

Monday, 27 July 2009

1

2 (10.00 am)

3

(Proceedings delayed)

4 (10.15 am)

5

Housekeeping

6

THE CHAIRMAN: All right, good morning. I think the first
7 thing that we need to say is that, as we understand it,
8 this morning we will be dealing with the application in
9 relation to Mr Underwood's recall, and whilst we had
10 thought we had time to deal with Mr Smith, Mr Little has
11 expressed the view that you're not entirely ready for
12 that?

13

MR LITTLE: I'm not ready but I have written submissions for
14 all the rest now, so that's to save us time.

15

THE CHAIRMAN: Right, okay, fine. So you're looking for
16 that particular matter to be stood over to another day?

17

MR LITTLE: Yes. I was going to suggest, sir, that I've
18 done the written submissions now for Mr Dekker, for
19 Mr Underwood, which I can hand up now, I've done
20 something for Mr Smith, but I just didn't have time to
21 finish it, and I can do that within 14 days, Jackie and
22 I are going to take a few days and holiday and then
23 I can do that.

24

THE CHAIRMAN: We've read that.

25

MR LITTLE: And I've done something on the documents

1 response to Mr Lynch, as well.

2 THE CHAIRMAN: We'll come to that in a moment. First things
3 first.

4 Mr Lynch, what are your views on standing over the
5 question of Mr Smith?

6 MR LYNCH: I think if Mr Little hasn't had time to prepare
7 it, that's what we must do.

8 THE CHAIRMAN: Yes.

9 MR LITTLE: May I hand these up, sir.

10 THE CHAIRMAN: Could you just allow me a second.

11 MR LITTLE: Yes, certainly. (Pause).

12 THE CHAIRMAN: So you have some written responses?

13 MR LITTLE: Yes.

14 (Handed)

15 That is the ones for Mr Dekker and Mr Underwood
16 and -- sorry, and Mr Smith's relevant in that, in terms
17 of there is a note regarding Alison Jones in that, sir.

18 THE CHAIRMAN: There is no point in handing that up now,
19 because we're not going to consider Mr Smith at all
20 today, are we?

21 So that's Mr Dekker and Mr Underwood.

22 As we said at the last hearing, we're going to take
23 half an hour ourselves to give these handups names, C
24 this, or R whatever, and we'll tell you what they are,
25 when we get a moment this morning.

1 MR LITTLE: Yes.

2 MR LYNCH: Yes.

3 THE CHAIRMAN: There are quite a lot of them and we don't
4 want to lose control of them.

5 You've seen those?

6 MR LYNCH: Yes, indeed, thank you.

7 THE CHAIRMAN: Okay. (Pause).

8 Right, now, we've received your submissions, you've
9 received those?

10 MR LITTLE: Yes, last Tuesday.

11 THE CHAIRMAN: And we were looking through those, and
12 looking through the application, the questions of
13 Mr Underwood, we thought that we'd come in to tell you
14 what we are proposing to do.

15 MR LYNCH: Thank you.

16 THE CHAIRMAN: We'll carry on with that exercise, we note
17 that reference is made in the application and in the
18 responses to the documents -- to certain documents which
19 have been disclosed and which are in the bundle,
20 obviously our bundles are in here so we need to read
21 those and we'll take those with us.

22 Can you help us on one point.

23 MR LYNCH: Please.

24 THE CHAIRMAN: In relation to question 7, that is based on
25 the document 297 D, which is the minutes of the board

1 meeting, and in your submission Mr Lynch you indicate
2 that that document was disclosed in November 2007.

3 MR LYNCH: We can't say that it was disclosed in November
4 2007 prior to the end of Mr Underwood's evidence.

5 MR LITTLE: We're not certain, that was my position as well.
6 I hadn't seen it before the time that I said and it was
7 the same with the 821 document, I certainly hadn't seen
8 it.

9 THE CHAIRMAN: Right, okay.

10 (Pause) and we had not got much further, I've read
11 them once but I was going back through them.

12 Then in relation to question 8 A and its
13 supplementaries, reference is made to pages 3548 to
14 3556, we assume that those are documents which would
15 have been disclosed after the date?

16 MR LYNCH: That's right, yes.

17 THE CHAIRMAN: The December 2008(?).

18 And then in questions 9 to 9 B, there are new
19 documents identified there.

20 MR LYNCH: Yes, sir. And tribunal, there's a typographical
21 error, the penultimate word in line 5 of paragraph 8,
22 and I think your one will say, as do the others, 1740,
23 it should be 1750.

24 THE CHAIRMAN: Okay. That the documents have arisen late is
25 not the end of the story, however, and you both are

1 aware of that. And we need to understand relevance, and
2 proportionality.

3 MR LYNCH: Yes, but also, sir, although new documents might
4 be referred to, of course, part of the point of my
5 submissions is that they might be referred to but they
6 don't really relate to the questions.

7 THE CHAIRMAN: Yes, we've read that that's what you're
8 contending, but ...

9 MR LITTLE: My point, of course, is that I look at it as an
10 integrated whole, which I understand is what I'm allowed
11 to do.

12 THE CHAIRMAN: Question 10 does not relate to any new
13 evidence.

14 MR LITTLE: No, it's purely a disclosure issue because
15 subsequently I was -- nobody had been asked to look for
16 it and obviously ...

17 THE CHAIRMAN: So -- right. We need to look, therefore, to
18 those documents which have been identified, and we'll
19 have to take them out or get them brought out for us.
20 We will then read your written submissions in opposition
21 or objection to the objections.

22 MR LITTLE: Yes.

23 THE CHAIRMAN: We will then come back in and hear any
24 further oral submissions that either of you wish to
25 make, and then we will decide on Mr Underwood.

1 I think we'll go to Mr Dekker and follow a similar
2 process in relation to that.

3 MR LITTLE: Do you understand I have a couple of issues
4 before we deal with Mr Neill, regarding the other
5 documents?

6 THE CHAIRMAN: There's a disclosure issue in relation to
7 Mr Neill, isn't there?

8 MR LITTLE: I've tried to summarise it in page 11 of my
9 aide-memoire.

10 THE CHAIRMAN: For today.

11 MR LITTLE: And rather than the application per se, which
12 was what I was trying to say on the 14th, there were
13 some things I didn't want to become issues subsequently
14 and I want us all to be comfortable with those points.

15 THE CHAIRMAN: In terms of the application for disclosure,
16 can you remind me, because we have all the handouts,
17 what date do we need to look at for the disclosure
18 application?

19 MR LITTLE: What you have there is the request for the
20 application was made formally on 14 July, after ten
21 weeks of voluntary didn't get anywhere --

22 THE CHAIRMAN: I'm not interested in the background, 14 July
23 2009 in a handup.

24 MR LITTLE: Yes, and you were given a handup on the morning
25 of the 14th by Mr Lynch, and I've done a written

1 response to that, so that this could all be dealt with
2 off line, in my view, other than about 15 minutes of
3 oral stuff.

4 THE CHAIRMAN: What do you mean, off line?

5 MR LITTLE: I'm thinking you could spend time the three of
6 you in the next six weeks and make your own decisions,
7 rather than using the time of the tribunal today.

8 THE CHAIRMAN: Are you saying that we don't need to make
9 rulings before Mr Neill gives evidence?

10 MR LITTLE: Only page 11 of my aide-memoire, that's what
11 I was trying to say, sir, when I said there were two
12 issues, reasonable belief and this, I didn't want this
13 to become an issue.

14 THE CHAIRMAN: Page 11 of aide-memoire, that's to be dealt
15 with before Mr Neill.

16 MR LITTLE: Because if there are any issues we should be
17 aware of that now and what I've also tried to do about
18 doing this, sir, is allow yourselves, other than, in my
19 view, with about 15 minutes' explanation of the
20 documents, to pick your own time to decide what should
21 be applied or not, so you don't have us and yourselves
22 having to spend another day wading through this.

23 THE CHAIRMAN: We have to be careful that we don't trespass
24 on the time that Mr Neill is allowed? What's the time
25 estimate?

1 MR LITTLE: My judgment now is that with what we've done it
2 should be under two hours and that's allowing for ten
3 per cent extra with the conferencing time, because it's
4 naturally slower.

5 THE CHAIRMAN: Is that right?

6 MR LITTLE: I would not like to estimate how long Mr Little
7 will be in cross-examination.

8 THE CHAIRMAN: You've seen the questions that are permitted.

9 MR LITTLE: I would have hoped it would have been shorter
10 actually by nevertheless.

11 THE CHAIRMAN: What time is he booked for, 1.00?

12 MR LITTLE: 1.00.

13 MR LYNCH: 1.00.

14 MR LITTLE: And that raises another point, sir, in my
15 aide-memoire, I know you've already made a ruling but
16 I've asked, in view of what happened, could question 13
17 to 19 be looked at.

18 THE CHAIRMAN: The answer to that is most certainly not.

19 MR LITTLE: That's fine.

20 THE CHAIRMAN: For the reasons given on the last occasion,
21 we've made a ruling in relation to that and we're not
22 reopening that application today.

23 MR LITTLE: I'd like, however, you be able to read at your
24 own time what I have said about that subject because I'm
25 not sure where that comes into the submissions subject.

1 THE CHAIRMAN: Well, we're not going to revisit that
2 application, we're not going to concern ourselves with
3 it, we need to make progress on the matters that are
4 still live issues, that we haven't resolved, and that's
5 what we're here for today.

6 MR LYNCH: Tribunal, can I ask is it your intention to read
7 the aide-memoire that we got this morning?

8 THE CHAIRMAN: In relation to that we have concerns about
9 the length of it, we have concerns about the relevance
10 of it, but we are going to read it in relation to
11 paragraphs -- up to page 11, because of the importance
12 in relation to the disclosure application, that is
13 something which is relevant to that application. And we
14 have skimmed through the remainder of it already this
15 morning in the short time available to us, but you know,
16 I have to say on behalf of the panel, we express some
17 concern about attempts to reopen decisions that have
18 already been made by the tribunal because it's not
19 proportionate to make further submissions on matters
20 such as we have already decided. So in answer to your
21 question, whilst we note what's in the documentation, in
22 terms of what is actually being dealt with by the
23 tribunal, it is going to be limited to considering page
24 11 of the aide-memoire in relation to the documentation
25 disclosure application.

1 MR LYNCH: Yes, and just on that, looking at page 11 and 12,
2 if I may.

3 THE CHAIRMAN: Yes.

4 MR LYNCH: It's ... I'm not quite sure what A and B are
5 getting at.

6 THE CHAIRMAN: Okay.

7 MR LITTLE: Can I try and --

8 THE CHAIRMAN: Wait a minute.

9 (Pause)

10 I don't follow this, Mr Little, I have to say, and
11 it's not intelligible to me, at the moment.

12 MR LITTLE: Maybe I could see if I could explain.

13 THE CHAIRMAN: Which part are you actually referring to on
14 page 11 --

15 MR LITTLE: The questions, what I had expected, sir, was --

16 THE CHAIRMAN: When?

17 MR LITTLE: On the 14th, I'd made the point about the
18 documents and reasonable belief, I'd expected I'd say
19 these things were relevant before the witnesses were
20 recalled, so if you'd let me explain each of these in
21 turn, because we had not dealt with the applications for
22 the documents disclosure, I was concerned, from what
23 I learnt the previous November that Mr Lynch would say
24 this is unfair to the respondents, they can't respond,
25 and all of this type of thing, and I was concerned -- as

1 you probably noticed, I integrate this stuff an awful
2 lot -- that in three weeks' time when you're listening
3 to the application for documents disclosure, there would
4 then be: Mr Neill hasn't been able to give evidence in
5 this and we can't do this, so I was concerned about
6 getting into a position that in simple terms I was
7 trying to ask questions which potentially could be doing
8 now, which were not fair because he had no opportunity
9 to give his evidence. I'll give you one example, sir.

10 THE CHAIRMAN: I'm sorry. What documents does page 11 refer
11 to?

12 MR LITTLE: It refers to the application for documents
13 disclosure.

14 THE CHAIRMAN: Yes. But I had not read that for a little
15 time, and I need to read it now this morning.

16 MR LYNCH: It's the bottom of page 11, is it, sir?

17 THE CHAIRMAN: Well, I assume so, it's 14 July morning
18 hearing expectations outcomes --

19 MR LYNCH: Over to 12?

20 THE CHAIRMAN: Yes. But I am just not clear the page number
21 documents you were saying this relates to.

22 MR LITTLE: My application is in document 4243 to 4250. And
23 that's on A340.

24 THE CHAIRMAN: Right. You handed up a bundle of documents
25 on the last occasion and that's where we'll find those

1 documents?

2 MR LITTLE: Yes.

3 THE CHAIRMAN: Right. Well, you've obviously got those
4 documents.

5 MR LITTLE: Yes. And my point is this, so have the
6 respondents for the last ten weeks. There is, for
7 example, one particular document requests 16A, which is
8 the engineering documentation within the regulatory
9 authorities that would say stuff about this 40 thousand
10 hours limitation. All the research we had done before,
11 since, and whatever, points to there being no such
12 documentation with Airbus, with Aircelle, with the
13 airlines, or anybody, all we have is one Virgin Atlantic
14 document that was handed up at the last meeting.

15 THE CHAIRMAN: What document do you want them to disclose?

16 MR LITTLE: The engineering documentation which the aviation
17 authorities and their customers should have.

18 THE CHAIRMAN: Engineering documentation that the?

19 MR LITTLE: They should have provided to ourselves, and the
20 aviation industry, for want of a better word, clearly
21 say there is a mandatory replacement of these products,
22 and you probably haven't read it, sir, it's in my
23 aide-memoire, we now have from their customer their view
24 that this whole thing is a hoax, in writing, this is
25 fraud, this is part of why I'm getting stressed, and the

1 point is that this document, if it does exist, they have
2 to be able to produce it. Everything I have done, and
3 Mr Bobbi has done, and we now have from Aircelle,
4 80 per cent of which through the checks on Airbus, says,
5 we have nothing, we have nothing, we have a hoax. And
6 Timet, their supplier, told me they have no
7 correspondence from 1997 with Airbus, the conversations
8 and documentation with Airbus and Aircelle, but not on
9 these products, this hasn't 16A in these documents, sir.

10 The point I'm trying to make is that I have asked
11 for the voluntary disclosure of this, to put the whole
12 issue to bed once and for all.

13 THE CHAIRMAN: So where does this page 11 come into that?

14 MR LITTLE: I was trying to say on that morning that when
15 you come to hear the applications about disclosure,
16 I don't want a situation that Mr Lynch says: I haven't
17 heard anything about this application, or know nothing
18 about this.

19 THE CHAIRMAN: What you're saying is that you want that
20 determined before Mr Neill gives his evidence.

21 MR LITTLE: Yes, that's correct, sir.

22 THE CHAIRMAN: Right.

23 MR LITTLE: Well, sorry, let me make sure we're not
24 misunderstanding, I want Mr Neill to be clear that he's
25 seen the requests for voluntary disclosure, and if at

1 any way he feel prejudiced at a later date, if those are
2 disclosed or not disclosed, in the evidence that he's
3 about to give.

4 THE CHAIRMAN: It seems to me that you want to ask him
5 a question about whether such documentation exists.

6 MR LITTLE: And why is it and why can they not disclose it?

7 THE CHAIRMAN: The starting point is, it seems to me, that
8 you are suggesting that there is symptom or there ought
9 to be some documentation in existence and you want
10 Mr Neill to answer whether or not it does exist and if
11 it does exist why doesn't he disclose.

12 MR LITTLE: And provide it and don't say later that
13 I couldn't give my evidence on this document because it
14 hadn't been disclosed. I mean, you must remember
15 Mr Lynch made very vociferous arguments last November
16 about the prejudice on these documents not having been
17 disclosed and a fishing expedition, and I know it's your
18 legal way of doing things but I'm a factual person and
19 I take all those things into account and say, I don't
20 want to be caught out later but not having made this
21 point now simply because the application couldn't be
22 heard.

23 Does that help?

24 THE CHAIRMAN: I understand what you say.

25 MR LITTLE: I'm just trying to prevent a problem later.

1 And on point B, sir, it was just saying that
2 Mr Lynch has handed up his paperwork in terms of his
3 opposition, and what do you want me to do in terms of
4 paperwork, and I've also generated a response to his
5 submission in writing --

6 THE CHAIRMAN: All that is telling us is that there's an
7 objection from Mr Lynch that you want to be able to deal
8 with and you've put it in writing.

9 MR LITTLE: That's right. So we'll just tick the box, and
10 that's your copy then of that.

11 THE CHAIRMAN: That has been submitted --

12 MR LITTLE: That's now been provided, sir, and that is
13 simply because I wasn't sure what was going to happen or
14 how that would affect it on that morning.

15 And the final thing was to say, if we'd gone through
16 the questions one by one I was going to say that
17 since I generated by witness recall document two new
18 documents have been disclosed, the 3605B to G series, on
19 the morning of 14 July, that's the emails to PwC and
20 Ernst & Young on 1 March, and also that morning we had
21 a proposal of Virgin Atlantic, which is 4263 to 69. And
22 there I was going to say, I'm going to ask some
23 additional questions on 15 and 16 that arise because of
24 those documents. I now believe, sir, that that was all
25 I was really trying to say back on 14 July, so I didn't

1 want a misunderstanding later.

2 THE CHAIRMAN: Yes, okay. So some additional questions

3 which arise out of.

4 MR LITTLE: Those disclosures, which will become part of

5 questions 15 and 16.

6 THE CHAIRMAN: I don't have the notes in here, did we rule

7 in relation to question 16?

8 MR LYNCH: Yes, 15 and 16 are --

9 MR LITTLE: Yes, they are, the whole thing.

10 THE CHAIRMAN: I see, I don't have my papers in the room

11 here.

12 MR LITTLE: That's all it was, sir.

13 MR LYNCH: Well, first of all, I should just say that

14 certainly wasn't all that Mr Little wanted to say on the

15 14th, my understanding was that he wanted to argue about

16 the ruling on the 14th.

17 MR LITTLE: Mr Lynch, that is not the case, and please don't

18 do that to me, please.

19 MR LYNCH: I'm grateful for clarification of what Mr Little

20 wants today and we have no problem at all with questions

21 about these documents Mr Mr Little. I mean, we think it

22 may be that Mr Neill's evidence and responses may

23 indicate the questions may fall away, but certainly

24 Mr Little is completely free as far as we're concerned

25 to ask those questions.

1 THE CHAIRMAN: So in relation to, let me just make that, get
2 it clear in my mind, in relation to point A that we were
3 dealing with a moment ago, what he's saying is that
4 there should be engineering documentation in existence
5 which was provided to Aircelle and the aviation
6 industry, saying that there is a mandatory requirement
7 to replace --

8 MR LYNCH: Exactly, a regulatory lifespan.

9 THE CHAIRMAN: -- and he wants to ask Mr Neill whether such
10 documentation exists.

11 MR LYNCH: Exactly.

12 THE CHAIRMAN: And the only basis on which that question
13 could be asked is if it's a relevant question.

14 MR LYNCH: Yes.

15 THE CHAIRMAN: If the answer to that question is that yes,
16 there is such documentation, then the documentation
17 itself must, per se, be relevant documentation to
18 disclose.

19 MR LYNCH: Yes.

20 THE CHAIRMAN: So it may be that, depending on the answer
21 that Mr Neill gives, there will be documentation that
22 will be in existence, which you may have to disclose.

23 MR LYNCH: Yes. On the other hand, as I say, it may be
24 that --

25 THE CHAIRMAN: It may be that it will' fall away but we

1 can't second guess what the evidence will be.

2 MR LYNCH: Exactly.

3 THE CHAIRMAN: In relation to point B, I mean, at the moment

4 I'm in, not au fait with that particular issue, but what

5 has been indicated here this morning is that it's been

6 dealt with now, by way of a written response to your

7 objections to disclosure in relation to such documents,

8 and in point C, he's referring to documents which have

9 been disclosed and he wants to ask some supplemental

10 questions which arise out of question 16, which is not

11 a disclosure matter at all, in truth, it's a question

12 recall and you have no problem with that?

13 MR LYNCH: No.

14 MR LITTLE: Sir, can I just check --

15 THE CHAIRMAN: Can we just go back to point B then, you have

16 indicated that you've dealt with that in further written

17 submissions.

18 MR LITTLE: Yes.

19 THE CHAIRMAN: And you've just handed up.

20 MR LITTLE: Yes.

21 THE CHAIRMAN: Where in here does that point feature, which

22 page?

23 MR LITTLE: Can I just make a point before you go to that,

24 sir.

25 THE CHAIRMAN: No, go to that one now while we have it in

1 hand.

2 MR LYNCH: This is the one on disclosure, yes?

3 THE CHAIRMAN: It appears to be that there's an application
4 in relation to disclosure which we have to look at but
5 whatever you said in relation to it, Mr Lynch, this
6 document takes issue with it, but I want to know where,
7 because I dare say this document relates to all the
8 disclosure points.

9 MR LITTLE: It does.

10 THE CHAIRMAN: Which we're not being asked to determine
11 today, we're being asked to determine at our leisure.

12 MR LITTLE: Yes, with a 15-minute oral time, or explanation
13 of things.

14 THE CHAIRMAN: It's pre-reading rather than just dealing
15 with it on paper.

16 MR LITTLE: Yes.

17 MR LYNCH: It's page 15.

18 MR LITTLE: Mr Lynch QC paragraph 17.5, which is his
19 comment.

20 THE CHAIRMAN: Wait a minute.

21 (Pause) right.

22 MR LYNCH: And tribunal, on that, the reason for my
23 submission the oral evidence should be heard before the
24 other views are taken is precisely what I have just
25 indicated now as well, that is to say that the tribunal

1 may feel that when Mr Neill gives his evidence as to the
2 40 hour point that it will be these requests for
3 particular types of documents, that that falls away and
4 are irrelevant.

5 MR LITTLE: They're not irrelevant to people flying on the
6 aircraft.

7 THE CHAIRMAN: It may be that they're not relevant because
8 it may be that for some reason these documents are not
9 relevant or do not exist, it may fall away but we'll
10 have to wait and see.

11 MR LYNCH: I'll just record, of course, and I should and do,
12 that (inaudible) wholly denied, the allegations --

13 THE CHAIRMAN: That's in issue.

14 MR LITTLE: The gravity of this is such --

15 THE CHAIRMAN: Mr Little, we don't want you to start telling
16 us the gravity of what you allege, we're perfectly aware
17 of that.

18 Wait a minute, please.

19 Yes, okay.

20 MR LITTLE: Sir, there's also a reference to BETA21 series
21 and the materials that are peculiar to this particular
22 product and these sizes and shapes, and in my
23 application for disclosure it's request 16 D, and when
24 you said earlier that this is one of the points, the
25 other point I wanted to make was, I know commercially in

1 confidence from Timet that there are no material orders
2 for more than half a dozen ship sets and if this was
3 true, there would be over a hundred ship sets on order.
4 THE CHAIRMAN: That might be a matter for submissions.
5 MR LITTLE: Again, they should be able to demonstrate that.
6 THE CHAIRMAN: We'll hear what Mr Neill has to say about
7 that. You can ask him questions about that, so it
8 seems.
9 MR LITTLE: Yes. I think that's everything I need to say.
10 MR LYNCH: It's 16 B and 16 D.
11 MR LITTLE: A is the aviation regulations Aircelle, and the
12 other end of this is the materials that go into this,
13 there's only one plant in the world in Toronto in Ohio,
14 who ... this material and those shapes by Timet.
15 MR LYNCH: Just going back to your application.
16 MR LITTLE: That is 16 D.
17 MR LYNCH: 16 B and D are the two headings that you've just
18 covered.
19 MR LITTLE: No, A is the engineering and D is -- B is
20 commercial and C is financial.
21 MR LYNCH: Thank you very much.
22 MR LITTLE: There's actually a total of five.
23 MR LYNCH: 16 A and 16 D.
24 MR LITTLE: I think you understand now what I was trying to
25 avoid later.

1 THE CHAIRMAN: Yes. Right, so we need to take with us --
2 we'll send a list out for you, David, if you could just
3 bring in the documents.

4 MR LYNCH: And there's also the John Dekker.

5 THE CHAIRMAN: Yes, we're going to deal with Mr Underwood
6 first. Then we'll decide on Mr Dekker.

7 MR LYNCH: Right.

8 THE CHAIRMAN: And then we'll decide on the disclosure
9 points.

10 MR LITTLE: I have nothing to add to what I've given you in
11 writing for Mr Dekker.

12 MR LYNCH: Which disclosure points, sir?

13 THE CHAIRMAN: Sorry?

14 MR LYNCH: Which disclosure points?

15 THE CHAIRMAN: The three points that we've just been looking
16 at, A, B, C, we hear your submission in relation to
17 those that maybe those matters will fall away once
18 you've heard the evidence of Mr Neill.

19 MR LYNCH: Yes.

20 THE CHAIRMAN: So we'll have to make a ruling on that.

21 Just so that we're clear about this, you have no
22 further submissions orally on Mr Dekker?

23 MR LITTLE: That's correct, and Mr Underwood.

24 THE CHAIRMAN: Or Mr Underwood?

25 MR LITTLE: Yes. Just the same as Mr Lynch said last time

1 he had no submissions, I'm saying the same to you now,
2 those two, I have Mr Smith to do --

3 THE CHAIRMAN: We have the Mr Smith point. Do you have any
4 further submissions orally in relation to disclosure?

5 MR LITTLE: On the documents I believe, sir, it will take
6 about 15 to 20 minutes just to --

7 THE CHAIRMAN: No, no, sorry --

8 MR LITTLE: In terms of Mr Neill?

9 THE CHAIRMAN: Yes, the ones we have just been looking at,
10 do you have any further oral submissions to make, you've
11 told us what it's about, do you have any further oral
12 submissions to make on those points?

13 MR LITTLE: I probably should make the point on what
14 requests B and C are in that document --

15 THE CHAIRMAN: Would you like to deal with it after we've
16 read the application? I think it's probably better
17 dealt with that way.

18 MR LITTLE: Yes, that would be better.

19 THE CHAIRMAN: In relation to Mr Dekker and Mr Underwood?

20 MR LYNCH: I suspect I will, yes.

21 THE CHAIRMAN: Right, okay. I think we'll read the
22 application of Mr Underwood and Mr Dekker, we'll deal
23 with them together and then we'll come back in hear
24 anything that you have to say, and if there's anything
25 that you want to say, as well, and then we will have

1 read the disclosure application, we'll hear what you
2 have to say and what you have to say and we'll make
3 a ruling on that. And we're now at 10.55, so we have
4 two hours to sort this out but if necessary we'll have
5 to revisit these matters after Mr Neill's given his
6 evidence today.

7 MR LITTLE: Yes, sir.

8 MR LYNCH: Tribunal, do you have an estimate as to how long
9 you might find helpful to have now?

10 THE CHAIRMAN: I think about half an hour to 45 minutes to
11 read -- we'd already started to read some of these, so
12 yes, I think that's about right.

13 Okay.

14 MR LITTLE: And hopefully we will get some time afterwards.

15 THE CHAIRMAN: There may well be some time afterwards, in
16 which we can finish off anything that's not been dealt
17 with.

18 MR LITTLE: Is there time pressure today in terms of when we
19 finish?

20 THE CHAIRMAN: No.

21 (10.53 am)

22 (A short break)

23 (11.52 am)

24 Ruling

25 THE CHAIRMAN: We're not going to permit any further recall

1 of Mr Dekker, we think it's disproportionate to permit
2 that, we will not be assisted by a detailed and dense
3 document being put to the witness, especially so as that
4 has been prepared as a result of litigation, rather than
5 being an original source document, it's simply
6 disproportionate to get involved in that level of detail
7 with a witness.

8 We refuse the application in relation to
9 Mr Underwood, question 6 doesn't assist the tribunal on
10 the issue at hand, question 7, we refuse that, it
11 relates to his knowledge of the investigation, to the
12 details of the allegations, not proportionate to deal
13 with it. Question 8, we don't permit that, because it
14 is a question or questions that could have been asked at
15 the time. Question 8 A, the documents 494 and 2672 are
16 already in the claimant's possession, although there are
17 some new documents, they don't justify the putting of
18 further questions. We really don't need to know what
19 Phil Underwood was doing to get accounts in this time
20 and it's not related to a protected disclosure.

21 Question 9, there has been exhaustive evidence on
22 these topics already and calling Mr Underwood will not
23 assist us in understanding the better or advance the
24 case of either party, or to the detriment of either
25 party, to any degree. Question 10 could have been asked

1 at the time of his evidence.

2 The application is refused.

3 In relation to disclosure, our provisional view is
4 that we are attracted by the submission of Mr Lynch that
5 these matters may fall away. The fact that questions
6 are being permitted to be asked of the witness indicates
7 that they are relevant questions. If, as a result of
8 asking those questions, there is reference to
9 documentation, then, per se, those documents will be
10 relevant, and in those circumstances, it would be
11 difficult for the respondents to refuse disclosure of
12 them.

13 On the other hand, if the documents don't exist, or
14 there's an assertion that they don't, that will be the
15 end of the matter, subject to any submissions being made
16 by the claimant about that. That's our provisional
17 view. You can try and persuade us otherwise, Mr Little,
18 if you wish, but it seems to us that that's a sensible
19 course as a provisional view, at any rate.

20 What would you like to do? ... (Pause)

21 MR LITTLE: I think perhaps it would be best to go through
22 and see what happens this afternoon first, to be frank,
23 and then try and explain more.

24 THE CHAIRMAN: Well, it may be that there's a admission that
25 such documents exist and the fact that you've asked

1 questions about that issue, it seems to us, that the
2 documents, in those circumstances, are prima facie
3 relevant and disclosable. The issue would be different
4 if there was evidence to suggest that, you know, there
5 is not such documentation and there's a valid reason for
6 saying there is not, but that's a matter for us to
7 determine, but that may mean that the application or the
8 issue would have to fall away, so I think it is sensible
9 to await the evidence of Mr Neill to see what is
10 forthcoming from that.

11 MR LITTLE: Yes, I think my difficulty, sir, is I don't know
12 if anybody in the tribunal is familiar with the
13 regulatory side of aviation.

14 THE CHAIRMAN: I'm sure you will ask questions of Mr Neill
15 which will enlighten us in relation to that.

16 MR LITTLE: That's what I'll try and do.

17 THE CHAIRMAN: And hopefully his answers will, as well, and
18 let's see what --

19 MR LITTLE: I think the provisional view I agree with, sir,
20 actually, and see where we go to.

21 THE CHAIRMAN: Okay.

22 MR LITTLE: Obviously, there are other aspects of the
23 financial statements for 2007 and 2008 which obviously
24 I can read and understand what they're saying, and
25 I believe this position, obviously, of continuing to

1 mislead the auditors is still the position.

2 THE CHAIRMAN: We will see what comes of the evidence then

3 that much, you know which questions are permitted and

4 the respondents have agreed to further questions this

5 morning in relation to the disclosure documents, 1.00,

6 I understand, is the due time.

7 MR LYNCH: Yes, I think it gets going, sort of setting it

8 up, 12.45. We will be ready for 1.00.

9 THE CHAIRMAN: You will be ready for 1.00. Good. If any

10 disclosure issues arise as a result of that evidence,

11 then we'll deal with those at the end of that evidence.

12 Okay. So we'll rise now until 1.00.

13 MR LITTLE: I presume, sir, that you'll have read Mr Neill's

14 witness statements and the bits of his oral evidence

15 that's relevant.

16 THE CHAIRMAN: We have to go through that in the next hour,

17 so the questions, I'm not sure -- (Pause)

18 Right, we need to refresh our memories of what

19 questions are permitted, unless you can --

20 MR LITTLE: I can put it very quickly, question 13, with the

21 exception of the first, question 15 and 16, in their

22 entirety, which are the additional ones.

23 THE CHAIRMAN: Hold on a minute, 15 and 16?

24 MR LITTLE: In their entirety.

25 THE CHAIRMAN: Yes.

1 MR LITTLE: 17, yes, is all okay. 18 is no, down to where
2 it says "supplementary", "I am of course", and it's just
3 the language is different.

4 THE CHAIRMAN: Supplementary?

5 MR LITTLE: 18, so if you omit the first, it starts where it
6 says "I am of course", I'm going to change the language,
7 but "did you draw the attention of PwC and
8 Ernst & Young", 19 is not, 20 is not, and 21 is.

9 MR LYNCH: I should say one thing, so that no one is taken
10 by surprise, and that is that we did indeed agree to the
11 questions being asked that Mr Little has identified,
12 occasionally there may be questions where we may have
13 a specific question within how the question is phrased,
14 so it may be based on an account of the evidence
15 allegedly given by Mr Neill at some earlier stage that
16 we don't think is accurate and we'll refer to that, but
17 that's not objecting to the question.

18 THE CHAIRMAN: As and when it arises we can have
19 a discussion about that.

20 MR LYNCH: Certainly.

21 THE CHAIRMAN: To clarify it.

22 MR LITTLE: You'll also hear me referring to volume 11,
23 probably, so Mr Rae made available volume 11 which
24 starts I think at 4180.

25 THE CHAIRMAN: Yes, we have that here.

1 MR LITTLE: It's now over in Canada with Mr Neill.

2 THE CHAIRMAN: He is going to affirm, is he?

3 MR LYNCH: I can't remember.

4 MR RAE: I don't know now. We can find out.

5 THE CHAIRMAN: He'll need a New Testament, won't he, if he's
6 not going to.

7 MR LITTLE: My recollection is he will actually swear on the
8 Bible, sir.

9 THE CHAIRMAN: You'll need to get one for him and he'll need
10 to be re sworn or affirmed.

11 MR LYNCH: We've assumed that the same arrangement will
12 apply as, sort of, say, Mr Edwards, in terms of Ms Ball
13 being there to assist Mr Neill get the pages as they --

14 THE CHAIRMAN: There is no objection to that, I don't see
15 any problem with that.

16 MR LYNCH: My final point is, has anyone seen my volume 11?
17 Oh, I think Charlie had it. That's fine.

18 MR LITTLE: It's a combination of two documents.

19 THE CHAIRMAN: Right. 1.00.

20 (12.00 noon)

21 (The Luncheon Adjournment)

22 (1.00 pm)

23 MR LYNCH: Tribunal, there's a logistical matter that we had
24 hoped we would not have to raise, we hoped it would be
25 all right but in fact in one sense it's not, that my

1 learned solicitor, his firm sent the relevant bundles to
2 Canada, either on Wednesday or Thursday morning via UPS
3 at the cost of £100 and I think a guaranteed arrival
4 date, that has not been received, we have done our best
5 to estimate what will be relevant, and we have scanned
6 those documents and they have been received. It's
7 conceivable that there may be the odd document that has
8 not been sent, if that's the case it can, of course, be
9 very rapidly scanned and sent there, but it's obviously
10 extremely unfortunate and it's certainly very
11 regrettable that a firm as well known as UPS can fail in
12 its deliveries, but anyway, those are the facts. We
13 think it's probably all right, even if there were
14 a wrinkle we I think it will be fairly easy to iron out,
15 but they thought it best to warn the tribunal.

16 THE CHAIRMAN: Thank you for letting us know that. Just one
17 or two points.

18 We've gone through the, we've tried to find
19 questions 18, I think it is, and 19, where do they
20 appear, because in the witness recall application,
21 I know we adjudicated on these matters, or referred to
22 them, I think we got as far as question 17 in the
23 witness recall application and then at appendix B,
24 attached to your submission, your aide-memoire, of
25 10 June, there were three supplemental questions in

1 there, but where are the questions 18 --

2 MR LITTLE: They're in the original application, sir, or

3 they should be.

4 MR LYNCH: It's page 78, sir.

5 THE CHAIRMAN: Okay, mine will come in in a moment, but

6 perhaps my colleagues can turn on that.

7 MR LITTLE: This is where we have the page numbering.

8 MR LYNCH: RAN page 18, "is it true". That's in the

9 82-page --

10 THE CHAIRMAN: The full version of it, yes.

11 MR LYNCH: That's right.

12 MR LITTLE: 19 immediately the next page.

13 THE CHAIRMAN: The page again? 78.

14 MR LYNCH: Yes. Does that make --

15 THE CHAIRMAN: Yes.

16 MR LITTLE: And the questions I will ask, when did you start

17 to review with Aeronca staff. The ones above that were

18 no.

19 THE CHAIRMAN: Wait a moment. (Pause) I must have been

20 having a brain dump, because I was looking at

21 Mr Dekker's questions, and not yours, which explains

22 why appendix -- I -- why does J D after as R N when I'm

23 looking at it over lunch, I just don't know, I'm sorry

24 about that, I was looking at the wrong questions.

25 MR LYNCH: So you have the --

1 THE CHAIRMAN: Yes, I do. I just don't know what I was
2 thinking of.

3 There we are.

4 MR LITTLE: Does that mean, sir, you have not refreshed your
5 evidence on the oral evidence?

6 THE CHAIRMAN: I have not, in terms of the questions. So
7 I need five or ten minutes.

8 MR LITTLE: Can we have time to do that, sir? May I also
9 say, the last time, I handed documents to Mr Dekker, and
10 he hadn't seen it, I'm quite concerned about this
11 happening with Mr Neill, so if I say I want to stop,
12 will you let me stop, because I feel that quite
13 stressful. It may not have been obvious to yourselves
14 the last time.

15 THE CHAIRMAN: Yes.

16 MR LITTLE: I wish you would give me the time to do that,
17 sir.

18 THE CHAIRMAN: Just one second, it may be that's something
19 that can be dealt with very quickly. (Pause) yes, so
20 whilst we're on it, it's all those questions save the
21 first in question 13.

22 MR LITTLE: That's correct, sir, yes.

23 MR LYNCH: Yes.

24 THE CHAIRMAN: Yes. Just check, look at those.
25 Question 15.

1 MR LITTLE: Sorry, 14 --

2 MR LYNCH: Tribunal, sorry, I think what we've called 1 3G
3 and 13 H, my understanding is they're not being asked.

4 MR LITTLE: That's correct, they're withdrawn.

5 MR LYNCH: Good.

6 THE CHAIRMAN: Yes.

7 MR LITTLE: 14 is all yes, except for 14 A.

8 THE CHAIRMAN: So let me just see if I get this right.
9 Question 13, save for the first question and the last
10 two, right?

11 MR LITTLE: That's correct.

12 MR LYNCH: Yes. So "after all", "who would ever", and "you
13 knew that he didn't". They're not being asked.

14 MR LITTLE: And maybe just for completeness, the question
15 around the extra document, I'll probably ask the Virgin
16 Atlantic question.

17 THE CHAIRMAN: Did you say 14?

18 MR LYNCH: I have them all yes.

19 MR LITTLE: 14, yes, sir, that was my mistake this morning.

20 THE CHAIRMAN: Yes, I got that. I'll just correct that.
21 Yes. Question 14.

22 MR LITTLE: And 14 A is both no.

23 THE CHAIRMAN: So the next one is -- what about question 15?

24 MR LITTLE: All of 15, and I will also ask additional
25 questions there.

1 THE CHAIRMAN: 14A you have, haven't you?

2 MR LITTLE: That's correct, they're withdrawn.

3 MR LYNCH: 14A, that's supplementary, did you distribute?

4 MR LITTLE: That's Mr Underwood's notes, which the Chairman

5 ruled no.

6 MR LYNCH: No, I don't have that. 14?

7 THE CHAIRMAN: 14A.

8 MR LITTLE: It was no.

9 THE CHAIRMAN: Do you have page 77?

10 MR LYNCH: Page 76 on my one.

11 MR POWELL: Page 77 over the page?

12 MR LYNCH: I understand, I'm so sorry.

13 THE CHAIRMAN: I know what it's like.

14 MR LYNCH: It's just that we've numbered ours A, B, C, as

15 well, thank you very much indeed.

16 THE CHAIRMAN: Okay.

17 MR LITTLE: So 15 is all yes.

18 THE CHAIRMAN: Yes.

19 MR LITTLE: And that will also have another dimension in the

20 Virgin Atlantic question in there. 16 is yes, and that

21 will include the questions of the disclosures of

22 the 1 March emails and documents.

23 THE CHAIRMAN: Yes.

24 MR LITTLE: 17 is all yes.

25 THE CHAIRMAN: 18, supplementaries.

1 MR LITTLE: I ask nothing until I start, "when did you
2 review with Aeronca staff, Mr Furbay", which is half way
3 down the page, I'd like a different language, as per the
4 note, on the 18.

5 THE CHAIRMAN: So it starts, "when did you review".

6 MR LITTLE: With Aeronca staff, yes.

7 THE CHAIRMAN: And then 20?

8 MR LITTLE: You've ruled on 20 is ruled, and 21 ... yes.

9 THE CHAIRMAN: 21. Now, page 18.

10 MR LYNCH: 18.

11 THE CHAIRMAN: Yes.

12 So Mr Neill -- who is not there at the moment -- has
13 where there's a document page reference in the question,
14 he has been provided with those pages, has he?

15 MR LYNCH: Yes.

16 THE CHAIRMAN: So that's what we do know he has.

17 MR LITTLE: But there are some things that I'll go to that
18 are in the volume 11, because of the Virgin Atlantic
19 stuff.

20 THE CHAIRMAN: Is it that it will have to be sent out to
21 him?

22 MR LITTLE: In that case, we'll have to stop, or whatever
23 we'll have to do, I can't deal with that pressure.

24 THE CHAIRMAN: We'll stop at that point.

25 MR LITTLE: I want to ensure, Mr Neill only said six or

1 seven lines in his witness statement, but the oral
2 evidence is read, I presumed, you remember we lost
3 a little time with Mr Dekker, and the questions sort of
4 follow from that, and it may not make sense, so he must
5 read all of that.

6 THE CHAIRMAN: He has the notes, has he not, of evidence?

7 MR RAE: I believe so.

8 MR LITTLE: My understanding is that he will have read
9 that from the last morning, with my seizure type
10 thing --

11 MR RAE: That's right, Brian, I obviously don't know --

12 MR LITTLE: That's right. The point is, that's relevant to
13 why the questions are there.

14 THE CHAIRMAN: That's right, we'll see how we go now.

15 MR LITTLE: The two key parts are in 60 to 62, which is
16 evidence in terms of A340 he'd previously given, and 16,
17 those are the key pages around A340.

18 MR LYNCH: 60 to 62 of the application, basically.

19 MR LITTLE: It's the ... data and it starts PD22 and runs
20 through what was said by various people and the
21 paragraph you see there in question 13, so anything I'm
22 going to be asking about that's relevant to what that
23 evidence was at the time and why I'm asking the
24 question.

25 THE CHAIRMAN: All right. Well, we've looked through it and

1 there's obviously some documents that are going to be
2 referred to, and when you take the witness to those
3 documents, then we'll do the same.

4 MR LITTLE: Can I make a suggestion, please, sir. I could
5 very quickly give the document numbers and we could
6 check whether there's anything else we're going to do,
7 which would give you time to reread or look at that
8 stuff.

9 THE CHAIRMAN: I don't think we need to do that, because
10 we're going to look at them anyway, because he's going
11 to need to refresh his memory of them.

12 I think we'll press on now and see where we go and
13 if we need to stop, if anyone needs to stop obviously
14 we'll sort that out at the time.

15 Right, shall we get Mr Neill up and running.

16 Good morning.

17 Mr Neill, are you going to swear on the Bible or
18 affirm?

19 A. Yes, I am, I have a Bible here in front of me.

20 THE CHAIRMAN: Right, do you have the words of the oath?

21 A. I do not.

22 THE CHAIRMAN: Right, if you will just --

23 A. Hold it, hold it. Some papers were late in arriving so
24 we will be scrambling here.

25 THE CHAIRMAN: It will not be there, so if you can listen to

1 David.

2 A. Yes.

3 THE CHAIRMAN: And repeat after him, please.

4 THE CLERK OF THE COURT: Mr Neill.

5 RICH NEILL (sworn) (via video link)

6 THE CHAIRMAN: Thank you.

7 A. Thank you.

8 THE CHAIRMAN: Mr Little is going to ask you some questions
9 in cross-examination, and it may be that Mr Lynch then
10 will have some supplemental questions in re-examination,
11 after that.

12 You have some of the documents, but it may be
13 necessary during the course of your evidence to take
14 a break so that further documents to be scanned to you,
15 all right?

16 A. Yes, judge.

17 THE CHAIRMAN: Okay. Then Mr Little, your questions, then.

18 Cross-examination by MR LITTLE

19 MR LITTLE: Mr Neill, in starting I'm going to start with
20 a question which is, have you reread or refreshed your
21 memory on your oral evidence or the notes of your oral
22 evidence in the course of your preparation for the
23 hearing?

24 A. Yes, I have.

25 Q. Okay. So I'm going to, on that presumption, then,

1 proceed on the basis that the questions I'm asking make
2 sense relevant on that oral evidence, if not, perhaps
3 you'll ask me and I'll try and clarify.

4 Okay, so I'm now about to start.

5 You said in your oral evidence that you had the A340
6 market reports for Teal in 2006, and 2007, and that
7 those reports formed part of some discussions with
8 suppliers.

9 MR LYNCH: I'm sorry, as I mentioned, there were a couple of
10 questions where I will raise a question.

11 The note of Mr Neill's evidence, as we understand
12 it, and indeed it appears at page 76 of the application,
13 the note is that Mr Neill said:

14 "We gave everything we had, included the plan for
15 production, did not include the international, I think
16 it included Teal but cannot recall."

17 And that's Mr Little's record.

18 MR LITTLE: Can I point you to the oral evidence ... it and
19 the chairman, you did not share the pessimism, your
20 cynicism about that pessimism has been vindicated,
21 because you have sold more.

22 Mr Neill answered, correct, I chose to call the
23 suppliers and discuss with them how they saw the future.
24 They said the estimate in the journal was extremely
25 pessimistic.

1 Mr Stafford said, when did you have that discussion?
2 Mr Neill, Q1, Q3, and another one just a month ago.
3 So he clearly had that document as part of what he
4 was using in the discussion with his suppliers.
5 MR LYNCH: I don't think that follows, and your own note of
6 the evidence records Mr Neill saying he thought it
7 included Teal but he could not recall.
8 MR LITTLE: If he thought it was pessimistic, he must have
9 had the document.
10 MR LYNCH: He might have been told what it was.
11 THE CHAIRMAN: We don't know what he said, we need to look
12 at the notes.
13 MR LITTLE: This is crucial, because the implication is he
14 certainly had an awareness --
15 THE CHAIRMAN: We'll see what my note says.
16 MR LITTLE: These are ... obviously.
17 MR LYNCH: Tribunal, I'm not sure you took you properly to
18 it, you see Mr Little's note of what was said, page 76,
19 the quote was there.
20 MR LITTLE: I'm not saying that was not what is given.
21 MR LYNCH: "Are they in evidence? We gave everything we had
22 ...(Reading to the words)... I think it included Teal
23 but cannot recall."
24 THE CHAIRMAN: I see.
25 MR LITTLE: I can't disagree that that's right, but that was

1 with regard to PwC, the point was that earlier he had
2 this discussion on the journal with the suppliers and
3 spoke to them about the journal, that's the point.

4 (Pause).

5 THE CHAIRMAN: What was the day, please?

6 MR LITTLE: 14 November, sir.

7 THE CHAIRMAN: Thank you.

8 MR LITTLE: And this is in the morning, and this started
9 with Mr Stafford apologising for omitting it the
10 previous evening, and this particular part is about ten,
11 15 minutes into the evidence.

12 (Pause).

13 THE CHAIRMAN: My notes say that he was aware of
14 a production plan, and the pessimism was shared and
15 reflected in Teal Group forecasts. And he mentions that
16 Forecast International is referred to in PwC, we
17 provided all the information to PwC which included all
18 the plans from Airbus, we didn't give them
19 Forecast International, they had to obtain them. We
20 also provided data from other publications.

21 MR LITTLE: It was slightly earlier than that, sir, there
22 was discussion about Rolls-Royce, and then him having
23 discussions with the suppliers.

24 THE CHAIRMAN: In relation to Rolls-Royce, I've noted the
25 forecast from Teal was worse in 2007, I don't see Airbus

1 or Rolls-Royce saying that they would be phased out in
2 2010 but it was pessimistic. We projected 1200 being
3 used.

4 MR LITTLE: I think just before that, sir, because it's just
5 literally just before that.

6 THE CHAIRMAN: He said, "I chose to call Rolls-Royce the
7 supply of the journal and ...(Reading to the words)...
8 overly pessimistic."

9 MR LITTLE: This is it.

10 THE CHAIRMAN: "I had a number of conversations ...(Reading
11 to the words)... mentioned in the PwC report."

12 MR LITTLE: That's it.

13 THE CHAIRMAN: He said he didn't agree with the pessimism of
14 the journal in April 2006 and my cynicisms as to
15 pessimism of the journal were vindicated because Airbus
16 have sold more than the forecast.

17 MR LITTLE: That's it, sir.

18 THE CHAIRMAN: What do you want to ask him?

19 MR LITTLE: The point is, I think, that journal he had
20 available, so my questions then follow from that.

21 THE CHAIRMAN: You need to ask him firstly, did he have the
22 journal available to him, did he read it, or was he told
23 what was in it, and if he was, who told him, et cetera.

24 MR LITTLE: Okay.

25 In your previous evidence you referred to the April

1 2006 Teal report. Did you have that journal available
2 to you, or how did you know what it was saying?

3 A. I did not have a copy of the Teal 2006 journal, I had
4 a presentation made by Teal over all of the state of the
5 civil aviation business and what the likely sales
6 would be and what products would sell, I did not get the
7 copies of these presentations until after the end of
8 2006.

9 THE CHAIRMAN: Sorry, when was that, after when?

10 A. After 2006 ,at the beginning of 2007.

11 MR LITTLE: So you had the Teal report then for April
12 2006 --

13 A. Not, I did not have the detailed Teal report that you
14 keep referring to, I had a presentation document made by
15 Teal ... which talked about the civil aviation business
16 and the likely products that would play in it, that's
17 what I had.

18 MR LITTLE: You therefore didn't have the April 2007 report,
19 as well?

20 A. I did not, no.

21 Q. Right. Okay.

22 As a result I'll adjust some of the questioning
23 here.

24 Okay.

25 It is true, isn't it, of all the market reports

1 available, only the Forecast International report from
2 2007 would allow you to use some figures to underpin
3 your reduced A340 sales figures of more than 200
4 aircraft?

5 A. We placed heavy reliance on Forecast International, we
6 had used their reports in one of the other Magellan
7 divisions, Orenda, for many years, we had found with
8 regard to engine-specific forecast they were reasonably
9 accurate, so I saw no reason to deviate from that belief
10 in the Forecast International numbers.

11 It was to some degree confirmed by that time some of
12 the uncertainty about how the civil aviation market
13 would unfold, and therefore we stood by the
14 Forecast International report.

15 MR LITTLE: Sir, if you look at the next two questions, and
16 Mr Lynch, I think those two questions now fall away,
17 because of that answer.

18 THE CHAIRMAN: Yes.

19 MR LYNCH: Yes.

20 A. Can I just add to that answer, it was partly because of
21 our history with Forecast International that I believe
22 PricewaterhouseCoopers took out their own subscription
23 and subscribed to the F I reports, as well.

24 THE CHAIRMAN: Because of your --

25 A. That was reported to me -- I beg your pardon?

1 THE CHAIRMAN: Because of your reliance on it?

2 A. Because we had- yes, because we had said that we were
3 using the Forecast International reports as the primary
4 document, at that time they did not have a subscription
5 to Forecast International, as I understand it, so they
6 then decided to take out their own subscription.

7 THE CHAIRMAN: I see.

8 MR LITTLE: Okay, I'm going to start with the ...

9 MR LYNCH: Sorry?

10 THE CHAIRMAN: Just a second. Yes.

11 MR LITTLE: Okay, so in your oral evidence, you followed the
12 chairman in answer to his question, "did you provide
13 data from our publications?" You said yes.
14 Okay? So my question is --

15 A. Yes.

16 MR LITTLE: Did you lie, or did in fact you provide the Teal
17 report to PwC, or any other reports, and then they were
18 ignored by PwC in those reports and exhibits?

19 THE CHAIRMAN: Before we go on, can we just check the
20 premise of that question is correct. I just want to go
21 back to it.
22 Is it the same point in the evidence on 14 November?

23 MR LITTLE: Yes, in fact I think we've all agreed it's
24 there.

25 THE CHAIRMAN: I just want to make sure that we know where

1 it is.

2 MR LITTLE: This also linked to the external market

3 report ...

4 THE CHAIRMAN: You also provided data from other

5 publications, is that what you're referring to?

6 MR LITTLE: Yes, but none of which had been disclosed.

7 MR LYNCH: Isn't it in the slightly conditional tense, sir.

8 THE CHAIRMAN: No, I have it noted as we also provided data

9 from other publications.

10 MR LITTLE: Quite explicit, I remember Mr Stafford saying,

11 where do I go from there, we only have that, and that's

12 the external market reports, actually the question is

13 for asking question 13, it's been disallowed.

14 MR LYNCH: Judge, you asked a question on this topic.

15 That's what elicited the reply, I think it included Teal

16 but I can't recall. Maybe you didn't note that as your

17 own question.

18 MR LITTLE: He just said it earlier.

19 Sorry, sir.

20 It's on page 62 of my witness recall document,

21 that's what you were referring to earlier. You actually

22 mentioned it earlier, sir.

23 THE CHAIRMAN: Yes, I don't see any reference to -- that was

24 his recollection, I think.

25 MR LITTLE: Yes, he said, "We gave everything we had to hand

1 and didn't plan for ...(Reading to the words)...but
2 cannot recall."

3 And then the chair asked, "Did you provide data from
4 other publications?"

5 Which was a straightforward, "what else was it that
6 was in the external market reports", and the answer was
7 yes, and then my QC said, "Where do I go from there?
8 All we know is what PwC have. What else do we have, no
9 other documentation says there were no other external
10 market reports", which is why the December disclosure
11 and why I wanted the answer to question 13.

12 THE CHAIRMAN: From my note it looks as though it was the
13 evidence that further documentation was provided.

14 (Pause).

15 MR LITTLE: Okay, so on that basis, sir --

16 A. Do you want me to add, sir?

17 THE CHAIRMAN: Yes, please.

18 A. Judge?

19 THE CHAIRMAN: Yes.

20 A. Yes, it's now two years since this happened but I recall
21 quite clearly, and Mr Little knows this, that it was my
22 practice to keep copies of all trade publication
23 articles, documents, as well as any forecast that we
24 would make, this would be, the trade publications would
25 be Flight International and Aviation Week primarily, but

1 other things, such as Air Transport World and the likes.
2 What I did was I handed the file, with as much of that
3 data in it that I had, I gave it to Pricewaterhouse.
4 And I do not recall if the Teal presentations that
5 I referred to earlier were in that file or not.

6 MR LITTLE: But none of -- well, but none of those other
7 publications, because we looked at all of them, gave any
8 indication of more than 200 aircraft beyond
9 about March 2007, none of them, and we have looked
10 at 14.

11 A. If you say that, then I accept what you say, I cannot
12 recall.

13 Q. Okay.

14 A. And they have the file.

15 Q. Why do you think none of that was included in the PwC
16 report, or any reference to it at all, not even
17 mentioned? Why was the only document the
18 Forecast International report, if there are, and there
19 were --

20 A. -- I think this is really a question for Pricewaterhouse
21 rather than for me, but I think they had already at this
22 time, as I understood it, purchased a separate
23 subscription to the Forecast International data, they
24 looked upon them as a trustworthy house and were relying
25 on them for the information that they provided, and

1 I guess it took that as priority over other trade
2 publication articles.

3 MR LITTLE: Why do you think they ignored the Teal report
4 they had in London?

5 THE CHAIRMAN: I don't think he can really answer that.
6 I think the point that he says is, well, he speculates,
7 he's already speculated once, but seems to be saying you
8 should ask PricewaterhouseCoopers.

9 MR LITTLE: I think, sir, to some extent this explains the
10 reason for my question which you disallowed,
11 essentially, which was, you know, all the evidence is
12 that there's nothing there, but where are the documents,
13 but there's no point in pursuing that, obviously, with
14 Mr Neill.

15 THE CHAIRMAN: No.

16 MR LITTLE: Right.
17 Right. If I'm not mistaken, sir, I think that takes
18 me to the penultimate question there, then. Sorry, the
19 final question, this is the "even then", doesn't it,
20 there's no point in doing anything before that, because
21 it's PwC.

22 THE CHAIRMAN: You're going down to even then you had to
23 make --

24 MR LYNCH: 13 F.

25 MR LITTLE: I don't think there's any point in asking

1 anything beyond that.

2 THE CHAIRMAN: He's given his evidence that he believes he's
3 given.

4 MR LITTLE: I'm sort of checking, we're at the even then you
5 need to make.

6 THE CHAIRMAN: Okay.

7 MR LITTLE: Yes. On this one, Mr Neill, could you turn up
8 volume 2.

9 THE CHAIRMAN: He can't.

10 MR LITTLE: No, he has volume 2.

11 MR LYNCH: He has 1 to 8, that's fine.

12 THE CHAIRMAN: Oh, I see.

13 MR LITTLE: And I think I know the ones -- please turn up
14 volume 2 and turn to page 694. Could I ask you, and in
15 fact everybody, just to read paragraphs 8.71 to
16 paragraph 8.75. So that's document 693, 694, and I'm
17 just asking everybody to take a couple of minutes to
18 read 693, 694 and specifically, paragraphs 8.71 to 8.75.

19 A. Okay.

20 Q. I just want to let everybody read this, Rich. (Pause).
21 Okay, now, I specifically want to go to the table
22 8.75 and then back into 8.74. And on 3 May 2007,
23 yourself and Mr Dekker reviewed this report with PwC.
24 So I want to specifically ask about the table in 8.75.

25 A. Mmm hmm. Okay.

1 Q. Now, this calculation of 1572 units is a calculation of
2 units which were to be replaced or repaired by 2021.

3 A. Yes.

4 Q. And the sources of that data they have used as being
5 Aeronca and the source data from Forecast International.

6 THE CHAIRMAN: Yes?

7 A. Yes, is that a question?

8 THE CHAIRMAN: I think it is.

9 MR LITTLE: Yes.

10 Did you explain to PwC that they were logically and
11 mathematically wrong?

12 A. I did not, I'm not sure I would agree with your
13 statement that they were logically and mathematically
14 wrong, and I base that on the fact that we know from the
15 work that was done by Aeronca engineering when the
16 nozzle exhaust system was designed and put into service
17 from --

18 Q. Mr Neill --

19 THE CHAIRMAN: Let him finish --

20 A. I'm sorry -- we know from that, and then the work done
21 by Dr Thamburaj that the number of spares and repairs
22 that would happen could be significant but remember it
23 is a forecast, and in a forecast you build a lot of
24 assumptions.

25 MR LITTLE: I want to deal with the mathematically and

1 logically wrong, if I can, first, that's what I was
2 trying to do.

3 A. Okay.

4 Q. Okay, so let's just work back first of all, the
5 replacement.

6 The view is that there is likely to be a replacement
7 on an average of eight years, a mandatory replacement on
8 an average of eight years, is that correct?

9 A. No. You use the word mandatory. There's likely to be
10 a replacement that is significant of all the original
11 units in the lifespan of the aeroplane, but it is not
12 mandatory. This is something that seems to have crept
13 in here that was never perpetuated, to my knowledge, by
14 Magellan.

15 Q. Are you suggesting therefore that there is not really
16 any certainty or any hot life limits requiring the
17 airlines to change the product at 40 thousand hours?

18 A. I think we have to go back to how this product is
19 managed in airline service. If when it was designed, it
20 was designed with a hundred thousand hour projected
21 life, there was then a damage control report, damage
22 control report prepared, which said, this is the amount
23 of damage that this product can sustain in service and
24 very specific limits were laid down for the length of
25 cracks, the number of dents and the like, and on top of

1 that the maintenance manual were prepared by Aeronca and
2 approved by Aircelle and Airbus, and that said that the
3 time between engine overhauls is 20 thousand hours, when
4 you remove the engine for service you should inspect the
5 exhaust system and the nozzle to see if it is
6 capable of continuing for the next service period,
7 another 20 thousand hours. If the damage that is
8 sustained is minor, then it can be refitted and used
9 again. If the damage exceeds the limits that were
10 defined in the damage ... report then the nozzle ...
11 should be returned to the manufacturer for repair. And
12 the assumption was that having 20 thousand hours, this
13 practice would continue, so when we made the forecast
14 and when we looked at all the things that contributed to
15 events occurring that would generate requirements for
16 spares, for repairs and the like, we used not the first
17 20 thousand hour period but the second one, 40 thousand
18 hours, as a benchmark, but it was purely an estimate
19 based on the practice that was defined in the overhaul
20 and maintenance manuals that the airlines had.

21 I was somewhat surprised when I read Mr Bobbi's
22 witness statement that he made no reference to this.

23 Q. I would suggest that his view was parts are either
24 managed on condition, or they're managed as mandatory
25 replacements and hot life limits, this is a product that

1 he was saying was on condition and all the information
2 available from the airlines and we now know from Airbus
3 last week, 80 per cent of their records reviewed, and
4 Aircelle, is that it's an on condition in monitoring,
5 and they have no expectation of having to do anything
6 from all the documentation they have until at least 80
7 to 100 thousand flying hours or equivalent to ten
8 thousand flight cycles.

9 A. I would disagree with that statement.

10 MR LITTLE: Well --

11 THE CHAIRMAN: Let him finish his evidence.

12 So what were you saying?

13 A. Since facts are and last year the Aeronca shop received
14 units in total from Lufthansa and Lufthansa Technik for
15 heavy repair, four were extensive to the tune of
16 a hundred thousand dollars, significant profit margins
17 for Aeronca, every year since 2006 we have delivered
18 somewhere between 350 and 650 thousand dollars' worth of
19 spare parts, which airlines would use to refit the
20 exhaust nozzle and the likes to the engines in question,
21 we also had conversations with the Virgin Atlantic
22 maintenance repairs specialist, Mark Stocks, about what
23 was happening in his airline, and at that time, we made
24 a proposal to him for a number of replacement units, so
25 while it is true that the engineering life was 80 to 100

1 thousand hours, there is significant wear and tear on
2 the units in service that do require maintenance and
3 repair.

4 Q. Right, so that there's absolutely no doubt for everybody
5 else, Rich, in my mind there is no argument that there
6 is at least 100, 130 units in spares and repairs here on
7 a On Condition basis, that's not in dispute. What I'm
8 disputing is PwC and yourselves coming to a conclusion
9 that there is a demand for 1572 units which are both
10 mathematically and logically wrong, and I want to pursue
11 that subject, if I may, as well as, if there is no
12 mandatory 40 thousand replacement, then it's not
13 surprising that the airlines, Airbus, and the other
14 parties, don't see eight to ten times the volume as
15 against an On Condition position, and it's certainly no
16 surprise now to me that the only people that make this
17 material in the only plant in the world which is in
18 Toronto in Ohio, don't have orders for more than 11 sets
19 of this material from yourselves, if it were a mandatory
20 requirement, you'd now have been positioning over
21 a hundred units to be replaced.

22 THE CHAIRMAN: But it's not a mandatory requirement --

23 MR LITTLE: Exactly.

24 MR LYNCH: We never said it was.

25 MR LITTLE: Mr Lynch, please go back and read -- can I do

1 this mathematically -- sorry.

2 THE CHAIRMAN: Wait a minute, please.

3 You are not asserting, Mr Neill, that there's

4 a mandatory requirement for replacement, that's right,

5 isn't it?

6 A. Sorry, would you repeat that, judge.

7 THE CHAIRMAN: You are not asserting that there is

8 a mandatory requirement --

9 A. Correct, correct.

10 THE CHAIRMAN: Yes.

11 A. It is an estimate of the service life that we use to

12 make the forecast.

13 MR LITTLE: If that's the case, Rich, why are there not more

14 purchase orders now for those materials to be

15 manufactured to support Virgin, Lufthansa, and some of

16 the initial airlines that have been looking for this?

17 I've also since talked to Mark Stocks and

18 the CEO's office of Mr Steve Ridgeway.

19 THE CHAIRMAN: Wait a minute.

20 What you're saying is that there's no, there doesn't

21 seem to be an order book for the materials which are

22 required to carry out the repairs -- yes, for the levels

23 suggested.

24 Can you help us as to why that might be?

25 A. On that's easy --

1 THE CHAIRMAN: Hang on a second -- (overspeaking)
2 Sorry, Mr Neill, hang on a second.
3 A. Sorry, okay.
4 THE CHAIRMAN: I'll tell you when I'm ready.
5 (Pause).
6 Yes.
7 A. Vis a vis material, the new manufacture programmes, both
8 in Aeronca and Bristol, use the same material for new
9 units and as we know, there has been a significant
10 slippage in both the A340, the A318 and the A380
11 production programmes. Because this is a unique
12 material, when the mill does a full mill run, we're
13 obligated to take the full amount of what we've ordered,
14 we cannot postpone or delay deliveries, so the plant has
15 been sitting with surplus materials from which they
16 have been making the spare parts and using the material
17 for repairs as they have been going along. As they burn
18 down that inventory, they'll renew their orders both for
19 the new production programme and for the spares as well.
20 THE CHAIRMAN: Sorry, I don't understand that, can you
21 explain that slowly and so that I can make a note and
22 also so that I can understand it.
23 What are you saying?
24 A. I'm saying that we had ordered material for the new
25 manufacturing programmes.

1 THE CHAIRMAN: You had ordered it?

2 A. For three -- we had orders and taken delivery of
3 material for three different aircraft programmes. The
4 380, the 340, and the 318.

5 THE CHAIRMAN: Yes.

6 A. And once we had received that material and it was in
7 house, we then received reschedules from Airbus, for all
8 three programmes, so we end up owning an excess inventory
9 of all three materials. Mr Butyniec, the new CEO, says
10 that we should burn up the materials, so it does not
11 surprise me that Timet do not have orders for new
12 materials. The same could be said about the new
13 manufacture programmes.

14 MR LYNCH: Sir, just pausing there, does that clarify?

15 THE CHAIRMAN: Yes, thank you.

16 MR LITTLE: There are a number of sizes of those materials
17 and the volumes of those materials, ie a hundred sets
18 plus, that situation would not be a legitimate
19 response, is that -- have you any idea, you know, do you
20 accept that there are some specific sizes that are used
21 in the A340 that are peculiar and only used by that
22 product? Ie, they're not used in the 318 or 380?

23 A. Brian, I cannot confirm or deny, I just don't know.

24 Q. Okay, that's fine.

25 A. I don't have that information right here.

1 Q. Okay.

2 A. But I do know that the -- when we take a whole mill run
3 the plant regulate trims material to fit different
4 purposes, I do know that.

5 Q. Okay, can I try and go back to the mathematically and
6 logically, if we go back to the 8.75.
7 This calculation here is predicated on a replacement
8 of 40 thousand hours, is it or is it not? That's the
9 logic of PwC.

10 A. I would assume so but it doesn't actually say this --

11 Q. Just up to 8.74 --

12 A. I would assume so.

13 Q. All right. If a product is to be replaced, and I want
14 to try and go through the maths and logic of this now,
15 a product that is delivered and in service up to the
16 year 2005 is going to have its original life to 2013,
17 and have a single replacement through to 2021, is that
18 correct?

19 A. Can you repeat the question

20 Q. Okay. If a product goes into service, ie, the aircraft
21 is delivered and it goes into service, the number of
22 products in service up to the end of 2005, that's
23 between 2002 and 2005, will have a life to 2013. And
24 they will then have a replacement which will then
25 require replacement again beyond 2021. Is that correct?

1 A. You mean there's a bunch of assumptions in there, which
2 I cannot confirm or deny.
3 This assumes the 40 thousand hours and assumes the
4 same flying rates and all that kind of stuff, but it is
5 correct that products which have been in service, that
6 were first introduced into service before 2005, which
7 were used on a regular basis, would be in need of repair
8 or replacement sometime in the next five, six, seven
9 years.

10 Q. Right. If you just go to the top of paragraph 8.74.
11 What PwC say here is assuming the maximum 20-year
12 amortization and the eight-year average, it implies the
13 policy of replacement.

14 They believe that units delivered between 2001 and
15 12 would need to be replaced or repaired twice.

16 Why would they say 2012 when in fact it's 2005?

17 A. I don't know, it's a question for them.

18 Q. And if you go to the -- yes, but you would have looked
19 at this, and this is sort of fairly basic stuff --

20 A. I assume that the 2012 came from the
21 Forecast International report that it makes reference
22 to.

23 Q. Surely it's a simple calculation of eight years.

24 And then I point to the table, if I may, Mr Neill.
25 The table, you will see, refers to 2001 to 2006, and it

1 multiplies the number by two. It should be 2005, that
2 makes a difference of over a hundred units.

3 And then the following, 2007 to 2012, it also
4 multiplies it by two, when in fact it's clearly wrong,
5 and just even if you assumed the Forecast International
6 report was wrong in terms of the 213 aircraft, this
7 number should have been around 800 units. Why would
8 Mr Dekker and you not have pointed this out?

9 This is a massive difference in your strategic and
10 revenue planning. And it's basic maths, and logic.

11 A. The -- let's deal with it one by one.

12 The first number is 414, which you correctly say is
13 half of 828, they've assumed in their eight year
14 projection that an airline is flying at a certain rate,
15 based on that if you project through to 2021, then they
16 will be either heavier repairs or replacements needed at
17 twice that, so 828 complies with the assumptions made on
18 the 40 thousand hours, and flying rates, and that's
19 mathematics, as well.

20 Q. No, but --

21 A. The next one --

22 THE CHAIRMAN: Let him finish his evidence, please.

23 A. The next line, I assume the same logic applies, though
24 I don't have the Forecast International report that
25 they've used here to verify the ... 48, but I assume

1 that the same mathematics and logic that they used
2 applies. So I can understand how they did it and I can
3 see validation and some justification for doing it that
4 way.

5 MR LITTLE: Mr Neill, it's basic arithmetic. Anything that
6 effectively is delivered between 2006 to 13 is only
7 going to need to be replaced once, or repaired once,
8 there's nothing complicated about that, and it's nothing
9 to do with the Forecast International report, and in
10 fact, just for completeness --

11 A. The -- if you want to break it down by years, the units
12 that were delivered in the earlier portion of that
13 period would be replaced, the likely parts, depending on
14 flying rates, towards the end of that period, would have
15 been replaced once, so I can agree that the 696 is
16 overstated by the last years of that period.

17 Q. Okay. And in terms --

18 A. -- they've actually, they've acknowledged that in the
19 next three columns.

20 Q. Well, they're simply saying that this calculation means
21 it's okay for 365, but the critical issue was, is the
22 production level valid.

23 Would you also concur by the way that the production
24 units here is not necessarily the aircraft in service?
25 In other words, what was relevant was how many aircraft

1 were actually flying at the end 2005, and the fact that
2 the flying numbers were substantially lower than 414 is
3 also relevant, and it doesn't actually kick in until the
4 aircraft is actually flying, not when it's delivered
5 from yourselves to Aircelle and then to Airbus, because
6 there's obviously a normal cycle time for all of that and
7 inventory.

8 A. Brian, I'd agree that it's only aeroplanes in service
9 that are flying that would build the volumes needed
10 to justify the repairs downstream, I have no data in
11 front of me now to say whether there's 414 nozzle plugs
12 in service at the end of 2005, or not. This says 2006,
13 not 2005.

14 Q. 2006 is the wrong year, they should have done it to
15 2006, but they've made an error.

16 In fact I've dealt with this, if anyone wants to
17 read it, at 4206 and 4206 A, because I did have a query,
18 when this was sent to the circulation on that document
19 as to why I considered the 1562 to be rubbish and why
20 I didn't create that case.

21 Have you had a chance to read that, ever?

22 A. If this is a document that you provided to Mr Dekker,
23 the answer is no, I did not read it.

24 MR LITTLE: This was sent on 8 July. No.

25 THE CHAIRMAN: Hold on. We will see.

1 MR LITTLE: Specifically because I think PwC were really
2 annoyed that they had made such a bodge.

3 MR LYNCH: Can you remind me of the page number.

4 MR LITTLE: 4206 and A.
5 It's just there for reference.

6 MR LYNCH: The reference can't be 42.6.

7 MR LITTLE: 4206. This is volume 11.
8 I don't think there's any point in pursuing this
9 much more.

10 A. The answer is because -- I'm looking at 4206, because it
11 refers to a whole bunch of spreadsheets and the likes
12 and I do not pursue that, nor have I read this.

13 MR LITTLE: I don't think, Rich, there's any point on doing
14 any more on this, than I have done, I'm going to ask the
15 question.
16 Do you agree, sir?

17 THE CHAIRMAN: Yes.

18 MR LITTLE: Even then you had to make sure the figures added
19 up to ensure the recovery of the NRC of 40 million in
20 the MAC balance sheet, so in March 2007 you then
21 conjured up these enormous volumes of replacement
22 spares, didn't you?

23 A. Absolutely not.

24 Q. Why did you not then correct this or any of this stuff
25 that their understanding was in fact that this was an On

1 Condition product and not, effectively, a hot life
2 replacement?

3 A. I have not gone back to check the Pricewaterhouse
4 report, but I think they use the term service life, not
5 mandatory life. And to me, service life definition
6 applies here because that's a common term that's used in
7 the maintenance repair world.

8 Q. But Aircelle have told me, and airlines, not directly
9 but indirectly, that in fact this is a service life
10 policy On Condition and they know of no specific life
11 limit and that's when they're telling the airlines --

12 A. ... to tell the airlines anything.

13 MR LITTLE: But Aircelle --

14 THE CHAIRMAN: You haven't told the industry anything about
15 it?

16 A. Untrue, we've completed a service manual, in 2005,
17 I think it was, where we had to complete some
18 calculations to describe what is called the MTBR, the
19 meantime between unit removal. It was because we had to
20 do that calculation and we've submitted this data to the
21 tribunal, and to Mr Little, because we had to do these
22 schedules, that we had Dr Thamburaj express an opinion
23 on when we thought units would be coming back from
24 service. Going back to the reports I referred to
25 earlier, we had a damage tolerance report that said

1 a hundred thousand hours is the design life, when they
2 did the damage tolerance report they built into it
3 a scatter range of 5, because the engine time between
4 overhauls was 20 thousand hours and therefore the belief
5 is that nozzles and plugs could start returning or
6 needing repair from service from 20 thousand hours on,
7 we thought 20 thousand hours was much too low a number
8 to use for this calculation, and at the same time, given
9 the amount of wear and tear that we knew that would
10 occur, based on our experience, a hundred thousand hours
11 was too great a number. So we had as it were a floor
12 and a ceiling. We made the decision to base it on 40
13 thousand hours, based on the work that Dr Thamburaj did,
14 that said that if any units are exposed to heavy use in
15 a number of hot and high airports and marine
16 environments, corrosive elements in the air, et cetera,
17 et cetera, there's every likelihood that we'll start
18 seeing heavy repairs from about 35 thousand hours on,
19 and we chose the 40 thousand hours based on that fact,
20 there was no other science behind the 40 thousand hours.

21 Q. Where is the documentation in the bundles on this,
22 I have seen lots of comments on repairs and so
23 on, and the unscheduled removals, but I have not seen any
24 scheduled removals, and I have to say, I saw nothing of
25 any work on any of this until I read the March 2007 or

1 the March 2007 emails and paperwork in the June 2007 PwC
2 report, ever, and nor have Aircelle, Aircelle have
3 nothing on this scheduled replacement.

4 A. The maintenance manual and the overhaul manual are quite
5 clear in their instructions as to how to inspect,
6 repair, and manage this -- you then have to go over to
7 each individual airline's service record and get from
8 them the time between overhauls when engines will come
9 off the wing. When the engine comes off the wing, the
10 exhaust and the plug will be taken off and inspected and
11 the initial TBO that was planned was 20 thousand hours.

12 Q. I'm not suggesting they're not getting reviewed ... but
13 none of that makes sense to the rest of the industry.
14 Can I also say, Timet are in --

15 A. What do you think on condition actually means it
16 means -- that is the required has been operated for
17 a certain period of time, you take it off, (After) and
18 look at it, and if there are cracks, dents, any sign of
19 damage or corrosion in any sense you make a decision at
20 that point, is the condition that's there good enough to
21 be returned to service or does it need a repair or does
22 it need a replacement.

23 Q. I don't disagree with that at all.

24 A. That's what it means.

25 Q. I don't disagree with that at all.

1 THE CHAIRMAN: We know where the issue is.

2 Do you need to pursue that any further?

3 MR LITTLE: Well, the critical thing is that --

4 When the production level falls away, these

5 replacements, the replacements are the only hinge in the

6 Financial EAC and become the basis of justifying how you and

7 Magellan recover the 40 million NRC, is that right? That's

8 that this EAC says.

9 A. That is not entirely true either, because the, as you

10 well know, there were a whole bunch of negotiations

11 going on with Aircelle, regarding the very same non

12 recovering costs, which were settled post you leaving

13 the company and a substantial contribution was made by

14 Aircelle to the NRCs ... the balance of that NRC will be

15 then amortized out over the remaining production and the

16 spares and repairs-of this programme --

17 Q. And what is that, what is that remaining value and the

18 remaining volumes assumptions at the end of 2008?

19 A. ... Mr Dekker would have supplied that, when he was on

20 the stand, I don't have that --

21 Q. He didn't --

22 A. It must be in the area of 15 to 20 million.

23 Q. Right, well I --

24 A. It's -- that is an estimate, that is not what was on the

25 actual books.

1 Q. From my reading of the accounts I reckon it will be
2 about 20 million because 10 million was written off
3 because of accounting policy but I was interested in
4 what were the volumes you were still assuming because
5 800 units at \$30000 per set, we were never
6 going to recover that 40 million on that basis. In
7 other words, the 30 thousand --

8 A. I understand -- I understand that this was, you dealt
9 with this, when Mr Dekker was on the stand, and that he
10 explained to the extent that he was able the basis for
11 the financial accounting, and I have not done anything
12 since then to follow through on that, I have seen
13 a number of spreadsheets that have come through
14 recently, that were referred by you, but I didn't
15 understand all of the assumptions, nor did I try to
16 follow through on the assumptions to get a clear
17 understanding.

18 Q. If you look at case 4B and 4C, it's exactly what we've
19 just been discussing, which is that replacement thing.
20 I'm going to leave it there, sir, and move on.
21 Okay.

22 This is question 14, and hopefully you will have
23 a range of documents, Jo Anne, 3605, through to 3605G,
24 and they should be in volume 9.

25 MS BALL: I don't have any volumes.

1 MR LITTLE: Okay, 3605, which was a document that was
2 disclosed in December 2008.

3 MS BALL: Please could you be stop for one second, while
4 I look.

5 MR LITTLE: Yes.

6 MS BALL: I have a 3631 to 3670, 3671 to 3601 ... 4186 and
7 4186 A and 4193, I don't have.

8 MR LITTLE: You should have a base 3605 and 3605A, and then
9 B through to G and if we haven't got those, Mr Dekker
10 should have them, in his office.

11 MR RAE: I don't think he's there.

12 MS BALL: He's not here.

13 MR LITTLE: Then I think we need to get these across.
14 (Discussion regarding documents)

15 MS BALL: Just a minute, just a minute. It looks like it
16 was supposed to have been provided, so let me just go.

17 THE CHAIRMAN: We don't have 3605A.

18 MRS SIMMONDS: We have B.

19 MR LITTLE: 3605 is the Aeronca incorporated Aircelle
20 programmes and it's a A3 document, an A3 spreadsheet,
21 and then there's a 3605 which was the document produced
22 by Mr Dekker, 3605A.

23 MR LYNCH: Tribunal, I think we have to send this, 05 has
24 gone through.

25 MR LITTLE: 05A --

1 MS BALL: 3605 we have.

2 MR LITTLE: 3605A.

3 (Discussion regarding documents)

4 MS BALL: It says here that 3605 came across as one
5 document. 3605, there was no A, B, C.

6 MR LITTLE: Then we'd better send this.
7 A, the at a glance document.

8 MR RAE: We have that at Y31B.

9 MR LYNCH: I think it's the same.

10 MR LITTLE: It says -- (overspeaking)

11 THE CHAIRMAN: 1831A and B, isn't it?

12 MS BALL: I have 1831A and B.

13 MR LITTLE: Do you have written on it, "for the sake of
14 clarity we also attach at page 2 a document, which was
15 Mr Dekker's"?

16 THE CHAIRMAN: Do you have that?

17 MR LYNCH: That's a covering email.

18 MR LITTLE: Yes, but the importance was, what was his
19 purpose, its relevance was that was what he was saying
20 in the.

21 THE CHAIRMAN: Can you pass 3605A, please, to the
22 respondents, so they can get it sent out. Thank you.
23 Can we have a couple of copies.

24 MR RAE: We do have that document, but it has Mr Little's
25 handwriting at the top.

1 MR LITTLE: It's your letter, I just copied the ... it's
2 what you said --

3 THE CHAIRMAN: What -- (Handed) (Pause)

4 Can you go to 1831B, please. 1831B.

5 A. Yes, I'm looking for it. 1831B, got it, yes.

6 THE CHAIRMAN: It's Aeronca Inc, A340 summary of best
7 information available. It's a schedule.

8 A. That's not the one we have here that's labelled 1831B,
9 this is, at the bottom, in large type, it says A340 24,
10 2006 EAC to EY audit.

11 THE CHAIRMAN: This needs to be sent out to you, then.

12 MR LYNCH: Let's just get straight what has to go, and we'll
13 all get copies --

14 MR LITTLE: I'm not sure that I have that, from what Joanne
15 said.

16 MR LYNCH: Are those the emails to PwC and E&Y?

17 MR LITTLE: Yes, on 1 March. And those were the ones
18 disclosed on 8 June.

19 MR LYNCH: It's fine, we just collect these and send them.
20 (Discussion regarding sending documents)

21 MR LYNCH: Tribunal, may I explain what's happening to
22 Canada.

23 THE CHAIRMAN: Yes.

24 MR LYNCH: Joanne, Rich, it's Adrian here, just to say that,
25 as you know, unfortunately, UPS has let us down and the

1 bundles promised to be delivered have not been
2 delivered, that's still the case, is it, I take it?

3 MS BALL: Yes. We normally get delivery at about 10.00.

4 MR LYNCH: So still nothing, all right, in that regard, what
5 we're going to do is now to effectively email those
6 documents that Mr Little is about to ask some questions
7 about, we're going to email those to you, and so
8 obviously they must be downloaded as soon as possible,
9 so we can alert the relevant people to download those as
10 soon as possible, and I'm just going to check with
11 Mr Little whether there are any other documents that we
12 ought to send at this stage.

13 MR LITTLE: That was what I was proposing perhaps earlier,
14 as well, just in case.
15 4263 to 4269?

16 MR LYNCH: That's the Virgin Atlantic document, you should
17 have that, I think.

18 A. Yes.

19 MR LYNCH: You have that.

20 MR LITTLE: That's the one, the March --

21 MS BALL: Just a minute, what is it called?

22 A. If I leave the room I can get it from another place --

23 MS BALL: It's number 40 --

24 MR LYNCH: 4263.

25 THE CHAIRMAN: Let's rise while this is sorted out.

1 (2.15 pm)

2 (A short break)

3 (2.30 pm)

4 THE CHAIRMAN: It feels a bit better in here --

5 MR LYNCH: Yes, and also the bundles --

6 THE CHAIRMAN: We wondered if they would arrive at some
7 time.

8 MR LITTLE: You probably realise, sir, I have no idea where
9 we are, schedule-wise.

10 THE CHAIRMAN: We need to get on with it.

11 MR LYNCH: Shall I press this button. This one here, yes?

12 Can you hear us?

13 A. We can indeed, can you hear us?

14 MR LYNCH: We can indeed.

15 MR LITTLE: Mr Neill, we'll go to the document 3605, that is
16 the original 3605, disclosed in December 2008.

17 A. 3605, hold on, I have to ... 3605 is a chart, is that
18 correct?

19 Q. That's it, headed Aeronca incorporated and there's
20 a mark on it which says Forecast International only
21 provides estimates through 2013, that is the document,
22 it has a little 5 or something marked on it?

23 A. Correct.

24 Q. Very quickly, can you confirm you've seen this Aeronca
25 schedule at document 3605 before?

1 A. Do you mean before the tribunal?

2 Q. Yes.

3 A. It was prepared after I had retired from the company.

4 I retired December 2006, I saw this as part of the

5 tribunal proceedings but that is all.

6 MR LITTLE: So you have never seen this document before?

7 THE CHAIRMAN: No, he's seen it as part of these

8 proceedings.

9 MR LITTLE: Yes, before, as in before my termination.

10 THE CHAIRMAN: Yes.

11 MR LITTLE: Okay. So did you contribute in any way to the

12 preparation of the production or spares numbers within

13 the document?

14 A. Ask the question again.

15 Q. Did you contribute in any way to the preparation of the

16 production or spares numbers used within this document?

17 A. No.

18 Q. Okay. sir, I don't think there's any point in asking the

19 next question, if Mr Lynch and you both agree, I think

20 that's almost a waste of time.

21 MR LYNCH: I think that must be down to you, really.

22 MR LITTLE: Well, I don't think there's any point, so I'm

23 now going to turn to document 3605 C. E, sorry, my

24 apologies, E. And it's headed Aeronca incorporated as

25 of 1.3.07, and it only provides estimates through 2005.

1 A. That's correct.

2 Q. Do you recall seeing this document before?

3 A. Again, not before we began these proceedings. It must
4 have arrived after I'd left the company, it's an email.

5 Q. Okay.

6 A. It's addressed to Stephanie at Pricewaterhouse.

7 Q. Okay. But just so we're clear, then, if you go back to
8 3605B.

9 A. ... see today, just repeat the same number.

10 Q. If you go back to 3605B, and also on E.

11 A. B.

12 Q. B and E.

13 A. Okay, yes.

14 Q. You'll notice on the email it has your name, are you
15 saying you didn't receive the email?

16 A. I don't recall reading it at that time.

17 Q. Okay.

18 Why as the market was clearly changing was there any
19 expectation of production beyond those years 2010, 2011,
20 2012? Why a hundred aircraft.

21 A. I'm assuming the Aeronca people who prepared this chart
22 did this on the basis of discussions with Aircelle, and
23 with Airbus, and there was an expectation that the
24 product would continue beyond 2012, because the
25 follow-on product did not look like it was going to be

1 ready until after 2015.

2 Q. But Rich, the production number there is higher than the
3 peak production in the best years of A340, those are
4 actually higher than the numbers in the best years of
5 2003 to 2005.

6 A. The -- there must have been some substantial reason for this,
7 Brian, again, we would have to ask Aeronca, but the --
8 there was an expectation that production would continue
9 to some level.

10 Q. Okay. I'm going to ask you the next question but
11 I think we know the answer already.

12 Did you personally provide this document to PwC or
13 Ernst & Young?

14 A. No.

15 Q. Okay.

16 A. The email suggests it was John Furbay who did that.

17 Q. Yes, but in the disclosure discussions that you had
18 in March with PwC, there was no discussion about this
19 document? That's really where I'm coming from?

20 A. Not that I can recollect, no.

21 Q. Right. Why are the volumes and timings in this document
22 inconsistent with the Q4 EAC at document 1831 and 1831A?
23 In other words, what was given to the auditors were
24 clearly quite different volumes and timings, why was
25 that inconsistent?

1 I'm talking about hundreds of units difference.

2 A. Brian, I am unclear as to what documents are you
3 comparing here?

4 Q. Right, if you go to 1831A and 1831?

5 A. 1831, yes.

6 Q. You will see there is a volume per year given in the
7 EAC. So basically what you and Jim Butyniec and
8 John Dekker and I would have been signing off was
9 essentially this EAC as a representation of what we
10 thought was going to happen in the programme. Or it
11 would not technically have been me, but it would
12 probably have been me once you'd retired.

13 1831A. It's the one with the volumes.

14 (Pause)?

15 A. 1831A is a revenue by year, is that correct?

16 Q. Yes, it's a revenue by year schedule, yes.

17 A. What are the other documents?

18 Q. 1831A you should definitely have, yes.

19 Right, so you will see there there's a volume per
20 year, which is what has gone through in the EAC and is
21 therefore the representation by you or Jim Butyniec and
22 John Dekker at the end of finance year 2006, in other
23 words, the volume of 833 to be produced per year based
24 on that. Why were those volumes used and why are they
25 inconsistent with this other document within Aeronca?

1 Because that's what you gave the auditors.

2 A. Now you're comparing the EAC on 1831.

3 Q. Yes.

4 A. With -- 3605.

5 Q. B, or C, or any of those, are quite different.

6 A. The only, the differences are not huge between the two.

7 Q. Well, the differences are 300 or 400 -- they're about

8 300 different.

9 A. No, 3605A drops off in 2015, 2016, I beg your pardon,

10 that is correct.

11 Q. Yes. And there's about --

12 A. And the EAC is looking at going towards, to the extreme

13 ends of the programme. So the minor differences must

14 have come because of some discussions between Aeronca

15 and Aircelle, and their people, to what would have

16 caused Aeronca to make the additions.

17 Q. But surely the reason why the EAC was presented was the

18 contract ended at the end of 2012 and we had no

19 certainty that it was going to go beyond that, in fact

20 we were just about to go into commercial arbitration and

21 a row with them, so why would we have used those

22 volumes?

23 A. Remember EAC is a ... forecast done on the basis of

24 forecasts, and forecasts are forecasts, they're not done

25 on the basis of certainty within a programme. From

1 a backlog or a firm order position, and I have to assume
2 that Aeronca projected quarterlies post 2012 in the
3 belief that they were the only source at that time for
4 this nozzle and plug and there should be still some life in
5 the product.

6 Q. Which is effectively saying over 213 aircraft,
7 presumably from the Forecast International report?

8 A. Perhaps, yes.

9 Q. But why would that not have been what was used to give
10 to the auditors? Why was the spreadsheet and you will
11 (overspeaking)

12 A. Brian, I personally did not give any information to
13 auditors, the information the auditors were seeing was
14 through the finance organisation, they effectively can
15 be in the plants for a period of two to three weeks and
16 they get a multitude of pieces of information during
17 that time and I personally have no detailed knowledge of
18 what is given and what is not.

19 Q. Can I just ask this question clearly now. Are you
20 saying that you had no discussion with Ernst & Young
21 during the early part of 2007 and particularly March
22 2007 on any part of the A340 programme? Is that what
23 you're saying?

24 A. No. I had at least one meeting, may be some discussion
25 on another subject, and I recall the discussion was

1 primarily about the discussion we had earlier, which was
2 the spares and repairs forecast, it was not about the
3 programme per se.

4 Q. Right, so it wasn't about the 3605 and it wasn't about
5 the EAC itself, it was purely the spares conversation?

6 A. Correct.

7 Q. Right.

8 A. We reviewed the EAC and management, as we're doing now,
9 and there were requests asked about that, but I do not
10 recall any questions being asked about the differences
11 between the different schedules.

12 Q. But were you part of management who reviewed these
13 management accounts at the end of 2006, is what I'm
14 asking, ie, these documents?

15 A. Yes.

16 Q. You were?

17 A. I would have reviewed the top level documents.

18 Q. So these inconsistencies weren't clear to you?

19 A. No.

20 MR LITTLE: Right, okay.

21 I don't think there's any point in pursuing that.

22 MR LYNCH: Sorry, were you going to add to your answer just
23 then?

24 A. I had intended to, the inconsistencies between these
25 documents I believe should have been raised with

1 Mr Dekker, since I would normally have reviewed this
2 with Mr Dekker, and the differences to me weren't
3 surprising, given the fact that back in 2006, we still
4 believed there was still some life in this product.
5 Q. Just for the record, do you believe there's any life in
6 the product now?
7 A. Well, I refer to a press conference that Airbus gave at
8 the Paris Air show this year, I believe you attended
9 this.
10 MR LITTLE: I did, I also spoke to several of them including
11 the --
12 THE CHAIRMAN: Is this going to help us or is it just
13 a matter of curiosity?
14 We've lost the link.
15 MR LITTLE: That's whatever they use going forward --
16 THE CHAIRMAN: I don't think it's going to help us, I am
17 afraid.
18 MR LITTLE: I think the relevance from my perspective is, if
19 they now recognise there's no production, the only way
20 to recover it is replacement spares and therefore we're
21 going into 700 plus replacement spares.
22 MR LYNCH: Actually tribunal, we might want a little
23 evidence about --
24 MR LITTLE: Can I give it too.
25 THE CHAIRMAN: No, you can cross-examine Mr Neill about

1 that.

2 (2.47 pm)

3 (The video link failed)

4 (Pause)

5 (2.50 pm)

6 A. We're back, yes.

7 NEW SPEAKER: Sorry, can you just speak again, I'm just

8 putting the volume up.

9 A. We are back, we can see you loud and clear.

10 NEW SPEAKER: Thank you very much.

11 MR LYNCH: Thank you very much indeed.

12 THE CHAIRMAN: You were going to tell us about the Airbus

13 presentation.

14 A. Oh. Oh, yes. Airbus, this summer, had a press

15 conference at the Paris Air Show, Airbus announced

16 some improvements to the A340/500.600 fuselage, and the

17 introduction of a new skin for the belly fairing under

18 the aeroplane, the introduction of this skin would mean

19 there would be a reasonable improvement in the drag

20 qualities of the aeroplane and an improvement of fuel

21 consumption in the order of about 1 per cent. They said

22 specifically that this would be offered to existing A340

23 360 operators and would be introduced on the production

24 line as appropriate, so it was a surprise to me, because

25 every indication that we'd seen from 2007 on, because of

1 the difficulties Airbus were facing with the 380
2 programme, that was consuming both human resources and
3 financial resources, that they'd given up on the A340,
4 but here was someone now saying: we're prepared to do
5 things to improve the performance of the aeroplane. So is
6 there life in this product? Perhaps, you can never rule
7 out more engineering improvements, the discussion, Brian
8 mentioned Rolls-Royce earlier, the discussion I had with
9 John Cheffins in Rolls-Royce was on this very issue, the
10 sustainability of the programme and what could be done, and
11 at that time he confirmed that Airbus were doing
12 virtually nothing, all of their resources were devoted
13 to the 380 and the launch of the new 350, and therefore
14 any opportunities beyond the production plan and backlog
15 was likely not to happen, he volunteered at that time
16 that they, Rolls-Royce, were offering the 500 Trent
17 engine for another opportunity, which was the
18 reengineering of a military aeroplane in the States, and
19 was somewhat optimistic about that, but it's a long
20 story to say that I had believed that the outlook for
21 the aeroplane was dim but given what happened this past
22 year I'm now no longer quite so sure.

23 MR LITTLE: I want to stick with 360 5C and just, Mr Lynch,
24 so you're aware, I'm going to question 16 now, because
25 it keeps it in the same bundle, okay, before 14. It

1 just keeps it in the same bundle.

2 Why would the Aeronca business team continue to
3 forecast a total of 190, that's the 172 plus 18 spares
4 and repairs, in document 3605, which is March 2007, if
5 they knew about a hot life service limitation and/or the
6 assumptions you've mentioned earlier from engineering?
7 Why have they continued to take what would be a fairly
8 classical On Condition estimates view, based on the 80,
9 100 thousand flight hours, or 10 thousand, 15 thousand
10 flight cycles, why would they not have corrected this?

11 A. I think -- again, you would have to ask them that, my
12 understanding is that this forecast for spares and
13 repairs was based on not only the engineering work that
14 was done on the Trent 500 exhaust system but the after
15 market business, be it spare parts, spare products, or
16 repairs, contained a fair degree of experience and
17 knowledge from other programmes that Aeronca was
18 involved in. You will recall that Aeronca have a steady
19 business on another nozzle and plug, on the ... 80 to 90
20 units a year on that and I assume some of that got built
21 into this forecast.

22 Q. But Mr Neill, this number here is an average of 10 to 12
23 units per year, which would be a fairly classic ranging and
24 scaling view for the product. If it was truly the
25 replacement levels you're talking about, this number

1 should be well into the 80 to 100 units each year.

2 I mean, that's not a marginal difference, that's

3 a phenomenal difference, a difference of two to three

4 hundred million revenue, it's not small.

5 A. And remember the difference here is that they are

6 preparing this data to do the basis of an EAC, to

7 satisfy the board and the financial community, that what

8 we had yet invested in this programme was recoverable,

9 if you are correct and we are correct on the short visit

10 theory and all this business comes to us, it's just

11 gravy, it's profit.

12 Q. Mr Neill, if the 750 which became 468 in the subsequent

13 document, which effectively is going to end up at 120/130

14 it puts all the onus on some 700 spares, we have

15 to deliver 700 to 800 spares, it's the only way to

16 recover those volumes, other than accounting changes,

17 which happened. Why would Aeronca not know of those

18 things for their strategic and engineering and quality

19 planning processes. These are absolutely basic, basic,

20 basic, aviation industry issues, they don't come more

21 basic than this, why wouldn't it?

22 THE CHAIRMAN: Let him answer. You're making statements,

23 it's questions that --

24 MR LITTLE: Yes. Why wouldn't they? (Pause).

25 A. What was the question.

1 THE CHAIRMAN: I think that's the difficulty, if you make
2 a lot of statements and then say, why wouldn't they, at
3 the end of it, everyone's forgotten what the first part
4 of the question was, if you just put a succinct question
5 to him that you want him to answer in relation to this
6 issue, then he will be able to do so.

7 MR LITTLE: All of what we've just discussed is fairly basic
8 to the aerospace industry in terms of strategy, quality,
9 planning, why would Aeronca not have made those changes,
10 in their forecasts as phenomenal as they are, like a ten
11 times increase in volume ... these documents, it's basic.

12 A. The issue as I understand it is the recovery of the
13 amount invested in non recurring and what is the minimum
14 number you have to achieve to be able to recover the
15 amounts invested.

16 I think Aeronca were preparing these charts on the
17 basis of what is reasonable to justify the claims that
18 they would get the money back that they had invested in
19 the programme, either through contract negotiations with
20 Aircelle, or through the sale of additional units,
21 spares, and repairs. It was on that basis that they
22 prepared these charts.

23 Q. But the documents that the auditors were given were
24 showing some 800 units over five years and those are the
25 management documents we would have been making the

1 representations on. It just doesn't make any sense.

2 I suppose that's a statement.

3 THE CHAIRMAN: Is there anything else you can add to that,

4 Mr Neill?

5 A. Oh, are you saying the other documents, I assume you're

6 referring to the EAC, is that correct?

7 MR LITTLE: Yes, and the 3605A document you saw a minute or

8 two ago, yes.

9 A. Well, the 3605A document, I think I've explained, or

10 tried to explain, that this is a number that you have to

11 achieve to get the right recovery of the investment. On

12 the EAC, they have taken a number of, from what I can

13 see, of additional units of 793, assuming this is the

14 last EAC that we looked at, which includes the spares

15 and repairs and the likes. So I don't see a whole lot

16 of contradiction.

17 Q. (Pause) this is the number one balance sheet ... no.

18 Right. I'm going to leave it there, sir, and go to

19 the next one.

20 THE CHAIRMAN: All right.

21 MR LITTLE: 15. Can you go now to document 3702 to 3721.

22 And 3631 to 3701.

23 MS BALL: Brian, could you repeat those numbers slowly,

24 please.

25 MR LITTLE: 3702 to 3721 and 3631 to 3701. Again, I'm

1 making the presumption, Mr Neill, that you would have
2 looked at those documents on the 14th when you were
3 here.

4 A. Correct.

5 Q. Yes. Okay. So you know what they are, yes?

6 A. It's the ... on and the difficulty that we have with
7 BETA 21.

8 Q. Did you commission these technical reports?

9 A. Go back to the first one, which is dated February 1999,
10 3702, that was the point in time when the meetings were
11 going on between Aircelle and Airbus and Aeronca on the
12 design and choice of material for the exhaust system.
13 Aeronca had offered two materials, a steel called
14 Inconel 625(?) and they'd also offered the titanium BETA
15 21, there were certain technical risks associated with
16 titanium 21 in civil aviation, there had at that time
17 been only one other application and not much was known
18 about it, but with the steel there was considerable
19 experience, and considerable knowledge, the difference
20 between the two was that the titanium product was
21 substantially lighter, and if you put all four on the
22 aeroplane, the difference between the two materials was
23 worth about another passenger.

24 So the issue became how does titanium 21 perform in
25 service and how manufacturability -- how good was it to

1 make products out of this material. Can you manufacture
2 such products? And we were concerned about the impact
3 of temperature on the alloys, so the 99 report was,
4 I didn't commission it but I certainly approved the
5 spend, to have this work done in Canada to investigate
6 the material and to propose solutions that would help
7 the manufacturing process.

8 Now, in 2005, that report, I had asked Aeronca
9 directly if they had further experience on titanium
10 BETA 21. The answer was while they had done all the
11 base line engineering they did not have any good service
12 type experience, so since this little group in Canada is
13 reasonably expert on understanding what happens to
14 materials in service, between Aeronca and myself we
15 asked them to do this study, and these tests.

16 Q. Thank you. Were Aircelle or Timet aware of any of this
17 or involved in any of this?

18 A. Aircelle definitely was, Timet had to be, because in the
19 early days of production, there had been significant
20 scrappage of material and the plant kept reordering
21 material time and time again, way beyond normal
22 production requirements.

23 Q. Sorry, were they involved in the fatigue and ductility --

24 A. To my knowledge, they were not -- they were not --
25 knowledge over what was going on inside our company.

1 Q. I want to be precise here, so Timet's knowledge from
2 1997 and involvement of Mr Fanning in fatigue life or the
3 ductility impact, he would not have been aware of any of
4 those issues, were confirmed

5 A. Correct, yes.

6 Q. The number one man in the world on BETA 21 was not
7 involved in R and D terms? On fatigue etc ?

8 A. I don't know that, because the Aeronca plant were having
9 a substantial dialogue with Timet, regarding, first of
10 all, the difficulties they were having in the mill in
11 producing this material, almost 50 per cent of every
12 batch that had been delivered to Aeronca was being
13 scrapped out for poor metallurgy, so the Aeronca plant
14 were continually interacting with time eat on the whole
15 issue around BETA 21, I'm unclear as to whether they had
16 any knowledge of any work being done by Thamburaj on
17 the --

18 MR LITTLE: My understanding is --

19 THE CHAIRMAN: Wait a minute, that's your evidence, his
20 understanding is different, at the moment, he doesn't
21 know.

22 MR LITTLE: He's telling you what he does know and that he
23 doesn't know about the fatigue life.

24 THE CHAIRMAN: No, he's saying he was unclear, he presumes
25 there was some dialogue, but he's unclear if they knew

1 of the exact services.

2 MR LYNCH: And Dr Thamburaj's report. He doesn't remember
3 anything to do with that.

4 MR LITTLE: He's aware of the BETA21 TIMET producability
5 problems, he's not aware of the fatigue issues. There's two
6 different categories.

7 THE CHAIRMAN: Is that right, Mr Neill?

8 MR LITTLE: Rich, can I just repeat this.

9 A. Let me, let me -- why don't you ask the question again.

10 MR LITTLE: All right, there were significant issues in the
11 production challenges, et cetera, with Aeronca and
12 Aircelle generally because of this on the pricing side,
13 and your understanding was there were definitely
14 discussions between Aeronca and Timet and Aircelle about
15 that matter, yes or no?

16 A. Correct, that is correct. There were even three-party
17 meetings to discuss it.

18 Q. That's also my understanding, by the way, from Timet.
19 In terms of the fatigue issues, and the issues
20 associated with life and service and application, what
21 is your understanding of the engagement between Aeronca,
22 Dr Thamburaj, or anybody with Timet? Well, just repeat
23 it yourself.

24 A. Between Aeronca and Dr Thamburaj --

25 Q. And Timet?

1 A. Wait a minute, let me answer. Between Aeronca and
2 Dr Thamburaj, there was numerous discussions and of
3 course the reports that we were looking at were actually
4 sent to Aeronca and were paid for by Aeronca, out of the
5 programme. I do not know if there were any discussions
6 between Dr Thamburaj and Timet directly, and I also do
7 not know if there were any discussions between Aeronca
8 and Timet, on the issues of service life. I'm unclear
9 as to whether fatigue even enters this part of the
10 discussion.

11 MR LITTLE: That is also my understanding and also Timet's
12 understanding, that they've never had any discussions
13 with Aeronca or Dr Thamburaj on implications for service life

14 THE CHAIRMAN: That's not his evidence, it's that he doesn't
15 know. Are you putting to him that there weren't any?

16 MR LITTLE: Yes, and he's confirming that he doesn't know.

17 Where in the technical reports is there reference or
18 justification for the hot life service limitation, in
19 other words, these documents were apparently given to
20 the auditors. Or so we're told. Where in these
21 documents is there any reference to the hot life limits
22 or any limitations?

23 A. In these documents there is no reference to specific
24 hours for hot service life -- let me say that again, for
25 a hot compliant service life. What there is, however,

1 there is a number of pieces of data reflecting
2 corrosion, the bubbling, the impact on the honeycomb
3 structure, all of which are statements regarding what
4 can happen to the product in service. The only document
5 that I'm aware of that has been released is an email
6 I sent to Dr Thamburaj asking him on the basis of these
7 tests, we're -- we intend to use 40 thousand hours as
8 the number to feed into the meantime between unit
9 removal forecast that we were giving to Aircelle, is
10 that a reasonable number to use and can you substantiate
11 it? And he responded, saying, yes, based on everything
12 that he saw, the worst case scenario was that a plug
13 that had been subjected to -- the exhaust that had been
14 subject to heavy use, and a lot of damage inferences,
15 especially corrosion, may incur trouble at about 33,
16 500, or 37, 300 hours, so on the basis of that we went
17 ahead with the 40,000 hour number.

18 Q. And so the first time the calculation was actually done
19 of the 33, 37 thousand hours was actually that email
20 that Raj did in March 2007?

21 A. I believe so, but I don't know for sure.

22 Q. Okay.

23 A. That was when I asked him.

24 Q. Okay?

25 A. That was when I asked him.

1 Q. And these documents have been disclosed as having been
2 given to the auditors and Mr Dekker said he didn't give
3 them to the auditors. Rich, I suspect that's just an
4 error, did you give these documents to the auditors?

5 A. Well, they may -- they may have -- they may have
6 received these documents in -- remember what I said,
7 they came and camped in Aeronca for two weeks, they were
8 like half a day in Magellan, and going through
9 documents, they may have obtained them then, I have no
10 clear recollection of actually giving them the
11 documents, I would not have seen the value of it.

12 Q. Right, okay, and that's where my head is, as well,
13 that's fine.

14 So following your meeting with PwC then on 7 March,
15 you got Raj to do the calculations that weekend and that
16 is what we've seen in the email with the 40 thousand
17 hours? Is that right?

18 A. I don't know when he did the calculations. I asked him
19 that weekend, could you give a 40 thousand hour
20 limit, and he emailed me back, saying yes.

21 Q. Right, okay, now, his emails refer consistently to
22 repairs, not just replacements. Can you explain more
23 about the EAC makes assumptions that replacements only
24 is in the accounting, that's what PwC and Ernst & Young
25 have said. Can you explain the repairs and the spares

1 replacement bit to the tribunal, please.

2 A. I suspect we're struggling with nomenclature, because
3 we've always talked about spares and repairs in the same
4 breath, and the question becomes, when does a repair
5 become a spare? For example, if you have, like we have
6 had from Lufthansa, if two plugs show up in your shop
7 and you replace 95 per cent of the material that's in
8 these plugs, and you send them back, is that a repair or
9 is that a spare? So we've always kind of looked upon
10 them in the same vein.

11 I would distinguish between that and spare part
12 pieces, individual pieces, that we sell to airlines for
13 maintenance purposes when the aeroplanes are actually on
14 the line in service, and I suspect that in the EACs,
15 when we see spares, we're actually talking about
16 a combination of spares and repairs. That is what my
17 understanding and that's what my belief is.

18 Q. Okay. But you know that the PwC report referred only to
19 spares being in the EAC and that they did not think
20 repairs ought to be? I presume you're aware it said
21 that in their report?

22 A. I know, I read these words, yes.

23 Q. Okay. But for accounting purposes it's spares only is
24 what is in the EAC? That's what John told us, too. Do
25 you know?

1 A. I would ... I don't know but I suspect what he was
2 alluding to would say the fact that individual spare
3 parts, for which we sell somewhere like half a million
4 dollars' worth a year, are not in the EACs and are
5 additional to the EACs. Spares and repairs that come
6 from the aftermath of work that is done in the factory
7 are in the spares and repairs part of the EAC.

8 Q. Okay, we have your evidence, okay. Could you now find
9 that Virgin Atlantic document --

10 MR LYNCH: Sir, I just want to see where we are with the
11 questions. Where are we now with the questions?

12 MR LITTLE: Basically, as far as I'm concerned, we've
13 finished all of 15 and we're now doing the Virgin
14 Atlantic question that relates to 15 and 16.

15 MR LYNCH: We've done 16, is that right?

16 MR LITTLE: Yes, and then we'll go on to 17. So we're now
17 doing the Virgin Atlantic bit that arises as a result of
18 that document.

19 Sir, is everybody okay there? Yes? So the document
20 is 4263 to 69, okay?

21 Mr Neill, this is a document which you chose to
22 disclose last or as part of the evidence last week, and
23 this is an unsolicited proposal, as I understand it, to
24 Virgin Atlantic, both from Mark Stocks and from his CEO.

25 Can you explain to the tribunal, where has this

1 proposal gone to and what was this proposal for and the
2 role of Aircelle in this proposal?

3 A. As I understand it, from conversations with Aeronca,
4 there had been a meeting convened in the UK, and at the
5 request of the Aeronca agent, to discuss the business
6 that was being transacted between Aeronca and Virgin
7 Atlantic directly. That business was primarily on
8 another engine, the CF6, but it also involved some
9 discussion on the 340 600. Mark Stocks had previously
10 indicated to our agent that they had been having trouble
11 with the Trent 500 engine, and there had been removals
12 earlier than the 20 thousand hour point, and I know no
13 more than just that, and as a consequence of these
14 removals, they were both damaging and having to make
15 repairs as best they could on the exhaust systems that
16 had come as part of the new supply.

17 Virgin Atlantic had also purchased one complete
18 system to act as a spare, and had that in their rotatable
19 pool. Based on that discussion, Keith Wyman, who was
20 present at that meeting, suggested that perhaps, for
21 Mark's benefit, he should have a proposal on the 340
22 similar to the proposal that -- and the contract that
23 they had on the CF 680 exhaust box.

24 What's the follow-up been, when the proposal went
25 in, because it involves leasing and the like, Mark

1 Stocks indicated that it was beyond his mandate to deal
2 with it, and he passed it over to another individual,
3 whose name I regret I didn't get, for them, Virgin, to
4 deal with it, because he handles all the leasing type
5 proposals.

6 That individual has subsequently left Virgin, he was
7 part of a staff cut, so this proposal right now is
8 languishing within the files of Virgin Atlantic itself.

9 How far, they still continue to experience
10 difficulty with the engine, and continue to make
11 request for spare parts to maintain their fleet I don't know.

12 Q. Okay.

13 In this proposal there's a reference to repairs as
14 well, and repair facility.

15 A. Yes.

16 Q. So this is the part you were saying earlier about the
17 "could", some of these could be repaired, but if so it's
18 a specialist repair?

19 A. Yes.

20 Q. As distinct from spares, okay.

21 Sir, I have a series of evidence here it points back
22 from what Mr Neill has said, more than two thirds of
23 that concurs with what Virgin tell me, and what --

24 Mr Neill, what I understand is that their
25 engineering organisation and their CEO's office say

1 there is no limitation or replacement requirement on the
2 Trent 500, that they would view this as an item of nearly
3 \$2 million per aircraft for the leasing proposal and
4 my understanding is they're pursuing this directly
5 with Aircelle and will be Airbus because their
6 expectation was that they would not have the number of
7 repair problems they're having and concur with what you
8 said, two aircraft with two engine problems prior to the
9 first removal, one was a damage repair, but they do not
10 see this as being an item in which they're going to have
11 to replace, effectively for 19 aircraft, something like
12 a 40 million dollars expenditure. In fact, they
13 said to me, Mr Little, that's equivalent to what our
14 staff cuts are going to be for 600 people, how do you
15 think I feel about that.

16 THE CHAIRMAN: That's a huge statement of what you believe
17 the position to be.

18 MR LITTLE: It's about the engineering replacement.

19 MR LYNCH: We don't know.

20 THE CHAIRMAN: It's whether the witness can give us evidence
21 about what he understands the position to be.

22 MR LITTLE: He's just say that he doesn't know.

23 THE CHAIRMAN: No.

24 MR LYNCH: No.

25 THE CHAIRMAN: What do you understand to be the position,

1 the prospects, in relation to Virgin Atlantic? What do
2 you understand?

3 A. Well, it's a question for me, is it?

4 THE CHAIRMAN: Yes.

5 A. Yes. Well, the answer comes in how much, or how you
6 believe in the work done by Dr Thamburaj. What he says
7 is it that at some point, the honeycomb structure in
8 this product will suffer because of the wear and tear
9 through service use at which point in time there will be
10 major repairs needed, and I mean, if all the aeroplanes
11 stay in their fleet to the full engineering design life
12 the belief is that every one of these exhaust blocks
13 will come back through the shop for a major repair or
14 a replacement.

15 MR LITTLE: And just so -- and Virgin see that, therefore,
16 as being almost 80 units in the next three, four years.
17 Which there's no way they have that in their plans.

18 THE CHAIRMAN: Do you know that?

19 A. I do not know that, no. Brian is making statements --

20 THE CHAIRMAN: I know, I just wonder whether you can help
21 us.

22 MR LITTLE: You know they have 19 aircraft, obviously.

23 A. In fact, as a result of you will all this, this will be
24 raised in the next two months with Virgin directly with
25 the people in ... office.

1 MR LITTLE: And it needs to be, and also with Timet, Rich,
2 because they have no idea there's any fatigue issues
3 here.

4 MR LYNCH: Again, it's --

5 MR LITTLE: This is a real air worthiness issue, I'm worried
6 about that, as well.

7 A. Brian, let me make a comment here. Brian says it's an
8 air worthiness issue, it is in the sense that the
9 product is managed on an On condition basis and through
10 that management, they will have some visibility of how
11 well the product is performing, or not performing, in
12 service. And the ... people will then be able to advise
13 Aeronca on the reality of whether there will be a need
14 for replacement or not, vis a vis Timet, we order
15 material from Timet to cover three programmes, 380, 340,
16 and 318, 318 is mandatory ... so orders have been slow,
17 but I can tell you Timet were able to cope with the full
18 production volume of the 340 at its height, deliver
19 material for the 380 at its height, and do that on the
20 normal business lead time, which is about 12 months.

21 MR LITTLE: Well --

22 THE CHAIRMAN: Are we now just debating the issue.

23 MR LITTLE: No.

24 THE CHAIRMAN: Not entering into just a general discussion
25 on the point, surely.

1 MR LITTLE: I would like to hope not.

2 THE CHAIRMAN: That's his view, you have your own take on
3 it.

4 MR LITTLE: Can we go to 4183, 84 and also 86A, back to 85.
5 4184 and 4186 to 85.

6 A. Okay.

7 Q. So on 4184, Mr Bobbi, you referred to earlier, asked
8 a straightforward question, is there a hot life ... and
9 and the man says, basically, we have no knowledge, we're
10 the vendor, we believe the whole thing is a hoax and --

11 A. Let me say this. We have never said there was a 40,000
12 or a service life limitation and that this was a life
13 limited component, we've said from day one this is
14 a component that has been managed on an On condition
15 basis, and the overhaul manual and the maintenance
16 manual that we wrote and was approved by Airbus and
17 Aircelle reflect that thinking.

18 So for Mark Bobbi to go round the world talking to
19 airlines suggesting that we are perpetuating a life
20 limit of 40,000 hours I think is offensive and can cause
21 damage to Aeronca's reputation in the work place --

22 Q. Of course it does, Rich. That's your position.

23 MR LYNCH: It's not.

24 THE CHAIRMAN: No, no, no, no, no, with respect, that is not
25 the position of Mr Neill and what he's saying is that

1 Mr Bobbi has been misrepresenting your position.

2 A. Our position.

3 THE CHAIRMAN: Is that what you're saying, Mr Neill?

4 A. Correct, yes, that's exactly what I'm saying.

5 THE CHAIRMAN: Your case, Mr Little, is that they have been

6 asserting a mandatory life of 40,000 hours, but that is

7 not what they say they have been claiming.

8 A. I would even add to that -- (overspeaking)

9 THE CHAIRMAN: Yes, you were going to say, sorry?

10 A. Had Mr Bobbi gone to the people who were familiar with

11 the overhaul manuals and the maintenance manuals, you

12 would have seen the language and the words that it

13 contains about what kind of damage can be sustained and

14 what you do when damage exceeds the limits specified in

15 these manuals, but I didn't see any reference to that in

16 either of his witness statement or any of his reports.

17 I just saw a lot of --

18 Q. Rich, that's exactly what he did do, and he asked the

19 people in Singapore and some others to go through the

20 manuals and they all got the stuff out and said we have

21 to do checks at 40 thousand hours etc but there's nothing

22 in here that would indicate that there's likely to be

23 anything of that substance.

24 Hang on, I have a fundamental problem with this,

25 this is really, really, really important. Your

1 cross-examination of him, Mr Lynch, was replacement,
2 this is what it says, he took out of that and he up to
3 then had been very careful about what he said to
4 airlines and everybody else and I warned you about this,
5 that this is a major issue.

6 (overspeaking)

7 THE CHAIRMAN: There's no need for what I perceive to be bad
8 language.

9 MR LYNCH: My point was simply this. I cross-examined
10 Mr Bobbi on the Dr Thamburaj material, and the need
11 for --

12 THE CHAIRMAN: Sorry, wait a minute.

13 (Pause)

14 I think we'll take a short break.

15 MR LYNCH: Canada, we're going to take a break for a bit.

16 (3.27 pm)

17 (A short break)

18 (3.34 pm)

19 THE CHAIRMAN: Yes.

20 MR LYNCH: Tribunal, I was just saying that I did not at any
21 time put to -- sorry.

22 Sorry. Welcome back.

23 Tribunal, I was just saying that I did not at any
24 time put to or suggest to Mr Bobbi that there was
25 a regulatory type specific time life of 40,000 flying

1 hours, what I was putting to Mr Bobbi was the research
2 by Dr Thamburaj, which, of course, itself, doesn't make
3 any such suggestion either.

4 MR LITTLE: Can I refer the tribunal to my aide-memoire
5 pages 23 to 25 and ask the tribunal please to read the
6 hearing extract of what was said to Mr Bobbi.

7 MRS SIMMONDS: The date of the aide-memoire?

8 MR LITTLE: Today's. Page 23 to 25, and I'd like the
9 tribunal to refresh their memory and Mr Lynch, I also
10 explicitly said after that evidence had been completed
11 that I wanted Mr Neill and Magellan to be fully aware of
12 what it was that we took from that.

13 MR LYNCH: You may take it from it but it's not --

14 MR LITTLE: We know the industry, with respect, Mr Lynch.

15 THE CHAIRMAN: I do remember you raising the point.
16 What page?

17 MR LITTLE: 23 to 25.

18 THE CHAIRMAN: Which part?

19 MR LITTLE: If you just scan through it you will see the
20 underlined is the bits I have tried to say are
21 particularly relevant. And why Mr Bobbi, and indeed
22 myself, because we specifically asked, have you got
23 instructions to say this, because this is a major issue.
24 And I can tell you that I've talked to several airlines,
25 this is an issue that ... and certainly Magellan don't

1 need.

2 THE CHAIRMAN: Talking about service units.

3 MR LYNCH: Exactly.

4 MR LITTLE: The lifespan of the unit ...

5 MR LYNCH: But I'm talking about the lifespan in terms of

6 the service and the commercial estimates as to how

7 frequent replacements are likely to be, I'm not saying

8 it's a regulatory requirement that as soon as it does

9 40,000 hours it must be removed.

10 MR LITTLE: The way the industry works is that there's a hot

11 life limit that makes things mandatory, and then there's

12 on condition.

13 MR LYNCH: But I never suggested it was regulatory, I'm

14 talking about a service limit.

15 MR LITTLE: Just keep reading the rest.

16 MR LYNCH: Well, I've read it. Well, I've read this.

17 MR LITTLE: He also made the point Aircelle would be fully

18 aware of this --

19 THE CHAIRMAN: Well, we're having a debate to and fro, which

20 I'm not happy with.

21 It's the respondent's position, via their counsel,

22 that he didn't put that there was a regulatory limit of

23 40 thousand hours, I don't see there is that on this

24 extract, as you have provided, maybe it's just

25 a misunderstanding on the part of yourself, Mr Little,

1 as to what was being suggested.

2 MR LITTLE: No, no, with respect, sir.

3 MR LYNCH: I do know what I was suggesting, I can assure you

4 I wasn't suggesting it was a regulatory rule that these

5 parts or nacelles had to be replaced after 40 thousand

6 flying hours, I certainly wasn't saying that.

7 THE CHAIRMAN: There is not one, anyway.

8 MR LYNCH: Exactly, and Dr Thamburaj didn't suggest that.

9 THE CHAIRMAN: What you're suggesting Mr Lynch is putting is

10 something that doesn't exist anyway. I think we're

11 agreed there is no regulatory, mandatory limit of 40

12 thousand hours on this part.

13 MR LYNCH: And may I say --

14 THE CHAIRMAN: So why would it be put?

15 MR LYNCH: If there is a misunderstanding between us may

16 I say that I've never understood Magellan's position to

17 be that there is a regulatory mandatory 40 thousand

18 flying hour condition attached to this.

19 MR LITTLE: Mr Lynch, I said to you on the 8th --

20 THE CHAIRMAN: Look, we're rehearsing the matter now, you'll

21 have to make submissions on the position, you'll have to

22 submit to us, if that's what you want to do, that the

23 respondent was at one point asserting that there was

24 a 40,000 hours limit on it, and that they were asserting

25 that there was a regulatory condition --

1 MR LYNCH: And it's certainly right that Mr Little did say
2 to me, this is a very, very serious regulatory aspect,
3 and do you understand --

4 MR LITTLE: I specifically wanted you to affirm and you did.

5 MR LYNCH: That's not the point, I don't know the
6 regulations that apply to the industry, the point of
7 importance is I was simply putting Dr Thamburaj's
8 research to Mr Bobbi, Dr Thamburaj certainly doesn't
9 suggest a regulatory mandatory 40 thousand hour limit,
10 I was talking about the service, the predictions as to
11 likely service durability. That's what I was trying to
12 put.

13 THE CHAIRMAN: So there we go.

14 There will have to be submissions if you want to
15 make that point. It's not Mr Neill's evidence that
16 there is a 40 thousand hour limit.

17 MR LITTLE: Which would be my understanding --

18 THE CHAIRMAN: Absolutely, so what you're suggesting is that
19 Mr Lynch was putting a false point and we'll have to
20 make a finding on that whether or not he, without
21 knowing the position, was putting a point falsely to
22 Mr Bobbi which you assert he was.

23 MR LITTLE: Which is also the basis of what was given to the
24 auditors.

25 MR LYNCH: No, that's absolutely not right.

1 THE CHAIRMAN: We'll have to hear submissions on that, as
2 well, won't we.

3 MR LITTLE: Well, it's in the PwC report.

4 THE CHAIRMAN: Take us to it and you can put that question
5 to Mr Neill. Because he's giving evidence, not
6 Mr Lynch.

7 MR LITTLE: We've actually just done it earlier in terms of
8 the spares and the volumes and the issues.

9 THE CHAIRMAN: No, you've suggested that there was an
10 assertion by the respondents that there was in fact
11 a regulatory limit of 40 thousand hours and it was in
12 the PwC report.

13 MR LITTLE: No, I'm sorry, what I said was, what they have
14 used in their EAC is eight years, therefore 40 thousand
15 hours, therefore --

16 THE CHAIRMAN: Yes, but that's -- we understand that.
17 They're not saying that at that time that part must
18 actually be removed.

19 Now --

20 MR LITTLE: But they're doing the accounting on that basis.

21 MR LYNCH: No.

22 THE CHAIRMAN: There we are. Let's make it clear that all
23 we expect you to do is to put to the witness the
24 questions you have, if you want him to comment on
25 particular matters, fine, but you must also understand

1 that there is a time for making submissions, and that
2 has not arrived yet. So you will have the opportunity
3 to make submissions on the respondent's assertions.
4 Yes. Next question. Where are we up to now?
5 MR LITTLE: We are on ... 16 -- 17, we're about to do now,
6 going to 3597.
7 THE CHAIRMAN: You've concluded 16, haven't you?
8 MR LITTLE: Yes. And 3598.
9 MR LYNCH: Am I right, we did 18 out of order?
10 THE CHAIRMAN: We've done 16.
11 A. What are the pages?
12 MR LITTLE: 3597 and 98. (Pause).
13 A. This is a memo from me to Pricewaterhouse.
14 Q. That's correct, and I'm just going to let the tribunal
15 read it first of all, and yourself, to remind you, and
16 then I have four or five questions I want to ask.
17 (Pause).
18 All right?
19 A. Yes.
20 Q. So this is from yourself, copied to John Furbay, noted
21 at the end of March, essentially, as distinct from what
22 we saw earlier.
23 A. Yes.
24 Q. And this is coming off the back of what Dr Thamburaj has
25 done in the middle of March for yourself, on the useful

1 life.

2 A. Correct.

3 Q. And this refers to a spares requirement in excess of 800

4 units to 2007 to 2021 as opposed to the 1572 calculated

5 by PwC?

6 A. If you make the assumptions for the forecast that we've

7 just agreed on, then the numbers will generate whatever

8 the numbers are, and if it's 800, it's 800.

9 Q. Okay. Oil' now --

10 A. We're not building -- go ahead.

11 Q. No, you go ahead?

12 A. I was going to suggest that the 800 was likely over the

13 life of the programme, and it was well in excess of the

14 numbers that, at that point in time, we needed to

15 recover all of the costs.

16 Q. Okay. Can you then go to the beginning of the second.

17 paragraph?

18 A. Yes.

19 Q. You refer there that generally in an exhaust achieves

20 its recommended and predicted life it will be taken out

21 of service and a new one will replace it.

22 A. Yes.

23 Q. What do you think that would normally mean?

24 A. Well, what happens when --

25 MR LYNCH: Tribunal --

1 THE CHAIRMAN: Sorry --

2 MR LYNCH: So sorry to interrupt, this seems perhaps to be,
3 it may be my mistake, and if it is I very much
4 apologise, but if we look at questions -- the only
5 questions that were permitted on question 17, aren't
6 they just the two about disclosure.

7 MR LITTLE: No, I've said (reads)

8 THE CHAIRMAN: We were not asked to arbitrate on 17.

9 MR LITTLE: No, there's a series of specific questions to
10 some of the detail in paragraph 1 or 2, I expect five or
11 so questions and that's what I'm doing now.

12 THE CHAIRMAN: We were not asked to arbitrate on 17, as far
13 as I recall.

14 MR LYNCH: Okay.

15 MR LITTLE: I'm now on my second question.

16 MR LYNCH: Okay.

17 MR LITTLE: But the question essentially is, this then
18 implies to anybody, like a PwC, that after 40 thousand
19 hours, it's going to take them out of service and a new
20 one is going to replace it.

21 That's what that language implies.

22 A. Well first of all, I don't -- I don't entirely agree
23 with you. The recommended life is a way of describing
24 a service life for a period of service, and I think I'd
25 go on further here to talk about these decisions about

1 replace or repair, that has to be made by the overhaul
2 base or the overhaul centre, and I would assume that
3 that decision is made and when that decision is made,
4 and that becomes the recommended life of the component.
5 Let me also say that in the engine repair and overhaul
6 business, it is traditional that when the whole
7 nozzle unit is returned to service that a detailed
8 report is written on its condition and on the basis of
9 that condition, the air worthiness authorities approve
10 the service life. And if it's in good condition, they
11 will extend the service life, if it is in poor
12 condition, they will reduce it and that then becomes the
13 recommended life of that component.

14 Q. Mr Neill, this very specifically is to PwC, it's all
15 about Thamburaj's report, and it says, "Generally if an
16 exhaust achieves its predicted recommended life it will
17 be taken out of service and a new one will replace it."

18 If that is not basically saying a replacement at 40
19 thousand hours, to everybody, other than those within
20 the industry, what is it saying? It could not be any
21 clearer.

22 A. It doesn't use 40 thousand hour life, it doesn't use the
23 repair mandated regulatory life, it uses the term
24 recommended life because that is not a known number, per
25 se.

1 Q. But Rich, you've related it to the 800 units up above
2 between 2007 and 21 and I can tell you it is about 800
3 units on that basis.

4 MR LYNCH: No, no.

5 THE CHAIRMAN: Just put a question to him, rather than
6 comments.

7 MR LITTLE: Well, it's quite explicit, the English language
8 says to somebody in PwC that "this is a particular
9 recommended life ...(Reading to the words)... 40,000
10 hours is equivalent to 800 units as calculated."

11 And I would concur with that calculation on that
12 basis, as I have done in case 4B.

13 A. I would, sorry, I would, in response, I would suggest
14 that we're in a new paragraph in this email, we're
15 talking about spares and repairs and we're talking about
16 life in relation to spares and repairs. I don't know
17 how PwC interpreted this, but I have assumed that they
18 segregated these two paragraphs to come up with the
19 conclusions that they did.

20 Q. Rich, with respect --

21 A. Beyond that, you're asking me to testify what they
22 understood but it and I can't.

23 Q. No, I'm suggesting to you you're lying, because that
24 says to anybody, a replacement. The calculation of 800
25 stacks together with that, it only makes sense in that

1 context. It can't mean anything else, and they then go
2 off and say that's how they've done their calculations,
3 but can't even get the maths right.

4 (overspeaking)

5 THE CHAIRMAN: Wait, please.

6 You're suggesting he's lied in the email?

7 MR LITTLE: Yes, he's deliberately lied and given that
8 impression.

9 THE CHAIRMAN: In the email.

10 MR LITTLE: In the email relating to the 800 and he then
11 conditions --

12 THE CHAIRMAN: No.

13 MR LYNCH: Wait.

14 THE CHAIRMAN: In the email, what you're suggesting is that
15 he's lying to PwC.

16 MR LITTLE: He's deliberately given the impression of that
17 40,000 hours replacement.

18 THE CHAIRMAN: I hear what you say but I want to make a note
19 of it. I suggest that you are lying in the email. Not
20 anywhere else, but in that email.

21 That's what's been suggested to you, I think. That
22 that's a lie.

23 A. Well, I have two or three comments here. In an email
24 I saw from Mr Little addressed to our counsel, Pinsents,
25 in two sentences he managed to accuse me of being

1 a cheat, a fraud, guilty of purporting a hoax, and the
2 likes, and quite frankly, when I read all that language
3 I was angry, because I take some pride in trying to be
4 truthful in everything that I do. I may not always be
5 as clear as I should be but I take pride in being
6 truthful, but then I got to think that this is the very
7 issue that surrounded the way that Mr Little behaved
8 within the corporation that led in the end to his
9 termination, and I calmed down a little bit, because to
10 me it was consistent with the character of the
11 individual.

12 Now, recommended life, I used that term because
13 I didn't know if it was the service life or whatever,
14 nor if it would be a life that would be approved by an
15 air worthiness authority, and so I used that language
16 for just that reason. I also had some conversations
17 with Stephen and Stephanie, which I refer to in the
18 opening paragraph and in which I thought I was very
19 clear about what life was all about.

20 MR LITTLE: And then when you looked at the PwC report, they
21 write a calculation based on eight years and do all
22 those numbers. That's all they understood.

23 MR LYNCH: He can't possibly know that.

24 THE CHAIRMAN: Right, that's a matter for submission, isn't
25 it.

1 MR LITTLE: You then proceed to say, "As far as I know
2 there's no mandatory ...(Reading to the words)... on
3 this exhaust."
4 So we're both agreed that this is an on condition --
5 THE CHAIRMAN: We have been through this. We know that.
6 MR LITTLE: Yes, okay, so I'd like to read a little bit of
7 evidence you said earlier, if we could.
8 MR LYNCH: Tribunal, I do think that last bit is rather
9 important, in terms of examining the allegation that
10 Mr Neill was lying in the email because he is saying
11 in the last bit we've looked at that this is not
12 a regulatory matter, there is no.
13 THE CHAIRMAN: It's the respondent's position that there is
14 not a regulatory matter. I accept what you say about
15 that.
16 MR LITTLE: Sorry.
17 THE CHAIRMAN: That that's what it says in the email.
18 MR LITTLE: I'm also saying that it's not --
19 THE CHAIRMAN: You agree with it, there's no issue about
20 that. It's whether or not -- I mean, it must be your
21 case, I assume, that at some point that position has
22 changed and changed back again, I don't know.
23 MR LITTLE: I think my position is that it has been said on
24 that basis and when this has gone out into the industry
25 in the last month or six weeks, they're coming back and

1 saying, what are you talking about, there's no ordered
2 material, nothing here and there, there's nothing that
3 stacks up against normal business processes.

4 THE CHAIRMAN: Okay.

5 MR LITTLE: Okay, the EAC then chooses to ignore -- your
6 fourth point, just the end of that paragraph?

7 A. The spares.

8 Q. Yes.

9 A. Yes.

10 Q. So your point here is, we ignore repairs, irrespective
11 of the size, and for the EAC we have purely done
12 replacement products which we think are around 800
13 units. That's what that's saying. That's what you've
14 told PwC.

15 A. Is that a question?

16 Q. I think so, isn't it? You've said, we're ignoring --

17 A. Are you asking me --

18 THE CHAIRMAN: Well, the question is, really (overspeaking)
19 Mr Neill, the question really is, is that an
20 accurate statement?

21 A. I ... hindsight is 20/20 and you look at language today,
22 and it could be clearer, but the point I was trying to
23 make, when units are repaired in overhaul ... are on the
24 line and people buy spare parts to support that we don't
25 normally include that in the EAC calculations. But

1 major repairs and the sale of major spares, like whole
2 new nozzles and plugs we do.

3 MR LITTLE: And that's consistent with what the PwC people
4 said, that the EAC is predicated on the basis of
5 replacement spares. And what you're also saying?

6 A. Yes.

7 Q. So we're back to the 800 units, effectively. Okay, is
8 that correct?

9 A. You keep saying that, I assume you're saying on the
10 basis that that's your belief.

11 Q. No, my presumption is, I'm asking you, that's how PwC
12 have interpreted what you said and got a mathematical
13 calculation wrong, but the rest of it is on that basis.

14 A. I think you want me through the ... to show you that
15 there was an error in the second line of their
16 calculations which would reduce the number, so on the
17 basis of that's what they did, you've interpreted it
18 that way and I would have to agree with you right now,
19 but it still doesn't change the overall basis of the
20 EAC, that we had more than the necessary 1250 or
21 whatever the number was mentioned in this email to get
22 all the amortization completed.

23 Q. Rich, just so we're both on the same wavelength, the
24 evidence you've given is that the table, you didn't
25 correct, and both of us believe that it's probably

1 wrong. You've said independently in this email that
2 you've done a calculation that suggests 800 units on
3 a replacement basis on 40 thousand hours is what is in
4 the EAC and what I'm saying is, if that is true and
5 everything has changed at 40,000 hours, purely for
6 spares, that would meet the 1247, which is your point,
7 but it's only in that situation that everything is
8 getting replaced at 40 thousand hours without exception.
9 No repairs, nothing, straightforward replacement.
10 That's what your emails are saying.

11 A. I think we're losing sight of the purpose of this email.
12 At that point in time, PwC were trying to understand how
13 the numbers stacked up to justify us getting more than
14 1247 units that had been used at that time in the EAC.
15 I must admit I didn't go back and check in detail every
16 calculation that followed that. All I was saying was
17 that if you took Dr Thamburaj's 40 thousand hours it
18 would generate a significant number which, on top of the
19 production, would easily exceed the 1247 numbers needed
20 to amortize out the recurring costs. That's what I was
21 trying to say in the opening paragraph.

22 Q. I've heard what you've said, we have your evidence.

23 Earlier in this afternoon's evidence, you made
24 a remark to, this is our worst case scenario, and is for
25 the hot and high and damaged products. Was where the 40

1 thousand hours came from, okay?

2 A. Yes.

3 Q. So what you're saying is you've taken the
4 worst case scenario of 40 thousand hours and assumed
5 that all 800 units will require to be replaced by 2021.
6 Is that correct?

7 A. If you want to assume 800 units are needed then you have
8 to assume that the whole fleet will need that kind of
9 replacement and that will occur if airlines operate in
10 difficult situations or conditions where there's
11 significant deterioration.

12 However, to get beyond the 1247, which was the
13 amount needed as I understood it at that time to
14 amortize out, you only needed 190 units and the point
15 I was making to PwC was that to exceed 190 units should
16 be something that is quite credible, because now you no
17 longer have to rely on the worst case condition you can
18 look at other events occurring, like we've seen in the
19 past two years, that would suggest that they will be the
20 repairs and spares bought to support the fleets.

21 Q. My position is that you knew full well there was never
22 going to be anywhere near those production levels in
23 that programme, never anywhere near it, from
24 about July, August 2006. Which is precisely what
25 we discussed on 8 August.

1 Can you go to 4186A and that will complete question
2 17.

3 A. 4186A?

4 Q. This is an email from Aircelle to one of the airlines,
5 Etihad, who are due to take delivery of two more
6 aircraft in the next two months and when we asked them
7 specifically about what was in their maintenance manuals
8 and all those things reviewed all that in Abu Dhabi, and
9 also asked Aircelle, and this is the reply they had from
10 Aircelle.

11 A. 4186 is an email to Paul Stow from you.

12 Q. Yes, just go to the bottom.

13 A. And then to Wermer Rothenbaecher.

14 Q. Who's the executive VP of all the maintenance and
15 engineering. You'll see the full email in 86 and 85.

16 A. Right. Go ahead.

17 Q. In which ...?

18 A. I have read it now.

19 Q. In which they have all the issues on the exhaust, so
20 there's no specific life limit and this is certified to
21 20 thousand flight cycles, which effectively is 150
22 thousand hours, if there's any more issues, let you
23 know.

24 On condition monitored.

25 The Aircelle view, as I understand, is that they see

1 about 111 of these units between now and 2121 requiring
2 a replacement, which is about the 100 to 130 Mr Bobbi
3 estimated and about the 170 factored down that Aeronca
4 estimated.

5 So how do we get 800? Only if we take the flying
6 worst case scenario and all of the complete replacements.

7 Now, this particular gentleman also made the point
8 that this is over a million dollars, this is the
9 equivalent of --

10 MR LYNCH: This is just another -- with great respect --

11 THE CHAIRMAN: Well, I think he's laying the groundwork for
12 it. There needs to be a question at the end of.

13 MR LITTLE: The question is, the airline industry, with all
14 the rules and whatever, have no sense of there being
15 a worst case flying scenario for them involving them in the
16 expenditure of over one to two million dollars at around
17 six or seven years of service. This is about \$300
18 million, effectively, in business, Timet have no view of
19 anything --

20 THE CHAIRMAN: When are you going to get to the question?

21 MR LITTLE: The question is, how come everybody doesn't
22 understand the magnitude of that problem in the
23 industry, Rich? At all? And Magellan don't seem to be
24 doing something about it within their engineering and
25 the quality process?

1 A. And the answer is, I think, that only time will tell
2 whether Dr Thamburaj's tests, and the coupon tests that
3 he did, is a clear representation of what will happen in
4 service. Somewhere between 20 thousand and 100 thousand
5 hours, it is clear that exhausts will have to be -- to
6 undergo a major repair and as I say, time will tell
7 that. On the coupon test, if you remember from that
8 report, it says that fatigue was not the biggest issue,
9 the biggest issue was in fact corrosion within the
10 honeycomb itself, which would mean some kind of
11 structural breakdown in the exhaust and only time will
12 prove that. Why is it that people don't know, well,
13 Mark Stocks got sufficiently alarmed, and raised it with
14 our guys, so there is one example of an operator who's
15 seen some of this damage raising the concern, the others
16 will raise the concern when they see it in their fleets.

17 Q. Mr Stocks:

18 "The reason ... (Reading to the words)... not for any
19 specific engineering hot life replacement or as
20 I described it, threshold, in fact, this was my normal
21 procurement maintenance responsibilities rather than any
22 major replacement programme for these exhaust systems."

23

24 MR LYNCH: Where did you get that from?

25 MR LITTLE: That's just notes of a conversation that I had

1 with them.

2 THE CHAIRMAN: That's evidence. I'm not going to record
3 that.

4 MR LITTLE: Well ...

5 THE CHAIRMAN: Your understanding is that Virgin were
6 alarmed about it and raised it.

7 MR LITTLE: Absolutely.

8 THE CHAIRMAN: Well, that's his understanding.
9 Is that right?

10 MR LYNCH: Mr Neill, did you hear that question?

11 A. I'm sorry, I do not catch the whole conversation, judge,
12 could you repeat what you said.

13 THE CHAIRMAN: You gave evidence that Virgin were alarmed by
14 the information and raised it as a concern with
15 yourselves?

16 A. "Alarm" might be too strong a word but Virgin certainly
17 raised it in the meeting they had with our agent and our
18 representative to say that because of the troubles
19 they'd had with the Trent 500 engine they could see the
20 need to prepare or replace exhaust parts more frequently
21 than they had expected.

22 THE CHAIRMAN: Okay.

23 A. That was my understanding.

24 MR LITTLE: My understanding was that that was normal
25 business, that wasn't --

1 A. Brian, that's your understanding.

2 Q. That's what he told me?

3 A. I'm just giving you mine.

4 THE CHAIRMAN: Yes.

5 MR LITTLE: Okay, that's what he told me.

6 I'm now finished 17 and I have gone on to 18.

7 THE CHAIRMAN: Haven't we done this.

8 MR LITTLE: I think so.

9 THE CHAIRMAN: We had this, didn't we?

10 MR LITTLE: Yes, I think his answer was no, and we've dealt

11 with it, is where I'm coming from, we didn't do it

12 directly with him.

13 (Pause) I am not even sure that the next question

14 hasn't been dealt with by implication, that he didn't

15 specifically do the EAC in that way.

16 It's probably a quick yes or no answer.

17 Did you draw the attention of PwC and Ernst & Young

18 and Mr Dekker to the assumption of approximately

19 40 aircraft or 160 units for each and every year and

20 that Mr Dekker and you used in preparing the price and

21 the unit sales on the basis of those assumptions?

22 A. I can't recall. If it was -- if that was in one of the

23 published forecast documents, then I would have done so,

24 but I cannot recall.

25 Q. Okay. Did you ever attend any meetings with

1 Ernst & Young or PwC with Mr Dekker and/or Butyniec on
2 the sales revenue and pricing assumptions which were the
3 subject of the 2006 audit process?

4 A. No. I attended one meeting with Mr Dekker.

5 Q. Can you tell us what was discussed at that meeting just
6 simply on that?

7 A. It was a wide-ranging meeting, they had a number of
8 issues across Magellan that they wanted to discuss and
9 this was one of the items on the agenda, and I have
10 already, I think, testified to this, that my part of
11 that discussion that I can recall related to the spares
12 and repairs.

13 Q. Yes, which jumps past the next one, the next two are
14 gone.

15 Just finish this 18, 19 isn't there, 20 isn't there,
16 and 21.

17 This was a no, yes.

18 Are you comfortable that we're happy with that now?

19 MR LYNCH: Sorry. I think it was a yes, but it's a very
20 broad --

21 MR LITTLE: But you're worried about where's it going to
22 lead to.

23 THE CHAIRMAN: The first question is yes or no, it's just --

24 MR LITTLE: Yes.

25 THE CHAIRMAN: It's in the quality document. It's there.

1 MR LITTLE: I don't think I even need to ask him the
2 question.

3 MR LYNCH: It was a yes, in fairness to Mr Little.

4 THE CHAIRMAN: Yes, but he doesn't need to ask the question,
5 it's a document.

6 MR LYNCH: Yes, exactly, precisely. And that means there
7 are no follow-ups. (Pause).

8 MR LITTLE: From what was said earlier, I would like, to
9 Mr Neill, to ask around the arbitration process and what
10 not.

11 Mr Neill, you referred earlier to the arbitration
12 process and the price adjustments and NRC Aircelle,
13 which was the subject of the arbitration process, or
14 whatever, we know from the published accounts that
15 around C\$10.4 million price change was retroactively
16 agreed, some of which will be for A340 and some of which
17 for A380. Did you say that all of that, or most of
18 that, if not all of that, had been used to reduce the
19 NRC value in the balance sheet?

20 A. Yes -- I believe I said that earlier, and I have been
21 thinking about that response since then, and without
22 having the information in front of me to look at, I do
23 not confirm that or not. Mr Dekker was here and you had
24 him on the stand, so I would have thought he could have
25 given a much better answer to that than I can, because

1 the arbitration process was settled after I'd left the
2 position of CEO and I only became knowledgeable about
3 the outcome as a member of the board of directors.

4 MR LITTLE: Okay, well, there were particular reasons why we
5 didn't manage to get to that element as a result of
6 something that happened on question 17 C, but we'll not
7 go there.

8 That's my questions.

9 THE CHAIRMAN: Thank you, re-examination.

10 (4.12 pm)

11 Re-examination by MR LYNCH

12 MR LYNCH: Mr Neill, we're now on to re-examination. The
13 first question I would ask is about your professional
14 background, you have been asked a lot of questions about
15 technical reports, by training what was your expertise?

16 A. Well, I was recruited by Rolls-Royce out of technical
17 college and was a graduate apprentice in their scheme.

18 Q. Studying what subject?

19 A. Mechanical engineering, and then after I joined
20 Rolls-Royce I did some postgraduate work in Glasgow on
21 studying compressors ... and was with Rolls-Royce from
22 1962 through to 1980, with a small interruption when
23 I actually ran a reliability laboratory for the national
24 cash register company trying to destroy essentially
25 computer expect and ATMs to see how they would perform

1 in service.

2 I learned a fair bit about service life, warranty
3 obligations, and the likes, during that NRC experience,
4 which N C R experience which I was able to carry over
5 into Rolls-Royce, and after that I was recruited by
6 General Electric to held their aircraft programme in
7 Canada and ... and the use of F 18 fighter jets and in
8 that connection, given the fact that Canada was one of
9 the lead flight operators of that aeroplane, it led to
10 the establishment of a ... this on the with a cell where
11 we tried to understand the in use life and the
12 conditions which could affect it in service of both the
13 engines and the aeroplane, and it was in that connection
14 that I first met Dr Thamburaj, because he was running
15 the engine portion of that cell, and was composing parts
16 of exposing parts of the engines to all kinds of --
17 tests, and whatever.

18 Q. In terms of your specialist area, to what extent was
19 that devoted to the engines on the planes, rather than,
20 say, the main frame, or whatever?

21 A. Up until 198 -- in fact, I've never actually been
22 involved in the airline side of the business until
23 Magellan was formed, in 1996, and when Magellan was
24 formed in 1996, we bought a company, it was formed
25 through the acquisition of a company called

1 Fleet Industries, which makes parts for the air frame,
2 until then I had been entirely engine focused and about
3 a third of that time in the repair and overall side, and
4 even within that context understanding how you manage
5 components of engines on condition, what life limited
6 components meant, how you tested for life limitations,
7 how you tested on condition, and how the regulatory
8 authorities looked at the engine manufacturer and the
9 overhaul agencies taking care of their engines.

10 Q. Just very, very briefly, I slightly cut you off, is
11 there anything else you want to add about that or does
12 that give a sufficiently full picture?

13 A. That's okay, I spent some time between 1981 and 1987
14 on the manufacturing side of the business and so I also
15 have a good understanding of manufacturing costs and the
16 likes and how you ran factory operations on a cost
17 basis.

18 Q. So let's move on now to Forecast International. It's
19 plain that Magellan placed reliance upon
20 Forecast International, can you tell the tribunal what
21 it was about that journal that over the years had made
22 Magellan come to place reliance upon its work?

23 A. Well, when I joined the Orenda, one of the companies
24 that went on to form Magellan, Orenda are engaged in the
25 overhaul and repair of military aircraft engines and it

1 was very difficult to obtain and get good data which
2 would allow you to build a forecast going forward when
3 parts were needed and when you should be ordering raw
4 material and the likes, so we used to assemble as much
5 information as we could, at that time, back in 1991, the
6 only forecasting organisation that would get down to the
7 level of detail that Orenda needed was
8 Forecast International, the -- to their work we then
9 used to add things like reports from the operators,
10 trade journals, and the like, and it was that practice
11 that I continued through into the Magellan situation,
12 where we had to do the same thing for the Aeronca
13 business.

14 Q. Thank you.

15 Now, if we move to the 40 thousand flying hour
16 issue, just a very short question on that, we know that
17 Magellan's case is it was not a question of some
18 regulatory fixed maximum life, but can you tell the
19 tribunal why it would be important to a business such as
20 Magellan to have some idea as to the likely lifespan of
21 the parts that it was making.

22 A. Well, as has already been pointed out by Mr Little, this
23 is a unique material with only one source in the world,
24 it's a patented alloy, so one of the things that the
25 plant has to do is accurately forecast is demand going

1 forward, to ensure orders are placed in sufficient time
2 to satisfy not just the ministering programme but any
3 spares demand that may occur through normal service.

4 And so we were trying to establish what was the best
5 case for the provisioning of material, for thinking
6 about the people needed in the plant, to allow the plant
7 to plan its business accurately, and as I said before,
8 based on the damage (inaudible) support and the overhaul
9 manual, the ceiling to that was the first time an engine
10 comes off the wing to be overhauled, which at that point
11 we assumed was 20 thousand hours, the maximum time would
12 be the 100 thousand hours that the aircraft was designed
13 for, somewhere between these two limits you had to make
14 a judgment as to which one you should use to build into
15 your forecast and like it or not, we used that 40
16 thousand hour number, based on Dr Thamburaj's work, and
17 it was in that connection that we produced the
18 forecasts.

19 Q. And staying with that, if we could move to a document
20 that you were asked some questions about, it's page
21 3597, it's your email.

22 A. Yes.

23 Q. 29 March 2007.

24 A. The email to PwC.

25 Q. PwC, yes.

1 A. Yes. Let me find it. I put it away.

2 Right, I have it.

3 Q. In the second paragraph you specifically draw PwC's
4 attention to the fact that there are not regulatory
5 provisions.

6 A. Correct.

7 Q. That set a fixed life.

8 A. Correct.

9 Q. Why did you consider it important to make that clear to
10 PwC?

11 A. Because I did not want anybody to misunderstand the
12 basis of the forecasts that we were assuming. Remember
13 the analysis was, did we -- would we have enough units
14 in the forecast to recover all of the money invested in
15 non covering costs? And I thought I took almost
16 a worst case scenario with 190 units, and the best case
17 scenario with 800 units, and said, between these two
18 numbers, there will be a quantity produced in support of
19 spares and repairs which will more than satisfy the non
20 recurring costs. Let me add one other thing. Brian
21 pick me up on the second paragraph on the word
22 recommended but if you look at the phrase it says quite
23 clearly it's predicted and recommended life, and I think
24 that should have given a signal to PwC that 60 thousand
25 hours was not a regulated or mandatory life for the

1 components.

2 Q. In that same paragraph you say that you ignore repairs,
3 because they're rather uncertain, in terms of
4 predictions, what did you have in mind when you used
5 that word repairs?

6 A. This is when I made the 20/20 comment.

7 I was really talking about the repairs that an
8 airline on an overhaul centre would make, it was in
9 their own premises, and only called on to plant for
10 spare parts to support that, I was really not talking
11 about the major or heavy repairs that would be
12 undertaken by Aeronca as the manufacturer.

13 Q. And if we could perhaps go back to that question that
14 you were asked by Mr Little, I'm not sure how far it
15 came across, the answer, on the video link, and all
16 that.

17 What was put to you by Mr Little was that you were
18 being dishonest in that email and deliberately creating
19 a false impression with PwC. What do you say to that
20 suggestion?

21 A. Well, I made some comments that I don't want to repeat
22 about cheating and fraud and the likes.

23 The answer to that is, I think Mr Little, who has
24 also been somewhat misleading by picking out --

25 Q. Sorry to interrupt but in England it's getting a bit

1 late, just to focus particularly on the question, what
2 do you say to the idea that you were lying in that
3 email?

4 A. Absolutely not, I was not absolutely. I was trying to
5 be as forthright and open as I could be.

6 Q. And likewise, it was put to you by Mr Little that you
7 were again lying when you told Ernst & Young and PwC
8 about Magellan's forecasts as to the levels of sales.
9 Once again, what do you say to the suggestion that you
10 were lying to those people?

11 A. I would say exactly the same thing. I was telling the
12 truth to the best of my knowledge at that time.

13 Q. One second, I'm just checking my notes.
14 Yes. Just one question about the
15 PricewaterhouseCoopers team, you were asked about them
16 and about their calculations, can you tell the tribunal,
17 do you have any knowledge of the extent, if any, of the
18 forensic team's involvement in the aerospace industry
19 before they conducted the exercise for Magellan? What
20 experience --

21 A. Well, my knowledge is relatively brief, I understand
22 that the Pricewaterhouse UK operation subtracted the
23 tasks of understanding the forecasts, et cetera, to the
24 Montreal office, on the basis that they were the group
25 that had the best knowledge and most experience of the

1 industry itself. The two individuals that came to the
2 company seemed to be competent, they certainly knew
3 a great deal about the industry, they had had extensive
4 discussions with Bombardier on the basis of jet marks
5 and the like, so on the basis of that I concluded that
6 they were reasonably expert.

7 THE CHAIRMAN: Reasonably what, sorry?

8 A. Expert.

9 THE CHAIRMAN: Thank you.

10 MR LYNCH: And how extensive were their inquiries within
11 Magellan and their examination of documentation?

12 A. Well, I know they spent time in the Aeronca plant,
13 I regret I don't have the details of everything they did
14 there, but I would assume they behaved like any other
15 auditor that goes there, they continually asked for data
16 and information and to my knowledge the plant gave them
17 everything that they required, they then returned, after
18 that, to Montreal, to digest some of this, then came to
19 Toronto to meet with Mr Dekker and ... which we reviewed
20 with Mr Little. Beyond that I can't comment because
21 I believe they had as much information and data as they
22 needed to come to their conclusion on the 340 market.

23 MR LYNCH: Thank you very much indeed, tribunal, I have no
24 further questions.

25 THE CHAIRMAN: Thank you. No, nothing from me.

1 Yes, thank you both. That's the end of your
2 evidence, Mr Neill, and that are, Ms Ball, for
3 assisting Mr Neill.

4 MR LYNCH: Thank you, bye bye.

5 A. Thank you.

6 (4.27 pm)

7 Housekeeping

8 THE CHAIRMAN: Could we turn it off, please.

9 MR LYNCH: Thank you. Spot on 4.30.

10 THE CHAIRMAN: Right, we need to fix some days.

11 We need to set a time for us to meet for that
12 disclosure information, how long is that going to take,
13 to read that disclosure application and to digest it?
14 Do you suggest that we meet on another day.

15 MR LITTLE: Yes. In terms of all of us?

16 THE CHAIRMAN: No, no.

17 MR LITTLE: Just in terms of yourselves.

18 THE CHAIRMAN: Pre-reading.

19 MR LITTLE: If it focuses on what it is that's this
20 application and what we're looking for as distinct from
21 looking at all the historical stuff and saying, you
22 know, this has happened in the past and that's happened
23 in the past --

24 THE CHAIRMAN: No, just your document.

25 MR LITTLE: Right, so on that basis I would imagine it

1 should only be about a third of the time and therefore
2 I'd imagine a couple of hours, two to three hours should
3 be adequate to do that.

4 MR LYNCH: To deal with both submissions?

5 THE CHAIRMAN: No, in relation to document disclosure, how
6 long is it going to take you to do the objections to
7 Mr Smith?

8 MR LITTLE: To be clear I'm now reflecting on that, because
9 I have to consider what you've ruled here and what
10 implications that has.

11 THE CHAIRMAN: You'll have until certainly the beginning
12 of September.

13 MR LITTLE: Yes, I was reckoning 14 days. Yes. Nothing is
14 going to happen in August, so if I can have to
15 1 September.

16 THE CHAIRMAN: You can have to 1 September, that's fine.
17 Okay. So by 1 September.

18 MR LITTLE: Sir, I was estimating it would take about 15
19 minutes just to go through the oral commentary.

20 THE CHAIRMAN: Yes, we'll deal with that at the next
21 hearing.

22 Mr Smith can come back on the next occasion?

23 MR LYNCH: There is quite a lot of unavailability, actually,
24 we're checking dates, but tribunal, my own estimate, if
25 I may say so, is it's going to take longer to deal with

1 disclosure orally than the estimate of 15 minutes might
2 suggest.

3 THE CHAIRMAN: What about the evidence of Mr Smith in terms
4 of, obviously there is some issue about the extent of
5 the questions, et cetera.

6 MR LYNCH: That's the other thing I was thinking, I don't
7 know whether the tribunal might have in mind a half day
8 hearing to deal with both those matters, I only have in
9 mind it might be better to get the questions sorted out
10 for Mr Smith before he comes back to be recalled.
11 I mean, I'm entirely in the hands of the tribunal, of
12 course.

13 THE CHAIRMAN: Well --

14 MR LYNCH: Or maybe do it all in one day.

15 THE CHAIRMAN: Mmm hmm. We probably will meet before you
16 come back, but we'd have to hear submissions on it, when
17 you come back. What are the difficult dates, the
18 difficulties with dates for availability now? Mr Smith,
19 he's obviously one of the important issues, his
20 availability.

21 MR LITTLE: Well, if I look at all the rulings you've made,
22 the whole lot of this, I'm not sure there's any point in
23 bringing him back.

24 THE CHAIRMAN: That's not a matter for us.

25 MR LITTLE: I need to reflect on it.

1 (Pause).

2 THE CHAIRMAN: You have I can't remember, have you put your
3 application to have yourself recalled in writing?
4 Right.

5 MR LITTLE: There are four other things I have to my list
6 and that was one of them, sir. Yes.

7 THE CHAIRMAN: Well, can you do that by 1 September?

8 MR LITTLE: Yes, I can.

9 MR LYNCH: What are the three others, if you don't mind my
10 asking.

11 MR LITTLE: Yes, I was going to.

12 MR LYNCH: Thank you.

13 MR LITTLE: The, I'm not sure of legal protocol here but
14 I am they're all around documents that have come from
15 19 January, and explanation, is there any value in me
16 doing kind of like a supplementary witness statement
17 type of thing?

18 THE CHAIRMAN: No, I don't think so, you need to make an
19 application if you want to be recalled, and you need to
20 explain why it is that you need to be recalled and what
21 you need to deal with.

22 MR LITTLE: So just the same as the rest, these are the
23 documents and these are the subject matters I expect to
24 cover?

25 THE CHAIRMAN: You need to explain what it is about the

1 documents that you've received since you gave your
2 evidence that would justify you being recalled,
3 certainly by 1 September, that is something that's going
4 to take, I mean, quite some time to, I dare say, digest
5 and deal with.

6 MR LITTLE: Yes.

7 THE CHAIRMAN: I think we'll have to take another day for
8 that. That would be the end of the evidence, am I right
9 in thinking, because there are no other applications for
10 recall, and we'd then need to set dates thereafter
11 for --

12 MR LYNCH: Written submissions.

13 THE CHAIRMAN: Written submissions. But there is no point
14 in setting that, we'll do that on the next occasion,
15 I think, not today.

16 MR LITTLE: Can I cover the other things in my mind,
17 reasonable belief, which I reckoned was only 15, 20
18 minutes, so that we all understand my understanding.

19 THE CHAIRMAN: That's a matter for submissions, that would
20 be in submissions. You will have your opportunity to
21 give your submissions in relation to it, plus
22 a opportunity to comment both in writing and orally on
23 any submissions made by the respondents.

24 MR LITTLE: Sir, I don't think I'm making myself clear, sir.
25 Mr Lynch has provided -- there was some confusion about

1 what certain things meant in the schedule, he's provided
2 me with the schedule, I want to say, this is my
3 understanding of how I interpret that schedule.

4 THE CHAIRMAN: You need to do that with Mr Lynch, not in
5 front of us.

6 MR LITTLE: It's just that -- (overspeaking)

7 MR LYNCH: Because Mr Little expressed concern that we
8 changed our view, he didn't understand our view --

9 MR LITTLE: I didn't understand it.

10 MR LYNCH: I set out a note, to try to explain what we
11 meant, what our understanding was.

12 MR LITTLE: Which I think largely concurs with the March 9
13 thing that the chairman said, but --

14 THE CHAIRMAN: We, as a tribunal, don't want to get involved
15 in that, until submissions. We need to see what both
16 parties are going to ultimately submit and then that
17 will be an opportunity for us to have read that and to
18 give you an opportunity to say what you want in oral
19 argument, and for us to ask questions of that. But
20 that's not for now.

21 What was the next point?

22 MR LITTLE: The second thing then essentially was there were
23 a number of documents and we've all numbered or whatever
24 from the very start and I am concerned that my
25 registration of the documents that you're numbering and

1 that we have them all --

2 THE CHAIRMAN: That's a housekeeping issue.

3 MR LITTLE: Yes.

4 THE CHAIRMAN: We'll deal with the housekeeping issue on the
5 next occasion, obviously we want to ensure that we have
6 all the documents.

7 MR LYNCH: That's quite a --

8 THE CHAIRMAN: Quite honestly, if, for example, you refer to
9 documents in submissions and when we look through to our
10 horror we discover that we don't have it, we'll simply
11 be writing to you asking you to send it. I mean, we
12 will be making sure that we do have the documents that
13 you refer to, that you are relying on.

14 MR LITTLE: Is it possible even to get a simple list, so
15 that I can check that I have them all.

16 THE CHAIRMAN: How do we achieve that? I mean -- none of us
17 is -- we're not going to go through the documents and
18 list every one, we're not going to create an index for
19 you, and you don't know what we have but the only basis
20 upon which we can ensure that everybody is provided with
21 all the documents is when you come to make your
22 submissions you refer to documents, and I think, quite
23 frankly, if you don't refer to documents in your
24 submissions, whilst I can't say that they will not be
25 considered and taken into account, it rather suggests

1 that the documents aren't of perhaps the degree of
2 relevance that the ones that you refer to are.

3 MR LITTLE: Okay. I'll come to the third thing, this is
4 probably one of my biggest things, both you and Mr Lynch
5 are on auto pilot, in terms of what submissions look
6 like. I'm --

7 THE CHAIRMAN: I've made that clear, when the time comes for
8 ordering submissions, you will have something of
9 a template to adhere to, including --

10 MR LITTLE: You realise I'm worrying about that, in terms of
11 how I bring it in.

12 THE CHAIRMAN: I've mentioned this and I've attempted to put
13 you at ease, as far as I can.

14 There will be limits on the extent of submissions
15 because we don't want a novel from either party, but
16 what we're looking for is assistance in coming to our
17 judgment, and the judgment will be on issues that have
18 been identified in the submissions, and whilst we've
19 heard a lot of evidence about matters which are on the
20 periphery of this case, it's not the duty of the
21 tribunal to quote and cite every single piece of
22 evidence that has been given in what is a 40-odd day
23 case, what we will try to do is to cut through the
24 chaff, to get to the point where we're looking at the
25 relevant issues that have been determined and identified

1 by the parties in their submissions, we just have to
2 make sure that we can get that into a manageable format,
3 but you will have a template.

4 We need to fix, at the moment, two days, I'm not
5 certain that that is ultimately going to be enough, but
6 certainly at this juncture.

7 What dates do you have to avoid in September?

8 MR LYNCH: I think, would the first day involve Mr Smith?

9 THE CHAIRMAN: Yes.

10 MR LYNCH: It would, yes.

11 MR RAE: Dates to avoid are the 1st, 11th, 14th, and the
12 whole week of the 21st, which takes you to the 25th.

13 THE CHAIRMAN: We need not trouble you on the 1st. The
14 dates to avoid on --

15 MR LYNCH: May I just phone my clerk. Shall I find out the
16 same for October? Is it likely, or is it going to
17 be September, is that the reality?

18 THE CHAIRMAN: I'm not so sure. I need to ask the members
19 when their availability is, and I need to look at mine.
20 This does get priority, so as far as I'm concerned ...

21 MR LYNCH: Perhaps September and the first few weeks of
22 October. Tribunal, will you excuse me.

23 THE CHAIRMAN: Yes.

24 (4.40 pm)

25 (A short break)

1 (4.48 pm)

2 THE CHAIRMAN: Right, well, we've managed to find a day
3 in September when we can meet.

4 MR LYNCH: That's meet the three of you?

5 THE CHAIRMAN: Yes. But that's not until 21 September, we
6 can't get a date that's useful for the rest of the
7 month, now, then 21 and 22 October are the only days --

8 MR LYNCH: I can't, really, I'll explain my situation,
9 I start a long trial, I can't remember if it's 25 or
10 26 October, I mean --

11 THE CHAIRMAN: So it's preparation.

12 MR LYNCH: I had hoped to have that as preparation time,
13 obviously, if needs must, there we are.

14 THE CHAIRMAN: Right.

15 MR LYNCH: It would just be a day, wouldn't it?

16 THE CHAIRMAN: No.

17 MR LITTLE: It's two days now.

18 THE CHAIRMAN: We're trying to finish not only Mr Smith but
19 also the claimant. So it's better to try and get two
20 days --

21 MR LYNCH: So decide, a, whether the claimant is able to
22 recall himself again and, if he is, he can then give his
23 evidence.

24 MR LITTLE: We're essentially reserving two days to get
25 everything finished, basically.

1 MR LYNCH: Sir, in that event, I wonder whether it might be
2 helpful to have a written statement because otherwise
3 I will not have any idea what Mr Little is going to say.
4 THE CHAIRMAN: You will, because when he puts his submission
5 in as to what he's going to be recalled about, he's
6 going to explain what he wants to say.
7 MR LITTLE: It's really the last couple of pages in the --
8 THE CHAIRMAN: Hang on a second. (Pause)
9 If we don't do those dates, we have Tuesday, 17 and
10 Wednesday 18 November, what about your availabilities
11 then.
12 MR POWELL: Yes.
13 THE CHAIRMAN: Yes? What about your availability?
14 MR LYNCH: I think that trial might still be going on then.
15 Certificate, can we go back to the dates in October,
16 sorry?
17 THE CHAIRMAN: 21 and 22, that's school half term,
18 incidentally.
19 It's holiday entitlements, if I'd exercised my
20 rights two years ago, I would not be sitting here now.
21 It was half term, and I was supposed to be going
22 away but I'd forgotten, so there we are.
23 MR LYNCH: But judges can now opt for --
24 THE CHAIRMAN: No, no, I'm just saying -- no, if I'd said
25 I was on holiday, which is what I was supposed to be

1 doing.

2 MR LYNCH: Right.

3 THE CHAIRMAN: I'm not on holiday on 21 and 22, but all I'm

4 saying is that it's half term.

5 MR LYNCH: Okay. My own views, if I may, I'd just say that,

6 you know, I think that this must be priority for me as

7 well and I could start the preparation for the other

8 case earlier than I otherwise might have done.

9 THE CHAIRMAN: Are you content with that.

10 MR LYNCH: Yes.

11 THE CHAIRMAN: That's --

12 MR LYNCH: I think it is still going ahead, I think it still

13 runs beyond 17 and 18 November.

14 THE CHAIRMAN: Right:

15 MR LYNCH: At least it might.

16 THE CHAIRMAN: I think it would be preferable now to do that

17 on 21 and 22 October. And we'll list it for two days.

18 Then, you know, we're talking about -- when does that

19 trial, that hearing finish?

20 MR LYNCH: I'm not absolutely sure.

21 THE CHAIRMAN: It's towards the end --

22 MR LYNCH: Mid-to late November.

23 THE CHAIRMAN: So you're tied up in that and there's no

24 prospect of you getting any submissions out in early,

25 late November, early December, is there? Because you'd

1 need quite a few weeks to --

2 MR LYNCH: Yes, I think that would be right, and obviously

3 it could settle, and all that, but --

4 THE CHAIRMAN: Potentially we're looking at submissions to

5 be provided some time in the New Year.

6 MR LYNCH: Or late December.

7 THE CHAIRMAN: We can't sit beyond 16 December --

8 MR LYNCH: Right.

9 THE CHAIRMAN: 15 the is the last, I'm away.

10 MR LYNCH: Then I think that would, to be honest, it's

11 a massive task, of course.

12 THE CHAIRMAN: It is going to be a massive task, for both of

13 you.

14 Okay, we'll cross that bridge when we come to it but

15 21 and 22 October, it will be listed for disclosure,

16 Mr Smith, and the claimant.

17 Now, because you're doing your submissions for

18 1 September, that will give us a chance to have read

19 rather than reading for the first time when we come on

20 the 21th, everything, so perhaps that might speed things

21 up for us on those days.

22 MR LITTLE: Yes, and I have to do the witness recall and the

23 Mr Smith for the 1 September.

24 THE CHAIRMAN: 1 September.

25 MR LITTLE: And that will be to yourselves and Mr Lynch.

1 THE CHAIRMAN: Yes.

2 MR LITTLE: That's all that has to be done.

3 THE CHAIRMAN: Yes, because we are going to meet on
4 21 September.

5 MR LITTLE: Yes.

6 THE CHAIRMAN: So they must, anything you need, we must look
7 at it by then, and of course you have a right to make
8 further submissions when we come back in October.

9 MR LITTLE: Yes.

10 THE CHAIRMAN: All right. So listed. Thank you.

11 (4.55 pm)

12 (The hearing adjourned until Wednesday, 21 October 2009)

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19
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21
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23
24
25

INDEX

Housekeeping	1
Ruling	24
RICH NEILL (sworn) (via video link)	39
Cross-examination by MR LITTLE	39
Re-examination by MR LYNCH	131
Housekeeping	140