

<p>1 Monday, 9 March 2015 2 (10.30 am) 3 CMC HEARING 4 MR JUSTICE DAVID RICHARDS: Mr Trower. 5 MR TROWER: My Lord, your Lordship has before you today the 6 CMC in relation to tranches B and C, 2 and 3. I was 7 though going to start with just wrapping up one or two 8 points in relation to tranche A which we also dealt with 9 in the skeleton arguments and it seemed sensible to 10 start with that. They obviously were the interest and 11 foreign currency conversion issues. 12 What we have done is produced for your Lordship 13 a note on the agreed issues. 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR TROWER: Which deals with those issues which where the 16 parties are ad idem as to the answer. My Lord, can 17 I say just so it is clear, we're not actually inviting 18 your Lordship to hear and now grant declarations or give 19 directions. The reason we formulated it in this way was 20 to try and get as much certainty as we could in relation 21 to what your Lordship would be asked to do in due course 22 once you've considered the other points. 23 My Lord, that note of agreed issues deals with 24 issues 1, 3, 5, sub-issues of 5, and 29. 25 MR JUSTICE DAVID RICHARDS: Yes.</p> <p style="text-align: center;">Page 1</p>	<p>1 direction. 2 So that's all I was going to say about issue 30. It 3 may be that Mr Zacaroli wants to add to that but that's 4 sufficient for my purposes. 5 There are then the parties' positions in relation to 6 issues 31, 31 and 33. 31 is whether a currency a 7 conversion claim can arise in relation to particular 8 forms of master agreement. Now, the position was, so 9 far as 31 is concerned the position was that the Senior 10 Creditor Group and Wentworth were in dispute as to 11 whether the issue was capable of being determined at all 12 as part of this application given the state of the 13 evidence. 14 Now, the joint administrators have now determined 15 this question is of actually no material significance in 16 any event and doesn't need to be determined. We are 17 intending to post a statement to that effect on the 18 website but our present position is in the light of that 19 your Lordship doesn't need to determine question 31. 20 As far as question 32 is concerned that is whether 21 if the answer to 31 is "no", a currency conversion claim 22 can arise in relation to those master agreements 23 referred to, and everyone's agreed that the issue is not 24 capable of being dealt with on this application. So 25 again we're not inviting your Lordship to answer</p> <p style="text-align: center;">Page 3</p>
<p>1 MR TROWER: And then behind it there is the form of proposed 2 declaration and I think, as I understand it, so far as 3 the parties are concerned on 1, 3, 5 and 29 there aren't 4 any points for your Lordship in relation to either of 5 the note or the form. It may be that they would wish to 6 say something else about the issues before your Lordship 7 today but I'll leave that to them. 8 My Lord, it was originally intended that issue 30 9 should also appear in the note of agreed issues and 10 that's the issue of whether there's a non-provable claim 11 where the interest applying a rate applicable apart from 12 the administration on a sterling admitted claim when 13 converted into the relevant foreign currency is less 14 than the amount of interest which would accrue applying 15 a rate applicable to the claim apart from the 16 administration to the original FCC. Now, everyone is 17 agreed on the answer, that such a claim does exist, but 18 Wentworths have suggested that the formulation of the 19 declaration or the direction might be better left until 20 your Lordship has dealt with issues 2 and 39. And we 21 for our part agree that that's a sensible approach and 22 so we haven't suggested at the moment that it's 23 appropriate for the parties to get to the stage of 24 an agreed formulation of what the answer is on issue 30 25 and how that declaration should be reflected in a</p> <p style="text-align: center;">Page 2</p>	<p>1 question 32, and there will be a posting on the website 2 as yet -- I think there already has been in relation to 3 32. As yet there's no response. If there is a response 4 we'll deal with it. 5 MR JUSTICE DAVID RICHARDS: On the face of it I would have 6 thought that 32 would fall with 31. 7 MR TROWER: Yes, it does. 8 And then issue 33 is the transferee issue in 9 relation to -- 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR TROWER: -- CCCs. Now, the position there is the joint 12 administrators have been unable to identify any cases in 13 which the issue arises and so for their part, again, 14 they don't think it's appropriate for the court to be 15 asked to answer the question. And again we put 16 a posting on the website in relation to that and we'll 17 wait to see what happens. But our present position is 18 that that question doesn't need to be answered, subject 19 to any response from the website. 20 My Lord, then the only other question that -- no, 21 there are two more questions you just need to deal with 22 in relation to tranche A. The first relates to issue 23 37, and there is a separate note on issue 37, which 24 I hope your Lordship has, it came in with our skeleton. 25 MR JUSTICE DAVID RICHARDS: Yes. I see it.</p> <p style="text-align: center;">Page 4</p>

1 MR TROWER: This is the one in relation to agreements that
 2 were entered into subsequent to the administration date
 3 in relation to the settlement of claims where the claims
 4 fell into two parts or more than one part anyway, and
 5 there are also sub-issues that arise in relation to the
 6 application of set-off.
 7 The places that your Lordship just needs to go to
 8 for this is -- we dealt with them briefly in paragraph 6
 9 and 18 of our skeleton for this hearing. Then there's
 10 the note itself.
 11 MR JUSTICE DAVID RICHARDS: Yes.
 12 MR TROWER: Annexed to the note is a suggested order in
 13 relation to what the court should be invited to declare
 14 in relation to issue 37. Broadly speaking, certainly so
 15 far as the first part of the order is concerned, I don't
 16 think there's any issue between the parties in relation
 17 to how that should work.
 18 The issue that arises insofar as it's an issue
 19 arises in relation to the set-off element which is dealt
 20 with in paragraph 4 of the order, and can I just ask
 21 your Lordship, the sensible way of dealing with this is
 22 for your Lordship to turn back to the note which
 23 describes the sub-issue, which is the set-off sub-issue
 24 at paragraph 9.
 25 MR JUSTICE DAVID RICHARDS: Right. Let me just ...
 Page 5

1 MR TROWER: 9 of the note.
 2 MR JUSTICE DAVID RICHARDS: Beginning --
 3 MR TROWER: If your Lordship would just read that.
 4 MR JUSTICE DAVID RICHARDS: I'll read it. (Pause)
 5 MR TROWER: Then if your Lordship would move on to
 6 paragraph 15 of the note. (Pause)
 7 MR JUSTICE DAVID RICHARDS: I suppose I had better read
 8 paragraph 10 as well. Paragraph 15 refers back to
 9 paragraph 10. (Pause) I can see why that approach is
 10 adopted.
 11 MR TROWER: Then just so -- because there are three points
 12 we just need to touch on -- the way that sub-issue is
 13 dealt with in the proposed order, a draft order is
 14 behind the note, or it is in my file --
 15 MR JUSTICE DAVID RICHARDS: Yes, it is.
 16 MR TROWER: The first bit that deals with the non-settled
 17 point is paragraph 1.
 18 MR JUSTICE DAVID RICHARDS: That reflects paragraph 10.
 19 MR TROWER: That's right and then paragraph 4 reflects the
 20 position in relation to or is intended to reflect the
 21 position in relation to set-off.
 22 MR JUSTICE DAVID RICHARDS: Okay I'll read that. (Pause)
 23 Yes, but subparagraph 3 -- so 4(3).
 24 MR TROWER: Yes.
 25 MR JUSTICE DAVID RICHARDS: That follows on from (2) doesn't
 Page 6

1 it?
 2 MR TROWER: From 4(2).
 3 MR JUSTICE DAVID RICHARDS: Yes.
 4 MR TROWER: Yes.
 5 MR JUSTICE DAVID RICHARDS: Although it doesn't expressly
 6 say so.
 7 MR TROWER: No, and the other point about the drafting of
 8 this, and I think we accept that we could do with
 9 a little bit of tweaking on this, the other point about
 10 the drafting is that what's intended within (2) and (3)
 11 is to encapsulate the circumstances in which there
 12 hasn't been an agreement --
 13 MR JUSTICE DAVID RICHARDS: Yes.
 14 MR TROWER: -- and what you inject into the equation. It's
 15 not intended of itself to say anything at all one way or
 16 the other about what would have happened in
 17 circumstances in which there was an agreement.
 18 MR JUSTICE DAVID RICHARDS: I follow.
 19 MR TROWER: And it's not entirely clear that that's the way
 20 the drafting works but I think that's the essence of
 21 what's intended to be captured by that and we will have
 22 another go at getting that one right.
 23 MR JUSTICE DAVID RICHARDS: Does (4) apply to circumstances
 24 in (1) as well as (2)?
 25 MR TROWER: I think it does, yes.
 Page 7

1 MR JUSTICE DAVID RICHARDS: It may be helpful just when you
 2 are having a re-think about it to make clear (2) and (3)
 3 go together. One point that was raised I think in the
 4 note was the question of as at what date set-off took
 5 place. But is there any choice?
 6 MR TROWER: The set-off takes effect as at the date of the
 7 notice.
 8 MR JUSTICE DAVID RICHARDS: Yes.
 9 MR TROWER: And this gives rise to a question in relation
 10 to -- but it takes into account the claims as at the
 11 commencement date.
 12 MR JUSTICE DAVID RICHARDS: Yes.
 13 MR TROWER: Which gives rise to a point that's raised in
 14 Mr Dicker's skeleton argument, which I think I need to
 15 deal with which is the second point I wanted to draw to
 16 your Lordship's attention on this. It's his skeleton
 17 argument for the issues themselves, ie in volume 6 of
 18 the trial bundle at tab 1, paragraphs 44(1) and 44(2).
 19 I think the easiest way to deal with this is if
 20 your Lordship would read 44(1) and 44(2).
 21 MR JUSTICE DAVID RICHARDS: Yes.
 22 MR TROWER: The issue arises in relation to the
 23 subparagraphs (4) and (5) of 442.
 24 MR JUSTICE DAVID RICHARDS: Yes (Pause) Yes I have read
 25 that.
 Page 8

1 MR TROWER: Just before I explain what we say the position
 2 is, the final thing I want to show your Lordship is
 3 a letter from Freshfields, which is in the
 4 correspondence bundle of 8 March, it's the very last
 5 letter in my bundle, pages 128 and 130.
 6 MR JUSTICE DAVID RICHARDS: Yes.
 7 MR TROWER: Would your Lordship just read that letter?
 8 MR JUSTICE DAVID RICHARDS: Yes. (Pause) Yes.
 9 MR TROWER: The point that's made by Freshfields on page 2
 10 of their letter is the point I've told your Lordship
 11 about in relation to the precise drafting of 4(2) and
 12 (3). The point on page 3 of their letter deals with
 13 paragraphs 442(4) and (5) of their skeleton argument.
 14 MR JUSTICE DAVID RICHARDS: Just to be clear, because no
 15 claims were agreed before the administrators gave notice
 16 of proposed distribution on 4 December 2009 then the
 17 mandatory set-off date applies.
 18 MR TROWER: The mandatory set-off date applies.
 19 MR JUSTICE DAVID RICHARDS: That clarifies that. I'll just
 20 re-read 442 ... (Pause) Right. So what they say is ...
 21 MR TROWER: They deal with it on page 130 (Pause).
 22 MR JUSTICE DAVID RICHARDS: Yes.
 23 MR TROWER: The administrator's present position in relation
 24 to this as your Lordship will have seen from the note
 25 and from what's said in the Freshfields letter is that

Page 9

1 they don't conceive that there was actually any
 2 adversarial argument on the existence of a currency
 3 conversion claim in these circumstances. And they are
 4 a little bit concerned at the moment, and I don't think
 5 Wentworth addresses this point anywhere, and it's
 6 slightly come in by the back door in relation to issue
 7 37, and they're a little bit concerned as to what the
 8 position may in fact be in relation to this. They
 9 haven't actually formulated their own position on it.
 10 Now, it may be that a direction will be required in
 11 due course in relation to this issue. We certainly
 12 don't accept, although we see how the argument is put by
 13 the Senior Creditor Group that it's the only way of
 14 looking at it, and we need to raise it because it may be
 15 that this is a point that has to come back for further
 16 argument.
 17 MR JUSTICE DAVID RICHARDS: Right.
 18 MR TROWER: It will slightly depend on what Wentworth's
 19 position in relation to it is but it's important that it
 20 shouldn't sort of be thought to have slipped in through
 21 the back door under the guise of the determination of
 22 issue 37.
 23 MR JUSTICE DAVID RICHARDS: I follow.
 24 MR TROWER: My Lord, the only other point that's been raised
 25 by the FCG in relation to issue 37 is simply this: They

Page 10

1 are concerned that when reaching a determination in
 2 relation to the question of how attribution ought to be
 3 treated for the purposes of the main and the sub-issue
 4 in relation to issue 37, that the joint administrators
 5 do ensure that they take into account all the available
 6 evidence when deciding whether or not there was
 7 an agreement and so on and so forth.
 8 One thing I ought to make clear is that our position
 9 is that in the light of the agreement that the parties
 10 have reached it is plain that what needs to be taken
 11 into account is what was made available to the
 12 administrators at the time the agreement was reached, ie
 13 it can only be what was there at the time. We can't
 14 take into account any new evidence that might come into
 15 account subsequent to the date of the agreement. But
 16 subject to that, yes we will consult to make sure that
 17 we have taken into account all the evidence that was
 18 available to us at the time for the purposes of
 19 determining the answer to question 37. So I hope that
 20 deals with the point that I think Mr Dicker was going to
 21 make in relation to issue 37.
 22 MR JUSTICE DAVID RICHARDS: Right.
 23 MR TROWER: My Lord, the only other tranche A issue that I'm
 24 aware of is the magnificent leap year issue which
 25 your Lordship now has another note on.

Page 11

1 MR JUSTICE DAVID RICHARDS: Yes.
 2 MR TROWER: And we've considered the case of Harrahill. One
 3 thing that has become apparent as a result of the
 4 exchange of notes is that it does appear to be the case
 5 that the issue between the parties has crystallised into
 6 two -- well two ways of thinking about it. The first is
 7 what if any assistance your Lordship gets from this case
 8 of Harrahill. But the second is what is the true nature
 9 of the dispute based on Harrahill. And the way we would
 10 characterise the dispute is simply this. That if you
 11 apply the approach that we say should be adopted you
 12 take 8 per cent per annum of a 365-day year and
 13 8 per cent per annum of a 366 day year and so when
 14 you're reducing that per annum to a per diem rate the
 15 per diem rate will be different in an ordinary year from
 16 a leap year because it will be a slightly smaller rate
 17 in the leap year because there's 366 days, the per diem
 18 rate. Mr Smith's case is that actually you take the 365
 19 day year for calculating the per diem rate for both
 20 ordinary years and leap years and the consequence of
 21 that is that you get an extra day's interest in a leap
 22 year.
 23 MR JUSTICE DAVID RICHARDS: Yes.
 24 MR TROWER: And that is the way the issue is crystallised on
 25 the back of the Harrahill case. Our submission actually

Page 12

1 at the end of the day boils down to the fact that the
 2 Harrahill case, it appears to decide that you get
 3 an extra day's interest in a leap year; we respectfully
 4 suggest that that simply does not work as a matter of
 5 construction of our legislation and the reason in short
 6 order we say it doesn't work as a matter of our
 7 legislation is what you are entitled to under the
 8 statute is 8 per cent per annum.
 9 MR JUSTICE DAVID RICHARDS: Where is this?
 10 MR TROWER: Does your Lordship have the bundles from the
 11 previous hearing?
 12 MR JUSTICE DAVID RICHARDS: Yes. I have them all here.
 13 MR TROWER: It's in 3A I think, the Judgments Act, tab 11.
 14 MR JUSTICE DAVID RICHARDS: Thank you.
 15 MR TROWER: I think it's actually I think it's, having said
 16 that I think it's -- there is somewhere in the bundles
 17 and I'll find it in just a moment or ask someone to,
 18 there's an updated version of it because all we have
 19 behind 11 is the as enacted but this particular bit of
 20 the wording hasn't changed and:
 21 "Be it enacted [it's section 17, page 2 of 2 print]
 22 that every judgment debt shall carry interest at the
 23 rate of £4 per centum per annum from the date of
 24 entering into judgment."
 25 MR JUSTICE DAVID RICHARDS: Sorry, I'm looking at
 Page 13

1 a different one in tab 11 then.
 2 MR TROWER: 3A?
 3 MR JUSTICE DAVID RICHARDS: Because the tab 11 I have is the
 4 version in force April 26/1999.
 5 MR TROWER: Your Lordship has the right one, for some
 6 strange reason I don't.
 7 MR JUSTICE DAVID RICHARDS: "Every judgment shall carry
 8 interest at the rate of £8 per centum per annum from
 9 such time as shall be prescribed by rules of court."
 10 CLAIMANT: Yes, so it's the pounds per centum per annum that
 11 we rely on and it's 8 per centum and the effect of
 12 Mr Smith's construction is that actually you're getting
 13 8.002 per centum per annum --
 14 MR JUSTICE DAVID RICHARDS: For a leap year?
 15 MR TROWER: For a leap year.
 16 MR JUSTICE DAVID RICHARDS: No, sorry, yes, I follow the
 17 point. I haven't -- I have read his original skeleton
 18 and the references to Harrahill. I'm not sure
 19 I actually have read all the new notes which is rather
 20 dumb. Mr Smith refers to an article which has appeared
 21 in successive editions of the Law Society Gazette and
 22 also a Bank of England document, are they in the --
 23 MR TROWER: They're in the bundles. Your Lordship has
 24 those. They're in the additional materials bundle,
 25 I think it's 4.
 Page 14

1 MR JUSTICE DAVID RICHARDS: That is fine. It's a very
 2 puzzling issue in a way.
 3 MR TROWER: Yes.
 4 MR JUSTICE DAVID RICHARDS: It's puzzling too that it has
 5 never come up before.
 6 MR TROWER: It may be that it's never been worth anyone's
 7 while. If you look at the Harrahill case it's quite
 8 bizarre although the judge devotes a couple of pages in
 9 his judgment I think it made about £2 difference.
 10 MR JUSTICE DAVID RICHARDS: I see.
 11 MR TROWER: So it is perhaps not surprising that it doesn't
 12 come up very often.
 13 MR JUSTICE DAVID RICHARDS: I mean it could, as I remarked
 14 last time I think at the last hearing it could make
 15 quite a difference here.
 16 MR TROWER: It could.
 17 MR JUSTICE DAVID RICHARDS: It's helpful sometimes to think
 18 of some examples and one that occurred to me which you
 19 might like to meet is this: that if a claimant enters
 20 judgment on 1 June 2015 and it's paid on 1 August 2015,
 21 he will get pounds X judgment rate interest.
 22 MR TROWER: Yes.
 23 MR JUSTICE DAVID RICHARDS: If he enters judgment on
 24 1 June 2016 and it's paid on 1 August 2016 he will get
 25 slightly less.
 Page 15

1 MR TROWER: Yes, and that is a function of the per annum
 2 calculation concept.
 3 MR JUSTICE DAVID RICHARDS: But it's a strange result isn't
 4 it?
 5 MR TROWER: Well, it's not as strange we would respectfully
 6 suggest as the result that -- effectively what Mr Smith
 7 has done is he's converted from a per annum to
 8 a per diem and then back up again to get to a different
 9 annum is what he's actually done. But I accept that.
 10 It all flows from --
 11 MR JUSTICE DAVID RICHARDS: You would say well if the
 12 judgment is outstanding for a whole year the 8 per cent
 13 per annum means that -- if it's outstanding for the
 14 whole of 2012, then you get slightly more than
 15 8 per cent.
 16 MR TROWER: Yes you do, which is contrary to the statute we
 17 would say. The problem with this flows from the need to
 18 reduce to a per diem rate in order to calculate for part
 19 of the year otherwise we respectfully suggest there
 20 wouldn't be an argument at all. If you were simply
 21 looking at whole years the answer would be obvious.
 22 MR JUSTICE DAVID RICHARDS: I see that. But as you say --
 23 yes I see. It may depend on what the import of the
 24 words "at the rate of" is.
 25 MR TROWER: Yes.
 Page 16

<p>1 MR JUSTICE DAVID RICHARDS: I see the debate. 2 MR TROWER: So what your Lordship has in the bundle is our 3 further note and the reply note from York as they -- 4 MR JUSTICE DAVID RICHARDS: Thank you. And the reply 5 note ... Yes, thank you. 6 MR TROWER: My Lord, I'm very much in your Lordship's hands 7 I could either now sit down and let others talk or say 8 anything they want to on tranche A but I could go 9 straight on to -- 10 MR JUSTICE DAVID RICHARDS: Let's deal with anything on 11 tranche A. I think that would be convenient Mr. 12 Dicker. 13 MR DICKER: My Lord, a couple of very short points. First 14 of all so far as the note on agreed issues is concerned, 15 one point in relation to issue 3, if your Lordship goes 16 to the note on agreed issues, it's paragraph 7. 17 MR JUSTICE DAVID RICHARDS: Just give me a moment. Yes 18 MR DICKER: Paragraph 7: 19 "The parties consider the answer to issue 3 is as 20 follows and invite the court to give directions 21 accordingly. The words 'the rate applicable to the debt 22 apart from the administration in ...(Reading to the 23 words)... interest accrues on a debt." 24 My Lord, just to remind your Lordship that although 25 the parties agree on that summary they disagree as to</p> <p style="text-align: center;">Page 17</p>	<p>1 a form of wording which should be incorporated in the 2 draft order 37, I'm not sure that that wording is agreed 3 but I'm sure the parties could come up with something 4 sensible to reflect it. So that's that point. 5 The next point in relation to issue 37, again 6 mentioned by my learned friend, concerns the operation 7 of set-off, given that there were no agreed claims for 8 the notice of intention to distribute. Your Lordship's 9 seen the letter and there is nothing I think I need to 10 add in relation to that. 11 So far as the final point which concern 12 paragraph 442(4) and (5) of our skeleton, my Lord, the 13 administrators identified that as a sub-issue. We dealt 14 with it in our skeleton argument below. There was no 15 response from any other party but, my Lord, obviously if 16 the administrators think that insufficient attention was 17 paid to it at the hearing and there may need to be 18 further argument in relation to it then so be it. At 19 the moment we think that is the correct position. And 20 I have nothing else I think in relation to tranche A. 21 MR JUSTICE DAVID RICHARDS: Thank you very much 22 Mr Smith. 23 MR SMITH: My Lord, just very quickly on the leap year 24 point. My Lord, obviously the Judgments Act provides 25 for interest at a per annum rate but that's the rate</p> <p style="text-align: center;">Page 19</p>
<p>1 what in fact it means. 2 MR JUSTICE DAVID RICHARDS: Yes, I follow. 3 MR DICKER: My Lord, it's because of that we wonder whether 4 it's necessarily sensible for your Lordship to give 5 directions at this stage in relation to that issue. 6 Unless and until your Lordship has actually ruled on 7 issues 2 and 3. 8 MR JUSTICE DAVID RICHARDS: Yes. I'm certainly not going to 9 make any declarations today. 10 MR DICKER: No, and I don't think my learned friend was 11 inviting your Lordship to. 12 MR JUSTICE DAVID RICHARDS: He made clear he wasn't asking 13 me to, no. 14 MR DICKER: So that's the first. The second are three 15 points in relation to question 37. The first point is 16 the consultation point. Just so your Lordship knows how 17 we put it in our skeleton argument for the last trial. 18 If your Lordship goes to our skeleton argument it's 19 page 158 and the footnote at the bottom, very short it 20 says: 21 "It would plainly be sensible for the administrators 22 to ...(Reading to the words)... are identified and 23 considered by the administrators." 24 That's what we thought was sensible. As we 25 understand it my learned friend agrees. We suggested</p> <p style="text-align: center;">Page 18</p>	<p>1 and, my Lord, in our submission when it comes to be 2 applied the way that is done is by converting the annual 3 rate into the daily rate. Now that seems to be common 4 ground between the parties, that's what the 5 administrator say in their on position paper at 6 paragraph 8. And if one is approaching it in that way 7 then in our submission the daily rate ought to be the 8 same rate irrespective of whether or not it was a leap 9 year. In our submission that reflects, what was decided 10 in Harrahill reflects the practice in the banking 11 markets as per the Bank of England document and it 12 reflects what appears what appears to be the position in 13 relation to damages in personal injury claims, which is 14 the Law Society Gazette article. So that is all I would 15 add on that point. 16 MR JUSTICE DAVID RICHARDS: Thank you very much, Mr Smith 17 Mr Zacaroli. 18 MR ZACAROLI: A couple of short points on tranche A. Issue 19 3 we agree with the comments that our friend Mr Dicker 20 made and my Lord is waiting anyway until he has decided 21 issues 2 and 3 before making any declaration on that. 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR ZACAROLI: Issue 30 I think we would say the point goes 24 slightly further than the formulation of the issue as 25 Mr Trower put it, recognising the tension between that</p> <p style="text-align: center;">Page 20</p>

1 and 39 if we are right on 39. If we are wrong on 39 no
 2 problem but if we are right there is clearly a tension
 3 and therefore sensibly delayed until my Lord determines
 4 issue 39.
 5 Issue 31, which we accept is not for determination
 6 now, I just mention this, that my clients remain
 7 surprised that the point isn't of wider import across
 8 the estate and I will continue to probe the
 9 administrators on certain questions they have in
 10 relation to that so it might be raised again but at the
 11 moment we accept that it's not part of the proceedings,
 12 that is all I am saying.
 13 MR JUSTICE DAVID RICHARDS: Thank you very much.
 14 Yes, Mr Trower. Moving on to tranche B.
 15 MR TROWER: Yes. Post administration contracts is what
 16 tranche B is all about. What we're doing in tranche B,
 17 my Lord, is the application notice is behind tab 1.
 18 We're doing 9, 34, 35, 36 and 38.
 19 MR JUSTICE DAVID RICHARDS: Yes.
 20 MR TROWER: 9, I don't think there's any need to pause on
 21 and there are no issues that arise in relation to it for
 22 the purposes of today.
 23 MR JUSTICE DAVID RICHARDS: Yes.
 24 MR TROWER: 34 and 35 deal with the impact of the CRA and
 25 the CDDs and in particular their release provisions on
 Page 21

1 currency conversion debts under 34 and statutory
 2 interest under 35. Issue 36 is of course whether any
 3 releases should in the circumstances be enforced.
 4 At the last CMC that we had in November
 5 your Lordship gave directions in relation to evidence
 6 for this tranche and since then the evidence that's come
 7 in is Mr Pearson's 7th witness statement and Mr Copley's
 8 first witness statement which were provided by the joint
 9 administrators in compliance with paragraph 4 of that
 10 order. There has then been some evidence that's come in
 11 from the respondents on these issues, which are
 12 Goldschmid, Ryan, Browning, which your Lordship also has
 13 in the CMC bundle, two from Wentworth and one from the
 14 Senior Creditor Group.
 15 The other direction that went to these issues that
 16 was made by your Lordship at the hearing in November
 17 related to a draft scenarios paper. Now, the position
 18 in relation to that is that scenarios paper process is
 19 no longer considered by the parties to be a very
 20 sensible way of proceeding. Essentially there was an
 21 issue about the process for preparing it. I don't think
 22 we need to look back at anything in relation to that now
 23 because matters have been slightly overtaken by
 24 a suggestion that was initiated in a Freshfields letter
 25 of 27 February in which they said that issue 36 should
 Page 22

1 be limited to a very defined and more precise generic
 2 set of circumstances which rendered the whole process
 3 that had been thought as being appropriate under the
 4 scenarios paper something that I think everyone accepts
 5 is not sensible now and doesn't really advance matters
 6 very much further.
 7 So that's where we are in relation to the directions
 8 that were made on the last occasion. Where we now are
 9 is that most of the questions I think which
 10 your Lordship is going to be asked to consider now
 11 relate to issue 36, ie whether or not the agreement
 12 ought to be enforced if it did operate as a release. Or
 13 either of the agreements ought to be enforced if they
 14 did operate as a release. But just before we go there
 15 there's one issue on -- one part of issue 34 that I just
 16 need to draw to your Lordship's attention. If we could
 17 turn up issue 34.
 18 MR JUSTICE DAVID RICHARDS: Yes.
 19 MR TROWER: Which is:
 20 "Whether a creditor's currency conversion claim has
 21 been released in circumstances in which the creditor
 22 entered into a foreign currency CDD incorporating a
 23 release clause, a sterling CDD incorporating a release
 24 clause or the CRA."
 25 Now, what the joint administrators are suggesting is
 Page 23

1 that the reference to "creditor's currency conversion
 2 claim" should be expanded to include any other
 3 non-provable claim and your Lordship might have seen
 4 reference to that in the skeletons and the
 5 correspondence. I think everyone agrees that --
 6 Wentworth certainly agree that that's sensible. I think
 7 the FCG wanted to know what other non-provable claim we
 8 had in mind. The other non-provable claim we had in
 9 mind was any non-provable claim that arises as a result
 10 of the circumstances that had been argued before
 11 your Lordship on the tranche A hearing. We just wanted
 12 to make sure such non-provable claims as there might be
 13 in the light of the way the argument has gone generally
 14 in relation to these arguments are covered by this
 15 provision.
 16 MR JUSTICE DAVID RICHARDS: Yes.
 17 MR TROWER: So that's the first -- the rather narrow issue
 18 that arises in relation to issue 34.
 19 There is a debate on issues 34 and 35 as to what
 20 evidence ought to be admissible in relation to issues 34
 21 and 35 as factual matrix evidence to assist the court in
 22 construction points that arise under questions 34 and
 23 35.
 24 MR JUSTICE DAVID RICHARDS: Yes.
 25 MR TROWER: What the joint administrators ultimately
 Page 24

<p>1 suggest, although if I can sort of park the point 2 without elaborating on it too much until we have looked 3 at issue 36, what the joint administrators suggest is 4 that they are content to try to produce a statement of 5 agreed facts in relation to issues 34 and 35 which draw 6 together the threads both in relation to those facts 7 which are agreed and those facts which they can see -- 8 which everyone accepts is relevant and those where there 9 is a debate as to whether or not they are relevant that 10 debate can be identified on the basis of the statement. 11 So the court has a document which identifies what is 12 agreed, what is agreed to be relevant and where there is 13 an issue as to whether something that is agreed is or is 14 not relevant.</p> <p>15 But that needs to be set against the present 16 position in relation to issue 36 which obviously gives 17 rise to rather broader factual questions than the pure 18 construction points. I think at this stage can I just 19 show your Lordship the bifurcation, which seems to be 20 a word everyone is using, of issue 36 which was first 21 suggested by Freshfields. It is page 62 of the bundle. 22 It starts at page 61 really. Would your Lordship read 23 from paragraph -- I think it's really the bit under 24 question 36 issues generally.</p> <p>25 MR JUSTICE DAVID RICHARDS: And read through to? Page 25</p>	<p>1 papers on this issue. There is a bit of a debate which 2 I'm not sure has been finally resolved on timetabling in 3 relation to that. The broad idea is that there should 4 be -- that the FCG should go first. Wentworths should 5 go second and that we should try and draw the threads 6 together going third and that the purpose of our 7 exercise will be not just to produce a position paper 8 but also to identify what is agreed and what is not as 9 part of the process of getting there and so far as the 10 joint administrators are concerned that will be done in 11 conjunction with but as a separate process from the 12 production of the agreed statement of facts in relation 13 to issues 34 and 35 because they're obviously linked 14 although they're not the same exercise.</p> <p>15 My Lord, the last we got to was a -- and it's dealt 16 with in our skeleton at paragraph 27 -- proposed 17 compromise between the parties' various positions on 18 position papers which would lead to the FCG putting 19 something in by 31 March. Wentworth by 13 April and us 20 by 21 April which should then fit in time for the 21 present directions in relation to the skeleton arguments 22 that are required for the substantive trial which are 23 required for 24 April.</p> <p>24 And the way that's been reflected in the draft 25 minute of order for this hearing -- does your Lordship Page 27</p>
<p>1 MR TROWER: And read through to the end of paragraph 34. 2 MR JUSTICE DAVID RICHARDS: Certainly. (Pause) 3 Yes. 4 MR TROWER: Then they say in paragraph 7 "We think this 5 argument can and should be dealt with in part B", and 6 they then explain why over the page on page 63. 7 MR JUSTICE DAVID RICHARDS: Yes. 8 MR TROWER: That is there and perhaps your Lordship could 9 just cast your eye down to the end of that section. 10 MR JUSTICE DAVID RICHARDS: Yes. 11 MR TROWER: That position Linklaters, for the joint 12 administrators, on page 72 of the bundle explain that we 13 thought this was a sensible and pragmatic suggestion. 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR TROWER: Then Kirkland & Ellis in a letter of 4 March, 16 and I think the relevant bit is on page 92, they start 17 this section on 91 but their position seems to be -- 18 it's probably right that your Lordship actually reads 19 from C on page 91, the bottom C, "We make the following 20 general observations", down to after (iv) on page 93. 21 (Pause) 22 MR JUSTICE DAVID RICHARDS: Yes. 23 MR TROWER: That reflects the parties' position. Now, 24 everyone is agreed that there's a need given the 25 suggested bifurcation for there to be updated position Page 26</p>	<p>1 have the draft? I don't think I have taken you to it 2 yet. It's behind tab 4 in my bundle. I hope it's in 3 there in yours. 4 MR JUSTICE DAVID RICHARDS: Tab 4 of which bundle? 5 MR TROWER: Sorry, of the CMC bundle. 6 MR JUSTICE DAVID RICHARDS: Yes. I have that. 7 MR TROWER: So just going through the -- issue 34, the 8 amendment, is the first paragraph that I've already 9 addressed you on. Then issue 36 be split into two 10 issues, that's the bifurcation that's suggested and that 11 second part of the issue simply be adjourned generally. 12 Then we have 4, 5 and 6 deal with the FCG, Wentworth and 13 then us on production of position papers in relation to 14 what has become 36A. 15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR TROWER: Paragraph 7 is the two-stage process of 17 producing a document on facts relevant to 34 and 35 and 18 facts relevant to 36A which we will undertake. 19 MR JUSTICE DAVID RICHARDS: And in fact you're anticipating 20 that that document will identify facts which are in 21 dispute -- not necessarily in dispute but the relevance 22 of -- 23 MR TROWER: The relevance of which is in dispute. I think 24 that needs a little bit of drafting, a bit of tinkering 25 with. Page 28</p>

7 (Pages 25 to 28)

1 My Lord, that's where we've got to on this. I'm not
 2 sure what the parties' final position is on timetabling
 3 and it may be your Lordship needs to hear from them.
 4 MR JUSTICE DAVID RICHARDS: Very good. Mr Dicker.
 5 MR DICKER: My Lord, so far as the amendment to question 34
 6 is concerned, we're content with that. The only thing
 7 we would say is we're still considering whether this
 8 requires any amendment to the position papers or any
 9 further evidence. Obviously the administrators in their
 10 evidence haven't considered other potential non-provable
 11 claims but I don't think that is going to be a practical
 12 issue.
 13 So far as the question of admissibility is
 14 concerned, we respectfully suggest the administrators'
 15 approach is also a sensible pragmatic one. We suspect
 16 it's unlikely at the end of the day that there will be
 17 any material dispute in relation to this but if there is
 18 then obviously that can be most easily determined at the
 19 hearing itself.
 20 MR JUSTICE DAVID RICHARDS: Mr Dicker, can I just interrupt,
 21 if you just move the microphone so it points at you. It
 22 might be of assistance to the transcriber.
 23 MR DICKER: So far as the draft order is concerned, subject
 24 to I think two small points we're content with
 25 paragraphs 2 to 6. The two points we have are firstly

Page 29

1 in relation to paragraph 4. The timing. What we
 2 originally suggested was 10 April. We think we can
 3 probably cope with 6 April. Any sooner than that is
 4 going to be very difficult if not impossible, in large
 5 part because both Mr Fisher and I now have to prepare
 6 for the Waterfall 1 appeal and obviously we didn't argue
 7 that the first time round in front of your Lordship and
 8 there's a fair amount that requires to be done in
 9 relation to that.
 10 My Lord, the second is paragraph 4(2). It's the
 11 reference to "file and serve a statement particularising
 12 all of the relevant facts."
 13 My Lord, we are slightly concerned that if that is
 14 what is required the document may end up rather longer
 15 and less useful. What we would simply suggest is, we
 16 will and are happy to file and serve a statement
 17 particularising the relevant facts, what we don't want
 18 is someone to subsequently turn round and say this small
 19 fact wasn't included and therefore you are not entitled
 20 to rely on it but again I'm sure that is something the
 21 parties can deal with sensibly.
 22 My learned friend I think mentioned the tweak
 23 require to paragraph 7 so far as the administrators'
 24 document is concerned. We would be content with that.
 25 I wasn't proposing to say anything more in relation to

Page 30

1 34, 35 and 36 at this stage unless your Lordship wish me
 2 to.
 3 MR JUSTICE DAVID RICHARDS: No, that's fine. Thank you very
 4 much. Mr Smith. You're not taking part in this?
 5 MR SMITH: No, My lord. This might be a convenient moment
 6 just to mention that your Lordship will have seen --
 7 MR JUSTICE DAVID RICHARDS: You would like to be supplied
 8 with position papers.
 9 MR SMITH: Yes, skeleton arguments and position papers in
 10 the normal way but not to file our own or to participate
 11 in the hearing as presently advised.
 12 MR JUSTICE DAVID RICHARDS: All right.
 13 MR SMITH: Grateful my Lord.
 14 MR JUSTICE DAVID RICHARDS: Mr Zacaroli.
 15 MR ZACAROLI: My Lord, can I make some submissions about the
 16 agreed statement of facts for issues 35 and 35 on the
 17 one hand and then the approach to issue 36 on to other.
 18 MR JUSTICE DAVID RICHARDS: Yes.
 19 MR ZACAROLI: And preface it with this point, that we are
 20 not here concerned with construing an agreement between
 21 the two parties that are before the court and therefore
 22 taking into account the matrix of facts available to the
 23 two parties before the court. What we are asking the
 24 court to do in relation to issues 34 and 35 is to come
 25 up with an answer of construction that is as of general

Page 31

1 application as it possibly can be amongst parties who
 2 are not before the court and whose own personal
 3 circumstances are not known.
 4 In those circumstances we think the only way the
 5 court can do that is to proceed on the basis of not just
 6 agreed facts but agreed facts which are assumed to be
 7 the only relevant facts for the purposes of that
 8 determination. There may well be creditors who have had
 9 personal communications with the administrator or whose
 10 circumstances are such that there are other factual
 11 matters relevant to construction of their agreement,
 12 it's important that any such creditor can see at
 13 a glance whether the findings the court makes on this
 14 generic level are distinguishable or not because it's
 15 own facts have been distinguishable or not. For that
 16 reason there are two things, the court must be clear
 17 what facts the court has taken into account, and,
 18 secondly, make clear that it's assuming that those are
 19 the only facts relevant.
 20 MR JUSTICE DAVID RICHARDS: Can you just help me on this?
 21 The CDDs first of all, they were bilateral agreements
 22 were they?
 23 MR ZACAROLI: They were yes.
 24 MR JUSTICE DAVID RICHARDS: But in a common form?
 25 MR ZACAROLI: Well --

Page 32

1 MR JUSTICE DAVID RICHARDS: There are several editions of
 2 them but they were not individually negotiated.
 3 MR ZACAROLI: Some were.
 4 MR JUSTICE DAVID RICHARDS: Some were?
 5 MR ZACAROLI: Some were, yes. There are different varieties
 6 out there and there are slight differences between
 7 different CDDs between different parties. So we are
 8 looking here at the ones that are most generally --
 9 MR JUSTICE DAVID RICHARDS: So we are looking at
 10 particular -- I see. But particular CDDs in particular
 11 forms and those forms were quite widely used.
 12 MR ZACAROLI: Yes, and there's the point about changing over
 13 time because the latter ones had exclusions for --
 14 MR JUSTICE DAVID RICHARDS: Yes. I see. So the CDDs to
 15 which 34 and 35 are directed, albeit that they clearly
 16 changed other time were nonetheless -- could be
 17 described as standard form agreements, is that right?
 18 MR ZACAROLI: Mostly standard form but not absolutely
 19 standard form. What the court has is a typical example,
 20 which was annexed to our original position paper and so
 21 far that's the only whole CDD that's actually been --
 22 the court's been asked to determine issues in relation
 23 to.
 24 MR JUSTICE DAVID RICHARDS: There's one CDD --
 25 MR ZACAROLI: There are two because there's one that's

Page 33

1 a pure CDD, there is second one that is a CDD entered
 2 into by creditors who signed up to the CRA.
 3 MR JUSTICE DAVID RICHARDS: As I understand it I'm being
 4 asked -- will be asked to look at different editions of
 5 the CDDs so it's gone wider than that.
 6 MR ZACAROLI: It has gone wider than that although I'm not
 7 entirely clear how many different editions given that
 8 most of the editions referred to in the evidence of
 9 Mr Lomas are those that are after the time that waivers
 10 were included in them as a matter of course, which
 11 there's obviously no argument to be had about whether
 12 they waived a currency conversion claim and if it
 13 specifically excluded that from the waiver.
 14 MR JUSTICE DAVID RICHARDS: I think the reason I'm asking
 15 these questions is that where you've got a standard form
 16 agreement which is in reasonably wide use, and the
 17 parties adopt that standard form, or enter into it in
 18 knowing that it is a standard form -- of course you
 19 might have specific clauses added -- but on the issues
 20 which we are concerned with here, as a matter of
 21 construction, you would not expect the agreement in
 22 similar terms to be construed differently depending on
 23 different parties, depending on the identity of the
 24 parties.
 25 MR ZACAROLI: I'm not sure I --

Page 34

1 MR JUSTICE DAVID RICHARDS: That's the difficulty I'm having
 2 hear in a way.
 3 MR ZACAROLI: Where one is dealing with something which is
 4 not -- well, let's take this right down to this case,
 5 let's say we are talking about a currency conversion
 6 claim, whether that is included or not and assuming that
 7 both parties had no appreciation of the existence of
 8 a currency conversion claim then that could be
 9 a relevant fact to the construction of the agreement but
 10 if particular parties had different understandings about
 11 that then it might be different. So for example if
 12 a creditor understood there were such claims -- I don't
 13 know that that's the case of course but just assume --
 14 MR JUSTICE DAVID RICHARDS: We have evidence that the
 15 administrators didn't -- this point had not occurred to
 16 them until it was raised with them in early 2013, so
 17 I can't -- I mean, it's a slightly -- I'm not sure in
 18 terms of the construction of the standard -- of
 19 an agreement whether the subjective knowledge of the
 20 parties, the existence of a claim -- it's a difficult
 21 thing to grapple with.
 22 MR ZACAROLI: Subjective knowledge not but if there were --
 23 again we're speculating, we haven't identified every
 24 creditor and examined the circumstances that existed
 25 between every creditor and the administrators when they

Page 35

1 entered into their CDD, whether there were different
 2 communications between them that are not replicated
 3 in -- are not revealed in the evidence because the
 4 evidence here is dealing with general matters. We just
 5 don't know what's out there.
 6 MR JUSTICE DAVID RICHARDS: Anyway your point is you have to
 7 be clear -- I'm in agreement with this, the court and
 8 the parties have to be clear what facts are being used
 9 as the relevant material for the construction of the
 10 agreement. And as you say creditors who say there are
 11 different facts applicable to them, that preserves their
 12 position to say well it has a different meaning for me.
 13 MR ZACAROLI: That's one side. The other thing is we need
 14 to know at the hearing what facts the court is being
 15 asked to take into account.
 16 MR JUSTICE DAVID RICHARDS: Quite. I think Mr Trower was
 17 hoping on 34 and 35 to produce a document which will
 18 make that clear.
 19 MR ZACAROLI: And the only addition I would make to that --
 20 it's paragraph 7 of the proposed draft order. What's
 21 missing from -- although I think it's meant to be there
 22 from the discussion that has been had this morning, the
 23 facts must be those which -- a general application that
 24 are relevant and are admissible. And it's the third
 25 word, admissibility, which --

Page 36

1 MR JUSTICE DAVID RICHARDS: I think what Mr Trower is
 2 envisaging is he will produce a document which -- there
 3 may be disagreement about whether a particular fact is
 4 relevant and therefore admissible.
 5 MR ZACAROLI: Yes.
 6 MR JUSTICE DAVID RICHARDS: And his document will identify
 7 that.
 8 MR ZACAROLI: Yes, so long as that's clear.
 9 MR JUSTICE DAVID RICHARDS: I think Mr Trower is probably
 10 proposing to rejig paragraph 7 a bit to reflect that.
 11 MR ZACAROLI: Yes in which case we are content with that.
 12 MR JUSTICE DAVID RICHARDS: You are content with that?
 13 MR ZACAROLI: Yes, we are. The fact is that most of the
 14 evidence is inadmissible that's been served to date. I
 15 think there is common ground about that. There may be
 16 some matters at the edges but most of it has not been
 17 served with the intention of being admissible.
 18 MR JUSTICE DAVID RICHARDS: The CRA, that's the agreement
 19 which was the earlier agreement in the context really of
 20 client money claims is it?
 21 MR ZACAROLI: Trust assets.
 22 MR JUSTICE DAVID RICHARDS: Not client money, thank you.
 23 Yes.
 24 MR ZACAROLI: That we have said on 35 and 35. 36,
 25 essentially we are agreeing to this process, the cut

Page 37

1 down version of issue 36. Although we do make this
 2 point in our skeleton, I reiterate it today, we do
 3 remain sceptical that this is possible, that it is
 4 capable of being resolved at a generic level on the
 5 basis that we are here talking about whether -- assuming
 6 the agreements do waive these claims whether the
 7 circumstances are such the administrators should not be
 8 able to rely upon that as against creditors and there
 9 the circumstances of different creditors may well lead
 10 to different answers. So it's even more important here
 11 that the facts upon which the court is making the
 12 decision, assumed to be the only facts relevant, are
 13 clearly set out but with that marker we are in agreement
 14 as to the process.
 15 MR JUSTICE DAVID RICHARDS: Yes.
 16 MR ZACAROLI: In terms of timing -- this is paragraphs 4 and
 17 5 I think -- we are happy to agree the compromise date
 18 suggested by the administrators, so it's the last one in
 19 each of paragraph 4 and paragraph 5. Recognising of
 20 course that in -- so the FCG producing theirs by
 21 31 March and us providing ours by 13 April. There are
 22 two points to make. First of all it is true that both
 23 of my learned friends to my right are involved in the
 24 Waterfall 1 appeal although it's all right to point out
 25 that the Senior Creditor Group was only involved for the

Page 38

1 purposes of the currency conversion claims and not with
 2 everything on the appeal. So I understand there's a lot
 3 of work for them to do but we do need these position
 4 papers well in advance of the May date so that we can
 5 prepare our responsive paper but also prepare arguments
 6 in good time for the May date. And the other point is
 7 we are of course receiving their papers just before the
 8 Easter break and producing ours just after the Easter
 9 break, we are content to provided we have the times here
 10 but if we only get theirs on, I think it was suggested
 11 6 April, it makes it very tight for us indeed in order
 12 to get the papers properly prepared in advance of us
 13 producing our skeleton arguments.
 14 So we would suggest the compromise dates are
 15 a sensible compromise and we are happy to go with those.
 16 My Lord, that's all I have to say on issue 36.
 17 MR JUSTICE DAVID RICHARDS: Right. Thank you very much
 18 Mr Trower.
 19 MR TROWER: My Lord, I don't think I have anything that
 20 I need to add. The only thing I thought I ought just to
 21 mention to your Lordship in the light of the way the
 22 discussion went about admissibility is that Mr Lomas
 23 does deal with the CDDs and the extent to which they
 24 were standard form documents in his evidence and they
 25 were presented as take it or leave it documents, there

Page 39

1 may have been some negotiation round the edges on some
 2 of them but that is the background. It's dealt with in
 3 paragraph 45 of his witness statement.
 4 But, my Lord, so far as the timetable is concerned
 5 I don't really have anything to add. We do respectfully
 6 suggest our compromise is --
 7 MR JUSTICE DAVID RICHARDS: Mr Dicker says 31 March is going
 8 to be very difficult.
 9 MR TROWER: Yes.
 10 MR JUSTICE DAVID RICHARDS: He proposes 6 April. Which is
 11 Easter Monday I think.
 12 MR TROWER: Yes.
 13 MR JUSTICE DAVID RICHARDS: Let's look at the end date which
 14 is the date for your position paper.
 15 MR TROWER: The reason we went for no later than that was
 16 that skeletons from the respondents are required for the
 17 tranche B trial on 24 April.
 18 MR JUSTICE DAVID RICHARDS: When is the tranche B trial due
 19 to start did you say?
 20 MR TROWER: 18 May. It may be that can be pushed back
 21 a bit.
 22 MR JUSTICE DAVID RICHARDS: So 18 May -- sorry -- and the
 23 skeletons were due -- the respondents' skeletons -- by
 24 the respondents you mean Wentworth --
 25 MR TROWER: Wentworth and the FCG. It's a direction that

Page 40

1 was given in November.
 2 MR JUSTICE DAVID RICHARDS: So that's at the moment
 3 24 April, is it? Did you say?
 4 MR TROWER: No I think it is ... Yes. It is paragraph 21
 5 of the order of November order. At the moment the
 6 directions for the respondents' skeleton are 24 April
 7 yes, that's right. And then we were going to lodge ours
 8 on 1 May. Then there was time for reply skeletons on
 9 11 May, supplementals, and I think we're down to the
 10 18th.
 11 MR JUSTICE DAVID RICHARDS: And the Court of Appeal hearing
 12 starts when?
 13 MR TROWER: 23rd of this month.
 14 MR JUSTICE DAVID RICHARDS: I see.
 15 MR TROWER: And it's for a week.
 16 MR JUSTICE DAVID RICHARDS: I'm sympathetic to Mr Dicker's
 17 position and I think there is scope for extending the
 18 timetable a bit in terms of skeletons. What I'm going
 19 to say is that paragraph 4 should have 6 April for the
 20 FCG to file their position -- well, I'm not sure they'll
 21 be able to file it on that day as I don't think the
 22 court is open on Easter Monday but I suppose they can
 23 file it by email, maybe they can. So anyway, Easter
 24 Monday then I'll leave it to you, to you all to agree
 25 knock-on dates which I'm sure you can do in a way which

Page 41

1 will sensibly give everyone the time they need before
 2 the start of the trial of tranche B.
 3 MR TROWER: That's to include some telescoping of the
 4 skeletons --
 5 MR JUSTICE DAVID RICHARDS: Yes, but in a way -- it may be
 6 that everyone -- given that, frankly part of the time
 7 that would you have had Mr Dicker's position paper may
 8 be down time over the Easter weekend, it's not going to
 9 be down time for him and his team, but, you know, that
 10 may give you a little bit of slack, as it were, in
 11 agreeing but I feel sure you will be able to agree
 12 something.
 13 MR TROWER: We'll --
 14 MR JUSTICE DAVID RICHARDS: You will endeavour to.
 15 MR TROWER: We will endeavour to do so, my Lord, and if
 16 unexpectedly we run into difficulties we will let you
 17 know.
 18 MR JUSTICE DAVID RICHARDS: Of course. So far as the -- the
 19 other point Mr Dicker said is on paragraph 4(2), a
 20 statement particularising all of the relevant facts.
 21 And Mr Dicker said he felt that could be sensibly dealt
 22 with, which again I think it can be but I think it
 23 should be clear, I'm sure it is clear to Mr Dicker, that
 24 his statement should set out really all the facts of any
 25 significance on which they rely because the facts are

Page 42

1 clearly terribly important on this sort of issue.
 2 I mean I wasn't -- it's difficult to know exactly what
 3 one's really talking about here. But I mean it will be
 4 undesirable for relevant facts to come in later.
 5 MR TROWER: Yes.
 6 MR JUSTICE DAVID RICHARDS: I mean if they're material then
 7 I think they should be in the statement. If they're not
 8 material well they probably shouldn't play any part in
 9 any consideration of the matter.
 10 MR TROWER: We would respectfully agree with that and
 11 I suspect -- I may be wrong but one can see that maybe
 12 the words "all of" gave an unsatisfactory emphasis to
 13 the most minute of facts.
 14 MR JUSTICE DAVID RICHARDS: It might be that particularising
 15 the relevant facts, which actually basically means all
 16 of them, perhaps doesn't ...
 17 MR TROWER: Yes.
 18 MR JUSTICE DAVID RICHARDS: I think it is a case where you
 19 have to have a Statement of Case which sets out the
 20 facts on which you rely for the relief which you say the
 21 court should give or rather the Senior Creditor Group.
 22 MR TROWER: I mean the example Mr Dicker gave one might say
 23 that the fact wasn't actually relevant for the purposes
 24 of which this order was drawn. We entirely agree with
 25 that. It's plainly important that everybody should know

Page 43

1 what are the material facts on which the court has
 2 reached its conclusion.
 3 MR JUSTICE DAVID RICHARDS: That's right and I'm --
 4 precisely that -- that Mr Zacaroli and indeed you should
 5 respond to the case made on the identified facts. So if
 6 it is then sought to introduce more facts well then
 7 there will be an application to do so which could no
 8 doubt be sensibly dealt with and provided it didn't add
 9 to people's burden it would be allowed in.
 10 MR TROWER: Yes quite.
 11 MR JUSTICE DAVID RICHARDS: I had better ask Mr Dicker --
 12 MR DICKER: I fully understand where your Lordship is coming
 13 from and in broad terms we agree.
 14 The only thing that I would emphasise to
 15 your Lordship is the parties are trying to find a way to
 16 enable your Lordship to decide this issue. There are,
 17 as we understand it, some 1600 CDDs, with 460 client
 18 money supplemental deeds entered over a period of
 19 a number of years. And the CDDs themselves changed as
 20 your Lordship knows in form over time and the context is
 21 obviously absolutely vital, we say. That broad context
 22 is given by the evidence which has been filed,
 23 particularly by the administrators in the form of
 24 Mr Lomas' statements and Mr Copley's, and certainly we
 25 see the good sense of producing a statement of facts,

Page 44

1 relevant facts. What we were concerned I think
 2 essentially to avoid was trying to turn everything in --
 3 Mr Lomas', Mr Pearson's and Mr Copley's witness
 4 statements et cetera into that statement of facts.
 5 I don't think in the end this should be an issue. But
 6 the only thing I would say is we don't accept my learned
 7 friend Mr Zacaroli's characterisation of the evidence to
 8 date as largely inadmissible. Plainly there are --
 9 MR JUSTICE DAVID RICHARDS: I think he was talking about
 10 issues 34 and 35 when he said that.
 11 MR DICKER: Even in that context --
 12 MR JUSTICE DAVID RICHARDS: You don't accept that?
 13 MR DICKER: Plainly there are statements in there of
 14 subjective belief as to what the document means and
 15 those may be inadmissible. But much is intended
 16 essentially to set out what the objective purpose, as
 17 understood by the parties, of those agreements was and
 18 as I say context in this situation is everything. But,
 19 my Lord, we would invite your Lordship certainly to
 20 delete the words "all of".
 21 MR JUSTICE DAVID RICHARDS: I will delete the words "all of"
 22 but let it be clearly understood I expect the statement
 23 to contain the material facts on which you all rely.
 24 MR TROWER: On which happy note we move on to tranche C.
 25 MR JUSTICE DAVID RICHARDS: We move on to tranche C.

Page 45

1 MR TROWER: Tranche C is a little further down the line.
 2 What tranche C is all about is essentially all about
 3 master agreements. Cost of funding and foreign law are
 4 the two areas of contention in relation to the evidence.
 5 So far as the -- it may be that from my point of
 6 view, because I probably won't have -- don't have very
 7 much to say on this because there's a bit of a debate
 8 going on between the parties, but if your Lordship goes
 9 to the draft order, I can most happily deal with in that
 10 way for today's purposes. The directions that are being
 11 sought in relation to these issues relate to expert
 12 evidence. The parties are essentially ad idem on expert
 13 evidence of foreign law.
 14 MR JUSTICE DAVID RICHARDS: Yes.
 15 MR TROWER: The questions, your Lordship will see there are
 16 a whole series of blank dates in there and the joint
 17 administrators aren't able to say exactly where the
 18 parties are in relation to that and it's largely driven
 19 by them not us at this stage.
 20 As far as the foreign lawyers are concerned we are
 21 talking about a New York lawyer, a German lawyer and
 22 a French lawyer, there was a suggestion at one stage as
 23 to whether or not there should be a single expert but
 24 that doesn't seem to have gone anywhere and the nature
 25 of this litigation is such that the joint administrators

Page 46

1 aren't going to suggest to your Lordship that your
 2 Lordship insist on it. Then annexed to the draft order
 3 is the questions and the question so far as the foreign
 4 lawyers are concerned, schedule A for the New York law
 5 experts, schedule B for the German law experts and
 6 schedule C for the French law experts are, as
 7 I understand it, agreed. There aren't any questions
 8 that arise in relation to them.
 9 So the only issue that remains for your Lordship to
 10 be informed about is the parties' present position in
 11 relation to timing. The administrators only interest --
 12 well, it has two interests, they have two interests.
 13 One is to ensure that we get this case ready for trial
 14 as soon as practicable and the second is that there is
 15 built into the timetable a slot for the administrators
 16 to put in evidence of foreign law if so advised and
 17 that's really just to make sure that if there are points
 18 that aren't being taken by the parties they are covered
 19 off in some way or another.
 20 MR JUSTICE DAVID RICHARDS: Mr Zacaroli I think in his
 21 skeleton suggests that I should direct that a date be
 22 fixed through the usual channels for tranche C -- for
 23 a trial. It struck me as having a lot of sense.
 24 MR TROWER: I think it certainly concentrates the parties'
 25 minds.

Page 47

1 MR JUSTICE DAVID RICHARDS: And you get a place in the
 2 timetable.
 3 MR TROWER: Yes.
 4 MR JUSTICE DAVID RICHARDS: In the queue. Is it thought
 5 that sometime in the autumn is the time to aim for?
 6 MR TROWER: We had always had in mind a date in October
 7 sometime, if that was feasible.
 8 MR JUSTICE DAVID RICHARDS: Okay. I do think that's
 9 a sensible thing then everyone knows the date to which
 10 we're working.
 11 MR TROWER: Yes.
 12 MR JUSTICE DAVID RICHARDS: And so I could give a direction
 13 that the parties apply to the clerk of the list to fix
 14 a date for trial of tranche C, before me on the first
 15 available date after whatever date you think sensible in
 16 October.
 17 MR TROWER: Yes. Part of that may depend on the time that
 18 the parties think is required for the expert evidence
 19 but that is very sensible, my Lord, yes.
 20 The main area for debate relates to the disciplines
 21 required for the cost of funding --
 22 MR JUSTICE DAVID RICHARDS: So far as dates for the expert
 23 evidence is concerned, do I take it that that's a matter
 24 on which you're aiming to agree?
 25 MR TROWER: I hope so although I haven't -- I regret

Page 48

1 I haven't really heard what the parameters of the
 2 dispute is. So whether it's -- I would imagine it's
 3 capable of agreement. I certainly hope so. But
 4 I haven't seen what it is that the two warring factions
 5 want by way of time for the foreign law aspect.
 6 MR JUSTICE DAVID RICHARDS: Should we just deal with the
 7 foreign law aspect first before getting on to the rest
 8 of --
 9 MR TROWER: Yes.
 10 MR JUSTICE DAVID RICHARDS: Have the parties got anywhere in
 11 identifying their expert? You wouldn't because you are
 12 reserving your position. Mr Dicker.
 13 MR DICKER: My Lord, so far as foreign law experts are
 14 concerned we are content with paragraphs 8 to 25 of the
 15 draft order. There is, as my learned friend mentioned,
 16 a question of timing. I'm not sure the parties are
 17 warring in relation to this. We originally suggested
 18 extending the existing date of 30 April to 22 May.
 19 Wentworth's response was that it would seem more
 20 sensible to have until the end of June and we can see
 21 some sense in that. That would obviously give
 22 sufficient time still for the start of the trial. I'm
 23 not sure the parties have agreed times that fall within
 24 that. But I think that's the present suggestion.
 25 So far as the questions are concerned in schedules

Page 49

1 A, B and C, again those as I understand it are agreed
 2 between the parties and there is nothing I need to say
 3 in relation to those.
 4 MR JUSTICE DAVID RICHARDS: Identified your experts yet?
 5 MR DICKER: My Lord, as I understand it we have although
 6 I don't have their names to hand.
 7 MR JUSTICE DAVID RICHARDS: Because in a sense -- this is
 8 quite important when one's fixing dates because they may
 9 have commitments -- it's an iterative process but if
 10 they have an immoveable commitment one has to work round
 11 it. I would prefer if the order identified the experts,
 12 which is what the CPR at the very least recommends.
 13 MR DICKER: I've just been I think corrected. We have
 14 identified our German law expert. I'm instructed our
 15 New York and French experts are not at the moment
 16 served. I suppose the other issue in relation to trial
 17 of course is an estimate as to how long it will take.
 18 MR JUSTICE DAVID RICHARDS: Yes.
 19 MR DICKER: We were thinking certainly two weeks, given the
 20 volume of expert evidence that may be required. Again
 21 I don't know what my --
 22 MR JUSTICE DAVID RICHARDS: We'll have to move -- it partly
 23 depends on the other area of expert evidence.
 24 MR DICKER: Yes.
 25 MR JUSTICE DAVID RICHARDS: Mr Zacaroli.

Page 50

1 MR ZACAROLI: The timing is agreed, so the end of June for
 2 first round of experts on foreign law. In a sense the
 3 timing thereafter for responsive reports in meetings
 4 I think probably await the date we know that that's
 5 going to be fixed because it's sensible to work back
 6 from that and I'm sure that can be agreed between the
 7 parties. We have identified experts in two of our
 8 fields and we are working on a third.
 9 MR JUSTICE DAVID RICHARDS: I'm not going to require the
 10 experts to be identified in the order because I think
 11 it's better to get the order finalised and made but I do
 12 think it's sensible in agreeing dates to take account of
 13 the commitments of the experts you instruct. All right.
 14 I think, Mr Trower, it looks as if you can agree between
 15 you the dates that are to be inserted there.
 16 MR TROWER: Yes, and Mr Zacaroli's point about it working
 17 back from the date of fixture seems very sensible.
 18 MR JUSTICE DAVID RICHARDS: Very sensible. We then move to
 19 the cost of funding points.
 20 MR TROWER: Yes. There's quite a lot of material on this
 21 which the parties have taken. I think it's fair to
 22 characterise the joint administrators position on this
 23 is that we have been trying to broker a deal, which is
 24 what we've been trying to do, in order to -- as
 25 I understand it we are now, and I think probably the

Page 51

1 best place to find this is in the correspondence bundle;
 2 there are issues between the parties in relation to the
 3 precise nature of the expertise that is required. And
 4 there are issues between the parties I think still in
 5 relation to the precise question that needs to be asked
 6 of the cost of funding the experts and how far it goes.
 7 The parties have been moving together on this point
 8 and it may be that it's -- the place your Lordship finds
 9 the latest iteration of the questions for the cost of
 10 funding experts is I think page 109. Then there's a red
 11 line version at pages 111 and 113.
 12 MR JUSTICE DAVID RICHARDS: So 109 --
 13 MR TROWER: 109 is a clean version of what your Lordship
 14 finds at 111.
 15 MR JUSTICE DAVID RICHARDS: Yes okay. I see.
 16 MR TROWER: My Lord, I wasn't really going to say anything
 17 more about it than that at the moment. I mean we --
 18 apart from save to say this: the joint administrators,
 19 obviously on this issue as on any other issue, are
 20 concerned to get as much assistance as the court can
 21 sensibly give in relation to the working out of claims
 22 that are actually being made. And they can see and
 23 agree with the concept of the court getting considerable
 24 assistance from expert evidence on this point. Now how
 25 far the point goes from a question of on the one hand

Page 52

1 pure point of construction in relation to what the words
 2 mean in a specific defined market, how far it goes
 3 beyond that is a question on which there may be
 4 a certain -- there still is a certain amount of debate
 5 between Wentworth and the FCG. But I think from -- and
 6 in a sense I don't want to be stealing anyone's thunder
 7 in relation to that because it is right that they
 8 express their position in their own words so
 9 your Lordship can hear exactly where they are on that.
 10 But so far as the joint administrators are concerned
 11 I think the most I can say is that the more assistance
 12 we can get as to what it means and how it is to be
 13 applied the better.
 14 MR JUSTICE DAVID RICHARDS: Just with that in mind could we
 15 just spend a moment looking at the questions first of
 16 all.
 17 MR TROWER: Yes.
 18 MR JUSTICE DAVID RICHARDS: So we start with question 10.
 19 This is under the ISDA master agreement. Incidentally
 20 can I ask this? Is there, so far as this is concerned,
 21 any difference between the 1992 and 2002 editions?
 22 MR TROWER: I don't think there is. But can someone behind
 23 me check.
 24 MR JUSTICE DAVID RICHARDS: I don't know -- of course it
 25 wouldn't necessarily just be the definition of default

Page 53

1 rate, there could be other difference. But at any rate
 2 so far as question 10 is concerned that looks just to be
 3 a pure question of construction, it doesn't raise any
 4 matters of expert evidence at all save as to foreign
 5 law.
 6 MR TROWER: Yes.
 7 MR JUSTICE DAVID RICHARDS: Can I say with question 11 I'm
 8 troubled by the first -- well the first sentence. "On
 9 the true construction of the term default rate as it
 10 appears what meaning should be given to the expression?"
 11 Then you quote it and then you have in particular. I
 12 mean it seems to me that that's not necessarily the way
 13 that one goes about issues of construction. The normal
 14 approach would be just for a party to say this is our
 15 cost of funding -- I'm perhaps not so much addressing
 16 Mr Zacaroli's trade usage argument at the moment. This
 17 is our cost of funding, which we've worked out by
 18 reference to a particular mode of financing. And the
 19 other side say well that's not within the meaning of the
 20 clause.
 21 This is very broadly expressed. It seems to us, the
 22 court, to come up with an exhaustive definition or
 23 construction of the words which I think is asking too
 24 much.
 25 MR TROWER: Yes.

Page 54

1 MR JUSTICE DAVID RICHARDS: But it may be that that's really
 2 just a drafting point because it may be your real
 3 questions are the in particular ones. And so that's
 4 just a comment I want to make, that I prefer the
 5 question of construction to be tied to particular types
 6 of financing.
 7 I get to 1(a) and that's just borrowing, so that's
 8 an identified -- and the question there is that doesn't
 9 seem to me conceptually that that raises the difficulty
 10 I mentioned. The question is does that phrase mean only
 11 borrowing, is really what that 1(a) is asking. That is
 12 right isn't it?
 13 MR TROWER: Yes.
 14 MR JUSTICE DAVID RICHARDS: In the first line incidentally
 15 is it 1(a):
 16 "Only be ascertained with reference to the
 17 ...(Reading to the words)... cost ..."
 18 "to the payee" rather than "of the payee", just
 19 a minor slip there, I think it is probably "to the
 20 payee". And in fact within (a) you have a second
 21 question -- well you have a series of questions in the
 22 brackets actually.
 23 MR TROWER: Yes.
 24 MR JUSTICE DAVID RICHARDS: I wasn't quite sure -- I'm
 25 asking all this because it has a bearing really on the

Page 55

1 whole question of expert evidence. But I wasn't quite
 2 clear, looking at the words in brackets -- I mean I can
 3 see the first part of the words in brackets:
 4 "(and if so whether such borrowing should be assumed
 5 to have recourse solely to the claim that it is funding
 6 or to the rest of the relevant payee's encumbered
 7 assets.)"
 8 So that's a kind of recourse and non-recourse
 9 finance sort of question. But I find slightly more
 10 puzzling the words that follow:
 11 "And if the latter whether the cost of funding
 12 should include the cost to the relevant payee of
 13 incurring additional debt against its existing asset
 14 base."
 15 I have some difficulty in understanding what that is
 16 saying or what it's saying in addition to the previous
 17 part. So someone may want to comment on that.
 18 MR TROWER: I'm going to leave Mr Dicker to respond on that
 19 point if I may.
 20 MR JUSTICE DAVID RICHARDS: Okay. Then (b) says:
 21 "Can this cost can be ascertained in other ways
 22 including with reference to funds which might be raised
 23 by way of equity investment in the payee and if so..."
 24 Again I think this is too broad.
 25 MR TROWER: There has been an attempt to try and -- I mean

Page 56

1 Mr Dicker will go into a bit more detail on this I'm
 2 sure but there has been an attempt to try and tie this
 3 down by way of example the McKee witness statement in
 4 particular that identifies specific ways of looking at
 5 it. But I quite appreciate that the wording as
 6 present -- drafted on the face of the application notice
 7 does in effect invite your Lordship to write a textbook
 8 and we're certainly not inviting your Lordship to do
 9 that.
 10 MR JUSTICE DAVID RICHARDS: Not an invitation I would
 11 accept.
 12 MR TROWER: No, I can understand that. And it may be that
 13 one of the things we need to do is to make sure that it
 14 is clear insofar as it isn't already clear from the
 15 examples that have been put forward through the McKee
 16 witness statement as to exactly what it is that
 17 constitutes other costs apart from the basic borrowing.
 18 Having made that observation it may be better for
 19 Mr Dicker to carry on.
 20 MR JUSTICE DAVID RICHARDS: Okay. (Pause) I'm just reading
 21 further down. Going on to 12. I think perhaps again
 22 the comments I've made before apply -- 12(i) and (ii)
 23 appear to be talking about borrowing costs. I may be
 24 wrong. (iii) is again in a very broad term, expressed
 25 very broadly and I think too broadly (iii).

Page 57

1 MR TROWER: In a sense of course at the time these questions
 2 were drafted they were trying to elucidate responses.
 3 MR JUSTICE DAVID RICHARDS: I see. (Pause)
 4 14 and 15 are rather different. Those are not
 5 clearly questions to which expert evidence is --
 6 MR TROWER: No, and indeed once one goes to them quite a lot
 7 of these are agreed. 14 and 15 are certainly agreed.
 8 MR JUSTICE DAVID RICHARDS: They're agreed are they?
 9 MR TROWER: Yes. As is 18 I think.
 10 MR JUSTICE DAVID RICHARDS: So 14 is basically you have to
 11 act rationally and in good faith.
 12 MR TROWER: Yes, it's that point.
 13 MR JUSTICE DAVID RICHARDS: And 15, the burden lies on the
 14 other party on the challenge.
 15 MR TROWER: That's right yes.
 16 MR JUSTICE DAVID RICHARDS: Okay. So they're not going to
 17 arise.
 18 MR TROWER: The main burden of the case is actually 10 and
 19 11 in fact.
 20 MR JUSTICE DAVID RICHARDS: Can I just read -- is 16 agreed
 21 or not?
 22 MR TROWER: 16 I don't think ... I didn't note down that it
 23 was. (Pause)
 24 MR JUSTICE DAVID RICHARDS: I see. Yes I see. Does 16 --
 25 that's a real issue is it? This is it the context of

Page 58

1 claims being assigned and who the payee --
 2 MR TROWER: Yes. I'm not -- I haven't noted down that it's
 3 agreed. But I can see that it's an issue which may need
 4 consideration as to how relevant it is. Well, no,
 5 I think it would be relevant if it is an issue.
 6 MR JUSTICE DAVID RICHARDS: I can see that if the payee in
 7 the definition of default rate means the counterparty,
 8 the counterparty has assigned its claim, and the
 9 counterparty has since gone into liquidation and been
 10 dissolved how is this meant to work, but the question I
 11 think may be well, is anyone saying that is a real
 12 issue?
 13 MR TROWER: Yes. No I think that's right.
 14 MR JUSTICE DAVID RICHARDS: Anyway. Is 17 a live issue?
 15 What does it mean?
 16 MR TROWER: 17 links back I think to 10 and 11 as I've read
 17 it.
 18 MR JUSTICE DAVID RICHARDS: So stated I find it difficult to
 19 really understand the question actually.
 20 MR TROWER: "In circumstances where ...(Reading to the
 21 words)...asserted costs if it were to fund the relevant
 22 amount."
 23 So it's trying to get at the hypothetical.
 24 MR JUSTICE DAVID RICHARDS: It is indeed but I'm not sure
 25 what is meant by "what principles should be applied".

Page 59

1 MR TROWER: Yes.
 2 MR JUSTICE DAVID RICHARDS: Again it's perhaps rather
 3 generally expressed.
 4 MR TROWER: I think it falls into your Lordship's point
 5 about the text book writing.
 6 MR JUSTICE DAVID RICHARDS: Then 18 is a question of
 7 construction of the agreement.
 8 MR TROWER: Yes.
 9 MR JUSTICE DAVID RICHARDS: Yes.
 10 MR TROWER: I've just been told from behind that 16 does in
 11 fact appear to be agreed.
 12 MR JUSTICE DAVID RICHARDS: Okay.
 13 MR TROWER: So we have a raft in there of issues which are
 14 likely to be agreed.
 15 MR JUSTICE DAVID RICHARDS: Okay, Mr Trower, that's very
 16 helpful, thank you. So I think on any footing some of
 17 these questions may need to be -- I think will certainly
 18 need to be amended to --
 19 MR TROWER: Defined down to identify precisely what it is --
 20 MR JUSTICE DAVID RICHARDS: Exactly.
 21 MR TROWER: -- that is being asserted.
 22 MR JUSTICE DAVID RICHARDS: But on the question whether
 23 there should be expert evidence and to what extent at
 24 this stage you are content for Mr Dicker and Mr Zacaroli
 25 to address me.

Page 60

1 MR TROWER: Yes, apart from to say that the principle of
 2 expert evidence we do support --
 3 MR JUSTICE DAVID RICHARDS: Yes, I mean there are two stages
 4 to this, aren't there? Mr Zacaroli says -- he wishes to
 5 advance a case that this phrase or at any rate part of
 6 it has a market usage.
 7 MR TROWER: Yes.
 8 MR JUSTICE DAVID RICHARDS: And that the ISDA master
 9 agreement should be construed in accordance with that
 10 market usage.
 11 MR TROWER: Yes.
 12 MR JUSTICE DAVID RICHARDS: Which is I mean classically
 13 a matter for expert evidence. I think Mr Dicker as
 14 I understand it is concerned to understand well what
 15 market are we talking about here? Which participants
 16 does this apply to and questions of that sort. He will
 17 explain himself.
 18 MR TROWER: Yes, he will explain himself.
 19 MR JUSTICE DAVID RICHARDS: Mr Zacaroli says that's the full
 20 extent to which expert evidence should go. Mr Dicker
 21 says that it should go much wider or rather wider and
 22 include corporate finance evidence going to the
 23 different types of funding.
 24 MR TROWER: Yes.
 25 MR JUSTICE DAVID RICHARDS: It may be the best point is to

Page 61

1 hear from both of them but I am concerned to understand
 2 how the administrators are going to be best helped by
 3 answers to these questions and what is needed in order
 4 to provide practical assistance to the administrators.
 5 MR TROWER: In very short form what is needed for the
 6 administrators is obviously this sense that when someone
 7 is asserting a particular cost of funding in a form
 8 which has been identified as being a realistic form,
 9 hence the McKee evidence, the administrators are
 10 reasonably well-equipped to determine whether or not
 11 what is actually asserted on the ground complies with
 12 what's requires to be proved for the purpose of
 13 establishing the cost.
 14 MR JUSTICE DAVID RICHARDS: Yes. Thank you very much.
 15 I think what I ought to do is to take the two
 16 strands of expert evidence separately and probably to
 17 hear Mr Zacaroli first on the market usage evidence and
 18 you will have an opportunity of responding to that,
 19 Mr Dicker, and I will deal with the expert evidence you
 20 would like to adduce. So, Mr Zacaroli.
 21 MR ZACAROLI: I'm not quite sure what my Lord --
 22 MR JUSTICE DAVID RICHARDS: There is some evidence you wish
 23 to adduce and I'd like to hear you about that.
 24 MR ZACAROLI: Yes. As we've set out in our skeleton
 25 argument and our position paper it is to establish

Page 62

1 a market usage amongst certain participants in the
 2 derivatives market and we have identified them as
 3 financial institutions. Now, my learned friend
 4 Mr Dicker's solicitors wrote to us yesterday with
 5 a series of questions about the precise ambit of the
 6 market, how notorious et cetera, the sort of questions
 7 one might -- they've asked those questions. And asked
 8 for a response by 31 March. The reality is we're
 9 prepared to do that. We are prepared to answer those
 10 questions by 31 March, the deadline they have requested
 11 from us.
 12 My Lord might not be surprised to hear that although
 13 there were various deadlines for expert evidence on part
 14 C that were running in tandem with what we've been doing
 15 in the last two months events have to a large extent
 16 overtaken us and therefore we are grateful for that
 17 opportunity and we will provide the answers requested in
 18 that time. But in essence it's a particular usage
 19 within not all users of the master agreement but for a
 20 certain class of users.
 21 MR JUSTICE DAVID RICHARDS: When you say financial
 22 institutions, what do you mean by that?
 23 MR ZACAROLI: Again we will provide in due course with the
 24 assistance of an expert the precise ambit but broadly
 25 speaking we start with banks. But it's not just banks,

Page 63

1 it's institutions similar to banks that are involved in
 2 the derivatives market on an active and regular basis.
 3 That's, again we can define that more clearly but
 4 broadly speaking. So one can say what's excluded
 5 perhaps more easily. It's a hedge fund for example
 6 which is not within that categorisation and it excludes
 7 your ordinary corporate user of a master agreement who
 8 is entering into it for a particular swap transaction
 9 et cetera. It's parties that are -- if one goes back to
 10 very beginning of the ISDA master agreement, if one
 11 starts with the parties it was primarily intended for,
 12 banks and other institutions, of a similar nature but I
 13 can't really, without going back to our expert --
 14 MR JUSTICE DAVID RICHARDS: All right. This would lead to
 15 the possible conclusion that the ISDA master agreement
 16 contained -- is to be differently construed depending on
 17 who the parties to the agreement are and the way you are
 18 approaching the case is to say that provided financial
 19 institutions, as you define them, are on both sides of
 20 the equation, then the market usage would apply.
 21 MR ZACAROLI: Yes.
 22 MR JUSTICE DAVID RICHARDS: But unless that's the case it
 23 carries whatever meaning it carries, there is no market
 24 usage.
 25 MR ZACAROLI: Yes.

Page 64

1 MR JUSTICE DAVID RICHARDS: Right. So what direction are
 2 you looking for from the court at this stage?
 3 MR ZACAROLI: The only direction at this stage -- I think
 4 these questions are in agreed form I think. And if
 5 my Lord has the most recent set of questions, page 109
 6 of the correspondence bundle I think, it's simply
 7 question 1.
 8 MR JUSTICE DAVID RICHARDS: You say that question 1 is that
 9 question is agreed?
 10 MR ZACAROLI: I believe so. The form of that question --
 11 MR JUSTICE DAVID RICHARDS: It's agreed okay, fine. What
 12 sort of expert is going to be giving evidence on this?
 13 MR ZACAROLI: An expert -- essentially someone who is expert
 14 within financial institutions in the derivatives market.
 15 So it's an expert in the derivatives market from the
 16 perspective of financial institutions.
 17 MR JUSTICE DAVID RICHARDS: Yes, I understand. So that's
 18 what you're asking for there.
 19 MR ZACAROLI: Yes.
 20 MR JUSTICE DAVID RICHARDS: I'll hear Mr Dicker just on this
 21 aspect.
 22 MR DICKER: My Lord, just before dealing with that would
 23 your Lordship mind if I just dealt with your Lordship's
 24 question in relation to question 11?
 25 MR JUSTICE DAVID RICHARDS: Yes, certainly.

Page 65

1 MR DICKER: My Lord, I entirely agree with your Lordship's
 2 comment about the way the question is formulated. But
 3 just to explain the structure which has been followed
 4 through your Lordship will see in Mr McKee's statement.
 5 11(1) and (2) break down the possible ways in which
 6 a party might say it has incurred costs within the
 7 definition of default rate. 11(1)(a) deals initially
 8 with borrowing. The second part in brackets
 9 your Lordship referred to deals with an issue that
 10 arises in that context. The Senior Creditors Group's
 11 case is if you incur, if you borrow money the cost to
 12 the entity of borrowing that money is not limited simply
 13 to the interest rate on the borrowing and any fees
 14 incurred, if you borrow money that has an impact on your
 15 capital structure which increases the cost of equity and
 16 any corporate, properly advised, would include that cost
 17 in estimating its total cost of funding for the purposes
 18 of default rate. So that's the reason for the
 19 additional works.
 20 And your Lordship see this in due course from the
 21 two bases on which Mr McKee proceeds in his statement.
 22 This is effectively the second basis. Subparagraph (b)
 23 is effectively an alternative to borrowing. Wentworth
 24 as we understand it say one is essentially concerned
 25 with borrowing and that's it. We say again not

Page 66

1 necessarily. There may be entities which don't fund
 2 themselves by borrowing at all or for whom equity
 3 funding would for one reason or another be more
 4 appropriate and (b) deals with that.
 5 11 --
 6 MR JUSTICE DAVID RICHARDS: So (b) is really directed to
 7 equity investment, is it?
 8 MR DICKER: Yes. 11(2) deals with a different way of
 9 approaching this. Again your Lordship will see this in
 10 due course from Mr McKee, this is what he refers to as
 11 the first basis. The short position in relation to this
 12 is that again an expert on corporate finance will say
 13 that the most accurate way of measuring the cost of
 14 funding involved in a case like this is essentially to
 15 work out the cost of funding this particular asset. In
 16 other words one's concerned with the incremental cost of
 17 obtaining the additional funding and the expert will say
 18 the most accurate way of measuring that is affectively
 19 by reference to the asset itself which is the defaulted
 20 LBIE receivable. And the answer to that comes from some
 21 work by two individuals who ended up winning the Nobel
 22 price for it, that effectively the result is independent
 23 of the asset or capital structure of the entity
 24 concerned. So essentially you end up with the same
 25 answer regardless of the corporate entity involved.

Page 67

1 Again I can show your Lordship that from Mr McKee's
 2 witness statement.
 3 So we essentially have two bases. The first one is
 4 broken down between borrowing on the one hand, but
 5 including the question of what the true cost of
 6 borrowing is. Is it simply limited to interest fees or
 7 has it an incidental impact which also needs to be
 8 measured and -- alternatively by reference to equity.
 9 And then the second approach your Lordship will see is
 10 discussed in terms of essentially the cost of the
 11 relevant payer being forced to fund LBIE because one way
 12 of analysing this is effectively the entity has in
 13 effect extended credit to LBIE, it's owed money by LBIE
 14 which LBIE at the moment is not paying. So that's the
 15 structure of question 11.
 16 If your Lordship then goes to the draft order, my
 17 learned friend Mr Zacaroli is right. The terms of
 18 question 1 are agreed. Those essentially relate to
 19 Wentworth's arguments that there is a trade usage in
 20 relation to this. And your Lordship is also right that
 21 Wentworth's case is that the definitions of default rate
 22 in the ISDA master agreement effectively has two
 23 different meanings, depending on the entity that's
 24 involved.
 25 Now your Lordship can see that most clearly if you

Page 68

<p>1 go back to, if your Lordship has it, the position papers 2 in the bundles of the last hearing, and go to the fourth 3 respondent's, Wentworth's position paper. It's 4 bundle 1, tab 5. It's at page 24 of tab 5 that 5 Wentworth deals with question 11. If your Lordship 6 quotas to paragraph 70: 7 "So far as issues 11(1) and 11(2) are concerned the 8 answer differs depending on whether the ...(Reading to 9 the words)... such as a fund or corporate." 10 And then it deals with each separately. So 71: 11 "In relation to credit institutions and financial 12 institutions referred to generically as banks. The 13 expression 'cost if it were to fund the relevant amount' 14 has a general understood meaning in the banking 15 derivatives market ie among bank counterparties to ISDA 16 master agreements namely that it means the bank's own 17 cost to fund." 18 So one has two stages. First of all this is 19 concerning banks and banks only. And secondly so far as 20 banks are concerned there is a generally understood 21 meaning. This phrase means cost of funds. Cost of 22 funds (2): 23 "Is a concept generally understood in the banking 24 market to mean the weighted average ...(Reading to the 25 words)... total notional amount." Page 69</p>	<p>1 of costs referred to above." 2 And: 3 "The expression 'cost of funding ...(Reading to the 4 words)...subject again to the definition of costs 5 referred to above." 6 The reference to costs referred to above 7 your Lordship will see if you go back to 69 -- the cost 8 to it of notionally or actually raising funds in an 9 amount equal to the relevant amount. The use of the 10 word "cost" indicates the expression refers to such 11 amount as the counterparty would be required to pay in 12 funding the amount. The point is then made that it 13 should be the lowest amount because otherwise we're not 14 dealing with a cost but an amount paid voluntarily. 15 On Wentworth's case in addition, so far as nonbank 16 entities are concerned, there is also the question as to 17 what the cost to the entity is of notionally or actually 18 raising funds in an amount equal to the relevant amount. 19 My Lord, so far as the expert evidence which 20 Wentworth seeks is concerned, my Lord, as I hope I've 21 made clear firstly we're content with such directions to 22 be given for such expert evidence. We are content that 23 the questions in paragraph 1(a) to (g) and our 24 additional request for clarification is something 25 Wentworth is happy to provide by 31 March. Page 71</p>
<p>1 My Lord, the first point as your Lordship knows is 2 we have asked for clarification of Wentworth's case in 3 relation to this. Because though they refer to credit 4 institutions or financial institutions here, or 5 generally banks, the way they have expressed it in 6 correspondence has varied over time, on occasions it's 7 banks, on other occasions it's financial institutions 8 active in the derivatives market. Generally active and 9 other variants. What we've essentially asked for is for 10 Wentworth to explain its position in relation to each of 11 the points in question 1(a) to (g) of the draft order 12 page 109. These are the questions for the experts but 13 obviously it would be helpful to know Wentworth's 14 position is in relation to each of these points -- 15 MR JUSTICE DAVID RICHARDS: Yes. 16 MR ZACAROLI: -- before we actually ask our expert for his 17 view. That is the agreed and that is by 31 March. 18 MR JUSTICE DAVID RICHARDS: Quite. 19 MR DICKER: My Lord, the second part of Wentworth's 20 construction, your Lordship see at paragraph 72 of their 21 position: 22 "In relation to funds in corporate entities 23 ...(Reading to the words)... refers simply to costs 24 which the relevant entity would incur if it were to 25 acquire the relevant amounts subject to the definition Page 70</p>	<p>1 MR JUSTICE DAVID RICHARDS: Thank you. That's helpful. 2 So I think that probably takes care of the area of 3 expert evidence that Mr Zacaroli wishes to put before 4 the court and to which you would want to respond. So 5 far so good. 6 Now we move on to the expert evidence you wish to 7 put forward which as I understand it Mr Zacaroli 8 opposes. 9 MR ZACAROLI: Yes. 10 MR DICKER: The second area of expert evidence is relevant 11 in two contexts. Firstly if the Senior Creditor Group 12 is correct, that the phrase in the ISDA master agreement 13 should be given its natural meaning, whether you are 14 a bank or other entity and doesn't bear some separate 15 trade meaning and, secondly, so far as Wentworth's 16 alternative position is concerned, by that I mean its 17 position in relation to funds and corporate entities. 18 Now, the meaning of the phrase in the ISDA master 19 agreement is obviously ultimately a question of 20 construction for the court. But in the usual way issues 21 may arise in that context on which expert evidence may 22 be of assistance. For example we say that we're 23 entitled to calculate our costs on a basis X, Y or Z or 24 to include factors A and B and if we do so that will 25 fall within the relevant provision in the master Page 72</p>

<p>1 agreement and Wentworth disagrees. 2 And we say an expert can assist in identifying the 3 various costs that an entity may incur and explain why 4 they are or are not costs. Your Lordship's seen 5 an example already from question 11. You can borrow 6 money. Is the cost of borrowing money simply limited to 7 the interest of fees or does that have an impact on your 8 capital structure and effectively causes you to incur 9 an additional cost as well? 10 My Lord, the expert may also be able to comment on 11 the way in which entities may approach the question of 12 ascertaining such costs and explain the concepts 13 involved. 14 My Lord, at the last CMC your Lordship said that it 15 would be helpful to have greater clarity on the bases 16 upon which claims can be put forward. And that led to 17 the November order, let me just remind your Lordship of 18 that. It's in the CMC bundle volume 1 at tab 3. It's 19 volume 1. Tab 3 is the order and the relevant paragraph 20 is paragraph 10. So: 21 "The Senior Creditor Group do by 15 January file and 22 served on the administrators ...(Reading to the 23 words)...substantiate such claims to interest and assist 24 any experts instructed in due course pursuant to 25 paragraph 12 below in preparing the expert evidence by Page 73</p>	<p>1 claim an effective rate of interest greater than the 2 Judgments Act rate and again I will come back to those. 3 Wentworth's position, as we understand it, is that 4 Mr McKee clearly sets out the basis on which claims can 5 be advanced. Its position as we understand it is that 6 that explanation is sufficiently clear, no expert 7 evidence is required. And we say not so. 8 As your Lordship will see in a moment expert 9 evidence will assist the court in understanding the two 10 approaches and assist it in deciding on what does or 11 does not or is or is not capable of being a cost for the 12 purposes of the definition of default rate. 13 Now, just showing your Lordship the two bases and 14 starting, because it's probably easiest to start with 15 this, with the second basis. If your Lordship goes to 16 paragraph 18, picking it up at 19, Mr McKee says: 17 "As an alternative, ie alternative to the first 18 basis, albeit less precise way of measuring cost of 19 funding would be to look at the enterprise's overall 20 cost of funding across all its assets and attribute that 21 blended cost to the amount in question. In this context 22 many of the same principles discussed above are 23 relevant. Using this approach one would examine the way 24 the enterprise has obtained funding for all purposes, ie 25 what percentage is debt rather than equity funding, Page 75</p>
<p>1 reference to such real claims." 2 And that was in part a response to your Lordship's 3 suggestions and in part also prompted by the 4 administrators, as my learned friend Mr Trower said, 5 wishing to ensure that the administrators get guidance 6 which they can apply. 7 That led to, as my learned friend said, Mr McKee's 8 witness statement which is at tab 14 of that bundle. If 9 your Lordship goes to paragraph 4 on the third page 10 Mr McKee says: 11 "In compliance with the order ...(Reading to the 12 words)... rate in excess of the Judgments Act rate." 13 And then that report is attached. The report is in 14 three parts. There's an introduction your Lordship can 15 see on the following page. Then just to identify the 16 parts. Paragraph 10 contains the first of two bases of 17 calculation and I'll come back to these. The first 18 basis for calculation starts at paragraph 10 and it's 19 the cost of funding the defaulting party in the 20 relevant amount. 21 The second basis starts at paragraph 18 and it's the 22 cost of raising a sum of money equal to the relevant 23 amount. 24 My Lord, then there are, beginning at paragraph 22, 25 three examples of circumstances in which entities can Page 74</p>	<p>1 estimate the funding cost of each component and based on 2 this analysis calculate the enterprise's overall blended 3 cost of funding. The result is the enterprise's 4 weighted average cost of capital being the cost of 5 funding a portfolio of all the enterprise's existing 6 investments. 7 "Having calculated a relevant ...(Reading to the 8 words)... therefore one can use this calculation to 9 measure the cost to the relevant payee of raising 10 an incremental sum of money equivalent to the relevant 11 amount. Although a cost of funding calculated on the 12 second basis fails to isolate specific funding 13 attributable to the defaulted LBIE claim in the way that 14 first basis does the second basis accurately captures 15 a relevant payee's average cost of funding across all of 16 its assets including its defaulted claim against LBIE. 17 This is likely to produce a conservative result, ie to 18 understate the true cost of funding where, as will often 19 be the case, the defaulted LBIE claim is riskier than on 20 average the other assets of the relevant payee." 21 And in this case 21 makes the point that: 22 "There are likely to be distinctions between the 23 respective costs of funding the different relevant 24 payees even though they each hold an asset with 25 ...(Reading to the words)... are taken into account in Page 76</p>

1 assessing their cost of funding."
 2 My Lord, that's one approach which the Senior
 3 Creditor Group contends is a proper way to measure cost
 4 and cost of funding and is capable of falling within the
 5 definition of default rate.
 6 Now, the first basis, if your Lordship goes back to
 7 paragraph 10, unlike the second basis focuses on the
 8 cost essentially of the specific asset with which one is
 9 concerned and starting at 10:
 10 "A defaulted claim against LBIE is an asset
 11 belonging to the relevant payee. There is a cost to the
 12 relevant payee of holding the defaulted claim in lieu of
 13 having the funds that should have been paid to it by
 14 LBIE. Put another way there is a cost to the relevant
 15 payee of being forced to fund LBIE in the sum of the
 16 relevant amount over the period of LBIE's default."
 17 Then 11:
 18 "It's a fundamental, albeit not immediately
 19 intuitive principle of corporate finance that the key
 20 determinant of the cost of funding borne is the risk and
 21 term of the asset being funded, illustrated simply the
 22 true cost to an enterprise of funding an investment in
 23 a risky bearing additional risk."
 24 12:
 25 "In the case of LBIE's claims the relevant payee is
 Page 77

1 forced to bear the risk ...(Reading to the words)... for
 2 an indefinite term. A material chance the relevant
 3 payee will never be repaid in full which increases the
 4 riskiness of the asset. Market participants demand
 5 a high rate of interest for bearing such risk. It is
 6 this rate that represents the true cost to the
 7 enterprise of funding LBIE over its period of default."
 8 Then 13:
 9 "This key principle is captured in a widely
 10 understood postulate ...(Reading to the words)... does
 11 not depend on the type of financing a firm uses to raise
 12 capital, whether the firm uses equity debt or a mixture
 13 of the two but instead depends on the nature of the
 14 asset itself."
 15 My Lord, I won't continue reading 14 through to 16
 16 although those continue to explain the way in which this
 17 basis operates. Your Lordship should note 17 picks up
 18 the point I think I made earlier and Mr McKee says:
 19 "It follows that there a number of different
 20 enterprises ...(Reading to the words)... factors to be
 21 a material distinction between their respective true
 22 costs of funding an asset. In other words applying the
 23 first basis to calculate the cost of funding of
 24 an enterprise in respect of a defaulted LBIE claim
 25 should not produce materially different funding costs
 Page 78

1 irrespective of whether the enterprise holding the claim
 2 is a financial institution, a hedge fund or a corporate
 3 entity."
 4 Now, my Lord, that's Mr McKee's explanation of two
 5 bases which the Senior Creditor Group contend are proper
 6 approaches to measuring costs, cost of funding and fall
 7 within the construction of the default rate. And we
 8 respectfully suggest that your Lordship would be
 9 assisted by experts explaining in more detail the
 10 conceptual basis underlying both bases, why they involve
 11 costs and costs of funding of the relevant entity, to
 12 enable your Lordship ultimately to decide whether as
 13 a matter of construction they're capable of falling
 14 within the definition of default rate.
 15 My Lord, we do say that there's nothing in fact
 16 unusual in any of this. For example if your Lordship
 17 has an issue for example whether or not a surgeon was
 18 guilty of negligence it would be of course for
 19 your Lordship to decide whether or not ultimately the
 20 actions of a surgeon were or were not negligent but in
 21 deciding the answer to that question your Lordship will
 22 often be helped by an expert to explain the task which
 23 the surgeon was undertaking, the way in which the
 24 surgeon would normally undertake it, the reasons why it
 25 went wrong, essentially to insure your Lordship fully
 Page 79

1 understands, as it were, the area of expert evidence to
 2 decide the ultimate question.
 3 My Lord, we say both bases are bases which would
 4 repay or deserve assistance from an expert, certainly
 5 I have never come across for example a Modigliani Miller
 6 theorem before I was introduced it and it does take,
 7 certainly speaking for myself, a little time to
 8 understand the economic intricacies involved.
 9 Now --
 10 MR JUSTICE DAVID RICHARDS: I wonder whether the draftsman
 11 of the ISDA 1992 master agreement was familiar with the
 12 theorem.
 13 MR DICKER: My Lord, that may not be relevant, if the
 14 draftsman of the master agreement was sufficiently wise
 15 simply to say an entity ought to be able to claim its
 16 cost of funding, that being a question of fact, he was
 17 essentially leaving it open for the parties to say we
 18 now understand and can appreciate what precisely the
 19 costs involved are, even if that understanding may not
 20 have -- I don't know whether it was or wasn't present to
 21 the draftsman at the time he drafted it.
 22 MR JUSTICE DAVID RICHARDS: But aren't you -- it seems to me
 23 you're actually -- this is really like Mr Zacaroli's
 24 approach. You're really suggesting there was a market
 25 usage that as -- the concept of costs as used in the
 Page 80

<p>1 definition of default rate encompassed these sort of 2 costs. 3 MR DICKER: My Lord, not necessarily. I mean, plainly it's 4 possible that parties have in the past used this method, 5 one or other methods to estimate their cost. That's one 6 approach. But we're not contending, as it were, this 7 meaning was a notorious universal meaning, or even 8 universal between particular entities. We don't need to 9 contend that. We say it's ultimately a question of 10 whether or not something is a cost. But in the context 11 of corporate finance, in understanding precisely what 12 costs an entity occurs and how properly you should 13 measure those costs, that is an area, plainly an area on 14 which expert economists, corporate financiers have 15 written and commented and your Lordship would repay some 16 assistance from them in understanding the concept in 17 that context. 18 MR JUSTICE DAVID RICHARDS: But the question is whether this 19 definition encompasses costs of that sort. 20 MR TROWER: Yes. 21 MR JUSTICE DAVID RICHARDS: That's a question of 22 construction of the master agreement. If it does -- so 23 if it has a very broad meaning then in advancing a case 24 for particular costs in a particular case one can 25 readily see the scope for expert evidence. Because the</p> <p style="text-align: center;">Page 81</p>	<p>1 definition of default rate. 2 MR DICKER: We say your Lordship will be assisted in 3 deciding that second question. If you fully understand 4 the conceptual basis and the nature of the costs 5 incurred in the first and second bases as set out by 6 Mr McKee. I mean, take an example going back many, 7 many years -- probably too many years, but if the court 8 were asked to decide for example what cost the capital 9 was. Now there are two approaches the court could 10 determine. It could either say well this is just 11 a question of construction. I will effectively work it 12 out for myself. Or it can say, well, one way in which 13 parties' accountants and others approach estimating 14 costs of capital appears by what's called the weighted 15 average cost of capital and the court may think it's 16 helpful to ensure that it ultimately understands what 17 that theory is, how it works and how it applies before 18 finally ruling on what is or is not within the 19 contractual phrase "cost of capital". In a sense what 20 we're saying here is not that much different from that. 21 This is the way costs of funding is approached by 22 a corporate financier. These are costs and costs of 23 funding properly incurred. These are bases on which 24 parties can rationally and properly advance a claim 25 interest. But your Lordship needs, we say, to</p> <p style="text-align: center;">Page 83</p>
<p>1 claimant will say: well our cost of funding of the sort 2 that you've been describing was X and this is how we get 3 to it. That's not the question here. The question here 4 is whether this phrase encompasses that type of cost. 5 Now, I'm trying to understand how you put the case 6 there. Because before you get to the theorem and so on 7 you have to have concluded that the ISDA master 8 agreement intended to encompass that type of cost within 9 this definition. 10 MR DICKER: My Lord, that we say, like any question of 11 construction, is in a sense an iterative process. 12 Your Lordship needs to understand fully the sort of 13 costs which can be incurred and their conceptual bases 14 before coming back to ultimately decide whether or not 15 they fall within the definition. 16 I mean take -- 17 MR JUSTICE DAVID RICHARDS: In other words the sort of costs 18 we're talking about -- I mean having -- you've set out 19 here types of costs which -- and your expert evidence 20 will be directed to establishing that this is what 21 people talk about in a costs and sort of corporate 22 finance context. I mean that might all be agreed, that 23 corporate financiers would talk about this in their 24 areas as cost and so on. The question then is well, is 25 that a meaning to be attributed to costs in the</p> <p style="text-align: center;">Page 82</p>	<p>1 understand those bases and in our respectful submission 2 that is best done by experts rather than simply by 3 reading Mr McKee's report which is what Wentworth 4 appears to envisage. 5 Now, my Lord, obviously in some cases one might be 6 concerned about costs involved in instructing additional 7 experts. My Lord, obviously that shouldn't be a concern 8 for your Lordship in this case, the amounts involved are 9 sufficiently large. But this isn't a case in which 10 additional costs should play a material part in deciding 11 whether or not a direction for experts should be given. 12 MR JUSTICE DAVID RICHARDS: Looking at the first basis of 13 calculation, I mean I don't -- you may say I shouldn't 14 really enter into this, but looking at the definition of 15 default rate it's the cost to the payee of funding the 16 relevant amount, plus 1 per cent per annum. Now the 17 relevant amount is the amount owed by the counterparty, 18 the close out amount, whatever it is. So the payee has 19 not received a million dollars, which it should have 20 received and it's got to fund a million dollars. Why is 21 it anything to do with funding LBIE? The identity of 22 the counterparty is irrelevant. We just have a 23 counterparty who hasn't paid the million dollars. Now 24 what is the cost to the payee of funding a million 25 dollars?</p> <p style="text-align: center;">Page 84</p>

1 MR DICKER: My Lord, again perfectly sensible questions, if
 2 I may respectfully say so, and answered by an expert --
 3 MR JUSTICE DAVID RICHARDS: But not an expert in ISDA master
 4 agreements. He is just going to say -- I find it very
 5 difficult to see what that approach has to do with the
 6 definition of default rate as it appears in the
 7 agreement. He's not going to be able to assist me with
 8 that.
 9 MR DICKER: No he's not. What he is going to be able to do
 10 is ensure your Lordship understands this basis of
 11 calculation cost. So LBIE owes a sum of money --
 12 MR JUSTICE DAVID RICHARDS: Sorry, paragraph 10 here, first
 13 basis of calculation, third sentence:
 14 "Put another way there is a cost to the relevant
 15 payee of being forced to fund LBIE in the sum of the
 16 relevant amount over the period of ..."
 17 Then it goes on to talk about risks of funding junk
 18 bonds and so on:
 19 "12. In the case of LBIE claims the relevant payee
 20 is forced to bear the risk associated with extending
 21 credit to an insolvent estate."
 22 Well no. I mean I just don't understand how that
 23 comes into play in the definition of default rate.
 24 MR DICKER: And if that was -- if that remains
 25 your Lordship's view --

Page 85

1 MR JUSTICE DAVID RICHARDS: Having heard the expert. But
 2 I must test it a bit. Why is -- looking at the
 3 definition of default rate, this is a legal question,
 4 why is it relevant that -- I mean the payee is not being
 5 forced to extend credit to an insolvent estate, it is
 6 being forced to obtain the money for itself.
 7 MR DICKER: Yes. But, my Lord, what an expert would say is
 8 that cost is effectively identical to the cost of
 9 bearing the defaulted claim against LBIE. In other
 10 words if one takes the incremental --
 11 MR JUSTICE DAVID RICHARDS: But he is not being asked to
 12 fund the defaulted claim. He is being asked to fund the
 13 relevant amount.
 14 MR DICKER: My Lord, yes -- well --
 15 MR JUSTICE DAVID RICHARDS: That's not the defaulted claim.
 16 You are not funding an asset here. You are funding
 17 an absence of cash.
 18 MR DICKER: No, although the incremental cost of obtaining
 19 that funding, in other words if you take the position
 20 before LBIE defaulted on the one hand and after it
 21 defaulted and funding had to be obtained on the other,
 22 after LBIE defaulted -- I mean the expression is graphic
 23 and in a sense accurate. You have effectively extended
 24 although you hadn't agreed to extend credit to LBIE, at
 25 least in the sense that LBIE owes you a sum of money

Page 86

1 which it has not paid.
 2 Now, you then have to get in funding and the
 3 question is: what is your cost of funding of that? Now,
 4 as I understand it the approach based on the
 5 Modigliani Miller theorem, which Mr McKee says is not,
 6 although fundamental is not immediately an intuitive
 7 principle, it is that that cost is effectively
 8 reflective of riskiness of the relevant asset.
 9 MR JUSTICE DAVID RICHARDS: I'm not concerned with the
 10 riskiness of assets. If you're looking -- supposing the
 11 counterparty is one of the primary banks in the world, a
 12 prime US bank, and LBIE has defaulted on a swap with it.
 13 It's owed a million dollars. The concern is how much is
 14 it going to cost that US prime bank to fund the relevant
 15 amount. The relevant amount I think we're agreed is
 16 a million dollars. Nothing to do with LBIE, is it?
 17 MR DICKER: But one takes it in stages. The first thing you
 18 could say the prime bank does is go out and borrow a sum
 19 of money. And the second basis, which Mr McKee deals
 20 with, effectively says well, that the cost of borrowing
 21 money isn't simply the interest and the fees on the
 22 loan. Simply by borrowing a sum of money you
 23 effectively weaken the position of your equity holders
 24 and impose a cost on them. And that's the second basis.
 25 Now, what Mr McKee says is well that's actually not

Page 87

1 an entirely accurate way of measuring cost of funding
 2 because what you're doing is effectively taking
 3 a blended range, giving LBIE essentially the benefit of
 4 your -- the rest of your --
 5 MR JUSTICE DAVID RICHARDS: I really don't at the minute
 6 understand what LBIE has to do with this. LBIE is the
 7 defaulting party, it has failed to pay money. The focus
 8 is now on the counterparty. How much is it going to
 9 cost the counterparty to replace that money? At the
 10 minute I simply cannot see the relevance of LBIE. I can
 11 see of course there's an argument to be had as to
 12 whether funding is intended to be restricted to
 13 borrowing or other types of funding, that is
 14 a completely different issue. But so far as this basis,
 15 whichever basis it is, I find it at the moment quite
 16 impossible to understand how it's relevant to, as
 17 a matter of construction, default rate.
 18 MR DICKER: Because the expert would say --
 19 MR JUSTICE DAVID RICHARDS: I'm sorry. Go on.
 20 MR DICKER: Your Lordship is quite right, one is focusing on
 21 the cost of funding.
 22 MR JUSTICE DAVID RICHARDS: I'm focusing on the words in the
 23 contract.
 24 MR DICKER: Yes. If it funds or if it were to fund the
 25 relevant amount and the expert's response would be to

Page 88

<p>1 say to that would be the most accurate way of measuring</p> <p>2 that is not by taking the entity's whack, the most</p> <p>3 accurate way of measuring that is on this basis.</p> <p>4 MR JUSTICE DAVID RICHARDS: Of looking at how much it would</p> <p>5 cost you to fund the loan of that amount to LBIE?</p> <p>6 MR DICKER: Yes.</p> <p>7 MR JUSTICE DAVID RICHARDS: That it seems to me to come back</p> <p>8 to a question of construction of the clause. I mean</p> <p>9 okay, that's what he says is the most accurate way of</p> <p>10 measuring the cost. But is that arguably within the</p> <p>11 meaning of the clause?</p> <p>12 MR DICKER: My Lord, we say of course yes. We also say that</p> <p>13 when your Lordship hears from an expert and understands</p> <p>14 precisely why this is the most accurate way of measuring</p> <p>15 the costs, if it is the most accurate way of measuring</p> <p>16 it you would expect it to be captured by the definition</p> <p>17 of default rate.</p> <p>18 MR JUSTICE DAVID RICHARDS: Not necessarily. It all depends</p> <p>19 what the default rate is seeking to achieve. These</p> <p>20 questions can be asked in all sorts of different</p> <p>21 contexts.</p> <p>22 I see it's now just after 1.00 and the transcribers</p> <p>23 have had a long morning. I will rise now, Mr Dicker.</p> <p>24 And I will sit at 2.15.</p> <p>25 (1.03 pm)</p> <p style="text-align: center;">Page 89</p>	<p>1 assets, including a defaulted claim against LBIE. Now</p> <p>2 in that way the nature of the risk inherent in the LBIE</p> <p>3 receivable will be taken into account in an assessment</p> <p>4 of the overall whack. Now, one can effectively take it</p> <p>5 all the way down to the stage at which one gets to the</p> <p>6 first basis. Imagine a company whose only asset happens</p> <p>7 to be the claim against LBIE. It goes to a lender and</p> <p>8 it says I want to borrow money, the lender asks what</p> <p>9 assets do you have and it says I have this claim against</p> <p>10 LBIE, and this is the cost.</p> <p>11 Now, the expert's view as I understand it is that</p> <p>12 actually that ultimately is the approach one ought to be</p> <p>13 taking, in a sense that is in fact the most accurate way</p> <p>14 of measuring the incremental cost involved. But there</p> <p>15 isn't a sharp distinction between the two in the sense</p> <p>16 that on the second basis no aspect or no consequence of</p> <p>17 LBIE's default can in any way feed into the cost of</p> <p>18 funding because plainly it will, whatever form the</p> <p>19 funding takes, whether it's by way of loan, whether it's</p> <p>20 by way of equity capital it's going to have some impact</p> <p>21 and the only question is the matter of degree.</p> <p>22 My Lord, that I think is all I wanted to say in</p> <p>23 addition in that respect.</p> <p>24 My Lord, just from a practical point of view if</p> <p>25 I can ask your Lordship just to look at the questions</p> <p style="text-align: center;">Page 91</p>
<p>1 (The short adjournment)</p> <p>2 (2.15 pm)</p> <p>3 MR DICKER: My Lord, not wishing to travel over ground that</p> <p>4 we have already trod but a few more submissions if I may</p> <p>5 in relation to the question of expert evidence.</p> <p>6 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>7 MR DICKER: My Lord, obviously the two bases that Mr McKee</p> <p>8 puts forward are bases which the Senior Creditor Group</p> <p>9 contend are bona fide and rational and that's obviously</p> <p>10 an issue which one way or another may need to be</p> <p>11 decided.</p> <p>12 My Lord, we do say that expert evidence would be of</p> <p>13 assistance at least in relation to the second basis.</p> <p>14 And, my Lord, we also say that if in relation to the</p> <p>15 second basis the first basis is effectively an extension</p> <p>16 of, on one view of that -- my Lord, just to illustrate</p> <p>17 at least one relationship between the two. My Lord, if</p> <p>18 one starts by considering the second basis which is the</p> <p>19 whack approach, imagine a company which has a series of</p> <p>20 assets but one major asset happened to consist of</p> <p>21 a claim against LBIE which has now been defaulted. It</p> <p>22 goes to a third party and says I'd like to borrow. The</p> <p>23 third party says well what assets do you have? Either</p> <p>24 to check its creditworthiness or by way of security at</p> <p>25 which point the corporate entity says these are my</p> <p style="text-align: center;">Page 90</p>	<p>1 which are at page 109 of the correspondence bundle.</p> <p>2 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>3 MR DICKER: My Lord, I do this simply because I am not sure</p> <p>4 at the moment that I understand precisely what questions</p> <p>5 the court will be invited to determine, with the</p> <p>6 assistance of experts if an expert is not permitted in</p> <p>7 relation to either the first or the second basis.</p> <p>8 Paragraph 1 obviously deals with Wentworth's notorious</p> <p>9 meaning, if I can refer to it in that way. Paragraph 2</p> <p>10 then effectively expands, and expands on that by asking</p> <p>11 a series of sub-questions. As I understand it those are</p> <p>12 potentially relevant in relation to Wentworth's own</p> <p>13 meaning but they're obviously also if your Lordship</p> <p>14 looks at the terms of them relevant in relation to both</p> <p>15 bases one and two.</p> <p>16 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>17 MR DICKER: So in a sense we are already going to be arguing</p> <p>18 about the same or dealing with the same issues. The</p> <p>19 difference between us is Wentworth says well the only</p> <p>20 expert we want is an expert simply dealing with market</p> <p>21 practice or market understanding. And we say if you</p> <p>22 look at those questions those questions are questions</p> <p>23 which would repay assistance of a slightly different</p> <p>24 sort of expert evidence.</p> <p>25 3 is then, as it were, just making 2 more specific,</p> <p style="text-align: center;">Page 92</p>

1 in other words when you deal with 2, you also need to
 2 have a look at Mr McKee's statement and the methods he
 3 identifies, together with possible approaches imply in
 4 the witness statement of Mr Bingham on behalf of
 5 Wentworth, or in Mr Lomas' statement and comment on
 6 whether those are consistent or inconsistent with your
 7 opinion.
 8 My Lord, the final point is simply this. If
 9 your Lordship goes in the correspondence bundle to
 10 page 100 there's a letter from Linklaters and it
 11 identifies one other possible reason why expert evidence
 12 may be required. It's the penultimate paragraph on
 13 page 101. My Lord, it may be easiest if you were just
 14 to read that paragraph beginning "In addition to those
 15 points".
 16 MR JUSTICE DAVID RICHARDS: Yes. (Pause) Yes.
 17 MR DICKER: My Lord, the obvious point is simply this. I do
 18 not know whether or to what extent the evidence which
 19 the Senior Creditor Group would wish to adduce by way of
 20 expert evidence in support of two bases identified by
 21 Mr McKee will necessarily cover this material. And
 22 your Lordship I think can't safely assume that it would.
 23 If so that, it seems to us at least, is a matter which
 24 the administrators need to consider, in other words is
 25 there more expert evidence that may be required, what do
 Page 93

1 they need to ensure that they get the guidance that they
 2 are hoping to receive from your Lordship.
 3 My Lord, I think then at 104 that's picked up by the
 4 administrators, my learned friend Mr Trower reminds me
 5 in the Linklaters earlier draft amendment to the
 6 proposed questions, if your Lordship just looks at
 7 question 2(e), that as I understand it is a suggested
 8 addition by the administrators effectively to deal with
 9 the point in correspondence I just mentioned.
 10 MR JUSTICE DAVID RICHARDS: The puzzling thing I think at
 11 the moment about this is that Mr Zacaroli's clients put
 12 forward a specific market usage meaning. And at the
 13 moment I don't understand that any of the issues in 2
 14 apply to the meaning which they put forward. The expert
 15 evidence really on the market usage should be confined
 16 to the meaning which Mr Zacaroli's clients put forward.
 17 Their case is it bears this meaning. Your case is it
 18 doesn't. Indeed your case is it doesn't bear any market
 19 meaning.
 20 So I don't at the moment see why one needs to ask
 21 any of the questions in question 2, when considering the
 22 meaning for which Mr Zacaroli contends.
 23 MR DICKER: I suppose two possible reasons. One of which is
 24 the parties' response to Mr Zacaroli's position is it
 25 doesn't bear the meaning for which he contends, for
 Page 94

1 example market participants, including financial
 2 institutions of the sort he refers to, can and do use
 3 alternative methods of assessing funding, for example
 4 these. The second reason I understand question 2 is
 5 inserted, no doubt my learned friend Mr Trower will tell
 6 me if I'm wrong, is to ensure the administrators don't
 7 simply get an answer to Mr Zacaroli's question, and are
 8 left with nothing more than being told default rate
 9 bears its ordinary and natural meaning and there's no
 10 further determination as to what precisely as a matter
 11 of construction comes within that.
 12 MR JUSTICE DAVID RICHARDS: But this question here is
 13 prefaced with "If the answer to question 1 is yes", so
 14 that presupposes that Mr Zacaroli's market custom
 15 meaning is accepted, in which case the question's
 16 answered.
 17 MR DICKER: My Lord, maybe I'm reading too much into change
 18 by the time one gets to page 109, which as we now have
 19 a tweak which means these questions arise whether or
 20 not --
 21 MR JUSTICE DAVID RICHARDS: I think the same point arises
 22 insofar as question 1 is answered yes, at the moment
 23 that looks like it's the end of it, as far as the case
 24 that he's putting forward now. I appreciate he's
 25 putting forward a case in respect of a subset of parties
 Page 95

1 that enter into these ISDA master agreements or
 2 transactions based on the master agreements but as far
 3 as they are concerned, as far as the meaning for which
 4 he contends in that context, as I understand it that's
 5 the end of the debate.
 6 MR DICKER: Yes, but if he's -- well, if he's right that
 7 that debate itself may involve considering not merely
 8 how he says banks approach things, but also how the
 9 Senior Credit -- or take the administrators' letter,
 10 other creditors contend --
 11 MR JUSTICE DAVID RICHARDS: Well do you mean creditors
 12 falling within his definition of financial --
 13 MR DICKER: Yes.
 14 MR JUSTICE DAVID RICHARDS: So even in a case where you have
 15 a contract made between two financial institutions, as
 16 Mr Zacaroli uses that term, and assume the answer to his
 17 question is "yes", it establishes that case, you say
 18 that these issues still arise.
 19 MR DICKER: No. I'm sorry if perhaps I wasn't clear. The
 20 submission was that in answering that question, in other
 21 words is Mr Zacaroli right or wrong as between such
 22 institutions it means cost of funding as a bank
 23 treasurer would mean one response may be that's wrong.
 24 It's wrong because the following alternative approaches
 25 can and often are used.
 Page 96

1 MR JUSTICE DAVID RICHARDS: That I follow. That I follow.
 2 So you would be saying that the way he expresses costs
 3 of funding for the purposes of financial institutions is
 4 wrong because actually they use it in a quite different
 5 way. That is evidence which would go to rebut his case.
 6 But if nonetheless he succeeds in his case, I don't see
 7 why we ask the questions in question 2, which after all
 8 are "or under any term of art established in response to
 9 question 1."
 10 MR DICKER: Because you then have the remaining part even on
 11 my learned friend's case of the operation of the default
 12 rate. In order words do those institutions who are not
 13 banks or financial institutions --
 14 MR JUSTICE DAVID RICHARDS: But the point is that this
 15 question 2 here is: which of the following could fall
 16 within the scope of cost if it were to fund or
 17 of funding, either in its general meaning or under any
 18 term of art established in response to question 1. And
 19 it's that latter bit which is neither here nor there.
 20 MR DICKER: I think on the way your Lordship formulates it
 21 that's right. The only way it could be relevant is if
 22 the rebuttal evidence to Mr Zacaroli's or Wentworth's
 23 position ends up effectively establishing an alternative
 24 trade practice.
 25 MR JUSTICE DAVID RICHARDS: No. That's impossible. Because

Page 97

1 there is only one trade meaning being put forward.
 2 MR DICKER: Your Lordship's quite right. So I think so far
 3 as, unless I'm missing something, your Lordship's right
 4 in relation to those concluding words but we still have
 5 the points firstly the debate about whether or not
 6 Wentworth is right may raise these alternative
 7 approaches. In other words are these approaches which
 8 the banks can and do take, ie is this evidence that
 9 contradicts the existence of a general practice. And,
 10 secondly, one has at least the remaining part of
 11 Wentworth's case in relation to funds or other corporate
 12 entities where you have effectively the same questions.
 13 My Lord, just stepping back, one way the parties
 14 could have approached this was effectively to say to
 15 your Lordship: look, ultimately this is a matter of
 16 certification for the individual claimant. They have to
 17 provide their estimate of costs and if it's rational and
 18 bona fide that's an end of it. And effectively said
 19 that's the process that should be adopted as between
 20 each claimant and the administrators.
 21 Now as we understand it that's not an approach which
 22 the administrators would wish to occur.
 23 MR JUSTICE DAVID RICHARDS: No.
 24 MR DICKER: To the extent it ends up delaying things it's
 25 not an approach which the Senior Creditor Group would

Page 98

1 wish to occur, thus effectively a desire to engage in
 2 a debate which may try to give the administrators
 3 additional guidance.
 4 MR JUSTICE DAVID RICHARDS: I accept that. I accept that.
 5 I mean, your clients wish to advance the case that on
 6 its true construction default rate in the master
 7 agreements extends to the concepts of cost to which
 8 Mr McKee refers and explains.
 9 MR DICKER: Or put another way, extends to concepts of cost
 10 included within paragraph 2(a) to (f) of the draft
 11 order.
 12 MR JUSTICE DAVID RICHARDS: Yes. I think my query is why do
 13 we need expert evidence on it?
 14 MR DICKER: Because we say your Lordship will be assisted in
 15 understanding the precise nature of the costs involved,
 16 the way in which they are incurred, the conceptual basis
 17 of the assessment of costs in ultimately deciding
 18 whether or not as a matter of construction they are
 19 within the wording the default rate.
 20 MR JUSTICE DAVID RICHARDS: It seems to me it's a very large
 21 exercise to undertake when one is seeking to construe
 22 the clause. I don't really understand why -- I mean on
 23 one view one could take Mr McKee's witness statement and
 24 exhibit as it is now and say does the definition of
 25 default rate extend to these costs? Here's

Page 99

1 a description of it. Whether or not how it would play
 2 out in any particular case of course is a different
 3 matter. But is it -- because that's the question I'm
 4 being asked after all, conceptually are these costs as a
 5 matter of construction within the meaning of the default
 6 rate definition. One approaches it as a matter of, you
 7 know, ordinary litigation and the Statement of Case.
 8 I don't at the moment understand why the parties
 9 couldn't agree well that is indeed a way in which
 10 corporate financiers might approach the question of
 11 costs. It's a perfectly respectable approach to the
 12 concept of costs. It just doesn't happen to be what
 13 this clause contemplates.
 14 MR DICKER: My Lord, your Lordship then needs, we say, to
 15 understand precisely what these costs are and why they
 16 are ascertained in this way to be able --
 17 MR JUSTICE DAVID RICHARDS: But Mr McKee does a pretty good
 18 job of explaining things.
 19 MR DICKER: With the greatest of respect Mr McKee he is not
 20 an expert and he is not someone we would be proposing to
 21 tender for the purpose of dealing with these matters.
 22 MR JUSTICE DAVID RICHARDS: I'll hear what Mr Zacaroli says
 23 but I'm just concerned that we're about to embark on
 24 an exercise, for the parties and the court, which is
 25 simply not required in order to answer the question.

Page 100

1 MR DICKER: My Lord, I need to persuade your Lordship
 2 obviously that there is sufficient potential benefit to
 3 make it sensible to embark on this process now to avoid
 4 the risk of, come the trial, your Lordship on hearing
 5 from Mr McKee or anyone else decides some more
 6 assistance would be helpful.
 7 MR JUSTICE DAVID RICHARDS: There is always a chicken and
 8 egg here, I agree. Yes.
 9 MR DICKER: My Lord, unless I can help your Lordship
 10 further.
 11 MR JUSTICE DAVID RICHARDS: Mr Zacaroli.
 12 MR ZACAROLI: My Lord, we start with the point that this is
 13 a question of the construction of the phrase "the cost
 14 to the relevant payee if it were to fund the relevant
 15 amount."
 16 The proposed expert evidence which the Senior
 17 Creditor Group wish to adduce in relation to that goes
 18 to the question of, my learned friend's put it in
 19 various ways today, the cost to an entity of funding the
 20 entries as he put it, or cost to the entity of funding
 21 the asset being the receivable from LBIE. There are a
 22 number of different things you might be funding but not
 23 the cost to fund the relevant amount, which is the only
 24 thing this court's concerned with, the construction of
 25 that phrase. And the way in which an entity might, an

Page 101

1 corporate or a fund might calculate the cost to it of
 2 funding its liabilities generally or funding
 3 a particular asset is irrelevant to that question.
 4 Now, my learned friend today has accepted two
 5 things: first of all as it clearly stated in
 6 correspondence before today that the FCG's case does not
 7 involve asserting any market usage. So that's not their
 8 case. And secondly he accepts today that the expert
 9 evidence he proposes to adduce would not assist the
 10 court with the meaning of the words. So we do ask the
 11 question well then what is the point of the expert
 12 evidence if there's no market usage being asserted and
 13 it would not assist the court in determining the meaning
 14 of the words, which is the only question for the court?
 15 What they say in their skeleton is paragraph 64 of the
 16 FCG's skeleton, tab 6 of the CMC bundle, page 24.
 17 MR JUSTICE DAVID RICHARDS: Yes.
 18 MR ZACAROLI: Summarising four subparagraphs about the ways
 19 in which they say the court would be assisted. First of
 20 all in understanding how entities can and do calculate
 21 their funding costs, generally they are not referenced
 22 to the ISDA master agreement:
 23 "Secondly understand the conceptual bases for the
 24 group's case that the cost of ...(Reading to the
 25 words)...not limited in that way."

Page 102

1 And thirdly:
 2 "In understanding the various ways in which the true
 3 cost of raising an incremental sum of money can and
 4 should be measured."
 5 And the fourth way is:
 6 "To understand the ways in which the true costs
 7 associated with being forced to fund defaulting party
 8 can and should be measured."
 9 Now a number of terms used in those subparagraphs,
 10 the first of which is reference to the true cost. It
 11 immediately begs the question true according to what
 12 standard? The only relevant question is: is that
 13 cost, that concept of costs referred to there within the
 14 four corners of the definition in the master agreement?
 15 Otherwise it's irrelevant to ask what true costs mean.
 16 Similarly the reference to how entities can calculate
 17 their costs. "Can" could be used in two meanings there.
 18 First of all a way in which in theory they could go
 19 about doing it as a matter of calculation. That takes
 20 us nowhere. The second possibility is "can" means the
 21 way in which they are permitted to do so. But that is
 22 also meaningless unless it's in the context of the words
 23 of the agreement and takes you straight back to the
 24 question of construction, where the evidence will give
 25 no assistance at all. What a corporate finance theorist

Page 103

1 or practitioner might think the words mean.
 2 MR JUSTICE DAVID RICHARDS: That's clearly not -- I don't
 3 think Mr Dicker would suggest that they could give
 4 evidence on that.
 5 MR ZACAROLI: That is in fact the question that's being
 6 suggested here because it's how should they measure
 7 their costs and the only relevance of that question is
 8 in the context of the construction of the agreement.
 9 Similarly then the other way to put it here is how
 10 do these entities calculate their costs? That really is
 11 what this may come down to at the end of the day.
 12 Mr Dicker wishes to advance evidence which simply
 13 explains the way in which corporates, funds, typically
 14 do calculate whatever it is they're calculating, it
 15 doesn't appear to be said to be calculating the amount
 16 owed to them under the ISDA master agreement default
 17 interest definition, it's more general than that, it's
 18 how they generally calculate their cost --
 19 MR JUSTICE DAVID RICHARDS: The question is for what
 20 purpose.
 21 MR ZACAROLI: Exactly. We say that one doesn't need expert
 22 evidence to identify as a matter of fact the ways in
 23 which it is being suggested that or the concepts of cost
 24 which is being suggested fall within the definition. In
 25 the same way as for example a notice says "no bicycles

Page 104

<p>1 in the park", you might want to know what a bicycle is 2 and the court needs to understand what a particular 3 party is saying constitutes a bicycle and it would ask 4 itself whether that fits the description or not. You 5 don't need expert evidence to tell you what the bicycle 6 is, or at least what the argument for the bicycle -- 7 MR JUSTICE DAVID RICHARDS: There is always a danger in 8 analogies. 9 MR ZACAROLI: Of course. 10 MR JUSTICE DAVID RICHARDS: I suppose -- I mean clearly -- 11 the administrators would like this issue determined. 12 That's clear. The Senior Creditor Group is putting 13 forward a case for the meaning of default rate which 14 encompasses costs which are a good deal wider than the 15 case that you put forward. And so there's no objection 16 to the case being put forward. 17 The issue is whether there needs to be expert 18 evidence about that. 19 Now, does Wentworth accept that the concepts of cost 20 being put forward by Mr McKee on behalf of the Senior 21 Creditor Group are concepts of costs which are in fact 22 in use by corporate entities, financial or otherwise. 23 Or do they say no, this is all complete nonsense, no one 24 ever thinks in these terms at all. 25 MR ZACAROLI: We haven't undertaken the same exercise --</p> <p style="text-align: center;">Page 105</p>	<p>1 question then would be given that background is that 2 what the definition of default rate is aimed at. 3 MR ZACAROLI: So when I say for the purposes of construction 4 we are prepared to accept those are credible ways in 5 which concepts of costs in the corporate financial 6 sphere. That doesn't mean we have to accept that they 7 actually are. One doesn't need to go to that step. All 8 we are saying is we are prepared to have the argument 9 that whether they exist or not are they within the 10 meaning of the words, we are prepared to accept for the 11 purpose of the argument, of construction, that they can 12 be treated as if they are real concepts that happen in 13 the real world. 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR ZACAROLI: Which means you don't need expert evidence, 16 which is frankly unlimited in scope here because it's 17 not -- there are two bases of calculation put forward in 18 Mr McKee's evidence. He then has at the back of the 19 argument three actual case and my learned friend has 20 seen those. It might be worth just glancing at them. 21 MR JUSTICE DAVID RICHARDS: Yes. 22 MR ZACAROLI: Tab 14 of the CMC bundle. It's about halfway 23 through the tab. There no page numbers but there's -- 24 it's paragraph 22 in the long exhibit document. 25 Paragraph 22 is the example. He identifies three actual</p> <p style="text-align: center;">Page 107</p>
<p>1 quite extensive exercise probably -- of going to 2 corporate finance experts and asking -- 3 MR JUSTICE DAVID RICHARDS: Is this a load of baloney? 4 MR ZACAROLI: -- does this make any sense at all in some 5 context or other. I'm prepared to accept for the 6 purposes of argument today that if we did do that we 7 would find that in certain contexts this isn't baloney, 8 this is something which corporate finance theorists and 9 practitioners would identify as a cost that a fund or 10 a corporate might incur. It might be a way of 11 describing the costs they incur for particular purposes 12 but that takes us nowhere because -- 13 MR JUSTICE DAVID RICHARDS: It takes us somewhere in the 14 sense that it is a legitimate use of the word cost -- 15 MR ZACAROLI: I accept that. 16 MR JUSTICE DAVID RICHARDS: -- or the cost of funding. 17 MR SMITH: Yes. 18 MR ZACAROLI: Yes. 19 MR JUSTICE DAVID RICHARDS: So in a sense without evidence 20 but that being the case being put forward by Mr Dicker's 21 clients you would have to accept that that was 22 a legitimate description of costs -- 23 MR ZACAROLI: Yes. 24 MR JUSTICE DAVID RICHARDS: -- used in certain, and you 25 wouldn't have to define which circumstances. The</p> <p style="text-align: center;">Page 106</p>	<p>1 examples without names. The first is a corporate in the 2 part of a large group, with 3 billion in adjusted 3 profits et cetera and he sets out the sort of 4 calculations over the next two pages which can be relied 5 upon in support of the first basis and then the second 6 basis. So between paragraph 22 and 30 you'll see actual 7 numbers there, an actual application of the bases to 8 particular facts. 9 MR JUSTICE DAVID RICHARDS: Right. 10 MR ZACAROLI: The same thing happens in examples 2 and 3. 11 So the court will have as it were the equivalent of 12 a pleaded case which is we say as a matter of definition 13 costs includes the following three or four or five 14 concepts. It will also have worked examples of that so 15 it can understand what those concepts are said to mean. 16 And that we submit is all the court really needs in 17 order to answer the question of construction, which 18 requires you to go back to the agreement, the context 19 et cetera. One doesn't need any more. You certainly 20 don't need theorists and practitioners from the world of 21 corporate finance doing extensive reports about the ways 22 in which this or may not happen in practice amongst 23 a whole range of different types of company. We are not 24 here talking about a particular expertise or 25 a particular profession with its own rules and</p> <p style="text-align: center;">Page 108</p>

1 regulations, we are talking about something as general
 2 as the way this which corporations and hedge funds might
 3 regard themselves as incurring costs by borrowing or in
 4 relation to particular assets or their overall funding.
 5 That's a very broad concept.
 6 It's made clear in the FCG's skeleton. We needn't
 7 turn it up, paragraph 62:
 8 "For the avoidance of doubt Mr McKee's evidence does
 9 not and is not intended to set out the ...(Reading to
 10 the words)...the cost."
 11 MR JUSTICE DAVID RICHARDS: I am just trying to look for the
 12 order that I made on 21 November.
 13 MR ZACAROLI: It's in tab 3 or 4.
 14 MR JUSTICE DAVID RICHARDS: I have taken it out. Just give
 15 me one moment. (Pause) So it was paragraph 11 -- no.
 16 MR ZACAROLI: 10, I think.
 17 MR JUSTICE DAVID RICHARDS: "To file and serve evidence
 18 explaining the basis or bases upon which they consider
 19 they are entitled to advance actual claim as to
 20 interest."
 21 Yes I see. Did you just refer to something Mr McKee
 22 said in his witness statement?
 23 MR ZACAROLI: No, I was referring to the skeleton argument
 24 of the Senior Creditor Group at paragraph 62.
 25 MR JUSTICE DAVID RICHARDS: I think the way I read it is

Page 109

1 that in the -- reading what is said here with my
 2 previous order, these are the bases on which the Senior
 3 Creditor Group put forward a case. If the
 4 administrators wish to put forward other bases for
 5 decision by the court well that's for them. But --
 6 I don't think that the Senior Creditor Group is trying
 7 to reserve a right to provide other bases later on.
 8 They could clarify.
 9 MR ZACAROLI: Let's assume that. It still doesn't really
 10 alter the point that it's still open-ended scope of
 11 expert evidence here given no recognised discipline or
 12 profession et cetera.
 13 MR JUSTICE DAVID RICHARDS: Yes.
 14 MR ZACAROLI: The other point to make is the form of the
 15 question. Page 109 of the correspondence bundle.
 16 My Lord just looked at this. It's the questions in the
 17 latest -- in fact this is the Senior Creditor Group's
 18 own draft. So question 1 we have dealt with.
 19 Question 2 -- actually the way this question is
 20 formulated, "which of the following could fall within
 21 the scope of" is nothing more than the question the
 22 court's being asked. It's the ultimate question. So as
 23 framed this can't work.
 24 MR JUSTICE DAVID RICHARDS: Yes.
 25 MR ZACAROLI: Which gives the lie we say to the idea that

Page 110

1 this evidence is somehow forming a useful function which
 2 is a permissible function. Just to be clear, my Lord,
 3 it's our position that it's only question 1 that is
 4 necessary on our --
 5 MR JUSTICE DAVID RICHARDS: Yes.
 6 MR ZACAROLI: So for those reasons we say that really
 7 there's no purpose to be served -- no legitimate purpose
 8 to be served by expert evidence from a corporate finance
 9 expert.
 10 MR JUSTICE DAVID RICHARDS: I see that question 3 refers
 11 first of all refers to Mr McKee's witness statement but
 12 then goes on to refer to methods potentially implied by
 13 the actions of certain claimants' evidenced in
 14 an exhibit to Mr Bingham's statement.
 15 MR ZACAROLI: Yes.
 16 MR JUSTICE DAVID RICHARDS: And the 11th witness statement
 17 of Mr Lomas.
 18 MR ZACAROLI: Yes. My Lord, what that is getting at and it
 19 doesn't go to the question of, the pure question for
 20 expert evidence. But it goes to this, that Mr Bingham's
 21 evidence identifies as a matter of fact that the vast
 22 majority of claims which are currently visible as claims
 23 for a default rate, of course -- nobody's submitted
 24 claims for interest in the LBIE estate as of yet, there
 25 is no formal request for that. But that shows that the

Page 111

1 evidence mostly based on submissions in other LBIE
 2 entities, which are guarantees of claims against LBIE,
 3 in the vast majority of those it so happens that the
 4 rate of interest that has been claimed is very low
 5 compared with the arguments for double digit or 20 per
 6 cent rates of interest based on these funding theories.
 7 Mr Lomas' evidence suggests that they have the same
 8 experience to the extent they have any experience within
 9 the LBIE estate itself.
 10 My Lord, can I just deal with one other issue
 11 related to this which is the breadth of the questions.
 12 We are really focusing here on question 11 because
 13 questions 12 to 19, many parts of them are agreed and to
 14 the extent they're not they really just fall -- they are
 15 a subset of question 11 in some way.
 16 Question 10 is obviously critical because that
 17 determines who it is and that's a very important
 18 question.
 19 Question 11, we suggest we submit that the court's
 20 being asked to do is at a generic level determine what
 21 potential calculations of costs or methods of
 22 calculating costs could be within the meaning of the
 23 phrase. This may be an obvious point but the court
 24 can't possibly go further than that and say that they
 25 are within because whether they are within -- well, it

Page 112

1 can say it's within the meaning as a matter of concept
 2 but --
 3 MR JUSTICE DAVID RICHARDS: That is as I understand it.
 4 MR ZACAROLI: But obviously in any given case you have to
 5 look at the circumstances of the particular
 6 counterparty.
 7 We made the suggestion in our skeleton that if the
 8 administrators wants guidance that goes beyond pure
 9 construction, that a way of achieving that that might be
 10 worth giving consideration to is test cases, because you
 11 can't -- Mr McKee's evidence tells us how particular
 12 funds have or are likely to calculate their costs but we
 13 don't know anything about those funds other than the
 14 bare facts. You don't know the full circumstances, what
 15 borrowing would have been available to them at the time
 16 for example. All that information is necessary before
 17 you can decide the amount they did certify was rational
 18 and in good faith, taking into account the
 19 circumstances.
 20 So we have made the suggestion that if the
 21 administrators want to get further assistance, where you
 22 would be able to adduce expert evidence in various
 23 fields no doubt, relative to a particular case, then
 24 provided you choose the cases carefully, and with types
 25 of claim that are representative of the entire group,

Page 113

1 then the court could give, case by case specific, but
 2 guidance by determining the very issues in the context
 3 of test cases.
 4 Now we suggest that would be a way of broadening the
 5 scope of -- broadening the extent of the guidance the
 6 court can give, which it simply can't give if it's
 7 simply asking questions of construction as are raised by
 8 this issues. So we have made that suggestion. It
 9 hasn't so far been taken up by anybody but we reiterate
 10 the suggestion.
 11 MR JUSTICE DAVID RICHARDS: With a test case of course --
 12 I mean the first issue in a sense would be the issue of
 13 construction.
 14 MR ZACAROLI: Yes.
 15 MR JUSTICE DAVID RICHARDS: That's the same issue as is
 16 raised by the administrators. And then in practice --
 17 well, in practice probably you'd have a single hearing
 18 where you would argue the issue of construction, but you
 19 also have the expert evidence and so on going to the
 20 issue as to whether if on its proper construction
 21 default rate includes these types of costs, whether the
 22 claimant can establish that case in these particular
 23 circumstances.
 24 Now a court faced with that claim might say well
 25 shouldn't we determine the question of construction

Page 114

1 first?
 2 MR ZACAROLI: I don't dissent from that. This may be
 3 a timing point as opposed to anything but that extra
 4 guidance -- if we look at one question for example which
 5 is question 15 in the list of issues. Question 15 is,
 6 as I've been reminded, an agreed issue but of course it
 7 contains the words at the end which everyone's ignored,
 8 rightly, because it's impossible to determine that
 9 question within the context of these proceedings.
 10 MR JUSTICE DAVID RICHARDS: Yes.
 11 MR ZACAROLI: So it may well be as my Lord says that the
 12 question of construction would have to be first
 13 determined to see what's --
 14 MR JUSTICE DAVID RICHARDS: I think it might be a more
 15 efficient use of court time and indeed parties' time and
 16 money to decide the issue of construction.
 17 MR ZACAROLI: Yes. I accept that. But what I'm saying is
 18 that to the extent that further guidance is -- which is
 19 useful, I'm sure it is useful to have broader guidance
 20 than that across the types of claim that are likely to
 21 be raised, then the appropriate forum for that is a test
 22 case as opposed to trying to force in those sorts of
 23 question into a question of construction --
 24 MR JUSTICE DAVID RICHARDS: Coming back to it I mean the
 25 question with Mr McKee's witness statement, the question

Page 115

1 is raised well are these costs that can fall within the
 2 definition of default rate. So it may be that the
 3 administrators will want to ask the same question in
 4 respect of other types of costs, I mean they haven't
 5 said so yet but that's the point that Mr Dicker I think
 6 made in his skeleton.
 7 Those necessarily are quite generic issues but
 8 they're real in the sense that there are creditors who
 9 wish to put forward at any rate the case Mr Dicker
 10 advances.
 11 MR ZACAROLI: But the point I'm making is those of course
 12 are determinable on a question of construction, are they
 13 off side or not.
 14 MR JUSTICE DAVID RICHARDS: Yes.
 15 MR ZACAROLI: No expert evidence required for that. Expert
 16 evidence to the extent that it would be useful comes in
 17 at the next stage.
 18 MR JUSTICE DAVID RICHARDS: I follow, yes.
 19 MR ZACAROLI: My Lord, unless I can assist further those are
 20 our submissions on that issue.
 21 MR JUSTICE DAVID RICHARDS: Thank you very much. I will
 22 hear Mr Dicker at the end but I think I should hear you
 23 first, Mr Trower.
 24 MR TROWER: My Lord, I wasn't going to say anything at all
 25 on the pure debate in relation to expert evidence

Page 116

1 because I realise that's what's your Lordship is dealing
 2 with. Just so I can clarify our position in relation to
 3 question 2, the questions under 2, in the cost of
 4 funding experts, your Lordship can see how that fits
 5 from our perspective. What they were from the joint
 6 administrators' perspective, irrespective of whether or
 7 not expert evidence in that form was considered by the
 8 court to be appropriate, was a distillation of the
 9 description of the forms of costs of funding which were
 10 derive from a combination of the position papers and the
 11 McKee evidence for the purposes of establishing whether,
 12 where in circumstances in which an assertion is made by
 13 a creditor this constitutes the cost of funding, the
 14 court is able to give the administrators guidance as to
 15 whether or not that category of costs falls within,
 16 conceptually, the idea of cost of funding within the
 17 meaning of the ISDA. So to that extent there's
 18 obviously a very close correlation between that and the
 19 ultimate question which the court is being asked --
 20 MR JUSTICE DAVID RICHARDS: I think actually question 2 is
 21 the question for the court rather than the question for
 22 the experts.
 23 MR TROWER: I can see why it is that Mr Zacaroli put it that
 24 way. Just subject to one extra point which I am asked
 25 to mention, and Mr Dicker raised this, there is the

Page 117

1 issue under 2(e) on page 104 that was mentioned in the
 2 Linklaters letter that Mr Dicker took you to on
 3 page 101, is a further way of characterising or
 4 describing a cost that may be asserted as constituting
 5 a cost of funding.
 6 MR JUSTICE DAVID RICHARDS: Who asserted this?
 7 MR TROWER: It was by another creditor. So it came to the
 8 joint administrators relatively late on in the process.
 9 So there is one category of descriptive cost of funding
 10 which isn't included in the McKee evidence but in
 11 respect of which the administrators would now like to
 12 seek an answer. It hasn't made it across from 104 to
 13 109 but it needs to do so. I quite appreciate that
 14 that's a different question from the one of whether or
 15 not your Lordship is going to direct expert evidence of
 16 those questions.
 17 MR JUSTICE DAVID RICHARDS: What view does the
 18 administrators have of whether there should be expert
 19 evidence?
 20 MR TROWER: My Lord we -- can I answer the question this
 21 way? It remains the case that we would like the court
 22 to answer the questions by reference to these arguments
 23 as to what might constitute cost of funding and it
 24 remains the case that if the court feels any concerns
 25 about understanding the way in which in a market sense

Page 118

1 the assertions are being described and characterised by
 2 the arguments made on behalf the Senior Creditor Group,
 3 that your Lordship may feel assisted by expert evidence.
 4 But it's expert evidence of that character to assist the
 5 court in understanding what may be being asserted as
 6 a cost of funding that may be not entirely, can I put it
 7 this way, easy to grasp at first blush, certainly if one
 8 is a lawyer rather than an economist.
 9 MR JUSTICE DAVID RICHARDS: Once one reads Mr McKee's
 10 witness statement, as I have done, although I haven't
 11 worked through the detail of the examples at the end,
 12 his explanation is very clear.
 13 MR TROWER: Yes. That's why I put it in a relatively
 14 low-key way. Some tribunals may find it easier to grasp
 15 the concepts that underpin this than others and at the
 16 end of day the expert evidence is to assist the court --
 17 because the one thing the administrators don't want to
 18 find is at the end of this process the court feels
 19 uncomfortable about asking the question because the
 20 evidence which has been adduced in support of
 21 an understanding of the issue isn't sufficiently clear.
 22 I don't think it would be right for me to make any other
 23 submissions apart from that.
 24 MR DICKER: Just a few points by way of reply. Firstly so
 25 far as the wording of question 2 is concerned, I think

Page 119

1 your Lordship and my learned friend Mr Zacaroli are
 2 right as phrased. This is essentially asking the
 3 ultimate question for the court and it could and in our
 4 submission should be rephrased, essentially to ask which
 5 of the following could be within the scope of "cost"
 6 raising an amount et cetera. So focusing more on the
 7 word "cost" than on the definition within default rate.
 8 The second point is this: My learned friend I think
 9 was prepared to accept on a limited basis that certain
 10 corporate finance theorists or practitioners, at least
 11 in some contexts, might apply one or other of the bases
 12 advanced by Mr McKee.
 13 My Lord, I have to say I was unclear as to the
 14 extent of the concession. It appeared to be limited
 15 solely to today and if so it is irrelevant for the
 16 purposes of the trial. Secondly, it was also unclear to
 17 me whether it extended to such use within the context of
 18 default rate or within analogous situations or whether
 19 what he was effectively accepting for the purposes of
 20 argument was it might be used simply in other --
 21 MR JUSTICE DAVID RICHARDS: It certainly wasn't -- but then
 22 the evidence wasn't -- your case is not being put
 23 forward on the basis. Your case is not being put
 24 forward on the basis that this is used as a cost for the
 25 purposes of default rate. Your case is that this is

Page 120

<p>1 an approach to costs of funding which corporate 2 financiers will use. It's not targeted at calculations 3 for the purposes of default rate. 4 MR DICKER: My Lord, that's right. It's not targeted on 5 default rate calculations. And we don't say that this 6 use, as it were, is a market practice as to how these 7 formulations are done but we do say this is an approach, 8 both in theory and practice, which is used by corporate 9 financiers to work out costs in various situations 10 including situations like the present one. 11 MR JUSTICE DAVID RICHARDS: I don't know where that appears. 12 You say "in situations like the present one" but there's 13 nothing in Mr McKee's witness statement which goes that 14 far. 15 MR DICKER: My Lord, implicit in his statement is that 16 because these are two bases which the Senior Creditor 17 Group are advancing they say are applicable in the 18 situation. 19 MR JUSTICE DAVID RICHARDS: I appreciate that. But they're 20 not putting forward a case and saying this is in fact 21 what happens. Nor is Mr Zacaroli saying in fact it does 22 not happen. The question is not whether it in fact 23 happens but whether it should happen, as a matter of 24 construction. 25 MR DICKER: My Lord, that is certainly how we were intending</p> <p style="text-align: center;">Page 121</p>	<p>1 work because Mr McKee isn't focusing on the cost of 2 funding "the relevant amount". The submission my 3 learned friend made was if you focus on the phrase "the 4 relevant amount" neither the second nor the first basis 5 can arise. In our respectful submission that may simply 6 indicate that my learned friend could do with the 7 assistance of an expert. 8 My Lord, take the second approach that Mr McKee 9 discusses. What is the cost of funding the relevant 10 amount? Mr McKee says a party who goes out and says to 11 a lender "I want to borrow money" will incur not merely 12 the cost of the interest on that loan and the associated 13 fees but will also incur a cost essentially imposed on 14 the cost of capital which needs taken into account in 15 providing an accurate reflection of cost. 16 MR JUSTICE DAVID RICHARDS: I don't think Mr Zacaroli does 17 need the existence of an expert to understand that. 18 It's perfectly clear from Mr McKee's state that that is 19 what he says is a cost. As a matter of corporate 20 finance theory and practice. Not tied to any particular 21 circumstance but that that is a legitimate approach to 22 the question of cost, as it were, in general. And then 23 Mr Zacaroli will accept that as I understand it, and 24 then the question is a question of construction. 25 MR DICKER: My Lord, and we say --</p> <p style="text-align: center;">Page 123</p>
<p>1 to argue the case. 2 MR JUSTICE DAVID RICHARDS: Tell me how you were intending 3 to argue the case. 4 MR DICKER: This is these concepts fall within -- these 5 concepts properly understood fall within the definition 6 of default rate. 7 MR JUSTICE DAVID RICHARDS: Yes but not by reference to what 8 people actually do when calculating default rate. You 9 are saying these are ways in which commercial 10 undertakings would calculate cost or may calculate cost, 11 without descending to detail about the context in which 12 they may do so. 13 MR DICKER: Your Lordship is absolutely right because 14 ultimately there are only two possibilities. It's 15 either a question of construction for your Lordship or 16 it's not because there's a trade practice which 17 establishes some meaning -- 18 MR JUSTICE DAVID RICHARDS: I don't think we are probably 19 at cross-purposes here. 20 MR DICKER: No. My Lord, so far as does this extend to the 21 default rate, as I understand it my learned friend's 22 response was, well, you don't need expert evidence to 23 assist you in that. Essentially because it's clear as 24 a matter of construction. The short submission he made 25 was these neither of the two bases advanced by Mr McKee</p> <p style="text-align: center;">Page 122</p>	<p>1 MR JUSTICE DAVID RICHARDS: All the experts can do is to 2 further explain and elaborate upon that which Mr McKee 3 has put in his statement and which is accepted by 4 Mr Zacaroli's clients as being a legitimate approach as 5 a general matter to the question of cost. And whether 6 it's applicable or suitable here is a question of law. 7 MR DICKER: My Lord, yes. But we say a question of law that 8 your Lordship can find it easier to decide if an expert 9 provided further colour as to precisely why and in what 10 way those costs were incurred and the extent to which 11 they relate to the direct costs say of interest or the 12 fees. 13 Now plainly that's one issue. The first basis is 14 more complicated. 15 MR JUSTICE DAVID RICHARDS: Interest and fees, sorry, I mean 16 I think that's Mr Zacaroli's case, as I understand it. 17 At any rate leaving aside his trade -- or at least it's 18 a point that is put forward in question 11, is it 19 limited to borrowing costs by which is meant interest 20 rate and fees. Maybe other things. So it's not -- I 21 doubt there is going to be very much controversy on 22 that. It's the other way of putting it, isn't it, 23 whether those other ways, those other quantifications of 24 cost are legitimate? 25 MR DICKER: And so as far as the first basis is concerned</p> <p style="text-align: center;">Page 124</p>

1 your Lordship's seen that. My Lord, certainly speaking
 2 for myself I would be assisted by an expert in
 3 explaining to your Lordship how and why those costs were
 4 incurred and therefore why they are properly to be
 5 regarded as costs within the scope of the definition.
 6 MR JUSTICE DAVID RICHARDS: You can't do that. He is not
 7 permitted to give evidence as to why they should be
 8 regarded as costs within the definition.
 9 MR DICKER: No.
 10 MR JUSTICE DAVID RICHARDS: He's able to give evidence about
 11 costs and about these being costs that are -- it's
 12 an approach to the calculation of costs undertaken by
 13 corporate financiers and others but he can't go beyond
 14 that.
 15 MR DICKER: No, your Lordship is right and I left out the
 16 words when saying "and why therefore", I left out the
 17 words "and why in my submissions therefore it falls
 18 within the scope of default rate."
 19 My Lord, my learned friend's I think just two other
 20 points. Firstly he says if you look at the questions,
 21 there's an enormously broad scope of evidence we
 22 require. My Lord, we say in reality it's not so.
 23 Your Lordship should not assume that any expert's
 24 reports dealing with Mr McKee's two bases will be
 25 particularly extensive.

Page 125

1 The final point my learned friend made was test
 2 cases. I don't think I need to say anything more than
 3 that.
 4 MR JUSTICE DAVID RICHARDS: The administrators are content
 5 to ask the court to rule on those issues in their
 6 present form and I think that's a rational approach.
 7 I'm not saying test cases would be a wrong approach but
 8 I think this approach is a perfectly acceptable one.
 9 MR DICKER: Unless I can help your Lordship further.
 10 MR JUSTICE DAVID RICHARDS: Thank you very much indeed
 11 Mr Dicker, on this question of expert evidence I think
 12 the position is sufficiently clearly expressed in
 13 Mr McKee's statement, the statement of your case, and
 14 I don't think it will be assisted by expert evidence so
 15 I'm not going to give permission for expert evidence to
 16 describe what Mr McKee has set out in his witness
 17 statement. I take this as a statement of the case which
 18 you're fully entitled to advance and will be fully
 19 argued but I think the statement of relevant fact which
 20 you contend for is sufficiently stated in this. This is
 21 subject to -- there does need to be a formal response on
 22 behalf of Wentworth, so we know exactly what Wentworth's
 23 position is in relation to Mr McKee's statement. And so
 24 I will direct within a time to be agreed that
 25 Wentworth's solicitors should write to the other

Page 126

1 solicitors stating their position as regards Mr McKee's
 2 witness statement. I mean I anticipate in the light of
 3 what Mr Zacaroli has said that there will be
 4 an acceptance that these are approaches to the
 5 calculation of cost which are in fact adopted as
 6 a general matter by corporate financiers and so on but
 7 it's for them to explain their position in relation to
 8 your case which is set out in Mr McKee's witness
 9 statement. And then we can see in the light of that
 10 response whether any further direction of any sort is
 11 required. So I rule against you on expert evidence.
 12 So far as the formulation then of the one question
 13 for the experts that is there, this is really addressed
 14 to all of you, I'm looking, Mr Dicker, at your draft,
 15 page 109. Paragraph 1 -- I am a bit concerned actually,
 16 as to the formulation of question 1. I appreciate it's
 17 agreed. But again it asks an entirely open question,
 18 whereas I think what we're actually addressing is
 19 a closed question, which is the meaning contended for by
 20 Wentworth. So the question I think should be
 21 directed -- I'm sorry that I'm undoing a lot of work,
 22 but it should be directed at the case that Wentworth is
 23 putting forward rather than it being a general question
 24 about whether there are any particular meanings or not.
 25 Mr Dicker, I got you on your feet only because you

Page 127

1 happen to be the last person on your feet but it applies
 2 to everyone. I think clearly many of the questions are
 3 applicable to that specific issue, but I think that the
 4 question needs to be restated in the targeted way in
 5 which I have mentioned but if any of you want to come
 6 back to me on that by all means do.
 7 What does that leave for --
 8 MR TROWER: Probably the best place to go is to the order,
 9 just to make sure that -- the draft order which is
 10 behind tab 4.
 11 MR JUSTICE DAVID RICHARDS: Are we clear about areas where
 12 the questions are going to have to be reframed a bit?
 13 MR TROWER: Which questions --
 14 MR JUSTICE DAVID RICHARDS: The ones, the actual questions
 15 under paragraphs 10 and following. I think just quickly
 16 to run through it, Mr Trower, there's no problem about
 17 question 10. I think question --
 18 MR TROWER: Is your Lordship looking at the application?
 19 MR JUSTICE DAVID RICHARDS: Yes.
 20 MR TROWER: It was your Lordship's --
 21 MR JUSTICE DAVID RICHARDS: Question 11, it was the first
 22 sentence of question 11 which is just very broad as it
 23 stands at the moment.
 24 MR TROWER: It's "what meaning should be given to" is too
 25 open a question, is that --

Page 128

<p>1 MR JUSTICE DAVID RICHARDS: Yes exactly. I think this 2 question -- I'm not sure in the light of -- things have 3 moved on in the sense that we've got Mr McKee's 4 statement. 5 MR TROWER: Yes. What I'm just wondering is whether -- one 6 way forward on this is to articulate the question by 7 reference to what was in paragraph 2 of the questions 8 for cost of funding experts, which is what we 9 characterise as a distillation of the issues for the 10 court. I'm slightly conscious, my Lord, that this has 11 had an enormous amount of work done on it. 12 MR JUSTICE DAVID RICHARDS: Which -- 13 MR TROWER: Here I am trying to ruin it on my feet. 14 MR JUSTICE DAVID RICHARDS: What has had a lot of work? 15 MR TROWER: The formulation of the question and how they 16 interrelate to the -- 17 MR JUSTICE DAVID RICHARDS: Sorry, the questions on 18 page 109? 19 MR TROWER: And how they interrelate with question 11. 20 MR JUSTICE DAVID RICHARDS: I can see these are a 21 distillation. Those clearly are raised by Mr McKee's 22 witness statement. 23 MR TROWER: Yes, and subject to the extra point I mentioned, 24 which was in the Linklaters letter, do appear to cover 25 the ground.</p> <p style="text-align: center;">Page 129</p>	<p>1 focus in a way which is acceptable to the parties and to 2 us. 3 MR JUSTICE DAVID RICHARDS: Yes. 4 MR TROWER: As to how to move away from an entirely 5 open-ended question, and that's obviously, I say 6 obviously, I would hope everyone would accept that would 7 be without prejudice to people if something else were to 8 emerge being specifically identified. 9 MR JUSTICE DAVID RICHARDS: Of course. That has to be. It 10 may be that 11(ii) gets wrapped up into the questions 11 that we have just been discussing but you'll consider 12 that? 13 MR TROWER: Yes, we will consider that as best how to 14 formulate it. 15 MR JUSTICE DAVID RICHARDS: I think 12(iii) I thought was 16 again rather open, or too open. I think we want to 17 identify -- we got to the point where we can identify in 18 the question anything that any party is putting forward, 19 can't we? 20 MR TROWER: Yes. 21 MR JUSTICE DAVID RICHARDS: I think maybe the rest -- I'm 22 not sure that I'd -- well, I don't think there's 23 a problem under 13. And then 14 and 15 are agreed. 16 24 I forget how -- 25 MR TROWER: 16 is agreed too, I think --</p> <p style="text-align: center;">Page 131</p>
<p>1 MR JUSTICE DAVID RICHARDS: All right. 2 MR TROWER: That's the only way I can think, on my feet, of 3 narrowing it down. 4 MR JUSTICE DAVID RICHARDS: I follow that. I mean there's 5 first of all -- I think perhaps -- 11(1)(a) is directed 6 to, as it were, the narrow meaning of default rate. So 7 that's clearly a candidate, isn't it? and whether it's 8 limited to that. Then it's (b) which at the moment -- 9 well because this was issued months or a year ago or 10 something, things have moved on a lot. It's really 11 almost in place of (b) isn't it? 12 MR TROWER: Yes, it's the other ways in which the cost may 13 be ascertained. At the moment it is nonspecific -- 14 MR JUSTICE DAVID RICHARDS: Apart from talking about equity 15 investment which is actually too narrow, I think, in the 16 light of -- 17 MR TROWER: The light of the way it's put. 18 MR JUSTICE DAVID RICHARDS: But it's a matter for you -- all 19 I'm saying really is this: I think you must be specific 20 as to the types of "cost" that are being put forward and 21 on which the court must rule. 22 MR TROWER: Can I suggest that what we do is this, is that 23 we have a go at rendering a little more specific these 24 questions in the light of where we are on the debate 25 that's gone on on the expert evidence and see if we can</p> <p style="text-align: center;">Page 130</p>	<p>1 MR JUSTICE DAVID RICHARDS: Is it agreed or -- I can't 2 remember how we left the discussion. 3 MR TROWER: I think I was told it was agreed. Yes. 4 MR JUSTICE DAVID RICHARDS: I think 17 was one that I was 5 concerned about the formulation of. 6 MR TROWER: Yes. Very difficult to see what it adds to 11. 7 MR JUSTICE DAVID RICHARDS: That's what I was wondering 8 MR TROWER: It relates back to 11. 9 MR JUSTICE DAVID RICHARDS: I'm inclined to think so. 10 I would like to give that thought as well. 11 MR TROWER: Give consideration as to whether we can just tie 12 that into 11 and anything that has come out of it. 13 18 is agreed. 14 MR JUSTICE DAVID RICHARDS: Yes. 15 MR TROWER: Then we move on. 16 MR JUSTICE DAVID RICHARDS: So those are -- we haven't -- 17 I'm just looking through the German agreements in 18 paragraphs 20 to 21. Those don't appear to give rise to 19 anything. 20 MR TROWER: No. 21 MR JUSTICE DAVID RICHARDS: Under 24 will it be clear what 22 other ways the parties are put in -- maybe it's clear 23 now, I don't know. 24 MR TROWER: I don't know the answer to that. I regret to 25 say that's not a question I spent very much time</p> <p style="text-align: center;">Page 132</p>

<p>1 thinking about.</p> <p>2 MR JUSTICE DAVID RICHARDS: Don't worry.</p> <p>3 MR TROWER: 25 I think I've noted as agreed.</p> <p>4 MR JUSTICE DAVID RICHARDS: Right. I see. I think 26 is</p> <p>5 going back to the good faith rational type point, isn't</p> <p>6 it?</p> <p>7 MR TROWER: Yes.</p> <p>8 MR JUSTICE DAVID RICHARDS: Then we have -- no, that's it.</p> <p>9 MR TROWER: That's it.</p> <p>10 MR JUSTICE DAVID RICHARDS: For tranche C that is in</p> <p>11 a single block. Thank you. So now we were just going</p> <p>12 to look at the --</p> <p>13 MR TROWER: We go back to the --</p> <p>14 MR JUSTICE DAVID RICHARDS: Draft order.</p> <p>15 MR TROWER: Tab 4. It starts at paragraph 8. I think</p> <p>16 Mr Dicker and Mr Zacaroli both confirmed to you that</p> <p>17 subject to timetabling questions they were content with</p> <p>18 page 8 to 25.</p> <p>19 MR JUSTICE DAVID RICHARDS: Yes. That's right. As</p> <p>20 I understand it.</p> <p>21 MR DICKER: I wonder whether it wouldn't be more sensible</p> <p>22 when we get on to cost of funding for Wentworth</p> <p>23 essentially to go first. For us to respond. At the</p> <p>24 moment 27 involves simultaneous exchange.</p> <p>25 MR TROWER: I hadn't got there quite yet. I got to 8 to 25</p> <p style="text-align: center;">Page 133</p>	<p>1 MR TROWER: It's 126.</p> <p>2 MR DICKER: At the bottom under the heading "Clarification</p> <p>3 of Wentworth's case" and --</p> <p>4 MR JUSTICE DAVID RICHARDS: I think this was the one</p> <p>5 Mr Zacaroli said they would be responding to by</p> <p>6 31 March.</p> <p>7 MR DICKER: Yes.</p> <p>8 MR JUSTICE DAVID RICHARDS: I'm not sure it's necessary in</p> <p>9 the light of that clear statement to put anything in the</p> <p>10 order.</p> <p>11 MR DICKER: If my learned friend is going to provide</p> <p>12 clarification on 31 March, so I'm sure --</p> <p>13 MR JUSTICE DAVID RICHARDS: There's a liberty to apply of</p> <p>14 course. But there is also as I indicated the other</p> <p>15 clarification which must be given in relation to</p> <p>16 Mr McKee's witness statement. Whether it's accepted and</p> <p>17 if not where it's not accepted.</p> <p>18 MR ZACAROLI: Absolutely. If we say at the end of March for</p> <p>19 that -- I'll need to take instructions about the timing</p> <p>20 and my clients aren't in this jurisdiction so we may</p> <p>21 need more time but if we say for the moment that is the</p> <p>22 time we will work to but liberty to apply on that.</p> <p>23 MR JUSTICE DAVID RICHARDS: That's fine.</p> <p>24 MR TROWER: My Lord, again subject to -- I think that -- we</p> <p>25 need to insert, 27 is just going to be Wentworth filing</p> <p style="text-align: center;">Page 135</p>
<p>1 so I think that is all --</p> <p>2 MR JUSTICE DAVID RICHARDS: Subject to --</p> <p>3 MR TROWER: Working out the dates. Then 26 is, as Mr Dicker</p> <p>4 rightly identifies, where we go when considering</p> <p>5 your Lordship's ruling. 26 needs to refer to what we</p> <p>6 had at 109 but only paragraph 1 of it as being scheduled</p> <p>7 at schedule D.</p> <p>8 MR JUSTICE DAVID RICHARDS: Then just reformulate it to be</p> <p>9 directed to the case that Mr Zacaroli is putting</p> <p>10 forward.</p> <p>11 MR TROWER: Then we previously had file and service of the</p> <p>12 reports on the cost of funding experts.</p> <p>13 MR JUSTICE DAVID RICHARDS: So Mr Dicker suggests it should</p> <p>14 be sequential. Mr Zacaroli?</p> <p>15 MR ZACAROLI: I can't really resist that. It is our case.</p> <p>16 MR TROWER: Would your Lordship just give me a moment.</p> <p>17 (Pause)</p> <p>18 MR DICKER: My Lord, we need to insert at some point the</p> <p>19 clarification of Wentworth's case, presumably before we</p> <p>20 get their expert report. My Lord, just so your Lordship</p> <p>21 knows the request was made in a letter from Freshfields</p> <p>22 on 8 March which I hope your Lordship has towards the</p> <p>23 back of the correspondence bundle. It's probably the</p> <p>24 penultimate letter.</p> <p>25 MR JUSTICE DAVID RICHARDS: It's page what, sorry?</p> <p style="text-align: center;">Page 134</p>	<p>1 and serving reports on cost of funding experts. Then</p> <p>2 obviously we have to have a sequential exchange in</p> <p>3 relation to the FCG but subject to that it's really just</p> <p>4 down to timetable --</p> <p>5 MR JUSTICE DAVID RICHARDS: Yes.</p> <p>6 MR TROWER: -- and it's really a question I think of</p> <p>7 probably most sensibly taking into account the other</p> <p>8 commitments and working back from the date in October or</p> <p>9 whenever it happens to be to make this work.</p> <p>10 MR JUSTICE DAVID RICHARDS: I agree.</p> <p>11 MR TROWER: And the parties will do their best to come up</p> <p>12 with a sensible solution on timetabling. I'm not sure</p> <p>13 we can say very much more about.</p> <p>14 MR JUSTICE DAVID RICHARDS: I will leave that with you if</p> <p>15 there's a problem then obviously apply to me.</p> <p>16 MR TROWER: What I've noted down at the moment is that we'll</p> <p>17 include in the order if we may a direction in relation</p> <p>18 to listing.</p> <p>19 MR JUSTICE DAVID RICHARDS: Not before what date?</p> <p>20 MR TROWER: We had been working for a date in October.</p> <p>21 MR JUSTICE DAVID RICHARDS: If we said not before a date in</p> <p>22 the middle of October would that would be sensible?</p> <p>23 It's either Monday 12 or Monday 19 October.</p> <p>24 MR TROWER: Monday 19th makes sense.</p> <p>25 MR JUSTICE DAVID RICHARDS: Is everyone happy?</p> <p style="text-align: center;">Page 136</p>

1 MR TROWER: Yes.
 2 MR JUSTICE DAVID RICHARDS: All right.
 3 MR TROWER: My Lord, I think that that is probably it. Can
 4 I just check with those behind me that I haven't missed
 5 anything. (Pause) My Lord, yes. I think we got there.
 6 MR JUSTICE DAVID RICHARDS: Good. Thank you all very much.
 7 There's nothing else anyone else wants to raise? Well
 8 thank you all very much indeed.
 9 (3.32 pm)
 10 (THE HEARING CONCLUDED)
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 137

1 INDEX
 2 PAGE
 3 CMC HEARING1
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 138

A	25:8 102:8	ad 1:16 46:12	108:2	admissibility	42:11	11:15
able 38:8	account 8:10	add 3:3	administra...	29:13	43:10,24	23:11
41:21	11:5,11,14	19:10	2:12,16 5:2	36:25	44:13	31:20
42:11	11:15,17	20:15	17:22	39:22	48:24	32:11
46:17	31:22	39:20 40:5	21:15	admissible	51:14	34:16,21
73:10	32:17	44:8	administra...	24:20	52:23 66:1	35:9,19
80:15 85:7	36:15	added 34:19	20:5 32:9	36:24 37:4	100:9	36:7,10
85:9	51:12	addition	administra...	37:17	101:8	37:18,19
100:16	76:25 91:3	36:19	3:14 4:12	admitted	136:10	38:13 49:3
113:22	113:18	56:16	9:15 11:4	2:12	agreed 1:13	53:19 60:7
117:14	123:14	71:15	11:12	adopt 34:17	1:23 2:9,17	61:9 63:19
125:10	136:7	91:23	18:21,23	adopted 6:10	2:24 3:23	64:7,10,15
absence	accountants	93:14 94:8	19:13,16	12:11	9:15 17:14	64:17
86:17	83:13	additional	21:9 22:9	98:19	17:16 19:2	68:22
absolutely	accrue 2:14	14:24	23:25	127:5	19:7 25:5,7	72:12,19
33:18	accrues	56:13	24:25 25:3	advance 23:5	25:12,12,13	73:1 80:11
44:21	17:23	66:19	26:12	39:4,12	26:24 27:8	80:14
122:13	accurate	67:17	27:10 29:9	61:5 83:24	27:12	81:22 82:8
135:18	67:13,18	71:24 73:9	29:14	99:5	31:16 32:6	85:7
accept 7:8	86:23 88:1	77:23 84:6	30:23	104:12	32:6 47:7	102:22
10:12 16:9	89:1,3,9,14	84:10 99:3	35:15,25	109:19	49:23 50:1	103:14,23
21:5,11	89:15	address	38:7,18	126:18	51:1,6 58:7	104:8,16
45:6,12	91:13	60:25	44:23	advanced	58:7,8,20	108:18
57:11 99:4	123:15	addressed	46:17,25	75:5	59:3 60:11	agreements
99:4	accurately	28:9	47:11,15	120:12	60:14 65:4	3:22 5:1
105:19	76:14	127:13	51:22	122:25	65:9,11	23:13
106:5,15,21	achieve	addresses	52:18	advances	68:18	32:21
107:4,6,10	89:19	10:5	53:10 62:2	116:10	70:17	33:17 38:6
115:17	achieving	addressing	62:4,6,9	advancing	82:22	45:17 46:3
120:9	113:9	54:15	73:22 74:4	81:23	86:24	69:16 85:4
123:23	acquire	127:18	74:5 93:24	121:17	87:15	96:1,2 99:7
131:6	70:25	adds 132:6	94:4,8 95:6	adversarial	112:13	132:17
acceptable	act 13:13	adduce 62:20	96:9 98:20	10:2	115:6	agrees 18:25
126:8	19:24	62:23	98:22 99:2	advised	126:24	24:5
131:1	58:11	93:19	105:11	31:11	127:17	aim 48:5
acceptance	74:12 75:2	101:17	110:4	47:16	131:23,25	aimed 107:2
127:4	actions 79:20	102:9	113:8,21	66:16	132:1,3,13	aiming 48:24
accepted	111:13	113:22	114:16	affectively	133:3	albeit 33:15
95:15	active 64:2	adduced	116:3	67:18	agreeing	75:18
102:4	70:8,8	119:20	117:6,14	ago 130:9	37:25	77:18
124:3	actual	adjourned	118:8,11,18	agree 2:21	42:11	allowed 44:9
135:16,17	107:19,25	28:11	119:17	17:25	51:12	alter 110:10
accepting	108:6,7	adjournme...	126:4	20:19 24:6	agreement	alternative
120:19	109:19	90:1	administra...	38:17	3:8 7:12,17	66:23
accepts 23:4	128:14	adjusted	9:23	41:24	11:7,9,12	72:16

75:17,17	33:20 47:2	apart 2:11,15	apply 7:23	83:9 93:3	54:16	112:20
95:3 96:24	annual 20:2	17:22	12:11	96:24 98:7	62:25	117:19,24
97:23 98:6	annum 12:12	52:18	48:13	98:7 100:6	88:11	asking 18:12
alternatively	12:13,14	57:17 61:1	57:22	127:4	105:6	31:23
68:8	13:8,23	119:23	61:16	approaching	106:6	34:14
ambit 63:5	14:8,10,13	130:14	64:20 74:6	20:6 64:18	107:8,11,19	54:23
63:24	16:1,7,9,13	apparent	94:14	67:9	109:23	55:11,25
amended	19:25	12:3	120:11	appropriate	120:20	65:18
60:18	84:16	appeal 30:6	135:13,22	2:23 4:14	arguments	92:10
amendment	answer 1:16	38:24 39:2	136:15	23:3 67:4	1:9 24:14	106:2
28:8 29:5,8	2:17,24	41:11	applying	115:21	27:21 31:9	114:7
94:5	3:21,25	appear 2:9	2:11,14	117:8	39:5,13	119:19
amount 2:14	4:15 11:19	12:4 57:23	78:22	April 14:4	68:19	120:2
30:8 53:4	16:21	60:11	appreciate	27:19,20,23	112:5	asks 91:8
59:22	17:19	104:15	57:5 80:18	30:2,3	118:22	127:17
69:13,25	31:25 63:9	129:24	95:24	38:21	119:2	aspect 49:5,7
71:9,9,11	67:20,25	132:18	118:13	39:11	arises 4:13	65:21
71:12,13,14	69:8 79:21	appeared	121:19	40:10,17	5:18,19	91:16
71:18,18	95:7,13	14:20	127:16	41:3,6,19	8:22 24:9	asserted
74:20,23	96:16	120:14	appreciation	49:18	24:18	59:21
75:21	100:25	appears 13:2	35:7	area 48:20	66:10	60:21
76:11	108:17	20:12,12	approach	50:23 72:2	95:21	62:11
77:16	118:12,20	54:10	2:21 6:9	72:10 80:1	art 97:8,18	102:12
84:16,17,17	118:22	83:14 84:4	12:11	81:13,13	article 14:20	118:4,6
84:18	132:24	85:6	29:15	areas 46:4	20:14	119:5
85:16	answered	121:11	31:17	82:24	articulate	asserting
86:13	4:18 85:2	applicable	54:14 68:9	128:11	129:6	62:7 102:7
87:15,15	95:16,22	2:11,15	73:11	arguably	ascertained	assertion
88:25 89:5	answering	17:21	75:23 77:2	89:10	55:16	117:12
101:15,23	96:20	36:11	80:24 81:6	argue 30:6	56:21	assertions
104:15	answers	121:17	83:13 85:5	114:18	100:16	119:1
113:17	38:10 62:3	124:6	87:4 90:19	122:1,3	130:13	assessing
120:6	63:17	128:3	91:12 96:8	argued 24:10	ascertaining	77:1 95:3
123:2,4,10	anticipate	application	98:21,25	126:19	73:12	assessment
129:11	127:2	3:12,24 5:6	100:10,11	arguing	aside 124:17	91:3 99:17
amounts	anticipating	21:17 32:1	121:1,7	92:17	asked 1:21	asset 56:13
70:25 84:8	28:19	36:23 44:7	123:8,21	argument	4:15 23:10	67:15,19,23
analogies	anybody	57:6 108:7	124:4	8:14,17	33:22 34:4	76:24 77:8
105:8	114:9	128:18	125:12	9:13 10:2	34:4 36:15	77:10,21
analogous	anyone's	applied 20:2	126:6,7,8	10:12,16	52:5 63:7,7	78:4,14,22
120:18	15:6 53:6	53:13	approached	16:20	70:2,9 83:8	86:16 87:8
analysing	anyway 5:4	59:25	83:21	18:17,18	86:11,12	90:20 91:6
68:12	20:20 36:6	applies 9:17	98:14	19:14,18	89:20	101:21
analysis 76:2	41:23	9:18 83:17	approaches	24:13 26:5	100:4	102:3
annexed 5:12	59:14	128:1	75:10 79:6	34:11	110:22	assets 37:21

56:7 75:20	assumed	47:5 50:1	70:7 87:11	85:10,13	57:18	borne 77:20
76:16,20	32:6 38:12	56:20	96:8 97:13	87:19,24	beyond 53:3	borrow
87:10	56:4	66:22 67:4	98:8	88:14,15	113:8	66:11,14
90:20,23	assuming	67:6 72:24	bank's 69:16	89:3 90:13	125:13	73:5 87:18
91:1,9	32:18 35:6	130:8,11	bare 113:14	90:15,15,18	bicycle 105:1	90:22 91:8
109:4	38:5	back 5:22	base 56:14	91:6,16	105:3,5,6	123:11
assigned	attached	6:8 10:6,15	based 12:9	92:7 99:16	bicycles	borrowing
59:1,8	74:13	10:21	76:1 87:4	108:5,6	104:25	55:7,11
assist 24:21	attempt	12:25 16:8	96:2 112:1	109:18	bifurcation	56:4 57:17
73:2,23	56:25 57:2	22:22	112:6	120:9,23,24	25:19	57:23 66:8
75:9,10	attention	40:20 51:5	bases 66:21	123:4	26:25	66:12,13,23
85:7 102:9	8:16 19:16	51:17	68:3 73:15	124:13,25	28:10	66:25 67:2
102:13	23:16	59:16 64:9	74:16	bear 72:14	bilateral	68:4,6 73:6
116:19	attributable	64:13 69:1	75:13 79:5	78:1 85:20	32:21	87:20,22
119:4,16	76:13	71:7 74:17	79:10 80:3	94:18,25	billion 108:2	88:13
122:23	attribute	75:2 77:6	80:3 82:13	bearing	Bingham	109:3
assistance	75:20	82:14 83:6	83:5,23	55:25	93:4	113:15
12:7 29:22	attributed	89:7 98:13	84:1 90:7,8	77:23 78:5	Bingham's	124:19
52:20,24	82:25	103:23	92:15	86:9	111:14,20	bottom 18:19
53:11 62:4	attribution	107:18	93:20	bears 94:17	bit 6:16 7:9	26:19
63:24	11:2	108:18	102:23	95:9	10:4,7	135:2
72:22 80:4	August 15:20	115:24	107:17	beginning	13:19	brackets
81:16	15:24	128:6	108:7	6:2 64:10	25:23	55:22 56:2
90:13 92:6	autumn 48:5	132:8	109:18	74:24	26:16 27:1	56:3 66:8
92:23	available	133:5,13	110:2,4,7	93:14	28:24,24	breadth
101:6	11:5,11,18	134:23	120:11	begs 103:11	37:10	112:11
103:25	31:22	136:8	121:16	behalf 93:4	40:21	break 39:8,9
113:21	48:15	background	122:25	105:20	41:18	66:5
123:7	113:15	40:2 107:1	125:24	119:2	42:10 46:7	briefly 5:8
assisted 79:9	average	baloney	basic 57:17	126:22	57:1 86:2	broad 27:3
83:2 99:14	69:24 76:4	106:3,7	basically	belief 45:14	97:19	44:13,21
102:19	76:15,20	bank 14:22	43:15	believe 65:10	127:15	56:24
119:3	83:15	20:11	58:10	belonging	128:12	57:24
125:2	avoid 45:2	69:15	basis 25:10	77:11	bizarre 15:8	81:23
126:14	101:3	72:14	32:5 38:5	benefit 88:3	blank 46:16	109:5
associated	avoidance	87:12,14,18	64:2 66:22	101:2	blended	125:21
85:20	109:8	96:22	67:11	best 52:1	75:21 76:2	128:22
103:7	await 51:4	banking	72:23	61:25 62:2	88:3	broadening
123:12	aware 11:24	20:10	74:18,21	84:2 128:8	block 133:11	114:4,5
assume		69:14,23	75:4,15,18	131:13	blush 119:7	broader
35:13	B	banks 63:25	76:12,14,14	136:11	boils 13:1	25:17
93:22	b 1:6 21:14	63:25 64:1	77:6,7	better 2:19	bona 90:9	115:19
96:16	21:16,16	64:12	78:17,23	6:7 44:11	98:18	broadly 5:14
110:9	26:5 40:17	69:12,19,19	79:10 83:4	51:11	bonds 85:18	54:21
125:23	40:18 42:2	69:20 70:5	84:12	53:13	book 60:5	57:25,25

63:24 64:4 broken 68:4 broker 51:23 Browning 22:12 built 47:15 bundle 8:18 9:4,5 14:24 17:2 22:13 25:21 26:12 28:2 28:4,5 52:1 65:6 69:4 73:18 74:8 92:1 93:9 102:16 107:22 110:15 134:23 bundles 13:10,16 14:23 69:2 burden 44:9 58:13,18	76:7,11 calculating 12:19 104:14,15 112:22 122:8 calculation 16:2 74:17 74:18 76:8 84:13 85:11,13 103:19 107:17 125:12 127:5 calculations 108:4 112:21 121:2,5 called 83:14 candidate 130:7 capable 3:11 3:24 38:4 49:3 75:11 77:4 79:13 capital 66:15 67:23 73:8 76:4 78:12 83:8,14,15 83:19 91:20 123:14 captured 7:21 78:9 89:16 captures 76:14 care 72:2 carefully 113:24 carries 64:23 64:23 carry 13:22 14:7 57:19	case 12:2,4,7 12:18,25 13:2 15:7 35:4,13 37:11 43:18,19 44:5 47:13 58:18 61:5 64:18,22 66:11 67:14 68:21 70:2 71:15 76:19,21 77:25 81:23,24 82:5 84:8,9 85:19 94:17,17,18 95:15,23,25 96:14,17 97:5,6,11 98:11 99:5 100:2,7 102:6,8,24 105:13,15 105:16 106:20 107:19 108:12 110:3 113:4,23 114:1,1,11 114:22 115:22 116:9 118:21,24 120:22,23 120:25 121:20 122:1,3 124:16 126:13,17 127:8,22 134:9,15,19	135:3 cases 4:12 84:5 113:10,24 114:3 126:2,7 cash 86:17 cast 26:9 categorisat... 64:6 category 117:15 118:9 causes 73:8 CCCs 4:11 CDD 23:22 23:23 33:21,24 34:1,1 36:1 CDDs 21:25 32:21 33:7 33:10,14 34:5 39:23 44:17,19 cent 12:12,13 13:8 16:12 16:15 84:16 112:6 centum 13:23 14:8 14:10,11,13 certain 21:9 53:4,4 63:1 63:20 106:7,24 111:13 120:9 certainly 5:14 10:11 18:8 24:6 26:2 44:24 45:19 47:24 49:3 50:19 57:8	58:7 60:17 65:25 80:4 80:7 108:19 119:7 120:21 121:25 125:1 certainty 1:20 certification 98:16 certify 113:17 cetera 45:4 63:6 64:9 108:3,19 110:12 120:6 challenge 58:14 chance 78:2 change 95:17 changed 13:20 33:16 44:19 changing 33:12 channels 47:22 character 119:4 characteris... 45:7 characterise 12:10 51:22 129:9 characteris... 119:1 characteris... 118:3 check 53:23 90:24	137:4 chicken 101:7 choice 8:5 choose 113:24 circumstan... 123:21 circumstan... 7:11,17,23 10:3 22:3 23:2,21 24:10 32:3 32:4,10 35:24 38:7 38:9 59:20 74:25 106:25 113:5,14,19 114:23 117:12 claim 2:10 2:12,15,17 3:7,21 10:3 23:20 24:2 24:3,7,8,9 34:12 35:6 35:8,20 56:5 59:8 75:1 76:13 76:16,19 77:10,12 78:24 79:1 80:15 83:24 86:9 86:12,15 90:21 91:1 91:7,9 109:19 113:25 114:24 115:20 claimant 14:10 15:19 82:1	98:16,20 114:22 claimants 111:13 claimed 112:4 claims 5:3,3 8:10 9:15 19:7 20:13 24:12 29:11 35:12 37:20 38:6 39:1 52:21 59:1 73:16 73:23 74:1 75:4 77:25 85:19 111:22,22 111:24 112:2 clarification 70:2 71:24 134:19 135:2,12,15 clarifies 9:19 clarify 110:8 117:2 clarity 73:15 class 63:20 classically 61:12 clause 23:23 23:24 54:20 89:8 89:11 99:22 100:13 clauses 34:19 clean 52:13 clear 1:17 7:19 8:2 9:14 11:8 18:12 32:16,18
--	---	---	---	---	--	--

34:7 36:7,8	73:18	50:9 51:13	104:23	concerning	considering	115:23
36:18 37:8	102:16	136:8	105:19,21	69:19	29:7 90:18	116:12
42:23,23	107:22	common	107:5,12	concerns	94:21 96:7	121:24
56:2 57:14	138:3	20:3 32:24	108:14,15	19:6	134:4	122:15,24
57:14	colour 124:9	37:15	119:15	118:24	consist 90:20	123:24
71:21 75:6	combination	communic...	122:4,5	concession	consistent	construe
96:19	117:10	32:9 36:2	conceptual	120:14	93:6	99:21
105:12	come 10:6,15	company	79:10	concluded	constitute	construed
109:6	11:14 15:5	90:19 91:6	82:13 83:4	82:7	118:23	34:22 61:9
111:2	15:12 19:3	108:23	99:16	137:10	constitutes	64:16
119:12,21	22:6,10	compared	102:23	concluding	57:17	construing
122:23	31:24 43:4	112:5	conceptually	98:4	105:3	31:20
123:18	54:22	complete	55:9 100:4	conclusion	117:13	consult 11:16
128:11	74:17 75:2	105:23	117:16	44:2 64:15	constituting	consultation
132:21,22	80:5 89:7	completely	concern	confined	118:4	18:16
135:9	101:4	88:14	19:11 84:7	94:15	construction	contain
clearly 21:2	104:11	compliance	87:13	confirmed	13:5 14:12	45:23
33:15	128:5	22:9 74:11	concerned	133:16	24:22	contained
38:13 43:1	132:12	complicated	2:3 3:9,20	conjunction	25:18	64:16
45:22 58:5	136:11	124:14	5:15 10:4,7	27:11	31:25	contains
64:3 68:25	comes 20:1	complies	11:1 17:14	conscious	32:11	74:16
75:4 102:5	67:20	62:11	27:10 29:6	129:10	34:21 35:9	115:7
104:2	85:23	component	29:14,23	consequence	35:18 36:9	contemplat...
105:10	95:11	76:1	30:13,24	12:20	53:1 54:3,9	100:13
126:12	116:16	compromise	31:20	91:16	54:13,23	contend 79:5
128:2	coming	27:17	34:20 40:4	conservative	55:5 60:7	81:9 90:9
129:21	44:12	38:17	45:1 46:20	76:17	70:20	96:10
130:7	82:14	39:14,15	47:4 48:23	consider	72:20 79:7	126:20
clerk 48:13	115:24	40:6	49:14,25	17:19	79:13	contended
client 37:20	commence...	conceive	52:20	23:10	81:22	127:19
37:22	8:11	10:1	53:10,20	93:24	82:11	contending
44:17	comment	concentrates	54:2 61:14	109:18	83:11	81:6
clients 21:6	55:4 56:17	47:24	62:1 66:24	131:11,13	88:17 89:8	contends
94:11,16	66:2 73:10	concept 16:2	67:16,24	considerable	95:11 99:6	77:3 94:22
99:5	93:5	52:23	69:7,20	52:23	99:18	94:25 96:4
106:21	commented	69:23	71:16,20	considerati...	100:5	content 25:4
124:4	81:15	80:25	72:16 77:9	43:9 59:4	101:13,24	29:6,24
135:20	comments	81:16	84:6 87:9	113:10	103:24	30:24
close 84:18	20:19	100:12	96:3	132:11	104:8	37:11,12
117:18	57:22	103:13	100:23	considered	107:3,11	39:9 49:14
closed	commercial	109:5	101:24	1:22 12:2	108:17	60:24
127:19	122:9	113:1	119:25	18:23	113:9	71:21,22
CMC 1:3,6	commitment	concepts	124:25	22:19	114:7,13,18	126:4
22:4,13	50:10	73:12 99:7	127:15	29:10	114:20,25	133:17
28:5 73:14	commitme...	99:9	132:5	117:7	115:12,16	contention

46:4	23:20 24:1	50:13	87:20,24	82:13,17,19	38:20 39:7	115:15
context	34:12 35:5	correlation	88:1,9,21	82:21,25	42:18	117:8,14,19
37:19	35:8 39:1	117:18	89:5,10	83:4,14,21	50:17	117:21
44:20,21	converted	correspon...	91:10,14,17	83:22,22	53:24 58:1	118:21,24
45:11,18	2:13 16:7	9:4 24:5	96:22	84:6,10	63:23	119:5,16,18
58:25	converting	52:1 65:6	97:16 99:7	89:15 97:2	66:20	120:3
66:10	20:2	70:6 92:1	99:9	98:17	67:10	126:5
72:21	cope 30:3	93:9 94:9	101:13,19	99:15,17,25	73:24	129:10
75:21	Copley's	102:6	101:20,23	100:4,11,12	79:18	130:21
81:10,17	22:7 44:24	110:15	102:1,24	100:15	88:11	court's 33:22
82:22 96:4	45:3	134:23	103:3,10,13	102:21	89:12	101:24
103:22	corners	cost 46:3	104:18,23	103:6,13,15	100:2	110:22
104:8	103:14	48:21	105:19	103:17	105:9	112:19
106:5	corporate	51:19 52:6	106:9,14,16	104:7,10	111:23	cover 93:21
108:18	61:22 64:7	52:9 54:15	109:10	105:14,21	114:11	129:24
114:2	66:16	54:17	117:3,13,16	106:11,22	115:6	covered
115:9	67:12,25	55:17	118:4,5,9	107:5	116:11	24:14
120:17	69:9 70:22	56:11,12,21	118:23	108:13	131:9	47:18
122:11	72:17	62:7,13	119:6	109:3	135:14	CPR 50:12
contexts	77:19 79:2	66:11,15,16	120:5,7,24	112:21,22	court 4:14	CRA 21:24
72:11	81:11,14	66:17	122:10,10	113:12	5:13 14:9	23:24 34:2
89:21	82:21,23	67:13,15,16	123:1,9,12	114:21	17:20	37:18
106:7	83:22	68:5,10	123:13,14	116:1,4	24:21	credible
120:11	90:25	69:13,17,21	123:15,19	117:9,15	25:11	107:4
continue	98:11	69:21 71:3	123:22	121:1,9	31:21,23,24	credit 68:13
21:8 78:15	100:10	71:7,10,14	124:5,24	124:10,11	32:2,5,13	69:11 70:3
78:16	102:1	71:17 73:6	127:5	124:19	32:16,17	85:21 86:5
contract	103:25	73:9 74:19	129:8	125:3,5,8	33:19 36:7	86:24 96:9
88:23	105:22	74:22	130:12,20	125:11,11	36:14	creditor 3:10
96:15	106:2,8,10	75:11,18,20	133:22	125:12	38:11	10:13
contracts	107:5	75:21 76:1	134:12	counterpar...	41:11,22	22:14
21:15	108:1,21	76:3,4,4,9	136:1	69:15	43:21 44:1	23:21
contractual	111:8	76:11,15,18	costs 57:17	counterpar...	52:20,23	32:12
83:19	120:10	77:1,3,4,8	57:23	59:7,8,9	54:22 65:2	35:12,24,25
contradicts	121:1,8	77:11,14,20	59:21 66:6	71:11	72:4,20	38:25
98:9	123:19	77:22 78:6	70:23 71:1	84:17,22,23	75:9 83:7,9	43:21
contrary	125:13	78:23 79:6	71:4,6	87:11 88:8	83:15 92:5	72:11
16:16	127:6	80:16 81:5	72:23 73:3	88:9 113:6	100:24	73:21 77:3
controversy	corporates	81:10 82:1	73:4,12	couple 15:8	102:10,13	79:5 90:8
124:21	104:13	82:4,8,24	76:23	17:13	102:14,19	93:19
convenient	corporations	83:8,15,19	78:22,25	20:18	105:2	98:25
17:11 31:5	109:2	84:15,24	79:6,11,11	course 1:21	108:11,16	101:17
conversion	correct 19:19	85:11,14	80:19,25	10:11 22:2	110:5	105:12,21
1:11 3:7,21	72:12	86:8,8,18	81:2,12,13	34:10,18	112:23	109:24
10:3 22:1	corrected	87:3,7,14	81:19,24	35:13	114:1,6,24	110:3,6,17

118:7	47:21 48:6	29:4,20	64:14,22	120:21	28:12	9:16
119:2	48:9,14,15	31:3,7,12	65:1,8,11	121:11,19	30:21	decide 13:2
121:16	48:15	31:14,18	65:17,20,25	122:2,7,18	39:23 46:9	44:16
creditors	49:18 51:4	32:20,24	67:6 70:15	123:16	49:6 51:23	79:12,19
32:8 34:2	51:17	33:1,4,9,14	70:18 72:1	124:1,15	62:19 93:1	80:2 82:14
36:10 38:8	136:8,19,20	33:24 34:3	80:10,22	125:6,10	94:8	83:8
38:9 66:10	136:21	34:14 35:1	81:18,21	126:4,10	105:14	113:17
96:10,11	dates 39:14	35:14 36:6	82:17	128:11,14	112:10	115:16
116:8	41:25	36:16 37:1	84:12 85:3	128:19,21	dealing 5:21	124:8
creditor's	46:16	37:6,9,12	85:12 86:1	129:1,12,14	35:3 36:4	decided 20:9
23:20 24:1	48:22 50:8	37:18,22	86:11,15	129:17,20	65:22	20:20
creditworth...	51:12,15	38:15	87:9 88:5	130:1,4,14	71:14	90:11
90:24	134:3	39:17 40:7	88:19,22	130:18	92:18,20	decides
critical	DAVID 1:4	40:10,13,18	89:4,7,18	131:3,9,15	100:21	101:5
112:16	1:14,25 4:5	40:22 41:2	90:6 92:2	131:21	117:1	deciding
cross-purp...	4:10,25	41:11,14,16	92:16	132:1,4,7,9	125:24	11:6 75:10
122:19	5:11,25 6:2	42:5,14,18	93:16	132:14,16	deals 1:15,23	79:21 83:3
crystallised	6:4,7,15,18	43:6,14,18	94:10	132:21	6:16 9:12	84:10
12:5,24	6:22,25 7:3	44:3,11	95:12,21	133:2,4,8	11:20 66:7	99:17
currency	7:5,13,18	45:9,12,21	96:11,14	133:10,14	66:9 67:4,8	decision
1:11 2:13	7:23 8:1,8	45:25	97:1,14,25	133:19	69:5,10	38:12
3:6,21 10:2	8:12,21,24	46:14	98:23 99:4	134:2,8,13	87:19 92:8	110:5
22:1 23:20	9:6,8,14,19	47:20 48:1	99:12,20	134:25	dealt 1:8	declaration
23:22 24:1	9:22 10:17	48:4,8,12	100:17,22	135:4,8,13	2:20 3:24	2:2,19,25
34:12 35:5	10:23	48:22 49:6	101:7,11	135:23	5:8,19 6:13	20:21
35:8 39:1	11:22 12:1	49:10 50:4	102:17	136:5,10,14	19:13 26:5	declarations
currently	12:23 13:9	50:7,18,22	104:2,19	136:19,21	27:15 40:2	1:18 18:9
111:22	13:12,14,25	50:25 51:9	105:7,10	136:25	42:21 44:8	declare 5:13
custom 95:14	14:3,7,14	51:18	106:3,13,16	137:2,6	65:23	deeds 44:18
cut 37:25	14:16 15:1	52:12,15	106:19,24	day 12:13,19	110:18	default 53:25
	15:4,10,13	53:14,18,24	107:14,21	13:1 29:16	debate 17:1	54:9 59:7
D	15:17,23	54:7 55:1	108:9	41:21	24:19 25:9	66:7,18
D 134:7	16:3,11,22	55:14,24	109:11,14	104:11	25:10 27:1	68:21
daily 20:3,7	17:1,4,10	56:20	109:17,25	119:16	46:7 48:20	75:12 77:5
damages	17:17 18:2	57:10,20	110:13,24	days 12:17	53:4 96:5,7	77:16 78:7
20:13	18:8,12	58:3,8,10	111:5,10,16	day's 12:21	98:5 99:2	79:7,14
danger 105:7	19:21	58:13,16,20	113:3	13:3	116:25	81:1 83:1
date 5:2 8:4	20:16,22	58:24 59:6	114:11,15	deadline	130:24	84:15 85:6
8:6,11 9:17	21:13,19,23	59:14,18,24	115:10,14	63:10	debt 13:22	85:23 86:3
9:18 11:15	23:18	60:2,6,9,12	115:24	deadlines	17:21,23	88:17
13:23	24:16,24	60:15,20,22	116:14,18	63:13	56:13	89:17,19
37:14	25:25 26:2	61:3,8,12	116:21	deal 4:4,21	75:25	91:17 95:8
38:17 39:4	26:7,10,14	61:19,25	117:20	8:15,19	78:12	97:11 99:6
39:6 40:13	26:22 28:4	62:14,22	118:6,17	9:21 17:10	debts 22:1	99:19,25
40:14 45:8	28:6,15,19	63:21	119:9	21:24	December	100:5

104:16	108:12	118:4	20:19 29:4	124:7,25	35:20 40:8	68:10
105:13	116:2	description	29:5,20,23	125:9,15	43:2 59:18	75:22
107:2	120:7	100:1	40:7 42:19	126:9,11	85:5 132:6	discusses
111:23	122:5	105:4	42:21,23	127:14,25	difficulties	123:9
114:21	125:5,8	106:22	43:22	133:16,21	42:16	discussing
116:2	definitions	117:9	44:11,12	134:3,13,18	difficulty	131:11
120:7,18,25	68:21	descriptive	45:11,13	135:2,7,11	35:1 55:9	discussion
121:3,5	degree 91:21	118:9	49:12,13	Dicker's 8:14	56:15	36:22
122:6,8,21	delayed 21:3	deserve 80:4	50:5,13,19	41:16 42:7	digit 112:5	39:22
125:18	delaying	desire 99:1	50:24	63:4	direct 47:21	132:2
130:6	98:24	detail 57:1	56:18 57:1	106:20	118:15	dispute 3:10
defaulted	delete 45:20	79:9	57:19	diem 12:14	124:11	12:9,10
67:19	45:21	119:11	60:24	12:15,17,19	126:24	28:21,21,23
76:13,16,19	demand 78:4	122:11	61:13,20	16:8,18	directed	29:17 49:2
77:10,12	depend	determina...	62:19	difference	33:15 67:6	dissent 115:2
78:24 86:9	10:18	116:12	65:20,22	15:9,15	82:20	dissolved
86:12,15,20	16:23	determinant	66:1 67:8	53:21 54:1	127:21,22	59:10
86:21,22	48:17	77:20	70:19	92:19	130:5	distillation
87:12	78:11	determinat...	72:10	differences	134:9	117:8
90:21 91:1	depending	10:21 11:1	80:13 81:3	33:6	direction	129:9,21
defaulting	34:22,23	21:5 32:8	82:10 83:2	different	2:19 3:1	distinction
74:19 88:7	64:16	95:10	85:1,9,24	12:15 14:1	10:10	78:21
103:7	68:23 69:8	determine	86:7,14,18	16:8 33:5,7	22:15	91:15
define 64:3	depends	3:19 33:22	87:17	33:7 34:4,7	40:25	distinctions
64:19	50:23	62:10	88:18,20,24	34:23	48:12 65:1	76:22
106:25	78:13	83:10 92:5	89:6,12,23	35:10,11	65:3 84:11	distinguish...
defined 23:1	89:18	112:20	90:3,7 92:3	36:1,11,12	127:10	32:14,15
53:2 60:19	derivatives	114:25	92:17	38:9,10	136:17	distribute
definition	63:2 64:2	115:8	93:17	58:4 61:23	directions	19:8
53:25	65:14,15	determined	94:23	67:8 68:23	1:19 17:20	distribution
54:22 59:7	69:15 70:8	3:11,14,16	95:17 96:6	76:23	18:5 22:5	9:16
66:7 70:25	derive	29:18	96:13,19	78:19,25	23:7 27:21	document
71:4 75:12	117:10	105:11	97:10,20	83:20	41:6 46:10	14:22
77:5 79:14	descending	115:13	98:2,24	88:14	71:21	20:11
81:1,19	122:11	determines	99:9,14	89:20	disagree	25:11
82:9,15	describe	21:3	100:14,19	92:23 97:4	17:25	28:17,20
83:1 84:14	126:16	112:17	101:1,9	100:2	disagreem...	30:14,24
85:6,23	described	determining	104:3,12	101:22	37:3	36:17 37:2
86:3 89:16	33:17	11:19	116:5,9,22	108:23	disagrees	37:6 45:14
96:12	119:1	102:13	117:25	118:14	73:1	107:24
99:24	describes	114:2	118:2	differently	discipline	documents
100:6	5:23	devotes 15:8	119:24	34:22	110:11	39:24,25
103:14	describing	Dicker 11:20	121:4,15,25	64:16	disciplines	doing 21:16
104:17,24	82:2	17:12,13,18	122:4,13,20	differs 69:8	48:20	21:18
107:2	106:11	18:3,10,14	123:25	difficult 30:4	discussed	63:14 88:2

103:19	E	120:19	42:14,15	entities 67:1	87:23	66:17
108:21	earlier 37:19	efficient	ended 67:21	70:22	91:20	83:13
dollars 84:19	78:18 94:5	115:15	ends 97:23	71:16	130:14	et 45:4 63:6
84:20,23,25	early 35:16	egg 101:8	98:24	72:17	equivalent	64:9 108:3
87:13,16	easier 119:14	either 2:4	enforced	73:11	76:10	108:19
door 10:6,21	124:8	17:7 23:13	22:3 23:12	74:25 81:8	108:11	110:12
double 112:5	easiest 8:19	83:10	23:13	98:12	essence 7:20	120:6
doubt 44:8	75:14	90:23 92:7	engage 99:1	102:20	63:18	event 3:16
95:5 109:8	93:13	97:17	England	103:16	essentially	events 63:15
113:23	easily 29:18	122:15	14:22	104:10	22:20	everybody
124:21	64:5	136:23	20:11	105:22	37:25 45:2	43:25
draft 6:13	Easter 39:8,8	elaborate	enormous	112:2	45:16 46:2	everyone's
19:2 22:17	40:11	124:2	129:11	entitled 13:7	46:12	3:23 115:7
27:24 28:1	41:22,23	elaborating	enormously	30:19	65:13	evidence
29:23	42:8	25:2	125:21	72:23	66:24	3:13 11:6
36:20 46:9	easy 119:7	element 5:19	ensure 11:5	109:19	67:14,24	11:14,17
47:2 49:15	economic	Ellis 26:15	47:13 74:5	126:18	68:3,10,18	22:5,6,10
68:16	80:8	elucidate	83:16	entity 66:12	70:9 77:8	24:20,21
70:11 94:5	economist	58:2	85:10 94:1	67:23,25	79:25	29:9,10
99:10	119:8	email 41:23	95:6	68:12,23	80:17 88:3	34:8 35:14
110:18	economists	embark	enter 34:17	70:24	120:2,4	36:3,4
127:14	81:14	100:23	84:14 96:1	71:17	122:23	37:14
128:9	edges 37:16	101:3	entered 5:2	72:14 73:3	123:13	39:24
133:14	40:1	emerge	23:22 34:1	79:3,11	133:23	44:22 45:7
drafted 57:6	editions	131:8	36:1 44:18	80:15	establish	46:4,12,13
58:2 80:21	14:21 33:1	emphasis	entering	81:12	62:25	47:16
drafting 7:7	34:4,7,8	43:12	13:24 64:8	90:25	114:22	48:18,23
7:10,20	53:21	emphasise	enterprise	101:19,20	established	50:20,23
9:11 28:24	effect 3:17	44:14	75:24	101:25	97:8,18	52:24 54:4
55:2	8:6 14:11	enable 44:16	77:22 78:7	entity's 89:2	establishes	56:1 58:5
draftsman	57:7 68:13	79:12	78:24 79:1	entries	96:17	60:23 61:2
80:10,14,21	effective 75:1	enacted	enterprises	101:20	122:17	61:13,20,22
draw 8:15	effectively	13:19,21	78:20	envisage	establishing	62:9,16,17
23:16 25:5	16:6 66:22	encapsulate	enterprise's	84:4	62:13	62:19,22
27:5	66:23	7:11	75:19 76:2	envisaging	82:20	63:13
drawn 43:24	67:22	encompass	76:3,5	37:2	97:23	65:12
driven 46:18	68:12,22	82:8	enters 15:19	equal 71:9,18	117:11	71:19,22
due 1:21	73:8 83:11	encompass...	15:23	74:22	estate 21:8	72:3,6,10
10:11	86:8,23	81:1	entire 113:25	equation	85:21 86:5	72:21
40:18,23	87:7,20,23	encompasses	entirely 7:19	7:14 64:20	111:24	73:25 75:7
63:23	88:2 90:15	81:19 82:4	34:7 43:24	equity 56:23	112:9	75:9 80:1
66:20	91:4 92:10	105:14	66:1 88:1	66:15 67:2	estimate	81:25
67:10	94:8 97:23	encumbered	119:6	67:7 68:8	50:17 76:1	82:19 90:5
73:24	98:12,14,18	56:6	127:17	75:25	81:5 98:17	90:12
dumb 14:20	99:1	endeavour	131:4	78:12	estimating	92:24

93:11,18,20	35:24	existence	92:20,20,24	129:8	68:13	58:19
93:25	example	10:2 35:7	93:11,20,25	134:12	86:23	60:11
94:15 97:5	33:19	35:20 98:9	94:14	136:1	120:17	79:15
97:22 98:8	35:11	123:17	99:13	expert's	extending	80:16
99:13	43:22 57:3	existing	100:20	88:25	41:17	91:13
101:16	64:5 72:22	49:18	101:16	91:11	49:18	104:5,22
102:9,12	73:5 79:16	56:13 76:5	102:8,11	125:23	85:20	105:21
103:24	79:17 80:5	expanded	104:21	explain 9:1	extends 99:7	110:17
104:4,12,22	83:6,8 95:1	24:2	105:5,17	26:6,12	99:9	111:21
105:5,18	95:3	expands	107:15	61:17,18	extension	121:20,21
106:19	104:25	92:10,10	110:11	66:3 70:10	90:15	121:22
107:15,18	107:25	expect 34:21	111:8,9,20	73:3,12	extensive	126:19
109:8,17	113:16	45:22	113:22	78:16	106:1	127:5
110:11	115:4	89:16	114:19	79:22	108:21	factions 49:4
111:1,8,20	examples	experience	116:15,15	124:2	125:25	factors 72:24
111:21	15:18	112:8,8	116:25	127:7	extent 39:23	78:20
112:1,7	57:15	expert 46:11	117:7	explaining	60:23	facts 25:5,6,7
113:11,22	74:25	46:12,23	118:15,18	79:9	61:20	27:12
114:19	108:1,10,14	48:18,22	119:3,4,16	100:18	63:15	28:17,18,20
116:15,16	119:11	49:11	122:22	109:18	93:18	30:12,17
116:25	excess 74:12	50:14,20,23	123:7,17	125:3	98:24	31:16,22
117:7,11	exchange	52:24 54:4	124:8	explains 99:8	112:8,14	32:6,6,7,15
118:10,15	12:4	56:1 58:5	125:2	104:13	114:5	32:17,19
118:19	133:24	60:23 61:2	126:11,14	explanation	115:18	36:8,11,14
119:3,4,16	136:2	61:13,20	126:15	75:6 79:4	116:16	36:23
119:20	excluded	62:16,19	127:11	119:12	117:17	38:11,12
120:22	34:13 64:4	63:13,24	130:25	express 53:8	120:14	42:20,24,25
122:22	excludes	64:13	134:20	expressed	124:10	43:4,13,15
125:7,10,21	64:6	65:12,13,13	expertise	54:21	extra 12:21	43:20 44:1
126:11,14	exclusions	65:15	52:3	57:24 60:3	13:3 115:3	44:5,6,25
126:15	33:13	67:12,17	108:24	70:5	117:24	45:1,4,23
127:11	exercise 27:7	70:16	experts 47:5	126:12	129:23	108:8
130:25	27:14	71:19,22	47:5,6	expresses	eye 26:9	113:14
evidenced	99:21	72:3,6,10	49:13 50:4	97:2		factual 24:21
111:13	100:24	72:21 73:2	50:11,15	expression	F	25:17
exactly 43:2	105:25	73:10,25	51:2,7,10	54:10	f 99:10	32:10
46:17 53:9	106:1	75:6,8	51:13 52:6	69:13 71:3	face 4:5 57:6	failed 88:7
57:16	exhaustive	79:22 80:1	52:10	71:10	faced 114:24	fails 76:12
60:20	54:22	80:4 81:14	70:12	86:22	fact 10:8	fair 30:8
104:21	exhibit 99:24	81:25	73:24 79:9	expressly 7:5	13:1 18:1	51:21
126:22	107:24	82:19 85:2	84:2,7,11	extend 86:5	28:19	faith 58:11
129:1	111:14	85:3 86:1,7	92:6 106:2	86:24	30:19 35:9	113:18
examine	exist 2:17	88:18	117:4,22	99:25	37:3,13	133:5
75:23	107:9	89:13 90:5	124:1	122:20	43:23	fall 4:6 49:23
examined	existed 35:24	90:12 92:6	127:13	extended	55:20	72:25 79:6

82:15	38:20	finally 27:2	32:13	firstly 29:25	17:20	formulates
97:15	40:25	83:18	finds 52:8,14	71:21	78:19	97:20
104:24	41:20 53:5	finance 56:9	fine 15:1	72:11 98:5	footing 60:16	formulation
110:20	136:3	61:22	31:3 65:11	119:24	footnote	2:18,24
112:14	FCG's 102:6	67:12	135:23	125:20	18:19	20:24
116:1	102:16	77:19	firm 78:11	Fisher 30:5	force 14:4	127:12,16
122:4,5	109:6	81:11	78:12	fit 27:20	115:22	129:15
falling 77:4	feasible 48:7	82:22	first 4:22	fits 105:4	forced 68:11	132:5
79:13	February	103:25	5:15 6:16	117:4	77:15 78:1	formulations
96:12	22:25	106:2,8	12:6 17:13	five 108:13	85:15,20	121:7
falls 60:4	feed 91:17	108:21	18:14,15	fix 48:13	86:5,6	forth 11:7
117:15	feel 42:11	111:8	22:8 24:17	fixed 47:22	103:7	forum
125:17	119:3	120:10	25:20 27:4	51:5	foreign 1:11	115:21
familiar	feels 118:24	123:20	28:8 30:7	fixing 50:8	2:13 23:22	forward
80:11	119:18	financial	32:21	fixture 51:17	46:3,13,20	57:15 72:7
far 2:2 3:9,20	fees 66:13	63:3,21	38:22	flows 16:10	47:3,16	73:16 90:8
5:15 17:14	68:6 73:7	64:18	48:14 49:7	16:17	49:5,7,13	94:12,14,16
19:11 27:9	87:21	65:14,16	51:2 53:15	focus 88:7	51:2 54:4	95:24,25
29:5,13,23	123:13	69:11 70:4	54:8,8	123:3	forget 131:24	98:1
30:23	124:12,15	70:7 79:2	55:14 56:3	131:1	form 2:1,5	105:13,15
33:21 40:4	124:20	95:1 96:12	62:17	focuses 77:7	19:1 32:24	105:16,20
42:18 46:5	feet 127:25	96:15 97:3	67:11 68:3	focusing	33:17,18,19	106:20
46:20 47:3	128:1	97:13	69:18 70:1	88:20,22	34:15,17,18	107:17
48:22	129:13	105:22	74:16,17	112:12	39:24	110:3,4
49:13,25	130:2	107:5	75:17	120:6	44:20,23	116:9
52:6,25	fell 5:4	financier	76:14 77:6	123:1	62:5,7,8	120:23,24
53:2,10,20	felt 42:21	83:22	78:23 83:5	follow 7:18	65:4,10	121:20
54:2 69:7	fide 90:9	financiers	84:12	10:23	91:18	124:18
69:19	98:18	81:14	85:12	14:16 18:2	110:14	127:23
71:15,19	fields 51:8	82:23	87:17	56:10 97:1	117:7	129:6
72:5,15	113:23	100:10	90:15 91:6	97:1	126:6	130:20
88:14	file 6:14	121:2,9	92:7 102:5	116:18	formal	131:18
95:23 96:2	30:11,16	125:13	102:19	130:4	111:25	134:10
96:3 98:2	31:10	127:6	103:10,18	followed	126:21	four 102:18
114:9	41:20,21,23	financing	108:1,5	66:3	forming	103:14
119:25	73:21	54:18 55:6	111:11	following	111:1	108:13
121:14	109:17	78:11	114:12	26:19	forms 3:8	fourth 69:2
122:20	134:11	find 13:17	115:1,12	74:15	33:11,11	103:5
124:25	filed 44:22	44:15 52:1	116:23	96:24	117:9	framed
127:12	filing 135:25	56:9 59:18	119:7	97:15	formulate	110:23
FCC 2:16	final 9:2	85:4 88:15	123:4	108:13	131:14	frankly 42:6
FCG 10:25	19:11 29:2	106:7	124:13,25	110:20	formulated	107:16
24:7 27:4	93:8 126:1	119:14,18	128:21	120:5	1:19 10:9	French 46:22
27:18	finalised	124:8	130:5	128:15	66:2	47:6 50:15
28:12	51:11	findings	133:23	follows 6:25	110:20	Freshfields

9:3,9,25	102:1	118:5,9,23	69:14	132:10,11	goes 17:15	22:12
22:24	103:7	119:6	97:17 98:9	132:18	18:18	good 29:4
25:21	106:9	121:1	104:17	134:16	20:23 46:8	39:6 44:25
134:21	fundamental	123:2,9	109:1	given 3:12	52:6,25	58:11 72:5
friend 18:10	77:18 87:6	129:8	123:22	19:7 26:24	53:2 54:13	100:17
18:25 19:6	funded 77:21	133:22	124:5	34:7 41:1	58:6 64:9	105:14
20:19	funding 46:3	134:12	127:6,23	42:6 44:22	68:16 74:9	113:18
30:22 45:7	48:21	136:1	generally	50:19	75:15 77:6	133:5
49:15 63:3	51:19 52:6	funds 56:22	24:13	54:10	85:17	137:6
68:17 74:4	52:10	69:21,22	25:24	71:22	90:22 91:7	grant 1:18
74:7 94:4	54:15,17	70:22 71:8	28:11 33:8	72:13	93:9	graphic
95:5 102:4	56:5,11	71:18	60:3 69:20	84:11	101:17	86:22
107:19	61:23 62:7	72:17	69:23 70:5	107:1	111:12,20	grapple
120:1,8	66:17 67:3	77:13	70:8 102:2	110:11	113:8	35:21
123:3,6	67:14,15,17	88:24	102:21	113:4	121:13	grasp 119:7
126:1	71:3,12	98:11	104:18	128:24	123:10	119:14
135:11	74:19	104:13	generic 23:1	135:15	going 1:7 3:2	grateful
friends 38:23	75:19,20,24	109:2	32:14 38:4	gives 8:9,13	11:20 18:8	31:13
friend's	75:25 76:1	113:12,13	112:20	25:16	23:10 27:6	63:16
97:11	76:3,5,11	further	116:7	110:25	28:7 29:11	greater
101:18	76:12,15,18	10:15 17:3	generically	giving 65:12	30:4 40:7	73:15 75:1
122:21	76:23 77:1	19:18	69:12	88:3	41:7,18	greatest
125:19	77:4,20,22	20:24 23:6	German	113:10	42:8 46:8	100:19
front 30:7	78:7,22,23	29:9 46:1	46:21 47:5	glance 32:13	47:1 51:5,9	ground 20:4
full 61:19	78:25 79:6	57:21	50:14	glancing	52:16	37:15
78:3	79:11	95:10	132:17	107:20	56:18	62:11 90:3
113:14	80:16 82:1	101:10	getting 7:22	go 5:7 7:22	57:21	129:25
fully 44:12	83:21,23	112:24	14:12 27:9	8:3 17:8	58:16	group 3:10
79:25	84:15,21,24	113:21	49:7 52:23	23:14 27:4	61:22 62:2	10:13
82:12 83:3	85:17	115:18	111:18	27:5 39:15	64:13	22:14
126:18,18	86:16,16,19	116:19	give 1:18	57:1 61:20	65:12 83:6	38:25
function 16:1	86:21 87:2	118:3	17:17,20	61:21 69:1	85:4,7,9	43:21
111:1,2	87:3 88:1	124:2,9	18:4 42:1	69:2 71:7	87:14 88:8	72:11
fund 59:21	88:12,13,21	126:9	42:10	87:18	91:20	73:21 77:3
64:5 67:1	91:18,19	127:10	43:21	88:19 97:5	92:17	79:5 90:8
68:11 69:9	95:3 96:22		48:12	103:18	106:1	93:19
69:13,17	97:3,17		49:21	107:7	114:19	98:25
77:15 79:2	101:19,20	G	52:21 99:2	108:18	116:24	101:17
84:20	101:22	Gazette	103:24	111:19	118:15	105:12,21
85:15	102:2,2,21	14:21	104:3	112:24	124:21	108:2
86:12,12	106:16	20:14	109:14	125:13	126:15	109:24
87:14	109:4	general	114:1,6,6	128:8	128:12	110:3,6
88:24 89:5	112:6	26:20	117:14	130:23	133:5,11	113:25
97:16	117:4,9,13	31:25 36:4	125:7,10	133:13,23	135:11,25	119:2
101:14,23	117:16	36:23	126:15	134:4	Goldschmid	121:17

66:10	15:7 20:10	holders	131:17,17	37:14 45:8	106:10,11	insist 47:2
102:24	heading	87:23	identifying	45:15	123:11,13	insofar 5:18
110:17	135:2	holding	49:11 73:2	incidental	incurred	57:14
guarantees	hear 1:18	77:12 79:1	identity	68:7	66:6,14	95:22
112:2	29:3 35:2	hope 4:24	34:23	incidentally	82:13 83:5	insolvent
guidance	53:9 62:1	11:19 28:2	84:21	53:19	83:23	85:21 86:5
74:5 94:1	62:17,23	48:25 49:3	ignored	55:14	99:16	institution
99:3 113:8	63:12	71:20	115:7	inclined	124:10	79:2
114:2,5	65:20	131:6	ii 57:22	132:9	125:4	institutions
115:4,18,19	100:22	134:22	iii 57:24,25	include 24:2	incurring	63:3,22
117:14	116:22,22	hoping 36:17	illustrate	42:3 56:12	56:13	64:1,12,19
guilty 79:18	heard 49:1	94:2	90:16	61:22	109:3	65:14,16
guise 10:21	86:1	hypothetical	illustrated	66:16	indefinite	69:11,12
	hearing 1:3	59:23	77:21	72:24	78:2	70:4,4,7
	5:9 13:11		imagine 49:2	136:17	independent	95:2 96:15
H		I	90:19 91:6	included	67:22	96:22 97:3
halfway	15:14	idea 27:3	immediately	30:19	INDEX	97:12,13
107:22	19:17	110:25	77:18 87:6	34:10 35:6	138:1	instruct
hand 31:17	22:16	117:16	103:11	99:10	indicate	51:13
50:6 52:25	24:11	idem 1:16	immoveable	118:10	123:6	instructed
68:4 86:20	27:25	46:12	50:10	includes	indicated	50:14
hands 17:6	29:19	identical	impact 21:24	108:13	135:14	73:24
happen	31:11	86:8	66:14 68:7	114:21	indicates	instructing
100:12	36:14	identified	73:7 91:20	including	71:10	84:6
107:12	41:11 69:2	18:22	implicit	56:22 68:5	individual	instructions
108:22	101:4	19:13	121:15	76:16 91:1	98:16	135:19
121:22,23	114:17	25:10	implied	95:1	individually	insufficient
128:1	137:10	35:23 44:5	111:12	121:10	33:2	19:16
happened	138:3	50:4,11,14	imply 93:3	inconsistent	individuals	insure 79:25
7:16 90:20	hears 89:13	51:7,10	import 16:23	93:6	67:21	intended 2:8
happens 4:17	hedge 64:5	55:8 62:8	21:7	incorporat...	information	6:20 7:10
91:6	79:2 109:2	63:2 93:20	important	19:1	113:16	7:15,21
108:10	help 32:20	131:8	10:19	incorporat...	informed	45:15
112:3	101:9	identifies	32:12	23:22,23	47:10	64:11 82:8
121:21,23	126:9	25:11 57:4	38:10 43:1	increases	inherent	88:12
136:9	helped 62:2	93:3,11	43:25 50:8	66:15 78:3	91:2	109:9
happily 46:9	79:22	107:25	112:17	incremental	initially 66:7	intending
happy 30:16	helpful 8:1	111:21	impose 87:24	67:16	initiated	3:17
38:17	15:17	134:4	imposed	76:10	22:24	121:25
39:15	60:16	identify 4:12	123:13	86:10,18	inject 7:14	122:2
45:24	70:13 72:1	27:8 28:20	impossible	91:14	injury 20:13	intention
71:25	73:15	37:6 60:19	30:4 88:16	103:3	insert 134:18	19:8 37:17
136:25	83:16	74:15	97:25	incur 66:11	135:25	interest 1:10
Harrahill	101:6	104:22	115:8	70:24 73:3	inserted	2:11,14
12:2,8,9,25	high 78:5	106:9	inadmissible	73:8	51:15 95:5	12:21 13:3
13:2 14:18	hold 76:24					

15:21	3:25 18:11	15:2 17:15	25:5,24	15:20,21,23	31:3,7,12	65:1,8,11
17:23	57:8	17:19 18:5	27:13	16:12	31:14,18	65:17,20,25
19:25 22:2	involve 79:10	19:5 20:18	28:10	Judgments	32:20,24	67:6 70:15
47:11	96:7 102:7	20:23,24	31:16,24	13:13	33:1,4,9,14	70:18 72:1
66:13 68:6	involved	21:4,5 22:2	33:22	19:24	33:24 34:3	80:10,22
73:7,23	38:23,25	22:21,25	34:19	74:12 75:2	34:14 35:1	81:18,21
75:1 78:5	64:1 67:14	23:11,15,15	45:10	June 15:20	35:14 36:6	82:17
83:25	67:25	23:17	46:11 52:2	15:24	36:16 37:1	84:12 85:3
87:21	68:24	24:17,18	52:4 54:13	49:20 51:1	37:6,9,12	85:12 86:1
104:17	73:13 80:8	25:3,13,16	60:13 69:7	junk 85:17	37:18,22	86:11,15
109:20	80:19 84:6	25:20 27:1	72:20	jurisdiction	38:15	87:9 88:5
111:24	84:8 91:14	28:7,9,11	92:18	135:20	39:17 40:7	88:19,22
112:4,6	99:15	29:12	94:13	JUSTICE	40:10,13,18	89:4,7,18
123:12	involves	31:17 38:1	96:18	1:4,14,25	40:22 41:2	90:6 92:2
124:11,15	133:24	39:16 43:1	114:2,8	4:5,10,25	41:11,14,16	92:16
124:19	irrelevant	44:16 45:5	115:5	5:11,25 6:2	42:5,14,18	93:16
interests	84:22	47:9 50:16	116:7	6:4,7,15,18	43:6,14,18	94:10
47:12,12	102:3	52:19,19	126:5	6:22,25 7:3	44:3,11	95:12,21
interrelate	103:15	58:25 59:3	129:9	7:5,13,18	45:9,12,21	96:11,14
129:16,19	120:15	59:5,12,14	iteration	7:23 8:1,8	45:25	97:1,14,25
interrupt	irrespective	66:9 79:17	52:9	8:12,21,24	46:14	98:23 99:4
29:20	20:8 79:1	88:14	iterative 50:9	9:6,8,14,19	47:20 48:1	99:12,20
intricacies	117:6	90:10	82:11	9:22 10:17	48:4,8,12	100:17,22
80:8	ISDA 53:19	105:11,17	iv 26:20	10:23	48:22 49:6	101:7,11
introduce	61:8 64:10	112:10		11:22 12:1	49:10 50:4	102:17
44:6	64:15	114:12,12	J	12:23 13:9	50:7,18,22	104:2,19
introduced	68:22	114:15,18	January	13:12,14,25	50:25 51:9	105:7,10
80:6	69:15	114:20	73:21	14:3,7,14	51:18	106:3,13,16
introduction	72:12,18	115:6,16	job 100:18	14:16 15:1	52:12,15	106:19,24
74:14	80:11 82:7	116:20	joint 3:14	15:4,10,13	53:14,18,24	107:14,21
intuitive	85:3 96:1	118:1	4:11 11:4	15:17,23	54:7 55:1	108:9
77:19 87:6	102:22	119:21	22:8 23:25	16:3,11,22	55:14,24	109:11,14
investment	104:16	124:13	24:25 25:3	17:1,4,10	56:20	109:17,25
56:23 67:7	117:17	128:3	26:11	17:17 18:2	57:10,20	110:13,24
77:22	isolate 76:12	issued 130:9	27:10	18:8,12	58:3,8,10	111:5,10,16
130:15	issue 2:8,10	issues 1:11	46:16,25	19:21	58:13,16,20	113:3
investments	2:24 3:2,11	1:13,15,23	51:22	20:16,22	58:24 59:6	114:11,15
76:6	3:23 4:8,8	1:24 2:6,9	52:18	21:13,19,23	59:14,18,24	115:10,14
invitation	4:13,22,23	2:20 3:6	53:10	23:18	60:2,6,9,12	115:24
57:10	5:14,16,18	8:17 17:14	117:5	24:16,24	60:15,20,22	116:14,18
invite 17:20	5:18 8:22	17:16 18:7	118:8	25:25 26:2	61:3,8,12	116:21
45:19 57:7	10:6,11,22	20:21	judge 15:8	26:7,10,14	61:19,25	117:20
invited 5:13	10:25 11:4	21:21	judgment	26:22 28:4	62:14,22	118:6,17
92:5	11:21,23,24	22:11,15	13:22,24	28:6,15,19	63:21	119:9
inviting 1:17	12:5,24	24:19,20	14:7 15:9	29:4,20	64:14,22	120:21

121:11,19	80:20	77:10,14,15	136:14	130:16,17	112:7	27:15 29:1
122:2,7,18	93:18	78:7,24	leaving 80:17	130:24	long 37:8	29:5 30:10
123:16	100:7	84:21	124:17	135:9	50:17	30:13 31:5
124:1,15	105:1	85:11,15,19	led 73:16	limited 23:1	89:23	31:13,15
125:6,10	113:13,14	86:9,20,22	74:7	66:12 68:6	107:24	39:16,19
126:4,10	121:11	86:24,25	left 2:19 95:8	73:6	longer 22:19	40:4 42:15
128:11,14	126:22	87:12,16	125:15,16	102:25	30:14	45:19
128:19,21	132:23,24	88:3,6,6,10	132:2	120:9,14	look 15:7	48:19
129:1,12,14	knowing	89:5 90:21	legal 86:3	124:19	22:22 34:4	49:13 50:5
129:17,20	34:18	91:1,2,7,10	legislation	130:8	40:13	52:16
130:1,4,14	knowledge	101:21	13:5,7	line 46:1	75:19	62:21
130:18	35:19,22	111:24	legitimate	52:11	91:25	63:12 65:5
131:3,9,15	known 32:3	112:1,2,9	106:14,22	55:14	92:22 93:2	65:22 66:1
131:21	knows 18:16	LBIE's 77:16	111:7	linked 27:13	98:15	70:1,19
132:1,4,7,9	44:20 48:9	77:25	123:21	Linklaters	109:11	71:19,20
132:14,16	70:1	91:17	124:4,24	26:11	113:5	73:10,14
132:21	134:21	lead 27:18	lender 91:7,8	93:10 94:5	115:4	74:24 77:2
133:2,4,8		38:9 64:14	123:11	118:2	125:20	78:15 79:4
133:10,14	L	leap 11:24	letter 9:3,5,7	129:24	133:12	79:15 80:3
133:19	large 30:4	12:16,17,20	9:10,12,25	links 59:16	looked 25:2	80:13 81:3
134:2,8,13	63:15 84:9	12:21 13:3	19:9 22:24	liquidation	110:16	82:10 84:5
134:25	99:20	14:14,15	26:15	59:9	looking	84:7 85:1
135:4,8,13	108:2	19:23 20:8	93:10 96:9	list 48:13	10:14	86:7,14
135:23	largely 45:8	learned	118:2	115:5	13:25	89:12 90:3
136:5,10,14	46:18	18:10,25	129:24	listing	16:21 33:8	90:7,12,14
136:19,21	late 118:8	19:6 30:22	134:21,24	136:18	33:9 53:15	90:16,17
136:25	latest 52:9	38:23 45:6	let's 17:10	litigation	56:2 57:4	91:22,24
137:2,6	110:17	49:15 63:3	35:4,5	46:25	65:2 84:12	92:3 93:8
	law 14:21	68:17 74:4	40:13	100:7	84:14 86:2	93:13,17
K	20:14 46:3	74:7 94:4	110:9	little 7:9 10:4	87:10 89:4	94:3 95:17
key 77:19	46:13 47:4	95:5 97:11	level 32:14	10:7 28:24	127:14	98:13
78:9	47:5,6,16	101:18	38:4	42:10 46:1	128:18	100:14
kind 56:8	49:5,7,13	102:4	112:20	80:7	132:17	101:1,9,12
Kirkland	50:14 51:2	107:19	liabilities	130:23	looks 51:14	110:16
26:15	54:5 124:6	120:1,8	102:2	live 59:14	54:2 92:14	111:2,18
knock-on	124:7	122:21	liberty	load 106:3	94:6 95:23	112:10
41:25	lawyer 46:21	123:3,6	135:13,22	loan 87:22	lord 1:5,16	115:11
know 24:7	46:21,22	125:19	lie 110:25	89:5 91:19	1:23 2:8	116:19,24
35:13 36:5	119:8	126:1	lies 58:13	123:12	4:20 10:24	118:20
36:14 42:9	lawyers	135:11	lieu 77:12	lodge 41:7	11:23 17:6	120:13
42:17 43:2	46:20 47:4	leave 2:7	light 3:18	Lomas 34:9	17:13,24	121:4,15,25
43:25	LBIE 67:20	39:25	11:9 24:13	39:22	18:3 19:12	122:20
50:21 51:4	68:11,13,13	41:24	39:21	44:24 45:3	19:15,23,24	123:8,25
53:24	68:14	56:18	127:2,9	93:5	20:1,20	124:7
70:13	76:13,16,19	128:7	129:2	111:17	21:3,17	125:1,19,22

129:10	81:15	M	master 3:8	111:21	121:13	89:11 92:9
134:18,20	82:12 83:2	magnificent	3:22 46:3	113:1	123:18	92:13
135:24	83:25 84:8	11:24	53:19 61:8	121:23	125:24	94:12,14,16
137:3,5	85:10	main 11:3	63:19 64:7	122:24	126:13,23	94:17,19,22
Lordship 1:5	88:20	48:20	64:10,15	123:19	127:1,8	94:25 95:9
1:12,18,21	89:13	58:18	68:22	124:5	129:3,21	95:15 96:3
2:4,6,20	91:25	major 90:20	69:16	127:6	135:16	97:17 98:1
3:19,25	92:13 93:9	majority	72:12,18,25	130:18	mean 15:13	100:5
4:24 5:7,21	93:22 94:2	111:22	80:11,14	matters	35:17	102:10,13
5:22 6:3,5	94:6 97:20	112:3	81:22 82:7	22:23 23:5	40:24 43:2	105:13
8:20 9:2,7	98:15	making	85:3 96:1,2	32:11 36:4	43:3,6,22	107:10
9:10,24	99:14	20:21	99:6	37:16 54:4	52:17 53:2	112:22
11:25 12:7	100:14	38:11	102:22	100:21	54:12	113:1
13:10 14:5	101:1,4,9	92:25	103:14	McKee 57:3	55:10 56:2	117:17
14:23 17:2	117:1,4	116:11	104:16	57:15 62:9	56:25	122:17
17:15,24	118:15	mandatory	material	66:21	59:15 61:3	127:19
18:4,6,11	119:3	9:17,18	3:15 29:17	67:10	61:12	128:24
18:16,18	120:1	March 1:1	36:9 43:6,8	74:10 75:4	63:22	130:6
22:5,12,16	122:13,15	9:4 26:15	44:1 45:23	75:16	69:24	meaningless
23:10 24:3	124:8	27:19	51:20 78:2	78:18 83:6	72:16 81:3	103:22
24:11	125:3,15,23	38:21 40:7	78:21	87:5,19,25	82:16,18,22	meanings
25:19,22	126:9	63:8,10	84:10	90:7 93:21	83:6 84:13	68:23
26:8,18	128:18	70:17	93:21	99:8	85:22 86:4	103:17
27:25 29:3	134:16,20	71:25	materially	100:17,19	86:22 89:8	127:24
30:7 31:1,6	134:22	134:22	78:25	101:5	96:11,23	means 16:13
39:21	Lordship's	135:6,12,18	materials	105:20	99:5,22	18:1 43:15
44:12,15,16	8:16 17:6	marker	14:24	109:21	103:15	45:14
44:20	19:8 23:16	38:13	matrix 24:21	117:11	104:1	53:12 59:7
45:19 46:8	60:4 65:23	market 53:2	31:22	118:10	105:10	69:16,21
46:15 47:1	66:1 73:4	61:6,10,15	matter 13:4	120:12	107:6	95:19
47:2,9 52:8	74:2 85:25	62:17 63:1	13:6 34:10	122:25	108:15	96:22
52:13 53:9	98:2,3	63:2,6 64:2	34:20 43:9	123:1,8,10	114:12	103:20
57:7,8	125:1	64:20,23	48:23	124:2	115:24	107:15
65:23 66:4	128:20	65:14,15	61:13	126:16	116:4	128:6
66:9,20	134:5	69:15,24	79:13	McKee's	124:15	meant 36:21
67:9 68:1,9	lot 39:2	70:8 78:4	88:17	66:4 68:1	127:2	59:10,25
68:16,20,25	47:23	80:24	91:21	74:7 79:4	130:4	124:19
69:1,5 70:1	51:20 58:6	92:20,21	93:23	84:3 93:2	meaning	measure
70:20 71:7	127:21	94:12,15,18	95:10	99:23	36:12	76:9 77:3
73:14,17	129:14	95:1,14	98:15	107:18	54:10,19	81:13
74:9,14	130:10	102:7,12	99:18	109:8	64:23	104:6
75:8,13,15	low 112:4	118:25	100:3,5,6	111:11	69:14,21	measured
77:6 78:17	lowest 71:13	121:6	103:19	113:11	72:13,15,18	68:8 103:4
79:8,12,16	low-key	markets	104:22	115:25	81:7,7,23	103:8
79:19,21,25	119:14	20:11	108:12	119:9	82:25	measuring

67:13,18	36:21 98:3	115:16	113:16	108:16	2:5,9 4:23	observation
75:18 79:6	mixture	123:11	135:8	118:13	5:10,12,22	57:18
88:1 89:1,3	78:12	month 41:13	need 3:16,19	123:14	6:1,6,14	observations
89:10,14,15	mode 54:18	months	4:18,21	128:4	8:4 9:24	26:20
91:14	Modigliani	63:15	6:12 8:14	134:5	11:25 17:3	obtain 86:6
meet 15:19	80:5 87:5	130:9	10:14	negligence	17:3,5,14	obtained
meetings	moment 2:22	morning	16:17 19:9	79:18	17:16	75:24
51:3	10:4 13:17	36:22	19:17	negligent	45:24	86:21
mention 21:6	17:17	89:23	21:20	79:20	58:22	obtaining
31:6 39:21	19:19	move 6:5	22:22	negotiated	78:17	67:17
117:25	21:11 31:5	29:21	23:16	33:2	noted 59:2	86:18
mentioned	41:2,5	45:24,25	26:24	negotiation	133:3	obvious
19:6 30:22	50:15	50:22	36:13 39:3	40:1	136:16	16:21
49:15	52:17	51:18 72:6	39:20 42:1	neither 97:19	notes 12:4	93:17
55:10 94:9	53:15	131:4	50:2 57:13	122:25	14:19	112:23
118:1	54:16	132:15	59:3 60:17	123:4	notice 8:7	obviously
128:5	68:14 75:8	moved 129:3	60:18 81:8	never 15:5,6	9:15 19:8	1:10 19:15
129:23	88:15 92:4	130:10	90:10 93:1	78:3 80:5	21:17 57:6	19:24
merely 96:7	94:11,13,20	moving	93:24 94:1	new 11:14	104:25	25:16
123:11	95:22	21:14 52:7	99:13	14:19	notional	27:13 29:9
method 81:4	100:8		101:1	46:21 47:4	69:25	29:18 30:6
methods	109:15	<hr/> N <hr/>	104:21	50:15	notionally	34:11
81:5 93:2	128:23	names 50:6	105:5	Nobel 67:21	71:8,17	44:21
95:3	130:8,13	108:1	107:7,15	nobody's	notorious	49:21
111:12	133:24	narrow	108:19,20	111:23	63:6 81:7	52:19 62:6
112:21	134:16	24:17	122:22	nonbank	92:8	70:13
microphone	135:21	130:6,15	123:17	71:15	November	72:19 84:5
29:21	136:16	narrowing	126:2,21	nonsense	22:4,16	84:7 90:7,9
middle	Monday 1:1	130:3	134:18	105:23	41:1,5	92:8,13
136:22	40:11	natural	135:19,21	nonspecific	73:17	101:2
Miller 80:5	41:22,24	72:13 95:9	135:25	130:13	109:12	112:16
87:5	136:23,23	nature 12:8	needed 62:3	non-prova...	number	113:4
million 84:19	136:24	46:24 52:3	62:5	2:10 24:3,7	44:19	117:18
84:20,23,24	money 37:20	64:12	needn't	24:8,9,12	78:19	131:5,6
87:13,16	37:22	78:13 83:4	109:6	29:10	101:22	136:2,15
mind 24:8,9	44:18	91:2 99:15	needs 5:7	non-recour...	103:9	occasion
48:6 53:14	66:11,12,14	necessarily	11:10	56:8	numbers	23:8
65:23	68:13 73:6	18:4 28:21	25:15	non-settled	107:23	occasions
minds 47:25	73:6 74:22	53:25	28:24 29:3	6:16	108:7	70:6,7
minor 55:19	76:10	54:12 67:1	52:5 68:7	normal		occur 98:22
minute 27:25	85:11 86:6	81:3 89:18	82:12	31:10	<hr/> O <hr/>	99:1
43:13 88:5	86:25	93:21	83:25	54:13	objection	occurred
88:10	87:19,21,22	116:7	94:20	normally	105:15	15:18
missed 137:4	88:7,9 91:8	necessary	100:14	79:24	objective	35:15
missing	103:3	111:4	105:2,17	note 1:13,23	45:16	occurs 81:12

October 48:6 48:16 136:8,20,22 136:23	29:23 36:20 39:11 41:5 41:5 43:24	overtaken 22:23 63:16	40:14 42:7 62:25 69:3	8:18 9:13 29:25 38:16	106:11 108:8,24,25 109:4	132:22 136:11								
okay 6:22 48:8 52:15 56:20 57:20 58:16 60:12,15 65:11 89:9	46:9 47:2 49:15 50:11 51:10,11,24 62:3 68:16 70:11 73:17,19	owed 68:13 84:17 87:13 104:16	papers 27:1 27:18 28:13 29:8 31:8,9 39:4 39:7,12 69:1 117:10	49:14 128:15 132:18	113:5,11,23 114:22 123:20 127:24	partly 50:22 parts 5:4 74:14,16 112:13								
once 1:22 58:6 119:9	74:11 97:12	owes 85:11 86:25	paragraph 5:8,20,24 6:6,8,8,9,17 6:18,19 17:16,18 19:12 20:6 22:9 25:23 26:1,4 27:16 28:8 28:16 30:1 30:10,23 36:20 37:10 38:19,19 40:3 41:4 41:19 42:19 69:6 70:20 71:23 73:19,20,25 74:9,16,18 74:21,24 75:16 77:7 85:12 92:8 92:9 93:12 93:14 99:10 102:15 107:24,25 108:6 109:7,15,24 127:15 129:7 133:15 134:6	parameters 49:1 park 25:1 105:1 part 2:21 3:12 4:13 5:4,15 16:18 21:11 23:15 26:5 27:9 28:11 30:5 31:4 42:6 43:8 48:17 56:3 56:17 61:5 63:13 66:8 70:19 74:2 74:3 84:10 97:10 98:10 108:2	114:22 123:20 127:24 particulari... 30:11,17 42:20 43:14 particularly 44:23 125:25 parties 1:16 2:3,23 3:5 5:16 11:9 12:5 17:19 17:25 19:3 20:4 22:19 26:23 27:17 29:2 30:21 31:21,23 32:1 33:7 34:17,23,24 35:7,10,20 36:8 44:15 45:17 46:8 46:12,18 47:10,18,24 48:13,18 49:10,16,23 50:2 51:7 51:21 52:2 52:4,7 64:9 64:11,17 80:17 81:4 83:13,24 94:24 95:25 98:13 100:8,24 115:15 131:1	party 19:15 54:14 58:14 66:6 74:19 88:7 90:22,23 103:7 105:3 123:10 131:18 pause 6:4,6,9 6:22 8:24 9:8,20,21 21:20 26:2 26:21 57:20 58:3 58:23 93:16 109:15 134:17 137:5 pay 71:11 88:7 payee 55:18 55:18,20 56:12,23 59:1,6 76:9 76:20 77:11,12,15 77:25 78:3 84:15,18,24 85:15,19 86:4 101:14 payees 76:24 payee's 56:6 76:15 payer 68:11 paying 68:14 Pearson's								
ones 33:8,13 55:3 128:14	99:11 100:25 108:17 109:12 110:2 128:8,9 133:14 135:10 136:17	page 9:9,12 9:21 13:21 18:19 25:21,22 26:6,6,12 26:16,19,20 52:10 65:5 69:4 70:12 74:9,15 92:1 93:10 93:13 95:18 102:16 107:23 110:15 118:1,3 127:15 129:18 133:18 134:25 138:2	paid 15:20 15:24 19:17 71:14 77:13 84:23 87:1	participants 61:15 63:1 78:4 95:1 participate 31:10 particular 3:7 13:19 21:25 33:10,10,10 35:10 37:3 54:11,18 55:3,5 57:4 62:7 63:18 64:8 67:15 81:8,24,24 100:2 102:3 105:2	parties 1:16 2:3,23 3:5 5:16 11:9 12:5 17:19 17:25 19:3 20:4 22:19 26:23 27:17 29:2 30:21 31:21,23 32:1 33:7 34:17,23,24 35:7,10,20 36:8 44:15 45:17 46:8 46:12,18 47:10,18,24 48:13,18 49:10,16,23 50:2 51:7 51:21 52:2 52:4,7 64:9 64:11,17 80:17 81:4 83:13,24 94:24 95:25 98:13 100:8,24 115:15 131:1	open-ended 110:10 131:5 operate 23:12,14 operates 78:17 operation 19:6 97:11 opinion 93:7 opportunity 62:18 63:17 opposed 115:3,22 opposes 72:8 order 5:12 5:15,20 6:13,13 13:6 16:18 19:2 22:10 27:25	ordinary 12:15,20 64:7 95:9 100:7 original 2:16 14:17 33:20 originally 2:8 30:2 49:17 ought 11:2,8 20:7 23:12 23:13 24:20 39:20 62:15 80:15 91:12 outstanding 16:12,13 overall 75:19 76:2 91:4 109:4	pages 9:5 15:8 52:11 108:4 paid 15:20 15:24 19:17 71:14 77:13 84:23 87:1	paper 20:5 22:17,18 23:4 27:7 33:20 39:5	paragraphs	part 2:21 3:12 4:13 5:4,15 16:18 21:11 23:15 26:5 27:9 28:11 30:5 31:4 42:6 43:8 48:17 56:3 56:17 61:5 63:13 66:8 70:19 74:2 74:3 84:10 97:10 98:10 108:2	participate 31:10 particular 3:7 13:19 21:25 33:10,10,10 35:10 37:3 54:11,18 55:3,5 57:4 62:7 63:18 64:8 67:15 81:8,24,24 100:2 102:3 105:2	parties 1:16 2:3,23 3:5 5:16 11:9 12:5 17:19 17:25 19:3 20:4 22:19 26:23 27:17 29:2 30:21 31:21,23 32:1 33:7 34:17,23,24 35:7,10,20 36:8 44:15 45:17 46:8 46:12,18 47:10,18,24 48:13,18 49:10,16,23 50:2 51:7 51:21 52:2 52:4,7 64:9 64:11,17 80:17 81:4 83:13,24 94:24 95:25 98:13 100:8,24 115:15 131:1	partly 50:22 parts 5:4 74:14,16 112:13 party 19:15 54:14 58:14 66:6 74:19 88:7 90:22,23 103:7 105:3 123:10 131:18 pause 6:4,6,9 6:22 8:24 9:8,20,21 21:20 26:2 26:21 57:20 58:3 58:23 93:16 109:15 134:17 137:5 pay 71:11 88:7 payee 55:18 55:18,20 56:12,23 59:1,6 76:9 76:20 77:11,12,15 77:25 78:3 84:15,18,24 85:15,19 86:4 101:14 payees 76:24 payee's 56:6 76:15 payer 68:11 paying 68:14 Pearson's

22:7 45:3	picking	56:19	6:21 9:1,23	post 3:17	44:4 60:19	95:14
penultimate	75:16	58:12 60:4	10:8,9,19	21:15	80:18	pretty
93:12	picks 78:17	61:25 70:1	11:8 19:19	posting 4:1	81:11	100:17
134:24	place 8:5	71:12	20:5,12	4:16	89:14 92:4	previous
people 82:21	48:1 52:1,8	76:21	22:17	postulate	95:10	13:11
122:8	128:8	78:18	25:16	78:10	100:15	56:16
131:7	130:11	90:25	26:11,17,23	potential	124:9	110:2
people's 44:9	places 5:7	91:24 93:8	26:25 27:7	29:10	preface	previously
percentage	plain 11:10	93:17 94:9	27:18	101:2	31:19	134:11
75:25	plainly 18:21	95:21	28:13 29:2	112:21	prefaced	price 67:22
perfectly	43:25 45:8	97:14	29:8 31:8,9	potentially	95:13	primarily
85:1	45:13 81:3	101:12	33:20	92:12	prefer 50:11	64:11
100:11	81:13	102:11	36:12 39:3	111:12	55:4	primary
123:18	91:18	110:10,14	40:14	pounds	prejudice	87:11
126:8	124:13	112:23	41:17,20	14:10	131:7	prime 87:12
period 44:18	play 43:8	115:3	42:7 47:10	15:21	prepare 30:5	87:14,18
77:16 78:7	84:10	116:5,11	49:12	practicable	39:5,5	principle
85:16	85:23	117:24	51:22 53:8	47:14	prepared	61:1 77:19
permissible	100:1	120:8	62:25	practical	39:12 63:9	78:9 87:7
111:2	pleaded	124:18	67:11 69:1	29:11 62:4	63:9 106:5	principles
permission	108:12	126:1	69:3 70:10	91:24	107:4,8,10	59:25
126:15	plus 84:16	129:23	70:14,21	practice	120:9	75:22
permitted	pm 89:25	131:17	72:16,17	20:10	preparing	print 13:21
92:6	90:2 137:9	133:5	75:3,5	92:21	22:21	probably
103:21	point 6:17	134:18	86:19	97:24 98:9	73:25	26:18 30:3
125:7	7:7,9 8:3	points 1:8,22	87:23	108:22	prescribed	37:9 43:8
person 128:1	8:13,15 9:9	2:4 6:11	94:24	114:16,17	14:9	46:6 51:4
personal	9:10,12	17:13	97:23	121:6,8	present 3:18	51:25
20:13 32:2	10:5,15,24	18:15	111:3	122:16	4:17 9:23	55:19
32:9	11:20	20:18	117:2,10	123:20	25:15	62:16 72:2
perspective	14:17	24:22	126:12,23	practitioner	27:21	75:14 83:7
65:16	17:15	25:18	127:1,7	104:1	47:10	106:1
117:5,6	18:15,16	29:21,24,25	positions 3:5	practitioners	49:24 57:6	114:17
persuade	19:4,5,11	38:22	27:17	106:9	80:20	122:18
101:1	19:24	47:17	possibilities	108:20	121:10,12	128:8
phrase 55:10	20:15,23	51:19	122:14	120:10	126:6	134:23
61:5 69:21	21:7 25:1	70:11,14	possibility	pragmatic	presented	136:7
72:12,18	31:19	93:15 98:5	103:20	26:13	39:25	137:3
82:4 83:19	33:12	119:24	possible 38:3	29:15	presently	probe 21:8
101:13,25	35:15 36:6	125:20	64:15 66:5	precise 9:11	31:11	problem
112:23	38:2,24	portfolio	81:4 93:3	23:1 52:3,5	preserves	16:17 21:2
123:3	39:6 42:19	76:5	93:11	63:5,24	36:11	128:16
phrased	46:5 51:16	position 3:8	94:23	75:18	presumably	131:23
120:2	52:7,24,25	3:9,18 4:11	possibly 32:1	99:15	134:19	136:15
picked 94:3	53:1 55:2	4:17 6:20	112:24	precisely	presupposes	proceed 32:5

22:20	83:23,24	62:12	130:17,20	73:11	123:22,24	128:14
proceedings	122:5	100:21	132:22	75:21	123:24	129:7,17
21:11	125:4	104:20	135:9	79:21 80:2	124:5,6,7	130:24
115:9	proposed 2:1	107:11	puts 90:8	80:16 81:9	124:18	131:10
proceeds	6:13 9:16	111:7,7	putting	81:18,21	126:11	133:17
66:21	27:16	purposes 3:4	27:18	82:3,3,10	127:12,16	question's
process	36:20 94:6	11:3,18	95:24,25	82:24 83:3	127:17,19	95:15
22:18,21	101:16	21:22 32:7	105:12	83:11 86:3	127:20,23	queue 48:4
23:2 27:9	proposes	39:1 43:23	121:20	87:3 89:8	128:4,17,17	quickly
27:11	40:10	46:10	124:22	90:5 91:21	128:21,22	19:23
28:16	102:9	66:17	127:23	94:7,21	128:25	128:15
37:25	proposing	75:12,24	131:18	95:4,7,12	129:2,6,15	quite 15:7,15
38:14 50:9	30:25	97:3 106:6	134:9	95:13,22	129:19	33:11
82:11	37:10	106:11	puzzling	96:17,20	131:5,18	36:16
98:19	100:20	107:3	15:2,4	97:7,9,15	132:25	44:10 50:8
101:3	proved 62:12	117:11	56:10	97:18	136:6	51:20
118:8	provide 62:4	120:16,19	94:10	100:3,10,25	questions	55:24 56:1
119:18	63:17,23	120:25		101:13,18	4:21 21:9	57:5 58:6
produce 25:4	71:25	121:3	Q	102:3,11,14	23:9 24:22	62:21
27:7 36:17	98:17	pursuant	quantificat...	103:11,12	25:17	70:18
37:2 76:17	110:7	73:24	124:23	103:24	34:15	88:15,20
78:25	135:11	pushed 40:20	query 99:12	104:5,7,19	46:15 47:3	97:4 98:2
produced	provided	put 4:15	question	107:1	47:7 49:25	106:1
1:12	22:8 39:9	10:12	3:15,19,20	108:17	52:9 53:15	116:7
producing	44:8 64:18	18:17	4:1,15,18	110:15,18	55:3,21	118:13
28:17	113:24	20:25	4:20 8:4,9	110:19,19	58:1,5	133:25
38:20 39:8	124:9	47:16	11:2,19	110:21,22	60:17	quotas 69:6
39:13	provides	57:15 72:3	18:15	111:3,10,19	61:16 62:3	quote 54:11
44:25	19:24	72:7 73:16	25:24 29:5	111:19	63:5,6,7,10	
production	providing	77:14 82:5	29:13 47:3	112:12,15	65:4,5	R
27:12	38:21	85:14	49:16 52:5	112:16,18	70:12	raft 60:13
28:13	123:15	94:11,14,16	52:25 53:3	112:19	71:23 85:1	raise 10:14
profession	provision	98:1 99:9	53:18 54:2	114:25	89:20	54:3 78:11
108:25	24:15	101:18,20	54:3,7 55:5	115:4,5,5,9	91:25 92:4	98:6 137:7
110:12	72:25	104:9	55:8,10,21	115:12,23	92:22,22,22	raised 8:3,13
profits 108:3	provisions	105:15,16	56:1,9	115:23,25	94:6,21	10:24
prompted	21:25	105:20	59:10,19	115:25	95:19 97:7	21:10
74:3	pure 25:17	106:20	60:6,22	116:3,12	98:12	35:16
proper 77:3	34:1 53:1	107:17	65:7,8,9,10	117:3,19,20	110:16	56:22
79:5	54:3	110:3,4	65:24,24	117:21,21	112:11,13	114:7,16
114:20	111:19	116:9	66:2 68:5	118:14,20	114:7	115:21
properly	113:8	117:23	68:15,18	119:19,25	117:3	116:1
39:12	116:25	119:6,13	69:5 70:11	120:3	118:16,22	117:25
66:16	purpose 27:6	120:22,23	71:16	121:22	125:20	129:21
81:12	45:16	124:3,18	72:19 73:5	122:15	128:2,12,13	raises 55:9

71:18	98:17	116:8	67:20 91:3	103:13	related 22:17	98:4,11
74:22 76:9	113:17	realise 117:1	101:21	referring	112:11	101:17
103:3	126:6	realistic 62:8	receive 94:2	109:23	relates 4:22	109:4
120:6	133:5	reality 63:8	received	refers 6:8	48:20	116:25
range 88:3	rationaly	125:22	84:19,20	14:20	132:8	117:2
108:23	58:11	really 23:5	receiving	67:10	relation 1:6	126:23
rate 2:11,15	83:24	25:22,23	39:7	70:23	1:8,20 2:4	127:7
12:14,15,16	reached	37:19 40:5	recognised	71:10 95:2	3:5,7,22	135:15
12:18,19	11:10,12	42:24 43:3	110:11	99:8	4:2,9,16,22	136:3,17
13:23 14:8	44:2	47:17 49:1	recognising	111:10,11	5:1,3,5,13	relationship
15:21	reaching	52:16 55:1	20:25	reflect 6:20	5:14,16,19	90:17
16:18,24	11:1	55:11,25	38:19	19:4 37:10	6:20,21 8:9	relative
17:21	read 6:3,4,7	59:19	recommends	reflected	8:22 9:11	113:23
19:25,25	6:22 8:20	64:13 67:6	50:12	2:25 27:24	9:23 10:6,8	relatively
20:3,3,7,8	8:24 9:7	80:23,24	recourse	reflection	10:11,19,25	118:8
54:1,1,9	14:17,19	84:14 88:5	56:5,8	123:15	11:2,4,21	119:13
59:7 61:5	25:22,25	94:15	red 52:10	reflective	17:15 18:5	release 21:25
66:7,13,18	26:1 58:20	99:22	reduce 16:18	87:8	18:15 19:5	23:12,14,23
68:21	59:16	104:10	reducing	reflects 6:18	19:10,18,20	23:23
74:12,12	93:14	108:16	12:14	6:19 20:9	20:13	released
75:1,2,12	109:25	110:9	refer 70:3	20:10,12	21:10,21	23:21
77:5 78:5,6	readily 81:25	111:6	92:9	26:23	22:5,18,22	releases 22:3
79:7,14	reading	112:12,14	109:21	reformulate	23:7 24:14	relevance
81:1 83:1	17:22	127:13	111:12	134:8	24:18,20	28:21,23
84:15 85:6	18:22	130:10,19	134:5	reframed	25:5,6,16	88:10
85:23 86:3	55:17	134:15	reference	128:12	27:3,12,21	104:7
88:17	57:20	136:3,6	24:1,4	regard 109:3	28:13	relevant 2:13
89:17,19	59:20 69:8	reason 1:19	30:11	regarded	29:17 30:1	25:8,9,12
95:8 97:12	69:24	13:5 14:6	54:18	125:5,8	30:9,25	25:14
99:6,19,25	70:23 71:3	32:16	55:16	regardless	31:24	26:16
100:6	73:22	34:14	56:22	67:25	33:22 46:4	28:17,18
105:13	74:11 76:7	40:15	67:19 68:8	regards	46:11,18	30:12,17
107:2	76:25 78:1	66:18 67:3	71:6 74:1	127:1	47:8,11	32:7,11,19
111:23	78:10,15,20	93:11 95:4	103:10,16	regret 48:25	49:17 50:3	35:9 36:9
112:4	84:3 95:17	reasonably	118:22	132:24	50:16 52:2	36:24 37:4
114:21	102:24	34:16	122:7	regular 64:2	52:5,21	38:12
116:2,9	109:9	62:10	129:7	regulations	53:1,7	42:20 43:4
120:7,18,25	110:1	reasons	referenced	109:1	65:24	43:15,23
121:3,5	reads 26:18	79:24	102:21	reiterate	67:11	45:1 56:6
122:6,8,21	119:9	94:23	references	38:2 114:9	68:20	56:12 59:4
124:17,20	ready 47:13	111:6	14:18	rejjig 37:10	69:11 70:3	59:5,21
125:18	real 55:2	rebut 97:5	referred 3:23	relate 23:11	70:10,14,22	68:11
130:6	58:25	rebuttal	34:8 66:9	46:11	72:17 90:5	69:13
rates 112:6	59:11 74:1	97:22	69:12 71:1	68:18	90:13,14	70:24,25
rational 90:9	107:12,13	receivable	71:5,6	124:11	92:7,12,14	71:9,18

72:10,25	115:6	50:20 52:3	62:18	12:23 13:9	50:7,18,22	104:2,19
73:19	reminds 94:4	71:11 75:7	135:5	13:12,14,25	50:25 51:9	105:7,10
74:20,22	rendered	93:12,25	response 4:3	14:3,7,14	51:18	106:3,13,16
75:23 76:7	23:2	100:25	4:3,19	14:16 15:1	52:12,15	106:19,24
76:9,10,15	rendering	116:15	19:15	15:4,10,13	53:14,18,24	107:14,21
76:20,23	130:23	127:11	49:19 63:8	15:17,23	54:7 55:1	108:9
77:11,12,14	repaid 78:3	requires 29:8	74:2 88:25	16:3,11,22	55:14,24	109:11,14
77:16,25	repay 80:4	30:8 62:12	94:24	17:1,4,10	56:20	109:17,25
78:2 79:11	81:15	108:18	96:23 97:8	17:17 18:2	57:10,20	110:13,24
80:13	92:23	reserve	97:18	18:8,12	58:3,8,10	111:5,10,16
84:16,17	rephrased	110:7	122:22	19:21	58:13,16,20	113:3
85:14,16,19	120:4	reserving	126:21	20:16,22	58:24 59:6	114:11,15
86:4,13	replace 88:9	49:12	127:10	21:13,19,23	59:14,18,24	115:10,14
87:8,14,15	replicated	resist 134:15	responses	23:18	60:2,6,9,12	115:24
88:16,25	36:2	resolved 27:2	58:2	24:16,24	60:15,20,22	116:14,18
92:12,14	reply 17:3,4	38:4	responsive	25:25 26:2	61:3,8,12	116:21
97:21	41:8	respect 78:24	39:5 51:3	26:7,10,14	61:19,25	117:20
101:14,14	119:24	91:23	rest 49:7	26:22 28:4	62:14,22	118:6,17
101:23	report 74:13	95:25	56:6 88:4	28:6,15,19	63:21	119:9
103:12	74:13 84:3	100:19	131:21	29:4,20	64:14,22	120:21
123:2,4,9	134:20	116:4	restated	31:3,7,12	65:1,8,11	121:11,19
126:19	reports 51:3	118:11	128:4	31:14,18	65:17,20,25	122:2,7,18
relied 108:4	108:21	respectable	restricted	32:20,24	67:6 70:15	123:16
relief 43:20	125:24	100:11	88:12	33:1,4,9,14	70:18 72:1	124:1,15
rely 14:11	134:12	respectful	result 12:3	33:24 34:3	80:10,22	125:6,10
30:20 38:8	136:1	84:1 123:5	16:3,6 24:9	34:14 35:1	81:18,21	126:4,10
42:25	representa...	respectfully	67:22 76:3	35:14 36:6	82:17	128:11,14
43:20	113:25	13:3 16:5	76:17	36:16 37:1	84:12 85:3	128:19,21
45:23	represents	16:19	revealed	37:6,9,12	85:12 86:1	129:1,12,14
remain 21:6	78:6	29:14 40:5	36:3	37:18,22	86:11,15	129:17,20
38:3	request	43:10 79:8	re-read 9:20	38:15	87:9 88:5	130:1,4,14
remaining	71:24	85:2	re-think 8:2	39:17 40:7	88:19,22	130:18
97:10	111:25	respective	RICHARDS	40:10,13,18	89:4,7,18	131:3,9,15
98:10	134:21	76:23	1:4,14,25	40:22 41:2	90:6 92:2	131:21
remains 47:9	requested	78:21	4:5,10,25	41:11,14,16	92:16	132:1,4,7,9
85:24	63:10,17	respond 44:5	5:11,25 6:2	42:5,14,18	93:16	132:14,16
118:21,24	require	56:18 72:4	6:4,7,15,18	43:6,14,18	94:10	132:21
remarked	30:23 51:9	133:23	6:22,25 7:3	44:3,11	95:12,21	133:2,4,8
15:13	125:22	respondents	7:5,13,18	45:9,12,21	96:11,14	133:10,14
remember	required	22:11	7:23 8:1,8	45:25	97:1,14,25	133:19
132:2	10:10	40:16,23,24	8:12,21,24	46:14	98:23 99:4	134:2,8,13
remind	27:22,23	41:6	9:6,8,14,19	47:20 48:1	99:12,20	134:25
17:24	30:14	respondent's	9:22 10:17	48:4,8,12	100:17,22	135:4,8,13
73:17	40:16	69:3	10:23	48:22 49:6	101:7,11	135:23
reminded	48:18,21	responding	11:22 12:1	49:10 50:4	102:17	136:5,10,14

136:19,21	78:4 87:8	89:9 90:22	91:16 92:7	117:4,23	114:12	50:16
136:25	87:10	90:23,25	95:4	127:9	116:8	73:22
137:2,6	risks 85:17	91:8,9	103:20	129:20	118:25	111:7,8
right 5:25	risky 77:23	92:19 96:8	108:5	130:25	129:3	service
6:19 7:22	round 30:7	100:22	120:8	132:6	136:24	134:11
9:20 10:17	30:18 40:1	104:25	123:4,8	133:4	sensible 1:9	servicing
11:22 14:5	50:10 51:2	115:11	secondly	seek 118:12	2:21 5:21	136:1
21:1,2	ruin 129:13	123:10,10	32:18	seeking	18:4,21,24	set 23:2
26:18	rule 126:5	123:19	69:19	89:19	19:4 22:20	25:15
31:12	127:11	125:20	72:15	99:21	23:5 24:6	38:13
33:17 35:4	130:21	scenarios	98:10	seeks 71:20	26:13	42:24
38:23,24	ruled 18:6	22:17,18	102:8,23	seen 9:24	29:15	45:16
39:17 41:7	rules 14:9	23:4	120:16	19:9 24:3	39:15 48:9	62:24 65:5
44:3 51:13	108:25	sceptical	section 13:21	31:6 49:4	48:15,19	82:18 83:5
53:7 55:12	ruling 83:18	38:3	26:9,17	73:4	49:20 51:5	109:9
58:15	134:5	schedule	security	107:20	51:12,17,18	126:16
59:13	run 42:16	47:4,5,6	90:24	125:1	85:1 101:3	127:8
64:14 65:1	128:16	134:7	see 4:17,25	Senior 3:9	133:21	sets 43:19
68:17,20	running	scheduled	6:9 10:12	10:13	136:12,22	75:4 108:3
88:20 96:6	63:14	134:6	15:10	22:14	sensibly 21:3	settlement
96:21	Ryan 22:12	schedules	16:22,23	38:25	30:21 42:1	5:3
97:21 98:2		49:25	17:1 25:7	43:21	42:21 44:8	set-off 5:6,19
98:3,6	S	scope 41:17	32:12	66:10	52:21	5:23 6:21
108:9	safely 93:22	81:25	33:10,14	72:11	136:7	8:4,6 9:17
110:7	save 52:18	97:16	41:14	73:21 77:2	sentence	9:18 19:7
119:22	54:4	107:16	43:11	79:5 90:8	54:8 85:13	sharp 91:15
120:2	saying 21:12	110:10,21	44:25	93:19 96:9	128:22	short 13:5
121:4	56:16,16	114:5	46:15	98:25	separate	17:13
122:13	59:11	120:5	49:20	101:16	4:23 27:11	18:19
125:15	83:20 97:2	125:5,18,21	52:15,22	105:12,20	72:14	20:18 62:5
130:1	105:3	second 8:15	56:3 58:3	109:24	separately	67:11 90:1
133:4,19	107:8	12:8 18:14	58:24,24	110:2,6,17	62:16	122:24
137:2	115:17	27:5 28:11	59:3,6 66:4	119:2	69:10	show 9:2
rightly 115:8	121:20,21	30:10 34:1	66:20 67:9	121:16	sequential	25:19 68:1
134:4	122:9	47:14	68:9,25	sense 44:25	134:14	showing
rise 8:9,13	125:16	55:20 66:8	70:20 71:7	47:23	136:2	75:13
25:17	126:7	66:22 68:9	74:15 75:8	49:21 50:7	series 46:16	shows 111:25
89:23	130:19	70:19	81:25 85:5	51:2 53:6	55:21 63:5	side 36:13
132:18	says 18:20	72:10	88:10,11	58:1 62:6	90:19	54:19
risk 77:20,23	40:7 56:20	74:21	89:22	82:11	92:11	116:13
78:1,5	61:4,19,21	75:15	94:20 97:6	83:19	serve 30:11	sides 64:19
85:20 91:2	74:10	76:12,14	108:6	86:23,25	30:16	signed 34:2
101:4	75:16	77:7 83:3,5	109:21	91:13,15	109:17	significance
riskier 76:19	78:18 87:5	87:19,24	111:10	92:17	served 37:14	3:15 42:25
riskiness	87:20,25	90:13,15,18	115:13	106:4,14,19	37:17	similar 34:22

64:1,12	102:15,16	127:1	35:23	3:17 22:7,8	strange 14:6	subsequent
Similarly	109:6,23	solution	spend 53:15	25:4,10	16:3,5	5:2 11:15
103:16	113:7	136:12	spent 132:25	27:12	struck 47:23	subsequent...
104:9	116:6	soon 47:14	sphere 107:6	30:11,16	structure	30:18
simply 10:25	skeletons	sooner 30:3	split 28:9	31:16 40:3	66:3,15	subset 95:25
12:10 13:4	24:4 40:16	sorry 13:25	stage 2:23	42:20,24	67:23	112:15
16:20	40:23,23	14:16 28:5	18:5 25:18	43:7,19	68:15 73:8	substantiate
28:11	41:8,18	40:22	31:1 46:19	44:25 45:4	subject 4:18	73:23
30:15 65:6	42:4	85:12	46:22	45:22 57:3	11:16	substantive
66:12 68:6	slack 42:10	88:19	60:24 65:2	57:16 66:4	29:23	27:22
70:23 73:6	slight 33:6	96:19	65:3 91:5	66:21 68:2	70:25 71:4	sub-issue
77:21	slightly 10:6	124:15	116:17	74:8 93:2,4	117:24	5:23,23
80:15 84:2	10:18	127:21	stages 61:3	93:5 99:23	126:21	6:12 11:3
87:21,22	12:16	129:17	69:18	100:7	129:23	19:13
88:10 92:3	15:25	134:25	87:17	109:22	133:17	sub-issues
92:20 93:8	16:14	sort 10:20	standard	111:11,14	134:2	1:24 5:5
93:17 95:7	20:24	25:1 43:1	33:17,18,19	111:16	135:24	sub-questi...
100:25	22:23	56:9 61:16	34:15,17,18	115:25	136:3	92:11
104:12	30:13	63:6 65:12	35:18	119:10	subjective	succeeds
114:6,7	35:17 56:9	81:1,19	39:24	121:13,15	35:19,22	97:6
120:20	92:23	82:1,12,17	103:12	124:3	45:14	successive
123:5	129:10	82:21	stands	126:13,13	submission	14:21
simultaneo...	slip 55:19	92:24 95:2	128:23	126:17,17	12:25 20:1	sufficient 3:4
133:24	slipped 10:20	108:3	start 1:7,10	126:19,23	20:7,9 84:1	49:22
single 46:23	slot 47:15	127:10	26:16	127:2,9	96:20	101:2
114:17	small 29:24	sorts 89:20	40:19 42:2	129:4,22	120:4	sufficiently
133:11	30:18	115:22	49:22	135:9,16	122:24	75:6 80:14
sit 17:7 89:24	smaller	sought 44:6	53:18	statements	123:2,5	84:9
situation	12:16	46:11	63:25	44:24 45:4	submissions	119:21
45:18	Smith 14:20	speaking	75:14	45:13	31:15 90:4	126:12,20
121:18	16:6 19:22	5:14 63:25	101:12	stating 127:1	112:1	suggest 13:4
situations	19:23	64:4 80:7	starting	statute 13:8	116:20	16:6,19
120:18	20:16 31:4	125:1	75:14 77:9	16:16	119:23	25:1,3
121:9,10,12	31:5,9,13	specific	starts 25:22	statutory	125:17	29:14
skeleton 1:9	106:17	34:19 53:2	41:12	22:1	submit	30:15
4:24 5:9	Smith's	57:4 76:12	64:11	stealing 53:6	108:16	39:14 40:6
8:14,16	12:18	77:8 92:25	74:18,21	step 107:7	112:19	47:1 79:8
9:13 14:17	14:12	94:12	90:18	stepping	submitted	104:3
18:17,18	Society 14:21	114:1	133:15	98:13	111:23	112:19
19:12,14	20:14	128:3	state 3:12	sterling 2:12	subparagr...	114:4
27:16,21	solely 56:5	130:19,23	123:18	23:23	6:23 66:22	130:22
31:9 38:2	120:15	specifically	stated 59:18	straight 17:9	subparagr...	suggested
39:13 41:6	solicitors	34:13	102:5	103:23	8:23	2:18,22
47:21	63:4	131:8	126:20	strands	102:18	5:12 18:25
62:24	126:25	speculating	statement	62:16	103:9	25:21

26:25	suppose 6:7	13:13 14:1	45:9 46:21	textbook	98:24	53:5,11,22
28:10 30:2	41:22	14:3 21:17	57:23	57:7	100:18	54:23
38:18	50:16	28:2,4 69:4	61:15	thank 13:14	101:22	55:19
39:10	94:23	69:4 73:18	82:18	17:4,5	102:5	56:24
49:17 94:7	105:10	73:19 74:8	108:24	19:21	124:20	57:21,25
104:6,23,24	supposing	102:16	109:1	20:16	129:2	58:9,22
suggesting	87:10	107:22,23	130:14	21:13 31:3	130:10	59:5,11,13
23:25	sure 11:16	109:13	tandem	37:22	think 2:2 4:2	59:16 60:4
80:24	14:18 19:2	128:10	63:14	39:17	4:14 5:16	60:16,17
suggestion	19:3 24:12	133:15	targeted	60:16	7:8,20,25	61:13
22:24	27:2 29:2	take 11:5,14	121:2,4	62:14 72:1	8:3,14,19	62:15 65:3
26:13	30:20	12:12,18	128:4	116:21	10:4 11:20	65:4,6 72:2
46:22	34:25	35:4 36:15	task 79:22	126:10	13:13,15,15	78:18
49:24	35:17	39:25	team 42:9	133:11	13:16	83:15
113:7,20	41:20,25	48:23	telescoping	137:6,8	14:25 15:9	87:15
114:8,10	42:11,23	50:17	42:3	theirs 38:20	15:14,17	91:22
suggestions	47:17	51:12	tell 95:5	39:10	17:11	93:22 94:3
74:3	49:16,23	62:15 80:6	105:5	theorem 80:6	18:10 19:9	94:10
suggests	51:6 55:24	82:16 83:6	122:2	80:12 82:6	19:16,19,20	95:21
47:21	57:2,13	86:19 91:4	tells 113:11	87:5	20:23	97:20 98:2
112:7	59:24	96:9 98:8	tender	theories	21:20	99:12
134:13	62:21 92:3	99:23	100:21	112:6	22:21 23:4	104:1,3
suitable	115:19	123:8	tension 20:25	theorist	23:9 24:5,6	109:16,25
124:6	128:9	126:17	21:2	103:25	25:18,23	110:6
sum 74:22	129:2	135:19	term 54:9	theorists	26:4,16	115:14
76:10	131:22	taken 11:10	57:24	106:8	28:1,23	116:5,22
77:15	135:8,12	11:17 28:1	77:21 78:2	108:20	29:11,24	117:20
85:11,15	136:12	32:17	96:16 97:8	120:10	30:2,22	119:22,25
86:25	surgeon	47:18	97:18	theory 83:17	32:4 34:14	120:8
87:18,22	79:17,20,23	51:21	terms 34:22	103:18	36:16,21	122:18
103:3	79:24	76:25 91:3	35:18	121:8	37:1,9,15	123:16
Summarisi...	surprised	109:14	38:16	123:20	38:17	124:16
102:18	21:7 63:12	114:9	41:18	thing 9:2	39:10,19	125:19
summary	surprising	123:14	44:13	11:8 12:3	40:11 41:4	126:2,6,8
17:25	15:11	takes 8:6,10	68:10,17	29:6 35:21	41:9,17,21	126:11,14
supplemen...	suspect	72:2 86:10	92:14	36:13	42:22,22	126:19
44:18	29:15	87:17	103:9	39:20	43:7,18	127:18,20
supplemen...	43:11	91:19	105:24	44:14 45:6	45:1,5,9	128:2,3,15
41:9	swap 64:8	103:19,23	terribly 43:1	48:9 87:17	47:20,24	128:17
supplied	87:12	106:12,13	test 86:2	94:10	48:8,15,18	129:1
31:7	sympathetic	talk 17:7	113:10	101:24	49:24	130:2,5,15
support 61:2	41:16	82:21,23	114:3,11	108:10	50:13 51:4	130:19
93:20	<hr/>	85:17	115:21	119:17	51:10,12,14	131:15,16
108:5	T	talking 35:5	126:1,7	things 32:16	51:21,25	131:21,22
119:20	tab 8:18	38:5 43:3	text 60:5	57:13 96:8	52:4,10	131:25

132:3,4,9	48:17 49:5	97:24 98:1	trod 90:4	47:24 48:3	true 12:8	75:13
133:3,4,15	49:22 58:1	122:16	troubled	48:6,11,17	38:22 54:9	78:13 79:4
134:1	63:18 70:6	124:17	54:8	48:25 49:9	68:5 76:18	83:9 90:7
135:4,24	80:7,21	tranche 1:8	Trower 1:4,5	51:14,16,20	77:22 78:6	90:17
136:6	95:18	4:22 11:23	1:15 2:1	52:13,16	78:21 99:6	91:15
137:3,5	113:15	17:8,11	4:7,11 5:1	53:17,22	103:2,6,10	92:15
thinking	115:15,15	19:20	5:12 6:1,3	54:6,25	103:11,15	93:20
12:6 50:19	126:24	20:18	6:5,11,16	55:13,23	Trust 37:21	94:23
133:1	132:25	21:14,16,16	6:19,24 7:2	56:18,25	try 1:20 25:4	96:15
thinks	135:21,22	22:6 24:11	7:4,7,14,19	57:12 58:1	27:5 56:25	102:4
105:24	times 39:9	40:17,18	7:25 8:6,9	58:6,9,12	57:2 99:2	103:17
third 27:6	49:23	42:2 45:24	8:13,22 9:1	58:15,18,22	trying 44:15	107:17
36:24 51:8	timetable	45:25 46:1	9:7,9,18,21	59:2,13,16	45:2 51:23	108:4
74:9 85:13	40:4 41:18	46:2 47:22	9:23 10:18	59:20 60:1	51:24 58:2	121:16
90:22,23	47:15 48:2	48:14	10:24	60:4,8,10	59:23 82:5	122:14,25
thirdly 103:1	136:4	133:10	11:23 12:2	60:13,15,19	109:11	125:19,24
thought 4:6	timetabling	tranches 1:6	12:24	60:21 61:1	110:6	two-stage
10:20	27:2 29:2	transaction	13:10,13,15	61:7,11,18	115:22	28:16
18:24 23:3	133:17	64:8	14:2,5,15	61:24 62:5	129:13	type 78:11
26:13	136:12	transactions	14:23 15:3	74:4 81:20	turn 5:22	82:4,8
39:20 48:4	timing 30:1	96:2	15:6,11,16	94:4 95:5	23:17	133:5
131:15	38:16	transcriber	15:22 16:1	116:23,24	30:18 45:2	types 55:5
132:10	47:11	29:22	16:5,16,25	117:23	109:7	61:23
threads 25:6	49:16 51:1	transcribers	17:2,6	118:7,20	tweak 30:22	82:19
27:5	51:3 115:3	89:22	20:25	119:13	95:19	88:13
three 6:11	135:19	transferee	21:14,15,20	128:8,13,16	tweaking 7:9	108:23
18:14	tinkering	4:8	21:24	128:18,20	two 1:7 4:21	113:24
74:14,25	28:24	travel 90:3	23:19	128:24	5:4 12:6,6	114:21
107:19,25	today 1:5 2:7	treasurer	24:17,25	129:5,13,15	22:13 28:9	115:20
108:13	18:9 21:22	96:23	26:1,4,8,11	129:19,23	29:24,25	116:4
thunder 53:6	38:2	treated 11:3	26:15,23	130:2,12,17	31:21,23	130:20
tie 57:2	101:19	107:12	28:5,7,16	130:22	32:16	typical 33:19
132:11	102:4,6,8	trial 8:18	28:23	131:4,13,20	33:25	typically
tied 55:5	106:6	18:17	36:16 37:1	131:25	38:22 46:4	104:13
123:20	120:15	27:22	37:9 39:18	132:3,6,8	47:12,12	
tight 39:11	today's 46:10	40:17,18	39:19 40:9	132:11,15	49:4 50:19	U
time 11:12	told 9:10	42:2 47:13	40:12,15,20	132:20,24	51:7 61:3	ultimate 80:2
11:13,18	60:10 95:8	47:23	40:25 41:4	133:3,7,9	62:15	110:22
14:9 15:14	132:3	48:14	41:13,15	133:13,15	63:15	117:19
27:20 30:7	total 66:17	49:22	42:3,13,15	133:25	66:21	120:3
33:13,16	69:25	50:16	43:5,10,17	134:3,11,16	67:21 68:3	ultimately
34:9 39:6	touch 6:12	101:4	43:22	135:1,24	68:22	24:25
41:8 42:1,6	trade 54:16	120:16	44:10	136:6,11,16	69:18	72:19
42:8,9	68:19	tribunals	45:24 46:1	136:20,24	72:11	79:12,19
44:20 48:5	72:15	119:14	46:15	137:1,3	74:16 75:9	81:9 82:14

83:16	133:20	107:16	101:19	128:5	77:14	130:12
91:12	understan...	unsatisfact...	103:2	131:16	78:16	132:22
98:15	56:15 75:9	43:12	113:22	wanted 8:15	79:23	weaken
99:17	80:19	unusual	121:9	24:7,11	83:12,21	87:23
122:14	81:11,16	79:16	vast 111:21	91:22	85:14 88:1	website 3:18
unable 4:12	92:21	updated	112:3	wants 3:3	89:1,3,9,14	4:1,16,19
unclear	99:15	13:18	version	113:8	89:15	week 41:15
120:13,16	102:20	26:25	13:18 14:4	137:7	90:10,24	weekend
uncomfort...	103:2	usage 54:16	38:1 52:11	warring 49:4	91:2,5,13	42:8
119:19	118:25	61:6,10	52:13	49:17	91:17,19,20	weeks 50:19
underlying	119:5,21	62:17 63:1	view 46:6	wasn't 18:12	92:9 93:19	weighted
79:10	understan...	63:18	70:17	30:19,25	97:2,5,20	69:24 76:4
underpin	35:10	64:20,24	85:25	43:2,23	97:21	83:14
119:15	understands	68:19	90:16	52:16	98:13 99:9	well-equip...
understand	80:1 83:16	80:25	91:11,24	55:24 56:1	99:16	62:10
2:2 18:25	85:10	94:12,15	99:23	80:20	100:9,16	went 22:15
34:3 39:2	89:13	102:7,12	118:17	96:19	101:25	39:22
44:12,17	understate	use 34:16	visible	116:24	102:25	40:15
47:7 50:1,5	76:18	71:9 76:8	111:22	120:21,22	103:5,18,21	79:25
51:25	understood	95:2 97:4	vital 44:21	Waterfall	104:9,13,25	Wentworth
57:12	35:12	105:22	volume 8:17	30:6 38:24	106:10	3:10 10:5
59:19	45:17,22	106:14	50:20	way 1:19	109:2,25	22:13 24:6
61:14,14	69:14,20,23	115:15	73:18,19	5:21 6:12	110:19	27:19
62:1 65:17	78:10	120:17	voluntarily	7:15,19	112:15	28:12
66:24 72:7	122:5	121:2,6	71:14	8:19 10:13	113:9	40:24,25
75:3,5 80:8	undertake	useful 30:15	<hr/> W <hr/>	12:9,24	114:4	53:5 66:23
80:18 82:5	28:18	111:1	wait 4:17	15:2 20:2,6	117:24	69:5 70:10
82:12 83:3	79:24	115:19,19	waiting	22:20	118:3,21,25	71:20,25
84:1 85:22	99:21	116:16	20:20	24:13	119:7,14,24	73:1 84:3
87:4 88:6	undertaken	user 64:7	waive 38:6	27:24	124:10,22	92:19 93:5
88:16	105:25	users 63:19	waived 34:12	31:10 32:4	128:4	98:6
91:11 92:4	125:12	63:20	waiver 34:13	35:2 39:21	129:6	105:19
92:11 94:7	undertaking	uses 78:11,12	waivers 34:9	41:25 42:5	130:2,17	126:22
94:13 95:4	79:23	96:16	want 9:2	44:15	131:1	127:20,22
96:4 98:21	undertakin...	usual 47:22	17:8 30:17	46:10	ways 12:6	133:22
99:22	122:10	72:20	49:5 53:6	47:19 49:5	56:21 57:4	135:25
100:8,15	undesirable	<hr/> V <hr/>	55:4 56:17	54:12	66:5	Wentworths
102:23	43:4	variants 70:9	72:4 91:8	56:23 57:3	101:19	2:18 27:4
103:6	undoing	varied 70:6	92:20	64:17 66:2	102:18	Wentwort...
105:2	127:21	varieties	105:1	67:8,13,18	103:2,6	10:18
108:15	unexpecte...	33:5	113:21	68:11 70:5	104:22	49:19
113:3	42:16	various	116:3	72:20	107:4	68:19,21
122:21	universal	27:17	119:17	73:11	108:21	69:3 70:2
123:17,23	81:7,8	63:13 73:3	123:11	75:18,23	122:9	70:13,19
124:16	unlimited			76:13 77:3	124:23	71:15

72:15 75:3	wish 2:5 31:1	17:21,23	54:17	Y	68:17	21:17 30:6
92:8,12	62:22 72:6	18:22	108:14	Y 72:23	70:16 72:3	38:24 41:8
97:22	93:19	43:12	119:11	year 11:24	72:7,9	65:7,8
98:11	98:22 99:1	45:20,21	working	12:12,13,15	94:22	68:18 69:4
126:22,25	99:5	53:1,8	48:10 51:8	12:16,17,19	96:16,21	73:18,19
134:19	101:17	54:23	51:16	12:22 13:3	100:22	84:16 92:8
135:3	110:4	55:17 56:2	52:21	14:14,15	101:11,12	95:13,22
we'll 4:4,16	116:9	56:3,10	134:3	16:12,19	102:18	97:9,18
42:13	wishes 61:4	59:21	136:8,20	19:23 20:9	104:5,21	110:18
50:22	72:3	67:16 69:9	works 7:20	130:9	105:9,25	111:3
136:16	104:12	69:25	66:19	years 12:20	106:4,15,18	127:15,16
we're 1:17	wishing 74:5	70:23 71:4	83:17	12:20	106:23	134:6
3:25 21:16	90:3	73:23	world 87:11	16:21	107:3,15,22	138:3
21:18 29:6	witness 22:7	74:12 76:8	107:13	44:19 83:7	108:10	1(a) 55:7,11
29:7,24	22:8 40:3	76:25 78:1	108:20	83:7	109:13,16	55:15
35:23 41:9	45:3 57:3	78:10,20,22	worry 133:2	yesterday	109:23	70:11
48:10 57:8	57:16 68:2	82:17	worth 15:6	63:4	110:9,14,25	71:23
63:8 71:13	74:8 93:4	86:10,19	107:20	York 17:3	111:6,15,18	1.00 89:22
71:21	99:23	88:22 93:1	113:10	46:21 47:4	113:4	1.03 89:25
72:22 81:6	109:22	93:24	wouldn't	50:15	114:14	10 6:8,9,18
82:18	111:11,16	96:21	16:20		115:2,11,17	30:2 53:18
83:20	115:25	97:12 98:4	49:11	Z	116:11,15	54:2 58:18
87:15	119:10	98:7	53:25	Z 72:23	116:19	59:16
100:23	121:13	102:10,14	106:25	Zacaroli 3:3	117:23	73:20
127:18	126:16	102:25	133:21	20:17,18,23	120:1	74:16,18
we've 12:2	127:2,8	103:22	wrapped	31:14,15,19	121:21	77:7,9
29:1 51:24	129:22	104:1	131:10	32:23,25	123:16,23	85:12
54:17	135:16	107:10	wrapping	33:3,5,12	127:3	109:16
62:24	wonder 18:3	109:10	1:7	33:18,25	133:16	112:16
63:14 70:9	80:10	115:7	write 57:7	34:6,25	134:9,14,15	128:15,17
129:3	133:21	125:16,17	126:25	35:3,22	135:5,18	10.30 1:2
whack 89:2	wondering	work 5:17	writing 60:5	36:13,19	Zacaroli's	100 93:10
90:19 91:4	129:5	13:4,6 39:3	written	37:5,8,11	45:7 51:16	101 93:13
whichever	132:7	50:10 51:5	81:15	37:13,21,24	54:16	118:3
88:15	word 25:20	59:10	wrong 21:1	38:16 44:4	80:23	104 94:3
wide 34:16	36:25	67:15,21	43:11	47:20	94:11,16,24	118:1,12
widely 33:11	71:10	83:11	57:24	50:25 51:1	95:7,14	109 52:10,12
78:9	106:14	110:23	79:25 95:6	60:24 61:4	97:22	52:13 65:5
wider 21:7	120:7	121:9	96:21,23,24	61:19	124:4,16	70:12 92:1
34:5,6	wording	123:1	97:4 126:7	62:17,20,21		95:18
61:21,21	13:20 19:1	127:21	wrote 63:4	62:24	1	110:15
105:14	19:2 57:5	129:11,14		63:23	1 1:24 2:3	118:13
winning	99:19	135:22	X	64:21,25	6:17 7:24	127:15
67:21	119:25	136:9	X 15:21	65:3,10,13	8:18 15:20	129:18
wise 80:14	words 16:24	worked	72:23 82:2	65:19	15:20,24,24	134:6

11 13:13,19 14:1,3 41:9 54:7 58:19 59:16 65:24 67:5 68:15 69:5 73:5 77:17 109:15 112:12,15 112:19 124:18 128:21,22 129:19 132:6,8,12 11th 111:16 11(ii) 131:10 11(1) 66:5 69:7 11(1)(a) 66:7 130:5 11(2) 67:8 69:7 111 52:11,14 113 52:11 12 57:21 73:25 77:24 85:19 112:13 136:23 12(iii) 131:15 12(i) 57:22 126 135:1 128 9:5 13 27:19 38:21 78:8 131:23 130 9:5,21 14 58:4,7,10 74:8 78:15 107:22 131:23 15 6:6,8 58:4 58:7,13 73:21	115:5,5 131:23 158 18:19 16 58:20,22 58:24 60:10 78:15 131:23,25 1600 44:17 17 13:21 59:14,16 78:17 132:4 18 5:9 40:20 40:22 58:9 60:6 74:21 75:16 132:13 18th 41:10 19 75:16 112:13 136:23 19th 136:24 1992 53:21 80:11 <hr/> 2 2 1:6 2:20 6:25 7:10 7:24 8:2 9:9 13:21 13:21 15:9 18:7 20:21 29:25 66:5 69:22 92:9 92:25 93:1 94:13,21 95:4 97:7 97:15 108:10 110:19 117:3,3,20 119:25 129:7 2(a) 99:10	2(e) 94:7 118:1 2.15 89:24 90:2 20 112:5 132:18 2002 53:21 2009 9:16 2012 16:14 2013 35:16 2015 1:1 15:20,20 2016 15:24 15:24 21 27:20 41:4 76:21 109:12 132:18 22 49:18 74:24 107:24,25 108:6 23rd 41:13 24 27:23 40:17 41:3 41:6 69:4 102:16 132:21 25 49:14 133:3,18,25 26 133:4 134:3,5 26/1999 14:4 27 22:25 27:16 133:24 135:25 29 1:24 2:3 <hr/> 3 3 1:6,24 2:3 6:23 7:10 8:2 9:12,12 17:15,19 18:7 20:19	20:21 73:18,19 92:25 108:2,10 109:13 111:10 3A 13:13 14:2 3.32 137:9 30 2:8,24 3:2 20:23 49:18 108:6 31 3:6,6,6,9 3:19,21 4:6 21:5 27:19 38:21 40:7 63:8,10 70:17 71:25 135:6,12 32 3:20 4:1,3 4:6 33 3:6 4:8 34 21:18,24 22:1 23:15 23:17 24:18,19,20 24:22 25:5 26:1 27:13 28:7,17 29:5 31:1 31:24 33:15 36:17 45:10 35 21:18,24 22:2 24:19 24:21,23 25:5 27:13 28:17 31:1 31:16,16,24 33:15 36:17 37:24,24	45:10 36 21:18 22:2 22:25 23:11 25:3 25:16,20,24 28:9 31:1 31:17 37:24 38:1 39:16 36A 28:14,18 365 12:18 365-day 12:12 366 12:13,17 37 4:23,23 5:14 10:7 10:22,25 11:4,19,21 18:15 19:2 19:5 38 21:18 39 2:20 21:1 21:1,1,4 <hr/> 4 4 5:20 6:19 7:23 8:23 9:16 13:23 14:25 22:9 26:15 28:2 28:4,12 30:1 38:16 38:19 41:19 74:9 109:13 128:10 133:15 4(2) 7:2 9:11 30:10 42:19 4(3) 6:23 44(1) 8:18,20 44(2) 8:18,20 442 8:23 9:20 442(4) 9:13	19:12 45 40:3 460 44:17 <hr/> 5 5 1:24,24 2:3 8:23 9:13 19:12 28:12 38:17,19 69:4,4 <hr/> 6 6 5:8 8:17 28:12 29:25 30:3 39:11 40:10 41:19 102:16 61 25:22 62 25:21 109:7,24 63 26:6 64 102:15 69 71:7 <hr/> 7 7 17:16,18 26:4 28:16 30:23 36:20 37:10 7th 22:7 70 69:6 71 69:10 72 26:12 70:20 <hr/> 8 8 9:4 12:12 12:13 13:8 14:8,11 16:12,15 20:6 49:14 133:15,18	133:25 134:22 8.002 14:13 <hr/> 9 9 1:1 5:24 6:1 21:18,20 91 26:17,19 92 26:16 93 26:20
--	--	---	---	--	---	---