

<p>1 Monday, 17 October 2016 2 (11.00 am) 3 Submissions by MR MILES 4 MR MILES: My Lord, if I can perhaps just introduce those 5 with speaking roles only. I appear on behalf of LBHI2, 6 Mr Wolfson appears on behalf of LBL, Mr Isaacs at the 7 end for LBHI, Mr Trower is for the LBIE and Mr Dicker, 8 at the far end, is for CVI. 9 The plan is, so far as possible, to take the points, 10 the issues, in the order that they appear in the 11 statement of facts and issues, so the appellants will go 12 through those, with one or two wrinkles, in that order, 13 and then you will hear from the respondents. So I am 14 dealing first of all with the issue concerning the 15 ranking of the subordinated debt in relation to 16 statutory interest and non-proveable claims. 17 There are three realistic candidates: first of all, 18 that the subordinated debt ranks before both statutory 19 interest and non-proveable claims; secondly, that the 20 subordinated debt ranks after statutory interest but 21 before non-proveable claims; and, thirdly, that the 22 subordinated debt ranks after both statutory interest 23 and non-proveable claims. 24 The judge and the Court of Appeal, of course, 25 decided in favour of the third outcome. We submit that</p> <p style="text-align: center;">Page 1</p>	<p>1 possible for agreements of this kind to be entered into 2 by non-members and the interpretation would have to be 3 the same. 4 As Lord Justice Lewison said, the question here is 5 the extent of the subordination. There were several 6 agreements which were in the same terms. I don't ask 7 you to turn it up now, but the first of those can be 8 found in bundle D, tab 7, starting at page 680, but the 9 relevant parts of it are conveniently set out in 10 bundle D, tab 3, starting at page 539. 11 LORD NEUBERGER: This is the Court of Appeal, is it? 12 MR MILES: This is Court of Appeal. So Lord Justice Lewison 13 set out the relevant terms of the (Inaudible). 14 LORD NEUBERGER: It did strike us, albeit only after reading 15 the written cases, which are not exactly in summary 16 form, and the judgments below, that really the bulk of 17 the argument, at any rate, as well as the bulk of the 18 relevant facts were, as one might expect, set out in the 19 judgments. 20 MR MILES: Yes. 21 LORD NEUBERGER: I would suggest that insofar as we can take 22 it from them, that would be a very sensible way to 23 proceed, so I applaud the course you have taken. 24 MR MILES: So if we take it from the judgment, you will see 25 that, starting on page 530 --</p> <p style="text-align: center;">Page 3</p>
<p>1 was wrong and argue for the first or second outcomes in 2 that order of priority. 3 There is also a second issue I am going to deal with 4 at this stage in my submissions, raised by an appeal by 5 LBIE, which is whether the sub-debt is proveable. The 6 judge decided that LBHI2 could not prove and seek 7 payment in respect of the sub-debt, whether by dividend 8 or set-off, before statutory interest and non-provables 9 had been paid in full. The Court of Appeal took 10 a different view and concluded that the debt was 11 provable, it is a contingent debt, and that the 12 administrator would be expected to value it at nil until 13 such time as the condition, namely the payment of 14 interest and non-provables, was met. We say that the 15 Court of Appeal was right on that question. 16 First, then, dealing with the first of the issues, 17 which is the ranking of the debt. It is important, 18 although perhaps obvious, to start with the observation 19 that, considering this aspect of the case, LBHI2 is not 20 to be treated as a member; it is a creditor. 21 LORD NEUBERGER: Yes. 22 MR MILES: That is something that Lord Justice Lewison 23 pointed out at paragraph 29. 24 It is important because there can be a bit of 25 a blurring of the arguments here, and of course it is</p> <p style="text-align: center;">Page 2</p>	<p>1 LORD CLARKE: Could I ask you to give us also the paragraph 2 numbers you are referring to? 3 MR MILES: Yes, I will do that. Starting at 31, you will 4 see that these are approved forms obtained from the FSA 5 and there were both what were called "variable terms" 6 and "standard terms". The standard terms, which is what 7 we are really concerned with, are set out in schedule 2, 8 and you will see that at paragraph 33. There is 9 a series of definitions, and if you just look at 10 insolvency and then liabilities, senior liabilities, 11 subordinated liabilities. Then going on to paragraph 34 12 of the judgment, paragraph 4 of the standard terms says 13 that the payment is expressed to be subject in all 14 respects to paragraph 5. 15 It is also worth noticing that paragraph 4.4 16 provided that the lender might enforce payment, as it is 17 put, by instituting proceedings for the insolvency of 18 the borrower. So, in other words, the lender is allowed 19 to, what is called, enforce payment by seeking the 20 winding up or placing into administration or whatever of 21 the borrower, but then in 4.5, no other remedy shall be 22 available to the lender for the recovery of amounts. 23 We will see in a little while that there is 24 an argument based partly on those clauses about whether 25 the debt is provable or not, and one of our arguments is</p> <p style="text-align: center;">Page 4</p>

<p>1 going to be that, given that there is an express right 2 to wind up or to put the company into administration, it 3 would be very surprising if the lender could not also 4 prove. 5 Paragraph 5 contains the subordination provisions, 6 and you will see that there are two separate paragraphs 7 in (a) and (b), the first of them dealing with the case 8 where an order has not been made or an effective 9 resolution passed for the insolvency of the borrower; in 10 other words, outside insolvency. Then (b), which is the 11 one that we are concerned with, the borrower being 12 "solvent" at the time of and immediately after the 13 payment by the borrower, and, accordingly, no such 14 amount which would otherwise fall due for payment shall 15 be payable except to the extent that the borrower could 16 make such payment and still be solvent. 17 Then a definition of what is meant by "solvent" 18 follows, and the question is whether the borrower is 19 able to pay its liabilities other than subordination 20 liabilities in full, disregarding obligations which are 21 not payable or capable of being established or 22 determined in the insolvency of the borrower, and that 23 is the key phrase which we are arguing about. 24 You will see, if you just go back to the opening 25 words of that paragraph, that the payment under</p> <p style="text-align: center;">Page 5</p>	<p>1 otherwise these words would be otiose, and the question 2 is: what are the words intended to cover? 3 LBIE's attempt at an answer as to what those words 4 are designed to cover is contained in its case at 5 paragraph 49.3, which you will find at C, tab 1, 6 page 363. You will see that they say that the 7 liabilities which are not capable of being established 8 or determined in the insolvency -- 9 LORD KERR: Which paragraph are you reading from? 10 MR MILES: I was looking at 49.3, which starts on 362 and 11 goes over the page: 12 "In referring to liabilities which are not capable 13 of being established or determined in the insolvency of 14 the borrower, what the term contemplates are liabilities 15 such as, in the English context, statute-barred debts or 16 non-EU foreign revenue claims." 17 They say they are to be disregarded for the purposes 18 of the solvency test in this clause, whether the 19 borrower is solvent or is in a formal insolvency 20 proceeding. 21 We say that is placing far too narrow 22 an interpretation on these rules because these are debts 23 which are not payable by the company in any event. They 24 are not payable -- you could not claim them by way of 25 writ, for example, it is absolutely notorious that you</p> <p style="text-align: center;">Page 7</p>
<p>1 paragraph 4 is expressed to be conditional upon those 2 things being satisfied. So the way the agreement works 3 is that there is an obligation to pay, conditional on 4 those matters being satisfied. We say that that is 5 a very straightforward form of contingent liability. 6 Now, going then to the key question, which is what 7 is meant by the disregard of obligations which are not 8 payable or capable of being established or determined in 9 the insolvency of the borrower, our overarching 10 submission is that the purpose of clause 5(2)(a) is to 11 exclude obligations which are not provable debts of the 12 borrower. Language, we say, is apt to capture the 13 concept of obligations which are payable at the outset 14 of the insolvency and those which are capable of being 15 established or determined in the insolvency proceedings. 16 We say this is a commercially realistic reading -- 17 indeed, the most commercially realistic reading -- since 18 it provides a workable mechanism for the valuation of 19 the relevant liabilities. It is the same valuation 20 exercise as has to take place under the insolvency rules 21 in an insolvency. 22 Now, the starting point is that the contractual 23 disregard contained in paragraph 5(2)(a) is clearly 24 intended to exclude some liabilities of the company, the 25 subordination, in other words, is not absolute,</p> <p style="text-align: center;">Page 6</p>	<p>1 cannot claim foreign revenue claims, it is a matter of 2 conflict of laws. You cannot claim them in 3 an insolvency either, which is well established. Again, 4 you cannot claim an insolvency for statute-barred debts 5 any more than you can bring a writ for them. 6 So we say this is placing a very narrow 7 interpretation on the words because these liabilities 8 are not payable anyway, and it would be very odd to have 9 an express wording dealing with the scope of the 10 subordination which tells you that one thing that you 11 are not subordinated to are liabilities which are not 12 payable anyway. 13 LORD NEUBERGER: You say it is referred with liabilities 14 which would be regarded as liabilities in law generally, 15 but cannot be established or determined insolvency? 16 MR MILES: Yes. 17 LORD NEUBERGER: I have the point, thank you. 18 MR MILES: Now -- 19 LORD NEUBERGER: You say their definition extends to things 20 that wouldn't be effective liabilities in any event. 21 MR MILES: In any event, whether in an insolvency or not. 22 LORD NEUBERGER: I see, yes. 23 MR MILES: Now, we do say that it is also relevant, 24 obviously, when looking at this definition of solvency 25 in this agreement, which is an English law agreement</p> <p style="text-align: center;">Page 8</p>

<p>1 concerning an English registered borrower, to look at 2 the English insolvency law background. 3 Now, one of the aims of the 1986 legislation was to 4 bring as much as possible within the definition of 5 provable debts and deal with their discharge through 6 payments in the insolvency. A good place to find that 7 point is going back to Lord Justice Lewison's judgment, 8 paragraphs 15 and 16, which you will find at page 535. 9 LORD NEUBERGER: Thank you very much. Yes. 10 MR MILES: You may also recall that Lord Neuberger quoted 11 that same paragraph of the Cork Report in Nortel and 12 made much the same point. 13 So one of the aims of the 1986 legislation was to 14 bring as much as possible within the scope of what is 15 provable, and also to deal, as I say, with discharge 16 through payment. Over the years, the scope of what is 17 provable has been broadened so that it includes not only 18 obvious pre-liquidation and claimed(?) debts, but also 19 unliquidated claims, future claims, contingent claims. 20 You will have seen in the cases reference to the 21 case of T&N, which was a case where, after the 1986 22 legislation, there were tort claims which were brought 23 against the company in liquidation, or at least this was 24 the situation that was being addressed in that case, it 25 was actually in the context of a scheme for arrangement,</p> <p style="text-align: center;">Page 9</p>	<p>1 statutory regime works, and the best place to find this 2 is in bundle F3 at tab 74. 3 Now, this tab contains a number of relevant 4 provisions of the insolvency rules in the form 5 applicable to this administration. There are 6 transitional provisions, there have been some changes 7 later and in tab 75 you have got -- 8 LORD NEUBERGER: Do the changes matter for present purposes? 9 MR MILES: No, they don't, but it is worth just knowing 10 that. 11 LORD NEUBERGER: I understand. 12 MR MILES: The way this is printed, for some reason, says 13 "Part 2, part 10, distribution to creditors", you will 14 see. In fact, in the original statute it is called 15 chapter 10 and then section A. 16 This is dealing with the position in 17 an administration. There are similar rules, of course, 18 in liquidation and in personal bankruptcy, but these are 19 the rules concerning administration, which are the ones 20 we are most directly concerned with. 21 Now, you are aware of course (Inaudible) in the 22 original 1986 legislation, there could not be 23 distributions in administrations. There were then 24 changes in the law so that it was possible, with the 25 leave of the court, for distributions to be made in</p> <p style="text-align: center;">Page 11</p>
<p>1 but the question was if in a company in liquidation 2 there was a tort claim where the damage was suffered 3 after the date of the liquidation, under the 1986 4 legislation, as it was first formulated, that wouldn't 5 have been provable because the cause of action would not 6 have been complete until the damage was suffered. Very 7 quickly after that decision, the legislature intervened 8 and changed the rules on what was meant by provable 9 debts to include a tort claim where all the elements of 10 the tort occur before the cut-off date except for 11 damage. 12 So what one can see is the legislature seeking to 13 bring as much as possible within the concept of what is 14 provable, and we say that is important because what the 15 contractual disregard in this case, in paragraph 5(2)(a) 16 is doing is mirroring the treatment of provable debts. 17 Provable debts are those debts which are either payable 18 or capable of being established or determined in the 19 insolvency of the borrower. 20 The statutory scheme has a number of provisions 21 which provide for establishing or determining the amount 22 of provable debt in an insolvency, and it is helpful to 23 look at these now. You will be seeing some of these 24 provisions in the context of other issues as well, so it 25 is helpful, I suggest, just to see how this part of the</p> <p style="text-align: center;">Page 10</p>	<p>1 administrations, and these rules were brought in 2 order to effectively bring the law into line with the 3 law on winding up. 4 LORD NEUBERGER: Yes, okay. 5 MR MILES: So you start at rule 2.68, which is a general 6 description of chapter 10. I think you only need to 7 look at rule 1. 8 LORD NEUBERGER: All right. 9 MR MILES: Sub-rule 1. Going on to 1990 -- 10 LORD NEUBERGER: Yes. 11 MR MILES: -- you will see that the debts of an insolvent 12 company are to rank equally, and they will be paid in 13 full after preferential debts, unless the assets are 14 insufficient for meeting it. So the whole point of this 15 part of the rules is to deal with the payment of debts 16 through the insolvency process. 17 LORD NEUBERGER: Yes. 18 MR MILES: 2.72, which is at 1994, tells us what proving 19 a debt is. Now, this is something that comes up under 20 a number of the arguments, so it is possibly just worth 21 looking at sub (1) and (2). 22 LORD NEUBERGER: Sorry, 2.72 -- 23 MR MILES: Page 1994, rule 2.72 sub-rules (1) and (2). 24 LORD NEUBERGER: Right. 25 MR MILES: Pausing on that just for the moment, if you want</p> <p style="text-align: center;">Page 12</p>

<p>1 to recover your debt in an administration, you have to 2 submit a claim, and the creditor who claims is referred 3 to in these rules as proving his debt and the document 4 by which he seeks to establish his claim is a proof. 5 One can get a bit caught up with the terminology of 6 proving, and we will see this in a number of the 7 arguments during the appeal. What proving is is 8 claiming to recover the debt through the administration. 9 There are provisions, then, about the method of 10 proof. At page 2000, you will see under rule 2.77 there 11 is provision for the proof to be admitted for dividend, 12 either for the whole amount claimed by the creditor or 13 in part, and if the administrator rejects it in whole or 14 in part, he will prepare a written statement and so on. 15 LORD NEUBERGER: Yes. 16 MR MILES: And then on the next page at 2001, 2.78 -- 17 LORD NEUBERGER: Yes. 18 MR MILES: -- (Inaudible), so then, if that happens, the 19 matter is determined through this process; it is 20 determined by the court as part of the administration. 21 LORD NEUBERGER: Right. 22 MR MILES: If you then go on to the page 2004, you will see 23 that we move from section B, which is the machinery of 24 proving a debt, to section C, which is quantification 25 claims.</p> <p style="text-align: center;">Page 13</p>	<p>1 LORD NEUBERGER: Basically you discount for early payment. 2 MR MILES: That's right. 3 LORD NEUBERGER: Okay. 4 MR MILES: And there are also rules about how you deal with 5 security. 6 LORD NEUBERGER: Yes. 7 MR MILES: What you have here in this section of the statute 8 is a series of mandatory rules about the valuation of 9 liabilities for the purpose of seeking payment in 10 an administration. As I say, you will find much the 11 same rules, materially the same rules, in relation to 12 a liquidation. These are based on the liquidation 13 rules. 14 LORD NEUBERGER: Yes, administrators originally didn't have 15 the power to distribute. When they were given that 16 power, they had to have mirror-image provisions. 17 MR MILES: And it effectively mirrors the position in 18 liquidation. 19 LORD NEUBERGER: Yes. 20 MR MILES: Now, we say that against that background, it 21 makes real sense for the subordination clause that we 22 are looking at in this case to be drafted on the basis 23 that the administrator, or the liquidator, as the case 24 may be, would use the same values, the same processes of 25 valuation resulting from that process to determine</p> <p style="text-align: center;">Page 15</p>
<p>1 2.81 deals with essentially contingent debts. 2 LORD NEUBERGER: Yes. 3 MR MILES: And what happens is the administrator places 4 an estimate on the value of the debt. 5 At 2.85, which is at page 2008, you will find the 6 rule on -- 7 LORD NEUBERGER: Mutual credit set-off. 8 MR MILES: -- set off, which is a well known rule which we 9 will have to come back to, but the effect of that is 10 that an account is taken of the mutual(?) claims and 11 only the net balance is then provable. 12 2.86, which is at 2011, deals with debts in 13 a foreign currency, and we will be looking at that in 14 detail in relation to currency conversion claims. 15 LORD NEUBERGER: Of course. 16 MR MILES: There is an important provision concerning 17 interest, which is all part of this same section, at 18 2013, that is rule 2.88. There are also, at 2.89 on 19 page 2015, a rule about debts payable at a future time, 20 and the way they work is that you prove for the full 21 amount of the future debt, but in relation to -- 22 LORD NEUBERGER: Subject to rule 2105. 23 MR MILES: That is at 2015. 24 LORD NEUBERGER: Which is on 2032 -- yes. 25 MR MILES: And the -- yes, so --</p> <p style="text-align: center;">Page 14</p>	<p>1 whether or not the borrower meets the solvency 2 condition. We suggest that that is all in the end that 3 clause 5(2)(a) is doing. 4 So if you then return to the contractual words, 5 which are in D3, page 540 -- 6 LORD NEUBERGER: Back to paragraph 36 of the judgment, yes. 7 MR MILES: That's right. And the provision at 8 paragraph 5(2)(a), what that is talking about is the 9 obligations which are not provable debts. They are not 10 payable in the insolvency and they are not capable of 11 being established or determined in the insolvency of 12 a borrower. That is the short way we put the point, and 13 we say it is practical and commercially workable because 14 the liquidator or administrator can value the provable 15 debts of the company according to the rules, which are 16 there for insolvency. 17 If those can be paid and there is still some for the 18 sub-debt to be paid, then it will be paid. If the 19 sub-debt cannot be paid and all of those debts still be 20 paid, then the sub-debt to that extent cannot be paid. 21 That is how the subordination works. So our overarching 22 submission is that it means provable debts. 23 It is also, though, helpful -- indeed, we suggest 24 necessary -- to look at the two elements that we are 25 concerned with separately, that is to say non-provable</p> <p style="text-align: center;">Page 16</p>

<p>1 claims on the one hand and statutory interest on the 2 other hand. If I could just deal with non-provable 3 claims first. 4 Our submission is that non-provable claims are 5 neither payable nor capable of being established or 6 determined in the insolvency, which is what the contract 7 is concerned with. 8 If such claims are payable at all, they are payable 9 despite or notwithstanding the insolvency, not in it, 10 and the clause is concerned with payment within the 11 insolvency or being established or determined within the 12 insolvency. 13 They are not capable of being established or 14 determined in the insolvency, as there is no mechanism 15 within the insolvency procedure for the determination or 16 establishment of non-provable claims at all. 17 We have just seen all of those provisions about the 18 determination and quantification of claims in 19 an insolvency, and they are all concerned with provable 20 debts. None of those are concerned with non-provable 21 claims at all. 22 LORD NEUBERGER: The word "payable", that is not governed, 23 or do you say it is, by the words "in the insolvency of 24 the borrower"? 25 MR MILES: Well, we say that it is really a question of</p> <p style="text-align: center;">Page 17</p>	<p>1 Yes, there is, in the case of proved debts; no, there is 2 not, in the case of non-provable debts. That is really 3 the point. 4 LORD NEUBERGER: I see. 5 MR MILES: So it emphasises a point we have already made. 6 Now, in the case where you have a non-provable 7 claim, there is very little law on how that would be 8 dealt with, notwithstanding the existence of the 9 insolvency. The officeholder has no statutory remit to 10 pay claims other than the expenses of the insolvency and 11 the proved claims. It is true that you will find some 12 old cases in particular which say, well, if there is 13 something which has been established as a non-provable 14 claim -- you will see this in old cases on interest, for 15 example -- the liquidator should pay that -- indeed, 16 must pay that -- before the surplus goes to the members. 17 But we suggest all that is being said in those cases 18 is that because he is the person in charge of the 19 company, he should do that. What those cases do not say 20 is that that is happening as part of the insolvency 21 process. 22 LORD CLARKE: What is it part of? 23 MR MILES: It is just a claim against the company. I will 24 just show you how it has been dealt with in a couple of 25 cases.</p> <p style="text-align: center;">Page 19</p>
<p>1 reading the whole thing as a whole. 2 LORD NEUBERGER: "Capable of being established or 3 determined" are clearly words governed by the insolvency 4 of the borrower. I am just checking what you are saying 5 about the word "payable". Is that governed by the words 6 "in the insolvency of the borrower"? 7 MR MILES: It is. 8 LORD NEUBERGER: I see. 9 MR MILES: It is whether they are payable or capable of 10 being established or determined in each case in the 11 insolvency of the borrower. 12 LORD NEUBERGER: Could there be circumstances where it was 13 capable of being established or determined but not 14 payable? Or could it be the other way round: could it 15 be payable without being capable of being established or 16 determined? 17 MR MILES: It is difficult to see how that would arise. 18 LORD NEUBERGER: Quite. 19 MR MILES: If it is not capable of being established or 20 determined, it is very difficult to see how it could be 21 payable. 22 LORD NEUBERGER: So on that basis, what do the words 23 "capable of being established or determined" add? 24 MR MILES: What they tell you is, as we say, is there 25 a mechanism for dealing with them in the insolvency?</p> <p style="text-align: center;">Page 18</p>	<p>1 Perhaps the best example is T&N, where 2 Mr Justice David Richards had deal with this question: 3 how then are they dealt with? You will find that in 4 bundle F1, tab 21. To answer Lord Clarke's question, if 5 these claims are payable, they will be payable 6 notwithstanding the insolvency, and the mechanism is 7 that the court may lift any stay on the bringing of 8 claims so that the claim is then allowed to proceed by 9 way of action against the company, as an exception to 10 the general stay on proceedings which happens in 11 insolvencies. That is the way that the judge looked at 12 it in this case. 13 I have already explained that this was a case 14 involving a scheme of arrangement involved asbestosis(?) 15 claims, and one of the questions for the court was 16 whether tort claims where the damage had not occurred at 17 the insolvency cut-off date were provable, and based on 18 the then rules, rule 13.12 in particular, the judge 19 reached the decision that the claims were not provable 20 claims. 21 If you then go to page 1556 at paragraph 107, he is 22 dealing here with the argument that, under the rules, 23 there is no mechanism for the payment of claims to the 24 tort claimants, and he says in 107: 25 "It would indeed be extraordinary if the companies</p> <p style="text-align: center;">Page 20</p>

<p>1 (Inaudible) could be, as it were, required to be 2 distributed to shareholders without paying tort claims 3 which accrued since the liquidation date or other claims 4 not provable in the liquidation, such as costs incurred 5 in litigation against the company before the liquidation 6 date but not then the subject of an order." 7 Then he says that is not the position. 8 If I could just invite you to read the rest of that 9 paragraph, I will then make a submission on it. 10 (Pause). 11 LORD NEUBERGER: Yes. 12 MR MILES: We say the solution that Mr Justice David 13 Richards came to in that case is to say that, in the 14 case of a non-provable claim, the way it would be dealt 15 with, as I say, is to either lift the statutory stay or 16 not impose the normal stay that you would find in 17 a voluntary winding up, and allow the creditors simply 18 to bring writ claims against the company, 19 notwithstanding the liquidation, and then follow the 20 ordinary process of execution of claims against the 21 company. 22 Now, we say that that shows that the process is not 23 happening within the liquidation, it is not happening 24 through the liquidation, or in the words of the clause, 25 "in the liquidation"; it is happening notwithstanding</p> <p style="text-align: center;">Page 21</p>	<p>1 were not good grounds for it. 2 LORD SUMPTION: Yes, but if he made an agreement, a purely 3 passive stance would not be available, if he wants to 4 agree an undisputed claim. 5 MR MILES: It may be that he has no power to do that. 6 LORD SUMPTION: Okay. 7 MR MILES: It may just be that the right course would be to 8 not defend the claim which is brought. 9 LORD KERR: I thought you said that because he was for the 10 time being in charge of the company, so to speak, it 11 would be in that capacity rather than his capacity as 12 liquidator that he would – 13 MR MILES: No, it would be qua liquidator, I have to accept 14 that, but it may be that the answer is that he would do 15 it simply by not opposing the claim. As I say, there is 16 very little learning on how non-provable claims are to 17 be dealt with at all, but such as there is suggests it 18 is a process that takes place outside the insolvency 19 process and notwithstanding it, rather than through it. 20 That view is also, we suggest, supported by a decision 21 of the Court of Appeal, which you will find in bundle F5 22 at tab 8. This is a decision called Levy v Legal 23 Services Commission. 24 This is a bankruptcy case. There was a bankruptcy 25 petition based on the costs of ancillary relief</p> <p style="text-align: center;">Page 23</p>
<p>1 the liquidation, despite the liquidation, outside the 2 liquidation, and in our case outside the administration. 3 LORD SUMPTION: What happens if there is agreement that the 4 amount is due? You still have to go through the form of 5 litigating, do you, simply to convert it from 6 a non-provable to a provable debt? 7 MR MILES: Yes. 8 LORD SUMPTION: It seems a rather unnecessary and burdensome 9 way of achieving a very straightforward result. 10 MR MILES: That may be right, my Lord, but it doesn't affect 11 the nature of the claim which is being made. What we 12 say is that, in that case, if it was possible to do it 13 by way of agreement rather than litigating the thing the 14 whole think through, nonetheless it is still a process 15 that is happening outside the liquidation. 16 LORD SUMPTION: The agreement would have to be made by the 17 administrator or the liquidator, wouldn't it? 18 MR MILES: Yes. 19 LORD SUMPTION: From what would he derive his power to make 20 such an agreement? 21 MR MILES: I think it would have to be essentially his 22 general power of administration of the company. We say 23 what would effectively be happening there is that 24 the claim would be brought -- I mean, it may be that he 25 would simply not oppose the claim being brought if there</p> <p style="text-align: center;">Page 22</p>	<p>1 proceedings, and under the relevant insolvency rules, 2 claims which arose under an order made in family 3 proceedings were not a provable debt. The respondent to 4 the petition argued that, since the debt which was being 5 claimed was not a provable debt, there could not be 6 a bankruptcy petition based on it, and that argument 7 succeeded. 8 There were two issues in the case: first of all, the 9 question of whether it was indeed a non-provable debt, 10 and the Court of Appeal concluded that it was 11 non-provable, and then what they called the timing 12 question, which was whether the petition could be based 13 on the non-provable debt in any case. If you go to 14 page 2739 at paragraph 34, this is in the judgment of 15 Lord Justice Jonathan Parker. For some reason, in this 16 report, they have been demoted to first instance judges, 17 but it was in the Court of Appeal and they were both 18 Lords Justice. 19 In paragraph 34, you will see that what 20 Lord Justice Jonathan Parker said was: 21 "On any footing, a bankruptcy order made on a 22 petition which is based on a non-provable debt is 23 an anomaly ...(Reading to the words)... bankruptcy and 24 the trustee will owe no duties towards him." 25 The Court of Appeal did go on to conclude that, in</p> <p style="text-align: center;">Page 24</p>

<p>1 very unusual circumstances, it would nonetheless be 2 possible to base a petition on a non-provable debt, but 3 they concluded it was difficult to see what those 4 circumstances would be and it was not appropriate for 5 this case. But the point of general application which 6 is made is that the non-provable debts are outside the 7 statutory scheme, and Lord Justice Peter Gibson picked 8 up the same point at paragraph 58. 9 LORD NEUBERGER: Yes, saying the same thing. 10 MR MILES: Saying the same thing. 11 It may be said this is a personal bankruptcy and not 12 corporate insolvency, but we say that the same reasoning 13 applies. The corporate insolvency, as we have seen, is 14 concerned with, in this regard, payment to the creditors 15 of the company, just as in the case of a bankruptcy it 16 is concerned with payment to the bankruptcy creditors, 17 who are essentially the proving creditors. The point 18 that is being made in this case, which we commend, is 19 that non-provable debts are just outside the statutory 20 scheme, they are something different. 21 There is something of a minor dispute between the 22 parties in how you deal with a case called 23 R-R Realisations. I am not going to go to it now, but 24 LBIE have suggested that that is another case about 25 non-provable debts. It was a decision of</p> <p style="text-align: center;">Page 25</p>	<p>1 have already seen rule 2.88. Statutory interest is not 2 contractual interest. If we just go back to rule 2.88, 3 which you will find -- 4 LORD NEUBERGER: 2013 of F3, yes. 5 MR MILES: Yes, exactly. 6 LORD NEUBERGER: F3/2013, yes. 7 MR MILES: The way that the statutory interest works is 8 that, first of all, you will see that under 9 sub-rule (1), it is possible to prove for the bit of 10 interest which has accrued before the cut-off date, and 11 then there are provisions from (2) down to (6) -- 12 LORD NEUBERGER: Yes. 13 MR MILES: -- which essentially say that, where interest is 14 payable by contract, the creditor can claim the higher 15 of contractual rate and the judgment rate, which, as we 16 know, is 8 per cent and it has been 8 per cent 17 throughout this period. 18 LORD NEUBERGER: And extraordinarily has never been reduced, 19 yes. 20 MR MILES: But also this allows for claims for interest 21 where it is not payable under the contract, so for 22 non-contractual interest, and you will see that in 23 paragraph (2). 24 LORD NEUBERGER: Yes. 25 MR MILES: Then in (7), and this is really the bit we are</p> <p style="text-align: center;">Page 27</p>
<p>1 Mr Justice Megarry. In fact, as we point out in our 2 case at paragraph 57, it is a case where, under the then 3 rules, the debts in question were provable debts 4 because, under the then law, it was possible to bring 5 a claim for late tort claims, and indeed any other 6 claim, that there was a solvent liquidation. So it is 7 not a case of non-provable debts. 8 So we say that, looking at the matter as a matter of 9 contractual interpretation, this supports our 10 overarching submission that what the clause is concerned 11 with is provable debts. 12 We say that non-provable debts are not payable, 13 capable of determination or otherwise capable of being 14 established in the insolvency. If they are payable or 15 capable of being established, that happens outside the 16 insolvency. We say, again, if you come back to the 17 question of commercial sense, that reading makes 18 commercial sense because there is a statutory provision 19 for the valuation of provable debts, there is no 20 provision in these rules for the valuation of 21 non-provable debts, and it makes sense, we say, to read 22 the solvency condition in the agreement in an uniform 23 way as applying essentially the rules that apply in 24 an insolvency. 25 Then there is a question of statutory interest. You</p> <p style="text-align: center;">Page 26</p>	<p>1 concerned with because we are really dealing with 2 post-administration interest: 3 "Any surplus remaining after payment of the debts 4 proved shall, before being applied for any purpose, be 5 applied in paying interest on those debts ..." 6 Which means all of the proved debts in respect of 7 the periods during which they have been outstanding 8 since the company entered into administration. In other 9 words, from the period from the outset of the 10 administration until payment in full of the approved 11 debts. 12 (8) says that all interest payable under that 13 paragraph ranks equally, whether or not the debts on 14 which it is payable rank equally, and the rate of 15 interest under paragraph (7) is the whichever is the 16 greater of the rates specified in paragraph (6), which 17 is judgment rate, or the rate applicable to the debt 18 apart from the administration. 19 LORD NEUBERGER: Yes. 20 MR MILES: So it is not simply, as it were, a substitute for 21 contractual interests; it is a very different regime. 22 It goes beyond contractual interest; it provides a right 23 to share in the surplus, if there is a surplus, over the 24 proved debts. 25 We say that this is a statutory direction to the</p> <p style="text-align: center;">Page 28</p>

<p>1 administrator to pay interest, it is not a debt or 2 liability of the company itself. 3 LORD REED: Is it not an obligation? 4 MR MILES: It is an obligation placed on the administrator 5 to apply any surplus, but we say it is not an obligation 6 of the company for the purposes of the contractual rule. 7 So there is an obligation, statutory duty, placed on the 8 administrator to make the payment if there is a surplus, 9 but it is not an obligation of the company for the 10 purposes of the contract. 11 LORD SUMPTION: Is that a real dichotomy? I mean, it is the 12 duty of the officeholder to pay liabilities of the 13 company. On what basis do you say that this is not 14 a liability of the company? I understand that is your 15 submission, but how do you get it out of this provision? 16 MR MILES: We say that it is not something for which 17 a creditor could bring a separate claim. You cannot 18 prove for it, by definition. The way that you claim in 19 the administration, as we have seen, is by putting in 20 a proof. What he can do is enforce the obligations of 21 the administrator through an action, as it were, court 22 proceedings against the administrator requiring him to 23 perform his statutory duty. But it is a bit like the 24 situation of a claimant in an unadministered estate, 25 where he doesn't have a claim to the asset, he cannot</p> <p style="text-align: center;">Page 29</p>	<p>1 company, and yet money that is "the company's" is being 2 used to pay money which is not a liability of the 3 company. It is a bit odd. 4 MR MILES: There is nothing particularly odd about that, it 5 is saying that this is how interest is going to be dealt 6 with. I don't accept that there is anything peculiar 7 about saying that, on the one hand, it is something that 8 the administrator needs to do in respect of the surplus, 9 but at the same time saying that it is not to be treated 10 as a liability of the company. 11 LORD KERR: Is it not incidental to the debt owed by the 12 company to the creditor? 13 MR MILES: Well, no, because it is a form of compensation to 14 all proved creditors, effectively, in respect of 15 a period since the beginning of the administration. It 16 is saying they have all been harmed, if you like, by the 17 fact of the administration, they have all been kept out 18 of the money, but it is important that it is not just 19 based on whether they have a right outside the 20 administration because the rule says that they get this 21 whether they have a right outside the administration or 22 not. So even if the underlying debt carries no right to 23 interest, they get their full share of the surplus under 24 this provision. 25 LORD NEUBERGER: I understand conceptually entirely how you</p> <p style="text-align: center;">Page 31</p>
<p>1 say that is his asset, but he is able to enforce the 2 obligations of the administrator. We say that is the 3 right way of looking at it. It is a specific statutory 4 requirement placed on the administrator to distribute 5 the assets, if any, amongst all proved creditors. 6 We say it is not a separate liability of the company 7 to the creditors. This ultimately goes back to the 8 question -- the word "obligation" is used in the 9 agreement. We say it is not an obligation of the 10 company at all; this is a statutory direction to the 11 administrator to make the payment. 12 We rely in that regard, although I'm not going to 13 take up -- 14 LORD CLARKE: You have to make the claim against the 15 company, do you, or -- 16 MR MILES: You make the claim against the administrator to 17 perform his statutory duty. 18 LORD CLARKE: You get that out of subsection (7), do you? 19 MR MILES: Yes. We say this is an obligation which is 20 placed on the administrator under (7), which is then 21 enforceable by a claim requiring him to perform his 22 duty. 23 LORD NEUBERGER: That could not be said to be sort of 24 ultra vires the Insolvency Act, could it? In the sense 25 that on your case it is not creating a liability of the</p> <p style="text-align: center;">Page 30</p>	<p>1 put it, but the comparison with a will is not really 2 a good one, is it, because here you are concerned with 3 almost exclusively otherwise enforceable claims against 4 the company, whereas in a will, of course, that is not 5 the territory you are really in, where somebody chooses 6 to leave their money in a certain way. You could invent 7 a claim, but it is a slightly dangerous analogy, 8 although I quite accept that, conceptually, if you are 9 right, it is entirely like a claim against trustees of 10 the estate to get on with distribution rather than 11 a financial claim against the estate, and I see how you 12 put it in light of the wording of (2), (7) and (8). 13 MR MILES: Yes, and we do rely on the important fact that 14 this is a statutory creation. It is not simply saying 15 you revert to your contractual rights. This is a big 16 point that we will see when we come to look at the 17 currency conversion claim. 18 LORD NEUBERGER: That is emphasised by our subparagraph (9). 19 MR MILES: Yes. 20 LORD NEUBERGER: I see. You say you have to imply words 21 into this if you are going to make it a liability of the 22 company. 23 MR MILES: Exactly, and there is no need to do that. 24 LORD NEUBERGER: There is no need. 25 LORD REED: Even if we are with you and it is not</p> <p style="text-align: center;">Page 32</p>

1 a liability of the company, it is still an amount which
 2 has to be paid before the surplus remaining after
 3 payment of debts proved is applied for any other
 4 purpose. Reading paragraph (7).
 5 MR MILES: Yes, but that is within the statutory scheme.
 6 I mean, the question we are faced with here, the first
 7 question that we are looking at, is: where does the
 8 subordinated debt lie? Now, if we are right, and this
 9 is not an obligation -- statutory interest, for example,
 10 it is not an obligation of the company, therefore it
 11 cannot be part of the obligations to which we
 12 subordinated, it means that we would come out before,
 13 because we would be a provable debt -- assuming we are
 14 right on that point, which I will come back to -- and we
 15 would share with all the other creditors in the surplus
 16 before anything else then happens to the surplus. So
 17 the question ultimately goes back to the question of
 18 where we lie in the rankings.
 19 LORD NEUBERGER: But if you are not a provable debt, then do
 20 the words Lord Reed has identified present you with
 21 a problem, saying you rank ahead of interest?
 22 MR MILES: If we are not a provable debt then -- so this is
 23 on the assumption that we are not provable. In that
 24 circumstance, I think we would have to accept that, if
 25 we are not provable at all, then -- perhaps I can think

Page 33

1 about that.
 2 LORD NEUBERGER: Okay.
 3 MR MILES: I have not got an immediate answer to that
 4 question.
 5 LORD REED: I am just wondering really what this last
 6 chapter in your argument actually establishes. If you
 7 are not provable, you seem to have a problem, but if you
 8 are provable, then it rather looks as though you ought
 9 to be paid before statutory interest is applied, just in
 10 terms of paragraph (7).
 11 MR MILES: What we say is that if we are provable and we
 12 rank before the statutory interest, and we say that part
 13 of the reason for thinking we do is that statutory
 14 interest is not an obligation of the company, then we
 15 just go in with all the other provable debts, and if
 16 there is a surplus, we then share in the surplus by way
 17 of statutory interest.
 18 I would like to think about the alternative, which
 19 is what happens if it is not a provable debt, and we
 20 will come back to that.
 21 We say this does provide some helpful support for
 22 the overarching submission we made at the outset. What
 23 we are really concerned with in the clause altogether is
 24 provable debt. It is another reason why that
 25 conclusion, we say, is correct.

Page 34

1 LORD CLARKE: Did the Court of Appeal grapple with this
 2 particular point?
 3 MR MILES: Yes, they dealt with it and they said they
 4 concluded it was to be treated as a liability of the
 5 company.
 6 LORD NEUBERGER: You say, I come back to the point, it is
 7 not what it says. It involves implying words. You
 8 don't need to imply words, and anyway you don't imply
 9 words into a statutory or legislative provision unless
 10 you have to.
 11 MR MILES: Yes.
 12 Now, I am going to come on to the question of
 13 whether the subordinated debt is provable at all.
 14 LORD NEUBERGER: Right.
 15 MR MILES: In relation to that, the judge held that it is
 16 not provable. The Court of Appeal held that it was --
 17 LORD NEUBERGER: They agreed with almost all his reasoning
 18 but not quite all, didn't they?
 19 MR MILES: Not quite all, and they disagreed with him on
 20 this point. Lord Justice Lewison dealt with this at
 21 paragraphs 38 to 41.
 22 LORD NEUBERGER: Yes.
 23 MR MILES: That is at page 541 and 542. We make six fairly
 24 short points in relation to this.
 25 First of all, we say that the subordinated debt,

Page 35

1 which is just an agreement to pay a sum of money, albeit
 2 conditionally, falls clearly within the definition of
 3 "debt" within rule 13.12 of the rules and "provable
 4 debt" within rule 12.3. Those two rules, of course,
 5 were exhaustively considered in the Nortel case, and it
 6 may be helpful just to look at those: F1, tab 6, 1184.
 7 LORD NEUBERGER: Yes.
 8 MR MILES: Which tells you that:
 9 "A debt in relation to the winding of up of
 10 a company means, subject to the next paragraph, only the
 11 following:
 12 "Any debt or liability to which the company is
 13 subject at the date on which it goes into liquidation.
 14 "Any debt or liability to which the company may
 15 become subject after that date by reason of any
 16 obligation incurred before that date."
 17 Those were the two subparagraphs that were
 18 considered extensively in Nortel. And you read that
 19 together with rule 12.3, and for that you have to go
 20 back to F3, tab 71, 1981, which says:
 21 "Subject as follows in administrations, winding up
 22 and bankruptcy ...(Reading to the words)... whether they
 23 are present or future, certain or contingent,
 24 ascertained or (Inaudible) only in damages."
 25 We say this is squarely within the definition of the

Page 36

<p>1 (Inaudible), it is a debt which arises under -- to which 2 a company is subject at the date on which it goes into 3 liquidation, or is a debt or liability to which 4 a company may become subject after that date by reason 5 of any obligation incurred before that date. Payment is 6 conditional on the condition being satisfied, and that 7 is a classic contingent liability. So that is the 8 starting point. 9 Secondly, it would, we submit, be very surprising if 10 the subordinated debt holder could not prove, given that 11 it expressly has the right to institute proceedings for 12 the insolvency of the borrower. That is the clause we 13 looked at earlier on page 540 of bundle D, paragraph 34 14 of Lord Justice Lewison's judgment. 15 LORD NEUBERGER: Paragraph 540, yes. 16 MR MILES: Page 540, paragraph 34 of the judgment. It says 17 in terms that the lender might enforce payment by 18 instituting proceedings for the insolvency of the 19 borrower, and it is important to note there that it is 20 described as "enforcing payment". So the way that you 21 enforce payment is through taking winding up proceedings 22 or insolvency proceedings, and proving is simply what 23 follows from that. The point of winding up as 24 a creditor is to seek to take part in the collective 25 process of recovery of amounts owing.</p> <p style="text-align: center;">Page 37</p>	<p>1 The fourth point is if you then look at paragraph 7 2 of the agreement, which is set out in paragraph 37 of 3 the judgment. 4 LORD NEUBERGER: You just referred to that, yes. 5 MR MILES: These are the parts which are particularly relied 6 upon by LBIE and were relied upon by the judge for 7 saying that the claim is not provable. 8 LORD NEUBERGER: This is your third point, it was also part 9 of your third point, saying there is nothing there that 10 prevents proving. 11 MR MILES: You would expect it to be here if you find it at 12 all. If you look at what it does actually say -- this 13 is the fourth point -- in 7(d), first of all, there is 14 an agreement not to attempt to obtain repayment of any 15 of the subordinated liabilities otherwise than in 16 accordance with the terms of this agreement. 17 Now, we say that since winding up or administration 18 is allowed as a means of enforcing payment under the 19 agreement, then participating in the winding up by 20 proving is clearly not something outside the terms of 21 the agreement, or otherwise than in accordance with the 22 terms of the agreement. 23 Additionally, if you put in a proof of a claim which 24 is contingent, that is to say conditional on the 25 satisfaction of some condition set out in the agreement,</p> <p style="text-align: center;">Page 39</p>
<p>1 Third, there is nothing in paragraph 7 or anywhere 2 else of the agreement -- we will look at paragraph 7 in 3 a minute -- which expressly prohibits proving. As 4 I say, the fact that you can take the proceedings in the 5 first place leads to the expectation that you would be 6 able to prove and, therefore, if it was going to be 7 excluded, you would expect that it would have to be 8 excluded expressly. 9 LORD NEUBERGER: You can validly expressly agree to exclude 10 the right to prove, can you? 11 MR MILES: You can, yes. It appears so. I will show you 12 an authority to that effect. 13 LORD NEUBERGER: It sounds right. 14 MR MILES: There is some controversy about it, but it 15 appears to be regarded as acceptable. 16 LORD NEUBERGER: It would not be contrary to the interests 17 of the other creditors by definition, so why should -- 18 MR MILES: No. The whole British eagle(?) idea is based on 19 the -- 20 LORD NEUBERGER: Exactly. 21 MR MILES: -- you don't get into a better position. 22 LORD NEUBERGER: No, but a worse, why shouldn't you, 23 exactly. Okay. 24 LORD NEUBERGER: We will look at a passage from 25 Professor Goode's book in a moment on that.</p> <p style="text-align: center;">Page 38</p>	<p>1 and that is your claim, you are not seeking payment 2 otherwise than in accordance with the terms of the 3 agreement because you are simply saying, "I will be paid 4 according to my rights, ie when the condition is 5 fulfilled". 6 LORD NEUBERGER: Lord Justice Lewison said so. 7 MR MILES: As Lord Justice Lewison said, it is essentially 8 neutral this point; it doesn't help. 9 LORD NEUBERGER: You are saying it is a circular point. 10 MR MILES: It is a circular point. 11 The same applies to my fifth point, which is for the 12 same reason clause 7(e) is not engaged, it doesn't, say, 13 take any action whereby the subordination is terminated 14 or paid or (Inaudible). With respect, it is not. If 15 you prove for a contingent claim, then it will be valued 16 at nil until the contingency is fulfilled, at which 17 point you can be paid. So all we are doing is seeking 18 to enforce a contractual right and not to go beyond it. 19 Then the last point is the text from 20 Professor Goode. You will find that in volume F8. 21 LORD NEUBERGER: Yes. 22 MR MILES: Tab 6. And the reason for referring to this is 23 that this explains there are a number of well known 24 modes of subordination, three in particular, one of 25 which is where you agree not even to prove. We, as Lord</p> <p style="text-align: center;">Page 40</p>

1 Justice Lewison did, rely on this to show that it is
 2 well known that that is something you can do if you wish
 3 to do so, but another form of subordination is to allow
 4 proof to take place, and that is what we have got here.
 5 This deals with the point that Lord Neuberger
 6 raised --
 7 LORD NEUBERGER: Can we take this as read for the moment?
 8 MR MILES: Yes.
 9 LORD NEUBERGER: You say it is right and it helps to support
 10 your points 4, 5 and 6 -- indeed, 3, yes, I understand.
 11 MR MILES: This deals with the point you raised which is
 12 whether it is valid at all.
 13 LORD NEUBERGER: Okay.
 14 MR MILES: This suggests that it is valid.
 15 LORD NEUBERGER: Yes.
 16 MR MILES: That is to say where the creditor agrees not even
 17 to prove.
 18 LORD NEUBERGER: Very well, thank you.
 19 MR MILES: We say the Court of Appeal was right on the
 20 question of whether the debt was provable and that is
 21 all we have to say about --
 22 LORD NEUBERGER: It is fair to say, while we are on this
 23 passage -- perhaps I encouraged you to pass over it too
 24 quickly -- there was some support for the next
 25 proposition, the Court of Appeal having agreed with you

Page 41

1 on this point, that you then take it away by saying it
 2 is worth nil. That --
 3 MR MILES: Yes. It is worth nil until -- they said that
 4 because they said it ranked after the statutory interest
 5 and the non-provable claims. If we are right about the
 6 ranking, it would not be worth nil, it would be worth
 7 the full amount.
 8 LORD KERR: This is your anterior point, is it?
 9 MR MILES: Yes, this is an anterior point.
 10 LORD NEUBERGER: All I am putting to you is might it be said
 11 that part of what is said in this passage in Goode is
 12 unhelpful to you on that point?
 13 MR MILES: No, we suggest not, because it seems right that
 14 if the ranking is against us, as it were, then you would
 15 indeed value the claim at nil, but that just means that
 16 it is a contingent claim like any other.
 17 LORD NEUBERGER: I see.
 18 MR MILES: It is a contingent claim which is provable.
 19 The mistake that the judge made, and which we
 20 suggest LBIE is perpetuating, is the idea that we cannot
 21 even prove until the conditions have been fulfilled, and
 22 there is nothing in the agreement or anywhere else which
 23 suggests that that is right. We can prove that the
 24 valuation of the claim is another matter.
 25 That is what I wanted to say about the first issue.

Page 42

1 I now want to turn, if I may, to the question of
 2 currency conversion claims, which is perhaps the most
 3 involved point in this appeal.
 4 It is helpful to start here, we suggest, with an
 5 anatomy of what exactly the claim being brought is. One
 6 place to find it is in the statement of facts and issues
 7 which is in bundle A, page 175 and it is in footnote 4.
 8 LORD NEUBERGER: What paragraph?
 9 MR MILES: Sorry, it is in footnote 4, so it is at the
 10 bottom of the page.
 11 LORD CLARKE: Where is the footnote referred to in the text?
 12 MR MILES: Sorry, 26.2.
 13 LORD CLARKE: Yes, I see, thank you.
 14 MR MILES: This is an attempt to provide an anatomy of what
 15 the claim is, and it is useful to start with this,
 16 I suggest:
 17 "... a claim that arises if a creditor had a claim
 18 enforceable against the company denominated in a foreign
 19 currency ..."
 20 Pausing there, that means a provable claim. So you
 21 start with the idea that the underlying debt is
 22 a provable claim.
 23 "... that claim is converted into sterling at the
 24 prevailing rate at the date of the administration under
 25 the rule. Between that date and the date or dates of

Page 43

1 the dividends, sterling depreciates against the foreign
 2 currency with the result that dividends paid to the
 3 creditor in respect of their proved claim are, when
 4 converted into foreign currency at the respective dates
 5 of payment, in aggregate lower than the claim
 6 denominated in the foreign currency ..."
 7 Now, the hypothesis, therefore, is that the
 8 underlying debt itself is a provable claim. Secondly,
 9 in the circumstances we are looking at here, it is being
 10 paid in full. This point only arises if it is paid in
 11 full, according to the valuation given by the rules.
 12 In relation to this part of the case, the key rule
 13 is obviously rule 2.86. That was based on the rule in
 14 winding up, which is rule 4.91, and 4.91 is in
 15 materially the same terms. 4.91 was introduced for the
 16 first time in the 1986 insolvency legislation. It
 17 doesn't appear in any predecessor legislation at all.
 18 As we have seen, it appears as part of a group of rules
 19 concerning the valuation of claims.
 20 Another rule that was made for the first time in the
 21 1986 legislation is rule 2.88, almost adjacent to
 22 rule 2.86. The group of rules that you find there, not
 23 all of them but some of them were new in the 1986
 24 legislation.
 25 Now we submit that the scheme of the statute here is

Page 44

<p>1 very simple and very straightforward. To bring a claim 2 for payment in the insolvency, the creditor has to claim 3 in writing, that is to say prove. Where the claim is 4 for a debt denominated in a foreign currency, it is 5 automatically converted for the purpose of valuation 6 into sterling, once and for all, as at the 7 administration date.</p> <p>8 Equally, looking at the other rules about things 9 like contingencies and so on, they are all valued as at 10 the administration date. It is coming up with a uniform 11 cut-off date. Dividends are then paid in sterling. We 12 say that to the extent that payments are made to 13 creditors, the claims of those creditors are satisfied.</p> <p>14 LORD NEUBERGER: I understand.</p> <p>15 MR MILES: The hypothesis, as we have seen, is that 16 dividends of 100 per cent paid are evidence(?) of proved 17 claims.</p> <p>18 If there is a surplus of assets after paying the 19 claims of the proved creditors through the proving 20 process, that surplus is then to be divided amongst the 21 proved creditors as statutory interest under rule 2.88, 22 because that is what the statute tells you. But once 23 the creditor, including the foreign currency creditor, 24 has been paid 100 per cent of the proof as valued by the 25 rules, plus statutory interest, he then has no further</p> <p style="text-align: center;">Page 45</p>	<p>1 claim satisfied?</p> <p>2 LORD NEUBERGER: You say, read that way, I think, 3 Lord Hoffmann's dictum, which Lord Justice Moore-Bick 4 played so much part on, actually works in your favour.</p> <p>5 MR MILES: Exactly.</p> <p>6 LORD NEUBERGER: Yes, I see.</p> <p>7 MR MILES: We also say that the rule on currency conversion, 8 there is obviously a general rule which is intended to 9 strike a fair balance between the various stakeholders 10 of the company being at various ranks of the creditors 11 and, indeed, ultimately its members, and inevitably, 12 when you have these general rules in an insolvency, 13 there are going to be winners and losers in particular 14 situations when measured against the parties' 15 contractual rights.</p> <p>16 But those are general rules of general application 17 across an insolvency, and, again, we say that where the 18 Court of Appeal went wrong and where CVT's arguments go 19 wrong is making a sort of abstract appeal to what they 20 say is just or fair outcome without having proper regard 21 to the general rules and the fact that there will be, as 22 I say, winners and losers in any given situation. That 23 is something that is a theme of their arguments but we 24 say doesn't really meet the question that we are having 25 to deal with.</p> <p style="text-align: center;">Page 47</p>
<p>1 claims against the assets of the company, whether under 2 some theory of remission to contract or otherwise.</p> <p>3 There is just nothing in the statute that allows it. We 4 say, in other words, that payment in full, in accordance 5 with the statutory scheme discharges that claim.</p> <p>6 Now, there is a suggestion, and we will look at it 7 in a bit of detail in a moment, that insolvency doesn't 8 affect the claim for creditors at all. That is 9 really --</p> <p>10 LORD NEUBERGER: Underlying contractual rights.</p> <p>11 MR MILES: Yes.</p> <p>12 LORD NEUBERGER: Against the company.</p> <p>13 MR MILES: And then it is said: and what is more, the 14 insolvency does not convert those claims into some other 15 legal thing, some other legal res, but what that is 16 ignoring is the fact of payment in accordance with the 17 statutory scheme.</p> <p>18 If you like, the fault line in the arguments between 19 the parties is not does the mere fact of the insolvency 20 convert the claim into something else, is that what has 21 the substantial effect? The fault line between the 22 parties is, looking at the rules, where there is a claim 23 in insolvency, it is valued in accordance with the 24 insolvency statute and there is payment in full of the 25 claims so valued in accordance with the statute, is the</p> <p style="text-align: center;">Page 46</p>	<p>1 Now, it is helpful also to bear in mind, just as 2 a general preliminary point, that as far as we are 3 aware, there is no case where something which arises out 4 of a provable claim, or could be seen as part of 5 a provable claim, is also bringable as a non-provable 6 claim.</p> <p>7 As we have seen from the way the claim is described 8 in the agreed statement of facts, this is a claim which 9 itself is a provable claim. What happens is that you 10 have a foreign currency claim for X. It is proved, it 11 is valued, dividends are paid for it in accordance with 12 that valuation, but if you then convert the dividends 13 back into something else, what is there? Well, 14 ultimately, there is just a shortfall in payment of the 15 proved claim, but it is a shortfall that arises under 16 and by reason of the statute itself.</p> <p>17 Now, it is different from something like 18 post-liquidation interest. Post-liquidation interest is 19 never provable. If there is then a rule which says, in 20 certain circumstances, if there is a surplus left, 21 post-liquidation interest may be payable, that is not 22 then saying that you are getting a further claim arising 23 out of the pre-liquidation bit of the interest. It is 24 something different.</p> <p>25 What we will find here when we look at it is there</p> <p style="text-align: center;">Page 48</p>

<p>1 is a basic incoherence at the heart of the argument. 2 What they are trying to do is bring in an approved claim 3 twice. 4 Now, we make -- 5 LORD NEUBERGER: The interest may be contingent, as it were, 6 on the proved debt, but it is not part of the proved 7 debt, whereas here you say you are getting -- 8 MR MILES: It is just part of the original debt. 9 LORD NEUBERGER: You have a hybrid -- 10 MR MILES: It is an unpaid portion of the original debt. 11 LORD NEUBERGER: I understand. Unpaid portion of 12 an original debt which, under the scheme, has been paid 13 in full, repaid in full. 14 MR MILES: Under the scheme itself, exactly. 15 LORD NEUBERGER: I see. 16 MR MILES: After those preliminary remarks, our first 17 principal submission -- and I am afraid to say my 18 submissions are to some extent going to overlap. It is 19 inevitably one of those areas where the points do 20 overlap with one another, but I am going to try, if 21 I may, to organise my submissions under a number of 22 heads. The first of those is that, where provable 23 claims are valued under the (Inaudible) of the 1986 24 legislation, and paid in full according to that 25 valuation, the creditor's only remaining claim in</p> <p style="text-align: center;">Page 49</p>	<p>1 with these provisions and paid, the effect is to satisfy 2 the claims. 3 Can I remind you, again -- and it is useful, 4 perhaps, to see it again in this context -- of 5 paragraph 15 of the Court of Appeal's judgment. 6 LORD NEUBERGER: That principle about assuming every debt -- 7 yes. 8 MR MILES: Not just that, it is to include in it as much as 9 possible, but you will also see the passage goes on to 10 say: 11 "... and in one way or another discharge all such 12 debts and liabilities." 13 And Lord Justice Lewison summaries that we say 14 accurately: 15 "Thus one of the aims of the law of insolvency is 16 for discharge of debts by proof and payment." 17 LORD NEUBERGER: Yes. 18 MR MILES: You, Lord Neuberger, also quoted that same 19 passage in Nortel. 20 LORD REED: Mr Miles, you say, do you, that payment of 21 a proved debt in full by a 100 per cent dividend 22 operates to discharge the underlying liability? 23 MR MILES: Yes, subject to a possible right to statutory 24 interest, which is a separate statutory -- 25 LORD NEUBERGER: That doesn't give you any difficulty; you</p> <p style="text-align: center;">Page 51</p>
<p>1 respect of the assets of the company is a possible claim 2 to statutory interest from any surplus. 3 LORD NEUBERGER: Yes. 4 MR MILES: If we go back to rule 2.86 in F3, page 2011, as 5 we have already seen, it is part of a collection of 6 rules in part 2, chapter 10 dealing with the 7 valuation -- 8 LORD NEUBERGER: Part of the mandatory scheme, yes. 9 MR MILES: Part of the mandatory scheme called the 10 quantification of claims. 11 LORD NEUBERGER: Yes. 12 MR MILES: What it says is: 13 "For the purpose of proofing a debt which has 14 occurred or payable in a currency other than sterling, 15 the amount of the debt shall be converted into sterling 16 at the official exchange rate prevailing on the date 17 when the company entered into administration." 18 LORD NEUBERGER: Yes. 19 MR MILES: As we have seen, this is part of also the same 20 section of the rules as dealt, for example, with 21 contingencies, that is back at 2.81; set-off, 2.85; 22 interest, 2.88; and future debts at 2.89 and 2.105. 23 There are counterparts of each of these rules in the 24 rules on liquidation and personal bankruptcy. 25 Now, where the claims are quantified in accordance</p> <p style="text-align: center;">Page 50</p>	<p>1 say it is specifically dealt with. 2 MR MILES: Yes, exactly. More than that -- 3 LORD NEUBERGER: And it is not part of the debt. 4 MR MILES: And more than that, as we will see, it is the one 5 place that tells you how surplus is dealt with, because 6 it expressly deals with that. I will come back to that. 7 LORD NEUBERGER: Yes. 8 MR MILES: Again, the passage which Lord Neuberger referred 9 to earlier, from Wight v Eckhardt, and I will come back 10 to that as well, also refers to the discharge of debts 11 through payment. 12 Now, there are examples of this in the rules, apart 13 from 2.86, so in 2.85, which is the rule on set-off, 14 which you will find at 2008, where there are mutual 15 claims, the rules on set-off operate by way of payment, 16 so that if there is something which is owed to the 17 creditor, he effectively gets 100 per cent of that 18 amount by way of payment of his claim. He doesn't have 19 to share merely in a dividend for that amount. It is 20 often said insolvency set-off takes place by way of 21 payment of the debt. 22 The effect then is, as you will see -- the way this 23 works is that there is a mutual account between the 24 parties, and at sub-rule 8, it says that only the 25 balance of the account owed to the creditor is provable</p> <p style="text-align: center;">Page 52</p>

<p>1 in the administration.</p> <p>2 LORD NEUBERGER: Yes, the rest, as you say, is paid in full,</p> <p>3 yes.</p> <p>4 MR MILES: Yes, that is because he has been paid.</p> <p>5 LORD NEUBERGER: Quite.</p> <p>6 MR MILES: Above that, you will also see that the rules on</p> <p>7 how you deal with contingent debts and future debts are</p> <p>8 incorporated by reference into this rule. You will see</p> <p>9 that at 5 and 6.</p> <p>10 LORD NEUBERGER: Yes.</p> <p>11 MR MILES: So a valuation process takes place. For the</p> <p>12 purposes of set-off, the same rule as applies in</p> <p>13 contingent debts is applied here, the same rule as</p> <p>14 applies in relation to future debts is applied here, and</p> <p>15 you end up with a number at the end of it which is then</p> <p>16 described as the balance which is provable in the</p> <p>17 administration.</p> <p>18 Lord Hoffmann --</p> <p>19 LORD REED: 6 deals also expressly with foreign currency</p> <p>20 debts.</p> <p>21 MR MILES: It does, I should have pointed that out. That is</p> <p>22 incorporated again into the rule and it operates by way</p> <p>23 of payment.</p> <p>24 It has been famously said by Lord Hoffmann in a case</p> <p>25 called Stein v Blake that the rule has substantive</p> <p style="text-align: center;">Page 53</p>	<p>1 rule.</p> <p>2 LORD NEUBERGER: I am just wondering how it would work if</p> <p>3 the set-off was in relation to debts and counter-debts</p> <p>4 in different currencies and the currencies then moved in</p> <p>5 different directions.</p> <p>6 MR MILES: That is an important point, which is not</p> <p>7 necessarily just to do with set-off. It is something</p> <p>8 I will come back to in due course, you could have also</p> <p>9 a case where there is a contract which has a number of</p> <p>10 payment obligations in different currencies.</p> <p>11 LORD NEUBERGER: Yes.</p> <p>12 MR MILES: One of the questions which arises is how does</p> <p>13 that work in a case where one of the currencies</p> <p>14 appreciates against sterling and the other depreciates.</p> <p>15 LORD NEUBERGER: You say all these problems disappear if you</p> <p>16 are right.</p> <p>17 MR MILES: Yes.</p> <p>18 LORD NEUBERGER: But it doesn't mean that you are therefore</p> <p>19 right.</p> <p>20 MR MILES: No, I am not going to jump to that conclusion,</p> <p>21 but it is a factor which you should take into account.</p> <p>22 LORD NEUBERGER: I see.</p> <p>23 MR MILES: And I will come back to that.</p> <p>24 Again, in relation to future debt, we have seen the</p> <p>25 rules on future debts. You prove for the full amount in</p> <p style="text-align: center;">Page 55</p>
<p>1 effect. I am not going to turn it up now, it is in F1,</p> <p>2 tab 20, and the passage you want is at page 1508 at D</p> <p>3 to F.</p> <p>4 LORD NEUBERGER: Thank you.</p> <p>5 MR MILES: As I said a bit earlier, it is important not to</p> <p>6 get too hung up on the precise language of substantive</p> <p>7 effect as opposed to procedural effect. There seems to</p> <p>8 have been a bit of debate about that, what is</p> <p>9 substantive and what is not. We say the important thing</p> <p>10 is if there is payment in accordance with the rules, it</p> <p>11 operates by way of discharge of the debt, and that is</p> <p>12 the really important thing.</p> <p>13 In other words, the insolvency regime does not</p> <p>14 operate merely by way of a procedural stay, which is how</p> <p>15 CVI argues it, it operates to affect the rights of the</p> <p>16 creditors substantively.</p> <p>17 LORD NEUBERGER: 6(a), relating as it does to currency other</p> <p>18 than sterling, does not take the present case any</p> <p>19 further, does it, because both the debt and the</p> <p>20 counter-debt are valued at the same date, at the same</p> <p>21 exchange rate, as it were. I suppose you could have</p> <p>22 a case where the claim is in euros and the counterclaim</p> <p>23 is in dollars, and there could be a --</p> <p>24 MR MILES: As it has turned out, there is no separate point,</p> <p>25 as it were, arising from the operation of the set-off</p> <p style="text-align: center;">Page 54</p>	<p>1 relation to future debt. If the debt is still future at</p> <p>2 the time when the payment by the administrator is to be</p> <p>3 made, it is discounted at a statutory rate of 5 per cent</p> <p>4 back to the date of administration and paid.</p> <p>5 LORD NEUBERGER: Yes.</p> <p>6 MR MILES: Now, both Mr Justice David Richards and</p> <p>7 Lord Justice Lewison in this case said that, where there</p> <p>8 is then payment of the discounted amount, that operates</p> <p>9 by way of discharge of the debt, of the full proved</p> <p>10 amount. That you will find in Mr Justice David</p> <p>11 Richards's decision at paragraph 77, page 625, and</p> <p>12 Lord Justice Lewison at paragraph 94.</p> <p>13 LORD NEUBERGER: You get interest, don't you? You may</p> <p>14 discount back and then if (overspeaking) --</p> <p>15 MR MILES: There may be, yes.</p> <p>16 LORD NEUBERGER: -- you get interest.</p> <p>17 MR MILES: It may be a complication involving interest, but</p> <p>18 the point of substance is that if you get paid the</p> <p>19 discounted amount, that operates by way of discharge of</p> <p>20 the claim.</p> <p>21 LORD NEUBERGER: I see, yes.</p> <p>22 MR MILES: You don't, as it were, come --</p> <p>23 LORD NEUBERGER: No, you can't then --</p> <p>24 MR MILES: You cannot then come back and say, "Ah, well,</p> <p>25 there are now some assets left at the end of this</p> <p style="text-align: center;">Page 56</p>

1 insolventy, I want a top up".
 2 LORD NEUBERGER: But it could be said you get
 3 a compensation, you will be double counting, because you
 4 get the discounted rate back to the date of the
 5 administration order, but you get interest, whereas
 6 there is no compensating feature for the currency
 7 appreciation, is there?
 8 MR MILES: That's right.
 9 There is another point to note in relation to the
 10 rule on future debts, and this is something that runs
 11 through these rules also. The rule on future debts
 12 itself changes the rights of creditors to this extent,
 13 that is to say a creditor would not otherwise be able to
 14 claim the money if it is a future debt. He would not
 15 have been outside the administration able to issue
 16 a writ or execute for it. Nonetheless, under the
 17 insolvency regime, he is able to prove for it in full.
 18 He gets a discounted payment on it, but it is another
 19 example of how the insolvency regime affects creditors'
 20 rights. It is just completely wrong to say that this
 21 regime does not have any effect on underlying factual
 22 rights, which is the broad submission which is made
 23 against us.
 24 Again, in relation to contingent claims, we say that
 25 where claims are valued under the rules and paid, it

Page 57

1 operates by way of discharge. Now, there is a slight
 2 wrinkle here in that, as Lord Justice Lewison described
 3 at paragraph 95 of his judgment, it is possible to bring
 4 us to seek to review or amend your proof if the
 5 contingency then occurs after you have been paid, but
 6 what happens in those circumstances is that the proof is
 7 amended. You don't come back for a non-provable claim
 8 and say, "Yes, I accept that I received 100 per cent of
 9 my proved claim. Now something else has happened, I am
 10 coming back in as a non-provable creditor." What
 11 happens, if you are going to do it at all, is that you
 12 amend your proof, and that is also supported by
 13 a decision of Lord Justice Hoffmann, as he then was, in
 14 a case called Stanhope Pension Trust v Registrar of
 15 Companies, which is in F6 at tab 15 -- again, I am not
 16 going to ask you to turn it up now -- page 3303. He
 17 explains in those circumstances a creditor could bring
 18 a revised provable claim, but there is no suggestion
 19 that what he is able to do is bring a non-provable claim
 20 outside the terms of the legislation.
 21 What happens is that if he can persuade the
 22 administrator (Inaudible) to revise the claim upward
 23 because a contingency has happened, he may then have
 24 a right to more money by way of proof. But that is not
 25 in any way a counter-example, as CVI seems to argue, to

Page 58

1 our submission that payment of the claim operates by way
 2 of discharge.
 3 Now, if you then go back to rule 2.86, we say that
 4 it does have substantive effect, at least to the extent
 5 of payment being made in accordance with it. Indeed, it
 6 must be common ground that it has some effect as regards
 7 payment because you have to ask what happens when
 8 sterling appreciates against the foreign currency.
 9 Now, in those circumstances, the creditor gets more
 10 than he would have done outside the insolvency. But he
 11 is entitled to keep that amount, there is no provision
 12 under the statute for saying, oh, he has to give some
 13 back.
 14 LORD NEUBERGER: I understand.
 15 MR MILES: Lord Justice Lewison made this point in
 16 paragraph 100, and he also made a further point which is
 17 worth looking at. It is at page 548(?). Sorry, it is
 18 a long paragraph, but if you can go down to 6 --
 19 LORD NEUBERGER: This is his 10 points?
 20 MR MILES: Yes, but it is worth bearing in mind that these
 21 are not his only 10 points, these are 10 points on, as
 22 it were, his third point. It is sometimes suggested
 23 that these are his only 10 points. They are not his
 24 only 10 points.
 25 LORD NEUBERGER: Anyway, we are looking at the sixth of his

Page 59

1 non-exclusive 10 points.
 2 MR MILES: Exactly.
 3 Now, that is about halfway down the paragraph, and
 4 he makes a point about where it appreciates, which is
 5 the point I have just made.
 6 LORD NEUBERGER: So after the reference referring to Lines
 7 Brothers, 6, one must consider the position of the
 8 creditor -- yes. The point is that this is, as it were,
 9 sauce for the goose but no sauce for the gander.
 10 MR MILES: But more than that, if you look at what he then
 11 goes on to say, there is the sauce for the goose point,
 12 but it goes on to say this is in marked contrast with
 13 obligations to repay contained in rules 2101.3,
 14 alterations and withdrawals of the proof, rule 2102.2,
 15 revaluation of security.
 16 So there are other provisions in this clutch of
 17 sections or parts of the insolvency rules which do give,
 18 as it were, a right to clawback if the creditor has had
 19 too much, but there is not in relation to currency
 20 conversion, and we say that is another telling point.
 21 So it has to be, we suggest, common ground between
 22 us that at least to the extent of appreciation of
 23 sterling, it has substantive effect because the
 24 creditors are entitled to keep the extra.
 25 LORD NEUBERGER: I see.

Page 60

1 MR MILES: We say if it runs that way, it must equally work
 2 the other way, and just as there is conversion and
 3 payment where currency goes up, so when it goes down it
 4 has substantive effect, in the sense that it discharges
 5 the debt.
 6 How does CVI seek to meet this point? It relies on
 7 a very broadly expressed proposition that the claims of
 8 creditor are wholly unaffected by insolvency. We say
 9 that is way too broad and doesn't in any way meet the
 10 points that we have just been looking at. The
 11 suggestion is it operates only as a procedural stay on
 12 particular creditors' ability to execute against the
 13 assets, while leaving the claims fully in place and
 14 unaffected and unchanged so, if there is ultimately
 15 a surplus, they can come back and assert their
 16 underlying contractual rights. We say that is
 17 completely at odds with the statutory scheme.
 18 First of all they rely in this regard on the
 19 Wight v Eckhardt case and it is worth just looking at
 20 that. That is in F1, tab 23.
 21 LORD NEUBERGER: Yes.
 22 MR MILES: This was a case about a seller of a boat, a
 23 vessel, to a buyer in Bangladesh and the price was to be
 24 paid by a letter of credit and also for the buyer to
 25 provide a deposit as a guarantee in a Bangladesh branch

Page 61

1 of the bank, which happened to be BCCI.
 2 BCCI itself is incorporated in the Cayman Islands.
 3 The buyer procured the letter of guarantee from the bank
 4 but then all of the branches of the bank were closed by
 5 the banking regulators and the buyer didn't then open
 6 the letter of credit, so the company claimed under the
 7 guarantee.
 8 Then the dates are important. In January 1992 the
 9 bank in Cayman was wound up, the company lodged a proof
 10 in the winding up in Cayman and then in August 1992, so
 11 after the commencement of the winding up, there was
 12 a scheme established under Bangladeshi law divesting all
 13 of the assets and liabilities of the branches in
 14 Bangladesh in a new bank, and as the Privy Council in
 15 this case decided, that had the effect of discharging
 16 the original liabilities and replacing them with a new
 17 liability owed by a new bank in Bangladesh.
 18 The liquidators in Cayman then rejected the proof in
 19 the Cayman liquidation and the company claimant, or
 20 applicant, argued that it had -- this was its
 21 argument -- that it had a vested right to prove in the
 22 Cayman liquidation which had arisen as a matter of law
 23 because of the winding up, and that replaced the
 24 underlying contract, and therefore that the right to
 25 prove, as they put it, was unaffected by the Bangladeshi

Page 62

1 scheme.
 2 The Privy Council held that under the proper law of
 3 the contract (Inaudible) the bank was discharged from
 4 the scheme and, because of that, the proof in the Cayman
 5 liquidation was properly rejected because there can
 6 always be a discharge of a debt after the liquidation
 7 date in accordance with the proper law. So that was the
 8 decision.
 9 The passage which is particularly relied upon starts
 10 at paragraph 27.
 11 LORD NEUBERGER: Thank you.
 12 MR MILES: But it is perhaps worth just going back to 26.
 13 LORD NEUBERGER: Yes.
 14 MR MILES: Or even perhaps back to 22, to see what argument
 15 was actually being advanced. It is really the argument
 16 that, because of the Ayerst decision, the claims of
 17 creditors are somehow turned into something else. They
 18 become the right to prove in the (Inaudible), so it was
 19 is a sort of metaphysical argument, really, that the
 20 real nature of the claim was transformed by the winding
 21 up into some other legal thing, and that is the argument
 22 Lord Hoffmann, we suggest, was addressing in
 23 paragraph 27. If I could perhaps just invite you to
 24 read that paragraph and then I will make a submission on
 25 it.

Page 63

1 (Pause)
 2 LORD NEUBERGER: Yes.
 3 MR MILES: Also, if we just look at the other part his
 4 reasoning, which is in 31 and 32, essentially what he
 5 was saying there was that, just in the way that
 6 a contingent debt can be shown to be worth more because
 7 of contingencies arising during the course of the
 8 winding up, so they can obviously become less and indeed
 9 can disappear at all, altogether, and that is really the
 10 decision in the case.
 11 Just looking at 27, what he was saying there, we
 12 suggest, was that the winding up itself, the fact of the
 13 winding up, doesn't transform the claims, the
 14 contractual claims, into something completely different.
 15 That is why he says it doesn't either create new
 16 substantive rights in the creditors or destroy the old
 17 ones. Their debts, if they are owing, remain debts
 18 throughout.
 19 Well, we accept that. We are not saying there has
 20 been a transformation of the --
 21 LORD NEUBERGER: You say what he is dealing with is the
 22 effect of the wind up per se, he is not addressing what
 23 the effect of the winding up rules in any particular
 24 case is?
 25 MR MILES: Particularly in a case where payment is made,

Page 64

<p>1 except in the sentence where he then goes on to say they 2 are discharged by the winding up only to the extent that 3 they are paid out of dividends. 4 So we say that is exactly the point we are making. 5 They are affected, they are discharged here to the 6 extent that they are paid out of dividends, and since 7 the statute tells you who you to value the debt for the 8 purpose of payment, if it tells you the debt is worth 9 £100 and £100 is paid, the debt is discharged. 10 So we say that the Court of Appeal was rather sort 11 of beguiled by this case into thinking that there is 12 some general principle that the insolvency has no effect 13 on contractual rights. That is just entirely wrong. Of 14 course, as with any judge and judge's comments, they 15 always have to be read in the context of the case and we 16 suggest they have been ripped from their proper context. 17 Now, it is also instructive in this regard perhaps 18 to see how CVI seeks to frame the issue in this case. 19 If you look at the core volume C, tab 2, page 456 at 20 paragraph 6, the way they seek to frame the issue is to 21 say that the issue is whether, in such circumstances, 22 that surplus is to be applied in discharging the unpaid 23 balance of the creditors' foreign currency claims which 24 have not been satisfied as a result of the payment of 25 dividends in sterling, pursuant to the proof process, or</p> <p style="text-align: center;">Page 65</p>	<p>1 called somewhere, in some places, remission to contract 2 or reversion to contract -- 3 LORD NEUBERGER: Yes. 4 MR MILES: -- which you find in a series of cases, the most 5 famous of which is called Humber Ironworks. 6 LORD NEUBERGER: Yes. 7 MR MILES: That was concerned with interest and the decision 8 in the case was that post-liquidation interest was not 9 a provable debt, but where there was a surplus after the 10 payment of provable debts, creditors with contractual 11 rights to interest, only those with contractual rights 12 to interest, should be able then to rely on an old rule 13 that, where payments were made, dividends are 14 attributable first to interest and then to principle. 15 It is a rule which in this context is known as a rule in 16 Bower v Marris, but derives from a general principle 17 that a creditor can appropriate payments to interest. 18 LORD NEUBERGER: (Inaudible) particular applications of that 19 rule of appropriation. 20 MR MILES: And it is found also in the administration of 21 estates more generally, but that was the decision in 22 that case. 23 Now, there are a number of things to note about 24 that. First, the line of authority was concerned with 25 post-insolvency interest payable under contracts, not</p> <p style="text-align: center;">Page 67</p>
<p>1 is instead to be distributed to the shareholders of the 2 company. 3 Now, that way of putting it, there is a very 4 important assumption. The assumption is that payment in 5 sterling of claims converted into sterling by the 6 statute does not discharge the debt, the claim against 7 the company in the insolvency. In other words, the 8 really important point in this case is actually buried. 9 They don't (Inaudible), no doubt, because this way of 10 putting it is a helpful framing of the issue for them, 11 but if one reads all of this in another way and says, 12 well, the payment of £100 for the debt which has been 13 converted into £100 and 100 has been paid, what is there 14 left then? What is this unpaid balance? What is the 15 unpaid balance of the creditors' foreign currency claim? 16 It is also worth looking at paragraph 10 while we 17 are at this, looking at this document, because there 18 they put the matter in terms of a windfall to the 19 members but, again, that is, with respect, to assume the 20 very thing that this argument is about. If they have 21 been paid in full for claims that they make and they get 22 statutory interest, then there is no question of 23 windfall to anyone else. They have been paid in 24 accordance with the statutory scheme. 25 Now, they also rely on the concept which has been</p> <p style="text-align: center;">Page 66</p>	<p>1 more general, and on the recommendations of the Cork 2 Committee, the 1986 legislation of course made new 3 provision for statutory interest. That is rule 2.88, 4 which we have looked at. 5 For complete accuracy, I should say that is the 6 equivalent of the winding up rule which was then 7 introduced when -- 8 LORD NEUBERGER: Yes, you have told us. 9 MR MILES: The act was changed later, but I am going to keep 10 putting it that way, if I may. 11 Under that, as we have seen, that changed the law 12 very significantly. 13 LORD NEUBERGER: Yes. 14 MR MILES: First, in relation to pre-insolvency interest, it 15 is now possible to prove not merely if there was 16 a contractual right to it, but also if there isn't. So 17 creditors who did not have a contractual right can now 18 claim for that. 19 LORD NEUBERGER: Secondly, if you have a contractual right, 20 you can opt for the higher rate if you want. 21 MR MILES: There is a higher rate. 22 Secondly, where there is a surplus, as we have seen, 23 after the payment approved debts, it is to be divided 24 amongst the proved claims at the higher of the 25 contractual rate or judgment rate, and that is whether</p> <p style="text-align: center;">Page 68</p>

1 or not the debt is interest bearing. That is
 2 a completely new rule which you will find in any of
 3 the -- it does not come out of any of the previous case
 4 law. It is an entire different regime, in other words,
 5 from remission to contract.
 6 Lord Justice Lewison dealt with this point at
 7 paragraph 92, page 555.
 8 LORD NEUBERGER: He really makes your point. It might be
 9 said that this is against you, the legislature or the
 10 executive has dealt with the reversion to contract in
 11 relation to interest but it has not said anything about
 12 that in relation to currency or other things.
 13 MR MILES: But the only place where this was ever found in
 14 the case law was in relation to interest.
 15 LORD NEUBERGER: I understand that.
 16 MR MILES: It is a point which was considered essentially
 17 with the appropriation of payments, a rule in
 18 Bower v Marris, and the idea was that, if there is
 19 a surplus, it was possible then to revert the contract.
 20 LORD NEUBERGER: I understand.
 21 MR MILES: There is nothing in any of the cases, with the
 22 exception of one obiter comment, which we will come on
 23 to, which was an obiter comment of
 24 Lord Justice Brightman to suggest that there was
 25 a non-provable claim in relation to currency conversion.

Page 69

1 I will come back to that comment in due course, but the
 2 bigger answer to the point is that it makes sense to
 3 read all of these provisions together as part of
 4 a collection of provisions to do with the valuation of
 5 claims in an insolvency.
 6 Rule 2.86 is almost next door to rule 2.88. It is
 7 all part of the same collection claims, in the same way
 8 that the rule on set-off is concerned with the valuation
 9 of claims. They are all part of the same group of
 10 provisions.
 11 LORD NEUBERGER: I understand.
 12 MR MILES: What we do say is that the Cork Report looked at
 13 this question of the reversion to contract in relation
 14 to interest, it came up with a new regime -- reversion
 15 to contract has gone basically -- and we say that CVI is
 16 wrong when it says in its case that this provision in
 17 relation to post-liquidation interest did not make any
 18 fundamental changes. They even say it codified the
 19 existing law. That is obviously incorrect.
 20 While we were looking at Lord Justice Lewison's
 21 judgment, can we also just look at what he says about
 22 the reversion to contract theory in 95. Now, he is
 23 dealing here with contingent claims and this is a point
 24 I have already made --
 25 LORD NEUBERGER: You have already dealt with this, yes.

Page 70

1 MR MILES: I have but I want to just draw your attention to
 2 the last set, which I have not looked at yet.
 3 "I do not therefore consider that reversion to
 4 contract theory applies to provable claims."
 5 LORD NEUBERGER: Yes.
 6 MR MILES: The point that is being made here is that, where
 7 there was a reversion to contract theory, it was dealing
 8 with something which itself was not provable. That is
 9 to say the treatment of post-liquidation interest,
 10 effectively. That was not a provable claim, never has
 11 been, never was at the time of Humber Ironworks, or any
 12 of the cases on reversion to contract, and this is
 13 a important point, although it is only expressed very
 14 briefly by Lord Justice Lewison. There is no room, we
 15 say, for the reversion to contract theory in any case in
 16 relation to claims which themselves are provable.
 17 LORD NEUBERGER: Are you saying that invents a new concept
 18 of hybrid claims?
 19 MR MILES: Exactly.
 20 LORD NEUBERGER: I see your point. Thank you.
 21 Is that a convenient moment?
 22 MR MILES: It is a good moment.
 23 LORD NEUBERGER: We will resume again at 2.00. Thank you
 24 very much, Mr Miles.
 25 Court is now adjourned.

Page 71

1 (1.01 pm)
 2 (The Luncheon Adjournment)
 3 (2.00 pm)
 4 LORD NEUBERGER: Mr Miles.
 5 MR MILES: My Lords, the next point I was going to make was
 6 that, although CVI talk about remission to contract and
 7 reversion to contract, actually their argument does not
 8 involve remission to contract or reversion to contract,
 9 because that would involve you asking the question where
 10 would you have stood under the contract and comparing it
 11 to the position you would have been in in your
 12 insolvency.
 13 They don't try to do that, they try to isolate one
 14 element of the contract, and there are a whole series of
 15 different elements to it, namely the currency, and seek
 16 recoveries in respect of that. So, for example, by
 17 participating in the insolvency here, the creditors
 18 stand to receive statutory interest at the rate of,
 19 here, at least 8 per cent, being the judgment rate.
 20 Had they obtained judgment in foreign currency,
 21 which of course they could have done, post-Miliangos,
 22 they would not have obtained English statutory judgment
 23 rate, you get a rate of interest based on a commercial
 24 rate under the foreign currency. Here it would have
 25 been on average less than 4 per cent over the period in

Page 72

<p>1 question. So by participating in the administration, 2 they have benefited overall, even leaving aside their 3 current claims, so even leaving aside this currency 4 conversion claim which is brought. 5 So they are not seeking, as it were, an adjustment 6 of rights to bring them into line with where they would 7 have been outside the administration, they are asking 8 for something more. One can easily postulate other 9 examples. 10 As we have seen, if sterling appreciates against the 11 given currency, the creditor who proves stands to 12 benefit, so you could easily take a case where 13 a creditor has more than one claim even under the same 14 contract but in different currencies. There is no 15 suggestion that he would have to, as it were, give 16 credit for some benefit he had had under the statutory 17 scheme. 18 What they are saying is that they should be able to 19 bring this claim without bringing into account the 20 various benefits from it, and the Court of Appeal 21 accepted that argument. What they are not trying to do 22 is actually be remitted to the contractual position they 23 would have been in. 24 Now, this leads on to our second main submission, 25 which is that our interpretation of rule 2.86 and the</p> <p style="text-align: center;">Page 73</p>	<p>1 First, there are a number of possible stakeholders 2 who are affected by the currency conversion rule. There 3 are sterling creditors, who are also able to prove; 4 there are genuine, what you might call non-provable debt 5 debts; there are then those claimants whose claims are 6 subordinated by statute under rule 12(3)(ii)(a). There 7 are contractually subordinated creditors, there are 8 preferential shareholders, and, ultimately, equity 9 shareholders, ordinary shareholders. All of those have 10 a potential interest in the assets of the company, and 11 to the extent assets are extracted at a higher level 12 before it gets to them, they obviously lose out. 13 Now, to appeal in these circumstances to some sort 14 of concept of abstract fairness detached from the rules 15 we say is actually apt to mislead. We are dealing here 16 with an overall statutory scheme which inevitably 17 proceeds on the basis of general rules. 18 But take one example of those various stakeholders 19 I mentioned. Suppose you have a group of 20 non-preferential claimants, so perhaps the easiest case 21 to think of is the one in the T&N case that 22 Mr Justice David Richards looked at before the change in 23 the rules. So these are tort claimants who would have 24 a claim but the damage only occurred after the 25 insolvency date. We now know that the rules have been</p> <p style="text-align: center;">Page 75</p>
<p>1 other valuation rules in chapter 10, section C of the 2 1986 rules is an attempt by the legislature, we suggest, 3 to strike a fair balance between the interests of 4 foreign currency, creditors, as against the interests of 5 other creditors and members, and there are inevitably 6 where you have general rules of that kind going to be 7 winners and losers in any given concrete situation, but 8 the general rule is what embodies the legislature's view 9 of what is fair. These rules are also intended to 10 promote the aims of simplicity and expeditious 11 insolvencies, which is a point Lord Justice Lewison made 12 in his judgment. 13 Now, CVI -- again, rather like their reliance on 14 Wight v Eckhardt -- rely on this incredibly broad 15 argument that because generally members come after 16 members, it is self-evidently just, they say there, that 17 the foreign currency creditor should have another slug 18 of money before any surplus is returned to the members. 19 As I say, they present this as an overwhelming point 20 and, indeed, the majority of the Court of Appeal appears 21 to have been impressed by this point. But the general 22 proposition that members come after creditors, though 23 correct as far as it goes, does very little, we suggest, 24 to inform the debate on this point, and there are 25 a number of points here.</p> <p style="text-align: center;">Page 74</p>	<p>1 changed so they have been brought in as provable 2 claimants, but before that change they were non-provable 3 debt debts. 4 Now, take them for example. We say that an appeal 5 to some sort of idea of abstract justice does not take 6 you very far. Take the competition between them and the 7 foreign currency claims. If currency conversion claims 8 exist, the foreign currency claimants will, under the 9 hypothesis we are looking at, have been paid 10 100 per cent of their claims as valued by the statute 11 and they will have been paid full statutory interest on 12 the proved claims. But, it is being said, they should 13 then compete with non-provable claimants. 14 Now, if you start appealing to abstract concepts of 15 justice, you might very well say that is a highly 16 contentious position. You might even think it is wrong. 17 There doesn't seem to be any obvious reason why other 18 kinds of non-provable claimant should only come into 19 competition with these foreign currency claimants. 20 Indeed, we suggest that if you are going to make appeals 21 to abstract justice, it actually points the other way. 22 Lord Justice Lewison made essentially this point at 23 paragraph 96 of the judgment, at page 557, and we say 24 that he is right. He says at the end of that paragraph: 25 "Nor is there any reason to impose the risk of</p> <p style="text-align: center;">Page 76</p>

<p>1 currency fluctuations on creditors with non-provable 2 claims." 3 He must be right as a matter of policy. 4 LORD NEUBERGER: Yes. 5 MR MILES: Now, we also make the point that this is not just 6 a point that is restricted to the position of other 7 non-provable claimants. Indeed, we say that even as 8 regards members, so the people who are last, as it were, 9 they too have a legitimate interest in the assets of the 10 company and they are affected by the operation of the 11 rules as well. CVI says that they come last, so somehow 12 it is self-evidently just that, if there are claims, 13 they should be met, but one then asks the question, and 14 I go back to the example: what happens when sterling 15 appreciates? Sterling appreciates, the creditors with 16 foreign currency claims do better than they would have 17 done had there not been an administration, in other 18 words had the conversion not taken place. They stand to 19 get more money. 20 Now, take that example. Not only are the other 21 provable claimants affected, the sterling claimants, 22 affected by that, they get less of the dividend, but if 23 dividends are paid 100p in the pound and statutory 24 interest is paid on top of that, the members too lose 25 out from that. That is one of the consequences of</p> <p style="text-align: center;">Page 77</p>	<p>1 a commercial relationship. 2 So we say that Lord Justice Briggs gave far too much 3 weight in this particular context to the principle of 4 party autonomy and ignored the very important point that 5 the company is in administration. 6 CVI also relies on, as did the Court of Appeal, on 7 the passage which no doubt you have seen from 8 Lines Brothers, which was in the Court of Appeal and it 9 is the obiter passage -- 10 LORD NEUBERGER: Yes. 11 MR MILES: -- in Lord Justice Brightman. That is in F1, 12 tab 15. 13 LORD NEUBERGER: Are the relevant passages quoted in the 14 judgment or not? Okay, take us to the -- 15 MR MILES: Do you mind if I take you to the judgment? I'm 16 not sure that they're -- 17 LORD NEUBERGER: Where do we go? 18 MR MILES: It is F1, tab 15. 19 LORD NEUBERGER: Thank you. Yes. 20 MR MILES: And the passage is at 1370/1371. It is important 21 to bear in mind this is all pre-1986, so it is before 22 the 1986 legislative changes, and it is before, 23 therefore, any statutory rule on currency conversion. 24 There was no rule. 25 It was a creditors voluntary liquidation and the</p> <p style="text-align: center;">Page 79</p>
<p>1 rules. 2 The members have got, if you like, a contingent 3 interest in the assets of the company, just as 4 subordinated creditors have, and there is no reason, we 5 say, in abstract justice, why, if they get more when the 6 currency appreciates, they should not also be affected 7 when the currency depreciates. It is simply the affect 8 of the application of general rules to creditors' 9 claims. 10 Lord Justice Briggs seemed to think that there was 11 an important point in favour of the foreign currency 12 claimants, namely that they bargained for payment in the 13 foreign currency. But while that is a fair point to 14 make outside an insolvency, it just does not accommodate 15 the problems which arise once the statutory insolvency 16 regime comes into application. One can meet the point 17 by saying that the creditor has contracted with 18 a borrower which is subject, in the event of the 19 relevant (Inaudible) supervening to English case law. 20 It is an English registered company and, therefore, it 21 is always subject to that happening. 22 What happens where you have a liquidation or 23 administration is that these general rules of valuation 24 come into play, and you are then in a different position 25 from that simply between debtor and creditor in</p> <p style="text-align: center;">Page 78</p>	<p>1 company owed 18.5 million Swiss Francs to a bank. The 2 liquidators, following a practice which had been 3 followed for about 100 years before then, converted all 4 the foreign currency claims to sterling at the date of 5 the winding up and paid dividends in sterling. Sterling 6 then depreciated and, after the payment of provable 7 debts, there remained a surplus. 8 The question that the Court of Appeal dealt with was 9 whether that surplus should go to pay post-liquidation 10 interest to creditors under the principles in 11 Humber Ironworks or whether it should be paid to the 12 bank in respect of the fluctuations in currency, and the 13 Court of Appeal held that the surplus should be paid to 14 creditors for post-liquidation interest. 15 So that was the decision in the case, and indeed it 16 appears from the argument that the liquidators didn't 17 appear, as far as the report is concerned, to then run 18 any argument on what would have happened if there was 19 still a surplus left after the payment of interest. 20 So everything that is said in this passage is 21 entirely obiter -- 22 LORD NEUBERGER: Right. 23 MR MILES: -- and we say rather tentative. But the passage 24 in question starts at H on 1370 and it goes as far as C 25 on 1371, and perhaps if I could invite you to read that.</p> <p style="text-align: center;">Page 80</p>

<p>1 (Pause).</p> <p>2 LORD NEUBERGER: In the end he sets out the argument and</p> <p>3 expresses his conclusion between F and G.</p> <p>4 MR MILES: That's right.</p> <p>5 LORD NEUBERGER: You say it is tentative and obiter?</p> <p>6 MR MILES: We say that and we make another point, and this</p> <p>7 is really the reason I have taken you to the passage.</p> <p>8 LORD NEUBERGER: Yes.</p> <p>9 MR MILES: If you look at the point which was being pressed</p> <p>10 by Mr Stubbs on behalf of the bank -- and you can see</p> <p>11 this between B and C on page 1371 -- he deals with the</p> <p>12 case where sterling falls against the Swiss currency,</p> <p>13 but then he says:</p> <p>14 "Per contra, if sterling had been revalued upwards,</p> <p>15 it would, it is said, be open to the liquidator, like</p> <p>16 any other foreign currency debtor, to discharge the</p> <p>17 company's obligation in the currency of the contract, so</p> <p>18 in the end the foreign currency creditor will get the</p> <p>19 worst of both worlds. He will gain nothing if the</p> <p>20 exchange rate moves against the currency of the contract</p> <p>21 and he will lose if it moves in favour of the currency</p> <p>22 of the contract."</p> <p>23 So, in other words, the argument that was being</p> <p>24 advanced was that it was a win/win for the liquidator:</p> <p>25 you win if the currency goes up, you win if it goes</p> <p style="text-align: center;">Page 81</p>	<p>1 an officeholder to manipulate exchange rates to the</p> <p>2 detriment of the foreign currency creditor in the way</p> <p>3 that was submitted to the Court of Appeal in</p> <p>4 Lines Brothers. The officeholder must pay foreign</p> <p>5 currency debts in sterling at the rate of exchange</p> <p>6 prevailing at the date of conversion whether the</p> <p>7 exchange rate moves for or against the foreign</p> <p>8 currency."</p> <p>9 So we say that that passage, which is much relied</p> <p>10 upon by the Court of Appeal in this case, really doesn't</p> <p>11 provide any great assistance when one is dealing with</p> <p>12 the 1986 legislation.</p> <p>13 The next point I wanted to make is if, having seen</p> <p>14 all of that, you then look at the text and context of</p> <p>15 rule 2.86, that supports the conclusion that there is no</p> <p>16 room for a further claim once the sterling amount</p> <p>17 required to be paid has been paid in full.</p> <p>18 Now, the starting point when considering the</p> <p>19 interpretation of the 1986 legislation is that it is to</p> <p>20 be read as a new departure and not as if the previous</p> <p>21 law applied.</p> <p>22 Authority for that can be found in a decision of</p> <p>23 Mr Justice David Richards in a follow up to this case,</p> <p>24 which is known as Waterfall IIA, which you will find --</p> <p>25 I don't ask you to look at it now -- at F1, tab 14,</p> <p style="text-align: center;">Page 83</p>
<p>1 down, and the argument was being made it was a lose/lose</p> <p>2 for the creditor.</p> <p>3 Now, that is an interesting argument, but it doesn't</p> <p>4 apply to the situation we are dealing with. If the</p> <p>5 currency appreciates, the liquidator cannot then pay the</p> <p>6 creditor in Swiss Francs, he has to pay dividends in</p> <p>7 sterling. That is what the rule is telling you.</p> <p>8 The creditor is able to say, "No, I want sterling.</p> <p>9 I want all of my money, please. It has been converted</p> <p>10 under rule 2.86 and I want it. That is my entitlement.</p> <p>11 You cannot fob me off by giving me Swiss Francs."</p> <p>12 So the hypothesis on which this argument was put to</p> <p>13 the Court of Appeal was not a hypothesis which is</p> <p>14 available under the 1986 legislation. It is not</p> <p>15 a win/win; it is a win/lose. And that is an important</p> <p>16 point when you are considering this argument -- again,</p> <p>17 it is an argument based on some sort of broad principle</p> <p>18 of fairness.</p> <p>19 Lord Justice Lewison noted that point in</p> <p>20 paragraph 78, and made the point which had been advanced</p> <p>21 by Mr Wolfson, at that stage, that he agrees with</p> <p>22 Mr Wolfson that:</p> <p>23 "Intervention of the rules providing for currency</p> <p>24 conversion have removed the premise upon which the</p> <p>25 proposed solution depends. It is not open to</p> <p style="text-align: center;">Page 82</p>	<p>1 page 1325, paragraph 129.</p> <p>2 LORD NEUBERGER: Thank you.</p> <p>3 MR MILES: We also note from paragraph 86 of</p> <p>4 Lord Justice Lewison's judgment that one of the express</p> <p>5 policy objectives of the 1986 legislation was, and this</p> <p>6 is quoting from the white paper, "to simplify, wherever</p> <p>7 possible, corporate and personal insolvency procedures".</p> <p>8 If you then go back to rule 2.86, and this is now</p> <p>9 dealing with effectively textual points, in F3, tab 74,</p> <p>10 at page 2011, the first thing to note about it is that</p> <p>11 it is mandatory, it is not something that arises at the</p> <p>12 option of the creditor. It is saying that --</p> <p>13 LORD NEUBERGER: Yes, but how does that help? Of course it</p> <p>14 has to be done, but the question is: what are the</p> <p>15 consequences?</p> <p>16 MR MILES: But my point, the point I am going to make, is</p> <p>17 like other rules, for example the set-off rule, which we</p> <p>18 have also looked at, it has mandatory effect.</p> <p>19 LORD NEUBERGER: Yes.</p> <p>20 MR MILES: And it can work to the benefit or detriment of</p> <p>21 either. It is not optional.</p> <p>22 LORD NEUBERGER: We have all that, yes.</p> <p>23 MR MILES: The next point is that the rule itself doesn't</p> <p>24 hint at the existence of a secondary claim if there is</p> <p>25 a surplus. By contrast, you will see that there is</p> <p style="text-align: center;">Page 84</p>

1 a rule which deals with surplus expressly, which is
2 2.88(7), which tells you what happens in respect of
3 surplus.
4 Now, the third point is that this is to be read
5 together with rule 2.72, 1994 --
6 LORD NEUBERGER: Yes.
7 MR MILES: -- which we looked at before, which tells you
8 what it means to prove in an administration. That means
9 essentially claiming in writing to be a creditor of the
10 company.
11 LORD NEUBERGER: Recovery of debt in whole or in part, is
12 the point.
13 MR MILES: Yes. The reason for those words that you have
14 just picked up, Lord Neuberger, is that if you hold
15 security, you are not required to prove --
16 LORD NEUBERGER: Absolutely.
17 MR MILES: You can choose to hang on to your security and
18 you can prove in part for your debt, which is why
19 someone would do it. Obviously that is not what we are
20 dealing with here. They have proved in full for their
21 claim in foreign currency and the question is: what is
22 the consequence of that?
23 Now, going back to 286, having just seen that rule
24 on proving, the Court of Appeal was very struck, it
25 appears, by the words "for the purpose of proving

Page 85

1 a debt". Lord Justice Briggs regarded that, it seems,
2 as a highly important point at paragraph 148 of his
3 judgment.
4 Now, one has to ask oneself the question: where
5 would this go to? It appears that what is being said is
6 that those words, "for the purpose of proving a debt",
7 are to be read as meaning something like, "for the
8 purpose of proving but not for the purpose of bringing
9 a non-provable claim in respect of the same debt".
10 Something like that. In other words, they are to be
11 read as limiting words or as words designed to reserve
12 a different kind of claim.
13 Now, we suggest that the words just cannot carry
14 anything like that weight. If you read it together with
15 2.72, which is the rule we just looked at on proving,
16 "for the purpose of proving a debt" simply means in
17 a case where a person is claiming to be a creditor of
18 the company in the foreign currency. It then says,
19 where that is happening, the amount of the debt which he
20 is claiming shall be converted into sterling. That is
21 the natural way of reading this. It just means where
22 the person, the creditor, has claimed payment in respect
23 of a foreign currency debt. It shall then be converted.
24 That is the first point, and that is quite a simple
25 textual point.

Page 86

1 The second point is we say it cannot seriously be
2 suggested that when setting out these words, when what
3 the draughtsman had in mind was that the claimant could
4 bring both a provable claim and a non-provable claim in
5 respect of the same debt, and, therefore, by using these
6 words, he was deliberately leaving open the non-provable
7 bit of it but saying this rule only applies to the
8 provable bit. We say that is a really farfetched
9 submission. They are not actually limiting words at
10 all, they are not intended to preserve something, they
11 are just describing the subject matter of the claim
12 brought by the claimant in the foreign currency. They
13 are just descriptive words.
14 If you think perhaps they are intended to provide
15 some limit, there is another way of explaining it, which
16 is to say that this rule doesn't affect the position of,
17 for example, sureties or co-debtors or security and it
18 preserves the position in relation to those.
19 But we say you don't even need that, it is just
20 a description of the subject matter of the rule, and all
21 it is saying is where the creditor is claiming in
22 respect of a foreign currency debt, it shall be
23 converted. It is nothing more than that.
24 So we say that the Court of Appeal were really
25 misled by these words into thinking there was more in

Page 87

1 this claim than there really is.
2 The third point on the words is that
3 Lord Justice Briggs drew a distinction between this
4 wording and the wording in 2.85, which he accepted had
5 substantive effect. That is the rule on set-off. He
6 said that the rule on set-off doesn't contain the same
7 kind of phrase for the purpose of proving a debt.
8 But if you look at rule 2.85 which starts at
9 page 2008, we have looked at this already, but you will
10 see at sub-rule (8) that it says:
11 "Only the balance, if any, of the account owed to
12 the creditor provable in the administration."
13 And he accepts that that reflects a rule of
14 substantive effect, but it uses the language of
15 provability. It says that only the balance shall be
16 provable, and we say that, in substance, that is no
17 different from the opening words of 2.86, which talk
18 about something being for the purpose of proving a debt.
19 So we say, again, that if you do look at the other
20 rules, including those which are acknowledged to have
21 substantive effect, the same language of provability
22 applies.
23 The same can be said of the rule on contingent claim
24 at 2.81, that is page 2004, where you will see that in
25 rule 2 it says:

Page 88

<p>1 "Where the value of a debt is estimated under this 2 rule, the amount provable in the administration in the 3 case of that debt is valid(?) the estimate for the time 4 being." 5 This repeated refrain of provability is only saying 6 that the amount that can be claimed in the 7 administration is that amount. 8 LORD NEUBERGER: Yes. 9 MR MILES: We also rely on the historical background to 10 this, reports of the Law Commission and Cork Committee. 11 We have set that out, or rather it is probably better to 12 say Lord Justice Lewison set that out in his judgment 13 and summarised their effect in paragraph 85 of the 14 judgment. 15 He sets out the relevant passages at paragraph 65 16 which is a passage from the Cork report. He goes 17 through this historically, dealing with the cases there 18 were at that point, and at 82, where he deals with 19 a report of the Law Commission which was 20 in October 1983, and he comes to the conclusion that 21 they support the view that there was, as it were, to be 22 no compensation for foreign currency creditors where 23 there was depreciation of the currency. 24 Lord Justice Briggs, as far as the statutory background 25 went or the history went, agreed at paragraph 156 that</p> <p style="text-align: center;">Page 89</p>	<p>1 make, is that the absence of any statutory machinery for 2 dealing with the claims which are now asserted, these 3 currency conversion claims, or their ranking against 4 other claims, also tells against their existence. 5 There is nothing in the statute to tell you how you 6 would value these claims or when they should be valued 7 or when they should be paid, and the contrast with the 8 position of provable claims under chapter 10 here is 9 striking. It sets out in prescriptive terms how claims 10 are to be valued and how they are to be paid. 11 Now, this is something which is rather brushed aside 12 and Lord Justice Briggs was inclined to say it was 13 something that could be sorted out by the chancery 14 judges, but, with respect, that is rather to miss the 15 point. It is the absence of any statutory provisions 16 about any of these points which is so striking. 17 I have already touched in the context of questions 18 of fairness on these points, but it is entirely unclear 19 how this would work. 20 Go back to the example of the tort claimants in the 21 T&N case. Supposing that they brought claims late on in 22 the administration. How are their claims on the Court 23 of Appeal's approach to be dealt with as against 24 currency conversion claims? How do you select a date 25 for valuing the claims in order to try and create some</p> <p style="text-align: center;">Page 91</p>
<p>1 it supported the interpretation that we are putting 2 forward. But as I say, he was rather impressed, it 3 seems, by the words for "for the purpose of proving", 4 which we say just don't have the impact that he thought 5 at all. 6 Now, we have set out the history in our case at 7 paragraph 78 and following and I am not going to go you 8 through that again. The main answer that CVI come up 9 with is to make the rather implausible suggestion, we 10 suggest, that when the Law Commission reported 11 in October 1983 and referred to the current state of the 12 law, or rather the present law, they had quoted that 13 obiter passage from Lord Justice Brightman and they say, 14 oh, well, the present law includes the obiter comment of 15 Lord Justice Brightman. But we suggest that is quite 16 an implausible reading of it, because in their report at 17 paragraph 2.23, which you will find at F8, tab 10, 18 page 3820, what they actually said was that there was no 19 direct authority on the point and they pointed out that 20 what Lord Justice Brightman had said was obiter. So it 21 is very unlikely that they took the view that his 22 comments represented the present law. 23 So we say that the interpretation we put forward is 24 strongly supported by the legislative background. 25 The next point, the next main submission I wanted to</p> <p style="text-align: center;">Page 90</p>	<p>1 sort of idea of fairness? How do you decide on the 2 ranking of those claims? There is not a hint of it in 3 the statute and we say that the lack of anything about 4 this in the statute is telling. 5 Lord Justice Lewison dealt with this at 6 paragraph 96, page 557. You have looked at that already 7 but this is dealing with a slightly different point, 8 which is that, as he says about two-thirds down the 9 paragraph: 10 "It is not provided for in the rules and it is 11 impossible to see what would be the appropriate date in 12 order to do justice as between different classes of 13 non-provable claim." 14 There is nothing in the statute which gives you the 15 answer to that. 16 Contrast the position of the claims regarded as they 17 properly are as provable claims, there is an absolutely 18 basic principle of insolvency law that they are all 19 valued as at the cut-off date. That is the key way that 20 you try and create a pari passu distribution. There is 21 nothing like that in relation to these claims. Are they 22 simply valued when they are asserted? Are they to be 23 valued when they are paid? How does that apply if you 24 have a series of non-provable claims coming in? 25 We say the absence of anything that even gives you</p> <p style="text-align: center;">Page 92</p>

<p>1 a clue as to how to deal with that is very striking. It 2 is not enough, as Lord Justice Briggs said, to say, 3 well, it is something that could be worked out on a case 4 by case basis. It doesn't meet the point. 5 LORD REED: Can I ask you, Lord Justice Lewison made what 6 I read as being a rather more fundamental point on the 7 basis of or by reference to Lord Justice Oliver's 8 judgment in Lines, the point being that debt or 9 liability are defined as meaning debt or liability to 10 which the company is subject at the date on which it 11 goes into administration, and it is said it is 12 a misreading of Miliangos to think that because 13 a contract requires \$1,000 to be paid, therefore the 14 company's liability is \$1,000; the liability is the 15 sterling equivalent. 16 So if what you are concerned with is a liability to 17 which the company is subject at the date it goes into 18 administration, then the liability is the sterling 19 equivalent of \$1,000 on that date, and if you pay that 20 amount, you have discharged the liability. That is the 21 rather -- 22 MR MILES: Yes. I am grateful. In a way, that goes back to 23 the very first point I was making, but I agree with 24 that. He used the example also of, I think, an amount 25 of gold, didn't he?</p> <p style="text-align: center;">Page 93</p>	<p>1 The theory which is now being advanced in the 2 current case would go against that and would go against 3 that in a very important way because what it does is to 4 allow the assertion of various claims based on the idea 5 that parties have contractual rights which are not 6 affected by the insolvency and then to assert them. 7 There is the currency claims in this case, of 8 course, but in Waterfall IIA, which was a subsequent 9 decision of -- 10 LORD NEUBERGER: You have referred to it already, yes. 11 MR MILES: I have referred to that already. I will just 12 give you the reference. That is in F1, tab 14. 13 A number of other related arguments were run. So, 14 for example, it was argued that the principle which 15 I have already described of Bower v Marris, which is the 16 idea of appropriation of debts, first against interest 17 and then against principle, survives in the case where 18 there is a surplus, notwithstanding the terms rule 2.88. 19 Mr Justice David Richards rejected that argument. 20 There was also the argument that there is 21 a non-provable claim in respect of the delay in paying 22 statutory interest. You will have seen that statutory 23 interest is calculated in respect of the period from the 24 insolvency cut-off date up to the date of payment of the 25 debt in full, and there was an argument based on</p> <p style="text-align: center;">Page 95</p>
<p>1 LORD REED: Yes, you find that a bit earlier on in 2 Mr Justice Lewison's judgment. 3 MR MILES: That's right. 4 The next point -- 5 LORD NEUBERGER: Lord Justice Lewison really says that, 6 quite apart from the arguments you have been putting 7 forward on the rules and the wording, and the 8 conception, he says, the fundamental conception is 9 consistent with his contemplation of what the nature of 10 the debt is. 11 MR MILES: Yes. 12 LORD NEUBERGER: What the obligation is. 13 MR MILES: The next point I wanted to make is that if the 14 court does recognise the existence of these claims, and, 15 indeed, other non-provable claims in related areas based 16 on this idea of complete remission to contract, it would 17 undermine the policy objective of simplifying and 18 streamlining insolvency administrations. 19 Now, I don't suggest that that policy is an absolute 20 one because, of course, there are bound to be 21 complications in particular cases, but we have seen that 22 the trend of authority is to broaden the scope of what 23 is meant by provable and to encompass as much as 24 possible in the process of proof and the discharge of 25 debts through payment.</p> <p style="text-align: center;">Page 94</p>	<p>1 reversion to contract that if that was not as much as 2 the creditors would have got under their contract for 3 the whole period, then they can have another go. They 4 can claim again in respect of that. The judge also 5 rejected that argument. 6 There were also arguments based on the Sempra Metals 7 case, which is essentially another way of arguing for 8 interest on the basis that people should be compensated 9 for being kept out of their money. It is essentially 10 a contractual argument. 11 There was a whole series, in other words, of 12 arguments, not just currency conversion claims, which 13 were all being run on the basis of the reversion or 14 remission to contract theory. 15 We say that this goes against the grain of the 16 insolvency legislation, which is to bring as much as 17 possible into the ambit of the proof process and not to 18 leave these loose ends. We say that exactly the same 19 sort of reasoning as is being deployed in this case, the 20 idea of very broad interpretation of Wight v Eckhardt, 21 a very broad interpretation of the idea of reversion to 22 contract, leaves open all of these further claims. Some 23 of them probably have not even been thought of yet and 24 a lot of legal ingenuity has been put into coming up 25 with these claims, but the underlying principle of them</p> <p style="text-align: center;">Page 96</p>

<p>1 is the same.</p> <p>2 If this court recognises them in this case, what it</p> <p>3 is actually doing is opening the door to a whole series</p> <p>4 of non-provable claims. That is not said in <i>terrorem</i>,</p> <p>5 it is said because reading the statute in a sensible way</p> <p>6 does not, we say, leave open a hint that that is what</p> <p>7 the legislature intended. On the contrary, one of the</p> <p>8 legislative objectives was to simplify procedures and</p> <p>9 allow for the reasonably speedy winding up and</p> <p>10 administration of companies.</p> <p>11 Now, the next point is a slightly different</p> <p>12 character of point, which is that it is instructive to</p> <p>13 see the position in personal bankruptcy because we say</p> <p>14 that there is no room in personal bankruptcy for foreign</p> <p>15 currency claims and there is no reason to think that the</p> <p>16 legislature would have intended a different outcome for</p> <p>17 personal --</p> <p>18 LORD NEUBERGER: Is it common ground that there is no room?</p> <p>19 MR MILES: No.</p> <p>20 LORD NEUBERGER: It isn't?</p> <p>21 MR MILES: No, that is part of my submission.</p> <p>22 I will deal with this fairly --</p> <p>23 LORD NEUBERGER: It is a fairly --</p> <p>24 MR MILES: -- rapidly if I can.</p> <p>25 Shall I see if I can identify the point of</p> <p style="text-align: center;">Page 97</p>	<p>1 Then in the next tab, this is where we say the real</p> <p>2 dispute comes, section 330, final distribution:</p> <p>3 "When the trustee has realised all the bankruptcies</p> <p>4 stayed, or so much of it as can in the trustee's opinion</p> <p>5 be realised without needlessly protracting the</p> <p>6 trusteeship, he shall give notice at a prescribed moment</p> <p>7 of the intention to declare a final dividend or no</p> <p>8 dividend."</p> <p>9 And then, if you go down to 5, and this is where the</p> <p>10 real dispute is:</p> <p>11 "If a surplus remains after payment in full and with</p> <p>12 interest of all the bankrupt's creditors and the payment</p> <p>13 of the expenses of the bankruptcy, the bankrupt is</p> <p>14 entitled to the surplus."</p> <p>15 Now, in a bankruptcy, the bankrupt himself is then</p> <p>16 discharged from provable debts but not from non-provable</p> <p>17 debts. So the scheme is he gets the surplus under 335.</p> <p>18 LORD NEUBERGER: And he is then liable to be sued for</p> <p>19 non-provable debts.</p> <p>20 MR MILES: For non-provable debts but not provable debts.</p> <p>21 He gets complete discharge in respect of --</p> <p>22 LORD NEUBERGER: In a way, it brings us back to the same</p> <p>23 argument as we have here.</p> <p>24 MR MILES: It is not, with respect, because we say the</p> <p>25 answer to this is that -- this the first point -- in</p> <p style="text-align: center;">Page 99</p>
<p>1 difference between us?</p> <p>2 LORD NEUBERGER: That would be very helpful.</p> <p>3 MR MILES: I will just take you through this quite quickly.</p> <p>4 If you could start at F2 at tab 43, this is</p> <p>5 a general rule, which is that:</p> <p>6 "Wherever the trustee has sufficient funds in hand</p> <p>7 for the purpose, he shall, subject to retention of such</p> <p>8 sums as may be necessary for the expenses of bankruptcy,</p> <p>9 declare and distribute dividends amongst the creditors</p> <p>10 in respect of the bankruptcy debts which they have</p> <p>11 respectively proved."</p> <p>12 So proved debts. The concept of bankruptcy debts is</p> <p>13 defined in section 382, which is at 1806, tab 46 of the</p> <p>14 same bundle.</p> <p>15 LORD NEUBERGER: Yes.</p> <p>16 MR MILES: It is essentially in the same terms as rule 13.12</p> <p>17 of the insolvency rules. So what one is dealing with is</p> <p>18 provable debts.</p> <p>19 Then, if you could go back to tab 44, section 328</p> <p>20 sets out the priority of debts. So they will be</p> <p>21 essentially in (iii), debts which are neither</p> <p>22 preferential debts nor debts to which the next section</p> <p>23 applies, and then you will see in (iv), this is where</p> <p>24 the statutory interest comes in, bankruptcy, surplus,</p> <p>25 paid by way of statutory interest.</p> <p style="text-align: center;">Page 98</p>	<p>1 330(5), you have to ask yourself the question, first of</p> <p>2 all: what is meant by "all the bankrupt's creditors",</p> <p>3 and this is the first difference between us.</p> <p>4 CVI say that means the provable and non-provable</p> <p>5 creditors. So they say that it only goes back after</p> <p>6 payment of the creditors, including the non-provable</p> <p>7 creditors. But we say that is not a realistic</p> <p>8 interpretation when you go through the sequence of</p> <p>9 sections that we have just been through. It is clear</p> <p>10 that this is talking, we say, about provable creditors</p> <p>11 because they are the people to whom the distribution is</p> <p>12 to be made, and (5) simply follows on from (1) in this</p> <p>13 section, which is to do with paying a dividend, and the</p> <p>14 earlier provisions that we have seen, and in particular</p> <p>15 324 are clearly dealing only with provable debts.</p> <p>16 So we say that they are just wrong about that, that</p> <p>17 it is quite clear that this section, when it talks about</p> <p>18 "all the bankrupt's creditors", means the provable</p> <p>19 creditors, and it would be very odd were that not the</p> <p>20 case, the surplus goes back after payment of the</p> <p>21 provable creditors.</p> <p>22 As for the question of discharge, again, we say that</p> <p>23 the point is clear that what this is intending to do is</p> <p>24 say that the bankrupt is discharged from bankruptcy</p> <p>25 debts, and if you go back to the definition of that in</p> <p style="text-align: center;">Page 100</p>

1 382, he is discharged from all of these debts, and we
 2 say if you look at 382, one of the debts he is
 3 discharged from is the foreign currency claim because it
 4 is a debt or liability to which he was subject at the
 5 commencement of the bankruptcy, or a debt or liability
 6 to which he may become subject after commencement of the
 7 bankruptcy by reason of any obligation incurred before
 8 the commencement of the bankruptcy. So he is discharged
 9 from those and all of the surplus is paid over to him.
 10 So we say when you look at those sections together,
 11 they show that there is no room for a currency
 12 conversion claim in respect of person bankruptcy.
 13 LORD NEUBERGER: Have I missed something? You accept he
 14 remains liable for non-provable liabilities?
 15 MR MILES: I accept that -- it is probably better to put it
 16 this way around: he is discharged from all bankruptcy
 17 debts as defined in 382. That is --
 18 LORD NEUBERGER: What is really said against you is this
 19 doesn't apply ex hypothesi to non-provable debts, for
 20 which he remains liable, and then that brings one back
 21 to the point that it is said insofar as there is a claim
 22 for the balance, it is a non-provable debt.
 23 MR MILES: But then you have to find a way, we say, if that
 24 argument is right, of finding out how it does not fit
 25 within 382, which is the definition of bankruptcy debts.

Page 101

1 Because if he is discharged from the bankruptcy debts,
 2 which he is, if the claim would fall within 382, he is
 3 discharged from that.
 4 LORD NEUBERGER: For my part, it does seem to me that the
 5 arguments are not that dissimilar, and even if you are
 6 right on this, in the end, there are differences
 7 between --
 8 MR MILES: There are, but --
 9 LORD NEUBERGER: You say this is not a sensible difference
 10 to have.
 11 MR MILES: That's right. There are no policy reasons.
 12 LORD NEUBERGER: When the bankruptcy and winding up or
 13 administration provisions are drafted, they are drafted
 14 not all together with one eye on the other, and there
 15 will be occasional inconsistencies, but I see your
 16 point.
 17 MR MILES: There will be, but there is also a general
 18 underlying objective in the legislation to assimilate
 19 the two where possible.
 20 LORD NEUBERGER: Put it this way, if we are against you on
 21 your arguments so far, this is unlikely to get you home.
 22 MR MILES: If, on the other hand, you think that --
 23 LORD NEUBERGER: If we are with you, you get comfort from
 24 it.
 25 MR MILES: I think that is a fair way of putting it.

Page 102

1 LORD NEUBERGER: Okay.
 2 MR MILES: The final point that I wanted to make -- this is
 3 now quite a fundamental point, going back to the
 4 examination of the claims -- we suggest there is
 5 something essentially incoherent about the claim which
 6 is being run anyway.
 7 It seems that the claim has to be seen either as
 8 some sort of claim for compensation arising from the
 9 operation of the statutory regime itself, which is very
 10 difficult to imagine, or it is merely part of the proved
 11 claim. It is part of the proved claim no doubt
 12 expressed in the foreign currency that then remains
 13 unsatisfied by the payment of dividends expressed in
 14 that foreign currency. But that would appear simply to
 15 be the definition itself, the definition of a proved
 16 debt.
 17 LORD NEUBERGER: You say in a sense it is now you don't see
 18 it and now you do, or the other way round.
 19 MR MILES: Yes, and we say that is not legally coherent.
 20 If you go back to what is meant by a debt here, in
 21 F1, tab 6, 1184, this is the rule that you looked at in
 22 (Inaudible), a debt in relation to the winding up of a
 23 company, and it is applied, I should say, by (5) to
 24 administrations, means any of the following:
 25 "Any debt or liability to which a company is subject

Page 103

1 at the date at which it goes into liquidation, or any
 2 debt or liability to which the company may become
 3 subject after that date by reason of any obligation
 4 incurred before that date."
 5 If it falls within that, it is a proved debt. It is
 6 impossible to see really why it doesn't fall within (b),
 7 because what is being asserted is a claim, a debt or
 8 liability, to which the company may become subject after
 9 the date by reason of an obligation incurred before that
 10 date. But the reason the claim arises, they say, is,
 11 (1) because of the original debt, which is
 12 pre-liquidation or pre-administration, and (2) decline
 13 in the currency. So, in other words, it is just
 14 a contingent provable claim, if it exists at all.
 15 But, of course, it cannot be a provable claim
 16 because that would be legally absurd.
 17 LORD NEUBERGER: It is inherent in the present exchange rate
 18 that it doesn't.
 19 MR MILES: Yes, that that can happen, and the rules on what
 20 is provable tell you that you have to convert it into
 21 sterling. There cannot be, as it were, a second
 22 provable claim.
 23 Now, they try and get out of that argument by
 24 saying, well, it can't really be a provable claim
 25 because that would be contrary to the pari passu

Page 104

<p>1 principle and it would be contrary to the idea of there 2 being a single cut-off date, so they cannot do that. 3 That will not do because if it fits in the words, then 4 it just is a provable claim. You cannot say the words 5 don't really mean that for this kind of claim. It is 6 either within the words or it is not. 7 We say this whole claim is legally incoherent. If 8 it exists at all, it would have to be a provable claim, 9 but it cannot be a provable claim because that is 10 absurd. 11 Now, the other way of putting it is to say that it 12 is a claim for some sort of loss which arises from the 13 operation of the statute itself. Well, that cannot, we 14 say, be a sensible reading of the statute. If the 15 statute tells you how the valuation is to take place, it 16 cannot be sensible for there then to be a claim based on 17 the operation of a statute. 18 That seems to be the point, or that was a point 19 which, again, Lord Justice Lewison was struck by in 20 paragraph 100, again, this was -- 21 LORD NEUBERGER: One of his 10 points. 22 MR MILES: One of his 10 points of 12, or whatever. 23 It is the first of the points. The way he puts it 24 is to say there is only one contractual obligation. And 25 the liability contracted by that obligation is provable</p> <p style="text-align: center;">Page 105</p>	<p>1 LORD NEUBERGER: We are running half an hour ahead of 2 schedule. 3 MR MILES: Yes, we are. 4 MR WOLFSON: My Lord, we are. 5 LORD NEUBERGER: I hope we can accelerate rather than 6 decelerate as a result of that. 7 MR WOLFSON: I feel the pressure now and I have not actually 8 said anything yet. 9 LORD NEUBERGER: That is just what I meant you to do. 10 Submissions by MR WOLFSON 11 MR WOLFSON: As your Lordship will appreciate, I am 12 addressing your Lordships on the determination of the 13 Court of Appeal that if LBIE moves from its current 14 distributing administration into liquidation, statutory 15 interest which is payable in respect of the 16 administration period under rule 2.88(7) out of 17 a surplus in the hands of LBIE's administrators, but 18 which is not in fact paid by those administrators, will 19 remain payable under rule 2.88(7) in the liquidation. 20 LORD NEUBERGER: Yes. 21 MR WOLFSON: This essentially the Court of Appeal's order at 22 declaration 4, which your Lordships have in bundle D. 23 LORD NEUBERGER: Thank you. 24 MR WOLFSON: So the factual premise, which is an important 25 factual premise of these submissions, is that there is</p> <p style="text-align: center;">Page 107</p>
<p>1 in accordance with the rules. That is the point I have 2 just been making. 3 LORD NEUBERGER: Yes. 4 MR MILES: "I agree with Mr Snowdon that it is impossible to 5 suppose that when rule 2.86(1) and 4.91 [which is the 6 winding up equivalent] were introduced, parliament 7 intended to split a unitary obligation to pay a sum of 8 money in a foreign currency into two claims, one of 9 which was provable and the other which was not." 10 LORD NEUBERGER: That was all part of your hybrid debt 11 argument. 12 MR MILES: That's right, but if you regard it as being 13 somehow severable in that way, we say that is equally 14 legally incoherent. It is unthinkable that the 15 legislature could have intended that since it arises 16 from the operation of the statute itself. 17 We say there is a more fundamental incoherence, 18 which is that if it exists at all, it is actually the 19 definition of provable debt, which of course they cannot 20 actually say. 21 So, my Lords, those are my submissions in relation 22 to currency conversion. 23 LORD NEUBERGER: Thank you. 24 MR MILES: I am now going to hand over to Mr Wolfson, if 25 I may.</p> <p style="text-align: center;">Page 106</p>	<p>1 in LBIE's administration a substantial surplus out of 2 which statutory interest can be paid, but which the 3 administrators decide (a) not to pay and (b) also decide 4 to go into liquidation. 5 In summary, let me set out our three main 6 submissions in response to this. In summary, we say, 7 first, on a straightforward reading of the relevant 8 statutory provisions, governing the payment of interest 9 both in administration and in liquidation, those 10 provisions have the effect that statutory interests for 11 the period of the administration can only be paid by the 12 administrators. That is the first point. 13 The second point is that if LBIE goes into 14 liquidation, its liquidators are required to apply the 15 assets in accordance with the statutory waterfall in 16 a winding up, summarised by my Lord, Lord Neuberger, in 17 Re Nortel, and contrary to the Court of Appeal's 18 approach, statutory interest for the administration 19 period does not come at the top testify the liquidation 20 waterfall. 21 It is important to appreciate that the effect of the 22 Court of Appeal's decision is that statutory interest 23 for the administration period actually comes right at 24 the top of the liquidation waterfall, even before 25 expenses and before principal debt, and I will develop</p> <p style="text-align: center;">Page 108</p>

<p>1 that point later.</p> <p>2 We submit, contrary to that, as Lord Neuberger sets</p> <p>3 out in Re Nortel, statutory interest in fact ranks</p> <p>4 number 6 in that waterfall and then only for the</p> <p>5 liquidation period.</p> <p>6 Third, we seek to make a number of submissions as to</p> <p>7 the timing of the introduction of the relevant</p> <p>8 provisions into the insolvency legislation, and this is</p> <p>9 important because the relevant rule we are dealing with,</p> <p>10 2.88(7) was inserted into the insolvency rules in 2003.</p> <p>11 I think my learned friend Mr Miles might have said this</p> <p>12 morning that 2.88 came in 1996. 2.88(7) came in in 2003</p> <p>13 following the creation of the process of distributing</p> <p>14 administrations in the Enterprise Act 2002.</p> <p>15 As my Lord, Lord Neuberger said, these rules were</p> <p>16 amended and had to be amended to take account of two</p> <p>17 important points: first of all, the creation of</p> <p>18 distributing administrations, and, secondly, the fact</p> <p>19 that you can move from administration into liquidation</p> <p>20 and also from liquidation into administration.</p> <p>21 We submit that, consistent with that legislative</p> <p>22 history, rule 2.88(7) does not flout and indeed take</p> <p>23 precedence over the longstanding provisions of the 1986</p> <p>24 act, which have, since 1986, and largely in unamended</p> <p>25 form, provided for the priority of various classes of</p> <p style="text-align: center;">Page 109</p>	<p>1 Lordships have that at F1/2.</p> <p>2 It is critical in this regard to bear in mind that</p> <p>3 that provision was put in place in 1986 and has not been</p> <p>4 changed, so it was put in place before distributing</p> <p>5 administrations or moves between administration and</p> <p>6 liquidation were possible. Your Lordships see that</p> <p>7 under the heading, "This version in force from</p> <p>8 29 December 1986 to the present".</p> <p>9 LORD NEUBERGER: Yes.</p> <p>10 MR WOLFSON: So the issue arises which I am dealing with</p> <p>11 because section 189(2) has not been amended to provide</p> <p>12 for the statutory interest payable in the liquidation to</p> <p>13 cover also the period of a preceding liquidation. And</p> <p>14 this is unlike the converse case, unlike the case where</p> <p>15 a winding up precedes an administration, where rule</p> <p>16 2.88(7) has been amended by the insolvency amendment</p> <p>17 rules in 2010 so that statutory interest payable in the</p> <p>18 administration also extends to the period of the prior</p> <p>19 winding up.</p> <p>20 Your Lordships have that at F1/5, and your Lordships</p> <p>21 see that essentially what the draughtsman has done is to</p> <p>22 assert the concept of the relevant date.</p> <p>23 LORD NEUBERGER: Sorry, where are we looking?</p> <p>24 MR WOLFSON: F1/5, the revised 2.88.</p> <p>25 LORD NEUBERGER: I see. 1181, yes.</p> <p style="text-align: center;">Page 111</p>
<p>1 claims in liquidation, for example fixed charges,</p> <p>2 liquidation expenses and preferential creditors.</p> <p>3 Before developing those three points, let me say</p> <p>4 a word about how the issue arises because we submit it</p> <p>5 is important.</p> <p>6 The issue arises because of two related points.</p> <p>7 First, in a liquidation, and under rule 4.93(1), as</p> <p>8 applicable to LBIE's administration -- and the reference</p> <p>9 for that is F3, tab 53 -- interest is not provable as</p> <p>10 part of the debt insofar as it is payable for any period</p> <p>11 after the company went into liquidation, or, if the</p> <p>12 liquidation was immediately preceded by</p> <p>13 an administration, any period after the company entered</p> <p>14 administration.</p> <p>15 That is in F3, tab 53.</p> <p>16 LORD NEUBERGER: Page 1957, yes.</p> <p>17 MR WOLFSON: Sorry?</p> <p>18 LORD NEUBERGER: Page 1957.</p> <p>19 MR WOLFSON: Yes, that's right.</p> <p>20 That the first point. The second point is that</p> <p>21 under section 1892 of the 1986 act, which your Lordships</p> <p>22 have at F1, tab 2, that provides for the payment of</p> <p>23 statutory interest in a liquidation. That does not</p> <p>24 provide for statutory interest for the period of</p> <p>25 an administration preceding the winding up. Your</p> <p style="text-align: center;">Page 110</p>	<p>1 MR WOLFSON: 1181, exactly.</p> <p>2 LORD NEUBERGER: Yes.</p> <p>3 MR WOLFSON: And your Lordships see that, of course, what</p> <p>4 was done is you have the definition of the relevant date</p> <p>5 and that, essentially, is the prior insolvency process.</p> <p>6 So the effect of the legislation, to use the word</p> <p>7 which has been used in this case a number of times, is</p> <p>8 that there is a lacuna. I am happy to call it a lacuna</p> <p>9 but it is a pretty special sort of lacuna, which I will</p> <p>10 come back to in a moment. There have been in these</p> <p>11 proceedings three attempts to fill the lacuna.</p> <p>12 There is the attempt of the Court of Appeal, which</p> <p>13 is the point I am dealing with in these submissions, and</p> <p>14 they seek to fill the lacuna by saying that rule 2.88(7)</p> <p>15 continues to operate in the winding up after the</p> <p>16 administration has ended. That was the solution of the</p> <p>17 Court of Appeal.</p> <p>18 The solution of Mr Justice David Richards is the</p> <p>19 point raised on LBIE's second cross appeal. He sought</p> <p>20 to fill it by allowing the claim for interest for the</p> <p>21 administration period which arose otherwise than under</p> <p>22 2.88(7) to be treated as non-provable claims in the</p> <p>23 subsequent liquidation. That was his solution and</p> <p>24 I will deal with that by way of reply.</p> <p>25 LBIE now seek, by way of fall back, to promote</p> <p style="text-align: center;">Page 112</p>

<p>1 a third attempt to fill the lacuna, which is to allow 2 claims for statutory interest in the administration 3 period to give rise to provable claims in the 4 liquidation. 5 Until the (Inaudible) Court of Appeal, they conceded 6 that you could not run a provable claim argument, but 7 then they reversed out of that and they maintained that 8 position, and that is their first cross-appeal before 9 your Lordships. 10 LORD NEUBERGER: Are you dealing with all three points? 11 MR WOLFSON: I was proposing to deal mainly with the first 12 point. I will just say a word about the cross-appeals 13 and I will deal with them if I need to say any more in 14 the reply. We have set out our position on that in our 15 written cases and I will give your Lordships the 16 reference in a moment. 17 LORD NEUBERGER: Right. 18 MR WOLFSON: Essentially we say that the lacuna is not one 19 which the court should fill. 20 LORD NEUBERGER: On the whole, if possible, it would be 21 quite good to hear, albeit in abbreviated form, if you 22 want, the totality of your arguments on this issue. 23 MR WOLFSON: I am happy to do that, my Lord. 24 LORD NEUBERGER: If you want to keep them short, that will 25 not be objected to.</p> <p style="text-align: center;">Page 113</p>	<p>1 essentially, one has to look at the insolvency 2 legislation as a complete code and apply it. This is 3 not an area where, respectfully, the court should try to 4 rewrite primary legislation or create implied statutory 5 charges. 6 I am not sure whether I was write or wrong on the 7 Greek point. 8 LORD NEUBERGER: You were wrong. 9 MR WOLFSON: Oh no, I apologise. 10 LORD NEUBERGER: We can check. You can't, you are on your 11 feet. I think Lord Reed knew without looking up. 12 MR WOLFSON: I will try and move from classical languages to 13 the rather more mundane points on the applicable rules. 14 I was going to say a few words about the 15 cross-appeals but I will leave all that, if I may, until 16 after I have dealt with the Court of Appeal's approach. 17 As I said earlier, it is important, we submit, to 18 look at the legislative history and to appreciate how 19 this point has come about. Our essential point is that 20 section 189(2), there was nothing wrong with 21 section 189(2) when it was passed and it remains 22 unamended. The initial context, your Lordships will 23 appreciate, is a report of the Cork Committee, and your 24 Lordships have that in F8, and the introduction of 25 a complete code of post-insolvency interest, and then of</p> <p style="text-align: center;">Page 115</p>
<p>1 MR WOLFSON: My Lord, what I will do is I will deal with the 2 Court of Appeal solution first. 3 LORD NEUBERGER: Of course, that is the one you are 4 appealing, I quite understand. 5 MR WOLFSON: Exactly. 6 LORD NEUBERGER: Is that what we are turning to now then? 7 MR WOLFSON: Yes, I was just going to say a word about 8 calling it a lacuna. 9 The first point we make is your Lordships will 10 appreciate this is not a lacuna in the sense of a legal 11 black hole which inescapably and inevitably arises. 12 It is a lacuna which arises only if there is 13 a surplus and the administrators choose not to pay it 14 out and they go into liquidation. 15 LORD NEUBERGER: That's called a casus omissus. 16 MR WOLFSON: Yes, your Lordship is allowed to use Latin, but 17 I'm not sure I am allowed to use that anymore. 18 LORD NEUBERGER: You just did with "lacuna". 19 MR WOLFSON: I thought that was Greek, my Lord. 20 LORD NEUBERGER: Maybe it is. It probably is. 21 MR WOLFSON: We say what has been perceived to be a hard 22 case regarding interest on what remain these 23 hypothetical assumptions has led to bad law in the form 24 of Mr Justice David Richards declaration and paragraph 4 25 of the Court of Appeal's order, but we say that,</p> <p style="text-align: center;">Page 114</p>	<p>1 course we have the Enterprise Act 2002 distributing 2 administrations and moves between administration and 3 liquidation. 4 What the Cork Committee did was to identify the 5 anomaly at that time between the availability of 6 interest at 4 per cent in a bankrupt's estate and the 7 absence of any parallel provision in a company winding 8 up, and they recommended that there be a common set of 9 interest provisions in insolvency. For your Lordships' 10 note, the reference is F8, tab 3, pages 315 to 316. 11 Those provisions were accepted by the government 12 with one important change, and the important change was 13 this: as the legislation was passed, post-insolvency 14 interest is available -- this is a point my learned 15 friend Mr Miles is impressing on your Lordships -- at 16 the higher of the judgment rate and the contractual rate 17 otherwise applicable to the debt. 18 What we submit, therefore, was that the legislative 19 intent was to provide a complete code for 20 post-insolvency interest to be paid after the debt 21 proved in the insolvency on all such debts prior to any 22 return of the members. The complete change in the law 23 regarding post-insolvency interest is set out in 24 Mr Justice David Richards's judgment in Waterfall IIA, 25 which we have quoted in our case at paragraph 68 to 69.</p> <p style="text-align: center;">Page 116</p>

<p>1 The relevant rules applicable are set out in the same 2 judge's judgment in this case at D5, at paragraphs 18 3 and then 113 to 117. 4 LORD NEUBERGER: Which paragraph of Lord Justice Lewison's 5 judgment were you talking about? 6 MR WOLFSON: He starts at paragraph 102. 7 LORD NEUBERGER: Yes, thank you. 8 MR WOLFSON: So the first point I was going to look at was 9 section 189, which you have at paragraph 104. 10 LORD NEUBERGER: Yes I see, thank you. Yes. 11 MR WOLFSON: This was enacted in 1986 and it regulates 12 interest on debts in a winding up whether solvent or 13 insolvent. Paragraph 1, in a winding up -- he doesn't 14 set out paragraph 189, section 189(1), unfortunately. 15 For that you will have to go to F1, tab 2. There is 16 a point I want to make on section 189(1) because it says 17 this: 18 "In a winding up, interest is payable in accordance 19 with this section on any debt proved in the winding up, 20 including so much of such debt as represents interest on 21 the remainder." 22 And we emphasise the words "in accordance with this 23 section" because there is no indication in section 189 24 that interest is payable in a winding up otherwise than 25 in accordance with section 189. And that is certainly</p> <p style="text-align: center;">Page 117</p>	<p>1 company entered into administration." 2 So interests for the liquidation period and the 3 prior administration period would not be provable in 4 LBIE's winding up. 5 So, essentially, the scheme is that interest is 6 provable until the date of entry into an insolvency 7 process, but thereafter the recovery is regulated by 8 statute. 9 If LBIE therefore goes into liquidation after its 10 current administration, in the winding up, two points 11 will apply. First of all, pre-administration interest 12 and pre-liquidation interest will not be provable, that 13 is the effect of rule 4.93(1); and, secondly, statutory 14 interest under section 189(2) will only be payable for 15 the period of the liquidation and not the prior 16 administration. 17 So the present issue essentially arises because 18 section 189(2) has not been amended as rule 4.93 was. 19 Before Mr Justice David Richards, my learned friend 20 Mr Trace -- your Lordships will appreciate, the counsel 21 may change in this case, but the arguments remain 22 constant -- rose to the challenge, as the learned judge 23 put it, of suggesting a policy reason or two as to why 24 this might be the case. None of those policy reasons 25 impressed the learned judge.</p> <p style="text-align: center;">Page 119</p>
<p>1 the way it has been understood by the various 2 commentators. We have referred to Sealy & Milman, which 3 your Lordships have at F8, tab 17. 4 Section 189(2) is the provision which provides for a 5 statutory interest in a liquidation, payable out of 6 a surplus after payment of the debt proved in the 7 winding up, and only in respect of the periods during 8 which the debts have been outstanding since the company 9 went into liquidation. 10 Rule 4.93(1) describes the interest that can be 11 proved as part of a debt. Now, as originally enacted, 12 and your Lordships have this at F3, tab 51, rule 4.93 13 provided: 14 "Where a debt proved in the liquidation bears 15 interest, that interest is provable as part of the debt, 16 except insofar as it is payable in respect of any period 17 after the company went into liquidation." 18 So pre-liquidation interest is not provable. That 19 rule was amended following the Enterprise Act 2002 and 20 the amended form is at F3/53. 21 LORD NEUBERGER: Yes. 22 MR WOLFSON: Your Lordships see that what has been done is 23 to add the words in square brackets there: 24 "Or, if the liquidation was immediately preceded by 25 the administration, any period after the date that</p> <p style="text-align: center;">Page 118</p>	<p>1 We put it this way before your Lordships: we simply 2 don't know why section 189(2) has not been amended, 3 other than the obvious point that parliament is busy. 4 It is most likely an oversight, as Mr Justice David 5 Richards suggested in his judgment at paragraph 121, and 6 the learned judge is obviously also correct to note 7 that, procedurally, it is much easier to amend the rules 8 than it is to amend primary legislation. 9 It is fair to say that there have been opportunities 10 to address this lacuna. There has been quite a lot of 11 legislation in this area. The Deregulation Act 2015, 12 the Small Business, Enterprise and Employment Act 2015 13 also made changes to the administration and liquidation 14 regimes. But the central point for my submissions is 15 that section 189(2) has remained as it was and is since 16 enacted in 1986 and, as I say, before distributing 17 administrations and moves between administration 18 liquidation were made possible. 19 Therefore, we submit that this is not a case where 20 parliament made some mistake in drafting or enacting 21 section 189(2). Therefore, it is very different from 22 cases which we will come to later where this court has 23 set out the basis on which the court can correct 24 drafting errors in legislation. There was no drafting 25 error in section 189(2) at the time it was passed.</p> <p style="text-align: center;">Page 120</p>

<p>1 There was no lacuna at that time. 2 The lacuna has arisen because section 189(2) has not 3 been amended to take into account other later changes to 4 the rules. 5 That is the position as to payment of interest in 6 a liquidation. To turn to the rules governing payment 7 of interest and administration, just to show your 8 Lordships those provisions, that is obviously rule 2.88, 9 which is set out in Lord Justice Lewison's judgment just 10 in the next paragraph we were looking at. 11 LORD NEUBERGER: Yes. 12 MR WOLFSON: But, my Lords, can I ask your Lordships just to 13 take it up in F1 for this reason. 14 LORD NEUBERGER: Yes. 15 MR WOLFSON: If your Lordships take it at F1, which is 16 I think is where your Lordships were looking at it 17 earlier today -- 18 LORD NEUBERGER: That's right. 19 MR WOLFSON: -- my learned friend Mr Miles said correctly 20 that part 10 should really be chapter 10. 21 LORD NEUBERGER: Page 2013, yes. 22 MR WOLFSON: Page 1179, at least in mine. 23 LORD NEUBERGER: Is it "Interest in administration"? 24 MR WOLFSON: Yes, I am at 2.88(1), the version in force 25 from 1 April 2005 to 5 April 2010.</p> <p style="text-align: center;">Page 121</p>	<p>1 the company entered administration ..." 2 And then the square brackets have been added. 3 LORD NEUBERGER: Yes. 4 MR MILES: Then (7) is the surplus point. 5 LORD NEUBERGER: Again, we looked at that. 6 MR WOLFSON: I will come to that. We emphasise the words: 7 "... before being applied for any purpose, be 8 applied for paying interest on those debts in respect of 9 the periods during which they have been outstanding and 10 since the company entered administration." 11 The court obviously will have noted the similarity 12 of wording between 189(2) and 2.88(7), and I will come 13 back to that point as well. 14 LORD NEUBERGER: Okay. 15 MR WOLFSON: It is important to appreciate, as now occurs, 16 when the administration proceeds a liquidation, prior 17 to April 2010 there was a similar lacuna where there was 18 a winding up and then a subsequent administration, 19 because 2.88(7) only provided for payment of interest 20 since the date of entry into administration and didn't 21 extend to the period of the earlier liquidation. That 22 lacuna was remedied through the amendments to rule 2.88 23 made by the Insolvency (Amendment) Rules 2010, which 24 amended the relevant provisions to read -- and your 25 Lordship has it at F1, tab 5 -- it used the concept of</p> <p style="text-align: center;">Page 123</p>
<p>1 LORD NEUBERGER: Page 2013. I think that is where we looked 2 at it with Mr Miles. 3 MR WOLFSON: I am looking at F1, tab 4. 4 LORD NEUBERGER: Okay. 5 MR WOLFSON: I am sorry if it is in there twice. I'm happy 6 to use -- 7 LORD NEUBERGER: It doesn't matter, provided we are looking 8 at the same rule. 9 MR WOLFSON: Tab 74. 10 LORD NEUBERGER: It is probably sensible to keep on looking 11 at the same one on the same page. We did look at it 12 fairly closely with Mr Miles, you are right. 13 Yes. It doesn't matter, if you are saying the same 14 thing. 15 MR WOLFSON: The point I wanted to make on that before 16 turning to the substance was that your Lordships should 17 appreciate where it comes in the rules. First of all, 18 in part 2, administration procedure; secondly, 19 distributions to creditors; and, third, a section 20 dealing with quantification of claims. I will come back 21 to that point later. 22 2.88(1): 23 "Where a debt proved in the administration bears 24 interest, it is provable as part of the debt except 25 insofar as it is payable in respect of any period after</p> <p style="text-align: center;">Page 122</p>	<p>1 the relevant date. 2 So inserted 2.88(a)(i): 3 "The relevant date means the date on which the 4 company entered administration, or, if the 5 administration was preceded by a winding up, the date on 6 which the company went into liquidation." 7 And then 2.88(7) referred to the periods during 8 which they have been outstanding since the relevant 9 date, and so it cured the lacuna in a case where you 10 have a liquidation followed by an administration. 11 So by reason of this amendment to the rules, where 12 a company is in administration, you have the current 13 position. First, interest on debts is provable only 14 until such time as the company entered into 15 administration or a prior liquidation. Statutory 16 interest is payable on any debts from an available 17 surplus for the periods during which the company has 18 been in administration or, if earlier, liquidation. 19 But, of course, there has been no amendment to 189(2). 20 Turning now to the approach of LBIE and also of the 21 Court of Appeal, the Court of Appeal attempted to fill 22 this lacuna by determining that the requirement under 23 rule 2.88(7) to pay interest was not limited to 24 a direction to the administrator but was a statutory 25 instruction that the surplus cannot be applied for any</p> <p style="text-align: center;">Page 124</p>

<p>1 purpose other than paying statutory interest. That is 2 the way Lord Justice Lewison put it at paragraph 107, 3 essentially in the second and third sentences of 4 paragraph 107. 5 He went on in that paragraph to say that it was not 6 necessary to become, to use his phrase, "bogged down" in 7 selecting a suitable private law label for this 8 statutory instruction. 9 He used the word "burdened", if the surplus in the 10 hands of the administrator is burdened in this way, 11 there was no conflict with 189, and the reason for that 12 was: 13 "If the fund comes into the hands of the liquidator 14 burdened by an obligation to pay interests to creditors 15 who proved in the administration, so much of the fund as 16 must be applied for that purpose will not count in the 17 liquidation as making up part of any future surplus." 18 Lord Justice Briggs, as your Lordships will have 19 seen, goes a little bit further and makes a comparison 20 to a Quistclose trust. At paragraph 135, he says that 21 is the best way in legal terms of giving effect to the 22 clear legislative intent embodied in the provision. 23 Lord Justice Lewison recognised that rule 2.88(7) 24 can only entitle those who have proved in the 25 administration to statutory interest, and also that the</p> <p style="text-align: center;">Page 125</p>	<p>1 was not the right solution because the prevailing policy 2 is to limit non-provable claims. 3 Lord Justice Moore-Bick agreed with both other judges 4 and, of course, we support the Court of Appeal on that 5 point, ie the non-provable point. 6 Turning to what we submit are the problems with the 7 Court of Appeal's approach, I have tried to group them 8 under three heads. First, we say the Court of Appeal's 9 approach is inconsistent with the legislative scheme 10 and, in particular, the statutory waterfall in a winding 11 up. Second, we submit that the lacuna is one for the 12 legislature and not this court to resolve or fill. 13 Third, we submit that the approach of the Court of 14 Appeal gives rise to unjustifiable discrepancies in 15 practice, when one actually works out how it works in 16 practice. 17 To deal with those three areas, first of all, my 18 submissions on the inconsistency with the statutory 19 scheme. 20 The key problem, we submit, with the Court of 21 Appeal's approach is that the continued application of 22 rule 2.88(7) in a winding up is not what is provided for 23 by the statutory scheme and is inconsistent with that 24 scheme. The rules and the act provide two codes. There 25 is a code for distribution of assets by</p> <p style="text-align: center;">Page 127</p>
<p>1 Court of Appeal's interpretation of that rule would only 2 have practical affect in an administration that has 3 become a distributing administration. 4 The effect of those two points is that the Court of 5 Appeal's solution to the lacuna is at best only 6 a partial solution anyway because it cannot help people 7 who prove a liquidation following an administration and 8 it will not apply when an administration is 9 non-distributing. 10 Lord Justice Lewison recognised, of course, those 11 two points, but at paragraph 108, he said a limited 12 solution was better than no solution at all. 13 Lord Justice Briggs also acknowledged at 14 paragraph 135 that the Court of Appeal's approach does 15 not provide a complete answer to what he called the 16 puzzling lacuna thrown out by the combined effect of 17 section 189(2) and rule 4.93(1) where administration 18 proceeds liquidation, and ended by saying: 19 "I agree with my Lord, Lord Justice Lewison, the 20 sooner this inexplicable gap between contractual and 21 statutory interests is remedied by amendment to the act 22 or to the rules the better." 23 The other thing the Court of Appeal did was to say 24 that the invention of a new species of non-provable 25 claim, which was Mr Justice David Richards's solution,</p> <p style="text-align: center;">Page 126</p>	<p>1 an administrator, and there is a second and different 2 code for the distribution of assets by a liquidator. 3 There are different rules for interest in the 4 administration and the liquidation and rule 2.88(7) is 5 applicable in the administration. 6 Under that broad head, we make five separate points 7 which I will try and identify separately. They are 8 short points. 9 The first is that rule 2.88(7) is part of the 10 process of a distributing administration. I really made 11 this point already in the sense that I have shown your 12 Lordships that rule 2.88(7) was inserted into the rules 13 by the insolvency amendment rules in 2003, once 14 distributing administrations became possible. 15 To make that point good, the explanatory notes to 16 the 2003 rules, which your Lordships have at F3, tab 29, 17 and if your Lordships could just turn that up, your 18 Lordships see F3, tab 29, page 1907, in the third 19 paragraph on that page beginning, "The main amendment", 20 it makes the point that the reason why these rules are 21 being amended is to provide for distributing 22 administrations. That is why they were there. 23 LORD NEUBERGER: That is self-evident. Until then, the 24 administrators could not distribute and so there 25 wouldn't be -- yes.</p> <p style="text-align: center;">Page 128</p>

<p>1 MR WOLFSON: Exactly. And that point is also made in the 2 preamble to the 2003 rules themselves. That preamble, 3 which is at tab 28 of the same bundle, states that the 4 rules are made by the Lord Chancellor in exercise of the 5 powers conferred on him by sections 411 and 412 of the 6 Insolvency Act. I will come back to that point in 7 a moment. 8 2.88(7), as we have seen, is part of chapter 10 of 9 the new part 2 of the rules entitled "Administration 10 Procedure", and the scope of chapter 10 dealing with 11 distributions to creditors is made clear in a number of 12 sections. I can just refer to them, we don't need to go 13 to them. 14 First, rule 2.11(d), which provides that chapter 10 15 applies in respect of appointments of administrators in 16 the various ways, by a court, by a floating charge 17 holder, by the directors. 18 Second, rule 2.68(1) provides that chapter 10 19 applies where the administrator makes or proposes to 20 make a distribution to any class of creditors. 21 Third, section (b) of chapter 10, which sets out the 22 machinery of proving a debt in an administration. 23 So that is really why 2.88(7) was brought in in the 24 first place. 25 The second point deals with what we mean by the</p> <p style="text-align: center;">Page 129</p>	<p>1 appointed, the money remains in the company just as it 2 was before. 3 MR WOLFSON: Absolutely. The fact it may be the same person 4 is a happenstance. 5 LORD NEUBERGER: Quite. It would be very odd if this 6 applied differently depending whether the liquidator was 7 the previous administrator or not, yes. 8 MR WOLFSON: That cannot be right. 9 LORD NEUBERGER: I would not have thought so. 10 MR WOLFSON: Therefore, we submit it involves no 11 contravention of rule 2.88(7) because of this point, he 12 is not applying the assets for a different purpose at 13 all. 14 LORD NEUBERGER: Can it not be said that when the company 15 goes into liquidation, as it were, all the assets are 16 being, as it were, applied for the Ayerst purpose rather 17 than for the previous administration purpose? 18 MR WOLFSON: Well -- 19 LORD NEUBERGER: You say that is a misuse of the word 20 "apply". 21 MR WOLFSON: They are certainly not being applied by the 22 administrator for that purpose. 23 LORD NEUBERGER: It doesn't say who has to apply it, but you 24 say they are not being applied. It may be that they 25 will be applied but they are not being applied at that</p> <p style="text-align: center;">Page 131</p>
<p>1 vacation of office by an administrator. We submit that 2 if a company moves from administration to liquidation, 3 all that has happened, as far as the administrator is 4 concerned, is that he ceases to hold office and 5 relinquishes control of the asset as the company's agent 6 he was administering. 7 LORD NEUBERGER: Your point is this isn't before being 8 applied for any purpose? 9 MR WOLFSON: He is not applying it for any purpose at all, 10 absolutely, and that is made clear by the relevant 11 sections. On his appointment under paragraph 67 of 12 schedule B1, he takes custody and control of the assets, 13 but the assets remain the company's assets. They are 14 not his assets; they are the company's assets. He is 15 there to deal with them. The rules govern how he is 16 meant to manage the company's assets. 17 LORD NEUBERGER: That is true when the company goes into 18 liquidation as well. 19 MR WOLFSON: Absolutely. But the critical point for 2.88(7) 20 is that what you cannot do, says rule 2.88(7), is apply 21 the assets for any other purpose than in paying 22 interest. 23 LORD NEUBERGER: Your point is they are not being applied 24 for any purpose. When the administrator either changes 25 into liquidator or walks off and a new liquidator is</p> <p style="text-align: center;">Page 130</p>	<p>1 moment. 2 MR WOLFSON: They are not being applied and I will come in 3 a moment to the administrator point as well when I deal 4 with the statutory instruction point. 5 The third point we make under this head is the 6 liquidator is subject to a different regime. The 7 liquidator is subject to separate and specific 8 directions as to how to apply the assets, and of course 9 the assets which the liquidator is applying may or may 10 not be limited to the surplus left over from the 11 administration. There may well be new assets which come 12 into the pot during the liquidation. I mean, the 13 company may have sold the division and there is an earn 14 out which brings in future monies. A football club 15 might sell a player and, depending on how many goals 16 they score for the new club, there is an addition to the 17 transfer fee. 18 So it is not unusual for the scope of the assets in 19 the liquidation to be different to the surplus handed 20 over, so to speak, by the administrator. 21 LORD NEUBERGER: If you are right, can the administrator be 22 sued for failing to comply with 2.88(7)? 23 MR WOLFSON: My Lord, the position may well be, as your 24 Lordship considered in Nortel, that under section 74 of 25 B1, creditors who want to complain about something the</p> <p style="text-align: center;">Page 132</p>

<p>1 administrator has done or not done may well be able to 2 go to court and say, "This administrator has not 3 provided any good reason for not paying out statutory 4 interest in accordance with rule 2.88(7), he is 5 proposing go into liquidation without paying that out 6 and there is no good reason for it, we want an order 7 forcing him to pay out or preventing the company going 8 into liquidation". 9 So it is not as if the creditors are left with 10 simply no remedy, but it may well be that the 11 administrator says, "Actually, there are very good 12 reasons for why I am doing what I am doing and, looking 13 at the whole picture and not just the creditors who are 14 entitled to statutory interest, this is the right thing 15 to do". 16 LORD NEUBERGER: If that is right, he could not be said to 17 be in breach of his duty under 2.88(7), if that is the 18 right way of characterising it, from what Mr Miles said, 19 unless you say being applied means being applied by 20 anybody, even after the administration is over. 21 MR WOLFSON: We submit that being applied means being 22 applied by the administrator. 23 LORD NEUBERGER: That is really the issue, I suspect. 24 MR WOLFSON: It may well be, yes. 25 Certainly, and I will come to this point, one of the</p> <p style="text-align: center;">Page 133</p>	<p>1 which on this approach enures into the liquidation and, 2 indeed, means that he has to pay out that interest at 3 the very top of the waterfall, and we say that is 4 plainly wrong. 5 There is simply no indication in the provisions 6 governing the distribution of a company property and 7 a liquidation that statutory interest for the period of 8 an immediately prior administration is payable at the 9 top of the waterfall, which is the necessary effect of 10 LBIE's submissions. 11 LORD NEUBERGER: It is interesting that 2.88(7) is expressed 12 in the passive sense. It doesn't say "the administrator 13 shall", and I notice that in one or two of the 14 provisions, such as 2.96, admitting or rejecting proofs, 15 2.97 and 2.98, it is all in the active sense of the 16 administrator making payment. Are there any other 17 provisions that are expressed in the passive like 18 2.88(7)? 19 MR WOLFSON: My Lord, can I take that one for a little 20 research? 21 LORD NEUBERGER: On the face of it, one might say if it is 22 the contrast to the administrator of (Inaudible) that 23 maybe this is intended to have a wider application or 24 longer application not just applying to the 25 administrator?</p> <p style="text-align: center;">Page 135</p>
<p>1 points we say, and I will develop this in a minute, as 2 to the statutory instruction, the way the Court of 3 Appeal is to say this is a statutory instruction, we say 4 the whole point about an instruction is that you really 5 need two people, you need an instructor and somebody who 6 is being instructed, and the person who is being 7 instructed under rule 2.88(7) is the administrator. 8 LORD NEUBERGER: I see. 9 MR WOLFSON: But just to come back, and I will come back to 10 that point, but if I can just finish the point, I was 11 just starting about the liquidator being subject to 12 a different regime, we put it this way: the liquidator 13 has to follow the rules applicable in a liquidation. 14 If your Lordships would imagine a liquidator being 15 told, "You are now the liquidator of X Co", and the 16 liquidator thinks, "I better make sure I am able to 17 fulfil my function. I will go and dig out the rules 18 which will apply in this liquidation. So he gets the 19 relevant sections from the Insolvency Act and arms 20 himself wisely with a copy of my Lord, Lord Neuberger's 21 judgment in Re Nortel, so he knows what his waterfall 22 is. On the approach of the Court of Appeal, he also has 23 to arm himself not just with one chapter of the 24 insolvency rules dealing with administration, and not 25 only one part, but one subsection of one rule, 2.88(7),</p> <p style="text-align: center;">Page 134</p>	<p>1 That may prove to be a bad point if the other 2 provisions are to be expressed in the passive like this 3 which impose obligations on the administrator. 4 MR WOLFSON: I am happy to be corrected. I am not sure that 5 point has been previously raised, so I cannot answer it 6 on my feet. I see your Lordship's point. 7 The point I was on is if the statutory interest is 8 payable at the top of the liquidation waterfall, it 9 would ride roughshod over various provisions of the act 10 which provide for the priority of categories of claims 11 in a winding up. For example, section 115 dealing with 12 expenses, 175(1) about preferential debts, and in 13 section 107, which talks about the distribution of the 14 company's property and provides -- this is, for your 15 Lordship's note, F2, tab 18. 16 LORD NEUBERGER: Is this very surprising if the whole idea 17 was that the money should have been paid out before the 18 liquidation starts? 19 MR WOLFSON: If one says that the money has to be paid 20 out -- 21 LORD NEUBERGER: That is what one envisages. That is what 22 would make more commercial sense. You say it is 23 a lacuna. If it is a lacuna then you are implying that 24 you accept that that is what one would at least expect. 25 I accept if one takes it too far, it is pulling oneself</p> <p style="text-align: center;">Page 136</p>

<p>1 up by the bootstraps. 2 MR WOLFSON: Precisely. 3 LORD NEUBERGER: But I repeat the question: is it that 4 surprising that it ranks ahead if one would have 5 expected it to be paid out before the company goes into 6 liquidation? 7 MR WOLFSON: 2.88(7) doesn't say it must be done in all 8 circumstances, 2.88(7) says before it can be applied for 9 any other purpose, it must be done this way. 10 I think it becomes a little bit circular at this 11 stage. 12 LORD NEUBERGER: Fair enough. 13 MR WOLFSON: Of course, just to finish off this point, the 14 effect would be, if it is paid out at the top of the 15 waterfall, that this would rank above unsecured claims 16 to principle in the liquidation, because of course there 17 may be people who have not been able to claim for one 18 reason or another in the administration who are claiming 19 for the first time in the liquidation, for example 20 a tort claimant, and it might be thought to be 21 surprising that a creditor who has had his claim paid in 22 full gets statutory interest on his claim at 8 per cent 23 before the tort claimant, who has a principal claim in 24 the liquidation, actually gets anything at all. 25 Now, LBIE's attempt to answer this is to say that</p> <p style="text-align: center;">Page 137</p>	<p>1 part of the assets which he is dealing with in the 2 liquidation, and as I said earlier, the assets in the 3 liquidation may well be greater than the assets in the 4 administration. 5 Secondly, LBIE picks up the language of statutory 6 instruction, and to repeat the point I made a moment 7 ago, we say the important thing about 2.88(7), and 8 I will come back to your Lordship on the passive 9 language, we know who is doing the instructing, that is 10 parliament, but we submit that the person being 11 instructed is the administrator and not the liquidator. 12 LORD NEUBERGER: Yes. 13 MR WOLFSON: The fourth point is that rule 2.88(7), we 14 submit, does not create a statutory fund burden or 15 trust. We made the point in writing that where the act 16 intends for a charge to be imposed it says so expressly, 17 and we gave the example for paragraph 99 of schedule B1. 18 There is no such express provision here to create 19 a charge and we submit there is no scope for the 20 imposition of a trust otherwise. Mr Justice David 21 Richards was correct to say at paragraph 71 of his 22 judgment that rule 2.88(7): 23 "... does not create a proprietary or equitable 24 interest in the surplus in favour of those creditors. 25 Rule 2.88(7) is simply part of the statutory scheme for</p> <p style="text-align: center;">Page 139</p>
<p>1 what it calls the rule 2.88(7) fund "does not form part 2 of the liquidation estate". That is the way it is put 3 at paragraph 87 of their written case. 4 LORD NEUBERGER: This is consistent with a sort of 5 Quistclose trust, in other words. 6 MR WOLFSON: Essentially, yes, my Lord. We say, 7 respectfully, that beyond LBIE's say-so, there is no 8 basis for such a proposition. There is no carve out in 9 the mandatory and unqualified provisions which provide 10 the statutory scheme for distribution in a winding up to 11 exclude from the company's assets, assets which were 12 previously administered by the administrator and formed 13 a surplus in his hands after the payment of debts proved 14 in the administration. The company's assets, which the 15 liquidator takes control of, means all of the company's 16 assets and there is no segregated fund. 17 When LBIE propounds the defined term, "the rule 18 2.88(7) fund", it can give the impression that what we 19 are talking about here is some sort of segregated or 20 separate fund which is passed on to the liquidator 21 subject to some sort of purpose trust or charge, but we 22 submit there is simply nothing of the sort. It is just 23 part of the company's assets which, once the 24 administrator has ceased to run the administration and 25 vacates his office, the liquidator takes it and forms</p> <p style="text-align: center;">Page 138</p>	<p>1 distributing assets in a distributing administration." 2 On this point, LBIE's response at paragraph 88.1 of 3 its written case is: 4 "The fact that the statutory scheme is capable of 5 creating expressly an obligation binding on the assets 6 after they passed from the hands of the administrators 7 into the hands of the liquidator does not of itself 8 preclude the statutory regime from creating such 9 an obligation by necessary implication." 10 And we respectfully disagree on both parts of that 11 phrase. First of all, we disagree that any implication 12 would be necessary. Secondly, and more fundamentally, 13 perhaps, we take issue with the notion that this is 14 an area where obligations or charge-like interests 15 should arise by implication. On the contrary, this is 16 an area where certainty is essential and where 17 insolvency practitioners up and down the country have to 18 know clearly, and ought to be able to know just by 19 reading rules, what it is they ought to do, and we 20 shouldn't be implying charges or trusts into the 21 legislation at all. 22 As far as the Quistclose analogy of 23 Lord Justice Briggs is concerned in this context, and 24 dealing with this fairly quickly, we have set out in our 25 written case why we submit respectfully this is not</p> <p style="text-align: center;">Page 140</p>

1 a fair analogy. That is paragraph 34 and footnote 7.
 2 LBIE appears to agree that if rule 2.88(7) does give
 3 rise to a trust or statutory charge, then it doesn't
 4 comply with the formal requirements for a particular
 5 type of private law trust, and so the Quistclose analogy
 6 does not really appear to be contended for by either
 7 party.
 8 Unless your Lordships wish me to say any more about
 9 it, I was proposing to leave that there in these oral
 10 submissions.
 11 LORD NEUBERGER: Thank you. Which was your paragraph number
 12 again?
 13 MR WOLFSON: Dealing with Quistclose?
 14 LORD NEUBERGER: Yes.
 15 MR MILES: 34 and footnote 7.
 16 LORD NEUBERGER: Thank you very much.
 17 MR WOLFSON: The fifth and last point in this part of my
 18 submissions is important. LBIE is driven to arguing
 19 that the Court of Appeal's construction of rule 2.88(7)
 20 would also apply to 189(2) where an administration
 21 follows a winding up. Your Lordships have seen that the
 22 language is the same.
 23 This is a point we set out at paragraph 34 of our
 24 written case, the same language regarding statutory
 25 interest used in 2.88(7) is found in 189(2), albeit

Page 141

1 relating to different time periods. Given the
 2 equivalent language, if the Court of Appeal's approach
 3 regarding the effect of rule 2.88(7) were correct,
 4 ie enures in a subsequent liquidation, it must also
 5 apply, as a matter of logic, to 189(2) in the converse
 6 situation, where an administration follows a winding up.
 7 So LBIE's case would have to be and seems to be that if
 8 a winding up proceeds an administration, a surplus left
 9 over after the payment of proved debts in the winding up
 10 would be impressed in the administrator's hands here
 11 with an obligation to use it to pay statutory interest
 12 accrued during the winding up.
 13 I say LBIE appears to agree with this because at
 14 paragraphs 84 to 85 of its written case, it appears to
 15 proceed on the basis that the same would apply in the
 16 converse situation, ie where you have a winding up first
 17 and then an administration. So the Court of Appeal's
 18 approach would mean that if you have a winding up and
 19 then an administration, statutory interests for the
 20 winding up period under 189(2) would also be payable by
 21 the later appointed administrators, this time at the top
 22 of the administration statutory waterfall, assuming the
 23 administration is a distributing administration.
 24 This gives rise to a number of problems which we
 25 submit respectfully are insuperable. First, your

Page 142

1 Lordships will have seen that LBIE in this regard are
 2 driven to submit at paragraph 85.1 of its written case
 3 that statutory interest is therefore payable at two
 4 separate stages of the administration waterfall.
 5 Where a winding up proceeds an administration, the
 6 amended version of 2.88(7) provides that:
 7 "Any surplus remaining after payment of debts proved
 8 shall be applied in paying interest on those debts in
 9 respect of the periods during which they have been
 10 outstanding since the company went into liquidation."
 11 Rule 2.72(6) in force from April 2010, your
 12 Lordships have that at F3, 38, provides -- and this is
 13 a deeming provision, provides that:
 14 "Where an administration is preceded by a winding
 15 up, the creditor who is proved in the winding up is
 16 deemed to have proved in the administration."
 17 What this means is that on LBIE's approach, if you
 18 have a winding up and then an administration, statutory
 19 interest for the winding up period is, in the
 20 administration, payable first under section 189(2) right
 21 at the top of the waterfall and then, if that doesn't
 22 pay those statutory interest claims in full, again,
 23 under rule 2.88(7), after payment of prior ranking
 24 claims including proved debts.
 25 We respectfully say this is a nonsense, it makes no

Page 143

1 sense for a category of claim, in this case
 2 post-insolvency interest, to have two bites at the
 3 cherry, right at the top of the waterfall and then again
 4 towards the bottom of the same waterfall. We have been
 5 unable to think of any other example of a claim which
 6 gets paid at two stages in the waterfall.
 7 One might add that, if you were going to give
 8 a claim special status in that regard, post-insolvency
 9 statutory interest may not be the first one that comes
 10 to your mind, but the fact is there is no, we say, any
 11 other such claim.
 12 Second, it cannot be right, we submit, that 189(2)
 13 continues to apply in an administration following
 14 a winding up. Not least because when 189(2) was passed
 15 in 1986, distributing administrations were not possible,
 16 so there is no basis for thinking that the legislature
 17 when enacting 189(2) intended it to apply in
 18 a distributing administration following a winding up.
 19 Taking both those points together, rather than be
 20 driven by such a place, which is where LBIE have to get
 21 to because the language is exactly the same, we invite
 22 the court to conclude that, insofar as there is
 23 a lacuna, it is a matter for the legislature to resolve.
 24 Perhaps I can just make this last point before your
 25 Lordships rise for today. I have made those five

Page 144

1 sub-points on my first submission. My second
 2 overarching submission was that this is a lacuna for the
 3 legislature and not the court to resolve. Let me just
 4 say a word about that.
 5 We accept that now you can have both distributing
 6 administrations and moves between administration and
 7 liquidation, the legislature might wish to consider
 8 amending 189(2), but the key point is that there was
 9 nothing wrong with 189(2) when it was passed and if one
 10 looks at the question of drafting mistakes in the sense
 11 described by Lord Nicholls in the Inco Europe case, that
 12 just does not arise here.
 13 Can I show your Lordships that in the few minutes
 14 I have left.
 15 LORD NEUBERGER: That is to do with mistakes when it is
 16 drafted, not with mistakes that result from changes in
 17 the law.
 18 MR WOLFSON: Exactly. Exactly, and the point Lord Nicholls
 19 was making there, really, was any court has to be very
 20 careful about amending or writing in or adding to
 21 legislation. But, he says, if you can show that when
 22 passing that legislation, the case there was the
 23 Arbitration Act and appeals up the system from decisions
 24 at first instance, if you can show that when the
 25 relevant provision was passed there was a mistake, that

Page 145

1 is good example of where the court can intervene,
 2 provided you can see, one, that there has been
 3 a mistake; two, exactly what the mistake was; and,
 4 third, what words should be used, more or less, to put
 5 the mistake right. Here there is no mistake.
 6 At the risk of running a highfalutin point at 3.58,
 7 this court would respectfully overstep its bounds if it
 8 was to amend 189(2) because it would be writing in to
 9 primary legislation something which is not there and
 10 where there was no mistake.
 11 Insofar as a mistake has been made here, it is that
 12 parliament has not kept up, has not kept 189(2) up with
 13 the changes in the insolvency provisions(?). There is
 14 nothing wrong with the rules, and there is nothing wrong
 15 with 189(2), (Inaudible -- interference) it is that
 16 189(2) (Inaudible). We respectfully submit that that is
 17 a paradigm change where this court should leave it to
 18 parliament to remedy the situation if it wishes, given
 19 that this will only arise in vanishingly few cases,
 20 indeed I am not sure it has ever arisen before. One has
 21 to have a distributing administration followed by
 22 a liquidation where there is a surplus and where --
 23 LORD NEUBERGER: The administrators have not exercised their
 24 power under 2.88(7).
 25 MR WOLFSON: It is a vanishingly rare case but, at the risk

Page 146

1 of making that constitutional point, we do make it and,
 2 as has been said before, this building is important,
 3 this building is important, the Palace of Westminster is
 4 important, but what is also important is the patch of
 5 grass between the two. The separation is important. We
 6 respectfully submit that this is a case where the
 7 remedy, if there is to be one, should be left to
 8 parliament.
 9 My Lords, that leaves me with a few submissions on
 10 some discrepancies which arise from the Court of
 11 Appeal's approach and then, if I may take up Lord
 12 Neuberger's invitation, because it will save time on
 13 Thursday, I will say a few words about the cross-appeals
 14 as well in the morning, but I am confident that not only
 15 will I pass over the baton to my learned friend with the
 16 same amount of time available, hopefully I will have
 17 increased it as well.
 18 LORD NEUBERGER: Very well. Then we will resume again at
 19 10.00 tomorrow.
 20 Thank you very much indeed. Court is now adjourned.
 21 (4.00 pm)
 22 (The hearing adjourned until 10.00 am the following day)
 23
 24
 25

Page 147

1 INDEX
 2
 3 Submissions by MR MILES1
 4 Submissions by MR WOLFSON107
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 148

A				
abbreviated 113:21	127:24 129:6	116:2 118:25	15:14 107:17,18	alternative 34:18
ability 61:12	134:19 136:9	119:1,3,10,16	108:3,12 114:13	altogether 34:23
able 5:19 30:1 38:6	139:15 145:23	120:13,17 121:7	128:24 129:15	64:9
57:13,15,17 58:19	action 10:5 20:9	121:23 122:18,23	140:6 142:21	ambit 96:17
67:12 73:18 75:3	29:21 40:13	123:1,10,16,18,20	146:23	amend 58:4,12
82:8 133:1 134:16	active 135:15	124:4,5,10,12,15	admitted 13:11	120:7,8 146:8
137:17 140:18	add 18:23 118:23	124:18 125:15,25	admitting 135:14	amended 58:7
absence 91:1,15	144:7	126:2,3,7,8,17	advanced 63:15	109:16,16 111:11
92:25 116:7	added 123:2	128:4,5,10 129:9	81:24 82:20 95:1	111:16 118:19,20
absolute 6:25 94:19	adding 145:20	129:22 130:2	affect 22:10 46:8	119:18 120:2
absolutely 7:25	addition 132:16	131:17 132:11	54:15 78:7 87:16	121:3 123:24
85:16 92:17	Additionally 39:23	133:20 134:24	126:2	128:21 143:6
130:10,19 131:3	address 120:10	135:8 137:18	afraid 49:17	amending 145:8,20
abstract 47:19	addressed 9:24	138:14,24 139:4	agent 130:5	amendment 111:16
75:14 76:5,14,21	addressing 63:22	140:1 141:20	aggregate 44:5	123:23 124:11,19
78:5	64:22 107:12	142:6,8,17,19,22	ago 139:7	126:21 128:13,19
absurd 104:16	adjacent 44:21	142:23,23 143:4,5	agree 23:4 38:9	amendments
105:10	adjourned 71:25	143:14,16,18,20	40:25 93:23 106:4	123:22
accelerate 107:5	147:20,22	144:13,18 145:6	126:19 141:2	amount 5:14 10:21
accept 23:13 31:6	Adjournment 72:2	146:21	142:13	13:12 14:21 22:4
32:8 33:24 58:8	adjustment 73:5	administrations	agreed 35:17 41:25	33:1 42:7 50:15
64:19 101:13,15	adjustment 73:5	11:23 12:1 36:21	48:8 89:25 127:3	52:18,19 55:25
136:24,25 145:5	administered	94:18 103:24	agreement 6:2 8:25	56:8,10,19 59:11
acceptable 38:15	138:12	109:14,18 111:5	8:25 22:3,13,16	83:16 86:19 89:2
accepted 73:21	administering	116:2 120:17	22:20 23:2 26:22	89:6,7 93:20,24
88:4 116:11	130:6	128:14,22 144:15	30:9 36:1 38:2	147:16
accepts 88:13	administration	145:6	39:2,14,16,19,21	amounts 4:22
accommodate	4:20 5:2 11:5,17	administrator 2:12	39:22,25 40:3	37:25
78:14	11:19 13:1,8,20	13:13 14:3 15:23	42:22	analogy 32:7
account 14:10	15:10 22:2,22	16:14 22:17 29:1	agreements 3:1,6	140:22 141:1,5
52:23,25 55:21	28:8,10,18 29:19	29:4,8,21,22 30:2	agrees 41:16 82:21	anatomy 43:5,14
73:19 88:11	31:15,17,20,21	30:4,11,16,20	Ah 56:24	ancillary 23:25
109:16 121:3	39:17 43:24 45:7	31:8 56:2 58:22	ahead 33:21 107:1	anomaly 24:23
accrued 21:3 27:10	45:10 50:17 53:1	124:24 125:10	137:4	116:5
142:12	53:17 56:4 57:5	128:1 129:19	aims 9:3,13 51:15	answer 7:3 20:4
accuracy 68:5	57:15 67:20 73:1	130:1,3,24 131:7	74:10	23:14 34:3 70:2
accurately 51:14	73:7 77:17 78:23	131:22 132:3,20	albeit 3:14 36:1	90:8 92:15 99:25
achieving 22:9	79:5 85:8 88:12	132:21 133:1,2,11	113:21 141:25	126:15 136:5
acknowledged	89:2,7 91:22	133:22 134:7	allow 21:17 41:3	137:25
88:20 126:13	93:11,18 97:10	135:12,16,22,25	95:4 97:9 113:1	anterior 42:8,9
act 30:24 68:9	102:13 107:14,16	136:3 138:12,24	allowed 4:18 20:8	anybody 133:20
109:14,24 110:21	108:1,9,11,18,23	139:11	39:18 114:16,17	anymore 114:17
116:1 118:19	109:19,20 110:8	administrator's	allowing 112:20	anyway 8:8,12 35:8
120:11,12 126:21	110:13,14,25	142:10	allows 27:20 46:3	59:25 103:6 126:6
	111:5,15,18	administrators	alterations 60:14	apart 28:18 52:12
	112:16,21 113:2			

94:6 apologise 115:9 appeal 1:24 2:4,9 2:15 3:11,12 13:7 23:21 24:10,17,25 35:1,16 41:19,25 43:3 47:18,19 65:10 73:20 74:20 75:13 76:4 79:6,8 80:8,13 82:13 83:3,10 85:24 87:24 107:13 112:12,17,19 113:5 114:2 124:21,21 126:23 127:4,14 134:3,22 Appeal's 51:5 91:23 107:21 108:17,22 114:25 115:16 126:1,5,14 127:7,8,21 141:19 142:2,17 147:11 appealing 76:14 114:4 appeals 76:20 145:23 appear 1:5,10 44:17 80:17 103:14 141:6 appears 1:6 38:11 38:15 44:18 74:20 80:16 85:25 86:5 141:2 142:13,14 appellants 1:11 applaud 3:23 applicable 11:5 28:17 110:8 115:13 116:17 117:1 128:5 134:13 applicant 62:20 application 25:5 47:16 78:8,16 127:21 135:23,24 applications 67:18	applied 28:4,5 33:3 34:9 53:13,14 65:22 83:21 103:23 123:7,8 124:25 125:16 130:8,23 131:6,16 131:21,24,25,25 132:2 133:19,19 133:21,22 137:8 143:8 applies 25:13 40:11 53:12,14 71:4 87:7 88:22 98:23 129:15,19 apply 26:23 29:5 82:4 92:23 101:19 108:14 115:2 119:11 126:8 130:20 131:20,23 132:8 134:18 141:20 142:5,15 144:13,17 applying 26:23 130:9 131:12 132:9 135:24 appointed 131:1 142:21 appointment 130:11 appointments 129:15 appreciate 107:11 108:21 114:10 115:18,23 119:20 122:17 123:15 appreciates 55:14 59:8 60:4 73:10 77:15,15 78:6 82:5 appreciation 57:7 60:22 approach 91:23 108:18 115:16 124:20 126:14 127:7,9,13,21	134:22 135:1 142:2,18 143:17 147:11 appropriate 25:4 67:17 92:11 appropriation 67:19 69:17 95:16 approved 4:4 28:10 49:2 68:23 April 121:25,25 123:17 143:11 apt 6:12 75:15 Arbitration 145:23 area 115:3 120:11 140:14,16 areas 49:19 94:15 127:17 argue 2:1 58:25 argued 24:4 62:20 95:14 argues 54:15 arguing 5:23 96:7 141:18 argument 3:17 4:24 20:22 24:6 34:6 49:1 62:21 63:14,15,19,21 66:20 72:7 73:21 74:15 80:16,18 81:2,23 82:1,3,12 82:16,17 95:19,20 95:25 96:5,10 99:23 101:24 104:23 106:11 113:6 arguments 2:25 4:25 12:20 13:7 46:18 47:18,23 94:6 95:13 96:6 96:12 102:5,21 113:22 119:21 arisen 62:22 121:2 146:20 arises 37:1 43:17 44:10 48:3,15	55:12 84:11 104:10 105:12 106:15 110:4,6 111:10 114:11,12 119:17 arising 48:22 54:25 64:7 103:8 arm 134:23 arms 134:19 arose 24:2 112:21 arrangement 9:25 20:14 asbestosis 20:14 ascertained 36:24 aside 73:2,3 91:11 asking 72:9 73:7 asks 77:13 aspect 2:19 assert 61:15 95:6 111:22 asserted 91:2 92:22 104:7 assertion 95:4 asset 29:25 30:1 130:5 assets 12:13 30:5 45:18 46:1 50:1 56:25 61:13 62:13 75:10,11 77:9 78:3 108:15 127:25 128:2 130:12,13,13,14 130:14,16,21 131:12,15 132:8,9 132:11,18 138:11 138:11,14,16,23 139:1,2,3 140:1,5 assimilate 102:18 assistance 83:11 assume 66:19 assuming 33:13 51:6 142:22 assumption 33:23 66:4,4 assumptions	114:23 attempt 7:3 39:14 43:14 74:2 112:12 113:1 137:25 attempted 124:21 attempts 112:11 attention 71:1 attributable 67:14 August 62:10 authority 38:12 67:24 83:22 90:19 94:22 automatically 45:5 autonomy 79:4 availability 116:5 available 4:22 23:3 82:14 116:14 124:16 147:16 average 72:25 aware 11:21 48:3 Ayerst 63:16 131:16
B				
b 5:7,10 13:23 81:11 104:6 108:3 129:21 B1 130:12 132:25 139:17 back 5:24 9:7 14:9 16:6 26:16 27:2 30:7 33:14,17 34:20 35:6 36:20 48:13 50:4,21 52:6,9 55:8,23 56:4,14,24 57:4 58:7,10 59:3,13 61:15 63:12,14 70:1 77:14 84:8 85:23 91:20 93:22 98:19 99:22 100:5 100:20,25 101:20 103:3,20 112:10 112:25 122:20 123:13 129:6				

134:9,9 139:8 background 9:2 15:20 89:9,24 90:24 bad 114:23 136:1 balance 14:11 47:9 52:25 53:16 65:23 66:14,15 74:3 88:11,15 101:22 Bangladesh 61:23 61:25 62:14,17 Bangladeshi 62:12 62:25 bank 62:1,3,4,9,14 62:17 63:3 80:1 80:12 81:10 banking 62:5 bankrupt 99:13,15 100:24 bankrupt's 99:12 100:2,18 116:6 bankruptcies 99:3 bankruptcy 11:18 23:24,24 24:6,21 24:23 25:11,15,16 36:22 50:24 97:13 97:14 98:8,10,12 98:24 99:13,15 100:24 101:5,7,8 101:12,16,25 102:1,12 bargained 78:12 base 25:2 based 4:24 15:12 20:17 23:25 24:6 24:12,22 31:19 38:18 44:13 72:23 82:17 94:15 95:4 95:25 96:6 105:16 basic 49:1 92:18 basically 15:1 70:15 basis 15:22 18:22 29:13 75:17 93:4 93:7 96:8,13	120:23 138:8 142:15 144:16 baton 147:15 BCCI 62:1,2 bear 48:1 79:21 111:2 bearing 59:20 69:1 bears 118:14 122:23 beginning 31:15 128:19 beguiled 65:11 behalf 1:5,6 81:10 benefit 73:12,16 84:20 benefited 73:2 benefits 73:20 best 11:1 20:1 125:21 126:5 better 38:21 77:16 89:11 101:15 126:12,22 134:16 beyond 28:22 40:18 138:7 big 32:15 bigger 70:2 binding 140:5 bit 2:24 13:5 27:9 27:25 29:23 31:3 46:7 48:23 54:5,8 87:7,8 94:1 125:19 137:10 bites 144:2 black 114:11 Blake 53:25 blurring 2:25 boat 61:22 bogged 125:6 book 38:25 bootstraps 137:1 borrower 4:18,21 5:9,11,13,15,18 5:22 6:9,12 7:14 7:19 9:1 10:19 16:1,12 17:24	18:4,6,11 37:12 37:19 78:18 bottom 43:10 144:4 bound 94:20 bounds 146:7 Bower 67:16 69:18 95:15 brackets 118:23 123:2 branch 61:25 branches 62:4,13 breach 133:17 briefly 71:14 Briggs 78:10 79:2 86:1 88:3 89:24 91:12 93:2 125:18 126:13 140:23 Brightman 69:24 79:11 90:13,15,20 bring 8:5 9:4,14 10:13 12:2 21:18 26:4 29:17 45:1 49:2 58:3,17,19 73:6,19 87:4 96:16 bringable 48:5 bringing 20:7 73:19 86:8 brings 99:22 101:20 132:14 British 38:18 broad 57:22 61:9 74:14 82:17 96:20 96:21 128:6 broaden 94:22 broadened 9:17 broadly 61:7 Brothers 60:7 79:8 83:4 brought 9:22 12:1 22:24,25 23:8 43:5 73:4 76:1 87:12 91:21 129:23 brushed 91:11	building 147:2,3 bulk 3:16,17 bundle 3:8,10 11:2 20:4 23:21 37:13 43:7 98:14 107:22 129:3 burden 139:14 burdened 125:9,10 125:14 burdensome 22:8 buried 66:8 Business 120:12 busy 120:3 buyer 61:23,24 62:3,5 <hr/> C <hr/> C 7:5 13:24 65:19 74:1 80:24 81:11 calculated 95:23 call 75:4 112:8 called 4:5,19 11:14 23:22 24:11 25:22 50:9 53:25 58:14 67:1,5 114:15 126:15 calling 114:8 calls 138:1 candidates 1:17 capable 5:21 6:8,14 7:7,12 10:18 16:10 17:5,13 18:2,9,13,15,19 18:23 26:13,13,15 140:4 capacity 23:11,11 capture 6:12 careful 145:20 carries 31:22 carry 86:13 carve 138:8 case 2:19 5:7 7:4 9:21,21,24 10:15 15:22,23 18:10 19:1,2,6 20:12,13	21:13,14 22:2,12 23:24 24:8,13 25:5,15,18,22,24 26:2,2,7 30:25 36:5 44:12 48:3 53:24 54:18,22 55:9,13 56:7 58:14 61:19,22 62:15 64:10,24,25 65:11,15,18 66:8 67:8,22 69:3,14 70:16 71:15 73:12 75:20,21 78:19 80:15 81:12 83:10 83:23 86:17 89:3 90:6 91:21 93:3,4 95:2,7,17 96:7,19 97:2 100:20 111:14,14 112:7 114:22 116:25 117:2 119:21,24 120:19 124:9 138:3 140:3,25 141:24 142:7,14 143:2 144:1 145:11,22 146:25 147:6 cases 3:15 9:20 19:12,14,17,19,25 67:4 69:21 71:12 89:17 94:21 113:15 120:22 146:19 casus 114:15 categories 136:10 category 144:1 caught 13:5 cause 10:5 Cayman 62:2,9,10 62:18,19,22 63:4 ceased 138:24 ceases 130:4 cent 27:16,16 45:16 45:24 51:21 52:17 56:3 58:8 72:19
---	---	---	--	---

72:25 76:10 116:6 137:22 central 120:14 certain 32:6 36:23 48:20 certainly 117:25 131:21 133:25 certainty 140:16 challenge 119:22 Chancellor 129:4 chancery 91:13 change 75:22 76:2 116:12,12,22 119:21 146:17 changed 10:8 68:9 68:11 76:1 111:4 changes 11:6,8,24 57:12 70:18 79:22 120:13 121:3 130:24 145:16 146:13 chapter 11:15 12:6 34:6 50:6 74:1 91:8 121:20 129:8 129:10,14,18,21 134:23 character 97:12 characterising 133:18 charge 19:18 23:10 129:16 138:21 139:16,19 141:3 charge-like 140:14 charges 110:1 115:5 140:20 check 115:10 checking 18:4 cherry 144:3 choose 85:17 114:13 chooses 32:5 circular 40:9,10 137:10 circumstance 33:24 circumstances	18:12 25:1,4 44:9 48:20 58:6,17 59:9 65:21 75:13 137:8 claim 7:24 8:1,2,4 10:2,9 13:2,4 19:7 19:14,23 20:8 21:14 22:11,24,25 23:4,8,15 26:5,6 27:14 29:17,18,25 30:14,16,21 32:7 32:9,11,17 39:7 39:23 40:1,15 42:15,16,18,24 43:5,15,17,17,20 43:22,23 44:3,5,8 45:1,2,3 46:5,8,20 46:22 47:1 48:4,5 48:6,7,8,9,10,15 48:22 49:2,25 50:1 52:18 54:22 56:20 57:14 58:7 58:9,18,19,22 59:1 63:20 66:6 66:15 68:18 69:25 71:10 73:4,13,19 75:24 83:16 84:24 85:21 86:9,12 87:4,4,11 88:1,23 92:13 95:21 96:4 101:3,12,21 102:2 103:5,7,8,11,11 104:7,10,14,15,22 104:24 105:4,5,7 105:8,9,12,16 112:20 113:6 126:25 137:17,21 137:22,23 144:1,5 144:8,11 claimant 29:24 62:19 76:18 87:3 87:12 137:20,23 claimants 20:24 75:5,20,23 76:2,8 76:13,19 77:7,21	77:21 78:12 91:20 claimed 9:18 13:12 24:5 62:6 86:22 89:6 claiming 13:8 85:9 86:17,20 87:21 137:18 claims 1:16,19,21 1:23 7:16 8:1 9:19,19,19,22 13:2,25 14:10,14 17:1,3,4,8,16,18 17:21 19:10,11 20:5,8,15,16,19 20:20,23 21:2,3 21:18,20 23:16 24:2 26:5 27:20 32:3 42:5 43:2 44:19 45:13,17,19 46:1,14,25 49:23 50:10,25 51:2 52:15 57:24,25 61:7,13 63:16 64:13,14 65:23 66:5,21 68:24 70:5,7,9,23 71:4 71:16,18 73:3 75:5 76:7,7,10,12 77:2,12,16 78:9 80:4 91:2,3,4,6,8 91:9,21,22,24,25 92:2,16,17,21,24 94:14,15 95:4,7 96:12,22,25 97:4 97:15 103:4 106:8 110:1 112:22 113:2,3 122:20 127:2 136:10 137:15 143:22,24 CLARKE 4:1 19:22 30:14,18 35:1 43:11,13 Clarke's 20:4 class 129:20 classes 92:12	109:25 classic 37:7 classical 115:12 clause 6:10 7:18 15:21 16:3 17:10 21:24 26:10 34:23 37:12 40:12 clauses 4:24 clawback 60:18 clear 100:9,17,23 125:22 129:11 130:10 clearly 6:23 18:3 36:2 39:20 100:15 140:18 closed 62:4 closely 122:12 club 132:14,16 clue 93:1 clutch 60:16 co-debtors 87:17 code 115:2,25 116:19 127:25 128:2 codes 127:24 codified 70:18 coherent 103:19 collection 50:5 70:4 70:7 collective 37:24 combined 126:16 come 14:9 26:16 32:16 33:12,14 34:20 35:6,12 52:6,9 55:8,23 56:22,24 58:7 61:15 69:3,22 70:1 74:15,22 76:18 77:11 78:24 90:8 108:19 112:10 115:19 120:22 122:20 123:6,12 129:6 132:2,11 133:25 134:9,9 139:8	comes 12:19 78:16 89:20 98:24 99:2 108:23 122:17 125:13 144:9 comfort 102:23 coming 45:10 58:10 92:24 96:24 commencement 62:11 101:5,6,8 commend 25:18 comment 69:22,23 70:1 90:14 commentators 118:2 comments 65:14 90:22 commercial 26:17 26:18 72:23 79:1 136:22 commercially 6:16 6:17 16:13 Commission 23:23 89:10,19 90:10 Committee 68:2 89:10 115:23 116:4 common 59:6 60:21 97:18 116:8 companies 20:25 58:15 97:10 company 5:2 6:24 7:23 9:23 10:1 12:12 16:15 19:19 19:23 20:9 21:5 21:18,21 22:22 23:10 25:15 28:8 29:2,6,9,13,14 30:6,10,15 31:1,3 31:10,12 32:4,22 33:1,10 34:14 35:5 36:10,12,14 37:2,4 43:18 46:1 46:12 47:10 50:1 50:17 62:6,9,19 66:2,7 75:10
---	--	--	---	--

77:10 78:3,20 79:5 80:1 85:10 86:18 93:10,17 103:23,25 104:2,8 110:11,13 116:7 118:8,17 119:1 123:1,10 124:4,6 124:12,14,17 130:2,17 131:1,14 132:13 133:7 135:6 137:5 143:10 company's 31:1 81:17 93:14 130:5 130:13,14,16 136:14 138:11,14 138:15,23 comparing 72:10 comparison 32:1 125:19 compensated 96:8 compensating 57:6 compensation 31:13 57:3 89:22 103:8 compete 76:13 competition 76:6 76:19 complain 132:25 complete 10:6 68:5 94:16 99:21 115:2 115:25 116:19,22 126:15 completely 57:20 61:17 64:14 69:2 complication 56:17 complications 94:21 comply 132:22 141:4 conceded 113:5 concept 6:13 10:13 66:25 71:17 75:14 98:12 111:22 123:25	conception 94:8,8 concepts 76:14 conceptually 31:25 32:8 concerned 4:7 5:11 11:20 16:25 17:7 17:10,19,20 25:14 25:16 26:10 28:1 32:2 34:23 67:7 67:24 70:8 80:17 93:16 130:4 140:23 concerning 1:14 9:1 11:19 14:16 44:19 conclude 24:25 144:22 concluded 2:10 24:10 25:3 35:4 conclusion 34:25 55:20 81:3 83:15 89:20 concrete 74:7 condition 2:13 16:2 26:22 37:6 39:25 40:4 conditional 6:1,3 37:6 39:24 conditionally 36:2 conditions 42:21 conferred 129:5 confident 147:14 conflict 8:2 125:11 consequence 85:22 consequences 77:25 84:15 consider 60:7 71:3 145:7 considered 36:5,18 69:16 132:24 considering 2:19 82:16 83:18 consistent 94:9 109:21 138:4 constant 119:22	constitutional 147:1 construction 141:19 contain 88:6 contained 6:23 7:4 60:13 contains 5:5 11:3 contemplates 7:14 contemplation 94:9 contended 141:6 contentious 76:16 context 7:15 9:25 10:24 51:4 65:15 65:16 67:15 79:3 83:14 91:17 115:22 140:23 contingencies 45:9 50:21 64:7 contingency 40:16 58:5,23 contingent 2:11 6:5 9:19 14:1 36:23 37:7 39:24 40:15 42:16,18 49:5 53:7,13 57:24 64:6 70:23 78:2 88:23 104:14 continued 127:21 continues 112:15 144:13 contra 81:14 contract 17:6 27:14 27:21 29:10 46:2 55:9 62:24 63:3 67:1,2 69:5,10,19 70:13,15,22 71:4 71:7,12,15 72:6,7 72:8,8,10,14 73:14 81:17,20,22 93:13 94:16 96:1 96:2,14,22 contracted 78:17 105:25 contracts 67:25	contractual 6:22 10:15 16:4 26:9 27:2,15 28:21,22 29:6 32:15 40:18 46:10 47:15 61:16 64:14 65:13 67:10 67:11 68:16,17,19 68:25 73:22 95:5 96:10 105:24 116:16 126:20 contractually 75:7 contrary 38:16 97:7 104:25 105:1 108:17 109:2 140:15 contrast 60:12 84:25 91:7 92:16 135:22 contravention 131:11 control 130:5,12 138:15 controversy 38:14 convenient 71:21 conveniently 3:9 converse 111:14 142:5,16 conversion 14:14 32:17 43:2 47:7 60:20 61:2 69:25 73:4 75:2 76:7 77:18 79:23 82:24 83:6 91:3,24 96:12 101:12 106:22 convert 22:5 46:14 46:20 48:12 104:20 converted 43:23 44:4 45:5 50:15 66:5,13 80:3 82:9 86:20,23 87:23 copy 134:20 core 65:19 Cork 9:11 68:1	70:12 89:10,16 115:23 116:4 corporate 25:12,13 84:7 correct 34:25 74:23 120:6,23 139:21 142:3 corrected 136:4 correctly 121:19 costs 21:4 23:25 Council 62:14 63:2 counsel 119:20 count 125:16 counter-debt 54:20 counter-debts 55:3 counter-example 58:25 counterclaim 54:22 counterparts 50:23 counting 57:3 country 140:17 couple 19:24 course 1:24 2:25 3:23 11:17,21 14:15 23:7 32:4 36:4 55:8 64:7 65:14 68:2 70:1 72:21 84:13 94:20 95:8 104:15 106:19 112:3 114:3 116:1 124:19 126:10 127:4 132:8 137:13,16 court 1:24 2:9,15 3:11,12 11:25 13:20 20:7,15 23:21 24:10,17,25 29:21 35:1,16 41:19,25 47:18 51:5 65:10 71:25 73:20 74:20 79:6 79:8 80:8,13 82:13 83:3,10 85:24 87:24 91:22
---	---	---	--	---

94:14 97:2 107:13 107:21 108:17,22 112:12,17 113:5 113:19 114:2,25 115:3,16 120:22 120:23 123:11 124:21,21 126:1,4 126:14,23 127:4,7 127:8,12,13,20 129:16 133:2 134:2,22 141:19 142:2,17 144:22 145:3,19 146:1,7 146:17 147:10,20 cover 7:2,4 111:13 create 64:15 91:25 92:20 115:4 139:14,18,23 creating 30:25 140:5,8 creation 32:14 109:13,17 credit 14:7 61:24 62:6 73:16 creditor 2:20 13:2 13:12 27:14 29:17 31:12 37:24 41:16 43:17 44:3 45:2 45:23,23 52:17,25 57:13 58:10,17 59:9 60:8,18 61:8 67:17 73:11,13 74:17 78:17,25 81:18 82:2,6,8 83:2 84:12 85:9 86:17,22 87:21 88:12 137:21 143:15 creditor's 49:25 creditors 11:13 21:17 25:14,16,17 30:5,7 31:14 33:15 38:17 45:13 45:13,19,21 46:8 47:10 54:16 57:12	60:24 63:17 64:16 67:10 68:17 72:17 74:4,5,22 75:3,7 77:1,15 78:4 79:25 80:10,14 89:22 96:2 98:9 99:12 100:2,5,6,7 100:10,18,19,21 110:2 122:19 125:14 129:11,20 132:25 133:9,13 139:24 creditors' 57:19 61:12 65:23 66:15 78:8 critical 111:2 130:19 cross 112:19 cross-appeal 113:8 cross-appeals 113:12 115:15 147:13 cured 124:9 currencies 55:4,4 55:10,13 73:14 currency 14:13,14 32:17 43:2,19 44:2,4,6 45:4,23 47:7 48:10 50:14 53:19 54:17 57:6 59:8 60:19 61:3 65:23 66:15 69:12 69:25 72:15,20,24 73:3,11 74:4,17 75:2 76:7,7,8,19 77:1,16 78:6,7,11 78:13 79:23 80:4 80:12 81:12,16,17 81:18,20,21,25 82:5,23 83:2,5,8 85:21 86:18,23 87:12,22 89:22,23 91:3,24 95:7 96:12 97:15 101:3 101:11 103:12,14	104:13 106:8,22 current 73:3 90:11 95:2 107:13 119:10 124:12 custody 130:12 cut-off 10:10 20:17 27:10 45:11 92:19 95:24 105:2 CVI 1:8 54:15 58:25 61:6 65:18 70:15 72:6 74:13 77:11 79:6 90:8 100:4 CVI's 47:18 <hr/> D D 3:8,10 37:13 54:2 107:22 D3 16:5 D5 117:2 damage 10:2,6,11 20:16 75:24 damages 36:24 dangerous 32:7 date 10:3,10 20:17 21:3,6 27:10 36:13,15,16 37:2 37:4,5 43:24,25 43:25 45:7,10,11 50:16 54:20 56:4 57:4 63:7 75:25 80:4 83:6 91:24 92:11,19 93:10,17 93:19 95:24,24 104:1,3,4,9,10 105:2 111:22 112:4 118:25 119:6 123:20 124:1,3,3,5,9 dates 43:25 44:4 62:8 David 20:2 21:12 56:6,10 75:22 83:23 95:19 112:18 114:24	116:24 119:19 120:4 126:25 139:20 day 147:22 deal 2:3 9:5,15 12:15 15:4 17:2 20:2 25:22 47:25 53:7 93:1 97:22 112:24 113:11,13 114:1 127:17 130:15 132:3 dealing 1:14 2:16 5:7 8:9 11:16 18:25 20:22 28:1 50:6 64:21 70:23 71:7 75:15 82:4 83:11 84:9 85:20 89:17 91:2 92:7 98:17 100:15 109:9 111:10 112:13 113:10 122:20 129:10 134:24 136:11 139:1 140:24 141:13 deals 14:1,12 41:5 41:11 52:6 53:19 81:11 85:1 89:18 129:25 dealt 19:8,24 20:3 21:14 23:17 31:5 35:3,20 50:20 52:1,5 69:6,10 70:25 80:8 91:23 92:5 115:16 debate 54:8 74:24 debt 1:15,18,20,22 2:10,11,17 4:25 10:22 12:19 13:1 13:3,8,24 14:4,21 22:6 24:3,4,5,9,13 24:22 25:2 28:17 29:1 31:11,22 33:8,13,19,22 34:19,24 35:13,25	36:3,4,9,12,14 37:1,3,10 41:20 43:21 44:8 45:4 49:6,7,8,10,12 50:13,15 51:6,21 52:3,21 54:11,19 55:24 56:1,1,9 57:14 61:5 63:6 64:6 65:7,8,9 66:6 66:12 67:9 69:1 75:4 76:3 85:11 85:18 86:1,6,9,16 86:19,23 87:5,22 88:7,18 89:1,3 93:8,9 94:10 95:25 101:4,5,22 103:16,20,22,25 104:2,5,7,11 106:10,19 108:25 110:10 116:17,20 117:19,20 118:6 118:11,14,15 122:23,24 129:22 debtor 78:25 81:16 debts 6:11 7:15,22 8:4 9:5,18 10:9,16 10:17,17 12:11,13 12:15 14:1,12,19 16:9,15,19,22 17:20 19:1,2 25:6 25:19,25 26:3,3,7 26:11,12,19,21 28:3,5,6,11,13,24 33:3 34:15 50:22 51:12,16 52:10 53:7,7,13,14,20 55:3,25 57:10,11 64:17,17 67:10 68:23 75:5 76:3 80:7 83:5 94:25 95:16 98:10,12,12 98:18,20,21,22,22 99:16,17,19,20,20 100:15,25 101:1,2 101:17,19,25
---	---	--	--	--

102:1 116:21 117:12 118:8 123:8 124:13,16 136:12 138:13 142:9 143:7,8,24 decelerate 107:6 December 111:8 decide 92:1 108:3,3 decided 1:25 2:6 62:15 decision 10:7 20:19 23:20,22 25:25 56:11 58:13 63:8 63:16 64:10 67:7 67:21 80:15 83:22 95:9 108:22 decisions 145:23 declaration 107:22 114:24 declare 98:9 99:7 decline 104:12 deemed 143:16 deeming 143:13 defend 23:8 defined 93:9 98:13 101:17 138:17 definition 5:17 8:19,24 9:4 29:18 36:2,25 38:17 100:25 101:25 103:15,15 106:19 112:4 definitions 4:9 delay 95:21 deliberately 87:6 demoted 24:16 denominated 43:18 44:6 45:4 departure 83:20 depending 131:6 132:15 depends 82:25 deployed 96:19 deposit 61:25 depreciated 80:6	depreciates 44:1 55:14 78:7 depreciation 89:23 Deregulation 120:11 derive 22:19 derives 67:16 described 37:20 48:7 53:16 58:2 95:15 145:11 describes 118:10 describing 87:11 description 12:6 87:20 descriptive 87:13 designed 7:4 86:11 despite 17:9 22:1 destroy 64:16 detached 75:14 detail 14:14 46:7 determination 17:15,18 26:13 107:12 determine 15:25 determined 5:22 6:8,15 7:8,13 8:15 10:18 13:19,20 16:11 17:6,11,14 18:3,10,13,16,20 18:23 determining 10:21 124:22 detriment 83:2 84:20 develop 108:25 134:1 developing 110:3 dichotomy 29:11 Dicker 1:7 dictum 47:3 difference 98:1 100:3 102:9 differences 102:6 different 2:10 25:20 28:21 48:17	48:24 55:4,5,10 64:14 69:4 72:15 73:14 78:24 86:12 88:17 92:7,12 97:11,16 120:21 128:1,3 131:12 132:6,19 134:12 142:1 differently 131:6 difficult 18:17,20 25:3 103:10 difficulty 51:25 dig 134:17 direct 90:19 direction 28:25 30:10 124:24 directions 55:5 132:8 directly 11:20 directors 129:17 disagree 140:10,11 disagreed 35:19 disappear 55:15 64:9 discharge 9:5,15 51:11,16,22 52:10 54:11 56:9,19 58:1 59:2 63:6 66:6 81:16 94:24 99:21 100:22 discharged 63:3 65:2,5,9 93:20 99:16 100:24 101:1,3,8,16 102:1,3 discharges 46:5 61:4 discharging 62:15 65:22 discount 15:1 56:14 discounted 56:3,8 56:19 57:4,18 discrepancies 127:14 147:10 dispute 25:21 99:2	99:10 disregard 6:7,23 10:15 disregarded 7:17 disregarding 5:20 dissimilar 102:5 distinction 88:3 distribute 15:15 30:4 98:9 128:24 distributed 21:2 66:1 distributing 107:14 109:13,18 111:4 116:1 120:16 126:3 128:10,14 128:21 140:1,1 142:23 144:15,18 145:5 146:21 distribution 11:13 32:10 92:20 99:2 100:11 127:25 128:2 129:20 135:6 136:13 138:10 distributions 11:23 11:25 122:19 129:11 divesting 62:12 divided 45:20 68:23 dividend 2:7 13:11 51:21 52:19 77:22 99:7,8 100:13 dividends 44:1,2 45:11,16 48:11,12 65:3,6,25 67:13 77:23 80:5 82:6 98:9 103:13 division 132:13 document 13:3 66:17 doing 10:16 16:3 40:17 97:3 133:12 133:12 139:9 dollars 54:23	door 70:6 97:3 double 57:3 doubt 66:9 79:7 103:11 drafted 15:22 102:13,13 145:16 drafting 120:20,24 120:24 145:10 draughtsman 87:3 111:21 draw 71:1 drew 88:3 driven 141:18 143:2 144:20 due 5:14 22:4 55:8 70:1 duties 24:24 duty 29:7,12,23 30:17,22 133:17
E				
eagle 38:18 earlier 37:13 52:9 54:5 94:1 100:14 115:17 121:17 123:21 124:18 139:2 early 15:1 earn 132:13 easier 120:7 easiest 75:20 easily 73:8,12 Eckhardt 52:9 61:19 74:14 96:20 effect 14:9 38:12 46:21 51:1 52:22 54:1,7,7 57:21 59:4,6 60:23 61:4 62:15 64:22,23 65:12 84:18 88:5 88:14,21 89:13 108:10,21 112:6 119:13 125:21 126:4,16 135:9 137:14 142:3				

effective 5:8 8:20	120:12	17:16	exercise 6:20 129:4	27:18
effectively 12:2	entire 69:4	estate 29:24 32:10	exercised 146:23	extraordinary
15:17 22:23 31:14	entirely 31:25 32:9	32:11 116:6 138:2	exhaustively 36:5	20:25
52:17 71:10 84:9	65:13 80:21 91:18	estates 67:21	exist 76:8	eye 102:14
either 8:3 10:17	entitle 125:24	estimate 14:4 89:3	existence 19:8	
13:12 21:15 64:15	entitled 59:11	estimated 89:1	84:24 91:4 94:14	F
84:21 103:7 105:6	60:24 99:14 129:9	Europe 145:11	existing 70:19	F 54:3 81:3
130:24 141:6	133:14	euros 54:22	exists 104:14 105:8	F1 20:4 36:6 54:1
element 72:14	entitlement 82:10	event 7:23 8:20,21	106:18	61:20 79:11,18
elements 10:9	entry 119:6 123:20	78:18	expect 3:18 38:7	83:25 95:12
16:24 72:15	enures 135:1 142:4	evidence 45:16	39:11 136:24	103:21 110:22
embodied 125:22	envisages 136:21	ex 101:19	expectation 38:5	117:15 121:13,15
embodies 74:8	equally 12:12 28:13	exactly 3:15 27:5	expected 2:12	122:3 123:25
emphasise 117:22	28:14 45:8 61:1	32:23 38:20,23	137:5	F1/2 111:1
123:6	106:13	43:5 47:5 49:14	expeditious 74:10	F1/5 111:20,24
emphasised 32:18	equitable 139:23	52:2 60:2 65:4	expenses 19:10	F2 98:4 136:15
emphasises 19:5	equity 75:8	71:19 96:18 112:1	98:8 99:13 108:25	F3 11:2 27:4 36:20
Employment	equivalent 68:6	114:5 129:1	110:2 136:12	50:4 84:9 110:9
120:12	93:15,19 106:6	144:21 145:18,18	explained 20:13	110:15 118:12
enacted 117:11	142:2	146:3	explaining 87:15	128:16,18 143:12
118:11 120:16	error 120:25	examination 103:4	explains 40:23	F3/2013 27:6
enacting 120:20	errors 120:24	example 7:25 19:15	58:17	F3/53 118:20
144:17	essential 115:19	20:1 33:9 50:20	explanatory 128:15	F5 23:21
encompass 94:23	140:16	57:19 72:16 75:18	express 5:1 8:9	F6 58:15
encouraged 41:23	essentially 14:1	76:4 77:14,20	84:4 139:18	F8 40:20 90:17
ended 112:16	22:21 25:17 26:23	84:17 87:17 91:20	expressed 4:13 6:1	115:24 116:10
126:18	27:13 40:7 64:4	93:24 95:14 110:1	61:7 71:13 103:12	118:3
ends 96:18	69:16 76:22 85:9	136:11 137:19	103:13 135:11,17	face 135:21
enforce 4:16,19	96:7,9 98:16,21	139:17 144:5	136:2	faced 33:6
29:20 30:1 37:17	103:5 107:21	146:1	expresses 81:3	fact 11:14 26:1
37:21 40:18	111:21 112:5	examples 52:12	expressly 37:11	31:17 32:13 38:4
enforceable 30:21	113:18 115:1	73:9	38:3,8,9 52:6	46:16,19 47:21
32:3 43:18	119:5,17 125:3	exception 20:9	53:19 85:1 139:16	64:12 107:18
enforcing 37:20	138:6	69:22	140:5	109:3,18 131:3
39:18	establish 13:4	exchange 50:16	extend 123:21	140:4 144:10
engaged 40:12	established 5:21	54:21 81:20 83:1	extends 8:19	factor 55:21
English 7:15 8:25	6:8,15 7:7,13 8:3	83:5,7 104:17	111:18	facts 1:11 3:18 43:6
9:1,2 72:22 78:19	8:15 10:18 16:11	exclude 6:11,24	extensively 36:18	48:8
78:20	17:5,11,13 18:2	38:9 138:11	extent 3:5 5:15	factual 57:21
entered 3:1 28:8	18:10,13,15,19,23	excluded 38:7,8	16:20 45:12 49:18	107:24,25
50:17 110:13	19:13 26:14,15	exclusively 32:3	57:12 59:4 60:22	failing 132:22
119:1 123:1,10	62:12	execute 57:16	65:2,6 75:11	fair 41:22 47:9,20
124:4,14	establishes 34:6	61:12	extra 60:24	74:3,9 78:13
Enterprise 109:14	establishing 10:21	execution 21:20	extracted 75:11	102:25 120:9
116:1 118:19	establishment	executive 69:10	extraordinarily	137:12 141:1

fairly 35:23 97:22 97:23 122:12 140:24	17:3 24:8,16 27:8 33:6 35:25 38:5 39:13 42:25 44:16 44:20 49:16,22 61:18 67:14,24 68:14 75:1 84:10 86:24 93:23 95:16 99:25 100:1,3 105:23 108:7,12 109:17 110:7,20 113:8,11 114:2,9 117:8 119:11 122:17 124:13 127:8,17 128:9 129:14,24 137:19 140:11 142:16,25 143:20 144:9 145:1,24	forcing 133:7 foreign 7:16 8:1 14:13 43:18 44:1 44:4,6 45:4,23 48:10 53:19 59:8 65:23 66:15 72:20 72:24 74:4,17 76:7,8,19 77:16 78:11,13 80:4 81:16,18 83:2,4,7 85:21 86:18,23 87:12,22 89:22 97:14 101:3 103:12,14 106:8 form 3:16 6:5 11:4 22:4 31:13 41:3 109:25 113:21 114:23 118:20 138:1 formal 7:19 141:4 formed 138:12 forms 4:4 138:25 formulated 10:4 forward 90:2,23 94:7 found 3:8 67:20 69:13 83:22 141:25 fourth 39:1,13 139:13 frame 65:18,20 framing 66:10 Francis 80:1 82:6 82:11 friend 109:11 116:15 119:19 121:19 147:15 FSA 4:4 fulfil 134:17 fulfilled 40:5,16 42:21 full 2:9 5:20 12:13 14:20 28:10 31:23 42:7 44:10,11 46:4,24 49:13,13	49:24 51:21 53:2 55:25 56:9 57:17 66:21 76:11 83:17 85:20 95:25 99:11 137:22 143:22 fully 61:13 function 134:17 fund 125:13,15 138:1,16,18,20 139:14 fundamental 70:18 93:6 94:8 103:3 106:17 fundamentally 140:12 funds 98:6 further 45:25 48:22 54:19 59:16 83:16 96:22 125:19 future 9:19 14:19 14:21 36:23 50:22 53:7,14 55:24,25 56:1,1 57:10,11 57:14 125:17 132:14	95:12 99:6 113:3 113:15 138:18 141:2 144:7 given 5:1 15:15 37:10 44:11 47:22 73:11 74:7 142:1 146:18 gives 92:14,25 127:14 142:24 giving 82:11 125:21 go 1:11 5:24 13:22 20:21 22:4 24:13 24:25 25:23 27:2 34:15 36:19 40:18 47:18 50:4 59:3 59:18 77:14 79:17 80:9 84:8 86:5 90:7 91:20 95:2,2 96:3 98:19 99:9 100:8,25 103:20 108:4 114:14 117:15 129:12 133:2,5 134:17 goals 132:15 goes 7:11 19:16 28:22 30:7 33:17 36:13 37:2 51:9 60:11,12 61:3,3 65:1 74:23 80:24 81:25,25 89:16 93:11,17,22 96:15 100:5,20 104:1 108:13 119:9 125:19 130:17 131:15 137:5 going 2:3 4:11 5:1 6:6 9:7 12:9 25:23 30:12 31:5 32:21 35:12 38:6 47:13 49:18,20 54:1 55:20 58:11 58:16 63:12 68:9 72:5 74:6 76:20 84:16 85:23 90:7 103:3 106:24
			G	
			G 81:3 gain 81:19 gander 60:9 gap 126:20 general 12:5 20:10 22:22 25:5 47:8 47:12,16,16,21 48:2 65:12 67:16 68:1 74:6,8,21 75:17 78:8,23 98:5 102:17 generally 8:14 67:21 74:15 genuine 75:4 getting 48:22 49:7 Gibson 25:7 give 4:1 51:25 59:12 60:17 73:15	

114:7 115:14 117:8 133:7 144:7 gold 93:25 good 9:6 23:1 32:2 71:22 113:21 128:15 133:3,6,11 146:1 Goode 40:20 42:11 Goode's 38:25 goose 60:9,11 govern 130:15 governed 17:22 18:3,5 governing 108:8 121:6 135:6 government 116:11 grain 96:15 grapple 35:1 grass 147:5 grateful 93:22 great 83:11 greater 28:16 139:3 Greek 114:19 115:7 ground 59:6 60:21 97:18 grounds 23:1 group 44:18,22 70:9 75:19 127:7 guarantee 61:25 62:3,7	happened 58:9,23 62:1 80:18 130:3 happening 19:20 21:23,23,25 22:15 22:23 78:21 86:19 happens 13:18 14:3 20:10 22:3 26:15 33:16 34:19 48:9 58:6,11,21 59:7 77:14 78:22 85:2 happenstance 131:4 happy 112:8 113:23 122:5 136:4 hard 114:21 harmed 31:16 head 128:6 132:5 heading 111:7 heads 49:22 127:8 hear 1:13 113:21 hearing 147:22 heart 49:1 held 35:15,16 63:2 80:13 help 40:8 84:13 126:6 helpful 10:22,25 16:23 34:21 36:6 43:4 48:1 66:10 98:2 helps 41:9 higher 27:14 68:20 68:21,24 75:11 116:16 highfalutin 146:6 highly 76:15 86:2 hint 84:24 92:2 97:6 historical 89:9 historically 89:17 history 89:25 90:6 109:22 115:18 Hoffmann 53:18,24 58:13 63:22	Hoffmann's 47:3 hold 85:14 130:4 holder 37:10 129:17 hole 114:11 home 102:21 hope 107:5 hopefully 147:16 hour 107:1 Humber 67:5 71:11 80:11 hung 54:6 hybrid 49:9 71:18 106:10 hypothesi 101:19 hypothesis 44:7 45:15 76:9 82:12 82:13 hypothetical 114:23	140:11,15 implied 115:4 imply 32:20 35:8,8 implying 35:7 136:23 140:20 important 2:17,24 10:14 14:16 31:18 32:13 37:19 54:5 54:9,12 55:6 62:8 66:4,8 71:13 78:11 79:4,20 82:15 86:2 95:3 107:24 108:21 109:9,17 110:5 115:17 116:12,12 123:15 139:7 141:18 147:2,3,4 147:4,5 impose 21:16 76:25 136:3 imposed 139:16 imposition 139:20 impossible 92:11 104:6 106:4 impressed 74:21 90:2 119:25 142:10 impressing 116:15 impression 138:18 Inaudible 3:13 11:21 13:18 21:1 36:24 37:1 40:14 49:23 58:22 63:3 63:18 66:9 67:18 78:19 103:22 113:5 135:22 146:15,16 incidental 31:11 inclined 91:12 include 10:9 51:8 includes 9:17 90:14 including 45:23 88:20 100:6 117:20 143:24 Inco 145:11	incoherence 49:1 106:17 incoherent 103:5 105:7 106:14 inconsistencies 102:15 inconsistency 127:18 inconsistent 127:9 127:23 incorporated 53:8 53:22 62:2 incorrect 70:19 increased 147:17 incredibly 74:14 incurred 21:4 36:16 37:5 101:7 104:4,9 INDEX 148:1 indication 117:23 135:5 inescapably 114:11 inevitably 47:11 49:19 74:5 75:16 114:11 inexplicable 126:20 inform 74:24 ingenuity 96:24 inherent 104:17 initial 115:22 inserted 109:10 124:2 128:12 insofar 3:21 101:21 110:10 118:16 122:25 144:22 146:11 insolvencies 20:11 74:11 insolvency 4:10,17 5:9,10,22 6:9,14 6:15,20,21 7:8,13 7:19 8:3,4,15,21 9:2,6 10:19,22 11:4 12:16 16:10 16:11,16 17:6,9
<hr/> H <hr/> H 80:24 half 107:1 halfway 60:3 hand 17:1,2 31:7 98:6 102:22 106:24 handed 132:19 hands 107:17 125:10,13 138:13 140:6,7 142:10 hang 85:17 happen 104:19		<hr/> I <hr/> idea 38:18 42:20 43:21 69:18 76:5 92:1 94:16 95:4 95:16 96:20,21 105:1 136:16 identified 33:20 identify 97:25 116:4 128:7 ignored 79:4 ignoring 46:16 IIA 83:24 95:8 116:24 iii 98:21 imagine 103:10 134:14 immediate 34:3 immediately 5:12 110:12 118:24 135:8 impact 90:4 implausible 90:9 90:16 implication 140:9		

17:11,12,14,15,19 17:23 18:3,6,11 18:25 19:9,10,20 20:6,17 23:18 24:1 25:12,13 26:14,16,24 30:24 37:12,18,22 44:16 45:2 46:7,14,19 46:23,24 47:12,17 51:15 52:20 54:13 57:1,17,19 59:10 60:17 61:8 65:12 66:7 70:5 72:12 72:17 75:25 78:14 78:15 84:7 92:18 94:18 95:6,24 96:16 98:17 109:8 109:10 111:16 112:5 115:1 116:9 116:21 119:6 123:23 128:13 129:6 134:19,24 140:17 146:13 insolvent 12:11 117:13 instance 24:16 145:24 institute 37:11 instituting 4:17 37:18 instructed 134:6,7 139:11 instructing 139:9 instruction 124:25 125:8 132:4 134:2 134:3,4 139:6 instructive 65:17 97:12 instructor 134:5 insufficient 12:14 insuperable 142:25 intended 6:24 7:2 47:8 74:9 87:10 87:14 97:7,16 106:7,15 135:23	144:17 intending 100:23 intends 139:16 intent 116:19 125:22 intention 99:7 interest 1:16,19,20 1:22 2:8,14 14:17 17:1 19:14 26:25 27:1,2,7,10,13,20 27:22 28:2,5,12 28:15,22 29:1 31:5,23 33:9,21 34:9,12,14,17 42:4 45:21,25 48:18,18,21,23 49:5 50:2,22 51:24 56:13,16,17 57:5 66:22 67:7,8 67:11,12,14,17,25 68:3,14 69:1,11 69:14 70:14,17 71:9 72:18,23 75:10 76:11 77:9 77:24 78:3 80:10 80:14,19 95:16,22 95:23 96:8 98:24 98:25 99:12 107:15 108:2,8,18 108:22 109:3 110:9,23,24 111:12,17 112:20 113:2 114:22 115:25 116:6,9,14 116:20,23 117:12 117:18,20,24 118:5,10,15,15,18 119:5,11,12,14 121:5,7,23 122:24 123:8,19 124:13 124:16,23 125:1 125:25 128:3 130:22 133:4,14 135:2,7 136:7 137:22 139:24	141:25 142:11 143:3,8,19,22 144:2,9 interesting 82:3 135:11 interests 28:21 38:16 74:3,4 108:10 119:2 125:14 126:21 140:14 142:19 interference 146:15 interpretation 3:2 7:22 8:7 26:9 73:25 83:19 90:1 90:23 96:20,21 100:8 126:1 intervene 146:1 intervened 10:7 Intervention 82:23 introduce 1:4 introduced 44:15 68:7 106:6 introduction 109:7 115:24 invent 32:6 invention 126:24 invents 71:17 invitation 147:12 invite 21:8 63:23 80:25 144:21 involve 72:8,9 involved 20:14 43:3 involves 35:7 131:10 involving 20:14 56:17 Ironworks 67:5 71:11 80:11 Isaacs 1:6 Islands 62:2 isolate 72:13 issue 1:14 2:3 42:25 57:15 65:18,20,21 66:10 110:4,6 111:10 113:22	119:17 133:23 140:13 issues 1:10,11 2:16 10:24 24:8 43:6 iv 98:23 <hr/> J <hr/> January 62:8 Jonathan 24:15,20 judge 1:24 2:6 20:11,18 35:15 39:6 42:19 65:14 96:4 119:22,25 120:6 judge's 65:14 117:2 judges 24:16 91:14 127:3 judgment 3:24 4:12 9:7 16:6 24:14 27:15 28:17 37:14 37:16 39:3 51:5 58:3 68:25 70:21 72:19,20,22 74:12 76:23 79:14,15 84:4 86:3 89:12 89:14 93:8 94:2 116:16,24 117:2,5 120:5 121:9 134:21 139:22 judgments 3:16,19 jump 55:20 justice 2:22 3:4,12 9:7 20:2 21:12 24:15,18,20 25:7 26:1 35:20 37:14 40:6,7 41:1 47:3 51:13 56:6,7,10 56:12 58:2,13 59:15 69:6,24 70:20 71:14 74:11 75:22 76:5,15,21 76:22 78:5,10 79:2,11 82:19 83:23 84:4 86:1 88:3 89:12,24	90:13,15,20 91:12 92:5,12 93:2,5,7 94:2,5 95:19 105:19 112:18 114:24 116:24 117:4 119:19 120:4 121:9 125:2 125:18,23 126:10 126:13,19,25 127:3 139:20 140:23 <hr/> K <hr/> keep 59:11 60:24 68:9 113:24 122:10 kept 31:17 96:9 146:12,12 KERR 7:9 23:9 31:11 42:8 key 5:23 6:6 44:12 92:19 127:20 145:8 kind 3:1 74:6 86:12 88:7 105:5 kinds 76:18 knew 115:11 know 27:16 75:25 120:2 139:9 140:18,18 knowing 11:9 known 14:8 40:23 41:2 67:15 83:24 knows 134:21 <hr/> L <hr/> label 125:7 lack 92:3 lacuna 112:8,8,9,11 112:14 113:1,18 114:8,10,12,18 120:10 121:1,2 123:17,22 124:9 124:22 126:5,16 127:11 136:23,23 144:23 145:2
--	---	---	---	--

<p>language 6:12 54:6 88:14,21 139:5,9 141:22,24 142:2 144:21</p> <p>languages 115:12</p> <p>largely 109:24</p> <p>late 26:5 91:21</p> <p>Latin 114:16</p> <p>law 8:14,25 9:2 11:24 12:2,3 19:7 26:4 51:15 62:12 62:22 63:2,7 68:11 69:4,14 70:19 78:19 83:21 89:10,19 90:10,12 90:12,14,22 92:18 114:23 116:22 125:7 141:5 145:17</p> <p>laws 8:2</p> <p>LBHI 1:7</p> <p>LBH2 1:5 2:6,19</p> <p>LBIE 1:7 2:5 25:24 39:6 42:20 107:13 108:13 112:25 119:9 124:20 138:17 139:5 141:2,18 142:13 143:1 144:20</p> <p>LBIE's 7:3 107:17 108:1 110:8 112:19 119:4 135:10 137:25 138:7 140:2 142:7 143:17</p> <p>LBL 1:6</p> <p>leads 38:5 73:24</p> <p>learned 109:11 116:14 119:19,22 119:25 120:6 121:19 147:15</p> <p>learning 23:16</p> <p>leave 11:25 32:6 96:18 97:6 115:15 141:9 146:17</p>	<p>leaves 96:22 147:9</p> <p>leaving 61:13 73:2 73:3 87:6</p> <p>led 114:23</p> <p>left 48:20 56:25 66:14 80:19 132:10 133:9 142:8 145:14 147:7</p> <p>legal 23:22 46:15 46:15 63:21 96:24 114:10 125:21</p> <p>legally 103:19 104:16 105:7 106:14</p> <p>legislation 9:3,13 9:22 10:4 11:22 44:16,17,21,24 49:24 58:20 68:2 82:14 83:12,19 84:5 96:16 102:18 109:8 112:6 115:2 115:4 116:13 120:8,11,24 140:21 145:21,22 146:9</p> <p>legislative 35:9 79:22 90:24 97:8 109:21 115:18 116:18 125:22 127:9</p> <p>legislature 10:7,12 69:9 74:2 97:7,16 106:15 127:12 144:16,23 145:3,7</p> <p>legislature's 74:8</p> <p>legitimate 77:9</p> <p>lender 4:16,18,22 5:3 37:17</p> <p>letter 61:24 62:3,6</p> <p>level 75:11</p> <p>Levy 23:22</p> <p>Lewison 2:22 3:4 3:12 35:20 40:6,7 41:1 51:13 56:7</p>	<p>56:12 58:2 59:15 69:6 71:14 74:11 76:22 82:19 89:12 92:5 93:5 94:5 105:19 125:2,23 126:10,19</p> <p>Lewison's 9:7 37:14 70:20 84:4 94:2 117:4 121:9</p> <p>liabilities 4:10,10 4:11 5:19,20 6:19 6:24 7:7,12,14 8:7 8:11,13,14,20 15:9 29:12 39:15 51:12 62:13,16 101:14</p> <p>liability 6:5 29:2,14 30:6,25 31:2,10 32:21 33:1 35:4 36:12,14 37:3,7 51:22 62:17 93:9 93:9,14,14,16,18 93:20 101:4,5 103:25 104:2,8 105:25</p> <p>liable 99:18 101:14 101:20</p> <p>lie 33:8,18</p> <p>lift 20:7 21:15</p> <p>light 32:12</p> <p>limit 87:15 127:2</p> <p>limited 124:23 126:11 132:10</p> <p>limiting 86:11 87:9</p> <p>line 12:2 46:18,21 67:24 73:6</p> <p>Lines 60:6 79:8 83:4 93:8</p> <p>liquidation 9:23 10:1,3 11:18 15:12,12,18 21:3 21:4,5,19,23,24 21:25 22:1,1,2,15 26:6 36:13 37:3 50:24 62:19,22</p>	<p>63:5,6 78:22 79:25 104:1 107:14,19 108:4,9 108:14,19,24 109:5,19,20 110:1 110:2,7,11,12,23 111:6,12,13 112:23 113:4 114:14 116:3 118:5,9,14,17,24 119:2,9,15 120:13 120:18 121:6 123:16,21 124:6 124:10,15,18 125:17 126:7,18 128:4 130:2,18 131:15 132:12,19 133:5,8 134:13,18 135:1,7 136:8,18 137:6,16,19,24 138:2 139:2,3 142:4 143:10 145:7 146:22</p> <p>liquidator 15:23 16:14 19:15 22:17 23:12,13 81:15,24 82:5 125:13 128:2 130:25,25 131:6 132:6,7,9 134:11 134:12,14,15,16 138:15,20,25 139:11 140:7</p> <p>liquidators 62:18 80:2,16 108:14</p> <p>litigating 22:5,13</p> <p>litigation 21:5</p> <p>little 4:23 19:7 23:16 74:23 125:19 135:19 137:10</p> <p>lodged 62:9</p> <p>logic 142:5</p> <p>long 59:18</p> <p>longer 135:24</p> <p>longstanding</p>	<p>109:23</p> <p>look 4:9 9:1 10:23 12:7 16:24 32:16 36:6 38:2,24 39:1 39:12 46:6 48:25 60:10 64:3 65:19 70:21 81:9 83:14 83:25 88:8,19 101:2,10 115:1,18 117:8 122:11</p> <p>looked 20:11 37:13 68:4 70:12 71:2 75:22 84:18 85:7 86:15 88:9 92:6 103:21 122:1 123:5</p> <p>looking 7:10 8:24 12:21 14:13 15:22 26:8 30:3 33:7 44:9 45:8 46:22 59:17,25 61:10,19 64:11 66:16,17 70:20 76:9 111:23 115:11 121:10,16 122:3,7,10 133:12</p> <p>looks 34:8 145:10</p> <p>loose 96:18</p> <p>Lord 1:4 2:21,22 3:4,11,12,14,21 4:1 7:9 8:13,17,19 8:22 9:7,9,10 11:8 11:11 12:4,8,10 12:17,22,24 13:15 13:17,21 14:2,7 14:15,22,24 15:1 15:3,6,14,19 16:6 17:22 18:2,8,12 18:18,22 19:4,22 20:4 21:11 22:3,8 22:10,16,19 23:2 23:6,9 24:15,20 25:7,9 27:4,6,12 27:18,24 28:19 29:3,11 30:14,18 30:23 31:11,25</p>
---	---	---	--	---

32:18,20,24,25	106:10,23 107:1,4	125:18 128:12,16	129:25 132:12	15:2,4,7,17,20
33:19,20 34:2,5	107:5,9,20,23	128:17,18 134:14	142:18	16:7 17:25 18:7,9
35:1,6,14,17,20	108:16,16 109:2	141:8,21 143:1,12	meaning 86:7 93:9	18:17,19,24 19:5
35:22 36:7 37:14	109:15,15 110:16	144:25 145:13	means 16:22 28:6	19:23 21:12 22:7
37:15 38:9,13,16	110:18 111:9,23	Lordships' 116:9	33:12 36:10 39:18	22:10,18,21 23:5
38:20,22,24 39:4	111:25 112:2	lose 75:12 77:24	42:15 43:20 85:8	23:7,13 25:10
39:8 40:6,6,7,9,21	113:10,17,20,23	81:21	85:8 86:16,21	27:5,7,13,20,25
40:25 41:5,7,9,13	113:24 114:1,3,6	lose/lose 82:1	100:4,18 103:24	28:20 29:4,16
41:15,18,22 42:8	114:15,18,19,20	losers 47:13,22	124:3 133:19,21	30:16,19 31:4,13
42:10,17 43:8,11	115:8,10,11 117:4	74:7	135:2 138:15	32:13,19,23 33:5
43:13 45:14 46:10	117:4,7,10 118:21	loss 105:12	143:17	33:22 34:3,11
46:12 47:2,3,3,6	121:9,11,14,18,21	lot 96:24 120:10	meant 5:17 6:7	35:3,11,15,19,23
49:5,9,11,15 50:3	121:23 122:1,4,7	lower 44:5	10:8 94:23 100:2	36:8 37:16 38:11
50:8,11,18 51:6	122:10 123:3,5,14	Luncheon 72:2	103:20 107:9	38:14,18,21 39:5
51:13,17,18,20,25	125:2,18,23		130:16	39:11 40:7,10,22
52:3,7,8 53:2,5,10	126:10,13,19,19	M	measured 47:14	41:8,11,14,16,19
53:18,19,24 54:4	127:3 128:23	machinery 13:23	mechanism 6:18	42:3,9,13,18 43:9
54:17 55:2,11,15	129:4 130:7,17,23	91:1 129:22	17:14 18:25 20:6	43:12,14 45:15
55:18,22 56:5,7	131:5,9,14,19,23	main 73:24 90:8,25	20:23	46:11,13 47:5,7
56:12,13,16,21,23	132:21,23 133:16	108:5 128:19	meet 47:24 61:6,9	49:8,10,14,16
57:2 58:2,13	133:23 134:8,20	maintained 113:7	78:16 93:4	50:4,9,12,19 51:8
59:14,15,19,25	134:20 135:11,19	majority 74:20	meeting 12:14	51:18,20,23 52:2
60:6,25 61:21	135:21 136:16,21	making 47:19 65:4	meets 16:1	52:4,8 53:4,6,11
63:11,13,22 64:2	137:3,12 138:4,6	93:23 106:2	Megarry 26:1	53:21 54:5,24
64:21 67:3,6,18	139:12 140:23	125:17 135:16	member 2:20	55:6,12,17,20,23
68:8,13,19 69:6,8	141:11,14,16	145:19 147:1	members 19:16	56:6,15,17,22,24
69:15,20,24 70:11	145:11,15,18	manage 130:16	47:11 66:19 74:5	57:8 59:15,20
70:20,25 71:5,14	146:23 147:11,18	mandatory 15:8	74:15,16,18,22	60:2,10 61:1,22
71:17,20,23 72:4	 Lords 24:18 72:5	50:8,9 84:11,18	77:8,24 78:2	63:12,14 64:3,25
74:11 76:22 77:4	106:21 121:12	138:9	116:22	67:4,7,20 68:9,14
78:10 79:2,10,11	147:9	manipulate 83:1	mentioned 75:19	68:21 69:13,16,21
79:13,17,19 80:22	 Lordship 107:11	marked 60:12	mere 46:19	70:12 71:1,6,19
81:2,5,8 82:19	114:16 123:25	Marris 67:16 69:18	merely 52:19 54:14	71:22,24 72:4,5
84:2,4,13,19,22	132:24 139:8	95:15	68:15 103:10	77:5 79:11,15,18
85:6,11,14,16	 Lordship's 136:6	materially 15:11	met 2:14 77:13	79:20 80:23 81:4
86:1 88:3 89:8,12	136:15	44:15	Metals 96:6	81:6,9 84:3,16,20
89:24 90:13,15,20	 Lordships 107:12	matter 8:1 11:8	metaphysical 63:19	84:23 85:7,13,17
91:12 92:5 93:2,5	107:22 110:21	13:19 26:8,8	method 13:9	89:9 93:22 94:3
93:5,7 94:1,5,5,12	111:1,6,20,20	42:24 62:22 66:18	Miles 1:3,4 2:22	94:11,13 95:11
95:10 97:18,20,23	112:3 113:9,15	77:3 87:11,20	3:12,20,24 4:3	97:19,21,24 98:3
98:2,15 99:18,22	114:9 115:22,24	122:7,13 142:5	7:10 8:16,18,21	98:16 99:20,24
101:13,18 102:4,9	116:15 118:3,12	144:23	8:23 9:10 11:9,12	101:15,23 102:8
102:12,20,23	118:22 119:20	matters 6:4	12:5,9,11,18,23	102:11,17,22,25
103:1,17 104:17	120:1 121:8,12,15	mean 22:24 29:11	12:25 13:16,18,22	103:2,19 104:19
105:19,21 106:3	121:16 122:16	33:6 55:18 105:5	14:3,8,16,23,25	105:22 106:4,12

106:24 107:3	morning 109:12	38:9,13,16,20,22	130:23 131:5,9,14	100:4,6 101:14,19
109:11 116:15	147:14	38:24 39:4,8 40:6	131:19,23 132:21	101:22 112:22
121:19 122:2,12	move 13:23 109:19	40:9,21 41:5,7,9	133:16,23 134:8	126:24 127:2,5
123:4 133:18	115:12	41:13,15,18,22	135:11,21 136:16	non-provables 2:8
141:15 148:3	moved 55:4	42:10,17 43:8	136:21 137:3,12	2:14
Miliangos 93:12	moves 81:20,21	45:14 46:10,12	138:4 139:12	non-proveable
million 80:1	83:7 107:13 111:5	47:2,6 49:5,9,11	141:11,14,16	1:16,19,21,23
Milman 118:2	116:2 120:17	49:15 50:3,8,11	145:15 146:23	nonsense 143:25
mind 48:1 59:20	130:2 145:6	50:18 51:6,17,18	147:18	normal 21:16
79:15,21 87:3	mundane 115:13	51:25 52:3,7,8	Neuberger's	Nortel 9:11 36:5,18
111:2 144:10	mutual 14:7,10	53:2,5,10 54:4,17	134:20 147:12	51:19 108:17
mine 121:22	52:14,23	55:2,11,15,18,22	neutral 40:8	109:3 132:24
minor 25:21		56:5,13,16,21,23	never 27:18 48:19	134:21
minute 38:3 134:1	N	57:2 59:14,19,25	71:10,11	note 37:19 57:9
minutes 145:13	narrow 7:21 8:6	60:6,25 61:21	new 44:23 62:14,16	67:23 84:3,10
mirror-image	natural 86:21	63:11,13 64:2,21	62:17 64:15 68:2	116:10 120:6
15:16	nature 22:11 63:20	67:3,6,18 68:8,13	69:2 70:14 71:17	136:15
mirroring 10:16	94:9	68:19 69:8,15,20	83:20 126:24	noted 82:19 123:11
mirrors 15:17	necessarily 55:7	70:11,25 71:5,17	129:9 130:25	notes 128:15
mislead 75:15	necessary 16:24	71:20,23 72:4	132:11,16	notice 99:6 135:13
misled 87:25	98:8 125:6 135:9	77:4 79:10,13,17	Nicholls 145:11,18	noticing 4:15
misreading 93:12	140:9,12	79:19 80:22 81:2	nil 2:12 40:16 42:2	notion 140:13
missed 101:13	need 12:6 32:23,24	81:5,8 84:2,13,19	42:3,6,15	notorious 7:25
mistake 42:19	35:8 87:19 113:13	84:22 85:6,11,14	non-contractual	notwithstanding
120:20 145:25	129:12 134:5,5	85:16 89:8 94:5	27:22	17:9 19:8 20:6
146:3,3,5,5,10,11	needlessly 99:5	94:12 95:10 97:18	non-distributing	21:19,25 23:19
mistakes 145:10,15	needs 31:8	97:20,23 98:2,15	126:9	95:18
145:16	neither 17:5 98:21	99:18,22 101:13	non-EU 7:16	number 10:20 11:3
misuse 131:19	net 14:11	101:18 102:4,9,12	non-exclusive 60:1	12:20 13:6 40:23
modes 40:24	Neuberger 2:21	102:20,23 103:1	non-members 3:2	49:21 53:15 55:9
moment 12:25	3:11,14,21 8:13	103:17 104:17	non-preferential	67:23 74:25 75:1
38:25 41:7 46:7	8:17,19,22 9:9,10	105:21 106:3,10	75:20	95:13 109:4,6
71:21,22 99:6	11:8,11 12:4,8,10	106:23 107:1,5,9	non-provable	112:7 129:11
112:10 113:16	12:17,22,24 13:15	107:20,23 108:16	16:25 17:2,4,16	141:11 142:24
129:7 132:1,3	13:17,21 14:2,7	109:2,15 110:16	17:20 19:2,6,13	numbers 4:2
139:6	14:15,22,24 15:1	110:18 111:9,23	21:14 22:6 23:16	
Monday 1:1	15:3,6,14,19 16:6	111:25 112:2	24:9,11,13,22	O
money 31:1,2,18	17:22 18:2,8,12	113:10,17,20,24	25:2,6,19,25 26:7	obiter 69:22,23
32:6 36:1 57:14	18:18,22 19:4	114:3,6,15,18,20	26:12,21 42:5	79:9 80:21 81:5
58:24 74:18 77:19	21:11 25:9 27:4,6	115:8,10 117:4,7	48:5 58:7,10,19	90:13,14,20
82:9 96:9 106:8	27:12,18,24 28:19	117:10 118:21	69:25 75:4 76:2	objected 113:25
131:1 136:17,19	30:23 31:25 32:18	121:11,14,18,21	76:13,18 77:1,7	objective 94:17
monies 132:14	32:20,24 33:19	121:23 122:1,4,7	86:9 87:4,6 92:13	102:18
Moore-Bick 47:3	34:2 35:6,14,17	122:10 123:3,5,14	92:24 94:15 95:21	objectives 84:5
127:3	35:22 36:7 37:15	128:23 130:7,17	97:4 99:16,19,20	97:8

<p>obligation 6:3 29:3 29:4,5,7,9 30:8,9 30:19 33:9,10 34:14 36:16 37:5 81:17 94:12 101:7 104:3,9 105:24,25 106:7 125:14 140:5,9 142:11</p> <p>obligations 5:20 6:7,11,13 16:9 29:20 30:2 33:11 55:10 60:13 136:3 140:14</p> <p>observation 2:18</p> <p>obtain 39:14</p> <p>obtained 4:4 72:20 72:22</p> <p>obvious 2:18 9:18 76:17 120:3</p> <p>obviously 8:24 44:13 47:8 64:8 70:19 75:12 85:19 120:6 121:8 123:11</p> <p>occasional 102:15</p> <p>occur 10:10</p> <p>occurred 20:16 50:14 75:24</p> <p>occurs 58:5 123:15</p> <p>October 1:1 89:20 90:11</p> <p>odd 8:8 31:3,4 100:19 131:5</p> <p>odds 61:17</p> <p>office 130:1,4 138:25</p> <p>officeholder 19:9 29:12 83:1,4</p> <p>official 50:16</p> <p>oh 59:12 90:14 115:9</p> <p>okay 12:4 15:3 23:6 34:2 38:23 41:13 79:14 103:1 122:4 123:14</p>	<p>old 19:12,14 64:16 67:12</p> <p>Oliver's 93:7</p> <p>omissus 114:15</p> <p>once 45:6,22 78:15 83:16 128:13 138:23</p> <p>ones 11:19 64:17</p> <p>oneself 86:4 136:25</p> <p>open 62:5 81:15 82:25 87:6 96:22 97:6</p> <p>opening 5:24 88:17 97:3</p> <p>operate 52:15 54:14 112:15</p> <p>operates 51:22 53:22 54:11,15 56:8,19 58:1 59:1 61:11</p> <p>operation 54:25 77:10 103:9 105:13,17 106:16</p> <p>opinion 99:4</p> <p>opportunities 120:9</p> <p>oppose 22:25</p> <p>opposed 54:7</p> <p>opposing 23:15</p> <p>opt 68:20</p> <p>option 84:12</p> <p>optional 84:21</p> <p>oral 141:9</p> <p>order 1:10,12 2:2 5:8 12:2 21:6 24:2,21 57:5 91:25 92:12 107:21 114:25 133:6</p> <p>ordinary 21:20 75:9</p> <p>organise 49:21</p> <p>original 11:14,22 49:8,10,12 62:16 104:11</p>	<p>originally 15:14 118:11</p> <p>otiose 7:1</p> <p>ought 34:8 140:18 140:19</p> <p>outcome 1:25 47:20 97:16</p> <p>outcomes 2:1</p> <p>outset 6:13 28:9 34:22</p> <p>outside 5:10 22:1,2 22:15 23:18 25:6 25:19 26:15 31:19 31:21 39:20 57:15 58:20 59:10 73:7 78:14</p> <p>outstanding 28:7 118:8 123:9 124:8 143:10</p> <p>overall 73:2 75:16</p> <p>overarching 6:9 16:21 26:10 34:22 145:2</p> <p>overlap 49:18,20</p> <p>oversight 120:4</p> <p>overspeaking 56:14</p> <p>overstep 146:7</p> <p>overwhelming 74:19</p> <p>owe 24:24</p> <p>owed 31:11 52:16 52:25 62:17 80:1 88:11</p> <p>owing 37:25 64:17</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 3:8,10,25 7:6 7:11 9:8 12:23 13:10,16,22 14:5 14:19 16:5 20:21 24:14 35:23 37:13 37:16 43:7,10 50:4 54:2 56:11 58:16 59:17 65:19</p>	<p>69:7 76:23 81:11 84:1,10 88:9,24 90:18 92:6 110:16 110:18 121:21,22 122:1,11 128:18 128:19</p> <p>pages 116:10</p> <p>paid 2:9 12:12 16:17,18,18,19,20 16:20 33:2 34:9 40:3,14,17 44:2 44:10,10 45:11,16 45:24 48:11 49:12 49:24 51:1 53:2,4 56:4,18 57:25 58:5 61:24 65:3,6 65:9 66:13,21,23 76:9,11 77:23,24 80:5,11,13 83:17 83:17 91:7,10 92:23 93:13 98:25 101:9 107:18 108:2,11 116:20 136:17,19 137:5 137:14,21 144:6</p> <p>Palace 147:3</p> <p>paper 84:6</p> <p>paradigm 146:17</p> <p>paragraph 2:23 4:1 4:8,11,12,14,15 5:5,25 6:1,23 7:5 7:9 9:11 10:15 16:6,8 20:21 21:9 24:14,19 25:8 26:2 27:23 28:13 28:15,16 33:4 34:10 36:10 37:13 37:15,16 38:1,2 39:1,2 43:8 51:5 56:11,12 58:3 59:16,18 60:3 63:10,23,24 65:20 66:16 69:7 76:23 76:24 82:20 84:1 84:3 86:2 89:13</p>	<p>89:15,25 90:7,17 92:6,9 105:20 114:24 116:25 117:4,6,9,13,14 120:5 121:10 125:2,4,5,20 126:11,14 128:19 130:11 138:3 139:17,21 140:2 141:1,11,23 143:2</p> <p>paragraphs 5:6 9:8 35:21 117:2 142:14</p> <p>parallel 116:7</p> <p>pari 92:20 104:25</p> <p>Parker 24:15,20</p> <p>parliament 106:6 120:3,20 139:10 146:12,18 147:8</p> <p>part 10:25 11:13,13 12:15 13:13,14,20 14:17 19:20,22 33:11 34:12 37:24 39:8 42:11 44:12 44:18 47:4 48:4 49:6,8 50:5,6,8,9 50:19 52:3 64:3 70:3,7,9 85:11,18 97:21 102:4 103:10,11 106:10 110:10 118:11,15 121:20 122:18,24 125:17 128:9 129:8,9 134:25 138:1,23 139:1,25 141:17</p> <p>partial 126:6</p> <p>participating 39:19 72:17 73:1</p> <p>particular 19:12 20:18 35:2 40:24 47:13 61:12 64:23 67:18 79:3 94:21 100:14 127:10 141:4</p>
---	--	---	---	---

particularly 31:4 39:5 63:9 64:25	18:5,9,14,15,21 20:5,5 26:12,14 27:14,21 28:12,14 48:21 50:14 67:25 107:15,19 110:10 111:12,17 117:18 117:24 118:5,16 119:14 122:25 124:16 135:8 136:8 142:20 143:3,20	people 77:8 96:8 100:11 126:6 134:5 137:17 perceived 114:21 perform 29:23 30:17,21 period 27:17 28:9 31:15 72:25 95:23 96:3 107:16 108:11,19,23 109:5 110:10,13 110:24 111:13,18 112:21 113:3 118:16,25 119:2,3 119:15 122:25 123:21 135:7 142:20 143:19 periods 28:7 118:7 123:9 124:7,17 142:1 143:9 perpetuating 42:20 person 19:18 86:17 86:22 101:12 131:3 134:6 139:10 personal 11:18 25:11 50:24 84:7 97:13,14,17 persuade 58:21 Peter 25:7 petition 23:25 24:4 24:6,12,22 25:2 phrase 5:23 88:7 125:6 140:11 picked 25:7 85:14 picks 139:5 picture 133:13 place 6:20 9:6 11:1 23:18 38:5 41:4 43:6 52:5,20 53:11 61:13 69:13 77:18 105:15 111:3,4 129:24 144:20 placed 29:4,7 30:4	30:20 places 14:3 67:1 placing 4:20 7:21 8:6 plainly 135:4 plan 1:9 play 78:24 played 47:4 player 132:15 please 82:9 plus 45:25 pm 72:1,3 147:21 point 6:22 8:17 9:7 9:12 12:14 16:12 19:3,5 25:5,8,17 26:1 32:16 33:14 35:2,6,20 37:8,23 39:1,8,9,13 40:8,9 40:10,11,17,19 41:5,11 42:1,8,9 42:12 43:3 44:10 48:2 54:24 55:6 56:18 57:9 59:15 59:16,22 60:4,5,8 60:11,20 61:6 65:4 66:8 69:6,8 69:16 70:2,23 71:6,13,20 72:5 74:11,19,21,24 76:22 77:5,6 78:11,13,16 79:4 81:6,9 82:16,19 82:20 83:13,18 84:16,16,23 85:4 85:12 86:2,24,25 87:1 88:2 89:18 90:19,25 91:15 92:7 93:4,6,8,23 94:4,13 97:11,12 97:25 99:25 100:23 101:21 102:16 103:2,3 105:18,18 106:1 108:12,13 109:1 110:20,20 112:13	112:19 113:12 114:9 115:7,19,19 116:14 117:8,16 120:3,14 122:15 122:21 123:4,13 127:5,5 128:11,15 128:20 129:1,6,25 130:7,19,23 131:11 132:3,4,5 133:25 134:4,10 134:10 136:1,5,6 136:7 137:13 139:6,13,15 140:2 141:17,23 144:24 145:8,18 146:6 147:1 pointed 2:23 53:21 90:19 points 1:9 35:24 41:10 49:19 59:19 59:21,21,23,24 60:1 61:10 74:25 76:21 84:9 91:16 91:18 105:21,22 105:23 109:17 110:3,6 113:10 115:13 119:10 126:4,11 128:6,8 134:1 144:19 policy 77:3 84:5 94:17,19 102:11 119:23,24 127:1 portion 49:10,11 position 11:16 15:17 21:7 38:21 60:7 72:11 73:22 76:16 77:6 78:24 87:16,18 91:8 92:16 97:13 113:8 113:14 121:5 124:13 132:23 possible 1:9 3:1 9:4 9:14 10:13 11:24 22:12 25:2 26:4 27:9 50:1 51:9,23
parties 25:22 46:19 46:22 52:24 95:5 parties' 47:14 partly 4:24 parts 3:9 39:5 60:17 140:10 party 79:4 141:7 pass 41:23 147:15 passage 38:24 41:23 42:11 51:9 51:19 52:8 54:2 63:9 79:7,9,20 80:20,23 81:7 83:9 89:16 90:13 passages 79:13 89:15 passed 5:9 115:21 116:13 120:25 138:20 140:6 144:14 145:9,25 passing 145:22 passive 23:3 135:12 135:17 136:2 139:8 passu 92:20 104:25 patch 147:4 Pause 21:10 64:1 81:1 Pausing 12:25 43:20 pay 5:19 6:3 19:10 19:15,16 29:1,12 31:2 36:1 80:9 82:5,6 83:4 93:19 106:7 108:3 114:13 124:23 125:14 133:7 135:2 142:11 143:22 payable 5:15,21 6:8 6:13 7:23,24 8:8 8:12 10:17 14:19 16:10 17:5,8,8,22	paying 21:2 28:5 45:18 95:21 100:13 123:8 125:1 130:21 133:3,5 143:8 payment 2:7,13 4:13,16,19 5:13 5:14,16,25 9:16 12:15 15:1,9 17:10 20:23 25:14 25:16 28:3,10 29:8 30:11 33:3 37:5,17,20,21 39:18 40:1 44:5 45:2 46:4,16,24 48:14 51:16,20 52:11,15,18,21 53:23 54:10 55:10 56:2,8 57:18 59:1 59:5,7 61:3 64:25 65:8,24 66:4,12 67:10 68:23 78:12 80:6,19 86:22 94:25 95:24 99:11 99:12 100:6,20 103:13 108:8 110:22 118:6 121:5,6 123:19 135:16 138:13 142:9 143:7,23 payments 9:6 45:12 67:13,17 69:17 peculiar 31:6 Pension 58:14			

58:3 68:15 69:19 75:1 84:7 94:24 96:17 102:19 111:6 113:20 120:18 128:14 144:15 possibly 12:20 post-administrat... 28:2 post-insolvency 67:25 115:25 116:13,20,23 144:2,8 post-liquidation 48:18,18,21 67:8 70:17 71:9 80:9 80:14 post-Miliangos 72:21 postulate 73:8 pot 132:12 potential 75:10 pound 77:23 power 15:15,16 22:19,22 23:5 146:24 powers 129:5 practical 16:13 126:2 practice 80:2 127:15,16 practitioners 140:17 pre-1986 79:21 pre-administration 104:12 119:11 pre-insolvency 68:14 pre-liquidation 9:18 48:23 104:12 118:18 119:12 preamble 129:2,2 preceded 110:12 118:24 124:5 143:14	precedence 109:23 precedes 111:15 preceding 110:25 111:13 precise 54:6 Precisely 137:2 preclude 140:8 predecessor 44:17 preferential 12:13 75:8 98:22 110:2 136:12 preliminary 48:2 49:16 premise 82:24 107:24,25 prepare 13:14 prescribed 99:6 prescriptive 91:9 present 11:8 33:20 36:23 54:18 74:19 90:12,14,22 104:17 111:8 119:17 preserve 87:10 preserves 87:18 pressed 81:9 pressure 107:7 pretty 112:9 prevailing 43:24 50:16 83:6 127:1 preventing 133:7 prevents 39:10 previous 69:3 83:20 131:7,17 previously 136:5 138:12 price 61:23 primary 115:4 120:8 146:9 principal 49:17 108:25 137:23 principle 51:6 65:12 67:14,16 79:3 82:17 92:18 95:14,17 96:25	105:1 137:16 principles 80:10 printed 11:12 prior 111:18 112:5 116:21 119:3,15 123:16 124:15 135:8 143:23 priority 2:2 98:20 109:25 136:10 private 125:7 141:5 Privy 62:14 63:2 probably 89:11 96:23 101:15 114:20 122:10 problem 33:21 34:7 127:20 problems 55:15 78:15 127:6 142:24 procedural 54:7,14 61:11 procedurally 120:7 procedure 17:15 122:18 129:10 procedures 84:7 97:8 proceed 3:23 20:8 142:15 proceeding 7:20 proceedings 4:17 6:15 20:10 24:1,3 29:22 37:11,18,21 37:22 38:4 112:11 proceeds 75:17 123:16 126:18 142:8 143:5 process 12:16 13:19 15:25 19:21 21:20,22 22:14 23:18,19 37:25 45:20 53:11 65:25 94:24 96:17 109:13 112:5 119:7 128:10 processes 15:24	procured 62:3 Professor 38:25 40:20 prohibits 38:3 promote 74:10 112:25 proof 13:4,10,11 29:20 39:23 41:4 45:24 51:16 58:4 58:6,12,24 60:14 62:9,18 63:4 65:25 94:24 96:17 proofing 50:13 proofs 135:14 proper 47:20 63:2 63:7 65:16 properly 63:5 92:17 property 135:6 136:14 proposed 82:25 proposes 129:19 proposing 113:11 133:5 141:9 proposition 41:25 61:7 74:22 138:8 propounds 138:17 proprietary 139:23 protracting 99:5 provability 88:15 88:21 89:5 provable 2:11 4:25 6:11 9:5,15,17 10:5,8,14,16,17 10:22 14:11 16:9 16:14,22 17:19 20:17,19 21:4 22:6 24:3,5 26:3 26:11,19 33:13,19 33:22,23,25 34:7 34:8,11,15,19,24 35:13,16 36:3 39:7 41:20 42:18 43:20,22 44:8 48:4,5,9,19 49:22	52:25 53:16 58:18 67:9,10 71:4,8,10 71:16 76:1 77:21 80:6 87:4,8 88:12 88:16 89:2 91:8 92:17 94:23 98:18 99:16,20 100:4,10 100:15,18,21 104:14,15,20,22 104:24 105:4,8,9 105:25 106:9,19 110:9 113:3,6 118:15,18 119:3,6 119:12 122:24 124:13 prove 2:6 5:4 14:20 27:9 29:18 37:10 38:6,10 40:15,25 41:17 42:21,23 45:3 55:25 57:17 62:21,25 63:18 68:15 75:3 85:8 85:15,18 126:7 136:1 proveable 2:5 proved 19:1,11 28:4,6,24 30:5 31:14 33:3 44:3 45:16,19,21 48:10 48:15 49:6,6 51:21 56:9 58:9 68:24 76:12 85:20 98:11,12 103:10 103:11,15 104:5 116:21 117:19 118:6,11,14 122:23 125:15,24 138:13 142:9 143:7,15,16,24 proves 73:11 provide 10:21 34:21 43:14 61:25 83:11 87:14 110:24 111:11 116:19 126:15
--	---	--	--	---

127:24 128:21 136:10 138:9 provided 4:16 92:10 109:25 118:13 122:7 123:19 127:22 133:3 146:2 provides 6:18 28:22 110:22 118:4 129:14,18 136:14 143:6,12 143:13 providing 82:23 proving 12:18 13:3 13:6,7,24 25:17 37:22 38:3 39:10 39:20 45:19 85:24 85:25 86:6,8,15 86:16 88:7,18 90:3 129:22 provision 13:11 14:16 16:7 26:18 26:20 29:15 31:24 35:9 59:11 68:3 70:16 111:3 116:7 118:4 125:22 139:18 143:13 145:25 provisions 5:5 10:20,24 11:4,6 13:9 15:16 17:17 27:11 51:1 60:16 70:3,4,10 91:15 100:14 102:13 108:8,10 109:8,23 116:9,11 121:8 123:24 135:5,14 135:17 136:2,9 138:9 146:13 pulling 136:25 purely 23:2 purpose 6:10 15:9 28:4 33:4 45:5 50:13 65:8 85:25 86:6,8,8,16 88:7	88:18 90:3 98:7 123:7 125:1,16 130:8,9,21,24 131:12,16,17,22 137:9 138:21 purposes 7:17 11:8 29:6,10 53:12 pursuant 65:25 put 4:17 5:2 16:12 32:1,12 39:23 62:25 66:18 82:12 90:23 96:24 101:15 102:20 111:3,4 119:23 120:1 125:2 134:12 138:2 146:4 puts 105:23 putting 29:19 42:10 66:3,10 68:10 90:1 94:6 102:25 105:11 puzzling 126:16	98:3 140:24 Quistclose 125:20 138:5 140:22 141:5,13 quite 18:18 32:8 35:18,19 53:5 86:24 90:15 94:6 98:3 100:17 103:3 113:21 114:4 120:10 131:5 quoted 9:10 51:18 79:13 90:12 116:25 quoting 84:6	80:25 83:20 85:4 86:7,11,14 93:6 123:24 reading 3:14 6:16 6:17 7:9 18:1 24:23 26:17 33:4 36:22 86:21 90:16 97:5 105:14 108:7 140:19 reads 66:11 real 15:21 29:11 63:20 99:1,10 Realisations 25:23 realised 99:3,5 realistic 1:17 6:16 6:17 100:7 really 3:16 4:7 17:25 19:2 27:25 28:1 32:1,5 34:5 34:23 46:9 47:24 54:12 63:15,19 64:9 66:8 69:8 81:7 83:10 87:8 87:24 88:1 94:5 101:18 104:6,24 105:5 121:20 128:10 129:23 133:23 134:4 141:6 145:19 reason 11:12 24:15 34:13,24 36:15 37:4 40:12,22 48:16 76:17,25 78:4 81:7 85:13 97:15 101:7 104:3 104:9,10 119:23 121:13 124:11 125:11 128:20 133:3,6 137:18 reasonably 97:9 reasoning 25:12 35:17 64:4 96:19 reasons 102:11 119:24 133:12 recall 9:10	receive 72:18 received 58:8 recognise 94:14 recognised 125:23 126:10 recognises 97:2 recommendations 68:1 recommended 116:8 recover 13:1,8 recoveries 72:16 recovery 4:22 37:25 85:11 119:7 reduced 27:18 Reed 29:3 32:25 33:20 34:5 51:20 53:19 93:5 94:1 115:11 refer 129:12 reference 9:20 53:8 60:6 93:7 95:12 110:8 113:16 116:10 referred 8:13 13:2 39:4 43:11 52:8 90:11 95:10,11 118:2 124:7 referring 4:2 7:12 40:22 60:6 refers 52:10 reflects 88:13 refrain 89:5 regard 25:14 30:12 47:20 61:18 65:17 106:12 111:2 143:1 144:8 regarded 8:14 38:15 86:1 92:16 regarding 114:22 116:23 141:24 142:3 regards 59:6 77:8 regime 11:1 28:21 54:13 57:17,19,21	
	Q	R			
	qua 23:13 quantification 13:24 17:18 50:10 122:20 quantified 50:25 question 2:15 3:4 5:18 6:6 7:1 10:1 17:25 20:2,4 24:9 24:12 26:3,17,25 30:8 33:6,7,17,17 34:4 35:12 41:20 43:1 47:24 66:22 70:13 72:9 73:1 77:13 80:8,24 84:14 85:21 86:4 100:1,22 137:3 145:10 questions 20:15 55:12 91:17 quickly 10:7 41:24	R-R 25:23 raised 2:4 41:6,11 112:19 136:5 rank 12:12 28:14 33:21 34:12 137:15 ranked 42:4 ranking 1:15 2:17 42:6,14 91:3 92:2 143:23 rankings 33:18 ranks 1:18,20,22 28:13 47:10 109:3 137:4 rapidly 97:24 rare 146:25 rate 3:17 27:15,15 28:14,17,17 43:24 50:16 54:21 56:3 57:4 68:20,21,25 68:25 72:18,19,23 72:23,24 81:20 83:5,7 104:17 116:16,16 rates 28:16 83:1 reached 20:19 read 21:8 26:21 36:18 41:7 47:2 63:24 65:15 70:3			

69:4 70:14 78:16 103:9 132:6 134:12 140:8 regimes 120:14 registered 9:1 78:20 Registrar 58:14 regulated 119:7 regulates 117:11 regulators 62:5 rejected 62:18 63:5 95:19 96:5 rejecting 135:14 rejects 13:13 related 94:15 95:13 110:6 relating 54:17 142:1 relation 1:15 14:14 14:21 15:11 35:15 35:24 36:9 44:12 53:14 55:3,24 56:1 57:9,24 60:19 68:14 69:11 69:12,14,25 70:13 70:17 71:16 87:18 92:21 103:22 106:21 relationship 79:1 relevant 3:9,13,18 6:19 8:23 11:3 24:1 78:19 79:13 89:15 108:7 109:7 109:9 111:22 112:4 117:1 123:24 124:1,3,8 130:10 134:19 145:25 reliance 74:13 relied 39:5,6 63:9 83:9 relief 23:25 relies 61:6 79:6 relinquishes 130:5 rely 30:12 32:13	41:1 61:18 66:25 67:12 74:14 89:9 remain 64:17 107:19 114:22 119:21 130:13 remainder 117:21 remained 80:7 120:15 remaining 28:3 33:2 49:25 143:7 remains 99:11 101:14,20 103:12 115:21 131:1 remarks 49:16 remedied 123:22 126:21 remedy 4:21 133:10 146:18 147:7 remind 51:3 remission 46:2 67:1 69:5 72:6,8 94:16 96:14 remit 19:9 remitted 73:22 removed 82:24 repaid 49:13 repay 60:13 repayment 39:14 repeat 137:3 139:6 repeated 89:5 replaced 62:23 replacing 62:16 reply 112:24 113:14 report 9:11 24:16 70:12 80:17 89:16 89:19 90:16 115:23 reported 90:10 reports 89:10 represented 90:22 represents 117:20 required 21:1 83:17 85:15	108:14 requirement 30:4 124:22 requirements 141:4 requires 93:13 requiring 29:22 30:21 res 46:15 research 135:20 reserve 86:11 resolution 5:9 resolve 127:12 144:23 145:3 respect 2:7 28:6 31:8,14 40:14 44:3 50:1 66:19 72:16 80:12 85:2 86:9,22 87:5,22 91:14 95:21,23 96:4 98:10 99:21 99:24 101:12 107:15 118:7,16 122:25 123:8 129:15 143:9 respectfully 115:3 138:7 140:10,25 142:25 143:25 146:7,16 147:6 respective 44:4 respectively 98:11 respects 4:14 respondent 24:3 respondents 1:13 response 108:6 140:2 rest 21:8 53:2 restricted 77:6 result 22:9 44:2 65:24 107:6 145:16 resulting 15:25 resume 71:23 147:18 retention 98:7	return 16:4 116:22 returned 74:18 revaluation 60:15 revalued 81:14 revenue 7:16 8:1 reversed 113:7 reversion 67:2 69:10 70:13,14,22 71:3,7,12,15 72:7 72:8 96:1,13,21 revert 32:15 69:19 review 58:4 revise 58:22 revised 58:18 111:24 rewrite 115:4 Richards 20:2 21:13 56:6 75:22 83:23 95:19 112:18 114:24 119:19 120:5 139:21 Richards's 56:11 116:24 126:25 ride 136:9 right 2:15 5:1 12:8 12:24 13:21 15:2 16:7 22:10 23:7 28:22 30:3 31:19 31:21,22 32:9 33:8,14 35:14 37:11 38:10,13 40:18 41:9,19 42:5,13,23 51:23 55:16,19 57:8 58:24 60:18 62:21 62:24 63:18 68:16 68:17,19 76:24 77:3 80:22 81:4 94:3 101:24 102:6 102:11 106:12 108:23 110:19 113:17 121:18 122:12 127:1 131:8 132:21	133:14,16,18 143:20 144:3,12 146:5 rights 32:15 40:4 46:10 47:15 54:15 57:12,20,22 61:16 64:16 65:13 67:11 67:11 73:6 95:5 ripped 65:16 rise 113:3 127:14 141:3 142:24 144:25 risk 76:25 146:6,25 roles 1:5 room 71:14 83:16 97:14,18 101:11 rose 119:22 roughshod 136:9 round 18:14 103:18 rule 12:5,7,23 13:10 14:6,8,18 14:19,22 20:18 27:1,2 29:6 31:20 36:3,4,19 43:25 44:12,13,13,14,20 44:21,22 45:21 47:7,8 48:19 50:4 52:13 53:8,12,13 53:22,25 55:1 57:10,11 59:3 60:14 67:12,15,15 67:19 68:3,6 69:2 69:17 70:6,6,8 73:25 74:8 75:2,6 79:23,24 82:7,10 83:15 84:8,17,23 85:1,5,23 86:15 87:7,16,20 88:5,6 88:8,13,23,25 89:2 95:18 98:5 98:16 103:21 106:5 107:16,19 109:9,22 110:7 111:15 112:14 118:10,12,19
--	---	--	--	---

119:13,18 121:8	runs 57:10 61:1	140:4	19:14 24:19 25:3	61:4 70:2 103:17
122:8 123:22		scope 8:9 9:14,16	27:8,22 32:11,16	114:10 128:11
124:23 125:23	S	94:22 129:10	32:20 42:17 43:13	135:12,15 136:22
126:1,17 127:22	satisfaction 39:25	132:18 139:19	47:6 49:15 51:4,9	144:1 145:10
128:4,9,12 129:14	satisfied 6:2,4 37:6	score 132:16	52:4,22 53:6,8	sensible 3:22 97:5
129:18 130:20	45:13 47:1 65:24	se 64:22	55:22 56:21 60:25	102:9 105:14,16
131:11 133:4	satisfy 51:1	Sealy 118:2	63:14 65:18 71:20	122:10
134:7,25 138:1,17	sauce 60:9,9,11	second 2:1,3 73:24	81:10 84:25 88:10	sentence 65:1
139:13,22,25	save 147:12	87:1 104:21	88:24 92:11 97:13	sentences 125:3
141:2,19 142:3	say-so 138:7	108:13 110:20	97:25 98:23	separate 5:6 29:17
143:11,23	saying 18:4 25:9,10	112:19 125:3	102:15 103:17	30:6 51:24 54:24
rules 6:20 7:22	31:5,7,9,16 32:14	127:11 128:1	104:6 111:6,21,25	128:6 132:7
10:8 11:4,17,19	33:21 39:7,9 40:3	129:18,25 144:12	112:3 117:10	138:20 143:4
12:1,15 13:3 15:4	40:9 42:1 48:22	145:1	118:22 128:18	separately 16:25
15:8,11,11,13	59:12 64:5,11,19	secondary 84:24	134:8 136:6 146:2	128:7
16:15 20:18,22	71:17 73:18 78:17	secondly 1:19 37:9	seeing 10:23	separation 147:5
24:1 26:3,20,23	84:12 87:7,21	44:8 68:19,22	seek 2:6 37:24 58:4	sequence 100:8
36:3,4 44:11,18	89:5 104:24	109:18 119:13	61:6 65:20 72:15	series 4:9 15:8 67:4
44:22 45:8,25	112:14 122:13	122:18 139:5	109:6 112:14,25	72:14 92:24 96:11
46:22 47:12,16,21	126:18	140:12	seeking 4:19 10:12	97:3
50:6,20,23,24	says 4:12 11:12	section 11:15 13:23	15:9 40:1,17 73:5	seriously 87:1
52:12,15 53:6	20:24 21:7 28:12	13:24 14:17 15:7	seeks 13:4 65:18	Services 23:23
54:10 55:25 57:11	31:20 35:7 36:20	50:20 74:1 98:13	seen 9:20 17:17	set 3:9,13,18 4:7
57:25 60:13,17	37:16 48:19 50:12	98:19,22 99:2	25:13 27:1 29:19	14:8 39:2,25 71:2
64:23 74:1,2,6,9	52:24 64:15 66:11	100:13,17 110:21	44:18 45:15 48:4	89:11,12 90:6
75:14,17,23,25	70:16,21 76:24	111:11 115:20,21	48:7 50:5,19	108:5 113:14
77:11 78:1,8,23	77:11 81:13 86:18	117:9,14,16,19,23	55:24 68:11,22	116:8,23 117:1,14
82:23 84:17 88:20	88:10,15,25 92:8	117:23,25 118:4	73:10 79:7 83:13	120:23 121:9
92:10 94:7 98:17	94:5,8 117:16	119:14,18 120:2	85:23 94:21 95:22	140:24 141:23
104:19 106:1	125:20 130:20	120:15,21,25	100:14 103:7	set-off 2:8 14:7
109:10,15 111:17	133:11 136:19	121:2 122:19	125:19 129:8	50:21 52:13,15,20
115:13 117:1	137:8 139:16	126:17 129:21	141:21 143:1	53:12 54:25 55:3
120:7 121:4,6	145:21	132:24 136:11,13	segregated 138:16	55:7 70:8 84:17
122:17 123:23	schedule 4:7 107:2	143:20	138:19	88:5,6
124:11 126:22	130:12 139:17	sections 60:17	select 91:24	sets 81:2 89:15 91:9
127:24 128:3,12	scheme 9:25 10:20	100:9 101:10	selecting 125:7	98:20 109:2
128:13,16,20	20:14 25:7,20	129:5,12 130:11	self-evident 128:23	129:21
129:2,4,9 130:15	33:5 44:25 46:5	134:19	self-evidently	setting 87:2
134:13,17,24	46:17 49:12,14	security 15:5 60:15	74:16 77:12	severable 106:13
140:19 146:14	50:8,9 61:17	85:15,17 87:17	sell 132:15	share 28:23 31:23
run 80:17 95:13	62:12 63:1,4	see 3:24 4:4,8,23	seller 61:22	33:15 34:16 52:19
96:13 103:6 113:6	66:24 73:17 75:16	5:6,24 7:6 8:22	Sempra 96:6	shareholders 21:2
138:24	99:17 119:5 127:9	10:12,25 11:14	senior 4:10	66:1 75:8,9,9
running 107:1	127:19,23,24	12:11 13:6,10,22	sense 15:21 26:17	short 16:12 35:24
146:6	138:10 139:25	18:8,17,20 19:4	26:18,21 30:24	113:24 128:8

shortfall 48:14,15 show 19:24 38:11 41:1 101:11 121:7 145:13,21,24 shown 64:6 128:11 shows 21:22 significantly 68:12 similar 11:17 123:17 similarity 123:11 simple 45:1 86:24 simplicity 74:10 simplify 84:6 97:8 simplifying 94:17 simply 21:17 22:5 22:25 23:15 28:20 32:14 37:22 40:3 78:7,25 86:16 92:22 100:12 103:14 120:1 133:10 135:5 138:22 139:25 single 105:2 situation 9:24 29:24 47:22 74:7 82:4 142:6,16 146:18 situations 47:14 six 35:23 sixth 59:25 slight 58:1 slightly 32:7 92:7 97:11 slug 74:17 Small 120:12 Snowdon 106:4 sold 132:13 solution 21:12 82:25 112:16,18 112:23 114:2 126:5,6,12,12,25 127:1 solvency 7:18 8:24 16:1 26:22 solvent 5:12,16,17	7:19 26:6 117:12 somebody 32:5 134:5 sooner 126:20 sorry 12:22 43:9,12 59:17 110:17 111:23 122:5 sort 30:23 47:19 63:19 65:10 75:13 76:5 82:17 92:1 96:19 103:8 105:12 112:9 138:4,19,21,22 sorted 91:13 sought 112:19 sounds 38:13 speak 23:10 132:20 speaking 1:5 special 112:9 144:8 species 126:24 specific 30:3 132:7 specifically 52:1 specified 28:16 speedy 97:9 split 106:7 square 118:23 123:2 squarely 36:25 stage 2:4 82:21 137:11 stages 143:4 144:6 stakeholders 47:9 75:1,18 stance 23:3 stand 72:18 77:18 standard 4:6,6,12 stands 73:11 Stanhope 58:14 start 2:18 12:5 43:4 43:15,21 76:14 98:4 starting 3:8,10,25 4:3 6:22 37:8 83:18 134:11 starts 7:10 63:9	80:24 88:8 117:6 136:18 state 90:11 statement 1:11 13:14 43:6 48:8 states 129:3 status 144:8 statute 11:14 15:7 44:25 45:22 46:3 46:24,25 48:16 59:12 65:7 66:6 75:6 76:10 91:5 92:3,4,14 97:5 105:13,14,15,17 106:16 119:8 statute-barred 7:15 8:4 statutory 1:16,18 1:20,22 2:8 10:20 11:1 17:1 19:9 21:15 25:7,19 26:18,25 27:1,7 28:25 29:7,23 30:3,10,17 32:14 33:5,9 34:9,12,13 34:17 35:9 42:4 45:21,25 46:5,17 50:2 51:23,24 56:3 61:17 66:22 66:24 68:3 72:18 72:22 73:16 75:16 76:11 77:23 78:15 79:23 89:24 91:1 91:15 95:22,22 98:24,25 103:9 107:14 108:2,8,10 108:15,18,22 109:3 110:23,24 111:12,17 113:2 115:4 118:5 119:13 124:15,24 125:1,8,25 126:21 127:10,18,23 132:4 133:3,14 134:2,3 135:7	136:7 137:22 138:10 139:5,14 139:25 140:4,8 141:3,24 142:11 142:19,22 143:3 143:18,22 144:9 stay 20:7,10 21:15 21:16 54:14 61:11 stayed 99:4 Stein 53:25 sterling 43:23 44:1 45:6,11 50:14,15 54:18 55:14 59:8 60:23 65:25 66:5 66:5 73:10 75:3 77:14,15,21 80:4 80:5,5 81:12,14 82:7,8 83:5,16 86:20 93:15,18 104:21 stood 72:10 straightforward 6:5 22:9 45:1 108:7 streamlining 94:18 strike 3:14 47:9 74:3 striking 91:9,16 93:1 strongly 90:24 struck 85:24 105:19 Stubbs 81:10 sub 12:21 sub-debt 2:5,7 16:18,19,20 sub-points 145:1 sub-rule 12:9 27:9 52:24 88:10 sub-rules 12:23 subject 4:13 14:22 21:6 36:10,13,15 36:21 37:2,4 51:23 78:18,21 87:11,20 93:10,17	98:7 101:4,6 103:25 104:3,8 132:6,7 134:11 138:21 submission 6:10 16:22 17:4 21:9 26:10 29:15 34:22 49:17 57:22 59:1 63:24 73:24 87:9 90:25 97:21 145:1 145:2 submissions 1:3 2:4 49:18,21 106:21 107:10,25 108:6 109:6 112:13 120:14 127:18 135:10 141:10,18 147:9 148:3,4 submit 1:25 13:2 37:9 44:25 109:2 109:21 110:4 115:17 116:18 120:19 127:6,11 127:13,20 130:1 131:10 133:21 138:22 139:10,14 139:19 140:25 142:25 143:2 144:12 146:16 147:6 submitted 83:3 subordinated 1:15 1:18,20,22 4:11 8:11 33:8,12 35:13,25 37:10 39:15 75:6,7 78:4 subordination 3:5 5:5,19 6:25 8:10 15:21 16:21 40:13 40:24 41:3 subparagraph 32:18 subparagraphs 36:17 subsection 30:18
---	--	--	---	--

134:25	supervening 78:19	11:3,7 20:4 23:22	terms 3:6,13 4:5,6	39:8,9 59:22 85:4
subsequent 95:8	support 34:21 41:9	36:6,20 40:22	4:6,12 34:10	88:2 109:6 113:1
112:23 123:18	41:24 89:21 127:4	54:2 58:15 61:20	37:17 39:16,20,22	122:19 125:3
142:4	supported 23:20	65:19 79:12,18	40:2 44:15 58:20	127:13 128:18
substance 56:18	58:12 90:1,24	83:25 84:9 90:17	66:18 91:9 95:18	129:21 132:5
88:16 122:16	supports 26:9	95:12 98:4,13,19	98:16 125:21	146:4
substantial 46:21	83:15	99:1 103:21 110:9	territory 32:5	thirdly 1:21
108:1	suppose 54:21	110:15,22 116:10	terrorem 97:4	thought 23:9 90:4
substantive 53:25	75:19 106:5	117:15 118:3,12	test 7:18	96:23 114:19
54:6,9 59:4 60:23	Supposing 91:21	122:3,9 123:25	testify 108:19	131:9 137:20
61:4 64:16 88:5	sure 79:16 114:17	128:16,18 129:3	text 40:19 43:11	three 1:17 40:24
88:14,21	115:6 134:16	136:15	83:14	108:5 110:3
substantively 54:16	136:4 146:20	take 1:9 3:21,24	textual 84:9 86:25	112:11 113:10
substitute 28:20	sureties 87:17	6:20 30:13 37:24	thank 8:17 9:9	127:8,17
succeeded 24:7	surplus 19:16 28:3	38:4 40:13 41:4,7	41:18 43:13 54:4	thrown 126:16
sued 99:18 132:22	28:23,23 29:5,8	42:1 54:18 55:21	63:11 71:20,23	Thursday 147:13
suffered 10:2,6	31:8,23 33:2,15	73:12 75:18 76:4	79:19 84:2 106:23	time 2:13 5:12
sufficient 98:6	33:16 34:16,16	76:5,6 77:20	107:23 117:7,10	14:19 23:10 31:9
suggest 3:21 10:25	45:18,20 48:20	79:14,15 98:3	141:11,16 147:20	44:16,20 56:2
16:2,23 19:17	50:2 52:5 61:15	105:15 109:16,22	theme 47:23	71:11 89:3 116:5
23:20 42:13,20	65:22 67:9 68:22	121:3,13,15	theory 46:2 70:22	120:25 121:1
43:4,16 60:21	69:19 74:18 80:7	135:19 140:13	71:4,7,15 95:1	124:14 137:19
63:22 64:12 65:16	80:9,13,19 84:25	147:11	96:14	142:1,21 147:12
69:24 74:2,23	85:1,3 95:18	taken 3:23 14:10	thing 8:10 18:1	147:16
76:20 86:13 90:10	98:24 99:11,14,17	77:18 81:7	22:13 25:9,10	times 112:7
90:15 94:19 103:4	100:20 101:9	takes 23:18 52:20	46:15 54:9,12	timing 24:11 109:7
suggested 25:24	107:17 108:1	53:11 130:12	63:21 66:20 84:10	today 121:17
59:22 87:2 120:5	114:13 118:6	136:25 138:15,25	122:14 126:23	144:25
suggesting 119:23	123:4 124:17,25	talk 72:6 88:17	133:14 139:7	told 68:8 134:15
suggestion 46:6	125:9,17 132:10	talking 16:8 100:10	things 6:2 8:19	tomorrow 147:19
58:18 61:11 73:15	132:19 138:13	117:5 138:19	45:8 67:23 69:12	top 57:1 77:24
90:9	139:24 142:8	talks 100:17 136:13	think 12:6 22:14,21	108:19,24 135:3,9
suggests 23:17	143:7 146:22	tell 18:24 91:5	33:24,25 34:18	136:8 137:14
41:14 42:23	surprising 5:3 37:9	104:20	47:2 75:21 76:16	142:21 143:21
suitable 125:7	136:16 137:4,21	telling 60:20 82:7	78:10 87:14 93:12	144:3
sum 36:1 106:7	survives 95:17	92:4	93:24 97:15	tort 9:22 10:2,9,10
summaries 51:13	suspect 133:23	tells 8:10 12:18	102:22,25 109:11	20:16,24 21:2
summarised 89:13	Swiss 80:1 81:12	36:8 45:22 52:5	115:11 121:16	26:5 75:23 91:20
108:16	82:6,11	65:7,8 85:2,7 91:4	122:1 137:10	137:20,23
summary 3:15	system 145:23	105:15	144:5	totality 113:22
108:5,6		tentative 80:23	thinking 34:13	touched 91:17
SUMPTION 22:3,8	T	81:5	65:11 87:25	Trace 119:20
22:16,19 23:2,6	T&N 9:21 20:1	term 7:14 138:17	144:16	transfer 132:17
29:11	75:21 91:21	terminated 40:13	thinks 134:16	transform 64:13
sums 98:8	tab 3:8,10 7:5 11:2	terminology 13:5	third 1:25 38:1	transformation

64:20 transformed 63:20 transitional 11:6 treated 2:20 31:9 35:4 112:22 treatment 10:16 71:9 trend 94:22 tried 127:7 Trower 1:7 true 19:11 130:17 trust 58:14 125:20 138:5,21 139:15 139:20 141:3,5 trustee 24:24 98:6 99:3 trustee's 99:4 trustees 32:9 trusteeship 99:6 trusts 140:20 try 49:20 72:13,13 91:25 92:20 104:23 115:3,12 128:7 trying 49:2 73:21 turn 3:7 43:1 54:1 58:16 121:6 128:17 turned 54:24 63:17 turning 114:6 122:16 124:20 127:6 twice 49:3 122:5 two 1:12 5:6 16:24 24:8 36:4,17 102:19 106:8 109:16 110:6 119:10,23 126:4 126:11 127:24 134:5 135:13 143:3 144:2,6 146:3 147:5 two-thirds 92:8 type 141:5	U	132:18 upward 58:22 upwards 81:14 use 15:24 112:6 114:16,17 122:6 125:6 142:11 useful 43:15 51:3 uses 88:14	V	v 23:22 52:9 53:25 58:14 61:19 67:16 69:18 74:14 95:15 96:20 vacates 138:25 vacation 130:1 valid 41:12,14 89:3 validly 38:9 valuation 6:18,19 15:8,25 26:19,20 42:24 44:11,19 45:5 48:12 49:25 50:7 53:11 70:4,8 74:1 78:23 105:15 value 2:12 14:4 16:14 42:15 65:7 89:1 91:6 valued 40:15 45:9 45:24 46:23,25 48:11 49:23 54:20 57:25 76:10 91:6 91:10 92:19,22,23 values 15:24 valuing 91:25 vanishingly 146:19 146:25 variable 4:5 various 47:9,10 73:20 75:18 95:4 109:25 118:1 129:16 136:9 version 111:7 121:24 143:6 vessel 61:23 vested 62:21	W	view 2:10 23:20 74:8 89:21 90:21 vires 30:24 volume 40:20 65:19 voluntary 21:17 79:25	105:11,23 106:13 112:24,25 118:1 120:1 125:2,10,21 133:18 134:2,12 137:9 138:2 ways 129:16 weight 79:3 86:14 went 47:18 89:25 89:25 110:11 118:9,17 124:6 125:5 143:10 Westminster 147:3 whichever 28:15 white 84:6 wholly 61:8 wider 135:23 Wight 52:9 61:19 74:14 96:20 win 81:25,25 win/lose 82:15 win/win 81:24 82:15 wind 5:2 64:22 windfall 66:18,23 winding 4:20 12:3 21:17 36:9,21 37:21,23 39:17,19 44:14 62:10,11,23 63:20 64:8,12,13 64:23 65:2 68:6 80:5 97:9 102:12 103:22 106:6 108:16 110:25 111:15,19 112:15 116:7 117:12,13 117:18,19,24 118:7 119:4,10 123:18 124:5 127:10,22 136:11 138:10 141:21 142:6,8,9,12,16 142:18,20 143:5 143:14,15,18,19 144:14,18 winnings 47:13,22
--	----------	---	----------	---	----------	--	--

74:7	85:13,25 86:6,10			
wisely 134:20	86:11,11,13 87:2	X	12.3 36:4,19	49:23 68:2 74:2
wish 41:2 141:8	87:6,9,13,25 88:2	X 48:10 134:15	121 120:5	79:22 82:14 83:12
145:7	88:17 90:3 96:11		129 84:1	83:19 84:5 109:23
wishes 146:18	104:13 105:3,4,6	Y	13.12 20:18 36:3	109:24 110:21
withdrawals 60:14	115:14 117:22		98:16	111:3,8 117:11
Wolfson 1:6 82:21	118:23 123:6	Z	1325 84:1	120:16 144:15
82:22 106:24	138:5 146:4		135 125:20 126:14	1990 12:9
107:4,7,10,11,21	147:13	0	1370 80:24	1992 62:8,10
107:24 110:17,19	work 14:20 55:2,13		1370/1371 79:20	1994 12:18,23 85:5
111:10,24 112:1,3	61:1 84:20 91:19	1	1371 80:25 81:11	1996 109:12
113:11,18,23	workable 6:18	1 7:5 12:7,9,21,23	14 83:25 95:12	
114:1,5,7,16,19	16:13	27:9 100:12	148 86:2	2
114:21 115:9,12	worked 93:3	104:11 117:13	15 9:8 51:5 58:15	2 4:7 11:13 12:21
117:6,8,11 118:22	works 6:2 11:1	121:25 148:3	79:12,18	12:23 27:11,23
121:12,15,19,22	16:21 27:7 47:4	1,000 93:13,14,19	1508 54:2	32:12 50:6 65:19
121:24 122:3,5,9	52:23 127:15,15	1.01 72:1	1556 20:21	88:25 104:12
122:15 123:6,15	worlds 81:19	10 11:13,15 12:6	156 89:25	110:22 117:15
129:1 130:9,19	worse 38:22	50:6 59:19,21,21	16 9:8	122:18 129:9
131:3,8,10,18,21	worst 81:19	59:23,24 60:1	17 1:1 118:3	2.00 71:23 72:3
132:2,23 133:21	worth 4:15 11:9	66:16 74:1 90:17	175 43:7	2.105 50:22
133:24 134:9	12:20 42:2,3,6,6	91:8 105:21,22	175(1) 136:12	2.11(d) 129:14
135:19 136:4,19	59:17,20 61:19	121:20,20 129:8	18 117:2 136:15	2.23 90:17
137:2,7,13 138:6	63:12 64:6 65:8	129:10,14,18,21	18.5 80:1	2.68 12:5
139:13 141:13,17	66:16	10.00 147:19,22	1806 98:13	2.68(1) 129:18
145:18 146:25	wouldn't 8:20 10:4	100 45:16,24 51:21	189 117:9,14,23,25	2.72 12:18,22,23
148:4	22:17 128:25	52:17 58:8 59:16	125:11	85:5 86:15
wondering 34:5	wound 62:9	65:9,9 66:12,13	189(1) 117:14,16	2.72(6) 143:11
55:2	wrinkle 58:2	66:13 76:10 80:3	189(2) 111:11	2.77 13:10
word 17:22 18:5	wrinkles 1:12	105:20	115:20,21 118:4	2.78 13:16
30:8 110:4 112:6	writ 7:25 8:5 21:18	100p 77:23	119:14,18 120:2	2.81 14:1 50:21
113:12 114:7	57:16	102 117:6	120:15,21,25	88:24
125:9 131:19	write 115:6	104 117:9	121:2 123:12	2.85 14:5 50:21
145:4	writing 45:3 85:9	107 20:21,24 125:2	124:19 126:17	52:13 88:4,8
wording 8:9 32:12	139:15 145:20	125:4 136:13	141:20,25 142:5	2.86 14:12 44:13,22
88:4,4 94:7	146:8	148:4	142:20 143:20	50:4 52:13 59:3
123:12	written 3:15 13:14	108 126:11	144:12,14,17	70:6 73:25 82:10
words 4:18 5:10,25	113:15 138:3	11.00 1:2	145:8,9 146:8,12	83:15 84:8 88:17
6:25 7:1,2,3 8:7	140:3,25 141:24	113 117:3	146:15,16	2.86(1) 106:5
16:4 17:23 18:3,5	142:14 143:2	115 136:11	1892 110:21	2.88 14:18 27:1,2
18:22 21:24 24:23	wrong 2:1 47:18,19	117 117:3	1907 128:18	44:21 45:21 50:22
28:9 32:20 33:20	57:20 65:13 70:16	1179 121:22	1957 110:16,18	68:3 70:6 95:18
35:7,8,9 36:22	76:16 100:16	1181 111:25 112:1	1981 36:20	109:12 111:24
46:4 54:13 66:7	115:6,8,20 135:4	1184 36:6 103:21	1983 89:20 90:11	121:8 123:22
69:4 77:18 81:23	145:9 146:14,14	12 105:22	1986 9:3,13,21 10:3	2.88(1) 121:24
		12(3)(ii)(a) 75:6	11:22 44:16,21,23	122:22

2.88(7) 85:2 107:16 107:19 109:10,12 109:22 111:16 112:14,22 123:12 123:19 124:7,23 125:23 127:22 128:4,9,12 129:8 129:23 130:19,20 131:11 132:22 133:4,17 134:7,25 135:11,18 137:7,8 138:1,18 139:7,13 139:22,25 141:2 141:19,25 142:3 143:6,23 146:24	22 63:14 23 61:20 26 63:12 26.2 43:12 27 63:10,23 64:11 2739 24:14 28 129:3 286 85:23 29 2:23 111:8 128:16,18	106:5 4.93 118:12 119:18 4.93(1) 110:7 118:10 119:13 126:17 41 35:21 411 129:5 412 129:5 43 98:4 44 98:19 456 65:19 46 98:13 49.3 7:5,10	68 116:25 680 3:8 69 116:25
2.88(a)(i) 124:2 2.89 14:18 50:22 2.96 135:14 2.97 135:15 2.98 135:15 20 54:2 2000 13:10 2001 13:16 2002 109:14 116:1 118:19 2003 109:10,12 128:13,16 129:2 2004 13:22 88:24 2005 121:25 2008 14:5 52:14 88:9 2010 111:17 121:25 123:17,23 143:11 2011 14:12 50:4 84:10 2013 14:18 27:4 121:21 122:1 2015 14:19,23 120:11,12 2016 1:1 2032 14:24 21 20:4 2101.3 60:13 2102.2 60:14 2105 14:22	3 3 3:10 41:10 116:10 3.58 146:6 31 4:3 64:4 315 116:10 316 116:10 32 64:4 324 100:15 328 98:19 33 4:8 330 99:2 330(5) 100:1 3303 58:16 335 99:17 34 4:11 24:14,19 37:13,16 141:1,15 141:23 36 16:6 362 7:10 363 7:6 37 39:2 38 35:21 143:12 382 98:13 101:1,2 101:17,25 102:2 3820 90:18	4 4 4:12 6:1 41:10 43:7,9 72:25 107:22 114:24 116:6 122:3 4.00 147:21 4.4 4:15 4.5 4:21 4.91 44:14,14,15	5 5 4:14 5:5 41:10 53:9 56:3 99:9 100:12 103:23 121:25 123:25 5(2)(a) 6:10,23 10:15 16:3,8 51 118:12 53 110:9,15 530 3:25 535 9:8 539 3:10 540 16:5 37:13,15 37:16 541 35:23 542 35:23 548 59:17 555 69:7 557 76:23 92:6 57 26:2 58 25:8
		6 6 27:11 28:16 36:6 40:22 41:10 53:9 53:19 59:18 60:7 65:20 103:21 109:4 6(a) 54:17 625 56:11 65 89:15 67 130:11	7 7 3:8 27:25 28:15 30:18,20 32:12 33:4 34:10 38:1,2 39:1 123:4 141:1 141:15 7(d) 39:13 7(e) 40:12 71 36:20 139:21 74 11:2 84:9 122:9 132:24 75 11:7 77 56:11 78 82:20 90:7
			8 8 23:22 27:16,16 28:12 32:12 52:24 72:19 88:10 137:22 82 89:18 84 142:14 85 89:13 142:14 85.1 143:2 86 84:3 87 138:3 88.1 140:2
			9 9 32:18 92 69:7 94 56:12 95 58:3 70:22 96 76:23 92:6 99 139:17