6 operated 87:17 operates 18:19 38:23 41:23 64:6 66:8 67:25 98:4 144:10 155:6 operating 40:20 operation 2:2 13:16 36:14 44:15 63:13 64:13,18 85:12 86:11 87:7 88:3 144:2 149:9	opinion 88:8 opportunity 119:2 opposed 74:5 options 122:25 oral 6:11 orally 5:1,24 order 11:22 27:7 37:18 48:6 61:22 86:23 92:7 108:16 111:6 115:24 117:21 138:15 146:25 176:16 184:8,14 190:15,20 192:17,19,25 ordered 30:6 orders 62:9 70:10 ordinary 32:15 36:15 43:1 original 4:17 172:5,19 173:25 originally 44:7 138:17 originates 44:10 ought 15:7 51:9 58:21 66:12,19 70:23 95:4 130:16 outline 21:6 outset 22:19 169:7 outside 53:25 89:18 95:24 outstanding 45:17 46:13 136:17 outwards 103:3 103:9 overall 21:8 155:6 171:23 override 62:9 overstate 39:24 overtopped 188:4 owe 148:21 owed 8:13 23:17 23:24 25:16 42:23 46:24 97:5,10 108:10 111:24 144:23 148:8 150:17 169:14,17,25 170:4,6,14 171:9,12 172:1 172:8 188:22 189:4 owes 22:12 35:8 148:5,7 149:2 149:3 150:20 154:2,4 owing 34:22 148:10 149:7	owner 79:7 owns 117:24 P page 1:24,25 3:1 3:4 4:9 6:17 28:8,17,18,18 29:19 34:18 35:1 50:21 51:19,24 52:18 52:20 53:6,8 53:17 71:4,5 71:12 84:16 92:22 109:7,8 124:9 134:7 156:24,25 157:5 158:13 158:14 159:6 159:10 167:6,7 167:10,12 183:18 184:4 pages 7:6 32:12 50:19 paid 7:7,25 8:5 22:11 25:13 29:1,13,20 32:15,17,21 35:8 41:4,7 42:2 48:13 53:25 62:3 82:9 85:11 86:2 87:5 90:2 92:6,8 93:12 94:6,6 95:15 97:3,9,9,11,14 97:16,19 98:9 135:19 140:13 152:15 157:11 159:14 160:8 161:14,16 167:18 169:18 170:14 174:13 178:16,18 179:6 183:6,14 panoply 32:6 paper 15:25 172:17 173:25 190:2 papers 172:15 par 162:14 paragraph 19:20 24:20 25:11 28:16,18 30:20 32:23 33:4 35:3 37:14,16 37:23 38:1 39:23 47:14 48:9,10,20,22 48:24 49:6 50:20 53:8 61:8,15 70:3 75:23 79:9 82:17 89:22 109:11,12,14 111:1 113:7,13 124:14,15	127:1 134:13 141:5 142:7 151:19 152:8 152:21 153:11 157:2,5 158:4 159:10 178:13 178:22,23 182:25 186:15 paragraphs 12:18,19 17:1 19:19 38:7 49:1 79:6 158:14 pari 25:1 26:2 32:6 37:8 146:25 147:18 148:22 158:19 158:20,24 park 98:2 Parliament 9:16 11:15 Parliament's 10:14 part 10:3 23:10 24:6 40:14 42:24 45:22 46:9 47:15,16 48:17 64:1 85:5 89:20 90:25 96:17 107:19 108:8 147:3 153:1 155:8 156:1 159:7,8 160:20 165:20 169:18 175:22 Parte 112:14 partially 153:23 154:8 participate 26:22 42:1 participation 24:16 177:19 particle 108:18 particular 26:1 28:7,16 37:21 40:24 42:13 48:5,8 59:3 65:12,20 74:3 75:15 79:25 101:14 107:16 107:24 108:18 111:23 114:23 123:15 126:25 136:25 147:18 151:23 156:12 163:6 164:21 165:2 174:11 187:24 particularly 21:4 84:3 85:4 85:19 120:19 parties 13:3 53:5 59:5 63:6 92:19,20 191:14	partly 94:6 97:9 97:14 114:17 parts 22:14 99:3 111:19 124:25 126:4 147:2 party 59:6 pass 5:10 passage 30:25 53:17 54:3,3 109:8 112:24 124:9 134:7 156:24 158:2,9 175:7 passages 15:15 151:10,18 passu 25:2 26:2 32:6 37:8 146:25 147:18 148:22 158:19 158:20,24 park 98:2 Parliament 9:16 11:15 Parliament's 10:14 pay 7:10 9:2,5 27:7 30:6 64:19 67:18,19 80:20 82:23 90:18 91:1 95:22 97:18 98:6 107:25 109:22 115:21 125:18 126:2 160:11,11,12 178:8 180:22 181:14 183:25 188:2 payable 63:7,18 65:5 66:10 80:5 81:6,9 83:2,13,16,20 83:23 84:8 87:6 96:7 99:20 111:15 125:20 139:7 150:1,12,16 151:5 153:2,8 163:5 paying 7:23 91:20 92:16 95:5 98:24 120:6 136:16 141:15 184:8 payment 8:7 24:3,11,13,14 25:18 42:23 43:3 63:5,7 65:10 67:16 70:14 71:25 77:4 85:13 86:12 87:7,8 87:11 91:16 93:6,17 97:15 120:12 135:1 135:12 136:9 140:15 141:10 155:21 159:25
--	---	---	---	--	---	--

160:5,16 161:3 161:4,9,10,12 161:15,17 162:9 166:6,6 166:8,17 167:19 177:18 183:15 184:2 188:1 pence 86:12 pending 184:10 Pensions 10:19 12:14 114:6 penultimate 7:3 people 93:25 192:18,20 people's 14:3 perceived 137:14 155:16 155:25 perfectly 112:9 152:8 period 63:15 64:2 106:22 125:20 133:6 140:21 143:21 164:9 176:5 periods 136:17 peripheral 121:3 permit 35:13 permits 39:5 105:4 124:3 person 24:3 114:24 184:2 perspective 8:2 76:21 Peruvian 42:9 Phillips 60:20 phrase 10:19 85:23 91:6 126:13 127:8 128:22 158:7,8 pick 146:4 151:18 picked 23:14 58:21 138:11 147:9 picking 191:25 picks 184:4 picture 142:12 168:20 piece 190:2 piggybacks 129:3 place 2:13 58:7 68:3 92:18 114:24 143:25 144:7 151:8 152:19 153:20 157:24 173:11 186:24 placed 165:9 places 19:17 98:6 plain 69:21 83:2 127:9 plainly 1:17	31:21 47:17 51:7 62:13 75:5 91:15 114:14 125:12 192:18 plans 103:9 play 65:24 player 7:14 please 133:23 151:14 182:17 pleasure 92:23 plethora 192:4 plus 193:5 pm 102:4,6 143:8,10 193:20 point 2:19,24 3:1 3:18,19 4:7,11 4:13,20,25 5:17,24 6:3,6 6:21 7:3,3,5,8 9:4,9 10:13 13:10 15:9,18 18:15,16 23:5 24:18 27:8,17 28:3,15 29:4,6 29:8 30:10 31:3,12,16 32:10 35:5 38:12,16,21 41:13,23 42:20 43:18 45:20 46:7 47:11,20 48:3,16,19 50:20 52:25 58:15,16 61:3 62:3 69:8,15 69:23 70:13 71:5,11 73:6 73:12 75:8 76:19 77:24 81:7,11,11,13 81:21,24 84:6 84:14 88:12 89:20 90:18,24 91:9 94:8,9 95:1,2 96:4,14 96:22 97:18 98:10 100:11 100:11 101:8 102:23 104:19 105:19 106:15 106:19 109:4 109:10 110:6 111:20,25 112:5 113:14 115:9 120:2,3 121:22 123:6 123:18,23 124:9,15 125:15,22 128:5,8 129:1 129:4 130:2,22 131:19,25 132:4 137:22 138:2,4,14	139:13 142:10 143:3,12,22 145:6 146:14 160:4 164:16 165:4 166:19 166:20 167:16 168:24 169:5 172:14 173:16 173:17,23,24 174:5,12,24 177:6,11 178:18,19 179:15,19,21 180:4,4,5,14 180:17,18,20 181:25 185:8,9 187:11,22 188:24 191:9 192:2,5,15 193:7 pointed 28:23 42:14 108:18 186:17 pointer 133:17 points 1:12,18 23:22 26:19 33:18 36:8 45:13 57:17 58:3 69:5,10 75:3 81:15,18 86:4 102:7,9 113:18 130:14 139:10 146:3,4 165:24 167:3 168:1,9 169:12 173:5 176:20 185:2 186:6 192:21 policy 14:16 16:16 73:11 130:20 133:8 146:11,21,24 147:17 151:25 168:13 172:2 poor 131:11 portion 41:8 pose 56:16 posit 143:16 150:18 posited 36:10,18 121:10 positing 106:20 position 6:19 13:1,3,3 14:5 15:3 16:25 17:12,13 18:4 18:12,18 20:1 20:2 21:7,21 22:17 26:25 39:24 46:1 51:13 54:6 56:25 58:11 64:7 72:3,3 80:12,15 90:25 92:11 102:25 127:3 152:7	165:3 187:10 189:1 190:11 positions 19:25 positive 80:17 possibility 21:14 25:15 59:7,19 115:18 118:3 118:15 122:5 133:18 173:12 possible 118:7 122:23 137:10 152:9 159:8 192:12 193:9 possibly 11:4 35:11 53:14 61:23 111:6 179:16 post 64:2 postpone 192:24 postponed 58:6 59:25 60:6 postulate 8:17 postulated 8:11 148:9 166:6 post-admin 80:16 post-administr... 9:12 179:22,24 post-bankruptcy 157:12 post-insolvency 80:22 post-judgment 63:15 post-liquidation 40:1,2,4,6 145:2,3 157:12 pot 131:16 potential 7:20 114:5 potentially 28:24 191:12 pound 34:24 86:13 159:15 188:2 pounds 153:15 154:9 power 6:15 29:7 31:2 36:23 37:3,3 186:8 practicable 158:18 practical 123:17 practice 86:16 87:17 92:5 95:11 153:21 pre 63:15 precedence 49:21 precedent 24:15 24:21 177:19 precise 54:6 precisely 42:4 43:19 54:25 96:16 146:23 preclude 44:15	precluded 34:11 38:14 precludes 39:9 precursor 130:19 predicament 165:9,13 preference 75:18 preferential 69:16,19 prefers 50:13 prejudice 58:11 146:18 premise 40:5,14 156:3 166:8 premises 155:15 present 26:17 27:4 58:19 62:5 80:5 96:13 114:10 117:8 121:23 124:19 150:17 153:4 183:21 presently 132:18 preserve 80:18 146:25 preserved 133:13 preserves 89:21 presumably 5:12 68:11 89:14 93:19 97:13 138:18 191:3 presuppose 144:21 pretty 49:8 57:24 prevent 21:13,22 40:20 prevented 65:6 preventing 24:11 35:14 prevents 45:18 144:15 184:10 previous 190:23 191:10 pre-admin 80:13 pre-call 23:12 28:4 pre-existing 67:6 67:11,11 68:10 81:17 pre-insolvency 81:22 pre-liquidation 39:7,9 110:17 157:14 price 191:12 prima 147:15 primarily 146:1 primary 3:20 4:16 6:19 15:4 18:12 45:15 prime 88:16 principal 28:1 82:12 161:22	163:24 164:3 168:6 181:17 183:8,13 principle 20:17 25:22 26:9,15 27:12 31:18 32:1 33:3 35:12 37:19 43:5 48:1,5 51:6 54:1,5,6 55:3 56:1 58:12 69:15,22 69:22 70:15 81:20 86:10,12 103:16 110:16 125:12 153:17 156:9,14 157:10 159:18 168:5 184:6 190:24 principled 26:16 53:18 55:19 168:11,23 principles 25:8 34:12 35:6 37:20 40:10 43:7 49:21 73:21 91:4 144:12 147:5 148:18 prior 10:14 49:21 65:16 72:15 80:2 81:5,8 86:24 134:20 137:11 137:16 139:7 152:7 priority 61:22 private 185:25 pro 133:4 probably 8:11 26:20 28:15 68:16 71:10 122:7,13,15 128:4 137:23 problem 10:11 12:8 23:5 35:21,21 36:17 74:3 87:25 94:17 95:8 101:22 118:17 119:5 139:6 142:16 148:4 149:2 165:17 165:17,20,22 191:11 problematic 120:16 problems 88:3 procedural 116:14 124:21 procedures 101:3 151:25 proceeded 53:4 proceeding 25:16	proceedings 83:12 84:19 88:20 89:17 proceeds 98:9 186:24 process 27:16 64:4,13 66:15 94:10 96:17 110:20 116:4,5 116:12,16 156:16 157:23 159:23 160:5 168:14,15 produce 153:3 188:6 produces 42:6 153:1 166:13 producing 54:7 progress 101:20 101:21 prohibit 106:3 187:17 promulgated 77:11 proof 6:7,23 13:19 47:25 49:5 59:12 72:7,16,17 74:11,14 86:13 87:6 89:4,13 90:5,7 110:17 115:15 116:2 116:11 120:9 123:4 124:3,21 125:23,24 139:23 156:16 157:23 159:23 160:4 179:22 181:2 192:5 proofs 135:18 140:13 proper 75:1 properly 44:22 116:9 property 100:18 118:21 proportion 8:23 proposal 172:19 propose 5:25 145:25 proposed 29:20 proposes 12:6 proposing 182:6 proposition 33:19 34:11 49:14 62:17 75:12 120:20 126:23 130:18 157:16,20 159:21 prospects 132:23 protect 27:24 32:3 35:7 80:18 protecting 31:22 protections
--	---	---	---	--	---	--

115:5 116:2 protective 123:14 provability 58:17 83:25 84:6 provable 7:7 13:12,13 14:14 57:23 58:21,23 61:25 62:2 83:1,3 84:7,7 90:19 95:16 99:10 101:15 107:17 116:10 116:24 128:18 129:5,6,8,23 146:12,22 147:4,7,8,12 147:16 148:15 148:16 159:14 160:21 161:1 165:5 168:14 169:15 180:8 184:19 prove 6:13,19 18:13,18 22:11 33:22 34:6,9 64:1 71:22 81:12 89:7 118:8 120:2 125:7,10,14 140:19 161:24 163:23 164:4 165:5 189:5 proved 33:20 58:1 87:5 134:25 135:6 136:10,11,12 139:19 140:4 140:16,17 141:10,23 146:24 160:24 179:24 183:6 proves 120:4 187:9 provide 40:8 79:14,17 83:14 165:1 168:10 176:4 provided 74:17 75:7 168:10 192:20 provides 38:25 111:14 124:20 135:1,11,12 160:19 162:4 168:18 187:14 providing 39:19 40:3 54:13 97:18 proving 6:12 13:4 20:3 89:11 90:1 115:25 116:7 117:18 121:17 140:1 155:8,11	168:14 provision 70:24 71:3 88:17 89:21 127:13 provisions 44:14 52:3 58:10 70:16 79:13 91:23 92:3 111:10 127:4 128:21 129:17 pure 100:25 120:20 purely 145:21 purpose 24:25 63:1 66:15 74:23 79:23 88:2 90:25 92:16 93:17 94:14 95:5 96:24 136:15 141:15 150:18 152:16 153:8 171:22,23 191:23 purposes 4:10 25:25 49:24 72:8 87:1 88:7 94:12 96:13 98:24 99:1,24 103:4 110:22 149:25 150:3 150:10 151:3 152:13 153:19 153:21 154:11 155:5,8,11 160:13,25 170:19,21 171:3,22 183:24 184:1 pursuant 86:22 120:8 175:23 pursue 43:3 94:21 pursuit 77:9 put 5:2,22 11:20 14:4,25 15:25 24:8,14 26:24 34:18 35:2 38:20 39:23 68:8 73:7,8 89:19 90:19 100:16,23 102:24 107:7,7 114:1 121:8 128:8 131:16 131:19 141:6 142:3,6 163:17 181:2 189:20 190:2 192:3 193:8 puts 33:3 34:25 55:4 109:6 193:10 putting 21:2 Pyle 53:1 92:20 109:3,4 111:21	111:21 112:3 <hr/> Q qua 120:25 qualification 75:21 quantified 82:9 query 8:14 question 2:16 9:10 16:6,15 16:17 17:6 19:6 22:10 27:3 30:18 37:10 42:3 47:4 55:22 56:16 61:6 63:17 65:3 72:8 77:17 79:18 88:17,20 101:11,14 102:8 104:22 105:9 106:21 107:2,7 114:16 131:12 141:8,9 143:24 148:25 157:6,22 160:15 173:10 175:9 176:4 183:15,19,21 191:7 questioned 80:9 questions 20:6 21:5 43:9 49:2 49:16 90:11 99:11 103:5 quibble 189:25 quick 133:22 quickly 69:8 191:3 quid 133:4 quite 12:25 18:6 23:4 27:2 33:4 37:14 38:9 41:12,16 43:22 56:18 57:14 62:19 66:22 69:7,9 71:17 72:23 83:3 85:15,24 88:2 93:25 101:19 115:7 118:19 122:23 129:9 138:2 141:4 179:11 187:6 189:23 190:21 193:2 quo 133:5 quotes 177:25 <hr/> R radical 10:1 Railway 42:9 raise 167:24 191:6,9 raised 160:15	190:19,20 191:9 raises 148:25 raising 30:17 32:18 ranging 98:6 rank 32:24 62:1 76:17 80:13,16 82:12 92:1 94:15 ranking 75:20 80:21 98:1,8 99:17 ranks 98:13 rapidly 190:5 rate 30:7 65:1,3 67:12,13 127:23 131:3,4 131:5 144:19 161:21,22 162:15,21,22 163:6,10,11 164:9,10,11 166:5 168:2 180:25 rates 162:16,19 ratio 8:19 47:17 49:17 rational 133:8 rational 168:19 reach 49:22 73:4 reached 61:16 reaching 118:10 read 12:7,8 58:9 61:15 70:22,23 70:25 71:6,7,9 71:10 74:16 85:25 93:2,5 124:12 140:2,2 150:15 151:12 151:13 153:11 177:17,20 178:2 182:18 182:19 reading 30:19 38:6 52:4 113:15 152:12 153:5 192:6 reads 54:12 151:9 real 52:5 80:22 115:17 176:6 realise 107:11 realised 101:4 realises 16:14 reality 88:24 really 4:15 11:3 22:13 27:22 44:15 58:5 62:15 73:10,19 77:4 80:8,17 83:15 91:11 94:7 98:9 101:21 109:14 111:17,20 114:8,13	118:17,18 123:4 129:11 130:6,20 133:1 144:5 161:7 174:16 176:3,8 181:5 185:8 190:24 191:7 reason 14:25 15:5 24:23 25:20 27:9 32:18 34:3,10 36:22 40:16,17 40:20 47:8 51:4 52:5,13 53:12,22,23 67:25 77:6 86:6 103:17 110:16 112:15 114:12 130:25 131:2 139:24 146:9 147:1,17 147:20 153:14 155:13,13,22 156:19 167:23 168:13 177:15 185:21 reasonably 101:20 158:17 193:12 reasoning 156:4 159:7,8 171:20 173:25 174:1,3 174:19 reasons 4:12,18 11:16 12:3,9 12:12 14:12,16 18:1 29:9,10 31:4,5 84:2 112:3 114:17 123:9 132:14 146:2 recall 14:19 24:8 31:6 50:12 53:2 95:3 112:18 113:6 124:5,23 172:15 185:3,5 185:13 187:13 recalled 186:2 recast 78:11 receive 24:7 35:13 42:25 64:25 87:10 164:1 received 26:3 67:16 92:14 receiving 42:22 140:5 recited 151:19 recognisably 111:2 recognise 26:7 recognised 57:19 57:25 62:18 69:14,17,25 recognition 25:7	recover 55:13 recovering 101:6 recovery 55:16 91:18,21 120:6 red 10:7 137:8 redefined 60:24 redresses 165:20 reduce 172:1 reduced 87:6 reduction 119:7 reenacted 128:11 refer 60:12 89:4 100:22 175:22 182:6 referable 168:6 180:15 reference 3:5 4:9 5:6,7 8:6 13:2 15:21 22:15 38:1,2 79:9 98:2 128:12 131:13 148:2 159:20 174:16 references 16:1 19:18 75:19 167:6 referred 3:8 6:11 15:12 41:20 50:3,5 60:17 68:21 70:1,3 82:7 109:19 112:14,15,17 153:13,13 155:24 159:7 159:19 169:1 176:16 178:10 178:19 180:18 185:5 referring 23:3,4 refers 5:9 48:10 52:22 60:9 84:16 159:11 reflect 63:18 87:7 reflects 65:4 82:15 regard 9:17,20 117:3 178:7,12 regarded 30:17 30:22 regards 102:15 102:16 152:8 regime 32:6 67:14 78:1 114:19 123:6 138:22 191:16 regimes 133:13 Regulator 10:19 12:14 114:6 regulatory 75:5 76:21 78:1 79:2 rehabilitation 84:19 85:5 reinterpretation	12:10 relate 109:11,19 related 78:8,9 79:25 143:14 relates 23:11 41:8 64:2 69:5 77:8,11 78:8 110:8 126:4 144:2 176:21 relating 44:14 77:9 108:17 relation 10:14 17:13 18:11 19:12 20:5 21:7 22:17 23:19 28:3 32:10 43:24 52:2 55:16 58:11 59:20 68:5,9 69:6,20 70:20 73:12,21 73:25 74:3,23 80:12,15 88:15 89:2,17 97:25 98:11,15 99:2 99:15 102:8,9 102:14,24 103:2 106:22 111:9,11 113:23 121:9 126:19 127:3 143:17,19 148:15 149:25 150:9,19 155:7 165:3 169:2 174:6 180:14 185:9 186:5 187:12 190:12 192:25 relationship 63:4 113:5,16 113:22 114:3,4 114:9,15 162:21 relative 8:18 relatively 108:22 relevance 38:24 182:13 relevant 3:20 4:5 4:10 12:18 15:25 28:15 32:13 47:23 49:13 50:20 56:3 72:10 83:10 85:19 98:7 126:3 136:18 137:10 139:9 155:16 167:19 reliance 156:19 relied 2:6 28:6 41:19 42:10,12 53:18 54:3 147:8 177:14 relies 158:1 relieves 184:1
--	--	---	---	--	---	---

149:13 151:23 relying 144:15 146:12 remain 161:15 173:12 remainder 153:6 remaining 91:2 91:3 135:23,24 135:25 136:3 141:10 149:10 155:11 156:22 remains 17:15 149:18 151:7 152:18 153:8 154:14,18 156:10 161:1 170:12 172:4 remedied 156:7 161:3 remedy 38:25 126:1 155:19 remember 18:19 25:9 60:14,16 70:21 108:25 125:22 126:15 132:4 168:12 187:22 remembers 51:15 85:15 108:4 109:4 121:10 remind 17:12 89:23 96:4 149:2 185:6 reminding 24:17 remitted 156:15 removal 66:20 remove 152:2 render 66:10 147:25 rendered 65:17 rendering 66:23 repay 92:7 repayable 152:25 repeat 11:17 12:5 19:17 81:21 146:16 160:3 168:18 173:5 repeating 20:23 rephrase 100:23 replaced 156:6 replacement 66:20 replaces 161:7 162:17 164:14 reply 1:3,8,12,19 12:23 19:13 21:3,6 23:10 69:2 145:17 177:9,10 189:11 193:23 193:24 report 174:1,21 174:22	represented 60:20 represents 153:4 require 43:1 88:8 required 26:22 27:4,7 61:4,11 127:5 149:19 153:3,7 requirement 88:16 requirements 102:13 requires 32:20 135:22 reread 71:16 research 169:2,7 reserve 20:22 193:19 resolved 157:8 resources 88:15 respect 4:17 6:7 7:8,18 8:23 11:17 16:13 17:15 19:13 27:15 28:22 38:25 45:6 48:15 59:22 64:1 65:18 70:17 72:17 81:4,12 82:10 82:13 87:11 91:19,21 95:8 96:25 109:17 120:24 124:4 124:22 125:1,7 125:10,14,20 133:6 136:16 139:22 145:5 157:12,14 187:5 190:12 respectful 9:1 12:11 19:15 185:20 187:1 respectfully 9:17 25:5 35:4,12 38:8 40:17 41:13 42:19 48:4 49:11,20 49:23 55:2,20 55:25 62:15 80:7 81:25 85:17 87:13 111:16 114:17 121:5,17 127:6 133:16 135:25 144:4 167:22 187:5 188:6 189:2 respectively 8:24 103:16 113:25 respects 167:21 respond 146:1 176:21 177:16 responded 180:1 180:6,7	responding 6:6 response 5:24 40:24 45:12 58:2 92:15 168:22 173:4 179:20 189:24 rest 184:7 resting 73:18 restricted 26:14 90:23 136:10 restricting 90:7 restriction 89:10 90:5 restricts 89:7,23 105:3 result 6:25 15:17 42:6 49:13 51:25 53:24 54:7,14 59:4 67:23,24 73:4 89:12 95:4 98:5 103:11 117:21 118:10 120:15,17,22 121:7,8 132:21 134:8 188:21 results 16:11 43:20 148:7 160:5 161:4,12 resume 102:3 resurrect 66:9 resurrected 87:1 resurrection 66:22 retainer 24:3 return 83:21 140:6 157:25 returns 88:1 reevaluation 87:2 revalue 86:11 reverse 187:7 reversion 156:4 159:3,22 reverted 157:23 revised 86:8 rewrite 10:21 11:24 Rhodesia 25:10 RICHARDS 1:4 1:7,11,15 3:2,7 3:13,17 4:1 5:5 5:12 8:9,21 9:5 9:11 10:12,16 11:25 12:17,21 12:24 13:18,21 13:23,25 14:9 14:11,15,21,25 15:11,18,23 16:7,9,22,25 17:3,9,17,19 17:21,25 18:3 18:7,10,15,22 18:25 19:5,8 19:11,22 20:3 20:7,10,12,19 20:25 24:9,21	28:12 29:11,13 29:16,18,25 30:2,5,12,14 30:19,21,24 33:13,17,24 34:1,4,13,16 35:16,20 36:1 36:6,12,16,19 36:24 37:1,5 37:13,25 38:5 41:5 43:10,14 43:17,22 44:4 44:10,13,19,25 45:2,8,23 46:1 46:5,11,15,20 46:23 47:1,4 47:22 50:1,5 50:16,18 51:1 51:14,20,24 52:16,21,24 53:10,15,20 54:2,10,16,25 55:8,12,18,24 56:3,6,15 57:2 57:5 58:25 59:10,14,21 60:5,9,12 61:9 61:14,18,21 62:14,23 65:9 66:25 67:5,10 67:21,23 68:4 68:7,11,18,22 68:25 69:4 70:6,8,21,25 71:8,15,18 72:2,12,23 73:2,8,14 74:6 74:13,16,21 76:1,4,6,8,12 76:14,16,18,20 77:6,14,17,23 78:1,7,13,18 78:23 79:1,12 82:21 83:6 84:18,24 85:3 85:7,19,22,24 87:12,16,20,23 88:1,10,13,19 88:25 89:8 90:8,12,15 91:14 92:9,21 93:1,4,9,13,19 94:3,17,21 95:7,15,19,21 96:14,20,23 97:2,7,13,24 99:12,19 100:5 100:7,20 101:5 101:7,13,17,22 102:2,15,17,19 102:22 103:7 103:19,21,23 104:1,7,12,16 104:21 105:2,6 105:10,13,17 105:21,24	106:5,8,12,16 106:25 107:6 107:10,18,23 108:3 109:1,5 109:13,15,22 110:1,3,8,11 110:21 113:1,3 113:9,12,17 114:7 116:18 116:22 117:22 118:1,5,9,12 118:16,22,24 119:4,9,13,16 119:19,23 122:2,7,12,16 122:19,21 123:2,11,22 124:2,7,13 125:3 126:7,16 126:21 127:12 127:16,18,22 128:4,7,11,15 128:21,25 129:9,16,19,22 130:1,7,10 131:23 132:12 133:22 134:3,6 134:9,19 135:5 135:8,11,14,20 136:3,7,9,14 136:22 137:2,4 137:7,13,19,24 138:3,8,10,13 138:17,21,24 139:2,5,12,18 139:20 140:8 140:20,23 141:1,3,8,14 141:18,20,22 141:25 142:4,6 142:9,13,18,22 142:25 143:4,7 143:13,23 144:3,14,17 145:3,7,12,15 145:20,23 146:20 149:16 150:5 151:12 151:15,22 152:20 153:10 153:16,24 154:2,6,13,18 154:21,24 155:2 156:9,12 157:1 158:6,10 158:15,17,20 159:1 160:10 161:6,10,19,24 162:2,6,9,12 162:20,24 163:7,9,14,21 163:23 164:1,4 164:8,13,23 165:7 166:1,11 166:22 167:9 167:11,13	168:8,17 169:12,23 170:7,10,13,17 170:21,23 171:1,6,11,17 172:5,8,10,13 172:17,21,25 173:14,16,21 174:14 175:10 175:16 176:10 176:14,23,25 177:2,5,8,13 177:20,24 178:2,4,22 179:5,7,16 180:3,7,13,20 181:4,9,16,19 181:21 182:4,7 182:9,12,19,22 183:20 184:19 184:21,24 186:4,19 189:10,13 190:4,8,14,17 190:22 191:2,5 191:14,23 192:10,14 193:1,14,18 right 6:9,10,16 6:21,23 7:2 8:16 12:25 14:11 17:17 18:9 19:4 20:22 21:6 22:1,1 24:19 28:23 29:23 30:24 31:20,22 32:3 34:3,16 43:3,22 46:12 46:22 50:4 51:5 54:20 55:23 56:4 59:23 60:16 61:3 62:9 63:12 64:1,10 64:12,20,24 65:2,10,12 66:23,25,25 67:11,12 68:12 68:15,25 76:6 81:3,12,23 82:2 85:24 88:25 89:7 94:20 95:9,24 100:1,12 101:1 101:17 105:22 112:7,10 119:23 121:16 125:7,9 129:25 131:7,9 135:20 138:5 139:6,12 141:24 142:15 143:19 144:16 155:2 158:11 158:15 161:8 162:23 163:18	164:12,14 165:5 172:19 175:5 176:12 177:8,9 178:1 179:11,13 181:22 183:13 188:3,25 189:22,23 192:11 rightly 8:23 186:17 rights 54:13,17 54:18 55:4 65:19 66:14,19 69:19,20 80:19 92:4 94:12,25 95:10,25 96:17 96:25 97:17 98:3,15 123:14 123:15,17,18 133:6 148:20 156:4,15,22 157:13,17,22 158:2 159:3,22 159:23 162:17 171:24 175:1 176:2 184:12 Rimer 185:6 rise 7:2 15:19 57:7 101:23 102:2 114:5,21 143:7 165:11 rising 143:2 risk 174:4 role 1:9 Rolls 26:11 Romer 51:10 52:17 53:17 55:3,21 room 2:2 rooted 54:5 round 50:25 160:20 177:17 route 137:20 Rowe 62:5 rule 1:23 2:1,3,3 2:15 3:21 12:1 12:10 13:6 20:6 21:9,12 21:22 22:10,21 22:22 23:1,3,4 23:9,12,16,19 23:23,25 24:2 24:2,2,10 25:4 25:21 26:14 27:21 28:4,21 29:5 31:21 32:1,11,20 33:7,12,15 34:12,19 35:6 35:9,22 36:7 36:14 37:8,19 37:22 38:3,4 38:10,11,18 40:12,15,19,19 41:16,17,22,24
---	--	--	---	--	---	---

42:5,18,21,25	47:8,12,12	7:4 8:3 10:10	148:20 181:23	37:11,20,23	182:25	106:21 110:19
44:4,17,23	61:15 77:14	12:8,9,12	seeks 126:1	38:10,14,19,24	sheet 15:25	115:17 117:8
45:18 46:4,6	93:22 175:5	17:15 24:19	seemlessly	39:5,9,19,21	short 1:8,16 7:3	117:13 121:10
47:21,24 48:1	180:1,7 181:5	31:9,10,11,13	133:19	39:25 40:3,5,8	27:2 29:17	143:16 178:14
48:2 49:4,5,10	says 3:5 8:23	38:16 39:3,25	seen 31:21 92:19	40:11,16,18,20	35:4 40:17,22	186:22 188:5
51:3,5 56:14	11:20,21 12:7	57:12 61:24	132:5 159:6	40:23 41:6,7	51:2 57:9 78:5	188:20 189:3,3
58:10,16,22	22:19,22 33:14	63:13,24 69:19	190:1	41:11,14,21	120:14 129:1	sixth 156:19
59:25 63:24	33:21 34:1,2,4	69:20 72:17	sees 138:14	42:3,7 43:4,9	132:4 143:9	skeleton 35:2
64:14,18 66:8	34:5,8,19 38:7	83:14 90:14,17	self-executing	44:17 45:10,11	166:23 167:5	39:24
66:12,18 67:3	39:13 47:16	90:22 91:8,16	2:12	45:13,15,18,24	169:6 177:11	skeletons 39:12
83:14 87:7	48:25 50:13	91:23 93:16	sell 119:3	46:2,3,17	179:18 185:2,9	Slade 156:20
93:16 99:14,24	53:17 54:12,16	94:5,9,14,23	senior 84:10	47:15 48:2	186:5 188:24	157:4,19
103:14 104:4	56:23 72:12	95:25 96:3,5	sense 11:4 66:10	49:5 51:22	190:2	159:16 167:6
104:10,13	73:8 108:6	98:4,19,23	73:16 78:11	52:14 53:11,21	shortfall 9:1	167:10 174:24
105:8,10	120:8,9 125:4	99:3,8 100:3	80:8 83:24	53:22,24 54:20	157:9	slight 88:10,11
106:10,15,17	128:17 129:13	101:12 104:17	85:3 96:21	54:25 56:14,15	shortly 22:24	107:9
125:18 132:7,7	131:24 141:1	105:3,25	105:18 114:22	102:24 103:2,4	147:20	slightly 23:18
132:9 134:4,5	148:11 149:24	107:16,20	114:25 130:5	103:12,15,18	show 21:1	38:12 42:20
134:12,15,23	151:20 157:19	109:2 111:5,14	165:14 178:20	104:8 105:3,22	115:20,23	63:16 83:19
138:17 139:14	159:11 170:23	111:16,17	sensible 191:18	105:24 106:1,3	186:7,11,12	88:12 95:2
139:15,25	177:18 178:14	120:5,8,19	sensitive 191:12	143:15,25	shown 156:24	96:11 101:9
140:5,16	179:6,9 180:11	121:16 123:25	sentence 24:22	144:7,10,16,21	158:2,16	107:1 116:23
143:15,17,20	184:16 185:7	124:1,3,6,20	28:17 54:4,12	144:25 145:4	sic 149:24	120:10 127:18
144:2,6,10,12	186:9 187:2	125:9,15,16,23	113:14 151:23	148:1,7,12,14	significance	137:21 147:8
146:17,18,19	scenario 187:24	126:14 127:2	177:14,18	148:15,17,19	121:5	164:19
146:20,25	scenarios 8:17	127:15 128:11	178:3,6,19	148:23,23,24	significant 39:4	slot 50:17
149:23,23,25	scenes 186:24	128:15 131:4	183:18 184:5	149:9,21	significantly	small 9:5 121:22
150:4,6,8,10	scheme 25:1	132:2 134:17	separate 6:2	150:24 151:6	162:14,16	192:11
150:11,13,22	26:1 31:24	140:18 144:18	16:15 38:9	152:17 153:7,8	similar 47:25	solely 40:11 94:5
151:3,4,4	37:9 44:24	144:19 152:21	141:6 175:9	153:14 154:12	150:8	solicitors 169:7
152:9,13,14	45:4 48:24	175:18 176:2	separately 23:22	154:17,22	simple 34:14	193:5
153:9,18,19,21	66:5 70:10	178:9 179:3,8	September	169:25 170:20	63:17,25 96:1	solution 11:18
155:5 169:13	71:19,19,21	179:9,23 180:2	121:12	171:6 172:4	105:9 111:14	12:6 149:15,17
170:18,21	72:1,3 86:23	sections 109:11	sequential 59:4	175:20 176:2,5	129:3 166:18	solved 133:11
171:3,21,23	115:5 123:14	109:18 124:25	sequestration	187:14,17	167:23 183:12	solvency 88:23
175:24,25	131:20 158:3,9	126:11	85:4	seven 146:2	188:8	127:14
176:7 183:22	158:12,24	see 3:13 16:19	series 69:5 101:9	seventh 165:8	simply 11:18,19	solvent 82:23
183:22 187:17	160:5,19 161:3	17:11 19:11	126:11	severe 117:6	27:3,23 29:24	172:22 174:7
190:13	161:4,7,11,12	28:10 29:19	seriously 168:25	share 8:10,25	32:17 36:13	174:12
rules 10:10,15	161:18 162:4	30:21 48:23	168:25	29:1 92:6,8	38:1 39:17	somebody 189:4
10:21 12:2	162:17 163:3	51:1 52:19,20	set 4:18 15:20	117:17 119:6	41:13 43:5,6	somewhat
50:22 61:18	164:14,18	53:11 55:7	17:8 18:12	188:23	59:23 61:3,10	192:20
62:12 64:8	173:7,10	71:22 72:23	19:17 56:20,21	shareholder	63:6 64:20	soon 158:17
75:8 82:10	175:23 176:1	73:10,20 74:1	102:14 134:12	24:24 25:23	65:15 66:1,8	193:12
85:12 103:2	scope 167:22	74:21 76:1,22	185:4	30:18 52:10	73:12 75:24	sorely 10:20
116:19 131:3	scrutiny 130:22	77:1,23,25	sets 48:14	97:3 178:15	83:1 87:6	sorry 28:13
149:24 155:9	se 6:10 8:25	78:3 79:20	setting 14:20,20	shareholders	89:21 90:1	30:19,21 36:5
rump 62:21	19:14 106:4	96:22 103:5,10	18:20 35:11,14	25:20 48:12	92:16 103:15	43:23 45:8,23
run 1:18 115:7	157:17	105:7 109:16	43:5	92:11 97:4,8,9	103:18 107:3	46:20 70:6,8
	sealed 185:14	110:11 111:7	set-off 1:22 2:1	97:16	114:9 116:6	71:9,15 78:15
S	second 2:19	111:10 113:21	2:11,15,16	shareholder's	121:6,18	78:19 100:20
satisfactory	11:13 16:6	114:2 116:12	3:23,25 7:12	24:16 177:19	125:11,23	122:19,20
80:10,17 83:25	23:18 27:8	116:22 119:13	13:4,16,21,24	shareholdings	126:18 132:19	135:14 138:9
satisfied 10:23	28:3 37:20	138:7,10,13	13:25 14:6,10	8:24	135:25 142:20	141:3,4 144:18
65:11 67:13	58:15 59:7	139:12 142:4	14:12,14,17,22	shares 8:13,19	143:16 147:13	149:11 153:24
68:13,15 94:23	68:5 69:23	142:23 152:12	15:5 16:4,6,16	29:14 36:3	148:24 155:20	166:14 167:9
117:12 121:23	75:8,20 81:5	152:23 158:3	16:18 17:20,23	48:12 75:18	165:20 167:15	177:22 179:7
157:15	97:20 102:23	162:11 164:7	18:8,19 19:2,3	94:6 97:4,9,10	168:21 173:6	180:3
satisfy 126:2	147:1 156:3	164:16 166:18	19:9 20:1 21:9	97:11,14	175:18 188:24	sort 16:9 26:21
save 19:13 66:14	157:5 167:16	171:18 175:10	21:18,24 22:4	109:23 115:12	190:18 192:3	54:5,6,13
79:4 82:1	173:16,22	181:12 182:5,7	22:5,7,11,20	117:24 118:2	192:24	70:12 75:8
159:24	174:20,21	182:9 183:18	23:2,8 24:12	118:13,18	Sir 182:17	79:15 80:1
saw 75:18	179:18 186:1	184:21	29:3,24 33:2,8	119:10 121:25	sit 101:23	83:21 89:16
saying 9:24 11:9	secondary 18:18	seeing 74:18	33:11,14 34:5	122:8,10,13	situation 49:4	92:10,15 96:25
14:6 18:1	Secondly 186:17	92:24 191:24	34:6,10,20	178:16,18	56:19 63:11	97:6,20 100:11
21:25 41:11	section 6:8,16	seeking 29:24	35:18 36:2	179:6,11	65:1 92:5	108:16 111:9

113:22 181:11 193:4 sorts 99:11 sought 41:10 45:21 46:8 131:19 132:21 168:10 source 40:8 63:19 92:11 so-called 86:15 130:9 speak 7:13 9:22 10:11 14:7 16:4 speaks 5:19 special 48:11 specific 26:8 84:25 98:10 114:15 159:20 specifically 23:19 58:10 90:9 132:9 171:18 spectacles 55:21 64:23 83:9,10 84:1 110:23 spotted 176:15 springing 108:17 springs 108:14 108:15 111:5 stage 1:19 8:1 10:3 22:3,8 27:13 32:13,18 54:24 56:11 81:4 93:25 97:20 110:13 112:19 113:6 116:1 121:17 134:17,22 135:3,15,16 138:11 173:24 175:7 staged 111:14 stages 58:3 113:8 116:4 stance 4:15 stand 111:20 112:2 133:8 193:11 standard 75:7 standing 55:15 stands 130:22 Star 4:24 5:6 112:6,9,17,21 112:24 start 9:14 21:10 35:20 49:6 94:25 115:6 145:4 157:3 181:1 started 190:11 starters 66:7 starting 28:17 90:24 91:9 109:11 130:22 starts 2:14 51:18	127:1 149:23 182:23 state 61:16 62:5 124:22 stated 10:8 45:2 45:3 190:5 statement 130:5 statements 127:3 129:24 stating 62:4 status 77:7 statute 9:25 52:2 64:22 82:2,4 156:6 164:20 171:23 statutes 9:19 10:25 11:8 statutory 25:1 25:25 31:24 37:9 38:15 44:14,24 45:4 49:4 62:24 65:6 66:5 67:14 69:13,24 70:17,20 74:1 74:4 80:6 81:1 81:9,16,19 84:13 86:23 90:2 93:18 94:16 95:16,24 98:18 99:17,20 107:24 108:5,6 108:13 111:24 123:14 125:7 126:14 127:8,9 128:2,9,13,23 129:1 130:4 131:9 133:6 142:15 158:3,8 158:12,23 160:5,19 161:3 161:7,17 162:17,21,25 163:3 164:14 164:18 173:7 173:10 174:13 176:1 178:9,24 180:22 Stein 153:12,13 step 69:11 108:23 114:20 171:21 steps 108:23 114:21 149:22 sterling 147:10 149:4,20 150:2 154:11 165:15 166:8,13,19 167:17 168:6 169:21 170:2 171:4,8 173:8 Sterling's 124:10 stop 117:1 190:15,20 straight 32:17 straightforward	108:22 162:15 strange 25:10 105:13 straw 122:1 strengthens 68:8 stressed 33:5 stresses 32:22 stretching 49:21 strict 49:16 strictly 61:25 strikes 54:12 strive 146:11 strong 84:6 88:22 structure 22:19 66:8 structured 29:8 31:3 struggling 163:14 subject 27:16 74:14 79:6,25 84:17 87:10 110:20 116:20 116:21 117:10 123:6 143:11 150:13 164:18 subjected 6:25 submission 7:15 9:2 12:5,11 19:15 27:23 28:19 41:19 43:24 44:2,13 71:13,18 72:9 77:5 82:22 85:8,10,25 87:14,15 89:1 89:12 111:13 116:23 123:8 125:22 127:7 127:24,25 129:12 132:6 132:25 133:1 133:10 139:24 142:3 144:9 157:4,6 178:6 185:20 187:1,2 187:13 189:7 submissions 1:3 1:8,13,17 4:16 4:17,23 6:12 12:23 15:22 16:4 17:2,3,10 19:18,19,20 20:8 21:3,7 22:2 23:14,20 26:13 27:20 37:6 38:13 40:22,24 41:12 42:9 45:12 56:11 57:15,16 60:19 62:25 69:2,6 70:4 74:22 79:24 82:17,20 85:15 88:15 89:19	91:11 99:4,9 101:10 107:15 107:19 109:9 110:22 112:19 113:11,24 119:25 126:11 126:18,23 128:19 129:4 131:6 134:13 145:17 146:14 165:24 169:11 169:24 175:13 176:13,18 182:21 185:1 186:15 190:23 193:23,24 194:1,2,3 submit 2:10 6:20 10:17 11:17 16:13 25:5 35:4 38:8 41:13 48:4 49:11 64:10 65:4 66:7 69:10,21 75:11 76:21 103:16 131:2,15 136:1 161:13 165:3 167:22 175:17 177:15 187:5 188:6 189:2 191:2 submitted 2:9 7:7 9:14 11:16 12:3,10 19:16 86:1 92:13 122:5 123:5 139:23 178:9 submitting 5:12 subordinate 72:14 73:16,24 subordinated 8:13 70:11,13 70:17 72:5,6 77:18 78:15 79:9 80:4 84:11 102:17 102:18 subordination 69:6,11,13,16 69:17,24 70:16 70:20,24 71:3 71:4 72:25 73:17,22 74:3 74:5,9,10 75:13 88:16 89:4,6,10,20 89:24 90:3,6 90:10 186:8,21 187:2,8 subsequent 136:12 Subsequently 86:24 subsidiary 187:13 188:20	substance 52:8 181:6,11 182:1 substantive 60:23 61:2 157:13 substantively 147:24 sub-debt 7:4,9 7:10,18 8:4 9:3 57:11 69:3 74:23 75:4,17 80:4,14,21 89:2,11 90:2 sub-rule 58:9 170:23 171:18 succeeded 132:11 135:18 success 179:18 sue 81:4 183:13 suffer 156:1 163:11 suffered 157:9 173:13 suffers 161:2 sufficiency 31:7 sufficient 7:17 67:18 91:1 99:21 113:5 114:10 115:21 117:11 suggest 32:19,25 35:12 42:20 43:6 49:20,23 55:20,25 59:23 62:15 75:16 80:7 82:1 85:17 87:4,13 111:17 113:25 114:17 121:6 121:18 127:6 132:20 133:10 133:16 144:4 144:20,24 149:12 176:4 188:3 191:22 193:4 suggested 2:22 11:18 60:5 65:22 83:16 suggesting 106:16 137:13 suggestion 27:6 61:1 185:23 suggests 111:5 sum 80:5 96:20 150:11,24 153:1 181:13 summarise 168:13 summary 16:23 38:25 summons 29:19 30:5 sums 9:7 149:25 superseded 179:13	Supersedes 136:7 supplemental 19:20 26:12 126:22 186:15 support 19:24 41:19 68:2 75:12,16 90:20 133:10 supported 156:18 supports 26:8 186:11 suppose 21:2 59:3 84:20 104:22 119:14 122:22 supposed 169:4 supposing 97:8 supposition 88:22 Supreme 5:13 49:25 59:24 62:6 sure 4:14 10:22 11:11,12 24:12 36:17 66:22 85:9,15 105:7 109:4 122:23 129:10 146:12 149:1 161:20 189:15,22 193:12,14,16 surplus 7:9 64:22 65:11,12 65:24,25 67:2 67:8,18 71:24 81:10,14 82:6 91:2,9 93:15 95:13,22 99:14 99:20,22,24 100:9,13 104:20 135:23 135:24,25 136:1,3 140:6 140:14 141:10 160:22 161:25 165:19 186:25 surprising 27:11 31:16 117:14 119:25 120:10 120:16,19 121:1,7,8 123:3,9 174:20 175:3 survives 9:13 142:19 suspect 192:23 suspended 67:1 68:12 suspension 66:21 sweep 20:22 swell 24:4 swept 106:14,17 Swinfen 25:9 symmetry 56:18	102:24 107:7 155:3 sympathetic 51:13,20 <hr/> T tab 24:18 28:12 28:13 50:17 51:11 70:5,6,7 71:6 76:3,5,7 76:12,13 77:7 77:11 78:8,9 78:10,13 79:5 92:20 109:7 110:7 123:23 134:2 137:6,23 150:14 156:23 159:5 tact 171:25 take 4:13 6:14 8:1 10:1 17:22 22:25 23:22 28:1 47:3 54:23 69:7 89:24 96:6 123:13 130:6 134:10 139:9 146:7 150:6 151:11 162:12 162:14 170:2 174:22 taken 27:24 41:17 51:11 57:25 58:7 70:3 76:15 90:21 93:14 96:16 103:4,9 111:19,25 122:3 126:8 133:9 134:7 137:15,19 151:8 152:19 153:18 157:23 168:7,24 173:11 180:19 185:17 takes 2:19 104:23 137:10 153:20 186:24 talk 191:21 talked 60:1 talking 28:10 45:23 66:1,3 73:22 100:21 117:7 175:3 178:23,24 talks 25:10 75:24 127:19 Tea 70:12 technically 181:4 tell 12:24 78:4 87:21 119:21 126:20 127:12 Tellingly 185:23 tells 43:20
---	--	---	---	--	--	--

template 77:18 77:20 79:18 102:8,13,21 tempted 10:20 tentatively 163:17 term 84:24 terminated 89:25 terms 11:20,21 14:4 32:22 85:3 126:23 133:20 192:16 terribly 8:10 test 10:22 84:6 88:23 107:21 113:4 testator 42:17 43:15 testators 44:8 text 15:13 thank 15:1 17:3 19:5,22,22 20:11,13 30:14 31:1 45:9 68:25 79:16 102:19 110:3,8 110:11 113:3 119:13 127:16 130:7 145:12 145:15 151:15 167:13 172:13 175:10 176:14 191:5 193:17 193:18 theory 123:8 166:12 thing 12:24 38:24 50:11 86:3 136:25 137:8 155:7 190:9 things 11:12 33:2 57:14 66:9 75:15 93:15 132:17 173:4 think 5:5,7 14:4 15:12,15 16:20 22:12,21,23 24:16 26:19 28:8,14,23,25 29:18 32:13 33:14 34:4,17 35:16,21,22 36:22 39:22 42:4,11,13,14 43:21 45:20 46:7 50:2,4,7 50:12 51:9 52:17 53:7 56:17 57:15 59:1 60:5 61:7 61:14 71:10 72:24 73:2 74:13 75:22	76:2 77:14 81:7,8,10,21 85:20,23 88:3 88:23 89:19,22 90:12,16 92:14 92:19,24 94:4 94:25 95:1 96:13 97:2 101:19,24,25 101:25 107:1,5 109:7,23 111:8 112:19 113:22 115:22 123:3 123:16 124:8 125:15 128:4 130:8,15 131:18,18,24 132:20 133:10 133:24,25 135:8 137:5,21 137:22 139:6 140:2,23 141:8 141:20 142:16 143:2,2,14 145:9 147:5 149:7 153:13 158:16 164:12 166:16 169:1,4 172:18,19 173:19,25 176:15 177:2 177:24 189:16 189:21,22 190:12 191:8 192:10 thinking 125:6 thinks 63:9 79:3 third 11:14 37:22 81:11 123:3 135:14 135:16 147:20 184:2 187:10 Thirdly 21:20 186:20 thought 38:22 82:11 107:3 118:20 133:11 179:16 three 11:12 37:16 38:9 49:2 152:10 185:2 three-staged 38:8 thrust 1:17 tight 191:17 time 15:24 26:14 32:3 43:11 63:8 79:5 86:9 86:9,19,24 87:9 93:24 100:19 104:19 104:22 108:14 109:3,17 111:3 112:17 114:24 133:14 138:4,6	142:23 143:21 146:7 160:20 163:5 165:12 174:10 177:17 179:21 180:19 times 159:6 164:24 177:3 timing 103:5 165:10 174:21 tiny 18:21 title 77:8 today 5:2 toes 14:3 told 14:7 top 30:16,20 52:18 109:8 topic 79:23 130:9 tort 58:17,18 59:12 total 99:19 188:15 touch 151:7 touched 51:10 80:2 96:9 123:15,16,17 123:23 touching 152:17 touchstone 84:1 tough 185:20 trace 1:14,19 7:6 9:13 14:5,7 17:5,7,10,18 17:20,22 18:1 18:6,9,11,16 18:23 19:4,6 19:10,12,23 26:21 27:20 60:21 73:8 80:9 94:4 110:24 130:15 131:18,19 168:25 184:24 185:1,2 186:5 186:20 190:10 190:22 194:3 Trace's 7:15 14:5 69:6 73:3 112:19 132:25 190:5 trading 132:17 133:4 162:13 traditional 72:24 transcript 1:24 2:25 3:5 4:9 6:17 17:11 19:18 34:19 35:1 81:3 169:3 177:16 177:23,25 188:9 transfer 121:25 transferee 118:13 travesty 25:11 tread 14:3	treat 47:24 54:17 181:10 treated 15:7 42:1 45:14 60:25 75:17 130:16 treatment 48:8 trial 119:20 tricky 59:15 trite 62:25 Trower 1:10 5:1 5:21,23 6:11 6:20 11:23,25 12:6 16:19 20:12,15,16,21 21:2,3,4 24:10 24:22 28:13 29:12,15,17,23 30:1,4,13,16 30:20,22 31:2 33:14,18,25 34:3,8,14,17 35:19,25 36:5 36:8,13,17,21 36:25 37:2,6 37:14 38:1,6 41:6 43:13,16 43:19 44:2,7 44:12,18,21 45:1,3,10,25 46:3,7,14,19 46:22,25 47:2 47:6,23 50:4,7 50:17,19 51:2 51:15,23,25 52:17,22,25 53:13,16,21 54:9,15,23 55:2,11,15,19 55:25 56:5,10 57:1,11 59:9 59:13,16,22 60:8,11,14 61:10,17,20 62:13,15,24 65:10 67:4,9 67:20,22,24 68:5,8,16,19 68:23 69:1,5 70:7,9,23 71:3 71:10,17 72:1 72:8,22 73:1,6 73:10,19 74:12 74:15,18,22 76:2,5,7,11,13 76:15,17,19,21 77:13,16,21,25 78:3,12,17,20 78:25 79:3,20 82:22 83:7 84:21 85:2,6,8 85:21,23 86:3 87:13,19,22,25 88:3,11,14,20 89:1,9 90:9,13 90:16 91:15 92:10,22 93:2	93:6,11,14,24 94:4,20 95:1,8 95:18,20 96:1 96:16,21,24 97:6,12,20,25 99:18 100:4,6 100:16,25 101:6,8,14,18 101:19,24 102:7,16,18,20 102:23 103:8 103:20,22,25 104:6,9,15,18 105:1,5,7,12 105:16,20,23 106:3,7,10,14 106:20 107:1,9 107:11,19,24 108:4 109:2,6 109:14,21,24 110:2,4,10,13 110:22 113:2,4 113:10,13,18 114:8 116:21 116:23 117:25 118:3,8,11,15 118:18,23,25 119:8,12,15,18 119:21,24 122:3,11,15,18 122:20,22 123:3,12,23 124:3,8,15 125:4 126:8,17 126:22 127:15 127:17,21,24 128:6,10,14,20 128:24 129:3 129:11,18,21 129:25 130:3,8 130:11 131:24 132:13 133:24 134:5,7,10,20 135:7,10,12,16 135:21 136:6,8 136:13,21,24 137:3,6,12,18 137:21 138:1,6 138:9,11,14,20 138:23 139:1,4 139:10,13,19 139:21 140:9 140:22,25 141:2,4,13,17 141:19,21,24 142:1,5,8,10 142:14,19,23 143:1,5,11,14 143:24 144:4 144:15 145:2,6 145:9,13,14 146:13 160:2 169:6 175:12 175:13,14,17 177:9 179:25 180:16 181:9	185:7 186:9 188:25 189:13 189:15 190:7,9 190:15,18 191:1,4,13,18 192:9,13,23 193:4,7,12,16 193:24 194:1 Trower's 11:18 12:10 187:1 189:7 true 22:23 47:15 53:21,23 70:15 106:12 155:18 155:22 trumping 48:2,2 trumps 21:24 trust 71:4,9 72:25 73:5,17 73:24 74:5,9 74:10,17 92:16 186:18,21,21 186:23 187:8 trustee 70:16 72:10 124:24 183:1 try 78:21 118:3 trying 185:24 turn 28:10 47:13 90:13 91:24 113:10 167:5 172:18 185:11 186:16 turning 82:18 123:20 turnover 186:23 turns 26:3 34:19 35:5 185:17 two 8:12 16:11 19:17 22:18 23:15 25:8 27:2 29:9 31:4 33:18 36:8 54:7,11 56:25 58:3 59:5 63:8 66:9 75:3,14 86:4 102:7,9 102:25 103:15 103:20,21 109:24 114:11 120:1 121:3,4 129:18 141:2,6 142:4,6 147:2 155:15 158:8 158:12,14 159:25 167:2,5 168:9 169:12 173:4,9 190:15 190:21 191:4 193:5,8 two-stage 9:23 two-thirds 50:22 93:7 type 61:24 70:12 84:21 92:5 types 167:24	typos 191:25 T&N 58:18 60:18 83:22 91:5 113:23 <hr/> U ultimate 2:18 59:4 ultimately 2:13 8:25 unable 10:21 127:25 unaffected 142:16 unanswered 49:3 uncalled 178:8 uncomfortable 98:17 uncovered 169:8 underlying 34:12 35:6 48:3 64:2 undermine 23:7 36:6 undermined 45:5 53:21 underpinned 48:21 underpinning 54:14 168:11 168:23 underpins 23:6 understand 3:11 3:18 26:10 27:22,25 33:19 37:5 44:11 68:4,7 73:6 82:11 83:15 143:6,15 169:15 177:11 180:4 182:12 185:8 187:11 191:9,11 understandable 112:9 understood 14:5 53:23 85:9 87:14 113:18 undertaken 24:14 25:3 27:9,13,15 55:6 117:19 undervalued 164:20,22 undo 144:7 undoubtedly 44:7 57:21 unenforceable 64:20 Unfortunately 78:20 unincorporated 44:6 unlimited 25:23 27:10,14 35:22
---	--	--	---	--	--	---

39:1,5,19	values 162:19	waterfall 32:16	52:23 53:14	99:14 128:2	56:4,7 76:5	\$10 148:10
40:23 41:1	valuing 19:6	60:2 69:18	111:19,21	180:12 181:21	83:2 85:17	\$100 148:5 149:4
55:6,10 99:15	various 59:11	91:17,25 94:16	112:2	wording 41:16	87:4 89:12	153:23 154:4,8
99:25 104:2	109:18 146:3	way 1:19 5:10	wholly 131:15	57:23 58:22	91:10 100:7,22	154:15
108:9 114:12	151:20 192:21	7:24 8:24 12:7	Wickens 182:17	83:4 111:4,11	112:22 120:1,2	
114:13 115:10	Vaughan-Willi...	16:23 18:8	wide 57:23	126:5 135:21	121:18 122:7	0
117:1,12,19,24	51:19 52:22	21:2 24:7,14	157:20	words 9:15,23	125:22 134:1	08 121:12
118:19 119:4,9	53:7	26:23,24 27:12	wider 74:17	11:5,9 12:4	138:1 142:10	
122:8 144:22	Vested 119:16	29:7 31:2	89:13 192:16	18:4 33:4 52:4	143:17 149:13	1
188:12	vesting 119:20	32:19 33:3	Wiffin 92:23,24	67:14 72:18	164:19	1 2:20 3:16 4:5
unmaintainable	Vice 182:16	34:17,25 35:2	93:3,20	89:5 113:15	wrongful 132:17	4:15,22,25 5:7
184:17	183:8,10	36:15 37:8	Wight 64:5	126:5 128:1	133:4	5:14,25 6:17
unpaid 35:23	view 13:10 50:23	38:20 39:23	66:17 156:18	139:3 149:10	wrongly 4:19,22	11:13 15:10
82:12 86:16	73:25 76:25	41:22 42:19,21	159:20	150:3 151:3	45:21 46:8	21:25 45:21
96:6 97:5,14	80:14 83:7,12	43:19,23 45:12	wile 96:10	152:13 153:5	49:19	46:8,25 47:1,7
108:1 109:22	106:5 130:2	47:9 48:9	wills 44:8	153:18 155:4		47:9 49:12,18
115:12 179:2	174:22 184:16	49:10 50:23,25	winding 71:22	176:10	X	49:19,24 50:3
179:10 183:3	viewed 181:7	54:16 55:3	71:23 72:16	work 9:25 27:12	X 121:13 166:13	50:9 51:5 56:4
unprovable	vindicated 64:21	64:11 65:20	74:11 90:18	37:17 38:10		84:16 110:13
58:18	65:19	66:12 67:8,20	91:1 108:16	88:6 126:5	Y	112:21 113:6
unsatisfactory	Vinelott 70:19	68:9 73:5,23	157:2	152:23 163:21	years 146:11	138:15 139:3
84:3	74:7	84:15 86:20	winding-up 9:13	164:23 166:24	160:16 163:5	166:7,7,8
unsubordinated	virtue 179:19	89:9,15,19	25:25 26:6	193:2	163:19 190:15	193:23
13:13 32:15	volume 92:20	90:6,19 92:13	39:2,14 108:7	worked 26:1	190:21	1A 92:20
untouched	113:13	93:7 96:4,10	110:9 111:6	37:17 70:20	yesterday 6:4	1C 156:23
159:23 161:16	vulnerable	96:11,21 97:5	134:18 135:18	146:6		1D 113:13
unworkable	114:15	98:3,22 100:16	139:24 140:19	working 51:18	Z	150:14 176:23
148:1	W	101:9 102:24	144:23 158:5	52:12 73:22	Zacaroli 20:15	1D/94 176:24
upsides 185:18	wait 22:11 189:6	109:6 112:11	184:8,14	88:5 151:5	20:20,21	1,000 153:2,6
upwards 152:5	189:6,6	113:6 114:1	winners 165:15	works 35:9	107:13 145:8	1.89 68:13
urge 12:13	waiting 161:2	117:18 118:9	wish 2:24 56:19	40:23 49:10	145:10,16,17	10 28:13,25
185:15	waits 160:16	118:11 121:18	57:6 179:14	66:12 82:18	145:18,21,24	29:15 92:6
use 3:9 10:19	Walker 22:22	122:22 125:8	191:3	84:15 96:4	146:21 149:17	10.00 1:2
53:10 63:2	23:1 25:11	131:18,19	wished 181:24	98:23 132:19	150:6 151:14	100 86:12 92:6,7
66:21 68:23	32:22 33:3	132:2 134:11	wishing 5:19	148:15 152:22	151:16,23	148:7 152:24
69:20 73:17	38:3,7 42:5	137:15 140:2	Wolfson 1:3,4,5	153:21 176:8	152:21 153:11	154:10,19
76:25 77:19	43:19 49:15,20	142:3,20 144:1	1:8,12,16 3:3,8	world 174:9	153:17 154:1,3	161:1 188:17
82:15 155:4	177:1 178:14	146:1 151:5	3:15,18 4:2 5:9	world's 155:18	154:7,14,20,23	100p 34:24
uses 127:7,8	178:23 187:15	152:4,9,16	5:15 8:16,22	worry 16:22	154:25 155:3	159:14 188:2
158:7	187:19	162:25,25	9:7,12 10:13	137:5	156:11,14	100,000 99:23
usual 191:22	Walker's 5:8	169:8 171:7	10:17 12:2,18	worst 155:17	157:2 158:7,11	10036 50:21
	24:19 47:23	176:7 181:2,6	12:22 13:17,20	worth 22:23	158:16,19,21	101 38:16,16
V	48:23	181:11 186:8	13:22,24 14:2	24:16 59:2	159:2 160:11	39:13,25
v 2:3 10:18 12:14	want 5:21,22	189:18	14:10,13,16,24	82:18 123:20	161:9,12,23	102 31:11
23:3,17,23	9:15 12:16	ways 141:2	15:4,12,20,24	148:6 154:10	162:1,3,8,11	104 50:17
24:1,2 25:4,19	23:10 53:12	142:4,6 186:13	16:8,13,24	wouldn't 3:10	162:19,23	107 127:2 134:13
38:3,11 41:22	57:3 79:1	Webb 92:23,24	17:1,4 19:12	7:13 14:22	163:4,8,13,16	1075 141:5 142:8
41:24 42:6,11	145:6 172:18	93:2,20	28:7 30:11,15	36:20,21,22	163:22,25	11 84:19
42:21 43:8,24	176:16 189:11	Wednesday 1:1	30:25 33:14,24	88:23 173:18	164:3,7,12,16	11.06 15:16
44:19 48:3	189:13,16,20	week 193:11,14	37:10 40:25	wound 4:3	165:1,8 166:2	11.11 15:16
62:5 64:5 66:7	190:4,9 192:24	weight 111:13	41:10,19 45:20	121:14 183:2	166:12,23	16:20
66:17 70:2,9	193:15	went 4:12 15:13	46:7 47:11	Wright 2:21	167:10,12,14	11.30 57:8
73:25 92:23,24	wanted 45:8	85:10,16	50:8 51:8 54:4	4:18,25	168:9,18 169:4	11.35 57:10
93:2,20 146:13	86:3 89:1	121:11 130:17	56:17,23 90:16	writing 4:21	169:22 170:5,8	115 12:19
153:12,13	172:14 180:14	133:24 134:22	110:24 165:25	5:24 15:20	170:11,16,18	117 49:1
156:18 159:20	189:8 191:6	138:1 139:8	167:1 189:10	16:2 189:20	170:22,24	12.2 60:1
valuation 6:13	wants 11:23	170:8 171:15	189:12 193:23	written 15:21	171:5,10,15,19	12.3 58:11
32:7 166:13	149:1 167:5	weren't 166:2	Wolfson's 22:17	69:25 99:4	172:7,9,12,16	12.3(3) 146:17
value 18:23	warm-up 1:10	West 112:1,8,13	33:10 37:6	126:10 127:25	172:20,24	12.32 58:7
64:12 119:1,2	Warrant 183:22	whatsoever	42:9	134:13 142:3	173:4,15,19,23	12.33 58:9
122:4 150:23	184:6	187:6	wonder 78:17	wrong 5:14	174:19 175:11	12.58 102:4
153:5 160:8,11	wasn't 4:10 5:1	whilst 17:15	wondering	15:10 21:15	176:12 189:9	125 32:12
160:12 163:2,2	47:15,16 53:13	White 4:24 5:6	117:22 172:25	22:3 34:2 35:5		129 32:12 34:18
164:20 188:11	55:1 87:17	112:6,9,17,21	word 66:22,23	38:21 41:14	\$	35:1
valued 154:9	182:6	112:24	69:21 72:20	47:24 48:8	\$1,000 166:7,21	13 19:20 37:23
162:23,24		Whitehouse	74:7 79:24	51:7 55:23		

38:1	151:3	4 1:24 3:2,3 7:6	7D 89:13
13.1 79:6	2.85(8) 153:9	79:6,11	7E 89:13,20,23
13.12 57:23	169:13 170:3	4.35 193:20	90:4
13.12.2 59:1	2.86 149:24	4.7.3 132:7	70 148:6 149:5
13.2 58:16	2.88 63:24 64:23	4.7.3(8) 132:9	154:5 188:10
14 121:12 167:6	67:3 68:13	4.73(8) 139:15	188:19
167:10	82:7 83:14	4.90 41:17	72.4F 60:11
147 153:4	99:14,24	40 70:3 149:3	74 6:8 7:4 8:3
149 38:16,17,23	134:16,23	154:3	17:15 57:12
39:3,13,14,18	149:24	41 123:23	90:14,17,22
105:5,6,25	2.88(7) 12:7	42 51:11	91:16,23 94:5
106:3 144:18	125:18 135:3,3	44 48:22,24	94:9,14,23
144:19 175:14	140:5,16 141:1		95:25 98:19,23
175:18	2.88.7 64:14		99:3,8 100:3
15 29:1 70:4	65:16,17 93:16	5	101:12 107:16
121:13 137:6	20 1:1,25 3:5	5 4:9 76:5,7,12	107:20 120:5,8
137:23	163:5 188:22	76:13 77:7	120:19 121:16
150 6:16	2003 138:18	79:6,11 89:22	125:16,23
150(1) 31:9,13	2005 138:25	158:11 161:22	126:14 128:11
152 39:23	152:8	5A 71:9	178:9 179:3,8
16 1:24 158:13	2009 152:25	5A(ii) 71:6 72:5	179:9,23 180:2
158:14	2010 138:16	72:13	74.2F 61:24
163 1:24	2013 1:1	5.1A 88:18,22	68:20 96:3,5,5
164 1:25 3:1,4	2018 153:2,9	5.1B 87:17 88:4	75 17:1 109:24
165 7:6	21 159:6 193:24	88:21	110:5 124:1
169 7:6	22 167:7,12	5.2 85:23	77 111:1 113:7
17 79:7	228(7) 141:9	5.2A 82:17 83:1	113:13
175 69:19 194:1	24 157:5	50 8:12 29:1	78 17:2
176 194:2	25 156:24	188:12,14	
178 124:9	286 155:7	51 38:7 48:9 49:6	8
18 3:4 25:11	288 181:19	52 24:20 32:23	8 160:23 171:18
134:2	288(1) 179:21	33:4 47:14	80 109:2 111:17
185 194:3	288(7) 12:11	178:13	82 124:20
1862 38:16 124:1		528 29:19	82(4) 123:25
189 10:10 12:8,9	3	53 37:14 38:7	125:9
12:12 63:24	3 4:9 32:12 76:15	533 30:15	826B 177:15
64:23 69:20	78:9 79:10	534 30:13,14,16	85,250 153:6
74:14,20 82:7	110:7 135:3	30:20,21	86 6:17 128:9,10
83:14 91:8	169:1 186:15	536 28:8,18	87 134:7
131:4 132:2	3A 76:2,12,13	54 78:16,18	89 127:15,16
134:15,17	3B 133:25	575 92:22	128:15
189.2 71:24 72:7	3.10 143:8	576 93:3	
72:17 93:16	3.20 143:10	582 109:7,8	9
1892 140:18	30 148:7 188:17		90 150:14 176:25
1986 38:17	300 146:11	6	93 19:19
1989 78:7	32 151:19,20	6 48:25 76:3	94 24:18
	33 152:8	77:11 78:10,13	94.34 153:1,3,4
2	34 92:20 109:7	79:5 170:23	98 48:10,20 49:1
2 5:6 34:18 35:1	149:8 152:8	60 70:24 71:4,5	
47:2 50:6 78:8	345 52:20	61 35:3	
79:6 110:7	346 51:19,24	63 61:8	
112:16,22,25	347 53:6,8	630 182:23	
134:2,22 137:6	35 152:21	631 183:17	
137:25 157:6	35A 63:13	633 184:16	
2C 79:9	352 52:18,18	64 75:23 76:7,13	
2(a) 175:20	53:17	78:18	
2.05 101:23	36 126:22 127:1	642 50:19	
102:3,6	149:6,20	644 50:19,21	
2.105 87:7	153:11 154:3,9	65 71:12 156:23	
150:10 151:5	154:10,16,20	65B 71:13	
152:14	154:21	68 70:5,7	
2.85 41:16	38 109:24,24		
152:13 169:13	39 61:15	7	
2.85(6) 149:23		7 61:22 71:6	
153:18	4	121:24 134:23	
2.85(7) 150:6,8		138:11,12,15	