

<p>1 Tuesday, 25 July 2017 2 (10.30 am) 3 (Proceedings delayed) 4 (10.37 am) 5 Submissions by MR ZACAROLI 6 LADY JUSTICE GLOSTER: Yes, Mr Zacaroli? 7 MR ZACAROLI: My Lady, my Lords, it is probably appropriate 8 to start with an apology for having wasted at least some 9 of the Court of Appeal's time -- 10 LADY JUSTICE GLOSTER: Don't apologise. It is what we are 11 here for. It is all very educational. I'm sorry you 12 are in such a small courtroom. Obviously nobody told me 13 to make the arrangements in time. 14 MR ZACAROLI: My Lords, what I propose to deal with this 15 morning, the court has had fairly detailed submissions 16 from us in writing on the impact of the Supreme Court 17 judgment -- 18 LADY JUSTICE GLOSTER: Yes. 19 MR ZACAROLI: -- so I propose to take this quite shortly in 20 three stages. 21 First, to identify what is left and what is not 22 left, because of the Supreme Court judgment, to deal 23 with. Secondly, to recap very shortly our headline 24 points on Bower v Marris. Then, thirdly, to indicate 25 why we say the Supreme Court judgment assists us on</p> <p style="text-align: center;">Page 1</p>	<p>1 MR ZACAROLI: So you will see the first items 1 and 2; that 2 is the Bower v Marris issue, the item 1, and then the 3 continued compounding under item 2. Those remain live 4 and we will make submissions -- we make submissions on 5 those two issues. 6 LADY JUSTICE GLOSTER: The continuation of compounding is 7 not dependent on Bower v Marris? 8 MR ZACAROLI: No, it is a separate point. 9 LADY JUSTICE GLOSTER: Yes. 10 MR ZACAROLI: The item 3, the (inaudible) is banded 11 effectively. That is all that happened there. The 12 judge is correct on that. That need not trouble this 13 court. 14 Item 4, one element of the non-provable claim for 15 interest it is said to apply -- that is the claim the 16 SCG make on interest, for the late payment of interest. 17 We will make, and we do make, very short submissions in 18 writing on that. I will make one point on that when we 19 come to it. 20 Item 5 is the question from what date interest runs 21 on contingent debt. That remains live and there is no 22 impact on it by the Supreme Court judgment -- 23 LORD JUSTICE BRIGGS: We will not be rehearing submissions 24 on that? 25 MR ZACAROLI: We will not be rehearing submissions on that.</p> <p style="text-align: center;">Page 3</p>
<p>1 those key points. 2 So there are two key conclusions in the Supreme 3 Court. The first is that there is no such thing as 4 a currency conversion claim. The second is that rule 5 2.88 constitutes a complete code for the payment of 6 post-administration interest or there is no (inaudible) 7 conversion to contractual rights. 8 LADY JUSTICE GLOSTER: Just explain to me why you are going 9 first. 10 MR ZACAROLI: Because when we first discussed -- 11 LADY JUSTICE GLOSTER: You are still very much respondent 12 rather than appellant. 13 MR ZACAROLI: Indeed, when we first discussed with our 14 opponents who was to go first in writing, they insisted 15 we went first in writing. They said the Supreme Court 16 judgment didn't change things. That is the reason. 17 LADY JUSTICE GLOSTER: Okay. 18 MR ZACAROLI: In terms of the impact of the Supreme Court 19 judgment on the items listed for this Court, if you can 20 turn to tab 3 of the supplemental bundle for today -- 21 LADY JUSTICE GLOSTER: That is the chart. 22 MR ZACAROLI: That's the chart. This relates to the 2A 23 appeal. The items in green remain live; the items in 24 grey do not. 25 LADY JUSTICE GLOSTER: Yes.</p> <p style="text-align: center;">Page 2</p>	<p>1 Then items 6 through 10 all relate to essentially 2 the offset points between interest and currency 3 conversion claims and the like, and they are now all 4 irrelevant. So you can ignore items 6 through 10. 5 Item 11 is the question of whether the rate 6 applicable to the Department of Administration includes 7 a foreign judgment(?) date. We made very brief 8 submissions in writing on that. I say nothing further 9 today. 10 LADY JUSTICE GLOSTER: Is that impacted? 11 MR ZACAROLI: We say it is. Very briefly, only in the sense 12 that the Supreme Court, we say, favours an approach of 13 certainty and simplicity and I say nothing more on that. 14 We have said all we want to say in writing on that. 15 Item 12 is the point that York ran about interest in 16 relation to a close-out sum under an ISDA contract. 17 LADY JUSTICE GLOSTER: Yes. 18 MR ZACAROLI: That remains live and there are no 19 submissions. Finally, item 13, currency conversion is 20 clearly now irrelevant. 21 So far as Part B is concerned, tab 4, it is very 22 easy; nothing remains. That is all about waiver of 23 currency conversion claims and claims to interest. 24 LADY JUSTICE GLOSTER: Yes. So it is Waterfall 2C we are 25 all looking forward to.</p> <p style="text-align: center;">Page 4</p>

<p>1 MR ZACAROLI: Depending on the meaning of "looking forward", 2 yes. 3 Turning to recap our headline points on Bower v 4 Marris, the first point is we say it is a question of 5 statutory construction, first and last. 6 Rule 2.88(7) is a clear and unambiguous direction to 7 an administrator to pay interest out of a surplus, 8 firstly at a defined rate, the judgment act rate or 9 contractual rate if higher; secondly, on a defined sum 10 that is the proved debt; and, thirdly, for a defined 11 period, that is the period the proved debt has been 12 outstanding since the date of administration. 13 On that last point we refer to the Cork report which 14 states that one of its conclusions is interest should 15 run on proved debts until a final dividend is awarded. 16 That followed there. We say the words preclude the 17 interest being discharged from principal -- they 18 preclude the surplus being used to pay interest on the 19 date after the proved debt is paid in full and preclude 20 (inaudible) not having been discharged by way of 21 principal. The Bower v Marris approach to calculated 22 interest. 23 Far from the rule being silent, as it is said in the 24 papers by my learned friends, on how we calculate 25 interest, we say it contains everything you need to know</p> <p style="text-align: center;">Page 5</p>	<p>1 before 1986. It was applied in liquidations because 2 there was no statutory rule that was based on and 3 it relates to contractual rights and nothing more. 4 Two outline cases in Canada which did apply -- we 5 say those are wrong for the reasons we dealt with in the 6 main appeal. I won't repeat all of that. 7 So far as item 2, compounding of interest, is 8 concerned, we say it is again a short point of 9 construction in that to allow compounding to continue 10 beyond the date of payment of final dividends would be 11 to require interest to be paid in respect of a period 12 after the proved debts had ceased to be outstanding and 13 thus inconsistent with the express will in (inaudible). 14 Turning then to the Supreme Court judgment and why 15 we say it impacts in our favour on these various points, 16 may I first of all take it that the Court has had an 17 opportunity to read the Supreme Court judgment? 18 LADY JUSTICE GLOSTER: Yes, you can. 19 MR ZACAROLI: I can take you just to the relevant passages 20 and we can be quite quick about this then. 21 First of all, we submit that the judgment reinforces 22 the importance of construing the 1986 legislation 23 according to its own terms as a new code, particularly 24 where any part of it is in fact new, as the rule for 25 payment of interest is.</p> <p style="text-align: center;">Page 7</p>
<p>1 by way of direction to the administrator as to how you 2 calculate interest. 3 Our second overall point was that Bower v Marris, 4 the case, did not lay down any "general equitable 5 principle", as to how interest is to be payable from an 6 insolvent claimant. All it laid down is that where 7 a creditor has a contractual right to interest, such 8 that it could be said at the time of the payment of the 9 dividend that the creditor had two parallel rights, one 10 to principal and one to interest, the dividend paid in 11 process of law was not an appropriation to principal or 12 anything. So that where a surplus emerged and 13 a creditor was remitted to its contractual rights, then 14 its right to appropriate is revived. 15 That is all the case is authority for. We say it 16 can't apply to statutory interest because there is 17 nothing due by way of statutory interest unless and 18 until there is a surplus. Therefore nothing due by way 19 of statutory interest at the time the dividends were 20 paid, therefore no room for the adoption of 21 appropriation. 22 Thirdly, our third overall point was that far from 23 there being some general equitable principle as 24 contended by the SCG, Bower v Marris have never been 25 applied to a statutory rule as to payment of interest</p> <p style="text-align: center;">Page 6</p>	<p>1 Secondly, and linked to that, we say the judgment 2 produces a further obstacle, if one was needed, in the 3 way of interpreting 2.88 in light of some supposed 4 general equitable principle said to have applied to the 5 prior statutory regimes. 6 Just a few excerpts from the judgment to make good 7 those points. Paragraphs 12 and 13: Lord Neuberger at 8 paragraphs 12 and 13 draws a distinction between certain 9 fundamental principles of insolvency which have always 10 applied. That is the third line of paragraph 12: 11 "Most, indeed probably all, fundamental principles 12 apply just as they always have done." 13 He cites the pari passu principle as the obvious 14 example. 15 LADY JUSTICE GLOSTER: Yes. 16 MR ZACAROLI: "But when it comes to less fundamental 17 procedures and rules, it cannot be assumed that judicial 18 decisions even at the highest level relating to the old 19 legislation necessarily hold good." 20 Just in passing, we note that the judge-made 21 principle or rule that you are remitted(?) contractual 22 rights in relation to interest for that which you didn't 23 get out of the scheme, is just one of those less 24 fundamental principles by definition because it is one 25 which the Supreme Court says does not survive.</p> <p style="text-align: center;">Page 8</p>

<p>1 Then in 13 some of the other long-standing 2 principles are referred to. So Lord Neuberger cites the 3 anti-deprivation principle, the rule against double 4 proof, the rule in <i>Cherry v Boulton</i>, and then he uses 5 the phrase "certain rules of fairness" alluded to in the 6 <i>Nortel Gmbh</i> case at paragraph 122. That paragraph is 7 the paragraph where the Supreme Court in <i>Nortel</i> 8 mentioned the rule in <i>ex parte James</i>: 9 "So where a judge-made rule is well established 10 consistent with the terms and underlying principles of 11 the legislation, it continues to apply. ...(Reading to 12 the words)... However [the last four lines] particularly 13 in light of the full and detailed nature of the current 14 legislation and the need for certainty, any judge would 15 think long and hard before extending or adapting an 16 existing rule, even more before formulating a new rule." 17 Then, skipping forward if I may to paragraph 83, 18 this is in a passage -- and we acknowledge that the 19 Supreme Court were not dealing expressly with <i>Bower v</i> 20 <i>Marris</i> at any stage, we of course acknowledge that -- 21 here what they are dealing with is the foreign currency 22 claims and rules 2.86 and 4.91, so the currency 23 conversion claim issue, but at paragraph 83, 24 Lord Neuberger points out: 25 "It is dangerous to rely on judicial dicta as to the</p> <p style="text-align: center;">Page 9</p>	<p>1 Now we do say there is a permissible read-across 2 from that general proposition -- or that proposition in 3 relation to currency conversion claims -- to interest, 4 because rule 2.88 was indeed a new rule. Yes, it had 5 been used in a slightly different form in bankruptcy, or 6 at least there was a statutory rule in relation to 7 bankruptcy, but as we know <i>Bower v Marris</i> had never been 8 applied to that statutory rule, but so far as companies 9 were concerned it was an entirely new rule. 10 Just picking up something in conjunction with that 11 passage at paragraphs 125 to 126. This is under the 12 section dealing with whether the contractual right to 13 interest -- so, just rewinding a moment, one of the 14 issues in the Supreme Court was this so-called lacuna, 15 where if a company which had been in administration went 16 into liquidation then what was apparently an accrued 17 right or said to have been an accrued right to statutory 18 interest in the administration fell away entirely 19 because the date for assessing payment of statutory 20 interest in liquidation was a much later one than for 21 liquidation(?). 22 So addressing that lacuna point, the Court of Appeal 23 had come up with a fix to it which the Supreme Court 24 disagreed with, which meant they had to go back to the 25 question, was there a continuing non-statutory right?</p> <p style="text-align: center;">Page 11</p>
<p>1 effect of an earlier insolvency code given that the 86 2 legislation amounts to what <i>Sealy & Milman</i> describe as 3 including extensive and radical changes in the law and 4 practice of bankruptcy and corporate insolvency and 5 amounting virtually to the introduction of a completely 6 new code." 7 Fair it is to point out that the dicta concerned 8 there are those in <i>Lyons(?) Brothers</i> about the effect of 9 currency conversion claims, but we rely upon it for the 10 more broad proposition that one is in a sense looking at 11 the words afresh in the 86 legislation unless there is 12 some well-established rule. 13 Then finally on this point, paragraph 90 in this 14 same section, he points out that the 1949 rules were 15 silent so far as the treatment of foreign currency 16 creditors were concerned. In the second sentence: 17 "Given that the treatment of foreign currency 18 creditors in corporate insolvencies was expressly dealt 19 with for the first time in the 1986 rules, ...(Reading 20 to the words)... it appears to me that there must be 21 a presumption that the new rule 2.86 intended to spell 22 out the full extent of a foreign currency creditor's 23 rights, particularly when one bears in mind the fact 24 just mentioned that the purpose of the 86 legislation 25 was to simplify and clarify the law."</p> <p style="text-align: center;">Page 10</p>	<p>1 And that is what they are dealing with at paragraphs 124 2 and following. 3 At 125, the Supreme Court -- Lord Neuberger says: 4 "In my judgment, contrary to the conclusions 5 reached by ...(Reading to the words)... the contractual 6 right to interest for the post-administration period 7 does not revive or survive in favour of a creditor who 8 has proof of his debt and who paid out on his proof in 9 a distribution administration ..." 10 LADY JUSTICE GLOSTER: Sorry, what paragraph are you on? 11 MR ZACAROLI: 125. 12 LADY JUSTICE GLOSTER: Yes. 13 MR ZACAROLI: "The contractual right ... for the 14 post-administration period does not revive or survive in 15 favour of a creditor who has proof of his debt and who 16 is paid out ..." 17 It refers then to <i>Humber Ironworks</i>, and refers at 18 the sixth line to that observation of 19 Lord Justice Gifford in <i>Humber Ironworks</i> being made: 20 "... in the context of a decision which was wholly 21 based on what Lord Justice Gifford expressly described 22 as judge-made law because the contemporary statutory 23 provisions gave no guidance as to how contractual 24 interest was to be dealt with in a winding up 25 ...(Reading to the words)... provide a complete</p> <p style="text-align: center;">Page 12</p>

<p>1 statutory code for the recovery of interest on proved 2 debts in administrations and liquidations. There is now 3 no room for the judge-made law which was invoked by Lord 4 Justice Gifford." 5 At 126: 6 "The issue has some echoes of a currency conversion 7 claim ... a creditor would have enjoyed under the 8 contract." 9 Now the third way in which we say the Supreme Court 10 assists our case is that it -- and following on really 11 from that last paragraph -- there is now no room for an 12 approach which the SCG favoured before this court and 13 before the judge which says, "Well, but for the 14 administration we would have been entitled to claim 15 interest from the company on a Bower v Marris basis 16 under our contractual rights, so you should interpret 17 the rule to include that contractual right"; there 18 should be some sort of predetermined impetus to 19 determine the rule to accord with those contractual 20 rights. 21 However, paragraph 126 shows that the legislative 22 scheme may well be intended to work in a way that does 23 not vindicate or give respect to all rights under 24 a contract. 25 On that point, Lord Sumption, in agreement with</p> <p style="text-align: center;">Page 13</p>	<p>1 indicate. 2 LADY JUSTICE GLOSTER: Yes. 3 MR ZACAROLI: It is common ground that the Supreme Court 4 judgment now precludes any remission to contractual 5 rights for interest -- 6 LADY JUSTICE GLOSTER: Yes. 7 MR ZACAROLI: -- once you have been through the statutory 8 process. It is common ground because that was part of 9 the ratio dealing with the lacuna. 10 LADY JUSTICE GLOSTER: Yes. But it is said that in relation 11 to Bower v Marris, for example, you construe the 12 statutory code as enabling that principle to continue to 13 apply? 14 MR ZACAROLI: Well, I think what is said is that you 15 construe rule 2.88 on the basis that within the rule -- 16 LADY JUSTICE GLOSTER: Yes. 17 MR ZACAROLI: Yes, I see, the Bower Marris principle. 18 LADY JUSTICE GLOSTER: Yes. 19 MR ZACAROLI: It is not a remission for contractual rights 20 principle. 21 LADY JUSTICE GLOSTER: Yes. 22 MR ZACAROLI: Yes, exactly. 23 So this is not directly on point, but we rely on it 24 as showing that the Supreme Court fully understood and 25 recognised that the scheme of the Act may result in</p> <p style="text-align: center;">Page 15</p>
<p>1 Lord Neuberger, said, at paragraph 194, he had no 2 difficulty with the concept that non-provable debts may 3 be recoverable from a surplus, but he did not accept the 4 conclusion that the unsatisfied balance of a foreign 5 currency debt can be recovered on that basis: 6 "The reason can be shortly stated ...(Reading to the 7 words)... It is axiomatic that where the insolvency 8 rules deal expressly with some matter in one way, it is 9 not open to the courts to deal with it in a different 10 and inconsistent way." 11 Then he deals with the rules, and about six or seven 12 lines further down he says, just below the second 13 hole-punch: 14 "Rules 2.86 and 4.91 provide that they are to be 15 valued at the cut-off date ...(Reading to the words)... 16 by reference to the judge-made rules governing 17 non-provable debts." 18 LORD JUSTICE BRIGGS: I missed that paragraph. Which one 19 are you in? 20 MR ZACAROLI: 194. 21 LORD JUSTICE BRIGGS: Thank you. 22 LADY JUSTICE GLOSTER: Are you saying that these views apply 23 to claims for interest? 24 MR ZACAROLI: They certainly do apply to claims for 25 interest, as paragraphs 124 and 125 as I just showed you</p> <p style="text-align: center;">Page 14</p>	<p>1 creditors' contractual rights not being vindicated. It 2 is just a question of construing what the rules say. 3 If it works that way, so be it. And we say that is 4 entirely how it does work in relation to rule 2.88. It 5 is a new direction to pay interest out of the surplus in 6 a particular way and one is not entitled to construe it 7 with some a priori impetus to say, well, surely 8 contractual rights should have been meant to be 9 satisfied. 10 LADY JUSTICE GLOSTER: So what is a non-provable debt, then? 11 Give me an example that it is still okay, you can go 12 against surplus in respect of it. 13 MR ZACAROLI: So a wholly subsequent tort claim. 14 LADY JUSTICE GLOSTER: Right. 15 MR ZACAROLI: Where the damage -- if all the events in 16 relation to the tort occurred after the date of the 17 administration, it is a wholly subsequent claim. It is 18 a non-provable claim. 19 The world of non-provable claims is undoubtedly 20 diminished in the light of the Supreme Court judgment. 21 LADY JUSTICE GLOSTER: Yes, I'm just trying to get my mind 22 round. 23 But a claim for late payment of interest is not such 24 a claim in relation to the period after the 25 administration, for example?</p> <p style="text-align: center;">Page 16</p>

<p>1 MR ZACAROLI: Well, you can't prove for interest accruing 2 after the date of administration. So in a sense, it 3 would be right to say that to the extent you have 4 a claim to interest that relates to the period after 5 administration, it is a non-provable claim. The point 6 is there is no such right to any such claim other than 7 what the statute now provides, because the statute 8 provides for your non-provable claim by way of a claim 9 to statutory interest. It is not called a non-provable 10 claim but it -- 11 LADY JUSTICE GLOSTER: Yes, I see. 12 MR ZACAROLI: -- is in fact not provable. 13 LADY JUSTICE GLOSTER: So there is no subsisting 14 non-provable claim for interest. The parties have 15 agreed that? 16 MR ZACAROLI: Yes, that is correct. 17 LADY JUSTICE GLOSTER: Yes. 18 MR ZACAROLI: Yes. 19 LADY JUSTICE GLOSTER: Yes, I see. 20 MR ZACAROLI: Save for the remaining argument that the SCG 21 run which is that there is a claim, which is 22 a non-provable claim, to interest for the late payment 23 of statutory interest. They still assert that. 24 We say it has clearly gone as a result of the 25 complete code argument but they still do assert that.</p> <p style="text-align: center;">Page 17</p>	<p>1 can't create the surplus by using section 74. So they 2 ruled out the ability to get a contribution from 3 creditors in order to pay statutory interest. 4 In that context, under the heading "Statutory 5 Interest" at paragraph 139, having I should say already 6 held just above that other non-provable liabilities were 7 something in respect of which the liquidator could claim 8 a contribution from shareholders, the Supreme Court went 9 on to say that you couldn't do the same in relation to 10 interest. The last three lines of 139 on the page: 11 "Nonetheless it seems to me that there is no answer 12 to the simple proposition advanced ...(Reading to the 13 words)... could be called on to meet under 14 section 74.1." 15 Then dropping two paragraphs at 142, again the Court 16 of Appeal had provided a fix to this particular problem, 17 and Lord Justice Briggs is quoted in the third line at 18 142 as saying: 19 "The use in section 189 rule 2.88 and elsewhere in 20 the statutory code of the concept of payment out of 21 a surplus ...(Reading to the words).. the priorities 22 encapsulated in the Waterfall." 23 Lord Neuberger goes on: 24 "It seems to me that this analysis involves 25 a rewriting of the legislative provisions ...(Reading to</p> <p style="text-align: center;">Page 19</p>
<p>1 LADY JUSTICE GLOSTER: Yes. 2 MR ZACAROLI: Our fourth and final point on the impact of 3 the Supreme Court judgment on Bower v Marris is that it 4 provides further support for the conclusion that we 5 urged on the court that the essential material, the 6 essential building blocks, for the application of what 7 we say is the proper interpretation of the principle in 8 Bower v Marris is simply missing. 9 Those building blocks are two concurrent rights 10 against which you can appropriate a payment. That is 11 there must be two concurrent rights accruing at the time 12 that a dividend is paid so the creditor can appropriate 13 payment to interest as opposed to principal. 14 Just a couple of references on this. If we start at 15 paragraph 139, so that you understand the context, this 16 is in a section of the judgment dealing with the 17 question which we have not had any need to consider in 18 Waterfall Part 2, which is the extent to which 19 contributories are liable under section 74 of the Act 20 for non-provable liabilities, in particular the 21 liability for statutory interest. 22 The question is can the liquidator pursue 23 shareholders for a contribution to create the surplus 24 from which interest would then be payable under the 25 statute? And the Supreme Court held no, you can't; you</p> <p style="text-align: center;">Page 18</p>	<p>1 the words)... not absurd or unworkable and therefore it 2 should be adopted." 3 First of all, we say that stresses the importance of 4 simply looking at the words of the rule to see what they 5 mean. Also Lord Neuberger there is reinforcing the 6 proposition that rule 2.88 is not merely reordering 7 existing liabilities; statutory interest is a new 8 liability created by the rule when there is a surplus. 9 The final reference is back to paragraph 117, again 10 dealing with the lacuna. Mr Justice David Richards had 11 concluded that the interest provided for in 2.88(7) 12 could not be claimed from a subsequent liquidator given 13 the difficulty in the wording of the rules. The 14 Supreme Court agreed. Lord Neuberger says in the fourth 15 line of 117: 16 "It is in my view an accurate characterisation 17 ...(Reading to the words)... in liquidation taking place 18 after administration has ended. 19 So this right to statutory interest (a) doesn't 20 arise unless and until there is a surplus; and, (b), 21 disappears if the administration is brought to an end. 22 We say that supports our general proposition that we 23 made at the main appeal hearing that during the period 24 when dividends are being paid in relation to proved 25 debts, there is no accruing right to statutory interest</p> <p style="text-align: center;">Page 20</p>

1 which could form the basis of an appropriation.
 2 Turning very briefly if I may lastly to item 4 in
 3 the list, which is the question of interest for late
 4 payment of interest, which, as I said, is still pursued.
 5 I should say we understand -- I made this clear in our
 6 written submissions -- we understand that so far as Part
 7 B is concerned, if this claim did exist it would have
 8 been subject to the releases and waivers under the CDD
 9 and the CRA, but we simply dealing here with the
 10 question whether it exists in the first place.
 11 We made two points on this --
 12 LADY JUSTICE GLOSTER: But we still have to decide whether
 13 it is subject to the releases?
 14 MR ZACAROLI: No.
 15 LADY JUSTICE GLOSTER: We haven't?
 16 MR ZACAROLI: No, it is accepted that it is released. That
 17 is common ground.
 18 LADY JUSTICE GLOSTER: I see.
 19 MR ZACAROLI: I will hear my learned friend. We made this
 20 point in writing. In our submission we made it fairly
 21 plain we understand it to be since Part B is now
 22 abandoned -- I will hear what he says about it.
 23 LADY JUSTICE GLOSTER: Right.
 24 MR ZACAROLI: So far as the question whether it exists or
 25 not, we made two main points. First of all, there is no

Page 21

1 possibility of any such claim because there is no
 2 obligation on the company to pay statutory interest by
 3 any particular date.
 4 So there is no concept of late payment and thus no
 5 foundation for any possible claim to damages for late
 6 payment. So the claim simply is a non-starter. We made
 7 those submissions at the main appeal hearing.
 8 Secondly, we said rule 2.88 is a complete code and
 9 it precludes any such claim. We submit the
 10 Supreme Court judgment has undoubtedly reinforced our
 11 case on the second of those aspects regarding the
 12 complete code.
 13 The rule provides, we now know from the
 14 Supreme Court, an exhaustive statement of rights to
 15 interest post administration. If it had been intended
 16 by the legislature that creditors should be entitled to
 17 interest on interest in relation to that statutory
 18 claim, then it could have said so. It would have said
 19 so. The absence of any indication to that effect, we
 20 say, is the end of it. It is a complete code. There is
 21 no right to interest accruing after administration
 22 whatsoever.
 23 My Lady and my Lords, unless I can assist further,
 24 those are my very brief submissions on why we say the
 25 Supreme Court judgment assists.

Page 22

1 LADY JUSTICE GLOSTER: Thank you very much.
 2 Yes, Mr Dicker?
 3 Submissions by MR DICKER
 4 MR DICKER: I was proposing to take a similar course to my
 5 learned friend and hopefully at roughly similar length.
 6 Can I start by putting the debate in relation to
 7 currency conversion claims to one side, because the
 8 issues in relation to that were very different.
 9 The issue in relation to currency conversion claims
 10 was not about the meaning of rule 2.86: it was,
 11 essentially, whether 2.86 was a complete code. Put
 12 another way, if you didn't get paid your foreign
 13 currency entitlement in full in accordance with 2.86,
 14 could you have a non-provable claim for the balance?
 15 If it was a complete code, there was no argument
 16 about what rule 2.86 meant. In that context, it is
 17 worth emphasising, we say, three points from the
 18 judgment of Lord Neuberger on behalf of the majority.
 19 Firstly, so far as prior authority was concerned,
 20 the dicta in previous cases were at best of limited
 21 value because they were mutually inconsistent -- that is
 22 paragraph 83 --
 23 LORD JUSTICE BRIGGS: You mean prior authorities on the
 24 currency conversion?
 25 MR DICKER: On current conversion claims. So prior

Page 23

1 authority is of limited value because they were mutually
 2 inconsistent at best. However the general understanding
 3 was that the contractual debt was converted into a right
 4 to prove. That is paragraph 89.
 5 So on the basis of the judgment of the majority,
 6 prior authority was, if anything, against a non-provable
 7 currency conversion claim.
 8 Secondly, so far as principal was concerned, the
 9 earlier authorities indicated that there were principled
 10 grounds for supporting either conclusion. That is
 11 paragraph 83. So in other words, if one had recourse to
 12 principle, you didn't get an answer pointing in one
 13 direction. There were reasons for supporting both
 14 approaches.
 15 Thirdly, so far as the preparatory materials leading
 16 up to the 1986 Act were concerned, the Cork Committee
 17 and the Law Commission, the majority held -- carefully
 18 considered the issue and reached the clearly expressed
 19 and firmly held conclusion that foreign currency claims
 20 should be dealt with in solvent as in the insolvent
 21 liquidations. That is the judgment at paragraph 88.
 22 Two other points specific to currency conversion
 23 claims were also important. Firstly, the notion of
 24 a hybrid debt with a presently provable element and
 25 a contingently unprovable element was regarded as

Page 24

<p>1 improbable. That is paragraph 144. 2 Secondly, if currency claims existed, rule 2.86 3 would in effect operate as a one-way bet in a foreign 4 currency creditor's favour. That is paragraph 91. 5 Now, one might say, given the views of the majority 6 in relation to the prior authority principle, the 7 Law Commission and the Cork Report, and taking into 8 account the hybrid nature of the currency conversion 9 claim and the existence of the one-way bet, having 10 reached the conclusions the majority did in relation to 11 that, one can understand the conclusion that they 12 arrived at. 13 Now, as your Lordships know, we accept that the 14 Supreme Court judgment had two obvious consequences. 15 The first is currency conversion claims don't exist; to 16 the extent any of the issues before you depend on their 17 existence, those issues disappear. 18 Secondly, we also accept that the judgment rules out 19 any non-provable claim in respect of interest, because 20 the Supreme Court majority has held that the provisions 21 in relation to interest represent a complete code. In 22 other words, you get what you get pursuant to rule 2.88 23 and that's it. 24 So that still leaves item 1, what does rule 2.88 25 mean? It is common ground now, as it was at the last</p> <p style="text-align: center;">Page 25</p>	<p>1 Lord Neuberger says at paragraph 53: 2 "Section 189.2 effectively confirms that interest 3 which would in the absence of the liquidation normally 4 be expected to be contractually payable by the company 5 from the liquidation date until repayment of the 6 principal is payable in the liquidation but if only 7 there is a surplus." 8 Section 189 is obviously the equivalent provision to 9 rule 2.88, and we focus on the words "interest which 10 would in the absence of the liquidation normally be 11 expected to be contractually payable by the company from 12 the liquidation date until repayment of the principal is 13 payable in the liquidation but only if there is 14 a surplus". 15 I will come back to that briefly later. 16 Now, we have obviously already made our submissions 17 on the meaning of 2.88. I don't want to go over those. 18 I do want to deal, however, with a couple of points made 19 by my learned friend and also with the impact of the 20 judgment of the Supreme Court on our submissions. 21 The first point arises out of Wentworth's skeleton 22 argument. It was a point that my learned friend picked 23 up in his oral submissions. If you go to his written 24 submissions at tab 5, and turn to paragraph 5.2 and 5.3, 25 in 5.2 he identifies certain features of the wording of</p> <p style="text-align: center;">Page 27</p>
<p>1 hearing, that the answer to that depends on the wording 2 of rule 2.88 construed in the context of the 1986 Act as 3 a whole, and the principles and policies underlying that 4 Act having regard, to the extent appropriate, to what 5 I referred to on the last occasion as the intellectual 6 freight provided by prior legislation and authority. 7 In considering construction of 2.88, we do say you 8 need to bear in mind the escape hatch of a non-provable 9 claim has disappeared. In other words, if creditors' 10 rights are not vindicated, pursuant to 2.88, they are 11 not going to receive what as a matter of contract they 12 were owed. 13 Just coming on to the headline points we make before 14 turning to the impact of the judgment of the 15 Supreme Court. The starting point is obviously the 16 wording of 2.88. As you know, the judgment of the 17 Supreme Court says little or nothing about the correct 18 construction of that rule, over and above saying that it 19 provides a complete code. 20 The only comment that is worth noting is a comment 21 by Lord Neuberger which we refer to in our written 22 skeleton, paragraph 53, if I can just show you that -- 23 LADY JUSTICE GLOSTER: The skeleton or your -- 24 MR DICKER: It is in the judgment. Paragraph 53 of the 25 judgment.</p> <p style="text-align: center;">Page 26</p>	<p>1 the rules, and in 5.3 explains why, in his submission, 2 Bower v Marris -- the operation of Bower v Marris is 3 inconsistent with the rules. 4 Now, as your Lordships know, in our submission the 5 real source of the problem is not the wording of rule 6 2.88. In a sense, that is easy to see if you ignore the 7 present situation and imagine a simple contract. 8 Imagine a contract that records that I owe you a debt of 9 £1,000 and which provides that it will incur interest at 10 the rate of 10 per cent for so long as that debt is 11 outstanding. A very typical contractual provision. No 12 difficulty in applying Bower v Marris in the context of 13 the contract like that. 14 The same, we say, is equally true in relation to 15 a judgment debt which carries interest at the judgment 16 debt rate of 8 per cent for so long as the judgment debt 17 is outstanding. 18 If we express the obligation in that way, there is 19 no difficulty in calculating interest in the way that 20 Bower v Marris indicates it should be calculated. Our 21 point, as you know, is that all of the points that 22 Wentworth make in paragraph 5.2 about the wording of the 23 rule are points which could equally be made to the 24 contractual argument I have just given you. The 25 contractual example I have just given you.</p> <p style="text-align: center;">Page 28</p>

<p>1 That is why, in our submission, the real source of 2 the problem is not that, but the fact that pursuant to 3 the statutory regime, as a result of the pari passu 4 principle, dividends have to be paid first in respect of 5 proved debts which is essentially principal. 6 So that by the time you get to the calculation of 7 interest, you have the oddity that you have a statutory 8 regime that says you have already made payments, and 9 those payments have had to have been made in respect of 10 proved debts, ie principal. So it looks like 11 a situation in which, for better or worse, the principal 12 has already been discharged, and therefore you cannot 13 calculate interest, save in that way. 14 Now, it is that feature that gives rise to the 15 points that Wentworth makes in paragraph 5.3 of its 16 written skeleton argument. 17 It is that aspect of the statutory regime that 18 enables Wentworth to say that if Bower v Marris applies, 19 it would require the surplus to be used for discharging 20 part of the proved debt itself, because it requires the 21 dividends as having been used to pay post administration 22 interest, because it would require statutory interest to 23 be paid with respect to a period long after the date the 24 proved debt, or relevant part of it, is paid. 25 We say the answer to that is simple. Bower v Marris</p> <p style="text-align: center;">Page 29</p>	<p>1 accordingly. 2 Now, you can see, we say, Bower v Marris is not 3 inconsistent with rule 2.88 by looking back to how it 4 operated, particularly in relation to section 132 of the 5 Bankruptcy Act 1825. This is obviously a critical point 6 in our argument, because we say Bower v Marris did 7 operate, or was assumed to operate, in bankruptcy 8 pursuant to the 1825 Act and subsequent acts, at least 9 until 1883. There was obviously a debate as to what 10 happened afterwards, but between that period 11 Bower v Marris operated. 12 Now, my learned friend's written argument in reply 13 is important in this context. At the last hearing you 14 will recall that I said on a number of occasions that it 15 was common ground that Bower v Marris applied at least 16 between 1825 and 1883. My learned friend did not, as 17 I understood him, indicate to the contrary. 18 We referred to the fact that Mr Justice David 19 Richards in paragraph 65 of his part A judgment said: 20 "I do not doubt the approach in Bower v Marris was 21 accepted as correct, at least until the Bankruptcy Act 22 1883." 23 We also referred you to the judgment of 24 Lord Cottenham in Bower v Marris, you may recall decided 25 some years after the introduction of the 1825 Act, when</p> <p style="text-align: center;">Page 31</p>
<p>1 doesn't actually require interest to be used to pay 2 principal, or any of the other things which described in 3 paragraph 5.3: Bower v Marris is simply a means of 4 calculating interest. It is done on a notional basis. 5 It assumes that because the payments of principal were 6 paid by operation of law, when you come to interest, you 7 essentially take a clean sheet of paper and you 8 calculate the position as if that had not happened. 9 LADY JUSTICE GLOSTER: Why do you say Bower v Marris is 10 a means of calculating interest, as opposed to 11 outstanding principal? 12 MR DICKER: Because that's precisely -- 13 LADY JUSTICE GLOSTER: It may be just the other side of the 14 coin? 15 MR DICKER: They are, but what is important is that what you 16 are doing is -- the situation is not one in which you 17 are effectively trying to act inconsistently with what 18 has already happened, as a matter of fact. 19 In other words, payments of principal have already 20 been made. That's true. Bower v Marris proceeds on 21 that basis. It is not trying to act inconsistently with 22 the statutory scheme. It is simply saying: when you 23 come to calculate interest, because those payments were 24 made by operation of law, we will treat them as having 25 been made generally on account and calculate interest</p> <p style="text-align: center;">Page 30</p>	<p>1 he referred to the earlier cases having been decided 2 "without the aid which the statute now affords". 3 So we say, go back to section 132 of the 1825 Act, 4 Bower v Marris applied. Indeed the learned judge below 5 held that it applied between 1825 and 1883. And we say 6 if you look at the wording of section 132, if 7 Bower v Marris applied in the context of that section, 8 why on earth can't it apply equally on the wording of 9 2.88? 10 We also rely, as you know, and I won't go back over 11 this, on the similar position, we say, in relation to 12 the 1841 order discussed in Whittingstall v Grover; a 13 similar statutory regime entitling you to interest in 14 the event of a surplus held by Mr Justice Chitty 15 entirely consistent with the application of Bower v 16 Marris. We also rely on the lengthy judgment of Justice 17 Blair in Attorney General v Canada case in Canada. 18 The other point that we make is this. As you know, 19 we do emphasise it is important not to get lost in the 20 detail of the wording of 2.88. We say the basic thrust 21 of rule 2.88 is creditors should receive the rate 22 applicable to the debt apart from the administration or 23 the Judgments Act rate. 24 The purpose of the first limb is to ensure that 25 creditors receive the interest that they would have</p> <p style="text-align: center;">Page 32</p>

<p>1 received had there been no administration. That's why 2 I took you to the paragraph in Lord Neuberger's judgment 3 where he talks at paragraph 53 about the section 4 effectively confirming that interest which would, in the 5 absence of the liquidation, normally be expected to be 6 contractually payable by the company from the 7 liquidation date until repayment of the principal, is 8 payable in the liquidation only if there is a surplus. 9 The broad purpose of that is plainly to give 10 creditors -- what they would otherwise have been 11 entitled to receive as a matter of contract. You may 12 recall, there was a similar comment of Mr Justice David 13 Richards in his part A supplemental judgment, 14 paragraph 34, where he says: 15 "The purpose of providing the alternative interest 16 at the rate applicable apart from the administration is 17 to ensure the creditor receives what it would have 18 received had there been no administration." 19 So that is plainly the broad thrust of that limb. 20 Similarly, in relation to the second limb, the broad 21 thrust is the creditor receives the interest that he 22 would normally have received if he had a judgment. 23 That's no doubt why the draftsman said you should get 24 interest at the Judgment Act rate. 25 Again, on Wentworth's case, neither of those two</p> <p style="text-align: center;">Page 33</p>	<p>1 return is made to members." 2 We do say that's an extraordinary submission. It 3 may be that on analysis -- 4 LADY JUSTICE GLOSTER: Sorry, paragraph 12? 5 MR DICKER: Paragraph 12 -- 6 LADY JUSTICE GLOSTER: Of their opening submissions in this 7 supplemental hearing? 8 MR DICKER: Paragraph 16 of their opening submissions. 9 LADY JUSTICE GLOSTER: Sorry, my fault. 16, yes. 10 MR DICKER: Second sentence: 11 "The court's task is to construe the words of the 12 legislation to determine what rights the legislation 13 provides, according to its language ... wrong to 14 construe the legislation by reference to what rights 15 a creditor would have had but for the insolvency, and to 16 assume the legislation intended those rights to be 17 satisfied in full before any return is made to members." 18 We say, with the greatest respect, that is 19 an extraordinary submission. The function of 20 liquidation is and always has been in general to ensure 21 that creditors are paid in full before anything is 22 distributed to members. 23 LADY JUSTICE GLOSTER: Yes. 24 MR DICKER: It may be that upon analysis, a particular rule 25 does not comply with that principle. If so, as a matter</p> <p style="text-align: center;">Page 35</p>
<p>1 things are true. You don't get the interest you would 2 have had as a matter of contract. You don't effectively 3 get interest at the Judgment Act rate of 8 per cent, 4 because it is not calculated in the way that it normally 5 would be calculated. 6 So far as the general approach to statutory 7 construction is concerned, we say there is nothing in 8 the Supreme Court's judgment that is intended to alter 9 the normal approach to statutory construction. 10 My learned friend showed you paragraphs 12 and 13 of 11 Lord Neuberger's judgment. Picking up three points from 12 those paragraphs, first, Lord Neuberger says: 13 "Most, indeed probably all, fundamental principles 14 apply just as they have always done." 15 We say one such principle is plainly creditors 16 first, members last. 17 LORD JUSTICE BRIGGS: So sorry, which paragraph? 18 MR DICKER: Paragraph 12. 19 LORD JUSTICE BRIGGS: Thank you. 20 MR DICKER: Now, you may have noted Wentworth's skeleton 21 argument where it says that, paragraph 16: 22 "It is wrong to construe the legislation by 23 reference to what rights a creditor would have had but 24 for the insolvency, and to assume that the legislature 25 intended those rights to be satisfied in full before any</p> <p style="text-align: center;">Page 34</p>	<p>1 of construction, that's the effect of the statute, so be 2 it. 3 We do say the starting point has to be an 4 expectation, absent wording to the contrary, that that 5 is what the statute will achieve. 6 The second point, going back to Lord Neuberger's 7 judgment, is in paragraph 12, where he says: 8 "When it comes to less fundamental procedures and 9 rules, it cannot be assumed that judicial decisions, 10 even at the highest level relating to previous 11 insolvency legislation necessarily hold good, in 12 relation to the 1986 legislation." 13 Obviously, we accept that. You can't necessarily 14 assume that. It all depends on the rule and it depends 15 on the reason why the rule was introduced, the purpose 16 which it was intended to meet and its wording. 17 The third point comes from paragraph 13 where 18 Lord Neuberger says: 19 "Despite its lengthy and detailed provisions, the 20 1986 legislation does not constitute a complete 21 insolvency code." 22 Amongst other things, he refers to the rule in 23 <i>Cherry v Boulton</i>, one aspect of which is obviously the 24 contributories rule and says: 25 "Provided that a judge-made rule is well</p> <p style="text-align: center;">Page 36</p>

<p>1 established, consistent with the terms and underlying 2 principles of current legislative provisions and 3 reasonably necessary to achieve justice, it continues to 4 apply ... as judge-made rules are ultimately part of 5 common law ... no reason in principle why they can't be 6 developed." 7 LADY JUSTICE GLOSTER: You say that Bower v Marris fits into 8 all of that? 9 MR DICKER: Yes. If the rule in Cherry v Boulton is such 10 a principle, why on earth isn't the rule in 11 Bower v Marris? 12 LADY JUSTICE GLOSTER: Yes. 13 MR DICKER: Just picking up the points that Lord Neuberger 14 makes -- 15 LADY JUSTICE GLOSTER: In fact in a way Bower v Marris is 16 simpler than Cherry v Boulton. 17 MR DICKER: What is extraordinary, if one goes back, I don't 18 know if you recall, but prior to Rory(?) Dunne's first 19 book on set-off, Cherry v Boulton had to a large extent 20 disappeared from view. 21 LADY JUSTICE GLOSTER: We dreamt about it every night in 22 Chancery. 23 MR DICKER: His book, we used to joke, could be well have 24 been called "Set-off and the rule in Cherry v Boulton", 25 because about half the book seemed to be concerned</p> <p style="text-align: center;">Page 37</p>	<p>1 In this context, we do say some assistance is 2 provided by the approach of the majority to the 3 contributory rule. Now, I know we have not been 4 concerned with that to date, but can I just show you as 5 my learned friend -- 6 LADY JUSTICE GLOSTER: That is it set out in your skeleton, 7 isn't it? 8 MR DICKER: It is. Just picking up so you have the relevant 9 paragraphs, if you go on to paragraph 166, there is 10 a prior question as to whether the LBIE administrators 11 can set off a contributory's potential liability. 12 If that fails, the next question which arose is the 13 question at 172: namely, does the contributory rule 14 apply when distributing administrations? 15 At 173, Lord Neuberger says: 16 "It is common ground this problem would not arise if 17 it was a liquidator rather than administrators of LBIE 18 who was effecting a distribution because of the 19 contributory rule ... an aspect of a wider equitable 20 principle known as the rule in Cherry v Boulton." 21 174: 22 "The rule applies in liquidations although it is not 23 provided for in the 1986 Act or the 1986 rules, and is 24 one of the surviving judge-made rules of the insolvency 25 code as alluded to in paragraph 17 above."</p> <p style="text-align: center;">Page 39</p>
<p>1 with it. 2 LADY JUSTICE GLOSTER: Yes. 3 MR DICKER: There really is no difference between the two 4 principles. They are both aspects of judge-made law. 5 Bower v Marris applies obviously more broadly because it 6 is a fund administration rule. We have seen from 7 Whittinghall v Grover, it is not limited to insolvency, 8 but it is held that it applies in insolvencies. 9 LADY JUSTICE GLOSTER: Yes. 10 MR DICKER: Now, so far as "well established" is concerned, 11 it is true, a bit like Cherry v Boulton, the rule 12 didn't have the greatest amount of public visibility for 13 a period. But it can hardly be said it disappeared from 14 sight. I made the point at the last hearing, referred 15 to in Re Humber Ironworks, a case cited in every edition 16 of every textbook, and it was applied only shortly 17 before the introduction of the 1986 Act in Re Lyons 18 Brothers Number 2. 19 Consistent with the terms and underlying principles 20 of the legislation, we say it is entirely consistent -- 21 indeed it is demonstrated -- by its application in the 22 context of section 132 of the Bankruptcy Act 1825: 23 reasonably necessary to achieve justice. That is how it 24 is described in all the cases, a matter of fairness and 25 justice.</p> <p style="text-align: center;">Page 38</p>	<p>1 If you go on to 177: 2 "The more difficult question is whether taking such 3 a course would involve extending the contributory rule 4 in a way which is inconsistent with the provisions or 5 principles of the current legislation. There is, at 6 least at first sight, a strong argument that such 7 an extension would be inconsistent with rule 2.69, which 8 requires debt to be paid in full unless the assets are 9 insufficient to meet them; and rule 2.88(7) which 10 requires any surplus remaining after payment of the 11 debts ... to be applied in paying statutory interest 12 before being applied for any other purpose." 13 Then going down to the last six lines of that 14 paragraph, Lord Neuberger says: 15 "The true analysis is the contributory rule is an 16 aspect of the general equitable principle which operates 17 as a qualification to the 1986 rules regarding 18 distributions in liquidations, and is needed to ensure 19 compliance with the overall purpose of those rules." 20 So the rules provide you have to distribute 21 pari passu amongst creditors, both in respect of proved 22 debts. The rules also provide that you have to pay 23 interest out of the surplus on those proved debts. 24 Now, the contributory rule, Lord Neuberger 25 acknowledges in 177, appears to be inconsistent with</p> <p style="text-align: center;">Page 40</p>

<p>1 those rules because it says you can't have anything out 2 until you contribute what you owe. If you can't have 3 anything out until you contribute what you owe, you are 4 not going to get a pari passu share of your proved debt 5 and you are not going to get paid interest. 6 Nevertheless, contributories rules applies because 7 it is a aspect of the general equitable principle which 8 operates as a qualification to the 1986 rules regarding 9 distributions in liquidations. 10 Then, paragraph 178, he says: 11 "I have come to the conclusion ... permissible and 12 appropriate for the LBIE administrators to apply the 13 rules ... provided it can be effected in a way which is 14 practical ... in harmony with the applicable legislative 15 provisions and principles." 16 So the first thing is the contributories rule is 17 extended so it applies not merely in a liquidation but 18 also in a administration. 19 Then, at 180 to 183, at 180 he says: 20 "I readily accept that if the rule was simply 21 applied to a distributing administration in its existing 22 terms ... easily lead to injustice in the way described 23 in those passages. However, in my view, a potential 24 contributory can be protected if the rule is applied 25 with minor procedural modifications to distributing</p> <p style="text-align: center;">Page 41</p>	<p>1 that it is, it is plainly permissible to take a similar 2 approach in relation to the rule in Bower v Marris. 3 I mentioned, in distinguishing the approach to 4 currency conversion claims, the importance of the 5 Law Commission and the court report in the conclusion 6 which the Supreme Court -- the majority of the 7 Supreme Court -- came to on currency conversion claims. 8 Obviously you cannot take the same approach in relation 9 to the Cork report and the Law Commission in the context 10 of Bower v Marris. It is one thing to say in the 11 context of currency conversion claims, the point was 12 specifically considered and a clear view reached. That 13 is not true here. 14 The Cork report, as we submitted on the last 15 occasion, did not refer to the principle in 16 Bower v Marris at all. Equally importantly, what the 17 Cork report recommended was the adoption of the approach 18 previously taken in bankruptcy. They said, if you 19 remember: we have an existing regime in bankruptcy. We 20 can have a debate about whether that regime did or did 21 not include Bower v Marris. 22 They said we should apply that to bankruptcy and 23 liquidation and have a similar rule for both. Now, the 24 one thing we know is that that wasn't what was 25 subsequently enacted, because, as you know, the</p> <p style="text-align: center;">Page 43</p>
<p>1 administrations." 2 So we extend the contributory rule to 3 administration, but because administration differs in 4 other respects from liquidation, we have to make some 5 tweaks, but Lord Neuberger explains the reserving 6 approach which needs to be taken at 180. He says at 7 183: 8 "LBHI objections to this course have force, but I do 9 not consider that any of them represents a fatal 10 objection, either in law or in practice. It is 11 perfectly fair to say that there is no legislative 12 mechanism which provides for a reserved fund in 13 administration, let alone one which is liable to be 14 handed over to a subsequent liquidator. However ... 15 scarcely surprising there is no such mechanism, given 16 there is no legislative mechanism for the application of 17 the rule in the first place, even in liquidations. If, 18 as I consider, justice requires extension of the rule to 19 administrations, I see no good reason why it should not 20 be permissible to add a relatively simple procedural 21 step which is needed to give effect to that extension, 22 provided, as I say, that it is not inconsistent with any 23 legislative provision." 24 Now, we say if that is permissible in relation to 25 the contributories rule, as the Supreme Court have held</p> <p style="text-align: center;">Page 42</p>	<p>1 White Paper added the reference to the rate applicable 2 to the debt, apart from the administration. 3 So not only did the Cork report not consider 4 Bower v Marris at all, the Cork report's recommendations 5 was not in the end implemented by the legislature, and 6 we do come back to a point that when you look at the 7 phrase, "rate applicable to the debt apart from the 8 administration", the natural reaction, as you have seen, 9 both of Mr Justice David Richards at first instance, 10 Lord Neuberger in the paragraph of his judgment I showed 11 you, the natural reaction to that phrase is to say it is 12 obvious what that is seeking to do is to give people the 13 interest which they were otherwise entitled to receive. 14 I mention two other points that were plainly 15 important in the context of currency conversion claims. 16 The first was the hybrid nature of the debt as the 17 majority held. Now, that plainly has no similar analogy 18 in relation to rule 2.88 and interest. 19 Secondly -- 20 LADY JUSTICE GLOSTER: Why did you say that? 21 MR DICKER: Well, the problem -- potential problem -- with 22 currency conversion claims was that you had -- 23 LADY JUSTICE GLOSTER: They have a life outside the regime? 24 MR DICKER: Yes. And we are not saying there is a life 25 outside the regime. We accept 2.88 is complete. All we</p> <p style="text-align: center;">Page 44</p>

<p>1 are saying is when you construe 2.88 in accordance with 2 the normal rules of statutory construction -- 3 LADY JUSTICE GLOSTER: You apply Bower v Marris. 4 MR DICKER: It provides for a method of calculation 5 consistent with Bower v Marris. 6 The problem with currency conversion claims, as the 7 majority held, is you have this foreign currency 8 entitlement, you are entitled to prove it. Rule 2.88 -- 9 2.86 says you have to convert it in sterling at the date 10 of liquidation. There is something, to use 11 Lord Sumption's words, inherently improbable in the 12 legislature having intended not merely that you can 13 prove it and issue dividends accordingly, but also to 14 the extent you are unpaid, you have a non-provable claim 15 for the balance. That was the hybrid nature. 16 LADY JUSTICE GLOSTER: I see. You say that is not reflected 17 in the Bower v Marris type claims? 18 MR DICKER: It is a problem which does not arise in relation 19 to Bower v Marris. We are concerned solely with the 20 meaning of 2.88. 21 If, as a matter of construction, 2.88 provides 22 a method of calculation consistent with Bower v Marris, 23 that is an end of it. 24 LADY JUSTICE GLOSTER: So it is not as though you have some 25 sort of contractual claim for damages, because the proof</p> <p style="text-align: center;">Page 45</p>	<p>1 legislature trying to achieve here. I have made the 2 points about the broad thrust of the two limbs of 3 2.88(9) but one submission I made on the last occasion 4 was that nowhere in the judgment of Mr Justice David 5 Richards does he provide any reason why the legislature 6 might have thought it appropriate to abolish, as we 7 would put it, the operation of the rule in 8 Bower v Marris. 9 Just a consequence of construction, apparently 10 without underlying reason. 11 That was equally true of Wentworth. Save for 12 a submission in relation to the desirability of 13 simplicity, no explanation was given as to why -- 14 LADY JUSTICE GLOSTER: So no principled reason for -- 15 MR DICKER: No principled reason. 16 I think I have already dealt with the points my 17 learned friend made in relation to Wentworth's 18 appropriation argument. 19 In a sense, this simply takes you back to the 20 situations in which Bower v Marris has been applied in 21 the context of a statutory right to interest. 22 My learned friend says Bower v Marris only works if 23 you have an underlying contractual right to interest. 24 We say -- and he says it doesn't apply if the claim to 25 interest is a statutory claim.</p> <p style="text-align: center;">Page 47</p>
<p>1 of debt -- that the regime didn't give you what was your 2 contractual entitlement? 3 MR DICKER: Absolutely. 4 LADY JUSTICE GLOSTER: Yes. 5 MR DICKER: We are just saying on item 1, it is a question 6 of construction. It is true that 2.88 doesn't have 7 a subparagraph that says: and you calculate it in 8 accordance with Bower v Marris. 9 But nevertheless, properly construed, that is the 10 effect it has. 11 LADY JUSTICE GLOSTER: So no hybrid nature at all? 12 MR DICKER: No hybrid nature. That problem does not arise. 13 The second factor, which obviously influenced the 14 majority heavily, was what was called the one-way bet. 15 LADY JUSTICE GLOSTER: You don't have that? 16 MR DICKER: That's not an issue in relation to interest. 17 LADY JUSTICE GLOSTER: It is all downside so far as you are 18 concerned, if Bower v Marris doesn't apply. 19 MR DICKER: It is not even a one-way bet. It is just 20 a one-way downside, yes. 21 LADY JUSTICE GLOSTER: It is not variable? 22 MR DICKER: Correct. 23 When one stands back and just asks, again to the 24 extent that it is appropriate to do so in the context of 25 a question of statutory construction: what was the</p> <p style="text-align: center;">Page 46</p>	<p>1 If we are right in relation to section 132 of the 2 Bankruptcy Act 1825, if we are right in relation to the 3 order of 1841 discussed in Whittingstall v Grover, 4 Justice Blair was right in Attorney General v Canada, 5 that is a bad point because it has been held to apply in 6 each of those cases which did involve a statutory right 7 to interest, payable only in the event of a surplus. 8 So far as item 2 is concerned, compound interest, 9 one point -- I think it is a point that York makes in 10 its skeleton argument and we made below, is the 11 following: if you look at Wentworth's skeleton argument 12 paragraph 5.3, and the features that they say make the 13 application of Bower v Marris inconsistent with rule 14 2.88, you can make the same points in relation to 15 compound interest. 16 One feature of compound interest is that it is 17 effectively interest on interest. Now, my learned 18 friend in paragraph 5.3 says that is inconsistent with 19 rule 2.88. It says that in the context of item 1. But 20 in the context of item 2, he accepts that you can have 21 compound interest -- in other words interest to 22 interest -- out of the surplus. 23 There is obviously a disagreement as to how long you 24 can have it. He says it stops once the principal debt 25 has been repaid. But the reality is that when in</p> <p style="text-align: center;">Page 48</p>

<p>1 accordance with his calculation, you calculate how much 2 interest is payable, on his calculation, you are using 3 the surplus to pay interest on interest, which he says 4 is something which is not permitted. 5 Item 4, damages for late payment of statutory 6 interest, I can take this very shortly. 7 We accept, as I have said, that rule 2.88 is 8 a complete code. We also say that is not inconsistent 9 with creditors having a claim for damages of late 10 payment of statutory interest. There are essentially 11 only two parts to this argument. The first part is that 12 if you look at presumably 2.88(7), we say, as a matter 13 of construction, rule 2.88(7) makes it clear that -- 14 LADY JUSTICE GLOSTER: One second, just let me get it out. 15 2.88, subrule 7? 16 MR DICKER: Yes. Makes it clear that once debt is proved to 17 have been paid, the surplus is to be applied in paying 18 interest. 19 So we say as a matter of construction you will have 20 to ask when were the proved debts paid? April 2014. 21 2.88(7) says that's when the surplus is to be applied. 22 Now, if we are right about that, then you can read 23 2.88(7) as if it said, in this case: in April 2014 you 24 were entitled to payment of X, X being whatever amount 25 of statutory interest you were entitled to.</p> <p style="text-align: center;">Page 49</p>	<p>1 not paid, you simply have your normal rights in relation 2 to non-payment of a sum which you would otherwise have. 3 So this isn't something outside, as it were, 2.88; it is 4 simply applying ordinary law to the right which the 5 legislature has given you under 2.88(7). 6 LADY JUSTICE GLOSTER: So it is outside the administration. 7 It is a claim for damages which you have not proved for. 8 You just get it later on, do you? Why isn't it outside 9 2.88? 10 MR DICKER: It is a consequence of the right which you have 11 been given under 2.88(7). So it is not something, as it 12 were, different from -- it is not like a situation in 13 which you are saying, in relation to currency conversion 14 claims, you are entitled to prove for this amount, to 15 the extent you are unpaid. You have a non-provable 16 claim for the balance. 17 So it is not -- 18 LADY JUSTICE GLOSTER: It is a new claim, is it? It is 19 a new claim that arises when? I mean, I'm not clear 20 from your submission -- I am sure it is my fault -- 21 whether you are saying that this is a claim within the 22 administration or outside the administration. 23 MR DICKER: It is within the administration in the sense 24 that it is something that obviously needs to be 25 discharged by the administrator before any sums return</p> <p style="text-align: center;">Page 51</p>
<p>1 Now if that sum is not paid, the normal consequence 2 as a matter of law is that you have a claim for damages 3 for late payment, in accordance with Sempra Metals. So 4 this is not outside rule 2.88. It is simply saying 2.88 5 gives you this. Having given you this, the consequences 6 of the normal application of rules to late payment of 7 debts, any debts, include damages for late payment. 8 That's the short point. 9 LADY JUSTICE GLOSTER: But just looking at subrule 7, it is 10 any surplus remaining after payment of the debts proved, 11 paying interest on those debts. But this is interest on 12 interest, is it? 13 No, it is damages, you say? You are saying it is 14 not interest, or are you saying it is interest? You are 15 saying it is damages for the failure to pay interest? 16 MR DICKER: As I say, this part of the argument has two 17 parts. The first is the question of construction: do 18 you construe 2.88(7) as essentially saying that this is 19 the date when statutory interest is to be paid; this is 20 when it becomes due and payable. That is limb one. 21 It is a question of construction. We are either 22 right or wrong in relation to our arguments on 23 construction. 24 The second point is if it provides that it is due 25 and payable at that date, we say at that stage if it is</p> <p style="text-align: center;">Page 50</p>	<p>1 to members. It is not inconsistent with the notion of a 2 complete code. 3 You can just test it this way. If 2.88(7) had said: 4 each creditor is entitled to payment of £100 by way of 5 interest on 1 April 2014, that sum is not paid. We say 6 it is not -- there is an obligation to pay it. It is 7 due and payable on that date. If it is not paid, 8 applying normal principles in law, you have a claim for 9 damages for nonpayment of that sum. The point is no 10 more complicated than that. 11 LADY JUSTICE GLOSTER: You prove for it or you issue 12 proceedings and freeze the funds? 13 MR DICKER: That is the standard issue in relation to this 14 case. The reality is the administrator would need to 15 discharge it, because the Supreme Court says -- 16 LADY JUSTICE GLOSTER: Yes, it is a liability. 17 MR DICKER: Otherwise you can't return any surplus, final 18 surplus to members. But as Mr Justice David Richards 19 said in T&N, procedurally if that doesn't happen, one 20 remedy you have is to apply for the statutory stay to be 21 listed and commence proceedings. The net result is the 22 same. 23 LADY JUSTICE GLOSTER: I'm just at a loss to understand why 24 it is not a claim outside the rules. It is a separate, 25 as it were, non-provable claim.</p> <p style="text-align: center;">Page 52</p>

<p>1 MR DICKER: This may be a terminological thing. 2 LADY JUSTICE GLOSTER: It may be. 3 MR DICKER: The way we would put it is the existence of such 4 a claim is not inconsistent with the notion that rule 5 2.88 provides a complete code. 6 The reason it is not inconsistent is because it is 7 no more than a consequence of the rights which we say, 8 as a matter of construction, rule 2.88(7) gives you. 9 LADY JUSTICE GLOSTER: Right, I see. 10 MR DICKER: There is one further point. In its reply 11 skeleton, Wentworth contends that if such a claim -- 12 LORD JUSTICE BRIGGS: Just before you go, I am still in 13 slight difficulty in trying to work out how 2.88(7) 14 clearly provides a due date which I think you are saying 15 is the date of the payment of the last chunk of 16 principal, because a surplus may arise later, or at 17 least it may become something you can use for a payment 18 later. There may be, let's say, very large scale 19 outstanding litigation against an alleged debtor of the 20 company, which is a chose in action which has not yet 21 been turned into money. There may be all sorts of 22 reasons why a surplus doesn't actually convert into 23 something which can be paid until a date quite possibly 24 long after the payment of the last amount of principle, 25 and/or further surplus may arise in due course.</p> <p style="text-align: center;">Page 53</p>	<p>1 not having paid proved debts at an earlier date. That 2 is absolutely right and we don't. 3 LORD JUSTICE BRIGGS: But the basis upon which interest is 4 payable on proved debts prior to payment is simply 5 a statutory right to interest. It is not some form of 6 compensation. 7 MR DICKER: That is why the question of construction arises 8 in relation to 2.88(7). 9 LORD JUSTICE BRIGGS: Yes. 10 MR DICKER: As I say, the argument of construction is either 11 right or wrong. We say that is what the effect of 12 2.88(7) as a matter of construction -- and if we are 13 right about that, then the mere fact that the 14 administrators can't themselves be criticised doesn't 15 take the matter any further. 16 Now, just to orientate one's self, it is important 17 obviously to bear in mind that if Bower v Marris 18 applies, and/or compound interest is payable for the 19 full period, then this item either disappears or at 20 least becomes very considerably less important. 21 LADY JUSTICE GLOSTER: Sorry, will you say that again? 22 MR DICKER: If interest is calculated in accordance with 23 Bower v Marris -- 24 LADY JUSTICE GLOSTER: Yes. 25 MR DICKER: -- this issue effectively disappears.</p> <p style="text-align: center;">Page 55</p>
<p>1 I'm slightly jibbing at your notion that there is 2 some sense of lateness if you accept your due date as 3 the date when the last payment of principal is made. 4 MR DICKER: I accept that. There may be questions as to how 5 you calculate the damages in the event that such a claim 6 exists. It is not an issue in this case, we say, 7 because as we say we know that proved debts were paid, 8 as we understand it, in April 2014, and that is the 9 position. But I don't think I can take -- 10 LORD JUSTICE BRIGGS: We know when the proved debts were 11 paid. The question is what time was surplus really 12 available -- I can see some, as it were, underlying 13 commercial sense in identifying some concept of a right 14 to compensation payment where the administrators simply 15 have a lot of money and sit on it and don't do anything 16 with it. Perhaps a rather unreal scenario. Normally 17 the reason they don't do something is either because it 18 consists of choses in action which have not yet been 19 turned into money, or because there is an issue about who 20 should get it which requires them to sit on it until the 21 court is told who to pay it to, which is this case, 22 I suspect. 23 MR DICKER: The answer to that may be this: if you go back 24 to the position in relation to proved debts, one might 25 say, well, you can't criticise the administrators for</p> <p style="text-align: center;">Page 54</p>	<p>1 Similarly -- 2 LADY JUSTICE GLOSTER: In arithmetic terms? 3 MR DICKER: Yes. Similarly for those entitled to compound 4 interest, again, if they are entitled to it, then, 5 again, this issue effectively disappears. Put it 6 another way, this was effectively the last argument we 7 had if every other argument failed. We don't need it if 8 the others succeed. 9 LADY JUSTICE GLOSTER: We are not using the words "last 10 ditch" or anything? 11 MR DICKER: No, merely logically last. 12 There is one further point I just do need to deal 13 with briefly. In its reply skeleton argument, Wentworth 14 contends that if such a claim exists, it has been 15 compromised by the CRA and the CDDs. 16 My learned friend made the same point on his feet 17 this morning and suggested it is common ground. It is 18 not for this simple reason: so far as we are aware, this 19 was not something which Wentworth previously argued. 20 I will just give you the reference. It is Wentworth's 21 original skeleton paragraph 46. Bundle A1, tab 16, 22 page 20. 23 I can deal with the point -- 24 LADY JUSTICE GLOSTER: Do you want us to go there? 25 MR DICKER: I don't think it is necessary, because I can</p> <p style="text-align: center;">Page 56</p>

1 deal with the point fairly shortly.
 2 We say that such a claim is unaffected by those
 3 documents for this reason: those documents, it is common
 4 ground, preserve a right to interest under 2.88. We say
 5 if they preserve that right -- in other words, if you
 6 are entitled to say, "I'm due statutory interest, I have
 7 not waived it, I have not given it up", we say equally
 8 you must be entitled to complain if you are not paid it
 9 and if, in accordance with the statutory scheme, you
 10 have a claim for damages for non-payment, equally that's
 11 something which you haven't given up either, essentially
 12 because it is parasitic on the right that you preserved.
 13 LADY JUSTICE GLOSTER: Yes.
 14 MR DICKER: Finally, in relation to item 1, 2 and 4, there
 15 is obviously a debate between the majority in the
 16 Supreme Court and the minority, as to what was described
 17 as the "wider approach".
 18 The majority inclining to the view, as we understand
 19 it, that the statutory scheme effectively replaces your
 20 underlying contractual rights; Lord Sumption saying the
 21 matter is procedural.
 22 It is possible, depending how the court's analysis
 23 goes in deciding these issues, that that debate may
 24 conceivably become relevant. If it is, we say
 25 Lord Sumption was correct for the reasons he gave. It

Page 57

1 is plain, we say, statutory scheme has always been
 2 understood to operate in the way that he described.
 3 Essentially, you have a bunch of assets which become
 4 subject to a statutory trust in accordance with
 5 Payerst(?), and the rules are all about how those assets
 6 are distributed, either in bankruptcy or liquidation,
 7 and it has no impact, as Lord Hoffmann said in White v
 8 Akar(?) on the underlying claims.
 9 LORD JUSTICE BRIGGS: But the particular submissions you
 10 made are all based upon an interpretation of the
 11 statutory scheme and the things that flow from it, as
 12 I understand it.
 13 MR DICKER: Correct.
 14 LORD JUSTICE BRIGGS: So you say you don't need to go there?
 15 MR DICKER: We say, certainly if you are with us, you don't
 16 need to go there.
 17 LORD JUSTICE BRIGGS: If I'm against you, why should I go
 18 anywhere? I'm not sure it makes a difference whether
 19 I'm with you or not, unless you have some further
 20 argument up your sleeve, which is not being deployed,
 21 about the reversion to your contractual rights.
 22 MR DICKER: No. I think the area where it might conceivably
 23 play a part -- and I think my learned friend hinted at
 24 this during his submissions -- is in the context of the
 25 notion of appropriation. In other words, the need for

Page 58

1 an existing underlying right.
 2 We say, properly understood, that is not a problem,
 3 because Bower v Marris is not dependent on the
 4 continuing existence of an underlying right. It is
 5 a rule of calculation applied in relation to an
 6 insolvent fund. You don't need such a right because you
 7 can see that from section 132 of the Bankruptcy Act --
 8 LORD JUSTICE BRIGGS: You go back to your 132
 9 Attorney General of Canada line.
 10 MR DICKER: Absolutely. That's why I say if you are with us
 11 on that, then those effectively answer the point, and
 12 there is no need to decide the debate between
 13 Lord Neuberger and Lord Sumption. I just wanted to make
 14 it clear that if, for whatever reason during the course
 15 of your thinking it did become necessary, our submission
 16 would be that Lord Sumption is right in his description
 17 of the way the statutory scheme operates.
 18 But as my Lord --
 19 LADY JUSTICE GLOSTER: How can we go with that if the
 20 majority agreed with Lord Neuberger?
 21 MR DICKER: Well, both only expressed provisional views.
 22 Both were careful only to express provisional views.
 23 LADY JUSTICE GLOSTER: What, it is obiter or provisional?
 24 MR DICKER: Provisional at most. I'm not even sure it is an
 25 obiter view, in the sense that it is not a concluded

Page 59

1 view.
 2 LADY JUSTICE GLOSTER: We are not bound by the majority.
 3 LORD JUSTICE BRIGGS: You say it is all provisional outside
 4 the effect of rule 2.88?
 5 MR DICKER: Correct.
 6 The only other item which we address in our written
 7 submissions concerns item 11, foreign judgment rates of
 8 interest, and there is nothing I wish to say to what we
 9 have said in writing.
 10 LADY JUSTICE GLOSTER: Right.
 11 MR DICKER: Unless I can assist you further.
 12 LADY JUSTICE GLOSTER: No. Thank you very much indeed,
 13 Mr Dicker.
 14 It is Mr Smith, is it, next?
 15 MR SMITH: My Lady, we don't have anything to add to
 16 Mr Dicker's submissions, which we very gratefully adopt.
 17 LADY JUSTICE GLOSTER: Thank you very much. Mr Bayfield?
 18 MR BAYFIELD: The parties have taken the available arguments
 19 and we have no submissions of our own to make.
 20 LADY JUSTICE GLOSTER: Thank you very much. Mr Zacaroli?
 21 Reply submissions by MR ZACAROLI
 22 MR ZACAROLI: Briefly by way of reply, if I may, first of
 23 all, my learned friend referred to the fact that there
 24 is no escape hatch of a non-provable claim, as being in
 25 some way relevant to the court's determination of the

Page 60

<p>1 meaning of rule 2.88. We say that is utterly 2 irrelevant, and the points I took my Lords to in the 3 Supreme Court judgment about there is no a priori where 4 you must approach this on the basis, you must include 5 (inaudible) rights or else they will be lost, just is 6 not there. So that is a irrelevant point. 7 Secondly, he referred to Lord Neuberger at 8 paragraph 53 of the Supreme Court judgment, where he 9 referred to section 189.2, confirming that he would 10 normally expect interest contractually payable to be 11 within the rule. His Lordship was clearly not 12 purporting to analyse or decide in any way to what 13 extent contractual rights of creditors were included 14 within rule 2.88(9). Our position, as you know from the 15 main appeal, is the reference to the rate at which it 16 would have been applicable apart from administration is 17 all that is included. So all the legislature did was 18 say Judgment Act rate or if the rate is higher than in 19 your contract, you can have that rate. There is no 20 greater incorporation for contractual rights and nothing 21 Lord Neuberger said can be in any way impinging on that. 22 My learned friend gave you an example of a contract 23 where he said that the interest is payable for the 24 period the debt is outstanding. It doesn't help at all 25 to try and posit what the answer might be to the</p> <p style="text-align: center;">Page 61</p>	<p>1 gets a flat rate at the end. Bower v Marris was not 2 concerned in any way with that statutory right to 3 interest; merely the part which says you go back to your 4 contractual rights, if it was dealing with that at all. 5 So to that extent, yes, we would accept that if in 6 bankruptcy you had a remission to contractual rights 7 prior to 1883, Bower v Marris would apply, because it is 8 all about the case where you get remitted to contractual 9 rights. But our point is that in no case, other than 10 the Canadian case, has the court in an insolvency 11 context applied Bower v Marris to the construction of 12 a statutory regime for paying statutory interest. It 13 has never been done. 14 LADY JUSTICE GLOSTER: What do you say about Mr Dicker's 15 point, that you have put forward no principled reason 16 for the non-application of the rule in the context of 17 2.88? 18 MR ZACAROLI: The principal reason is as follows: the 19 legislature in 1986 decided to incorporate a blanket 20 rule of payment of what it is calling its statutory 21 interest, to all creditors, whether they had 22 a contractual right to interest or not. 23 So it is creating a new right for interest for some 24 creditors they never had. It is creating a blanket rule 25 to recognise the common misfortune all those creditors</p> <p style="text-align: center;">Page 63</p>
<p>1 question of Bower v Marris applying to any contract. 2 All that does is raise another issue of contractual 3 construction. 4 We know that Bower v Marris is susceptible to 5 a different interpretation in the contract. Parties can 6 contractually agree the interest payment any way they 7 like. It really doesn't help to say: if there was 8 a contract which said this, the answer would be the 9 same. It takes the court nowhere. 10 My learned friend repeated the submissions he made 11 throughout the main appeal, that it is common ground 12 that Bower v Marris applied in bankruptcy. I did, 13 I think, stand up and correct him in my reply on the 14 main appeal. 15 LADY JUSTICE GLOSTER: Yes. 16 MR ZACAROLI: To the extent that Bower v Marris is to be 17 interpreted -- which is doubtful in itself -- as saying 18 that the statutory provision in section 132, to the 19 extent that it remitted you to your contractual right to 20 interest, to the extent it said in that context 21 Bower v Marris applies, we would agree. But that says 22 nothing about any statutory right to interest. That is 23 just a remission to your contractual rights. 24 Section 132 operated first of all that if you have 25 a contractual right, you get it and anybody else just</p> <p style="text-align: center;">Page 62</p>	<p>1 suffer by the time taken to distribute assets in the 2 estate. It is essentially starting with a blank piece 3 of paper -- 4 LADY JUSTICE GLOSTER: So the scheme ousts the equitable 5 principle. 6 MR ZACAROLI: The equitable principle has no room. It is 7 not that it ousts it; it has no room -- 8 LADY JUSTICE GLOSTER: For operation within the scheme. 9 MR ZACAROLI: Yes. The principle is: it is a common 10 misfortune, let's just identify a rate, a way of 11 calculating interest which is fair to everyone in the 12 insolvency state -- 13 LADY JUSTICE GLOSTER: Overall, simplicity and ease of 14 management of what is a rough and ready fairness-for-all 15 scheme. 16 MR ZACAROLI: Yes. Yes. 17 The other point on my learned friend on this common 18 ground, is we say he fell into the trap which the 19 Supreme Court says you should not fall into, of trying 20 to construe rule 2.88 by reference to how a case back in 21 1841 construed section 132 of the 1825 Act. That is 22 clearly an impermissible exercise. We are looking here 23 at the 1986 rules and we should start and finish with 24 those. 25 My learned friend says there is no difference</p> <p style="text-align: center;">Page 64</p>

<p>1 between Bower v Marris and Cherry v Boulton in the 2 sense that they are general principles of equitable -- 3 equitable principles, fundamental principles that apply 4 and should apply to the insolvency regime. We say that 5 is absurd. There is absolutely no correlation between 6 something like the rule in Cherry v Boulton and the 7 so-called principle in Bower v Marris as properly 8 understood.</p> <p>9 I won't repeat the submissions I have made at length 10 on that, but we say it is an absurd proposition. It has 11 only ever been regarded as an aspect of contractual 12 rights, and where creditors have remitted to those 13 contractual rights, it is an aspect of them which they 14 get in calculating in that context. It is clearly not 15 a rule of calculation that applies under a statute.</p> <p>16 We make this point in our written submissions. The 17 court --</p> <p>18 LADY JUSTICE GLOSTER: Not in your latest written 19 submissions?</p> <p>20 MR ZACAROLI: It is in our original supplemental 21 submissions, so we have done a first-hand reply. It is 22 our first submissions in this round.</p> <p>23 We make the point that courts operate by way of 24 respecting and giving effect to the rights of parties. 25 The statute tells you what interest is provided for post</p> <p style="text-align: center;">Page 65</p>	<p>1 were waived or released by the CDDs or CRAs undoubtedly 2 covers this remaining corner, as it were, of those 3 non-provable claims; that is the non-provable claims 4 interest on interest.</p> <p>5 We say you don't need to get there because it 6 doesn't exist, but if it did, it has been waived.</p> <p>7 LADY JUSTICE GLOSTER: Right.</p> <p>8 MR ZACAROLI: Unless I can assist any further, those are my 9 submissions.</p> <p>10 LADY JUSTICE GLOSTER: Thank you all very much and for 11 reconvening again at such short notice. Obviously we 12 will reserve our judgments. We will circulate the draft 13 judgments or judgment in the normal way for minor 14 factual and minor typographical errors. It is not an 15 opportunity to reargue, obviously.</p> <p>16 Nobody need turn up for the formal hand-down of the 17 judgment. We would hope that you would be able to agree 18 any consequential between the parties. If you can't 19 agree any consequentials, or the form of the order, the 20 likelihood is that the court will decide any 21 outstanding on the papers.</p> <p>22 Thank you very much indeed. 23 (12.15 pm) 24 (The hearing concluded. Judgment reserved.) 25</p> <p style="text-align: center;">Page 67</p>
<p>1 administration debts period. You look to the statute to 2 work out how much interest is payable. The rule in 3 Bower v Marris, so far as it exists at all, is simply 4 giving effect to rights of creditors in relation to 5 their right to appropriate. That is all it is. It is 6 not a rule which says you must calculate interest in 7 this way or that way. You look to the statute for that.</p> <p>8 Finally, on issue or item 4, I won't repeat the 9 points we made in writing on why there is no such thing 10 as a further non-provable claim to interest by way of 11 damages on the Sempra Metals model, but on the question 12 of waiver, the issue before the judge on this is very 13 broadly stated at the supplemental judgment of 14 Mr Justice David Richards, which you will find in 15 bundle 2 at part A, paragraph 56. I will read the 16 issue. It is:</p> <p>17 "Whether to the extent that a creditor has 18 a non-provable claim for interest, such non-provable 19 claim has been released under the terms of the CRA 20 and/or a CDD and if so, whether the administrator ... 21 not to enforce such a release."</p> <p>22 We understood that any and all non-provable claims 23 for interest which could be imagined were within that 24 issue, and therefore we take the view that the judge's 25 decision below that non-provable claims for interest</p> <p style="text-align: center;">Page 66</p>	<p style="text-align: center;">I N D E X</p> <p>1 Submissions by MR ZACAROLI1 2 Submissions by MR DICKER23 3 Reply submissions by MR ZACAROLI60 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 68</p>

A				
A1 56:21	addressing 11:22	analyse 61:12	41:12 43:22 45:3	64:1
abandoned 21:22	administration 4:6	analysis 19:24 35:3	46:18 47:24 48:5	assist 22:23 60:11
ability 19:2	5:12 11:15,18	35:24 40:15 57:22	52:20 63:7 65:3,4	67:8
able 67:17	12:9 13:14 16:17	and/or 53:25 55:18	applying 28:12	assistance 39:1
abolish 47:6	16:25 17:2,5	66:20	51:4 52:8 62:1	assists 1:25 13:10
absence 22:19 27:3	20:18,21 22:15,21	answer 19:11 24:12	approach 4:12 5:21	22:25
27:10 33:5	29:21 32:22 33:1	26:1 29:25 54:23	13:12 31:20 34:6	assume 34:24
absent 36:4	33:16,18 38:6	59:11 61:25 62:8	34:9 39:2 42:6	35:16 36:14
absolutely 46:3	41:18,21 42:3,3	anti-deprivation	43:2,3,8,17 57:17	assumed 8:17 31:7
55:2 59:10 65:5	42:13 44:2,8 51:6	9:3	61:4	36:9
absurd 20:1 65:5	51:22,22,23 61:16	anybody 62:25	approaches 24:14	assumes 30:5
65:10	66:1	apart 32:22 33:16	appropriate 1:7	Attorney 32:17
accept 14:3 25:13	administrations	44:2,7 61:16	6:14 18:10,12	48:4 59:9
25:18 36:13 41:20	13:2 39:14 42:1	apologise 1:10	26:4 41:12 46:24	authorities 23:23
44:25 49:7 54:2,4	42:19	apology 1:8	47:6 66:5	24:9
63:5	administrator 5:7	apparently 11:16	appropriation 6:11	authority 6:15
accepted 21:16	6:1 51:25 52:14	47:9	6:21 21:1 47:18	23:19 24:1,6 25:6
31:21	66:20	appeal 2:23 7:6	58:25	26:6
accepts 48:20	administrators	11:22 19:16 20:23	April 49:20,23 52:5	available 54:12
accord 13:19	39:10,17 41:12	22:7 61:15 62:11	54:8	60:18
account 25:8 30:25	54:14,25 55:14	62:14	area 58:22	awarded 5:15
accrued 11:16,17	adopt 60:16	Appeal's 1:9	argued 56:19	aware 56:18
accruing 17:1	adopted 20:2	appears 10:20	argument 17:20,25	axiomatic 14:7
18:11 20:25 22:21	adoption 6:20	40:25	23:15 27:22 28:24	
accurate 20:16	43:17	appellant 2:12	29:16 31:6,12	B
achieve 36:5 37:3	advanced 19:12	applicable 4:6	34:21 40:6 47:18	b 4:21 20:20 21:7
38:23 47:1	affords 32:2	32:22 33:16 41:14	48:10,11 49:11	21:21
acknowledge 9:18	afresh 10:11	44:1,7 61:16	50:16 55:10 56:6	back 11:24 20:9
9:20	agree 62:6,21 67:17	application 18:6	56:7,13 58:20	27:15 31:3 32:3
acknowledges	67:19	32:15 38:21 42:16	arguments 50:22	32:10 36:6 37:17
40:25	agreed 17:15 20:14	48:13 50:6	60:18	44:6 46:23 47:19
act 5:8 15:25 18:19	59:20	applied 6:25 7:1	arises 27:21 51:19	54:23 59:8 63:3
24:16 26:2,4	agreement 13:25	8:4,10 11:8 31:15	55:7	64:20
30:17,21 31:5,8	aid 32:2	32:4,5,7 38:16	arithmetic 56:2	bad 48:5
31:21,25 32:3,23	Akar 58:8	40:11,12 41:21,24	arose 39:12	balance 14:4 23:14
33:24 34:3 38:17	alleged 53:19	47:20 49:17,21	arrangements 1:13	45:15 51:16
38:22 39:23 48:2	allow 7:9	59:5 62:12 63:11	arrived 25:12	banded 3:10
59:7 61:18 64:21	alluded 9:5 39:25	applies 29:18 38:5	asks 46:23	bankruptcy 10:4
action 53:20 54:18	alter 34:8	38:8 39:22 41:6	aspect 29:17 36:23	11:5,7 31:5,7,21
acts 31:8	alternative 33:15	41:17 55:18 62:21	39:19 40:16 41:7	38:22 43:18,19,22
adapting 9:15	amount 38:12	65:15	65:11,13	48:2 58:6 59:7
add 42:20 60:15	49:24 51:14 53:24	apply 3:15 6:16 7:4	aspects 22:11 38:4	62:12 63:6
added 44:1	amounting 10:5	8:12 9:11 14:22	assert 17:23,25	based 7:2 12:21
address 60:6	amounts 10:2	14:24 15:13 32:8	assessing 11:19	58:10
	analogy 44:17	34:14 37:4 39:14	assets 40:8 58:3,5	basic 32:20
				basis 13:15 14:5

15:15 21:1 24:5 30:4,21 55:3 61:4 Bayfield 60:17,18 bear 26:8 55:17 bears 10:23 behalf 23:18 best 23:20 24:2 bet 25:3,9 46:14,19 better 29:11 beyond 7:10 bit 38:11 Blair 32:17 48:4 blank 64:2 blanket 63:19,24 blocks 18:6,9 book 37:19,23,25 Boulton 9:4 36:23 37:9,16,19,24 38:11 39:20 65:1 65:6 bound 60:2 Bower 1:24 3:2,7 5:3,21 6:3,24 9:19 11:7 13:15 15:11 15:17 18:3,8 28:2 28:2,12,20 29:18 29:25 30:3,9,20 31:2,6,11,15,20 31:24 32:4,7,15 37:7,11,15 38:5 43:2,10,16,21 44:4 45:3,5,17,19 45:22 46:8,18 47:8,20,22 48:13 55:17,23 59:3 62:1,4,12,16,21 63:1,7,11 65:1,7 66:3 brief 4:7 22:24 briefly 4:11 21:2 27:15 56:13 60:22 Briggs 3:23 14:18 14:21 19:17 23:23 34:17,19 53:12 54:10 55:3,9 58:9	58:14,17 59:8 60:3 broad 10:10 33:9 33:19,20 47:2 broadly 38:5 66:13 Brothers 10:8 38:18 brought 20:21 building 18:6,9 bunch 58:3 bundle 2:20 56:21 66:15 <hr/> C <hr/> calculate 5:24 6:2 29:13 30:8,23,25 46:7 49:1 54:5 66:6 calculated 5:21 28:20 34:4,5 55:22 calculating 28:19 30:4,10 64:11 65:14 calculation 29:6 45:4,22 49:1,2 59:5 65:15 called 17:9 19:13 37:24 46:14 calling 63:20 Canada 7:4 32:17 32:17 48:4 59:9 Canadian 63:10 careful 59:22 carefully 24:17 carries 28:15 case 6:4,15 9:6 13:10 22:11 32:17 33:25 38:15 49:23 52:14 54:6,21 63:8,9,10 64:20 cases 7:4 23:20 32:1 38:24 48:6 CDD 21:8 66:20 CDDs 56:15 67:1 ceased 7:12	cent 28:10,16 34:3 certain 8:8 9:5 27:25 certainly 14:24 58:15 certainty 4:13 9:14 Chancery 37:22 change 2:16 changes 10:3 characterisation 20:16 chart 2:21,22 Cherry 9:4 36:23 37:9,16,19,24 38:11 39:20 65:1 65:6 Chitty 32:14 chose 53:20 choses 54:18 chunk 53:15 circulate 67:12 cited 38:15 cites 8:13 9:2 claim 2:4 3:14,15 9:23 13:7,14 16:13,17,18,23,24 17:4,5,6,8,8,10,14 17:21,22 19:7 21:7 22:1,5,6,9,18 23:14 24:7 25:9 25:19 26:9 45:14 45:25 47:24,25 49:9 50:2 51:7,16 51:18,19,21 52:8 52:24,25 53:4,11 54:5 56:14 57:2 57:10 60:24 66:10 66:18,19 claimant 6:6 claimed 20:12 claims 4:3,23,23 9:22 10:9 11:3 14:23,24 16:19 23:7,9,25 24:19 24:23 25:2,15	43:4,7,11 44:15 44:22 45:6,17 51:14 58:8 66:22 66:25 67:3,3 clarify 10:25 clean 30:7 clear 5:6 21:5 43:12 49:13,16 51:19 59:14 clearly 4:20 17:24 24:18 53:14 61:11 64:22 65:14 close-out 4:16 code 2:5 7:23 10:1 10:6 13:1 15:12 17:25 19:20 22:8 22:12,20 23:11,15 25:21 26:19 36:21 39:25 49:8 52:2 53:5 coin 30:14 come 3:19 11:23 27:15 30:6,23 41:11 44:6 comes 8:16 36:8,17 coming 26:13 commence 52:21 comment 26:20,20 33:12 commercial 54:13 Commission 24:17 25:7 43:5,9 Committee 24:16 common 15:3,8 21:17 25:25 31:15 37:5 39:16 56:17 57:3 62:11 63:25 64:9,17 companies 11:8 company 11:15 13:15 22:2 27:4 27:11 33:6 53:20 compensation 54:14 55:6 complain 57:8	complete 2:5 12:25 17:25 22:8,12,20 23:11,15 25:21 26:19 36:20 44:25 49:8 52:2 53:5 completely 10:5 compliance 40:19 complicated 52:10 comply 35:25 compound 48:8,15 48:16,21 55:18 56:3 compounding 3:3,6 7:7,9 compromised 56:15 conceivably 57:24 58:22 concept 14:2 19:20 22:4 54:13 concerned 4:21 7:8 10:7,16 11:9 21:7 23:19 24:8,16 34:7 37:25 38:10 39:4 45:19 46:18 48:8 63:2 concerns 60:7 concluded 20:11 59:25 67:24 conclusion 14:4 18:4 24:10,19 25:11 41:11 43:5 conclusions 2:2 5:14 12:4 25:10 concurrent 18:9,11 confirming 33:4 61:9 confirms 27:2 conjunction 11:10 consequence 47:9 50:1 51:10 53:7 consequences 25:14 50:5 consequential 67:18,19
--	---	--	---	--

consider 18:17 42:9,18 44:3	continued 3:3	Cork 5:13 24:16 25:7 43:9,14,17 44:3,4	66:17	52:18 66:14
considerably 55:20	continues 9:11 37:3		creditor's 10:22	deal 1:14,22 14:8,9 27:18 56:12,23
considered 24:18 43:12	continuing 11:25 59:4	corner 67:2	25:4	57:1
considering 26:7	contract 4:16 13:8 13:24 26:11 28:7	corporate 10:4,18	creditors 10:16,18 19:3 22:16 32:21	dealing 9:19,21 11:12 12:1 15:9 18:16 20:10 21:9 63:4
consistent 9:10 32:15 37:1 38:19 38:20 45:5,22	28:8,13 33:11 34:2 61:19,22 62:1,5,8	correct 3:12 17:16 26:17 31:21 46:22 57:25 58:13 60:5 62:13	32:25 33:10 34:15 35:21 40:21 49:9 61:13 63:21,24,25 65:12 66:4	deals 14:11
consists 54:18	contractual 2:7 5:9 6:7,13 7:3 8:21	correlation 65:5	creditors' 16:1 26:9	dealt 7:5 10:18 12:24 24:20 47:16
constitute 36:20	11:12 12:5,13,23 13:16,17,19 15:4 15:19 16:1,8 24:3 28:11,24,25 45:25 46:2 47:23 57:20 58:21 61:13,20 62:2,19,23,25 63:4,6,8,22 65:11 65:13	Cottenham 31:24	critical 31:5	debate 23:6 31:9 43:20 57:15,23 59:12
constitutes 2:5		couple 18:14 27:18	criticise 54:25	debt 3:21 5:10,11 5:19 12:8,15 14:5 16:10 24:3,24 28:8,10,15,16,16 29:20,24 32:22 40:8 41:4 44:2,7 44:16 46:1 48:24 49:16 61:24
construction 5:5 7:9 26:7,18 34:7,9 36:1 45:2,21 46:6 46:25 47:9 49:13 49:19 50:17,21,23 53:8 55:7,10,12 62:3 63:11	course 9:20 23:4 40:3 42:8 53:25 59:14	course 9:20 23:4 40:3 42:8 53:25 59:14	criticised 55:14	debtor 53:19
construe 15:11,15 16:6 34:22 35:11 35:14 45:1 50:18 64:20	court 1:9,15,16,22 1:25 2:3,15,18,19 3:13,22 4:12 7:14 7:16,17 8:25 9:7 9:19 11:14,22,23 12:3 13:9,12 15:3 15:24 16:20 18:3 18:5,25 19:8,15 20:14 22:10,14,25 25:14,20 26:15,17 27:20 42:25 43:5 43:6,7 52:15 54:21 57:16 61:3 61:8 62:9 63:10 64:19 65:17 67:20	court's 34:8 35:11 57:22 60:25	currency 2:4 4:2,19 4:23 9:21,22 10:9 10:15,17,22 11:3 13:6 14:5 23:7,9 23:13,24 24:7,19 24:22 25:2,4,8,15 43:4,7,11 44:15 44:22 45:6,7 51:13	debts 5:15 7:12 13:2 14:2,17 20:25 29:5,10 40:11,22,23 49:20 50:7,7,10,11 54:7 54:10,24 55:1,4 66:1
construed 26:2 46:9 64:21	contractually 27:4 27:11 33:6 61:10 62:6	courts 14:9 65:23	current 9:13 23:25 37:2 40:5	decide 21:12 59:12 61:12 67:20
construing 7:22 16:2	contrary 12:4 31:17 36:4	covers 67:2	cut-off 14:15	decided 31:24 32:1 63:19
contains 5:25	contribute 41:2,3	CRA 21:9 56:15 66:19	<hr/> D <hr/>	deciding 57:23
contemporary 12:22	contribution 18:23 19:2,8	CRA's 67:1	D 68:1	decision 12:20 66:25
contended 6:24	contributories 18:19 36:24 40:24 41:6,16 42:25	create 18:23 19:1	damage 16:15	decisions 8:18 36:9
contends 53:11 56:14	contributory 39:3 39:13,19 40:3,15 41:24 42:2	created 20:8	damages 22:5 45:25 49:5,9 50:2 50:7,13,15 51:7 52:9 54:5 57:10 66:11	defined 5:8,9,10
context 12:20 18:15 19:4 23:16 26:2 28:12 31:13 32:7 38:22 39:1 43:9,11 44:15 46:24 47:21 48:19 48:20 58:24 62:20 63:11,16 65:14	contributory's 39:11	creating 63:23,24	dangerous 9:25	delayed 1:3
contingent 3:21	conversion 2:4,7 4:3,19,23 9:23 10:9 11:3 13:6 23:7,9,24,25 24:7 24:22 25:8,15 43:4,7,11 44:15	creditor 6:7,9,13 12:7,15 13:7 18:12 33:17,21 34:23 35:15 52:4	date 3:20 4:7 5:12 5:19 7:10 11:19 14:15 16:16 17:2 22:3 27:5,12 29:23 33:7 39:4 45:9 50:19,25 52:7 53:14,15,23 54:2,3 55:1	demonstrated 38:21
contingently 24:25	convert 45:9 53:22		David 20:10 31:18 33:12 44:9 47:4	Department 4:6
continuation 3:6	converted 24:3			depend 25:16

dependent 3:7 59:3	differs 42:3	doubtful 62:17	ended 20:18	existed 25:2
depending 5:1 57:22	difficult 40:2	downside 46:17,20	enforce 66:21	existence 25:9,17 53:3 59:4
depends 26:1 36:14 36:14	difficulty 14:2 20:13 28:12,19 53:13	draft 67:12	enjoyed 13:7	existing 9:16 20:7 41:21 43:19 59:1
deployed 58:20	diminished 16:20	draftsman 33:23	ensure 32:24 33:17 35:20 40:18	exists 21:10,24 54:6 56:14 66:3
describe 10:2	direction 5:6 6:1 16:5 24:13	draws 8:8	entirely 11:9,18 16:4 32:15 38:20	expect 61:10
described 12:21 30:2 38:24 41:22 57:16 58:2	directly 15:23	dreamt 37:21	entitled 13:14 16:6 22:16 33:11 44:13 45:8 49:24,25 51:14 52:4 56:3,4 57:6,8	expectation 36:4
description 59:16	disagreed 11:24	due 6:17,18 50:20 50:24 52:7 53:14 53:25 54:2 57:6	Dunne's 37:18	expected 27:4,11 33:5
desirability 47:12	disagreement 48:23			explain 2:8
Despite 36:19	disappear 25:17	E	entitlement 23:13 45:8 46:2	explains 28:1 42:5
detail 32:20	disappeared 26:9 37:20 38:13	E 68:1	entitling 32:13	explanation 47:13
detailed 1:15 9:13 36:19	disappears 20:21 55:19,25 56:5	earlier 10:1 24:9 32:1 55:1	equally 28:14,23 32:8 43:16 47:11 57:7,10	express 7:13 28:18 59:22
determination 60:25	discharge 52:15	earth 32:8 37:10	equitable 6:4,23 8:4 39:19 40:16 41:7 64:4,6 65:2,3	expressed 24:18 59:21
determine 13:19 35:12	discharged 5:17,20 29:12 51:25	ease 64:13	errors 67:14	expressly 9:19 10:18 12:21 14:8
developed 37:6	discharging 29:19	easily 41:22	equivalent 27:8	extend 42:2
Dicker 23:2,3,4,25 26:24 30:12,15 34:18,20 35:5,8 35:10,24 37:9,13 37:17,23 38:3,10 39:8 44:21,24 45:4,18 46:3,5,12 46:16,19,22 47:15 49:16 50:16 51:10 51:23 52:13,17 53:1,3,10 54:4,23 55:7,10,22,25 56:3,11,25 57:14 58:13,15,22 59:10 59:21,24 60:5,11 60:13 68:3	discussed 2:10,13 32:12 48:3	easy 4:22 28:6	escape 26:8 60:24	extended 41:17
Dicker's 60:16 63:14	distinction 8:8	echoes 13:6	essential 18:5,6	extending 9:15 40:3
dicta 9:25 10:7 23:20	distinguishing 43:3	edition 38:15	essentially 4:1 23:11 29:5 30:7 49:10 50:18 57:11 58:3 64:2	extension 40:7 42:18,21
difference 38:3 58:18 64:25	distribute 40:20 64:1	educational 1:11	estate 64:2	extensive 10:3
different 11:5 14:9 23:8 51:12 62:5	distributed 35:22 58:6	effect 10:1,8 22:19 25:3 36:1 42:21 46:10 55:11 60:4 65:24 66:4	event 32:14 48:7 54:5	extent 10:22 17:3 18:18 25:16 26:4 37:19 45:14 46:24 51:15 61:13 62:16 62:19,20 63:5 66:17
	distributing 39:14 41:21,25	effected 41:13	established 9:9 37:1 38:10	extraordinary 35:2 35:19 37:17
	distribution 12:9 39:18	effecting 39:18	events 16:15	F
	distributions 40:18 41:9	effectively 3:11 27:2 30:17 33:4 34:2 48:17 55:25 56:5,6 57:19 59:11	exactly 15:22	fact 7:24 10:23 17:12 29:2 30:18 31:18 37:15 55:13 60:23
	ditch 56:10	either 24:10 42:10 50:21 54:17 55:10 55:19 57:11 58:6	example 8:14 15:11 16:11,25 28:25 61:22	factor 46:13
	dividend 5:15 6:9 6:10 18:12	element 3:14 24:24 24:25	excerpt 8:6	factual 67:14
	dividends 6:19 7:10 20:24 29:4 29:21 45:13	emerged 6:12	exercise 64:22	failed 56:7
	documents 57:3,3	emphasise 32:19	exhaustive 22:14	fails 39:12
	doing 30:16	emphasising 23:17	exist 21:7 25:15 67:6	failure 50:15
	double 9:3	enables 29:18		
	doubt 31:20 33:23	enabling 15:12		
		enacted 43:25		
		encapsulated 19:22		

fair 10:7 42:11 64:11	fits 37:7	14:12 18:4 22:23	63:14 64:4,8,13	26:1 31:13 35:7
fairly 1:15 21:20 57:1	fix 11:23 19:16	53:10,25 55:15	65:18 67:7,10	38:14 67:24
fairness 9:5 38:24	flat 63:1	56:12 58:19 60:11	Gmbh 9:6	heavily 46:14
fairness-for-all 64:14	flow 58:11	66:10 67:8	go 2:14 11:24 16:11	held 18:25 19:6
fall 64:19	focus 27:9	G	27:17,23 32:3,10	24:17,19 25:20
far 4:21 5:23 6:22 7:7 10:15 11:8	followed 5:16	general 6:4,23 8:4	39:9 40:1 53:12	32:5,14 38:8
21:6,24 23:19	following 12:2 13:10 48:11	11:2 20:22 24:2	54:23 56:24 58:14	42:25 44:17 45:7
24:8,15 34:6	follows 63:18	32:17 34:6 35:20	58:16,17 59:8,19	48:5
38:10 46:17 48:8	force 42:8	40:16 41:7 48:4	63:3	help 61:24 62:7
56:18 66:3	foreign 4:7 9:21 10:15,17,22 14:4	59:9 65:2	goes 19:23 37:17 57:23	higher 5:9 61:18
fatal 42:9	23:12 24:19 25:3	generally 30:25	going 2:8 26:11	highest 8:18 36:10
fault 35:9 51:20	45:7 60:7	Gifford 12:19,21 13:4	36:6 40:13 41:4,5	hinted 58:23
favour 7:15 12:7,15 25:4	form 11:5 21:1 55:5 67:19	give 13:23 16:11	good 8:6,19 36:11 42:19	Hoffmann 58:7
favoured 13:12	formal 67:16	33:9 42:21 44:12	governing 14:16	hold 8:19 36:11
favours 4:12	formulating 9:16	46:1 56:20	gratefully 60:16	hole-punch 14:13
feature 29:14 48:16	forward 4:25 5:1 9:17 63:15	given 10:1,17 20:12	greater 61:20	hope 67:17
features 27:25 48:12	foundation 22:5	25:5 28:24,25	greatest 35:18 38:12	hopefully 23:5
feet 56:16	four 9:12	42:15 47:13 50:5	green 2:23	Humber 12:17,19 38:15
fell 11:18 64:18	fourth 18:2 20:14	51:5,11 57:7,11	grey 2:24	hybrid 24:24 25:8 44:16 45:15 46:11
final 5:15 7:10 18:2 20:9 52:17	freeze 52:12	gives 29:14 50:5 53:8	ground 15:3,8 21:17 25:25 31:15	46:12
finally 4:19 10:13 57:14 66:8	freight 26:6	giving 65:24 66:4	39:16 56:17 57:4	I
find 66:14	friend 21:19 23:5 27:19,22 31:16	GLOSTER 1:6,10	62:11 64:18	identifies 27:25
finish 64:23	34:10 39:5 47:17	1:18 2:8,11,17,21	grounds 24:10	identify 1:21 64:10
firmly 24:19	47:22 48:18 56:16	2:25 3:6,9 4:10,17	Grover 32:12 38:7 48:3	identifying 54:13
first 1:21 2:3,9,10 2:13,14,15 3:1 5:4	58:23 60:23 61:22	4:24 7:18 8:15	guidance 12:23	ignore 4:4 28:6
5:5 7:16,21 10:19	62:10 64:17,25	12:10,12 14:22	H	imagine 28:7,8
20:3 21:10,25	friend's 31:12	15:2,6,10,16,18	half 37:25	imagined 66:23
25:15 27:21 29:4	friends 5:24	15:21 16:10,14,21	hand-down 67:16	impact 1:16 2:18 3:22 18:2 26:14
32:24 34:12,16	full 5:19 9:13 10:22 23:13 34:25 35:17	17:11,13,17,19	handed 42:14	27:19 58:7
37:18 40:6 41:16	35:21 40:8 55:19	18:1 21:12,15,18	happen 52:19	impacted 4:10
42:17 44:9,16	fully 15:24	21:23 23:1 26:23	happened 3:11 30:8,18 31:10	impacts 7:15
49:11 50:17 60:22	function 35:19	30:9,13 35:4,6,9	hard 9:15	impermissible 64:22
62:24 65:22	fund 38:6 42:12 59:6	35:23 37:7,12,15	harmony 41:14	impetus 13:18 16:7
first-hand 65:21	fundamental 8:9 8:11,16,24 34:13	37:21 38:2,9 39:6	hatch 26:8 60:24	impinging 61:21
firstly 5:8 23:19 24:23	36:8 65:3	44:20,23 45:3,16	heading 19:4	implemented 44:5
	funds 52:12	45:24 46:4,11,15	headline 1:23 5:3 26:13	importance 7:22 20:3 43:4
	further 4:8 8:2	46:17,21 47:14	hear 21:19,22	important 24:23 30:15 31:13 32:19
		49:14 50:9 51:6	hearing 20:23 22:7	44:15 55:16,20
		51:18 52:11,16,23		importantly 43:16
		53:2,9 55:21,24		
		56:2,9,24 57:13		
		59:19,23 60:2,10		
		60:12,17,20 62:15		

law 6:11 10:3,25 12:22 13:3 24:17 25:7 30:6,24 37:5 38:4 42:10 43:5,9 50:2 51:4 52:8	likelihood 67:20 limb 32:24 33:19 33:20 50:20 limbs 47:2 limited 23:20 24:1 38:7 line 8:10 12:18 19:17 20:15 59:9 lines 9:12 14:12 19:10 40:13 linked 8:1 liquidation 11:16 11:20,21 20:17 27:3,5,6,10,12,13 33:5,7,8 35:20 41:17 42:4 43:23 45:10 58:6 liquidations 7:1 13:2 24:21 39:22 40:18 41:9 42:17 liquidator 18:22 19:7 20:12 39:17 42:14 list 21:3 listed 2:19 52:21 litigation 53:19 little 26:17 live 2:23 3:3,21 4:18 logically 56:11 long 9:15 28:10,16 29:23 48:23 53:24 long-standing 9:1 look 32:6 44:6 48:11 49:12 66:1 66:7 looking 4:25 5:1 10:10 20:4 31:3 50:9 64:22 looks 29:10 Lord 3:23 8:7 9:2 9:24 12:3,19,21 13:3,25 14:1,18 14:21 19:17,23 20:5,14 23:18,23	26:21 27:1 31:24 33:2 34:11,12,17 34:19 36:6,18 37:13 39:15 40:14 40:24 42:5 44:10 45:11 53:12 54:10 55:3,9 57:20,25 58:7,9,14,17 59:8 59:13,13,16,18,20 60:3 61:7,21 Lords 1:7,14 22:23 61:2 Lordship 61:11 Lordships 25:13 28:4 loss 52:23 lost 32:19 61:5 lot 54:15 Lyons 10:8 38:17	63:1,7,11 65:1,7 66:3 material 18:5 materials 24:15 matter 14:8 26:11 30:18 33:11 34:2 35:25 38:24 45:21 49:12,19 50:2 53:8 55:12,15 57:21 mean 20:5 23:23 25:25 51:19 meaning 5:1 23:10 27:17 45:20 61:1 means 30:3,10 meant 11:24 16:8 23:16 mechanism 42:12 42:15,16 meet 19:13 36:16 40:9 members 34:16 35:1,17,22 52:1 52:18 mention 44:14 mentioned 9:8 10:24 43:3 mere 55:13 merely 20:6 41:17 45:12 56:11 63:3 Metals 50:3 66:11 method 45:4,22 Milman 10:2 mind 10:23 16:21 26:8 55:17 minor 41:25 67:13 67:14 minority 57:16 misfortune 63:25 64:10 missed 14:18 missing 18:8 model 66:11 modifications 41:25	moment 11:13 money 53:21 54:15 54:19 morning 1:15 56:17 mutually 23:21 24:1
N				
N 68:1 natural 44:8,11 nature 9:13 25:8 44:16 45:15 46:11 46:12 necessarily 8:19 36:11,13 necessary 37:3 38:23 56:25 59:15 need 3:12 5:25 9:14 18:17 26:8 52:14 56:7,12 58:14,16 58:25 59:6,12 67:5,16 needed 8:2 40:18 42:21 needs 42:6 51:24 neither 33:25 net 52:21 Neuberger 8:7 9:2 9:24 12:3 14:1 19:23 20:5,14 23:18 26:21 27:1 34:12 36:18 37:13 39:15 40:14,24 42:5 44:10 59:13 59:20 61:7,21 Neuberger's 33:2 34:11 36:6 never 6:24 11:7 63:13,24 nevertheless 41:6 46:9 new 7:23,24 9:16 10:6,21 11:4,9 16:5 20:7 51:18 51:19 63:23				
M				
main 7:6 20:23 21:25 22:7 61:15 62:11,14 majority 23:18 24:5,17 25:5,10 25:20 39:2 43:6 44:17 45:7 46:14 57:15,18 59:20 60:2 management 64:14 Marris 1:24 3:2,7 5:4,21 6:3,24 9:20 11:7 13:15 15:11 15:17 18:3,8 28:2 28:2,12,20 29:18 29:25 30:3,9,20 31:2,6,11,15,20 31:24 32:4,7,16 37:7,11,15 38:5 43:2,10,16,21 44:4 45:3,5,17,19 45:22 46:8,18 47:8,20,22 48:13 55:17,23 59:3 62:1,4,12,16,21				

night 37:21	26:15 27:8,16	outstanding 5:12	18:18 21:6,21	people 44:12
non-application	31:5,9 36:13,23	7:12 28:11,17	29:20,24 31:19	perfectly 42:11
63:16	38:5 43:8 46:13	30:11 53:19 61:24	33:13 37:4 49:11	period 5:11,11 7:11
non-payment 51:2	48:23 51:24 55:17	outstandings 67:21	50:16 58:23 63:3	12:6,14 16:24
57:10	57:15 67:11,15	overall 6:3,22	66:15	17:4 20:23 29:23
non-provable 3:14	occasion 26:5	40:19 64:13	parte 9:8	31:10 38:13 55:19
14:2,17 16:10,18	43:15 47:3	owe 28:8 41:2,3	particular 16:6	61:24 66:1
16:19 17:5,8,9,14	occasions 31:14	owed 26:12	18:20 19:16 22:3	permissible 11:1
17:22 18:20 19:6	occurred 16:16		35:24 58:9	41:11 42:20,24
23:14 24:6 25:19	oddy 29:7	P	particularly 7:23	43:1
26:8 45:14 51:15	offset 4:2	page 19:10 56:22	9:12 10:23 31:4	permitted 49:4
52:25 60:24 66:10	okay 2:17 16:11	paid 5:19 6:10,20	parties 17:14 60:18	phrase 9:5 44:7,11
66:18,18,22,25	old 8:18	7:11 12:8,16	62:5 65:24 67:18	picked 27:22
67:3,3	once 15:7 48:24	18:12 20:24 23:12	parts 49:11 50:17	picking 11:10
non-starter 22:6	49:16	29:4,23,24 30:6	passage 9:18 11:11	34:11 37:13 39:8
non-statutory	one's 55:16	35:21 40:8 41:5	passages 7:19	piece 64:2
11:25	one-way 25:3,9	49:17,20 50:1,19	41:23	place 20:17 21:10
nonpayment 52:9	46:14,19,20	51:1 52:5,7 53:23	passing 8:20	42:17
normal 34:9 45:2	open 14:9	54:7,11 55:1 57:8	passu 8:13 29:3	plain 21:21 58:1
50:1,6 51:1 52:8	opening 35:6,8	paper 30:7 44:1	40:21 41:4	plainly 33:9,19
67:13	operate 25:3 31:7,7	64:3	pay 5:7,18 16:5	34:15 43:1 44:14
normally 27:3,10	58:2 65:23	papers 5:24 67:21	19:3 22:2 29:21	44:17
33:5,22 34:4	operated 31:4,11	paragraph 8:10 9:6	30:1 40:22 49:3	play 58:23
54:16 61:10	62:24	9:6,7,17,23 10:13	50:15 52:6 54:21	pm 67:23
Nortel 9:6,7	operates 40:16	12:10 13:11,21	payable 6:5 18:24	point 3:8,18 4:15
note 8:20	41:8 59:17	14:1,18 18:15	27:4,6,11,13 33:6	5:4,13 6:3,22 7:8
noted 34:20	operation 28:2	19:5 20:9 23:22	33:8 48:7 49:2	10:7,13 11:22
notice 67:11	30:6,24 47:7 64:8	24:4,11,21 25:1,4	50:20,25 52:7	13:25 15:23 17:5
noting 26:20	opponents 2:14	26:22,24 27:1,24	55:4,18 61:10,23	18:2 21:20 26:15
notion 24:23 52:1	opportunity 7:17	28:22 29:15 30:3	66:2	27:21,22 28:21
53:4 54:1 58:25	67:15	31:19 33:2,3,14	Payerst 58:5	31:5 32:18 36:3,6
notional 30:4	opposed 18:13	34:17,18,21 35:4	paying 40:11 49:17	36:17 38:14 43:11
number 31:14	30:10	35:5,8 36:7,17	50:11 63:12	44:6 48:5,9,9 50:8
38:18	oral 27:23	39:9,25 40:14	payment 2:5 3:16	50:24 52:9 53:10
O	order 19:3 32:12	41:10 44:10 48:12	6:8,25 7:10,25	56:12,16,23 57:1
obiter 59:23,25	48:3 67:19	48:18 56:21 61:8	11:19 16:23 17:22	59:11 61:6 63:9
objection 42:10	ordinary 51:4	66:15	18:10,13 19:20	63:15 64:17 65:16
objections 42:8	orientate 55:16	paragraphs 8:7,8	21:4 22:4,6 40:10	65:23
obligation 22:2	original 56:21	11:11 12:1 14:25	49:5,10,24 50:3,6	pointing 24:12
28:18 52:6	65:20	19:15 34:10,12	50:7,10 52:4	points 1:24 2:1 4:2
observation 12:18	ousts 64:4,7	39:9	53:15,17,24 54:3	5:3 7:15 8:7 9:24
obstacle 8:2	outline 7:4	parallel 6:9	54:14 55:4 62:6	10:14 21:11,25
obvious 8:13 25:14	outside 44:23,25	parasitic 57:12	63:20	23:17 24:22 26:13
44:12	50:4 51:3,6,8,22	pari 8:13 29:3	payments 29:8,9	27:18 28:21,23
obviously 1:12	52:24 60:3	40:21 41:4	30:5,19,23	29:15 34:11 37:13
		part 4:21 7:24 15:8		

44:14 47:2,16 48:14 61:2 66:9 policies 26:3 posit 61:25 position 30:8 32:11 54:9,24 61:14 possibility 22:1 possible 22:5 57:22 possibly 53:23 post 22:15 29:21 65:25 post-administrat... 2:6 12:6,14 potential 39:11 41:23 44:21 practical 41:14 practice 10:4 42:10 precisely 30:12 preclude 5:16,18 5:19 precludes 15:4 22:9 predetermined 13:18 preparatory 24:15 present 28:7 presently 24:24 preserve 57:4,5 preserved 57:12 presumably 49:12 presumption 10:21 previous 23:20 36:10 previously 43:18 56:19 principal 5:17,21 6:10,11 18:13 24:8 27:6,12 29:5 29:10,11 30:2,5 30:11,19 33:7 48:24 53:16 54:3 63:18 principle 6:5,23 8:4 8:13,21 9:3 15:12 15:17,20 18:7	24:12 25:6 29:4 34:15 35:25 37:5 37:10 39:20 40:16 41:7 43:15 53:24 64:5,6,9 65:7 principled 24:9 47:14,15 63:15 principles 8:9,11 8:24 9:2,10 26:3 34:13 37:2 38:4 38:19 40:5 41:15 52:8 65:2,3,3 prior 8:5 23:19,23 23:25 24:6 25:6 26:6 37:18 39:10 55:4 63:7 priori 16:7 61:3 priorities 19:21 probably 1:7 8:11 34:13 problem 19:16 28:5 29:2 39:16 44:21,21 45:6,18 46:12 59:2 procedural 41:25 42:20 57:21 procedurally 52:19 procedures 8:17 36:8 proceedings 1:3 52:12,21 proceeds 30:20 process 6:11 15:8 produces 8:2 proof 9:4 12:8,8,15 45:25 proper 18:7 properly 46:9 59:2 65:7 propose 1:14,19 proposing 23:4 proposition 10:10 11:2,2 19:12 20:6 20:22 65:10 protected 41:24	provable 17:12 24:24 prove 17:1 24:4 45:8,13 51:14 52:11 proved 5:10,11,15 5:19 7:12 13:1 20:24 29:5,10,20 29:24 40:21,23 41:4 49:16,20 50:10 51:7 54:7 54:10,24 55:1,4 provide 12:25 14:14 40:20,22 47:5 provided 19:16 20:11 26:6 36:25 39:2,23 41:13 42:22 65:25 provides 17:7,8 18:4 22:13 26:19 28:9 35:13 42:12 45:4,21 50:24 53:5,14 providing 33:15 provision 27:8 28:11 42:23 62:18 provisional 59:21 59:22,23,24 60:3 provisions 12:23 19:25 25:20 36:19 37:2 40:4 41:15 public 38:12 purporting 61:12 purpose 10:24 32:24 33:9,15 36:15 40:12,19 pursuant 25:22 26:10 29:2 31:8 pursue 18:22 pursued 21:4 put 23:11 47:7 53:3 56:5 63:15 putting 23:6	qualification 40:17 41:8 question 3:20 4:5 5:4 11:25 16:2 18:17,22 21:3,10 21:24 39:10,12,13 40:2 46:5,25 50:17,21 54:11 55:7 62:1 66:11 questions 54:4 quick 7:20 quite 1:19 7:20 53:23 quoted 19:17	53:6 54:17 56:18 57:3 59:14 63:15 63:18 reasonably 37:3 38:23 reasons 7:5 24:13 53:22 57:25 recall 31:14,24 33:12 37:18 recap 1:23 5:3 receive 26:11 32:21 32:25 33:11 44:13 received 33:1,18,22 receives 33:17,21 recognise 63:25 recognised 15:25 recommendations 44:4 recommended 43:17 reconvening 67:11 records 28:8 recourse 24:11 recoverable 14:3 recovered 14:5 recovery 13:1 refer 5:13 26:21 43:15 reference 14:16 20:9 34:23 35:14 44:1 56:20 61:15 64:20 references 18:14 referred 9:2 26:5 31:18,23 32:1 38:14 60:23 61:7 61:9 refers 12:17,17 36:22 reflected 45:16 regard 26:4 regarded 24:25 65:11 regarding 22:11 40:17 41:8
			R	
			radical 10:3 raise 62:2 ran 4:15 rate 4:5 5:8,8,9 28:10,16 32:21,23 33:16,24 34:3 44:1,7 61:15,18 61:18,19 63:1 64:10 rates 60:7 ratio 15:9 reached 12:5 24:18 25:10 43:12 reaction 44:8,11 read 7:17 49:22 66:15 read-across 11:1 readily 41:20 Reading 9:11 10:19 12:5,25 14:6,15 19:12,21,25 20:17 ready 64:14 real 28:5 29:1 reality 48:25 52:14 really 13:10 38:3 54:11 62:7 reargue 67:15 reason 2:16 14:6 36:15 37:5 42:19 47:5,10,14,15	
		Q		

<p>regime 29:3,8,17 32:13 43:19,20 44:23,25 46:1 63:12 65:4</p> <p>regimes 8:5</p> <p>rehearing 3:23,25</p> <p>reinforced 22:10</p> <p>reinforces 7:21</p> <p>reinforcing 20:5</p> <p>relate 4:1</p> <p>relates 2:22 7:3 17:4</p> <p>relating 8:18 36:10</p> <p>relation 4:16 8:22 11:3,6 15:10 16:4 16:16,24 19:9 20:24 22:17 23:6 23:8,9 25:6,10,21 28:14 31:4 32:11 33:20 36:12 42:24 43:2,8 44:18 45:18 46:16 47:12 47:17 48:1,2,14 50:22 51:1,13 52:13 54:24 55:8 57:14 59:5 66:4</p> <p>relatively 42:20</p> <p>release 66:21</p> <p>released 21:16 66:19 67:1</p> <p>releases 21:8,13</p> <p>relevant 7:19 29:24 39:8 57:24 60:25</p> <p>rely 9:25 10:9 15:23 32:10,16</p> <p>remain 2:23 3:3</p> <p>remaining 17:20 40:10 50:10 67:2</p> <p>remains 3:21 4:18 4:22</p> <p>remedy 52:20</p> <p>remember 43:19</p> <p>remission 15:4,19 62:23 63:6</p> <p>remitted 6:13 8:21</p>	<p>62:19 63:8 65:12</p> <p>reordering 20:6</p> <p>repaid 48:25</p> <p>repayment 27:5,12 33:7</p> <p>repeat 7:6 65:9 66:8</p> <p>repeated 62:10</p> <p>replaces 57:19</p> <p>reply 31:12 53:10 56:13 60:21,22 62:13 65:21 68:4</p> <p>report 5:13 25:7 43:5,9,14,17 44:3</p> <p>report's 44:4</p> <p>represent 25:21</p> <p>represents 42:9</p> <p>require 7:11 29:19 29:22 30:1</p> <p>requires 29:20 40:8 40:10 42:18 54:20</p> <p>reserve 67:12</p> <p>reserved 42:12 67:24</p> <p>reserving 42:5</p> <p>respect 7:11 13:23 16:12 19:7 25:19 29:4,9,23 35:18 40:21</p> <p>respecting 65:24</p> <p>respects 42:4</p> <p>respondent 2:11</p> <p>result 15:25 17:24 29:3 52:21</p> <p>return 35:1,17 51:25 52:17</p> <p>reversion 58:21</p> <p>revive 12:7,14</p> <p>revived 6:14</p> <p>rewinding 11:13</p> <p>rewriting 19:25</p> <p>Richards 20:10 31:19 33:13 44:9 47:5 52:18 66:14</p> <p>right 6:7,14 11:12</p>	<p>11:17,17,25 12:6 12:13 13:17 16:14 17:3,6 20:19,25 21:23 22:21 24:3 47:21,23 48:1,2,4 48:6 49:22 50:22 51:4,10 53:9 54:13 55:2,5,11 55:13 57:4,5,12 59:1,4,6,16 60:10 62:19,22,25 63:2 63:22,23 66:5 67:7</p> <p>rights 2:7 6:9,13 7:3 8:22 10:23 13:16,20,23 15:5 15:19 16:1,8 18:9 18:11 22:14 26:10 34:23,25 35:12,14 35:16 51:1 53:7 57:20 58:21 61:5 61:13,20 62:23 63:4,6,9 65:12,13 65:24 66:4</p> <p>rise 29:14</p> <p>room 6:20 13:3,11 64:6,7</p> <p>Rory 37:18</p> <p>rough 64:14</p> <p>roughly 23:5</p> <p>round 16:22 65:22</p> <p>rule 2:4 5:6,23 6:25 7:2,24 8:21 9:3,4 9:8,9,16,16 10:12 10:21 11:4,4,6,8,9 13:17,19 15:15,15 16:4 19:19 20:4,6 20:8 22:8,13 23:10,16 25:2,22 25:24 26:2,18 27:9 28:5,23 31:3 32:21 35:24 36:14 36:15,22,24,25 37:9,10,24 38:6 38:11 39:3,13,19</p>	<p>39:20,22 40:3,7,9 40:15,24 41:16,20 41:24 42:2,17,18 42:25 43:2,23 44:18 45:8 47:7 48:13,19 49:7,13 50:4 53:4,8 59:5 60:4 61:1,11,14 63:16,20,24 64:20 65:6,15 66:2,6</p> <p>ruled 19:2</p> <p>rules 8:17 9:5,22 10:14,19 14:8,11 14:14,16 16:2 20:13 25:18 28:1 28:3 36:9 37:4 39:23,24 40:17,19 40:20,22 41:1,6,8 41:13 45:2 50:6 52:24 58:5 64:23</p> <p>run 5:15 17:21</p> <p>runs 3:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>satisfied 16:9 34:25 35:17</p> <p>save 17:20 29:13 47:11</p> <p>saying 14:22 19:18 26:18 30:22 44:24 45:1 46:5 50:4,13 50:14,15,18 51:13 51:21 53:14 57:20 62:17</p> <p>says 8:25 12:3 13:13 14:12 20:14 21:22 26:17 27:1 29:8 33:14 34:12 34:21 36:7,18,24 39:15 40:14 41:1 41:10,19 42:6 45:9 46:7 47:22 47:24 48:18,19,24 49:3,21 52:15 62:21 63:3 64:19 64:25 66:6</p>	<p>scale 53:18</p> <p>scarcely 42:15</p> <p>scenario 54:16</p> <p>SCG 3:16 6:24 13:12 17:20</p> <p>scheme 8:23 13:22 15:25 30:22 57:9 57:19 58:1,11 59:17 64:4,8,15</p> <p>Sealy 10:2</p> <p>second 2:4 6:3 10:16 14:12 22:11 33:20 35:10 36:6 46:13 49:14 50:24</p> <p>secondly 1:23 5:9 8:1 22:8 24:8 25:2,18 44:19 61:7</p> <p>section 10:14 11:12 18:16,19 19:1,14 19:19 27:2,8 31:4 32:3,6,7 33:3 38:22 48:1 59:7 61:9 62:18,24 64:21</p> <p>see 3:1 15:17 17:11 17:19 20:4 21:18 28:6 31:2 42:19 45:16 53:9 54:12 59:7</p> <p>seeking 44:12</p> <p>seen 38:6 44:8</p> <p>self 55:16</p> <p>Sempra 50:3 66:11</p> <p>sense 4:11 10:10 17:2 28:6 47:19 51:23 54:2,13 59:25 65:2</p> <p>sentence 10:16 35:10</p> <p>separate 3:8 52:24</p> <p>set 39:6,11</p> <p>set-off 37:19,24</p> <p>seven 14:11</p> <p>share 41:4</p>
---	---	---	--	--

shareholders 18:23 19:8	slightly 11:5 54:1	57:6,9,19 58:1,4	66:13	taken 42:6 43:18
sheet 30:7	small 1:12	58:11 59:17 62:18	support 18:4	60:18 64:1
short 3:17 7:8 50:8	Smith 60:14,15	62:22 63:2,12,12	supporting 24:10	takes 47:19 62:9
67:11	so-called 11:14	63:20	24:13	talks 33:3
shortly 1:19,23	65:7	stay 52:20	supports 20:22	task 35:11
14:6 38:16 49:6	solely 45:19	step 42:21	supposed 8:3	tells 65:25
57:1	solvent 24:20	sterling 45:9	Supreme 1:16,22	terminological
show 26:22 39:4	sorry 1:11 12:10	stops 48:24	1:25 2:2,15,18	53:1
showed 14:25	34:17 35:4,9	stresses 20:3	3:22 4:12 7:14,17	terms 2:18 7:23
34:10 44:10	55:21	strong 40:6	8:25 9:7,19 11:14	9:10 37:1 38:19
showing 15:24	sort 13:18 45:25	subject 21:8,13	11:23 12:3 13:9	41:22 56:2 66:19
shows 13:21	sorts 53:21	58:4	15:3,24 16:20	test 52:3
side 23:7 30:13	source 28:5 29:1	submission 21:20	18:3,25 19:8	textbook 38:16
sight 38:14 40:6	specific 24:22	28:1,4 29:1 35:2	20:14 22:10,14,25	Thank 14:21 23:1
silent 5:23 10:15	specifically 43:12	35:19 47:3,12	25:14,20 26:15,17	34:19 60:12,17,20
similar 23:4,5	spell 10:21	51:20 59:15	27:20 34:8 42:25	67:10,22
32:11,13 33:12	stage 9:20 50:25	submissions 1:5,15	43:6,7 52:15	thing 2:3 41:16
43:1,23 44:17	stages 1:20	3:4,4,17,23,25 4:8	57:16 61:3,8	43:10,24 53:1
Similarly 33:20	stand 62:13	4:19 21:6 22:7,24	64:19	66:9
56:1,3	standard 52:13	23:3 27:16,20,23	sure 51:20 58:18	things 2:16 30:2
simple 19:12 28:7	stands 46:23	27:24 35:6,8 58:9	59:24	34:1 36:22 58:11
29:25 42:20 56:18	start 1:8 18:14 23:6	58:24 60:7,16,19	surely 16:7	think 9:15 15:14
simpler 37:16	64:23	60:21 62:10 65:9	surplus 5:7,18 6:12	47:16 48:9 53:14
simplicity 4:13	starting 26:15 36:3	65:16,19,21,22	6:18 14:3 16:5,12	54:9 56:25 58:22
47:13 64:13	64:2	67:9 68:2,3,4	18:23 19:1,21	58:23 62:13
simplify 10:25	state 64:12	submit 7:21 22:9	20:8,20 27:7,14	thinking 59:15
simply 18:8 20:4	stated 14:6 66:13	submitted 43:14	29:19 32:14 33:8	third 6:22 8:10
21:9 22:6 30:3,22	statement 22:14	subparagraph 46:7	40:10,23 48:7,22	13:9 19:17 36:17
41:20 47:19 50:4	states 5:14	subrule 49:15 50:9	49:3,17,21 50:10	thirdly 1:24 5:10
51:1,4 54:14 55:4	statute 17:7,7	subsequent 16:13	52:17,18 53:16,22	6:22 24:15
66:3	18:25 32:2 36:1,5	16:17 20:12 31:8	53:25 54:11	thought 47:6
sit 54:15,20	65:15,25 66:1,7	42:14	surprising 42:15	three 1:20 19:10
situation 28:7	statutory 5:5 6:16	subsequently 43:25	survive 8:25 12:7	23:17 34:11
29:11 30:16 51:12	6:17,19,25 7:2 8:5	subsisting 17:13	12:14	thrust 32:20 33:19
situations 47:20	11:6,8,17,19	succeed 56:8	surviving 39:24	33:21 47:2
six 14:11 40:13	12:22 13:1 15:7	suffer 64:1	susceptible 62:4	time 1:9,13 6:8,19
sixth 12:18	15:12 17:9,23	suggested 56:17	suspect 54:22	10:19 18:11 29:6
skeleton 26:22,23	18:21 19:3,4,20	sum 4:16 5:9 50:1		54:11 64:1
27:21 29:16 34:20	20:7,19,25 22:2	51:2 52:5,9	T	today 2:20 4:9
39:6 48:10,11	22:17 29:3,7,17	Sumption 13:25	T&N 52:19	told 1:12 54:21
53:11 56:13,21	29:22 30:22 32:13	57:20,25 59:13,16	tab 2:20 4:21 27:24	tort 16:13,16
skipping 9:17	34:6,9 40:11 45:2	Sumption's 45:11	56:21	trap 64:18
sleeve 58:20	46:25 47:21,25	sums 51:25	take 1:19 7:16,19	treat 30:24
slight 53:13	48:6 49:5,10,25	supplemental 2:20	23:4 30:7 43:1,8	treatment 10:15,17
	50:19 52:20 55:5	33:13 35:7 65:20	49:6 54:9 55:15	trouble 3:12
			66:24	

true 28:14 30:20 34:1 38:11 40:15 43:13 46:6 47:11 trust 58:4 try 61:25 trying 16:21 30:17 30:21 47:1 53:13 64:19 Tuesday 1:1 turn 2:20 27:24 67:16 turned 53:21 54:19 turning 5:3 7:14 21:2 26:14 tweaks 42:5 two 2:2 3:5 6:9 7:4 18:9,11 19:15 21:11,25 24:22 25:14 33:25 38:3 44:14 47:2 49:11 50:16 type 45:17 typical 28:11 typographical 67:14	unprovable 24:25 unreal 54:16 unsatisfied 14:4 unworkable 20:1 urged 18:5 use 19:19 45:10 53:17 uses 9:4 utterly 61:1	W	36:4,16 words 5:16 9:12 10:11,20 12:5,25 14:7,15 19:13,21 20:1,4,17 24:11 25:22 26:9 27:9 30:19 35:11 45:11 48:21 56:9 57:5 58:25 work 13:22 16:4 53:13 66:2 works 16:3 47:22 world 16:19 worse 29:11 worth 23:17 26:20 writing 1:16 2:14 2:15 3:18 4:8,14 21:20 60:9 66:9 written 21:6 26:21 27:23 29:16 31:12 60:6 65:16,18 wrong 7:5 34:22 35:13 50:22 55:11	0
ultimately 37:4 unaffected 57:2 unambiguous 5:6 underlying 9:10 26:3 37:1 38:19 47:10,23 54:12 57:20 58:8 59:1,4 understand 18:15 21:5,6,21 25:11 52:23 54:8 57:18 58:12 understanding 24:2 understood 15:24 31:17 58:2 59:2 65:8 66:22 undoubtedly 16:19 22:10 67:1 unpaid 45:14 51:15	V	waived 57:7 67:1,6 waiver 4:22 66:12 waivers 21:8 want 4:14 27:17,18 56:24 wanted 59:13 wasn't 43:24 wasted 1:8 Waterfall 4:24 18:18 19:22 way 5:20 6:1,17,18 8:3 13:9,22 14:8 14:10 16:3,6 17:8 23:12 28:18,19 29:13 34:4 37:15 40:4 41:13,22 52:3,4 53:3 56:6 58:2 59:17 60:22 60:25 61:12,21 62:6 63:2 64:10 65:23 66:7,7,10 67:13 well-established 10:12 went 2:15 11:15 19:8 Wentworth 28:22 29:15,18 47:11 53:11 56:13,19 Wentworth's 27:21 33:25 34:20 47:17 48:11 56:20 whatsoever 22:22 White 44:1 58:7 Whittingstall 32:12 38:7 48:3 wholly 12:20 16:13 16:17 wider 39:19 57:17 winding 12:24 wish 60:8 wording 20:13 26:1 26:16 27:25 28:5 28:22 32:6,8,20	1	1 3:1,2 25:24 46:5 48:19 52:5 57:14 68:2 1,000 28:9 10 4:1,4 28:10 10.30 1:2 10.37 1:4 100 52:4 11 4:5 60:7 117 20:9,15 12 4:15 8:7,8,10 34:10,18 35:4,5 36:7 12.15 67:23 122 9:6 124 12:1 14:25 125 11:11 12:3,11 14:25 126 11:11 13:5,21 13 4:19 8:7,8 9:1 34:10 36:17 132 31:4 32:3,6 38:22 48:1 59:7,8 62:18,24 64:21 139 18:15 19:5,10 142 19:15,18 144 25:1 16 34:21 35:8,9 56:21 166 39:9 17 39:25 172 39:13 173 39:15 174 39:21 177 40:1,25 178 41:10 180 41:19,19 42:6 1825 31:5,8,16,25 32:3,5 38:22 48:2 64:21 183 41:19 42:7 1841 32:12 48:3
U		X	Y	
		X 49:24,24 68:1	years 31:25 York 4:15 48:9	
		Z		
		Zacaroli 1:5,6,7,14 1:19 2:10,13,18 2:22 3:1,8,10,25 4:11,18 5:1 7:19 8:16 12:11,13 14:20,24 15:3,7 15:14,17,19,22 16:13,15 17:1,12 17:16,18,20 18:2 21:14,16,19,24 60:20,21,22 62:16 63:18 64:6,9,16 65:20 67:8 68:2,4		

64:21	2C 4:24			
1883 31:9,16,22				
32:5 63:7	3			
189 19:19 27:8	3 2:20 3:10			
189.2 27:2 61:9	34 33:14			
194 14:1,20				
1949 10:14	4			
1986 7:1,22 10:19	4 3:14 4:21 21:2			
24:16 26:2 36:12	49:5 57:14 66:8			
36:20 38:17 39:23	4.91 9:22 14:14			
39:23 40:17 41:8	46 56:21			
63:19 64:23				
2	5			
2 3:1,3 7:7 18:18	5 3:20 27:24			
38:18 48:8,20	5.2 27:24,25 28:22			
57:14 66:15	5.3 27:24 28:1			
2.69 40:7	29:15 30:3 48:12			
2.86 9:22 10:21	48:18			
14:14 23:10,11,13	53 26:22,24 27:1			
23:16 25:2 45:9	33:3 61:8			
2.88 2:5 8:3 11:4	56 66:15			
15:15 16:4 19:19				
20:6 22:8 25:22	6			
25:24 26:2,7,10	6 4:1,4			
26:16 27:9,17	60 68:4			
28:6 31:3 32:9,20	65 31:19			
32:21 44:18,25				
45:1,8,20,21 46:6	7			
48:14,19 49:7,15	7 49:15 50:9			
50:4,4 51:3,9 53:5	74 18:19 19:1			
57:4 60:4 61:1	74.1 19:14			
63:17 64:20				
2.88(7) 5:6 20:11	8			
40:9 49:12,13,21	8 28:16 34:3			
49:23 50:18 51:5	83 9:17,23 23:22			
51:11 52:3 53:8	24:11			
53:13 55:8,12	86 10:1,11,24			
2.88(9) 47:3 61:14	88 24:21			
20 56:22	89 24:4			
2014 49:20,23 52:5				
54:8	9			
2017 1:1	90 10:13			
23 68:3	91 25:4			
25 1:1				
2A 2:22				