

IN THE EMPLOYMENT TRIBUNALS
BRISTOL

CASE NUMBER: 1402867/2006

B E T W E E N:

MR BRIAN LITTLE

Claimant

- and -

(1) MAGELLAN AEROSPACE (U.K.) LIMITED

(2) MAGELLAN AEROSPACE CORPORATION

Respondents

WITNESS STATEMENT OF BRIAN ALEXANDER LITTLE

I, BRIAN ALEXANDER LITTLE, of Fortfield, 176 Whitechurch Road, Ballywalter, Newtownards, Co. Down BT22 2JZ, Northern Ireland, **WILL SAY** as follows:

1. This is my witness statement detailing my claims of unfair dismissal and whistleblowing. I also believe that I was subjected to various detriments by Magellan Aerospace (UK) Limited (“MALUK”) and/or Magellan Aerospace Corporation (“MAC”) following the termination of my employment by reason of my whistleblowing, which I have also described below.

The termination of my employment

2. I transferred under TUPE in late 2003 from Mayflower Aerospace to MALUK, becoming Executive Vice President – European Operations and a short while later an executive director of MALUK. In June 2005 I was promoted to Senior Vice-President – Information Technology, Strategy and Business Development and made a senior officer of MAC, while continuing as an executive director of and being paid by MALUK. I remained in this role until I was summarily dismissed on 18 September 2006. MAC is the holding company of MALUK and is a Canadian public company listed on the Toronto Stock Exchange (TSX).

3. I believe that the reason for my summary dismissal was that, on 17 September 2006, I had formally requested MAC to commence an internal investigation into whistleblowing concerns I had raised, and was continuing to make, about the operations of MALUK and MAC. I sent an email on 17 September 2006 (see volume 6, page 2340) to my superior Rich Neill (the President and Chief Executive Officer of MAC), in which I stated that, if my concerns were not resolved through corporate processes by 19 September 2006, I would escalate them to Murray Edwards (the Chairman of MAC), and in the final event to William A. Dimma (an independent director of MAC and the Chairman of MAC's Audit Committee) for an investigation to take place, either under the whistleblower or ethics policies or anyway by the Audit Committee. I believe that the concerns which I was making at that time, and which I had previously made, amounted to whistleblowing and were "protected disclosures" under UK law. Naturally, I was very wound up about all of this and I expected that my visit from the UK to MAC's HQ in Toronto on 18 September 2006, for a week long strategy planning meeting with the senior executives of MAC, would provide the time and opportunity to properly deal with these matters, including the creation of an action plan to address these issues, which were causing me great concern.
4. The very next day, on Monday 18 September 2006, I was dismissed upon my arrival into Toronto Airport by Mr Neill, accompanied by Jo-Ann Ball (MAC's Vice President for Human Resources) right after my long flight from the UK.
5. I had requested and expected to meet Mr Neill later that afternoon at MAC's offices, to discuss my concerns with him. But I was surprised when Mr Neill and above all Ms Ball met me at the airport at around 3:15pm (Toronto time), just after I had cleared immigration and customs. Mr Neill told me that they wanted to have a chat with me, and led me into the Sheraton Gateway Hotel in Terminal 3 of the airport. I hoped that the reason for this impromptu chat was that they genuinely wanted to understand my whistleblowing concerns so that we could move forward together and resolve matters.
6. I was anxious to know whether Mr Neill had read and understood the emails I had sent him over the previous couple of days. I refer to my email to Mr Neill's secretary, Joyce Stuttard (and copied to Mr Neill) on 17 September 2006 (see volume 6, page 2342), in which I asked Ms Stuttard to print out copies of the emails I had sent Mr Neill over the previous four days in preparation for my meeting with Mr Neill on 18 September 2006. So, as we walked together the short distance to the hotel, I twice asked Mr Neill whether he had had an opportunity to read all the emails that I had sent through to him. He said that he had. I then asked Mr Neill what his thoughts were on the emails, but he did not reply.
7. When we arrived at the hotel, we sat down in the lounge/bar. Ms Ball asked me whether I wanted anything to drink and I ordered a sparkling water. Mr Neill then told me straight off that I was dismissed. I was stunned. I had been given no warning that my employment

was in jeopardy and I did not have any disciplinary warnings on my file, and I was expecting to engage in discussion about resolving the whistleblowing concerns, so this was a complete shock to me. Even so, I realised that I had to deal with this unexpected situation and thought that I must be being fired so that I could not press the whistleblowing concerns I had raised. I was determined not to let that happen and therefore took tight control of my emotions, even though my stomach was churning and I was continuing to worry about MALUK's solvency. I asked Mr Neill what I had done to deserve this? Mr Neill informed me that the reason for my summary dismissal was that relationships had become so damaged that I could no longer be effective, and therefore I needed to part ways with the Corporation. Mr Neill was unwilling to discuss this further with me, though I asked him to explain how this was so, as I could not believe it. I also tried to raise my whistleblowing concerns with him. At one point I said that two or three illegal actions had taken place in the UK. Mr Neill's response was that Magellan had probably committed 5 or 6 illegal actions and he almost appeared to be suggesting that this was in some way acceptable. I was completely surprised and taken aback by Mr Neill's comment and it was clear to me, from her surprised reaction to this exchange, that this was news to Ms Ball. Anyway, Mr Neill and Ms Ball were not prepared to discuss the illegal actions and instead Mr Neill asked me several times if I had resigned or was going to resign, which I will explain later. ~~At~~ this point, Ms Ball suggested Mr Neill leave the hotel and return to their offices and he got up to go.

8. As Mr Neill was leaving I asked again whether any of the other MAC Directors were involved with making or even aware of this decision to fire me and Mr Neill told me that Mr Edwards was aware of the decision to dismiss me. Accordingly, I tried to telephone Mr Edwards on my mobile phone to raise it with him, but I received no answer. At this point, I was forming an action plan in my mind. It was that I would not accept my dismissal and that I would press my whistleblowing concerns through internal channels and the whistleblower or ethics procedures to MAC's directors, along with my case why it was wrong for Mr Neill and apparently Mr Edwards to fire me. And I would do that in person in Canada and if that meant camping on their doorsteps to get them to meet me, that is what I would do. I mentally committed to staying in Canada for the week for that purpose. I was that determined that I was not going to let them get away with sacking me for raising and pressing what I genuinely believed were uncomfortable truths about the unlawful ways I believed the 2 companies had been acting and their poor management and governance. Nor was I going to allow my sacking to prevent these issues coming to light. Accordingly, I decided that I would first visit Mr Edwards, as I had indicated that I would do, if necessary, in my email of 17 September 2006 to Mr Neill referred to already (see volume 6, page 2340).

9. After Mr Neill had left, Ms Ball handed me an envelope, which she said contained a letter terminating my employment. I reluctantly took this from her and placed it on the table between us. I deliberately did not open it as part of my plan not to accept my dismissal. Ms Ball then requested that I hand her my company –issue laptop computer. I refused to do this, telling her that there were emails and documents on it that recorded my complaints, and others that showed what the governance and management issues were, and that I wanted to keep the pc so that I could show them to Mr Edwards and/or Mr Dimma. I then asked her if she was familiar with the company policies and procedures she should be following in all the circumstances and if she had taken legal advice. She responded that the Corporation had absolute discretion in all circumstances. Consistent with my plan for not accepting my dismissal, I suggested she should consider that position carefully again. I thought that Ms Ball was out of her depth and did not know about my whistleblowing (as to my knowledge she had not been a party to any of the emails or discussions I had had with colleagues about these matters up to now). I expected Ms Ball would speak directly to MALUK’s solicitors, Pinsent Masons, to take any advice. I had previously discussed some of these whistleblowing/governance/employment matters with Jonathan Coley, an employment partner at Pinsent Masons, and I hoped and expected that he would probe and find out about my whistleblowing and at least advise that they were breaking UK legal procedures in the way they were sacking me and that his advice would contribute towards my re-instatement and the resolution of the whistleblowing issues. Therefore, I politely suggested that in the light of what had just happened with Mr Neill she ought to take legal advice in the UK. I was then offered a flight home to Belfast by Ms Ball and encouraged to take it. Ms Ball said that she thought I should be at home now with my wife and family. In accordance with the plan I had now formed and my email of 17 September, I explained to Ms Ball that instead I wanted to take a flight to Calgary in Canada, which is Mr Edwards’ base of operations, to see Mr Edwards. Ms Ball could not understand why I did not want to return home, but reluctantly she did make the necessary flight arrangements, after I had offered to pay for the flights on my credit card.
10. At the very start of the meeting I had asked Ms Ball to take notes of the ensuing discussion, which lasted about 15 – 20 minutes, including Mr Neill’s part in it. At the end of the meeting, I asked Ms Ball to provide me with a copy of her manuscript notes. Ms Ball refused to give these notes to me at the time and I only got to see them over a year later as a part of the disclosure process in this case. That was the end of our meeting.
11. After Ms Ball had left the Sheraton Gateway Hotel, I stayed on in the hotel for a while. I opened the envelope Ms Ball had given me and that I had deliberately left unopened on the table. It contained the first letter from Mr Neill dated 18 September 2006 terminating my employment with MAC and MALUK with immediate effect, and asking me to waive my right to bring a claim against the companies (see volume 6, page 2372) and a copy of my

service agreement with MALUK (see volume 2, page 533). I went over to reception and asked the hotel to photocopy the covering letter, as I realised that I might need it later. I then put the original letter back into the envelope and tore the whole into eight pieces and I left the pieces on the table where we had been sitting for the meeting beneath my empty bottle of Perrier water. I then called Ms Ball on my mobile phone and, when she did not answer, left a voicemail message saying that I had not taken the envelope. I then walked to the departure gate to await the flight to Calgary. I believed that by not accepting the dismissal letter, I was giving them a way out of dismissing me and all the problems I believed that would entail for them. At the time I believed that Mr Edwards could not fully understand all the issues and that it was professional and appropriate to see him next, as I had said I would do, prior to seeing Mr Dimma as Chair of the Audit Committee. I hoped, even expected, that once Mr Neill and Ms Ball had further reflected on our meeting, they, together with Mr Edwards and/or Mr Dimma would overturn the decision to fire me and give me the opportunity to fully explain my concerns to them. I also wanted to demonstrate to them that I could be trusted to work with them and my colleagues to put the whistleblowing issues right, notwithstanding the appalling way they had just treated me, by trying to work normally. So, for example, I continued to pursue the engineering cash receipts from Airbus UK for MALUK.

12. I did not then believe and still do not believe that the reason for my dismissal was that there had been a breakdown in the employment relationship between myself and MALUK or MAC. I believe that I was being dismissed because, between February 2006 and particularly in August/September 2006, I had raised protected disclosures, and/or in an attempt to stop me from repeating or pursuing my protected disclosures/governance matters whilst in Head Office during the series of highly important group senior executive meetings in Canada over the following seven days. In particular I felt that Mr Neill and I thought Mr Dekker (the Chief Financial officer of MAC) were trying to avoid dealing with the whistleblowing issues I had raised.
13. While I was waiting at the gate for my flight to Calgary, I used my pc to email Mr Edwards an exchange of emails between myself and Mr Neill on 15 September 2006, some of which I had previously forwarded to him on 15 September 2006 (see volume 6, pages 2376-2378). In my email, I stated that I wanted to establish that he had seen all the documentation I had provided to Mr Neill during the previous 72 hours. I stated that I was trying to do the right thing and requested that he telephone me to discuss this with me. I did not hear from Mr Edwards so I emailed to let him know that I was boarding a flight to Calgary and would be at his office at around 7am the following day. This time Mr Edwards replied by email that he was fully committed on 19 September 2006 and would be out of town for the remainder of the week (see volume 6, page 2374). I replied saying that I would meet him at a suitable time for him (see volume 6, page 2375). Not only is Mr Edwards the Chairman

of MAC; he is also the single biggest shareholder owning some 28% of the ordinary shares in MAC.

14. The next day, Thursday 19 September, I arrived at Mr Edwards' offices in Calgary at approximately 6 am and waited in reception until he arrived for work just after 7 am. As he was walking along towards the lifts, to take him to his top floor office, I asked him if he would give me some time to discuss the concerns I had been raising and my termination. He did acknowledge me and replied making a few remarks regarding UK finances and the CFO but did not stop and kept walking to the lifts and got in, leaving me behind on the ground floor. But, as the lift doors closed, Mr Edwards asked me to send him a 1 to 2-page note setting out my concerns. I had already commenced drafting such a note / summary of headings and I spent some time on my laptop in the Ground Floor seating area completing my list of the various management, governance and legal issues – in this instance focussing on the UK. I waited there until approximately midday, when I took the lift up to Mr Edwards' office and sat in their private reception area to wait for him so I could give him the paper. As the regular weekly MAC staff conference call had been scheduled for this time and Mr Edwards frequently participated in them, I guessed he was taking part in that call. While I was waiting for him to emerge, I received several calls from Airbus executives; they gave me to understand that they thought I had been fired and wanted to know what was going on. It was plain to me therefore that MAC must have made my sacking public somehow, as I certainly had not leaked it. I told them that I was sitting in Mr Edwards's reception waiting for a meeting with him. At about 2 pm, Mr Edwards emerged and headed for the lifts. He saw me waiting there and looked a little dismayed, but told me that, when he got back after his next meeting, I could have five minutes with him, after which he would ask security to escort me out of the building.
15. At approximately 4.40pm, that meeting took place. Mr Edwards was accompanied by Larry Moeller (a long time business associate of Mr Edwards and also a director of MAC). During this meeting, which lasted about 25 minutes, I spent some time explaining a number of my complaints and concerns to Mr Edwards. However he would not look at any of the documents on my computer, although I tried to get him to read them. My overriding impression was that Mr Edwards did not want to get involved as, on three occasions, Mr Edwards stated that I should refer all of the matters I was raising to Mr Dimma – the Chair of MAC's Audit Committee. Mr Moeller said nothing at the meeting and neither of them took any notes. The meeting then ended and I left Mr Edwards offices of my own free will and without any fuss and returned to the ground floor seating area. I wrote my handwritten notes immediately on my return to the Ground Floor seating area – see typed notes of my meeting with Mr Edwards (see volume 6, pages 2410-2411). I believe that Mr Edwards had now to realise, if he had not done so before, what sorts of concerns I was

raising. It was plain however that he was not going to get involved and wanted to push me on to Mr Dimma.

16. I decided to stay in Calgary. I returned to my hotel and telephoned my wife, Jackie, to discuss the situation with her. This was the second time I had spoken to her in 24 hours but I had not told her what had happened until after I had the meeting with Mr Edwards. Obviously she was shocked and anxious and I repeated to her what I had said to her the previous weekend on the way home from taking our daughter Caroline to university namely I was going to stay in Canada for the week and try to sort the matters out with Mr Dimma before returning home. At that time Jackie had received no contact from other people.
17. I started writing and trying to send a series of emails on MALUK business and pursuing my situation on my pc, but I found I could not send them. I later learned this was because the Respondents had turned off my Internet and email access at around 8 pm Canadian time on 18 September. So all these documents and those I wrote over the next couple of days got hung up in my pc's "outbox" (see volume 6, pages 2412-2457). I now turned my attention to Mr Dimma as I said I would do. Accordingly, on 20 September 2006, I prepared a three-page letter to Mr Dimma (and the other members of the Audit and Human Resources board sub-committees), in which I tried to bring my protected disclosures to his attention (see volume 6, pages 2497-2499). I also prepared 18 files, organised by subject matter, which contained print outs of the many emails from me to my colleagues in MALUK and MAC, increasing in number and intensity through July, August and September 2006, and other documents, all of which recorded my complaints and concerns and their responses, as well as about certain other business matters, which I intended to give to Mr Dimma when we met (the "Dossiers"). I referred to these Dossiers in my letter to Mr Dimma. However, as I could not access a number of documents that I believed were important, I suggested in my letter that Mr Dimma and his Audit Committee colleagues would need to research and obtain the answers to a further six questions as part of their investigation/research.
18. I then began to receive voicemails, texts and telephone calls from various people from both the UK and North America. During Wednesday 20 September 2006, it became manic. Iain Gray the Airbus UK MD rang and we spoke about a number of matters. Terry Stocker of All Metal Services, who was in the USA, and various other people from Airbus UK also telephoned. That evening, when I called Jackie, she said that a couple of people had phoned (one from Bombardier and someone from one of the suppliers, IBM). The following day, Nick Cook, who works as a freelance aerospace journalist in the media, also called to ask what was happening. I was starting to get more concerned.

19. On both Wednesday September 20 and Thursday 21 September, I had numerous calls and texts from a variety of customers, suppliers, employees, business acquaintances and friends regarding an announcement which had apparently been circulated by MAC, although I had not seen it myself. Overwhelmingly, the calls and messages expressed shock about my sacking and there were accompanying messages of support and sympathy, as well as messages that the announcement was harming the reputations of the Respondents and myself. Therefore, I called Mr Neill and told him about the harm that was being done to both of us by the announcement and my need to have IT links reinstated so I could keep on doing my job and that I was still waiting for precise contact details for Mr Dimma so I could set up my meeting with him.
20. In the meantime, I was continuing to work by telephone on collecting cash from customers, such as Mecachrome, Hamble Aerostructures and Airbus Engineering (with Paul Nokes and Airbus – Geoff Pinner/Clive Renson) and the retrospective revenues for the manufactured parts (Jim Fairbairn) which I believed was vital to MALUK's solvency – I shall return to the cash collections subject later in my statement when I detail my protected disclosures.
21. On Thursday 21 September at midday I received at my hotel in Calgary a four page Fax from Mr Neill's secretary (see volume 6, pages 2482-2485) which contained Mr Dimma's contact details, a typed set of Airport termination minutes (pages 2483-2484) and a redraft of the original announcement which they no doubt intended to limit the damage (at page 2485). I then telephoned Mr Dimma. His executive assistant, Enid Williams, informed me that he would not be in the office until the following morning. Accordingly, I left Mr Dimma a two to three minute voicemail message. I explained that there were a number of issues I was concerned about and that I was not sure what he had been told about my concerns, my dismissal and me. I said that Mr Edwards had suggested that I see him, and that although I was planning to return to UK on Sunday 24 September 2006, I was prepared to stay on in Canada to see him. Mr Dimma returned my call the following day (Friday 22 September 2006) and after a brief discussion he asked me to meet him at his offices in central Toronto on Sunday 24 September 2006 at 3:30pm (Toronto time) for approximately an hour.
22. Also on 21 September, I drafted on my laptop pc a response to Mr Neill and Ms Ball about Ms Ball's typed minute of the airport meeting and about the revised announcement. I put forward a list of corrections and additions to the meeting note (see volume 6, pages 2486-2487). As I was unable to send the email, as my email was still cut off, I called Mr Neill instead intending to use the letter as my script for the call. When Mr Neill did not answer, I dictated a long message of the contents into his voicemail([\(- Ms Ball? - examination-in-chief - phone records - document 2391C\)\)\)](#)).

23. I flew back to Toronto and on Sunday 24 September 2006, I arrived at Mr Dimma's office building at 3:30pm as arranged and Mr Dimma picked me up from the reception area at approximately 3:45pm. When we arrived at his office/conference room I immediately handed Mr Dimma the letter I had drafted on 20 September 2006 (see volume 6, pages 2497-2499) and set down the 18 dossiers and my laptop computer on the table. We briefly discussed my letter and I took him through some of the issues I had raised, and some of the documents contained in the dossiers, which he said he would pass to Mr Neill to review. On four occasions during our meeting Mr Dimma asked me what I wanted, and I explained that I wanted to try to change the company and get it to address the relevant legal, financial, management and governance issues I had raised. He seemed almost more concerned to find out from me how my meeting with Mr Edwards had gone, rather than with getting an understanding of the issues I was raising. Towards the end of our meeting I informed him that I specifically wanted him and his independent director colleagues to read the dossiers and get the answers to the questions on page 3 of my letter. I would then make myself available for further discussions, including returning for a meeting in Canada, with him and his Audit Committee colleagues about the issues I had raised. I left my company issue pc with him for safe keeping in his custody as I told him I would need to access it later in our discussion under the process. Our meeting lasted approximately 80 minutes. I made notes of our meeting immediately afterwards (see volume 6, pages 2500-2504). I flew home to Northern Ireland that night.
24. Upon my return home from Canada on Monday 25 September 2006 and having access again to email via my own pc I sent several emails to Mr Neill and Ms Ball (see volume 6, pages 2509-2510). I also emailed Mr Dimma and confirmed that I would be available to return to Canada for further discussions, during the period 10-24 October 2006 (see volume 6, pages 2511-2514). I attached a scanned copy of my letter dated 20 September 2006 to my email, for him to circulate to his board colleagues. That day, I also got an amended version of the airport dismissal meeting notes from [Mr Neill Ms Ball](#) (see volume 6, pages 2494-2495 [and 2516-2518](#)). Surprisingly, the notes did not include any of the changes I had requested but Ms Ball had added more material, presumably. I did not recollect that the two additional items had been said in the meeting. These items were: "RN [Rich Neill] *acknowledged that if there was anything illegal it should have been disclosed in the quarterly sub-certificate BL [Brian Little] signed*" and "RN *stated that he was not going to debate these issues here but that BL should contact Bill Dimma if he feels there are issues*" (see volume 6, page 2517). I do not recall the reference to the Quarterly certification letters by Mr Neill (or Ms Ball) during our meeting and I will deal with the relevance and my positive adherence to these processes later in my statement for each item. It was also me who stated clearly that I would proceed to escalate to Mr Dimma as I had said in my email prior to my dismissal.

25. That evening a courier parcel arrived from Ms Ball which contained the termination letter /documents again. After opening the parcel, I immediately emailed Ms Ball to re-iterate that I did not accept that the MAC could or should do this (see volume 6, pages 2515 and 2520). I tried to tell her that MAC was trying to terminate my employment without following its own and the legally required procedures, which I believed was wholly inappropriate. I also suggested that the Respondents fully brief their professional advisors, who I stated I presumed would be “Jonathan”. This was a reference to Jonathan Coley, the Pinsent Masons partner who I have mentioned already, and the purpose was the same as before. At this time I still believed that my plan would work. Namely that Ms Ball would seek legal advice from Mr Coley, and particularly that his advice would at worst be that I should be suspended pending an investigation and certainly not dismissed outright, and they would then realise the very serious error they had made. Simultaneously I believed that Mr Dimma, and his Audit Committee colleagues, would review my dossiers, and properly consider the issues I had raised, together with the documentation I had suggested they obtain in my letter of 20 September 2006 (see volume 6, pages 2497-2499), and realise the seriousness of the situation I had revealed and the genuineness of my concerns about them, before inviting me back to Canada for further discussions. I sincerely believed that they would take my concerns seriously and deal with the matters properly and conscientiously under the whistleblower procedure of MAC. I thought there would be a coming together of the legal advice about my dismissal from Ms Ball after speaking to Mr Coley, with the work of Mr Dimma and his colleagues, which would result in my dismissal being rescinded and that I would be able to work with my colleagues at MALUK and MAC to resolve the matters I had blown the whistle on.
26. In a further email to Mr Dimma on 26 September 2006, I stated that I did not want to resolve the matter through a legal route (meaning litigation) until all internal processes had been exhausted and that I would await contact from him (see volume 7, pages 2533-2544). In it, I also suggested an independent investigation of my concerns. In a further email of 29 September 2006, I provided Mr Dimma with contact details for a previous employee of MALUK, Clare Pettifer, with whom the Audit Committee could contact to verify some of my disclosures and concerns (see volume 7, page 2544). I repeated again that I would wait to hear from him with regard to me returning to Canada for discussions. I hoped that Mr Dimma would take time to thoroughly review the dossiers, circulate my letter and obtain copies of the documents listed in my letter before inviting me back to Canada for further discussions with some of his independent director colleagues. In the event, I heard nothing back from him for many weeks.
27. In particular, my proposal for an independent investigation of my complaints was not taken up at the time. But at the end of January 2007, the Audit Committee did commission Price Waterhouse Coopers (“PwC”) to carry out an investigation. They eventually

delivered a “final draft” report in early May 2007 and their “final” report followed in late August. I will deal with their report later in this statement but in the meantime simply wish to draw the Tribunal’s attention to one paragraph of the Executive Summary of their final draft report, which they submitted after 3 months or so of detailed investigation, which I think correctly characterises the environment and culture within MAC and MALUK and which I believe goes a long way to explain the whistleblowing concerns I had and verify the belief I had that legal obligations were not being met.

28. In Paragraph 2.40, PWC stated:-

Financial control within MAC and MALUK in relation to the areas we have examined is poor and needs to be improved; this need is particularly acute given that MAC is a Public Company. Examples of poor financial control that we identified during our work include:

- (a) *Accounting adjustments made with insufficient supporting analysis or documentation,*
- (b) *Inadequate understanding or documentation of balance sheet provisions and insufficient documentation of the decision to release certain provisions:*
- (c) *A lack of awareness of the program accounting requirements under either Canadian GAAP or UK GAAP. The accounting rules and guidelines are complex, and our impression is that the principles are not well understood throughout all of the finance community within the MAC group.*
- (d) *Poor control over individual projects from an accounting perspective. Project sales volumes, revenues and costs are not reviewed with sufficient frequency or rigour.*

It is only fair to say that this paragraph was one of the few changes between the “final draft” and “final” (August 2007) reports.

29. It is also worth noting now that PWC’s brief was restricted – about half of my protected disclosures (the “doubtful solvency” of MALUK August – October 2006 and the company’s and audit committee’s adherence to its own Corporate Ethics and Whistleblowing policies) were initially deferred at the request of the MAC Audit Committee and then ~~NOT~~ investigated by PwC para 4.11 - final draft report .

My Background

30. My family originated from Scotland, ~~and we~~ we came to Northern Ireland during the “Plantation of Ulster” in 1609 and are from a farming origin. I did live in the farmhouse until late 2008, which had been in my family for what would have been four centuries this year. Until my late father retired in 1992, we actively farmed, whilst some members of the family (including myself) have supported and mentored a number of small and medium

sized business enterprises since the 1970's, successfully helping them to grow and prosper. My mother was not keen that her 3 sons should go into farming, so she encouraged us all to find other careers and we all went into some form of business.

31. I graduated with a first class honours degree in Business Studies – specialising in Finance and Accounting - from the University of Ulster in 1979. At completion of my degree I was offered a full time role at Short Brothers, an aerospace business and one of the largest business enterprises in Northern Ireland. I worked in various departments until the takeover by Bombardier of Canada in 1989 and then held, at various times, Director and Vice President positions in Engineering, Operations, IT and Procurement up to 1995. This involved responsibilities for 3000 people (Operations role) and £200m plus costs including capital and materials procurement. In 1995 I left Shorts and went to work for Harland and Wolff PLC, Northern Ireland's other big business at the time as Deputy Managing Director. During that time I helped transform the company from a traditional "standard" ship builder to a company building advanced off-shore products and storage which enabled the turnaround of the company financially. We substantially reduced the company's losses (from £25 million in 1994) and by 1997 the company had made a small operating profit for the first time in many years. I left Harland and Wolff Plc to become an independent consultant, mostly because I had just turned 40 and wanted to spend more time at home with my family and on other interests, and I doubted that I could achieve the latter with what was on the horizon at Harland & Wolff. So in 1997 I started my consulting practice, and built up a practice as a Business and Organisational Development Consultant with a small number of major European companies as key clients and one professional services company (Ernst & Young). In 2001, I joined Compaq/Hewlett Packard as a Client Principal Consultant based in Belfast on a 150 day per year employment contract, which enabled me to carry on my consulting practice in the rest of my time.
32. From August 2001, I accepted an invitation to be a 50 days a year consultant to Trim Engineering Limited ("Trim"), which carried on business as a manufacturer and supplier of aerospace structural components and assemblies and was a part of Mayflower Aerospace and Rail Systems. They had tried to get me to come on board as Executive Chairman but I was reluctant to give up my role with Compaq/HP and this was the compromise we agreed. Trim's operations director was Mr Phil Underwood, whose name will feature later in this statement as my executive director colleague at MALUK.
33. Trim had a very big contract from Airbus to do work on the A380 aircraft programme and frankly it did not have the capability of delivering on that contract. It was also quite weak financially. In the course of 2002 this became increasingly apparent to Airbus and one of their executives, who I had first met while I was working at Shorts, started trying to persuade me to get more heavily involved with Trim to try and make sure they could

deliver to Airbus. It was also becoming increasingly apparent to Trim/Mayflower's own management and shareholders and the Chairman, Mr Henleyfrey, started trying to persuade me to take on the job of Chief Executive of Mayflower Aerospace as he thought the current incumbent was not up to the task of turning the business around but that I was. Eventually I succumbed to these dual pressures and agreed to become Chief Executive and a director but only on a 150 days a year contract so I could retain my home base and family time in Northern Ireland as well as continuing my business mentoring activities in Northern Ireland. I did wind up the consulting practice and of course quit my job with Compaq/HP. I started in this new job in July 2002.

34. I would ask the Tribunal's indulgence in my telling some of the history of Mayflower Aerospace, as it is directly relevant to what happened later in MALUK and MAC and MALUK is anyway the successor to Mayflower Aerospace's business. Mayflower needed to be restructured and refinanced to put it on a sound footing. I began that process but in October told the Board that the business was going to run out of cash by Christmas 2002, much earlier than they had thought before I carried out my analysis and planning. Then there were delays and problems between the shareholders and the banks in agreeing a refinancing so, as a precautionary measure, I started the process of creating sufficient cash flow headroom to enable a longer period for the refinancing/restructure to be completed. This was achieved by getting agreement with the Inland Revenue to defer around £1.5 million of PAYE to 19 April 2003 and by persuading key customers to advance payments to us and squaring trade creditors/suppliers. However, by the middle of March 2003, negotiations between the banks and the shareholders had broken down and we needed to start all over again. This time we decided to look for a buyer but we needed again to get cash flow headroom, so we managed to negotiate a further extension from the Inland Revenue and further advance payments from Airbus. We did get buyers interested and we accepted a firm offer in July 2003, only for this deal to collapse later and for the directors to have to put the business into administrative receivership in September 2003. This caused the Revenue to suffer a big loss of the deferred tax, and a loss for trade creditors.
35. From about December 2002 to its eventual receivership in September 2003, Mayflower Aerospace was constantly of doubtful solvency. This meant it was vital for us as directors to constantly check that we were solvent to avoid the very serious legal consequences of trading while insolvent. I became acutely aware of a directors responsibility when a company was in financial difficulties. From around November 2002, the Board regularly obtained legal and accounting advice as to our ability to continue trading, normally at our monthly board meetings but latterly usually 2 or 3 times a week. Our legal advice came from Pinsents. Practically we had to have the tightest financial management and we had to have agreements to defer any payment to creditors beyond the normal payment terms and of course getting money in on time from debtors was key too. While all of this was

unfolding a colleague Mr Gavin Crick and I kept a chronology of the events (see volume 3, pages 735-753). This was provided to Mr Underwood, Mr Neill, Mr Dekker and others at MAC not long after the acquisition and then Mr Murray Edwards (who acknowledged it by email on 17 August 2005 saying “what a tail, all behind us now” – see volume 3, page 1016).

36. While this experience did equip me well as a businessman, the whole process of working on the edge of insolvency for a sustained 6-month period in this way was very stressful and for much of the time I was effectively working more than full time given the challenges we faced. In the end, once the directors had decided in September that receivership was the only way forward, I had to take some time off work as I was utterly exhausted and stressed out and in need of a complete rest. I returned home and was immediately signed off sick with hypertension by my doctor. I have been on medication for high blood pressure since that time. You can therefore imagine the effect on me in terms of concern for health and the legal liability exposure when later I saw signs that MALUK was itself of doubtful solvency.

My key learning/experiences/knowledge from Mayflower Aerospace

37. **Firstly**, that when a business experiences cash flow problems, the directors have a very heavy legal responsibility to creditors and are exposed to personal liability if they trade while the business is insolvent. Very careful accounting and legal advice is needed.
38. **Second**, that directors cannot avoid responsibility if they delegate them, so they have to make certain a delegate is actually performing their job properly. So all the directors and the senior management have to work together as a team.
39. **Third**, it is essential to manage rigorously future commitments/purchases (particularly capital and other short-term discretionary spend) and ensuring that payments to creditors are adhering to the terms of business agreed with suppliers or if these are to be extended ensure that agreements are in place with these creditors regarding payment. Essentially the Directors establish and make sure the company follows a formal Supplier payment policy.
40. **Fourth**, when insolvency exists the company must cease trading and the directors must act as a Board and proceed to some form of formal insolvency process.
41. **Fifth**, if the company is part of a group, each company must be considered separately.
42. In 2006, I came across a book published by the Institute of Directors in association with Pinsent Masons, in 2005, called “The Directors Handbook” which had an excellent section on director’s duties when a company was of “doubtful solvency”, as the book put it. That section which neatly encapsulated all the advice that I had received piecemeal while at

Mayflower from Pinsent Masons, and gave graphic examples (see volume 3, pages 942-943. I read it carefully and took its advice to heart, given the memories I had from Mayflower and hoped never to have to experience again.

Magellan Aerospace Corporation (MAC) Acquisition and MAC Group structure

43. MAC's principal business activity is the manufacture of aerospace components and related services. MAC operates 14 plants; four in Canada, six in the United States and four plants in two locations in the UK. MALUK is based in the UK and is involved primarily in designing and manufacturing airframe components. I refer to page 4 of MAC's Annual Information Form for 2006, which sets out a chart showing the group's structure (see volume 1, page 202), and page 8 of MAC's Annual Information Form for 2006, which details the core capabilities of each of the group's business units (see volume 1, page 206). MAC is listed on the Toronto Stock Exchange ("TSX"), so its shares are publicly traded. As such, it is legally bound by its Listing Agreement with TSX to obey TSX rules for its listed companies from time to time. I refer to the TSX Filing Guide, Policy Statement on Timely Disclosure and Related Guidelines and Listing Agreement (see volume 7, pages 2748-2755).
44. On 29 September 2003 substantially all of the aerospace business and assets of Mayflower Aerospace (including the engineering and manufacturing divisions) were acquired by a nominee (Kimball Corporation owned by Mr Larry Moeller), on behalf of MAC. Ultimately the business assets were transferred to MAC and vested in MALUK. As a consequence of the acquisition, my employment (like that of the majority of the other employees of Mayflower Aerospace) transferred to MALUK under the Transfer of Undertakings Regulations. I was appointed as Executive Vice President – European Operations of MALUK. In this role, I was responsible for continuing the strategic restructuring of the UK business together with some of the functional parts – Engineering, IT, Procurement . I was also made a Director of MALUK in early 2004.
45. When Kimball / MAC acquired Mayflower Aerospace they did not have the time to carry out any due diligence and Mr Dekker and Moeller made certain financial assumptions in respect of payments to trade creditors, The expectation was that, as in North America, few cash payments would need to be made to "ransom creditors" - those with the commercial/business leverage to insist the "old debts " were paid as a condition of supplying the new entity. There was of course no legal obligation to discharge the debts of Mayflower Aerospace and therefore MAC made no real provision for them. However, the situation on the ground for MALUK was that a number of key suppliers including, Apollo Metals and All Metal Services, were in a position to hold MALUK to ransom, and would do so. Airbus, which had continuously supported Mayflower Aerospace throughout its financial problems, agreed to underwrite any debt to Apollo Metals and All Metal Services

and Bombardier in Belfast had done so also. Of course, neither Airbus nor Bombardier expected actually to pay up to Apollo or All Metal. They expected that MAC would eventually stump up the money under commercial pressure. Of course, MAC/MALUK needed to see Airbus and Bombardier quickly to try to cement new relationships and keep the relevant contracts in place. Mr Moeller asked me to come back from my sick leave for the first meeting with Airbus, on 30 September, such was its importance, and I agreed to this (see volume 3, page 756). At the meeting Airbus' starting point was that Mayflower Aerospace going bust had cancelled the contracts, and the relationship was up for review, as they knew nothing about MAC. Shortly after the meeting finished I was told privately that, unless MAC/MALUK paid up to Apollo and All Metal, we should not expect Airbus to let us negotiate any recovery/amortisation on the A380 business for the Mayflower Non- Recurring investment. (some \$5million) in a new A380 contract. Unfortunately some of the experiences with Bombardier prior to receivership and then with Apollo ransom payments by MAC for their "underwriting" materials debt, on the same day as the Airbus meeting, eventually led to the loss of all the Bombardier business.

46. MAC slowly realised that the ransom creditors situation was going to be different than in ~~the~~ North America and their financial assumptions invalid. Richard Clarke (then Finance Director), Clare Pettifer and Mr Shorrocks (MALUK Purchasing manager) then set about managing the delicate balance between what we needed to pay to continue the MALUK business and leaving the other debts with the old Mayflower Aerospace Company.

47. In the final analysis over £1.5m was paid to ransom creditors (see volume 7, pages 2506-2507). In addition to that there was a loss of suppliers goodwill that MALUK had to deal with, and it took us in MALUK a lot of time and effort to rebuild that, partly by making sure we agreed clear payment terms with suppliers and stuck to them.

48. The MALUK Supplier payment policy was then established and reported as below in the Directors Report for the Financial Statements for FY 2004 (see volume 2, pages 423):

"It is company policy in respect of its suppliers to develop long-term relationships with them, which includes making payments consistent with established practices agreed with suppliers and ensuring that they are aware of the terms of payment and that such terms are followed."

The average number of days purchases included within creditors at 31 December 2004 was 36 days.

My emphasis added

49. In the aftermath of the acquisition of Mayflower Aerospace, in November/December 2003, MALUK and MAC considered purchasing the assets of a company called Moore's. Moore's was based in Bournemouth and was another contractor to Airbus. I believed it was crucial for MAC to grow the amount of work we did for Airbus, as the existing

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MALUK business (after the loss of DIAC /Bombardier business) was now strategically and financially unsustainable. ~~We and we~~ needed to be bigger to get the leverage with Airbus to avoid them discounting of products (Airbus's Route 06 –2006) was a current initiative targeting 15% price discounts) on any real scale. We considered the Moore's purchase as a means to that end, amongst other strategic and operational advantages (see volume 3, pages 782-783). When we gained preferred bidder status for Moore's in December 2003 of course we needed to get Airbus on board. This was challenging. (Email Document Dave Micklewright mid December – see volume 3, pages 759-760). We commenced a comprehensive due diligence process in January 2004 and by March 2004 we had talked Airbus around and had obtained their agreement. ~~This included -re~~ future new work / £7m per year new work targets , no price discounting until December 2006 (the end of the Route 06 program) and proper commercial contracts for all the manufacturing workload for both companies. Importantly in parallel we, and particularly me, were working hand in glove with Moore's bank appointee and the Moore's owners – the Roberts brothers – to make sure their cash management was up to the mark by ensuring that all the trade creditors were paid on settlement terms and that there would be no repeat of the ransom creditors experience after buying Mayflower, nor any damage to the process of rebuilding MALUK supplier goodwill. Moore's were not in sound financial shape and, if we had not bought them, they would have gone bust and that could have left me exposed as a "shadow director".

50. As part of the acquisition deal in April 2004, MALUK gained an option to buy the freehold of Moore's site, at a price that was favourable to MALUK, provided we exercised the option on or before 23 June 2006. The relationship I had built up with the Moore's owners in 2004 saved the day for us, when due to a bank signatories error by MALUK we were unable to exercise the option on the precise due date. When Moore's solicitors advised Mr Roberts of the delay they still kindly agreed to proceed with the property transaction early the following week, after the Option date, rather than insist on the higher price they could have demanded for late exercise. This was worth approximately £1m plus to MALUK.
51. After the Moore's acquisition was agreed and signed in April 2004 I felt I needed to reinforce the differing responsibilities for directors/shadow directors in the UK with my Canadian colleagues and to do this Pinsent Masons, MALUK's solicitors provided me with ~~me~~ a "Memorandum on Directors' Responsibilities in Potential Corporate Insolvency Situations" which I forwarded to all the directors of MALUK and Mr Moeller (see volume 2, pages 366-379; and volume 2, pages 942-943).

52. The planned sale of another part of Mayflower Aerospace, MTS, completed a hectic strategic restructuring seven month period for MALUK. ~~On and on~~ 6 May 2004 MAC released a press release which summarised the position (see volume 3, page 785).
53. Next I turned most of my attention to the engineering business that had been losing money and needed to win new business. A big problem was that MALUK had been unsuccessful in bidding for the design-build contract for the metallic ribs, for the Airbus A400m military freighter they had failed largely due to Airbus concerns re pricing and manufacturing capability and capacity. But we managed with the active support of Airbus, to negotiate a collaboration with the winner Mecachrome of France and provide the technical/engineering leadership of the project which got us on the A400 project.
54. We also worked hard with Airbus to convince them we had a good engineering design capability and continued to implement the steps we needed to take to get more work from them. That included making our design team permanent employees, instead of self-employed contractors. Part of the deal about converting them to permanent employees on packages, that at least after tax, were not so good, was a bonus provision in the employment contracts. From mid 2004 the Airbus organisation changed and Airbus UK began the involvement of senior people in their Production Planning and Control area within their aerospace supply chain, with more attention being focussed on supply and programme rate increases. A Mr Steve Vandersteen of Airbus UK was assigned by the Airbus Vice President Andy Greasley as the senior production planning liaison person for MALUK.
55. Alongside this there was however increasing public awareness of the problems Airbus were having on the A380 Passenger programme with escalating costs and delivery challenges. To counter part of this Airbus began discussions with a number of suppliers to increase the funding of some of the change in engineering work packages/parts by the suppliers (a process I will refer to as A380 amortisation deal) - see Minutes of 26 January 2005 meeting with Mr Fairbairn re NRC A380 amortisation (see volume 3, pages 839-841). By the end of May 2005 we had agreed the principles of a A380 contract amendment (see volume 3, pages 913-917) and had approved at the MALUK Board - 26 May 2005 (see volume 2, page 411). However this came under further scrutiny initially from Airbus Toulouse, which delayed it to mid August, and then Mr Butyniec in his new role, who was not previously aware of the Contract amendment in late August 2006~~5~~. He was concerned about the effect on the Q3.2006~~5~~ and FY2006~~5~~ MAC financial results. After it was explained to him that essentially it was more than self funding, ~~and that~~ from a cash perspective through the reductions in settlement terms, and ~~also one with from~~ an investment return of 60% IRR over the 350 aircraft sets for A380. Profitability in the remaining quarters of FY 2005 was

also assured by other parts of the commercial arrangement. Mr Butyniec then approved (see volume 3, pages 1068-1076).

56. Mr Dekker was keen to have the release of the associated £266K A380 reserve included in the Q3.2006~~5~~ financial results (see volume 3, page 1099; and volume 1, page 134) but collectively we failed to get a written agreement with Airbus UK until January 2006 (see volume 4, pages 1332-1335). I learned after the Financial results were released for Q3.2006~~5~~ that the £266K had increased the MAC profits for Q3.2006~~5~~ (but not in the MALUK accounts) although we had not yet achieved the written approval/agreement from Airbus Toulouse. Indeed although I had indicated in an email in early November 2006~~5~~ (see volume 3, pages 1101-1102) regarding FY 2006 budgets that we should now not assume release until the December 2005 financial results I found out in late December that the same £266k release had also been included in the MALUK November 2005 financial results (see volume 3, page 1124).

~~57. Whilst all of this was proceeding I had been working since early 2005 with Mr Paul Archer my Business Development colleague and Mr Martin to win a new “metallic ribs package – internally called the HdeH package – which was a crucial foundation to any future A350 engineering and manufacturing package for metallic ribs (if not composite) for MALUK (see volume 4, pages 1177-1184; final bid approved by the Board in December 2005 – see volume 1, page 154).~~

~~57-58.~~ Following some discussions preceding the MAC organisation changes the MAC organisation finally changed in May/ June 2005 and I was promoted to the position of Senior Vice President of MAC and also a Senior Officer position.

~~58. Whilst all of this was proceeding I had been working since early 2005 with Mr Paul Archer my Business Development colleague and Mr Martin to win a new “metallic ribs package – internally called the HdeH package – which was a crucial foundation to any future A350 engineering and manufacturing package for metallic ribs (if not composite) for MALUK (see volume 4, pages 1177-1184; final bid approved by the Board in December 2005 – see volume 1, page 154).~~

59. Mr Butyniec and team visited the UK from Canada at the end of August 2005 (I was on my annual holidays) and as a result further emphasis was placed on cost-cutting/meeting the original integration plan and improvement in the financial results at Bournemouth. By September 2005 the financial situation at Bournemouth was deteriorating (or at least much more apparent with the MRP implementation of the EFACS system and September inventory check - on at least two occasions Mr Larry Winegarden and myself drew the attention of others, including Mr Dekker, to our assessment that ~~that~~ the inventory was over-valued at Bournemouth at the end of September 2005 by perhaps £300K to £400k

(see volume 3, page 1095). This would of course have increased the losses for MALUK and MAC by the equivalent sum in Q3.2005 financial statements.

60. In October/November 2005 the MALUK and Bournemouth financial problems came to a “head” with the loss of over £1m reported in two months. ~~S and~~ simultaneously the operations problems with deliveries from Bournemouth finally led to Airbus UK and in particular Mr Vandersteen sending an email of complaint. I will refer to ~~this~~ as the Steve Vandersteen Airbus Number 1 complaint on 23 November 2005. ~~Then and then~~ follows a chain of emails (see volume 4, pages 1131 and 1135-1136). Eventually a meeting was set up with Airbus UK for mid December to review how we would approach the “situation/AUK complaint” during which Mr Butyniec and MALUK made a number of commitments to take steps to get back on track with deliveries to Airbus, including assigning extra senior MAC personnel to MALUK to oversee the effort and for the following few weeks this progressed (see volume 4, pages 1187 and 1310-1311).

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~~4-61.~~ Whilst this was happening we secured an Instruction to Proceed (ITP), a sort of commitment but not contractually binding, for the HdeH ribs package (as Airbus said in good faith) and there was an agreement to review pricing across some of the existing parts contracts (which I called MOU2 at the time) (see volume 4, pages 1188-1191). Some principles for price increases of some £1.5m per year were agreed with Mr Micklewright just before and after Christmas 2005 (see volume 4, pages 1222-1223 and 1226A-1226G), but these were then set aside in mid February 2006 when our delivery situation was still deteriorating, following a discussion between Mr Butyniec and Mr McIntyre of Airbus. [\(document 3374/1433A\)](#). Indeed the internal resources allocated to support the increased pricing analysis, (and therefore if and when agreed more sales/profits and cash) Mr Roger Upward was reassigned in mid February for three months to help in production (see volume 4, pages 1396).

~~2-62.~~ Following the mid December meeting during January and early February it was clear that a number of the Airbus senior management and people were getting increasingly anxious about the deteriorating delivery performance situation and their assessment of our management response [to it](#) in MAC and MALUK.

~~3-63.~~ This came to a “climax” following a conversation between Mssrs McIntyre/Greasley and Mr Neill which resulted in Mr Neill communicating a recovery / organisation proposal on 13 February (see volume 4, pages 1407 and 1430). The reaction to this by Airbus was swift and several telecons took place with Canada (one including the Chairman) in which Airbus UK made clear their views and feelings in respect of the plan (see volume 4, page 1434) - The outcome was that Mr Butyniec came to the UK for most of the following ten weeks (see volume 4, page 1433). This focus, together with the tremendous work of Mr

Martin/Mr Shorrock and team, a significant increase in temporary labour resources and more cash/resource investment meant that by the end of April there was an enormous improvement in our delivery performance to Airbus UK in operations supply but not yet the intelligent buffer stock which Mr Vandersteen was pressing for. In parallel the Manufacturing financial results deteriorated substantially with all the unbudgeted costs and by June 2006 were some £2m over the MALUK 2006 budget and a further approximately £2m of cash was required from MAC (see volume 5, page 1920).

4-64. Internal Airbus UK organisation changes also took place around this time in April 2006 during which the procurement management team, who had previously worked with MALUK all changed. Mr Vandersteen now became Head of SME procurement (Small and Medium sized Enterprises) which meant that Mr Vandersteen also now had the responsibility for all of Airbus's purchasing (including our A380 engineering contract workload) from MALUK. We were his largest spend supplier so he was obviously going to put most of his effort into us. Mr Vandersteen had previously been involved in, and had extensive experience of Operations planning and control. However, Mr Vandersteen and his new team initially seemed to have limited experience of engineering management or commercial procurement at Airbus.

5-65. As a result I determined with Mr Underwood that with these organisational changes at Airbus we would proceed on the logic of the required price correction/increases changes being led by him with Haydn Martin and that I would stay in the background for the meantime to see how matters progressed (see volume 5, page 1627). Mr Martin and Mr Underwood started that process formally with the newly appointed Mr Vandersteen and team on 5 May 2006 (see volume 5, pages 1684-1685, 1690 and 1677-1679) and they were able to put the logical arguments across though these were met with varying forms of resistance by Airbus, which was to be expected. In this new role Mr Vandersteen was now of course also responsible for the cost of the materials purchases from MALUK and all the internal Airbus budgets for it. On or around the 20th June Mr Underwood and Mr Martin were telling me of the trouble/difficulties they were facing in trying to gain agreement from Airbus and that ~~now expected-would lead~~ at best ~~to~~ only about 60% of the required price increases we needed for those parts (see volume 5, page 1791).

6-66. By the 25th June Mr Underwood, Mr Martin and I agreed that I would take the lead now in moving the price increase process forward and then I wrote a letter to Mr Vandersteen regarding same (see volume 5, pages 1802-1806). Mr Vandersteen's reply came within hours and was an attack on our delivery and quality performance (see volume 5, pages 1807-1810 and 1832). We were plainly still in big trouble. This I will call Mr Vandersteen AUK complaint 2.

7-67. Fortunately Mr Butyniec was also in the UK at the time and it was possible to use his attendance at ~~the~~ Airbus annual golf charity outing to get to meet the relevant people. After discussing the quality and delivery situation with Mssrs Vandersteen, Butyniec and Underwood and they had retired for the night I had the opportunity to speak with Mr Micklewright (Airbus UK Vice President –Procurement) and his Operations boss Mr Brian Fleet (Airbus Senior Vice President). Amongst a number of other items I explained how crucial for MALUK were the £2m plus per year price corrections on the specific parts ~~as well as~~ ~~and~~ increased materials reimbursement for the additional costs of titanium metal. In principle they accepted that they would do this but asked for a commitment from MALUK that we would truly work towards helping them and us reduce our respective cost bases (and hence prices) without impairing our mutual profitability.

8-68. After a number of other meetings and discussions with Mr Micklewright and Mr Vandersteen in early July and the tireless efforts of Mr Jim Fairbairn of Airbus we finally got an agreement to first a £200K retroactive price increase which MAC could reflect in their Q2/2006 financial results for the parts (despite the delivery challenges in Q1/Q2 – see volume 5, pages 1869-1872) and then second ~~on a~~ 100% of the requested price increases we had asked for, which were worth some £2m per year at 2006 production levels rather than the maximum proposed in June 2006 of £1.1m by the Airbus team dealing with the estimates and Mr Vandersteen (see volume 5, pages 1924-1927). Over the course of the remaining contract to 2010 this is worth an increase in profitability for MALUK of some £10m plus. Once the Airbus repricing agreement had finally been signed on 10 August (see volume 5, pages 2007-2013) I knew I needed to move quickly on managing the go-forward relationships and focus with Mr Vandersteen. ~~On and so~~ my return to MALUK from Canada I arranged to see Mr Vandersteen in the Aztec Hotel in Bristol on 15 August 2006. This ~~had three aims -was~~ to try and move the formal contract amendments through for the pricing changes and the related payments (signed agreement of 10 August), to discuss the intelligent buffer inventory and associated liquidated damage changes and to progress the Future Price and Cost Reduction plans/approach. We also discussed the A380 engineering monies, which I had discussed with Mr Gray. When I explained why I had spoken with Mr Gray on the A380 engineering payments he stated – “no problem”. The meeting lasted about 30 minutes and at the conclusion he said he would write a letter before he departed that Friday though he had lots to do before his fortnight’s holiday. I said that I could draft some notes to help, if he wanted to – he said “fine”. The notes which I drafted that evening were on about an A4 page and covered the intelligent buffer inventory process/timing discussions and regarding Liquidated damages for deliveries and what he referred to as the recommencement of the Seniors Steering Committee for Price/Cost reduction with the involvement of Jim Butyniec and at my suggestion Larry Winegarden from MAC (see volume 8, pages 2961-2963, 3174-3175 and

3272). [These notes have not been disclosed by the Respondents and others despite intensive efforts in various ways to obtain them. Their disclosure would vindicate me.](#)

My further promotion within the group

~~9-69.~~ In or around June 2005, I was promoted to become Senior Vice President – Information Technology, Strategy and Business Development and made a senior officer of the MAC (see volume 3, pages 922-925). In this role, I had responsibility for all aspects of the group's strategy development and, in particular, the customer, marketing and sales aspects of this activity. Internally, I participated in the governance of all the group subsidiaries in assisting in the strategy and operations execution, while building a supporting IT infrastructure. Additionally, I retained responsibility for the design and engineering, sales and marketing, and IT activities in the UK. Design and engineering was a key area for MAC as we were trying to build up this part of the business to integrate the manufacturing activity with the UK and win new work from Airbus, which was increasingly developing new products. In March 2005 Mr Neill asked me to spend a proportion of my time in Canada because he was intending to retire from his role as Chief Executive Officer (see volume 3, pages 880-880C). From June 2005 I spent half my time working in Canada. As part of my own education from June 2005 regarding Senior Officer duties and responsibilities in Canada and to gain some understanding of the differences and similarities with the UK I spoke with a lady on a few occasions called Beth Bandler. Up until August 2006 she acted part-time in MAC's legal support team and was present at the various Audit Committee and MAC Board meetings, including taking all the minutes. In particular as she had resigned and was leaving after the MAC Board on August 10 2006 we had a wide-ranging discussion for some 20 plus minutes on a number of matters including that of Directors and Senior Officers in Canada. As best I could understand (with the exception of the fiduciary duty to creditors in doubtful solvency/insolvency) the duties and responsibilities of directors and senior officers were pretty similar in both UK and Canada and in particular the principle that you could not delegate responsibility were the same.

[Document 815A-815D](#) The adoption of Bill 198 (post Enron Canadian legislation) was progressively being implemented -- see [FY2005 MALUK Audit Closing meeting minutes at doc 3545-3547 and the comments from DDW – Mr Dave de Wolfe of EY-](#)

~~40-70.~~ From September 2005 in my new role I spent my time at MAC understanding the various business matters under my direct control and in particular the various profitability issues with projects/current work. While we reviewed all the pricing/commercial arrangements the focus of the MAC Executive team and myself was on four major repricing projects. I found it difficult to really get a good handle on the pricing /management accounting information needed to do this properly but we worked our way through this as best we could with the time and efforts we could muster from the various plants. For new work

we also experienced bidding challenges with costing information particularly for the increasingly larger and more complex contracts that were increasingly a feature of the aerospace business. These matters also evidenced themselves in our strategic planning process which Mr Winegarden and I were working to improve with the various businesses.

~~41-71.~~ MAC was also implementing new statutory obligations which included the disclosure controls element first and the resulting quarterly certificate/sub certification process was a crucial part of that (see volume 1, pages 98-124). Naturally I therefore took some interest, from a ~~S~~enior ~~O~~fficer perspective, on the sales/pricing/overall accounting, including EAC documents, which were the basis of providing the information ~~which were~~ being certified in accordance with the new internal disclosure controls process. This meant I looked and tried to understand in particular the accounting at Haley, some C\$9m price increases over a fifteen month period, the Boeing repricing – some C\$20m required over all the Boeing business, particularly in Ellanef and the Aeronca Estimate at Completion (EAC) for the Aircelle projects. It also seemed that UK accounting GAAP standards were more advanced in the UK than Canada – which remained consistent with my previous experience and which Mr Dekker had also discussed on a few occasions.

My protected disclosures

~~42-72.~~ In this section of my statement, I will describe the protected disclosures that I made in 5 sections, and in chronological order within each section. In essence, I was very concerned:

~~43-73.~~ **First section** that the way in which **MALUK** was being managed meant it did not have enough cash to meet its debts as they fell due and the company was only keeping going by systematically refusing to pay creditors on agreed settlement terms or cash injections from its parent, MAC which had also liquidity concerns during the “doubtful solvency” of MALUK.

~~44-74.~~ **Second, and third sections** that **MAC** had and seemed to be continuing to account for its Ellanef divisions contract with Boeing for 737 Systems integrator kits and its Aeronca divisions’s contracts for the Airbus A340-500/600, in ways that could present a false picture of the profitability and Balance Sheet of MAC.

~~45-75.~~ **Fourth section** that **MALUK** was going to account for certain overheads and related inventory valuations in its Engineering Division in a way that could present a false picture of its profitability and Balance Sheet to the outside world; and

~~46-76.~~ **Fifth section** that **MALUK** was going to renege on bonus arrangements in employment contracts with managers in its Engineering Division and then when it did pay those bonuses account for them in a way that could present a false picture of its profitability and Balance Sheet to the outside world.

~~47-77.~~ Obviously, the detail of these issues is somewhat more complicated, but I believed that each of these issues was a point of legal and commercial peril for MALUK and MAC respectively. In my mind, if these issues had legal implications for the relevant company they also had legal implications for its directors and officers. I did not want to be responsible for placing either Company in breach of its legal obligations, since it would inevitably place me at risk of having broken my fiduciary and statutory duties as a director of MALUK and a senior officer of MAC. The way the companies were managed was inextricably bound up with its compliance with legal obligations – contractual, statutory and regulatory. To my mind corporate governance meant ensuring that the directors and officers managed a company within the law.

~~48-78.~~ Finally MAC Ethics policy, to which in each of my three roles I was subject as an employee, Director in MALUK and Senior Officer in MAC states “*It is the policy of Magellan to comply, not merely with the letter, but also with the spirit of the law. Violation of the law can affect Magellan’s reputation and ability to carry on business. Each employee is responsible for knowing and understanding the laws, rules and regulations applicable to the performance of his or her duties at Magellan and complying with both the letter and spirit of these laws, rules and regulations. Ignorance of the law is not a valid defense if the law has been contravened.*” (see volume 1, pages 80-81).

My growing concerns about MALUK’s financial position - the doubtful solvency of MALUK

~~49-79.~~ Before I commence my evidence on the solvency situation I would like to use a period in late 2004 to provide an example of how the business was managing within the MAC/MALUK governance processes the subject of cash/solvency management and our MALUK Director responsibilities. This is important as since the acquisition of MALUK cash was provided/required on a regular basis from MAC from 2003 in support of MALUK turnround/business development.

~~20-80.~~ I refer to a period in mid/late 2004 when the financial results and costs associated with the Bournemouth facility in particular were significantly worse than the budget. Firstly a MALUK Board meeting which was held on the 3 September 2004 where at Point 11 in the minutes it is recorded that “*The management of MALUK is aware of the Magellan Aerospace Corporation refinancing. MALUK requests further funds are made available at the end of September to met payroll and statutory obligations. It was noted that at present approximately £1.3m of trade creditors payments were overdue. It was agreed that there was no reason to believe that there would not be sufficient funds to discharge creditor payments. It was expected that MALUK would retain proceeds from the Poole property disposal and receive in addition £1m from Corporate and that this would provide sufficient funds to carry the business forward until January*” (see volume 2, page 382).

~~21-81.~~ Ms Fitzgerald in an email to Mr Dekker on 10 September confirms receipt of the C\$400k (sum for September / £1m in October) and some other relevant matters (see volume 3,

page 805). Note also the email from Ms Pettifer to the financial staff in the various MALUK business units regarding further Payment of August trade creditors, which provides an example of the process operating at the time (see volume 3, page 805).

~~22-82.~~ As a result the MAC staff meeting on September 14 2004 then records minutes for the MALUK section at g) “*Cash is up to date with payroll and creditors. Working with Corp for sufficient funds to cover.*” (see volume 3, page 807).

~~23-83.~~ At the end of October as planned Ms Pettifer requests the forecasted £1m funds that were ~~and~~ agreed at the 3 September 2004 MALUK Board meeting. In an email dated 22 October to Mr Dekker and Mr Nunez (Assistant Treasurer) where she states “ *With reference to the MALUK cashflow forecast (actuals to 15 October) it is clear that we will require the full £1million funding agreed at the MALUK board meeting by Friday 29 October in order to release the trade creditors due on the 29th October. I would appreciate it if you would let me know when the funds will be sent to the UK*” (see volume 3, page 811).

~~24-84.~~ Mr Nunez replies in an email of 26 October 2004 in which he asks “*Is the £1m necessary all at once? Can the creditors be paid off over a several week period? What are the terms you have with Creditors and what will a delay do?*” (see volume 3, page 813).

~~25-85.~~ Ms Pettifer replies in a comprehensive email dated 27 October in which she explains to Mr Nunez the MALUK situation and history on all of the trade creditor matters (see volume 3, page 813).

~~26-86.~~ Throughout all of the period up to July 2005 when I worked with the Finance team closely on the cash management/forecasting in MALUK we were always able to get our cash forecasts for any additional funding from MAC identified at least 4 weeks, and mostly 8 weeks, in advance of the requirement. As a matter of practice Cashflow, Supplier Payment terms and Ongoing Funding requirements were always items on the MALUK Board agendas and the minutes addressed the situation at that time. MAC staff meetings were updated as we all considered necessary.

~~27-87.~~ MALUK faced a mini crisis of sorts in November 2004 when the reported results of the Bournemouth manufacturing facility collapsed. While the sales volumes/values were on target, the manufacturing costs were much higher than had been anticipated. So profits were hit hard and MAC had to step in to support MALUK with extra cash to plug the cash hole, as well as contributing to a significant fall in the gross profits in the Q4.2004 financial results for MAC (see volume 7, page 2680).

~~28-88.~~ This all happened just as the MALUK Budget for 2005 was being prepared for approval at the December 2004 MAC Board. Whilst I was present in Toronto at the MAC Board Mr Underwood presented the MALUK budget for FY2005. For the manufacturing operations

– the forecast was for some £3.5m profit for FY2005 and a further £612K for the Engineering business that was my responsibility. This was a major transformation in our performance and I was concerned that the detailed level of budgeting to support this analysis/action plans were not sufficient to underpin those budgets, particularly in light of the unfolding financial results at Bournemouth. I also realised as I saw the full MAC Budget at the MAC Board that MALUK financial performance in particular was crucial to achieving the overall MAC Budget for FY 2005.

~~29-89.~~ On my return to MALUK and during January 2005 I pressed Mr Underwood (see volume 3, page 842) and Ms Fitzgerald (see volume 3, pages 831-833) to begin to work on what I called the FY2005 Push Budgets to ensure that we had done everything we could to ensure that the budgets and cost management/action plans were secure. In parallel the proposed IT systems upgrade at Bournemouth had been delayed as the assessment of whether to implement the proposed corporate standard CINCOM or the local MALUK EFACS system was considered. Finally in March 2005 we made a decision to implement the local EFACS system (see volume 3, page 891) and the computing aspect was successfully achieved at the end of June 2005. In the event with all the other issues/matters/FY 2004-year end audit we were unable to devote the requisite time and effort to achieve that detailed review/understanding of the costs /profitability in Manufacturing and Head Office. We were however able to do this though in the Engineering Division with the General Manager Mr Bellia in a process we called 100 day plans.

~~30-90.~~ By the end of FY 2005 the MALUK budget of just over £4m profit had been wiped out and the financial results – excluding some price gains and release of other provisions – produced an approximate £4.5m difference in manufacturing operations from the budget (see volume 4, pages 1386-1388). Obviously this meant that the profits and cash generation never took place and further funding from Canada was necessary during FY 2005. Although we were substantially off budget we maintained the ability to forecast at least four weeks ahead the funding MALUK required from MAC. While there was the obvious frustration with the financial results at no stage were we told (particularly by Mr Edwards) that there was any risk of not having further funding from MAC.

~~31-91.~~ As I commented earlier the MAC organisation changed in June 2005 and Mr Underwood now reported to Mr Butyniec, rather than directly to Mr Neill, as he had done since September 2003. Mr Butyniec visited the UK with others from the Canada team at the end of August 2005 and the emphasis, was to drive the costs down to the original Bournemouth transition plan by the end of December 2005 and implement EFACS successfully (see volume 3, pages 1025-1026). I moved to my new role effectively at the same time and the MALUK cash management then became the executive responsibility of Mr Smith – temporary CFO – with Ms Pettifer.

~~32-92.~~ As a result of these financial difficulties, on or about 20 September 2005, Mr Underwood and Mr Smith implemented a policy whereby MALUK would fail or refuse to pay its suppliers/trade creditors unless such creditors either (a) threatened or pursued legal action against MALUK; or (b) were able to frustrate MALUK's ability to fulfil its contractual obligations to various clients (see volume 3, pages 1045-1046 and 1017). I will refer to this practice below as "the Policy". This was actually contrary to the payment policy adopted by MALUK's Board of Directors and which we had just signed off in the Statutory Financial statements for FY 2004 the previous month and now lodged with the Companies House (see volume 2, page 423). On December 1, just before the circulation of the Board pack to the MAC Directors for the Board meeting on 8 December Mr Neill instructed me to change the budget slides and numbers to include the impact of winning the HdeH ribs package, even though it was not yet awarded -so as to ensure the slides for MALUK and MAC budgets properly reflected the sales, profitability and cash position for the budget for FY 2006. He said that we would present this in the Board meeting with the formal bid for Directors approval on December 8.

~~33-93.~~ I tried to discuss incorporating these budget changes with Mr Smith on December 1 as he was steadfastly refusing to do so, and only eventually with the telecom intervention of Mr Underwood did he do so and the new budget pack was circulated by Mr Groot to the MAC Directors the following day (see volume 4, pages 1154, 1148-1151, then 1154 again).

~~34-94.~~ Mr Underwood and Mr Butyniec, with the support of Mr Smith, had created a MALUK FY 2006 budget and plan which had a £2.8m profit (including a small profit in Engineering under my control) Mr Butyniec presented to the MAC Board the FY 2006 plan including a budget in which the manufacturing business in MALUK would generate some £2.8m in profit in FY 2006 and this together with the HdeH Ribs bid was approved by the MAC Board on 8 December 2005 (see volume 1, pages 153-155).

~~35-95.~~ I was becoming increasingly concerned about the governance of MALUK, the lack of Board meetings and discussion and I forwarded a note regarding directors responsibilities to the directors. At this time I was concerned that Mr Smith was not fulfilling his responsibilities to the Directors. I used the upcoming FY 2005 audit and Mr Smith's full time appointment to bring this to my fellow UK Directors attention (see volume 4, pages 1200 and 1210-1212).

96. At the same time the Disclosures Controls – quarterly certification process that was being implemented by MAC to comply with new Canadian laws post – Enron, which required the various Senior Officers,, Directors and management to certify certain items depending on their area of responsibility, including the management accounts for each quarter. See the reference to this new Canadian law by Mr Dave De Wolfe (rotated off EY Canada Partner for MAL) in the 10 February 2006 Directors Audit Closing minutes at document 3545-

3547 where it records “DDW raised concerns about Magellan’s ability to meet criteria of Bill 198 (Canadian SoX) due to IT issues”. The Respondents legal team confirmed at the interlocutory hearing on Friday 28 November 2008 that ALL the Quarterly certification documentation as per the Magellan Aerospace Corporation governance processes (document 99 – 115/98) signed by the Claimant that “We have disclosed all the documents that we have”. These are all included in the documents bundle. This meant that my Documents Request 12 at the interlocutory hearing on 28 November 2008 was not required (and RAN 101 is factually incorrect) as the following five quarterly “certifications” had been disclosed and together with the 3 December 2008 Tribunal ordered Requests 1, 2 and 3 for MALUK would complete the “quarterly certification” packs which had been “certified” by me in my three roles. In summary

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96.1 **MALUK Q4/2005** - Certification document for MALUK Engineering Division – Mr Little and Mr Smith signed 17 February 2006.

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Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant cert-incorporated MALUK Management accounting packs . I have selected pages 3518 – 3523 from this disclosure. Please note at document 3518 the Actual Intercompany Loan from MAC to MALUK for £10123K. Also the Engineering inventory of £463k at document 3521 (also at Paragraph 235) and the Engineering inventory supporting schedule at document 3523 which shows no overhead applied throughout 2005.

I found no reason to certify any issues, as the Engineering management accounts did not contain any changes in the policy / calculation of engineering overheads, and the provision of engineering bonuses were unchanged as per the MAC Board approved 2005 budget.

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MALUK Q1/2006 - Document 1691- 1700 - Certification document for MALUK Engineering Division – Mr Little and Mr Smith signed 6 May /30 April 2006.

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Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant MALUK Management accounting packs. I have selected pages 3529-3534 from this disclosure. I will deal with this further at paragraph 240. Although it is asserted in the PwC report at paragraph 5.39 that three out of the four MALUK directors (Brian Little, John Dekker and Phil Underwood) were aware of a change in accounting policy/ calculation from the Audit Closing meeting on 10 February 2006 we can see from those EY minutes disclosed on 9 December 2008, following the December 2008 Tribunal Order, that the subject was NOT formally discussed or minuted – see document 3546 /3547 -- Point 2 audit differences . PwC did not include this document in their Report Exhibits. Nor for the avoidance of doubt did Mr Smith discuss any of this “agreed change” with me before signing the Quarterly certificate letter excluding any appropriate overheads inclusion. There was no reason for me to certify any issues on 6 May 2006 as the “certified” Management Accounts did NOT have the incorrect engineering overhead adjustments formulae / approach applied to the financial results in the quarter. No audit adjustments had been made to the Opening or Closing balances. Indeed Mr Smith had signed these all off before me, so I decided to let it sit for the meantime.

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96.2 MALUK Q2/2006 - Document 1976 – 1984 - Certification document for MALUK

Engineering division – Mr Little and Mr Smith signed 31 July 2006 but both on holidays – sent to MAC on 8 August 2006. Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant MALUK management accounting packs . I have selected pages 3538–3544 from this disclosure. I will deal with this further at Paragraph 241.

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There was no reason for me to certify any issues in late July/early August 2006 as the “certified” Management Accounts did NOT have the incorrect engineering overhead adjustments formulae/approach applied to the financial results for the quarter. No audit adjustments had been made to the Opening or Closing Balances. Indeed Mr Smith had signed these all off before me again. On this occasion I had written to him in an email on 21 July 2006 at document 1895 and he replied that Steve (Groot) saw no need for any documentation to support any changes to the MALUK Management accounting packs for the Q2.2006 earnings releases.

This was of course another example of what PwC referred to in their Final draft report at paragraph 2.40 when they noted that MAC as a Public Company had poor Financial Control and at A) “ *Accounting adjustments made with insufficient supporting analysis or documentation*” . Prior to June 2007 I was unaware that Mr Smith had already discussed the matter with Mr Groot and it seems had made his own “Engineering overhead” calculation based on the £523K of engineering inventory reported at 30 June 2006, which he then verbally confirmed to Steve Groot would adjust the documented and reported Engineering profitability results by a minimum increase of £10k . Maximum £20K Target £10k as disclosed at Exhibit 9.18 (document 1882-1883) in the Boeing 737 section of the PwC report. Mr Smith did not advise anyone, to my knowledge, in MALUK Engineering and certainly not me as the functionally responsible SVP and a UK director that he had done so.

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It was following this 21 July email and Mr Smith’s response that I decided that the time was now right to raise the matter formally with Mr Dekker in August 2006 – my witness statement paragraph 243. This I did as part of my email on 2 August 2006 at document 1955 and again in my conversation with Mr Dekker on Friday 11 August in the Toronto Board room –see witness statement paragraph 244 and PD15.

96.3 I have dealt with my MAC Senior Officer duties and responsibilities and MAC Quarterly certifications / management accounts position for Boeing at Q2/2006 at witness statement paragraph 181 (document 2006) and for A340-500/600 for Q4/2005 at paragraph 201 (document 1457-1460) and in Q2/2006 at paragraphs 208 to 211 (PD22) (document 2006)

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96.4 The above documentation/evidence also specifically contradict the unfounded allegation regarding the Quarterly certification/accounts” process in the Respondents solicitors first correspondence at document 3113. Nor for completeness and for the record did I disregard or flout any legal processes in any of my three roles at Magellan (or indeed Moyola) – research and evidence is that whistleblowers do the contrary. Instead the

respondents Counsel and solicitors have said “Schedule A - We do not believe that these documents are relevant or necessary to the issues in this case and we do not propose to disclose them” – document 3277B-1 and again on 28 November 2008 when Mr Lynch stated “.... these are classic examples of yet more scrambling for documents with no necessity and no suspicion of what they would reveal”. The 3 December 2008 Tribunal Order which led to all of the documents being disclosed by the Respondents solicitors on 9 and 11 December 2008 simply provides further evidence of abuse of this legal process and natural justice. We will return to that later

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96.97 Together these items provided the opportunity for Mr Smith, as MALUK Company Secretary and shortly a Director, to create the appropriate governance processes for the UK, both as a division of MAC and a separate legal entity MALUK – precisely what had been achieved in the past.

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98. MALUK finally did have a Board meeting on 5 January 2006 (the last prior to my termination) (see volume 2, pages 464-466 and 461-463) and some of our discussion was crucial in the context of the cash flow crisis we were to encounter within months and the relevant minutes of the meeting are as follows

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~~4.298.1~~ *It was stated that MALUK do not anticipate requiring any funds from Magellan Corporation in the near future other than for the A350 amortisation and any amounts that may be required to fund property.*

~~4.298.2~~ *It was noted that the BNP funding for the new A380 amortisation deal needs to be in place by the end of Q1.2006.*

~~4.398.3~~ *R Neill stated that the expectation was that MALUK would raise sufficient funds to fund the purchase of the Bournemouth property. However, this is not expected to be met from any trading cash surplus.*

~~2.99.~~ *The Board recognised that the year-end cash position was significantly better than forecast.*

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~~3.100.~~ On the 31 January 2006 Mr Dekker sent an email to various UK staff in which he asks “Clare - Why is cash balance for the next few weeks running so far off budget? and other questions (see volume 4, pages 1369 and 1375). Mr Smith responds to the email on February 2 and while the email overall is of interest I would highlight “Obviously the current cash flow shows a significant shortfall in Feb. This is of concern to me however; we are monitoring the situation on a daily basis. We have moved out some of the forecast CAPEX payments, which will help. We are still in a situation whereby all creditor payments are authorised by myself first, and we are only sending payment to those that are a threat to production or are threatening legal action” (see volume 4, page 1399).

~~4.101.~~ On 3 February 2006 I sent an email to Mr Smith in which I pose a number of questions from his email of 2 February (see volume 4, page 1398). I think it is useful to allow the Tribunal to read this full email, as there are a number of relevant matters in it. I highlighted my concerns to Mr Smith, Mr Underwood and Mr Dekker. In this email, I explained that I continued to believe that their approach to creditors was fundamentally

flawed. I also referred to the ransom creditor position that many of MALUK's suppliers had experienced in September 2003 after the acquisition of Mayflower Aerospace. I was concerned that by not meeting the obligations owed to trade creditors, the directors of MALUK would be (personally) vulnerable and it was possible that the company would suffer from the same difficulties Mayflower Aerospace had in September 2003. I would also refer to ~~Also~~ my forwarded email of 5 February 2006 to Mr Dekker in which I try and bring the "technical analysis matters" to Mr Dekker's attention as well as my concern regarding a probable need for cash in MALUK from Canada in Q1. – Which was then requested / transferred in March 2006 (see volume 4, page 1398).

5-102. Ms Pettifer then confirms in an email on February 6 to Mr Smith and myself that the cash balances were higher (about a £1m) because of the improved Airbus payment terms (now 40 days not 60 days). These had been -negotiated as part of the A380 amortisation deal which had just been signed by Airbus and myself and meant that the sales deficit was approximately £600k to budget (see volume 4, page 1401). By this time ~~it~~ was becoming increasingly clear to me that apart from it putting us in breach of our payment obligations to our creditors and breaking the Board's official policy, the Policy was having a detrimental impact on MALUK's business because we were having increasing problems with suppliers and their willingness to supply on the "better credit terms" was diminishing. By mid August some 40+ regular suppliers had reduced their credit terms to us or moved to proforma invoices (see volume 5, page 2050).

6-103. In the absence of any response from the other emails to Mr Dekker I forwarded the February 3 email to Mr Neill, my superior, on 15 February 2006, with the comments "*Rich private info – we now need to raise £3m plus from invoice discounting in the next 30 days regards Brian*" (see volume 4, page 1426) and a further email a couple of hours later which stated - *Rich – based on openness and the "team" being aware of the issues – how do we handle this type of thing below with Murray – I see this as part of the problem Phil, has had without my support since April June 2005. Also see my other recent email to John re this. I will also ask Mary for copy of Clare exit interview – we normally see this for senior staff. regards Brian* (see volume 4, page 1426).

7-104. By the third week in February 2006, the damage that the Policy was having on MALUK's relationship with its suppliers was becoming ever more obvious, and not only to me. In an email on 21 February 2006 (which was copied to me), Ms Pettifer confirmed to Mr Dekker that MALUK needed to advise its trade creditors of when they could expect payment, because the uncertainty was causing problems (see volume 4, page 1444). She stated that the company was only paying suppliers holding up our production or if legal action was threatened, and that following this course of action (which the company had done for several months) was damaging the company's relationship with its suppliers. As such, she

looked forward to receiving a decision on the request for additional funding for MALUK from MAC

~~9-105.~~ However, neither Mr Dekker nor his direct report Mr Smith took any action to change the Policy or to take appropriate steps to address MALUK's financial difficulties nor did he seek to call a Board meeting to consider. By this stage, Mr Smith's approach to MALUK's financial position was also causing concern amongst the company's Accounts and Finance departments. On 27 February 2006 I received a forwarded email (originally sent to Mr Smith – copy Mr Underwood) from Alison Jones (Management Accountant at MALUK's manufacturing facility in Bournemouth) in which she informed me that Mr Smith had refused to allow her to send an email to MAC, which referred to various costing issues and reports detailing the lack of profitability of the company (see volume 4, pages 1464-1465). Ms Jones also told me that she had repeatedly asked Mr Smith for a meeting to go through the costing issues and reports, to identify the problems relating to the company's profitability. However, Ms Jones informed me that Mr Smith's response was that he did not see what the problem was. The situation then worsened, still without Mr Smith acknowledging the damage that was occurring to MALUK's business and the supplier/creditor track record been impacted with more suppliers reducing their credit terms with the MALUK.

~~9-106.~~ I have mentioned before a conversation I had with Jonathan Coley of Pinsent Masons on 3 March 2006 (see volume 4, page 1469). I decided to telephone Mr Coley on 3 March 2006, in my capacity as a director and employee of MALUK, because a number of things relating to MALUK were bothering me. For example I was concerned about MALUK's solvency, how MALUK was being managed, the lack of meetings of the board of directors of MALUK, management and governance and the directors of MALUK meeting their fiduciary duties. Approximately the first five minutes of our seven/ten minute conversation were spent discussing my concerns regarding governance and board issues. I then asked Mr Coley regarding my own position as a director and my service agreement and whether I could resign as a director and continue as just an employee. On that particular point, he said I could not do that, as my contract was to be an executive director AND employee. He made a number of other relevant comments amongst which was a question as to whether the company had a whistleblower policy. Whilst we did not specifically discuss this it was the first time it registered with me that I might be a whistleblower myself and the company might have a whistleblower policy I might have to use, although I also did recollect audit questions on the matter as part of our audit closing meetings with Ms Barbara Hadfield, the audit partner for MALUK. In the final minutes of the telcon Jonathon then suggested that the conversation needed to move off the record and that I really should seek independent employment advice as regards the employee/director aspects of my service agreement. My nature is to obtain as much information as possible to

ensure that I am properly informed. Therefore, following our telephone conversation, I checked the company's network and located a copy of the Respondents' ethics policy and whistleblower protection policy. I also did ask the employment person at my local solicitors in Northern Ireland, who concurred with this analysis ~~that~~ in any event whether or not I ~~if~~ remained an employee I would be potentially liable as a director/shadow director because of the role /authority and direction of my position in MALUK which was much as I had expected.

~~40-107.~~ In an emotional email, dated 25 April 2006 to Mr Smith (and forwarded to me by Ms Jones later that day), Ms Jones expressly stated that the company needed a substantial injection of cash to pacify the company's creditors (see volume 5, page 1657). She also stated that the company needed a more long term plan, rather than continually asking MAC for further cash, and living from day to day crisis. With the increased costs as a result of the Bournemouth delivery recovery programmes during the first half of the year the position at MALUK deteriorated further so that at the end of June 2006 the Operational inefficiencies/materials costs were £2m higher than budget and the gross profits in Manufacturing were therefore much lower than planned (see volume 5, page 1920). In the same period Mr Smith made requests for five separate transfers of funds from MAC totalling almost £2m (see volume 5, pages 2032-2033).

~~44-108.~~ On 26 July 2006, Claire Wade (one of MALUK's Head Office Accountants) came to see me in my office at MALUK's Bristol office. As I have explained earlier, up until August 2005 (shortly after my promotion to Senior Vice President), I had been involved in, and had closely dealt with, MALUK's cash management. Ms Wade was tearful and clearly anxious. She informed me that both Mr Underwood and Mr Smith were absent on their annual holidays (and were currently un-contactable). Ms Wade told me that prior to leaving for his holiday Mr Smith had informed her that it would not be necessary for her to request any funds from MAC during his absence. However, Ms Wade went on to tell me that, according to her calculations, there were insufficient funds in MALUK's bank account to meet the payroll for July, and that she believed that £1 million from Canada would be necessary within the next two days and up to three weeks. Because I had not been overseeing MALUK's financial position as closely as I had in previous years, I asked Ms Wade to bring the necessary paperwork through to my office so that I could review the cash situation with her. I then reviewed Ms Wade's calculations, and satisfied myself from a preliminary analysis that her assessment was absolutely correct, and that the company needed about £1 million in the next two days and up to three weeks. I had had few direct dealings with Ms Wade prior to this conversation and was pleased to see that she had a good grasp of the paperwork and was on top of MALUK's finances. I also noticed from my review of Ms Wade's calculations that MALUK owed approximately £2.9 million to its trade creditors, all of which were at least three weeks overdue for payment. Accordingly, I

immediately instructed Ms Wade to contact Steven Groot (Group Treasurer of MAC) and request an immediate transfer of £1 million. I refer to Ms Wade's email of that day to Mr Groot (see volume 5, page 1928). I told Ms Wade that I would also contact Mr Dekker, as he was the Chief Financial Officer of MAC, later that evening when I had a chance to review all the information in more detail.

~~42-109.~~ By 24 July 2006, MALUK's 'daily cash balance' showed the following (see volume 5, pages 1929-1930):

~~42-4109.1~~ MALUK's total bank balance stood at £333,632.62;

~~42-2109.2~~ MALUK had un-cleared cheques and other payments to creditors which amounted to £377,108.74;

~~42-3109.3~~ accordingly MALUK's available balance before committed costs stood at (minus) (£43,476.12);

~~42-4109.4~~ MALUK's payroll for the month and other committed costs stood at £648,846.62;

~~42-5109.5~~ the 'definite receipts' which were due to be paid into MALUK that week totalled £701,971; and

~~42-6109.6~~ **Free cash was therefore less than £10,000;**

~~42-7109.7~~ as at that date, MALUK owed £2,909,085 to its trade creditors, all of which were by that date at least three weeks overdue for payment.

~~43-110.~~ That evening (26 July) I studied the cash flow forecasts in some detail – they showed that in the next three months the company would not have the cash to settle its debts running into cash closing balances which were negative – that no provision had been made for any funding requests from Canada. (here I will for ease of reference use the 28 July cash schedule – see volume 5, pages 1884- 1887) although it had not been finalised by Ms Wade at that time.

~~44-111.~~ In checking the debtors position (AR) it showed approx £8.6m and over £1.3m overdue 60 days whilst the trade creditor position (AP) was almost £7m (which I had never recognised as high in the past) – of these over 1.4m were more than 60 days and I knew from past experience that our average agreed settlement terms were about 40-45 days – therefore there was at least £2.5m overdue and probably the £2.9m on the daily cash balances.

~~45-112.~~ This confirmed that we were way over our agreed settlement position with suppliers and with insufficient funds to cover the shortfall without actions on our part and MAC funding

we were of “doubtful solvency”. I knew from the MAC staff meeting the previous day (25 July 2006 – document – “*that 1. Cash / Receivables/Payables – need EBITDA improvement from operations. Cash is tight – report to be circulated*” (see volume 5, page 1907).

~~46.113.~~ I looked closely at the Outstanding debtors/Receivables position and the potential for accelerating the cash position – it was circa £15m for the next 3 months. Then I looked at the creditor payments profile and it was around £6.5m in the next 3 months. From all of this I knew from the overall analysis and my extensive experience that

- (a) Clare Wade was right in the requirement for funding immediately to cover the payroll which was confirmed in her schedule circulated later in an email attachment on 16 August 2006 and that she was also right that £1m would be the minimum from MAC to get through the next three weeks to avoid an overdraft.
- (b) I knew that the trade creditor position was unsustainable and at least a further £1.5m- £2m need to be paid to them in the period so as to get near to our statutory supplier payment policy and that we therefore also needed to obtain about a further £1.5m from the debtor position. Even if the delayed sale of receivables/ debts (to BNP) was finally achieved this would only camouflage the other underlying profitability/cash problems that had to be addressed in MALUK.

~~47.114.~~ I considered there to be four concerns/factors which had to be dealt with promptly if we were going to get back on top of this as MALUK was clearly of “doubtful solvency” without MAC funding (no parent company guarantee existed) and MAC was clearly facing a deteriorating liquidity position from the information available to me. These were:

~~47.114.1~~ The Airbus letter which provided the basis for additional price increases of £2m plus per year and materials reimbursement of some £500K per year (over £10m for the remaining contract period at 2006 planned production rates) had finally been agreed with Airbus UK, after difficult negotiations, and I had just received their letter/agreement earlier that morning (26 July) to have signed off by MALUK/MAC (see volume 5, pages 1924-1927). It was now essential to have this approved by MAC as soon as possible in order that we could obtain the retroactive pricing monies and the correct purchase order pricing for future invoices for both the production parts and titanium materials. The following day I spoke with Mr Fairbairn and he promised that if we could proceed promptly with the agreement sign-off he would do his best to help secure all the back payments/ overdue monies before he went on holidays in mid August – this was worth almost £1m at the end of July. In the event it took longer to get the internal approvals (Rich Neill - 2 Aug (see volume 5, page 1959) and Fairbairn 3

Aug (see volume 5, page 1958)) and those particular funds were eventually not paid until various stages from late August to October 5.

~~47.2114.2~~ _____ Whilst this was all occurring Airbus was struggling with the A380 programme overall and there was increasing pressure to make the A380 Freighter Wing First Article programme – where MALUK produced some of the initial components. Mr Vandersteen had now responsibility for the procurement/management of these elements. Together with his new team of Mr Price and Mr Burns they had limited understanding of the Airbus processes for managing these packages as well as limited time and a difficult business environment in getting items authorised. Mr Clive Renson who was the [Airbus UK](#) A380 Procurement project representative acted to try and assist for over several weeks in breaking this logjam but Mr Vandersteen and his team were seldom available for the key internal Airbus meetings. In July I asked Mr Micklewright to intervene and he said he would instruct Mr Vandersteen to get involved with Mr McIntyre. In mid August Mr Pinner (Airbus –Engineering) assisted in progressing the other A380 work package payments (including accelerated payments), which were received in late August and again in mid and late September 2006 (see Corrie email – volume 6, page 2096). I raised the A380 design-build package payments also with Mr Gray, the Airbus MD, and I will cover this in more detail later in my witness statement (see 23/25 August email – volume 6, pages 2077-2078 and 2443). I worked closely with Mr Renson of Airbus and other Airbus staff to ensure that these were processed and over the next 1 to 5 weeks MALUK and in particular Mr Nokes (with my outside support) were able to get this all processed and paid (see volume 6, pages 2415, 2425 and 2439-2447).

~~47.3114.3~~ _____ I said earlier that the Manufacturing operations were behind plan – in particular in Bournemouth where we had the Mr Vandersteen complaint 2 on 28 June 2006 sent within three hours of my letter following up the price increases which were crucial as part of the Bournemouth turnaround plan and MALUK solvency (see volume 5, pages 1807-1810 and 1832). Whilst there may have been some delivery performance challenges at the time, and I was not close enough to really know, it was obvious to me and some others that the key remained to start to build a intelligent buffer inventory (see volume 6, pages 2362 and 2130). This was to permit “real focus” on operations productivity rather than what Mr Butyniec referred to as the MALUK “launch and recover” policy. . This would require, at least initially some additional funding to support the inventory build and the Policy of waiting until production was stopped/impacted to pay suppliers would seriously jeopardise that situation.

~~17.4114.4~~ Finally and crucially the liquidity position of MAC itself (circa C\$8m on the daily cash that day) – as conveyed again in the MAC staff meeting the previous day (see volume 5, page 1930).

~~18.115.~~ Having completed this analysis work I then telephoned Mr Dekker. He was not there but I left a voicemail asking him to please call me back as soon as possible. He rang me back later that evening (see volume 5, page 1931). I told Mr Dekker as part of that conversation that I had reviewed Ms Wade's calculations and that she was correct in her assessment that MALUK needed £1 million imminently and to meet the July payroll. I also informed Mr Dekker (in general terms i.e. without mentioning specific numbers) about my concern with regard to the payments that were overdue to MALUK's creditors and our fiduciary duties in this situation. Mr Dekker told me that Mr Groot had the matter in hand already and that the funds would be transferred immediately. However, Ms Wade advised me the following day that she had spoken to Mr Groot, who had informed her that MAC could not afford to provide MALUK with £1 million and was sending £500,000 cleared funds before the payroll was due.

~~19.116.~~ I asked Mr Shelley (MALUK IT manager) on 31 July 2006 to run me a number of printouts regarding creditors and settlement terms and the number of related invoices of £25K per year (see volume 5, page 1950). I wanted to understand whether the trade creditor information I was looking at correct and that EFACS was correctly calculating the overdue trade creditors. This we reviewed and had to make some changes to the software for mid-month trade creditors but in essence it confirmed that we were at least £2m overdue to settlement terms. I asked him to check it all thoroughly again and to have it for my return in mid August - this he duly did.

~~20.117.~~ The following week I was then on a one week holiday in Northern Ireland and I spent time trying to get the internal MAC approval for the Airbus price increases 26 July letter /agreement and progressing some of the payments for the Engineering business. This we finally achieved at the end of that week. As part of that holiday I also participated in the MAC staff teleconference call to progress that approval and during the two hours also heard /discussed other matters regarding Boeing 737 systems integrator kits and the MAC liquidity position (see volume 5, pages 1973-1974). There was also some discussion regarding the delays in gaining an agreement for the MALUK sale of receivables/debts (BNP) and MAC providing over £2m in unbudgeted cash in 2006 which was a real cash shortfall. The "official" minutes of that MAC staff meeting could not be located and therefore have not been disclosed in this process. Following the Tribunal Order of 3 December 2008 regarding Request 8 the Respondents solicitors have been instructed to advise in their letter on 9 December 2008: "There was no MAC Staff meeting on 1 August 2006" (document 3734/3277R2). This is simply untrue as the documentary evidence available in

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the Bundle demonstrates at 1955/1956 and 2098. These minutes would also show that the minutes specifically contradict the unfounded allegation regarding MAC staff meetings in the Respondents solicitors first correspondence at document 3113.

- ~~21-118.~~ Whilst I was in Canada in the week of August 7 for the MAC Board meeting I discussed the financial position of MAC for the next period with Mr Groot and he was clearly concerned that the operations were not generating the cash required, and that we faced significant challenges for the remainder of the Financial Year. He of course discussed the MALUK financial situation and I conveyed some of my earlier remarks above and in particular that I believed we would require the remaining £500K – from the £1m - that month, but I fully realised that MAC could not keep bailing out MALUK indefinitely.
- ~~22-119.~~ On 10 August 2006, immediately following MAC's board meeting, Mr Edwards the Chairman of MAC and personal guarantor of the group's banking facility, informed Mr Dekker that MAC was unwilling to provide MALUK with further cash funding. Mr Dekker then relayed this position to me on the morning of 11 August 2006 at our meeting in the MAC's boardroom in Toronto. During this meeting I expressed my concerns about the state MALUK's creditors had been allowed to get into. I told him that I would continue to review /work on the overall cash situation and again properly review the creditors situation on my return to the UK. I also informed him that I would ask Mr Smith to convene a board meeting of MALUK's directors about this matter. (See my email to Mr Smith on 11 August 2006 – volume 2, page 471).
- ~~23-120.~~ The weekly group senior staff meeting on 15 August 2006 took place by teleconference. At the end of the MALUK review Mr Edwards made it expressly and directly clear to the various directors of MALUK (including Mr Smith, Mr Underwood and myself), that MALUK was going to get no further funds from MAC. Mr Smith indeed commented on this at the MALUK Management Committee meeting on the 17 August when he said that *"he had not realised that Murray was even on the staff call until he said just at the end – no more cash to the UK"* (see volume 5, page 2046).
- ~~24-121.~~ Mr Edwards' announcement directly to us all (for the first time ever) compounded my concerns that, without such MAC funding and a resolution of the other matters regarding pricing / A380 engineering monies and operations profitability , MALUK was of doubtful solvency and it seemed to me that Mr Edwards was indeed concerned regarding MAC . I had several concerns in relation to this:
- ~~24-121.1~~ _____ that MALUK was going to breach its legal and contractual obligations to trade creditors in a period of "doubtful solvency" with regard to paying the various trade creditors; I knew from my experiences from working at Mayflower Aerospace that the company's doubtful solvency also meant that the directors of

MALUK were (personally) vulnerable if any problems arose whilst trading in the future; and — that the Policy being presently implemented was clearly inconsistent with the ‘Suppliers Payment Policy’ as set out in the Director’s Report (contained in the Statutory Accounts) and signed by Mr Dekker on behalf of the board of directors of MALUK on 22 August 2005 (see volume 2, page 423); that if immediate remedial action was not taken, MALUK was at risk of becoming legally insolvent – not just in doubtful solvency.

~~25.122.~~ As a result of the above issues, after the staff meeting on the evening of 15 August 2006 (UK time), I telephoned Mr Dekker (see volume 5, page 2028, item 16). During this telephone conversation, I explained that I had heard now directly what Mr Edwards had said at the MAC staff meeting about future cash payments to MALUK, however:

~~25.4122.1~~ MALUK was significantly in debt to various trade creditors/suppliers, and such debts were now at least three weeks overdue (**this was my First Protected Disclosure**);

~~25.2122.2~~ I believed that there was a likelihood that, without funding from MAC, MALUK would not be able to pay such creditors and would therefore remain in breach of its obligations to pay suppliers (**this was my Second Protected Disclosure**);

~~25.3122.3~~ because of this, MALUK was clearly of doubtful solvency and its directors were currently acting in breach of their fiduciary duties owed to MALUK’s creditors (**this was my Third Protected Disclosure**); and

~~25.4122.4~~ I was concerned that unless MALUK took some immediate action to remedy the financial situation, there was a risk that MALUK would become legally insolvent.

~~26.123.~~ I also reported to him that I was concerned that MALUK was going to run an unauthorised overdraft in the near future because of its cash-flow situation and that while I was accelerating my personal efforts/focus in this area we really needed to do a complete review of the cash management and debtors and creditors position in the way that we had done in the past.

~~27.124.~~ Following our telephone conversation, Mr Dekker sent an email at 03:14 am (UK time) on 16 August 2006 to Mr Smith (with a copy to me), in which he identified that there had been some “cash pressure” that week, and in particular some discussions regarding a possible letter to HSBC bank, notifying them that MALUK may be overdrawn for a brief period that week (see volume 5, page 2031). Mr Dekker specifically stated that the letter should not go to the bank unless it had corporate approval and that all other avenues

should be exhausted before an overdraft situation was allowed to exist. He also informed Mr Smith that this matter needed to be discussed fully the following day as it had implications for all directors of MALUK and that a “ground-up” cash flow needed to be developed for MALUK on an urgent basis, which must involve detailed input from Mr Underwood and me.

~~28-125.~~ I reviewed the various cash flow/debtor and creditor documents myself that evening (16 August) and decided that in the near term another £500K would be required from MAC within the next 7 days and that if we really pushed to accelerate the debtor items I discussed earlier – Airbus price increases, engineering monies and met our sales/delivery recovery plans in operations whilst simultaneously paying off the “oldest debts” to trade creditors in accordance with the “agreed terms” then we would be doing the “best” we could for MALUK and MAC until the “ground up cash flow information had been completed (see volume 5, page 2030). At the Management Committee meeting ~~held~~ during the morning/early afternoon on Thursday 17 August 2006 (see volume 5, pages 2037-2039 and 2046-2047), I explained to Haydn Martin (Director of Commercial and Business Development for MALUK), Mr Underwood and Mr Smith the group’s financial position and debrief from the Board meeting/week in Toronto. I reiterated my view that the Policy was both wrong operationally and legally and that MALUK needed to pay its creditors up to date. We also needed to get back to recovering our creditor track record as we clearly had many suppliers now reducing our credit terms and that MALUK needed the other £500,000 from Canada.

~~29-126.~~ Mr Shorrocks who attended the meeting part-time said he would review the list of those creditors who had reduced terms or ~~whom that~~ we should try and extend to 60 days by agreement in the next three months (he produced a list of some 40+ suppliers the next day in his email/attachment – see volume 5, page 2050). Mr Martin also reported that the implementation of the Policy was doing us damage and that someone from Gardners had in fact told him that our finance staff had now taken to telling suppliers to stop deliveries or send in legal notices to get paid – Mr Smith said he would investigate (see volume 6, page 2370). I confirmed that I had heard similar concerns about what we were doing from two companies at the Farnborough Airshow the previous month and that this policy must be changed. Refer to the agenda of the meeting (see volume 5, page 2037-2038), Mr Smith’s formal minutes of the meeting (see volume 5, page 2039) and my handwritten and typed notes (typed after termination) of this meeting (see volume 5, pages 2040-2047). Mr Smith was asked and agreed to follow up the £500k requirement from MAC with Mr Dekker and they could then address with Mr Edwards as appropriate.

~~30-127.~~ Shortly after this meeting, I went into the Finance office which Ms Wade shares with Mr Smith. Mr Smith was on the telephone. I knelt down next to Ms Wade and asked her

whether she had spoken to Mr Smith about MALUK not having enough money to meet the July payroll when he was on holidays. Ms Wade told me that there was no point, because she had overheard Mr Smith on the telephone to Mr Groot saying that she had over-reacted and that MALUK could have taken more risk. I said that this was clearly wrong as her own schedules of the previous day showed clearly and that there was a desperate need for cash from Canada (see volume 5, pages 2034-2035 and 2032-2033). Later that afternoon Ms Wade came into my office. I told her that I could not believe that Mr Smith had said that and she confirmed our previous assessment, and my analysis of last evening, that MALUK needed the other £500k within a few days to probably avoid an unauthorised overdraft and to support the calculations we had done in late July. I indicated that we had discussed this at a Management Committee that morning and that Mr Smith was to action immediately with Mr Dekker and Mr Edwards if necessary. I said she should discuss this directly with Mr Smith on this occasion as he was well aware of what needed to be done.

~~31-128.~~ Despite my efforts, Mr Dekker's email to Mr Smith on 16 August 2006, the Management Committee meeting on the 17th and Mr Edwards' decision to refuse any further cash payments from the MAC to bail out MALUK, on 22 August 2006, MALUK's 'daily cash balance' stated that MALUK's bank balance stood at £171,739 overdrawn with a further £172K of cheques in the post to the suppliers (see volume 5, page 2064). This situation had arisen without any communication with the Directors or MALUK calling any board meeting of its directors.

~~32-129.~~ On 22 August 2006, MALUK's daily cash balance" showed the following

~~32-1129.1~~ MALUK's total bank balance stood at minus (£171743.79) (overdraft);

~~32-2129.2~~ MALUK had un-cleared cheques and other payments to creditors which amounted to £172088.33;

~~32-3129.3~~ Accordingly MALUK's available balance before committed costs stood at minus (£343,832);

~~32-4129.4~~ MALUK's payroll and other committed costs stood at £523,407;

~~32-5129.5~~ The "definite receipts" which were due to be paid into MALUK that week totalled £557,901; and

~~32-6129.6~~ There was no free cash as we were in deficit to the tune of more than £309,000;

~~32-7129.7~~ As at that date, MALUK owed £2,243,157 to its trade creditors, all of which were by that date at least three weeks overdue for payment.

~~33-130.~~ That night (17th August) I noted that the MAC cash balances stood at under C\$6465K – including the cash at MALUK of C\$1868K (see volume 5, page 2036). I had never seen it this low. This had recovered to C\$10637K on 22 August 2007 when MALUK had unauthorised bank overdraft of C\$337K (see volume 5, page 2065). Whilst there had been a reduction in our total trade creditors outstanding to just over £6.3m the aging of the trade creditors was moving towards a worse position at over £1.6m over 60 days and higher in the daily cash balances sheet on 22 August 2006 at over £2.2m with a further £1m plus by the month end.

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~~34-131.~~ In the MAC staff meeting on that 22 August it was stated that there was a potential overdraft when in fact it was already clear from the daily cash balance that we were overdrawn in MALUK (see volume 5, page 2070). This was also later reflected on the MAC daily cash report (see volume 5, page 2064).

~~35-132.~~ MALUK's situation was worsened by Mr Smith's failure to acknowledge the seriousness of the situation, despite my various attempts to highlight it to him. Mr Smith failed to consult with and/or convene board meetings of MALUK's directors to consult or brief them or obtain their approval of the Policy, even when requested. He also failed to implement sufficient measures for MALUK's cash-flow difficulties to recover, despite my requests for him to do so and at times sought to impede my efforts to make things right and manage the difficult cash situation and our "doubtful solvency". I felt that Mr Smith was consistently ignoring his responsibilities, particularly as he became a director and Company Secretary, towards MALUK and his fellow directors, including me.

~~36-133.~~ Further, (and in breach of Mr Smith's, Mr Underwood's, Mr Dekker's and MR Neill's fiduciary duties), MALUK was being managed **without** any due regard for the views of MALUK's board of directors and/or the trade creditors of MALUK.

~~36-133.1~~ On my final working day before going on my three week holiday from 25 August 2006 sent an email to Mr Dekker saying "Once BNP transaction is complete the attached indicates £2.35M would be returned to Canada to be consistent with the principles discussed – i.e. returning UK to the MALUK budget submitted by Phil / Shawn in November 2005. I assume you will follow up at the appropriate time – meantime I am doing everything possible to enhance "free cash" progressively by mid September. Our creditors position has never since July 2002 been this BAD. Regards Brian" (see volume 6, page 2079).

~~37-134.~~ By the beginning of September 2006 I had become frustrated by the financial situation that MALUK was in because I felt like I was the only person making any effort to resolve the

situation. I was feeling particularly frustrated at that time because, since 28 August 2006, I was supposed to be enjoying a three week holiday with my family, and yet I was busy trying for some of the time to sort out the business. Throughout my holiday I continued to deal with two suppliers and customers to improve and accelerate cash flow for MALUK. On 5 September 2006, during my three week holiday, I received an email from Mr Smith in which he notified me that the monies had still not been paid by Airbus, as agreed, and that Airbus had not committed to a date when MALUK would be paid (see volume 6, page 2108).

~~37.1~~37.134.1 I pursued this by phone with a number of Airbus people including Mr Fairbairn who assured me that the matters were now being progressed and that he was working to ensure that all the paperwork was being managed properly with his colleagues and Mr Upward.

~~37.2~~37.134.2 In an email on September 8 to Mr Smith I asked about the apparent inconsistency between the daily cash balance trade creditor information and the weekly cash AR/AP schedules (see volume 6, page 2123). From previous experience the daily cash balances took account of the credit terms agreed with suppliers whereas the weekly AR/AP schedules were simply driven by the specific invoice dates and did not account for the agreed settlement terms. I asked him to look into this as I believed that a simple aged 60 day view did not properly account for the overdue creditors in accordance with “agreed terms” or at least for those with more than £25K per year in business. I conclude - *“as discussed following your review of the “presented” information will you please ensure the above is carried out and that we have a Correct picture of our creditor position over the coming weeks so we can make the “right” decisions. Please advise regards Brian”*.

~~38.1~~38.135. I take my responsibilities as a director very seriously and, as such, had previously conducted some research into my role and responsibilities as a director. I remembered the Directors Handbook, which I mentioned para 42 above, suggested using the threat of resignation as a negotiating tool, as a last resort in wrongful trading cases after a director has tried to persuade the other directors to assess the financial situation properly and take the appropriate course of action in doubtful or actual insolvency situations (see volume 3, pages 990-991 and 987). As a result of my concerns, and to try to get MALUK to take my concerns seriously, and act appropriately, on 8 September 2006 I emailed a series of instructions (regarding discharging MALUK’s creditors) to Mr Smith (with a copy to Mr Underwood) (see volume 6, page 2123). I decided that I had to use the book’s tactic of threatening to resign because things were so bad, so in my covering email to Mr Underwood I stated that unless such instructions were carried out within the next 21 days I would resign as a director of MALUK). **This was my Fourth Protected Disclosure.** I anticipated that Mr Underwood would ask me why I was prepared to resign as a director,

so that we could then discuss the issues, and that the Board would then get together and take the appropriate decisions and actions. However he did not react that way.

~~39-136.~~ He sent an email on September 9 (see volume 6, page 2130) in which he said - “Brian – I will run through this with Shawn on Monday and see why we cannot do this. I do not see anything fundamentally wrong with your request. It is where we should be aiming to be. However, whilst we have loss-making businesses we need to be cautious. Will get back to you on this on Monday.” Regards Phil”.

~~40-137.~~ Again, on 10 September 2006 I repeated my concerns in an email to Mr Underwood (see volume 6, page 2130) regarding:

~~40-137.1~~ _____ the Policy - I explained that it was now affecting deliveries and sales and that MALUK’s finance team had resorted to telling suppliers to send in legal notices to help them get paid and;

~~40-2137.2~~ _____ the poor financial situation of MALUK - I explained that six requests for money from Canada had been made that year – two in order to meet payrolls – and that the company had run an unauthorised overdraft in August. The overdraft was unauthorised because MALUK failed to obtain authority from MAC, its shareholders and the bank.

I also emphasised that as directors, it was our responsibility to bring money into the company. Similarly it should be our responsibility to determine to whom and when it goes out; this should be based on business understanding and not on receipt of legal notices.

This was my Fifth Protected Disclosure.

~~44-138.~~ On September 11 I received the first email response to my 8 September email in which Mr Smith takes each of the points I raise in turn – specifically (see volume 6, page 2136). The key point here is that he considers the weekly cash sheets to provide a “correct picture of Creditors” on the basis that you simply apply a 60 day view of “agreed terms with creditors”. I responded (see volume 6, page 2136) indicating that “*You CANNOT take the data on the based on invoice dates – have the businesses RUN again based on creditor overdue dates. – This was adjusted by Eric also to allow for the mid-month creditors – the reason why it is on the daily/ updated cash update is that it is simple to see the consolidated age of those creditors linked to cash. I think you will find that the info is not the same when you check the detail – do so, Can you also confirm therefore circa £900k of creditors who were due payment at the end of last week by end July. If things are going this well then why are we having all the problems / feedback internally and externally and jeopardising deliveries regards Brian*”.

~~42-139.~~ An email response (see volume 6, page 2143) to my email of September 8 in which Mr Smith states “*Brian, I believe that the situation is very easy to see on the weekly cash flow which is run*

on invoice date, it is therefore not difficult to see that if an invoice is 60 days old and we have 60 days terms then it has become due. As I said in my previous email there are £368K of creditors that are overdue, and £1097K that have now become due as at 31 AugustAs for the issues to which you refer, I am now struggling with this. I can only assume this is a hangover from August when we not paying anybody, however, now we have had some significant receipts in all creditors that have been requested have been paid. In addition both Bournemouth and Wrexham have cash to spare, i.e. cash that they can send out if the need arises. They are also both aware that further cash is available should it be required. As far as I am concerned the information is there and I do not propose to spend any more time on it at this juncture. Obviously I monitor the position on daily basis and it is formally updated each week in the cash flow, which should be sufficient.

~~42-139.1~~ I respond on the same day (see volume 6, page 2143) that in view of the “surplus” funds by Wednesday 13th of at approximately £1.8m – lowest £1.45m can we please arrange to release a further £500k – with instruction that this is the most cash until Sept 20 to the units. We can then review where we are at re debt to be collected by 30 Sept – based on my other email. Lets fix our track record also regards Brian”.

~~43-140.~~ Following the above emails I send an email to Mr Shelley asking him “*to run the various creditors EFACS runs again – from above – based on overdue to creditor terms etc regards Brian*” (see volume 6, page 2221).

~~44-141.~~ Following a follow up conversation with Mr Fairbairn of Airbus UK on 12 September I send an email to Mr Nigel Jones headed AUK cash Q2 and July retro payments (copied to Mr Underwood, Mr Smith, Mr Martin and Ms Jones) in which I say “*Nigel you should expect a special payment on Thursday Friday this week for the above. Please confirm when received. Working on the titanium and August now regards Brian*” (see volume 6, page 2153).

~~45-142.~~ On 12 September 2006, I participated in a staff teleconference meeting, throughout its four-hour duration (see volume 6, pages 2175-2179). During this meeting, Mr Neill discussed liquidity concerns affecting MAC on several occasions and the challenges we were all facing (see volume 6, page 2175). The MAC minutes also recorded that “*RBC {Royal Bank of Canada} had requested a meeting re liquidity and again that we needed the EBITDA improvement from Operations.*”

~~46-143.~~ That evening given the overall MAC liquidity position and “doubtful solvency” of MALUK I also email Mr Underwood to push Mr Smith to get the cash disbursed to the level requested {500K} (see volume 6, page 2181).

~~47-144.~~ On September 13 I email Mr Smith again (see volume 6, page 2195) and state “*Assume you will release the further £0,5M – no more pre next Wednesday – as we discussed re normal trade creditors*”

etc – to end July and working our way into key August creditors etc. Also ring and discuss Apollo as discussed regards Brian?

- ~~48~~-145. Later that day I receive confirmation from Mr Jones from Bournemouth that he had received the remittance advice referred to on Tuesday and that the payment date for £329K is tomorrow (see volume 6, page 2196). This was outside of the normal payment cycle for Airbus. I forward that email to Mr Smith asking -- “*so why cannot we pay at least £500k etc as requested – this would allow up to £800k if we needed to regards Brian*” (see volume 6, page 2196).
- ~~49~~-146. On the same day I finally break the A380 logjam with Airbus UK re the engineering design build package monies (£1.2m) when I receive a telecom from Mr McIntyre and respond in an email that further amortisation of monies is not available (see volume 6, page 2197). and also email from Clive Renson – 14 September 2006 (see volume 6, page 2227).
- ~~50~~-147. “I receive an attachment from Mr Shelley on September 14 at around 10 am which states “*Brian Aged creditors by due date for Fabrications, Structures and Bournemouth attached. These were run yesterday afternoon regards Eric*” (see volume 6, pages 2221-2222). I then review this information for about 45 minutes looking for any substantial errors, to confirm that it is largely as I expected – that is the overdue creditors are higher than a 60 day assessment in the weekly cash AP schedules. I then send email to Mr Underwood to try and cause him to discuss **with me** the release of the £500k payments to the oldest debt creditors with me. As I had not heard from him by lunchtime I then forwarded Mr Shelley’s email and attachment to Mr Smith - copy Mr Underwood stating “*info see below and totals etc regards Brian*” (see volume 6, pages 2221-2222).
- ~~51~~-148. That afternoon I spoke with Mr Crompton, the MD of Hamble on the A380 Freighter programme and monies. I also asked about the progress on clearing the delivery and invoice queries with Bournemouth, which he confirmed, were now progressing and that an early payment of £73K (not due to October 1) was being sent early the following week.
- ~~52~~-149. During the afternoon and evening of 14 September 2006 – four days before my dismissal - I made separate telephone calls to Mr Dekker (at 7:39 p.m. for 29 minutes – see volume 6, pages 2237-2240) and Mr Underwood (just before 3pm for 22 minutes - 5–7 mins on creditors and again just before 6pm for 5–7 mins – see volume 6, page 2234) to explain to them, in further detail, my concerns regarding the continuation of the Policy and the business judgement/competency of Mr Smith. In my telephone conversation with Mr Dekker, I stated that:
- ~~52~~-149.1 _____ although there had been an improvement in the financial position, MALUK remained significantly indebted to its various trade creditors and had

'overdue' debts amounting to £1,293,388 (**this was my Sixth Protected Disclosure**); and

~~52.2~~149.2 of the above figure, approximately £400,000 was significantly overdue and/or that according to the terms of the various agreements such debts should have been discharged by MALUK between February and July 2006 (i.e. between six months and six weeks previously) (**this was my Seventh Protected Disclosure**); and

~~52.3~~149.3 it was of paramount importance – in order for the directors of MALUK to comply with their fiduciary duties owed to such creditors – that the sum of £400,000 be immediately released to pay the oldest debts (**this was my Eighth Protected Disclosure**); and

~~52.4~~149.4 it was essential (for the directors to comply with their fiduciary duties owed to MALUK's various creditors) that the Policy be abandoned (**this was my Ninth Protected Disclosure**); and

~~52.5~~149.5 I had serious concerns as to the competence of Mr Smith and/or his ability to carry out his duties (whether fiduciary or otherwise) as a director / Chief Financial Officer / Company Secretary with reasonable skill and competence (**this was my Tenth Protected Disclosure**).

~~53.~~150. I refer to my handwritten and typed notes of my telephone conversation with Mr Dekker (see volume 6, pages 2238-2240) also made my **Ninth and Tenth Protected Disclosures** to Mr Underwood. In addition, I informed Mr Underwood that I was concerned that the directors of MALUK were not being consulted in relation to the Policy, and that Mr Smith's poor business judgement meant he was not giving the matter proper attention (this was my **Eleventh Protected Disclosure**). I refer to my contemporary notes of two telephone conversations with Mr Underwood, on 14 September 2006 (see volume 6, page 2234). On the last day of my holiday Friday 15th September I started work at 7.30am. At 07.35 I sent an email to Mr Shorrocks and Mr Smith (see volume 6, pages 2267-2268) asking what progress we had made on suppliers not on 60 days terms. Mr Shorrocks replied at .8.33 (see volume 6, page 2281).

~~54.~~151. Shortly after 8 am on the morning of 15 September 2006 (the last day of my three week holiday) I received a telephone call from a senior person at Gardners plc (one of MALUK's suppliers and a competitor). During our conversation about a number of matters, he told me that he had been present at a recent board meeting of the directors of Gardners plc at which Rolls Royce were also present as a shareholder/investor. My contact told me that during the board meeting the directors discussed the fact that MALUK had not been

paying its bills and may be in some difficulty again. He was also certain that the Rolls Royce representatives noted the remarks.

~~55-152.~~ Mr Fairbairn of Airbus sent an email to me at 07.55 (see volume 6, page 2271), which I opened after breakfast at 8.30, which covered a number of significant matters re the pricing changes and related invoicing again amongst other matters.

~~56-153.~~ Mr Smith sent an email at 07.53 to me (opened at 08.32) (see volume 6, page 2283) in which he stated in response to my email of September 14 “*As far as I am concerned the policy remains. This morning I will let the business have the cash they need to pay the suppliers as they request. If you have a problem with this approach then I suggest you speak to John. Unless John issues an instruction otherwise I shall continue to adopt the process as described in paragraph 3*”.

~~57-154.~~ My response to this email was to explain that I had spoken with Mr Dekker the previous evening, as I had feared that Mr Smith would not pay the creditors in accordance with the terms of those agreements with them. At 08.42 I forwarded Mr Smith’s email (see volume 6, page 2283), and my response, to Mr Dekker and emphasised that this was for me the last “straw” in a long line of mistakes/inadequacies/lack of business understanding with Mr Smith, as I was desperately concerned about our “doubtful solvency”. To reinforce the importance of my concerns, I reiterated that unless Mr Dekker made it clear to Mr Smith that he should do what makes business sense, Mr Dekker should expect me to resign as a director of MALUK in keeping with the Director handbook recollections. I also stated to Mr Dekker that I had been unhappy with the governance processes in MALUK for over 12 months. **This was my Twelfth Protected Disclosure.**

~~57-154.1~~ In the meantime Mr Smith had sent an email at 08.05 which I read at 08.34 which stated “*You have obviously been discussing payment terms and different proposals with major suppliers recently. I am concerned that I for one was not a party to the fact that you wished to have these discussions with these suppliers. In future can you please let me know what you are intending to discuss with suppliers in respect of payment terms. In addition I would have thought that any discussions with suppliers would have been Phil’s domain.*” (see volume 6, page 2282). I responded at 08.34 and will address in Defences para 9.4 (see volume 6, page 2282).

~~57-154.2~~ Having received the MALUK Daily cash balance at approximately 11.35 am (£2.42m) with £1.3m trade creditors overdue to terms (a little lower than what I had calculated the previous day) I sent an email to Mr Smith, copied to Mr Underwood stating “*I think this largely confirms what I have been saying re our ability to substantially clean up overdue normal creditors etc and you can now determine what you are going to do – my actions will continue based on that decision. Brian*” (see volume 6, page 2297).

~~58.155.~~ **On 15 September 2006 MALUK's** daily cash balance (see volume 6, page 2298) showed the following:

~~58.4155.1~~ MALUK's total bank balance stood at £2,417,497;

~~58.2155.2~~ MALUK had un-cleared cheques and other payments issued to creditors which amounted to £415,743;

~~58.3155.3~~ Accordingly MALUK's available balance before committed costs stood at £2,001,754;

~~58.4155.4~~ MALUK's (committed costs) stood at £1,654,718 (less approx £575K of agreed (with me) deferred payments to Apollo and All Metal Services - from 15 to September 27);

~~58.5155.5~~ The 'definite receipts' which were due to be paid into MALUK that week totalled £649,645. (With early receipts from Hamble and others not counted);

~~58.6155.6~~ **I therefore calculated we had free cash of at least £1.5M;**

~~58.7155.7~~ and further down the Cash balance schedule, as at that date, MALUK owed £1,293,388 to its trade creditors which were a couple of weeks overdue;

~~58.8155.8~~ The Weekly cash flow AP situation at the 8th September showed some £5.5m in trade creditors – of which £850K was 60 days overdue – and I expected that this would have fallen by perhaps by a net £500k through the Week (see volume 6, page 2126). The 15 September equivalent document shows £5140K (£630K overdue at 60 days) (see volume 6, page 2329). I was satisfied that we could easily move the Settlement overdue creditors down by a further £500k. I still believed that the underlying profitability and cash generation of circa £500k was the core issue and that had to be addressed again when we had a clearer view of the gathering pace on receivables / debt collection. MALUK was still of "doubtful solvency" and the position at MAC was a serious concern. The information for MAC the same day showed a cash balance of C\$8454 K (plus the C\$5091K for MALUK) (see volume 6, page 2299). A payment by MAC of \$2500K was due to be made that day to GE. (see MAC cash balance – volume 6, page 2299);

~~58.9155.9~~ It is of course crucial to look at the rolling cash receipts/payables at any point of time and my request of my UK Director colleagues was for a further £400K-500K of the most overdue debts to suppliers to be paid (given the cash

balances and special monies that week (£2m + cash balance) and that we would review again on September 20 when more cash/income certainty on the rest of the next 2/6 weeks would become clearer – particularly the pricing/materials retroactive payments and the engineering monies for A380 (see volume 6, page 2195). See cash income levels for the following weeks on 20 November schedule ([document 2692](#));

~~59-156.~~ Later that day I opened an email from Mr Neill, in which he referred to my email exchange with Mr Smith (see volume 6, page 2302). Firstly I tried to phone Mr Neill, but upon receiving no answer. ~~I sent an email and in~~ my email I pleaded with him to take the time to understand MALUK's situation (see volume 6, page 2302). I explained that it was naïve of him to think that MALUK's problems were as simple as paying a few creditors. I then forwarded my email, exchange with Mr Neill to Mr Edwards and commented that I had stayed quiet for too long about what was going on in the UK (see volume 6, page 2376). I also tried to call several times again later that day.

~~60-157.~~ In two emails to Mr Smith (timed at 14:07 and 14:14 – see volume 6, pages 2338-2339) and an email to Mr Neill (timed at 14:41 – see volume 6, pages 2340-2341), on 17 September 2006 – the day before my dismissal - I made clear that my intention was to bring my concerns in person to the attention of Mr Neill, Mr Dekker, and others as necessary, during the period of the week long series of meetings in Toronto commencing the next day. I also attempted to highlight again to Mr Smith the fiduciary duties that were owed by the directors of MALUK. In my email to Mr Smith on 17 September 2006 (timed at 14:14 – see volume 6, pages 2339), I asked him to send a copy of the last board meeting minutes to Mr Neill and Mr Edwards; to confirm how many times I had asked him in emails and/or verbally to organise another board meeting of MALUK's directors; to summarise the responsibilities and liabilities of a UK director, particularly regarding finances; and to explain why no board meetings had been held since 20 June 2006. **This was my Thirteenth Protected Disclosure.** In order to highlight the severe financial difficulties of MALUK and my serious concerns as to the competence of Mr Smith to Mr Neill, on 17 September 2006 (at 18:48 – see volume 6, page 2356), I also sent an email to Ms Wade (copied to Mr Neill) in which I requested Ms Wade's confirmation on a number of issues listed in my email of 17 September 2006.

Conclusions -our fiduciary Duties as Directors

~~64-158.~~ As I said earlier my experiences with doubtful and then actual insolvency at Mayflower Aerospace had brought my fiduciary duties as a director into sharp focus in my mind. I was therefore acutely aware that I would be in breach of my fiduciary duties as a director not to act appropriately in these circumstances, where the financial situation of MALUK was poor

and deteriorating. Accordingly, from as early as late July 2006 – in order to comply with my fiduciary duties owed to MALUK’s creditors – I attempted to:

~~64-158.1~~ quickly recover as much of the debts owed to MALUK by its various customers (and also seek advance payment from them wherever possible); and

~~64-2158.2~~ agree deferrals of payments due to the two major creditors (Apollo Metals and All Metal Services), which were the only suppliers of MALUK to have parent company guarantees from MAC for MALUK’s indebtedness to them

~~62-159.~~ My primary objectives were to continue to swiftly reduce the monies owed to the various trade creditors of MALUK, to ease MALUK’s cash flow more generally and to manage customer relations. (I also sent an email to Mr Smith (as Company Secretary) on 11 August 2006 to request a board meeting to discuss this situation (see volume 2, page 471). As I received no response from Mr Smith, I spoke to Mr Dekker about the need for a meeting of the board of directors of MALUK on ~~16~~5 August 2006 (see volume 5, page 2031) and a very detailed cash flow management plan – meaning what we had in previously done in 2003, 2004 and up to mid 2005. Again on 14 September 2006 in my 3 pm telecom (see volume 6, page 2234) I agreed with Mr Underwood that we should indeed have a Board meeting to discuss these matters promptly. Despite these discussions and requests a board meeting was not convened.

~~63-160.~~ Within about six weeks of the end of July 2006, by carrying out this process, we had raised/accelerated funds which had enabled MALUK to reduce its overdue debts by in excess of £1.2 million. (8 September –£5.5m - 60 days overdue £850K and more to “agreed” terms – see volume 6, page 2126) also expected to be able to raise a further £500,000 for MALUK in the week commencing 18 September 2006. I had planned to review and evaluate MALUK’s financial position, after having done what I could to bring in as much money as I could for the business, following my weeklong trip to Canada commencing 18 September 2006.

~~64-161.~~ At a practical level over £800k of Engineering monies came in, some early, at the end of August (see volume 6, page 2096), £73K was paid by Hamble early on September 19 (see volume 6, pages 2273-2275) – after my termination, all outstanding monies for Mecachrome were paid (see my email to Jonathon Powell – volume 7, pages 2530-2531), Airbus special cheque received on Thursday September 14th of £329K (see volume 6, page 2196), Airbus monies for price changes and others – special cheque on October 5. Monies for engineering reserve offset of £209517 paid in October 2006 (see volume 7, pages 2546-2548).

~~65-162.~~ At the end of October 2006 we can see that from the Actual Cash Flow statements (use 20 November 2006 statement – see volume 7, page 2692) in the three month period from the end of July to the end of October some £16625K was received from customers – prediction for the same period £15313K at 28 July 2007~~6~~ achieving the approximate £1.5m I calculated we must have at 28 July. The actual trade creditor payments made were £8019k in the same period rather than the 28 July forecast of £6551K - reducing the MALUK trade creditors to £5.1m at 15 September (with £630K overdue at 60 days – hence my request to release a further min £500k on 15 September at that time with “free cash” of £1.5m. ~~By 20~~ the 20 October the trade creditors had fallen further to £4725K (by over £2m from 28 July) with over 60 days at £750K.

~~66-163.~~ This was the same week that the MAC staff meeting of 17 October recorded for MALUK - “RESULTS Disappointing for September .Requested funds from Corporate” (see volume 7, page 2601). Later ~~that~~ week £535K was transferred 20 October 2006 MALUK Cash Flow Reconciliation (see volume 7, page 2614). ~~This was – the same~~ £500k that Ms Wade and I identified back as necessary in late July 2006 (see volume 5, page 1928), and again in mid August 2006 (see volume 5, pages 2030-2031), to avoid the unauthorised overdraft whilst carrying out our fiduciary duties as Directors in MALUK in that period of “doubtful solvency”.

~~67-164.~~ It is also not clear to me why the disappointing performance in September would affect the a cash request in mid-October - timing differences are not that tight –hence the reason why a prediction of the need for cash ~~for is~~ four weeks ahead is practical. Additionally the PwC report includes the Financial results for the month of September and shows that the MALUK profit (EBIT level) for September was some ~~£1236K / £588K~~ £1236K / £588K (including £200k from Engineering) against a budget of ~~£710K / £338K~~ £710K / £338K - PwC exhibit 9.19 – MALUK (see volume 7, page 2647). To my mind this was not the problem – it was the underlying understanding and management necessary of the cash flow of MALUK in that period of “doubtful solvency” when the risks to the future cash flow receipts and their management were crucial whilst meeting our fiduciary duties to creditors in the event that we were unsuccessful. All of course compounded by the MAC liquidity position and no parent company guarantee for their separate legal entity MALUK.

~~68-165.~~ Now I will simply make the point that when the Statutory Financial Statements for the FY 2005 were finally filed with the Companies Registry on 11 July 2007 (legally due 31 October 2006) in the Directors Report they contained a new Suppliers Payment Policy:-

~~68-165.1~~ It is company policy in respect of its suppliers to develop long-term relationships with them, which includes making payments consistent with business cycles and established practices as agreed with suppliers and ensuring

they are aware of the terms of payments. I refer to this policy (see volume 2, page 510).

~~68-2~~165.2 _____ The average number of days purchases included within creditors at 31 December 2005 was 52 days (2004 36 days) (see volume 2, page 510 and document 3099J/K). On the basis of the information in the FY2005 statements I and others cannot see how the Directors – probably Mr Smith - (this would not be audited by EY) have arrived at this 52 days number.

~~69-1~~66. _____ This compares with the Supplier payment policy in force whilst I was a Director to November 2006 which did not have the comment with business cycles and crucially also contained within the statement terms of payments ***and that such terms are followed*** (see volume 2, page 423). Following the Tribunal Order on 3 December 2008 for Request 13 we can also see that the Supplier payment policy in the draft financial statements sent to EY at 26 October 2006 (document 3551) and 4 May 2007 (document 3559) continued with those same “and that such terms are followed”.

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~~70-1~~67. _____ Although this is stated in the published FY 2005 accounts this was never discussed at any MALUK Board meeting or indeed any other meetings in FY2005 or FY2006 that I attended and I have seen no documentation sent to the supplier community as regards settlement terms agreement beyond what was previously issued and agreed. In any event from the outset in 1997 the UK legislation has always required – see document 3099J in pack 3099G-3099L - the Supplier payment policy in the Directors report to state the policy “with respect to the next following financial year”, for obvious reasons.

~~70-4~~167.1 _____ Secondly, the FY 05 statutory accounts disclose in the Directors Report that “*In September 2006 the company entered into a sale of receivables agreement with BNP Paribas, the purpose of this transaction was to increase liquidity and provide funds for further investment*” (see volume 2, page 509).

~~70-2~~167.2 _____ The MAC Board would need to approve that transaction too and I understand from the documents disclosed a resolution was passed in November 2006 to effect the arrangements (see volume 1, page 296). The cash from the BNP transaction “to increase liquidity” was in fact only shown as being received in Magellan in the week of 29 December 2006 – see document 2736U . This was some twelve months after the initial work by the Finance team to evaluate this funding option.

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~~70-3~~167.3 _____ At the MAC level there were concerns about liquidity in September 2006 with RBC (see volume 6, page 2175). It is my view that at least Mr Edwards, Mr Neill, Mr Dekker and Mr Groot were aware of the liquidity challenges at the time for MAC and therefore Mr Edwards comments regarding no further MALUK funding was crucial. H+e

had never said this before to the Directors of MALUK On 2 April 2007, MAC released its Fourth Quarter Report (December 2006) (see volume 7, pages 2897, 2886 and 2893). The Report shows that with increasing bank indebtedness over the last twelve months (Q2 '06 C\$130.7m, Q3 C\$ 137.8m Q4 C\$142.5m, Q1 '07 C\$161.3m) and the cancellation of the receivables securitisation programme in Q4'06, there is increasing evidence of increasing liquidity pressures across the group. This has necessitated both an increase in the credit guarantee provided by the Chairman from C\$155m to C\$175m, and C\$15m new loan from Mr Moeller. The ability to stay within these increased bank facilities is currently unclear. Notwithstanding the injection of further funds referred to above, the Group's ability to operate within the revised facilities was far from certain.

~~71-168.~~ I believe the following exchange between a market analyst Nick Morton (RBC Dominion Securities) and Mr Dekker during the Q4.2006 webcast on 4 April 2007 to be relevant: Nick Morton “ *right now is there \$30m or more available from those increased banking facilities?*” Mr Dekker - “ *just slightly less*”. In contradiction to this statement, the Q1.2007 statements released on 14 May 2007 (see volume 1, page 320) – for the period completing at 31 March 2007 (a few days before the 4 April webcast) disclosed the banking facility headroom to have fallen to \$11.7m, even with the increased bank facilities. [I may deal with this further in oral evidence.](#)

Accountancy treatment of Ellanef's contracted price reductions on its work for Boeing

~~72-169.~~ In this part of my witness statement I set out the concerns that I raised with my senior colleagues in MAC regarding (1) not reflecting the agreed contractual prices with Boeing in MAC's budget, (2) how accurately MAC's published quarterly financial statements reflected MAC's actual profits for the first half of FY2006 and (3) the lack of sufficient documentation from Boeing, to support the recognition of increased profits, in MAC's published quarterly financial statements in Q2.2006.

~~73-170.~~ Ellanef is a wholly owned subsidiary of MAC. Its core business capability is the machining and assembly of complex components and sub-assemblies for aircraft. In 2005, Ellanef entered into a renewal contract with Boeing to supply parts for the Boeing 737, 747, 767 and 777 aircraft, for 2005 to 2009. In that contract Ellanef / MAC agreed to give price reductions in most years for the largest revenue item, the 737 Systems Integrator Kit. The total Boeing contract represented over 60% of the business revenue for Ellanef.

~~74-171.~~ As I was trying to bring myself up to date with MAC's commercial contracts in October 2005, I became aware that Ellanef's overall contract with Boeing was not as profitable as required, to meet the profitability targets that had been set (15-18%) by the MAC Board. After working with my colleagues in MAC and Ellanef, for a few months we eventually estimated [that](#) to achieve that 15%-18% Ebitda (profitability) the gross margin on the

overall Boeing contract would require a price increase in excess of US\$20 million (at 2006 materials prices) over the remaining contract period, if this work was to yield the Ellanef/MAC profitability targets to support the necessary capital investment and rejuvenation programme at Ellanef.

75-172. Accordingly, in October 2005 my colleague Mr Zanatta and I decided to approach Boeing in November/December 2005 with the aims of removing the price reductions on the 737 Integrator Kit whilst also agreeing an overall review of the pricing on the remaining contract package with Ellanef. See for example, the following email exchanges regarding the pricing reductions: email from me to Henry David (General Manager at Ellanef) and Konrad Hahnelt (Vice President – Global Strategic Sourcing) on 29 September 2005 (see volume 3, pages 1055-1058); email from Mr Butyniec to Mr Chidiac and Mr David on 14 October 2005 (see volume 3, page 1081); email from me to Mr Butyniec on 15 October 2005 (see volume 3, page 1083); email from me to Mr David and Carl Chidiac (a sales representative) on 15 October 2005 (see volume 3, page 1083). I was actively involved in seeking to achieve these aims. It was my view that the scale and price changes needed to be agreed in principle as soon as practicable, on a broad if not detailed basis. I believed that we should try to push for these changes as part of a contract amendment from January 2006, or, if this was not possible, that the changes should be agreed in principle before there was any further significant capital investment in Ellanef or property redeployment, both of which were in front of various MAC Board meetings in late 2005 and 2006. This was especially because it provided an element of negotiating strength with Boeing as the capacity utilisation in the North American machining market and pricing power moved in favour of the suppliers, like Ellanef. I also, of course, recognised that getting Boeing to agree to remove the price reductions and agree price increases was a difficult challenge, although this was what was necessary for the future business success of MAC and Ellanef.

76-173. In November 2005, Dan Zanatta (who was responsible for oversight of Ellanef and Chicopee in North America) and I arranged to meet with the senior Boeing procurement team for a meeting and then dinner in Seattle to discuss the price changes and removal of price reductions on the 737 Integrator Kits. Informally, over dinner, the Boeing team agreed to consider foregoing the agreed price reductions for the first quarter of 2006 to allow Mr Zanatta, Ellanef and I to prepare a business case for the price changes.

77-174. In or around mid-November 2005, I discovered that MAC's budget had been changed so that it did not reflect the presently agreed contractual prices with Boeing. The 2006 budget for Ellanef included US\$1.2 million of increased revenue with respect to the removal of the price reductions on the 737 Integrator Kit. This was our minimum target but had not yet been agreed with Boeing, although negotiations were underway. I informed Mr Butyniec of

my concerns in relation to this in two emails on 27 November 2005 and 30 November 2005 (see volume 4, pages 1155-1156).

~~78-175.~~ On 8 December 2005 Steve Groot (MAC's Corporate Controller and Treasurer) and I made a presentation at MAC's board meeting (see volume 1, pages 151-157), to the effect that a pricing improvement in excess of US \$20 million, plus an increase in materials costs reimbursement, was required over the term of the Boeing contract (2004-2009) to meet MAC's sustainable 15-18% profitability targets. We explained to the MAC Board that the removal of the price reductions/price increases was essential and Boeing repricing was one of the four major targets for pricing improvements in 2006. I also advised the MAC board of my concerns with respect to achieving the necessary price changes. See the powerpoint slides which Mr Groot and I prepared and used this board meeting which show the deterioration in gross margins in the Boeing contract from 2004 – 2009 before any capital investment or redeployment was sanctioned by the MAC board (see volume 1, pages 156-157). Despite my concerns, Mr Neill and Mr Butyniec were of the view that the contractually agreed price reductions would not be budgeted for because they were going to assume that the pricing change would be achieved each quarter in 2006. Mr Butyniec later presented a budget to the MAC board on this basis. I was concerned about this, and so on 27 December 2005, I emailed Mr Neill and Mr Butyniec to express my concerns about the correctness of this approach (see volume 4, page 1224). This was my 18th Protected Disclosure. Since filing my ET1 at the Employment Tribunal in December 2006 I have withdrawn this as a "Protected Disclosure". To avoid any confusion, the numbering of my remaining Protected Disclosures has not changed.

~~79-176.~~ On 12 January 2006 we sent a letter by email to Mike Rootjes of Boeing (see volume 4, pages 1294-1296) to reinforce our meeting and case and lay the ground for the price increases. However, we were collectively unable to obtain the necessary information to support the overall price change and increase proposals for many months, as the Ellanef staffs were pre-occupied with the rejuvenation programme (see volume 4, page 1421; volume 5, pages 1659 and 1908). By this time, Boeing was actually applying the contractual price reductions in their purchase orders and the Ellanef invoices had to reflect these to ensure payment. So we were actually experiencing the financial impact of the discounts in reducing our revenue. One of my major planned tasks from September to December 2006 was to finalise the price increases with Boeing, although, of course, I was dismissed in September 2006 and was therefore unable to complete this task.

~~80-177.~~ On several occasions between March and August 2006, as part of a number of business discussions, I informed Mr Neill and Mr Dekker that, in the absence of any firm undertaking or agreement from Boeing on the price increases/discount elimination, MAC could not have a reasonable belief that its actual profits in the first half of FY2006 were

accurately reflected in MAC's contemporary published quarterly financial statements. **This was my Twentieth Protected Disclosure.**

Although I was on a week's leave at the time, I participated for over two hours in the MAC senior management staff conference call on 1 August 2006. I refer to [document 2098 - 447734501181 - recording my presence on this MAC staff call for 2 hours and 12 minutes, my note of this call](#). However, during the teleconference, I was concerned to learn that MAC may have been including profits relating to the price changes, without sufficient agreement or paperwork to support the conclusion that the price reductions had been waived. I briefly stated my concerns regarding this to my colleagues at that staff meeting. I am unable to refer you to the official minutes of this important staff teleconference on 1 August 2006 as these apparently cannot be located by MAC and so have not been disclosed. [Following the Tribunal order on 3 December 2008 for Request 8 the Respondents solicitors advised on 9 December 2008 \(document 3734/3277R2\) that "There was no MAC staff meeting held on 1 August 2006". This is simply untrue and for the record these are the only set of MAC staff meeting minutes not disclosed to my knowledge in the 1246 pages provided by the Respondents, after being ordered as category 3 disclosure by the Tribunal at CMD4 in June 2007. The contemporaneous emails from me at documents 1955 and 1956 also refer to this MAC Staff meeting on 1 August 2006. These minutes would also show that the minutes specifically contradict the unfounded allegation regarding MAC staff meetings in the Respondents solicitors first correspondence at document 3113.](#)

[The PwC "independent investigation" reports refer at multiple paragraphs - 9.24/9.26/9.27/9.28/9.40/9.43/9.44 \(document 712 - 715\) to Mr Henry David from Ellanef attending these MAC staff meetings. I am certain he was not an attendee at this 1 August 2006 staff meeting \(minutes not disclosed\) AND for all the other MAL staff meetings minutes in the year prior to my employment termination. He was never an attendee during my presence. PwC are factually incorrect in multiple paragraphs in this forensic "fact-finding" report. I note that Mr Dekker told PwC in Paragraph 9.43 \(document 715\) ".....John Dekker indicated that Henry David participated in these calls". and then in Mr Dekker's witness statement at Para 88 states ".....PwC notes that Henry David recalls that the Claimant agreed that the revenue accrual should be booked in Q1 and Q2 2006". Ms Stafford QC did not wish us to pursue Request 23 at the 28 November 2008 interlocutory hearing on the basis that it is up to the Respondents to show the minutes of those MAC staff meetings in the year prior to 18 September 2006 at which Henry David from Ellanef was noted as an attendee. Either in the Bundle or from the 1246 pages disclosed as relevant category 3 by the Respondents solicitors for Request 30 at CMD4 in June 2007. My point remains that the minutes of this 1 August 2006 MAL staff meeting have not been disclosed and additionally the Respondents solicitors are now instructed to assert "There was no MAC staff meeting held on 1 August 2006".](#)

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179. In a follow-up email to that teleconference to Mr Dekker (copied to Mr Neill, Mr Butyniec, Mr Zanatta and Mr Groot) dated 2 August 2006 (see volume 5, page 1956), by which time Ellanef/MAC still had not reached an agreement with Boeing to waive their contractual rights to the reduced prices, I repeated my concerns around the inclusion of increased profits relating to the higher prices on the 737 Integrator Kit. I explained that I was not comfortable with the situation and advised that, to my knowledge, MAC did not have sufficient coverage in writing from Boeing to support the recognition of the higher revenues, retroactively to January 2006. **This was my Nineteenth Protected Disclosure** I then set out to see if we could achieve a level of confidence in an appropriately worded document from Boeing prior to the MAC Board meeting on August 10.

~~180.~~ Mr Zanatta and I then discussed the situation and agreed that he would draft a note to Mr Rootjes at Boeing, which we judged would be sufficient to underpin any MAC financial results for Q1 and Q2.2006 in writing. I refer to Mr Zanatta's email, and attached note, of 3 August 2006 to Mr Rootjes (see volume 5, page 1957). From Mr Rootjes' response on 4 August 2006 (see volume 5, page 1971) I realised that we were unlikely to get the agreement we wanted – this was carefully written by a seasoned procurement professional. Accordingly, I circulated Mr Rootjes' email to Mr Neill, Mr Butyniec and Mr Dekker on 7 and 8 August 2006 (see volume 5, page 1988), stating that it was the “best” response we were likely to get at this time and referring to my earlier 2 August 2006 to Mr Dekker setting out my concerns in taking the additional \$300K profits in our results (see volume 5, page 1956). Without an appropriately worded document/agreement, I believed that we could not and should not record an additional US \$600,000 profits in the first half year results for MAC. From my own career experience and as recently as in July 2006 regarding the Airbus price increases, I knew that the corporate accounting and governance processes relating to publicly owned companies, such as Boeing, would require these companies to provide in their accounts for any increased retroactive prices prior to the end of their quarter reporting. If they did not, it was highly unlikely that the finance teams within these publicly owned companies would be allowed any commercial agreements to increase prices. Accordingly, I expected that any efforts on the part of the Boeing procurement team to allow retroactive pricing and payments would be met with a wholly negative response from the Boeing finance teams.

~~181.~~ I did not receive a response to my emails of 2 August or 7 August 2006 from anyone, including Mr Dekker, so on 9 August 2006 I indicated an exception regarding the Boeing 737 Integrator Kits in the ‘Comments’ box of my MAC Sub-Certification sign-off sheet for quarter two of 2006 (which MAC requires from all its senior officers for them to record any material business/financial or risk issues known to them) (see volume 5, page 2006). Sub-Certification sign-off sheets and quarterly certification letters are required by MAC's corporate governance processes from each corporate officer to discharge its statutory duty

under Canadian law in certifying the health of the company. I refer to my sub-certification sheet Q2.2006 (see volume 5, page 2006). I was anxious that MAC could be signing off on quarterly earnings statements without any supporting documents for the higher pricing from Boeing reflected in the figures reported in the statements. I fully expected that by drawing this to the attention of MAC by means of my comment in the Sub-Certification sign-off sheet, I would trigger a further review of the issue with Mr Dekker and Mr Neill.

3-182. At the board meeting on 10 August 2006, a discussion took place about the accounting treatment of certain property and balance sheet matters at Ellanef, and Mr Edwards summarised the position as “the right hand not knowing what the left hand is doing” (see volume 1, pages 269-270). The accountancy treatment of Ellanef’s agreed price reductions was not discussed, however. Despite being a senior officer of MAC, neither Mr Dekker nor Mr Neill ever informed me what had been done about the accounting treatment of the prices or my sub-certification “comment” note. At the time, I assumed that I was being ignored and decided to raise the matter again when I was in Toronto in the week commencing 18 September 2006 (the week I was terminated), as part of my aim to step-up the effort to get the Boeing contract pricing amendments agreed by no later than December 2006 and to get it properly considered in good time before the Q3.2006 final results. In their report, following their independent investigation into my concerns, PwC state at paragraph 9.48 in their final report of August 2007 (see volume 2, page 716) the following in support of my protected disclosures:

“In March 2007, following further consultations with EY regarding the appropriate accounting treatment for the Boeing revenue accrual as part of the year end audit process, John Dekker indicated that he now agreed that since an agreement in writing from Boeing had not been obtained, the revenue accruals should not have been taken at the 2006 quarter ends since they failed the revenue recognition test. We note that EY does not carry out quarterly reviews of MAC’s results.”

And in paragraph 9.54 (see volume 2, page 717)

“Brian Little’s position that the inclusion of profits with respect to reversal of price reductions on the Integrator kit was made in the absence of a firm undertaking or agreement from Boeing is supported by PwC’s analysis and by MAC’s conclusion that revenue should not have been accrued at the 2006 quarter ends.”

Effectively this means that PwC agreed with me and that the increased profits reported in Q1.2006 and Q2.2006 (US \$600k prior to my termination) and a cumulative C\$904K at the end of Q3.2006 had to be removed which should have resulted in an increased loss of that amount in the Q4.2006 and FY 2006 results.

~~4~~-183. The MAC earnings report for quarter four of 2006 (see volume 1, page 299), released to the financial markets/TSE, shows that the gross margin (7.5%) in the fourth quarter of 2006 was significantly below market expectations. I know now from the PWC report that at least part of this fall in quarter 4 was ~~because that~~ some C\$904K of profits claimed in the MAC Earnings statements for Q1/Q2/Q3 increased the overall losses in the Q4.2006 earnings statement. This C\$904K contributed to a reduction of Gross margin to 7.5% - the lowest % in a quarter in the previous 20 quarters / 5 years. This was not what the TSE financial analysts were expecting as was clear from their questioning in the Q4.2006 webcast on 4 April 2007 and from the fact that MAC's share price fell by almost 20% at one point shortly after the report was released.

~~5~~-184. The Toronto Globe and Mail (G & M) newspaper on 5 April 2007 summed up the general reaction of the market analysts (from the FY2006 webcast – 4 April 2007) in Q4.2006 in the commentary from Angela Barnes (see volume 7, page 2901) - *“Magellan’s Aerospace Corp’s fourth quarter and full-year results didn’t make the mark and so analyst Cameron Doerkson of Versant partners Inc. has cut his rating on the stock to “hold” from the “buy” he had raised it to less than two months ago. “Although we had relatively low expectations for {the fourth quarter}, the reported results were clearly disappointing and we no longer have the same level of confidence in a return to profitability in the near term”. Mr Doerkson said in a report yesterday. The full text of this article has 167 words”*

~~6~~-185. Despite several detailed questions from analysts on the earnings webcast for the first quarter of 2007 on 14 May 2007, MAC's management team were unable to answer fully the basis for the decrease in the fourth quarter of 2006 and the subsequent improvement in the first quarter of 2007.

~~7~~-186. As I have said above, my experience of public companies caused me to believe that Boeing were unlikely to agree to anything which meant a retroactive impact on their earnings or cash in prior quarters. Indeed in one of the only two additional exhibits in the Final PwC report (exhibit 9.31 – see volume 8, pages 2964-2968) for the Boeing revised pricing and extended contract (to 2012) we can read that Boeing in their 1 June 2007 letter to MAC state *“Boeing has agreed to structure the payments of the prices increases in accordance with Magellan and Ellanef’s request (ref the attached term sheet) with higher integrator kit pricing being paid from 1 June 2007 to 31 December 2007.”* This of course means that Boeing, in accordance with normal industry and financial practice, have chosen as part of the overall commercial agreement to incur the increased “premium” prices of \$132000 per unit during the balance of their current FY2007 before reverting to normal purchase prices”. This is precisely what I originally anticipated in my assessment in August 2006 (see volume 5, page 1956). Boeing is making no retroactive pricing or payments. This is therefore consistent with my analysis and PwC /E&Y view regarding revenue recognition and profits in Q1 and Q2.2006, as I had stated in my protected disclosures prior to my termination. (I note that in the MAL

Q3/2008 earnings report (document 3481,webcast 3496/3502/3503/3505 and then document 3506) there was a \$10.4m one-time retroactive price adjustments with a European customer (not publicly disclosed as A340 settlement).Crucially the accounting for this did recognise the impact on sales revenue and profitability in prior years as at the MAL website document 3506. This on the face of it would, I believe and understand, be the proper accounting treatment for retroactive price adjustments in accordance with Magellan revenue recognition policy. This was NOT that reflected in the quarterly earnings reports following the Boeing 1 June 2007 agreement.)

Likely accounting impact associated with non-recurring costs on the Airbus A340 –500/600 programmes

~~8-187.~~ By way of background, Aeronca is a wholly owned subsidiary of MAC based in Ohio, USA. Its main customer and over 50% of the revenue is from Aircelle (previously Hurel Dubois). Aeronca and Aircelle developed and together manufactured the engine nacelles to be fitted to the Airbus A340-500/600 aircraft. This is a four-engined aircraft (so four nacelles – engine pods/enclosures - per aircraft plus spares), with Aeronca as a risk-sharing sub-contractor.

~~9-188.~~ Prior to the A380 super jumbo, the A340-500 and -600 were the largest aircraft in the Airbus family. At the time of the launch of the A340-500/600 aircraft, the market expectation was for the sale of some 300 to 500 aircraft over the period to 2020. My understanding was that MAC/Aeronca expected to amortise its investment (i.e. once off research, design and development costs of the product called non-recurring costs or (“NRC”) in the aerospace industry) over 250 aircraft sales. At the time of MAC’s decision to “invest” in the A340 nacelle project about a decade ago, this was therefore at the low end of the market expectations for sales of the A340-500/600.

~~40-189.~~ The actual (NRC) and production inventory/learning costs incurred by Aeronca associated with the A340 contract had significantly exceeded initial estimates and during 2004 and 2005 there were many commercial discussions held with Aircelle to reach a contractual settlement. This was achieved in a March 2005 agreement (see volume 3, pages 849-879). The agreement provided an escalation formula to determine future price increases for that A340 product.

~~44-190.~~ Consistent with aerospace industry practice, the A340 development and learning costs were capitalised in the balance sheet as assets and assumed to be recouped (i.e. written off or “amortised”) against the profits on the nacelles/exhaust systems delivered as aircraft were sold.. The ability to amortise these capitalised costs is clearly dependent upon the future profits achievable under the related contract, which in itself is a function of the actual sales

of aircraft and spares coupled with the ability to manufacture the components at a profit margin, consistent with the related estimates.

- | ~~42-191.~~ To put MAC's investment in the A340 programme into context, MAC's FY06 financial statements showed a total investment in A340 Engineering and Development costs and production inventory at well over 40% of the assets of just under C\$100m, for customer-contracted projects in inventory. At the end of FY 2006 the company's balance sheet (see volume 5, page 1830; or volume 2, page 683) therefore included in **excess of C\$40m** of A340 – 500/600 capitalised NRC and production inventory (learning costs).
- | ~~43-192.~~ In its Financial Statements for FY 2005 in the Management Discussion and Analysis (see volume 4, page 1502) MAC stated *“The Corporation relies on customers' delivery projections to determine the number of units over which to amortise non-recurring costs. Should deliveries not reach the number projected, any unamortized balance that remains would then need to be charged to cost of revenues which could have a material adverse impact on the Corporation”*.
- | ~~44-193.~~ In the notes to those financial statements regarding Inventory (see volume 4, page 1508) MAC stated : *“The Corporation is in negotiation with one of its customers over amendments to pricing with respect to an existing long-term contract. While it is probable that the Corporation will be successful in its negotiations, the final outcome is not determinable at the present time. If the negotiations are not successful or the final terms differ from what the Corporation expects, the Corporation may be required to record a loss provision on this contract. The amount of such provision, if any, cannot be reasonably estimated until such amendments are finalized”*.
- | ~~45-194.~~ This statement was not in the FY 2004 financial statements but I understand was included in FY 2003. The comment I understand was in respect of Aeronca/Aircelle commercial negotiations.
- | ~~46-195.~~ Not long after the commercial agreement was signed with Aircelle in March 2005 it was clear that the cost estimates were not being met and in particular the pricing and cost of BETA 21 materials were significant and causing large losses on the project. This gave rise to a number of actions but a dispute regarding the interpretation of the escalation formula and the numbers to be used for Aeronca pricing became a major issue between Aircelle and Aeronca.
- | ~~47-196.~~ Included in my initial Head Office tasks from June 2005 was making an assessment of the various Gross Margin/profitability challenges and understanding the related existing commercial contracts. It soon became clear the A340 would be one of the four major areas in which we had to secure new pricing/commercial agreement. As Mr Neill, the President of MAC, had been involved in the project from the outset and therefore had all the history we naturally deferred to him in leading the solution although the whole

executive team were generally involved in some way. Mr Edwards was in fact the Magellan Aerospace President and CEO when the initial A340-500/600 contract was approved by the Board and signed in 1998. My experience of him during the time of my Senior Officer role on this project was that he had an very good knowledge of the history and nacelle product having been involved at the MAC Board and as executive CEO with Airbus, Hurel Dubois and then Aircelle.

~~18~~197. On 2 December 2005 I also received an email from Mr Micklewright, the Vice President of Procurement in Airbus UK (see volume 4, pages 1144-1145), asking for some comments regarding MAC financial status which he had received from his Toulouse colleagues in which it was said that Aircelle had suggested that Aeronca/MAC was potentially bankrupt and in which he acknowledges the challenges in MALUK.

~~19~~198. To assist me in understanding more about the Aircelle projects in advance of the Group's forthcoming pricing negotiations with Aircelle Mr Dekker sent me an email on 22 December 2005 titled "Refreshed Aircelle Program Profitability with Best and Final price offers" (see volume 4, pages 1213-1214). While not the primary purpose of this email it indicated that on the basis of the current assumptions, the MAC Group was expecting to use a 6.5% Divisional Selling and General Administrative ("SG&A") cost for Aeronca and was then forecasting a PBIT loss of c. \$13m on the A340 programme, after \$10m (6.5% of overall production costs) of SG&A expenses. Paul Gilbert (CFO- USA) told me that this would normally be fully reviewed at the end of each quarter and I decided to leave it at that based on my limited knowledge at the time.

~~20~~199. On 3 January 2006 an email update was sent to Mr Butyniec by Mr Paul Gilbert, copied to me, which used a SG&A - 7% (see volume 4, pages 1239-1240). Mr Butyniec replied on 3 January 2006, in which he said "*Thanks Paul for your summaries of the costs on the said programs. My concern is that we keep changing the numbers until they look like we need them to be. We have removed all of our opportunity in our last offer, and face only risk if we again lower the price. We need a real offer in writing from them now. We are negotiating with ourselves and have been for months.....*" (see volume 4, page 1241).

~~21~~200. As part of an email update headed Wednesday night – Toulouse debrief, to Mr Neill (copied to Messrs Butyniec, Dekker and Edwards) on 19 February 2006 (see volume 4, pages 1437-1438), I commented on amongst other matters, the A340 programme. This email set out the current situation regarding sales campaigns and my concerns that some Airbus internal estimates of production volumes for the A340 –500/600 programme were for just 75 sales from that time. I copied my email to Mr Edwards so that he would also have this information as we progressed through the next few months, as the matter was such a big one for MAC given the scale of its "investment/assets" in the A340 programme.

~~22-201.~~ At the end of 2005 and early 2006, it was becoming increasingly well known within the aerospace industry that Airbus's A340 was losing market share to the competing Boeing twin-engined 777 aircraft. Accordingly for the December 2005 quarterly certification letter, signed 24 February 2006 (see volume 4, pages 1457-1460), I stated that I was aware of the continuing challenges for Aeronca regarding future A340 programme volumes and that we would need to keep this under close scrutiny during 2006. Following receipt of the Final draft PwC report in June 2007 I decided to obtain for the first time myself the TEAL report (a respected market analyst /commentator) for June 2005 (see volume 8, pages 2981-2984). This stated their production estimate for the A340-500/600 of 242 aircraft and that the A340 had weight and performance issues. Their Summary title initially called it Airbus's Uncertain Quadjet in 2005 and then by 2006 Airbus's Tragic Quadjet and in April 2007 Dead Plane Flying.

~~23-202.~~ Because of my growing concern about our estimates of sales in the EAC compared with the declining market and manufacture expectation of sale on or about 16 March 2006, just before MAC's board meeting on the 17 March 2006, I informed Mr Dekker in person that MAC's financial statements were based on an assumption regarding Aeronca's ability to recoup NRC on the A340 that MAC could no longer reasonably believe to be accurate. Accordingly, I said that MAC would have to review its financial statements to ensure they accurately reflected the Group's profitability and assets in the second half of the year. **This was my Twenty-first Protected Disclosure.** Since the first hearing at the Employment Tribunal in 2007 I have withdrawn this as a "Protected disclosure." To avoid any confusion, the numbering of my remaining Protected Disclosures has not changed.

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~~24-203.~~ In the period between April and July 2006, I became more involved in the Aeronca business and got to know in detail about:

~~24-203.1~~ *Aeronca's Contractual dispute with Aircelle on the application of the cost escalation formula* – the contract included an escalation formula whereby Aeronca could achieve an increase in pricing, dependent upon increases in the underlying costs. Aircelle had a different interpretation of this formula to Aeronca and it seemed that we would have to consider arbitration. I participated in a number of telecoms on this subject including with the relevant legal counsel in France (see volume 5, pages 1732-1741). The contract whilst "sole source" was only to December 2012 – not life of programme –20 years) and therefore that aspect needed to be carefully considered as part of any arbitration and the wider contracts for the A380 and A318 projects.

~~24-203.2~~ *Importance of future BETA 21 prices to profit margin*– A special "Titanium" material called BETA 21 is used for the A340 Exhaust system and its cost is an important factor so estimates of future pricing and usage trends for BETA21

represented an important consideration in the assessment of the overall programme profitability. It also seemed that the price escalation formula agreed in 2005 had a 0.31 /31% level (see volume 3, pages 873-875) which was working favourably for MAC in the near-term but with continuing significant changes in BETA21 pricing that “gain” would change against MAC as the actual costs of BETA21, as a proportion of the overall manufacturing costs, rose above that 0.31 / 31% level.

~~24.3203.3~~ *The ultimate Estimate to Complete (EAC) analysis for the project* – this represented the internal assessment of the overall programme profitability for all NRC investments, which was prepared on a quarterly basis. In summary, this analysis seeks to confirm that the future estimated profits from a programme exceed the investment in NRC to date (i.e. the aggregate sales revenues exceed the aggregate costs for each programme). For the A340, this analysis was prepared for the period to 2012, consistent with the contract expiry date with Aircelle (see volume 5, page 1830).

~~25.204.~~ I also presented to the MAC board on 11 May 2006 (see volume 1, pages 247-248) a 20-year outlook for twin aisle (wide body) aircraft and the risks and opportunities of the Corporation’s participation in that market. The key messages of which were that this was a key growth market – driven in particular by the Far East and that the new product offerings by Boeing and Airbus in this area would be substantially improved products offering significant opportunities and risks for the participants. The commercial basis for involvement was increasingly design – build with risk-sharing investment. The impact on the A340 was relevant in that the A340 was a twin aisle aircraft and it seemed Airbus would shortly have to decide what it was going to do with that aircraft (A3456?) and its marketing/sales strategy. Mr Edwards also advised the directors during that same Board meeting that Aeronca’s contractual issue with Aircelle on pricing for the A380, A340 and A318 was a significant issue for the Corporation to resolve.” See relevant Board minutes (volume 1, page 246).

~~26.205.~~ At the Farnborough Airshow in July 2006 Airbus finally confirmed the growing speculation that they would now market a new version of its A350 twin-engine aircraft (A350XWB), which would include market segments where it had been offering the A340. Further, Airbus had also dropped the idea of creating an upgraded A340 model in favour of re-launching its A350 aircraft. This could only mean even worse news for the A340 programme, now even Airbus was downplaying their A340 in favour of A350. I also got to hear that Airbus own internal assessments of sales scenarios were such that this would mean that Aeronca/MAC should now prudently expect no more than between 60 and 100 sales and deliveries of A340 aircraft by Airbus from January 2007. This would mean

between 155 and 195 production aircraft in total against original MAC programme estimates of 250 for amortisation. In a conversation at Farnborough Airshow in July 2006 with Mr Butyniec, held after he had met Aircelle representatives to try and progress the commercial negotiations on the application of the pricing escalation formula, he said he too was concerned about MAC/Aeronca ever recovering its NRC investment on the A340 – 500/600 programme.

27-206. I also understood from the various discussions in the few months up to and at the July Farnborough Airshow that it was the MAC team's view, and particularly Mr Hahnelt, the MAC Vice President of Strategic Global Sourcing, that the BETA 21 price inflation was now expected to reduce after the significant increases in the last couple of years. Prices increase of approximately 8% per year from 2007 for the rest of the decade and then drop a little. I knew from my other analysis that if that were so then the 0.31 factor in the escalation formula would be of assistance for longer in our Cost calculations – at least beyond the end of the current contract in 2012 (see volume 3, pages 873-875). From various internal business discussions with MAC/Aeronca in Q1 FY06, I also understood that there was expected to be only a small improvement in the usage of the BETA21 materials in production at Aeronca during 2006 and that this was expected to be the base level for the foreseeable future. This meant that the business had struggled to achieve any meaningful improvement in usage levels but that did not seem to be a major point in the commercial arguments about the “best production cost estimates” with Aircelle. This is important as it seemed there was little Aeronca could do to reduce the overall BETA 21 cost (see volume 4, page 1209C).

28-207. The effect of the various issues detailed above was that I concluded the expected number of A340s to be sold was likely to be significantly lower than had previously been anticipated by Aeronca/MAC and, on the basis of this latest market information, the EAC analysis for volumes for the period to 2012 was unlikely to be correct. In my opinion, this would have significant adverse implications on the capitalised value of the NRCs in MAC's Group balance sheet, as the Group's ability to amortise the NRCs would be significantly compromised.

29-208. This together with the Aeronca quarterly EAC Q2.2006 gross loss of \$5m shown in the Q2.2006 EAC (Document EAC – see volume 5, page 1830) plus SG&A of at least another \$5m + meant there were over \$10m losses on the project even before considering the full impact of this substantial reduction in over 800 exhaust system/nacelles in the programme by 2012. I also wish to record that in the final draft report PwC correctly state at paragraph 8.61 that “*Brian Little stated in the EY presentation that his concerns regarding the treatment of the A340 were raised following Q2 FY2006*” - and this has been deleted in the final report.

~~30-209.~~ As a result I believed that over \$10m needed to be written off from the capitalised NRC value in the MAC balance sheet. If disclosed fully, such an adjustment was likely to have a substantial adverse impact on MAC's financial position and importantly, likely to be a significant consideration in the context of the forward profits guidance provided by the Group to the Toronto Stock Exchange.

~~31-210.~~ Accordingly, and while I was in Toronto, I discussed my concerns regarding the balance sheet treatment of the A340 NRCs with Mr. Neill in his office after lunch on 8 August 2006 for about 10/15 minutes. I said that even with a favourable outcome on the arbitration with Aircelle regarding the price escalation formula, we could still be facing a substantial write off of an element, and possibly all, of the current Balance Sheet asset value for NRC. I discussed with Mr. Neill the history of the product, the reduction in expected production volumes, the airlines flying the aircraft, the dispute with Aircelle over the interpretation of the contract pricing escalation clause, and the Estimates at Completion (EAC). I stressed that I believed that the issue needed to be addressed in this 2006 financial year. I considered this the number one priority for the year and a very important issue for Mr Neill to address.

~~32-211.~~ On 9 August 2006, by way of follow up to that meeting and to try to ensure that the matter was formally discussed and/or reviewed again, I inserted into the 'Comments' box of my Sub-Certification sign-off for Q2 FY06 "*A340 Aeronca – To discuss*" (see volume 5, page 2006). By making this comment, I was trying to reinforce my concern that the level of profit/loss was dependent on its ability to recoup various costs on future sales of the A340, such sales and deliveries looking increasingly unlikely." . **This was my Twenty-second Protected Disclosure.** I expected Mr. Neill and/or Mr. Dekker to follow this up with me, however neither of them did so before nor after the MAC board meeting whether as part of the Corporations' internal disclosure controls process on the Q2. EAC.2006 or otherwise.

~~33-212.~~ After the MAC Board on 10 August 2006, while I was still in Toronto, I had a meeting with Mr. Neill and Mr. Edwards on a number of matters. During this meeting, I told Mr Edwards of my concerns regarding the A340 programme and also informed Mr Edwards and Mr. Neill that on the basis of my own market intelligence, I understood that three scenarios were being considered by Airbus for the A340 programme – namely 60, 80 or 100 further aircraft deliveries from January 2007. Compared with the assumption of a further 800 exhaust system deliveries from January 2007 assumed in the EAC this represented a downgrade of perhaps 50% and in my opinion, had serious adverse implications for MAC's ability to recover the NRC in the Group balance sheet against the future profits from this programme, which we would have to address through our accounts and disclosure to the stock market. **This was my Twenty-third Protected Disclosure.**

~~34-213.~~ On the evening of 14 September 2006, when I was back in the UK, as part of the same 29 minute telephone conversation with Mr Dekker, referred to earlier in my witness statement (see volume 6, pages 2237-2240), I informed Mr. Dekker that I had done some more work and information on this subject during my holidays and that my previous concerns about the recoverability of the NRC had still to be addressed. I emphasised that this was a live and worsening issue and suggested that we discuss it again when I was in Toronto during the following week for the Group strategy and budget meetings, believing that it was essential that we address these issues ahead of publishing the Group's Q3 or certainly the Q4 quarterly and annual financial results for 2006. **This was my Twenty-fourth Protected Disclosure.**

~~35-214.~~ As a consequence of my dismissal on 18 September 2006, I was of course not party to any further management discussion of the accounting treatment for the A340 programme.

~~36-215.~~ As I have mentioned previously, PwC were appointed in January 2007 to conduct an independent investigation into the various allegations raised by myself and specifically, in respect of the A340 programme, that:

~~36.1215.1~~ The production expectations for the A340 should be downgraded substantially

~~36.2215.2~~ The NRC balance would therefore have to be "amortised" over a significantly smaller number of aircraft/spares

~~36.3215.3~~ The Group had not performed an adequate investigation or assessment of this information or its impact.

~~36.4215.4~~ The reduced production volumes should lead to a material reduction in the carrying value of the NRC inventory included in the balance sheet, compromising the profits of the Group

216. I met PwC in Belfast on 29 January 2007 and then again in Toronto on February 9/10. Among other things I briefed them as fully as I could on my concerns on this A340 issue (see volume 7, pages 2811-2813). Although I was informed by Sterl Greenhalgh of PwC (UK) at the end of March (see volume 7, page 2865) that the North American team wished to meet /discuss matters with me during April I had no follow up from them after that comment.

216.1 Following the interlocutory hearing on Friday 28 November 2008 and in response to the Tribunal Order dated 3 December 2008 at Point 2 - "*On or before 4 pm on the 1st of December 2008 the respondents shall disclose any documents to which it alluded when asserting in its 2006 financial year statements that the respondent "relies on external market forecasts to determine the number of A340 (500/600) units over*

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which to amortise non-recurring cost being those documents provided to Ernst and Young in its audit and at point 3 “On or before 4 pm on the 11th of December 2008 the respondents shall disclose any documents provided to PwC for the purpose of its whistleblowing investigation which contain forecasts made by publications relating to the market for the A340 (500/600). the Respondents solicitors have disclosed a number of documents which have not been identified as relating to those for Point 2 (EY) and those for Point 3 (PwC). A significant number of these documents or related information have not been included in the PwC report, Exhibits or conclusions and have not previously been disclosed in this case. The majority of these are now in the new Volume 9 supplementary bundle between document 3597 and 3721. (The relevant MAL Q3.2008 earnings report and webcast transcripts are also included at 3480/3099E1-1 to 3506/3099G1-1.) I have written to the Respondents solicitors to ask for clarification about which documents precisely do Magellan assert were provided to whom. In light of this disclosure I have also emailed separately to Mr Dimma (Chair of the MAL Audit Committee), Mr John Tracey of PwC, Mr Don Linsdell of E&Y to confirm which documents a) EY had in their possession and were used to inform their MAL FY2006 audit and testing and b) which documents PwC had in their possession (particularly those which did not inform part of their PwC reports and Exhibits). It is a matter for Mr Dimma and PwC to explain to the Respondents counsel/solicitors and thence to us why these documents/information were excluded/ignored in their May and August 2007 forensic “independent investigation” reports and also not previously disclosed in this case in accordance with the Respondents legal obligations for disclosure. My Lynch QC has asserted, during the interlocutory hearing of 28 November 2008, that “it would be wholly inappropriate to duplicate the complete forensic accounting already done by PwC”. I do NOT accept his assertion, based on the factual evidence available, that PwC have carried out a “complete forensic accounting investigation” nor indeed its “independence” in the Final Report and the conduct of the seven month process from late January 2007 – end August 2007.

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216.2 It is planned to deal with these matters further by reference in part to the documentation and this original witness statement during my Examination-in-Chief with Mr Stafford QC.

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4-217. In the context of the concerns raised by me repeatedly across 2006, I was interested in the accounting treatment of the capitalised NRC in the MAC FY06 annual financial statements, as released in April 2007 (see volume 7, pages). From my review of these FY2006 financial statements, I concluded that the concerns raised by myself had been addressed in preparing these financial statements by what appeared to be the following narrative inclusions (italics highlight changes from the FY05 financial statements) but that no financial losses/adjustments to the asset value had been recorded:

4-217.1 **MAC Financial statements FY2006 - Assessment of Risk Factors: (Page 14)**

(see volume 7, page 2881): “The Corporation relies on customers’ delivery projections as well as external market forecasts to determine the number of units over which to amortize non-recurring costs. Should deliveries not reach the number projected, any unamortized balance that remains would then need to be charged to costs of revenues which could have a material adverse impact on the Corporation”

~~4-217.2~~ The addition of the reference to external market forecasts had not been included before in any financial statements.

~~4-3217.3~~ **And in Note 3 Inventories FY2006 (Page 27)** (see volume 7, page 2892):
“Learning Curve costs involve measurement uncertainty, and accordingly, the carrying amounts could be materially different from the amounts recovered. Due to the long-term contractual periods of the Corporation’s contracts, the Corporation may be in negotiation with its customers over amendments to pricing or other terms. Management’s assessment of the recoverability of amounts capitalized in inventory may be based on judgements with respect to the outcome of these negotiations. If the negotiations are not successful or the final terms differ from what the Corporation expects, the Corporation may be required to record a loss provision on this contract. The amount of such provision, if any, cannot be reasonably estimated until such amendments are finalized”.

~~4-4217.4~~ Again here you will note the underlined text/narrative, which was not in FY2005.

~~2-218.~~ Whilst I was unable to determine with certainty the reasons for the text changes from the previous year, I concluded that the Group had based their assessment of the balance sheet carrying value for NRCs now on at least two external market forecasts and that the arbitration/litigation in Paris process with Aircelle, in regarding the application of the price escalation formula had now been lodged. In particular it also seemed that if no loss could be estimated/assessed, despite the asset valuation on the MAC Balance Sheet of more than **C\$40m** Canadian GAAP rules, did not require any action from an accounting and financial perspective. Certainly this was different from my UK GAAP understanding.

~~3-219.~~ The Disclosure certificates (Sedar filings) for Toronto Stock exchange disclosure (TSE) E Disclosure for FY 2006 show this.

~~4-220.~~ Following the Employment Tribunal order on 6 June for its disclosure, I received the “final draft” PwC report on 20 June 2007 I was surprised that the document had been issued as a final draft without me being afforded an opportunity to comment on the draft ,as had apparently been afforded to certain people within MAC when it stated in the PwC report at para 3.12 (see volume 2, page 629) *“We have provided oral updates of our progress to the Audit committee and a draft of this report for consideration. A copy of this report (excluding the Executive summary) was provided to MAC for comment on its factual accuracy. While we have taken into account comments made by Audit Committee and MAC, the final content of this report has been a matter for PwC alone”.*

~~5-221.~~ This section 8 of the report only contained 5 Exhibits yet it was the subject on which they did report which I anticipated most supporting analysis/work would be required ~~given and~~ its materiality to the MAC balance sheet. The Exhibits were.

Exhibit 8.1 Settlement agreement between Hurel-Hispano, Aeronca Inc. and MAC, dated 11 March 2005 (see volume 3, pages 849-879).

Exhibit 8.2 Schedule from Airbus website entitled “Orders, deliveries, Operators – Worldwide “ dated 31 January 2007 (see volume 7, pages 2814-2817).

Exhibit 8.3 Estimated Average Cost to Completion prepared by MAC for the periods ended Q4 FY2006, Q2.2006 and Q4 FY2005 (see volume 5, pages 1829-1831).

Exhibit 8.4 Report issued by Forecast International Inc. entitled “Airbus A340” dated April 2007 (see volume 7, pages 2924-2934).

Exhibit 8.5 Internal engineering report entitled “Durability analysis on Aircelle A340-500/600 Exhaust system”, by Dr Raj Thamburaj (Director of AMES, Orenda) and accompanying email dated 14 March 2007 from Rich Neill to Stephen Moore (PwC) (see volume 7, pages 2851-2856).

~~6-222.~~ On 25 June 2007 I sent an email to PwC Lead partner John Tracey (see volume 8, pages 2977-2978) in which I cited a couple of examples including A340 where I considered an invitation to comment on the report was appropriate before it was finally finalised.

~~7-223.~~ Eventually I was instead informed by Mr. Jewett, the MAC Audit Committee’s counsel, via email on 12 July 2007 that “*PwC is of the view that further contact with you will not add to its investigation or conclusions and the Audit Committee has accepted this view*” (see volume 8, page 3002). In my response to this email on 17 July 2007, I said that “*Your answer does not really address the primary question I asked of Mr Dimma. According to the draft report, PwC showed earlier versions of it in whole or in part to the Committee, and management (para3.12). I asked if I was to be afforded a similar opportunity, which seems to me to be procedurally fair, consistent with Mr Dimma’s 5Feb letter of engagement to PwC and is I understand the usual course of action in such matters in UK practice. However I note that I am not going to be given this opportunity and the reason you have given for it, which in part you attribute to PwC*” (see volume 8, pages 3003-3005).

~~8-224.~~ In their final PwC report, released at the end of August 2007, PwC concluded that while I was correct in asserting that the volume expectations for the A340 aircraft were being downgraded based upon market events, my allegations were on the whole unfounded from financial reporting and accounting perspectives. While volume expectations for the A340 aircraft had been downgraded, it was PwC’s opinion that it was not reasonable to conclude, at this stage of the programme, (they said 33%) that it would be probable that the programme would incur a loss. No additional exhibits or updated exhibits had been added to the A340 section of the Final PwC Report. I was disappointed that this conclusion had been reached without any further discussion with me outside of the original briefing months before which was also not to Mr Russell Goodman – the PwC partner leading that

part of the analysis / report). Specifically, I was disappointed that PwC's analysis did not show any obvious consideration of the following:

8.1224.1 **Airbus internal programme estimates:** Contrary to the narrative in the MAC's FY2005 and FY2006 financial statements that the Corporation relies on customers' delivery projections, there is no mention of Airbus' internal programme projections in the PwC report or any Exhibit. I was surprised that given the Group's numerous trading relationships with Airbus they were unable to at least 'sense check' their assumptions for the future A340 build programme. The last version of Airbus's own projections I had was dated 7 September 2006 (volume date – see volume 6, page 2117) which shows a build programme of 10 (40) for 2007~~8~~ and 15 (60) for 2008~~9~~. I was able to understand from internal Airbus sources that their latest production schedule on 20 August 2007 (before the PwC Final Report was released) stated 2008 – 10 (~~as before~~)~~reduced from 45~~, 2009 – 11 (~~reduced from 15~~) and 2010 – 9. It seemed to me that this was broadly consistent with what had been happening prior to my termination and the recent order intake for the last twelve months came from the sales campaigns of the Airbus-only customers (Lufthansa – 7 aircraft December 2006, Iberia – 3 aircraft August 2007) for their 2008 plus plans and 4 additional A340-600 aircraft ordered in June 2007 to assist the airline and Airbus transition processes on the A380 flight test campaigns from Etihad Airlines (MSN002,MSN004,MSN7,MSN009) (see volume 8, pages 3085-3089).

8.224.2 **Multiple external market references:** The FY06 financial statements now stated that the Corporation relied upon customers' delivery projections as well as external market forecasts (i.e. plural). The PwC report includes only one external market forecast for market/production run (para 8.67 (b), from ~~F~~Forecast International, a company based in the USA. Notwithstanding the lack of reference to multiple external forecasts, I regarded the choice of Forecast International for the sole market forecast to be odd given that this organisation was US based and had built its reputation on US military aircraft/engine forecasting (the A340 is an European civil aircraft). Also the analysis is based on a top-down market segment /market share approach rather than any combination of other approaches. As part of my first interview with PwC in January 2007, when asked about market forecasting by PwC, I had recommended Richard Aboulafia and the TEAL Group (see transcript of interview – volume 7, pages 2812-2813) but PwC appeared not to have followed up that suggestion. This, I have since learned from my own investigations, is especially relevant in that Mr Hoon Lee at PwC UK has been receiving the TEAL reports for some time. I subsequently discovered in July 2007 that the TEAL Group had been forecasting in each of their annual reviews,

issued in April 2006 (see volume 8, page 2993) and 2007 (see volume 8, page 2999), production of c. 135-140 aircraft across the full A340-500/600 programme life. I found it strange that PwC did not include reference to the TEAL reports and subsequent to receipt of the PwC report have myself obtained reports from other independent forecasters. While they use different methodologies, none of them forecast a build of more than 150 production aircraft and I assess the consensus view is 135 aircraft in total. This represented an almost 80 aircraft reduction from the estimates issued by Forecast International. The current Airbus Orders and Deliveries schedule on their website (as at 30 September – see volume 8, pages 3096-3098) shows a A340-500/600 total of 138 aircraft now on order. This is 15 fewer (24 cancelled/transferred) than the PwC Exhibit 8.42 of the same document which is dated 31 January 2007 and used in their Final Report (see volume 7, pages 2814-2817). This recognises the cancellation/transfer of the 18 aircraft by Emirates and 6 by Aeroline-as Argentines. This was widely known in the industry last October (2006) and the Emirates cancellation was commented on by Forecast International in their April 2007 report at PwC Exhibit 8.24 (see volume 7, pages 2924-2934). Finally the Air Canada A340-600 order shown for 3 is not considered “real” for the purposes of actual A340-600 deliveries - see document – volume 8, page 3083). In fact the only real speculation is how many of the remaining 6 Virgin Atlantic aircraft on order will actually be delivered – from 1 to 6 (see volume 8, page 3084; and volume 7, pages 2905 and 2903). Therefore the production run to 130 aircraft is generally regarded as secure (another 26 aircraft) with only speculation on the Virgin Atlantic orders. Few, if any other airline orders/additional inventory are now expected – indeed there is some speculation that some leased aircraft already in service might be handed back by their current operators. Meantime Boeing has over 350 aircraft back orders for the Boeing 777 family (see volume 8, pages 3080).

8.3224.3 **Spares analysis:** In estimating the total demand for A340 nacelle units, the PwC report (para 8.71 – see volume 2, page 693) contained a calculation of the likely demand for the complete spare exhaust system units based upon a life of 40,000 engine flying hours and an 8 year replacement cycle for the complete Aeronca product (i.e. an implied 5,000 flying hours per year). In my view, based upon available market information, this represents an overestimation, with the A340-500 and A340-600 averaging only 3,900 and 4,400 hours respectively. Indeed from my recollection, prior to my termination, the expectation was around 4000 engine hours per year as there was a high concentration of aircraft units within a small number of “premier” airlines. That would mean a 10 year cycle and of course it is not clear that aircraft will have every exhaust systems unit replaced with a complete new exhaust system. ~~F~~ Only Five of the world’s airlines have 60% of the

aircraft delivered or on order out of a total of 12 A340-500/600 aircraft operators
It is also important to assess what airline and third party repairs may take place and other methods of replacement/cannibalisation will occur. In any event the spares demand will largely be after FY2012 – the end of the current contract and the EAC period used by management and which PwC had therefore to consider (see volume 5, page 1830).

8.4224.4 Whilst choosing not to reflect the prevailing consensus market forecasts for the A340 production programme, PwC's report suggested that there would be a significant increase in the overall sale of spares to fill any contract production shortfall. This not only represented a fundamental shift in the basis for preparation of the EAC, it also assumed that the production programme extended beyond 2012, the expiry date of the Aircelle contract. In the circumstances, I considered the mathematical spares calculation included in the report to be at best, misguided. The EAC in the PwC report did not consider any volumes beyond 2012 (see volume 2, page 851; as per revenue recognition accounting policy, see volume 7, page 2890).

8.5224.5 **EAC calculation:** PwC's final draft report (para 8.59 – see volume 7, page 690), commented that from a review of the EAC calculations for the quarters from Q4 FY04 to Q4 FY06, it was apparent that management were updating the assumptions and forecasts with respect to revenues and costs on an ongoing basis. They further commented that the estimates with “*respect to: (a) the number of units to be produced and sold; and (b) the length of time to produce and sell them have remained unchanged at 1,285 units and until FY2012 respectively*”. It continues to be my belief that the first is materially inconsistent both with market expectations and internal MAC management discussions and the second is inconsistent with the implied production scheduling necessary to achieve management's volume assumptions. Both PwC reports fail to deal directly with either of these inconsistencies over the seven months of PwC analysis/assessment.

8.6224.6 **Revenue escalation and cost reductions:** Management's EAC analysis assumed that revenue pricing escalation would be achieved in line with MAC's contract escalation formula 'interpretation' rather than Aircelle's and that the Group would be able to achieve significant and sustainable cost improvements, including using 8% less BETA 21 materials in each future production unit. I was surprised that PwC accepted these assumptions, without adjustment, in the context of (a) ongoing contract pricing disputes with Aircelle (i.e. current arbitration process), (b) a history of underperformance for the MAC Group in achieving target cost and/or efficiency savings and (c) an assumption of volume driven overhead

savings which were not linked to unit delivery profiles (i.e. the cost improvements are not matched with volume increases) and (d) there was no evidence of forecast BETA 21 pricing information or the basis for the almost 8% reduction in the Q4.2006 EAC for BETA 21 usage in the PwC report or exhibits.

8.7224.7 **SG&A expense:** In para 8.33 of their draft report (see volume 2, pages 684-685), PwC state that CICA Section 3450, 'Research and Development Costs' "*requires that five criteria be satisfied in order for development costs to be deferred to future periods, to the extent that their recovery can reasonably be regarded as assured by expected future revenues less associated production, selling and administrative and further development costs*". Notwithstanding this reference and contrary to the analysis shared with me in December 2005 by Mr. Dekker (see volume 4, pages 1213-1214), PwC have excluded any deduction for future SG&A in arriving at an estimated programme profit for the A340 programme. When I added the SG&A at 6.5% for the minimum 60 production aircraft I was stating together with the \$5.2m gross loss in the EAC at Q2.2006 aircraft the minimum loss was over \$10m and then one has to add the impact of the reduced spares volumes. In my 29 minute telephone discussion with Mr Dekker on 14 September 2006 (see volume 6, pages 2237-2240) I had said that I had more information and thoughts re Arbitration with Aircelle and the A340 NRC's/escalation and we needed to review scenarios/options etc re rates and how to handle in FY06. I also indicated that I had discussed this with Mr Neill last month and would see him next week on Monday 18 September in Toronto. My notes summarise the conversation points (see volume 6, pages 2238-2240).

8.8224.8 **Contingency:** Notwithstanding that the EAC calculation requires "*many estimates by management*" (para 8.508), the PwC analysis failed to include any provision for a contingency (i.e. that not all outcomes are to the MAC's favour), as might have been expected when so much of the assessment is highly subjective. Such a treatment would have also been consistent with my previous experiences although I have no recollection of ever bringing this specifically to any of my MAC colleagues attention.

9.225. In the circumstances and absent consideration of the above issues by PwC in their final draft and then final reports, I, with help from a leading accounting firm, subsequently sought to replicate the analysis included within the PwC report, albeit adjusted for the various issues listed above. (Document 3277A -3277R) -The objective of this analysis was for me to identify the potential financial impacts of each of the highlighted items and specifically, the correctness of the management's assertion that there was no need to write

down the balance sheet inventory value of the A340 NRC. The output from this analysis and an explanation for each of the line items is set out below:

	<i>Notes</i>	Profit/(loss) before interest and tax
		\$k
Replication of Q4 FY06 EAC	(A)	(3,479)
833 exhaust systems by FY2012		
Adjustments:		
(1) Inclusion of SG&A costs		(9,581)
(2) Reduction in volumes		(23,889)
(3) Beta 21 escalation adjustment		(780)
(4) Cost contingency		(1,429)
Adjusted profit/(loss)	(B)	(39,158)
(5) Programme reprofiling beyond 2012 (if total of 150 spares by FY2021)		6,112
Adjusted profit/(loss)	(C)	(33,046)

Notes:

- (A) *In the absence of detailed calculations, I have been required to replicate management's EAC calculation at December 2006 from data included in PwC's final draft report*
- (B) *Calculated assuming that assessment is made to the end of the current contract period i.e. 2012 (with arbitration there must be some risk)*
- (C) *Calculated, assuming that the assessment is made for the period through to 2021, the estimated timeframe for production of all spares (150 rather than original 265)*

~~40.226.~~ Taking each of the line items in turn:

~~40.1226.1~~ **Replicated Q4 FY06 EAC:** In the absence of the supporting calculations to the Q4 FY06 EAC, as summarised in the final draft of the PwC report, we have modelled the stated MAC assumptions for pricing and costs, overlaid on an estimated production schedule for each year. Consistent with the PwC commentary, I have assumed total programme production of 1,285 nacelle units (four units per plane) with production of 833 units from January 2007. These units are sold at a weighted average price of \$220k each. Whilst as highlighted below, this analysis resulted in a significant difference from the profit as per the EAC (as summarised in the PwC document), I did not believe that this changed my overall conclusions reached from the table above.

Notes **\$k**

Per EAC:

Forecast net profit FY07 to FY12	(A)	(37,328)
Less:		
Inventory at December 2006	(B)	38,245
Net profit/(loss)		917
Balancing adjustment	(D)	2,562
'Replicated' net profit/(loss)	(C)	3,479

Notes:

- (A) Per paragraph 8.18 of the PwC final draft
- (B) Per paragraph 8.18 of the PwC final draft. Assumes (A) calculated before any amortisation of NRC/production inventory
- (C) Net profit/(loss) calculated by using the MAC assumptions detailed in the PwC final draft report
- (D) Represents the unexplained difference between the net profit/(loss) included in the MAC Q4 FY06 EAC and the replicated net profit/(loss) calculated by me from the assumptions detailed in the PwC final draft report.

10.2226.2 **Inclusion of SG&A costs:** Consistent with both the management analysis shared with me in late 2005 and early 2006 and CICA Section 3450 quoted in the PwC report, I have included a deduction for the estimated future SG&A costs, calculated as 6.5% of production costs.

10.3226.3 **Reduction in volumes:** Consistent with the external market estimates obtained by myself and from TEAL Group (see volume 8, page 2999), MB strategy consulting (see volume 8, pages 3015-3025), Merrill Lynch (see volume 7, pages 2935-2937), Documental Solutions (see volume 8, pages 3077-3078), and other respected individuals, I have reduced the total number of aircraft expected to be built under the current programme to 135 – when adjusted for aircraft built to date, this implies future production of 31 aircraft. Private customer aircraft sales seem to be the final opportunity for perhaps a few aircraft before the expected close of series production in 2010. In addition and on the basis of additional analysis performed for me by Mark Bobbi, (MB Strategy Consulting – See Mark Bobbi report of 27 August 2007 – volume 8, pages 3015-3025) a renowned aviation engine technical analyst, I estimated total spares production of 150 nacelle units – 18 spares have been built pre 2007, a further 20 are expected between 2007 and 2012, with a residual 112 produced post 2012. At a total production of 690 units (i.e. (135 x 4)+150), this represented a significant downgrade from the numbers included in the PwC report but was entirely consistent with all the third party commercial, market and technical information available to me and therefore, I assume the MAC management team.

10.4226.4 **BETA 21 escalation:** The EAC states a 10% pa increase in BETA 21 costs across the forecast period, although a higher variable price escalation (12 – 15%) is needed to provide the stated pricing in the PwC report and which is then

applied in calculating the contract price escalation (albeit currently subject to arbitration with Aircelle). Consistent with my understanding from last year, I have assumed 8% pa increases in 2008/09 with 6% pa thereafter. Consistent also with the position discussed in late 2005/2006 I have also assumed no reduction in BETA 21 usage over and above existing levels.

~~40.5226.5~~ **Cost contingency.** Consistent with my experience of wider industry practices, I have also now included a general contingency representing 3% of production costs (as calculated on the lower production volumes detailed above).

~~40.6226.6~~ **Programme reprofiling beyond 2012.** All EAC analysis both shared with me previously and contained within the PwC report, has been based on management's forecasts to the end of the contract life i.e. 2012. ~~This~~**Which** with the impending arbitration/litigation introduces risk in any contract renewal **and of course was also relevant for some of the banking covenants.** – Even assuming, as PwC's report suggests, that any decrease in sales of production units is met from sales of spares, these sales are neither subject to a formal contract nor will the assumed demand for the spares arise fully in the period to 2012. I have therefore calculated the benefit of including the sales of spares expected to be achieved in the period from 2012 (i.e. average 112 per my earlier commentary on volumes), which highlights the impact of including the sales of these units, albeit their inclusion is contrary to the stated basis of preparation for the EAC (per paragraph 8.598 **and 8.61** of the PwC draft report – see volume 2, page 690) and any EAC audit testing by E & Y (see volume 5, page 1830).

~~44.227.~~ My analysis has led me to conclude the following That it was not just the case that my belief was reasonable at the time, (EAC Q2.2006) but was actually correct and that MAC was facing a substantial loss on the A340 contract of at least \$10m (the Q2.2006 of \$5m plus SG&A of \$5m) and that a further and more detailed assessment of the size of the loss with the significant reduction in production build was needed to be made in order that we could assess and comply with our legal obligations in respect of disclosure to shareholders and the market as required by law and TSX rules (see volume 7, pages 2748-2755).

~~44.4227.1~~ The EAC failed to recognise either current market forecasts for the A340 programme or the commercial implications of the arbitration process with Aircelle. That remains my view today.

~~44.2227.2~~ The underlying data and analysis presented to PwC by management was flawed and in certain respects, incorrect.

41.3227.3 The accounting assessment for financial reporting purposes was inconsistent with my understanding and belief in respect of my and MAC financial disclosure obligations together with sound commercial and business judgement as a Senior Officer in the MAC team.

227.4 In summary, it remains my belief for the reasons given that a material reduction of over \$10m as at the time of the Q2 .2006 EAC, and perhaps now all of the MAC balance sheet NRC inventory (over C\$40M) , is necessary to reflect business reality and our obligations regarding Financial Reporting to the various stakeholders.

41.4227.5 I remained very concerned about this A340 subject and the PwC approach/Reports and particularly the basis of the documents and information which informed their conclusions. Sufficiently so that I emailed Mr Edwards and Mr Dimma directly on 11 September 2007 at document 3038, where they both recorded a “Read receipt” within a couple of hours. The full email text of this document is part of my relevant evidence.

Accountancy treatment of engineering overheads

228. In this part of my witness statement I have set out the concerns that I raised with my senior colleagues in MALUK and MAC regarding (1) the interpretation of a change in accounting policy relating to overheads in MALUK’s engineering division with the nature of the business going forward; and (2) that the draft MALUK statutory accounts which would be filed with Companies House for financial year 2005 would misleadingly reflect a higher profit/lower losses if they did not properly reflect correctly the accounting treatment of the engineering overheads.

228.1 Following the interlocutory hearing on Friday 28 November 2008 and in response to the Tribunal Order dated 3 December 2008 Point 1 for Requests 13, 14 and 15 the Respondents solicitors disclosed the relevant documents. These documents are now included in the Volume 9 Supplementary Bundle - in part for request 13 - “Draft” MALUK FY2005 statutory financial statements sent to E&Y – 26 October 2006 (documents 3548-3556) and 1 May 2007 (documents 3557- 3565). For request 14 – the E&Y Management letter dated 11 July 2007 for the FY2005 statutory financial statements at document 3566- 3575. For Request 15 – the Directors Audit Closing meeting minutes held on 10 February 2006 at document 3545 – 3547. These documents are all relevant to the case and have been requested from the Respondents solicitors since 19 October 2007 (document 3276) and 22 October 2007 (document 3277) following the EY/Jeffreys teleconference on 18 October 2007 – see document 3443/3099A1-2.

228.2 I have written to the Respondents solicitors on 18 December 2008 to formally ask for a number of these Tribunal Order document requests “Why did MR Lynch QC consider that these documents did not require to be disclosed as relevant in this case and did he advise the Respondents accordingly?” This includes Requests 13, 14 and 15. For

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example at document 3571 et al. Mr Lynch QC asserted for example that “Request 13 ...this is a classic fishing expeditionthere is nothing in the final document so let’s get the drafts” . Request 14 – “There is no reason to believe EY actually had suspicions despite signing off on the accounts. Therefore this is a classic fishing expedition. Disclosure should not be ordered because evidence is lacking. There is no reason to think EY did mention anything relevant in the letter (request 14) therefore there is no reason for disclosure. This is a fishing expedition and disclosure would be at odds with the over-riding objective and the heightening of the test of necessity.....If these documents are producedthis would prejudice the respondents.” Request 15 – “..... there is no evidence on this- it is just putting a hand in another pond and seeing if it shows something.....” . Requests 13,14 and 15 “it is not a question of BL knowing what is in the documents. To cross the line between fishing and non-fishing you must demonstrate some evidence of relevance. These documents were mentioned in a telecom, it was not an application. We stand by the lateness point”. My QC will deal with this further at the Tribunal.

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228.3 It is planned to deal with these Engineering Overheads matters further by reference to this original witness statement during my Examination-in-Chief.

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4-229. From 2003 to 2006 I had overall responsibility for MALUK’s engineering division. The majority of engineering work carried out by MALUK was for Airbus UK, and Mecachrome /Clairis of France, in relation to the A380 and A400M programmes respectively.

2-230. Prior to August 2006, the management accounts for the engineering division of MALUK charged all overheads (production and non-production) to the “profit and loss” account when incurred. Production overheads are those overheads that are attributed directly to the provision of design services. Production overheads were then recorded within “cost of sales” within the “profit and loss” account as incurred, whilst non-production overheads were reported within “selling, general and administrative” (SG&A) costs. Paul Precious (MALUK’s Financial Controller for the engineering division) analysed the financial performance of the engineering division on a monthly basis with his Engineering colleagues and myself and on a quarterly basis a comprehensive and thorough review.

3-231. The process of “capitalising” overheads involves recording overheads as an asset on the balance sheet rather than as a cost on the “profit and loss” account when it is incurred. This process can be problematic, as the company has to consider what its realisable value would be if it had to liquidate that asset – effectively how much cash would you get for the Engineering work that was not yet fully delivered from a customer or others. For engineering, unlike manufacturing, it is much more difficult to determine the relevant value of work in progress.

4-232. On 10 February 2006 I attended a meeting with Mr Dekker, Mr Smith and three auditors from Ernst & Young in the UK, (Barbara Hadfield - partner, Chris Gilbert and David Wakefield). (((I should note that in my recollection Mr Dave de Wolfe (E & Y partner from Canada) and Mr Underwood were not at the meeting although the agenda and PwC report may lead you to understand that they were – deal with in examination-in-chief.))) The purpose of this meeting, which takes place every year, is to review financial and

business audit matters for MALUK. It is known as the “directors audit-closing meeting”. At this meeting I said that the accounting treatment of (i.e. capitalisation) of design engineering overheads required careful consideration at a number of levels and I wished to be kept informed. I cannot refer you to minutes of this meeting as I never received any and the Respondents have not located them during the course of disclosure. It is therefore probable that such minutes do not exist. Not included on the agenda but I recall that one of the items that I was concerned about, and we discussed, was the Bournemouth inventory valuations at FY 2004 and FY 2005. Following the Tribunal Order of 3 December 2008 for Request 15 see the EY minutes now disclosed at document 3545. This is also referred to in the Management letter for FY2005 Statutory Accounts to the MALUK Directors from E&Y – document 3566-3575 - and also now disclosed following the Tribunal order on 3 December 2008 for Request 14. I note that this letter at document 3567 records “*For the UK statutory accounts further detail testing was performed to ensure that the inventory provision to be included in the financial statements for the year ended 31 December 2005 was correct. As discussed above this has led to an increase in the level of inventory provision by £1437k.*” I note also that neither set of E&Y correspondence assert, as stated in Mr Dekker’s written and oral evidence, that I accused E&Y of making an error on the inventory matter. There was a quick confirmation regarding the £2m A380 long-term asset /other debtors and the recent A380 amortisation contract amendment with Airbus at the meeting – note it is also not on agenda. Later that afternoon, before leaving for Bristol Manchester airport, I repeated my concern about the accountancy treatment of the engineering overheads to Mr Smith. He told me that we would discuss it further at a later date (see volume 4, page 1415). Following this Tribunal order on 3 December 2008 for the disclosure of these Audit Closing minutes of the FY2005 meeting and the FY2005 Management letter in July 2007 we can now see that some of PwC fact-finding evidence and conclusions (they did not include either document in their Final Report) are both variously wrong and incomplete. The Report certainly ignores both of these key documents /related information and cannot be regarded, as Mr Lynch QC asserts, a “complete forensic accounting independent investigation”.

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5-233. On 14 February 2006, I received an email from Mr Precious (see volume 4, page 1415) in which he informed me that he had been told by Mr Smith to adopt a change of accounting policy within the engineering division of MALUK, which would materially impact on the numbers. He went on to tell me that he had concerns in suddenly changing accounting procedures to that being suggested.

6-234. As the rationale for the change in accounting policy had not been explained to me, and because (based on my own engineering accounting experience) I believed that the revised policy was inconsistent with the nature of the business going forward, on 14 February 2006, I forwarded Mr Precious’ email of 14 February 2006 to Mr Smith. In my email I

demanded an explanation from Mr Smith as to why such a policy was being implemented (see volume 4, page 1416). **This was my Fourteenth Protected Disclosure.** Mr Smith replied by email later that day (see volume 4, page 1415) and stated that there was a possibility of the engineering division adopting the same policy as the rest of MALUK by absorbing overheads into the work-in-progress balance. He referred to my conversation with him on 10 February 2006 and acknowledged that I (and Mr Precious) had expressed concerns about the new approach. He also told me again that this matter was something that would need to be discussed amongst him, me, Mr Underwood and Mr Dekker, who was also a director of MALUK.

234.235 However, I was not involved in any follow up to this until the signing of my quarterly sub-certificate for the MALUK engineering management accounts for the fourth quarter /FY 2005 on 17 February 2006 (see volume 4, pages 1447-1456; and volume 7, page 2554). Both Mr Smith and I signed the quarterly certificates on the basis that the engineering management accounts were prepared in accordance with the usual accounting procedures and method of inventory valuation, as in financial year 2004 and 2005, but not the changed basis. I refer to the quarterly certificates for MALUK – Engineering for Mr Smith and I and through the discovery process my lawyers sought to obtain a copy of the relevant Management accounts but this has not been disclosed to my legal team. These have now been disclosed following the Tribunal Order of 3 December 2008.

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-MALUK Q4/2005 - Certification document for MALUK Engineering Division – Mr Little and Mr Smith signed 17 February 2006.
Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant cert-incorporated MALUK Management accounting packs . I have selected pages 3518 – 3523 from this disclosure. Please note at document 3518 the Actual Intercompany Loan from MAC to MALUK for £10123K. Also the reported Engineering inventory of £463K at document 3521 (also at Paragraph 235) and the supporting engineering inventory schedule at document 3523, which shows no overhead applied throughout 2005.

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I found no reason to certify any issues, as the Engineering management accounts did not contain any changes in the policy / method calculation of engineering overheads, and the provision for engineering bonuses were unchanged as per the MAC Board approved 2005 budget.

7.235.

8.236. Shortly before travelling to Toronto for the MAC board meeting in the week commencing 14 March 2006 I had one further conversation with Mr Smith about the accounting treatment of the engineering overheads. Mr Smith told me that he had looked at the capitalisation of the engineering overheads/inventory valuation and that it was not included in the MALUK audit adjustments (this was also the case for a FY2005 cost of circa £90k for engineering bonuses – which I will return to later). An email from Mr Smith to Mr Dekker and Mr Groot on 13 March 2006, attaching a Summary of Audit Issues 2005 schedule (Exhibit 5.4 to PWC's report – see volume 4, pages 1482-1483) - supports my recollection (and understanding) of my conversation with Mr Smith. At point 13 of the Summary of Audit Issues 2005 it states Eng overhead absorb - ~~£114k~~, with the comment

“Not included in adjustments but would be accepted by”. It is therefore clear that at that time it was not planned to reduce the MALUK losses. I received no other copies of emails or any audit adjustment paperwork, covering either the capitalisation of engineering overheads or bonuses, following the Audit closing meeting on 10 February 2006. For completeness please note under the Heading “Potential offsets at Number 1 Engineering Bonus of £90K” which I will return to later in the next section of protected disclosures.

~~9-237.~~ Between 14 – 17 March 2006, without - to my knowledge - having notified or consulted other directors of MALUK at a board meeting or otherwise, or sought board approval, Mr Smith and Mr Dekker adjusted the 2005 financial results by £114,000 profit in MAC by capitalising MALUK’s design engineering overheads. See the FY2005 financial statements. Paragraph 5.15 of PWC’s report (see volume 2, page 635) supports this. Later, PwC state that in the draft statutory financial statements for financial year 2005, the MALUK financial results were adjusted by £134,000 (see volume 7, page 2948) – [this is the May “draft version” now disclosed following the 3 December 2008 Tribunal Order request 13 at document 3568](#).- Paragraph 5.16 of PWC’s report also supports this (see volume 2, page 635). [The 9 December 2008 Disclosure of document request 14 - E& Y Management letter regarding FY2005 statutory financial statements on 11 July 2007 at document 3566 – 3573 is also highly relevant from a number of perspectives. I will deal with this further in my Examination-in-Chief.](#)

~~40-238.~~ As engineering inventory generally tends to be low at the financial year-end through appropriate commercial arrangements/milestones, as in the FY 2004 and FY 2006 it makes a complex assessment of the realisable value (cash likely to be paid if transferred/liquidated) difficult and generally unnecessary. I believe that the sole or principal reason for making this change was to reduce MALUK/MAC’s losses for 2005 and that the decision to do so was taken only a few days before the MAC board meeting on 17 March 2006 which was held just prior to publishing MAC’s results for financial year 2005. The losses would otherwise have been worse, caused primarily by the £1m plus losses in the fourth quarter of 2005 in MALUK’s manufacturing facility in Bournemouth.

~~44-239.~~ This assessment is consistent with my telephone conversation with Mr Dekker on 7 April 2006 in which Mr Dekker told me that MAC “needed” the numbers for the 2005 financial results, in light of the overall results for MALUK and MAC (see volume 4, page 1595). I refer to this telephone conversation in my email to Mr Precious on 8 April 2006 (see volume 4, pages 1590-1594).

~~42-240.~~ I understand from reading both PWC’s reports (paragraph 2.5(a) – see volume 2, page 597) that the other MALUK directors were apparently aware of the changes to the accounting policy, however I was not. If so they like myself signed the quarterly certificates for MALUK engineering management accounts for the first and second quarters of 2006

without any capitalisation of the engineering overheads, either explicitly or implicitly. See the accounts signed by Mr Smith on 30 April 2006 and by myself on 6 May 2006 (see volume 5, pages 1691-1700). At the end of Q1.2006 the non-capitalised inventory value had more than doubled to £950K from the beginning of January 2006 (these management accounts have also not been disclosed by the Respondents – now disclosed following Tribunal order on 3 December 2008 Request 2 at document 3533A/3524) and if the interpretation of the “new” policy was being applied by Mr Smith in the method proposed this may have created in excess of perhaps a further £100k profit for Q1.2006 in Engineering.

MALUK Q1/2006 - Document 1691- 1700 - Certification document for MALUK Engineering Division – Mr Little and Mr Smith signed 6 May /30 April 2006. Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant MALUK Management accounting packs. I have selected pages 3529-3534 from this disclosure. I have dealt with this further above in paragraph 240. Although it is asserted in the PwC report at paragraph 5.39 without the facts that three out of the four MALUK directors (Brian Little, John Dekker and Phil Underwood) were aware of a change in accounting policy/ calculation from the Audit Closing meeting on 10 February 2006 we can see from those EY minutes disclosed on 9 December 2008, following the Tribunal Order for Request 15, that the Engineering Overheads subject was NOT minuted – see document 3546 /3547 -- Point 2 audit differences . PwC did not include this document in their Exhibits or include any of the relevant information within their report. Nor for the avoidance of doubt did Mr Smith discuss any of this “agreed policy/method change” with me before signing the Quarterly certificate letter excluding any appropriate overheads inclusion. There was no reason for me to certify any issues as the “certified” Management Accounts did NOT have the incorrect engineering overhead adjustments formulae / approach applied to the financial results in the quarter. No audit adjustments had been made to the Opening or Closing balances. Indeed Mr Smith had signed these all off before me, so I let it sit for the meantime.

~~43-241.~~ On 9 June 2006 I received a copy of an email from Mr Smith, attaching the engineering overhead absorption figures for financial year 2005 (see volume 5, pages 1784-1786), which were apparently produced by Ernst & Young, for the capitalisation of overheads in financial year 2005. I could not understand why Ernst & Young had produced this (rather than Mr Precious or within MALUK). After reviewing the schedule briefly I realised that it was incorrect as it included production and non-production overheads and non-chargeable time, and took no account of losses or earned value or any commercial aspects with regard to realisable value on the inventoried contracts. I decided to do nothing for the present and pick it up at the next appropriate opportunity; certainly no later than when the MALUK Board discussed the statutory financial statements for financial year 2005 to ensure that a

proper discussion was held amongst the MALUK directors. The MALUK engineering management accounts and quarterly certificates for the second quarter of 2006 were signed by both Mr Smith and myself on 31 July 2006 and sent to MAC on 6 August 2006 (see volume 5, pages 1976-1984). Again, the management accounts we were working from did not include the capitalisation of the design engineering overhead. Inventory was stated at £523K for the end of the second quarter of 2006 (again the relevant management accounts have not been disclosed – [now disclosed following Tribunal order on 3 December 2008 Request 3 at document 3542A/3525](#)). I was comfortable that this approach was sound and it appeared that with their explicit or implicit approval of the quarterly certificates/management accounts so were the other MALUK Directors. I decided that we should though formally discuss at our next Board meeting or FY 2005 statutory accounts review and that I should find some opportunities at the relevant time to raise and finally conclude the matter.

[MALUK Q2/2006 - Document 1976 – 1984 - Certification document for MALUK Engineering division – Mr Little and Mr Smith signed 31 July 2006 but both on holidays – sent to MAC on 8 August 2006 Following the Tribunal Order of 3 December 2008 the Respondents have disclosed the relevant MALUK management accounting packs . I have selected pages 3538–3544 from this disclosure. I have dealt with this further above in Paragraph 241.](#)

[There was no reason for me to certify any issues as the “certified” Management Accounts did NOT have the incorrect engineering overhead adjustments formulae/approach applied to the financial results for the quarter. No audit adjustments had been made to the Opening or Closing Balances. Indeed Mr Smith had signed these all off before me; again . On this occasion I had written to him in an email on 21 July 2006 at document 1895 – see below para 241.242](#)

[This was of course another example of what PwC referred to in their Final draft report at paragraph 2.40 when they noted that MAC as a Public Company had poor Financial Control and at A\) “ *Accounting adjustments made with insufficient supporting analysis or documentation*” . At that time I was unaware that Mr Smith had already discussed the matter with Mr Groot in MAC and it seems had made his own “Engineering overhead” calculation based on the £523K of reported inventory, which he then confirmed to Steve Groot. This would adjust the documented and submitted Engineering profitability results by a **minimum increase of £10k . Maximum £20K Target £10k as disclosed at Exhibit 9.18 \(document 1882-1883\)** in the Boeing 737 section of the PwC reports. Mr Smith did not advise anyone in MALUK Engineering or me that he had done so. This was similar to the situation when MAL in fact independently adjusted the MALUK results by CAD 107,000 without any reference to anyone in MALUK, including Mr Smith, in Q3/2005 – see PwC paragraphs 5.22 – 5.27 at document 636/637.](#)

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241.242 In my email of 21 July 2006 to Shawn Smith (see volume 5, page 1895) providing the updates for the MALUK earnings statements for the second quarter of 2006 for the board, I commented "Engineering - your recommendation" to draw the subject to Mr Smith's attention so that we could speak about it again. In his response Mr Smith said he had spoken to Mr Groot: "have had a discussion with Steve as such did not see the need for an email." He stated this, despite the fact that we were increasing our profits by some £ 276K (circa c\$600K) for the quarter two 2006 earnings statement on other Airbus price changes (retroactively) there, and that these would then pass into MAC financial statements for the Quarter and the TSE. No response/recommendation was made on the Engineering subject which remained as per our signed quarterly certificates.

~~44.242.~~

~~45.243.~~ Following this up I tried to generate a discussion on the same subject by sending an email on 2 August 2006 to John Dekker (see volume 5, page 1955), in which I said "Engineering – I do not know where you/Steve got to with Shawn on this item. I believe we should leave unchanged in the slides". This reflected the management accounts for the second quarter of 2006 without the capitalisation of any design engineering overheads / inventory valuation. There was no response from Mr Dekker and he presented the slides on the previous accounting base at the MAC Board on August 10 and in the Q2.2006 Earnings release.

~~46.244.~~ My next opportunity to raise the subject was whilst in Toronto, on the morning of 11 August 2006, (following MAC's board meeting on 10 August 2006), when I attended a meeting with Mr Dekker in MAC's boardroom. During our meeting I informed Mr Dekker that I had a real concern that the draft MALUK Statutory Accounts for 2005 would misleadingly reflect a higher profit if they did not properly reflect the change in the accounting treatment of the engineering overheads and likely value. **This was my Fifteenth Protected Disclosure.** Our meeting lasted between one and one and a half hours, and we discussed a number of topics, in addition to the MALUK Statutory Accounts for 2005, including Mr Edwards' comment to Mr Dekker (the previous day, I was not present) that MAC was unwilling to provide MALUK with further cash funding.

~~47.245.~~ On ~~Thursday~~ ~~Friday~~ morning of ~~18~~7 August 2006 I went into Mr Smith's office to ask Mr Smith about a couple of matters, including the current status of the statutory accounts for MALUK for financial year 2005. Mr Powell and Mr Precious were also in the office working together. After a brief discussion about when the draft statutory accounts would be ready, I mentioned the capitalisation of the engineering overheads/inventory valuation subject and the FY2005 engineering bonuses. I stated that we needed to recognise these in the FY 2005 statements and Mr Smith said that the draft FY2005 statutory statements were not yet produced but should be available in the next 4 weeks. I responded that this was fine as I would return from my week in Toronto about then.

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~~48-246.~~ On 1 September 2006 I received a copy of an email from Mr Powell to Mr Smith regarding engineering audit adjustments for 2005 (see volume 6, page 2102). In this email he stated that he had now processed the FY 2005 audit adjustments including “*£134K inventory increase due to the overhead absorption*”. This had the effect (together with the removal of the engineering bonuses) of increasing the profits from £550k to £750K for Engineering in FY 2005 and reducing the overall MALUK losses by £200k.

~~49-247.~~ I knew the August 2006 management accounts would now be incorrect but waited to see how the changes had been reflected. They were circulated to me on around 11 September 2006 (see volume 6, pages 2156-2172) and I responded by email on 12 September 2006 (see volume 6, page 2155) I draw your attention to page 12 of the management accounts (see volume 6, page 2163) where it shows that in August 2006 the full £134K audit adjustment had only been applied for the 2005 audit adjustment from that point. I then participated, though on holiday, in the MAC staff meeting for over four hours (please see the record of this telephone conversation on my telephone bill to confirm the length of my participation (see volume 6, page 2174). After this call I sent an email to Mr Smith (see volume 6, page 2180) where I asked again, so as to try to engage him in a meaningful discussion “*do we have a draft of the stat accounts for 2005 yet incorporating same? to review* regards Brian”.

~~20-248.~~ On 14 September 2006, Mr Powell sent an email to Mike Jones (Financial Controller-North), with a copy to me (see volume 6, pages 2235-2236), providing a summary which indicated that the engineering division would achieve “*a loss in September in the region of the budgeted PBIT figure of £78K (of the breakeven that was previously forecast) and that its likely that our 2006 PBIT will be in the region of the budgeted figure less the change due to the stock value audit adjustment i.e. a PBIT loss of - £80K.*”

~~21-249.~~ In their “final report” PwC in principle agree with me on the two aspects of the valuation approach to the £134K that they considered. At paragraph 5.48 (see volume 2, page 641), PwC recognise that the analysis of production overheads was flawed (as I had seen in the 9 June 2006 email/attachment schedule). They say “*Information we have seen and explanations provided to us suggest certain non-productive and administrative costs were absorbed into WIP. The EY schedule includes “written off labour costs” of some £411,000, part of which is absorbed into WIP. In our experience non-productive costs of this kind are not generally absorbed into WIP.... the calculation also includes labour costs - relate to staff time on tasks such as training, quality and office administration rather than production. Again in our experience costs such as office administration are not generally absorbed into WIP. MALUK may wish to consider whether the inclusion of these costs was consistent with SSAP 9.*

~~22-250.~~ At paragraph 5.62/5.65 (see volume 2, page 644) they also recognise that no assessment had been made of losses/net realisable value, - “we did identify that the audit adjustment

failed to consider loss provisions made against certain WIP items.no adjustment was made however to the value of design engineering overheads to be absorbed in respect of these provisions”.....which they calculated to be approximately £20K less for MALUK. I say this is the realisable value from an accounting perspective only.

23-251. They do not mention or have the requisite information for the other dimension, which I believe has to be assessed and that is the likely realisable value of the asset if it was liquidated/work moved etc. – its commercial value at that point. These matters must be considered - work warranty arrangements, MALUK premium charge-out rate impact of any work transfer, amortised versus non amortised business costs and any relevant commercial aspects regarding loss potential/change to ensure any losses are fully considered. For this accounting policy to be effective it has to assess all three of these aspects. The adjustment in this category will almost always reduce the inventory value.

24-252. For all of these reasons and to simplify and promote focus on the real effective direct hour utilisation and total cost base of engineering we had always costed the non production overhead and assessment of losses/commercial status to the MALUK engineering profit and loss account as incurred until August 2007 as this would be a conservative view. At least once a quarter we engaged in a full review of all the projects and the related accounting and then made both the accounting and commercial assessment with regard to inventory valuations. I understand that the audit threshold for accounting items is £50K or C\$100K for E & Y audit. When the inventory valuations are “corrected to reflect” the realisable value taken in aggregate with the engineering bonuses of now £52,129 I accordingly believed that these issues represent a material adjustment in the context of the original draft Statutory Financial statements at 31 October 2006 to the final published MALUK FY05 financial statements.

25-253. After my termination, with the help of Airbus and some of my ex-colleagues from MALUK, including Mr Paul Nokes, I was able to further pursue the billing/recovery of engineering monies. For example, we billed Airbus on 20 September 2006 for some £209,517. MAC made a profit of \$ 221K in the third quarter of 2006 and would not have done so without my specific pre and then post-termination efforts to get bills out and payments in. The swing in the forecast from a loss in engineering of £78K to a profit in September 2006 to £202k was largely also a direct result of my efforts. (see Sept 2006 MALUK Engineering accounts – 30 September 2006 – volume 7, pages 2546-2567) the cash was received later in October 2006.

254. It also seemed to me that the accounting treatment adopted for engineering overheads in 2005 was consistent with the treatment applied in relation to engineering overheads on the “long term asset” for the A380 contract. In January 2006, I signed an agreement on behalf of MALUK with Airbus to be compensated for additional work MALUK had carried out

during the design process that was not in the original agreement at the beginning of the project. It was agreed that MALUK would recover from Airbus \$2.2 million of the overrun design costs. This arrangement is known within MAC and MALUK as the “amortisation deal” and together with the original agreement negotiated by Mr Archer and myself with Airbus UK meant that almost US \$10 million dollars would be paid to MALUK progressively as Airbus delivered up to 350 of their A380 super-jumbo aircraft. If less were delivered we would share that risk for approximately \$30K per aircraft set. This is similar to what I was describing earlier with the A340. The development and research costs incurred in relation to the amortisation deal were recorded as non-recurring costs (“NRCs”) within “other debtors” in MALUK’s balance sheet. PwC agree with me paragraph 2.5d (see volume 2, page 597) when they state “*Brian Little is correct to assert that engineering production overheads are not included within the NRC sitting within other Debtors on the balance sheet of MALUK relating to the A380 contract*” and later in para 5.55 (see volume 2, page 643) where PwC say “*Included within other Debtors in the 2006 MALUK draft statutory accounts (exhibit 5.16) is included £2,054,000 (2004: £1,639,000) which falls due after more than one year and which is disclosed as relating to “amounts recoverable over the length of the contract on the A380 programme”* (see volume 7, page 2948). As I have mentioned earlier, this was dealt with briefly at the audit-closing meeting on 10 February 2006, where I gave a quick update on A380 project/orders status and the long term asset was now valued at just over £2m in the management accounts following the A380 amortisation contract amendment which I had signed in January 2006.

For completeness the final published FY 2005 statutory accounts increased the value of the A380 Long Term Asset in Other Debtors from that now disclosed in the October 2006 FY2005 Draft financial statements at document 3563 and May 2007 at document 3554 and as PwC reported as above from £2,054,000 to £2,466,000. This would have the consequent effect on the FY2005 MALUK statutory financial statements filed with Companies House on 11 July 2007.

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Accountancy treatment of bonuses payable by MALUK to various engineering managers

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4-255. When Mayflower Aerospace was originally formed the engineering management and staff were generally contractors and not permanent staff. From the outset of my involvement with Mayflower Airbus rightly insisted that we build a core of permanent engineering technical and management staff. As an example see my email to Iain Gray of Airbus on 1 March 2003 (see volume 3, page 729) who at the time was leading the A380 engineering efforts in the UK. As the key people were contractors and generally self-employed and largely capable of gaining steady workload for them selves it was difficult to offer a permanent job position which offered comparable remuneration levels. To address this challenge of creating an engineering core and providing the right remuneration package we came up with a form of discretionary annual bonus arrangement (15%) to get them on board as employees. See, for example, the bonus letter to Mr Martin Bellia dated 26 May 2006 at Exhibit 6.9 of the Final PwC Report (see volume 4, pages 1743-1744).

~~2~~256. During 2002 and 2003 those permanent staff were well aware of the poor financial situation in which we were operating and not once did any of them ask me about a bonus. When Magellan acquired the business in late 2003 these employment contracts transferred via TUPE. For 2004 as I said earlier the engineering business had a “hard time” at various levels and the net result was that we lost some £550K in the financial year. Again no-one to my recollection asked about any bonus. We were doing so badly at ~~at~~ one point I discussed closing the Engineering business with Mr Edwards (as Mr Neill was ill for a period) unless we could ~~findeome~~ find a plan that transformed our overall performance. Many of the engineering management team then worked on an overhaul of the business with me from September 2004 through 2005 in a process we called 100 day plans which targetted improved selling rates, cost base, and project management and control g. (See the email from Martin Bellia to me on 30 June 2005 (see volume 3, page 999). The plans were intended to improve the selling rates, cost base, project management and control and of course win new work to make is a successful profitable business.

~~3~~257. In the approved MALUK Engineering budget for 2005 we provided for a £80K bonus pot for the various people in the engineering management team (see volume 3, pages 809-810; and Exhibit ~~6.75.5~~ of the Final PwC Report – volume 6, page 2105-2106).

~~4~~258. Mr Underwood sent an email on ~~268~~ February to Mr Neill (see volume 3, page 847) regarding the MIC plan for MALUK and in my next visit to Toronto I raised the matter of Engineering employment contracts/MIC with him. Also, when information regarding the Respondents’ Management Incentive Compensation plan (“the MIC plan”) was issued in March 2005 (see the attachment to Jo-Ann Ball’s email to Mary Walker, Phil Underwood and myself dated 15 April 2005 – volume 3, pages 895-899), I had several discussions with Mr Neill concerning the payment of bonuses to MALUK’s engineering staff, and about the treatment of bonuses within MALUK, for example, with Mr Neill in April 2004, November 2004, February 2005, April 2005 and with Mr Butyniec in March 2006 (see volume 5, page 1646) in which I explained the legal and UK employment obligations placed upon MALUK to exercise its discretion on bonus payments in a fair and consistent manner. I recall that during one of our conversations in the first half of 2005, Mr Neill and I reached an understanding that MALUK’s engineering management team who were employees (the permanent v contracting situation) would receive a discretionary bonus in their contracts, if certain targets were met. I refer to these discussions at point five of my first email to Mr Neill and Mr Dekker on 8 April 2006 (14:40) (see volume 4, page 1591). He said that he intended to review the whole MIC plan – as Mr Butyniec had stated that he believed it needed to be reviewed too. In September 2005 I saw an email on the subject dated 29 ~~A~~ugust 2005 from Ms Ball to others at MAC (see volume 3, page 1032) and assumed that this would all be dealt with by them) and they would keep me informed of the relevant decisions.. I then continued to focus on the business issues I was dealing with

in MALUK – winning HdeH ribs bid/ a380 amortisation deal and the engineering workload together with my new role in MAC with the focus on understanding the new business opportunities, gross margins on key projects and contracts and the key tasks for FY2006. In hindsight I should have asked more about the resolution of these issues but I thought the documents we were sending, largely from Mr Bellia explained the business environment in which we were operating and the logic of what we needed to do. For example to me in his email of 25 July 2005 (see volume 3, pages 1005-1007) where he states “ the continued pressure on sub-contractor rates and permanent salaries within engineering means we need to insure our position within the Airbus supply base . the key part of this is to retain and reward the key people within the engineering division by keeping their salaries competitive”

~~5-259.~~ In mid September there was a review of the financial statements for the various businesses, including Engineering which involved the re-statement upwards of the profits for the month by the adjustments of provisions and accruals. These were items which Mr Smith should be aware of as they included COS adjustments including bonus accruals. —see See emails from Paul Precious to Clare Pettifer on 19 September (copy Mr Smith and Mr Underwood) (see volume 3, pages 1043-1044) and Brian Little to Shawn Smith and Victoria Fitzgerald dated 22 September 2005 (see volume 3, page 1048). This schedule is shown at PwC report Para 6.22.

~~6-260.~~ Martin Bellia sends an email on 7 November 2005 to Ms Ball (see volume 3, pages 1105-1112) on the subject of Pay and rates in UK Engineering Division in which he says “*I attach a summary description of the Uk engineering division salaries and sub-contractor ratesI hope everything is clear and that you are able to gain a thorough understanding of the UK market in engineering.*” I forwarded email this to Mr Edwards on 10 December 2005 “ *please find some more info re engineering salaries in the UK. Thanks for your support on Friday re this - I know I should have got all this through earlier but it was also in corporate for the last 6 weeks too* “ (see volume 4, page 1185).

~~7-261.~~ In response to an email dated 10 January 2006 from Mr Smith about bonus schemes, I notified him by email later that day (see volume 4, page 1279) that a bonus provision had been discussed in Canada on a couple of occasions and the fact that he was unaware did not mean there was none. I recalled that following the poor July/August 2005 results in Bournemouth the August 2005 financial results were reviewed in head office and adjustments made to the results following that review (see volume 3, pages 1043-1044). I then forwarded this email to Mr Neill the same day (at 10:46 – see volume 4, pages 1286-1287) with details of when our discussions had taken place. A number of emails in January 2006 followed regarding the bonus provision (see volume 4, pages 1281-1285, 1288, 1291-1292, 1298-1302, 1306, 1312, 1359, 1368). I was surprised that this was becoming such a

major issue as it was clear that the Engineering business had met their budgetary targets and indeed “lost” some £436K of additional profits in engineering in the A380 amortisation deal so as to provide a wider business gain for MALUK as a whole – both in the current FY and beyond.

~~8-262.~~ On 1 February 2006, I responded to an email dated 31 January 2006 from Mr Dekker, in which he sought to clarify the process for payment of bonus entitlement and/or discretionary bonuses (see volume 4, page 1377). In my response, I explained that I had discussed the MIC plan with Mr Neill in February and April 2005 but that nothing was ever done, i.e. no proposals were ever put forward regarding how to apply the MIC plan to the engineering management team or the employment contracts. I also could not understand why he was taking this position as he had been a director on the MALUK Board since the beginning and I thought was well aware of the engineering contracts. It soon became apparent that this was being heavily influenced by the disappointing results in MALUK as a whole and that the enormous losses (£1m plus) in Bournemouth in October/November 2005 (Q4.2005) and problems in other North American facilities had affected the financial results substantially. I then went on to notify Mr Dekker that the engineering management team had met their strategic and operational targets, therefore the MIC plan for the engineering staff had clearly been met. As such, there was a business justification as to why each engineering manager should receive the recommended bonus payment of part of the 15%..

~~9-263.~~ In another email dated 1 February 2006 (see volume 3, page 1377), Mr Dekker informed me that he did not intend to debate the appropriateness and levels of bonus that I had determined certain individuals should be entitled to. Mr Dekker acknowledged that I had presented strong views on this. He went on to say that his concerns related only to the manner in which any entitlement was handled. He stated that once appropriate documented authorisation was obtained, the amounts could be released.

~~10-264.~~ My understanding was that this was being reviewed by Mr Neill and at the audit closing meeting on 10 February there was no discussion or documents about adjusting the MALUK Financial results to remove the bonuses. Following the 3 December 2008 Tribunal Order for Request 15 the Audit Closing meeting minutes are at document 3545-3547 – this confirms there was no discussion. This is further confirmed in the disclosure of Request 14 of the E&Y Management letter at document 3567 under the heading “Engineering and Head Office Bonus accruals” where the EY letter concludes “Management have represented to us that this was a discretionary payment that was agreed in 2006 (and not specifically relating to performance targets met in 2005) and therefore have treated this as a 2006 cost. **We have obtained specific representation from the Directors to support the position adopted by MALUK in relation to this”**.-In an

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email to Mr Bellia dated 1 March 2006 (see volume 4, page 1467), which followed up a voicemail from him, Ms Ball stated that, *“unfortunately we are not in a position to release the payment of any bonus within Magellan.”* I was not concerned about this as I had understood from the beginning that the approval of any bonus payouts would be after the March Board and had always accepted that.

~~41-265.~~ In the week prior to going to Toronto for the 17th March Board meeting ([this was week ending 3 March 2006 and that Friday my telecon with Mr Coley](#)) Mr Smith advised me that they had not been removed in the audit adjustments and I should work through this with Canada the following week (see volume 4, pages 1482-1483). There was no indication to me in that week in Canada that the bonuses would not be paid rather -that they simply required a further review with Mr Edwards the next week. Therefore I was surprised to receive from Mr Bellia, who worked for me, an email that he had received from Mary Walker on 20 March 2006 which had not been copied to me (see volume 4, pages 1511-1512). This email contained an earlier email dated 18 March 2006 from Ms Ball to Ms Walker which stated that *“the bonus for the Engineers was not approved today. Brian was told that this required further review and a decision should be made by the end of March. Just wanted you to know first hand. Regards, Jo-Ann”*.

~~42-266.~~ When the email was forwarded to me by Mr Bellia I forwarded it to Mr Neill on 20 March 2006 (see volume 4, page 1511), stating that *“I had understood you would try and resolve early this week?? I had also understood jim and yourself were happy re the younger engineers now – circa £10K – can you please confirm regards brian”*, and to Ms Ball (see volume 4, page 1512), saying *“it would be good manners/etiquette to have copied me on your email. I also understand that Jim and I had agreed to do the younger engineers uplift as part of March payroll – circa £10k...thanks and regards brian”*.

~~43-267.~~ Because of the nature of the Engineering employment situation re permanent versus sub-contracting and the history of our permanent employment contracts I was also concerned that MALUK had capriciously exercised its discretion under the managers’ contracts of employment. There had been no indication at any time that there would be a problem with these employment contracts or the discretionary bonuses and accordingly, in the last week in March (and again in mid April – see volume 4, page 1604) 2006 I informed Mr Neill and Ms Ball that failing to even consider paying the engineering management team their discretionary bonuses was likely to breach the managers’ respective contracts of employment. This was my **Sixteenth Protected Disclosure**.

~~44-268.~~ During a conversation with Mr Neill that week, Mr Neill informed me that he was reviewing /exercising the discretion to pay bonuses, with Mr Edwards. I received Mr Neill’s update on 27 March 2006 (see volume 4, page 1515) advising me that *“Murray was supplied all the detail on Thursday and we hope to get the feedback tomorrow Will keep you posted”*. And

then again in an email on Saturday 1 April (see volume 4, page 1589): *“Murray Delayed until Tuesday next week so it will be Weed am before we know the full story”*.

~~45-269.~~ In light of these discussions/emails, I was surprised to receive an email from Mr Precious on 7 April 2006 (see volume 4, pages 1595-1596), in which Mr Precious informed me that he had been instructed by Mr Smith to make various audit adjustments. This included ignoring the liability to pay the bonuses of around £80,000 which had been recorded in the FY2005 management accounts to MALUK’s engineering management team for the financial year 2005.

~~46-270.~~ On or around 17 March 2006, MAC published its Annual Report and Financial Statements for the financial year 2005 on a consolidated basis which included an additional £80,000 profit contributed from MALUK by reason of the removal of these engineering bonuses. I believed that the decision to reverse the £80,000 accrual for MALUK’s engineering staff bonuses was an example of MAC engineering the profitability of the Group to mask the company’s substantial trading underperformance. This was also consistent with my telephone conversation with Mr Dekker on 7 April 2006 in which Mr Dekker told me that MAC “needed” the numbers for the 2005 financial results, in light of the overall results for MALUK and MAC. I refer to this telephone conversation in my email to Mr Precious on 8 April 2006 (see volume 4, pages 1595-1596).

~~47-271.~~ There is much email correspondence from then to mid May 2006 but here I simply want to say I was becoming more and more anxious about the outcome and delay and trying to manage the various aspects of what was happening – this was really “stressful” as it seemed that for accounting purposes we were simply going to ignore the employment contracts of the Engineering staff,, particularly when they had achieved/surpassed the main objectives.

~~48-272.~~ On 5 May 2006 Ms Ball sent an email to Mr Bellia ,Mr Edwards, Mr Neill, Mr Butyniec, Ms Walker and myself (see volume 5, page 1682), Re UK engineering salaries attaching a final version for the engineering group commenting *“that adjustments were made after discussion with Martin Bellia for performance factors..... the new total is 60.7K regards Jo-Ann”*

~~49-273.~~ Mr Bellia sent an email reply to Ms Ball on 8 May 2007 (see volume 5, page 1704) in which he said *“Thanks for the spreadsheet – I was only too pleased to provide the “performance factors” for you.... The end result, however still falls short for Simon Bendrey, John Poulain and Phil Underwood the set of figures that Brian and I worked out late last year were arranged so that those who had been showing the greatest commitment to the business were rewarded the most and I believe these guys are not quite there yet.....I have included a copy of my report on salaries from last year. All of the major conclusions are still valid – indeed we have lost even more perman~~ent~~ staff since I wrote it in November 2005..... I hope this helps in reaching a final arrangement.”*

~~20-274.~~ Finally in Mid May after the MAC AGM we had a meeting involving Mr Edwards in which it became clear to me that he had not fully grasped all the UK contracting and permanent staff dimension sufficiently to understand my legal and business concerns. He did however acknowledge that it was clearly important to the business and me and that we needed to put the subject behind us and fix the contracts of employment for the future with integrated MIC for the relevant people and could I achieve this for approximately £70,000 cash impact in FY2006. I said I would try and do that but wanted to ensure that it was all completed properly so that this never ever happened again.

~~21-275.~~ I then completed the various assessments over the weekend and proposed making adjustments of £72,379 for the Senior Engineers. Mr Edwards authorised the paperwork which resulted in a payment of £52129 as a bonus to the engineering management team for the financial year 2005 and the remaining sum was associated with the salary changes for the balance of the year (see volume 5, page 1716).

~~22-276.~~ New employment contract letters needed to be sent to the employees so I said that I would draft these with Ms Walker on my return to MALUK with the appropriate employment terms. [\(see document 1742\)](#) This we duly did but on 29 May 2006 I received an email from Ms Ball (see volume 5, pages 1769-1772) which referred to Head Office sending out the letters and associated employment contracts. I queried this as they needed to be on MALUK letterheading. To be sure I was correct I asked Jon Coley of PinsentMasons and received an email dated 8 June confirming that was the appropriate course of action (see volume 5, page 1781). The letters were then issued to the various employees with the relevant adjustments [See letters – examples - signed by Mr Butyniec – copy Ms Ball - at documents 1746 – 1759 and the specific comment “.....The bonus payment is in recognition of your continued efforts in support of Magellan Aerospace \(UK\) during 2005.”](#)

~~23-277.~~ As I was aware that the bonuses were in respect of F2005, I knew that those costs needed to be included in MALUK's Statutory Accounts for FY 2005 so that they would reflect a full and fair view of the company's financial position. On the morning of ~~18~~ August 2006, I interrupted a meeting in Mr Smith's office between Mr Smith, Mr Precious and Jonathan Powell (who would be Mr Precious' successor when Mr Precious left employment at the end of August 2006), regarding the handover arrangements from Mr Precious to Mr Powell. I asked Mr Smith what the current position of the Statutory Accounts for 2005 was. I informed Mr Smith that MALUK was likely to be in breach of its obligation to publish a true and fair view of MALUK's financial position, unless the FY2005 Statutory Accounts reflected the payment of approximately £60,000 bonus although it was obviously going to be paid in FY2006. **This was my Seventeenth Protected Disclosure.** I recall that Mr Smith explained that he had only just started preparing the Statutory Accounts for

2005 and that they should be available in about 3 to 4 weeks. I said fine as I would then have returned from Toronto and we could review all the detail together. Notwithstanding the reversal of the £80K bonus provision initially included in the FY05 management accounts, a bonus of £52,129 was paid in May 2006 - my Grounds of Complaint and Whistleblowing presentation mistakenly said £60k and July 2006,. According to PwC at para 6.61 (see volume 2, page 660) of the PwC final draft report “ at 17 March 2006, Murray Edwards had formed the view, and communicated to his senior team, that no bonus was due to MALUK engineering staff in relation to 2005”. Nothing had ever been said to me about reversing the bonus provision in the MAC FY2005 financial statements – simply that the bonus subject would be reviewed the following week – until the audit adjustments email referred to above on 7 April. However PwC at para 6.70 (see volume 2, page 662) and myself believe that this conclusion is surprising in the context of letters sent to the employees and much of the email correspondence that preceded these letters which stated that “the bonus payments related to performance in 2005 of the individuals concerned.” – as above.

24-278. The PwC final report at Para 2.8 (see volume 2, page 598) refers to FRS12 Provisions, contingent liabilities and contingent assets and requires that a provision is recorded when “an entity has a present obligation (legal or constructive) as a result of a past event , it is probable that a transfer of economic benefits will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation”and at 2.10 “If it was indeed the case that senior management had determined that a bonus would not be paid , the reversal of the bonus accrual was appropriate. If however senior Management’s intention as of 17 March 2006 had been to pay a bonus, the accrual should not have been reversed.” This is in respect of the MAC financial statements The MALUK statutory financial statements for FY2005 should have been filed with the Companies Registry by 31 October 2006 in which case the payments referred to as bonuses for FY2005 for the MALUK engineering management paid in May 2006 were a known liability in respect of FY 2005 prior to filing in the UK.

25-279. Additionally my specific concern was with respect to the MALUK FY2005 statutory accounts as I stated above. The combination of the engineering overheads /inventory valuation and the bonuses would represent a material change in the FY2005 statutory financial statements.

26-280. With regard to the employment contracts and bonuses PwC stated in Para 2.11 (see volume 2, page 599) that “whilst it is a matter of legal opinion not accounting interpretation, and ultimately, it is a judgement that is appropriate for MAC rather than us to make ,our findings tend to suggest that a bonus payment was at the discretion of MALUK senior management (and that final approval of any such bonus payments was needed from MAC) .This is of course what was achieved finally in mid May with Mr Edwards approval. . This resulted in the payment of the FY2005 bonuses in May 2006 and

a restructuring of the various employment contracts with the engineering management concerned at MALUK for the future.

Mr Sterl Greenhalgh, now ex-PwC, told me in September 2008 that PwC and he had not considered what bonuses had been included or excluded in the FY2005 MALUK statutory financial statements before or after their filing with Companies House in July 2007. This was despite the fact that the Final PwC report was not completed until late August 2007. He also told me that the “MALUK engineering bonuses” focus by the PwC Partner John Tracey / MAL Audit Committee throughout their whole investigation was specifically confined to the MAC financial statements and he had not discussed with EY the UK Draft or final FY2005 financial statements on this matter – hence no mention in the PwC report. This allowed PwC to create the impression that the “clean” bill of health they were giving MAC included MALUK statutory reporting – yet the FY 2005 financial statements had not been completed or filed. The exact wording used in the Q1/2007 earnings report was “PwC has advised the audit committee that they had no found anything that would undermine the integrity or accuracy of the Corporation’s financial statements.”

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My response to the Respondents’ allegations

27-281. I set out below my response to the Respondents’ allegations about my behaviour, raised in their Grounds of Resistance, which I have not dealt with above.

Paragraph 9.1 Misconduct Schedule – Allegation 24

28-282. In relation to the allegation in paragraph 9.1 of the Grounds of Resistance, that in January 2006, I sent an email to Mr Martin, which I copied to junior colleagues (see volume 4, pages 1269-1270), causing Mr Martin distress by my unjustified allegations that Mr Martin had been dishonest, I wish to clarify a matter first. The only “junior colleague” I copied in the email to was Paul Archer (the Sales and Development Manager for the group at the time) as the Respondents have since agreed. From 1 January 2006, Mr Archer had responsibility for management of an account for Smith Aerospace Aerostructures (referred to by me and my colleagues as “Hamble”). Clearly, therefore, it was important that matters relating to that account were brought to his attention. Further, I did not regard Mr Archer as organisationally “junior” In a small functional team hierarchy has a limited role. Mr Archer was a very competent and diligent member of our MALUK management team. In fact, Mr Martin in June 2006, following Mr Archer’s resignation and departure from MALUK, took on part of Mr Archer’s role.

29-283. From around April 2004 to November 2005 Mr Martin worked as General Manager of MALUK’s manufacturing facility in Bournemouth. At that time we had agreed that Mr Martin was responsible for the Hamble account. From July 2005 to around November 2005, Mr Martin’s superior, Mr Underwood, Mr Martin and I progressively recognised that

the strategic and operational tasks then facing the General Manager role was too big for any one individual to manage. It was therefore agreed between all of us and Mr Butyniec in November 2005 that some of the key tasks performed by Mr Martin needed to be broken down and assigned to other individuals. We thought it best to assign the day-to-day operational management to another person and allow Mr Martin to focus on a number of specific tasks which were absolutely crucial to “overhauling the business”, which had just lost over £1m in the last couple of months. As a result, Mr Martin’s title changed from that of General Manager of Bournemouth to General Manager Special Projects (Bournemouth). It was agreed between us that Mr Martin would focus primarily on make /buy families and parts and sourcing arrangements. As part of this, it was also agreed that Mr Archer would take over responsibility for Hamble from Mr Martin, with effect from 1 January 2006. I formalised these new arrangements by emailing Mr Martin on 23 December 2005 (see volume 4, page 1215), informing him that, Mr Archer and I would deal with the management of the Hamble account to enable him to work on his other tasks. I also then confirmed my mid December conversation with Mr Mark Crompton the MD of Hamble, that we would now make this change.

~~30-284.~~ In a telephone conversation with Mr Underwood on 6 January 2006 I was surprised to hear that Mr Martin was on his way to a meeting with Hamble. Mr Underwood told me that he had asked Mr Martin whether I was aware of this and that Mr Martin had said that I was aware. This was simply not the case. Accordingly, in my next telephone conversation with Mr Martin (we usually talked at least once a day), I asked Mr Martin why he was not focussing on the sourcing of parts and the other tasks, as we had previously agreed and should not have been going to Hamble at all. I said that I knew he had told Mr Underwood that I was aware about his trip to Hamble, and that this was untrue – neither Mr Archer nor I were aware of his visit. Given the challenges we were all facing at the time we all needed to be open and honest with each other, and that he had been dishonest. ~~Mr Martin started to provide excuses for his behaviour and to rant and rave. After a little time I told him that this was not productive, so I put the telephone down on him and got on with other matters.~~ Mr Archer was also present in the office we shared when Mr Martin spoke with me. The following day, on 7~~9~~ January 2006, Mr Martin telephoned me. As part of our conversation, he said that I had upset him the previous working day. I told him that my response had been justified as he had lied to Mr Underwood and we needed to all get on with our agreed assigned tasks in the face of the acute “business performance” problems at Bournemouth. Mr Martin started to provide excuses for his behaviour and to rant and rave. After a little time I told him that this was not productive, so I put the telephone down on him and got on with other matters. I sent the email to which the Respondents refer not long after. I also forwarded to Mr Martin the email I had sent to him on 23 December 2005 (see volume 4, page 1261). In my covering email I made it clear to him that I was unhappy with him for not being honest. Given that Mr Archer now had

responsibility for managing the Hamble account, it was important for Mr Archer to be aware of Mr Martin's visit to Hamble. Accordingly, I copied Mr Archer into the email. However, I chose not to copy Mr Upward (who had travelled to Hamble and worked with Mr Martin) into my email because it was not necessary for Mr Upward to be aware of the incident. I also forwarded my email to Mr Upward of 31 December 2005 to Mr Martin for completeness and considered that the end of the matter (see volume 4, page 1262).

~~31-285.~~ As time progressed over the next few weeks I noticed that Mr Martin was becoming increasingly anxious about the changes to his role and the way that he was now perceived - by others - to be losing the authority of being General Manager. I tried to reassure him that what he was doing was essential and I have no doubt then or now he performed a crucial role well in executing the final turnaround strategy for Bournemouth.

~~32-286.~~ No one ever raised the incident with me whilst I was employed by the Respondents. The first time it was mentioned to me was in the ET3.

Paragraph 9.2 Misconduct Schedule – Allegation 37

~~33-287.~~ In relation to the allegation at paragraph 9.2 of the Grounds of Resistance that, in July 2006, I caused distress to Mary Walker (Human Resources Manager of MALUK) in connection with my offensive complaints to her about the handling of a potential redundancy case, I comment as follows. In June 2006 MALUK decided to restructure its quality management function at Bournemouth in order to reduce costs (see volume 5, page 1780). I was partially involved in the restructuring exercise. At that time, the role of Madeleine Harris, one of MALUK's Quality Engineers, was beginning to diminish following the significant task of firstly building the engineering division and then integrating the processes /procedures on the two engineering sites in the previous 3 years, to the extent that she was no longer performing a full-time role. It was decided that David Stewart would move to a new role, Senior Quality Manager – Engineering, and supply chain sourcing (see 11 July 2006 – see volume 5, page 1851 – which would incorporate Ms Harris' role, as well as what he was already doing across the manufacturing business. Accordingly, Ms Harris would be redundant. This was complicated by the fact that Ms Harris was on maternity leave at the time the restructuring decisions were being made.

~~34-288.~~ I realised therefore that Ms Harris' redundancy was not an ordinary redundancy and we needed to be extra careful to make sure we followed the right processes. Because of this, on 7 June 2006 I emailed Ms Walker (see volume 5, page 1778) to check that she was doing what was necessary to understand the legal position on the matter before taking any further action and to discuss it with me. In her email to me later that day (see volume 5, page 1778), Ms Walker assured me that she knew what she was doing. She also told me that she

had been in touch with the Engineering Employers Federation (“EEF”), which MALUK regularly uses to obtain employment advice, for this purpose.

~~35-289.~~ Given my email to Ms Walker on 7 June 2006 and her response, I was surprised to receive an email from Ms Walker on 12 July 2006, in which it appeared that she had only got advice from the EEF on 11 July. I refer to Ms Walker’s email of 12 July, and the email chain between Ms Walker and Martin Augustus of the EEF on 11 and 12 July 2006 immediately below it (see volume 5, pages 1860-1862). I responded by email later that day and stated that we should discuss this further and that I was less than impressed with how she had handled the situation. In her reply later that day, Ms Walker explained that she had obtained advice previously, from both ACAS and the EEF (see volume 5, page 1859). I responded to Ms Walker’s email to me (see volume 5, page 1863) by telling her that she clearly had not given them the correct information upon which to advise, which was what I had been worried about all along.

~~36-290.~~ On 13 July 2006, whilst I was at MALUK’s manufacturing facility in Bournemouth, I had a brief discussion with Mr Underwood about Ms Harris’ redundancy and Ms Walker. I explained to Mr Underwood that I felt that Ms Walker had not handled the situation as well as she should have. Mr Underwood’s response was that I should have handled this situation myself, with Mr Augustus from the EEF.

~~37-291.~~ After the suggestion from Mr Underwood I did talk to Mr Augustus of the EEF myself, to discuss the situation about dealing with Ms Harris’ redundancy. Whilst travelling I spent approximately 10 minutes explaining the overall business and personal situation. Mr Augustus confirmed my thoughts, which were that it would be prudent for us to get Ms Harris to enter into a compromise agreement with us. I relayed this advice to Ms Walker by telephone when we next spoke and on 18 July 2006, I received an email from Ms Walker (see volume 5, page 1874), updating me on the situation regarding Ms Harris’ redundancy. In the final paragraph Ms Walker apologised for being “a little short last week” due to “serious family problems”. In our telecom on 19th July I asked, out of concern for her, about the family problems and she explained that they were regarding her daughter but matters were moving forward now and that she would follow up with Ms Harris promptly. I continued to follow up, both before and after my termination, the compromise agreement arrangements and ensured that both the Company and myself provided a reference for Ms Harris.

~~38-292.~~ I did not and do not consider that I made any offensive remarks to her. On the contrary, she apparently felt the need to apologise to me. [See further evidence in my 30-page Supplementary Witness statement at Page 20.](#)

Paragraph 9.3 Misconduct Schedule – Allegation 48

~~39-293.~~ In relation to the allegation at paragraph 9.3 of the Grounds of Resistance, that on 14 September 2006, I emailed Mr Neill where I attached an email that I was going to send to Mr Smith in which I called Mr Smith “inept”, I comment as follows. This is incorrect. I sent it to Mr Underwood, not to Mr Neill. I would not have sent that email to Mr Neill. I refer to the email of 14 September (see volume 6, page 2250). During the morning of 14 September 2006, there had been some email correspondence between Nigel Jones (Financial Controller for MALUK at MALUK’s manufacturing facility in Bournemouth) and me regarding Hamble debt collection /invoice queries and the release of cash to discharge trade creditors. Mr Smith, who had been copied into this email exchange, emailed me on 14 September to say we should not be paying the creditors (see volume 6, page 2251). This frustrated me given our “doubtful solvency” and the need to get the oldest debts paid up. Accordingly, I sent a private email to Mr Underwood (see volume 6, page 2250), in which I asked Mr Underwood to telephone me to discuss the situation. In this draft to Mr Smith, I stated that if he did not release this £ 0.5m cash, I would stop my efforts to accelerate cash in and repeated that I would resign as a director of MALUK. I then stated that he was “inept”. Frankly, it was what I believed, given that the financial problems I blew the whistle on were at least contributed to by Mr Smith and this demonstrated that he was inept. I never intended to send the email to Mr Smith. I sent it, privately, to Mr Underwood only, with the hope of it prompting him to intervene with Mr Smith as he had occasionally to do in the past on other matters. I referred earlier in my evidence to the two telephone calls that took place between Mr Underwood and myself later that Thursday at approximately 3 pm and 6pm and his suggestion/calling for a MALUK Board meeting.

Paragraph 9.4 Misconduct schedule – Allegation 49

~~40-294.~~ In relation to the allegation at paragraph 9.4 of the Grounds of Resistance, that in response to Mr Smith’s email on 15 September 2006 (see volume 6, page 2282) in regard to my dealing with major suppliers, I stated “*Shawn fuck off – I have had enough of this now – perhaps more experience and ability than you will ever understand*”, I comment as follows. This was the last day of my three week holiday at home on which I had already devoted a huge amount of time and energy to work MAC and in particular MALUK matters and was close to the end of my tether. I had started work at 7.30 am that day. In Mr Smith’s emails of 15 September 2006, – read by me at 08.32 (see volume 6, pages 2278-2280) he stated that he was not going to change the MALUK Supplier payment policy unless instructed by Mr Dekker and then in his email (see volume 6, page 2282) – read by me at 08.33 complained that I had been discussing payment terms with suppliers that he was not aware of, and requested that, in future, I let him know what I was intending to discuss with suppliers with regard to payment terms Given that I had spent hours (including time whilst I was on holidays) recovering debts owed to MALUK, agreeing deferrals of payments again to

Apollo and All Metal services negotiating price increases and moving forward the A380 engineering monies in order for the company to be able to pay down the monies owed to trade creditors and ease MALUK's cash-flow, and that Mr Smith was fully aware of my discussions with these specific suppliers both at the Executive Committee meeting in August and in subsequent email correspondence Mr Smith's email made me very angry. As a result of my frustration, I told Mr Smith to "fuck off" and stated "I have had enough of this now". I acknowledge that I should not have used this language towards my colleague. I was nervous about the company ending up in the difficult position Mayflower Aerospace had been in, in September 2003. I was also frustrated that Mr Smith simply did not seem to be grasping, or acknowledging, the seriousness of MALUK's solvency situation and the liquidity issues in MAC. As a result as I sat at home in my study I lost my temper in print. The F-word is however a word that is quite often used in business and indeed within MALUK and MAC. While I regret using it, I do not regard it as a serious matter in itself. I went on to state "more experience and ability than you will ever understand". My reference to my "experience" was to the experience (regarding director's duties during a zone of insolvency) that I had gained through working at Mayflower Aerospace with Mr Underwood in the aftermath of its acquisition.

~~41-295.~~ Later that day at approximately 3 pm I opened an email from Mr Neill (see volume 6, page 2302), in which he referred to my email exchange with Mr Smith. Firstly, I tried to telephone Mr Neill, but upon receiving no answer, I emailed him (see volume 6, page 2302). In my email I pleaded with him to take the time to understand MALUK's situation. I explained that it was naïve of him to think that MALUK's problems were as simple as paying a few creditors. I then forwarded my email exchange with Mr Neill to Mr Edwards (see volume 6, pages 2376-2378) and commented that I had stayed quiet for too long about what was going on in the UK. I also tried to call several times again later that day.

Paragraph 9.5.

~~42-296.~~ In relation to the allegation at paragraph 9.5 of the Grounds of Resistance, that I contaminated the view of certain staff in regard to Mr Smith, on Mr Smith joining MALUK, by falsely alleging that Mr Smith had been involved in the departure of Mr Smith's predecessor in post, Victoria Fitzgerald, I comment as follows. It is simply untrue and I am deeply saddened by it. Since I do not know upon what this comment is based, I have very little to say on this point. However, I would like to point out that I initially recruited Mr Smith on a temporary basis in April 2005. I refer to Mr Smith's Employment Recruitment Requisition form, dated 25 April 2005, which is signed by me (see volume 3, pages 903-905). As I have described above, my way of dealing with issues is to meet them head-on and most probably discuss them with the relevant person, if necessary. Accordingly, I was fully aware that Mr Smith was being offered permanent employment

and if I was opposed to Mr Smith joining MALUK, I would most certainly have raised this with the relevant person and at a MALUK Board.

Paragraph 9.6

~~43-297.~~ In relation to the allegation in paragraph 9.6 of the Grounds of Resistance, that I criticised and belittled Mr Smith to other, often junior staff, and in particular that, in August 2006 I told Ms Wade that staff members had left because of Mr Smith, I comment as follows. I deny criticising or belittling Mr Smith to other staff. However, as detailed above, I did (as occasion warranted) raise with my senior colleagues issues to do with Mr Smith's business judgement and competence. For example, I refer to my email to Mr Dekker on 6 January 2006 (see volume 4, page 1259) and my email to Mr Neill of 15 February 2006 (see volume 4, pages 1426-1428).

~~44-298.~~ I do admit that, on 17 August 2006, during my afternoon conversation with Ms Wade about our cash flow crunch and her view confirming again that the remaining £0.5m (from our £1m original forecast) was imminently needed from MAC to probably avoid an unauthorised" overdraft," I encouraged her to raise the matter with Mr Smith, indicating that we had spoken about the money needed at the Executive Committee meeting that morning in Bristol. She said he would probably do nothing again with MAC and I encouraged her to speak up (having already been told by her an hour or so earlier that she had overheard Mr Smith telling Mr Groot that "she could have taken more risk at the end of July regarding the £0.5m monies requested for the payroll ".) I assured we had both done the right thing as the two emails from her yesterday had confirmed (see volume 5, pages 2034-2035). I then went on to casually and finally comment that this was part of the reason why three people had left because of Mr Smith. I had in mind Ms Clare Pettifer, Mr Lewis Fodor (in part), and Mr Paul Precious and given her proximity to two of them in the Bristol office did not consider I was telling her anything she would not have known. I simply wanted her have the confidence to progress the matter of the additional £0.5m with Mr Smith herself and that on this occasion I would not intervene with Mr Dekker, having already sent an email on the subject earlier in the week (see volume 5, page 2030), expecting that Mr Smith and Mr Dekker would arrange to resolve the matter, if necessary involving Mr Edwards.

~~45-299.~~ With the benefit of hindsight, I realise that I should not have said about the three leavers and would not make the same comment today.

Paragraph 9.7 [Misconduct Schedule – Allegations 30/50](#)

~~46-300.~~ In relation to the allegation at paragraph 9.7 of the Grounds of Resistance, that I continued to seek to construct some kind of case against Mr Smith and in September 2006 made Ms

Wade cry as a result of her distress at being pressed for information by me against Mr Smith, I comment as follows. I strongly deny that I tried to “manufacture” a case against Mr Smith.

~~47.301.~~ An email from Ms Walker to Ms Ball on 18 September 2006 (see volume 6, page 2368) has been disclosed by the Respondents in relation to the assertion that I made Ms Wade cry in September 2006. In this email Ms Walker states that she has had to send Ms Wade home as she received an email from me, which is unacceptable and seeks evidence to use against her line-manager, Mr Smith. Ms Walker goes on to state that Ms Wade told her that matters had gone beyond a joke and she felt threatened by the situation, and particularly by me. The email I sent to Ms Wade on 17 September 2006 (see volume 6, page 2365) was not meant to threaten Ms Wade, only to emphasise to Mr Neill the severity of the situation. Nor as it meant to undermine Mr Smith. But I was seeking confirmation of these issues and it was not just my view. I certainly did not consider the breaches of fiduciary duties, accounting imprudence and doubtful solvency of MALUK as a “joke”, precisely the contrary.

~~48.302.~~ By way of background, I have not had many dealings with Ms Wade. As I have described earlier in my witness statement, my first real contact with Ms Wade was on 26 July 2006, when Ms Wade came to see me in my office regarding her concern that there were insufficient funds in MALUK’s bank account to meet the payroll for July. Ms Wade was tearful and clearly anxious about the monies and payroll situation at that time.

Paragraph 9.8 [Misconduct Schedule – Allegation 44](#)

~~49.303.~~ In relation to the allegations at paragraph 8 of the Grounds of Resistance, that I orchestrated complaints by Third Parties who traded with the Respondents, against the Respondents, and at paragraph 9.8 of their Grounds of Resistance, that I orchestrated a letter of purported complaint against the Respondents from Airbus, I comment as follows. These allegations are totally untrue.

~~50.304.~~ I am aware that the Respondents (through their solicitors) have stated in correspondence with my solicitors (in their letter dated 23 March 2007 – see volume 8, pages 3161-3162) that the other “Third Party” to which they refer in paragraph 8 of their Grounds of Resistance is Apollo Metals, and that the complaint (there is only the one alleged against me) I had allegedly orchestrated was an email dated 15 August 2006 from Tony Stocker of Apollo Metals. The Respondents’ solicitors later clarified, in their letter of 4 April 2007 (see volume 8, page 3181) that the reference should be to Terry Stocker of All Metals Service rather than Tony Stocker of Apollo Metals. As explained above, the email of 15 August 2006 from Terry Stocker (the joint Managing Director of All Metal Services) (see volume 5, pages 2017-2018) dates back to a period in which MALUK was in significant

financial difficulties. During this period of doubtful solvency, in order to comply with my fiduciary duties owed to MALUK's creditors. I dealt directly with the company's two major creditors All Metal Services and Apollo – whom I interacted extensively with in 2003 in Mayflower and earlier. Both companies had parent company guarantees from MAC in respect of MALUK paying them for supplies, and you can see some of the email correspondence around these matters in around March 2005. Both Mr Underwood and Mr Smith were fully aware of my conversations with them in August (Executive Committee) and in copies of correspondence in September 2006 (see volume 6, page 2107).

54-305. I have known Mr Stocker for at least 10 years and I get on very well with him and his joint Managing Director of All Metal Services, Dave Potts who I have known for some 20 years since my time at Bombardier. I telephoned Mr Stocker on 15 August 2006 in relation to MALUK delaying its August payment to All Metal Services, to ease MALUK's cash-flow and use that funding to discharge other creditors. It later transpired that it was too late to delay the payment as it had already been sent electronically into the banking system a couple of hours earlier. As a result of my request to delay the payment, Mr Stocker asked me what was going on, and told me that he had significant concerns regarding MALUK's current operations difficulties and therefore MALUK's financial situation and no-one had discussed the recent actions by MALUK to stop all materials receipts and turning lorries with deliveries away. Whilst obviously understanding the financial situation in MALUK Mr Underwood or Mr Smith had not informed me that we were taking such actions. Mr Stocker also told me that Mr Underwood had never been to any of their depots and that the planned supplier meetings with them had always been cancelled. I said nothing but thought, knowing Mr Stocker, it was best for him to get this off his chest and suggested that he drop an email to me and that I would discuss with Mr Underwood on 17 August 2006 when we were next together. Mr Stocker then sent me the email in question (see volume 6, page 2107). For the avoidance of doubt I did not write any of the email or dictate any of its contents. When I met Mr Underwood on the Thursday 17 August 2006 at the Executive Committee meeting in Bristol we discussed the email and said that it was important that he and Mr Shorrock follow up quickly with Mr Stocker. Mr Underwood agreed to follow up the email and other items with Mr Stocker – which he did (see volume 6, page 2130). When I called Mr Stocker to ensure agreement re the 15 September payment to 27 September on 7 September he told me that Mr Underwood and Mr Shorrock had now visited them and that they had a very productive meeting and that payment two weeks late to agreed terms was now satisfactory. I vigorously deny that I orchestrated, or in any way encouraged, Mr Stocker to make any complaints to MALUK and considered that after the discussion on the 17 August that was the end of it. Mr Underwood did not advise me that he had spoken with Mr Butyniec on the matter, nor did I consider it was necessary for either of us to do so.

52. It has been suggested that I “orchestrated” another complaint, that by Mr Vandersteen of Airbus UK, in his letter of 21 August 2006 (see volume 5, pages 2074-2076). I will briefly deal with this ridiculous suggestion. On 15 August 2006 I arranged to see Mr Vandersteen in the Aztec Hotel in Bristol to try and progress a number of issues that were important for MALUK. My main purpose was to move forward, after the difficult price negotiations for him, and to get the necessary paperwork to obtain retrospective production and materials monies, together with advancing the A380 engineering agreement. Among other things we discussed the A380 engineering monies, which I had discussed with Mr Gray the Managing Director of Airbus UK, and various delays in delivery performance by MALUK which Airbus were unhappy about and that they were pressing us very hard to put right. Mr Vandersteen gave me a pretty hard time in the meeting, but that was part and parcel of his role in procurement, so I didn’t take it personally. When I explained why I had spoken with Iain Gray about the A380 engineering payments and pricing programme he said that he understood and that it was not a problem. The meeting lasted about 30 minutes and at the conclusion Steve said he would write a follow up letter before he departed that Friday for his holiday though he had lots to get done before his holiday. I said that I could draft some notes if he wanted, he said fine. The notes which I drafted that evening were on about an A4 page and covered only; 1. The intelligent buffer inventory process and liquidated damages for deliveries and 2. what he referred to as the recommencement of the joint Senior Airbus/MALUK Steering Committee for Price/Cost reduction, with the involvement of Jim Butyniec and at my suggestion Larry Winegarden for MAC/MALUK side. Unfortunately I did not keep a copy of them and the Respondents have been unable to locate them after an extensive search at MALUK (see volume 8, page 3272). Likewise my solicitors have been unable to retrieve from Airbus UK - Document 1 June letter to Steve Vandersteen (see volume 8, pages 2961-2963). I received an email which I sent to the Respondents solicitors on 4 September 2008 from Ian Pike – ex MALUK IT employee and one of only two people within MALUK who could technically retrieve this document from the IT systems. He advised me “ Brian – just to confirm that I was never asked, whilst at Magellan to extract any data from MS Exchange regarding emails to do with you. Also to the best of my knowledge I am not aware of Paul Reid being asked to do the same. Regards Ian Pike”. I was able to confirm with Paul Reid later that week that he had never been asked to do so either and his only involvement was in respect of some work for PwC on my PC image in February/March 2007. This document is a crucial piece of evidence and would completely vindicate me in the absence of Mr Vandersteen as a witness in this “orchestration complaint” allegation.

307. I was keen that we should get Airbus’ issues out on the table, so we could clear the air and agree a way forward, so that we both had a focus on the relevant activities moving forward. However, my notes were clearly not comprehensive or strongly worded enough for Mr

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Vandersteen, as I understand that he destroyed my notes on receipt and then [Airbus](#) produced their own.

~~4-308.~~ I saw Mr Vandersteen's original/draft letter via Simon Price of Airbus just before it was sent to Mr Neill, Mr Butyniec and myself. This letter was inflammatory and far removed from my own notes. I tried hard to persuade Mr Price to remove other parts and tone it down. However, with the exception of the final paragraph (which was removed), Mr Price refused to make any other changes to the letter. The final paragraph of 5 or 6 lines referred to the engineering monies owed to MALUK by Airbus, and complained about escalation processes in which I had involved Mr Gray. This was a reference to me having raised the issue on two occasions with Mr Gray. The final (second) version of Mr Vandersteen's letter, was sent to the Mr Neill, Butyniec and myself on 21 August 2006. The receipt by me of the first / original version of the letter cannot be located by MALUK (see volume 8, page 3272).

~~4-308.1~~ At this point I would like to ~~show~~ refer to the draft letter of response to Mr Vandersteen's Complaint 3 which I produced and circulated to Mr Neill and Mr Butyniec on the 11 September 2006 (see volume 6, pages 2149-2152). You will see that the contents mirror my original remarks and the additional subject matter in Mr Vandersteen's 21 August letter (see volume 5, pages 2074-2076). Later that week on 14 September 2006 Mr Neill proposes his edits to my draft letter and apologises that we cannot speak with Mr Butyniec who had had to deal with the problems at Haley following complaints from Pratt and Whitney (see volume 6, pages 2245-2248, 2254 and 2257).

~~2-309.~~ I am adamant that I did nothing to "orchestrate" Mr Vandersteen's complaints in that letter. The two prior written complaints (23 November 2005 – see volume 4, page 1131 – and 28 June 2006 – see volume 5, page 1807) show Mr Vandersteen's "form" when it comes to writing to MALUK to complain, and that this letter fits the mould of the earlier ones.

Paragraph 9.9 [Misconduct Schedule – Allegation 41](#)

~~3-310.~~ In relation to the allegation paragraph 9.9 of the Grounds of Resistance, that I told Mr Martin not to assist Mr Underwood or Mr Butyniec, but rather to allow them to fail in their work, I comment as follows.

~~4-311.~~ This has been blown out of all proportion and taken out of its true context.

~~5-312.~~ The Respondents' have disclosed an email, from Mr Martin to Mr Underwood on 29 January 2007 (see volume 7, page 2810), in relation to this. I do recall the discussion to which Mr Martin refers in his email. However, I deny telling Mr Martin to allow Mr Underwood and Mr Butyniec to fail in their work. Rather, I told Mr Martin that everyone

needs to do their bit, otherwise the team would fail in its work. I also recall saying that if the team does fail in its work, we'll learn from the mistakes we've made and moved on.

~~6-313.~~ At point 1 in his email of 29 January 2007 (see volume 7, page 2810), Mr Martin states that the alleged discussion between Mr Martin and me took place in the first quarter of 2006. If this is the case, my alleged comment to Mr Martin would be inconsistent with my other actions at that time. During the first quarter of 2006, MALUK had some major problems with Airbus and on 23 November 2005 we received our first letter of complaint from Mr Vandersteen at Airbus (see volume 4, page 1131). This eventually resulted in Mr Butyniec coming very regularly to the UK to the end of April 2006. As a result, on 17 February 2006, I sent a private email to Andy Greasley (a Vice President of Airbus, who was responsible for production and control) (see volume 4, page 1433), asking him to work really hard with Mr Butyniec to make the relationship work. Indeed when Mr Butyniec was anxious about the organisation changes at MAC in early 2005 I moved to try and accelerate the process with Mr Neill in April 2005 (see volume 3, pages 885-886). These hardly seem to be the actions of someone promoting failure of a colleague. Additionally when Mr Underwood requested assistance, as in 27 November 2005 with the first Airbus UK complaint from Mr Vandersteen I organised myself accordingly to support that and him (see volume 4, page 1136).

~~7-314.~~ Clearly, it is unlikely that I would make this comment about Mr Butyniec or Mr Underwood at the same time as telling Mr Martin to allow them to fail.

~~8-315.~~ Mr Martin's account on 13 March 2007 of his discussion with me has shifted during the course of this litigation. In their letter of 13 August 2007, Pinsent Masons informed my solicitors that the conversation occurred in or around July 2006 (see volume 8, page 3237). [See further evidence in my 30-page Supplementary Witness Statement at Pages 22 and 23.](#)

Paragraph 9.10 Misconduct Schedule – Allegation 36

~~9-316.~~ In paragraph 9.10 of the Grounds of Resistance, the Respondents have alleged that I falsely informed Mr Smith that Mr Butyniec had approved, and had initialled his approval, of bonus payments to certain staff, when in fact Mr Butyniec had not done so, and in fact the initials supposedly of Mr Butyniec were written by me and not Mr Butyniec.

~~10-317.~~ Firstly some business context. At the time we were losing some junior staff (particularly at the Biggleswade engineering office) and had also just had a good financial year in FY.2005. Mr Martin Bellia – the General Manager of Engineering suggested that as we did not want to change the salaries for the various people we should instead provide a one-off salary adjustment/bonus payment. I agreed the Sum of £10,000 and he then produced a

breakdown of how he and his team wished to allocate it (see volume 4, page 1403 [and document 1348-1350](#)).

~~41~~318. The Respondents policy relating to salary and benefit uplifts, dated 17 November 2004, together with the attached Employee Change of Salary/Benefits form, can be found at volume 1, pages 73-74. This provides that salary and benefits changes must receive the direct authorisation of both Mr Underwood and me. On 30 November 2004, Ms Walker sent out an email (see volume 1, page 75) stating that the policy had been amended to require her own authorisation for all recruitment and pay uplifts.

~~42~~319. In March 2006 (~~24 February 2006~~ - [document 1433A/3374 - examination-in-chief](#)) I had a conversation with Mr Butyniec, during which we discussed bonus payments to senior engineers (management level people) as I said earlier in my evidence and one off sums for junior engineers, although it was not necessary for me to obtain authorisation with Mr Butyniec under the terms of the policy. During our discussion, Mr Butyniec agreed with me on the adjustments I proposed. We also agreed to further discuss the bonus payments to senior engineers when I was next in Canada. After I had signed off on the payments (by initialling the Employee Change of Salary/Benefits forms), I also wrote Mr Butyniec's initials on the forms. I did this to indicate that I had spoken to Mr Butyniec about the subject this was solely as I was trying hard to ensure that we were both "joined up" and seen to be working closely together in the new organisation (see volume 4, page 1195). I did not attempt to write Mr Butyniec's signature or try to make it look as though Mr Butyniec had signed the forms. As such, it is clear that I (and not Mr Butyniec) wrote Mr Butyniec's initials on the forms. I refer to the signed Employee Change of Salary/Benefits forms (see volume 4, pages 1518-1531). After I had signed the forms, I handed them to Mr Smith for onward transmission to Mr Underwood Precious/Ms Walker. As I did so, I mentioned that I had discussed the forms with Mr Butyniec. On 30 ~~in~~ March 2006 I emailed Mr Butyniec (see volume 4, page 1533) to confirm that he had discussed and approved these with me whilst in the UK. If I had been trying to be deceptive, clearly I would not have done this. [See further evidence in my 30-page Supplementary Witness Statement at Pages 19 and 20.](#)

Conclusion on Paragraph 9

~~43~~320. My overall comment on Paragraph 9 is that none of these matters, some of which go back a very long way before my dismissal, were ever raised with me before I was fired. Indeed none of them surfaced until long afterwards. Some have changed several times. None of them could justify my dismissal in my view. I had never received a disciplinary warning or indeed ever had any discussion with Mr Neill about my business performance, conduct, management style, or behaviour in my time with the Respondents, so there was no question of me being on any warning or anything like that.

~~44-321.~~ As I tried hard to do what was right for the business and comply with my legal responsibilities as a director, in the months leading up to mid-September 2006 I grew increasingly frustrated with the lack of understanding, commitment and performance of some of my colleagues, particularly Shawn Smith (MALUK's Chief Financial Officer and Company Secretary) and John Dekker (the Chief Financial Officer of the MAC and Mr Smith's direct superior), who I believed were failing to direct and manage Mr Smith properly. Therefore, if any strain was placed upon the employment relationship, I believe that it was the consequence of me having made protected disclosures.

Post-termination actions taken and detriments suffered

~~45-322.~~ During the months immediately following my dismissal, whilst I was pursuing my complaints and my dismissal internally, the Respondents subjected me to detriments 8 eight times. 6 Six of these are stated in my ETI (see volume 1, pages 32-34). A further 2two took place after my ETI was filed at the Employment Tribunal in December 2006, and are referred to in my solicitors' letter to the Employment Tribunal dated 10 August 2007 (see volume 8, pages 3231-3232). Remember of course that the Respondents kept me in their employment and paid me until 31 December 2006. I believe that the acts that constitute detriments were done on the grounds that I made my protected disclosures. These are detailed below. I also describe (in chronological order) below the actions I took post-termination (excluding those actions covered earlier in my witness statement) to pursue my protected disclosures, and to assist the Respondents as far as possible with their internal and external investigations into my complaints.

~~46-323.~~ On or after 18 September 2006, MAC removed me from office as Senior Vice President. I do not know who authorised this, but from the Respondents' discovery of minutes of a MAC board meeting on 9 November 2006 (see volume 1, pages 293-294), I see that it was dealt with retrospectively at that meeting.

~~47-324.~~ On 19 September 2006, at 4:20pm UK time (9:20am Calgary time), MAC issued an announcement (see volume 6, pages 2401 and 2476-2479), which informed its clients and suppliers that I was no longer employed by MALUK or MAC. Following the release of the announcement, in September and October 2006, I received some 157 texts, calls, letters, cards and emails from the Respondents' employees, customers and suppliers, and the media.

~~48-325.~~ It was clear to me from the responses I received that the announcement implied in the minds of a number of recipients that my employment had been terminated by reason of some serious misconduct. What I did not appreciate until a couple of months later, was the extent to which recruitment consultants in the UK would pick up on the content of the announcement, or that it would have such a detrimental impact on my employability. I

strongly believe that the Respondents' announcement has damaged my reputation, particularly in the European Aerospace market and contributed towards my permanent unemployability (of which see more below).

~~49~~326. Because the Respondents' did not discuss their announcement with me prior to its release, on 20/21 September 2006, I sought to agree with Mr Neill a joint statement regarding my departure. I wanted the statement to refer to the Respondents' conducting some sort of investigation, rather than being so final about my departure. Mr Neill proposed some wording, which he sent to me by fax on 21 September 2006 (see volume 6, page 2485). However his wording was inappropriate, as I felt it implied that my employment had been terminated because I had committed some kind of gross misconduct. During a telephone conversation with Mr Neill and Ms Ball on 22 September 2006, it became clear to me that it was unlikely that we would be able to agree a joint statement and we were never able to agree one. This was one way in which MAC could have helped me, but they were not willing to be reasonable.

~~20~~327. As I have mentioned before, for about three weeks after the termination of my employment, I continued to work on collecting cash from customers, such as Mecachrome, Hamble and Airbus to try to get as much money into MALUK as possible. Whilst I did make some contact with my ex-colleagues in MALUK to assist me in this process, I confined this to a couple of emails and some communications with Paul Nokes (the General Manager of engineering in MALUK) (see volume 7, pages 2530-2531 and 2606). I also met with 7 of the Airbus management team on 4 and 5 October 2006, where I thanked them for their support and worked through some of the remaining business matters. With the help of Mr Nokes and Airbus (particularly Geoff Pinner and Clive Renson), I was able to ensure that the necessary orders and invoices for engineering monies were completed, or at least progressing towards completion. For example I also managed to invoice Airbus on 20 September 2006 for some £209,517 (see volume 7, pages 2546-2547) which MAC would have been unable to invoice without my knowledge, experience and Airbus network. This helped MAC declare a profit, for the first time in many quarters, of C\$ 221K in the third quarter of 2006 (see volume 7, page 2647; and volume 1, page 276).

~~24~~328. I later discovered MALUK held a board meeting on 29 September 2006. They failed to give me notice of its board meeting despite me remaining a director of MALUK at this time and it being their obligation under the Articles and law. Given my protected disclosures, and particularly my concern that MALUK was of "doubtful solvency", that was particularly serious as it deprived me of a legitimate opportunity to understand as a director what was going on or raise my dismissal. From the minutes disclosed in the discovery process (see volume 2, page 474), I understand that only Mr Smith and Mr Dekker were present at the board meeting and that the purpose of the meeting was to enter

into a agreement with BNP Paribas for the sale of debts from MALUK to BNP Paribas. The effect of the sale of the debts would be to accelerate cash into MALUK. It appears from the minutes disclosed to me during the discovery process, that this agreement was approved at the MAC board meeting on 9 November 2006 (see volume 1, page 296). Although the sale of the debts to BNP Paribas did bring in money for MALUK, the timing of the agreement still meant that over £500,000 was still required from MAC to keep MALUK afloat in mid October 2006. This was of course the same £500k (actual £535K) which Ms Wade and I had forecast as being required in late July in that three month look ahead period of “doubtful solvency” to meet our fiduciary duties. This was also MALUK’s first board meeting since 5 January 2006.

22-329. As I have explained earlier in my witness statement, I met with Mr Edwards on 19 September 2006 and Mr Dimma on 24 September 2006 (as I had indicated prior to my dismissal that I would do), where I explained that there were a number of issues I was concerned about. MAC’s whistleblower protection policy states that the company should have provided a report back to me within 21 days, indicating how the matter would be dealt with, giving an estimate of time that it would take for a final response, advising whether initial enquires had been made and advising whether further investigations would follow, and if not, why not (see volume 1, pages 84-85). Despite the fact that I raised a formal grievance, MAC seemingly made no effort to investigate my concerns pursuant to its whistleblower protection policy. My grievances were raised with one or other of the Respondents or their solicitors by me and my solicitors, for example in my emails and letters dated 25 September 2006 (see volume 7, pages 2522-2524), 25 October 2006 (see volume 7, pages 2635-2636), and 7 November 2006 (see volume 7, pages 2661-2671) and letters and emails from my solicitors to Respondents’ solicitors dated 26 October 2006 (see volume 8, pages 3100-3101 and 3100-3111), 3 November 2006 (see volume 8, page 3114), 9 November 2006 (see volume 8, page 3120) and 22 November 2006 (see volume 8, page 3122-3123).

23-330. On, I think, 20 October 2006, I received a package from Ms Ball of MAC via Federal Express. The chief contents were a letter from her dated 19 October 2006 and a one page document called “Acknowledgement and Release” (see volume 7, pages 2607-2609). The letter confirms they are paying me through to 31 December 2006 to ensure I was paid in full, as I had worked more than my year’s commitment by the date of my firing. They duly did this and later, in 2007, I finally received my P45 which confirmed this (see volume 7, page 2746). She also offered to pay me 12 months salary as severance, conditional on my signing the enclosed release. I took advice from my solicitor on the release and taking that into account rejected the offer, as I was not prepared to give up my issues with them over my disclosures and my dismissal.

- 24-331. The 21-day period for Mr Dimma to report back to me, pursuant to the whistleblower protection policy, expired on 16 October 2006, without any report back from Mr Dimma, or others on behalf of the Respondents, and without any contact with me to arrange further meetings or discussions regarding my protected disclosures. This failure was of course a particularly keenly felt detriment, as I was desperate for the Respondents' to address the disclosures I had made and tremendously upset that I had been fired.
- 25-332. On 18 October 2006 MALUK held another board meeting, despite me remaining a director of MALUK at this time, without giving me notice of it. From the minutes of the meeting, which I have only seen through the discovery process, I understand that Mr Dekker and Smith were the only directors present again (see volume 2, pages 477-478). On this occasion the board considered increasing the authorised share capital of MALUK and issued 10 million shares to a company called Gee & Co.
- 26-333. During the second 21-day period for a response under the whistleblower policy, both my solicitor, Mr Jeffreys, and I tried to make contact with Mr Dimma. Mr Jeffreys telephoned Mr Dimma on several occasions between 16 – 20 October 2006 to get an update on the progress of the investigation (without success), and followed this up with an email on 20 October 2006 (see volume 7, page 2611). On 23 October 2006, Mr Neill left a voicemail message for my solicitor (see volume 7, page 2622), in which he stated that he and Ms Ball were following up on my solicitor's call to Mr Dimma, and that Mr Dimma considered there was nothing further for him to do. Mr Dimma had therefore delegated the investigation to the very people who had retaliated by dismissing me by reason of my disclosures. I consider that was a very serious detriment, in that an independent director was handing my case back to "management".
- 27-334. I continued to try to engage with Mr Dimma, and on 25 October 2006 I sent him a lengthy email (see volume 7, page 2624), stating that 30 days had passed since my meeting with him on 24 September 2006, and that I had received no response pursuant to the whistleblower policy or any request from him for me to return to Canada for further discussions. On 26 October 2006, I eventually received a short email sent on behalf of Mr Dimma, by his personal assistant, Enid Williams (see volume 7, page 2634) stating "*Our whistleblower policy calls for me, as Chair of the Audit committee to be the first contact with anyone wishing to invoke that policy but for management to handle any subsequent steps*". I also received a further email directly from Mr Dimma on 27 October 2006 (see volume 7, page 2638), in which he stated "*I think that its best practice, under the circumstances for future contact between you and Magellan to be through the management, Rich Neill, as CEO, may be the best single contact, depending on the issue*". I thought this was simply absurd as these were the very people who had summarily dismissed me. I never heard anything from Mr Neill (or Ms Ball) regarding any investigation into my dismissal. I can only conclude that Mr Neill and Ms Ball failed to carry out any further

investigations at all after they dismissed me at Toronto airport. This was, of course, to my detriment itself.

~~28~~335. As I still had not received a proper response under the whistleblower protection policy to the matters I had raised, I decided to take a further step to try to bring the issues to all nine of the directors of MAC. So, on 7 November 2006, I prepared and sent a file to each director in Canada containing a number of selected documents for their consideration, together with a letter in which I briefed them about my disclosures (see volume 7, pages 2661-2671). I also invited them to meet me in London to review and discuss the disclosures I had made.

~~29~~336. In the absence of receiving any notice of a MALUK board meeting to approve the Statutory Accounts for financial year 2005, which were legally due to be filed at Companies House by 31 October 2006 at the latest (and for which default the directors could be penalised) I emailed Mr Smith (as MALUK's Company Secretary) on 8 November 2006 (see volume 7, page 2672) and requested that notice be given for a board meeting to discuss, review and approve the financial year 2005 Statutory Accounts, prior to submission to MALUK's auditors, Ernst & Young. I also forwarded my email of 8 November 2006 to Mr Dimma and Mr Edwards on 10 November 2006 (see volume 7, page 2675). Mr Smith did not respond to my email request on 8 November 2006 or reminder on 16 November 2006 (see volume 7, page 2682). The Respondents' apparent response to my requests for a board meeting was to remove me from office as a director of MALUK on 17 November 2006. This was actually effected by MAC as shareholder filing a notice removing me from office (see volume 2, page 491; and volume 7, page 2679).

~~30~~337. On 16 November 2006, I eventually received a two-page letter dated 14 November 2006 from Mr Dimma in relation to my complaints (see volume 7, pages 2676-2677). The Respondents claim that this letter is Mr Dimma's written report of his conclusions on the matters I raised under the provisions of the company's whistleblower protection policy. In this letter, Mr Dimma stated:

"I was satisfied (and remain satisfied) that the issues you raised did not (and do not) warrant further steps or remedy..... I considered that the issues you raised were not financial or governance issues that were of concern to me as Chairman of the Audit Committee. They did not, in my view, amount to unethical or unlawful acts on the part of the Company or any of its employees.....my role is to ensure that issues relating to the proper and ethical governance of the Company are not left unchecked. It is also to ensure that any complaints or concerns about the governance and control of the Company have a proper avenue of investigation and report and, where appropriate remedy. In the circumstances, I explained to you my opinion that I would not report your concerns as meriting any remedial action or further investigation. This remains my position. The matters that you were raising were historic and related to

your working relationship with the Company, they do not merit further consideration under the provisions of Magellan's Whistleblower Protection Policy and/or Code of Ethics".

~~31-338.~~ I was outraged by this attempted "whitewash". In my letter of response the following day (17 November 2006) (see volume 7, pages 2684-2685), I stated that I was forced to conclude that my disclosures had not been taken seriously and that Mr Dimma's letter was an attempt to close off and cover up these issues. I also sent a copy of my letter to all the directors of MAC's Audit Committee and Mr Edwards.

~~32-339.~~ Despite the fact that the Respondents had chosen to ignore and/or cover up my disclosures, taking into consideration the gravity of the matters I had raised, I decided to take further internal steps to pursue my protected disclosures. On 4 December 2006 I wrote to the directors of MAC again (see volume 7, pages 2695-2707) and updated the information in their possession by providing them with copies of further correspondence between my solicitors and the solicitors acting for the Respondents. In my letter I repeated that I was forced to conclude, from the Respondents' actions and inactions, that MAC had no wish to understand the issues that I raised in my disclosures, had no desire even to talk to me to try and resolve them and that at least some of the senior officers had been allowed to fire me for being so troublesome as to raise these issues in the first place.

~~33-340.~~ As a final step before commencing my claim in the Employment Tribunal, given the impending deadline for doing so, I decided to take my issues to the auditors of the Respondents, Ernst & Young. As a result of an initial contact around late November, on 7 December 2006 I met Barbara Hadfield (the Ernst & Young Audit Partner for MALUK) for over three hours at the Ernst & Young offices in Bristol. I was accompanied by Mr Precious, an ex employee of MALUK. I made notes of this meeting shortly afterwards (see volume 7, pages 2709-2719). During this meeting I explained all the issues surrounding my protected disclosures to Ms Hadfield, and showed her the whistleblowing presentation, in "PowerPoint", which I had drafted with help from a leading firm of accountants for presentation to Mr Dimma and his colleagues (see volume 7, pages 2579-2590). In this presentation I categorised my concerns into three areas: (i) solvency issues; (ii) UK and Canadian financial reporting; and (iii) Corporate Governance. I also raised the fact that MALUK was late in filing its Statutory Accounts for financial year 2005 at Companies House.

~~34-341.~~ Ms Hadfield said three things during our meeting that I thought were particularly significant. Firstly, that Ernst & Young had not yet been able to get adequate and appropriate documentation from Mr Smith with respect to "going concern" (this is an accounting term which to me means "solvency"). Secondly, that she had considered asking to see me privately after Ernst & Young's audit planning meeting in September 2006, as she was concerned about several matters within MALUK. Thirdly, that she wished I had

come forward to her earlier with my concerns. I also came away from our meeting with the clear impression that the MALUK statutory accounts were not ready for overall consideration, never mind approval. She also indicated that there had been no discussion regarding engineering bonus payments for financial year 2005, which were made in financial year 2006 by MALUK. At the end of the meeting, around lunchtime, Ms Hadfield immediately made contact with her colleagues at Ernst & Young in Canada, who were about to commence a meeting with MAC. Ms Hadfield confirmed to me later that afternoon that her Canadian colleagues wished to discuss the North American matters with me and would also like to hear my whistleblowing presentation.

35-342. On 14 December 2007~~6~~, I had a further, approximately four hour long, meeting in London (at my solicitors' offices but without any of them taking part in the meeting) with Don Linsdell (the Lead Audit Partner at Ernst & Young in Canada) and Dave De Wolf (the previous Lead Audit Partner at Ernst & Young in Canada). Ms Pettifer, another ex-employee of MALUK, accompanied me. I refer to Ms Pettifer's typed notes of this meeting (see volume 7, pages 2723-2726), which she prepared shortly after the meeting and gave to me. In this meeting I focused on explaining the issues relating to MAC. As requested, I also delivered my whistleblowing presentation to them. At the end of the meeting, Mr Linsdell told me that he would speak to MAC's Audit Committee members and board of directors and explain his views on the matters I had raised. Mr Linsdell also stated that he thought the Audit Committee would need to address my issues initially, before possibly commissioning an external "independent" investigation. On 11 January 2006 Mr Linsdell left me a voice message (see volume 7, page 2766), informing me that Ernst & Young's role was "*to understand the scope of the result for conclusions*" and not "*to deal with this matter at this point in time until the audit committee has concluded their review and come to any decisions that need to be made.*"

36-343. After filing my claim at the Employment Tribunal on 15 December 2006, just before the expiry of the three month deadline for doing so, I continued to update the directors and officers of MALUK and MAC, to assist them in understanding the seriousness of my disclosures. I sent the directors of MAC further letters and packs of documents on 19 December 2006 (see volume 7, pages 2728-2732). On 15 January 2007 I sent further documentation to Mr Neill, Mr Underwood and Mr Smith. On 22 January 2007, I sent a letter and pack of documents to Mr Edwards and the Chairmen of the relevant sub-committees of the board of MAC (Messrs Dimma, Davis and Young). In my 22 January 2007 letter I stated that I was still available to discuss any aspect of the situation and notified them that I would be in the US and Canada from 5 – 9 February 2007, if they wished to meet in Toronto.

~~37-344.~~ On 24 January 2007, PWC sent an email to my solicitors (see volume 7, page 2787) saying that it was being engaged by the Audit Committee of MAC to conduct an independent investigation into the concerns I had raised and that they wanted to meet with me as soon as possible. My solicitors contacted me about this right away and later that day I arranged to meet PWC at their offices in Belfast on 29 January 2007. This meeting was with John Tracey (the lead partner of the investigation from PWC) and two others from PWC's forensic team in Birmingham. The meeting lasted over 7 hours. During the meeting I provided copies of the whistleblowing presentation I had given to Ernst & Young in December 2006, and provided explanations of each of the issues contained in the presentation. I also talked through the documents contained in my dossiers together with the IOD "The Director's Handbook". Mr Tracey prepared and sent me a summary of this meeting (see volume 7, page 2811 [transcript]). At the end of the meeting, I offered to make myself available to PwC in Canada on 8 or 9 February 2007 if it would assist them in their North American investigation. On 4 February 2007, a few days after my solicitors had received the Respondents' defence document, I wrote to Mr Lowe and Mr Gowan, who are independent directors on MAC's Audit Committee (see volume 7, pages 2821-2824). I stated in my letter that I wanted to bring to their particular attention the involvement of PWC, and the way in which they are referred to in the Grounds of Resistance. I asked them to consider these matters when the Audit Committee met again, and to inform me of the results of their discussions. Copies of these letters were also sent to Mr Dimma, Mr Edwards, PWC and Ernst & Young.

~~38-345.~~ On 8 February 2007 I had a further meeting in Toronto with two partners from PWC Canada for over three hours. Although PWC told me that Russell Goodman (a partner experienced in the Canadian aerospace industry and long-term accounting) would lead the North American review, Mr Goodman was not present at this meeting. This meeting was similar to my meeting with PWC in the UK on 29 January 2007, although I discussed with them issues specifically relating to the concerns I had raised in connection with MAC. I never actually met Mr Goodman. In late March 2007 PWC in the UK asked me for details of my availability for April 2007 (see volume 7, page 2865), for the purpose of arranging a further meeting with PWC in North America, but they never followed through on this.

~~39-346.~~ I met with Ernst & Young and PWC in Toronto again the following day (9 February 2007) to complete the briefing.

~~40-347.~~ Later that day I personally handed over a letter to Mr Dimma at his offices in central Toronto. In my letter I asked Mr Dimma which matters PWC were investigating and what role MAC's board and sub-committees would play in the investigation. I also stated that I wanted to be involved in rather than excluded from the investigation. I also sent a copy of this letter to Messrs Edwards, Lowe and Gowan by FEDEX that day.

~~41-348.~~ On 15 February 2007 I had a further 5-hour meeting with PWC's UK team in Birmingham (the same three people from UK) to assist their investigation, as they said they had now completed the preliminary review of the various documents.

~~42-349.~~ By 2 March 2007, I had still not received a response to, or indeed even an acknowledgement of the matters I had raised in my letters to MAC's Audit Committee. Consequently, I sent an email to Mr Dimma to point this out to him that day (see volume 7, page 2846). In Mr Dimma's response later that evening, he stated that the Audit Committee's lawyers were currently drafting a letter that would address the question of who should appropriately communicate with me whilst PWC were conducting their investigation. I replied later that evening and asked Mr Dimma whether he had any idea as to when that would be sent to me. Mr Dimma's response later that evening was that I should receive it within a week to 10 days. Upon picking up Mr Dimma's email the following morning (4 March 2007), I immediately replied with a comprehensive email, summarising various aspects of the matters for consideration (see volume 7, pages 2848-2849).

~~43-350.~~ I sent further letters to Mr Dimma, Mr Lowe and Mr Gowan of the Audit Committee on 5 March 2007 and on 9 March 2007 (see volume 7, page 2850) I sent a further pack of documents, together with letters to all the directors of MAC to update them on recent correspondence between my solicitors and the Respondents' solicitors. I also sent copies of this pack of documents to PWC (in London and Birmingham) and Ernst & Young in Bristol.

~~44-351.~~ On 16 March 2007, having heard nothing from PWC since mid February 2006 I emailed PWC (see volume 7, pages 2860-2861) and noted that I had not received any questions or queries from them to clarify the matters I had raised with them, as I believed that this was unusual. On 22 March, I received an email from PWC requesting a follow-up meeting with me the following week.

~~45-352.~~ On 24 April 2007, Mr Dimma informed me by email (see volume 7, page 2918) that the PWC report was nearing completion and should be available to MAC at its board meeting on 10 May 2007.

~~46-353.~~ I believe that I suffered a further detriment on 11 May 2007 when MAC published its first quarter report (see volume 1, pages 310-322). On the third page of MAC's first quarter report dated 11 May 2007 (see volume 1, page 312), MAC state:

"Also included in the total administrative and general expenses for the quarter were legal and accounting fees of \$2.0 million incurred by the Corporation in relation to a detailed investigation of concerns raised by a former employee regarding the integrity of the Corporation's financial statements. These concerns were

thoroughly investigated by Pricewaterhousecoopers (“PWC”) who, under the direction of the Corporation’s audit committee, prepared a report for the audit committee on their findings. The Corporation’s legal counsel has advised the Board of Directors that PWC met with the audit committee and the Corporation’s external auditors, and based on the report prepared by PWC, PWC has advised the audit committee that they had not found anything that would undermine the integrity or accuracy of the Corporation’s financial statements.”

Given that MAC’s announcement of my departure earlier in the year and my high profile position as a “senior officer” I was concerned that analysts and others who followed the company (I believe for example that Airbus and Boeing, as major customers, would look out for this sort of information to keep an eye on key suppliers) would work out that I was the “ex-employee” in question, and identifying me as a whistleblower would do no end of harm to my employability.

47-354. During MAC’s public conference call on 14 May 2007 on its first quarter report, MAC’s representatives were asked a number of questions about this particular statement. For example, MAC’s representatives were asked whether the “ex-employee” was going to have to repay any of that money, to which Mr Dekker answered that this was clearly a sensitive issue – employment and legal – and it was not appropriate to say any more at that point. Further questions were raised asking when the cost was incurred and whether any more such costs would be incurred. In answering that Mr Dekker again stated that it was incurred in quarter one of 2007 and that some costs were expected in quarter two, but this would not impact earnings materially.

48-355. A few people have asked me about the financial report since that time. These people told me that the statement suggested to them that the financial concerns of “the ex-employee” were invalid. That was an added detrimental effect.

49-356. I also believe that I suffered a detriment when MALUK finally filed its Report and Financial Statement (its statutory accounts) for the year ended 31 December 2005 in July 2007 (see volume 2, pages 507-530). The directors’ report, which forms part of the MALUK’s statutory accounts for the year ended 31 December 2005, states at page 2 (see volume 2, page 509):

“it is a source of disappointment and regret that the directors have not been able to file these accounts in accordance with the statutory reporting deadlines.

The lateness of the filing is a consequence of some concerns raised by a former employee regarding the integrity of the Company’s financial statement. These concerns have been thoroughly investigated by Pricewaterhousecoopers (PWC) who, under the direction of the audit committee of Magellan Aerospace Corporation, the ultimate parent company, prepared a report for the audit committee on their findings. PWC has advised the audit committee that they have not found anything that would undermine the integrity

or accuracy of the Company's financial statements. No adjustments have been required to be made to these financial statements as a result of the PWC findings."

The impression given is that the draft financial statements for financial year 2005 were available by the statutory filing date of 31 October 2006, but were delayed as a result of my concerns. I believe the natural conclusion to be drawn from the addition of the final sentence (that was not in MAC's quarterly statement, but the rest of the paragraph was the same) is that I was wrong when, of course, PWC agree with me on a number of the matters. Anyone who knew me or who received the announcement and read this report would have been able to work out I was the "ex-employee" referred to. The directors' report goes on to state that I had been "removed" as a director, on page 4 of the statutory accounts (see volume 2, page 510), which would act as a further prompt towards drawing that conclusion. It is important to state that this statement is the sole responsibility of the directors and was approved by Mr Dekker, Mr Smith and Mr Underwood in the MALUK Board meeting of 5 July 2007 according to the minutes of this board meeting disclosed in the case (see volume 2, page 505).

~~50-357.~~ On 27 July 2007, to my surprise I was contacted by one of the executive recruitment consultants I had met in December 2006 in relation to my job search, and informed that the filing of the statutory accounts had been picked up electronically by one of their internal researchers running an automatic programme of some sort. It seems tremendous to me what information technology can do in this day and age. He did not know whether others would pick this up but told me that the reference to "a former employee" and "removal" in the directors' report (which he had never seen before), was likely to damage my prospects of successfully obtaining permanent employment. I had had minimal experience of executive recruitment people and processes until the last year, but I have to say I have been surprised at the level of "knowledge" and "intelligence" available to the professionals in this industry.

Mitigation

~~51-358.~~ I was 49 years old when I was summarily dismissed by the Respondents. As I have mentioned earlier in my witness statement, I was contractually committed to working 162 days per year (including 12 days paid holiday) for the Respondents (see my service agreement – volume 2, pages 541 and 544). However, in reality I effectively worked more or less full time – typically 210 – 220 days a year - for the Respondents, in order to fulfil my duties and support the group in the challenges it faced (see volume 3, pages 732 and 845; volume 4, page 1227; and volume 6, pages 2417 and 2451-2452). It did mean that I just about had 50 days a year to spend on the business mentoring. I do in Northern Ireland support the 5 businesses and on average, I work ten days each year for each of these businesses (50 days in total per year). Since I often prioritised my work for the

Respondents, I sometimes found it difficult to find the time to do the work required for each of these businesses. In the first couple of months following my summary dismissal, I was able to catch-up on the work that I should have been doing whilst the Respondents employed me. However, I have not worked on these business interests to any greater extent than I should have been able to whilst the Respondents employed me. Practically, the only difference from when I was employed is that I am now able to deal with these business interests during the normal working week, rather than at weekends. It is also wholly inappropriate for me to do any more than around 10 days each year for each business, given that I only have a non-executive/mentoring type involvement in someone else's business.

52-359. Despite my efforts, I have been unable to find myself a new role since my dismissal. I started my job search in October 2006 by contacting those people who had previously headhunted me, or were personally known to me in other ways, over the last fifteen years. I spoke first to Ian Rainey of MSL Belfast, who is, I think, the leading executive recruitment consultant in Northern Ireland. I have known Mr Rainey for over 12 years and I trust his judgement completely. I with Mr Rainey on 12 October 2006. Mr Rainey did not mince his words. He told me that there was a declining market in Northern Ireland for people of my level and that it would be virtually impossible for me to reproduce the terms of my previous employment contract. Mr Rainey also told me that, in his opinion, this litigation could have a severe and detrimental impact on my employability. Without me requesting him to do so, Mr Rainey confirmed these points in a letter to me on 20 October 2006 (see pages 64 - 65 of my mitigation file). I also spoke to a number of my aerospace industry contacts, namely Guenter Kappler, who recently retired as Chief Executive Officer of Europrop, Chris Melrose of Daher and Chris Lloyd of Thales on 17 October 2006 regarding employment and consulting opportunities, and Ross Bradley of Farnborough Aerospace Consortium on 18 October 2006 regarding employment opportunities. Each told me that they were not aware of any potential roles or appointments suitable for me. I was shocked that Mr Melrose had seen the Respondents' announcement and that both Mr Lloyd and Mr Bradley seemed to be aware of its existence. I refer to my handwritten and typed notes of these telephone conversations (see pages 96 - 97, 156 - 157, 62 - 63 and 154 - 155 of my mitigation file).

53-360. For the rest of October 2006 and, up until around 10 or 11 November 2006, I hoped that the Respondents would reverse the decision to terminate my employment and reinstate me. During this time I put my search for new employment on hold. As mentioned previously, at the MAC board meeting on 9 November 2006, I was removed from office (see the board meeting minutes - volume 1, pages 293-294). Therefore, with reinstatement now looking unlikely, on or around 10 November 2006 I decided to step up my employment search. From November 2006, I started studying the appointments pages of The

Times/The Sunday Times and The Telegraph newspapers, and the internet, for job opportunities on a monthly basis. From November 2006 onwards I studied numerous websites, including The Times/The Sunday Times, The Daily Telegraph, Executive on the Web, Tiptop Job, Howgate Sable, Spencer Stuart, The Executive Club, Futurestep (a database of Korn/Ferry International), and Bluesteps (a service of the Association of Executive Search Consultants) (see pages 41 – 59 and 106 – 109 of my mitigation file).

54-361. On 12 November 2006 I was delighted to see an advertisement in The Sunday Times newspaper by The Wright Group (a supplier of public transport buses) based in Northern Ireland, which was looking for a new Managing Director (see pages 71 – 72 of my mitigation file). I made contact with Mr Rainey about the position, to see what he knew about the position and with Pat Graham at The Wright Group, who I have known for a number of years. Steve Banks was handling the recruitment at Howgate Sable recruitment consultants. However, before I even had chance to formally apply for the position at Howgate Sable, the role was withdrawn. I found out a couple of days later from Ms Graham that an internal candidate had been offered the role. Howgate Sable also confirmed to me that the position was no longer available.

55-362. From the middle of November onwards I also made contact with further people who were personally known to me. I refer to my handwritten and typed notes of my telephone conversations with Michael Smith of Griffonage on 21 November 2006 (see pages 73 – 74 of my mitigation file), Brian Dunseath of BAE Systems on 21 November 2006 (see pages 175 – 176 of my mitigation file), Phillip Price of Price Guy Cholerton on 7 December 2006 (see pages 91 - 92 of my mitigation file), Michael Keogh of Irish Management Institute in January 2007 (see pages 183 – 184 of my mitigation file), John Lane, a previous colleague at Bombardier, on 16 January 2007 (see pages 98 – 99 of my mitigation file), Alan Harvey, a previous colleague at Bombardier, on 6 February 2007 (see pages 133 – 134 of my mitigation file) and John Crampton, previously of Cap Gemini and now working at Management Consulting Engineers, on 27 February 2007 (see pages 160 – 161 of my mitigation file).

56-363. Between December 2006 and March 2007, I attended meetings with eight recruitment consultants in the UK and two recruitment consultants in Northern Ireland. Whilst I knew some of the individuals personally, others were from executive recruitment companies that I knew of from the past 10 - 15 years. I refer to my handwritten and typed notes of my meetings with Gordon Campbell of Spencer Stuart consultants on 4 December 2006 (see pages 75 - 76 of my mitigation file), Michael Smith of Griffonage on 6 December 2006 (see pages 85 – 86 of my mitigation file), Forde Maye of Forde May Consulting on 20 December 2006 (see pages 93 – 94 of my mitigation file), Phillip Price of Price Guy Cholerton on 17 January 2007 (see pages 100 – 102 of my mitigation file), Jon Boyle of

Heidrick & Struggles International on 22 January 2007 (see pages 110 – 112 of my mitigation file), Nigel Rose of Korn/Ferry International on 24 January 2007 (see pages 117 – 118 of my mitigation file), Simon Musgrave of Hoggett Bowers on 6 February 2007 (see pages 123 - 124 of my mitigation file), Anthony Bainbridge of Rundle Brownswood on 6 February 2007 (see pages 126 – 127 of my mitigation file), Ian Rainey of MSL Belfast on 13 March 2007 (see pages 158 – 159 of my mitigation file) and John Crampton of Management Consulting Engineers on 14 March 2007 (see pages 160 – 161 of my mitigation file).

57:364. In my telephone conversations and meetings with the recruitment consultants we discussed executive and non-executive job opportunities, in the aerospace and manufacturing industries and other sectors as well in the UK and Europe. I explained that I wanted to retain my home in Northern Ireland (for family history reasons and so that I could continue to participate in my other business interests there), but that I was willing to have my office base away from there, and to travel with my job as necessary, as I have done for many years. Although I was employed on a part-time basis by the Respondents, I did not look just for 150 days a year jobs: I looked for full-time employment opportunities.

58:365. The impression given to me during the telephone conversations and meetings was that I did not have a lot to look forward to. I was told again and again that positions in the aerospace and manufacturing industries were limited, that there were few positions at senior executive level available, especially for someone of my age, and, at present, they had no suitable job opportunities for me. Again, I was surprised by how much preparation the recruitment consultants had done for the meetings and by how well informed some of them were about the Respondents' announcement. It was particularly evident from my early meetings up to mid February, that the people/organisations known to me had carried out what I now understand to be standard research about me before our discussions. I was also shocked by the number of people who had either seen the announcement (via Airbus it seemed), or had indirectly heard about it. At first, I did not appreciate the extent to which the announcement would damage my employability, and the reputation that I had worked hard to achieve in the European Aerospace market. The two meetings described below brought this home to me.

59:366. On 6 December 2006 I met with Michael Smith of Griffonage recruitment consultants, who I had met in the mid 1990s. Mr Smith had set up Griffonage, a specialist consultancy in defence and aerospace, in 1996. Mr Smith had been given a copy of the Respondents' announcement by a contact in Airbus. He told me, in polite but clear terms, that this announcement gave a "bad impression". The fact that he knew about the announcement, and reacted to it in such an adverse way, caught me off guard. Following this statement, our conversation was difficult. I wondered what other people would think about me once

they had read the announcement, how this would affect me finding another job and what I should do next. I refer to my handwritten and typed notes of my meeting with Mr Smith (see pages 85 – 86 of my mitigation file).

~~60-367.~~ On 22 January 2007 I met with Jon Boyle, a member of the aerospace and aviation practice of Heidrick & Struggles International. I had met Mr Boyle previously, when he worked for Arthur Andersen. During our meeting, Mr Boyle told me that he had received some “strange” information through his sources. It was clear that Mr Boyle was referring to the Respondents’ announcement. He warned me to be aware of the impact of announcement being discussed out in the “industry”. I refer to my handwritten and typed notes of my meeting with Mr Smith at pages 110 – 112 of my mitigation file.

~~64-368.~~ In late March 2006, I was told by a contact that Moy Park Limited (a poultry and food processing company based in Northern Ireland) was looking for someone to take over the strategy and development side of the business. I telephoned Trefor Campbell, the Managing Director of Moy Park, who I knew through my contacts in Northern Ireland, regarding the role. I refer to my notes of my telephone conversation with Mr Campbell (see pages 163 – 164 of my mitigation file). I knew that the role was in fact his replacement, as he was retiring in January 2007. He politely put me off the role. He told me that the business required someone with a customer network, which I do not have, and implied that the role would suit someone younger. He also told me that the role would increasingly involve a lot of travelling. I got the impression that he was supporting an internal candidate for the role and I was able to confirm that was the case from others. He told me that the selection process was just starting but that if things did not work out, he would contact me. Accordingly, I did not make a formal application for the role.

~~62-369.~~ Although I was feeling dejected about the lack of opportunities for me, and in the manufacturing industry generally, from April to June 2007, I contacted a number of recruitment agencies that were unfamiliar to me. I sent out my CV to many major international firms in the UK and USA (see, for example, pages 165 - 167, 169, 171, 173, 173 and 193 of my mitigation file). At most, I received an acknowledgement, and a promise to hold my details on file and bear me in mind if a suitable vacancy came up (see, for example, pages 168, 172 and 174 of my mitigation file).

~~63-370.~~ Around this time, I realised that obtaining permanent employment was looking less likely. Accordingly, I started to think about other avenues. I spoke to, and met with, a number of people about management consulting opportunities. I refer to my handwritten and typed notes of my telephone conversations and meetings with Ronnie Hibbert, a private individual who I know from Bombardier and who is now working in consulting, on 21 May 2007 (see pages 177 – 178 of my mitigation file), Mark Crompton of Contour Engineering on 8 June 2007 (see pages 177 – 178 of my mitigation file), Paul Mackin at IBM Product

Lifecycle Management Solutions on 14 June 2007 (see pages 185 – 186 of my mitigation file), Bernard Baxter of Computer Sciences Corporation on 29 June 2007 (see pages 200-201 of my mitigation file), Chris Lloyd of Thales in mid June (see page 194C of my mitigation file) and Willie Magill, a private individual who I know from Bombardier and who is now working in consulting, on 2 and 26 July 2007 (see pages 205 and 206 of my mitigation file). During most of these telephone conversations and meetings, I was told that consulting opportunities were limited, but they would keep me in mind. It became clear to me from these meetings that the market has changed a lot over the last ten years ago, when I was last consulting. This is a major challenge, especially because many of the people I knew in the 1990's (with whom I might have been able to obtain employment or consulting work) have moved on or retired. For example, Chris Lloyd, who previously worked for BAE Systems, is now moving with Thales to Australia and Iain Gray of Airbus is moving into a new job with the UK Government as Chief Executive for the Technology Strategy Board. On top of this I feel that my age and my whistleblowing claim have affected my chances of obtaining employment and consultancy work.

64-371. However, as a result of my conversation with John Crampton in March 2007, there is a possibility of me working on a consultancy basis for a German-based company (Management Consulting Engineers) for 30 days each year for the next three years. The company is currently trying to obtain the necessary internal approvals for this.

65-372. By the end of August 2007, I had updated my CV (see pages 1 – 4 of my mitigation file) and obtained details of additional recruitment consultants to contact. I used a book called “Executive Grapevine” to do this. On 27 August 2007, as the holiday season drew to a close, I sent out my CV to a number of firms (including in the Republic of Ireland, as well as in Northern Ireland and England), which I had found details of in “Executive Grapevine” or had been recommended to me by other executive recruitment consultants. Although I had followed up with many of the recruitment consultants I had spoken to or met, earlier in the year, on a regular basis, on 27 August 2007 I also sent out further follow-up emails to most of the major executive recruitment agencies I had previously contacted, to remind them that I was still available for suitable executive employment opportunities. I refer to the emails I sent out on 27 August 2007 at pages 209 – 261 of my mitigation file. As a result, on 4 September 2007 I had a telephone discussion with a recruitment consultant from McDonagh Neill in Shrewsbury, in which we agreed to meet later in 2007. On 19 September 2007 I met with John Collier from Clive and Stokes in London. I also met up with Grace Borrelli from CMT Partners on 20 September 2007. I refer to my handwritten and typed notes of these meetings (see pages 262 – 265 of my mitigation file). However, nothing was forthcoming from these discussions.

373. I have been left feeling very depressed about my future prospects. All I set out to do was to manage the business matters properly, legally and ethically within the company and the effect this has had on my future prospects and my life has come as a huge shock to my family and me.

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373.1 Reluctantly my family and I have now had to accept and consent to the fact that this will no longer be a combined liability/remedy hearing and therefore have not updated the mitigation efforts evidence, though they naturally do continue. I also believe that my dismissal has tainted me in the job market so that I am still unemployed after more than 2 years and fear that I am now practically unemployable. I have now experienced in the real world what was described in Ms Ball's response to the question posed in her cross examination -- So there were no formal complaints? "No, and that's very interesting. People didn't want to do that. The Aerospace industry is a small organisation in the UK and it would affect people's careers."

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373.2 I do feel deeply upset about my treatment by the Respondents – both about the dismissal itself and the impact on my reputation in the Aerospace industry damaging new employment prospects AND about the way I have had to fight tooth and nail throughout this extraordinarily lengthy case.

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~~I also verify the facts contained within the Schedule of Loss prepared by Deloitte.~~

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I believe that the facts stated in this witness statement are true.

Signed

Brian Alexander Little

Dated this 15 day of October 2007 and Updated
1 January 2009