

BUSINESS INTERRUPTION INSURANCE TEST CASE

DRAFT TRANSCRIPT

OF DAY 6 OF TRIAL (28 JULY 2020)

Pursuant to paragraph 30 of the court's order made on 26 June 2020, what follows is a **draft** transcript.

A final transcript will be published when it is available.

OPUS2

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

Day 6

July 28, 2020

Opus 2 - Official Court Reporters

Phone: +44 (0)20 3008 5900

Email: transcripts@opus2.com

Website: <https://www.opus2.com>

1 Tuesday, 28 July 2020
 2 (10.00 am)
 3 Submissions by MR GAISMAN (continued)
 4 LORD JUSTICE FLAUX: Yes, Mr Gaisman.
 5 MR GAISMAN: My Lords, a few concluding remarks on
 6 causation. I have limited time, as Mr Kealey has just
 7 reminded me.
 8 I don't need to spend any more time on the
 9 counterfactual. The position is set out in
 10 paragraph 330 and 332 of our skeleton and your Lordships
 11 have read it; your Lordships know where the battle lines
 12 are drawn. But the question I want to ask is this: what
 13 is actually the justification for the FCA's case?
 14 My learned friend Mr Kealey on Day 4 dealt with some
 15 of the purported justifications put forward, and I have
 16 a few supplementary points.
 17 The first one I am going to call the trade off. One
 18 question which the FCA has completely failed to grapple
 19 with is this: since these are composite perils, with
 20 several defined steps all of which have to be satisfied,
 21 including their causal relations, in other words, quite
 22 limited perils, why, objectively, would the parties have
 23 agreed carefully to circumscribe the insured peril as
 24 they have, only to throw away the rule book by allowing
 25 the causation exercise dramatically to widen it?

1

1 This question, as I say, is not even identified by
 2 FCA, let alone answered. At least, and to its credit,
 3 the Hiscox interveners see the need to proffer some
 4 justification. The trouble is it's no justification at
 5 all. In their skeleton at paragraph 90, {1/3/32} which
 6 I understand my Lord, Lord Justice Flaux may not be able
 7 to access, but -- I'm sorry, your Lordship's mute is on.
 8 LORD JUSTICE FLAUX: I've got it in hard copy.
 9 MR GAISMAN: I'm not sure your Lordship really needs it.
 10 What they say is, it won't take long:
 11 "That is the trade off the insurer must make in
 12 return for forcing the insured to prove a long chain of
 13 matters and the causal relationship between each of
 14 them. The insurer can ask the insured to prove many
 15 things but then, when considering whether 'but for'
 16 causation is established, those matters must all be
 17 stripped away in the counterfactual."
 18 With deference to my learned friend Mr Lynch and
 19 however often I re-read that short paragraph, I can
 20 discern the operation of no known legal principle to
 21 underpin or justify that suggestion.
 22 So much for the trade off. The next justification
 23 is alleged absurdity and I have dealt with this, because
 24 the charge that is made, it is an incorrect charge, is
 25 that the cover has no content if Hiscox is right.

2

1 Now I addressed this in my opening remarks. In the
 2 paradigm situation at which the clause is aimed, the
 3 restaurant closed as a result of food poisoning, the
 4 suicide in the adjacent building, there will be no
 5 difficulty in saying that the restrictions themselves
 6 were the cause of the loss, and the objection is simply
 7 chimerical.
 8 Then it is said, thirdly, that there is a problem of
 9 artificiality. Your Lordships again know the submission
 10 that I am going to make here.
 11 The insured peril is removed and, depending on the
 12 facts, that may lead to an artificial hypothetical. In
 13 a professional negligence case where the court, having
 14 anathematised the serial negligence and incompetence of
 15 the hapless solicitor or accountant, then reinvents the
 16 world in which, impossibly, one considers the
 17 counterfactual of him having competently done the very
 18 job which he has failed to do competently.
 19 That is simply an exercise of causation that is so
 20 natural that one hardly considers it. In a sense it's
 21 artificial. But as my learned friend Mr Kealey said,
 22 what could be more artificial than imagining a country
 23 without COVID or a world without COVID? Counterfactuals
 24 in one sense are always artificial, they require an
 25 artifice. They require one to imagine something that

3

1 never happened and, given what did happen, never could
 2 have happened. But in any event, if it is relevant, for
 3 reasons again which your Lordships are familiar with, we
 4 say that the counterfactual proposed by Hiscox is far
 5 from artificial; it happened in Sweden, it happened
 6 previously in the case of prior pandemics in the UK, and
 7 it might have happened here in relation to COVID-19 had
 8 Lord Sumption won the day in the public arena. We have
 9 dealt with these points in our joint skeleton on
 10 causation in paragraph 25.
 11 Now another alleged justification which I have dealt
 12 with in my opening remarks is the alleged difficulty of
 13 proof point and, again, I don't need to go back through
 14 it. Even if it were made out, it is no sufficient basis
 15 to rewrite contracts or ignore legal principle.
 16 But may I just dwell on one point, my Lords. Anyone
 17 who has had anything to do with business insurance knows
 18 how complicated it can be when it comes to
 19 quantification of indemnity. We gave a reference in
 20 footnote 364 to chapter 14 of Riley on Business
 21 Interruption Insurance; unhelpfully we didn't include
 22 the citation, and I am not asking your Lordships to look
 23 at it now because I haven't got time. It is {J/154/43}.
 24 What one sees, if one simply leafs through that
 25 chapter, which is called "Claims calculation" and the

4

1 ensuing chapter, "Claims, settlements and other
 2 considerations" is this is an area, especially with
 3 trends clauses, of inescapable complexity. But the
 4 various things which have to be taken into account on
 5 the trends clauses, even on my learned friend
 6 Mr Edelman's construction, statistical trends,
 7 comparison with budget, comparative performance,
 8 ie comparing the performance of other outlets,
 9 post-indemnity period trading, none of this is easy.
 10 But the point is that it completely undermines my
 11 learned friend Mr Edelman's argument that these are
 12 insureds with low limits who couldn't be expected to
 13 have gone to the trouble of appointing loss adjusters
 14 because the game wouldn't be worth the candle. That
 15 point is simply not available to him.
 16 But furthermore, can I just stress, which I know is
 17 code for repeat, something I said in my introductory
 18 remarks. These clauses, public authority clauses and
 19 the like, have been around for a long time and there is
 20 no evidence, there is no evidence that they have caused
 21 any particular difficulty and, with the greatest of
 22 respect to your Lordships, your Lordships are in no
 23 position to assume that they do.
 24 I have already argued that in the ordinary case
 25 there is no particular reason to suppose that they will.

1 Of course, if loss adjusters are appointed there will no
 2 doubt be the usual toing and froing and the reaching of
 3 a compromise, especially where there are low limits, but
 4 that is a fact of life in all sorts of insurance claims.
 5 None of this can change the meaning and the effect of
 6 the contracts.
 7 Thirdly and related to that, my Lords, the FCA
 8 approach, insofar as it justifies it at all, is entirely
 9 premised on this supposed difficulty of extricability.
 10 There is no factual or legal basis for this premise at
 11 all. Nobody has attempted in this trial or in this
 12 arena to do the exercise of working out what loss has
 13 been caused by what; it is not an issue in the action.
 14 It is therefore entirely without foundation to suppose
 15 that it will be of especial difficulty. There has been
 16 no evidence of the sort that Mr Justice Tomlinson heard
 17 in *The Silver Cloud*. And there are obvious ways in
 18 which one can approach the point: one looks at matters
 19 before restrictions were in place; one looks at what
 20 happens afterwards, that may well provide a guide; one
 21 may look at other countries such as Sweden, where the
 22 anecdotal evidence is that businesses didn't do much
 23 better than over here.
 24 Now, this is an extreme and unprecedented situation
 25 and it may be a situation where all or most of the loss

1 sustained by individual assureds with have been incurred
 2 anyway. But that is for a later date. What is for
 3 today is that there is no basis whatever for assuming
 4 that the enquiry as to what caused loss is so difficult
 5 that it's not worth embarking on. And I do ask your
 6 Lordships simply not to be influenced by such a concern,
 7 because there is no basis for it.
 8 Fourth and lastly under this heading, although it
 9 will depend on the facts, if an assured is able to prove
 10 the elements of the clause and to raise a prima facie
 11 case that its loss has been caused by the insured peril,
 12 as your Lordship finds it to be, then the evidential
 13 burden may shift to the insurer. And if one looks at
 14 the skeletons on the other side, they don't really deal
 15 with that point, they just say rather limply: that isn't
 16 going to make it any easier or the difficulties we
 17 pointed out -- non-existent difficulties -- aren't
 18 significantly mitigated by the fact that the burden of
 19 proof may be on the insurer. Why not?
 20 That brings me on --
 21 LORD JUSTICE FLAUX: Sorry, Mr Gaisman, in a very real sense
 22 I think you have put your finger on the point that has
 23 troubled me in relation to this whole causation debate,
 24 that normally causation is an issue which one would be
 25 exploring on given facts; facts that either were going

1 to be established at trial or had already been
 2 established. Because we are looking at this on issues
 3 of principle, in one sense, you know, it is difficult to
 4 engage in the causation exercise. It may be that the
 5 coverage issues that we have to address actually deal
 6 with many of these points in themselves, which I think
 7 is just another way of putting the same point as you
 8 were making a moment ago, which is that if any given
 9 assured actually makes good all the various elements of
 10 the insured peril in your case, then it may be that you
 11 reach a situation where prima facie a loss has been
 12 suffered and if the insurer wants to say that a loss
 13 hasn't been suffered for whatever reason, then the
 14 evidential burden shifts to the insurer. But that is
 15 all for another day.
 16 MR GAISMAN: My Lord, I didn't quite say that. What I said
 17 was that if the elements of the peril are established
 18 and the assured establishes a prima facie case that the
 19 loss was caused by those insured perils, then the burden
 20 to say, oh, something else, would have shifted,
 21 I certainly don't say that the burden is shifted to the
 22 insurer merely by the insured establishing the operation
 23 of an insured peril, because causation is always for the
 24 insured to prove.
 25 LORD JUSTICE FLAUX: I understand the point you're making.

1 MR GAISMAN: My Lord, it is the FCA in this case which is
 2 inviting what we have submitted, and I won't go back
 3 over it, is a radical departure from the normal approach
 4 to "but for" causation in the context of insurance, and
 5 that is, more than any other single issue, the issue
 6 which in a sense divides the parties.

7 I am sure Mr Edelman won't mind me saying
 8 that when the FCA first launched the idea of this test
 9 case, the causation issue was very much at the forefront
 10 of the things which it wanted to have resolved, as one
 11 can see from the framework agreement, where there are
 12 two fundamental issues which are identified as dividing
 13 the parties, one of which is the causation issue.

14 So I would certainly hope, whether we are right or
 15 wrong in the debate which Mr Kealey and I have been
 16 having with Mr Edelman over the last several days,
 17 I hope that your Lordships will feel able, as it were,
 18 to address those questions, because they are absolutely
 19 fundamental to the divisions that have arisen.
 20 Mr Edelman tendentiously calls them "road blocks", but
 21 that is just another way of saying they are issues
 22 between the parties. All we are saying about this is
 23 that causation in these cases is to be determined
 24 according to orthodox principles.

25 Mr Edelman, on behalf of the FCA, is inviting your

1 Lordships to undertake some unorthodox and heretical
 2 procedure and he has no justification for doing so, and
 3 it is the justifications that I am dealing with at the
 4 moment.

5 That takes me on almost to my last substantive
 6 topic, which is the question of divisible loss which
 7 I said I wanted to come back to. It is inherent,
 8 although implicit, in the FCA's case that everything is
 9 indivisible, that the different elements of loss cannot
 10 be separated. We say there is simply no warrant for
 11 treating the loss as indivisible as a matter of fact.
 12 Quite apart from anything else, there is no evidence
 13 that it is.

14 It can't simply be asserted, it would have to be
 15 proved. If my learned friend wants to argue that
 16 a particular legal result follows from a particular
 17 fact, the first thing he needs to do is to prove the
 18 fact.

19 Now, I mentioned in my opening remarks the case of
 20 Rahman v Arearose, {K/99/1} and it is instructive to
 21 spend a minute on that. That was a case, as your
 22 Lordships may remember, where a man was assaulted in
 23 a fast food restaurant and he suffered serious injuries.
 24 One of those injuries was to his eyes, and due to
 25 negligence in a subsequent hospital procedure he lost

1 the sight in that eye. He also developed complicated
 2 psychological disabilities. He sued both his employer
 3 and the hospital, and the question was which defendant
 4 was responsible for what.

5 It is instructive to go to paragraph 6 of the
 6 judgment on page {K/99/6}, where Lord Justice Laws sets
 7 out the trial judge, Mr Justice Rougier's findings.
 8 Your Lordship sees that between letters D and G. The
 9 detail doesn't matter, but what the learned judge,
 10 Mr Justice Rougier, says at G is this:

11 "The effects of the two separate incidents, [namely
 12 the incident in the fast food restaurant and the
 13 incident at the hospital] which have led to the
 14 condition I have outlined with entwined around each
 15 other like ivy strands round a tree. The court is faced
 16 with the daunting task of trying to disentangle various
 17 causes and effects and to determine at which door they
 18 are to be laid."

19 That being obviously a case of two wrongdoers.
 20 Mr Justice Rougier didn't give up, he reached an
 21 apportionment. The Court of Appeal disagreed with it,
 22 but reached its own apportionment. It is in that
 23 context that the line of Lord Justice Laws that we quote
 24 in our skeleton, at paragraph 19 of the judgment, the
 25 line that loss qualifies as indivisible only where there

1 is "simply no rational basis for an objective
 2 apportionment for objective responsible for the injury
 3 between the tortfeasors".

4 Therefore, indivisible loss is matter of last
 5 resort, and we are not in any such territory in this
 6 case.

7 Now, for example, it is perfectly possible to
 8 conceive, over an episode that has lasted already for
 9 several months, that different loss will be capable of
 10 being analysed as being caused by different things at
 11 different times. What could be more normal than that?

12 Now, my learned friend half recognises the
 13 possibility of some form of temporal division, because
 14 in the discussion with your Lordships on Day 3 about the
 15 approaching hurricane, he recognised that the reduction
 16 in turnover before the hurricane has finally hit is not
 17 insured, although he argued that it could somehow be
 18 recovered in different ways. All I think I need to do,
 19 whether that is in advance on the skeleton or not
 20 doesn't matter, but can I show your Lordship, the last
 21 thing I want to show your Lordship of my learned
 22 friend's skeleton is paragraph 276.1 is {1/1/108} in my
 23 learned friend's skeleton argument. 276.1.

24 Now, this is a most peculiar paragraph. I may well
 25 not have understood it. The language has that tortured

1 quality which is more eloquent than anything I could
 2 say, so this is by way of illustration. My learned
 3 friend says:
 4 "If, in a public authority clause, the trigger
 5 public authority action is preceded by a downturn or
 6 closure (eg due to voluntary behaviour or government
 7 advice [et cetera]) the government action ..."
 8 Then we have a (i) and a (ii), I'm not quite sure if
 9 they are the same thing or different things:
 10 "... (i) is the sole cause of any additional
 11 interference, interruption or loss not suffered prior to
 12 the action, but in any case [and one takes a deep breath
 13 here] (ii) takes over or encompasses/absorbs (as an
 14 interlinked and so not truly concurrent cause) the prior
 15 disease-related causes as the sole proximate and 'but
 16 for' cause of interference, interruption or loss."
 17 Now, I think I haven't really got time to do more
 18 than leave that paragraph with your Lordships, but
 19 either what is being said is that one ignores temporal
 20 divisibility and so the interruption has retrospective
 21 effect to cover the previous, as it were, approaching
 22 hurricane, or alternatively, as we interpret it, in
 23 a case where the necessary causal link between the
 24 public authority action and the interruption cannot be
 25 shown because the interruption preceded the public

13

1 authority action. But what the FCA is doing is
 2 retrospectively interposing a causal link which never
 3 existed. Either way, my Lords, the FCA is, with
 4 respect, in a world of its own.
 5 Two more topics, one of which --
 6 LORD JUSTICE FLAUX: Speaking for myself, Mr Gaisman, if the
 7 business has closed before the public authority action,
 8 I just don't understand how coverage gets off the ground
 9 at all, either as a matter of causation or in any other
 10 way, because the interruption simply is not caused by,
 11 doesn't follow or result from, or whatever the linking
 12 word is, any action of the public authority.
 13 MR JUSTICE BUTCHER: Mr Gaisman, you are on mute, so I have
 14 missed its last sentence at least.
 15 MR GAISMAN: Yes. But if one looks at (ii), what appears to
 16 being said is that once the interruption happens it sort
 17 of takes over. But even though -- I am not going to
 18 spend my precious last few minutes. There are some
 19 paragraphs which it is only necessary to read to
 20 your Lordship, even if they are in one's opponent's
 21 skeleton argument.
 22 Can I then say something very quickly about trends
 23 clauses. We have explained how these work in our
 24 skeleton argument, we have explained how they fit in
 25 with the general law, and we have explained in both that

14

1 and the joint skeleton how the Orient-Express is right
 2 both on the general law and the trends clauses, it
 3 having considered both.
 4 I have only got to mention I think, and only
 5 briefly, the FCA's big point on some of our trends
 6 clauses, it is in a minority of the wordings in fact, 14
 7 out of 40, which don't mention restrictions, but do
 8 mention damage.
 9 It is hard to think of a clearer case of what, in
 10 the high and far off times, we were allowed to call
 11 a *falsa demonstratio*, but I am going to pose a question
 12 that we pose in our skeleton at paragraph 397, for which
 13 I am still waiting for an answer from the FCA, and it is
 14 this: what possible reason could there be why the
 15 parties would have wanted the trends clause to apply
 16 differently to claims involving material damage and
 17 claims involving non-damage business interruption?
 18 Because unless there is an answer to that question, this
 19 is a non-point.
 20 To borrow a phrase of my learned friends, I would
 21 ask the FCA to consider its position, because these
 22 clauses can work both ways, and whilst the FCA submits
 23 in a fit of literalism that the clause doesn't apply to
 24 a non-damage case unless it mentions restriction, what
 25 will it say to an insured restaurant, in a paradigm case

15

1 in six months' time, that wishes to rely in its claim
 2 against one or other of the insurers on a clause which
 3 only mention damage, which wishes to rely upon the fact
 4 that it hired a star chef and business was rising by the
 5 week?
 6 This is a terrible point, and the fact that the same
 7 mistake occurs not only in some of our clauses but in
 8 those of several other insurers shows what a bad point
 9 it is.
 10 That is all I want to say about trends clauses; the
 11 whole position is set out in the skeleton.
 12 My Lord, that leaves me two minutes, which I am not
 13 going to occupy, on "solely and directly". As
 14 your Lordship knows, those words are in the stem.
 15 I made one submission about the relationship between the
 16 interruption and the loss, and there having to be
 17 a relationship of sole cause. There are other points
 18 and they are contained in our skeleton in paragraphs 421
 19 to 439. If one could imagine a situation in which your
 20 Lordships have nothing better to do, I would ask
 21 your Lordships to read those for yourselves.
 22 Thank you, my Lords.
 23 (10.28 am)
 24 LORD JUSTICE FLAUX: Thank you, Mr Gaisman.
 25 Who is next? Mr Kealey.

16

1 MR KEALEY: I'm afraid it is, my Lord, yes. Can your
 2 Lordships hear me?
 3 LORD JUSTICE FLAUX: Yes, thank you.
 4 (10.28 am)
 5 Submissions by MR KEALEY
 6 MR KEALEY: Good. My Lords, I can hear an echo. I think
 7 that's -- very well. Thank you, my Lord.
 8 As you know, I appear for the Ecclesiastical and for
 9 MSAmclin. My submissions are going to cover both of
 10 those insureds.
 11 Your Lordships already, of course, know that I have
 12 dealt in part with causation on behalf of all insurers,
 13 and I shall be making some separate submissions on
 14 causation in relation to both of my insurer clients.
 15 I am going to turn first to the Ecclesiastical, my
 16 Lords. For your bearing, as it were, if you could get
 17 your bearings, you need to look at our skeleton
 18 argument, which is in divider 12 {1/12/1}. We begin in
 19 relation to Ecclesiastical EIO at page {1/12/38}.
 20 I don't know if your screens are now working so you
 21 can see it online as it were, as well as on paper in
 22 writing.
 23 LORD JUSTICE FLAUX: Yes, they are now, thank you.
 24 MR KEALEY: At page 38 you will see the beginning of the
 25 wording, and it may be more convenient to turn to one of

1 these wordings which is in {B/4/1}.
 2 The loss of income section, my Lords, is at page 42.
 3 {B/4/42}. You will want to turn to page {B/4/45} for
 4 the relevant coverage provision. What you see there, my
 5 Lords, at the top of the page is that this is an
 6 extension:
 7 "The insurance by this section is extended to cover
 8 loss resulting from interruption of or interference with
 9 your usual activities as a result of the following."
 10 Then if you look at the left-hand column you will
 11 see "What is covered" and in the right-hand column "What
 12 is not covered".
 13 I should mention, my Lords, that in some of the
 14 policies what you find is that these columns don't
 15 appear, but what you find is what is covered is then
 16 followed by an exclusion, excluding that which appears
 17 on the right-hand side of this page. It is item 3, my
 18 Lords, "Prevention of access -- Non-damage". This
 19 covers:
 20 "Access to or use of the premises being prevented or
 21 hindered by
 22 "(a) any action of government, police or a local
 23 authority due to an emergency which could endanger human
 24 life or neighbouring property."
 25 If you look on the right-hand side of the page to

1 see what is not covered, you will see that item (iii),
 2 what is not covered, is:
 3 "Closure or restriction in the use of the premises
 4 due to the order or advice of the competent local
 5 authority as a result of an occurrence of an infectious
 6 disease (or the discovery of an organism resulting in or
 7 likely to result in the occurrence of an infectious
 8 disease) food poisoning, defective drains or other
 9 sanitary arrangements."
 10 So you have on the left that which is covered, and
 11 on the right that which is carved out of that which is
 12 covered.
 13 Now, for better or for worse, we have in our
 14 skeleton argument described clause 3 in the right-hand
 15 side as the infectious disease carve out. That is
 16 a misnomer because it doesn't just carve out infectious
 17 diseases, it carves out food poisoning, defective drains
 18 or other sanitary arrangements, and also closure or
 19 restriction in the premises due to vermin and a few on
 20 items as well. But I hope you will forgive us if we
 21 continue to use the term "infectious disease carve out".
 22 My Lords, the first point that we make is that you
 23 can't construe the left and the right-hand columns on
 24 their own, you also have to construe them in the context
 25 in which they appear in the contract. In this context

1 could I take you to {B/4/46}, where you have the
 2 specified disease, murder, food poisoning, defective
 3 sanitation and vermin coverage clause. If you have a
 4 look at the left-hand column of page 46, you will see
 5 that the specified diseases are identified.
 6 Now, most of those specified diseases, I should
 7 mention to your Lordship, are in the list of notifiable
 8 diseases scheduled to the Health Protection
 9 Notifications regulations of 2010; most of them, but not
 10 all of them. If I could tell your Lordships which are
 11 not, they are dysentery, legionellosis, leptospirosis,
 12 meningitis, although a form of meningitis is in the
 13 notifiable disease list attached to the regulations of
 14 2010, ophthalmia relapsing fever and viral hepatitis.
 15 All the rest, my Lords, are notifiable diseases in the
 16 list; and you will find that list, incidentally, at
 17 bundle {J/11/8}.
 18 The list also, my Lord, includes some diseases which
 19 are not included in the list attached to the notifiable
 20 diseases regulations; those include dysentery,
 21 meningitis, relapsing fever and scarlet fever.
 22 But if your Lordships turn to page {B/4/47}, in
 23 relation to specified diseases, and other matters, you
 24 will see what is covered. At the top of page 47 on the
 25 left-hand side column you will see that what is covered

1 is:
 2 "Any occurrence of a specified disease [as we have
 3 just seen] being contracted by a person at the premises
 4 or within a radius of 25 miles of the premises."
 5 Then if you could go just after (d):
 6 "Which causes restrictions in the use of the
 7 premises on the order or advice of the competent local
 8 authority."
 9 So we have in the specified disease clause,
 10 clause 6, a clause which provides coverage in respect of
 11 certain specified diseases in relation to occurrences
 12 contracted by persons not only at the premises but also
 13 within a radius of 25 miles of the premises.
 14 We also know that it is not just any occurrence
 15 which is covered, it has to be an occurrence, as the
 16 clause goes on to say, "which causes restrictions in the
 17 use of the premises on the order or advice of the
 18 competent local authority".
 19 Just so that you have it well in mind, those last
 20 words are not an exact but an almost exact echo of
 21 similar words in the infectious disease carve out at
 22 page {B/4/45}. Those last words were:
 23 "Which causes restrictions in the use of the
 24 premises on the order or advice of the competent local
 25 authority."

21

1 And the words at page 45 in clause 3 are:
 2 "Closure or restriction in the use of the premises
 3 due to the order or advice of the competent local
 4 authority as a result of an occurrence of an infectious
 5 disease ..." et cetera.
 6 There is a clear echo, as it were, between the
 7 infectious disease carve out and clause 6, the specified
 8 disease clause.
 9 Now turning back to the prevention of access -
 10 non-damage clause, my Lords, I should just tell you that
 11 the ordinary principles of construction apply. You
 12 don't treat the clause which is under the heading "What
 13 is not covered" or even if it were to be described as an
 14 exclusion clause, you don't treat that clause as an
 15 exemption clause, exempting an insurer from liability
 16 for negligence or something like that. The clause on
 17 the right, under the column on the right, is there, as
 18 much as is the clause on the left, to define and
 19 circumscribe the scope of the coverage under the policy.
 20 LORD JUSTICE FLAUX: Delineation of cover.
 21 MR KEALEY: Delineation of cover. I am not going to take
 22 your Lordship to the cases because time doesn't permit,
 23 but Impact Funding, Lords Hodge and Toulson, {J/132/7},
 24 and you will see an excellent analysis by Mr Peter
 25 MacDonald Eggers, sitting as a Deputy High Court Judge

22

1 in Crowden v QBE, which is at {J/135/13}, paragraphs 63
 2 to 65. Delineation of cover.
 3 Now, the Ecclesiastical says, relying upon the
 4 column of what is not covered in conjunction with the
 5 specified disease clause, that that which has been
 6 carved out is closure or restriction in the use of the
 7 premises due to the order and advice of the competent
 8 local authority where the words "competent local
 9 authority" in that context, and also in the context of
 10 clause 6, means the authority with competence in the
 11 relevant locality.
 12 We say that for a variety of what we consider, in
 13 our respectful submission, to be very good reasons. But
 14 before going there I should mention that the FCA
 15 suggests that our preferred meaning is, in their words,
 16 very challenging". That is in the FCA skeleton at
 17 paragraph 531, which is {1/1/185}.
 18 But in our respectful submission, the challenge that
 19 Ecclesiastical faces is more apparent than real. That
 20 doesn't make it not challenging, but it is a challenge
 21 which is and readily should be overcome. We say this
 22 for the following very simple reasons.
 23 First, it is perfectly obvious that there was an
 24 infectious disease carve out from the prevention of
 25 access coverage, and the types of infectious diseases to

23

1 be carved out were unrestricted; they were any and all
 2 infectious diseases. It is also apparent that there is
 3 a clear connection between the infectious disease carve
 4 out in clause 3 and the specified disease coverage in
 5 clause 6.
 6 Clause 6, as I have mentioned before, contains an
 7 almost but not quite verbatim rendition of the same
 8 words in the infectious disease carve out: closure or
 9 restriction in the use of the premises due to the order
 10 or advice of the competent local authority. So it is
 11 apparent that it was recognised that the coverage
 12 provision in clause 3 was wide enough, unless
 13 qualified, to include access to or use of premises being
 14 prevented or hindered by action due to any infectious
 15 disease emergency.
 16 But it is, we say, clearly to be implied that:
 17 firstly, there was no wish on Ecclesiastical's part to
 18 provide such wide infectious disease coverage, hence the
 19 carve out; and secondly, that there was a wish and
 20 intention on the part of Ecclesiastical to provide some
 21 infectious disease cover, but limited to those diseases
 22 identified in clause 6 and within the circumscriptions
 23 provided by clause 6, for example, the 25-mile radius
 24 limit.
 25 Before going further into the detail, we would

24

1 suggest to your Lordships that these clauses should be
2 construed against the relevant legal background.
3 I don't think that that should be too controversial
4 a submission, but I am afraid it has proved to be so.
5 Therefore, I am going to make it good with some very
6 short references, my Lord.

7 Firstly, if one goes to Lewison at {K/202/20} you
8 will see the first substantive paragraph under the
9 heading "6. The Legal Background", what should be
10 a relatively uncontroversial observation:

11 "Parties do not make contracts in a legal vacuum.
12 They always negotiate against the background of law. It
13 is, therefore, reason to suppose that they take into
14 account the general law in reaching their ultimate
15 consensus. And, accordingly, the proper interpretation
16 of their agreement is properly influenced by the legal
17 background against which it is made."

18 Now, that is a question of negotiated contracts, but
19 it is a proposition that applies equally to contracts of
20 insurance which might not specifically have been
21 negotiated, and it is perfectly sufficient as a matter
22 of legal principle that the legislative background was
23 reasonably available to the parties.

24 If you go on to page {K/202/26}, the first main
25 paragraph at the top which says:

25

1 "It is not considered that proof of actual knowledge
2 of the parties is necessary in all cases. Where the
3 legal background in question is English law, it is
4 considered that the principles of English law, if not
5 actually known to the parties, would at least have been
6 reasonably available to them."

7 That is of course, my Lords, consistent with the
8 principle that the factual matrix includes all the
9 relevant and admissible background that was known or
10 reasonably available to be known to the contracting
11 parties. Your Lordships only need to be referred to
12 paragraph 56.4 of the Ecclesiastical skeleton at
13 {1/12/43}. You don't have to go there.

14 But one thing is certain, contrary to what the FCA
15 says in its trial skeleton at paragraph 535.3 {1/1/186},
16 what is certain is that Ecclesiastical does not have to
17 show that the legislative framework was actually known
18 by the insurer or by the average insured. That's what
19 the FCA suggests at paragraph 535.3., and that is wrong
20 as a matter of legal principle.

21 Now it is of course a fortiori, my Lords, that the
22 legal background will include the legislative
23 background. In fact, we would respectfully suggest that
24 the legislative background is much more part of the
25 acceptable and acknowledged factual matrix than perhaps

26

1 legal decisions, which may or may not be very well
2 established. But the legislative background and the
3 legislation of this country, that is to say
4 England and Wales for present purposes, is something
5 which is readily accessible and therefore readily known
6 or deemed to be known to the parties.

7 Your Lordships can see that from a very simple case
8 in {K/137/1}. It is a case called Doleman v Shaw. I am
9 not going to take this overlong, my Lords. You can have
10 a look at the headnote because it is particularly easily
11 read. If your Lordships could read the first paragraph
12 of the headnote, and take into account that the judge at
13 first instance held that the guarantee in question fell
14 to be construed in the context of the Insolvency Act
15 1986. (Pause)

16 So this is a case of a guarantee in relation to the
17 assignment of a tenancy of a shop. If your Lordships
18 could turn to the judgment of Lord Justice Elias at
19 page 12 of the bundle {K/137/12}, page 1186 of the
20 report, at paragraph 55, you will see there it says:

21 "Mr Fancourt QC, counsel for the landlord, contends
22 that in the context of the guarantee agreement, the
23 assignee must be deemed still to be bound by the
24 tenant's covenants even though he was not so bound in
25 fact. The guarantor is liable as though the assignee

27

1 were bound. That is the effect of section 178(4) of the
2 Insolvency Act as construed in the Hindcastle case by
3 Lord Nicholls."

4 Then going to the next paragraph -- well, one should
5 go on:

6 "It is of course open to the parties to limit the
7 guarantor's liability so as to terminate on disclaimer,
8 but very clear words are necessary to achieve that
9 objective. Insolvency or bankruptcy are precisely the
10 circumstances when the guarantee is likely to become
11 operative.

12 Then 56:

13 "When construing the guarantee agreement, the words
14 used must be read in the context of the common law and
15 the statutory background with the consequences that the
16 liabilities of the assignee are deemed to continue even
17 though they do not continue in fact."

18 So it was against the context of the Insolvency Act
19 that the legal liability of the guarantor was evaluated
20 and ascertained.

21 So what is the position of the legislative
22 background in this case, involving Ecclesiastical and
23 infectious diseases?

24 Now, I don't have the time to go through it all, but
25 it is set out in detail in our skeleton at paragraphs 59

28

1 to 69; that is {1/12/44} to 53. But there are one or
 2 two matters that I need to take your Lordships
 3 specifically to. Perhaps the most significant in this
 4 context is the Civil Contingencies Act of 2004, and you
 5 will find that in {J/8/1}.

6 As you look at that Act, my Lords, can I just remind
 7 you that the infectious disease carve out is a carve out
 8 to a clause, that is at {B/4/45}, which talks about:
 9 "Access to or use of the premises being prevented or
 10 hindered by
 11 "Any action of government, police or a local
 12 authority due to an emergency which could endanger human
 13 life or neighbouring property."

14 If you go to the Civil Contingencies Act 2004, to
 15 page 1, you will see straightaway that in relation to
 16 local arrangements for civil protection -- not directly
 17 relevant, but it doesn't matter -- the meaning of
 18 "emergency" means an event or situation which threatens
 19 serious damage to human welfare in a place in the United
 20 Kingdom.

21 Then subparagraph 2:
 22 "For the purposes of subsection 1(a), an event or
 23 situation threatens damage to human welfare only if it
 24 involves causes or may cause loss of human life, human
 25 illness or injury."

1 Likewise, if you go to part 2, which is the most
 2 relevant part, at page {J/8/12}, you will see at
 3 section 19 exactly the same relevant definition, or
 4 almost exactly the same relevant definition, of an
 5 emergency.

6 But in this context what I need to draw to your
 7 attention is section 20, {J/8/13} "Power to make
 8 emergency regulations". Firstly, subsection (1):
 9 "Her Majesty may by order in council make emergency
 10 regulations if satisfied that the condition of
 11 section 21 are satisfied."

12 A senior minister of the Crown may similarly do so,
 13 my Lords, and that includes the Prime Minister and any
 14 of Her Majesty's principal secretaries of State; that is
 15 in subsection (3).

16 Regulations under subsection (5) must be prefaced by
 17 a statement by the person making the regulations:
 18 "(a) specifying the nature of the emergency in
 19 respect of which the regulations are made, and.
 20 "(b) declaring that the person making the
 21 regulations ...
 22 "(ii) is satisfied that the regulations contain only
 23 provision which is appropriate for the purpose of
 24 preventing, controlling or mitigating an aspect or
 25 effect of the emergency in respect of which the

1 regulations are made."
 2 Then turning the page {J/8/14} the conditions are
 3 set out in section 21 and the scope of the emergency
 4 regulations are set out in section 22.
 5 If one looks at sub-section (2):
 6 "... emergency regulations may make any provision
 7 which the person making the regulations is satisfied is
 8 appropriate for the purpose of:
 9 "(a) protecting human life, health or safety .
 10 "(b) treating human illness or injury ."
 11 Further, my Lords, under the Public Health (Control
 12 of Disease) Act 1984, section 45C, the relevant minister
 13 may by regulations make provisions to protect against,
 14 control or provide a public health response to the
 15 instance or spread of infection. If your Lordships
 16 could be taken to {J/5.1/15} you will see at
 17 section 45C.
 18 (1) The appropriate minister may by regulations make
 19 provision for the purpose of preventing, protecting
 20 against, controlling or providing a public health
 21 response to the incidence or spread of infection or
 22 contamination in England and Wales ...
 23 (2) The power ... may be exercised:
 24 "(a) in relation to infection or contamination
 25 generally or in relation to particular forms of

1 infection or contamination, and
 2 (b) so as to make provision of a general nature, to
 3 make contingent provision or to make specific provision
 4 in response to a particular set of circumstances."
 5 Now it is apparent, my Lords, from that
 6 legislation -- that is the 1984 Act and I'm not going to
 7 take you through it, you can see it at paragraph 67.4 of
 8 our skeleton -- that the architecture of the legislation
 9 contemplates action by central government, local
 10 government and other authorised persons, for example
 11 Justices of the Peace.

12 As our skeleton indicates at paragraph 95.3, the
 13 legal background shows, firstly, it has never been the
 14 case that the only authority competent to act in
 15 relation to public health protection, including in
 16 relation to infectious diseases, is a local government
 17 authority. Secondly, the power to make the most
 18 intrusive and invasive orders in fact lies with the
 19 courts, particularly magistrates, And thirdly, central
 20 government has always been an authority with competence
 21 to act in relation to local and indeed wider public
 22 health matters and national public health matters.
 23 My Lords, there is no dispute between the parties
 24 that this is the effect of the legislative framework.
 25 I refer your Lordships, you needn't look it up, to

1 transcript {Day3/145:4} to line 5. Your Lordships can
 2 also see the reply, that is the FCA's reply, at
 3 paragraph 55, which is in {A/14/28}.

4 So what we say is that at the time of this contract
 5 being entered into the parties are to be taken as having
 6 had reasonably available to them the legislative
 7 framework to which I have just referred. Firstly,
 8 because that is necessary to understand which
 9 authorities were competent to issue orders or advice as
 10 a result of the occurrence of infectious disease, and
 11 therefore what the policy meant by "competent local
 12 authority"; and secondly, because obviously an
 13 understanding of the statutory framework was vital to
 14 understanding what cover was provided under clause 6 and
 15 what cover was being carved out under the infectious
 16 disease carve out in clause 3.

17 MR JUSTICE BUTCHER: I am no doubt being slow, Mr Kealey,
 18 but why doesn't the carve out just say "the competent
 19 authority", why does it say "the competent local
 20 authority"?

21 MR KEALEY: It could have said the "competent authority",
 22 I accept. I think what it was doing, my Lord, was
 23 identifying the authority which had jurisdiction in the
 24 locality, wherever that was and however extensive it
 25 was, in the locality where there was an infectious

33

1 disease. But it could have said, you are absolutely
 2 right, my Lord, it could have said "the competent
 3 authority". Equally, my Lord, it could have said "the
 4 local authority". It didn't have to have the word
 5 "competent" there at all. What we would ask
 6 your Lordship to do is enquire of yourself, what is the
 7 purpose of the additional adjectival qualification of
 8 "competent"? Why was the word "competent" added?

9 If I might answer that straightaway before going on
 10 to something else, if I could add that straightaway, if
 11 you look at the left-hand column what you find is
 12 a variety of authorities; you have got the government,
 13 you have got the police and you have got a local, a
 14 local authority, with an indefinite article.

15 So why do you have "the competent local authority"
 16 in the right-hand column? Well, the reason why you have
 17 the definite article "the", the reason why you have the
 18 adjectival qualification "competent", and the reason why
 19 you have those two grammatical qualifications to a local
 20 authority is because you are not confining yourself to
 21 either the government or the police or local authority,
 22 it is whatever is the competent local authority. It is
 23 not necessarily confined to those three entities or
 24 forms of authority in the left-hand column; it is
 25 whatever it is which is the competent local authority.

34

1 But your Lordship's question is entirely apt. Why
 2 didn't it say "the competent authority"? It would make
 3 my task much easier had it done so. Regrettably, or not
 4 regrettably, depending on one's perspective, it didn't
 5 say that. But what it did say was "the competent local
 6 authority" and that is exactly, and this is the reason
 7 why clause 6 is so important, that is exactly the same
 8 phraseology as in clause 6.

9 LORD JUSTICE FLAUX: Just following the point through,
 10 Mr Kealey. If COVID-19 was a specified disease in
 11 clause 6, you would accept that the restrictions which
 12 are being imposed by the government, for example closing
 13 churches, would fall within the definition "restrictions
 14 in the use of the premises on the order or advice of the
 15 competent local authority". Because, in context, the
 16 authority which was competent to impose such
 17 restrictions in the locality was the government.

18 MR KEALEY: I would. And I would go further, my Lord. Let
 19 us just say that COVID-19 had been mentioned in
 20 clause 6. Let's say --

21 LORD JUSTICE FLAUX: The irony is, of course, the FCA will
 22 be arguing like Billy-o that the government was
 23 a competent local authority.

24 MR KEALEY: They might or might not. They have hedged their
 25 bets here, and I am going to cover that in a second,

35

1 about. But you are absolutely right.

2 Let us just say that some insured in Leicester made
 3 a claim under this policy, with COVID-19 being one of
 4 the infectious diseases. I wonder what the FCA would
 5 say if my clients, the Ecclesiastical, said: ha, too
 6 bad, I'm afraid the central government is not the
 7 competent local authority. The regulations that apply
 8 to Leicester which have just been made don't give you
 9 any coverage at all, because those were central
 10 government regulations so "tant pis", as they say in
 11 Swaziland or wherever.

12 Now, the first person who might say that that simply
 13 is wholly inappropriate would, in our respectful
 14 submission, be the FCA. In fact, the Financial
 15 Ombudsman may say: come on, give us a break here. And
 16 no doubt some person would come along and say: well,
 17 what does "the competent local authority" mean in that
 18 context.

19 In my respectful submission, what it means is when
 20 you have a list of infectious diseases, and I am going
 21 to come on to the fact that some of them were notifiable
 22 diseases, but when you have a list of infectious
 23 diseases and you know that regulations can be made and
 24 restrictions can be imposed and closures can be
 25 enforced, by a whole variety of competent authorities,

36

1 including local government but not exclusive to local
2 government, someone will say in relation to clause 6,
3 "Well, that must include a Justice of the Peace or
4 a magistrate, it must include a Crown Court on appeal
5 from a magistrate, it might even include the High Court
6 in London by way of case stated on appeal from a Crown
7 Court, and why on earth wouldn't it include the
8 appropriate minister?" Is really the insured's coverage
9 under clause 6 going to be really dependent upon whether
10 the closure or restriction came from some bureaucrat in,
11 say, the middle of Leicester as opposed to some
12 government minister in London? And the poor old insured
13 would say, "My goodness me, why didn't the minister look
14 at my policy and direct someone in Leicester to do it
15 instead of doing it himself?" Or herself, as the case
16 may be.

17 So we do say, my Lord, that clause 6, which does
18 echo, as we have said, restrictions in the use of the
19 premises on the order or advice of the competent local
20 authority, clause 6, which is a clause not very much
21 dealt with by the FCA, they don't dwell on it too much,
22 they dwell it on a tiny little bit but not very much at
23 all, clause 6 in a sense is vital to understanding
24 clause 1.

25 As soon as one identifies the, as it were,

37

1 unfairness in clause 6 of confining the competent local
2 authority to some local executive, as soon as one
3 identifies that unfairness, one realises that what
4 happened, in our respectful submission, is that one has
5 a broad phrase "causing restriction on the use of the
6 premises on the order or advice of the competent local
7 authority", a broad phrase in clause 6 which is almost
8 a mirror image of the carve out in clause 1, are, in our
9 respectful submission, intended to mirror each other.
10 In other words, that which is carved out of clause 1 is
11 intended to be mitigated by that which is included in
12 clause 6.

13 What one finds is that in a different context or in
14 the context of other disease clauses the phrase
15 "competent local authority" seemingly is accepted by the
16 FCA as including central government. Not in the case of
17 the Ecclesiastical, but in other cases.

18 So, for example, if you go to paragraph 44.5 of the
19 amended points of claim or particulars of claim, or
20 whatever they are to be described as nowadays, at
21 {A/2/29}, and you go there to paragraph 44.5 -- if we
22 start at the beginning of 44:

23 "All of the advice, instructions and regulations
24 referred to above in paragraph 18 above were actions of
25 the UK Government and accordingly were ...

38

1 "44.5 not of themselves orders or advice of
2 a competent local authority for the purposes of (but
3 only for the purposes of) the exclusion in
4 Ecclesiastical 1.1 and 1.2, where the words 'competent
5 local authority' are used in the exclusion in the
6 context of a clause addressing action of 'government,
7 police or a local authority'. That contextual
8 construction does not dictate the meaning of a similar
9 or the same phrase when used in denial of access cover
10 clauses in Arch1 ('local authority') and MSAm1in1, RSA4,
11 and Zurich1-2 ('competent local authority')."

12 If you were to go for example to Amlin1 --
13 MR JUSTICE BUTCHER: That is actually a fair point, isn't
14 it? It is one of the difficulties of looking at lots of
15 different policies. But here the point against you is
16 based simply on the fact that the terms of 3(a) use the
17 word "local authority" and so does the carve out. That
18 is the point.

19 MR KEALEY: Yes. That is absolutely right. I would have
20 greater sympathy for that approach and your Lordship's
21 question if the carve out had said "the advice of the
22 local authority". Why did it have to say "the competent
23 local authority"? Why didn't it say "a local
24 authority"? So in fact, whilst I obviously take the
25 point, I am not a complete fool sometimes and I do

39

1 actually see the force of the submissions against me.
2 Whilst I ask myself, I say to myself, well, if there was
3 intended to be a reference in the carve out to exactly
4 that which appears in the coverage, then it would say
5 "closure or restriction in the use of the premises due
6 to the order or advice of a local authority". That's
7 what you would actually find.

8 So whilst of course I understand the tension that
9 your Lordship has just drawn my attention to, for the
10 very first time, I would actually say that that tension
11 is, as I have said originally, more apparent than real.

12 LORD JUSTICE FLAUX: In a sense I understand your answer to
13 my Lord's question, but another way of putting it would
14 be to say that last sentence of 44.5, if it were the
15 case, going back to the point I was putting to you, that
16 COVID was a specified disease in clause 6 of the
17 Ecclesiastical policy, the FCA would be saying that list
18 of policies using the words "competent local authority"
19 would include Ecclesiastical on 1.1 and 1.2.

20 MR KEALEY: Yes, it would.

21 LORD JUSTICE FLAUX: And you would say, or you do say, if
22 "competent local authority" in clause 6 must include,
23 for example, magistrates or a government minister or
24 whoever imposes the relevant restrictions, then those
25 words "competent local authority" must or should at

40

1 least mean the same in the carve out in clause 3.
 2 A fortiori if what we are dealing with is delineation of
 3 cover rather than exclusion .
 4 MR KEALEY: That is exactly right, my Lord. It is very
 5 difficult to improve on the point.
 6 LORD JUSTICE FLAUX: Yes. It is actually a short point,
 7 really .
 8 MR KEALEY: It is a very short point. It is very difficult
 9 for the FCA to improve on its point as well, in the
 10 sense that you just look at both columns and you say: oh
 11 my goodness me, impressionistically that is not the
 12 government or the police .
 13 LORD JUSTICE FLAUX: It is very badly drafted, with respect .
 14 MR KEALEY: It is.
 15 Can I just make one or two points before moving on,
 16 because you are either, as it were, I hope persuaded or,
 17 if I am unlucky, unpersuaded. But Mr Edelman or the FCA
 18 mentioned in his submissions that Ecclesiastical
 19 clause 6 is confined to local diseases and local
 20 outbreaks of disease. Now, I am not going to get into
 21 that very much, because when I look at the plague, for
 22 example, and measles and rather nasty things which
 23 appear in the specified disease list, it may be that
 24 they might be confined and it may be, for some reason or
 25 another, there are an awful lots of rats, we seem to

41

1 have a lots of rats in this case, but there are an awful
 2 lot of itinerant rats and their fleas, which may go way
 3 beyond 25 miles, I have absolutely no idea. But what
 4 Mr Edelman also said at {Day3/146:1} to page 148 -- and
 5 it is probably worth having a quick look at that.
 6 If you go to page 146 first, he firstly, at line 7,
 7 agreed with an observation by my Lord
 8 Lord Justice Flaux, that the carve out covers a whole
 9 lot of more local things like food poisoning, defective
 10 drains and other sanitary arrangements. Pausing there,
 11 your Lordships probably now have quite a lot of
 12 experience of these clauses, and what you find is that
 13 infectious disease clauses are commonly included with
 14 suicide, murder, sanitary arrangements and a whole lot
 15 of unsavoury things like that, so you shouldn't in any
 16 way be influenced or badly influenced by that.
 17 Then he goes on at line 17:
 18 "If you had a clause which had 'competent local
 19 authority' and a 25-mile radius in the insuring clause,
 20 then you might say: oh well, does that really mean
 21 'local' ?
 22 Well, that is what you have got in clause 6,
 23 my Lord. So I would in fact ask myself: does that
 24 really mean "local". He goes on to say:
 25 "So I am making it clear that this is purely

42

1 contextual for this exclusion in this particular policy .
 2 Other policies, where it is in the insuring clause,
 3 a different context may have a different meaning,
 4 because Mr Kealey is right about the authorities that
 5 can deal with disease ."
 6 Then he says:
 7 "There is really no clue to it being different .
 8 I know he relies heavily on extension 6, but one has to
 9 look to see whether a reasonable reader of 3 would think
 10 that it meant something fundamentally different from
 11 what it appears to say. And 6, it has got diseases, but
 12 if you are now assuming a reader with intimate knowledge
 13 of all the public health legislation, you would think:
 14 yes, well these correspond to the notifiable diseases
 15 list, but hang on a minute, what is the most recent
 16 epidemic disease of a type that could, if it resurrupted
 17 itself, spread across the country, it's SARS. And it's
 18 not there.
 19 "I'm not saying that it would be conclusive, but
 20 there is nothing here that drags you into saying that
 21 it's not local. If the list was unspecified in 6 and it
 22 was an insuring clause, one might say -- and that was
 23 a unitary clause, only dealing with disease, then you
 24 might say: if it is only purporting to cover notifiable
 25 disease and it's not limiting it, well maybe it could

43

1 extend to something else. But that is not what we have
 2 here. We don't even have in the exclusion to the
 3 extension 3, we don't even have a reference to
 4 "notifiable disease" ..."
 5 Then if you go to page 148 at line 8, {Day3/148:8}:
 6 "What I was saying was if you have a notifiable
 7 disease, an unspecified notifiable disease list, and
 8 25 miles and this, it might be open to it."
 9 In other words, if you had in clause 6 an
 10 unspecified notifiable disease clause, then you might
 11 say that the competent local authority being referred to
 12 there was not confined to local government. But
 13 actually, in the specified disease list we have
 14 a multitude of notifiable diseases which are on the 2010
 15 regulations list, we have also a variety of other
 16 diseases which are not. And Mr Edelman is absolutely
 17 right, we don't have SARS, no doubt because
 18 Ecclesiastical didn't want to insure against SARS. But
 19 that is its choice and it might be said, well, it has
 20 made its bed, it must now lie on it .
 21 But what we are saying in relation to clause 6,
 22 my Lord, is that clause 6 is not confined, other than by
 23 reason of the 25-mile restriction, to something which is
 24 necessarily local. Of course the 25-mile restriction is
 25 terribly important, in another context. That is the

44

1 first thing.
 2 Secondly, even if it were confined to local or
 3 locality, it may be hindsight but hindsight is sometimes
 4 a very useful indication of what could have been
 5 contemplated at the time, just look at Leicester, central
 6 government can make any variety of fairly draconian orders in a
 7 locality within 25 miles or smaller.
 8
 9 LORD JUSTICE FLAUX: If there were an outbreak of a plague,
 10 one might expect that central government would be
 11 involved with, let alone some of these other diseases.
 12 We had this debate at the second case management
 13 conference, and Mr Edelman is right that some of these
 14 diseases would be unlikely to lead to as it were
 15 widespread outbreaks. Legionnaires' disease is
 16 a classic example; that is likely to be localised, isn't
 17 it? But some of the others at least have the potential
 18 to lead to quite serious outbreaks, and we know that,
 19 for example, from measles and mumps, let alone anything
 20 else. I mean, I don't know about scarlet fever. TB, if
 21 there were a serious outbreak of TB somewhere in the
 22 North of England, say, that is something one would
 23 expect to be dealt with not by the local council
 24 necessarily but by central government.
 25 MR KEALEY: What I can say is that one can reasonably expect

45

1 that it won't necessarily be confined to local
 2 government.
 3 LORD JUSTICE FLAUX: That's your point.
 4 MR KEALEY: So I can't positively say that central
 5 government will be involved, but it might be
 6 a dereliction of duty on the part of the
 7 Secretary of State for Health, Mr Hancock, if the plague
 8 broke out in Newcastle and if he rang up the head of the
 9 council in Newcastle and said, "Oh well, you're probably
 10 a member of the Labour Party, I will let you get on with
 11 it and see how well you do". I suspect Mr Hancock would
 12 say, "This is really quite serious, I am going to send
 13 people up there and I am going to take a personal
 14 interest". If he didn't, I am sure that The Guardian
 15 would tell him off.
 16 LORD JUSTICE FLAUX: Is that a convenient moment, Mr Kealey?
 17 MR KEALEY: Yes, it is, my Lord.
 18 LORD JUSTICE FLAUX: Ten minutes.
 19 (11.20 am)
 20 (Short break)
 21 (11.30 am)
 22 MR KEALEY: My Lord, many thanks.
 23 I am going to go on to causation in relation to
 24 Ecclesiastical, if I may. I have dealt with the
 25 application, in our respectful submission, of the

46

1 exclusion or the disease carve out, but before I go on
 2 to causation, my Lord, there is one matter I need to
 3 address arising from my submissions on Thursday.
 4 I have a concern that in the course of my
 5 submissions in relation particularly to the
 6 Orient-Express, I might have suggested that Mr Edelman
 7 was somehow deliberately misleading the court in some of
 8 his submissions on the insured peril, and I am concerned
 9 about that. That certainly was not my intention.
 10 I have looked at the transcript --
 11 LORD JUSTICE FLAUX: I didn't pick up any such sense at all.
 12 MR KEALEY: Good.
 13 LORD JUSTICE FLAUX: I am pretty certain that (a) I don't
 14 think you would have dreamt of saying anything of the
 15 kind and (b) if you had, I am sure one or other of us
 16 would have picked it up and upbraided you. So I don't
 17 think you need have a concern about that. And if
 18 concern has been expressed by others, then any fears can
 19 be allayed by the fact the court doesn't -- I can't
 20 speak for my Lord, but I am sure he would agree with me.
 21 MR JUSTICE BUTCHER: I certainly didn't understand that you
 22 were making any such suggestion.
 23 MR KEALEY: Good. I'm very grateful, my Lords.
 24 I will continue with causation. My Lords, last week
 25 I explained, on Thursday, how one reverses only the

47

1 causal chain that embodies the insured peril, and in the
 2 rat example I explained one doesn't reverse the rats for
 3 all intents and purposes, you only reverse the closure
 4 as caused by government action as caused by rats. And
 5 you certainly don't reverse the rats insofar as they
 6 feature in a different causal chain; and that is because
 7 a different combination in which the rats feature may
 8 exist and may cause loss, and the loss caused by that
 9 combination is not covered. So you distinguish between
 10 the loss caused by one combination and compare it with
 11 the loss caused by another combination.
 12 If one looks at the EIO wording, my Lords, the only
 13 combination to be reversed is loss caused by prevention
 14 or hindrance of access or use, as caused by action of
 15 government, police or local authority, as caused by the
 16 emergency. No other combination featuring the emergency
 17 is to be reversed.
 18 If I could take you very briefly to paragraph 71 to
 19 paragraph 80 of the Ecclesiastical's skeleton, which is
 20 in {1/12/54}. I am not going to read all of this out,
 21 of course, but I will ask your Lordships to bear in mind
 22 some very important paragraphs.
 23 At 71, we have broken down the clause into its
 24 constituent elements. You will see that there are three
 25 critical elements. And we say in 72 that the scope of

48

1 the cover and what triggers the cover is to be discerned
2 by a process of construing the clause, and you have to
3 identify the specific role performed by each phrase
4 within the clause, having regard to its relationship
5 with every other.

6 Then what you find at 75 -- I think this was
7 criticised by Mr Edelman, because we talk about the
8 essence of the insured peril; we don't in any way
9 apologise, because it is the essence of the insured
10 peril -- is:

11 "... access prevention [as defined] where that has
12 occurred by the specified reason (viz by reason of the
13 action of government etc) in specified circumstances
14 (viz due to an emergency etc)."

15 So we say that the interrelationship and the
16 connections between the different parts of the clause
17 are very straightforward.

18 This is a point that Mr Gaisman made, I think, that
19 you look at the clause, and each part essentially
20 narrows the clause as it goes along. So for example,
21 phrase 1 requires access prevention, but it is not every
22 access prevention which qualifies for cover. Phrase 2
23 defines and qualifies phrase 1, in that it is only
24 prevention or hindrance of access or use which is by
25 reason of action of government that can trigger the

49

1 clause. But it is not all action of government which
2 counts; phrase 3 has been included to qualify and define
3 the type of phase 2 action. So it is not just any
4 action of government, police or local authority, it has
5 to be action due to an emergency which could endanger
6 human life or neighbouring property. We give an
7 example, and I needn't go to that now.

8 At 77 we say, in a paragraph which has attracted
9 criticism by the FCA, or by Mr Edelman, {1/12/56}, we
10 say:

11 "... the scheme of the clause is tolerably clear.
12 The essence of the insured peril is stated at the outset
13 of the clause (viz access prevention, et cetera ...) but
14 the remainder of the clause serves to ..."

15 He didn't like all of these verbs. He doesn't like
16 the fact that I am a vocabularist by nature, but it:

17 "... serve to define, refine, qualify and restrict
18 the type of access prevention etc which qualifies ..."

19 In fact, my Lords, if one looks at all those four
20 verbs, they are all apposite and they don't completely
21 all overlap, so they are totally appropriate.

22 So starting again, it is access prevention; but
23 it is not just any old access prevention, it is access
24 prevention due to action of government; but it is not
25 any old action of government, it is action of government

50

1 due to an emergency. So definition, refinement,
2 qualification and restriction.

3 If you go to paragraph 79, there is what we say,
4 perhaps a little self-servingly, it's a limited
5 sub-category of access prevention, but it is access
6 prevention when caused by action of government and then
7 only where the action of government which is only in
8 response to a specified type of emergency.

9 My Lords, if we could read paragraph 30, where we
10 embody our submissions, yet again, it might be said, if
11 one wishes to be overcritical.

12 LORD JUSTICE FLAUX: Paragraph 30 or 80?

13 MR KEALEY: I meant 80, not 30. Forgive me, my Lords. 80.
14 (Pause)

15 LORD JUSTICE FLAUX: We need to go over the page.

16 MR KEALEY: Right, thank you. {1/12/57}.

17 Then we make a number of what we suggest are
18 compellingly obvious points, my Lord. But they are so
19 obvious that maybe they haven't been necessarily picked
20 up by our opponents.

21 Firstly, at paragraph 82, the insured peril is not
22 the emergency. That is the first point.

23 The emergency's function, as we say in 82.3, was to
24 identify that to which the action of government must be
25 a response if it is to be a qualifying action within

51

1 phrase 2. That is it. So, for example, there could be
2 an emergency with no government action; not covered. Or
3 government action, et cetera, with no emergency; not
4 covered.

5 As we say at 82.4, it is only where there is
6 government action, et cetera, which is due to the
7 emergency and such action causes access prevention,
8 et cetera, that the cover is triggered. The second
9 point, obvious.

10 The insured peril cannot become the emergency by the
11 back door. In other words, just because it is mentioned
12 in the clause doesn't mean to say that it is the insured
13 peril or that it has to be altogether reversed by
14 applying the counterfactual.

15 So the peril can't be converted just because it is
16 mentioned. Secondly, paragraph 83.2, it can't be
17 converted into the emergency by the back door of
18 causation. In other words, you can't say because the
19 emergency is mentioned therefore it is part of the
20 counterfactual and the whole emergency has to be
21 reversed:

22 Then we say, thirdly, at page 61, paragraph 83.3
23 {1/12/61}:

24 "... the insured peril cannot be converted into the
25 emergency by the back door of the facts."

52

1 For example, 83.3(c), it is a point that Mr Gaisman
2 kindly addressed, I think possibly even this morning:

3 "According to the FCA, none of the disease, the
4 public authority action [et cetera] can be separated out
5 from any other."

6 It is all part of some indivisible and interlinked
7 strategy and package of national measures.

8 My Lords, that is a highly controversial statement,
9 and not least because I think some people would suggest
10 that the government reactions have hardly been part of
11 any one strategy. Quite apart from the fact that even
12 if they are part of a strategy, they can somehow or
13 other be determined as being indivisible.

14 But if you look at (e) at the bottom, the public
15 authority actions are clearly not indivisible among
16 themselves, any more than the actions are not
17 indivisible from disease, and distinctions can and must
18 be made.

19 The third obvious point, at paragraph 84:

20 "The insured peril must ultimately be determined by
21 construing the policy wording carefully."

22 We refer to Lord Justice Clarke in AstraZeneca, in
23 an appeal from my Lord Lord Justice Flaux, where his
24 judgment was upheld, speaks about the occurrence being
25 the shell within which the pearl of liability is to be

1 found.

2 But if the peril were to include the emergency in
3 its own right, as the FCA suggests, then insurers would
4 be taken to have provided insurance for all the
5 consequences of the emergency. But that is not what we
6 agreed to insure, the Ecclesiastical agreed to insure.
7 It is rather like saying the more elements you include,
8 in the chain of causes, the more you agree to insure.
9 Whereas in fact it is the contrary that is normally the
10 case. The more elements in the chain of causation which
11 qualify and narrow the peril, the narrower the insured
12 peril.

13 Now, in our opening, my Lords, at paragraph 86 at
14 page 63 {1/12/63} we pose the example of a wealthy donor
15 whose giving to the church stopped because his
16 restaurant had been closed due to COVID-19. If your
17 Lordships look at paragraph 86 and paragraph 86.1, we
18 postulated the donor making the donation by standing
19 order. The donor was the owner of the local restaurant.
20 In fact, when the church had been closed in the
21 preceding year, the donation had continued. In other
22 words, the donor didn't have to go to church to make his
23 donation, he did it electronically at a distance.

24 At the end of March 2020 the generous donor wrote,
25 stopping the monthly donation and attributing it to his

1 own loss of income caused by his restaurant being shut
2 down by COVID-19. His donation represents 25% of the
3 church's income and we asked the question: was that
4 caused by the insured peril?

5 Now Mr Edelman, on the first day of this trial,
6 page 112 at lines 6 to 17, {Day1/112:6} was politely
7 dismissive of this example. He said that this example
8 failed at the first hurdle because the interruption or
9 interference, that is the closure due to the emergency,
10 was neither a "but for" nor a proximate cause of
11 stopping the donation; lines 8 to 10.

12 Now, in our respectful submission that is actually
13 a very important concession. In our example, the church
14 was closed at the time when the donation was stopped, so
15 there was hindrance of use caused by government action
16 caused by an emergency.

17 As Mr Edelman would suggest, the trigger conditions
18 for recovery were all met. Then, on the FCA's pleaded
19 case, since all the elements of the trigger have been
20 met, the correct counterfactual is a situation in which
21 there was no COVID-19 in the UK, no government advice,
22 orders, laws or other measures in relation to COVID-19.
23 That, my Lords, is paragraph 77 of the particulars of
24 claim. {A/2/45}. It is also paragraph 10.3 of the
25 FCA's trial skeleton, {1/1/10}.

1 So according to the FCA's counterfactual, you assume
2 that there is no emergency. Of course, if there were no
3 COVID-19 in the UK, no government action of any kind,
4 the church would still be open, the restaurant would be
5 open, the restaurant owner, the restaurateur, would
6 still have its income, so the church would still be
7 receiving the monthly donation by standing order.

8 So the loss of income was caused by the COVID-19
9 emergency and wouldn't have been suffered if you assume
10 no COVID-19 in the UK and no government action.
11 Therefore, on the FCA's pleaded case it ought to be
12 recoverable.

13 But Mr Edelman accepts that it is not recoverable
14 because, as he puts it, the closure due to the emergency
15 had nothing to do with the church losing this income.

16 So the insured peril is not a mere trigger; it is
17 not a gateway which, when crossed, permits the recovery
18 of broader losses. If that were true Mr Edelman would
19 permit the church to recover the lost donation.

20 It also reveals Ms Mulcahy's mistake. She said that
21 the boundaries of the insured peril do not need to be
22 the boundaries of what is subtracted for the purposes of
23 the "but for" test {Day2/63: 6} to line 9. In other
24 words, you reverse more. But if you reverse more, if,
25 as the FCA pleads, you reverse the entire emergency, the

1 church would recover the lost donation, because the
 2 church was closed and the loss of the donation was
 3 caused by the COVID-19 emergency.
 4 But when Mr Edelman dismisses this example, he
 5 actually concedes his pleaded case. He concedes that
 6 first you have to work out what loss was actually caused
 7 by the closure due to the emergency. And secondly, in
 8 order to do that, you don't reverse all the effects of
 9 the emergency; what you do, and all you do, is reverse
 10 the closure as caused by the government action, as
 11 caused by the emergency. When you reverse that
 12 combination, that single causal strand, you don't
 13 reverse the emergency if and insofar as the emergency
 14 was the source or beginning of a different causal
 15 strand. You don't reverse that, so you don't reverse
 16 loss of donation, caused by donor's loss of restaurant
 17 income, caused by the COVID emergency.
 18 Let's change the example slightly. Assume the same
 19 wealthy parishioner never gave by monthly standing order
 20 but actually attended church every Sunday and put money
 21 into the collection plate at the weekly service. This
 22 is the collection of the service example given by
 23 Mr Edelman at {Day1/115:1}. The church was closed, the
 24 services didn't take place and so the wealthy
 25 parishioner stopped giving money, putting the money in

1 the plate. But the wealthy parishioner had lost his
 2 income because his restaurant was closed because of
 3 COVID-19. So he wouldn't have given any money in the
 4 collection plate even if the church had remained open.
 5 Can the church recover the loss? It is no surprise to
 6 find that the church can't. The insured peril is not
 7 the emergency but is prevention of access caused by
 8 government action caused by the emergency, and the loss
 9 of income had nothing to do with the church being
 10 closed.
 11 MR JUSTICE BUTCHER: Suppose had he been there, had he been
 12 in church, he would have thought: even though my income
 13 has gone down I will actually make the effort and, as it
 14 were give, my widow's mite, but as he is not there he
 15 never does that.
 16 MR KEALEY: You're postulating the possibility that if he
 17 were there in person, he would have given something,
 18 let's call it 10% of what he normally gives. Well, if
 19 that were the case then it might be the case that the
 20 10% that he would otherwise have given, which has been
 21 denied the church as a result of the closure, as caused
 22 by the government, as caused by the emergency, is
 23 recoverable. But the 90% which represents, say, the
 24 greater proportion of the donation less the widow's mite
 25 is not recoverable.

1 MR JUSTICE BUTCHER: We are here talking about then an
 2 analysis of each and every member of the congregation's
 3 motivation and what they would have done differently.
 4 MR KEALEY: Well, what you are talking about is, it's rather
 5 like the question that you asked me on Thursday last,
 6 and indeed asked in a different way Mr Gaisman either
 7 yesterday or this morning, which is that what the church
 8 will have to do is identify what it says its loss of
 9 income is and explain how its loss of income has been
 10 caused by the closure. But if it turns out, my Lord,
 11 that the loss of income has not been caused by the
 12 closure, then it doesn't recover pro tanto that loss of
 13 income.
 14 It is all very well to say that it all depends upon
 15 what each parishioner or whatever it happens to be or
 16 what each congregant would have done, of course it does,
 17 because what you are looking at is the collection plate,
 18 and the collection plate and its contents will depend on
 19 is what is given at the service. And of course it might
 20 be said that if no one can attend a service, nothing
 21 will be in the collection place. But if nothing would
 22 have been in the collection plate irrespective of the
 23 service, then no loss of income has been suffered.
 24 LORD JUSTICE FLAUX: If in any given case the church is
 25 closed, just assume the church is closed and as a result

1 there is no collection and nobody gives anything, the
 2 church makes a claim for loss of income of £1,000 a week
 3 for whatever period of time it is, on the basis that
 4 nobody has given any money, and they have not given any
 5 money because the church is closed, and the church is
 6 closed had because of the restriction imposed by the
 7 government as a result of the emergency.
 8 Why isn't that, at least on the face of it,
 9 sufficient to establish a loss resulting from the
 10 interruption or interference with the insured
 11 activities?
 12 MR KEALEY: Well --
 13 LORD JUSTICE FLAUX: And why doesn't the burden then pass to
 14 the insurer? If the insurer wants to say, "Well,
 15 actually, nobody would ever have given any money anyway,
 16 even if the church had remained open throughout, because
 17 they were all down on their uppers as a result of
 18 COVID", why isn't the burden on the insurer to say that,
 19 rather than on the insured to, as it were, make good
 20 what is otherwise a prima facie case of loss?
 21 MR KEALEY: My Lord, on Thursday I think I was asked almost
 22 the same question by my Lord Mr Justice Butcher.
 23 LORD JUSTICE FLAUX: Yes.
 24 MR KEALEY: And the answer I gave Mr Justice Butcher
 25 I myself remember vaguely and therefore I will try and

1 repeat it without --
 2 LORD JUSTICE FLAUX: Yes. No, in all seriousness, this is
 3 a point in relation to your clients, specifically your
 4 clients, Ecclesiastical, which troubles both of us. It
 5 is a matter we have discussed. So I would welcome your
 6 assistance on this point, Mr Kealey.
 7 MR KEALEY: Well, my Lord, as I indicated on Thursday, if
 8 for example there is a prima facie case so that let us
 9 just say that the church regularly received €1,000 per
 10 week and did so through its collection plate. The
 11 church was closed, so no one attended church. So each
 12 week the church was closed the church did not receive
 13 €1,000.
 14 The church, in those circumstances, would be able to
 15 establish a prima facie case that there was an emergency
 16 that caused police or authority action, that prevented
 17 or hindered access. And assume that the emergency
 18 didn't affect the situation of the parishioners in any
 19 other way than that they couldn't attend church and did
 20 not, therefore, give their donations. In that case,
 21 I would accept that the loss of income is highly likely
 22 to have been caused by the prevention of access caused
 23 by the action, because there is unlikely to be any
 24 alternative cause, on those very simple facts where the
 25 emergency has not affected the situation of the

61

1 parishioners in any other way.
 2 In other words, the insured would be able to make
 3 out a prima facie case of coverage and that the insured
 4 peril had not only operated but also had caused the
 5 church loss, the €1,000 a week.
 6 However, if you have a situation which is slightly
 7 different, where you have a widespread situation
 8 affecting the whole of society and not just the insured
 9 church, which has separate and independent effects on
 10 the lives and the financial situation of many
 11 parishioners, it may be that the church will not be able
 12 to make out a prima facie case. And even if it does
 13 make out what on the face of it looks like a good case
 14 for (a) coverage and (b) caused loss, causation may
 15 become a real issue.
 16 MR JUSTICE BUTCHER: Let me understand that. You are saying
 17 that if the takings had gone down, let's say, from last
 18 year, down to 80% by 23 March, and then fall from 80% to
 19 zero on 23 March, you are saying there won't be
 20 a prima facie case, or Ecclesiastical's position is that
 21 there won't be a prima facie case of loss because of the
 22 extent of the economic effects of COVID in the country.
 23 MR KEALEY: I will take it in stages.
 24 If the income had fallen from 100 to 80 by the time
 25 of the closure of the church, firstly, the best that the

62

1 church could seek to recover is 80% of the 100.
 2 LORD JUSTICE FLAUX: Subject to Mr Edelman's ingenious
 3 point, I think we both follow that.
 4 MR KEALEY: Right.
 5 LORD JUSTICE FLAUX: It is the difference between the 80 and
 6 the zero in my Lord's example.
 7 MR KEALEY: Let's just say that the church comes along and
 8 says: well, it was down to 80%, I was then closed,
 9 I couldn't recover anything, I couldn't get anything
 10 from my parishioners, they all stopped coming because
 11 I couldn't receive them, therefore there was nothing in
 12 the collection plate. That might give rise to an
 13 eventual burden, as I have said before, on the insurer
 14 to say: yes, that certainly ostensibly appears to be the
 15 case, but in fact what we can show or what we have
 16 evidence to show is that even if the church had remained
 17 open and the parishioners had all come into church,
 18 nevertheless, for example, 25% of your income was
 19 attributable to the restaurateur, well he hasn't got any
 20 business left, in fact, so far as we can see he has
 21 actually put up his restaurant for sale and he might
 22 even go into administration, and therefore, if you
 23 actually ascribe 25% of your income to the wealthy
 24 parishioner, we, the insurer, will suggest to you that
 25 the reason why you are not getting his 25% is not

63

1 because of the closure of the church, but actually is
 2 because of the fact that --
 3 MR JUSTICE BUTCHER: I understand that, Mr Kealey. What
 4 I was trying to get at was: are you saying that there
 5 won't even be a shifting of the evidential burden
 6 because of the general effects of COVID on the economy,
 7 and that Ecclesiastical can as it were say: no, there
 8 isn't even a prima facie case, because of these general
 9 effects? That is what I was rather falteringly trying
 10 to get at.
 11 MR KEALEY: I am sorry, it was probably my fault. No, I am
 12 not saying that necessarily. And I want to make it
 13 absolutely plain it is not necessarily. Every single
 14 case will depend upon its facts, obviously, and it may
 15 be that some cases are much clearer than others. Some
 16 cases will have, cases where you have got a parishioner,
 17 et cetera, who accounts for 25%, and let's say he's
 18 noticeably without funds. So I am not saying
 19 necessarily that in every case the evidential burden
 20 will shift, totally, and I am not saying that in every
 21 single case, just because there is a situation of an
 22 emergency there, that the evidential burden will not
 23 shift. These are exactly the points that arise in any
 24 business interruption case where there are possible
 25 reasons why the losses have been sustained, which are

64

1 not those attributable to the insured peril. That is
 2 precisely why you have loss adjusters.
 3 And by the way, your Lordships think that this may
 4 be Ecclesiastical 's, the church is a small relatively
 5 small insured, but actually there are wordings which are
 6 being discussed in this case, for example the Resilience
 7 Marsh wording, which have, not in this case but have
 8 insureds whose insurances are tens of millions or
 9 hundreds of millions of pounds here. So you shouldn't
 10 think that, oh, this is a case where loss adjusters are
 11 coming in and there is a poor little church out there,
 12 and how can a church have a loss adjuster and incur all
 13 this money. You should take that out of your mind for a
 14 minute. Business interruption losses are a highly
 15 complex area of administration and of insurance.
 16 Disputes arise often -- or issues arise, let me put
 17 it that way. Issues arise often between insureds and
 18 insurers as to what losses have genuinely been sustained
 19 as a result of the insured peril and what losses would
 20 have been sustained in any event.
 21 This is one of the main reasons why you have such
 22 a complex trends clause. This is one of the main
 23 reasons why Riley has such complicated chapters, one of
 24 which Mr Gaisman alluded to this morning, on how you
 25 work out trends clauses and their application.

1 So the answer is that there are causation issues
 2 that can and will arise. And my Lords, I should say
 3 this is not just me spouting this. The FCA accepts that
 4 there are and can be perfectly legitimate causation
 5 issues. If you look at Mr Edelman's submissions,
 6 Mr Edelman accepted, for example -- we gave an example
 7 in our opening of the social group for elderly people in
 8 the church hall. Do your Lordships recall that? It is
 9 paragraph 87 at {1/12/64}. Yes, page 64. It is
 10 paragraph 87.
 11 There was a social group for elderly people in the
 12 church hall, for which rental income was paid. We
 13 postulate there the organisers deciding to suspend their
 14 meetings before the government regulations, and we
 15 postulate the suggestion that even were the church to
 16 re-open, the group's leader suggests that it is unlikely
 17 that the group will ever reconvene, not only because
 18 some of them don't exist any more, but also because of
 19 shielding.
 20 If your Lordship could look at transcript
 21 {Day1/113:1}. We can start at 113 at line 18:
 22 "Now that poses a straight causal question ... it is
 23 simply a question of 'but for' the interruption or
 24 interference, would the rent payments have been
 25 received? And it is going to be a question of fact

1 where there is a casual income like this, and the answer
 2 will depend on the facts. If the 16 March order to stay
 3 at home and minimise travel and shield amounts to
 4 qualifying interference or interruption or interference,
 5 and the cancellation was after 16 March, then the loss
 6 may result from the interruption or interference,
 7 depending on the reasons of the group for cancelling.
 8 "If the 16 March to stay at home and minimise travel
 9 was not interruption or interference, then the income
 10 stopped before, and it wasn't the result."
 11 Then he goes on to look at collections, and I have
 12 already discussed collections.
 13 But what we are acknowledging among ourselves,
 14 including the FCA, my Lord, is that you have to ask
 15 yourself whether as a matter of fact the loss actually
 16 was caused by the interruption or interference.
 17 As Mr Edelman says at line 4 on page 114, it depends
 18 on the reasons of the group for cancelling. And
 19 Mr Edelman himself, my Lord, gave the example of the
 20 restaurant whose Michelin starred celebrity chef gave in
 21 his notice the day before a fire. It is {Day2/114:21}.
 22 He says:
 23 "The classic example of a restaurant would be the
 24 head chef had already given in his notice.
 25 "He had already given in his notice but he was

1 working out his notice when the fire happens, and the
 2 insured presents to the insurer his turnover figures for
 3 the period up to the fire and says: look how well I was
 4 doing. But there had been a circumstance before the
 5 fire, the chef that was the main attraction, his
 6 reputation had spread far and wide, has just been
 7 poached by a Michelin star restaurant.
 8 "And afterwards, the day after the chef gives in his
 9 notice he says, 'I am terribly sorry to let you down at
 10 this terrible moment, but I was always going to go,
 11 I had already been negotiating and I was going to go
 12 anyway'. So the insurers are entitled to say: the
 13 minute the people heard about the fact that your chef
 14 was going, your turnover would have decreased, your past
 15 figures these those circumstances are no reliable guide
 16 to what your position would have been but for the fire."
 17 So it is accepted, my Lord, that in assessing the
 18 insured's BI loss, caused by damage caused by the fire,
 19 there has to be a stripping out of the indemnity the
 20 extent of the turnover that would have been attributed
 21 to the loss of the celebrity chef. That may or may not
 22 be an easy exercise, it may be that the loss adjusters
 23 would have to ask themselves what attraction precisely
 24 was represented by this chef, how many people actually
 25 went to this restaurant because of the chef, or because

1 of the nourriture produced by the chef, or because he
 2 used to be at the door with his huge great chef's hat
 3 with typical bonhomie and saying in typical French "Do
 4 come in", or whatever it happens to be. But he is not
 5 there any more, so the loss adjuster is going to say:
 6 how do I calculate this? And no doubt the loss adjuster
 7 for the insured will say, "Actually he wasn't that
 8 good", et cetera, "and we have a very good chef", or
 9 whatever it happens to be. But these are matters that
 10 have to be gone into in the ordinary, typical business
 11 interruption evaluation and ascertainment of loss
 12 exercise.

13 Coming back to my Lord Mr Justice Butcher's
 14 question, and looking at Mr Edelman's own example,
 15 Mr Edelman would be able to say: fire, loss of income,
 16 compare it with last year, I have suffered, I made
 17 10,000 a day, I am now making nothing per day, I want
 18 10,000, a day. The insurer gets to learn or is told
 19 that the chef was leaving anyway, the insurer says: hang
 20 on a second, your chef was leaving, therefore your
 21 10,000 would immediately have reduced to 2., after
 22 people got to know that the chef wasn't there, then you
 23 might have brought in a new chef, et cetera. There
 24 would be a debate, a discussion, an evaluation. That is
 25 exactly what happens.

1 So is there a prima facie case? Well, coming back
 2 to my Lord Mr Justice Butcher's example, or question:
 3 you have the service being interrupted, in other words,
 4 stopped, closed; you have what might be described as
 5 a prima facie loss because the collections simply are
 6 not being collected. And I have to say, if I were
 7 advising the insurer, I would have to say, well,
 8 ostensibly it looks as though that which the church
 9 previously received is not now being received because of
 10 the closure of the church. However, I would also have
 11 to advise the insurers that you have to take into
 12 account that even though the church was closed, we all
 13 know that people were not going to be gathering socially
 14 together and, moreover, people were not permitted to
 15 gather socially together, and so even if the church had
 16 remained open and therefore people could have gone
 17 there, members of the congregation would not have gone
 18 there, or if they had gone there, they would have gone
 19 there in vastly reduced numbers.

20 Therefore, the closure has not caused the insured
 21 the loss for which it claims, and the loss adjusters
 22 would get into it and if there is a dispute the evidence
 23 at trial would determine the issue.

24 The one thing that is terribly important in relation
 25 to the questions that I am now being asked is that it is

1 not legitimate to conflate issues of fact with issues of
 2 legal principle.

3 Of course evidential issues may arise, and indeed
 4 they may be difficult to resolve. But they don't
 5 necessarily arise, firstly; and secondly, even if they
 6 do or are likely to arise, that is not any justification
 7 for expanding the limits of the insuring clause or, for
 8 that matter, changing the rules of causation that do
 9 apply.

10 And we say a fortiori this is a case where the court
 11 is being asked to deliver -- and I really don't envy
 12 you -- a judgment for legal certainty. If you are
 13 looking for legal certainty, the one thing that you
 14 shouldn't be doing is delving into hypothetical facts
 15 like that and basically saying: can the insured prove,
 16 or show, rather, a prima facie case because of the
 17 existing situation of COVID-19 in the country? I don't
 18 know in any given case whether the insured can show
 19 a prima facie case unless and until the insured makes
 20 a claim and shows what case it has and what evidence it
 21 has.

22 But taking the very basic church closure case, if
 23 a church is able to say, "On average I made £10 a week
 24 and now I am making nothing because nobody is turning up
 25 because they can't turn up", then I would probably have

1 to accept that that looks like a prima facie case. It
 2 is then, as I indicated on Thursday, I am not saying
 3 that it is necessarily correct totally but it would then
 4 probably be for the insurer to say, "Well, actually your
 5 congregation had all died of COVID-19 and therefore your
 6 closure is an irrelevance".

7 I can't go into --
 8 LORD JUSTICE FLAUX: Or postulating another example, if you
 9 had an inner city church in a deprived area, the insurer
 10 might be able to say "Well, in an actual fact even if your
 11 church had remained open and people could have come to
 12 it, all the people in the town who would have come to
 13 your church are now unemployed as a result of COVID".
 14 MR KEALEY: That could well be right, my Lord, and indeed
 15 the insurer would be entirely within his rights to say
 16 that and have it investigated.

17 LORD JUSTICE FLAUX: As you rightly say, those are all
 18 factual issues with which we are not concerned.
 19 MR KEALEY: That's what you shouldn't be concerned with, and
 20 I don't see how you can be concerned with. As
 21 Mr Gaisman said, we have worked long and hard on assumed
 22 facts, none of which has actually broken through the ice
 23 to get to your Lordships. But if one wanted to have
 24 a whole lot of assumed facts and one could make those
 25 assumptions, you could therefore deliver a judgment on

1 the basis of the assumption, for example, that half of
 2 the congregation were deprived of their income and
 3 therefore did not turn up and therefore even if the
 4 closure of church had not occurred they wouldn't have
 5 given much, if any, money.
 6 These are all assumptions that can be made, but your
 7 Lordships cannot determine at this trial that either an
 8 insured can make out a prima facie case or that an
 9 insured can't. For my part, I think it is quite
 10 difficult for a court to do that.
 11 Of course the court can say that in the very simple
 12 example, closure of church, no income, no collection
 13 plate, therefore on the face of it, on that evidence
 14 alone, if there is nothing else, then the insured may
 15 have a prima facie case and may succeed. But ...
 16 LORD JUSTICE FLAUX: It seems to me, obviously, you know,
 17 I'm open to persuasion, we are both open to persuasion,
 18 but I think this is a point that I made to Mr Gaisman
 19 this morning -- on reflection, rather badly I think --
 20 that what I had in mind was really the fact that we are
 21 not dealing with any given factual scenario, and
 22 actually it might be said it would be dangerous for us
 23 to stray into assumed factual scenarios. All we can
 24 really do is to deal with the issue of principle in
 25 relation to causation, which is essentially whether you

1 are right in the submission you, on behalf of the
 2 insurers, made on Thursday as to what it is, for
 3 example, that you reverse out of any counterfactual
 4 exercise. Then when the court has determined what the
 5 answer to that question is, it will be for the
 6 individual insureds and insurers hereafter to make of
 7 that what they will in relation to individual claims.
 8 MR KEALEY: I would suggest that, and that is vitally
 9 important. And it shouldn't be thought that that is in
 10 any way not doing as much as you can. In fact, it is
 11 doing exactly what a court should do in these
 12 circumstances, where the essence of the FCA's case is
 13 that on the counterfactual you reverse everything, and
 14 the essence of insurers' case is that that simply is
 15 unprincipled and unthought out, and you have to be
 16 slightly more intellectually logical and astute and
 17 actually work out what these contracts are about.
 18 That is the key issue in this case, in fact. I mean
 19 there are of course other issues on particular wordings,
 20 what does "interruption" mean, what does "interference"
 21 mean and things like that, but one of the key issues in
 22 this case, this is what this case is likely to be
 23 referred to hereafter for, is the question of causation
 24 in insurance law with reference to these contracts. In
 25 other words, not just -- it will be what are the

1 relevant insurance principles that apply and contractual
 2 principles that apply, and then, having established as
 3 it were the academic side, which is absolutely critical,
 4 then how do you apply that to the particular words with
 5 which one is confronted.
 6 LORD JUSTICE FLAUX: But you might say, or one might say
 7 that that question, at least in part, is determined by
 8 identification on the particular wording that one is
 9 considering and what the insured peril is. And once you
 10 have identified what the insured peril is, you would
 11 submit and you did submit on Thursday, applying normal
 12 principles of causation in contract law generally, never
 13 mind in insurance law specifically, you reverse out of
 14 your "but for" consideration, if I can put it that way,
 15 the insured peril, but you don't reverse out everything
 16 else.
 17 MR KEALEY: That is correct, and that is a fundamental issue
 18 in this case.
 19 LORD JUSTICE FLAUX: Yes.
 20 MR KEALEY: It is not answered in the way that the FCA might
 21 suggest sometimes, which is: oh well, we don't have to
 22 go there, we can just look and see what the insuring
 23 clause says, and we can envisage what it contemplated,
 24 and we can identify the insured peril but do what
 25 Ms Mulcahy says, which is add on a little bit to the

1 insured peril for the purposes of reversals. Those are
 2 fundamental issues with which this court is confronted.
 3 They are fundamental law, not just construction of
 4 contracts.
 5 LORD JUSTICE FLAUX: No, understood.
 6 MR KEALEY: My Lord, there is one last point on causation on
 7 Ecclesiastical before I move to Amlin, if I may. It is
 8 a very short point.
 9 The EIO clause with which we are concerned, my Lord,
 10 related to prevention or hindrance due to a certain
 11 character of government action, namely action due to an
 12 emergency. I paraphrase. But the reference to the
 13 emergency, as I have said really ad nauseam, is a form
 14 of qualification, and the FCA says the emergency should
 15 be reversed in the counterfactual, we say that is wrong.
 16 But let's test it just briefly in another way.
 17 Assume that the clause gave can much broader coverage to
 18 the insured, and let's say that the clause covered
 19 prevention, losses, et cetera, resulting from prevention
 20 or hindrance due to any government action. Full stop.
 21 That would be a clause providing really quite wide
 22 coverage. Now, that clause wouldn't refer to any
 23 emergency at all. It is nowhere near the clause. No
 24 reference to it at all. Presumably, therefore, the FCA
 25 would accept that for the purposes of the counterfactual

1 you don't reverse the emergency, you only reverse ,
 2 according to the FCA, the elements to which the clause
 3 refers . Therefore, in what would be a far broader
 4 clause for coverage purposes, the emergency and all the
 5 other effects of the emergency remain.
 6 Now, what is paradoxical is that if the coverage is
 7 narrower, because the clause says "prevention or
 8 hindrance caused by government action caused by an
 9 emergency", and therefore the coverage is far narrower,
 10 the FCA says you reverse the emergency just because it
 11 is referred to. And by reversing the emergency, in what
 12 was a far narrower coverage clause, you actually give
 13 the insured a hugely increased scope of coverage.
 14 What you have done is made the insured peril even
 15 bigger than the insured peril produced by a coverage
 16 clause covering prevention or hindrance due to any
 17 government action, full stop. Because in that last
 18 clause, if you wanted to work out what but for the
 19 government action or but for the closure caused by
 20 government action, what loss was caused by that, you
 21 would necessarily take into account everything of the
 22 emergency and all the effects of the emergency. And if
 23 the effects of the emergency therefore meant that the
 24 insured had suffered no loss, then the insured would
 25 recover nothing. But under the narrower coverage

1 clause, the FCA says: a ha, the emergency is referred
 2 to, we reverse the entirety of the emergency. And
 3 therefore the insured ends up with hugely expanded
 4 coverage.
 5 That proves that the insured, in this case the FCA,
 6 has simply got its wires crossed.
 7 I hope I have made that point clear, my Lords.
 8 MR JUSTICE BUTCHER: Very clear, Mr Kealey.
 9 MR KEALEY: Then I am going to move on from the
 10 Ecclesiastical to Amlin, if I may.
 11 Now, my Lords, there are as it were two clauses in
 12 Amlin1 that are relevant, they are clauses 1 and 6. My
 13 Lords will find those in {B/10/65} and 66. I think
 14 I have got things mixed up here, my Lords. No, 65 and
 15 66, I think that is right. It is right. 65 and 66.
 16 LORD JUSTICE FLAUX: Yes, business interruption cover in
 17 Amlin1.
 18 MR KEALEY: That is right.
 19 What your Lordships find is that in clause 1 you
 20 have "Action of competent authorities" and in clause 6
 21 you have "Notifiable disease, vermin defective sanitary
 22 arrangements, murder and suicide". My Lords, I am going
 23 to take clause 6 first because it is common to Amlin1
 24 and Amlin2.
 25 My Lords, clause 6 says:

1 "consequential loss as a result of interruption of
 2 or interference with the business carried on by you at
 3 the premises following ..."
 4 (a)(iii):
 5 "Any notifiable disease within a radius of 25 miles
 6 of the premises."
 7 I addressed the significant causation issues that
 8 arise in relation to this clause on Thursday.
 9 The Amlin clause defines " Notifiable Disease" or the
 10 Amlin contract defines " Notifiable Disease" at page 58
 11 {B/10/58}. Notifiable disease is:
 12 " Illness sustained by any person resulting from ...
 13 "(b) any human infectious or contagious disease ...
 14 an outbreak of which the competent local authority has
 15 stipulated will be notified to them."
 16 So this clause, my Lord, clause 6, requires actual
 17 people with actual illness within the 25-mile radius .
 18 It is not looking to the situation beyond the 25-mile
 19 radius area, there may or may not be people there with
 20 the same or a different disease, the policy is simply
 21 not interested in them.
 22 The issue that arises, my Lord, is whether the loss
 23 in this case was following the proved cases of the
 24 disease within the 25-mile radius area. If one applies
 25 the "but for" test, one simply removes the proved cases

1 of the illness within the 25-mile radius area. That
 2 assumes, my Lord, that the word "following" is causal .
 3 And we say it is at least causal, and the FCA agrees
 4 that the word "following" requires a degree of causal
 5 connection. We say that because it is causal and
 6 requires at least a degree of causal connection, it
 7 requires at least the satisfaction of the "but for"
 8 test, otherwise it is not a cause, let alone
 9 a contributing cause, it is no cause at all .
 10 Now as I have said, the FCA accepts that the word
 11 "following" requires some degree of causal connection;
 12 it doesn't contend that the word only provides
 13 a temporal requirement. You can see that, my Lords, if
 14 your Lordships go to bundle {A/2/40}, paragraph 60 of
 15 the amended particulars of claim of the FCA:
 16 "Further or alternatively, the word ' following '
 17 deliberately connotes an event which is part of the
 18 factual background and represents a looser causal
 19 connection than ' resulting from' and similar ."
 20 If your Lordships could go, please, to
 21 {Day3/112:10}, you will see there:
 22 "Now Hiscox, and we would say rightly, accepts that
 23 ' following ' is a looser causal connection, although it
 24 requires more than simply a temporal successiveness or
 25 a temporal connection."

1 Then it tells you what Zurich would suggest it
 2 means.
 3 If you go then to the FCA's trial skeleton and you
 4 go to paragraph 893 at page 287 {1/1/287}, the FCA says
 5 at 287:
 6 "MSAmlin assert that in respect of prevention of
 7 access clauses 'following' means proximately caused by
 8 or, alternatively, having a significant causal
 9 connection with. The latter is closer to the correct
 10 position, which is that there must be a temporal
 11 connection and a causal connection looser than proximate
 12 cause; see paragraphs 325.3 and 385 above. The 'jigsaw'
 13 idea -- that the government was responding to all actual
 14 and anticipated cases of COVID-19 in the country -- is
 15 sufficient for these purposes to link the case within
 16 25 miles to the interruption or loss."
 17 So what seems to be suggested there is that,
 18 firstly, "following" does not mean proximately caused
 19 by, according to the FCA. It has a meaning which is
 20 closer to significant causal connection, it is looser
 21 than a proximate cause, but the jigsaw idea, which is
 22 that when the government was promulgating its
 23 regulations or taking action or giving advice, it was
 24 responding to all actual and anticipated cases, and that
 25 is sufficient, for those purposes, to link the case

1 within 25 miles to the interruption or loss.
 2 Ms Mulcahy developed the FCA's case further during
 3 her oral submissions, when she said that "'following'
 4 imports a causal connection". But it is not one that
 5 requires a direct and "but for" link, rather it is more
 6 of a causal contribution. That is {Day3/113:6} to line
 7 8. That appears, my Lords, to be a refrain from
 8 paragraph 215.2(b) of the FCA's skeleton at {1/1/87}.
 9 At the top of page 87 in {1/1/87}:
 10 "They fail [that is insurers] to apply the correct
 11 causation analysis in that they fail to recognise that
 12 the presence of COVID-19 in each locality is an integral
 13 part of one single broad and/or indivisible cause, being
 14 little COVID-19 pandemic, or alternatively that the
 15 outbreak in each locality made its own concurrent
 16 causative contribution to the overall of a pandemic
 17 which prompted the government response."
 18 In fact, my Lords, and I just mention this for your
 19 note, it was not until the FCA's trial skeleton at
 20 paragraphs 779 and 899, that it was suggested by the FCA
 21 that the word "following" while requiring some degree of
 22 causal connection, did not import a "but for" test.
 23 That is not part of the FCA's pleaded case.
 24 Now, what we say, my Lord, is that in reality this
 25 issue does not turn on the difference between proximate

1 cause and some less strong cause than proximate cause;
 2 it turns on the difference between cause and non-cause.
 3 By non-cause I mean something that has not even passed
 4 the "but for" test.
 5 MR JUSTICE BUTCHER: But you are begging a very big question
 6 there. Suppose you had an outbreak in the locality and
 7 the competent authorities, wherever they are, said: yes,
 8 we are going to respond to that, that is what we are
 9 responding to, that is our motivation in imposing these
 10 restrictions. And yet it could also be said that they
 11 would have done the same thing a bit later because of
 12 other outbreaks. There is at least a significant
 13 argument that the restrictions were imposed following
 14 and because of the local outbreak, even though they
 15 don't actually meet the "but for" test.
 16 MR KEALEY: Well, I think, firstly, if you have a causal
 17 connection like making a causal contribution, then what
 18 you need to have is something that if it did not exist,
 19 would not have resulted in whatever it is it is said to
 20 have produced.
 21 LORD JUSTICE FLAUX: Putting that another way, what you are
 22 really saying, do I get this right, is that however
 23 loose the causal connection can be said to be, it has to
 24 satisfy the "but for" test otherwise it is not causal at
 25 all?

1 MR KEALEY: That is exactly what I am saying. It makes no
 2 causal contribution at all.
 3 LORD JUSTICE FLAUX: Well, that is a point that has troubled
 4 me, that was puzzling me, because "but for" is certainly
 5 not the same thing as proximate cause.
 6 MR KEALEY: No, it is very much not.
 7 LORD JUSTICE FLAUX: So what is something that is more than
 8 temporal successiveness or connection, but as it were
 9 some looser causal effect that doesn't satisfy the "but
 10 for" test? It is very difficult to discern what that
 11 would be.
 12 MR KEALEY: I don't believe it is -- or there is.
 13 LORD JUSTICE FLAUX: No.
 14 MR KEALEY: In our submission, even if you look at the cases
 15 which talk about material contribution, like Bonnington,
 16 which is in the bundle, which is a tort case, if you
 17 look at anything which is described as making a material
 18 causal contribution, it is either something which
 19 satisfies the "but for" test or, in the tortious
 20 context, is something which falls within the Fairchild
 21 Enclave or an acknowledged and recognised exception to
 22 the "but for" test. But to say that something has
 23 a causal contribution in circumstances where, if it did
 24 not exist, it would make absolutely no difference to the
 25 result, is in our submission misusing the words. It's

1 not making any causal contribution at all .
 2 If one is talking about a question of temporal
 3 succession , then one would be in a completely different
 4 area of investigation . But since we are not purely in
 5 an arena of temporal succession , we are in an arena of
 6 causation, cause and consequence, if something makes
 7 absolutely no difference to the consequence, then it is
 8 not a cause of that consequence.
 9 That is the whole debate about "but for" in , for
 10 example, areas like Fairchild and everywhere else , where
 11 it is acknowledged it could not be proved, in that very
 12 exceptional area of investigation , the negligence of the
 13 manufacturer or whoever it was, the employer, had any
 14 causal connection with the ultimate disease , and because
 15 the "but for" test could not be satisfied .
 16 What we submit, my Lord, is that what I was
 17 suggesting , and my Lord Mr Justice Butcher took issue
 18 with me, is that if you can't even get over the "but
 19 for" test you are not into cause.
 20 MR JUSTICE BUTCHER: That I do have difficulty with. There
 21 are various different ways you can look at cause, and
 22 one is to have a direct effect . The hypothesis I was
 23 putting to you, there is a direct effect ; it is the
 24 disease within the locality which leads the authority to
 25 impose the restriction .

85

1 MR KEALEY: Then that --
 2 MR JUSTICE BUTCHER: That is the effect. It could actually
 3 be shown, though, that that restriction might have been
 4 imposed or would have been imposed for other reasons
 5 later . There, you can say that there is a direct effect
 6 even though it is not a "but for" cause, because the
 7 restrictions would have been implemented later.
 8 MR KEALEY: I would answer that in a variety of ways.
 9 It depends which area of law you are in . That's the
 10 first thing . For example, if you are in the area of
 11 fraudulent representation or fraudulent
 12 misrepresentation , then what the law does is to say that
 13 you don't have to prove, for cases of fraudulent
 14 misrepresentation , that but for the fraudulent
 15 misrepresentation the representee would have done
 16 something other than that which the representee did . It
 17 is sufficient for fraudulent misrepresentation , for
 18 example, that that which was fraudulently misrepresented
 19 was in the forefront or in part of the representee 's
 20 mind when determining what to do or what not to do.
 21 But here we are in a completely different area of
 22 legal investigation . Here we are in the area internally
 23 to a contract , before one even gets to proximate
 24 causation, of asking oneself whether, as a matter of the
 25 proper interpretation of this contract , the word

86

1 " following " has a causative connotation and requires
 2 a causal recollection ; and if so, what that causal
 3 connection is required to be . And in a contractual
 4 framework such as the framework with which we are
 5 confronting , we say that the word " following " has
 6 a causal connection and must therefore satisfy the "but
 7 for" test .
 8 I am going to take you to the contract in a moment
 9 and to the word " following " so you can see it in its
 10 proper context , because our primary case is that the
 11 word " following " in the contract is the same as "as
 12 a result of" or "in consequence of", in other words, is
 13 the same as a proximate cause or a direct cause .
 14 Your Lordships --
 15 LORD JUSTICE FLAUX: This wording doesn't in fact mention
 16 government action at all , does it , clause 6?
 17 MR KEALEY: No, this wording doesn't, my Lord. This
 18 wording --
 19 LORD JUSTICE FLAUX: Interruption or interference with the
 20 business following any notifiable disease within
 21 a 25-mile radius .
 22 MR KEALEY: Yes, that is right, my Lord. That is exactly
 23 what --
 24 LORD JUSTICE FLAUX: It may be that government action, or
 25 whatever, leading to interruption or interference is to

87

1 be inferred , but it is not actually referred to at all .
 2 MR KEALEY: No, it is not. Government action is not
 3 referred to in this particular clause . Nevertheless ,
 4 what we say is that " following " in this clause means,
 5 means, and your Lordships will see how we put it , means
 6 " directly or proximately caused by the notifiable
 7 disease within that radius " . And what you are looking
 8 at is the consequential loss as a result of interruption
 9 or interference with the business following that
 10 disease .
 11 We say that there has to be a direct causal
 12 connection between that notifiable disease , in other
 13 words, as we have mentioned, the sickness , the actual
 14 sickness , sustained or contracted by a person or persons
 15 within the radius of 25 miles of the premises , and the
 16 interruption of or interference with the business
 17 carried on at those premises .
 18 It is not good enough, in our submission, that the
 19 notifiable disease or the sickness within that area was
 20 something which occurred but which doesn't have the
 21 satisfactory or necessary causal connection with the
 22 interruption .
 23 Just because the government in London says, on
 24 a jigsaw basis , as the FCA suggests, "Well, we have got
 25 to stop the disease from spreading" or "We've got to

88

1 stop the NHS from being overrun or overwhelmed", that
 2 doesn't mean, in our respectful submission, that
 3 a sickness within that radius had the impact which it is
 4 required to have for the purposes of satisfaction of
 5 that clause.
 6 Now, as I have mentioned, we say that "following",
 7 in the context in which it appears, is intended to
 8 equate to direct or proximate cause.
 9 Mr Edelman suggested that the word "following" and
 10 "resulting from" had only been used interchangeably on
 11 one occasion, on the Welcome page and in the BI insuring
 12 clause. He said that at {Day3/130:1}.
 13 Can I take your Lordship to the contract more
 14 specifically. If you go to {B/10/59} you will see that
 15 "Insuring clause" says:
 16 "For each item in the schedule, we will pay you for
 17 any interruption or interference with the business
 18 resulting from damage to property used by you at the
 19 premises for the purposes of the business ..."
 20 So there the words "resulting from damage" are used.
 21 If you go down on the same page to the basis of
 22 settlement provision, and you go to gross profit, you
 23 will see that under paragraphs 1 and 2, "for reduction
 24 in turnover" and "for increase in cost of working", the
 25 use of the word "following the damage".

1 So, for example, if you look at 1:
 2 "For reduction in turnover, the sum produced by
 3 applying the rate of gross profit to the amount by which
 4 the turnover during the indemnity period will following
 5 the damage fall short of the standard turnover."
 6 If you go to paragraph 2:
 7 "For increase in cost of working, the additional
 8 expenditure necessarily and reasonably incurred for the
 9 sole purpose of avoiding or diminishing the reduction in
 10 turnover which, but for that expenditure, would have
 11 taken place during the indemnity period following the
 12 damage but not exceeding the total of ..."
 13 What we say, my Lord, is that the word "following",
 14 used there in both contexts of paragraphs 1 and 2,
 15 reflect the same causation requirement as appears in the
 16 main business interruption clause imported by the use of
 17 the words "as a result of" or "resulting from".
 18 The word "following" in the "Claims Basis of
 19 Settlement A -- Gross Profit", is not intended to have
 20 a different or looser causal connecting meaning. It is
 21 the different word of course, but it means the same in
 22 the context.
 23 If you go to page {B/10/60} and you go to "Rent
 24 Receivable" under paragraph 1:
 25 "For loss of rent receivable ... the amount by which

1 the rent receivable during the indemnity period will,
 2 following the damage, fall short of the standard rent
 3 receivable."
 4 It is the same causal connection link. It is also
 5 the case, as Mr Edelman pointed out, that we rely on
 6 what is said at the Welcome page, which is {B/10/3}.
 7 This is a Welcome page. This is your instant,
 8 et cetera, policy, and it sets out the details of your
 9 insurance contract:
 10 "It must be read [this document] ... any
 11 endorsements, et cetera, must be read together as one
 12 contract as they form your policy. In return for
 13 payment of the premium shown in the schedule we agree to
 14 insure you against ..."
 15 The second bullet point:
 16 "Loss resulting from interruption or interference
 17 with the business following damage."
 18 Just to remind your Lordships about the top of
 19 page 59 {B/10/59}, when it comes to the actual insuring
 20 clause, at the top of 59:
 21 "We will pay you for any interruption or
 22 interference with the business resulting from damage."
 23 There is no intention, my Lords, to have a different
 24 causal requirement. As you see there, the Welcome page
 25 says "following damage"; the top of 59 says "resulting

1 from damage"; the bases of settlement clauses refer to
 2 "following damage".
 3 These are words that we say are used
 4 interchangeably.
 5 It is also relevant, in our submission, to have
 6 regard to the definition of "consequential loss". The
 7 definition, my Lord, is at page 11 {B/10/11}:
 8 "Consequential loss is defined as loss resulting
 9 from interruption or interference with the business
 10 carried on by you at the premises in consequence of
 11 damage to property used by you at the premises for the
 12 purpose of the business."
 13 Now, the words "resulting from" were not used.
 14 Rather the phrase "in consequence of" was used.
 15 "Resulting from" was in the first line. Perhaps for
 16 elegance of prose it decided, or the person drafting
 17 this, decided not to use the words "resulting from
 18 damage" in the second line having used it in the first
 19 line. I know not.
 20 But if you go to clause 6, the clause with which we
 21 are concerned {B/10/59}, you will see -- perhaps one
 22 should start at the top of page {65}:
 23 "Additional cover provided as standard.
 24 "We will pay you for", and then go to clause 6:
 25 "Consequential loss as a result of interruption of

1 or interference with the business carried on by you at
 2 the premises following any notifiable disease."
 3 Now if you transpose the words from the definition
 4 "consequential loss", there is a certain element of
 5 duplication and superfluity because "consequential loss"
 6 means:
 7 "Loss resulting from interruption of or interference
 8 with the business carried on by you at the premises in
 9 consequence of damage to property", and then one would
 10 continue:
 11 "As a result of interruption of or interference with
 12 the business carried on by you following any notifiable
 13 disease."
 14 Of course as one reads that out one recognises that
 15 if the definition of "consequential loss" was applied
 16 strictly in accordance with its terms clause 6 would
 17 never be triggered, because notifiable disease would
 18 never have caused damage to property. So that can't
 19 have been intended.
 20 So what must have been intended is that some deft
 21 and sensible verbal manipulation should take place such
 22 that "damage" is read as referring to the insured peril.
 23 And indeed that appears to be common ground: FCA's trial
 24 skeleton {1/1/259}.
 25 So on that basis it is clear, we would respectfully

1 suggest, that the phrase "in consequence of" in the
 2 definition of "consequential loss", is being used
 3 interchangeably with the word "following" in the disease
 4 clause, MSA 1, clause 6.
 5 So you have there clear indications wherever the
 6 word "following" is used, that it is used in the same
 7 sense as "as a result of" or "resulting from", or "in
 8 consequence of". All three phrases or words have the
 9 same meaning.
 10 The same analysis, my Lords, I should say applies to
 11 Amlin2. I can deal with this I suppose more quickly
 12 because I have just dealt with it in Amlin1. But if you
 13 go to {B/11/44} what is covered is at the top:
 14 "For each item in the schedule we will pay you for
 15 any interruption or interference with the business
 16 resulting from damage to property used by you for the
 17 purposes of the business occurring during the period of
 18 the insurance caused by an insured event ..."
 19 Then you go down to the "Gross Profit", and you see
 20 under paragraphs 1 and 2 the same use of the words
 21 "following the damage".
 22 We again refer your Lordships to the Welcome page,
 23 which is at page 4, the second bullet point:
 24 "Loss resulting from interruption or interference
 25 with the business following damage."

1 I will refer you again to the "consequential loss"
 2 definition at page 42 {B/11/42}:
 3 "Loss resulting from interruption ... [et cetera]
 4 carried on by you following damage."
 5 So we say again that these clauses reflect the cover
 6 provided under the main BI provision and use the word or
 7 the term "following" interchangeably or meaning the same
 8 as "resulting from".
 9 So our primary argument on the wording is that
 10 "following" is the same as proximate causation. It is
 11 not a looser causal connection. But if it is a looser
 12 causal connection than proximate cause then we make the
 13 submission that it still doesn't assist the FCA in
 14 displacing the "but for" test.
 15 MR JUSTICE BUTCHER: Even if it does displace the "but for"
 16 test does it make any difference?
 17 Wouldn't you say that whatever causal significance
 18 you give to the word "following", it is not met by the
 19 disease within the 25-mile radius, because to take --
 20 and I have put the point about but for to you before,
 21 Mr Kealey and I am not going to do it again -- but this
 22 is not a case where you can even say that, that because
 23 of the 25-mile radius that had any specific effect in
 24 relation to the interference with the business.
 25 MR KEALEY: That is exactly what we say. We respectfully

1 adopt, and your Lordships will see it in QBE's skeleton,
 2 I think it is, I think it is QBE's skeleton, which
 3 really dispatches the point, if I might very
 4 respectfully say so, with huge skill and elegance all at
 5 the same time, QBE's skeleton despatches any idea that
 6 any disease within any particular radius -- I should
 7 mention it is in {1/17/36} -- it despatches any idea
 8 that anything going on, any of these illnesses, whatever
 9 they were, within whatever radius it is, and the
 10 greatest one is a 25-mile radius, had any causative
 11 impact whatsoever on any interruption or interference,
 12 any interruption of or interference with the business of
 13 any insured.
 14 I was going to let Mr Howard make his submissions in
 15 due course, of course. But if one looks at {1/17/37}
 16 for a moment. If we could go to page 37, one should
 17 read really -- one should actually read paragraph 85 of
 18 my learned friends', who acts for QBE, their skeleton.
 19 You should read 85 through to 90.
 20 LORD JUSTICE FLAUX: Why don't we read those to ourselves
 21 over the lunch break. We can break now until 2 o'clock.
 22 How much longer have you got, Mr Kealey?
 23 MR KEALEY: I have got probably another hour or so, I think,
 24 an hour to an hour and a half.
 25 LORD JUSTICE FLAUX: Is that in accordance with the plan or

1 is there a slip?
 2 MR KEALEY: I think -- that is my allowance.
 3 LORD JUSTICE FLAUX: Right, okay. Fine, jolly good.
 4 2 o'clock then.
 5 MR KEALEY: Thank you, my Lord.
 6 (1.00 pm)
 7 (The short adjournment)
 8 (2.00 pm)
 9 LORD JUSTICE FLAUX: When you are ready, Mr Kealey.
 10 MR KEALEY: Thank you, my Lord.
 11 I am going the move to Amlin, clause 1, which
 12 my Lords you will find in {B/10/65}.
 13 LORD JUSTICE FLAUX: I think you mean clause 3.
 14 MR KEALEY: I hope not.
 15 LORD JUSTICE FLAUX: No, you are quite right. I beg your
 16 pardon, I am looking at the wrong thing.
 17 MR KEALEY: That's lucky, because I was thinking maybe I had
 18 spent the last few days researching the wrong clause.
 19 LORD JUSTICE FLAUX: That would be really unfortunate.
 20 MR KEALEY: Still, I could make it up as I go along.
 21 Clause 1, my Lord, headed "Action of competent
 22 authorities":
 23 "Loss resulting from interruption or interference
 24 with the business following action by the police or
 25 other competent local, civil or military authority

1 following a danger or disturbance in the vicinity of the
 2 premises where access will be prevented ... "
 3 It obviously speaks of authority action where access
 4 will be prevented.
 5 We say the words "will be prevented", the tense used
 6 is simply looking to the result or the effect on the
 7 premises of the authority action. That, we say, is the
 8 only significance of the tense used.
 9 Now, in terms of the necessary result or effect of
 10 the action, it doesn't talk about access being hindered,
 11 it only talks about access being prevented. It doesn't
 12 talk about use being prevented and it doesn't talk about
 13 use being hindered; in fact, it doesn't talk about use
 14 at all. So the only concept in terms of the effect of
 15 the action with which we are concerned is access being
 16 prevented.
 17 If you compare that with clause 7, at page 67 of the
 18 same file {B/10/67}, you will see under the heading
 19 "Prevention of access":
 20 "Consequential loss as a result of damage to
 21 property near the premises which prevents or hinders the
 22 use of the premises or access to them will be deemed to
 23 be damage."
 24 So clause 7 envisages both access being prevented or
 25 hindered, and also use being prevented or hindered. The

1 parties obviously know the difference between access and
 2 use, and the difference between prevention and
 3 hindrance. Out of the four possibilities envisaged in
 4 clause 7, only one appears in clause 1., namely access
 5 will be prevented.
 6 Therefore, when the parties used only one of the
 7 four possibilities in clause 1, we would respectfully
 8 suggest that that has to be given effect to as a matter
 9 of construction. We make these points, for your
 10 reference, my Lords, at paragraphs 144 to 145 of our
 11 skeleton. You needn't look it up, it is in {1/12/94}.
 12 So we are not talking about hindrance and we are not
 13 talking about use. We say that in that context
 14 "prevention", prevention of access that is, means an
 15 impossibility of gaining physical access to the
 16 premises. That impossibility may be the physical effect
 17 of the authority action or a legal effect, but nothing
 18 short of impossibility will do.
 19 Now, if that provides only limited cover, then so be
 20 it. That is not a reason for expanding the cover. If
 21 a situation arises in which it is made more difficult
 22 but not impossible to gain physical access to the
 23 premises, that is not prevention of access, that is
 24 hindrance of access. That is not covered.
 25 If a situation arises in which you can get to the

1 premises and access them, but you can only use some part
 2 of the premises when you get there, because use of some
 3 part of the premises is impossible when you get there,
 4 that is not prevention off access; that is prevention or
 5 hindrance of use. That is not covered, because nothing
 6 short of prevention of access is.
 7 The fact that loss has to result from interruption
 8 of or interference with the business, with the emphasis
 9 in this context on interference, does not dilute the
 10 meaning of prevention of access. A business may well be
 11 interfered with, and not interrupted, as a result of
 12 prevention of access to its premises. For example,
 13 a business may have several premises. One of those
 14 premises might suffer from enforced prevention of
 15 access. That might interfere with a carrying on by the
 16 insured of its business as a whole. For example, if
 17 access is prevented to warehouse A, containing raw
 18 materials which are required by the factory at location
 19 B, the factory at location B may be interfered with but
 20 not interrupted, because it can still receive some
 21 materials from warehouse C.
 22 "Business", I should mention is defined at
 23 {B/10/10}. The business is:
 24 "The business specified in the schedule conducted
 25 solely within the territorial limits ..."

1 So "Business" there contemplates a business with
 2 just one premises or with several premises. So as
 3 I say, if one of those premises cannot be accessed, in
 4 other words, access is prevented, if it has raw
 5 materials required by the factory at premises B, the
 6 inability to gain access to A and extract raw materials
 7 for the purposes of the business carried on at premises
 8 B will interfere or may interfere with the business, but
 9 will not necessarily interrupt it.

10 Moreover, perhaps a simpler example, a business to
 11 whose premises access is prevented may nonetheless be
 12 capable of being carried on away from the premises.
 13 A professional services business, for example, may be
 14 able to work from home, but because access to its
 15 premises might be prevented that might affect its
 16 turnover. That is interference with the business as
 17 a result of prevention of access.

18 Now in our case, my Lord, in our submission, for
 19 much the same reasons as given by Mr Gaisman earlier
 20 yesterday, there was no prevention of access to the
 21 premises even insofar as the lockdown regulations meant
 22 that customers were not allowed to go there.

23 Mr Gaisman gave the example of the tailor who was
 24 able to conduct her tailoring business from home.
 25 Because the materials and equipment are essential, she

1 can't conduct her business -- sorry, she can't conduct
 2 her business were home because the materials and
 3 equipment are essential and they are only at the
 4 premises. That business, my Lord -- that is {J/16/4} --
 5 was never required by the regulations to close. It was
 6 always permitted by rule 6(2)(f), always permitted for
 7 the tailor to travel to work because she couldn't
 8 undertake her business at home.

9 We take into account in making these submissions,
 10 my Lords, that none of the government advice was
 11 mandatory or compulsory. We make that point at
 12 paragraphs 31 and following in our opening skeleton
 13 {I/12/23}. It is worth just reminding ourselves what
 14 Lord Sumption said. What he said was in The Times
 15 newspaper, it is in {I/12/28}, that is paragraph 33.6.
 16 At the foot of the page, at thee 3.6 he says:

17 "... in his press conference Boris Johnson purported
 18 to place most citizens under virtual house arrest
 19 through the terms of a press conference and a statement
 20 on the government website said to have 'immediate
 21 effect'. These pronouncements are no doubt valuable as
 22 'advice', even 'strong advice'. But under our
 23 constitution neither has the slightest legal effect
 24 without statutory authority."

25 Then if you could read the rest of the passage from

1 his piece at page 29, I would be grateful, my Lord.
 2 {I/12/29}.

3 My Lords, we say, therefore, for access to be
 4 prevented by any action of any authority within the
 5 meaning of this clause, that means any action, generally
 6 speaking, having the force of law. So nothing done by
 7 any authority by way of advice, instructions or
 8 announcement legally prevented access to any premises.

9 Now, as you know, the FCA says, see its reply at
 10 paragraph 13.1, that is {A/14/8}, that prohibition does
 11 not require legal force, it requires that something is
 12 forbidden by someone with authority. The FCA continues
 13 and says that the government did prohibit through
 14 guidance and announcements, and would have been so
 15 understood by Mr Gaisman's Jacobean reasonable citizen.
 16 They go so far as to say that:

17 "All the advice [et cetera] given on 16 March and on
 18 many occasions subsequently amounted for all businesses
 19 to prevention of access to the premises."

20 That is paragraph 46 of the amended points of claim,
 21 that is {A/2/30}.

22 Now, we have dealt with that in considerable detail,
 23 mainly by reference to constitutional law and very high
 24 authority, at paragraphs 33 and following of our opening
 25 submissions; that is {I/12/23} and following. It is

1 worth just remarking that Boris Johnson is not
 2 Maximilien Robespierre or George Danton, he is not the
 3 president of the Committee of Public Safety, we don't
 4 live in a dictatorship or a totalitarian regime. The
 5 idea that Boris Johnson, also known as Robespierre, can
 6 issue an instruction without any legal validity or
 7 force, and that is translated as a legal prohibition or
 8 a prohibition by someone with authority, has only to be
 9 stated, we say, to be rejected.

10 Now, the fact that some members of the citizenry of
 11 this country, if one wants to borrow from the French
 12 revolution, might have been taken in and might have
 13 chosen to live by the Prime Ministerial announcements or
 14 guidance rather than by the regulations is neither here
 15 nor there. There was government guidances that went
 16 beyond the government regulations, and the latter are
 17 binding and the former are not. It is as simple as
 18 that.

19 If one takes the documents in the bundle, that is
 20 just for your reference {C/2/287}, according to what
 21 Mr Edelman would say, all citizens were prohibited from
 22 exercising more than once a day because the government
 23 said so. But actually the regulations said absolutely
 24 nothing about how many times a day you could exercise.
 25 You can have a look at that, it is regulation 6(2)(f),

1 {1/16/4}.

2 Moving on from the legal perspective, if one is told
3 to close one's business that does not prevent access to
4 the premises. What it does is it prevents the use of
5 the premises for that business. The proprietor could
6 still gain access to the premises, even if there was
7 a complete prohibition or prevention of use from or at
8 those premises for the purposes of conducting the
9 insured business. What you cannot do is transform
10 a prevention of access cover into a prevention of use
11 cover. If, however, we are wrong on that --

12 LORD JUSTICE FLAUX: So you say this clause doesn't bite at
13 all.

14 MR KEALEY: No, we say that exactly.

15 LORD JUSTICE FLAUX: I mean, if one looks at it and tries to
16 think about what it really directed at, and again it is
17 very a local cover, isn't it, "danger or disturbance in
18 the vicinity of the premises", so it is looking, for
19 example, if there were, I don't know, an oil spill which
20 caused a danger, and government or the police say you
21 are -- issue instructions, leaving aside your point
22 about what has as it were legal effect, but assume they
23 issue some form of instructions that is legally binding
24 that requires someone not to go to the premises.

25 MR KEALEY: Correct.

105

1 LORD JUSTICE FLAUX: Provided that it lasts for at least
2 24 hours, then there is cover.

3 MR KEALEY: That is exactly right, my Lord. So you have
4 a bomb scare, you have a gas leak, you have a terrorist
5 event, you have a water main bursting, a flood, whatever
6 it is.

7 LORD JUSTICE FLAUX: Actually on the face of it, it is
8 fairly narrow cover, isn't it?

9 MR KEALEY: Yes, it is.

10 If we are wrong about all of that, which we are not,
11 but perchance we might be, and this is really
12 a prevention of use cover, despite what it says, then
13 the position becomes much more detailed and complicated,
14 because it will turn upon what the regulations said
15 about different types of business. There were many
16 businesses about which the regulations were silent
17 because they were neither required to close nor
18 expressly essential to remain open. That is very
19 important to us, my Lord, because Amlin1 was
20 predominantly, though not exclusively, used for
21 businesses of a type which in the event were not
22 required to close; barristers' chambers, solicitors'
23 firms, accountancy firms and the like.

24 The reason we say that clause 1 is actually narrow
25 is because it is to be inferred that Amlin was only

106

1 prepared to offer limited non-damage cover. This, of
2 course, is an extension to the extension.

3 LORD JUSTICE FLAUX: So in the case of those, as it were,
4 typical insured, you say the FCA doesn't even get to
5 first base.

6 MR KEALEY: Correct, my Lord.

7 LORD JUSTICE FLAUX: Because there is no question of anybody
8 being prevented from going into your chambers or into
9 your solicitor's office or whatever. The fact that you
10 choose not to, and choose to work from home is your
11 choice.

12 MR KEALEY: That's right. Yes. I'm afraid we take a very
13 simple approach to this. When it says access is
14 prevented, we think access is prevented. I can't really
15 say it more than once. You can't gain access.

16 If it is suggested: oh well, maybe you can -- there
17 are instances where -- this is I think one of
18 Mr Edelman's examples: well, you can get into the
19 premises but the fifth floor, for example, is closed.
20 We say that is not prevention of access to the premises,
21 that is a prevention or hindrance of use of the fifth
22 floor.

23 We give some examples, there are two of them. I am
24 not going to take your Lordship to them now because we
25 don't have the time and you probably, just like I, won't

107

1 have the interest. But at paragraph 159 of our opening
2 submissions at {1/12/96}, we give two examples which are
3 relevant, including one applying all category five
4 businesses mutatis mutandis.

5 So my Lords, that really deals with the essential
6 kernel of this clause. We can't pass by completely
7 without saying that a danger in the vicinity is
8 something that obviously you have to look at. We say
9 a danger requires an acute risk of harm. I mean, a risk
10 we appreciate or a threat we appreciate. We also
11 recognise that in the vicinity requires that the acute
12 risk of harm be in the neighbourhood of the premises.
13 But in terms of neighbourhood, that is an elastic
14 concept.

15 LORD JUSTICE FLAUX: For example, the example we have looked
16 at or talked about many times, a measles outbreak in the
17 town, and the local authority impose a prevention of
18 access on all the schools in the town or something of
19 that kind, that would probably be a danger in the
20 vicinity of the premises.

21 MR KEALEY: I think we would accept that, my Lord, yes.

22 LORD JUSTICE FLAUX: Yes.

23 MR KEALEY: We would. The fact that it is a disease or an
24 illness doesn't make any difference.

25 LORD JUSTICE FLAUX: It doesn't stop it from being a danger.

108

1 It is not a disturbance but it is a danger.
 2 MR KEALEY: That is absolutely right, my Lord. Equally, an
 3 outbreak of weasels as opposed to measles could be
 4 a danger, depending on the ferocity of the weasels
 5 concerned.
 6 LORD JUSTICE FLAUX: Not so likely, Mr Kealey.
 7 MR KEALEY: What we can say is set out in our written
 8 submissions at paragraphs 177 to 185, including as to
 9 the causation requirement; in other words, the danger
 10 obviously has to cause the government action, and that
 11 is built into the clause. That, for my Lords'
 12 reference, is to be found at {1/12/100} to page 102.
 13 But we can't go any further into this, my Lords,
 14 because in terms of causation and in terms of whether
 15 this clause responds to anything, further than I have
 16 already indicated, it is a question about dates,
 17 locations and facts as to whether there was a danger in
 18 the vicinity, as to what the vicinity is. The vicinity
 19 of, say, Islington or a road in Islington will probably
 20 occupy really quite a small area compared to the
 21 vicinity of a rural hotel in the middle of
 22 Northumberland. It is all depends upon the context in
 23 which the premises are to be located and found.
 24 So I can't say any more than that at the moment.
 25 Certainly if it is suggested that the vicinity means

109

1 a place where, if something happens it can reasonably be
 2 expected to have an impact on the premises, that is such
 3 a broad and indefinite and unhelpful definition that one
 4 doesn't really know what to say about it. I suppose the
 5 next time that there is an outbreak of some unknown
 6 virus in China, that might be said to be in the vicinity
 7 of Westminster, simply because there might be
 8 a reasonable expectation that if things aren't done
 9 properly it could extend to Westminster. But I don't
 10 think that anyone in his or her right mind or their
 11 right mind would say that what is going on in China
 12 really is in the vicinity of Westminster.
 13 My Lords, I move on swiftly to the question, which
 14 I'm not going to answer because I have answered it
 15 already, as to the meaning of "following", because it
 16 won't have escaped your eagle eyes that the causal
 17 connecting linkage in clause 1 is "following". So you
 18 have to interruption or interference with business
 19 following action by the police or other competent local,
 20 civil or military authority following a danger.
 21 Now, you have heard our submissions on "following"
 22 in a completely different context. We would say, and
 23 indeed the FCA acknowledges I think, that "following"
 24 denotes some causal connection. But the obvious causal
 25 connection in this context is caused by, in our

110

1 respectful submission, where you have interference or
 2 interruption of business following action by the police,
 3 that is not sequential, that means as a result of. So
 4 I can't really take it any further than that.
 5 LORD JUSTICE FLAUX: Well, you say it is a further
 6 indication that "resulting from" and "following" are
 7 used interchangeably in this policy.
 8 MR KEALEY: Yes, my Lord, that's right.
 9 I think I have dealt with Amlin1 now and could
 10 I move on to Amlin2.
 11 I have already dealt with Amlin2 the disease clause,
 12 which is clause 6, because that is the same as Amlin1,
 13 save to one extent. The disease clause, my Lord, is at
 14 {B/11/47}.
 15 I am reminded that the FCA makes one additional
 16 point at paragraph 906 of its trial skeleton, so that is
 17 in {1/1/290}. At paragraph 906, the third line, it is
 18 said:
 19 "There is no requirement in MSAmlin2 for
 20 'interruption or interference' at all."
 21 Unless serious surgery is done to transplant
 22 a modified form of the property damage-related
 23 consequential loss definition, all that is required is
 24 loss following the notifiable disease. That is where it
 25 begins and ends. But if one could just go back, if we

111

1 may, to {B/11/47}, "Consequential Loss" is a defined
 2 term. The definition of "Consequential Loss", my Lords,
 3 is at page {B/11/42}. We have looked at this before,
 4 I think, in the earlier policy. "Consequential Loss" is
 5 defined as:
 6 "Loss resulting from interruption of or interference
 7 with the business ..."
 8 To put that definition into the context of clause 6
 9 at page 47, obviously a certain degree of verbal
 10 manipulation is required, because the definition of
 11 "Consequential Loss" is following damage to property,
 12 and of course we are in with one of the non-damage
 13 extensions. But there is no doubt about it, my Lords,
 14 that the emboldened "consequential loss" in clause 6 at
 15 page 47 takes its meaning from the definition, as one
 16 would expect, and the definition includes "loss
 17 resulting from interruption of or interference with the
 18 business".
 19 So when the FCA says that there is no requirement in
 20 MSAmlin2 for interruption or interference at all, they
 21 have got it wrong. And when they talk about serious
 22 surgery done to transplant a modified form, it is not
 23 that serious surgery, all it requires is a little bit of
 24 skill and deftness and elegance and we know exactly what
 25 it means; it means "loss resulting from interruption of

112

1 or interference with the business carried on by you at
 2 the premises following any occurrence ..." et cetera,
 3 et cetera, or following any notifiable disease. It is
 4 hardly brain surgery.
 5 My Lords, we move on now to "Prevention of access --
 6 non-damage" clause, that is number 8. That is at
 7 {B/11/48}. You have seen a remarkably similar version
 8 to this in the Hiscox NDDA clause. This is the incident
 9 within a 1 mile radius resulting in a denial of access
 10 or hindrance in access, et cetera.
 11 Now, we adopt everything and anything that
 12 Mr Gaisman said in relation to this clause,
 13 mutatis mutandis. There is only one extra point that
 14 I would like to make, which gives us a little more
 15 weight, as it were. As you will see, going back to
 16 page 46 {B/11/46}, at the top it says:
 17 "We will pay you for ..."
 18 Then if you go to page {B/11/47} -- well, if you
 19 stay on page 46, forgive me, you will see that the words
 20 "consequential loss", in bold, are used very frequently
 21 in, for example, clauses 2, 3, and then if one turns the
 22 page to {B/11/47}, 4, 6, 7, and in fact later on at
 23 page {B/11/48}, 11, 12 and 13. What you find is that
 24 clause 8 does not say "consequential loss", so one asks
 25 oneself why has the defined term not been used, why have

113

1 the parties used different language?
 2 Well, there are two reasons, as Mr Gaisman said
 3 yesterday in relation to a similar point. Instead of
 4 covering loss just resulting from, on this occasion it
 5 covers only loss resulting solely and directly from.
 6 The second reason, which is a more powerful point
 7 than Mr Gaisman was able to make, simply because I have
 8 better fortune in my wording than he does, is that
 9 clause 8 does not cover interruption of or interference
 10 with the business, it only covers interruption to the
 11 business. So there is no contamination here by any
 12 thought of interference with the business, we only have
 13 interruption to the business.
 14 That reinforces the fact, my Lords, that in this
 15 clause the parties said what they meant and meant what
 16 they said in referring only to interruption. No room
 17 exists for conflating "interruption" with
 18 "interference", given the way in which clause 8 has been
 19 prepared and drafted.
 20 On that note, I will leave this clause and simply
 21 adopt everything that Mr Gaisman said.
 22 That leads me naturally, as it were, to Amlin3,
 23 which I am going to take very swiftly, perhaps even as
 24 swiftly as Mr Edelman took Amlin3. It is at {B/12/1}.
 25 LORD JUSTICE FLAUX: Is it used by anyone other than forges?

114

1 MR KEALEY: Not that I'm aware of, my Lord, no.
 2 LORD JUSTICE FLAUX: Does anybody know what happened to
 3 forges during lockdown?
 4 MR KEALEY: Well, they were businesses that were never
 5 required to close.
 6 LORD JUSTICE FLAUX: Yes.
 7 MR KEALEY: They --
 8 LORD JUSTICE FLAUX: Insofar as forges, in one sense, is
 9 a rural concept, the requirements for those things which
 10 are made in forges continued throughout the lockdown.
 11 MR KEALEY: Indeed. It is quite difficult to take your
 12 furnace and everything home and start making iron works
 13 and weathervanes and goodness knows what from one's
 14 drawing room.
 15 LORD JUSTICE FLAUX: Horseshoes, agricultural machinery,
 16 implements, I suppose. Anyway ...
 17 MR KEALEY: Horseshoes are much more farriers. You don't
 18 normally go to a forge.
 19 LORD JUSTICE FLAUX: No, I suppose that's true.
 20 MR KEALEY: Your farrier normally comes to your horse.
 21 LORD JUSTICE FLAUX: Well, you would know.
 22 MR KEALEY: Anyway --
 23 MR JUSTICE BUTCHER: Doesn't the forge have to make the
 24 horseshoe which the farrier then shoes the horse with?
 25 MR KEALEY: Not necessarily, no, my Lord. If you ever come

115

1 across a farrier, you will find that the horseshoes
 2 there, they may be made but normally the farrier will
 3 have made them himself. Whether he has a personal forge
 4 or not, I don't know, but of course he then heats them
 5 up very considerably and moulds them to your horse's
 6 hoof and hammers away, and normally gets bitten by the
 7 horse, or at least does in my case.
 8 Anyway, I should say there are no claims of which
 9 Amlin is aware, but that is neither nor there, you have
 10 the wording and --
 11 LORD JUSTICE FLAUX: It shows in the wording.
 12 MR KEALEY: What I am going to do on this is, I just don't
 13 see the profit, with the amount of time that we have, to
 14 go into any detail. My written submissions stand. Your
 15 Lordships will see them.
 16 LORD JUSTICE FLAUX: Unless you want to add anything to your
 17 written submissions, we will take them as read,
 18 Mr Kealey.
 19 MR KEALEY: I'm grateful.
 20 I am just going to take your Lordship then -- I am
 21 coming towards the end, but not quite, because I still
 22 have some causation issues to take, very shortly, and
 23 maybe just a word or two about trends clauses. But I am
 24 aware of my learned friends, who are, to use the same
 25 analogy, champing at the bit to get into court, as it

116

1 were, before your Lordship.
 2 I don't know whether my Lord Lord Justice -- you are
 3 still there.
 4 I can't hear your Lordship. I am trying to lipread
 5 and I think I probably have worked it out.
 6 LORD JUSTICE FLAUX: I was just saying that I seem to have
 7 gone back to the other camera. I have got two cameras
 8 and one of them that was working this morning has now
 9 stopped working, but not to worry.
 10 MR KEALEY: Good. I am going to take causation quite
 11 swiftly. I want to take a very simple insuring clause
 12 for BI loss. Business interruption loss caused by
 13 prevention of access on to the premises, caused by
 14 public authority action due to an incident within
 15 a 1 mile radius.
 16 For your reference, it is the joint skeleton,
 17 paragraphs 63 to 80, pages 68 to 75. All I want to
 18 address is the issue of independent and interdependent
 19 causes in that last example -- or that last clause.
 20 The authority action and the incident are
 21 interdependent in the sense only that the incident
 22 caused the authority action. Without the incident the
 23 public authority would not have taken action. The
 24 relevant question, however, is whether the loss, that is
 25 interruption to or interference with the business

1 resulting from prevention of access, was caused by those
 2 interdependent causes; in other words, by their
 3 combination.
 4 The insuring clause only provides cover where those
 5 causes are operating in combination. That is the
 6 combination or causal chain which the insurance clause
 7 requires. There has to be both an incident and
 8 authority action due to the incident for the insuring
 9 clause to be triggered. But the mere existence in
 10 combination of the incident and the authority action
 11 does not necessarily prove that the loss was caused by
 12 that combination. If the accident or the incident was
 13 the start of another causal chain in which it combined
 14 with something else to cause the loss, that something
 15 else would be an independent cause of the loss, capable
 16 of causing the loss, independently of the combination,
 17 which the insuring clause defines as the peril.
 18 So if the incident gave rise to public reaction
 19 separate and apart from government action, and if the
 20 public reaction was such as to cause the same business
 21 interruption loss irrespective of the government action,
 22 the loss was not caused by the incident in combination
 23 with the government action. That is because that
 24 combination doesn't pass the "but for" test.
 25 As between insured and insurer, the loss is regarded

1 as caused by a separate combination, the causal chain
 2 containing the incident and the public reaction to the
 3 incident.
 4 So a loss is only caused by interdependent causes
 5 when both causes operate in combination and caused the
 6 loss. In that situation, both causes satisfy the "but
 7 for" test. That was the case in The B Atlantic; drugs
 8 on the hull of the ship, and the seizure by the customs
 9 authorities. There was a combination of causes. There
 10 was an interdependence of causes. There was no other
 11 potential cause of the loss.
 12 Here there is something additional and independent
 13 going on from the clause that I have just identified.
 14 If you assume that COVID-19 caused customers to stay
 15 away, regardless of government action, that is a cause
 16 independent of the combination of interdependent causes
 17 located in the insured peril. Though the interdependent
 18 causes exist and are essential for the insured peril,
 19 they simply didn't cause the insured loss, because there
 20 was a further independent cause, the operation of which
 21 means that the insured combination, at least pro tanto,
 22 failed the "but for" test.
 23 Now, it is said against us that that makes no
 24 commercial sense.
 25 LORD JUSTICE FLAUX: That would, of course, depend on the

1 facts in any given case, would it not?
 2 MR KEALEY: That is absolutely right, my Lord. Absolutely
 3 right.
 4 LORD JUSTICE FLAUX: So all we can do in terms of issues of
 5 principle is to determine whether or not, in your
 6 example, the fact that customers are staying away as
 7 a consequence of COVID-19, irrespective of government
 8 advice, would amount to an independent cause.
 9 MR KEALEY: Yes. That is correct. That is absolutely
 10 right.
 11 Don't get me wrong, this can work in favour of the
 12 insured. Let's say you have got an access road, and
 13 a jogger is stabbed along the side of the road. Let's
 14 hope he doesn't die, but anyway, he's stabbed. He
 15 doesn't block any road, he happens to be injured by the
 16 side of the road, but the police close the road and
 17 it is a crime scene for several days. The prevention of
 18 access isn't caused by the incident, it is caused by the
 19 public authority action. The public authority action
 20 was itself caused by the incident, and the insured gets
 21 cover.
 22 That is the sort of case which the clause covers.
 23 The prevention of access is caused by the authority
 24 action due to the incident. There is no other
 25 independent cause operating, so there is nothing to stop

1 the insured combination, which are interdependent
 2 causes, from passing the "but for" test and being
 3 regarded as the proximate cause of the loss .
 4 My Lords, that is Amlin and that is causation .
 5 The last item is trends . I have only got a little
 6 while to go, and I am going to take this quite shortly
 7 because it hasn't detained many of the participants in
 8 these proceedings , but it would be remiss of me not to
 9 say something. I could, if I were lazy , simply refer
 10 your Lordships to our skeleton at paragraphs 255-278,
 11 {1/12/129} to 148. All I will do is emphasise one or
 12 two matters .
 13 The trends clauses generally reject the causal
 14 requirements in the relevant insuring clauses , all of
 15 which require the application of the "but for" test .
 16 The general rule or the general practice that you will
 17 see reflected in all these insurance contracts with
 18 which you are concerned, not just mine, is that the
 19 trends clauses make explicit that which was already
 20 implicit as a matter of law .
 21 Secondly, it cannot have been intended that the
 22 policies do not provide any method for quantifying an
 23 insured 's loss under the non-damage business
 24 interruption extensions .
 25 So even though the trends clauses almost all appear

121

1 in the context of business interruption loss caused by
 2 physical damage, it is obvious when one reads the
 3 policies that the trends clauses , likewise the gross
 4 profit or standard turnover or increased expense of
 5 working, all those clauses were intended to apply to
 6 business interruption losses which were provided by
 7 extension beyond the physical damage business
 8 interruption sections of the policy . And the right and
 9 sensible conclusion for the purposes of the application
 10 of the trends clauses , in I think all these policies , is
 11 simply to substitute for the word "damage", where it
 12 appears, "the insured peril ", in the context of the
 13 non-damage BI extensions .
 14 Thirdly , Mr Edelman made submissions on Day 2 as to
 15 the breadth and meaning of trends clauses , and submitted
 16 that they could only be used to adjust for extraneous
 17 matters unconnected with the cause of the insured peril .
 18 Now, we have addressed that in writing , paragraphs 276
 19 to 278 of our skeleton at {1/12/144}. What I will do is
 20 simply make my submissions by reference to trends
 21 clauses in Ecclesiastical type 1.2., which is accepted
 22 by the FCA to apply .
 23 Your Lordships will go there, it is in {B/5/39}. If
 24 your Lordships go to the "Standard Revenue", the bottom
 25 left , it means:

122

1 "The revenue during the period corresponding with
 2 the indemnity period of the 12 months immediately before
 3 the date of the damage appropriately adjusted where the
 4 indemnity period exceeds 12 months to which such
 5 adjustments will be made as may be necessary to provide
 6 for the trend of the business and for variations in or
 7 other circumstances affecting the business either before
 8 or after the damage or which would have affected the
 9 business had the damage not occurred so that the figures
 10 thus adjusted shall represent as nearly as may be
 11 reasonably practicable the results which but for the
 12 damage would have been obtained during the relative
 13 period after the damage."
 14 My Lords, as I read that , although it sounds
 15 complicated, nothing could be clearer than the objective
 16 or the purpose of the clause . In fact, it is explicit .
 17 Everything is to go into the mix so that upon
 18 adjustment, taking into account everything , the figures
 19 shall represent as nearly as may be reasonably
 20 practicable the results which but for the damage, or in
 21 our case but for the insured peril , would have been
 22 obtained during the relative period after the damage .
 23 It is as simple as that . These words are plainly
 24 broad enough to encompass the uninsured effects on the
 25 insured 's business of the cause or causes of the insured

123

1 peril . In other words, not the insured peril , but that
 2 which underlies or underlines the insured peril .
 3 As in the Orient-Express in the business
 4 interruption section , where the insured peril was
 5 physical damage, as we know, it takes into account the
 6 cause of the insured peril , the insured event; in other
 7 words, the hurricane .
 8 No restrictions whatsoever are placed on the type or
 9 nature of trends , variations or other circumstances .
 10 They can, and not only can but they must be taken into
 11 account so long as they either affected the business or
 12 would have affected the business had the insured peril
 13 not occurred .
 14 It does not say on the tin , which Mr Edelman has,
 15 see transcript {Day2/109:17} to line 19, it does not say
 16 on the tin that it is all about the ordinary
 17 vicissitudes of life . That neither appears under the
 18 ingredients nor under any of the health warnings that
 19 might be apparent on the tin .
 20 All that the trends clause is concerned about is to
 21 make sure that but for the insured peril , everything is
 22 taken into account. So that the insured business is put
 23 into exactly the same position as it would have been in
 24 had the insured peril not occurred .
 25 There is absolutely nothing on the tin which says

124

1 you must not adjust for extraneous matters or you can
 2 only adjust for extraneous matters unconnected with the
 3 cause of the damage. That is an assertion by the FCA,
 4 {Day2/94/1} to 95 and 107, and it has no proper or
 5 actual regard to the words used in the trends clauses .
 6 Now, Mr Edelman sought to highlight the heading of
 7 the "trends clause" in Orient-Express, {Day2/95:1}.
 8 None of the Ecclesiastical or for that matter Amlin
 9 policies has such a heading, but in any event, the
 10 heading cannot be used for reading the actual words
 11 used. There is nothing illogical or unintended about
 12 adjusting, under the trends clauses, for the underlying
 13 cause giving rise to the insured peril. If the
 14 underlying cause were intended to be part of the insured
 15 peril, as an insured peril on its own, the clause would
 16 have said so.
 17 All that the trends clauses do is merely give effect
 18 to the "but for the insured peril" requirement. That is
 19 consistent with the causation requirement in the BI
 20 insuring clauses and would be applicable even in the
 21 absence of the trends clauses .
 22 In our respectful submission, the approach of the
 23 tribunal in the Orient-Express and the approach of
 24 Mr Justice Hamblen as then he was, to construing the
 25 trends clauses, was undoubtedly correct and should be

125

1 applied here. It would be wrong to depart from that
 2 case on the basis of some general a priori assessment of
 3 the sort of factors that properly come into play in
 4 a trends clause .
 5 My Lords, that is mainly what I want to say. There
 6 is just one additional point .
 7 Mr Edelman said in the course of his oral
 8 submissions, that is {Day3/153:6} to line 7, that the
 9 Ecclesiastical type 1.1 policies have no specific trends
 10 clause. Perhaps it is easier in this context if
 11 I simply take you to our skeleton argument, because we
 12 fear that Mr Edelman has fallen into error .
 13 If one goes in our skeleton argument to
 14 paragraph 261, {1/12/131} this is the easiest way of
 15 doing it. Paragraph 261 identifies the lead wording for
 16 EIO1.1 is the ME857 Parish Plus wording. It did not
 17 contain a trends clause in its traditional form, but it
 18 contains wording in the loss of income clause in its
 19 "Basis of settlement" section .
 20 There you have it, "Loss of income":
 21 "We will pay the difference between the income you
 22 would have received during the indemnity period if there
 23 had been no damage and the income you actually received
 24 during that period ..."
 25 In other words, but for the damage.

126

1 Of the nine other policies included, only one other
 2 is in similar form to that wording; the remaining eight
 3 are similar to one another and contain a trends clause
 4 in its traditional form. Those are addressed in the
 5 following section. It is important to note, therefore,
 6 that so far as the basis of settlement provisions and
 7 trends clauses are concerned, the policies included in
 8 EOI type 1.1 are not all similar to the lead policy
 9 wording.
 10 So we say, returning to the loss of income clause,
 11 the underlying wording, in similar terms to that found
 12 in a trends clause and requires the court to assess the
 13 insured's loss by reference to the income it would have
 14 earned but for the damage.
 15 That applies, we say in 264, and we go on and do
 16 that. It becomes quite detailed, and I am not going to
 17 go to on any further. Suffice it to say that the
 18 absence of a heading called "Trends clause" is neither
 19 here nor there .
 20 I should mention, in fact, that Riley doesn't even
 21 refer to them all the time as trends clauses, it refers
 22 to them by means of a whole variety of other
 23 descriptions, and "trends clauses" may be one of them,
 24 but they are referred to in Riley as clauses, "other
 25 circumstances clauses" is one, and a variety of other

127

1 titles or descriptions .
 2 There is no magic in the words "trends clause",
 3 although if they are there, then that is fine, and if
 4 they are not there, look at the words actually used, and
 5 if the words actually used have the same effect as
 6 a traditional trends clause or an effective trends
 7 clause, it's all right, you don't have to worry about
 8 the absence of the magic words "the trends clause" or
 9 "the trends terms" or whatever it is, because they are
 10 not really magic words.
 11 My Lords, I think I have despatched what I need to
 12 despatch .
 13 LORD JUSTICE FLAUX: If you think of it in terms of -- I am
 14 just looking at this clause on paragraph 261 and going
 15 back to the example of reduction in income as a result
 16 of concerns about COVID before any government
 17 restrictions were imposed. You would say: well, in
 18 my Lord's example you have already had a reduction from
 19 100 to 80, that in calculating any loss that had been
 20 suffered by the church in question, you couldn't start
 21 at 100%, because you would say there is 20% of this that
 22 you would have suffered anyway even if the insured peril
 23 hadn't operated .
 24 MR KEALEY: Correct, my Lord.
 25 LORD JUSTICE FLAUX: I mean in a sense, unless Mr Edelman is

128

1 right about his point about "in anticipation of the
2 hurricane", the one follows from the other, doesn't it?
3 MR KEALEY: Yes.
4 LORD JUSTICE FLAUX: Because as in Orient-Express the
5 hurricane itself is not insured, so here the effects of
6 COVID, in general terms, are not insured until there is
7 a restriction or whatever it happens to be.
8 MR KEALEY: And even then they are not an insured peril in
9 their own name or in their own right; they are only
10 a predicate for, say, government action and thereafter
11 a prevention. In other words, they are a cause of, they
12 are one of the ingredients in a combination which
13 amounts to the insured peril.
14 If COVID-19 or infectious disease were an insured
15 peril, then that is all you need. It is the government
16 action which must actually cause the loss, and the
17 government action must be coming from an insured peril.
18 You have heard me on this before.
19 LORD JUSTICE FLAUX: Yes. Okay.
20 MR KEALEY: My Lords, if I can assist you further please
21 don't hesitate to cross-examine me, but otherwise I am
22 departing.
23 LORD JUSTICE FLAUX: I don't think we need to cross-examine
24 you any more than we already have done, Mr Kealey.
25 MR KEALEY: My Lords, my clients are grateful, as am I.

129

1 LORD JUSTICE FLAUX: Thank you very much.
2 Right. Who is next?
3 MR LOCKEY: Good afternoon, my Lord, I appear for Arch.
4 LORD JUSTICE FLAUX: Not yet you don't.
5 There you are. Yes, hello.
6 (2.57 pm)
7 Submissions by MR LOCKEY
8 MR LOCKEY: My Lords, the policy wordings written by Arch
9 that the court is asked to consider are to be found in
10 three Arch policies; there is a commercial combined
11 policy, a retailers policy and an offices and surgeries
12 policy. They are at bundle B tab 2, tab 23 and tab 24,
13 but we will only be looking at {B/2/1}, the commercial
14 combined policy, which has been designated as the lead
15 Arch1 policy.
16 The key provisions which fall for consideration at
17 this hearing, in particular the government and local
18 authority action extension, are materially the same in
19 each of the three policies. So I am in the fortunate
20 position of only having to address your Lordships on
21 a single relevant extension, and we will do that by
22 reference to the Arch combined commercial policy. I am
23 also in the fortunate position that it is common ground
24 between Arch and the FCA that the trends clause in the
25 Arch combined commercial policy applies to the relevant

130

1 extension, and that similar or equivalent language
2 requiring "but for" causation, which appears in the
3 retailers' policy and in the offices and surgeries'
4 policy, also apply to claims under the extension.
5 Now, what we have done, and I hope your Lordships
6 recall reading our skeleton, we have set out three
7 annexes.
8 Annex A, which is bundle {1/8/1}, explains our
9 position on the seven categories of business which have
10 been referred to by the FCA, and with which your
11 Lordships are now very familiar. Annex A summarises
12 evidence which is set out in Ms Valder's witness
13 statement, she is the head of claims at Arch, which is
14 at {D/1/1} and which is not challenged by the FCA. That
15 statement sets out what Arch's interests are in the
16 various categories of business so far as concerns the
17 Arch1 policy.
18 It is fair to say that Arch, in common with other
19 insurers, has a much greater interest in category 5
20 than, say, category 1, pubs and clubs and cafes. We are
21 also interested in particular in category 3, because of
22 the Arch retail policy in particular, and we are, as
23 I said, not especially interested in category 1, where
24 only 0.4% of our policyholders would fall. Therefore,
25 although the FCA spent a quite a lot of time in their

131

1 submissions against Arch developing interesting debates
2 about take-aways, we are not really interested in
3 take-aways, at least in any legal sense.
4 We have no category 6 policies and we have only two
5 policyholders who fall within category 7, so I am not
6 going to say much at all about that.
7 That is annex A to our skeleton; that sets out in
8 detail our position on the seven categories of business
9 and I do commend re-reading that document.
10 Annex B to our skeleton sets out our response to the
11 FCA's assumed facts scenario under the Arch wording.
12 Now, your Lordships may recall, when reading the FCA
13 skeleton, that interspersed in the sections which deal
14 with each insurer there are assumed fact scenarios.
15 They appear to have received, so far as I can recall,
16 virtually no or indeed possibly none, no attention at
17 all in the FCA's oral submissions. But we set out in
18 annex B our response to the FCA's assumed facts scenario
19 under the Arch wording, which appears in the FCA's
20 skeleton at {1/1/173}. Time will probably not permit me
21 to go through that example in detail, but I do recommend
22 undertaking the exercise of comparing the assumed fact
23 scenario with Arch's response, because it reveals, we
24 would suggest, a number of errors in the FCA's
25 construction of the relevant clause and also in the

132

1 application of the relevant principles of causation .
 2 If I could start , my Lords, by inviting your
 3 Lordships' attention again to the Arch1 policy , the lead
 4 policy , {B/2/1}. If we could look at page {B/2/9}
 5 first , just to pick up the definitions of "The Business"
 6 and "The Premises".
 7 Your Lordships will see from the left -hand column
 8 towards the foot of the page that "The Business" is
 9 defined as:
 10 " Activities directly connected with the business
 11 described in the statement of fact and specified in the
 12 schedule."
 13 Then "The Premises" are:
 14 "The premises as stated in the statement of fact and
 15 specified in the schedule."
 16 What is obvious is that we are here concerned, in
 17 the government and local authority action extension and
 18 indeed with the business interruption provisions
 19 generally , we are concerned with business premises . And
 20 so far as the government and local authority action
 21 clause is concerned, we are concerned with whether there
 22 has been a qualifying prevention of access to business
 23 premises .
 24 So we have not sought to suggest that where insured
 25 premises were required to close under the regulations ,

133

1 or where closure was advised in the days before the
 2 regulations , that there was no prevention of access ,
 3 because the policyholder could have had access to the
 4 premises to conduct repairs or to start a different new
 5 business from them. We hope we have taken, and
 6 I suggest and submit that we have taken, a sensible
 7 commercial approach to the construction of the clauses .
 8 Could I then move to the business interruption
 9 section , which starts at page {B/2/32} of the policy ,
 10 and if we could turn to the key business interruption
 11 insuring provision under Arch1, which is at page
 12 {B/2/34}.
 13 We are not concerned with the book debts cover ,
 14 cover 2, which is over the page, we are concerned with
 15 the loss of gross profits cover, item 1.
 16 It is accepted by the FCA and by Arch that the loss
 17 of gross profit cover which you see here is the relevant
 18 cover for a claim under the extensions , including the
 19 government and local authority action clause , as well as
 20 for the main business interruption cover. I will show
 21 you in a moment why that is common ground.
 22 You will see from the left -hand column under the
 23 heading "Gross Profit" that the indemnity is expressed
 24 as follows :
 25 "In respect of each item in the schedule, we will

134

1 indemnify you in respect of any interruption or
 2 interference with the business as a result of damage
 3 occurring during the period of insurance by
 4 "(1) any cause not excluded by the terms of the
 5 property damage and/or theft sections of your policy ."
 6 We will come to look at the definition of "Damage"
 7 in a moment.
 8 If you look in the right -hand column under the
 9 heading above (i) in the right -hand column:
 10 "The amount payable will be
 11 "(i) in respect of reduction in turnover the sum
 12 produced by applying the rate of gross profit to the
 13 amount by which due to the damage, the standard turnover
 14 exceeds the turnover during the indemnity period."
 15 Familiar concepts. And then a provision in relation
 16 to:
 17 "... increase in cost of working ... [incurred]
 18 solely to prevent or limit a reduction in turnover
 19 during the indemnity period which but for such
 20 additional expenses would have taken place due to the
 21 damage."
 22 So, so far as the loss of gross profit cover is
 23 concerned, the typical formulation, I would suggest,
 24 applying the rate of gross profit to the reduction in
 25 turnover which has been caused by the damage.

135

1 If we turn back to page {B/2/33} you will see the
 2 definition of "Damage" in the left-hand column:
 3 "Accidental loss or destruction of or damage to
 4 property used by you at the premises for the purposes of
 5 the business."
 6 So we would submit that it is plain that for the
 7 purposes of the main BI cover, the insured peril is
 8 accidental damage to property used by the policyholder
 9 at the premises for the purposes of the business . And
 10 in order to be indemnifiable , the loss of gross profit
 11 must be caused by such damage.
 12 If we could then look at the right -hand column on
 13 this page {B/2/33}, you will see the definitions of
 14 "Indemnity Period", "Gross Profit", "Rate of Gross
 15 Profit" and "Standard Turnover". My Lords, we don't
 16 need to focus on the detail of these provisions , which
 17 are fairly standard and your Lordships will be very
 18 familiar with them.
 19 At the foot of the page we find the trends language.
 20 We have referred to it as "trends language" because it
 21 doesn't appear set out at a separate clause . As I said
 22 at the beginning of my remarks, it is common ground
 23 between the FCA and Arch that the trends language
 24 applies to the government and local authority action
 25 extension .

136

1 You will see:
 2 "Rate of gross profit and standard turnover may be
 3 adjusted to reflect any [and I emphasise 'any'] trends
 4 or circumstances which
 5 "(i) affect the business before or after the damage.
 6 "(ii) [or] would have affected the business had the
 7 damage not occurred."
 8 If we could go to the next page {B/2/34}, in the top
 9 left corner:
 10 "The adjusted figures will represent, as near as
 11 possible, the results which would have been achieved
 12 during the same period had the damage not occurred."
 13 So we would submit that it is clear that the trends
 14 language confirms that "but for" causation is required
 15 by the Arch policy. The adjustment exercise is aimed at
 16 arriving at an answer to the question: what would have
 17 been the financial results for the business during the
 18 indemnity period if the damage had not occurred?
 19 In the case of the main business interruption cover
 20 under this policy, therefore, the enquiry is into what
 21 would have been the results for the business if the
 22 damage to insured property had not been incurred. And
 23 we would respectfully suggest that the analysis is
 24 indistinguishable from that applied in the
 25 Orient-Express case.

1 And the counterfactual is logically the same, where
 2 any of the business interruption extensions apply,
 3 reading "damage" in the context of the trends language
 4 to mean the operation of the relevant insured peril
 5 under the applicable extension.
 6 If we could go back to page 33 {B/2/33}, just to
 7 pick up on the trends language at the foot of the page,
 8 I emphasise that it is any trends or circumstances, in
 9 our trends language. Plainly, "trends" suggests
 10 patterns, patterns affecting the business, and it is
 11 sensible to look at patterns affecting the business
 12 because the standard turnover will only be a snapshot
 13 for a particular 12-month period, it won't tell you
 14 whether the business was growing or shrinking over
 15 a period of years.
 16 So far as concerns "circumstances", that, we
 17 suggest, plainly means anything else which has an effect
 18 on the business. And "any", I would respectfully
 19 suggest, means "any". It is very difficult, we would
 20 suggest to see why "any circumstances" should be limited
 21 to what Mr Edelman described as ordinary business
 22 vicissitudes, whatever they might be.
 23 Mr Kealey has just made submissions to you on this
 24 point and I am not going to repeat them. Can I just
 25 note that it doesn't even appear to have been argued in

1 the Orient-Express case that the trends clause in that
 2 case, that the special circumstances were limited to
 3 ordinary business vicissitudes. It doesn't appear to
 4 have been argued that the hurricane was not an ordinary
 5 business vicissitude and could not, for that reason, be
 6 a relevant circumstance.
 7 With that introduction to the indemnity provisions
 8 and the business interruption section in mind, can we
 9 move then to the extensions in the policy, the
 10 extensions to the business interruption provisions.
 11 They are called "clauses" in this policy for some
 12 reason, but they are extensions.
 13 If we could start on bundle {B/2/35} with the stem,
 14 to use Mr Gaisman's helpful words, the stem under the
 15 heading "Clauses" in the right-hand column:
 16 "We will also indemnify you in respect of reduction
 17 in turnover and increase in cost of working as insured
 18 under this section resulting from ..."
 19 It is the words "as insured under this section"
 20 which confirm -- and as I said, this is common ground --
 21 that the loss of gross profits provisions, including the
 22 trends language which we have been looking at, apply as
 23 much to these extensions in the Arch policy as they do
 24 to the main business interruption cover.
 25 I don't really need to say anything more about

1 "resulting from"; it indicates that the loss of gross
 2 profit must result from the insured peril. In other
 3 words, the insured peril must be a proximate cause of
 4 the loss of gross profit.
 5 I am going to look carefully in a moment at the
 6 government and local authority action extension, which
 7 is the only extension upon which the FCA places
 8 reliance. But before we get to it, it is helpful just
 9 to look at some of the extensions which are not relied
 10 upon, simply to identify the provisions by reference to
 11 which coverage would attach.
 12 The first clause I invite your attention to is
 13 clause 1, "Prevention of Access", and this only applies
 14 in an event of damage to property in the vicinity of the
 15 premises. But the words that I invite your particular
 16 attention to are "hinders or prevents access to the
 17 premises". You will note that this clause includes the
 18 word "hinders".
 19 We then have clause 3, the "Disease, Infestation and
 20 Defective Sanitation" clause. This is not relied on by
 21 the FCA and if I can just say the reason why, it is
 22 because item (c), notifiable human infectious or
 23 contagious disease, the definition of that term contains
 24 a closed list which does not include COVID-19. But that
 25 is not the reason for showing you the clause. The

1 reason I am showing you the clause is because you will
 2 see that the peril insured against involves the use of
 3 the premises being restricted on the order or advice of
 4 the competent authority. So this is a restriction of
 5 use clause.
 6 If we then turn over the page we get to the relevant
 7 provision for the purposes of the FCA's claim {B/2/36},
 8 which is clause 7, "Government or Local Authority
 9 Action".
 10 Can I just draw your Lordships' attention very
 11 briefly to the next clause, clause 8, the "Loss of
 12 attraction" clause, the extension at clause 8, which
 13 insures against a loss of gross profit by reason of
 14 reduced customer footfall as a result of damage to the
 15 property in the vicinity of the premises. As we pointed
 16 out in our written skeleton, this provision is relevant
 17 because it shows that the policy, in specific
 18 provisions, does deal with the limited circumstances in
 19 which a loss of customer footfall may give rise to
 20 a business interruption claim under one of the
 21 extensions. We will come to look in due course at
 22 regulation 6, and the suggestion or contention by the
 23 FCA that the movement restrictions which led to
 24 a reduction in customer footfall in some way involves
 25 a prevention of access, and we submit plainly it

141

1 doesn't.
 2 If we then look, finally, with that rather long
 3 build-up, at the relevant provision, the "Government or
 4 Local Authority Action" provision which your Lordships
 5 will see at the top on the right-hand column. Our case
 6 in a nutshell is that this extension provides that if
 7 the policyholder's premises cannot be accessed for the
 8 purposes of the carrying on of the Business, capital B,
 9 by reason of the order or advice of government or local
 10 authority in response to a qualifying emergency, the
 11 policy will pay for the loss of gross profit caused by
 12 that prevention of access. And we submit that that is
 13 the natural, indeed only reasonable and sensible
 14 construction of the first three lines of the clause.
 15 So if we identify what it is that goes to make up
 16 the insured peril, the insured peril requires each of
 17 the following. Firstly, it requires a qualifying
 18 emergency, an emergency likely to endanger life or
 19 property. Second, it requires government or local
 20 authority action or advice, taken in response to the
 21 qualifying emergency. Thirdly, the effect of that
 22 action or advice must be to require or recommend the
 23 prevention of access to the premises.
 24 To repeat a point which I think all insurers have
 25 made at various stages, this is obviously not pandemic

142

1 cover. The emergency is the first step, but the
 2 emergency obviously doesn't trigger any right to an
 3 indemnity.
 4 This extension does not purport to provide, and no
 5 reasonable reader of the clause could conclude that it
 6 provides, cover for loss of gross profit due to an
 7 emergency. The extension provides cover for loss of
 8 gross profit caused by a particular category of
 9 prevention of access to the premises, namely one which
 10 is the result of an order or advice of government or
 11 local authority, which is some turn a response to an
 12 emergency of a particular type.
 13 So the insured peril is no more and no less than the
 14 prevention of access to the premises as a result of
 15 governmental action or advice taken in response to
 16 a qualifying emergency.
 17 LORD JUSTICE FLAUX: Is that a convenient moment, Mr Lockey?
 18 MR LOCKEY: Yes.
 19 LORD JUSTICE FLAUX: We will break until 3.30, ten minutes.
 20 MR LOCKEY: Very good.
 21 (3.20 pm)
 22 (Short break)
 23 (3.30 pm)
 24 LORD JUSTICE FLAUX: Right.
 25 MR LOCKEY: My Lords, if I can resume.

143

1 LORD JUSTICE FLAUX: Yes.
 2 MR LOCKEY: If we could have the "Government or Local
 3 Authority Action" clause on the screen again {B/2/36}.
 4 There is no dispute about the emergency, and there is no
 5 dispute about the meaning of "actions or advice of a
 6 government or local authority".
 7 The dispute at the coverage stage, and it is
 8 the principal dispute, is about the meaning of
 9 "prevention of access to the premises". There is
 10 a limit to how many times one can make the same point.
 11 The premises are defined; they are the location or
 12 location stated in the policy schedule, the place where
 13 the policyholder carries on his business.
 14 "Access to the premises" refers to the means by
 15 which entry is made to the premises. That is the
 16 natural meaning of the phrase and it is also essentially
 17 what the FCA says at paragraph 153 of their skeleton.
 18 I will give you the reference but we don't need to look
 19 it up, {1/1/60}.
 20 Therefore, reading the clause as a whole, we say
 21 that government action or advice which prevents access
 22 to the premises is government action or advice which
 23 requires, recommends, that the means of accessing the
 24 premises are no longer to be used.
 25 In practical terms, therefore, we do submit that

144

1 nothing short of action or advice, the effect of which
 2 is to require or recommend closure of the premises, will
 3 suffice to lead to a prevention of access to the
 4 premises.
 5 If I could make some very simple points to show
 6 where we differ from the FCA on the construction of this
 7 clause. The points are very straightforward and rather
 8 obvious, and to a certain extent they have been made by
 9 other insurers in connection with other clauses, but
 10 nevertheless they fall to be made by reference to this
 11 clause for Arch.
 12 The first obvious point is that the clause is
 13 concerned with access to the premises. It is not
 14 concerned with restrictions on the use which may be made
 15 of the premises. That is the first obvious point.
 16 The second is that the clause is concerned with
 17 prevention of access to the premises, not hindrance of
 18 access to the premises. You will have seen the earlier
 19 prevention of access clause, clause 1 in the extensions.
 20 You have also seen reference in the skeleton arguments
 21 to the difference between "prevention" and "hindrance",
 22 when similar words are used in force majeure clause.
 23 LORD JUSTICE FLAUX: You say there is no reason why we
 24 shouldn't give effect to those cases like Tennants v
 25 Wilson, and Westfälische Central-Genossenschaft, merely

1 because they are dealing with force majeure clauses
 2 rather than insurance disputes.
 3 MR LOCKEY: Absolutely. They reflect the ordinary use, we
 4 would suggest, of "prevention" and "hindrance".
 5 LORD JUSTICE FLAUX: Yes.
 6 MR LOCKEY: Thirdly, or the next obvious point is that the
 7 clause is concerned with "prevention of access to the
 8 premises", not prevention of access to the premises or
 9 to any part thereof. It is an obvious point, but the
 10 FCA argues that the clause does not say complete
 11 prevention of access to the premises, but that is
 12 obviously what the words used do mean. By the same
 13 token, it is impossible to see how "prevention of access
 14 to the premises" can be read to mean partial prevention
 15 of access, which is another FCA variant. We struggle
 16 with the concept of the partial prevention, but in any
 17 event that as it were is by-the-by, it is "prevention of
 18 access to the premises" which is required.
 19 Jumping ahead to the facts slightly, this is
 20 a particularly important --
 21 LORD JUSTICE FLAUX: Mr Lockey, just as a matter of
 22 presentation, you have sort of disappeared off the right
 23 of our screen. I think you need to move very slightly
 24 to your right.
 25 MR LOCKEY: I do want your Lordship to see me.

1 LORD JUSTICE FLAUX: I know I'm a fine one to talk, but ...
 2 MR LOCKEY: My chair has wheels.
 3 LORD JUSTICE FLAUX: I hate seeing only a part of your face.
 4 MR LOCKEY: What I was going to say, jumping ahead to the
 5 facts, and this is particularly important for category 3
 6 and category 5 businesses, this clause is not triggered
 7 by restrictions placed on the free movement of those who
 8 may use the premises, whether it is the business owner,
 9 his or her employees, or his or her customers or
 10 clients. Those restrictions, the restrictions which we
 11 see in regulation 6, are not directed at the means of
 12 accessing the premises and do not prevent access to the
 13 premises.
 14 Therefore, our position so far as categories 3 and 5
 15 are concerned is clear and, we would submit, clearly
 16 correct. Those businesses were neither required nor
 17 even advised to close, and so there is no question of
 18 a prevention of access to the premises.
 19 MR JUSTICE BUTCHER: I see the point about categories 3 and
 20 5. Is there any tension between the concept of
 21 prevention of access and the idea that this can be due
 22 to advice?
 23 MR LOCKEY: The fact that it can be due to advice means that
 24 the prevention of access doesn't need to be legally or
 25 practically impossible. That is what I would suggest is

1 the way of resolving any tension from, or explaining how
 2 actions and advice relate to prevention. That is why we
 3 don't argue that it must be a physical legal
 4 impossibility. It is enough that the advice recommends
 5 closure of the premises.
 6 MR JUSTICE BUTCHER: But the advice has to recommend total
 7 closure, as it were, and it doesn't matter that people
 8 could ignore the advice.
 9 MR LOCKEY: Exactly. Absolutely. Yes. We don't say that
 10 the fact that the advice could be ignored makes
 11 a difference. Nor do we say, and having explained
 12 already that we accept that it is prevention of access
 13 to business premises, we don't go so far as to say that
 14 access for the limited purpose, which wouldn't involve
 15 a breach of the regulations, for example to switch off
 16 the electricity or to do urgent maintenance work during
 17 the period when the premises were required to be closed,
 18 meant there was no prevention of access. We don't take
 19 such an absolutist point. We take the point that it is
 20 access to the premises for the purposes of carrying on
 21 the business which must be prevented.
 22 So far as regulation 6 is concerned, this does not
 23 on any view, we would submit, represent or constitute
 24 a prevention of access to the premises of any insured
 25 business. It doesn't actually amount -- and this is

1 a point I think made by Mr Gaisman -- it doesn't even
2 amount to a prevention of egress from the uninsured
3 premises where the owners or employees or customers
4 live .

5 But the focus of the clause is not on the access of
6 customers or the access of employees or the access of
7 the business owners. The FCA's point that the clause
8 does not say whose access must be prevented is, in our
9 respectful submission, a non-point. It is addressing
10 the wrong question. The clause tells us what must be
11 prevented; it must be access to the premises which must
12 be prevented. It is not a relevant enquiry to
13 investigate whose access must be prevented, it is the
14 access to the premises .

15 Therefore, the answer to the FCA's argument that
16 advice and social distancing advice, followed by action
17 placing restrictions on movement constitutes prevention
18 of access, is that such advice or actions have no effect
19 on the means of access to the premises, and therefore
20 does not fall within the scope of our clause .

21 The FCA also argues --

22 LORD JUSTICE FLAUX: It might amount to a hindrance of
23 access. Just to test the point .

24 MR LOCKEY: Possibly, although --

25 LORD JUSTICE FLAUX: Going back to Mr Gaisman's point about

149

1 queuing outside Waitrose for 45 minutes because you can
2 only go in one at a time, for these purposes, just
3 looking at what is hindrance or prevention, you might
4 say access to the premises there are hindered, but they
5 are clearly not prevented .

6 MR LOCKEY: No. And we will come on --

7 LORD JUSTICE FLAUX: If the shops close because they have
8 been told to close, then access is prevented by
9 everybody .

10 MR LOCKEY: Yes. The FCA also argues that the clause must
11 be read commercially, and that access and its prevention
12 has to be assessed by reference to the effects on
13 revenue, to quote the transcript from {Day3/27:18} .
14 I don't think we need to turn that up .

15 We respectfully submit that, again, that is looking
16 at the wrong target . The proper construction of the
17 clause does not involve any assumption that any
18 reduction in revenue must be the result of a prevention
19 of access to the premises . The clause has nothing --
20 the insured peril is not dependent or driven by revenue
21 effects on the advice or action; it requires
22 a particular result or effect of the advice or action .

23 If I could just then run through the various
24 categories of business and how the clause applies to the
25 facts . We say that the only advice which meets the

150

1 requirement of preventing access to certain types of
2 premises is the advice given by the Prime Minister on
3 20 March 2020 and on 23 March 2020, advising or
4 instructing certain categories of business premises to
5 be closed . If I can just give you the cross- references ,
6 it is rows 46, 53 and 54 of the table in Agreed Facts 1,
7 at {C/1/21} and pages 26 to 27 . But we don't need to
8 look those up, you will remember the transcript of the
9 Prime Minister's speeches .

10 There is one point on the facts where there is
11 a disagreement as to whether it constitutes relevant and
12 that concerns the Prime Minister's advice on 16 March,
13 2020, entry 33 at {C/1/12} to page 14 . You will recall
14 this advice, my Lords . This was the advice, advising
15 people to work from home where possible and not to go to
16 pubs or clubs . This advice did not, we would
17 respectfully submit, recommend the closure of any
18 premises . It is one thing to tell people not to go to
19 pubs or clubs; it is something else to advise the pubs
20 and clubs to close . I am not going to give evidence,
21 but your Lordships may well remember, at least from the
22 newspapers that week, reporting on the fact that many
23 pubs and clubs did remain open after the speech on
24 16 March 2020 and people continued to flock to them all
25 that week . But on the FCA's case --

151

1 LORD JUSTICE FLAUX: I think, from recollection, there was
2 a sort of booze-fest on the basis that any day now he's
3 going to close them down, which is what happened .

4 MR LOCKEY: On the FCA's case there was already a prevention
5 of access for those pubs and clubs that were benefiting
6 from the booze-fest .

7 So we don't accept the FCA's case that the social
8 distancing advice or advice to work from home where
9 possible given by the Prime Minister on 16 March 2020
10 constituted advice preventing access to insured
11 premises . That advice did not recommend closure of
12 insured premises .

13 But we do accept, as with the advice given on
14 20 March and on 23 March, that the regulations which
15 followed hot on the heels of that advice also qualify is
16 as actions preventing access to certain types of
17 premises . But it is only those regulations which
18 required closure of premises, or closure of a business
19 carried on at the premises, which qualify . That is why
20 we get to the seven categories of business . Perhaps
21 I could just take this briefly from annex A to our
22 skeleton, which is at {1/8/1} .

23 If we could go over the page {1/8/2} . I apologise
24 that the formatting may cause some difficulty if you are
25 looking at this on a small screen .

152

1 Category 1, I will take this very quickly because,
2 as I said, although the FCA are obsessed with
3 take-aways, Arch has very few policyholders in
4 category 1, and in our submission the point is extremely
5 straightforward.

6 Access to the premises of a pub, bar, club or
7 restaurant was only prevented by the 20 March advice and
8 then by the 21 March regulations and followed by the
9 26 March regulations, if the pub, bar, club or
10 restaurant did not offer take-away services as part of
11 its Business, with a capital B.

12 For those businesses, we would accept that the
13 effect of the advice and subsequent regulations was that
14 the premises could not be open to customers without the
15 policyholder making a fundamental change to its
16 business; in other words, a different business to that
17 referred to in the schedule and the statement of facts
18 or the proposals. We have not taken the position that
19 where a policyholder in category 1 could start a new
20 business which is permitted, that there is no prevention
21 of access to the premises.

22 So we don't suggest, for example, that
23 Gordon Ramsey's restaurant could re-open as a take-away
24 and therefore there was no relevant prevention of
25 access. But by the same token, we would not accept that

153

1 there was a prevention of access to McDonalds, which
2 prior to the regulations did have a significant and
3 substantial take-away business.

4 Could I just note that --

5 MR JUSTICE BUTCHER: Does it matter that it was significant
6 and substantial?

7 MR LOCKEY: I think it needs to be more than de minimis.

8 Can I just note in this context that the FCA relies
9 on the duty to mitigate losses and the reasonable
10 precautions provision, but in our submission those
11 provisions have no bearing on what triggers the
12 extension.

13 If I can move quickly on to category 2. We accept
14 that there was a prevention of access to the premises
15 where the premises were used for businesses which would
16 fall within category 2 and which were required to cease
17 those businesses under regulation 2.4 of the 21 March
18 regulations and regulation 4.4 of the 26 March
19 regulations.

20 The FCA suggested there was some sort of
21 inconsistency in our position, even though we have
22 accepted, to all intents and purposes, that category 2
23 involves closure, because they say that under the
24 regulations a theatre could still put on a performance
25 for remote audiences or, perhaps even more bizarrely,

154

1 could host blood donation sessions. But there is no
2 inconsistency in our position. There is a prevention of
3 access for theatres because neither of those permitted
4 activities would have formed part of the Business,
5 capital B, of a policyholder as set out in the statement
6 of fact.

7 Category 3. Now this is important to Arch, but the
8 FCA skates over it. They skate over category 5, but
9 they also skate over category 3 and it is very important
10 for Arch because 70% of the Arch retail policyholders
11 operate businesses which fall within category 3. And
12 category 3, as you know, is the category of business
13 where there was no requirement to close. On the
14 contrary, they were expressly permitted by the
15 regulations to remain open. That is regulation 5.1 at
16 J16; we don't need to turn it up, you are familiar with
17 it.

18 How, we ask, can there be a relevant prevention of
19 access to the premises of businesses by government
20 action or advice, where the government action or advice
21 is to the effect that such businesses are expressly
22 permitted to remain open? And we submit that the FCA's
23 case is really, really hopeless on this point. It is
24 just difficult to see how it even passes the red face
25 test. Those premises were expressly permitted to remain

155

1 open.

2 Even if it is relevant, which it is not, to look at
3 the position of employees or customers, the position is
4 equally clear. Regulation 6.2(f) provided that it would
5 be a reasonable excuse for a person to leave the place
6 where they are living to travel for the purposes of work
7 where it was not reasonably possible for that person to
8 work from the place where they were living. That
9 clearly meant that business owners and employees were
10 not prevented from accessing category 3 premises.
11 Equally, customers of category 3 businesses were not
12 prevented from leaving home to shop at category 3
13 premises.

14 The FCA's case appears to boil down to this: that
15 access was prevented merely because it was more
16 expensive for the businesses to operate because of
17 social distancing advice or because footfall was less
18 than usual.

19 And please bear in mind when you look back at the
20 FCA's case on this topic, that the FCA's case on
21 category 3 is not limited to shops in category 3 which
22 chose to close, it includes all those shops in
23 category 3 which remained open through the lockdown.
24 You can see that from their skeleton at section 151.3,
25 and you will also note it from Ms Mulcahy's oral

156

1 submissions on {Day3/34:1}. There is no need to turn
2 that up.

3 Category 4, we can deal with that fairly quickly.
4 We say this is fact-sensitive, and certainly the FCA is
5 not entitled to any sort of blanket declaration. This
6 is probably the category into which the somewhat quaint
7 or homespun example of the tailor might fall, but one
8 would also include, perhaps more realistically in
9 category 4, the example of a high street estate agent or
10 letting agent whose business includes operations carried
11 on online. The regulations didn't require the estate
12 agent's premises to be closed if used for those purposes.
13 Likewise, movement restrictions in regulation 6 would
14 not prohibit attendance at premises by the estate agent
15 if this was reasonably necessary, for example to update
16 the website, if that was something that couldn't be done
17 from home, or to access paper files.

18 Category 5, you heard something on this from
19 Mr Gaisman and also from Mr Kealey. I don't want to
20 repeat their submissions. Category 5 businesses are of
21 great importance to Arch as well; it represents 38% of
22 the total. These businesses were not required or
23 advised to close, and we submit that there was no
24 prevention of access to those premises; the premises in
25 question remained fully accessible throughout.

157

1 Category 6 is not relevant to Arch.

2 Category 7, we have the sum total of two businesses
3 in category 7, two policies, so I am not going to
4 develop any submissions on that orally.

5 Where does that take us? You will see that we have
6 accepted, and this has been our position prior to this
7 litigation, we have accepted that where businesses were
8 advised to close or required to close pursuant to the
9 regulations, and did close, that the extension has been
10 triggered for those policyholders. That has not been
11 disputed or doubted by Arch. On the contrary, that is
12 the position we have taken.

13 The point which then arises, which is also a point
14 which the FCA seeks to deal with by way of these broad
15 declarations, concerns the calculation of the indemnity
16 where the clause has been triggered.

17 Our main point on causation is essentially a point
18 that goes to the determination of the appropriate
19 indemnity, rather than to the operation of the insured
20 peril. Our point is a fairly obvious one and you can
21 see it coming: a policyholder whose premises have been
22 closed is not entitled to claim from Arch a loss of
23 gross profits which the policyholder would not have made
24 if the premises had remained open.

25 What the FCA is seeking to do by the broad

158

1 declarations sought in these proceedings is to prevent
2 Arch from adjusting claims on the basis that some or all
3 of its policyholders under Arch1 would not have realised
4 their expected profit even if their premises had not
5 been closed, because of the economic effects of the
6 pandemic, including the reduction in footfall caused by
7 the lockdown restrictions, but also by the general fear
8 of COVID and the general lack of consumer confidence.
9 None of which comprise the insured peril.

10 Despite having set out to prove this, we say that
11 the FCA has singularly failed to prove a rule of law
12 which makes that argument unavailable to Arch simply as
13 a matter of principle.

14 So we say it is a necessary part of the
15 policyholder's burden of proving that a reduction in
16 gross profit has been proximately caused by the
17 operation of the insured peril, to show that the loss
18 would not have been suffered or, in other words, the
19 gross profit would have been earned if the insured peril
20 had not operated. And the fact that the emergency is
21 the first link in the chain of causation in the insured
22 peril does not mean that the other effects of the
23 emergency fall to be excluded from consideration when
24 examining what would be the position if the insured
25 peril had not operated. There is no principle of law

159

1 which requires the cause of the insured peril to be
2 ignored.

3 To pick up a point that was addressed by Mr Kealey
4 in his submissions, I think on Ecclesiastical1, it is
5 not entirely clear from the FCA's submissions on the
6 Arch policy whether the FCA's position on the
7 counterfactual turns on the fact that the emergency is
8 one of the stipulated requirements for cover under our
9 clause, extension 7.

10 So one could test this point, as indeed Mr Kealey
11 did, by asking what would be the FCA's position if the
12 clause had simply stopped at government or local
13 authority action or advice. So that the clause would
14 apply, the extension would be operative, irrespective of
15 what it was that caused the government or local
16 authority to respond.

17 If one assumes the facts are the same, that you have
18 got the emergency, which leads to the government or
19 local authority actual advice in this case, would the
20 FCA accept that in those circumstances, where the
21 emergency is not referred to in the insured peril, one
22 could have regard to the economic effects of the
23 emergency when assessing what the results would have
24 been if the premises had not been closed?

25 It seems, certainly from some parts of the FCA's

160

1 submissions, and Ms Mulcahy's submissions in particular
2 on Arch, that the point is said to arise because
3 extension 7 is a composite peril. But in truth, the
4 point can't depend on whether there is a particular
5 cause identified in the peril or not.

6 It seems to us that the FCA's case has to go
7 further, and it is the heretical proposition that any
8 and all causes of the operation of an insured peril are
9 to be excluded from consideration, whether those causes
10 are identified in the insuring clause or otherwise. And
11 it can't be a point which turns on whether there is
12 a composite insured peril clause or not.

13 We respectfully submit that there is nothing in
14 insurance law or in the law of causation more generally
15 in contract to support that proposition.

16 The second point we make is that "but for" causation
17 is expressly required by the trends language in the lead
18 Arch commercial combined policy, which we looked at
19 a few minutes ago, and similar "but for" language which
20 is common ground appears in the other two forms of Arch
21 policy. This language requires the making of an
22 assumption that the insured peril has not occurred, but
23 everything else remains the same.

24 So in short, the indemnity, where the extension has
25 been triggered, is to be calculated assuming that the

161

1 premises had not been a required or advised to close,
2 but everything else remains equal.

3 Can I just deal now with the assertion that it is or
4 may be impossible to distinguish between the loss caused
5 by the closure and loss which was caused by the pandemic
6 or the restrictions on movement, the recession,
7 et cetera.

8 Mr Kealey has addressed this point this morning, and
9 I don't want to go over all of that ground again.

10 What I would draw your attention to are the
11 following practical points. We know that for many
12 businesses they did suffer a reduction in turnover
13 before the closure advice and closure orders were made.
14 It is one of the agreed facts; the reference is
15 paragraph 1 in Agreed Facts 8 at {C/14/2}. Not wishing
16 to go over well trodden turf, on any view the gross
17 profit on that loss of turnover, turnover before the
18 advice and closure orders were made, is not recoverable.
19 The cause of that loss of turnover was the emergency, it
20 wasn't the subsequent closure advice nor indeed the
21 anticipation of the closure advice or orders.
22 Therefore, the reduced turnover for policyholders in the
23 days and indeed weeks before 20 March will form part of
24 the available evidence that even if the premises had
25 been permitted to remain open after 20 March, the

162

1 budgeted gross profit would not have been achieved.

2 The second practical point is that we know that many
3 businesses which were permitted to remain open after
4 20 March also suffered a loss of turnover compared to
5 the same period last year, because of the economic
6 recession, the lack of consumer confidence and the
7 restrictions on movement. There is plenty of publicly
8 available data about the drastic reductions in daily
9 travel by bus, train and road during the lockdown period
10 and subsequently. There are reams of economic data
11 published by the ONS and other sources, and this doesn't
12 require the evidence of social scientists or mind
13 readers.

14 Finally, the third practical point is that we know
15 that many businesses which were required to close and
16 which have since reopened, since the relaxation of the
17 regulations, have suffered a loss of turnover for the
18 period following re-opening compared to the same period
19 last year, because of the economic recession and the
20 lack of consumer confidence.

21 That is not an agreed fact, but anyone who has read
22 the newspapers will know it to be true, at least in
23 general terms. Therefore, the policyholders' results
24 for the period following the end of the closure period
25 will also be available and will assist in showing the

163

1 extent to which the emergency, and its effects on the
2 economy, rather than the closure, has been responsible
3 for the loss of turnover and the loss of gross profit
4 during the closure period.

5 These are all issues which we say we are entitled to
6 raise in an assessment or adjustment of what, if any,
7 loss of gross profit has been caused by the closure
8 order for any particular insured, and the FCA is simply
9 not entitled to declaratory relief which seeks to rule
10 out this exercise. And the fact that there is an
11 extension sub-limit of €25,000 does not change the legal
12 position.

13 If I can close by making one final point, which is
14 that adjustment exercises are often far from
15 straightforward, because one is seeking to establish
16 hypothetical trading results. The point was made by the
17 tribunal in the award in the Orient-Express, if you just
18 note paragraph 20 of the award, which is set out at
19 {J/106/5}:

20 "All claims for business interruption raise
21 hypothetical issues, and whilst the tribunal would
22 acknowledge that the evaluation required on the facts of
23 the present dispute is more difficult than most, this
24 cannot affect what is the correct approach in
25 principle."

164

1 I would respectfully suggest that that is correct .
 2 My Lords, unless I can assist your Lordships any
 3 further , that is all I propose to say on behalf of Arch.
 4 Obviously the written argument is taken as read.
 5 LORD JUSTICE FLAUX: I don't have any questions, Mr Lockey.
 6 Thank you very much.
 7 Who do we have now?
 8 MR ORR: My Lords, can you hear me?
 9 LORD JUSTICE FLAUX: Yes. You might need to turn up your
 10 sound a bit .
 11 (4.03 pm)
 12 Submissions by MR ORR
 13 MR ORR: Is that better?
 14 LORD JUSTICE FLAUX: Yes, that is fine.
 15 MR ORR: I am obliged, my Lords.
 16 My Lords, as you know, I appear for Zurich. There
 17 are two Zurich wordings relied upon by the FCA; they are
 18 both public authority prevention of access clauses .
 19 They each provide cover for loss resulting from
 20 interruption or interference with the insured's business
 21 in consequence of action by the police or other
 22 competent local, civil or military authority following
 23 a danger or disturbance in the vicinity of the premises
 24 whereby access to the premises is prevented.
 25 There are notifiable disease clauses in the Zurich

165

1 policies , but these are not alleged by the FCA to be
 2 triggered by the COVID pandemic or the government's
 3 response to that pandemic.
 4 In terms of a route map for my submissions,
 5 I propose first to take your Lordships to the Zurich
 6 policies , and to make certain preliminary points on the
 7 wordings and the policies in which they appear.
 8 Second, I will address the coverage issues between
 9 Zurich and the FCA, focusing in particular on two
 10 issues : first of all , whether the government measures
 11 responding to the COVID-19 pandemic were taken following
 12 a danger in the vicinity of the premises, within the
 13 meaning of the clause ; and second, whether the
 14 government measures prevented access to the premises
 15 within the meaning of the clause .
 16 Third, I will address certain discrete issues
 17 concerning causation of loss and trends.
 18 As regards the coverage issues , I should explain
 19 that Zurich does not pursue an argument about the
 20 meaning of " civil authority ". It accepts that the term
 21 as used in the Zurich policies encompasses central
 22 government.
 23 I will endeavour in my submissions to avoid
 24 duplicating points that have already been made by other
 25 insurers .

166

1 My Lords, could we start , then, by going to the
 2 Zurich wordings. There are two lead policies ; they are
 3 in {B/21/1} and {B/21/1}. The relevant wordings in each
 4 policy are in materially the same terms, but the
 5 policies are different in structure and there are
 6 relevant differences between them to which I should draw
 7 your Lordship's attention .
 8 Ms Mulcahy took your Lordships to the combined all
 9 risk policy at {B/21/1}. That comprises a policy
 10 document and a schedule.
 11 Can I take your Lordships to the second lead policy ,
 12 known as Zurich2, which is in {B/22/1}.
 13 If we can start at page 1, this is known as the
 14 Acturis policy and, as its front page indicates , it is
 15 designed for manufacturing businesses .
 16 The Contents page identifies the types of cover
 17 provided. Section B, business interruption , begins at
 18 page 28 of the document {B/22/28}.
 19 The primary business interruption cover, the
 20 insuring clause for that is at page {B/22/30}, and your
 21 Lordships will see in the middle of the page "Cover":
 22 "In the event of any incident occurring during the
 23 period of insurance and in consequence the business
 24 carried on by you at the premises being interrupted or
 25 interfered with then we will pay you ..."

167

1 "Incident" is defined at page {B/22/28} as being:
 2 "Damage to property used by you at the premises for
 3 the purposes of the business."
 4 And "Damage" in turn is defined on page {B/22/13}
 5 as:
 6 "Physical loss, destruction or damage."
 7 If I can take you back to page {B/22/30} your
 8 Lordships will see there that for the basic business
 9 interruption cover are set out at page 30, "Basis of
 10 claim settlement" clauses . There are various types of
 11 bases of claim clauses , but by way of example item 1 is
 12 dealing with gross profit :
 13 "The amount payable as indemnity under this item
 14 will be:
 15 "(a) in respect of reduction in turnover: the sum
 16 produced by applying the rate of gross profit to the
 17 amount by which the turnover during the indemnity period
 18 falls short of the standard turnover in consequence of
 19 the incident ."
 20 The trends clause , as we have been describing it ,
 21 appears at the top of page {B/22/30} under the heading
 22 "Notes to the special definitions ". Your Lordships will
 23 see:
 24 "In respect of the definitions of [among other
 25 things] standard turnover, adjustments will be made as

168

1 may be necessary to provide for the trend of the
 2 business and for variations in or other circumstances
 3 affecting the business either before or after the
 4 incident which would have affected the business had the
 5 incident not occurred so that the figures thus adjusted
 6 will represent as nearly as may be reasonably
 7 practicable the results which but for the incident would
 8 have been obtained ..."
 9 Your Lordships have seen similar wording in trends
 10 clauses in other insurers' policies .
 11 Now, my Lords, could we then go to the extensions to
 12 the primary business insurance cover, and they begin at
 13 page 34. {B/22/34}. All of these are governed by the
 14 introductory words, the stem appears towards the top of
 15 page 34.
 16 "Additional cover extensions applicable to
 17 subsection B1 ...
 18 "Any loss as insured under this section resulting
 19 from interruption of or interference with the business
 20 in consequence of:
 21 "(a) damage at any situation or to any property
 22 shown below; or
 23 "(b) any of the under-noted contingencies
 24 "will be deemed to be an incident."
 25 So the obvious purpose of that is to deem the

169

1 contingencies under each extension to be an incident ,
 2 which then brings it within the scope of the basic
 3 business interruption insuring clause and engages the
 4 quantification machinery.
 5 The first extension is what we call the AOCA
 6 extension , the action of competent authorities
 7 extension . That is the wording that I have already
 8 identified to your Lordships.
 9 I should, while I'm on this, just make this point in
 10 relation to the indemnity period. The maximum indemnity
 11 period is 12 months. "Indemnity Period" is defined on
 12 page {B/22/28} towards the bottom of page 28, as being:
 13 "The period beginning with the occurrence of the
 14 incident and ending not later than the maximum indemnity
 15 period thereafter during which the results of the
 16 business are affected in consequence of the incident ."
 17 I draw that to your Lordship's attention because the
 18 FCA in their skeleton have taken a bad point against us.
 19 They suggest that the reference to 12 months indemnity
 20 period suggests that this clause is contemplating
 21 a danger or disturbance which could last for 12 months.
 22 That is clearly not the case. The indemnity period is
 23 looking to the period during which the business' results
 24 are affected , not the period during which the danger or
 25 disturbance continues .

170

1 Other relevant extensions are the loss of attraction
 2 extension on page {B/22/35}, which engages damage to
 3 property within the vicinity of the premises . Then the
 4 notifiable diseases and vermin extension , number 8, on
 5 page 35:
 6 "Loss resulting from interruption of or interference
 7 with the business at the premises resulting from
 8 "(a)(i) any occurrence of a notifiable disease at
 9 the premises."
 10 And so on:
 11 "which causes restrictions on the use of the
 12 premises on the order or advice of the competent local
 13 authority ."
 14 Importantly, in this policy , if your Lordships go
 15 over to page {B/22/36}, towards the top, as part of the
 16 notifiable disease extension , your Lordships will see an
 17 exclusion :
 18 "Excluding:
 19 "(i) any infectious diseases which have been
 20 declared as a pandemic by the
 21 World Health Organisation."
 22 So it is for that reason common ground between us
 23 and the FCA that this extension is not engaged.
 24 I should also ask your Lordships to note that
 25 " Notifiable Disease" is defined ; we don't need to go to

171

1 it , it's at page {B/22/29} and it is a closed list .
 2 Then finally on these extensions that are relevant
 3 the prevention of access extension on page {B/22/36}
 4 number 10, that is engaged where:
 5 "Property in the vicinity of the premises is
 6 damaged, damage to which will prevent or hinder the use
 7 of the premises or access thereto , whether your premises
 8 or property therein sustain damage or not ..."
 9 Now I don't propose to take your Lordships to
 10 Zurich1, because Ms Mulcahy has already done that.
 11 That, as I have said , comprises a policy document and
 12 a schedule. It is in materially similar terms, except
 13 for this: the notifiable disease extension does not
 14 include the exclusion that appears in this policy .
 15 LORD JUSTICE FLAUX: But it is limited in any event, isn't
 16 it , to occurrence at the premises?
 17 MR ORR: Yes, it is, my Lord. In both policies , precisely
 18 so. Occurrence of a notifiable disease is constrained
 19 by that limitation .
 20 LORD JUSTICE FLAUX: Yes.
 21 MR ORR: My Lords, a number of preliminary points fall to be
 22 made at the outset about the provisions I have
 23 identified .
 24 First , the Zurich policies draw a clear distinction
 25 between three matters. First of all , access to the

172

1 premises and use of the premises. They also distinguish
 2 between access to the premises being prevented, and
 3 access to the premises being hindered. Thirdly, they
 4 also distinguish between access to the premises being
 5 prevented and use of the premises being hindered or
 6 becoming subject to restrictions .
 7 So these are the same distinctions that have been
 8 made by insurers preceding me.
 9 The second preliminary point is that the phrase
 10 "vicinity ", "in the vicinity of the premises" or "within
 11 the vicinity of the premises" is used not only in the
 12 AOCA extension but also in the loss of attraction and
 13 the prevention of access extensions . We say that this
 14 phrase has the same meaning in each of the extensions ,
 15 namely that it means in the immediate locality of the
 16 premises; it requires the relevant event to have
 17 occurred within close spatial proximity of the premises,
 18 ie close to or nearby the premises. That is especially
 19 clear from the prevention of access extension . Unless
 20 the damaged property is near or close to the insured 's
 21 premises, the damage to that property would not or would
 22 be unlikely to prevent or hinder access to the insured 's
 23 premises .
 24 The third preliminary point is that the extensions
 25 to the business interruption cover provide pockets of

1 cover, each one of which is limited by its own specific
 2 requirements; there is no blanket coverage, for example,
 3 in respect of danger or notifiable diseases . That is
 4 particularly apparent from the notifiable diseases
 5 extensions .
 6 The same circumscription of cover is apparent, we
 7 submit, from the AOCA extension. The circumscription
 8 includes the geographical location of the danger or
 9 disturbance; it must be in the vicinity . Secondly, the
 10 requirement that the danger or disturbance in the
 11 vicinity must cause the action by the relevant
 12 authority, ie the one must follow from the other. And
 13 thirdly, the type of public authority action which
 14 triggers cover, namely that it must prevent access to
 15 the premises .
 16 Those limitations are fundamental, but they are
 17 ignored by the FCA in their arguments.
 18 We also emphasise at this stage that the vicinity
 19 limitation , and accordingly the causal link between the
 20 vicinity and the authority action , is an important
 21 distinction between the Zurich wording and the
 22 government authority clause in Arch's wording.
 23 My final preliminary point is to note the
 24 composition of Zurich 's policyholders . As Ms Mulcahy
 25 informed your Lordships , the Zurich1 and 2 wordings were

1 purchased by insureds falling within all seven
 2 categories of business identified by the FCA, but with
 3 a heavy leaning towards category 5.
 4 Now, in fact 84% of the policies in issue were
 5 purchased by policyholders in category 5., that is
 6 service businesses and manufacturers. The relevant
 7 figures are in a table at bundle H, tab 44, page 15,
 8 {H/44/15}. That is a schedule that has been compiled by
 9 the FCA on the basis of information from insurers , and
 10 your Lordship will see there on the right-hand side, the
 11 final column, a box containing the various percentages
 12 of policyholders across all Zurich wordings.
 13 Of course none of the business , as your Lordships
 14 know, in category 5 were required to cease or close
 15 their premises .
 16 My Lords, we also echo Mr Kealey's observation that
 17 these policies were not all sold to SMEs. Zurich1
 18 policies , for example, are sold mainly to mid-market
 19 companies with substantial turnovers, and not SMEs.
 20 That is a point that is made in our skeleton at
 21 paragraph 41.
 22 My Lords, can I then turn to the construction
 23 issues .
 24 Before focusing on the main two issues I make this
 25 general point about the AOCA extension. Reading the

1 clause as a whole, it is clearly directed to occurrence
 2 of a danger or disturbance in the immediate locality of
 3 the insured 's premises which leads to the police or
 4 other relevant authority taking action to prevent access
 5 to the insured 's premises. And it is common ground, as
 6 others have told your Lordships, that "access" in this
 7 clause means the means to approach or enter the
 8 premises. Access is therefore agreed to be a physical
 9 concept; the clause is concerned with obstruction to the
 10 physical means of the approaching or entering the
 11 premises .
 12 The paradigm case contemplated by the clause is
 13 a bomb scare, a brawl, a serious traffic accident. In
 14 response, the police or other relevant authority takes
 15 action which prevents access to the premises, ie shuts
 16 off access altogether for all purposes, because access
 17 to the premises is unsafe or needs to be kept clear for
 18 the emergency services or for police investigations .
 19 That is the vanilla risk that is insured by this clause .
 20 Now, as explained by Riley on Business Interruption
 21 Insurance, in a passage that we have cited in our
 22 skeleton in a footnote to paragraph 66, which is at
 23 {I/19/33}, this type of extension arose out of terrorist
 24 activity in the UK in the 1980s and 1990s. If we could
 25 have bundle {I/19/33} up, that may help. Thank you.

1 Now, that terrorist activity, as mentioned in the
2 footnote there, involved not only devices which did
3 explode, but also bomb hoaxes to which the authorities
4 were bound to react by cordoning off areas, thereby
5 preventing access to premises. In the absence of
6 material damage, other business interruption cover would
7 not respond, because ordinary denial of access or loss
8 of attraction cover depends upon such damage, as indeed
9 is the case in the Zurich policies.

10 So the objective intent of the AOCA extension could
11 not be clearer, it contemplates a local kind of incident
12 which causes the police or other relevant authorities to
13 obstruct the physical means of approaching or entering
14 the premises. That, of course, is a very long way from
15 the COVID-19 pandemic and the national measures
16 implemented by the UK Government on a nationwide basis
17 to deal with that pandemic.

18 If one were drafting an extension to apply to the
19 government measures taken in response to the pandemic,
20 it would certainly not look like the AOCA extension. In
21 our submission, no reasonable reader reading that
22 extension would think that it covered the COVID-19
23 pandemic or the wholly unprecedented measures introduced
24 by the UK Government to deal with the pandemic.

25 By arguing the contrary, the FCA is trying to force

177

1 a square peg into a round hole. Many of the
2 difficulties encountered in this case, including how
3 does a policyholder prove danger, what expert evidence
4 is required, and the artificiality of the jigsaw
5 argument that is relied upon by the FCA, all stem from
6 the fact that the FCA is attempting to use this clause
7 to achieve an objective it was never intended to
8 achieve.

9 But the FCA nevertheless goes so far as to say that
10 it was contemplated, at least in Zurich2, that the AOCA
11 extension might be triggered by pandemics, as the
12 reasonable reader would understand. In our submission,
13 that is plainly wrong.

14 The FCA seeks to make a virtue of the express
15 exclusion for pandemics in the notifiable diseases
16 extension in Zurich2. Thus, it pleads in its amended
17 particulars of claim, at paragraph 33, and its reply at
18 paragraph 43, that the presence of the pandemic's
19 exclusion in the notifiable diseases extension would be
20 taken by a reasonable reader to demonstrate a deliberate
21 decision by the draftsman not to exclude pandemics from
22 the scope of the AOCA extension, which should therefore
23 be taken to encompass pandemics. In our submission,
24 that is fallacious reasoning.

25 The true position, the correct position is the

178

1 opposite. The reasonable reader reading either of the
2 Zurich policies would infer that if cover was afforded
3 by any of the extensions for infectious disease
4 pandemics, it would be found in the notifiable disease
5 extension. But since that extension doesn't apply there
6 is no cover.

7 Zurich doesn't contend that the extensions are
8 mutually exclusive and that there is therefore only one
9 door for any event. The extensions are not mutually
10 exclusive in a strict sense except where they specify
11 otherwise.

12 However, where a particular extension is directed to
13 a particular kind of event, as for example the
14 notifiable diseases extension, it is unlikely that it
15 was intended that the restrictions set out in that
16 extension could be side-stepped by a policyholder's
17 reliance on general wording in another extension.

18 My Lords, there is one further point to make at this
19 stage.

20 LORD JUSTICE FLAUX: Is that right in this sense, that
21 certainly other insurers, and in relation to other
22 wordings, accepted, I think Mr Kealey accepted that
23 danger in the vicinity of the premises could encompass
24 an occurrence of a disease, say measles or whatever, in
25 the locality, and that the real thrust of the point

179

1 about this clause is it is dealing with local incidents,
2 local dangers, local disturbances?

3 MR ORR: My Lords, we entirely agree that the real thrust is
4 on the local nature of the incident, of the danger or
5 the disturbance.

6 LORD JUSTICE FLAUX: Yes.

7 MR ORR: We do have a point of construction on danger which
8 I will come to tomorrow. It is a short point. Your
9 Lordships will either be with us or not. It is the one
10 point on which we disagree with Mr Kealey. But
11 otherwise we entirely endorse everything that he has
12 said.

13 LORD JUSTICE FLAUX: The point to my recollection was that
14 you did disagree with Mr Kealey, and I was just trying
15 to test the point. It is probably better to test it in
16 the morning rather than now.

17 MR ORR: Yes, my Lord. I won't take me long. Can I just
18 finish off this point?

19 LORD JUSTICE FLAUX: Yes, sure.

20 MR ORR: It is this: that having positively relied in its
21 pleadings upon the notifiable diseases extension in
22 Zurich2, the FCA now appears in its skeleton to be
23 trying to distance itself from the other extensions in
24 the Zurich policies.

25 We deal with this in paragraphs 61 to 63 of our

180

1 skeleton. I don't need to take your Lordships there
2 now. But our short point is that we submit that the
3 court can and should have regard to the other extensions
4 in the Zurich policies as well as the other provisions
5 of those policies when construing the Zurich wordings.

6 The two policies before the court are those in tabs
7 21 and 22 of bundle B. {B/21/1} and {B/22/1}. Those
8 are the policies that have been selected to be tested in
9 these proceedings.

10 The FCA, as I have said, has relied on other
11 extensions and provisions in those policies to support
12 its case and we must be entitled to do the same.

13 So it is not open, in our submission, to the FCA to
14 say, well, a particular policyholder might not have
15 purchased a notifiable disease extension, therefore the
16 court shouldn't take that into account.

17 My Lord, as I say, we have to construe the policies
18 that are before the court.

19 My Lords, is that a convenient moment?

20 LORD JUSTICE FLAUX: Yes, that is a convenient moment.

21 Now, is there any need to start earlier tomorrow
22 morning?

23 MR ORR: My Lords, I have been asked if we could prevail
24 upon your Lordships to do so in order to make sure that
25 insurers do finish tomorrow.

181

1 LORD JUSTICE FLAUX: I am conscious also that, you know, you
2 obviously won't be that long, but we haven't heard from
3 Mr Howard or Mr Salzedo yet.

4 MR ORR: No, my Lord. In terms of allotment I have another
5 hour left.

6 LORD JUSTICE FLAUX: Yes, okay. In that case subject to
7 Mr Justice Butcher disagreeing I will say 10.00 am. Are
8 you happy with that?

9 MR JUSTICE BUTCHER: Yes, certainly.

10 MR EDELMAN: My Lord, can I just say something.

11 We have been faced with 850 pages of written
12 submissions and a full four days of argument. They have
13 had their extra half an hour on two days, which is what
14 we had. Why they should now require four days to reply
15 to only three days of our submissions in circumstances
16 where we also had to spend some time, for example, going
17 through the legislation to explain that to the court,
18 leaves us in a state of some bemusement.

19 There has been a good deal of repetition from
20 insurers on the causation issues. Even though Mr Kealey
21 was supposed to be dealing exclusively with that we have
22 been hearing the same argument repeated and developed
23 and they in a sense have wasted their own time and not
24 done what they were supposed to do in accordance with
25 the framework agreement.

182

1 It is a matter for the court, but I put down
2 a marker as to why this extra time is necessary.

3 MR ORR: My Lords --

4 LORD JUSTICE FLAUX: Does anybody want to say anything about
5 that on behalf of insurers before I say anything?

6 MR ORR: My Lords, could I just say this. Obviously it is
7 a complex case. Each insurer needs to look at its
8 individual wording. I certainly will endeavour
9 overnight to cut out whatever duplication I can. But we
10 each have to present our own arguments to some extent.
11 As I say, that is a complex process. We are just asking
12 for half an hour to ensure that we are able to finish
13 tomorrow.

14 LORD JUSTICE FLAUX: Well, two things. First of all,
15 I detected -- I don't know about Mr Justice Butcher --
16 I certainly detected less repetition orally than there
17 was in writing. So I don't think any criticism of
18 insurers on that basis is warranted.

19 Secondly, I think from the court's perspective it is
20 extremely important firstly that everybody who is
21 separately represented has the opportunity to make the
22 submissions on behalf of their clients, so that
23 everybody feels that they have had a fair trial, and
24 secondly that we complete this case in its totality by
25 4.30 on Thursday.

183

1 Given that there is a risk -- and there has always
2 been a risk in relation to the timing of the whole
3 exercise -- it seems to me giving you an extra half an
4 hour tomorrow morning is probably wise, because once we
5 get to 4.30 on Thursday requests, for example, to sit
6 late on Thursday will not be met kindly, and requests to
7 sit on Friday will be met with the short answer "no",
8 because I have another hearing on Friday.

9 So I am very anxious that we do finish this case by
10 4.30 on Thursday. To ensure that we will sit at
11 10.00 am tomorrow. We will see you in the morning.

12 MR EDELMAN: Will my Lord also then be sitting at 10.00 am
13 on Thursday?

14 LORD JUSTICE FLAUX: Quite possibly. We will see where we
15 get to tomorrow, Mr Edelman.

16 MR EDELMAN: I assume that insurers will take the full day.
17 Obviously if they don't take a full day and they finish
18 half an hour early then we won't need to.

19 LORD JUSTICE FLAUX: We might not need to sit at 10.00 am on
20 Thursday.

21 MR EDELMAN: Yes, my Lord, but if they do take a full day,
22 as I anticipate they will, then we would want our extra
23 time on Thursday as well. I think there would be some
24 disquiet if we weren't -- having felt that we were
25 pressed with our three days to fit everything in, and we

184

1 will be pressed on Thursday, that there ought to be at
 2 least equality between the parties, which there will not
 3 be if we don't get the extra half an hour on Thursday.
 4 LORD JUSTICE FLAUX: Subject to anything anybody wants to
 5 say at close of business tomorrow, I will be prepared --
 6 and again subject to Mr Justice Butcher -- to sit at
 7 10.00 am on Thursday, to avoid any more forensic
 8 ping-pong about who has had whatever length of time.

9 I understand the point you make, Mr Edelman, but
 10 I must say I am not overimpressed. But we will sit at
 11 10 o'clock both days running as necessary, and we will
 12 see you at 10.00 am tomorrow.

13 (4.36 pm)

14 (The hearing adjourned until 10.00 am on Wednesday,
 15 29 July 2020)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

185

1 INDEX

2 PAGE

3 Submissions by MR GAISMAN1
 (continued)

4 Submissions by MR KEALEY17

5 Submissions by MR LOCKEY130

6 Submissions by MR ORR165

7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

186

187

<p>A</p> <p>a1428 (1) 33:3</p> <p>a148 (1) 103:10</p> <p>a229 (1) 38:21</p> <p>a230 (1) 103:21</p> <p>a240 (1) 80:14</p> <p>a245 (1) 55:24</p> <p>able (13) 2:6 7:9 9:17 61:14 62:2,11 69:15 71:23 72:10 101:14,24 114:7 183:12</p> <p>above (4) 38:24,24 81:12 135:9</p> <p>absence (4) 125:21 127:18 128:8 177:5</p> <p>absolutely (18) 9:18 34:1 36:1 39:19 42:3 44:16 64:13 75:3 84:24 85:7 104:23 109:2 120:2,9 124:25 146:3 148:9</p> <p>absolutist (1) 148:19</p> <p>absurdity (1) 2:23</p> <p>academic (1) 75:3</p> <p>accept (13) 33:22 35:11 61:21 72:1 76:25 108:21 148:12 152:7,13 153:12,25 154:13 160:20</p> <p>acceptable (1) 26:25</p> <p>accepted (10) 38:15 66:6 68:17 122:21 134:16 154:22 158:6,7 179:22,22</p> <p>accepts (5) 56:13 66:3 80:10 22 166:20</p> <p>access (154) 2:7 18:18,20 22:9 23:25 24:13 29:9 39:9 48:14 49:11,21,22,24 50:13,18,22,23,23 51:5,5 52:7 58:7 61:17,22 81:7 98:2,3,10,11,15,19,22,24 99:1,4,14,15,22,23,24 100:1,4,6,10,12,15,17 101:4,6,11,14,17,20 103:3,8,19 105:3,6,10 107:13,14,15,20 108:18 113:5,9,10 117:13 118:1 120:12,18,23 133:22 134:2,3 140:13,16 141:25 142:12,23 143:9,14 144:9,14,21 145:3,13,17,18,19 146:7,8,11,13,15,18 147:12,18,21,24 148:12,14,18,20,24 149:5,6,6,8,11,13,14,18,19,23 150:4,8,11,19 151:1 152:5,10,16 153:6,21,25 154:1,14 155:3,19 156:15 157:17,24 165:18,24 166:14 172:3,7,25 173:2,3,4,13,19,22 174:14 176:4,6,8,15,16,16 177:5,7</p> <p>accessed (2) 101:3 142:7</p> <p>accessible (2) 27:5 157:25</p> <p>accessing (3) 144:23 147:12 156:10</p> <p>accident (2) 118:12 176:13</p> <p>accidental (2) 136:3,8</p> <p>accordance (3) 93:16 96:25 182:24</p> <p>according (6) 9:24 53:3 56:1 77:2 81:19 104:20</p> <p>accordingly (3) 25:15 38:25 174:19</p> <p>account (11) 5:4 25:14 27:12 70:12 77:21 102:9 123:18 124:5,11,22 181:16</p> <p>accountancy (1) 106:23</p> <p>accountant (1) 3:15</p> <p>accounts (1) 64:17</p> <p>achieve (3) 28:8 178:7,8</p> <p>achieved (2) 137:11 163:1</p> <p>acknowledge (1) 164:22</p> <p>acknowledged (3) 26:25 84:21 85:11</p> <p>acknowledges (1) 110:23</p> <p>acknowledging (1) 67:13</p>	<p>across (3) 43:17 116:1 175:12</p> <p>action (108) 6:13 13:5,7,12,24 14:1,7,12 18:22 24:14 29:11 32:9 39:6 48:4,14 49:13,25 50:1,3,4,5,24,25,25 51:6,7,24,25 52:2,3,6,7 53:4 55:15 56:3,10 57:10 58:8 61:16,23 76:11,11,20 77:8,17,19,20 78:20 81:23 87:16,24 88:2 97:21,24 98:3,7,10,15 99:17 103:4,5 109:10 110:19 111:2 117:14,20,22,23 118:8,10,19,21,23 119:15 120:19,19,24 129:10,16,17 130:18 133:17,20 134:19 136:24 140:6 141:9 142:4,20,22 143:15 144:3,21,22 145:1 149:16 150:21,22 155:20,20 160:13 165:21 170:6 174:11,13,20 176:4,15</p> <p>actions (7) 38:24 53:15,16 144:5 148:2 149:18 152:16</p> <p>activities (4) 18:9 60:11 133:10 155:4</p> <p>activity (2) 176:24 177:1</p> <p>acts (1) 96:18</p> <p>actual (11) 26:1 72:10 79:16,17 81:13,24 88:13 91:19 125:5,10 160:19</p> <p>actually (41) 1:13 8:5,9 26:5,17 39:13 40:1,7,10 41:6 44:13 55:12 57:5,6,20 58:13 60:15 63:21,23 64:1 65:5 67:15 68:24 69:7 72:4,22 73:22 74:17 77:12 83:15 86:2 88:1 96:17 104:23 106:7,24 126:23 128:4,5 129:16 148:25</p> <p>acturis (1) 167:14</p> <p>acute (2) 108:9,11</p> <p>ad (1) 171:8</p> <p>add (3) 34:10 75:25 116:16</p> <p>added (1) 34:8</p> <p>additional (9) 13:10 34:7 90:7 92:23 111:15 119:12 126:6 135:20 169:16</p> <p>address (7) 8:5 9:18 47:3 117:18 130:20 166:8,16 147:12,18,21,24 148:12,14,18,20,24 149:5,6,6,8,11,13,14,18,19,23 150:4,8,11,19 151:1 152:5,10,16 153:6,21,25 154:1,14 155:3,19 156:15 157:17,24 165:18,24 166:14 172:3,7,25 173:2,3,4,13,19,22 174:14 176:4,6,8,15,16,16 177:5,7</p> <p>addressing (2) 39:6 149:9</p> <p>adjacent (1) 3:4</p> <p>adjective (2) 34:7,18</p> <p>adjourned (1) 185:14</p> <p>adjournment (1) 97:7</p> <p>adjust (3) 122:16 125:1,2</p> <p>adjusted (5) 123:3,10 137:3,10 169:5</p> <p>adjuster (3) 65:12 69:5,6</p> <p>adjusters (6) 5:13 6:1 65:2,10 68:22 70:21</p> <p>adjusting (2) 125:12 159:2</p> <p>adjustment (4) 123:18 137:15 164:6,14</p> <p>adjustments (2) 123:5 168:25</p> <p>administration (2) 63:22 65:15</p> <p>admissible (1) 26:9</p> <p>adopt (3) 96:1 113:11 114:21</p> <p>advance (1) 12:19</p> <p>advice (70) 13:7 19:4 21:7,17,24 22:3 23:7 24:10 33:9 35:14 37:19 38:6,23 39:1,21 40:6 55:21 81:23 102:10,22,22 103:7,17 120:8 141:3 142:9,20,22 143:10,15 144:5,21,22 145:1 147:22,23 148:2,4,6,8,10 149:16,16,18 150:21,22,25</p>	<p>151:2,12,14,14,16 152:8,8,10,11,13,15 153:7,13 155:20,20 156:17 160:13,19 162:13,18,20,21 171:12</p> <p>advise (2) 70:11 151:19</p> <p>advised (5) 134:1 147:17 157:23 158:8 162:1</p> <p>advising (3) 70:7 151:3,14</p> <p>affect (4) 61:18 101:15 137:5 164:24</p> <p>affected (8) 61:25 123:8 124:11,12 137:6 169:4 170:16,24</p> <p>affecting (5) 62:8 123:7 138:10,11 169:3</p> <p>afforded (1) 179:2</p> <p>afraid (4) 17:1 25:4 36:6 107:12</p> <p>after (12) 21:5 67:5 68:8 69:21 123:8,13,22 137:5 151:23 162:25 163:3 169:3</p> <p>afternoon (1) 130:3</p> <p>afterwards (2) 6:20 68:8</p> <p>again (15) 3:9 4:3,13 50:22 51:10 94:22 95:1,5,21 105:16 133:3 144:3 150:15 162:9 185:6</p> <p>against (16) 16:2 25:2,12,17 28:18 31:13,20 39:15 40:1 44:18 91:14 119:23 132:1 141:2,13 170:18</p> <p>agent (4) 157:9,10,12,14</p> <p>ago (2) 8:8 161:19</p> <p>agree (4) 47:20 54:8 91:13 180:3</p> <p>agreed (9) 1:23 42:7 54:6,6 151:6 162:14,15 163:21 176:8</p> <p>agreement (5) 9:11 25:16 27:22 28:13 182:25</p> <p>agrees (1) 80:3</p> <p>agricultural (1) 115:15</p> <p>ahead (2) 146:19 147:4</p> <p>ai (1) 171:8</p> <p>aiii (1) 79:4</p> <p>aimed (2) 3:2 137:15</p> <p>allayed (1) 47:19</p> <p>alleged (4) 2:23 4:11,12 166:1</p> <p>allotment (1) 182:4</p> <p>allowance (1) 97:2</p> <p>allowed (2) 15:10 101:22</p> <p>allowing (1) 1:24</p> <p>alluded (1) 65:24</p> <p>almost (7) 10:5 21:20 24:7 30:4 38:7 60:21 121:25</p> <p>alone (5) 2:2 45:11,19 73:14 80:8</p> <p>along (5) 36:16 49:20 63:7 97:20 120:13</p> <p>already (19) 5:24 8:1 12:8 17:11 67:12,24,25 68:11 109:16 110:15 111:11 121:19 128:18 129:24 148:12 152:4 166:24 170:7 172:10</p> <p>also (50) 11:1 19:18,24 20:18 21:12,14 23:9 24:2 33:2 42:4 44:15 55:24 56:20 62:4 66:18 70:10 83:10 91:4 92:5 98:25 104:5 108:10 130:23 131:4,21 132:25 139:16 144:16 145:20 149:21 150:10 152:15 155:9 156:25 157:8,19 158:13 159:7 163:4,25 171:24 173:1,4,12 174:18 175:16 177:3 182:1,16 184:12</p> <p>alternative (1) 61:24</p> <p>alternatively (4) 13:22 80:16 81:8 82:14</p> <p>although (10) 7:8 10:8 12:17 20:12 80:23 123:14 128:3 131:25 149:24 153:2</p>	<p>altogether (2) 52:13 176:16</p> <p>always (8) 3:24 8:23 25:12 32:20 68:10 102:6,6 184:1</p> <p>amended (4) 38:19 80:15 103:20 178:16</p> <p>amlin (9) 76:7 78:10 79:9,10 97:11 106:25 116:9 121:4 125:8</p> <p>amlin1 (8) 39:12 78:12,17,23 94:12 106:19 111:9,12</p> <p>amlin2 (4) 78:24 94:11 111:10,11</p> <p>amlin3 (2) 114:22,24</p> <p>among (3) 53:15 67:13 168:24</p> <p>amount (11) 90:3,25 116:13 120:8 135:10,13 148:25 149:2,22 168:13,17</p> <p>amounted (1) 103:18</p> <p>amounts (2) 67:3 129:13</p> <p>analogy (1) 116:25</p> <p>analysed (1) 12:10</p> <p>analysis (5) 22:24 59:2 82:11 94:10 137:23</p> <p>anathematised (1) 3:14</p> <p>andor (2) 82:13 135:5</p> <p>anecdotal (1) 6:22</p> <p>annex (6) 131:8,11 132:7,10,18 152:21</p> <p>annexes (1) 131:7</p> <p>announcement (1) 103:8</p> <p>announcements (2) 103:14 104:13</p> <p>another (18) 4:11 8:7,15 9:21 40:13 41:25 44:25 48:11 72:8 76:16 83:21 96:23 118:13 127:3 146:15 179:17 182:4 184:8</p> <p>answer (13) 15:13,18 34:9 40:12 60:24 66:1 67:1 74:5 86:8 110:14 137:16 149:15 184:7</p> <p>answered (3) 2:2 75:20 110:14</p> <p>anticipate (1) 184:22</p> <p>anticipated (2) 81:14,24</p> <p>anticipation (2) 129:1 162:21</p> <p>anxious (1) 184:9</p> <p>anybody (4) 107:7 115:2 183:4 185:4</p> <p>anyone (4) 4:16 110:10 114:25 163:21</p> <p>anything (18) 4:17 10:12 13:1 45:19 47:14 60:1 63:9,9 84:17 96:8 109:15 113:11 116:16 138:17 139:25 183:4,5 185:4</p> <p>anyway (9) 7:2 60:15 68:12 69:19 115:16,22 116:8 120:14 128:22</p> <p>aoca (8) 170:5 173:12 174:7 175:25 177:10,20 178:10,22</p> <p>apart (3) 10:12 53:11 118:19</p> <p>apologise (2) 49:9 152:23</p> <p>apparent (8) 23:19 24:2,11 32:5 40:11 124:19 174:4,6</p> <p>appeal (4) 11:21 37:4,6 53:23</p> <p>appear (12) 17:8 18:15 19:25 41:23 121:25 130:3 132:15 136:21 138:25 139:3 165:16 166:7</p> <p>appears (20) 14:15 18:16 40:4 43:11 63:14 82:7 89:7 90:15 93:23 99:4 122:12 124:17 131:2 132:19 156:14 161:20 168:21 169:14 172:14 180:22</p> <p>applicable (3) 125:20 138:5 169:16</p> <p>application (5) 46:25 65:25 121:15 122:9 133:1</p> <p>applied (3) 93:15 126:1 137:24</p>	<p>applies (8) 25:19 79:24 94:10 127:15 130:25 136:24 140:13 150:24</p> <p>apply (17) 15:15,23 22:11 36:7 71:9 75:1,2,4 82:10 122:5,22 131:4 138:2 139:22 160:14 177:18 179:5</p> <p>applying (7) 52:14 75:11 90:3 108:3 135:12,24 168:16</p> <p>appointed (1) 6:1</p> <p>appointing (1) 5:13</p> <p>apportionment (3) 11:21,22 12:2</p> <p>apposite (1) 50:20</p> <p>appreciate (2) 108:10,10</p> <p>approach (10) 6:8,18 9:3 39:20 107:13 125:22,23 134:7 164:24 176:7</p> <p>approaching (4) 12:15 13:21 176:10 177:13</p> <p>appropriate (6) 30:23 31:8,18 37:8 50:21 158:18</p> <p>appropriately (1) 123:3</p> <p>apt (1) 35:1</p> <p>apt (32) 130:3,8,10,22,24,25 131:13,18,22 132:1,11,19 134:16 136:23 137:15 139:23 145:11 153:3 155:7,10,10 157:21 158:1,11,22 159:2,12 160:6 161:2,18,20 165:3</p> <p>arch1 (6) 39:10 130:15 131:17 133:3 134:11 159:3</p> <p>architecture (1) 32:8</p> <p>archs (3) 131:15 132:23 174:22</p> <p>area (14) 5:2 65:15 72:9 79:19,24 80:1 85:4,12 86:9,10,21,22 88:19 109:20</p> <p>arearose (1) 10:20</p> <p>areas (2) 85:10 177:4</p> <p>arena (4) 4:8 6:12 85:5,5</p> <p>arent (2) 7:17 110:8</p> <p>argue (2) 10:15 148:3</p> <p>argued (4) 5:24 12:17 138:25 139:4</p> <p>argues (3) 146:10 149:21 150:10</p> <p>arguing (2) 35:22 177:25</p> <p>argument (17) 5:11 12:23 14:21,24 17:18 19:14 83:13 95:9 126:11,13 149:15 159:12 165:4 166:19 178:5 182:12,22</p> <p>arguments (3) 145:20 174:17 183:10</p> <p>arise (10) 64:23 65:16,16,17 66:2 71:3,5,6 79:8 161:2</p> <p>arisen (1) 9:19</p> <p>arises (4) 79:22 99:21,25 158:13</p> <p>arising (1) 47:3</p> <p>arose (1) 176:23</p> <p>around (2) 5:19 11:14</p> <p>arrangements (6) 19:9,18 29:16 42:10,14 78:22</p> <p>arrest (1) 102:18</p> <p>arriving (1) 137:16</p> <p>article (2) 34:14,17</p> <p>artifice (1) 3:25</p> <p>artificial (5) 3:12,21,22,24 4:5</p> <p>artificiality (2) 3:9 178:4</p> <p>ascertained (1) 28:20</p> <p>ascertainment (1) 69:11</p> <p>ascribe (1) 63:23</p> <p>aside (1) 105:21</p> <p>ask (13) 1:12 2:14 7:5 15:21 16:20 34:5 40:2 42:23 48:21 67:14 68:23 155:18 171:24</p> <p>asked (8) 55:3 59:5,6 60:21</p>	<p>70:25 71:11 130:9 181:23</p> <p>asking (4) 4:22 86:24 160:11 183:11</p> <p>asks (1) 113:24</p> <p>aspect (1) 30:24</p> <p>assaulted (1) 10:22</p> <p>assert (1) 81:6</p> <p>asserted (1) 10:14</p> <p>assertion (2) 125:3 162:3</p> <p>assess (1) 127:12</p> <p>assessed (1) 150:12</p> <p>assessing (2) 68:17 160:23</p> <p>assessment (2) 126:2 164:6</p> <p>assignee (3) 27:23 25 28:16</p> <p>assignment (1) 27:17</p> <p>assist (4) 95:13 129:20 163:25 165:2</p> <p>assistance (1) 61:6</p> <p>assume (10) 5:23 56:1,9 57:18 59:25 61:17 76:17 105:22 119:14 184:16</p> <p>assumed (7) 72:21,24 73:23 132:11,14,18,22</p> <p>assumes (2) 80:2 160:17</p> <p>assuming (3) 7:3 43:12 161:25</p> <p>assumption (3) 73:1 150:17 161:22</p> <p>assumptions (2) 72:25 73:6</p> <p>assured (3) 7:9 89:18</p> <p>assureds (1) 7:1</p> <p>astrazeneca (1) 53:22</p> <p>astute (1) 74:16</p> <p>atlantic (1) 119:7</p> <p>attach (1) 140:11</p> <p>attached (2) 20:13,19</p> <p>attempted (1) 6:11</p> <p>attempting (1) 178:6</p> <p>attend (2) 59:20 61:19</p> <p>attendance (1) 157:14</p> <p>attended (2) 57:20 61:11</p> <p>attention (10) 30:7 40:9 132:16 133:3 140:12,16 141:10 162:10 167:7 170:17</p> <p>attracted (1) 50:8</p> <p>attraction (6) 68:5,23 141:12 171:1 173:12 178:8</p> <p>attributable (2) 63:19 65:1</p> <p>attributed (1) 68:20</p> <p>attributing (1) 54:25</p> <p>audiences (1) 154:25</p> <p>authorised (1) 32:10</p> <p>authorities (11) 33:9 34:12 36:25 43:4 78:20 83:7 97:22 119:9 170:6 177:3,12</p> <p>authority (116) 5:18 13:4,5,24 14:1,7,12 18:23 19:5 21:8,18,25 22:4 23:8,9,10 24:10 29:12 32:14,17,20 33:12,19,20,21,23 34:3,4,14,15,20,21,22,24,25 35:2,6,15,16,23 36:7,17 37:20 38:2,7,15 39:2,5,7,10,11,17,22,23,24 40:6,18,22,25 42:19 44:11 48:15 50:4 53:4,15 61:16 79:14 85:24 97:25 98:3,7 99:17 102:24 103:4,7,12,24 104:8 108:17 110:20 117:14,20,22,23 118:8,10 120:19,19,23 130:18 133:17,20 134:19 136:24 140:6 141:4,8 142:4,10,20 143:11 144:3,6 160:13,16,19 165:18,22 166:20 171:13 174:12,13,20,22 176:4,14</p> <p>available (8) 5:15 25:23 26:10 33:6 162:24 163:8,25</p> <p>average (2) 26:18 71:23</p> <p>avoid (2) 166:23 185:7</p>	<p>avoiding (1) 90:9</p> <p>award (2) 164:17,18</p> <p>aware (3) 115:1 116:9,24</p> <p>away (6) 1:24 2:17 101:12 116:6 119:15 120:6</p> <p>awful (2) 41:25 42:1</p> <p>B</p> <p>b (20) 30:20 31:10 32:2 47:15 62:14 79:13 100:19,19 101:5,8 119:7 130:12 132:10,18 142:8 153:11 155:5 167:17 169:23 181:7</p> <p>b1 (1) 169:17</p> <p>b1010 (1) 100:23</p> <p>b1011 (1) 92:7</p> <p>b103 (1) 91:6</p> <p>b1058 (1) 79:11</p> <p>b1059 (3) 89:14 91:19 92:21</p> <p>b1060 (1) 90:23</p> <p>b1065 (2) 78:13 97:12</p> <p>b1067 (1) 98:18</p> <p>b1142 (2) 95:2 112:3</p> <p>b1144 (1) 94:13</p> <p>b1146 (1) 113:16</p> <p>b1147 (4) 111:14 112:1 113:</p>
--	--	---	---	---	---	--

before (34) 6:19 12:16 14:7
23:14 24:6,25 34:9 41:15
47:1 63:13 66:14 67:10,21
68:4 76:7 86:23 95:20
112:3 117:1 123:2,7
128:16 129:18 134:1 137:5
140:8 162:13,17,23 169:3
175:24 181:6,18 183:5

beg (1) 97:15

begging (1) 83:5

begin (2) 17:18 169:12

beginning (5) 17:24 38:22
57:14 136:22 170:13

begins (2) 111:25 167:17

behalf (6) 9:25 17:12 74:1
165:3 183:5,22

behaviour (1) 13:6

being (48) 11:19 12:10,10
13:19 14:16 18:20 21:3
24:13 29:9 33:5,15,17
35:12 36:3 43:7 44:11
53:13,24 55:1 58:9 65:6
70:3,6,9,25 71:11 82:13
89:1 94:2
98:10,11,12,13,15,24,25
101:12 107:8 108:25 121:2
141:3 167:24 168:1 170:12
173:2,3,4,5

believe (1) 84:12

below (1) 169:22

bemusement (1) 182:18

benefiting (1) 152:5

best (1) 62:25

bets (1) 35:25

better (6) 6:23 16:20 19:13
114:8 165:13 180:15

between (34) 2:13 9:22 11:8
12:3 13:23 16:15 22:6 24:3
32:23 48:9 49:16 63:5
65:17 82:25 83:2 88:12
99:1,2 118:25 126:21
130:24 136:23 145:21
147:20 162:4 166:8 167:6
171:22 172:25 173:2,4
174:19,21 185:2

beyond (4) 42:3 79:18
104:16 122:7

bi (7) 68:18 89:11 95:6
117:12 122:13 125:19
136:7

big (2) 15:5 83:5

bigger (1) 77:15

billyo (1) 35:22

binding (2) 104:17 105:23

bit (6) 37:22 75:25 83:11
112:23 116:25 165:10

bite (1) 105:12

bitten (1) 116:6

bizarrely (1) 154:25

blanket (2) 157:5 174:2

block (1) 120:15

blocks (1) 9:20

blood (1) 155:1

boil (1) 156:14

bold (1) 113:20

bomb (3) 106:4 176:13 177:3

bonhomie (1) 69:3

bonnington (1) 84:15

book (2) 1:24 134:13

boozefest (2) 152:2,6

boris (3) 102:17 104:1,5

borrow (2) 15:20 104:11

both (19) 11:2 14:25
15:2,3,22 17:9,14 41:10
61:4 63:3 73:17 90:14
98:24 118:7 119:5,6
165:18 172:17 185:11

bottom (3) 53:14 122:24
170:12

bound (4) 27:23,24 28:1
177:4

boundaries (2) 56:21,22

box (1) 175:11

brain (1) 113:4

brawl (1) 176:13

breach (1) 148:15

breadth (1) 122:15

break (6) 36:15 46:20
96:21,21 143:19,22

breath (1) 13:12

briefly (5) 15:5 48:18 76:16
141:11 152:21

brings (2) 7:20 170:2

broad (7) 38:5,7 82:13 110:3
123:24 158:14,25

broader (3) 56:18 76:17 77:3

broke (1) 46:8

broken (2) 48:23 72:22

brought (1) 69:23

budget (1) 5:7

budgeted (1) 163:1

building (1) 3:4

built (1) 142:3

built (1) 109:11

bullet (2) 91:15 94:23

bundle (11) 20:17 27:19
80:14 84:16 104:19 130:12
131:3 139:13 175:7 176:25
181:7

burden (12) 7:13,18
8:14 19,21 60:13,18 63:13
64:5,19,22 159:15

bureaucrat (1) 37:10

bursting (1) 106:5

bus (1) 163:9

business (152) 4:17,20 14:7
15:17 16:4 63:20 64:24
65:14 69:10 78:16 79:2
87:20 88:9,16 89:17,19
90:16 91:17,22 92:9,12
93:1,8,12 94:15,17,25
95:24 96:12 97:24
100:8,10,13,16,22,23,24
101:1,1,7,8,10,13,16,24
102:1,2,4,8 105:3,5,9
106:15 110:18 111:2
112:7,18 113:1
114:10,11,12,13 117:12,25
118:20 121:23 122:1,6,7
123:6,7,9,25
124:3,11,12,22 131:9,16
132:8 133:5,8,10,18,19,22
134:5,8,10,20 135:2
136:5,9 137:5,6,17,19,21
138:2,10,11,14,18,21
139:3,5,8,10,24 141:20
142:8 144:13 147:8
148:13,21,25 149:7 150:24
151:4 152:18,20
153:11,16,16,20 154:3
155:4,12 156:9 157:10
164:20 165:20
167:17,19,23 168:3,8
169:2,3,4,12,19
170:3,16,23 171:7 173:25
175:2,13 176:20 177:6
185:5

businesses (25) 6:22 103:18
106:16,21 108:4 115:4
147:6,16 153:12 154:15,17
155:11,19,21 156:11,16
157:20,22 158:2,7 162:12
163:3,15 167:15 175:6

butcher (24) 14:13 33:17
39:13 47:21 58:11 59:1
60:22,24 62:16 64:3 78:8
83:5 85:17,20 86:2 95:15
115:23 147:19 148:6 154:5
182:7,9 183:15 185:6

butchers (2) 69:13 70:2

bytheby (1) 146:17

C

c (2) 100:21 140:22

c112 (1) 151:13

c121 (1) 151:7

c142 (1) 162:15

c2287 (1) 104:20

cafes (1) 131:20

calculate (1) 69:6

calculated (1) 161:25

calculating (1) 128:19

calculation (2) 4:25 158:15

call (4) 1:17 15:10 58:18
170:5

called (4) 4:25 27:8 127:18
139:11

calls (1) 9:20

came (1) 37:10

camera (1) 117:7

cameras (1) 117:7

cancellation (1) 67:5

cancelling (2) 67:7,18

candle (1) 5:14

cannot (11) 10:9 13:24
52:10,24 73:7 101:3 105:9
121:21 125:10 142:7
164:24

cant (24) 10:14 19:23 46:4
47:19 52:15,16,18 58:6
71:25 72:7 73:9 85:18
93:18 102:1,1 107:14,15
108:6 109:13,24 111:4
117:4 161:4,11

capable (3) 12:9 101:12
118:15

capital (3) 142:8 153:11
155:5

carefully (3) 1:23 53:21
140:5

carried (13) 79:2 88:17
92:10 93:1,8,12 95:4
101:7,12 113:1 152:19
157:10 167:24

carries (1) 144:13

carrying (3) 100:15 142:8
148:20

carve (20) 19:15,16,21 21:21
22:7 23:24 24:3,8,19
29:7,7 33:16,18 38:8
39:17,21 40:3 41:1 42:8
47:1

carved (5) 19:11 23:6 24:1
33:15 38:10

cases (14) 9:23 22:22 26:2
38:17 64:15,16,16
79:23,25 81:14,24 84:14
86:13 145:24

casual (1) 67:1

categories (9) 131:9,16
132:8 147:14,19 150:24
151:4 152:20 175:2

category (39) 108:3
131:19,20,21,23 132:4,5
143:8 147:5,6 153:1,4,19
154:13,16,22
155:7,8,9,11,12,12
156:10,11,12,21,21,23
157:3,6,9,18,20 158:1,2,3
175:3,5,14

causal (52) 1:21 2:13 13:23
14:2 48:1,6 57:12,14 66:22
80:2,3,4,5,6,11,18,23
81:8,11,20 82:4,6,22
83:16,17,23,24
84:2,9,18,23 85:1,14
87:2,2,6 88:11,21 90:20
91:4,24 95:11,12,17
110:16,24,24 118:6,13
119:1 121:13 174:19

causation (50) 1:6,25 2:16
3:19 4:10 7:23,24 8:4,23
9:4,9,13,23 14:9 17:12,14
46:23 47:2,24 52:18 54:10
62:14 66:1,4 71:8 73:25
74:23 75:12 76:6 79:7
82:11 85:6 86:24 90:15
95:10 109:9,14 116:22
117:10 121:4 125:19 131:2
133:1 137:14 158:17
159:21 161:14,16 166:17
182:20

causative (3) 82:16 87:1
96:10

cause (56) 3:6 13:10,14,16
16:17 29:24 38:8 48:8
55:10 61:24 80:8,9,9

81:12,21 82:13 83:1,1,1,2
84:5 85:6,8,19,21 86:6
87:13,13 89:8 95:12
109:10 118:14,15,20
119:11,15,19,20 120:8,25
121:3 122:17 123:25 124:6
125:3,13,14 129:11,16
135:4 140:3 152:24 160:1
161:5 162:19 174:11

caused (78) 5:20 6:13 7:4,11
8:19 12:10 14:10
48:4,4,8,10,11,13,14,15
51:6 55:1,4,15,16 56:8
57:3,6,10,11,16,17
58:7,8,21,22 59:10,11
61:16,22,22 62:4,14 67:16
68:18,18 70:20
77:8,8,19,20 81:7,18 88:6
93:18 94:18 105:20 110:25
117:12,13,22 118:1,11,22
119:1,4,5,14
120:18,18,20,23 122:1
135:25 136:11 142:11
143:8 159:6,16 160:15
162:4,5 164:7

causes (24) 11:17 13:15
21:6,16,23 29:24 52:7 54:8
117:19 118:2,5
119:4,5,6,9,10,16,18 121:2
123:25 161:8,9 171:11
177:12

causing (2) 38:5 118:16
cease (2) 154:16 175:14

celebrity (2) 67:20 68:21

central (10) 32:9,19 36:6,9
38:16 45:6,10,24 46:4
166:21

centralgenossenschaft (1)
145:25

certain (13) 21:11 26:14,16
47:13 76:10 93:4 112:9
145:8 151:1,4 152:16
166:6,16

certainly (2) 71:12,13

cetera (19) 13:7 22:5 50:13
52:3,6,8 53:4 64:17
69:8,23 76:19 91:8,11 95:3
103:17 113:2,3,10 162:7

chain (9) 2:12 48:1,6 54:8,10
118:6,13 119:1 159:21

chair (1) 147:2

challenge (2) 23:18,20

challenged (1) 131:14

challenges (2) 23:16,20

chambers (2) 106:22 107:8

champing (1) 116:25

change (4) 6:5 57:18 153:15
164:11

changing (1) 71:8

chapter (3) 4:20,25 5:1

chapters (1) 65:23

character (1) 76:11

charge (2) 2:24,24

chef (15) 16:4 67:20,24
68:5,8,13,21,24,25
69:1,8,19,20,22,23

chefs (1) 69:2

chimerical (1) 3:7

china (2) 110:6,11

choice (2) 44:19 107:11

chose (2) 107:10,10

chose (1) 156:22

chosen (1) 104:13

church (59) 54:15,20,22
55:13 56:4,6,15,19
57:1,2,20,23
58:4,5,6,9,12,21
59:7,24,25 60:2,5,16
61:9,11,11,12,12,14,19
62:5,9,11,25 63:1,7,16,17
64:1 65:4,11,12 66:8,12,15
70:8,10,12,15 71:22,23
72:9,11,13 73:4,12 128:20

churches (1) 35:13

churchs (1) 55:3

circumscribe (2) 1:23 22:19

circumscription (2) 174:6,7

circumscriptions (1) 24:22

circumstance (2) 68:4 139:6

circumstances (19) 28:10
32:4 49:13 61:14 68:15
74:12 84:23 123:7 124:9
127:25 137:4 138:8,16,20
139:2 141:18 160:20 169:2
182:15

citation (1) 4:22

cited (1) 176:21

citizen (1) 103:15

citizenry (1) 104:10

citizens (2) 102:18 104:21

city (1) 72:9

civil (7) 29:4,14,16 97:25
110:20 165:22 166:20

claims (13) 4:25 5:1 6:4
15:16,17 70:21 74:7 90:18
116:8 131:4,13 159:2
164:20

clarke (1) 53:22

classic (2) 45:16 67:23

clause (227) 3:2 7:10 13:4
15:15,23 16:2 19:14 20:3
19:10,10,16
22:1,7,8,10,12,14,14,15,16,18
23:5,10 24:4,5,6,12,22,23
29:8 33:14,16 35:7,8,11,20
37:2,9,17,20,20,23,24
38:1,7,10,12 39:6 40:16,22
41:1,19 42:18,19,22
43:2,22,23 44:9,10,21,22
48:23 49:2,4,16,19,20
50:1,11,13,14 52:12 65:22
67:1 75:23
76:9,17,18,21,22,23
77:2,4,7,12,16,18,
78:1,19,20,23,25
79:8,9,16,16 87:16 88:3,4
89:5,12,15 90:16 91:20
92:20,20,24 93:16 94:4,4
97:11,13,18,21 98:17,24
99:4,4,7 103:5 105:12
106:24 108:6 109:11,15
110:17 111:11,12,13
112:8,14 113:6,8,12,24
114:9,15,18,20 117:11,19
118:4,6,9,17 119:13
120:22 123:16 124:20
125:7,15 126:4,10,17,18
127:3,10,12,18
128:2,6,7,8,14 130:24
132:25 133:21 134:19
136:21 139:1
140:12,13,17,19,20,25
141:1,5,8,11,11,12,12
142:14 143:5 144:3,20
145:7,11,12,16,19,19,22
146:7,10 147:6
149:5,7,10,20
150:10,17,19,24 158:16
160:9,12,13 161:10,12
166:13,15 167:20 168:20
170:3,20 174:22
176:1,7,9,12,19 178:6
180:1

clauses (53) 5:3,5,18,18
14:23 15:2,6,22 16:7,10
25:1 38:14 39:10 42:12,13
65:25 78:11,12 81:7 92:1
95:5 113:21 116:23
121:13,14,19,25
122:3,5,10,15,21
125:5,12,17,20,21,25
127:7,21,23,24,25 134:7
139:11,15 145:9 146:1
165:18,25 168:10,11
169:10

clear (16) 22:6 24:3 28:8
42:25 50:11 78:7,8 93:25
94:5 137:13 147:15 156:4
160:5 172:24 173:19
176:17

clearer (4) 15:9 64:15 123:15
177:11

clearly (7) 24:16 53:15
147:15 150:5 156:9 170:22
176:1

clients (7) 17:14 36:5 61:3,4
129:25 147:10 150:7,8

close (27) 60:6 102:5 105:3
106:17,22 115:5 120:16
133:25 147:17 150:7,8
151:20 152:3 155:13
156:22 157:23 158:8,9,9
162:1 163:15 164:13
173:17,18,20 175:14 185:5

closed (26) 3:3 14:7
54:16,20 55:14 57:2,23
58:2,10 59:25,25 60:5
61:11,12 63:8 70:4,12
107:19 140:24 148:17
151:5 157:12 158:22 159:5
160:24 172:1

closer (2) 81:9,20

closing (1) 35:12

closure (44) 13:6 19:3,18
22:2 23:6 24:8 37:10 40:5
48:3 55:9 56:14 57:7,10
58:21 59:10,12 62:25 64:1
70:10,20 71:22 72:6
73:4,12 77:19 134:1 145:2
148:5,7 151:17
152:11,18,18 154:23
162:5,13,13,18,20,21
163:24 164:2,4,7

closures (1) 36:24

cloud (1) 61:17

club (2) 153:6,9

clubs (6) 131:20
151:16,19,20,23 152:5
163:12 43:7

code (1) 5:17

collected (1) 70:6

collection (11) 57:21,22 58:4
59:17,18,21,22 60:1 61:10
63:12 73:12

collections (3) 67:11,12 70:5

column (18) 18:10,11
20:4,25 12:17 23:4
34:11,16,24 133:7 134:22
135:8,9 136:2,12 139:15
142:5 175:11

columns (3) 18:14 19:23
41:10

combination (22)
48:7,9,10,11,13,16 57:12
118:3,5,6,10,12,16,22,24
119:1,5,9,16,21 121:1
129:12

combined (7) 118:13
130:10,14,22,25 161:18
167:8

come (14) 10:7 36:15,16,21
63:17 69:4 72:11,12
115:25 126:3 135:6 141:21
150:6 180:8

comes (4) 4:18 63:7 91:19
115:20

coming (7) 63:10 65:11
69:13 70:1 116:21 129:17
158:21

commend (1) 132:9

commercial (7) 119:24
130:10,13,22,25 134:7
161:18

commercially (1) 150:11

committee (1) 104:3

common (11) 28:14 78:23
93:23 130:23 131:18
134:21 136:22 139:20
161:20 171:22 176:5
commonly (1) 42:13

companies (1) 175:19

comparative (1) 5:7

compare (3) 48:10 69:16
98:17

compared (3) 109:20
163:4,18

comparing (2) 5:8 132:22

comparison (1) 5:7

compellingly (1) 51:18

competence (2) 23:10 32:20

competent (53) 19:4
21:7,18,24 22:3 23:7,8
24:10 32:14
33:9,11,18,19,21
34:2,5,8,8,15,18,22,25
35:2,5,15,16,23 36:7,17,25
37:19 38:1,6,15
39:2,4,11,22 40:18,22,25
42:18 44:11 78:20 79:14
83:7 97:21,25 110:19
141:4 165:22 170:6 171:12
146:10 183:24

compiled (1) 175:8

complete (4) 39:25 105:7
146:10 183:24

completely (7) 1:18 5:10
50:20 85:3 86:21 108:6
110:22

complex (4) 65:15,22
183:7,11

complexity (1) 5:3

complicated (5) 4:18 11:1
65:23 106:13 123:15

composite (3) 1:19 161:3,12

composition (1) 174:24

comprise (1) 159:9

comprises (2) 167:9 172:11

compromise (1) 6:3

compulsory (1) 102:11

concedes (2) 57:5,5
conceive (1) 12:8

concept (6) 98:14 108:14
115:9 146:16 147:20 176:9

concepts (1) 135:15

concern (4) 7:6 47:4,17,18
concerned (25) 47:8
72:18,19,20 76:9 92:21
98:15 109:5 121:18 124:20
127:7 133:16,19,21,21
134:13,14 135:23
145:13,14,16 146:7 147:15
148:22 176:9

concerning (1) 166:17

concerns (5) 128:16 131:16
138:16 151:12 158:15

concession (1) 55:13

conclude (1) 143:5

concluding (1) 1:5

conclusion (1) 122:9

conclusive (1) 43:19

concurrent (2) 13:14 82:15

condition (2) 11:14 30:10

conditions (2) 31:2 55:17

condition (4) 101:24 102:1,1
134:4

conducted (1) 100:24

conducting (1) 105:8

conference (3) 45:13
102:17,19

confidence (3) 159:8
163:6,20

confined (7) 34:23 41:19,24
44:12,22 45:2 46:1

confining (2) 34:20 38:1

confirm (1) 139:20

confirms (1) 137:14

conflate (1) 171:1

conflating (1) 114:17

confronted (2) 75:5 76:2

confronting (1) 87:5

congregant (1) 59:16

congregation (3) 70:17 72:5
73:2

congregations (1) 59:2

conjunction (1) 23:4

connected (1) 133:10

connecting (2) 90:20 110:17
127:24,3

connotation (1) 87:1
 connotes (1) 80:17
 conscious (1) 182:1
 consensus (1) 25:15
 consequence (15) 85:6,7,8
 87:12 92:10,14 93:9 94:1,8
 120:7 165:21 167:23
 168:18 169:20 170:16
 consequences (2) 28:15 54:5
 consequential (19) 79:1 88:8
 92:6,8,25 93:4,5,15 94:2
 95:1 98:20 111:23
 112:1,2,4,11,14 113:20,24
 consider (3) 15:21 23:12
 130:9
 considerable (1) 103:22
 considerably (1) 116:5
 consideration (4) 75:14
 130:16 159:23 161:9
 considerations (1) 5:2
 considered (3) 15:3 26:1,4
 considering (2) 2:15 75:9
 considers (2) 3:16,20
 consistent (2) 26:7 125:19
 constituent (1) 48:24
 constitute (1) 148:23
 constituted (1) 152:10
 constitutes (2) 149:17
 151:11
 constitution (1) 102:23
 constitutional (1) 103:23
 constrained (1) 172:18
 construction (12) 5:6 22:11
 39:8 76:3 99:9 132:25
 134:7 142:14 145:6 150:16
 175:22 180:7
 construe (3) 19:23,24 181:17
 construed (3) 25:2 27:14
 28:2
 constructing (5) 28:13 49:2
 53:21 125:24 181:5
 consumer (3) 159:8 163:6,20
 contagious (2) 79:13 140:23
 contain (3) 30:22 126:17
 127:3
 contained (1) 16:18
 containing (3) 100:17 119:2
 175:11
 contains (3) 24:6 126:18
 140:23
 contamination (4) 31:22,24
 32:1 114:11
 contemplated (4) 45:5 75:23
 176:12 178:10
 contemplates (3) 32:9 101:1
 177:11
 contemplating (1) 170:20
 contend (2) 80:12 179:7
 contents (1) 27:21
 content (1) 2:25
 contention (1) 141:22
 contents (2) 59:18 167:16
 context (34) 9:4 11:23
 19:24,25 23:9,9 27:14,22
 28:14,18 29:4 30:6 35:15
 36:18 38:13,14 39:6 43:3
 44:25 84:20 87:10 89:7
 90:22 99:13 100:9 109:22
 110:22,25 112:8 122:1,12
 126:10 138:3 154:8
 contexts (1) 90:14
 contextual (2) 39:7 43:1
 contingencies (4) 29:4,14
 169:23 170:1
 contingent (1) 32:3
 continue (5) 19:21 28:16,17
 47:24 93:10
 continued (5) 1:3 54:21
 115:10 151:24 186:3
 continues (2) 103:12 170:25
 contract (12) 19:25 33:4
 75:12 79:10 86:23,25
 87:8,11 89:13 91:9,12
 161:15
 contracted (3) 21:3,12 88:14
 contracting (1) 26:10

contracts (9) 4:15 6:6
 25:11,18,19 74:17,24 76:4
 121:17
 contractual (2) 75:1 87:3
 contrary (5) 26:14 54:9
 155:14 158:11 177:25
 contributing (1) 80:9
 contribution (8) 82:6,16
 83:17 84:2,15,18,23 85:1
 control (2) 31:11,14
 controlling (2) 30:24 31:20
 controversial (2) 25:3 53:8
 convenient (5) 17:25 46:16
 143:17 181:19,20
 converted (3) 52:15,17,24
 copy (1) 2:8
 cordoning (1) 177:4
 corner (1) 137:9
 correct (14) 55:20 72:3
 75:17 81:9 82:10 105:25
 107:6 120:9 125:25 128:24
 147:16 164:24 165:1
 178:25
 corresponding (1) 43:14
 correspondingly (1) 123:1
 cost (4) 89:24 90:7 135:17
 139:17
 couldn't (8) 5:12 61:19
 63:9,9,11 102:7 128:20
 157:16
 council (3) 30:9 45:23 46:9
 counsel (1) 27:21
 counterfactual (1) 19:2 2:17
 3:17 4:4 52:14,20 55:20
 56:1 74:3,13 76:15,25
 138:1 160:7
 counterfactuals (1) 3:23
 countries (1) 6:21
 country (7) 3:22 27:3 43:17
 62:22 71:17 81:14 104:11
 counts (1) 50:2
 course (28) 6:1 17:11
 26:7,21 28:6 35:21 40:8
 44:24 47:4 48:21 56:2
 59:16,19 71:3 73:11 74:19
 90:21 93:14 96:15,15
 107:2 112:12 116:4 119:25
 126:7 141:21 175:13
 177:14
 courts (2) 32:19 183:19
 covenants (1) 27:24
 cover (62) 2:25 13:21 17:9
 18:7 22:20,21 23:2 24:21
 33:14,15 35:25 39:9 41:3
 43:24 49:1,1,22 52:8 78:16
 92:23 95:5 99:19,20
 105:10,11,17 106:2,8,12
 107:1 114:9 118:4 120:21
 134:13,14,15,17,18,20
 135:22 136:7 137:19
 139:24 143:1,6,7 160:8
 165:19 167:16,19,21 168:9
 169:12,16 173:25
 174:1,6,14 177:6,8 179:2,6
 coverage (30) 8:5 14:8 18:4
 20:3 21:10 22:19 23:25
 24:4,11,18 36:9 37:8 40:4
 62:3,14 76:17,22
 77:4,6,9,12,13,15,25 78:4
 140:11 144:7 166:8,18
 174:2
 covered (20) 18:11,12,15
 19:1,2,10,12 20:24,25
 21:15 22:13 23:4 48:9
 52:2,4 76:18 94:13 99:24
 100:5 177:22
 covering (2) 77:16 114:4
 covers (5) 18:19 42:8
 114:5,10 120:22
 covid (12) 3:23,23 40:16
 57:17 60:18 62:22 64:6
 72:13 128:16 129:6 159:8
 166:2
 covid19 (25) 4:7 35:10,19
 36:3 54:16 55:2,21,22
 56:3,8,10 57:3 58:3 71:17

72:5 81:14 82:12,14
 119:14 120:7 129:14
 140:24 166:11 177:15,22
 credit (1) 2:2
 crime (1) 120:17
 critical (2) 48:25 75:3
 criticised (1) 49:7
 criticism (2) 50:9 183:17
 crossed (2) 56:17 78:6
 crossexamine (2) 129:21,23
 crossreferences (1) 151:5
 crown (1) 23:1
 crown (3) 30:12 37:4,6
 customer (3) 141:14,19,24
 customers (9) 101:22 119:14
 120:6 147:9 149:3,6
 153:14 156:3,11
 customs (1) 119:8
 cut (1) 183:9

D

d (2) 11:8 21:5
 d11 (1) 131:14
 daily (1) 163:8
 damage (72) 15:8,16 16:3
 29:19,23 68:18
 89:18,20,25 90:5,12
 91:2,17,22,25 92:1,2,11,18
 93:9,18,22 94:16,21,25
 95:4 98:20,23 112:11
 122:2,7,11
 123:3,8,9,12,13,20,22
 124:5 125:3 126:23,25
 127:14 135:2,5,6,13,21,25
 136:2,3,8,11
 137:5,7,12,18,22 138:3
 140:14 141:14 168:2,4,6
 169:21 171:2 172:6,8
 173:21 177:6,8
 damaged (2) 172:6 173:20
 damagerelated (1) 111:22
 danger (24) 98:1 105:17,20
 108:7,9,19,25 109:1,4,9,17
 110:20 165:23 166:12
 170:21,24 174:3,8,10
 176:2 178:3 179:23
 180:4,7
 dangerous (1) 73:22
 dangers (1) 180:2
 danton (1) 104:2
 data (2) 163:8,10
 date (2) 7:2 123:3
 dates (1) 109:16
 daunting (1) 11:16
 day (17) 1:14 4:8 8:15 12:14
 55:5 67:21 68:8
 69:17,17,18 104:22,24
 122:14 152:2 184:16,17,21
 day11126 (1) 55:6
 day11131 (1) 66:21
 day11151 (1) 57:23
 day210917 (1) 124:15
 day211421 (1) 67:21
 day263 (1) 56:23
 day2941 (1) 125:4
 day2951 (1) 125:7
 day311210 (1) 80:21
 day31136 (1) 82:6
 day31301 (1) 89:12
 day31454 (1) 33:1
 day31461 (1) 42:4
 day31488 (1) 44:5
 day31536 (1) 126:8
 day32718 (1) 150:13
 day3341 (1) 157:1
 days (11) 9:16 97:18 120:17
 134:1 162:23
 182:12,13,14,15 184:25
 185:11
 de (1) 154:7
 deal (14) 7:14 8:5 43:5 73:24
 94:11 132:13 141:18 157:3
 158:14 162:3 177:17,24
 180:25 182:19
 dealing (8) 10:3 41:2 43:23
 73:21 146:1 168:12 180:1

182:21
 deals (1) 108:5
 dealt (12) 1:14 2:23 4:9,11
 17:12 37:21 45:23 46:24
 94:12 103:22 111:9,11
 debate (5) 7:23 9:15 45:12
 69:24 85:9
 debates (1) 132:1
 debts (1) 134:13
 decided (2) 92:16,17
 deciding (1) 66:13
 decision (1) 178:21
 decisions (1) 27:1
 declaration (1) 157:5
 declarations (2) 158:15
 159:1
 declaratory (1) 164:9
 declared (1) 171:20
 declaring (1) 30:20
 decreased (1) 68:14
 deem (1) 169:25
 deemed (5) 27:6,23 28:16
 98:22 169:24
 deep (1) 13:12
 defective (6) 19:8,17 20:2
 42:9 78:21 140:20
 defendant (1) 11:3
 deference (1) 2:18
 define (3) 22:18 50:2,17
 defined (13) 1:20 49:11 92:8
 100:22 112:1,5 113:25
 133:9 144:11 168:1,4
 170:11 171:25
 defines (4) 49:23 79:9,10
 118:17
 definite (1) 34:17
 definition (20) 30:3,4 35:13
 51:1 92:6,7 93:3,15 94:2
 95:2 110:3 111:23
 112:2,8,10,15,16 135:6
 136:2 140:23
 definitions (4) 133:5 136:13
 168:22,24
 debt (1) 93:20
 debtness (1) 112:24
 degree (5) 80:4,6,11 82:21
 112:9
 deliberate (1) 178:20
 deliberately (2) 47:7 80:17
 delineation (4) 22:20,21 23:2
 41:2
 deliver (2) 71:11 72:25
 delving (1) 71:14
 demonstrate (1) 178:20
 demonstratio (1) 15:11
 denial (3) 39:9 113:9 177:7
 denied (1) 58:21
 denotes (1) 110:24
 depart (1) 126:1
 departing (1) 129:22
 departure (1) 9:3
 depend (6) 7:9 59:18 64:14
 67:2 119:25 161:4
 dependent (2) 37:9 150:20
 depending (4) 3:11 35:4
 67:7 109:4
 depends (5) 59:14 67:17
 86:9 109:22 177:8
 deprived (2) 72:9 73:2
 deputy (1) 22:25
 dereliction (1) 46:6
 described (7) 19:14 22:13
 38:20 70:4 84:17 133:11
 138:21
 describing (1) 168:20
 descriptions (2) 127:23
 128:1
 designated (1) 130:14
 designed (1) 167:15
 despatch (1) 128:12
 despatched (1) 128:11
 despatches (2) 96:5,7
 despite (2) 106:12 159:10
 destruction (2) 136:3 168:6
 detail (8) 11:9 24:25 28:25
 103:22 116:14 132:8,21

136:16
 detailed (2) 106:13 127:16
 details (1) 91:8
 detained (1) 121:7
 detected (2) 183:15,16
 determination (1) 158:18
 determine (4) 11:17 70:23
 73:7 120:5
 determined (5) 9:23
 53:13,20 74:4 75:7
 determining (1) 86:20
 develop (1) 158:4
 developed (3) 11:1 82:2
 182:22
 developing (1) 132:1
 devices (1) 177:2
 dictate (1) 39:8
 dictatorship (1) 104:4
 didnt (19) 4:21 6:22 8:16
 11:20 34:4 35:2,4 37:13
 39:23 44:18 46:14
 47:11,21 50:15 54:22
 57:24 61:18 119:19 157:11
 die (1) 120:14
 died (1) 72:5
 differ (1) 145:6
 difference (12) 63:5 82:25
 83:2 84:24 85:7 95:16
 99:1,2 108:24 126:21
 145:21 148:11
 differences (1) 167:6
 different (31) 10:9
 12:9,10,11,18 13:9 38:13
 39:15 43:3,3,7,10 48:6,7
 49:16 57:14 59:6 62:7
 79:20 85:3,21 86:21
 90:20,21 91:23 106:15
 110:22 114:1 134:4 153:16
 167:5
 differently (2) 15:16 59:3
 difficult (12) 7:4 8:3 41:5,8
 71:4 73:10 84:10 99:21
 115:11 138:19 155:24
 164:23
 difficulties (4) 7:16,17 39:14
 178:2
 difficulty (7) 3:5 4:12 5:21
 6:9,15 85:20 152:24
 dilute (1) 100:9
 diminishing (1) 90:9
 direct (8) 37:14 82:5
 85:22,23 86:5 87:13 88:11
 89:8
 directed (4) 105:16 147:11
 176:1 179:12
 directly (5) 16:13 29:16 88:6
 114:5 133:10
 disabilities (1) 11:2
 disagree (2) 180:10,14
 disagreed (1) 11:21
 disagreeing (1) 182:7
 disagreement (1) 151:11
 disappeared (1) 146:22
 discern (2) 2:20 84:10
 discerned (1) 49:1
 disclaimer (1) 28:7
 discovery (1) 19:6
 discrete (1) 166:16
 discussed (3) 61:5 65:6
 67:12
 discussion (2) 12:14 69:24
 disease (84) 19:6,8,15,21
 20:2,13 21:2,9,21 22:5,7,8
 23:5,24 24:3,4,8,15,18,21
 29:7 31:12 33:10,16 34:1
 35:10 38:14 40:16
 41:20,23 42:13
 43:5,16,23,25
 44:4,7,7,10,13 45:15 47:1
 53:3,17 78:21
 79:5,9,10,11,13,20,24
 85:14,24 87:20
 88:7,10,12,19,25
 93:2,13,17 94:3 95:19 96:6
 108:23 111:11,13,24 113:3
 129:14 140:19,23 165:25

171:8,16,25 172:13,18
 179:3,4,24 181:15
 diseaserelated (1) 13:15
 diseases (33) 19:17
 20:5 6:8,15,18,20,23 21:11
 23:25 24:2,21 28:23 32:16
 36:4,20,22,23 41:19
 43:11,14 44:14,16
 45:11,14 171:4,19 174:3,4
 178:15,19 179:14 180:21
 disentangle (1) 11:16
 disses (1) 57:4
 dismissive (1) 55:7
 dispatches (1) 96:3
 displace (1) 95:15
 displacing (1) 95:14
 dispute (7) 32:23 70:22
 144:5,7,8 164:23
 disputed (1) 158:11
 disputes (2) 65:16 146:2
 disquiet (1) 184:24
 distance (2) 54:23 180:23
 distancing (3) 149:16 152:8
 156:17
 distinction (2) 172:24 174:21
 distinctions (2) 53:17 173:7
 distinguish (4) 48:9 162:4
 173:1,4
 disturbance (10) 98:1 105:17
 109:1 165:23 170:21,25
 174:9,10 176:2 180:5
 disturbances (1) 180:2
 divider (1) 17:18
 divides (1) 9:6
 dividing (1) 9:12
 divisibility (1) 13:20
 divisible (1) 10:6
 division (1) 12:13
 divisions (1) 9:19
 document (5) 91:10 132:9
 167:10,18 172:11
 documents (1) 104:19
 does (47) 26:16 33:19 36:17
 37:17 39:8,17 42:20,23
 58:15 59:16 62:12
 74:20,20 81:18 82:25
 86:12 87:16 95:15,16
 100:9 103:10 105:3,4
 113:24 114:8,9 115:2
 116:7 118:11 124:14,15
 140:24 141:18 143:4
 146:10 148:22 149:8,20
 150:17 154:5 158:5 159:22
 164:11 166:19 172:13
 178:3 183:4
 doesnt (49) 11:9 12:20 14:11
 15:23 19:16 22:22 23:20
 29:17 33:18 47:19 48:2
 50:15 52:12 59:12 60:13
 80:12 84:9 87:15,17 88:20
 89:2 95:13 98:10,11,12,13
 105:12 107:4 108:24,25
 110:4 115:23 116:1
 120:14,15 127:20 129:2
 136:21 138:25 139:3 142:1
 143:2 147:24 148:7,25
 149:1 163:11 179:5,7
 doing (9) 10:2 14:1 33:22
 37:15 68:4 71:14 74:10,11
 126:15
 doleman (1) 27:8
 donation (14) 54:18,21,23,25
 55:2,11,14 56:7,19
 57:1,2,16 58:24 155:1
 donations (1) 61:20
 done (16) 3:17 35:3 59:3,16
 77:14 83:11 86:15 103:6
 110:8 111:21 112:22
 129:24 131:5 157:16
 172:10 182:24
 donor (5) 54:14,18,19,22,24
 donors (1) 57:16
 dont (75) 1:8 4:13 7:14 8:21
 14:8 15:7 17:20 18:14
 22:12,14 25:3 26:13 28:24
 36:8 37:21 44:2,3,17 45:20

47:13,16 48:5 49:8 50:20
 57:8,12,15,15 66:18
 71:4,11,17 72:20 75:15,21
 77:1 83:15 84:12 86:13
 96:20 104:3 105:19 107:25
 110:9 115:17 116:4,12
 117:2 120:11 128:7
 129:21,23 130:4 136:15
 139:25 144:18
 148:3,9,13,18 150:14
 151:7 152:7 153:22 155:16
 157:19 162:9 165:5 171:25
 172:9 181:1 183:15,17
 184:17 185:3
 door (6) 11:17 52:11,17,25
 69:2 179:9
 doubt (7) 6:2 33:17 36:16
 44:17 69:6 102:21 112:13
 doubted (1) 158:11
 down (13) 48:23 55:2 58:13
 60:17 62:17,18 63:8 68:9
 89:21 94:19 152:3 156:14
 183:1
 downturn (1) 13:5
 draconian (1) 45:7
 drafted (2) 41:13 114:19
 drafting (2) 92:16 177:18
 draftsman (1) 178:21
 drags (1) 43:20
 drains (3) 19:8,17 42:10
 dramatically (1) 1:25
 drastic (1) 163:8
 draw (6) 30:6 141:10 162:10
 167:6 170:17 172:24
 drawing (1) 115:14
 drawn (2) 1:12 40:9
 dreamt (1) 47:14
 driven (1) 150:20
 drugs (1) 119:7
 due (34) 10:24 13:6 18:23
 19:4,19 22:3 23:7 24:9,14
 29:12 40:5 49:14 50:5,24
 51:1 52:6 54:16 55:9 56:14
 57:7 76:10,11,20 77:16
 96:15 117:14 118:8 120:24
 135:13,20 141:21 143:6
 147:21,23
 duplicating (1) 166:24
 duplication (2) 93:5 183:9
 during (24) 82:2 90:4,11
 91:1 94:17 115:3
 123:1,12,22 126:22,24
 135:3,14,19 137:12,17
 148:16 163:9 164:4 167:22
 168:17 170:15,23,24
 duty (2) 46:6 154:9
 dwell (3) 4:16 37:21,22
 dysentery (2) 20:11,20

E

e (1) 53:14
 eagle (1) 110:16
 earlier (4) 101:19 112:4
 145:18 181:21
 early (1) 184:18
 earned (2) 127:14 159:19
 earth (1) 37:7
 easier (3) 7:16 35:3 126:10
 easiest (1) 126:14
 easily (1) 27:10
 easy (2) 5:9 68:22
 ecclesiastical (25) 17:8,15,19
 23:3,19 24:20 26:12,16
 28:22 36:5 38:17 39:4
 40:17,19 41:18 44:18
 46:24 54:6 61:4 64:7 76:7
 78:10 122:21 125:8 126:9
 ecclesiastical1 (1) 160:4

edelman (38) 9:7,16,20,25
41:17 42:4 44:16 45:13
47:6 49:7 50:9 55:5,17
56:13,18 57:4,23 66:6
67:17,19 69:15 89:9 91:5
104:21 114:24 122:14
124:14 125:6 126:7,12
128:25 138:21 182:10
184:12,15,16,21 185:9
edelmans (6) 5:6,11 63:2
66:5 69:14 107:18
een (1) 72:10
effect (30) 6:5 13:21 28:1
30:25 32:24 84:9 85:22,23
86:2,5 95:23 98:6,9,14
99:8,16,17 102:21,23
105:22 125:17 128:5
138:17 142:21 145:1,24
149:18 150:22 153:13
155:21
effective (1) 128:6
effects (18) 11:11,17 57:8
62:9,22 64:6,9 77:5,22,23
123:24 129:5 150:12,21
159:5,22 160:22 164:1
effort (1) 58:13
eg (1) 13:6
eggors (1) 22:25
egress (1) 149:2
eight (1) 127:2
eio (3) 17:19 48:12 76:9
eio11 (1) 126:16
eight (14) 7:25 13:19 14:3,9
34:21 41:16 59:6 73:7
84:18 123:7 124:11 169:3
179:1 180:9
elastic (1) 108:13
elderly (2) 66:7,11
electricity (1) 148:16
electronically (1) 54:23
elegance (3) 92:16 96:4
112:24
element (1) 93:4
elements (10) 7:10 8:9,17
10:9 48:24,25 54:7,10
55:19 77:2
elias (1) 27:18
eloquent (1) 13:1
else (14) 8:20 10:12 34:10
44:1 45:20 73:14 75:16
85:10 118:14,15 138:17
151:19 161:23 162:2
embarking (1) 7:5
embodies (1) 48:1
embody (1) 51:10
emboldened (1) 112:14
emergency (83) 18:23 24:15
29:12,18 30:5,8,9,18,25
31:3,6 48:16,16 49:14 50:5
51:1,8,22
52:2,3,7,10,17,19,20,25
54:2,5 55:9,16
56:2,9,14,25
57:3,7,9,11,13,13,17
58:7,8,22 60:7 61:15,17,25
64:22 76:12,13,14,23
77:1,4,5,9,10,11,22,22,23
78:1,2 142:10,18,18,21
143:1,2,7,12,16 144:4
159:20,23 160:7,18,21,23
162:19 164:1 176:18
emergencys (1) 51:23
emphasis (1) 100:8
emphaise (4) 121:11 137:3
138:8 174:18
employees (5) 147:9 149:3,6
156:3,9
employer (2) 11:2 85:13
enclave (1) 84:21
encompass (3) 123:24
178:23 179:23
encompasses (1) 166:21
encompassesabsorbs (1)
13:13
encountered (1) 178:2
end (3) 54:24 116:21 163:24

endanger (4) 18:23 29:12
50:5 142:18
endeavour (2) 166:23 183:8
ending (1) 170:14
endorse (1) 180:11
endorsements (1) 91:11
ends (2) 78:3 111:25
enforced (2) 36:25 100:14
engage (1) 8:4
engaged (2) 171:23 172:4
engages (2) 170:3 171:2
england (3) 27:4 31:22 45:22
english (2) 26:3,4
enough (4) 24:12 88:18
123:24 148:4
enquire (1) 34:6
enquiry (3) 7:4 137:20
149:12
ensuing (1) 5:1
ensure (2) 183:12 184:10
enter (1) 176:7
entered (1) 33:5
entering (2) 176:10 177:13
entire (1) 56:25
entirely (7) 6:8,14 35:1
72:15 160:5 180:3,11
entirety (1) 78:2
entities (1) 34:23
entitled (6) 68:12 157:5
158:22 164:5,9 181:12
entry (2) 144:15 151:13
entwined (1) 11:14
envisage (1) 75:23
envisaged (1) 99:3
envisages (1) 98:24
envy (1) 71:11
eo1 (1) 127:8
epidemic (1) 43:16
epilogue (1) 12:8
equal (1) 162:2
equality (1) 185:2
equally (5) 25:19 34:3 109:2
156:4,11
equate (1) 89:8
equipment (2) 101:25 102:3
equivalent (1) 131:1
error (1) 126:12
errors (1) 132:24
escaped (1) 110:16
especial (1) 6:15
especially (4) 5:2 6:3 131:23
173:18
essence (5) 49:8,9 50:12
74:12,14
essential (5) 101:25 102:3
106:18 108:5 119:18
essentially (4) 49:19 73:25
144:16 158:17
establish (3) 60:9 61:15
164:15
established (6) 2:16 8:1,2,17
27:2 75:2
establishes (1) 8:18
establishing (1) 8:22
estate (3) 157:9,11,14
et (19) 13:7 22:5 50:13
52:3,6,8 53:4 64:17
69:8,23 76:19 91:8,11 95:3
103:17 113:2,3,10 162:7
etc (3) 49:13,14 50:18
evaluated (1) 28:19
evaluation (3) 69:11,24
164:22
even (56) 2:1 4:14 5:5
14:17,20 22:13 27:24
28:16 37:5 44:2,3 45:2
53:2,11 58:4,12 60:16
62:12 63:16,22 64:5,8
66:15 70:12,15 71:5 73:3
77:14 83:3,14 84:14 85:18
86:6,23 95:15,22 101:21
102:22 105:6 107:4 114:23
121:25 125:20 127:20
128:22 129:8 138:25
147:17 149:1 154:21,25
155:24 156:2 159:4 162:24

182:20
event (17) 4:2 29:18,22
65:20 80:17 94:18
106:5,21 124:6 125:9
140:14 146:17 167:22
172:15 173:16 179:9,13
evential (1) 63:13
ever (3) 60:15 66:17 115:25
every (7) 49:5,21 57:20 59:2
64:13,19,20
everybody (3) 150:9
183:20,23
everything (14) 10:8 74:13
75:15 77:21 113:11 114:21
115:12 123:17,18 124:21
161:23 162:2 180:11
184:25
everywhere (1) 85:10
evidence (14) 5:20,20
6:16,22 10:12 63:16 70:22
71:20 73:13 131:12 151:20
162:24 163:12 178:3
evidential (6) 7:12 8:14
64:5,19,22 71:3
exact (2) 21:20,20
exactly (17) 30:3,4 35:6,7
40:3 41:4 64:23 69:25
74:11 84:1 87:22 95:25
105:14 106:3 112:24
124:23 148:9
examining (1) 159:24
example (66) 12:7 24:23
32:10 35:12 38:18 39:12
40:23 41:22 45:16,19 48:2
49:20 50:7 52:1 53:1 54:14
55:7,13 57:4,18,22 61:8
63:6,18 65:6 66:6,6
67:19,23 69:14 70:2 72:8
73:1,12 74:3 85:10
86:10,18 90:1 100:12,16
101:10,13,23 105:19
107:19 108:15,15 113:21
117:19 120:6 128:15,18
132:21 148:15 153:22
157:7,9,15 168:11 174:2
175:18 179:13 182:16
184:5
examples (3) 107:18,23
108:2
exceeding (1) 90:12
exceeds (2) 123:4 135:14
excellent (1) 22:24
except (2) 172:12 179:10
exception (1) 84:21
exceptional (1) 85:12
exclude (1) 178:21
excluded (3) 135:4 159:23
161:9
excluding (2) 18:16 171:18
exclusion (12) 18:16 22:14
39:3,5 41:3 43:1 44:2 47:1
171:17 172:14 178:15,19
exclusive (3) 37:1 179:8,10
exclusively (2) 106:20 182:21
excuse (1) 156:5
executive (1) 38:2
exempting (1) 22:15
exemption (1) 22:15
exercise (12) 1:25 3:19 6:12
8:4 68:22 69:12 74:4
104:24 132:22 137:15
164:10 184:3
exercised (1) 31:23
exercises (1) 164:14
exercising (1) 104:22
exist (5) 48:8 66:18 83:18
84:24 119:18
existed (1) 14:3
existence (1) 118:9
existing (1) 71:17
exists (1) 114:17
expanded (1) 78:3
expanding (2) 71:7 99:20
expect (4) 45:10,23,25
112:16
expectation (1) 110:8

expected (3) 5:12 110:2
159:4
expenditure (2) 90:8,10
expense (1) 122:4
expenses (1) 135:20
expensive (1) 156:16
experience (1) 42:12
expert (1) 178:3
explain (3) 59:9 166:18
182:17
explained (7) 14:23,24,25
47:25 48:2 148:11 176:20
explaining (1) 148:1
explains (1) 131:8
explicit (2) 121:19 123:16
explode (1) 177:3
exploring (1) 7:25
express (1) 178:14
expressed (2) 47:18 134:23
expressly (5) 106:18
155:14,21,25 161:17
extend (2) 44:1 110:9
extended (1) 18:7
extension (57) 18:6 43:8
44:3 107:2,2 122:7
130:18,21 131:1,4 133:17
136:25 138:5 140:6,7
141:12 142:6 143:4,7
154:12 158:9 160:9,14
161:3,24 164:11
170:1,5,6,7 171:2,4,16,23
172:3,13 173:12,19 174:7
175:25 176:23
177:10,18,20,22
178:11,16,19,22
179:5,5,12,14,16,17
180:21 181:15
extensions (26) 112:13
121:24 122:13 134:18
138:2 139:9,10,12,23
140:9 141:21 145:19
149:11,16 171:1 172:2
173:13,14,24 174:5
179:3,7,9 180:23 181:3,11
extensive (1) 33:24
extent (6) 62:22 68:20
111:13 145:8 164:1 183:10
extra (6) 113:13 182:13
183:2 184:3,22 185:3
extract (1) 101:6
extraneous (3) 122:16
125:1,2
extreme (1) 6:24
extremely (2) 153:4 183:20
extricability (1) 6:9
eye (1) 11:1
eyes (2) 10:24 110:16

F

face (6) 60:8 62:13 73:13
106:7 147:3 155:24
faced (2) 11:15 182:11
faces (1) 23:19
facie (18) 7:10 8:11,18 60:20
61:8,15 62:3,12,20,21 64:8
70:1,5 71:16,19 72:1
73:8,15
factors (1) 126:3
factory (3) 100:18,19 101:5
factsensitive (1) 157:4
factual (7) 6:10 26:8,25
72:18 73:21,23 80:18
fail (2) 82:10,11
failed (5) 1:18 3:18 55:8
119:22 159:11
fair (3) 39:13 131:18 183:23
fairchild (2) 84:20 85:10
fairly (5) 45:6 106:8 136:17
157:3 158:20
fall (14) 35:13 62:18 90:5
91:2 130:16 131:24 132:5
145:10 149:20 154:16
155:11 157:7 159:23
172:21
fallacious (1) 178:24
fallen (2) 62:24 126:12

falling (1) 175:1
falls (2) 84:20 168:18
falsa (1) 15:11
faltering (1) 64:9
familiar (5) 4:3 131:11
135:15 136:18 155:16
fancourt (1) 27:21
far (19) 4:4 15:10 63:20 68:6
77:3,9,12 103:16 127:6
131:16 132:15 133:20
135:22 138:16 147:14
148:13,22 164:14 178:9
farrier (4) 115:20,24 116:1,2
farriers (1) 115:17
fast (2) 10:23 11:12
fault (1) 64:11
favour (1) 120:11
fca (94) 1:18 2:2 6:7
9:1,8,25 14:1,3
15:13,21,22 23:14,16
26:14,19 35:21 36:4,14
37:21 38:16 40:17 41:9,17
50:9 53:3 54:3 56:25 66:3
67:14 75:20 76:14,24
77:2,10 78:1,5 80:3,10,15
81:4,19 82:20 88:24 95:13
103:9,12 107:4 110:23
111:15 112:19 122:22
125:3 130:24 131:10,14,25
132:12 134:16 136:23
140:7,21 141:23 144:17
145:6 146:10,15 149:21
150:10 153:2 154:8,20
155:8 157:4 158:14,25
159:11 160:20 164:8
165:17 166:1,9 170:18
171:23 174:17 175:2,9
177:25 178:5,6,9,14
180:22 181:10,13
fcas (35) 1:13 10:8 15:5 33:2
55:18,25 56:1,11 74:12
81:3 82:2,8,19,23 93:23
132:11,17,18,19,24 141:7
149:7,15 151:25 152:4,7
155:22 156:14,20,20
160:5,6,11,25 161:6
fear (2) 126:12 159:7
fears (1) 47:18
feature (2) 48:6,7
featuring (1) 48:16
feel (1) 9:17
feels (1) 183:23
fell (1) 27:13
felt (1) 184:24
ferocity (1) 109:4
fever (4) 20:14,21,21 45:20
few (7) 1:5,16 14:18 19:19
97:18 153:3 161:19
fifth (2) 107:19,21
figures (7) 68:2,15 123:9,18
137:10 169:5 175:7
file (1) 98:18
files (1) 157:17
final (3) 164:13 174:23
175:11
finally (4) 12:16 142:2
163:14 172:2
financial (3) 36:14 62:10
137:17
find (15) 18:14,15 20:16
29:5 34:11 40:7 42:12 49:6
58:6 78:13,19 97:12
113:23 116:1 136:19
findings (1) 11:7
finds (2) 7:12 38:13
fine (4) 97:3 128:3 147:1
165:14
finger (1) 7:22
finish (5) 180:18 181:25
183:12 184:9,17
fire (7) 67:21 68:1,3,5,16,18
69:15
firms (2) 106:23,23
first (36) 1:17 9:8 10:17
17:15 19:22 23:23 25:8,24
27:11,13 36:12 40:10 42:6

45:1 51:22 55:5,8 57:6
78:23 86:10 92:15,18
107:5 133:5 140:12 142:14
143:1 145:12,15 159:21
166:5,10 170:5 172:24,25
183:14
firstly (13) 24:17 25:7 30:8
32:13 33:7 42:6 51:21
62:25 71:5 81:18 83:16
142:17 183:20
fit (3) 14:24 15:23 184:25
five (1) 108:3
flaux (113) 1:4 2:6,8 7:21
8:25 14:6 16:24 17:3,23
22:20 35:9,21 40:12,21
41:6,13 42:8 45:9
46:3,16 18 47:11,13
51:12,15 53:23 59:24
60:13,23 61:2 63:2,5
72:8,17 73:16 75:6,19 76:5
78:16 83:21 84:3,7,13
87:15,19,24 96:20,25
97:3,9,13,15,19 105:12,15
106:17,7 107:3,7
108:15,22,25 109:6 111:5
114:25 115:2,6,8,15,19,21
116:11,16 117:6 119:25
120:4 128:13,25
129:4,19,23 130:1,4
143:17,19,24 144:1 145:23
146:5,21 147:1,3
149:22,25 150:7 152:1
165:5,9,14 172:15,20
179:20 180:6,13,19 181:20
182:1,6 183:4,14
184:14,19 185:4
fleas (1) 42:2
flock (1) 151:24
flood (1) 106:5
floor (2) 107:19,22
focus (2) 136:16 149:5
focusing (2) 166:9 175:24
follow (3) 14:11 63:3 174:12
followed (4) 18:16 149:16
152:15 153:8
following (67) 18:9 23:22
35:9 79:3,23
80:2,4,11,16,23 81:7,18
82:3,21 83:13
87:1,5,9,11,20 88:4,9
89:6,9,25 90:4,11,13,18
91:2,17,25 92:2 93:2,12
94:3,6,21,25 95:4,7,10,18
97:24 98:1 102:12
103:24,25
110:15,17,19,20,21,23
111:2,6,24 112:11 113:2,3
127:5 142:17 162:11
163:18,24 165:22 166:11
follows (3) 10:16 129:2
134:24
food (7) 3:3 10:23 11:12
19:8,17 20:2 42:9
fool (1) 39:25
foot (4) 102:16 133:8 136:19
138:7
football (5) 141:14,19,24
156:17 159:6
footnote (3) 4:20 176:22
177:2
forbidden (1) 103:12
force (7) 40:1 103:6,11
104:7 145:22 146:1 177:25
179:17
forcing (1) 2:12
forefront (2) 9:9 86:19
forensic (1) 185:7
forge (3) 115:18,23 116:3
forges (4) 114:25 115:3,8,10
forgive (3) 19:20 51:13
113:19
form (11) 12:13 20:12 76:13
91:12 105:23 111:22
112:22 126:17 127:2,4
162:23
formatting (1) 152:24
formed (1) 155:4

former (1) 104:17
forms (3) 31:25 34:24 161:20
formulation (1) 135:23
fortiori (3) 26:21 41:2 71:10
fortunate (2) 130:19,23
fortune (1) 114:8
forward (1) 1:15
found (6) 54:1 109:12,23
127:11 130:9 179:4
foundation (1) 6:14
four (5) 50:19 99:3,7
182:12,14
fourth (1) 7:8
framework (8) 9:11 26:17
32:24 33:7,13 87:4,4
182:25
fraudulent (5)
86:11,11,13,14,17
fraudulently (1) 86:18
free (1) 147:7
french (2) 69:3 104:11
frequency (1) 113:20
friday (2) 184:7,8
friends (5) 12:22,23 15:20
96:18 116:24
froing (1) 6:2
front (1) 167:14
full (6) 76:20 77:17 182:12
184:16,17,21
fully (1) 157:25
function (1) 51:23
fundamental (7) 9:12,19
15:17 76:2,3 153:15
174:16
fundamentally (1) 43:10
funding (1) 22:23
funds (1) 64:18
furnace (1) 115:12
further (15) 24:25 31:11
35:18 80:16 82:2
109:13,15 111:4,5 119:20
127:17 129:20 161:7 165:3
179:18
furthermore (1) 5:16

G

g (2) 11:8,10
gain (4) 99:22 101:6 105:6
107:15
gaining (1) 99:15
gaisman (26) 1:3,4,5 2:9
7:21 8:16 9:1 14:6,13,15
16:24 49:18 53:1 59:6
65:24 72:21 73:18
101:19,23 113:12
114:2,7,21 149:1 157:19
186:3
gaismans (3) 103:15 139:14
149:25
game (1) 5:14
gas (1) 106:4
gateway (1) 56:17
gather (1) 70:15
gathering (1) 70:13
gave (9) 4:19 57:19 60:24
66:6 67:19,20 76:17
101:23 118:18
general (15) 14:25 15:2
25:14 32:2 64:6,8
121:16,16 126:2 129:6
159:7,8 163:23 175:25
179:17
generally (6) 31:25 75:12
103:5 121:13 133:19
161:14
generous (1) 54:24
genuinely (1) 65:18
geographical (1) 174:8
george (1) 104:2
get (23) 17:16 41:20 46:10
63:9 64:4,10 70:22 72:23
83:22 85:18 99:25 100:2,3
107:4,18 116:25 120:11
140:8 141:6 152:20
184:5,15 185:3

gets (5) 14:8 69:18 86:23
 116:6 120:20
 getting (1) 63:25
 give (17) 11:20 36:8,15 50:6
 58:14 61:20 63:12 77:12
 95:18 107:23 108:2 125:17
 141:19 144:18 145:24
 151:5,20
 given (26) 4:1 7:25 8:8 57:22
 58:3,17,20 59:19,24
 60:4,4,15 67:24,25 71:18
 73:5,21 99:8 101:19
 103:17 114:18 120:1 151:2
 152:9,13 184:1
 gives (4) 58:18 60:1 68:8
 113:14
 giving (5) 54:15 57:25 81:23
 125:13 184:3
 goes (10) 21:16 25:7
 42:17,24 49:20 67:11
 126:13 142:15 158:18
 178:9
 going (63) 1:17 3:10 7:16,25
 14:17 15:11 16:13 17:9,15
 22:21 23:14 24:25 25:5
 27:9 28:4 32:6 34:9 35:25
 36:20 37:9 40:15 41:20
 46:12,13,23 48:20 66:25
 68:10,11,14 69:5 70:13
 78:9,22 83:8 87:8 95:21
 96:8,14 97:11 107:8,24
 110:11,14 113:15 114:23
 116:12,20 117:10 119:13
 121:6 127:16 128:14 132:6
 138:24 140:5 147:4 149:25
 151:20 152:3 158:3 167:1
 182:16
 gone (9) 5:13 58:13 62:17
 69:10 70:16,17,18,18
 117:7
 good (16) 8:9 17:6 23:13
 25:5 47:12,23 60:19 62:13
 69:8,8 88:18 97:3 117:10
 130:3 143:20 182:19
 goodness (3) 37:13 41:11
 115:13
 gordon (1) 153:23
 governed (1) 169:13
 government (111) 13:6,7
 18:22 29:11 32:9,10,16,20
 34:12,21 35:12,17,22
 36:6,10 37:1,2,12 38:16,25
 39:6 40:23 41:12 44:12
 45:6,10,24 46:2,5 48:4,15
 49:13,25 50:1,4,24,25,25
 51:6,7,24 52:2,3,6 53:10
 55:15,21 56:3,10 57:10
 58:8,22 60:7 66:14
 76:11,20 77:8,17,19,20
 81:13,22 82:17 87:16,24
 88:2,23 102:10,20 103:13
 104:15,16,22 105:20
 109:10 118:19,21,23
 119:15 120:7 128:16
 129:10,15,17 130:17
 133:17,20 134:19 136:24
 140:6 141:8 142:3,9,19
 143:10 144:2,6,21,22
 155:19,20 160:12,15,18
 166:10,14,22 174:22
 177:16,19,24
 governmental (1) 143:15
 governments (1) 166:2
 grammatical (1) 34:19
 grapple (1) 1:18
 grateful (4) 47:23 103:1
 116:19 129:25
 great (2) 69:2 157:21
 greater (3) 39:20 58:24
 131:19
 greatest (2) 5:21 96:10
 gross (31) 89:22 90:3,19
 94:19 122:3 134:15,17,23
 135:12,22,24 136:10,14,14
 137:2 139:21 140:1,4
 141:13 142:11 143:6,8
 158:23 159:16,19 162:16
 163:1 164:3,7 168:12,16
 ground (10) 14:8 93:23
 130:23 134:21 136:22
 139:20 161:20 162:9
 171:22 176:5
 group (5) 66:7,11,17 67:7,18
 groups (1) 66:16
 growing (1) 138:14
 guarantee (5) 27:13,16,22
 28:10,13
 guarantor (2) 27:25 28:19
 guarantors (1) 28:7
 guardian (1) 46:14
 guidance (2) 103:14 104:14
 guidances (1) 104:15
 guide (2) 6:20 68:15

H

 h (1) 175:7
 h4415 (1) 175:8
 ha (2) 36:5 78:1
 hadnt (1) 128:23
 half (8) 12:12 73:1 96:24
 182:13 183:12 184:3,18
 185:3
 hall (2) 66:8,12
 hamblen (1) 125:24
 hammers (1) 116:6
 hancock (2) 46:7,11
 hang (2) 43:15 69:19
 hapless (1) 3:15
 happen (1) 4:1
 happened (8) 4:1,2,5,5,7
 38:4 115:2 152:3
 happens (10) 6:20 14:16
 59:15 68:1 69:4,9,25 110:1
 120:15 129:7
 happy (1) 182:8
 hard (3) 2:8 15:9 72:21
 hardly (3) 3:20 53:10 113:4
 harm (2) 108:9,12
 hasnt (3) 8:13 63:19 121:7
 hat (1) 69:2
 hate (1) 147:3
 havent (4) 4:23 13:17 51:19
 182:2
 having (17) 3:13,17 9:16
 15:3 16:16 33:5 42:5 49:4
 75:2 81:8 92:18 103:6
 130:20 148:11 159:10
 180:20 184:24
 head (3) 46:8 67:24 131:13
 headed (1) 97:21
 heading (12) 7:8 22:12 25:9
 98:18 125:6,9,10 127:18
 134:23 135:9 139:15
 168:21
 headnote (2) 27:10,12
 health (12) 20:8
 31:9,11,14,20 32:15,22,22
 43:13 46:7 124:18 171:21
 hear (4) 17:2,6 117:4 165:8
 heard (6) 6:16 68:13 110:21
 129:18 157:18 182:2
 hearing (4) 130:17 182:22
 184:8 185:14
 heats (1) 116:4
 heavily (1) 43:8
 heavy (1) 175:3
 hedged (1) 35:24
 heels (1) 152:15
 held (1) 27:13
 hello (1) 130:5
 help (1) 176:25
 helpful (2) 139:14 140:8
 hence (1) 24:18
 hepatitis (1) 20:14
 here (22) 3:10 4:7 6:23
 13:13 35:25 36:15 39:15
 43:20 44:2 59:1 65:9 78:14
 86:21,22 104:14 114:11
 119:12 126:1 127:19 129:5
 133:16 134:17
 hereafter (2) 74:6,23
 heretical (2) 10:1 161:7
 herself (1) 37:15
 hes (3) 64:17 120:14 152:2
 hesitate (1) 129:21
 high (5) 15:10 22:25 37:5
 103:23 157:9
 highlight (1) 125:6
 highly (3) 53:8 61:21 65:14
 himself (3) 37:15 67:19
 116:3
 hindcastle (1) 28:2
 hinder (2) 172:6 173:22
 hindered (11) 18:21 24:14
 29:10 61:17
 98:10,13,25,25 150:4
 173:3,5
 hinders (3) 98:21 140:16,18
 hindrance (18) 48:14 49:24
 55:15 76:10,20 77:8,16
 99:3,12,24 100:5 107:21
 113:10 145:17,21 146:4
 149:22 150:3
 hindsight (2) 45:3,3
 hired (1) 16:4
 hiscox (5) 2:3,25 4:4 80:22
 113:8
 hit (1) 12:16
 hoaxes (1) 177:3
 hodge (1) 22:23
 hole (1) 178:1
 home (12) 67:3,8 101:14,24
 102:2,8 107:10 115:12
 151:15 152:8 156:12
 157:17
 homespun (1) 157:7
 hoof (1) 116:6
 hope (9) 9:14,17 19:20 41:16
 78:7 97:14 120:14 131:5
 134:5
 hopeless (1) 155:23
 horse (3) 115:20,24 116:7
 horses (1) 116:5
 horseshoe (1) 115:24
 horseshoes (3) 115:15,17
 116:1
 hospital (3) 10:25 11:3,13
 host (1) 155:1
 hotel (1) 109:21
 hour (9) 96:23,24,24
 182:5,13 183:12 184:4,18
 185:3
 hours (1) 106:2
 house (1) 102:18
 howard (2) 96:14 182:3
 however (8) 2:19 33:24 62:6
 70:10 83:22 105:11 117:24
 179:12
 huge (2) 69:2 96:4
 hugely (2) 77:13 78:3
 hull (1) 119:8
 human (11) 18:23
 29:12,19,23,24,24 31:9,10
 50:6 79:13 140:22
 hundreds (1) 65:9
 hurdle (1) 55:8
 hurricane (7) 12:15,16 13:22
 124:7 129:2,5 139:4
 hypothesis (1) 85:22
 hypothetical (4) 3:12 71:14
 164:16,21

I

 i110 (1) 55:25
 i1108 (1) 12:22
 i1173 (1) 132:20
 i1185 (1) 23:17
 i1186 (1) 26:15
 i121 (1) 17:18
 i12100 (1) 109:12
 i12129 (1) 121:11
 i12131 (1) 126:14
 i12144 (1) 122:19
 i1223 (2) 102:13 103:25
 i1228 (1) 102:15
 i1229 (1) 103:2
 i1238 (1) 17:19
 i1243 (1) 26:13
 i1244 (1) 29:1
 i1254 (1) 48:20
 i1256 (1) 50:9
 i1257 (1) 51:16
 i1259 (1) 93:24
 i1261 (1) 52:23
 i1263 (1) 54:14
 i1264 (1) 66:9
 i1287 (1) 81:4
 i1290 (1) 111:17
 i1294 (1) 99:11
 i1296 (1) 108:2
 i160 (1) 144:19
 i164 (1) 105:1
 i1736 (1) 96:7
 i1737 (1) 96:15
 i187 (2) 82:8,9
 i1933 (2) 176:23,25
 i332 (1) 2:5
 i81 (2) 131:8 152:22
 i82 (1) 152:23
 ice (1) 72:22
 idea (8) 9:8 42:3 81:13,21
 96:5,7 104:5 147:21
 identified (1) 75:8
 identified (11) 2:1 9:12 20:5
 24:22 75:10 119:13
 161:5,10 170:8 172:23
 175:2
 identities (4) 37:25 38:3
 126:15 167:16
 identify (6) 49:3 51:24 59:8
 75:24 140:10 142:15
 identifying (1) 33:23
 ie (4) 5:8 173:18 174:12
 176:15
 ignore (2) 4:15 148:8
 ignored (3) 148:10 160:2
 174:17
 ignores (1) 13:19
 ii (5) 13:8,13 14:15 30:22
 137:6
 iii (1) 19:1
 illness (6) 29:25 31:10
 79:12,17 80:1 108:24
 illnesses (1) 96:8
 illogical (1) 125:11
 illustration (1) 13:2
 im (15) 2:7,9 13:8 17:1 32:6
 36:6 43:19 47:23 73:17
 107:12 110:14 115:1
 116:19 147:1 170:9
 image (1) 38:8
 imagine (2) 3:25 16:19
 imagining (1) 3:22
 immediate (3) 102:20
 173:15 176:2
 immediately (2) 69:21 123:2
 impact (4) 22:23 89:3 96:11
 110:2
 implemented (2) 86:7
 177:16
 implements (1) 115:16
 implicit (2) 10:8 121:20
 implied (1) 24:16
 import (1) 82:22
 importance (1) 157:21
 important (14) 35:7 44:25
 48:22 55:13 70:24 74:9
 106:19 127:5 146:20 147:5
 155:7,9 174:20 183:20
 importantly (1) 171:14
 imported (1) 90:16
 imports (1) 82:4
 impose (3) 35:16 85:25
 108:17
 imposed (7) 35:12 36:24
 60:6 83:13 86:4,4 128:17
 imposes (1) 40:24
 imposing (1) 83:9
 impossibility (4) 99:15,16,18
 148:4
 impossible (5) 99:22 100:3
 146:13 147:25 162:4
 impossibly (1) 3:16
 impressionistically (1) 41:11
 improve (2) 41:5,9
 inability (1) 101:6
 inappropriate (1) 36:13
 incidence (1) 31:21
 incident (30) 11:12,13 113:8
 117:14,20,21,22
 118:7,8,10,12,18,22
 119:2,3 120:18,20,24
 167:22 168:1,19
 169:4,5,7,24 170:1,14,16
 177:11 180:4
 incidentally (1) 20:16
 incidents (2) 11:11 180:1
 include (15) 4:21 20:20
 24:13 26:22 37:3,4,5,7
 40:19,22 54:2,7 140:24
 157:8 172:14
 included (6) 20:19 38:11
 42:13 50:2 127:1,7
 includes (8) 20:18 26:8
 30:13 112:16 140:17
 156:22 157:10 174:8
 including (11) 1:21 32:15
 37:1 38:16 67:14 108:3
 109:8 134:18 139:21 159:6
 178:2
 income (33) 18:2 55:1,3
 56:6,8,15 57:17 58:2,9,12
 59:9,11,13,23 60:2 61:21
 62:24 63:18,23 66:12
 67:1,9 69:15 73:2,12
 126:18,20,21,23 127:10,13
 128:15
 incompetence (1) 3:14
 inconsistency (2) 154:21
 155:2
 incorrect (1) 2:24
 increase (4) 89:24 90:7
 135:17 139:17
 increased (2) 77:13 122:4
 incur (1) 65:12
 incurred (4) 7:1 90:8 135:17
 137:22
 indefinite (2) 34:14 110:3
 indemnifiable (1) 136:10
 indemnify (2) 135:1 139:16
 indemnity (26) 4:19 68:19
 90:4,11 91:1 123:2,4
 126:22 134:23 135:14,19
 136:14 137:18 139:7 143:3
 158:15,19 161:24
 168:13,17
 170:10,10,11,14,19,22
 independent (8) 62:9 117:18
 118:15 119:12,16,20
 120:8,25
 independently (1) 118:16
 index (1) 186:1
 indicated (3) 61:7 72:2
 109:16
 indicatives (3) 32:12 140:1
 167:14
 indication (2) 45:4 111:6
 indications (1) 94:5
 indistinguishable (1) 137:24
 individual (4) 7:1 74:6,7
 183:8
 indivisible (9) 10:9,11 11:25
 12:4 53:6,13,15,17 82:13
 inescapable (1) 5:3
 infection (4) 31:15,21,24
 32:1
 infectious (31)
 19:5,7,15,16,21 21:21
 22:4,7 23:24,25
 24:2,3,8,14,18,21 28:23
 29:7 32:16 33:10,15,25
 36:4,20,22 42:13 79:13
 129:14 140:22 171:19
 179:3
 infer (1) 179:2
 inferred (2) 88:1 106:25
 infestation (1) 140:19
 influenced (4) 7:6 25:16
 42:16,16
 information (1) 175:9
 informed (1) 174:25
 ingenious (1) 63:2
 ingredients (2) 124:18
 129:12
 inherent (1) 10:7
 injured (1) 120:15
 injuries (2) 10:23,24
 injury (3) 12:2 28:25 31:10
 inner (1) 72:9
 insafar (5) 6:8 48:5 57:13
 101:21 115:8
 insolvency (4) 27:14
 28:2,9,18
 instance (2) 27:13 31:15
 instances (1) 107:17
 instant (1) 91:7
 instead (2) 37:15 114:3
 instructing (1) 151:4
 instruction (1) 104:6
 instructions (4) 38:23 103:7
 105:21,23
 instructive (1) 10:20 11:5
 insurance (21) 4:17,21 6:4
 9:4 18:7 25:20 54:4 65:15
 74:24 75:1,13 91:9 94:18
 118:6 121:17 135:3 146:2
 161:14 167:23 169:12
 176:21
 insurances (1) 65:8
 insure (5) 44:18 54:6,6,8
 91:14
 insured (128) 1:23 2:12,14
 3:11 7:11 8:10 19,22,23,24
 12:17 15:25 26:18 36:2
 37:12 47:8 48:1 49:8,9
 50:12 51:21 52:10,12,24
 53:20 54:11 55:4 56:16,21
 58:6 60:10,19 62:2,3,8
 65:1,5,19 68:2 69:7 70:20
 71:5,18,19 73:8,9,14
 75:9,10,15,24 76:1,18
 77:13,14,15,24,24 78:3,5
 93:22 94:18 96:13 100:16
 105:9 107:4 118:25
 119:17,18,19,21 120:12,20
 121:1 122:12,17 123:21,25
 124:1,2,4,6,6,12,21,22,24
 125:13,14,15,18 128:22
 129:5,6,8,13,14,17 133:24
 136:7 137:22 138:4
 139:17,19 140:2,3 141:2
 142:16,16 143:13 148:24
 150:20 152:10,12 158:19
 159:9,17,19,21,24
 160:1,21 161:8,12,22
 164:8 169:18 176:19
 insureds (16) 5:12 17:10
 37:8 65:8,17 68:18 74:6
 121:23 123:25 127:13
 165:20 173:20,22 175:1
 176:3,5
 insurer (25) 2:11,14 7:13,19
 8:12,14,22 17:14 22:15
 26:18 60:14,14,18
 63:13,24 68:2 69:18,19
 70:7 72:4,9,15 118:25
 132:14 183:7
 insurers (24) 16:2,8 17:12
 54:3 65:18 68:12 70:11
 74:2,6,14 82:10 131:19
 142:24 145:9 166:25
 169:10 178:8 175:9 179:21
 181:25 182:20 183:5,18
 184:16
 insures (1) 141:13
 insuring (18) 42:19 43:2,22
 71:7 75:22 89:11,15 91:19
 117:11 118:4,8,17 121:14
 125:20 134:11 161:10
 167:20 170:3
 integral (1) 82:12
 intellectually (1) 74:16
 intended (12) 38:9,11 40:3
 89:7 90:19 93:19,20
 121:21 122:5 125:14 178:7
 179:15
 intent (1) 177:10
 intention (3) 24:20 47:9
 91:23
 intents (2) 48:3 154:22
 interchangeably (5) 89:10
 92:4 94:3 95:7 111:7
 interdependence (1) 119:10
 interdependent (7)
 117:18,21 118:2
 119:4,16,17 121:1
 interest (3) 46:14 108:1
 131:19
 interested (4) 79:21
 131:21,23 132:2
 interesting (1) 132:1
 interests (1) 131:15
 interfere (3) 100:15 101:8,8
 interfered (3) 100:11,19
 167:25
 interference (48) 13:11,16
 18:8 55:9 60:10 66:24
 67:4,4,6,9,16 74:20 79:2
 87:19,25 88:9,16 89:17
 91:16,22 92:9 93:1,7,11
 94:15,24 95:24 96:11,12
 97:23 100:8,9 101:16
 110:18 111:1,20
 112:6,17,20 113:1
 114:9,12,18 117:25 135:2
 165:20 169:19 171:6
 interlinked (2) 13:14 53:6
 internally (1) 86:22
 interposing (1) 14:2
 interpret (1) 13:22
 interpretation (2) 25:15
 86:25
 interrelationship (1) 49:15
 interrupt (1) 101:9
 interrupted (4) 70:3
 100:11,20 167:24
 interruption (88) 4:21
 13:11,16,20,24,25
 14:10,16 15:17 16:16 18:8
 55:8 60:10 64:24 65:14
 66:23 67:4,6,9,16 69:11
 74:20 78:16 79:1 81:16
 82:1 87:19,25 88:8,16,22
 89:17 90:16 91:16,21
 92:9,25 93:7,11 94:15,24
 95:3 96:11,12 97:23 100:7
 110:18 111:2,20
 112:6,17,20,25
 114:9,10,13,16,17
 117:12,25 118:21 121:24
 122:1,6,8 124:4 133:18
 134:8,10,20 135:1 137:19
 138:2 139:8,10,24 141:20
 164:20 165:20 167:17,19
 168:9 169:19 170:3 171:6
 173:25 176:20 177:6
 interspersed (1) 132:13
 interveners (1) 2:3
 intimate (1) 43:12
 into (43) 5:4 24:25 25:13
 27:12 33:5 41:20 43:20
 48:23 52:17,24 57:21
 63:17,22 69:10 70:11,22
 71:14 72:7 73:23 77:21
 85:19 102:9 105:10
 107:8,8,18 109:11,13
 112:8 116:14,25 123:17,18
 124:5,10,22,23 126:3,12
 137:20 157:6 178:1 181:16
 introduced (1) 177:23
 introduction (1) 139:7
 introductory (2) 5:17 169:14
 intrusive (1) 32:18
 invasive (1) 32:18
 investigate (1) 149:13
 investigated (1) 72:16
 investigation (3) 85:4,12
 86:22
 investigations (1) 176:1

169:7
 practical (4) 144:25 162:11
 163:2,14
 practically (1) 147:25
 practice (1) 121:16
 precautions (1) 154:10
 preceded (2) 13:5,25
 preceding (2) 54:21 173:8
 precious (1) 14:18
 precisely (4) 28:9 65:2 68:23
 172:17
 predicate (1) 129:10
 predominantly (1) 106:20
 prefaced (1) 30:16
 preferred (1) 23:15
 preliminary (5) 166:6 172:21
 173:9,24 174:23
 premise (1) 6:10
 premises (1) 6:9
 premises (180) 18:20 19:3,19
 21:3,4,7,12,13,17,24 22:2
 23:7 24:9,13 29:9 35:14
 37:19 38:6 40:5 79:3,6
 88:15,17 89:19 92:10,11
 93:2,8 98:2,7,21,22
 99:16,23
 100:1,2,3,12,13,14
 101:2,2,3,5,7,11,12,15,21
 102:4 103:8,19
 105:4,5,6,8,18,24
 107:19,20 108:12,20
 109:23 110:2 113:2 117:13
 133:6,13,14,19,23,25
 134:4 136:4,9 140:15,17
 141:1,3,15 142:7,23
 143:9,14
 144:9,11,14,15,22,24
 145:2,4,13,15,17,18
 146:8,11,14,18
 147:8,12,13,18
 148:5,13,17,20,24
 149:3,11,14,19 150:4,19
 151:2,4,18
 152:11,12,17,18,19
 153:6,14,21 154:14,15
 155:19,25 156:10,13
 157:12,14,24,24 158:21,24
 159:4 160:24 162:1,24
 165:23,24 166:12,14
 167:24 168:2 171:3,7,9,12
 172:5,7,7,16
 173:1,1,2,3,4,5,10,11,16,17,18,22
 174:15 175:15
 176:3,5,8,11,15,17
 177:5,14 179:23
 premium (1) 91:13
 prepared (3) 107:1 114:19
 185:5
 presence (2) 82:12 178:18
 present (3) 27:4 164:23
 183:10
 presentation (1) 146:22
 presents (1) 68:2
 president (1) 104:3
 press (2) 102:17,19
 pressed (2) 184:25 185:1
 presumably (1) 76:24
 pretty (1) 47:13
 prevail (1) 181:23
 prevent (8) 105:3 135:18
 147:12 159:1 172:6 173:22
 174:14 176:4
 prevented (37) 18:20 24:14
 29:9 61:16
 98:2,4,5,11,12,16,24,25
 99:5 100:17 101:4,11,15
 103:4,8 107:8,14,14
 148:21 149:8,11,12,13
 150:5,8 153:7
 156:10,12,15 165:24
 166:14 173:2,5
 preventing (6) 30:24 31:19
 151:1 152:10,16 177:5
 prevention (96) 18:18 22:9
 23:24 48:13
 49:11,21,22,24

50:13,18,22,23,24 51:5,6
 52:7 58:7 61:22
 76:10,19,19 77:7,16 81:6
 98:19 99:2,14,14,23
 100:4,4,6,10,12,14
 101:17,20 103:19
 105:7,10,10 106:12
 107:20,21 108:17 113:5
 117:13 118:1 120:17,23
 129:11 133:22 134:2
 140:13 141:25 142:12,23
 143:9,14 144:9
 145:3,17,19,21
 146:4,7,8,11,13,14,16,17
 147:18,21,24
 148:2,12,18,24 149:2,17
 150:3,11,18 152:4
 153:20,24 154:1,14
 155:2,18 157:24 165:18
 172:3 173:13,19
 prevents (5) 98:21 105:4
 140:16 144:21 176:15
 previous (1) 13:21
 previously (2) 4:6 70:9
 prima (18) 7:10 8:11,18
 60:20 61:8,15
 62:3,12,20,21 64:8 70:1,5
 71:16,19 72:1 73:8,15
 primary (4) 87:10 95:9
 167:19 169:12
 prime (6) 30:13 104:13
 151:2,9,12 152:9
 principal (2) 30:14 144:8
 principle (12) 2:20 4:15 8:3
 25:22 26:8,20 71:2 73:24
 120:5 159:13,25 164:25
 principles (7) 9:24 22:11
 26:4 75:1,2,12 133:1
 prior (5) 4:6 13:11,14 154:2
 158:6
 priori (1) 126:2
 pro (2) 59:12 119:21
 probably (15) 42:5,11 46:9
 64:11 71:25 72:4 96:23
 107:25 108:19 109:19
 117:5 132:20 157:6 180:15
 184:4
 problem (1) 3:8
 procedure (2) 10:2,25
 proceedings (3) 121:8 159:1
 181:9
 progress (2) 49:2 183:11
 produced (6) 69:1 77:15
 83:20 90:2 135:12 168:16
 professional (2) 3:13 101:13
 proffer (1) 2:3
 profit (30) 89:22 90:3,19
 94:19 116:13 122:4
 134:17,23 135:12,22,24
 136:10,14,15 137:2
 140:2,4 141:13 142:11
 143:6,8 159:4,16,19
 162:17 163:1 164:3,7
 168:12,16
 profits (3) 134:15 139:21
 158:23
 prohibit (2) 103:13 157:14
 prohibited (1) 104:21
 prohibition (4) 103:10
 104:7,8 105:7
 prompted (1) 82:17
 promulgating (1) 81:22
 pronouncements (1) 102:21
 proof (3) 4:13 7:19 26:1
 proper (5) 25:15 86:25 87:10
 125:4 150:16
 properly (3) 25:16 110:9
 126:3
 property (25) 18:24 29:13
 50:6 89:18 92:11 93:9,18
 94:16 98:21 111:22 112:11
 135:5 136:4,8 137:22
 140:14 141:15 142:19
 168:2 169:21 171:3
 172:5,8 173:20,21
 proportion (1) 58:24

proposals (1) 153:18
 propose (3) 165:3 166:5
 172:9
 proposed (1) 4:4
 proposition (3) 25:19
 161:7,15
 proprietor (1) 105:5
 prose (1) 92:16
 protect (1) 31:13
 protecting (2) 31:9,19
 protection (3) 20:8 29:16
 32:15
 prove (11) 2:12,14 7:9 8:24
 10:17 71:15 86:13 118:11
 159:10,11 178:3
 proved (5) 10:15 25:4
 79:23,25 85:11
 proves (1) 78:5
 provide (10) 6:20 24:18,20
 31:14 121:22 123:5 143:4
 165:19 169:1 173:25
 provided (9) 24:23 33:14
 54:4 92:23 95:6 106:1
 122:6 156:4 167:17
 provides (7) 21:10 80:12
 99:19 118:4 142:6 143:6,7
 providing (2) 31:20 76:21
 proving (1) 159:15
 provision (17) 18:4 24:12
 30:23 31:6,19 32:2,3,3
 89:22 95:6 134:11 135:15
 141:7,16 142:3,4 154:10
 provisions (2) 30:14 127:6
 130:16 133:18 136:16
 139:7,10,21 140:10 141:18
 154:11 172:22 181:4,11
 proximate (14) 13:15 55:10
 81:11,21 82:25 83:1 84:5
 86:23 87:13 89:8 95:10,12
 121:3 140:3
 proximally (4) 81:7,18 88:6
 159:16
 proximity (1) 173:17
 psychological (1) 11:2
 pub (2) 153:6,9
 public (27) 4:8 5:18
 13:4,5,24,25 14:7,12
 31:11,14,20 32:15,21,22
 43:13 53:4,14 104:3
 117:14,23 118:18,20 119:2
 120:19,19 165:18 174:13
 publicly (1) 163:7
 published (1) 163:11
 pub (6) 131:20
 151:16,19,19,23 152:5
 purchased (3) 175:1,5
 181:15
 purely (2) 42:25 85:4
 purport (1) 143:4
 purported (2) 1:15 102:17
 purporting (1) 43:24
 purpose (9) 30:23 31:8,19
 34:7 90:9 92:12 123:16
 148:14 169:25
 purposes (29) 27:4 29:22
 39:2,3 48:3 56:22 76:1,25
 77:4 81:15,25 89:4,19
 94:17 101:7 105:8 122:9
 136:4,7,9 141:7 142:8
 148:20 150:2 154:22 156:6
 157:12 168:3 176:16
 pursuant (1) 158:8
 pursue (1) 166:19
 puts (1) 56:14
 putting (6) 8:7 40:13,15
 57:25 83:21 85:23
 puzzling (1) 84:4

qualifications (1) 34:19
 qualified (1) 24:13
 qualifies (4) 11:25 49:22,23
 50:18
 qualify (5) 50:2,17 54:11
 152:15,19
 qualifying (7) 51:25 67:4
 133:22 142:10,17,21
 143:16
 quality (1) 13:1
 quantification (2) 4:19 170:4
 quantifying (1) 121:22
 question (35) 1:12,18 2:1
 10:6 11:3 15:11,18 25:18
 26:3 27:13 35:1 39:21
 40:13 55:3 59:5 60:22
 66:22,23,25 69:14 70:2
 74:5,23 75:7 83:5 85:2
 107:7 109:16 110:13
 117:24 128:20 137:16
 147:17 149:10 157:25
 questions (3) 9:18 70:25
 165:5
 queuing (1) 150:1
 quick (1) 42:5
 quickly (5) 14:22 94:11
 153:1 154:13 157:3
 quite (20) 1:21 8:16 10:12
 13:8 24:7 42:11 45:18
 46:12 53:11 73:9 76:21
 97:15 109:20 115:11
 116:21 117:10 121:6
 127:16 131:25 184:14
 quote (2) 11:23 150:13

R

radical (1) 9:3
 radius (20) 21:4,13 24:23
 42:19 79:5,17,19,24 80:1
 87:21 88:7,15 89:3
 95:19,23 96:6,9,10 113:9
 117:15
 rahman (1) 10:20
 raise (3) 7:10 164:6,20
 ramseys (1) 153:23
 rang (1) 46:8
 rat (1) 48:2
 rate (6) 90:3 135:12,24
 136:14 137:2 168:16
 rather (18) 7:15 41:3,22
 54:7 59:4 60:19 64:9 71:16
 73:19 82:5 92:14 104:14
 142:2 145:7 146:2 158:19
 164:2 180:16
 rational (1) 12:1
 rats (7) 41:25 42:1,2
 48:2,4,5,7
 raw (3) 100:17 101:4,6
 reach (1) 8:11
 reached (2) 11:20,22
 reaching (2) 6:2 25:14
 react (1) 177:4
 reaction (3) 118:18,20 119:2
 reactions (1) 53:10
 read (22) 1:11 14:19 16:21
 27:11,11 28:14 48:20 51:9
 91:10,11 93:22
 96:17,17,19,20 102:25
 116:17 123:14 146:14
 150:11 163:21 165:4
 reader (7) 43:9,12 143:5
 177:21 178:12,20 179:1
 readers (1) 163:13
 readily (3) 23:21 27:5,5
 reading (8) 125:10 131:6
 132:12 138:3 144:20
 175:25 177:21 179:1
 reads (2) 93:14 122:2
 ready (1) 97:9
 real (7) 7:21 23:19 40:11
 42:20 62:15 179:25 180:3
 realised (1) 159:3
 realises (1) 38:3
 realistically (1) 157:8
 reality (1) 82:24

really (31) 2:9 7:14 13:17
 37:8,9 41:7 42:24 43:7
 46:12 71:11 73:20,24
 76:13,21 83:22 96:3,17
 97:19 105:16 106:11
 107:14 108:5 109:20
 110:4,12 111:4 128:10
 132:2 139:25 155:23,23
 reams (1) 163:10
 reason (26) 5:25 8:13 15:14
 25:13 34:16,17,18 35:6
 41:24 44:23 49:12,12,25
 63:25 99:20 106:24 114:6
 139:5,12 140:21,25
 141:1,13 142:9 145:23
 171:22
 reasonable (11) 43:9 103:15
 110:8 142:13 143:5 154:9
 156:5 177:21 178:12,20
 179:1
 reasonably (12) 25:23
 26:6,10 33:6 45:25 90:8
 110:1 123:11,19 156:7
 157:15 169:6
 reasoning (1) 178:24
 reasons (11) 4:3 23:13,22
 64:25 65:21,23 67:7,18
 86:4 101:19 114:2
 recall (5) 66:8 131:6
 132:12,15 151:13
 receivable (4) 90:24,25
 91:1,3
 receive (3) 61:12 63:11
 100:20
 received (7) 61:9 66:25
 70:9,9 126:22,23 132:15
 receiving (1) 56:7
 recent (1) 43:15
 recession (3) 162:6 163:9,19
 recognise (2) 82:11 108:11
 recognised (3) 12:15 24:11
 84:21
 recognises (2) 12:12 93:14
 recollection (3) 87:2 152:1
 180:13
 recommend (6) 132:21
 142:22 145:2 148:6 151:17
 152:11
 recommends (2) 144:23
 148:4
 reconvene (1) 66:17
 recover (7) 56:19 57:1 58:5
 59:12 63:1,9 77:25
 recoverable (5) 56:12,13
 58:23,25 162:18
 recovered (1) 12:18
 recovery (2) 55:18 56:17
 red (1) 155:24
 reduced (4) 69:21 70:19
 141:14 162:22
 reduction (16) 12:15 89:23
 90:2,9 128:15,18
 135:11,18,24 139:16
 141:24 150:18 159:6,15
 162:12 168:15
 reductions (1) 163:8
 refer (8) 32:25 53:22 76:22
 92:1 94:22 95:1 121:9
 127:21
 reference (21) 4:19 40:3
 44:3 74:24 76:12,24 99:10
 103:23 104:20 109:12
 117:16 122:20 127:13
 130:22 140:10 144:18
 145:10,20 150:12 162:14
 170:19
 references (1) 25:6
 referred (14) 26:11 33:7
 38:24 44:11 74:23 77:11
 78:1 88:1,3 127:24 131:10
 136:20 153:17 160:21
 referring (2) 93:22 114:16
 refers (3) 77:3 127:21 144:14
 refine (1) 50:17
 refinement (1) 51:1
 reflect (4) 90:15 95:5 137:3

tension (4) 40:8,10 147:20
148:1
term (6) 19:21 95:7 112:2
113:25 140:23 166:20
terminate (1) 28:7
terms (20) 39:16 93:16
98:9,14 102:19 108:13
109:14,14 120:4 127:11
128:9,13 129:6 135:4
144:25 163:23 166:4 167:4
172:12 182:4
terrible (2) 16:6 68:10
terribly (3) 44:25 68:9 70:24
territorial (1) 100:25
territory (1) 12:5
terrorist (3) 106:4 176:23
177:1
test (27) 9:8 56:23 76:16
79:25 80:8 82:22
83:4,15,24 84:10,19,22
85:15,19 87:7 95:14,16
118:24 119:7,22 121:2,15
149:23 155:25 160:10
180:15,15
tested (1) 181:8
thank (11) 16:22,24
17:3,7,23 21:5 116:9 97:5,10
130:1 165:6 176:25
thanks (1) 46:22
thats (10) 17:7 26:18 40:6
46:3 72:19 86:9 97:17
107:12 111:8 115:19
theatre (1) 154:24
theatres (1) 155:3
thee (1) 102:16
theft (1) 135:5
themselves (5) 3:5 8:6 39:1
53:16 68:23
thereafter (2) 129:10 170:15
thereby (1) 177:4
therefore (43) 6:14 12:4
25:5,13 27:5 33:11 52:19
56:11 60:25 61:20
63:11,22 69:20 70:16,20
72:5,15 73:3,3,13 76:24
77:3,9,23 78:3 87:6 99:6
103:3 127:5 131:24 137:20
144:20,25 147:14
149:15,19 153:24 162:22
163:23 176:8 178:22 179:8
181:15
therein (1) 172:8
thereof (1) 146:9
thereto (1) 172:7
thing (12) 10:17 12:21 13:9
26:14 45:1 70:24 71:13
83:11 84:5 86:10 97:16
151:18
thinking (1) 97:17
third (5) 53:19 111:17
163:14 166:16 173:24
thirdly (9) 3:8 6:7 32:19
52:22 122:14 142:21 146:6
173:3 174:13
though (15) 14:17 27:24,25
28:17 58:12 70:8,12 83:14
86:3,6 106:20 119:17
121:25 154:21 182:20
thought (3) 58:12 74:9
114:12
threat (1) 108:10
threatens (2) 29:18,23
three (10) 34:23 48:24 94:8
130:10,19 131:6 142:14
172:25 182:15 184:25
through (14) 4:13,24 28:24
32:7 35:9 61:10 72:22
96:19 102:19 103:13
132:21 150:23 156:23
182:17
throughout (3) 60:16 115:10
157:25
throw (1) 1:24
thrust (2) 179:25 180:3
thursday (19) 47:3,25 59:5
60:21 61:7 72:2 74:2 75:11

79:8 183:25
184:5,6,10,13,20,23
185:1,3,7
thus (3) 123:10 169:5 178:16
time (27) 1:6,8 4:23 5:19
13:17 16:1 22:22 28:24
33:4 40:10 45:5 55:14 60:3
62:24 96:5 107:25 110:5
116:13 127:21 131:25
132:20 150:2 182:16,23
183:2 184:23 185:8
times (6) 12:11 15:10 102:14
104:24 108:16 144:10
timing (1) 184:2
tin (4) 124:14,16,19,25
tiny (1) 37:22
titles (1) 128:1
today (1) 7:3
together (3) 70:14,15 91:11
toing (1) 6:2
token (2) 146:13 153:25
told (4) 69:18 105:2 150:8
176:6
tolerably (1) 50:11
tomlinson (1) 6:16
tomorrow (9) 180:8
181:21,25 183:13
184:4,11,15 185:5,12
too (3) 25:3 36:5 37:21
took (3) 85:17 114:24 167:8
topic (2) 10:6 156:20
topics (1) 14:5
torfeasors (1) 12:3
tortious (1) 84:19
tortured (1) 12:25
total (4) 90:12 148:6 157:22
158:2
totalitarian (1) 104:4
totality (1) 183:24
totally (3) 50:21 64:20 72:3
toulson (1) 22:23
towards (6) 116:21 133:8
169:14 170:12 171:15
175:3
town (3) 72:12 108:17,18
trade (3) 1:17 2:11,22
trading (2) 5:9 164:16
traditional (3) 126:17 127:4
128:6
traffic (1) 176:13
train (1) 163:9
transcript (6) 33:1 47:10
66:20 124:15 150:13 151:8
transform (1) 105:9
translated (1) 104:7
transplant (2) 111:21 112:22
transpose (1) 93:3
travel (5) 67:3,8 102:7 156:6
163:9
treat (2) 22:12,14
treating (2) 10:11 31:10
tree (1) 11:15
trend (2) 123:6 169:1
trends (58) 5:3,5,6 14:22
15:2,5,15 16:10 65:22,25
116:23 121:5,13,19,25
122:3,10,15,20 124:9,20
125:5,7,12,17,21,25
126:4,9,17
127:3,7,12,18,21,23
128:2,6,6,8,9 130:24
136:19,20,23 137:3,13
138:3,7,8,9,9 139:1,22
161:17 166:17 168:20
169:9
trial (13) 6:11 8:1 11:7 26:15
55:5,25 70:23 73:7 81:3
82:19 93:23 111:16 183:23
tribunal (3) 125:23
164:17,21
tries (1) 105:15
trigger (6) 13:4 49:25
55:17,19 56:16 143:2
triggered (9) 52:8 93:17
118:9 147:6 158:10,16
161:25 166:2 178:11

triggers (3) 49:1 154:11
174:14
trodden (1) 162:16
trouble (2) 2:4 5:13
troubled (2) 7:23 84:3
troubles (1) 61:4
true (4) 56:18 115:19 163:22
178:25
truly (1) 13:14
truth (1) 161:3
try (1) 60:25
trying (7) 11:16 64:4,9 117:4
177:25 180:14,23
tuesday (1) 1:1
turf (1) 162:16
turn (19) 17:15,25 18:3
20:22 27:18 71:25 73:3
82:25 106:14 134:10 136:1
141:6 143:11 150:14
155:16 157:1 165:9 168:4
175:22
turning (3) 22:9 31:2 71:24
turnover (32) 12:16
68:2,14,20 89:24
90:2,4,5,10 101:16 122:4
135:11,13,14,18,25 136:15
137:2 138:12 139:17
162:12,17,17,19,22
163:4,17 164:3
168:15,17,18,25
turnovers (1) 175:19
turns (5) 59:10 83:2 113:21
160:7 161:11
type (12) 43:16 50:3,18 51:8
106:21 122:21 124:8 126:9
127:8 143:12 174:13
176:23
types (6) 23:25 106:15 151:1
152:16 167:16 168:10
typical (5) 69:3,3,10 107:4
135:23

unprecedented (2) 6:24
177:23
unprincipled (1) 74:15
unrestricted (1) 24:1
unsafe (1) 176:17
unsavoury (1) 42:15
unspecified (3) 43:21
44:7,10
unthought (1) 74:15
until (6) 71:19 82:19 96:21
129:6 143:19 185:14
upbraided (1) 47:16
update (1) 157:15
upheld (1) 53:24
upon (15) 16:3 23:3 37:9
59:14 64:14 106:14 109:22
123:17 140:7,10 165:17
177:8 178:5 180:21 181:24
uppers (1) 60:17
urgent (1) 148:16
used (42) 28:14 39:5,9 69:2
89:10,18,20 90:14
92:3,11,13,14,18
94:2,6,6,16 98:5,8 99:6
106:20 111:7 113:20,25
114:1,25 122:16
125:5,10,11 128:4,5
136:4,8 144:24 145:22
146:12 154:15 157:12
166:21 168:2 173:11
useful (1) 45:4
using (1) 40:18
usual (3) 6:2 18:9 156:18

V

v (4) 10:20 23:1 27:8 145:24
vacuum (1) 25:11
vaguely (1) 60:25
valders (1) 131:12
validity (1) 104:6
valuable (1) 102:21
vanilla (1) 176:19
variant (1) 146:15
variations (3) 123:6 124:9
169:2
variety (8) 23:12 34:12 36:25
44:15 45:6 86:8 127:22,25
various (9) 5:4 8:9 11:16
85:21 131:16 142:25
150:23 168:10 175:11
vastly (1) 70:19
verbal (2) 93:21 112:9
verbatim (1) 24:7
verbs (2) 50:15,20
vermin (4) 19:19 20:3 78:21
171:4
version (1) 113:7
vicinity (26) 98:1 105:18
108:7,11,20
109:18,18,18,21,25
110:6,12 140:14 141:15
165:23 166:12 171:3 172:5
173:10,10,11
174:9,11,18,20 179:23
vicissitude (1) 139:5
vicissitudes (3) 124:17
138:22 139:3
viral (1) 20:14
virtual (1) 102:18
virtually (1) 132:16
virtue (1) 178:14
virus (1) 110:6
vital (2) 33:13 37:23
vitality (1) 74:8
viz (3) 49:12,14 50:13
vocabularist (1) 50:16
voluntary (1) 13:6

W

waiting (1) 15:13
waitrose (1) 150:1
wales (2) 27:4 31:22
wants (5) 8:12 10:15 60:14
104:11 185:4
warehouse (2) 100:17,21
warnings (1) 124:18
warrant (1) 10:10
warranted (1) 183:18
wasnt (4) 67:10 69:7,22
162:20
wasted (1) 182:23
water (1) 106:5
way (28) 8:7 9:21 13:2
14:3,10 37:6 40:13 42:2,16
49:8 59:6 61:19 62:1
65:3,17 74:10 75:14,20
76:16 83:21 103:7 114:18
126:14 141:24 148:1
158:14 168:11 177:14
ways (5) 6:17 12:18 15:22
85:21 86:8
wealthy (5) 54:14 57:19,24
58:1 63:23
weasels (2) 109:3,4
weathervanes (1) 115:13
website (2) 102:20 157:16
wednesday (1) 185:14
week (9) 16:5 47:24 60:2
61:10,12 62:5 71:23
151:22,25
weekly (1) 57:21
weeks (1) 162:23
weight (1) 113:15
welcome (6) 61:5 89:11
91:6,7,24 94:22
welfare (2) 29:19,23
went (2) 68:25 104:15
werent (1) 184:24
westfalische (1) 145:25
westminster (3) 110:7,9,12
weve (1) 88:25
whatever (23) 7:3 8:13
14:11 34:22,25 38:20
59:15 60:3 69:4,9 83:19
87:25 95:17 96:8,9 106:5
107:9 128:9 129:7 138:22
179:24 183:9 185:8
whatsoever (2) 96:11 124:8
wheels (1) 147:2
whereas (1) 54:9
whereby (1) 165:24
wherever (4) 33:24 36:11
83:7 94:5
whilst (5) 15:22 39:24 40:2,8
164:21
whoever (2) 40:24 85:13
whole (14) 7:23 16:11 36:25
42:8,14 52:20 62:8 72:24
85:9 100:16 127:22 144:20
176:1 184:2
wholly (2) 36:13 177:23
who (8) 54:15 65:8 67:20
101:11 149:8,13 157:10
158:21
wide (4) 24:12,18 68:6 76:21
widen (1) 1:25
wider (1) 32:21
widespread (2) 45:15 62:7
widows (2) 58:14,24
wilson (1) 145:25
wires (1) 78:6
wise (1) 184:4
wish (2) 24:17,19
wishes (3) 16:1,3 51:11
wishing (1) 162:15
witness (1) 131:12
won (1) 4:8
wonder (1) 36:4
wont (13) 2:10 9:2,7 46:1
62:19,21 64:5 107:25
110:16 138:13 180:17
182:2 184:18
wording (26) 17:25 48:12
53:21 65:7 75:8
87:15,17,18 95:9 114:8
116:10,11 126:15,16,18
127:2,9,11 132:11,19
169:9 170:7 174:21,22
179:17 183:8
wounds (13) 15:6 18:1 65:5
74:19 130:8 165:17 166:7

167:2,3 174:25 175:12
179:22 181:5
work (15) 14:23 15:22 57:6
65:25 74:17 77:18 101:14
102:7 107:10 120:11
148:16 151:15 152:8
156:6,8
worked (2) 72:21 117:5
working (10) 6:12 17:20 68:1
89:24 90:7 117:8,9 122:5
135:17 139:17
works (1) 115:12
world (4) 3:16,23 14:4
171:21
worry (2) 117:9 128:7
worse (1) 19:13
worth (5) 5:14 7:5 42:5
102:13 104:1
wouldnt (8) 5:14 37:7 56:9
58:3 73:4 76:22 95:17
148:14
writing (3) 17:22 122:18
183:17
written (7) 109:7 116:14,17
130:8 141:16 165:4 182:11
wrong (13) 9:15 26:19 76:15
97:16,18 105:11 106:10
112:21 120:11 126:1
149:10 150:16 178:13
wrongdoers (1) 11:19
wrote (1) 54:24

Y

year (5) 54:21 62:18 69:16
163:5,19
years (1) 138:15
yesterday (3) 59:7 101:20
114:3
yet (4) 51:10 83:10 130:4
182:3
youre (3) 8:25 46:9 58:16
yourself (3) 34:6,20 67:15
yourselves (1) 16:21

Z

zero (2) 62:19 63:6
zurich (18) 81:1
165:16,17,25
166:5,9,19,21 167:2
172:24 174:21 175:12
177:9 179:2,7 180:24
181:4,5
zurich1 (3) 172:10 174:25
175:17
zurich12 (1) 39:11
zurich2 (4) 167:12 178:10,16
180:22
zurichs (1) 174:24

0

04 (1) 131:24

1

1 (38) 29:15 30:8 31:18
37:24 38:8,10 49:21,23
78:12,19 89:23 90:1,14,24
94:4 20 97:11,21 99:4,7
106:24 110:17 113:9
117:15 131:20,23 134:15
135:4 140:13 145:19 151:6
153:1,4,19 162:15 167:13
168:11 186:3
10 (6) 55:11 58:18,20 71:23
172:4 185:11
100 (5) 62:24 63:1 97:6
128:19,21
1000 (12) 1:2 60:2 61:9,13
62:5 182:7 184:11,12,19
185:7,12,14
10000 (3) 69:17,18,21
102 (1) 109:12
1028 (2) 16:23 17:4
103 (1) 55:24

3

3 (29) 12:14 18:17 19:14
 22:1 24:4,12 30:15 33:16
 41:1 43:9 44:3 50:2 97:13
 113:21 131:21 140:19
 147:5,14,19 155:7,9,11,12
 156:10,11,12,21,21,23
 30 (4) 51:9,12,13 168:9
 31 (1) 102:12
 320 (1) 143:21
 3253 (1) 81:12
 33 (4) 103:24 138:6 151:13
 178:17
 330 (3) 1:10 143:19,23
 332 (1) 1:10
 336 (1) 102:15
 34 (2) 169:13,15
 35 (1) 171:5
 36 (1) 102:16
 364 (1) 4:20
 37 (1) 96:16
 38 (2) 17:24 157:21
 385 (1) 81:12
 397 (1) 15:12
 3a (1) 39:16

4

4 (6) 1:14 67:17 94:23
 113:22 157:3,9
 40 (1) 15:7
 403 (1) 165:11
 41 (1) 175:21
 42 (2) 18:2 95:2
 421 (1) 16:18
 43 (1) 178:18
 430 (3) 183:25 184:5,10
 436 (1) 185:13
 439 (1) 16:19
 44 (3) 38:22 154:18 175:7
 445 (4) 38:18,21 39:1 40:14
 45 (2) 22:1 150:1
 45c (2) 31:12,17
 46 (5) 20:4 103:20 113:16,19
 151:6
 47 (3) 20:24 112:9,15

5

5 (12) 30:16 33:1 131:19
 147:6,14,20 155:8
 157:18,20 175:3,5,14
 51 (1) 155:15
 53 (2) 29:1 151:6
 531 (1) 23:17
 5353 (2) 26:15,19
 54 (1) 151:6
 55 (2) 27:20 33:3
 56 (1) 28:12
 564 (1) 26:12
 58 (1) 79:10
 59 (4) 28:25 91:19,20,25

6

6 (54) 11:5 21:10 22:7 23:10
 24:5,6,22,23 25:9 33:14
 35:7,8,11,20
 37:2,9,17,20,23 38:1,7,12
 40:16,22 41:19 42:22
 43:8,11,21 44:9,21,22 55:6
 56:23 78:12,20,23,25
 79:16 87:16 92:20,24
 93:16 94:4 111:12
 112:8,14 113:22 132:4
 141:22 147:11 148:22
 157:13 158:1
 60 (1) 80:14
 61 (2) 52:22 180:25
 62f (3) 102:6 104:25 156:4
 63 (4) 23:1 54:14 117:17
 180:25
 64 (1) 66:9
 65 (4) 23:2 78:14,15 92:22
 66 (4) 78:13,15,15 176:22
 67 (1) 98:17
 674 (1) 32:7
 68 (1) 117:17
 69 (1) 29:1

7

7 (12) 42:6 98:17,24 99:4
 113:22 126:8 132:5 141:8
 158:2,3 160:9 161:3
 70 (1) 155:10
 71 (2) 48:18,23
 72 (1) 48:25
 75 (2) 49:6 117:17
 77 (2) 50:8 55:23
 779 (1) 82:20
 79 (1) 51:3

8

8 (11) 44:5 55:11 82:7
 113:6,24 114:9,18
 141:11,12 162:15 171:4
 80 (12) 48:19 51:12,13,13
 62:18,18,24 63:1,5,8
 117:17 128:19
 82 (1) 51:21
 823 (1) 51:23
 824 (1) 52:5
 832 (1) 52:16
 833 (1) 52:22
 833c (1) 53:1
 84 (2) 53:19 175:4
 85 (2) 96:17,19
 850 (1) 182:11
 86 (2) 54:13,17
 861 (1) 54:17
 87 (3) 66:9,10 82:9
 893 (1) 81:4
 899 (1) 82:20

9

9 (1) 56:23
 90 (3) 2:5 58:23 96:19
 906 (2) 111:16,17
 95 (1) 125:4
 953 (1) 32:12