Thursday, 26 March 2015
(10.30 am)
Submissions by MR TROWER (continued)
LORD JUSTICE MOORE-BICK: Yes, Mr Trower.
MR TROWER: My Lords, two concluding points on provability and the administration of the contributory before I move on to the contributory rule.
The first point is comparing, if you like, Nortel to the present case. In Nortel the original relationship was between the employer and the target companies, paragraph 84 is where Lord Neuberger explains it.
The vulnerability did actually occur after the relationship arose. You get that from paragraph 85 of the judgment, because the vulnerability that Lord Neuberger was particularly focusing on was the vulnerability in the context of the administration.
The third point just to bear in mind is that the liability in that case is initiated by a third party, who is the pensions regulator, and the obligation to pay under the contribution notice requires the debt to be paid to the trustees, i.e. the underlying beneficial interest or the beneficiaries. You get that from paragraph 12 of the judgment of his speech as to how it is that it is structured. One can immediately see that the closeness between the situation in which getting

hold of the money, if I can put it in those colloquial terms, is something which is initiated through a process, which is controlled by the regulator.
It's not the same, but there are parallels with the situation in the present case where the process is initiated through the liquidator and the money comes into the company's assets.
My Lord, that's the first point. The second point is, whatever may be the position in relation to a contingent claim by a company pre-administration, and my Lord Lord Justice Briggs made a comment right at the end of my submissions yesterday about the position in relation to making contingent claims where the company is still subject to the control of its directors, and that may be different from the position post-administration.
Whatever the position may be there, we submit that where a company has actually gone into administration it is plain that that company and the liability comes within what Lord Neuberger described in paragraph 85 of his speech as the penumbra of the regime. We would say that in any event you have a contingent liability at an earlier stage, but by the stage of administration the company and the liability that arises under section 74, which is all part of the same structure, is within the

penumbra of the relevant regime. It's within the same statutory envelope, which includes a scheme for the distribution of its assets.
So, my Lords, that is what I was going to say about provability unless your Lordships have any further questions.
So far as the contributory rule is concerned, as I've explained, this arises if the judge was wrong to hold as he did in relation to declarations 8, 9 and 10, because we accept that, if you conclude that the judge's decision in relation to those were right, then the point can't arise because there's a set-off in relation to the claim and the cross-claim.
I was going to split my submissions into three parts: what is the contributory rule, when and why does it apply and why do we say it would apply in an administration? I will deal with them, I hope, relatively shortly.
LORD JUSTICE MOORE-BICK: Yes, thank you.
MR TROWER: The starting point is Grissell's case. I will go to it in just a moment, but Lord Chelmsford -- if I can just give you the note for the purposes of this first point. Lord Chelmsford says at page 534 that the question depends entirely upon the construction of the Companies Act. He says, slightly later on:

"The primary intention of the legislature in the provisions relating to the winding up of companies must be regarded ..."
So one is dealing with a construction point, and the same point has been made in subsequent cases.
While we of course then, therefore, agree that the contributory rule is a rule of statutory construction, it's also clear that it has been informed, is the way we would put it, by the existence in terms of an equivalent equitable right of retainer in the form of the rule in Cherry v Boultbee. It's a different rule but it's been informed by that, and that's precisely what Lord Walker made clear in Kaupthing. Can I take your Lordships first to the Kaupthing case, which is 1C, tab 89. (Pause).
Kaupthing was a case about the rule against double proof and the interrelationship with the rule in Cherry v Boultbee. When your Lordships are reading Lord Walker's speech, when he talks about the equitable rule, what he's talking about is the rule in Cherry v Boultbee. You get that from a number of parts of his judgment.
But I think for present purposes, because a lot of the judgment is dealing with the complex -- although he actually criticised Chadwick LJ for describing it as

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 some form of rocket science, it's nothing like that.
2 The simple point that I need to take your Lordships to
3 the judgment for at this stage is paragraphs 51 and 52,
4 where he's looking at a passage -- or he starts off in
5 51 by referring to:
6 "The line of authority dealing with the special case
7 of shareholders liable for calls on shares which are not
8 fully paid up. Some of these cases are mentioned in
9 paragraph 20 above."
10 Just flicking back to paragraph 20 above, your
11 Lordships will see reference to a series of cases,
12 including Grissell's case which appears just over the
13 page on page 817, just over the page from the beginning
14 of that paragraph.
15 He then says:
16 "Chadwick LJ sets out a fuller citation of the case
17 but I have say with respect he seems to have missed the
18 point."
19 Then he what says what that point is:
20 "The situation in this line of authority is that
21 a shareholder as a creditor of an insolvent ...(Reading
22 to the words)... not fully paid up so that he is liable
23 as a contributory. Suppose he has 10,000 £1 shares, 10p
24 paid and is owed 15,00 ...(Reading to the words)... he
25 has no right of set-off and to that extent he is

1 disadvantaged."
2 And then he cites Auriferous:
3 "If he seeks to prove in the liquidation the
4 liquidator can rely on the equitable rule as it applies
5 in a case of this sort."
6 So there he is actually characterises the
7 contributory rule as an equitable rule, or part of it:
8 "That is that he can receive nothing until he has
9 paid everything that he owes as a contributory, that is
10 in re Auriferous. The rule is also very clearly stated
11 by Buckley J in West Coast Gold Fields, cited in
12 paragraph 20 above."
13 So if one flicks back to page 817, where the
14 citation is:
15 "The right view is that the person liable as
16 a contributory [that's the citation at page 817 in
17 paragraph 20] must have discharged himself in that
18 character before he can set up that as a creditor he is
19 entitled to receive anything and a fortiori as it seems
20 to me before he can set up that as a contributory he is
21 entitled to receive anything."
22 Then Lord Walker goes on:
23 "Payment of the call is a condition precedent to the
24 shareholders' participation in any distribution and
25 again the shareholder is to that extent disadvantaged."

1 Then in paragraph 53, he goes on and explains how
2 the equitable rule, which is the rule in
3 Cherry v Boultbee, may be said to fill the gap left by
4 disapplication of set-off but it doesn't work in
5 opposition to set-off; and in that sense is consistent
6 with the way the contributory rule has been considered
7 in the authorities.
8 But the important point here is -- well, for present
9 purposes he's equivalating, if you like, the
10 contributory rule to the rule in Cherry v Boultbee.
11 They are similar in effect and there are obvious
12 resemblances, but one also can see from the way he puts
13 it that it's a product of the interpretation by the
14 courts of the statutory scheme but against the
15 background of this equitable principle.
16 We submit that it is a rule the development of which
17 has been influenced and informed by the existence of
18 a parallel equitable rule of similar effect.
19 The core of our point is the rule should -- and we
20 accept it's a development. It has to be development in
21 this case because the rule has only ever been applied in
22 the context of liquidations where a call has actually
23 been made, and we accept that. What we're inviting your
24 Lordships to do is develop the rule to meet the changes
25 in the insolvency procedures that are contained in the

1 existing code.
2 Now --
3 LORD JUSTICE BRIGGS: Specifically you mean the
4 Enterprise Act change?
5 MR TROWER: Indeed. The introduction of distributed
6 administrations and in particular the application of the
7 code with the application of the pari passu principle.
8 Because, as I will show your Lordships in a moment, the
9 contributory rule does three things. First of all, it
10 protects the pari passu rule. Secondly, it fills the
11 gap left by the disapplication of set-off and third it
12 ensures that the statutory mechanism for making calls in
13 a liquidation is not defeated. So those three things
14 are what is going on.
15 LORD JUSTICE LEWISON: Does this development of the rule
16 apply irrespective of whether the contingent liability
17 is provable?
18 MR TROWER: Yes.
19 LORD JUSTICE LEWISON: Even if the contingent liability is
20 not provable in the administration of the
21 contributories?
22 MR TROWER: Yes.
23 LORD JUSTICE LEWISON: You say the contributory rule or this
24 equitable rule applies --
25 MR TROWER: Yes.

1 LORD JUSTICE LEWISON: -- to preclude them from
2 participating in any distribution in the administration?
3 MR TROWER: Yes, I do say that. The answer may depend on
4 why it's not provable, but I do say that because --
5 LORD JUSTICE LEWISON: Suppose it's not provable for reasons
6 encapsulated in (c) of Lord Neuberger's test. There's
7 something in the statutory scheme --
8 MR TROWER: Yes.
9 LORD JUSTICE LEWISON: -- that means that one shouldn't
10 allow it to be provable.
11 MR TROWER: Yes.
12 LORD JUSTICE LEWISON: If it's not provable for reasons of
13 that kind.
14 MR TROWER: They all sort of feed off each other in this
15 sense because it would be quite surprising -- I think
16 I would have to accept that I would be quite surprising
17 if it was not provable because of the way the scheme
18 worked but I was still entitled to the protection of the
19 contributory rule, because in a sense the contributory
20 rule wouldn't be protecting anything that the scheme
21 regarded as important for protection. If the scheme
22 regards it as important for protection, one would expect
23 under the 77(c) test that there would be an ability to
24 prove.
25 So in that sense they are intimately interlinked.

1 But what I don't want to accept for present purposes is
2 that in all circumstances the two stand or fall together
3 because one can conceive of a situation in which
4 provability might -- there might be a problem with
5 provability, but where you still need, in order to
6 protect the statutory scheme, to ensure that the ability
7 to call on contributories is protected.
8 LORD JUSTICE LEWISON: Yes.
9 LORD JUSTICE BRIGGS: It may help clear one's mind if one
10 starts with a solvent contributory.
11 MR TROWER: Yes.
12 LORD JUSTICE BRIGGS: For the present purpose and then see
13 what difference its insolvency might make.
14 MR TROWER: Yes. Yes.
15 Yes, that may be right. I am just thinking about
16 whether to develop the submission based on the back of
17 that statement. (Pause).
18 I think it is important, having made those three
19 points about what it does, to go to Grissell's case and
20 just see where they fit in the structure of where this
21 rule started.
22 LORD JUSTICE MOORE-BICK: Right, where is that?
23 MR TROWER: Which is 1A, tab 6. (Pause).
24 The headnote is very short and is on the page -- at
25 the beginning, obviously, six lines' worth. I ask your

1 Lordships to cast your eyes on that and then turn to the
2 beginning of Lord Chelmsford's speech at page 533.
3 Would my Lords read the first paragraph, which sets the
4 scene. (Pause).
5 Then he goes on, on 534, to deal with the point
6 about it depending entirely upon the construction of the
7 Companies Act.
8 Then, important for present purposes, the next
9 paragraph:
10 "in considering the questions involved in these
11 applications, the primary intention of the legislature
12 in the provisions relating to the winding up of
13 companies must be regarded. That intention is expressed
14 in the 133rd section of the Act, being that the priority
15 of the company shall be applied in satisfaction of its
16 liabilities pari passu and subject thereto shall unless
17 it be otherwise provided by the regulations of the
18 company be distributed amongst the members according to
19 their rights and interests in the company."
20 So on the first point, what is relevant to note is
21 that he's referring there to the pari passu rule as
22 being the primary intention of the legislature in the
23 provisions relating to the winding up of companies.
24 That's the starting point. One can immediately see why
25 the pari passu rule is relevant. The contributory holds

1 in his own hands a part of the estate which he's liable
2 to contribute to the estate. If he paid that amount
3 into the estate so as to complete the estate, he would
4 then receive back his share of the estate pari passu
5 with the other ordinary unsecured creditors. If he
6 retains part of the estate in his hands while also
7 receiving a dividend, he gets more than his fair share
8 and that's a breach of the pari passu rule.
9 That's how Kekewich J put it in Akerman, which was
10 quoted by Lord Walker in Kaupthing. As Lord Walker
11 notes in Kaupthing, Akerman is dealing with the
12 Cherry v Boultbee position but the position is the same
13 in relation to the contributory rule and
14 Cherry v Boultbee. It's this concept of retaining that
15 which you ought to be contributing.
16 Now, if there is no set-off, therefore, and the
17 contributory rule does not apply, the insolvent
18 contributory gets more than his fair share because he
19 retains in his hands the contribution that's he's
20 required to put into the estate whilst additionally
21 receiving a further part of the estate by way of
22 dividend.
23 So that's the starting point.
24 Stage 2, the contributory rule fills the gap left by
25 the disapplication of set-off. That's the second part

1 of the stage.
2 The starting point here is that there was no
3 mandatory insolvency set-off in liquidation at the time
4 of Grissell's case. Lord Chelmsford makes this clear at
5 the bottom of page 535 and over to page 536. (Pause).
6 It starts at:
7 "The two remaining questions may be considered
8 together. It appears to me to be quite clear ..."
9 If my Lords would just read that paragraph.
10 (Pause).
11 Then also, on to the next paragraph:
12 "The case of a member of a limited company is
13 different from that of a member of a company of
14 unlimited liability."
15 I need to explain to my Lords how that fits, given
16 we're here dealing with an unlimited company in the case
17 of LBIE. (Pause).
18 LORD JUSTICE BRIGGS: There the contemplation must be
19 a solvent -- Lord Chelmsford must be thinking about
20 a solvent contributory.
21 MR TROWER: I think that's right. In a way the contributory
22 rule shouldn't really depend on whether the contributory
23 is solvent or insolvent, because that would be quite
24 a difficult concept to apply from a pragmatic point of
25 view and perhaps more importantly the contributory may

1 become insolvent at any stage.
2 LORD JUSTICE BRIGGS: Yes, but the creditors would mind very
3 much if the contributory was insolvent contrary to the
4 way Lord Chelmsford sets out his observation.
5 MR TROWER: Yes.
6 LORD JUSTICE LEWISON: Do we have section 101 somewhere?
7 MR TROWER: Yes, I am just going to take your Lordships to
8 it. It is in bundle 3 at tab 9. It's page 811 of the
9 print. It starts at the bottom of 811 and goes over to
10 812. (Pause).
11 LORD JUSTICE BRIGGS: The key word is "may" in the middle of
12 the bottom line.
13 MR TROWER: Yes, indeed.
14 LORD JUSTICE LEWISON: Has any equivalent found its way into
15 the modern Insolvency Code?
16 MR TROWER: It is 149(3), is what we have in the modern
17 code.
18 LORD JUSTICE BRIGGS: Yes. (Pause). Which we looked at
19 yesterday.
20 MR TROWER: Yes.
21 LORD JUSTICE LEWISON: It is 149(2)(a).
22 MR TROWER: Yes, your Lordships is right, it is (2)(a)
23 and -- well, it's 3 really because the proviso to 101 is
24 the same as (3).
25 LORD JUSTICE LEWISON: Yes.

1 MR TROWER: Then if one goes on just in the same bundle as
2 Grissell's case to a case called Black's case, which is
3 behind tab 16. If my Lords would turn to page 265,
4 really just to -- this is Mellish LJ putting the point
5 about the implication derived from section 101 slightly
6 more clearly at page 265 in the paragraph starting at
7 the top of the page. (Pause).
8 Then, flicking back in the same bundle, having made
9 that, I hope, point good as to how that bit of the
10 structure works, we go back to Grissell again and just
11 carrying on at the bottom of page 536. (Pause).
12 If my Lords would read the paragraph "But" to just
13 the end of the last paragraph of the judgment, which is
14 dealing with the point that the contributory rule is
15 necessary to plug the gap left by the inapplicability of
16 set-off. (Pause).
17 That point about filling the gap was made in the
18 last paragraph of Lord Walker's speech in Kaupthing as
19 well, when he's talking about the equitable rule, but
20 what he said in paragraph 53 -- which was the paragraph
21 after the ones I invited your Lordships to look at.
22 Your Lordships may have read it, but if not I think we
23 ought to just go back to it. (Pause).
24 So you have:
25 "The equitable rule may be said to full the gap left

1 by disapplication of set-off, it doesn't work in
2 opposition to it. It produces a similar netting off
3 effect except where some cogent principle of law
4 requires one claim to be given strict priority to
5 another. The principle that a company's contributories
6 must stand in the queue behind its creditors is one such
7 principle. The rule against double proof is another.
8 I would accept ..."
9 Et cetera.
10 He is obviously dealing with a slightly different
11 point here in the sense that he's dealing with the
12 interrelationship between the rule against
13 Cherry v Boultbee and the rule against double proof, and
14 one accepts that. But it is important to see how it is
15 that the contributory rule and the equitable rule fit
16 together with set-off, because obviously if you have
17 a mandatory set-off there isn't room for the application
18 of the contributory rule because there's a mandatory
19 entitlement under the code which entitles set-off.
20 If you don't have the set-off, for whatever reason,
21 the contributory rule fills the gap in this particular
22 case.
23 So what we primarily submit in relation to the
24 principle is that it's necessary to protect the
25 pari passu rule to ensure that the contributory doesn't

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 get more than his fair share in a context in which it's
2 also necessary to ensure that the statutory mechanism
3 for making calls in a liquidation is not defeated.
4 The legislature has throughout had a fairly detailed
5 statutory mechanism for the making of calls by
6 liquidators. What the courts have strived to do in
7 Grissell's case is to protect and give effect to this
8 statutory machinery and to make sure that it's not
9 defeated. That's what's going on.
10 But it may be that protection of the mechanism by
11 which calls can be made and protection of the pari passu
12 rules are just a different way of putting the same
13 point, at the end of the day, given what a call is, what
14 it is being brought in to do.
15 There's just one other bit I wanted to show my Lords
16 in Black's case, also called Paraguassu, which we looked
17 at just now. Sorry to keep darting around. It is
18 behind tab 16 in 1A, 262. It's put rather neatly by
19 Lord Selborne here. The sentence starts at the very
20 bottom of page 261 and it's the rest of that paragraph
21 to halfway down page 262. (Pause).
22 LORD JUSTICE BRIGGS: Yes.
23 MR TROWER: So, in summary, what we say is the rule is
24 a rule that is concerned with the protection of the
25 pari passu rule and the statutory mechanism for the

1 making of calls in a liquidation in circumstances where
2 set-off is not available. It's dependent on the true
3 construction of the relevant provisions of the
4 insolvency legislation, ultimately, but it's been
5 formulated --
6 LORD JUSTICE BRIGGS: Not in a mechanical sense but in
7 a purposive sense.
8 MR TROWER: In a purposive sense. The way we would put it,
9 it has been formulated by the courts in order to give
10 effect to the intention of the legislature. That's the
11 way it works and it's an example of the well-known
12 phenomenon of a court developing these rules in aid of
13 a statute to ensure that the intention isn't defeated.
14 There are actually a number of illustrations of
15 where one finds that in the statutory code already or
16 linked -- the rule against double proof, actually, is
17 quite a good example of it, which is described at some
18 length in Lord Walker's speech in Kaupthing. I will
19 show your Lordships it in just a moment. I was going to
20 give three examples, actually. That's the first one.
21 The second one is the anti-deprivation principle,
22 which is not to be found in any particular section of
23 the Insolvency Act but it's another example of the court
24 giving effect to the statutory scheme as a whole. The
25 last actually, although it's now been codified, is the

1 law on fraudulent preferences. It was developed by the
2 courts at the time of Lord Mansfield to protect the
3 concept of a pari passu distribution, that's what it was
4 all about. It was only codified for the first time in
5 the late 19th century. That's a slightly different
6 example because it now has been codified, so it's not
7 extant. Obviously one of the things that's happened in
8 this area is there has been greater codification as time
9 has gone on. One accepts that. But there are still
10 plenty of principles out there, and the contributory
11 rule is quite a good example of it, of cases where the
12 court has developed these sort of rules in order to
13 ensure that the legislative intent is not defeated.
14 Just so I can show my Lords where in Kaupthing
15 Lord Walker talks about the rule against double proof --
16 just so you can see the sort of approach. If we go back
17 to Kaupthing, it's paragraph 1. It's the first very
18 paragraph of his judgment, where he also refers to the
19 anti-deprivation principle which the Supreme Court had
20 to consider in the Belmont case, The Perpetual
21 Trustee v Bank of New York.
22 LORD JUSTICE BRIGGS: It says it's implicit. (Pause).
23 Does he conveniently summarise the rule itself --
24 oh, yes, paragraph 8.
25 MR TROWER: Yes, there's a section in paragraphs 8 to 12,

1 I think, of the judgment -- I'm sorry, I should have
2 drawn your Lordships' attention to that -- which
3 describes in much more detail the way in which the rule
4 double proof actually works.
5 LORD JUSTICE BRIGGS: Yes. That nice quote from Re
6 Oriental. (Pause).
7 MR TROWER: So just projecting that into the existing code,
8 first of all in the context of unlimited liability
9 companies, if once the unlimited liability company goes
10 into liquidation the contributory rule is -- the first
11 question to ask is: what is the set-off position in
12 relation to a liquidator's ability to call? That's
13 dealt with by section 149.
14 LORD JUSTICE BRIGGS: So he can set off separate debts owed
15 to him by the company --
16 MR TROWER: There's an implication --
17 LORD JUSTICE BRIGGS: -- but he can't set off his --
18 MR TROWER: Unless the court gives permission, which the
19 court won't do unless everybody has --
20 LORD JUSTICE BRIGGS: Been paid.
21 MR TROWER: Unless everybody has been paid in full.
22 LORD JUSTICE BRIGGS: Yes.
23 MR TROWER: Yes. So that's the concept in the code. Now,
24 there's nothing -- and so one sets against that
25 background the appropriateness of applying the

1 contributory rule at the stage prior to the application
2 of 149, because we're in a situation, of course, where
3 149 doesn't apply because the company is still in
4 administration.
5 But because of the envelope of the statutory scheme
6 for administration, including the pari passu
7 distribution provisions, we would submit that the
8 protection of the contributory rule is still required
9 for the purposes of assisting the legislative intent in
10 relation to pari passu distributions.
11 We accept that on the existing authorities,
12 certainly in relation to Cherry v Boultbee, and also the
13 way in which the rule is put in Grissell's case, that
14 the contributory rule wasn't focused on protection in
15 respect of future calls. A lot is made by my learned
16 friends in relation to that. One can understand why,
17 because of the way in which the contributory rule is
18 expressed on the authorities.
19 But that is comprehensible in the context of
20 a statutory scheme which doesn't include administration,
21 where administrators are not in a position yet to make
22 a call.
23 LORD JUSTICE BRIGGS: It doesn't include a distributing
24 administration.
25 MR TROWER: A distributing administration, that's right. So

1 one can see in a liquidation how it works. If the
2 liquidator needs to make a call in order to introduce
3 the protection of the contributory rule, he just makes
4 a call.
5 The administrator doesn't have that ability, which
6 is why the protection of the contributory rule is
7 required, notwithstanding the fact that the liability in
8 respect of the call has not yet accrued payable.
9 But particularly in the case of an unlimited
10 liability company, where there is no assurance of
11 payment of the creditors in full, it remains an asset
12 that requires the protection of the contributory rule.
13 That's, in a nutshell, the way we put the case.
14 LORD JUSTICE LEWISON: Grissell's case seemed to suggest
15 that where you have an unlimited company there's no need
16 for any particular protection.
17 MR TROWER: Yes.
18 LORD JUSTICE LEWISON: As my Lord Lord Justice Briggs said,
19 well, that may depend on whether the contributory is or
20 isn't solvent.
21 LORD JUSTICE BRIGGS: It must.
22 LORD JUSTICE LEWISON: Does your proposition apply
23 irrespective of the solvency of the contributory or does
24 it depend on a view being taken about the contributory's
25 eventual ability to repay? If the government takes

1 shares in some company, as they sometimes do, does it
2 matter?
3 MR TROWER: I think the way we put it is that it doesn't
4 depend on that fact, if only because it may well be the
5 case that -- you obviously need it much more immediately
6 and obviously, if you can see that the contributory is
7 insolvent, if it's subject to an insolvency process.
8 LORD JUSTICE LEWISON: I suppose what I am getting at is are
9 you putting forward, so to speak, a rule or
10 a discretionary power given to the court?
11 MR TROWER: I am putting forward a rule, I think. I am
12 basing it on the existing rule and saying it needs
13 a little bit of extension in the context of
14 administration.
15 LORD JUSTICE LEWISON: Section 149 appears to give
16 a discretionary power.
17 MR TROWER: Yes.
18 LORD JUSTICE LEWISON: So you are going further than 149 in
19 saying that there is a rule?
20 MR TROWER: Yes, at this stage of the process.
21 LORD JUSTICE LEWISON: What's the justification for having
22 something which is more stringent than section 149 at
23 a time when section 149 doesn't apply?
24 MR TROWER: Before I respond, can I just listen to what is
25 being said behind? (Pause).

1 149 of course is dealing with the discretion in
2 relation to set-off.
3 LORD JUSTICE LEWISON: Yes.
4 MR TROWER: We're actually dealing with a slightly different
5 point here.
6 LORD JUSTICE BRIGGS: But if the discretion in relation to
7 set-off is exercised by allowing a set-off --
8 MR TROWER: Yes.
9 LORD JUSTICE BRIGGS: -- that would override the
10 contributory rule, wouldn't it?
11 MR TROWER: Yes.
12 LORD JUSTICE BRIGGS: So if it's a rule --
13 MR TROWER: Yes.
14 LORD JUSTICE BRIGGS: -- does the rule have a sort of
15 non-statutory discretion built into it to deal with the
16 problem that in administration section 149 discretion
17 doesn't on its face apply? (Pause).
18 Otherwise I think the position would be tougher for
19 a contributory in the administration than it would in
20 the liquidation.
21 MR TROWER: I can see that. I can see that, my Lords.
22 I can see that. Although of course -- yes, I mean --
23 and one would have to work out on a fact by fact basis
24 as to the circumstances in which the discretion might be
25 exercised to permit it.

1 LORD JUSTICE LEWISON: So you're --
2 MR TROWER: And the justification for it would be that when
3 you're looking at the totality of the envelope within
4 which the dividend would otherwise be paid and the
5 protection of the pari passu rule is required, part of
6 that statutory envelope includes the prospective
7 application of section 149.
8 LORD JUSTICE LEWISON: I can see the argument that the
9 section 149 scheme, if I can call it that, should be
10 applied by analogy. I find it difficult to suppose that
11 something more stringent than the section 149 should be
12 created by the courts.
13 MR TROWER: Yes. My Lords, I see the point. Tying the two
14 together has a structural coherence to it, if I may
15 respectfully put it that way.
16 LORD JUSTICE BRIGGS: The obvious case for applying the
17 discretion would be if the contributory was
18 an unquestioned solvency --
19 MR TROWER: Indeed.
20 LORD JUSTICE BRIGGS: -- and it's an unlimited company,
21 which is exactly the situation which is contemplated by
22 the old cases.
23 MR TROWER: Indeed. One can see in that sort of case that
24 it would be harsh on the contributory to retain the
25 dividend in circumstances where it was always going to

1 be able to discharge in any event the contribution
2 obligation under the call. I think the only caveat
3 I add to that, but I still think it renders it a rule
4 subject to a discretion, is that in many cases that will
5 be difficult to establish. But that's no reason not to
6 have it in there, I accept that.
7 LORD JUSTICE BRIGGS: It's particularly interesting to note,
8 which is why I raised this, let's look at in relation to
9 an insolvent contributory point, that the judge's
10 concern in his judgment in not extending the rule to
11 administration was precisely because of his concern for
12 solvent contributories.
13 MR TROWER: Yes, indeed.
14 LORD JUSTICE BRIGGS: He spells that out very clearly.
15 MR TROWER: Yes.
16 So, my Lord, it is one of those principles where,
17 going through a lot of the old cases, we respectfully
18 suggest doesn't really elucidate very much. Of course
19 one has to see the juridical foundation for it and the
20 way it has been explained at the highest level, those
21 are important points. But if one goes digging back
22 through all the old cases, they really aren't on the
23 point if only because we accept that what we're trying
24 to do here is something that is based on a new scheme,
25 applying principles the core essence of which are not

1 fundamentally in issue between my client and my learned
2 friends, between --
3 LORD JUSTICE BRIGGS: Is the question which we have to ask
4 ourselves whether, by converting an administration into
5 a distributing administration, the whole spirit and
6 purpose of the insolvency code thereby descends upon
7 that company?
8 MR TROWER: Yes.
9 LORD JUSTICE BRIGGS: In a situation where unfortunately the
10 draftsman, on any view, left all sorts of things out --
11 MR TROWER: Yes.
12 LORD JUSTICE BRIGGS: -- like backdating the cut-off date
13 properly in Rule 13.12, all sorts of -- and the lacuna
14 which you describe in relation to interest.
15 MR TROWER: Yes.
16 LORD JUSTICE BRIGGS: And didn't give the distributing
17 administrator the power to make calls.
18 MR TROWER: Of course, the learned judge in his judgment did
19 focus on the fact that the reason -- you know, there was
20 no ability to make calls in an administration was
21 something that infected a lot of his reasoning on this
22 area.
23 LORD JUSTICE BRIGGS: Yes.
24 MR TROWER: I accept that, of course I accept that.
25 In a sense the sort of big picture that we invite

1 your Lordships to think about in this context is that
2 while a distributing administration obviously imposes
3 the pari passu principle, which is at the core of the
4 reasoning in relation to this, it doesn't of itself
5 impose the ability to make effective recovery under
6 section 74 of calls, but, for two reasons, that's not
7 a complete answer.
8 The first is that you are already within a process
9 that is moving or may move in due course into
10 liquidation where that is part of the code, but,
11 secondly, and more importantly, you are within a process
12 where there is a legislative scheme, the core essential
13 of which is to distribute assets amongst the creditors.
14 LORD JUSTICE BRIGGS: The stated objective is to do it
15 better than you do it in a winding-up.
16 MR TROWER: A winding up, indeed.
17 LORD JUSTICE BRIGGS: But otherwise it is to do it in
18 a winding-up.
19 MR TROWER: Yes. (Pause).
20 LORD JUSTICE BRIGGS: I forget which section that is, but we
21 all remember the phraseology. I forget what section of
22 the Act that is --
23 MR TROWER: Sorry, my Lord?
24 LORD JUSTICE BRIGGS: What section of the Insolvency Act
25 is --

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 LORD JUSTICE LEWISON: B1, paragraph 3 or something.
2 LORD JUSTICE BRIGGS: Yes.
3 MR TROWER: So the bits of it that matter are that it is to
4 achieve a better result for the company's creditors as
5 a whole and in doing it to act at all times in the best
6 interests of the company's creditors as a whole.
7 It is page 267 of the Red Book. It's the second
8 purpose, 3.1(b); the first one being rescue as a going
9 concern.
10 And then 3.2, over the page:
11 "Subject to sub-paragraph 4 [which is dealing
12 effectively with secured creditors' interest] the
13 administrator of a company must perform his functions in
14 the interests of the company's creditors as a whole."
15 So that's the way it works conceptually.
16 So, my Lords, although on any view that's quite
17 a big question, because we are asking the court to
18 develop a rule, the submission we make in relation to it
19 is relatively short at the end of the day, which is why
20 I wasn't going to -- there's not really very much more
21 I can do by way of development of it. But I am very
22 happy obviously, to respond to any further questions
23 my Lords have on it. (Pause).
24 LORD JUSTICE MOORE-BICK: Not at the moment anyway. Thank
25 you.

1 MR TROWER: So, my Lords, that's the contributory rule.
2 There is then the parked issue, if I can put it that
3 way.
4 LORD JUSTICE BRIGGS: I am not sure that there is a problem
5 there, is there? That part of the first instance
6 judgment in Nortel, to which you helpfully referred me,
7 makes absolutely clear that although between 2005 and
8 2009, or whenever it was, the main cut-off date
9 arrangement had a terrible lacuna on it that couldn't be
10 filled by interpretation, it didn't in relation to
11 interest, which is what we're talking about in the
12 parked issues.
13 MR TROWER: Can I just explain to my Lords the reason there
14 may be an issue.
15 LORD JUSTICE BRIGGS: Okay.
16 MR TROWER: Because I think we need to see how it all fits
17 together as a point.
18 If we just go to Rule 4.93.
19 LORD JUSTICE BRIGGS: Yes.
20 MR TROWER: "Where a debt proved in the liquidation bears
21 interest, that interest is provable as part of the debt
22 except insofar as it is payable in respect of any period
23 after the company went into liquidation or if the
24 liquidation was immediately preceded by
25 an administration any period after that date the company

1 entered into administration."
2 LORD JUSTICE BRIGGS: When was the bit in brackets inserted?
3 MR TROWER: 2005. So that is applicable. In the Red Book
4 we're looking at what was applicable at the relevant
5 time.
6 LORD JUSTICE BRIGGS: Yes.
7 MR TROWER: Of course if we go to 13.12 in the form
8 applicable at the referral time, as my Lord
9 Lord Justice Briggs held in --
10 LORD JUSTICE LEWISON: Where are we going?
11 MR TROWER: 13.12.
12 LORD JUSTICE LEWISON: Yes. (Pause).
13 LORD JUSTICE BRIGGS: Yes.
14 MR TROWER: 13.12, there is no equivalent relation back at
15 that stage. What my Lord did in the decision at first
16 instance was hold that you couldn't treat the 2010
17 amendment -- which was made in order to render 13.12
18 similar to 4.93(1) in its impact. You can't treat that
19 as relating back to 2005, which is one of the arguments
20 that was developed eloquently by Mr Dicker; but it
21 wasn't accepted, that argument.
22 So the position in relation to the administration
23 and most importantly future liquidation of LBIE is that
24 we have 13.12 in the form you find it in the Red Book,
25 with no relation back in relation to proved debts -- so

1 you don't have the cut-off date going back in relation
2 to proved debts -- but you do have relation back in
3 relation to the interest.
4 LORD JUSTICE BRIGGS: So you can't prove for contractual
5 interest if you're in a liquidation after the precedent
6 onset of administration.
7 MR TROWER: Administration. But the issue then which
8 arises, which is what we're concerned with here, is
9 a situation in which LBIE goes from administration into
10 liquidation at some stage in the future. A surplus has
11 arisen in the administration of LBIE, but interest has
12 not actually been paid to the creditors in respect of
13 the administration period, but the proved debts have all
14 been paid because everyone has got 100p in the pound.
15 LORD JUSTICE LEWISON: So you're postulating there is
16 a surplus or it can be ascertained that there was
17 a surplus in the administration?
18 MR TROWER: Yes. When you get to the end of the
19 administration --
20 LORD JUSTICE LEWISON: Yes.
21 MR TROWER: -- the proved debts have been paid at 100p in
22 the pound, nobody has got any interest, but there is
23 a surplus.
24 LORD JUSTICE LEWISON: Yes.
25 MR TROWER: The company goes into liquidation.

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 Now, in that situation the application of 4.93
2 arises.
3 LORD JUSTICE BRIGGS: A whole lot more creditors turn up,
4 saying, "Ah, I have provable debts that weren't provable
5 at the onset of the administration".
6 MR TROWER: That's one thing that needs to be injected into
7 the equation. There's another point which gives rise to
8 the issue that may still be out there, which is this,
9 people whose debts have not been interest liabilities
10 have not been paid. Do they have a right to prove in
11 the liquidation in respect of their interest claims?
12 Because the debts have actually been paid. So at the
13 liquidation stage there is no longer a debt proved in
14 the liquidation bearing interest. There may be
15 an entitlement to prove in respect of interest which is
16 quite independent from the debt proved in the
17 liquidation. That's the issue that may arise.
18 In other words, because all the debts in the
19 administration have been paid in full, the entitlement
20 to interest is no longer the interest that is borne on
21 a debt proved in the liquidation.
22 LORD JUSTICE LEWISON: I still don't quite understand why
23 Rule 2.88 doesn't apply.
24 MR TROWER: That's the lacuna point. Our principal argument
25 is that Rule 2.88 continues to operate in the

1 liquidation.
2 LORD JUSTICE LEWISON: Yes.
3 LORD JUSTICE BRIGGS: Yes.
4 MR TROWER: My concern about this point --
5 LORD JUSTICE LEWISON: If there's a surplus in the
6 administration, Rule 2.88 says, before you do anything
7 else with the surplus, you have to pay interest.
8 MR TROWER: Yes.
9 LORD JUSTICE LEWISON: Why can't you say to the liquidator
10 "Before you do anything else with any assets under your
11 control, you have to pay the interest because that's
12 what Rule 2.88 says"?
13 MR TROWER: My Lord, that is our argument in relation to why
14 there isn't a lacuna. My concern is that if that's
15 wrong -- where the judge went on this point is that
16 there's a non-provable liability. Okay. So if my
17 argument is wrong on lacuna and your Lordships' response
18 on lacuna, if I may respectfully say so, was wrong,
19 where we went to was not-provable liability.
20 LORD JUSTICE BRIGGS: Non-contractual provable liability.
21 MR TROWER: Indeed. Now where it is possible we should have
22 gone, and this is the point which wasn't argued in front
23 of the learned judge --
24 LORD JUSTICE BRIGGS: They were provable --
25 MR TROWER: -- was that --

1 LORD JUSTICE BRIGGS: -- pre-application statutory
2 liability.
3 MR TROWER: Correct. And that point was not argued before
4 the judge. That was what caused a certain amount of
5 flurrying behind -- well, it is both, actually. My
6 learned friend Mr Snowden rightly points out there are
7 two possibilities. The first is that there's
8 a contractual liability arising only out of the
9 antecedent contractual entitlement, which was antecedent
10 to all of the insolvency proceedings. The second
11 possibility is that you can prove in respect of the
12 statutory right to interest under 2.88. That's the
13 second possibility.
14 LORD JUSTICE LEWISON: If it was an antecedent contractual
15 liability --
16 MR TROWER: Yes.
17 LORD JUSTICE LEWISON: -- you would have proved for it in
18 the administration, would you not?
19 MR TROWER: No, you wouldn't because it's
20 post-administration interest.
21 LORD JUSTICE LEWISON: I'm sorry, I thought when you said
22 "antecedent" you meant preceding the administration.
23 But you don't mean that, you mean contractual
24 interest --
25 MR TROWER: Yes, I don't.

1 LORD JUSTICE LEWISON: -- that would have accrued but for
2 the administration.
3 MR TROWER: Yes, I'm terribly sorry, yes that's exactly what
4 I meant. Yes.
5 LORD JUSTICE LEWISON: Yes.
6 LORD JUSTICE BRIGGS: So you say this particular bit --
7 MR TROWER: This particular point --
8 LORD JUSTICE BRIGGS: -- as an alternative to your revived
9 contractual interest argument --
10 MR TROWER: Yes.
11 LORD JUSTICE BRIGGS: -- has never been argued?
12 MR TROWER: Yes. So the question that -- they may have.
13 Obviously if my Lord Lord Justice Lewison's point or
14 our lacuna argument is that the scheme of the statute is
15 that the interest just continues to flow through into
16 the administration, and that's the way it works, in
17 a sense this becomes less of an issue.
18 What we are very concerned about, though, is that
19 this point doesn't get argued, if you like, on a false
20 premise now that's it's actually emerged. I can only
21 apologise for the fact that we hadn't quite lit on it in
22 the way that we should have done and we responded to it
23 in the light actually ultimately of a question from my
24 Lord Lord Justice Moore-Bick which caused a certain
25 amount of flurrying when we suddenly focused on it.

Page 37

1 My Lords, my slight hesitation about this is we are
2 still not quite sure that we have got to the bottom of
3 how the arguments work in relation to this point. We
4 are a little bit concerned, insofar as it is relevant,
5 in inviting your Lordships to decide it without being
6 absolutely sure that we understand how the arguments
7 work and perhaps more importantly who may have
8 an interest in making them.
9 Having said that, we can deal with the lacuna
10 arguments and such arguments as there are in relation to
11 non-provable debts so that my Lords can see the shape of
12 them and the way they work, and there are a number of
13 possible solutions as to how the parties could present
14 to the court any further arguments that needed to be
15 made in relation to the possible application of 4.93.
16 LORD JUSTICE LEWISON: The provable debt argument depends on
17 the cut-off date under the transitional provisions
18 remaining the date of the liquidation?
19 MR TROWER: Yes.
20 LORD JUSTICE BRIGGS: And that wasn't resurrected in the
21 Court of Appeal, was it?
22 MR TROWER: No. So what has happened is in this liquidation
23 there is a determination by my Lord Lord Justice Briggs
24 sitting at first instance which has not been appealed,
25 it applies -- I think Mr Dicker made the argument so he

Page 38

1 can explain a little more if necessary. It was
2 an argument that required the court to adopt a very wide
3 approach --
4 LORD JUSTICE LEWISON: I understand that. I am just
5 thinking what, if any, knock-on effects does it have.
6 I think you're saying it doesn't have any knock-on
7 effects in the regime as it currently stands.
8 MR TROWER: No.
9 LORD JUSTICE LEWISON: There may be other transitional
10 insolvency processes to which it would apply.
11 MR TROWER: Yes.
12 LORD JUSTICE LEWISON: Presumably most of them are over by
13 now.
14 MR TROWER: Yes. I think it's unlikely that it will affect
15 others because we're now -- what are we? We're
16 five years on from 2010, so it is unlikely.
17 LORD JUSTICE BRIGGS: It will affect all the English Lehman
18 insolvencies.
19 MR TROWER: Yes, it has a big -- there are three
20 possibilities here of course, on the way the thing has
21 now developed.
22 LORD JUSTICE BRIGGS: You're not yet in liquidation.
23 MR TROWER: No, we're not.
24 LORD JUSTICE BRIGGS: So if you were to go into liquidation
25 now, wouldn't you be under the new version of 13.12?

Page 39

1 MR TROWER: No, that's what your Lordship decided.
2 LORD JUSTICE BRIGGS: Oh, I see. You never are because --
3 MR TROWER: Because we went into administration in 2008.
4 LORD JUSTICE BRIGGS: -- you went into administration. Yes
5 of course.
6 MR TROWER: That was your construction --
7 LORD JUSTICE BRIGGS: Absolutely right.
8 MR TROWER: -- of the transitional provisions.
9 So there are three possibilities. Possibility one
10 is that you simply seamlessly transfer all the interest
11 obligations from administration into liquidation, and
12 that's why we say the judge got it wrong on the lacuna.
13 The second possibility, which is what we won on in
14 front of the judge, is it's a non-provable liability.
15 The third possibility --
16 LORD JUSTICE BRIGGS: "It", you mean the contractual
17 interest?
18 MR TROWER: Yes, sorry, the contractual interest is
19 a non-provable liability. The third possibility, which
20 was not argued before the judge and which this point
21 gives rise to, is that it's a provable liability.
22 LORD JUSTICE BRIGGS: It's a 13.12(1)(a) debt or liability.
23 MR TROWER: That's correct.
24 LORD JUSTICE BRIGGS: Yes.
25 MR TROWER: Yes. The concern that we have about this is

Page 40

1 that actually, as is always the case in relation to the
2 Lehman companies, really quite enormous sums of money
3 might turn on which of those three pots it falls into,
4 because it affects the waterfall within the Lehman
5 estate, if it goes into liquidation, as to where these
6 liabilities fall.
7 LORD JUSTICE BRIGGS: Not least, presumably, because some of
8 those with an interest claim have rates lower than the
9 judgment rate.
10 MR TROWER: Yes.
11 LORD JUSTICE BRIGGS: Or no rates.
12 MR TROWER: Yes.
13 LORD JUSTICE BRIGGS: And some may have contractual rates
14 above the judgment rate.
15 MR TROWER: Indeed. So you have to identify the source of
16 the liability in order to work out how it fits in
17 the ...
18 Now, as your Lordships might imagine, as the parties
19 began to think about this overnight a bit more and get
20 into it a bit more, it became apparent to everyone that
21 there was perhaps a little bit more complexity in
22 relation to this than we had originally thought there
23 might be, both commercially and legally. Where I was
24 going to go in the first instance was invite your
25 Lordships, having -- I can finish off my argument on the

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 lacuna, if your Lordships would find that helpful, or we
2 could just push the whole thing off to tomorrow, when
3 people may have a more coherent position as to what they
4 want to argue.
5 The problem is that it's not actually clear at the
6 moment --
7 LORD JUSTICE BRIGGS: Who benefits.
8 MR TROWER: -- who benefits and who doesn't, and who might
9 want to argue, if anyone, it is in fact provable.
10 LORD JUSTICE MOORE-BICK: From the court's point of view it
11 is quite important that we hear all the arguments on
12 this point.
13 MR TROWER: I think your Lordships should.
14 LORD JUSTICE MOORE-BICK: And --
15 LORD JUSTICE BRIGGS: It isn't much of a lacuna, at least in
16 relation to a company with a surplus, if you can just
17 prove it in the liquidation.
18 MR TROWER: Obviously, the impact of the lacuna becomes very
19 different, that's right.
20 What goes into the estate by way of provable claims
21 also affects, on any view, what may go up to the
22 contributories.
23 LORD JUSTICE BRIGGS: It may have a knock-on consequence in
24 terms of the deemed proof, your proof in the
25 administration is deemed to be proof in the subsequent

1 liquidation, but it shouldn't rule you out from
2 a further proof if you have a postponed cut-off date.
3 MR TROWER: That may be one of the arguments, because you
4 have the deemed proof point which at first blush looks
5 like as if it may be an answer to the 4.93 point, but it
6 may not be.
7 LORD JUSTICE BRIGGS: No.
8 MR TROWER: My Lords, so far as the administrators of the
9 LBIE estate are concerned, they are, for I hope obvious
10 reasons, very keen that your Lordships should be aware
11 of both the argument and should be able to deal with it
12 in the most effective way possible. We are a little bit
13 concerned now that we're still only -- we'll less than
14 24 hours away from when this point first emerged in the
15 form in which it has emerged, and it requires proper
16 consideration. There are a number of ways we could deal
17 with it. It is possible that we could deal with it in
18 writing, if we couldn't deal with it before the end of
19 week. We could perhaps come back to it tomorrow when
20 we're a bit more formulated on, but it I am a little bit
21 concerned about doing the argument simply like --
22 LORD JUSTICE MOORE-BICK: I see that, but speaking for
23 myself I think to have it dealt with orally is likely to
24 be quite helpful because it gives the court a chance --
25 MR TROWER: I understand that, my Lord.

1 LORD JUSTICE MOORE-BICK: -- to engage in some discussion.
2 MR TROWER: It was a developing feast right up to the moment
3 in time at which your Lordships came into court as to
4 precisely where the parties were on this, but can I take
5 it that my Lords' position is that -- and we would urge
6 this on you -- you do need to understand the way the
7 arguments work in order to resolve declarations 4 and 5?
8 LORD JUSTICE MOORE-BICK: Yes.
9 MR TROWER: Yes. We respectfully agree with that. Can
10 I say no more on it at the moment until anyway after the
11 mid-morning break and we can decide whether -- or would
12 it possible to take the mid-morning break a few moments
13 early?
14 LORD JUSTICE MOORE-BICK: Would that be a convenient moment?
15 LORD JUSTICE BRIGGS: You're otherwise at the end of your
16 submissions?
17 MR TROWER: Yes, I am finished now apart from that.
18 LORD JUSTICE MOORE-BICK: I don't quite know how this might
19 go, normally we say five minutes and we mean
20 five minutes; but we could stretch it if that would
21 really be of assistance.
22 MR TROWER: It might be easier if it was ten minutes and we
23 could then all agree. If we said quarter to, would that
24 be all right?
25 LORD JUSTICE MOORE-BICK: We will sit again at quarter to.

1 (11.38 am)
2 (A short break)
3 (11.48 am)
4 LORD JUSTICE MOORE-BICK: Yes, Mr Trower. Have you
5 clarified the position?
6 MR TROWER: Yes, can I explain what the position is. Before
7 I do that, can I just say Mr Dicker and I had agreed
8 that I would, as I anticipated, by finished by the
9 mid-morning break, which I'm not actually, so we're
10 a little bit behind. He did think he needed about --
11 from now until the end of today to do his submissions.
12 So we may run a little bit over, but I hope it won't be
13 too long over based on what I'm about to say.
14 So far as the position on these two declarations is
15 concerned, the argument that we put in relation to
16 the -- and what I wanted to do was just to explain what
17 the three arguments are. The way we put it is that,
18 first of all, it is the construction point which we say
19 the judge got wrong.
20 LORD JUSTICE LEWISON: 2.88.
21 MR TROWER: 2.88, and if it's not either it is either
22 non-provable or provable. We'll explain -- it has to be
23 one of the two.
24 LORD JUSTICE BRIGGS: Provable would be the statutory
25 interest, would it?

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 MR TROWER: Yes, there are two things that could be
2 provable; one is statutory and the other is the
3 underlying contractual.
4 LORD JUSTICE BRIGGS: So it is provable contractual. Does
5 the non-provable argument really survive if the cut-off
6 date is only the date of the onset of LBIE's
7 liquidation, winding up? The only reason why it was
8 non-provable was because there was an assumed cut-off
9 date that had passed.
10 MR TROWER: That begs the question as to how else it is
11 going to be dealt with.
12 LORD JUSTICE BRIGGS: Okay.
13 MR TROWER: So far as the continuation of the obligation is
14 concerned, i.e. the lacuna point, we simply say that the
15 effect of Rule 2.88(7) is limited to those creditors who
16 have actually lodged a proof in the administration.
17 Rule 2.88(7) applies to such creditors and
18 section 189(2) applies to those creditors who actually
19 prove during the winding up, if they didn't prove in the
20 administration.
21 LORD JUSTICE BRIGGS: Or to the same creditors who had any
22 extra proof in the winding up?
23 MR TROWER: Yes, that would be the case too because it
24 relates to the proof not the creditor.
25 LORD JUSTICE BRIGGS: By that you mean proofs actually

1 rather than deemed made?
2 MR TROWER: Yes. So if a creditor proves during the
3 administration, his right to interest during the period
4 of administration arises under 2.88(7) and is not lost
5 upon the conversion of the administration to
6 a winding-up, which was the points I was making to my
7 Lords before I stopped on this argument yesterday.
8 Whereas if a creditor doesn't prove until the subsequent
9 winding-up, then he doesn't accrue a right to interest
10 under 2.88(7). The right of the creditor proving in the
11 administration continues to fix to the surplus, even
12 though it's moved into the hands of the liquidator.
13 LORD JUSTICE BRIGGS: Like a sort of Quistclose trust. It's
14 a taxable fund?
15 MR TROWER: Sort of, yes, but there's a statutory scheme
16 overall here and the scheme provides for the surplus to
17 be used for a purpose. So, yes, purpose in a Quistclose
18 sense.
19 The principal argument against us, as we understand
20 it, is that it is based on the premise that in some way
21 2.88(7) can't have a life after the conclusion of the
22 administration and that in a subsequent winding-up there
23 will be two separate and distinct rules for the regimes
24 for the payment of interest. But, with respect, is not
25 an objection because the argument is simply based on the

1 premise that a creditor must actually have proved in
2 a preceding administration in order that the entitlement
3 is engaged under 2.88(7), which then imposes the
4 liability on LBIE to pay statutory interest during the
5 period -- which accrued during the period of the
6 administration. It's as simple as that.
7 So we respectfully submit that that is the short
8 answer on the lacuna point. There isn't actually
9 a lacuna there. Everything that infected the judge's
10 reasoning flowed from the idea that 2.88(7) had
11 a limited life, that everything within 2.88(7) is
12 capable of continuing through notwithstanding the
13 liquidation.
14 My Lords, that was the lacuna point.
15 The next stage in the argument, and I think
16 I logically need to take it this way round, is if we're
17 wrong on that there's a provable debt. I think it
18 logically has to come before non-provable debt and if
19 I could just explain how the argument works.
20 We dealt with it, anyway in outline, just before we
21 rose for the short mid-morning break, but it requires
22 one to start with 13.12:
23 "Debt in relation to the winding up of the company
24 means (a) any debt or liability to which the company is
25 subject on the date on which it goes into liquidation."

1 We would simply say it is a debt to which the
2 company was subject at the time at which it went into
3 liquidation.
4 LORD JUSTICE BRIGGS: Or if it's not a debt at least
5 a liability.
6 MR TROWER: A liability. We then go to --
7 LORD JUSTICE BRIGGS: "It", you mean the statutory interest?
8 MR TROWER: Yes. Yes, I need to develop that. What we mean
9 by the liability is either the underlying contractual
10 entitlement, which does not disappear merely by reason
11 of the existence of the administration code, or the
12 liability to pay which arises under Rule 2.88(7).
13 I think I probably need to put those and/or the
14 other way round. It's the statutory one that comes
15 first. For the sort of reasons that I was submitting to
16 your Lordships in relation to 2.88(7) liability
17 yesterday, there isn't a problem with that. It's
18 a liability of the company's.
19 The question which then arises is --
20 LORD JUSTICE LEWISON: The consequences will be very
21 different because not least under the statutory
22 obligation, if it is one, you get at least Judgments Act
23 rate which in the current market is a pretty high rate.
24 MR TROWER: Yes.
25 LORD JUSTICE LEWISON: And if you didn't stipulate for

1 interest, you still get it.
2 MR TROWER: Yes. That's right.
3 Quite a lot of creditors do actually assert claims
4 for rates which are above the statutory interest rate,
5 based on derivatives contracts.
6 LORD JUSTICE LEWISON: Right.
7 MR TROWER: We then go to 4.93 to see whether that takes it
8 out of what would otherwise be the provability under
9 13.12(1)(a). (Pause).
10 We would say it does not because we're not here
11 talking about interest borne on a debt proved in the
12 liquidation, we're talking about a debt in its own
13 right. Because on this hypothesis -- well, what we're
14 talking about --
15 LORD JUSTICE LEWISON: I don't understand what you mean by
16 "a debt in its own right".
17 MR TROWER: Perhaps I should have set the scene a little
18 more clearly in relation to this. This presupposes
19 that -- which is in fact the position -- that 100p in
20 the pound has been paid on the proved debts, which is
21 the situation.
22 LORD JUSTICE LEWISON: Oh, I see, so there is no longer duty
23 to prove in the liquidation.
24 MR TROWER: In the liquidation. This is a debt in its own
25 right. (Pause).

1 LORD JUSTICE BRIGGS: Even though it's deemed to be also
2 proved in the liquidation?
3 MR TROWER: That's what I will just come on to next. That
4 is 4.73(8) and we need to see what the impact of that
5 is.
6 LORD JUSTICE LEWISON: 4.73?
7 MR TROWER: Yes, sub-rule eight, page 783.
8 What that does is give protection to the creditors,
9 is the way we characterise this, to ensure that they
10 don't have to prove again. It doesn't mean that for all
11 purposes, including in particular this purpose, you have
12 to treat a creditor who has proved in the administration
13 as having had its debt proved in the liquidation,
14 particularly where that debt has been paid 100p in the
15 pound before the company goes into liquidation.
16 LORD JUSTICE LEWISON: Wouldn't Wight v Eckhardt Marine, as
17 it were, come to rescue? There isn't a debt any more.
18 MR TROWER: That may well be right. That's another way of
19 analysing it, yes.
20 LORD JUSTICE BRIGGS: The factual predicate for all this is
21 that the debts have been paid 100p in the pound.
22 MR TROWER: Indeed.
23 LORD JUSTICE LEWISON: So the debt has been discharged,
24 there isn't one anymore.
25 MR TROWER: Yes, I think that must be right.

1 LORD JUSTICE LEWISON: On the hindsight principle, it means
2 there's nothing to prove in the liquidation.
3 MR TROWER: There's nothing left to prove. So 4.73(8) is of
4 nothing, as is 4.93 as of nothing, on this point.
5 (Pause).
6 So, my Lords, that's the analysis in relation to why
7 it is provable debt. We then move on to the question
8 of, well, if we're wrong on that, why might it be
9 a non-provable debt?
10 LORD JUSTICE BRIGGS: Which is the rule that provides for
11 the statutory interest in the liquidation?
12 LORD JUSTICE LEWISON: Section 189.
13 MR TROWER: 189.
14 LORD JUSTICE BRIGGS: Section 189, yes.
15 MR TROWER: In section 189.
16 LORD JUSTICE BRIGGS: Yes. Can we just look at that first?
17 I think you're going to say that that's not a problem
18 because the debt you're now contending for is part of
19 that which must be paid before there's any relevant
20 surplus.
21 MR TROWER: Indeed. So you simply have to prove it in the
22 liquidation.
23 So what the creditors concerned will be doing is
24 they will be lodging a fresh proof in the liquidation in
25 respect of this new debt.

1 If we're wrong on that, we go to this claim being
2 a non-provable debt. There is the Wight v Eckhardt
3 Marine analysis that my Lords have already seen. So far
4 as the non-provable liability is concerned, the effect
5 of the winding up when the liquidation intervenes is
6 that the underlying debt is then left untouched by the
7 statutory code, to the extent that it is not
8 vindicated -- vindicated, discharged or otherwise dealt
9 with under the statutory code -- it survives. It
10 survives as a liability which doesn't get discharged in
11 the course of the distribution of dividends to creditors
12 or the application of the surplus under section 189,
13 because we're now dealing with the liquidation --
14 LORD JUSTICE LEWISON: You're talking now about contractual
15 interest only?
16 MR TROWER: I think it has to be, because we're in
17 a situation here where there has been -- we're assuming
18 that the lacuna argument doesn't work, we're assuming
19 that it is not a provable debt. So we can only be in
20 the realm of contractual liability. I think that must
21 be right.
22 LORD JUSTICE BRIGGS: That's the judge's solution?
23 MR TROWER: And that's the judge's solution, yes. (Pause).
24 I am conscious of the time, so I don't want to spend
25 a lot of time on this. The judge's analysis in relation

1 to that is something that we respectfully adopt. It
2 does take you right back to the Humber Ironworks type of
3 characterisation of a non-provable claim because it was
4 remission to contractual rights, where the scheme didn't
5 affect the contractual rights, which underpinned the
6 concept in Humber Ironworks of discharging people's
7 contractual entitlement to interest out of the surplus.
8 That was the juridical basis of Humber Ironworks.
9 LORD JUSTICE BRIGGS: You say there's no conversion issue in
10 relation to interest?
11 MR TROWER: No.
12 This argument is predicated, obviously, on the
13 assumption the lacuna is there. So one has a situation
14 where the scheme just simply does not address people's
15 rights to interest during the period of the
16 administration where the company goes into liquidation.
17 (Pause).
18 One of the ways --
19 LORD JUSTICE LEWISON: Your provable debt argument assumes
20 that there is a conversion, does it not?
21 MR TROWER: A conversion --
22 LORD JUSTICE LEWISON: That is to say, your right to
23 interest is derived now from the statutory code --
24 MR TROWER: Yes.
25 LORD JUSTICE LEWISON: -- and not from anything else?

1 MR TROWER: Yes, it does, in respect of the statutory
2 element of the proof. (Pause).
3 LORD JUSTICE BRIGGS: I am not sure you have to get into the
4 issue about whether it's a conversion, do you? You
5 either have the statutory right or you have not.
6 MR TROWER: Or you have not, yes.
7 LORD JUSTICE BRIGGS: If you do not have it, you say you
8 revert to your contractual right. If you do have it,
9 you just use it.
10 MR TROWER: Yes. Will your Lordships just give me a moment?
11 LORD JUSTICE BRIGGS: Yes.
12 MR TROWER: Of course one accepts that can't have double
13 recovery -- you either have the statutory right or the
14 contractual right.
15 LORD JUSTICE BRIGGS: No, of course, no double proving.
16 MR TROWER: You will inevitably be looking at Lines Bros in
17 relation to currency conversion claims, but the concept
18 that one gets in relation to the non-provable claim is
19 whether or not the statutory scheme compels the
20 conclusion that the existing contractual right has been
21 replaced. That's what you have to ask yourself.
22 If the totality of the scheme or the particular
23 provision you're looking at on its true construction
24 replaces the contractual right, well, then obviously the
25 contractual rights disappear.

1 But if doesn't on its true construction and it's not
2 vindicated at all, it's not either discharged or
3 replaced, it's a question of construction of the scheme,
4 well, it survives. One accepts that, we accept that for
5 this purpose.
6 There may be wider arguments that will be addressed
7 in relation to currency conversion, but on this point
8 all we say is the statutory scheme just does not engage,
9 on this hypothesis, with the position in relation to
10 interest during that period.
11 The only other point -- and I can deal with this
12 very quickly, because I don't think any submissions have
13 been made upon it. I just need to deal quickly with
14 a submission in relation to the supposed consequences of
15 the judge's conclusion in relation to bankruptcy. Your
16 Lordships haven't heard anything about this, but I just
17 need to briefly explain what the position is in
18 bankruptcy because a point is made on the back of. And
19 we haven't looked that yet.
20 LORD JUSTICE MOORE-BICK: Is this covered in your skeleton?
21 MR TROWER: Is it? No, I'm afraid it's not. Submissions
22 were made on it in the other side's skeleton. I am very
23 happy to deal with it in writing, actually, given we're
24 quite short on time because the points can be made very
25 shortly.

1 LORD JUSTICE MOORE-BICK: I think if they can be made
2 shortly orally that would be the best of both worlds.
3 MR TROWER: Let me do that it way, then, my Lord. If we
4 just pick up the Red Book and go to section -- the
5 argument was that if you had a liability of this sort,
6 if you applied the same principles in a bankruptcy it
7 would survive the bankruptcy and therefore the bankrupt
8 would not get his discharge.
9 LORD JUSTICE LEWISON: And he would be made bankrupt all
10 over again.
11 MR TROWER: That's the argument. We suggest respectfully
12 that's not right. If you go to section 382, which is
13 page 211, that contains the definition of "bankruptcy
14 debts". My Lords will immediately see a similarity with
15 the way 13.12 is drafted.
16 LORD JUSTICE BRIGGS: Yes. (Pause).
17 MR TROWER: Would my Lords also note, just in passing, that
18 there's a wider definition in the legislation in
19 relation to claims in tort still retained in bankruptcy
20 that has been cut down by the amendments to Rule 13.12
21 in relation to liquidation. That's 38.2(2).
22 LORD JUSTICE BRIGGS: Yes.
23 MR TROWER: We say that a contractual liability for interest
24 is therefore a bankruptcy debt and prima facie provable
25 as such.

1 LORD JUSTICE BRIGGS: That's 38.2(1)(d), is it?
2 MR TROWER: 38 --
3 LORD JUSTICE LEWISON: That's the statutory interest --
4 MR TROWER: And the contractual interest. We're talking
5 about the non-provable claim here. The argument that is
6 put against us is that there will be a problem in
7 bankruptcy if you allow a non-provable claim because the
8 non-provable claim will not be discharged by the
9 bankruptcy.
10 But also a bankruptcy debt and therefore prima facie
11 provable, post-insolvency interest is taken out of the
12 provability regime by section 322(2) of the
13 Insolvency Act.
14 We then need to go to the discharge provisions,
15 which are in section 281. The effect of the discharge
16 provisions in 281 is that -- 281(1) which is on
17 page 158:
18 "Subject as follows, where a bankrupt is discharged
19 the discharge releases him from all the bankruptcy debts
20 but has no effect on the functions so far as they remain
21 to be carried out of the trustee of his estate on the
22 operation for the purposes of carrying out of those
23 functions for the provisions of this part."
24 So you're discharged from bankruptcy debts whether
25 or not they're provable, because what you get your

1 discharge from is the bankruptcy debt. The whether or
2 not you're provable is because the non-provable element
3 is taken out of what would otherwise be a bankruptcy
4 debt. But the discharge, of course, doesn't and the way
5 it works is a discharge does not have any effect on the
6 trustee's functions. One of the trustee's functions is
7 to deal with the surplus under section 330(5).
8 (Pause).
9 "If a surplus remains after payment in full and with
10 interest of all the bankrupt's creditors and the payment
11 of the expenses of the bankruptcy the bankrupt is
12 entitled to the surplus."
13 So if there is a surplus it can only be returned to
14 the debtor after payment in full and with interest of
15 all the bankrupt's creditors and of the expenses of the
16 bankruptcy.
17 So our position is that post-insolvency interest and
18 any other non-provable claims must therefore be
19 satisfied in order for there to have been payment in
20 full, which must mean payment of all liabilities. The
21 net effect of this is that the bankrupt gets his
22 discharge in respect of the bankruptcy debts. If
23 there's a surplus in the hands of the trustee, that's
24 still administered, notwithstanding the discharge in
25 respect of the bankruptcy debts. One of the things that

1 may have to be discharged out of the surplus is interest
2 and non-provable claims.
3 LORD JUSTICE BRIGGS: Because you say in that section the
4 reference to "with interest" doesn't just mean provable
5 interest?
6 MR TROWER: No. Yes.
7 LORD JUSTICE BRIGGS: You have to make that good.
8 MR TROWER: And liabilities because the -- hang on, sorry,
9 I should have gone back to that. 330. (Pause).
10 LORD JUSTICE BRIGGS: "Payment in full and with interest of
11 all ... "
12 MR TROWER: "All the bankrupt's creditors and the payment of
13 the expenses ..."
14 LORD JUSTICE BRIGGS: So it is not talking, you say, about
15 bankruptcy debts?
16 MR TROWER: It is not talking about bankruptcy debts there,
17 it is talking about anybody who has a claim against the
18 bankrupt.
19 LORD JUSTICE BRIGGS: Yes.
20 MR TROWER: So, in other words, people have a claim on the
21 surplus which can still be administered by the trustee
22 whether or not their claim arises out of a bankruptcy
23 debt. The bankruptcy debt provisions are what lead to
24 the discharge. So anything that constitutes
25 a bankruptcy debt will be discharged.

1 So, my Lords, unless I can help any further,
2 those -- and I am sorry they will a little bit speedy,
3 those last submissions.
4 LORD JUSTICE MOORE-BICK: That's all right. Thank you very
5 much indeed, Mr Trower.
6 Yes, Mr Dicker.
7 Submissions by MR DICKER
8 MR DICKER: My Lords, as your Lordships know my submissions
9 are concerned solely with currency conversion claims.
10 LORD JUSTICE MOORE-BICK: Yes.
11 MR DICKER: The learned judge's conclusion on this,
12 paragraph 110 of his judgment, was that it would be
13 contrary to principle and justice that the debtor or the
14 shareholders receiving the surplus should be able to
15 deny the foreign currency claimants their full
16 contractual rights. We say he was correct.
17 A creditor whose claim is denominated in a foreign
18 currency has bargained for that currency and only that
19 currency and he's entitled to receive no less than he
20 bargained for. Shareholders can be in no better
21 position than the debtor. Put another way, members come
22 last.
23 It would be contrary to principle for the assets of
24 a company to be distributed to shareholders if these
25 would leave creditors with an existing debt not paid in

1 full and which would result in distributions going to
2 shareholders with the consequence that it would never be
3 paid in full.
4 We say that your Lordships will see there is nothing
5 in the statutory insolvency process, properly
6 understood, that produces a result contrary to those
7 principles, neither before 1986 or after 1986.
8 We also say there's nothing remotely unjust or
9 unreasonable in this. It was LBIE which resolved to go
10 into administration and to bring the statutory process
11 into existence. The immediate consequence of that was
12 to introduce a regime which required LBIE's assets to be
13 distributed pari passu amongst its creditors in respect
14 of their proved debts. One part of that was to require
15 foreign currency claims to be converted into sterling
16 for the purposes of proof, in other words, to ensure
17 pari passu distribution. The scheme also required
18 dividends to be paid in sterling.
19 One possibility, of course, is that sterling might
20 have appreciated during this period. If that happened,
21 the consequence would be that LBIE would end up paying
22 more than it would otherwise have paid to creditors had
23 it not gone into administration.
24 Now, that's plainly not something which LBIE or its
25 shareholders can complain about. That's simply a price

1 of the statutory scheme which it has invoked. It's no
2 different in principle from various other consequences
3 of going into liquidation or a distributing
4 administration; for example, the obligation to pay
5 interest on debts which otherwise don't carry interest
6 or to pay interest at the Judgments Act rate.
7 That's the first stage of the process, pari passu
8 distribution.
9 What if there turns out to be a surplus and sterling
10 has depreciated? Why in that situation is it unjust or
11 unreasonable for a creditor, who has not been paid in
12 full, to say, "Please pay me the rest that I am owed and
13 pay that before distributing any assets to
14 shareholders"? It's now plain that the premise on which
15 we've been working for the last four years was
16 incorrect. This company is in fact solvent. "You are
17 able to pay me what you owe, please do so."
18 My learned friends submissions I think give the
19 impression that the problem is essentially being caused
20 by the creditor who comes along seeking to assert his
21 non-provable claim. We do question that
22 characterisation. All the creditor is doing is saying,
23 "I haven't been paid in full and I should before any
24 assets are returned to shareholders". There's another
25 way of looking at this, we respectfully submit, which is

1 that the real source of the complaint is not the
2 creditor coming along and asking to be paid in full,
3 it's the fact that the statutory process which LBIE has
4 invoked required, to ensure pari passu distribution, the
5 conversion of currency claims into sterling for the
6 purposes of proof. That, one might say, is the source
7 of the problem. That's not something which LBIE or its
8 shareholders are entitled to complain about. As I said,
9 that's simply the price of the statutory process it has
10 invoked.
11 My learned friends say, well, that can't be right
12 because that would give rise to a one-way bet,
13 a situation permanently to the advantage of the foreign
14 currency claimant and to the disadvantage of the
15 company. My Lords, ignoring the obvious point, this is
16 not a bet which the foreign currency creditor ever
17 agreed to enter into.
18 One needs to look at this argument in the wider
19 context. You only get to the so-called one-way bet
20 after all creditors have been paid 100p in the pound,
21 plus statutory interest.
22 One needs to bear in mind that, so far as LBIE is
23 concerned, for the first four years, I think, of its
24 administration no one anticipated that there would be
25 a surplus. Everyone was proceeding on the basis that

1 the administrators' reports indicated that there was
2 likely to be a substantial deficiency.
3 In that situation, if sterling had depreciated, the
4 consequence was that foreign currency creditors would
5 suffer disproportionately compared to other creditors.
6 Your Lordships may have noted that in Lines Bros,
7 whereas the sterling creditors received 100p in the
8 pound on their sterling claims, the net position was
9 that the bank, with its Swiss franc claim, only ended up
10 receiving some 58p in the pound.
11 If one takes into account that, in other words for
12 so long as and to the extent that LBIE was insolvent,
13 there was no possible one-way bet. Everyone was going
14 to suffer a loss. The only question was how big the
15 loss would be. As I said, if sterling depreciated, that
16 loss was going to be even bigger for the foreign
17 currency claimants.
18 We say it would effectively be adding insult to
19 injury if, when it came to the position of a surplus,
20 foreign currency creditors couldn't even at that stage
21 say, "I have suffered. I haven't received the same
22 percentage as every other creditor has received in the
23 liquidation", if the position was they couldn't even
24 receive the balance at that stage when the money was
25 paid to shareholders.

1 One could hypothesise in perhaps slightly extreme
2 circumstances in which the result, we say, would be
3 truly extraordinary. Imagine an English company
4 solvent, but who's only liabilities are in US dollars.
5 The directors of the company decide they're not
6 comfortable with the exchange rate risk that they face.
7 They put the company into a members' voluntary
8 liquidation. At that stage foreign currency claims are
9 converted into sterling and in the course of the next
10 year, or however long it takes, those foreign currency
11 claimants receive sterling payments. The directors'
12 concern proves to be real. Sterling does depreciate and
13 the consequence is that the company manages effectively
14 to avoid the foreign currency risk which it agreed to
15 accept, to impose it instead on the foreign currency
16 claimants, and for the shareholders to receive
17 a surplus, distributions, which they would never have
18 received had the company not gone into a members'
19 voluntary liquidation. We do respectfully say that
20 cannot possibly be the right result.
21 With those preliminary remarks, I want now to
22 develop our submissions. I was proposing to do so in
23 four parts.
24 First of all, I wanted to say a few words about the
25 position as between creditor and debtor outside of

1 an insolvency. Just to pick up a point my learned
2 friend made. His contention was that in the context of
3 ordinary execution, there's nothing exceptional or
4 surprising in there being currency conversion losses
5 which are not compensated for. That's the first topic.
6 The second, I want to deal with the effects of the
7 statutory regime both in relation to insolvent and
8 solvent companies and in that context to explain how
9 non-provable claims, including foreign currency claims,
10 currency conversion losses, are dealt with.
11 Thirdly, I want to deal with the rules relating to
12 contingent and future debts and set-off; and essentially
13 my learned friends' argument that those have substantive
14 effect and therefore Rule 2.86, 4.93 in relation to
15 currency conversion claims, also has substantive effect.
16 Fourthly, to deal with my learned friend's argument
17 that it would be unfair if creditors with foreign
18 currency claims were entitled to have their claims paid
19 in full, the one-way bet argument.
20 I am conscious my learned friend Mr Trower dealt
21 with some of the areas which I need to cover and I will
22 certainly try and avoid unnecessary duplication. But
23 your Lordships will bear in mind, I am sure, that he was
24 deploying the authorities and the points in the context
25 of different arguments and I obviously need to draw your

1 Lordships' attention to the relevance in the context of
2 this.
3 The other thing I was proposing to do is -- one
4 point just concerning the hearing that's recently taken
5 place in front of David Richards J in Waterfall II.
6 A number of the topics on which submissions are being
7 addressed to your Lordships were the subject of further
8 submissions in front of the learned judge as part of
9 Waterfall II. Now obviously your Lordships need to
10 decide the issues on the appeal in the light of the
11 submissions that are made. What I was, however,
12 proposing to do is just point out to your Lordships from
13 time to time particular areas which were the subject of
14 further submissions, just so your Lordships know that
15 those, as it were, are live as part of Waterfall II.
16 LORD JUSTICE MOORE-BICK: Is this just for our understanding
17 or is there some implication attached to that?
18 MR DICKER: My Lord, no. There are differences, for
19 example, in the position of various of the parties on
20 some of the underlying points. I think we would simply
21 be concerned if your Lordships were to, as it were, to
22 say something in the judgment, not intending, as it
23 were, to finally determine that issue which the learned
24 judge below spent two weeks hearing if it wasn't
25 necessary as part of this appeal.

1 LORD JUSTICE MOORE-BICK: All right.
2 LORD JUSTICE LEWISON: So line 1 of the judgment says, "This
3 is not a statute".
4 MR DICKER: My Lord, can I start with the position as
5 between creditor and debtor outside of an insolvency; in
6 other words, with the effect of the House of Lords
7 judgment in Miliangos.
8 I emphasise four points made by their Lordships.
9 The first is, as your Lordships know, and as
10 Lord Wilberforce said, the creditors' contract has
11 nothing to do with sterling. He bargained for foreign
12 currency and that is what he is entitled to, he has no
13 concern with sterling.
14 He also said that justice therefore demands that the
15 creditor should not suffer from fluctuations in the
16 value of sterling and it must be wrong in principle to
17 allow procedure to affect detrimentally the substance of
18 the creditors' rights.
19 The third point, however, is this. The creditor is
20 therefore entitled to a judgment in the foreign currency
21 sum or the sterling equivalent at the date of payment.
22 Your Lordships can see that most clearly from
23 Lord Edmund-Davies' speech. If your Lordships just --
24 LORD JUSTICE MOORE-BICK: This isn't really controversial,
25 is it?

1 MR DICKER: No, it's not.
2 LORD JUSTICE MOORE-BICK: This has been, dare one say, old
3 hat for quite a long time.
4 MR DICKER: And reflected in the practice direction, a copy
5 of which your Lordships have in the bundles. My Lord,
6 I won't take your Lordship to that.
7 The fourth point is there is then a separate
8 question of practicality.
9 LORD JUSTICE MOORE-BICK: Yes.
10 MR DICKER: What happens if the debtor does not pay and the
11 creditor has to take steps to enforce payment?
12 If the judgment has to be enforced in this country,
13 practicalities require it to be converted prior to
14 enforcement and this should occur on the last practical
15 date. The House of Lords suggested that in the case of
16 a writ of fi. fa. This should be done by converting the
17 relevant sum when the court authorised enforcement,
18 namely the date of the affidavit leading to execution.
19 My Lords, that is simply a matter of practicalities.
20 It doesn't affect the judgment to which the creditor is
21 entitled.
22 The argument that is then made by the other side is
23 that you should not assume that there can't be
24 uncompensated currency conversion losses as a result of
25 the process of enforcement because there may be currency

1 movements between the date of the affidavit and the date
2 of the payment.
3 My Lords, ignoring the point in that most cases this
4 is unlikely to be a practical problem given the short
5 period involved, we say that's wrong. It's wrong simply
6 because, if one goes back to the judgment to which the
7 creditor is entitled, the judgment is a judgment for the
8 foreign currency sum or the sterling equivalent at the
9 date of payment. If, when the sum is finally paid to
10 the creditor in sterling, it is not sufficient to
11 discharge the judgment sum, then that judgment has not
12 been satisfied. In principle, though no doubt in
13 practice it will be extremely rare, one suspects, for
14 this to occur, a further writ of execution could be
15 issued.
16 My Lords, nothing at all surprising at that.
17 Entirely consistent, we say, with the approach of the
18 House of Lords in Miliangos, who were keen to ensure, so
19 far as practical, the creditor got precisely what he had
20 bargained for.
21 We have included two authorities in the bundles just
22 to illustrate this. Can I just draw your Lordships'
23 attention to both of them. The first is a case called
24 Carnegie v Giessen. It's in bundle 5 and it's tab 11.
25 (Pause).

1 What happened was that the claimant obtained
2 judgment against the defendant for some US$1.4 million
3 which the defendant failed to pay. The master made
4 a charging order expressed in US dollars, and the
5 question was whether he had jurisdiction to do so and
6 the Court of Appeal held that he did.
7 Your Lordship will see from the judgment of
8 Carnwath LJ, paragraph 12, his comment in the second
9 sentence that:
10 "The common principle underlying all the speeches
11 [that is in Miliangos] is that the conversion should be
12 made as close as practical to the date of payment having
13 regard to the realities of enforcement procedures."
14 Then he deals with the various practice directions
15 at paragraphs 15 to 22 and concludes, at the top of
16 page 2517, halfway through paragraph 22:
17 "The House of Lords was not laying down binding
18 rules applicable regardless of the enforcement
19 procedure. It was stating a general principle, the
20 detail of which would have to be worked out in
21 procedural rules."
22 In 31, line 3, the conclusion:
23 "For present purposes it is enough in my view to
24 hold the master clearly had jurisdiction to make
25 a charging order in the form he did."

1 Ultimately, where it is practicable, one can in fact
2 issue an order for execution in the relevant foreign
3 currency.
4 The second case is tab 10, if your Lordships go back
5 one tab, again a decision of the Court of Appeal in
6 a case called Choice Investments.
7 This case is essentially the reverse of the issue
8 we've just been discussing. What happened here was that
9 the currency markets moved in favour of the creditor
10 after execution had commenced. The Court of Appeal held
11 he only was entitled to receive the amount necessary to
12 discharge the amount in respect of which he had obtained
13 his judgment.
14 In practice, what happened was this, that judgment
15 was in sterling, the creditor sought to garnishee a debt
16 owed by the debtor's bank which was in US dollars. He
17 got an order nisi. Between the date of the order nisi
18 and the order absolute sterling depreciated. So the
19 amount of US dollars blocked was now greater than the
20 amount of the sterling judgment. The Court of Appeal
21 held the bank must release the balance and provide it to
22 the debtor.
23 Your Lordships will see at page 156, from the
24 judgment of the Master of the Rolls, between letters G
25 and H, the comment, just above G:

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

"But, if and when the garnishee order is made absolute, the bank should exchange that stopped amount from dollars into sterling so far as is necessary to meet the sterling judgment debt and pay over that amount to the judgment creditor. But if insofar as the stopped amount, owing to exchange fluctuations, is more than enough to meet the judgment debt, the bank must release the balance from the stop and have it available for its customer on demand."

LORD JUSTICE MOORE-BICK: These cases are simply illustrations of the general principle of the distinction between the money of account and the money of payment, aren't they? This was a sterling judgment which the judgment creditor could satisfy by execution on non-sterling assets and he could only execute as to the extent necessary to meet his sterling debt.

MR DICKER: Your Lordship is absolute rightly in relation to this. We say, similarly, if it were the other way round and the judgment was in a foreign currency and the order nisi effectively blocked funds in a US dollars account and the same thing happened, again what would be required was sufficient to pay off the judgment amount only and, if the sterling had appreciated in the meantime, no more than that.

So we say when one comes to the process of

enforcement, one starts with the fact that one is entitled to judgment in the foreign currency or the equivalent at the date of payment, and the court will do whatever it can to ensure that this is in fact what happens. There isn't, as it were, a bargain struck to which both parties then effectively take the risk. It's worked out as and when necessary to ensure that, as I say, the creditor gets what he's entitled to get.

My Lords, it's a small point but I just wanted to answer the submission made by my learned friends that your Lordships shouldn't be surprised if there are uncompensated for currency conversion losses in the context of an enforcement process, because that's something which may happen in the context of ordinary enforcement.

LORD JUSTICE BRIGGS: Is there any case that actually shows a sort of double execution where you convert under the practice direction for your first execution to sterling, sterling then depreciates before payment? You say in principle you should be able to go and have another bite of the cherry.

MR DICKER: My Lord, yes.

LORD JUSTICE BRIGGS: Is there any illustration of that?

MR DICKER: We weren't able to find one.

LORD JUSTICE BRIGGS: I understand what you say, but I just

wonder if it was established.

MR DICKER: We say in principle it's simply another reason why the process of execution has resulted in less than is required to discharge the judgment debt. It doesn't matter what the reason is. If there's a shortfall, that process of execution has not sufficed, one is entitled to try again.

That's all I was going to say in relation to that.

So turning to the second part of my submissions, which concern the effect of insolvency proceedings in relation to insolvent and solvent companies.

We say it's important to consider the treatment of non-provable claims, including foreign currency claims, in the context of the operation of the statutory scheme as a whole.

My learned friend Mr Trower made the point that the essence of a liquidation at its most basic is that the liquidator is to secure the assets of the company are got in, realised and distributed to the company's creditors or, if there is a surplus, to the persons entitled to it. The schedule is section 143 and section 107.

Your Lordships know similar provisions have existed in similar terms right back to the origins of corporate insolvency and bankruptcy, going as far back I think as

1542.

The first part of the regime concerns the analysis which applies if the company is insolvent. The first point is it's described, as your Lordships know, as a process of collective enforcement in respect of proved debts. We say that reflects the fact, as with any ordinary enforcement, the scheme is that the creditors' underlying claims are discharged only to the extent they are actually paid or one needs to add, for reasons I will explain, or treated as having been paid. This has been consistently confirmed by authorities at the highest level.

My learned friend Mr Snowden showed you Lord Hoffmann's speech in Wight v Eckhardt. Can I just remind your Lordships of the terms of the relevant paragraphs. It is in bundle 1C, tab 75. My Lords, it is paragraph 26 and 27. (Pause).

My learned friend's submission was that all Lord Hoffmann was doing in Wight v Eckhardt was saying the winding-up order does not on its own convert any claims, have any effect on claims. But in our submission Lord Hoffmann, in paragraph 27, is going further than that. He is describing the scheme as a whole. He says in 27:

"The winding-up leaves the debts of the creditors

1 untouched. It only affects the way in which they can be
2 enforced. When the order is made, ordinary proceedings
3 against the company are stayed ... the creditors are
4 confined to a collective enforcement procedure that
5 results in pari passu distribution of the company's
6 assets. The winding-up does not either create new
7 substantive rights in the creditors or destroy the old
8 ones. Their debts, if they're owing, remain debts
9 throughout. They are discharged by the winding up only
10 to the extent that they are paid out of dividends. But
11 when the process of distribution is complete, there are
12 no further assets against which they can be enforced.
13 When the company is dissolved, there is no longer
14 an entity which the creditor can sue. But even then,
15 discovery of an asset can result in a company being
16 restored for the process to continue."
17 So what we say he is doing is providing a general
18 description of the regime as a whole and it is
19 a description which is consistent with the regime which
20 has existed, as I say, since the origins of corporate
21 insolvency and bankruptcy.
22 LORD JUSTICE LEWISON: But it's not a comprehensive
23 description.
24 MR DICKER: No, and there is one aspect which is obviously
25 critical for the purposes of this case which I need to

1 come back to. That is Lord Hoffmann's comment that:
2 "They are discharged by the winding up only to the
3 extent that they are paid out of dividends."
4 There's obviously an issue as to what constitutes
5 payment and in what circumstance the statutory scheme
6 treats one as having been paid.
7 My Lords, that part of the issue I was going to deal
8 with when I come on to dealing with the rules relating
9 to contingent and future debts and set-off and obviously
10 also the purpose of the rule relating to the conversion
11 of foreign currency claims for the purposes of proof.
12 LORD JUSTICE LEWISON: All right.
13 MR DICKER: What I am trying to do at the moment is, as it
14 were, set the scene before one gets to that stage of the
15 argument.
16 LORD JUSTICE LEWISON: Right. That's the critical point,
17 isn't it?
18 MR DICKER: Yes.
19 LORD JUSTICE LEWISON: One can accept what Lord Hoffmann
20 says as a generality but then there are exceptions, of
21 which we know about many. The question is: is currency
22 conversion one of them?
23 MR DICKER: Absolutely. Your Lordship is absolutely right
24 and we say one needs to approach it in stages.
25 LORD JUSTICE LEWISON: Yes.

1 MR DICKER: One needs to, before drilling down to that level
2 of detail, be clear as to what the process of collective
3 execution in respect of proved debts is, how that
4 analysis applies and the extent to which it applies,
5 what then happens if there is a surplus, what's the
6 analysis in relation to that, and see how the specific
7 rules operate in that context.
8 One parallel I am going to refer your Lordships to,
9 which we say is a very helpful parallel, is between the
10 approach which the statute now takes and the cases
11 previously took in relation to post-insolvency interest,
12 on the one hand, and currency conversion claims, on the
13 other, because we say there is a close relationship
14 between them, both in substance and as a matter of how
15 they have been analysed in the authorities.
16 My Lords, I won't weary your Lordships with taking
17 you to other recitations of Lord Hoffmann's comments in
18 Wight v Eckhardt. There are three further examples in
19 the bundles, including two further Privy Council cases,
20 Cambridge Gas and Parmalat.
21 Again, just taking the analysis further, how does
22 this collective process of enforcement work? Again, as
23 my learned friend says, the basic requirement is that
24 the debtors' assets are distributed pari passu amongst
25 the creditors in respect of their proved debts. I'm not

1 sure he mentioned, just so your Lordships have it,
2 pari passu treatment in a compulsory, as he observed,
3 isn't expressly dealt with in section 143, but it is
4 dealt in the rules. Just so your Lordships know, it is
5 Rule 4.181.
6 LORD JUSTICE BRIGGS: 4.1 --
7 MR DICKER: 4.181, which provides that:
8 "Debts other than preferential debts rank equally
9 between themselves in the winding up, and after the
10 preferential debts, shall be paid in full unless the
11 assets are insufficient for meeting them, in which case
12 they abate in equal proportions between themselves."
13 (Pause).
14 This necessarily requires, again as your Lordships
15 know, the existence of a cut-off date. There has to be
16 a cut-off date to determine the class of creditors who
17 are entitled to participate in the distribution of the
18 company's available assets pari passu. Lord Neuberger
19 makes that point in Nortel at paragraph 35. In other
20 words, the debts have to exist as at the relevant date.
21 Conversely, any debts that don't exist at that relevant
22 date are not provable and are not entitled to
23 participate in the collective process.
24 The next stage we say it is obviously important to
25 appreciate what a non-provable claim is. All the

creditor is doing is saying to the debtor, "You have a debt or liability which has not been satisfied by the process of collective enforcement. Please pay me."

It's not a claim for damages for loss caused by the statutory scheme. The creditor is not saying that the scheme has caused him loss, for which he has some entitlement to compensation. Nor is it something that's created for the first time by the statutory scheme or a byproduct of the statutory scheme. It's simply a claim which has not been paid in whole or in part as part of the pari passu distribution of the assets.

LORD JUSTICE MOORE-BICK: But the foreign currency debt does exist, on this assumption that the date of liquidation or administration, and can be proved for, and the scheme tells one how it is to be proved for, doesn't it --

MR DICKER: And --

LORD JUSTICE MOORE-BICK: -- and what its value is?

MR DICKER: For the purposes of proof.

LORD JUSTICE MOORE-BICK: Yes.

MR DICKER: Again, the next stage of the argument, as your Lordships will see, is how matters are dealt with for the purposes of proof, but we say only for the purposes of proof.

My Lords, my learned friend Mr Snowden sought to suggest that non-provable claims are in some way strange

and elusive things no draftsman would have contemplated. We say that's not right.

It is obviously true that the category of proved and provable claims has progressively been enlarged, and the category of non-provable claims has been correspondingly reduced. David Richards J summarised it in T&N and your Lordships have been referred to that.

That's obviously not always been the case. It wasn't until the mid-19th century that contingent claims, for example, were admissible to proof. More importantly, again as your Lordships know, the concept of non-provable claims is still a very familiar one. In the period leading up to the introduction of the 1986 Act, unliquidated claims for damages were not provable. There were a series of cases -- two of which your Lordships will see in due course -- in the period leading up to 1986 which dealt precisely with those claims, and they were only admitted to proof for the first time in 1986. Again, as my learned friend Mr Trower said, admitted to proof initially only if the cause of action was complete at the relevant date. That was then addressed by David Richards J in T&N and the rules were subsequently amended to provide admissible to proof provided the cause of action was complete, save only for damage.

There are still non-provable claims. One obvious example, following the decision of the Supreme Court in Nortel, are statutory claims which don't satisfy Lord Neuberger's requirements in paragraph 77 of his speech.

LORD JUSTICE BRIGGS: And which don't create expenses?

MR DICKER: And which don't create expenses.

It may not necessarily be easy to determine the dividing line between the two, as I think a discussion between my Lords Lord Justice Moore-Bick and Lord Justice Briggs yesterday illustrated.

There are two non-provable claims which are obviously particularly important in this context. The first is in relation to interest and the second, obviously, foreign currency claims. Both, we say, are non-provable for exactly the same reason. They are both non-provable as a direct consequence of the need for a cut-off date and the requirement that claims are ascertained as at that date.

The consequence of that in relation to interest is that you can prove for interest accrued prior to the relevant date; you can't in respect of interest in the period after that date. In relation to foreign currency claims, you can prove only for your debt ascertained as at the relevant date, i.e. the sterling equivalent on

the same date.

Both of those consequences were originally judge-made law. The position in relation to post-insolvency interest in fact originated in a decision of Lord Hardwicke in a case called Bromley v Goodere back in 1743. It was subsequently codified in bankruptcy in 1824. Matters in relation to corporate insolvency took a little longer to catch up. It was determined as a matter of authority, as your Lordships know, in Humber Ironworks and it was finally codified by statute only in 1986.

In relation to foreign currency claims, the same thing occurred. It was first established by authorities by Oliver J in In re Dynamics, upheld by the Court of Appeal in Lines Bros, and then subject to codification in 1986.

We say it is critical for the purposes of this appeal to appreciate that the need for a cut-off date and the need to ascertain claims as at the relevant date is solely to ensure that the assets of the debtor are distributed pari passu amongst its creditors in respect of their proved debts. My Lords, it is again something which appears from Lord Hoffmann's speech in Wight v Eckhardt, if I can just ask your Lordships to turn back to that, which is in bundle 1C, tab 75.

1 (Pause).
2 It is paragraph 28 and 29. In paragraph 28 he
3 refers to Oliver J's judgment in Dynamics:
4 "The purpose of the rule that debts are valued at
5 the date of winding up is to give effect to the
6 principle of pari passu distribution. It is a principle
7 of fairness between creditors."
8 Then quoting:
9 "It is only in this way that a rateable or
10 pari passu distribution of the available property can be
11 achieved."
12 Then in 29:
13 "The image of collecting and uno flatu distributing
14 the assets of the company on the day of the winding-up
15 order is a vivid one. The courts apply it to give
16 effect to the underlying purpose of fair distribution
17 between creditors pari passu and not as a rigid rule."
18 Then the last sentence:
19 "It would be pure conceptualism to apply it so as to
20 require payment of a dividend to someone who, at the
21 time of the distribution, is not a creditor at all."
22 That's obviously its application in
23 Wight v Eckhardt.
24 LORD JUSTICE LEWISON: Is there not another purpose of the
25 cut-off date? And that is to enable the company to wind

1 itself up within a reasonable period of time.
2 MR DICKER: Your Lordship is right and that is the reason
3 why the rules include provisions for estimating,
4 discounting future debts and things of that sort.
5 Your Lordship is absolutely right. I was going to come
6 on to those. There are two distinctions between those
7 rules and foreign currency rules.
8 LORD JUSTICE LEWISON: There may well be. I was just
9 questioning your proposition that the only reason for
10 the cut-off date is for the purpose of pari passu
11 distribution.
12 MR DICKER: My Lord, in our submission, that is the purpose
13 of valuing all claims as at the relevant date. Plainly,
14 the process as a whole has to ensure that claims can be
15 valued as at that date. So to that extent these rules
16 are therefore required and are relevant. But the
17 concern there is simply to ensure that the company can
18 wind up its affairs within a reasonable period. We say
19 obviously that rationale, providing the justification
20 for discounting, estimation, et cetera, has nothing to
21 do with foreign currency claims because, by the time the
22 surplus comes to be distributed, it's perfectly clear
23 whether or not the creditor has suffered a shortfall.
24 There is no part of the conversion into sterling that
25 therefore requires or is capable of being justified on

1 the basis it's necessary to ensure winding up within
2 a reasonable period.
3 LORD JUSTICE MOORE-BICK: But the notion of collecting and
4 uno flatu distributing the assets, if applied to foreign
5 currency debts, means there would never be an exchange
6 loss.
7 MR DICKER: Yes.
8 LORD JUSTICE MOORE-BICK: That's quite an important point,
9 isn't it? Because you are then getting full credit for
10 your debt at the date of winding-up and interest for
11 thereafter being kept out of it?
12 MR DICKER: My Lord, just three points in response.
13 Firstly, Lord Hoffmann's comment that it's not a sort of
14 rigid rule, it's an image.
15 LORD JUSTICE MOORE-BICK: No, no.
16 MR DICKER: Secondly, in a sense you could make exactly the
17 same point in relation to post-insolvency interest.
18 Your debt is valued as at the date of the winding up --
19 LORD JUSTICE MOORE-BICK: Then you get --
20 MR DICKER: On that basis one should have, in a sense -- if
21 one is going to imagine a situation that all the assets
22 are realised and distributed on one day and treat that
23 not that merely as an image but as something which then
24 dictates what happens, logically you wouldn't pay
25 post-insolvency interest at all.

1 LORD JUSTICE MOORE-BICK: I am not sure about that, because
2 it's the date of valuation that counts for this purpose
3 and whether you're credited with full value at the date
4 of the winding up and then simply paid interest for
5 being kept out of that money.
6 MR DICKER: My Lord, the third point is when your Lordship
7 said "credited with full value", one thing that's
8 obviously plain is you are not in fact receiving full
9 value on that date. If exchange rates move, obviously,
10 after the relevant date and distributions are only made
11 subsequently, it may well turn out that you don't
12 receive full value.
13 LORD JUSTICE BRIGGS: So, subject to hedging, you're locked
14 out your currency of choice --
15 MR DICKER: Yes.
16 LORD JUSTICE BRIGGS: -- by the fact that you don't in fact
17 get paid on the winding-up date?
18 MR DICKER: It was a point I think my learned friend
19 Mr Wolfson sought to address by saying, "This isn't
20 a practical problem; you can simply hedge", to which we
21 say, firstly, hedging inevitably involves a cost which
22 the creditor then has to bear; but secondly, and in
23 a sense more importantly, you only get to this issue if
24 the company is solvent.
25 LBIE wasn't initially thought to be solvent. It was

1 insolvent. That remained the state of affairs for at
2 least four years. So if one wanted a hedge, what one
3 would effectively be doing is going out to
4 a counterparty and saying, "I want to hedge an uncertain
5 amount for an uncertain period, which may only arise in
6 certain circumstances."
7 My Lords, it's simply not a practical proposition.
8 It's not an answer to this. Even if it's available, it
9 would only impose additional costs on creditors.
10 My Lords, I don't know whether that would be
11 a convenient moment.
12 LORD JUSTICE MOORE-BICK: A convenient moment? Thank you.
13 We'll sit again at 2 o'clock.
14 (1.03 pm)
15 (The short adjournment)
16 (2.00 pm)
17 LORD JUSTICE MOORE-BICK: Yes, Mr Dicker.
18 MR DICKER: My Lords, we were discussing the image of
19 notional collection distribution on Day 1.
20 LORD JUSTICE MOORE-BICK: We were, yes.
21 MR DICKER: Your Lordships know our submission is that one
22 applies that image to give effect to the pari passu
23 distribution amongst proved debts. As Lord Hoffmann
24 says, even in that context it's not an absolute or rigid
25 rule.

1 LORD JUSTICE MOORE-BICK: No.
2 MR DICKER: We also say it loses any analytical relevance
3 when one has finished the proof process and moves to
4 dealing with any surplus which may exist.
5 We say one can see that quite neatly from two cases;
6 both from Humber Ironworks, where Selwyn LJ starts by
7 dealing -- or rather deals with the position if the
8 company is insolvent and applies the notional
9 distribution on day one as a reason for saying there
10 must be a cut-off for interest as at the date of the
11 winding-up order.
12 LORD JUSTICE MOORE-BICK: Yes.
13 MR DICKER: He then says, with no sense of there being any
14 inconsistency, that in the event of a surplus
15 post-insolvency interest is payable. We also say,
16 similarly, Brightman LJ in Lines Bros effectively did
17 the same. The main issue in that case obviously was at
18 what date for the purposes of proof do foreign currency
19 claims need to be converted? He dealt with that and
20 part of his reasoning again depended on the notional
21 distribution ascertainment on day one point, and then
22 moved on to say, well, that's not determinative, in
23 effect, in the event of a surplus.
24 LORD JUSTICE MOORE-BICK: Right.
25 MR DICKER: What I want to do now is turn and deal very

1 briefly with what happens where there is a surplus,
2 again in general terms, before going down a level and
3 looking at issues in more detail.
4 So we've essentially finished the first stage.
5 We've finished the process of proof pari passu
6 distribution amongst creditors; and we're now in
7 a situation where it turns out there is a surplus, the
8 company is solvent.
9 The issue then is: how are such non-provable claims
10 dealt with? As your Lordships know, the position has
11 always been those non-provable claims rank in priority
12 to any distributions from shareholders. One sees that
13 reflected most recently in Lord Neuberger's speech in
14 Nortel.
15 My Lords, just a small point in relation to that.
16 My Lord Lord Justice Briggs asked whether the Supreme
17 Court was addressed on the distinction between provable
18 and non-provable claims.
19 LORD JUSTICE MOORE-BICK: Yes.
20 MR DICKER: The short answer is, yes, at very considerable
21 length, if Mr Phillips and Mr Robins will forgive me for
22 saying so. Their written case included about 30 pages
23 of history, dealing with every move in the boundary
24 between provable and non-provable claims, essentially in
25 support of a submission that this was a matter on which

1 Parliament acted every time it wished to act.
2 Parliament had not acted in relation to the discretion
3 cases and therefore it would be inappropriate for the
4 Supreme Court to do so, they should leave it to the
5 legislature. That submission obviously ultimately was
6 rejected, but reflected in the report of the argument in
7 the reported decision on Nortel is a summary of
8 Mr Phillips' and Mr Robins' submissions on that.
9 How, then, are such claims dealt with by the
10 statutory scheme? It's fair to say, with considerably
11 more brevity than the scheme deals with the first stage,
12 process of proof. But the effect of the scheme has
13 always been held to be that the relevant office holder
14 has to pay such liabilities before returning the surplus
15 to shareholders.
16 One can in fact trace that right back to a case
17 I mentioned earlier, a decision of Lord Hardwicke in
18 Bromley v Goodere in 1743. At that stage --
19 LORD JUSTICE LEWISON: How is this relevant? If you have
20 a non-provable claim, of course you get paid before the
21 members. But the question is, do you have one?
22 MR DICKER: My Lord, absolutely right, and if -- the
23 argument effectively goes like this. One has to
24 understand what the nature of a non-provable claim is.
25 The effect of stage one, the proof process, on that

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

claim, answer it has an effect for the purposes of proof but no further, the treatment of that claim in the event of a surplus. Having seen that structure, we say it's then very clear how those claims should be dealt with, in other words in the way that Brightman LJ dealt with it In re Lines Bros. We also say it's very clear, when one looks at the way the draftsman codified the position in the 1986 Act that he was essentially exactly what Brightman LJ suggested was the solution. The critical words, as your Lordships knows, are the words at the start of the relevant rule, for the purposes of proof, i.e. for the purposes of stage one rather than stage two.

My Lord, I am dealing with it partly in this way to pick up submissions my learned friend made along the way. One of the submissions he made was there are no detailed rules governing non-provable claims. I think he sought to pray that in aid of his submission that therefore there can't be a currency conversion claim, because if there was you would expect detailed rules to deal with it.

One answer to that is simply that there had never been detailed rules in the statutory scheme, all the way back to 1542, dealing with non-provable claims, despite the fact the further one goes back the bigger percentage

of claims are non-provable claims. They have always, with one exception, prior to the 1986 Act been left to the courts to deal with. The one exception was that there was an express provision dealing with post-insolvency interest in bankruptcy. I mentioned that. It was brought in originally in 1842.

The reason why specific statutory provision needed to be made was because up to that point creditors only got post-insolvency interest if they were entitled to it, and the regime had worked perfectly satisfactorily so far as such interest was concerned. In 1842 the legislature added a provision that creditors were entitled, at that stage after contractual interest had been paid, to interest at the prescribed rate. Obviously, that was a new additional right, given by statute and thus needed to be embodied in the statutory code. But until then it was always a matter for judges to deal with.

I said there are two strains of authorities before the 1986 Act which we say throw light on the correct construction of the 1986 Act and the rule governing conversion and foreign currency claims. Those are, as your Lordships know, firstly cases dealing with post-insolvency interest and, secondly, obviously, Re Dynamics and Lines Bros. It's essentially the

parallels in the reasoning between the two that we rely on.

If I can start, and again dealing with this relatively briefly, with the cases dealing with post-insolvency interest. I am going to deal with the cases dealing with the position in relation to corporate insolvency rather than bankruptcy, and there are three cases. The first is Humber Ironworks, the second is a case called WW Duncan, the third is Fine Industrial Commodities.

Just at this point I should pause to say the precise scope of one's right to post-insolvency interest, in particular under the 1986 Act, is obviously one of the issues currently being considered by David Richards J as part of Waterfall II.

My Lords, Humber Ironworks. This decision has been repeatedly cited at the highest levels ever since. Your Lordships will have seen it's referred to indeed by Lord Hoffmann in Wight v Eckhardt. It essentially did two things. If your Lordships turn up the decision, it's in bundle 1A, tab 12. (Pause).

It dealt with, firstly, the position in the event the company was insolvent and, secondly, in the event it was solvent, although the order was obviously reversed in Selwyn LJ's judgment.

If your Lordships go to Selwyn LJ at 646, in the main paragraph on 646 he deals with the position in the event a company is insolvent. The point he makes there is essentially to say that:

"Though it may be difficult to conceive, save in a very simple case, of a situation in which the assets of a company could be immediately realised and distributed, nevertheless that's the approach that has to be taken."

Just at the marked passage, just above the second hole punch, he says:

"Justice I think requires that that course of proceedings should be followed. No person should be prejudiced by the accidental delay and that, in consequence, the necessary forms and proceedings of the court actually takes place in realising the assets, but that in a case of an insolvent estate all the money being realised as speedily as possible should be applied equally and rateably in payment of the debts as they existed at the date of the winding up."

He uses, at the top of 647, the well-known image that the tree must lie as it falls.

That's the approach in the event that the company is insolvent.

In the event there is a surplus, the company is

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 solvent, the position is different. He deals with that
2 at 645. Again, I think your Lordships have seen the
3 paragraph at the bottom of the page, four lines down.
4 He says:
5 "In the first place it appears to me we must
6 consider the case under two aspects. The first whether
7 is ..."
8 And notes where there is not a surplus. Then:
9 "I apprehend in whatever manner the payments may
10 have been made, whether originally they made have been
11 made in respect of capital or in respect of interest,
12 still in as much as they have all been paid in process
13 of law without any contract or agreement between the
14 parties, the account must, in the event of there being
15 an ultimate surplus, be taken as between the company and
16 the creditors in the ordinary way."
17 Effectively, you are entitled to get whatever amount
18 of interest you would have received under your contract.
19 The specific point he was addressing when he talks about
20 "in the ordinary way", that is in the manner pointed out
21 in Bower v Marris, that point he was holding entitled
22 the creditor to be able to say that the dividends he
23 received he could in this situation notionally treat as
24 having been payments of interest, rather than principal,
25 because that's reflects his underlying contractual

1 rights, although obviously for the purposes of
2 pari passu distribution dividends are paid in respect of
3 principal.
4 So the regime in respect in the event of a surplus
5 is different.
6 It's often referred to in the cases as involving
7 a remission to contractual rights. That obviously made
8 sense in a context in which the relevant rights,
9 underlying rights, were contractual. But another way of
10 looking at it, we say, is simply this reflects the fact
11 that members come last; the creditors should be paid all
12 they are entitled to be paid before the shareholders
13 receive anything.
14 In the case of a contract one way of achieving that
15 to say remission to contractual rights, you get whatever
16 you're entitled to as a matter of contract.
17 The case didn't discuss the mechanism for
18 determining such claims to interest. In practice, that
19 never seems to have been a problem. None of the cases,
20 following this route, whether in bankruptcy or corporate
21 insolvency, address that.
22 The two other cases to similar effect and which
23 I can take very briefly, as I said, are WW Duncan at
24 tab 32 of the same bundle. (Pause).
25 Just noting from page 310 at the bottom of the page,

1 on the record of the argument, the reference to Warrant
2 Finance Company's case is another name for
3 Re Humber Ironworks (1880) LR 4 Ch 643.
4 At 313 Buckley J says, six lines down:
5 "Happily the result of the winding up is there has
6 been enough to pay the creditors 20 shillings in the
7 pound. The only question I have to determine is whether
8 the customers are in addition entitled to interest from
9 the date of the winding up until the date of the payment
10 of the principal sums due to them. In my opinion they
11 are."
12 There is then an argument which essentially involved
13 the opposing party saying, "Well, creditors signed
14 receipts saying they had taken their 20 shillings in the
15 pound in full and final settlement of their claim
16 against the company" and Buckley J deals with that at
17 315. He says, at the break by the first hole punch:
18 "With regard to class F, this further point is made
19 on behalf of the contributories. The people of that
20 class sent in their proofs. The liquidator rejected
21 their proofs altogether. The matter was then brought
22 before the court. The decision of the liquidator
23 rejecting the proofs was reversed and they were admitted
24 to dividend. Now, what do you admit to proof for
25 dividend in the winding up of a company? The amount of

1 the debt at the commencement of the winding up, that has
2 nothing whatever to do with the payment of interest
3 accruing due after the winding up if the company turns
4 out to be solvent. There could not until the fact of
5 solvency was ascertained be a right to claim that
6 interest."
7 He then says in the next paragraph:
8 "The compromise in respect of that right of proof.
9 There is no compromise of the right to have interest if
10 the company turns out, as it has in this case, to be
11 solvent."
12 So although the creditors had actually signed
13 a receipt saying they had received 20 shillings in the
14 pound in full and final settlement of their claim
15 against the company, Buckley J held there was no
16 restriction on them because that was effectively all in
17 the context of proof.
18 The other decision is a decision of Vaisey J, Fine
19 Industrial Commodities which is at tab 46. His judgment
20 starts at page 260. He says in the first paragraph,
21 line 2:
22 "The strange feature of the case is that a company
23 in the process of being wound up on the footing it was
24 an insolvent company now finds itself in the position,
25 in the person of its liquidator, of being in possession

1 of a substantial surplus."
2 Then two short passages at 262, picking it up
3 six lines down from for the first full paragraph. The
4 sentence in the middle beginning "Although". He says:
5 "Although for some purposes during the winding-up
6 proceedings this company must have been deemed to have
7 been insolvent, it seems to me when the time comes with
8 dealing with surplus it must no longer be deemed to be
9 an insolvent company. It has to be treated as a company
10 which is and was and always has been solvent."
11 He repeats that in four lines just above the second
12 hole punch, if your Lordships see that:
13 "But I should have thought that as soon as it is
14 found there is a surplus, the court must be deemed to be
15 no longer winding up an insolvent company but to be
16 winding-up a company which is solvent."
17 Over the page, supports the view he has taken by
18 referring not surprisingly to Re Humber Ironworks.
19 That's at the top of 263.
20 So that's how post-insolvency interest is dealt with
21 in the event of a surplus. The notional distribution on
22 day one ceases to have any analytical force and the
23 basic underlying idea is --
24 LORD JUSTICE LEWISON: I am not quite sure what we get out
25 of Fine Industrial Commodities. Vaisey J was

1 considering whether the bankruptcy rule applied and the
2 Companies Act only applied that in the winding-up of
3 an insolvent company. So he had to decide: did the
4 bankruptcy rule apply? That's what he is actually
5 deciding.
6 MR DICKER: Your Lordship is right because -- I didn't think
7 it was necessary to go into the complexities for the
8 purposes of our submissions. Your Lordship is
9 absolutely right. One of the issues, and the issue in
10 Fine Industrial and also in Vice-Chancellor Pennycuick's
11 subsequent judgment in Rolls-Royce was: are creditors
12 entitled to interest effectively at the Judgments Act
13 rate? Now, as I mentioned, there was express provision
14 to that effect in the bankruptcy rules --
15 LORD JUSTICE LEWISON: Then there was a crossover whereby
16 the bankruptcy rule was brought into the winding up of
17 an insolvent company and these cases discuss what
18 happens if the company stops being insolvent.
19 MR DICKER: Your Lordship is right. The reason why
20 section 33.8 did not apply was because the crossover
21 only applied in the event the company was insolvent.
22 Obviously, that issue isn't relevant for these
23 purposes.
24 LORD JUSTICE LEWISON: No.
25 MR DICKER: What is, we say, is Vaisey J's comments about

1 how you approach a company, i.e. your approach it on the
2 basis it is solvent and always treated as having been
3 solvent.
4 One thing that that does indicate is that we're no
5 longer encumbered by the baggage which came along with
6 proved debts --
7 LORD JUSTICE LEWISON: I see.
8 MR DICKER: -- on that analysis.
9 LORD JUSTICE LEWISON: So you extract a general principle
10 that, if a company turns out to have a surplus, it's
11 treated as though it was never insolvent?
12 MR DICKER: No, I don't go so far. What I submitted was
13 what one ultimately gets from these cases is the idea
14 that in the event of a surplus the creditors are
15 entitled effectively to payment in full.
16 LORD JUSTICE LEWISON: Right.
17 MR DICKER: Everything that they would have received had the
18 company not gone into insolvent liquidation. Put
19 another way, there was an earlier process of
20 distributing the assets pari passu amongst the creditors
21 and various rules were required to ensure that that
22 resulted in a pari passu distribution.
23 In a sense, with hindsight, it turns out that was
24 unnecessary, the company is solvent. When one gets to
25 that situation one is back to, essentially, straight

1 competition between creditors and shareholders. Should
2 creditors be paid in full or are shareholders entitled
3 to receive the sums leaving creditors unpaid?
4 LORD JUSTICE LEWISON: Yes.
5 MR DICKER: My Lords, the second category of cases, again
6 dealing with these briefly, concerned post-insolvency
7 claims in tort. Your Lordships know the basic position
8 in relation to this.
9 The three cases are: firstly, a decision of Harman J
10 in Islington Metal; secondly, R-R Realisations; and,
11 thirdly, T&N.
12 The first case, Islington Metal, your Lordship will
13 find in bundle 1B, tab 58. (Pause).
14 Just before turning to the detail of the judgment,
15 your Lordships should know there are two judgments
16 behind tab 58. The first starts at page 17 and the
17 second starts at page 22.
18 The first judgment concerned whether unliquidated
19 claims for damages in tort were provable in an insolvent
20 liquidation. The reason why that issue arose was
21 because Vinelott J had given a judgment in a case called
22 Barclays Securities. He held, contrary to the
23 understanding I think of most people at the time, that
24 unliquidated claims for damages in tort were provable,
25 provided that you obtained a judgment during the course

1 of the winding up.
2 The first issue Harman J dealt with was whether or
3 not that was right. He said it wasn't.
4 If your Lordships just go to page 19, I am picking
5 it up at letter D, he says:
6 "I have said the decision in the Barclay case was
7 surprising to practitioners in company law. It's not
8 easy to reconcile with terms of section 30 of the
9 Bankruptcy Act 1914 and I turn to consider the basic
10 framework to the winding up of an insolvent company,
11 whether by court or voluntarily."
12 Your Lordships see he then refers to
13 Humber Ironworks and Oliver J in Dynamics Corporation.
14 Picking it up just above G, he says:
15 "All debts are to be computed as at that date, as
16 the Court of Appeal held In re Lines Bros Ltd. Foreign
17 claims are converted into sterling at that date.
18 Brightman LJ at pages 17 to 20 analyses the authorities
19 in detail."
20 Then I don't think your Lordships need the rest of
21 that paragraph. His conclusion in the last paragraph at
22 the bottom of the page is:
23 "In my judgment, this basic scheme is wholly
24 inconsistent with the approach adopted by Vinelott J in
25 the Barclay case."

1 So, as everyone thought, unliquidated claims for
2 damages in tort were not provable and you weren't
3 assisted merely by getting a judgment post-winding-up.
4 The second judgment raised a different issue. It
5 raised the issue whether, once all proved debts had been
6 paid, any surplus should go to the tort claimants or to
7 the shareholders. Perhaps not surprisingly, Harman J
8 held that it should go to the non-provable tort
9 claimants. Your Lordships should note the argument by
10 the contributories is dealt with by Harman J at
11 page 23H. (Pause).
12 He says at 23H:
13 "When Mr Kennedy for the contributories argued this
14 part of the summons, he argued that once claimants such
15 as the tort claimants here were prevented from proving
16 by section 317 they were so prevented for all time. In
17 particular, the propositions which I found compelling on
18 question 1 of this summons, that is to say the
19 liquidation has to be treated as if liquidation and
20 distribution were simultaneous ... show that one cannot
21 have claimants who are not admitted at the date of
22 liquidation but come in thereafter."
23 The key to his answer he gives at page 24E to F on
24 the next page, where he says:
25 "In my judgment, the key to the whole problem lies

1 in the concept that a company in liquidation starts,
2 subject to section 317, but can then move to
3 section 316. The test for admission to proof are
4 different in the two sections. The fact that this shift
5 of position may occur demonstrates in my judgment that
6 the theory of simultaneous dealing has to be modified to
7 this limited extent."
8 Just so your Lordships know, 316 and 317 are
9 effectively the precursors of the rules that Mr Trower
10 referred you to, namely 12.3 and 13.12.
11 The second case I want to show your Lordships --
12 LORD JUSTICE LEWISON: So he decides that the tort claims
13 are provable, does he? Once the company is solvent.
14 Admission to proof, he says.
15 MR DICKER: Yes, and there is a wider category of claims
16 admissible to --
17 LORD JUSTICE LEWISON: He's not dealing with non-provable
18 claims. He's saying the rules for admission to proof
19 are different in the two cases.
20 MR DICKER: My Lord, in our respectful submission, it's the
21 same point.
22 LORD JUSTICE LEWISON: Right.
23 MR DICKER: In the sense that they were non-provable so far
24 as an insolvent company is concerned. They become, if
25 one wants to call it, provable in a solvent liquidation.

1 LORD JUSTICE LEWISON: I am only using Harman J's language.
2 MR DICKER: No, they are provable in the sense that they are
3 entitled to be paid and entitled to be paid before any
4 distributions are made to shareholders.
5 So it's essentially the mirror of the point my
6 learned friend Mr Trower made, the distinction between
7 12.3 and 13.12. 13.12 limits you to debts, provable
8 debts, with all the restrictions that that involves, and
9 the position when one comes to a surplus is different.
10 That's the first --
11 LORD JUSTICE BRIGGS: In fact the two sections are set out
12 on page 18.
13 MR DICKER: Yes. The second authority, R-R Realisations, is
14 in bundle 5, tab 9. (Pause).
15 Again, before turning to the parts of the judgment
16 of Vice-Chancellor Megarry that I wanted to show you,
17 just briefly so far as the facts are concerned, this is
18 a company which went into insolvent liquidation in 1971.
19 The liquidator had already made a substantial
20 distribution to shareholders. In the facts on 805,
21 letter G, you can see:
22 "On 8 October 1979 it was announced that a final
23 distribution of some 5.5 million be made to ordinary
24 stockholders."
25 Then:

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 "Meanwhile, following the publication on
2 September 22, 1978 of the results of an enquiry into
3 an accident at Bombay Airport, 1976, involving
4 an aircraft powered by the company's engines writs
5 against the company were issued."
6 So five years after the company went into
7 liquidation, an aircraft crashed which was powered by
8 Rolls-Royce engines. Four lines from the end, on that
9 page:
10 "A summons by the joint liquidators asked the
11 Companies Court for leave to distribute the company's
12 assets remaining in their hands amongst creditors and
13 stockholders without providing for the payment from
14 those assets of any debt, claim or liability which might
15 be owing by the company arising from the Bombay
16 accident, and the registrar dismissed the summons."
17 The Vice-Chancellor's response was essentially to
18 refuse that application. Your Lordships will see that
19 and the reason why at page 814. Just picking it up
20 below letter C, the last three lines of that paragraph.
21 LORD JUSTICE LEWISON: Which page? I am sorry.
22 MR DICKER: 814.
23 LORD JUSTICE LEWISON: Yes.
24 MR DICKER: The last three lines of the first paragraph, he
25 says:

1 "Where the order is sought in order to facilitate
2 a distribution among members, the court will be more
3 reluctant to grant it than if the distribution is to be
4 made to creditors. If I apply those conclusions to the
5 present case, it becomes plain the application must be
6 refused. I do not think that it would be just to make
7 the order and so shut out the plaintiffs from making any
8 effective claim against the company, particularly as the
9 proposed distribution is to members and not creditors.
10 I can well appreciate highly inconvenient to have the
11 postponed distribution halted in mid-course and
12 postponed for an indefinite period with the attendant
13 wasted additional cost. I do not say that inconvenience
14 and expense will not be of such a degree as to amount to
15 an injustice, but when this is weighed against the
16 proposed extinction of the plaintiffs' claims against
17 the company's assets I have no doubt where the balance
18 of justice lies."
19 So he refuses that.
20 The third case, I don't think your Lordships need to
21 turn it up because you've seen it, is the decision of
22 David Richards J in T&N. Your Lordships have seen that,
23 to similar effect, he said it would be extraordinary if
24 the company's assets could be and were required to be
25 distributed without paying tort claims which had accrued

1 since the liquidation date.
2 So, again, we say the same approach as has existed
3 all the way back to 1542, before any assets are
4 distributed by way of surplus to a bankrupt or to
5 shareholders, all claims existing as at that date have
6 to have been paid.
7 The next stage is to turn to foreign currency claims
8 and again to deal briefly with how they were approached
9 before 1986. The short answer, we say, is effectively
10 the same, although the authorities are much more sparse,
11 no doubt in large part because until the decision of the
12 House of Lords in Miliangos the issue didn't arise.
13 The first decision your Lordships obviously are
14 concerned with is Re Dynamics, which is in bundle 1B,
15 tab 55. (Pause).
16 As your Lordships know, the issue here was when
17 foreign currency claims should be converted for the
18 purposes of a liquidation. There was, again as your
19 Lordships know, at this stage no provision in the Act or
20 Rules dealing with this, so Oliver J had to deal with it
21 as a matter of principle.
22 The case involved a company which was insolvent, so
23 it didn't concern the position if the company was
24 solvent. The question was whether the claims should be
25 converted at the date of winding up or some other date.

1 The short conclusion was, applying basic principle
2 and by analogy with the treatment of other claims, it's
3 the date of the winding-up order as this was required to
4 ensure pari passu treatment.
5 I am just showing your Lordship the relevant points
6 from the judgment. If I can pick it up at page 761,
7 Oliver J starts at the bottom, between -- I'm sorry,
8 I should probably pick it up in fact between C and D,
9 the first marked passage, where he says in the second
10 sentence:
11 "It is of course necessary in a liquidation, if
12 a proportionate distribution among creditors of the
13 available assets is to be achieved, claims of all
14 creditors be reduced at some stage to a common unit of
15 account. The point of time at which that should be done
16 has been concluded by a series of cases which establish
17 the conversion must be made at the date when payment
18 became due so that the sterling amount of any claim was
19 ascertainable either before or at the latest upon the
20 commencement of the winding up."
21 Then he refers to Miliangos between E and F.
22 Then at G:
23 "What now is the position when such a debt in
24 respect of which no judgment has been obtained, or
25 indeed of such a debt where judgment has been obtained

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 but has not yet been enforced, is owed by a company
2 which is wound up in England?"
3 Then he starts with the basic purpose of the scheme:
4 "I take it to be well established the purpose of
5 both Bankruptcy Act 1914 and its predecessors, and of
6 the winding-up provisions of the Companies Act 1948 and
7 its predecessors, must ascertain the liabilities of the
8 bankrupt or of the company, as the case may be, as at
9 the date of the bankruptcy or liquidation and to secure
10 the division of the debtor's property amongst the
11 claimants pro rata according to the value of their
12 claims as at that date."
13 He develops that over the page at 672. Firstly by
14 citing two lengthy extracts from Selwyn LJ and
15 Giffard LJ's judgments in Humber Ironworks at 762 at C
16 to the top of 763; and refers to various other cases,
17 including, at the bottom of 763, British American
18 Continental Bank, where Lawrence J says:
19 "In a winding-up this court has to ascertain all the
20 liabilities of the company for the purpose of effecting
21 the proper distribution of its assets amongst its
22 creditors. The date has necessarily to be fixed on
23 which all debts and other liabilities are be treated as
24 definitely ascertained both for the purpose of placing
25 all creditors on an equality and for the purpose of

1 properly conducting a winding-up of the affairs of the
2 company."
3 His conclusion at 764, as to the effect of those
4 authorities, is between letters E and G. My Lords, it's
5 a familiar paragraph. Three lines below D, he says:
6 "The provisions of both the Companies Act and the
7 Bankruptcy Act with regard to the submission of proof
8 are, I think, all directed to this end, that is to say
9 to entertaining what at the relevant date were the
10 liabilities of the company or the bankrupt, as the case
11 may be, in order to determine what at that date is the
12 denominator in the fraction of which the numerator will
13 be the net realised value of the property available for
14 distribution. It is only in this way that a rateable or
15 pari passu distribution of the available property can be
16 achieved and it is, as I see it, axiomatic that the
17 claims of the creditors amongst whom the division is to
18 be effected must all be crystallised at the same date,
19 even though the actual ascertainment may not be possible
20 at that date, for otherwise one is not comparing like
21 with like."
22 So the entire reasoning is based on the need to
23 ascertain claims as at the date of the winding-up order,
24 to value them as at that date, so as to ensure
25 pari passu distribution of the assets in the event of

1 an insolvency.
2 That's the purpose Oliver J says, with the
3 provisions with regard to the submission of proof.
4 Obviously, given the terms of the rule dealing with
5 currency conversion claims, that has, we say, some
6 resonance.
7 The argument for the foreign currency creditors was
8 that their claim should be converted at the date of
9 proof, essentially picking up comments made by their
10 Lordships in Miliangos. This was rejected, essentially
11 for the same reasons. Your Lordships will see 769
12 between A and B --
13 LORD JUSTICE LEWISON: May I ask you about 768?
14 MR DICKER: Yes.
15 LORD JUSTICE LEWISON: Between D and F, the judge says:
16 "There is, as I see it, no doubt about what the
17 obligation of the company is at the date of the winding
18 up. It is not an obligation to pay to the dollar
19 creditor whatever may be the sterling equivalent of his
20 debt at some time ... it is an obligation to pay
21 whatever is the sterling equivalent at that date."
22 MR DICKER: And that --
23 LORD JUSTICE LEWISON: Isn't that a substituted obligation?
24 MR DICKER: We say no. We say what that's referring to --
25 it has to be read in context. Oliver J was dealing with

1 proof and what he was effectively saying was that, for
2 the purposes of proof, the only obligation which the
3 creditor is in a position to enforce or claim, i.e. at
4 this stage, is the sterling equivalent.
5 My Lords, I will come on to some of the issues.
6 They may be described as practical, or otherwise, if
7 there was a mandatory conversion for all times as at the
8 date of winding-up order, but I am sure your Lordships
9 can imagine some of the difficulties. One example
10 I will come to concerns third party rights against
11 insurers, for example, and the potential consequence
12 that might have in that context. Another would be the
13 position of co-obligors.
14 If that was the position, in other words if it
15 wasn't limited simply for the purposes of proof, then
16 the consequence wouldn't merely be that the creditor
17 wouldn't end up being paid his full amount from the
18 debtor before the surplus was distributed to
19 shareholders, it could also have consequences so far as
20 that creditor's claims against third parties are
21 concerned. Again that cannot, we respectfully say, have
22 been the intention of the process of collective
23 enforcement, which is just dividing up the available
24 assets amongst the creditors.
25 LORD JUSTICE LEWISON: Yes.

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

Page 117

1 MR DICKER: But your Lordship I think is absolutely right to
2 refer to that, if I may say. But we do say it needs to
3 be read in context.
4 LORD JUSTICE BRIGGS: You say the context is, what,
5 a single-minded focus on an insolvent company as
6 revealed by the fact he quotes from the insolvency part
7 of Humber Ironworks?
8 MR DICKER: Yes. Oliver J's entire approach -- I think
9 Mr Mann in an article referred to it as an astonishingly
10 brave judgment, given the discussions in the
11 House of Lords suggested that the date of proof might be
12 the right judgment. He described it as certainly
13 correct. But the entire driving force of the analysis
14 was: look at the rules governing proof, look at the
15 rules required to ensure a pari passu distribution of
16 creditors. That's what he had in mind and everything,
17 we say, has to be read in that context.
18 LORD JUSTICE LEWISON: The other unbelievably impressive
19 thing about it is it's an unreserved judgment.
20 MR DICKER: I had forgotten that. Even more --
21 LORD JUSTICE LEWISON: He might have had overnight to think
22 about it or he may just have given it at the end of
23 slightly more than a day's hearing. It's quite
24 remarkable.
25 MR DICKER: So we say essentially this is Oliver J applying

Page 118

1 what one might call stage one of Selwyn LJ's analysis in
2 Humber Ironworks: I am dealing with an insolvent
3 company. How does that work? I look at the seminal
4 case on that, Humber Ironworks, and I will apply the
5 analysis in the same way to foreign currency claims.
6 As your Lordships know, the issue arose again in
7 Lines Bros. Just so we're clear about this, the case
8 did not involve a dispute between creditors and
9 shareholders. Essentially the contest was between
10 creditors entitled to post-insolvency interest on the
11 one hand and foreign currency claims on the other.
12 One can see that from the argument at page 8 at
13 letter H.
14 LORD JUSTICE LEWISON: We're looking at the Court of Appeal
15 now?
16 MR DICKER: Yes, I'm sorry, it's the same bundle, tab 57.
17 LORD JUSTICE LEWISON: Yes. (Pause).
18 MR DICKER: Where Mr Stubbs says at 8, between G and H:
19 "In the present case the liquidators have paid in
20 full ..."
21 LORD JUSTICE BRIGGS: Sorry, which page are you on?
22 MR DICKER: I am sorry, page 8, between G and H. Just
23 picking it up at G:
24 "In the present case the liquidators have paid in
25 full all pre-liquidation indebtedness except the foreign

Page 119

1 currency debts owing to the bank and one Deutschmark
2 creditor, the dividends received by those two being
3 insufficient to discharge that foreign currency
4 indebtedness. The competition therefore is between
5 those creditors in respect of foreign currency
6 shortfalls on the one hand and the claims for
7 contractual post-liquidation interest on the other."
8 So it wasn't a case which involved a surplus, in the
9 sense of a potential return to shareholders.
10 Your Lordships need to understand the argument being
11 advanced by the bank by Mr Stubbs, which becomes
12 relevant when one looks later at the Law Commission
13 reports. You can pick that up going back to page 5,
14 starting between C and D. He says:
15 "A winding-up does not alter either the substantive
16 rights of the creditor in respect of a pre-liquidation
17 non-sterling debt or the substantive rights of
18 a creditor in respect of a sterling pre-liquidation debt
19 except in so far as necessary to give evidence effect to
20 the requirement of section 302, the property of
21 a company shall on its winding up be applied in
22 satisfaction of its liabilities."
23 What he then says is, "Ah, yes, but you have to
24 understand what pari passu means". His argument was
25 that pari passu should be construed to mean effectively

Page 120

1 a payment of an equal percentage on the amount of your
2 claim where you had a foreign currency claim determined
3 as at the date of payment. He said if you're going to
4 make a pari passu distribution, that's really the best
5 way of doing that.
6 He says, therefore, at F, or the submission at F is:
7 "Contrary to what was held in Re Dynamics
8 corporation a notional conversion of the Swiss franc
9 debt into sterling at the date of the winding-up order
10 or resolution does not give effect to the pari passu
11 principle."
12 So starting from the same premise, namely winding
13 up, doesn't mandatorily convert but what you need to
14 understand is what's meant by "pari passu distribution".
15 Lawton LJ's judgment is at page 9. He doesn't,
16 save, I think it is fair to say, in passing, suggest any
17 view about what you do if the company is solvent. In
18 13, at B, just above letter B, he says:
19 "Mr Graham and Mr Potts provided an answer [that is
20 to Mr Stubbs' submissions] in the way they put the
21 liquidator's case. They submitted, liquidation whether
22 compulsory or voluntary was a form of collective
23 enforcement under the law."
24 Dropping down to letter D:
25 "Being a form of collective enforcement, the

1 beginning of a winding-up was in its legal nature the
2 equivalent of a court giving leave to enforce
3 a judgment. Just as a judgment in a foreign currency
4 could not be enforced until it was converted into
5 sterling, so a liquidator could not apply property of
6 a company in satisfaction of its liabilities pari passu
7 until he had put a value in sterling on any claim made
8 in a foreign currency. The liquidator has to compare
9 like with like and a Swiss franc cannot be compared with
10 a pound until the sterling value is known."
11 Then your Lordships will see at letter F:
12 "The assets realised should be applied equally and
13 rateably to the payment of the debts as they existed at
14 the date of the winding up ..."
15 With a reference to Humber Ironworks.
16 Lawton LJ effectively agreed with that. He did so
17 at page 14. At the first full paragraph he says:
18 "At the end of Mr Stubbs' opening I thought his
19 submission was right. Mr Graham and Mr Potts, however,
20 persuaded me that it ignores the juridical nature of
21 liquidation and is fallacious. As I have already said,
22 liquidation is a form of collective enforcement of
23 liabilities. Liabilities are what the court will
24 enforce. It will not enforce judgments for debts in
25 Swiss francs but their equivalents in sterling as at the

1 date when leave to enforce is given. Liquidation
2 affects the contractual relationship between debtor and
3 creditor and the liquidation starts no further
4 liabilities under contract become payable until such
5 time as it is clear that pre-liquidation liabilities
6 have been satisfied in full: see Re Humber Ironworks."
7 I say the only indication he gave as to the position
8 in the event of a solvent liquidation was in passing.
9 I say that simply because the phrase he uses at C is "no
10 further liabilities become payable until" and he refers
11 to Humber Ironworks, which obviously dealt with both.
12 Brightman LJ deals both, obviously, with insolvent
13 situation and obiter solvent situation.
14 He starts at 14, right at the bottom of the page,
15 saying he will deal separately with:
16 "The position which arises in relation to the
17 surplus assets of the company remaining after its
18 indebtedness so calculated has been discharged in full."
19 He then deals with the position if the company is
20 insolvent. That's page 15, the same page, just starting
21 between C and D, where he says, concern with
22 a creditor's voluntary winding up:
23 "It would be unrealistic to describe the fact the
24 identical issue can arise in the liquidation of
25 a prosperous company which has more than enough assets

1 to answer its full contractual indebtedness."
2 Then:
3 "Much argument has resolved around the precise
4 wording of section 302 ..."
5 That's the pari passu section.
6 He says between E and F:
7 "The accounts can only be expressed in a single
8 currency ..."
9 I.e. to achieve pari passu distribution. And at F:
10 "Conversion is inevitable. The question is: at what
11 date or dates is that conversion to be effected?"
12 His conclusion is at 17, between A and B:
13 "If a single conversion date has to be chosen, all
14 parties are agreed that the only candidate in the
15 present case is the date when the company was placed
16 into liquidation, i.e. the date of the resolution to
17 wind up."
18 LORD JUSTICE LEWISON: May I just ask you about the previous
19 page, please?
20 MR DICKER: Yes, I was going to come back to it.
21 LORD JUSTICE LEWISON: You will come back to it, right.
22 MR DICKER: Yes, forgive me.
23 He refers to Humber Ironworks, over the page,
24 page 18, Buckley J in WW Duncan. That's in the middle
25 of the page. At 19, he says:

1 "I am accordingly of the opinion the liquidator's
2 submission, that a foreign currency debt should be
3 proved or claimed according to its value as at the date
4 upon which the company was placed in liquidation, aside
5 answering the justice of the case is entirely in
6 accordance with the general rule for the valuation of
7 winding up of the claims of creditors."
8 So far, that's again, we would say, simply the
9 application of stage one of Selwyn LJ's approach in
10 Humber Ironworks. He gives some additional reasons, as
11 my Lord Lord Justice Lewison said, at 16. What he does
12 at D is identify the policy underlying the decision in
13 Miliangos, which was that the foreign currency debtor
14 should not be entitled to impose on the foreign currency
15 creditor the risk of a fall in the value of sterling.
16 Justice demands the risk should be borne by the debtor
17 who is the party in default. That's as between debtor
18 and creditor. Then at 16E onwards, he effectively says
19 well, that can't apply in the context of a company which
20 is insolvent because you can't make a similar point
21 about the other creditors with whom you are in
22 competition. It is one thing to say that the debtor is
23 not entitled to impose the currency conversion risk on
24 the creditor. That's not something the creditor is
25 entitled to say about any other creditors.

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 He says, just at E:
2 "If the statement of the reasoning behind Miliangos
3 is correct, clearly it has no role to play in the
4 distribution of the assets of an insolvent company.
5 Sterling creditors are not in default vis-à-vis the
6 foreign currency creditors."
7 Dropping three lines:
8 "The company is the wrongdoer towards both the
9 sterling creditors and the foreign currency creditors
10 ...no particular reason in the field of abstract justice
11 why the currency risk should be borne by one description
12 of creditor rather than by another description of
13 creditor and they are all directed to rank pari passu.
14 The do not rank pari passu if the sterling creditors are
15 required to underwrite the exchange rate of the pound
16 for the benefit of the foreign currency creditors. The
17 just course, as it seems to me, is to value the foreign
18 debt once and for all at an appropriate rate and to keep
19 that rate of conversion throughout the liquidation until
20 all debts have been paid in full."
21 Can I just pause on the phrase "is to value the
22 foreign debt once and for all". It's a phrase that you
23 may have noticed comes up in the Law Commission report.
24 It's a phrase that Brightman LJ uses. It's interesting
25 because, obviously, he didn't regard this phrase as in

1 any way inconsistent with his analysis of what should
2 happen if the company turned out to be solvent.
3 LORD JUSTICE LEWISON: Well, I wonder about that. What he
4 says in the passage you've just shown us is the just
5 course is to value a foreign debt once and for all, at
6 an appropriate date, to keep that rate of conversion
7 throughout the liquidation, not until dividends have
8 been paid, but until all debts have been paid in full.
9 He then says:
10 "The loss and the benefit from changes in exchange
11 rates will then [that is when debts have been paid in
12 full] lie where they fall."
13 MR DICKER: My Lord, again, with respect --
14 LORD JUSTICE LEWISON: That seems to me to be pretty clear.
15 MR DICKER: Well, again, with respect, we submit not so.
16 It's essentially the same point as arose out of
17 Oliver J's judgment. In this context --
18 LORD JUSTICE LEWISON: Except that Brightman LJ is
19 contemplating the payment of all debts in full.
20 MR DICKER: And he is dealing at this stage with
21 an insolvent company --
22 LORD JUSTICE LEWISON: Well he can't be if it pays all its
23 debts in full.
24 MR DICKER: My Lord, there's then a different point. There
25 are various ways of approaching this. One of the

1 possibilities was that you start with a conversion date
2 when the company is insolvent and the conversion date is
3 the date of the winding-up order. One possibility is,
4 if the company becomes solvent, you realise it's
5 solvent, you effectively throw away the original
6 conversion date.
7 LORD JUSTICE LEWISON: That would be entirely contrary to
8 what he's just said.
9 MR DICKER: Absolutely. What we say is that that
10 essentially was what he was rejecting here. He was
11 rejecting the idea that, in the event the company turns
12 out to be solvent, you effectively have a completely new
13 regime, which is a new conversion date for everyone, and
14 you then apply that conversion rate.
15 He can't have meant "once and for all" in the sense
16 that your claim has been converted into sterling and you
17 can never, in any circumstances, rely on the fact that
18 you had a foreign currency claim because it's gone. He
19 can't have meant that, we respectfully say, because when
20 he comes on to deal with the solvent situation that's
21 precisely what he envisages is the solution in the event
22 of a solvent company.
23 When one reads the Law Commission reports,
24 particularly the first working paper, which was before
25 obviously the judgment of Brightman LJ, when they talk

1 about "conversion once for all", what we submit they
2 were talking about was effectively that idea that when
3 you become solvent we'll switch to an entirely new
4 regime for everyone, which is obviously a different
5 solution to the one that Brightman LJ had in mind.
6 LORD JUSTICE MOORE-BICK: I have to say I am a little
7 unhappy with this notion of becoming solvent. The fact
8 is if it's later discovered that the company is solvent,
9 it has always been solvent, hasn't it? No?
10 LORD JUSTICE LEWISON: It might have been cash flow
11 insolvent but balance sheet solvent, I suppose.
12 MR DICKER: Where a company has gone into insolvent
13 liquidation, in a sense it doesn't matter. My
14 submission is simply that at that stage one, the proof
15 stage, one has a regime which is pari passu distribution
16 and various rules are required for that purpose.
17 If you finish that regime and find out you have
18 money left, whether one says, "It turns out I have money
19 left", or, "I effectively always had it and never
20 realised it", in a sense doesn't matter. The issue
21 changes at that stage. It becomes, as your Lordships
22 know, we say an issue between creditor and debtor. At
23 that point what's been necessary to distribute the
24 assets fairly amongst the creditors can't determine what
25 the outcome should be between the creditor and the

1 debtor. As the judge says, at that stage essentially
2 the justice of Miliangos resurfaces.
3 LORD JUSTICE MOORE-BICK: The passage Lines Bros at page 16
4 G to H, does suggest that Brightman LJ thought that
5 questions of appreciation and depreciation subsequent to
6 the date of the liquidation simply didn't come into
7 play. I suppose you say, well, that's only for the
8 limited purposes, do you?
9 MR DICKER: And they do come into play. If one thinks what
10 happened to the bank in Lines Bros, it is in a sense --
11 at the end of stage one what had happened was sterling
12 creditors had received 100p in the pound, they had been
13 paid in full. The Swiss franc creditor, because
14 sterling had depreciated, had received 100p in the pound
15 on their converted claim, which turned only to be worth
16 58 per cent of their Swiss franc claim. So they had
17 suffered once already. That loss was a loss which they
18 have to bear. There was no way round it. That was
19 simply a requirement of pari passu distribution.
20 What we say underlies Brightman LJ --
21 LORD JUSTICE MOORE-BICK: Was there any claim by the Swiss
22 franc creditor for the currency loss?
23 LORD JUSTICE LEWISON: Yes.
24 MR DICKER: Well, the argument --
25 LORD JUSTICE LEWISON: They were a claim in the currency

1 loss but they were trumped by the statutory interest.
2 MR DICKER: Yes. There were a whole series of arguments by
3 Mr Stubbs, some very, if I may say, elegant and
4 interesting and arguments to try and avoid it, one of
5 which, as I've said, pari passu really means, although
6 no one knew it until then, in his submission an equal
7 percentage amongst everyone, which obviously would have
8 avoid the problem. Another argument was, well, if it
9 becomes solvent, let's have a complete new set of
10 exchange rates; not the approach Brightman LJ took.
11 If one just goes back just to the bank in
12 Lines Bros, at the end of stage one it only has
13 58 per cent of its claim. So it has had to bear the
14 currency conversion loss. Statutory interest is then
15 payable. It is payable equally to both of them but on
16 their sterling claim. So if the Swiss bank had
17 an underlying contractual claim to interest in the
18 foreign currency, that probably was a further loss which
19 it incurred.
20 One then gets to the end of the day with the bank
21 effectively having received, at least in percentage
22 terms, much less than as between it and the debtor it
23 was entitled to receive. We do say it would effectively
24 have been adding insult to injury to then say to the
25 bank, "Oh, and by the way, we've got to the end of this

1 process, we converted your claim for the purposes of
2 proof, we've done the proof exercise, we've ensured
3 everyone has been paid pari passu, but nevertheless it's
4 a permanent conversion and what's left is paid to the
5 shareholders".
6 On that basis, the bank has suffered twice. It's
7 suffered in the sense it has had to bear the conversion
8 loss, when the company was insolvent it got in
9 percentage terms less than everyone else, and it sees
10 the shareholders walking away with the balance with no
11 opportunity ...
12 That we say is the force of the point that
13 Brightman LJ was addressing when he dealt with what's
14 the solution in the event the company is solvent.
15 He dealt with this, as your Lordships know, page 20,
16 beginning at letter H.
17 My Lord, I am reminded, figures may not in the end
18 matter enormously in a court of law. But the figures
19 involved, as your Lordships knows, in this case are
20 enormous. The estimate is that we're talking about
21 1.3 billion which may turn on this. That's the extent
22 to which creditors, if -- they don't have a non-provable
23 claim will lose out and the extent to which the
24 shareholders will benefit from a currency risk which,
25 for Miliangos, they were never entitled as between them

1 and the creditor to force the creditor to bear.
2 LORD JUSTICE BRIGGS: Or the shareholders or the deferred
3 debtors -- the deferred creditors?
4 MR DICKER: And --
5 LORD JUSTICE BRIGGS: It depends where they come in the
6 order.
7 MR DICKER: I am not seeking, as it were, to achieve any
8 unfair advantage by referring to the shareholders. Your
9 Lordships should take it implicit in my submission is
10 that my learned friend Mr Trower is ultimately right on
11 the construction of the subordinated agreement, on which
12 I am not instructed to make any submissions and don't.
13 They effectively rank for these purposes along with the
14 shareholders.
15 LORD JUSTICE BRIGGS: Yes.
16 MR DICKER: If that's the case, then the same merits points
17 can be made against them just as much as they can be
18 against the shareholders.
19 At page 20 a much prescient argument by the bank
20 with the injustice. This is at letter H:
21 "The injustice which might arise on the liquidator's
22 submission in the case of a wholly solvent company."
23 Just moving in the first instance to page 21, D to E
24 and F, what we say at this stage in a nutshell
25 Brightman LJ is doing is saying, "Well, Humber Ironworks

1 also provides the answer in this situation." We're now
2 at stage two. The proof process has finished, we've
3 talking about a surplus, and the Court of Appeal in
4 Humber Ironworks tells me what I need to do in this
5 situation as well.
6 Just noting at 21F, Brightman LJ saying:
7 "It is on that principle that a creditor may claim
8 post-liquidation interest. He does this on the basis
9 that obligations under the contract are not necessarily
10 discharged, despite the fact that all provable debts
11 have been paid at 100p in the pound."
12 That's the general principle under Humber Ironworks.
13 My Lords, we would say it equally applied to
14 Brightman LJ's analysis In re Lines Bros. There wasn't
15 a rule at this stage. So if one is talking about
16 foreign currency claims being extinguished, being
17 converted into sterling as at the date of a winding-up
18 order for good, that's not something which Brightman LJ,
19 we say, intended to achieve nor perhaps could have
20 achieved. It would have to be an entirely novel thing,
21 introduced by the 1986 Act.
22 Again, the only other point, a small one, but in the
23 context of how one deals with non-provable claims, at
24 21D, again in the context of interest, Brightman LJ
25 says, just below D, that:

1 "The duty of the liquidator is to discharge the
2 contractual indebtedness of a company in respect of such
3 debts to the extent the contractual indebtedness exceeds
4 the provable indebtedness."
5 It's all part of the statutory scheme.
6 My Lords, we say nothing surprising in that. We
7 are, in a solvent situation, back to, as
8 David Richards J said, the underlying justice of the
9 situation as identified by their Lordships in Miliangos.
10 Just to finish this before the break, if I may, at
11 page 22, just between letters A and E, Brightman LJ's
12 conclusion between A and B:
13 "I do not think, therefore, that a foreign currency
14 creditor can base a claim on the depreciation in trust
15 rate between sterling and the foreign currency until the
16 liquidator has assets in his hands which will otherwise
17 go to the shareholders. At that stage, but not earlier,
18 as it seems to me, it would be entirely just to allow
19 the foreign currency creditor to recover the same amount
20 as he would have been able to recover if no liquidation
21 had ever taken place."
22 As your Lordships know, Oliver J at 26, letter F
23 says that:
24 "Certainly for my part I do not dissent from the
25 proposition. The answer to Mr Stubbs' criticism may

1 well be found in the way suggested in the judgment of
2 Brightman LJ."
3 LORD JUSTICE LEWISON: He makes three points, doesn't he?
4 The first is that liability is what you can be compelled
5 to pay. The second point is that the statutory scheme
6 sometimes does result in creditors getting less than
7 their full contractual entitlement, even in a fully
8 solvent situation. The third point is that
9 Brightman LJ's solution might be right.
10 MR DICKER: My Lord, and I also have to deal with those.
11 House Property and Investment Company Ltd, I think my
12 learned friend Mr Isaacs referred your Lordships to
13 this, is a case referred to in either Stanhope or Danka
14 and I was going to come to that.
15 LORD JUSTICE LEWISON: Yes.
16 MR DICKER: Again, your Lordship is absolutely right, it is
17 still a point I need to deal with. But the basic
18 architecture, we say, is perfectly plain. One has this
19 distinction between the process of proving on the one
20 hand and what happens in the event of a surplus, and
21 a very clear regime as to what happens within each. As
22 your Lordship says, ultimately, one has to look at the
23 relevant rules and decide how they apply in the context
24 of those two stages.
25 LORD JUSTICE LEWISON: Yes, absolutely.

1 MR DICKER: My Lord, I wonder if that would be a convenient
2 moment?
3 LORD JUSTICE MOORE-BICK: Would that be a good time? All
4 right, we will rise for five minutes.
5 (3.18 pm)
6 (A short break)
7 (3.25 pm)
8 LORD JUSTICE MOORE-BICK: Yes, Mr Dicker.
9 MR DICKER: There's one other point on Lines Bros and it's
10 my learned friend Mr Wolfson's reliance on page 21, A to
11 C. The submission, as we understood it, was that
12 Lightman J decided or expressed the view he did because
13 he considered that the liquidator could always discharge
14 the foreign currency claim by payment of the relevant
15 foreign currency amount.
16 We say not so. If your Lordships just note 21
17 between B and C, it is simply recorded as:
18 "Per contra, if the sterling had been revalued
19 upwards it would, it is said, be open to
20 a liquidator ..."
21 In fact, in our submission, that would not have been
22 possible for the simple reason that it would have been
23 contrary to the pari passu principle.
24 LORD JUSTICE MOORE-BICK: Yes.
25 MR DICKER: Creditors aren't entitled to insist on having

1 their claims paid in a foreign currency as part of the
2 collective process of enforcement in respect of proved
3 debts. Equally they can't be forced to take foreign
4 currency.
5 So that in fact wasn't an option. We also say that
6 when one comes on to the views that Brightman LJ
7 expresses from 21, D, onwards, it is no part of his
8 reasoning or his justification that this option would
9 have been open to a liquidator.
10 Lines Bros has been repeatedly cited with approval,
11 both before and after 1986. There are six examples in
12 the bundles before your Lordships, just to mention which
13 they are, Islington Metal, Kentish Homes,
14 Wight v Eckhardt, Re Telewest, FS Compensation
15 v Larnell, another decision of the Court of Appeal, and
16 Cambridge Gas, obviously the Privy Council.
17 I can't put too much weight on this, because none of
18 them were considering the position if a company was
19 solvent. But what I can say is that none of them
20 suggest or mention even if in passing that there might
21 be a problem with the approach suggested by
22 Brightman LJ. For our part, we're not aware of any
23 academic commentary since that decision which suggests
24 that that is for one reason or another not an option,
25 whether before 1986 or after 1986.

1 LORD JUSTICE MOORE-BICK: So your position then is that the
2 foreign currency creditor whose currency has appreciated
3 against sterling has a claim as an unprovable creditor.
4 But what if it's the other way round? What if his
5 currency has depreciated against sterling? Does the
6 company have a claim to recover any part of the proof
7 and if not why not?
8 MR DICKER: No, they don't for the simple --
9 LORD JUSTICE MOORE-BICK: Why not?
10 MR DICKER: Because that is simply the price of the
11 statutory process which the company has gone into.
12 LORD JUSTICE MOORE-BICK: There's not much symmetry about
13 that. The essence of your argument is that your
14 creditor should get what he has contracted for and no
15 less. But the company might say, "All right, and no
16 more either". Why should you --
17 MR DICKER: Well, we say the company effectively, firstly,
18 lost that right when it went into insolvency.
19 LORD JUSTICE MOORE-BICK: Why?
20 MR DICKER: Well, obviously it ultimately depends on the
21 effect of the rules.
22 LORD JUSTICE MOORE-BICK: Yes.
23 MR DICKER: But if I may put it this way, one price which is
24 paid if you go into a liquidation is a mandatory
25 conversion of foreign currency claims into sterling and

1 payment out of the sterling sum.
2 I made the point right at the start, if sterling
3 depreciated during the period, that the regime is that
4 the valuation is fixed on day one. The company is not,
5 in that situation, entitled to complain on the basis
6 that, had it not gone into insolvency, by the time it
7 ended up paying these debts through dividends sterling
8 had been depreciated and it would have been cheaper to
9 pay it at that stage. That's simply a consequence of
10 the pari passu distribution. It is, in loose terms,
11 a price which has to be paid.
12 Now, part of the difficulty here is actually
13 achieving perfect symmetry. My learned friends, and
14 I'll come on to this in due course, when they refer to
15 the one-way bet are very keen essentially that you only
16 look at it from the date that it becomes apparent that
17 the company is solvent. Their basic argument -- this is
18 from that point on. This looks unfair because creditors
19 seem to win either way. If sterling appreciates or
20 depreciates, they get paid the most valuable currency.
21 We say you can't look at it in isolation in that way.
22 Part of the reason you can't look at it in isolation
23 is, as in this case, LBIE was insolvent --
24 LORD JUSTICE MOORE-BICK: Thought to be insolvent.
25 MR DICKER: Always thought to be and could well have turned

1 out that way. If one was asking, as at the date of
2 administration, what the likely outcome was, the
3 administrators' reports for a number of years indicated
4 the likely outcome was insolvency.
5 LORD JUSTICE MOORE-BICK: Would you accept that, for
6 whatever reason, the effect of your argument is that the
7 foreign currency creditor does have the best of both
8 worlds?
9 MR DICKER: No, not overall, because -- go back to the poor
10 old bank in Lines Bros. It received, on any commercial
11 basis, considerably less than the sterling creditors.
12 LORD JUSTICE MOORE-BICK: That's because the assets weren't
13 actually sufficient for all the claims that were being
14 made, isn't it?
15 MR DICKER: So it took a currency hit, essentially, in that
16 situation.
17 LORD JUSTICE MOORE-BICK: But in principle I think your
18 argument is that if the funds are there, it would not
19 take the currency hit.
20 MR DICKER: Yes.
21 LORD JUSTICE MOORE-BICK: So, as you put it, you would get
22 the strongest currency.
23 MR DICKER: That's the effect. The reason why one gets
24 there, we say, is because -- it's back to this two-stage
25 process. When the company is insolvent, that's the

Page 141

1 regime that applies. You may, like the bank in
2 Lloyds Bank, end up suffering compared to everyone else.
3 They receive everything they're contractually entitled
4 to, but you don't, you're not allowed to complain.
5 LORD JUSTICE LEWISON: What if you receive more? That's
6 really underlying my Lord's question. You have foreign
7 currency creditors, one is denominated in euros and the
8 other is denominated in dollars. You do a conversion,
9 the pound appreciates against the euro and depreciates
10 against the dollar, as it has done in the last few
11 weeks. So the euro creditors when they are paid get
12 110 per cent of their contractual entitlement and the
13 dollar creditors get 80 per cent, let's say. Then what?
14 MR DICKER: Because we have these two stages, the first of
15 which is pari passu distribution. Now that may mean
16 that some creditors end up getting more than their full
17 contractual entitlement, but that is simply
18 a consequence of pari passu distribution. It can cut
19 both ways, as I said. In Lines Bros you may get more,
20 you may get less. That's the first stage.
21 The second stage is we're back in a different world.
22 We are dealing with the position as between the company
23 and its creditor. Obviously in that situation any
24 creditor who has received more, apart from stage one, as
25 a result of the operation of the pari passu scheme,

Page 142

1 fine, he -- there's nothing you can do about that.
2 Everyone accepts it can't be recovered because that's
3 just the price of equal distribution.
4 When one comes to the second stage, one is therefore
5 concerned only with the person who is left, who is
6 saying, very simply, "It now turns out you're solvent,
7 whether we treat you as always having been solvent
8 doesn't matter --
9 LORD JUSTICE MOORE-BICK: If you get more than your claim
10 you're getting more at someone else's expense, aren't
11 you, necessarily? It could be at the expense of the
12 members, which you would say doesn't matter. But it
13 might be at the expense of other unprovable creditors,
14 mightn't it?
15 MR DICKER: My Lord, absolutely. That does raise
16 potentially a further issue, which is not a live issue
17 on this appeal or not an issue which anyone has sought
18 to grapple with. It's the point made by
19 David Richards J in T&N. If you have a collection of
20 different types of non-provable claims, is there
21 a ranking? One knows, if one goes back in history, that
22 issue arose for the judges to decide so far as interest
23 and currency conversion claims were concerned, and in
24 Lines Bros they held interest comes first.
25 Conceivably there might have to be a similar

Page 143

1 argument as to how priorities work in this situation.
2 My Lord, we say that's not an issue, frankly, your
3 Lordships need to grapple with on this appeal because
4 essentially the starting point for our submissions is
5 that the subordinated creditors are to be treated
6 effectively as if they were equity and will rank
7 afterwards anyway.
8 But your Lordship is right, there is potentially
9 some further working out to be done, in the same way
10 there was some working out to be done in Lines Bros when
11 the conflict between post-insolvency interest creditors
12 and currency conversion claims arose.
13 LORD JUSTICE BRIGGS: Part of the working out may test your
14 thesis in the sense that -- let's suppose there's
15 a surplus after payment of provable debts and statutory
16 interest and there are two groups of non-provable
17 claimants. One group is a currency conversion group and
18 the other is, let's say, an aeroplane load of people who
19 were killed when their engine failed after the cut-off
20 date. They are coming in as non-provable claimants as
21 well. Assume there isn't a sufficient surplus to pay
22 all the non-provable claimants in full. How do you
23 value the currency conversion claim for the purpose --
24 let's assume there's no reason to give one parity over
25 the other. So they are both queueing for another

Page 144

1 sub-stage pari passu distribution of an insufficient
2 fund. How do you value the currency conversion claims
3 at that stage? They still haven't been paid. So the
4 quantification of the currency conversion claimants'
5 loss, if there is one, is still uncertain.
6 MR DICKER: I think there are two separate issues, one of
7 which is: if they are all to rank pari passu, how do you
8 value them?
9 LORD JUSTICE BRIGGS: Yes.
10 MR DICKER: The second is do they actually all rank --
11 LORD JUSTICE BRIGGS: I accept that. But assume for the
12 moment that they do and there's no way in which one can
13 be treated as superior to the other. So you come to the
14 conclusion that equality is open to you and they are all
15 going to rank pari passu. Then how do you value -- I am
16 looking at the first question. Do you have to have
17 another conversion date at the beginning of this second
18 stage of pari passu distribution or do you then adopt,
19 contrary to the Law Commission and everybody else's
20 view, the payment date?
21 MR DICKER: My Lord, and there may be arguments both ways in
22 relation to those. Your Lordship observed yesterday
23 that it's possible that the policy may be different in
24 a situation where you have various types of non-provable
25 claims competing against each other.

1 LORD JUSTICE BRIGGS: Which there may be in this case.
2 I don't know anything about the Waterfall II and the
3 judgment is reserved, I think.
4 MR DICKER: Yes. My learned friends tried -- I don't know
5 whether it was intended to be in terrorem, but
6 a reference to a whole home shopping list of the
7 non-provable claims. Just so your Lordships know
8 effectively how most of those arise, one of the issues
9 before David Richards J is how much statutory interest
10 you get under 2.88(7). 2.88(7) says you get the greater
11 of Judgments Act rate and the rate applicable to the
12 contract apart from the administration. One of the
13 arguments run by LBHI2 was when you look at the phrase
14 "rate applicable apart from the administration" what
15 "rate" means is simply the percentage rate. In other
16 words, it doesn't include concepts like compounding or
17 anything of that sort.
18 Our response was that's not right. Alternatively,
19 if it was right, the consequence of that is that we
20 don't end up getting the full contractual amount to
21 which we're entitled and the residue must be
22 a non-provable claim.
23 That issue, I can tell your Lordship, is a dead
24 issue for the simple reason that it was ultimately
25 conceded that "rate" does include compounding. So that

1 shortfall can't give rise to a non-provable claim.
2 There are still issues being debated which were
3 debated before David Richards J, one of which is what
4 Selwyn LJ referred to as the ordinary approach in
5 Bower v Marris. In other words, can you treat dividends
6 paid in respect of your proved debt as, first, a payment
7 in respect of interest and then principal, as you would
8 have been entitled to do outside and as the cases held
9 you were entitled to do for the last 250/300 years. We
10 say yes, the other side said no --
11 LORD JUSTICE BRIGGS: For my part I am not looking to delve
12 into all the issues in Waterfall II, save to say --
13 assume you have several groups of currency conversion
14 claimants claiming in different currencies but all of
15 which have appreciated against sterling at different
16 rates.
17 MR DICKER: And there are two ways. The most simple, we
18 say, even assuming, as it were, the policy factors
19 continue to apply against the foreign currency creditor,
20 if you get to a stage at which you have paid out to
21 victims of the aircraft crash or whatever --
22 LORD JUSTICE BRIGGS: Yes.
23 MR DICKER: -- we're back in exactly the same situation. Do
24 you pay what's left to the foreign currency creditor or
25 do you pay it to its shareholders? In a sense that, for

1 present purposes, may be good enough for me --
2 LORD JUSTICE LEWISON: That doesn't answer my Lord's
3 question. If you have foreign currency creditors who
4 are entitled to claim yen and dollars and renminbi and
5 euros, and all the rest of it, you have to achieve
6 equality between them in some way.
7 LORD JUSTICE BRIGGS: If there's a shortfall.
8 LORD JUSTICE LEWISON: Well, perhaps even if there isn't.
9 You can't discriminate between them. So what date do
10 you choose? Do you say it's the date of payment if
11 there is enough money to satisfy each creditor?
12 MR DICKER: Our primary argument would be that it would be
13 in that situation the date of payment.
14 LORD JUSTICE LEWISON: And if there isn't enough money to
15 satisfy every single one of them in full, having paid
16 out the aircraft victims?
17 MR DICKER: Then you get the issue as to whether or not
18 there ought to be some ranking between them.
19 LORD JUSTICE LEWISON: No, no, no. You have paid the
20 aircraft victims, you have some money left and now
21 a competition is between creditors in a variety of
22 different foreign currencies, on the one hand, and the
23 subordinated creditors and/or members on the other.
24 What do you do about the different foreign currency
25 creditors? When do you convert or do you not convert?

1 MR DICKER: I'm sorry, I was slow and didn't appreciate
2 your Lordship's question. The short answer to that is
3 you take the date of payment.
4 LORD JUSTICE LEWISON: The date of payment. Right.
5 MR DICKER: That is what gives creditors, each of them in
6 their own currency, the full amount to which they are
7 entitled. Neither the debtor nor its shareholders can
8 sensibly complain, in our submission, if that's what
9 occurs and anything that's left goes to the
10 shareholders.
11 LORD JUSTICE LEWISON: Right. If there is enough to pay the
12 aircraft victims but not quite enough to pay the foreign
13 currency creditors in full in their foreign currencies,
14 then what do you do?
15 MR DICKER: My Lord, again we would say that as between each
16 of them, each of them effectively being foreign currency
17 creditors, they can effectively say to each other -- or
18 rather none of them can say to any other of them, "We
19 didn't agree, as it were, to bear a currency risk.
20 We're all in the same basket so far as this is
21 concerned." So again one would take the date of
22 payment.
23 We fully accept that --
24 LORD JUSTICE MOORE-BICK: But how do you actually carry out
25 a pari passu calculation by reference to a date of

1 payment? Don't you have to do that before you get to
2 the stage of payment?
3 MR DICKER: You will no doubt strike a date, like the --
4 maybe this is one of the practical problems the
5 House of Lords adverted to but said might need to be
6 decide in due course.
7 You have to strike a date. You would no doubt do it
8 as soon before --
9 LORD JUSTICE MOORE-BICK: It is going to be an artificial
10 date ahead of the date of payment, isn't it, so you can
11 actually work out the entitlements?
12 LORD JUSTICE BRIGGS: I suppose if you have a big enough
13 computer it might just be very early in the morning.
14 MR DICKER: My Lord, it's a little like the point Selwyn LJ
15 made in his dissent in Miliangos. It's not logical, in
16 the sense it's not the payment date, but it's as near as
17 you can practically get. It's as fair as it can be.
18 I freely accept that the rules do not deal in
19 detail, and one can barely say they deal with them at
20 all with how one treats non-provable claims. But this
21 has been the position since 1542. From time to time
22 issues have arisen where post-insolvency interest,
23 foreign currency claims, non-provable tort claims of the
24 sort David Richards J identified and dealt with in
25 T&N -- and answers have to be found.

1 None of those practical problems, in our submission,
2 are a reason why -- or justify the shareholders
3 effectively saying, "It's all too difficult, a simple
4 solution is let us keep the money and leave creditors
5 unpaid". That can't be a justification for that
6 outcome.
7 My Lords, can I deal with two other potential
8 consequences if my learned friend's submissions are
9 right and that the effect of the currency conversion is
10 to convert the claim into sterling once and for all,
11 whatever happens thereafter.
12 The first is so far as third party rights against
13 insurers are concerned. Imagine a creditor has claim
14 against a company in US dollars. The company is
15 insolvent. The creditor is in liquidation. The
16 creditor needs to get judgment against the company to be
17 able to have the benefit of third party rights against
18 insurers. If his US dollar claim has been converted
19 into sterling once and for all, is he therefore forced
20 to obtain a judgment in sterling, converted as at the
21 date of the winding-up order? Is it therefore that
22 judgment which he has to enforce against the insurer?
23 In other words, does the insurer also get effectively
24 the benefit of any depreciation in the value of
25 sterling?

1 One might say bad enough if members do, very odd if
2 a third party in the position of an insurer can.
3 There are other examples like that. One can imagine
4 a situation in which you have two co-obligors, each of
5 whom owe 10 million US dollars. One of the co-obligors
6 goes into liquidation in England. The creditors claim
7 against him, converted into sterling, as at the date of
8 the winding up. What then happens? Two possible
9 approaches, neither of which seem terribly satisfactory.
10 The first of which is that the insolvent co-obligor
11 effectively is entitled to say, "I only have to pay you
12 the sterling equivalent. Even if it turns out I am
13 solvent, I can pay the rest to my shareholder", but his
14 co-obligor is still subject to the full US dollar
15 liability. That seems a slightly odd result, one
16 co-obligor getting off the hook and the other
17 effectively have to bear on his own currency risk. Is
18 the co-obligor entitled to a bite of the contribution or
19 indemnity and if so how does that work? That's one
20 possibility.
21 The other possibility is that, given their two
22 liabilities are co-extensive, in the ordinary way again
23 the solvent co-obligor can say, "I am only liable to the
24 extent that my co-obligor is also liable. He's also
25 liable for the sterling equivalent therefore I am only

1 liable for the sterling equivalent." Again have you
2 provided a benefit to a third party who has no
3 conceivable entitlement?
4 My Lords, can I move on now and deal finally with
5 the 1986 Act. I say "finally" in the sense this is the
6 last part of part two of my submissions.
7 What, then, was the effect of the 1986 Act? The
8 most important point we say is no changes were made to
9 the basic structure of the statutory scheme. Whether
10 one is talking about section 143, 107, it's equivalent
11 involuntary, Rule 4.481, pari passu distribution,
12 et cetera, no change at that level.
13 Three specific changes were made, one of which
14 obviously is the critical one here. Firstly, the
15 boundary between provable and non-provable claims was
16 adjusted again, as your Lordship knows, in relation to
17 unliquidated claims for damages in tort. Secondly, the
18 position in relation to post-insolvency interest was
19 codified for the first time in relation to corporate
20 insolvency. Nothing, we say, material there. All that
21 the rules did, in our submission, was effectively codify
22 Humber Ironworks, in the sense you were entitled to
23 whatever interest you would have received under
24 contract, and bring in the bankruptcy provision which
25 had existed since 1824 for interest at the Judgments Act

1 rate.
2 Your Lordships may or may not have noted at the end
3 of Giffard LJ's judgment in Humber Ironworks he refers
4 to the unfairness, essentially, of some creditors
5 getting interest because they're contractually entitled
6 and others getting none at all. That anomaly, referred
7 to in the Cork Report, was corrected in relation to
8 corporate insolvency in 1986. As I say, it had been
9 corrected in bankruptcy in 1824.
10 So far as foreign currency claims are concerned, we
11 say the effect of the approach taken by Brightman LJ was
12 effectively also codified in Rule 4.9(1).
13 It's not a point that bears much repetition. We do
14 rely on the terms of 4.91, if your Lordships have it.
15 Obviously 4.91 is the equivalent of 2.86 in
16 administration, as it was subsequently introduced.
17 What we stress are the opening words of 4.91(1):
18 "For the purpose of proving a debt incurred or
19 payable in a currency other than sterling."
20 I have spent some time drawing a distinction between
21 the two stages, first of all the process of proving
22 pari passu distribution in respect of proved debts on
23 the one hand and what happens in the event of a surplus.
24 We say that's a clear indication that this was meant to
25 form part of, and only part of, the collective process

1 of enforcement in respect of proved debts.
2 It would have been an extraordinarily inapt phrase
3 for the draftsman to have used, given the distinction
4 between stage one and stage two, reflected in
5 Humber Ironworks and Lines Bros, if he had intended it
6 to operate not merely for the purposes of proving
7 a debt, but once and for all forever. (Pause).
8 I have mentioned Lines Bros continued to be cited
9 with approval after 1986. There's one post-1986 case in
10 which the specific point arose, although it's not
11 subject to detailed discussion. I thought I ought at
12 least to draw to your Lordships' attention. It's
13 a decision in Barings, which arises in a slightly
14 different context. It is 1B, tab 72.
15 (Pause).
16 Rather than take your Lordships through the facts,
17 it will be, I think, easier if I try and summarise them.
18 It didn't concern distributions, it concerned an attempt
19 by a creditor to requisition a meeting of creditors to
20 vote on the removal of the liquidators. So one has
21 a request for a meeting of creditors to vote and one
22 issue obviously arose, how do you ascertain the value
23 for which creditors can vote?
24 One of the creditors was a claim by the holders of
25 some 150 million US dollar floating capital rate notes.

1 They are identified in paragraph 2, line 2, of the
2 Vice-Chancellor's judgment:
3 "The first class, comprised the holders of
4 150 million floating capital rate notes in US dollars."
5 One issue was how the trustee of those notes would
6 be entitled to vote at such meeting. You'll see that
7 issue identified in paragraph 8. It is point 3 of the
8 issues identified by the Vice-Chancellor. He says:
9 "Accordingly the issues are (1), (2) and then (3),
10 how much would the 1986 trustee have been entitled to
11 vote at such meeting?"
12 If your Lordships then go on, paragraph 35, and this
13 I say not discussed in detail and that may be
14 overstating it. What consideration of this there is is
15 in paragraph 35, 36 and 37.
16 This is 35:
17 "In addition the 1986 trustee seeks in one way or
18 another to vote in respect of post-liquidation interest
19 of 34.5 million and post-liquidation exchange rate
20 losses of 19.4 million. I say in one way or another
21 because the submission is that either the 1986 trustee
22 is entitled to prove for those amounts or they must be
23 paid before the perpetual trustee [i.e. a subordinated
24 trustee] is paid anything. They must be deducted from
25 the amount if any in respect of which the perpetual

1 trustee is entitled to vote. While not abandoning the
2 first submission, counsel for the 1986 trustee didn't
3 pursue it. Equally I did not understand counsel for the
4 perpetual trustee contend the amounts in question did
5 not have to be paid to the 1986 trustee before the
6 perpetual trustee was paid anything."
7 Obviously that concession wouldn't have been
8 properly made if there had been a mandatory conversion
9 once and for all.
10 Then 36:
11 "In each case the amounts are due under the
12 provision of a trust deed. The exchange rate losses
13 arise from the discrepancy between the requirement to
14 convert the non-sterling debt into sterling for the
15 purpose of proof under 4.91 and the contractual
16 entitlement to payment in US dollars."
17 Then the Vice-Chancellor says in 37:
18 "In my view, the alternative submission for the 1986
19 trustee is correct. The consequence is that if and to
20 the extent the perpetual trustee is entitled to vote in
21 respect of any amount, the sum of 53.9 million should be
22 deducted therefrom."
23 In other words, the subordinated creditor has to
24 reduce the amount for which he can vote by the amount of
25 currency conversion loss which the senior creditor has

Page 157

1 suffered because the senior creditor would get paid out
2 first --
3 LORD JUSTICE MOORE-BICK: Just a minute. (Pause).
4 Thank you.
5 MR DICKER: In other words, you have to deduct from the
6 amount for which the subordinated creditor can vote the
7 exchange rate losses suffered by the senior creditor on
8 the basis that they would have to be paid out first.
9 I thought it right to draw your Lordships' attention
10 to this decision. I can't put it any higher than that
11 if there was a mandatory conversion once and for all the
12 point was missed by those involved in this case,
13 although perhaps that would be more forgivable by the
14 Vice-Chancellor.
15 LORD JUSTICE BRIGGS: Is the perpetual trustee described as
16 the litigating perpetuals at page 160, letter G?
17 MR DICKER: There are two. I think the answer to that is
18 yes.
19 LORD JUSTICE BRIGGS: I am just trying to see who made the
20 concession.
21 MR DICKER: My Lords, then the materials leading up to the
22 1986 Act. This is the Law Commission, the Cork Report
23 and the eventual paper. We say they don't assist my
24 learned friends.
25 Working backwards and taking the latest statutory

Page 158

1 materials first, the latest in time is the Revised
2 Framework for Insolvency Law, which your Lordships have
3 in bundle 4 at tab 12. (Pause).
4 It's dated February 1984, your Lordships can see
5 from the front page. I can deal with his very shortly
6 because there is, as far as we can see, nothing that's
7 relevant in this document unless --
8 LORD JUSTICE MOORE-BICK: You're not going to take us
9 through all it to show us there is nothing in it, are
10 you?
11 MR DICKER: I am not. I am going to take that as read. My
12 learned friend can find something. The only thing
13 I would refer your Lordships to that could conceivably
14 cover it is paragraph 70.
15 LORD JUSTICE LEWISON: 70?
16 MR DICKER: 70, 7-0.
17 LORD JUSTICE LEWISON: Yes. (Pause).
18 MR DICKER: The only submission I think I can make in
19 relation to this is that if it was intended that foreign
20 currency claims would be extinguished once and for all,
21 and if the legislature had effectively intended to
22 depart from the solution proposed by Brightman LJ and
23 envisaged the possibility of the surplus being returned
24 to members, contrary to the general rule members come
25 last, we say it's absolutely inconceivable that it

Page 159

1 wouldn't have been addressed somewhere. This is, after
2 all, some time after the decision of the Court of
3 Appeal.
4 The second working back in time is the final report
5 of the Law Commission. I have this in both tabs 10 and
6 11.
7 LORD JUSTICE MOORE-BICK: Yes.
8 MR DICKER: Again, your Lordships, I think, have seen this
9 so I can deal with it very quickly. 2.23, which I at
10 least have behind tab 10, is a reference to the obiter
11 solution of Brightman LJ in Lines Bros. You can see in
12 footnote 72 a reference to his judgment, page 21.
13 (Pause).
14 So the Law Commission was aware not only of the
15 existence of the decision of the Court of Appeal but
16 also of this specific obiter view of Brightman LJ.
17 LORD JUSTICE LEWISON: Somewhere in their report, and
18 I don't think it's in these two extracts, they note that
19 the Cork Committee endorsed their view in the working
20 paper that there should be a single conversion, even if
21 the company turns out to be solvent, and then they said,
22 "We adhere to the view we expressed in the working
23 paper".
24 MR DICKER: Yes. I will show your Lordships that.
25 If your Lordships then go to tab 11, paragraph

Page 160

1 3.34 --
2 LORD JUSTICE LEWISON: I think it's the preceding page.
3 MR DICKER: I think your Lordship had in mind footnote 207.
4 LORD JUSTICE LEWISON: Do we have that? I have only
5 page 38.
6 LORD JUSTICE BRIGGS: Yes.
7 LORD JUSTICE LEWISON: I think it's the preceding page.
8 MR DICKER: My Lord, I am sorry. I think it is my fault
9 because a revised clip was handed up.
10 LORD JUSTICE LEWISON: I think we're being told it might be
11 in bundle 5.
12 MR DICKER: Tab 17.
13 LORD JUSTICE LEWISON: Yes, that was it. Paragraph 3.34 to
14 3.36.
15 MR DICKER: Yes. Essentially this is once and for all
16 point. We say what the Law Commission were talking
17 about previously and what they're referring to here is
18 the idea -- is not a solution proposed by Brightman LJ.
19 What they're talking about is, effectively, an entirely
20 new currency conversion date which you adopt for
21 everyone if and in the event that the company turns out
22 to be solvent.
23 That obviously isn't what we contend is the effect
24 of the rules. That's what we say they were expressing
25 agreement with. They weren't, as it were, saying

1 Brightman LJ's obiter suggestion is wrong and shouldn't
2 be applied.
3 LORD JUSTICE LEWISON: I just find it odd that for a reason,
4 there must have been a reason, they say in footnote 207:
5 "The committee endorsed our view that conversion
6 should continue to apply even if the debtor was
7 subsequently found to be solvent ..."
8 So that that was their view in the working paper,
9 the Cork Committee agreed with it. At the end of 3.36:
10 "We remain of the view which we expressed in the
11 working paper."
12 MR DICKER: It's not as clear as it might be, but we do say
13 it is vital to distinguish between two possible
14 solutions.
15 LORD JUSTICE LEWISON: Right.
16 MR DICKER: The first solution, as I said, is where the
17 company becomes solvent and you just change the
18 conversion date for everyone. That was rejected by the
19 initial working paper of the Law Commission and they
20 held to that view, and that's not the effect of the
21 1986 Act.
22 The 1986 Act provides that essentially the
23 conversion remains, in the sense you don't have
24 a completely new conversion date for everyone. There is
25 that solution and there's the solution proposed by

1 Brightman LJ which is essentially, "Yes, but if you end
2 up with someone who hasn't been paid in full, he should
3 be paid before members are".
4 They certainly disagreed with first and we take no
5 issue in relation to that.
6 So far as the second, Brightman LJ's approach is
7 concerned, we say you don't get any further than their
8 reference to his obiter comment in 2.23, save that in
9 3.37 they say:
10 "The present law relating to the conversion into
11 sterling of foreign currency claims in relation to
12 solvent and insolvent companies and to bankruptcy is
13 satisfactory."
14 My Lord, we do say again if what they had meant by
15 that was Brightman LJ's solution is no solution at all,
16 again it's a very odd way to express it.
17 So far as the two earlier documents were concerned,
18 the first is the Law Commission working paper which is
19 bundle 4, tab 8. (Pause).
20 In our submission, one can't read too much into this
21 for two reasons. First of all, their ultimate
22 conclusion at 3.47 is they support the view of Oliver J
23 in Dynamics:
24 "The date of the winding-up order is the appropriate
25 once for all date of the conversion of every foreign

1 currency debt on the winding up, both solvent and
2 insolvent companies."
3 I have made the point that's the same phrase used by
4 Brightman LJ, so can't exclude his proposed solution.
5 Then they say:
6 "We would welcome comments on this conclusion and on
7 our view that development of this area of the law could
8 be left to judicial decision."
9 That's the first point.
10 The second point is the obvious one, they weren't
11 able to express a view on Brightman LJ's solution
12 because he hadn't delivered judgment by this stage.
13 My Lords, so far as the Cork Report is concerned,
14 it's not entirely clear whether the authors of the
15 report were aware of the decision of the Court of
16 Appeal. Can I just explain what I mean by that.
17 The only indication, as your Lordships know from the
18 Cork Report, extracts of which you have at tab 9, is
19 that they refer in paragraph 13.08 to two subsequent
20 cases. One knows that must have been Dynamics and at
21 least Lines Bros at first instance.
22 David Graham QC, who was counsel involved in
23 Lines Bros (No 2) and (No 1), was a co-opted member of
24 the Cork Committee. So the question is whether the
25 cut-off date, as it were, by the consideration of the

1 committee was April 1981 when the report was delivered
2 to the Secretary of State --
3 LORD JUSTICE LEWISON: One would have thought so.
4 MR DICKER: My Lord, there are three references. We have
5 copies in court, and I can hand them up, of parts of the
6 Cork Report which on any basis post-date that.
7 LORD JUSTICE LEWISON: Right.
8 MR DICKER: I will hand your Lordships a clip, just so your
9 Lordships have them. Just so you know, paragraph 15.86
10 refers to a judgment in a case called Re Armagh Shoes.
11 The judgment was only given on 4 December 1981.
12 Paragraph 17.91 refers to a section 332 in terms which
13 suggest it's in force, although it only came into
14 operation on 22 December 1981. Paragraph 19.18 refers
15 to a report of the House of Lords Select Committee dated
16 22 October 1981. So it does appear at least some
17 amendments were made after April and before the report
18 was finally published.
19 That doesn't answer the question whether they were
20 aware of and in a position to comment on the judgment
21 before the report was finally published. Certainly
22 I think one can say David Graham obviously did. Whether
23 he relayed it again we're just in the realm of
24 speculation.
25 So ultimately, however one reads the Cork Report,

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 either they were aware of the decision of Brightman LJ
2 but didn't comment on it, which would be understandable
3 if either they agreed with it of were content to leave
4 it for judicial development, or they simply weren't
5 aware of it; in which case, in a sense, it's been
6 overtaken by events.
7 What ultimately matters, obviously, for your
8 Lordships is the meaning and effect of the 1986 Act and
9 Rules and on that we do come back to the words at the
10 start of Rule 4.86 "for the purpose of proving a debt".
11 If the draftsman, as he no doubt would have been, was
12 familiar with the structure of insolvency and the
13 distinction between on the one hand proving for the
14 purposes of pari passu distribution and on the other
15 hand the different regime, however one defines it and
16 whatever precise form it takes, in the event of
17 a surplus, he couldn't conceivably have intended to
18 effect a mandatory once and for all conversion by using
19 the words "for the purpose of proving a debt".
20 My Lords --
21 LORD JUSTICE MOORE-BICK: How are we doing?
22 MR DICKER: I was proceeding roughly at the pace I had
23 expected, until I think some stage during the course of
24 this afternoon. I had expected to run over slightly
25 into the morning. I have, I would estimate, by my usual

1 rate of progress, about another -- somewhere between
2 half an hour and three-quarters of an hour, no more than
3 that. (Pause).
4 LORD JUSTICE MOORE-BICK: If we said we'll sit until 4.30
5 and you --
6 MR DICKER: If your Lordships are happy to hear me for
7 longer, I am very happy to continue speaking.
8 LORD JUSTICE MOORE-BICK: That would give you half an hour
9 in the morning, wouldn't it?
10 MR DICKER: My Lord, I will endeavour to live within that.
11 LORD JUSTICE MOORE-BICK: Before we firm up on that, can
12 I ask other counsel, who are expecting to be on their
13 feet tomorrow, can you get your submissions through in
14 the course of a day, less half an hour? It is reply,
15 bear in mind, so we're not inviting you to re-argue the
16 case.
17 MR SNOWDEN: My Lord, it's not exclusively reply.
18 LORD JUSTICE MOORE-BICK: It's not exclusively reply. But,
19 nonetheless, the question is you had budgeted for a day,
20 I know that.
21 MR SNOWDEN: We did. I anticipate that it might be -- it is
22 difficult to tell but it might be tight, shall we say.
23 There was a little bit left for Mr Trower at the end of
24 the day in genuine and only reply, which we might have
25 to cramp if we were not to start a little early,

1 perhaps.
2 LORD JUSTICE MOORE-BICK: Since you've budgeted for a court
3 day, it wouldn't be unreasonable to expect you all to
4 complete your submissions within that day, would it? So
5 if we were to hear Mr Dicker for another quarter of
6 an hour now and we sat at 10 o'clock tomorrow to give
7 him his half an hour before the court day would
8 ordinarily start, no one wouldn't have any grounds to
9 feel hard done by; is that fair?
10 MR SNOWDEN: Yes.
11 MR DICKER: It is perfectly fair.
12 LORD JUSTICE MOORE-BICK: All right. Thank you all very
13 much.
14 Go on, then, Mr Dicker.
15 MR DICKER: My Lord, the third part of my submissions is to
16 deal with the effect of the rules dealing with
17 contingent and future debts and set-off. The argument
18 by my learned friends is essentially those rules have
19 substantive effect, why not 4.86? The substantive
20 effect for which they contend, of course, is mandatory
21 conversion once and for all. I should be careful about
22 using that phrase, given the way Brightman LJ used it,
23 but your Lordships know what I mean.
24 Before I deal with the detail, two general points
25 just to distinguish the purpose of these rules from the

1 currency conversion provisions. They are all necessary
2 to ensure that a company is able to wind up its affairs
3 within a reasonable period. In other words, to have
4 a liquidation rather than merely a run-off.
5 Secondly, they can all be said to result in
6 a creditor being paid in full, or fairly having been
7 treated as having been paid in full, at the date of
8 payment. They don't go any further than that.
9 Neither of these points, we say, is relevant to or
10 applicable to conversion of foreign currency claims.
11 You don't have to convert a foreign currency claim to
12 enable a liquidation rather than a run-off to take
13 place. Obviously, by the time you get to making your
14 final dividend, you will have crystallised what the
15 foreign currency loss is by definition before the
16 conclusion of the liquidation. Nor, we say, can the
17 conversion be fairly regarded as resulting in payment of
18 a creditor in full. In commercial terms, as those
19 sitting behind me repeatedly explain, it doesn't; we're
20 short 1.3 billion.
21 Conversely, we say my learned friends can't identify
22 any situation in which these rules knowingly result in
23 a sum being paid to shareholders at a time when it's
24 clear there is a creditor who has a claim who has not
25 been paid in full.

1 All of the rules envisage the courts doing and
2 liquidators doing their very best to ensure, right up
3 and even beyond the last possible moment, the creditors
4 get paid in full or at least paid the best estimate of
5 what their claim is at the relevant date.
6 Dealing first with contingent claims, we say these
7 rules do not involve extinguishing underlying claims to
8 which creditors are otherwise entitled. In other words,
9 giving them a right solely to the estimate, such that,
10 if the estimated amount of their claim is paid in full,
11 that effectively is a compromise, settlement, a payment
12 of everything to which they're entitled.
13 If your Lordships turn to 4.86, of which the
14 equivalent in administration is Rule 2.81:
15 "The liquidator shall estimate the value of any
16 claim by reason of its being subject to any contingency
17 and he may revise any estimate previously made if he
18 thinks fit by reference to any change of circumstances
19 or to information becoming available to him."
20 And then, where that occurs, the revised estimate is
21 the amount provable. That's 4.86(2).
22 As your Lordships I think have seen and as
23 Lord Hoffmann said in Wight v Eckhardt, the situation
24 does not freeze at the date of the winding-up order.
25 What is important, however, is to note the circumstances

1 and how far matters can go in creditors having their
2 contingent claims revised.
3 Your Lordships have already seen R-R Realisations,
4 the aircraft crash five or six years after the date of
5 liquidation. One can go further than that. Two
6 decisions. Firstly, Danka Business Systems Ltd, which
7 my learned friend referred your Lordships to, is
8 bundle 1C, tab 91. (Pause).
9 The relevant paragraphs were those my learned friend
10 showed you from Patten LJ's judgment, paragraphs 37 and
11 38. (Pause).
12 Obviously, the application for a reserve failed
13 because that's inconsistent with a liquidation and
14 consistent only with a run-off. But so far as
15 re-estimating a contingent claim is concerned, in 38,
16 Patten LJ says:
17 "The effect of the 1986 Rules is to allow the
18 liquidator to distribute the assets of the company free
19 from any further claims by creditors. Mr Arden was,
20 I think, minded to accept the liquidator could properly
21 stay his hand if (post-valuation but pre-distribution)
22 the contingency was about to occur. I am by no means
23 certain about that, although if the contingency does
24 occur pre-distribution to members and so creates
25 an actual liability of the company which the liquidator

1 has not provided for, then it would obviously be open to
2 the creditor (absent agreement) to lodge an additional
3 proof out of time which in a solvent liquidation
4 a liquidator would have to deal with."
5 So after final dividends had been paid, after
6 everyone has received whatever their final dividend on
7 their estimated proof was, nevertheless, if the
8 liquidator then takes six months before he gets round to
9 distributing the surplus, the creditors have a further
10 opportunity to come in and ask for their proof to be
11 revised. Again, the court doing absolutely everything
12 it can to ensure that, before the assets are finally
13 paid away, creditors have been paid in full or at least
14 at that date there aren't any creditors of which the
15 court is aware who will be left unpaid.
16 It goes further than that. Your Lordships will see
17 this from a decision of Hoffmann J in Stanhope. Just
18 showing your Lordships that in bundle 1B, tab 65.
19 (Pause).
20 The short point here is, even if you get to the
21 stage whereby the liquidation is complete, in the sense
22 that proved debts have been paid in full and
23 a distribution has been made to shareholders, so the
24 winding-up has happened, everything has been done, and
25 the company is subsequently dissolved, nevertheless

1 creditors can come back, if it is worthwhile them doing
2 so, because an asset has been discovered, or any other
3 reason, and say, "I would like to revise my estimate."
4 Just noting the facts in Stanhope, on page 628,
5 Forte was dissolved in February 1992 following
6 a members' voluntary winding-up. So that's the company
7 went into MVL:
8 "The applicants were lessors under two registered
9 under leases, by which premises were let to Forte for
10 a term of 42 years. Forte then assigned those, firstly
11 to Post and Post subsequently to Properties. Properties
12 assigned it to BCCI, which was ordered to be wound up in
13 January 1992, and the liquidators disclaimed the lease.
14 The applicants applied to have Forte restored to the
15 register. Post and Properties applied to be joined as
16 parties under RSC Order 15 so they could object.
17 Although Forte did not have assets, the applicants
18 claimed the restoration of Forte to the register would
19 bring into being a new asset, namely its right of
20 indemnity under section 24(1)(b) of the Land
21 Registration Act 1925, which it had against Post,
22 a solvent company."
23 The application was opposed on the basis it would be
24 inconsistent with the right to wind up one's affairs
25 within a reasonable period. Your Lordships will see

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 that at 634 between C and D. (Pause).
2 The argument between C and D:
3 "Mr Etherton said that an English company has
4 an inalienable right to wind itself up and dissolve
5 whatever might be its outstanding liabilities ...
6 entitled to have its assets distributed to creditors and
7 shareholders in accordance with the rules of
8 liquidation, paying contingent creditors the value of
9 their claims at the date of liquidation and no more.
10 Furthermore, there is a strong policy which required
11 such distribution to be final and undisturbed.
12 "In my judgment, there are elements of truth in each
13 of Mr Etherton's propositions but they are qualified in
14 various ways which do not allow such board brush strokes
15 to present an adequate picture of the law. A company is
16 certainly entitled to initiate and complete the process
17 of winding up, notwithstanding that it will thereby
18 become unable to fulfil future or contingent
19 obligations."
20 So Hoffmann J obviously at that stage expressing
21 a view which is effectively a precursor to the view he
22 expressed in Wight v Eckhardt, "notwithstanding that it
23 will thereby become unable to fulfil future or
24 contingent obligations." They don't cease to exist.
25 They're not compromised or anything of that sort.

1 He then says, between E and F:
2 "You cannot be required to set aside a fund and the
3 liquidator is entitled to distribute the assets in
4 accordance with the rules. Such distributions cannot
5 afterwards be disturbed."
6 But then he says:
7 "On the other hand, it is also a rule of winding up
8 that the creditor may submit a proof or amend
9 an existing proof at any time during the liquidation.
10 The rule that prior distributions cannot be disturbed
11 means it may not do him such good, but in principle he
12 is entitled to make his claim. Another principle of
13 liquidation is that contingent claims are valued in the
14 light of subsequent events so that a proof may be
15 increased.
16 "Furthermore, it is possible that a creditor may be
17 entitled to prove for an accrued debt when a contingency
18 had occurred after the winding-up. I express no opinion
19 on this point but, whatever the form of the proof, there
20 is no principle which excludes new or increased claims."
21 His conclusion is at 635G. He says it's sufficient
22 that -- and the right of recovery is not merely shadowy,
23 i.e. against the assignee. He says:
24 "I think the possibility that assets may become
25 available under the indemnity is far from shadowy. It

1 follows that an order under section 651 may enable the
2 company to meet a liability which would otherwise remain
3 unpaid. This seems to me a sufficient ground for
4 exercising the discretion and I would do so."
5 Just for your Lordships' notes, at 630 Lord Hoffmann
6 records, between D and E:
7 "This is a company in which the final account and
8 return was registered on 8 November 1991. The company
9 was therefore deemed to have been dissolved on
10 8 February 1992."
11 So if one follows this through, we say one can have
12 a contingent claim. It can be estimated. You can
13 receive the full amount of your estimated claim and the
14 assets can be returned to shareholders, and the company
15 dissolved.
16 If that was a compromise and settlement of the
17 underlying claim, it would not be open to the creditor
18 to come back later and say, "Actually, my contingency
19 turned out to be worse than I thought and it's
20 worthwhile getting a declaration that the dissolution
21 is -- restoring the company to the register because
22 there's another asset I am aware of and I ought to have
23 that as well."
24 So the rules in relation to contingent claims do not
25 involve the extinguishment of the underlying claim on

1 payment in full, even in full, of the estimated amount.
2 You can conclude the liquidation, but the underlying
3 claims, Lord Hoffmann said in Wight v Eckhardt, remain.
4 If it turns out that the court and liquidator, despite
5 their best efforts, came up with an estimate that proved
6 inadequate, the creditor can come back.
7 We do say that the use of the hindsight rule in
8 relation to contingent debts provides a very useful
9 analogy with foreign currency claims. Indeed, one might
10 say foreign currency claims are a fortiori a Stanhope
11 situation because one only needs hindsight to the date
12 of payment of the final dividend, because that's when
13 the foreign currency loss is crystallised. You don't
14 need hindsight for any extended period. You certainly
15 don't need hindsight after the company has been
16 dissolved, potentially many years later.
17 LORD JUSTICE MOORE-BICK: Would that be a good point at
18 which to stop for the day?
19 MR DICKER: Yes, it would.
20 LORD JUSTICE MOORE-BICK: Mr Dicker and others, we will sit
21 at 10 o'clock.
22 MR DICKER: Can I just ask, I offered your Lordships copies
23 of the paragraphs in the Cork Report referring to more
24 recent materials. I wonder if first thing tomorrow if
25 we just handed them up --

Merrill Corporation www.merrillcorporation.com/mls 8th Floor, 165 Fleet Street
(+44) 207 404 1400 London EC4A 2DY

1 LORD JUSTICE MOORE-BICK: Yes. We will sit at 10.00 am.
2 You can make whatever you think is the best use of the
3 first half an hour of the day.
4 MR DICKER: I anticipate that I will finish my submissions,
5 as planned, within that half an hour.
6 LORD JUSTICE MOORE-BICK: I think you have to do that
7 because at 10.30 am I shall be calling on Mr Snowden.
8 Thank you all very much.
9 (4.34 pm)
10 (The court adjourned until 10.00 am
11 on Friday, 27 March 2015)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX
2 PAGE
3 Submissions by MR TROWER (continued) 1
4
5 Submissions by MR DICKER 60
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A
abandoning 156:1
abate 80:12
ability 9:23 10:6 20:12 22:5,25 27:20 28:5
able 26:1 42:11 60:14 62:17 74:20,24 97:22 134:20 150:17 163:11 168:2
absent 171:2
absolute 72:18 73:2,17 89:24
absolutely 30:7 37:6 39:7 78:23 78:23 86:5 92:22 102:9 117:1 127:9 135:16,25 142:15 158:25 171:11
abstract 125:10
academic 137:23
accept 3:10 7:20 7:23 9:16 10:1 16:8 21:11 26:6 26:23 27:24,24 55:4 65:15 78:19 140:5 144:11 148:23 149:18 170:20
accepted 31:21
accepts 16:14 19:9 54:12 55:4 142:2
accident 109:3 109:16
accidental 96:14
account 64:11 73:12,20 97:14 112:15 175:7
accounts 123:7
accrue 46:9
accrued 22:8 36:1 47:5 83:21 110:25 174:17
accruing 100:3
achieve 29:4 123:9 132:7 133:19 147:5
achieved 85:11 112:13 114:16 133:20
achieving 98:14 139:13
act 3:25 8:4 11:7 11:14 18:23 28:22,24 29:5 48:22 57:13 62:6 82:14 92:1 93:8 94:2,20,21 95:13 102:2,12 105:9 111:19 113:5,6 114:6,7 133:21 145:11 152:5,7,25 157:22 161:21 161:22 165:8 172:21
acted 92:1,2
action 82:21,24
actual 114:19 170:25
add 26:3 76:9
added 94:12
adding 64:18 130:24
addition 99:8 155:17
additional 89:9 94:15 110:13 124:10 171:2
additionally 12:20
address 53:14 88:19 98:21
addressed 55:6 67:7 82:22 91:17 159:1
addressing 97:19 131:13
adequate 173:15
adhere 159:22
adjourned 177:10
adjournment 89:15
adjusted 152:16
administered 58:24 59:21
administration 1:6,16 2:18,23 3:17 8:20 9:2 21:4,6,20,24,25 23:14 24:16,19 26:11 27:4,5,20 28:2 30:25 31:1 31:22 32:6,7,9 32:11,13,17,19 33:5,19 34:6 35:18,22 36:2 36:16 39:3,4,11 41:25 45:16,20 46:3,4,5,11,22 47:2,6 48:11 50:12 53:16 61:10,23 62:4 63:24 81:14 140:2 145:12 145:14 153:16 169:14
administrations 8:6
administrator 22:5 27:17 29:13
administrators 21:21 42:8 64:1 140:3
admissible 82:10 82:23 107:16
admission 107:3 107:14,18
admit 99:24
admitted 82:18 82:20 99:23 106:21
adopt 38:2 53:1 144:18 160:20
adopted 105:24
advanced 119:11
advantage 63:13 132:8
adverted 149:5
aeroplane 143:18
affairs 86:18 89:1 114:1 168:2 172:24
affect 38:14,17 53:5 68:17 69:20
affidavit 69:18 70:1
afraid 55:21
afternoon 165:24
agree 4:6 43:9,23 148:19
agreed 44:7 63:17 65:14 121:16 123:14 161:9 165:3
agreement 97:13 132:11 160:25 171:2
Ah 33:4 119:23
ahead 149:10
aid 18:12 93:18
aircraft 109:4,7 146:21 147:16 147:20 148:12 170:4
Airport 109:3
Akerman 12:9 12:11
allow 9:10 57:7 68:17 134:18 170:17 173:14
allowed 141:4
allowing 24:7
alter 119:15
alternative 36:8 156:18
Alternatively 145:18
altogether 99:21
amend 174:8
amended 82:23
amendment 31:17
amendments 56:20 164:17
American 113:17
amount 12:2 35:4 36:25 72:11,12,19,20 73:2,4,6,22 89:5 97:17 99:25 110:14 112:18 116:17 120:1 134:19 136:15 145:20 148:6 155:25 156:21,24,24 157:6 169:10 169:21 175:13 176:1
amounts 155:22 156:4,11
analogy 25:10 112:2 176:9
analysed 79:15
analyses 105:18
analysing 50:19
analysis 51:6 52:3,25 76:2 79:4,6,21 103:8 117:13 118:1,5 126:1 133:14
analytical 90:2 101:22
and/or 48:13 147:23
announced 108:22
anomaly 153:6
answer 9:3 28:7 42:5 47:8 74:10 89:8 91:20 93:1 93:22 106:23 111:9 120:19 123:1 133:1 134:25 147:2 148:2 157:17 164:19
answering 124:5
answers 149:25
antecedent 35:9 35:9,14,22
anticipate 166:21 177:4
anticipated 44:8 63:24
anti-deprivation 18:21 19:19
anybody 59:17
anymore 50:24
anyway 29:24 43:10 47:20 143:7
apart 43:17 141:24 145:12 145:14
apologise 36:21
apparent 40:20 139:16
appeal 37:21 67:10,25 71:6 72:5,10,20 84:15,18 105:16 118:14 133:3 137:15 142:17 143:3 159:3,15 163:16
appealed 37:24
appear 164:16
appears 5:12 13:8 23:15 84:23 97:5
applicable 31:3,4 31:8 71:18 145:11,14 168:10
applicants 172:8 172:14,17
application 8:6,7 16:17 21:1 25:7 33:1 37:15 52:12 85:22 109:18 110:5 124:9 170:12 172:23
applications 11:11
applied 7:21 11:15 25:10 56:6 87:4 96:18 102:1,2,21 119:21 121:12 133:13 161:2 172:14,15
applies 6:4 8:24 37:25 45:17,18 76:3 79:4,4 89:22 90:8 141:1
apply 3:16,16 8:16 12:17 13:24 21:3 22:22 23:23 24:17 33:23 38:10 85:15,19 102:4,20 110:4 118:4 121:5 124:19 127:14 135:23 146:19 161:6
applying 20:25 25:16 26:25 112:1 117:25
appreciate 80:25 84:18 110:10 148:1
appreciated 61:20 73:23 138:2 146:15
appreciates 139:19 141:9
appreciation 129:5
apprehend 97:9
approach 19:16 38:3 70:17 78:24 79:10 96:8,23 103:1,1 105:24 111:2 117:8 124:9 130:10 137:21 146:4 153:11 162:6
approached 111:8
approaches 151:9
approaching 126:25
appropriate 125:18 126:6 162:24
appropriateness

20:25
approval 137:10 154:9
April 164:1,17
architecture 135:18
Arden 170:19
area 19:8 27:22 163:7
areas 66:21 67:13
argue 41:4,9
argued 34:22 35:3 36:11,19 39:20 106:13 106:14
argument 25:8 31:21 33:24 34:13,17 36:9 36:14 37:16,25 38:2 40:25 42:11,21 44:15 45:5 46:7,19,25 47:15,19 52:18 53:12,19 56:5 56:11 57:5 63:18 66:13,16 66:19 69:22 78:15 81:20 92:6,23 99:1,12 106:9 115:7 118:12 119:10 119:24 123:3 129:24 130:8 132:19 138:13 139:17 140:6 140:18 143:1 147:12 167:17 173:2
arguments 31:19 37:3,6,10,10,14 41:11 42:3 43:7 44:17 55:6 66:25 130:2,4 144:21 145:13
arisen 32:11 149:22
arises 2:24 3:8 32:8 33:2 46:4 48:12,19 59:22 122:16 154:13
arising 35:8 109:15
Armagh 164:10
arose 1:13 104:20 118:6 126:16 142:22 143:12 154:10 154:22
arrangement 30:9
article 117:9
artificial 149:9
ascertain 84:19 113:7,19 114:23 154:22
ascertainable 112:19
ascertained 32:16 83:19,24 100:5 113:24
ascertainment 90:21 114:19
aside 124:4 174:2
asked 91:16 109:10
asking 29:17 63:2 140:1
aspect 77:24
aspects 97:6
assert 49:3 62:20
asset 22:11 77:15 172:2,19 175:22
assets 2:7 3:3 28:13 34:10 60:23 61:12 62:13,24 73:15 75:18 77:6,12 79:24 80:11,18 81:11 84:20 85:14 87:4,21 96:6,16 103:20 109:12,14 110:17,24 111:3 112:13 113:21 114:25 116:24 121:12 122:17,25 125:4 128:24 134:16 140:12 170:18 171:12 172:17 173:6 174:3,24 175:14
assigned 172:10 172:12
assignee 174:23
assist 157:23
assistance 43:21
assisted 106:3
assisting 21:9
assume 69:23 143:21,24 144:11 146:13
assumed 45:8
assumes 53:19
assuming 52:17 52:18 146:18
assumption 53:13 81:13
assurance 22:10
astonishingly 117:9
attached 67:17
attempt 154:18
attendant 110:12
attention 20:2 67:1 70:23 154:12 157:9
Auriferous 6:2 6:10
authorised 69:17
authorities 7:7 21:11,18 66:24 70:21 76:11 79:15 84:13 94:19 105:18 111:10 114:4
authority 5:6,20 84:9 108:13
authors 163:14
available 18:2 73:8 80:18 85:10 89:8 112:13 114:13 114:15 116:23 169:19 174:25
avoid 65:14 66:22 130:4,8
aware 42:10 137:22 159:14 163:15 164:20 165:1,5 171:15 175:22
axiomatic 114:16

B

B 115:12 120:18 120:18 123:12 134:12 136:17
back 5:10 6:13 10:16 12:4 15:8 15:10,23 19:16 26:21 31:14,19 31:25 32:1,2 42:19 53:2 55:18 59:9 70:6 72:4 75:24,25 78:1 84:6,25 92:16 93:24,25 103:25 111:3 119:13 123:20 123:21 130:11 134:7 140:9,24 141:21 142:21 146:23 159:4 165:9 172:1 175:18 176:6
backdating 27:12
background 7:15 20:25
backwards 157:25
bad 151:1
baggage 103:5
balance 64:24 72:21 73:8 110:17 128:11 131:10
bank 19:21 64:9 72:16,21 73:2,7 113:18 119:1 119:11 129:10 130:11,16,20 130:25 131:6 132:19 140:10 141:1,2
bankrupt 56:7,9 57:18 58:11,21 59:18 111:4 113:8 114:10
bankruptcy 55:15,18 56:6,7 56:13,19,24 57:7,9,10,19,24 58:1,3,11,16,22 58:25 59:15,16 59:22,23,25 75:25 77:21 84:7 94:5 95:7 98:20 102:1,4 102:14,16 105:9 113:5,9 114:7 152:24 153:9 162:12
bankrupt's 58:10 58:15 59:12
Barclay 105:6,25
Barclays 104:22
barely 149:19
bargain 74:5
bargained 60:18 60:20 68:11 70:20
Barings 154:13
base 134:14
based 10:16 26:24 44:13 46:20,25 49:5 114:22
basic 75:17 79:23 101:23 104:7 105:9,23 112:1 113:3 135:17 139:17 152:9
basing 23:12
basis 24:23 53:8 63:25 87:1,20 103:2 131:6 133:8 139:5 140:11 157:8 164:6 172:23
basket 148:20
BCCI 172:12
bear 1:17 63:22 66:23 88:22 129:18 130:13 131:7 132:1 148:19 151:17 166:15
bearing 33:14
bears 30:20 153:13
becoming 128:7 169:19
began 40:19
beginning 5:13 10:25 11:2 101:4 121:1 131:16 144:17
begs 45:10
behalf 99:19
Belmont 19:20
beneficial 1:21
beneficiaries 1:22
benefit 125:16 126:10 131:24 150:17,24 152:2
benefits 41:7,8
best 29:5 56:2 120:4 140:7 169:2,4 176:5 177:2
bet 63:12,16,19 64:13 66:19 139:15
better 28:15 29:4 60:20
beyond 169:3
big 27:25 29:17 38:19 64:14 149:12
bigger 64:16 93:25
billion 131:21 168:20
binding 71:17
bit 15:9 17:15 23:13 31:2 36:6 37:4 40:19,20 40:21 42:12,20 42:20 44:10,12 60:2 166:23
bite 74:20 151:18
bits 29:3
Black's 15:2 17:16
blocked 72:19 73:20
blush 42:4
board 173:14
Bombay 109:3 109:15
Book 29:7 31:3 31:24 56:4
borne 33:20 49:11 124:16 125:11
bottom 13:5 14:9 14:12 15:11 17:20 37:2 97:3 98:25 105:22 112:7 113:17 122:14
Boultbee 4:11,18 4:21 7:3,10 12:12,14 16:13 21:12
boundary 91:23 152:15
Bower 97:21 146:5
brackets 31:2
brave 117:10
breach 12:8
break 43:11,12 44:2,9 47:21 99:17 134:10 136:6
brevity 92:11
briefly 55:17 91:1 95:4 98:23 104:6 108:17 111:8
Briggs 2:11 8:3 10:9,12 13:18 14:2,11,18 17:22 18:6 19:22 20:5,14

21:23 22:18,21 24:6,9,12,14 25:16,20 26:7 26:14 27:3,9,12 27:16,23 28:14 28:17,20,24 29:2 30:4,15,19 31:2,6,9,13 32:4 33:3 34:3 34:20,24 35:1 36:6,8,11 37:20 37:23 38:17,22 38:24 39:2,4,7 39:16,22,24 40:7,11,13 41:7 41:15,23 42:7 43:15 44:24 45:4,12,21,25 46:13 48:4,7 50:1,20 51:10 51:14,16 52:22 53:9 54:3,7,11 54:15 56:16,22 57:1 59:3,7,10 59:14,19 74:16 74:23,25 80:6 83:6,11 88:13 88:16 91:16 108:11 117:4 118:21 132:2,5 132:15 143:13 144:9,11 145:1 146:11,22 147:7 149:12 157:15,19 160:6
Brightman 90:16 93:5,9 105:18 122:12 125:24 126:18 127:25 128:5 129:4,20 130:10 131:13 132:25 133:6 133:14,18,24 134:11 135:2,9 137:6,22 153:11 158:22 159:11,16 160:18 161:1 162:1,6,15 163:4,11 165:1 167:22
bring 61:10 152:24 172:19
British 113:17
Bromley 84:6 92:18
Bros 54:16 64:6 84:15 90:16 93:6 94:25 105:16 118:7 129:3,10 130:12 133:14 136:9 137:10 140:10 141:19 142:24 143:10 154:5,8 159:11 163:21,23
brought 17:14 94:6 99:21 102:16
brush 173:14
Buckley 6:11 99:4,16 100:15 123:24
budgeted 166:19 167:2
built 24:15
bundle 14:8 15:1 15:8 70:24 76:16 84:25 95:21 98:24 104:13 108:14 111:14 118:16 158:3 160:11 162:19 170:8 171:18
bundles 69:5 70:21 79:19 137:12
Business 170:6
byproduct 81:9
B1 29:1

C

c 9:6 109:20 112:8 113:15 119:14 122:9 122:21 136:11 136:17 173:1,2
calculated 122:18
calculation 148:25
call 6:23 7:22 10:7 17:13 20:12 21:22 22:2,4,8 25:9 26:2 107:25 118:1
called 15:2 17:16 70:23 72:6 84:5 95:9 104:21 164:10
calling 177:7
calls 5:7 8:12 17:3,5,11 18:1 21:15 27:17,20 28:6
Cambridge 79:20 137:16
candidate 123:14
capable 47:12 86:25
capital 97:11 154:25 155:4
careful 167:21
Carnegie 70:24
Carnwath 71:8
carried 57:21
carry 62:5 148:24
carrying 15:11 57:22
case 1:9,18 2:5 3:20 4:14,16 5:6,12,16 6:5 7:21 10:19 13:4 13:12,16 15:2,2 15:2 16:22 17:7 17:16 19:20 21:13 22:9,13 22:14 23:5 25:16,23 40:1 45:23 69:15 70:23 72:4,6,7 74:16 77:25 80:11 82:8 84:5 90:17 91:22 92:16 95:9 96:6 96:17 97:6 98:14,17 99:2 100:10,22 104:12,21 105:6,25 107:11 110:5 110:20 111:22 113:8 114:10 118:4,7,19,24 119:8 120:21 123:15 124:5 131:19 132:16 132:22 135:13 139:23 145:1 154:9 156:11 157:12 164:10 165:5 166:16
cases 4:5 5:8,11 19:11 25:22 26:4,17,22 70:3 73:10 79:10,19 82:15 90:5 92:3 94:23 95:4,6,8 98:6,19,22 102:17 103:13 104:5,9 107:19 112:16 113:16 146:8 163:20
cash 128:10
cast 11:1
catch 84:8
category 82:3,5 104:5 107:15
cause 82:21,24
caused 35:4 36:24 62:19 81:4,6
caveat 26:2
cease 173:24
ceases 101:22
cent 129:16 130:13 141:12 141:13
century 19:5 82:9
certain 35:4 36:24 89:6 170:23
certainly 21:12 66:22 117:12 134:24 162:4 164:21 173:16 176:14
cetera 16:9 86:20 152:12
Ch 99:3
Chadwick 4:25 5:16
chance 42:24
change 8:4 152:12 161:17 169:18
changes 7:24 126:10 128:21 152:8,13
character 6:18
characterisation 53:3 62:22
characterise 50:9
characterises 6:6
charging 71:4,25
cheaper 139:8
Chelmsford 3:21 3:23 13:4,19 14:4
Chelmsford's 11:2
cherry 4:11,18 4:21 7:3,10 12:12,14 16:13 21:12 74:21
choice 72:6 88:14
choose 147:10
chosen 123:13
circumstance 78:5
circumstances 10:2 18:1 24:24 25:25 65:2 89:6 127:17 169:18 169:25
citation 5:16 6:14 6:16
cited 6:11 95:17 137:10 154:8
cites 6:2
citing 113:14
claim 2:10 3:13 16:4 40:8 52:1 53:3 54:18 57:5 57:7,8 59:17,20 59:22 60:17 62:21 64:9 80:25 81:4,10 92:20,24 93:1,2 93:19 99:15 100:5,14 109:14 110:8 112:18 115:8 116:3 120:2,2 121:7 127:16 127:18 129:15 129:16,21,25 130:13,16,17 131:1,23 133:7 134:14 136:14 138:3,6 142:9 143:23 145:22 146:1 147:4 150:10,13,18 151:6 154:24 168:11,24 169:5,10,16 170:15 174:12 175:12,13,17 175:25
claimant 63:14 71:1
claimants 60:15 64:17 65:11,16 106:6,9,14,15 106:21 113:11 143:17,20,22 144:4 146:14
claimed 124:3 172:18
claiming 146:14
claims 2:13 33:11 41:20 49:3 54:17 56:19 58:18 59:2 60:9 61:15 63:5 64:8 65:8 66:9,9,15 66:18,18 75:13 75:13 76:8,21 76:21 78:11 79:12 81:25 82:4,5,10,12,14 82:18 83:1,3,12 83:15,18,24 84:12,19 86:13 86:14,21 90:19 91:9,11,18,24 92:9 93:4,17,24 94:1,1,22 98:18 104:7,19,24 105:17 106:1 107:12,15,18 110:16,25 111:5,7,17,24 112:2,13 113:12 114:17 114:23 115:5 116:20 118:5 118:11 119:6 124:7 133:16 133:23 137:1 138:25 140:13 142:20,23 143:12 144:2 144:25 145:7 149:20,23,23 152:15,17 153:10 158:20 162:11 168:10 169:6,7 170:2 170:19 173:9 174:13,20 175:24 176:3,9 176:10
clarified 44:5
class 80:16 99:18 99:20 155:3
clear 4:8,13 10:9 13:4,8 30:7 41:5 79:2 86:22 93:4,6 118:7 122:5 126:14 135:21 153:24 161:12 163:14 168:24
clearly 6:10 15:6

26:14 49:18 68:22 71:24 125:3
client 27:1
clip 160:9 164:8
close 71:12 79:13
closeness 1:25
Coast 6:11
code 8:1,7 14:15 14:17 16:19 18:15 20:7,23 27:6 28:10 48:11 52:7,9 53:23 94:17
codification 19:8 84:15
codified 18:25 19:4,6 84:7,11 93:7 152:19 153:12
codify 152:21
cogent 16:3
coherence 25:14
coherent 41:3
collecting 85:13 87:3
collection 89:19 142:19
collective 76:5 77:4 79:2,22 80:23 81:3 116:22 120:22 120:25 121:22 137:2 153:25
colloquial 2:1
come 42:19 47:18 50:3,17 60:21 78:1,8 86:5 98:11 106:22 116:5,10 123:20,21 129:6,9 132:5 135:14 139:14 144:13 158:24 165:9 171:10 172:1 175:18 176:6
comes 2:6,19 48:14 62:20 73:25 86:22 101:7 108:9 125:23 127:20 137:6 142:4,24
comfortable 65:6
coming 63:2 143:20
commenced 72:10
commencement 100:1 112:20
comment 2:11 71:8 72:25 78:1 87:13 162:8 164:20 165:2
commentary 137:23
comments 79:17 102:25 115:9 163:6
commercial 140:10 168:18
commercially 40:23
Commission 119:12 125:23 127:23 144:19 157:22 159:5 159:14 160:16 161:19 162:18
committee 159:19 161:5,9 163:24 164:1 164:15
Commodities 95:10 100:19 101:25
common 71:10 112:14
companies 1:10 3:25 4:2 11:7 11:13,23 20:9 40:2 66:8 75:11 102:2 109:11 113:6 114:6 162:12 163:2
company 2:10,13 2:18,19,24 11:15,18,19 13:12,13,16 20:9,15 21:3 22:10,15 23:1 25:20 27:7 29:13 30:23,25 32:25 41:16 47:23,24 48:2 50:15 53:16 60:24 62:16 63:15 65:3,5,7 65:13,18 75:18 76:3 77:3,13,15 85:14,25 86:17 88:24 90:8 91:8 95:23 96:3,7,23 96:25 97:15 99:16,25 100:3 100:10,15,22 100:24 101:6,9 101:9,15,16 102:3,17,18,21 103:1,10,18,24 105:7,10 107:1 107:13,24 108:18 109:5,6 109:15 110:8 111:22,23 113:1,8,20 114:2,10 115:17 117:5 118:3 119:21 120:17 121:6 122:17,19,25 123:15 124:4 124:19 125:4,8 126:2,21 127:2 127:4,11,22 128:8,12 131:8 131:14 132:22 134:2 135:11 137:18 138:6 138:11,15,17 139:4,17 140:25 141:22 150:14,14,16 159:21 160:21 161:17 168:2 170:18,25 171:25 172:6 172:22 173:3 173:15 175:2,7 175:8,14,21 176:15
company's 2:7 16:5 29:4,6,14 48:18 75:19 77:5 80:18 99:2 109:4,11 110:17,24
compare 121:8
compared 64:5 121:9 141:2
comparing 1:8 114:20
compelled 135:4
compelling 106:17
compels 54:19
compensated 66:5
compensation 81:7 137:14
competing 144:25
competition 104:1 119:4 124:22 147:21
complain 61:25 63:8 139:5 141:4 148:8
complaint 63:1
complete 12:3 28:7 77:11 82:21,24 130:9 167:4 171:21 173:16
completely 127:12 161:24
complex 4:24
complexities 102:7
complexity 40:21
compounding 145:16,25
comprehensible 21:19
comprehensive 77:22
comprised 155:3
compromise 100:8,9 169:11 175:16
compromised 173:25
compulsory 80:2 120:22
computed 105:15
computer 149:13
conceded 145:25
conceivable 152:3
conceivably 142:25 158:13 165:17
conceive 10:3 96:5
concept 12:14 13:24 19:3 20:23 53:6 54:17 82:11 107:1
concepts 145:16
conceptualism 85:19
conceptually 29:15
concern 26:10,11 29:9 34:4,14 39:25 65:12 68:13 75:10 86:17 111:23 122:21 154:18
concerned 3:7 17:24 32:8 36:18 37:4 42:9 42:13,21 44:15 45:14 51:23 52:4 60:9 63:23 67:21 94:11 104:6,18 107:24 108:17 111:14 116:21 142:5,23 148:21 150:13 153:10 154:18 162:7,17 163:13 170:15
concerning 67:4
concerns 76:2 116:10
concession 156:7 157:20
conclude 3:10 176:2
concluded 112:16
concludes 71:15
concluding 1:5
conclusion 46:21 54:20 55:15 60:11 71:22 105:21 112:1 114:3 123:12 134:12 144:14 162:22 163:6 168:16 174:21
conclusions 110:4
condition 6:23
conducting 114:1
confined 77:4
confirmed 76:11
conflict 143:11
conscious 52:24 66:20
consequence 41:23 61:2,11 61:21 64:4 65:13 83:17,20 96:15 116:11 116:16 139:9 141:18 145:19 156:19
consequences 48:20 55:14 62:2 84:2 116:19 150:8
consider 19:20 75:12 97:6 105:9
considerable 91:20
considerably 92:10 140:11
consideration 42:16 155:14 163:25
considered 7:6 13:7 95:14 136:13
considering 11:10 102:1 137:18
consistent 7:5 70:17 77:19 170:14
consistently 76:11
constitutes 59:24 78:4
construction 3:24 4:4,7 11:6 18:3 39:6 44:18 54:23 55:1,3 94:21 132:11
construed 119:25
contained 7:25
contains 56:13
contemplated 25:21 82:1
contemplating 126:19
contemplation 13:18
contend 156:4 160:23 167:20
contending 51:18
content 165:3
contention 66:2
contest 118:9
context 1:16 7:22 17:1 20:8 21:19 23:13 28:1 63:19 66:2,8,24 67:1 74:13,14 75:14 79:7 83:13 89:24 98:8 100:17 115:25 116:12 117:3,4,17 124:19 126:17 133:23,24 135:23 154:14
Continental

113:18
contingency 169:16 170:22 170:23 174:17 175:18
contingent 2:10 2:13,22 8:16,19 66:12 78:9 82:9 167:17 169:6 170:2,15 173:8 173:18,24 174:13 175:12 175:24 176:8
continuation 45:13
continue 77:16 146:19 161:6 166:7
continued 1:3 154:8 178:3
continues 33:25 36:15 46:11
continuing 47:12
contra 136:18
contract 68:10 97:13,18 98:14 98:16 122:4 133:9 145:12 152:24
contracted 138:14
contracts 49:5
contractual 32:4 35:8,9,14,23 36:9 39:16,18 40:13 45:3,4 48:9 52:14,20 53:4,5,7 54:8 54:14,20,24,25 56:23 57:4 60:16 94:13 97:25 98:7,9,15 119:7 122:2 123:1 130:17 134:2,3 135:7 141:12,17 145:20 156:15
contractually 141:3 153:5
contrary 14:3 60:13,23 61:6 104:22 120:7 127:7 136:23 144:19 158:24
contribute 12:2
contributing 12:15
contribution 1:20 12:19 26:1 151:18
contributories 8:21 10:7 16:5 26:12 41:22 99:19 106:10 106:13
contributory 1:6 1:7 3:7,15 4:7 5:23 6:7,9,16 6:20 7:6,10 8:9 8:23 9:19,19 10:10 11:25 12:13,17,18,24 13:20,21,22,25 14:3 15:14 16:15,18,21,25 19:10 20:10 21:1,8,14,17 22:3,6,12,19,23 23:6 24:10,19 25:17,24 26:9 30:1
contributory's 22:24
control 2:14 34:11
controlled 2:3
controversial 68:24
convenient 43:14 89:11,12 136:1
conveniently 19:23
Conversely 80:21 168:21
conversion 46:5 53:9,20,21 54:4 54:17 55:7 60:9 63:5 66:4,10,15 69:24 71:11 74:12 78:10,22 79:12 86:24 93:19 94:22 112:17 115:5 116:7 120:8 123:10,11,13 124:23 125:19 126:6 127:1,2,6 127:13,14 128:1 130:14 131:4,7 138:25 141:8 142:23 143:12,17,23 144:2,4,17 146:13 150:9 156:8,25 157:11 159:20 160:20 161:5 161:18,23,24 162:10,25 165:18 167:21 168:1,10,17
convert 74:17 76:20 120:13 147:25,25 150:10 156:14 168:11
converted 61:15 65:9 69:13 90:19 105:17 111:17,25 115:8 121:4 127:16 129:15 131:1 133:17 150:18,20 151:7
converting 27:4 69:16
copies 164:5 176:22
copy 69:4
core 7:19 26:25 28:3,12
Cork 153:7 157:22 159:19 161:9 163:13 163:18,24 164:6,25 176:23
corporate 75:24 77:20 84:8 95:6 98:20 152:19 153:8
corporation 105:13 120:8
correct 35:3 39:23 60:16 94:20 117:13 125:3 156:19
corrected 153:7 153:9
correspondingly 82:5
cost 88:21 110:13
costs 89:9
Council 79:19 137:16
counsel 156:2,3 163:22 166:12
counterparty 89:4
country 69:12
counts 88:2
course 4:6 21:2 24:1,22 26:18 27:18,24 28:9 31:7 38:20 39:5 52:11 54:12,15 58:4 61:19 65:9 82:16 92:20 96:12 104:25 112:11 125:17 126:5 139:14 149:6 165:23 166:14 167:20
court 18:12,23 19:12,19 20:18 20:19 23:10 29:17 37:14,21 38:2 42:24 43:3 69:17 71:6 72:5 72:10,20 74:3 83:2 84:14 91:17 92:4 96:16 99:22 101:14 105:11 105:16 109:11 110:2 113:19 118:14 121:2 121:23 131:18 133:3 137:15 159:2,15 163:15 164:5 167:2,7 171:11 171:15 176:4 177:10
courts 7:14 17:6 18:9 19:2 25:12 85:15 94:3 169:1
court's 41:10
cover 66:21 158:14
covered 55:20
co-extensive 151:22
co-obligor 151:10,14,16 151:18,23,24
co-obligors 116:13 151:4,5
co-opted 163:23
cramp 166:25
crash 146:21 170:4
crashed 109:7
create 77:6 83:6 83:7
created 25:12 81:8
creates 170:24
credit 87:9
credited 88:3,7
creditor 5:21 6:18 45:24 46:2 46:8,10 47:1 50:12 60:17 62:11,20,22 63:2,16 64:22 65:25 68:5,15 68:19 69:11,20 70:7,10,19 72:9 72:15 73:5,14 74:8 77:14 81:1 81:5 85:21 86:23 88:22 97:22 115:19 116:3,16 119:2 119:16,18 122:3 124:15 124:18,24,24 125:12,13 128:22,25 129:13,22 132:1,1 133:7 134:14,19 138:2,3,14 140:7 141:23 141:24 146:19 146:24 147:11 150:13,15,16 154:19 156:23 156:25 157:1,6 157:7 168:6,18 168:24 171:2 174:8,16 175:17 176:6
creditors 12:5 14:2 16:6 22:11 28:13 29:4,6,12 29:14 32:12 33:3 45:15,17 45:18,21 49:3 50:8 51:23 52:11 58:10,15 59:12 60:25 61:13,22 63:20 64:4,5,7,20 66:17 68:10,18 75:20 76:7,25 77:3,7 79:25 80:16 84:21 85:7,17 89:9 91:6 94:8,12 97:16 98:11 99:6,13 100:12 102:11 103:14 103:20 104:1,2 104:3 109:12 110:4,9 112:12 112:14 113:22 113:25 114:17 115:7 116:24 117:16 118:8 118:10 119:5 124:7,21,25 125:5,6,9,9,14 125:16 128:24 129:12 131:22 132:3 135:6 136:25 139:18 140:11 141:7 141:11,13,16 142:13 143:5 143:11 147:3 147:21,23,25 148:5,13,17 150:4 151:6 153:4 154:19 154:21,23,24 169:3,8 170:1 170:19 171:9 171:13,14 172:1 173:6,8
creditor's 116:20 122:22
critical 77:25 78:16 84:17 93:9 152:14
criticised 4:25
criticism 134:25
crossover 102:15 102:20
cross-claim 3:13
crystallised 114:18 168:14 176:13
currencies 146:14 147:22 148:13
currency 54:17 55:7 60:9,15,18 60:18,19 61:15 63:5,14,16 64:4 64:17,20 65:8 65:10,14,15 66:4,9,10,15,18 68:12,20 69:24 69:25 70:8 72:3 72:9 73:19 74:2 74:12 75:13 78:11,21 79:12 81:12 83:15,23

87:5 88:14 90:18 93:19 94:22 111:7,17 115:5,7 118:5 118:11 119:1,3 119:5 120:2 121:3,8 123:8 124:2,13,14,23 125:6,9,11,16 127:18 129:22 129:25 130:14 130:18 131:24 133:16 134:13 134:15,19 136:14,15 137:1,4 138:2,2 138:5,25 139:20 140:7 140:15,19,22 141:7 142:23 143:12,17,23 144:2,4 146:13 146:19,24 147:3,24 148:6 148:13,16,19 149:23 150:9 151:17 153:10 153:19 156:25 158:20 160:20 162:11 163:1 168:1,10,11,15 176:9,10,13
current 48:23
currently 38:7 95:14
customer 73:9
customers 99:8
cut 56:20 141:18
cut-off 27:12 30:8 32:1 37:17 42:2 45:5,8 80:15,16 83:18 84:18 85:25 86:10 90:10 143:19 163:25

D

D 105:5 112:8 114:5 115:15 119:14 120:24 122:21 124:12 132:23 133:25 137:7 173:1,2 175:6
damage 82:25
damages 81:4 82:14 104:19 104:24 106:2 152:17
Danka 135:13 170:6
dare 69:2
darting 17:17
date 27:12 30:8 30:25 32:1 37:17,18 42:2 45:6,6,9 47:25 68:21 69:15,18 70:1,1,9 71:12 72:17 74:3 80:15,16,20,22 81:13 82:21 83:18,19,22,23 83:25 84:1,18 84:19 85:5,25 86:10,13,15 87:10,18 88:2,3 88:9,10,17 90:10,18 96:20 99:9,9 105:15 105:17 106:21 111:1,5,25,25 112:3,17 113:9 113:12,22 114:9,11,18,20 114:23,24 115:8,17,21 116:8 117:11 120:3,9 121:14 122:1 123:11 123:13,15,16 124:3 126:6 127:1,2,3,6,13 129:6 133:17 139:16 140:1 143:20 144:17 144:20 147:9 147:10,13 148:3,4,21,25 149:3,7,10,10 149:16 150:21 151:7 160:20 161:18,24 162:24,25 163:25 168:7 169:5,24 170:4 171:14 173:9 176:11
dated 158:4 164:15
dates 123:11
David 67:5 82:6 82:22 95:14 110:22 134:8 142:19 145:9 146:3 149:24 163:22 164:22
day 17:13 29:19 85:14 87:22 89:19 90:9,21 101:22 130:20 139:4 166:14 166:19,24 167:3,4,7 176:18 177:3
day's 117:23
dead 145:23
deal 3:17 11:5 24:15 37:9 42:11,16,17,18 55:11,13,23 58:7 66:6,11,16 78:7 90:25 93:21 94:3,18 95:5 111:8,20 122:15 127:20 135:10,17 149:18,19 150:7 152:4 158:5 159:9 167:16,24 171:4
dealing 4:4,24 5:6 12:11 13:16 15:14 16:10,11 24:1,4 29:11 52:13 78:8 90:4 90:7 91:23 93:14,24 94:4 94:23 95:3,4,6 101:8 104:6 107:6,17 111:20 115:4 115:25 118:2 126:20 141:22 167:16 169:6
deals 71:14 90:7 92:11 96:2 97:1 99:16 122:12 122:19 133:23
dealt 20:13 42:23 45:11 47:20 52:8 66:10,20 80:3,4 81:21 82:17 90:19 91:10 92:9 93:4 93:5 95:22 101:20 105:2 106:10 122:11 131:13,15 149:24
debated 146:2,3
debt 1:20 30:20 30:21 33:13,16 33:21 37:16 39:22 47:17,18 47:23,24 48:1,4 49:11,12,16,24 50:13,14,17,23 51:7,9,18,25 52:2,6,19 53:19 56:24 57:10 58:1,4 59:23,23 59:25 60:25 72:15 73:4,7,16 75:4 81:2,12 83:24 87:10,18 100:1 109:14 112:23,25 115:20 119:17 119:18 120:9 124:2 125:18 125:22 126:5 146:6 153:18 154:7 156:14 163:1 165:10 165:19 174:17
debtor 58:14 60:13,21 65:25 68:5 69:10 72:22 81:1 84:20 116:18 122:2 124:13 124:16,17,22 128:22 129:1 130:22 148:7 161:6
debtors 79:24 132:3
debtor's 72:16 113:10
debts 20:14 31:25 32:2,13 32:21 33:4,9,12 33:18 37:11 49:20 50:21 56:14 57:19,24 58:22,25 59:15 59:16 61:14 62:5 66:12 76:6 76:25 77:8,8 78:9 79:3,25 80:8,8,10,20,21 84:22 85:4 86:4 87:5 89:23 96:19 103:6 105:15 106:5 108:7,8 113:23 119:1 121:13 121:24 125:20 126:8,11,19,23 133:10 134:3 137:3 139:7 143:15 153:22 154:1 167:17 171:22 176:8
December 164:11,14
decide 37:5 43:11 65:5 67:10 102:3 135:23 142:22 149:6
decided 39:1 136:12
decides 107:12
deciding 102:5
decision 3:11 31:15 72:5 83:2 84:5 92:7,17 95:16,20 99:22 100:18,18 104:9 105:6 110:21 111:11 111:13 124:12 137:15,23 154:13 157:10 159:2,15 163:8 163:15 165:1 171:17
decisions 170:6
declaration 175:20
declarations 3:9 43:7 44:14
deduct 157:5
deducted 155:24 156:22
deed 156:12
deemed 41:24,25 42:4 46:1 50:1 101:6,8,14 175:9
default 124:17 125:5
defeated 8:13 17:3,9 18:13 19:13
defendant 71:2,3
deferred 132:2,3
deficiency 64:2
defines 165:15
definitely 113:24
definition 56:13 56:18 168:15
degree 110:14
delay 96:14
delivered 163:12 164:1
delve 146:11
demand 73:9
demands 68:14 124:16
demonstrates 107:5
denominated 60:17 141:7,8
denominator 114:12
deny 60:15
depart 158:22
depend 9:3 13:22 22:19,24 23:4
depended 90:20
dependent 18:2
depending 11:6
depends 3:24 37:16 132:5 138:20
deploying 66:24
depreciate 65:12
depreciated 62:10 64:3,15 72:18 129:14 138:5 139:3,8
depreciates 74:19 139:20 141:9
depreciation 129:5 134:14 150:24
derivatives 49:5
derived 15:5 53:23
descends 27:6
describe 27:14 122:23
described 2:20 18:17 76:4 116:6 117:12 157:15
describes 20:3
describing 4:25 76:23
description 77:18 77:19,23 125:11,12
despite 93:24 133:10 176:4
destroy 77:7
detail 20:3 71:20 79:2 91:3 104:14 105:19

149:19 155:13 167:24
detailed 17:4 93:17,20,23 154:11
determination 37:23
determinative 90:22
determine 67:23 80:16 83:8 99:7 114:11 128:24
determined 84:9 120:2
determining 98:18
detrimentally 68:17
Deutschmark 119:1
develop 7:24 10:16 29:18 48:8 65:22
developed 19:1 19:12 31:20 38:21
developing 18:12 43:2
development 7:16,20,20 8:15 29:21 163:7 165:4
develops 113:13
Dicker 31:20 37:25 44:7 60:6 60:7,8,11 67:18 68:4 69:1,4,10 73:17 74:22,24 75:2 77:24 78:13,18,23 79:1 80:7 81:16 81:18,20 83:7 86:2,12 87:7,12 87:16,20 88:6 88:15,18 89:17 89:18,21 90:2 90:13,25 91:20 92:22 102:6,19 102:25 103:8 103:12,17 104:5 107:15 107:20,23 108:2,13 109:22,24 115:14,22,24 117:1,8,20,25 118:16,18,22 123:20,22 126:13,15,20 126:24 127:9 128:12 129:9 129:24 130:2 132:4,7,16 135:10,16 136:1,8,9,25 138:8,10,17,20 138:23 139:25 140:9,15,20,23 141:14 142:15 144:6,10,21 145:4 146:17 146:23 147:12 147:17 148:1,5 148:15 149:3 149:14 157:5 157:17,21 158:11,16,18 159:8,24 160:3 160:8,12,15 161:12,16 164:4,8 165:22 166:6,10 167:5 167:11,14,15 176:19,20,22 177:4 178:5
dictates 87:24
difference 10:13
differences 67:18
different 2:15 4:11 13:13 16:10 17:12 19:5 24:4 41:19 48:21 62:2 66:25 97:1 98:5 106:4 107:4,19 108:9 126:24 128:4 141:21 142:20 144:23 146:14,15 147:22,24 154:14 165:15
difficult 13:24 25:10 26:5 96:5 150:3 166:22
difficulties 116:9
difficulty 139:12
digging 26:21
direct 83:17
directed 114:8 125:13
direction 69:4 74:18
directions 71:14
directors 2:14
65:5,11
disadvantage 63:14
disadvantaged 6:1,25
disagreed 162:4
disappear 48:10 54:25
disapplication 7:4 8:11 12:25 16:1
discharge 26:1 56:8 57:14,15 57:19 58:1,4,5 58:22,24 59:24 70:11 72:12 75:4 119:3 134:1 136:13
discharged 6:17 50:23 52:8,10 55:2 57:8,18,24 59:1,25 76:8 77:9 78:2 122:18 133:10
discharging 53:6
disclaimed 172:13
discounting 86:4 86:20
discovered 128:8 172:2
discovery 77:15
discrepancy 156:13
discretion 24:1,6 24:15,16,24 25:17 26:4 92:2 175:4
discretionary 23:10,16
discriminate 147:9
discuss 98:17 102:17
discussed 155:13
discussing 72:8 89:18
discussion 43:1 83:9 154:11
discussions 117:10
dismissed 109:16
disproportiona... 64:5
dispute 118:8
dissent 134:24 149:15
dissolution 175:20
dissolve 173:4
dissolved 77:13 171:25 172:5 175:9,15 176:16
distinct 46:23
distinction 73:12 91:17 108:6 135:19 153:20 154:3 165:13
distinctions 86:6
distinguish 161:13 167:25
distribute 28:13 109:11 128:23 170:18 174:3
distributed 8:5 11:18 60:24 61:13 75:19 79:24 84:21 86:22 87:22 96:8 110:25 111:4 116:18 173:6
distributing 21:23,25 27:5 27:16 28:2 62:3 62:13 85:13 87:4 103:20 171:9
distribution 3:3 6:24 9:2 19:3 21:7 52:11 61:17 62:8 63:4 77:5,11 80:17 81:11 85:6,10 85:16,21 86:11 89:19,23 90:9 90:21 91:6 98:2 101:21 103:22 106:20 108:20 108:23 110:2,3 110:9,11 112:12 113:21 114:14,15,25 117:15 120:4 120:14 123:9 125:4 128:15 129:19 139:10 141:15,18 142:3 144:1,18 152:11 153:22 165:14 171:23 173:11
distributions 21:10 61:1 65:17 88:10 91:12 108:4 154:18 174:4 174:10
disturbed 174:5 174:10
dividend 12:7,22 25:4,25 85:20 99:24,25 168:14 171:6 176:12
dividends 52:11 61:18 77:10 78:3 97:22 98:2 119:2 126:7 139:7 146:5 171:5
dividing 83:9 116:23
division 113:10 114:17
document 158:7
documents 162:17
doing 29:5 42:21 51:23 62:22 76:19 77:17 81:1 89:3 120:5 132:25 165:21 169:1,2 171:11 172:1
dollar 115:18 141:10,13 150:18 151:14 154:25
dollars 65:4 71:4 72:16,19 73:3 73:20 141:8 147:4 150:14 151:5 155:4 156:16
double 4:16 16:7 16:13 18:16 19:15 20:4 54:12,15 74:17
doubt 70:12 110:17 111:11 115:16 149:3,7 165:11
drafted 56:15
draftsman 27:10 82:1 93:7 154:3 165:11
draw 66:25 70:22 154:12 157:9
drawing 153:20
drawn 20:2
drilling 79:1
driving 117:13
Dropping 120:24 125:7
due 28:9 82:16 99:10 100:3 112:18 139:14 149:6 156:11
Duncan 95:9 98:23 123:24
duplication 66:22
duty 49:22 134:1
Dynamics 84:14 85:3 94:25 105:13 111:14 120:7 162:23 163:20

E

E 112:21 114:4 123:6 125:1 132:23 134:11 174:1 175:6
earlier 2:23 92:17 103:19 134:17 162:17
early 43:13 149:13 166:25
easier 43:22 154:17
easy 83:8 105:8
Eckhardt 50:16 52:2 76:14,19 79:18 84:24 85:23 95:19 137:14 169:23 173:22 176:3
Edmund-Davies 68:23
effect 7:11,18 16:3 17:7 18:10 18:24 45:15 52:4 57:15,20 58:5,21 66:14 66:15 68:6 75:10 76:21 85:5,16 89:22 90:23 92:12,25 93:1 98:22 102:14 110:23 114:3 119:19 120:10 138:21 140:6,23 150:9 152:7 153:11 160:23 161:20

165:8,18
167:16,19,20
170:17
effected 114:18
123:11
effecting 113:20
effective 28:5
42:12 110:8
effectively 29:12
64:18 65:13
73:20 74:6 89:3
90:16 92:23
97:17 100:16
102:12 103:15
107:9 111:9
116:1 119:25
121:16 124:18
127:5,12 128:2
128:19 130:21
130:23 132:13
138:17 143:6
145:8 148:16
148:17 150:3
150:23 151:11
151:17 152:21
153:12 158:21
160:19 169:11
173:21
effects 38:5,7
66:6
efforts 176:5
eight 50:7
either 44:21,21
48:9 54:5,13
55:2 77:6
112:19 119:15
135:13 138:16
139:19 155:21
165:1,3
elegant 130:3
element 54:2
58:2
elements 173:12
eloquently 31:20
else's 142:10
144:19
elucidate 26:18
elusive 82:1
embodied 94:16
emerged 36:20
42:14,15
emphasise 68:8
employer 1:10
enable 85:25
168:12 175:1
encapsulated 9:6
encumbered
103:5
endeavour
166:10
ended 64:9 139:7
endorsed 159:19
161:5
enforce 69:11
116:3 121:2,24
121:24 122:1
150:22
enforced 69:12
77:2,12 113:1
121:4
enforcement
69:14,17,25
71:13,18 74:1
74:13,15 76:5,7
77:4 79:22 81:3
116:23 120:23
120:25 121:22
137:2 154:1
engage 43:1 55:8
engaged 47:3
engine 143:19
engines 109:4,8
England 113:2
151:6
English 38:17
65:3 173:3
enlarged 82:4
enormous 40:2
131:20
enormously
131:18
enquiry 109:2
ensure 10:6
16:25 17:2
18:13 19:13
50:9 61:16 63:4
70:18 74:4,7
84:20 86:14,17
87:1 103:21
112:4 114:24
117:15 168:2
169:2 171:12
ensured 131:2
ensures 8:12
enter 63:17
entered 31:1
Enterprise 8:4
entertaining
114:9
entire 114:22
117:8,13
entirely 3:24
11:6 70:17
124:5 127:7
128:3 133:20
134:18 160:19
163:14
entitled 6:19,21
9:18 58:12
60:19 63:8
66:18 68:12,20
69:21 70:7
72:11 74:2,8
75:6,21 80:17
80:22 94:9,13
97:17,21 98:12
98:16 99:8
102:12 103:15
104:2 108:3,3
118:10 124:14
124:23,25
130:23 131:25
136:25 139:5
141:3 145:21
146:8,9 147:4
148:7 151:11
151:18 152:22
153:5 155:6,10
155:22 156:1
156:20 169:8
169:12 173:6
173:16 174:3
174:12,17
entitlement
16:19 33:15,19
35:9 47:2 48:10
53:7 81:7 135:7
141:12,17
152:3 156:16
entitlements
149:11
entitles 16:19
entity 77:14
envelope 3:2 21:5
25:3,6
envisage 169:1
envisaged 158:23
envisages 127:21
equal 80:12
120:1 130:6
142:3
equality 113:25
144:14 147:6
equally 80:8
96:19 121:12
130:15 133:13
137:3 156:3
equation 33:7
equitable 4:10,19
6:4,7 7:2,15,18
8:24 15:19,25
16:15
equity 143:6
equivalating 7:9
equivalent 4:9
14:14 31:14
68:21 70:8 74:3
83:25 115:19
115:21 116:4
121:2 151:12
151:25 152:1
152:10 153:15
169:14
equivalents
121:25
essence 26:25
75:17 138:13
essential 28:12
essentially 62:19
66:12 72:7 91:4
91:24 93:8
94:25 95:19
96:4 99:12
103:25 108:5
109:17 115:9
115:10 117:25
118:9 126:16
127:10 129:1
139:15 140:15
143:4 153:4
160:15 161:22
162:1 167:18
establish 26:5
112:16
established 75:1
84:13 113:4
estate 12:1,2,3,3
12:4,6,20,21
40:5 41:20 42:9
57:21 96:17
estimate 131:20
165:25 169:4,9
169:15,17,20
172:3 176:5
estimated 169:10
171:7 175:12
175:13 176:1
estimating 86:3
estimation 86:20
et 16:9 86:20
152:12
Etherton 173:3
Etherton's
173:13
euro 141:9,11
euros 141:7
147:5
event 2:22 26:1
90:14,23 93:2
95:22,23 96:3
96:23,25 97:14
98:4 101:21
102:21 103:14
114:25 122:8
127:11,21
131:14 135:20
153:23 160:21
165:16
events 165:6
174:14
eventual 22:25
157:23
everybody 20:19
20:21 144:19
evidence 119:19
exactly 25:21
36:3 83:16
87:16 93:8
146:23
example 18:11
18:17,23 19:6
19:11 62:4
67:19 82:10
83:2 116:9,11
examples 18:20
79:18 137:11
151:3
exceeds 134:3
exception 94:2,3
exceptional 66:3
exceptions 78:20
exchange 65:6
73:2,6 87:5
88:9 125:15
126:10 130:10
155:19 156:12
157:7
exclude 163:4
excludes 174:20
exclusively
166:17,18
execute 73:15
execution 66:3
69:18 70:14
72:2,10 73:14
74:17,18 75:3,6
79:3
exercise 131:2
exercised 24:7,25
exercising 175:4
exist 80:20,21
81:13 90:4
173:24
existed 75:23
77:20 96:20
111:2 121:13
152:25
existence 4:9
7:17 48:11
61:11 80:15
159:15
existing 8:1 20:7
21:11 23:12
54:20 60:25
111:5 174:9
expect 9:22 93:20
167:3
expected 165:23
165:24
expecting 166:12
expense 110:14
142:10,11,13
expenses 58:11
58:15 59:13
83:6,7
explain 13:15
30:13 38:1 44:6
44:16,22 47:19
55:17 66:8
76:10 163:16
168:19
explained 3:8
26:20
explains 1:11 7:1
express 94:4
102:13 162:16
163:11 174:18
expressed 11:13
21:18 71:4
123:7 136:12
159:22 161:10
173:22
expresses 137:7
expressing
160:24 173:20
expressly 80:3
extant 19:7
extended 176:14
extending 26:10
extension 23:13
extent 5:25 6:25
52:7 64:12
73:16 76:8
77:10 78:3 79:4
86:15 107:7
131:21,23
134:3 151:24
156:20
extinction 110:16
extinguished
133:16 158:20
extinguishing

169:7
extinguishment 175:25
extra 45:22
extract 103:9
extracts 113:14 159:18 163:18
extraordinarily 154:2
extraordinary 65:3 110:23
extreme 65:1
extremely 70:13
eyes 11:1

F

F 99:18 106:23 112:21 115:15 120:6,6 121:11 123:6,9 132:24 134:22 174:1
fa 69:16
face 24:17 65:6
facie 56:24 57:10
facilitate 110:1
fact 22:7 23:4 24:23,23 27:19 36:21 41:9 49:19 62:16 63:3 72:1 74:1 74:4 76:6 84:4 88:8,16,16 92:16 93:25 98:10 100:4 107:4 108:11 112:8 117:6 122:23 127:17 128:7 133:10 136:21 137:5
factors 146:18
facts 108:17,20 154:16 172:4
factual 50:20
failed 71:3 143:19 170:12
fair 12:7,18 17:1 85:16 92:10 120:16 149:17 167:9,11
fairly 17:4 128:24 168:6 168:17
fairness 85:7
fall 10:2 40:6 124:15 126:12
fallacious 121:21
falls 40:3 96:22
false 36:19
familiar 82:12 114:5 165:12
far 3:7 42:8 44:14 45:13 52:3 57:20 63:22 70:19 73:3 75:25 94:11 103:12 107:23 108:17 116:19 119:19 124:8 142:22 148:20 150:12 153:10 158:6 162:6,17 163:13 170:1 170:14 174:25
fault 160:8
favour 72:9
feast 43:2
feature 100:22
February 158:4 172:5 175:10
feed 9:14
feel 167:9
feet 166:13
fi 69:16
field 125:10
Fields 6:11
figures 131:17,18
fill 7:3
filled 30:10
filling 15:17
fills 8:10 12:24 16:21
final 99:15 100:14 108:22 159:4 168:14 171:5,6 173:11 175:7 176:12
finally 67:23 70:9 84:10 152:4,5 164:18,21 171:12
Finance 99:2
find 25:10 31:24 41:1 74:24 104:13 128:17 158:12 161:3
finds 18:15 100:24
fine 95:9 100:18 101:25 102:10 142:1
finish 40:25 128:17 134:10 177:4
finished 43:17 44:8 90:3 91:4 91:5 133:2
firm 166:11
first 1:8 2:8 3:23 4:14 8:9 11:3 11:20 18:20 19:4,17 20:8,10 28:8 29:8 30:5 31:15 35:7 37:24 40:24 42:4,14 44:18 48:15 51:16 62:7 63:23 65:24 66:5 68:9 70:23 74:18 76:2,3 81:8 82:19 83:14 84:13 91:4 92:11 95:8 97:5 97:6 99:17 100:20 101:3 104:12,16,18 105:2 108:10 109:24 111:13 112:9 121:17 127:24 132:23 135:4 141:14 141:20 142:24 144:16 146:6 150:12 151:10 152:19 153:21 155:3 156:2 157:2,8 158:1 161:16 162:4 162:18,21 163:9,21 169:6 176:24 177:3
firstly 87:13 88:21 94:23 95:22 104:9 113:13 138:17 152:14 170:6 172:10
fit 10:20 16:15 169:18
fits 13:15 30:16 40:16
five 38:16 43:19 43:20 109:6 136:4 170:4
fix 46:11
fixed 113:22 139:4
flatu 85:13 87:4
flicking 5:10 15:8
flicks 6:13
floating 154:25 155:4
flow 36:15 128:10
flowed 47:10
fluctuations 68:15 73:6
flurrying 35:5 36:25
focus 27:19 117:5
focused 21:14 36:25
focusing 1:15
followed 96:13
following 83:2 98:20 109:1 172:5
follows 57:18 175:1,11
footing 100:23
footnote 159:12 160:3 161:4
force 101:22 117:13 131:12 132:1 164:13
forced 137:3 150:19
foreign 60:15,17 61:15 63:13,16 64:4,16,20 65:8 65:10,14,15 66:9,17 68:11 68:20 70:8 72:2 73:19 74:2 75:13 78:11 81:12 83:15,23 84:12 86:7,21 87:4 90:18 94:22 105:16 111:7,17 115:7 118:5,11,25 119:3,5 120:2 121:3,8 124:2 124:13,14 125:6,9,16,17 125:22 126:5 127:18 130:18 133:16 134:13 134:15,19 136:14,15 137:1,3 138:2 138:25 140:7 141:6 146:19 146:24 147:3 147:22,24 148:12,13,16 149:23 153:10 158:19 162:11 162:25 168:10 168:11,15 176:9,10,13
forever 154:7
forget 28:20,21
forgivable 157:13
forgive 91:21 123:22
forgotten 117:20
form 4:10 5:1 31:7,24 42:15 71:25 120:22 120:25 121:22 153:25 165:16 174:19
forms 96:15
formulated 18:5 18:9 42:20
Forte 172:5,9,10 172:14,17,18
fortiori 6:19 176:10
forward 23:9,11
found 14:14 18:22 101:14 106:17 135:1 149:25 161:7
foundation 26:19
four 62:15 63:23 65:23 68:8 89:2 97:3 101:11 109:8
fourth 69:7
Fourthly 66:16
fraction 114:12
framework 105:10 158:2
franc 64:9 120:8 121:9 129:13 129:16,22
francs 121:25
frankly 143:2
fraudulent 19:1
free 170:18
freely 149:18
freeze 169:24
fresh 51:24
Friday 177:11
friend 35:6 66:2 66:20 75:16 76:13 79:23 81:24 82:19 88:18 93:15 108:6 132:10 135:12 136:10 158:12 170:7,9
friends 21:16 27:2 62:18 63:11 66:13 74:10 139:13 145:4 157:24 167:18 168:21
friend's 66:16 76:18 150:8
front 34:22 39:14 67:5,8 158:5
FS 137:14
fulfil 173:18,23
full 15:25 20:21 22:11 33:19 58:9,14,20 59:10 60:15 61:1,3 62:12,23 63:2 66:19 80:10 87:9 88:3 88:7,8,12 99:15 100:14 101:3 103:15 104:2 116:17 118:20 118:25 121:17 122:6,18 123:1 125:20 126:8 126:12,19,23 129:13 135:7 141:16 143:22 145:20 147:15 148:6,13 151:14 162:2 168:6,7,18,25 169:4,10 171:13,22 175:13 176:1,1
fuller 5:16
fully 5:8,22 135:7 148:23
functions 29:13 57:20,23 58:6,6
fund 46:14 144:2 174:2
fundamentally 27:1
funds 73:20 140:18
further 3:5 12:21 23:18 29:22 37:14 42:2 60:1 67:7,14 70:14 76:23 77:12 79:18,19,21 93:2,25 99:18 122:3,10 130:18 142:16

168:8 170:5,19 171:9,16
Furthermore 173:10 174:16
future 21:15 31:23 32:10 66:12 78:9 86:4 167:17 173:18 173:23

G

G 72:24,25 105:14 108:21 112:22 114:4 118:18,22,23 129:4 157:16
gap 7:3 8:11 12:24 15:15,17 15:25 16:21
garnishee 72:15 73:1
Gas 79:20 137:16
general 71:19 73:11 77:17 91:2 103:9 124:6 133:12 158:24 167:24
generality 78:20
genuine 166:24
getting 1:25 23:8 87:9 106:3 135:6 141:16 142:10 145:20 151:16 153:5,6 175:20
Giessen 70:24
Giffard 113:15 153:3
give 3:22 17:7 18:9,20 23:15 27:16 50:8 54:10 62:18 63:12 85:5,15 89:22 119:19 120:10 143:24 146:1 166:8 167:6
given 13:15 16:4 17:13 23:10 55:23 70:4 94:15 104:21 115:4 117:10 117:22 122:1 151:21 154:3 164:11 167:22
gives 20:18 33:7 39:21 42:24 106:23 124:10 148:5
giving 18:24 121:2 169:9
go 3:21 10:19 15:10,23 19:16 30:18 31:7 38:24 40:24 41:21 43:19 48:6 49:7 52:1 56:4,12 57:14 61:9 72:4 74:20 96:1 102:7 103:12 105:4 106:6,8 134:17 138:24 140:9 155:12 159:25 167:14 168:8 170:1,5
goes 6:22 7:1 11:5 14:9 15:1 20:9 26:21 32:9 32:25 40:5 41:20 47:25 50:15 53:16 70:6 92:23 93:25 130:11 142:21 148:9 151:6 171:16
going 3:4,14 8:14 14:7 17:9 18:19 23:18 25:25 26:17 29:8,20 31:10 32:1 40:24 45:11 51:17 61:1 62:3 64:13,16 75:8 75:25 76:22 78:7 79:8 86:5 87:21 89:3 91:2 95:5 119:13 120:3 123:20 135:14 144:15 149:9 158:8,11
Gold 6:11
good 15:9 18:17 19:11 59:7 133:18 136:3 147:1 174:11 176:17
Goodere 84:6 92:18
governing 93:17 94:21 117:14
government 22:25
Graham 120:19 121:19 163:22 164:22
grant 110:3
grapple 142:18 143:3
greater 19:8 72:19 145:10
Grissell 15:10
Grissell's 3:20 5:12 10:19 13:4 15:2 17:7 21:13 22:14
ground 175:3
grounds 167:8
group 143:17,17
groups 143:16 146:13

H

H 72:25 118:13 118:18,22 129:4 131:16 132:20
half 166:2,8,14 167:7 177:3,5
halfway 17:21 71:16
halted 110:11
hand 79:12 118:11 119:6 135:20 147:22 153:23 164:5,8 165:13,15 170:21 174:7
handed 160:9 176:25
hands 12:1,6,19 46:12 58:23 109:12 134:16
hang 59:8
happen 74:14 126:2
happened 19:7 37:22 61:20 71:1 72:8,14 73:21 129:10 129:11 171:24
happens 69:10 74:5 79:5 87:24 91:1 102:18 135:20,21 150:11 151:8 153:23
Happily 99:5
happy 29:22 55:23 166:6,7
hard 167:9
Hardwicke 84:5 92:17
Harman 104:9 105:2 106:7,10 108:1
harsh 25:24
hat 69:3
headnote 10:24
hear 41:11 166:6 167:5
heard 55:16
hearing 67:4,24 117:23
hedge 88:20 89:2 89:4
hedging 88:13,21
held 31:9 71:6 72:10,21 92:13 100:15 104:22 105:16 106:8 120:7 142:24 146:8 161:20
help 10:9 60:1
helpful 41:1 42:24 79:9
helpfully 30:6
hesitation 37:1
high 48:23
higher 157:10
highest 26:20 76:12 95:17
highly 110:10
hindsight 51:1 103:23 176:7 176:11,14,15
history 91:23 142:21
hit 140:15,19
Hoffmann 76:19 76:22 78:19 89:23 95:19 169:23 171:17 173:20 175:5 176:3
Hoffmann's 76:14 78:1 79:17 84:23 87:13
hold 2:1 3:9 31:16 71:24
holder 92:13
holders 154:24 155:3
holding 97:21
holds 11:25
hole 96:11 99:17 101:12
home 145:6
Homes 137:13
hook 151:16
hope 3:17 15:9 42:9 44:12
hour 166:2,2,8 166:14 167:6,7 177:3,5
hours 42:14
House 68:6 69:15 70:18 71:17 111:12 117:11 135:11 149:5 164:15
Humber 53:2,6,8 84:10 90:6 95:8 95:16 99:3 101:18 105:13 113:15 117:7 118:2,4 121:15 122:6,11 123:23 124:10 132:25 133:4 133:12 152:22 153:3 154:5
hypothesis 49:13 55:9
hypothesise 65:1

I

idea 47:10 101:23 103:13 127:11 128:2 160:18
identical 122:24
identified 134:9 149:24 155:1,7 155:8
identify 40:15 124:12 168:21
ignores 121:20
ignoring 63:15 70:3
II 67:5,9,15 95:15 145:2 146:12
illustrate 70:22
illustrated 83:11
illustration 74:23
illustrations 18:14 73:11
image 85:13 87:14,23 89:18 89:22 96:21
imagine 40:18 65:3 87:21 116:9 150:13 151:3
immediate 61:11
immediately 1:24 11:24 23:5 30:24 56:14 96:7
impact 31:18 41:18 50:4
implication 15:5 20:16 67:17
implicit 19:22 132:9
important 7:8 9:21,22 10:18 11:8 16:14 26:21 41:11 75:12 80:24 83:13 87:8 152:8 169:25
importantly 13:25 28:11 31:23 37:7 82:11 88:23
impose 28:5 65:15 89:9 124:14,23
imposes 28:2 47:3
impression 62:19
impressive 117:18
inadequate 176:6
inalienable 173:4
inapplicability 15:15
inappropriate 92:3
inapt 154:2
include 21:20,23 86:3 145:16,25
included 70:21 91:22
includes 3:2 25:6
including 5:12 21:6 50:11 66:9 75:13 79:19 113:17
inconceivable 158:25
inconsistency 90:14
inconsistent 105:24 126:1 170:13 172:24
inconvenience 110:13
inconvenient

110:10
incorrect 62:16
increased 174:15 174:20
incurred 130:19 153:18
indebtedness 118:25 119:4 122:18 123:1 134:2,3,4
indefinite 110:12
indemnity 151:19 172:20 174:25
independent 33:16
INDEX 178:1
indicate 103:4
indicated 64:1 140:3
indication 122:7 153:24 163:17
Industrial 95:9 100:19 101:25 102:10
inevitable 123:10
inevitably 54:16 88:21
infected 27:21 47:9
influenced 7:17
information 169:19
informed 4:8,12 7:17
initial 161:19
initially 82:20 88:25
initiate 173:16
initiated 1:18 2:2 2:6
injected 33:6
injury 64:19 130:24
injustice 110:15 132:20,21
inserted 31:2
insist 136:25
insofar 30:22 37:4 73:5
insolvencies 38:18
insolvency 7:25 10:13 13:3 14:15 18:4,23 23:7 27:6 28:24 35:10 38:10 57:13 61:5 66:1 68:5 75:10,25 77:21 84:8 95:7 98:21 115:1 117:6 138:18 139:6 140:4 152:20 153:8 158:2 165:12
insolvent 5:21 12:17 13:23 14:1,3 23:7 26:9 64:12 66:7 75:11 76:3 89:1 90:8 95:23 96:3 96:17,24 100:24 101:7,9 101:15 102:3 102:17,18,21 103:11,18 104:19 105:10 107:24 108:18 111:22 117:5 118:2 122:12 122:20 124:20 125:4 126:21 127:2 128:11 128:12 131:8 139:23,24 140:25 150:15 151:10 162:12 163:2
instance 30:5 31:16 37:24 40:24 132:23 163:21
instructed 132:12
insufficient 80:11 119:3 144:1
insult 64:18 130:24
insurer 150:22 150:23 151:2
insurers 116:11 150:13,18
intended 133:19 145:5 154:5 158:19,21 165:17
intending 67:22
intent 19:13 21:9
intention 4:1 11:11,13,22 18:10,13 116:22
interest 1:22 27:14 29:12 30:11,21,21 32:3,5,11,22 33:9,11,14,15 33:20,20 34:7 34:11 35:12,20 35:24 36:9,15 37:8 39:10,17 39:18 40:8 44:25 46:3,9,24 47:4 48:7 49:1 49:4,11 51:11 52:15 53:7,10 53:15,23 55:10 56:23 57:3,4,11 58:10,14,17 59:1,4,5,10 62:5,5,6 63:21 79:11 83:14,20 83:21,22 84:4 87:10,17,25 88:4 90:10,15 94:5,9,11,13,14 94:24 95:5,12 97:11,18,24 98:18 99:8 100:2,6,9 101:20 102:12 118:10 119:7 130:1,14,17 133:8,24 142:22,24 143:11,16 145:9 146:7 149:22 152:18 152:23,25 153:5 155:18
interesting 26:7 125:24 130:4
interests 11:19 29:6,14
interlinked 9:25
interpretation 7:13 30:10
interrelationship 4:17 16:12
intervenes 52:5
intimately 9:25
introduce 22:2 61:12
introduced 133:21 153:16
introduction 8:5 82:13
Investment 135:11
Investments 72:6
invite 27:25 40:24
invited 15:21
inviting 7:23 37:5 166:15
invoked 62:1 63:4,10
involuntary 152:11
involve 118:8 169:7 175:25
involved 11:10 70:5 99:12 111:22 119:8 131:19 157:12 163:22
involves 88:21 108:8
involving 98:6 109:3
Ironworks 53:2,6 53:8 84:10 90:6 95:8,16 99:3 101:18 105:13 113:15 117:7 118:2,4 121:15 122:6,11 123:23 124:10 132:25 133:4 133:12 152:22 153:3 154:5
irrespective 8:16 22:23
Isaacs 135:12
Islington 104:10 104:12 137:13
isolation 139:21 139:22
issue 27:1 30:2 30:14 32:7 33:8 33:17 36:17 53:9 54:4 67:23 72:2,7 78:4,7 88:23 90:17 91:9 102:9,22 104:20 105:2 106:4,5 111:12 111:16 118:6 122:24 128:20 128:22 142:16 142:16,17,22 143:2 145:23 145:24 147:17 154:22 155:5,7 162:5
issued 70:15 109:5
issues 30:12 67:10 91:3 95:14 102:9 116:5 144:6 145:8 146:2,12 149:22 155:8,9
i.e 1:21 45:14 83:25 93:12 103:1 116:3 123:9,16 155:23 174:23

J

J 6:11 12:9 67:5 82:6,22 84:14 95:14 99:4,16 100:15,18 101:25 104:9 104:21 105:2 105:13,24 106:7,10 110:22 111:20 112:7 113:18 115:2,25 117:25 123:24 134:8,22 136:12 142:19 145:9 146:3 149:24 162:22 171:17 173:20
January 172:13
joined 172:15
joint 109:10
judge 3:8 27:18 34:15,23 35:4 39:12,14,20 44:19 67:8,24 115:15 129:1
judges 94:17 142:22
judge's 3:10 26:9 47:9 52:22,23 52:25 55:15 60:11
judge-made 84:3
judgment 1:14 1:23 4:22,24 5:3 15:13 19:18 20:1 26:10 27:18 30:6 40:9 40:14 60:12 67:22 68:2,7,20 69:12,20 70:6,7 70:7,11,11 71:2 71:7 72:13,14 72:20,24 73:4,5 73:7,13,14,19 73:22 74:2 75:4 85:3 95:25 100:19 102:11 104:14,18,21 104:25 105:23 106:3,4,25 107:5 108:15 112:6,24,25 117:10,12,19 120:15 121:3,3 126:17 127:25 135:1 145:3 150:16,20,22 153:3 155:2 159:12 163:12 164:10,11,20 170:10 173:12
judgments 48:22 62:6 102:12 104:15 113:15 121:24 145:11 152:25
judicial 163:8 165:4
juridical 26:19 53:8 121:20
jurisdiction 71:5 71:24
justice 1:4 2:11 3:19 8:3,15,19 8:23 9:1,5,9,12 10:8,9,12,22 13:18 14:2,6,11 14:14,18,21,25 17:22 18:6 19:22 20:5,14 20:17,20,22 21:23 22:14,18 22:18,21,22 23:8,15,18,21 24:3,6,9,12,14 25:1,8,16,20 26:7,14 27:3,9 27:12,16,23 28:14,17,20,24 29:1,2,24 30:4 30:15,19 31:2,6 31:9,10,12,13 32:4,15,20,24 33:3,22 34:2,3 34:5,9,20,24 35:1,14,17,21 36:1,5,6,8,11 36:13,24 37:16 37:20,23 38:4,9 38:12,17,22,24 39:2,4,7,16,22 39:24 40:7,11

40:13 41:7,10 41:14,15,23 42:7,22 43:1,8 43:14,15,18,25 44:4,20,24 45:4 45:12,21,25 46:13 48:4,7,20 48:25 49:6,15 49:22 50:1,6,16 50:20,23 51:1 51:10,12,14,16 52:14,22 53:9 53:19,22,25 54:3,7,11,15 55:20 56:1,9,16 56:22 57:1,3 59:3,7,10,14,19 60:4,10,13 67:16 68:1,2,14 68:24 69:2,9 73:10 74:16,23 74:25 77:22 78:12,16,19,25 80:6 81:12,17 81:19 83:6,10 83:11 85:24 86:8 87:3,8,15 87:19 88:1,13 88:16 89:12,17 89:20 90:1,12 90:24 91:16,19 92:19 96:12 101:24 102:15 102:24 103:7,9 103:16 104:4 107:12,17,22 108:1,11 109:21,23 110:18 115:13 115:15,23 116:25 117:4 117:18,21 118:14,17,21 123:18,21 124:5,11,16 125:10 126:3 126:14,18,22 127:7 128:6,10 129:2,3,21,23 129:25 132:2,5 132:15 134:8 135:3,15,25 136:3,8,24 138:1,9,12,19 138:22 139:24 140:5,12,17,21 141:5 142:9 143:13 144:9 144:11 145:1 146:11,22 147:2,7,8,14,19 148:4,11,24 149:9,12 157:3 157:15,19 158:8,15,17 159:7,17 160:2 160:4,6,7,10,13 161:3,15 164:3 164:7 165:21 166:4,8,11,18 167:2,12 176:17,20 177:1,6
justification 23:21 25:2 86:19 137:8 150:5
justified 86:25
justify 150:2
J's 85:3 102:25 108:1 117:8 126:17

K

Kaupthing 4:13 4:14,16 12:10 12:11 15:18 18:18 19:14,17
keen 42:10 70:18 139:15
keep 17:17 125:18 126:6 150:4
Kekewich 12:9
Kennedy 106:13
Kentish 137:13
kept 87:11 88:5
key 14:11 106:23 106:25
killed 143:19
kind 9:13
knew 130:6
knock-on 38:5,6 41:23
know 27:19 43:18 60:8 67:14 68:9 75:23 76:4 78:21 80:4,15 82:11 84:10 89:10,21 91:10 94:23 104:7,15 107:8 111:16 111:19 118:6 128:22 131:15 134:22 145:2,4 145:7 163:17 164:9 166:20 167:23
knowingly 168:22
known 121:10
knows 93:10 131:19 142:21 152:16 163:20

L

lacuna 27:13 30:9 33:24 34:14,17,18 36:14 37:9 39:12 41:1,15 41:18 45:14 47:8,9,14 52:18 53:13
Land 172:20
language 108:1
large 111:11
Larnell 137:15
late 19:5
latest 112:19 157:25 158:1
law 16:3 19:1 84:3 97:13 105:7 119:12 120:23 125:23 127:23 131:18 144:19 157:22 158:2 159:5,14 160:16 161:19 162:10,18 163:7 173:15
Lawrence 113:18
Lawton 120:15 121:16
laying 71:17
LBHI2 145:13
LBIE 13:17 31:23 32:9,11 42:9 47:4 61:9 61:21,24 63:3,7 63:22 64:12 88:25 139:23
LBIE's 45:6 61:12
lead 59:23
leading 69:18 82:13,17 157:21
learned 21:15 27:1,18 34:23 35:6 60:11 62:18 63:11 66:1,13,16,20 67:8,23 74:10 75:16 76:13,18 79:23 81:24 82:19 88:18 93:15 108:6 132:10 135:12 136:10 139:13 145:4 150:8 157:24 158:12 167:18 168:21 170:7,9
lease 172:13
leases 172:9
leave 60:25 92:4 109:11 121:2 122:1 150:4 165:3
leaves 76:25
leaving 104:3
left 7:3 8:11 12:24 15:15,25 27:10 51:3 52:6 94:2 128:18,19 131:4 142:5 146:24 147:20 148:9 163:8 166:23 171:15
legal 121:1
legally 40:23
legislation 18:4 56:18
legislative 19:13 21:9 28:12
legislature 4:1 11:11,22 17:4 18:10 92:5 94:12 158:21
Lehman 38:17 40:2,4
length 18:18 91:21
lengthy 113:14
lessors 172:8
letter 105:5 108:21 109:20 118:13 120:18 120:24 121:11 131:16 132:20 134:22 157:16
letters 72:24 114:4 134:11
let's 26:8 130:9 141:13 143:14 143:18,24
level 26:20 76:12 79:1 91:2 152:12
levels 95:17
Lewison 8:15,19 8:23 9:1,5,9,12 10:8 14:6,14,21 14:25 22:14,18 22:22 23:8,15 23:18,21 24:3 25:1,8 29:1 31:10,12 32:15 32:20,24 33:22 34:2,5,9 35:14 35:17,21 36:1,5 37:16 38:4,9,12 44:20 48:20,25 49:6,15,22 50:6 50:16,23 51:1 51:12 52:14 53:19,22,25 56:9 57:3 68:2 77:22 78:12,16 78:19,25 85:24 86:8 92:19 101:24 102:15 102:24 103:7,9 103:16 104:4 107:12,17,22 108:1 109:21 109:23 115:13 115:15,23 116:25 117:18 117:21 118:14 118:17 123:18 123:21 124:11 126:3,14,18,22 127:7 128:10 129:23,25 135:3,15,25 141:5 147:2,8 147:14,19 148:4,11 158:15,17 159:17 160:2,4 160:7,10,13 161:3,15 164:3 164:7
Lewison's 36:13
liabilities 11:16 33:9 40:6 58:20 59:8 65:4 92:14 113:7,20,23 114:10 119:22 121:6,23,23 122:4,5,10 151:22 173:5
liability 1:18 2:19,22,24 8:16 8:19 13:14 20:8 20:9 22:7,10 34:16,19,20 35:2,8,15 39:14 39:19,21,22 40:16 47:4,24 48:5,6,9,12,16 48:18 52:4,10 52:20 56:5,23 81:2 109:14 135:4 151:15 170:25 175:2
liable 5:7,22 6:15 12:1 151:23,24 151:25 152:1
lie 96:22 126:12
lies 106:25 110:18
life 46:21 47:11
light 36:23 67:10 94:20 174:14
Lightman 136:12
limited 13:12 45:15 47:11 107:7 116:15 129:8
limits 108:7
line 5:6,20 14:12 68:2 71:22 83:9 100:21 155:1
lines 10:25 54:16 64:6 84:15 90:16 93:6 94:25 97:3 99:4 101:3,11 105:16 109:8 109:20,24 114:5 118:7 125:7 129:3,10 130:12 133:14 136:9 137:10 140:10 141:19 142:24 143:10 154:5,8 159:11 163:21,23
linked 18:16
liquidation 6:3 8:13 13:3 17:3 18:1 20:10 22:1 24:20 28:10 30:20,23,24 31:23 32:5,10 32:25 33:11,13 33:14,17,21 34:1 37:18,22

38:22,24 39:11
40:5 41:17 42:1
45:7 47:13,25
48:3 49:12,23
49:24 50:2,13
50:15 51:2,11
51:22,24 52:5
52:13 53:16
56:21 62:3
64:23 65:8,19
75:17 81:13
103:18 104:20
106:19,19,22
107:1,25
108:18 109:7
111:1,18
112:11 113:9
120:21 121:21
121:22 122:1,3
122:8,24
123:16 124:4
125:19 126:7
128:13 129:6
134:20 138:24
150:15 151:6
168:4,12,16
170:5,13 171:3
171:21 173:8,9
174:9,13 176:2
liquidations 7:22
liquidator 2:6
6:4 22:2 34:9
46:12 75:18
99:20,22
100:25 108:19
121:5,8 134:1
134:16 136:13
136:20 137:9
169:15 170:18
170:20,25
171:4,8 174:3
176:4
liquidators 17:6
109:10 118:19
118:24 154:20
169:2 172:13
liquidator's
20:12 120:21
124:1 132:21
list 145:6
listen 23:24
lit 36:21
litigating 157:16
little 23:13 37:4
38:1 40:21
42:12,20 44:10
44:12 49:17
60:2 84:8 128:6
149:14 166:23
166:25
live 67:15 142:16
166:10
LJ 4:25 5:16 15:4
71:8 90:6,16
93:5,9 96:1
105:18 113:14
121:16 122:12
125:24 126:18
127:25 128:5
129:4,20
130:10 131:13
132:25 133:6
133:18,24
135:2 137:6,22
146:4 149:14
153:11 158:22
159:11,16
160:18 162:1
163:4 165:1
167:22 170:16
LJ's 95:25
113:15 118:1
120:15 124:9
133:14 134:11
135:9 153:3
161:1 162:6,15
163:11 170:10
Lloyds 141:2
load 143:18
locked 88:13
lodge 171:2
lodged 45:16
lodging 51:24
logical 149:15
logically 47:16
47:18 87:24
long 44:13 64:12
65:10 69:3
longer 33:13,20
49:22 77:13
84:8 101:8,15
103:5 166:7
look 15:21 26:8
51:16 63:18
117:14,14
118:3 135:22
139:16,21,22
145:13
looked 14:18
17:16 55:19
looking 5:4 25:3
31:4 54:16,23
62:25 91:3
98:10 118:14
144:16 146:11
looks 42:4 93:7
119:12 139:18
loose 139:10
Lord 1:4,11,15
2:8,11,11,20
3:19,21,23 4:12
4:19 6:22 8:3
8:15,19,23 9:1
9:5,6,9,12 10:8
10:9,12,22 11:2
12:10,10 13:4
13:18,19 14:2,4
14:6,11,14,18
14:21,25 15:18
17:19,22 18:6
18:18 19:2,15
19:22 20:5,14
20:17,20,22
21:23 22:14,18
22:18,18,21,22
23:8,15,18,21
24:3,6,9,12,14
25:1,8,16,20
26:7,14,16 27:3
27:9,12,16,23
28:14,17,20,23
28:24 29:1,2,24
30:4,15,19 31:2
31:6,8,9,10,12
31:13,15 32:4
32:15,20,24
33:3,22 34:2,3
34:5,9,13,20,24
35:1,14,17,21
36:1,5,6,8,11
36:13,13,24,24
37:16,20,23,23
38:4,9,12,17,22
38:24 39:2,4,7
39:16,22,24
40:7,11,13 41:7
41:10,14,15,23
42:7,22,25 43:1
43:8,14,15,18
43:25 44:4,20
44:24 45:4,12
45:21,25 46:13
48:4,7,20,25
49:6,15,22 50:1
50:6,16,20,23
51:1,10,12,14
51:16 52:14,22
53:9,19,22,25
54:3,7,11,15
55:20 56:1,3,9
56:16,22 57:1,3
59:3,7,10,14,19
60:4,10 67:16
67:18 68:1,2,4
68:10,23,24
69:2,5,9 73:10
74:16,22,23,25
76:14,19,22
77:22 78:1,12
78:16,19,19,25
79:17 80:6,18
81:12,17,19
83:4,6,10,11
84:5,23 85:24
86:8,12 87:3,8
87:12,13,15,19
88:1,6,13,16
89:12,17,20,23
90:1,12,24
91:13,16,16,19
92:17,19,22
93:14 95:19
101:24 102:15
102:24 103:7,9
103:16 104:4
107:12,17,20
107:22 108:1
108:11 109:21
109:23 115:13
115:15,23
116:25 117:4
117:18,21
118:14,17,21
123:18,21
124:11,11
126:3,13,14,18
126:22,24
127:7 128:6,10
129:3,21,23,25
131:17 132:2,5
132:15 135:3
135:10,15,25
136:1,3,8,24
138:1,9,12,19
138:22 139:24
140:5,12,17,21
141:5 142:9,15
143:2,13 144:9
144:11,21
145:1 146:11
146:22 147:2,7
147:8,14,19
148:4,11,15,24
149:9,12,14
157:3,15,19
158:8,15,17
159:7,17 160:2
160:4,6,7,8,10
160:13 161:3
161:15 162:14
164:3,4,7
165:21 166:4,8
166:10,11,17
166:18 167:2
167:12,15
169:23 175:5
176:3,17,20
177:1,6
Lords 1:5 3:4
11:3 13:9,15
15:3,12 17:15
19:14 24:21
25:13 29:16,23
30:1,13 37:1,11
42:8 43:5 46:7
47:14 51:6 52:3
56:14,17 60:1,8
63:15 68:6
69:15,19 70:3
70:16,18 71:17
74:9 76:16 78:7
79:16 81:24
83:10 84:22
89:7,10,18
91:15 95:16
104:5 111:12
114:4 116:5
117:11 133:13
134:6 149:5
150:7 152:4
157:21 163:13
164:15 165:20
Lordship 39:1
69:6 71:7 73:17
78:23 86:2,5
88:6 102:6,8,19
104:12 112:5
117:1 135:16
135:22 143:8
144:22 145:23
152:16 160:3
Lordships 3:5
4:13,18 5:2,11
7:24 8:8 11:1
14:7,22 15:21
15:22 18:19
20:2 28:1 34:17
37:5 40:18,25
41:1,13 42:10
43:3 48:16
54:10 55:16
60:8 61:4 64:6
66:23 67:1,7,9
67:12,14,21
68:8,9,22,23
69:5 70:22 72:4
72:23 74:11
75:23 76:4,15
79:8,16 80:1,4
80:14 81:21
82:7,11,16
84:10,24 89:21
91:10 93:10
94:23 95:18,20
96:1 97:2
101:12 104:7
104:15 105:4
105:12,20
106:9 107:8,11
109:18 110:20
110:22 111:13
111:16,19
115:10,11
116:8 118:6
119:10 121:11
128:21 131:15
131:19 132:9
134:9,22
135:12 136:16
137:12 143:3
145:7 153:2,14
154:12,16
155:12 157:9
158:2,4,13
159:8,24,25
163:17 164:8,9
165:8 166:6
167:23 169:13
169:22 170:3,7
171:16,18
172:25 175:5
176:22
Lordship's 148:2
Lord's 141:6
147:2
lose 131:23
loses 90:2
loss 64:14,15,16
81:4,6 87:6
126:10 129:17
129:17,22
130:1,14,18
131:8 144:5
156:25 168:15
176:13
losses 66:4,10
69:24 74:12
155:20 156:12
157:7
lost 46:4 138:18
lot 4:23 21:15
26:17 27:21

33:3 49:3 52:25
lower 40:8
LR 99:3
l58 57:17

M

machinery 17:8
main 30:8 90:17 96:2
making 2:13 8:12 17:3,5 18:1 37:8 46:6 110:7 168:13
manages 65:13
mandatorily 120:13
mandatory 13:3 16:17,18 116:7 138:24 156:8 157:11 165:18 167:20
Mann 117:9
manner 97:9,20
Mansfield 19:2
March 1:1 177:11
Marine 50:16 52:3
marked 96:10 112:9
market 48:23
markets 72:9
Marris 97:21 146:5
master 71:3,24 72:24
material 152:20
materials 157:21 158:1 176:24
matter 23:2 29:3 69:19 75:5 79:14 84:9 91:25 94:17 98:16 99:21 111:21 128:13 128:20 131:18 142:8,12
matters 81:21 84:7 165:7 170:1
mean 8:3 24:22 35:23,23 39:16 43:19 45:25 48:7,8 49:15 50:10 58:20 59:4 119:25 141:15 163:16 167:23
meaning 165:8
means 9:9 47:24 51:1 87:5 119:24 130:5 145:15 170:22 174:11
meant 35:22 36:4 120:14 127:15 127:19 153:24 162:14
mechanical 18:6
mechanism 8:12 17:2,5,10,25 98:17
meet 7:24 73:4,7 73:16 175:2
meeting 80:11 154:19,21 155:6,11
Megarry 108:16
Mellish 15:4
member 13:12 13:13 163:23
members 11:18 60:21 65:7,18 92:21 98:11 110:2,9 142:12 147:23 151:1 158:24,24 162:3 170:24 172:6
mention 137:12 137:20
mentioned 5:8 80:1 92:17 94:5 102:13 154:8
merely 48:10 87:23 106:3 116:16 154:6 168:4 174:22
merits 132:16
Metal 104:10,12 137:13
middle 14:11 101:4 123:24
mid-course 110:11
mid-morning 43:11,12 44:9 47:21
mid-19th 82:9
mightn't 142:14
Miliangos 68:7 70:18 71:11 111:12 112:21 115:10 124:13 125:2 129:2 131:25 134:9 149:15
million 71:2 108:23 151:5 154:25 155:4 155:19,20 156:21
mind 1:17 10:9 14:2 63:22 66:23 117:16 128:5 160:3 166:15
minded 170:20
minute 157:3
minutes 43:19,20 43:22 136:4
mirror 108:5
missed 5:17 157:12
modern 14:15,16
modified 107:6
moment 3:21 8:8 18:19 29:24 41:6 43:2,10,14 54:10 78:13 89:11,12 136:2 144:12 169:3
moments 43:12
money 2:1,6 40:2 64:24 73:12,12 88:5 96:17 128:18,18 147:11,14,20 150:4
months 171:8
Moore-Bick 1:4 3:19 10:22 29:24 36:24 41:10,14 42:22 43:1,8,14,18,25 44:4 55:20 56:1 60:4,10 67:16 68:1,24 69:2,9 73:10 81:12,17 81:19 83:10 87:3,8,15,19 88:1 89:12,17 89:20 90:1,12 90:24 91:19 128:6 129:3,21 136:3,8,24 138:1,9,12,19 138:22 139:24 140:5,12,17,21 142:9 148:24 149:9 157:3 158:8 159:7 165:21 166:4,8 166:11,18 167:2,12 176:17,20 177:1,6
morning 149:13 165:25 166:9
move 1:6 28:9 51:7 88:9 91:23 107:2 152:4
moved 46:12 72:9 90:22
movements 70:1
moves 90:3
moving 28:9 132:23
MVL 172:7

N

name 99:2
nature 92:24 121:1,20
near 149:16
neatly 17:18 90:5
necessarily 80:14 83:8 113:22 133:9 142:11
necessary 15:15 16:24 17:2 38:1 67:25 72:11 73:3,16 74:7 87:1 96:15 102:7 112:11 119:19 128:23 168:1
need 5:2 10:5 13:15 22:15 23:5 30:16 43:6 47:16 48:8,13 50:4 55:13,17 57:14 66:21,25 67:9 77:25 83:17 84:18,19 90:19 105:20 110:20 114:22 119:10 120:13 133:4 135:17 143:3 149:5 176:14,15
needed 37:14 44:10 94:7,16
needs 22:2 23:12 33:6 63:18,22 76:9 78:24 79:1 117:2 150:16 176:11
neither 61:7 148:7 151:9 168:9
net 58:21 64:8 114:13
netting 16:2
Neuberger 1:11 1:15 2:20 80:18
Neuberger's 9:6 83:4 91:13
never 36:11 39:2 61:2 65:17 87:5 93:22 98:19 103:11 127:17 128:19 131:25
nevertheless 96:8 131:3 171:7,25
new 19:21 26:24 38:25 51:25 77:6 94:15 127:12,13 128:3 130:9 160:20 161:24 172:19 174:20
nice 20:5
nisi 72:17,17 73:20
Non-contractual 34:20
non-provable 34:16 37:11 39:14,19 44:22 45:5,8 47:18 51:9 52:2,4 53:3 54:18 57:5 57:7,8 58:2,18 59:2 62:21 66:9 75:13 80:25 81:25 82:5,12 83:1,12,16,17 91:9,11,18,24 92:20,24 93:17 93:24 94:1 106:8 107:17 107:23 131:22 133:23 142:20 143:16,20,22 144:24 145:7 145:22 146:1 149:20,23 152:15
non-statutory 24:15
non-sterling 73:15 119:17 156:14
normally 43:19
Nortel 1:8,9 30:6 80:19 83:3 91:14 92:7
note 3:22 11:20 26:7 56:17 106:9 136:16 159:18 169:25
noted 64:6 153:2
notes 12:11 97:8 154:25 155:4,5 175:5
notice 1:20
noticed 125:23
noting 98:25 133:6 172:4
notion 87:3 128:7
notional 89:19 90:8,20 101:21 120:8
notionally 97:23
notwithstanding 22:7 47:12 58:24 173:17 173:22
not-provable 34:19
novel 133:20
November 175:8
number 4:21 18:14 37:12 42:16 67:6 140:3
numerator 114:12
nutshell 22:13 132:24

O

obiter 122:13 159:10,16 161:1 162:8
object 172:16
objection 46:25
objective 28:14
obligation 1:19 26:2 45:13 48:22 62:4 115:17,18,20 115:23 116:2
obligations 39:11 133:9 173:19 173:24
observation 14:4
observed 80:2 144:22
obtain 150:20
obtained 71:1

72:12 104:25 112:24,25
obvious 7:11 25:16 42:9 63:15 83:1 163:10
obviously 10:25 16:10,16 19:7 23:5,6 28:2 29:22 36:13 41:18 53:12 54:24 66:25 67:9 77:24 78:4 78:9 80:24 82:3 82:8 83:13,15 85:22 86:19 88:8,9 90:17 92:5 94:15,24 95:13,24 98:1,7 102:22 111:13 115:4 122:11 122:12 125:25 127:25 128:4 130:7 137:16 138:20 141:23 152:14 153:15 154:22 156:7 160:23 164:22 165:7 168:13 170:12 171:1 173:20
occur 1:12 69:14 70:14 107:5 170:22,24
occurred 84:13 174:18
occurs 148:9 169:20
October 108:22 164:16
odd 151:1,15 161:3 162:16
offered 176:22
office 92:13
oh 19:24 39:2 49:22 130:25
Okay 30:15 34:16 45:12
old 25:22 26:17 26:22 69:2 77:7 140:10
Oliver 84:14 85:3 105:13 111:20 112:7 115:2,25 117:8,25 126:17 134:22 162:22
once 20:9 106:5 106:14 107:13 125:18,22 126:5 127:15 128:1 129:17 150:10,19 154:7 156:9 157:11 158:20 160:15 162:25 165:18 167:21
ones 15:21 77:8
one's 10:9 95:12 172:24
one-way 63:12 63:19 64:13 66:19 139:15
onset 32:6 33:5 45:6
onwards 124:18 137:7
open 136:19 137:9 144:14 171:1 175:17
opening 121:18 153:17
operate 33:25 79:7 154:6
operation 57:22 75:14 141:25 164:14
opinion 99:10 124:1 174:18
opportunity 131:11 171:10
opposed 172:23
opposing 99:13
opposition 7:5 16:2
option 137:5,8,24
orally 42:23 56:2
order 10:5 18:9 19:12 22:2 31:17 40:16 43:7 47:2 58:19 71:4,25 72:2,17 72:17,18 73:1 73:19 76:20 77:2 85:15 90:11 95:24 110:1,1,7 112:3 114:11,23 116:8 120:9 127:3 132:6 133:18 150:21 162:24 169:24 172:16 175:1
ordered 172:12
ordinarily 167:8
ordinary 12:5 66:3 74:14 76:7 77:2 97:16,20 108:23 146:4 151:22
Oriental 20:6
original 1:9 127:5
originally 40:22 84:2 94:6 97:10
originated 84:4
origins 75:24 77:20
ought 12:15 15:23 147:18 154:11 175:22
outcome 128:25 140:2,4 150:6
outline 47:20
outside 65:25 68:5 146:8
outstanding 173:5
overall 46:16 140:9
overnight 40:19 117:21
override 24:9
overstating 155:14
overtaken 165:6
owe 62:17 151:5
owed 5:24 20:14 62:12 72:16 113:1
owes 6:9
owing 73:6 77:8 109:15 119:1
o'clock 89:13 167:6 176:21

P

pace 165:22
page 3:23 5:13,13 5:13 6:13,16 10:24 11:2 13:5 13:5 14:8 15:3 15:6,7,11 17:20 17:21 29:7,10 50:7 56:13 57:17 71:16 72:23 97:3 98:25,25 100:20 101:17 104:16,17 105:4,22 106:11,23,24 108:12 109:9 109:19,21 112:6 113:13 118:12,21,22 119:13 120:15 121:17 122:14 122:20,20 123:19,23,24 123:25 129:3 131:15 132:19 132:23 134:11 136:10 157:16 158:5 159:12 160:2,5,7 172:4 178:2
pages 91:22 105:18
paid 1:21 5:8,22 5:24 6:9 12:2 20:20,21 25:4 32:12,14,21 33:10,12,19 49:20 50:14,21 51:19 60:25 61:3,18,22 62:11,23 63:2 63:20 64:25 66:18 70:9 76:9 76:10 77:10 78:3,6 80:10 81:10 88:4,17 92:20 94:14 97:12 98:2,11 98:12 104:2 106:6 108:3,3 111:6 116:17 118:19,24 125:20 126:8,8 126:11 129:13 131:3,4 133:11 137:1 138:24 139:11,20 141:11 144:3 146:6,20 147:15,19 155:23,24 156:5,6 157:1,8 162:2,3 168:6,7 168:23,25 169:4,4,10 171:5,13,13,22
paper 127:24 157:23 159:20 159:23 161:8 161:11,19 162:18
paragraph 1:11 1:13,23 2:20 5:9,10,14 6:12 6:17 7:1 11:3,9 13:9,11 15:6,12 15:13,18,20,20 17:20 19:17,18 19:24 29:1 60:12 71:8,16 76:17,22 80:19 83:4 85:2,2 96:2 97:3 100:7 100:20 101:3 105:21,21 109:20,24 114:5 121:17 155:1,7,12,15 158:14 159:25 160:13 163:19 164:9,12,14
paragraphs 5:3 19:25 71:15 76:16 170:9,10 176:23
Paraguassu 17:16
parallel 7:18 79:8,9
parallels 2:4 95:1
pari 8:7,10 11:16 11:21,25 12:4,8 16:25 17:11,25 19:3 21:6,10 25:5 28:3 61:13 61:17 62:7 63:4 77:5 79:24 80:2 80:18 81:11 84:21 85:6,10 85:17 86:10 89:22 91:5 98:2 103:20,22 112:4 114:15 114:25 117:15 119:24,25 120:4,10,14 121:6 123:5,9 125:13,14 128:15 129:19 130:5 131:3 136:23 139:10 141:15,18,25 144:1,7,15,18 148:25 152:11 153:22 165:14
parity 143:24
parked 30:2,12
Parliament 92:1 92:2
Parmalat 79:20
part 2:25 6:7 12:1,6,21,25 25:5 28:10 30:5 30:21 51:18 57:23 61:14 67:8,15,25 75:9 76:2 78:7 81:10 81:11 86:24 90:20 95:15 106:14 111:11 117:6 134:5,24 137:1,7,22 138:6 139:12 139:22 143:13 146:11 152:6,6 153:25,25 167:15
participate 80:17 80:23
participating 9:2
participation 6:24
particular 8:6 16:21 18:22 22:16 36:6,7 50:11 54:22 67:13 95:13 106:17 125:10
particularly 1:15 22:9 26:7 50:14 83:13 110:8 127:24
parties 37:13 40:18 43:4 67:19 74:6 97:14 116:20 123:14 172:16
partly 93:14
parts 3:15 4:21 65:23 108:15 164:5
party 1:18 99:13 116:10 124:17 150:12,17 151:2 152:2
passage 5:4 96:10 112:9 126:4 129:3
passages 101:2
passed 45:9
passing 56:17 120:16 122:8 137:20
passu 8:7,10 11:16,21,25

12:4,8 16:25 17:11,25 19:3 21:6,10 25:5 28:3 61:13,17 62:7 63:4 77:5 79:24 80:2,18 81:11 84:21 85:6,10,17 86:10 89:22 91:5 98:2 103:20,22 112:4 114:15 114:25 117:15 119:24,25 120:4,10,14 121:6 123:5,9 125:13,14 128:15 129:19 130:5 131:3 136:23 139:10 141:15,18,25 144:1,7,15,18 148:25 152:11 153:22 165:14
Patten 170:10,16
pause 4:15 10:17 10:23 11:4 13:5 13:10,17 14:10 14:18 15:7,11 15:16,23 17:21 19:22 20:6 23:25 24:17 28:19 29:23 31:12 49:9,25 51:5 52:23 53:17 54:2 56:16 58:8 59:9 70:25 76:17 80:13 85:1 95:11,21 98:24 104:13 106:11 108:14 111:15 118:17 125:21 154:7,15 157:3 158:3,17 159:13 162:19 166:3 170:8,11 171:19 173:1
pay 1:19 34:7,11 47:4 48:12 62:4 62:6,12,13,17 69:10 71:3 73:4 73:22 81:3 87:24 92:14 99:6 115:18,20 135:5 139:9 143:21 146:24 146:25 148:11 148:12 151:11 151:13
payable 22:8 30:22 90:15 122:4,10 130:15,15 153:19
paying 61:21 110:25 139:7 173:8
payment 6:23 22:11 46:24 58:9,10,14,19 58:20 59:10,12 68:21 69:11 70:2,9 71:12 73:13 74:3,19 78:5 85:20 96:19 99:9 100:2 103:15 109:13 112:17 120:1,3 121:13 126:19 136:14 139:1 143:15 144:20 146:6 147:10,13 148:3,4,22 149:1,2,10,16 156:16 168:8 168:17 169:11 176:1,12
payments 65:11 97:9,24
pays 126:22
Pennycuick's 102:10
pensions 1:19
penumbra 2:21 3:1
people 33:9 41:3 59:20 99:19 104:23 143:18
people's 53:6,14
percentage 64:22 93:25 120:1 130:7,21 131:9 145:15
perfect 139:13
perfectly 86:22 94:10 135:18 167:11
perform 29:13
period 30:22,25 32:13 46:3 47:5 47:5 53:15 55:10 61:20 70:5 82:13,16 83:23 86:1,18 87:2 89:5 110:12 139:3 168:3 172:25 176:14
permanent 131:4
permanently 63:13
permission 20:18
permit 24:25
perpetual 19:20 155:23,25 156:4,6,20 157:15
perpetuals 157:16
person 6:15 96:13 100:25 142:5
persons 75:20
persuaded 121:20
phenomenon 18:12
Phillips 91:21 92:8
phrase 122:9 125:21,22,24 125:25 145:13 154:2 163:3 167:22
phraseology 28:21
pick 56:4 66:1 93:15 112:6,8 119:13
picking 101:2 105:4,14 109:19 115:9 118:23
picture 27:25 173:15
place 67:5 96:16 97:5 134:21 168:13
placed 123:15 124:4
placing 113:24
plain 2:19 62:14 88:8 110:5 135:18
plainly 61:24 86:13
plaintiffs 110:7 110:16
planned 177:5
play 125:3 129:7 129:9
please 62:12,17 81:3 123:19
plenty 19:10
plug 15:15
plus 63:21
pm 89:14,16 136:5,7 177:9
point 1:8,17 2:8,8 3:11,20,23 4:4 4:5 5:2,18,19 7:8,19 11:5,20 11:24 12:23 13:2,24 15:4,9 15:14,17 16:11 17:13 24:5 25:13 26:9,23 30:17 33:7,24 34:4,15,22 35:3 36:7,13,19 37:3 39:20 41:10,12 42:4,5,14 44:18 45:14 47:8,14 51:4 55:7,11,18 63:15 66:1 67:4 67:12 68:19 69:7 70:3 74:9 75:16 76:4 78:16 80:19 87:8,17 88:6,18 90:21 91:15 94:8 95:11 96:3 97:19,21 99:18 107:21 108:5 112:15 124:20 126:16,24 128:23 131:12 133:22 135:5,8 135:17 136:9 139:2,18 142:18 143:4 149:14 152:8 153:13 154:10 155:7 157:12 160:16 163:3,9 163:10 171:20 174:19 176:17
pointed 97:20
points 1:5 10:19 26:21 35:6 46:6 55:24 66:24 67:20 68:8 87:12 112:5 132:16 135:3 167:24 168:9
policy 124:12
pool 144:23 146:18 173:10
poor 140:9
position 2:9,12 2:15,17 12:12 12:12 20:11 21:21 24:18 31:22 41:3 43:5 44:5,6,14 49:19 55:9,17 58:17 60:21 64:8,19 64:23 65:25 67:19 68:4 84:3 90:7 91:10 93:7 95:6,22 96:2 97:1 100:24 104:7 107:5 108:9 111:23 112:23 116:3 116:13,14 122:7,16,19 137:18 138:1 141:22 149:21 151:2 152:18 164:20
possession 100:25
possibilities 35:7 38:20 39:9 127:1
possibility 35:11 35:13 39:9,13 39:15,19 61:19 127:3 151:20 151:21 158:23 174:24
possible 34:21 37:13,15 42:12 42:17 43:12 64:13 96:18 114:19 136:22 144:23 151:8 161:13 169:3 174:16
possibly 65:20
Post 172:11,11 172:15,21
postponed 42:2 110:11,12
postulating 32:15
post-administr... 2:16 35:20
post-date 164:6
post-insolvency 57:11 58:17 79:11 84:4 87:17,25 90:15 94:5,9,24 95:5 95:12 101:20 104:6 118:10 143:11 149:22 152:18
post-liquidation 119:7 133:8 155:18,19
post-valuation 170:21
post-winding-up 106:3
post-1986 154:9
potential 116:11 119:9 150:7
potentially 142:16 143:8 176:16
pots 40:3
Potts 120:19 121:19
pound 32:14,22 49:20 50:15,21 63:20 64:8,10 99:7,15 100:14 121:10 125:15 129:12,14 133:11 141:9
power 23:10,16 27:17
powered 109:4,7
practicable 72:1
practical 69:14 70:4,19 71:12 88:20 89:7 116:6 149:4 150:1
practicalities 69:13,19
practicality 69:8
practically 149:17
practice 69:4 70:13 71:14 72:14 74:18 98:18
practitioners 105:7
pragmatic 13:24
pray 93:18
preceded 30:24
precedent 6:23 32:5
preceding 35:22 47:2 160:2,7
precise 95:11 123:3 165:16

precisely 4:12 26:11 43:4 70:19 82:17 127:21
preclude 9:1
precursor 173:21
precursors 107:9
predecessors 113:5,7
predicate 50:20
predicated 53:12
preferences 19:1
preferential 80:8 80:10
prejudiced 96:14
preliminary 65:21
premise 36:20 46:20 47:1 62:14 120:12
premises 172:9
prescient 132:19
prescribed 94:14
present 1:9 2:5 4:23 7:8 10:1 10:12 11:8 37:13 71:23 110:5 118:19 118:24 123:15 147:1 162:10 173:15
presumably 38:12 40:7
presupposes 49:18
pretty 48:23 126:14
prevented 106:15 106:16
previous 123:18
previously 79:11 160:17 169:17
pre-administra... 2:10
pre-application 35:1
pre-distribution 170:21,24
pre-liquidation 118:25 119:16 119:18 122:5
price 61:25 63:9 138:10,23 139:11 142:3
prima 56:24 57:10
primarily 16:23
primary 4:1 11:11,22 147:12
principal 33:24 46:19 97:24 98:3 99:10 146:7
principle 7:15 8:7 16:3,5,7,24 18:21 19:19 28:3 51:1 60:13 60:23 62:2 68:16 70:12 71:10,19 73:11 74:20 75:2 85:6 85:6 103:9 111:21 112:1 120:11 133:7 133:12 136:23 140:17 174:11 174:12,20
principles 19:10 26:16,25 56:6 61:7
print 14:9
prior 21:1 69:13 83:21 94:2 174:10
priorities 143:1
priority 11:14 16:4 91:11
Privy 79:19 137:16
pro 113:11
probably 48:13 112:8 130:18
problem 10:4 24:16 30:4 41:5 48:17 51:17 57:6 62:19 63:7 70:4 88:20 98:19 106:25 130:8 137:21
problems 149:4 150:1
procedural 71:21
procedure 68:17 71:19 77:4
procedures 7:25 71:13
proceeding 63:25 165:22
proceedings 35:10 75:10 77:2 96:13,15 101:6
process 2:3,5 23:7,20 28:8,11 61:5,10 62:7 63:3,9 69:25 73:25 74:13 75:3,6 76:5 77:11,16 79:2 79:22 80:23 81:3 86:14 90:3 91:5 92:12,25 97:12 100:23 103:19 116:22 131:1 133:2 135:19 137:2 138:11 140:25 153:21,25 173:16
processes 38:10
produces 16:2 61:6
product 7:13
progress 166:1
progressively 82:4
projecting 20:7
proof 4:17 16:7 16:13 18:16 19:15 20:4 41:24,24,25 42:2,4 45:16,22 45:24 51:24 54:2 61:16 63:6 78:11 81:18,22 81:23 82:10,18 82:20,24 90:3 90:18 91:5 92:12,25 93:1 93:11 99:24 100:8,17 107:3 107:14,18 114:7 115:3,9 116:1,2,15 117:11,14 128:14 131:2,2 133:2 138:6 156:15 171:3,7 171:10 174:8,9 174:14,19
proofs 45:25 99:20,21,23
proper 42:15 113:21
properly 27:13 61:5 114:1 156:8 170:20
Properties 172:11,11,15
property 85:10 113:10 114:13 114:15 119:20 121:5 135:11
proportionate 112:12
proportions 80:12
proposed 110:9 110:16 158:22 160:18 161:25 163:4
proposing 65:22 67:3,12
proposition 22:22 86:9 89:7 134:25
propositions 106:17 173:13
prospective 25:6
prosperous 122:25
protect 10:6 16:24 17:7 19:2
protected 10:7
protecting 9:20
protection 9:18 9:21,22 17:10 17:11,24 21:8 21:14 22:3,6,12 22:16 25:5 50:8
protects 8:10
provability 1:5 3:5 10:4,5 49:8 57:12
provable 8:17,20 9:4,5,10,12,17 30:21 33:4,4 34:20,24 37:16 39:21 41:9,20 44:22,24 45:2,4 47:17 51:7 52:19 53:19 56:24 57:11,25 58:2 59:4 80:22 82:4,14 91:17 91:24 104:19 104:24 106:2 107:13,25 108:2,7 133:10 134:4 143:15 152:15 169:21
prove 6:3 9:24 32:4 33:10,15 35:11 41:17 45:19,19 46:8 49:23 50:10 51:2,3,21 83:21 83:24 155:22 174:17
proved 30:20 31:25 32:2,13 32:21 33:13,16 33:21 35:17 47:1 49:11,20 50:2,12,13 61:14 76:5 79:3 79:25 81:14,15 82:3 84:22 89:23 103:6 106:5 124:3 137:2 146:6 153:22 154:1 171:22 176:5
proves 46:2 65:12
provide 72:21 82:23
provided 11:17 82:24 104:25 120:19 152:2 171:1
provides 46:16 51:10 80:7 133:1 161:22 176:8
providing 77:17 86:19 109:13
proving 46:10 54:15 106:15 135:19 153:18 153:21 154:6 165:10,13,19
provision 54:23 94:4,7,12 102:13 111:19 152:24 156:12
provisions 4:2 11:12,23 18:3 21:7 37:17 39:8 57:14,16,23 59:23 75:23 86:3 113:6 114:6 115:3 168:1
proviso 14:23
publication 109:1
published 164:18 164:21
punch 96:11 99:17 101:12
pure 85:19
purpose 10:12 27:6 29:8 46:17 46:17 50:11 55:5 78:10 85:4 85:16,24 86:10 86:12 88:2 113:3,4,20,24 113:25 115:2 128:16 143:23 153:18 156:15 165:10,19 167:25
purposes 3:22 4:23 7:9 10:1 11:8 21:9 50:11 57:22 61:16 63:6 71:23 77:25 78:11 81:18,22,22 84:17 90:18 93:1,11,12 98:1 101:5 102:8,23 111:18 116:2 116:15 129:8 131:1 132:13 147:1 154:6 165:14
purposive 18:7,8
pursue 156:3
push 41:2
put 2:1 4:9 12:9 12:20 17:18 18:8 21:13 22:13 23:3 25:15 30:2 44:15,17 48:13 57:6 60:21 65:7 103:18 120:20 121:7 137:17 138:23 140:21 157:10
puts 7:12
putting 15:4 17:12 23:9,11

Q

QC 163:22
qualified 173:13
quantification 144:4
quarter 43:23,25 167:5
question 3:24 20:11 27:3 29:17 36:12,23 45:10 48:19 51:7 55:3 62:21 64:14 69:8 71:5 78:21 92:21

99:7 106:18 111:24 123:10 141:6 144:16 147:3 148:2 156:4 163:24 164:19 166:19
questioning 86:9
questions 3:6 11:10 13:7 29:22 129:5
queue 16:6
queueing 143:25
quickly 55:12,13 159:9
Quistclose 46:13 46:17
quite 9:15,16 13:8,23 18:17 19:11 29:16 33:16,22 36:21 37:2 40:2 41:11 42:24 43:18 49:3 55:24 69:3 87:8 90:5 101:24 117:23 148:12
quote 20:5
quoted 12:10
quotes 117:6
quoting 85:8

R

raise 142:15
raised 26:8 106:4 106:5
rank 80:8 91:11 125:13,14 132:13 143:6 144:7,10,15
ranking 142:21 147:18
rare 70:13
rata 113:11
rate 40:9,14 48:23,23 49:4 62:6 65:6 94:14 102:13 125:15 125:18,19 126:6 127:14 134:15 145:11 145:11,14,15 145:15,25 153:1 154:25 155:4,19 156:12 157:7 166:1
rateable 85:9
114:14
rateably 96:19 121:13
rates 40:8,11,13 49:4 88:9 126:11 130:10 146:16
rationale 86:19
read 11:3 13:9 15:12,22 115:25 117:3 117:17 158:11 162:20
reading 4:18 5:21,24
reads 127:23 164:25
real 63:1 65:12
Realisations 104:10 108:13 170:3
realise 127:4
realised 75:19 87:22 96:7,18 114:13 121:12 128:20
realising 96:16
realities 71:13
really 13:22 14:23 15:4 26:18,22 29:20 40:2 43:21 45:5 68:24 120:4 130:5 141:6
realm 52:20 164:23
reason 16:20 26:5 27:19 30:13 45:7 48:10 75:2,5 83:16 86:2,9 90:9 94:7 102:19 104:20 109:19 125:10 136:22 137:24 139:22 140:6 140:23 143:24 145:24 150:2 161:3,4 169:16 172:3
reasonable 86:1 86:18 87:2 168:3 172:25
reasoning 27:21 28:4 47:10 90:20 95:1 114:22 125:2
137:8
reasons 9:5,12 28:6 42:10 48:15 76:9 115:11 124:10 162:21
receipt 100:13
receipts 99:14
receive 6:8,19,21 12:4 60:19 64:24 65:11,16 72:11 88:12 98:13 104:3 130:23 141:3,5 175:13
received 64:7,21 64:22 65:18 97:18,23 100:13 103:17 119:2 129:12 129:14 130:21 140:10 141:24 152:23 171:6
receiving 12:7,21 60:14 64:10 88:8
recitations 79:17
reconcile 105:8
record 99:1
recorded 136:17
records 175:6
recover 134:19 134:20 138:6
recovered 142:2
recovery 28:5 54:13 174:22
Red 29:7 31:3,24 56:4
reduce 156:24
reduced 82:6 112:14
refer 79:8 117:2 139:14 158:13 163:19
reference 5:11 59:4 99:1 121:15 145:6 148:25 159:10 159:12 162:8 169:18
references 164:4
referral 31:8
referred 30:6 82:7 95:18 98:6 107:10 117:9 135:12,13 146:4 153:6
170:7
referring 5:5 11:21 101:18 115:24 132:8 160:17 176:23
refers 19:18 85:3 105:12 112:21 113:16 122:10 123:23 153:3 164:10,12,14
reflected 69:4 91:13 92:6 154:4
reflects 76:6 97:25 98:10
refuse 109:18
refused 110:6
refuses 110:19
regard 71:13 99:18 114:7 115:3 125:25
regarded 4:3 9:21 11:13 168:17
regardless 71:18
regards 9:22
regime 2:21 3:1 38:7 57:12 61:12 66:7 76:2 77:18,19 94:10 98:4 127:13 128:4,15,17 135:21 139:3 141:1 165:15
regimes 46:23
register 172:15 172:18 175:21
registered 172:8 175:8
registrar 109:16
Registration 172:21
regulations 11:17
regulator 1:19 2:3
rejected 92:6 99:20 115:10 161:18
rejecting 99:23 127:10,11
relates 45:24
relating 4:2 11:12,23 31:19 66:11 78:8,10 162:10
relation 2:9,13 3:9,11,12 12:13
16:23 20:12 21:10,12,16 24:2,6 26:8 27:14 28:4 29:18 30:10 31:14,22,25,25 32:1,2,3 34:13 37:3,10,15 40:1 40:22 41:16 44:15 47:23 48:16 49:18 51:6 52:25 53:10 54:17,18 55:7,9,14,15 56:19,21 66:7 66:14 73:17 75:8,11 79:6,11 83:14,20,23 84:3,7,12 87:17 91:15 92:2 95:6 104:8 122:16 144:22 152:16 152:18,19 153:7 158:19 162:5,11 175:24 176:8
relationship 1:9 1:13 79:13 122:2
relatively 3:18 29:19 95:4
relayed 164:23
release 72:21 73:7
releases 57:19
relevance 67:1 90:2
relevant 3:1 11:20,25 18:3 31:4 37:4 51:19 69:17 72:2 76:15 80:20,21 82:21 83:22,25 84:19 86:13,16 88:10 92:13,19 93:11 98:8 102:22 112:5 114:9 119:12 135:23 136:14 158:7 168:9 169:5 170:9
reliance 136:10
reluctant 110:3
rely 6:4 95:1 127:17 153:14
remain 57:20 77:8 161:10
175:2 176:3
remained 89:1
remaining 13:7 37:18 109:12 122:17
remains 22:11 58:9 161:23
remarkable 117:24
remarks 65:21
remember 28:21
remind 76:15
reminded 131:17
remission 53:4 98:7,15
remotely 61:8
removal 154:20
render 31:17
renders 26:3
renminbi 147:4
repay 22:25
repeatedly 95:17 137:10 168:19
repeats 101:11
repetition 153:13
replaced 54:21 55:3
replaces 54:24
reply 166:14,17 166:18,24
report 92:6 125:23 153:7 157:22 159:4 159:17 163:13 163:15,18 164:1,6,15,17 164:21,25 176:23
reported 92:7
reports 64:1 119:13 127:23 140:3
request 154:21
require 61:14 69:13 85:20
required 12:20 21:8 22:7 25:5 38:2 61:12,17 63:4 73:22 75:4 86:16 103:21 110:24 112:3 117:15 125:15 128:16 173:10 174:2
requirement 79:23 83:18 119:20 129:19

156:13
requirements 83:4
requires 1:20 16:4 22:12 42:15 47:21 80:14 86:25 96:12
requisition 154:19
rescue 29:8 50:17
resemblances 7:12
reserve 170:12
reserved 145:3
residue 145:21
resolution 120:10 123:16
resolve 43:7
resolved 61:9 123:3
resonance 115:6
respect 5:17 21:15 22:8 30:22 32:12 33:11,15 35:11 46:24 51:25 54:1 58:22,25 61:13 72:12 76:5 79:3,25 83:22 84:21 97:11,11 98:2,4 100:8 112:24 119:5,16,18 126:13,15 134:2 137:2 146:6,7 153:22 154:1 155:18 155:25 156:21
respectful 107:20
respectfully 25:15 26:17 34:18 43:9 47:7 53:1 56:11 62:25 65:19 116:21 127:19
respond 23:24 29:22
responded 36:22
response 34:17 87:12 109:17 145:18
rest 17:20 62:12 105:20 147:5 151:13
restoration 172:18
restored 77:16 172:14
restoring 175:21
restriction 100:16
restrictions 108:8
result 29:4 61:1,6 65:2,20 69:24 77:15 99:5 135:6 141:25 151:15 168:5 168:22
resulted 75:3 103:22
resulting 168:17
results 77:5 109:2
resurfaces 129:2
resurrected 37:20
retain 25:24
retained 56:19
retainer 4:10
retaining 12:14
retains 12:6,19
return 119:9 175:8
returned 58:13 62:24 158:23 175:14
returning 92:14
revalued 136:18
revealed 117:6
reverse 72:7
reversed 95:24 99:23
revert 54:8
revise 169:17 172:3
revised 158:1 160:9 169:20 170:2 171:11
revived 36:8
re-argue 166:15
re-estimating 170:15
Richards 67:5 82:6,22 95:14 110:22 134:8 142:19 145:9 146:3 149:24
right 2:11 3:11 4:10 5:25 6:15 10:15,22 13:21 14:22 21:25 33:10 35:12 39:7 41:19 43:2 43:24 46:3,9,10 49:2,6,13,16,25 50:18,25 52:21 53:2,22 54:5,8 54:13,14,20,24 56:12 60:4 63:11 65:20 68:1 75:24 78:12,16,23 82:2 86:2,5 90:24 92:16,22 94:15 95:12 100:5,8,9 102:6 102:9,19 103:16 105:3 107:22 117:1 117:12 121:19 122:14 123:21 132:10 135:9 135:16 136:4 138:15,18 139:2 143:8 145:18,19 148:4,11 150:9 157:9 161:15 164:7 167:12 169:2,9 172:19 172:24 173:4 174:22
rightly 35:6 73:17
rights 11:19 53:4 53:5,15 54:25 60:16 68:18 77:7 98:1,7,8,9 98:15 116:10 119:16,17 150:12,17
rigid 85:17 87:14 89:24
rise 33:7 39:21 63:12 136:4 146:1
risk 65:6,14 74:6 124:15,16,23 125:11 131:24 148:19 151:17
Robins 91:21 92:8
rocket 5:1
role 125:3
Rolls 72:24
Rolls-Royce 102:11 109:8
room 16:17
rose 47:21
roughly 165:22
round 47:16 48:14 73:18 129:18 138:4 171:8
route 98:20
RSC 172:16
rule 1:7 3:7,15 4:7,7,10,11,16 4:17,20,20 6:4 6:7,7,10 7:2,2,6 7:10,10,16,18 7:19,21,24 8:9 8:10,15,23,24 9:19,20 10:21 11:21,25 12:8 12:13,17,24 13:22 15:14,19 15:25 16:7,12 16:13,15,15,18 16:21,25 17:23 17:24,25 18:16 19:11,15,23 20:3,10 21:1,8 21:13,14,17 22:3,6,12 23:9 23:11,12,19 24:10,12,14 25:5 26:3,10 27:13 29:18 30:1,18 33:23 33:25 34:6,12 42:1 45:15,17 48:12 51:10 56:20 66:14 78:10 80:5 85:4 85:17 87:14 89:25 93:11 94:21 102:1,4 102:16 115:4 124:6 133:15 152:11 153:12 158:24 165:10 169:14 174:7 174:10 176:7
rules 17:12 18:12 19:12 46:23 66:11 71:18,21 78:8 79:7 80:4 82:23 86:3,7,7 86:15 93:17,20 93:23 102:14 103:21 107:9 107:18 111:20 117:14,15 128:16 135:23 138:21 149:18 152:21 160:24 165:9 167:16 167:18,25 168:22 169:1,7 170:17 173:7 174:4 175:24
run 44:12 145:13 165:24
run-off 168:4,12 170:14
R-R 104:10 108:13 170:3

S

sat 167:6
satisfaction 11:15 119:22 121:6
satisfactorily 94:10
satisfactory 151:9 162:13
satisfied 58:19 70:12 81:2 122:6
satisfy 73:14 83:3 147:11,15
save 82:24 96:5 120:16 146:12 162:8
saying 23:12,19 33:4 38:6 62:22 76:19 81:1,5 88:19 89:4 90:9 91:22 99:13,14 100:13 107:18 116:1 122:15 132:25 133:6 142:6 150:3 160:25
says 3:23,25 5:15 5:19 19:22 34:6 34:12 68:2 76:24 78:20 79:23 89:24 90:13 96:11 97:4 99:4,17 100:7,20 101:4 105:5,14 106:12,24 107:14 109:25 112:9 113:18 114:5 115:2,15 118:18 119:14 119:23 120:6 120:18 121:17 122:21 123:6 123:25 124:18 125:1 126:4,9 128:18 129:1 133:25 134:23 135:22 145:10 155:8 156:17 170:16 174:1,6 174:21,23
scene 11:4 49:17 78:14
schedule 75:21
scheme 3:2 7:14 9:7,17,20,21 10:6 18:24 21:5 21:20 25:9 26:24 28:12 36:14 46:15,16 53:4,14 54:19 54:22 55:3,8 61:17 62:1 75:14 76:7,23 78:5 81:5,6,8,9 81:14 92:10,11 92:12 93:23 105:23 113:3 134:5 135:5 141:25 152:9
science 5:1
scope 95:12
seamlessly 39:10
second 2:8 12:25 18:21 29:7 35:10,13 39:13 66:6 71:8 72:4 75:9 83:14 95:8 96:10 101:11 104:5,17 106:4 107:11 108:13 112:9 135:5 141:21 142:4 144:10,17 159:4 162:6 163:10
secondly 8:10 28:11 87:16 88:22 94:24 95:23 104:10 152:17 168:5
Secretary 164:2
section 2:24 11:14 14:6 15:5 18:22 19:25 20:13 23:15,22 23:23 24:16 25:7,9,11 28:6 28:20,21,24 45:18 51:12,14

51:15 52:12 56:4,12 57:12 57:15 58:7 59:3 75:21,22 80:3 102:20 105:8 106:16 107:2,3 119:20 123:4,5 152:10 164:12 172:20 175:1
sections 107:4 108:11
secure 75:18 113:9
secured 29:12
Securities 104:22
see 1:24 5:11 7:12 10:12,20 11:24 16:14 19:16 22:1 23:6 24:21,21,22 25:8,13,23 26:19 30:16 37:11 39:2 42:22 49:7,22 50:4 56:14 61:4 68:22 71:7 72:23 79:6 81:21 82:16 90:5 101:12 103:7 105:12 108:21 109:18 114:16 115:11 115:16 118:12 121:11 122:6 155:6 157:19 158:4,6 159:11 171:16 172:25
seeking 62:20 132:7
seeks 6:3 155:17
seen 52:3 93:3 95:18 97:2 110:21,22 159:8 169:22 170:3
sees 91:12 131:9
Selborne 17:19
Select 164:15
Selwyn 90:6 95:25 96:1 113:14 118:1 124:9 146:4 149:14
seminal 118:3
senior 156:25 157:1,7
sense 7:5 9:15,19 9:25 16:11 18:6 18:7,8 27:25 36:17 46:18 87:16,20 88:23 90:13 98:8 103:23 107:23 108:2 119:9 127:15 128:13 128:20 129:10 131:7 143:14 146:25 149:16 152:5,22 161:23 165:5 171:21
sensibly 148:8
sent 99:20
sentence 17:19 71:9 85:18 101:4 112:10
separate 20:14 46:23 69:7 144:6
separately 122:15
September 109:2
series 5:11 82:15 112:16 130:2
set 6:18,20 20:14 20:17 49:17 78:14 108:11 130:9 174:2
sets 5:16 11:3 14:4 20:24
settlement 99:15 100:14 169:11 175:16
set-off 3:12 5:25 7:4,5 8:11 12:16,25 13:3 15:16 16:1,16 16:17,19,20 18:2 20:11 24:2 24:7,7 66:12 78:9 167:17
shadowy 174:22 174:25
shape 37:11
share 12:4,7,18 17:1
shareholder 5:21 6:25 151:13
shareholders 5:7 6:24 60:14,20 60:24 61:2,25 62:14,24 63:8 64:25 65:16 91:12 92:15 98:12 104:1,2 106:7 108:4,20 111:5 116:19 118:9 119:9 131:5,10,24 132:2,8,14,18 134:17 146:25 148:7,10 150:2 168:23 171:23 173:7 175:14
shares 5:7,23 23:1
sheet 128:11
shift 107:4
shillings 99:6,14 100:13
Shoes 164:10
shopping 145:6
short 10:24 29:19 44:2 47:7,21 55:24 70:4 89:15 91:20 101:2 111:9 112:1 136:6 148:2 168:20 171:20
shortfall 75:5 86:23 146:1 147:7
shortfalls 119:6
shortly 3:18 55:25 56:2 158:5
show 8:8 17:15 18:19 19:14 106:20 107:11 108:16 158:9 159:24
showed 76:13 170:10
showing 112:5 171:18
shown 126:4
shows 74:16
shut 110:7
side 69:22 146:10
side's 55:22
signed 99:13 100:12
similar 7:11,18 16:2 31:18 75:23,24 98:22 110:23 124:20 142:25
similarity 56:14
similarly 73:18 90:16
simple 5:2 47:6 96:6 136:22 138:8 145:24 146:17 150:3
simply 39:10 42:21 45:14 46:25 48:1 51:21 53:14 61:25 63:9 67:20 69:19 70:5 73:10 75:2 81:9 86:17 88:4 88:20 89:7 93:22 98:10 116:15 122:9 124:8 128:14 129:6,19 136:17 138:10 139:9 141:17 142:6 145:15 165:4
simultaneous 106:20 107:6
single 123:7,13 147:15 159:20
single-minded 117:5
sit 43:25 89:13 166:4 176:20 177:1
sitting 37:24 168:19
situation 1:25 2:5 5:20 10:3 21:2 25:21 27:9 32:9 33:1 49:21 52:17 53:13 62:10 63:13 64:3 87:21 91:7 96:6 97:23 103:25 122:13 122:13 127:20 133:1,5 134:7,9 135:8 139:5 140:16 141:23 143:1 144:24 146:23 147:13 151:4 168:22 169:23 176:11
six 10:25 99:4 101:3 137:11 170:4 171:8
skeleton 55:20,22
slight 37:1
slightly 3:25 15:5 16:10 19:5 24:4 65:1 117:23 151:15 154:13 165:24
slow 148:1
small 74:9 91:15 133:22
Snowden 35:6 76:13 81:24 166:17,21 167:10 177:7
solely 60:9 84:20 169:9
solution 52:22,23 93:9 127:21 128:5 131:14 135:9 150:4 158:22 159:11 160:18 161:16 161:25,25 162:15,15 163:4,11
solutions 37:13 161:14
solvency 22:23 25:18 100:5
solvent 10:10 13:19,20,23 22:20 26:12 62:16 65:4 66:8 75:11 88:24,25 91:8 95:24 97:1 100:4,11 101:10,16 103:2,3,24 107:13,25 111:24 120:17 122:8,13 126:2 127:4,5,12,20 127:22 128:3,7 128:8,9,11 130:9 131:14 132:22 134:7 135:8 137:19 139:17 142:6,7 151:13,23 159:21 160:22 161:7,17 162:12 163:1 171:3 172:22
soon 101:13 149:8
sorry 17:17 20:1 28:23 35:21 36:3 39:18 59:8 60:2 109:21 112:7 118:16 118:21,22 148:1 160:8
sort 6:5 9:14 19:12,16 24:14 25:23 27:25 46:13,15 48:15 56:5 74:17 86:4 87:13 145:17 149:24 173:25
sorts 27:10,13
sought 72:15 81:24 88:19 93:18 110:1 142:17
source 40:15 63:1,6
so-called 63:19
sparse 111:10
speak 23:9
speaking 42:22 166:7
special 5:6
specific 79:6 94:7 97:19 152:13 154:10 159:16
Specifically 8:3
speculation 164:24
speech 1:23 2:21 4:19 11:2 15:18 18:18 68:23 76:14 83:5 84:23 91:13
speeches 71:10
speedily 96:18
speedy 60:2
spells 26:14
spend 52:24
spent 67:24 153:20
spirit 27:5
split 3:14
stage 2:23,23 5:3 12:24 13:1 14:1 21:1 23:20 31:15 32:10 33:13 47:15 62:7 64:20,24 65:8 78:14 80:24 81:20 91:4 92:11,18 92:25 93:12,12 94:13 111:7,19 112:14 116:4 118:1 124:9 126:20 128:14 128:15,21 129:1,11 130:12 132:24

133:2,15 134:17 139:9 141:20,21,24 142:4 144:3,18 146:20 149:2 154:4,4 163:12 165:23 171:21 173:20
stages 78:24 135:24 141:14 153:21
stand 10:2 16:6
stands 38:7
Stanhope 135:13 171:17 172:4 176:10
start 47:22 68:4 93:11 95:3 127:1 139:2 165:10 166:25 167:8
started 10:21
starting 3:20 11:24 12:23 13:2 15:6 119:14 120:12 122:20 143:4
starts 5:4 10:10 13:6 14:9 17:19 74:1 90:6 100:20 104:16 104:17 107:1 112:7 113:3 122:3,14
state 89:1 164:2
stated 6:10 28:14
statement 10:17 125:2
stating 71:19
statute 18:13 36:14 68:3 79:10 84:11 94:16
statutory 3:2 4:7 7:14 8:12 9:7 10:6 17:2,5,8 17:25 18:15,24 21:5,20 25:6 35:1,12 44:24 45:2 46:15 47:4 48:7,14,21 49:4 51:11 52:7,9 53:23 54:1,5,13 54:19 55:8 57:3 61:5,10 62:1 63:3,9,21 66:7 75:14 78:5 81:5 81:8,9 83:3 92:10 93:23 94:7,16 130:1 130:14 134:5 135:5 138:11 143:15 145:9 152:9 157:25
stay 170:21
stayed 77:3
steps 69:11
sterling 61:15,18 61:19 62:9 63:5 64:3,7,8,15 65:9,11,12 68:11,13,16,21 70:8,10 72:15 72:18,20 73:3,4 73:13,16,23 74:18,19 83:25 86:24 105:17 112:18 115:19 115:21 116:4 119:18 120:9 121:5,7,10,25 124:15 125:5,9 125:14 127:16 129:11,14 130:16 133:17 134:15 136:18 138:3,5,25 139:1,2,7,19 140:11 146:15 150:10,19,20 150:25 151:7 151:12,25 152:1 153:19 156:14 162:11
stipulate 48:25
stockholders 108:24 109:13
stop 73:8 176:18
stopped 46:7 73:2,5
stops 102:18
straight 103:25
strains 94:19
strange 81:25 100:22
stress 153:17
stretch 43:20
strict 16:4
strike 149:3,7
stringent 23:22 25:11
strived 17:6
strokes 173:14
strong 173:10
strongest 140:22
struck 74:5
structural 25:14
structure 2:25 10:20 15:10 93:3 152:9 165:12
structured 1:24
Stubbs 118:18 119:11 120:20 121:18 130:3 134:25
subject 2:14 11:16 23:7 26:4 29:11 47:25 48:2 57:18 67:7 67:13 84:15 88:13 107:2 151:14 154:11 169:16
submission 10:16 29:18 55:14 74:10 76:18,22 86:12 89:21 91:25 92:5 93:18 107:20 114:7 115:3 120:6 121:19 124:2 128:14 130:6 132:9,22 136:11,21 148:8 150:1 152:21 155:21 156:2,18 158:18 162:20
submissions 1:3 2:12 3:14 43:16 44:11 55:12,21 60:3,7,8 62:18 65:22 67:6,8,11 67:14 75:9 92:8 93:15,16 102:8 120:20 132:12 143:4 150:8 152:6 166:13 167:4,15 177:4 178:3,5
submit 2:17 7:16 16:23 21:7 47:7 62:25 126:15 128:1 174:8
submitted 103:12 120:21
submitting 48:15
subordinated 132:11 143:5 147:23 155:23 156:23 157:6
subsequent 4:5 41:25 46:8,22 102:11 129:5 163:19 174:14
subsequently 82:23 84:6 88:11 153:16 161:7 171:25 172:11
substance 68:17 79:14
substantial 64:2 101:1 108:19
substantive 66:13,15 77:7 119:15,17 167:19,19
substituted 115:23
sub-paragraph 29:11
sub-rule 50:7
sub-stage 144:1
suddenly 36:25
sue 77:14
suffer 64:5,14 68:15
suffered 64:21 86:23 129:17 131:6,7 157:1,7
suffering 141:2
sufficed 75:6
sufficient 70:10 73:22 140:13 143:21 174:21 175:3
suggest 22:14 26:18 56:11 81:25 120:16 129:4 137:20 164:13
suggested 69:15 93:9 117:11 135:1 137:21
suggestion 161:1
suggests 137:23
sum 68:21 69:17 70:8,9,11 139:1 156:21 168:23
summarise 19:23 154:17
summarised 82:6
summary 17:23 92:7
summons 106:14 106:18 109:10 109:16
sums 40:2 99:10 104:3
superior 144:13
support 91:25 162:22
supports 101:17
suppose 5:23 9:5 23:8 25:10 128:11 129:7 143:14 149:12
supposed 55:14
Supreme 19:19 83:2 91:16 92:4
sure 17:8 30:4 37:2,6 54:3 66:23 80:1 88:1 101:24 116:8
surplus 32:10,16 32:17,23 34:5,7 41:16 46:11,16 51:20 52:12 53:7 58:7,9,12 58:13,23 59:1 59:21 60:14 62:9 63:25 64:19 65:17 75:20 79:5 86:22 90:4,14 90:23 91:1,7 92:14 93:3 96:25 97:8,15 98:4 101:1,8,14 101:21 103:10 103:14 106:6 108:9 111:4 116:18 119:8 122:17 133:3 135:20 143:15 143:21 153:23 158:23 165:17 171:9
surprised 74:11
surprising 9:15 9:16 66:4 70:16 105:7 134:6
surprisingly 101:18 106:7
survive 45:5 56:7
survives 52:9,10 55:4
suspects 70:13
Swiss 64:9 120:8 121:9,25 129:13,16,21 130:16
switch 128:3
symmetry 138:12 139:13
Systems 170:6

T

tab 4:14 10:23 14:8 15:3 17:18 70:24 72:4,5 76:16 84:25 95:21 98:24 100:19 104:13 104:16 108:14 111:15 118:16 154:14 158:3 159:10,25 160:12 162:19 163:18 170:8 171:18
tabs 159:5
take 4:13 5:2 14:7 43:4,12 47:16 53:2 69:6 69:11 74:6 98:23 113:4 132:9 137:3 140:19 148:3 148:21 154:16 158:8,11 162:4 168:12
taken 22:24 57:11 58:3 67:4 96:9 97:15 99:14 101:17 134:21 153:11
takes 22:25 49:7 64:11 65:10 79:10 96:16 165:16 171:8
talk 127:25
talking 4:20 15:19 30:11 49:11,12,14 52:14 57:4 59:14,16,17 128:2 131:20 133:3,15 152:10 160:16 160:19
talks 4:19 19:15 97:19
target 1:10
taxable 46:14
Telewest 137:14
tell 145:23 166:22
tells 81:15 133:4
ten 43:22

term 172:10
terms 2:2 4:9 41:24 75:24 76:15 91:2 105:8 115:4 130:22 131:9 139:10 153:14 164:12 168:18
terrible 30:9
terribly 36:3 151:9
terrorem 145:5
test 9:6,23 107:3 143:13
thank 3:19 29:24 60:4 89:12 157:4 167:12 177:8
theory 107:6
therefrom 156:22
thereto 11:16
thesis 143:14
thing 33:6 38:20 41:2 67:3 73:21 84:13 88:7 103:4 117:19 124:22 133:20 158:12 176:24
things 8:9,13 19:7 27:10 45:1 58:25 82:1 86:4 95:20
think 4:23 9:15 10:18 13:21 15:22 20:1 23:3 23:11 24:18 26:2,3 28:1 30:16 37:25 38:6,14 40:19 41:13 42:23 44:10 47:15,17 48:13 50:25 51:17 52:16,20 55:12 56:1 62:18 63:23 67:20 75:25 83:9 88:18 93:17 96:12 97:2 102:6 104:23 105:20 110:6,20 114:8 117:1,8,21 120:16 134:13 135:11 140:17 144:6 145:3 154:17 157:17 158:18 159:8 159:18 160:2,3 160:7,8,10 164:22 165:23 169:22 170:20 174:24 177:2,6
thinking 10:15 13:19 38:5
thinks 129:9 169:18
third 1:17,18 8:11 39:15,19 68:19 88:6 95:9 110:20 116:10 116:20 135:8 150:12,17 151:2 152:2 167:15
thirdly 66:11 104:11
thought 35:21 40:22 88:25 101:13 106:1 121:18 129:4 139:24,25 154:11 157:9 164:3 175:19
three 3:14 8:9,13 10:18 18:20 38:19 39:9 40:3 44:17 79:18 87:12 95:7 104:9 109:20 109:24 114:5 125:7 135:3 152:13 164:4
three-quarters 166:2
throw 94:20 127:5
Thursday 1:1
tight 166:22
time 13:3 19:2,4 19:8 23:23 31:5 31:8 43:3 48:2 52:24,25 55:24 67:13,13 69:3 81:8 82:19 85:21 86:1,21 92:1 101:7 104:23 106:16 112:15 115:20 122:5 136:3 139:6 149:21 149:21 152:19 153:20 158:1 159:2,4 168:13 168:23 171:3 174:9
times 29:5 116:7
today 44:11
told 160:10
tomorrow 41:2 42:19 166:13 167:6 176:24
top 15:7 71:15 96:21 101:19 113:16
topic 66:5
topics 67:6
tort 56:19 104:7 104:19,24 106:2,6,8,15 107:12 110:25 149:23 152:17
totality 25:3 54:22
tougher 24:18
trace 92:16
transfer 39:10
transitional 37:17 38:9 39:8
treat 31:16,18 50:12 87:22 97:23 142:7 146:5
treated 76:10 101:9 103:2,11 106:19 113:23 143:5 144:13 168:7
treatment 75:12 80:2 93:2 112:2 112:4
treats 78:6 149:20
tree 96:22
tried 145:4
Trower 1:3,4,5 3:20 8:5,18,22 8:25 9:3,8,11 9:14 10:11,14 10:23 13:21 14:5,7,13,16,20 14:22 15:1 17:23 18:8 19:25 20:7,16 20:18,21,23 21:25 22:17 23:3,11,17,20 23:24 24:4,8,11 24:13,21 25:2 25:13,19,23 26:13,15 27:8 27:11,15,18,24 28:16,19,23 29:3 30:1,13,16 30:20 31:3,7,11 31:14 32:7,18 32:21,25 33:6 33:24 34:4,8,13 34:21,25 35:3 35:16,19,25 36:3,7,10,12 37:19,22 38:8 38:11,14,19,23 39:1,3,6,8,18 39:23,25 40:10 40:12,15 41:8 41:13,18 42:3,8 42:25 43:2,9,17 43:22 44:4,6,21 45:1,10,13,23 46:2,15 48:6,8 48:24 49:2,7,17 49:24 50:3,7,18 50:22,25 51:3 51:13,15,21 52:16,23 53:11 53:21,24 54:1,6 54:10,12,16 55:21 56:3,11 56:17,23 57:2,4 59:6,8,12,16,20 60:5 66:20 75:16 82:20 107:9 108:6 132:10 166:23 178:3
true 18:2 54:23 55:1 82:3
truly 65:3
trumped 130:1
trust 46:13 134:14 156:12
trustee 19:21 57:21 58:23 59:21 155:5,10 155:17,21,23 155:24 156:1,2 156:4,5,6,19,20 157:15
trustees 1:21
trustee's 58:6,6
truth 173:12
try 66:22 75:7 130:4 154:17
trying 26:23 78:13 157:19
turn 11:1 15:3 33:3 40:3 84:25 88:11 90:25 95:20 105:9 110:21 111:7 131:21 169:13
turned 126:2 129:15 139:25 175:19
turning 75:9 104:14 108:15
turns 62:9 91:7 100:3,10 103:10,23 127:11 128:18 142:6 151:12 159:21 160:21 176:4
twice 131:6
two 1:5 10:2 13:7 25:13 28:6 35:7 44:14,23 45:1 46:23 67:24 70:21 79:19 82:15 83:9,12 86:6 90:5 93:13 94:19 95:1,20 97:6 98:22 101:2 104:15 107:4,19 108:11 113:14 119:2 133:2 135:24 141:14 143:16 144:6 146:17 150:7 151:4,8,21 152:6 153:21 154:4 157:17 159:18 161:13 162:17,21 163:19 167:24 170:5 172:8
two-stage 140:24
Tying 25:13
type 53:2
types 142:20 144:24
T&N 82:6,22 104:11 110:22 142:19 149:25

U

ultimate 97:15 162:21
ultimately 18:4 36:23 72:1 92:5 103:13 132:10 135:22 138:20 145:24 164:25 165:7
unable 173:18,23
unbelievably 117:18
uncertain 89:4,5 144:5
uncompensated 69:24 74:12
underlies 129:20
underlying 1:21 45:3 48:9 52:6 67:20 71:10 76:8 85:16 97:25 98:9 101:23 124:12 130:17 134:8 141:6 169:7 175:17,25 176:2
underpinned 53:5
understand 21:16 33:22 37:6 38:4 42:25 43:6 46:19 49:15 74:25 92:24 119:10 119:24 120:14 156:3
understandable 165:2
understanding 67:16 104:23
understood 61:6 136:11
underwrite 125:15
undisturbed 173:11
unfair 66:17 132:8 139:18
unfairness 153:4
unfortunately 27:9
unhappy 128:7
unit 112:14
unjust 61:8 62:10
unlimited 13:14 13:16 20:8,9 22:9,15 25:20
unliquidated 82:14 104:18 104:24 106:1 152:17
unnecessary 66:22 103:24
uno 85:13 87:4

unpaid 104:3 150:5 171:15 175:3
unprovable 138:3 142:13
unquestioned 25:18
unrealistic 122:23
unreasonable 61:9 62:11 167:3
unreserved 117:19
unsecured 12:5
untouched 52:6 77:1
upheld 84:14
upwards 136:19
urge 43:5
use 54:9 176:7 177:2
useful 176:8
uses 96:21 122:9 125:24
usual 165:25
US$1.4 71:2

V

v 4:11,18,21 7:3 7:10 12:12,14 16:13 19:21 21:12 50:16 52:2 70:24 76:14,19 79:18 84:6,24 85:23 92:18 95:19 97:21 137:14 137:15 146:5 169:23 173:22 176:3
Vaisey 100:18 101:25 102:25
valuable 139:20
valuation 88:2 124:6 139:4
value 68:16 81:17 88:3,7,9 88:12 113:11 114:13,24 121:7,10 124:3 124:15 125:17 125:21 126:5 143:23 144:2,8 144:15 150:24 154:22 169:15 173:8
valued 85:4 86:15 87:18 174:13
valuing 86:13
variety 147:21
various 62:2 67:19 71:14 103:21 113:16 126:25 128:16 144:24 173:14
version 38:25
Vice-Chancellor 102:10 108:16 155:8 156:17 157:14
Vice-Chancello... 109:17 155:2
victims 146:21 147:16,20 148:12
view 6:15 13:25 22:24 27:10 29:16 41:10,21 71:23 101:17 120:17 136:12 144:20 156:18 159:16,19,22 161:5,8,10,20 162:22 163:7 163:11 173:21 173:21
views 137:6
vindicated 52:8,8 55:2
Vinelott 104:21 105:24
vis-à-vis 125:5
vital 161:13
vivid 85:15
voluntarily 105:11
voluntary 65:7 65:19 120:22 122:22 172:6
vote 154:20,21,23 155:6,11,18 156:1,20,24 157:6
vulnerability 1:12,14,16

W

Walker 4:12 6:22 12:10,10 19:15
Walker's 4:19 15:18 18:18
walking 131:10
want 10:1 41:4,9 52:24 65:21 66:6,11 89:4 90:25 107:11
wanted 17:15 44:16 65:24 74:9 89:2 108:16
wants 107:25
Warrant 99:1
wasn't 21:14 29:20 31:21 34:22 37:20 67:24 82:9 88:25 105:3 116:15 119:8 133:14 137:5
wasted 110:13
waterfall 40:4 67:5,9,15 95:15 145:2 146:12
way 4:8 7:6,12 9:17 12:21 13:21 14:4,14 17:12 18:8,11 20:3 21:13,17 22:13 23:3 25:15 26:20 29:15,21 30:3 36:16,22 37:12 38:20 41:20 42:12 43:6 44:17 46:20 47:16 48:14 50:9,18 56:3,15 58:4 60:21 62:25 73:18 77:1 81:25 85:9 93:5,7,14,16,23 97:16,20 98:9 98:14 103:19 111:3,4 114:14 118:5 120:5,20 126:1 129:18 130:25 135:1 138:4,23 139:19,21 140:1 143:9 144:12 147:6 151:22 155:17 155:20 162:16 167:22
ways 42:16 53:18 126:25 141:19 144:21 146:17 173:14
weary 79:16
week 42:19
weeks 67:24 141:11
weighed 110:15
weight 137:17
welcome 163:6
well-known 18:11 96:21
went 30:23 34:15 34:19 39:3,4 48:2 108:18 109:6 138:18 172:7
weren't 33:4 74:24 106:2 140:12 160:25 163:10 165:4
West 6:11
we'll 42:13 44:22 89:13 128:3 166:4
we're 7:23 13:16 21:2 24:4 26:23 30:11 31:4 32:8 38:15,15,23 42:13,20 44:9 47:16 49:10,12 49:13 51:8 52:1 52:13,16,17,18 55:23 57:4 91:6 103:4 118:7,14 131:20 133:1 137:22 141:21 145:21 146:23 148:20 160:10 164:23 166:15 168:19
we've 62:15 72:8 91:4,5 130:25 131:2,2 133:2
whilst 12:20
wholly 105:23 132:22
wide 38:2
wider 55:6 56:18 63:18 107:15
Wight 50:16 52:2 76:14,19 79:18 84:24 85:23 95:19 137:14 169:23 173:22 176:3
Wilberforce 68:10
win 139:19
wind 85:25 86:18 123:17 168:2 172:24 173:4
winding 4:2 11:12,23 28:16 45:7,19,22 47:23 52:5 77:9 78:2 80:9 85:5 87:1,18 88:4 96:20 99:5,9,25 100:1,3 101:15 102:16 105:1 105:10 111:25 112:20 115:17 119:21 120:12 121:14 122:22 124:7 151:8 163:1 173:17 174:7
winding-up 28:15,18 46:6,9 46:22 76:20,25 77:6 85:14 87:10 88:17 90:11 101:5,16 102:2 112:3 113:6,19 114:1 114:23 116:8 119:15 120:9 121:1 127:3 133:17 150:21 162:24 169:24 171:24 172:6 174:18
wished 92:1
Wolfson 88:19
Wolfson's 136:10
won 39:13
wonder 75:1 126:3 136:1 176:24
word 14:11
wording 123:4
words 5:22,24 33:18 59:20 61:16 64:11 65:24 68:6 80:20 93:5,10 93:10 116:14 145:16 146:5 150:23 153:17 156:23 157:5 165:9,19 168:3 169:8
work 7:4 16:1 24:23 37:3,7,12 40:16 43:7 52:18 79:22 118:3 143:1 149:11 151:19
worked 9:18 71:20 74:7 94:10
working 62:15 127:24 143:9 143:10,13 157:25 159:4 159:19,22 161:8,11,19 162:18
works 15:10 18:11 20:4 22:1 29:15 36:16 47:19 58:5
world 141:21
worlds 56:2 140:8
worse 175:19
worth 10:25 129:15
worthwhile 172:1 175:20
wouldn't 9:20 24:10 35:19 38:25 50:16 87:24 116:16 116:17 156:7 159:1 166:9 167:3,8
wound 100:23 113:2 172:12
writ 69:16 70:14
writing 42:18 55:23
writs 109:4
written 91:22
wrong 3:8 34:15 34:17,18 39:12 44:19 47:17 51:8 52:1 68:16 70:5,5 161:1
wrongdoer 125:8
WW 95:9 98:23 123:24

Y

year 65:10
years 38:16 62:15 63:23 89:2 109:6 140:3 146:9 170:4 172:10 176:16
yen 147:4
yesterday 2:12 14:19 46:7

48:17 83:11 144:22
York 19:21

1

1 5:23 19:17 68:2 89:19 106:18 155:9 163:23 178:3
1A 10:23 17:18 95:21
1B 104:13 111:14 154:14 171:18
1C 4:14 76:16 84:25 170:8
1.03 89:14
1.3 131:21 168:20
10 3:9 72:4 151:5 159:5,10 167:6 176:21
10p 5:23
10,000 5:23
10.00 177:1,10
10.30 1:2 177:7
100p 32:14,21 49:19 50:14,21 63:20 64:7 129:12,14 133:11
101 14:6,23 15:5
107 75:22 152:10
11 70:24 159:6,25
11.38 44:1
11.48 44:3
110 60:12 141:12
12 1:23 19:25 71:8 95:21 158:3
12.3 107:10 108:7
13 120:18
13.08 163:19
13.12 27:13 31:7 31:11,14,17,24 38:25 47:22 56:15,20 107:10 108:7,7
13.12(1)(a) 39:22 49:9
133rd 11:14
14 121:17 122:14
143 75:21 80:3 152:10
149 20:13 21:2,3 23:15,18,22,23 24:1,16 25:7,9 25:11
149(2)(a) 14:21
149(3) 14:16
15 71:15 122:20 172:16
15,00 5:24
15.86 164:9
150 154:25 155:4
1542 76:1 93:24 111:3 149:21
156 72:23
16 15:3 17:18 124:11 129:3
16E 124:18
160 157:16
17 104:16 105:18 123:12 160:12
17.91 164:12
1743 84:6 92:18
18 108:12 123:24
1824 84:7 152:25 153:9
1842 94:6,11
1880 99:3
189 51:12,13,14 51:15 52:12
189(2) 45:18
19 105:4 123:25
19th 19:5
19.18 164:14
19.4 155:20
1914 105:9 113:5
1925 172:21
1948 113:6
1971 108:18
1976 109:3
1978 109:2
1979 108:22
1981 164:1,11,14 164:16
1984 158:4
1986 61:7,7 82:13 82:17,19 84:11 84:16 93:8 94:2 94:20,21 95:13 111:9 133:21 137:11,25,25 152:5,7 153:8 154:9 155:10 155:17,21 156:2,5,18 157:22 161:21 161:22 165:8 170:17
1991 175:8
1992 172:5,13 175:10

2

2 12:24 14:22 89:13 100:21 155:1,1,9 163:23
2.00 89:16
2.23 159:9 162:8
2.81 169:14
2.86 66:14 153:15
2.88 33:23,25 34:6,12 35:12 44:20,21
2.88(7) 45:15,17 46:4,10,21 47:3 47:10,11 48:12 48:16 145:10 145:10
20 5:9,10 6:12,17 99:6,14 100:13 105:18 131:15 132:19
2005 30:7 31:3,19
2008 39:3
2009 30:8
2010 31:16 38:16
2015 1:1 177:11
207 160:3 161:4
21 132:23 136:10 136:16 137:7 159:12
21D 133:24
21F 133:6
211 56:13
22 71:15,16 104:17 109:2 134:11 164:14 164:16
23H 106:11,12
24 42:14
24E 106:23
24(1)(b) 172:20
250/300 146:9
2517 71:16
26 1:1 76:17 134:22
260 100:20
261 17:20
262 17:18,21 101:2
263 101:19
265 15:3,6
267 29:7
27 76:17,22,24 177:11
28 85:2,2
281 57:15,16
281(1) 57:16
29 85:2,12

3

3 14:8,23,24 29:1 71:22 155:7,9
3.1(b) 29:8
3.18 136:5
3.2 29:10
3.25 136:7
3.34 160:1,13
3.36 160:14 161:9
3.37 162:9
3.47 162:22
30 91:22 105:8
302 119:20 123:4
31 71:22
310 98:25
313 99:4
315 99:17
316 107:3,8
317 106:16 107:2 107:8
32 98:24
322(2) 57:12
33.8 102:20
330 59:9
330(5) 58:7
332 164:12
34.5 155:19
35 80:19 155:12 155:15,16
36 155:15 156:10
37 155:15 156:17 170:10
38 57:2 160:5 170:11,15
38.2(1)(d) 57:1
38.2(2) 56:21
382 56:12

4

4 29:11 43:7 99:3 158:3 162:19 164:11
4.1 80:6
4.181 80:5,7
4.30 166:4
4.34 177:9
4.481 152:11
4.73 50:6
4.73(8) 50:4 51:3
4.86 165:10 167:19 169:13
4.86(2) 169:21
4.9(1) 153:12
4.91 153:14,15 156:15
4.91(1) 153:17
4.93 30:18 33:1 37:15 42:5 49:7 51:4 66:14
4.93(1) 31:18
42 172:10
46 100:19

5

5 43:7 70:24 108:14 119:13 160:11
5.5 108:23
51 5:3,5
52 5:3
53 7:1 15:20
53.9 156:21
533 11:2
534 3:23 11:5
535 13:5
536 13:5 15:11
55 111:15
57 118:16
58 104:13,16 129:16 130:13
58p 64:10

6

6 10:23
60 178:5
628 172:4
630 175:5
634 173:1
635G 174:21
643 99:3
645 97:2
646 96:1,2
647 96:21
65 171:18
651 175:1
672 113:13

7

7-0 158:16
70 158:14,15,16
72 154:14 159:12
74 2:24 28:6
75 76:16 84:25
761 112:6
762 113:15
763 113:16,17
764 114:3
768 115:13
769 115:11
77 83:4
77(c) 9:23
783 50:7

8

8 3:9 19:24,25 108:22 118:12 118:18,22 155:7 162:19 175:8,10
80 141:13
805 108:20
811 14:8,9
812 14:10
814 109:19,22
817 5:13 6:13,16
84 1:11
85 1:13 2:20
89 4:14

9

9 3:9 14:8 108:14 120:15 163:18
91 170:8