

INQUIRY INTO CERTAIN AUSTRALIAN
COMPANIES IN RELATION TO THE UN OIL-FOR-FOOD PROGRAMME

Before The Hon TRH Cole AO RFD QC

Held at Court 2, Level 5,
55 Market Street, Sydney

On Wednesday, 29 March 2006, at 10.10am

1 MR AGIUS: Mr Commissioner, there are one or two
2 housekeeping matters. It will be recalled that
3 arrangements have been made to have Mr Nicholas and
4 Ms Wensley available for examination by phone tomorrow
5 afternoon, at 5pm and 6pm. Mr Nicholas will be at the
6 Australian Embassy in Peking, I understand, and Ms Wensley
7 the Australian Embassy in Paris.

8
9 As I understand it, only Mr Forrest wishes to examine
10 Ms Wensley. I'm not certain who wishes to examine
11 Mr Nicholas. We would like an indication of that so that
12 we can make appropriate arrangements. I'm not sure if we
13 can conduct that examination in this hearing room and
14 whether or not we can have the phone line put through to
15 here. We may have to move somewhere else for those
16 examinations.

17
18 The other thing we would like is an indication of what
19 documents those two witnesses will be examined upon so that
20 we can be sure to have the documents available to the
21 witness at the time or prior to their being examined,
22 because we won't have any facility to show them any
23 documents during the course of any examinations. So if
24 there are any documents that any of my learned friends wish
25 either of those witnesses to have available to them for the
26 purpose of the examination, could we have an indication of
27 that by midday today, so that arrangements can be made to
28 have those documents available in those foreign posts for
29 the examination.

30
31 THE COMMISSIONER: Yes. Could people let Mr Agius or the
32 solicitor assisting know, first of all, if they wish to
33 examine either of those people and, secondly, the documents
34 which it is desired to examine them upon.

35
36 MR AGIUS: Secondly, Mr Commissioner, I will tender a
37 statement from Mr Mark Rowland, who is available to be
38 examined today, if anybody wishes to examine him. I would
39 ask that, when you receive the tender, Mr Commissioner, you
40 make a non-publication order in relation to the names of
41 any ships. We are having them removed from the document.
42 The document is WST.0036.0002. It is a statutory
43 declaration and it runs to 0020. It is 19 pages.

44
45 EXHIBIT #686 STATUTORY DECLARATION OF MARK ROWLAND,
46 BARCODED WST.0036.0002-0020

47

1 THE COMMISSIONER: I make a non-publication order in
2 relation to the names of any ships mentioned therein.

3

4 MR EVANS: Mr Commissioner, at that stage may I interrupt
5 my learned friend and seek your authorisation to appear for
6 Mr Rowland?

7

8 THE COMMISSIONER: Yes, Mr Evans, that authorisation is
9 granted on the usual terms.

10

11 MR EVANS: May it please you.

12

13 THE COMMISSIONER: Mr Judd, you are wanting to say
14 something?

15

16 MR JUDD: I was, but I didn't want to interrupt my friend.
17 Just a couple of matters. One was to say that I overnight
18 have been reflecting on the position we took yesterday in
19 relation to the scope of authority under the terms of
20 reference. While we continue to contend that the terms
21 don't authorise an investigation into breaches of
22 Australian law in relation to matters that occurred after
23 the Commission was established, I did put it a little more
24 highly than, in our submission, can be justified, and
25 I wanted to correct that by saying to the Commission that
26 if, for example, there is a matter of fact which can be
27 assisted by, for example, an admission that's made at any
28 time, so long as privilege doesn't apply, of course that's
29 not a matter that the Commission would be inhibited in
30 examining, and that would fall into the category of
31 admissions that might be said to be made by someone such as
32 Mr Lindberg. So I wanted to correct our position on that.

33

34 THE COMMISSIONER: Thank you.

35

36 MR JUDD: The second matter, sir, is this, and I don't
37 know whether this is the appropriate time to raise it: you
38 will recall that some of the witnesses have been examined
39 about, particularly early in the piece, the deed that was
40 entered into between the AWB and former employees for the
41 provision of financial assistance in relation to this
42 hearing, and the AWB attracted some criticism early in the
43 piece and, in response to that, sought independent advice
44 on the formulation of the deed and a new version was
45 brought into existence and was thereafter employed.

46

47 Mr Hogan was offered the opportunity to enter into

1 that deed as a means of assisting him and declined to do
2 so. Indeed, as we understand it, he hasn't suggested that
3 there be any amendment to it in any material respect.
4 However, what has been occurring is that Mr Hogan has been
5 demanding that his legal bills be paid, and even this
6 morning - and I don't think this is putting it too highly -
7 threatened the AWB with complaint to this Commission if the
8 AWB did not meet what he regarded as a completely uncapped
9 demand for financial assistance.

10
11 Now, in our submission, that's a most unsatisfactory
12 circumstance. We don't consider that the AWB ought to be
13 placed into a position where it is being threatened in this
14 way. We are concerned about it. I wanted to draw it to
15 the attention of the Commission because we are trying to do
16 the best we can to treat these people fairly. We took on
17 board what the Commission said in the early part of the
18 hearing concerning the terms of the deed, and there is
19 certainly no intention on the part of AWB to do other than
20 provide reasonable assistance. We will not yield to what
21 might be described in colourful language, but which I will
22 simply describe as a threat of complaint in order to obtain
23 financial assistance which is greater than that provided to
24 others.

25
26 THE COMMISSIONER: I don't think that's a matter for this
27 inquiry.

28
29 MR JUDD: Well, if that's --

30
31 THE COMMISSIONER: The only reason it was raised before
32 was because of clause 6, as I recall, which was capable of
33 construction in a variety of ways.

34
35 MR JUDD: Yes. No, we understand that, and, as I say, we
36 took that on board and we sought independent third party
37 advice on the matter and we understand that was resolved,
38 but we are concerned with the way this matter was
39 progressing and just wanted to raise it. If it is not a
40 matter for the inquiry, then so be it.

41
42 MR KENNAN: Mr Commissioner, I just want to make clear
43 that the second form of the deed was not provided to
44 Mr Hogan or his solicitors until yesterday and Mr Hogan
45 always had a concern about clause 6, and that's why he
46 didn't sign it in the first place.

47

1 THE COMMISSIONER: Thank you. Yes, Mr Agius.

2

3 MR AGIUS: I am not aware of any complaint having been
4 made to this inquiry of the nature that my learned friend
5 Mr Judd has outlined, and so far as those assisting you are
6 concerned, Mr Commissioner, it is not a matter that we
7 would enter into. It was proposed, then, to call Mr Hogan
8 this morning. I understand that there are applications to
9 examine him by two of my learned friends. So I will call
10 him, if he is available.

11

12 <DOMINIC JOHN HOGAN, on former oath: [10.20am]

13

14 THE COMMISSIONER: You are on your former oath.
15 Thank you.

16

17 <EXAMINATION BY MR AGIUS:

18

19 MR AGIUS: Q. Mr Hogan, for the record, your full name
20 is Dominic Hogan?

21 A. Dominic John Hogan.

22

23 Q. We have an additional statement from you, Mr Hogan.
24 Could we bring up WST.0027.0082. There have been one or
25 two deletions from this statement. The deletions related
26 to matters which are not relevant to this inquiry in any
27 way. With that exception, Mr Hogan, do you recognise that
28 as the first page of your additional statement?

29 A. Yes, I do.

30

31 Q. And if we go to the last page, 0107, does that appear
32 to be the last page of your additional statement?

33 A. Yes, it is.

34

35 Q. Do you say that the contents of that statement are
36 true and correct to the best of your knowledge and belief?

37 A. Yes, they are.

38

39 MR AGIUS: Mr Commissioner, I tender that as a public
40 exhibit.

41

42 EXHIBIT #687 SUPPLEMENTARY STATUTORY DECLARATION
43 OF MR HOGAN

44

45 MR AGIUS: Q. There are one or two matters I wished to
46 take up with you concerning the statement. At
47 paragraph 67, on 0100, you say this:

1
2 I did record in my email on the
3 2nd November 2000... that the 10% increase
4 had been approved by the UN (as per IGB) --

5
6 that is, that's what you had been told by the IGB --

7
8 and I would get this in writing. I cannot
9 recall ever being questioned on this again,
10 however, I believe I did include the UN
11 approval confirmation as an agenda item
12 in May 2001 to raise in discussions with
13 the IGB and Minister. However, it was not
14 obtained by me.

15
16 We have located some documents from around that date,
17 2 November and following, which I want to show to you.
18 Could we bring up, please, AWB.5049.0201. This appears to
19 be an email from you to the IGB on 2 November 2000 at
20 3.31pm --

21 A. Correct.

22
23 Q. -- where you raise in the last sentence:

24
25 For good orders sake, could you please
26 forward the conditions especially regarding
27 the UN approved Trucking fee and percentage
28 increase.

29
30 We are not able to find any direct response to this email,
31 Mr Hogan, but does that appear as an email that you sent to
32 the IGB on 2 November 2000?

33 A. Yes, that's correct, because we concluded, in
34 Melbourne time, later that afternoon with Treasury the
35 conversion to Euro - I actually think we did it in Deutsche
36 Mark, not Euro. We confirmed that, then they sent us back
37 a contract, stamped and signed; we put up in our own
38 contracts admin on the same day, on 2 November, and I think
39 we submitted that all to DFAT all on 2 November. However,
40 they did not provide anything with regards to the
41 UN-approved trucking fee and percentage increase, because
42 that was recorded again later in diary notes as issues
43 in May '01 and June '01, with issues to raise.

44
45 MR AGIUS: I tender that email, Mr Commissioner.

1 EXHIBIT #688 EMAIL FROM DOMINIC HOGAN TO MR YOUSIF,
2 DATED 2/11/2000, BARCODED AWB. 5049.0201

3
4 MR AGIUS: Q. You will recall that there was
5 correspondence between the AWB and DFAT which resulted in a
6 letter of I think 2 November from Ms Drake-Brockman, being
7 a response to correspondence in the name of Mr Stott?

8 A. I recall it from the Commission itself. I did not
9 recall seeing that letter when I was at the AWB.

10
11 Q. Can I show you an email in that regard -
12 AWB. 5056.0079. This appears to be an email from you to
13 Marise Wilson, who we understand to be the personal
14 assistant to Mr Officer; is that right?

15 A. 14 November 2000, personal assistant to Charles Stott.

16
17 Q. But she was with Mr Officer and then continued and was
18 with Mr Stott?

19 A. Correct.

20
21 Q. On 14 November 2000 Mr Officer had gone and Mr Stott
22 was at the AWB?

23 A. Yes.

24
25 Q. This is an email from you to her, at 2.30pm on
26 14 November 2000, wherein you set out some dot points. It
27 is the second of them that I draw your attention to.

28 A. Mmm-hmm.

29
30 Q.
31 DFAT have approved AWB's "eloquent"
32 solution" to increasing discharge rates at
33 Umm Qaser.

34
35 Now, that would appear to be a reference to the verbiage of
36 the correspondence between AWB and DFAT, which resulted in
37 Ms Drake-Brockman's letter of 2 November.

38 A. Yes, it does.

39
40 MR AGIUS: I tender that email, Mr Commissioner.

41
42 EXHIBIT #689 EMAIL FROM DOMINIC HOGAN TO MARISE WILSON,
43 DATED 14/11/2000, BARCODED AWB. 5056.0079

44
45 MR AGIUS: Q. This was obviously being forwarded to
46 Marise Wilson for inclusion in a report for the board of
47 AWB Limited due that day, if one has regard to the subject

1 matter of the email?

2 A. Yeah, correct, from business issues in the Middle
3 East.

4
5 Q. Finally, there is this email that I want to ask you
6 about, as we cannot place it in any particular context. It
7 is AWB.6038.0344. It is from Mr Borlase to you on Friday,
8 13 June 2003. I will leave you to read it.

9 A. Yes. I have read that.

10
11 Q. Can you assist the inquiry? Can you place this email
12 in any context?

13 A. 13 June 2003, it was prior to my resignation.
14 I hadn't resigned at that time. It refers to, I think at
15 that stage, that they had put on Chris Quennell to do
16 Project Rose, or to start the investigation in June 2003.
17 Darryl Borlase was based in our Cairo office. I would have
18 been asking him to send over any documents or anything that
19 was on the files there, and there would have been a date
20 reference, or briefs for that period, just to fax any
21 correspondence that I kept or had on those files from -
22 I would assume we were asked, I think, from about 1999 to
23 that period, I suppose.

24
25 Q. Mr Borlase goes on to say:

26
27 There is no brief in the file with ref to
28 the dates you indicated (do you have a good
29 shredder??)

30
31 We cannot find any electronic transmission or email to
32 which this email might be a response, which would rather
33 indicate that the dates you indicated were not sent
34 electronically to Mr Borlase, or, if they were sent, either
35 electronically or in a document, it has not been retrieved
36 or provided.

37 A. It would come from just a telephone conversation -
38 I would ring up Darryl if I wanted to sometimes talk to him
39 about something specific, because the time difference was
40 maybe seven or nine hours at that stage - 3.56am on the
41 Friday, so he sent it on the Thursday night, I assume. So
42 I have asked him to just provide that information.

43
44 I'm not sure - "There is no brief in the file with ref
45 to the dates you indicated". I'm not sure what brief I was
46 asking for.

47

1 Q. And the reference to, "(do you have a good
2 shredder??)"?

3 A. Would refer to some of the information on the files
4 that have been produced already to this Commission that
5 shows that payments - when the initial thing was set up,
6 that payments were going back through into Iraq.
7

8 Q. So it is a satirical reference to keeping secret the
9 fact that payments were being made to the Iraqis?

10 A. I think it is just tongue in cheek to say that the
11 information - "faxed the only pages that I have" inferred
12 the trucking fee, there was an investigation being done by
13 Chris Quennell. Darryl was of the same opinion of me as
14 at February 2001 that the money was being siphoned.
15 I don't think Mr Borlase's view ever changed on that. Mine
16 never changed on that, that they were siphoning money back
17 into Iraq. The investigation was probably - come back and
18 discover this, and he is saying "Well, I hope you have got
19 a good shredder because all the evidence is here that will
20 point to the inland transport fees and how the mechanism
21 was working back into Iraq".
22

23 MR AGIUS: I tender that email, Mr Commissioner.
24

25 EXHIBIT #690 EMAIL FROM DARRYL BORLASE TO DOMINIC HOGAN
26 DATED 3/6/2003, BARCODED AWB.6038.0344
27

28 THE WITNESS: I would like to say I don't think Mr Borlase
29 is asking me to shred documents.
30

31 MR AGIUS: Q. I used the words "satirical reference".

32 A. My vocabulary is not so good, so small words, please.
33

34 Q. I want to show you a series of emails, two of which
35 are exhibits, only the last of which relates to you, but,
36 again, in an effort to try to put some context on the
37 exhibits which we have - I should say on the documents
38 which we have, which are not yet exhibited. We will start
39 with an email of 2 May 2003 from Mr Hockey to Mr Whitwell.
40 It is exhibit 325 - AWB.0241.0043. This is Mr Hockey to
41 Mr Whitwell in May of 2003, saying:
42

43 It is purported that AWB Limited deposited
44 funds into a Jordanian account - ultimately
45 benefitting Saddam Hussein - in order to
46 secure the wheat sales under the UN's
47 Oil-for-Food Program??

1 Am also told that there are existing
2 contracts that have this clause included in
3 them... (i.e. 20 per cent deposit, or said
4 another way .. kick back) ...

5
6 Then we have exhibit 326 - AWB.0241.0041. This is later
7 that same day, at 1.08pm, with a number of dot points:

- 8
9 . we did pay money into a Jordanian account
10 for the inland transportation component of
11 the transaction.
12 . we did it as requested by UN
13 . we had no discretion
14 . the 20% "kickback" is completely untrue
15 . the payment is visible in all
16 documentation
17 . it was monitored by the UN through the
18 Office of the Iraq Program
19 . it was consistent with the requirements
20 of the UN resolution
21 . it is covered by a letter of credit from
22 the UN.

23
24 The next document is on 5 May. This is not yet exhibited -
25 AWB.5011.0286. You will see Mr Hockey, on 4 May, I should
26 say, at 3.53pm, writes again to Mr Whitwell saying:

27
28 Once we finalise this, pls send back to me
29 and I will top and tail it as a briefing
30 note for Embassy/dfat officials.

31
32 And I will leave you to read that. You will see that there
33 are some changes?

34 A. Mmm-hmm.

35
36 Q. Mr Whitwell then, the next day, sends it to Mr Hockey
37 but copied to you, asking you whether you have any
38 comments. We can't find any response from you to this.

39 A. I would have to check the dates. I'm not sure.

40 Without wanting to sound like an AWB executive, I don't
41 actually think I read this. Around the time in early May,
42 sort of mid-May, our three-month-old daughter was admitted
43 to Royal Children's Hospital. She was in for two weeks
44 over about a three-week period. She went into intensive
45 care for a couple of days, and it was around this May time.
46 So I don't even know if I was actually at work over this
47 period or not. It was in May that this occurred. So

1 I don't - I would need to check dates on that. If there is
2 no response on the email system, then I would assume
3 I haven't responded to it.

4
5 MR AGIUS: I will tender this one page, AWB.5011.0286.

6
7 EXHIBIT #691 PAGE OF EMAILS BETWEEN CHRIS WHITWELL,
8 DARRYL HOCKEY AND DOMINIC HOGAN, BARCODED AWB.5011.0286

9
10 MR AGIUS: We do have the email from Mr Hockey to
11 Mr Whitwell before Mr Whitwell made his changes to it. I
12 will tender that for completeness. It is AWB.5014.0056.

13
14 EXHIBIT #692 EMAIL FROM DARRYL HOCKEY TO CHRIS WHITWELL
15 BEFORE CHANGES MADE BY CHRIS WHITWELL,
16 BARCODED AWB.5014.0056

17
18 THE WITNESS: Mr Agius, could I just ask, when we
19 requested documents and emails back in December or
20 something, for all emails that I was copied, corresponded,
21 so that I would be able to reply to the Commission, this
22 one, the one from Darryl Borlase, the first time I'm seeing
23 them is now.

24
25 MR AGIUS: Q. They were brought to my attention this
26 morning, Mr Hogan. We have an awful lot of work to do and
27 even we make mistakes. There was no deliberate intention
28 to withhold them from you.

29 A. It is just that I could reply better on the dates,
30 et cetera.

31
32 Q. Just one other matter. In paragraph 71 of your
33 statutory declaration you say:

34
35 Following the November 2000 contract
36 I corresponded with the Grain Board of Iraq
37 confirming the inland transport amounts and
38 I believe I requested they be split into
39 two payments. I have not seen any
40 documentation of recent times to confirm
41 this although I believe it exists or has
42 existed.

43
44 Can I draw some matters to your attention. I appreciate
45 that in that paragraph you are speaking of the November
46 2000 contract.

47 A. Yes.

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Q. We do have as part of confidential exhibit 167 a fax from you to the IGB of 12 September 2001, where you speak of the payment being split into two components - AWB.0001.0311. You will see that the second and third dot points refer to the splitting of the transport fee.

A. Correct.

Q. And we have, as part of exhibit 169, AWB.0144.0088 - in February 2001 a fax from you to the IGB, on 2 February 2001, referring to a splitting of the transport fee.

A. Correct. I actually don't think that was faxed.

I think it was printed off. It is dated 2 February.

I think we may have printed it off at the IGB in Baghdad and handed them a copy. It is one of five pages, so our confirmation was probably with it as well.

Q. In relation to what we think is the November contract, we have exhibit 160, which relates to your first statement, at paragraph 109. We will have exhibit 160 brought up. It is AWB.0144.0220. This would appear to be a confirmation from the Grain Board of Iraq to AWB confirming the splitting of the payment of the land transport charges.

A. Correct. The reason why I say in my statement that I believe I would have sent them documentation is because I have this document, I have seen this document in the documents I have received - "After carefully studied your proposal of transferring the land transport charges". So I have sent them in a proposal, but I don't have that in any of my documents.

Q. Well, I believe we do have it where it is reported in a trip report that you had such a discussion, but not in relation to this contract.

A. No, this contract was done in Melbourne, so it is - and it is just - the due diligence I would do to make sure all of this - the inland transport parts, because we were splitting, they were changing from US dollars to Deutsche Mark, that I wanted to keep a full-on record of all of these transactions and confirm them back in writing.

Q. We have not been able to find, although we are still looking, any written proposal or correspondence from you to the IGB to which this exhibit 160 might be a response.

A. That's what I - there should be a document that's either a fax. They may have been on email - they were on email then, because they came on 25 October, onto email, or

1 there could be a telex, but I would go for fax or email.

2

3 MR AGIUS: That completes my further examination of
4 Mr Hogan, Mr Commissioner.

5

6 THE COMMISSIONER: Yes.

7

8 MR KENNAN: I have no questions, Commissioner.

9

10 MR JUDD: No questions.

11

12 THE COMMISSIONER: Yes, Mr Lacava?

13

14 MR LACAVA: Thank you, sir.

15

16 <EXAMINATION BY MR LACAVA:

17

18 MR LACAVA: Q. Mr Hogan, you provided to the inquiry,
19 did you not, copies of your notebooks?

20

21 A. My diaries?

22

23 Q. Your diaries?

24

25 A. Yeah, the diaries that were still, yeah, at the AWB,
26 correct.

27

28 Q. You have not provided to the inquiry, have you, any
29 diary that relates to the year 2003?

30

31 A. I don't think I have provided - well, I asked for all
32 the relevant documents or day books, et cetera, that I had,
33 that I left at the AWB, and I didn't even know if I had
34 left them at the AWB or whether I had actually discarded
35 them when I resigned. But I'm not sure about the 2003. It
36 was probably - if not, I can provide it; it would be at my
37 home, if it is --

38

39 Q. You don't have it with you?

40

41 A. No.

42

43 MR AGIUS: I don't want to interrupt my friend
44 unnecessarily, and I apologise, but the first question my
45 friend asked would seem to indicate that the diaries and
46 notebooks that we have were provided by this witness. In
47 fact, they were provided by AWB, and we have a schedule of
that which was provided, and the last date of that provided
by AWB is - do you want me to say this?

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49 MR LACAVA: Yes - is it December 2002?

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MR AGIUS: It is 16 December 2002 to 4 February 2003.

MR LACAVA: Thank you very much, I am indebted for that.

Q. Mr Hogan, during 2003 you were continuing to keep diaries, weren't you?

A. Correct. Correct. If it hasn't been provided, I have got that diary at home. There would be a day book at home.

Q. Were you still at the AWB in June of 2003?

A. Correct.

Q. Do you know whether you made a diary entry that relates to any discussion which you may have had with Mr Borlase on or about 13 June 2003?

A. No, because the inquiry sent me a notice to provide all relevant documents that I had in my possession to the inquiry, and I went through that day book, because I left in June, and I continued using that day book as my normal diary/day book. I went through any of that day book that I had at home, and there is no relevance to this inquiry, I think, in regards to that. I am happy to check it, to provide it.

Q. My question to you was do you know whether you made a diary entry that relates to any discussion that you had with Mr Borlase on 13 June 2003?

A. No, I do not know.

Q. But you will be able to look for that when you return home, will you, and if you have one you will provide it to the Commission, will you?

A. I can check, yes.

Q. I just want to ask you, firstly, about your first statement. Do you have a copy of it with you in the witness box?

A. Yes.

Q. It is exhibit 142. When was it brought into existence?

A. What paragraph, I'm sorry?

Q. The whole statement?

A. The statement was dated just before I appeared here - 6 February, or something.

1
2 Q. Yes. Who prepared it?
3 A. I prepared it.
4
5 Q. You did?
6 A. We - yes, I prepared this statement with my legal
7 advisers.
8
9 Q. Did you type it?
10 A. This one?
11
12 Q. Yes.
13 A. Yes. It has been typed, because all the formatting
14 is - I typed the original statement, sent it off to my
15 solicitors, and then we completed it here across at the
16 Suisse Hotel, where we combine typed and then we actually
17 mucked up all the formatting and then we couldn't fix it
18 up.
19
20 Q. So prior to preparing the statement, had you had
21 discussions with officers from the Commission?
22 A. With the Commission - discussions with the Commission,
23 et cetera? Yes.
24
25 Q. Yes.
26 A. Yes.
27
28 Q. Did you ask the Commission to provide you with a copy
29 of every document that the Commission wanted you to comment
30 on?
31 A. We asked in early December, I think, we put in a
32 request to provide documents - every email, correspondence,
33 fax, telex, market briefs, market reports that had my name
34 on, was written by me, was sent to me or was copied to me.
35 The day that I met the Commission I was provided those
36 documents on that morning.
37
38 Q. When did you meet the Commission?
39 A. Am I allowed to say when I met with the Commission and
40 had my interview?
41
42 THE COMMISSIONER: Yes.
43
44 THE WITNESS: No PPL or anything?
45
46 THE COMMISSIONER: No, we don't have that here.
47

1 MR LACAVA: Q. Just concentrate on the question, would
2 you? When did you meet with the Commission?
3 A. 4th or 6th of January - some time around then.
4
5 Q. Did you meet with the Commission on your own?
6 A. No. The actual Commission came to me, because at that
7 stage I still couldn't travel or would not leave my home.
8 The Commission came to my home, Mr Agius and Alice, and
9 I met them with my two advisers, Gavin and Gary.
10
11 Q. You had a discussion, did you, with the Commission
12 then - with Mr Agius and Alice?
13 A. I didn't have a discussion, I had a recorded
14 interview, or whatever you want to say. It wasn't a
15 discussion. I was questioned.
16
17 Q. You were questioned by Mr Agius, were you?
18 A. Correct.
19
20 Q. And by Alice?
21 A. No. Alice --
22
23 Q. Just Mr Agius?
24 A. Yes.
25
26 Q. And this discussion was tape-recorded, was it?
27 A. Correct.
28
29 Q. And how long did the discussion last?
30 A. It went - I initially thought the meeting might go for
31 one or two hours. It went from approximately 9am through
32 until about 2.30, 3 o'clock, and I felt upset because
33 I didn't offer them any coffee or anything while they were
34 there, or food. So it went for five, six hours.
35
36 Q. And occupied several tapes, did it?
37 A. Yes.
38
39 Q. Were you provided with a copy of those tapes?
40 A. I was provided - no, not with the tapes, no.
41
42 Q. You were provided with a transcript of the tapes, were
43 you?
44 A. I was provided with a - we initially drew up the
45 statement in December. We sent it to the Commission. They
46 came to question me with the documents on that statement.
47 They then recorded it and then sent back pretty much the

1 statement that I initially provided to the Commission in
2 early - I don't know, December - with additional
3 information that we had from the documents. So it was
4 taken from the transcript, the notes that Alice took during
5 the interview. It was recompiled back into a statement for
6 me to redo to submit to the Commission.

7
8 Q. Was there ever prepared a typed-up version of what was
9 recorded on the tapes?

10 A. Not that I know of.

11
12 Q. You haven't seen such a document?

13 A. No, I haven't.

14
15 Q. So the procedure was that your initial interview was
16 tape-recorded and the tapes were taken away and used to
17 type up a first version of what we see in exhibit 142; is
18 that what happened?

19
20 MR KENNAN: I don't think that was the evidence,
21 Mr Commissioner.

22
23 THE COMMISSIONER: No, it wasn't. What's the point of all
24 this, Mr Lacava? We have a statement. He has sworn to it.

25
26 MR LACAVA: Yes, Commissioner. We would, if there exists
27 a record of the interview with this man, like to see it.

28
29 THE COMMISSIONER: There are tapes. You can go and listen
30 to six hours of tapes if you want to.

31
32 MR LACAVA: Well, that may be so, and I might request to
33 do that. I didn't know that it existed until less than
34 five minutes ago. But the obvious purpose, Commissioner,
35 is to compare what was first said with what was later said.

36
37 THE COMMISSIONER: Yes. Well, you had better indicate the
38 areas where you wish to challenge what was later said and
39 we will have a look at that.

40
41 MR LACAVA: I am sorry, sir?

42
43 THE COMMISSIONER: You had better indicate the areas which
44 are of interest to you, and perhaps someone can reduce the
45 time that you will have to listen. Or perhaps your
46 solicitor can go away and start listening now; I don't
47 mind. But you will understand that, for the protection of

1 the Commission, interviews are always taped.

2

3 MR LACAVA: Yes, I understand that. I am not suggesting
4 that --

5

6 THE COMMISSIONER: But I am not going to sit here and have
7 a fishing expedition that just goes to show minutiae of
8 change which could come from a whole variety of sources,
9 including refreshing recollections from documents, and the
10 like, unless there is some point to it, and you will need
11 to tell me what the point is.

12

13 MR LACAVA: I don't know what the point is until I see --

14

15 THE COMMISSIONER: That's the thing that troubles me. It
16 is a fishing expedition.

17

18 MR LACAVA: Commissioner, with very great respect, I am
19 entitled to press this witness on matters as to credit.

20

21 THE COMMISSIONER: Absolutely.

22

23 MR LACAVA: That's what I intend to do, or at least that's
24 what we intend to do.

25

26 THE COMMISSIONER: Yes.

27

28 MR LACAVA: I am entitled to ask the witness about
29 previous interviews, and I should be entitled to see or
30 hear those, if they are available. If there is some reason
31 for public interest or privacy that I can't, well then
32 I would like to know it now, but you can rest assured that
33 I will not be pressing the witness on changes of the
34 minutiae. I will be pressing the witness if it becomes
35 relevant on major issues. I do not intend to waste time on
36 minutiae. I don't think I have in the several weeks we
37 have been here.

38

39 THE COMMISSIONER: I am just wondering how we go forward.
40 It is your view that you want to listen to these tapes -
41 Mr Agius, is there any objection to Mr Lacava or counsel
42 listening to the tapes?

43

44 MR LACAVA: No. We don't have a transcript.

45

46 THE COMMISSIONER: Does anybody else want to listen to the
47 tapes before there be any cross-examination, because, if

1 so, we will just defer the whole thing.

2

3 MR LACAVA: Please don't put words in my mouth,
4 Commissioner. I have not asked for the cross-examination
5 to be deferred.

6

7 THE COMMISSIONER: If you want to listen to the tapes
8 before you cross-examine - I am not going to have you
9 cross-examine and then go and listen to tapes and come back
10 and cross-examine again.

11

12 MR LACAVA: No, I understand that.

13

14 THE COMMISSIONER: You have to make up your mind.

15

16 MR LACAVA: I understand that. I am going to keep going.

17

18 THE COMMISSIONER: So you don't want to listen to the
19 tapes?

20

21 MR LACAVA: I don't want to listen to the tapes at the
22 present time.

23

24 THE COMMISSIONER: No, no, this is the opportunity that
25 you have to listen to them if you wish, and I will defer
26 the cross-examination until you have. What I am not going
27 to have is you having a cross-examination, then you going
28 away and listening to the tapes and then coming back and
29 wanting to cross-examine him again. That would be too
30 confusing and would be wasteful of our time.

31

32 MR LACAVA: Just pardon me a moment, Commissioner. I will
33 talk to my junior.

34

35 THE COMMISSIONER: Yes.

36

37 MR LACAVA: Commissioner, we would like to proceed, but we
38 do wish to listen to the tapes.

39

40 THE COMMISSIONER: No. You have to make up your mind, I'm
41 afraid. If you want to listen to the tapes, I will defer
42 this cross-examination until you have done so.

43

44 MR LACAVA: I am not going to be asking to recall the
45 witness for further cross-examination, but I will wish to
46 listen to the tapes.

47

1 THE COMMISSIONER: What is the point in doing that after
2 you have concluded your cross-examination?

3

4 MR LACAVA: Well, it may be that I will ask for the tapes
5 to be tendered and make submissions in relation to them.

6

7 THE COMMISSIONER: Yes - on the basis that there be no
8 further cross-examination?

9

10 MR LACAVA: Yes.

11

12 THE COMMISSIONER: What do you say, Mr Agius?

13

14 MR AGIUS: Well, at this stage, we couldn't see any
15 utility at all in that process. We have the witness's
16 sworn evidence as to what he says happened. The tendering
17 of the tapes in a vacuum, in those circumstances, could not
18 offer any utility, in our respectful submission.

19

20 THE COMMISSIONER: Yes. No, I think, Mr Lacava, if you
21 wish to listen to the tapes, I will defer the
22 cross-examination of this witness.

23

24 MR LACAVA: Could I perhaps put this as a compromise: we
25 have complied, I think to the letter, with your practice
26 direction relating to requests for cross-examination. If
27 we listen to the tapes at the conclusion of today, or
28 tomorrow, and form the view that there are matters that
29 should be put to Mr Hogan, could we then make application
30 to you, in the form that we have in the past, and you can
31 consider whether or not you will give me leave to further
32 cross-examine or reject my application.

33

34 THE COMMISSIONER: No, I think that's too messy, if I may
35 say so. I think if any counsel wishes to cross-examine
36 this witness and wishes to have access to the tapes, they
37 are available for them, and I will defer cross-examination
38 until those tapes have been listened to.

39

40 MR LACAVA: Well, we would ask that the cross-examination
41 be deferred, sir. We would wish to listen to the tapes.

42

43 THE COMMISSIONER: Very well. I am sorry about that,
44 Mr Hogan. So be it.

45

46 MR BARKER: I did want to cross-examine Mr Hogan, not at
47 great length. I don't want to listen to the tapes.

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THE COMMISSIONER: Very well. You go ahead.

MR AGIUS: Just before my friend does, there was one matter that I neglected to do and I was about to do it when this issue arose, because I was reminded.

Mr Hogan, in his second statement, refers to a number of documents, and he sets out the reference in detail. We have, overnight, put together a compilation which includes those documents. Many of them - most of them - are exhibits already, but for ease of reference, and so that there is a complete record, we would tender two volumes of documents referred to in Mr Hogan's statement, which replicates, I think up to about 90 per cent, exhibits already tendered. With each of these documents there is a schedule indicating the paragraph number, the barcode number and, where the document is already an exhibit, the exhibit number.

THE COMMISSIONER: Very well. I will mark those two volumes exhibit 693.

MR AGIUS: They should perhaps be marked as confidential exhibits, because many of them are confidential exhibits in their own right. But we would have no objection to anybody who has authorisation to appear having access to those documents, but we would ask for a non-publication order beyond that circle.

THE COMMISSIONER: Yes. I will mark it in lieu confidential exhibit 284C. I make a non-publication order in respect of the documents in those two volumes, save that they are to be available to any persons who have authorisation, and those assisting me.

EXHIBIT #284C TWO VOLUMES OF DOCUMENTS REFERRED TO IN SUPPLEMENTARY STATEMENT OF MR HOGAN

THE COMMISSIONER: Now, Mr Lacava, we will need to make arrangements for you to listen to these tapes.

MR LACAVA: Yes, sir.

THE COMMISSIONER: Would you be able to do that overnight?

MR LACAVA: I am not quite sure what sort of equipment I

1 have got to listen to them.

2

3 THE COMMISSIONER: No, no, we will provide you with a
4 player.

5

6 MR LACAVA: I think I have got a power point in my hotel
7 room, so, yes, I could listen to them overnight.

8

9 THE COMMISSIONER: Well, then, I should defer Mr Hogan
10 until tomorrow.

11

12 MR LACAVA: Thank you, sir.

13

14 THE COMMISSIONER: I am sorry about that, Mr Hogan.

15

16 MR BARKER: May I cross-examine?

17

18 THE COMMISSIONER: You may, indeed.

19

20 <EXAMINATION BY MR BARKER:

21

22 MR BARKER: Q. Could we please have Mr Hogan's new
23 statement at paragraphs 47 to 49 shown on the screen.
24 You say there, Mr Hogan - this is in your new statement -
25 that you have seen a copy of the Iraqi market brief which
26 Darryl Borlase mailed to you in Cairo on 7 October 1999:

27

28 I believe I would have provided copies of
29 this brief paper to Mr Flugge and Mr Rogers
30 as was my standard practice. In fact,
31 Mr Flugge agrees that briefing papers are
32 usually given...

33

34 In paragraph 49:

35

36 I cannot imagine that Mr Rogers and
37 Mr Flugge would not have been briefed on
38 the current issues prior to visiting any
39 market.

40

41 Now, if we could go from there, please, to your first
42 statement. It is WST.0005.0016. In paragraph 51 you say:

43

44 I believe the Chairman and CEO --

45

46 THE COMMISSIONER: That is the preceding page, I think.

47

1 MR BARKER: I am sorry.

2

3 Q. I am talking about the trip to Baghdad in October
4 1999, do you understand:

5

6 I believe the Chairman and CEO must have
7 been briefed before the trip about any
8 matters which were on the table and likely
9 to be discussed, including the inland
10 transport fee. I cannot imagine that they
11 were not briefed on this issue...

12

13 If we go back to paragraph 48 of your first statement, you
14 say:

15

16 I note that Darryl Borlase emailed me a
17 briefing paper on Iraq on the 7th October
18 1999 but I have not been provided a copy of
19 the document by the Commission and I do not
20 recall its contents.

21

22 Now, is the briefing paper referred to in paragraph 48 of
23 your first statement the same briefing paper referred to in
24 paragraphs 47 and 48 of your new statement?

25 A. Paragraph 51, I - no --

26

27 Q. Paragraph 48?

28 A. Yeah, yeah, 48 versus 51? I believe --

29

30 Q. No, I am sorry, paragraph 48 of your first statement
31 is the briefing paper therein referred to the same as the
32 Iraqi market brief referred to in paragraphs 47 and 48 of
33 your new statement?

34 A. 47 and 48 I am referring to an Iraqi market brief that
35 Darryl Borlase provided.

36

37 Q. Yes.

38 A. In 51 of my first statement --

39

40 Q. No, no, could you go back to paragraph 48 of your
41 first statement?

42 A. I am on the wrong page. 48 - oh, yes, correct.
43 That's the same one - Darryl Borlase, briefing paper.
44 Okay.

45

46 Q. When you made your first statement, you hadn't seen a
47 copy of the document?

1 A. No.
2
3 Q. And you couldn't even recall what was in it. That's
4 what you said, didn't you?
5 A. Well, yeah, I hadn't seen that document.
6
7 Q. You said, "I do not recall its contents"?
8 A. No.
9
10 Q. When it comes to making the statement which you made
11 the other day, you have seen it, and you are now able to
12 say you believe you would have provided copies to Mr Flugge
13 and Mr Rogers?
14 A. I believe I would have handed a copy to them, yes.
15
16 Q. Have you any idea whether you did or not?
17 A. I believe I would have given them - asked them if they
18 have a copy of the brief. If they said "yes", I would say
19 "fine", and if they said "no", I would have handed them a
20 copy of the brief.
21
22 Q. Are you simply reconstructing matters in the absence
23 of any real memory about this?
24 A. No, that would be a standard practice. I would ask
25 the chairman and the CEO who are coming into --
26
27 Q. I am not talking about standard practice, I am talking
28 about the actuality of the fact. Do you remember giving
29 Mr Flugge a copy of that brief?
30 A. No, I don't.
31
32 Q. What briefing would be necessary for Mr Flugge to go
33 to Baghdad to open a grain conference?
34 A. The grain conference that Mr Flugge was going to was
35 probably a 15 to half hour opening, which was a figure head
36 opening. The main issues that we went through and we put
37 it on the itinerary was that we were having contract
38 discussions with Zuhair, a meeting with the minister, and
39 to open a grain conference.
40
41 Q. Mr Hogan, the sole purpose, I suggest, of Mr Flugge's
42 visit to Baghdad in October 1999 was to open the grain
43 conference as chairman, non-executive chairman of AWB; what
44 do you say to that?
45 A. I disagree with that. I disagree. We had - our
46 chairman was travelling through the region. The grain
47 conference was on in Iraq. We were signing a million tonne

1 contract in Sudan. We went to Turkey, we went to Lebanon.
2 We had an Australian product week in Egypt. The chairman
3 was travelling around the region, not purely based to open
4 a grain conference in Iraq.

5
6 Q. Well, let me limit, then, the visit to Iraq.
7 I suggest the sole purpose of his being in Iraq was to open
8 the grain conference, and he didn't need to be briefed
9 about any contracts or contract negotiations?

10 A. No, he did, because the chairman was opening a grain
11 conference, but he was going to be present at two
12 meetings - one with His Excellency Mohammed Mehdi Saleh,
13 who was at that stage Australia's second or largest grain
14 buyer, and he was meeting with the Director-General,
15 Zuhair Daoud, who was the grain buyer.

16
17 Q. Yes. That was all for the purpose of goodwill, not
18 for contract negotiations, wasn't it?

19 A. No, it was - we were negotiating 225,000 tonnes of
20 Australian wheat, which the chairman --

21
22 Q. You did the negotiating, didn't you?

23 A. I don't disagree, the chairman did not negotiate the
24 contracts.

25
26 Q. And if you won't agree that it was the sole purpose of
27 the trip, will you agree that the main purpose of the trip
28 to Iraq for Mr Flugge was to open the grain conference?

29 A. I - no, it was one of the reasons to open the grain
30 conference. The other reason is to visit Mohammed Mehdi
31 Saleh, the Minister of Trade, one of our largest buyers,
32 and to meet with the Director-General.

33
34 Q. Could you have a look at paragraph 47 of your first
35 statement, please?

36 A. First statement?

37
38 Q. Yes.

39 A. Mmm-hmm.

40
41 Q.
42
43 During the trip the chairman opened the
44 technical grain training conference at the
45 IGB technical laboratories just outside of
46 Baghdad. This was the main purpose of the
47 trip and the main reason Mr Flugge and

1 Mr Rogers travelled to Baghdad.

2

3 Now, you don't retreat from that, I take it?

4 A. I don't retreat - it is - he was there to open the
5 grain conference.

6

7 Q. It was the main purpose of the trip, so far as Flugge
8 was concerned, wasn't it?

9 A. And to meet with Mohammed Mehdi Saleh and the
10 Director-General of the Grain Board. It is in his
11 itinerary - and possible contract negotiations. It is
12 documented. It is sent to his personal secretary,
13 assistants. So, all right, okay, he opened the grain
14 conference; I agree with you. He also met with minister
15 Mohammed Mehdi Saleh and he met with the Director-General.

16

17 Q. I am simply drawing attention to what you said in your
18 first statement, that it was the main purpose of his trip
19 to Baghdad; that's right, isn't it?

20 A. Well, if I have said it in my first statement, then
21 I agree with you, it was his main purpose to go and open
22 the grain conference.

23

24 Q. And it had been the subject of some planning for some
25 time, had it not - that visit for Mr Flugge - Mr Flugge's
26 visit to Baghdad, to open the grain conference?

27 A. The grain conference planning was probably three
28 months in advance. There were emails back and forth
29 in August - it was possibly linking up to a trip to Iran
30 with Nigel Officer and Phil Hughes, but - yes.

31

32 Q. Could we have a look at some emails, which I think are
33 all exhibit 102, commencing on 25 May 1999 and concluding
34 on 29 June 1999. Is the exhibit number a sufficient
35 identification, Mr Commissioner?

36

37 THE COMMISSIONER: I don't know, Mr Barker. It is a
38 technical matter.

39

40 MR AGIUS: It is better if we have the barcode number.

41

42 MR BARKER: All right. AWB.5056.0344 and 0343.

43

44 MR AGIUS: With the barcode numbers announced the monitor
45 can go straight to the exhibit. Otherwise there is a bit
46 of crosschecking to be done by us.

47

1 MR BARKER: Q. The first one I want to take you to is
2 dated 29 May 1999 from Mr Emons to Mr Zuhair. Do you see
3 that? On the second page, on 5056.0344, numbered
4 paragraph 2, it reads:

5
6 Your colleagues when they were in Australia
7 asked us to prepare a technical seminar
8 presentation in Baghdad. This seminar
9 would cover storage, grain handling and
10 milling of wheat. The technical papers
11 would be delivered by Mr John Bunn and
12 Mr Peter Hart. Our proposed dates are the
13 9th and 10th of October.

14
15 Please confirm as soon as possible that
16 these dates are agreeable.

17
18 3. It would be our desire with your
19 agreement that AWB chairman Mr Trevor
20 Flugge visit Iraq on the same dates and
21 would open the seminar.

22
23 Have you seen that before?

24 A. I would have seen it at the time, and I don't disagree
25 with anything in this.

26
27 Q. Then if you go to the next one, dated 8 June 1999,
28 that's from Peter Hart to Mark Emons, where he talks about
29 the grain handling course, and then if you go from there to
30 29 June 1999, AWB.5056.0343, from Mr Emons to Mr Hart:

31
32 Spoke at length with Zuhair on this. They
33 are very happy with our ideas especially as
34 Trevor Flugge will be in town to open the
35 seminar.

36
37 I am simply showing you those to obtain your agreement to
38 the proposition that this grain handling conference was a
39 matter of some importance to AWB, and Mr Flugge's presence
40 at the conference was also a matter of some importance to
41 AWB; right?

42 A. The technical conference was of major importance to -
43 not AWB, but major importance to Iraq, because the UN
44 sanctions had cut off all training and technical manuals,
45 the whole works for them. So they didn't have any
46 training.

1 The actual opening - having Mr Flugge in a market in
2 the Middle East, they saw him as a minister, so any market,
3 it was important to have Mr Flugge in. It was seen like
4 that.

5
6 Q. It was a matter of prestige?

7 A. He was seen as a minister.

8
9 Q. Yes. You thought it was important to have him there?

10 A. I think it was important to have him in Sudan signing
11 a million tonne contract. I thought it was important to
12 have him in Turkey negotiating with the Turkey guys.
13 I thought it was important to put him in front of the
14 general supply in Egypt.

15
16 Q. After the conference you sent some emails to
17 Melbourne, did you not, from Baghdad?

18 A. After the October trip?

19
20 Q. Yes.

21 A. Yes, correct - oh, not from Baghdad, no. There is no
22 email communication from Baghdad. I sent them when I got
23 back to Cairo or from - yeah, from the Cairo office in
24 Egypt.

25
26 Q. I think the first one is exhibit 1C - and I don't have
27 the document nor the barcode number.

28
29 THE COMMISSIONER: Is that confidential exhibit 1C?
30 That's a large bundle of documents, I think.

31
32 MR BARKER: Q. At all events, it was an email from you
33 reporting on the negotiations.

34
35 MR AGIUS: Is this 11 October 1999?

36
37 MR BARKER: Yes.

38
39 MR AGIUS: AWB. 5058.0070. It is a two-page email which is
40 part of confidential exhibit 1C. Confidential exhibit 1C
41 is a thick pile of documents.

42
43 MR BARKER: Right.

44
45 Q. Do you remember that email?

46 A. Definitely, correct. Both meetings went well.
47

1 Q. From where did you send it?

2 A. If I didn't send it from Amman airport in Jordan,
3 I sent it from my office in Cairo. What date? 11th -
4 Monday, 11 October. I sent it from Cairo.

5

6 Q. Could you have a look at your first statement, please,
7 paragraph 61 - WST.0005.0017. You say in that, do you not:

8

9 I didn't speak to the Chairman or CEO about
10 the resolution of the inland transport fee
11 (ITF) issue, as I flew out to Khartoum with
12 the Chairman and CEO in the very early
13 hours of the morning on the 12th of
14 October, so at this stage I would not have
15 seen Emons and Owens responses to my email.
16 When I returned to Cairo... on 13th of
17 October, I cannot recall that I raised the
18 issue again with the Chairman or CEO.

19 I subsequently accompanied the Chairman and
20 CEO to several meetings in Cairo, and then
21 on the 15th of October, myself and the
22 Chairman departed for Beirut and Turkey.

23 I cannot recollect whether I was ever
24 advised or it came to my knowledge how the
25 inland transport issues were resolved or
26 what payment mechanisms were implemented.

27

28 So the fact is that you didn't speak to Mr Flugge about any
29 question of how the inland transport fee might be resolved?

30 A. No.

31

32 Q. And I suggest you didn't speak to Mr Flugge about the
33 emails you sent to Melbourne?

34 A. I would have spoken to Mr Flugge about everything that
35 was discussed and what happened in Baghdad at both
36 meetings. You can't be - we travelled - we went to two
37 meetings. It is said at the top of that email, "Both
38 meetings went well". Mr Flugge has confirmed he met with
39 Zuhair and he met with the minister - Mohammed Mehdi Saleh.
40 So two meetings. I have confirmed both meetings went well.
41 I have transcribed everything that happened in both
42 meetings in two emails that the chairman was present at.
43 We then travelled back from Baghdad, 12 hours, across a
44 desert, which is not much to see. We would have been
45 discussing 225,000 tonnes of Australian wheat on offer on
46 table to the Iraqis. We would have been discussing the
47 problems about the vessels turning up in a week's time with

1 no payment mechanism in place. We would have discussed
2 these issues. We wouldn't have talked about football.

3

4 Q. You said quite specifically at paragraph 61 of your
5 first statement you didn't speak to the chairman or CEO
6 about the resolution of the inland transport fee.

7 A. Correct, and I didn't even find out myself about the
8 resolution of the inland transport until I was providing an
9 offer in November, I think.

10

11 Q. And you didn't thereafter raise the matter with
12 Mr Flugge?

13 A. No, I didn't. We went on to Sudan. We missed our
14 flight to Sudan. We had problems with that. The Sudanese
15 chartered their own 737 and picked us up in the middle of
16 Cairo. We signed a million tonne contract in Sudan. We
17 met growers in the middle of a sorghum field in Sudan. But
18 we didn't discuss this, because when we came back we had
19 more meetings in Egypt. I don't even know if I checked my
20 emails when I came back. We had an Australian product
21 conference, we then went to Beirut. Then we flew around
22 Turkey. The minute Flugge left from Turkey back to
23 Australia I went from Turkey back to Cairo.

24

25 Q. When you flew out of Khartoum, you hadn't had
26 responses from Australia to the email you sent on
27 11 October, had you?

28 A. Well, I didn't have email in Khartoum either. There
29 is no email facility.

30

31 Q. So there was nothing to discuss?

32 A. About the resolution?

33

34 Q. Yes.

35 A. I don't disagree. I never discussed the resolution of
36 the inland with Mr Flugge or Mr Rogers.

37

38 Q. And whatever you may have told Mr Flugge in October
39 1999, whatever he may have heard at the meetings with the
40 Iraqis, I suggest he was told nothing, and overheard
41 nothing, which would have suggested to him any impropriety
42 in the process - would you agree with that?

43 A. No - well, apart from Mr Flugge's one deaf ear,
44 Mr Zuhair - and I don't think - as I said in my statement,
45 I don't believe we discussed any of these issues with the
46 minister, and the minister and Mr Flugge sat that far apart
47 (indicating) and they did all the discussions. When we met

1 with Zuhair, we met him in his office. Across from the
2 table I sat on his right-hand side across the desk.
3 Mr Flugge sat the same distance away on the left-hand side.
4 Murray Rogers sat --
5
6 Q. Mr Hogan, I am sorry to interrupt. I am not talking
7 about --
8 A. Mr Flugge would have heard the discussions.
9
10 Q. Let us assume for the moment that he overheard the
11 discussion.
12 A. Mmm-hmm.
13
14 Q. Let us assume for the moment that you did discuss
15 matters with him relating to the contract. What I am
16 putting to you is that nothing he was told by you, nothing
17 he would have overheard in Baghdad in October 1999, would
18 have alerted him to any impropriety in the process, would
19 it?
20 A. No, because I, myself, didn't believe in any
21 impropriety in the process.
22
23 MR BARKER: Yes. Thank you.
24
25 THE COMMISSIONER: Does anybody else wish to cross-examine
26 this witness?
27
28 MR FORREST: No, sir.
29
30 MR ALLEN: No, sir.
31
32 THE COMMISSIONER: Very well, Mr Hogan. 10 o'clock
33 tomorrow.
34
35 THE WITNESS: Again.
36
37 THE COMMISSIONER: Again.
38
39 THE WITNESS: Thank you.
40
41 <THE WITNESS WITHDREW
42
43 MR AGIUS: Is that an appropriate time?
44
45 THE COMMISSIONER: Yes. I will take a brief adjournment.
46
47 MR AGIUS: Then we will resume with Mr Rowland.

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SHORT ADJOURNMENT

MR AGIUS: Mr Commissioner, those assisting you have observed that the Honourable Kevin Rudd, Shadow Minister for Foreign Affairs and Trade and International Security has released an opinion, said to be by Bret Walker of senior counsel. We have received that opinion, together with a submission, said to be a submission on behalf of Mr Rudd under the name of Mr Walker, and we have received those two documents under the cover of correspondence of 10 March 2006, under the hand of Mr Rudd, in which we were asked not to make that material public. But in view of the publication that we understand to have occurred, I will now tender the correspondence from Mr Rudd, together with the email and letter correspondence that followed. I see no reason why confidentiality ought now to attach to our copies of that material, which has otherwise been made public. Might they be marked as a public exhibit, and we will prepare a slim volume containing that material.

THE COMMISSIONER: Yes. The opinion and submission of Mr Walker, submitted to the Commission on behalf of Mr Rudd, and the covering correspondence, will be exhibit 693.

EXHIBIT #693 OPINION AND SUBMISSION OF MR WALKER,
SUBMITTED TO THE COMMISSION ON BEHALF OF MR RUDD,
WITH COVERING CORRESPONDENCE

MR AGIUS: We will have that compilation made up. We have Mr Mark Rowland, who has provided a statutory declaration. I have no questions for Mr Rowland, but is Mr Rowland present?

MR EVANS: He is present in court, Mr Agius. He is at the rear of the court, with my instructing solicitor, Mr Wylid.

MR AGIUS: I am content to call Mr Rowland, but if nobody has any questions for him, I would not go to the trouble of having him sworn simply to have him stand down again.

MR EVANS: He has come over from Perth. He is available to give evidence if anybody wishes to ask him any questions.

THE COMMISSIONER: Does anybody wish to ask Mr Rowland any

1 questions?

2

3 MR EVANS: Otherwise he would like to get back to Perth.

4

5 MR AGIUS: I think he might be in time for the afternoon
6 plane.

7

8 THE COMMISSIONER: The statutory declaration of Mr Rowland
9 is exhibit 686. If nobody has any questions, there is no
10 need for him to be called.

11

12 MR AGIUS: It is a sworn statutory declaration, so we can
13 accept it with Mr Rowland's oath on that basis. It refers
14 to a number of documents by reference to barcodes that AWB
15 have applied to documents. We are preparing a schedule
16 which relates those barcodes to the inquiry barcodes and
17 relates those documents to the inquiry's documents, and I
18 will tender that schedule together with a volume of
19 material to which Mr Rowland makes reference in his
20 statutory declaration and ask that that be marked as an
21 exhibit. We perhaps at this stage will have it marked as a
22 confidential exhibit, with a non-publication order, but
23 with access available to all of those with authorisation to
24 appear. I would ask Mr Judd, in due course, to review the
25 documents to see whether any of them or any parts of them
26 can be released without infringing upon commercial
27 confidentiality.

28

29 MR JUDD: We have had a look at the statement. We have
30 just identified ship names, in the usual way, to be
31 deleted. I understand that --

32

33 THE COMMISSIONER: Otherwise there is no problem.

34

35 MR JUDD: Otherwise there is no confidentiality issue.

36

37 THE COMMISSIONER: I shall mark the volume of documents
38 and schedule referred to in the statutory declaration of
39 Mr Rowland as exhibit 694. That will be a public exhibit,
40 but I make a non-publication order in relation to the names
41 of any vessels referred to in those documents.

42

43 EXHIBIT #694 VOLUME OF DOCUMENTS AND SCHEDULE REFERRED TO
44 IN STATUTORY DECLARATION OF MR ROWLAND

45

46 MR JUDD: There might have been a misunderstanding. We
47 haven't had a chance to look through the attachments, only

1 the statement.

2

3 THE COMMISSIONER: Oh, I see. I will make a
4 non-publication order in relation to the whole of exhibit
5 694 until further order.

6

7 MR AGIUS: Would you include within exhibit 694 the
8 schedule that I foreshadowed, Mr Commissioner?

9

10 THE COMMISSIONER: Yes.

11

12 MR EVANS: May Mr Rowland please be excused?

13

14 THE COMMISSIONER: Yes. He is excused.

15

16 MR AGIUS: Mr Condon will take the next two witnesses.

17

18 MR CONDON: Mr Commissioner, the next witness is
19 Mr Donges.

20

21 MR JUDD: If the Commission please, I seek leave to
22 appear on behalf of the next two witnesses, both directors
23 of AWBI.

24

25 THE COMMISSIONER: Yes, Mr Judd. That leave is granted on
26 the usual terms.

27

28 <IAN ROSS DONGES sworn: [11.55am]

29

30 <EXAMINATION BY MR CONDON:

31

32 MR CONDON: Q. Mr Donges, can you state your full name,
33 please?

34

35 A. My full name is Ian Ross Donges.

36

37 Q. Are you a director of AWB International Limited?

38

39 A. I am.

40

41 Q. When were you appointed to that position?

42

43 A. In March 2001.

44

45 Q. And have you held that position continuously
46 since March 2001?

47

48 A. That's true.

49

50 Q. I am going to ask you some questions about occurrences
51 at board meetings. From time to time, we know that lawyers

1 were present to give advice. I want to make it clear at
2 the outset that none of my questions are intended to
3 require you to impart any legal advice or information you
4 received on those occasions.

5 A. (Witness nods).

6
7 Q. When did you become aware, Mr Donges, of the
8 requirement that a company called Alia be used to truck
9 wheat inland?

10 A. When did I become aware of that?

11
12 Q. Yes.

13 A. I can't recall the exact time, in terms of becoming
14 aware of that situation, but it was certainly some time
15 after I became a director of AWB International.

16
17 Q. That was March of 2001. Can you assist the
18 Commissioner by reference to that date - are we talking
19 about a matter of months, or years, or what?

20 A. It would probably be in terms of months, within the
21 first 12 months.

22
23 Q. Can you recall who informed you of the inland trucking
24 requirement?

25 A. Who informed me?

26
27 Q. Yes.

28 A. No, I can't recall that, I'm sorry.

29
30 Q. Was it in the context of a board meeting, or some
31 other context?

32 A. It could have been either.

33
34 Q. What is your recollection of what you were told about
35 this issue?

36 A. My recollection is that Alia were performing a
37 service, in terms of transporting wheat inland, in Iraq, so
38 the wheat that was delivered by ship as part of the
39 contractual arrangements was then distributed by the Alia
40 trucking company.

41
42 Q. Can you recall anything else being said about the
43 arrangement?

44 A. The only other recollection I have is that there was
45 increasing fees and the explanation for that given to
46 myself was that the risk of doing business was increasing
47 in terms of security of drivers and the issues of taking

1 the wheat further into flour mills across Iraq to fulfil
2 the contractual arrangements.
3
4 Q. We know that the invasion of Iraq took place in
5 about March of 2003?
6 A. Mmm-hmm.
7
8 Q. Did this conversation take place before or after the
9 outbreak of hostilities?
10 A. Before.
11
12 Q. Can you recall how long before the outbreak of
13 hostilities in 2003?
14 A. No, I can't. As I said to you before, I think it was
15 within months of my taking the AWB directorship in 2001.
16
17 Q. You say the AWB directorship - you have been only a
18 director of AWBI; is that correct?
19 A. That's true.
20
21 Q. And in what context can you recall this discussion
22 occurring?
23 A. Well, I guess the context was in relation to
24 fulfilling the contractual arrangements into Iraq. Given
25 my role as a director of AWB International, it was really
26 an oversight role in terms of seeing that those contracts
27 were successfully executed.
28
29 Q. And in your capacity of having this oversight role,
30 what steps did you take to familiarise yourself with the
31 course of trade with Iraq?
32 A. From my point of view, as a director, it was most
33 important in terms of the performance of those contracts in
34 relation to the AWB pools. That was my primary
35 responsibility.
36
37 Q. Did you have a particular point of contact amongst the
38 management to whom you spoke and who reported to you about
39 these issues?
40 A. Oh, no-one in particular. A number of people were
41 part of that.
42
43 Q. Who were those people?
44 A. Well, I guess starting with Sarah Scales, who was the
45 general manager, overseeing the whole of the pooling
46 arrangements, and a number of other staff who were part of
47 that team.

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Q. Is it likely that the conversation you had, of which you have just spoken, was with one of those team people?

A. Well, it is - it is possible, but it is also possible it could be others.

Q. We know that in about August 2002 Mr Lindberg went to Iraq to negotiate a new contract. Do you recall Mr Lindberg giving any report to any meeting at which you were present about what had occurred in August 2002 during his trip to Iraq?

A. I don't recall any specific details, but I'm aware of that situation.

Q. When you say you are aware of it --

A. Well, I'm aware that Mr Lindberg went to Iraq.

Q. Do you have any recollection of his reporting to you about the outcome of his negotiations?

A. Not in detail. Obviously there would be - my concern would be in terms of whether there were to be ongoing contracts with Iraq, what was the prospects of business, et cetera.

Q. Until or up to March 2003 did you receive any other information about inland trucking in Iraq?

A. Not that I'm aware of.

Q. I want to take you to a memorandum which Mr Lindberg wrote. It is AWB.0157.0442. Do you recall Mr Lindberg discussing, some time after 6 May 2004, the contents of this particular memorandum?

A. I'm aware of - yes, I'm aware of part of that. I'm aware of the discussion around the investigation of 30,000 emails, and so on.

Q. In what context did Mr Lindberg discuss this memorandum with you?

A. In what context?

Q. Yes. Was it at a board meeting or some other meeting?

A. I believe that it would be a joint information session. That's my recollection.

Q. We know that a joint information session took place in May of 2004. Do you recall Mr Lindberg discussing the emails which had been reviewed as part of a process he

1 describes in this particular memorandum?
2 A. Only in relation to the number of emails - 30,000 was
3 a figure that I recall, in terms of the investigation.

4
5 Q. Did he describe the contents of any of the emails, or
6 what they disclosed?

7 A. Well, the content that concerned me was in terms of
8 the level of detail of the questions in relation to the
9 Volcker Inquiry, and where that was going.

10
11 Q. Well, you have to help me with that answer. Can you
12 explain what your particular concern was?

13 A. Well, obviously my concern was in relation to the
14 Volcker Inquiry and whether there were matters that should
15 concern me as a director.

16
17 Q. Did you ask Mr Lindberg that question sometime after
18 the receipt of this memorandum of 6 May 2004?

19 A. I don't recall asking him specifically that question.

20
21 Q. Did you ask someone else that question?

22 A. The question in relation to, sorry?

23
24 Q. To your concerns which you have just described?

25 A. There was obviously discussion at director level,
26 because it was an issue that was very topical, but I can't
27 recall asking any specific person those questions.

28
29 Q. Well, you said this:

30
31 Well, obviously my concern was in relation
32 to the Volcker Inquiry --

33
34 A. Mmm.

35
36 Q.

37
38 -- and whether there were matters that
39 should concern me as a director.

40
41 Now, accepting you had those concerns, how did you try to
42 resolve them?

43 A. Well, I resolved them in my own mind by listening
44 carefully to the briefing that was given to us and feeling
45 comfort in the fact that that briefing, I think, allayed
46 the fears that I had.

47

1 Q. Was that a legal briefing, or a briefing by lawyers?
2 A. No, I don't believe it was. Well, it could be either,
3 but I mean, in terms of the briefing, the briefing was the
4 topic that obviously concerned me, and Mr Lindberg was part
5 of that briefing, and most likely lawyers were involved as
6 well.

7
8 Q. Did anyone say where these emails had been sourced?
9 A. No, I don't recall.

10
11 Q. Did they say - I'm not suggesting they did - that they
12 had come from your IS&M section?

13 A. No, as I said, it is the same answer - I don't recall
14 that.

15
16 Q. Did they say, or did anyone say, who within AWB
17 management had been interviewed?

18 A. No. I don't - I can't answer that in terms of those
19 specific individuals.

20
21 Q. Were you told anything about Alia in about May of
22 2004?

23 A. Look, I can't recall that, except that, as I mentioned
24 in my answer before, there was obviously an interest in
25 Alia, in terms of its performance of services to the
26 contractual arrangements with Iraq, and during the period
27 from whatever months after I took the role as AWBI director
28 there was ongoing information about that.

29
30 THE COMMISSIONER: Q. Mr Donges, do you recall there
31 being any discussion about the fact that the contract for
32 delivery of wheat into Iraq was unusual, in the sense that
33 this was the first time AWB had been required to deliver
34 wheat beyond a sea port?

35 A. I do recall that, Mr Commissioner.

36
37 Q. What was that discussion?

38 A. Specifically in relation to the changes in the Iraqi
39 contractual arrangements, yes. I'm not aware that we don't
40 do some other similar things in other parts of the world,
41 because we deal with 40 other countries, but certainly in
42 relation to Iraq, I do recall that.

43
44 Q. That was raised?

45 A. Yes.

46
47 Q. Was there discussion then about transportation and how

1 AWB would fulfil its contractual obligations?

2 A. There was certainly some discussion about that, in
3 terms of fulfilling that contract and how that would
4 happen.

5
6 Q. What do you recall of that discussion?

7 A. Well, my recollection is that Alia would be the
8 service provider in terms of that inland transport
9 component. There was obviously discussion in terms of -
10 ongoing discussion about them performing that duty,
11 recollection from my point of view in terms of the price
12 increases being explained, in terms of the risk to drivers
13 and some of the risks to the actual trucks that were
14 performing those services, and the distances travelled in
15 terms of delivering that wheat.

16
17 Q. Did that discussion occur once or was there a series
18 of discussions that addressed this topic?

19 A. Well, my recollection would be it certainly would be
20 more than once. But I can't give you a specific number.

21
22 Q. And I take it these discussions were either at joint
23 information sessions or board meetings?

24 A. That's true, yeah.

25
26 Q. Was there any discussion at either joint information
27 sessions or board meetings about increases in trucking
28 fees?

29 A. Yes. As I said, part of that information flow was
30 certainly, to my recollection, through that joint
31 information process.

32
33 Q. Can you recall when that occurred?

34 A. No, I can't.

35
36 MR CONDON: Q. Again, just following up on the
37 Commissioner's last question, if we take March of 2003 as a
38 date of some significance, did those conversations take
39 place before or after that date?

40 A. I would think it would be before, but that's -
41 I haven't got any specific dates in terms of that.

42
43 Q. Was the information conveyed to you by a board member
44 or someone from management?

45 A. I thought you asked that question before. I mean,
46 I think - you know, it certainly was part of board
47 discussions, in terms of one-on-one discussions, but,

1 I mean, I can't give you any specific names or individuals.

2

3 Q. I asked you this question:

4

5 Q. Were you told anything about Alia in
6 about May of 2004?

7

8 You responded:

9

10 A. Look, I can't recall that, except
11 that, as I mentioned in my answer before,
12 there was obviously an interest in Alia, in
13 terms of its performance of services to the
14 contractual arrangements with Iraq, and
15 during the period from whatever months
16 after I took the role as AWBI director
17 there was ongoing information about that.

18

19 A. Yes.

20

21 Q. My interest is that you fix this information-gathering
22 exercise to the period from months after you took over as
23 a director in March of 2001.

24

25 A. Mmm.

26

27 Q. Is that information conveying in part the same process
28 about which the Commissioner has asked you some questions?

29

30 A. In terms of the joint information sessions?

31

32 Q. Yes.

33 A. Yes, that's my recollection of it, yes.

34

35 Q. And what were you told on those occasions about Alia -

36 do you have any recollection about that?

37

38 A. Only what I have already stated, in terms of its

39 providing a service, some explanation in terms of the

40 increase in fees, and I guess that - I mean, the final part

41 of that, of course, was successfully executing the

42 business, which it was most important to me that we didn't

43 have ships tied up at port for an extended time, because

44 that was a cost to growers, and so I was keen to see that

45 the business was executed successfully.

46

47 Q. At what point in time do you recall becoming aware of

48 a report prepared by Arthur Andersen?

49

50 A. I've not been aware of that at all.

1 Q. In the course of this inquiry we have had some
2 evidence about a report prepared by that firm in December
3 of 2000.
4 A. Mmm.
5
6 Q. That's the report I have asked you a question of.
7 What is your evidence as to when you became aware of the
8 commissioning of that report or its contents?
9 A. No, I'm not aware of that Arthur Andersen report.
10
11 Q. Even as you sit in the witness box today?
12 A. I am only aware of it by reading it in the media.
13 I am not aware of it as a director.
14
15 Q. Can we have, please, AWB.0381.0276. This is
16 exhibit 661, Commissioner. You will see, Mr Donges, that
17 it bears the date 28 July 2004?
18 A. Mmm.
19
20 Q. Do you recall - and we have your name listed for a
21 joint information session that day - attending a joint
22 information session on 28 July 2004?
23 A. I certainly - if my name is recorded as being there,
24 I'm sure I would have been there, because I haven't missed
25 any board meetings that I'm aware of.
26
27 Q. Do you recall a presentation where this document was
28 displayed - and by all means we can scroll through the
29 document?
30 A. Mmm.
31
32 Q. I would ask the monitor to do that. Just tell the
33 monitor when to scroll through.
34 A. Sorry, yes, keep going.
35
36 Q. That is the last page.
37 A. Okay, so that --
38
39 Q. Now, do you recall seeing that material in some form
40 or another on 28 July?
41 A. I recall seeing parts of that material, but not that
42 last page, which you will probably need to put back up.
43
44 Q. Could the monitor go to 0287.
45 A. That one, yes. I certainly don't recall seeing that.
46
47 Q. Was this information conveyed through a projector, or

1 was it distributed in hard copy to the board members
2 present?
3 A. I don't know the answer to that. Probably both, but I
4 can't answer that specifically.
5
6 Q. Is it the practice for information of this kind to be
7 distributed in a hard copy?
8 A. It can be, yes, but --
9
10 Q. Have you - I am sorry, I apologise.
11 A. No, you are right. It can be, but obviously AWB has
12 facilities to project this information on the screen,
13 because it is often in PowerPoint presentation form.
14
15 Q. Have you searched your files to see if there is within
16 those files a hard copy of this material?
17 A. I haven't searched my files, but I can assure you that
18 I wouldn't have a copy of that, because I don't keep those
19 things.
20
21 Q. You seem, with respect, to be certain that this page,
22 0287, was not displayed to you or shown to you on 28 July.
23 Why are you so certain of that?
24 A. Because the information in there is something that
25 I would recall, I believe, in terms of having a keen
26 interest in what it was telling me.
27
28 Q. In other words, it would have been significant to your
29 consideration?
30 A. It would have been significant, yes.
31
32 Q. Do you recall there being any discussion or any verbal
33 presentation on 28 July at which any of the facts set out
34 in the bullet points on that page were disclosed to you?
35 A. Sorry, can you repeat that question?
36
37 Q. Yes. Do you recall, on 28 July --
38
39 THE COMMISSIONER: 2004?
40
41 MR CONDON: Q. -- 2004, if any of the information set
42 out in the bullet points was conveyed to you verbally?
43 A. You mean in these bullet points on the screen?
44
45 Q. Yes.
46 A. No. No, not that I'm aware of, apart from - sorry,
47 the first bullet point talks about a Jordanian company

1 based in Amman. Well, I was aware of that, and that was my
2 understanding of the company, in terms of where it was
3 based.

4
5 Q. And the next bullet point is that the company - and
6 I am using the words as they appear - was owned 51% by the
7 al-Khawam family based in Iraq.

8 A. Mmm.

9
10 Q. Was that information conveyed to you in July 2004?

11 A. No, I wasn't aware of that.

12
13 Q. Can I ask you when, if any time, that information was
14 conveyed to you before the commencement of this inquiry on
15 16 January?

16 A. No, I'm not - I haven't been made aware of it at all.

17
18 Q. It was only after the commencement of the public
19 hearings that --

20 A. This inquiry.

21
22 Q. And is that likewise your evidence concerning what we
23 see in the fifth dot point:

24
25 Apparently 49% owned by the Iraqi Ministry
26 of Transport.

27
28 A. Mmm. I wasn't aware of that.

29
30 Q. Again, until the commencement of the public hearings?

31 A. Yes, that's right.

32
33 Q. And likewise the following dot point?

34 A. The same. Yes, the same answer: I wasn't aware of
35 that.

36
37 Q. During the course of the board meetings - and I am
38 speaking generally from 2004 onwards - and leaving to one
39 side any information you obtained from lawyers, was there
40 any information given to you about the ownership of Alia?

41 A. No.

42
43 Q. Was any information given to you about the existence
44 or otherwise of a joint venture between Alia and the Iraqi
45 Ministry of Transport?

46 A. No.

47

1 Q. Did you ask any questions, from 2004 onwards, about
2 the ownership of Alia?
3 A. No, I didn't.
4
5 Q. Did you hear any directors of AWBI or AWB Limited ask
6 any questions concerning the ownership of Alia?
7 A. Not that I'm aware of.
8
9 Q. Can you think of any occasion when that information -
10 by which I mean the information on the screen - ought to
11 have been conveyed to you?
12 A. Can I think of any?
13
14 Q. Yes. Was there any inquiry or any discussion which
15 took place as a result of which you believed you should
16 have been told about the information which appears on your
17 screen?
18 A. In my role as AWB International director, I was
19 comfortable with the knowledge that it was a Jordanian
20 company and it was successfully executing the transport
21 part of the contract.
22
23 Q. It has been suggested that this page may have been
24 removed from the presentation because the information in it
25 was too detailed for directors.
26 A. Mmm.
27
28 Q. Have you read the evidence of Dr Fuller?
29 A. I haven't - I have read some of his evidence, but
30 probably - yes.
31
32 Q. What do you have to say in relation to that particular
33 suggestion, that the information was too detailed for the
34 directors of AWB?
35 A. My answer to that is that that information is the sort
36 of detail, I guess, that would have been of interest to
37 directors.
38
39 Q. I want to change topics slightly and go to the issue
40 of Tigris.
41 A. Mmm.
42
43 Q. In due course, I will take you to the meetings that
44 occurred on 14 December of 2004. Do you have a
45 recollection of hearing of Tigris before 14 December 2004?
46 A. I don't. No, I don't, but - and it is still possible;
47 I certainly recall December 2004.

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Q. Can you give the Commissioner your evidence about how it came to be that you were informed of Tigris?

A. I was informed of Tigris through a joint information session with both boards, and that was a briefing that I was part of.

Q. Who spoke on that occasion?

A. Who spoke? My understanding is that it was Mr Lindberg and Mr Cooper, and perhaps others.

Q. And, again, being conscious that I don't want you to impart any legal advice that you received, what did Mr Lindberg say to you on that occasion?

A. What did he say?

Q. Yes, about Tigris?

A. He outlined the potential arrangement with Tigris, which was a debt recovery situation, that would result in half a million dollars US coming into the national pools, and there were probably more aspects of that that I could recall in a minute, but that was the essential part of what he was talking about.

Q. Well, take your time. I want to have your best evidence about what Mr Lindberg said on this occasion.

A. The other aspect, of course, was in terms of the legalities of that, as far as that actual transaction taking place.

Q. Yes. I don't wish to traverse the issue of legalities.

A. That's fine. So - I mean, essentially, it was as I stated, that it was a debt recovery situation that involved the Iraqi Grains Board; it involved the AWB Limited company, who were the service provider; and the opportunity to fulfil a commercial transaction that would result in US\$500,000 coming back to the pools.

Q. What did Mr Lindberg say, if anything, about the activities of Tigris, as to what it had done by way of the provision of services or otherwise?

A. My recollection of that was it was part of a previous transaction by a party and it was essentially just a debt recovery situation.

THE COMMISSIONER: Q. Was there any inquiry as to how

1 the debt was to be recovered, or had been recovered?
2 A. Not that I'm aware of, Commissioner, in terms of that
3 detail, no.

4
5 MR CONDON: Q. Can I just follow up that last question
6 from the Commissioner. We have in Mr Cooper's second
7 supplementary statement the following. Perhaps it is
8 easier if we bring up the document - JMC.0002.0023. Can
9 I take you, please, to paragraph 56 of that document, which
10 appears on that page and on to the following page.

11 A. Yes. Sorry, we need to go over the page. Yes.

12
13 Q. Having looked at the entirety of what Mr Cooper says
14 in paragraph 56, can I ask you to comment upon what he says
15 and, in particular, in relation to what Mr Lindberg might
16 have said about this issue.

17 A. My answer is still the same, in terms of the
18 fundamentals of that arrangement, and I certainly have no
19 knowledge in terms of what were the details in terms of how
20 those dollars would be collected.

21
22 Q. Is it the case that you recall Mr Lindberg not
23 describing how the moneys were recovered, or is it the case
24 that you have no recollection one way or the other?

25 A. It is the latter, in terms of I have no recollection
26 one way or the other, but my - I guess my feeling is
27 towards not being specifically made aware of that
28 information.

29
30 THE COMMISSIONER: Q. Did anyone inquire as to why AWB
31 was engaged in debt collecting for a third party?

32 A. Did anyone inquire?

33
34 Q. Yes.

35 A. There was no doubt discussions about that area,
36 because it was a topic that was of great interest to us.

37
38 Q. What was said and by whom?

39 A. Sorry, I can't recall.

40
41 MR CONDON: Q. I want to try and assist your memory a
42 little bit. Can we have exhibit 516 - WST.0016.0130.
43 These are Dr Fuller's notes of the joint information
44 session of 14 December 2004. You will see that Project
45 Rose and Project Tigris appear against number 4.

46 A. Yes.

47

1 Q. Do you recall if these two projects were discussed at
2 the same time?

3 A. Look, I can't specifically recall that, but given that
4 Project Rose was ongoing at that stage, I would presume
5 that that was the case.
6

7 Q. Well, Project Rose was a project which was brought
8 about initially after the complaint of the American Wheat
9 Associates in June of 2003, and then expanded as certain
10 inquiries were undertaken?

11 A. Mmm.

12
13 Q. My point was simply this: do you recall there being
14 any discussion, in December of 2004, or at this meeting,
15 where the two projects were discussed in the same context?

16 A. No, I don't recall that.

17
18 Q. You will see at the bottom there is a note:

19
20 Facilitated - USD8m (1) can't distance
21 (2) corporate morality.

22
23 Then, if we go to the next page, you will see "morality"?

24 A. Yes.

25
26 Q. Then we also have Ms Scales' notes, and they are
27 AWB.0270.0024-R. It is exhibit 344. These may relate to a
28 joint information session, or they may relate to a later
29 meeting, but you will see against Mr Thame's name "Tigris
30 check", then "AWB account therefore we are now tainted", a
31 reference to "James Hardy classic example - mood in market
32 place", and then against Mr Simpson the entry "I think it
33 is extraordinary and I am surprised". Do you recall
34 Mr Thame or Mr Simpson saying the words which are
35 attributed to them?

36 A. No, I don't.

37
38 Q. Then we have another note, exhibit 518,
39 WST.0016.0141-R. You will see that you are listed as being
40 present at the meeting --

41 A. Yes.

42
43 Q. -- of the board of AWBI which opens at 2.45?

44 A. Yes.

45
46 Q. If we go to the following page, we have Mr Lindberg,
47 "AL", "Assist 1992. Back in mid" something or other. And

1 then a little bit down the page there is a box, "WG",
2 I think it is, "How explain in terms of our accounts", "to
3 do". I think Dr Fuller has written against that?

4 A. Yes.

5

6 Q. Then against your name:

7

8 How is it accounted for. WEA - should we
9 tell them.

10

11 Again, "To do".

12 A. Mmm.

13

14 Q. Now, having shown you those notes, do they assist your
15 recollection as to what may have been discussed, either at
16 the joint board information session or at the subsequent
17 meeting of AWBI?

18 A. The answer is yes, they do.

19

20 Q. What is your evidence about what occurred?

21 A. My recollection of my comments referred to there in
22 Dr Fuller's notes were along the lines that I thought for
23 proper accountability factors the Wheat Export Authority
24 should be informed of the transaction if it went ahead.

25

26 Q. What caused you to form that view?

27 A. Because the Wheat Export Authority is our regulator,
28 and they, of course, take keen interest in all matters to
29 do with AWB International.

30

31 Q. What did you think should be disclosed to the Wheat
32 Export Authority?

33 A. I thought the disclosure should be, if the transaction
34 were to be successfully, I guess, completed - that the
35 \$500,000, if it was to happen, should be drawn to the
36 attention of the Wheat Export Authority.

37

38 Q. Why?

39 A. Why?

40

41 Q. Yes.

42 A. Because it was not part of a normal contractual wheat
43 sale.

44

45 Q. Did you state what you have just stated in the last
46 three or four answers to those present at the meeting
47 on December 14?

1 A. Did I state that?
2
3 Q. Yes - your process of reasoning?
4 A. The comment there was in terms of, you know, a concern
5 as a director, and I guess as much about a question, but it
6 was certainly something that I was thinking through at the
7 time, in terms of how this \$500,000 would be part of a
8 contractual arrangement, if you like, that was accounted
9 for in the pool.
10
11 Q. Well, you just told me that you had a concern because
12 this was not part of the normal course of business for AWB?
13 A. It was not part of the normal course of business for
14 AWB International, in terms of the conduct of the pools.
15
16 Q. Yes. And did you express that view at the meeting
17 on December 14?
18 A. I guess I expressed sentiments along those lines.
19
20 Q. In other words, you made it pretty clear on that
21 occasion that you thought the Wheat Export Authority should
22 be told of what you considered to be an extraordinary
23 transaction?
24 A. Well, I consider it certainly a contractual
25 arrangement that was different to our normal transactional
26 arrangements, contractual arrangements, in terms of selling
27 wheat and being paid for that wheat.
28
29 THE COMMISSIONER: Q. Did you learn at this meeting that
30 the manner in which the debt had been recovered had been by
31 inflation of the wheat contract price?
32 A. No, I wasn't aware of that, Commissioner.
33
34 Q. So the reference to your making material available to
35 the WEA just relates to the \$500,000, not to the unusual
36 factor of inflation of wheat prices?
37 A. That's true. That's true.
38
39 MR CONDON: Q. Having expressed those concerns, what
40 response did you receive at that meeting?
41 A. I don't recall any specific response. I think it was
42 more a concern from myself as a director to be noted by
43 staff.
44
45 Q. We have Dr Fuller's notes against which appear the
46 words "To do".
47 A. Yes.

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Q. Was it your understanding that, having expressed your concerns, the Wheat Export Authority would be informed?

A. It was my understanding that that would be the case - if the transaction was to go ahead.

Q. Were you ever told one way or the other what had happened vis-a-vis the Wheat Export Authority?

A. No, I don't recall.

Q. Did anyone tell you, if it be the case, the WEA had not been informed?

A. No, I --

Q. Do you have any other recollection of what was said during the course of this meeting?

A. In terms of this whole Tigris issue?

Q. Yes.

A. Well, my recollection, as Mr Gibson's comments there, I certainly recall those, because they were the types of comments that were very specific, in terms of this particular transaction.

THE COMMISSIONER: Q. Were you told at this meeting that the debt had in fact been recovered - the \$7m-odd?

A. No, I don't recall that that was the case at the time. I believe it was still a possibility, but it hadn't been finally executed. That's why I say, Commissioner, that if the transaction was to be successfully executed, certain things should happen.

Q. So you weren't told that it was in fact complete and in fact the moneys had been repaid?

A. That - well, look, that's my recollection at the time - that, yes, we were certainly of the belief that it would be successfully executed, but I can't recall whether it was actually a done deal, if you like, at that time.

MR CONDON: Q. Do you recall what the explanation was for the board being given a briefing on the Tigris transaction - was it for approval or for information or for some other purpose?

A. No, I don't believe it was for approval. It was certainly informing the board of the possibility of a successful transaction in terms of this debt recovery process.

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Q. We have the typed minutes of the AWBI Limited board meeting. Can we have AWB.0157.0556. It is confidential exhibit 65C. You will see, Mr Donges, that you are listed as a director present?

A. Yes.

Q. Can we go to 0558. These are the minutes of the meeting insofar as they relate to the Tigris transaction.

A. Yes.

Q. Do those record accurately what you were told by Mr Lindberg?

A. I believe that does, yes.

Q. What did Mr Lindberg say about the assistance Tigris had given in 2002?

A. Look, my answer still hasn't changed, in terms of it being explained as a debt recovery process and a commission, if you like, being paid to AWB International.

Q. Can I take you through to a board meeting on 22 February 2005. It is AWB.0349.0002. I draw this page to your attention, Mr Donges, because you are listed as a person present?

A. Yes.

Q. Does that accord with your recollection that you were present on that occasion?

A. Yes.

Q. We have, again, Dr Fuller's notes of what transpired at that meeting. Can we have exhibit 511, WST.0016.0191, and, for convenience, I want to hand you a hard copy of those notes. Again, Mr Donges, it appears from Dr Fuller's notes that you were present?

A. Yes.

Q. Can I take you to page 0192. We have a heading "Issues"?

A. Yes.

Q. I was remiss, but I will now rectify that. On the previous page at the bottom we have an entry "AL address on Project Rose"?

A. Yes.

1 Q. Is it your recollection that Mr Lindberg spoke at this
2 meeting on 22 February 2005?
3 A. I believe so, yes. I have --
4
5 Q. I am sorry.
6 A. Yes, no, you are right.
7
8 Q. By all means, take your time to read the document, but
9 do you recall Mr Lindberg addressing what Dr Fuller
10 describes as issues?
11 A. I certainly recall some of those points raised there
12 by Mr Fuller.
13
14 Q. When you say "by Mr Fuller", are you saying by
15 Mr Lindberg as recorded by Mr Fuller?
16 A. In Mr Fuller's notes. I mean, the iron filings are
17 certainly something I am familiar with.
18
19 Q. Can I take you through the notes one by one. What did
20 Mr Lindberg say about Alia on this occasion?
21 A. Look, I can't recall that.
22
23 Q. There is a note, "Trucking fees - reasonable".
24 A. Mmm.
25
26 Q. Do you recall there being any discussion about
27 trucking fees or the manner of their calculation?
28 A. Sorry, can you repeat that?
29
30 Q. Yes. Do you recall there being any discussion about
31 trucking fees or the manner of their calculation?
32 A. I think my answer is the same as it was previously, in
33 terms of an ongoing discussion about the trucking fees and
34 certainly explanations in terms of the increase in those
35 fees. Whether it happened at this meeting or not, I'm not
36 sure, but I am presuming, looking at that, that it was part
37 of that flow of information.
38
39 Q. Were you told anything about the imposition of a
40 service fee or a 10 per cent fee in the context of trucking
41 fees?
42 A. No. The answer is no.
43
44 Q. And there is an entry "Compliance UN conventions
45 circumvented"?
46 A. Mmm.
47

1 Q. Was there any discussion on this occasion about the
2 circumvention of UN conventions?
3 A. Not that I'm aware of.
4
5 Q. Then there is an entry for iron filings. What is your
6 recollection about the discussion that took place about
7 that issue?
8 A. My recollection there is that there was ongoing
9 quality claims from Iraq, in terms of delivery of contracts
10 to the market, and there was claims by the Iraqis that
11 there were problems with iron filings in the wheat and
12 therefore they were not accepting the delivery of that
13 wheat.
14
15 Q. Was that a problem current as at the date of this
16 meeting, February 2005, or was it a reference back to
17 events which had occurred in 2002?
18 A. No, it wouldn't be 2002. It was certainly a
19 reference to a later iron filings issue
20
21 Q. I want to take you to the following page, 0193, and
22 again, please take your time to read the document if you
23 want to. I am going to the entry near the bottom of 0193.
24 There was a question, "Has there been kickbacks, bribes,
25 corruption - no evidence". "Will focus on - may have found
26 a way around".
27 A. Yes.
28
29 Q. Do you recall there being discussion about those
30 issues?
31 A. No, I don't, not specifically.
32
33 Q. Do you have any recollection now about what Dr Fuller
34 may have been recording concerning a way being found around
35 sanctions?
36 A. No, I don't. I don't have any recollection of that.
37
38 Q. We have Mr Thame recorded as saying underneath that
39 "Wisdom of hindsight. Wished hadn't done that"?
40 A. Mmm.
41
42 Q. Then immediately under that we have Mr Lindberg saying
43 "Tigris".
44 A. Yes.
45
46 Q. Do you recall there being any discussion about those
47 issues?

1 A. Not specifically, no.
2
3 Q. Do you recall Mr Thame expressing concerns on this
4 occasion?
5 A. No, I don't.
6
7 Q. Then we have over the page - and again I invite you to
8 take your time, if you desire, but I am interested now in
9 Mr Lindberg's entry about halfway down the page - against
10 his initials "AL Bl emishes - emails. Former employees"?
11 A. Yes.
12
13 Q. Do you recall there being a discussion about bl emishes
14 or documents that had come to the attention of anyone?
15 A. No, I don't.
16
17 THE COMMISSIONER: Q. Mr Donges, the note records that
18 Mr Thame suggested that the directors' and officers'
19 insurance policy insurers should be notified. Do you
20 recall that?
21 A. Sorry, where was that, Commissioner?
22
23 Q. At the top of the page.
24 A. Yes.
25
26 Q. That's a fairly notable event, I should have thought?
27 A. Mmm.
28
29 Q. Do you recall that being discussed?
30 A. I don't recall it being discussed. I do recall
31 Mr Thame talking about that at a point. Now, if this was
32 the meeting, well, that may well have been the meeting.
33 I do remember him making those comments.
34
35 Q. What was your understanding of what has been called
36 Project Rose?
37 A. What was my understanding of Project Rose? It,
38 I guess, in my words, was in relation to the Volcker
39 Inquiry and our response to that, and gathering of
40 information to fulfil our obligations to that Volcker
41 Inquiry.
42
43 MR CONDON: Q. There is a reference on page 0193, about
44 two-thirds of the way down the page, to "AFP + Royal
45 Commission".
46 A. Are we talking about the same document?
47

1 THE COMMISSIONER: Yes, the previous page.
2
3 THE WITNESS: The previous page, sorry. Now I have got
4 it.
5
6 MR CONDON: Q. Do you see the barcode in the top
7 right-hand corner?
8 A. Yes. Going back one. Now I have you.
9
10 Q. Yes, I apologise. About two-thirds of the way down
11 the page, "AFP + Royal Commission"?
12 A. Mmm.
13
14 Q. If we go to the following page, 0194, about two-thirds
15 of the way down the page Mr Cooper is saying "Notify ASX",
16 in the context of these investigations.
17 A. Yes.
18
19 Q. By any event, if Dr Fuller's notes are direct, we had
20 a reference to the AFP, a royal commission, the ASX and
21 other matters?
22 A. Yes.
23
24 Q. It was a fairly singular meeting, can I suggest to
25 you?
26 A. Mmm.
27
28 Q. What's your recollection of what was causing these
29 concerns amongst the directors?
30 A. Well, my recollection is that the Volcker commission
31 was going to be quite comprehensive and therefore needed to
32 be addressed in that manner. My other observation would be
33 that we needed to be certainly forthcoming in terms of
34 cooperating with that inquiry.
35
36 Q. Were instructions given about the level of cooperation
37 with that inquiry by the board, to your knowledge?
38 A. My knowledge is that the board were of the view that
39 we should be certainly very cooperative --
40
41 Q. Was there - I am sorry, I apologise.
42 A. No, you're right.
43
44 Q. Did the board express there to be any limitation on
45 the classes of documents that should be disclosed to the
46 Volcker Inquiry?
47 A. No, not that I'm aware of.

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Q. Was it your understanding that all documents relevant to the Volcker Inquiry should be disclosed to that inquiry?

A. It was certainly my understanding, yes.

Q. I want to take you now to the following meeting - that is, on 10 March 2005. Can we have AWB.0348.0073. Again, we have you as being present.

A. Yes.

Q. We have some notes about Alia. About halfway down the page we have the entry "Jordanian Co - didn't know at the time". I think it then says "Advised against using Alia but no-one contacted AWB. Potential breach of UN Res'n 661". Do you recall Mr Lindberg or anyone else saying something about Alia on the occasion of this meeting?

A. It is possible that they did make comments at this meeting, and obviously these notes suggest that was a topic, and given it was a very important ongoing topic for us, I'm presuming that that was the case, yes.

Q. I think you have said earlier today that the role of Alia was of some significance to your concerns as a director of AWB Limited, or AWBI Limited?

A. It was - yes, it was a concern in terms of successfully executing the contracts into Iran [sic].

Q. Do you recall, in the context of those concerns you had, there being discussion on 10 March about Alia, or the Jordanian trucking company?

A. Look, it is possible. I can't recall that specific meeting.

Q. We have the entry "Potential breach of UN Res'n 661", under which we have "Procedural" and an entry "Unknowingly or unwittingly breached". Do you have any recollection of there being discussion about those issues?

A. No, not specifically.

Q. If we go to the following page, 0074, and, again, I invite you to read the whole of that page, but about a third of the way down we have against Mr Lindberg's initials:

Required to use by IGB. We formed the view.

1 A. Mmm. Yes.
2
3 Q. Then we have "XM", for Xavier Martin, I assume:
4
5 Used before?
6
7 "AL", "Yes", and then I think it is Mr McClelland,
8 "Tigris?", Mr Lindberg "Not an issue". Do you recall any
9 discussion taking place about those issues?
10 A. No, I don't, and I guess it doesn't flow in terms of
11 the question of Alia versus Tigris. I mean, I can't see
12 the connection there, and I don't recall that.
13
14 Q. Do you recall what Mr Lindberg's explanation on this
15 occasion may have been about the circumstances in which
16 Alia came to be used?
17 A. The only recollection I have on that is that it was a
18 preferred contractor of the IGB.
19
20 Q. That's what he said to you, is it, on that occasion?
21 A. I don't recall if it was that occasion, but it was
22 certainly my recollection of my understanding of how the
23 system worked.
24
25 Q. Did Mr Lindberg tell you that?
26 A. He could have.
27
28 Q. I would like to have your recollection one way or the
29 other.
30 A. I can't recall who informed me of that.
31
32 Q. Do you have any recollection of Mr Lindberg ever
33 describing to you Alia, or its circumstances or its
34 background?
35 A. I do have recollection of that, because that was part
36 of the area that I had interest in, as I said before.
37
38 Q. I asked about Mr Lindberg specifically. What do you
39 recall him saying to you?
40 A. Well, my recollection of Mr Lindberg's briefing on the
41 subjects, which could have happened over a number of times,
42 was along the lines of a trucking company executing the
43 business and being the preferred provider of the Iraqi
44 Grains Board, and my greatest concern was that those
45 contracts were successfully executed.
46
47 Q. Did Mr Lindberg ever give you any more by way of

1 description of Alia's role?
2 A. No, not that I'm aware of.
3
4 Q. Putting to one side Mr Lindberg, did you receive any
5 explanation from any other member of management about the
6 role of Alia?
7 A. It is possible that that could be the case, because a
8 number of staff members were obviously part of those
9 arrangements, but I can't recall who.
10
11 Q. And do you recall there being any discussion at any
12 time about how the inland trucking fee came to be imposed?
13 A. Yes. I recall that in terms of it being a fee that
14 was necessary for the transport of grain and to fulfil the
15 contracts that the Iraqi Grains Board had with us.
16
17 Q. We may have traversed this issue before, but do you
18 recall who gave you that explanation?
19 A. No, I don't. I would expect it was Mr Lindberg
20 initially, but perhaps others as well.
21
22 Q. And apart from that explanation or information was
23 anything else told to you?
24 A. No.
25
26 Q. In terms of your knowledge of inland trucking and
27 Iraq, you have given me two pieces of information which you
28 were told?
29 A. Mmm.
30
31 Q. Does that comprise the sum total of what you were
32 told, outside legal briefings, by Mr Lindberg and other
33 members of management?
34 A. Yes, I believe that's my answer.
35
36 Q. Lastly, I want to take you to a board meeting on
37 12 January 2006. Mr Moffet has given some evidence about
38 what occurred on this occasion. Is it possible to have
39 transcript 4187 displayed? I want to direct your
40 attention to the passage beginning at line 13 - you will
41 see that number on the left-hand sign, if the monitor could
42 just hold it there so that you can read it.
43 A. Yes, I have read 13, yes.
44
45 Q. If you could read down to line 43.
46 A. Oh. Yes.
47

1 Q. In fairness, I think I should also direct your
2 attention to line 45 and over the page, until line 5.
3 Mr Moffet describes, in his evidence, Mr Lindberg's
4 admission as "potent".
5 A. Yes.
6
7 Q. I have set out in full, or materially, what Mr Moffet
8 said about what occurred at that meeting?
9 A. Mmm.
10
11 Q. Were you present at that meeting --
12 A. I was.
13
14 Q. -- where Mr Lindberg addressed the board?
15 A. I was present at that meeting, yes.
16
17 Q. What do you say in relation to Mr Moffet's evidence.
18 Is it correct or incorrect, or something in between?
19 A. My recollection is that it is incorrect, in terms of
20 what Mr Lindberg stated.
21
22 Q. I want to confine my questions only to what
23 Mr Lindberg said --
24 A. Mmm.
25
26 Q. -- because I am conscious that lawyers were present on
27 this occasion.
28 A. Yes.
29
30 Q. What is your evidence as to what Mr Lindberg said
31 about the payment of an aftersales service fee or the money
32 being paid to an Iraqi entity, if anything?
33 A. My recollection is that Mr Lindberg introduced the
34 lawyers present, and we went from there.
35
36 Q. Did he say anything at all about an aftersales service
37 fee?
38 A. No, that's not my recollection.
39
40 Q. Did he say anything at all, to your recollection,
41 about the moneys being onpaid to the Iraqi Government?
42 A. No, I don't believe he did.
43
44 Q. Is there any aspect of Mr Moffet's evidence which I
45 have taken you to which you would agree with, or not?
46 A. I certainly don't agree with Mr Moffet's evidence in
47 terms of the key points that were raised there in terms of

1 the service fees, et cetera.

2

3 MR CONDON: Mr Commissioner, that completes my examination
4 of Mr Donges.

5

6 THE COMMISSIONER: Mr Judd?

7

8 MR JUDD: No examination from me, sir.

9

10 THE COMMISSIONER: Does anybody else have any questions of
11 Mr Donges?

12

13 MR ALLEN: Yes, sir.

14

15 <EXAMINATION BY MR ALLEN:

16

17 MR ALLEN: Q. Mr Donges, you have said many times when
18 you were being asked questions by Mr Condon, when he was
19 taking you through the notes that Mr Fuller made during
20 various meetings, and focusing your attention on particular
21 topics that Mr Fuller had recorded in his notes, that you
22 couldn't recall that being discussed, "I don't recall
23 that" - I made a note of some of the expressions you used,
24 "I have no recollection of that". Do you remember giving
25 those sorts of answers on many occasions in relation to
26 Mr Fuller's notes of various meetings?

27

28

29 Q. You are not saying, are you, that those things were
30 not discussed - that is, that Mr Fuller's notes are
31 incorrect? You are not saying that, are you?

32

33

34 Q. What you are saying, quite understandably, is that it
35 is very difficult to specifically recall this particular
36 topic being discussed at this meeting or that meeting or
37 another meeting over a period of some years, isn't it?

38

39

40 Q. Whenever you have used that expression "I don't
41 recall", "I have no recollection of that", "Not that I
42 remember", and some such expressions, in relation to notes
43 you have been shown, that's all you are saying, isn't it -
44 you can't say one way or the other whether those things
45 were discussed or not; correct?

46

47

1 Q. But you are not meaning to take issue with the
2 veracity of Mr Fuller's notes, are you?
3 A. No, I'm not.
4
5 Q. You were being asked questions at one stage in
6 relation to a briefing at the joint information session on
7 14 December 2004 --
8 A. Yes.
9
10 Q. -- and a subsequent AWBI board meeting.
11 A. Mmm.
12
13 Q. You were shown an extract from the minutes of that
14 board meeting of 14 December, exhibit 65C - 0157.0558, if
15 that page could be brought up, please. It is
16 AWB.0157.0558. Thank you.
17 A. Yes.
18
19 Q. You were asked whether the paragraph under the
20 subheading "Tigris", subparagraph (b), accurately set out
21 what Mr Lindberg briefed the board on during that meeting.
22 Do you remember being asked that question by Mr Condon?
23 A. Yes.
24
25 Q. You said that it did seem, to your recollection, to be
26 an accurate minute of that briefing?
27 A. Yes. Yes.
28
29 Q. You read the paragraph before you gave that evidence,
30 didn't you?
31 A. Mmm. Mmm.
32
33 Q. The minute records that the board members were
34 informed that, amongst other things, the AWB had assisted
35 Tigris in recovering a debt - that's what the minutes
36 record?
37 A. Yes.
38
39 Q. And Tigris had paid a commission for the recovery of
40 the debt; correct?
41 A. Yes.
42
43 Q. The minutes record that these events had occurred
44 already, don't they?
45 A. Well, I answered the question in terms of my knowledge
46 of the timing of that, remembering I am a director of AWB
47 International.

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Q. Yes. Well, I am not being --

A. And it was my recollection at the time that I wasn't confident that that transaction had been totally completed, and the board was making a decision in terms of our view in terms of that \$500,000 being paid to AWB Limited - sorry, International, and therefore to growers.

Q. Yes. Well, I don't take issue with that. You see, the Commissioner asked you whether you recalled being told that the debt had been recovered.

A. Mmm.

Q. Your evidence was that you couldn't recall being told that. Let me just put you in the picture to help you a bit, because it is difficult to remember these sorts of details with the passage of time. As you see, the minutes record that you were told that the debt had been recovered. Other witnesses, including Mr Thame, have given evidence - and you weren't told this by Mr Condon - that the debt had been recovered, that the members who were present that day were informed of that, and that what this meeting was about was what was to happen to the money now that it was recovered?

A. Yes, that's true.

Q. Do you follow?

A. Yes.

Q. Does that refresh your memory?

A. Well, certainly - that's what I stated before, in terms of the board having determination on how that money should be accounted for and where it should go.

Q. All right. So, having previously given evidence in answer to the Commissioner's question, and not having the benefit of what I have just told you about, and not having been asked further questions about this minute, do you now recall that you were told that, whereas the debt had been recovered, that that part of the transaction was, to use Mr Thame's language, as I recall his evidence, a done deal, the question was now what was to happen to the money?

A. Mmm.

Q. Is that right?

A. Well, that was the question to me as a director in this meeting.

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Q. In a similar vein, you were asked whether you recalled whether or not there was any mention as to how the debt was recovered by AWB on behalf of Tigris. Do you follow?

A. Yes.

Q. You said you couldn't recall that being mentioned. Now, evidence has been given by two witnesses at least - Mr Fuller and Mr Cooper - that there was some mention during this meeting of how the debt was recovered, in passing, and it was to this effect, that some board member asked a question along those lines, or put it to Mr Lindberg - I think it was Mr Cooper's evidence - "Was it recovered through the contract price?", to which Mr Lindberg has nodded or has indicated his assent, that that's how the money was recovered.

THE COMMISSIONER: Was it the evidence of the contract price or the wheat contracts?

MR ALLEN: The wheat contracts.

THE COMMISSIONER: That's quite different.

MR ALLEN: It would be better if we bring up the evidence, Mr Commissioner. It is at page 5520, I think. This is Mr Cooper's evidence. There was other evidence given by Mr Fuller. I think it is towards the bottom of the page. Yes, there it is.

Q. I will just allow you to read that question and answer. You see the question at line 34:

Q. Do you have a recollection as to whether or not he spoke of how it was that the Tigris debt had in fact been recovered?

And then Mr Cooper's answer.

A. Yes.

Q. It just goes over the top of the page, the next couple of lines.

A. Right. Yes.

Q. You can see that, in effect, Mr Cooper's evidence was that it was his recollection that one of the people at the meeting, sitting down at a particular end of the table,

1 said something like, "Was the money collected through the
2 payments for our contracts?", and that Mr Lindberg nodded,
3 or said "mmm-hmm", but answered in the affirmative; do you
4 see that?

5 A. Yes, I did. I read that.

6

7 Q. Is it your evidence that you don't recall that
8 happening?

9 A. I don't recall that happening. I don't have any
10 recollection of the detail on how that money was collected.

11

12 Q. Fair enough. But you are not saying that Mr Cooper's
13 evidence about that is wrong, are you?

14 A. I'm not saying that.

15

16 Q. If Mr Fuller had given, as he has, similar evidence,
17 you don't say that is wrong either, but, rather, you say
18 that's not something that you can recall?

19 A. It is not my recollection in terms of the detail.

20

21 Q. Just as there are many other things about these
22 meetings that you cannot recollect; is that true?

23 A. That's true.

24

25 MR ALLEN: Thank you.

26

27 THE COMMISSIONER: Is there any re-examination?

28

29 MR CONDON: No, thank you, Mr Commissioner.

30

31 THE COMMISSIONER: Thank you, Mr Donges. You are excused.

32

33 <THE WITNESS WITHDREW

34

35 THE COMMISSIONER: I will adjourn until 2.15.

36

37 LUNCHEON ADJOURNMENT

38

39

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1 UPON RESUMPTION:

2

3 MR CONDON: Commissioner, the next witness is Mr Gibson.

4

5 <WAYNE FRANCIS GIBSON, sworn: [2.15pm]

6

7 <EXAMINATION BY MR CONDON:

8

9 MR CONDON: Q. Mr Gibson, would you be so kind as to
10 state your full name?

11 A. Wayne Francis Gibson.

12

13 Q. Are you a director of AWB International Limited?

14 A. That's correct.

15

16 Q. When were you appointed to that office?

17 A. March 2000.

18

19 Q. Have you held that office continuously since then?

20 A. That's correct.

21

22 Q. Are you also a director of AWB Limited?

23 A. No.

24

25 Q. As a director of AWB International Limited, you had
26 responsibility ultimately for the operation of the pool; is
27 that correct?

28 A. That's correct.

29

30 Q. What steps did you take upon your appointment to
31 familiarise yourself with the operations of the pool
32 generally?

33 A. We had a familiarisation course given by the company.
34 That sort of filled us in on the details that we had to
35 know and where we were to go, and whatever.

36

37 Q. Were you given any information upon your appointment
38 about the Iraq market?

39 A. No.

40

41 Q. Were you given any information in the months that
42 followed about any inland trucking component relating to
43 the Iraq market?

44 A. Yes. The reasons there is that they told us about the
45 inland trucking side of the market, that it was quite
46 different from all the other markets we deal with around
47 the world. This was the only one where we actually dealt

1 with inland marketing, or inland transport.
2
3 Q. Who was it who told you that?
4 A. I can't recollect at the moment.
5
6 Q. Was it a board member or a member of the executive, or
7 someone else?
8 A. A member of the executive.
9
10 Q. Can you recall from what section of AWB that person
11 worked, or what division, or is your mind a blank on that
12 issue?
13 A. No, I'm pretty well a blank on that issue.
14
15 Q. What else were you told by that person about inland
16 trucking?
17 A. In the early days, or when you're talking 2000,
18 basically nothing much at all, apart from the deal
19 concerned inland trucking to facilitate the sale of the
20 grain.
21
22 Q. Were you told anything about the company that was
23 allegedly providing the trucking services?
24 A. In the earlier days we were told it was a Jordanian
25 trucking company. In the later days, probably going to
26 '03 - somewhere around about that time - that it had some
27 connection in Iraq.
28
29 Q. I'll come back to that shortly, but I want to make it
30 clear at the outset that I don't wish to ask any questions
31 that would involve you identifying your legal advice --
32 A. Yes.
33
34 Q. -- or information that you obtained from lawyers
35 acting in the course of giving advice to you or the board.
36 A. Yes.
37
38 Q. Were you told anything in what you call the early days
39 concerning how the trucking fee was calculated?
40 A. No.
41
42 Q. You keep saying, "We were told this". Is that a
43 reference just to you or to a number of other people who
44 were told this at the same time?
45 A. It would have been to the I board.
46
47 Q. Was that in the context of an I board meeting?

1 A. It could have been a joint session also.
2
3 Q. Do you have any recollection now as to the context in
4 which you were told this? Was it in response to an
5 inquiry, or did it arise from some other way?
6 A. Everything I know as far as the mechanics of the
7 operation I've known since - well, since the inquiry
8 started, yes, or just before, probably --
9
10 Q. Well, going back to what you were told in the early
11 days --
12 A. -- January 22.
13
14 Q. Sorry, we're at cross-purposes; I'll start again.
15 A. 12, I mean.
16
17 Q. You say what was discussed in the early days, after
18 your appointment in March of 2000 --
19 A. Yes.
20
21 Q. -- and you've given some information that you were
22 told something about the trucking fees.
23 A. Yes.
24
25 Q. You stated you thought this was in the context of an
26 I board meeting or a joint information session?
27 A. Yes.
28
29 Q. I just wanted to know what was it that brought about
30 this information being told to the I board or the joint
31 information session shortly after your appointment in March
32 of 2000?
33 A. I think because it was an unusual contract.
34
35 Q. Do you have a recollection that someone from the board
36 had sought information from management about the contract,
37 or was it something that management was bringing
38 spontaneously to the attention of the board?
39 A. Oh, management were bringing it to the board, I would
40 say.
41
42 Q. Do you have any recollection who from management
43 addressed the board about this issue?
44 A. No.
45
46 Q. You said on a number of occasions that this is what
47 you were told in the early days. Were you told something

1 more complete or more detailed later?

2 A. Well, earlier on we thought it was just a Jordanian
3 company. In later days we heard - or we were told - that
4 it had some connections in Iraq.

5

6 Q. Sorry, I don't wish to cut you off.

7 A. Also at a later date I also remember we queried - or
8 one particular director queried; I don't remember his
9 name - was this trucking company all right, and I can
10 remember the answer definitely, "Well, there's some
11 American companies using the same trucking company", so I
12 just naturally thought, "That's fine", if the Americans are
13 using them, well, no problems.

14

15 Q. I want to break up those two bits of information bit
16 by bit. You said that you were told that it had - that is,
17 the trucking company - some connections in Iraq, was your
18 answer. When were you told that?

19 A. It was fairly late in the piece - probably - I don't
20 recall exactly the time, but if you want a year, I suppose
21 it would have to be around about '04 - '03-'04.

22

23 Q. The war had broken out in March of 2003. There was a
24 complaint by US Wheat Associates in June of 2003, and the
25 Volcker Inquiry began gathering pace in 2004. Having
26 refreshed your memory about those matters, I ask the
27 question again: do you recall when you were told of the
28 connection with Iraq?

29 A. I think it was pre-war.

30

31 Q. You think it was pre-war?

32 A. Yes.

33

34 Q. That's March of 2003; you can take it from me that is
35 the date of the invasion. Is it your recollection that you
36 were told of this fact before the invasion in March 2003?

37 A. Yes, I'd say so.

38

39 Q. Can you recall who told you that?

40 A. No.

41

42 Q. Can you recall if that was told to you one on one, so
43 to speak, or in the course of a meeting?

44 A. It would have been in the course of a meeting.

45

46 Q. Do you recall if it was in the course of an AWBI
47 meeting, or some other meeting?

1 A. It could have been an I meeting or a joint meeting.

2

3 Q. Well, what is your recollection as to what caused the
4 speaker, whoever he or she might be, to make this
5 statement?

6 A. Regards the - when the Iraqis were - we were told the
7 Iraqis were involved, or could have been involved?

8

9 Q. Yes.

10 A. Well, I guess we were just told that, in passing,
11 whoever was informing us, and my reaction was, when the
12 comment was made about the Americans, it didn't sort of
13 worry me at all.

14

15 THE COMMISSIONER: Q. Mr Gibson, I think, if your
16 evidence about the Americans is correct, then your evidence
17 about the date must be wrong, because my understanding
18 is - and people will correct me if I've got this wrong -
19 that prior to the occupation in March 2003 American firms
20 were prohibited from trading with Iraq, which would have to
21 place your time of knowledge as after that date?

22 A. Well, I can't give you a specific date,
23 Mr Commissioner.

24

25 MR CONDON: Q. Were these two bits of information
26 linked - that is, the Iraqi connection and the use by
27 American companies? Were they spoken of in the same
28 conversation, or in different conversations?

29 A. I gather it was different. I think it was just a
30 question asked and it was just an answer given to - I
31 suppose to make the directors feel comfortable that this
32 company was all right.

33

34 Q. I'll make myself clearer. You've told us two bits of
35 information: first, that you were told there was a
36 connection with the Iraqis?

37 A. Yes.

38

39 Q. And, secondly, in response to an inquiry, that the
40 Americans were using the company. Were these two bits of
41 information spoken of at the same meeting, or were they
42 spoken of in different meetings?

43 A. No, I believe the same meeting.

44

45 Q. Well, having been informed that, until the war,
46 American companies were forbidden from trading with Iraq,
47 does that refresh your recollection as to when this

1 conversation may have occurred?

2 A. No.

3

4 Q. Did it cause you concern when you were told of the
5 Iraqi connection?

6 A. Not really.

7

8 Q. Well, you knew that there were sanctions, can I
9 suggest, at least in force before March 2003, that limited
10 how trade could be done with the Iraqi government and with
11 Iraqi entities?

12 A. Mmm.

13

14 Q. Did you have that in the back of your mind when this
15 information was conveyed to you? I think you said you were
16 alarmed or had some concerns?

17 A. No, I had no concerns. At about the same time - I'm
18 not too familiar with the dates and all that, but I do know
19 that IGB had the Jordanian trucking company or Alia as
20 their preferred trucking company to do the inland trucking
21 for this contract.

22

23 THE COMMISSIONER: Q. You were told that by AWB
24 officers, were you?

25 A. Yes.

26

27 Q. Do you remember who or when?

28 A. Gee, Mr Commissioner - not offhand, no, sorry.

29

30 MR CONDON: Q. If we take March 2003 as a convenient
31 cutoff point --

32 A. Yes.

33

34 Q. -- that is, the date of the invasion --

35

36 THE COMMISSIONER: I think it's called occupation.

37

38 MR CONDON: I stand corrected and withdraw that.
39 Occupation.

40

41 Q. What else were you told about the inland trucking
42 issue before that point in time?

43 A. Very little, just that it was - basically - originally
44 it was just a Jordanian trucking company, and that's
45 basically about it.

46

47 Q. Who was your point of contact with management?

1 A. Well, on I we just have - our point of contact is the
2 secretary, Rick Fuller; the general manager of the pool is
3 Sarah Scales; Steve Sheridan; and Johnson - David Johnson.

4
5 Q. Were those four people you've nominated the people to
6 whom you would speak to find out what was going on and who
7 in turn would tell you about what was going on?

8 A. If I had need to, yes.

9

10 Q. We know that a delegation went to Iraq in August 2002
11 to deal with a claim about iron filings, and that one of
12 the persons who went with the delegation was Mr Lindberg.
13 What were you told by Mr Lindberg or anyone else about what
14 occurred during the course of that trip?

15 A. I knew that they went there, and all I can say is that
16 they reported back that it was successful, so that's the
17 only conclusion I have on that one.

18

19 Q. Were you told that a figure for compensation had been
20 agreed in the course of that trip?

21 A. No.

22

23 Q. And were you told anything about how the compensation
24 was to be paid?

25 A. No.

26

27 Q. I want to take you forward now to May of 2004 - that
28 is, approximately a year after the occupation. Can we have
29 exhibit 498 - AWB.0157.0442. We have a memorandum from
30 Mr Lindberg dated 6 May 2004. Can I ask you to read that
31 document, please.

32 A. Yes.

33

34 Q. Do you recall there being any discussion after May of
35 2004 concerning the contents of that memorandum?

36 A. Yes, that's the Volcker Report.

37

38 Q. Well, I want to take your attention to the heading
39 "Action already undertaken". You'll see there's a
40 reference to some inquiries being commenced --

41 A. Yes.

42

43 Q. -- a review of over 30,000 emails, many files and
44 interviewing AWB management?

45 A. Yes.

46

47 Q. Was there any discussion at which you were present

1 which dealt with those issues?
2 A. No. We knew about the emails, but not the content, or
3 anything like that. And also, as far as the Volcker Report
4 went, that the government wished us to comply fully with
5 them.
6
7 Q. What did you know about - speaking as at May of
8 2004 - the emails?
9 A. Just the number.
10
11 Q. Did you know about their contents?
12 A. No.
13
14 Q. Did anyone describe any of the emails to you?
15 A. No.
16
17 Q. Did anyone tell you where they had come from?
18 A. No.
19
20 Q. I want then to take you through to 28 July 2004. Can
21 we have exhibit 661, AWB.0381.0276. For ease of reference,
22 I'll give you a hard copy of that document. I can inform
23 my learned friend Mr Judd that this is the edited copy, to
24 remove any reference to legal advice at page 0284. Can I
25 ask you to look at that document, please, Mr Gibson.
26 A. Yes.
27
28 Q. I want to ask you in broad terms about this document
29 and then I'll take you to a specific page. Do you recall
30 receiving a presentation in July of 2004 involving this
31 document?
32 A. Yes.
33
34 Q. Was that presentation done through a projector or
35 slide show, so to speak, or was it done by distributing a
36 copy of this document?
37 A. It was PowerPoint.
38
39 Q. Who gave the presentation?
40 A. Mr Lindberg and Mr Cooper.
41
42 Q. Was it a board meeting of I or L, or a combination
43 thereof?
44 A. I believe it was a joint meeting.
45
46 Q. I want to take you, please, to the last page. You'll
47 see in the top right-hand corner there is a barcode

1 AWB. 0381. 0287.
2 A. Yes.
3
4 Q. Headed "Alia for Transportation and General Trade
5 Company" - do you have that document?
6 A. Yes.
7
8 Q. Do you recall that page being projected during a
9 presentation on 28 July 2004?
10 A. No, I haven't seen this page before, until this
11 hearing.
12
13 Q. Can I ask you, with respect, what makes you express
14 that view?
15 A. Well, there's items in there that would have caused us
16 to ask quite a few questions, and when you start asking a
17 lot of questions about something, they tend to stick in
18 your mind.
19
20 Q. What items on this page do you say were not disclosed
21 to you as at July 2004?
22 A. Can you give me that question again, please?
23
24 Q. Sorry, I withdraw the question. As at July 2004, were
25 you informed of any of the information that appears on this
26 page, 0287?
27 A. Dot point 1 would be the only one. That would be the
28 only one I would know anything about.
29
30 Q. To be precise, you were not told as at July 2004 that
31 the company was owned as to 51 per cent by the al-Khawam
32 family based in Iraq?
33 A. That's right.
34
35 Q. You weren't told of the apparent 49 per cent ownership
36 by the Iraqi Ministry of Transport?
37 A. That's right.
38
39 Q. And you weren't told of the existence of a joint
40 venture referred to in the second-last dot point?
41 A. That's right.
42
43 Q. I framed that question, or those questions, by
44 reference to July 2004. Were you subsequently told of any
45 of that information?
46 A. No.
47

1 Q. Evidence has been given that a possible reason for
2 this information not being conveyed to directors was that
3 it was too detailed. What do you have to say in relation
4 to that suggestion?

5 A. Oh, I think it's probably the detail directors would
6 like to see.

7
8 Q. You gave some evidence earlier this afternoon about a
9 discussion where a question was asked about Alia and
10 someone said that the Americans used it.

11 A. Yes.

12
13 Q. By reference to July 2004, the date of this
14 presentation, can you recall if that conversation took
15 place before it or after it, or on 28 July itself?

16 A. It's possible.

17
18 Q. I'm sorry, what is possible?

19 A. It's possible it was then at that joint board meeting.

20
21 Q. Do you have any recollection now of what Mr Lindberg
22 said on that occasion when he gave his presentation?

23
24 MR ALLEN: I object. The evidence is that the
25 presentation was given by Mr Cooper and Mr Lindberg.

26
27 THE COMMISSIONER: He's just asking about what Mr Lindberg
28 said.

29
30 MR CONDON: I'll get to Mr Cooper shortly.

31
32 THE WITNESS: I can answer that, because I couldn't
33 specifically go to either one of the people who presented
34 the paper and specifically say which one said - which
35 person said what.

36
37 MR CONDON: Q. Can you recall what was said on that
38 occasion by either Mr Lindberg or Mr Cooper?

39 A. No, not apart from just addressing the briefing notes.

40
41 Q. Is it your recollection that the presentation - I
42 interpose to say that the legal advice has been edited - is
43 it your recollection that the briefing basically followed
44 what is set out in the document we have?

45 A. The presentation - yes, I'd say the presentation was
46 set out in this manner.

47

1 Q. When did you become aware that the last page - that
2 is, 0287 - was not presented to the board on 28 July 2004?
3 A. Only in preparation for this Commission hearing.

4
5 Q. How many days ago was that?
6 A. Probably - it wasn't in our original pack, so it was
7 handed to us later, so it probably would have been Tuesday.

8
9 Q. Yesterday?
10 A. Yes. Or - sorry, Monday.

11
12 Q. When you say it wasn't handed to you in your original
13 pack, are you talking about a presentation pack that was
14 given to board members before a meeting?
15 A. No - well, it is a pack, but it's just got the
16 documentation of our minutes, et cetera, all included in
17 there.

18
19 Q. Would this document have been presented or provided in
20 some pack given to the directors?

21
22 THE COMMISSIONER: The witness is speaking of a bundle of
23 documents that were provided by lawyers, I think.

24
25 MR CONDON: Yes.

26
27 THE WITNESS: When I saw this, it was just like this.

28
29 MR CONDON: Q. Right. That was a couple of days ago,
30 was it?

31 A. Yes.

32
33 Q. I'm going to take you forward now to December 2004.
34 I want to ask you some questions about the company called
35 Tigris. What is your recollection of when you were
36 informed of Tigris?

37 A. The only thing I've ever been informed of with Tigris
38 is that AWB was doing a deal with Tigris to recover debt
39 and there would be commission paid to International.

40
41 Q. Can we have, please, exhibit 516, WST.0016.0130.

42
43 THE COMMISSIONER: Q. Did anyone explain to you why, if
44 AWB was recovering the debt, the commission should go to
45 the pool?

46 A. No, they didn't, Mr Commissioner.

47

1 MR CONDON: Q. These are Dr Fuller's notes of a joint
2 information session on 14 December 2004. Do you recall
3 being present on that occasion?
4 A. Yes.
5
6 Q. I want to take you to the bottom of that page against
7 item 4, "Project Rose/Project Tigris". Can I ask you to
8 read the notes which appear underneath that heading and
9 tell the monitor when you finish that page.
10 A. Yes.
11
12 Q. If we could turn over, please. Do you recall
13 Mr Simpson asking for a paper on Tigris?
14 A. I'm sorry, I don't recall him asking for a paper on
15 Tigris.
16
17 Q. There is a reference, attributed to no-one in
18 particular, to "facilitated USD8m can't distance corporate
19 morality", and the question "What have they got to hide?"
20 I'm not going to ask you anything about the line under it,
21 "Following good legal advice". I want to ask you first can
22 you recall anyone present saying anything about distancing
23 oneself or corporate morality or having things to hide?
24 A. No, I can't.
25
26 Q. Did it strike you at the time that this was a curious
27 transaction?
28 A. Personal feelings probably could have been a little
29 bit that way, but as an I director, I just thought it was
30 good office by AWB Limited in their handling of the wheat
31 contracts that we would get spinoff back to the pool and
32 therefore to the growers of Australia.
33
34 Q. It wasn't part of the normal business of AWB
35 Limited --
36 A. No.
37
38 Q. -- or AWBI, can I suggest --
39 A. No, you're right.
40
41 Q. I'll just finish the question - for it to be involved
42 in debt recovery?
43 A. That's right.
44
45 Q. Did that strike you at the time - that is, in
46 December 2004?
47 A. It was different.

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Q. Do you recall other directors, be it of I or L, expressing concern about it?

A. Not directly at a meeting, no. As that's more of an L issue, I would say the L directors would have talked that over a lot more.

Q. Do you recall why you were being told about this information?

A. Well, they would have had to tell us something, because the 500,000 was going to come back into the pool.

Q. What was your understanding of the status of the transaction as at 14 December 2004?

A. I didn't know how - I didn't know any of the mechanics of it whatsoever.

Q. Was the board being asked to approve something, or was it for information only?

A. Information only.

Q. We have some notes of the board meeting of Dr Fuller, and it is a board meeting of AWBI of 14 December. Can we have, please, WST.0016.0141, exhibit 518. You'll see, Mr Gibson, that you are listed as a director present?

A. That's correct.

Q. Does that accord with your recollection, being present on this occasion?

A. That's right.

Q. If we go over the page to 0142, we have a heading "Tigris" and underneath it the initials "AL", presumably for Mr Lindberg. Now, can I ask you to read what follows, down to the heading "Management Structure".

A. Yes.

Q. You'll see against Mr Lindberg's name there's some entries, apparently, "Assist 1992. Back to mid - influence/lobbying". Does that refresh your recollection as to what Mr Lindberg said by way of explanation?

A. No, it does not.

Q. Did anyone else apart from Mr Lindberg give any explanation on this particular occasion about the Tigris transaction?

A. No, I think Mr Lindberg was the only person.

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Q. Was it your understanding that Mr Lindberg said that Tigris was owed money by the Iraqi government and that, as a result of AWB's assistance in recovering that debt, AWB would be paid a commission?

A. AWBI would be paid.

Q. I'm sorry, with that qualification, was that the gist of Mr Lindberg's --

A. That's basically it, yes.

Q. Did he say how the money had been recovered from the Iraqi government?

A. No, not at all.

Q. I want to show you something Mr Cooper has said in his second supplementary statement, for your comment. Can we have, please, JMC.0002.0023. Mr Gibson, what I'm showing you is a declaration by Mr Cooper --

A. Yes.

Q. -- as to his recollection of what occurred at a meeting on 14 December. Can I ask you to read paragraph 56. When you get to the bottom of the page, please ask the monitor to go to the next page.

A. Yes, I agree with Mr Cooper: we didn't know any of the mechanics at all with regard to that.

Q. I just want to understand your answer a little bit more, if I can. Mr Cooper asserts to having some recollection of a question being asked by one of the directors of Mr Lindberg to the effect that a debt had been collected through the company's wheat contracts. What I want to know is do you have a recollection of that question being asked, or not?

A. No, I don't, I don't have a recollection of the question being asked.

Q. Do you have any recollection of Mr Lindberg saying on that occasion anything to suggest that the money had been collected through the company's wheat contracts?

A. No.

Q. Would you have been concerned, had you been told that?

A. Yes.

Q. Why?

1 A. Well, I don't think you should be using wheat
2 contracts to be recovering debt for some other person, or
3 whatever.

4
5 Q. Can I just ask you to think about that answer
6 specifically in the context of sanctions as they existed up
7 to March of 2003. Would that have been of any concern to
8 you?

9 A. If it was done before 2003?

10
11 Q. Yes.

12 A. I'm not too sure about that.

13
14 Q. Can I go back to Dr Fuller's notes, WST.0016.0142-R.
15 We have against your name, or your initials, "WG", about
16 halfway down the page, this statement. I think it's
17 "wants", or something "explain in terms of our accounts".
18

19 THE COMMISSIONER: "How explain in terms of our accounts".
20

21 THE WITNESS: That's right. I asked how it would be
22 entered into the account book, as all our entries in our
23 accounts are for wheat pools and sales, and this would be a
24 different item and I was wondering how it would be
25 accounted for.

26
27 THE COMMISSIONER: Q. And which pool it would go into?

28 A. Yes.

29
30 MR CONDON: Q. Why did you think it was a different
31 item - it was a commission, or --

32 A. It was a commission, yes.

33
34 Q. Who responded to that inquiry, if anyone?

35 A. No-one responded. It was just a question Mr Fuller
36 sort of takes down and I assumed that he would act upon it.
37

38 Q. Did you ever get an answer to your inquiry?

39 A. No, I didn't.

40
41 Q. Underneath your initials are those of Mr Donges. "How
42 is it accounted for. WEA - should we tell them". Again,
43 next to that entry are the words "To do". Do you recall
44 anything being said by Mr Donges at this meeting about the
45 Wheat Export Authority?

46 A. Yes, I do recall Mr Donges asking that question, along
47 those sorts of lines, and I would have thought that would

1 have been something we probably would have had to tell the
2 WEA.

3
4 Q. Did Mr Donges explain why he was concerned about
5 accounting for it to the Wheat Export Authority?

6 A. Not to my recollection. I think both the questions
7 asked were one-liners type things that we would assume that
8 the company secretary would act upon.

9
10 Q. Why did you think that it was something that you
11 probably had to tell the Wheat Export Authority?

12 A. Well, at the time - well, at all times they had been
13 inquiring into all activities within the pools, and
14 therefore it was their right to know all those activities.

15
16 Q. It appears - I can find no reference, at least - that
17 there was no specific written notification to the Wheat
18 Export Authority of this payment. Do you have an
19 explanation for that?

20 A. No, I do not.

21
22 Q. I want to take you then to the next meeting, on
23 22 February 2005. This is a joint meeting. Again, we have
24 Dr Fuller's notes. It's WST.0016.0191. I'll supply a hard
25 copy of those notes. It's exhibit 511. I'm going to ask
26 you, Mr Gibson, some questions about some of the entries on
27 this document, but feel free by all means to look at other
28 entries before answering my questions. You are recorded as
29 being present against "(until)" and I think it might be a
30 question mark.

31 A. I was there. The "until" bit, well until what I don't
32 know.

33
34 Q. You see at the bottom of the page that there's an
35 entry "AL Address on Project Rose"?

36 A. Yes.

37
38 Q. And on the following pages we have what purportedly
39 records what Mr Lindberg said on that occasion. Were you
40 present there at the meeting for Mr Lindberg's address in
41 its entirety?

42 A. I believe so.

43
44 Q. And were you present for the question and answer
45 session that occurred after Mr Lindberg finished his
46 presentation?

47 A. Are you referring to the issues at the bottom, are

1 you?

2

3 Q. Well, later there appear to be some questions and
4 answers after Mr Lindberg's presentation. I want to know
5 if you were present when those questions and answers were
6 passing.

7 A. If you're referring to the issues on the bottom of the
8 page, I believe I was.

9

10 Q. Now, can we go to 0192. There's something called
11 "Issues", and underneath it "Alia". Was there any
12 discussion about Alia on this occasion?

13 A. I think the discussion with Alia was in the context
14 with the trucking fees, where the trucking fees sort of
15 escalated quite a bit over a period of time, and the reason
16 given for the escalation of the trucking fees was due to
17 the extra risk and trucks getting destroyed, et cetera, and
18 the longer distances they had to travel.

19

20 Q. Was there any discussion about the increase in
21 trucking fees before March 2003 on this occasion?

22 A. No, I believe not.

23

24 Q. Was there any discussion on this occasion, or any
25 other occasion you can recall, about a 10 per cent service
26 fee, or any service fee, imposed by the Iraqis?

27 A. No, I haven't heard of the service fee until
28 12 January 06.

29

30 Q. Then we have the entry "Compliance UN Conventions
31 circumvented". Do you have any recollection as to what
32 that might be referring to?

33 A. No, I can't recollect that one.

34

35 Q. Was there any discussion on this occasion about UN
36 conventions being circumvented?

37 A. Not that I can remember.

38

39 Q. Then at the bottom of the page we have a note "AL
40 finishes speaking", and we have some questions and answers
41 on the following pages. You see about three-quarters of
42 the way down the page there's reference to "AFP + Royal
43 Commission"?

44 A. Yes.

45

46 Q. Do you recall there being reference to those
47 possibilities - that is, an AFP investigation or the

1 possibility of a royal commission?

2 A. Yes, I can recollect there was sort of some talk
3 around that, a special commission.

4
5 Q. That would have been a matter of some concern to you
6 in February 2005, I take it?

7 A. Well, not to me personally, because I was always led
8 to believe that our legal position was always sound.

9
10 Q. I don't want to traverse into legal issues, for the
11 reasons I have said earlier. There's an entry underneath
12 it "Will focus on - may have found a way around". Does
13 that mean anything to you?

14 A. No, nothing whatsoever.

15
16 Q. Under Mr Thame's name at the bottom of the page
17 there's an entry "Wisdom of hindsight. Wished hadn't done
18 that"?

19 A. Yes.

20
21 Q. Do you recall what that might be referring to?

22 A. No, I don't.

23
24 Q. If you'd please turn over to 0194, there's a note that
25 Mr Cooper will notify D & O Insurance. Down the page,
26 about halfway down, we have against Mr Lindberg's initials
27 "Bl emishes", arrow, "emails", and underneath it "Former
28 employees". Do you recall there being a discussion about
29 emails on this occasion?

30 A. No.

31
32 Q. Do you recall there being a discussion about a
33 collation of documents on the part of AWB?

34 A. Only in regards to the Volcker Inquiry, the 30,000
35 emails and documentation that was gathered for that.

36
37 Q. You said to me earlier today, in answer to some
38 questions about a May 2004 document, that you were not told
39 of the nature of the documents, only their number. Had you
40 been told more about the contents of the documents by
41 February 2005?

42 A. No, we had not.

43
44 Q. Were you ever told anything about the contents of the
45 documents after February 2005?

46 A. None whatsoever.

47

1 Q. There is an email, exhibit 9, that speaks of some
2 possibilities in 1999 of how the money could be paid, and
3 it is said, tongue in cheek, no doubt, that a large
4 suitcase could be used. Does that email ring a bell as to
5 what was identified to you at any stage?

6 A. No, that doesn't ring a bell at all, but '99 was
7 before my time and the suitcase thing is something that's
8 been flying around for ages.

9

10 Q. Well, it has in many contexts, but I want to ask you
11 about this particular context. Do you recall being brought
12 to your attention an email that spoke of bringing a large
13 suitcase?

14 A. No, none whatsoever.

15

16 Q. Down the page, on 0194, there is against Mr Cooper's
17 initials "Notify ASX". Can you recall what apparently
18 provoked Mr Cooper to mention a notification to the ASX,
19 either by way of a statement or a question?

20 A. No, I can't.

21

22 Q. Well, Mr Gibson, this is a rather singular meeting.
23 We've had references to a royal commission, AFP, D & O
24 Insurance and the ASX. It would appear to be an eventful
25 meeting.

26 A. In question time after the meeting a lot of things fly
27 around. There's a lot of different thoughts. A lot of it
28 doesn't really mean anything. It's just discussion between
29 the board members and questions to the CEO.

30

31 Q. And is it your evidence that at no stage were you told
32 any more information about the ownership of Alia?

33 A. No.

34

35 Q. And is it your evidence that at no stage were you told
36 anything about how the trucking fees were calculated?

37 A. That's correct.

38

39 Q. And is it your evidence that at no stage were you ever
40 told anything about a 10 per cent service fee?

41 A. That's correct - until 12 January 06.

42

43 Q. And is it your evidence that you were never told
44 anything that suggested that money being paid to Alia might
45 be finding its way to an Iraqi entity?

46 A. No. I've always been quite comfortable with all
47 those. There's always been those allegations there with

1 the Volcker and the American wheat association, and all
2 that type of thing. But I don't take much notice of what
3 the American wheat association says, but they've always
4 been trying to get at us all the time. So it's just as
5 common for them to try to pick a hole somewhere in our
6 system.

7
8 Q. You became a director of AWBI in March of 2000. Do
9 you recall at about the time of your appointment there
10 being discussion about a complaint initiated by the
11 Canadian Government or a Canadian wheat entity?

12 A. No. I'd have to say no at that time, because earlier
13 on, my first term on the board, the meetings were very
14 quick, very little discussed. It was just settling down
15 after the transition. So, no, I can't recollect anything
16 like that.

17
18 Q. Do you recall ever being told, outside any legal
19 advice you might have received, anything about a complaint
20 from the Canadian Government or a Canadian wheat entity in
21 early 2000?

22 A. Not in early 2000, no.

23
24 Q. Subsequently?

25 A. Subsequently, yes.

26
27 Q. Again, I don't want to trespass upon anything which
28 might involve you receiving legal advice, but what were you
29 told about a complaint sourced from Canada in relation to
30 Iraq?

31 A. I'd rather not answer that, because I'd only be
32 speculating what I've heard. I'd like to be exact in
33 commenting upon something like that.

34
35 Q. I don't want you to speculate, Mr Gibson, but I want
36 your recollection, if you have a recollection, about this
37 issue. Do you have a recollection about this issue, or
38 not?

39 A. No.

40
41 Q. We'll come to January 2006 shortly, but I want to just
42 go to the next board meeting in sequence, which is 10 March
43 2005. Can we have, please, AWB.0348.0073. These appear to
44 be notes of a joint information session, and you'll see
45 against AWBI your initials appear.

46 A. Yes. These are Mr Fuller's notes?

47

1 Q. These are Dr Fuller's notes, yes, apparently. About
2 halfway down the page there is an entry "Jordanian Co -
3 didn't know at the time". I think the next sentence is
4 "Advised against using Alia. But no-one contacted AWB", it
5 appears. Do you recall there being any discussion at this
6 meeting about Alia or a Jordanian trucking company?
7 A. Yes, I do, and we still felt, or I still felt quite
8 comfortable with what was happening then.
9
10 Q. Well, who was speaking about the Jordanian company at
11 this meeting?
12 A. I'm not too sure. I would say - no --
13
14 Q. I don't want you to speculate; I just want to know
15 what your recollection is.
16 A. No, I'm not sure.
17
18 Q. What is your recollection of what you were told about
19 the Jordanian company at this meeting?
20 A. No, I'm not sure at all.
21
22 Q. Well, we had before you about half an hour ago the
23 slide packet --
24 A. Yes.
25
26 Q. -- and the page which you said you have not seen.
27 Were you told in March 2005 anything new about the
28 Jordanian company?
29 A. No, nothing new at all.
30
31 Q. Then we have, a few lines down, the entry "Potential
32 breach of UN Res'n 661". Do you recall anyone talking
33 about a potential breach of US Resolution 661?
34 A. No, I don't.
35
36 Q. That would have caused you at least some concern?
37 A. Most definitely.
38
39 Q. Is it your evidence you simply can't recall any
40 discussion about that issue at this meeting?
41 A. No, I can't recall any potential breach of 661 being
42 talked about.
43
44 Q. Does that follow also for the entry "Unknowingly or
45 unwittingly breached"?
46 A. I guess that's something out of the Volcker Inquiry.
47

1 Q. If you could go, please, to the following page, 0074.
2 There is an entry about a third of the way down the page,
3 against Mr Lindberg's initials, "Required to use by IGB.
4 We formed the view."

5 A. Yes.

6

7 Q. Do you recall Mr Lindberg talking about such a
8 requirement on the part of IGB?

9 A. The only thing I can recall is that IGB required this
10 Jordanian trucking company to be the preferred inland
11 supplier.

12

13 Q. Is that the extent of the information you were told on
14 this occasion?

15 A. Yes.

16

17 Q. Mr Martin, "XM", has said "Used before?", "AL", "Yes".
18 Do you recall anything about that issue?

19 A. It's another point where the directors are talking
20 sort of between themselves in question time, and things
21 like that, and - I have no real recollection of the
22 directors going down that line.

23

24 Q. Against Mr McClelland's initials we have "Tigris?",
25 then "Not an issue". Do you recall anything about that
26 issue or the role of Tigris being discussed?

27 A. No.

28

29 Q. Mr Moffet, at paragraph 38 of his statutory
30 declaration, says that it was not until May of 2004, at a
31 board meeting, that Mr Lindberg informed the board that the
32 specific freight cost during the Oil-for-Food Program had
33 grown from approximately US\$12 to around US\$47.75 per
34 tonne. I know you've given some evidence of --

35 A. I would agree with that.

36

37 Q. Does that go back to the conversation you have
38 described earlier and what you were told about the reasons
39 for that increase?

40 A. Yes.

41

42 Q. You have said several times something about 12 January
43 2006.

44 A. Yes.

45

46 Q. I want to take you to that date, and I want to confine
47 my questions to what Mr Lindberg or any other officer of

1 AWB said on that particular occasion; that is, I want to
2 exclude anything said by lawyers and, in particular,
3 external lawyers, on these questions. What was said to you
4 on 12 January 2006 about trucking in Iraq?

5 A. Mr Lindberg introduced the legal team and then it
6 processed from there.

7
8 Q. Did Mr Lindberg say anything else on that occasion?

9 A. Not to our meeting, no.

10
11 THE COMMISSIONER: Q. Was this a joint meeting?

12 A. This was joint, yes, Mr Commissioner.

13
14 MR CONDON: Q. When you say "Not to our meeting", you
15 exclude the possibility that he may have said something to
16 the L meeting; is that right?

17 A. Yes, I believe that some of the comments there do, I
18 would expect, relate to an L meeting.

19
20 Q. Were you told anything about what Mr Lindberg had said
21 at the L meeting that occurred on that day, or the day
22 after?

23 A. No.

24
25 Q. I want to show you some transcript of Mr Moffet's
26 evidence to this inquiry for your comment. Can we have,
27 please, page 4187. Could we go to line 13, please.
28 Mr Gibson, you'll see on the left-hand side of the page
29 there's a numeral 13. Can I ask you to read that page and
30 over the next page up until at least line 5, but please
31 feel free to read on if you want to. Just tell the monitor
32 when you would like to have it scrolled down.

33 A. Yes.

34
35 Q. Mr Gibson, what is your comment about Mr Moffet's
36 evidence, is it correct or incorrect or something in
37 between?

38 A. My recollection is a little different from that.
39 That's what I believe - it must have been what Mr Moffet is
40 referring to is an L meeting afterwards.

41
42 Q. Well, when you say your recollection is a little bit
43 different, I just want to be clear on what you say. Do you
44 recall anything to the effect of what Mr Moffet there sets
45 out being said in your presence?

46 A. No.

47

1 Q. One thing is clear, can I suggest, Mr Gibson, that
2 over the course of 2004, and into 2005, you had a number of
3 occasions where the issue of Iraq and Project Rose was
4 discussed at board level, either in the course of
5 I meetings or joint sessions - you have to say "yes" or
6 "no" for the transcript.

7 A. I beg your pardon?
8

9 Q. You have to say "yes" or "no" for the transcript?

10 A. You'd better give me the question again, please.
11

12 Q. One thing is clear, can I suggest, Mr Gibson, that
13 over the course of 2004, and into 2005, there were a number
14 of meetings, either at the I level or through joint
15 sessions, where Iraq and Project Rose were discussed?

16 A. That's correct.
17

18 Q. Am I right in thinking that the board was fairly
19 inquisitive about those issues?

20 A. We always asked questions, but at the end of the day
21 our legal advice was always on the positive.
22

23 THE COMMISSIONER: We can't have that.
24

25 MR CONDON: I almost got through to the end without
26 trespassing on that issue.
27

28 THE WITNESS: I'm sorry.
29

30 MR CONDON: Q. I've shown you the last page of
31 exhibit 661, which is the pack and the page about Alia and
32 its ownership. I want to ask you this: do you have any
33 explanation as to why, in the circumstances I've described,
34 that information was not conveyed to you as a board member?

35 A. No, I'd only be speculating by answering that
36 question.
37

38 MR CONDON: Thank you. That completes my examination of
39 Mr Gibson, Mr Commissioner.
40

41 THE COMMISSIONER: Mr Judd?
42

43 MR JUDD: Just one matter that may need clarification.
44
45
46
47

1 <EXAMINATION BY MR JUDD:

2

3 MR JUDD: Q. Mr Gibson, you have confirmed on a number
4 of occasions to my learned friend in his questions that it
5 wasn't until the preparation for this hearing that you
6 became acquainted with the information that is contained in
7 the final page of that presentation you looked at, but for
8 the first dot point; do you recall that?

9 A. The first dot point about the Jordanian trucking
10 company in particular itself I have heard before.

11

12 Q. Apart from that, what is contained in that sheet was
13 news to you until recently?

14 A. Most definitely.

15

16 Q. Earlier in your evidence you were asked some questions
17 about you becoming acquainted with the Iraq contracts and
18 inland transport, and then you were asked about Alia, and
19 you said, although without being able to give any time
20 frame, that there was a point at which you were told of
21 Alia having some connection with Iraq. Could you there be
22 referring to the occasion when you were informed by
23 somebody that the Iraq Grain Board had identified Alia as
24 its preferred supplier?

25 A. That's where I would have gleaned that from, yes.

26

27 MR JUDD: Thank you, sir.

28

29 THE COMMISSIONER: Does anybody else wish to ask
30 questions?

31

32 MR CROUCHER: Yes.

33

34 <EXAMINATION BY MR CROUCHER:

35

36 MR CROUCHER: Q. Mr Gibson, could I take you back to the
37 meeting of 14 December 2004, the AWBI meeting, and you've
38 been shown Dr Fuller's notes where yourself and Mr Donges
39 are recorded as making certain comments, which you
40 described as one-liners.

41 A. Yes.

42

43 Q. You understand that Dr Fuller has given evidence and
44 that he, for reasons that he can't explain, says that there
45 were no action items ever recorded for those comments? Do
46 you understand that?

47 A. That's correct.

1
2 Q. You would have expected action items to be recorded?
3 A. I personally wouldn't have done it. I would have
4 expected somebody to come back to me if there was a
5 problem.
6
7 Q. Secondly, you would have expected it to be recorded in
8 the minutes?
9 A. Possibly so.
10
11 Q. It wasn't recorded in the minutes?
12 A. It was not recorded in the minutes.
13
14 Q. Thirdly, the way in which it would usually be dealt
15 with, the chain of command, as it were, would be that
16 Dr Fuller would speak to the relevant managers?
17 A. Yes.
18
19 Q. They being Mr Johnson, perhaps Mr Ingleby, perhaps
20 Ms Scales, and, depending on what they said about it, it
21 might then be passed on, insofar as the WEA was concerned,
22 to Mr Sheridan; is that right?
23 A. Yes.
24
25 Q. Both Mr Sheridan and Ms Scales, it seems, attended
26 that meeting, according to Dr Fuller's notes. Can you take
27 it from me that in their notes there's no mention of these
28 comments being made by either you or Mr Donges.
29 A. (Witness nods).
30
31 Q. I wonder if you could actually answer. You're just
32 nodding your head, Mr Gibson.
33 A. I do agree with you. Mr Sheridan, Steve, was at that
34 meeting and --
35
36 Q. Do you remember that he spoke on cracked wheat at that
37 meeting?
38 A. Yes, he did.
39
40 Q. He was not asked directly about these issues, was he?
41 A. No.
42
43 Q. Can I read to you pages 4193 and 4194 of another
44 director's evidence about this, Mr Gibson.
45
46 THE COMMISSIONER: Can we put it up on the screen?
47

1 MR CROUCHER: Yes, if we could, please.

2

3 Q. Mr Moffet is there being asked about the same issue.
4 If you can start from line 36 on page 4193, you'll see a
5 sentence that says "So I believe", at line 36.

6 A. Yes.

7

8 Q. You might want to read the preceding part to get the
9 context, but can I just let you do that for a moment and
10 then read the rest of it out to you.

11 A. Yes.

12

13 Q. Mr Moffet goes on and says:

14

15 So I believe that Mr Gibson is asking where
16 do we explain the inclusion of half a
17 million dollars into the pool accounts
18 which go, obviously, to wheat growers who
19 have delivered to the pools, and Mr Donges'
20 question is in a similar vein - should we
21 tell WEA that we collected half a million
22 dollars for the pool, that was money earned
23 through the good offices of the parent
24 board.

25

26 Then the question is:

27

28 Mr Fuller has written "To do" alongside
29 each of those inquiries. Do you recall any
30 conversation as to what the follow-up would
31 be, those inquiries having been made.

32

33 If we go to the next page, his answer is:

34

35 I don't believe there was any further
36 inquiry about it.

37

38 Is that consistent with your recollection?

39 A. Yes.

40

41 Q. He goes on and says:

42

43 We have assumed that Richard --

44

45 that would be Richard Fuller --

46 A. Yes.

47

1 Q.

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-- has in actual fact done these things,
that the chief financial officer would
account for it in the accounts of the
pool --

Who was the chief financial officer?

A. Paul Ingleby.

Q.

-- and that it would either become an
agenda item for our next joint consultative
meeting with the Wheat Export Authority or
it wouldn't. So I have allowed that to
fall within the province of the chairman of
AWBI to make the decision as to whether it
is raised with the Wheat Export Authority
or not, and I have left it to the chief
financial officer to include it in the
accounts of the pool in the manner he feels
fit to reveal the activities of the pool.

Does that accord with your understanding of how things
might have gone as well?

A. Yes, I would have done. I would have thought that the
Wheat Export Authority would have passed it on to
Mr Sheridan at the end of the day, because he was the
person that deals with the WEA.

Q. All right. At the next AWBI board meeting was this
issue raised?

A. No.

Q. Did you attend any of the subsequent joint meetings
between the WEA board and the AWBI board?

A. Yes.

Q. Was the issue raised then?

A. No.

MR CROUCHER: Thank you, sir.

THE COMMISSIONER: Yes, Mr Allen.

1 <EXAMINATION BY MR ALLEN:

2

3 MR ALLEN: Q. Mr Gibson, just briefly, you were taken to
4 various entries in Mr Fuller's notes where various people
5 at various meetings are recorded as having made
6 observations or asked questions; do you remember that?

7 A. (Witness nods).

8

9 Q. On numerous occasions you said you could not recall
10 this or that - do you remember giving that evidence?

11 A. That's correct.

12

13 Q. In relation to two meetings in particular, or at least
14 two that I made a note of, part of your explanation as to
15 why you had no recollection of this being said or that
16 question being asked was that in question time, you said, a
17 lot of things fly around, later in relation to a different
18 meeting you said directors talk between themselves at
19 question time, and things like that; do you remember that?

20 A. Yes, that is correct.

21

22 Q. What you meant by that is at any meeting it's quite
23 possible that exchanges take place between directors and
24 management, or director and director, between people at the
25 meeting, that you might, for one reason or another, just
26 not hear?

27 A. That is very correct.

28

29 Q. Particularly if directors are asking questions?

30 A. Correct.

31

32 Q. Directors might be asking questions, some might be
33 listening to the question and answer; others might be
34 talking between themselves about some matter of concern to
35 them, is that right?

36 A. That's correct.

37

38 THE COMMISSIONER: During a board meeting?

39

40 MR ALLEN: Yes, sir.

41

42 Q. Is that your evidence, that during the board meeting -
43 do you want me to take you through - I'll stop. You were
44 taken to various entries in Mr Fuller's notes about these
45 board meetings, weren't you?

46 A. Yes.

47

1 Q. Just to give you some examples, you were taken to a
2 note of someone making a comment about US conventions being
3 circumvented, you said you had no recollection of that; do
4 you remember that?
5 A. Yes.
6
7 Q. You were taken to a note at another meeting about talk
8 about Resolution 661 of the United Nations - you had no
9 recollection of that being discussed?
10 A. No.
11
12 Q. Do you remember that?
13 A. Yes.
14
15 Q. You remember giving that evidence. It was in the
16 context of those things that you gave the explanation, at
17 least twice, that things were discussed as talk at meetings
18 between directors, and at question time you said things fly
19 around, by way of explanation as to why you mightn't have
20 heard things being said, didn't you?
21 A. That's possible, that's for sure.
22
23 Q. Mr Cooper has given evidence that at one meeting a
24 director asked a question about how the Tigris debt was
25 collected; you know about that evidence?
26 A. Yes.
27
28 Q. The best you can say about whether that question was
29 asked and any response was given is that you didn't hear
30 it, isn't it?
31 A. That's right. I didn't hear it or, if I did hear it,
32 it doesn't --
33
34 Q. You can't recall it?
35 A. I can't recall it.
36
37 MR ALLEN: Thank you.
38
39 THE COMMISSIONER: Any re-examination, Mr Judd?
40
41 MR JUDD: No, sir.
42
43 MR CONDON: No, thank you, Commissioner.
44
45 THE COMMISSIONER: Thank you, Mr Gibson. You're excused,
46 thank you.
47

1 THE WITNESS: Thank you, Mr Commissioner.

2

3 <THE WITNESS WITHDREW

4

5 MR CONDON: Mr Commissioner, that exhausts the witnesses
6 we have available today.

7

8 THE COMMISSIONER: It finishes them; I don't know about
9 exhausts them. Very well. I will adjourn until 10am.
10 I'll give reasons tomorrow morning in relation to the
11 application that I review my decision of 14 March.

12

13 AT 3.35PM THE HEARING WAS ADJOURNED TO
14 THURSDAY, 30 MARCH 2006 AT 10AM

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#	5616:7, 5616:29, 5641:25, 5643:40, 5644:42 10% [1] - 5565:3 10.10am [1] - 5560:35 10.20am [1] - 5564:12 102 [1] - 5585:33 109 [1] - 5571:20 10am [2] - 5655:9, 5655:14 10th [1] - 5586:13 11 [3] - 5587:35, 5588:4, 5589:27 11.55am [1] - 5593:28 11th [1] - 5588:3 12 [9] - 5571:3, 5588:43, 5594:21, 5618:37, 5627:15, 5641:28, 5643:41, 5646:42, 5647:4 12th [1] - 5588:13 13 [8] - 5567:8, 5567:13, 5573:16, 5573:28, 5618:40, 5618:43, 5647:27, 5647:29 13th [1] - 5588:16 14 [15] - 5566:15, 5566:21, 5566:26, 5604:44, 5604:45, 5606:44, 5609:17, 5621:7, 5621:14, 5636:2, 5637:14, 5637:23, 5638:23, 5649:37, 5655:11 14/11/2000 [1] - 5566:43 142 [2] - 5573:41, 5576:17 15 [1] - 5583:35 15th [1] - 5588:21 16 [2] - 5573:2, 5603:15 160 [3] - 5571:19, 5571:20, 5571:44 167 [1] - 5571:2 169 [1] - 5571:9 19 [1] - 5561:43 1992 [2] - 5607:47, 5637:39 1999 [14] - 5567:22, 5581:26, 5582:4, 5582:18, 5583:42, 5585:33, 5585:34, 5586:2, 5586:27, 5586:30, 5587:35, 5589:39, 5590:17,	5643:2 1c [4] - 5587:26, 5587:29, 5587:40	2	5601:17, 5601:22, 5602:39, 5602:41, 5603:10, 5603:38, 5604:1, 5604:44, 5604:45, 5604:47, 5606:44, 5607:14, 5621:7, 5628:25, 5631:27, 5631:30, 5631:35, 5632:8, 5632:20, 5632:30, 5633:9, 5633:21, 5633:24, 5633:30, 5633:44, 5634:13, 5635:2, 5635:33, 5636:2, 5636:46, 5637:14, 5642:38, 5646:30, 5648:2, 5648:13, 5649:37 2005 [12] - 5611:23, 5612:2, 5613:16, 5616:7, 5640:23, 5642:6, 5642:41, 5642:45, 5644:43, 5645:27, 5648:2, 5648:13 2006 [7] - 5560:35, 5591:12, 5618:37, 5644:41, 5646:43, 5647:4, 5655:14 22 [4] - 5611:23, 5612:2, 5627:12, 5640:23 225,000 [2] - 5584:19, 5588:45 25 [2] - 5571:47, 5585:33 28 [10] - 5601:17, 5601:22, 5601:40, 5602:22, 5602:33, 5602:37, 5632:20, 5633:9, 5634:15, 5635:2 284c [1] - 5580:32 29 [4] - 5560:35, 5585:34, 5586:2, 5586:30 2nd [1] - 5565:3	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29
\$	\$14 [1] - 5608:47 \$500,000 [4] - 5608:35, 5609:7, 5609:35, 5622:6	5643:2 2.15 [1] - 5624:35 2.15pm [1] - 5625:5 2.30 [1] - 5575:32 2.30pm [1] - 5566:25 2.45 [1] - 5607:43 2/11/2000 [1] - 5566:2 20 [1] - 5569:3 20% [1] - 5569:14 2000 [15] - 5565:19, 5565:32, 5566:15, 5566:21, 5566:26, 5570:35, 5570:46, 5601:3, 5625:17, 5626:17, 5627:18, 5627:32, 5644:8, 5644:21, 5644:22 2000...that [1] - 5565:3 2001 [10] - 5565:12, 5568:14, 5571:3, 5571:10, 5571:11, 5593:40, 5593:43, 5594:17, 5595:15, 5600:23 2002 [8] - 5572:47, 5573:2, 5596:7, 5596:10, 5611:17, 5613:17, 5613:18, 5631:10 2003 [27] - 5567:8, 5567:13, 5567:16, 5568:39, 5568:41, 5572:27, 5572:32, 5573:2, 5573:6, 5573:11, 5573:16, 5573:28, 5595:5, 5595:13, 5596:25, 5599:37, 5607:9, 5628:23, 5628:24, 5628:34, 5628:36, 5629:19, 5630:9, 5630:30, 5639:7, 5639:9, 5641:21 2004 [41] - 5596:31, 5596:46, 5597:18, 5598:22, 5600:6,	5601:17, 5601:22, 5602:39, 5602:41, 5603:10, 5603:38, 5604:1, 5604:44, 5604:45, 5604:47, 5606:44, 5607:14, 5621:7, 5628:25, 5631:27, 5631:30, 5631:35, 5632:8, 5632:20, 5632:30, 5633:9, 5633:21, 5633:24, 5633:30, 5633:44, 5634:13, 5635:2, 5635:33, 5636:2, 5636:46, 5637:14, 5642:38, 5646:30, 5648:2, 5648:13, 5649:37 2005 [12] - 5611:23, 5612:2, 5613:16, 5616:7, 5640:23, 5642:6, 5642:41, 5642:45, 5644:43, 5645:27, 5648:2, 5648:13 2006 [7] - 5560:35, 5591:12, 5618:37, 5644:41, 5646:43, 5647:4, 5655:14 22 [4] - 5611:23, 5612:2, 5627:12, 5640:23 225,000 [2] - 5584:19, 5588:45 25 [2] - 5571:47, 5585:33 28 [10] - 5601:17, 5601:22, 5601:40, 5602:22, 5602:33, 5602:37, 5632:20, 5633:9, 5634:15, 5635:2 284c [1] - 5580:32 29 [4] - 5560:35, 5585:34, 5586:2, 5586:30 2nd [1] - 5565:3	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29	
'	'01 [2] - 5565:43 '03 [1] - 5626:26 '03-'04 [1] - 5628:21 '04 [1] - 5628:21 '99 [1] - 5643:6	2	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29		
0	0020 [1] - 5561:43 0074 [2] - 5616:40, 5646:1 0100 [1] - 5564:47 0107 [1] - 5564:31 0142 [1] - 5637:32 0157.0558 [1] - 5621:14 0192 [2] - 5611:39, 5641:10 0193 [3] - 5613:21, 5613:23, 5614:43 0194 [3] - 5615:14, 5642:24, 5643:16 0284 [1] - 5632:24 0287 [4] - 5601:44, 5602:22, 5633:26, 5635:2 0343 [1] - 5585:42 0558 [1] - 5611:8 06 [2] - 5641:28, 5643:41	5643:2 2.15 [1] - 5624:35 2.15pm [1] - 5625:5 2.30 [1] - 5575:32 2.30pm [1] - 5566:25 2.45 [1] - 5607:43 2/11/2000 [1] - 5566:2 20 [1] - 5569:3 20% [1] - 5569:14 2000 [15] - 5565:19, 5565:32, 5566:15, 5566:21, 5566:26, 5570:35, 5570:46, 5601:3, 5625:17, 5626:17, 5627:18, 5627:32, 5644:8, 5644:21, 5644:22 2000...that [1] - 5565:3 2001 [10] - 5565:12, 5568:14, 5571:3, 5571:10, 5571:11, 5593:40, 5593:43, 5594:17, 5595:15, 5600:23 2002 [8] - 5572:47, 5573:2, 5596:7, 5596:10, 5611:17, 5613:17, 5613:18, 5631:10 2003 [27] - 5567:8, 5567:13, 5567:16, 5568:39, 5568:41, 5572:27, 5572:32, 5573:2, 5573:6, 5573:11, 5573:16, 5573:28, 5595:5, 5595:13, 5596:25, 5599:37, 5607:9, 5628:23, 5628:24, 5628:34, 5628:36, 5629:19, 5630:9, 5630:30, 5639:7, 5639:9, 5641:21 2004 [41] - 5596:31, 5596:46, 5597:18, 5598:22, 5600:6,	3	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29	
1	1 [2] - 5607:20, 5633:27 1.08pm [1] - 5569:7 10 [8] - 5590:32, 5591:12, 5612:40,	5643:2 2.15 [1] - 5624:35 2.15pm [1] - 5625:5 2.30 [1] - 5575:32 2.30pm [1] - 5566:25 2.45 [1] - 5607:43 2/11/2000 [1] - 5566:2 20 [1] - 5569:3 20% [1] - 5569:14 2000 [15] - 5565:19, 5565:32, 5566:15, 5566:21, 5566:26, 5570:35, 5570:46, 5601:3, 5625:17, 5626:17, 5627:18, 5627:32, 5644:8, 5644:21, 5644:22 2000...that [1] - 5565:3 2001 [10] - 5565:12, 5568:14, 5571:3, 5571:10, 5571:11, 5593:40, 5593:43, 5594:17, 5595:15, 5600:23 2002 [8] - 5572:47, 5573:2, 5596:7, 5596:10, 5611:17, 5613:17, 5613:18, 5631:10 2003 [27] - 5567:8, 5567:13, 5567:16, 5568:39, 5568:41, 5572:27, 5572:32, 5573:2, 5573:6, 5573:11, 5573:16, 5573:28, 5595:5, 5595:13, 5596:25, 5599:37, 5607:9, 5628:23, 5628:24, 5628:34, 5628:36, 5629:19, 5630:9, 5630:30, 5639:7, 5639:9, 5641:21 2004 [41] - 5596:31, 5596:46, 5597:18, 5598:22, 5600:6,	4	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29	
		4	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29		
		5	5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29		
			5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29		
			5597:2, 5631:43, 5642:34 325 [1] - 5568:40 326 [1] - 5569:6 34 [1] - 5623:32 344 [1] - 5607:27 36 [2] - 5651:4, 5651:5 38 [1] - 5646:29		

5pm [1] - 5561:5	5580:27, 5592:23	adjournment [1] - 5590:45	5587:35, 5587:39, 5590:43, 5590:47, 5591:4, 5591:31, 5591:36, 5591:39, 5592:5, 5592:12, 5593:7, 5593:16	allegations [1] - 5643:47
6	accompanied [1] - 5588:19	Adjo [2] - 5591:2, 5624:37	ago [4] - 5576:34, 5635:5, 5635:29, 5645:22	allegedly [1] - 5626:23
6 [6] - 5563:32, 5563:45, 5573:47, 5596:31, 5597:18, 5631:30	accord [3] - 5611:28, 5637:28, 5652:25	admin [1] - 5565:38	agree [10] - 5584:26, 5584:27, 5585:14, 5585:21, 5589:42, 5619:45, 5619:46, 5638:26, 5646:35, 5650:33	Allen [13] - 5590:30, 5620:13, 5620:15, 5620:17, 5623:21, 5623:25, 5624:25, 5634:24, 5652:45, 5653:1, 5653:3, 5653:40, 5654:37
61 [2] - 5588:7, 5589:4	accounting [1] - 5650:26	admission [2] - 5562:27, 5619:4	agreed [1] - 5631:20	allow [1] - 5623:31
65c [2] - 5611:4, 5621:14	account [5] - 5568:44, 5569:9, 5607:30, 5639:22, 5652:5	admissions [1] - 5562:31	agreement [2] - 5586:19, 5586:37	allowed [2] - 5574:39, 5652:16
661 [9] - 5601:16, 5616:15, 5616:34, 5632:21, 5645:32, 5645:33, 5645:41, 5648:31, 5654:8	accountability [1] - 5608:23	admitted [1] - 5569:42	agrees [1] - 5581:31	almost [1] - 5648:25
661 [9] - 5601:16, 5616:15, 5616:34, 5632:21, 5645:32, 5645:33, 5645:41, 5648:31, 5654:8	accounted [5] - 5608:8, 5609:8, 5622:33, 5639:25, 5639:42	advance [1] - 5585:28	ahead [3] - 5580:2, 5608:24, 5610:5	alongside [1] - 5651:28
67 [1] - 5564:47	accounts [7] - 5608:2, 5639:17, 5639:19, 5639:23, 5651:17, 5652:5, 5652:22	advice [13] - 5562:43, 5563:37, 5594:1, 5594:3, 5605:13, 5626:31, 5626:35, 5632:24, 5634:42, 5636:21, 5644:19, 5644:28, 5648:21	airport [1] - 5588:2	amendment [1] - 5563:3
686 [1] - 5592:9	act [2] - 5639:36, 5640:8	advised [2] - 5616:13, 5645:4	Al [8] - 5607:47, 5611:44, 5614:10, 5617:7, 5637:33, 5640:35, 5641:39, 5646:17	American [7] - 5607:8, 5628:11, 5629:19, 5629:27, 5629:46, 5644:1, 5644:3
693 [2] - 5580:22, 5591:25	accurate [1] - 5621:26	advised [1] - 5588:24	al [2] - 5603:7, 5633:31	amman [2] - 5588:2, 5603:1
694 [3] - 5592:39, 5593:5, 5593:7	accurately [2] - 5611:12, 5621:20	advisers [2] - 5574:7, 5575:9	al-khawam [2] - 5603:7, 5633:31	amounts [1] - 5570:37
6pm [1] - 5561:5	acquainted [2] - 5649:6, 5649:17	Affairs [1] - 5591:6	alarmed [1] - 5630:16	Andersen [2] - 5600:45, 5601:9
6th [1] - 5575:3	act [2] - 5639:36, 5640:8	Afp [6] - 5614:44, 5615:11, 5615:20, 5641:42, 5641:47, 5643:23	alerted [1] - 5590:18	announced [1] - 5585:44
7	acting [1] - 5626:35	afraid [1] - 5578:41	Alia [37] - 5594:8, 5594:36, 5594:39, 5598:21, 5598:25, 5599:7, 5600:5, 5600:12, 5600:33, 5603:40, 5603:44, 5604:2, 5604:6, 5612:20, 5616:11, 5616:13, 5616:16, 5616:23, 5616:29, 5617:11, 5617:16, 5617:33, 5618:6, 5630:19, 5633:4, 5634:9, 5641:11, 5641:12, 5641:13, 5643:32, 5643:44, 5645:4, 5645:6, 5648:31, 5649:18, 5649:21, 5649:23	answered [2] - 5621:45, 5624:3
7 [1] - 5581:26	Action [1] - 5631:39	afternoon [4] - 5561:5, 5565:34, 5592:5, 5634:8	Alias [1] - 5618:1	answering [2] - 5640:28, 5648:35
71 [1] - 5570:32	action [2] - 5649:45, 5650:2	aftersales [2] - 5619:31, 5619:36	Alice [5] - 5575:8, 5575:12, 5575:20, 5575:21, 5576:4	answers [5] - 5608:46, 5620:25, 5641:4, 5641:5,
737 [1] - 5589:15	activities [4] - 5605:41, 5640:13, 5640:14, 5652:23	afterwards [1] - 5647:40	allayed [1] - 5597:45	
7m [1] - 5610:26	actual [5] - 5575:6, 5587:1, 5599:13, 5605:28, 5652:3	agenda [2] - 5565:11, 5652:14		
7m-odd [1] - 5610:26	actuality [1] - 5583:28	ages [1] - 5643:8		
7th [1] - 5582:17	additional [4] - 5564:23, 5564:28, 5564:32, 5576:2	Agus [45] - 5561:1, 5561:31, 5561:36, 5564:1, 5564:3, 5564:17, 5564:19, 5564:39, 5564:45, 5565:45, 5566:4, 5566:40, 5566:45, 5568:23, 5568:31, 5570:5, 5570:10, 5570:18, 5570:25, 5572:3, 5572:39, 5573:2, 5575:8, 5575:12, 5575:17, 5575:23, 5577:41, 5579:12, 5579:14, 5580:4, 5580:24, 5585:40, 5585:44,		
8	Address [1] - 5640:35			
8 [1] - 5586:27	address [2] - 5611:44, 5640:40			
9	addressed [4] - 5599:18, 5615:32, 5619:14, 5627:43			
9 [1] - 5643:1	addressing [2] - 5612:9, 5634:39			
90 [1] - 5580:15	adjoin [2] - 5624:35, 5655:9			
9am [1] - 5575:31	Adjoined [1] - 5655:13			
9th [1] - 5586:13				
A				
able [7] - 5565:30, 5570:21, 5571:42, 5573:31, 5580:45, 5583:11, 5649:19				
absence [1] - 5583:22				
Absolutely [1] - 5577:21				
accept [1] - 5592:13				
accepting [2] - 5597:41, 5613:12				
access [3] - 5579:36,				

5641:40 ao ^[1] - 5560:26 apart ^[7] - 5589:43, 5589:46, 5602:46, 5618:22, 5626:18, 5634:39, 5637:44 Apart ^[1] - 5649:12 apologise ^[4] - 5572:40, 5602:10, 5615:10, 5615:41 apparent ^[1] - 5633:35 appear ^[16] - 5562:5, 5564:31, 5565:31, 5566:35, 5571:21, 5580:27, 5592:24, 5593:22, 5603:6, 5606:45, 5609:45, 5636:8, 5641:3, 5643:24, 5644:43, 5644:45 appeared ^[1] - 5573:46 application ^[3] - 5579:29, 5579:32, 5655:11 applications ^[1] - 5564:8 applied ^[1] - 5592:15 apply ^[1] - 5562:28 appointed ^[2] - 5593:39, 5625:16 appointment ^[5] - 5625:30, 5625:37, 5627:18, 5627:31, 5644:9 appreciate ^[1] - 5570:44 appropriate ^[3] - 5561:12, 5562:37, 5590:43 approval ^[3] - 5565:11, 5610:42, 5610:44 approve ^[1] - 5637:18 approved ^[4] - 5565:4, 5565:27, 5565:41, 5566:31 area ^[2] - 5606:35, 5617:36 areas ^[2] - 5576:38, 5576:43 arise ^[1] - 5627:5 arose ^[1] - 5580:6 arrangement ^[5] - 5594:43, 5605:18, 5606:18, 5609:8, 5609:25 arrangements ^[14] -	5561:3, 5561:12, 5561:27, 5580:41, 5594:39, 5595:2, 5595:24, 5595:46, 5598:26, 5598:39, 5600:14, 5609:26, 5618:9 arrow ^[1] - 5642:27 Arthur ^[2] - 5600:45, 5601:9 aspect ^[2] - 5605:27, 5619:44 aspects ^[1] - 5605:21 assent ^[1] - 5623:15 asserts ^[1] - 5638:30 assist ^[4] - 5567:11, 5594:17, 5606:41, 5608:14 Assist ^[2] - 5607:47, 5637:39 assistance ^[6] - 5562:41, 5563:9, 5563:20, 5563:23, 5611:16, 5638:4 assistant ^[2] - 5566:14, 5566:15 assistants ^[1] - 5585:13 assisted ^[2] - 5562:27, 5621:34 assisting ^[5] - 5561:32, 5563:1, 5564:5, 5580:35, 5591:4 Associates ^[2] - 5607:9, 5628:24 association ^[2] - 5644:1, 5644:3 assume ^[7] - 5567:22, 5567:41, 5570:2, 5590:10, 5590:14, 5617:3, 5640:7 assumed ^[2] - 5639:36, 5651:43 assure ^[1] - 5602:17 assured ^[1] - 5577:32 Asx ^[5] - 5615:15, 5615:20, 5643:17, 5643:18, 5643:24 attach ^[1] - 5591:17 attachments ^[1] - 5592:47 attend ^[1] - 5652:36 attended ^[1] - 5650:25 attending ^[1] - 5601:21	attention ^[14] - 5563:15, 5566:27, 5570:25, 5570:44, 5585:17, 5608:36, 5611:24, 5614:14, 5618:40, 5619:2, 5620:20, 5627:38, 5631:38, 5643:12 attracted ^[1] - 5562:42 attributed ^[2] - 5607:35, 5636:17 August ^[4] - 5585:29, 5596:7, 5596:10, 5631:10 Australia ^[4] - 5586:6, 5589:23, 5589:26, 5636:32 Australia's ^[1] - 5584:13 Australian ^[8] - 5560:18, 5561:6, 5561:7, 5562:22, 5584:2, 5584:20, 5588:45, 5589:20 authorisation ^[5] - 5562:5, 5562:8, 5580:27, 5580:35, 5592:23 authorise ^[1] - 5562:21 Authority ^[14] - 5608:23, 5608:27, 5608:32, 5608:36, 5609:21, 5610:3, 5610:8, 5639:45, 5640:5, 5640:11, 5640:18, 5652:15, 5652:19, 5652:28 authority ^[1] - 5562:19 available ^[13] - 5561:4, 5561:20, 5561:25, 5561:28, 5561:37, 5564:10, 5577:30, 5579:37, 5580:34, 5591:43, 5592:23, 5609:34, 5655:6 aware ^[33] - 5564:3, 5594:7, 5594:10, 5594:14, 5596:12, 5596:15, 5596:16, 5596:27, 5596:33, 5596:34, 5598:39, 5600:44, 5600:46, 5601:7, 5601:9, 5601:12, 5601:13, 5601:25, 5602:46, 5603:1, 5603:11,	5603:16, 5603:28, 5603:34, 5604:7, 5606:2, 5606:27, 5609:32, 5613:3, 5615:47, 5618:2, 5635:1 Awb ^[66] - 5562:40, 5562:42, 5563:7, 5563:8, 5563:12, 5563:19, 5566:5, 5566:9, 5566:22, 5566:36, 5566:47, 5568:43, 5569:40, 5571:22, 5572:23, 5572:30, 5572:31, 5572:43, 5572:45, 5573:11, 5583:43, 5586:19, 5586:39, 5586:41, 5586:43, 5592:14, 5593:36, 5594:15, 5595:15, 5595:17, 5595:25, 5595:34, 5598:16, 5598:33, 5599:1, 5602:11, 5604:5, 5604:18, 5604:34, 5605:35, 5606:30, 5607:30, 5608:29, 5609:12, 5609:14, 5611:20, 5616:14, 5616:24, 5621:34, 5621:46, 5622:6, 5623:4, 5625:13, 5625:22, 5625:25, 5626:10, 5630:23, 5631:44, 5635:38, 5635:44, 5636:30, 5636:34, 5638:4, 5642:33, 5645:4, 5647:1 Awb's ^[2] - 5566:31, 5638:4 Awb.0001.0311 ^[1] - 5571:5 Awb.0144.0088 ^[1] - 5571:9 Awb.0144.0220 ^[1] - 5571:21 Awb.0157.0442 ^[2] - 5596:30, 5631:29 Awb.0157.0556 ^[1] - 5611:3 Awb.0157.0558 ^[1] - 5621:16 Awb.0241.0041 ^[1] - 5569:6 Awb.0241.0043 ^[1] - 5568:40 Awb.0270.0024-r ^[1] - 5607:27	Awb.0348.0073 ^[2] - 5616:7, 5644:43 Awb.0349.0002 ^[1] - 5611:23 Awb.0381.0276 ^[2] - 5601:15, 5632:21 Awb.0381.0287 ^[1] - 5633:1 Awb.5011.0286 ^[3] - 5569:25, 5570:5, 5570:8 Awb.5014.0056 ^[2] - 5570:12, 5570:16 Awb.5049.0201 ^[2] - 5565:18, 5566:2 Awb.5056.0079 ^[2] - 5566:12, 5566:43 Awb.5056.0343 ^[1] - 5586:30 Awb.5056.0344 ^[1] - 5585:42 Awb.5058.0070 ^[1] - 5587:39 Awb.6038.0344 ^[2] - 5567:7, 5568:26 Awbi ^[20] - 5593:23, 5595:18, 5598:27, 5600:16, 5604:5, 5607:43, 5608:17, 5611:2, 5616:24, 5621:10, 5628:46, 5636:38, 5637:23, 5638:6, 5644:8, 5644:45, 5649:37, 5652:18, 5652:32, 5652:37 awful ^[1] - 5570:26
B				
background ^[1] - 5617:34 Baghdad ^[15] - 5571:14, 5582:3, 5583:33, 5583:42, 5584:46, 5585:1, 5585:19, 5585:26, 5586:8, 5587:17, 5587:21, 5587:22, 5588:35, 5588:43, 5590:17 barcode ^[6] - 5580:17, 5585:40, 5585:44, 5587:27, 5615:6, 5632:47 Barcoded ^[6] - 5561:46, 5566:2, 5566:43, 5568:26, 5570:8, 5570:16 barcodes ^[3] -				

<p>5592:14, 5592:16 Barker [12] - 5579:46, 5581:16, 5581:20, 5581:22, 5582:1, 5585:37, 5585:42, 5586:1, 5587:32, 5587:37, 5587:43, 5590:23 based [6] - 5567:17, 5584:3, 5603:1, 5603:3, 5603:7, 5633:32 basis [2] - 5579:7, 5592:13 bears [1] - 5601:17 became [4] - 5594:15, 5601:7, 5644:8, 5649:6 become [4] - 5594:7, 5594:10, 5635:1, 5652:13 becomes [1] - 5577:34 becoming [3] - 5594:13, 5600:44, 5649:17 beg [1] - 5648:7 began [1] - 5628:25 beginning [1] - 5618:40 behalf [4] - 5591:9, 5591:23, 5593:22, 5623:4 Behalf [1] - 5591:28 Beirut [2] - 5588:22, 5589:21 belief [2] - 5564:36, 5610:36 bell [2] - 5643:4, 5643:6 benefit [1] - 5622:37 benefitting [1] - 5568:45 best [4] - 5563:16, 5564:36, 5605:25, 5654:28 better [6] - 5570:29, 5576:37, 5576:43, 5585:40, 5623:25, 5648:10 between [14] - 5562:40, 5566:5, 5566:36, 5603:44, 5619:18, 5643:28, 5646:20, 5647:37, 5652:37, 5653:18, 5653:23, 5653:24, 5653:34, 5654:18 Between [1] - 5570:7 beyond [2] -</p>	<p>5580:29, 5598:34 bills [1] - 5563:5 bit [11] - 5585:45, 5606:42, 5608:1, 5622:16, 5628:15, 5628:16, 5636:29, 5638:29, 5640:31, 5641:15, 5647:42 bits [4] - 5628:15, 5629:25, 5629:34, 5629:40 blank [2] - 5626:11, 5626:13 Blemishes [2] - 5614:10, 5642:27 blemishes [1] - 5614:13 Board [7] - 5570:36, 5571:22, 5585:10, 5605:35, 5617:44, 5618:15, 5649:23 board [63] - 5563:17, 5563:36, 5566:46, 5593:47, 5594:30, 5596:41, 5599:23, 5599:27, 5599:43, 5599:46, 5601:25, 5602:1, 5603:37, 5607:43, 5608:16, 5610:41, 5610:45, 5611:2, 5611:22, 5615:37, 5615:38, 5615:44, 5618:36, 5619:14, 5621:10, 5621:14, 5621:21, 5621:33, 5622:5, 5622:32, 5623:11, 5626:6, 5626:35, 5626:45, 5626:47, 5627:26, 5627:30, 5627:35, 5627:38, 5627:39, 5627:43, 5632:42, 5634:19, 5635:2, 5635:14, 5637:18, 5637:22, 5637:23, 5643:29, 5644:13, 5644:42, 5646:31, 5648:4, 5648:18, 5648:34, 5651:24, 5652:32, 5652:37, 5653:38, 5653:42, 5653:45 boards [1] - 5605:5 book [6] - 5573:9, 5573:19, 5573:20, 5573:21, 5639:22 books [1] - 5572:29 Borlase [13] - 5567:7, 5567:17, 5567:25, 5567:34, 5568:25,</p>	<p>5568:28, 5570:22, 5573:16, 5573:28, 5581:26, 5582:16, 5582:35, 5582:43 Borlase's [1] - 5568:15 bottom [11] - 5607:18, 5611:44, 5613:23, 5623:28, 5636:6, 5638:24, 5640:34, 5640:47, 5641:7, 5641:39, 5642:16 box [3] - 5573:38, 5601:11, 5608:1 breach [5] - 5616:14, 5616:34, 5645:32, 5645:33, 5645:41 breached [2] - 5616:36, 5645:45 breaches [1] - 5562:21 break [1] - 5628:15 Bret [1] - 5591:7 bribes [1] - 5613:24 brief [11] - 5567:27, 5567:44, 5567:45, 5581:25, 5581:29, 5582:32, 5582:34, 5583:18, 5583:20, 5583:29, 5590:45 briefed [5] - 5581:37, 5582:7, 5582:11, 5584:8, 5621:21 briefing [22] - 5569:29, 5581:31, 5582:17, 5582:22, 5582:23, 5582:31, 5582:43, 5583:32, 5597:44, 5597:45, 5598:1, 5598:3, 5598:5, 5605:5, 5610:41, 5617:40, 5621:6, 5621:26, 5634:39, 5634:43 briefings [1] - 5618:32 briefly [1] - 5653:3 briefs [2] - 5567:20, 5574:33 bring [4] - 5564:24, 5565:18, 5606:8, 5623:25 bringing [3] - 5627:37, 5627:39, 5643:12 broad [1] - 5632:28 brockman [1] - 5566:6 brockman's [1] -</p>	<p>5566:37 broken [1] - 5628:23 brought [8] - 5562:45, 5570:25, 5571:20, 5573:41, 5607:7, 5621:15, 5627:29, 5643:11 bullet [5] - 5602:34, 5602:42, 5602:43, 5602:47, 5603:5 bundle [2] - 5587:30, 5635:22 Bunn [1] - 5586:11 business [9] - 5567:2, 5594:46, 5596:22, 5600:39, 5600:42, 5609:12, 5609:13, 5617:43, 5636:34 buyer [2] - 5584:14, 5584:15 buyers [1] - 5584:31</p>	<p>5633:15, 5645:36 causing [1] - 5615:28 cent [7] - 5569:3, 5580:15, 5612:40, 5633:31, 5633:35, 5641:25, 5643:40 Ceo [9] - 5581:44, 5582:6, 5583:25, 5588:9, 5588:12, 5588:18, 5588:20, 5589:5, 5643:29 Certain [1] - 5560:18 certain [6] - 5561:10, 5602:21, 5602:23, 5607:9, 5610:30, 5649:39 certainly [26] - 5563:19, 5594:14, 5598:41, 5599:2, 5599:19, 5599:30, 5599:46, 5601:23, 5601:45, 5604:47, 5606:18, 5609:6, 5609:24, 5610:21, 5610:36, 5610:45, 5612:11, 5612:17, 5612:34, 5613:18, 5615:33, 5615:39, 5616:4, 5617:22, 5619:46, 5622:31 cetera [7] - 5570:30, 5572:29, 5574:23, 5596:23, 5620:1, 5635:16, 5641:17 chain [1] - 5650:15 Chairman [7] - 5581:44, 5582:6, 5588:9, 5588:12, 5588:18, 5588:19, 5588:22 chairman [13] - 5583:25, 5583:43, 5583:46, 5584:2, 5584:10, 5584:20, 5584:23, 5584:43, 5586:19, 5588:42, 5589:5, 5652:17 challenge [1] - 5576:38 chance [1] - 5592:47 change [2] - 5577:8, 5604:39 changed [3] - 5568:15, 5568:16, 5611:18 changes [4] - 5569:33, 5570:11, 5577:33, 5598:38 Changes [1] -</p>
C				
			<p>Cairo [9] - 5567:17, 5581:26, 5587:23, 5588:3, 5588:4, 5588:20, 5589:16, 5589:23 Cairo...on [1] - 5588:16 calculated [2] - 5626:39, 5643:36 calculation [2] - 5612:27, 5612:31 Canada [1] - 5644:29 Canadian [4] - 5644:11, 5644:20 cannot [8] - 5565:8, 5567:6, 5567:31, 5581:36, 5582:10, 5588:17, 5588:23, 5624:22 capable [1] - 5563:32 capacity [1] - 5595:29 care [1] - 5569:45 carefully [2] - 5571:27, 5597:44 case [8] - 5606:22, 5606:23, 5607:5, 5610:5, 5610:11, 5610:27, 5616:20, 5618:7 category [1] - 5562:30 caused [4] - 5608:26, 5629:3,</p>	

<p>5570:15 changing [1] - 5571:38 charges [2] - 5571:23, 5571:28 Charled[1] - 5566:15 chartered [1] - 5589:15 check [5] - 5569:39, 5570:1, 5573:23, 5573:34, 5607:30 checked [1] - 5589:19 cheek [2] - 5568:10, 5643:3 chief [3] - 5652:4, 5652:8, 5652:20 Children's [1] - 5569:43 Chris[5] - 5567:15, 5568:13, 5570:7, 5570:14, 5570:15 circle [1] - 5580:29 circumstance [1] - 5563:12 circumstances [4] - 5579:17, 5617:15, 5617:33, 5648:33 circumvented [4] - 5612:45, 5641:31, 5641:36, 5654:3 circumvention [1] - 5613:2 claim [1] - 5631:11 claims [2] - 5613:9, 5613:10 clarification [1] - 5648:43 classes [1] - 5615:45 classic [1] - 5607:31 clause [3] - 5563:32, 5563:45, 5569:2 clear [7] - 5563:42, 5594:1, 5609:20, 5626:30, 5647:43, 5648:1, 5648:12 clearer [1] - 5629:34 Co[2] - 5616:12, 5645:2 coffee [1] - 5575:33 Cole[1] - 5560:26 collation [1] - 5642:33 colleagues [1] - 5586:6 collected [7] - 5606:20, 5624:1, 5624:10, 5638:33, 5638:41, 5651:21, 5654:25</p>	<p>collecting [1] - 5606:31 colourful [1] - 5563:21 combination [1] - 5632:42 combine [1] - 5574:16 comfort [1] - 5597:45 comfortable [4] - 5604:19, 5629:31, 5643:46, 5645:8 coming [4] - 5578:28, 5583:25, 5605:20, 5605:38 command [1] - 5650:15 commenced [1] - 5631:40 commencement [3] - 5603:14, 5603:18, 5603:30 commencing [1] - 5585:33 comment [8] - 5574:29, 5606:14, 5609:4, 5629:12, 5638:17, 5647:26, 5647:35, 5654:2 commenting [1] - 5644:33 comments [10] - 5569:38, 5608:21, 5610:20, 5610:22, 5614:33, 5616:17, 5647:17, 5649:39, 5649:45, 5650:28 commercial [2] - 5592:26, 5605:37 Commission[35] - 5562:23, 5562:25, 5562:29, 5563:7, 5563:15, 5563:17, 5566:8, 5568:4, 5570:21, 5573:33, 5574:21, 5574:22, 5574:28, 5574:29, 5574:35, 5574:38, 5574:39, 5575:2, 5575:5, 5575:6, 5575:8, 5575:11, 5575:45, 5576:1, 5576:6, 5577:1, 5582:19, 5591:23, 5591:28, 5593:21, 5614:45, 5615:11, 5635:3, 5641:43 commission [12] - 5611:20, 5615:20,</p>	<p>5615:30, 5621:39, 5635:39, 5635:44, 5638:5, 5639:31, 5639:32, 5642:1, 5642:3, 5643:23 Commissioner[139] - 5561:1, 5561:31, 5561:36, 5561:39, 5562:1, 5562:4, 5562:8, 5562:13, 5562:34, 5563:26, 5563:31, 5563:42, 5564:1, 5564:6, 5564:14, 5564:39, 5565:45, 5566:40, 5568:23, 5572:4, 5572:6, 5572:8, 5572:12, 5574:42, 5574:46, 5576:21, 5576:23, 5576:26, 5576:29, 5576:34, 5576:37, 5576:43, 5577:6, 5577:15, 5577:18, 5577:21, 5577:26, 5577:39, 5577:46, 5578:4, 5578:7, 5578:14, 5578:18, 5578:24, 5578:32, 5578:35, 5578:37, 5578:40, 5579:1, 5579:7, 5579:12, 5579:20, 5579:34, 5579:43, 5580:2, 5580:21, 5580:31, 5580:40, 5580:45, 5581:3, 5581:9, 5581:14, 5581:18, 5581:46, 5585:35, 5585:37, 5587:29, 5590:25, 5590:32, 5590:37, 5590:45, 5591:4, 5591:22, 5591:47, 5592:8, 5592:33, 5592:37, 5593:3, 5593:8, 5593:10, 5593:14, 5593:18, 5593:25, 5594:18, 5598:30, 5598:35, 5600:27, 5601:16, 5602:39, 5605:2, 5605:47, 5606:2, 5606:6, 5606:30, 5609:29, 5609:32, 5610:25, 5610:29, 5614:17, 5614:21, 5615:1, 5620:3, 5620:6, 5620:10, 5622:10, 5623:18, 5623:23, 5623:26, 5624:27, 5624:29,</p>	<p>5624:31, 5624:35, 5625:3, 5629:15, 5629:23, 5630:23, 5630:28, 5630:36, 5634:27, 5635:22, 5635:43, 5635:46, 5639:19, 5639:27, 5647:11, 5647:12, 5648:23, 5648:39, 5648:41, 5649:29, 5650:46, 5652:45, 5653:38, 5654:39, 5654:43, 5654:45, 5655:1, 5655:5, 5655:8 Commissioner's [2] - 5599:37, 5622:36 commissioning [1] - 5601:8 common [1] - 5644:5 communication [1] - 5587:22 companies [3] - 5628:11, 5629:27, 5629:46 Companies [1] - 5560:19 company [30] - 5594:8, 5594:40, 5602:47, 5603:2, 5603:5, 5604:20, 5605:36, 5616:30, 5617:42, 5625:33, 5626:22, 5626:25, 5628:3, 5628:9, 5628:11, 5628:17, 5629:32, 5629:40, 5630:19, 5630:20, 5630:44, 5633:31, 5635:34, 5640:8, 5645:6, 5645:10, 5645:19, 5645:28, 5646:10, 5649:10 Company[1] - 5633:5 company's [2] - 5638:33, 5638:41 compare [1] - 5576:35 compensation [2] - 5631:19, 5631:23 compilation [2] - 5580:10, 5591:31 complaint [8] - 5563:7, 5563:22, 5564:3, 5607:8, 5628:24, 5644:10, 5644:19, 5644:29 complete [3] - 5580:13, 5610:33,</p>	<p>5628:1 completed [3] - 5574:15, 5608:34, 5622:4 completely [2] - 5563:8, 5569:14 completeness [1] - 5570:12 completes [3] - 5572:3, 5620:3, 5648:38 Compliance[2] - 5612:44, 5641:30 complied [1] - 5579:25 comply [1] - 5632:4 component [3] - 5569:10, 5599:9, 5625:42 components [1] - 5571:4 comprehensive [1] - 5615:31 comprise [1] - 5618:31 compromise [1] - 5579:24 concentrate [1] - 5575:1 concern [18] - 5563:45, 5596:20, 5597:12, 5597:13, 5597:15, 5597:31, 5597:39, 5609:4, 5609:11, 5609:42, 5616:25, 5617:44, 5630:4, 5637:3, 5639:7, 5642:5, 5645:36, 5653:34 concerned [10] - 5563:14, 5563:38, 5564:6, 5585:8, 5597:7, 5598:4, 5626:19, 5638:44, 5640:4, 5650:21 concerning [7] - 5563:18, 5564:46, 5603:22, 5604:6, 5613:34, 5626:39, 5631:35 concerns [10] - 5597:24, 5597:41, 5609:39, 5610:3, 5614:3, 5615:29, 5616:23, 5616:28, 5630:16, 5630:17 concluded [2] - 5565:33, 5579:2 concluding [1] - 5585:33</p>
---	---	--	--	--

<p>conclusion [2] - 5579:27, 5631:17</p> <p>conditions [1] - 5565:26</p> <p>Condon[35] - 5593:16, 5593:18, 5593:30, 5593:32, 5599:36, 5602:41, 5606:5, 5606:41, 5609:39, 5610:40, 5614:43, 5615:6, 5620:3, 5620:18, 5621:22, 5622:20, 5624:29, 5625:3, 5625:7, 5625:9, 5629:25, 5630:30, 5630:38, 5634:30, 5634:37, 5635:25, 5635:29, 5636:1, 5639:30, 5647:14, 5648:25, 5648:30, 5648:38, 5654:43, 5655:5</p> <p>conduct [2] - 5561:13, 5609:14</p> <p>conference [21] - 5583:33, 5583:34, 5583:39, 5583:43, 5583:47, 5584:4, 5584:8, 5584:11, 5584:28, 5584:30, 5584:44, 5585:5, 5585:14, 5585:22, 5585:26, 5585:27, 5586:38, 5586:40, 5586:42, 5587:16, 5589:21</p> <p>confident [1] - 5622:4</p> <p>confidential [8] - 5571:2, 5580:24, 5580:25, 5580:32, 5587:29, 5587:40, 5592:22, 5611:3</p> <p>Confidential[1] - 5587:40</p> <p>confidentiality [3] - 5591:17, 5592:27, 5592:35</p> <p>confine [2] - 5619:22, 5646:46</p> <p>confirm [3] - 5570:40, 5571:40, 5586:15</p> <p>confirmation [3] - 5565:11, 5571:16, 5571:21</p> <p>confirmed [4] - 5565:36, 5588:38, 5588:40, 5649:3</p>	<p>confirming [2] - 5570:37, 5571:22</p> <p>confusing [1] - 5578:30</p> <p>connection [7] - 5617:12, 5626:27, 5628:28, 5629:26, 5629:36, 5630:5, 5649:21</p> <p>connections [2] - 5628:4, 5628:17</p> <p>conscious [2] - 5605:12, 5619:26</p> <p>consider [3] - 5563:12, 5579:31, 5609:24</p> <p>consideration [1] - 5602:29</p> <p>considered [1] - 5609:22</p> <p>consistent [2] - 5569:19, 5651:38</p> <p>construction [1] - 5563:33</p> <p>consultative [1] - 5652:14</p> <p>contact [3] - 5595:37, 5630:47, 5631:1</p> <p>contacted [2] - 5616:14, 5645:4</p> <p>contained [2] - 5649:6, 5649:12</p> <p>containing [1] - 5591:20</p> <p>contend [1] - 5562:20</p> <p>content [3] - 5591:39, 5597:7, 5632:2</p> <p>contents [10] - 5564:35, 5582:20, 5583:7, 5596:31, 5597:5, 5601:8, 5631:35, 5632:11, 5642:40, 5642:44</p> <p>context [21] - 5567:6, 5567:12, 5568:36, 5594:30, 5594:31, 5595:21, 5595:23, 5596:37, 5596:39, 5607:15, 5612:40, 5615:16, 5616:28, 5626:47, 5627:3, 5627:25, 5639:6, 5641:13, 5643:11, 5651:9, 5654:16</p> <p>contexts [1] - 5643:10</p> <p>continue [1] -</p>	<p>5562:20</p> <p>continued [2] - 5566:17, 5573:20</p> <p>continuing [1] - 5573:6</p> <p>continuously [2] - 5593:42, 5625:19</p> <p>contract [24] - 5565:37, 5570:35, 5570:46, 5571:18, 5571:34, 5571:35, 5583:37, 5584:1, 5584:9, 5584:18, 5585:11, 5587:11, 5589:16, 5590:15, 5596:8, 5598:31, 5599:3, 5604:21, 5609:31, 5623:14, 5623:18, 5627:33, 5627:36, 5630:21</p> <p>contractor [1] - 5617:18</p> <p>contracts [19] - 5565:38, 5569:2, 5584:9, 5584:24, 5595:26, 5595:33, 5596:22, 5613:9, 5616:26, 5617:45, 5618:15, 5623:19, 5623:21, 5624:2, 5636:31, 5638:33, 5638:41, 5639:2, 5649:17</p> <p>contractual [11] - 5594:39, 5595:2, 5595:24, 5598:26, 5598:39, 5599:1, 5600:14, 5608:42, 5609:8, 5609:24, 5609:26</p> <p>convenience [1] - 5611:34</p> <p>convenient [1] - 5630:30</p> <p>Conventions[1] - 5641:30</p> <p>conventions [4] - 5612:44, 5613:2, 5641:36, 5654:2</p> <p>conversation [8] - 5567:37, 5595:8, 5596:2, 5629:28, 5630:1, 5634:14, 5646:37, 5651:30</p> <p>conversations [2] - 5599:38, 5629:28</p> <p>conversion [1] - 5565:35</p> <p>conveyed [9] - 5599:43, 5601:47,</p>	<p>5602:42, 5603:10, 5603:14, 5604:11, 5630:15, 5634:2, 5648:34</p> <p>conveying [1] - 5600:26</p> <p>Cooper[15] - 5605:10, 5606:13, 5615:15, 5623:9, 5632:40, 5634:25, 5634:30, 5634:38, 5638:16, 5638:19, 5638:26, 5638:30, 5642:25, 5643:18, 5654:23</p> <p>Cooper's [7] - 5606:6, 5623:13, 5623:27, 5623:38, 5623:45, 5624:12, 5643:16</p> <p>cooperating [1] - 5615:34</p> <p>cooperation [1] - 5615:36</p> <p>cooperative [1] - 5615:39</p> <p>copied [3] - 5569:37, 5570:20, 5574:34</p> <p>copies [4] - 5572:19, 5581:28, 5583:12, 5591:18</p> <p>copy [20] - 5571:15, 5573:37, 5574:28, 5575:39, 5581:25, 5582:18, 5582:47, 5583:14, 5583:18, 5583:20, 5583:29, 5602:1, 5602:7, 5602:16, 5602:18, 5611:34, 5632:22, 5632:23, 5632:36, 5640:25</p> <p>corner [2] - 5615:7, 5632:47</p> <p>corporate [3] - 5607:21, 5636:18, 5636:23</p> <p>correct [29] - 5562:25, 5562:32, 5564:36, 5565:33, 5567:2, 5572:24, 5582:42, 5587:21, 5587:46, 5595:18, 5619:18, 5620:45, 5621:40, 5625:14, 5625:20, 5625:27, 5625:28, 5629:16, 5629:18, 5637:26, 5643:37, 5643:41, 5647:36, 5648:16,</p>	<p>5649:47, 5653:11, 5653:20, 5653:27, 5653:36</p> <p>Correct[12] - 5565:21, 5566:19, 5571:7, 5571:12, 5571:24, 5573:8, 5573:12, 5575:18, 5575:27, 5589:7, 5653:30</p> <p>corrected [1] - 5630:38</p> <p>corresponded [2] - 5570:20, 5570:36</p> <p>Correspondence[1] - 5591:29</p> <p>correspondence [10] - 5566:5, 5566:7, 5566:36, 5567:21, 5571:43, 5574:32, 5591:11, 5591:15, 5591:16, 5591:24</p> <p>corruption [1] - 5613:25</p> <p>cost [2] - 5600:41, 5646:32</p> <p>counsel [3] - 5577:41, 5579:35, 5591:8</p> <p>countries [1] - 5598:41</p> <p>couple [4] - 5562:17, 5569:45, 5623:41, 5635:29</p> <p>course [24] - 5561:23, 5562:28, 5586:29, 5592:24, 5595:31, 5600:38, 5601:1, 5603:37, 5604:43, 5605:27, 5608:28, 5609:12, 5609:13, 5610:16, 5625:33, 5626:35, 5628:43, 5628:44, 5628:46, 5631:14, 5631:20, 5648:2, 5648:4, 5648:13</p> <p>court [2] - 5591:36, 5591:37</p> <p>Court[1] - 5560:31</p> <p>cover [2] - 5586:9, 5591:11</p> <p>covered [1] - 5569:21</p> <p>covering [1] - 5591:24</p> <p>Covering[1] - 5591:29</p> <p>cracked [1] - 5650:36</p>
--	---	--	--	---

<p>credit [2] - 5569:21, 5577:19</p> <p>criticism [1] - 5562:42</p> <p>cross [22] - 5577:47, 5578:4, 5578:8, 5578:9, 5578:10, 5578:26, 5578:27, 5578:29, 5578:42, 5578:45, 5579:2, 5579:8, 5579:22, 5579:26, 5579:32, 5579:35, 5579:37, 5579:40, 5579:46, 5581:16, 5590:25, 5627:14</p> <p>cross-examination [12] - 5577:47, 5578:4, 5578:26, 5578:27, 5578:42, 5578:45, 5579:2, 5579:8, 5579:22, 5579:26, 5579:37, 5579:40</p> <p>cross-examine [9] - 5578:8, 5578:9, 5578:10, 5578:29, 5579:32, 5579:35, 5579:46, 5581:16, 5590:25</p> <p>cross-purposes [1] - 5627:14</p> <p>crosschecking [1] - 5585:46</p> <p>Croucher [5] - 5649:32, 5649:34, 5649:36, 5651:1, 5652:43</p> <p>curious [1] - 5636:26</p> <p>current [2] - 5581:38, 5613:15</p> <p>cut [2] - 5586:44, 5628:6</p> <p>cutoff [1] - 5630:31</p>	<p>5629:22, 5630:34, 5634:13, 5646:46</p> <p>dated [5] - 5571:13, 5573:46, 5586:2, 5586:27, 5631:30</p> <p>Dated [3] - 5566:2, 5566:43, 5568:26</p> <p>dates [11] - 5567:28, 5567:33, 5567:45, 5569:39, 5570:1, 5570:29, 5586:12, 5586:16, 5586:20, 5599:41, 5630:18</p> <p>daughter [1] - 5569:42</p> <p>David [1] - 5631:3</p> <p>days [11] - 5569:45, 5626:17, 5626:24, 5626:25, 5626:38, 5627:11, 5627:17, 5627:47, 5628:3, 5635:5, 5635:29</p> <p>deaf [1] - 5589:43</p> <p>deal [7] - 5598:41, 5610:38, 5622:41, 5625:46, 5626:18, 5631:11, 5635:38</p> <p>deals [1] - 5652:30</p> <p>dealt [3] - 5625:47, 5632:1, 5650:14</p> <p>debt [25] - 5605:19, 5605:34, 5605:44, 5606:1, 5606:31, 5609:30, 5610:26, 5610:46, 5611:19, 5621:35, 5621:40, 5622:11, 5622:18, 5622:20, 5622:39, 5623:3, 5623:10, 5623:36, 5635:38, 5635:44, 5636:42, 5638:4, 5638:32, 5639:2, 5654:24</p> <p>December [23] - 5570:19, 5572:47, 5573:2, 5574:31, 5575:45, 5576:2, 5601:2, 5604:44, 5604:45, 5604:47, 5606:44, 5607:14, 5608:47, 5609:17, 5621:7, 5621:14, 5635:33, 5636:2, 5636:46, 5637:14, 5637:23, 5638:23, 5649:37</p> <p>decision [3] - 5622:5, 5652:18, 5655:11</p> <p>declaration [9] -</p>	<p>5561:43, 5570:33, 5591:32, 5592:8, 5592:12, 5592:20, 5592:38, 5638:19, 5646:30</p> <p>Declaration [3] - 5561:45, 5564:42, 5592:44</p> <p>declined [1] - 5563:1</p> <p>deed [5] - 5562:39, 5562:44, 5563:1, 5563:18, 5563:43</p> <p>defer [6] - 5578:1, 5578:25, 5578:41, 5579:21, 5579:37, 5581:9</p> <p>deferred [2] - 5578:5, 5579:41</p> <p>Definitely [1] - 5587:46</p> <p>definitely [3] - 5628:10, 5645:37, 5649:14</p> <p>delegation [2] - 5631:10, 5631:12</p> <p>deleted [1] - 5592:31</p> <p>deletions [2] - 5564:25</p> <p>deliberate [1] - 5570:27</p> <p>deliver [1] - 5598:33</p> <p>delivered [3] - 5586:11, 5594:38, 5651:19</p> <p>delivering [1] - 5599:15</p> <p>delivery [3] - 5598:32, 5613:9, 5613:12</p> <p>demand [1] - 5563:9</p> <p>demanding [1] - 5563:5</p> <p>departed [1] - 5588:22</p> <p>deposit [1] - 5569:3</p> <p>deposited [1] - 5568:43</p> <p>describe [3] - 5563:22, 5597:5, 5632:14</p> <p>described [5] - 5563:21, 5597:24, 5646:38, 5648:33, 5649:40</p> <p>describes [3] - 5597:1, 5612:10, 5619:3</p> <p>describing [2] - 5606:23, 5617:33</p> <p>description [1] -</p>	<p>5618:1</p> <p>desert [1] - 5588:44</p> <p>desire [2] - 5586:18, 5614:8</p> <p>desired [1] - 5561:34</p> <p>desk [1] - 5590:2</p> <p>destroyed [1] - 5641:17</p> <p>detail [8] - 5580:9, 5596:20, 5597:8, 5604:36, 5606:3, 5624:10, 5624:19, 5634:5</p> <p>detailed [4] - 5604:25, 5604:33, 5628:1, 5634:3</p> <p>details [4] - 5596:12, 5606:19, 5622:17, 5625:34</p> <p>determination [1] - 5622:32</p> <p>Deutsche [2] - 5565:35, 5571:38</p> <p>Dfat [4] - 5565:39, 5566:5, 5566:31, 5566:36</p> <p>diaries [5] - 5572:20, 5572:22, 5572:23, 5572:41, 5573:7</p> <p>diary [5] - 5565:42, 5572:27, 5573:9, 5573:14, 5573:27</p> <p>diary/day [1] - 5573:21</p> <p>difference [1] - 5567:39</p> <p>different [13] - 5609:25, 5623:23, 5625:46, 5629:28, 5629:29, 5629:42, 5636:47, 5639:24, 5639:30, 5643:27, 5647:38, 5647:43, 5653:17</p> <p>difficult [2] - 5620:35, 5622:16</p> <p>diligence [1] - 5571:36</p> <p>direct [4] - 5565:30, 5615:19, 5618:39, 5619:1</p> <p>direction [1] - 5579:26</p> <p>directly [2] - 5637:4, 5650:40</p> <p>director [29] - 5593:36, 5594:15, 5595:18, 5595:25, 5595:32, 5597:15, 5597:25, 5597:39,</p>	<p>5598:27, 5600:16, 5600:23, 5601:13, 5604:18, 5609:5, 5609:42, 5611:5, 5616:24, 5621:46, 5622:46, 5625:13, 5625:22, 5625:25, 5628:8, 5636:29, 5637:25, 5644:8, 5653:24, 5654:24</p> <p>Director [4] - 5584:14, 5584:32, 5585:10, 5585:15</p> <p>director's [1] - 5650:44</p> <p>Director-general [4] - 5584:14, 5584:32, 5585:10, 5585:15</p> <p>Directors [1] - 5653:32</p> <p>directors [19] - 5593:22, 5604:5, 5604:25, 5604:34, 5604:37, 5615:29, 5629:31, 5634:2, 5634:5, 5635:20, 5637:2, 5637:5, 5638:32, 5646:19, 5646:22, 5653:18, 5653:23, 5653:29, 5654:18</p> <p>directors' [1] - 5614:18</p> <p>directorship [2] - 5595:15, 5595:17</p> <p>disagree [5] - 5583:45, 5584:23, 5586:24, 5589:35</p> <p>discarded [1] - 5572:31</p> <p>discharge [1] - 5566:32</p> <p>disclosed [6] - 5597:6, 5602:34, 5608:31, 5615:45, 5616:3, 5633:20</p> <p>disclosure [1] - 5608:33</p> <p>discover [1] - 5568:18</p> <p>discretion [1] - 5569:13</p> <p>discuss [4] - 5589:18, 5589:31, 5590:14, 5596:37</p> <p>discussed [21] - 5582:9, 5588:35, 5589:1, 5589:35, 5589:45, 5607:1, 5607:15, 5608:15,</p>
D				
<p>Daoud [1] - 5584:15</p> <p>Darryl [11] - 5567:17, 5567:38, 5568:13, 5568:25, 5570:8, 5570:14, 5570:22, 5581:26, 5582:16, 5582:35, 5582:43</p> <p>date [17] - 5565:16, 5567:19, 5572:44, 5588:3, 5594:18, 5599:38, 5599:39, 5601:17, 5613:15, 5628:7, 5628:35, 5629:17, 5629:21,</p>				

5614:29, 5614:30, 5620:22, 5620:30, 5620:36, 5620:45, 5627:17, 5644:14, 5646:26, 5648:4, 5648:15, 5654:9, 5654:17 discussing [4] - 5588:45, 5588:46, 5596:31, 5596:46 discussion [50] - 5571:33, 5573:15, 5573:27, 5575:11, 5575:13, 5575:15, 5575:26, 5575:29, 5590:11, 5595:21, 5596:34, 5597:25, 5598:31, 5598:37, 5598:47, 5599:2, 5599:6, 5599:9, 5599:10, 5599:17, 5599:26, 5602:32, 5604:14, 5607:14, 5612:26, 5612:30, 5612:33, 5613:1, 5613:6, 5613:29, 5613:46, 5614:13, 5616:29, 5616:37, 5617:9, 5618:11, 5631:34, 5631:47, 5634:9, 5641:12, 5641:13, 5641:20, 5641:24, 5641:35, 5642:28, 5642:32, 5643:28, 5644:10, 5645:5, 5645:40 discussions [11] - 5565:12, 5574:21, 5574:22, 5583:38, 5589:47, 5590:8, 5599:18, 5599:22, 5599:47, 5606:35 displayed [3] - 5601:28, 5602:22, 5618:39 distance [3] - 5590:3, 5607:20, 5636:18 distances [2] - 5599:14, 5641:18 distancing [1] - 5636:22 distributed [3] - 5594:39, 5602:1, 5602:7 distributing [1] - 5632:35 division [1] - 5626:11 document [32] -	5561:41, 5561:42, 5567:35, 5569:24, 5571:26, 5571:45, 5574:29, 5576:12, 5580:18, 5582:19, 5582:47, 5583:5, 5587:27, 5601:27, 5601:29, 5606:8, 5606:9, 5612:8, 5613:22, 5614:46, 5631:31, 5632:22, 5632:25, 5632:28, 5632:31, 5632:36, 5633:5, 5634:44, 5635:19, 5640:27, 5642:38 documentation [5] - 5569:16, 5570:40, 5571:25, 5635:16, 5642:35 documented [1] - 5585:12 Documents [2] - 5580:37, 5592:43 documents [44] - 5561:19, 5561:20, 5561:23, 5561:24, 5561:28, 5561:33, 5565:16, 5567:18, 5568:29, 5568:37, 5570:19, 5571:27, 5571:30, 5572:29, 5573:18, 5574:32, 5574:36, 5575:46, 5576:3, 5577:9, 5580:9, 5580:11, 5580:14, 5580:16, 5580:28, 5580:33, 5587:30, 5587:41, 5591:11, 5592:14, 5592:15, 5592:17, 5592:25, 5592:37, 5592:41, 5614:14, 5615:45, 5616:2, 5635:23, 5642:33, 5642:39, 5642:40, 5642:45 dollars [5] - 5571:38, 5605:20, 5606:20, 5651:17, 5651:22 Dominic [7] - 5564:12, 5564:20, 5564:21, 5566:1, 5566:42, 5568:25, 5570:8 done [16] - 5568:12, 5571:35, 5578:42, 5585:46, 5605:41, 5610:38, 5613:39, 5622:41, 5630:10,	5632:34, 5632:35, 5639:9, 5642:17, 5650:3, 5652:3, 5652:27 Donges [21] - 5593:19, 5593:28, 5593:32, 5593:34, 5594:7, 5598:30, 5601:16, 5611:4, 5611:24, 5611:35, 5614:17, 5620:4, 5620:11, 5620:17, 5624:31, 5639:41, 5639:44, 5639:46, 5640:4, 5649:38, 5650:28 Donges' [1] - 5651:19 dot [8] - 5566:26, 5569:7, 5571:5, 5603:23, 5603:33, 5633:40, 5649:8, 5649:9 Dot [1] - 5633:27 doubt [2] - 5606:35, 5643:3 Down [2] - 5642:25, 5643:16 down [21] - 5591:41, 5608:1, 5614:9, 5614:44, 5615:10, 5615:15, 5616:11, 5616:42, 5618:45, 5623:47, 5637:35, 5639:16, 5639:36, 5641:42, 5642:26, 5644:14, 5645:2, 5645:31, 5646:2, 5646:22, 5647:32 Dr [19] - 5604:28, 5606:43, 5608:3, 5608:22, 5609:45, 5611:32, 5611:35, 5612:9, 5613:33, 5615:19, 5636:1, 5637:22, 5639:14, 5640:24, 5645:1, 5649:38, 5649:43, 5650:16, 5650:26 Drake [2] - 5566:6, 5566:37 Drake-brockman [1] - 5566:6 Drake-brockman's [1] - 5566:37 draw [4] - 5563:14, 5566:27, 5570:44, 5611:23 drawing [1] - 5585:17	drawn [1] - 5608:35 drew [1] - 5575:44 drivers [2] - 5594:47, 5599:12 due [5] - 5566:47, 5571:36, 5592:24, 5604:43, 5641:16 During [3] - 5584:43, 5603:37, 5653:38 during [14] - 5561:23, 5573:6, 5576:4, 5596:10, 5598:26, 5600:15, 5610:16, 5620:19, 5621:21, 5623:10, 5631:14, 5633:8, 5646:32, 5653:42 duty [1] - 5599:10	5566:31 email [36] - 5565:2, 5565:19, 5565:30, 5565:31, 5565:45, 5566:11, 5566:12, 5566:25, 5566:40, 5567:1, 5567:5, 5567:11, 5567:31, 5567:32, 5568:23, 5568:39, 5570:2, 5570:10, 5571:46, 5571:47, 5572:1, 5574:32, 5587:22, 5587:32, 5587:39, 5587:45, 5588:15, 5588:37, 5589:26, 5589:28, 5589:29, 5591:16, 5643:1, 5643:4, 5643:12 Email [4] - 5566:1, 5566:42, 5568:25, 5570:14 emailed [1] - 5582:16 Emails [1] - 5570:7 emails [22] - 5568:34, 5570:19, 5570:20, 5585:28, 5585:32, 5587:16, 5588:33, 5588:42, 5589:20, 5596:35, 5596:47, 5597:2, 5597:5, 5598:8, 5614:10, 5631:43, 5632:2, 5632:8, 5632:14, 5642:27, 5642:29, 5642:35 Embassy [2] - 5561:6, 5561:7 Embassy/dfat [1] - 5569:30 Emons [4] - 5586:2, 5586:28, 5586:30, 5588:15 employed [1] - 5562:45 employees [3] - 5562:40, 5614:10, 5642:28 end [4] - 5623:47, 5648:20, 5648:25, 5652:29 engaged [1] - 5606:31 enter [2] - 5562:47, 5564:7 entered [2] - 5562:40, 5639:22 entirety [2] - 5606:13, 5640:41
E				
ear [1] - 5589:43 early [14] - 5562:39, 5562:42, 5563:17, 5569:41, 5574:31, 5576:2, 5588:12, 5626:17, 5626:38, 5627:10, 5627:17, 5627:47, 5644:21, 5644:22 earned [1] - 5651:22 ease [2] - 5580:12, 5632:21 easier [1] - 5606:8 East [2] - 5567:3, 5587:2 edited [2] - 5632:23, 5634:42 effect [4] - 5623:11, 5623:45, 5638:32, 5647:44 effort [1] - 5568:36 Egypt [4] - 5584:2, 5587:14, 5587:24, 5589:19 either [18] - 5561:25, 5561:33, 5567:34, 5571:46, 5589:28, 5594:32, 5598:2, 5599:22, 5599:26, 5608:15, 5624:17, 5634:33, 5634:38, 5643:19, 5648:4, 5648:14, 5650:28, 5652:13 electronic [1] - 5567:31 electronically [2] - 5567:34, 5567:35 eloquent [1] -				

<p>entities [1] - 5630:11</p> <p>entitled [3] - 5577:19, 5577:28, 5577:29</p> <p>entity [4] - 5619:32, 5643:45, 5644:11, 5644:20</p> <p>entries [6] - 5637:39, 5639:22, 5640:26, 5640:28, 5653:4, 5653:44</p> <p>entry [20] - 5573:14, 5573:27, 5607:32, 5611:44, 5612:44, 5613:5, 5613:23, 5614:9, 5616:12, 5616:34, 5616:35, 5639:43, 5640:35, 5641:30, 5642:11, 5642:17, 5645:2, 5645:31, 5645:44, 5646:2</p> <p>equipment [1] - 5580:47</p> <p>escalated [1] - 5641:15</p> <p>escalation [1] - 5641:16</p> <p>especially [2] - 5565:26, 5586:33</p> <p>essential [1] - 5605:22</p> <p>essentially [2] - 5605:33, 5605:44</p> <p>established [1] - 5562:23</p> <p>et [7] - 5570:30, 5572:29, 5574:23, 5596:23, 5620:1, 5635:16, 5641:17</p> <p>Euro[2] - 5565:35, 5565:36</p> <p>Evans [7] - 5562:4, 5562:8, 5562:11, 5591:36, 5591:43, 5592:3, 5593:12</p> <p>event [2] - 5614:26, 5615:19</p> <p>eventful [1] - 5643:24</p> <p>events [3] - 5587:32, 5613:17, 5621:43</p> <p>evidence [54] - 5568:19, 5576:20, 5579:16, 5591:44, 5601:2, 5601:7, 5603:22, 5604:28, 5604:29, 5605:2, 5605:26, 5608:20, 5613:25, 5618:37,</p>	<p>5619:3, 5619:17, 5619:30, 5619:44, 5619:46, 5621:29, 5622:14, 5622:19, 5622:35, 5622:41, 5623:8, 5623:13, 5623:18, 5623:25, 5623:27, 5623:45, 5624:7, 5624:13, 5624:16, 5629:16, 5634:8, 5634:24, 5643:31, 5643:35, 5643:39, 5643:43, 5645:39, 5646:34, 5647:26, 5647:36, 5649:16, 5649:43, 5650:44, 5653:10, 5653:42, 5654:15, 5654:23, 5654:25</p> <p>Evidence[1] - 5634:1</p> <p>exact [2] - 5594:13, 5644:32</p> <p>Exactly [1] - 5620:38</p> <p>exactly [1] - 5628:20</p> <p>Examination [9] - 5564:17, 5572:16, 5581:20, 5593:30, 5620:15, 5625:7, 5649:1, 5649:34, 5653:1</p> <p>examination [22] - 5561:4, 5561:13, 5561:26, 5561:29, 5572:3, 5577:47, 5578:4, 5578:26, 5578:27, 5578:42, 5578:45, 5579:2, 5579:8, 5579:22, 5579:26, 5579:37, 5579:40, 5620:3, 5620:8, 5624:27, 5648:38, 5654:39</p> <p>examinations [2] - 5561:16, 5561:23</p> <p>examine [15] - 5561:9, 5561:10, 5561:33, 5561:34, 5561:38, 5564:9, 5578:8, 5578:9, 5578:10, 5578:29, 5579:32, 5579:35, 5579:46, 5581:16, 5590:25</p> <p>examined [4] - 5561:19, 5561:21, 5561:38, 5562:38</p> <p>examining [1] - 5562:30</p> <p>example [3] -</p>	<p>5562:26, 5562:27, 5607:31</p> <p>examples [1] - 5654:1</p> <p>Excellency[1] - 5584:12</p> <p>except [2] - 5598:23, 5600:10</p> <p>exception [1] - 5564:27</p> <p>exchanges [1] - 5653:23</p> <p>exclude [2] - 5647:2, 5647:15</p> <p>excused [4] - 5593:12, 5593:14, 5624:31, 5654:45</p> <p>executed [6] - 5595:27, 5600:42, 5610:29, 5610:30, 5610:37, 5617:45</p> <p>executing [4] - 5600:38, 5604:20, 5616:26, 5617:42</p> <p>executive [4] - 5569:40, 5583:43, 5626:6, 5626:8</p> <p>exercise [1] - 5600:22</p> <p>exhausts [2] - 5655:5, 5655:9</p> <p>Exhibit [10] - 5561:45, 5564:42, 5566:1, 5566:42, 5568:25, 5570:7, 5570:14, 5580:37, 5591:27, 5592:43</p> <p>exhibit [44] - 5564:40, 5568:40, 5569:6, 5571:2, 5571:9, 5571:19, 5571:20, 5571:44, 5573:41, 5576:17, 5580:18, 5580:19, 5580:22, 5580:32, 5585:33, 5585:34, 5585:45, 5587:26, 5587:29, 5587:40, 5591:19, 5591:25, 5592:9, 5592:21, 5592:22, 5592:39, 5593:4, 5593:7, 5601:16, 5606:42, 5607:27, 5607:38, 5611:4, 5611:33, 5621:14, 5631:29, 5632:21, 5635:41, 5637:24, 5640:25, 5643:1, 5648:31</p> <p>exhibited [2] -</p>	<p>5568:38, 5569:24</p> <p>exhibits [6] - 5568:35, 5568:37, 5580:12, 5580:15, 5580:25</p> <p>existed [3] - 5570:42, 5576:33, 5639:6</p> <p>existence [4] - 5562:45, 5573:42, 5603:43, 5633:39</p> <p>existing [1] - 5569:1</p> <p>exists [2] - 5570:41, 5576:26</p> <p>expanded [1] - 5607:9</p> <p>expect [2] - 5618:19, 5647:18</p> <p>expected [3] - 5650:2, 5650:4, 5650:7</p> <p>expedition [2] - 5577:7, 5577:16</p> <p>explain [8] - 5597:12, 5608:2, 5635:43, 5639:17, 5639:19, 5640:4, 5649:44, 5651:16</p> <p>explained [2] - 5599:12, 5611:19</p> <p>explanation [14] - 5594:45, 5600:36, 5610:40, 5617:14, 5618:5, 5618:18, 5618:22, 5637:41, 5637:45, 5640:19, 5648:33, 5653:14, 5654:16, 5654:19</p> <p>explanations [1] - 5612:34</p> <p>Export [14] - 5608:23, 5608:27, 5608:32, 5608:36, 5609:21, 5610:3, 5610:8, 5639:45, 5640:5, 5640:11, 5640:18, 5652:15, 5652:19, 5652:28</p> <p>express [3] - 5609:16, 5615:44, 5633:13</p> <p>expressed [3] - 5609:18, 5609:39, 5610:2</p> <p>expressing [2] - 5614:3, 5637:3</p> <p>expression [1] - 5620:40</p> <p>expressions [2] - 5620:23, 5620:42</p>	<p>extended [1] - 5600:40</p> <p>extent [1] - 5646:13</p> <p>external [1] - 5647:3</p> <p>extra [1] - 5641:17</p> <p>extract [1] - 5621:13</p> <p>extraordinary [2] - 5607:33, 5609:22</p>
F				
			<p>facilitate [1] - 5626:19</p> <p>facilitated [1] - 5636:18</p> <p>Facilitated[1] - 5607:20</p> <p>facilities [1] - 5602:12</p> <p>facility [2] - 5561:22, 5589:29</p> <p>fact [14] - 5562:26, 5568:9, 5572:43, 5581:30, 5583:28, 5588:28, 5597:45, 5598:31, 5610:26, 5610:33, 5610:34, 5623:36, 5628:36, 5652:3</p> <p>factor [1] - 5609:36</p> <p>factors [1] - 5608:23</p> <p>facts [1] - 5602:33</p> <p>Fair[1] - 5624:12</p> <p>fairly [5] - 5563:16, 5614:26, 5615:24, 5628:19, 5648:18</p> <p>fairness [1] - 5619:1</p> <p>fall [2] - 5562:30, 5652:17</p> <p>familiar [2] - 5612:17, 5630:18</p> <p>familiarisation [1] - 5625:33</p> <p>familiarise [2] - 5595:30, 5625:31</p> <p>family [2] - 5603:7, 5633:32</p> <p>far [6] - 5564:5, 5585:7, 5589:46, 5605:28, 5627:6, 5632:3</p> <p>fax [6] - 5567:20, 5571:2, 5571:10, 5571:46, 5572:1, 5574:33</p> <p>faxed [2] - 5568:11, 5571:12</p> <p>fears [1] - 5597:46</p> <p>February[13] - 5568:14, 5571:10,</p>	

5571:13, 5573:2, 5573:47, 5611:23, 5612:2, 5613:16, 5640:23, 5642:6, 5642:41, 5642:45 fee [20] - 5565:27, 5565:41, 5568:12, 5571:6, 5571:11, 5582:10, 5588:10, 5588:29, 5589:6, 5612:40, 5618:12, 5618:13, 5619:31, 5619:37, 5626:39, 5641:26, 5641:27, 5643:40 feelings [1] - 5636:28 fees [17] - 5568:20, 5594:45, 5599:28, 5600:37, 5612:23, 5612:27, 5612:31, 5612:33, 5612:35, 5612:41, 5620:1, 5627:22, 5641:14, 5641:16, 5641:21, 5643:36 felt [3] - 5575:32, 5645:7 few [2] - 5633:16, 5645:31 field [1] - 5589:17 fifth [1] - 5603:23 figure [3] - 5583:35, 5597:3, 5631:19 file [2] - 5567:27, 5567:44 files [7] - 5567:19, 5567:21, 5568:3, 5602:15, 5602:16, 5602:17, 5631:43 filings [5] - 5612:16, 5613:5, 5613:11, 5613:19, 5631:11 filled [1] - 5625:34 final [2] - 5600:37, 5649:7 finalise [1] - 5569:28 Finally [1] - 5567:5 finally [1] - 5610:29 financial [6] - 5562:41, 5563:9, 5563:23, 5652:4, 5652:8, 5652:21 fine [3] - 5583:19, 5605:33, 5628:12 finish [2] - 5636:9, 5636:41 finished [1] - 5640:45 finishes [2] -	5641:40, 5655:8 firm [1] - 5601:2 firms [1] - 5629:19 First [1] - 5584:36 first [31] - 5561:32, 5563:46, 5564:28, 5570:22, 5571:19, 5572:40, 5573:36, 5576:17, 5576:35, 5581:41, 5582:13, 5582:23, 5582:30, 5582:38, 5582:41, 5582:46, 5584:34, 5585:18, 5585:20, 5586:1, 5587:26, 5588:6, 5589:5, 5594:21, 5598:33, 5602:47, 5629:35, 5636:21, 5644:13, 5649:8, 5649:9 firstly [1] - 5573:36 fishing [2] - 5577:7, 5577:16 fit [1] - 5652:23 five [3] - 5571:15, 5575:34, 5576:34 fix [2] - 5574:17, 5600:21 flew [3] - 5588:11, 5589:21, 5589:25 flight [1] - 5589:14 flour [1] - 5595:1 flow [3] - 5599:29, 5612:37, 5617:10 Flugge [26] - 5581:29, 5581:31, 5581:37, 5583:12, 5583:29, 5583:32, 5583:34, 5584:28, 5584:47, 5585:7, 5585:25, 5586:20, 5586:34, 5587:1, 5587:3, 5588:28, 5588:32, 5588:34, 5588:38, 5589:12, 5589:22, 5589:36, 5589:38, 5589:46, 5590:3, 5590:8 Fluggés [4] - 5583:41, 5585:25, 5586:39, 5589:43 fly [3] - 5643:26, 5653:17, 5654:18 flying [1] - 5643:8 focus [2] - 5613:25, 5642:12 focusing [1] - 5620:20 follow [5] - 5606:5, 5622:27, 5623:4,	5645:44, 5651:30 follow-up [1] - 5651:30 followed [3] - 5591:16, 5625:42, 5634:43 Following [2] - 5570:35, 5636:21 following [13] - 5565:17, 5599:36, 5603:33, 5606:7, 5606:10, 5607:46, 5613:21, 5615:14, 5616:6, 5616:40, 5640:38, 5641:41, 5646:1 follows [1] - 5637:34 food [4] - 5560:19, 5568:47, 5575:34, 5646:32 football [1] - 5589:2 forbidden [1] - 5629:46 force [1] - 5630:9 Foreign [1] - 5591:6 foreign [1] - 5561:28 foreshadowed [1] - 5593:8 form [6] - 5563:43, 5579:28, 5579:30, 5601:39, 5602:13, 5608:26 formatting [2] - 5574:13, 5574:17 formed [2] - 5616:45, 5646:4 Former [2] - 5614:10, 5642:27 former [3] - 5562:40, 5564:12, 5564:14 formulation [1] - 5562:44 Forrest [2] - 5561:9, 5590:28 forth [1] - 5585:28 forthcoming [1] - 5615:33 forward [4] - 5565:26, 5577:39, 5631:27, 5635:33 forwarded [1] - 5566:45 four [2] - 5608:46, 5631:5 frame [1] - 5649:20 framed [1] - 5633:43 Francis [2] - 5625:5, 5625:11 free [2] - 5640:27, 5647:31	freight [1] - 5646:32 Friday [2] - 5567:7, 5567:41 friend [8] - 5562:5, 5562:16, 5564:4, 5572:39, 5572:41, 5580:4, 5632:23, 5649:4 friends [2] - 5561:24, 5564:9 front [1] - 5587:13 fulfil [5] - 5595:1, 5599:1, 5605:37, 5614:40, 5618:14 fulfilling [2] - 5595:24, 5599:3 full [6] - 5564:19, 5571:39, 5593:32, 5593:34, 5619:7, 5625:10 full-on [1] - 5571:39 Fuller [19] - 5604:28, 5608:3, 5612:9, 5612:12, 5612:14, 5612:15, 5613:33, 5620:19, 5620:21, 5623:9, 5623:28, 5624:16, 5631:2, 5637:22, 5639:35, 5649:43, 5650:16, 5651:28, 5651:45 Fullers [19] - 5606:43, 5608:22, 5609:45, 5611:32, 5611:35, 5612:16, 5615:19, 5620:26, 5620:30, 5621:2, 5636:1, 5639:14, 5640:24, 5644:46, 5645:1, 5649:38, 5650:26, 5653:4, 5653:44 fully [1] - 5632:4 fundamentals [1] - 5606:18 funds [1] - 5568:44	5584:14, 5584:32, 5585:10, 5585:15, 5587:14, 5595:45, 5631:2 generally [2] - 5603:38, 5625:32 Gibson [23] - 5625:3, 5625:5, 5625:9, 5625:11, 5629:15, 5632:25, 5637:25, 5638:18, 5640:26, 5643:22, 5644:35, 5647:28, 5647:35, 5648:1, 5648:12, 5648:39, 5649:3, 5649:36, 5650:32, 5650:44, 5651:15, 5653:3, 5654:45 Gibson's [1] - 5610:20 gist [1] - 5638:8 Given [1] - 5595:24 given [32] - 5581:32, 5583:17, 5594:45, 5597:44, 5603:40, 5603:43, 5607:3, 5610:41, 5611:17, 5615:36, 5616:19, 5618:27, 5618:37, 5622:19, 5622:35, 5623:8, 5623:27, 5624:16, 5625:33, 5625:37, 5625:41, 5627:21, 5629:30, 5634:1, 5634:25, 5635:14, 5635:20, 5641:16, 5646:34, 5649:43, 5654:23, 5654:29 gleaned [1] - 5649:25 goodwill [1] - 5584:17 government [4] - 5630:10, 5632:4, 5638:3, 5638:13 Government [3] - 5619:41, 5644:11, 5644:20 Grain [4] - 5570:36, 5571:22, 5585:10, 5649:23 grain [23] - 5583:33, 5583:34, 5583:39, 5583:42, 5583:46, 5584:4, 5584:8, 5584:10, 5584:13, 5584:15, 5584:28, 5584:29, 5584:44, 5585:5, 5585:13,
G				
Gary [1] - 5575:9 gather [1] - 5629:29 gathered [1] - 5642:35 gathering [3] - 5600:21, 5614:39, 5628:25 Gavin [1] - 5575:9 Gee [1] - 5630:28 General [1] - 5633:4 general [7] -				

<p>5585:22, 5585:26, 5585:27, 5586:9, 5586:29, 5586:38, 5618:14, 5626:20 Grains [3] - 5605:35, 5617:44, 5618:15 granted [2] - 5562:9, 5593:25 great [3] - 5577:18, 5579:47, 5606:36 greater [1] - 5563:23 greatest [1] - 5617:44 growers [5] - 5589:17, 5600:41, 5622:7, 5636:32, 5651:18 grown [1] - 5646:33 guess [12] - 5595:23, 5595:44, 5600:37, 5604:36, 5606:26, 5608:34, 5609:5, 5609:18, 5614:38, 5617:10, 5629:10, 5645:46 guys [1] - 5587:12</p>	<p>5611:39, 5631:38, 5636:8, 5637:32, 5637:35 hear [6] - 5577:30, 5604:5, 5653:26, 5654:29, 5654:31 heard [7] - 5589:39, 5590:8, 5628:3, 5641:27, 5644:32, 5649:10, 5654:20 Hearing [1] - 5655:13 hearing [7] - 5561:13, 5562:42, 5563:18, 5604:45, 5633:11, 5635:3, 5649:5 hearings [2] - 5603:19, 5603:30 Held [1] - 5560:31 held [2] - 5593:42, 5625:19 help [2] - 5597:11, 5622:15 hide [2] - 5636:19, 5636:23 highly [2] - 5562:24, 5563:6 hindsight [2] - 5613:39, 5642:17 hmm [6] - 5566:28, 5569:34, 5584:39, 5590:12, 5595:6, 5624:3 Hockey [7] - 5568:39, 5568:40, 5569:25, 5569:36, 5570:8, 5570:10, 5570:14 Hogan [32] - 5562:47, 5563:4, 5563:44, 5564:7, 5564:12, 5564:19, 5564:20, 5564:21, 5564:23, 5564:27, 5564:43, 5565:31, 5566:1, 5566:42, 5568:25, 5570:8, 5570:26, 5572:4, 5572:18, 5573:6, 5579:29, 5579:44, 5579:46, 5580:8, 5580:38, 5581:9, 5581:14, 5581:24, 5583:41, 5590:6, 5590:32 Hogan's [2] - 5580:14, 5581:22 hold [1] - 5618:42 hole [1] - 5644:5 home [7] - 5572:34, 5573:9, 5573:22,</p>	<p>5573:32, 5575:7, 5575:8 Hon [1] - 5560:26 Honourable [1] - 5591:5 hope [1] - 5568:18 Hospital [1] - 5569:43 hostilities [2] - 5595:9, 5595:13 hotel [1] - 5581:6 Hotel [1] - 5574:16 hour [2] - 5583:35, 5645:22 hours [6] - 5567:40, 5575:31, 5575:34, 5576:30, 5588:13, 5588:43 housekeeping [1] - 5561:2 Hughes [1] - 5585:30 Hussein [1] - 5568:45</p>	<p>5587:13, 5595:33, 5600:39, 5616:19 imposed [2] - 5618:12, 5641:26 imposition [1] - 5612:39 impropriety [3] - 5589:41, 5590:18, 5590:21 include [3] - 5565:10, 5593:7, 5652:21 included [2] - 5569:2, 5635:16 includes [1] - 5580:10 including [3] - 5577:9, 5582:9, 5622:19 inclusion [2] - 5566:46, 5651:16 incorrect [4] - 5619:18, 5619:19, 5620:31, 5647:36 increase [7] - 5565:3, 5565:28, 5565:41, 5600:37, 5612:34, 5641:20, 5646:39 increases [2] - 5599:12, 5599:27 increasing [3] - 5566:32, 5594:45, 5594:46 indebted [1] - 5573:4 Indeed [1] - 5563:2 indeed [1] - 5581:18 independent [2] - 5562:43, 5563:36 indicate [4] - 5567:33, 5572:41, 5576:37, 5576:43 indicated [4] - 5567:28, 5567:33, 5567:45, 5623:15 indicating [2] - 5580:17, 5589:47 indication [3] - 5561:11, 5561:18, 5561:26 individuals [2] - 5598:19, 5600:1 inferred [1] - 5568:11 inflation [2] - 5609:31, 5609:36 influence/lobbying [1] - 5637:40 inform [1] - 5632:22 information [71] -</p>	<p>5567:42, 5568:3, 5568:11, 5576:3, 5594:3, 5596:26, 5596:42, 5596:45, 5598:28, 5599:23, 5599:26, 5599:29, 5599:31, 5599:43, 5600:17, 5600:21, 5600:26, 5600:28, 5601:21, 5601:22, 5601:47, 5602:6, 5602:12, 5602:24, 5602:41, 5603:10, 5603:13, 5603:39, 5603:40, 5603:43, 5604:9, 5604:10, 5604:16, 5604:24, 5604:33, 5604:35, 5605:4, 5606:28, 5606:43, 5607:28, 5608:16, 5610:42, 5612:37, 5614:40, 5618:22, 5618:27, 5621:6, 5625:37, 5625:41, 5626:34, 5627:21, 5627:26, 5627:30, 5627:31, 5627:36, 5628:15, 5629:25, 5629:35, 5629:41, 5630:15, 5633:25, 5633:45, 5634:2, 5636:2, 5637:9, 5637:19, 5643:32, 5644:44, 5646:13, 5648:34, 5649:6 Information [1] - 5637:20 information-gathering [1] - 5600:21 informed [16] - 5594:23, 5594:25, 5605:3, 5605:4, 5608:24, 5610:3, 5610:12, 5617:30, 5621:34, 5622:22, 5629:45, 5633:25, 5635:36, 5635:37, 5646:31, 5649:22 informing [2] - 5610:45, 5629:11 infringing [1] - 5592:26 Ingleby [2] - 5650:19, 5652:9 inhibited [1] - 5562:29 initial [2] - 5568:5, 5576:15</p>
H		I		
<p>half [5] - 5583:35, 5605:20, 5645:22, 5651:16, 5651:21 halfway [5] - 5614:9, 5616:11, 5639:16, 5642:26, 5645:2 hand [8] - 5590:2, 5590:3, 5591:12, 5611:34, 5615:7, 5618:41, 5632:47, 5647:28 handed [5] - 5571:15, 5583:14, 5583:19, 5635:7, 5635:12 handling [4] - 5586:9, 5586:29, 5586:38, 5636:30 happy [2] - 5573:23, 5586:33 hard [6] - 5602:1, 5602:7, 5602:16, 5611:34, 5632:22, 5640:24 Hardy [1] - 5607:31 Hart [3] - 5586:12, 5586:28, 5586:30 head [2] - 5583:35, 5650:32 Headed [1] - 5633:4 heading [5] -</p>		<p>lan [2] - 5593:28, 5593:34 idea [1] - 5583:16 ideas [1] - 5586:33 identification [1] - 5585:35 identified [3] - 5592:30, 5643:5, 5649:23 identifying [1] - 5626:31 Igb [16] - 5565:4, 5565:6, 5565:13, 5565:19, 5565:32, 5571:3, 5571:10, 5571:14, 5571:44, 5584:45, 5616:45, 5617:18, 5630:19, 5646:3, 5646:8, 5646:9 imagine [2] - 5581:36, 5582:10 immediately [1] - 5613:42 impart [2] - 5594:3, 5605:13 implemented [1] - 5588:26 importance [4] - 5586:39, 5586:40, 5586:42, 5586:43 important [8] - 5587:3, 5587:9, 5587:10, 5587:11,</p>		

<p>initials [10] - 5614:10, 5616:43, 5637:33, 5639:15, 5639:41, 5642:26, 5643:17, 5644:45, 5646:3, 5646:24</p> <p>initiated [1] - 5644:10</p> <p>inland [28] - 5568:20, 5569:10, 5570:37, 5571:37, 5582:9, 5588:10, 5588:25, 5588:29, 5589:6, 5589:8, 5589:36, 5594:9, 5594:23, 5594:37, 5596:26, 5599:8, 5618:12, 5618:26, 5625:42, 5625:45, 5626:1, 5626:15, 5626:19, 5630:20, 5630:41, 5646:10, 5649:18</p> <p>inquire [2] - 5606:30, 5606:32</p> <p>inquiries [4] - 5607:10, 5631:40, 5651:29, 5651:31</p> <p>inquiring [1] - 5640:13</p> <p>inquiry [26] - 5563:27, 5563:40, 5564:4, 5564:26, 5567:11, 5572:18, 5572:26, 5573:17, 5573:19, 5573:22, 5592:16, 5601:1, 5603:14, 5603:20, 5604:14, 5605:47, 5615:34, 5615:37, 5616:3, 5627:5, 5627:7, 5629:39, 5639:34, 5639:38, 5647:26, 5651:36</p> <p>Inquiry [11] - 5560:18, 5597:9, 5597:14, 5597:32, 5614:39, 5614:41, 5615:46, 5616:3, 5628:25, 5642:34, 5645:46</p> <p>inquiry's [1] - 5592:17</p> <p>inquisitive [1] - 5648:19</p> <p>insofar [2] - 5611:9, 5650:21</p> <p>instructing [1] - 5591:37</p> <p>instructions [1] - 5615:36</p>	<p>Insurance [2] - 5642:25, 5643:24</p> <p>insurance [1] - 5614:19</p> <p>insurers [1] - 5614:19</p> <p>intend [3] - 5577:23, 5577:24, 5577:35</p> <p>intended [1] - 5594:2</p> <p>intensive [1] - 5569:44</p> <p>intention [2] - 5563:19, 5570:27</p> <p>interest [10] - 5576:44, 5577:31, 5598:24, 5600:12, 5600:21, 5602:26, 5604:36, 5606:36, 5608:28, 5617:36</p> <p>interested [1] - 5614:8</p> <p>International [13] - 5591:6, 5593:36, 5594:15, 5595:25, 5604:18, 5608:29, 5609:14, 5611:20, 5621:47, 5622:7, 5625:13, 5625:25, 5635:39</p> <p>interpose [1] - 5634:42</p> <p>interrupt [4] - 5562:4, 5562:16, 5572:39, 5590:6</p> <p>interview [5] - 5574:40, 5575:14, 5576:5, 5576:15, 5576:27</p> <p>interviewed [1] - 5598:17</p> <p>interviewing [1] - 5631:44</p> <p>interviews [2] - 5577:1, 5577:29</p> <p>introduced [2] - 5619:33, 5647:5</p> <p>invasion [4] - 5595:4, 5628:35, 5628:36, 5630:34</p> <p>investigation [7] - 5562:21, 5567:16, 5568:12, 5568:17, 5596:34, 5597:3, 5641:47</p> <p>investigations [1] - 5615:16</p> <p>invite [2] - 5614:7, 5616:41</p> <p>involve [2] - 5626:31, 5644:28</p>	<p>involved [6] - 5598:5, 5605:35, 5629:7, 5636:41</p> <p>involving [1] - 5632:30</p> <p>Iran [2] - 5585:29, 5616:26</p> <p>Iraq [48] - 5568:6, 5568:17, 5568:21, 5569:18, 5570:36, 5571:22, 5582:17, 5583:47, 5584:4, 5584:6, 5584:7, 5584:28, 5586:20, 5586:43, 5594:37, 5595:1, 5595:4, 5595:24, 5595:31, 5596:8, 5596:11, 5596:16, 5596:22, 5596:26, 5598:26, 5598:32, 5598:42, 5600:14, 5603:7, 5613:9, 5618:27, 5625:38, 5625:43, 5626:27, 5628:4, 5628:17, 5628:28, 5629:20, 5629:46, 5631:10, 5633:32, 5644:30, 5647:4, 5648:3, 5648:15, 5649:17, 5649:21, 5649:23</p> <p>Iraqi [19] - 5581:25, 5582:32, 5582:34, 5598:38, 5603:25, 5603:44, 5605:35, 5617:43, 5618:15, 5619:32, 5619:41, 5629:26, 5630:5, 5630:10, 5630:11, 5633:36, 5638:3, 5638:13, 5643:45</p> <p>Iraqis [8] - 5568:9, 5588:46, 5589:40, 5613:10, 5629:6, 5629:7, 5629:36, 5641:26</p> <p>iron [5] - 5612:16, 5613:5, 5613:11, 5613:19, 5631:11</p> <p>Is&M [1] - 5598:12</p> <p>issue [33] - 5580:6, 5582:11, 5588:11, 5588:18, 5592:35, 5594:35, 5597:26, 5604:39, 5605:31, 5606:16, 5610:17, 5613:7, 5613:19, 5617:8, 5618:17, 5621:1, 5622:9,</p>	<p>5626:12, 5626:13, 5627:43, 5630:42, 5637:5, 5644:37, 5645:40, 5646:18, 5646:25, 5646:26, 5648:3, 5648:26, 5651:3, 5652:33, 5652:40</p> <p>issues [22] - 5565:42, 5565:43, 5567:2, 5577:35, 5581:38, 5583:36, 5588:25, 5589:2, 5589:45, 5594:47, 5595:39, 5612:10, 5613:30, 5613:47, 5616:37, 5617:9, 5632:1, 5640:47, 5641:7, 5642:10, 5648:19, 5650:40</p> <p>Issues [2] - 5611:40, 5641:11</p> <p>item [5] - 5565:11, 5636:7, 5639:24, 5639:31, 5652:14</p> <p>items [4] - 5633:15, 5633:20, 5649:45, 5650:2</p> <p>Itf [1] - 5588:11</p> <p>itinerary [2] - 5583:37, 5585:11</p> <p>itself [3] - 5566:8, 5634:15, 5649:10</p>	<p>5647:11, 5647:12, 5648:5, 5648:14, 5652:14, 5652:36</p> <p>Jordan[1] - 5588:2</p> <p>Jordanian[17] - 5568:44, 5569:9, 5602:47, 5604:19, 5616:12, 5616:30, 5626:24, 5628:2, 5630:19, 5630:44, 5645:2, 5645:6, 5645:10, 5645:19, 5645:28, 5646:10, 5649:9</p> <p>Judd[23] - 5562:13, 5562:16, 5562:36, 5563:29, 5563:35, 5564:5, 5572:10, 5592:24, 5592:29, 5592:35, 5592:46, 5593:21, 5593:25, 5620:6, 5620:8, 5632:23, 5648:41, 5648:43, 5649:1, 5649:3, 5649:27, 5654:39, 5654:41</p> <p>July[17] - 5601:17, 5601:22, 5601:40, 5602:22, 5602:33, 5602:37, 5603:10, 5632:20, 5632:30, 5633:9, 5633:21, 5633:24, 5633:30, 5633:44, 5634:13, 5634:15, 5635:2</p> <p>June[13] - 5565:43, 5567:8, 5567:13, 5567:16, 5573:11, 5573:16, 5573:20, 5573:28, 5585:34, 5586:27, 5586:30, 5607:9, 5628:24</p> <p>junior [1] - 5578:33</p> <p>justified [1] - 5562:24</p>
J				
		<p>James[1] - 5607:31</p> <p>January[9] - 5575:3, 5603:15, 5618:37, 5627:12, 5641:28, 5643:41, 5644:41, 5646:42, 5647:4</p> <p>Jmc0002.0023 [2] - 5606:8, 5638:18</p> <p>John[3] - 5564:12, 5564:21, 5586:11</p> <p>Johnson[3] - 5631:3, 5650:19</p> <p>joint [30] - 5596:42, 5596:45, 5599:22, 5599:26, 5599:30, 5600:28, 5601:21, 5603:44, 5605:4, 5606:43, 5607:28, 5608:16, 5621:6, 5627:1, 5627:26, 5627:30, 5629:1, 5632:44, 5633:39, 5634:19, 5636:1, 5640:23, 5644:44,</p>		
K				
		<p>keen [3] - 5600:41, 5602:25, 5608:28</p> <p>keep [6] - 5571:39, 5573:6, 5578:16, 5601:34, 5602:18, 5626:42</p> <p>keeping [1] - 5568:8</p> <p>Kennan[3] - 5563:42, 5572:8, 5576:20</p> <p>kept [1] - 5567:21</p> <p>Kevin[1] - 5591:5</p>		

<p>key [1] - 5619:47 Khartoum [3] - 5588:11, 5589:25, 5589:28 khawam [2] - 5603:7, 5633:31 kick [1] - 5569:4 kickback [1] - 5569:14 kickbacks [1] - 5613:24 kind [2] - 5602:6, 5625:9 knowledge [9] - 5564:36, 5588:24, 5604:19, 5606:19, 5615:37, 5615:38, 5618:26, 5621:45, 5629:21 known [1] - 5627:7</p>	<p>Lastly[1] - 5618:36 late [1] - 5628:19 latter [1] - 5606:25 law [1] - 5562:22 lawyers [10] - 5593:47, 5598:1, 5598:5, 5603:39, 5619:26, 5619:34, 5626:34, 5635:23, 5647:2, 5647:3 learn [1] - 5609:29 learned [6] - 5561:24, 5562:5, 5564:4, 5564:9, 5632:23, 5649:4 least [8] - 5577:23, 5623:8, 5630:9, 5640:16, 5645:36, 5647:30, 5653:13, 5654:17 leave [6] - 5567:8, 5569:32, 5575:7, 5579:31, 5593:21, 5593:25 leaving [1] - 5603:38 Lebanon[1] - 5584:1 led [1] - 5642:7 left [8] - 5572:30, 5572:31, 5573:19, 5589:22, 5590:3, 5618:41, 5647:28, 5652:20 left-hand [3] - 5590:3, 5618:41, 5647:28 legal [16] - 5563:5, 5574:6, 5594:3, 5598:1, 5605:13, 5618:32, 5626:31, 5632:24, 5634:42, 5636:21, 5642:8, 5642:10, 5644:18, 5644:28, 5647:5, 5648:21 legalities [2] - 5605:28, 5605:32 length [2] - 5579:47, 5586:32 less [1] - 5576:33 letter [6] - 5566:6, 5566:9, 5566:37, 5569:21, 5579:25, 5591:16 Level[1] - 5560:31 level [5] - 5597:8, 5597:25, 5615:36, 5648:4, 5648:14 lieu [1] - 5580:31 likely [3] - 5582:8, 5596:2, 5598:5</p>	<p>likewise [2] - 5603:22, 5603:33 limit [1] - 5584:6 limitation [1] - 5615:44 Limited[14] - 5566:47, 5568:43, 5593:36, 5604:5, 5605:36, 5611:2, 5616:24, 5622:6, 5625:13, 5625:22, 5625:25, 5636:30, 5636:35 limited [1] - 5630:9 Lindberg[65] - 5562:32, 5596:7, 5596:9, 5596:16, 5596:29, 5596:30, 5596:37, 5596:46, 5597:17, 5598:4, 5605:10, 5605:14, 5605:26, 5605:40, 5606:15, 5606:22, 5607:46, 5611:13, 5611:16, 5612:1, 5612:9, 5612:15, 5612:20, 5613:42, 5616:15, 5617:8, 5617:25, 5617:32, 5617:38, 5617:47, 5618:4, 5618:19, 5618:32, 5619:14, 5619:20, 5619:23, 5619:30, 5619:33, 5621:21, 5623:13, 5623:15, 5624:2, 5631:12, 5631:13, 5631:30, 5632:40, 5634:21, 5634:25, 5634:27, 5634:38, 5637:34, 5637:41, 5637:44, 5637:47, 5638:2, 5638:32, 5638:39, 5640:39, 5640:45, 5646:7, 5646:31, 5646:47, 5647:5, 5647:8, 5647:20 Lindbergs [11] - 5614:9, 5616:42, 5617:14, 5617:40, 5619:3, 5637:38, 5638:9, 5640:40, 5641:4, 5642:26, 5646:3 line [12] - 5561:14, 5618:40, 5618:45, 5619:2, 5623:32, 5636:20, 5646:22, 5647:27, 5647:30,</p>	<p>5651:4, 5651:5 liners [2] - 5640:7, 5649:40 lines [7] - 5608:22, 5609:18, 5617:42, 5623:12, 5623:42, 5639:47, 5645:31 linked [1] - 5629:26 linking [1] - 5585:29 listed [5] - 5601:20, 5607:39, 5611:4, 5611:24, 5637:25 listen [19] - 5576:29, 5576:45, 5577:40, 5577:46, 5578:7, 5578:9, 5578:18, 5578:21, 5578:25, 5578:38, 5578:41, 5578:46, 5579:21, 5579:27, 5579:41, 5579:47, 5580:41, 5581:1, 5581:7 listened [1] - 5579:38 listening [5] - 5576:46, 5577:42, 5578:28, 5597:43, 5653:33 located [1] - 5565:16 look [10] - 5573:31, 5576:39, 5584:34, 5585:32, 5588:6, 5592:29, 5592:47, 5610:35, 5632:25, 5640:27 Look[6] - 5598:23, 5600:10, 5607:3, 5611:18, 5612:21, 5616:31 looked [2] - 5606:13, 5649:7 looking [2] - 5571:43, 5612:36 Luncheon[1] - 5624:37</p>	<p>5599:44, 5618:5, 5618:33, 5627:36, 5627:37, 5627:39, 5627:42, 5630:47, 5631:44, 5653:24 manager [2] - 5595:45, 5631:2 managers [1] - 5650:16 manner [6] - 5609:30, 5612:27, 5612:31, 5615:32, 5634:46, 5652:22 manuals [1] - 5586:44 March [27] - 5560:35, 5591:12, 5593:40, 5593:43, 5594:17, 5595:5, 5596:25, 5599:37, 5600:23, 5616:7, 5616:29, 5625:17, 5627:18, 5627:31, 5628:23, 5628:34, 5628:36, 5629:19, 5630:9, 5630:30, 5639:7, 5641:21, 5644:8, 5644:42, 5645:27, 5655:11, 5655:14 Marise [3] - 5566:13, 5566:42, 5566:46 mark [4] - 5580:21, 5580:31, 5592:37, 5640:30 Mark [6] - 5561:37, 5561:45, 5565:36, 5571:39, 5586:28, 5591:32 marked [4] - 5580:24, 5591:19, 5592:20, 5592:21 Market [1] - 5560:32 market [13] - 5574:33, 5581:25, 5581:39, 5582:32, 5582:34, 5587:1, 5587:2, 5607:31, 5613:10, 5625:38, 5625:43, 5625:45 marketing [1] - 5626:1 markets [1] - 5625:46 Martin [2] - 5617:3, 5646:17 material [9] - 5563:3, 5591:13, 5591:18, 5591:20, 5592:19, 5601:39, 5601:41, 5602:16, 5609:34</p>
		<p>L</p>	<p>M</p>	<p>M</p>
<p>laboratories [1] - 5584:45 Lacava[35] - 5572:12, 5572:14, 5572:16, 5572:18, 5572:47, 5573:4, 5575:1, 5576:24, 5576:26, 5576:32, 5576:41, 5577:3, 5577:13, 5577:18, 5577:23, 5577:28, 5577:41, 5577:44, 5578:3, 5578:12, 5578:16, 5578:21, 5578:32, 5578:37, 5578:44, 5579:4, 5579:10, 5579:20, 5579:24, 5579:40, 5580:40, 5580:43, 5580:47, 5581:6, 5581:12 land [2] - 5571:23, 5571:28 language [2] - 5563:21, 5622:41 large [3] - 5587:30, 5643:3, 5643:12 largest [2] - 5584:13, 5584:31 last [15] - 5564:31, 5564:32, 5565:23, 5568:35, 5572:44, 5575:29, 5599:37, 5601:36, 5601:42, 5606:5, 5608:45, 5632:46, 5633:40, 5635:1, 5648:30</p>	<p>laboratories [1] - 5584:45 Lacava[35] - 5572:12, 5572:14, 5572:16, 5572:18, 5572:47, 5573:4, 5575:1, 5576:24, 5576:26, 5576:32, 5576:41, 5577:3, 5577:13, 5577:18, 5577:23, 5577:28, 5577:41, 5577:44, 5578:3, 5578:12, 5578:16, 5578:21, 5578:32, 5578:37, 5578:44, 5579:4, 5579:10, 5579:20, 5579:24, 5579:40, 5580:40, 5580:43, 5580:47, 5581:6, 5581:12 land [2] - 5571:23, 5571:28 language [2] - 5563:21, 5622:41 large [3] - 5587:30, 5643:3, 5643:12 largest [2] - 5584:13, 5584:31 last [15] - 5564:31, 5564:32, 5565:23, 5568:35, 5572:44, 5575:29, 5599:37, 5601:36, 5601:42, 5606:5, 5608:45, 5632:46, 5633:40, 5635:1, 5648:30</p>	<p>mailed [1] - 5581:26 main [7] - 5583:36, 5584:27, 5584:46, 5584:47, 5585:7, 5585:18, 5585:21 major [3] - 5577:35, 5586:42, 5586:43 man [1] - 5576:27 Management [1] - 5637:35 management [12] - 5595:38, 5598:17,</p>	<p>mailed [1] - 5581:26 main [7] - 5583:36, 5584:27, 5584:46, 5584:47, 5585:7, 5585:18, 5585:21 major [3] - 5577:35, 5586:42, 5586:43 man [1] - 5576:27 Management [1] - 5637:35 management [12] - 5595:38, 5598:17,</p>	<p>M</p>

<p>materially [1] - 5619:7</p> <p>matter [20] - 5562:26, 5562:29, 5562:36, 5563:26, 5563:37, 5563:38, 5563:40, 5564:6, 5567:1, 5570:32, 5580:5, 5585:38, 5586:39, 5586:40, 5587:6, 5589:11, 5594:19, 5642:5, 5648:43, 5653:34</p> <p>matters [16] - 5561:2, 5562:17, 5562:22, 5564:26, 5564:45, 5570:44, 5577:19, 5579:28, 5582:8, 5583:22, 5590:15, 5597:14, 5597:38, 5608:28, 5615:21, 5628:26</p> <p>McClelland [1] - 5617:7</p> <p>McClelland's [1] - 5646:24</p> <p>mean [12] - 5598:3, 5599:45, 5600:1, 5600:37, 5602:43, 5604:10, 5605:33, 5612:16, 5617:11, 5627:15, 5642:13, 5643:28</p> <p>meaning [1] - 5621:1</p> <p>means [4] - 5563:1, 5601:28, 5612:8, 5640:27</p> <p>meant [1] - 5653:22</p> <p>mechanics [3] - 5627:6, 5637:15, 5638:27</p> <p>mechanism [2] - 5568:20, 5589:1</p> <p>mechanisms [1] - 5588:26</p> <p>media [1] - 5601:12</p> <p>meet [6] - 5563:8, 5574:38, 5575:2, 5575:5, 5584:32, 5585:9</p> <p>meeting [97] - 5575:30, 5583:38, 5584:14, 5594:30, 5596:9, 5596:41, 5607:14, 5607:29, 5607:40, 5608:17, 5608:46, 5609:16, 5609:29, 5609:40, 5610:16, 5610:25, 5611:3, 5611:9,</p>	<p>5611:22, 5611:33, 5612:2, 5612:35, 5613:16, 5614:32, 5615:24, 5616:6, 5616:16, 5616:18, 5616:32, 5618:36, 5619:8, 5619:11, 5619:15, 5620:36, 5620:37, 5621:10, 5621:14, 5621:21, 5622:22, 5622:47, 5623:10, 5623:47, 5626:47, 5627:26, 5628:43, 5628:44, 5628:47, 5629:1, 5629:41, 5629:43, 5632:42, 5632:44, 5634:19, 5635:14, 5637:4, 5637:22, 5637:23, 5638:23, 5639:44, 5640:22, 5640:23, 5640:40, 5643:22, 5643:25, 5643:26, 5644:42, 5645:6, 5645:11, 5645:19, 5645:40, 5646:31, 5647:9, 5647:11, 5647:14, 5647:16, 5647:18, 5647:21, 5647:40, 5649:37, 5650:26, 5650:34, 5650:37, 5652:15, 5652:32, 5653:18, 5653:22, 5653:25, 5653:38, 5653:42, 5654:7, 5654:23</p> <p>meetings [29] - 5584:12, 5587:46, 5588:20, 5588:36, 5588:37, 5588:38, 5588:40, 5588:42, 5589:19, 5589:39, 5593:47, 5599:23, 5599:27, 5601:25, 5603:37, 5604:43, 5620:20, 5620:26, 5624:22, 5629:42, 5644:13, 5648:5, 5648:14, 5652:36, 5653:5, 5653:13, 5653:45, 5654:17</p> <p>Mehdi [5] - 5584:12, 5584:30, 5585:9, 5585:15, 5588:39</p> <p>Melbourne [4] - 5565:34, 5571:35, 5587:17, 5588:33</p> <p>member [7] - 5599:43, 5618:5, 5623:11, 5626:6,</p>	<p>5626:8, 5648:34</p> <p>members [7] - 5602:1, 5618:8, 5618:33, 5621:33, 5622:21, 5635:14, 5643:29</p> <p>memorandum [7] - 5596:29, 5596:32, 5596:38, 5597:1, 5597:18, 5631:29, 5631:35</p> <p>memory [4] - 5583:23, 5606:41, 5622:30, 5628:26</p> <p>mention [4] - 5623:3, 5623:9, 5643:18, 5650:27</p> <p>mentioned [4] - 5562:2, 5598:23, 5600:11, 5623:7</p> <p>messy [1] - 5579:34</p> <p>met [10] - 5574:35, 5574:39, 5575:9, 5585:14, 5585:15, 5588:38, 5588:39, 5589:17, 5589:47, 5590:1</p> <p>mid [3] - 5569:42, 5607:47, 5637:39</p> <p>mid-may [1] - 5569:42</p> <p>midday [1] - 5561:27</p> <p>Middle [2] - 5567:2, 5587:2</p> <p>middle [2] - 5589:15, 5589:17</p> <p>Might [1] - 5591:19</p> <p>might [24] - 5562:31, 5563:21, 5567:32, 5571:44, 5575:30, 5576:32, 5588:29, 5592:5, 5592:46, 5606:15, 5629:4, 5640:29, 5641:32, 5642:21, 5643:44, 5644:19, 5644:28, 5650:21, 5651:8, 5652:26, 5653:25, 5653:32, 5653:33</p> <p>mightn't [1] - 5654:19</p> <p>milling [1] - 5586:10</p> <p>million [6] - 5583:47, 5587:11, 5589:16, 5605:20, 5651:17, 5651:21</p> <p>mills [1] - 5595:1</p> <p>mind [7] - 5576:47, 5578:14, 5578:40, 5597:43, 5626:11,</p>	<p>5630:14, 5633:18</p> <p>Mine [1] - 5568:15</p> <p>Minister [3] - 5565:13, 5584:31, 5591:5</p> <p>minister [7] - 5583:38, 5585:14, 5587:2, 5587:7, 5588:39, 5589:46</p> <p>Ministry [3] - 5603:25, 5603:45, 5633:36</p> <p>minute [5] - 5589:22, 5605:22, 5621:26, 5621:33, 5622:38</p> <p>minutes [11] - 5576:34, 5611:2, 5611:8, 5621:13, 5621:35, 5621:43, 5622:17, 5635:16, 5650:8, 5650:11, 5650:12</p> <p>minutiae [3] - 5577:7, 5577:34, 5577:36</p> <p>missed [2] - 5589:13, 5601:24</p> <p>mistakes [1] - 5570:27</p> <p>misunderstanding [1] - 5592:46</p> <p>mmm-hmm [1] - 5624:3</p> <p>Mmm-hmm [5] - 5566:28, 5569:34, 5584:39, 5590:12, 5595:6</p> <p>Moffet [8] - 5618:37, 5619:3, 5619:7, 5646:29, 5647:39, 5647:44, 5651:3, 5651:13</p> <p>Moffet's [5] - 5619:17, 5619:44, 5619:46, 5647:25, 5647:35</p> <p>Mohammed [5] - 5584:12, 5584:30, 5585:9, 5585:15, 5588:39</p> <p>moment [5] - 5578:32, 5590:10, 5590:14, 5626:4, 5651:9</p> <p>Monday [2] - 5588:4, 5635:10</p> <p>money [16] - 5568:14, 5568:16, 5569:9, 5619:31, 5622:23, 5622:32,</p>	<p>5622:42, 5623:16, 5624:1, 5624:10, 5638:3, 5638:12, 5638:40, 5643:2, 5643:44, 5651:22</p> <p>moneys [3] - 5606:23, 5610:34, 5619:41</p> <p>monitor [8] - 5585:44, 5601:32, 5601:33, 5601:44, 5618:41, 5636:9, 5638:25, 5647:31</p> <p>monitored [1] - 5569:17</p> <p>month [1] - 5569:42</p> <p>months [9] - 5585:28, 5594:19, 5594:20, 5594:21, 5595:15, 5598:27, 5600:15, 5600:22, 5625:41</p> <p>mood [1] - 5607:31</p> <p>morality [4] - 5607:21, 5607:23, 5636:19, 5636:23</p> <p>morning [6] - 5563:6, 5564:8, 5570:26, 5574:36, 5588:13, 5655:10</p> <p>Most [2] - 5645:37, 5649:14</p> <p>most [6] - 5563:11, 5580:11, 5595:32, 5598:5, 5600:39, 5620:46</p> <p>mouth [1] - 5578:3</p> <p>move [1] - 5561:15</p> <p>mucked [1] - 5574:17</p> <p>Murray [1] - 5590:4</p> <p>must [3] - 5582:6, 5629:17, 5647:39</p>
N				
<p>name [15] - 5564:19, 5566:7, 5574:33, 5591:10, 5593:32, 5593:34, 5601:20, 5601:23, 5607:29, 5608:6, 5625:10, 5628:9, 5637:38, 5639:15, 5642:16</p> <p>names [5] - 5561:40, 5562:2, 5592:30, 5592:40, 5600:1</p> <p>national [1] - 5605:20</p> <p>Nations [1] - 5654:8</p>				

<p>naturally [1] - 5628:12</p> <p>nature [2] - 5564:4, 5642:39</p> <p>near [1] - 5613:23</p> <p>necessary [2] - 5583:32, 5618:14</p> <p>need [9] - 5570:1, 5577:10, 5580:40, 5584:8, 5592:10, 5601:42, 5606:11, 5631:8, 5648:43</p> <p>needed [2] - 5615:31, 5615:33</p> <p>neglected [1] - 5580:5</p> <p>negotiate [2] - 5584:23, 5596:8</p> <p>negotiating [3] - 5584:19, 5584:22, 5587:12</p> <p>negotiations [5] - 5584:9, 5584:18, 5585:11, 5587:33, 5596:19</p> <p>never [3] - 5568:16, 5589:35, 5643:43</p> <p>new [8] - 5562:44, 5581:22, 5581:24, 5582:24, 5582:33, 5596:8, 5645:27, 5645:29</p> <p>news [1] - 5649:13</p> <p>next [19] - 5569:24, 5569:36, 5586:27, 5593:16, 5593:18, 5593:22, 5603:5, 5607:23, 5623:41, 5625:3, 5638:25, 5639:43, 5640:22, 5644:42, 5645:3, 5647:30, 5651:33, 5652:14, 5652:32</p> <p>Nicholas [3] - 5561:3, 5561:5, 5561:11</p> <p>Nigel [1] - 5585:30</p> <p>night [1] - 5567:41</p> <p>nine [1] - 5567:40</p> <p>no-one [4] - 5595:40, 5616:14, 5636:17, 5645:4</p> <p>No-one [1] - 5639:35</p> <p>nobody [2] - 5591:39, 5592:9</p> <p>nominated [1] - 5631:5</p> <p>non [8] - 5561:40, 5562:1, 5580:28, 5580:32, 5583:43, 5592:22, 5592:40, 5593:4</p> <p>non-executive [1] - 5583:43</p> <p>non-publication [7] - 5561:40, 5562:1, 5580:28, 5580:32, 5592:22, 5592:40, 5593:4</p> <p>None [1] - 5642:46</p> <p>none [2] - 5594:2, 5643:14</p> <p>normal [6] - 5573:20, 5608:42, 5609:12, 5609:13, 5609:25, 5636:34</p> <p>notable [1] - 5614:26</p> <p>note [12] - 5569:30, 5582:16, 5607:18, 5607:38, 5612:23, 5614:17, 5620:23, 5641:39, 5642:24, 5653:14, 5654:2, 5654:7</p> <p>notebooks [2] - 5572:19, 5572:42</p> <p>noted [1] - 5609:42</p> <p>notes [36] - 5565:42, 5576:4, 5606:43, 5607:26, 5608:14, 5608:22, 5609:45, 5611:32, 5611:35, 5611:36, 5612:16, 5612:19, 5615:19, 5616:11, 5616:18, 5620:19, 5620:21, 5620:26, 5620:30, 5620:42, 5621:2, 5634:39, 5636:1, 5636:8, 5637:22, 5639:14, 5640:24, 5640:25, 5644:44, 5644:46, 5645:1, 5649:38, 5650:26, 5650:27, 5653:4, 5653:44</p> <p>nothing [8] - 5589:31, 5589:40, 5589:41, 5590:16, 5626:18, 5642:14, 5645:29</p> <p>notice [2] - 5573:17, 5644:2</p> <p>notification [2] - 5640:17, 5643:18</p> <p>notified [1] - 5614:19</p> <p>notify [1] - 5642:25</p> <p>Notify [2] - 5615:15, 5643:17</p> <p>November [15] - 5565:3, 5565:17, 5565:19, 5565:32, 5565:38, 5565:39, 5566:6, 5566:15, 5566:21, 5566:26, 5566:37, 5570:35, 5570:45, 5571:18, 5589:9</p> <p>number [24] - 5569:7, 5580:8, 5580:17, 5580:18, 5580:19, 5585:34, 5585:40, 5587:27, 5592:14, 5595:40, 5595:46, 5597:2, 5599:20, 5606:45, 5617:41, 5618:8, 5618:41, 5626:43, 5627:46, 5632:9, 5642:39, 5648:2, 5648:13, 5649:3</p> <p>numbered [1] - 5586:3</p> <p>numbers [1] - 5585:44</p> <p>numeral [1] - 5647:29</p> <p>numerous [1] - 5653:9</p>	<p>5592:22, 5592:40, 5593:4</p>	<p>5565:3, 5565:17, 5565:19, 5565:32, 5565:38, 5565:39, 5566:6, 5566:15, 5566:21, 5566:26, 5566:37, 5570:35, 5570:45, 5571:18, 5589:9</p> <p>number [24] - 5569:7, 5580:8, 5580:17, 5580:18, 5580:19, 5585:34, 5585:40, 5587:27, 5592:14, 5595:40, 5595:46, 5597:2, 5599:20, 5606:45, 5617:41, 5618:8, 5618:41, 5626:43, 5627:46, 5632:9, 5642:39, 5648:2, 5648:13, 5649:3</p> <p>numbered [1] - 5586:3</p> <p>numbers [1] - 5585:44</p> <p>numeral [1] - 5647:29</p> <p>numerous [1] - 5653:9</p>	<p>5618:8, 5651:18</p> <p>Obviously [1] - 5596:20</p> <p>occasion [32] - 5604:9, 5605:8, 5605:14, 5605:26, 5609:21, 5611:29, 5612:20, 5613:1, 5614:4, 5616:16, 5617:15, 5617:20, 5617:21, 5618:38, 5619:27, 5634:22, 5634:38, 5636:3, 5637:29, 5637:45, 5638:40, 5640:39, 5641:12, 5641:21, 5641:24, 5641:25, 5641:35, 5642:29, 5646:14, 5647:1, 5647:8, 5649:22</p> <p>occasions [7] - 5594:4, 5600:33, 5620:25, 5627:46, 5648:3, 5649:4, 5653:9</p> <p>occupation [3] - 5629:19, 5630:36, 5631:28</p> <p>Occupation [1] - 5630:39</p> <p>occupied [1] - 5575:36</p> <p>occur [1] - 5599:17</p> <p>occurred [16] - 5562:22, 5569:47, 5591:14, 5596:10, 5599:33, 5604:44, 5608:20, 5613:17, 5618:38, 5619:8, 5621:43, 5630:1, 5631:14, 5638:22, 5640:45, 5647:21</p> <p>occurrences [1] - 5593:46</p> <p>occurring [2] - 5563:4, 5595:22</p> <p>October [15] - 5571:47, 5581:26, 5582:3, 5582:17, 5583:42, 5586:13, 5587:18, 5587:35, 5588:4, 5588:14, 5588:17, 5588:21, 5589:27, 5589:38, 5590:17</p> <p>odd [1] - 5610:26</p> <p>offer [4] - 5575:33, 5579:18, 5588:45, 5589:9</p> <p>offered [1] - 5562:47</p>	<p>offhand [1] - 5630:28</p> <p>Office [1] - 5569:18</p> <p>office [7] - 5567:17, 5587:23, 5588:3, 5590:1, 5625:16, 5625:19, 5636:30</p> <p>officer [4] - 5646:47, 5652:4, 5652:8, 5652:21</p> <p>Officer [4] - 5566:14, 5566:17, 5566:21, 5585:30</p> <p>officers [2] - 5574:21, 5630:24</p> <p>officers' [1] - 5614:18</p> <p>offices [1] - 5651:23</p> <p>officials [1] - 5569:30</p> <p>often [1] - 5602:13</p> <p>Oil [3] - 5560:19, 5568:47, 5646:32</p> <p>Oil-for-food [3] - 5560:19, 5568:47, 5646:32</p> <p>old [1] - 5569:42</p> <p>once [2] - 5599:17, 5599:20</p> <p>Once [1] - 5569:28</p> <p>One [3] - 5562:17, 5648:1, 5648:12</p> <p>one [59] - 5561:1, 5564:24, 5564:45, 5566:47, 5570:5, 5570:22, 5570:32, 5571:15, 5573:32, 5574:10, 5575:31, 5580:4, 5582:43, 5584:12, 5584:29, 5584:31, 5586:1, 5586:27, 5587:26, 5589:43, 5595:40, 5596:3, 5599:47, 5601:45, 5603:38, 5606:24, 5606:26, 5610:7, 5612:19, 5615:8, 5616:14, 5617:28, 5618:4, 5620:44, 5621:5, 5623:46, 5625:47, 5628:8, 5628:42, 5631:11, 5631:17, 5633:27, 5633:28, 5634:33, 5634:34, 5636:17, 5638:31, 5639:35, 5640:7, 5641:33, 5645:4, 5648:43, 5649:40, 5653:25, 5654:23</p> <p>one-liners [2] -</p>
O				
<p>o'clock [2] - 5575:32, 5590:32</p> <p>oath [3] - 5564:12, 5564:14, 5592:13</p> <p>object [1] - 5634:24</p> <p>objection [2] - 5577:41, 5580:26</p> <p>obligations [2] - 5599:1, 5614:40</p> <p>observation [1] - 5615:32</p> <p>observations [1] - 5653:6</p> <p>observed [1] - 5591:5</p> <p>obtain [2] - 5563:22, 5586:37</p> <p>obtained [3] - 5565:14, 5603:39, 5626:34</p> <p>obvious [1] - 5576:34</p> <p>obviously [12] - 5566:45, 5597:13, 5597:25, 5597:31, 5598:4, 5598:24, 5599:9, 5600:12, 5602:11, 5616:18,</p>				

<p>5640:7, 5649:40 one-on-one [1] - 5599:47 oneself [1] - 5636:23 ongoing [8] - 5596:21, 5598:28, 5599:10, 5600:17, 5607:4, 5612:33, 5613:8, 5616:19 onpaid [1] - 5619:41 onwards [2] - 5603:38, 5604:1 open [12] - 5583:33, 5583:39, 5583:42, 5584:3, 5584:7, 5584:28, 5584:29, 5585:4, 5585:21, 5585:26, 5586:21, 5586:34 opened [2] - 5584:43, 5585:13 opening [4] - 5583:35, 5583:36, 5584:10, 5587:1 opens [1] - 5607:43 operation [2] - 5625:26, 5627:7 operations [1] - 5625:31 Opinion[1] - 5591:27 opinion [4] - 5568:13, 5591:7, 5591:8, 5591:22 opportunity [3] - 5562:47, 5578:24, 5605:37 order [10] - 5561:40, 5562:1, 5563:22, 5568:45, 5580:28, 5580:32, 5592:22, 5592:40, 5593:4, 5593:5 orders [1] - 5565:25 original [3] - 5574:14, 5635:6, 5635:12 originally [1] - 5630:43 otherwise [3] - 5591:18, 5603:44, 5605:42 Otherwise[4] - 5585:45, 5592:3, 5592:33, 5592:35 ought [3] - 5563:12, 5591:17, 5604:10 outbreak [2] - 5595:9, 5595:12 outcome [1] - 5596:19</p>	<p>outlined [2] - 5564:5, 5605:18 outset [2] - 5594:2, 5626:30 outside [3] - 5584:45, 5618:32, 5644:18 overheard [3] - 5589:40, 5590:10, 5590:17 overnight [4] - 5562:17, 5580:10, 5580:45, 5581:7 oversight [2] - 5595:26, 5595:29 oversighting [1] - 5595:45 owed [1] - 5638:3 Owens[1] - 5588:15 own [5] - 5565:37, 5575:5, 5580:26, 5589:15, 5597:43 owned [3] - 5603:6, 5603:25, 5633:31 ownership [6] - 5603:40, 5604:2, 5604:6, 5633:35, 5643:32, 5648:32</p>	<p>5633:20, 5633:26, 5635:1, 5636:6, 5636:9, 5637:32, 5638:24, 5638:25, 5639:16, 5640:34, 5641:8, 5641:39, 5641:42, 5642:16, 5642:25, 5643:16, 5645:2, 5645:26, 5646:1, 5646:2, 5647:27, 5647:28, 5647:29, 5647:30, 5648:30, 5648:31, 5649:7, 5651:4, 5651:33 pages [6] - 5561:43, 5568:11, 5571:15, 5640:38, 5641:41, 5650:43 paid [12] - 5563:5, 5609:27, 5611:20, 5619:32, 5621:39, 5622:6, 5631:24, 5635:39, 5638:5, 5638:6, 5643:2, 5643:44 paper [9] - 5581:29, 5582:17, 5582:22, 5582:23, 5582:31, 5582:43, 5634:34, 5636:13, 5636:14 papers [2] - 5581:31, 5586:10 paragraph [22] - 5564:47, 5570:32, 5570:45, 5571:20, 5573:43, 5580:17, 5581:34, 5581:42, 5582:13, 5582:22, 5582:30, 5582:40, 5584:34, 5586:4, 5588:7, 5589:4, 5606:9, 5606:14, 5621:19, 5621:29, 5638:24, 5646:29 Paragraph [2] - 5582:25, 5582:27 paragraphs [3] - 5581:23, 5582:24, 5582:32 pardon [2] - 5578:32, 5648:7 parent [1] - 5651:23 Paris [1] - 5561:7 part [32] - 5563:17, 5563:19, 5571:2, 5571:9, 5587:40, 5594:38, 5595:41, 5595:46, 5596:33, 5596:47, 5598:4,</p>	<p>5599:29, 5599:46, 5600:26, 5600:37, 5604:21, 5605:6, 5605:22, 5605:43, 5608:42, 5609:7, 5609:12, 5609:13, 5612:36, 5617:35, 5618:8, 5622:40, 5636:34, 5642:33, 5646:8, 5651:8, 5653:14 particular [20] - 5567:6, 5595:37, 5595:40, 5596:32, 5597:1, 5597:12, 5604:32, 5606:15, 5610:23, 5620:20, 5620:35, 5623:47, 5628:8, 5636:18, 5637:45, 5643:11, 5647:1, 5647:2, 5649:10, 5653:13 particularly [1] - 5562:39 Particularly [1] - 5653:29 parts [4] - 5571:37, 5592:25, 5598:40, 5601:41 party [3] - 5563:36, 5605:44, 5606:31 passage [2] - 5618:40, 5622:17 passed [2] - 5650:21, 5652:28 passing [3] - 5623:11, 5629:10, 5641:6 past [1] - 5579:30 Paul [1] - 5652:9 pay [1] - 5569:9 payment [7] - 5569:15, 5571:4, 5571:23, 5588:26, 5589:1, 5619:31, 5640:18 payments [5] - 5568:5, 5568:6, 5568:9, 5570:39, 5624:2 Peking [1] - 5561:6 people [14] - 5561:31, 5561:33, 5563:16, 5595:40, 5595:43, 5596:3, 5623:46, 5626:43, 5629:18, 5631:5, 5634:33, 5653:4, 5653:24 per [9] - 5565:4,</p>	<p>5569:3, 5580:15, 5612:40, 5633:31, 5633:35, 5641:25, 5643:40, 5646:33 percentage [2] - 5565:27, 5565:41 performance [3] - 5595:33, 5598:25, 5600:13 performing [3] - 5594:36, 5599:10, 5599:14 Perhaps [1] - 5606:7 perhaps [9] - 5576:44, 5576:45, 5579:24, 5580:24, 5592:21, 5605:10, 5618:20, 5650:19 period [9] - 5567:20, 5567:23, 5569:44, 5569:47, 5598:26, 5600:15, 5600:22, 5620:37, 5641:15 person [8] - 5597:27, 5611:25, 5626:10, 5626:15, 5634:35, 5637:47, 5639:2, 5652:30 personal [3] - 5566:13, 5566:15, 5585:12 Personal [1] - 5636:28 personally [2] - 5642:7, 5650:3 persons [2] - 5580:34, 5631:12 Perth [2] - 5591:43, 5592:3 Peter [2] - 5586:12, 5586:28 Phil [1] - 5585:30 phone [2] - 5561:4, 5561:14 pick [1] - 5644:5 picked [1] - 5589:15 picture [1] - 5622:15 piece [3] - 5562:39, 5562:43, 5628:19 pieces [1] - 5618:27 pile [1] - 5587:41 place [16] - 5563:46, 5567:6, 5567:11, 5589:1, 5595:4, 5595:8, 5596:45, 5599:39, 5604:15, 5605:29, 5607:32, 5613:6, 5617:9, 5629:21, 5634:15, 5653:23</p>
P				
<p>pace [1] - 5628:25 pack [6] - 5635:6, 5635:13, 5635:15, 5635:20, 5648:31 packet [1] - 5645:23 Page [1] - 5570:7 page [75] - 5564:28, 5564:31, 5564:32, 5570:5, 5581:46, 5582:42, 5586:3, 5587:39, 5601:36, 5601:42, 5602:21, 5602:34, 5604:23, 5606:10, 5606:11, 5607:23, 5607:46, 5608:1, 5611:24, 5611:39, 5611:44, 5613:21, 5614:7, 5614:9, 5614:23, 5614:43, 5614:44, 5615:1, 5615:3, 5615:11, 5615:14, 5615:15, 5616:12, 5616:40, 5616:41, 5619:2, 5621:15, 5623:26, 5623:28, 5623:41, 5632:24, 5632:29, 5632:46, 5633:8, 5633:10,</p>				

<p>placed [1] - 5563:13 plane [1] - 5592:6 planning [2] - 5585:24, 5585:27 player [1] - 5581:4 pleases [1] - 5593:21 pls [1] - 5569:28 point [27] - 5568:20, 5576:23, 5577:10, 5577:11, 5577:13, 5579:1, 5581:6, 5595:32, 5595:37, 5599:11, 5600:44, 5602:47, 5603:5, 5603:23, 5603:33, 5607:13, 5614:31, 5630:31, 5630:42, 5630:47, 5631:1, 5633:27, 5633:40, 5646:19, 5649:8, 5649:9, 5649:20 points [8] - 5566:26, 5569:7, 5571:6, 5602:34, 5602:42, 5602:43, 5612:11, 5619:47 policy [1] - 5614:19 pool [13] - 5609:9, 5625:26, 5625:31, 5631:2, 5635:45, 5636:31, 5637:11, 5639:27, 5651:17, 5651:22, 5652:6, 5652:22, 5652:23 pooling [1] - 5595:45 pools [7] - 5595:34, 5605:20, 5605:38, 5609:14, 5639:23, 5640:13, 5651:19 port [2] - 5598:34, 5600:40 position [6] - 5562:18, 5562:32, 5563:13, 5593:39, 5593:42, 5642:8 positive [1] - 5648:21 possession [1] - 5573:18 possibilities [2] - 5641:47, 5643:2 possibility [4] - 5610:28, 5610:45, 5642:1, 5647:15 possible [15] - 5585:11, 5586:15, 5596:4, 5604:46, 5616:17, 5616:31, 5618:7, 5618:38, 5634:1, 5634:16,</p>	<p>5634:18, 5634:19, 5653:23, 5654:21 possibly [1] - 5585:29 Possibly [1] - 5650:9 posts [1] - 5561:28 potent [1] - 5619:4 potential [3] - 5605:18, 5645:33, 5645:41 Potential [3] - 5616:14, 5616:34, 5645:31 power [1] - 5581:6 Powerpoint [2] - 5602:13, 5632:37 Ppl [1] - 5574:44 practice [5] - 5579:25, 5581:30, 5583:24, 5583:27, 5602:6 pre [2] - 5628:29, 5628:31 pre-war [2] - 5628:29, 5628:31 preceding [2] - 5581:46, 5651:8 precise [1] - 5633:30 preferred [5] - 5617:18, 5617:43, 5630:20, 5646:10, 5649:24 preparation [2] - 5635:3, 5649:5 prepare [2] - 5586:7, 5591:20 prepared [6] - 5574:2, 5574:3, 5574:6, 5576:8, 5600:45, 5601:2 preparing [2] - 5574:20, 5592:15 presence [2] - 5586:39, 5647:45 present [29] - 5578:22, 5584:11, 5588:42, 5591:34, 5591:36, 5594:1, 5596:10, 5602:2, 5607:40, 5608:46, 5611:5, 5611:25, 5611:29, 5611:36, 5616:8, 5619:11, 5619:15, 5619:26, 5619:34, 5622:21, 5631:47, 5636:3, 5636:22, 5637:25, 5637:28, 5640:29, 5640:40, 5640:44, 5641:5</p>	<p>presentation [19] - 5586:8, 5601:27, 5602:13, 5602:33, 5604:24, 5632:30, 5632:34, 5632:39, 5633:9, 5634:14, 5634:22, 5634:25, 5634:41, 5634:45, 5635:13, 5640:46, 5641:4, 5649:7 presented [3] - 5634:33, 5635:2, 5635:19 press [1] - 5577:19 pressing [2] - 5577:33, 5577:34 prestige [1] - 5587:6 presumably [1] - 5637:33 presume [1] - 5607:4 presuming [2] - 5612:36, 5616:20 pretty [3] - 5575:47, 5609:20, 5626:13 previous [5] - 5577:29, 5605:43, 5611:44, 5615:1, 5615:3 previously [2] - 5612:32, 5622:35 price [4] - 5599:11, 5609:31, 5623:14, 5623:19 prices [1] - 5609:36 primary [1] - 5595:34 printed [2] - 5571:13, 5571:14 privacy [1] - 5577:31 privilege [1] - 5562:28 problem [3] - 5592:33, 5613:15, 5650:5 problems [4] - 5588:47, 5589:14, 5613:11, 5628:13 Procedural [1] - 5616:35 procedure [1] - 5576:15 proceed [1] - 5578:37 process [10] - 5579:15, 5589:42, 5590:18, 5590:21, 5596:47, 5599:31, 5600:26, 5609:3, 5610:47, 5611:19 processed [1] - 5647:6</p>	<p>produced [1] - 5568:4 product [2] - 5584:2, 5589:20 Program [3] - 5568:47, 5569:18, 5646:32 Programme [1] - 5560:19 progressing [1] - 5563:39 prohibited [1] - 5629:20 project [2] - 5602:12, 5607:7 Project [12] - 5567:16, 5606:44, 5606:45, 5607:4, 5607:7, 5611:45, 5614:36, 5614:37, 5636:7, 5640:35, 5648:3, 5648:15 projected [1] - 5633:8 projector [2] - 5601:47, 5632:34 projects [2] - 5607:1, 5607:15 proper [1] - 5608:23 proposal [3] - 5571:28, 5571:29, 5571:43 proposed [2] - 5564:7, 5586:12 proposition [1] - 5586:38 prospects [1] - 5596:22 protection [1] - 5576:47 provide [10] - 5563:20, 5565:40, 5567:42, 5572:33, 5573:17, 5573:24, 5573:32, 5574:28, 5574:32, 5581:3 provided [24] - 5563:23, 5563:43, 5567:36, 5572:18, 5572:26, 5572:28, 5572:42, 5572:43, 5572:44, 5573:8, 5574:35, 5575:39, 5575:40, 5575:42, 5575:44, 5576:1, 5581:28, 5582:18, 5582:35, 5583:12, 5591:32, 5635:19, 5635:23 provider [3] -</p>	<p>5599:8, 5605:36, 5617:43 providing [3] - 5589:8, 5600:36, 5626:23 province [1] - 5652:17 provision [2] - 5562:41, 5605:42 provoked [1] - 5643:18 public [8] - 5564:39, 5577:31, 5591:13, 5591:19, 5592:39, 5603:18, 5603:30 publication [8] - 5561:40, 5562:1, 5580:28, 5580:32, 5591:14, 5592:22, 5592:40, 5593:4 purely [1] - 5584:3 purported [1] - 5568:43 purportedly [1] - 5640:38 purpose [12] - 5561:26, 5576:34, 5583:41, 5584:7, 5584:17, 5584:26, 5584:27, 5584:46, 5585:7, 5585:18, 5585:21, 5610:43 purposes [1] - 5627:14 put [16] - 5561:14, 5562:23, 5565:37, 5567:15, 5568:36, 5574:31, 5578:3, 5579:24, 5579:29, 5580:10, 5583:36, 5587:13, 5601:42, 5622:15, 5623:12, 5650:46 Putting [1] - 5618:4 putting [2] - 5563:6, 5590:16</p>
Q				
<p>Qaser [1] - 5566:33 Qc [1] - 5560:26 qualification [1] - 5638:8 quality [1] - 5613:9 quarters [1] - 5641:41 Quennell [2] - 5567:15, 5568:13 queried [2] - 5628:7, 5628:8</p>				

<p>questioned [3] - 5565:9, 5575:15, 5575:17</p> <p>questions [41] - 5572:8, 5572:10, 5591:33, 5591:40, 5591:45, 5592:1, 5592:9, 5593:46, 5594:2, 5597:8, 5597:27, 5600:27, 5604:1, 5604:6, 5619:22, 5620:10, 5620:18, 5621:5, 5622:38, 5626:30, 5633:16, 5633:17, 5633:43, 5635:34, 5640:6, 5640:26, 5640:28, 5641:3, 5641:5, 5641:40, 5642:38, 5643:29, 5646:47, 5647:3, 5648:20, 5649:4, 5649:16, 5649:30, 5653:6, 5653:29, 5653:32</p> <p>quick [1] - 5644:14</p> <p>quite [11] - 5580:47, 5589:4, 5615:31, 5620:34, 5623:23, 5625:45, 5633:16, 5641:15, 5643:46, 5645:7, 5653:22</p>	<p>5618:45, 5621:29, 5623:31, 5624:5, 5631:30, 5636:8, 5637:34, 5638:23, 5647:29, 5647:31, 5650:43, 5651:8, 5651:10</p> <p>reading [1] - 5601:12</p> <p>reads [1] - 5586:4</p> <p>real [2] - 5583:23, 5646:21</p> <p>really [3] - 5595:25, 5630:6, 5643:28</p> <p>rear [1] - 5591:37</p> <p>reason [9] - 5563:31, 5571:24, 5577:30, 5584:30, 5584:47, 5591:17, 5634:1, 5641:15, 5653:25</p> <p>reasonable [2] - 5563:20, 5612:23</p> <p>reasoning [1] - 5609:3</p> <p>reasons [6] - 5584:29, 5625:44, 5642:11, 5646:38, 5649:44, 5655:10</p> <p>recalled [3] - 5561:2, 5622:10, 5623:2</p> <p>receipt [1] - 5597:18</p> <p>receive [4] - 5561:39, 5596:25, 5609:40, 5618:4</p> <p>received [6] - 5571:27, 5591:8, 5591:10, 5594:4, 5605:13, 5644:19</p> <p>receiving [2] - 5632:30, 5644:28</p> <p>recent [1] - 5570:40</p> <p>recently [1] - 5649:13</p> <p>recognise [1] - 5564:27</p> <p>recollect [6] - 5588:23, 5624:22, 5626:4, 5641:33, 5642:2, 5644:15</p> <p>recollection [78] - 5594:34, 5594:36, 5594:44, 5596:18, 5596:43, 5599:7, 5599:11, 5599:19, 5599:30, 5600:31, 5600:34, 5604:45, 5605:43, 5606:24, 5606:25, 5608:15, 5608:21, 5610:15, 5610:20, 5610:35, 5611:28, 5612:1,</p>	<p>5613:6, 5613:8, 5613:33, 5613:36, 5615:28, 5615:30, 5616:36, 5617:17, 5617:22, 5617:28, 5617:32, 5617:35, 5617:40, 5619:19, 5619:33, 5619:38, 5619:40, 5620:24, 5620:41, 5621:25, 5622:3, 5623:34, 5623:46, 5624:10, 5624:19, 5627:3, 5627:35, 5627:42, 5628:35, 5629:3, 5629:47, 5634:21, 5634:41, 5634:43, 5635:35, 5637:28, 5637:40, 5638:22, 5638:31, 5638:34, 5638:36, 5638:39, 5640:6, 5641:31, 5644:36, 5644:37, 5645:15, 5645:18, 5646:21, 5647:38, 5647:42, 5651:38, 5653:15, 5654:3, 5654:9</p> <p>recollections [1] - 5577:9</p> <p>recompiled [1] - 5576:5</p> <p>reconstructing [1] - 5583:22</p> <p>record [9] - 5564:19, 5565:2, 5571:39, 5576:27, 5580:13, 5611:12, 5621:36, 5621:43, 5622:18</p> <p>recorded [18] - 5565:42, 5575:13, 5575:26, 5575:47, 5576:9, 5576:16, 5601:23, 5612:15, 5613:38, 5620:21, 5640:28, 5649:39, 5649:45, 5650:2, 5650:7, 5650:11, 5650:12, 5653:5</p> <p>recording [1] - 5613:34</p> <p>records [3] - 5614:17, 5621:33, 5640:39</p> <p>recover [1] - 5635:38</p> <p>recovered [16] - 5606:1, 5606:23, 5609:30, 5610:26, 5622:11, 5622:18, 5622:21, 5622:24,</p>	<p>5622:40, 5623:4, 5623:10, 5623:14, 5623:16, 5623:36, 5638:12</p> <p>recovering [4] - 5621:35, 5635:44, 5638:4, 5639:2</p> <p>recovery [7] - 5605:19, 5605:34, 5605:45, 5610:46, 5611:19, 5621:39, 5636:42</p> <p>rectify [1] - 5611:43</p> <p>redo [1] - 5576:6</p> <p>reduce [1] - 5576:44</p> <p>ref [2] - 5567:27, 5567:44</p> <p>refer [2] - 5568:3, 5571:6</p> <p>reference [27] - 5562:20, 5566:35, 5567:20, 5568:1, 5568:8, 5568:31, 5580:9, 5580:12, 5592:14, 5592:19, 5594:18, 5607:31, 5609:34, 5613:16, 5613:19, 5614:43, 5615:20, 5626:43, 5631:40, 5632:21, 5632:24, 5633:44, 5634:13, 5636:17, 5640:16, 5641:42, 5641:46</p> <p>references [1] - 5643:23</p> <p>Referred [2] - 5580:37, 5592:43</p> <p>referred [9] - 5580:14, 5582:22, 5582:23, 5582:31, 5582:32, 5592:38, 5592:41, 5608:21, 5633:40</p> <p>referring [6] - 5571:11, 5582:34, 5640:47, 5641:7, 5641:32, 5642:21, 5647:40, 5649:22</p> <p>refers [3] - 5567:14, 5580:8, 5592:13</p> <p>reflecting [1] - 5562:18</p> <p>refresh [3] - 5622:30, 5629:47, 5637:40</p> <p>refreshed [1] - 5628:26</p> <p>refreshing [1] - 5577:9</p> <p>regard [3] - 5566:11,</p>	<p>5566:47, 5638:27</p> <p>regarded [1] - 5563:8</p> <p>regarding [1] - 5565:26</p> <p>Regards [1] - 5629:6</p> <p>regards [3] - 5565:40, 5573:23, 5642:34</p> <p>region [2] - 5583:46, 5584:3</p> <p>regulator [1] - 5608:27</p> <p>reject [1] - 5579:32</p> <p>relate [4] - 5607:27, 5607:28, 5611:9, 5647:18</p> <p>related [1] - 5564:25</p> <p>relates [8] - 5568:35, 5571:19, 5572:27, 5573:15, 5573:27, 5592:16, 5592:17, 5609:35</p> <p>relating [3] - 5579:26, 5590:15, 5625:42</p> <p>Relation [1] - 5560:19</p> <p>relation [31] - 5561:40, 5562:2, 5562:19, 5562:22, 5562:41, 5571:18, 5571:34, 5579:5, 5592:40, 5593:4, 5595:23, 5595:34, 5597:2, 5597:8, 5597:13, 5597:22, 5597:31, 5598:38, 5598:42, 5604:32, 5606:15, 5614:38, 5619:17, 5620:25, 5620:42, 5621:6, 5634:3, 5644:29, 5653:13, 5653:17, 5655:10</p> <p>released [2] - 5591:7, 5592:26</p> <p>relevance [1] - 5573:22</p> <p>relevant [6] - 5564:26, 5572:29, 5573:18, 5577:35, 5616:2, 5650:16</p> <p>remember [19] - 5583:28, 5587:45, 5614:33, 5620:24, 5620:42, 5621:22, 5622:16, 5628:7, 5628:8, 5628:10, 5630:27, 5641:37, 5650:36, 5653:6,</p>
R				
<p>raise [6] - 5562:37, 5563:39, 5565:12, 5565:23, 5565:43, 5589:11</p> <p>raised [8] - 5563:31, 5588:17, 5598:44, 5612:11, 5619:47, 5652:19, 5652:33, 5652:40</p> <p>rates [1] - 5566:32</p> <p>rather [4] - 5567:32, 5624:17, 5643:22, 5644:31</p> <p>re [2] - 5624:27, 5654:39</p> <p>re-examination [2] - 5624:27, 5654:39</p> <p>reaction [1] - 5629:11</p> <p>read [24] - 5567:8, 5567:9, 5569:32, 5569:41, 5604:28, 5604:29, 5612:8, 5613:22, 5616:41, 5618:42, 5618:43,</p>	<p>5618:45, 5621:29, 5623:31, 5624:5, 5631:30, 5636:8, 5637:34, 5638:23, 5647:29, 5647:31, 5650:43, 5651:8, 5651:10</p> <p>reading [1] - 5601:12</p> <p>reads [1] - 5586:4</p> <p>real [2] - 5583:23, 5646:21</p> <p>really [3] - 5595:25, 5630:6, 5643:28</p> <p>rear [1] - 5591:37</p> <p>reason [9] - 5563:31, 5571:24, 5577:30, 5584:30, 5584:47, 5591:17, 5634:1, 5641:15, 5653:25</p> <p>reasonable [2] - 5563:20, 5612:23</p> <p>reasoning [1] - 5609:3</p> <p>reasons [6] - 5584:29, 5625:44, 5642:11, 5646:38, 5649:44, 5655:10</p> <p>recalled [3] - 5561:2, 5622:10, 5623:2</p> <p>receipt [1] - 5597:18</p> <p>receive [4] - 5561:39, 5596:25, 5609:40, 5618:4</p> <p>received [6] - 5571:27, 5591:8, 5591:10, 5594:4, 5605:13, 5644:19</p> <p>receiving [2] - 5632:30, 5644:28</p> <p>recent [1] - 5570:40</p> <p>recently [1] - 5649:13</p> <p>recognise [1] - 5564:27</p> <p>recollect [6] - 5588:23, 5624:22, 5626:4, 5641:33, 5642:2, 5644:15</p> <p>recollection [78] - 5594:34, 5594:36, 5594:44, 5596:18, 5596:43, 5599:7, 5599:11, 5599:19, 5599:30, 5600:31, 5600:34, 5604:45, 5605:43, 5606:24, 5606:25, 5608:15, 5608:21, 5610:15, 5610:20, 5610:35, 5611:28, 5612:1,</p>	<p>5613:6, 5613:8, 5613:33, 5613:36, 5615:28, 5615:30, 5616:36, 5617:17, 5617:22, 5617:28, 5617:32, 5617:35, 5617:40, 5619:19, 5619:33, 5619:38, 5619:40, 5620:24, 5620:41, 5621:25, 5622:3, 5623:34, 5623:46, 5624:10, 5624:19, 5627:3, 5627:35, 5627:42, 5628:35, 5629:3, 5629:47, 5634:21, 5634:41, 5634:43, 5635:35, 5637:28, 5637:40, 5638:22, 5638:31, 5638:34, 5638:36, 5638:39, 5640:6, 5641:31, 5644:36, 5644:37, 5645:15, 5645:18, 5646:21, 5647:38, 5647:42, 5651:38, 5653:15, 5654:3, 5654:9</p> <p>recollections [1] - 5577:9</p> <p>recompiled [1] - 5576:5</p> <p>reconstructing [1] - 5583:22</p> <p>record [9] - 5564:19, 5565:2, 5571:39, 5576:27, 5580:13, 5611:12, 5621:36, 5621:43, 5622:18</p> <p>recorded [18] - 5565:42, 5575:13, 5575:26, 5575:47, 5576:9, 5576:16, 5601:23, 5612:15, 5613:38, 5620:21, 5640:28, 5649:39, 5649:45, 5650:2, 5650:7, 5650:11, 5650:12, 5653:5</p> <p>recording [1] - 5613:34</p> <p>records [3] - 5614:17, 5621:33, 5640:39</p> <p>recover [1] - 5635:38</p> <p>recovered [16] - 5606:1, 5606:23, 5609:30, 5610:26, 5622:11, 5622:18, 5622:21, 5622:24,</p>	<p>5622:40, 5623:4, 5623:10, 5623:14, 5623:16, 5623:36, 5638:12</p> <p>recovering [4] - 5621:35, 5635:44, 5638:4, 5639:2</p> <p>recovery [7] - 5605:19, 5605:34, 5605:45, 5610:46, 5611:19, 5621:39, 5636:42</p> <p>rectify [1] - 5611:43</p> <p>redo [1] - 5576:6</p> <p>reduce [1] - 5576:44</p> <p>ref [2] - 5567:27, 5567:44</p> <p>refer [2] - 5568:3, 5571:6</p> <p>reference [27] - 5562:20, 5566:35, 5567:20, 5568:1, 5568:8, 5568:31, 5580:9, 5580:12, 5592:14, 5592:19, 5594:18, 5607:31, 5609:34, 5613:16, 5613:19, 5614:43, 5615:20, 5626:43, 5631:40, 5632:21, 5632:24, 5633:44, 5634:13, 5636:17, 5640:16, 5641:42, 5641:46</p> <p>references [1] - 5643:23</p> <p>Referred [2] - 5580:37, 5592:43</p> <p>referred [9] - 5580:14, 5582:22, 5582:23, 5582:31, 5582:32, 5592:38, 5592:41, 5608:21, 5633:40</p> <p>referring [6] - 5571:11, 5582:34, 5640:47, 5641:7, 5641:32, 5642:21, 5647:40, 5649:22</p> <p>refers [3] - 5567:14, 5580:8, 5592:13</p> <p>reflecting [1] - 5562:18</p> <p>refresh [3] - 5622:30, 5629:47, 5637:40</p> <p>refreshed [1] - 5628:26</p> <p>refreshing [1] - 5577:9</p> <p>regard [3] - 5566:11,</p>	<p>5566:47, 5638:27</p> <p>regarded [1] - 5563:8</p> <p>regarding [1] - 5565:26</p> <p>Regards [1] - 5629:6</p> <p>regards [3] - 5565:40, 5573:23, 5642:34</p> <p>region [2] - 5583:46, 5584:3</p> <p>regulator [1] - 5608:27</p> <p>reject [1] - 5579:32</p> <p>relate [4] - 5607:27, 5607:28, 5611:9, 5647:18</p> <p>related [1] - 5564:25</p> <p>relates [8] - 5568:35, 5571:19, 5572:27, 5573:15, 5573:27, 5592:16, 5592:17, 5609:35</p> <p>relating [3] - 5579:26, 5590:15, 5625:42</p> <p>Relation [1] - 5560:19</p> <p>relation [31] - 5561:40, 5562:2, 5562:19, 5562:22, 5562:41, 5571:18, 5571:34, 5579:5, 5592:40, 5593:4, 5595:23, 5595:34, 5597:2, 5597:8, 5597:13, 5597:22, 5597:31, 5598:38, 5598:42, 5604:32, 5606:15, 5614:38, 5619:17, 5620:25, 5620:42, 5621:6, 5634:3, 5644:29, 5653:13, 5653:17, 5655:10</p> <p>released [2] - 5591:7, 5592:26</p> <p>relevance [1] - 5573:22</p> <p>relevant [6] - 5564:26, 5572:29, 5573:18, 5577:35, 5616:2, 5650:16</p> <p>remember [19] - 5583:28, 5587:45, 5614:33, 5620:24, 5620:42, 5621:22, 5622:16, 5628:7, 5628:8, 5628:10, 5630:27, 5641:37, 5650:36, 5653:6,</p>

5653:10, 5653:19, 5654:4, 5654:12, 5654:15 remembering [1] - 5621:46 reminded [1] - 5580:6 remiss [1] - 5611:43 remove [1] - 5632:24 removed [2] - 5561:41, 5604:24 repaid [1] - 5610:34 repeat [2] - 5602:35, 5612:28 replicates [1] - 5580:15 reply [2] - 5570:21, 5570:29 report [8] - 5566:46, 5571:33, 5596:9, 5600:45, 5601:2, 5601:6, 5601:8, 5601:9 Report [2] - 5631:36, 5632:3 reported [3] - 5571:32, 5595:38, 5631:16 reporting [2] - 5587:33, 5596:18 reports [1] - 5574:33 request [2] - 5574:32, 5576:32 requested [3] - 5569:12, 5570:19, 5570:38 requests [1] - 5579:26 require [1] - 5594:3 required [2] - 5598:33, 5646:9 Required [2] - 5616:45, 5646:3 requirement [3] - 5594:8, 5594:24, 5646:8 requirements [1] - 5569:19 Resn [3] - 5616:14, 5616:34, 5645:32 resignation [1] - 5567:13 resigned [2] - 5567:14, 5572:32 Resolution [2] - 5645:33, 5654:8 resolution [6] - 5569:20, 5588:10, 5589:6, 5589:8, 5589:32, 5589:35	resolve [1] - 5597:42 resolved [4] - 5563:37, 5588:25, 5588:29, 5597:43 respect [5] - 5563:3, 5577:18, 5580:33, 5602:21, 5633:13 respectful [1] - 5579:18 responded [4] - 5570:3, 5600:8, 5639:34, 5639:35 response [13] - 5562:43, 5565:30, 5566:7, 5567:32, 5569:38, 5570:2, 5571:44, 5609:40, 5609:41, 5614:39, 5627:4, 5629:39, 5654:29 responses [2] - 5588:15, 5589:26 responsibility [2] - 5595:35, 5625:26 rest [2] - 5577:32, 5651:10 result [4] - 5604:15, 5605:19, 5605:38, 5638:4 resulted [2] - 5566:5, 5566:36 resume [1] - 5590:47 Resumption [1] - 5625:1 retreat [2] - 5585:3, 5585:4 retrieved [1] - 5567:35 return [1] - 5573:31 returned [1] - 5588:16 reveal [1] - 5652:23 review [3] - 5592:24, 5631:43, 5655:11 reviewed [1] - 5596:47 Rfd [1] - 5560:26 Richard [2] - 5651:43, 5651:45 Rick [1] - 5631:2 right-hand [3] - 5590:2, 5615:7, 5632:47 ring [3] - 5567:38, 5643:4, 5643:6 risk [3] - 5594:46, 5599:12, 5641:17 risks [1] - 5599:13 Rogers [6] - 5581:29, 5581:36, 5583:13,	5585:1, 5589:36, 5590:4 role [10] - 5595:25, 5595:26, 5595:29, 5598:27, 5600:16, 5604:18, 5616:22, 5618:1, 5618:6, 5646:26 room [2] - 5561:13, 5581:7 Rose [10] - 5567:16, 5606:45, 5607:4, 5607:7, 5611:45, 5614:36, 5614:37, 5640:35, 5648:3, 5648:15 Roseproject [1] - 5636:7 Ross [2] - 5593:28, 5593:34 Rowland [14] - 5561:37, 5561:45, 5562:6, 5590:47, 5591:32, 5591:33, 5591:39, 5591:47, 5592:8, 5592:19, 5592:39, 5592:44, 5593:12 Rowlands [1] - 5592:13 Royal [4] - 5569:43, 5614:44, 5615:11, 5641:42 royal [3] - 5615:20, 5642:1, 5643:23 Rudd [6] - 5591:5, 5591:10, 5591:12, 5591:15, 5591:24, 5591:28 runs [1] - 5561:43	5590:4 satirical [2] - 5568:8, 5568:31 save [1] - 5580:33 saw [2] - 5587:2, 5635:27 Scales [4] - 5595:44, 5631:3, 5650:20, 5650:25 Scales' [1] - 5607:26 Schedule [1] - 5592:43 schedule [6] - 5572:43, 5580:17, 5592:15, 5592:18, 5592:38, 5593:8 scope [1] - 5562:19 screen [6] - 5581:23, 5602:12, 5602:43, 5604:10, 5604:17, 5650:46 scroll [2] - 5601:28, 5601:33 scrolled [1] - 5647:32 sea [1] - 5598:34 searched [2] - 5602:15, 5602:17 second [10] - 5562:36, 5563:43, 5566:27, 5571:5, 5580:8, 5584:13, 5586:3, 5606:6, 5633:40, 5638:17 second-last [1] - 5633:40 secondly [2] - 5561:33, 5629:39 Secondly [2] - 5561:36, 5650:7 secret [1] - 5568:8 secretary [3] - 5585:12, 5631:2, 5640:8 section [2] - 5598:12, 5626:10 secure [1] - 5568:46 Security [1] - 5591:6 security [1] - 5594:47 see [41] - 5569:25, 5569:32, 5571:5, 5576:17, 5576:27, 5577:13, 5577:29, 5579:14, 5586:2, 5588:44, 5591:16, 5592:25, 5593:3, 5600:41, 5601:16, 5602:15, 5603:23, 5606:44, 5607:18,	5607:23, 5607:29, 5607:39, 5611:4, 5615:6, 5617:11, 5618:41, 5622:9, 5622:17, 5623:32, 5623:45, 5624:4, 5631:39, 5632:47, 5634:6, 5637:24, 5637:38, 5640:34, 5641:41, 5644:44, 5647:28, 5651:4 seeing [6] - 5566:9, 5570:22, 5595:26, 5601:39, 5601:41, 5601:45 seek [2] - 5562:5, 5593:21 seem [3] - 5572:41, 5602:21, 5621:25 selling [1] - 5609:26 seminar [4] - 5586:7, 5586:8, 5586:21, 5586:35 send [4] - 5567:18, 5569:28, 5588:1, 5588:2 sends [1] - 5569:36 senior [1] - 5591:8 sense [1] - 5598:32 sent [19] - 5565:31, 5565:36, 5567:33, 5567:34, 5567:41, 5571:25, 5571:29, 5573:17, 5574:14, 5574:34, 5575:45, 5575:47, 5585:12, 5587:16, 5587:22, 5588:3, 5588:4, 5588:33, 5589:26 sentence [3] - 5565:23, 5645:3, 5651:5 sentiments [1] - 5609:18 September [1] - 5571:3 sequence [1] - 5644:42 series [2] - 5568:34, 5599:17 service [12] - 5594:37, 5599:8, 5600:36, 5605:36, 5612:40, 5619:31, 5619:36, 5620:1, 5641:25, 5641:26, 5641:27, 5643:40 services [5] - 5598:25, 5599:14, 5600:13, 5605:42,
S				
Saddam [1] - 5568:45 sake [1] - 5565:25 sale [2] - 5608:43, 5626:19 Saleh [5] - 5584:12, 5584:31, 5585:9, 5585:15, 5588:39 sales [2] - 5568:46, 5639:23 sanctions [4] - 5586:44, 5613:35, 5630:8, 5639:6 Sarah [2] - 5595:44, 5631:3 sat [4] - 5589:46, 5590:2, 5590:3,				

<p>5626:23 session [15] - 5596:43, 5596:45, 5601:21, 5601:22, 5605:5, 5606:44, 5607:28, 5608:16, 5621:6, 5627:1, 5627:26, 5627:31, 5636:2, 5640:45, 5644:44 sessions [5] - 5599:23, 5599:27, 5600:28, 5648:5, 5648:15 set [8] - 5566:26, 5568:5, 5602:33, 5602:41, 5619:7, 5621:20, 5634:44, 5634:46 sets [2] - 5580:9, 5647:44 settling [1] - 5644:14 seven [1] - 5567:40 several [4] - 5575:36, 5577:36, 5588:20, 5646:42 Shadow [1] - 5591:5 shall [1] - 5592:37 sheet [1] - 5649:12 Sheridan [5] - 5631:3, 5650:22, 5650:25, 5650:33, 5652:29 ship [2] - 5592:30, 5594:38 ships [3] - 5561:41, 5562:2, 5600:40 Short [1] - 5591:2 shortly [4] - 5626:29, 5627:31, 5634:30, 5644:41 show [8] - 5561:22, 5565:17, 5566:11, 5568:34, 5577:7, 5632:35, 5638:16, 5647:25 showing [2] - 5586:37, 5638:18 shown [7] - 5581:23, 5602:22, 5608:14, 5620:43, 5621:13, 5648:30, 5649:38 shows [1] - 5568:5 shred [1] - 5568:29 shredder [3] - 5567:29, 5568:2, 5568:19 sic [1] - 5616:26 side [6] - 5590:2, 5590:3, 5603:39,</p>	<p>5618:4, 5625:45, 5647:28 sign [2] - 5563:46, 5618:41 signed [2] - 5565:37, 5589:16 significance [2] - 5599:38, 5616:23 significant [2] - 5602:28, 5602:30 signing [2] - 5583:47, 5587:10 similar [4] - 5598:40, 5623:2, 5624:16, 5651:20 simply [7] - 5563:22, 5583:22, 5585:17, 5586:37, 5591:41, 5607:13, 5645:39 Simpson [3] - 5607:32, 5607:34, 5636:13 singular [2] - 5615:24, 5643:22 siphoned [1] - 5568:14 siphoning [1] - 5568:16 sit [2] - 5577:6, 5601:11 sitting [1] - 5623:47 situation [5] - 5594:14, 5596:13, 5605:19, 5605:34, 5605:45 situations [1] - 5620:46 six [2] - 5575:34, 5576:30 slide [2] - 5632:35, 5645:23 slightly [1] - 5604:39 slim [1] - 5591:20 small [1] - 5568:32 sole [3] - 5583:41, 5584:7, 5584:26 solicitor [3] - 5561:32, 5576:46, 5591:37 solicitors [2] - 5563:44, 5574:15 solution [1] - 5566:32 someone [8] - 5562:31, 5576:44, 5597:21, 5599:44, 5626:7, 5627:35, 5634:10, 5654:2 sometime [1] - 5597:17</p>	<p>sometimes [1] - 5567:38 somewhere [3] - 5561:15, 5626:26, 5644:5 soon [1] - 5586:15 sorghum [1] - 5589:17 Sorry [9] - 5601:34, 5602:35, 5606:11, 5606:39, 5612:28, 5614:21, 5627:14, 5628:6, 5633:24 sorry [21] - 5573:43, 5576:41, 5579:43, 5581:14, 5582:1, 5582:30, 5590:6, 5594:28, 5597:22, 5602:10, 5602:46, 5612:5, 5615:3, 5615:41, 5622:6, 5630:28, 5634:18, 5635:10, 5636:14, 5638:8, 5648:28 sort [9] - 5569:42, 5580:47, 5604:35, 5625:34, 5629:12, 5639:36, 5641:14, 5642:2, 5646:20 sorts [3] - 5620:25, 5622:16, 5639:47 sought [3] - 5562:43, 5563:36, 5627:36 sound [2] - 5569:40, 5642:8 sourced [2] - 5598:8, 5644:29 sources [1] - 5577:8 speaker [1] - 5629:4 speaking [6] - 5570:45, 5603:38, 5632:7, 5635:22, 5641:40, 5645:10 speaks [1] - 5643:1 special [1] - 5642:3 specific [14] - 5567:39, 5596:12, 5597:27, 5598:19, 5599:20, 5599:41, 5600:1, 5609:41, 5610:22, 5616:31, 5629:22, 5632:29, 5640:17, 5646:32 Specifically [1] - 5598:38 specifically [13] - 5589:4, 5597:19, 5602:4, 5606:27, 5607:3, 5613:31, 5614:1, 5616:38,</p>	<p>5617:38, 5620:35, 5634:33, 5634:34, 5639:6 speculate [2] - 5644:35, 5645:14 speculating [2] - 5644:32, 5648:35 spinoff [1] - 5636:31 split [2] - 5570:38, 5571:4 splitting [4] - 5571:6, 5571:11, 5571:23, 5571:38 spoken [5] - 5588:34, 5596:3, 5629:27, 5629:41, 5629:42 spontaneously [1] - 5627:38 staff [3] - 5595:46, 5609:43, 5618:8 stage [14] - 5562:4, 5567:15, 5567:40, 5575:7, 5579:14, 5584:13, 5588:14, 5592:21, 5607:4, 5621:5, 5643:5, 5643:31, 5643:35, 5643:39 stamped [1] - 5565:37 stand [2] - 5591:41, 5630:38 standard [3] - 5581:30, 5583:24, 5583:27 start [6] - 5567:16, 5568:38, 5576:46, 5627:14, 5633:16, 5651:4 started [1] - 5627:8 starting [1] - 5595:44 state [4] - 5593:32, 5608:45, 5609:1, 5625:10 Statement [1] - 5580:38 statement [48] - 5561:37, 5564:23, 5564:25, 5564:28, 5564:32, 5564:35, 5564:46, 5571:19, 5571:24, 5573:37, 5573:45, 5573:46, 5574:6, 5574:14, 5574:20, 5575:45, 5575:46, 5576:1, 5576:5, 5576:24, 5580:8, 5580:14, 5581:23, 5581:24,</p>	<p>5581:42, 5582:13, 5582:23, 5582:24, 5582:30, 5582:33, 5582:38, 5582:41, 5582:46, 5583:10, 5584:35, 5584:36, 5585:18, 5585:20, 5588:6, 5589:5, 5589:44, 5592:29, 5593:1, 5606:7, 5629:5, 5638:17, 5639:16, 5643:19 status [1] - 5637:13 statutory [8] - 5561:42, 5570:33, 5591:32, 5592:8, 5592:12, 5592:20, 5592:38, 5646:29 Statutory [3] - 5561:45, 5564:42, 5592:44 steps [2] - 5595:30, 5625:30 Steve [2] - 5631:3, 5650:33 stick [1] - 5633:17 still [10] - 5571:42, 5572:23, 5573:11, 5575:7, 5604:46, 5606:17, 5610:28, 5611:18, 5645:7 stop [1] - 5653:43 storage [1] - 5586:9 Stott [4] - 5566:7, 5566:15, 5566:18, 5566:21 straight [1] - 5585:45 Street [1] - 5560:32 strike [2] - 5636:26, 5636:45 Structure [1] - 5637:35 studied [1] - 5571:27 subheading [1] - 5621:20 subject [2] - 5566:47, 5585:24 subjects [1] - 5617:41 submission [6] - 5562:24, 5563:11, 5579:18, 5591:9, 5591:22 Submission [1] - 5591:27 submissions [1] - 5579:5 submit [1] - 5576:6 submitted [2] - 5565:39, 5591:23</p>
---	--	--	---	---

<p>Submitted [1] - 5591:28</p> <p>subparagraph [1] - 5621:20</p> <p>subsequent [3] - 5608:16, 5621:10, 5652:36</p> <p>Subsequently [2] - 5644:24, 5644:25</p> <p>subsequently [2] - 5588:19, 5633:44</p> <p>successful [2] - 5610:46, 5631:16</p> <p>successfully [9] - 5595:27, 5600:38, 5600:42, 5604:20, 5608:34, 5610:30, 5610:37, 5616:26, 5617:45</p> <p>Sudan [6] - 5584:1, 5587:10, 5589:13, 5589:14, 5589:16, 5589:17</p> <p>Sudanese [1] - 5589:14</p> <p>sufficient [1] - 5585:34</p> <p>suggest [11] - 5583:41, 5584:7, 5588:32, 5589:40, 5615:24, 5616:18, 5630:9, 5636:38, 5638:40, 5648:1, 5648:12</p> <p>suggested [5] - 5563:2, 5589:41, 5604:23, 5614:18, 5643:44</p> <p>suggesting [2] - 5577:3, 5598:11</p> <p>suggestion [2] - 5604:33, 5634:4</p> <p>Suisse [1] - 5574:16</p> <p>suitcase [3] - 5643:4, 5643:7, 5643:13</p> <p>sum [1] - 5618:31</p> <p>supplementary [2] - 5606:7, 5638:17</p> <p>Supplementary [2] - 5564:42, 5580:38</p> <p>supplier [2] - 5646:11, 5649:24</p> <p>supply [2] - 5587:14, 5640:24</p> <p>suppose [3] - 5567:23, 5628:20, 5629:31</p> <p>surprised [1] - 5607:33</p>	<p>sworn [6] - 5576:24, 5579:16, 5591:41, 5592:12, 5593:28, 5625:5</p> <p>Sydney [1] - 5560:32</p> <p>system [3] - 5570:2, 5617:23, 5644:6</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table [4] - 5582:8, 5588:46, 5590:2, 5623:47</p> <p>tail [1] - 5569:29</p> <p>tainted [1] - 5607:30</p> <p>talks [2] - 5586:28, 5602:47</p> <p>tape [2] - 5575:26, 5576:16</p> <p>tape-recorded [2] - 5575:26, 5576:16</p> <p>taped [1] - 5577:1</p> <p>tapes [28] - 5575:36, 5575:39, 5575:40, 5575:42, 5576:9, 5576:16, 5576:29, 5576:30, 5577:40, 5577:42, 5577:47, 5578:7, 5578:9, 5578:19, 5578:21, 5578:28, 5578:38, 5578:41, 5578:46, 5579:4, 5579:17, 5579:21, 5579:27, 5579:36, 5579:38, 5579:41, 5579:47, 5580:41</p> <p>team [3] - 5595:47, 5596:3, 5647:5</p> <p>technical [7] - 5584:44, 5584:45, 5585:38, 5586:7, 5586:10, 5586:42, 5586:44</p> <p>telephone [1] - 5567:37</p> <p>telex [2] - 5572:1, 5574:33</p> <p>tend [1] - 5633:17</p> <p>tender [11] - 5561:36, 5561:39, 5564:39, 5565:45, 5566:40, 5568:23, 5570:5, 5570:12, 5580:13, 5591:15, 5592:18</p> <p>tendered [2] - 5579:5, 5580:16</p> <p>tendering [1] - 5579:16</p>	<p>term [1] - 5644:13</p> <p>terms [65] - 5562:9, 5562:19, 5562:20, 5563:18, 5593:26, 5594:13, 5594:20, 5594:37, 5594:47, 5595:26, 5595:33, 5596:21, 5597:3, 5597:7, 5598:3, 5598:18, 5598:25, 5599:3, 5599:8, 5599:9, 5599:11, 5599:12, 5599:15, 5599:41, 5599:47, 5600:13, 5600:28, 5600:35, 5600:36, 5602:25, 5603:2, 5605:27, 5606:2, 5606:17, 5606:19, 5606:25, 5608:2, 5609:4, 5609:7, 5609:14, 5609:26, 5610:17, 5610:22, 5610:46, 5611:18, 5612:33, 5612:34, 5613:9, 5615:33, 5616:25, 5617:10, 5618:13, 5618:26, 5619:19, 5619:47, 5621:45, 5622:5, 5622:6, 5622:32, 5624:19, 5632:28, 5639:17, 5639:19</p> <p>Thame[6] - 5607:34, 5613:38, 5614:3, 5614:18, 5614:31, 5622:19</p> <p>Thames [3] - 5607:29, 5622:41, 5642:16</p> <p>them...(i.e) [1] - 5569:3</p> <p>themselves [3] - 5646:20, 5653:18, 5653:34</p> <p>thereafter [2] - 5562:45, 5589:11</p> <p>therefore [6] - 5607:30, 5613:12, 5615:31, 5622:7, 5636:32, 5640:14</p> <p>therein [2] - 5562:2, 5582:31</p> <p>thereof [1] - 5632:43</p> <p>they've [1] - 5644:3</p> <p>thick [1] - 5587:41</p> <p>thinking [2] - 5609:6, 5648:18</p> <p>third [5] - 5563:36, 5571:5, 5606:31,</p>	<p>5616:42, 5646:2</p> <p>Thirdly[1] - 5650:14</p> <p>thirds [3] - 5614:44, 5615:10, 5615:14</p> <p>thoughts [1] - 5643:27</p> <p>threat [1] - 5563:22</p> <p>threatened [2] - 5563:7, 5563:13</p> <p>three [5] - 5569:42, 5569:44, 5585:27, 5608:46, 5641:41</p> <p>three-month-old [1] - 5569:42</p> <p>three-quarters [1] - 5641:41</p> <p>three-week [1] - 5569:44</p> <p>Thursday[2] - 5567:41, 5655:14</p> <p>tied [1] - 5600:40</p> <p>Tigris[34] - 5604:40, 5604:45, 5605:3, 5605:4, 5605:17, 5605:18, 5605:41, 5606:45, 5607:29, 5610:17, 5610:41, 5611:9, 5611:16, 5613:43, 5617:8, 5617:11, 5621:20, 5621:35, 5621:39, 5623:4, 5623:36, 5635:35, 5635:36, 5635:37, 5635:38, 5636:7, 5636:13, 5636:15, 5637:33, 5637:45, 5638:3, 5646:24, 5646:26, 5654:24</p> <p>timing [1] - 5621:46</p> <p>today [7] - 5561:27, 5561:38, 5579:27, 5601:11, 5616:22, 5642:37, 5655:6</p> <p>together [4] - 5580:10, 5591:8, 5591:15, 5592:18</p> <p>tomorrow [5] - 5561:4, 5579:28, 5581:10, 5590:33, 5655:10</p> <p>tongue [2] - 5568:10, 5643:3</p> <p>tonne [4] - 5583:47, 5587:11, 5589:16, 5646:34</p> <p>tonnes [2] - 5584:19, 5588:45</p> <p>took [12] - 5562:18, 5563:16, 5563:36,</p>	<p>5576:4, 5595:4, 5596:45, 5598:27, 5600:16, 5600:22, 5604:15, 5613:6, 5634:14</p> <p>top [6] - 5569:29, 5588:37, 5614:23, 5615:6, 5623:41, 5632:47</p> <p>topic [6] - 5598:4, 5599:18, 5606:36, 5616:19, 5620:36</p> <p>topical [1] - 5597:26</p> <p>topics [2] - 5604:39, 5620:21</p> <p>total [1] - 5618:31</p> <p>totally [1] - 5622:4</p> <p>towards [2] - 5606:27, 5623:28</p> <p>town [1] - 5586:34</p> <p>trade [2] - 5595:31, 5630:10</p> <p>Trade[3] - 5584:31, 5591:6, 5633:4</p> <p>trading [2] - 5629:20, 5629:46</p> <p>training [3] - 5584:44, 5586:44, 5586:46</p> <p>transaction [18] - 5569:11, 5605:28, 5605:37, 5605:44, 5608:24, 5608:33, 5609:23, 5610:5, 5610:23, 5610:30, 5610:42, 5610:46, 5611:9, 5622:4, 5622:40, 5636:27, 5637:14, 5637:46</p> <p>transactional [1] - 5609:25</p> <p>transactions [1] - 5571:40</p> <p>transcribed [1] - 5588:41</p> <p>transcript [7] - 5575:42, 5576:4, 5577:44, 5618:39, 5647:25, 5648:6, 5648:9</p> <p>transferring [1] - 5571:28</p> <p>transition [1] - 5644:15</p> <p>transmission [1] - 5567:31</p> <p>transpired [1] - 5611:32</p> <p>Transport[3] - 5603:26, 5603:45,</p>
--	---	---	--	--

5633:36 transport [18] - 5568:20, 5570:37, 5571:6, 5571:11, 5571:23, 5571:28, 5571:37, 5582:10, 5588:10, 5588:25, 5588:29, 5589:6, 5589:8, 5599:8, 5604:20, 5618:14, 5626:1, 5649:18 Transportation [1] - 5633:4 transportation [2] - 5569:10, 5598:47 transporting [1] - 5594:37 travel [2] - 5575:7, 5641:18 travelled [4] - 5585:1, 5588:36, 5588:43, 5599:14 travelling [2] - 5583:46, 5584:3 traverse [2] - 5605:31, 5642:10 traversed [1] - 5618:17 Treasury [1] - 5565:34 treat [1] - 5563:16 trespass [1] - 5644:27 trespassing [1] - 5648:26 Trevor [2] - 5586:19, 5586:34 Trh [1] - 5560:26 trip [14] - 5571:33, 5582:3, 5582:7, 5584:27, 5584:43, 5584:47, 5585:7, 5585:18, 5585:29, 5587:18, 5596:11, 5631:14, 5631:20 trouble [1] - 5591:40 troubles [1] - 5577:15 truck [1] - 5594:8 Trucking [2] - 5565:27, 5612:23 trucking [39] - 5565:41, 5568:12, 5594:23, 5594:40, 5596:26, 5599:27, 5612:27, 5612:31, 5612:33, 5612:40, 5616:30, 5617:42, 5618:12, 5618:26, 5625:42, 5625:45,	5626:16, 5626:19, 5626:23, 5626:25, 5626:39, 5627:22, 5628:9, 5628:11, 5628:17, 5630:19, 5630:20, 5630:41, 5630:44, 5641:14, 5641:16, 5641:21, 5643:36, 5645:6, 5646:10, 5647:4, 5649:9 trucks [2] - 5599:13, 5641:17 true [9] - 5564:36, 5593:44, 5595:19, 5599:24, 5609:37, 5622:25, 5624:22, 5624:23 try [4] - 5568:36, 5597:41, 5606:41, 5644:5 trying [2] - 5563:15, 5644:4 Tuesday [1] - 5635:7 Turkey [7] - 5584:1, 5587:12, 5588:22, 5589:22, 5589:23 turn [3] - 5631:7, 5636:12, 5642:24 turning [1] - 5588:47 twice [1] - 5654:17 Two [1] - 5580:37 two [35] - 5561:1, 5561:19, 5564:9, 5564:25, 5564:45, 5568:34, 5569:43, 5570:39, 5571:4, 5575:9, 5575:31, 5580:13, 5580:21, 5580:33, 5584:11, 5587:39, 5588:36, 5588:40, 5588:42, 5591:11, 5593:16, 5593:22, 5607:1, 5607:15, 5614:44, 5615:10, 5615:14, 5618:27, 5623:8, 5628:15, 5629:25, 5629:34, 5629:40, 5653:13, 5653:14 two-page [1] - 5587:39 two-thirds [3] - 5614:44, 5615:10, 5615:14 type [4] - 5574:9, 5576:17, 5640:7, 5644:2 typed [5] - 5574:13, 5574:14, 5574:16,	5576:8, 5611:2 typed-up [1] - 5576:8 types [1] - 5610:21 U ultimately [2] - 5568:44, 5625:26 Umm [1] - 5566:33 Un's [1] - 5568:46 Un-approved [1] - 5565:41 uncapped [1] - 5563:8 Under [1] - 5642:16 under [9] - 5562:19, 5568:46, 5591:10, 5591:11, 5591:12, 5613:42, 5616:35, 5621:19, 5636:20 underneath [6] - 5613:38, 5636:8, 5637:33, 5641:11, 5642:11, 5642:27 Underneath [1] - 5639:41 understandably [1] - 5620:34 undertaken [2] - 5607:10, 5631:39 United [1] - 5654:8 Unknowingly [2] - 5616:35, 5645:44 unless [1] - 5577:10 unnecessarily [1] - 5572:40 unsatisfactory [1] - 5563:11 untrue [1] - 5569:14 unusual [3] - 5598:32, 5609:35, 5627:33 unwittingly [2] - 5616:36, 5645:45 up [32] - 5564:24, 5564:46, 5565:18, 5565:37, 5567:38, 5568:5, 5571:20, 5574:17, 5574:18, 5575:44, 5576:8, 5576:17, 5578:14, 5578:40, 5580:15, 5585:29, 5588:47, 5589:15, 5591:31, 5596:25, 5599:36, 5600:40, 5601:42, 5606:5, 5606:8, 5621:15, 5623:25, 5628:15, 5639:6, 5647:30, 5650:46,	5651:30 upset [1] - 5575:32 Us\$12 [1] - 5646:33 Us\$47.75 [1] - 5646:33 Us\$500,000 [1] - 5605:38 Usd8m [2] - 5607:20, 5636:18 usual [3] - 5562:9, 5592:30, 5593:26 utility [2] - 5579:15, 5579:18 V vacuum [1] - 5579:17 variety [2] - 5563:33, 5577:8 various [6] - 5620:20, 5620:26, 5653:4, 5653:5, 5653:44 vein [2] - 5623:2, 5651:20 venture [2] - 5603:44, 5633:40 veracity [1] - 5621:2 verbal [1] - 5602:32 verbally [1] - 5602:42 verbiage [1] - 5566:35 version [3] - 5562:44, 5576:8, 5576:17 versus [2] - 5582:28, 5617:11 vessels [2] - 5588:47, 5592:41 view [13] - 5568:15, 5577:40, 5579:28, 5591:13, 5595:32, 5599:11, 5608:26, 5609:16, 5615:38, 5616:46, 5622:5, 5633:14, 5646:4 vis [2] - 5610:8 vis-a-vis [1] - 5610:8 visible [1] - 5569:15 visit [6] - 5583:42, 5584:6, 5584:30, 5585:25, 5585:26, 5586:20 visiting [1] - 5581:38 vocabulary [1] - 5568:32 Volcker [14] - 5597:9, 5597:14, 5597:32,	5614:38, 5614:40, 5615:30, 5615:46, 5616:3, 5628:25, 5631:36, 5632:3, 5642:34, 5644:1, 5645:46 Volume [1] - 5592:43 volume [3] - 5591:20, 5592:18, 5592:37 volumes [3] - 5580:13, 5580:22, 5580:33 Volumes [1] - 5580:37 W Walker [4] - 5591:7, 5591:10, 5591:23, 5591:27 wants [1] - 5639:17 war [4] - 5628:23, 5628:29, 5628:31, 5629:45 waste [1] - 5577:35 wasteful [1] - 5578:30 Wayne [2] - 5625:5, 5625:11 ways [1] - 5563:33 Wea [9] - 5608:8, 5609:35, 5610:11, 5639:42, 5640:2, 5650:21, 5651:21, 5652:30, 5652:37 Wednesday [1] - 5560:35 week [2] - 5569:44, 5584:2 week's [1] - 5588:47 weeks [2] - 5569:43, 5577:36 Wensley [3] - 5561:4, 5561:6, 5561:10 Wg [2] - 5608:1, 5639:15 whatsoever [4] - 5637:16, 5642:14, 5642:46, 5643:14 Wheat [16] - 5607:8, 5608:23, 5608:27, 5608:31, 5608:36, 5609:21, 5610:3, 5610:8, 5628:24, 5639:45, 5640:5, 5640:11, 5640:17, 5652:15, 5652:19, 5652:28 wheat [31] - 5568:46,
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5584:20, 5586:10, 5588:45, 5594:9, 5594:37, 5594:38, 5595:1, 5598:32, 5598:34, 5599:15, 5608:42, 5609:27, 5609:31, 5609:36, 5613:11, 5613:13, 5623:19, 5623:21, 5636:30, 5638:33, 5638:41, 5639:1, 5639:23, 5644:1, 5644:3, 5644:11, 5644:20, 5650:36, 5651:18 whereas [1] - 5622:39 wherein [1] - 5566:26 Whitwell [9] - 5568:39, 5568:41, 5569:26, 5569:36, 5570:7, 5570:11, 5570:14, 5570:15 whole [8] - 5573:45, 5577:8, 5578:1, 5586:45, 5593:4, 5595:45, 5610:17, 5616:41 Wilson [3] - 5566:13, 5566:42, 5566:46 Wisdom [2] - 5613:39, 5642:17 wish [14] - 5561:24, 5561:32, 5576:38, 5578:25, 5578:38, 5578:45, 5579:21, 5579:41, 5590:25, 5591:47, 5605:31, 5626:30, 5628:6, 5649:29 wished [2] - 5564:45, 5632:4 Wished [2] - 5613:39, 5642:17 wishes [6] - 5561:9, 5561:10, 5561:38, 5579:35, 5579:36, 5591:44 withdraw [2] - 5630:38, 5633:24 Withdrew [3] - 5590:41, 5624:33, 5655:3 withhold [1] - 5570:28 witness [15] - 5561:21, 5572:42, 5573:38, 5577:19, 5577:28, 5577:33,	5577:34, 5578:45, 5579:22, 5579:36, 5590:26, 5593:18, 5601:11, 5625:3, 5635:22 Witness [17] - 5568:28, 5570:18, 5574:44, 5590:35, 5590:39, 5590:41, 5594:5, 5615:3, 5624:33, 5634:32, 5635:27, 5639:21, 5648:28, 5650:29, 5653:7, 5655:1, 5655:3 witness's [1] - 5579:15 witnesses [8] - 5561:19, 5561:25, 5562:38, 5593:16, 5593:22, 5622:19, 5623:8, 5655:5 wonder [1] - 5650:31 wondering [2] - 5577:39, 5639:24 words [10] - 5568:31, 5568:32, 5578:3, 5602:28, 5603:6, 5607:34, 5609:20, 5609:46, 5614:38, 5639:43 works [1] - 5586:45 world [2] - 5598:40, 5625:47 worry [1] - 5629:13 writes [1] - 5569:26 writing [2] - 5565:8, 5571:40 written [5] - 5571:43, 5574:34, 5608:3, 5640:17, 5651:28 wrote [1] - 5596:30 Wst0005.0016 [1] - 5581:42 Wst0005.0017 [1] - 5588:7 Wst0016.0130 [2] - 5606:42, 5635:41 Wst0016.0141 [1] - 5637:24 Wst0016.0141-r [1] - 5607:39 Wst0016.0142-r [1] - 5639:14 Wst0016.0191 [2] - 5611:33, 5640:24 Wst0027.0082 [1] - 5564:24 Wst0036.0002 [1] - 5561:42	Wst0036.0002-0020 [1] - 5561:46 Wyld [1] - 5591:37
X		
Xavier [1] - 5617:3 Xm [2] - 5617:3, 5646:17		
Y		
year [3] - 5572:27, 5628:20, 5631:28 years [2] - 5594:19, 5620:37 Yesterday [1] - 5635:9 yesterday [2] - 5562:18, 5563:44 yield [1] - 5563:20 yourself [3] - 5595:30, 5625:31, 5649:38 Yousif [1] - 5566:1		
Z		
Zuhair [7] - 5583:38, 5584:15, 5586:2, 5586:32, 5588:39, 5589:44, 5590:1		