Thursday, 20 October 2016
(10.00 am)
Submissions by MR DICKER (continued)
LORD NEUBERGER: Mr Dicker.
MR DICKER: My Lords, at the risk of extending my estimate by a few minutes I would like to have a further go at answering a couple of points raised yesterday, in particular by my Lord, Lord Reed.
LORD NEUBERGER: Yes.
MR DICKER: I do want to ensure your Lordships have our submissions.

The starting point is we agree with Lord Sumption as he put it at page 159 of the transcript yesterday, when he said:

"The argument is surely simply that the admission of a proof has an effect roughly corresponding to the merger of a judgment with the underlying liability, and the whole argument really depends on whether that proposition is correct."

We say that is the issue. We also say, as your Lordships know, that as between the creditor and the debtor, it is not treated as a merger.

My Lord, Lord Reed said at page 132:

"The scheme gives you exactly what you would have got if you had sued and got a judgment debt as at the

date of winding up. You get the sterling equivalent at that date, plus the 8 per cent interest from then until actual payment."

We agree that is how your claim is valued for the purposes of proof to ensure pari passu distribution, and we also agree that you may receive 8 per cent interest on that rate, but we say it doesn't follow that that is all that you are entitled to or all that you can ever obtain pursuant to the statutory scheme.

Now, Miliangos obviously established that a creditor is entitled to be paid in the relevant foreign currency, and out of insolvency he is entitled to obtain judgment in the foreign currency. He can enforce in that foreign currency if there are foreign currency assets available, he doesn't have to convert his claim into sterling if he doesn't need to, but if he does, sterling will be converted at the last practical moment before enforcement. That is essentially just a procedural matter.

Now, the question, as my Lord, Lord Sumption said, is whether rule 2.86 is just, we would put it anyway, a valuation mechanism for the purposes of proof or effectively treats the creditor as if he had obtained a judgment. We say obviously it is the former not the latter. We say that is supported by Lord Hoffmann in

Wight v Eckhardt; indeed, he expressly makes the point that winding up isn't the same as obtaining a judgment.

We also say that was Mr Justice Oliver's view in Dynamics. One can tell that from his approach in Lines Bros. If he had taken a view in Dynamics that the conversion into sterling was in substitution for the underlying debt, his response to Lord Justice Brightman's comments about the surplus wouldn't have been to say that he didn't assent that that was a possible solution, he would have said that the issue simply doesn't arise. The underlying claim has gone and there is therefore no question of any residual claim capable of being paid out of the surplus.

Now, my Lord, Lord Neuberger said at page 133, lines 10 to 15:

"So may it not be said that, by applying the judgment rate from the date in question, it makes sense that the conversion to sterling is treated as being on that date generally, because otherwise why give a rate appropriate to a sterling date?"

Now, in response to that, we say that one needs to bear in mind how the statutory waterfall works. One has to deal with each level in the statutory waterfall separately. You might never get down to a subsequent stage. There might be insufficient to pay creditors in

full, in which case one is only concerned with pari passu distribution. There might be more, in which case there may be a distribution in respect of interest. In some cases, relatively rare, there may be sufficient to pay interest in full as well and leave a surplus, at which point the issue arises.

Now, we do say it is important to bear in mind that each stage has to be dealt with and completed before you get to the next stage. So the first stage is pari passu distribution. To treat everyone equally, foreign currency claims need to be converted into sterling at the date of liquidation. That is why the scheme gives you a right to the sterling equivalent as at the date of liquidation. As I say, to ensure everyone is treated equally.

The next stage is statutory interest. If there is a surplus, creditors should be compensated for delay in payment of their proved debts and be compensated on an equal basis. For that reason, they are all given a right to interest at the greater of the judgment set rate or the rate applicable to the debt apart from the administration but interest on their proved debt, in other words the sterling amount for which they have been permitted to prove.

Now, as I say, that is done simply to ensure that at

1 this stage, as well, creditors are treated equally.
2 They have all been paid equally by reference to
3 a sterling sum. They should all be compensated equally
4 by reference to interest on a sterling sum. It doesn't
5 follow, we say, that the effect of this scheme is
6 necessarily to say that their underlying claim is
7 essentially treated as if it were merged into a judgment
8 and then be treated accordingly.
9 LORD NEUBERGER: Yes, you say my question is fine as far as
10 it goes, but it doesn't deal with the issue of the
11 underlying debt, it is merely consistent with them all
12 being proved claims being converted, but the underlying
13 debt still runs underneath.
14 MR DICKER: Your Lordship has the point, absolutely.
15 Now, one needs to bear in mind in this respect,
16 conversion to sterling was part of the common law of
17 insolvency before rule 2.86 was introduced. By that
18 I mean the judges decided in Re Dynamics and Lines Bros
19 that that was how the statutory scheme should work. We
20 say one can't link the conversion of claims into
21 sterling and the provision of interest at the
22 Judgment Act rate as if they had both been introduced
23 for the first time in the 1986 Act and as representing
24 a decision that the underlying claim should be
25 extinguished and replaced with a new claim, equivalent

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1 to a judgment claim.
2 As I submitted, rule 2.86, we say, was simply
3 intended to codify Lines Bros, and rule 2.88, dealing
4 with post-insolvency interest, was intended to do two
5 things: one, to preserve a creditor's right to
6 contractual post-insolvency interest, and, secondly, to
7 remedy the defect identified by Lord Justice Giffard in
8 Humber Ironworks, ie creditors who had been prevented
9 from obtaining a judgment ought to have some
10 compensation for that.
11 Now, we also say that one needs to bear in mind that
12 the interest provision will often not compensate the
13 foreign currency creditor, even for his lost interest.
14 Now, by that I mean this: the foreign currency creditor
15 will often be entitled to interest on his foreign
16 currency claim. If sterling depreciates, he will not
17 get the full amount of his underlying principle, but in
18 addition, because statutory interest under 2.88 is
19 statutory interest on the sterling equivalent of his
20 underlying claim, the interest he receives under 2.88
21 may well be less than the equivalent interest he would
22 have received in respect of his underlying obligation.
23 Now, just to give a simple example, at the relevant
24 time, the New York judgment rate was 9 per cent. If
25 a creditor with a foreign currency claim had obtained

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1 judgment in a foreign currency -- not necessarily here,
2 assume in New York -- carrying a rate of interest at
3 9 per cent, then the statutory scheme on my learned
4 friend's case causes a double loss for the creditor.
5 Not only does he not get back the full amount of
6 principal, but nor does he get back the full amount of
7 the interest that he would have received on his
8 underlying foreign currency claim because, as I say, the
9 interest is payable in respect of his sterling proved
10 debt.
11 Now, my Lord, Lord Reed then raised the question at
12 page 129, lines 6 to 10, of whether a foreign currency
13 creditor needs to give credit for the statutory interest
14 that he has received. Now, we say this is a separate
15 question. First of all, one has to decide whether
16 currency conversion claims exist at all. There is then
17 a question of how do you calculate the unpaid amount of
18 any underlying claim. We deal with this in our written
19 case at paragraph 169. I don't need to take your
20 Lordships to it. I briefly summarised the position.
21 Mr Justice David Richards in Waterfall IIA dealt
22 with this issue at paragraphs 227 to 231. His
23 conclusion is, or was, essentially that you don't have
24 to give credit because, as I summarised yesterday,
25 essentially the two things are intended to compensate

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1 you for different things; one for delay in payment, the
2 second is intended to ensure that you get paid the full
3 amount that you were owed.
4 Now, I just wanted to ensure your Lordships were
5 aware that the decision in Waterfall IIA is going on
6 appeal and will be heard by the Court of Appeal,
7 I think, next April. So to the extent that there is
8 a subsequent question as to how you calculate the
9 foreign currency claim by way of a non-provable claim,
10 do you have to take interest into account, as I say,
11 that was decided in Waterfall IIA, is going on appeal --
12 LORD NEUBERGER: Yes.
13 MR DICKER: -- and that issue will be heard by the
14 Court of Appeal next year.
15 The only other point is a short point raised by my
16 Lord, Lord Neuberger. Your Lordship asked whether there
17 was an equivalent to 2.86 in relation to liquidation.
18 LORD NEUBERGER: Yes.
19 MR DICKER: Whether it was worded identically. There is of
20 course an equivalent; it is rule 4.91.
21 LORD NEUBERGER: Yes.
22 MR DICKER: Just so your Lordships have the reference,
23 authorities F, bundle 3, tab 50.
24 LORD NEUBERGER: Yes.
25 MR DICKER: It is in essentially the same terms.

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1 LORD NEUBERGER: It is effectively similar.
2 MR DICKER: Yes. The only difference is there is wording
3 dealing with where there is a liquidation preceded by
4 an administration.
5 LORD NEUBERGER: Yes.
6 MR DICKER: That is all I was proposing to say by way of
7 dealing with points raised yesterday.
8 My Lords, when I finished yesterday I was dealing
9 with a series of other aspects of the statutory scheme
10 which my learned friend relied upon, essentially, in
11 support of his proposition that, if you look at those,
12 you can see or you can deduce that 2.86 must have been
13 intended effectively to extinguish the old claim,
14 provide a new claim or, as he put it, ensure that
15 payment of that claim in sterling in full was payment of
16 the underlying debt in full.
17 Just to finish that sequence of other aspects,
18 I should, I think, say something very briefly about
19 future debts, but I can deal with them very briefly, for
20 this reason: the position in relation to future debts is
21 that you prove for the full amount of your future debt.
22 So if you have a debt of £100 payable in a year, your
23 proof is admitted for the full £100. So there is no
24 interference there. What then happens is rule 2.105
25 discounts that debt back to provide a present value, it

1 says for the purposes of dividends; essentially to
2 ensure that it is treated equally with every other debt.
3 In other words, they are all paid by reference to their
4 present value. And then, equally with every other debt,
5 it is also entitled to interest in respect of the period
6 for which it is out of the money provided that there is
7 sufficient to trigger 2.88.
8 So no issue in relation to future debts. Proved for
9 the full amount. That is no detriment to the creditor;
10 indeed, his claim, effectively, has been treated as
11 accelerated subject to the discount then applied to
12 bring it back to present value. Compensation for any
13 delay in payment of that present value, equally with
14 every other creditor, pursuant to rule 2.88.
15 LORD SUMPTION: Can I ask you a question that doesn't arise
16 out of the point that you have just made, although it is
17 broadly related to the issue we are dealing with. Has
18 it ever been suggested that any aspect of the rule of
19 res judicata applies to the admission of a proof in
20 a winding up? You may need to have a look at that. It
21 would be a tall order if you were to dredge it up
22 straight away.
23 MR DICKER: That is not is issue that I confess I have --
24 LORD SUMPTION: If it ever has, I am not aware that it has.
25 I would be interested to know.

1 MR DICKER: My Lord, I am sure that the parties can check.
2 My understanding is, for what it is worth, standing
3 here, I am certainly not aware of any case in which the
4 mere admission of a proof operates by way of
5 res judicata.
6 LORD NEUBERGER: Presumably if it did, it would have been
7 difficult, you say, for Lord Hoffmann to say what he
8 said.
9 MR DICKER: Yes. My only hesitation, I suppose, is that one
10 can imagine situations in a winding up where, as
11 Lord Hoffmann said, I think, in Cambridge Gas, it is
12 occasionally necessary, actually, to determine, and
13 there may be no way of determining it, short of giving
14 a creditor leave to commence proceedings and then
15 determine his claim in that way. Now, that may be
16 a different situation leading into a different result.
17 My Lord, two other matters, two other aspects. The
18 first is disclaimer. We deal with that in our written
19 case. I don't need to say anything more to your
20 Lordships about it. Our point is simply that if you
21 look at the wording in relation to the disclaimer
22 provision, that is the sort of wording that we say one
23 would expect to find if the underlying claim is
24 extinguished and replaced by something else. The
25 disclaimer provision is very clear. It says that it:

1 "... operates to determine as from the date of
2 disclaimer the rights, interests, and liabilities of the
3 company in or in respect of the property disclaimed."
4 And it expressly gives a right to damages in
5 exchange. Again, nothing that interferes with, we say,
6 the creditors first, members last principle, because the
7 damages claim is simply a secondary liability for the
8 primary right. It is intended to provide the same level
9 of compensation, the only difference is that it has to
10 be estimated. But as an estimated claim, it is capable
11 of being treated in the liquidation like every other
12 estimated claim. Hindsight applies. If further
13 information suggests the estimate is wrong, it can be
14 revised and treated accordingly.
15 Bankruptcy, we deal with in our written case at
16 paragraph 151.
17 LORD NEUBERGER: Yes.
18 MR DICKER: I don't think I need to say anything more in
19 relation to that.
20 My Lords, there is then a section of our case,
21 paragraphs 156 is to 174, dealing with what we describe
22 as the merits, and I do just want to emphasise a few
23 points and pick up a few points arising out of yesterday
24 in relation to that section.
25 The starting point, we say, is that you have

1 creditors who have not received the full currency amount
2 that they are owed. We say it is no answer to say they
3 might have done better if sterling had appreciated, or
4 that things could have been different in a different
5 administration.
6 The appellant's position is essentially that it must
7 be entitled to protection from what it describes as the
8 one-way bet. The consequence of that is necessarily to
9 require creditors to bear an exchange rate risk which
10 they never agreed to bear.
11 Now, in relation to LBIE, there are foreign currency
12 creditors who, if the appellants are right, will simply
13 not end up receiving the amount that they were entitled
14 to receive. We say no argument about taking the rough
15 with the smooth provides an answer to that. It may
16 provide an answer when one is dealing with the position
17 as between creditors, but a shareholder is not entitled,
18 we say, to a creditor, "I haven't paid you the full
19 amount, but that is fair thing because otherwise, in
20 other circumstances, I might have ended up having to pay
21 you more or I might have ended up having to pay others
22 more".
23 LORD SUMPTION: One problem about the argument that you are
24 objecting to is that it is an argument that relates only
25 to this particular kind of claim. So if it is correct,

1 it would tend to suggest that one would have to fashion
2 a special rule in relation to undischarged claims in
3 foreign currency, but wouldn't necessarily apply to
4 other kinds of claims, or the kinds of non-provable
5 claims.
6 MR DICKER: Well, we say your Lordships wouldn't be
7 fashioning a special rule for this. One would simply be
8 applying the structure of the scheme, recognising that
9 the operation of the proof process hasn't discharged
10 these creditors in full and permitting them to enforce
11 the remainder of their claim as a non-provable claim.
12 LORD NEUBERGER: Can you think of any other non-contingent
13 debt which this would apply other than a currency claim?
14 MR DICKER: The answer to that is no. It is something which
15 arises because of the need to convert claims into
16 sterling for the purposes of proof.
17 LORD NEUBERGER: You say that Lord Sumption's way of putting
18 what he put to you is a somewhat -- I don't mean it
19 crudely to him -- loaded way.
20 LORD SUMPTION: Oh, definitely loaded.
21 LORD NEUBERGER: As I say, I don't mean it --
22 LORD SUMPTION: But I think Mr Dicker may well have
23 misunderstood against whom the blunderbuss would be
24 aimed.
25 LORD REED: I am just thinking aloud, but would a contract

1 for the delivery of commodities possibly be in a similar
2 position? A contract for, I don't know, whatever it
3 might be, oil futures or gold or whatever it is would
4 have a different value at the date of liquidation from
5 its value at the date of payment of a dividend.
6 MR DICKER: I suppose in specie claims obviously would be
7 dealt with differently in a liquidation but, again,
8 my Lord is right in the sense that the effect of the
9 statutory scheme in its broadest sense in that situation
10 would be to ensure the creditor got back his asset,
11 effectively at the value it was worth.
12 LORD NEUBERGER: So where you have an in specie claim,
13 I promise to deliver oil to you over the next five
14 years, specified instalments. I go insolvent.
15 MR DICKER: Yes, and you would --
16 LORD NEUBERGER: You prove for it. That is valued at the
17 date.
18 MR DICKER: You would then get the value of that claim.
19 LORD NEUBERGER: So that is worth at a certain date, X. At
20 the date of liquidation or administration, that is worth
21 X, and that is what you get paid out of.
22 MR DICKER: I mean, if it is an in specie claim, you would
23 obviously get the gold back.
24 LORD NEUBERGER: Yes.
25 MR DICKER: But if it was a proprietary claim --

1 LORD NEUBERGER: If I was willing to sell you oil and
2 I hadn't got any oil, but you had made a loss because
3 you had agreed to buy oil to me at $20 a barrel and the
4 present price was $50, you would prove for the value of
5 that contract, would you, or what? How would you prove
6 for that on the relevant date? Or how would it be
7 valued?
8 MR DICKER: It would be a contingent claim which would be
9 given a present value. It would be capable of being
10 revalued as and when the value of that claim changed.
11 LORD NEUBERGER: But each day the oil falls to be delivered,
12 you would be entitled to look and say, well, that was
13 valued at $20 a barrel on the basis of the date of
14 liquidation, the price has now gone down to $10
15 a barrel, therefore the right to be supplied to it -- or
16 perhaps I have it the wrong way round, but at any rate
17 you would revalue the value of the contract, or the
18 right to have the oil delivered, or to sell it to me, at
19 the date of delivery, and you could get the balance, as
20 it were.
21 MR DICKER: Yes.
22 LORD NEUBERGER: I haven't put it very well, I am sorry.
23 MR DICKER: My Lord, can I just make a further point in
24 relation to --
25 LORD NEUBERGER: And that is more or less what Lord Hoffmann

1 says when he talks about insurance policies in that
2 passage.
3 MR DICKER: Yes.
4 The advantage if it is a contingent claim is you
5 don't need the non-provable analysis.
6 LORD NEUBERGER: Right.
7 MR DICKER: Because simply, as and when further information
8 comes to light, you revalue it.
9 LORD NEUBERGER: But you say in this case it is the same
10 thing, it just happens not to be a contingent claim.
11 But you are still --
12 MR DICKER: The only difference is that in relation to two
13 categories of claims, post-insolvency interest and
14 currency conversion claims, that, as it were,
15 forward-looking benefit, if that is the right phrase for
16 it, isn't something for which you can prove, because the
17 way in which the cut-off date (inaudible) liquidation
18 are assessed means that you simply exclude it for the
19 purposes of proof. So the way the scheme has developed,
20 you can only recover it as a non-provable claim.
21 LORD REED: I wonder if it is completely analogous, because
22 isn't the explanation given -- I think it may be
23 Mr Justice Oliver in one of the cases, he explains the
24 theory behind the treatment of contingent claims where
25 new information emerges as being that you can use

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1 hindsight as an (inaudible) valuing the claim as at the
2 date of liquidation. So it is still the liquidation
3 date value that is being assessed, albeit with the
4 benefit of hindsight.
5 MR DICKER: Yes, absolutely.
6 LORD NEUBERGER: It might be said that the power under 2.81
7 to adjust a claim for a contingency is interesting in
8 that there is no power to adjust for currency.
9 MR DICKER: Correct. And we say --
10 LORD NEUBERGER: Page 2040.
11 MR DICKER: In a sense, the statutory scheme could
12 conceivably have done that. It could conceivably have
13 treated both post-insolvency interest and currency
14 conversion claims as contingent, provable claims. It
15 could have said, "We know we are not going to make
16 a distribution for a while, we will take a guess as to
17 how long and we will take a guess as to what it would be
18 worth, you know, as and when we will make a payment".
19 But because of this image of collection and distribution
20 on day 1, that is not how the scheme works. So these
21 claims, and it may well be only these claims, are
22 necessarily relegated to being non-provable claims, but
23 not, we say, extinguished; simply pushed down the
24 statutory waterfall.
25 LORD NEUBERGER: I see. So if the adjustment isn't made

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1 under 2.81 or whatever, then you would be left to your
2 claim as a non-provable claim?
3 MR DICKER: Well, if it is strictly a contingent provable
4 claim, I don't --
5 LORD NEUBERGER: If you don't adjust, you lose it.
6 MR DICKER: It is difficult to see when you would ever need
7 a non-provable claim. Stanhope, I think, is a most
8 graphic example of that, because even post-dissolution.
9 LORD NEUBERGER: I see.
10 MR DICKER: -- you are able to come back and say,
11 "Dissolution void, (inaudible) the liquidation, now
12 I will submit a revised" --
13 LORD NEUBERGER: It is a provable claim but you can't undo
14 the distribution?
15 MR DICKER: Yes.
16 LORD NEUBERGER: I see. Quite right, thank you.
17 MR DICKER: My Lord, I gave an example yesterday of
18 a company that went into liquidation or administration
19 at a time when its assets and liabilities were both
20 denominated a foreign currency and of equal amounts. It
21 is the example we give in our written case at
22 paragraph 160 at footnote 14.
23 LORD NEUBERGER: Yes.
24 MR DICKER: And I just wanted to respond to one point made
25 by my Lord, Lord Neuberger in relation to that. The

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1 example at paragraph 160, footnote 14.
2 LORD NEUBERGER: Yes.
3 MR DICKER: I won't take your Lordships through the detail
4 of the example; I outlined it yesterday.
5 LORD NEUBERGER: Yes.
6 MR DICKER: Now, my Lord, Lord Neuberger asked
7 yesterday: well, what happens if the pound, instead of
8 depreciating, appreciates? Don't creditors necessarily
9 get a windfall in that situation? So the example in
10 footnote 14 is sterling depreciates because the
11 liabilities are converted on the date of liquidation,
12 but the assets are converted later. Liabilities ended
13 up being paid less than their full foreign currency
14 amount.
15 LORD NEUBERGER: Yes, yes.
16 MR DICKER: And the additional amount, effectively enures
17 for the benefit of shareholders. My Lord, Lord
18 Neuberger said: what if it is the other way round, don't
19 creditors benefit if sterling appreciates?
20 LORD NEUBERGER: Yes.
21 MR DICKER: And we say the answer is they can never do
22 better in that situation than payment in full. And the
23 reason is simple. There are only essentially two
24 possible scenarios, the first of which is the foreign
25 currency liability is converted at the date of

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1 liquidation and the assets are converted on the same
2 date.
3 LORD NEUBERGER: Yes.
4 MR DICKER: In which case, they will get 100 cents in the
5 dollar, but no more.
6 LORD NEUBERGER: Yes.
7 MR DICKER: Alternatively, the assets are converted later
8 but, again, in that situation they will simply make
9 a loss. So there is a downside but there is not
10 an upside in relation to this.
11 LORD NEUBERGER: Yes, I see.
12 MR DICKER: My Lord, another point we make is the injustice,
13 we say, is also entirely one-sided. If the claim is by
14 LBIE against the third party, LBIE will continue to be
15 entitled to payment in the relevant foreign currency.
16 So you have a situation in which LBIE can force everyone
17 else to accept sterling, but if anyone owes LBIE money,
18 LBIE is entitled to insist on payment of the foreign
19 currency amount.
20 LORD NEUBERGER: Yes.
21 MR DICKER: So that is another thing one has to add into the
22 balance when one talks about effectively a one-way bet.
23 LORD NEUBERGER: Yes. If you make your final points quite
24 shortly.
25 MR DICKER: My Lord, yes.

1 LORD NEUBERGER: I am not saying it is your fault.
2 MR DICKER: I deal with the one-way bet. I think I have
3 dealt with taking interest into account now.
4 If I just remind your Lordships of paragraph 170,
5 there is a paragraph that sets out why my learned friend
6 is wrong to say foreign currency creditors would be
7 better off than they otherwise would have been.
8 LORD NEUBERGER: Yes.
9 MR DICKER: I won't take your Lordship through that, nor
10 with our submissions on the limited force of the
11 reliance on the desire for simplicity.
12 LORD NEUBERGER: Yes.
13 MR DICKER: My Lord, in the last section of the our case, we
14 deal with the situation in which there is a shortfall of
15 non-provable claims.
16 LORD NEUBERGER: Yes.
17 MR DICKER: And essentially, the thrust of this is we
18 support Lord Justice Briggs's approach, which is
19 essentially in this situation, it is not expressly dealt
20 with by the statute, but it can no doubt be dealt with
21 as and when the problem arises. It's not something that
22 needs to trouble your Lordships today. It isn't
23 something which the courts have needed to address in the
24 last 250 years. Specific problems, if and when they can
25 arise, can no doubt be dealt with at that stage.

1 My Lords, subject to your Lordships, those were our
2 submissions.
3 LORD NEUBERGER: That is very kind, thank you very much
4 indeed. Thank you. Thank you, Mr Dicker.
5 Mr Miles.
6 Submissions in reply by MR MILES
7 MR MILES: May I start with a general point that crosses
8 over all three of the issues that I am dealing with,
9 which is to do with the interpretation of section 107
10 and 146 of the Insolvency Act.
11 LORD NEUBERGER: Yes.
12 MR MILES: If you just take up bundle F2, tab 18.
13 LORD NEUBERGER: Yes.
14 MR MILES: Page 1760.
15 LORD NEUBERGER: Yes.
16 MR MILES: Now, when we opened, we said that the reference
17 to liabilities there is clearly a reference to the
18 non-preferential provable liabilities; in other words,
19 the ordinary unsecured claims. The argument on the
20 other side, and it is supported by some things that were
21 said in the Court of Appeal, is that you don't read it
22 in that way; you have to read the reference to the
23 company's liabilities as being a reference to a series
24 of classes or categories of liabilities, and you have to
25 read the section as saying that, subject to preferential

1 payments, the company's property shall be applied in
2 satisfaction of each class of liabilities, presumably
3 pari passu within each class. So, in other words,
4 notionally following the Nortel waterfall, you would
5 have to read that into the section.
6 Now, the reason why the Court of Appeal was
7 attracted by that argument is the business of how you
8 deal with statutory interest, because statutory interest
9 clearly has to be paid before the payment to members,
10 which is referred to in the last part of this section.
11 LORD NEUBERGER: Yes.
12 MR MILES: And the conclusion that the Court of Appeal
13 therefore reached was that you have to read liabilities
14 as including statutory interest.
15 Now, we suggest that that is a misreading. If you
16 look in F1, tab 2, at section 189, which is the --
17 LORD NEUBERGER: Yes.
18 MR MILES: -- liquidation provision in relation to interest.
19 LORD NEUBERGER: Yes.
20 MR MILES: The relevant bit is sub-section (2) which says:
21 "Any surplus remaining after the payment of the debt
22 is proved in the winding up shall, before being applied
23 for any other purpose, be applied in paying interest."
24 LORD NEUBERGER: Yes.
25 MR MILES: Now, the simple way of reconciling the two

1 sections is not to read liabilities as including
2 statutory interest, it is simply to say that 107 takes
3 effect subject to the overriding requirement of
4 section 189(2), which says in terms that, before it is
5 paid for any other purpose, it shall be applied to this
6 purpose. And that is a completely sensible way of
7 reading it. In other words, the reconciliation is
8 achieved not by reading the word
9 "liabilities" differently, it is simply by reading the
10 bit at the end of section 107, which says it will be
11 applied in this particular way, as subject to the
12 overriding requirement of section 189. That is
13 perfectly straightforward.
14 It also fits in with the statutory history, because
15 107 simply reflects earlier statutes. 189 was then
16 introduced into the 1986 Act. It introduces a new
17 obligation to pay statutory interest out of the surplus,
18 and what has happened here is that the legislature
19 hasn't spelt out in the new 107 that further need to pay
20 out the interest. But that is a much more sensible
21 reading, we suggest.
22 LORD NEUBERGER: I can see how you say it is linguistically
23 more sensible, but, in the end, the argument against you
24 is that it is commercially less sensible, effectively.
25 MR MILES: Well, there is no reason for that, my Lord. If

1 what one is dealing with in 107, as it always has been
2 interpreted until the Court of Appeal in this case, is
3 dealing with the proved debts, there is no reason to
4 read it in a different way. I don't, with respect,
5 accept that there is really a commercial point here.
6 LORD NEUBERGER: Well, it is commercial in relation to the
7 facts of this case, or any case where section 74 comes
8 into play.
9 MR MILES: Well, I will come back to that in a moment, if
10 I may.
11 LORD NEUBERGER: I see how you say (inaudible) the point
12 that arises in this case.
13 MR MILES: It is not a mere linguistic point, with respect.
14 If we look at the way section 143 then works.
15 LORD NEUBERGER: Yes. We find 143 ...?
16 MR MILES: In D3.
17 LORD NEUBERGER: It is tab 20, 1765, isn't it?
18 MR MILES: Yes.
19 LORD NEUBERGER: So tab 20, the same bundle as 107, yes.
20 Yes.
21 MR MILES: You can also find it in the judgment, where we
22 have been looking at it.
23 LORD NEUBERGER: Yes, fair enough.
24 MR MILES: Page 545.
25 LORD NEUBERGER: Right.

1 MR MILES: Now, this is the part that deals with compulsory
2 liquidations, and the section there talks about the
3 company's creditors. But as LBIE said, you have to read
4 that together with rule 4.181, which you will find in
5 F3, I am afraid.
6 LORD NEUBERGER: Well, wait a minute. We are construing the
7 statute. Talking about the two sections, is it right to
8 construe this using the rules --
9 MR MILES: This is LBIE's own argument.
10 LORD NEUBERGER: I know it is, but I am asking you whether
11 it is right to construe 189 and 107 by reference to the
12 rules. That is all.
13 MR MILES: Well, my Lord, to the extent --
14 LORD NEUBERGER: The fact LBIE do so doesn't mean it is
15 right.
16 MR MILES: Okay, well, my general submission --
17 LORD REED: You say insofar as it is right.
18 MR MILES: My general submission is you should be looking at
19 the statute. I accept that.
20 LORD NEUBERGER: But if we go down the road.
21 MR MILES: If you go down the road.
22 LORD NEUBERGER: Fair enough.
23 MR MILES: If you look at bundle F3, tab 56.
24 LORD NEUBERGER: Yes.
25 MR MILES: You will see that this is the bit which

1 essentially reflects part of section 107. It is the
2 part which applies to compulsory liquidations. Debts
3 other than preferential debts rank equally in the
4 winding up, and after the preferential debt shall be
5 paid in full unless the assets are insufficient for
6 meeting them, in which case they abate (?).
7 Now, debts here is clearly a reference to the
8 provable debts. That is explained in the Nortel case.
9 As the court explained in that case, where it is
10 referring to debts in this way, it is talking about the
11 provable debts.
12 So we say that, going back to 107, the better view
13 is that when it talks about liabilities, it is talking
14 about the provable liabilities. There is a separate
15 section, 189, which has a separate overriding statutory
16 obligation to apply the surplus for interest, and that
17 is the only sensible way, we say, of reading these
18 sections together. If you don't read it in that way
19 then it is difficult to make sense of the idea of the
20 company's property being applied pari passu. It would
21 seem that their argument is that it would cover not only
22 statutory interest --
23 LORD NEUBERGER: Yes.
24 MR MILES: -- but also non-provable debts. But there is
25 nothing at all in the statute which deals with

1 non-provable debts. The only thing you find in the
2 statute is a rule which tells you what debts are not
3 provable. There is nothing in the statute which deals
4 with the question of non-provable debt. There is
5 nothing in the statute which tells you how you would
6 bring about a pari passu distribution in respect of
7 non-provable debts. There are no rules for there being
8 an insolvency cut-off date. There are no rules on
9 currency conversion. There are no rules on the
10 valuation of non-provable debts. There is nothing in
11 the statute about that.
12 That is a further reason, we suggest, for reading
13 this in the way that it has always been interpreted. It
14 has been interpreted the way that we suggest by
15 Lord Justice Patten in Danka. I will just give you the
16 reference: F1, tab 8 at page 1204E to F.
17 The predecessor of 143, read by Mr Justice Oliver in
18 Dynamics as referring to the proved debts of the
19 company --
20 LORD NEUBERGER: Yes.
21 MR MILES: -- that is in F1/9/1214. We suggest that this is
22 an entirely novel reading, it is a wrong reading, and it
23 is taking the interpretation of this section, 107 and
24 section 143, down the wrong path. The only place you
25 will find it is in the Court of Appeal, in the courts

1 below, in this case. We say that 143 does indeed have
2 to be read together with 4.181 and that tells you the
3 answer.
4 LORD NEUBERGER: Yes.
5 MR MILES: On the question of whether the subordinated debt
6 is -- the ranking of it against the other claims.
7 LORD NEUBERGER: Yes.
8 MR MILES: I have made my submissions on the question of
9 interpretation. I will just say a couple of things on
10 the question of whether it is provable, which only
11 arises, of course, if we are wrong on our arguments
12 about where it ranks.
13 In relation to that, they accept that we are
14 contingent creditors, which means that for the purposes
15 of the rules we have a provable claim. So we have
16 a provable claim within rule 12.3 and 13.12, we submit.
17 They then say, oh, well, you can exclude the right to
18 prove by contract. But we say that the argument that
19 they rely upon, which is clause 4 of the agreements,
20 which is the one that says that we can bring
21 an application to wind up, or for insolvency, they say
22 well, that means that you can't prove. But that is
23 an argument that establishes too much, because they
24 accept that we can prove at some point. The way that it
25 was put in argument was that it is a timing point only.

1 So that argument cannot work because it seeks to
2 establish too much.
3 The second point is that they are then forced to
4 rely on clause 7 of the agreement, and the answer to
5 that is that those provisions don't say anything about
6 proofing. As lord Sumption said in the course of the
7 discussion, if it is possible to agree not to prove, it
8 must also be possible to agree not to accept payment,
9 because that is something less than proving. What those
10 clauses are concerned with, is an agreement not to
11 accept payment. But that fits perfectly well within the
12 idea that we prove, the claims are contingent, therefore
13 we don't share in a distribution if we are indeed
14 subordinated, but it is nonetheless proved.
15 That leads to a couple of points about how you value
16 contingent claims. There was some discussion about
17 this, and we suggest the discussion went slightly on the
18 wrong footing, because it was suggested at times that we
19 are, as it were, putting in a proof for a nil amount.
20 That is not the way proving works.
21 LORD NEUBERGER: No, it was valued at a nil amount.
22 MR MILES: That's right. The creditor puts in the proof.
23 LORD NEUBERGER: You say you want the lot.
24 MR MILES: And then the administrator values it.
25 LORD NEUBERGER: Yes.

1 MR MILES: Your Lordship also has the point, which was
2 discussed today, that if you look at rule 2.81, which
3 you will find in F3, tab 74 at page 2004, this is where
4 the contingent debts are dealt with, by way of
5 valuation. That rule itself includes the ability on the
6 administrator to revise the estimate that had been made.
7 LORD NEUBERGER: Yes, we looked at that, yes.
8 MR MILES: And that has a couple of implications. First,
9 that explains why we are not putting a claim with a nil
10 valuation. That is not the way it works. We put in our
11 proof. If the events happen which fulfil the
12 contingency, then it is revised. That simply happens
13 through the proving process. But also, when we come to
14 look at currency conversion claims, which I will turn to
15 in a minute, we say that it is striking that in the case
16 of contingent claims, there is a specific power here in
17 the rules to allow the revision of those claims, and you
18 won't find anything similar in relation to currency
19 conversion when we look at that under 2.86. There is no
20 mechanism for the revision of the valuation of the
21 claims.
22 In relation to section 74, we rely on what we have
23 already said about section 107 and how you should read
24 the word "liabilities" in that section. And if we are
25 right about that, we say that that throws some light

1 back on section 74, which is part of the same statutory
2 scheme.
3 In relation to what has been called, slightly
4 flippantly, the boot straps argument, we say that if you
5 read section 189 together with 74, you can't use the 74
6 power to create a surplus for the purpose of giving rise
7 to a liability under 189.
8 LORD NEUBERGER: Yes.
9 MR MILES: Which then becomes a basis for a call under 74.
10 LORD NEUBERGER: Yes.
11 MR MILES: The answer to that that LBIE gives is that the
12 right to call under section 74 is itself an asset of the
13 company, and we respectfully say that it is important to
14 keep a firm distinction in mind here between the right
15 to make the call, which is a right which is in the
16 court, vested then in the liquidator, and the fruits of
17 any such call. And it makes perfect sense to regard
18 those two things separately, and we also rely on, albeit
19 only by way of analogy, with those sections in the Act
20 which give the liquidator the power to seek to reverse
21 earlier transactions, for example as preferences, and
22 there is, we suggest, an analogy there.
23 LORD NEUBERGER: Yes.
24 MR MILES: In relation to currency conversion claims --
25 LORD NEUBERGER: Yes.

1 MR MILES: -- Mr Dicker at times framed the issue as whether
2 we could show that the 1986 legislation removed some
3 pre-existing recognised claim to such claims.
4 LORD NEUBERGER: Yes.
5 MR MILES: Now, we say that an extremely ambitious argument,
6 and indeed it is wrong, because there is no pre-1986
7 case.
8 LORD NEUBERGER: You say the furthest it goes is
9 Lord Justice Brightman's obiter thoughts.
10 MR MILES: That's right.
11 LORD NEUBERGER: That is not enough to say there was an
12 established position. Far from it.
13 MR MILES: Yes.
14 LORD NEUBERGER: Okay.
15 MR MILES: And we also say in relation to the discussion
16 Mr Dicker had with Lord Sumption, we don't say that it
17 is the admission to proof which necessarily satisfies
18 the claim. We have said throughout our argument that
19 the treatment of the claim is the proof and it is
20 the payment in full of the claim which operates by way
21 of satisfaction of the claims.
22 LORD SUMPTION: Well, that rather begs the question, because
23 you have inserted the words "in full".
24 MR MILES: In accordance with the statute.
25 LORD SUMPTION: I mean, suppose that you get paid the full

1 amount of the dividend corresponding to what you are
2 admitted to proof for. That is not, as I understand it,
3 inconsistent with a subsequent further proof in respect
4 of the same claim, indeed even after dissolution in
5 appropriate cases.
6 MR MILES: In the case of a contingent claim.
7 LORD SUMPTION: All right. But that is a rather striking
8 difference between a judgment and the process of proving
9 in a winding up, whatever stages you encompass in that
10 expression.
11 MR MILES: Yes. We say that that points out the difference,
12 which is that there is a specific rule in relation to
13 contingent claims where that is allowed to happen, as we
14 have just seen, and that is part of the statutory
15 process. There is no such provision in relation to
16 2.86. We say -- it is a point that I made in opening --
17 there is a basic lack of coherence about what is being
18 asserted here, because what they say at times is, oh,
19 well, this is (inaudible). Indeed, Mr Dicker came close
20 to accepting that there was a close analogy with it.
21 But it can't be a contingent provable claim because that
22 would be legally incoherent.
23 Looking at it another way, if there was anything in
24 their argument, it would have to be characterised as
25 a provable claim, because all they are really saying is

1 that some part of their provable debt has not been paid.
2 That is all it is. That is what the argument is. But
3 if that is the case, it would be a provable debt, but
4 they accept that it can't be that because the rules
5 don't allow it. For example, there would have to be
6 a further conversion, because it is still, on their
7 case, an unsatisfied foreign currency debt. But then
8 how do you deal with it? Do you have to then convert it
9 again under 2.86? It would seem to be, if it is
10 a proved claim. This is the point of now you see it,
11 now you don't; they then say, oh, well, then those rules
12 don't apply.
13 We say -- I use the words "payment in
14 full" advisedly, because what I mean is payment in full
15 in accordance with the statutory scheme.
16 LORD NEUBERGER: You mean payment "in whole" rather than "in
17 full".
18 MR DICKER: "In whole", yes.
19 LORD NEUBERGER: Back to 2.72.
20 MR MILES: Yes, and it is payment in whole in accordance
21 with the statutory scheme. The statutory scheme tells
22 you how much you are to be paid. That accords with part
23 of the overall purpose of the 1986 legislation, which
24 was to bring as much as possible within the ambit of
25 provability, and provide for its discharge. That is the

1 way that the court report put it. That is the way that
2 Lord Justice Lewison put it in his judgment and that is
3 also a passage that you, Lord Neuberger, quoted in
4 Nortel. That was one of the purposes of the Act.
5 The idea behind it is that it tells you what the rights
6 of the creditor are in the insolvency.
7 We say that the real question here is whether
8 a creditor whose claim is converted into sterling under
9 2.86 and is then paid 100 per cent of that amount in
10 sterling, and full sterling interest under rule 2.88,
11 then has a further claim on the assets of the company.
12 If you ask the question in that way, we say that it
13 is obvious that there is no room for such a claim. The
14 rules don't in any way contemplate such a claim. There
15 is no room for revising your claim. There is no room
16 for bringing a contingent claim for that amount, because
17 it would have to be a contingent provable claim, and
18 they accept that that doesn't work.
19 We say our argument fits much more coherently into
20 the scheme. 2.88 provides an entirely new statutory
21 provision for post-liquidation interest. It is quite
22 wrong to suggest that its a codification of earlier law.
23 The sterling rate under that is applicable to all
24 creditors, both sterling and foreign, and that is
25 an important consideration.

1 The claims of the creditors are treated, albeit
2 there is obviously no actual judgment, as if notionally
3 there was a judgment at the date of the administration
4 for all of the creditors, and that rule, we say, doesn't
5 embody any idea of remission to contract.
6 Now, Mr Dicker says, oh, well, those interest
7 provisions may not work fairly, or may not fully
8 compensate the foreign currency creditors for lost
9 interest, and he takes a point where sterling goes down.
10 But what about the case where sterling goes up? Not
11 only does the amount of the proof effectively go up, but
12 also the amount that they get by way of interest goes
13 up. If sterling goes up, then the statutory interest is
14 a judgment rate at 8 per cent on proof. They therefore
15 benefit from that.
16 It is no good saying, oh, okay, well, on the facts
17 of this case, we are worse off. What the court is
18 having to do is try to come up with an interpretation of
19 the rules that applies fairly in all circumstances.
20 There are winners, there are losers, inevitably, from
21 changes in exchange rates, and one would think that if
22 the legislature was trying to give them this extra dip
23 into the pot after they have been paid their sterling
24 equivalent in full and statutory interest in full, you
25 would expect it to be spelt out in the statute.

1 Lord Clarke asked at one point: what would actually
2 happen if there was no insolvency, and a creditor
3 obtained a judgment in here in a foreign currency, what
4 would be the interest payable on that? Now, Mr Dicker
5 didn't answer that question. We have answered it in,
6 and it is set out fully in our case at paragraph 114,
7 which you will find in B at 238. And the English law
8 position is if you get a judgment in a foreign currency
9 in the English courts, the judgment rate interest you
10 get is essentially a commercial rate based on --
11 LORD NEUBERGER: Sorry, what paragraph was that?
12 MR MILES: It is paragraph 114.
13 LORD CLARKE: Thank you.
14 MR MILES: And there is authority which explains this. But
15 the interest rate you will get is essentially the
16 commercial foreign interest rate. You don't get
17 8 per cent.
18 Now, Mr Dicker today postulated a rather unlikely
19 situation where you are looking at someone who already
20 has a foreign judgment as at the date of the liquidation
21 from a foreign court, and he says, oh, well, that person
22 might lose out because under the foreign law there might
23 be a higher judgment rate in that place. But that is
24 not the case we are looking at at all. We are dealing
25 with the position of creditors. One can assume that in

1 general one is not dealing with judgment creditors, one
2 is looking at the ordinary creditors of the company, and
3 the proper comparison is between, we suggest, the
4 sterling rate that they get under 2.88 and what they
5 would have got on an English law judgment in a foreign
6 currency and they would not have got the English
7 judgment rate. Now --
8 LORD SUMPTION: As far as it was an anomaly, it is
9 an anomaly arising from the extraordinary fact that the
10 Judgment Act rate is very, very rarely amended, and is
11 therefore completely out of sync with any reasonable
12 remuneration for delay. But that can't affect the
13 construction of the insolvency scheme.
14 MR MILES: But we say, well, there is of course that point.
15 There is the fact that it has not been amended a great
16 deal. But that doesn't deal with the point of
17 substance, which is that it is intended to be a sterling
18 rate as opposed to a foreign rate. And so we say that
19 it does assist here. We say that our interpretation
20 leads to a coherent scheme. Claims are converted into
21 sterling. All claims are then dealt with in the
22 liquidation in sterling. There is a sterling interest
23 rate that is applied rather than a foreign interest rate
24 which is applied if there is a surplus. That is
25 coherent.

1 Their case is something of a mishmash. The claim is
2 treated as converted into sterling. They get sterling
3 interest on that out of any surplus. But then they get
4 an extra dip, they say, for more, potentially, if
5 sterling has depreciated. What they don't have to do is
6 give anything back, including any extra interest they
7 have earned, by virtue of it being in sterling, if the
8 currency has appreciated. And we say that is not
9 a coherent way of reading the rules.
10 And we also do suggest that Lord Neuberger was right
11 when he asked the question: how does the idea of the
12 appreciation of sterling fit in with the idea of the
13 contractual rights of the parties simply carrying on
14 unaffected by the insolvency?
15 Now, we say that that is a telling point which
16 Mr Dicker wasn't really able to answer. He just said,
17 well, that is the one-way bet point. But it is more
18 than that. It is clear that the liquidator can't take
19 advantage of the rise in sterling by paying the creditor
20 in the foreign currency. He has to pay dividends in
21 sterling. What that shows, we suggest, very clearly, is
22 that this is a regime that affects creditors' rights
23 substantively.
24 Where it appreciates, it is clear that it effects
25 their rights substantively, because they are able to

1 keep that extra money and they keep it at the expense of
2 everyone, including the members. Equally, we say if the
3 currency depreciates they, don't get more.
4 We also do say, as a matter of textual analysis,
5 that it is important that the rule we're looking at is
6 very close to the rule on interest. They are almost
7 adjacent. They are certainly part of the same section
8 of the rules. And rule 2.88 is the one place where you
9 will see how the surplus is to be dealt with. It says
10 in terms: this is how the surplus shall be applied.
11 There is no suggestion in the rules that there is any
12 further right to surplus, and in particular there is
13 nothing in rule 2.86 to suggest that they can come back
14 for more.
15 Now, if there is a --
16 LORD NEUBERGER: It says before being applied for any
17 purpose, which must mean any other purpose, obviously.
18 Leave that whole question over.
19 MR MILES: Yes.
20 LORD NEUBERGER: Yes.
21 MR MILES: But it deals with it in terms. It deals with the
22 question of what is to happen to the surplus at that
23 stage.
24 LORD NEUBERGER: Yes.
25 MR MILES: It is striking, we say, that nothing similar

1 appears in rule 2.86.
2 LORD NEUBERGER: Yes, I see. Thank you.
3 MR MILES: Now, Mr Dicker also suggested at times that
4 rule 2.88 was itself an example of a non-provable claim.
5 We say that that is clearly not right. One only has to
6 look at the Nortel waterfall to see that it comes out
7 before non-provable claims. That is clear from the
8 statute itself. Secondly, 2.88 is an entirely novel
9 provision dealing with post-insolvency interest. It is
10 not simply retaining some non-provable right.
11 But there is also another point that arises out of
12 that. If they are right in their argument, this appears
13 to be the only case one can find where something can be
14 both a provable debt and then a non-provable debt.
15 Post-insolvency interest doesn't fall within that
16 category.
17 LORD NEUBERGER: No.
18 MR MILES: It can't be proved. Then the statute gives
19 a separate entitlement to post-insolvency interest. It
20 deals with it separately. If they are right -- all that
21 they are really claiming for is what they call an unpaid
22 portion of the proved debt. They want to claim it as
23 a non-provable debt because they realise that they can't
24 claim it a second time as a provable debt.
25 LORD NEUBERGER: Yes.

1 MR MILES: It is the only example, therefore, known to
2 law --
3 LORD NEUBERGER: We have that point, yes.
4 MR MILES: And we also suggest that it is relevant to ask
5 the question that Lord Reed asked at one point in the
6 argument: where do you say, then, that the non-provable
7 claims fall within rule 2.3 of the insolvency rules?
8 And there was not an answer to that question.
9 Now, Mr Dicker said numerous times, "This is
10 answered by the idea that members come last". Just in
11 relation to that, he did not address the really
12 difficult question that would arise, if these claims
13 were to be recognised, of the competition between them
14 and what you might call genuine non-provable claims. So
15 he gave the example of the late tort claim. It was the
16 point that was discussed in some of the cases. Now,
17 there is nothing in the statute which gives any clue as
18 to how the claims that his clients are asserting would
19 fit in with genuine non-provable claims such as tort
20 claims. Bear in mind that these claimants will, ex
21 hypothesi, have been paid the full sterling amount of
22 the claims and they will have been paid the full
23 sterling statutory interest before you get to the stage
24 of their attempt to dip in again as a non-provable
25 claim.

1 Now, how does that competition then work with
2 genuine non-provable claims? There is nothing in the
3 statute which provides even the hint of an answer as to
4 that. It is not good enough, we suggest, to say, well,
5 the courts can work it out. The courts wouldn't be able
6 to work it out because there is nothing that tells you
7 how it is to work. Are these claimants to be postponed
8 in respect of the extra interest that they have
9 received? By definition, the tort claimants won't have
10 received any interest. The rules are highly
11 prescriptive in relation to where they do apply, as to
12 things like the valuation date, when interest runs from
13 and so on, but there is nothing in the statute which
14 provides even the hint of how you deal with this
15 situation. And that, we suggest, is very telling.
16 LORD NEUBERGER: Right.
17 MR MILES: Pre-legislative history. We ask you to read the
18 whole of that, rather than just the final Law Commission
19 report. That is set out in our case at 87 to 100.
20 LORD NEUBERGER: Right.
21 MR MILES: The reason for that is they expressly considered
22 the question of whether there should be compensation for
23 these kinds of claims.
24 LORD NEUBERGER: Yes.
25 MR MILES: And the Law Commission in the end came to the

1 conclusion it did, which didn't give any such
2 compensation. We say that, in the light of that
3 legislative history, if there had been any intention to
4 give them this second dip, it would have been spelt out
5 in the code.
6 LORD NEUBERGER: Yes.
7 MR MILES: On a couple of small points, the future debts, we
8 suggest that the best place to look at this is in the
9 judgment of Mr Justice David Richards at paragraph 77 --
10 that is D, tab 5, page 100 -- and Lord Justice Lewison
11 at 96 -- that is D3, tab 3, page 31. And what those
12 passages should is that if you are paid the discounted
13 amount by way of dividend, that operates to discharge
14 the debt in full.
15 Now, that is an important point, because it shows
16 that the statutory scheme operates by way of discharge
17 when payment is made of the amount required to be made
18 under the scheme. If they were right, a creditor in
19 that situation would be able to come back and say, "Oh,
20 look, the discount rate that I have been subjected to
21 under the statutory scheme" -- which is 5 per cent, in
22 other words very high at the moment -- "is way higher
23 than a commercial rate would be in order to create the
24 present value of the claim. I should therefore have
25 another right to a top up" -- indeed, it is possible

1 that by that date the futurity has come in, as it were,
2 and they would simply say, "I want the full amount that
3 I haven't been paid. I want to be remitted to my
4 contractual rights." There is nothing in the scheme
5 that prevents that, but it is clear that that doesn't
6 work. If you have been paid in full the amount that the
7 scheme tells you that you are entitled to, that operates
8 by way of discharge to the debt.
9 LORD NEUBERGER: Can you give me the reference again, the
10 judge and to --
11 MR MILES: Yes paragraph 77, which is D5, page 100, and 94,
12 D3, page 31.
13 LORD CLARKE: Thank you.
14 MR MILES: We suggest that is a very telling point, and they
15 haven't suggested that what the courts below said there,
16 was wrong. But it is a really clear illustration of how
17 payment in full under the statutory scheme operates by
18 way of discharge.
19 There is nothing, I suggest, loaded about the way
20 I am putting that, because the creditor could come back
21 and say, "Well, I haven't been paid in full because my
22 contract gave me a higher right", but the statute tells
23 you what the answer is. If they were able to make these
24 claims here, the same logic must apply in relation to
25 future debts.

1 My Lord, that I think covers the points I wanted to
2 make by way of reply.
3 LORD NEUBERGER: Very helpful, thank you very much indeed.
4 Thank you, Mr Miles.
5 Mr Wolfson.
6 Submissions in reply by MR WOLFSON
7 MR WOLFSON: My Lords, I do not intend to address your
8 Lordships on the matters arising from the
9 Court of Appeal's decision on the post-insolvency
10 interest point, which is my appeal. But, my Lords, I do
11 seek to respond briefly on LBIE's two cross-appeals,
12 particularly in the way that these were developed orally
13 beyond the ways that they were put in writing.
14 LORD NEUBERGER: Fair enough.
15 MR WOLFSON: My Lord, LBIE's first cross-appeal, which is
16 the argument that unpaid statutory interest in
17 an administration is a provable liability in
18 a subsequent liquidation --
19 LORD NEUBERGER: Yes.
20 MR WOLFSON: -- your Lordships will appreciate that there
21 are no prior judgments on this point for the obvious
22 reasons. I make three points in response to the way
23 Mr Trower put it orally. The first point is the
24 starting point, which is my submission that the
25 fundamental principle of insolvency law, as set out in

1 the scheme, is that once a company has gone into
2 an insolvency process, that stops the clock as far as
3 interest is concerned, and gives rise to a fundamental
4 feature of the pari passu scheme. We saw that arising
5 out of the recommendations of the Cork Committee, that
6 in the event of a surplus, interests should run on
7 proved debts and liabilities until a final dividend is
8 declared.
9 As enacted, the scheme provide for interest accrued
10 prior to the insolvency process to be provable, whereas
11 interest which accrues during the insolvency process is
12 paid on a statutory footing from any surplus in that
13 process.
14 My Lords, I do emphasise "on a statutory footing"
15 because, in my respectful submission, even when one is
16 getting interest from the surplus at a contractual
17 right, because the contractual rate happens to be higher
18 than the judgment rate, that interest is still being
19 paid on a statutory footing, albeit that the statute is
20 providing that you get that interest at your contractual
21 rate. It is not a contractual right to interest you are
22 relying on. You are still getting interest pursuant to
23 statute, which provides that you get it at the higher of
24 the contractual and Judgment Act rates. And your
25 Lordships will recall, this was the difference between

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1 the scheme as enacted and the recommendation of the Cork
2 Committee.
3 There is no provision, and we submit it was plainly
4 not the draftsman's intention, to render interest which
5 accrues during an insolvency process a provable debt,
6 even where -- and this is the important point -- one
7 type of insolvency process is followed by another. In
8 fact, my Lords, as we set out in our case at
9 paragraph 58(2), and this point was not addressed by my
10 learned friend Mr Trower at all, we submit that the
11 legislation itself shows that when you have one
12 insolvency process followed by another, the interest
13 arising in the first insolvency process is not
14 a provable debt in the second.
15 My Lords, the example we give is the converse
16 example to this case, ie where one has a liquidation,
17 followed by an administration. My Lord, the argument we
18 set out in writing, but perhaps I can just take two
19 minutes to just go through it orally.
20 LORD NEUBERGER: Yes.
21 MR WOLFSON: The starting point is --
22 LORD NEUBERGER: Where is it in your submissions?
23 MR WOLFSON: It is 58(2), my Lord, B3/326.
24 LORD NEUBERGER: Yes, yes, thank you.
25 MR WOLFSON: The starting point, my Lords, is that it is

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1 critical to bear in mind that rule 13.12(1) applies both
2 to an administration and to a liquidation. And that is
3 made clear by 13.12(5), which provides in terms:
4 "This rule shall apply where a company is in
5 administration and shall be read as if references to
6 a winding up were a reference to an administration."
7 So 13.12(1) must be read consistently in both
8 insolvency processes.
9 Now, where a winding up precedes an administration,
10 your Lordship will recall that rule 2.88(7) provides, as
11 now amended, for statutory interest to be payable in the
12 administration for both the period of the administration
13 but also the period of the earlier winding up. Rule
14 2.88(1) provides for interest to be provable as part of
15 the debt in the administration only up to the date of
16 the preceding winding up.
17 Therefore, we submit that, in circumstances where
18 you have a winding up and then an administration, we see
19 that statutory interest is payable in the administration
20 for both the period of the winding up and the period of
21 the following administration.
22 So, accordingly, in the conversion situation to the
23 one we have in this case, interest for the first
24 insolvency process, in this example the winding up, is
25 not provable in the second insolvency process, the

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1 administration, but interest is only payable as
2 statutory interest in that second insolvency process.
3 LORD NEUBERGER: What about the simple point that might be
4 said that 2.88(7) isn't addressed to anyone, it simply
5 says you can't pay anything out of the debts until you
6 have paid this interest, and when the money is passed to
7 the liquidator, or passes the liquidator, he is bound by
8 that, too?
9 MR WOLFSON: Well, your Lordships have my submissions on
10 that. This is an instruction to the administrator. It
11 doesn't --
12 LORD NEUBERGER: Well, sorry to bang on about it, but it
13 doesn't say its addressed to the administrator, it is
14 expressed in the passive.
15 MR WOLFSON: It is expressed in the passive and it can't be
16 applied for any other purpose.
17 LORD NEUBERGER: Quite.
18 MR WOLFSON: Your Lordship has my submission that when the
19 administrator vacates office, he is not applying --
20 LORD NEUBERGER: I appreciate he is not applying --
21 MR WOLFSON: And this instruction is set out in the section
22 of the act which is focused on administrators, and it
23 would be extraordinary, in my respectful submission --
24 LORD NEUBERGER: Yes, I see.
25 MR WOLFSON: -- if a liquidator had it turn to one part of

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1 one sub-rule to work out what effectively he had to do
2 with the assets. Your Lordship also has my submissions
3 as to the affect that that has on the Nortel waterfall
4 and the two bites of the cherry, if I can mix metaphors
5 horribly, the two opportunities to get money out of the
6 waterfall, at stage 1 and at stage 6. Because if you
7 wouldn't be paid your statutory interest in full from
8 the surplus, you would effectively take statutory
9 interest right at the top of the waterfall and then
10 again at stage 6.
11 LORD NEUBERGER: Right, thank you.
12 MR WOLFSON: My Lord, just to finish the point I was making,
13 as your Lordships have it on the converse situation, in
14 my respectful submission, by positing the converse
15 example, where one has a winding up and then
16 an administration, one sees that statutory interest in
17 the winding up would not be a provable debt in the
18 subsequent administration because statutory interest in
19 the administration covers both the period of the winding
20 up and also the period of the subsequent administration.
21 And interest for the liquidation period, in my example
22 the first insolvency process, cannot be both provable
23 and payable as statutory interest in the subsequent
24 administration.
25 We respectfully submit, therefore, that LBIE's

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1 argument regarding the provability of statutory interest
2 does not work, and cannot work, where a winding up
3 precedes an administration, and because 13.12(1) must
4 mean the same thing in all circumstances, it must be
5 wrong equally when an administration precedes a winding
6 up. And as I say, Mr Trower has not addressed that
7 point at all. That is the first point I was making in
8 this context. There are two further short points.
9 The second point is we submit that there is a good
10 policy reason for post-insolvency interest not being
11 provable, because the consequence of LBIE's argument
12 would be to create a new provable debt in respect of
13 statutory interest for the administration period in the
14 liquidation, which would compete with unsecured claims
15 for principal proved for the first time in the
16 liquidation, the putative torts claimant, and it would
17 be surprising, we respectfully submit, if that was the
18 intention of the scheme.
19 Thirdly, and also shortly, in relation to the point
20 on the interrelationship of rules 13.12(1)(a) and (c),
21 we respectfully adopt the point made in argument by my
22 Lord, Lord Reed. If one were to read the rule
23 13.12(1)(a) in the expansive way that LBIE does,
24 13.12(1)(c) would be unnecessary, and that cannot be
25 what the draftsman intended.

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1 Interest is given its own special treatment in
2 paragraph (c), and it is not possible, in our respectful
3 submission, to shoehorn what is effectively a claim for
4 interest into (a), nor is it right in this context, as
5 Mr Trower put it on Tuesday, to submit that
6 post-administration interest somehow loses its character
7 as interest if a creditor seeks to prove for it in
8 winding up, which is how LBIE seeks to shoehorn this
9 into paragraph (a). This is clear from the example
10 I gave a few moments ago as to when you have a winding
11 up and then an administration.
12 We submit that to allow this cross-appeal would run
13 contrary to the basic features of the statutory scheme
14 and also to give 13.12(1) different meanings depending
15 on which order the two insolvency processes arrive.
16 Essentially this court would, were to it allow the
17 appeal, fall into the trap that beguiled the
18 Court of Appeal, ie identify a lacuna and then try to
19 find a way to fill it in a way that we submit is
20 contrary to the rules.
21 My Lords, I see the time. I can be quite short on
22 the cross-appeal. I might go slightly over the
23 half-hour mark.
24 LORD NEUBERGER: Well, you shouldn't. I see, half past,
25 fine.

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1 MR WOLFSON: Yes, I wasn't suggesting --
2 LORD NEUBERGER: Fair enough.
3 MR WOLFSON: My Lords, if I can therefore turn to the second
4 cross-appeal, your Lordships appreciate that this is the
5 point as to having a non-provable claim. So the
6 argument is that there is a non-provable claim for the
7 statutory interest.
8 LORD NEUBERGER: Yes.
9 MR WOLFSON: We submit that this is simply anathema to the
10 statutory scheme. In argument, and I will just give
11 your Lordships the transcript references, my learned
12 friend Mr Trower accepted that there are circumstances
13 in which the statutory scheme can affect the underlying
14 liability. That was on Tuesday, page 175, lines 14 to
15 16. He further accepted that there are provisions of
16 the insolvency code which deal with interest and are
17 intended to provide a complete answer to the interest
18 entitlements with which it engages -- same day,
19 following page, 176, lines 13 to 16 -- but then went on
20 to say that if the judge was right on declaration 5 and
21 the liability was not provable:
22 "The scheme taken as a whole simply does not deal at
23 all with interest accruing between the commencement of
24 the administration and the commencement of any
25 subsequent liquidation where that is what happened, and

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1 if that is the case, there is no reason to conclude that
2 the legislature intended to provide for the underlying
3 right to be replaced."
4 With respect, that entirely misses the point. The
5 non-provable claims which LBIE contends for are claims
6 for interest other than arising under the statutory
7 scheme. LBIE is contending that if the administrators
8 fail to pay out under, essentially, 2.88(7), then in the
9 liquidation, creditors can assert their contractual
10 rights to interest as non-provable claims.
11 We respectfully submit this is remarkable for two
12 reasons. First, this would be a non-provable claim that
13 is said to exist even though the statute does allow for
14 the payment of interest in the administration period,
15 namely payment of statutory interest by the
16 administrators. So the genesis of this non-provable
17 claim is in fact the statutory scheme itself, because it
18 is only a non-provable claim if the administrators
19 haven't followed the instruction in rule 2.88(7).
20 Secondly, and relatedly, the non-provable claims
21 which would arise are therefore inconsistent with the
22 statutory scheme, because they are not for statutory
23 interest, but rather for interest arising otherwise than
24 under the statute. We submit that the right to
25 statutory interest extinguishes such contractual or

1 other rights creditors have to interest for the
2 administration period.
3 It can't be right that those contractual rights are
4 somehow resurrected. If the administrators were to pay
5 out under 2.88(7), they would be paying out under
6 statute. The contractual right has gone. So how does
7 it, we ask rhetorically, resurrect when the
8 administration ends and the liquidation begins?
9 We respectfully submit that non-provable claims
10 exist when there is a true black hole, such as the tort
11 claimants in T&N before it was amended or such tort
12 claimants as now fall outside of the legislative effect
13 given to the judgment in T&N. Non-provable claims,
14 however, cannot arise out of the statutory scheme
15 itself, which is the essential basis of my learned
16 friend's argument, and they cannot exist in a manner
17 which is fundamentally contrary to that statutory
18 scheme.
19 Therefore, for those two reasons, LBIE's second
20 cross-appeal should be dismissed.
21 My Lords, unless I can assist your Lordships
22 further, those are our submissions on the cross-appeals.
23 LORD NEUBERGER: Thank you very much indeed, Mr Wolfson.
24 Mr Isaacs.
25 MR ISAACS: Your Lordships have been breaking at 11.30.

1 Would your Lordships wish me to continue now?
2 LORD NEUBERGER: I think in the circumstances it would be
3 better for us to continue to finish. You are absolutely
4 right, thank you very much for that.
5 MR ISAACS: I am grateful.
6 Submissions in reply by MR ISAACS
7 MR ISAACS: Your Lordships, I start with a correction and
8 an apology. I told your Lordships that Hasty's(?) case
9 was referred to in the judgment of
10 Mr Justice David Richards below. In fact, it wasn't and
11 that was a mistake. It was included in my skeleton
12 argument in the Court of Appeal but it wasn't included
13 in any of the judgments below.
14 LORD NEUBERGER: Thank you very much. In the grand scheme
15 of mistakes, it is a pretty small one.
16 MR ISAACS: Yes, it is.
17 I will first reply to the two cases on which my
18 learned friend Mr Trower relied in relation to proof and
19 set-off and then I will address your Lordships on the
20 contributory rule.
21 I start with the decision of the Privy Council in
22 Newton v Anglo-Australian Investment, and that is in the
23 supplemental bundle at G/13.
24 LORD NEUBERGER: Thank you. Yes.
25 MR ISAACS: There are three important matters of fact which

1 appear from the headnote on page 13.
2 LORD NEUBERGER: Yes.
3 MR ISAACS: The first is that this case concerned a company
4 limited by shares.
5 LORD NEUBERGER: Yes.
6 MR ISAACS: The second is that the issue in the case was
7 whether a limited company could create a charge upon its
8 uncalled capital --
9 LORD NEUBERGER: Yes.
10 MR ISAACS: -- so as to confer priority in the winding up.
11 The third is that Re Pyle Works was approved by the
12 Privy Council.
13 LORD NEUBERGER: Right.
14 MR ISAACS: Lord MacNaghten refers to Re Pyle Works at the
15 bottom of page 16 --
16 LORD NEUBERGER: Yes.
17 MR ISAACS: -- having considered a number of cases which had
18 looked at the question of whether a limited company
19 could charge its uncalled capital. Your Lordship sees
20 at the top of page 17, the bottom of page 16, he says:
21 "After examining all of the previous authorities and
22 discussing the matter very fully, Lord Justices Cotton
23 and Lindley upheld a charge on uncalled capital."
24 And then a couple of sentences later is the one
25 sentence on which my learned friend relies, and he

1 relies on the statement that:
2 "The liability of a contributory to pay calls in the
3 winding up is not a liability springing into existence
4 for the first time on the company going into
5 liquidation."
6 There can be no doubt that this is a reference to
7 a call for the unpaid capital of a limited company.
8 That is clear from four matters. The first is the
9 reference to uncalled capital at the top of the page.
10 The second is that the case concerned solely whether
11 unpaid capital of a limited company could be charged.
12 The third is the last three sentences in the same
13 paragraph:
14 "The question is: what does belong to the company?
15 What are its assets or its property? That must depend
16 on what dispositions have been made and what charges
17 have been validly created while the company, acting
18 within its powers, was free to deal as it pleased with
19 its own. The company is free to deal as it pleases with
20 its unpaid capital. An unlimited company cannot deal
21 with the section 74 liability at all."
22 And then in the next paragraph, Lord MacNaghten
23 said:
24 "Their Lordships see no reason to differ from the
25 conclusion at which the Court of Appeal arrived in the

1 case of Re Pyle Works."
2 So the Newton case has nothing at all to do with the
3 section 74 liability of an unlimited company, which is
4 the subject matter of this appeal. Its relevance, if
5 anything, is that it approved Pyle Works, on which
6 I rely heavily for the speeches of all three of their
7 Lordships.
8 I started my oral submissions and I ended them by
9 submitting that LBIE had failed to distinguish between
10 two different liabilities: a liability to pay unpaid
11 capital and the section 74 liability of an unlimited
12 company. This case is a paradigm example of that
13 failure to distinguish.
14 The second case I refer to, and referred to by my
15 learned friend, is China Steamship ex parte Mackenzie
16 and that is at bundle 4, tab 20. The passage relied on
17 is at 2425 down at the bottom to 2426. It begins with
18 the words "The enactment is", three lines up from the
19 bottom of the page.
20 I only have three submissions to make on this
21 paragraph. The first is that the opening point made by
22 Lord Romilly, where he starts with the words:
23 "The enactment is in the event of the company being
24 wound up and in that event only a debt is created."
25 Now, he is emphasising section 75 only has effect if

1 the company is wound up, and then he makes the same
2 point again later in the paragraph, where he says if the
3 winding up should take place, then after the winding up
4 has taken place.
5 The third point relates to the Latin. The point
6 about this is it recognises that the section 74
7 liability is indeed a contingent liability upon the
8 winding up taking place. Indeed, the liability depends
9 upon multiple contingencies, for example the settling of
10 the list by the liquidator, the inclusion of the member
11 in the list and the making of a call by the liquidator
12 on the member. There is no support in this case or any
13 other case for the proposition that the section 74
14 liability is a contingent liability before the winding
15 up.
16 I now propose to turn to the contributory rule.
17 I submit that the courts below were correct to reject
18 LBIE's submission that the contributory rule should be
19 extended and I make four short points in support of
20 that.
21 Firstly, the rule is intended to give effect to the
22 obligation imposed upon contributories in a winding up
23 and the rule is that the contributory must pay all sums
24 due from him in respect of calls before he can take
25 something from the common fund. It is no part of the

1 statutory scheme to pay calls in respect of the
2 section 74 liability to a company in administration.
3 Secondly, the expansion of the contributory rule for
4 which LBIE contends would be unjust because it would
5 prevent contributories from receiving distributions in
6 an administration. The LBIE administrators submit that
7 they would maintain a reserve for the potential benefit
8 of its members until it became clear whether or not LBIE
9 would move into liquidation. However, there is no
10 warrant or mechanism for such a procedure and it would
11 deprive contributories of dividends to which they are
12 otherwise entitled until it became clear that the
13 company would in fact move into liquidation. LBIE
14 suggests that a contributory could pay in advance of
15 a call. However, a contributory would not know whether
16 calls could be made and it would have to pay in advance
17 of calls which might never be made.
18 Thirdly, LBIE submits that it would be unjust if
19 LBIE goes into liquidation because its members would at
20 that stage be unable to meet any calls. The response to
21 that is, as Lord Justice Briggs said, LBIE's
22 administrators are free to put the company into
23 liquidation, thereby enabling the liquidator to make
24 calls.
25 The fourth point is that case law is in fact

1 inconsistent with LBIE's cross-appeal, since it shows
2 that the contributory rule does not apply during
3 a liquidation to the contingent liability of
4 a contributory to meet calls, and this was explained by
5 Mr Justice David Richards at paragraphs 190 to 192.
6 Unless I can be of further assistance, my Lords,
7 those are my submissions.
8 LORD NEUBERGER: Thank you very much indeed, Mr Isaacs.
9 Submissions in reply by MR TROWER
10 MR TROWER: My Lords, given the shortness of those
11 submissions in relation to the contributory rule, it is
12 probably not right for me to say very much about it by
13 way of reply, because that is what I am expected to
14 respond to by way of reply, but can I just say this: one
15 of the submissions that my learned friend has just made
16 in relation to the contributory rule related to the
17 application of the statutory scheme and how it fitted.
18 That, of itself, fits in with the submissions in
19 relation to set-off. So one has the set-off and the
20 contributory rule together, which are the aspects of
21 this part of the case, as far as LBIE is concerned.
22 The question for my Lords, in our respectful
23 submission, is a question of stepping back and looking
24 at the two possible solutions that are presented by
25 LBIE, whether by way of set-off or by way of application

1 of the contributory rule, to ensure that what we say
2 would end up being a distortion of the statutory scheme
3 would occur.
4 Put in short terms, we respectfully submit that when
5 one is looking at the statutory scheme for these
6 purposes, the contributory rule or set-off, your
7 Lordships are looking at the totality of the statutory
8 scheme. One needs to be careful about saying there is
9 a statutory scheme that is applicable and only capable
10 of being applicable to the winding up, and a statutory
11 scheme that is applicable and only capable of being
12 applicable to an administration.
13 Of course, one accepts that there are provisions of
14 the Act and provisions of the rules that, in terms, are
15 designed to deal with the liquidation and are designed
16 to deal with an administration, for one and not the
17 other. But also within the statutory scheme there is
18 a complete contemplation that companies are going to
19 move seamlessly from liquidation to administration, and
20 now the other way round.
21 In our respectful submission, one has to be careful
22 about ending up with the result in which there is too
23 hard and sharp and fast a division between the two
24 elements of what is ultimately a coherent statutory
25 scheme dealing with the position of unsecured creditors,

1 secured creditors in small part, and expenses and so on
2 relating to the insolvency of the same legal entity.
3 So that is the reason why we respectfully submit
4 that one has to look at the question of the contributory
5 rule and set-off together, and seek to find a solution
6 which does not artificially distort the way in which the
7 scheme ought to work in its totality.
8 That is really all I wanted to say by way of reply.
9 My Lord, can I just give one final illustration in
10 relation to this. It arises out of a question that
11 I was asked at the end of my submissions yesterday, when
12 my Lord, Lord Neuberger asked me about the interface
13 between the contributory rule and set-off in the context
14 of the liability --
15 LORD NEUBERGER: Yes.
16 MR TROWER: -- that might arise under section 74.
17 My Lord, can I just remind my Lords of this: the
18 liability that arises under section 74 and is part of
19 the totality of the scheme is deemed by the statute to
20 be a contract debt. That is what the statute deems it
21 to be. So when one is thinking about the totality --
22 and the point is dealt with by Lord Justice Briggs in
23 paragraphs 207 to 211 of his judgment -- of the
24 statutory scheme, one is thinking about that liability
25 arising under section 74 being treated as a contract

1 debt under section 80, and it is a contract debt under
2 section 80, and it is that liability that one is seeking
3 to preserve as an asset within the totality of the
4 statutory scheme.
5 So, with respect, the sorts of points that were
6 being put to me by my Lord, Lord Sumption yesterday in
7 relation to, well, could one have a liability that was
8 a pure statutory liability without there being
9 a creditor, is not quite the right way of looking at it
10 if you look at the statutory scheme as a whole.
11 LORD SUMPTION: Do we have section 80 anywhere?
12 MR TROWER: Yes, my Lord, we do. It is in the bundles,
13 tab 9, page 4045.
14 LORD NEUBERGER: Thank you very much.
15 MR TROWER: So, my Lords, unless I can assist your Lordships
16 any further, I think that is what I was entitled to
17 reply on and I don't have any other submissions to make.
18 LORD NEUBERGER: That is very fair, thank you very much
19 indeed.
20 Well, thank you all very much indeed for your oral
21 submissions and for making what is a difficult and
22 potentially complex case as clear as it could have been.
23 Not that you have necessarily made our task any easier
24 by your arguments. Thank you also to all of those who
25 were involved in preparing the written cases.

1 We will consider this matter and let you know our
2 decision in due course. Thank you all very much.
3 The court is now adjourned.
4 (11.46 am)
5 (The hearing concluded)
6
7

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