OPUS2

The Financial Conduct Authority vs. MS Amlin Underwriting Limited and others

Day 4

July 23, 2020

Opus 2 - Official Court Reporters

Phone: +44 (0)20 3008 5900

Email: transcripts@opus2.com

Website: https://www.opus2.com

1 Thursday, 23 July 2020
2 (9.59 am)
3 LORD JUSTICE FLAUX: Good morning.
4 Are we hearing from Mr Lynch now?
5 MR LYNCH: My Lord yes.
6 LORD JUSTICE FLAUX: Good morning, Mr Lynch.
7 Submissions by MR LYNCH
8 MR LYNCH: Good morning. My Lord, I'm grateful to your
9 Lordships for sitting early again.
10 I will be addressing the public authority clause in
11 the Hiscox policies; please see Hiscox 1, at {B/6/42} at
12 clause 13. If that can be pulled up, please.
13 In my 30 minutes I would like to develop three
14 points: first, how to go about construing the public
15 authority clause; second, the argument that the word
16 "occurrence" must mean localized to the insured
17 premises; and third, a hypothetical worked example.
18 Turning to my first point, with respect your
19 Lordships will know this all very well, however, the
20 tidal wave of objection and being told that the proper
21 construction is extremely narrow is on its way and the
22 following may be of assistance.
23 Looking at {B/6/41}, and the stem, so if we could
24 see that document, there is the stem wording. We have
25 just seen clause 13 on {B/6/42}. Properly construed,

1 the words used are flexible and capable of multiple
2 meanings. Whether they capture a given set of facts is
3 an acutely fact-sensitive exercise and an exercise of
4 judgment, not one of reformulation of the clause or
5 replacing the words with synonymous or single dictionary
6 definition for each. They are words that can carry both
7 narrower and broader applications, and that is their
8 proper construction. For example, in clause 13 the
9 words "restrictions imposed by a public authority" could
10 mean direct closure orders having the force of law; but
11 something less strict and specific, such as "directions
12 of those of a public authority, including the statements
13 of the Prime Minister on 16 and 23 March commencing
14 lockdown and closing shops".
15 A good example of Hiscox's contrary approach appears
16 in paragraph 204 of its skeleton; please see {I/13/66}.
17 Your Lordship will see the first four lines of
18 paragraph 204:
19 "Secondly, on the FCA's approach the definition of
20 'imposed' and 'restrictions' is so elastic that it would
21 be impossible to know what was within the clause and
22 what was not. The confinement of the clause to
23 mandatory restrictions avoids this uncertainty and is
24 clearly what the clause was objectively intended to
25 apply to."

1 That approach is wrong, for reasons I will come on
2 to consider.
3 As another example, if we please see {B/6/41} and
4 the stem wording, "What is covered". Hiscox argues that
5 the word "interruption" means something very narrow and
6 restrictive, such as a complete stop and a later
7 restart. However, that is very unlikely in light of
8 points your Lordships already have. For example, your
9 Lordships already have the points clause 5 and clause 9.
10 By way of brief recap, your Lordships will remember that
11 under clause 5 there is the "shortfall" point and under
12 clause 9 there is the "unless the business only had one
13 supplier point", but even then note the word "any".
14 There is also on {B/6/40} cover for increased cost
15 of working or additional increased costs of working, as
16 per the introduction.
17 More likely, therefore, the word "interruption" is
18 capable of covering something wider than just a complete
19 stop and restart. So whilst interruption is capable of
20 a very narrow construction, it is also capable of
21 a wider meaning.
22 Your Lordships of course already have the points,
23 but the words used in the policy are capable of a range
24 of meanings covering both broad and narrow application,
25 and that is the proper construction. The key point is

1 not to think, as Hiscox would submit: well, these words
2 are broad and flexible and so it is necessary to give
3 them one narrow construction or else they don't make
4 sense or are too uncertain. Instead, the key is to
5 accept the proper construction of the words is that they
6 are words capable of covering a variety of
7 circumstances, and that of course fits with their
8 obvious objective commercial purpose of covering a very
9 wide range of circumstances. (Pause)
10 Sorry. Thank you. So clauses 1 to 16 make it
11 clear, and even within the subclauses of clause 13
12 itself, the objective commercial purpose is covering not
13 only --
14 LORD JUSTICE FLAUX: We're on the wrong page, Mr Lynch. We
15 are on page 40 for some reason, don't ask me why.
16 MR LYNCH: Sorry. Page {B/6/41}. Your Lordships will see
17 the wide range of circumstances there. Then
18 page {B/6/42}, your Lordships will see another wide
19 range of circumstances, including clause 13 itself.
20 LORD JUSTICE FLAUX: We've already drawn attention to the
21 specified customer, specified supplier provisions, which
22 unless the relevant insured only had one supplier and
23 one customer, the interruption is unlikely to be
24 a complete one.
25 MR LYNCH: Exactly. Your Lordship has absolutely already

1 got the point. I really only used that point to draw
2 out the generalised approach that I would submit is the
3 correct approach, which is to say that it is possible
4 for the word "interruption" to have a very narrow
5 meaning, but here it doesn't; here it is a word that is
6 capable of covering a range, and it will depend on the
7 facts, whatever falls within that meaning. But that
8 doesn't mean it has got multiple meanings; it means it
9 has one meaning, which is that "interruption" is to be
10 given its natural meaning.
11 So if I could draw an analogy, and it is only an
12 analogy, but if I could ask, please, to go to {M/1/1}.
13 Here we see the AIG case in the Supreme Court, which
14 your Lordships will no doubt be familiar with this
15 authority. If we could go to paragraph 22 on {M/1/8},
16 please. This is the Supreme Court's decision on the
17 solicitors' minimum terms, and conditions, in particular
18 the aggregation clause wording; and the relevant
19 wording, which no doubt your Lordships will be familiar
20 with, is the "similar acts or omissions in a series of
21 related matters or transactions" point.
22 The fundamental question was: well, what does
23 "related" mean? We see at paragraph 22 at the top, just
24 reading down, if I ask your Lordships just to read from
25 A down to C. (Pause)

1 Your Lordships will see it is an analogy, but it is
2 the same point.
3 In the AIG case, the SRA said: look, the word
4 "related" is far too broad, it has to be given a very
5 narrow meaning, it must mean something intrinsic,
6 a relationship only between the matters or transactions,
7 and not with some third matter, because otherwise it is
8 too broad.
9 The Supreme Court held, following my Lord
10 Lord Justice Rix in Scott v Copenhagen Re, that it is
11 not the right approach. The right approach is to look
12 at the word "related" and say, well, given its natural
13 meaning it is capable of multiple applications because
14 that is its natural meaning, that's its right meaning.
15 And it is not a question of reformulating the clause, it
16 is an exercise of judgment, not a reformulation of the
17 clause to be construed and applied.
18 Obviously that is an analogy only, but it is
19 applicable here.
20 If I could then go, please, to {M/2/7} just to make
21 it good. Obviously this isn't a point that applies only
22 to aggregation clauses, it is a point that applies
23 across the board, and your Lordships will see there, if
24 your Lordships could please read the Tophams extract.
25 (Pause)

1 Then down towards the bottom you will see a passage
2 taken from the judgment of Mr Justice Slade in the Earl
3 of Lonsdale:
4 "Of many, perhaps the majority, of the words used
5 by English speaking people there can be little doubt as
6 to the ordinary meaning, or 'literal' or 'primary'
7 meaning, as it is often called. To take an example at
8 random, the court would not, I conceive find much
9 difficulty in attaching a literal or primary meaning to
10 the word 'elephant', if it found it in a written
11 instrument. In contrast, however, some English words
12 and phrases fall into a second, quite different
13 category. They are words and phrases which are readily
14 capable of bearing two or more alternative meanings and
15 to which the court is not willing to ascribe a prima
16 facie meaning, so as to impose upon any party the onus
17 of displacing it. In any such case the court finds
18 itself obliged to construe the word in its particular
19 context, having regard to the admissible evidence,
20 without any predisposition to give it one meaning in
21 preference to another."
22 This is not actually hugely different from the point
23 that Hiscox itself makes in its own skeleton at
24 paragraph 264 at {I/13/88}. We see there the reference
25 to my Lord Lord Justice Bridge in the Shell case saying:

1 "... it is no novelty in the common law to find that
2 a criterion on which some important question of
3 liability is to depend can only be defined in imprecise
4 terms which leave a difficult question for decision as
5 to how the criterion applied to the facts of a
6 particular case. A clear and distinct line of
7 demarcation may be impossible to draw in abstract terms,
8 yet the court does not shrink from the task deciding on
9 the facts any case before it, on which side of the line
10 the case falls."
11 Here, if we go back to {B/6/42} please, we have
12 subclauses (a) to (e) covering a wide variety of factual
13 circumstances which are not capable of prediction or
14 foresight without absolutely precision. The subclauses
15 are deliberately broad and nonspecific, with the linking
16 word between the events and the subclauses and
17 restrictions imposed with the very general word
18 "following".
19 Now, that does leave the application of the clause
20 to an exercise of judgment on the particular facts, and
21 it is therefore inappropriate to read words into the
22 clause in an attempt to create greater certainty in its
23 scope. Hiscox falls into error in doing so. Whilst the
24 clause is certainly capable of applying the way Hiscox
25 argues, that is only one application of the clause.

1 However, it is not the only set of circumstances which
2 fall within the ambit of the clause, because its proper
3 construction recognises the breadth of the wording used.
4 Hiscox is well capable of using narrower language.
5 If we see {B/6/41}, please, and the non-denial of access
6 clause at clause 3, there they specify, at the end of
7 that clause, "for more than 24 consecutive hours". Now,
8 that is a very specific wording used and it is well able
9 to do that, but it also is well able to use more
10 flexible language.
11 Now, what we would obviously seek from the court is
12 guidance in terms of the proper construction being the
13 broader construction, and whilst the court cannot of
14 course apply the clause to all the facts of the various
15 cases, there are some agreed facts where that can be
16 done, for example the 16 and 23 March statements made by
17 the Prime Minister. Otherwise, the parties will be able
18 to apply the properly construed clause to the facts
19 themselves.
20 That was my first point about how to go about the
21 proper construction of the clause, which again obviously
22 your Lordships will be very familiar with, but your
23 Lordships will now have Hiscox saying that in fact the
24 right approach is a very narrow construction, and
25 hopefully those introductory points would help.

1 On to my second point, which is the occurrence or
2 localisation. So the second point I would like to
3 address is the argument the word "occurrence" must mean
4 localised insured premises. Mr Edelman has already
5 addressed you on this point and so I will only deal
6 briefly with a couple of additional points.
7 If we go to {A/10/16} please, that should be
8 paragraph 14.3 of the Hiscox defence. I am afraid
9 I must have an incorrect reference, but I can just tell
10 you what the defence says. It's paragraph 14.3 -- thank
11 you. Sorry, it is {A/10/6}:
12 "An occurrence must be local and specific to the
13 insured, its business or business activities or the
14 premises."
15 Now, we deal with this point in paragraphs 132 to
16 143 of our skeleton, and I won't repeat those points,
17 but what that means is reading in the words "local and
18 specific to the insured, its business or business
19 premises" at the end of the public authority clause.
20 Now, the first and most obvious point to make is the
21 clause simply doesn't say that, and it is a point of
22 such obviousness that it could be missed; but the task
23 at hand is obviously to construe the words which are
24 there, which words say what they say. That is
25 particularly the case in a policy of this kind where, if

1 we please look at {B/6/15}, we see the introduction to
2 the Hiscox wordings say:
3 "Thank you for choosing Hiscox to protect your
4 business. We hope the language and layout of this
5 policy wording are clear because we want you to
6 understand the insurance we provide, as well as the
7 responsibilities we have to each other."
8 If we return, please, to {B/6/42} and 13(b),
9 obviously it doesn't include the words that Hiscox says
10 it should include, but nor does it have to mean what
11 Hiscox says it means for any other reason. For example
12 if the clause didn't work, there was some problem with
13 it or it didn't make sense, but there is a perfectly
14 reasonable and legitimate construction, indeed obviously
15 the right construction, which is to read the words as
16 they appear in the clause; Hiscox say in response: well,
17 the occurrence of disease could be in Manchester and the
18 insured premises are in Truro. Well, there is
19 Mr Edelman's very good answer to that, which is that the
20 occurrence is not the entire insured peril. The
21 occurrence has to lead to restrictions imposed by
22 a public authority, which have to lead to the inability
23 to use the insured premises. That is a sufficient
24 restriction on the clause. In the most common case, an
25 occurrence of disease in Manchester may well not affect

1 an insured premises in Truro, but that will simply
2 depend on the facts. Trying to reword the clause to
3 deal with this kind of factual example is plainly wrong.
4 Hiscox make a lot of the noscitur principle, but
5 Mr Edelman has, with respect, dismantled that point.
6 For your reference, without going to them now. We have
7 included various authorities on the point in bundle M,
8 at M2 to M8. I don't need to go to those authorities
9 because the problem isn't with the authorities, the
10 problem is with the substance of the point.
11 The difficulty is for Hiscox that there are various
12 of the other underlying events within this wording that
13 are not localised to the premises. So we see, for
14 example, on page {B/6/41} at clause 7, that's insured
15 damage arising at the premises of a specified customer.
16 Now, where Hiscox did want to include a geographical
17 restriction, they did. So if we see on this same page,
18 if we see at clause 3 there is a 1 mile restriction, and
19 we see at clause 2 there is a vicinity restriction.
20 Now, if we go back again to the next page, please so
21 page {B/6/42}, within the clause itself, within 13
22 itself there are also restrictions, so we see at (c) and
23 (e) the restriction to insured premises.
24 Now, if we can then compare, please, {B/9/36}. We
25 see there the public authority clause is at clause 7,

1 and your Lordships will see at 7(b):
2 "An occurrence of notifiable human disease within
3 1 mile of the business premises."
4 Now, obviously bearing in mind concerns about
5 reading across between the policies, and bearing those
6 points in mind, there is an oddity which arises, which
7 Hiscox does not appear to address, perhaps because there
8 is no good answer.
9 The oddity is this: if Hiscox is right that the true
10 meaning of 13(b) in Hiscox 1 is that the occurrence
11 following which the restriction has been imposed must be
12 one that is local and specific to the insured or the
13 insured premises, then this would apparently be narrower
14 than Hiscox 4's wording that expressly includes the
15 1 mile restriction. So applying Hiscox's construction,
16 what is obviously a restriction on the wording,
17 ie within 1 mile, in fact buys the insured a 1 mile
18 radius, which is a large area.
19 So if we then look at {I/1/68}, please. There we
20 see the helpful maps, the top one being the relevant
21 one. There we see what 1 mile buys a company in terms
22 of radius; the insured with the restriction on their
23 wording gets all of that area. That is given to them by
24 a restriction. Whereas an insured with no restriction
25 on their wording gets cover localised to their insured

1 premises. That simply can't be right. And that map
2 visibly demonstrates how unrealistic and unworkable
3 Hiscox's construction is. For example, it is very
4 difficult for a restaurant outside the RCJ to say that
5 an occurrence is local and specific to their premises if
6 the occurrence took place, for example, on the south
7 side of Westminster Bridge, but that is the effect of
8 Hiscox's construction.
9 If I just go on now to my third point, please, which
10 is the worked example. Now, the purpose of this worked
11 example is to determine what is and what is not covered
12 under clause 13 in the normal course, based on Hiscox's
13 and the Hiscox interveners' competing instructions.
14 To be clear, what I mean by the normal course is not
15 the circumstances arising from COVID-19. Instead,
16 I simply want to explore how the clause works in normal
17 circumstances, because it must, obviously, operate in
18 principle the same way in all cases. There is no point
19 testing the clause with examples of extremes. A much
20 better test is: in really standard circumstances will
21 there be any meaningful cover under the clause if Hiscox
22 is right?
23 Now, one indication of the answer to that is
24 Hiscox's construction. They feel confident enough to
25 say in their skeleton -- no need to turn these up, but

1 just for the transcript and your note -- see
2 paragraphs 323 and 440, at {I/13/104} and {I/13/134},
3 they say the wording never responds. Now, as we will
4 come on briefly to consider, that seems to apply across
5 a lot of, if not all of the public authority clause in
6 its entirety, in the vast majority of cases, not just
7 the facts of this case.
8 So turning to the worked example, if we could please
9 have {B/6/42} again, we see at (d):
10 "Defects in the drains or other sanitary
11 arrangements."
12 This example applies mutatis mutandis across all of
13 (a) to (e), and I am going to use a real life insured,
14 but before anyone disagrees with that approach this is
15 a hypothetical example, just using the names of the real
16 life insured and that is Mr Duckett, the owner of Lazy
17 Claire Patisserie in Belfast. His facts are at
18 {I/3/19}, which is paragraph 50 of our skeleton
19 argument, and it is helpful just to have those up.
20 It is a patisserie, it seats 14 customers within the
21 shop, it was doing really well before all of this
22 happened.
23 Now, let's imagine he comes into work on Monday
24 morning, day 1, and he finds there is a serious defect
25 with the drains, there is sewage flooding all over the

1 floor. He is faced with an immediate dilemma. He is
2 well versed, as it happens, with insurance law and he is
3 well advised and he now thinks to himself: hang on
4 a second, do I shut, faced with the sewage, knowing
5 I will face the insurers' counterfactual argument, or
6 should I stay open for fear of that argument, should I
7 run to the council and ask them to shut me down
8 immediately before anything else gets in the way? What
9 does he do?
10 Obviously these kinds of rhetorical questions might
11 otherwise be amusing were it not all so incredibly
12 serious for the insureds who desperately need the
13 insurance money. But in reality, returning to the real
14 world or the hypothetical, he would obviously have to
15 shut, and he wouldn't open, he would call a plumber. He
16 would have to do both: for obvious reasons he can't open
17 his patisserie when it is covered in sewage; but also,
18 he has to under the terms of the policy.
19 So if we see {B/6/18} at the bottom, please, there
20 is the reasonable precautions clause, and:
21 "You must take reasonable steps to prevent accident
22 or injury and to protect your property against loss or
23 damage. You must keep any property insured under this
24 policy in good condition and repair. We will not make
25 any payment under this policy in respect of any incident

1 occurring whilst you are not in compliance with this
2 condition unless you can demonstrate that such
3 non-compliance ..." et cetera.
4 We then go on to {B/6/19} at the bottom, and we see
5 2(a) "Your obligations":
6 "You must:
7 "(a) Make every reasonable effort to minimise any
8 loss, damage or liability and take appropriate emergency
9 measures ..." et cetera.
10 If the plumber said, "look, I'm sorry, this issue is
11 serious, perhaps it relates to sewage backing up from
12 the public pipes underground", they would have to call
13 the council. In the meantime, Mr Duckett would of
14 course keep the patisserie closed and no customers could
15 attend, ie interruption to the business, but no
16 restrictions yet. So it says closed from day 1 to
17 day 3. The council is busy, they arrive on day 3 and
18 they attend. Obviously there has been a loss from day 1
19 to day 3, but there is no claim under the policy because
20 there is no authority public restriction yet. So the
21 cover is not triggered. However, on day 3 the council
22 arrive and inspect and say that they have to close it,
23 and they have to close it until they are satisfied the
24 necessary repairs have been done. All the while, the
25 patisserie is shut. A week passes and we get to day 10

1 and by that time the repairs have been done, that have
2 been necessary under the closure order, and on day 10 it
3 can open. All that time it has been closed for two
4 reasons: first, the serious defects in the drains, and
5 then later, that cause is a background cause, but the
6 proximate cause, being the closure by the council. If
7 the council had not closed the patisserie it would have
8 been closed anyway because of the defective drains.
9 What if on day 10 the patisserie reopens but can
10 only use half the space because restrictions remain in
11 place because the temporary drainage had to be put in
12 place and the council has fenced off half the
13 patisserie? There we have continued restrictions but
14 half open. But again, the entire, all the ingredients
15 are there to make a recovery.
16 It may be that Hiscox would say there is no
17 interruption because the business was already closed,
18 and Mr Gaisman can tell us the answer when he gives his
19 submissions. But if not, if Hiscox is right on its "but
20 for" approach to causation and the correct
21 counterfactual is to ask: if the council had not closed
22 the patisserie there would still have been the defects
23 in the drain so it would still have closed, the clause
24 would simply not respond.
25 To argue to the contrary isn't to say that

1 Mr Duckett should be provided with cover for defective
2 drains alone. As I have said, he doesn't recover
3 anything from days 1 to 3. Mr Duckett then does not
4 recover, after day 10 on the first variable; he only
5 recovers during the period when all the ingredients of
6 the public authority clause operate.
7 Addressing, albeit very briefly, your Lordships'
8 point, raised with Mr Edelman, as to the impact of days
9 1 and 2; so there is a closure on days 1 and 2, we
10 respectfully adopt Mr Edelman's approach as a matter of
11 general principle. More directly, Mr Edelman's
12 approach is consistent with the answers on the Hiscox
13 terms.
14 To be clear, this is a very important point for
15 certain policyholders. It is important in respect to
16 the Hiscox Interveners to note many of them did not
17 suffer a downturn until the restrictions, so that is
18 a distinction. It is also right to point out that the
19 Hiscox Interveners are generally on the wording the
20 trends clause {B/6/45}, if we could see that, where
21 there is the trends clause -- I appear to have the wrong
22 reference. The trends clause, I thought, was 45. Yes,
23 sorry it is at the top. It starts on {B/6/44} and goes
24 on to {B/6/45}. Do you see at the bottom of 44:
25 "Provided that you advise us ..." et cetera.

1 Then on to 45, your Lordships will see at the top:
2 "Your schedule will show if business trends cover
3 applies and the additional percentage amount."
4 For most Hiscox Interveners they don't have in their
5 schedule that that applies, so they don't have the
6 trends clause problem. But for those that do have loss
7 prior to restriction and the other kind of trends
8 clause, it is a very significant issue. I don't have
9 time to go into the issue in detail, all I have time to
10 do is briefly to show you the contractual mechanism
11 under the Hiscox wording.
12 If we could please go to {B/6/44}, "How much we will
13 pay", your Lordships will see:
14 "How much we will pay.
15 "We will pay up to the amount insured [et cetera]."
16 Then the two primary choices are loss of income or
17 loss of gross profit.
18 Briefly to explain, loss of gross profit, please see
19 {B/6/41}. Your Lordships will see at the top "Rate of
20 gross profits". This is the essence of the calculation:
21 "The percentage produced by dividing gross profit by
22 your income during the financial year immediately before
23 any insured damage, insured failure or restriction."
24 So if there is a downturn in those two days, it will
25 make whatever difference it makes as an impact across

1 that year.
2 Now if we go back, please, to {B/6/44}, loss of
3 income:
4 "The difference between your actual income during
5 the indemnity period and the income it is estimated that
6 you will have earned during that period, or if this is
7 your first trading year the difference between your
8 income [et cetera]."
9 Obviously I am going quickly but the point is,
10 there, if it is your first year you look at the period
11 immediately before the loss. And that can't mean
12 immediately before, because if they happen to have
13 a good day before the loss then it would distort the
14 figures. Instead what it means is reasonably
15 immediately, or in the run up to then from having
16 started. What the first part means is in the normal
17 course it does pose a counterfactual, the difference
18 between your actual income during the indemnity period
19 and the income it is estimated you would have earned
20 during that period. How is that worked out? What it
21 obviously means is what you normally would earn, and
22 that is clear. What it shows is there is a distinction
23 between the normal case and the new business, because of
24 the use of the word "or".
25 So what is not done, to be clear, is look at days 1

1 and 2, you have had terrible days 1 and 2, so you
2 continue that into the counterfactual. No. What it is
3 right to do is to say: normally you would have earned X
4 amount. Because otherwise the "or" would apply to both.
5 So for both loss of income and loss of gross profits the
6 correct counterfactual is not to look at: well, you have
7 had it on days 1 and 2 so that continues through.
8 I don't have time to get into Mr Edelman's point and
9 my time is up, but I wanted to flag that because it is
10 a very important issue for those insureds who have that
11 relevant wording.
12 As it happens for the Hiscox Interveners, for the
13 reasons I have explained, it is not of as direct
14 importance.
15 Finally, just one last point, if I may, on the
16 Hiscox approach to public authority wording. If we go
17 back, please, to page 42, so {B/6/42}, what Hiscox does
18 is tread an uncommercially and unrealistically narrow
19 path. Because here, obviously whatever happens the
20 background event must be serious enough to lead to
21 public authority restrictions, so it has got to be quite
22 serious. But equally, if their counterfactual is right,
23 the more serious the event, the less likely it is that
24 the insured will recover. So when does it ever apply?
25 And that is a real difficulty on their construction.

1 That isn't a difficulty on our construction.
2 My Lords, my time is up, but unless I can help you
3 further ...
4 MR JUSTICE BUTCHER: Just before you stop, just to confirm
5 I think what you have already said, which is that your
6 clients, in fact most of them were in a position where
7 the interruption actually did only bite, you say, with
8 the restrictions.
9 MR LYNCH: That is my understanding of the facts as far as
10 we know them so far. It is the large group, but that is
11 the analysis that has been done. And there is a helpful
12 graph at the end of our skeleton argument, which I think
13 makes that point.
14 MR JUSTICE BUTCHER: But you say the points about days 1 and
15 2 is nevertheless, you say, an important point for at
16 least some.
17 MR LYNCH: Certainly for some of my group. And then across
18 the board, an important point across the board. That
19 will have to be explored with the defendants further and
20 then dealt with in reply as appropriate, but that is the
21 position.
22 LORD JUSTICE FLAUX: Thank you very much, Mr Lynch.
23 MR LYNCH: My Lord, thank you.
24 (10.32 am)
25 LORD JUSTICE FLAUX: Who's next, is it Mr Kealey?

1 (10.32 am)
2 Submission by MR KEALEY
3 LORD JUSTICE FLAUX: Yes, Mr Kealey.
4 MR KEALEY: Thank you, my Lord.
5 My Lords, of course I only represent Ecclesiastical
6 and Amlin in this matter, but it has been agreed that
7 I should deliver the oral submissions for the benefit of
8 all insurers on the fundamental principles that apply in
9 this case on causation in insurance. So my task is more
10 academic, I suspect, although in due course I am going
11 to go into the detail of some of the clauses, or at
12 least some examples, in order to explain to
13 your Lordships what insurers' case is.
14 The written argument on causation, the joint
15 argument for all insurers, is at bundle {I/6/1}.
16 This is a joint document and your Lordships will have
17 read it. I re-read it last night and I commend it to
18 your Lordships, because I doubt very much that my oral
19 delivery is actually going to be very much of an
20 improvement on what the parties have written.
21 LORD JUSTICE FLAUX: You are too modest, Mr Kealey.
22 MR KEALEY: My Lord, I'm known for my modesty.
23 The target of my submissions, my Lord, is worth
24 stating at the outset, my Lords.
25 Firstly, the FCA's case is that there is a single

1 proximate cause of everything, everything relevant to
2 this case. Could I invite your Lordships to look at
3 paragraph 53.1 of the amended particulars of claim at
4 {A/2/35}. This is important:
5 "As a matter of the proper construction of the
6 wordings and/or the law, both for the purposes of
7 considering whether causation is sufficiently direct,
8 and for considering the appropriate counterfactual to
9 any applicable 'but for' test, there is only one
10 proximate effective, operative or dominant cause of the
11 assumed losses, namely the (nationwide) COVID-19
12 disease, including its local presence or manifestation,
13 and the restrictions due to an emergency, danger or
14 threat to life due to the harm potentially caused by the
15 disease."
16 That, my Lord, is the FCA's indivisible case on all
17 wordings of all insurers, regardless of the specific
18 words in any particular clause.
19 So there is only one proximate cause of everything,
20 from which no distinct and independent causes can be
21 separated out. That is the case that insurers have to
22 meet.
23 Before continuing, my Lords, I would ask you to
24 compare 53.1 with the wordings in due course, because
25 the wordings contain no peril, no insured peril

1 resembling that.
2 If your Lordships could turn to the FCA's trial
3 skeleton, paragraph 225, which is in {I/1/91}
4 paragraph 225, you will see that the FCA puts it
5 slightly more widely at page 91. At 225, the third
6 line:
7 "The single proximate cause is the disease
8 everywhere and the government and human responses to
9 it."
10 So human responses, my Lords, are now included.
11 Again, the observation I make is that nowhere is there
12 any policy wording that resembles that peril.
13 The second point that I wish to make at the outset,
14 so you have it well in mind before you start attacking
15 me, is that the FCA's case as to the correct
16 counterfactual for the purpose of the causation test
17 generally is a situation where there was no COVID-19 in
18 the UK, no government advice, no government orders, no
19 laws or other measures in relation to COVID-19. In
20 other words, a disease-free United Kingdom.
21 If you could turn back to the amended particulars of
22 claim, paragraph 77 at {A/2/45}, you will see that what
23 I have said I hope is correctly summarised, is a correct
24 summary of what they say:
25 "The proper counterfactual (for the purposes of the

1 causation test generally and ..."
2 This is paragraph 77, my Lord.
3 LORD JUSTICE FLAUX: 77. Yes, sorry, Mr Kealey.
4 MR KEALEY: "The proper counterfactual (for the purposes of
5 the causation test generally and to the extent
6 applicable under trends clauses) for considering what
7 would have happened but for the insured perils
8 considered in this claim is the situation in which there
9 was no COVID-19 in the UK and no government advice,
10 orders, laws or other measures in relation to COVID-19,
11 or alternatively in which such of these events as the
12 court adjudges to be interlinked (if not all) had not
13 occurred."
14 Now before the alternative case, I will just invite
15 you to have another look at that counterfactual and
16 I will say again that that counterfactual, or the
17 circumstances in that counterfactual, bear no true
18 resemblance to any of the insured perils in any of the
19 wordings in this case.
20 There is another reference, it is paragraph 74 of
21 the same pleading. I will just give you the reference,
22 but if I can take you to the trial skeleton of the FCA,
23 paragraph 10.3, that is in {I/1/10}. I will just read
24 out for everybody's sake the first few lines:
25 "Nothing in the wordings or in the law entitles the

1 insurer to deny cover, or requires the court to find
2 a lack of cover or reduce the indemnity, by reason of
3 loss not being caused by the insured peril, but because
4 it was caused by COVID-19 more generally (such as other
5 public authority action or public reactions to the
6 pandemic). Moreover, if and to the extent that it is
7 necessary and appropriate to consider what would have
8 happened but for the insured peril ... the correct
9 counterfactual is a scenario in which there was no
10 COVID-19 and no government intervention related to
11 COVID-19 -- not an artificial one in that there was, for
12 example, government intervention but no COVID-19 or vice
13 versa."
14 Now of course, my Lords, counterfactuals are in
15 a sense artificial, and indeed the counterfactual being
16 proposed by the FCA is in itself totally artificial,
17 because it assumes that in a disease-ridden world there
18 is one disease-free set of islands, namely the British
19 Isles. So even the FCA's counterfactual is an
20 artificiality.
21 Yesterday my learned friend Mr Edelman suggested
22 that counterfactuals and the "but for" test were all
23 insurers' misconceived idea. You needn't look it up, it
24 is {Day3/11:1} to page 12.
25 That misunderstands the position. Counterfactuals

1 and the "but for" test are inherent in any causation
2 analysis, including in contract. Unless you are
3 undertaking a "but for" test or standard and applying
4 it, and applying a counterfactual, you are actually
5 applying a different and unspecified concept of
6 causation. I am going to come back to --
7 MR JUSTICE BUTCHER: You will obviously show us, Mr Kealey,
8 the insurance cases which have tested whether there is
9 a proximate cause by a counterfactual, a "but for" test.
10 MR KEALEY: I shall take you to the cases which tell you
11 that in contract cases and in insurance the "but for"
12 test applies.
13 MR JUSTICE BUTCHER: Yes, but you will show me the insurance
14 cases where that has happened.
15 MR KEALEY: I hope to be able to do that, my Lord, yes.
16 LORD JUSTICE FLAUX: Other than Orient-Express?
17 MR KEALEY: Other than Orient-Express.
18 I shall also hopefully be able to show you, not that
19 you need to be shown, but I shall also be able to show
20 you the cases that tell you that insurance is a form of
21 contract of indemnity, and a contract of indemnity is
22 a form of contract, and an insurance contract sounds in
23 damages for breach, and the purpose of damages is to put
24 the victim of the breach in the position in which he or
25 she or it would have been but for the breach.

1 MR JUSTICE BUTCHER: Is that a long way round of saying that
2 you haven't got one?
3 MR KEALEY: I don't think it is a long way round of saying
4 that. I hope not. I will have a look and tell
5 your Lordships.
6 If you could go to Endurance Capital at {K/184/1}.
7 If you go, please, to Lord Justice Leggatt's judgment at
8 page 8 of that divider, at paragraphs 34 to 36
9 {K/184/8}, you will see there at 34 the learned judge
10 says:
11 "... the general principles which govern the
12 assessment of loss under a policy of insurance against
13 property damage in the absence of any different express
14 provision are well established and are not in dispute.
15 "First of all, in a case where (as here) an insurer
16 has agreed to indemnify the insured against loss or
17 damage caused by an insured peril, the nature of the
18 insurer's promise is that the insured will not suffer
19 the specified loss or damage. The occurrence of such
20 loss or damage is therefore a breach of contract which
21 gives rise to a claim for damages: see ... The Padre
22 Island, Ventouris v Mountain, and Sprung."
23 "The general object of an award of damages for
24 breach of contract is to put the claimant in the same
25 position so far as money can do it as if the breach had

1 not occurred."
2 In other words, my Lords, but for the breach.
3 "See British Westinghouse ... Where the breach of
4 contract arises from loss or destruction of or damage to
5 property (as it does where the contract is a property
6 insurance policy), there are two distinct ways of
7 seeking to give effect to this principle."
8 Then the learned judge goes on to talk about
9 reinstatement or market values.
10 So the learned judge there, although I am going to
11 take you to other cases as necessary, doesn't refer
12 specifically to a "but for" test in those terms, but
13 it is very clear indeed that the damage or the damages
14 are to put the claimant in the same position, so far as
15 money can do it, as if the breach had not occurred. In
16 other words, but for the --
17 MR JUSTICE BUTCHER: Thank you, Mr Kealey, that is helpful.
18 Is there any other case in which something has been said
19 not to be a proximate cause because it fails a "but for"
20 test?
21 MR KEALEY: Yes, my Lord. If you could go to the case of
22 Blackburn Rovers. You will find that in {K/119/6}.
23 This is a case in the Court of Appeal. Your Lordship
24 will see that this is an insurance case. You will see
25 that a professional footballer, if I can take you to the

1 headnote to give you the perspective as it were, the
2 second paragraph, you see that a professional footballer
3 suffered an injury to his back and that put an end to
4 his professional career. His club, Blackburn Rovers,
5 had obtained insurance from the defendants against the
6 risks of injury to its players, and there was a bodily
7 injury provision, which required --
8 LORD JUSTICE FLAUX: Sorry, I think, Mr Kealey, Magnum has
9 put up the wrong page. We are in the middle of the
10 judgment at the moment.
11 MR KEALEY: That is my fault. Page {K/119/1}. Page 1,
12 my Lord.
13 LORD JUSTICE FLAUX: Yes.
14 MR KEALEY: I am very sorry, it is probably my fault. It is
15 the second paragraph of the headnote, so you can see the
16 background.
17 LORD JUSTICE FLAUX: Yes, okay.
18 MR KEALEY: So there was a policy which covered accidental
19 bodily injury defined, if your Lordships see at (b):
20 "Solely and independently of any other cause, except
21 illness directly resulting from ..."
22 A variety of other matters, and then there is an
23 exclusion:
24 "The policy excluded 'death or disablement directly
25 or indirectly resulting from or consequent upon ...

1 "4. Permanent total disablement attributable either
2 directly or indirectly to arthritic or other
3 degenerative conditions in joints, bones, muscles
4 tendons or ligaments."
5 A claim was made in relation of this hapless
6 footballer and a variety of questions arose. If your
7 Lordships see (3) in the right-hand column, one of the
8 particular issues was whether degenerative changes that
9 are typical of the male population, typical of top-class
10 professional footballers, et cetera, are to be
11 disregarded for the purpose of the policy.
12 If your Lordships go to page 6 of the bundle
13 {K/119/6}, you will see at paragraph 17:
14 "The same approach to causative nexus appears in the
15 following statement in paragraph 29 of
16 Mr~Justice~Moore-Bick's judgment. We needn't go into
17 that too much. If you look at paragraph 18.
18 "Mr Stuart Smith disavowed having advanced any such
19 argument and, had he done so, it would have been
20 manifestly unsound. Disablement cannot be said to be
21 attributable, either directly or indirectly ', to a
22 pre-existing condition unless, at the least, the
23 condition is a ..."
24 For Mr Edelman's purposes I will translate this,
25 my Lord, "the condition is a cause without which not":

1 "... causa sine qua non of the disablement." In the
2 situation postulated by the judge this was not the case.
3 The accident would have disabled the player regardless
4 of the pre-existing condition and, conversely, the
5 player would not have been disabled had he not suffered
6 the accident."
7 So there, my Lords, is a clear indication, in our
8 respectful submission, that you have to have
9 satisfaction of the "but for" test, causa sine qua non,
10 in order to recover under an insurance policy.
11 MR JUSTICE BUTCHER: Thank you. I will let you get on with
12 your order of play.
13 MR KEALEY: Can I also take your Lordships -- that is very
14 kind of you to have taken me out of my course as it
15 were, because it enabled me to answer the same question
16 several times.
17 LORD JUSTICE FLAUX: I am sorry, Mr Kealey, sorry to
18 interrupt, but in that case, is that analysis because of
19 the operation of the exclusion or is that independent of
20 the exclusion?
21 MR KEALEY: That is within the meaning of the exclusion.
22 LORD JUSTICE FLAUX: We get into the point, you know, the
23 issues about concurrent independent or concurrent
24 interdependent clauses and Wayne Tank and all of that.
25 MR KEALEY: Well --

1 LORD JUSTICE FLAUX: I just wondered to what extent that is
2 an example of the operation of the Wayne Tank principle.
3 MR KEALEY: The Wayne Tank principle is obviously
4 interdependent causes, and you won't have coverage --
5 or, rather, you only have coverage in relation to
6 interdependent causes because both causes satisfy the
7 "but for" test. In other words, but for the operation
8 of the cause, the loss wouldn't have been suffered; and
9 but for the operation of each cause, the loss wouldn't
10 have been suffered.
11 So the interdependent concurrent cause analysis, and
12 indeed principle, is based, as a matter of principled
13 law, on the "but for" test. Therefore, if you have one
14 interdependent cause which is covered and one
15 interdependent cause which is uninsured, you are covered
16 for the loss because you can prove that but for the
17 insured cause the loss would not have been suffered.
18 Per contra -- I am sorry, I don't really want to go
19 into Latin. By contrast, in relation to independent
20 concurrent causes, in other words, two causes which
21 independently can be said to be causative of the loss,
22 if one is using loose language, and you are looking at
23 one of those causes which is an insured peril, you have
24 no coverage because but for the operation of the insured
25 peril the loss would still have been suffered as

1 a consequence of the operation of the other concurrent
2 independent cause. In fact, the other concurrent
3 independent cause does not actually even have to be
4 a proximate cause, although most often it is.
5 But the insured cause in that example is neither a
6 "but for" cause nor, because it is not a "but for"
7 cause, is it a proximate cause. You can only have
8 a proximate cause if it has satisfied the "but for"
9 test, otherwise it is simply not a cause under any
10 concept of causation known to insurance law.
11 MR JUSTICE BUTCHER: That's why I was asking you. Proximate
12 cause has been around for a very long time and I was
13 just wondering how many times it has ever been asked:
14 well, is this a proximate cause or is it not a proximate
15 cause because it doesn't satisfy the "but for" test?
16 MR KEALEY: I will come back to that if I may, but I would
17 answer it at this juncture if I may, my Lord, by saying
18 you don't even get to a proximate cause, unless it is
19 satisfied -- I am so sorry, my Lord.
20 LORD JUSTICE FLAUX: No, I am sorry, Mr Kealey, I'm talking
21 over you. That is the problem with this way of
22 operating.
23 I am just anxious, before you leave your example of
24 the independent causes and one insured peril and one
25 uninsured cause, whether you have got any authority that

1 is directly on the point in the insurance context.
2 MR KEALEY: I will have to consider that, my Lord.
3 LORD JUSTICE FLAUX: I understand the point there, but
4 I wonder whether it is really right. If you have got
5 two independent causes, and the truth is that if you
6 only have the insured cause then there would be a loss,
7 why does it matter if there is also another cause which
8 is uninsured -- not excluded, but uninsured -- unless
9 what you are really talking about is a situation where
10 the insured cause falls short of being sufficient to be
11 a proximate cause? Do you follow the point I am making?
12 MR KEALEY: I follow the point entirely that you are making.
13 My Lord, we say in our skeleton argument talking about
14 two independent concurrent causes and two independent
15 concurrent proximate causes is a little bit of
16 a misnomer, because you can't have a proximate cause, we
17 say, unless that cause satisfies or at least fulfills
18 the threshold "but for" test.
19 But coming to your Lordship's question, the question
20 that is asked under an insurance contract, which is
21 absolutely vital and it seems to be not the question
22 that the FCA has asked itself, is whether the insured
23 peril has caused the claimed loss.
24 The question is not a slightly more metaphysical
25 question, which is: what is the cause of the loss?

1 Because when you are in a bilateral contract, assuming
2 a contract of insurance is bilateral for present
3 purposes, the only question that arises for any
4 tribunal, and indeed for the contracting parties, is:
5 firstly, has there been an insured peril; and secondly,
6 has that insured peril caused the claimed loss?
7 If there is another cause of that loss, which let us
8 call it at the moment of equivalent weight, I am just
9 using that as a neutral term for present purposes, in
10 other words, if that loss would have occurred but for
11 the insured peril, then by definition the insured peril
12 has not satisfied the threshold "but for" test for the
13 purposes of that insurance policy.
14 Now there are exceptions to that principle that
15 apply, where there are, for example, in other areas of
16 contract, and indeed specifically tort, but also in
17 contract, where there are multiple wrongdoers, or let's
18 call them two wrongdoers. I am going to come on to that
19 later, because in fact you can have two wrongdoings by
20 one insurer.
21 Actually, if one analyses the Orient-Express case
22 correctly, where there are two operating perils, both
23 pro tanto, if I can use the Latin tag, pro tanto causing
24 loss, then what the insurer cannot do is rely upon its
25 own breach of contract in failing to hold the insured

1 harmless from one of those perils, what he can't do is,
2 by relying upon his own breach of contract in failing to
3 hold the insured harmless from one of those perils, say
4 that the peril under which or in respect of which he is
5 being sued has caused no loss.
6 I will take you to the Orient-Express in a moment,
7 or perhaps not so quickly but later on, and I will show
8 you the two clauses or the two sets of clauses that
9 operated in relation to insured loss or operated in
10 relation to insured perils there, and I will show you
11 how it is that the insurers paid under the loss of
12 attraction clause or the prevention of access clause,
13 they didn't pay anything and indeed the dispute was in
14 relation to the peril of damage, physical damage and
15 whether that damage caused loss, and the answer was --
16 well, we know what the answer was and we will come on to
17 that later. But what the insurer could not there do is
18 say: well, I am not liable to you in relation to the
19 business interruption caused by physical damage, because
20 the loss was caused in fact by matters which create or
21 represent another peril insured against under the same
22 contract.
23 In other words, there are two perils operating, we
24 say, and each of those perils is in the same contract,
25 and both perils can be said to have given rise to the

1 same loss; and what the insurer cannot say when being
2 attacked in relation to one peril, what he cannot say
3 is, "Well, that has not caused you a loss, because but
4 for my breach of contract in relation to that you would
5 still have suffered the loss under another peril". He
6 can't rely upon his failure to hold harmless under the
7 second peril in order to avoid liability in relation to
8 the first.
9 That is quite a complicated analysis, but if you go
10 back to --
11 LORD JUSTICE FLAUX: That is the explanation, you say, of
12 why it is that they paid under the prevention of access
13 extension. Because they couldn't be heard to say: well
14 actually your loss is suffered under the property damage
15 business interruption section, and therefore you can't
16 recover under the prevention of access extension.
17 MR KEALEY: That is absolutely right.
18 LORD JUSTICE FLAUX: But non constat, when you get to the
19 property damage business interruption section, and you
20 are looking to recover more by way of insurance recovery
21 than under the prevention of access extension, that the
22 insurer can't say: well now at this stage your loss is
23 being caused by something other than this insured peril.
24 MR KEALEY: Exactly so, my Lord. That is exactly the point.
25 In our joint skeleton we have postulated a different

1 example, where you have one loss insured under two
2 policies of insurance, issued by two different insurers,
3 and where one insurer says, "Ah well, the peril under my
4 contract didn't cause you loss, rather it is the peril
5 under the other contract, and therefore you are not
6 covered", and the other insurer does exactly the same by
7 way of mirror image, "My peril didn't cause you the
8 loss, it's the peril under the other". So the poor
9 insured is actually worse off by having two insurance
10 policies than if he had only one. And there you have
11 two wrongdoers.
12 This is something I am going to come back to. The
13 wrongdoing my Lord and the breach of contract is failing
14 to save the insured harmless from the loss in the first
15 instance, and that is a wrongdoing.
16 Once that is understood as being the breach of
17 contract, then you are introduced into the correct
18 analysis as to causation. Because, as I said a moment
19 ago and I will come back to it, but as I said a moment
20 ago --
21 LORD JUSTICE FLAUX: It is an oddity of the way in which our
22 insurance law has developed, but you are absolutely
23 right that is how it has developed, that at the moment
24 when the relevant insured peril occurs the insurer is in
25 breach of contract.

1 MR KEALEY: Yes.
2 LORD JUSTICE FLAUX: And that was analysed in, I forget
3 which case it was now, but several cases,
4 Chandris v Argo you can go back to, and other cases
5 since. But you are absolutely right that that is the
6 law and we have to proceed on that basis.
7 MR KEALEY: That is right, my Lord. In fact
8 Mr Anthony Clarke QC as he then was, argued before
9 Mr Justice Hirst in Ventouris v Mountain that the moment
10 the ship went down the insurer was in breach of
11 contract.
12 LORD JUSTICE FLAUX: Yes.
13 MR KEALEY: And Mr Justice Hirst's analysis and decision
14 reflected precisely that. You have to save the insured
15 harmless from the insured peril operating to cause loss.
16 MR JUSTICE BUTCHER: I was troubled by this example
17 overnight, Mr Kealey, and perhaps you would help me with
18 it. Suppose you have a railway and it insures itself
19 against delays caused by landslip. And there is a storm
20 which causes a landslip which delays a train. And it
21 delays it in the sense that the reason why people don't
22 proceed down the line is because they think there is
23 a landslip. But in fact, had it been probed and
24 investigated, it could have been shown that the storm
25 had also caused a problem with the signalling, and that

1 there would have been a delay to that train in any
2 event, a failure of signalling being neither covered
3 expressly, nor excluded.
4 Now there, in an obvious sense, the landslip is the
5 cause of the delay. But it is not a "but for" cause of
6 the delay. Can the insurers escape liability?
7 MR KEALEY: I would put it differently by saying that the
8 insured has no coverage in that case. It is not
9 a question of the insurers escaping liability, it is
10 simply that that which is the peril which is insured
11 against has not actually, as a matter of fact, caused an
12 insured loss.
13 MR JUSTICE BUTCHER: It has caused it in a real sense. It
14 has been an absolutely pivotal part of the reason why
15 the train didn't run.
16 MR KEALEY: Yes, but the train would not in any event have
17 run, because of the signalling problem. The fact that
18 there was, whatever it is, Railtrack action, makes no
19 difference to that.
20 You are absolutely right, my Lord, to say that the
21 reason why the train did not actually leave the station,
22 as it were, was because it was told not to. But even if
23 the train had been told to do so, to leave the station
24 and run, it could not have done so, and therefore --
25 MR JUSTICE BUTCHER: Wouldn't one say that the landslip was

1 the proximate cause?
2 MR KEALEY: No, one would not say that the landslip was the
3 proximate cause. One would say, in those circumstances,
4 that the landslip certainly provoked the authority to
5 stop the train or to say to the train "Do not run", but
6 actually for the purposes of the insurance contract, the
7 public authority action or the action in those
8 circumstances did not cause the loss, because the loss
9 would in any event have been incurred irrespective or
10 but for that action.
11 So you are absolutely right, my Lord, that
12 technically what happened is the chain of events that
13 you have just identified, but I am going to take you to
14 examples which will demonstrate that either as well or
15 as badly as your Lordship's example. And I will take
16 you to why it is.
17 But under any concept of causation known to English
18 law, under any concept of causation known to English
19 law, unless as a Fairchild v Glenhaven or some
20 exception, there is a threshold factual causation
21 requirement to be satisfied, which is the factual "but
22 for" concept.
23 In other words, if you would have suffered exactly
24 the same loss but for something which was not insured,
25 then your insurance policy does not pay.

1 Your Lordship asked me about cases in relation to
2 insurance --
3 LORD JUSTICE FLAUX: So my Lord's example, you say, is an
4 example of two independent causes, one of which is
5 insured and one of which isn't, and because of the
6 operation of the second cause, the first cause is not
7 the proximate cause of the loss.
8 MR KEALEY: Yes, that is absolutely right, my Lord.
9 My Lord Mr Justice Butcher asked me about "but for".
10 Can I just take your Lordships to another case, it is
11 actually referred to in our joint skeleton. I am happy
12 to refer your Lordships to this because my learned
13 friend Mr Edelman did. It is at {I/6/18} and it is
14 a quotation from Sir Peter Webster in
15 Callaghan v Dominion. It is in paragraph 23.2.
16 "The best way to define an indemnity insurance is
17 that it is an agreement by the insurer to confer on the
18 insured a contractual right which, prima facie, comes
19 into existence immediately when loss is suffered by the
20 happening of an event insured against ..."
21 I am not sure that I entirely agree with that, but
22 putting that to one side, my Lord:
23 "... to be put by the insurer into the same position
24 in which the insured would have been had the event not
25 occurred [that is the peril insured against, my Lord]

1 but in no better position."
2 So, with respect to my Lord Mr Justice Butcher's
3 question and example, the insured is not to be in any
4 better a position or situation than that in which it
5 would have been had the insured peril not have
6 eventuated.
7 In the example given by my Lord, although there was
8 action which stopped, as it were, the train running,
9 that train would never have run because it couldn't run,
10 because there was a signalling failure which prevented
11 it running.
12 Therefore, the delay is not something for which the
13 insurer is liable.
14 MR JUSTICE BUTCHER: Right, I understand what you say and
15 I understand what you say by reference to Callaghan.
16 Would you agree that in the sort of case that
17 I mentioned, at least, if it were to be asserted that
18 the loss would have been suffered anyway by reason of
19 the signalling failure, it will be the insurer who has
20 to show that?
21 MR KEALEY: Well, what I would say is that -- can I address
22 it this way, my Lord, and you will now accuse me of
23 being a politician and not answering the question
24 directly, so I will answer it directly in my indirect
25 way.

1 MR JUSTICE BUTCHER: I have taken you well out of your
2 course already, Mr Kealey, do what you want to.
3 LORD JUSTICE FLAUX: We are firing questions at you that you
4 haven't had prior notice of, so ...
5 MR KEALEY: The fact is, my Lord, if you have a train which
6 would have run, and the authority says, "There has been
7 a landslip, you are not allowed to go", and the insured
8 puts that case to the insurer and asks for recovery, on
9 the basis of that evidence and on that material I, for
10 the insurer, would have to say that there is
11 a prima facie case of coverage.
12 It would only be --
13 LORD JUSTICE FLAUX: I think sensibly the answer to
14 my Lord's question must be that the burden would be on
15 the insurer, in the given example, to demonstrate that
16 in fact that prima facie case was not good because the
17 real cause of the loss was the signalling failure, which
18 wasn't covered.
19 MR KEALEY: What I would say is actually the insurer has the
20 evidential burden of putting before the court, as it
21 were, evidence to suggest to the contrary, and it is
22 then the legal burden remains on the insured.
23 LORD JUSTICE FLAUX: We are then into that sort of abstruse
24 area about legal and evidential burdens, which probably
25 doesn't matter for present purposes.

1 MR KEALEY: That is right. It is not relevant, at least at
2 the moment, but that would be my answer. And I don't
3 shy in the slightest bit from acknowledging, on behalf
4 of insurers in that hypothetical case, that if they are
5 just confronted with those facts, then I can't see that
6 they would say to the insured, "Now go and prove every
7 single negative known to man that it wasn't caused by
8 this, that and the other", even though there is
9 absolutely no suggestion that whatever it is that is
10 "the other" could conceivably have existed or did exist.
11 But if the insurer comes along and says, "Well, we
12 hear that there was a signal failure and here is the
13 record of it, and therefore it seems to us that there is
14 a serious doubt as to whether or not you could have gone
15 anywhere in any event", that might satisfy, as it were,
16 the evidential burden so far as to shift the evidential
17 burden back. But the insured, of course, always
18 retains, as we always know, the legal burden to prove
19 a loss by a peril insured against.
20 That, my Lord, by the way, is a completely different
21 case from the case of Dalmine, I should say. I am not
22 going to go into that at the moment, because if I get to
23 it, it is going to be right down the end of the line of
24 this much more difficult causation analysis than burdens
25 of proof, if I might respectfully suggest.

1 In relation to my Lord Mr Justice Butcher's
2 question, though, if the damage as it were or the loss
3 claimed is the failure to arrive at the destination on
4 time, then, as we have said, the landslip is not the
5 cause, it would be the signalling failure for the
6 purposes of the insurance contract. In other words, but
7 for the Railtrack or whatever it is determination, still
8 the train would not have arrived on time. It is as
9 simple as that.
10 So our analysis is not complicated. It is based
11 upon fundamental legal principles, and in my respectful
12 submission those fundamental legal principles have
13 really been put to one side, deliberately of course,
14 because they are so clever, put to one side by the FCA,
15 as though they don't really exist.
16 I would like to go back, if I may, to one or two
17 matters which actually arise out of the questions that
18 have been asked of me. I should say, my Lords, I am not
19 in the slightest bit shy about being asked questions, so
20 if you want to pepper me with more pellets I'm perfectly
21 happy to be subjected.
22 LORD JUSTICE FLAUX: If you are moving on to a slightly
23 different topic, Mr Kealey, would that be a sensible
24 point to have a ten-minute break for the transcribers?
25 MR KEALEY: Everything is going to be the same topic but --

1 LORD JUSTICE FLAUX: I know, but having answered my Lord's
2 question you are obviously going back to your script,
3 and rather than interrupting you five minutes into what
4 you are going to say next, it might be sensible to break
5 now.
6 MR KEALEY: That would be sensible. My Lord, I welcome the
7 interruptions because it means that I probably won't
8 have to read out everything so much as otherwise
9 I might.
10 LORD JUSTICE FLAUX: Thank you very much, Mr Kealey. We
11 will say 11:25am, please.
12 MR KEALEY: Thank you, my Lord.
13 (11.16 am)
14 (Short break)
15 (11.25 am)
16 LORD JUSTICE FLAUX: When you're ready, Mr Kealey.
17 MR KEALEY: Thank you, my Lord.
18 Mr Edelman said yesterday -- you needn't look it up
19 but it is page 12 of the transcript for yesterday
20 {Day3/12:1} -- that insurance is something different
21 from a normal contract. That is not true. It is
22 a species of contract, it has specific rules that apply
23 to it; but those rules, in terms of causation, are
24 exactly the same rules as any other contract. It has
25 the same rules on construction, on breach and damages.

1 And the "but for" principle, as I have tried to explain,
2 is an integral part of the law of contract damages as
3 much as insurance and as much in insurance as contract
4 damages.
5 Mr Edelman said yesterday, at page 12 of the
6 transcript Day 3, one is asking a different question for
7 a different purpose. That is fallacious. Damages are
8 only recoverable insofar as caused by the breach of
9 contract of insurance and not insofar as caused by the
10 breach plus plus plus.
11 It is absolutely critical, my Lords, to identify
12 what the breach is. We have already gone there. It is
13 a failure to hold harmless from the insured peril, no
14 more and no less. That is why it is vital in any case
15 properly to identify as a matter of interpretation what
16 the insured peril is.
17 Contrary to everything that Mr Edelman said on Day 2
18 at pages 5 and following, {Day2/5:1} it is absolutely
19 expected that the counterfactual that one applies in the
20 application of the "but for" test will or may be
21 different between and among different insurers who
22 insure on different wordings in different contracts in
23 relation to different perils.
24 The idea that the FCA has, that one can apply the
25 same counterfactual in every single case, itself

1 suggests that the FCA must have got it wrong.
2 Mr Edelman is also absolutely wrong when he says
3 that in the application of the "but for" test or the
4 application of the counterfactual, whether that be under
5 general law or under the trends clauses, these insurers
6 before your Lordships today do not reverse as
7 relevant -- and I emphasise "as relevant" -- the disease
8 or the emergency or whatever it is that is at the start
9 or the bottom of the causal chain.
10 He is absolutely wrong when he suggests that
11 insurers are cherry-picking or salami slicing or
12 whatever comestible metaphor he wishes to choose when it
13 comes to the counterfactual. So that your Lordships can
14 see it, that is at {Day2/3:25} to page 4, line 6.
15 What he is suggesting there is completely
16 fallacious, and I am going to take you to some examples.
17 Before I do so, I want to emphasise the following. What
18 is reversed, and no more than that which is reversed, is
19 the combination that makes up the insured peril. Never
20 any or only any individual aspect of the combination.
21 What you take out is the combination, and what that
22 means, my Lords, and this is absolutely vital, all the
23 elements of the combination to the extent that they
24 combine and form the stated combination, but not
25 otherwise and no more. You don't remove every aspect of

1 every ingredient within the combination. That is not
2 taking out the combination; it is taking out all the
3 ingredients for all purposes, and that goes way beyond
4 the combination.
5 The combination is only the ingredients and the sum
6 of the ingredients insofar as they combine in the stated
7 way.
8 Let's just take Mr Edelman's verminous example. You
9 will see that at {Day1/108:1}. The insuring clause for
10 this example my Lord you can actually see in bundle
11 {I/6/69}, that is in the insurers' joint causation
12 skeleton.
13 LORD JUSTICE FLAUX: Vermin or pests at the insured
14 premises.
15 MR KEALEY: That is right, my Lord. It is at the top of the
16 page {I/6/69}. Mr Edelman gave you the example of rats
17 in a restaurant.
18 Now let me just explain to you how this works. This
19 clause covers the inability to use the insured premises
20 due to restrictions imposed by a public authority
21 following, in (e):
22 "Vermin or pests at the insured premises."
23 Let's just say that there are rats in a restaurant.
24 Let's say that a journalist finds out about the rats and
25 writes an article saying there are lots of rats in this

1 restaurant. Let's say that his article is widely read
2 by everyone in the vicinity of the restaurant, whatever
3 "vicinity" might mean.
4 Let's say that subsequent to that article being
5 widely read, the local government hears of the rats, or
6 indeed the restaurateur tells the local authorities
7 about the rats, and the government or the local
8 authority orders the closure of the restaurant whilst
9 the rats are removed and exterminated.
10 If one looks at this insurance clause and one asks
11 what is the insured peril, the insured peril is
12 a combination of inability to use the restaurant due to
13 restrictions imposed by the public authority following
14 vermin at the premises; in short order, it is closure of
15 the premises as caused by government action, as caused
16 by rats. That is the combination you remove in order to
17 apply the "but for" test and the counterfactual.
18 What you remove, I will repeat it, closure as caused
19 by the government action, as caused by the rats. You
20 don't remove the rats, pure and simple. You remove that
21 causal chain; and you work out, having removed that
22 combination, what the loss is that the insured peril has
23 caused.
24 If those rats are in another causal chain as well,
25 for example disinclination of the public to visit the

1 restaurant, as caused by reading the article in the
2 newspaper, as caused by rats, that is another causal
3 combination which exists and has caused loss, and the
4 loss caused by that combination, which involves rats, is
5 not covered.
6 LORD JUSTICE FLAUX: That is the example that we discussed
7 with Mr Edelman yesterday. Let's stick to rats for the
8 moment. I mean, at the time when the restriction is
9 imposed, the insured business is already suffering
10 a downturn as a consequence of something which is not
11 covered by the insurance, because there is no
12 restriction in place. That is the trigger for there
13 being cover. As I understand your case, you would say,
14 in that example, the insured could only recover to the
15 extent that it was able to demonstrate that there had
16 been a yet further downturn in the business as
17 a consequence of the imposition of the restriction.
18 MR KEALEY: Exactly so. But I would go even further,
19 my Lord.
20 LORD JUSTICE FLAUX: Let's say for the sake of argument
21 there are some people who like actually seeing rats
22 running around a restaurant because of its a novelty
23 value, so half the tables have people sitting at them,
24 notwithstanding there are rats scurrying around. The
25 insurer has suffered a loss of 50% of his turnover, but

1 when the restriction comes which makes it 100%, he can
2 only recover the 50% caused by the restriction.
3 MR KEALEY: Correct.
4 MR JUSTICE BUTCHER: You accept that, do you, Mr Kealey? Or
5 do you say he can't recover that, because the rats would
6 be there anyway?
7 MR KEALEY: Well, let me just put it this way. If the rats
8 are known about, rather than people don't know about
9 them -- I will answer this in stages. Can I answer it
10 in stages?
11 LORD JUSTICE FLAUX: Yes.
12 MR KEALEY: Thank you. The restaurant is closed by the
13 authorities. Someone cancels a reservation, not knowing
14 of the closure but knowing of the rats, because he has
15 read the article, or she has read the article, and does
16 so after the closure.
17 LORD JUSTICE FLAUX: That is a different point.
18 MR KEALEY: It is a different point.
19 LORD JUSTICE FLAUX: That is a loss that is caused by
20 something other than the closure. So in that example
21 that would fall, as it were, within the first tranche of
22 uninsured loss, as it were. But what my Lord is putting
23 to you is: assume the restaurant is then closed, so the
24 insured in my example has now lost 100% of his turnover,
25 do you say nonetheless he can't recover anything because

1 the rats would have been there anyway?
2 MR KEALEY: No. Your example, my Lord, was about
3 a clientele who don't actually mind rats, or like rats.
4 LORD JUSTICE FLAUX: I know that is an extreme example, we
5 are just trying to test the point.
6 MR KEALEY: I am addressing that precise example. They
7 would have gone to the restaurant irrespective of rats.
8 The government closure prevented them from going to the
9 restaurant, and stopped the restaurant from earning
10 money from those diners. That is covered, my Lord,
11 because they would have gone to the restaurant
12 irrespective of the rats. Therefore, what you have is
13 the combination of the inability to use, due to
14 restrictions imposed by public authority following
15 vermin at the premises actually causing loss.
16 But in relation to those diners who wouldn't have
17 gone near the restaurant because of the rats, whether
18 they had read about the article before the closure or
19 having read the article after the closure, in relation
20 to those diners or those people who would otherwise have
21 gone to the restaurant to eat, to whom the closure was
22 an irrelevance because they wouldn't have gone near the
23 restaurant because of the rats, there is no loss which
24 is covered under this policy.
25 MR JUSTICE BUTCHER: We are getting very close to the heart

1 of this issue, because if it goes down from 50% to
2 nought after the closure, could it nevertheless be said
3 by insurers: well, the reputation of the rats might have
4 contributed to that further decrease?
5 MR KEALEY: Yes. The answer is absolutely yes. I wouldn't
6 say "contributed" to the decrease. Well, I would have
7 said "caused" people not to go to the restaurant and
8 therefore "caused" the restaurant is loss. Then the
9 answer is yes, the closure had no impact.
10 I am assuming for your purposes, my Lord, that the
11 closure had no impact, because these people were
12 learning about the rats and wouldn't have gone near the
13 restaurant because of the rats, irrespective of the
14 closure. Now --
15 LORD JUSTICE FLAUX: But the reality, of course, may be more
16 complicated, because the reality may be that the local
17 authority closes the restaurant and nobody goes there,
18 but it is impossible to actually extricate or impossible
19 to discern why they didn't go there. Is it because of
20 the closure by the local government or is it because
21 they didn't like the rats?
22 MR KEALEY: That is the question.
23 LORD JUSTICE FLAUX: That is why my Lord says to you we are
24 very close to the heart of what it is that you are
25 inviting us to determine here. Because you say, well,

1 because of COVID, the public reaction was such that the
2 people wouldn't have wanted to go to the restaurant
3 because they might sit next to somebody who had got
4 COVID.
5 MR KEALEY: And what your Lordships have just posed to me is
6 a factual question to which I do not have an answer.
7 LORD JUSTICE FLAUX: You may be right about that.
8 MR KEALEY: I am right about it. I am absolutely right
9 about it. You know and I know -- this is not me giving
10 evidence -- there were people who were disinclined to go
11 to cinemas before closure, because of the proximity of
12 other people.
13 LORD JUSTICE FLAUX: I know that, because my wife cancelled
14 a trip to the opera three days before the lockdown, for
15 exactly that reason.
16 MR KEALEY: There you are. And irrespective of the
17 lockdown, Lady Flaux would have cancelled a trip to the
18 opera after the lockdown, if the lockdown hadn't
19 occurred.
20 LORD JUSTICE FLAUX: Yes. In fact what had happened is that
21 the opera house had closed anyway.
22 MR KEALEY: Yes, but that closure didn't cause that loss of
23 business.
24 LORD JUSTICE FLAUX: That is precisely why I put the point
25 to you, because it was a point that I was thinking about

1 when I was looking at your skeleton argument and
2 thinking about these points.
3 MR KEALEY: You see, I would, or rather Mr Edelman would
4 cross-examine the hapless Lady Flaux and extract from
5 her, in the same way as Amber Heard, exactly why she did
6 what she did.
7 LORD JUSTICE FLAUX: Right, Mr Kealey, let's move on, shall
8 we?
9 MR KEALEY: But the critical point that I am trying to make,
10 my Lords, is that we do reverse the rats. But we don't
11 reverse the rats for all intents and purposes. The idea
12 that you have still got these nasty little vermin
13 running around is actually a given. What you reverse is
14 the chain of causation which constitutes and embodies
15 the insured peril. No more and certainly no less.
16 If you remove more, then you are imposing an
17 unjustified and unprincipled obligation and liability on
18 insurers. If you remove less, you are depriving
19 insureds in an unjustified and unprincipled way of
20 coverage.
21 The idea postulated and put about by the FCA and on
22 their behalf and others, that you remove more than the
23 insured peril in order to gain more coverage, is
24 antithetical to all accepted concepts of causation and,
25 since they like it, common sense.

1 So there are two points that come out of this
2 example, and there are lots of other examples and I will
3 probably now no longer take them, but there are two
4 points that come out of this example. Firstly, it is
5 completely traducing insurers to suggest that we don't
6 remove the rats. Secondly, it is completely false to
7 suggest that because we remove the rats we remove them
8 for all intents and purposes.
9 If you go to another clause or another example --
10 you will forgive me while I find the example later on --
11 let us just say you have a disease clause, something
12 closer. Let's make it very, very simple. Business
13 interruption loss resulting from interference with the
14 business, caused by illness from COVID-19 within
15 25 miles of the insured premises. In short order, that
16 is business interruption loss caused by interference,
17 caused by illness, within 25 miles.
18 The illness within 25 miles has to be causative of
19 the interference and therefore causative of the business
20 interruption loss. The illness within 25 miles has to
21 be factually causative. That, my Lord, is as relevant
22 whether the disease is described as local or as having
23 epidemic or, indeed, pandemic proportions.
24 Let me give you an example. Assume an illness
25 only --

1 LORD JUSTICE FLAUX: If you take the obvious example,
2 Mr Kealey, of a measles outbreak, let us say in, well
3 let's take the west of England. So there is a measles
4 outbreak affecting Devon and Cornwall, Somerset, Dorset
5 and Wiltshire, and there is a local lockdown of all the
6 schools, local shutdown of all the schools in the west
7 of England. If you were looking at a 25-mile radius
8 around Dorchester say, for the sake of argument, you
9 might be able to show that that local outbreak had
10 caused the shutdown of the schools. But you would have
11 to show that -- this is your case -- and it wouldn't be
12 enough to show that simply there had been an outbreak of
13 measles within 25 miles of Dorchester, if in fact the
14 outbreak everywhere else in the west of England would
15 have led to closure of the schools within the 25-mile
16 radius in any event.
17 MR KEALEY: That is correct, in our submission. And the
18 reason why we are correct, in our submission, is because
19 we are simple people and we apply the "but for" test,
20 which is the basic threshold factual causation test of
21 English contract law.
22 What you find is that if you have a national
23 outbreak but it is only the 25-mile radius illness that
24 provokes government action within that 25-mile area,
25 then there is coverage because but for the outbreak in

1 that area there would have been no government action and
2 no loss.
3 If there is, for example, COVID-19 illness in
4 Leicester and the Central Government closes down
5 Leicester or the environs of Leicester, then the
6 business interruption loss was caused by what I will
7 describe as the local disease. That is the application
8 of the "but for" test; but for the disease within
9 25 miles there would have been no government action and
10 therefore no loss, therefore there is coverage and the
11 loss is recoverable.
12 But let us just say, but what you don't ever do,
13 my Lords, is reverse the disease, ever, beyond the
14 25-mile area. Because the 25-mile area is the limit and
15 the circumscription of the insured peril.
16 So let's go nearer to what the FCA would like.
17 Let's take an infectious disease and someone falls ill
18 24 miles away from the premises. But the disease is
19 everywhere as well outside the 25-mile area. The
20 government closes the entire country down. It didn't
21 close the country -- I am making this factual
22 assumption -- because of the one illness within the
23 25-mile area, but because of illness everywhere else and
24 the threat of illness coming within the 25-mile area.
25 That one illness, in that example, did not factually

1 cause any business interruption loss. And there is no
2 legal or principled basis in the disease clauses with
3 which we are concerned that enables the FCA to say there
4 is such a close relationship or commonality or linkage
5 between the one instance of the illness and the illness
6 everywhere else in the country that enables the insured
7 to recover, because it is contemplated that a 25-mile
8 radius area referable to the disease might be affected
9 by something of epidemic proportions.
10 That is the FCA's case; see Mr Edelman, transcript
11 {Day1/105:1} to 106.
12 LORD JUSTICE FLAUX: That is right, that as a matter of
13 common sense, using that expression, if you have got
14 COVID within the 25-mile range, which is a pretty big
15 range, depending on where you are in the country, the
16 chances are you have got it all over the place
17 elsewhere. Unless, in my example, it is limited to the
18 west of England, say. But you say, well, that is
19 nothing to the point, because that is not what insurers
20 have agreed to cover.
21 MR KEALEY: That is exactly right.
22 LORD JUSTICE FLAUX: That is why the 25-mile limit is there,
23 because they have only agreed to cover disease within
24 the 25-mile limit which has caused the insured a
25 business interruption loss, together with all the other

1 interference as a consequence of restrictions ,
2 et cetera , et cetera .
3 MR KEALEY: That is absolutely right, but we also develop it
4 only a tiny little bit more, which is to say that
5 Mr Edelman says the insured is covered against the peril
6 being caught up in the consequences of a wide area
7 disease that manifests itself in the relevant area .
8 That is how he put it .
9 That is not the peril insured against or remotely
10 the peril insured against .
11 If , as Mr Edelman says, and let's just assume he is
12 right on this one, that objectively the parties might
13 have contemplated a disease of epidemic proportions , in
14 other words, all over the country, then you have to ask
15 yourself this rhetorical question: why is there
16 a 25-mile limit ?
17 If , on the other hand, objectively the parties did
18 not contemplate a wide area epidemic disease , then
19 insurers , by giving a 25-mile limit , which as
20 your Lordship has indicated is a substantial area, were
21 covering a lot of possibilities . Whichever way you look
22 at it , there is a geographical limit which applies . And
23 it is absolutely clear that both the insured and the
24 insurers were agreeing that it is only business
25 interruption losses caused by illness within that area

1 which are covered, nothing more and nothing less .
2 MR JUSTICE BUTCHER: That is quite a narrow point in
3 relation to actually the construction of the insuring
4 clauses . This is rather different from your
5 counterfactual analysis , isn't it ?
6 MR KEALEY: It is. You are absolutely right . But --
7 LORD JUSTICE FLAUX: This is a coverage point, really.
8 MR KEALEY: It's both, actually.
9 LORD JUSTICE FLAUX: It's both, it is. You are absolutely
10 right that it is a coverage issue , and you say this is
11 where the FCA's case fails to give really any sensible
12 meaning to the 1 mile or 25-mile limit in the contract ,
13 as a matter of construction . But then you say, well ,
14 the causation issue as to whether, in your example
15 there , there's business interruption losses within the
16 25-mile limit were caused by the illness within that
17 limit , is ultimately a factual question .
18 MR KEALEY: Yes, that is absolutely right . That is
19 absolutely right .
20 If you have, my Lords, one instance of illness
21 within the 25-mile area , then the question you have to
22 ask is : did that cause the business interruption loss?
23 And the question you have to ask in order to answer that
24 question is : but for that illness within that 25-mile
25 area would the loss have been suffered ?

1 What you can't do, which is what the FCA seeks to do
2 for that counterfactual , is harvest into the 25-mile
3 area, notionally , is to harvest in every single other
4 illness in the country, and government action responsive
5 to everything everywhere, in order to say: well , those
6 business interruption losses were caused by that one
7 illness .
8 In fact , I should correct myself. The FCA knows it
9 can't say that, because it has said it can't say that.
10 I will come on to that later . So --
11 LORD JUSTICE FLAUX: Just before you move off this point,
12 what you are saying, I think I understand it this way,
13 is you take out the interruption or the interference or
14 whatever it is , and the restriction and the disease
15 within the 25-mile area.
16 MR KEALEY: Correct.
17 LORD JUSTICE FLAUX: So you have now got as it were
18 notionally , rather like in Orient-Express, the
19 disease-free , restriction-free area within 25 miles.
20 MR KEALEY: Yes.
21 LORD JUSTICE FLAUX: But, you then ask the question in
22 causation terms: the loss that the insured has suffered ,
23 would the insured have suffered in any event? To which
24 you say the answer is : yes, the insured would have
25 suffered it in any event because of the imposition of

1 the national lockdown.
2 MR KEALEY: Correct. But that is a question ultimately of
3 fact , of course.
4 LORD JUSTICE FLAUX: That is what I said to you. Yes, it is
5 a question of fact . Or it might be, going back to our
6 example of the restaurant , because members of the public
7 don't want to go to the restaurant in any event.
8 MR KEALEY: Yes. But --
9 LORD JUSTICE FLAUX: And if they are not prevented by the
10 government. But that again is a factual question .
11 MR KEALEY: That is again a factual question.
12 If one looks at the 25-mile radius , you might have,
13 and indeed I am sure some of the hapless insureds with
14 which we are concerned, you may have a local pub or
15 a local shop and its clientele all come from within
16 a mile or two miles or three miles of the premises.
17 Anyone who is experienced with local village shops, they
18 know that these little village shops service the village
19 and perhaps other villages around, that is their
20 demographic, their clientele . And you may well find ,
21 my Lord, seriously , that there is cover in respect of
22 local disease , in the sense of disease within that
23 25-mile area, which brings down some form of prohibition
24 or inhibition , whatever the wording of the contract is ,
25 which affects that shop. So for example, take the

1 measles and the local school, the local school is closed
2 down by government, and that -- depending of course on
3 the peril insured against, but let's say it doesn't
4 matter, in let's call it very wide cover, any illnesses
5 within 25 miles which have a causative effect or cause
6 business interruption at your shop. If that is what you
7 have got, if that is the width of your cover, then the
8 fact that there is measles in the local school, which
9 inhibits parents from coming, and therefore inhibits the
10 parents from going to the local shop, et cetera, then
11 you have got coverage.
12 So the idea put about by the FCA that somehow or
13 other, by virtue of what these insurers are doing, we
14 are rendering the cover illusory is itself a fantasy.
15 Because these insurers, they are not bad people, these
16 insurers may well in certain instances be wrong about
17 not paying up, in certain instances they will be right
18 about not paying up, these insurers, as Lord Sumption
19 said, have to be treated in exactly the same way as
20 insureds; in other words, fairly. I know you are going
21 to do that anyway, but it is something that I wanted to
22 mention.
23 LORD JUSTICE FLAUX: Our law makes that very clear, unlike
24 certain of the jurisdictions in the United States.
25 MR KEALEY: That is absolutely right. In fact, I am not

1 going to refer to Lord Sumption, that reference to
2 Lord Sumption is in our joint skeleton -- it isn't in
3 our joint skeleton, it is actually in Amlin and
4 Ecclesiastical's skeleton. But looking at our joint
5 skeleton, one goes way back to paragraph 21.3 {I/6/13},
6 and I don't want to dwell too much on aleatory bargains,
7 but there is a quotation from Lord Sumner in
8 Becker Gray, and the last four lines:
9 "One need only ask, has the event, on which I put my
10 premium, actually occurred? This is a matter of the
11 meaning of the contract, and not, as seems sometimes to
12 be supposed, of doing the liberal and reasonable thing
13 by a reasonable assured."
14 MR JUSTICE BUTCHER: In your point about the radius, and
15 this may just be because I am being slow, but this isn't
16 really necessarily tied to a "but for" point, is it?
17 You would say that the losses suffered by reason of
18 government action weren't caused by the disease in the
19 area in any sense at all. It wasn't that anyone
20 thought, for example, there is a disease here and
21 therefore there needs to be a restriction. In other
22 words, the debate we were having about the various
23 different types of causation, you would say, isn't
24 relevant here at all.
25 MR KEALEY: Yes.

1 MR JUSTICE BUTCHER: That is at least as I understand it.
2 MR KEALEY: That is absolutely right. I hear myself echoing
3 for some reason.
4 That is absolutely right. I think that the best
5 location for the analysis of that is actually, dare
6 I say it, not in our skeleton, or my skeleton, it is
7 actually in the skeleton of QBE. To an extent --
8 I don't mean to disparage anybody else's skeletons, it
9 may be that I have just read that most recently. But
10 you are absolutely right, my Lord, there is
11 a fundamental causation problem here, and indeed the FCA
12 acknowledges that the government would have done exactly
13 the same as it did do, irrespective of these individual
14 insureds or the illnesses locally.
15 LORD JUSTICE FLAUX: By contrast, in the case of a local
16 lockdown, in Leicester or wherever it may be, then there
17 may very well be insurance coverage within these
18 clauses, precisely because the government action in
19 locking down in that area is as a consequence of the
20 prevalence of disease in that area.
21 MR KEALEY: I would imagine that that is absolutely right.
22 I don't know. But certainly if one takes a basic
23 disease clause, in the circumstances of which we know,
24 I would expect there to be coverage.
25 Then if there is coverage, as one would expect there

1 to have been loss as a result of this, one knows that
2 the lockdown in Leicester came in very shortly after the
3 release from lockdown, and so people were starting to go
4 to pubs or restaurants or whatever it is, and they
5 suddenly stopped. In those circumstances, it will be
6 a question for the calculation of the loss, but there is
7 no doubt in my mind that according to the correct
8 wording there will be coverage for that.
9 Indeed, I had looked myself just out of interest,
10 the lockdown is within, as it were, a circle of
11 25 miles. Obviously it depends where your premises are,
12 but if your premises are right in the middle of the
13 lockdown it seems to be that everything around that is
14 25 miles, but that was --
15 LORD JUSTICE FLAUX: It is actually a bit less, isn't it?
16 It may be as little as 5 miles or 10 miles. But it is
17 more than a mile but less than 25, I think.
18 MR KEALEY: Exactly so, my Lord.
19 What we suggest to your Lordships is that if you are
20 going to apply the counterfactual correctly, which you
21 must, in relation to an insured peril, let's call it A,
22 it is unprincipled and wrong to apply a counterfactual
23 reversing A plus B, when B is not an insured peril. At
24 worst, if the insurer is held liable for the loss caused
25 by A plus B, the contract is rewritten, because the

1 insurer never promised to hold harmless against loss
2 caused by A plus B. Reversing less than the insured
3 peril can cause the insured harm, because you may
4 deprive an insured of coverage by not reversing that
5 which needs to be reversed; in other words, the insured
6 peril.
7 Now, if you move away from the "but for" test or you
8 purport to apply the "but for" test to something more
9 than the insured peril, in other words, but for A plus
10 B, you are moving away from fundamental principles of
11 law. You can't take refuge in the Fairchild enclave or
12 anywhere else, there is no principled basis for doing
13 so.
14 So my Lords, when the contract insures against loss
15 resulting from or caused by or following, or any similar
16 language requiring causal connection, what the parties
17 are doing, as they did in this case, they are adopting
18 traditional "but for" causation and not replacing it.
19 You have got to construe this contract as at the
20 date it was made, or these contracts as at the date when
21 they were made, not with the benefit of COVID-19
22 hindsight. So if they are saying "caused by",
23 "resulting from", "following", whether you say that one
24 denotes proximate cause or another denotes something
25 less, like you might say a less significant causal

1 connection, you are nevertheless, or you should
2 nevertheless conclude that the parties are adopting
3 traditional causal analysis, not replacing it.
4 LORD JUSTICE FLAUX: You are taking links in a chain and
5 that some of the links may be weaker than others,
6 depending on the words that are being used, and where
7 you get to is a chain, or a combination as you describe
8 it, which comprises the insured peril.
9 MR KEALEY: Yes. That is right.
10 LORD JUSTICE FLAUX: The proximate cause point only really
11 comes in, doesn't it, when you are asking the question:
12 is the loss claimed caused by the insured peril?
13 MR KEALEY: Yes, yes.
14 LORD JUSTICE FLAUX: So in a sense the points about "arising
15 from", "connected to", "following", et cetera, are all
16 beside the point.
17 MR KEALEY: That is our submission, my Lord.
18 LORD JUSTICE FLAUX: But still, once you put them together
19 in the combination and decided what the insured peril
20 is, then the proximate cause test applies at that stage.
21 MR KEALEY: That is right. There are two stages in a sense.
22 Firstly, are there causative links in the combination
23 which constitutes the insured peril? So disease causing
24 this, causing that, causing the other. And you may have
25 to, as your Lordship has indicated, apply different

1 degrees of causation, depending upon the language.
2 LORD JUSTICE FLAUX: Sure.
3 MR KEALEY: But -- but -- on any of the language in our
4 cases, and I don't act for other insurers, but having
5 seen them, on any of the language in our cases there is
6 never anything less than a factual causation "but for"
7 standard that needs to be met in any event. That is the
8 first stage.
9 The second stage, once you have identified the
10 insured peril, has that caused the business interruption
11 loss for which a claim is made? And that is
12 traditional, legal causation principles that apply, and
13 the very least of those principles is the "but for"
14 principle.
15 LORD JUSTICE FLAUX: In fact it's proximate cause at that
16 stage, or dominant or efficient or whatever.
17 MR KEALEY: It is. It is. But that is a far higher
18 standard, as it were, than the "but for" principle,
19 because unless you actually overcome the "but for"
20 principle you are not into proximate causation anyway.
21 LORD JUSTICE FLAUX: No.
22 MR KEALEY: My Lords, I am going to turn if I may, with a
23 certain -- not rapidity but I am just going to make sure
24 that I cover everything.
25 We have discussed quite quickly concurrent

1 interdependent causes. As I have indicated, my Lords,
2 concurrent interdependent causes shouldn't be something
3 with which we should be concerned directly in this case,
4 but of course it does educate us on the correct analyses
5 to be applied as a matter of general causation
6 principles. In other words, as I indicated earlier,
7 both causes in two interdependent causes by definition
8 satisfy the "but for" test. Each of them does.
9 Your Lordships will see that not only in
10 MacGillivray, and I will give your Lordships the
11 reference, you don't need to look at it, it is
12 paragraph 21-005, which is at {K/191/2}, and that was in
13 a passage endorsed by Lord Clarke in The Kos, which is
14 at {J/115/29}. Perhaps --
15 LORD JUSTICE FLAUX: Shall we have a look at The Kos?
16 MR KEALEY: We will have a look at The Kos. It is
17 {J/115/29}. It is paragraph 74, my Lord. Perhaps we
18 should start at page {J/115/28}.
19 LORD JUSTICE FLAUX: Yes.
20 MR KEALEY: Thank you so much. At the bottom. You will see
21 it in the left-hand, paragraph 71, go through Wayne Tank
22 and Miss Jay Jay, Midland Mainline and Eagle Star, those
23 are all interdependent, my Lord.
24 LORD JUSTICE FLAUX: Yes.
25 MR KEALEY: There are quotations there. Then if we go to

1 the next page, and about by the letter B, this is The
2 Miss Jay Jay:
3 "It was held that the faulty design and construction
4 of the vessel, which was neither an insured peril nor an
5 excepted cause, and perils of the seas, which was an
6 insured peril, were both proximate causes of the loss
7 since they were, as Lord Justice Slade put it, 'equal or
8 at least nearly equal in their efficiency in bringing
9 about the damage'. These principles are as I see it
10 correctly summarised in MacGillivray ... and in McGee
11 and where Lord Hodge also stressed the importance of
12 context see I think this is just to be fair".
13 This is just on the question of independent and
14 interdependent causes that Lord Justice Clarke approves
15 of Orient-Express and Mr Justice Hamblen, and also the
16 Global Process case.
17 LORD JUSTICE FLAUX: But this is interdependent causes,
18 hence the reference to them being both --
19 MR KEALEY: Exactly.
20 LORD JUSTICE FLAUX: -- of equal efficiency.
21 MR KEALEY: That is exactly right, my Lord. Two
22 interdependent proximate causes. The cases there are
23 all of combinations of causes in the absence of either
24 of which the loss would not have occurred.
25 Of course, being interdependent causes it

1 necessarily follows that if one is excluded the "but
2 for" test cannot be satisfied, because both are required
3 in combination to produce the loss.
4 MR JUSTICE BUTCHER: But that shows, doesn't it, that you
5 can have a proximate cause which is not a "but for"
6 cause?
7 MR KEALEY: No. You have got two proximate causes, each is
8 a "but for" cause, but if one is excluded from coverage
9 then you don't have a covered loss.
10 So you do have two interdependent causes, it is just
11 that if one is insured and the other is not insured you
12 have got coverage, because the insured peril satisfies
13 the "but for" test. But if you have got one insured and
14 one excluded, then because you have got the exclusion,
15 you take out one of the necessary arms or elements which
16 are necessary or is necessary to produce the loss, ergo
17 your loss is excluded.
18 LORD JUSTICE FLAUX: That's obviously Wayne Tank.
19 MR KEALEY: That is all those cases, my Lord. It is also,
20 if one goes -- let me just take you to B Atlantic, that
21 is probably a good area to go. If your Lordship goes to
22 {J/139/1}. It is in the Supreme Court.
23 LORD JUSTICE FLAUX: Yes.
24 MR KEALEY: The passage is in Lord Mance's judgment. If you
25 go to page 23 {J/139/23} this, as your Lordships

1 probably know, is a case where drugs had been strapped
2 to the hull of a ship.
3 LORD JUSTICE FLAUX: I was the hapless trial judge,
4 Mr Kealey, so I know all about this case.
5 MR KEALEY: Well, there you are.
6 LORD JUSTICE FLAUX: Lord Mance found another way of
7 doing me down than the way that Lord Justice
8 Christopher Clarke had.
9 MR KEALEY: I am sorry about that.
10 LORD JUSTICE FLAUX: None of that is relevant for present
11 purposes. This is principles of causation.
12 MR KEALEY: If your Lordship would go to paragraph 49, just
13 above letter C, this is John Cory, and reference to
14 Lord Blackburn:
15 "Subsequent authority confirms Lord Blackburn's
16 conclusion that, where an insured loss arises from the
17 combination of two causes, one insured, the other
18 excluded, the exclusion prevents recovery, see [Samuel v
19 Dumas and Wayne Tank]. Here, the two potential causes
20 were the malicious act and the seizure and detainment.
21 The malicious act would not have caused the loss without
22 the seizure and detainment, it was the combination of
23 the two that was fatal."
24 Then it goes on. So what your Lordship sees is that
25 Lord Mance there is, in our respectful submission, if

1 not explicitly then certainly very clearly implicitly,
2 endorsing the proposition that where you have
3 a combination of causes in circumstances where the loss
4 wouldn't have occurred without that combination, in
5 other words, each has to satisfy the "but for" test,
6 when you have that, then if you are insured and
7 uninsured you're covered, and if you're insured and
8 excluded you're not.
9 That is a completely different case, of course, from
10 that of two so-called independent concurrent causes. I
11 say soi-disant in that case because that begs the
12 question as to causation.
13 I know my learned friends for the FCA refer to
14 a passing remark of Lord Justice Clarke in the Court of
15 Appeal about concurrent causes but, frankly, I am not
16 going to take you to that because it is not
17 authoritative, and your Lordships have Lord Mance in the
18 Supreme Court.
19 So concurrent independent causes. Now, I am going
20 to take this quite swiftly because I have already
21 covered much of the ground. But if your Lordships will
22 in your own time, if you have any, which I know you may
23 not, it is paragraph 56 of the joint skeleton, that is
24 {I/6/47}. Well, it is there.
25 What you have is the simple application of the "but

1 for" test to the insured peril produces the equally
2 simple result that the insured peril didn't cause the
3 loss as a matter of factual "but for" causation.
4 And by reason of being a second independent cause or
5 by reason of there being a second independent cause, the
6 insured peril did not contribute to the loss.
7 Now, the only answer that the FCA seems to be able
8 to make to this, apart from slightly ambitious arguments
9 on construction or connection or interlinkage or
10 jigsaws, is: on that logic, the loss has no cause.
11 Because if you ask the question whether, on the "but
12 for" test, the second independent cause caused the loss,
13 the answer would be no, because of the insured peril.
14 So the philosopher would answer that the loss has no
15 cause, and that can't be right. That is exactly what
16 the FCA said, through one of its counsel, at Day 1 of
17 the transcript, pages 130 to 131. [Day1/130:1] And we
18 submit, my Lords, that that is simply a nonanswer. It
19 is an irrelevance.
20 Because the issue on a contract of insurance is
21 simply not, if I can put it that way, was the cause of
22 the loss, but rather as between two contracting parties,
23 and in that context, did the insured peril cause the
24 loss.
25 The standard "but for" test answers that question

1 and does so perfectly satisfactorily, traditionally and
2 correctly. It is irrelevant to the enquiry that if you
3 apply the same approach to the other uninsured
4 independent cause you arrive at, as it were, a similar
5 mirror conclusion.
6 The only time when that is a relevant or might be
7 a relevant factor is the one that I have indicated
8 before, it's if the other independent cause was itself
9 a breach of legal duty owed to the same claimant in
10 respect of the same loss. In other words, you have two
11 wrongdoings.
12 Now, if you have got two wrongdoers the law
13 recognises as an exceptional circumstance that both
14 cannot be allowed to escape liability by relying on the
15 other's wrongdoing, so as to leave the claimant in
16 a worse position than it would have been in if it had
17 been the victim of only one breach of duty.
18 All the decisions relied upon by the FCA as examples
19 of cases where the "but for" test has not been applied
20 are cases where there are concurrent independent causes
21 involving multiple wrongdoers. I don't want it to be
22 brought up now, but for your reference it is
23 paragraphs 238 to 240 of the FCA's trial skeleton
24 {I/1/94}. For example, two people simultaneously but
25 independently shooting a victim dead, two people

1 independently searching for the source of a gas leak
2 with the aid of lighted candles; the facts of the
3 successive conversions in Kuwait Airways and the
4 decision in Greenwich Millennium involving the multiple
5 subcontractors who each of them or all of them were
6 responsible legally.
7 I am going to turn to the issue of multiple
8 wrongdoers later, as I have indicated, when looking at
9 the Orient-Express.
10 What we have done, my Lord, is to have identified
11 classical legal principle, and the first question then
12 that you will have to consider, probably later, in
13 relation to individual wordings is what is the insured
14 peril. That is a question of contract construction.
15 I have given you some examples.
16 When you have identified what the insured peril is,
17 my Lords, you will and should, in our respectful
18 submission, conclude that there is no legal or
19 principled reason, on the basis of the wordings with
20 which we are concerned, that enables the insured to say,
21 with a straight or other face, there is such a close
22 relationship or commonality or linkage between, say, one
23 instance of illness and the illness everywhere else in
24 the country that enables the insured to recover because
25 it is contemplated that, for example, a 25-mile radius

1 area referable to disease might be affected by something
2 of epidemic proportions.
3 What Mr Edelman said on {Day 1/105:1} to 106 was
4 effectively the same; it was to the effect that the
5 insured is covered against the peril of being caught up
6 in the consequences of a wide area disease that
7 manifests itself in the relevant area. And that really
8 says it all. All you need, according to the FCA, is the
9 manifestation of a disease in a relevant area for
10 coverage to exist.
11 They say, and I am going to take you to the
12 passages, that so long as, in other words, provided
13 that, there is just one case of COVID-19 in the 25-mile
14 radius area, the insured can recover all its losses
15 caused by the entire pandemic. So the one case doesn't
16 even have to be a cause of the insured's loss, the one
17 case is merely the gateway. And it is a gateway, my
18 Lords, to a different cover from that which the insured
19 was granted for the premium that the insured paid.
20 It is just like Chesil Beach. If the oil comes only
21 one inch into the insured area, and that one inch of oil
22 has no significance whatsoever, because it is manifested
23 within the relevant radius area, as if by magic the
24 insured can recover all its loss caused by the oil spill
25 on the beach beyond the insured area.

1 So what we say is that --
2 LORD JUSTICE FLAUX: I mean, the actual example that was
3 given was where the area of contamination is greater
4 than the insured area. But if the insured can
5 demonstrate that even if it had been limited to the
6 insured area the relevant shutdown would have occurred,
7 then there is cover.
8 So, for example, going back to Leicester, let's
9 assume for the sake of argument that there is a 1 mile
10 limit in the policy, in fact the area that is restricted
11 is a 3-mile limit or a 5-mile limit, but if the insured
12 can demonstrate that the prevalence of the disease
13 within the 1 mile limit was causative of the shutdown,
14 then there is cover, even though the extent of the
15 disease is greater than the 1 mile area.
16 MR KEALEY: I agree with that, my Lord, entirely. I would
17 only make sure that we understand each other. In other
18 words, but for the disease within that 1 mile area,
19 whatever government restriction it was would not have
20 been imposed.
21 LORD JUSTICE FLAUX: That was part of what I was putting to
22 you.
23 MR KEALEY: How can I possibly disagree with that?
24 LORD JUSTICE FLAUX: Because one of the points that is taken
25 against insurers, as I understand it, is: well, if there

1 is a national pandemic or if there is a wider outbreak
2 of disease then they are saying there is no cover. And
3 that is not in fact what you are saying. What you are
4 saying is, provided that within the relevant limit,
5 whether it is 1-mile or 25-mile limit, there has been
6 a restriction as a consequence of disease in that area,
7 the fact that the overall area of the disease is greater
8 is neither here nor there.
9 MR KEALEY: That is right.
10 Two qualifications: the insured has to prove that
11 but for the disease within that area the restrictions
12 wouldn't have been imposed; and secondly, the insured --
13 this is going to be very fact-sensitive, but the insured
14 should not be entitled to recover, other than in respect
15 of the loss caused by the restrictions caused by the
16 disease within that 25-mile area.
17 MR JUSTICE BUTCHER: So you say, supposing turnover of these
18 restaurants in Leicester has been at 50% of normal
19 because of the -- restaurants is not a good example --
20 the shops have been 50% of normal because of the
21 lockdown nationally, and then there is the local closure
22 and it goes down to nought, you are saying that it still
23 has to be shown, in that 50% decline, that that was due
24 to the local lockdown and not to the other effects of
25 COVID.

1 MR KEALEY: Correct.
2 MR JUSTICE BUTCHER: Because, I mean, this is an area which
3 really troubles me, and it troubles me about your
4 church, for example. If you had for the first three
5 weeks of March a church which has takings which are,
6 let's say, at 80% of what they had been the previous
7 year, you accept, as Ecclesiastical -- I know you are
8 not Ecclesiastical just at the moment but you are
9 otherwise Ecclesiastical -- you accept that on 23 March
10 there was a government action which was capable of
11 restricting access, as I understand it.
12 MR KEALEY: Yes.
13 MR JUSTICE BUTCHER: And the churches, let's take a church,
14 as I say, it was 80% before, and it falls to 10% of what
15 it had been the previous year.
16 Now, do you then say: well, the insured can't
17 recover the difference between 80% and 10% unless it can
18 be said that they can distinguish between that part of
19 that difference which was due to the restrictions on
20 churches and not to any other part of the governmental
21 action on the 23 March?
22 MR KEALEY: Yes. I put it this way, that you start with
23 80%. So on any view, subject to any other facts that
24 might arise, the insured can't recover more than up to
25 80%; that is the first stage. The second stage is that

1 the diminution by a further 70% of the 100% is
2 ostensibly covered following the insured peril unless,
3 as I have put it before in answer to a question of
4 your Lordship, it is prima facie covered because you
5 have the closure, you have the reduction, and therefore
6 there is a prima facie case. If those are the only
7 facts you have got, then there is a prima facie case.
8 If, however, there is evidence sufficient to shift
9 the evidential burden, or rather shift it back, to the
10 effect that irrespective of the closure of the church
11 you would have been deprived of the income because all
12 your congregation was dead, then the insured will have
13 to take that on the chin.
14 MR JUSTICE BUTCHER: The trouble is that the nature of these
15 events is that after the occurrence of the restriction,
16 in conjunction with all sorts of other restrictions, it
17 becomes impossible to tell.
18 MR KEALEY: Right. You assert that, my Lord.
19 MR JUSTICE BUTCHER: It might be impossible. It might be
20 difficult to tell.
21 MR KEALEY: I don't necessarily disagree with your Lordship
22 on the last statement. I don't shy away from it either,
23 because business interruption losses are quite often
24 really difficult and complicated analyses. I am not
25 saying that as an in terrorem attack on these hapless

1 insureds in our cases. I am just saying business
2 interruption losses are notoriously difficult to
3 calculate. In fact, my Lord, this is why loss adjustors
4 are so heavily -- and I am not talking about insureds in
5 this case, I am just talking generally -- loss adjustors
6 are heavily engaged for both sides in trying to work out
7 what the answer or the answers are.
8 If your Lordships go to paragraph 26.6 in our
9 skeleton this is something that we recognise. It is not
10 something that we are frightened of and it is not
11 something that we are unaware of. It is at
12 paragraph 26.6 if you go to {I/6/29}.
13 Could I just invite your Lordships to read that. So
14 this is something we recognise. But I have to say to
15 your Lordship that it is not a reason why one should
16 construe the contract or manipulate the law in any way
17 which is not justified by the contract or the law.
18 Now you are right, it would be a difficult exercise
19 if you have, for example, as your Lordship has said, you
20 have a shop closed, or let's call it the Ecclesiastical,
21 let's call it the church. You have a reduction to 80%
22 and if the government had not had acted that, let's just
23 assume my Lord it can be proved, would have reduced to
24 60%, not because of the closure but because of other
25 factors, for example, the public's disinclination to be

1 seen with other people or be near other people, or the
2 Church of England, or depending what type of church it
3 is, might have said: "We don't encourage you to go to
4 take communion" or whatever it happens to be.
5 I have to say, and I don't say it with timidity,
6 I say it legally, that that extra 20% is a loss that
7 cannot be attributed to the closure of the church; that
8 loss is attributed to something other than the insured
9 peril.
10 It may be difficult to prove and in fact it may be
11 difficult even for insurers to satisfy its own, or their
12 own evidential burden. But I don't in any way retreat
13 from the legal principles by which we are all bound.
14 LORD JUSTICE FLAUX: Mr Kealey, just to follow that through:
15 do you accept that in my Lord's example where there is,
16 as it were, events which are inextricably linked one
17 with another, that it might, given on any set of
18 facts -- and I entirely accept that it is
19 a fact-sensitive analysis -- you might or an insured
20 might as it were succeed in a claim under the policy on
21 a similar basis to that which applied in the Silversea
22 case?
23 MR KEALEY: Actually I don't accept that. I don't accept
24 that. I will come on to Silversea, or the Silver Cloud
25 in due course.

1 LORD JUSTICE FLAUX: That is an example of a case where the
2 judge had said at first instance there are two causes
3 but you can't actually say which of them -- you can't
4 extricate them. So it is a case of interdependent
5 causes.
6 MR KEALEY: That particular judge was inappropriately
7 seduced by the advocacy of the insured in that case.
8 But what he decided in relation to that was -- I am not
9 saying he was wrong to decide it, of course he decided
10 it -- what he decided was the impact of two
11 circumstances, I will call them that neutrally, which
12 occurred one immediately following the other which had
13 an influence or an effect upon the minds of individuals.
14 LORD JUSTICE FLAUX: Yes.
15 MR KEALEY: So you have a terrorist attack and a government
16 warning, which I think he said were, upon the basis of
17 expert evidence that he heard, of indivisible causative
18 effect.
19 LORD JUSTICE FLAUX: He couldn't say that the one was of
20 greater causal impact than the other. That was the
21 point.
22 MR KEALEY: No, he couldn't say that. That is on the mind
23 of individuals. Now that is not, if I might put it this
24 way, my Lord, our case.
25 LORD JUSTICE FLAUX: No.

1 MR KEALEY: Because the case postulated by
2 Mr Justice Butcher, my Lord Mr Justice Butcher, or the
3 case in fact I postulated to him, I cannot remember
4 which way it went, but I suggested that after the
5 closure you would have found that a further 20% wouldn't
6 have gone into the church in any event. In other words,
7 they weren't affected by the closure. The closure,
8 unlike the government warnings, or the State Department
9 warnings in your case, my Lord, the closure didn't have
10 that impact. I am not saying that closure can't. Of
11 course a closure could shape how someone thinks about
12 something.
13 LORD JUSTICE FLAUX: I think we might be slightly at
14 cross-purposes, because I think what I was really
15 putting to you, I was really just trying to explore
16 whether if on the facts it wasn't possible to say
17 whether it was the closure or fear of COVID, and in the
18 case, you know, assuming that there is a trial, the
19 evidence is to the effect that you simply cannot
20 distinguish between the two, then you would have
21 a scenario that was very similar to the one in
22 Silversea. That is all I am putting to you I think.
23 MR KEALEY: Right. Then the answer is that the insured has
24 failed to satisfy its burden.
25 LORD JUSTICE FLAUX: Right.

1 MR KEALEY: It is no different from The Popi M. I don't
2 think -- well, anyway, it is not for me to think or not
3 think.
4 LORD JUSTICE FLAUX: I don't know.
5 MR KEALEY: I try and think a little bit.
6 LORD JUSTICE FLAUX: Do you submit then that Silversea is
7 wrongly decided?
8 MR KEALEY: Oh no. No, no, no. What I say is Silversea
9 didn't decide anything of any relevance to this case.
10 LORD JUSTICE FLAUX: That is a different point. Yes,
11 I follow. Anyway, I was taking you out of your course.
12 MR KEALEY: Not at all. I am going to come to Silversea.
13 LORD JUSTICE FLAUX: You have limited time, Mr Kealey, so
14 let's shut up now.
15 MR KEALEY: No, please don't, my Lord.
16 The important point that I was making is that -- and
17 I am going to give your Lordships the references: it is
18 {Day1/101:6-14}, {Day1/104:16-22} and {Day1/105:22} to
19 {Day1/106:4}.
20 What Mr Edelman submitted was that business
21 interruption losses caused to an insured by disease
22 everywhere in a pandemic or epidemic are recoverable
23 simply "so long as" the pandemic extends into the stated
24 radius of the insured premises. I am using a disease
25 radius clause for this example.

1 According to the FCA and their counsel, the insured
2 does not have to show, apparently, that the business
3 interruption losses were actually caused by any disease
4 within the 25-mile radius.
5 There is absolutely no insured peril clause in any
6 of these contracts which comes anywhere near wording to
7 that effect. If there were it would have to read
8 something akin to, "You are entitled to recover business
9 interruption loss resulting from interference with the
10 business caused by illness from an infectious disease
11 provided that there is a case of illness of infectious
12 disease within 25 miles of the insured premises".
13 The effect of doing that is actually to remove the
14 causative requirement and to demote the disease within
15 25 miles to the status of a mere subsidiary trigger. It
16 removes the in-built restriction from the scope of the
17 disease cover.
18 So instead of promising to insure against disease
19 within 25 miles causing business interruption loss, the
20 insurer is confronted by a promise that he never made to
21 insure against disease occurring everywhere so long as
22 one case can be proved within a 25-mile radius area of
23 its premises, of the premises of the insured.
24 It transforms the promise from an agreement to
25 insure local disease to meet the insured's aspiration

1 after the event in this case for broad national disease
2 cover, and for that matter threatened national disease.
3 Now I am not like the FCA saying, oh well, you
4 should have excluded this or you should have excluded
5 that. All I am saying is that if these insurers had
6 been prepared to give cover for infectious diseases on
7 an epidemic scale in a disease clause that would not
8 have been the disease clauses with which your Lordships
9 are confronted.
10 Now my learned friend, I can't remember, I think
11 it is Mr Edelman in his comestible metaphors, accused us
12 of salami slicing or cherry-picking {Day1/97:3-4}. We
13 are not guilty. The guilt lies elsewhere with him.
14 Mr Edelman also argued that on our approach the more
15 widespread the disease the less cover the insured has.
16 {Day1/122:17-25}
17 My Lord, that is just wrong. It all depends on what
18 the disease is and what the government's approach is to
19 that disease.
20 If the government only imposes restrictions where
21 there are outbreaks and one of those areas is covered by
22 the policy then the insured can readily show not only
23 disease within the requisite area but also causation.
24 If the government imposes restrictions on all areas
25 regardless of whether there is at the time any case or

1 any serious number of cases, then if the insured cannot
2 show that the disease within 25 miles, in other words
3 the relevant area, caused him loss or caused it loss,
4 then the insured doesn't have the coverage.
5 All this is because as the FCA has acknowledged in
6 its pleadings and in its skeleton argument, it cannot
7 prove and does not have the evidence that comes close to
8 proving that any disease or any incident or anything
9 happening within a particular area was causative of the
10 government's response, whatever that response was, to
11 COVID-19. And by "whatever that response" I mean
12 whatever shape or form it took: whether it was advisory;
13 imposition of regulations; whether it was on social
14 distancing; whether it was on closures. No causation
15 can be proved.
16 That, my Lords, for your reference is reply
17 paragraph 52. That is {A/14/27}; the FCA trial
18 skeleton, paragraph 241. That is {I/1/97}.
19 So, my Lords, I have taken you to some examples.
20 I have got some other examples in my notes, for example
21 a lorry spill and other examples. I can go through
22 those. But I just wonder whether it is of real value to
23 you since I think I have made my points on those.
24 If your Lordships wish me to go through, for
25 example, a lorry spill and causation enquiries I can do

1 so. But I am not sure --
2 MR JUSTICE BUTCHER: Speaking for myself, I suspect we have
3 covered the ground in relation to that. I think I can
4 imagine what you are going to say about it.
5 MR KEALEY: Yes, I think I have covered the ground, my Lord,
6 because I see a certain amount of repetition in my
7 examples of the principles. So I am grateful for that.
8 So, my Lords, what I think I would like to do is to
9 take your Lordships now, or what I am going to try and
10 cover now in not short order but I am not going to be
11 trespassing too much on everybody's time, I want to go
12 to the Orient-Express, then to Silversea, and then back
13 to Orient Express. Then I think I am probably done.
14 Your Lordships may say you have not answered all our
15 questions. But I am going to proceed along those lines
16 in the hope that I will have done so by the end of my
17 submissions sometime after lunch, about an hour after
18 lunch this afternoon.
19 LORD JUSTICE FLAUX: If you have not answered our questions,
20 Mr Kealey, we will tell you.
21 MR KEALEY: Then I will go straight to the Orient-Express at
22 {J/106/1}.
23 The reason I do so at this stage is not the reason
24 I will do so later.
25 So 106. The reason I go here now is to identify to

1 your Lordship some fallacies in my learned friend's
2 submissions on the Orient-Express, and particularly how
3 it worked.
4 What I want to do, my Lord, and the whole purpose of
5 this exercise right now -- and you may tell me that you
6 know the answer already -- I want to identify the
7 insured peril in the business interruption section of
8 the policy. Not the insured peril in the property
9 damage section of the policy, but the insured peril in
10 the business interruption.
11 Of course, in doing so I will also tell you what the
12 insured peril is in relation to the property damage
13 section of the policy.
14 On {Day2/101:7-19} Mr Edelman said that
15 Mr Justice Hamblen reached the wrong judgment about what
16 the insured peril was because he said "indubitably the
17 insured peril was the hurricane".
18 Now your Lordships have to look at the case rather
19 more carefully. If your Lordships go to paragraph 12 of
20 the judgment {J/106/3}, where it says "The Policy",
21 bottom right, there are two sections.
22 Firstly under (a):
23 "The insurers agree to indemnify the insured under
24 the material damage and machinery breakdown sections
25 against direct physical loss, destruction or damage,

1 except as excluded herein to property as defined herein,
2 such loss, destruction or damage being hereafter termed
3 [capital D] Damage."
4 So the subject matter of that section is damage, and
5 the perils insured against, as indeed was accepted on
6 behalf of the FCA, were all risks, in other words all
7 fortuitous risks.
8 I want to emphasise one thing at this stage.
9 Contrary to Mr Edelman's suggestions on {Day2/99/1} to
10 {Day2/100:1}, nothing that I am about to say, and
11 nothing that Mr Justice Hamblen said, would have been
12 any different if the property damage section of the
13 policy that I have just read out was a specified risks
14 policy as opposed to an all risks policy. Absolutely
15 nothing. It wouldn't have made any difference if every
16 single risk, including hurricane, had been set out
17 verbatim. That is, my Lord, because as we say at
18 paragraph 16.3 of the Ecclesiastical skeleton, I think
19 it is, and Amlin's skeleton, that is {I/12/13} at
20 footnote 7:
21 "As Lord Sumner said in the case of British and
22 Foreign Marine v Gaunt: 'An all risks policy is
23 equivalent to a policy in which every single risk is set
24 out and enumerated'".
25 You see that at footnote 7:

1 "All risks have the same effect as if all insurable
2 risks were separately enumerated."
3 Back to paragraph 12 {J/106/3} you can imagine every
4 single risk, including hurricane, being enumerated
5 there. That is the first stage of the policy.
6 The second section has a different insurance
7 coverage: under the business interruption section
8 against loss due to interruption or interference with
9 the business directly arising from damage.
10 The subject matter of 1(b) is the business. The
11 peril insured against is damage, capital D Damage as
12 defined. In other words capital D Damage as having been
13 caused by whichever risk falls within all risks, but
14 whatever risk falls within all risks and causes damage
15 ...
16 LORD JUSTICE FLAUX: So the peril insured against under the
17 business interruption section is damage caused by
18 hurricane, not hurricane.
19 MR KEALEY: Correct, and that is the only point I am making.
20 I am going to make it rather lengthily but unfortunately
21 I have to because it was submitted to you that the peril
22 was a hurricane, and that is blatantly fallacious.
23 If you look, my Lords, at paragraphs 57 and 58 of
24 Mr Justice Hamblen's judgment {J/106/11} -- one should
25 really start at 52. It is at page {J/106/11}:

"Sixthly, OEH [that is the insured] submits that Generali's approach subverts first principles in that it involves seeking to strip out from the claim for business interruption loss, loss caused by insured damage, not merely the concurrent consequences of the extraneous circumstances."

Et cetera:

"But the concurrent consequences of the very peril that caused the damage which was a proximate cause of the business interruption loss in the first place. However the relevant insured peril is the damage; not the cause of that damage."

If your Lordships now go to paragraph 57:

"I agree with the tribunal that the clause is concerned only with the damage, not with the cause of the damage. What is covered are business interruption losses caused by damage, not business interruption losses caused by damage or other damage which resulted from the same cause."

If your Lordships go to the bottom of that paragraph, the same page, in relation to the trends clause but also actually the "but for" test:

"The assumption required to be made under the trends clause is had the damage not occurred, not had the damage and whatever event caused the damage not

occurred."

When he says that your Lordships should recall that he also said that the trends clause was merely a reflection of the general "but for" test as a matter of general legal principle.

Then at 58 over the page, my Lords:

"I agree with Generali that OEH's construction effectively requires words to be read into the clause or for it to be redrafted."

Just towards the end of that paragraph -- well, I should read on:

"Further such a redrafting of the trends clause which would allow for OEH to recover for the loss in gross operating profit suffered as a result of the occurrence of the insured event (ie the hurricanes) as opposed to the loss suffered as a result of the damage to the hotel, is inconsistent with the causation requirements of the main insuring clause which OEH accepts requires proof that the losses claimed were caused by damage to the hotel."

Then in the next paragraph he refers to the trends clauses providing clear support for adopting the "but for" approach to causation.

Now what I think the FCA has done, which is wholly inappropriate and quite wrong, is to have tried to lead

your Lordships to think that when Mr Justice Hamblen was referring there to the insured event as the hurricane being the insured event what he meant for the purposes of the business interruption part of the policy was the same as the insured peril under the BI part of the policy.

That, my Lords, is wholly wrong, and quite wrong to have been suggested.

Your Lordships will see that, just little bits, if your Lordships go back to paragraph 45. I hope your Lordships will read now this judgment from the correct not misleading perspective {J/106/10}. If your Lordships go back to page 10, paragraph 45, at paragraph 45:

"However, without an adjustment mechanism as provided for by the trends clauses, an application of that standard formula to the facts of a given case may not give proper effect to the indemnity intended to be provided under the business interruption section of the policy, namely in respect of the loss resulting from the business interruption suffered in consequence of the property damage, which is itself the result of an insured event."

"Insured event" at this juncture of my Lord Mr Justice Hamblen's judgment, is the cause of the

insured peril, and is not the insured peril.

Then the last couple of sentences or three sentences --

LORD JUSTICE FLAUX: Even though it might be an insured peril under section A of the policy, the material damage section.

MR KEALEY: Exactly so, my Lord. That is exactly the same point as was addressed by the Court of Appeal in Silversea.

LORD JUSTICE FLAUX: Quite.

MR KEALEY: Exactly so. Mr Justice Hamblen is no slouch when it comes to, you know, grammar and vocabulary and taking the right words, he knew what he was saying and, in my respectful submission, when you read the words that he uses, anyone reading this judgment knew what he was saying and knows what he was saying.

If your Lordships go to the bottom of paragraph 46 the middle:

"One cannot ignore the damage and yet pretend [this is the submission of the insured] for the purposes of the trends clause that the event which caused the damage still happened. However, this does not follow. The only assumption required by the clause is that the damage has not occurred."

That, my Lord, is the insured peril:

1 "It does not require any assumption to be made as to
2 the causes of that damage."
3 I am going to be referring to this case again, but
4 since I am on it now, do your Lordships remember that --
5 let me check, have I taken your Lordships to
6 paragraph 52? I think I have. Yes, I have. That is
7 okay.
8 Do your Lordships remember I was talking about
9 wrongdoers and multiple wrongdoers? Since I am here
10 now, my Lords, it is probably not inappropriate that
11 I should just mention the multiple wrongdoers.
12 Sorry, my Lords I am just losing my --
13 LORD JUSTICE FLAUX: It is paragraph 24, it's the reference
14 to Kuwait Airways.
15 MR KEALEY: I'm grateful, my Lord.
16 LORD JUSTICE FLAUX: Is it from Kuwait Airways at 73 and 74,
17 the judge quotes it at page --
18 MR KEALEY: Yes, it is, 73 and 74. In fact, I wanted to
19 take your Lordships also to paragraph 39 at page
20 {J/106/9}:
21 "Further, it is not the case that the application of
22 the 'but for' test means that there can be no recovery
23 under either the main insuring clause or the prevention
24 of access or the loss of attraction. If, for the
25 purpose of resisting the claim under the main insuring

1 clause, Generali asserts that the loss has not been
2 caused by the damage to the hotel, because it would in
3 any event have resulted from the damage to the vicinity
4 or its consequences, it has to accept the causal effect
5 of that damage for the POA or LOA, as indeed it has
6 done. It cannot have it both ways. The 'but for' test
7 does not, therefore, have the consequence that there is
8 no cause and no recoverable loss, but rather a different
9 (albeit, on the facts, more limited) recoverable loss."
10 That is because, my Lord, the losses were partly
11 covered or potentially covered under both clauses.
12 Therefore, because it was partially covered, or the loss
13 was partially covered under both clauses, there was
14 a breach of contract under both clauses, or under all
15 three clauses actually. Because the insurer, Generali
16 in this case, did not hold the insured harmless by
17 preventing the loss from occurring. Ex hypothesi, the
18 insurer was in breach of contract and was a wrongdoer.
19 And a wrongdoer, in applying the "but for" test, cannot
20 rely upon its own wrong.
21 So that is a further extrapolation of the instances
22 or examples given in the Kuwait Airways case by
23 Lord Nicholls and in other places about multiple
24 wrongdoers. In fact, this is an a fortiori case, in the
25 sense that this is one double or triple wrongdoer.

1 My Lords, it is now 1.00 pm. I think I have dealt
2 with, in this context, Orient-Express as to the
3 proper -- I really shouldn't have had to do this --
4 proper identification of the insured peril under the
5 business interruption section. I am sorry to have had
6 to take your time and it is wholly wrong that I should
7 have been required to do so, but I have. I am now going
8 to turn, if I may, my Lord, after lunch to the Silversea
9 case, I think, and then revert finally to the
10 Orient-Express.
11 LORD JUSTICE FLAUX: So you have got about another hour,
12 have you?
13 MR KEALEY: I'm afraid I do, my Lords. I'm sorry.
14 LORD JUSTICE FLAUX: How the defendants divide up their time
15 is a matter for them.
16 MR KEALEY: Yes indeed.
17 LORD JUSTICE FLAUX: No doubt your colleagues will upbraid
18 you if they think you have been belabouring points.
19 MR KEALEY: I think they already have.
20 LORD JUSTICE FLAUX: Fortunately, they can't upbraid us for
21 interrupting too much, but I hope we haven't interrupted
22 too much.
23 Anyway, 2 o'clock, Mr Kealey.
24 MR KEALEY: Thank you so much, my Lord.
25 (1.00 pm)

1 (The short adjournment)
2 (1.58 pm)
3 LORD JUSTICE FLAUX: Mr Kealey, it's just before 2 o'clock.
4 If you are ready, shall we resume?
5 MR KEALEY: I'm grateful, my Lord.
6 Earlier this morning I had mentioned that the
7 difficulties with which the FCA is confronted, the FCA
8 sought to get around on essentially two bases. Firstly,
9 which I have covered, we say that they, that is the FCA,
10 sought to rewrite the insured perils, and we have dealt
11 with that. But secondly, the FCA has come up with
12 a novel concept of inextricable linkage, which seems to
13 have been lifted imaginatively out of The Silver Cloud
14 decision which, as we will demonstrate to your
15 Lordships, is not an authority for anything relevant to
16 this case and was, for the purposes of this case, purely
17 a decision on the facts.
18 Now, this inextricable linkage novel concept appears
19 to be a concept to which the FCA says that the legal
20 principles applicable to concurrent interdependent
21 causes applies.
22 So they say that the concept of interlinkage enables
23 insureds to bring into contracts of insurance, as a form
24 of almost unnamed peril and unnamed coverage, in this
25 case all losses attributable to COVID-19. They say that

1 this new category sits somewhere between the categories
2 of concurrent independent causes and concurrent
3 interdependent causes. It has the characteristics of
4 a hybrid.
5 So one of its factual features is one that the
6 insured peril of one part of the hybrid would not
7 satisfy the "but for" test, but so long as one of the
8 independent causes in this hybrid is insured and the
9 other is not excluded, rather like interdependent
10 causes, the insured can recover. And the way they put
11 it is to say that this applies where the insured peril
12 is inextricably interlinked or related to or connected
13 with something else.
14 Where they articulate their case is at a number of
15 places in fact, at transcript {Day2/37:1} really through
16 to page 39. We needn't go there for present purposes,
17 because I think I have accurately summarised what they
18 say. It is sufficient that there is an inextricable
19 linkage or sufficient that there is some commonality or
20 relationship.
21 The reason why this is so important is because, as
22 I have indicated this morning, as the FCA accepts, look
23 at their trial skeleton page 241, that is {I/1/97}, and
24 indeed if one looks at paragraph 241 you will see that
25 they accept there that it would have made no difference

1 that there was anything within any one 25-mile area, it
2 would have made no difference to the existence of the
3 business interruption loss.
4 That is also accepted at paragraph 52 of the FCA's
5 reply, in {A/14/27} at paragraph 52. They specifically
6 say that:
7 "It is not alleged that the advice given and/or
8 restrictions imposed were caused by any particular local
9 occurrence of COVID-19 but they were caused ..." then
10 they tell you by what they were caused.
11 So it is accepted, in our respectful submission,
12 that the operation of any individual insured peril did
13 not actually cause, on the FCA's own case, any insured
14 business interruption loss.
15 Looking back at the new hybrid concept of
16 interlinkage, one tries to look for the principle by
17 which it is to be assessed, whether a non-insured cause
18 is sufficiently interlinked with an insured cause to be
19 treated as falling within this special category. And as
20 a matter of law there is actually no legal or principled
21 basis for doing so. The best that it seems the FCA can
22 offer is the decision of the High Court and the Court of
23 Appeal in Silversea, but actually the decisions in both
24 of those courts help the FCA not at all.
25 Silversea is a case which you will find at {J/90/1}.

1 That is the decision of Mr Justice Tomlinson. Before we
2 turn to that, the new concept which is proposed by the
3 FCA is an entirely new concept of concurrent cause. It
4 involves identifying what loss was proximately caused by
5 a cause other than or additional to the insured peril.
6 So what they have done is to conjure up a gateway to
7 an outcome where the insured peril need not actually be
8 the cause of the loss at all. It is again reduced to
9 a gateway to an outcome, where the insurer is fixed with
10 a set of losses caused by something other than or in
11 addition to the insured peril.
12 Now, we have dealt with the Silversea decision in
13 some length in the joint skeleton. I am not going to
14 turn to that, because I am just going to pick up various
15 important points.
16 In the joint skeleton at paragraph 60, which is
17 {I/6/62}. You have it out, as I say, in {J/90/1}.
18 Now, the following are quite important to note. The
19 case came before the court on the footing that it was
20 common ground between the experts that the events of
21 9/11 and the State Department warnings were concurrent
22 causes of the downturn in bookings.
23 Having heard the expert evidence,
24 Mr Justice Tomlinson as then he was, decided, on the
25 facts, that it was impossible to divorce the effects of

1 the warnings from the effects of the events on the
2 travelling public. He decided that it was not possible
3 to separate out those different factors, and to assign
4 to them a different weight in terms of their impact on
5 decision-making. You can see that at paragraph 68 of
6 the learned judge's judgment, at {J/90/29}. Having
7 heard the evidence, at line 4:
8 "... I am confirmed in that view. It is simply
9 impossible to divorce anxiety derived from the attacks
10 themselves from anxiety derived from the stark warnings
11 issued in the immediate aftermath thereof."
12 Therefore, Mr Justice Tomlinson rejected
13 underwriters' case, as referred to at paragraph 67
14 further up on the left-hand side of that page, rejected
15 underwriters' pleaded case that any diminution in
16 business was attributable, either wholly or in
17 overwhelming part or in part at all, to the attacks
18 themselves. You see that:
19 "Underwriters' pleaded case was that any diminution
20 in business after the 11 September attacks was
21 attributable either wholly or in overwhelming part to
22 reaction to the attacks themselves, rather than to any
23 official warnings issued in their aftermath."
24 The experts suggested that 80 to 90% of the effect
25 was actually attributable to the attacks and only 10 to

1 20% attributable to the State Department advisories and
2 similar warnings. But Mr Justice Tomlinson concluded in
3 the next paragraph that that was an impossible approach
4 and you couldn't divorce anxiety from one from anxiety
5 derived from another.
6 What then happened, my Lords, is that he thereupon
7 proceeded, because the parties before him proceeded,
8 upon the conclusion that on the basis of those facts the
9 two causes were concurrent causes.
10 There was no indication in his judgment -- and
11 I will tell you why in a second -- that on this
12 conclusion, that there were concurrent causes, and
13 therefore because of the inapplication or
14 inapplicability of one of the exclusions the insured was
15 covered, there was no indication in his judgment that he
16 was breaking any new ground.
17 If you look at paragraph 69 he says en passant that:
18 "... since, as I find, and as was common ground
19 between the two experts, the events of 11 September and
20 the warnings were concurrent causes of downturn in
21 bookings, including cancellations thereof, and since the
22 consequences of the events of September 11 are not for
23 the purposes of section A.ii excluded from the ambit of
24 the cover, as opposed to simply being not covered, a
25 claim under the policy must lie -- see Wayne Tank. I am

1 not sure that, on this hypothesis, insurers contend to
2 the contrary."
3 Indeed, as your Lordships will see from the Court of
4 Appeal, they did not. And they were not.
5 This judgment by Mr Justice Tomlinson, on the basis
6 of a factual finding, was a judgment where there was no
7 contest between the parties as to the application of the
8 Wayne Tank principle. There was no argument that
9 because the causes were not interdependent, on one view,
10 therefore the "but for" test applied.
11 LORD JUSTICE FLAUX: They were clearly interdependent
12 causes, weren't they?
13 MR KEALEY: On one view they were.
14 LORD JUSTICE FLAUX: Interdependent in that there wouldn't
15 have been State Department warnings at all if it hadn't
16 been for the 9/11 attacks.
17 MR KEALEY: That is absolutely right. That is absolutely
18 right. In that sense they were interdependent, I do
19 accept that.
20 LORD JUSTICE FLAUX: And the evidence, whilst he concluded
21 that you couldn't disentangle them, he proceeded on the
22 basis that they were both, in effect, causative of the
23 loss.
24 MR KEALEY: He did, my Lord, he did. And the point that you
25 make makes my submission, as it were, a fortiori.

1 Because here, if that is right, and I am going to remain
2 neutral at the moment, my Lord, but if that is right, as
3 it appears to be, then of course this authority is no
4 more, and indeed no less, than a further authority
5 explaining the application and scope of the
6 interdependent concurrent cause line of cases. But if
7 ever it is argued to the contrary that it is not an
8 interdependent cause case, one can rest assured that
9 there was no argument before his Lordship to the effect
10 that the "but for" test did not apply, or that the "but
11 for" test was not satisfied in relation to either of the
12 concurrent causes.
13 Insurers never argued that the Wayne Tank principle
14 did not apply and never argued that the "but for" test
15 was not satisfied in relation to either of the two
16 candidate causes.
17 MR JUSTICE BUTCHER: So it's Mr Swainston missed the point
18 and Mr Justice Tomlinson didn't see that he'd missed the
19 point.
20 MR KEALEY: Well, that is as may be. Mr Flaux could
21 probably, as it were, give us the answers, but --
22 LORD JUSTICE FLAUX: The short answer is, as you rightly
23 say, the point wasn't argued; and the reason the point
24 wasn't argued is the one I have just put to you, which
25 is that on the evidence before the court, and as

1 a matter of, using Mr Edelman's words, common sense,
2 both causes were operative, effective "but for" causes,
3 proximate causes, whatever you describe them as. That
4 was the point.
5 MR KEALEY: Yes, my Lord, I agree with that. I defer to
6 your Lordship on that. And it does appear, you are
7 absolutely right, it is a bit like the Atlantic B, where
8 in that case the seizure would never have occurred
9 without the drugs being on the underside of the hull.
10 And that was regarded by Lord Mance as interdependent.
11 And here, likewise, the State Department would never
12 have issued any warnings had there not been a 9/11
13 attack. So I agree with that, my Lord.
14 LORD JUSTICE FLAUX: Yes.
15 MR KEALEY: I will come back to that in a moment.
16 In the Court of Appeal, the insurers in that case --
17 and your Lordships will see it is at the next divider,
18 it is at {J/91/1}. In the Court of Appeal, the insurers
19 sought to take advantage. If your Lordships can go to
20 {J/91/21}. Insurers sought to take advantage of the
21 judge's conclusion, in rejection of their factual case
22 on causation, that in fact the causes were indivisible
23 and were both concurrent.
24 The reason they did so, my Lords, is because of the
25 exclusion clause which you see referred to at

1 paragraph 97. There was an exclusion clause which
2 excluded cover for any loss arising from deterioration
3 of market and/or loss of market and/or lack of support
4 for any scheduled cruise, unless as a direct result of
5 an insured event.
6 Insurers, through Mr Swainston, sought to take
7 legitimate advantage of that exclusion clause, and
8 indeed the Wayne Tank principle, by saying that one of
9 the causes, one of the two concurrent causes, was
10 excluded as a result of that exclusion clause and
11 therefore, on Wayne Tank principles applicable to
12 interdependent causes, the loss was not recoverable by
13 the insured. You see that, my Lords, at paragraph 100.
14 "On this appeal [this is Lord Justice Rix's
15 judgment] the underwriters do not seek to go behind the
16 judge's rejection of their factual case on causation.
17 They do, however, take a further point of law briefly
18 referred to by the judge in this passing comment [which
19 I have already read out]."
20 At paragraph 101:
21 "Now on appeal at any rate they do."
22 That is leading from Mr Justice Tomlinson's last
23 sentence:
24 "'I am not sure that, on this hypothesis, insurers
25 contend to the contrary.'.

1 "Now on appeal at any rate they do. Mr Swainston
2 submits that because of the exclusion only losses caused
3 by government warnings are covered, not losses caused by
4 the underlying events. Since, on the judge's own
5 findings, all the losses such as they may turn out to be
6 were caused as much by the underlying events as by the
7 warnings, it follows that the same losses would have
8 taken place even in the absence of the warnings. It
9 follows that on Dr Gibbs' findings Silversea could
10 recover for only 10-20% of their claim, whereas on the
11 judge's finding they could recover nothing.
12 "It is common ground that the law is to be found
13 encapsulated in this citation from Lord Phillips'
14 judgment in The Demetra K."
15 You can turn over the page. It is the Wayne Tank
16 principle, on the left-hand column:
17 "The effect of an exception is to save the insurer
18 from liability for a loss which but for the exception
19 would be covered."
20 Then at 103:
21 "Both parties, however, submit that the application
22 of these principles produces a result in their favour
23 respectively. Mr Swainston submits that the 9/11 events
24 themselves, because a direct cause of the losses
25 different from the 'insured event' under cover A.ii,

1 which has to be a warning, are excluded perils, and that
2 losses caused by such perils are excluded losses.
3 Mr Flaux, however, submits that the events of war or
4 terrorism which lead to warnings are not excluded
5 perils, but are perils covered elsewhere within the
6 policy and are a necessary pre-condition, actual or
7 threatened of the warnings within cover A.ii itself."
8 Then the learned judge concludes that Silversea are
9 right. Lord Justice Rix goes on to say:
10 "Cover A.ii is premised on acts of war, armed
11 conflict or terrorist activities, actual or threatened,
12 provided, however, that they generate the relevant
13 warnings about them. If they do, and those warnings are
14 not excluded perils, it is simply that they are not
15 covered under cover A.ii as perils in themselves."
16 For example, hurricane, physical damage:
17 "Something extra is required. However, they are 'an
18 insured event' for the purpose of the contract as
19 a whole. There is no intention under this policy to
20 exclude loss directly caused by a warning concerning
21 terrorist activities just because it can also be said
22 that the loss was also directly and concurrently caused
23 by the underlying terrorist activities themselves."
24 Therefore, Lord Justice Rix concluded, turning back
25 to paragraph 97, that the 9/11 event was an insured

1 event within the meaning of the exception to the
2 exclusion in the exclusion clause.
3 Now, in order to understand that fully you need just
4 to have in mind the A.ii cover, which you will see at
5 page 8 of this report. {J/91/8}. In the top left-hand
6 column, under A.ii:
7 "The heading of A.ii referred to 'loss of
8 anticipated income ...' and the loss was further
9 described as ..."
10 And if your Lordships go to paragraph 12:
11 "To cover the ascertained net loss resulting from
12 a State Department advisory or similar warning by a
13 competent authority regarding acts of war, armed
14 conflict, [et cetera], terrorist activities, whether
15 actual or threatened, that negatively impacts the
16 assured's bookings and/or necessitates a change to the
17 scheduled cruise itinerary, subject to a maximum period
18 per event of 6 months ..."
19 That is the A.ii. The underlying causes of the
20 warnings, as I have indicated, were not excluded perils,
21 but they were not covered under A.ii as perils in
22 themselves. In other words, the actual terrorist
23 activities were not perils under A.ii, and therefore
24 something extra was required in that the acts of
25 terrorism must have given rise to a State Department

1 warning, from which warning the loss must have resulted
2 in order for the cover to respond.
3 If you go to A.i ...
4 LORD JUSTICE FLAUX: In other words, the something extra
5 that was required was the insured peril under
6 cover A.ii.
7 MR KEALEY: The something extra that was required was in
8 fact the insured peril under A.i.
9 I'm sorry, your Lordship is absolutely right, under
10 A.ii. The something extra that was required is the
11 peril under A.ii. I am so sorry, my Lord, you are
12 absolutely right.
13 LORD JUSTICE FLAUX: I think that must be right.
14 MR KEALEY: No, that is right.
15 LORD JUSTICE FLAUX: Because if they are not covered under
16 A.ii's perils in themselves, something extra is
17 required, and the something extra that is required is
18 whatever it is that is an insured peril under A.ii.
19 MR KEALEY: Forgive me, that is absolutely right. I was
20 looking at another one. Thank you. That is absolutely
21 right. Forgive me, my Lord.
22 A.i, which is at paragraph 6, at page {J/91/7}:
23 "The heading of A.i referred to 'loss of income' and
24 the cover was described as ...
25 "this insurance covers loss due to the vessel being

1 wholly or partially deprived of income as a consequence
2 of an occurrence within the policy period of one of the
3 following events."
4 Then under [5] you have:
5 "... any other event which directly interferes with
6 the scheduled itinerary of the vessel by ... terrorists
7 ... actual or threatened ... [and]
8 "[7] Acts of war, armed conflict [et cetera] which
9 interfere with the scheduled itinerary of the insured
10 vessel, whether actual or threatened."
11 So it is not surprising, my Lords, that in
12 construing the exclusion clause, which is referred to at
13 paragraph 97, and refers in the exception to the
14 exclusion of a direct result of an insured event, that
15 the court concluded that the terrorist activities which
16 were an insured peril under A.i were, for the purposes
17 of the application and meaning of A.ii, an insured
18 event.
19 LORD JUSTICE FLAUX: Yes.
20 MR KEALEY: It is as simple as that.
21 MR JUSTICE BUTCHER: Mr Kealey, you are clearly right about
22 the Court of Appeal. But the net result of the case, at
23 least at first instance, is that where you have related
24 causes, in the sense that the advisory only followed the
25 terrorist events, they are related causes and they lead

1 to effects which it is impossible to allocate between
2 the two, the insurers pay for the combined effect.
3 MR KEALEY: Yes. Can I answer that in the sense of
4 your Lordship's question, which I at least infer?
5 Firstly, if they were interdependent causes then the
6 answer is the classical answer provided in Wayne Tank
7 and the Miss Jay Jay, because you have one insured and
8 one uninsured, ergo there is coverage because one
9 shouldn't forget that before Mr Justice Tomlinson there
10 was no argument as to the application of any exclusion.
11 That is the first thing.
12 Secondly, if that is wrong, as I indicated to
13 my Lord Lord Justice Flaux earlier, Mr Justice Tomlinson
14 noted en passant what the consequence was. But there
15 was no argument before Mr Justice Tomlinson as to, if
16 they were independent concurrent causes rather than
17 interdependent concurrent causes, the "but for" standard
18 had to be satisfied nevertheless and was not. In other
19 words, the case proceeded before Mr Justice Tomlinson
20 without adverse argument or without any opposing
21 arguments as to the application of the Wayne Tank and
22 Miss Jay Jay principles, which apply only to
23 interdependent causes.
24 Therefore, if one is going to seek any authority
25 from this in relation to independent concurrent causes,

1 it does not exist. There was no argument that one can
2 see, and that was the end of the matter.
3 It is instructive, my Lord, to look at
4 Mr Justice Hamblen in the Orient-Express. If your
5 Lordships go to 106, that is {J/106/1} and the important
6 passage here is at paragraph 32 at page {J/106/8} of the
7 report.
8 Whilst the FCA criticises Mr Justice Hamblen,
9 I don't think they have any legitimacy in criticising
10 him about his ability of reading cases and analysing
11 what they say or don't say. He first mentions the
12 Silversea case at paragraph 29. Then he says that there
13 was some support of the approach in Silversea at
14 paragraph 30. Then at paragraph 31 he recites what
15 happened, and at paragraph 32 he says:
16 "I agree with Generali that no great assistance can
17 be derived from this case, which largely turned on the
18 court's factual conclusions. In particular, it did not
19 address the specific issue of two concurrent independent
20 causes, nor the applicability of the 'but for' causation
21 test in such a case. Further, there is an important
22 difference between a case involving two concurrent
23 interdependent causes and one involving two concurrent
24 independent causes. In the former case the 'but for'
25 test will be satisfied; in the latter it will not."

1 Your Lordships should be aware of paragraph 29 and
2 the specific contention or submission of Orient-Express
3 Hotels, which was specifically rejected. If your
4 Lordships look at 29:
5 "Although OEH cannot point to any insurance or
6 indeed contract case in which it has been held to be
7 inappropriate to apply the 'but for' test, it relies on
8 the generally accepted principle that where there are
9 two proximate causes of a loss an insured can recover on
10 the basis that it is sufficient that one of the causes
11 was a peril insured, provided the other cause is not
12 excluded; see the Miss Jay Jay. While to date this has
13 been a principle applied in respect of concurrent
14 interdependent causes, OEH submits that it should
15 equally be applied to concurrent independent causes."
16 My Lords, not only did Mr Justice Hamblen reject
17 that argument but he moreover said, and correctly in our
18 respectful submission, that the Silversea decision is no
19 authority to the contrary of what he concluded, and that
20 the Silversea decision simply is no support for the
21 proposition that the principle applied to interdependent
22 causes should apply equally to concurrent independent
23 causes.
24 So it is not as if Mr Justice Hamblen did not have
25 the issue well in mind. He had it very well in mind.

1 And in my respectful submission, where we see -- and of
2 course I can't say this for certain, but where we saw,
3 for example, that Lord Clarke, referring to the
4 principle applicable to interdependent causes, and
5 referred in that context to, among other cases, the
6 Orient-Express, we would suggest respectfully that
7 Lord Clarke in the Supreme Court had well in mind, since
8 he referred explicitly to this case, these passages, in
9 which interdependent and independent concurrent causes
10 are debated and determined.
11 MR JUSTICE BUTCHER: I see that, but in our case, or in the
12 present case, whether a particular person goes to
13 a church or whatever, there may be two causes, it may be
14 very difficult to say whether they are independent or
15 interdependent in a particular case.
16 How is that addressed? Certainly without an
17 investigation which is prohibitively expensive, as it
18 were.
19 MR KEALEY: Well, firstly addressing the point that
20 your Lordship made towards the end, it may or may not be
21 expensive, and it may or may not be difficult, but cost
22 and difficulty don't necessarily provide a legal answer
23 to the question. In fact, in my respectful submission
24 they don't provide an answer at all to a completely
25 different and very important conceptual question of law.

1 Secondly, the answer is that if you have two as it
2 were indivisible causes, or rather two causes that can't
3 be separated one from the other, in a case where one is
4 insured and the other is not insured but they are not
5 interdependent, then I have to tell you that the insured
6 fails to satisfy the burden of proof upon it.
7 Now, it makes no difference whether the insured is
8 a small insured or is BP. The position of the law is
9 the same in relation to both insureds. Interdependent
10 causes require that each pass the "but for" test,
11 otherwise there is no coverage.
12 If what your Lordship has postulated are
13 interdependent causes, each has to pass the "but for"
14 test, so the insured has to prove that but for that the
15 loss would not have been suffered. That is if they are
16 interdependent. That is, in a sense, the high watermark
17 for an insured.
18 If they are independent causes, then it is exactly
19 the same, each has to pass the "but for" test, and if
20 that cannot be proved to the satisfaction of the court
21 then the insured fails on the burden of proof.
22 Now, it is said quite often, and I acknowledge, that
23 courts do not like determining cases on the basis of
24 burden of proof. However, as was made absolutely plain
25 by Lord Brandon in Popi M, and by Lady Hale more

1 recently in that case about the BP engineer who might or
2 might not have committed suicide in Braganza, courts
3 should not be in the slightest bit timid or afraid or
4 reticent about concluding, if it be the case, that the
5 burden of proof has not been satisfied.
6 So for example, in The Popi M, the House of Lords,
7 through Lord Brandon and others, concluded that despite
8 the fact that one might say one wants to help the
9 insured in that case, the insured failed on the burden
10 of proof, and the court should not be shy about so
11 concluding, even if that means that the cause of the
12 loss is unexplained or if that means, as a necessary
13 consequence of the legal principles, that it has not
14 been shown that the loss was caused factually, let alone
15 proximately, by the insured peril.
16 What this actually demonstrates, in my respectful
17 submission, is there is nothing wrong with the policy
18 language, there is nothing wrong -- you may criticise
19 the insurers for taking certain defences or not taking
20 certain defences, I know not, that will be in the
21 future. But there is nothing wrong with the policy
22 language as such. But one thing is very, very clear,
23 and that is that the FCA's case that these insureds were
24 insured against infectious diseases generally is simply
25 not right.

1 Now if that had been, and I imagine perhaps some
2 insurer may one day have given such wide coverage, but
3 these are extensions to already an extension to
4 coverage. In other words, property damage is the
5 primary part of the insurance contract, business
6 interruption losses which are, as it were, parasitic on
7 property damage is the next section, and then you get
8 additional non-damage extensions. And in those
9 non-damage extensions, most of them are relatively
10 circumscribed.
11 Why are they circumscribed? It is not because
12 insurers had a pandemic in mind and decided not to
13 include them; they are circumscribed because they are
14 add-ons. So they are, as it were, not a gift but they
15 are of benefit to the insured.
16 That is one big reason why, as it happens, one finds
17 that insurers are of course, for many reasons, but one
18 reason why insurers are anxious about cases such as
19 this.
20 Anyway, what I have said is that the decision in
21 Silversea or Silver Cloud is not an authority that
22 actually helps you at all. And although
23 Mr Justice Tomlinson, for better or for worse,
24 determined that in that case, the effects of The
25 Government State Department warnings and 9/11 attacks

1 could not be distinguished, that is a factual finding
2 which was not taken on further, as it were, as a matter
3 of legal analysis, by either counsel, one of them very
4 sensible not to and the other who knows, was not taken
5 any further in relation to --
6 LORD JUSTICE FLAUX: But the important point about that, if
7 we go back to paragraph 69 of Mr Justice Tomlinson's
8 judgment, is it is quite clear, which is I think the
9 point you were making about what Mr Justice Hamblen said
10 in Orient Hotels, that he was applying the Wayne Tank
11 principle on the basis that what he was faced with was
12 two concurrent interdependent causes, in the sense that
13 they were both of equal efficacy. Hence he says at 69
14 that:
15 "The events of 11 September and the warnings were
16 concurrent causes of the downturn in bookings."
17 So they were both effective causes or proximate
18 causes, or whatever you describe them as. And you say,
19 or insurers say here that, in effect, in relation to the
20 disease clauses -- I mean the position may be different
21 with the public authority denial of access clauses, as
22 I see it anyway, but in relation to the disease clauses
23 it is effectively accepted by the FCA that the local
24 occurrence of the disease was not a proximate cause of
25 the losses that were suffered. So unless they can get

1 home as it were on concurrent independent causes, then
2 they don't have a case, and that's what you say.
3 MR KEALEY: That is what we say.
4 LORD JUSTICE FLAUX: And what you are pointing out is that
5 there is nothing in this case, Silversea, that helps us
6 to conclude that concurrent independent causes, or
7 rather the same Wayne Tank doctrine, if I can put it
8 that way, applies to concurrent independent causes.
9 MR KEALEY: That is absolutely right, my Lord. That is
10 absolutely right.
11 LORD JUSTICE FLAUX: Yes.
12 MR KEALEY: I leave that case, my Lord.
13 LORD JUSTICE FLAUX: Yes.
14 MR KEALEY: Because in my respectful submission it doesn't
15 take you any further.
16 LORD JUSTICE FLAUX: No.
17 MR KEALEY: I want to return now, my Lord, to
18 Orient-Express.
19 LORD JUSTICE FLAUX: Yes.
20 MR KEALEY: Which is in the same bundle, and I think I have
21 taken you to it a moment ago, and it is in divider 106.
22 {J/106/1}.
23 Before I go into this case in any detail, and your
24 Lordships know this case pretty well by now so I am
25 going to take it quite shortly but I don't want to

1 underplay my hand, it was suggested, I think by
2 Mr Edelman, that this case did not reach the Court of
3 Appeal perhaps because insurers wanted to bank their
4 victory.
5 LORD JUSTICE FLAUX: There is absolutely no basis for that
6 whatsoever.
7 MR KEALEY: And it is false.
8 LORD JUSTICE FLAUX: We don't know.
9 MR KEALEY: No.
10 LORD JUSTICE FLAUX: All I know is that there was an appeal
11 and it was due to be heard, and that was settled pretty
12 close to the appeal hearing.
13 MR KEALEY: Yes, that is absolutely right.
14 LORD JUSTICE FLAUX: That is just anecdotally what I was
15 told by Mr Justice Picken.
16 MR KEALEY: Yes. He is right. Indeed, Mr Justice Picken's
17 junior, Ms Sushma Ananda, is helping me hugely in this
18 case.
19 Anyway, I just wanted to put paid to any --
20 LORD JUSTICE FLAUX: It wouldn't matter anyway, would it?
21 MR KEALEY: It shouldn't.
22 LORD JUSTICE FLAUX: It is a "So what?" point. Either the
23 case is correct or it is not correct, and the fact that
24 they didn't go to the Court of Appeal is neither here
25 nor there.

1 MR KEALEY: Yes. I agree. I won't trouble your Lordship
2 any more on that point.
3 Can I take your Lordship to page 2 of the report.
4 It is page 532, but it is page 2 of the bundle
5 {J/106/2}. Your Lordship sees there that there were two
6 questions or two issues that arose. These were
7 questions, my Lord, that, as addressed by
8 Mr Justice Hamblen, were questions referable to the
9 policy as a whole and not specifically with reference to
10 the trends clause.
11 So (1) is the question:
12 "Whether on its true construction the policy
13 provides cover in respect of loss which was concurrently
14 caused by (i) physical damage to the property; and (ii)
15 damage to or consequent loss of attraction of the
16 surrounding area.
17 "(2) Whether on the true construction of the policy,
18 the same events which cause the damage to the insured
19 property which gives rise to the business interruption
20 loss are also capable of being or giving rise to special
21 circumstances for the purposes of allowing an adjustment
22 of the same business interruption loss within the scope
23 of the trends clause."
24 So one is of general application as a matter of
25 construction and, as your Lordship will see, general

1 application of the law, and the second is the trends
2 clause.
3 So the FCA is wrong in its skeleton argument, at
4 paragraph 299.4 which is {I/1/118}, to say that the
5 decision has no application to policies without a "but
6 for" test in an applicable trends clause. That is not
7 correct. That ignores question (1) that
8 Mr Justice Hamblen addressed.
9 Now I have looked at this case with you before and
10 if I may, therefore, I am going to turn -- I have looked
11 at paragraph 11 and 12, at 12 we have the wording.
12 Your Lordship sees that at paragraph 14 we have the
13 POA clause and paragraph 15 the LOA clause.
14 We need, sorry, on the screen {J/106/4}.
15 We have looked at paragraph 17 at page 4, where the
16 insuring clause defines damage directly arising, and
17 then also business interruption directly arising from
18 damage, et cetera.
19 If your Lordships could turn to paragraph 18 at the
20 top of page {J/106/5} left column.
21 LORD JUSTICE FLAUX: This is within the award, isn't it?
22 MR KEALEY: No, this -- oh yes, you are absolutely right.
23 LORD JUSTICE FLAUX: Confusingly, the paragraph numbers
24 overlap with each other, so I think you will find this
25 is paragraph 18 of the award.

1 MR KEALEY: Yes, you are absolutely right.
2 LORD JUSTICE FLAUX: Being quoted in paragraph 17 of the
3 judgment.
4 MR KEALEY: Yes, you are right, my Lord. You are right.
5 I am so sorry. Anyway, this is a pretty good award so
6 I'm not deterred.
7 LORD JUSTICE FLAUX: No.
8 MR KEALEY: Just above paragraph 19 of the award it says:
9 "The third question, in Mr Fletcher's formulation in
10 opening submissions, was what is the loss resulting from
11 such interruption?"
12 I should say that for my own part I actually regard
13 Mr Fletcher's arguments as really perfectly good. He
14 lost in front of the tribunal but that is, of course, as
15 it goes. Anyway, paragraph 19:
16 "it is the third question on which the parties part
17 company. On behalf of Generali, Mr Picken submitted
18 that the words are clear; the cause of the loss has to
19 be and be shown by OEH to be interruption or
20 interference resulting from the physical damage to the
21 hotel and not from the damage to the City of New Orleans
22 or, say, want of demand because of the damage to the
23 city which the hotel would have suffered even if it had
24 not been damaged at all."
25 Then it is said that:

1 "Mr Fletcher did not ... ever supply a convincing
2 answer to this submission. He criticised the submission
3 as one creating a false hypothesis because the cause of
4 the damage to the city and to the hotel was the same
5 event or events, and submitted that the policy was
6 intended to cover losses resulting from all damage
7 caused by the events which damaged the hotel, and only
8 to exclude losses resulting from damage which was
9 completely unconnected in the sense that it had an
10 independent cause. He submitted that the law relating
11 to concurrent causes would in any event enable the hotel
12 to recover in circumstances where a given loss was
13 caused both by damage to the hotel and the damage to the
14 city. And he submitted that the effect of excluding
15 losses resulting from damage to the city was to require
16 an artificial and hypothetical enquiry to be made."
17 Pausing there, this is very much like the FCA's
18 arguments in this case; talking about exclusions when of
19 course there aren't any relevant exclusions, at least in
20 relation to this part of the case:
21 "But none of these submissions, in the view of the
22 tribunal, addresses the language used in the provisions
23 to which we referred and which we have emphasised. That
24 language requires OEH to establish that the cause of the
25 loss claimed is the damage to the hotel. It is not

1 necessary or relevant for this purpose to go behind the
2 damage and consider whether the event which caused the
3 damage also caused damage to other property in the city;
4 the fact that there was other damage which resulted from
5 the same cause does not bring the consequences of such
6 damage within the scope of the cover. As for the
7 argument that there were concurrent causes, it is
8 difficult to think of examples of a loss that would
9 reasonably be attributable both to damage to the hotel
10 and to the damage to the city. But in any event the
11 trends clause language is ... conclusive."
12 Then if your Lordships go to the second half, the
13 last bit of the right-hand column, we are still in the
14 award, reference is made to a case from the
15 United States Fourth Circuit Court of Appeals, which
16 I should tell your Lordship does not include the
17 Carolinas:
18 "The critical question in this case was whether
19 particular profits ..."
20 LORD JUSTICE FLAUX: Where is it, Mr Kealey?
21 MR KEALEY: It is Texas. The Fifth Circuit -- I'm sorry,
22 this is the Fourth Circuit. I will have to get that one
23 right. Will your Lordship bear with me for a second?
24 LORD JUSTICE FLAUX: Don't worry, it's only a matter of
25 interest, that's all.

1 MR KEALEY: The Fourth Circuit includes, I think, Virginia.
2 LORD JUSTICE FLAUX: Yes.
3 MR KEALEY: I will tell your Lordship and I think actually
4 the Carolinas are probably --
5 LORD JUSTICE FLAUX: I think it is Virginia, North and South
6 Carolina and possibly West Virginia.
7 MR KEALEY: I am told that is right, my Lord.
8 LORD JUSTICE FLAUX: Yes.
9 MR KEALEY: Then in the last part of the page:
10 "The critical question in that case was whether
11 particular profits would have been earned 'had the loss
12 not occurred'. The majority of the Court of Appeals
13 interpreted these words as requiring the court to ask
14 whether the profits would have been earned had the
15 hurricane not occurred, to which the answer on the facts
16 was 'no'. The third member of the Court of Appeals
17 dissented on the ground that 'had the loss not occurred'
18 did not refer to the hurricane or to the overall loss in
19 the surrounding area, but only to the loss incurred by
20 the insured. It seems to the tribunal, with respect,
21 that the reasoning of the dissenting judge is
22 persuasive; but whether it was right or not on the
23 wording of the policy in that case, the tribunal has no
24 doubt that the policy in the present case permits
25 recovery only for loss caused by the damage to the hotel

1 itself."
2 If your Lordships turn to paragraph 18 of
3 Mr Justice Hamblen's decision, he recites the fact that
4 the tribunal therefore held that a "but for" causation
5 approach was appropriate and that it is necessary to
6 assess the BI loss on the hypothesis that the hotel was
7 undamaged but the City of New Orleans was devastated, as
8 in fact it was.
9 So, my Lords, the tribunal concluded, on the
10 application of the "but for" test, in relation to the
11 insured peril in that case for business interruption,
12 namely physical damage to the property, that it was
13 necessary to assess the BI loss on the basis that the
14 hotel was undamaged but nothing else was different. In
15 other words, but for the damage to the hotel. In other
16 words, but for the insured peril. No more and no less.
17 "Question 1: whether, on its true construction, the
18 policy provides cover in respect of loss which was
19 concurrently caused by: (i) physical damage to the
20 property; and (ii) damage to or consequent loss of
21 attraction of the surrounding area."
22 Your Lordships see, at paragraph 20, the answer to
23 this question is moot:
24 The tribunal has not excluded recovery of losses
25 concurrently caused by damage to the hotel and damage to

1 the vicinity ... It has only excluded losses which would
2 have been suffered in any event but for damage to the
3 hotel. Such losses are not to be regarded as caused in
4 fact by the damage. At the hearing it became apparent
5 that the crucial issue of law dividing the parties was
6 the appropriateness of applying the 'but for' causation
7 test in this case."
8 Then you have, my Lords, a reference to the normal
9 rule for determining causation in fact being the "but
10 for" test, being a necessary but not sufficient
11 condition. You have Clerk & Lindsell, McGregor on
12 Damages, and various exceptions; for example, your
13 Lordships see at page {J/106/6}, right-hand column,
14 under (1) "The exceptions", that's the tort of
15 conversion, and then (a) "Negligence", in other words,
16 more than one wrongdoer. Then OEH submits that this is
17 one of those very occasional cases where fairness and
18 reasonableness require a relaxation of the standard, and
19 then reference is made to Lord Nicholls' judgment or
20 speech in Kuwait Airways. Can I invite your Lordships
21 just to read paragraph 73 and 74 from Lord Nicholls'
22 speech. {J/106/7}. (Pause)
23 At the end of Lord Nicholls' speech at paragraph 25,
24 OEH acknowledge that the cases in which it has been held
25 to be inappropriate to apply the "but for" test have

1 been cases in tort, particularly negligence and
2 conversion, and the same approach should be applied in
3 an appropriate case in contract. He says:
4 "This is such a case, being a case of two concurrent
5 independent causes in relation to which the application
6 of the 'but for' test would lead to the untenable
7 conclusion that neither of the causes caused the
8 business interruption loss."
9 That, my Lords, is what I said was in fact the wrong
10 question being asked by OEH.
11 Then I am going to leave that part of the judgment
12 and go past Silversea and then turn to paragraph 33,
13 because there Mr Justice Hamblen acknowledges that as
14 a matter of principle there is considerable force in
15 much of OEH's argument. At page {J/106/8} of the
16 bundle:
17 "As a general rule the 'but for' test is a necessary
18 condition for establishing causation in fact. However,
19 there may be cases in which fairness and reasonableness
20 require that it should not be a necessary condition.
21 This is most likely to be in the context of negligence
22 or conversion claims, but I would accept that in
23 principle it is not limited to tort or to particular
24 torts. I would also accept that a case in which there
25 are two concurrent independent causes of a loss, with

1 the consequence that the application of the 'but for'
2 test would mean that there is no cause of the loss, is
3 potentially an example of a case in which fairness and
4 reasonableness would require that the 'but for' test
5 should not be a necessary condition of causation
6 particularly where two wrongdoers are involved."
7 My Lords, that is not this case.
8 "However, whether or not this is so will depend on
9 all the circumstances of the particular case and
10 ultimately the issue is whether the tribunal erred in
11 law in applying a 'but for' causation approach under
12 this policy ..."
13 There are a number of difficulties that the judge
14 identified, but I want you to go through, if I may, to
15 paragraph 38 at page {J/106/9}, because this is
16 important.
17 "Thirdly, in any event I am not satisfied that it
18 has been shown that 'fairness and reasonableness' does
19 require that the 'but for' test should not be applied."
20 So, my Lords, what the judge is there doing is
21 addressing, quite independently of the fact that this
22 was an appeal from a tribunal award, whether as a matter
23 of principle in that case fairness and reasonableness
24 required -- and it is a requirement, it is not just
25 something that would be nice to do, it is whether

1 fairness and reasonableness does require that the "but
2 for" test should not be applied.
3 Can I invite your Lordships to read paragraph 38 to
4 yourselves because, just as in this case, anything other
5 than that "but for" test results in something which is
6 wholly inconsistent with the contractual bargain.
7 (Pause)
8 It is the first possibility that you should be
9 focusing on. (Pause)
10 LORD JUSTICE FLAUX: When you say the first possibility,
11 Mr Kealey, what do you mean?
12 MR KEALEY: One possibility --
13 LORD JUSTICE FLAUX: But for the damage to the hotel and the
14 city?
15 MR KEALEY: That is the one, yes. Because that is what the
16 FCA is contending.
17 LORD JUSTICE FLAUX: So no COVID in the defined area and no
18 COVID in the country.
19 MR KEALEY: Exactly so. (Pause)
20 Now my Lords, looking at the first possibility, one
21 possibility but for the damage to the hotel and the
22 city, in other words but for COVID-19 in the area and in
23 the country, that would measure the gross operating
24 profit that would have been made by the insureds if
25 COVID-19 had not struck at all, and would therefore

1 compensate the insureds for all business interruption
2 losses howsoever caused by COVID-19, even where those
3 losses were not in any way caused by COVID-19 within the
4 specified area, and as such are not recoverable under
5 the main insuring clause of the policy.
6 In other words, just as I started earlier this
7 morning, and I finish as it were late at night, it would
8 provide cover for a peril not insured against.
9 Of course this covers -- I have done it in
10 shorthand, but of course it would provide coverage to an
11 insured even if that coverage was dependent upon public
12 authority action, in circumstances where the public
13 authority action made absolutely no difference.
14 That possibility is what the FCA is gunning for, and
15 I will remind you of Mr Edelman. Mr Edelman says:
16 provided that there is just one case, provided that the
17 peril insured against can be said to be activated, that
18 is enough to harvest in all the consequences of COVID-19
19 however those consequences are and wherever those
20 consequences are to be found.
21 So you have an insured peril different from that
22 which the insurer agreed to underwrite, and he concluded
23 that none of those alternatives was more fair and
24 reasonable than enforcing the contract according to its
25 terms. And we say that the most objectionable of the

1 possibilities was the first, because that simply
2 re-wrote the peril. There is nothing fair and
3 reasonable about rewriting the parties' contract after
4 the event. There is nothing fair and reasonable in
5 terms of common sense or public policy. The parties
6 have contractually agreed the framework and the
7 boundaries of the insurance for which an indemnity is
8 payable, and they have agreed that the indemnity is only
9 payable when a loss is caused in the traditional sense.
10 Now, the FCA also says that notwithstanding all this
11 law, in some cases you can reverse more than the insured
12 peril in the counterfactual. Ms Mulcahy said on
13 Tuesday, that is {Day2/63:6} to line 9, that the
14 boundaries of the peril do not need to be the boundaries
15 of what is subtracted for the purposes of the "but for"
16 test. In other words, you can reverse more than the
17 peril.
18 That is so heretical and so bad as a proposition of
19 law that there should be no hesitation in its rejection.
20 Reversing more than the insured peril gives rise to
21 a loss which is completely different, or is different
22 from the loss caused by the insured peril. You are
23 essentially throwing out the basic and fundamental
24 concepts of factual causation under English law. It is
25 wholly unacceptable. It is anarchic in legal terms and

1 fundamentally wrong.
2 So, my Lords, the Orient-Express, we say, was
3 undoubtedly correctly decided. It involved an entirely
4 orthodox application of principles relating to the
5 proper interpretation of BI policies, the "but for" test
6 and concurrent causes. The FCA has sought to suggest
7 that the decision has been widely criticised. In fact
8 that is far from true; there are many references to the
9 Orient-Express without criticism. If it has been
10 criticised, we would respectfully suggest that those who
11 are critical of it have not understood the fundamental
12 principles by which Mr Justice Hamblen was guided and
13 which compelled him to the correct conclusion to which
14 he came.
15 My Lords, those are I think, I hope, my submissions
16 on the fundamental principles of causation, supplemented
17 by specific examples, including rodents, and concluding
18 with an analysis of the Silversea case, on which the FCA
19 has placed so much reliance, which is in our respectful
20 submission of absolutely no value as a matter of legal
21 principle to your Lordships, and concluding with the
22 Orient-Express, which we say was correctly decided.
23 So, my Lords, having perhaps overstayed my welcome
24 by about five minutes, I hope that your Lordships are
25 satisfied and have no further questions at this stage.

1 LORD JUSTICE FLAUX: I don't know if my Lord has any
2 questions for you, Mr Kealey.
3 MR JUSTICE BUTCHER: No. Thank you very much, Mr Kealey.
4 LORD JUSTICE FLAUX: Thank you very much indeed, Mr Kealey.
5 Who is up next?
6 MR TURNER: It is me, my Lord.
7 LORD JUSTICE FLAUX: I think it might be sensible, rather
8 than interrupting you 15 minutes into your submissions,
9 if we took a break now for ten minutes, and then we can
10 have a clear run for the rest of the afternoon. Does
11 that suit?
12 MR TURNER: Of course.
13 LORD JUSTICE FLAUX: My clock says just after 5 past, so we
14 will say 3:15pm. Okay?
15 (3.06 pm)
16 (Short break)
17 (3.15 pm).
18 Submissions by MR TURNER
19 LORD JUSTICE FLAUX: Right, Mr Turner, when you are ready.
20 MR TURNER: My Lords, could I give you a route map.
21 I am going to start with a handful of preliminary
22 points. Then I am going to address, in not great
23 detail, the question of proximity requirements and
24 causation, without, I hope, repeating what Mr Kealey has
25 spent much of today saying. Then I am going to turn to

1 the incorporation of damage-based quantification
2 machinery, and I will then turn to each of the RSA
3 policies in turn.
4 The strength of English commercial law has been its
5 consistency, and no more so than in the field of
6 insurance, and in this case insurers ask the court to
7 adopt entirely conventional approaches to the
8 identification of the insured peril, the application of
9 long-established rules of causation, and the principles
10 applicable to the construction of contracts; and to do
11 so without recourse to jigsaws, spreadsheets, and the
12 wholesale rewriting of insuring clauses, trends clauses
13 and exclusions, according to what the FCA asserts would
14 be a reasonable landing point and therefore must have
15 been in the contemplation of the parties or the
16 intention of the parties at the time of contracting.
17 We would suggest that the court cannot determine in
18 this action the question of whether different causes of
19 loss are or are not separable. As Mr Kealey indicated,
20 those are classically matters for adjustment in due
21 course, and for a future fact-finding tribunal to
22 resolve should it be necessary to do so.
23 Yesterday afternoon my Lord Mr Justice Butcher
24 raised a question about the enforceability of cordons by
25 the police, can I deal with that very shortly.

1 The police have powers at common law to take action
2 to prevent a breach of the peace, and those powers
3 extend to the right to impose and enforce a cordon. The
4 leading example of that is the case of Austin v The
5 Commissioner of Police for the Metropolis, which was the
6 case which arose out of the 2001 May Day protests, and
7 which endorsed the legality in principle of what is now
8 known as "kettling". There are also statutory powers to
9 impose and enforce cordons, and an example within the
10 authorities folder in front of you is part 4 of the
11 Terrorism Act, which has enforcement powers within
12 section 36, the reference is {K/11/50}, along with
13 a provision within section 36 that it is an offence to
14 fail to comply with an order, for example, to leave the
15 cordoned area.
16 Then a short word in response to Mr Edey's
17 submission that the relevant interruption or
18 interference is part of the peril insured.
19 The short answer to his submission is that the clue
20 is in the name of the relevant cover. For a material
21 damage cover, the loss or its occasion is the damage,
22 and the peril is the fire, the flood or the explosion.
23 For a business interruption cover, the loss or its
24 occasion is the interruption or the interference, and
25 the peril, we would say, is the notifiable disease

1 et cetera.
2 We also say that there is a clue in the use of the
3 word "peril", it must be a reference to a danger, here
4 to the insured's gross profit, which brings about the
5 interruption or interference and thereby the loss.
6 Whilst Hiscox may not thank us for saying so, very
7 little, if anything, is added to the policy by the use
8 of the words "interruption or interference". If
9 financial loss flows from the operation of the insured
10 peril, then the fact of interruption or interference
11 will be self-evident.
12 The words "interruption or interference" are little
13 more than a coat hanger over which the cover is draped.
14 For those reasons, we align ourselves with QBE's
15 submissions as set out in paragraph 214 and following of
16 its written submissions, reference {I/17/74}.
17 Turning to proximity requirements, these arise in
18 one shape or another in relation to all of RSA's
19 wordings, as well as the wordings of most of the other
20 insurers. The requirements can either be expressed by
21 reference to a specified distance or by use of the
22 phrase "the vicinity", a term which is undefined in most
23 wordings but which is a defined term, uniquely, in RSA4.
24 The starting point, as Mr Kealey has identified, is
25 that the stipulated proximity requirement is an integral

1 part of the insured peril; and the FCA is not entitled
2 to look outside the words used in the policy for the
3 purposes of identifying what that peril may be.
4 The FCA's submissions as to peril bear no
5 resemblance to the words used in the relevant policies
6 and are wholly dislocated from any concept of proximate
7 cause. Let us look at the disease clauses or just
8 remind you, if I may, of the disease clauses in RSA1, 3
9 and 4 as examples.
10 RSA agreed only to insure against the proximately
11 caused consequences of: for RSA1, closures or
12 restrictions imposed on the premises or placed on the
13 premises as a result of the manifestation of
14 a notifiable human disease within 25 miles of the
15 premises; for RSA3, it is a notifiable human disease
16 within 25 miles of the premises; and for RSA4,
17 a notifiable human disease within the vicinity of the
18 premises.
19 We submit that the commercial rationale for these
20 provisions is obvious. If there is a notifiable human
21 disease within the specified proximity, people may be
22 less willing to visit the area of the insured premises,
23 they may be less willing to undertake economic activity
24 within the relevant area, thereby impacting on the
25 insured business. Plainly, the likelihood of people's

1 behaviour being so affected will increase as the
2 distance from the insured premises decreases.
3 Accordingly, we say it cannot be said that insurers'
4 approach to the construction of the relevant perils is
5 in any way uncommercial. And, my Lords, we would
6 endorse or agree with, respectfully, the bread and
7 butter disease outbreak example which my Lord
8 Lord Justice Flaux gave on {Day1/136:12} to line 15. I
9 think you contemplated an outbreak of mumps or measles
10 and, as a result, schools and the like being shutdown in
11 a particular area.
12 Conversely, the consequence of the FCA's approach is
13 to reduce each proximity requirement to no more than an
14 arbitrary, wholly incidental and non-causal contingency
15 which, providing it is satisfied, brings within the
16 scope of the insured peril everything which happens
17 beyond the specified limit.
18 A contract having such an effect would be the
19 epitome of happenstance, as my Lord Mr Justice Butcher
20 observed on {Day1/135:8}. It would be what Lord Sumner
21 referred to in Becker Gray as an "aleatory bargain",
22 something turning on the roll of a dice. There is no
23 obvious reason which we can discern as to why the FCA
24 draws a line at a specified proximity of 1 mile from the
25 premises, since its reason would apply, if correct, just

1 as much to manifestations of disease at the premises,
2 which would doubtless be explained as pixels on the
3 individual pieces of the jigsaw.
4 Remarkably, the FCA seeks to justify that approach
5 by reference to the quotation from Lord Sumner's speech
6 in Becker Gray, with which it concludes paragraph 220 of
7 its skeleton argument. Could we turn that up, please,
8 it is {I/1/89}.
9 The suggestion in the final sentence is that the
10 only question with which your Lordships need to concern
11 yourselves is: has the event, on which I put my premium,
12 actually occurred?
13 If we go over the page {I/1/90} we will see that
14 that is characterised as being an important feature of
15 an indemnity policy.
16 We say that the FCA's approach is infected by
17 a misreading of the relevant passage in Lord Sumner's
18 speech. Could we now look at that at {J/42/13}.
19 Can we go back one page, please. {J/42/12}. We can
20 really pick up the relevant passage in his speech in the
21 middle, or about a third of the way down on page 12
22 where he deals with proximate cause. In about the
23 middle of the page, having said it helps one side no
24 oftener than it helps the other, he says:
25 "I believe it to be nothing more nor less than the

1 real meaning of the parties to a contract of insurance."
2 If we could then go to page {J/42/13}, and about
3 two-thirds of the way down is a passage starting:
4 "In a contract of indemnity ..."
5 Could I ask you to read from those words through to
6 the end of the sentence concluding on the last line of
7 that page. (Pause)
8 It is plain that Lord Sumner is drawing
9 a distinction, we submit, between on the one hand
10 contracts of indemnity, such as the policies that are
11 before you, and on the other, what he terms aleatory
12 contracts, contracts of chance, contingency.
13 With the former, to adopt his words, "the question
14 is whether the loss was caused in that way, and the
15 remoter causes of this state of things do not become
16 material". And with the latter, and again adopting his
17 words, "one need only ask: has the event, on which I put
18 my premium, actually occurred?"
19 To be fair to the FCA, many of us have been standing
20 too close to the trees to see the wood, and it is only
21 really with the benefit of what Mr Gaisman would call
22 "time to think" that the error apparent on the face of
23 the FCA's skeleton argument really becomes obvious.
24 We submit that there would be no commercial
25 justification for adopting a construction of the

1 insuring clauses within these policies which effectively
2 reduces the perils to the status of mere contingency.
3 Nor can such a construction be fashioned or justified
4 from the words which the parties have chosen to use to
5 define the perils.
6 We submit it is clear that the FCA cannot provide
7 a rationale for treating the proximity requirements as
8 a happenstance, other than its assertion that the effect
9 of the contingency or ticking the box, or the need to
10 tick the box, is it relieves insurers of the need to pay
11 someone in the Scilly Isles; and the reference for that
12 is {Day2/119:6} to line 16.
13 Can we see that, please.
14 That is said by Mr Edelman to be its commercial
15 purpose, the function and the purpose.
16 Mr Edey made similar submissions on behalf of the
17 hospitality interveners yesterday, {Day3/166:25}, that's
18 the start of the passage. Sorry, it is {Day3/167:1}.
19 Could we go to that page, please.
20 My Lords, the second point is the question which, if
21 we go over the page, {Day3/169:1}, and Mr Edey at least
22 acknowledged that what he was effectively canvassing
23 created a postcode lottery. A classic aleatory contract
24 on any view.
25 In our submission, what both the FCA and Mr Edey

1 described is not a commercial purpose for imposing
2 a contract of contingency on insurers, but it simply
3 describes the effect that such a contingency would
4 create.
5 One can draw a distinction between perhaps the best
6 known contingency in material damage policies, which is
7 the material damage proviso. On one view, the
8 requirement that there has to be in place before the
9 business interruption cover can respond there must be
10 property cover in place under which liability is
11 admitted, could be described or seen as a pure
12 contingency, a happenstance. And no doubt the FCA and
13 Mr Edey would say that that affects whether insurers
14 have to pay out a business interruption loss.
15 But that is not the commercial purpose for the MD
16 proviso. The proviso is there to ensure that the
17 assured can rebuild its premises, and thereby bring the
18 period of interruption to an end as soon as possible,
19 thereby hopefully reducing the exposure of insurer.
20 That is the obvious commercial purpose which underlies
21 the MD proviso and nothing else, and that is in Riley at
22 paragraph 2.10. I will give you the reference, it is
23 {K/323/1}. We don't need to turn it up.
24 It is, in our submission, not surprising that the
25 FCA's approach to proximity requirements, thus infected,

1 has left it in a state of confusion. You can see this
2 at paragraph 951 of its skeleton argument, where in the
3 context of RSA1 the FCA -- and that reference is
4 {I/1/302} please. Can we go to {I/1/302}, please.
5 You will see in paragraph 951:
6 "The clause thereby requires establishing (i)
7 closure or restrictions placed on the premises, (ii)
8 as a result of COVID-19 manifesting itself within
9 25 miles ..."
10 To similar effect were the submissions by Mr Edelman
11 on Day 3 at page 45, lines 4 to 9. {Day3/454}.
12 We would suggest that no one could sensibly make the
13 submission that the wording set out in paragraph 951 of
14 the FCA's skeleton argument should be construed as
15 requiring no more than a box to be ticked. They plainly
16 require the policyholder to establish a proximate causal
17 link between the manifestation of the disease within the
18 specified radius and the relevant closure or
19 restrictions, as well as a proximate causal link between
20 the loss and the closure or restrictions thus caused.
21 LORD JUSTICE FLAUX: In commercial terms it is completely
22 pointless, isn't it?
23 MR TURNER: Yes.
24 LORD JUSTICE FLAUX: Because if the cover is as broad as the
25 FCA asserts, then the 1 mile or 25-mile or vicinity

1 requirement is completely pointless.
2 MR TURNER: So is --
3 LORD JUSTICE FLAUX: Other than as a trigger for being able
4 to say -- as you say, a box to be ticked or a trigger
5 that says: provided you have one case within 1 mile, or
6 in the vicinity, or within 25 miles, then everything
7 else follows.
8 MR TURNER: My Lord, exactly.
9 LORD JUSTICE FLAUX: Why on earth you would do that, why you
10 would feel the need to do that remains unexplained.
11 MR TURNER: Wholly. Wholly. And it goes against every
12 grain of construing an indemnity policy where, as
13 Lord Sumner makes clear in Becker Gray, the assumption
14 from the very start, unless you have clear words to the
15 contrary, is that under an indemnity policy you are
16 insuring loss caused in a particular way. And that
17 predisposition towards requiring the causal link is
18 reflected in section 55 of the Act.
19 MR JUSTICE BUTCHER: I have to say, Mr Turner, I'm not sure
20 that Lord Sumner was addressing really the same point as
21 you are addressing. There would be, on one view, loss
22 as a result of closure or restrictions. But the point
23 you are really focusing on is within the clause itself,
24 that the closure or restrictions are not as a result of
25 a notifiable human disease manifesting itself within the

1 25 miles.
2 MR TURNER: That is a very fair point. That is a very fair
3 point, my Lord. But in relation to RSA3, where we
4 indemnify against loss caused by a notifiable disease
5 within 25 miles of the premises, the point is, in my
6 submission, more directly apposite, and the link into
7 what Lord Sumner was saying.
8 We would go further, and if you take the wording in
9 RSA3, which is notifiable disease, loss caused by
10 notifiable disease, in fact it is "loss following
11 notifiable disease within 25 miles", and I will address
12 you in due course as to the meaning of the word
13 "following", but please for present purposes assume that
14 I am right when I say that that requires a proximate
15 causal relationship, the question which would arise in
16 relation to that clause, if one borrows from
17 Lord Dunedin's speech in Leyland Shipping, {J/43/14},
18 and as explained by my Lord Mr Justice Butcher in
19 Insurance Disputes at paragraph 7.15, reference
20 {K/204/9}, the question is whether the occurrence of
21 COVID-19 within 25 miles of the premises has been the
22 dominant cause -- and I put the words "dominant cause"
23 in inverted commas -- of the loss.
24 In answering that question, and to borrow once again
25 from Lord Sumner in Becker Gray, one does not take

1 account of the remoter causes of the loss.
2 That then leads me to the next feature of the FCA's
3 argument in relation to causation, which is the jigsaw,
4 or the lines on the spreadsheet.
5 Now, Mr Kealey has already addressed the novel
6 inextricable linkage concept. The other way the FCA
7 puts its case, albeit, we would say, as the other side
8 of exactly the same coin, is the jigsaw or lines on the
9 spreadsheet, each making its concurrent contribution to
10 the cause. Not to the loss, to the cause. And I am
11 quoting there from Mr Edelman on {Day3/140:20} to lines
12 25.
13 Perhaps it is Day 2. Could I just have one moment,
14 please? I am not doing very well with my references,
15 my Lord.
16 LORD JUSTICE FLAUX: Don't take up time, Mr Turner, we
17 recall the submission.
18 MR TURNER: All I am going to say in relation to this is
19 that this seems to be an attempt by the FCA to abolish
20 the law of proximate cause or the rule of proximate
21 cause, however one wishes to articulate it, as explained
22 by Lord Dunedin, as set out or summarised in
23 paragraph 7.15 of Insurance Disputes, to unleash the
24 remoter causes disapproved by Lord Sumner in
25 Becker Gray, and introduce the concept of material

1 contribution, as explained in cases such as Bonnington
2 Castings, into the law of insurance.
3 Such an approach, we suggest, has absolutely nothing
4 to do with the test of proximate cause or even, as one
5 can see from Lord Hodge's speech in Barker v Corus, at
6 paragraph 72 {K/126/31} -- I will just ask you to read
7 that, the first eight lines, to yourselves. (Pause)
8 It is paragraph 72, but it is the passage at the top
9 of page 31.
10 LORD JUSTICE FLAUX: Yes.
11 MR TURNER: All I need to say by way of conclusion on this
12 part of my submissions is that it is no surprise
13 whatsoever that Bonnington Castings makes no appearance
14 in either Insurance Disputes or in MacGillivray.
15 The concept of material contribution or underlying
16 causes of a cause is unknown in the field of insurance
17 when it comes to identifying the proximate cause of
18 loss.
19 My Lords, can I turn now to the incorporation of
20 quantification machinery, where that is damages based or
21 damage based within policies.
22 It is common ground as between us and the FCA that
23 the adjustment provisions in RSA4 do apply to the
24 calculation of any indemnity payable under that policy,
25 because the quantification provisions are phrased in

1 terms which do not refer to "Damage", capital D. That
2 quantification machinery we will come to briefly in due
3 course.
4 The RSA2 and RSA3 policies, along with policies of
5 some of the other insurers, do contain adjustment
6 provisions which apply to business interruption losses
7 resulting from "Damage", capital D.
8 For RSA's purposes, you can find those provisions in
9 RSA2.1 at {B/17/34}. This is a policy where the
10 adjustments provision appears within the "Definitions"
11 section of the policy. As you would expect, "Damage" is
12 a defined term requiring physical loss, damage or
13 destruction.
14 In RSA2.2, exactly the same wording can be found at
15 {B/18/52}, special condition 4.
16 And in RSA3 one finds the quantification machinery
17 at {B/19/34}, and under the heading of "Vicinity" or the
18 definition of "Vicinity" is then an unheaded special
19 provision, which concludes "so that the figures thus
20 adjusted shall represent as nearly as may be reasonably
21 practicable the results which but for the incident would
22 have been obtained during the relevant period after the
23 incident."
24 The term "incident" is defined on the previous page,
25 please, {B/19/33}, and you will see that it incorporates

1 "Damage", capital D, in the middle of the page.
2 So, says the FCA, none of these clauses in RSA2.1,
3 2.2 or 3 can apply to the quantification of losses under
4 a non-damage extension to the business interruption
5 cover.
6 My Lords, the reasons for maintaining what some
7 might say is an uncharacteristically puritan approach to
8 policy construction can be found at paragraphs 273 to
9 274 of its skeleton argument, {I/1/107}.
10 If we go on, please, to {I/1/108}, this is in the
11 context of the Hiscox wording, the trends clause doesn't
12 apply because it is damage-based, and it's said to be
13 entirely understandable or unsurprising because there is
14 often a modest subject limit and time limit on the
15 period of indemnity, and the parties will therefore
16 often have been content with a simpler and cheaper
17 quantification process. One might observe that there is
18 a rather obvious non sequitur in the final sentence of
19 274.
20 We say that the FCA approach is wrong. Indeed, we
21 go as far as to say it should be common ground that, and
22 I quote:
23 "Unless one proceeds on the premise that the peril
24 in each extension, if it does not involve Damage
25 [capital D], is to be treated as if it were damage for

1 the purposes of the policy, there is no indemnification
2 provision. This cannot have been intended by the
3 parties."
4 That is a quotation, my Lords, from the FCA's own
5 skeleton argument at paragraph 947, page 300 in this
6 document, please {I/1/300}. This is in relation to the
7 Argenta policy, and it is the last two sentences of
8 paragraph 947.
9 Now, we say those points as to mutual intention are
10 plainly of general application and cannot be limited
11 specifically to either the Arch or Argenta wordings,
12 because the stem by which the extensions provide cover
13 effectively requires manipulation of the text.
14 What the FCA is setting out in 947 are general
15 propositions which are equally applicable to every
16 single damage-based quantification clause in any of the
17 policies before you.
18 And that should be the end of it. The issue is
19 a simple one of construction, easily accommodated,
20 certainly in the context of the RSA policies, by
21 construing the words which extend the primary business
22 interruption cover as extending it, subject to the
23 incidence, including as to quantification, of the
24 primary cover.
25 In relation to RSA3 in particular, we can also point

1 to clear indicators within the language of the
2 non-damage extensions that show the parties were
3 treating the non-damage extensions as if they were
4 damage for the purposes of the quantification machinery,
5 for example, through the use of terms such as "indemnity
6 period" which is defined in a way which requires there
7 to be damage. But we have identified those additional
8 linguistic or textual factors in our written submissions
9 at paragraph 32 of appendix 3, {I/18/66}.
10 In conclusion, each adjustments clause should, as
11 with RSA4, be construed according to its language, as
12 that is how it would be naturally understood, and
13 construed as applying to non-damage losses which would
14 otherwise be indemnifiable in the policies before you.
15 There is some other machinery in RSA 1, to which
16 I am going to come in just a moment, but we say
17 a similar approach should be adopted there.
18 My Lord, could we now go to RSA1, and the policy can
19 be found in bundle {B/16/1}. Our submissions on RSA1,
20 for your notes, are {I/18/7} and following.
21 Can we go, please, to {B/16/5}. About the third
22 paragraph down contains the reminder that the policy and
23 any schedule endorsements, et cetera, should be read as
24 if they were one document.
25 In terms of business interruption cover, could we

1 look, please, at page {B/16/12}, and at the top of the
2 page:
3 "This insurance applies only where shown as included
4 in the schedule."
5 If we then go to the schedule, please, the same tab
6 at page {B/16/82}, one sees the business interruption
7 insurance, and what is insured is loss of gross revenue.
8 That is a defined term, the definition of which you will
9 find at page {B/16/73}, on the left-hand side:
10 "The actual amount of the reduction in the gross
11 revenue received by you during the indemnity period
12 solely as a result of damage to buildings."
13 So in other words, it is a damage-based definition.
14 But in our submission that has to be manipulated to
15 encompass non-damage losses as if those non-damage
16 losses or perils are the "Damage", capital D, for the
17 purposes of the definition. Because otherwise the FCA
18 gets no cover at all in relation to the non-damage
19 extensions.
20 So that machinery introduces a requirement, we say,
21 that the reduction in the gross revenue during the
22 indemnity period must be solely as a result of the
23 insured peril under the non-damage extensions.
24 If we look at the business --
25 MR JUSTICE BUTCHER: They are not very well drafted, but

1 this sort of terminological inconsistency is not unknown
2 in insurance policies.
3 MR TURNER: It really isn't, and particularly where one is
4 looking at extensions to primary cover.
5 LORD JUSTICE FLAUX: You wouldn't have any quantification
6 provisions at all. I mean, unless you read the
7 definition of "Loss of Gross Revenue" as encompassing
8 within "Damage" other non-damage extensions, then there
9 isn't any basis for saying there is any method of
10 quantification of the loss.
11 MR TURNER: There is no method, so presumably the FCA's
12 approach is to say -- and I make this assumption because
13 they haven't told us what their approach is -- that the
14 parties just have to establish what the loss is from
15 first principles.
16 How that conforms with the FCA's submission that the
17 parties can have been intending to make it simpler and
18 cheaper I don't know, because the whole purpose of the
19 quantification machinery is to make it simpler and
20 cheaper and to avoid argument.
21 LORD JUSTICE FLAUX: Yes.
22 MR JUSTICE BUTCHER: In fact, I suspect you would say it
23 doesn't make any difference whether they are included in
24 it or not, wouldn't you?
25 MR TURNER: No --

1 MR JUSTICE BUTCHER: It just makes it clearer.
2 MR TURNER: It makes it clearer and it avoids dispute,
3 my Lord. That is really as far as it goes. But what it
4 does mean is that the policyholders have to accept the
5 extensions along with the quantification machinery that
6 goes with the primary cover. And if that machinery
7 introduces a particular causal test, it has to be
8 respected.
9 A separate issue whether it does, and that is
10 a matter for your Lordships in due course construing the
11 words of the particular clauses as they appear in each
12 policy, without any assumption that they are all simply
13 to be characterised as trends clauses, whatever that may
14 mean. Because the language does differ from clause to
15 clause.
16 Let us turn, if we may, to the business interruption
17 insuring clause. We can find that on page 22.
18 {B/16/22}. Again, slightly odd drafting because we have
19 had the business interruption perils, so to speak, set
20 out. Then on the previous page we have the insuring
21 clause for property damage. Or perhaps not on the
22 previous page, but the previous page to that {B/16/20}.
23 So after we have set out all the business interruption
24 perils, we then have -- it's called "How we settle
25 claims for damage to buildings", but it actually starts

1 with what one would call a conventional insuring clause,
2 which is then followed by basis of settlement
3 provisions.
4 Going forward two pages to {B/16/22}, please, "Gross
5 revenue -- How we settle claims" actually again starts
6 with the primary insuring clause for business
7 interruption, and then goes on to set out the machinery.
8 Again, item number 1 there is:
9 "In respect of gross revenue.
10 "[It is] the amount by which the gross revenue
11 received during the indemnity period falls short of the
12 standard gross revenue as a result of the damage."
13 And the same points arise.
14 There is a material damage requirement in this
15 policy, on the next page {B/16/23}, on the right-hand
16 column, from which there is a specific carve out in
17 relation to event 13, but nothing is said whatsoever in
18 relation to the preceding non-damage extensions to the
19 business interruption cover. But again, that can be
20 resolved by treating the perils insured under those
21 extensions as if they were damage.
22 The relevant extension with which we are concerned
23 appears at page 16 {B/16/16} it is item 2(a). Can we
24 start at the top of the page. "This insurance also
25 covers" must, in my submission, be a reference to the

1 insurance under the business interruption section, if
2 shown within the schedule. "What is covered", item 2A:
3 "Loss as a result of:
4 "Closure or restrictions placed on the premises as
5 a result of a notifiable human disease manifesting
6 itself at the premises or within a radius of 25 miles at
7 of the premises."
8 So the first point to note is that there has to be
9 a notifiable human disease at or within a radius of
10 25 miles of the premises.
11 That disease, thus circumscribed in its geography,
12 has to manifest itself, and the manifestation of the
13 disease as thus circumscribed has to result in closure
14 or restrictions placed on the premises. So that the
15 words "as a result of" appear both as a link between the
16 loss and the peril as a whole, and as the causal
17 connector between the different parts of the peril. And
18 those words, we say, require proximate causation, and
19 they require proximate causation both at level of the
20 cause of the loss and also the cause of restrictions.
21 You can't interpret the same words in the same clause as
22 having two different meanings.
23 There is an issue between us about manifestation.
24 The FCA says that "manifestation" means "occurrence";
25 and as long as there is an actual occurrence, either

1 known or apprehended, then that is sufficient for the
2 purposes of being a notifiable human disease manifesting
3 itself at the premises.
4 We say that is wrong, because if the parties had
5 wanted to say "a notifiable human disease at the
6 premises or within a radius of 25 miles of the premises"
7 they could have said so. They have used the word
8 "manifesting", and that clearly indicates a requirement
9 that the disease is apparent. And that requirement is
10 underlined or reinforced by the fact that the
11 manifestation of the disease, thus circumscribed, has to
12 result in a closure or restrictions.
13 We say it is absurd to suggest that an unknown
14 episode of COVID-19 can satisfy the causal test which
15 appears within the middle of the insuring clause.
16 The FCA's submission boils down to a notifiable
17 human disease manifesting itself at the premises whether
18 it is manifest or not. It deprives the word
19 "manifesting" of all effect. But it may be that in the
20 overall scheme of things this becomes an academic
21 debate, given the required causal link.
22 The definition of "Indemnity Period", can I draw
23 your attention to, is on page {B/16/72}. It is on the
24 bottom of the left-hand column:
25 "The maximum number period from the date of the

1 Damage ..."
2 So the definition of "Indemnity Period" incorporates
3 the concept of "Damage", capital D.
4 But if we go back to extensions 1 and 4 on page
5 {B/16/16}, this is reinforcing the same point about
6 machinery, so one is failure of supply, so it is
7 a non-damage cover but again refers to the indemnity
8 period.
9 The same point can be made in relation to extension
10 4 over the page, {B/16/17}. Again, it is a non-damage
11 cover, but clearly contemplates the application of the
12 damage-based quantification machinery.
13 Can I then move on to some high level submissions as
14 to what our position is.
15 First, we say that closure or restrictions are only
16 placed on the premises by the 26 March regulations. We
17 say that the earlier advice and directions are
18 insufficient. Can we just take an example to illustrate
19 that.
20 If one assumes that you have a customer who lives
21 20 miles away from the premises, he develops symptoms of
22 consistent with COVID-19 on 12 March and he cancels
23 a booking starting on the 15th, complying with the
24 self-isolation advice that had already been circulated
25 at the end of the preceding week. He subsequently tests

1 positive for COVID-19. We say that it could not
2 properly be suggested that the booking of that customer
3 is cancelled because of closure or restrictions placed
4 on the premises. The premises are not closed, they are
5 not restricted, no restrictions have been placed upon
6 them. The booking is cancelled because the customer
7 personally has the notifiable disease and he is
8 complying with the social distancing measures, the
9 advice, but that isn't enough to bring the loss of the
10 booking within the insured peril.
11 We go on to say that the necessary causal link
12 between the closure or the restrictions and the
13 manifestation within 25 miles cannot be satisfied by the
14 FCA. We give the example of the Scilly Isles. So if
15 you take at this stage you can apply the counterfactual,
16 where you have multiple causal links within the peril,
17 it is both right and proper to test that causal link by
18 a counterfactual. If you pose the question of whether
19 the premises would have been subject to closure or
20 restrictions even if there had been no manifestation of
21 disease within 25 miles, the answer is yes, "but for"
22 causation is not satisfied, and therefore the peril has
23 not occurred.
24 One can test that also by reference to the Scilly
25 Isles. No known -- no manifestation of disease within

1 25 miles, on the basis of the agreed facts, but still
2 subject to the closure or restrictions.
3 You have my submissions in relation to
4 quantification machinery, and so I am not going to
5 repeat them any more than I already have.
6 Your Lordship Lord Justice Flaux posed a question
7 yesterday in relation to an outbreak of Legionnaires'
8 disease at the premises, and the government contacting
9 the people who were planning to stay at the premises in
10 the next three weeks and telling them not to go, and
11 asking the question whether or not that would amount to
12 closure or restrictions placed on the premises.
13 We would say, perhaps obviously, that the example is
14 artificial, because in reality what would happen is the
15 public health official in the locality would direct the
16 premises to close until they have been deep-cleaned and
17 certified safe. But if it is to be treated as a closure
18 placed on the premises, it is because there is
19 a specific risk relating to the specific premises, and
20 so the directions given are intrinsic to the premises.
21 And that would be the only way by which to say that that
22 particular requirement had been satisfied on the basis
23 of that example.
24 If one takes a different example, if one
25 hypothesises that in order to slow down the spread of

1 the disease the government, on 12 March, banned the use
2 of public transport by everyone, except for key workers,
3 and a booking due to start on the 15th was cancelled by
4 a party, because they were relying on a train from
5 Paddington to Penzance to get to the holiday cottage and
6 could no longer get there, it couldn't be said that that
7 booking was cancelled because of a closure or
8 restriction placed on the premises; it had been
9 cancelled because of restrictions placed on the use of
10 public transport by individuals. It is not intrinsic to
11 the premises, and therefore the peril would not be
12 satisfied, even if there were outbreaks. And perhaps
13 not Paddington to Penzance, let's take Truro to Penzance
14 or even Camelford to Penzance, 22 miles, so that might
15 satisfy the causal test, and one can postulate various
16 different scenarios. But certainly on that scenario we
17 would say that there is no closure or restrictions
18 placed on the premises.
19 As for the Chesil Beach example, your Lordships will
20 have well in mind Mr Edelman's admonition at page 3 of
21 the transcript for Day 1 {Day1/3:1} that your Lordship
22 should not express views on issues or clauses that are
23 not before you. That was before he embarked on the
24 Chesil Beach example, the vermin example, the Buncefield
25 example and many other examples in order to illustrate

1 his submissions.
2 Mr Kealey has dealt with Chesil Beach this morning.
3 We deal with it as much as it needs to be dealt with,
4 because it is misconceived, at {I/18/23}, paragraphs 34
5 to 36 of our written submissions. My Lords, I am not
6 going to repeat those now.
7 MR JUSTICE BUTCHER: I have to say, Mr Turner, I didn't
8 understand Mr Edelman to mean that we couldn't express
9 a view on other policy clauses which are completely
10 irrelevant. I think he was warning us not to say
11 anything which might be relevant to the sort of COVID
12 issues we are concerned with.
13 MR TURNER: I think I have pulled Mr Edelman's leg as much
14 as it needs pulling in relation to that.
15 Mr Edelman said, and the reference for this is
16 {Day3/65:24} to page 66, line 9, that RSA can't say that
17 the closure cannot be as a result of a notifiable
18 disease, because the government measures were
19 preventative or pre-emptive. The FCA say that can't be
20 correct, because the government were responding not just
21 to the known but also to the known unknowns, in
22 Rumsfeldian language.
23 My Lord, the difficulty with that is the use of the
24 word "manifesting" within the relevant peril, and so the
25 closure, an anticipatory closure, or preventative

1 pre-emptive closure cannot be said to be as a result of
2 the manifestation of a notifiable disease within the
3 prescribed radius.
4 In relation to the counterfactuals, the complaint is
5 that we subtract the whole of the clause, we subtract
6 the closure, the restrictions and the disease
7 manifesting itself within 25 miles, so it is said we
8 don't make the mistake of other insurers. Well,
9 Mr Kealey has already dealt with that. One can apply on
10 this clause, so I have already indicated,
11 counterfactuals at different stages. One can apply the
12 counterfactual to test, whether the necessary causal
13 link for the closure or restrictions is satisfied, and
14 we say it plainly is not, even on the FCA's own case.
15 One can then test the question of the counterfactual to
16 the insuring clause as a whole by posing the question:
17 what would have happened if, following the manifestation
18 within the prescribed radius, or because of the
19 manifestation, if one assumes there had been some, the
20 closure or restrictions were imposed?
21 So one simply takes away, at that stage, the closure
22 or restrictions to ask what the question would be. As
23 I have already indicated, the social distancing
24 measures, set out with legislative force from 26 March,
25 would have provided a complete answer from that date.

1 LORD JUSTICE FLAUX: In one sense, Mr Turner, and I think
2 this is a point my Lord made to Mr Kealey, one can move
3 away from counterfactuals. I mean, you say your case
4 is, as a matter of construction, you only have to cover
5 if you can demonstrate that the closure or restriction
6 has been placed on the premises as a result of
7 manifestation of disease within 25 miles.
8 Now, it may be that in any given case that can be
9 demonstrated on the facts. But you say that is
10 extremely unlikely, and if it can't be demonstrated on
11 the facts then there isn't any cover. So you don't need
12 to get to counterfactuals at all.
13 MR TURNER: Precisely. Counterfactuals are only really
14 a way of testing the application of proximate cause, and
15 if one simply poses the question and says, "Has any loss
16 proximately been caused or have the closure or
17 restrictions proximately been caused by the
18 manifestation of a disease within 25 miles?", then until
19 we get to examples such as Leicester, the answer is no.
20 And you are quite right, my Lord, one doesn't need to go
21 on to counterfactuals, they are there as a reality check
22 if one needs one. But I would agree that on those facts
23 one doesn't need one.
24 MR JUSTICE BUTCHER: You can just ask the question: was the
25 closure or the restriction placed on the premises as

1 a result of a notifiable disease manifesting itself?
2 LORD JUSTICE FLAUX: Within 25 miles.
3 MR JUSTICE BUTCHER: Within 25 miles.
4 MR TURNER: Precisely.
5 LORD JUSTICE FLAUX: And if the answer to that question is
6 no, that is the end of it.
7 MR TURNER: Yes, it is. We are in violent agreement.
8 My Lords, that is all I propose to say about RSA1.
9 Could I make a start on RSA2, at least to the extent
10 of setting out the route map to the policy itself.
11 It is {B/17/1} and the submissions in relation to RSA2
12 are appendix 2 to our written submissions {I/18/28} and
13 following, and we don't need to go there.
14 Page 3 of tab 17, and this is the pubs policy --
15 {B/17/3} -- we have a one document provision. It is
16 three paragraphs under the inapt heading "Insuring
17 Clause".
18 LORD JUSTICE FLAUX: These policies are in fact written by
19 a managing general agent, are they?
20 MR TURNER: They are. A managing general underwriter.
21 LORD JUSTICE FLAUX: A general underwriter rather, I think
22 on behalf of Aviva, and Aviva is part of your clients,
23 is it not?
24 MR TURNER: No. That is Resilience. Resilience is actually
25 a broker created broker place policy through Marsh,

1 where RSA's exposure on Resilience is relatively modest.
2 QBE, Zurich, Aviva and AIG, and lots of others, there is
3 enough to fill a 52-seater coach, I can tell you, they
4 also write business on the Resilience wording, and some
5 if not all of them write a lot more of that business
6 than RSA does.
7 LORD JUSTICE FLAUX: So in a sense RSA4 is, if you like,
8 a test case for a lot of other policy wordings.
9 MR TURNER: It is. Or a test case for a lot of other
10 insurers.
11 LORD JUSTICE FLAUX: Yes.
12 MR TURNER: And they are watching anxiously.
13 LORD JUSTICE FLAUX: So this one is RSA through an
14 underwriting agent.
15 MR TURNER: Yes, it is RSA, though it's Eaton Gate's
16 wordings, and you will observe various features of their
17 wordings in due course and we will address those as we
18 come to them.
19 Let's look at the business interruption insuring
20 clause here. If we start, please, at page {B/17/36}.
21 I am just checking that is -- sorry, I am in the
22 wrong -- no, I am in the right bundle.
23 In fact let's start, if we may, at {B/17/34}. It is
24 the start of the "Business Interruption" section. You
25 have already seen the adjustments provision included

1 within the definitions section, or subsection. Then we
2 have "Subsection A -- Gross Profit", and over the page
3 "What is Covered":
4 "In the event of damage to property used by you at
5 the premises ..."
6 So there is the answer to Mr Edelman's Buncefield
7 scenario; in relation to RSA2, the peril is damage.
8 Then below that we find the heading "Extensions":
9 "Cover provided by this subsection is extended to
10 include interruption or interference with the business.
11 "What is Covered", and we say those general words of
12 extension are sufficient to, if you like, wrap over the
13 quantification machinery, if you need a route by which
14 to do so.
15 Subclause A or Extension A is actually a disease
16 clause with specified diseases.
17 LORD JUSTICE FLAUX: It doesn't actually use the words
18 "caused by" or anything of that kind, but they must be
19 necessarily implicit, mustn't they?
20 MR TURNER: This wording doesn't, so we say this is
21 section 55 territory. One defaults to proximate cause
22 unless the policy provides otherwise, and it doesn't.
23 So we have specified diseases in A, and then in F
24 over the page {B/17/36} we have the relevant extension,
25 a "Prevention of Access - Public Emergency" extension:

1 "The actions or advice of a competent public
2 authority due to an emergency likely to endanger life or
3 property in the vicinity of the premises which prevents
4 or hinders the use or access to the premises."
5 My Lord, quite what sense one takes away from the
6 insuring provision may depend slightly on where one
7 draws breath as one reads it out, but as I am going to
8 show you in due course, the parties are happily agreed
9 as to how that provision should be construed.
10 And the agreement, just not to keep you in suspense,
11 is that it should be construed as referring to an
12 emergency in the vicinity of the premises likely to
13 endanger life or property, and I will make that good in
14 due course.
15 Then "What is not Covered", we start with a time
16 deductible.
17 Then we have exclusion (b), on which Mr Edelman made
18 submissions yesterday, and on which we rely as
19 delineating the cover or restricting the scope of cover
20 to the period of actual prevention. It is an unusual
21 approach to policy wording, but there are a number of
22 unusual features to the approach to this policy's
23 wording.
24 (c) is labour disputes; (d) is Northern Ireland; and
25 (e) is specified diseases, so extension A sub(a); and

1 then finally there is a freestanding inner limit, "Any
2 amount in excess of č10,000". One can see that a number
3 of these extensions have freestanding inner limits thus
4 expressed, so extension A, extension B, extension C, F
5 we have just looked at, G, H, all have freestanding
6 inner limits.
7 The equivalent provisions within RSA2.2, the
8 business interruption insuring section, starts at
9 {B/18/49}. The extension starts on page 50 {B/18/50}.
10 Disease is again nominated or specified diseases, in
11 B(a), freestanding and a limit in B(a). I ask you to
12 note the freestanding limits in C as well, and G.
13 The extension with which we are concerned is the
14 "Public Emergency" extension at F, which is in identical
15 terms to that in RSA2.1, subject to two features, at
16 least as a matter the text. The first is that the
17 exclusion --
18 LORD JUSTICE FLAUX: We need to go to the next page.
19 MR TURNER: Sorry, {B/18/51}. I ask you to note the inner
20 limit on G on that page, and then go back to F. The
21 insuring provision, the "What is Covered" provision is
22 identical.
23 Then the "What is not Covered" provision, again we
24 have the time deductible and so on, and it is all really
25 the same until we get to (e). The first difference in

1 relation to (e) is that the exclusion in respect of
2 "infectious or contagious diseases" is unqualified by
3 reference to the specified diseases in A, on {B/18/50};
4 and the second point is that the "any amount in excess
5 of č10,000" has found itself onto or into sub-exclusion
6 (e), where previously it has been a freestanding inner
7 limit.
8 I am going to address that exclusion and our
9 approach to it, if I may, on Monday morning.
10 Just before we break, so that I do make use of the
11 time, can I identify some points of agreement.
12 We accept that there is action or advice by
13 a competent public authority.
14 We accept that the closure measures hindered use,
15 but say they did not prevent access.
16 We accept that COVID-19 was a general public health
17 emergency. But we are not insuring general public
18 health emergencies; we say we are insuring emergencies
19 in the vicinity of the premises likely to endanger life
20 or property.
21 MR JUSTICE BUTCHER: Yes. You will have so show me how that
22 works grammatically.
23 MR TURNER: Grammatically, if one were using punctuation,
24 and it is fair to say that the draftsman is sparing in
25 his use of punctuation, one would put a comma after the

1 word "emergency" in the second line of the "Public
2 Emergency" extension, and another comma after the word
3 "property" in the next line.
4 MR JUSTICE BUTCHER: Right. Thank you.
5 MR TURNER: That appears to be common ground. And can I now
6 make good, as perhaps one of my last points for today,
7 that that appears to be common ground. It is the FCA's
8 skeleton argument at paragraph 610, reference {I/1/209}.
9 MR JUSTICE BUTCHER: Where are you referring to, Mr Turner?
10 MR TURNER: The opening words of 610:
11 "[Their] primary case is that the emergency was
12 within the vicinity of the premises ..."
13 I may be reading too much into it, but we suggest
14 that that indicates that there is common ground between
15 the parties, certainly on their --
16 LORD JUSTICE FLAUX: I'm not sure about that. Because they
17 have a very wide definition of "in the vicinity".
18 There are two ways in which you could look at it,
19 aren't there? One is to say, as Mr Edelman does: well
20 "in the vicinity" means the whole of the UK.
21 MR TURNER: Yes.
22 LORD JUSTICE FLAUX: The other is to say: wherever there is
23 COVID in the vicinity, in the sense of within a distance
24 that it is going to affect the premises so that it gets
25 closed down.

1 MR TURNER: "In the vicinity" here, we don't have
2 a definition.
3 LORD JUSTICE FLAUX: No, you don't have RSA4, it is true.
4 MR TURNER: It is natural meaning of words. We adopt what
5 Hiscox say about the Latin derivation of "vicinity". It
6 means "close to", and it doesn't need elaboration, which
7 is the creation solely of lawyers and can't represent --
8 MR JUSTICE BUTCHER: Without your commas, you could say that
9 the emergency was likely to endanger life, the life
10 being in the vicinity of the premises, anyone near the
11 premises was endangered by COVID. On one view, it
12 doesn't say that the actions have to come from the
13 danger to the life near the premises.
14 MR TURNER: Yes, but the actions have to come from something
15 close to the vicinity, close to the premises, to put it
16 into paraphrase, and we say the natural way to deal with
17 that is to say it is an emergency in the vicinity. So
18 an emergency likely to endanger life or property in the
19 vicinity of the premises.
20 LORD JUSTICE FLAUX: Why don't we return to issues of
21 punctuation on Monday morning, Mr Turner.
22 MR TURNER: I shall look forward to it, my Lord.
23 LORD JUSTICE FLAUX: I think that is probably enough for one
24 day. Thank you very much.
25 Unless there is anything that anybody wants to raise

1 with the court, we will rise now, metaphorically, if not
2 in fact, and resume again at 10.00 am as requested on
3 Monday morning.
4 Can I just say to all of you that I hope you all
5 have as good a weekend as you can in the middle of
6 a difficult and long case.
7 MR TURNER: Thank you, my Lord.
8 (4.30 pm)
9 (The hearing adjourned until 10.00 am on Monday
10 27 July 2020)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX
2 PAGE
3 Submissions by MR LYNCH 1
4 Submission by MR KEALEY 24
5 Submissions by MR TURNER 147
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A

a1016 (1) 10:7
a106 (1) 10:11
a1427 (2) 96:17 110:5
a235 (1) 25:4
a245 (1) 26:22
ability (1) 124:10
able (10) 9:8,9,17 29:15,18,19 55:15 62:9 81:7 158:3
abolish (1) 160:19
above (2) 79:13 135:8
absence (3) 30:13 77:23 118:8
absolutely (48) 4:25 8:14 37:21 40:17 41:22 42:5 43:14,20 44:11 45:8 48:9 51:11,18 52:2,10,22 58:5 59:8 65:3,23 66:6,9,18,19 69:25 71:2,4,10,21 94:5 99:14 114:17,17 116:7 121:9,12,19,20 127:24 131:9,10 132:5,13 134:22 135:1 144:13 146:20 161:3
abstract (1) 8:7
abstruse (1) 47:23
absurd (1) 171:13
academic (2) 24:10 171:20
accept (17) 4:5 56:4 87:7,9 90:15,18,23,23 106:4 109:25 114:19 141:22,24 168:4 184:12,14,16
accepted (6) 60:24 99:5 110:4,11 125:8 130:23
accepts (2) 102:19 109:22
access (11) 9:5 39:12 40:12,16,21 87:11 105:24 130:21 181:25 182:4 184:15
accident (3) 16:21 34:3,6
accidental (1) 32:18
accommodated (1) 164:19
according (6) 72:7 84:8 94:1 144:24 148:13 165:11
accordingly (1) 152:3
account (1) 160:1
accurately (1) 109:17
accuse (1) 46:22
accused (1) 95:11
acknowledge (2) 127:22 140:24
acknowledged (2) 96:5 155:22
acknowledges (2) 71:12 141:13
acknowledging (1) 48:3
across (7) 6:23 13:5 15:4,12 20:25 23:17,18
acted (1) 89:22
action (21) 28:5 43:18 44:7,7,10 46:8 54:15,19 62:24 63:1,9 67:4 70:18 71:18 87:10,21 144:12,13 148:18 149:1 184:12
actions (3) 182:1 186:12,14
activated (1) 144:17
activities (7) 10:13 119:11,21,23 120:14,23 122:15
activity (1) 151:23
acts (5) 5:20 119:10 120:13,24 122:8
actual (12) 21:4,18 85:2 119:6,11 120:15,22 122:7,10 166:10 170:25 182:20
actually (50) 7:22 23:7 24:19 29:4 36:3 38:21 40:14 41:9 43:11,21 44:6 45:11 47:19 49:17 53:10 55:21 57:3,15 58:18 60:13 66:3,8 70:3,10 71:5,7 72:15 75:19 90:23 91:3 94:3,13 101:22 106:15 110:13,20,23 111:7 112:25 128:16 129:22 135:12 138:3 153:12 154:18 168:25 169:5 179:24 181:15,17
acutely (1) 2:3
added (1) 150:7
addition (1) 111:11
additional (6) 3:15 10:6 20:3 111:5 129:8 165:7
addons (1) 129:14
address (8) 10:3 13:7 46:21 124:19 147:22 159:11 180:17 184:8
addressed (6) 10:5 104:8 126:16 133:7 134:8 160:5
addresses (1) 136:22
addressing (7) 1:10 19:7 57:6 126:19 142:21 158:20,21
adjourned (1) 187:9
adjournment (1) 108:1
adjudges (1) 27:12
adjusted (1) 162:20
adjustment (5) 103:15 133:21 148:20 161:23 162:5
adjustments (3) 162:10 165:10 180:25
adjustors (2) 89:3,5
admissible (1) 7:19
admitted (1) 156:11
admonition (1) 175:20
adopt (4) 19:10 148:7 154:13 186:4
adopted (1) 165:17
adopting (5) 73:17 74:2 102:22 154:16,25
advanced (1) 33:18
advantage (3) 116:19,20 117:7
adverse (1) 123:20
advice (8) 26:18 27:9 110:7 172:17,24 173:9 182:1 184:12
advise (1) 19:25
advised (1) 16:3
advisories (1) 113:1
advisory (3) 96:12 120:12 122:24
advocacy (1) 91:7
affect (2) 11:25 185:24
affected (4) 64:8 84:1 92:7 152:1
affecting (1) 62:4
affects (2) 68:25 156:13
afraid (3) 10:8 107:13 128:3
after (19) 19:4 56:16 57:19 58:2 59:18 72:2 88:15 92:4 95:1 97:17,17 107:8 112:20 145:3 147:13 162:22 168:23 184:25 185:2
aftermath (2) 112:11,23
afternoon (3) 97:18 147:10 148:23
again (22) 1:9 9:21 12:20 15:9 18:14 26:11 27:16 68:10,11 105:3 111:8 154:16 159:24 168:18 169:5,8,19 172:7,10 183:10,23 187:2
against (31) 16:22 30:12,16 32:5 39:21 42:19 43:11 45:20,25 48:19 65:5,9,10 69:3 73:1,14 84:5 85:25 94:18,21 98:25 99:5 100:8,11,16 128:24 144:8,17 151:10 158:11 159:4
agent (2) 179:19 180:14
aggregation (2) 5:18 6:22
ago (3) 41:19,20 131:21
agree (12) 45:21 46:16 85:16 98:23 101:14 102:7 116:5,13 124:16 133:1 152:6 178:22
agreed (11) 9:15 24:6 30:16 64:20,23 144:22 145:6,8 151:10 174:1 182:8
agreeing (1) 65:24
agreement (5) 45:17 94:24 179:7 182:10 184:11
ah (1) 41:3
ai (5) 121:3,8,22,23 122:16
aid (1) 83:2
aig (3) 5:13 6:3 180:2
aii (16) 113:23 118:25 119:7,10,15 120:4,6,7,19,21,23 121:6,10,11,18 122:17
aiis (1) 121:16
airways (5) 83:3 105:14,16 106:22 140:20
akin (1) 94:8
albeit (3) 19:7 106:9 160:7
aleatory (4) 70:6 152:21 154:11 155:23
align (1) 150:14
alleged (1) 110:7
allocate (1) 123:1
allow (1) 102:13
allowed (2) 47:7 82:14
allowing (1) 133:21
almost (1) 108:24
alone (2) 19:2 128:14
along (5) 48:11 97:15 149:12 162:4 168:5
already (23) 3:8,9,22 4:20,25 10:4 18:17 23:5 47:2 51:12 55:9 80:20 98:6 107:19 117:19 129:3 160:5 172:24 174:5 177:9,10,23 180:25
also (39) 3:14,20 9:9 12:22 16:17 19:18 29:18,19 34:13 37:7 38:16 42:25 52:2 65:3 77:11,15 78:19 95:14,23 98:11 101:22 102:3 105:19 110:4 119:21,22 133:20 134:17 137:3 141:24 145:10 149:8 150:2 164:25 169:24 170:20 173:24 176:21 180:4
alternative (2) 7:14 27:14
alternatively (1) 27:11
alternatives (1) 144:23
although (6) 24:10 31:10 36:4 46:7 125:5 129:22
always (2) 48:17,18
amber (1) 60:5
ambit (2) 9:2 113:23
ambitious (1) 81:8
amended (2) 25:3 26:21
amlin (2) 24:6 70:3
amlins (1) 99:19
among (2) 51:21 126:5
amount (9) 20:3,15 22:4 97:6 166:10 169:10 174:11 183:2 184:4
amusing (1) 16:11
analogy (4) 5:11,12 6:1,18
analysed (1) 42:2
analyses (3) 38:21 76:4 88:24
analysing (1) 124:10
analysis (15) 23:11 29:2 34:18 35:11 40:9 41:18 42:13 48:24 49:10 66:5 71:5 74:3 90:19 130:3 146:18
ananda (1) 132:17
anarchic (1) 145:25
andor (5) 25:6 110:7 117:3,3 120:16
anecdotally (1) 132:14
another (22) 3:3 4:18 7:21 27:15,20 37:7 38:7 39:21 40:5 45:10 54:24 55:2 61:9,9 73:24 79:6 90:17 107:11 113:5 121:20 150:18 185:2
answer (41) 11:19 13:8 14:23 18:18 34:15 36:17 39:15,16 46:24 47:13 48:2 56:9,9 58:5,9 59:6 66:23 67:24 81:7,13,14 88:3 89:7 92:23 98:6 115:22 123:3,6,6 126:22,24 127:1 136:2 138:15 139:22 149:19 173:21 177:25 178:19 179:5 181:6
answered (3) 50:1 97:14,19
answering (2) 46:23 159:24
answers (4) 19:12 81:25 89:7 115:21
anthony (1) 42:8
anticipated (1) 120:8
anticipatory (1) 176:25
antithetical (1) 60:24
anxiety (4) 112:9,10 113:4,4
anxious (2) 36:23 129:18
anxiously (1) 180:12
anybody (2) 71:8 186:25
anyone (5) 15:14 68:17 70:19 104:15 186:10
anything (14) 16:8 19:3 39:13 56:25 75:6 93:9 96:8 108:15 110:1 143:4 150:7 176:11 181:18 186:25
anyway (16) 18:8 46:18 56:6 57:1 59:21 69:21 75:20 93:2,11 107:23 129:20 130:22 132:19,20 135:5,15
anywhere (3) 48:15 73:12 94:6
apart (1) 81:8
apparent (3) 140:4 154:22 171:9
apparently (2) 13:13 94:2
appeal (16) 31:23 80:15 104:8 110:23 114:4 116:16,18 117:14,21 118:1 122:22 132:3,10,12,24 142:22
appeals (3) 137:15 138:12,16
appear (6) 11:16 13:7 19:21 116:6 168:11 170:15
appearance (1) 161:13
appears (9) 2:15 33:14 108:18 115:3 162:10 169:23 171:15 185:5,7
appendix (2) 165:9 179:12
applicability (1) 124:20
applicable (9) 6:19 25:9 27:6 108:20 117:11 126:4 134:6 148:10 164:15
application (27) 3:24 8:19,25 51:20 52:3,4 63:7 80:25 103:16 105:21 114:7 115:5 118:21 122:17 123:10,21 133:24 134:1,5 139:10 141:5 142:1 146:4 148:8 164:10 172:11 178:14
applications (2) 2:7 6:13
applied (12) 6:17 8:5 76:5 82:19 90:21 114:10 125:13,15,21 141:2 142:19 143:2
applies (13) 6:21,22 15:12 20:3,5 29:12 51:19 65:22 74:20 108:21 109:11 131:8 166:3
apply (32) 2:25 9:14,18 15:4 22:4,24 24:8 38:15 50:22 51:24 54:17 62:19 72:20,22 73:8 74:25 75:12 82:3 115:10,14 123:22 125:7,22 140:25 152:25 161:23 162:6 163:3,12 173:15 177:9,11
applying (10) 8:24 13:15 29:3,4,5 106:19 130:10 140:6 142:11 165:13
apposite (1) 159:6
apprehended (1) 171:1
approach (38) 2:15,19 3:1 5:2,3 6:11,11 9:24 15:14 18:20 19:10,12 22:16 33:14 82:3 95:14,18 101:2 102:23 113:3 124:13 139:5 141:2 142:11 152:4,12 153:4,16 156:25 161:3 163:7,20 165:17 167:12,13 182:21,22 184:9
approaches (1) 148:7
appropriate (6) 17:8 23:20 25:8 28:7 139:5 141:3
appropriateness (1) 140:6
approves (1) 77:14
arbitrary (1) 152:14
arch (1) 164:11
area (60) 13:18,23 47:24 62:24 63:1,14,14,19,23,24 64:8 65:6,7,18,20,25 66:21,25 67:3,15,19 68:23 70:19 71:19,20 78:21 84:1,6,7,9,14,21,23,25 85:3,4,6,10,15,18 86:6,7,11,16 87:2 94:22 95:23 96:3,9 110:1 133:16 138:19 139:21 143:17,22 144:4 149:15 151:22,24 152:11
areas (3) 38:15 95:21,24
arent (2) 136:19 185:19
argenta (2) 164:7,11
argo (1) 42:4
argue (1) 18:25
argued (7) 42:8 95:14 115:7,13,14,23,24
argues (2) 3:4 8:25
argument (34) 1:15 10:3 15:19 16:5,6 23:12 24:14,15 33:19 37:13 55:20 60:1 62:8 85:9 96:6 114:8 115:9 123:10,15,20 124:1 125:17 134:3 137:7 141:15 153:7 154:23 157:2,14 160:3 163:9 164:5 167:20 185:8
arguments (4) 81:8 123:21 135:13 136:18
arise (5) 49:17 87:24 150:17 159:15 169:13
arises (4) 13:6 31:4 38:3 79:16
arising (7) 12:15 14:15 74:14 100:9 117:2 134:16,17
armed (3) 119:10 120:13 122:8
arms (1) 78:15
arose (3) 33:6 133:6 149:6
around (8) 36:12 55:22,24 60:13 62:8 68:19 72:13 108:8
arrangements (1) 15:11
arrive (4) 17:17,22 49:3 82:4
arrived (1) 49:8
arthritic (1) 33:2
article (8) 53:25 54:1,4 55:1 56:15,15 57:18,19
articulate (2) 109:14 160:21
artificial (5) 28:11,15,16 136:16 174:14
artificiality (1) 28:20
ascertained (1) 120:11
ascribe (1) 7:15
ask (21) 4:15 5:12,24 16:7 18:21 25:23 65:14 66:22,23 67:21 70:9 81:11 138:13 148:6 154:5,17 161:6 177:22 178:24 183:11,19
asked (8) 36:13 37:20,22 45:1,9 49:18,19 141:10
asking (4) 36:11 51:6 74:11 174:11
asks (2) 47:8 54:10
aspect (2) 52:20,25
aspiration (1) 94:25
assert (1) 88:18
asserted (1) 46:17
assertion (1) 155:8
asserts (3) 106:1 148:13 157:25
assess (2) 139:6,13
assessed (1) 110:17
assessment (1) 30:12
assign (1) 112:3
assistance (2) 1:22 124:16
assume (6) 56:23 61:24 65:11 85:9 89:23 159:13
assumed (1) 25:11
assumes (3) 28:17 172:20 177:19
assuming (3) 38:1 58:10 92:18
assumption (7) 63:22 101:23 104:23 105:1 158:13 167:12 168:12
assured (3) 70:13 115:8 156:17
assureds (1) 120:16
atlantic (2) 78:20 116:7
attaching (1) 7:9
attack (3) 88:25 91:15 116:13
attacked (1) 40:2
attacking (1) 26:14
attacks (7) 112:9,17,20,22,25 114:16 129:25
attempt (2) 8:22 160:19
attend (2) 17:15,18
attention (2) 4:20 171:23
attraction (4) 39:12 105:24 133:15 139:21
attributable (8) 33:1,21 108:25 112:16,21,25 113:1 137:9
attributed (2) 90:7,8
austin (1) 149:4
authoritative (1) 80:17
authorities (6) 12:7,8,9 54:6 56:13 149:10
authority (36) 1:10,15 2:9,12 5:15 10:19 11:22 12:25 15:5 17:20 19:6 22:16,21 28:5 36:25 44:4,7 47:6 53:20 54:8,13 57:14 58:17 79:15 108:15 115:3,4 120:13 123:24 125:19 129:21 130:21 144:12,13 182:2 184:13
aviva (3) 179:22,22 180:2
avoid (2) 40:7 167:20
avoids (2) 2:23 168:2
award (7) 30:23 134:21,25 135:5,8 137:14 142:22
aware (1) 125:1
away (8) 63:18 73:7,10 88:22 172:21 177:21 178:3 182:5

B

b (11) 32:19 72:23,23,25 73:2,10 77:1 78:20 116:7 182:17 183:4
b161 (1) 165:19
b1612 (1) 166:1
b1616 (2) 169:23 172:5
b1617 (1) 172:10
b1620 (1) 168:22
b1622 (2) 168:18 169:4
b1623 (1) 169:15
b165 (1) 165:21
b1672 (1) 171:23
b1673 (1) 166:9
b1682 (1) 166:6
b171 (1) 179:11
b173 (1) 179:15
b1734 (2) 162:9 180:23
b1736 (2) 180:20 181:24
b1849 (1) 183:9
b1850 (2) 183:9 184:3
b1851 (1) 183:19
b1852 (1) 162:15
b1933 (1) 162:25
b1934 (1) 162:17
b615 (1) 11:1
b618 (1) 16:19
b619 (1) 17:4
b640 (1) 3:14
b641 (6) 1:23 3:3 4:16 9:5 12:14 20:19
b642 (8) 1:11,25 4:18 8:11 11:8 12:21 15:9 22:17
b644 (3) 19:23 20:12 21:2
b645 (2) 19:20,24
b936 (1) 12:24
ba (2) 183:11,11
back (30) 8:11 12:20 21:2 22:17 26:21 29:6 32:3 36:16 40:10 41:12,19 42:4 48:17 49:16 50:2 68:5 70:5 85:8 88:9 97:12 100:3 103:10,13 110:15 116:15 119:24 130:7 153:19 172:4 183:20
background (3) 18:5 22:20 32:16
backing (1) 17:11
bad (2) 69:15 145:18
badly (1) 44:15
bank (1) 132:3
banned (1) 175:1
bargain (2) 143:6 152:21
bargains (1) 70:6
barker (1) 161:5
based (5) 14:12 35:12 49:10 161:20,21
bases (1) 108:8
basic (3) 62:20 71:22 145:23
basis (20) 42:6 47:9 64:2 73:12 83:19 90:21 91:16 110:21 113:8 114:5,22 125:10 127:23 130:11 132:5 139:13 167:9 169:2 174:1,22
beach (5) 84:20,25 175:19,24 176:2
bear (3) 27:17 137:23 151:4
bearing (3) 7:14 13:4,5
became (1) 140:4
becker (6) 70:8 152:21 153:6 158:13 159:25 160:25
become (1) 154:15
becomes (3) 88:17 154:23 171:20
before (42) 8:9 15:14,21 16:8 20:22 21:11,12,13 23:4 25:23 26:14 27:14 36:23 42:8 47:20 52:6,17 57:18 59:11,14 67:11 82:8 87:14 88:3 108:3 111:1,19 113:7 115:9,25 123:9,15,19 131:23 134:9 154:11 156:8 164:17 165:14 175:23,23 184:10
begs (1) 80:11
behalf (6) 48:3 60:22 99:6 135:17 155:16 179:22
behaviour (1) 152:1
behind (2) 117:15 137:1
being (42) 1:20 9:12 13:20 18:6 28:3,15 37:10 39:5 40:1,23 41:16 43:2 46:23 49:19 54:4 55:13 65:6 70:15 74:6 77:18,25 81:4,5 84:5 99:2 100:4 103:3 113:24 116:9 121:25 133:20 135:2 140:9,10 141:4,10 152:1,10 153:14 158:3 171:2 186:10
belabouring (1) 107:18
belfast (1) 15:17
believe (1) 153:25
below (1) 181:8
benefit (4) 24:7 73:21 129:15 154:21
beside (1) 74:16
best (4) 45:16 71:4 110:21 156:5
better (4) 14:20 46:1,4 129:23
between (30) 6:6 8:16 13:5 21:4,7,18,23 51:21 64:5 81:22 83:22 87:17,18

92:20 109:1 111:20 113:19 114:7 123:1 124:22 154:9 156:5 157:17,19 161:22 170:15,17,23 173:12 185:14
beyond (4) 53:3 63:13 84:25 152:17
bi (4) 103:5 139:6,13 146:5
big (2) 64:14 129:16
bilateral (2) 38:1,2
bit (9) 37:15 48:3 49:19 65:4 72:15 93:5 116:7 128:3 137:13
bite (1) 23:7
bits (1) 103:9
blackburn (3) 31:22 32:4 79:14
blackburns (1) 79:15
blatantly (1) 100:22
board (3) 6:23 23:18,18
bodily (2) 32:6,19
boils (1) 171:16
bones (1) 33:3
bonnington (2) 161:1,13
booking (6) 172:23 173:2,6,10 175:3,7
bookings (4) 111:22 113:21 120:16 130:16
borrow (1) 159:24
borrows (1) 159:16
both (36) 2:6 3:24 16:16 22:4,5 25:6 35:6 38:22 39:25 65:23 66:8,9 76:7 77:6,18 78:2 82:13 89:6 106:6,11,13,14 110:23 114:22 116:2,23 118:21 127:9 130:13,17 136:13 137:9 155:25 170:15,19 173:17
bottom (10) 7:1 16:19 17:4 19:24 52:9 76:20 98:21 101:20 104:17 171:24
bound (1) 90:13
boundaries (3) 145:7,14,14
box (4) 155:9,10 157:15 158:4
bp (2) 127:8 128:1
braganza (1) 128:2
brandon (2) 127:25 128:7
breach (25) 29:23,24,25 30:20,24,25 31:2,3,15 38:25 39:2 40:4 41:13,16,25 42:10 50:25 51:8,10,12 82:9,17 106:14,18 149:2
bread (1) 152:6
breadth (1) 9:3
break (6) 49:24 50:4,14 147:9,16 184:10
breakdown (1) 98:24
breaking (1) 113:16
breath (1) 182:7
bridge (2) 7:25 14:7
brief (1) 3:10
briefly (7) 10:6 15:4 19:7 20:10,18 117:17 162:2
bring (4) 108:23 137:5 156:17 173:9
bringing (1) 77:8
brings (3) 68:23 150:4 152:15
british (3) 28:18 31:3 99:21
broad (7) 3:24 4:2 6:4,8 8:15 95:1 157:24
broader (2) 2:7 9:13
broker (2) 179:25,25
brought (1) 82:22
buildings (2) 166:12 168:25
buncefield (2) 175:24 181:6
bundle (9) 12:7 24:15 33:12 53:10 131:20 133:4 141:16 165:19 180:22
burden (14) 47:14,20,22 48:16,17,18 88:9 90:12 92:24 127:6,21,24 128:5,9
burdens (2) 47:24 48:24
business (84) 3:12 10:13,13,18,18 11:4 13:3 17:15 18:17 20:2 21:23 39:19 40:15,19 55:9,16 59:23 61:12,14,16,19 63:6 64:1,25 65:24 66:15,22 67:6 69:6 75:10 88:23 89:1 93:20 94:2,8,10,19 98:7,10 100:7,9,10,17 101:4,10,16,17 103:4,19,21 107:5 110:3,14 112:16,20 129:5 133:19,22 134:17 139:11 141:8 144:1 149:23 151:25 156:9,14 162:6 163:4 164:21 165:25 166:6,24 168:16,19,23 169:6,19 170:1 180:4,5,19,24 181:10 183:8
busy (1) 17:17
butcher (46) 23:4,14 29:7,13 30:1 31:17 34:11 36:11 42:16 43:13,25 45:9 46:14 47:1 56:4 57:25 66:2 70:14 71:1 78:4 86:17 87:2,13 88:14,19 92:2,2 97:2 115:17 122:21 126:11 147:3 148:23 152:19 158:19 159:18 166:25 167:22 168:1 176:7 178:24 179:3 184:21 185:4,9 186:8
butchers (2) 46:2 49:1
butter (1) 152:7
buys (2) 13:17,21

C

c (6) 5:25 12:22 79:13 182:24 183:4,12
calculate (1) 89:3
calculation (3) 20:20 72:6 161:24
call (11) 16:15 17:12 38:8,18 69:4 72:21 89:20,21 91:11 154:21 169:1
callaghan (2) 45:15 46:15
called (2) 7:7 168:24
came (3) 72:2 111:19 146:14
camelford (1) 175:14
cancellations (1) 113:21
cancelled (7) 59:13,17 173:3,6 175:3,7,9
cancels (2) 56:13 172:22
candidate (1) 115:16
candles (1) 83:2
cannot (25) 9:13 33:20 38:24 40:1,2 78:2 82:14 90:7 92:3,19 96:1,6 104:19 106:6,19 125:5 127:20 148:17 152:3 155:6 164:2,10 173:13 176:17 177:1
cant (30) 14:1 16:16 21:11 37:16 39:1 40:6,15,22 48:5 56:5,25 67:1,9,9 73:11 81:15 87:16,24 91:3,3 92:10 95:10 107:20 126:2 127:2 170:21 176:16,19 178:10 186:7
canvassing (1) 155:22
capable (14) 2:1 3:18,19,20,23 4:6 5:6 6:13 7:14 8:13,24 9:4 87:10 133:20
capital (10) 30:6 99:3 100:11,12 162:1,7 163:1,25 166:16 172:3
capture (1) 2:2
career (1) 32:4
carefully (1) 98:19
carolina (1) 138:6
carolinas (2) 137:17 138:4
carry (1) 2:6
carve (1) 169:16
cases (31) 9:15 14:18 15:6 29:8,10,11,14,20 31:11 42:3,4 45:1 75:4,5 77:22 78:19 82:19,20 89:1 96:1 115:6 124:10 126:5 127:23 129:18 140:17,24 141:1,19 145:11 161:1
castings (2) 161:2,13
categories (1) 109:1
category (3) 7:13 109:1 110:19
caught (2) 65:6 84:5
causa (2) 34:1,9
causal (22) 52:9 54:21,24 55:2 73:16,25 74:3 91:20 106:4 157:16,19 158:17 159:15 168:7 170:16 171:14,21 173:11,16,17 175:15 177:12
causation (55) 18:20 24:9,14 25:7 26:16 27:1,5 29:1,6 36:10 41:18 44:17,18,20 48:24 50:23 53:11 60:14,24 62:20 66:14 67:22 70:23 71:11 73:18 75:1,6,12,20 76:5 79:11 80:12 81:3 95:23 96:14,25 102:17,23 116:22 117:16 124:20 139:4 140:6,9 141:18 142:5,11 145:24 146:16 147:24 148:9 160:3 170:18,19 173:22
causative (12) 33:14 35:21 61:18,19,21 69:5 74:22 85:13 91:17 94:14 96:9 114:22
cause (116) 18:5,5,6 25:1,10,19 26:7 29:9 31:19 32:20 33:25 35:8,9,11,14,15,17 36:2,3,4,5,6,7,7,8,9,12,14,15,18,25 37:6,7,10,11,16,17,25 38:7 41:4,7 42:15 43:5,5 44:1,3,8 45:6,6,7 47:17 49:5 59:22 64:1 66:22 69:5 73:3,24 74:10,20 75:15 77:5 78:5,6,8 81:2,4,5,10,12,15,21,23 82:4,8 84:16 101:9,12,15,19 103:25 106:8 110:13,17,18 111:3,5,8 115:6,8 118:24 125:11 128:11 130:24 133:18 135:18 136:3,10,24 137:5 142:2 151:7 153:22 159:22,22 160:10,10,20,21 161:4,16,17 170:20,20 178:14 181:21
caused (104) 25:14 28:3,4 30:17 37:23 38:6 39:5,15,19,20 40:3,23 42:19,25 43:11,13 48:7 51:8,9 54:15,15,18,19,23 55:1,2,3,4 56:2,19 58:7,8 61:14,16,17 62:10 63:6 64:24 65:25 66:16 67:6 70:18 72:24 73:2,15,22 74:12 75:10 79:21 81:12 84:15,24 86:15,15 93:21 94:3,10 96:3,3 100:13,17 101:4,9,17,18,25 102:20 104:21 106:2 110:8,9,10 111:4,10 118:2,3,6 119:2,20,22 128:14 133:14 136:7,13 137:2,3 138:25 139:19,25 140:3 141:7 144:2,3 145:9,22 151:11 154:14 157:20 158:16 159:4,9 178:16,17 181:18
causes (100) 25:20 35:4,6,6,20,20,23 36:24 37:5,14,15 42:20 45:4 76:1,2,7,7 77:6,14,17,22,23,25 78:7,10 79:17,19 80:3,10,15,19 82:20 91:2,5 100:14 105:2 108:21 109:2,3,8,10 111:22 113:9,9,12,20 114:9,12 115:12,16 116:2,2,3,22 117:9,9,12 120:19 122:24,25 123:5,16,17,23,25 124:20,23,24 125:9,10,14,15,22,23 126:4,9,13 127:2,2,10,13,18 130:12,16,17,18 131:1,6,8 136:11 137:7 141:5,7,25 146:6 148:18 154:15 160:1,24 161:16
causing (6) 38:23 57:15 74:23,24,24 94:19
central (1) 63:4
certain (9) 19:15 69:16,17,24 75:23 97:6 126:2 128:19,20
certainty (1) 8:22
certified (1) 174:17
cetera (16) 17:3,9 19:25 20:15 21:8 33:10 65:2,2 69:10 74:15 101:7 120:14 122:8 134:18 150:1 165:23
chain (7) 44:12 52:9 54:21,24 60:14 74:4,7
chance (1) 154:12
chances (1) 64:16
chandris (1) 42:4
change (1) 120:16
changes (1) 33:8
characterised (2) 153:14 168:13
characteristics (1) 109:3
cheaper (3) 163:16 167:18,20
check (2) 105:5 178:21
checking (1) 180:21
cherrypicking (2) 52:11 95:12
chesil (4) 84:20 175:19,24 176:2
chin (1) 88:13
choices (1) 20:16
choose (1) 52:12
choosing (1) 11:3
chosen (1) 155:4
christopher (1) 79:8
church (10) 87:4,5,13 88:10 89:21 90:2,2,7 92:6 126:13
churches (2) 87:13,20
cinemas (1) 59:11
circle (1) 72:10
circuit (4) 137:15,21,22 138:1
circulated (1) 172:24
circumscribed (6) 129:10,11,13 170:11,13 171:11
circumscription (1) 63:15
circumstance (1) 82:13
circumstances (21) 4:7,9,17,19 8:13 9:1 14:15,17,20 27:17 44:3,8 71:23 72:5 80:3 91:11 101:6 133:21 136:12 142:9 144:12
citation (1) 118:13
city (10) 135:21,23 136:4,14,15 137:3,10 139:7 143:14,22
claimant (4) 30:24 31:14 82:9,15
claimed (6) 37:23 38:6 49:3 74:12 102:19 136:25
claims (3) 141:22 168:25 169:5
claire (1) 15:17
clarke (7) 42:8 76:13 77:14 79:8 80:14 126:3,7
classic (1) 155:23
classical (2) 83:11 123:6
classically (1) 148:20
clause (112) 1:10,12,15,25 2:4,8,21,22,24 3:9,9,11,12 4:11,19 5:18 6:15,17 8:19,22,24,25 9:2,6,6,7,14,18,21 10:19,21 11:12,16,24 12:2,14,18,19,21,25,25 14:12,16,19,21 15:5 16:20 18:23 19:6,20,21,22 20:6,8 25:18 39:12,12 53:9,19 54:10 61:9,11 71:23 93:25 94:5 95:7 101:14,22,24 102:3,8,12,18 104:21,23 105:23 106:1 116:25 117:1,7,10 120:2 122:12 133:10,23 134:2,6,13,16 137:11 144:5 157:6 158:23 159:16 163:11 164:16 165:10 168:14,15,17,21 169:1,6 170:21 171:15 177:5,10,16 179:17 180:20 181:16
clauses (31) 4:10 6:22 24:11 27:6 34:24 39:8,8 52:5 64:2 66:4 71:18 95:8 102:22 103:16 106:11,13,14,15 130:20,21,22 148:12,12 151:7,8 155:1 163:2 168:11,13 175:22 176:9
clear (20) 4:11 8:6 11:5 14:14 19:14 21:22,25 31:13 34:7 65:23 69:23 102:22 128:22 130:8 135:18 147:10 155:6 158:13,14 165:1
clearer (2) 168:1,2
clearly (6) 2:24 80:1 114:11 122:21 171:8 172:11
clerk (1) 140:11
clever (1) 49:14
clientele (3) 57:3 68:15,20
clients (2) 23:6 179:22
clock (1) 147:13
close (14) 17:22,23 57:25 58:24 63:21 64:4 83:21 96:7 132:12 154:20 174:16 186:6,15,15
closed (15) 17:14,16 18:3,7,8,17,21,23 56:12,23 59:21 69:1 89:20 173:4 185:25
closer (1) 61:12
closes (3) 58:17 63:4,20
closing (1) 2:14
closure (63) 2:10 18:2,6 19:9 54:8,14,18 56:14,16,20 57:8,18,19,21 58:2,9,11,14,20 59:11,22 62:15 86:21 88:5,10 89:24 90:7 92:5,7,7,9,10,11,17 157:7,18,20 158:22,24 170:4,13 171:12 172:15 173:3,12,19 174:2,12,17 175:7,17 176:17,25,25 177:1,6,13,20,21 178:5,16,25 184:14
closures (2) 96:14 151:11
cloud (3) 90:24 108:13 129:21
club (1) 32:4
clue (2) 149:19 150:2
coach (1) 180:3
coat (1) 150:13
coin (1) 160:8
colleagues (1) 107:17
column (8) 33:7 118:16 120:6 134:20 137:13 140:13 169:16 171:24
combination (23) 52:19,20,21,23,24 53:1,2,4,5 54:12,16,22 55:3,4 57:13 74:7,19,22 78:3 79:17,22 80:3,4
combinations (1) 77:23
combine (2) 52:24 53:6
combined (1) 123:2
come (21) 3:1 15:4 29:6 36:16 38:18 39:16 41:12,19 61:1,4 67:10 68:15 90:24 93:12 108:11 116:15 162:2 165:16 180:18 186:12,14
comes (11) 15:23 45:18 48:11 52:13 56:1 74:11 84:20 94:6 96:7 104:12 161:17
comestible (2) 52:12 95:11
coming (3) 37:19 63:24 69:9
comma (2) 184:25 185:2
commas (2) 159:23 186:8
commencing (1) 2:13
commend (1) 24:17
comment (1) 117:18
commercial (10) 4:8,12 148:4 151:19 154:24 155:14 156:1,15,20 157:21
commissioner (1) 149:5
committed (1) 128:2
common (15) 8:1 11:24 60:25 64:13 111:20 113:18 116:1 118:12 145:5 149:1 161:22 163:21 185:5,7,14
commonality (3) 64:4 83:22 109:19
communion (1) 90:4
company (2) 13:21 135:17
compare (2) 12:24 25:24
compelled (1) 146:13
compensate (1) 144:1
competent (3) 120:13 182:1 184:13
competing (1) 14:13
complaint (1) 177:4
complete (4) 3:6,18 4:24 177:25
completely (11) 48:20 52:15 61:5,6 80:9 126:24 136:9 145:21 157:21 158:1 176:9
compliance (1) 17:1
complicated (4) 40:9 49:10 58:16 88:24
comply (1) 149:14
complying (2) 172:23 173:8
comprises (1) 74:8
conceivably (1) 48:10
conceive (1) 7:8
concept (17) 29:5 36:10 44:17,18,22 108:12,18,19,22 110:15 111:2,3 151:6 160:6,25 161:15 172:3
concepts (2) 60:24 145:24
conceptual (1) 126:25
concern (1) 153:10
concerned (8) 64:3 68:14 76:3 83:20 101:15 169:22 176:12 183:13
concerning (1) 119:20
concerns (1) 13:4
conclude (3) 74:2 83:18 131:6
concluded (8) 113:2 114:20 119:24 122:15 125:19 128:7 139:9 144:22
concludes (3) 119:8 153:6 162:19
concluding (5) 128:4,11 146:17,21 154:6
conclusion (9) 79:16 82:5 113:8,12 116:21 141:7 146:13 161:11 165:10
conclusions (1) 124:18
conclusive (1) 137:11
concurrent (49) 34:23,23 35:11,20 36:1,2 37:14,15 75:25 76:2 80:10,15,19 82:20 101:5,8 108:20 109:2,2 111:3,21 113:9,12,20 115:6,12 116:23 117:9 123:16,17,25 124:19,22,23 125:13,15,22 126:9 130:12,16 131:1,6,8 136:11 137:7 141:4,25 146:6 160:9
concurrently (4) 119:22 133:13 139:19,25
condition (11) 16:24 17:2 33:22,23,25 34:4 140:11 141:18,20 142:5 162:15
conditions (2) 5:17 33:3
confer (1) 45:17
confident (1) 14:24
confinement (1) 2:22
confirm (1) 23:4
confirmed (1) 112:8
confirms (1) 79:15
conflict (3) 119:11 120:14 122:8
conforms (1) 167:16
confronted (4) 48:5 94:20 95:9 108:7
confusingly (1) 134:23
confusion (1) 157:1
congregation (1) 88:12
conjunction (1) 88:16
conjure (1) 111:6
connected (2) 74:15 109:12
connection (3) 73:16 74:1 81:9
connector (1) 170:17
consecutive (1) 9:7
consequence (13) 36:1 55:10,17 65:1 71:19 86:6 103:21 106:7 122:1 123:14 128:13 142:1 152:12
consequences (11) 65:6 84:6 101:5,8 106:4 113:22 137:5 144:18,19,20 151:11
consequent (3) 32:25 133:15 139:20
consider (6) 3:2 15:4 28:7 37:2 83:12 137:2
considerable (1) 141:14
considered (1) 27:8
considering (3) 25:7,8 27:6
consistency (1) 148:5
consistent (2) 19:12 172:22
constat (1) 40:18
constitutes (2) 60:14 74:23
construction (38) 1:21 2:8 3:20,25 4:3,5 9:3,12,13,21,24 11:14,15 13:15 14:3,8,24 22:25 23:1 25:5 50:25 66:3,13 77:3 81:9 83:14 102:7 133:12,17,25 139:17 148:10 152:4 154:25 155:3 163:8 164:19 178:4
construe (4) 7:18 10:23 73:19 89:16
construed (8) 1:25 6:17 9:18 157:14 165:11,13 182:9,11
construing (5) 1:14 122:12 158:12 164:21 168:10
contacting (1) 174:8
contagious (1) 184:2
contain (2) 25:25 162:5
contains (1) 165:22
contamination (1) 85:3
contemplate (1) 65:18
contemplated (4) 64:7 65:13 83:25 152:9
contemplates (1) 172:11
contemplation (1) 148:15
contend (2) 114:1 117:25
contending (1) 143:16
content (1) 163:16
contention (1) 125:2
contest (1) 114:7
context (10) 7:19 37:1 77:12 81:23 107:2 126:5 141:21 157:3 163:11 164:20
contingency (8) 152:14 154:12 155:2,9 156:2,3,6,12
continue (1) 22:2
continued (1) 18:13
continues (1) 22:7
continuing (1) 25:23

contra (1) 35:18
contract (58) 29:2,11,21,21,22,22 30:20,24 31:4,5 37:20 38:1,2,16,17,25 39:2,22,24 40:4 41:4,5,13,17,25 42:11 44:6 49:6 50:21,22,24 51:2,3,9 62:21 66:12 68:24 70:11 72:25 73:14,19 81:20 83:14 89:16,17 106:14,18 119:18 125:6 129:5 141:3 144:24 145:3 152:18 154:1,4 155:23 156:2
contracting (3) 38:4 81:22 148:16
contracts (8) 51:22 73:20 94:6 108:23 148:10 154:10,12,12
contractual (3) 20:10 45:18 143:6
contractually (1) 145:6
contrary (10) 2:15 18:25 47:21 51:17 99:9 114:2 115:7 117:25 125:19 158:15
contrast (3) 7:11 35:19 71:15
contribute (1) 81:6
contributed (2) 58:4,6
contribution (3) 160:9 161:1,15
conventional (2) 148:7 169:1
conversely (2) 34:4 152:12
conversion (3) 140:15 141:2,22
conversions (1) 83:3
convincing (1) 136:1
copenhagen (1) 6:10
cordon (1) 149:3
cordoned (1) 149:15
cordons (2) 148:24 149:9
cornwall (1) 62:4
correct (24) 5:3 18:20 22:6 26:15,23 28:8 41:17 56:3 62:17,18 67:8,16 68:2 72:7 76:4 87:1 100:19 103:11 132:23,23 134:7 146:13 152:25 176:20
correctly (8) 26:23 38:22 72:20 77:10 82:2 125:17 146:3,22
corus (1) 161:5
cory (1) 79:13
cost (2) 3:14 126:21
costs (1) 3:15
cottage (1) 175:5
couldnt (8) 40:13 46:9 91:19,22 113:4 114:21 175:6 176:8
council (8) 16:7 17:13,17,21 18:6,7,12,21
counsel (3) 81:16 94:1 130:3
counterfactual (32) 16:5 18:21 21:17 22:2,6,22 25:8 26:16,25 27:4,15,16,17 28:9,15,19 29:4,9 51:19,25 52:4,13 54:17 66:5 67:2 72:20,22 145:12 173:15,18 177:12,15
counterfactuals (9) 28:14,22,25 177:4,11 178:3,12,13,21
country (9) 63:20,21 64:6,15 65:14 67:4 83:24 143:18,23
couple (2) 10:6 104:2
course (41) 3:22 4:7 9:14 14:12,14 17:14 21:17 24:5,10 25:24 28:14 34:14 47:2 48:17 49:13 58:15 68:3 69:2 76:4 77:25 80:9 90:25 91:9 92:11 93:11 98:11 115:3 126:2 129:17 135:14 136:19 144:9,10 147:12 148:21 159:12 162:3 168:10 180:17 182:8,14
courts (5) 5:16 110:24 124:18 127:23 128:2
cover (64) 3:14 13:25 14:21 17:21 19:1 20:2 28:1,2 55:13 64:20,23 68:21 69:4,7,14 75:24 84:18 85:7,14 86:2 94:17 95:2,6,15 97:10 113:24 117:2 118:25 119:7,10,15 120:4,11 121:2,6,24 133:13 136:6 137:6 139:18 144:8 149:20,21,23 150:13 156:9,10 157:24 163:5 164:12,22,24 165:25 166:18 167:4 168:6 169:19 172:7,11 178:4,11 181:9 182:19,19
coverage (29) 35:4,5,24 43:8 47:11 60:20,23 62:25 63:10 66:7,10 69:11 71:17,24,25 72:8 73:4 78:8,12 84:10 96:4 100:7 108:24 123:8 127:11 129:2,4 144:10,11
covered (44) 3:4 14:11 16:17 32:18 35:14,15 41:6 43:2 47:18 55:5,11 57:10,24 65:5 66:1 78:9 80:7,21 84:5 88:2,4 95:21 97:3,5 101:16 106:11,11,12,13 108:9 113:15,24 118:3,19 119:5,15 120:21 121:15 170:2 181:3,11 182:15 183:21,23
covering (8) 3:18,24 4:6,8,12 5:6 8:12 65:21
covers (4) 53:19 121:25 144:9 169:25
covid (10) 59:1,4 64:14 86:25 92:17 143:17,18 176:11 185:23 186:11
covid19 (28) 14:15 25:11 26:17,19 27:9,10 28:4,10,11,12 61:14 63:3 73:21 84:13 96:11 108:25 110:9 143:22,25 144:2,3,18 157:8 159:21 171:14 172:22 173:1 184:16
create (3) 8:22 39:20 156:4
created (2) 155:23 179:25
creating (1) 136:3
creation (1) 186:7
criterion (2) 8:2,5
critical (5) 51:11 60:9 137:18 138:10 146:11
criticise (1) 128:18
criticised (3) 136:2 146:7,10
criticises (1) 124:8
criticising (1) 124:9
criticism (1) 146:9
crossexamine (1) 60:4
crosspurposes (1) 92:14
crucial (1) 140:5
cruise (2) 117:4 120:17
customer (6) 4:21,23 12:15 172:20 173:2,6
customers (2) 15:20 17:14

D

d (11) 15:9 99:3 100:11,12 162:1,7 163:1,25 166:16 172:3 182:24
dalmine (1) 48:21
damage (117) 12:15 16:23 17:8 20:23 30:13,17,19,20 31:4,13 39:14,14,15,19 40:14,19 49:2 77:9 98:9,12,24,25 99:2,3,4,12 100:9,11,11,12,14,17 101:5,9,11,12,15,16,17,18,18,24,25,25 102:16,20 103:22 104:5,19,21,24 105:2 106:2,3,5 119:16 129:4,7 133:14,15,18 134:16,18 135:20,21,22 136:4,6,8,13,13,15,25 137:2,3,3,4,6,9,10 138:25 139:12,15,19,20,25,25 140:2,4 143:13,21 149:21,21 156:6,7 161:21 162:1,7,11,12 163:1,24,25 165:4,7 166:12,16 167:8 168:21,25 169:12,14,21 172:1,3 181:4,7
damagebased (5) 148:1 163:12 164:16 166:13 172:12
damaged (2) 135:24 136:7
damages (11) 29:23,23 30:21,23 31:13 50:25 51:2,4,7 140:12 161:20
danger (3) 25:13 150:3 186:13
dare (1) 71:5
date (5) 73:20,20 125:12 171:25 177:25
day (22) 15:24 17:16,17,17,18,19,21,25 18:2,9 19:4 21:13 51:6,17 81:16 84:3 129:2 149:6 157:11 160:13 175:21 186:24
day1101614 (1) 93:18
day11041622 (1) 93:18
day11051 (1) 64:11
day110522 (1) 93:18
day11064 (1) 93:19
day11081 (1) 53:9
day11221725 (1) 95:16
day11301 (1) 81:17
day11358 (1) 152:20
day113612 (1) 152:8
day131 (1) 175:21
day19734 (1) 95:12
day21001 (1) 99:10
day2101719 (1) 98:14
day21196 (1) 155:12
day2325 (1) 52:14
day2371 (1) 109:15
day251 (1) 51:18
day2636 (1) 145:13
day2991 (1) 99:9
day3111 (1) 28:24
day3121 (1) 50:20
day314020 (1) 160:11
day316625 (1) 155:17
day31671 (1) 155:18
day31691 (1) 155:21
day3454 (1) 157:11
day36524 (1) 176:16
days (9) 19:3,8,9 20:24 21:25 22:1,7 23:14 59:14
dead (2) 82:25 88:12
deal (6) 10:5,15 12:3 148:25 176:3 186:16
deals (1) 153:22
dealt (7) 23:20 107:1 108:10 111:12 176:2,3 177:9
death (1) 32:24
debate (2) 70:22 171:21
debated (1) 126:10
decide (2) 91:9 93:9
decided (10) 74:19 91:8,9,10 93:7 111:24 112:2 129:12 146:3,22
deciding (1) 8:8
decision (15) 5:16 8:4 42:13 83:4 108:14,17 110:22 111:1,12 125:18,20 129:20 134:5 139:3 146:7
decisionmaking (1) 112:5
decisions (2) 82:18 110:23
decline (1) 86:23
decrease (2) 58:4,6
decreases (1) 152:2
deductible (2) 182:16 183:24
deepcleaned (1) 174:16
defaults (1) 181:21
defect (1) 15:24
defective (2) 18:8 19:1
defects (3) 15:10 18:4,22
defences (2) 128:19,20
defendants (3) 23:19 32:5 107:14
defer (1) 116:5
define (2) 45:16 155:5
defined (10) 8:3 32:19 99:1 100:12 143:17 150:23 162:12,24 165:6 166:8
defines (1) 134:16
definition (13) 2:6,19 38:11 76:7 162:18 166:8,13,17 167:7 171:22 172:2 185:17 186:2
definitions (2) 162:10 181:1
degenerative (2) 33:3,8
degrees (1) 75:1
delay (4) 43:1,5,6 46:12
delays (3) 42:19,20,21
deliberately (2) 8:15 49:13
delineating (1) 182:19
deliver (1) 24:7
delivery (1) 24:19
demand (1) 135:22
demarcation (1) 8:7
demetra (1) 118:14
demographic (1) 68:20
demonstrate (8) 17:2 44:14 47:15 55:15 85:5,12 108:14 178:5
demonstrated (2) 178:9,10
demonstrates (2) 14:2 128:16
demote (1) 94:14
denial (1) 130:21
denotes (2) 73:24,24
deny (1) 28:1
department (8) 92:8 111:21 113:1 114:15 116:11 120:12,25 129:25
depend (5) 5:6 8:3 12:2 142:8 182:6
dependent (1) 144:11
depending (5) 64:15 69:2 74:6 75:1 90:2
depends (2) 72:11 95:17
deprive (1) 73:4
deprived (2) 88:11 122:1
deprives (1) 171:18
depriving (1) 60:18
derivation (1) 186:5
derived (4) 112:9,10 113:5 124:17
describe (4) 63:7 74:7 116:3 130:18
described (5) 61:22 120:9 121:24 156:1,11
describes (1) 156:3
design (1) 77:3
desperately (1) 16:12
despite (1) 128:7
destination (1) 49:3
destruction (4) 31:4 98:25 99:2 162:13
detail (4) 20:9 24:11 131:23 147:23
detainment (2) 79:20,22
deterioration (1) 117:2
determination (1) 49:7
determine (3) 14:11 58:25 148:17
determined (2) 126:10 129:24
determining (2) 127:23 140:9
deterred (1) 135:6
devastated (1) 139:7
develop (2) 1:13 65:3
developed (2) 41:22,23
develops (1) 172:21
devon (1) 62:4
dice (1) 152:22
dictionary (1) 2:5
didnt (16) 11:12,13 39:13 41:4,7 43:15 58:19,21 59:22 63:20 81:2 92:9 93:9 115:18 132:24 176:7
differ (1) 168:14
difference (15) 20:25 21:4,7,17 43:19 87:17,19 99:15 109:25 110:2 124:22 127:7 144:13 167:23 183:25
different (43) 7:12,22 29:5 30:13 40:25 41:2 48:20 49:23 50:20 51:6,7,21,21,22,22,23 56:17,18 66:4 70:23 74:25 80:9 84:18 93:1,10 99:12 100:6 106:8 112:3,4 118:25 126:25 130:20 139:14 144:21 145:21,21 148:18 170:17,22 174:24 175:16 177:11
differently (1) 43:7
difficult (13) 8:4 14:4 48:24 88:20,24 89:2,18 90:10,11 126:14,21 137:8 187:6
difficulties (2) 108:7 142:13
difficulty (6) 7:9 12:11 22:25 23:1 126:22 176:23
dilemma (1) 16:1
diminution (3) 88:1 112:15,19
diners (3) 57:10,16,20
direct (8) 2:10 22:13 25:7 98:25 117:4 118:24 122:14 174:15
directions (3) 2:11 172:17 174:20
directly (16) 19:11 32:21,24 33:2,21 37:1 46:24,24 76:3 100:9 119:20,22 122:5 134:16,17 159:6
disabled (2) 34:3,5
disablement (4) 32:24 33:1,20 34:1
disagree (2) 85:23 88:21
disagrees (1) 15:14
disapproved (1) 160:24
disavowed (1) 33:18
discern (2) 58:19 152:23
discussed (2) 55:6 75:25
disease (99) 11:17,25 13:2 25:12,15 26:7 52:7 61:11,22 63:7,8,13,17,18 64:2,8,23 65:7,13,18 67:14 68:22,22 70:18,20 71:20,23 74:23 84:1,6,9 85:12,15,18 86:2,6,7,11,16 93:21,24 94:3,10,12,14,17,18,21,25 95:1,2,7,8,15,18,19,23 96:2,8 130:20,22,24 149:25 151:7,8,14,15,17,21 152:7 153:1 157:17 158:25 159:4,9,10,11 170:5,9,11,13 171:2,5,9,11,17 173:7,21,25 174:8 175:1 176:18 177:2,6 178:7,18 179:1 181:15 183:10
diseasefree (3) 26:20 28:18 67:19
diseaseridden (1) 28:17
diseases (8) 95:6 128:24 181:16,23 182:25 183:10 184:2,3
disentangle (1) 114:21
disinclination (2) 54:25 89:25
disinclined (1) 59:10
dislocated (1) 151:6
dismantled (1) 12:5
disparage (1) 71:8
displacing (1) 7:17
dispute (3) 30:14 39:13 168:2
disputes (4) 159:19 160:23 161:14 182:24
disregarded (1) 33:11
dissented (1) 138:17
dissenting (1) 138:21
distance (3) 150:21 152:2 185:23
distancing (3) 96:14 173:8 177:23
distinct (3) 8:6 25:20 31:6
distinction (4) 19:18 21:22 154:9 156:5
distinguish (2) 87:18 92:20
distinguished (1) 130:1
distort (1) 21:13
divide (1) 107:14
divider (3) 30:8 116:17 131:21
dividing (2) 20:21 140:5
divorce (3) 111:25 112:9 113:4
doctrine (1) 131:7
document (5) 1:24 24:16 164:6 165:24 179:15
does (38) 5:22 8:8,19 11:10 13:7 16:9 19:3 21:17 22:17,24 31:5 36:3 37:7 41:6 44:25 56:15 76:4,8 82:1 94:2 96:7 104:22 105:1 106:7 116:6 124:1 137:5,16 142:18 143:1 147:10 159:25 163:24 168:4,9,14 180:6 185:19
doesnt (23) 5:5,8 10:21 11:9 19:2 31:11 36:15 47:25 69:3 74:11 78:4 84:15 96:4 131:14 163:11 167:23 178:20,23 181:17,20,22 186:6,12
doing (12) 8:23 15:21 69:13 70:12 73:12,17 79:7 94:13 98:11 110:21 142:20 160:14
dominant (4) 25:10 75:16 159:22,22
dominion (1) 45:15
done (15) 9:16 17:24 18:1 21:25 23:11 33:19 43:24 71:12 83:10 97:13,16 102:24 106:6 111:6 144:9
dont (56) 4:3,15 12:8 20:4,5,8 22:8 30:3 35:18 36:18 42:21 48:2 49:15 52:25 54:20 56:8 57:3 60:10 61:5 63:12 68:7 70:6 71:8,22 75:4 76:11 78:9 82:21 88:21,22 90:3,5,12,23,23 93:1,4,15 124:9,11 126:22,24 131:2,25 132:8 137:24 147:1 156:23 160:16 167:18 177:8 178:11 179:13 186:1,3,20
dorchester (2) 62:8,13
dorset (1) 62:4
double (1) 106:25
doubt (9) 5:14,19 7:5 24:18 48:14 72:7 107:17 138:24 156:12
doubtless (1) 153:2
down (21) 5:24,25 7:1 16:7 42:10,22 48:23 58:1 63:4,20 68:23 69:2 71:19 79:7 86:22 153:21 154:3 165:22 171:16 174:25 185:25
downturn (7) 19:17 20:24 55:10,16 111:22 113:20 130:16
dr (1) 118:9
drafted (1) 166:25
drafting (1) 168:18
draftsman (1) 184:24
drain (1) 18:23
drainage (1) 18:11
drains (5) 15:10,25 18:4,8 19:2
draped (1) 150:13
draw (5) 5:1,11 8:7 156:5 171:22
drawing (1) 154:8
drawn (1) 4:20
draws (2) 152:24 182:7
drugs (2) 79:1 116:9
duckett (4) 15:16 17:13 19:1,3
due (22) 24:10 25:13,14,24 53:20 54:12 57:13 86:23 87:19 90:25 100:8 121:25 132:11 148:20 159:12 162:2 168:10 175:3 180:17 182:2,8,14
dumas (1) 79:19
dunedin (1) 160:22
dunedins (1) 159:17
during (10) 19:5 20:22 21:4,6,18,20 162:22 166:11,21 169:11
duty (2) 82:9,17
dwell (1) 70:6

E

e (8) 8:12 12:23 15:13 53:21 182:25 183:25 184:1,6
eagle (1) 76:22
earl (1) 7:2
earlier (5) 76:6 108:6 123:13 144:6 172:17
early (1) 1:9
earn (1) 21:21
earned (5) 21:6,19 22:3 138:11,14
earning (1) 57:9
earth (1) 158:9
easily (1) 164:19
eat (1) 57:21
eaton (1) 180:15
ecclesiastical (6) 24:5 87:7,8,9 89:20 99:18
ecclesiasticals (1) 70:4
echoing (1) 71:2
economic (1) 151:23
edelman (30) 10:4 12:5 19:8 28:21 45:13 50:18 51:5,17 52:2 53:16 55:7 60:3 64:10 65:5,11 84:3 93:20 95:11,14 98:14 132:2 144:15,15 155:14 157:10 160:11 176:8,15 182:17 185:19
edelmans (11) 11:19 19:10,11 22:8 33:24 53:8 99:9 116:1 175:20 176:13 181:6
edey (4) 155:16,21,25 156:13
edeys (1) 149:16
educate (1) 76:4
effect (25) 14:7 31:7 69:5 84:4 88:10 91:13,18 92:19 94:7,13 100:1 103:18 106:4 112:24 114:22 115:9 118:17 123:2 130:19 136:14 152:18 155:8 156:3 157:10 171:19
effective (3) 25:10 116:2 130:17
effectively (6) 84:4 102:8 130:23 155:1,22 164:13
effects (5) 86:24 111:25 112:1 123:1 129:24
efficacy (1) 130:13
efficiency (2) 77:8,20
efficient (1) 75:16
effort (1) 17:7
eight (1) 161:7
either (16) 33:1,21 44:14 77:23 88:22 105:23 112:16,21 115:11,15 130:3 132:22 150:20 161:14 164:11 170:25
elaboration (1) 186:6
elastic (1) 2:20
elements (2) 52:23 78:15
elephant (1) 7:10

else (11) 4:3 16:8 62:14 63:23 64:6 73:12 83:23 109:13 139:14 156:21 158:7
elses (1) 71:8
elsewhere (3) 64:17 95:13 119:5
embarked (1) 175:23
embodies (1) 60:14
emergencies (2) 184:18,18
emergency (14) 17:8 25:13 52:8 181:25 182:2,12 183:14 184:17 185:1,2,11 186:9,17,18
emphasise (3) 52:7,17 99:8
emphasised (1) 136:23
en (2) 113:17 123:14
enable (1) 136:11
enabled (1) 34:15
enables (5) 64:3,6 83:20,24 108:22
encapsulated (1) 118:13
enclave (1) 73:11
encompass (1) 166:15
encompassing (1) 167:7
encourage (1) 90:3
end (15) 9:6 10:19 23:12 32:3 48:23 97:16 102:10 124:2 126:20 140:23 154:6 156:18 164:18 172:25 179:6
endanger (5) 182:2,13 184:19 186:9,18
endangered (1) 186:11
endorse (1) 152:6
endorsed (2) 76:13 149:7
endorsements (1) 165:23
endorsing (1) 80:2
endurance (1) 30:6
enforce (2) 149:3,9
enforceability (1) 148:24
enforcement (1) 149:11
enforcing (1) 144:24
engaged (1) 89:6
engineer (1) 128:1
england (5) 62:3,7,14 64:18 90:2
english (7) 7:5,11 44:17,18 62:21 145:24 148:4
enough (7) 14:24 22:20 62:12 144:18 173:9 180:3 186:23
enquiries (1) 96:25
enquiry (2) 82:2 136:16
ensure (1) 156:16
entire (4) 11:20 18:14 63:20 84:15
entirely (8) 37:12 45:21 85:16 90:18 111:3 146:3 148:7 163:13
entirety (1) 15:6
entitled (3) 86:14 94:8 151:1
entitles (1) 27:25
enumerated (3) 99:24 100:2,4
environs (1) 63:5
epidemic (7) 61:23 64:9 65:13,18 84:2 93:22 95:7
episode (1) 171:14
epitome (1) 152:19
equal (4) 77:7,8,20 130:13
equally (5) 22:22 81:1 125:15,22 164:15
equivalent (3) 38:8 99:23 183:7
ergo (2) 78:16 123:8
erred (1) 142:10
error (2) 8:23 154:22
escape (2) 43:6 82:14
escaping (1) 43:9
essence (1) 20:20
essentially (2) 108:8 145:23
establish (3) 136:24 157:16 167:14
established (1) 30:14
establishing (2) 141:18 157:6
estimated (2) 21:5,19
et (16) 17:3,9 19:25 20:15 21:8 33:10 65:2,2 69:10 74:15 101:7 120:14 122:8 134:18 150:1 165:23
even (23) 3:13 4:11 28:19 36:3,18 43:22 48:8 55:18 84:16 85:5,14 90:11 104:4 118:8 128:11 135:23 144:2,11 161:4 173:20 175:12,14 177:14
event (44) 22:20,23 43:2,16 44:9 45:20,24 48:15 62:16 67:23,25 68:7 70:9 75:7 92:6 95:1 101:25 102:15 103:2,3,23,24 104:21 106:3 117:5 118:25 119:18,25 120:1,18 122:5,14,18 136:5,11 137:2,10 140:2 142:17 145:4 153:11 154:17 169:17 181:4
events (20) 8:16 12:12 27:11 44:12 88:15 90:16 111:20 112:1 113:19,22 118:4,6,23 119:3 122:3,25 130:15 133:18 136:5,7
eventuated (1) 46:6
ever (6) 22:24 36:13 63:12,13 115:7 136:1
every (11) 17:7 48:6 51:25 52:25 53:1 67:3 99:15,23 100:3 158:11 164:15
everybodys (2) 27:24 97:11
everyone (2) 54:2 175:2
everything (11) 25:1,1,19 49:25 50:8 51:17 67:5 72:13 75:24 152:16 158:6
everywhere (9) 26:8 62:14 63:19,23 64:6 67:5 83:23 93:22 94:21
evidence (12) 7:19 47:9,21 59:10 88:8 91:17 92:19 96:7 111:23 112:7 114:20 115:25
evidential (6) 47:20,24 48:16,16 88:9 90:12
ex (1) 106:17
exactly (24) 4:25 40:24,24 41:6 44:23 50:24 55:18 59:15 60:5 64:21 69:19 71:12 72:18 77:19,21 81:15 104:7,7,11 127:18 143:19 158:8 160:8 162:14
example (86) 1:17 2:8,15 3:3,8 7:7 9:16 11:11 12:3,14 14:3,6,10,11 15:8,12,15 28:12 35:2 36:5,23 38:15 41:1 42:16 44:15 45:3,4 46:3,7 47:15 53:8,10,16 54:25 55:6,14 56:20,24 57:2,4,6 61:2,4,9,10,24 62:1 63:3,25 64:17 66:14 68:6,25 70:20 82:24 83:25 85:2,8 86:19 87:4 89:19,25 90:15 91:1 93:25 96:20,25 119:16 126:3 128:6 140:12 142:3 149:4,9,14 152:7 165:5 172:18 173:14 174:13,23,24 175:19,24,24,25
examples (17) 14:19 24:12 44:14 52:16 61:2 82:18 83:15 96:19,20,21 97:7 106:22 137:8 146:17 151:9 175:25 178:19
except (3) 32:20 99:1 175:2
excepted (1) 77:5
exception (5) 44:20 118:17,18 120:1 122:13
exceptional (1) 82:13
exceptions (3) 38:14 140:12,14
excess (2) 183:2 184:4
exclude (2) 119:20 136:8
excluded (24) 32:24 37:8 43:3 78:1,8,14,17 79:18 80:8 95:4,4 99:1 109:9 113:23 117:2,10 119:1,2,4,14 120:20 125:12 139:24 140:1
excluding (1) 136:14
exclusion (20) 32:23 34:19,20,21 78:14 79:18 116:25 117:1,7,10 118:2 120:2,2 122:12,14 123:10 182:17 183:17 184:1,8
exclusions (4) 113:14 136:18,19 148:13
exercise (6) 2:3,3 6:16 8:20 89:18 98:5
exist (4) 48:10 49:15 84:10 124:1
existed (1) 48:10
existence (2) 45:19 110:2
exists (1) 55:3
expect (3) 71:24,25 162:11
expected (1) 51:19
expensive (2) 126:17,21
experienced (1) 68:17
expert (2) 91:17 111:23
experts (3) 111:20 112:24 113:19
explain (4) 20:18 24:12 51:1 53:18
explained (5) 22:13 153:2 159:18 160:21 161:1
explaining (1) 115:5
explanation (1) 40:11
explicitly (2) 80:1 126:8
explore (2) 14:16 92:15
explored (1) 23:19
explosion (1) 149:22
exposure (2) 156:19 180:1
express (4) 30:13 97:13 175:22 176:8
expressed (2) 150:20 183:4
expression (1) 64:13
expressly (2) 13:14 43:3
extend (2) 149:3 164:21
extended (1) 181:9
extending (1) 164:22
extends (1) 93:23
extension (20) 40:13,16,21 129:3 163:4,24 169:22 172:9 181:12,15,24,25 182:25 183:4,4,4,9,13,14 185:2
extensions (16) 129:3,8,9 164:12 165:2,3 166:19,23 167:4,8 168:5 169:18,21 172:4 181:8 183:3
extent (8) 27:5 28:6 35:1 52:23 55:15 71:7 85:14 179:9
exterminated (1) 54:9
extra (8) 90:6 119:17 120:24 121:4,7,10,16,17
extract (2) 6:24 60:4
extraneous (1) 101:6
extrapolation (1) 106:21
extreme (1) 57:4
extremely (2) 1:21 178:10
extremes (1) 14:19
extricate (2) 58:18 91:4

F

f (4) 181:23 183:4,14,20
face (3) 16:5 83:21 154:22
faced (3) 16:1,4 130:11
facie (7) 7:16 45:18 47:11,16 88:4,6,7
factfinding (1) 148:21
factor (1) 82:7
factors (3) 89:25 112:3 165:8
factsensitive (3) 2:3 86:13 90:19
factual (19) 8:12 12:3 44:20,21 59:6 62:20 63:21 66:17 68:10,11 75:6 81:3 109:5 114:6 116:21 117:16 124:18 130:1 145:24
factually (3) 61:21 63:25 128:14
fail (1) 149:14
failed (2) 92:24 128:9
failing (3) 38:25 39:2 41:13
fails (4) 31:19 66:11 127:6,21
failure (11) 20:23 40:6 43:2 46:10,19 47:17 48:12 49:3,5 51:13 172:6
fair (8) 77:12 144:23 145:2,4 154:19 159:2,2 184:24
fairchild (2) 44:19 73:11
fairly (1) 69:20
fairness (6) 140:17 141:19 142:3,18,23 143:1
fall (3) 7:12 9:2 56:21
fallacies (1) 98:1
fallacious (3) 51:7 52:16 100:22
falling (1) 110:19
falls (9) 5:7 8:10,23 37:10 63:17 87:14 100:13,14 169:11
false (3) 61:6 132:7 136:3
familiar (3) 5:14,19 9:22
fantasy (1) 69:14
far (10) 6:4 23:9,10 30:25 31:14 48:16 75:17 146:8 163:21 168:3
fashioned (1) 155:3
fatal (1) 79:23
fault (2) 32:11,14
faulty (1) 77:3
favour (1) 118:22
fca (62) 26:4 27:22 28:16 37:22 49:14 51:24 52:1 60:21 63:16 64:3 67:1,8 69:12 71:11 80:13 81:7,16 82:18 84:8 94:1 95:3 96:5,17 99:6 102:24 108:7,7,9,11,19 109:22 110:21,24 111:3 124:8 130:23 134:3 143:16 144:14 145:10 146:6,18 148:13 151:1 152:23 153:4 154:19 155:6,25 156:12 157:3,25 160:6,19 161:22 163:2,20 164:14 166:17 170:24 173:14 176:19
fcas (26) 2:19 24:25 25:16 26:2,15 28:19 64:10 66:11 82:23 110:4,13 128:23 136:17 151:4 152:12 153:16 154:23 156:25 157:14 160:2 164:4 167:11,16 171:16 177:14 185:7
fear (2) 16:6 92:17
feature (2) 153:14 160:2
features (4) 109:5 180:16 182:22 183:15
feel (2) 14:24 158:10
fenced (1) 18:12
few (1) 27:24
field (2) 148:5 161:16
fifth (1) 137:21
figures (2) 21:14 162:19
fill (1) 180:3
final (2) 153:9 163:18
finally (3) 22:15 107:9 183:1
financial (2) 20:22 150:9
find (14) 7:8 8:1 28:1 31:22 61:10 62:22 68:20 110:25 113:18 134:24 162:8 166:9 168:17 181:8
finding (3) 114:6 118:11 130:1
findings (2) 118:5,9
finds (5) 7:17 15:24 53:24 129:16 162:16
finish (1) 144:7
fire (1) 149:22
firing (1) 47:3
first (37) 1:14,18 2:17 9:20 10:20 18:4 19:4 21:7,10,16 27:24 30:15 40:8 41:14 45:6 56:21 75:8 83:11 87:4,25 91:2 100:5 101:2,10 122:23 123:11 124:11 143:8,10,20 145:1 161:7 167:15 170:8 172:15 183:16,25
firstly (8) 24:25 38:5 61:4 74:22 98:22 108:8 123:5 126:19
fits (1) 4:7
five (2) 50:3 146:24
fixed (1) 111:9
flag (1) 22:9
flaux (168) 1:3,6 4:14,20 23:22,25 24:3,21 27:3 29:16 32:8,13,17 34:17,22 35:1 36:20 37:3 40:11,18 41:21 42:2,12 45:3 47:3,13,23 49:22 50:1,10,16 53:13 55:6,20 56:11,17,19 57:4 58:15,23 59:7,13,17,20,24 60:4,7 62:1 64:12,22 66:7,9 67:11,17,21 68:4,9 69:23 71:15 72:15 74:4,10,14,18 75:2,15,21 76:15,19,24 77:17,20 78:18,23 79:3,6,10 85:2,21,24 90:14 91:1,14,19,25 92:13,25 93:4,6,10,13 97:19 100:16 104:4,10 105:13,16 107:11,14,17,20 108:3 114:11,14,20 115:20,22 116:14 119:3 121:4,13,15 122:19 123:13 130:6 131:4,11,13,16,19 132:5,8,10,14,20,22 134:21,23 135:2,7 137:20,24 138:2,5,8 143:10,13,17 147:1,4,7,13,19 152:8 157:21,24 158:3,9 160:16 161:10 167:5,21 174:6 178:1 179:2,5,18,21 180:7,11,13 181:17 183:18 185:16,22 186:3,20,23
fletcher (1) 136:1
fletchers (2) 135:9,13
flexible (3) 2:1 4:2 9:10
flood (1) 149:22
flooding (1) 15:25
floor (1) 16:1
flows (1) 150:9
focusing (2) 143:9 158:23
folder (1) 149:10
follow (5) 37:11,12 90:14 93:11 104:22
followed (2) 122:24 169:2
following (23) 1:22 6:9 8:18 13:11 33:15 51:18 52:17 53:21 54:13 57:14 73:15,23 74:15 88:2 91:12 111:18 122:3 150:15 159:10,13 165:20 177:17 179:13
follows (4) 78:1 118:7,9 158:7
footballer (3) 31:25 32:2 33:6
footballers (1) 33:10
footing (1) 111:19
footnote (2) 99:20,25
force (3) 2:10 141:14 177:24
foreign (1) 99:22
foresight (1) 8:14
forget (2) 42:2 123:9
forgive (3) 61:10 121:19,21
form (6) 29:20,22 52:24 68:23 96:12 108:23
former (2) 124:24 154:13
formula (1) 103:17
formulation (1) 135:9
fortiori (2) 106:24 114:25
fortuitous (1) 99:7
fortunately (1) 107:20
forward (2) 169:4 186:22
found (9) 7:10 79:6 92:5 118:12 144:20 162:14 163:8 165:19 184:5
four (2) 2:17 70:8
fourth (3) 137:15,22 138:1
framework (1) 145:6
frankly (1) 80:15
freestanding (6) 183:1,3,5,11,12 184:6
friends (2) 80:13 98:1
frightened (1) 89:10
front (2) 135:14 149:10
fulfills (1) 37:17
fully (1) 120:3
function (1) 155:15
fundamental (9) 5:22 24:8 49:11,12 71:11 73:10 145:23 146:11,16
fundamentally (1) 146:1
further (20) 23:3,19 55:16,18 58:4 88:1 92:5 102:12 105:21 106:21 112:14 115:4 117:17 120:8 124:21 130:2,5 131:15 146:25 159:8
future (2) 128:21 148:21

G

g (3) 183:5,12,20
gain (1) 60:23
gaisman (2) 18:18 154:21
gas (1) 83:1
gates (1) 180:15
gateway (4) 84:17,17 111:6,9
gaunt (1) 99:22
gave (2) 53:16 152:8
general (19) 8:17 19:11 30:11,23 52:5 76:5 102:4,5 133:24,25 141:17 164:10,14 179:19,20,21 181:11 184:16,17
generali (5) 102:7 106:1,15 124:16 135:17
generalis (1) 101:2
generalised (1) 5:2
generally (8) 19:19 26:17 27:1,5 28:4 89:5 125:8 128:24
generate (1) 119:12
geographical (2) 12:16 65:22
geography (1) 170:11
get (17) 17:25 22:8 34:11,22 36:18 40:18 48:22 74:7 108:8 129:7 130:25 137:22 175:5,6 178:12,19 183:25
gets (5) 13:23,25 16:8 166:18 185:24
getting (1) 57:25
gibbs (1) 118:9
gift (1) 129:14
give (15) 4:2 7:20 27:21 31:7 32:1 61:24 66:11 76:10 93:17 95:6 103:18 115:21 147:20 156:22 173:14
given (21) 2:2 5:10 6:4,12 13:23 39:25 46:7 47:15 60:13 83:15 85:3 90:17 103:17 106:22 110:7 120:25 129:2 136:12 171:21 174:20 178:8
gives (4) 18:18 30:21 133:19 145:20
giving (3) 59:9 65:19 133:20
glenhaven (1) 44:19
global (1) 77:16
goes (17) 19:23 31:8 53:3 58:1,17 70:5 78:20,21 79:24 86:22 119:9 126:12 135:15 158:11 168:3,6 169:7
going (57) 12:6 15:13 21:9 24:10,19 29:6 31:10 38:18 41:12 44:13 48:22,23 49:25 50:2,4 52:16 57:8 68:5 69:10,20 70:1 72:20 75:22,23 80:16,19 83:7 84:11 85:8 86:13 93:12,17 97:4,9,10,15 100:20 105:3 107:7 111:13,14 115:1 123:24 131:25 134:10 141:11 147:21,22,25 160:18 165:16 169:4 174:4 176:6 182:7 184:8 185:24
gone (9) 48:14 51:12 57:7,11,17,21,22 58:12 92:6
good (17) 1:3,6,8 2:15 6:21 11:19 13:8 16:24 21:13 47:16 78:21 86:19 135:5,13 182:13 185:6 187:5
govern (1) 30:11
government (36) 26:8,18,18 27:9 28:10,12 54:5,7,15,19 57:8 58:20 62:24 63:1,4,9,20 67:4 68:10 69:2 70:18 71:12,18 85:19 87:10 89:22 91:15 92:8 95:20,24 118:3 129:25 174:8 175:1 176:18,20
governmental (1) 87:20
governments (2) 95:18 96:10
grain (1) 158:12
grammar (1) 104:12
grammatically (2) 184:22,23
granted (1) 84:19
graph (1) 23:12
grateful (4) 1:8 97:7 105:15 108:5
gray (6) 70:8 152:21 153:6 158:13 159:25 160:25
great (2) 124:16 147:22
greater (5) 8:22 85:3,15 86:7 91:20
greenwich (1) 83:4
gross (17) 20:17,18,20,21 22:5 102:14 143:23 150:4 166:7,10,21 167:7 169:4,9,10,12 181:2
ground (13) 80:21 97:3,5 111:20 113:16,18 118:12 138:17 161:22 163:21 185:5,7,14
group (2) 23:10,17
guidance (1) 9:12
guided (1) 146:12
guilt (1) 95:13
guilty (1) 95:13
gunning (1) 144:14

H

h (1) 183:5
hadnt (2) 59:18 114:15
hale (1) 127:25
half (5) 18:10,12,14 55:23 137:12
hamblen (14) 77:15 98:15 99:11 103:1 104:11 124:4,8 125:16,24 130:9 133:8 134:8 141:13 146:12
hamblens (3) 100:24 103:25 139:3
hand (4) 10:23 65:17 132:1 154:9
handful (1) 147:21
hang (1) 16:3
hanger (1) 150:13
hapless (5) 33:5 60:4 68:13 79:3 88:25
happen (2) 21:12 174:14
happened (10) 15:22 27:7 28:8 29:14 44:12 59:20 104:22 113:6 124:15 177:17
happening (2) 45:20 96:9
happens (6) 16:2 22:12,19 90:4 129:16 152:16

happenstance (3) 152:19 155:8 156:12
happily (1) 182:8
happy (2) 45:11 49:21
harm (2) 25:14 73:3
harmless (8) 39:1,3 40:6 41:14 42:15 51:13 73:1 106:16
harvest (3) 67:2,3 144:18
havent (4) 30:2 47:4 107:21 167:13
having (18) 2:10 7:19 21:15 33:18 41:9 50:1 54:21 57:19 61:22 70:22 75:4 100:12 111:23 112:6 146:23 152:18 153:23 170:22
heading (5) 120:7 121:23 162:17 179:16 181:8
headnote (2) 32:1,15
health (3) 174:15 184:16,18
hear (2) 48:12 71:2
heard (6) 40:13 60:5 91:17 111:23 112:7 132:11
hearing (4) 1:4 132:12 140:4 187:9
hears (1) 54:5
heart (2) 57:25 58:24
heavily (2) 89:4,6
hed (1) 115:18
held (6) 6:9 72:24 77:3 125:6 139:4 140:24
help (5) 9:25 23:2 42:17 110:24 128:8
helpful (4) 13:20 15:19 23:11 31:17
helping (1) 132:17
helps (4) 129:22 131:5 153:23,24
hence (2) 77:18 130:13
here (24) 5:5,5,13 6:19 8:11 22:19 30:15 48:12 58:25 70:20,24 71:11 79:19 86:8 97:25 105:9 115:1 116:11 124:6 130:19 132:24 150:3 180:20 186:1
hereafter (1) 99:2
herein (2) 99:1,1
heretical (1) 145:18
hesitation (1) 145:19
high (3) 110:22 127:16 172:13
higher (1) 75:17
himself (1) 16:3
hindered (1) 184:14
hinders (1) 182:4
hindsight (1) 73:22
hirst (1) 42:9
hirsts (1) 42:13
hiscox (37) 1:11,11 3:4 4:1 7:23 8:23,24 9:4,23 10:8 11:2,3,9,11,16 12:4,11,16 13:7,9,10,14 14:13,21 18:16,19 19:12,16,19 20:4,11 22:12,16,17 150:6 163:11 186:5
hiscoxs (6) 2:15 13:15 14:3,8,12,24
hodge (1) 77:11
hodges (1) 161:5
hold (6) 38:25 39:3 40:6 51:13 73:1 106:16
holiday (1) 175:5
home (1) 131:1
hope (11) 11:4 26:23 29:15 30:4 97:16 103:10 107:21 146:15,24 147:24 187:4
hopefully (3) 9:25 29:18 156:19
hospitality (1) 155:17
hotel (19) 102:17,20 106:2 135:21,23 136:4,7,11,13,25 137:9 138:25 139:6,14,15,25 140:3 143:13,21
hotels (2) 125:3 130:10
hour (2) 97:17 107:11
hours (1) 9:7
house (2) 59:21 128:6
however (19) 1:19 3:7 7:11 9:1 17:21 88:8 101:11 103:15 104:22 117:17 118:21 119:3,12,17 127:24 141:18 142:8 144:19 160:21
howsoever (1) 144:2
hugely (2) 7:22 132:17
hull (2) 79:2 116:9
human (13) 13:2 26:8,10 151:14,15,17,20 158:25 170:5,9 171:2,5,17
hurricane (10) 98:17 99:16 100:4,18,18,22 103:2 119:16 138:15,18
hurricanes (1) 102:15
hybrid (4) 109:4,6,8 110:15
hypothesi (1) 106:17
hypothesis (4) 114:1 117:24 136:3 139:6
hypothesises (1) 174:25
hypothetical (5) 1:17 15:15 16:14 48:4 136:16

I

i110 (1) 27:23
i1107 (1) 163:9
i1108 (1) 163:10
i1118 (1) 134:4
i1209 (1) 185:8
i1213 (1) 99:19
i1300 (1) 164:6
i1302 (2) 157:4,4
i13104 (1) 15:2
i13134 (1) 15:2
i1366 (1) 2:16
i1388 (1) 7:24
i168 (1) 13:19
i1774 (1) 150:16
i1823 (1) 176:4
i1828 (1) 179:12
i1866 (1) 165:9
i187 (1) 165:20
i189 (1) 153:8
i190 (1) 153:13
i191 (1) 26:3
i194 (1) 82:24
i197 (2) 96:18 109:23
i319 (1) 15:18
i61 (1) 24:15
i613 (1) 70:5
i618 (1) 45:13
i629 (1) 89:12
i647 (1) 80:24
i662 (1) 111:17
i669 (2) 53:11,16
idea (5) 28:23 51:24 60:11,21 69:12
identical (2) 183:14,22
identification (2) 107:4 148:8
identified (7) 44:13 75:9 83:10,16 142:14 150:24 165:7
identify (5) 51:11,15 97:25 98:6 184:11
identifying (3) 111:4 151:3 161:17
ie (3) 13:17 17:15 102:15
ignore (1) 104:19
ignores (1) 134:7
ii (3) 133:14 139:20 157:7
ill (1) 63:17
illness (24) 32:21 61:14,17,18,20,24 62:23 63:3,22,23,24,25 64:5,5 65:25 66:16,20,24 67:4,7 83:23,23 94:10,11
illnesses (2) 69:4 71:14
illusory (1) 69:14
illustrate (2) 172:18 175:25
im (14) 1:8 17:10 24:22 36:20 49:20 105:15 107:13,13 108:5 121:9 135:6 137:21 158:19 185:16
image (1) 41:7
imaginatively (1) 108:13
imagine (5) 15:23 71:21 97:4 100:3 129:1
immediate (2) 16:1 112:11
immediately (7) 16:8 20:22 21:11,12,15 45:19 91:12
impact (8) 19:8 20:25 58:9,11 91:10,20 92:10 112:4
impacting (1) 151:24
impacts (1) 120:15
implicit (1) 181:19
implicitly (1) 80:1
importance (2) 22:14 77:11
important (17) 8:2 19:14,15 22:10 23:15,18 25:4 93:16 109:21 111:15,18 124:5,21 126:25 130:6 142:16 153:14
impose (3) 7:16 149:3,9
imposed (14) 2:9,20 8:17 11:21 13:11 53:20 54:13 55:9 57:14 85:20 86:12 110:8 151:12 177:20
imposes (2) 95:20,24
imposing (2) 60:16 156:1
imposition (3) 55:17 67:25 96:13
impossible (10) 2:21 8:7 58:18,18 88:17,19 111:25 112:9 113:3 123:1
imprecise (1) 8:3
improvement (1) 24:20
inability (4) 11:22 53:19 54:12 57:13
inapplicability (1) 113:14
inapplication (1) 113:13
inappropriate (5) 8:21 102:25 105:10 125:7 140:25
inappropriately (1) 91:6
inapt (1) 179:16
inbuilt (1) 94:16
inch (2) 84:21,21
incidence (1) 164:23
incident (5) 16:25 96:8 162:21,23,24
incidental (1) 152:14
include (6) 11:9,10 12:16 129:13 137:16 181:10
included (5) 12:7 26:10 166:3 167:23 180:25
includes (2) 13:14 138:1
including (9) 2:12 4:19 25:12 29:2 99:16 100:4 113:21 146:17 164:23
income (13) 20:16,22 21:3,4,5,8,18,19 22:5 88:11 120:8 121:23 122:1
inconsistency (1) 167:1
inconsistent (2) 102:17 143:6
incorporates (2) 162:25 172:2
incorporation (2) 148:1 161:19
incorrect (1) 10:9
increase (1) 152:1
increased (2) 3:14,15
incredibly (1) 16:11
incurred (2) 44:9 138:19
indemnifiable (1) 165:14
indemnification (1) 164:1
indemnify (3) 30:16 98:23 159:4
indemnity (23) 21:5,18 28:2 29:21,21 45:16 103:18 145:7,8 153:15 154:4,10 158:12,15 161:24 163:15 165:5 166:11,22 169:11 171:22 172:2,7
independent (37) 25:20 34:19,23 35:19 36:2,3,24 37:5,14,14 45:4 77:13 80:10,19 81:4,5,12 82:4,8,20 109:2,8 123:16,25 124:19,24 125:15,22 126:9,14 127:18 131:1,6,8 136:10 141:5,25
independently (5) 32:20 35:21 82:25 83:1 142:21
index (1) 188:1
indicated (12) 65:20 74:25 76:1,6 82:7 83:8 109:22 120:20 123:12 148:19 177:10,23
indicates (2) 171:8 185:14
indication (4) 14:23 34:7 113:10,15
indicators (1) 165:1
indirect (1) 46:24
indirectly (3) 32:25 33:2,21
individual (5) 52:20 71:13 83:13 110:12 153:3
individuals (3) 91:13,23 175:10
indivisible (4) 25:16 91:17 116:22 127:2
indubitably (1) 98:16
inextricable (4) 108:12,18 109:18 160:6
inextricably (2) 90:16 109:12
infected (2) 153:16 156:25
infectious (6) 63:17 94:10,11 95:6 128:24 184:2
infer (1) 123:4
influence (1) 91:13
ingredient (1) 53:1
ingredients (5) 18:14 19:5 53:3,5,6
inherent (1) 29:1
inhibition (1) 68:24
inhibits (2) 69:9,9
injury (5) 16:22 32:3,6,7,19
inner (5) 183:1,3,6,19 184:6
insofar (3) 51:8,9 53:6
inspect (1) 17:22
instance (6) 41:15 64:5 66:20 83:23 91:2 122:23
instances (3) 69:16,17 106:21
instead (4) 4:4 14:15 21:14 94:18
instructions (1) 14:13
instructive (1) 124:3
instrument (1) 7:11
insufficient (1) 172:18
insurable (1) 100:1
insurance (54) 11:6 16:2,13 24:9 29:8,11,13,20,22 30:12 31:6,24 32:5 34:10 36:10 37:1,20 38:2,13 40:20 41:2,9,22 44:6,25 45:2,16 49:6 50:20 51:3,3,9 54:10 55:11 71:17 81:20 100:6 108:23 121:25 125:5 129:5 145:7 148:6 154:1 159:19 160:23 161:2,14,16 166:3,7 167:2 169:24 170:1
insure (5) 51:22 94:18,21,25 151:10
insured (250) 1:16 4:22 10:4,13,18 11:18,20,23 12:1,14,23 13:12,13,17,22,24,25 15:13,16 16:23 20:15,23,23 22:24 25:25 27:7,18 28:3,8 30:16,17,18 35:17,23,24 36:5,24 37:6,10,22 38:5,6,11,11,25 39:3,9,10,21 40:23 41:1,9,14,24 42:14,15 43:8,10,12 44:24 45:5,18,20,24,25 46:3,5 47:7,22 48:6,17,19 51:13,16 52:19 53:13,19,22 54:11,11,22 55:9,14 56:24 60:15,23 61:15 63:15 64:6,24 65:5,9,10,23 67:22,23,24 69:3 72:21,23 73:2,3,4,5,9 74:8,12,19,23 75:10 77:4,6 78:11,11,12,13 79:16,17 80:6,7 81:1,2,6,13,23 83:13,16,20,24 84:5,14,18,19,21,24,25 85:4,4,6,11 86:10,12,13 87:16,24 88:2,12 90:8,19 91:7 92:23 93:21,24 94:1,5,12,23 95:15,22 96:1,4 98:7,8,9,12,16,17,23 99:5 100:11,16 101:1,4,11 102:15 103:2,3,5,23,24 104:1,1,4,20,25 106:16 107:4 108:10 109:6,8,10,11 110:12,13,18 111:5,7,11 113:14 117:5,13 118:25 119:18,25 121:5,8,18 122:9,14,16,17 123:7 125:9,11 127:4,4,5,7,8,14,17,21 128:9,9,15,24 129:15 133:18 138:20 139:11,16 144:8,11,17,21 145:11,20,22 148:8 149:18 150:9 151:1,22,25 152:2,16 166:7,23 169:20 173:10
insureds (16) 16:12 22:10 60:19 68:13 69:20 71:14 84:16 89:1,4 94:25 108:23 127:9 128:23 143:24 144:1 150:4
insurer (31) 28:1 30:15 38:20,24 39:17 40:1,22 41:3,6,24 42:10 45:17,23 46:13,19 47:8,10,15,19 48:11 55:25 72:24 73:1 94:20 106:15,18 111:9 118:17 129:2 144:22 156:19
insurers (55) 16:5 24:8,13,15 25:17,21 28:23 30:18 39:11 41:2 43:6,9 48:4 51:21 52:5,11 53:11 58:3 60:18 61:5 64:19 65:19,24 69:13,15,16,18 75:4 85:25 90:11 95:5 98:23 114:1 115:13 116:16,18,20 117:6,24 123:2 128:19 129:12,17,18 130:19 132:3 148:6 150:20 152:3 155:10 156:2,13 162:5 177:8 180:10
insures (2) 42:18 73:14
insuring (23) 53:9 66:3 102:18 105:23,25 134:16 144:5 148:12 155:1 158:16 168:17,20 169:1,6 171:15 177:16 179:16 180:19 182:6 183:8,21 184:17,18
integral (2) 51:2 150:25
intended (4) 2:24 103:18 136:6 164:2
intending (1) 167:17
intention (3) 119:19 148:16 164:9
intents (2) 60:11 61:8
interdependent (41) 34:24 35:4,6,11,14,15 76:1,2,7,23 77:14,17,22,25 78:10 91:4 108:20 109:3,9 114:9,11,14,18 115:6,8 116:10 117:12 123:5,17,23 124:23 125:14,21 126:4,9,15 127:5,9,13,16 130:12
interest (2) 72:9 137:25
interfere (1) 122:9
interference (15) 61:13,16,19 65:1 67:13 94:9 100:8 135:20 149:18,24 150:5,8,10,12 181:10
interferes (1) 122:5
interlinkage (3) 81:9 108:22 110:16
interlinked (3) 27:12 109:12 110:18
interpret (1) 170:21
interpretation (2) 51:15 146:5
interpreted (1) 138:13
interrupt (1) 34:18
interrupted (1) 107:21
interrupting (3) 50:3 107:21 147:8
interruption (80) 3:5,17,19 4:23 5:4,9 17:15 18:17 23:7 39:19 40:15,19 61:13,16,20 63:6 64:1,25 65:25 66:15,22 67:6,13 69:6 75:10 88:23 89:2 93:21 94:3,9,19 98:7,10 100:7,8,17 101:4,10,16,17 103:4,19,21 107:5 110:3,14 129:6 133:19,22 134:17 135:11,19 139:11 141:8 144:1 149:17,23,24 150:5,8,10,12 156:9,14,18 162:6 163:4 164:22 165:25 166:6 168:16,19,23 169:7,19 170:1 180:19,24 181:10 183:8
interruptions (1) 50:7
interveners (6) 14:13 19:16,19 20:4 22:12 155:17
intervention (2) 28:10,12
into (31) 7:12 8:21,23 15:23 20:9 22:2,8 24:11 33:16 34:22 35:19 41:17 45:19,23 47:23 48:22 50:3 67:2 75:20 84:21 92:6 93:23 102:8 108:23 131:23 147:8 159:6 161:2 184:5 185:13 186:16
intrinsic (3) 6:5 174:20 175:10
introduce (1) 160:25
introduced (1) 41:17
introduces (2) 166:20 168:7
introduction (2) 3:16 11:1
introductory (1) 9:25
inverted (1) 159:23
investigated (1) 42:24
investigation (1) 126:17
invite (5) 25:2 27:14 89:13 140:20 143:3
inviting (1) 58:25
involve (1) 163:24
involved (2) 142:6 146:3
involves (3) 55:4 101:3 111:4
involving (4) 82:21 83:4 124:22,23
ireland (1) 182:24
irrelevance (2) 57:22 81:19
irrelevant (2) 82:2 176:10
irrespective (7) 44:9 57:7,12 58:13 59:16 71:13 88:10
island (1) 30:22
islands (1) 28:18
isles (4) 28:19 155:11 173:14,25
isnt (16) 6:21 12:9 18:25 23:1 45:5 66:5 70:2,15,23 72:15 134:21 157:22 167:3,9 173:9 178:11
issued (4) 41:2 112:11,23 116:12
issues (6) 33:8 34:23 133:6 175:22 176:12 186:20
item (3) 169:8,23 170:2
itinerary (3) 120:17 122:6,9
its (63) 1:21 2:16 5:10 6:12,14,14 7:18,23 8:22 9:2 10:10,13,18 15:6 18:19 25:12 32:6 38:24 41:8 55:22 66:8,9 68:15 75:15 81:16 82:8 84:14,24 90:11 92:24 94:23 96:6,6 105:13 106:4,20 108:3 109:5 115:17 133:12 134:3 137:24 139:17 144:24 145:19 148:4 149:21,23 150:16 152:25 153:7 155:8,14 156:17 157:2 160:7,9 163:9,12 165:11 168:24 170:11 180:15
itself (28) 4:12,19 7:18,23 12:21,22 28:16 37:22 42:18 51:25 65:7 69:14 82:8 84:7 103:22 119:7 139:1 157:8 158:23,25 170:6,12 171:3,17 177:7 179:1,10 184:5

J

j1061 (3) 97:22 124:5 131:22
j10610 (1) 103:12
j10611 (2) 100:24,25
j1062 (1) 133:5
j1063 (2) 98:20 100:3
j1064 (1) 134:14
j1065 (1) 134:20
j1066 (1) 140:13
j1067 (1) 140:22
j1068 (2) 124:6 141:15
j1069 (2) 105:20 142:15
j11528 (1) 76:18
j11529 (2) 76:14,17
j1391 (1) 78:22
j13923 (1) 78:25
j4212 (1) 153:19
j4213 (2) 153:18 154:2
j4314 (1) 159:17
j901 (2) 110:25 111:17
j9029 (1) 112:6
j911 (1) 116:18
j9121 (1) 116:20
j917 (1) 121:22
j918 (1) 120:5
jay (10) 76:22,22 77:2,2 123:7,7,22,22 125:12,12
jigsaw (3) 153:3 160:3,8
jigsaws (2) 81:10 148:11
john (1) 79:13
joint (11) 24:14,16 40:25 45:11 53:11 70:2,3,4 80:23 111:13,16
joints (1) 33:3
journalist (1) 53:24
judge (13) 30:9 31:8,10 34:2 79:3 91:2,6 105:17 117:18 119:8 138:21 142:13,20
judges (5) 112:6 116:21 117:16 118:4,11
judgment (25) 2:4 6:16 7:2 8:20 30:7 32:10 33:16 78:24 98:15,20 100:24 103:11,25 104:15 112:6 113:10,15 114:5,6 117:15 118:14 130:8 135:3 140:19 141:11
july (2) 1:1 187:10
juncture (2) 36:17 103:24
junior (1) 132:17
jurisdictions (1) 69:24
justification (1) 154:25
justified (2) 89:17 155:3
justify (1) 153:4

K

k (1) 118:14
k1150 (1) 149:12
k1191 (1) 32:11
k1196 (2) 31:22 33:13
k12631 (1) 161:6
k1841 (1) 30:6
k1848 (1) 30:9
k1912 (1) 76:12
k2049 (1) 159:20

k3231 (1) 156:23
kealey (190) 23:25 24:2,3,4,21,22 27:3,4 29:7,10,15,17 30:3 31:17,21 32:8,11,14,18 34:13,17,21,25 35:3 36:16,20 37:2,12 40:17,24 42:1,7,13,17 43:7,16 44:2 45:8 46:21 47:2,5,19 48:1 49:23,25 50:6,10,12,16,17 53:15 55:18 56:3,4,7,12,18 57:2,6 58:5,22 59:5,8,16,22 60:3,7,9 62:2,17 64:21 65:3 66:6,8,18 67:16,20 68:2,8,11 69:25 70:25 71:2,21 72:18 74:9,13,17,21 75:3,17,22 76:16,20,25 77:19,21 78:7,19,24 79:4,5,9,12 85:16,23 86:9 87:1,12,22 88:18,21 90:14,23 91:6,15,22 92:1,23 93:1,5,8,12,13,15 97:5,20,21 100:19 104:7,11 105:15,18 107:13,16,19,23,24 108:3,5 114:13,17,24 115:20 116:5,15 121:7,14,19 122:20,21 123:3 126:19 131:3,9,12,14,17,20 132:7,9,13,16,21 133:1 134:22 135:1,4,8 137:20,21 138:1,3,7,9 143:11,12,15,19 147:2,3,4,24 148:19 150:24 160:5 176:2 177:9 178:2 188:4
keep (3) 16:23 17:14 182:10
kettling (1) 149:8
key (3) 3:25 4:4 175:2
kind (5) 10:25 12:3 20:7 34:14 181:18
kinds (1) 16:10
kingdom (1) 26:20
knew (2) 104:13,15
know (31) 1:19 2:21 23:10 34:22 39:16 48:18 50:1 56:8 57:4 59:9,9,13 68:18 69:20 71:22,23 79:1,4 80:13,22 87:7 92:18 93:4 98:6 104:12 128:20 131:24 132:8,10 147:1 167:18
knowing (3) 16:4 56:13,14
known (12) 24:22 36:10 44:17,18 48:7 56:8 149:8 156:6 171:1 173:25 176:21,21
knows (4) 67:8 72:1 104:16 130:4
kos (3) 76:13,15,16
kuwait (5) 83:3 105:14,16 106:22 140:20

L

labour (1) 182:24
lack (2) 28:2 117:3
lady (3) 59:17 60:4 127:25
landing (1) 148:14
landslip (9) 42:19,20,23 43:4,25 44:2,4 47:7 49:4
language (17) 9:4,10 11:4 35:22 73:16 75:1,3,5 128:18,22 136:22,24 137:11 165:1,11 168:14 176:22
large (2) 13:18 23:10
largely (1) 124:17
last (11) 22:15 24:17 70:8 88:22 104:2 117:22 137:13 138:9 154:6 164:7 185:6
late (1) 144:7
later (10) 3:6 18:5 38:19 39:7,17 61:10 67:10 83:8,12 97:24
latin (3) 35:19 38:23 186:5
latter (2) 124:25 154:16
lawyers (1) 186:7
layout (1) 11:4
lazy (1) 15:16
lead (7) 11:21,22 22:20 102:25 119:4 122:25 141:6
leading (2) 117:22 149:4
leads (1) 160:2
leak (1) 83:1
learned (10) 28:21 30:9 31:8,10 45:12 80:13 95:10 98:1 112:6 119:8
learning (1) 58:12
least (15) 23:16 24:12 33:22 37:17 46:17 48:1 71:1 75:13 77:8 122:23 123:4 136:19 155:21 179:9 183:16
leave (9) 8:4,19 36:23 43:21,23 82:15 131:12 141:11 149:14
led (1) 62:15
left (2) 134:20 157:1
lefthand (6) 76:21 112:14 118:16 120:5 166:9 171:24
leg (1) 176:13
legal (19) 47:22,24 48:18 49:11,12 64:2 75:12 82:9 83:11,18 90:13 102:5 108:19 110:20 126:22 128:13 130:3 145:25 146:20
legality (1) 149:7
legally (2) 83:6 90:6
leggatts (1) 30:7
legionnaires (1) 174:7
legislative (1) 177:24
legitimacy (1) 124:9
legitimate (2) 11:14 117:7
leicester (8) 63:4,5,5 71:16 72:2 85:8 86:18 178:19
length (1) 111:13
lengthily (1) 100:20
less (18) 2:11 22:23 51:14 60:15,18 66:1 72:15,17 73:2,25,25 75:6 95:15 115:4 139:16 151:22,23 153:25
let (13) 34:11 38:7 53:18 56:7 61:11,24 62:2 63:12 78:20 105:5 128:14 151:7 168:16
lets (28) 15:23 38:17 53:8,23,24 54:1,4 55:7,20 60:7 61:12 62:3 63:16,17 65:11 69:3,4 72:21 85:8 87:6,13 89:20,21,22 93:14 175:13 180:19,23
letter (2) 77:1 79:13
level (2) 170:19 172:13
leyland (1) 159:17
liability (9) 8:3 17:8 40:7 43:6,9 60:17 82:14 118:18 156:10
liable (3) 39:18 46:13 72:24
liberal (1) 70:12
lie (1) 113:25
lies (1) 95:13
life (10) 15:13,16 25:14 182:2,13 184:19 186:9,9,13,18
lifted (1) 108:13
ligaments (1) 33:4
light (1) 3:7
lighted (1) 83:2
like (20) 1:13 10:2 49:16 55:21 57:3 58:21 60:25 63:16 67:18 73:25 84:20 95:3 97:8 109:9 116:7 127:23 136:17 152:10 180:7 181:12
likelihood (1) 151:25
likely (8) 3:17 22:23 141:21 182:2,12 184:19 186:9,18
likewise (1) 116:11
limit (22) 63:14 64:22,24 65:16,19,22 66:12,16,17 85:10,11,11,13 86:4,5 152:17 163:14,14 183:1,11,20 184:7
limited (6) 64:17 85:5 93:13 106:9 141:23 164:10
limits (3) 183:3,6,12
lindsell (1) 140:11
line (16) 8:6,9 26:6 42:22 48:23 52:14 112:7 115:6 145:13 152:8,24 154:6 155:12 176:16 185:1,3
lines (9) 2:17 27:24 70:8 97:15 157:11 160:4,8,11 161:7
linguistic (1) 165:8
link (9) 157:17,19 158:17 159:6 170:15 171:21 173:11,17 177:13
linkage (6) 64:4 83:22 108:12,18 109:19 160:6
linked (1) 90:16
linking (1) 8:15
links (4) 74:4,5,22 173:16
literal (2) 7:6,9
little (10) 7:5 37:15 60:12 65:4 68:18 72:16 93:5 103:9 150:7,12
lives (1) 172:20
loa (2) 106:5 134:13
local (29) 10:12,17 13:12 14:5 25:12 54:5,6,7 58:16,20 61:22 62:5,6,9 63:7 68:14,15,17,22 69:1,1,8,10 71:15 86:21,24 94:25 110:8 130:23
localisation (1) 10:2
localised (3) 10:4 12:13 13:25
locality (1) 174:15
localized (1) 1:16
locally (1) 71:14
location (1) 71:5
lockdown (14) 2:14 59:14,17,18,18 62:5 68:1 71:16 72:2,3,10,13 86:21,24
locking (1) 71:19
logic (1) 81:10
long (9) 30:1,3 36:12 84:12 93:23 94:21 109:7 170:25 187:6
longer (2) 61:3 175:6
longestablished (1) 148:9
lonsdale (1) 7:3
look (33) 6:3,11 11:1 13:19 17:10 21:10,25 22:6 25:2 27:15 28:23 30:4 33:17 50:18 65:21 76:11,15,16 98:18 100:23 109:22 110:16 113:17 124:3 125:4 151:2,7 153:18 166:1,24 180:19 185:18 186:22
looked (5) 72:9 134:9,10,15 183:5
looking (11) 1:23 35:22 40:20 60:1 62:7 70:4 83:8 110:15 121:20 143:20 167:4
looks (3) 54:10 68:12 109:24
loose (1) 35:22
lords (57) 23:2 24:5,24 25:23 26:10 28:14 31:2 34:7 45:3 47:14 49:18 50:1 51:11 52:22 60:10 63:13 66:20 73:14 75:22 76:1 81:18 83:17 84:18 90:15 96:16,19 97:8 100:23 102:6 103:7 105:10,12 107:1,13 113:6 116:24 117:13 122:11 125:16 128:6 139:9 140:8 141:9 142:7,20 143:20 146:2,15,23 147:20 152:5 155:20 161:19 163:6 164:4 176:5 179:8
lordship (29) 2:17 4:25 31:23 45:1 65:20 74:25 78:21 79:12,24 88:4,21 89:15,19 98:1 115:9 116:6 121:9 126:20 127:12 133:1,3,5,25 134:12 137:16,23 138:3 174:6 175:21
lordships (88) 1:9,19 3:8,9,10,22 4:16,18 5:14,19,24 6:1,23,24 9:22,23 13:1 19:7 20:1,13,19 24:13,16,18 25:2 26:2 30:5 32:19 33:7,12 34:13 37:19 44:15 45:10,12 52:6,13 59:5 72:19 76:9,10 78:25 80:17,21 89:8,13 93:17 95:8 96:24 97:9,14 98:18,19 101:13,20 102:2 103:1,9,10,11,13 104:17 105:4,5,8,19 108:15 114:3 116:17,19 120:10 123:4 124:5 125:1,4 131:24 134:19 137:12 139:2,22 140:13,20 143:3 146:21,24 153:10 168:10 175:19
lorry (2) 96:21,25
losing (1) 105:12
loss (200) 16:22 17:8,18 20:6,16,17,18 21:2,11,13 22:5,5 28:3 30:12,16,19,20 31:4 35:8,9,16,17,21,25 37:6,23,25 38:6,7,10,24 39:5,9,11,15,20 40:1,3,5,14,22 41:1,4,8,14 42:15 43:12 44:8,8,24 45:7,19 46:18 47:17 48:19 49:2 54:22 55:3,4,25 56:19,22 57:15,23 58:8 59:22 61:13,16,20 63:2,6,10,11 64:1,25 66:22,25 67:22 72:1,6,24 73:1,14 74:12 75:11 77:6,24 78:3,9,16,17 79:16,21 80:3 81:3,6,10,12,14,22,24 82:10 84:16,24 86:15 89:3,5 90:6,8 94:9,19 96:3,3 98:25 99:2 100:8 101:4,4,10 102:13,16 103:20 105:24 106:1,8,9,12,17 110:3,14 111:4,8 114:23 117:2,3,12 118:18 119:20,22 120:7,8,11 121:1,23,25 125:9 127:15 128:12,14 133:13,15,20,22 135:10,18 136:12,25 137:8 138:11,17,18,19,25 139:6,13,18,20 141:8,25 142:2 145:9,21,22 148:19 149:21,23 150:5,9 154:14 156:14 157:20 158:16,21 159:4,9,10,23 160:1,10 161:18 162:12 166:7 167:7,10,14 170:3,16,20 173:9 178:15
losses (38) 25:11 65:25 66:15 67:6 70:17 84:14 88:23 89:2 93:21 94:3 101:17,18 102:19 106:10 108:25 111:10 118:2,3,5,7,24 119:2,2 129:6 130:25 136:6,8,15 139:24 140:1,3 144:2,3 162:6 163:3 165:13 166:15,16
lost (2) 56:24 135:14
lot (6) 12:4 15:5 65:21 180:5,8,9
lots (3) 53:25 61:2 180:2
lottery (1) 155:23
lunch (3) 97:17,18 107:8
lynch (13) 1:4,5,6,7,8 4:14,16,25 23:9,17,22,23 188:3

M

m (4) 12:7 93:1 127:25 128:6
m11 (1) 5:12
m18 (1) 5:15
m2 (1) 12:8
m27 (1) 6:20
m8 (1) 12:8
macgillivray (3) 76:10 77:10 161:14
machinery (16) 98:24 148:2 161:20 162:2,16 165:4,15 166:20 167:19 168:5,6 169:7 172:6,12 174:4 181:13
magic (1) 84:23
magnum (1) 32:8
main (4) 102:18 105:23,25 144:5
mainline (1) 76:22
maintaining (1) 163:6
majority (3) 7:4 15:6 138:12
makes (13) 7:23 20:25 23:13 43:18 52:19 56:1 69:23 114:25 127:7 158:13 161:13 168:1,2
making (7) 37:11,12 63:21 93:16 100:19 130:9 160:9
male (1) 33:9
malicious (2) 79:20,21
man (1) 48:7
managing (2) 179:19,20
mance (4) 79:6,25 80:17 116:10
mances (1) 78:24
manchester (2) 11:17,25
mandatory (1) 2:23
manifest (2) 170:12 171:18
manifestation (16) 25:12 84:9 151:13 157:17 170:12,23,24 171:11 173:13,20,25 177:2,17,19 178:7,18
manifestations (1) 153:1
manifested (1) 84:22
manifesting (10) 157:8 158:25 170:5 171:2,8,17,19 176:24 177:7 179:1
manifestly (1) 33:20
manifests (2) 65:7 84:7
manipulate (1) 89:16
manipulated (1) 166:14
manipulation (1) 164:13
many (7) 7:4 19:16 36:13 129:17 146:8 154:19 175:25
map (3) 14:1 147:20 179:10
maps (1) 13:20
march (9) 2:13 9:16 87:5,9,21 172:16,22 175:1 177:24
marine (1) 99:22
market (3) 31:9 117:3,3
marsh (1) 179:25
material (10) 47:9 98:24 104:5 149:20 154:16 156:6,7 160:25 161:15 169:14
matter (33) 6:7 19:10 24:6 25:5 35:12 37:5 43:11 47:25 51:15 64:12 66:13 69:4 70:10 76:5 81:3 95:2 99:4 100:10 102:4 107:15 110:20 116:1 124:2 130:2 132:20 133:24 137:24 141:14 142:22 146:20 168:10 178:4 183:16
matters (6) 5:21 6:6 32:22 39:20 49:17 148:20
maximum (2) 120:17 171:25
mcgee (1) 77:10
mcgregor (1) 140:11
md (2) 156:15,21
mean (23) 1:16 2:10 5:8,23 6:5 10:3 11:10 14:14 21:11 54:3 55:8 71:8 85:2 87:2 96:11 130:20 142:2 143:11 167:6 168:4,14 176:8 178:3
meaning (23) 3:21 5:5,7,9,10 6:5,13,14,14 7:6,7,9,16,20 13:10 34:21 66:12 70:11 120:1 122:17 154:1 159:12 186:4
meaningful (1) 14:21
meanings (5) 2:2 3:24 5:8 7:14 170:22
means (15) 3:5 5:8 10:17 11:11 21:14,16,21 50:7 52:22 105:22 128:11,12 170:24 185:20 186:6
meant (1) 103:3
meantime (1) 17:13
measles (6) 62:2,3,13 69:1,8 152:9
measure (1) 143:23
measures (7) 17:9 26:19 27:10 173:8 176:18 177:24 184:14
mechanism (2) 20:10 103:15
meet (2) 25:22 94:25
member (1) 138:16
members (1) 68:6
mention (2) 69:22 105:11
mentioned (2) 46:17 108:6
mentions (1) 124:11
mere (2) 94:15 155:2
merely (3) 84:17 101:5 102:3
met (1) 75:7
metaphor (1) 52:12
metaphorically (1) 187:1
metaphors (1) 95:11
metaphysical (1) 37:24
method (2) 167:9,11
metropolis (1) 149:5
middle (8) 32:9 72:12 104:18 153:21,23 163:1 171:15 187:5
midland (1) 76:22
might (34) 16:10 48:15,25 50:4,9 54:3 58:3 59:3 62:9 64:8 65:12 68:5,12 73:25 82:6 84:1 87:24 88:19,19 90:3,17,19,20 91:23 92:13 104:4 128:1,2,8 147:7 163:7,17 175:14 176:11
mile (16) 12:18 13:3,15,17,17,21 66:12 68:16 72:17 85:9,13,15,18 152:24 157:25 158:5
miles (40) 61:15,17,18,20 62:13 63:9,18 67:19 68:16,16 69:5 72:11,14,16,16 94:12,15,19 96:2 151:14,16 157:9 158:6 159:1,5,11,21 170:6,10 171:6 172:21 173:13,21 174:1 175:14 177:7 178:7,18 179:2,3
millennium (1) 83:4
mind (12) 13:4,6 26:14 57:3 72:7 91:22 120:4 125:25,25 126:7 129:12 175:20
minds (1) 91:13
minimise (1) 17:7
minimum (1) 5:17
minister (2) 2:13 9:17
minutes (5) 1:13 50:3 146:24 147:8,9
mirror (2) 41:7 82:5
misconceived (2) 28:23 176:4
misleading (1) 103:12
misnomer (1) 37:16
misreading (1) 153:17
miss (5) 76:22 77:2 123:7,22 125:12
missed (3) 10:22 115:17,18
mistake (1) 177:8
misunderstands (1) 28:25
modest (3) 24:21 163:14 180:1
modesty (1) 24:22
moment (16) 32:10 38:8 39:6 41:18,19,23 42:9 48:2,22 55:8 87:8 115:2 116:15 131:21 160:13 165:16
monday (5) 15:23 184:9 186:21 187:3,9
money (4) 16:13 30:25 31:15 57:10
months (1) 120:18
moot (1) 139:23
more (46) 3:17 7:14 9:7,9 19:11 22:23 24:9 26:5 28:4 37:24 40:20 48:24 49:20 51:14 52:18,25 58:15 60:15,16,22,23 65:4 66:1 72:17 73:8 87:24 95:14 98:19 106:9 115:4 127:25 133:2 139:16 140:16 144:23 145:11,16,20 148:5 150:13 152:13 153:25 157:15 159:6 174:5 180:5
moreover (2) 28:6 125:17
morning (11) 1:3,6,8 15:24 108:6 109:22 144:7 176:2 184:9 186:21 187:3
most (11) 10:20 11:24 20:4 23:6 36:4 71:9 129:9 141:21 144:25 150:19,22
mountain (2) 30:22 42:9
move (5) 60:7 67:11 73:7 172:13 178:2
moving (2) 49:22 73:10
mrjusticemoorebicks (1) 33:16
ms (2) 132:17 145:12
much (32) 7:8 14:19 20:12,14 23:22 24:18,19 33:17 48:24 50:8,10 51:3,3 70:6 76:20 80:21 97:11 107:21,22,24 118:6 136:17 141:15 146:19 147:3,4,25 153:1 176:3,13 185:13 186:24
mulcahy (1) 145:12
multiple (11) 2:1 5:8 6:13 38:17 82:21 83:4,7 105:9,11 106:23 173:16
mumps (1) 152:9
muscles (1) 33:3
must (24) 1:16 6:5 10:3,9,12 13:11 14:17 16:21,23 17:6 22:20 47:14 52:1 72:21 113:25 120:25 121:1,13 148:14 150:3 156:9 166:22 169:25 181:18
mustnt (1) 181:19
mutandis (1) 15:12
mutatis (1) 15:12
mutual (1) 164:9
myself (4) 67:8 71:2 72:9 97:2

N

name (1) 149:20
namely (4) 25:11 28:18 103:20 139:12
names (1) 15:15
narrow (10) 1:21 3:5,20,24 4:3 5:4 6:5 9:24 22:18 66:2
narrower (3) 2:7 9:4 13:13
nasty (1) 60:12
national (5) 62:22 68:1 86:1 95:1,2
nationally (1) 86:21
nationwide (1) 25:11
natural (5) 5:10 6:12,14 186:4,16
naturally (1) 165:12
nature (2) 30:17 88:14

near (7) 57:17,22 58:12 90:1 94:6 186:10,13
nearer (1) 63:16
nearly (2) 77:8 162:20
necessarily (5) 70:16 78:1 88:21 126:22 181:19
necessary (20) 4:2 17:24 18:2 28:7 31:11 78:15,16,16 119:6 128:12 137:1 139:5,13 140:10 141:17,20 142:5 148:22 173:11 177:12
necessitates (1) 120:16
need (25) 12:8 14:25 16:12 29:19 70:9 76:11 84:8 111:7 120:3 134:14 145:14 153:10 154:17 155:9,10 156:23 158:10 161:11 178:11,20,23 179:13 181:13 183:18 186:6
neednt (4) 28:23 33:16 50:18 109:16
needs (6) 70:21 73:5 75:7 176:3,14 178:22
negative (1) 48:7
negatively (1) 120:15
negligence (3) 140:15 141:1,21
neither (6) 36:5 43:2 77:4 86:8 132:24 141:7
net (2) 120:11 122:22
neutral (2) 38:9 115:2
neutrally (1) 91:11
never (10) 15:3 46:9 52:19 73:1 75:6 94:20 115:13,14 116:8,11
nevertheless (5) 23:15 58:2 74:1,2 123:18
newspaper (1) 55:2
next (15) 12:20 23:25 50:4 59:3 77:1 102:21 113:3 116:17 129:7 147:5 160:2 169:15 174:10 183:18 185:3
nexus (1) 33:14
nice (1) 142:25
nicholls (4) 106:23 140:19,21,23
night (2) 24:17 144:7
nobody (1) 58:17
nominated (1) 183:10
non (4) 34:1,9 40:18 163:18
nonanswer (1) 81:18
noncausal (1) 152:14
noncompliance (1) 17:3
nondamage (14) 129:8,9 163:4 165:2,3,13 166:15,15,18,23 167:8 169:18 172:7,10
nondenial (1) 9:5
none (4) 79:10 136:21 144:23 163:2
nonetheless (1) 56:25
noninsured (1) 110:17
nonspecific (1) 8:15
nor (9) 11:10 36:6 43:3 77:4 86:8 124:20 132:25 153:25 155:3
normal (9) 14:12,14,16 21:16,23 50:21 86:18,20 140:8
normally (2) 21:21 22:3
north (1) 138:5
northern (1) 182:24
noscitur (1) 12:4
note (7) 3:13 15:1 19:16 111:18 170:8 183:12,19
noted (1) 123:14
notes (2) 96:20 165:20
nothing (19) 27:25 64:19 66:1,1 99:10,11,15 118:11 128:17,18,21 131:5 139:14 145:2,4 153:25 156:21 161:3 169:17
notice (1) 47:4
notifiable (20) 13:2 149:25 151:14,15,17,20 158:25 159:4,9,10,11 170:5,9 171:2,5,16 173:7 176:17 177:2 179:1
notionally (2) 67:3,18
notoriously (1) 89:2
notwithstanding (2) 55:24 145:10
nought (2) 58:2 86:22
novel (3) 108:12,18 160:5
novelty (2) 8:1 55:22
nowhere (1) 26:11
number (7) 96:1 109:14 142:13 169:8 171:25 182:21 183:2
numbers (1) 134:23

O

object (1) 30:23
objection (1) 1:20
objectionable (1) 144:25
objective (2) 4:8,12
objectively (3) 2:24 65:12,17
obligation (1) 60:17
obligations (1) 17:5
obliged (1) 7:18
observation (1) 26:11
observe (2) 163:17 180:16
observed (1) 152:20
obtained (2) 32:5 162:22
obvious (10) 4:8 10:20 16:16 43:4 62:1 151:20 152:23 154:23 156:20 163:18
obviously (22) 6:18,21 9:11,21 10:23 11:9,14 13:4,16 14:17 16:10,14 17:18 21:9,21 22:19 29:7 35:3 50:2 72:11 78:18 174:13
obviousness (1) 10:22
occasion (2) 149:21,24
occasional (1) 140:17
occurred (21) 27:13 31:1,15 38:10 45:25 59:19 70:10 77:24 80:4 85:6 91:12 101:24 102:1 104:24 116:8 138:12,15,17 153:12 154:18 173:23
occurrence (21) 1:16 10:1,3,12 11:17,20,21,25 13:2,10 14:5,6 30:19 88:15 102:15 110:9 122:2 130:24 159:20 170:24,25
occurring (3) 17:1 94:21 106:17
occurs (1) 41:24
oclock (2) 107:23 108:3
odd (1) 168:18
oddity (3) 13:6,9 41:21
oeh (10) 101:1 102:13,18 125:5,14 135:19 136:24 140:16,24 141:10
oehs (2) 102:7 141:15
offence (1) 149:13
offer (1) 110:22
official (2) 112:23 174:15
often (6) 7:7 36:4 88:23 127:22 163:14,16
oftener (1) 153:24
oh (3) 93:8 95:3 134:22
oil (3) 84:20,21,24
okay (3) 32:17 105:7 147:14
omissions (1) 5:20
once (4) 41:16 74:18 75:9 159:24
onto (1) 184:5
onus (1) 7:16
open (5) 16:6,15,16 18:3,14
opening (2) 135:10 185:10
opera (3) 59:14,18,21
operate (2) 14:17 19:6
operated (2) 39:9,9
operating (6) 36:22 38:22 39:23 42:15 102:14 143:23
operation (9) 34:19 35:2,7,9,24 36:1 45:6 110:12 150:9
operative (2) 25:10 116:2
opposed (3) 99:14 102:16 113:24
opposing (1) 123:20
oral (2) 24:7,18
order (17) 18:2 24:12 34:10,12 40:7 54:14,16 60:23 61:15 66:23 67:5 97:10 120:3 121:2 149:14 174:25 175:25
orders (4) 2:10 26:18 27:10 54:8
ordinary (1) 7:6
orient (2) 97:13 130:10
orientexpress (19) 29:16,17 38:21 39:6 67:18 77:15 83:9 97:12,21 98:2 107:2,10 124:4 125:2 126:6 131:18 146:2,9,22
orleans (2) 135:21 139:7
orthodox (1) 146:4
ostensibly (1) 88:2
others (5) 60:22 74:5 82:15 128:7 180:2
otherwise (13) 6:7 9:17 16:11 22:4 36:9 50:8 52:25 57:20 87:9 127:11 165:14 166:17 181:22
ourselves (1) 150:14
outbreak (11) 62:2,4,9,12,14,23,25 86:1 152:7,9 174:7
outbreaks (2) 95:21 175:12
outcome (2) 111:7,9
outset (2) 24:24 26:13
outside (3) 14:4 63:19 151:2
over (13) 15:25 36:21 64:16 65:14 102:6 118:15 150:13 153:13 155:21 172:10 181:2,12,24
overall (3) 86:7 138:18 171:20
overcome (1) 75:19
overlap (1) 134:24
overnight (1) 42:17
overstayed (1) 146:23
overwhelming (2) 112:17,21
owed (1) 82:9
own (12) 7:23 38:25 39:2 80:22 90:11,12 106:20 110:13 118:4 135:12 164:4 177:14
owner (1) 15:16

P

paddington (2) 175:5,13
padre (1) 30:21
pages (3) 51:18 81:17 169:4
paid (4) 39:11 40:12 84:19 132:19
pandemic (7) 28:6 61:23 84:15 86:1 93:22,23 129:12
paragraph (100) 2:16,18 5:15,23 7:24 10:8,10 15:18 25:3 26:3,4,22 27:2,20,23 32:2,15 33:13,15,17 45:15 70:5 76:12,17,21 79:12 80:23 89:8,12 96:17,18 98:19 99:18 100:3 101:13,21 102:10,21 103:10,13,14 104:17 105:6,13,19 109:24 110:4,5 111:16 112:5,13 113:3,17 117:1,13,20 119:25 120:10 121:22 122:13 124:6,12,14,14,15 125:1 130:7 134:4,11,12,13,15,19,23,25 135:2,8,15 139:2,22 140:21,23 141:12 142:15 143:3 150:15 153:6 156:22 157:2,5,13 159:19 160:23 161:6,8 164:5,8 165:9,22 185:8
paragraphs (8) 10:15 15:2 30:8 82:23 100:23 163:8 176:4 179:16
paraphrase (1) 186:16
parasitic (1) 129:6
parents (2) 69:9,10
part (23) 21:16 43:14 51:2 85:21 87:18,20 103:4,5 109:6 112:17,17,21 129:5 135:12,16 136:20 138:9 141:11 149:10,18 151:1 161:12 179:22
partially (3) 106:12,13 122:1
particular (22) 5:17 7:18 8:6,20 25:18 33:8 91:6 96:9 110:8 124:18 126:12,15 137:19 138:11 141:23 142:9 152:11 158:16 164:25 168:7,11 174:22
particularly (5) 10:25 98:2 141:1 142:6 167:3
particulars (2) 25:3 26:21
parties (27) 9:17 24:20 38:4 65:12,17 73:16 74:2 81:22 113:7 114:7 118:21 135:16 140:5 145:3,5 148:15,16 154:1 155:4 163:15 164:3 165:2 167:14,17 171:4 182:8 185:15
partly (1) 106:10
parts (1) 170:17
party (2) 7:16 175:4
pass (3) 127:10,13,19
passage (9) 7:1 76:13 78:24 124:6 153:17,20 154:3 155:18 161:8
passages (2) 84:12 126:8
passant (2) 113:17 123:14
passes (1) 17:25
passing (2) 80:14 117:18
past (2) 141:12 147:13
path (1) 22:19
patisserie (9) 15:17,20 16:17 17:14,25 18:7,9,13,22
pause (9) 4:9 5:25 6:25 140:22 143:7,9,19 154:7 161:7
pausing (1) 136:17
pay (8) 20:13,14,15 39:13 44:25 123:2 155:10 156:14
payable (3) 145:8,9 161:24
paying (2) 69:17,18
payment (1) 16:25
peace (1) 149:2
pellets (1) 49:20
penzance (4) 175:5,13,13,14
people (20) 7:5 42:21 55:21,23 56:8 57:20 58:7,11 59:2,10,12 62:19 69:15 72:3 82:24,25 90:1,1 151:21 174:9
peoples (1) 151:25
pepper (1) 49:20
per (3) 3:16 35:18 120:18
percentage (2) 20:3,21
perfectly (4) 11:13 49:20 82:1 135:13
perhaps (17) 7:4 13:7 17:11 39:7 42:17 68:19 76:14,17 129:1 132:3 146:23 156:5 160:13 168:21 174:13 175:12 185:6
peril (131) 11:20 25:25,25 26:12 28:3,8 30:17 35:23,25 36:24 37:23 38:5,6,11,11 39:4,14,21 40:2,5,7,23 41:3,4,7,8,24 42:15 43:10 45:25 46:5 48:19 51:13,16 52:19 54:11,11,22 60:15,23 63:15 65:5,9,10 69:3 72:21,23 73:3,6,9 74:8,12,19,23 75:10 77:4,6 78:12 81:1,2,6,13,23 83:14,16 84:5 88:2 90:9 94:5 98:7,8,9,12,16,17 100:11,16,21 101:8,11 103:5 104:1,1,5,25 107:4 108:24 109:6,11 110:12 111:5,7,11 121:5,8,11,18 122:16 125:11 128:15 139:11,16 144:8,17,21 145:2,12,14,17,20,22 148:8 149:18,22,25 150:3,10 151:1,3,4 152:16 163:23 166:23 170:16,17 173:10,16,22 175:11 176:24 181:7
perils (30) 27:7,18 38:22 39:1,3,10,23,24,25 51:23 77:5 99:5 108:10 119:1,2,5,5,14,15 120:20,21,23 121:16 152:4 155:2,5 166:16 168:19,24 169:20
period (20) 19:5 21:5,6,10,18,20 120:17 122:2 156:18 162:22 163:15 165:6 166:11,22 169:11 171:22,25 172:2,8 182:20
permanent (1) 33:1
permits (1) 138:24
person (1) 126:12
personally (1) 173:7
perspective (2) 32:1 103:12
persuasive (1) 138:22
pests (2) 53:13,22
peter (1) 45:14
phillips (1) 118:13
philosopher (1) 81:14
phrase (1) 150:22
phrased (1) 161:25
phrases (2) 7:12,13
physical (9) 39:14,19 98:25 119:16 133:14 135:20 139:12,19 162:12
pick (2) 111:14 153:20
picken (2) 132:15 135:17
pickens (1) 132:16
pieces (1) 153:3
pipes (1) 17:12
pivotal (1) 43:14
pixels (1) 153:2
place (10) 14:6 18:11,12 55:12 64:16 101:10 118:8 156:8,10 179:25
placed (15) 146:19 151:12 157:7 170:4,14 172:16 173:3,5 174:12,18 175:8,9,18 178:6,25
places (2) 106:23 109:15
plain (2) 127:24 154:8
plainly (5) 12:3 151:25 157:15 164:10 177:14
planning (1) 174:9
play (1) 34:12
player (2) 34:3,5
players (1) 32:6
pleaded (2) 112:15,19
pleading (1) 27:21
pleadings (1) 96:6
please (42) 1:11,12 2:16 3:3 5:12,16 6:20,24 8:11 9:5 10:7 11:1,8 12:20,24 13:19 14:9 15:8 16:19 20:12,18 21:2 22:17 30:7 50:11 93:15 153:7,19 155:13,19 157:4,4 159:13 160:14 162:25 163:10 164:6 165:21 166:1,5 169:4 180:20
plumber (2) 16:15 17:10
plus (7) 51:10,10,10 72:23,25 73:2,9
pm (6) 107:1,25 108:2 147:15,17 187:8
poa (2) 106:5 134:13
pointing (1) 131:4
pointless (2) 157:22 158:1
points (22) 1:14 3:8,9,22 9:25 10:6,16 13:6 23:14 60:2 61:1,4 74:14 85:24 96:23 107:18 111:15 147:22 164:9 169:13 184:11 185:6
police (3) 148:25 149:1,5
policies (19) 1:11 13:5 41:2,10 134:5 146:5 148:3 151:5 154:10 155:1 156:6 161:21 162:4,4 164:17,20 165:14 167:2 179:18
policy (72) 3:23 10:25 11:5 16:18,24,25 17:19 26:12 30:12 31:6 32:18,24 33:11 34:10 38:13 44:25 57:24 85:10 90:20 95:22 98:8,9,13,20 99:13,14,14,22,23 100:5 103:4,6,20 104:5 113:25 119:6,19 122:2 128:17,21 133:9,12,17 136:5 138:23,24 139:18 142:12 144:5 145:5 150:7 151:2 153:15 158:12,15 161:24 162:9,11 163:8 164:1,7 165:18,22 168:12 169:15 176:9 179:10,14,25 180:8 181:22 182:21
policyholder (1) 157:16
policyholders (2) 19:15 168:4
policys (1) 182:22
politician (1) 46:23
poor (1) 41:8
popi (3) 93:1 127:25 128:6
population (1) 33:9
pose (2) 21:17 173:18
posed (2) 59:5 174:6
poses (1) 178:15
posing (1) 177:16
position (13) 23:6,21 28:25 29:24 30:25 31:14 45:23 46:1,4 82:16 127:8 130:20 172:14
positive (1) 173:1
possibilities (2) 65:21 145:1
possibility (6) 143:8,10,12,20,21 144:14
possible (4) 5:3 92:16 112:2 156:18
possibly (2) 85:23 138:6
postcode (1) 155:23
postulate (1) 175:15
postulated (6) 34:2 40:25 60:21 92:1,3 127:12
potential (1) 79:19
potentially (3) 25:14 106:11 142:3
powers (4) 149:1,2,8,11
practicable (1) 162:21
precautions (1) 16:20
preceding (2) 169:18 172:25
precise (1) 57:6
precisely (5) 42:14 59:24 71:18 178:13 179:4
precision (1) 8:14
precondition (1) 119:6
prediction (1) 8:13
predisposition (2) 7:20 158:17
preemptive (2) 176:19 177:1
preexisting (2) 33:22 34:4
preference (1) 7:21
preliminary (1) 147:21
premise (1) 163:23
premised (1) 119:10
premises (80) 1:17 10:4,14,19 11:18,23 12:1,13,15,23 13:3,13 14:1,5 53:14,19,22 54:14,15 57:15 61:15 63:18 68:16 72:11,12 93:24 94:12,23,23 151:12,13,15,16,18,22 152:2,25 153:1 156:17 157:7 159:5,21 170:4,6,7,10,14 171:3,6,6,17 172:16,21 173:4,4,19 174:8,9,12,16,18,19,20 175:8,11,18 178:6,25 181:5 182:3,4,12 184:19 185:12,24 186:10,11,13,15,19
premium (4) 70:10 84:19 153:11 154:18
prepared (1) 95:6
prescribed (2) 177:3,18
presence (1) 25:12
present (8) 38:2,9 47:25 79:10 109:16 126:12 138:24 159:13
presumably (1) 167:11
pretend (1) 104:19
pretty (4) 64:14 131:24 132:11 135:5
prevalence (2) 71:20 85:12
prevent (3) 16:21 149:2 184:15
preventative (2) 176:19,25
prevented (3) 46:10 57:8 68:9
preventing (1) 106:17
prevention (7) 39:12 40:12,16,21 105:23 181:25 182:20
prevents (2) 79:18 182:3
previous (6) 87:6,15 162:24 168:20,22,22
previously (1) 184:6
prima (7) 7:15 45:18 47:11,16 88:4,6,7
primary (10) 7:6,9 20:16 129:5 164:21,24 167:4 168:6 169:6 185:11
prime (2) 2:13 9:17
principle (29) 12:4 14:18 19:11 31:7 35:2,3,12 38:14 51:1 75:14,18,20 83:11 102:5 110:16 114:8 115:13 117:8 118:16 125:8,13,21 126:4 130:11 141:14,23 142:23 146:21 149:7
principled (5) 35:12 64:2 73:12 83:19 110:20
principles (23) 24:8 30:11 49:11,12 73:10 75:12,13 76:6 77:9 79:11 90:13 97:7 101:2 108:20 117:11 118:22 123:22 128:13 146:4,12,16 148:9 167:15
prior (2) 20:7 47:4
pro (2) 38:23,23
probably (12) 32:14 47:24 50:7 61:3 78:21 79:1 83:12 97:13 105:10 115:21 138:4 186:23
probed (1) 42:23
problem (8) 11:12 12:9,10 20:6 36:21 42:25 43:17 71:11
proceed (3) 42:6,22 97:15
proceeded (4) 113:7,7 114:21 123:19
proceeds (1) 163:23
process (2) 77:16 163:17
produce (2) 78:3,16
produced (1) 20:21
produces (2) 81:1 118:22
professional (4) 31:25 32:2,4 33:10
profit (7) 20:17,18,21 102:14 143:24 150:4 181:2
profits (5) 20:20 22:5 137:19 138:11,14
prohibition (1) 68:23
prohibitively (1) 126:17
promise (3) 30:18 94:20,24
promised (1) 73:1
promising (1) 94:18
proof (7) 48:25 102:19 127:6,21,24 128:5,10

proper (15) 1:20 2:8 3:25 4:5 9:2,12,21 25:5 26:25 27:4 103:18 107:3,4 146:5 173:17
properly (4) 1:25 9:18 51:15 173:2
property (27) 16:22,23 30:13 31:5,5 40:14,19 98:8,12 99:1,12 103:22 129:4,7 133:14,19 137:3 139:12,20 156:10 168:21 181:4 182:3,13 184:20 185:3 186:18
proportions (4) 61:23 64:9 65:13 84:2
propose (1) 179:8
proposed (2) 28:16 111:2
proposition (3) 80:2 125:21 145:18
propositions (1) 164:15
protect (2) 11:3 16:22
protests (1) 149:6
prove (7) 35:16 48:6,18 86:10 90:10 96:7 127:14
proved (4) 89:23 94:22 96:15 127:20
provide (7) 11:6 126:22,24 144:8,10 155:6 164:12
provided (15) 19:1,25 84:12 86:4 94:11 103:16,19 119:12 123:6 125:11 144:16,16 158:5 177:25 181:9
provides (3) 133:13 139:18 181:22
providing (2) 102:22 152:15
proving (1) 96:8
provision (13) 30:14 32:7 149:13 162:10,19 164:2 179:15 180:25 182:6,9 183:21,21,23
provisions (10) 4:21 136:22 151:20 161:23,25 162:6,8 167:6 169:3 183:7
proviso (4) 156:7,16,16,21
provoked (1) 44:4
provokes (1) 62:24
proximate (47) 18:6 25:1,10,19 26:7 29:9 31:19 36:4,7,8,11,14,14,18 37:11,15,16 44:1,3 45:7 73:24 74:10,20 75:15,20 77:6,22 78:5,7 101:9 116:3 125:9 130:17,24 151:6 153:22 157:16,19 159:14 160:20,20 161:4,17 170:18,19 178:14 181:21
proximately (5) 111:4 128:15 151:10 178:16,17
proximity (9) 59:11 147:23 150:17,25 151:21 152:13,24 155:7 156:25
pub (1) 68:14
public (37) 1:10,14 2:9,12 10:19 11:22 12:25 15:5 17:12,20 19:6 22:16,21 28:5,5 44:7 53:20 54:13,25 57:14 59:1 68:6 112:2 130:21 144:11,12 145:5 174:15 175:2,10 181:25 182:1 183:14 184:13,16,17 185:1
publics (1) 89:25
pubs (2) 72:4 179:14
pulled (2) 1:12 176:13
pulling (1) 176:14
punctuation (3) 184:23,25 186:21
pure (2) 54:20 156:11
purely (1) 108:16
puritan (1) 163:7
purport (1) 73:8
purpose (17) 4:8,12 14:10 26:16 29:23 33:11 51:7 98:4 105:25 119:18 137:1 155:15,15 156:1,15,20 167:18
purposes (30) 25:6 26:25 27:4 33:24 38:3,9,13 44:6 47:25 49:6 53:3 58:10 60:11 61:8 79:11 103:3 104:20 108:16 109:16 113:23 122:16 133:21 145:15 151:3 159:13 162:8 164:1 165:4 166:17 171:2
puts (3) 26:4 47:8 160:7
putting (6) 45:22 47:20 56:22 85:21 92:15,22

Q

qbe (2) 71:7 180:2
qbes (1) 150:14
qc (1) 42:8
qua (2) 34:1,9
qualifications (1) 86:10
quantification (17) 148:1 161:20,25 162:2,16 163:3,17 164:16,23 165:4 167:5,10,19 168:5 172:12 174:4 181:13
question (69) 5:22 6:15 8:2,4 34:15 37:19,19,21,24,25 38:3 43:9 46:3,23 47:14 49:2 50:2 51:6 58:22 59:6 65:15 66:17,21,23,24 67:21 68:2,5,10,11 72:6 74:11 77:13 80:12 81:11,25 83:11,14 88:3 123:4 126:23,25 133:11 134:7 135:9,16 137:18 138:10 139:17,23 141:10 147:23 148:18,24 153:10 154:13 155:20 159:15,20,24 173:18 174:6,11 177:15,16,22 178:15,24 179:5
questions (12) 16:10 33:6 47:3 49:17,19 97:15,19 133:6,7,8 146:25 147:2
quickly (3) 21:9 39:7 75:25
quite (17) 7:12 22:21 40:9 66:2 75:25 80:20 88:23 102:25 103:7 104:10 111:18 127:22 130:8 131:25 142:21 178:20 182:5
quotation (4) 45:14 70:7 153:5 164:4
quotations (1) 76:25
quote (1) 163:22
quoted (1) 135:2
quotes (1) 105:17
quoting (1) 160:11

R

radius (21) 13:18,22 62:7,16,23 64:8 68:12 70:14 83:25 84:14,23 93:24,25 94:4,22 157:18 170:6,9 171:6 177:3,18
railtrack (2) 43:18 49:7
railway (1) 42:18
raise (1) 186:25
raised (2) 19:8 148:24
random (1) 7:8
range (7) 3:23 4:9,17,19 5:6 64:14,15
rapidity (1) 75:23
rate (3) 20:19 117:21 118:1
rather (20) 35:5 41:4 50:3 56:8 60:3 66:4 67:18 81:22 88:9 98:18 100:20 106:8 109:9 112:22 123:16 127:2 131:7 147:7 163:18 179:21
rationale (2) 151:19 155:7
rats (34) 53:16,23,24,25 54:5,7,9,16,19,20,24 55:2,4,7,21,24 56:5,7,14 57:1,3,3,7,12,17,23 58:3,12,13,21 60:10,11 61:6,7
rcj (1) 14:4
re (1) 6:10
reach (1) 132:2
reached (1) 98:15
reaction (2) 59:1 112:22
reactions (1) 28:5
read (28) 5:24 6:24 8:21 11:15 24:17 27:23 50:8 54:1,5 56:15,15 57:18,19 71:9 89:13 94:7 99:13 102:8,11 103:11 104:14 117:19 140:21 143:3 154:5 161:6 165:23 167:6
readily (2) 7:13 95:22
reading (7) 5:24 10:17 13:5 55:1 104:15 124:10 185:13
reads (1) 182:7
ready (3) 50:16 108:4 147:19
real (8) 15:13,15 16:13 22:25 43:13 47:17 96:22 154:1
reality (5) 16:13 58:15,16 174:14 178:21
really (30) 5:1 14:20 15:21 35:18 37:4,9 49:13,15 66:7,11 70:16 74:10 84:7 87:3 88:24 92:14,15 100:25 107:3 109:15 135:13 153:20 154:21,23 158:20,23 167:3 168:3 178:13 183:24
reason (25) 4:15 11:11 28:2 42:21 43:14,21 46:18 59:15 62:18 70:17 71:3 81:4,5 83:19 89:15 97:23,23,25 109:21 115:23 116:24 129:16,18 152:23,25
reasonable (10) 11:14 16:20,21 17:7 70:12,13 144:24 145:3,4 148:14
reasonableness (6) 140:18 141:19 142:4,18,23 143:1
reasonably (3) 21:14 137:9 162:20
reasoning (1) 138:21
reasons (7) 3:1 16:16 18:4 22:13 129:17 150:14 163:6
rebuild (1) 156:17
recall (2) 102:2 160:17
recap (1) 3:10
received (2) 166:11 169:11
recently (2) 71:9 128:1
recites (2) 124:14 139:3
recognise (2) 89:9,14
recognises (2) 9:3 82:13
record (1) 48:13
recourse (1) 148:11
recover (24) 19:2,4 22:24 34:10 40:16,20 55:14 56:2,5,25 64:7 83:24 84:14,24 86:14 87:17,24 94:8 102:13 109:10 118:10,11 125:9 136:12
recoverable (7) 51:8 63:11 93:22 106:8,9 117:12 144:4
recovers (1) 19:5
recovery (7) 18:15 40:20 47:8 79:18 105:22 138:25 139:24
redrafted (1) 102:9
redrafting (1) 102:12
reduce (2) 28:2 152:13
reduced (2) 89:23 111:8
reduces (1) 155:2
reducing (1) 156:19
reduction (4) 88:5 89:21 166:10,21
refer (6) 31:11 45:12 70:1 80:13 138:18 162:1
referable (3) 64:8 84:1 133:8
reference (32) 7:24 10:9 12:6 19:22 27:20,21 46:15 70:1 76:11 77:18 79:13 82:22 96:16 105:13 133:9 137:14 140:8,19 149:12 150:3,16,21 153:5 155:11 156:22 157:3 159:19 169:25 173:24 176:15 184:3 185:8
references (3) 93:17 146:8 160:14
referred (11) 45:11 112:13 116:25 117:18 120:7 121:23 122:12 126:5,8 136:23 152:21
referring (5) 103:2 105:3 126:3 182:11 185:9
refers (3) 102:21 122:13 172:7
reflected (2) 42:14 158:18
reflection (1) 102:4
reformulating (1) 6:15
reformulation (2) 2:4 6:16
refuge (1) 73:11
regard (2) 7:19 135:12
regarded (2) 116:10 140:3
regarding (1) 120:13
regardless (3) 25:17 34:3 95:25
regulations (2) 96:13 172:16
reinforced (1) 171:10
reinforcing (1) 172:5
reinstatement (1) 31:9
reject (1) 125:16
rejected (3) 112:12,14 125:3
rejection (3) 116:21 117:16 145:19
related (8) 5:21,23 6:4,12 28:10 109:12 122:23,25
relates (1) 17:11
relating (3) 136:10 146:4 174:19
relation (52) 26:19 27:10 33:5 35:5,19 39:9,10,14,18 40:2,4,7 45:1 49:1 51:23 57:16,19 66:3 72:21 83:13 91:8 97:3 98:12 101:21 115:11,15 123:25 127:9 130:5,19,22 136:20 139:10 141:5 150:18 159:3,16 160:3,18 164:6,25 166:18 169:17,18 172:9 174:3,7 176:14 177:4 179:11 181:7 184:1
relationship (5) 6:6 64:4 83:22 109:20 159:15
relatively (2) 129:9 180:1
relaxation (1) 140:18
release (1) 72:3
relevance (1) 93:9
relevant (39) 4:22 5:18 13:20 22:11 25:1 41:24 48:1 52:7,7 61:21 65:7 70:24 79:10 82:6,7 84:7,9,23 85:6 86:4 96:3 101:11 108:15 119:12 136:19 137:1 149:17,20 151:5,24 152:4 153:17,20 157:18 162:22 169:22 176:11,24 181:24
reliance (1) 146:19
relied (1) 82:18
relies (1) 125:7
relieves (1) 155:10
rely (4) 38:24 40:6 106:20 182:18
relying (3) 39:2 82:14 175:4
remain (2) 18:10 115:1
remains (2) 47:22 158:10
remark (1) 80:14
remarkably (1) 153:4
remember (5) 3:10 92:3 95:10 105:4,8
remind (2) 144:15 151:8
reminder (1) 165:22
remotely (1) 65:9
remoter (3) 154:15 160:1,24
remove (12) 52:25 54:16,18,20,20 60:16,18,22 61:6,7,7 94:13
removed (2) 54:9,21
removes (1) 94:16
rendering (1) 69:14
reopens (1) 18:9
repair (1) 16:24
repairs (2) 17:24 18:1
repeat (4) 10:16 54:18 174:5 176:6
repeating (1) 147:24
repetition (1) 97:6
replacing (3) 2:5 73:18 74:3
reply (3) 23:20 96:16 110:5
report (3) 120:5 124:7 133:3
represent (4) 24:5 39:21 162:20 186:7
reputation (1) 58:3
requested (1) 187:2
require (11) 105:1 127:10 136:15 140:18 141:20 142:4,19 143:1 157:16 170:18,19
required (14) 32:7 78:2 101:23 104:23 107:7 119:17 120:24 121:5,7,10,17,17 142:24 171:21
requirement (12) 44:21 94:14 142:24 150:25 152:13 156:8 158:1 166:20 169:14 171:8,9 174:22
requirements (6) 102:18 147:23 150:17,20 155:7 156:25
requires (8) 28:1 102:8,19 136:24 157:6 159:14 164:13 165:6
requiring (5) 73:16 138:13 157:15 158:17 162:12
requisite (1) 95:23
reread (1) 24:17
resemblance (2) 27:18 151:5
resembles (1) 26:12
resembling (1) 26:1
reservation (1) 56:13
resilience (4) 179:24,24 180:1,4
resisting (1) 105:25
resolve (1) 148:22
resolved (1) 169:20
respect (16) 1:18 12:5 16:25 19:15 39:4 46:2 68:21 82:10 86:14 103:20 125:13 133:13 138:20 139:18 169:9 184:1
respected (1) 168:8
respectful (12) 34:8 49:11 79:25 83:17 104:14 110:11 125:18 126:1,23 128:16 131:14 146:19
respectfully (5) 19:10 48:25 126:6 146:10 152:6
respectively (1) 118:23
respond (3) 18:24 121:2 156:9
responding (1) 176:20
responds (1) 15:3
response (5) 11:16 96:10,10,11 149:16
responses (2) 26:8,10
responsibilities (1) 11:7
responsible (1) 83:6
responsive (1) 67:4
rest (2) 115:8 147:10
restart (2) 3:7,19
restaurant (25) 14:4 53:17,23 54:1,2,8,12 55:1,22 56:12,23 57:7,9,9,11,17,21,23 58:7,8,13,17 59:2 68:6,7
restaurants (3) 72:4 86:18,19
restaurateur (1) 54:6
restricted (2) 85:10 173:5
restricting (2) 87:11 182:19
restriction (28) 11:24 12:17,18,19,23 13:11,15,16,22,24,24 17:20 20:7,23 55:8,12,17 56:1,2 67:14 70:21 85:19 86:6 88:15 94:16 175:8 178:5,25
restrictionfree (1) 67:19
restrictions (48) 2:9,20,23 8:17 11:21 12:22 17:16 18:10,13 19:17 22:21 23:8 25:13 53:20 54:13 57:14 65:1 86:11,15 87:19 88:16 95:20,24 110:8 151:12 157:7,19,20 158:22,24 170:4,14,20 171:12 172:15 173:3,5,12,20 174:2,12 175:9,17 177:6,13,20,22 178:17
restrictive (1) 3:6
result (27) 72:1 81:2 102:14,16 103:22 117:4,10 118:22 122:14,22 151:13 152:10 157:8 158:22,24 166:12,22 169:12 170:3,5,13,15 171:12 176:17 177:1 178:6 179:1
resulted (4) 101:18 106:3 121:1 137:4
resulting (14) 32:21,25 61:13 73:15,23 94:9 103:20 120:11 135:10,20 136:6,8,15 162:7
results (2) 143:5 162:21
resume (2) 108:4 187:2
retains (1) 48:18
reticent (1) 128:4
retreat (1) 90:12
return (3) 11:8 131:17 186:20
returning (1) 16:13
revenue (8) 166:7,11,21 167:7 169:5,9,10,12
reverse (7) 52:6 60:10,11,13 63:13 145:11,16
reversed (3) 52:18,18 73:5
reversing (4) 72:23 73:2,4 145:20
revert (1) 107:9
reword (1) 12:2
rewrite (1) 108:10
rewriting (2) 145:3 148:12
rewritten (1) 72:25
rewrote (1) 145:2
rhetorical (2) 16:10 65:15
righthand (4) 33:7 137:13 140:13 169:15
rightly (1) 115:22
riley (1) 156:21
rise (7) 30:21 39:25 120:25 133:19,20 145:20 187:1
risk (6) 99:16,23 100:4,13,14 174:19
risks (10) 32:6 99:6,7,13,14,22 100:1,2,13,14
rix (3) 6:10 119:9,24
rixs (1) 117:14
rodents (1) 146:17
roll (1) 152:22
round (2) 30:1,3
route (3) 147:20 179:10 181:13
rovers (2) 31:22 32:4
rsa (8) 148:2 151:10 164:20 165:15 176:16 180:6,13,15
rsa1 (6) 151:8,11 157:3 165:18,19 179:8
rsa2 (4) 162:4 179:9,11 181:7
rsa21 (3) 162:9 163:2 183:15
rsa22 (2) 162:14 183:7
rsa3 (6) 151:15 159:3,9 162:4,16 164:25
rsa4 (6) 150:23 151:16 161:23 165:11 180:7 186:3
rsas (3) 150:18 162:8 180:1
rules (5) 50:22,23,24,25 148:9
rumsfeldian (1) 176:22
run (10) 16:7 21:15 43:15,17,24 44:5 46:9,9 47:6 147:10
running (4) 46:8,11 55:22 60:13

S

safe (1) 174:17
sake (4) 27:24 55:20 62:8 85:9
salami (2) 52:11 95:12
same (50) 6:2 12:17 14:18 27:21 30:24 31:14 33:14 34:15 39:21,24 40:1 41:6 44:24 45:23 49:25 50:24,25 51:25 60:5 69:19 71:13 82:3,9,10 84:4 100:1 101:19,21 103:5 104:7 118:7 127:9,19 131:7,20 133:18,22 136:4 137:5 141:2 158:20 160:8 162:14 166:5 169:13 170:21,21 172:5,9 183:25
samuel (1) 79:18
sanitary (1) 15:10
satisfaction (2) 34:9 127:20
satisfactorily (1) 82:1
satisfied (19) 17:23 36:8,19 38:12 44:21 78:2 115:11,15 123:18 124:25 128:5 142:17 146:25 152:15 173:13,22 174:22 175:12 177:13
satisfies (2) 37:17 78:12
satisfy (11) 35:6 36:15 48:15 76:8 80:5 90:11 92:24 109:7 127:6 171:14 175:15
save (3) 41:14 42:14 118:17
saw (1) 126:2
saying (27) 7:25 9:23 30:1,3 36:17 43:7 53:25 67:12 73:22 86:2,3,4,22 88:25 89:1 91:9 92:10 95:3,5 104:13,16,16 117:8 147:25 150:6 159:7 167:9
scale (1) 95:7
scenario (4) 28:9 92:21 175:16 181:7
scenarios (1) 175:16
schedule (6) 20:2,5 165:23 166:4,5 170:2
scheduled (4) 117:4 120:17 122:6,9
scheme (1) 171:20
school (3) 69:1,1,8
schools (5) 62:6,6,10,15 152:10
scilly (3) 155:11 173:14,24
scope (7) 8:23 94:16 115:5 133:22 137:6 152:16 182:19
scott (1) 6:10
screen (1) 134:14
script (1) 50:2
scurrying (1) 55:24
searching (1) 83:1
seas (1) 77:5
seats (1) 15:20
second (23) 1:15 7:12 10:1,2 16:4 26:13 32:2,15 40:7 45:6 75:9 81:4,5,12 87:25 100:6 113:11 134:1 137:12,23 155:20 184:4 185:1
secondly (7) 2:19 38:5 61:6 86:12 108:11 123:12 127:1
section (25) 40:15,19 98:7,9,13 99:4,12 100:6,7,17 103:19 104:5,6 107:5 113:23 129:7 149:12,13 158:18 162:11 170:1 180:24 181:1,21 183:8
sections (2) 98:21,24
seduced (1) 91:7

see (86) 1:11,24 2:16,17 3:3 4:16,18 5:13,23 6:1,23 7:1,24 9:5 11:1 12:13,17,18,19,22,25 13:1,20,21 15:1,9 16:19 17:4 19:20,24 20:1,13,18,19 26:4,22 30:9,21 31:3,24,24 32:2,15,19 33:7,13 48:5 52:14 53:9,10 60:3 64:10 76:9,20 77:9,12 79:18 97:6 99:25 103:9 109:24 112:5,18 113:25 114:3 115:18 116:17,25 117:13 120:4 124:2 125:12 126:1,11 130:22 133:25 139:22 140:13 153:13 154:20 155:13 157:1,5 161:5 162:25 183:2
seeing (1) 55:21
seek (3) 9:11 117:15 123:24
seeking (2) 31:7 101:3
seeks (2) 67:1 153:4
seems (10) 15:4 37:21 48:13 70:11 72:13 81:7 108:12 110:21 138:20 160:19
seen (5) 1:25 75:5 90:1 156:11 180:25
sees (4) 79:24 133:5 134:12 166:6
seizure (3) 79:20,22 116:8
selfevident (1) 150:11
selfisolation (1) 172:24
sense (26) 4:4 11:13 28:15 42:21 43:4,13 60:25 64:13 68:22 70:19 74:14,21 106:25 114:18 116:1 122:24 123:3 127:16 130:12 136:9 145:5,9 178:1 180:7 182:5 185:23
sensible (6) 49:23 50:4,6 66:11 130:4 147:7
sensibly (2) 47:13 157:12
sentence (4) 117:23 153:9 154:6 163:18
sentences (3) 104:2,3 164:7
separable (1) 148:19
separate (2) 112:3 168:9
separated (2) 25:21 127:3
separately (1) 100:2
september (4) 112:20 113:19,22 130:15
sequitur (1) 163:18
series (1) 5:20
serious (9) 15:24 16:12 17:11 18:4 22:20,22,23 48:14 96:1
seriously (1) 68:21
service (1) 68:18
set (14) 2:2 9:1 28:18 90:17 99:16,23 111:10 150:15 157:13 160:22 168:19,23 169:7 177:24
sets (1) 39:8
setting (2) 164:14 179:10
settle (2) 168:24 169:5
settled (1) 132:11
settlement (1) 169:2
several (2) 34:16 42:3
sewage (4) 15:25 16:4,17 17:11
shall (8) 29:10,18,19 60:7 76:15 108:4 162:20 186:22
shape (3) 92:11 96:12 150:18
shell (1) 7:25
shift (3) 48:16 88:8,9
ship (2) 42:10 79:2
shipping (1) 159:17
shooting (1) 82:25
shop (6) 15:21 68:15,25 69:6,10 89:20
shops (4) 2:14 68:17,18 86:20
short (11) 37:10 50:14 54:14 61:15 97:10 108:1 115:22 147:16 149:16,19 169:11
shortfall (1) 3:11
shorthand (1) 144:10
shortly (3) 72:2 131:25 148:25
should (46) 10:7 11:10 16:6,6 19:1 24:7 48:21 49:18 67:8 74:1 76:3,18 83:17 86:14 89:15 95:4,4 100:24 102:2,11 105:11 107:6 125:1,14,22 128:3,10 135:12 137:16 141:2,20 142:5,19 143:2,8 145:19 148:22 157:14 163:21 164:18 165:10,17,23 175:22 182:9,11
shouldnt (4) 76:2 107:3 123:9 132:21
show (18) 20:2,10 29:7,13,18,19 39:7,10 46:20 62:9,11,12 94:2 95:22 96:2 165:2 182:8 184:21
shown (8) 29:19 42:24 86:23 128:14 135:19 142:18 166:3 170:2
shows (2) 21:22 78:4
shrink (1) 8:8
shut (5) 16:4,7,15 17:25 93:14
shutdown (5) 62:6,10 85:6,13 152:10
shy (4) 48:3 49:19 88:22 128:10
side (9) 8:9 14:7 45:22 49:13,14 112:14 153:23 160:7 166:9
sides (1) 89:6
signal (1) 48:12
signalling (7) 42:25 43:2,17 46:10,19 47:17 49:5
significance (1) 84:22
significant (2) 20:8 73:25
silver (3) 90:24 108:13 129:21
silversea (22) 90:21,24 92:22 93:6,8,12 97:12 104:9 107:8 110:23,25 111:12 118:9 119:8 124:12,13 125:18,20 129:21 131:5 141:12 146:18
similar (10) 5:20 73:15 82:4 90:21 92:21 113:2 120:12 155:16 157:10 165:17
simple (8) 49:9 54:20 61:12 62:19 80:25 81:2 122:20 164:19
simpler (3) 163:16 167:17,19
simultaneously (1) 82:24
since (11) 42:5 60:25 77:7 96:23 105:4,9 113:18,21 118:4 126:7 152:25
sine (2) 34:1,9
single (10) 2:5 24:25 26:7 48:7 51:25 67:3 99:16,23 100:4 164:16
sir (1) 45:14
sit (1) 59:3
sits (1) 109:1
sitting (2) 1:9 55:23
situation (5) 26:17 27:8 34:2 37:9 46:4
sixthly (1) 101:1
skeleton (38) 2:16 7:23 10:16 14:25 15:18 23:12 26:3 27:22 37:13 40:25 45:11 53:12 60:1 70:2,3,4,5 71:6,6,7 80:23 82:23 89:9 96:6,18 99:18,19 109:23 111:13,16 134:3 153:7 154:23 157:2,14 163:9 164:5 185:8
skeletons (1) 71:8
slade (2) 7:2 77:7
slicing (2) 52:11 95:12
slightest (3) 48:3 49:19 128:3
slightly (7) 26:5 37:24 49:22 81:8 92:13 168:18 182:6
slouch (1) 104:11
slow (2) 70:15 174:25
small (1) 127:8
smith (1) 33:18
socalled (1) 80:10
social (3) 96:13 173:8 177:23
soidisant (1) 80:11
solely (4) 32:20 166:12,22 186:7
solicitors (1) 5:17
somebody (1) 59:3
somehow (1) 69:12
someone (4) 56:13 63:17 92:11 155:11
somerset (1) 62:4
something (39) 2:11 3:5,18 6:5 31:18 40:23 41:12 44:24 46:12 50:20 55:10 56:20 61:11 64:9 69:21 73:8,24 76:2 84:1 89:9,10,11,14 90:8 92:12 94:8 109:13 111:10 119:17 120:24 121:4,7,10,16,17 142:25 143:5 152:22 186:14
sometime (1) 97:17
sometimes (1) 70:11
somewhere (1) 109:1
soon (1) 156:18
sort (4) 46:16 47:23 167:1 176:11
sorts (1) 88:16
sought (6) 108:8,10 116:19,20 117:6 146:6
sounds (1) 29:22
source (1) 83:1
south (2) 14:6 138:5
space (1) 18:10
sparing (1) 184:24
speak (1) 168:19
speaking (2) 7:5 97:2
special (4) 110:19 133:20 162:15,18
species (1) 50:22
specific (14) 2:11 9:8 10:12,18 13:12 14:5 25:17 50:22 124:19 125:2 146:17 169:16 174:19,19
specifically (6) 31:12 38:16 110:5 125:3 133:9 164:11
specified (16) 4:21,21 12:15 30:19 99:13 144:4 150:21 151:21 152:17,24 157:18 181:16,23 182:25 183:10 184:3
specify (1) 9:6
speech (8) 140:20,22,23 153:5,18,20 159:17 161:5
spent (1) 147:25
spill (3) 84:24 96:21,25
spread (1) 174:25
spreadsheet (2) 160:4,9
spreadsheets (1) 148:11
sprung (1) 30:22
sra (1) 6:3
stage (13) 40:22 74:20 75:8,9,16 87:25,25 97:23 99:8 100:5 146:25 173:15 177:21
stages (4) 56:9,10 74:21 177:11
standard (9) 14:20 29:3 75:7,18 81:25 103:17 123:17 140:18 169:12
standing (1) 154:19
star (1) 76:22
stark (1) 112:10
start (15) 26:14 52:8 76:18 87:22 100:25 147:21 155:18 158:14 169:24 175:3 179:9 180:20,23,24 182:15
started (2) 21:16 144:6
starting (4) 72:3 150:24 154:3 172:23
starts (5) 19:23 168:25 169:5 183:8,9
stated (3) 52:24 53:6 93:23
statement (2) 33:15 88:22
statements (2) 2:12 9:16
states (2) 69:24 137:15
stating (1) 24:24
station (2) 43:21,23
status (2) 94:15 155:2
statutory (1) 149:8
stay (2) 16:6 174:9
stem (4) 1:23,24 3:4 164:12
steps (1) 16:21
stick (1) 55:7
still (11) 18:22,23 35:25 40:5 49:7 60:12 74:18 86:22 104:22 137:13 174:1
stipulated (1) 150:25
stop (4) 3:6,19 23:4 44:5
stopped (3) 46:8 57:9 72:5
storm (2) 42:19,24
straight (2) 83:21 97:21
strapped (1) 79:1
strength (1) 148:4
stressed (1) 77:11
strict (1) 2:11
strip (1) 101:3
struck (1) 143:25
stuart (1) 33:18
suba (1) 182:25
subclause (1) 181:15
subclauses (4) 4:11 8:12,14,16
subcontractors (1) 83:5
subexclusion (1) 184:5
subject (9) 87:23 99:4 100:10 120:17 163:14 164:22 173:19 174:2 183:15
subjected (1) 49:21
submit (9) 4:1 5:2 81:18 93:6 118:21 151:19 154:9,24 155:6
submits (6) 101:1 118:2,23 119:3 125:14 140:16
submitted (6) 93:20 100:21 135:17 136:5,10,14
subsection (3) 181:1,2,9
subsequent (2) 54:4 79:15
subsequently (1) 172:25
subsidiary (1) 94:15
substance (1) 12:10
substantial (1) 65:20
subtract (2) 177:5,5
subtracted (1) 145:15
subverts (1) 101:2
succeed (1) 90:20
successive (1) 83:3
suddenly (1) 72:5
sued (1) 39:5
suffer (2) 19:17 30:18
suffered (24) 32:3 34:5 35:8,10,17,25 40:5,14 44:23 45:19 46:18 55:25 66:25 67:22,23,25 70:17 102:14,16 103:21 127:15 130:25 135:23 140:2
suffering (1) 55:9
sufficient (9) 11:23 37:10 88:8 109:18,19 125:10 140:10 171:1 181:12
sufficiently (2) 25:7 110:18
suggest (13) 47:21 48:25 61:5,7 72:19 126:6 146:6,10 148:17 157:12 161:3 171:13 185:13
suggested (6) 28:21 92:4 103:8 112:24 132:1 173:2
suggesting (1) 52:15
suggestion (2) 48:9 153:9
suggestions (1) 99:9
suggests (2) 52:1,10
suicide (1) 128:2
suit (1) 147:11
sum (1) 53:5
summarised (4) 26:23 77:10 109:17 160:22
summary (1) 26:24
sumner (9) 70:7 99:21 152:20 154:8 158:13,20 159:7,25 160:24
sumners (2) 153:5,17
sumption (3) 69:18 70:1,2
supplemented (1) 146:16
supplier (3) 3:13 4:21,22
supply (2) 136:1 172:6
support (4) 102:22 117:3 124:13 125:20
suppose (1) 42:18
supposed (1) 70:12
supposing (1) 86:17
supreme (6) 5:13,16 6:9 78:22 80:18 126:7
sure (10) 45:21 68:13 75:2,23 85:17 97:1 114:1 117:24 158:19 185:16
surprise (1) 161:12
surprising (2) 122:11 156:24
surrounding (3) 133:16 138:19 139:21
sushma (1) 132:17
suspect (3) 24:10 97:2 167:22
suspense (1) 182:10
swainston (4) 115:17 117:6 118:1,23
swiftly (1) 80:20
symptoms (1) 172:21
synonymous (1) 2:5

T

tab (2) 166:5 179:14
tables (1) 55:23
tag (1) 38:23
taken (10) 7:2 34:14 47:1 85:24 96:19 105:5 118:8 130:2,4 131:21
takes (4) 71:22 174:24 177:21 182:5
taking (7) 53:2,2 74:4 93:11 104:13 128:19,19
takings (1) 87:5
talk (1) 31:8
talking (7) 36:20 37:9,13 89:4,5 105:8 136:18
tank (16) 34:24 35:2,3 76:21 78:18 79:19 113:25 114:8 115:13 117:8,11 118:15 123:6,21 130:10 131:7
tanto (2) 38:23,23
target (1) 24:23
task (3) 8:8 10:22 24:9
technically (1) 44:12
telling (1) 174:10
tells (1) 54:6
temporary (1) 18:11
ten (1) 147:9
tendons (1) 33:4
tenminute (1) 49:24
term (6) 38:9 150:22,23 162:12,24 166:8
termed (1) 99:2
terminological (1) 167:1
terms (20) 5:17 8:4,7 9:12 13:21 16:18 19:13 31:12 50:23 67:22 112:4 144:25 145:5,25 154:11 157:21 162:1 165:5,25 183:15
terrible (1) 22:1
territory (1) 181:21
terrorem (1) 88:25
terrorism (3) 119:4 120:25 149:11
terrorist (8) 91:15 119:11,21,23 120:14,22 122:15,25
terrorists (1) 122:6
test (77) 14:20 25:9 26:16 27:1,5 28:22 29:1,3,9,12 31:12,20 34:9 35:7,13 36:9,15 37:18 38:12 51:20 52:3 54:17 57:5 62:19,20 63:8 73:7,8 74:20 76:8 78:2,13 80:5 81:1,12,25 82:19 101:22 102:4 105:22 106:6,19 109:7 114:10 115:10,11,14 124:21,25 125:7 127:10,14,19 134:6 139:10 140:7,10,25 141:6,17 142:2,4,19 143:2,5 145:16 146:5 161:4 168:7 171:14 173:17,24 175:15 177:12,15 180:8,9
tested (1) 29:8
testing (2) 14:19 178:14
tests (1) 172:25
texas (1) 137:21
text (2) 164:13 183:16
textual (1) 165:8
thank (21) 4:10 10:10 11:3 23:22,23 24:4 31:17 34:11 50:10,12,17 56:12 76:20 107:24 121:20 147:3,4 150:6 185:4 186:24 187:7
thats (8) 6:14 12:14 36:11 78:18 131:2 137:25 140:14 155:17
themselves (9) 9:19 112:10,18,22 118:24 119:15,23 120:22 121:16
thereby (5) 150:5 151:24 156:17,19 157:6
therefore (33) 3:17 8:21 30:20 35:13 40:15 41:5 43:24 46:12 48:13 57:12 58:8 61:19 63:10,10 69:9 70:21 88:5 106:7,12 112:12 113:13 114:10 117:11 119:24 120:23 123:24 134:10 139:4 143:25 148:14 163:15 173:22 175:11
thereof (2) 112:11 113:21
theres (1) 66:15
thereupon (1) 113:6
thing (4) 70:12 99:8 123:11 128:22
thinking (2) 59:25 60:2
thinks (2) 16:3 92:11
third (9) 1:17 6:7 14:9 26:5 135:9,16 138:16 153:21 165:21
thirdly (1) 142:17
though (6) 48:8 49:2,15 85:14 104:4 180:15
thought (2) 19:22 70:20
threat (2) 25:14 63:24
threatened (6) 95:2 119:7,11 120:15 122:7,10
three (8) 1:13 59:14 68:16 87:4 104:2 106:15 174:10 179:16
threshold (4) 37:18 38:12 44:20 62:20
through (14) 22:7 76:21 81:16 90:14 96:21,24 109:15 117:6 128:7 142:14 154:5 165:5 179:25 180:13
throwing (1) 145:23
thursday (1) 1:1
thus (7) 156:25 157:20 162:19 170:11,13 171:11 183:3
tick (1) 155:10
ticked (2) 157:15 158:4
ticking (1) 155:9
tidal (1) 1:20
tied (1) 70:16
time (25) 18:1,3 20:9,9 22:8,9 23:2 36:12 49:4,8 55:8 80:22 82:6 93:13 95:25 97:11 107:6,14 148:16 154:22 160:16 163:14 182:15 183:24 184:11
times (2) 34:16 36:13
timid (1) 128:3
timidity (1) 90:5
tiny (1) 65:4
today (3) 52:6 147:25 185:6
together (2) 64:25 74:18
told (6) 1:20 43:22,23 132:15 138:7 167:13
tomlinson (11) 111:1,24 112:12 113:2 114:5 115:18 123:9,13,15,19 129:23
tomlinsons (2) 117:22 130:7
too (11) 4:4 6:4,8 24:21 33:17 70:6 97:11 107:21,22 154:20 185:13
took (3) 14:6 96:12 147:9
topclass (1) 33:9
tophams (1) 6:24
topic (2) 49:23,25
torts (1) 141:24
total (1) 33:1
totally (1) 28:16
towards (4) 7:1 102:10 126:20 158:17
trading (1) 21:7
traditional (4) 73:18 74:3 75:12 145:9
traditionally (1) 82:1
traducing (1) 61:5
train (13) 42:20 43:1,15,16,21,23 44:5,5 46:8,9 47:5 49:8 175:4
tranche (1) 56:21
transactions (2) 5:21 6:6
transcribers (1) 49:24
transcript (7) 15:1 50:19 51:6 64:10 81:17 109:15 175:21
transforms (1) 94:24
translate (1) 33:24
transport (2) 175:2,10
travelling (1) 112:2
tread (1) 22:18
treated (4) 69:19 110:19 163:25 174:17
treating (3) 155:7 165:3 169:20
trees (1) 154:20
trends (23) 19:20,21,22 20:2,6,7 27:6 52:5 101:21,23 102:3,12,21 103:16 104:21 133:10,23 134:1,6 137:11 148:12 163:11 168:13
trespassing (1) 97:11
trial (7) 26:2 27:22 79:3 82:23 92:18 96:17 109:23
tribunal (12) 38:4 101:14 135:14 136:22 138:20,23 139:4,9,24 142:10,22 148:21
tried (2) 51:1 102:25
tries (1) 110:16
trigger (4) 55:12 94:15 158:3,4
triggered (1) 17:21
trip (2) 59:14,17
triple (1) 106:25
trouble (2) 88:14 133:1
troubled (1) 42:16
troubles (2) 87:3,3
true (8) 13:9 27:17 50:21 133:12,17 139:17 146:8 186:3
truro (3) 11:18 12:1 175:13
truth (1) 37:5
try (2) 93:5 97:9
trying (5) 12:2 57:5 60:9 89:6 92:15
tuesday (1) 145:13
turn (21) 14:25 26:2,21 75:22 83:7 107:8 111:2,14 118:5,15 134:10,19 139:2

141:12 147:25 148:2,3 153:7 156:23 161:19 168:16
turned (1) 124:17
turner (43) 147:6,12,18,19,20 157:23 158:2,8,11,19 159:2 160:16,18 161:11 167:3,11,25 168:2 176:7,13 178:1,13 179:4,7,20,24 180:9,12,15 181:20 183:19 184:23 185:5,9,10,21 186:1,4,14,21,22 187:7 188:5
turning (5) 1:18 15:8 119:24 150:17 152:22
turnover (3) 55:25 56:24 86:17
twothirds (1) 154:3
type (1) 90:2
types (1) 70:23
typical (2) 33:9,9

U

uk (3) 26:18 27:9 185:20
ultimately (3) 66:17 68:2 142:10
unacceptable (1) 145:25
unaware (1) 89:11
uncertain (1) 4:4
uncertainty (1) 2:23
uncharacteristically (1) 163:7
uncommercial (1) 152:5
uncommercially (1) 22:18
unconnected (1) 136:9
undamaged (2) 139:7,14
undefined (1) 150:22
underground (1) 17:12
underlies (1) 156:20
underlined (1) 171:10
underlying (6) 12:12 118:4,6 119:23 120:19 161:15
underplay (1) 132:1
underside (1) 116:9
understand (12) 11:6 37:3 46:14,15 55:13 67:12 71:1 85:17,25 87:11 120:3 176:8
understandable (1) 163:13
understanding (1) 23:9
understood (3) 41:16 146:11 165:12
undertake (1) 151:23
undertaking (1) 29:3
underwrite (1) 144:22
underwriter (2) 179:20,21
underwriters (4) 112:13,15,19 117:15
underwriting (1) 180:14
undoubtedly (1) 146:3
unexplained (2) 128:12 158:10
unfortunately (1) 100:20
unheaded (1) 162:18
uninsured (8) 35:15 36:25 37:8,8 56:22 80:7 82:3 123:8
uniquely (1) 150:23
united (3) 26:20 69:24 137:15
unjustified (2) 60:17,19
unknown (3) 161:16 167:1 171:13
unknowns (1) 176:21
unleash (1) 160:23
unless (21) 3:12 4:22 17:2 23:2 29:2 33:22 36:18 37:8,17 44:19 64:17 75:19 87:17 88:2 117:4 130:25 158:14 163:23 167:6 181:22 186:25
unlike (2) 69:23 92:8
unlikely (3) 3:7 4:23 178:10
unnamed (2) 108:24,24
unprincipled (3) 60:17,19 72:22
unqualified (1) 184:2
unrealistic (1) 14:2
unrealistically (1) 22:18
unsound (1) 33:20
unspecified (1) 29:5
unsurprising (1) 163:13
untenable (1) 141:6
until (6) 17:23 19:17 174:16 178:18 183:25 187:9
unusual (2) 182:20,22
unworkable (1) 14:2
upbraid (2) 107:17,20
upon (15) 7:16 32:25 38:24 39:2 40:6 49:11 75:1 82:18 91:13,16 106:20 113:8 127:6 144:11 173:5
used (12) 2:1 3:23 5:1 7:4 9:3,8 74:6 136:22 151:2,5 171:7 181:4
uses (1) 104:15
using (8) 9:4 15:15 35:22 38:9 64:13 93:24 116:1 184:23

V

v (10) 6:10 30:22 42:4,9 44:19 45:15 79:18 99:22 149:4 161:5
value (3) 55:23 96:22 146:20
values (1) 31:9
variable (1) 19:4
variety (4) 4:6 8:12 32:22 33:6
various (8) 9:14 12:7,11 70:22 111:14 140:12 175:15 180:16
vast (1) 15:6
ventouris (2) 30:22 42:9
verbatim (1) 99:17
vermin (6) 53:13,22 54:14 57:15 60:12 175:24
verminous (1) 53:8
versa (1) 28:13
versed (1) 16:2
vessel (4) 77:4 121:25 122:6,10
vice (1) 28:12
vicinity (24) 12:19 54:2,3 106:3 140:1 150:22 151:17 157:25 158:6 162:17,18 182:3,12 184:19 185:12,17,20,23 186:1,5,10,15,17,19
victim (3) 29:24 82:17,25
victory (1) 132:4
views (1) 175:22
village (3) 68:17,18,18
villages (1) 68:19
violent (1) 179:7
virginia (3) 138:1,5,6
virtue (1) 69:13
visibly (1) 14:2
visit (2) 54:25 151:22
vital (3) 37:21 51:14 52:22
vocabulary (1) 104:12

W

wants (2) 128:8 186:25
war (4) 119:3,10 120:13 122:8
warning (7) 91:16 119:1,20 120:12 121:1,1 176:10
warnings (20) 92:8,9 111:21 112:1,10,23 113:2,20 114:15 116:12 118:3,7,8 119:4,7,13,13 120:20 129:25 130:15
wasnt (6) 47:18 48:7 70:19 92:16 115:23,24
watching (1) 180:12
watermark (1) 127:16
wave (1) 1:20
way (46) 1:21 3:10 8:24 14:18 16:8 30:1,3 36:21 40:20 41:7,21 45:16 46:22,25 48:20 53:3,7 56:7 60:5,19 65:21 67:12 69:19 70:5 79:6,7 81:21 87:22 89:16 90:12 91:24 92:4 109:10 131:8 144:3 152:5 153:21 154:3,14 158:16 160:6 161:11 165:6 174:21 178:14 186:16
wayne (16) 34:24 35:2,3 76:21 78:18 79:19 113:25 114:8 115:13 117:8,11 118:15 123:6,21 130:10 131:7
ways (3) 31:6 106:6 185:18
weaker (1) 74:5
webster (1) 45:14
week (2) 17:25 172:25
weekend (1) 187:5
weeks (2) 87:5 174:10
weight (2) 38:8 112:4
welcome (2) 50:6 146:23
went (2) 42:10 92:4
werent (3) 70:18 92:7 114:12
west (5) 62:3,6,14 64:18 138:6
westinghouse (1) 31:3
westminster (1) 14:7
weve (1) 4:20
whatever (25) 5:7 20:25 22:19 43:18 48:9 49:7 52:8,12 54:2 67:14 68:24 72:4 75:16 85:19 90:4 96:10,11,12 100:14 101:25 116:3 121:18 126:13 130:18 168:13
whatsoever (4) 84:22 132:6 161:13 169:17
whereas (2) 13:24 118:10
wherever (3) 71:16 144:19 185:22
whichever (2) 65:21 100:13
whilst (8) 3:19 8:23 9:13 17:1 54:8 114:20 124:8 150:6
whole (8) 98:4 119:19 133:9 167:18 170:16 177:5,16 185:20
wholesale (1) 148:12
wholly (12) 102:24 103:7 107:6 112:16,21 122:1 143:6 145:25 151:6 152:14 158:11,11
whom (1) 57:21
whos (1) 23:25
wide (10) 4:9,17,18 8:12 65:6,18 69:4 84:6 129:2 185:17
widely (4) 26:5 54:1,5 146:7
wider (3) 3:18,21 86:1
widespread (1) 95:15
width (1) 69:7
wife (1) 59:13
willing (3) 7:15 151:22,23
wiltshire (1) 62:5
wish (2) 26:13 96:24
wishes (2) 52:12 160:21
wonder (2) 37:4 96:22
wondered (1) 35:1
wondering (1) 36:13
wont (4) 10:16 35:4 50:7 133:1
wood (1) 154:20
wording (31) 1:24 3:4 5:18,19 9:3,8 11:5 12:12 13:14,16,23,25 15:3 19:19 20:11 22:11,16 26:12 68:24 72:8 94:6 134:11 138:23 157:13 159:8 162:14 163:11 180:4 181:20 182:21,23
wordings (17) 11:2 25:6,17,24,25 27:19,25 51:22 83:13,19 150:19,19,23 164:11 180:8,16,17
work (4) 11:12 15:23 54:21 89:6
worked (6) 1:17 14:10,10 15:8 21:20 98:3
workers (1) 175:2
working (2) 3:15,15
works (3) 14:16 53:18 184:22
world (2) 16:14 28:17
worry (1) 137:24
worse (3) 41:9 82:16 129:23
worst (1) 72:24
worth (1) 24:23
wouldnt (18) 16:15 35:8,9 43:25 57:16,22 58:5,12 59:2 62:11 80:4 86:12 92:5 99:15 114:14 132:20 167:5,24
wrap (1) 181:12
write (2) 180:4,5
writes (1) 53:25
written (8) 7:10 24:14,20 150:16 165:8 176:5 179:12,18
wrong (28) 3:1 4:14 12:3 19:21 32:9 52:1,2,10 69:16 72:22 91:9 95:17 98:15 102:25 103:7,7 106:20 107:6 123:12 128:17,18,21 134:3 141:9 146:1 163:20 171:4 180:22
wrongdoer (4) 106:18,19,25 140:16
wrongdoers (11) 38:17,18 41:11 82:12,21 83:8 105:9,9,11 106:24 142:6
wrongdoing (3) 41:13,15 82:15
wrongdoings (2) 38:19 82:11
wrongly (1) 93:7

X

x (1) 22:3

Y

year (6) 20:22 21:1,7,10 87:7,15
yesterday (9) 28:21 50:18,19 51:5 55:7 148:23 155:17 174:7 182:18
yet (5) 8:8 17:16,20 55:16 104:19
youre (4) 50:16 80:7,7,8
yourself (1) 65:15
yourselves (3) 143:4 153:11 161:7

Z

zurich (1) 180:2

1

1 (38) 1:11 4:10 12:18 13:3,10,15,17,17,21 15:24 17:16,18 19:3,9,9 21:25 22:1,7 23:14 32:11 66:12 81:16 85:9,13,15,18 133:11 134:7 139:17 140:14 152:24 157:25 158:5 165:15 169:8 172:4 175:21 188:3
10 (9) 17:25 18:2,9 19:4 72:16 87:14,17 103:13 112:25
100 (6) 56:1,24 88:1 107:1,25 117:13
1000 (2) 187:2,9
10000 (2) 183:2 184:5
101 (1) 117:20
1020 (1) 118:10
103 (2) 27:23 118:20
1032 (2) 23:24 24:1
106 (5) 64:11 84:3 97:25 124:5 131:21
11 (5) 112:20 113:19,22 130:15 134:11
11051 (1) 84:3
1116 (1) 50:13
1125 (1) 50:15
1125am (1) 50:11
12 (11) 28:24 50:19 51:5 98:19 100:3 120:10 134:11,11 153:21 172:22 175:1
13 (8) 1:12,25 2:8 4:11,19 12:21 14:12 169:17
130 (1) 81:17
131 (1) 81:17
132 (1) 10:15
13b (2) 11:8 13:10
14 (2) 15:20 134:12
143 (3) 10:8,10,16
147 (1) 188:5
15 (3) 134:13 147:8 152:8
158 (1) 108:2
15th (2) 172:23 175:3
16 (5) 2:13 4:10 9:16 155:12 169:23
163 (1) 99:18
17 (4) 33:13 134:15 135:2 179:14
18 (4) 33:17 134:19,25 139:2
19 (2) 135:8,15
1b (1) 100:10
1mile (1) 86:5

2

2 (15) 12:19 19:9,9 22:1,1,7 23:15 51:17 107:23 108:3 133:3,4,17 160:13 179:12
20 (5) 90:6 92:5 113:1 139:22 172:21
2001 (1) 149:6
2020 (2) 1:1 187:10
204 (2) 2:16,18
210 (1) 156:22
21005 (1) 76:12
213 (1) 70:5
214 (1) 150:15
22 (5) 5:15,23 163:3 168:17 175:14
220 (1) 153:6
225 (3) 26:3,4,5
23 (6) 1:1 2:13 9:16 78:25 87:9,21
232 (1) 45:15
238 (1) 82:23
24 (4) 9:7 63:18 105:13 188:4
240 (1) 82:23
241 (3) 96:18 109:23,24
25 (36) 61:15,17,18,20 62:13 63:9 67:19 69:5 72:11,14,17 94:12,15,19 96:2 140:23 151:14,16 157:9 158:6 159:1,5,11,21 160:12 170:6,10 171:6 173:13,21 174:1 177:7 178:7,18 179:2,3
25mile (31) 62:7,15,23,24 63:14,14,19,23,24 64:7,14,22,24 65:16,19 66:12,16,21,24 67:2,15 68:12,23 83:25 84:13 86:5,16 94:4,22 110:1 157:25
26 (2) 172:16 177:24
264 (1) 7:24
266 (2) 89:8,12
27 (1) 187:10
273 (1) 163:8
274 (2) 163:9,19
29 (4) 33:15 124:12 125:1,4
2994 (1) 134:4
2a (3) 17:5 169:23 170:2

3

3 (15) 9:6 12:18 17:17,17,19,21 19:3 33:7 51:6 151:8 157:11 163:3 165:9 175:20 179:14
30 (2) 1:13 124:14
300 (1) 164:5
306 (1) 147:15
31 (2) 124:14 161:9
315 (1) 147:17
315pm (1) 147:14
32 (3) 124:6,15 165:9
323 (1) 15:2
33 (1) 141:12
34 (3) 30:8,9 176:4
36 (4) 30:8 149:12,13 176:5
38 (2) 142:15 143:3
39 (2) 105:19 109:16
3mile (1) 85:11

4

4 (10) 33:1 52:14 112:7 134:15 149:10 151:9 157:11 162:15 172:4,10
40 (1) 4:15
42 (1) 22:17
430 (1) 187:8
44 (1) 19:24
440 (1) 15:2
45 (6) 19:22 20:1 103:10,13,14 157:11
46 (1) 104:17
49 (1) 79:12
4s (1) 13:14

5

5 (6) 3:9,11 51:18 72:16 122:4 147:13
50 (8) 15:18 55:25 56:2 58:1 86:18,20,23 183:9
52 (5) 96:17 100:25 105:6 110:4,5
52seater (1) 180:3
531 (2) 25:3,24
532 (1) 133:4
55 (2) 158:18 181:21
56 (1) 80:23
57 (2) 100:23 101:13
58 (2) 100:23 102:6
5mile (1) 85:11

6

6 (4) 33:12 52:14 120:18 121:22
60 (2) 89:24 111:16
610 (2) 185:8,10
66 (1) 176:16
67 (1) 112:13
68 (1) 112:5
69 (3) 113:17 130:7,13

7

7 (5) 12:14,25 99:20,25 122:8
70 (1) 88:1
71 (1) 76:21
715 (2) 159:19 160:23
72 (2) 161:6,8
73 (3) 105:16,18 140:21
74 (5) 27:20 76:17 105:16,18 140:21
77 (3) 26:22 27:2,3
7b (1) 13:1

8

8 (2) 30:8 120:5
80 (7) 87:6,14,17,23,25 89:21 112:24

9

9 (5) 3:9,12 145:13 157:11 176:16
90 (1) 112:24
91 (1) 26:5
911 (6) 111:21 114:16 116:12 118:23 119:25 129:25
947 (3) 164:5,8,14
951 (3) 157:2,5,13
959 (1) 1:2
97 (3) 117:1 119:25 122:13