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Wednesday, 10 June 2009

(10.30 am)

(Proceedings delayed)

(10.38 am)

Housekeeping

THE CHAIRMAN: Can we just mark up the additional documents in the way that you have handed up to us this morning.

MR LITTLE: Yes, handed up this morning was the one from last evening, and I've given you my master, on --

THE CHAIRMAN: I'll hand them back in a moment, I just need to mark up.

MR LITTLE: Mr Lynch will need to mark up as well.

THE CHAIRMAN: The email which came from John Furbay on 1 March at 1.33 to Ernst & Young is 3605B, and the documents beyond it are C and D, and then the other email on the same date is 3605E, and presumably F and G. And the document from last night is page 1830A.

MR LITTLE: Just for clarity, sir, the spreadsheet that I'd handed up as the way of explaining, that was also numbered A, it should be destroyed, because that is not the proper document.

THE CHAIRMAN: This is the one that supplants the other one?

MR LITTLE: That's correct, sir. (Handed)

Thank you very much.

MR LYNCH: Tribunal, one final disclosure matter, the entire

1 personnel file of Mr Baigent has been checked by Mr Rae
2 and there are no additional relevant documents. (Pause).
3 THE CHAIRMAN: Yes, right. Now then, the application to
4 recall in relation to Mr Dekker. We've read the
5 application and we've read the response.
6 MR LYNCH: I'm so sorry, sir, I missed that.
7 THE CHAIRMAN: We've read the application, the written
8 application, and the respondents' response. Thank you
9 very much indeed. What we didn't receive of you,
10 yesterday, however, Mr Lynch, was your yes/no document
11 in relation to Mr Dekker, you remember you said you had
12 one.
13 MR LYNCH: Yes. Sorry, sir, I had not realised that you
14 wanted it.
15 THE CHAIRMAN: What we're anxious to establish the extent to
16 which there is agreement about the ambit of questions in
17 relation to the A340.
18 MR LYNCH: I have a copy, I have written on it.
19 THE CHAIRMAN: Right.
20 MR LYNCH: Obviously, well --
21 THE CHAIRMAN: Can we go to the --
22 MR LYNCH: What it is, sir, it really just tracks the
23 82-page document, in the sense that it's a reduced
24 version of the 82-page document, going through the
25 questions.

1 THE CHAIRMAN: Yes, well, we have the 82-page document and
2 we have the questions, can you -- well, you'll have to
3 just read them out then, I suppose.

4 MR LITTLE: I thought I had done that yesterday, sir, in
5 terms of questions 13 through to 19.

6 THE CHAIRMAN: Yes, I want to go through it again.

7 MR LITTLE: Okay.

8 THE CHAIRMAN: Because I've written yes/no, yes/no, but I'm
9 not happy that I have the correct --

10 MR LYNCH: I'll go through them.
11 Question 1 to 1E inclusive, all no.

12 THE CHAIRMAN: Yes.

13 MR LYNCH: Question 2 through to and including 2C, no.
14 Question 3, no.
15 And the same is true for questions 3A through to and
16 including 3C.
17 Question 4 through to 5A, no.
18 Question 6, in regard to question 6 itself and the
19 first five supplementaries thereafter, the first one
20 starts "please turn now to document 2791", yes.
21 The remaining supplementaries, which are three in
22 number, no.

23 THE CHAIRMAN: Yes.

24 MR LYNCH: Question 7, and the first question under 7A, you
25 have said "you have heavily", both yes.

1 The question thereunder, "why do you believe", no.
2 Question 8 and question 9 and its supplementaries,
3 no.

4 Question 10, yes. That's question 10 and the two
5 supplementaries, three questions.

6 The first question under question 11, yes.

7 The second question under question 11, no.

8 THE CHAIRMAN: What about the supplementaries?

9 MR LYNCH: The first question is, "did you discuss?" The
10 next one is "advice ...(Reading to the words)...
11 supplementary these documents were disclosed", that goes
12 over the page in my version. The audits in and prior to
13 the financial year 2006, that's a no. The next one,
14 "how did these 1999, 205", that's a yes.

15 Question 12 and its supplementary, no.

16 Question 13, "is it true", and the first four
17 supplementaries thereunder are no. The last of those
18 supplementaries I mentioned, is supplementary "would E&Y
19 have to investigate it". The rest of the
20 supplementaries under question 13 are yes. There should
21 be six in number.

22 Question 15, which starts "would you agree", are we
23 agreed on that? That is no through to and including the
24 8th supplementary thereafter, which is "Mr Dekker, in
25 document 4110, I would like to ask you".

1 There is then a question on -- there has been some
2 interposing by Mr Little, so I hope I have this right,
3 but I understand the next question to be supplementary,
4 "Did you or Mr Neill or Mr Butyniek ever meet any
5 resistance during 2006 from Paul Gilbert or any Aeronca
6 management?"

7 Our answer to that is a yes.

8 THE CHAIRMAN: "Did you or Mr Neill or Mr Butyniek ever meet
9 any resistance during 2006", yes?

10 MR LYNCH: Until 2007 on the projected.

11 THE CHAIRMAN: That's a yes.

12 MR LYNCH: Question 16, "Mr Dekker, why", and the next one,
13 "Mr Dekker, can you turn to document 4132", are both
14 noes.

15 Then my understanding is that pursuant to the
16 aide-memoire dated the 8th of this month, there has been
17 something of a revision.

18 THE CHAIRMAN: The three questions there.

19 MR LITTLE: Yes. 17A, B, and C.

20 MR LYNCH: That is right, thank you, and the answers -- so
21 this is question 17, supplementary 1 in your witness
22 statement, that's a no, as is supplementary 2, but
23 supplementary 3 is a yes.

24 Tribunal, that should conclude it.

25 THE CHAIRMAN: Okay. Right, Mr Little.

1 Submissions by MR LITTLE

2 MR LITTLE: Just for completeness, sir, and just for the
3 record, in terms of Mr Dekker, Mr Dekker has a copy of
4 the hearing transcript data, including the question
5 numbers against each section of the documents, so he
6 knows what transcript information is relevant as it
7 were, as in the written evidence or oral evidence for
8 those, I have given him the three witness statements
9 that are marked in the particular areas, I said I will
10 be pressing to ask questions on that, I understand
11 that's not the case but the forewarning is there on
12 those. Last evening I confirmed to Mr Rae that I have
13 no problem with them having all the document numbers
14 themselves identified to Mr Dekker, so that he would
15 know which documents to go to. I took the view that
16 that was the same as we'd done with Mr Edwards and it
17 speeds the process up. He obviously has the witness
18 questions in advance, as in fact for the seven questions
19 across the Mr Smith, Mr Underwood, and Mr Dekker, so
20 they have time to prepare for those questions. What is
21 not included here, sir, just for completeness, are the
22 questions that I will ask in relation to the documents
23 that were handed up that we've just dealt with on
24 Monday, plus also on Wednesday. Obviously they're all
25 A340-related.

1 MR LYNCH: Yes. I think this is what Mr Little meant but
2 just to clarify, the question that Mr Little said
3 Mr Dekker had was question 17 only?

4 MR LITTLE: 17 only, yes.

5 MR LYNCH: Yes.

6 MR LITTLE: And the mishap the other day was he's actually
7 seen what the question was, as well as the text, but
8 that's my error, I just had too many things going on
9 that morning.

10 THE CHAIRMAN: Yes.

11 MR LITTLE: I should say by the way, I think it would be
12 unfair to the witnesses for those seven questions, if
13 he's probably read them, that they didn't have time to
14 look through and see where they are in the bundle. To
15 me they're important questions and they should be asked
16 in evidence or correspondence.

17 THE CHAIRMAN: Would you like to supplement?

18 MR LITTLE: Yes, sir, I would like to do that now.

19 This may take a little longer than perhaps you're
20 anticipating. I probably regard this particular
21 occasion as being one of my sort of top three things and
22 it's important I take the time and slowly go through and
23 explain exactly why I think this particular application
24 is important and the reasons why it should be agreed, if
25 you like, in its entirety, the questions in its

1 entirety.

2 If I'm going too fast, I hope you'll slow me down or
3 anything like that. There are a number of areas, and
4 I'm particularly conscious, sir, that you have about
5 five jobs you're trying to do, so I will slow down and
6 allow you to get precise notes of what I'm saying.

7 THE CHAIRMAN: Thank you.

8 MR LITTLE: So please manage me.

9 THE CHAIRMAN: Okay.

10 MR LITTLE: I'm going to start off by saying that I'm going
11 to talk about this in three different ways, first of all
12 in an overall perspective of the case, in a limited way
13 at the start, I'm going to say a little bit about
14 natural justice and what was said at the very original
15 hearing on day three with Mr Stafford with regard to the
16 unpleaded allegations and then I'm going to deal with
17 Mr Lynch's opposition document in some detail and then
18 finish with my own sort of conclusions around that
19 particular subject, so please bear with me.

20 The reason why I want to do this is I've given
21 a great deal of thought to how do I minimise but
22 optimise what is fair to myself and indeed the
23 respondents with regard to these particular questions.

24 That's basically where we're at. Let me just start
25 off for that.

1 I should start off for the record that we know that
2 the first three witnesses were all heard by
3 14 November 2007, so that was the starting position.
4 And I would also like to emphasise that Mr Neill was
5 also in a hurry to get a flight, if you remember, on the
6 Friday, so there were some challenges on that Friday,
7 together with Mr Stafford had omitted to do the A340 by
8 error until the Friday morning, so there was some
9 difficulty in that process, as well.

10 THE CHAIRMAN: We're not dealing with Mr Neill, we're just
11 dealing with Mr Dekker.

12 MR LITTLE: No, I thought we were dealing with the overall
13 application first and then specifically Mr Dekker.

14 THE CHAIRMAN: I'm sorry, it may be my fault, no, we're
15 dealing with Mr Dekker, if you remember, there was some
16 discussion --

17 MR LITTLE: No problem, I thought we were doing the overall
18 view of yes or no to the four witnesses and then doing
19 the detail only of Mr Dekker.

20 THE CHAIRMAN: No, because Mr Dekker is here we thought we'd
21 see if we could get Mr Dekker's evidence dealt with in
22 one fell swoop, really.

23 MR LITTLE: Okay, sir, I need to reorientate myself.

24 MR LYNCH: I think, sir, you said we'd do Mr Smith if we had
25 time.

1 MR LITTLE: Okay, then I'm assuming that we're going to go
2 through Mr Lynch's opposition document at a high level,
3 so I probably need to do the same. Should I?
4 THE CHAIRMAN: Well, I think --
5 MR LITTLE: Mr Dekker is actually --
6 THE CHAIRMAN: There's no opposition to Mr Dekker being
7 recalled as a witness. There's no opposition to that,
8 and quite frankly, as we indicated yesterday, in those
9 circumstances it's most unlikely that we would prohibit
10 that taking place.
11 MR LITTLE: Right.
12 THE CHAIRMAN: In fact, I think we can say that it will
13 happen.
14 MR LITTLE: Yes.
15 THE CHAIRMAN: What we want you to try and focus on is
16 really the -- where Mr Lynch has indicated he has
17 opposition to you asking questions about a particular
18 topic, or indeed in a particular way.
19 MR LITTLE: Right, I'll reorientate myself.
20 THE CHAIRMAN: I think our provisional view is that you are
21 pushing at an open door in terms of questions which
22 relate to documents that were disclosed after the
23 witness has given evidence.
24 MR LITTLE: Yes.
25 THE CHAIRMAN: Where they are relevant.

1 MR LITTLE: Okay.

2 THE CHAIRMAN: And what we're -- I think what we are in some
3 difficulty in doing is being completely prescriptive in
4 determines of the types of question you could ask
5 because cross-examination sometimes can be fluid, and
6 prescriptive and it may be that there will be a question
7 arising out of an answer, so to say for example that you
8 can only ask question 3A, as an example, without
9 following it up, if there are answers which are -- which
10 need following up, is difficult, it's difficult for us
11 at this juncture.

12 I think that we are helped by Mr Lynch's yes/no
13 yes/no approach, and I know that you have set it out in
14 terms of questions, but I think that it may be that we
15 will simply respond to the application on broader
16 principles than that.

17 MR LITTLE: Right, okay.

18 THE CHAIRMAN: But we'll hear your argument in relation to
19 particular topics and indeed if you want to, particular
20 questions in topics, without any problem at all.

21 I mean, your first topic is the Apollo metals subject.

22 MR LITTLE: Can I do the two helicopter bits and then
23 Mr Dekker.

24 THE CHAIRMAN: Anything you say now, of course, would be
25 germane to the application to Mr Smith and Mr Underwood

1 anyway, and Mr Neill.

2 MR LITTLE: Yes, so you've observed I've said the five
3 categories of subject, there's the PD schedule produced
4 on 17 November, there are no questions to Mr Dekker on
5 that because obviously it was produced before Mr Dekker
6 gave evidence, so there's no questions to him on that,
7 we have all that evidence. In terms of the witness
8 statements, the witness statements were obviously
9 produced subsequently for Mr Wilkins, Mr Fairbairn, and
10 Mr Baigent. In terms of Mr Wilkins, I believe, sir,
11 that the Apollo metals subject and its centrality in
12 part of the minds of, I think, both parties at that
13 point in time, in September, and indeed perhaps prior to
14 that, is important. I think if the tribunal look at the
15 questions that I am in fact asking, it is crucial that
16 it's not just seen in the context of the allegation,
17 it's the way the conduct and actions of myself, and
18 indeed Mr Smith and Mr Underwood, with regard to Apollo.
19 Obviously you realise that I regard that as being the
20 provocative email, the f-off stuff, breakfast, morning
21 at home, on the last day of holiday.

22 With Mr Fairbairn, the critical area is MOU2 and
23 what happened around that context and I think his
24 evidence of what in fact happened, and then if you read
25 the questions that I'm asking, I think they are germane

1 to helping answer what I think perhaps some people
2 haven't realised, the connections that I was making that
3 in fact I believe were taking place within the
4 organisation, and that was designed particularly to help
5 Mr Lynch, you know, about what's the tipping points and
6 what are the issues that are essentially going on.

7 THE CHAIRMAN: So you've moved on from -- that's question 2.

8 MR LITTLE: 1 is Mr Wilkins, 2 is Fairbairn, and question 3
9 is Mr Baigent, a combination both of his supplementary
10 witness statement and the statutory accounts which were
11 produced.

12 THE CHAIRMAN: Wait a minute. A combination of, it's
13 Mr Baigent and the statutory agreements.

14 I think we'd better -- the accounts 3551 and 3559,
15 the date of their disclosure?

16 MR LITTLE: The dates of those were both December 11, 2008.

17 THE CHAIRMAN: Yes, December 2008.

18 MR LITTLE: Could I, sir, just give my one other helicopter
19 summary that I'd like to make now because I think this
20 is very germane to the overall documents disclosure
21 issue, and I'm going to go slowly through this, because
22 it does require Mr Lynch to understand exactly what it
23 is I'm saying.

24 During the course of 2007, June and July 2007, there
25 were a total of 62 requests for documents, sir.

1 THE CHAIRMAN: Wait a minute. I'm sorry, I was correcting
2 my typing. Can you just say that again, please.

3 MR LITTLE: Right, during the course of June 2007
4 and July 2007, there were two case management
5 discussions, case management 4 and case management 5.

6 THE CHAIRMAN: Yes, two CMDs, yes. 62 applications?

7 MR LITTLE: 62 applications in total, okay. And I have
8 copies of those here, if any of that is needed. Of that
9 total, when you look at what has occurred at the time,
10 through the PwC report, and subsequently, the following
11 are the only requests which have now eventually not been
12 produced, or are not required. They are request 4,
13 which is something to do with Madeleine Harris and the
14 compromise agreement, and I agree that that probably was
15 disproportionate, with Ms Christiansen, 7, which was to
16 do with Magellan cash balances in the corporation, the
17 parent company, between July and September 2006, that
18 was never disclosed. Requests 9 to 16 and 27, were all
19 regarded as going to be covered by the PwC report.
20 Ms Christiansen made a tape recording which was
21 available to you around all of that subject, she
22 categorised those as being category two because we said
23 that they ought to be with what was covered in the PwC
24 report.

25 In terms of requests 5 to 8, it was not clear

1 whether the solvency issues would be addressed for the
2 business.

3 THE CHAIRMAN: Yes, I'm sorry to cut cross you, but we are
4 where we are with your contentions of late disclosure,
5 in the sense that there's an issue between you as to why
6 that took place but we know it did take place, and some
7 of these documents that you refer to as part of your
8 application occurred after Mr Dekker gave his evidence.
9 As I indicated to you, our provisional view is that you
10 would be pushing at an open door in terms of asking
11 questions surrounding those documents.

12 MR LITTLE: Yes.

13 THE CHAIRMAN: Okay? So the whole history, whilst it may
14 cause you some concern, that's clearly right, you are
15 concerned about it, it's not going to, I think, be
16 entirely germane to this exercise.

17 MR LITTLE: I think what is germane, sir, is that Mr Lynch's
18 opening comments in his opposition is that effectively
19 I'm factually wrong about what has happened in request
20 terms.

21 THE CHAIRMAN: Yes, but in the course of a interlocutory
22 application, we don't have to make judgments about
23 absolutely everything that is asserted by parties in
24 their documentation, it's one thing to assert it, it's
25 another thing for it to actually be relevant for us to

1 determine. What we want to know is how we can --
2 because, as you appreciate, allowing witnesses to be
3 recalled is a exceptional course.

4 MR LITTLE: Yes, I fully understand that.

5 THE CHAIRMAN: And it is' not to be done lightly, and it's
6 a fairly rare event.

7 MR LITTLE: I fully understand that, sir.

8 THE CHAIRMAN: And one of the reasons why disclosure, we
9 think, is probably a good idea in cases generally is
10 where parties have not been able to ask questions of
11 a witness on documents which they have not had access
12 to.

13 MR LITTLE: Absolutely.

14 THE CHAIRMAN: So, you know, I think whether or not that's
15 because there has been a failure on the part of the
16 respondents to be diligent in giving disclosure or
17 whether ultimately that has been withheld deliberately,
18 I don't think in the context of this case matters very
19 much.

20 MR LITTLE: I think it matters in a number of ways, and
21 I understand your point about some of these are separate
22 issues, but my critical point here is that it is --
23 there have only been four of those applications, four of
24 those documents which effectively have not been
25 disclosed in this entire case eventually.

1 THE CHAIRMAN: I hear what you say, but what you're basing
2 your application on at paragraph 3 is documents 3551 and
3 3559, both of which you didn't receive until after
4 Mr Dekker gave his evidence.

5 MR LITTLE: That's right.

6 THE CHAIRMAN: What you, with respect, should be persuading
7 us is whether or not you ought to be allowed to ask
8 questions around those documents in the light of the
9 evidence that has already been given, how those
10 documents, in effect, alter the position of the parties
11 such that it would be relevant to allow you to ask
12 questions on them.

13 MR LITTLE: Okay. So I'll try and now do that, for each
14 question. That's okay.

15 THE CHAIRMAN: I don't wish to be unhelpful, I'm trying to
16 be helpful, I hope I am, and that's to try and focus
17 your endeavours on those issues, really.

18 MR LITTLE: So 3551 is the first draft of the statutory
19 accounts to Ernst & Young, included in which is the
20 directors' report, and the directors' report includes
21 the supplier payment policy. And you will see that both
22 the first and second drafts have the same supplier
23 payment policy in those documents.

24 Now, what's important here is that what was in the
25 mind of all of us was a consistent supplier payment

1 policy, that required the directors to ensure that we
2 were following up and making sure that things were being
3 done.

4 THE CHAIRMAN: Sorry, but you obviously will -- you can
5 answer this very readily. Until you had those
6 documents, was it not clear to you that that was the
7 policy?

8 MR LITTLE: It was absolutely clear to me and I said to
9 Mr Stafford, and that's why these particular requests 13
10 and 14 were quite annoying for me, his view was that
11 Mr Lynch would most certainly have disclosed them if
12 they were relevant. And I said they are.

13 THE CHAIRMAN: So you knew what the policy was.

14 MR LITTLE: I had no view that it had been changed or
15 whatever, what I was also clear on was -- and Mr Smith,
16 in my view, misled the tribunal, he said there were
17 financial year 2004 statutory accounts but it was
18 different in 2005. The legal position is that the
19 statutory accounts you report are for the future
20 financial period, not the last.

21 THE CHAIRMAN: Yes. But turning back to the documents 3551
22 and 3559, as I understand what you're saying to us, it's
23 that those documents contain the supplier payment
24 policies?

25 MR LITTLE: They do.

1 THE CHAIRMAN: And they obviously have to be recorded in
2 there, and they were.

3 MR LITTLE: Yes.

4 THE CHAIRMAN: Prior to that time, you were aware of the
5 supplier payment policy, but are you telling us that
6 there was no document in the bundle --

7 MR LITTLE: That's correct. Which would prove the mindset.

8 THE CHAIRMAN: Which recorded those policies?

9 MR LITTLE: And confirmed that Mr Smith and Mr Dekker, who
10 were submitting these documents in draft terms, were
11 consistent with what we all said.

12 That policy did not change until the thing was filed
13 on 11 July 2007. And its relevance is the future
14 period.

15 THE CHAIRMAN: Again, we haven't looked at what Mr Smith and
16 Mr Dekker have said in relation to specific questions on
17 that point.

18 MR LITTLE: It's in this evidence.

19 THE CHAIRMAN: You will take me to them, but were they
20 denying that that was the supplier payment policy?

21 MR LITTLE: Yes, Mr Smith was giving the impression that
22 that --

23 THE CHAIRMAN: Right, that's --

24 MR LITTLE: Okay, I'll just find it.

25 That may be in Mr Smith's hearing part of it.

1 THE CHAIRMAN: Mmm hmm, what about Mr Dekker?

2 MR LITTLE: I'll just find it, it's in here. Did Mr Dekker
3 actually deal with the issue at all?

4 THE CHAIRMAN: Was he cross-examined?

5 MR LITTLE: He was asked questions about the payment policy,
6 yes, if you go to -- he was asked questions with regard
7 to the policy in the top page, where it said, "what
8 happened and who manages it and who pays".

9 THE CHAIRMAN: What page number?

10 MR LITTLE: Page 7.

11 MR LYNCH: Page 7 of the letter, isn't it?

12 MR LITTLE: Yes, page 7.

13 THE CHAIRMAN: I'm trying to look at witness evidence
14 in April 2008, where is it?

15 MR LITTLE: What was going on in terms of overdue creditors,
16 can't be managed on a daily basis, we talked about the
17 funding, et cetera.

18 THE CHAIRMAN: Sorry, I'm still not with you.

19 MR LYNCH: Are you looking at this letter, sir?

20 THE CHAIRMAN: The application.

21 MR LYNCH: Or the long one, the 82-page.

22 MR LITTLE: The 82-page, page 7, and Mr Dekker's witness
23 evidence.

24 THE CHAIRMAN: Right.

25 MR LITTLE: So we're going through there discussing what's

1 going on in terms of the payment policy and who was
2 making decisions in terms of the payment policy.

3 THE CHAIRMAN: It starts "... (Reading to the words)...
4 cheques accounting to Canada."

5 MR LITTLE: That's the one, and you're down to about the
6 payments position.

7 THE CHAIRMAN: Well, it's talking about whether Mr Smith,
8 Mr Underwood and Mr Little were responsible for.

9 MR LITTLE: Yes, there may not have been a direct question
10 to him about the policy itself, other than the context
11 of the statutory accounts.

12 THE CHAIRMAN: Yes, I don't see any specific question --

13 MR LITTLE: There certainly is to Mr Smith, because
14 I remember he came back and --

15 THE CHAIRMAN: Let's just focus, this is not a general
16 principle now, we're talking about an application now in
17 relation to Mr Dekker, so there's no direct question.

18 MR LITTLE: But he was, of course, a director of the
19 company, and the finance parent company, as well. It's
20 certainly his legal responsibility, sir.

21 THE CHAIRMAN: Yes.

22 Right, so those are the documents 3551 and 3559, and
23 their relevance.

24 MR LITTLE: Yes.

25 THE CHAIRMAN: Then --

1 MR LITTLE: If you go to page 10 you see 3A, B, and --

2 THE CHAIRMAN: Yes, we've seen those.

3 MR LITTLE: Yes; and that's basically because it's our
4 responsibility --

5 THE CHAIRMAN: Which of these, it seems to me, and you may
6 disabuse me of that, that 3A may relate to that issue,
7 directly. What governance processes did you have.

8 MR LITTLE: Yes, it does, sir. 3A is definitely on that.

9 THE CHAIRMAN: But as I understand it, the late disclosure
10 of the supplier payment policies was confirmation to you
11 of something that you already knew existed?

12 MR LITTLE: I'd never seen the document, but it was
13 confirmation to me --

14 THE CHAIRMAN: That that's what it was.

15 MR LITTLE: That none of us had ever changed our minds or
16 discussed it and therefore effectively it said Shawn
17 hadn't changed anything --

18 THE CHAIRMAN: But essentially, you knew that that was
19 a supplier payment?

20 MR LITTLE: That was my understanding and there had been no
21 discussion to the contrary, and Phil also said that we
22 discussed these at the MAC staff meetings I have no
23 recollection, and nowhere in the staff meetings is there
24 any discussion of the policy, it was never discussed.

25 THE CHAIRMAN: It was your understanding that there existed

1 a policy but you had not seen the documents.

2 MR LITTLE: This was confirming that Shawn said, at the end
3 of October and indeed at the end of May it was
4 unchanged, as it was for all of us, it didn't change
5 until July, when the actual accounts were published.

6 Now, 3B and 3C are -- let me try and explain this,
7 in terms of being a litigant in person I had not
8 realised enough about the ability to go back to refer to
9 other people's evidence, for example Mr Lynch on Monday
10 referred back to Mr Baigent to evidence that had been
11 given by somebody, and then Ms Wade, yesterday, with
12 Corrie, and so on. So Mr Neill's position was very
13 strongly, instructions from him in Canada were: you're
14 to manage deferments with creditors and try and manage
15 your way through this process. And my question there,
16 obviously, was: well, what was your understanding of
17 what we're doing, given that earlier your evidence was
18 it was up to the three people in the UK to sort out what
19 was going on? And then with respect to the contractual
20 agreements, was he in any way aware that some of the new
21 staff were regarding contracts as it didn't matter
22 a damn, or irrelevant?

23 THE CHAIRMAN: So 3B and 3C? Yes.

24 MR LITTLE: And I think this is absolutely at the heart of
25 this case, in terms of the solvency dimension of it, and

1 the policies and practices. And you know, I hear
2 Mr Lynch keeps saying, you know: it's not your job, it's
3 not your job. I know, or at least I think I know, most
4 of my legal responsibilities, I certainly set out to try
5 and understand them, and a director has legal
6 responsibilities for everything, including his own
7 function, at least in the eyes of the law.

8 THE CHAIRMAN: Okay. So we're on to question --

9 MR LITTLE: 4.

10 THE CHAIRMAN: 4.

11 MR LITTLE: Okay. Now, 4 is a starter, which we had before,
12 which is the 6 January board minutes, and there are
13 specific subjects that are discussed within that.

14 THE CHAIRMAN: Right, so it's the board minutes?

15 MR LITTLE: Yes.

16 THE CHAIRMAN: Date again?

17 MR LITTLE: 6 January, I think it is.

18 THE CHAIRMAN: 6 January.

19 MR LITTLE: Right. I just emphasise, the questions that I'm
20 asking here are more just for information to allow the
21 question to be asked subsequently in the closing.

22 THE CHAIRMAN: Wait a minute, then. It's 10 February, in
23 fact, isn't it?

24 MR LITTLE: No, what you're referring to, sir, is the audit
25 closing minutes, I'm referring to the board meeting

1 first.

2 MR LYNCH: That's not a new document.

3 MR LITTLE: No, it's not a new document but because of

4 what's been discussed in the closing meeting there's

5 issues about cash and funding and I'm referring back to

6 questions going on from the last conversation that we

7 have had as group of directors.

8 THE CHAIRMAN: 3565, 3546, is that is document disclosed

9 since --

10 MR LITTLE: Yes. That's request 15, sir, that was

11 the November 28 document disclosed on 11 December --

12 MR LYNCH: That's the notes that we didn't have, that

13 Ernst & Young had, of the meeting of 10 February, sir,

14 2006.

15 MR LITTLE: It appears that Mr Dekker and Mr Neill, or

16 Mr Smith, didn't have notes. And I made an error as to

17 where I was, unusually.

18 THE CHAIRMAN: Yes, right.

19 MR LITTLE: And the purpose of going to the previous

20 question, by the way, about the board meeting, was the

21 last time the four of us were together.

22 THE CHAIRMAN: So what do you say is the significance?

23 MR LITTLE: Point 3 is about the financial year 2005 results

24 and about cash, there's a quick note about wages and

25 bonuses, which are important in terms of dates, and

1 point 12 about the MOU1 and MOU2, given that there's
2 a discussion about MOU2 at the end of the month.

3 THE CHAIRMAN: The board minutes of January 2006 are
4 something that you have had, what I want to know is why
5 3545 to 3547, what's in there that.

6 MR LITTLE: Right, specifically to the paragraph, I'll do
7 that now.

8 THE CHAIRMAN: You were there, are not weren't you, at the
9 meeting?

10 MR LITTLE: Yes. I was definitely at the meeting, I know
11 that for sure.

12 The first bit that is relevant or in part, is the
13 bit, "BL made comment on potential" --

14 THE CHAIRMAN: I have that, yes.

15 MR LITTLE: The next one is "overall costs, working hourly
16 rates are outstanding, challenges."

17 THE CHAIRMAN: Wait a minute. Where is that?

18 MR LITTLE: PU noted disappointing FAB results.

19 THE CHAIRMAN: Yes, the contract was --

20 MR LITTLE: Yes, and then it goes on to Bournemouth sales
21 are a million down on budget with overall million
22 pounds.

23 THE CHAIRMAN: You were present during this, were you?

24 MR LITTLE: I was, yes.

25 THE CHAIRMAN: Yes, go on.

1 MR LITTLE: And then you're saying: okay, what was the
2 discussion that we were having with the auditors in
3 terms of cash and the position going forward, what was
4 said was there was going to be:

5 "...considerable cashflow input, 2 million plus
6 ...(Reading to the words)... from a mixture of invoice
7 discounting [which then didn't take place until the end
8 of that year] and parent company funding."

9 You'll also notice the thing about pricing in
10 quarter two. Somewhere else there's reference to the
11 pricing.

12 THE CHAIRMAN: Right.

13 MR LITTLE: This is all effectively saying: guys, we need to
14 rebudget. If you remember, I then ended up doing a cash
15 thing myself, which became the dossier which I gave to
16 John.

17 THE CHAIRMAN: But you were party to these conversations?

18 MR LITTLE: Yes.

19 THE CHAIRMAN: Right. So these minutes confirm the
20 conversations that you had as a board with the
21 Ernst & Young people?

22 MR LITTLE: That's correct, sir. What they also confirm is
23 the whole issue about funding and going concern. One of
24 your member's questions was the assessment of going
25 concern and when is that done, and the answer is, that

1 would have been the input data back from us, you get
2 a budget that says you don't really need cash, however
3 you have invoice discounting to be considered and parent
4 company funding, so I had no concerns about that beyond
5 that we had a serious problem with our budget being now
6 prong and that was the reason for the dossier.

7 THE CHAIRMAN: Okay.

8 MR LITTLE: Okay. And that really is all that's in
9 question 4.

10 THE CHAIRMAN: Yes.

11 MR LITTLE: Okay, and you'll remember the specific bit about
12 Ms Hadfield on the inventory, and so on and so forth,
13 and I assume you've seen it was £1.247 million -- no,
14 thousand. So that's all ...

15 THE CHAIRMAN: Question 5.

16 MR LITTLE: 5 and 6.

17 THE CHAIRMAN: Together, yes?

18 MR LITTLE: 5 is very definitely a disclosure question,
19 about disclosure obligations, legal obligations in the
20 case, why not disclosed, and if you gave your evidence
21 on 1 April 2008, why on earth would these particular
22 documents not have been something that were in your
23 mind?

24 THE CHAIRMAN: Why not disclosed.

25 MR LITTLE: When was it decided and on what basis did they

1 decide not to disclose it. I'm trying to separate the
2 issue between what legal advice they were given and what
3 was provided to --

4 THE CHAIRMAN: Those two go to the question of why
5 disclosure took place when it did.

6 MR LITTLE: Yes. And you'll also remember we asked for
7 those documents, because Ms Hadfield told us these are
8 the documents that are relevant to the questions that
9 I was asking.

10 THE CHAIRMAN: Right.

11 MR LITTLE: In her effort to try and not be a witness.

12 THE CHAIRMAN: We have that, question 6, the bulk of those
13 are yes, save for the last three.

14 MR LITTLE: Yes.

15 THE CHAIRMAN: 1477 to 1479, that's not a late disclosure.

16 MR LITTLE: No, but it puts in context the whole inventory
17 issue.

18 THE CHAIRMAN: Can I go through quickly for my satisfaction,
19 that's not a new document question.

20 MR LYNCH: Which question is that, sir?

21 THE CHAIRMAN: The first supplementary after you've --

22 MR LYNCH: 6.

23 THE CHAIRMAN: You've denied all the others.

24 MR LYNCH: Yes.

25 THE CHAIRMAN: You've agreed all the others but this is the

1 first refusal.

2 MR LYNCH: Yes.

3 THE CHAIRMAN: And then, "when you gave your evidence you
4 were aware of both the information on inventory
5 provisions necessary in 2005 together with this document
6 3566, 3571" -- hang on a minute. So 3566.

7 So the question seems to be that when he gave his
8 evidence in April 2008, he would have been aware of the
9 information contained in the 11 July 2007 letter from
10 Ernst & Young?

11 MR LITTLE: Absolutely right, sir.

12 THE CHAIRMAN: Yes. So next question: why did you not tell
13 the court and disclose the document when giving evidence
14 on these matters.

15 MR LITTLE: And that's in the context of the NRV valuation,
16 because what happened, sir, at the end of the day, was
17 that the Canadian auditor, Mr Linsdell, overrode the UK
18 as well and I wasn't happy about that. You heard
19 Mr Precious say there were some off the record
20 conversations, there was one with Mr Linsdell and
21 Mr DeWolf, and that was around the inventory thing,
22 where I said: guys, you're just wrong, this has not been
23 done properly with the NRV, et cetera, and obviously it
24 was fixed properly then. That's me, as a director,
25 doing my job, raising the issues that I'm concerned

1 about until I'm happy I've seen the logic as to how it
2 comes together, and you've obviously realised that we
3 didn't put all the PDs into the complaint --

4 THE CHAIRMAN: Yes, okay, I have that.

5 I take it "record for the 69th time" --

6 MR LITTLE: That's just me frustrated, I saw that the other
7 day and realised I shouldn't have put that in.

8 THE CHAIRMAN: Never mind.

9 Question 7, yes to the first one.

10 MR LITTLE: I'm actually not sure why I understand the --
11 it's -- there only are two -- anything that's in italics
12 is intended to be the questions, where it says
13 "question 7A" in bold, that was just trying to make an
14 statement, and then the question was the next bit, and
15 I think this is a crucial question, it's quite clear --
16 and this goes to the credibility of PwC and what was
17 done in this whole reporting process -- that the numbers
18 were changed, before the final report was done by PwC,
19 to £84,000, and we still don't --

20 THE CHAIRMAN: So you ... (Pause) does this, there's
21 reference to, in question 7, to 11 July, which we've
22 just looked at.

23 MR LITTLE: Yes.

24 THE CHAIRMAN: How does this tie in with the new document?

25 MR LITTLE: Right, if you read document 3568.

1 THE CHAIRMAN: Yes.

2 MR LITTLE: And you read the engineering overhead
3 adjustment?

4 THE CHAIRMAN: Yes.

5 MR LITTLE: If you just refresh your memory on that, sir.

6 THE CHAIRMAN: Yes, I have that marked, yes.

7 MR LITTLE: That was the 134 down to the 84,000, for which
8 we've still never seen a schedule, the point was it had
9 changed, if PwC finished their report in August, why
10 would they not have accounted for and explained that in
11 fact they now understood that that number had changed?
12 Why would the witness statements not have recognised
13 that --

14 THE CHAIRMAN: I thought, it may be I have this wrong, but
15 I thought you knew that the numbers had been changed?

16 MR LITTLE: No.

17 THE CHAIRMAN: You didn't appreciate that until you saw this
18 document?

19 MR LITTLE: No, until I saw this, I had no idea.

20 THE CHAIRMAN: I thought you had.

21 MR LITTLE: No.

22 THE CHAIRMAN: Okay.

23 MR LITTLE: I was pleased it is, and then I knew it's still
24 wrong, and there has to be a schedule, Mr Smith has told
25 Charles, under subject 2A, "there is no schedule, there

1 is no schedule", I know there's no way Barbara will have
2 signed that off without some sort of schedule or
3 calculation.

4 THE CHAIRMAN: So you're not, you don't understand why PwC
5 are not aware of it?

6 MR LITTLE: Forensic accounting is different to auditing,
7 which is something we're going to cover at some point
8 but in simple terms why would you not between May
9 and August know, we've made these adjustments, some of
10 which were part of their recommendations, why is that
11 not recorded? And my view is quite simple, they wrote
12 what was needed for the client, and I was not invited to
13 make any comments back in any way, despite offering to
14 do so several times. The result is we're here today,
15 having spent twice the amount of time we should have
16 been, we could have had a better PwC independent
17 report ...

18 THE CHAIRMAN: Okay.

19 MR LITTLE: And it goes to the credibility of PwC, frankly.

20 THE CHAIRMAN: Well, yes.

21 MR LITTLE: You know, their report was done 22 August or
22 something, was the final report.

23 THE CHAIRMAN: Okay, and then we move on to question 8.

24 MR LITTLE: Yes.

25 THE CHAIRMAN: That doesn't relate to new disclosure?

1 MR LITTLE: No, this is now the engineering bonuses issue.

2 THE CHAIRMAN: Yes, but it's not new disclosure as such,
3 it's related to the engineering overheads, and questions
4 surrounding --

5 MR LITTLE: Sorry, engineering bonuses, sir?

6 THE CHAIRMAN: Yes.

7 MR LITTLE: You are strictly speaking correct, sir, that's
8 me coming back to the respondents' PD schedule.

9 THE CHAIRMAN: I think those questions are self explanatory.

10 MR LITTLE: I could have asked that, I just -- I mean,
11 I think probably my answer to that, sir, I had always
12 the expectation that ultimately the respondents would
13 present Ernst & Young and PwC here, I thought that that
14 was the only credible way to do it, and I know you as
15 a tribunal have stuck with this through what has been
16 anything but easy for yourselves, as well, in terms of
17 all the accounting stuff, so I very, very, very much
18 appreciate that, and there we go. I suppose, as you
19 say, there you go.

20 THE CHAIRMAN: There you go. I had not realised I said that
21 so often. I obviously do.

22 MR LITTLE: I suppose that's really --

23 THE CHAIRMAN: Okay, question.

24 MR LITTLE: 9. 9, I think, has been interpreted by Mr Lynch
25 as being about performance appraisal and what was going

1 on at work, I just wanted to take a particular example,
2 obviously we have responsibilities to produce the
3 statutory accounts, the group accounts are done March
4 each year and then by the end of October, ie 7 month
5 later, we issue the final statutory accounts and
6 I should have put in there the document number being the
7 document that you referred to earlier, 3551, ie, nothing
8 went to Ernst & Young until the 20 something, end
9 of October, I should say, just again --

10 THE CHAIRMAN: What was date it went to Ernst & Young?

11 MR LITTLE: 3551, I think it was 20 -- this is the one that
12 Charles came back and said what is a slightly different
13 date, was it? It's on the front of the document, the
14 document we were given.

15 THE CHAIRMAN: Yes, all right. 3551.

16 MR LITTLE: It just says October 2006.
17 Was.

18 THE CHAIRMAN: This goes to the late submission.

19 MR LITTLE: It wasn't given to Ernst & Young in time, and to
20 the linkage back to Mr Lynch, PD 17 and stuff was when
21 I was asking on Wednesday, or Thursday 17 August, about
22 the statutory accounts, so that was a key date at which
23 the complaints were then being made about me
24 interfering.

25 THE CHAIRMAN: Yes, so the point is that you're saying that

1 the accounts were late.

2 MR LITTLE: But I was also on 17 and 12 September asking
3 where are they and what are they doing, because
4 I believe the responsibilities for the accounts,
5 equally --

6 THE CHAIRMAN: This goes to the competence of Mr Smith.

7 MR LITTLE: And legal deadlines and his respect for
8 colleagues as directors, he's carrying the primary
9 functional responsibility.

10 THE CHAIRMAN: Of course, you can make submissions about the
11 competence of Mr Smith, of course.

12 MR LITTLE: This is just one example and I'm saying it
13 because on 17 August part of what drove Shawn to have
14 that meeting, I'm sure, is: get half a million cash in
15 and where are the statutory accounts? And his view,
16 that's nothing to do with me, and it has everything to
17 do with me, both legally and functionally.

18 THE CHAIRMAN: Okay.

19 You need not trouble yourself with question 10. 11?
20 The first one is a yes, second one --

21 MR LITTLE: I would like Mr Dekker -- because presumably he
22 is somebody who has effectively explained in those
23 90 pages something that would make sense to an auditor
24 or a layperson. I can assure you that I've given it to
25 11 people, six of them auditors, and none of them has

1 identified anything that would make any sense to them
2 and I would be amazed if those documents were ever
3 provided, there's no reference to them in the PwC report
4 so I think these reports were put in to bulk out the
5 disclosure and nothing to do with it. I certainly have
6 never seen them or heard them referred to at all.

7 THE CHAIRMAN: Yes, the next supplementary is okay, it's
8 agreed, so it's question 12.

9 MR LITTLE: Yes. Right.

10 THE CHAIRMAN: Hang on a sec, please.

11 Question 12, both no, they relate to the
12 non-disclosure.

13 MR LITTLE: Yes, and the two points I would like to make
14 here, sir, is they equally apply to the Ernst & Young
15 and PwC documents we now have, the ones you got on
16 Monday.

17 THE CHAIRMAN: So these are general questions about: why did
18 you disclose things late?

19 MR LITTLE: Yes. But equally, sir, none of these is in the
20 PwC report. We have five exhibits on A340 and PwC and
21 with 31 on engineering bonuses. You might be intrigued
22 to know that three and a half days of our 40 days have
23 been on engineering bonuses in the hearing time.
24 I don't know why I've wasted that amount of time.

25 THE CHAIRMAN: Question 13.

1 MR LITTLE: The first parts of these are no. And the reason
2 why I want --

3 THE CHAIRMAN: There's one question that is yes, I think
4 it's all -- sorry, it's yes, all the way from
5 "supplementary if the Q4 ... (Reading to the words)...
6 loss."

7 MR LITTLE: That's right.

8 THE CHAIRMAN: So everything down from there is a yes, so
9 there are four questions no.

10 MR LITTLE: Yes. That's right. And the reason why I'm
11 doing this, sir, is you made the comment several times,
12 cause, effect, or motive, what was the motive,
13 et cetera. I believe that a significant part of the
14 reason why I was dismissed is this issue of the funding
15 of the business in the future and going to the markets
16 with a significant level of loss and affecting
17 convertible debentures would have been a significant
18 issue for the business, it certainly was going to be in
19 terms of cash intake in the strategic plan, and I also
20 believe that Mr Neill didn't want any difficulty before
21 he was going to retire. I was trying to make sure we'd
22 fixed all that as best we could before we really did
23 have to get directly into the markets.

24 THE CHAIRMAN: Okay.

25 MR LITTLE: So that's motive.

1 THE CHAIRMAN: That's the four questions there.

2 MR LITTLE: Yes.

3 THE CHAIRMAN: Okay.

4 MR LITTLE: Okay. And then question 14 and 15, Mr Lynch has
5 gone out of his way to talk about "distinguished" this,
6 and "pre-eminent" that, and education and experience and
7 whatever else, and I think the critical thing from my
8 perspective is that I'm equally live, as I am sure most
9 of us are now, more and more in the last year, to all
10 sorts of professional people being questioned, and
11 I think the bottom line in this process is I'd like to
12 deal with some of that issue through this activity. PwC
13 in fact produced a report, I can't comment on its
14 authenticity, but well over half the lawsuits in North
15 America in 2007 or 2008 were for accounting estimates
16 being wrong, so exactly this subject of using numbers
17 that were not correct or valid in the financial
18 accounting.

19 THE CHAIRMAN: Okay.

20 MR LITTLE: That essentially deals with question 14 and 15.

21 THE CHAIRMAN: Yes.

22 MR LITTLE: Question 16 --

23 THE CHAIRMAN: There is one on --

24 MR LITTLE: Sorry.

25 THE CHAIRMAN: There is one on question 15 which is yes, and

1 that's --

2 MR LITTLE: That's the very last -- start at the top,
3 page 23?

4 THE CHAIRMAN: Yes.

5 MR LITTLE: Yes. My reason for doing this is that I'm aware
6 of one conversation --

7 THE CHAIRMAN: You don't need to justify that one, then.

8 Question 16?

9 MR LITTLE: 16 essentially is, you know, given that we have
10 been here, day 43, or whatever it is now.

11 THE CHAIRMAN: This relates to why they haven't --

12 MR LITTLE: Why are you not presenting central witnesses
13 here? The fundamental issue to me here is they have
14 been saying that I was bullying certain individuals, who
15 haven't been called.

16 THE CHAIRMAN: Yes.

17 MR LITTLE: They're turning against them, and obviously
18 I realise the difficulty of internal employees, but
19 Ernst & Young and PwC are paid a very large amount of
20 money for what they're doing, why are they not capable
21 of explaining themselves?

22 THE CHAIRMAN: Okay.

23 MR LITTLE: You may not be able to call them to this
24 jurisdiction, sir, but they can be called to other
25 jurisdictions by others in due course.

1 THE CHAIRMAN: All right, then question 17, the first two
2 are noes and the last one is a yes, so the first one,
3 your supplementary --

4 MR LITTLE: Yes, Mr Dekker refers on a number of occasions
5 to Mr David being present at meetings in his evidence,
6 and PwC said umpteen times in their report, I'm
7 personally absolutely clear that he was never at any
8 meetings -- in the back of the car at one -- and there's
9 nothing in any of the staff meetings, show me the dates
10 that he was present at any of the meetings to do this.
11 This is going to the credibility of PwC and Mr Dekker
12 deliberately, in my view, being fully aware that Henry
13 wasn't at any of those meetings.

14 THE CHAIRMAN: What you're saying is that these minutes
15 would show that he was not there, and that's what they
16 do show.

17 MR LITTLE: They do show. They're all disclosed. And PwC
18 say that they reviewed all the minutes for 2006, which
19 goes to forensic accounting experience.

20 THE CHAIRMAN: Okay.

21 MR LITTLE: The second question then, essentially, includes
22 references to emails, and I think the tribunal are
23 aware, I have tried, and Mr Stafford, before
24 the November 28 disclosure day and subsequent to
25 the November 28 disclosure day, to actually get

1 confirmation of exactly what documents they did receive,
2 have it confirmed or not, and also any other documents
3 they considered in their analysis, you'll remember the
4 Teal report was part of that, and my question here is:
5 is there any more documentary evidence of what was
6 provided, as distinct from simply saying: these have
7 been viewed, and obviously the new disclosures we just
8 have on Monday as well are additive to that question.

9 THE CHAIRMAN: Okay. Those are the --

10 MR LITTLE: And the last one is yes, which is some
11 spreadsheets.

12 Yes. That's the completion, sir, of Mr Dekker.

13 THE CHAIRMAN: Of Mr Dekker.

14 (11.44 am)

15 THE CHAIRMAN: Well, to some extent we are going through
16 a yes/no yes/no exercise. I suppose it's in the
17 parties' interests to have some sort of clarity about
18 the approach that we are adopting. Okay.

19 Yes, Mr Lynch.

20 Submissions by MR LYNCH

21 MR LYNCH: Thank you. If I may, I'll adopt the same
22 approach, going through the questions. We start with
23 allegation 33 in regards to Apollo metals. As
24 I understand it, this is not an application based on any
25 new documentation, it's based supposedly on Mr Wilkins'

1 evidence on behalf of Apollo, we respectfully submit
2 that in a sense that's the first answer, because after
3 all, the application was meant to be based on newly
4 disclosed documents. But quite apart from that, we say
5 that if one considers Mr Wilkins' evidence, it can't
6 possibly give rise to justifying the recall of any of
7 the respondents' witnesses, and the reason why we say
8 that, Tribunal, is that Mr Wilkins' evidence was, of
9 course, that he couldn't comment at all and had no
10 knowledge of events and arrangements within the
11 respondents. The essential concern of the respondents,
12 with regard to the Apollo matter, particularly on the
13 part of Mr Smith and Mr Underwood, was that Mr Little
14 had not discussed with them in advance of being in touch
15 with Apollo that he was going to do so, and that was not
16 a matter that Mr Wilkins could give any evidence on at
17 all, he was extremely frank on that. So there is
18 nothing new.

19 THE CHAIRMAN: That's the point you want us to reflect on
20 carefully is the fact that there's nothing new in the --

21 MR LYNCH: Exactly, and if there is nothing new, the
22 exceptional course of recalling witnesses, in our
23 respectful submission, can't be justified.

24 THE CHAIRMAN: That's 1 and 2, is it?

25 MR LYNCH: That's right, Mr Fairbairn is exactly the same,

1 the only other point I make about Apollo is that, of
2 course, the issue of the "fuck off" email and the emails
3 running up to it was a issue that has been part of this
4 case from the very, very start, and you'll recollect
5 that Mr Smith was cross-examined on it. So this is not
6 a new issue, on any view whatsoever.

7 As you rightly say, sir, exactly the same applies to
8 Mr Fairbairn, he was absolutely clear, he couldn't
9 comment at all on the actual matter that was the basis
10 of the complaint that we had about the MOU2, that's to
11 say Mr Dekker's evidence that Mr Little misled him in
12 a meeting in terms of that, the knowledge of Airbus of
13 it, that simply is -- there's nothing new that could
14 possibly justify the recall of a witness.

15 THE CHAIRMAN: Okay.

16 MR LITTLE: If we look in regard to question 3.

17 THE CHAIRMAN: This is ... excuse me a minute. He knew
18 there was a policy, he just hadn't seen the documents
19 that confirmed it.

20 MR LYNCH: Well, the facts are that there was a policy in
21 place that Mr Little was fully aware of, it was agreed
22 in 2007 that the policy would be amended for the next
23 publication of the directors' report, which I think was
24 the report that was for the year 2005.

25 THE CHAIRMAN: Yes, it's the 2005/2006 we're focusing on,

1 and he was aware of --

2 MR LYNCH: He was aware of the policy that was published and
3 in place, it took time for amendments to be agreed, when
4 they were agreed they were then published as the next
5 directors' report, but the real answer to this,
6 actually, lies in the excerpts from the transcript that
7 follow the question, because it's perfectly clear that
8 what those transcripts concern are exactly the same
9 issues that we have been through from the very start of
10 these proceedings, and that is the general questions
11 about the extent to which Magellan did or didn't pay its
12 creditors and what the principles were defined, when
13 they would pay them.

14 THE CHAIRMAN: Okay.

15 MR LYNCH: So once again, although there's reference to this
16 change of policy, that is not an issue that actually
17 goes to the issue of what we did in practice about
18 paying the creditors, and certainly can't justify the
19 recall of a witness.

20 THE CHAIRMAN: Right.

21 MR LYNCH: Question 3 also refers to Mr Baigent in the
22 supposed basis for its appropriateness, and once again,
23 with great respect, that's no basis at all for recalling
24 a witness. The reason is this: that Mr Baigent's
25 evidence in regard to the payment of creditors was

1 really very much of the same as we have had before and
2 indeed, if that were meant to be the relevant matter
3 that Mr Baigent could testify about, then, of course,
4 the claimant could have called Mr Baigent in the first
5 place, because obviously an issue from the very early
6 days in this case has been what happened in regard to
7 the payment of suppliers.

8 THE CHAIRMAN: Yes, but moving on from that, question 3A,
9 that goes back to the existence of the payment policy.

10 MR LYNCH: Yes, but until it was changed, there was a policy
11 that was the published policy.

12 MR LITTLE: That's not --

13 THE CHAIRMAN: Yes.

14 MR LYNCH: And Mr Little was aware of that.

15 THE CHAIRMAN: He's said that.

16 MR LYNCH: It's difficult to see how that material would
17 impact on the questions that the transcripts plainly go
18 to, that's to say, what happened in practice about the
19 payment of suppliers and whether there were delays in
20 regard to that.

21 THE CHAIRMAN: Yes, 2003 3B, that's a question in relation
22 to Mr Neill's evidence.

23 MR LYNCH: Exactly.

24 THE CHAIRMAN: Question 3C, that's about Mr Jones's?

25 MR LYNCH: Yes, well, in regard to that, Mr Little I think

1 has said at a stage of his submissions that he wasn't
2 aware at the time that he could ask questions on the
3 basis of other witnesses's evidence. In actual fact
4 it's perfectly clear from transcripts which he includes
5 in the documents we are considering, by way of example
6 page 63, that he did indeed ask questions on the basis
7 of what other people had said in their evidence, so that
8 forms no basis on which Mr Little should be allowed to
9 recall any witnesses.

10 In terms of the issues in regard to the evidence of
11 Mr Neill and in regard to Mr Jones, Wednesday again,
12 they simply relate to the same old issue, as to whether
13 Magellan was late about the payment of suppliers. And
14 that's what the transcript exhibited is about, that's
15 what Mr Baigent's evidence is about, which is meant to
16 be the basis for this application for these questions.
17 So what we have here is reference to a new document, but
18 when one examines it the new document is on any view not
19 sufficient enough to the issue that these questions are
20 going to give rise to a right to recall witnesses or the
21 duty on a party to have its witnesses recalled.

22 THE CHAIRMAN: Yes, thank you.

23 MR LYNCH: Question 4, the document of January 2006 is not
24 a new document.

25 THE CHAIRMAN: No, he was present at the closing --

1 MR LYNCH: He was present at the closing meeting, these,
2 I know the tribunal is very well aware and is tired of
3 hearing me write it or say it, but, of course, we didn't
4 have any notes, we didn't have the notes of
5 Ernst & Young, it wasn't a question of us having
6 a document and not providing it, we actually asked
7 Ernst & Young for -- we asked them after the
8 28 November 2008 CMD, do you have any notes, they said
9 yes, they gave them to us and we passed them on.

10 THE CHAIRMAN: Whether it came from you or somebody else is
11 not particularly helpful. What is of more consequence
12 is the fact that he was actually at the meeting, isn't
13 it?

14 MR LYNCH: Exactly, precisely, absolutely.

15 THE CHAIRMAN: Question?

16 MR LYNCH: My next one, I think, is question 5.

17 THE CHAIRMAN: Yes.

18 MR LYNCH: Our point there, and it's a general point, is
19 that it's not appropriate to recall witnesses to ask
20 them general questions about the disclosure process or
21 their understanding of the duty of disclosure, that's
22 a matter for submissions. It's a matter, in fact, that
23 we have responded to in regards to the Ernst & Young and
24 the A340 materials in my response to Mr Little's
25 application, that is the appropriate way that it should

1 be dealt with, and, as with so many of these matters, of
2 course, no one is saying that Mr Little can't make
3 submissions about these matters, any more than he would
4 try to limit our freedom to make submissions, but
5 calling people back to ask them: what do you understand
6 by your duty to disclose, et cetera, is not an
7 appropriate course.

8 THE CHAIRMAN: Would it be an appropriate course to say:
9 well, this document has been disclosed, why wasn't it
10 disclosed earlier? And if the witness says: I don't
11 know, that's as far as the cross-examiner can take it.
12 Matters of general principle, the law relating to
13 disclosure, are not matters for witnesses.

14 MR LYNCH: Absolutely not.

15 THE CHAIRMAN: What is potentially a question is: you knew
16 about this document, you've seen it, why wasn't it
17 disclosed? If they can't give an answer, well, they
18 can't give an answer.

19 MR LYNCH: Indeed, sir, but just in a way to repeat what
20 I've said, certainly my experience for what it's worth,
21 the standard, and we would submit appropriate, way in
22 which that is dealt with is it's dealt with through
23 submissions.

24 THE CHAIRMAN: Normally it is, that's because the party who
25 generally makes complaint about late disclosure is quite

1 happy to make merry with the idea that there's something
2 sinister in late disclosure and we'll do that by way of
3 submission. It is not often the case that people are
4 recalled, I agree that is true.

5 MR LYNCH: And we have set out our explanation.

6 THE CHAIRMAN: Yes, you have.

7 MR LYNCH: And that's, as you say, we would respectfully
8 submit that that is the appropriate path, and that's
9 a point that, of course, does tend to recur in a number
10 of these questions.

11 THE CHAIRMAN: It recurs in question 6 again.

12 MR LYNCH: Tribunal, turning now to question 6, we agree to
13 the question set out there, and I just want to highlight
14 that I hope our responses show that where questions
15 really do relate to new documents and relevant
16 questions --

17 THE CHAIRMAN: And where it alters the understanding of the
18 parties --

19 MR LYNCH: Precisely, then we're absolutely, completely
20 happy with the questions being asked.

21 THE CHAIRMAN: The ones you refuse, 6.1, that's not a new
22 document?

23 MR LYNCH: Exactly.

24 THE CHAIRMAN: As I understand it.

25 MR LYNCH: And thereafter, as you rightly said, sir, the

1 same point applies about dealing with disclosure.

2 THE CHAIRMAN: It's disclosure.

3 MR LYNCH: Obviously, I don't want to repeat the point, but
4 in the light of the way allegations have changed, you
5 know, I would just repeat about the yeses, of course, we
6 are keen to be able to respond to relevant matters, so
7 it's not, we're not trying to avoid it.

8 Then moving on, I think I'm right in saying we now
9 reach question 7, and the same applies, of course we say
10 yes, because in our view we concede that they are new
11 documents, and they are relevant questions.

12 THE CHAIRMAN: Second one you dispute?

13 MR LYNCH: But in terms of why ... we're not aware -- well,
14 it's not appropriate to recall witnesses to ask them
15 questions about some third party. And I would say here,
16 if I may, sir, that it was at this juncture that
17 Mr Little talked about the fact was that PwC were simply
18 writing whatever their client wanted. Well, I mean,
19 that is an allegation, I need hardly say, which is, in
20 our respectful submission, as serious as it is
21 groundless, and it would be entirely improper, in our
22 respectful submission, for any decision with regard to
23 recalling witnesses in any way to countenance, let alone
24 be based upon, such an allegation against
25 PricewaterhouseCoopers.

1 THE CHAIRMAN: Question 8 is a -- there's no new documents
2 in there.

3 MR LYNCH: Exactly. Of course, may I say that throughout
4 the proceedings, we've made it entirely clear that it
5 was never our intention to call Ernst & Young and
6 PricewaterhouseCoopers, we think their actions and
7 reports speak for themselves, and I simply can see no
8 basis at all on which the claimant could have somehow
9 been of the view, as he said this morning, that he
10 thought we were going to call them.

11 THE CHAIRMAN: He hoped that you would.

12 MR LITTLE: Yes, correct.

13 MR LYNCH: Well, we have made it completely clear throughout
14 that we would.

15 THE CHAIRMAN: Yes, but he hoped that you would. He's
16 consistently expressed that view, in fairness, that he'd
17 like you to call them.

18 Question 9 is about Mr Smith.

19 MR LYNCH: Yes. Exactly. It's --

20 THE CHAIRMAN: His competence.

21 MR LYNCH: Once again, tribunal, this is a matter in which
22 as I understand it late on there has been an added
23 reference by Mr Little to the notes of the meeting of
24 10 February 2006, which Ernst & Young have had and gave
25 to us and we passed on, and, of course, the meeting that

1 Mr Little, in any event, attended. But of course the
2 fact of the matter is that this is not, question 9, is
3 not an application that depends on new documentation.
4 THE CHAIRMAN: No, I have that point. 10 we don't need to
5 look at.
6 MR LYNCH: No.
7 THE CHAIRMAN: 11, you say yea to the first and nay to the
8 second.
9 MR LYNCH: That's because it's impossible for a recalled
10 witness to respond to. To ask a witness: you pick out
11 the bits that a lay person or auditor would understand,
12 it would be completely unfair and totally inappropriate
13 to such a witness, and it simply couldn't be a basis for
14 calling a witness, never mind recalling a witness, and
15 once again, as one finds so often in this matter, these
16 are matters that, if Mr Little wishes to, he can make
17 submissions upon, but that's radically different to
18 recalling witnesses.
19 Then in regard to question 12, once again it goes
20 back to the same point about it's not appropriate to
21 recall in regard to questions about disclosure.
22 THE CHAIRMAN: Yes, a disclosure point.
23 MR LYNCH: Yes, then moving on, question 13, looking at the
24 first three questions, question 13 itself and the first
25 two supplementaries.

1 THE CHAIRMAN: Yes.

2 MR LYNCH: These are questions that relate to MAC's
3 financial position after 2006. We submit on that basis
4 alone they are irrelevant, and many of these questions,
5 Tribunal, of course, you will have picked up, you know,
6 if one actually looks back at perhaps my response as to
7 what are the issues here, you know, they're a long way
8 from that. That's particularly vividly illustrated --

9 THE CHAIRMAN: They're not new documents.

10 MR LYNCH: They're not new document questions, exactly
11 right. And the next two, all the more so, I mean, it
12 would be impossible for Mr Dekker or anybody else,
13 really -- unless you're a sort of pundit on Newsnight --
14 to say: what do you think will happen? And those
15 questions are in contrast to the ones we say yes to.
16 Where it is genuinely a case that it's based on new
17 documents which are relevant, then we certainly accede.

18 THE CHAIRMAN: 14 and 15 are the same sort of issues,
19 really.

20 MR LYNCH: Exactly, and of course the documents referred to
21 are not new documents in the sense of disclosed by the
22 respondents, those are documents, as in so many in the
23 bundle, that Mr Little has provided late in the day.
24 Obviously general discussions about the nature of
25 shareholder actions in the United States is not of any

1 assistance, in my respectful submission, to the
2 tribunal.

3 THE CHAIRMAN: Okay. Question 16.

4 MR LYNCH: Yes. Again, this is not a new document matter.

5 THE CHAIRMAN: But it -- oh yes, it's the calling of --

6 MR LYNCH: Exactly.

7 THE CHAIRMAN: Sorry.

8 MR LYNCH: So that goes back to that particular matter and
9 I will not repeat what I've said.

10 THE CHAIRMAN: No.

11 MR LYNCH: Then looking at 17, well, these, again, it's not
12 a new document application, this is again a classic
13 example of one of the other themes that I noted in my
14 response, this is a classic afterthought matter, where
15 these documents were there, the cross-examination could
16 have taken place if it was really thought worthwhile, it
17 didn't, it's certainly not a basis for allowing the line
18 of questions to be pursued with Mr Dekker at this stage.

19 So that's supplementary number 1.

20 As to supplementary number 2, again, it's not an
21 appropriate question, the fact of the matter is our
22 evidence is absolutely clear that we sent them that
23 material.

24 THE CHAIRMAN: It's a matter for submissions, that.

25 MR LYNCH: It's a matter for submissions, exactly right.

1 And the final one is agreed, so I need say no more about
2 that.

3 So Tribunal, that, in essence, deals with the
4 specifics of our response, and I obviously will also
5 draw upon but not repeat the general matters that I've
6 raised in my response, in terms of the criteria for
7 assessing this application to recall.

8 (12.07 pm)

9 THE CHAIRMAN: Anything?

10 Submissions in reply by MR LITTLE

11 MR LITTLE: Yes, sir, I have.

12 I went home last night thinking I didn't need to do
13 the detail, I needed to get across the helicopter view
14 and everything else, and I'm going to give responses to
15 each of these but I want to start again with the overall
16 helicopter view.

17 I have conducted myself in this case asking for
18 documents that should have been disclosed as far back
19 as June and July 2007. Every single document bar three
20 were asked for no later than July 2007, in the original
21 requests, and I can trace all those back.

22 We asked also to sort out the unpleaded allegations.
23 Mr Stafford made it a major point about natural justice
24 in this process. If the respondents have now not
25 disclosed the documents, I'm now a victim of having to

1 explain why I'm bringing people back in this process.

2 There was also a decision in the original
3 application about all allegations in or none type of
4 process. I think I have gone overboard in trying to
5 make sure two things have occurred, number one, that
6 we've put forward all the stuff, for transparency, to
7 help as much as I can in the case; and secondly to knock
8 as many corners out of this to stop producing documents
9 in the case since the staff. I'm frightened to death
10 about the level involved in doing the submissions in
11 this, and the documents, almost all the oral evidence is
12 needed to support the -- the hearing transcript, to
13 support the witness statements from the other side,
14 because they've virtually done nothing to deal with my
15 case.

16 Now I'm going to deal with each of the points in
17 turn if I may, sir.

18 Question 1, in terms of Apollo metals, I have three
19 points. First I would like the tribunal, when they
20 consider the application, to look very specifically at
21 what the questions are. The questions are not just in
22 relation to the specific allegation itself, they're to
23 do with what would be in people's minds, were they aware
24 of what was actually happening, and the evidence of
25 others.

1 My second point, this allegation was not a pleaded
2 allegation, you'll recall on day three of the original
3 tribunal discussion about what should be pleaded and
4 what should not be pleaded and Mr Stafford, keep your
5 powder dry and so on and so forth, and what was and
6 wasn't, this allegation was never pleaded. Had it been
7 so, Stuart would have been here from the very start and
8 we would not be having this discussion at all.

9 The final thing is, Mr Lynch has said several times
10 now that the allegations have changed, or whatever else.
11 My case has seldom changed, what I think has happened is
12 a growing understanding amongst everybody, including
13 Mr Lynch, of what it is I've basically been trying to
14 say. That particular allegation is central to me
15 sitting just after breakfast on a Friday morning and
16 saying "enough is enough", after a previous email.

17 In terms of question 2, which is the comment on the
18 MOU, my only comment there is that I'd like the members
19 to look at the three questions and in particular the
20 reasons for those questions, because again, it's been
21 said to me, you know, I didn't understand this, or
22 didn't realise that was what was in your mind. Well,
23 I'm now making it explicitly clear, those were things
24 that I was anxious about, at that time.

25 Number 3. Can I ask the tribunal to go to page 14,

1 please. If you read the first 68 lines of that. This
2 is Mr Smith's evidence, in respect to the statutory
3 supplier policy.

4 THE CHAIRMAN: Page 14?

5 MR LITTLE: 14. If you recall, I was looking for this
6 earlier.

7 THE CHAIRMAN: Yes, page 14?

8 MR LITTLE: The evidence, essentially you will see my point
9 there being about the policy did not change in terms of
10 the published policy, in financial year 2004 --

11 THE CHAIRMAN: I'm just trying to --

12 MR LITTLE: If you read down to half way down the page, sir,
13 you will see that, the whole issue about 2004,
14 specifically the policy is different in 2005. In fact
15 it did not change until July 2007, for the forthcoming
16 period, the future period. What's the point in
17 publishing a policy that's to do with the past?

18 THE CHAIRMAN: Yes.

19 MR LITTLE: The point that Mr Lynch also made about question
20 3B and 3C, he's probably right, there are a few
21 occasions where that's the case, but I wasn't doing that
22 joined up stuff just as much at the early stages in this
23 process, I hope you've realised I've learnt most things
24 I need to do -- I have definitely leading questions to
25 sort out, but there's actually some reason for some of

1 that earlier -- but the core point is that, from my
2 perspective, I have tried the best I can to do the join
3 ups as best I can. I should not be a victim in this
4 process of all this stuff coming to light and then
5 suddenly having to try and deal with it, when I've spent
6 over a million quid trying to do it in the first place.

7 Now, there were then questions on disclosure, and
8 I'd like to read an extract of the 2008 transcript.

9 THE CHAIRMAN: Which question are we on now?

10 MR LITTLE: This is just generally in the subject of
11 disclosure. We're moving on, is it 5 and 6?

12 THE CHAIRMAN: 5 and 6.

13 MR LITTLE: Is it about disclosure? You asked a question
14 somewhere about disclosure and I'm trying to deal with
15 the disclosure subject overall, okay, rather than on
16 a specific question.

17 This is a record of what was said in
18 the January 2008 transcript:

19 "Regarding disclosure, your Pinsent Mason interface,
20 as well as Mr Dekker?"

21 That was a question to Ms Ball and she said:

22 "I had many discussions with Pinsent Mason. Our
23 responsibility was taken very seriously regarding the
24 disclosure of documents. Every document requested was
25 not necessarily given and it was discussed with legal

1 counsel."

2 I then quote various evidence from Mr Smith
3 regarding him having a secondary role.

4 You, sir, then say:

5 "We know the co-ordination of disclosure is done by
6 Canada. Please explain the relevance.

7 "It's important to produce all documents relevant to
8 the case for both the claimant and the respondent so I
9 want to ask why it was necessary to have multiple CMDs."

10 And you said, sir:

11 "I'm not going to allow that question. It infringes
12 a legal professional privilege."

13 And I go on to say that I've spent over
14 a million pounds trying to get documentation and legal
15 fees and you say, sir:

16 "Your counsel has had the opportunity to put to the
17 witnesses that they deliberately withheld documents. I
18 don't recollect that question being put. This witness
19 says she considers it important. Making the allegation
20 that documents have been deliberately withheld is
21 serious and we would need to know the basis for such an
22 allegation. Belief and opinion is not good enough."

23 And Mr Lynch says.

24 "I want it to be clear [and I'd like this recorded]
25 that any documents that were the subject matter of a CMD

1 we advised on."

2 You say, sir:

3 "To be fair to you, we've have had this discussion
4 and Mr Stafford accepted it."

5 And I said, sir:

6 "It was only the PwC report that Mr Stafford
7 referred to."

8 And you said:

9 "I'm going to make a note of that discussion."

10 I have felt I've needed to show you in the same way
11 that we have with Ms Christiansen, here are the
12 documents that most are relevant and have not been
13 disclosed, and I do believe significant numbers of these
14 were deliberately withheld. I don't see why I should be
15 a victim again. There's three documents were asked for,
16 the closing minutes, the draft accounts, and that
17 financial year 2007 11 July email. Half these questions
18 would have gone away if the answer to the 19 October
19 emails from Mr Rae had been provided.

20 THE CHAIRMAN: We know your case in relation to
21 non-disclosure is that you believe that these things
22 were deliberately withheld.

23 MR LITTLE: The point you're now saying to me, sir, is
24 you're aware, therefore, you should have asked. I felt
25 I needed to have the documents to get you to believe

1 that what I was saying, that may be my fault --

2 THE CHAIRMAN: Yes, I think you misunderstood --

3 MR LITTLE: I'm not a lawyer, sir.

4 THE CHAIRMAN: -- I think you're talking about a different

5 issue.

6 MR LITTLE: Okay.

7 THE CHAIRMAN: The question is whether or not you should be

8 given the right to ask Mr Dekker personally, why weren't

9 these documents disclosed? That's what you want to do,

10 isn't it?

11 MR LITTLE: And why did they not influence what you were

12 saying in witness and oral evidence. You should have

13 been aware that these things were changing.

14 THE CHAIRMAN: Okay, we have that point and we understand

15 that point in relation to both question 5 and 6.

16 MR LITTLE: Okay, I'm now moving on to question 8, and the

17 PwC bit, and no new document round the bonuses.

18 THE CHAIRMAN: Question 8?

19 MR LITTLE: I think it is a fair question --

20 THE CHAIRMAN: Hang on.

21 MR LITTLE: It is a fair question as to why you didn't do

22 that before, and my answer to that is my continual hope

23 that PwC and Ernst & Young would be here, therefore I've

24 prepared and still have a significant amount of

25 cross-examination to say, for example, there's nothing

1 in that report about UK statutory accounts and bonuses,
2 not a sausage, anywhere in section 6, and if you like,
3 trying to keep some of the powder dry.

4 THE CHAIRMAN: Mmm hmm.

5 MR LITTLE: Question 9 I don't see as solely being an issue
6 about the statutory accounts and Mr Smith, I want to
7 reinforce the point I made before, I asked Mr Smith
8 about where were the statutory accounts, as a director,
9 in the 17 August. It gives rise in part to the
10 conversation the following week complaining about me.
11 The same again on 12 September, the statutory accounts
12 were not submitted to Ernst & Young later. I'm trying
13 to show cause as to why some of the actions (inaudible)
14 as well as a performance management issue of Mr Smith.

15 Jumping now to question 13, about the financial year
16 and positions and what happened after the event, it may
17 be one of the things that perhaps I have an ability to
18 see more what happens, what is likely to happen in the
19 future and the implications of what we should be doing
20 now but it's quite clear to me that what happens after
21 the event, in the various businesses and financially,
22 also tells you what was likely to be some of the causal
23 issues, earlier, so the fact that there needed to be
24 a rebanking agreement before the end of March 2007 to
25 basically get the accounts released, 2008, a going

1 concern, 2009, now we're in serious financial
2 conditions, we're delisting. Is it really unrealistic
3 for me then to think if the chairman says "no more
4 cash", and he's a lawyer, and I take him literally, I'm
5 stupid? I don't think so, and the post actions and
6 behaviour also point to anxieties that I should have had
7 and did have in 2006 and 2007. That also is regarding
8 A340.

9 I suppose I'll finish, sir, just with the view that
10 I had thought that I wanted to try and get across that
11 I was hoping this would be able to ask all the
12 questions, not take a lot of time on that, and the
13 answers, and the way that comes also relates to the
14 freshness of some of the data that was provided back 17,
15 18, 19 months ago. In some ways I also thought that
16 this provided the opportunity for the respondents to
17 actually respond to some of these issues, because
18 I think everybody has had a growing understanding as the
19 thing has progressed.

20 I keep going back to cause and effect. We should
21 not have to recall any witnesses. Had all this stuff
22 been produced at the start, and I will be able to
23 demonstrate in due course there have been only five new
24 requirements, they may not have been understood at the
25 time but they were all there in CMDs 4 and 5 -- sorry,

1 bar 4, bar 5.

2 THE CHAIRMAN: Right. it's 12.20, we'll do the best we can
3 to come back before lunch. So when we can.

4 (12.20 pm)

5 (A short break)

6 (12.54 pm)

7 THE CHAIRMAN: Mr Little, can you look at your application
8 at page 21, please. Question 13.

9 MR LITTLE: Yes.

10 THE CHAIRMAN: And the first two questions there, please.

11 MR LITTLE: Yes.

12 THE CHAIRMAN: Well, in fact the first three questions, you
13 have "is it true that" and then supplementary 1 and 2.

14 MR LITTLE: Yes.

15 THE CHAIRMAN: Dealing with the first point, the increase in
16 bank borrowing limit, and the personal guarantee,
17 assuming that that's correct, and --

18 MR LITTLE: It is correct, yes.

19 THE CHAIRMAN: Well, yes, I presume it's a matter of public
20 record?

21 MR LITTLE: Yes, of course, yes.

22 THE CHAIRMAN: Yes. When, firstly, when did you discover
23 that?

24 MR LITTLE: When the accounts were published.

25 THE CHAIRMAN: Yes, I know, when was that?

1 MR LITTLE: That was 30 March.

2 THE CHAIRMAN: Of?

3 MR LITTLE: 2007. The key thing is, Mr Edwards, obviously,
4 decided to further fund the business.

5 THE CHAIRMAN: Yes, 30 March 2007. In relation to the
6 matters under the next two supplementaries, I think the
7 first supplementary relates back to 1 March 2007.

8 MR LITTLE: Yes.

9 THE CHAIRMAN: The third supplementary, the convertibility
10 debentures, when was that?

11 MR LITTLE: Well, we've always known since 2003 that
12 in January 2008 the 70 million came up automatically for
13 financial review, therefore remember (inaudible)
14 strategy, therefore in simple terms you have another
15 70 million of funding to replace at some point.

16 THE CHAIRMAN: So you knew that that was going to be likely?

17 MR LITTLE: This is part of what I was saying to Rich.

18 THE CHAIRMAN: You've known about that for many years?

19 MR LITTLE: Yes, I would take that seriously from the point
20 I was a senior officer, June 2005, because I then got
21 the responsibility of the strategy, in simple terms,
22 sir --

23 THE CHAIRMAN: I only want to know the dates, really.

24 MR LITTLE: Okay, well I think part of the difficulty here
25 is, I know what's going to come up ahead of me,

1 It it's not about revisiting old ground, it's not
2 about granting a party a second bite of the cherry, and
3 nor should applications for recall be granted where
4 questions could have been asked previously or indeed to
5 contradict or question the oral evidence of other
6 witnesses, or indeed, of course, where the questions are
7 simply not relevant, and we remind the parties that
8 submissions can be made in due course as to any
9 inconsistencies or the lack of evidence in a particular
10 area.

11 Applying those principles, we refuse permission for
12 the claimant to ask questions in relation to questions 1
13 and 2. We think that these are matters of old ground,
14 not covered by any new disclosure, and therefore that
15 offends the general principles which we have outlined in
16 relation to making applications for recall.

17 In relation to question 3, that is a new document
18 but the questions under question 3, that's 3A, B, C,
19 they certainly are premised on the basis of new
20 documentation concerning the supplier payment policy and
21 the board resolution in connection with it. However,
22 this is a policy which the claimant was aware of and
23 therefore was entitled to ask questions in relation to
24 it. Therefore we do not permit any further questions in
25 relation to 3 or 3A.

1 In relation to 3B, that seems to us to be seeking to
2 contradict or question the evidence given by another
3 witness and offends the general principles, and could be
4 the subject of submissions in due course if there are
5 discrepancies or inconsistencies. The same applies to
6 question 3C, so we don't permit those questions, either.

7 Question 4, that also relates to a new document,
8 which is the audit closing meeting of February 2006, and
9 questions concerning the information contained therein.
10 We are satisfied that as the claimant was present that
11 is not a matter which is new to him, nor does it
12 therefore alter his understanding of his position or the
13 position of the other party in the case, and accordingly
14 we refuse permission to ask questions in relation to
15 that.

16 In relation to question 5, we consider it's improper
17 to permit questions in relation to what a party
18 understands. A witness understands is his legal
19 obligations, it doesn't assist the tribunal, we know
20 what the legal obligations of the parties and their
21 witnesses are.

22 However, in relation to question 5A, we are
23 satisfied that it is appropriate to ask questions of
24 a witness as to why a document has not been disclosed
25 or, alternatively, disclosed late. It's a question that

1 he would have been entitled to ask of Mr Dekker had
2 there been documents disclosed to him shortly before the
3 hearing if there had been requests for it made by him
4 which had not been adhered to, and in those
5 circumstances we will permit him to ask a question of
6 Mr Dekker at 5A as to why the document was not disclosed
7 until after his evidence was given.

8 Question 6, question 6.1 supplementary, this is
9 a question based on material which was already in
10 existence and known to the claimant and is therefore
11 refused.

12 6.2 and 6.3 are matters which he could have asked at
13 the first cross-examination and in the circumstances, we
14 refuse.

15 MR LITTLE: Sir, I'm lost, 6.1, 2, and 3, what do you mean
16 by that?

17 THE CHAIRMAN: The supplemental questions, the first
18 questions are questions which were legitimate, I'm not
19 dealing with those, those are questions which the
20 respondent --

21 MR LITTLE: Are you now down to 1476? 6.2, you could have
22 asked a question about that because it was material
23 available to you. 6.1.

24 MR POWELL: "Can you turn", it starts "can you turn".

25 MR LITTLE: Sorry, yes, I see.

1 Are you saying I can't ask the question?

2 THE CHAIRMAN: Wait a minute, please, I'm just correcting my
3 notes here.

4 I'll return to 6.2 and 6.3 because my typing notes,
5 unhappily, are not clear.

6 We'll come back to that in a moment. Question 7,
7 there are, I think, three questions there, there's the
8 first question 7, then 7A, and there seems to be
9 a supplemental, so dealing with the first question.

10 MR LYNCH: Is that the one "why do you believe that PwC",
11 the first no?

12 THE CHAIRMAN: The first one is 7A.

13 MR LITTLE: It's more or less a statement, sir.

14 THE CHAIRMAN: Yes, the first one is a statement. The first
15 one is 7A, which you've already said he can?

16 MR LYNCH: Yes.

17 THE CHAIRMAN: In relation to the second one, which I'll
18 call 7 -- well, I will not call it anything, I'll just
19 say it's the second one, we think it appropriate that
20 the claimant ask Mr Dekker for any explanation as to why
21 PwC were not aware of the overhead changes, which is
22 a slightly different wording from the question as set.

23 Question 8, we do not consider that this relates to
24 new documentation, and therefore should not be
25 permitted.

1 Question 9, we do not consider that this material
2 should be asked of Mr Dekker, it's not helpful to us,
3 the questions of Mr Smith's competence or otherwise are
4 questions which could have been asked of Mr Dekker when
5 he gave his evidence, the lateness of the accounts has
6 long been known.

7 Question 10 is permissible anyway, so we need not
8 trouble with that.

9 Question 11, which is headed "advise witness of Q
10 supplementary", we refuse permission to ask that
11 question, as it's an impossible question to answer.

12 Question 12, there are two questions there, relating
13 to disclosure, and we think it is appropriate that
14 questions are asked as to why disclosure was given when
15 it was, and not earlier.

16 Question 13, there are five questions before we
17 reach the point where questions are agreed to. In
18 relation to question 1, at the top, alongside the word
19 "question 13", this is information which was available
20 to the claimant from March 2007 and could have been
21 dealt with in his original cross-examination, and the
22 same applies to the second question and the third
23 question, and we think that the fourth and fifth
24 questions are not helpful to us, and it is
25 disproportionate for us to permit those to be asked.

1 Then moving on to question 14 and question 15, we
2 would find questions on those topics unhelpful and
3 disproportionate and he could have been asked about
4 those matters previously.

5 Question 16, that's the question about why PwC and
6 Ernst & Young were not called as witnesses. That's
7 a wholly inappropriate question and we refuse it.

8 Question 17, question 1 and 2, it's unhelpful to us
9 to have questions such as that, it's disproportionate in
10 any event, and question 2, again, we do not consider it
11 appropriate to permit the question, it's a matter for
12 submissions, if there's no evidence we'll hear
13 submissions as to that from the claimant.

14 I need to look back at 6.2 and 6.3.

15 MR LYNCH: Page 12.

16 THE CHAIRMAN: I think we need to retire, I don't think
17 I made an accurate note of that. I'll just check.

18 (Pause)

19 6.2 and 6.3 we permit. We think there's kernel of
20 a question in the second one, in relation to the
21 information in relation to inventory provisional
22 changes, and the document 3566, 3567 is a new document,
23 and the third question follows on from it, in relation
24 to disclosure, a question which is something that we
25 think the claimant can ask.

1

Housekeeping

2 THE CHAIRMAN: Right, it's 1.10, shall we say 2.00.

3 The procedure that we propose to adopt now is that
4 the witness is recalled, he gives the oath or affirms
5 again, and then he is cross-examined by you, of course,
6 firstly, and then re-examination subsequent to that.

7 MR LYNCH: So no questions in chief?

8 THE CHAIRMAN: No.

9 MR LITTLE: Sir, you realise there is a question 18, as
10 well, which is the one to do with the documents you have
11 just got on Monday and Wednesday.

12 MR LYNCH: I hadn't realised that.

13 THE CHAIRMAN: It's whether you can ask questions in
14 relation to those documents.

15 MR LITTLE: Those were A340. Yes.

16 THE CHAIRMAN: Yes.

17 MR LYNCH: That's 1830A?

18 THE CHAIRMAN: 1830 and 3605. Yes, we're just going to make
19 a note of that, question 18, yes.

20 Right, there will be no evidence in chief, because
21 this is a recall application made by the claimant for
22 further cross-examination, so you will have an
23 opportunity to reexamine, Mr Lynch.

24 MR LYNCH: Thank you.

25 THE CHAIRMAN: We will sit to finish the witness,

1 irrespective of the time. I'm sorry, but we have to
2 make some progress.

3 MR LITTLE: That's no problem, there's not that many
4 questions anyway.

5 THE CHAIRMAN: There's quite a few.

6 MR LITTLE: Is there?

7 THE CHAIRMAN: Yes. 2.00.
8 (1.14 pm)

9 (The Luncheon Adjournment)

10 (2.07 pm)

11 THE CHAIRMAN: Yes, Mr Dekker.

12 JOHN DEKKER (recalled) (sworn)

13 THE CHAIRMAN: Your name hasn't changed, and still care of
14 MALUK, or MAC?

15 A. Magellan, MAC.

16 THE CHAIRMAN: Magellan, yes. Well, you know the purpose
17 that you have been asked to return for further
18 cross-examination, so Mr Little, ready?

19 Cross-examination by MR LITTLE

20 MR LITTLE: Yes, I'm not 100 per cent sure where we are with
21 documents for the witness stand, so we may need to sort
22 that out just as we go along, I think that was the plan.

23 THE CHAIRMAN: Okay.

24 MR LITTLE: Mr Dekker, do you have your old transcripts in
25 front of you, I'm going to go first to questions 5 and

1 6.

2 MR RAE: Mr Dekker doesn't have any documents with him.

3 MR LYNCH: Mr Dekker doesn't have any documents.

4 MR LITTLE: I was assuming we're going to go through each of

5 the questions, and Mr Dekker had this morning -- I gave

6 Charles this morning "here is the question numbers, so

7 that you have it in front of you, if I'm talking about

8 it at any point."

9 THE CHAIRMAN: Right.

10 MR LITTLE: You know what I'm talking about, John, in terms

11 of the previous hearing evidence stuff. (Handed).

12 I'm going to keep with the existing question

13 numbering for everything, and pages and stuff.

14 THE CHAIRMAN: All right.

15 MR LITTLE: If you can find question 5 and 6, transcript,

16 first.

17 A. Is there a page reference that I can go to.

18 Q. Page 11. No, sorry, yours isn't.

19 THE CHAIRMAN: Is yours not paginated?

20 A. It is, I'm just looking for a page reference.

21 THE CHAIRMAN: 11 and 12.

22 MR LITTLE: It's a different version, he's working out of

23 a shorter version.

24 Charles, do you have the document I gave you this

25 morning?

1 You'll have seen the stuff, it's just a matter of
2 making it easier for you. (Handed).

3 THE CHAIRMAN: Now what is he going to be looking at?

4 MR LITTLE: It has the old transcript evidence in front of
5 him.

6 THE CHAIRMAN: He has the full application now, has he?

7 MR LITTLE: No, the oral evidence only, with the question
8 numbers against those that are relevant where there's
9 any evidence-related issues.

10 THE CHAIRMAN: Right.

11 MR LITTLE: For example, you'll have a question 5 written
12 against something there.

13 A. There's a Q5 plus 6.

14 MR LITTLE: That's it, can you just refresh your memory of
15 that first, and we'll get some documents.

16 MR LYNCH: This is question?

17 MR LITTLE: This is 5 and 6 and I'm going to start off with
18 5A as I understand it, sir.

19 MR LYNCH: And the transcripts are found where?

20 MR LITTLE: They're just above it, so you see "support for
21 JD" questions 5 and 6, so what I'm going to be saying,
22 I suppose to you all, is just refresh your memory of
23 this evidence.

24 THE CHAIRMAN: You want us to read the transcript as well?

25 MR LITTLE: Indeed, yes, it's only fair to everybody to do

1 that.

2 THE CHAIRMAN: Yes.

3 (Pause)

4 A. So I'm to read just below where it says "you can't
5 threaten the witness"?

6 MR LITTLE: Yes, and once you stop there, I'll take you to
7 the documents I want you to go to.

8 Okay, so the first document I want you to turn to is
9 volume 8, and it's document 3276 and 7.

10 MR LYNCH: Could we have the page reference again, please.

11 MR LITTLE: Volume 8, document 3276.

12 MR LYNCH: Thank you.

13 MR LITTLE: And 3277. On document 3276, sir, we're looking
14 for point 3 only.

15 THE CHAIRMAN: Okay.

16 (Pause).

17 MR LITTLE: And then the whole of 3277.

18 A. Ignoring 3276 A, B?

19 Q. Point 3 is the one on 3276, third point, and then
20 turning over to 3277.

21 A. I have 3276 A, 3276 B, 3276 C, as well.

22 THE CHAIRMAN: Just look at 3277.

23 MR LITTLE: Okay, now, Mr Dekker, can you confirm you gave
24 your evidence on 1 to 4 April 2008.

25 THE CHAIRMAN: Well, that's right.

1 MR LITTLE: Okay, we're all comfortable with that.

2 THE CHAIRMAN: Yes.

3 MR LITTLE: Okay, now I'd like to turn to document 3566 to
4 3575, and you'll find that in volume 9.

5 A. Pages again?

6 Q. 3566 to 3575. This is a letter to the directors of
7 Magellan UK. Yes? Do you have it? Okay.

8 (Pause)

9 Are you ready now, is everybody ready? Are you
10 ready, Mr Dekker?

11 A. Yes.

12 Q. Okay, I think this is a slight rephrasing of 5A and
13 I hope I have the sense of that.

14 Why was this document not disclosed until after your
15 evidence was given, as you were a director of the UK?

16 A. (Pause) I'm just trying to recollect when this document
17 was released and the circumstances that directed us to
18 this. I cannot recall the specific details as to what
19 led us to this document and when.

20 THE CHAIRMAN: Somebody has a mobile phone somewhere.

21 MR RAE: It was mine, I have switched it off. I apologise.

22 MR LITTLE: Just again, Mr Dekker, obviously the phone went
23 off, you said?

24 A. I cannot recall the specific circumstances of when this
25 document was released and submitted.

1 THE CHAIRMAN: Okay.

2 MR LITTLE: This would be now one of my supplementaries,
3 because of the response.

4 This document was released as a result of the
5 tribunal order to disclose documents that was issued
6 in December 2008, and was disclosed thereafter. Does
7 that help in any way?

8 A. Well, I do remember that we located this document and at
9 the same time we were tentatively searching for another
10 like document, that might have been issued over in
11 Canada, the Magellan corporation auditors, I do remember
12 that search for documents, yes, I do.

13 Q. Do you remember when you actually first saw this
14 document or circulated it, by Mr Smith to you?

15 A. This specific document, I don't have that date in my
16 mind, no.

17 Q. So I'm now going to the second part of it.

18 Did you, on behalf of MAC, decide not to disclose
19 this document? If not you, who at MAC decided not to
20 disclose this document, shortly after 11 July 2007,
21 given the extensive document disclosure already under
22 way following CMD4.

23 MR LYNCH: That's not accepted.

24 THE CHAIRMAN: That's not a question, that's more of
25 a statement.

1 MR LITTLE: Okay.

2 THE CHAIRMAN: The question is, did you or anyone else that
3 you know decide not to disclose this document?

4 A. No, sir.

5 MR LITTLE: I am now going, sir, to question 6. If you
6 would just refresh your memory on the short piece of
7 oral evidence that you read there, this subject is now
8 on inventory provisions.

9 MR LYNCH: Sorry, a short bit of oral is where?

10 MR LITTLE: That was question 5 and 6.

11 MR LYNCH: I understand, okay.

12 MR LITTLE: It's just refreshing, I'm going to ask you to
13 read a particular section.

14 THE CHAIRMAN: Sorry, I am missing out now. You were
15 dealing with question 5 now?

16 MR LITTLE: I believe I have completed 5, sir, we're now
17 moving on to 6, which is on the subject of inventory,
18 and 5 and 6, the oral evidence was related to both
19 subjects.

20 THE CHAIRMAN: I see, yes, sorry.

21 MR LITTLE: And this one, Mr Dekker, I would like you to
22 read, if you would, 3566 inventory provisions, and could
23 you read that down to where it finishes, "as discussed
24 above this led to an increase in the level of inventory
25 provisions".

1 A. It's not clear to me where you wish me to read to.

2 Q. You're finishing at the top of "engineering and head
3 office bonus accruals", so just above that?

4 A. Okay.

5 MR LITTLE: It's about a page.

6 MR LYNCH: Sorry, I missed the page, I'm so sorry.

7 MR LITTLE: 3566 and 3557, sorry. (Pause).

8 Okay, so my first question, and I'll do this slowly:
9 Mr Little was concerned about the manufacturing
10 inventory evaluations and inadequate inventory
11 provisions in that period, January/February 2006, wasn't
12 he, despite the further impact on the Magellan UK
13 finances.

14 A. Sorry, can you break that question down.

15 MR LITTLE: Mr Little was concerned --

16 THE CHAIRMAN: Was he concerned --

17 MR LITTLE: -- about the manufacturing and inventory
18 valuations in the conversations about the audit closing
19 meetings and subsequent to this.

20 A. Yes, we all were.

21 Q. And you accept that he raised that in the audit closing
22 meeting and his concerns about how that was being dealt
23 with?

24 A. Yes. My recollection is that in 2005 when Shawn first
25 joined, much of his time was spent at Bournemouth,

1 since we had some significant inventory challenges
2 there, and this was an issue that we were working on
3 extensively, throughout 2005. Also, both in the UK and
4 in Canada, or North America, the auditing profession was
5 focused on a more rigorous programme to quantify and
6 establish the process for obsolete and slow-moving
7 inventory, so there was a more rigorous programme in
8 place at all locations, and we handled it consistently
9 throughout the country. In the past, it had been
10 relatively subjective on a division by division basis,
11 so there was a lot of attention paid to inventory in
12 2005, and Mr Little would have been aware of that and
13 fully engaged in that whole discussion and process.

14 Q. I'm now going to the first supplementary, for everybody.

15 So the outcome of that detailed review by
16 Ernst & Young on Magellan led to an increase in the
17 level of inventory provision by £1437K, you can see where
18 that is, okay? "As discussed above, this has led to an
19 increase in the provisions", that's correct, isn't it?

20 A. I'm reading it, without having the rest of the data in
21 front of me I have to believe that that's correct.

22 MR LITTLE: That would be almost Canadian \$3 million or
23 thereabouts at that time.

24 THE CHAIRMAN: I don't think we need to worry about that,
25 the figure is there.

1 MR LITTLE: I'm just putting it in the context of Canada,
2 it's a significant number from Canada.

3 THE CHAIRMAN: For us it's £1,437, 000.

4 MR LITTLE: Now going to the next question, sir,
5 supplementary 2.

6 THE CHAIRMAN: Yes, can I just make a note of that. Yes.

7 MR LITTLE: Now going to supplementary 2.

8 But that £1.437m was not reflected in the Magellan
9 financial statements for financial year 2005, isn't that
10 correct? The corporation's finance statements?

11 A. I do not have the data here right now to tie --

12 THE CHAIRMAN: I think you might be shown some documents.

13 MR LITTLE: I'm just going to that, 3986, first of all.

14 THE CHAIRMAN: 3986.

15 A. Sorry, 3986?

16 THE CHAIRMAN: 3986.

17 MR LITTLE: 3986, volume 10.

18 Okay, are you familiar with this summary of audit
19 differences, so you can see what Ernst & Young and
20 yourself did agree to change and what was not changed,
21 correct?

22 A. Yes.

23 Q. Can you go back to a paragraph in 3567 which starts "it
24 is noted that at the time of the group reporting".

25 MR LYNCH: Sorry, where are we now?

1 MR LITTLE: 3567, we're still on the inventory.

2 THE CHAIRMAN: So you have agreed it's not reflected in the
3 finance statements for F Y 2005, yes?

4 A. I haven't agreed to that. I have just agreed that yes,
5 I see it, on this schedule, I see the schedule, that was
6 the question asked of me.

7 THE CHAIRMAN: Right.

8 A. And yes, I see the schedule. Now I'm waiting for the
9 question which I think is coming.

10 MR LITTLE: He's seen the summary audit differences and some
11 adjustments, so I need to go through the rest of this to
12 complete, basically.

13 THE CHAIRMAN: I'm sorry.

14 MR LITTLE: So John, 3567, you see where it starts, the
15 words, "it is noted"?

16 MR LYNCH: 3567.

17 MR LITTLE: Group reporting.

18 A. Okay.

19 Q. That means that essentially yourself, who has the
20 primary responsibility for the management, how the
21 accounting, and what is given to the auditors,
22 suggesting an agreement with Ernst & Young Canada, what
23 you could do for the provisions for the end of 2007, at
24 Magellan Group level. Isn't that correct?

25 A. Let's just go back. You have a couple of inaccuracies

1 in there. Don Linsdell was not on the audit.

2 MR LITTLE: This is the first year that Don did it, I think?

3 THE CHAIRMAN: Let Mr Dekker give his evidence.

4 A. There's the preamble there, and let's deal with that,
5 I'm not sure if that's the question. So let's deal with
6 the question.

7 Q. Right, you have the summary of audit differences which
8 came as a result of the discussion which you would have
9 led as to what was going to be done in terms of the
10 inventory valuations for the UK -- with Mr Linsdell, in
11 my understanding, if not, it may have David -- and
12 therefore you made the decision as to what would be done
13 with the presumed agreement of Ernst & Young Canada?

14 A. As part of the closing process we assemble the summary
15 of audit differences, and address with the auditors the
16 adjustments that we will make and the adjustments that
17 we will not make, keeping in view the whole issue of
18 materiality to ensure that the financial statements are
19 not materially mis-stated.

20 Q. And that sum for 2005 is the document we see at 3986,
21 for 2005, so going back again, you can see for
22 Magellan UK the adjustments or the non-adjustments, as
23 agreed, that you agreed, I think you're saying to me
24 with Dave DeWolf, but I thought it was Don.

25 THE CHAIRMAN: It doesn't matter who.

1 MR LITTLE: With Ernst & Young Canada, not with the UK.

2 A. I'm sorry, what was the question?

3 Q. Yes, that was the question.

4 A. This is the document that we agreed with Ernst & Young,
5 yes.

6 Q. Canada?

7 A. Canada, correct.

8 Q. Yes. Could you go now to 4071.

9 A. This only goes as far as 4052.

10 MR LITTLE: Mmm hmm. Now, Charles, this is the other part
11 of the bundle from the stuff you handed up from 1 April.
12 The 2006.

13 Sir, this is the document that was handed up on
14 1 April, the audit report for 2006, and it was dated
15 30 March 2007, and the schedule that we're looking for
16 is this summary of audit differences.

17 MR LYNCH: So the pages we're looking for?

18 MR LITTLE: I have it as 4071, it's actually page 19 of the
19 document that was handed up on 1 April by Mr Dekker.

20 THE CHAIRMAN: It's the document dated?

21 MR LITTLE: 30 March 2007.

22 THE CHAIRMAN: Yes.

23 MR LITTLE: Ernst & Young Audit Results and Communications report
24 for 2006.

25 THE CHAIRMAN: I have a letter Magellan did at ...

1 MR LITTLE: It's a 29 or 30-page document, sir, and it's
2 page 19 we're looking for, called summary of audit
3 differences.

4 MR LYNCH: I just want to make sure we all have the same,
5 it's page what of this document?

6 MR LITTLE: Page 19, that's it there, you have it.

7 MR LYNCH: Yes.

8 THE CHAIRMAN: I do not have it. 4071?

9 MR LITTLE: It was a -- we actually all punched it at the
10 time, sir, and put it in the bundle, or I thought we
11 did.

12 THE CHAIRMAN: Did we?

13 MR LITTLE: It was the one that was handed up by Mr Lynch
14 that morning.

15 MR LYNCH: It starts at page 4040, Tribunal, if that's any
16 help, I think. It's slightly odd with the pagination of
17 the document, actually.

18 MR LITTLE: We will use this same document several times,
19 sir, later on.

20 THE CHAIRMAN: Right. You see, I have ... 4051 and 52, but
21 I'm missing a 4071. Do any of the members have this
22 document?

23 MR POWELL: No.

24 THE CHAIRMAN: No.

25 MR LITTLE: Do you have a document called the Ernst & Young

1 30 March 2007?

2 THE CHAIRMAN: No, I have a letter from Shawn Smith dated
3 30 March 2007.

4 MR LITTLE: No, that's not the same one, sir. Mr Lynch
5 definitely provided it, because I concurred that it was
6 the document that I wanted and it did deal with the
7 issues that I wanted to address.

8 THE CHAIRMAN: Well, I think it's in this box of papers
9 somewhere, but I have somehow not put it into the --

10 MRS SIMMONDS: 30 March 2007?

11 MR LITTLE: Yes.

12 MRS SIMMONDS: I have it.

13 MR LITTLE: It says "E&Y audit results and communications".

14 MR POWELL: Is this it?

15 MR LITTLE: Yes.

16 (Further discussion regarding the document).

17 THE CHAIRMAN: We now have it.

18 MR LITTLE: Okay, if you go to page 19, the heading should
19 say "summary of audit differences".

20 MR POWELL: Summary of audit differences, yes.

21 MR LITTLE: And that's what we now call document 4071, and
22 I will actually go back to several pages in this
23 document later, as well.

24 THE CHAIRMAN: Okay. Yes.S.

25 MR LITTLE: Okay, on the Magellan UK, there's a note with

1 regard to prior year adjustments in the statutory
2 accounts and the group accounts.

3 THE CHAIRMAN: Yes.

4 MR LITTLE: Okay, those would substantively include the
5 adjustments in inventory provisions, isn't that correct?

6 A. I believe so.

7 MR LYNCH: Now, which heading was that on 4071?

8 MR LITTLE: Statutory past year, just down here, you see it
9 says past year, prior year adjustments.

10 So basically as a result of the statutory year end
11 process, plus my whistleblowing, these results were
12 changed in the 2006 accounts in the group.

13 MR LYNCH: That's not a question.

14 MR LITTLE: No, I'm sorry, I'm trying to explain the
15 relevance.

16 THE CHAIRMAN: What is being suggested to you is that the
17 reason that there was the change included the fact that
18 there had been a whistleblower by the claimant, that's
19 what is being suggested to you.

20 A. In 2005, the statutory accounts were a long time in
21 getting completed, and that was to a large extent
22 because of the inventory investigations that were under
23 way, we had already sought an extension to our filing
24 and my recollection is that we were due to file in the
25 middle of December as opposed to, I believe, the July

1 time frame. I may be mistaken on the deadlines, but we
2 sought a fairly reasonable extension for filing because
3 we had not yet completed the 2005 statutory accounts and
4 Ernst & Young had not yet signed off fully. We were, my
5 recollection is that, and Shawn can give better evidence
6 on this, but my recollection is that we were prepared
7 to -- Ernst & Young UK was prepared to sign off in
8 early December with the statements as they were, the
9 filing did not occur at that time, because of the
10 whistleblowing challenges -- or I say the
11 whistleblowing, Mr Little's claims that the issues with
12 the UK numbers.(?) And that caused Ernst & Young to
13 pause and delay in releasing those numbers until
14 PricewaterhouseCoopers' investigation could be
15 completed, they were not going to release any more
16 statements until they had a fix on the validity of the
17 claims.

18 THE CHAIRMAN: So I take it from that answer that you're
19 saying that actually you don't agree that there were any
20 modifications or alterations made as a result of any
21 alleged whistleblowing by the claimant?

22 A. My recollection is that whistleblowing claim only
23 created a further delay in filing the statutory
24 accounts.

25 THE CHAIRMAN: And so that we're -- so I'm not getting this

1 wrong, but the whistleblowing that you're referring to
2 is the claims made after employment ceased?

3 A. That's correct, that's correct, that would have been --
4 and again the timing was crucial, we were ready to go
5 with the statutory accounts early December, the formal
6 claim was raised second or third week in December,
7 before the statements could go out, and Ernst & Young
8 were not prepared to release anything until the question
9 concerning those claims had been resolved.

10 THE CHAIRMAN: Mmm hmm.

11 MR LITTLE: Would you be surprised, Mr Dekker, to know that
12 the first set of draft accounts which Mr Smith
13 submitted, presumably including all the inventory, was
14 actually on 24 October, to Ernst & Young?

15 A. What was the first part of that question, would I be
16 surprised? Is that what you asked?

17 Q. Would you be surprised to know that the first draft set
18 of accounts submitted to Ernst & Young was on
19 24 October 2006?

20 A. No, I'm not surprised at that, I knew that we were
21 working with Ernst & Young extensively throughout the
22 period, the fact that the formal set of statements went
23 to them at that point in time with a target of filing in
24 early December, the timing works out.

25 Q. Did you know that the statutory filing responsibility is

1 for all directors and it was in fact 31 October?

2 A. I do know it's for all directors and I do know that we
3 sought an extension and got one.

4 Q. When was the extension sought?

5 A. I can't give you the specific date, Mr Smith got the
6 extension.

7 Q. Could you look at document 3571. Could you read on to
8 the heading "Brian Little whistleblowing allegation".
9 The fifth point there is that the level of inventory
10 provisions is appropriate.

11 A. I see that.

12 Q. You probably wouldn't have the detail as to when
13 Mr Little first spoke with Ms Hadfield, would you, in
14 terms of after his termination?

15 A. I have no information on that.

16 Q. Thank you. Are you saying that Mr Little didn't raise
17 any concerns about inventory valuations or take any
18 personal interest in that prior to his termination?

19 A. I think I've said the contrary.

20 THE CHAIRMAN: Yes.

21 MR LITTLE: That's okay, I'm just establishing that it's
22 a before and after situation.

23 A. Never made any allegations in that regard, I said that
24 Mr Little was fully engaged in the process.

25 THE CHAIRMAN: You did.

1 MR LITTLE: So Mr Little was right to raise those concerns as
2 a UK director to his colleagues and Ernst & Young, wasn't
3 he?

4 A. Yes.

5 Q. And it would be the claimant's legal duty and
6 responsibility to take an ongoing interest in this
7 inventory valuation subject to satisfy himself it would
8 be correct, wouldn't it?

9 A. I guess there's two parts to that question I'm not clear
10 on, first of all I'm not sure I'm in a position to
11 answer the legal obligation and I'm not sure what you
12 mean by a continuing interest and I'm not sure I can
13 answer that.

14 Q. Let me clarify. It would be -- he would be legally
15 responsible, even though he was not primarily
16 functional responsible, for ensuring that the inventory
17 subject was covered, with the rest of the team,
18 properly, wouldn't he?

19 A. Yes, and that refers back to the fact that
20 I acknowledged you were fully engaged in the process,
21 that's right.

22 Q. And that he would therefore be expected to spend time
23 and ask questions of people, if that were appropriate,
24 or deal with that, if necessary?

25 A. I would think that's fair.

1 Q. Okay. Can you now turn to 2971 and 72, which are in
2 volume 8. I would ask you and the tribunal, and
3 everybody, if you would please read from 2972 and read
4 the entirety of the email trail forward, please.

5 This is a document that Mr Lynch has gone to before,
6 from only one perspective, and I would like to deal with
7 at least a second, so I want to deal first of all with the --
8 let everybody read the email trail, which starts at
9 2972.

10 MR LYNCH: And goes on to?

11 MR LITTLE: 2971, it goes forward. If just people please
12 take the time to do this.

13 (Pause)

14 MR LYNCH: That, of course, is not a new document, but we
15 take no objection to this question.

16 THE CHAIRMAN: Yes, you didn't dispute that one.

17 Yes.

18 MR LITTLE: All right, so my first question relates to 2972.

19 Obviously, you can see the lower email, but could you
20 look at the last two lines of the upper email, between
21 Alison and Mr Smith.

22 A. Yes.

23 Q. Do you see where it says "to see whether we could reduce
24 the 246 for 12 months plus, has he done this"?

25 A. I see that.

1 Q. What would be the effect of reducing the inventory
2 provisions, in terms of the profitability for 2005?

3 A. The straight math is if you reduce the provision you
4 increase the profit, straightforward.

5 Q. Okay. Could you now turn over to 2971, and read the
6 lower email.

7 (Pause).

8 And the later email is basically saying what
9 Ernst & Young are saying their understanding is to her?
10 Is that correct?

11 A. I'm sorry, I missed that.

12 Q. The lower email is saying to Alison what her
13 understanding is of what the auditors are saying to her?

14 A. That's correct.

15 Q. And then there's an email from Alison to me.

16 A. Correct.

17 Q. The lower two emails is one to Shawn and Phil, who are
18 obviously directors, and also I'm a director. She
19 didn't copy initially to me.

20 A. Nods.

21 Q. Would it be reasonable for me to have asked Alison what
22 was actually happening at about that time, which would
23 then be 10 to 12 days after the audit closing meeting?

24 A. I'm not going to question who you should be asking and
25 certainly it's a fair question for you to be asking,

1 whether you should be asking that of Shawn, who's
2 a fellow director, or going to Alison, that's a matter
3 of discussion, but you certainly, I would suggest, would
4 be in your rights to ask the question.

5 Q. In fact Shawn has already given evidence that he was
6 hospitalised for a couple of days around that week when I was
7 in Bournemouth, but anyway.

8 Go to the very top email, which you'll notice is
9 in June 2007, to you, headed "another example". It was
10 another example of what, Mr Dekker, do you think?

11 A. I would suggest it's an example that Shawn has
12 identified where he has not been copied on
13 correspondence that you have had with those reporting to
14 him, and he wasn't aware of that chain of communication.

15 Q. Would it be unreasonable for Alison to tell me what's
16 happening if I asked her the question, as a director?

17 A. I don't think that's unreasonable, but in regards to
18 respect for your fellow director, who this individual
19 reports to, I would have expected that the communication
20 loop would have been closed.

21 Q. Would Mr Smith have a responsibility to me as a fellow
22 director, to keep me advised of what was happening on
23 this subject?

24 A. Since this is primarily his responsibility, and he and
25 I, in fact, were working on this quite extensively,

1 I don't know to what level it would be reasonable to
2 copy you on all correspondence that's circulated on this
3 matter. This went back and forth a number of times and
4 as I mentioned earlier, Ernst & Young was quite focused
5 on setting a standard for inventory obsolescence, and in
6 fact, when they initially recommended the time frame
7 that needed to be -- that they felt needed to be the
8 measurement for the various discounts in the inventory,
9 we had some fairly extensive discussions because they
10 didn't have a clear understanding of how our inventory
11 turned(?), so this was not an easy matter to deal with,
12 so there was extensive back and forth on this. And I'm
13 not sure it would be appropriate to keep Phil and Brian
14 totally in the loop on it, with whatever we were
15 discussing.

16 Q. The question wasn't totally, it was in the loop,
17 reasonably, as to what was happening.

18 A. I guess reasonably becomes a fairly subjective matter.

19 Q. Let me try it another way. I raised the matter as part
20 of the audit closing meeting some 11 days earlier or 12
21 days earlier, so it would seem reasonable at some point
22 between then and 16 March that I'm going to be kept in
23 the loop as to what's happening?

24 A. Well, I viewed considerable traffic, I can't recall
25 whether I've seen any correspondence in that time frame,

1 where you were or were not kept up to date, so I can't
2 answer that.

3 Q. Can I go to the second sentence in that upper email.

4 A. Other than the grammar being particularly bad, and some
5 words missing.

6 MR LITTLE: The key question was, what does it say about the
7 mindset of the individual sending that to you about --

8 THE CHAIRMAN: This was in June, wasn't it?

9 MR LYNCH: June 2007.

10 A. Yes.

11 MR LITTLE: Yes. But it's the mindset of the individual as
12 to --

13 THE CHAIRMAN: Certainly in June 2007, that was the mind
14 set, but you were embroiled in litigation by then.

15 MR LITTLE: I would suggest that the evidence, if we look at
16 it generally, in communication --

17 THE CHAIRMAN: No, I don't think there's any need for
18 a debate on this, because it's well after you left the
19 employment.

20 MR LITTLE: That's the end of the question 2971.

21 THE CHAIRMAN: Yes.

22 MR LITTLE: The document 1477 and 79.
23 I was left somewhat uncertain, sir.

24 THE CHAIRMAN: We refused permission.

25 MR LITTLE: It is relevant, though, in terms of the

1 sequence.

2 THE CHAIRMAN: We refused permission.

3 MR LITTLE: Finally, Mr Dekker, when you gave your evidence
4 in April 2008, you were aware of both the information
5 about the inventory provisions changes necessary in 2005
6 together with this document at 3566 and 3571, why did
7 you not tell the court and disclose the document then,
8 when giving evidence in these matters?

9 A. Let's take that from the beginning again.

10 Q. When you gave your evidence in April 2008, you were
11 aware of both the information and inventory provision
12 and changes necessary in finance year 2005, together
13 with this document of 11 July. My question is, why did
14 you not tell the court and disclose the document then,
15 when giving evidence in these matters, when I asked the
16 questions in the oral evidence that you have just read,
17 on inventory provisions and inventory?

18 A. Well, I guess we disclosed a whole whack of documents
19 and I must say that the time spent going through and
20 poring through our files looking for documents that were
21 relevant and trying to get where the question would
22 lead. These weren't considered at that time.

23 Q. Mr Dekker, would you just reread your oral evidence
24 again, what was in question 5 and 6, precisely what it
25 was you said in response in the court.

1 A. And I read that, and I'm still not convinced that it led
2 to pulling those documents for the next two subsequent
3 years out and declare that those were relevant.

4 Q. You're telling me that you didn't know there was an
5 almost \$3m change in the 2006 accounts for the group for
6 2005 UK statutory accounts, you didn't remember that, when
7 you gave your evidence and said, Ms Hadfield, et cetera,
8 et cetera, you didn't remember that?

9 A. Before you say the "et cetera, et cetera", the
10 "et cetera, et cetera" --

11 THE CHAIRMAN: What do you say should have caused him to
12 give that evidence?

13 MR LITTLE: The latter part of the bit about before you copy
14 to Ms Hadfield, inventory provisions, everything was
15 okay, there was no problem, call Ms Hadfield,
16 essentially. It must have been in his mind.

17 THE CHAIRMAN: It was in your mind, knew about it.

18 MR LITTLE: I didn't know anything about it.

19 THE CHAIRMAN: You did know, didn't you?

20 MR LITTLE: I didn't know about that until the July.

21 THE CHAIRMAN: No, but the inventory issue.

22 MR LITTLE: Not how much, and everything else.

23 THE CHAIRMAN: But you knew it was an inventory issue.

24 MR LITTLE: Yes.

25 THE CHAIRMAN: Did you put it to him?

1 MR LITTLE: Well, I --

2 THE CHAIRMAN: Did you put it to him.

3 MR LITTLE: I specifically said the inventory was what was
4 wrong, he said Barbara had come back, and then you told
5 me, "don't threaten the witness", and I said it must
6 have been obvious to him, in his mind.

7 THE CHAIRMAN: "So perhaps you can stop that happening,
8 Mrs Hadfield doesn't want to be called" --

9 MR LITTLE: Just before that, sir.

10 MR LYNCH: With great respect, this line of questioning was
11 about an allegation that Mr Little made in regard to
12 what Mr Little had said at the meeting, I think of
13 10 February 2006, to Ernst & Young, and Ms Hadfield in
14 particular, that Ernst & Young had made an mistake. My
15 understanding of this transcript is that it is here that
16 Mr Dekker was being cross-examined about that, and
17 Mr Dekker's evidence was that Ms Hadfield had said to
18 Mr Dekker that she had checked and Ernst & Young had not
19 made a mistake, and that the allegation raised by
20 Mr Little against Ernst & Young was erroneous. That's
21 my clear recollection.

22 (overspeaking)

23 MR LITTLE: I never made an allegation against
24 Ernst & Young.

25 THE CHAIRMAN: This is the evidence, I don't quite see where

1 that's leading us insofar as suggesting to the witness
2 that this should have alert the him to the fact that
3 there were other documents.

4 MR LITTLE: Sir, he must have been aware that the whole
5 inventory issue of nearly 3 million bucks was going on.

6 THE CHAIRMAN: I'm not sure your question went to that
7 issue.

8 MR LITTLE: The closing meeting was specifically on
9 inventory provisions.

10 THE CHAIRMAN: I'm not sure you put it to him as you're now
11 suggesting that he should have been aware. I don't
12 understand it from that part of the evidence anyway.
13 Why it would alert him to give any further evidence on
14 that, I'm not clear.

15 MR LITTLE: Well, he must have known there was a \$3m change,
16 which was precisely what I was raising as being an issue
17 of some hundred thousand, I was actually talking about
18 us.

19 THE CHAIRMAN: He's given his evidence, hasn't he.

20 MR LYNCH: I don't know if you remember, but it was about
21 this exchange about Mr Little making the allegation
22 against Ms Hadfield that Ernst & Young had made
23 a mistake that Mr Little then claimed -- I'm pretty sure
24 this is right, John will correct me if I am wrong --
25 Mr Little put to Mr Dekker, "you're lying."

1 MR LITTLE: No, I did not.

2 MR LYNCH: And Mr Dekker said "no, I'm not", that was about
3 that issue.

4 A. Absolutely, he called me a liar and I took great
5 exception to that.

6 THE CHAIRMAN: I do remember that.

7 MR LITTLE: I can tell you it was nothing to do with that
8 subject, sir.

9 MR LYNCH: Well, I --

10 MR LITTLE: I'm positive.

11 THE CHAIRMAN: We have the evidence, gentlemen, he said he
12 had disclosed a whole whack of documents and trying to
13 get whether these would be relevant, just can't say.
14 I don't think we can take it any further than that,
15 that's his evidence. I don't know what more you can
16 suggest to him about that.

17 MR LITTLE: I'll ask the question this way, and only one
18 question, then.
19 You were aware, in April 2008, that there had been
20 a significant change in both the Magellan corporation's
21 accounts for 2006 for inventory provision changes and
22 also for the financial year 2005 statutory findings,
23 were you, or were you not?

24 A. Certainly, the information here --

25 Q. Would suggest you were?

1 A. -- discloses that.

2 MR LITTLE: That's fine, that's as far as I can take it,
3 sir.

4 THE CHAIRMAN: Mmm hmm.

5 MR LITTLE: That, I think, is all of question 6, sir.

6 THE CHAIRMAN: Okay, thank you.

7 MR LITTLE: Now, John, if you go to question 7, it's about
8 a three-page transcript.

9 MR LYNCH: Question 7?

10 MR LITTLE: Yes, question 7, and if everybody would like to
11 read, there's about three and a half pages on question 7
12 in the hearing transcript.

13 MR LYNCH: And that's before the question, yes?

14 MR LITTLE: Yes, that's correct, in every instance, the
15 relevant oral transcript or -- to keep it down. (Pause).

16 A. Without looking at these documents I'm not sure what
17 they're referring to.

18 THE CHAIRMAN: He'll have to look at the transcript or the
19 notes first, and then ...

20 MR LITTLE: Yes.

21 THE CHAIRMAN: But surely the thing is to ask him to look at
22 the notes and then take him to the documents, and then
23 ask him to look at a particular passage of the notes
24 that are relevant, rather than reading round, otherwise
25 we will be here I don't know how long.

1 MR LITTLE: Okay, if you go, what is the first document
2 number?

3 MR LYNCH: Has Mr Dekker had a chance, is that what you
4 said, sir?

5 THE CHAIRMAN: No, other way round, then he can be taken to
6 the part that's relevant, rather than reading the whole
7 section in a vacuum.

8 MR LITTLE: I agree with that, you tell me the document
9 number and I'll tell you which section you need out of
10 it.

11 A. Wouldn't it be more efficient to know which part of this
12 transcript and then I can point to -- or is it the whole
13 transcript?

14 THE CHAIRMAN: You need to know what the question is. Based
15 on the evidence in 2008 -- you do have a copy of it in
16 front of you, don't you?

17 MR LITTLE: Yes.

18 THE CHAIRMAN: Ask him to look at 3568.

19 MR LITTLE: Yes, it's 3568 and 3969. Those are the two
20 documents that are relevant to this question. First of
21 all, 3568, which is the one -- and the section that you
22 need for it is headed "engineering overhead adjustment"
23 and it's about 12 lines.

24 THE CHAIRMAN: There's a reference there to engineering
25 overhead adjustment, yes.

1 A. I'm reading that, yes, sir.

2 THE CHAIRMAN: And presumably, you would have remembered the
3 letter of 11 July 2007?

4 A. (Nods)

5 THE CHAIRMAN: At the time you were giving your evidence,
6 yes?

7 A. Certainly well aware of this issue here.

8 THE CHAIRMAN: Yes, and then there's a question of, did you
9 recollect the board meeting on 5 July 2007?

10 MR LITTLE: Which approved the statutory accounts, that was
11 the primary condition.

12 A. I can't remember the specific date.

13 THE CHAIRMAN: Okay.

14 A. There must be one on record.

15 MR LITTLE: 3969.

16 THE CHAIRMAN: 3965, 3970.

17 A. I'm sorry, 39?

18 MR LITTLE: 3969, and the document itself, you need to read
19 very quickly from 3965. That's in volume 10.

20 MR LYNCH: Sorry, we are now on to page 3969, are we?

21 MR LITTLE: Yes, well, that's the signed document, 3969 is
22 the signature, 3965 is (inaudible).

23 THE CHAIRMAN: Have you been able to refresh your memory,
24 Mr Dekker?

25 A. Yes.

1 THE CHAIRMAN: Those are the documents that suggested that
2 you would have been aware of, it's suggested, and when
3 you gave your evidence in April 2008, yes?

4 A. Yes.

5 THE CHAIRMAN: Now, what the claimant is going to do is to
6 take you to the passage of the evidence which he has
7 a note of, and which there may be some doubt as to
8 whether you could recollect those documents when you
9 gave that evidence.

10 That's effectively it, is it, Mr Little?

11 MR LITTLE: Yes.

12 THE CHAIRMAN: Yes, so can you take him to the passage or
13 passages that you want him to deal with, and to explain.

14 MR LITTLE: Effectively, on the first page, then, if you
15 would read the bit "can I explain what the documents
16 are", about the tenth line down, and then it says, "I'd
17 rather you put the questions and if you need to explain
18 them, do so", from the chairman. This is the first part
19 regarding the PD15.

20 A. Yes.

21 Q. Okay, just reminding you of that bit.

22 A. Okay.

23 Q. Okay, and could you go to the very bottom of that page,
24 starting from the chair, "put it to him, it may jog his
25 memory".

1 A. Okay, I think I see that, it's not on the bottom of my
2 page, but is it right below "make a particular note"?

3 Q. Yes, it will be different in yours, I'm sorry.

4 A. How far down?

5 Q. Just read on down there until you get to "I don't think
6 that jogged his memory", until you get down to, "if
7 you're going to quote" --

8 A. Yes, I see.

9 MR LYNCH: Sorry, I can't see "if you're going to quote",
10 sorry.

11 MR LITTLE: It has a couple of dots after it.

12 (Pause)

13 You need to read down to the bit that says "no, no",
14 that was the chairman, and Mr Lynch is shouting "no" at
15 me, "no, you're not going to challenge this, it's too
16 late".

17 THE CHAIRMAN: So from "if you're going to quote".

18 MR LITTLE: No, in terms of reading, where to stop, there's
19 a bit that says, "this is consulting speak", and then
20 you shout "no", and the Chairman shouts, "no, you're not
21 going to challenge this", and that's where you need to
22 read to, that's what I'm saying, and then I'm going to
23 start you at another point, and then ... and then it
24 starts again, John, with the Chairman asking the
25 question, "what relevance is this issue to the PD", and

1 I answer, "the numbers are not correct".

2 A. Right.

3 Q. If you read down to, "are you going to the next PD",
4 from the chairman.

5 Sorry, I'm sorry, you need to read down to the
6 chairman saying "can you see what I'm saying, you can
7 forget the correct figure issue".

8 (Pause)

9 THE CHAIRMAN: I don't think we're making much sense of some
10 of the notes, I have to say.

11 MR LITTLE: Well, I mean, that is the evidence, the
12 transcript.

13 MR LYNCH: It's not a transcript.

14 THE CHAIRMAN: It's not a transcript, the reality is that
15 it's your notetaker's notes, and I don't understand some
16 of them.

17 MR LITTLE: I hope I can clarify them, I mean, you have --
18 the masters are there.

19 THE CHAIRMAN: Where in here, can you ask the witness, then,
20 so we can understand, the relevance of these points to
21 the acceptance by him that he would have been aware of
22 the documents that we have just looked at?

23 MR LITTLE: Right, we have a letter from the directors,
24 including himself, with what is written in the
25 engineering overhead adjustment.

1 THE CHAIRMAN: Yes, but what is it you want him to --

2 MR LITTLE: Well, it basically says:

3 "This is the impact of doing this, further
4 adjustments were made, effectively we had changed down
5 to 84K and ...(Reading to the words)... specific
6 representation from management"

7 -- including a letter signed by himself, so he must
8 have been aware the numbers had changed.

9 THE CHAIRMAN: Do you understand the question, Mr Dekker?

10 A. I'm not sure I recall the exact train of discussion
11 here, what we're talking about me recollecting, I think
12 it may in fact with the question about whether
13 I recollect email from him, as opposed to do I recollect
14 the issue of the overhead, because I was clearly aware
15 of the overhead issue, that's front and centre.

16 MR LITTLE: This is all to do with the overhead issue and
17 your evidence on the engineering overheads, that is
18 verbatim, what we discussed, and in fact, sir, you were
19 getting more annoyed with me, as to the correct figure,
20 move on, move on, and I was trying to say, you know,
21 that's bound to have been addressed because there's
22 comments in the PwC report that concur with some of my
23 views, and our views, about some of the numbers, but it
24 wasn't complete. In fact, I remember both of you
25 shouting at me about the consulting speak.

1 THE CHAIRMAN: You say that, I'm not going to accept that
2 I shouted at you, I have been firm with you, because
3 sometimes you ask questions which in my view aren't
4 assisting the tribunal.

5 MR LYNCH: You certainly never raised your voice.

6 MR LITTLE: Let me correct myself, sir, you said no, and
7 Mr Lynch said NO (emphasis), as well.

8 The issue for me was I was trying to work my way
9 through, I was convinced there had to be changes to
10 those numbers because they were wrong and my point now
11 is that John would have known those numbers were wrong
12 and changed.

13 A. My understanding of this is that if we moved to seventh
14 speaker in the sequence here, it starts as BL,
15 Mr Dekker's witness statement.

16 MR LYNCH: Wait, we have a different format.

17 A. The pagination is different here, this is at the start
18 of question 7, the Mr Dekker evidence, April -- okay.

19 THE CHAIRMAN: Okay.

20 A. The seventh speaker.

21 MR LYNCH: I do not have that, we must try to be on the same
22 page, at least in our minds. You're taking us from
23 where?

24 A. That starts, "BL: we listed a series of documents",
25 which is immediately under the header, "Mr Dekker

1 evidence".

2 MR LITTLE: I'm not with you, either. How far is it down
3 the page, it's the very start?

4 A. I'm starting it from the very beginning, the seventh
5 entry, there's a "chair" that says, "I'd rather you put
6 the questions", then it says, "BL: Mr Dekker's witness
7 statement." The question, or the issue of my
8 recollection is in that paragraph, "you do not recall
9 speaking to the claimant". It's not whether I recall
10 the issue of an overhead or not.

11 THE CHAIRMAN: Well, there was some issue -- there was an
12 issue about whether or not disclosures were made to you
13 in August 2006.

14 A. By the claimant, yes.

15 THE CHAIRMAN: By the claimant, in a telephone conversation,
16 and whether or not you could recollect the content of
17 that telephone conversation.

18 A. Correct, and my understanding of the questions being put
19 to me right now is do I recollect the issue of the --

20 THE CHAIRMAN: In fact it goes on, you do go on to say
21 about August 2006, and that does -- I do remember that.

22 MR LITTLE: Sir, can I help?

23 A. I think the questions that Mr Little is putting to me
24 right now deal with whether I recall the engineering
25 overhead numbers, and the fact that there were issues

1 surrounding those.

2 MR LITTLE: Sir --

3 A. A different question.

4 Q. I wish to clarify, sir. P 15 was one that was initially
5 said to be, it doesn't, there's no disclosure. I showed
6 through a series of factual issues and whatever else it
7 was, it's the only document that's changed on the
8 respondent's PD schedule, since PD15 accepted, there was
9 then a discussion about was it a correct figure, there
10 was ultimately an acknowledgement --

11 THE CHAIRMAN: That's the engineering overheads?

12 MR LITTLE: Yes, that's PD15, I'm not sure that was bottomed
13 out, and the point I'm now trying to make is that Dekker
14 would have been aware, from this letter, that in fact
15 they'd changed what they did. He would also have been
16 aware, because he signed a specific personal
17 representation letter on the subject, or overall, which
18 included that subject. And the point is, if you
19 therefore look -- I'm sorry, sir.

20 THE CHAIRMAN: It's all right.

21 MR LITTLE: I think if you look at the bits I tried to pick
22 out in that, I'm basically trying to say: you would have
23 been aware that was changing, what was your motive, what
24 is the relevance, I think you have gone beyond it. This
25 is all relevant to the 11th, "John's withdrawing and PwC

1 says the statement is not accurate", the point is, some
2 things are changing, we asked if anything changed as
3 a result of PwC, my answer is nothing.

4 But it did change, then they worked through and
5 changed the stuff with Ernst & Young.

6 A. We say changing, what are we indicating, a move from 134
7 to 84, is that the question?

8 MR LITTLE: Yes.

9 A. Because the movement, it's apples and oranges, the 134
10 is this specific issue but if you read at the front of
11 the next sentence, sorry, two sentences down, "following
12 further adjustments that were made", so the 84 was
13 a combination of adjustments, which included the 134.
14 So there was a netting of a series of adjustments that
15 netted out to 84. So that's the change that -- if
16 there's a change there, that's what it's all about.

17 THE CHAIRMAN: I don't think we're going to get any further
18 with that, because the witness is having difficulty with
19 recollecting it, and if you're going to make any
20 submissions on it, you have to make those at the
21 relevant time.

22 MR LITTLE: Yes. I will ask the secondary question, then,
23 in 7A, the italics one.

24 THE CHAIRMAN: Yes.

25 MR LITTLE: Okay. To help me do this and in fact to help

1 everybody, I would like to go to document 3891, I will
2 get the precise page in a little minute.

3 MR LYNCH: This is page?

4 MR LITTLE: 3891.

5 MR LYNCH: 3891.

6 MR LITTLE: If people remember, this is the reside,
7 deletions, bolds, increases, if they look at section 5,
8 that is the engineering overheads changes in PwC report.

9 A. Sir, I don't recognise this document.

10 MR LYNCH: This is a document put together by Mr Little in
11 which he seeks to contrast the terms in certain specific
12 respects.

13 THE CHAIRMAN: It's PwC, isn't it? Between the draft and
14 the final.

15 MR LITTLE: Between May and August 2007 what changed,
16 effectively. If you turn to section 5, a couple of
17 pages in.

18 MR LYNCH: 3891 C on my pagination.

19 MR LITTLE: And if you look at the headings, you have
20 a heading called 5, these were the only adjustments made
21 between May and August in the final forensic accounting
22 exercise. And then I'll ask the question.

23 (Pause).

24 Bold black being the additional, red being the
25 deletions. (Pause)

1 Are you ready?

2 A. Yes.

3 Q. My question is in two parts. First, Mr Dekker, do you

4 have any explanation as to why, in that forensic

5 investigation, from May to August 2007, as to why PwC

6 were not aware of those engineering overhead changes

7 made by Mr Smith for the FY2005 statutory accounts and which

8 were filed on July 2007, certainly before they

9 were finalised or before PwC finalised their final

10 report at the end of August 2007?

11 A. I'll take it from the top.

12 Q. Okay.

13 A. Sorry.

14 Q. May 2007, first draft?

15 A. Yes.

16 Q. Final position, end of August?

17 A. Right.

18 Q. July 2007, the statutory accounts are filed, including

19 an adjustment from 134 to 84 K. Do you have any

20 explanation as to why PwC in their forensic

21 investigation would not have been aware of those changes

22 made by Mr Smith?

23 A. We talk about changes, again, are you talking about the

24 change from 134 to 84?

25 Q. Mmm hmm?

1 A. I'm suggesting that that wasn't a change to the basis
2 for the 134, as the lead-in to that sentence indicates,
3 there were a number of adjustments that netted together
4 to the 84.

5 Q. Sorry, let's try this another way.

6 The balance sheet was going to show 134K in
7 inventory overhead. It was then changed to 84K, is that
8 correct?

9 A. The balance sheet was going to be adjusted to show 134K
10 related to that one narrow item, yes.

11 Q. And therefore --

12 A. And it did. There were offsetting items totalling
13 50,000 that went the other way that were also reflected
14 on the balance sheet. Hence the 84.

15 MR LITTLE: Sorry, this is a simple question, Mr Dekker.

16 MR LYNCH: Well, let --

17 A. I think that's a simple answer.

18 MR LYNCH: Yes.

19 MR LITTLE: Is the balance sheet £50,000 lower, overall?
20 And profit up 50,000, as a result of this change?

21 A. I cannot tell you if there was a balance sheet
22 adjustment for the 50,000, or if it was a P&L
23 adjustment, I don't recall at this point this time, so
24 I can't answer that question.

25 Q. Can you answer the question, then, why PwC wouldn't have

1 been aware of that change?

2 A. I'm not sure they weren't.

3 Q. Well, it's not recorded as part of their change.

4 THE CHAIRMAN: So you just don't know?

5 A. I don't know. I mean, we need to be clear on how the

6 PwC investigation took place, I didn't run the process

7 at all, when PwC was engaged, the audit committee took

8 over the whole process, I simply gave them full and free

9 access to anybody and everyone that they wished to speak

10 to, my only job, well, two roles, one was to facilitate

11 the process, and make sure that they had efficient and

12 speedy access to all the information that they needed,

13 and the second was to be interviewed for topics that

14 I was involved in. And as such, I did not keep track of

15 what information they looked at, I was only aware of it

16 to the extent I assisted in providing that information,

17 so I have no idea what they did, other than when they

18 requested information of me and I gave it to them.

19 THE CHAIRMAN: Thank you.

20 A. It was a hands-off third party investigation.

21 THE CHAIRMAN: Yes.

22 A. It had to be.

23 MR LITTLE: Will you accept that they didn't seem to record

24 that?

25 THE CHAIRMAN: Well, that's a matter of fact, isn't it?

1 MR LITTLE: Yes, well, it is.

2 Can I go, Mr Dekker, to the second part of that, it

3 says in the document at 3568 "we reviewed management

4 calculations".

5 A. Sorry?

6 Q. 3568. Half way, it's just the second part of this and

7 then I'm going to go to another.

8 THE CHAIRMAN: What's the second, the second of what, is

9 that?

10 MR LITTLE: In 3891 -- this is going to the flip side of it,

11 I haven't listed it this way, but it's a way of making

12 another point.

13 MR LYNCH: This is the question, 7A, isn't it?

14 MR LITTLE: It's the only -- yes, if you look at

15 paragraph 5.63, if you --

16 THE CHAIRMAN: Wait a minute, this is not something

17 that's --

18 MR LITTLE: I'm sorry, it's -- leave it, it's the flip side,

19 I'm trying to deal with what Mr Dekker said to show the

20 flip side, as well. It's not specifically listed

21 before.

22 THE CHAIRMAN: No.

23 MR LITTLE: But it comes -- well, I think my point is,

24 because the calculation is wrong, why was this added

25 into the report, I'm trying to do the flip side of it,

1 saying here is something they now know to be wrong but
2 it's added into the PwC report. This demonstrates that.
3 THE CHAIRMAN: I don't think it's going to help us any
4 further.
5 MR LITTLE: Okay, in which case that's all of 7, sir.
6 THE CHAIRMAN: Thank you.
7 MR LITTLE: I'm now going on to question 10, there is no
8 manuscript here, John, this should be quick.
9 Right, question 10, 4071 the only document you need
10 for this, and that is in volume 10.
11 A. That's the one I don't have.
12 Q. It's the one in front of you I gave you. Okay, and the
13 question is to do with Boeing 737, so if you can just
14 find Boeing 737 on that?
15 A. Yes.
16 MR LITTLE: And this should just be dot the is and cross the
17 ts. Is everybody ready?
18 MR LYNCH: There's a reference to Boeing, not the
19 Boeing 737.
20 MR LITTLE: It will be against Ellanef and corporate,
21 there's two points --
22 MR LYNCH: This is page 4071.
23 MR LITTLE: Yes.
24 THE CHAIRMAN: Can you tell us in which line on the
25 left-hand column.

1 MR LITTLE: There are two lines we're going to discuss, one
2 is under Ellanef, do you see Boeing something there?

3 MR LYNCH: Yes.

4 MR LITTLE: And further down, you will see another one with
5 Boeing corporate. Those are the two lines and I'm going
6 to try and do this from my memory.

7 Mr Dekker, do you agree that ...(Reading to the
8 words)... confirms that the Boeing 737 reversal of the
9 699,000 of overstated income for Q 1 and Q2 2006 was
10 correct, et cetera, et cetera?

11 A. Are you asking do I believe that this is correct?

12 Q. Yes.

13 Do you agree that because of this publicly reported
14 MAC net income was adjusted downwards at the time of the
15 financial year 2006 audit MAC annual report, yes or no?

16 A. Yes.

17 Q. Okay, and do you agree that this was necessary in Q4
18 2006?

19 A. Yes.

20 Q. That's it. That's question 10 done.

21 Now, question 11.

22 MR LYNCH: Tribunal, I swear this is not purely self
23 interest, but I think, I've never been a witness, but
24 I suspect it's tiring being a witness, not that
25 Mr Dekker is showing any signs of wear and tear, and

1 I know on the time what we have get through, but he has
2 been going for an hour and a half and I don't know
3 whether --

4 THE CHAIRMAN: Well, so you know, if we don't get through
5 this today, that's going to cause huge problems.

6 MR LYNCH: We have to get through it. May I just raise
7 that, then, as a --

8 THE CHAIRMAN: If Mr Dekker feels he needs a break, I'm sure
9 he'll tell us.

10 A. I will not be shy.

11 THE CHAIRMAN: No.

12 MR LITTLE: Right, it's 3702 to 3721. You don't have to
13 read all this, these are the technical report things.
14 If you just refresh yourself as to what the two
15 documents are.

16 MR LYNCH: This is part of 11, yes?

17 MR LITTLE: Yes, this is 11 now we're on to, this is 3702,
18 3721, and 3726.

19 THE CHAIRMAN: You may not need to look at them 3726.

20 MR LITTLE: 3702 which is the 2005 and 1999 one, and also
21 the previous technical, okay. You obviously know I have
22 a supplementary question for other reasons, but did you
23 discuss these A340 technical report documents for 1999
24 and 2005 with either Ernst & Young or PwC at any time?
25 A. You're asking me if I did, no, I did not.

1 Q. Do you know anybody else that did?

2 A. Again, as I said earlier, I didn't manage the flow of
3 information that went to PricewaterhouseCoopers, I know
4 that Mr Neill spent considerable time with
5 PricewaterhouseCoopers, and Ernst & Young, discussing
6 the A340.

7 THE CHAIRMAN: You can't say what --

8 A. I can't say what documents he presented to them,
9 I simply don't know.

10 MR LITTLE: Sticking with those documents, next question,
11 which is the supplementary, how did these technical
12 reports impact the A340 sales forecasting and financial
13 accounting in Aeronca?

14 A. Again, Mr Neill is certainly the experienced one in this
15 area, and I cannot state categorically that he used them
16 to form his basis for developing comfort with the
17 quantities used in the cost to complete, but I truly
18 believe he did.

19 Q. Okay.

20 A. He would have used the work of Dr Raj Thamburaj to
21 arrive at a view on the spares and repairs.

22 Q. Right. And if that were the case, turning first of all
23 to the two documents that were disclosed yesterday,
24 I can pick any of the ones of the 3605 series?

25 A. The only one I have here is the old one.

1 Q. They're all the same, essentially. If you go to spares
2 and repairs -- yes. If you go to spares and repairs,
3 you would agree that this document, which is one of the
4 ones that has gone to PwC and Ernst & Young, it has said
5 there were 18 spares delivered and a projected further
6 172 by 2021.

7 A. Yes, that's correct.

8 Q. And that was consistent with, effectively, what had been
9 in the 3605 document that you were looking at as well?

10 A. That's correct.

11 Q. It was also consistent with another document that you
12 produced at a glance for want of a better word,
13 recently, saying that there was 166 spares plus six in
14 2006?

15 A. That would be the same concept, yes.

16 Q. So the Aeronca folks all had the view, there's something
17 of the order of 190 spares repairs or thereabouts through to
18 2021?

19 A. That is their view of what the spares requirements might
20 be based on --

21 MR LYNCH: I missed the number, some number of spares.

22 MR LITTLE: It was 18 plus 172. There was another document
23 which John produced which was 166 plus 6 but it's the
24 same principle.

25 I asked the question with regard to A340 sales

1 forecasting and financial accounting in Aeronca. Now,
2 you are responsible for the financial accounting in
3 Aeronca, and therefore what would be provided to the
4 auditors for the purposes of their audit, and the
5 representation to them. So my question is, how did
6 these technical reports impact what was provided in
7 financial accounting terms, through the EAC to the
8 auditors?

9 A. The two documents that were provided, I think yesterday,
10 the reason there's two of them, they are identical, one
11 was a set provided to PricewaterhouseCoopers and the
12 other one was to Ernst & Young, so we provided them the
13 same information, and Rich Neill spent time with both
14 parties and they were, each party was aware that the
15 other was looking at the same documents.

16 THE CHAIRMAN: Yes.

17 MR LITTLE: So these documents, then, together with 3605,
18 which was disclosed before, in December, were provided
19 to Ernst & Young and PwC?

20 A. I'm confident that the early document, which I think was
21 pointed out, only took the Forecast International view
22 out to 2013, that was produced a week and a half before
23 the final set, there was some efforts under way to get
24 the most current copy of the Forecast International but
25 to get the process started, and moving, we gave them the

1 best information we had, and then within a week were
2 able to freshen that up and circulated revised copies,
3 and as Mr Little said, they're all pretty much the same,
4 and certainly when we went through the documentation
5 looking for information that went to the auditors, the
6 fact that the two documents were different didn't come
7 to my attention. In fact, it didn't come to my
8 attention until Sunday.

9 MR LYNCH: Which Sunday, sorry?

10 A. Sunday past. In fact, when I was discussing them with
11 Mr Lynch.

12 MR LITTLE: Just as a matter of interest, why is the date of
13 this document 21 May?

14 A. Because that's when I printed another one off my
15 computer, thinking it was the same document that was in
16 the file. Not comparing the numbers. Because they do
17 in fact all look the same.

18 Q. So it was effectively just before you get on the flight?

19 A. Yes, just before I left Canada.

20 Q. You do know that that document isn't at all an exhibit
21 in the PwC report? It's not anywhere near the PwC
22 report.

23 A. Well ...

24 Q. That's a matter of fact.

25 THE CHAIRMAN: That's a matter of comment, then.

1 MR LITTLE: Okay, sorry, you're aware it isn't, then, is
2 really my question.

3 MR LYNCH: Tribunal, obviously the exhibits are what PwC
4 have decided to cross-reference in their report, it
5 doesn't define what PwC looked at.

6 THE CHAIRMAN: Not necessarily, no.

7 A. I trust there's no suggestion that those reports didn't
8 in fact go to PwC because they certainly did.

9 THE CHAIRMAN: Well.

10 A. The cover letter, the email attached to it.

11 THE CHAIRMAN: It says, to PwC, Stephanie LeBlanc.

12 A. I don't want there to be any doubt that's the truth.

13 THE CHAIRMAN: Stephen Moores.

14 MR LITTLE: On that point, John, I am more than surprised
15 that this would not be an incorrect document if
16 Mr Neill had spent so much time on it --

17 THE CHAIRMAN: That's a comment of yours.

18 A. I didn't control any of the --

19 THE CHAIRMAN: No, it's not evidence that Mr Little is
20 giving, it's comment.

21 MR LITTLE: Question 12, which almost deals with what we
22 have been discussing here, why, Mr Dekker, were these
23 documents not disclosed way back in April 2007 as part
24 of the normal disclosure process?

25 A. Sorry, which documents are we talking about now?

1 Q. Well, 3605.

2 THE CHAIRMAN: The ones you've just looked at.

3 A. The ones that I identified Sunday as not being the ones
4 that were already in the bundle, obviously I wasn't
5 aware that those two documents weren't already part of
6 the evidence, as 3605.

7 MR LITTLE: Why were they not disclosed right at the very
8 outset, because these documents are
9 all March, April 2007, they're all right at the start of
10 CMD 1.

11 A. At that point in time, I'm not sure that there was
12 a realisation that the questions were going to head in
13 this direction, and we looked through the documents to
14 try to assess what the most relevant documents might be.
15 And there's no reason to not disclose these documents,
16 there's nothing secretive about them, there's nothing
17 special about them. It was a matter of trying to
18 identify what the relevant documents were, in
19 consultation with our legal counsel, and those were not
20 flagged.

21 Q. So why was there so much pushback on November 28 and that
22 this is a fishing expedition, they're not needed,
23 et cetera.

24 THE CHAIRMAN: That's a matter for the legal advisors.

25 MR LYNCH: A, legal advice and b, we've set out our comments

1 very fully in my response.

2 THE CHAIRMAN: It's legal advice.

3 MR LYNCH: But may I say that if there were to be any

4 criticisms about, for example, how the matter was argued

5 on the 28th, that rebounds to me and not to anybody

6 else, certainly not to MALUK.

7 MR LITTLE: Again, this material is request 16 in CMD4.

8 THE CHAIRMAN: That's a matter of comment, I think you've

9 asked the questions.

10 MR LITTLE: Okay, I think that's all on 12, isn't it, sir.

11 THE CHAIRMAN: I think it is.

12 MR LITTLE: So we're now going on to 13.

13 The document I'd like to turn to now.

14 A. Do you have anything on that here?

15 MR LITTLE: Yes, you do, you have quite a large piece of

16 transcript, actually. Starting with witness --

17 THE CHAIRMAN: The questions begin.

18 MR LITTLE: "If the Q4".

19 THE CHAIRMAN: "Q4 2006 EAC".

20 MR LITTLE: He will not see that, first of all I'm asking

21 people to read the witness, J Butyniec, it's a couple

22 of pages before this, which is all very relevant to and

23 really needs to be looked at.

24 A. This says Q1 plus A340, is that it?

25 MR LYNCH: I'm so sorry, I was just distracted look.

1 MR LITTLE: You really need to read it all.

2 MR LYNCH: To page 21, yes?

3 MR LITTLE: Yes, where it starts at the top, with the chair,
4 "you've already established this".
5 (Pause).

6 THE CHAIRMAN: I have difficulty with this approach. Why
7 can't you simply ask the question? If the Q4 2006 EAC
8 continued, et cetera, why can't this witness simply
9 answer it? I mean, whatever Mr Butyniec has said, and if
10 it differs from what this witness says, you can make
11 comment on it.

12 MR LITTLE: Well, the purpose of doing it, essentially, was
13 twofold, sir, first of all it was there was virtually no
14 written evidence at all in any of the witness statements
15 and --

16 THE CHAIRMAN: Ask him the question. He will be able to
17 answer it, and if he can't, you can take him to
18 documents that is relevant, rather than asking him to
19 read a transcript of somebody else's evidence.

20 MR LITTLE: All right, can we find first of all, then, 1831
21 now, to help on that, now, this is where the documents,
22 we may need to spend a bit of time here because I'm not
23 sure that the witness stand is up to date with this. If
24 the tribunal would go to their bundle under the yellow
25 tab.

1 MR LYNCH: That's attached to what?

2 MR LITTLE: You have two sets of that, it starts at 1831.

3 MR LYNCH: Isn't it in my bundle?

4 MR LITTLE: I don't know.

5 THE CHAIRMAN: Can we just go through the questions one by
6 one here.

7 The first one, you're asking him to look, perhaps,
8 at document 691. Mr Dekker, sorry to do this, but can
9 you look at the first -- he doesn't have it, does he?
10 He doesn't have the questions, I've just realised.

11 MR LITTLE: No, he doesn't have the questions.

12 THE CHAIRMAN: Can you put that question to him and see what
13 the answer is, he may agree with you, and that's the end
14 of it.

15 MR LITTLE: Right.

16 THE CHAIRMAN: Well, that's the point, he may agree with
17 you, so we may not need to look at a document.

18 MR LITTLE: Okay.

19 THE CHAIRMAN: If the Q4 2006 EAC had continued with the
20 underlying gross loss of 5.22 million and the further
21 2.734 million costs increase by Q4 2006 had been
22 recorded at circa 10 million loss, would MAC senior
23 officers have recorded from that EAC a circa 10 million
24 plus loss in Q4 2006 earnings and then stated that in
25 the F Y 2006 published accounts?

1 A. Yes.

2 MR LITTLE: Right --

3 A. But --

4 THE CHAIRMAN: But --

5 MR LYNCH: Yes, please.

6 A. But it's based on a lot of presumptions.

7 THE CHAIRMAN: Right.

8 A. The final question is, would we post the accounts
9 correctly, of course we would, if that was truly a loss
10 we would post the accounts correctly and record a loss.

11 MR LITTLE: Can I just clarify something now, if we just
12 look at document 1831 in the bundle, what you're saying,
13 John, then, is, and this is for everybody else, if the
14 number do you know here, 137172, which is the very
15 bottom of the sheet, marked D, I think, sir.

16 THE CHAIRMAN: Yes.

17 MR LITTLE: An outline of yours.

18 MR LYNCH: Hang on, I haven't got to 1831, it's volume 5,
19 isn't it?

20 MR LITTLE: I sent about five or six sheets to try and make
21 this easier for everybody.

22 THE CHAIRMAN: We have it.

23 MR LITTLE: I think it's just ...

24 MR LYNCH: Yes, thank you.

25 MR LITTLE: So, Mr Dekker, if D was minus 10 million,

1 I think you've just told the tribunal that you would
2 then be posting 10 million loss to the accounts?

3 A. If you're asking me if this schedule generated the
4 number of minus 10 million in the bottom of the
5 programme total, would we record it that way, no. Not
6 solely on the basis of this schedule. This schedule is
7 an estimate at complete, and each quarter we do various
8 scenarios of this schedule, there are three major
9 variables that affect the outcome of this schedule,
10 sorry to bring it to such basic levels, but it's number
11 of units, times revenue per unit, and the cost. Each of
12 those three variables has a habit of changing on us.
13 And as such, this schedule will change each time we do
14 it. We also have uncertainty about the future, so our
15 view as to what's going to happen into the future will
16 also affect how this schedule is completed.

17 MR LITTLE: But the core question is, if as a result of
18 doing all of that, that number became minus 10 million,
19 would you be posting minus 10 million to the accounts?

20 A. If our best view, our -- let me identify best, our most
21 reasoned view and most likely outcome showed
22 a 10 million loss, yes, we would post that loss.

23 Q. And it is correct, Mr Dekker, that this document is the
24 primary document which Ernst & Young would use in their
25 audit process?

1 A. We would give them this document in the audit process,
2 plus the supporting detail, I can't say that this is the
3 primary document but I have to believe it's one of the
4 key ones.

5 Q. Right, and in the audit testing processes, which we're
6 both familiar with, in terms of the primary part of
7 their job, for want of a better word, that's what this
8 Excel work sheet will become, and its backing paper,
9 what they use to do their calculations of mathematics
10 on.

11 A. I believe so, I'm not present at each of the business
12 units when the auditors are in but certainly that would
13 be a logical assumption, I would expect nothing
14 different.

15 MR LITTLE: Right, and sir, just for factual record, in the
16 final report at paragraph 8.61, PwC, it confirms that
17 this was the document used for year end audit testing
18 purposes.

19 THE CHAIRMAN: Okay.

20 MR LITTLE: Okay, and there is another document in the audit
21 report which actually it might be helpful just quickly
22 to go to now, if you go back to the document I have
23 mentioned on the March 2007 --

24 THE CHAIRMAN: But why? Why do we need to?

25 MR LITTLE: It simply helps reinforce the scope of what the

1 auditors are doing, it's very important to understand
2 what they regard as their scope and therefore what it is
3 they're signing off the directors.

4 THE CHAIRMAN: What page?

5 MR LITTLE: If you turn to 4065, which, on your documents,
6 would be page 13. And if you look at a heading called
7 "inventory valuation".

8 It's called accounting policy judgments and
9 estimates, and if you look under the heading, inventory
10 valuation.

11 MR LYNCH: It's the one that starts at 1440?

12 MR LITTLE: Yes, it's page 13, inventory valuation.

13 THE CHAIRMAN: 4065, did you say?

14 MR LITTLE: Yes.

15 THE CHAIRMAN: Ours isn't paginated.

16 Page 13 did you say?

17 MR LITTLE: Yes, and under the heading "inventory
18 valuation", if you just read under the heading
19 "accounting policy judgment of sensitive estimates and
20 E&Y, ", so if you read across that column it reinforces
21 what Ernst & Young regard as their scope.

22 THE CHAIRMAN: Yes.

23 MR LITTLE: Okay.

24 John, would it be fair to say that the primary focus
25 that the audit system testing is done around is

1 predominantly the costs dimension of that process,
2 that's where the majority of the work would go into the
3 audit testing? Sorry, that's not to say they don't do
4 revenue and volumes, either, but the primary effort of
5 the auditors is the costing?

6 A. That would be correct, because the biggest item on our
7 balance sheet is our inventory number and the costing is
8 really the largest component of that, that's where
9 they're going to spend most of their time.

10 I think it's yes.

11 Q. In fact the A340 is the biggest, as we said originally,
12 in the evidence.

13 I am going to move to the next question, sir.

14 THE CHAIRMAN: Yes.

15 MR LITTLE: When did you do your review with Mr Furbay and
16 check the A340 sales schedule to make sure the units and
17 revenues were correct to the best information at the
18 available time before the EAC was given to
19 Ernst & Young?

20 Do you want me to do that again.

21 A. I'm trying to understand which time frame you're talking
22 about.

23 Q. This is for 2006, Q2, and the same again -- sorry,
24 you're right. Q2 and also for Q4?

25 A. Okay.

1 Q. I should have been explicit.

2 A. We would have -- we do EACs, or estimate at completes,
3 on a monthly basis, throughout the year, and will
4 constantly be assessing the impact of adjusting any one
5 of the three variables to see if there's an impact on
6 the bottom line. So the EAC or the estimate at complete
7 for June 30 2006 in outline likelihood would have been
8 completed some time in July 2006. And the estimate at
9 complete, at the year end, is done more thoroughly, to
10 ensure that we have adequate documentation for the
11 auditors as well, and that would have been prepared
12 throughout January, February time frame of 2007.

13 Q. And you would do that review directly with Mr Furbay at
14 some point in that, roughly that calendar period
15 yourself, given the size of this project?

16 A. I would -- the review that I participate in is not at
17 the basic level, we have a summary level, we would
18 receive the EAC, and essentially look for net changes
19 and reassure ourselves that there has not been anything
20 significant that has changed in the instance, for year
21 end, Mr Neill became quite actively involved, as we're
22 all aware, in the quantities question, and looking at
23 spares and repairs in particular.

24 Q. Could we turn now to document 1830, which is the quarter
25 2 2006 EAC. Quarter two. That's volume 5.

1 The bottom of this, it's showing a loss of \$5.2m.

2 A. That's correct.

3 Q. Okay, and obviously that was assessed and reviewed at

4 the end of quarter two, that was not posted as

5 a change in quarter two, in terms of losses, was it?

6 A. Okay. Go ahead.

7 Q. So ought it to have been, or what would be the reason as

8 to why it wasn't?

9 A. Well, the reason is, as I laid out earlier, each --

10 periodically, we will assess the individual variables to

11 see what happens to the results, should certain events

12 occur, we were in the midst of price negotiations with

13 our customer, at that point in time, while there was

14 a contract in place that gave us reasonable certainty of

15 the prices we should receive on the programme, under the

16 terms of the contract, the customer was resisting price

17 increases, and in this instance -- and again, when

18 PricewaterhouseCoopers came in to review the information

19 at Aeronca, we just opened the books, and they took one

20 of our "what if" scenarios, which is what this was, what

21 if we don't get the price lift, and they took this, and

22 of course, we showed them everything we had, and they

23 then queried this particular document. And then, of

24 course, we had to explain to them why we didn't make the

25 adjustment, and they were content with that explanation.

1 Q. None of that is covered in the PwC report, what you've
2 just said in your evidence, is it?

3 A. Well, again, I didn't control the PwC report, and
4 I didn't control the document flow to them. So I can't
5 take any ownership of any of the --

6 THE CHAIRMAN: No.

7 MR LITTLE: You recognise it was this document that gave
8 rise to part of my conversation with Mr Neill on the 8th
9 and the certification on the 9th.

10 A. Sorry, the 8th of what?

11 Q. August, sorry, 8th August.

12 A. I'm not aware specifically of what you talked to
13 Mr Neill about or what documents you and he discussed,
14 so I can't answer.

15 Q. You do remember quarter 2 I said, please discuss, which
16 was around the quarterly certificate.

17 A. Yes, I think we've looked at that in the document.

18 Q. We have, I'm just connecting the dots here.

19 A. But I don't have direct knowledge of what the two of you
20 talked about, because I was not a party to that
21 discussion.

22 Q. This morning we received document 1830A, do you have
23 that?

24 Okay, so this is the schedule that backs up the
25 volumes and the selling prices that were used in the

1 EAC.

2 A. All right.

3 Q. And this is the quarter two EAC.

4 A. Right. Correct.

5 Q. Okay. Now, in all of the EACs they finish in 2012,
6 there's a reason for that, isn't there, Mr Dekker, can
7 you explain what the reason is?

8 A. The EACs, on this schedule, that we've just referred to,
9 1830A, if we look at the number of units, it's 1247,
10 that was our sort of benchmark, and the basis that was
11 established early on, when we incurred our non recurring
12 costs we cost amortized over the life of the programme
13 and we held that number constant throughout the
14 analysis, as long as we were comfortable that 1247 units
15 would ultimately be delivered, we didn't increase that
16 to 1500 when we saw that there were additional plane
17 sales, or draw it back from that higher number, should
18 there be a reduced number of plane sales and component
19 sales.

20 The contract was originally, and it's a sole source,
21 so we are the only suppliers for these components, sole
22 source supplier, out to year 2012, and presumably for
23 any follow-on contracts beyond that point, should the
24 requirement be there.

25 As we progressed, the question of spares and repairs

1 came up, and of course, that factored in, and it's
2 likely relevant to go to the schedule which I think is
3 1831B.

4 MR LITTLE: Can we leave that a little minute, John.

5 THE CHAIRMAN: He wants to give his answer that way, so
6 I think he should probably be allowed to do that.

7 A. I don't have a copy of it.

8 MR LITTLE: This is the one we were taking the 3605 and
9 repeating it. Is this the at a glance one?

10 THE CHAIRMAN: Do you have it?

11 A. I have it, if it's what -- are you referring to the at
12 a glance?

13 THE CHAIRMAN: Just take it out, 1831B.

14 You don't have it, do you?

15 A. No, it's not in the bundle, here.

16 (Further discussion regarding the document)

17 MR LITTLE: You'll all see that as 3605A, because
18 effectively what you're doing, and I have handwritten at
19 the top what you'd actually said. Basically it's a 3605
20 schedule repeated into financial form. And I should
21 say, that's the original 3605 document.

22 THE CHAIRMAN: What did you want to say?

23 A. Okay, initially, the programme, as is depicted on the
24 right hand side of the schedule here, runs to 2012.

25 THE CHAIRMAN: Mmm hmm.

1 A. We help -- and again, the cost to complete schedule that
2 we saw on 1830 is a summary of a whole chain of Excel
3 spreadsheets on a year by year basis that break out the
4 cost and sales value for the individual units, or for
5 these units.

6 THE CHAIRMAN: 1830.

7 A. 1830 has a series of work sheets in behind it that are
8 linked in, and rather than extending this Excel work
9 sheet for ever, we took an efficient approach to it, and
10 just built the model out to 2012 and left it there.
11 Which meant that, as you approached 2012 on the time
12 line, any shortfall in deliveries to date would get
13 jammed into the period from now until 2012, so you
14 effectively increase or modify those figures to end up
15 again at 1247 units, so that's mechanically how the
16 schedule was put together.

17 The obvious test that needs to take place, then, is
18 a test to ensure that 1247 units are still valid
19 expectations, and that's a separate analysis, and that's
20 what's occurring on the left hand side of this work
21 sheet, where we're identifying the number of units that
22 will be delivered, under the new scenario, and the new
23 profile. And this information comes right off the 3605
24 foldout spreadsheet. So it's not new information. Now,
25 the reason the numbers go past 2012 in the left hand

1 side of the schedule is a very practical reason. If
2 this programme is truly tailing off, no one else is
3 going to incur the upfront pre-production costs to
4 compete for any units that will need to be delivered
5 past 2012, so they will automatically fall to us, and
6 similarly, any replacement units, which are identical to
7 brand new units, will fall to us, as well.

8 THE CHAIRMAN: Because you'd invested the --

9 A. We've invested, no one else can do it, so as long as
10 those planes are going to fly, we're going to be the
11 ones providing parts for it.

12 And we have moved this out to 2012, 2021, but I
13 truly believe that this programme could easily last much
14 longer than that, but even going out to 2021 gets us past the
15 1247 units, and of course, this is all putting yourself
16 back at December 31 2006.

17 MR LITTLE: Now, three things I would like to say, that
18 schedule still shows spares at 166, so the view was that
19 spares were still 166, ie, plus the circumstances, at
20 that point in time, that was what you were using, and
21 including what Mr Neill was considering, that's what it
22 says?

23 A. That's what it says.

24 Q. It's also correct, isn't it, that the contract was not
25 a whole life contract, it did in fact terminate in 2012?

1 A. The contract will -- it runs to 2012, that's correct.

2 Q. And it is also correct that we were about to embark,
3 on litigation led by myself, on the price arbitration issue,
4 which was likely to bring this into a dispute with our
5 friends in Aircelle?

6 A. In ... yes, yes, that's the time frame.

7 Q. August, September, was the decision: right, we're going
8 into dispute.

9 A. In July, we approached the Belgian firm and engaged
10 them.

11 Q. It's also correct that, from a auditor's perspective, if
12 there was not contract cover for that, and for which you
13 were certain of recovery over the programme life, they
14 would be obliged to look only for the period under which
15 there was contract cover. Is that not correct?

16 A. The auditors reviewed this programme, and also concluded
17 that we would deliver the production units, even beyond
18 2012, because of the uniqueness of our product and our
19 process. And they were quite confident, because we'd
20 also been awarded the A380 programme for the same
21 component, working with the same customer, there was
22 reasonable assurance that we would in fact be supplying
23 these beyond that point. And for purposes of the
24 amortization of the current costs, that test was enough.

25 THE CHAIRMAN: So they were satisfied?

1 A. Yes, they were, and have been satisfied through two
2 further audit years, 2007 and 2008.

3 MR LITTLE: And is it also the case that the selling prices
4 options that you'd used in EAC with the auditors were
5 what was called the pessimistic pricing? Ie, the
6 interpretation of what was likely to be the lower
7 recovery in your estimation?

8 A. That's too general a statement, we run sensitivity tests
9 for them, so we will do several scenarios at their
10 request.

11 THE CHAIRMAN: For pricing?

12 A. Yes, in particular, when we were in the midst of the
13 negotiation, and if you look at one of the two
14 schedules, 1830, which is the June cost to complete that
15 those the \$5.2m loss, and the 1831, which was
16 the December 31 2006, that showed close to break even,
17 those were taking into consideration some flexing that
18 might occur -- the price was reflected, flexed, to look
19 at the different outcomes.

20 MR LITTLE: The one used for the audit testing was the worst
21 position, the pessimistic, you had to be above the zero
22 at d to be okay for them, although you looked at the better
23 positions, the one they used for audit testing was the
24 pessimistic one?

25 A. Sure, you'd push as hard as you could, and as long as

1 you were more than a break even there would not be
2 a provision required.

3 Subsequently, the pricing was agreed with Aircelle,
4 and the lift was beyond what we had anticipated in these
5 schedules, so that gave us more head room, moving
6 forward.

7 MR LITTLE: Is it also correct, Mr Dekker, and we need to go
8 to a schedule here on pricing, quickly, document 692 B.

9
10 THE CHAIRMAN: How much longer do you think you will be,
11 Mr Little? You budgeted on two hours, and all the
12 questions were in the frame, you told us there were not
13 many questions left and we're now two hours and 20
14 minutes into it?

15 MR LITTLE: I understand, sir, this is the bit which is the
16 core, effectively, of the conversation, it also takes
17 care of what I call Q18 earlier, because we're sort of
18 combining into this. How long will I be, the honest
19 answer, I'm so focused on this element of it I haven't
20 had time to reflect on it, but this is about moving us
21 all through to get an understanding of where my head was
22 and reasonable belief, and why.

23 Document 692 B, I think when we've finished this
24 section, sir, I will be able to assess where I'm at, if
25 you don't mind, and I do understand the time issue, this

1 is essential stuff.

2 A. I fortunately don't have a flight out this evening, so
3 the pressure's not coming from me.

4 MR LITTLE: Nor me, either, no ferry, as well.

5 Paragraph 8.62B, I'd like you just to read that.
6 (Pause).

7 Q. Okay? Now, John, management's assessment here is
8 presumably yourself with John and others, but does this
9 paragraph suggest, as PwC reports, that the selling
10 price assumptions between quarter two and quarter four
11 were in fact unchanged and it was purely the quantity
12 that had actually adjusted the EAC?

13 A. Well, that's not correct, because --

14 Q. No, but I'm asking you what PwC have said. I happen to
15 know it's not correct as well, but that's how I read
16 that paragraph.

17 MR LYNCH: No. Isn't that a matter of interpretation of
18 the --

19 MR LITTLE: It says management asserts future sales,
20 whatever, there's no reference to any change in
21 assumptions and selling price, which is rather germane,
22 when it's worth \$6m to \$7m, based on the figures I was
23 given this morning. (Pause).

24 A. That would certainly be an interpretation of what
25 they're saying.

1 Q. For fear of making a comment, and consulting speak, when
2 I say management assertion, that's what they're being
3 told.

4 Can you confirm that there was a change in the
5 selling price assumptions made between quarter two and
6 quarter four?

7 A. There's evidence in the bundle, we have two different
8 schedules that show the breakout for the 2006 Q2, and
9 Q4, numbers that the selling price for each quarter was
10 different, the Q2 price was lower than the Q4.

11 THE CHAIRMAN: It doesn't look as if they've brought that
12 into the equation in terms of the report?

13 A. They certainly haven't documented it in that fashion.

14 MR LITTLE: And that's substantive in terms of reasonable
15 belief, the documents are 1830A --

16 THE CHAIRMAN: You say it's important in terms of reasonable
17 belief, are you asserting that you had no expectation of
18 price increases?

19 MR LITTLE: Yes, the critical issue here, sir, is that the
20 ultimate driver of that price range was the materials
21 escalation on BETA21 and I'm going to go into that and
22 explain why I have no expectation of that, in my witness
23 statement there was quite a bit of work done before
24 arbitration on the pricing, also, critically --

25 THE CHAIRMAN: You were aware of the pricing, the hope,

1 expectation of price increasing from that source? The
2 arbitration?

3 MR LITTLE: Yes.

4 THE CHAIRMAN: But not, of course, Dr Thamburaj's --

5 MR LITTLE: No, that was March 2007.

6 THE CHAIRMAN: Yes.

7 MR LITTLE: I think, sir, also to be clear, and this is in
8 fairness to John and Rich, part of the reason for doing
9 nothing at Q2, that was in the initial stages of the
10 arbitration, I was confident we'd get a little better
11 but I was equally aware that we had serious problems
12 going forward and I had no expectation of not getting
13 more on a selling price on arbitration but a big jump on
14 the escalation formula I'll show you why in a minute.

15 MR LYNCH: These are not matters for this witness.

16 THE CHAIRMAN: We need to make sure that he's able to assist
17 the tribunal with his evidence and that's what's
18 important.

19 MR LITTLE: Okay. Well, the other document referred to in
20 Q4 was the document 1831A, as well, so it's the
21 equivalent schedule that was shown on subject 1B, ie,
22 1 April. This is the Q2 one, this morning, and Q4 was
23 the one we got on 19 May, or 5 May, which is in the
24 bundle.

25 A. Just as a matter of comment on the question that was

1 raised about paragraph B here, when I read that I read
2 that with a different interpretation than what is being
3 suggested here, which could also be an interpretation.

4 THE CHAIRMAN: How did you read it?

5 A. When I looked at that, I took it within the context of
6 the next section, which is the number of units, where
7 they've rationalised that we will be providing spares
8 and repairs units into the into the future, and if you
9 look at 2012 as your last year of deliveries, your price
10 is frozen at the 2012 level, but if those units actually
11 bleed out into future years, you would get a 5 and 6
12 per cent price lift each year as you roll out,
13 compounded, so an unit that might have been sold at 2012
14 now gets sold at 2020 and the price may be \$40,000 or
15 \$50,000 higher, exponentially, it could be higher, which
16 would give you a higher revenue base, that's how I read
17 that paragraph.

18 THE CHAIRMAN: Okay.

19 A. That was the -- that's how I interpreted the
20 rationalisation for why that Q2 might not be an issue.

21 MR LITTLE: Obviously I don't, sir. This next bit, though,
22 is absolutely critical, because it goes exactly to that
23 price escalation subject. If you go to document 698 and
24 read 8.94 and 8.95, please. This again goes to my
25 reasonable belief and I'll endeavour to try and

1 demonstrate why.

2 MR LYNCH: Page 698 and?

3 MR LITTLE: 7 and 8 and the paragraphs I'd like people to
4 read are 8.93, 94, and 95.

5 (Pause)

6 The question here, Mr Dekker, is in the first few
7 years, because the BETA21 was such a small proportion,
8 31 per cent of the formula, there was a bigger jump in
9 the gain that we got on the selling price, is that
10 correct?

11 A. In the early part of the programme.

12 Q. I mean from 2005 to 2008, because the proportion of
13 proportion of BETA21 materials cost was much less,
14 23 per cent rather than 31 per cent, a big jump in that
15 BETA21 price gave you a multiplied jump in your selling
16 prices.

17 A. I think I agree with you. The price that, the cost that
18 we were allowed in the pricing for the components in the
19 early period was lower than what the market was actually
20 charging for the BETA21, and we were not entitled -- the
21 customer was not going to give us a lift on that, even
22 though the contract permitted it, and when we did the
23 calculation, there was a fairly significant jump in that
24 time period, that brought us up significantly on the
25 base price, so it then became a larger percentage of the

1 total cost for that component, and because you have
2 increased the base so dramatically, any incremental
3 change, of course, will run off the higher base, and
4 that was a fairly significant compound impact.

5 THE CHAIRMAN: So --

6 A. I think that's what you're saying.

7 THE CHAIRMAN: Because the material had simply increased it
8 allowed you extra profit on the sales.

9 A. Contractually, but the customer was denying that, yes,
10 that's correct.

11 MR LITTLE: So when you go to arbitration, you get a big
12 jump and the argument becomes, that's not justifiable. But
13 it's also true, Mr Dekker, and this is the second part
14 of the question, that once you go beyond the 31
15 per cent, ie from 2010 onwards, if your costs are going
16 up even higher for BETA21, it's actually then starting
17 to reduce your recovery, in your costs versus revenue,
18 you're actually starting to lose money, which
19 effectively is what PwC were saying, isn't it, in the
20 point they're making in 8.95, in other words, if you
21 take the selling price assumptions now, the customer is
22 only going to give you 31 per cent but your costs are
23 actually 35, therefore you're losing one and a half
24 per cent and it gets worse, the further you go out, the
25 worse it goes out, isn't that correct?

1 A. But you get the compound of each year on the base,
2 I mean the base increases, and you get your incremental
3 mark-up, because you do the incremental mark-up each
4 year, you do the price escalation calculation, based on
5 prices quoted at the end of the year.

6 THE CHAIRMAN: Your evidence is that the price was going to
7 keep increasing and your profit on it was going to keep
8 increasing.

9 MR LITTLE: Can I ask that question again a second way.

10 THE CHAIRMAN: Well, no. I'm not sure, this is now getting
11 into the realms of very detailed forecasting, and it's
12 not easy to follow, so when you have an answer, unless
13 you're able to challenge it by cross-examination,
14 I don't see any need to ask the question again.

15 MR LITTLE: It's a central part of the reasonable belief and
16 was actually part of the conversation on 14 September.

17 THE CHAIRMAN: Yes, but if you have an answer which you
18 don't like, you can challenge it by making alternative
19 suggestions but you can't simply put the question in
20 a different way, because he's given you an answer.

21 MR LITTLE: Are you suggesting, then, that PwC in 8.95, and
22 what they say as a conclusion impact on 8.94, is
23 therefore incorrect?

24 (Pause)?

25 A. I'm not sure I've developed a view on that. I'd have to

1 look at it a little more closely, I had not thought of
2 it in that light.

3 MR LITTLE: Can I just do one final bit on this, sir.

4 THE CHAIRMAN: Yes.

5 MR LITTLE: When we spoke on the telephone on 14 September,
6 this was a part of what I was discussing with you, about
7 the arbitration and needing to discuss further next
8 week.

9 MR LYNCH: It must be a question.

10 MR LITTLE: Yes, it is, sorry, do you recall this was an
11 element in the discussion that we were having about the
12 arbitration and the BETA pricing and how it was working
13 for us but then going to go against us and the
14 arbitration issue about what the letter of law was, do
15 you remember that discussion?

16 A. I do not remember that discussion at all, no, not that
17 aspect of the discussion.

18 Q. Do you remember the discussion about the arbitration and
19 the issues around what the implications for that would
20 be at all, around pricing?

21 A. I'm having great difficulty remembering very much about
22 that call at this stage, unfortunately, I've put much of
23 it out of my mind.

24 MR LITTLE: Sir, can I go back to the questions now to see
25 where does that leave us.

1 THE CHAIRMAN: Does that deal with ...

2 MR LITTLE: I'm sure, I hope you all realised just how
3 fundamental it was to the reasonable belief dimension.

4 THE CHAIRMAN: I do understand the point, does that mean
5 that you've dealt with --

6 MR LITTLE: Just going back to it now, sir.

7 THE CHAIRMAN: -- question 13?

8 MR LITTLE: I am of course referring to 1831, 31A, yes, we
9 discussed, recollection from those discussions with
10 Ernst & Young, I think it is appropriate to ask the 21,
11 the top one, the supplemental bit just before the end.
12 Can you tell us your recollection.

13 MR LYNCH: I'm not quite following which number we're on
14 now.

15 THE CHAIRMAN: 13.

16 MR LYNCH: I appreciate that, but I'm not sure which
17 supplementary.

18 MR LITTLE: I'm on 13, I've dealt in detail with the 1831,
19 so the penultimate question.
20 Can you tell us your recollection, okay.

21 Right, can you tell us your recollection from
22 discussions with Ernst & Young or PwC specifically on
23 the A340 sales revenue and pricing, what can you tell us
24 of your recollection of that?

25 THE CHAIRMAN: Hasn't he dealt with that?

1 MR LITTLE: Is there anything else you want to add?

2 THE CHAIRMAN: That's fair enough.

3 MR LITTLE: Is there anything else you want to add to what

4 we've just done, around that, with E&Y.

5 A. Around the sales re revenue and pricing --

6 Q. Q4?

7 A. Q4 2006, we had a number of discussions but again it's

8 the sensitivity, what if we get 31, 9, 60 per cent price

9 increase, it was all sensitivity analyses on the various

10 scenarios to get some sense for what might occur, and

11 they asked us to do some different iterations, and

12 John Furbay would have alerted me to that, I would not

13 have had the data.

14 Q. I think the last question, sir, sort of similar, as

15 well.

16 Is there anything else, I'm not sure it's worth

17 asking, actually, we've probably done enough of that.

18 THE CHAIRMAN: For the sake of completeness, as you have

19 gone so far.

20 MR LITTLE: Did you ever attend any meetings with

21 Ernst & Young and PwC with Mr Neill and Mr Butyniec for

22 the A340 in the period January to August 2007?

23 THE CHAIRMAN: That's with Mr Neill and Mr Butyniec, with

24 one or the other.

25 MR LITTLE: With E&Y and PwC.

1 A. PwC, no, that wasn't the form for interview, it was an
2 one on one, whenever PwC talked to us.

3 THE CHAIRMAN: No, so you met with Ernst & Young.

4 A. Ernst & Young, I mean, the regular meetings the board
5 meetings, first of all management meetings to discuss
6 the financial statements, both Rich and Jim would like
7 that, I'm confident they were both there, but certainly
8 at the board meetings, Jim and Rich would be there and,
9 you know, that would be a topic of discussion.

10 MR LITTLE: There's no indication in the Ernst & Young
11 meeting of having met Rich at all during 2006, into of
12 2006. He's not listed as one of their interviewees in
13 the audit report.

14 MR LYNCH: PwC.

15 MR LITTLE: No, Rich isn't.

16 THE CHAIRMAN: Can you remember whether you met?

17 MR LITTLE: 30 March 2007, you remember it always lists who
18 they interview and who they need, Rich's name isn't on
19 that.

20 THE CHAIRMAN: Well.

21 A. Well.

22 THE CHAIRMAN: This is January 2007, to August 2007. Can
23 you help us?

24 A. I guess I'm a little bit uncertain of what we're
25 describing as interviewing and meetings.

1 THE CHAIRMAN: No, just a meeting with, I don't know that
2 that's taking us any further overspeaking.

3 A. Because Rich would have been involved, when we were
4 dealing with the quantities issues, Ernst & Young was in
5 our offices, I mean, they lived there for the months
6 of February and March, and Rich was in constantly, and
7 Jim was there, and we would have meetings in the
8 boardroom regularly with them to talk about the various
9 matters, so certainly we would be meeting with them.

10 THE CHAIRMAN: Yes.

11 Okay.

12 MR LITTLE: Next question, then, just to finish this, and
13 then I'll give you an estimate for complete, page 22,
14 final question.

15 If so what can you recollect was discussed regarding
16 programmes and volumes.

17 Now, not pricing, the programmes and the volumes
18 discussion, do you want to add anything further to the
19 discussion with any of them with Ernst & Young or PwC in
20 programmes and volumes?

21 A. Not beyond what we've already talked about.

22 THE CHAIRMAN: Already said.

23 A. The Raj Thamburaj report and the like, this is all in
24 the bundles.

25 MR LITTLE: In the disclosure, you gave them the production

1 programme for the wings at ten aircraft a year type
2 process. Do you recollect any discussion with
3 Ernst & Young or PwC on it?

4 A. Well, when you say when you gave them, are you talking
5 about Ernst & Young or are you talking about
6 PricewaterhouseCoopers?

7 MR LITTLE: I'm told that the document was given to both of
8 them, for the programme, at 3600 --

9 A. Okay, if you're talking about that document, I did not
10 provide that to them, John Furbay did, again,
11 PricewaterhouseCoopers moved three people into Aeronca
12 for three weeks, and they just descended on that team
13 and asked whatever questions they needed to ask, so
14 I don't know what was provided to them.

15 THE CHAIRMAN: Okay.

16 MR LITTLE: Okay, so you were not involved in any discussion
17 on the programmes and volumes conversations, per se?

18 A. Not per se.

19 Q. All right, I'll ask one more question, top of page 23,
20 sir, and then I think we're there.

21 Did you and Mr Neill or Mr Butyniec ever meet any
22 discussion or resistance during 2006 from Mr Paul
23 Gilbert, or any Aeronca management, on the projected
24 A340 sales volumes to be used by Aeronca in their
25 quarterly EAC analysis which could lead to what some

1 people would call management override?

2 A. Did we ever ...

3 Q. Did you or Rich ever have any discussion or resistance
4 discussions with Mr Paul Gilbert or other Aeronca
5 management on the projected sales volumes that were
6 going to be used?

7 A. I certainly did not, I know that Rich had discussions
8 with the Aeronca team, I'm trying to think when Paul
9 Gilbert, his involvement with that process, he was quite
10 intimately involved at that point in time, Rich likely
11 had discussions, but I can't say for sure. And I've no
12 idea what the issue of those discussions might have
13 been.

14 Q. That only leaves us with the final question
15 supplementary 3, sir, and just to complete, so with this
16 question and what I call question 18, okay, and I'm
17 estimating 15 minutes will complete us from here.

18 MR LYNCH: On one question?

19 MR LITTLE: It depends how fast you all stay with us, with
20 those documents, that's why.

21 THE CHAIRMAN: I thought we'd already dealt with question
22 18.

23 MR LITTLE: If you go to document 4176 to 4182, which I am
24 certain that you probably don't have, Mr Dekker, and
25 you'll need. I know where it is, sir, it's in your

1 aide-memoire from Monday, there's an attachment, the
2 documents attached to the back of that.

3 MR LYNCH: Hang on, we're looking for 4176.

4 MR LITTLE: To 4182.

5 MR LYNCH: I definitely don't have them.

6 MR LITTLE: Charles should have them.

7 A. I go as far as 4052.

8 MR LYNCH: Same here.

9 (Pause) (Handed).

10 MR LITTLE: Have you seen that before?

11 A. It doesn't look familiar.

12 MR LITTLE: If this doesn't ring a bell for Mr Dekker, which
13 it appears not to, this may take a little time.

14 THE CHAIRMAN: This may what?

15 MR LITTLE: It may take a little time, I was hoping that it
16 had been read.

17 THE CHAIRMAN: If it doesn't make any sense to him, it might
18 take no time, because there's no point in asking him
19 questions, there may be others you want to --

20 MR LITTLE: Well, it's critical because it replicates the
21 EAC thing and comes out of --

22 THE CHAIRMAN: Well, come on. Let him have a look at it and
23 see what he can make of it.

24 MR LYNCH: These aren't newly disclosed documents.
25 Tribunal, these are not --

1 THE CHAIRMAN: No, but you seem to have agreed.

2 MR LYNCH: I'm not sure we knew what we were agreeing to.

3 THE CHAIRMAN: Well, that's ... (Pause).

4 MR LYNCH: I mean ...

5 MR LITTLE: Can I explain what the documents are, sir?

6 THE CHAIRMAN: Well, what do you want to ask him?

7 MR LITTLE: Right, these documents essentially replicate the

8 EAC documents of 1830 and 31, in the context of volumes

9 and pricing and the recoveries, so this essentially is

10 what Deloittes and I have replicated to show changing

11 volumes and what effectively was happening in the

12 context of differing assumptions. And across the top

13 you will see the programme volumes per year, and then

14 you will see calculations --

15 THE CHAIRMAN: Mr Dekker, have you seen this document

16 before?

17 MR LITTLE: No, that's my point, he has not seen it, which

18 I don't understand why.

19 MR LYNCH: Because we were not aware of the fact that we

20 were allowed to show documents to the witness, that's

21 right, isn't it? In any event, I don't think we

22 realised that that was what these were, there was

23 a chain of emails from 29 May.

24 THE CHAIRMAN: This is dense material that you can't

25 possibly expect a witness to -- I mean, how you earth

1 this witness is expected to digest this information at
2 this juncture I simply do not know. I mean, in fact,
3 this question looks as though it's meant to, well, it's
4 not a question at all, it is you taking him through the
5 spreadsheets and options and putting to him the material
6 based on data used by MAC and PwC. I mean, he would
7 need to have that in front of him and make sure that
8 he's up to speed on that. This is just
9 disproportionate, Mr Little.

10 MR LITTLE: Can we deal with this through my recall, I'll
11 explain what it's doing.

12 THE CHAIRMAN: Just don't make any assumptions about your
13 recall.

14 MR LYNCH: Tribunal, first of all may I say that this may
15 well reflect our fault, that, as I said, I'm not sure we
16 understood what we were agreeing to. My recollection
17 is, I'm not waiving privilege in any other sense but
18 certainly speaking for myself, I can say that it was the
19 reference to the document 1831A, which is from the
20 respondents, it was because of that that we agreed to
21 this request, but we certainly didn't, I certainly --
22 I can absolutely be sure to say that I didn't understand
23 that by agreeing to this request it was going to open
24 the door to questions of the kind of detail that are
25 foretold by the incredibly detailed table.

1 May I say this, tribunal, I just wonder whether it
2 may not be the case that these are matters that
3 Mr Little, can, of course, make submissions upon, as to
4 what he says the implications of these tables are.
5 THE CHAIRMAN: Well, of course he can do that.
6 MR LYNCH: It would be impossible for Mr Dekker to try and
7 take them on board.
8 MR LITTLE: Can I also just make the point, sir, these are
9 the same models as were provided in November 2007,
10 simply brought up to date with the latest data, almost
11 made no change to what was available in the bundle.
12 THE CHAIRMAN: Mr Little, this is just impossible, I'm
13 sorry, this witness cannot be expected to digest this
14 information in the space of five minutes before he's
15 asked questions on it. It is simply not acceptable.
16 For one reason or another, he has not seen them, and
17 he's going to be ambushed by it, and I don't mean that
18 to be critical of you, I just mean it in a practical
19 sense, it's just too dense to expect an individual, any
20 individual, to be able to get a handle on that, and
21 certainly not at 4.50 after he has been giving evidence
22 for nearly three hours.
23 MR LITTLE: Well ...
24 THE CHAIRMAN: What is the point of it?
25 MR LITTLE: The core issue, and this comes back to

1 reasonable belief, and I have an increasing ever
2 threshold of what I'm supposed to be correct about, it
3 replicates entirely all the supporting data that John
4 would recognise from the EAC, it is it simply applies
5 the programme volumes and numbers from existing 1831 and
6 shows you simple loss calculations up to 2012 and if it
7 was beyond 2012.

8 THE CHAIRMAN: So you are trying to establish that by
9 looking at these figures, in fact, by 2012, there would
10 be a loss of 35 million or thereabouts, by 2021, there
11 would be a loss of 31 million.

12 MR LYNCH: It could not possibly be the case that this was
13 in Mr Little's mind in 2006.

14 MR LITTLE: Well --

15 THE CHAIRMAN: These are terribly detailed calculations, but
16 in any event, with great respect to Mr Little, I mean,
17 you know, obviously the principle of proportionality
18 applies to the detail of cross-examination, and of
19 course for it to be fair to the witness as well as to
20 Mr Little, so I do think it would be impossible to try
21 to go through the detail.

22 MR LITTLE: I want to deal with what I knew in 2006, because
23 that is wrong.

24 THE CHAIRMAN: Wait a minute, you have in fact dealt with
25 what you knew in 2006 in your evidence.

1 MR LITTLE: I did.

2 THE CHAIRMAN: And that is central to your case, I need to
3 speak with my members about this, because I want to know
4 what their views are in relation this --

5 MR LITTLE: Can I make this easy, if John hasn't looked at
6 it, it is unfair, I'd made the presumption that he had,
7 or look at the previous November stuff, I didn't think
8 that he would not have seen it.

9 THE CHAIRMAN: Well, you are entitled to make submissions on
10 this, and you can put them in writing as to what you
11 intend by it, but I -- you know, do you agree? I just
12 don't see, Mr Little, in fairness.

13 MR LITTLE: I've withdrawn it, but what I would like to do
14 is spend three minutes with John explaining what it is,
15 because that is central to the case.

16 THE CHAIRMAN: You don't need to do that in evidence.

17 MR LITTLE: Not in evidence.

18 THE CHAIRMAN: He doesn't have to do that, that's a matter
19 only he can --

20 MR LITTLE: He has to persuade me logically I'm wrong.

21 THE CHAIRMAN: I don't think he's going to want to deal with
22 it.

23 MR LYNCH: A gin and tonic may be a more attractive thing.

24 THE CHAIRMAN: I suspect so.

25 MR LITTLE: Sir, we're not going any further, if he has not

1 looked at it recently or in November 2007, I just don't
2 know why that has not happened but it's unfortunate and
3 let's leave it.

4 THE CHAIRMAN: Right, okay.

5 MR LITTLE: Because it is after two or three hours.

6 THE CHAIRMAN: You can make submissions on it, as I say.

7 MR LITTLE: I would like, and you heard it earlier, about
8 the recall thing, but this helps bring together all the
9 late disclosure documents and brings up to date what
10 I original had in November 2007.

11 That is it complete, sir.

12 THE CHAIRMAN: Thank you. Now, then.

13 Re-examination by MR LYNCH

14 MR LYNCH: You were taken to a document in which a number of
15 issues were discussed in the and adjusted in the
16 auditing process, do you remember that?

17 A. Yes.

18 Q. Can you tell the tribunal whether those were matters
19 that were being discussed by a number of senior
20 managers, or were those matters that were simply being
21 discussed because Mr Little had raised them in
22 a whistleblowing context?

23 A. No, those matters that arose out of the individual
24 business units and the results of the audits -- so we
25 would have managers at various business units addressing

1 those issues with us, as a result of the audit. Through
2 the multiple participants in that.

3 Q. In regard to the so called adjustment of £134,000 to
4 £84,000, the suggestion being, well, PwC didn't know
5 about that, did the adjustments that were made, did
6 those adjustments, as it happens, that gave rise to
7 a reduction of £50,000, did those adjustments impact on
8 the logic of the engineering overheads issue or were
9 they relating to other issues?

10 A. They were unrelated to the concept of how the overhead
11 should be -- the concept that overhead should be
12 allocated to inventory.

13 Q. You were taken to document 1831, which may be maybe
14 sticks in your head?

15 A. Sadly, it does.

16 Q. It's the document in which certain figures are set out,
17 in terms of calculations. You said that that would be
18 given to Ernst & Young, together with the underlying
19 documents. To what extent would those underlying
20 documents allow Ernst & Young to test the figures, that
21 appear in that document?

22 A. I'm not sure whether we provide Ernst & Young with the
23 documents in electronic form or in hard copy but
24 certainly they come into our business unit, the Aeronca
25 unit, and work closely with our contracts people, and

1 the accounting people, and would look for us to do
2 sensitivities on those work sheets, and they could be
3 adjusted to get a sense for effect on the bottom line,
4 should some of the variables change.

5 Q. You were asked a question in fact by the learned judge
6 in regard to engineering overheads and your reply was,
7 you certainly recall that well. And I wasn't quite
8 clear from your answer whether you were saying in reply
9 that you recall that issue, engineering overheads, very
10 well, or whether you were saying that you recollect the
11 letter from Ernst & Young dated 11 July?

12 A. I was referring to the engineering matter, as we were
13 trying to decide on what it was I recollected in that
14 transcript, or the ...

15 THE CHAIRMAN: Notes.

16 A. The notes. I was searching for the appropriate word.

17 MR LYNCH: It was that, rather than saying you had any clear
18 recollection of the July 2007 letter?

19 A. That's correct.

20 Q. And in regard to that letter, as I suspect the witness
21 knows, certainly the tribunal does, we've set out the
22 account of the provenance of that letter, and the basis
23 on which it came to be disclosed in the end and
24 submission has been made as well, at earlier stages.

25 So you made clear that you in fact didn't mean you

1 had any particular specific memory of this letter, but
2 so far as you are aware, what is your reply to the
3 suggestion that, as I understand it, is being made, that
4 the PricewaterhouseCoopers letter of 11 July -- I'm so
5 sorry, the Ernst & Young letter of 11 July 2007 was
6 deliberately not disclosed or suppressed by Magellan?

7 A. Absolutely not, we had no reason to withhold that and we
8 also undertook a fairly exhaustive search looking for
9 a like document for Ernst & Young at Group and were
10 unable to locate anything, so we ended up providing
11 excerpts of the year end board of directors meeting
12 where -- the audit committee meeting where Ernst & Young
13 presented to us the outcome of the audit in the hopes of
14 providing some useful information.

15 MR LYNCH: Tribunal, that concludes my re-examination.

16 THE CHAIRMAN: Any questions?

17 MR POWELL: No.

18 THE CHAIRMAN: Thank you.

19 MR LYNCH: Mr Dekker, thank you very much indeed, thank you,
20 tribunal.

21 We've done it, it's 5.00, it's not bad.

22 MR LITTLE: Any estimating was based on the stuff that we've
23 done before, it's the documents and trying to go slowly
24 through it.

25 THE CHAIRMAN: We are where we are now.

1 MR LITTLE: It's a good job we cut out half of them.

2 Discussion regarding timetable

3

4 THE CHAIRMAN: Now, we need to think about the next stage.

5 MR LITTLE: There are also issues of my aide-memoire, sir,

6 we need to deal with how and where we deal with any of

7 that, again.

8 MR LYNCH: I don't think now is the time to have a ...

9 THE CHAIRMAN: Right. We can't now sit until the week

10 beginning 13 July, so what we have to do next is to deal

11 with Mr Neill's position, and his recall. In terms of

12 the general principles, you know what they are, so

13 there's a list of questions, so can you, based on that

14 premise, on the principles that we outlined, see if you

15 can agree the questions for Mr Neill.

16 MR LYNCH: Exactly.

17 THE CHAIRMAN: We will, on the next occasion, in the

18 morning, deal with Mr Neill's.

19 MR LYNCH: Evidence -- I see, the questions.

20 THE CHAIRMAN: If we need to, if there is still an issue.

21 If there's no issue, we'll deal with the question of

22 recalls for Mr Underwood and Mr Smith and, if we have

23 time, the claimant. And then on that afternoon we will

24 deal with the evidence of Mr Neill.

25 MR LYNCH: Yes.

1 THE CHAIRMAN: I don't suppose he's going to come back, is
2 he?

3 MR LYNCH: I hope he will.

4 THE CHAIRMAN: Mr Dekker has his hand up, that means there's
5 trouble.

6 MR DEKKER: No, I'm just trying to help.

7 THE CHAIRMAN: I know.

8 MR DEKKER: I spoke to Mr Neill last evening, and he is
9 available from 4 to 18 July, so this fits perfectly.
10 And he's prepared to come here.

11 THE CHAIRMAN: Right, that's excellent. That saves us
12 a short trip.

13 MR LITTLE: And avoids the air conditioning, as well.

14 THE CHAIRMAN: All right. We'd better fix a date.

15 MR LYNCH: Yes, do you think two days?

16 MR LITTLE: Two days should finish

17 THE CHAIRMAN: We'll come back on that in a moment.

18 (5.04 pm)

19 (Pause)

20 (5.09 pm)

21 THE CHAIRMAN: You will have to wait a moment, I have to go
22 online to get my diary.
23 Are there any dates to avoid?

24 MR LYNCH: I don't know, I haven't asked my clerk yet.

25 THE CHAIRMAN: That week.

1 MR LYNCH: Is that a Monday, the 13th?

2 THE CHAIRMAN: We'll have to do our best to get Mr Neill
3 accommodated within that week.

4 MR LYNCH: I'll phone my clerk now.

5 MR LITTLE: No problem.

6 MR LYNCH: Tribunal, sorry.

7 THE CHAIRMAN: Yes. It doesn't look as if we're going to be
8 able do more than a day, I am afraid.

9 MR LYNCH: So we have one day.

10 THE CHAIRMAN: One day, we have to finish Mr Neill in that
11 day, but we will not be able to do more than a day that
12 week.

13 MR LITTLE: And there's the expectation it's
14 probably September.

15 THE CHAIRMAN: I am afraid so.

16 MR LITTLE: So we're going to get round to our third
17 anniversary. (Pause) sir, just to change the subject
18 a little bit, how long would you anticipate that until
19 the closing submissions time, are we talking about six
20 or eight weeks, or 12 weeks, or what? Because I am
21 frightened to death about how much is involved in this,
22 and whatever else.

23 THE CHAIRMAN: Yes.

24 MR LITTLE: Do you have any sense of guidance for me, I have
25 no idea.

1 THE CHAIRMAN: We certainly think you need quite a bit of
2 time to get submissions together, what we will do,
3 certainly before you start, is give you a framework to
4 operate in.

5 MR LITTLE: Are you thinking a couple of months or three
6 months, type of thing?

7 THE CHAIRMAN: We will not be expecting that length of
8 delay, no. From the point at which we finish the
9 evidence to the point where we would expect you to
10 exchange your first set of submissions probably would be
11 between four and six weeks.

12 MR LITTLE: Right, that's really what I was looking for.

13 MR LYNCH: Tribunal, if all the days really are equally
14 convenient to everybody, then may I suggest the 14th.

15 MR LITTLE: I'd prefer, if it was possible, to be at church
16 that weekend, if I could, and that would mean coming on
17 the Monday.

18 MR LYNCH: Is that all right?

19 MR LITTLE: Yes, I'd prefer the Tuesday, if that was
20 possible.

21 MR LYNCH: Is that convenient?

22 THE CHAIRMAN: It looks like any day for me. Tuesday 14.
23 We could do Monday 27.

24 MR LYNCH: I'm so sorry, sir.

25 THE CHAIRMAN: We could do Monday 27, as well.

1 MR LYNCH: I don't know whether Richard Neill could be here
2 then?

3 THE CHAIRMAN: We'll have dealt with him on the 14th, he has
4 to be finished on the 14th.

5 MR LYNCH: If that were the case, sir, I am under immense
6 pressure to try and take August off, because I haven't
7 had a holiday for a while, so I'd hope the closing
8 submissions would be mid-October or something like that.

9 THE CHAIRMAN: We understand that. Let me see. We would
10 finish Mr Neill on the 14th, definitely, but we may not
11 even have dealt with the applications to -- for your
12 other recalls.

13 MR LITTLE: No, I don't think we will.

14 THE CHAIRMAN: If we were to agree to recalls, based on the
15 principles that we've enunciated, there's no way we
16 would be finishing the evidence before September anyway,
17 so --

18 MR LITTLE: If the 27th was available, would you not hope
19 we'd try and get that done within the day.

20 THE CHAIRMAN: I don't think there's any realistic prospect
21 of it, you know, being realistic about it.

22 MR LITTLE: That's fine, I know we've set off several times
23 to try and get finished.

24 THE CHAIRMAN: I had hoped to get you a judgment by July at
25 one point early this year.

1 MR LYNCH: 27th is fine.

2 MR LITTLE: That's okay for us, too. I've said to Mr Lynch
3 that it would be helpful if we work through Shawn and
4 the other stuff to get as much agreed or not agreed, if
5 it was at all possible and I'd like you to encourage us
6 to do that.

7 THE CHAIRMAN: Yes, what I -- what we decided this morning.

8 MR LYNCH: Sorry, sir.

9 THE CHAIRMAN: What we decided this morning was the
10 application about Mr Dekker, but when we gave judgment
11 on that matter, the matters that we indicated at the
12 outset were inevitably general applications, we're not
13 going to reconsider that component of the application.
14 And therefore, where we have said that we would allow
15 someone to be recalled for a particular purpose, then
16 that will apply to Mr Smith, to Mr Underwood, and to the
17 claimant. So in terms of giving you a heads up, as far
18 as coming to some form of agreement about what should
19 happen --

20 MR LYNCH: That's obviously a very great help.

21 THE CHAIRMAN: You will bear that in mind, and similarly
22 with you, you will notice the limitations on recall.

23 MR LITTLE: I have that, yes.

24 THE CHAIRMAN: So there will be, I would have thought,
25 without looking at those, a coming together of the

1 parties, we would hope, in respect of those, that will
2 shorten things, it still doesn't mean that we would be
3 anticipating getting anywhere near submissions, an order
4 for submissions until September, and as I was saying to
5 Mr Little, it's -- we would be allowing somewhere
6 between four and six weeks for initial submissions
7 thereafter, with another period of time for you to
8 respond, mutually, but we think this is a case where you
9 will have to come back and make oral submissions, give
10 you the opportunity to make oral submissions.

11 MR LYNCH: Thank you very much indeed, much appreciated.

12 MR LITTLE: Yes.

13 THE CHAIRMAN: So close it all down, but you will be aware
14 from all that that the timescale for a deliverance of
15 a judgment is the New Year.

16 MR LITTLE: Yes.

17 MR LYNCH: Yes. The only other thing I was going to say, if
18 I may, and Mr Little's estimate, time estimate for
19 Mr Neill was, of course, longer than it was for
20 Mr Dekker, now, we have to get Mr Neill done in a day
21 and obviously the less time we can spend arguing the
22 toss about questioning, so much the better.

23 THE CHAIRMAN: Absolutely.

24 MR LYNCH: And obviously, we have the general compass from
25 this morning, which was immensely helpful, but

1 realistically there are going to be some disagreements
2 and it seems to me it may be helpful, I know it's
3 ghastly, you always turn up and get more material, but
4 it may just save time if we did written submissions to
5 the tribunal setting out why we disagree or agree, not
6 why we agree, but if there is disagreement setting out
7 the arguments, so it might save time, if that's not
8 a help, and it may fill your heart with horror ...

9 THE CHAIRMAN: Is this something that you think that both of
10 you can just cover in written submissions and that you
11 will not need to have organise submissions on the
12 morning, because if that's the case, we managed
13 a telecon which we might be able to set up in advance of
14 14 July.

15 MR LYNCH: We could have a short, a telecon CMD that will
16 mean --

17 THE CHAIRMAN: No, that's between ourselves, you see, so
18 unless you're saying that you need to make oral
19 submissions on these points, if you do, we'll have to
20 hear it on the morning, we certainly would like you to
21 give the claimant written notification of your
22 objections to Mr Neill and Mr Underwood and Mr Smith,
23 but it has to be based on the premise of what we said at
24 the outset of this application.

25 MR LYNCH: Absolutely, sir, and we want to get the questions

1 first, and then we'll know whether we do or don't
2 object.

3 MR LITTLE: You have all the questions.

4 THE CHAIRMAN: You have the questions.

5 MR LITTLE: You have what you understand to be the technical
6 rules now, so if you can tell me that, I can come back
7 and say, this, this and this should go, and we should
8 get this sorted out, so there's the minimum amount of
9 time required with the tribunal.

10 THE CHAIRMAN: If you could do that not less than seven days
11 before 14 July, so that's why 7 July.

12 MR LYNCH: We should, sorry?

13 THE CHAIRMAN: If you can respond to the written application
14 not less than seven days before 14 July.

15 MR LYNCH: And that's to the tribunal, as well as Mr Little?

16 THE CHAIRMAN: Yes, so that we have it then when we arrive
17 on the morning of the 14th, I don't think it's something
18 actually that you can do just in writing, so you're
19 better off then just coming to the morning.

20 MR LYNCH: Thank you very much.

21 THE CHAIRMAN: What time should we start on that morning.
22 9.30.

23 MR LYNCH: 9.30.

24 THE CHAIRMAN: 9.30 on the 14th.

25 MR LITTLE: So I will get back yeses and noes for each of

1 them no later than the 7th, and what I'm clear on it's
2 purely document disclosure so it's question numbers that
3 I looked at before to be looked at and responded to.
4 THE CHAIRMAN: The principle is, where there's new material.
5 MR LITTLE: Yes.
6 THE CHAIRMAN: And with Mr Neill there's the A340.
7 MR LYNCH: Yes.
8 MR LITTLE: If I can just remind you which are the only ones
9 you need to look at, in my view, so you're not wasting
10 any time.
11 THE CHAIRMAN: Right, response is by 7 July.
12 MR LYNCH: If you could write that to us, that would be
13 helpful.
14 MR LITTLE: You want it in writing?
15 MR LYNCH: Yes, but pithily, if I may say so.
16 THE CHAIRMAN: 9.30 on the 14th, and 27th July.
17 MR LYNCH: Tribunal, thank you very, very much indeed from
18 all of us for your patience.
19 MR LITTLE: Particularly this afternoon, because if
20 reasonable belief wasn't challenged, we probably
21 wouldn't be here at all.
22 MR LYNCH: I very much doubt that.
23 Thank you very much indeed and have a nice June.
24 THE CHAIRMAN: Few days.
25

1 (5.22 pm)

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(The hearing adjourned until

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Tuesday, 14 July 2009 at 9.30 am)

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