By E mail

STRICTLY PRIVATE AND CONFIDENTIAL

Mr Charles Rae
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30 September 2009

Dear Mr Rae / Mr A Lynch QC

Brian Little v Magellan Aerospace (UK) Limited & Magellan Aerospace Corp
Case number 1402867/2006

As promised please find attached my formal response to your letter of 14 September 2009. Your letter is critical of me in producing lengthy letters - which I have stated on multiple occasions are to save time in the frequent cross-referencing to other documents to read. In the case of my 4 September letter of sixteen pages it avoided the need to refer to thirteen other documents and extracts which would have been necessary. I find it easier as I continue to believe that this is more time and cost effective, though it would seem that the legal profession seems to have a preference for wading through one document to another document to another, which in my experience takes much longer.

Subject 1

Firstly I have analysed the emails/letter and documents sent in the period to which your complaint refers. They comprise the following subject matter

1. Mr Smith's Witness Recall - response to Mr Lynch's document
2. Claimant Recall - which had to be centred around documents and evidence disclosed since 19 January 2009 and which at present remains outstanding and

would should form the basis of my final evidence on 21/22 October 2009. In completing this I was obliged by the Tribunal (on 27 July 2009) to consider the further oral evidence of Mr Neill on 27 July 2009 and document 3605H which was disclosed on 27 July 2009. Following your letter of 14 September I provided a "final draft" on 15 September 2009 and following our email exchanges on further disclosures a Final Version on 17 September 2009, together with an Updated Application for Documents disclosure and Index document.

3. A substantive portion of the documentation relates to subject 3.

Your letter sent on the evening of Thursday 27 August 2009 (whilst noting that you had not an opportunity to read my email of Wednesday 26 August 2009 at 10.15 – in fact I received your Read Receipt on Friday 28th at 17.59 just as you were departing on your holidays) referred to my email of 10 August at point (a)

"*Moving to your email of 10th August. At "point "a" you are apparently referring to a response that you say Mr Neill gave to a question from the learned Judge when giving evidence in November 2007. Mr Neill did not respond in the way you suggest – he was not as categoric as your email states he was. He did not claim any certainty of what publications he provided to PWC/EY*"

I was astonished at this response. Your own notes of the 27th July 2009 hearing should have been very clear of the unusual position for Mr Neill when he stated to the Judge that "he recalled quite clearly" and most certainly when I sent you a copy of my court stenographers' transcript of his oral evidence by email on 31 July 2009. In fact although it would seem that you had not read it by then I had already set this out clearly in my email of 26 August 2009 to you in Attachment A at Page 2.

As Mr Neill had mentioned the detail so explicitly in his evidence, and it ought to have been disclosed in accordance with the December 2008 Tribunal Order, it is obviously a relevant series of documents and should be disclosed.

Your letter then goes on to say "*All of the publications that were provided to PwC/EY by Mr Neill and that are in the Respondents possession have been provided to you. You will recall that Mr Neill, in his recent video link evidence, said he recalled giving some information to PWC about a presentation given by Teal. Mr Neill does not have a copy of that document, he recalls giving PwC his only copy. There are, therefore, no further documents that stand to be disclosed by the Respondents on that matter.*"

As these contemporary documents were obviously relevant to my "Witness Recall" and you were now on holiday to Tuesday 8 September 2009 I proceeded to ask for the assistance of PwC UK and Canada on 31 August 2009 and 4 September 2009 (document 4294) in retrieving "Mr Neill's file" and returning it to Mr Dekker. I copied Mr Dimma and Mr Dekker on that

correspondence so that file could be with you on your return and that I could include it in my Witness Recall application.

You will be aware that in parallel in late July and early August 2009, and just before my annual holidays, that I asked the three specific Publications mentioned by Mr Neill in his evidence – Flight International, Aviation Week and Air Transport World to provide the relevant A340 articles in the period between September 2005 and June 2007. I provided with my email Attachment B a list of the articles which I could recall and/or from Flight and ATW on 26 August 2009 and these are now in the Bundle at document 4270-4289.

From your 27 August letter I included my follow up emails for Aviation Week to you (copy Mr Dekker) and their subsequent publications extracts forwarded by AWST in mid September 2009. (document 4290).

Likewise I asked Mr Aboulafia of Teal Group (copied you / Mr Dekker) for presentations made by him in Canada in the relevant time period and related questions. As you know he promptly responded and these documents are now in the bundle at 4291-4293.

You then say in your 14 September 2009 letter

"*You have repeatedly made reference to documents that Mr Neill provided to PwC and I note your numerous emails (copied to me) that you have sent direct to PwC on the matter. You have sent me a copy of two presentations that you obtained from Teal Group. I will seek to confirm which, if either, of these documents contains the presentation extracts that he recalls providing to PWC and I will revert to you.*"

I note your comment that you believe you require the many document that you ask for needed in order to enable you to "complete" your application that you be permitted to be recalled to give more witness evidence.

So far as we are concerned, your application can, and should be finalised and sent to us and the Tribunal. It was always contemplated that you should do so regardless of whether or not you believe that there are further documents that you ask for disclosure of. You raised the prospect that you believed you should be entitled to return to give more evidence several months ago, before Mr Neill gave further evidence, so it should not hold up your sending us you application because you believe there might be still further documents that you wish to consider.

Mr Lynch QC needs time to consider your application to recall yourself in advance of the Tribunal reading day on 21 September 2009 and we do not believe there is any proper basis for you to withhold your application. Please can you send us your application by return"

My response to this is quite simple. Firstly the Tribunal Chairman explicitly told us that I should list all the relevant documents since I first gave evidence (19 January 2009) and, whilst I offered to do one, that a formal witness statement was not required. I have set out in the "Confidential Witness Recall" Application those

relevant documents with some explanation, and in the most recent correspondence, a Documents Index in light of Mr Neill's oral evidence, document 3605H and your recent correspondence. I have also set out in Appendix 1 a summary of all the previous correspondence before I last gave my evidence in chief requesting various documents - these were not forthcoming from the Respondents and you for months later. I am simply not going to let that happen for a second time in a continuing process of obfuscation. Even when there are Tribunal orders further relevant documents come to light. Secondly when I have offered "90%+ drafts" in the past you have refused to accept them as a basis for proceeding with any work – on every occasion you have insisted on a Final "Version" . I am therefore going to get it 99.9% right – which is what I did. As I said above on this occasion you did ask for the "final draft" on Tuesday morning and I sent it just after I read that email on my return to our home.

As regards the outstanding documents it also seems now, to others and me, that Mr Lynch QC must be aware of the increasing fragility of the Respondents case on A340 as you cannot produce definitive documents on a voluntary basis which should obviously assist your case and that ought to address in part the growing evidence of PwC errors with the disclosure of those relevant documents – such as Request 15A.

I have therefore met the requirements of what I understand the Tribunal Chairman to have asked me to do and Mr Lynch QC and yourself will have had four weeks in which to prepare your cross-examination by the next hearing.

Finally in your letter of 14 September you do not agree to carry out any "reconciliation with the Mr Neill's "Data from Publications File". As Mr Neill referred to this file in his evidence it ought now to be a simple matter for Mr Dimma or Dekker to provide it now from PwC and we can annotate the documents in the Bundle with the relevant references, including any documents which the Publications have not furnished and of course the Ref A forecasts in his oral evidence. In any event as you recognised on the Exhaust Nozzle and Plug Component Maintenance Manuals – R & O- Mr Neill's reference to his file and the documents make it relevant. If you continue to have any uncertainty on what to do and do not wish to allocate any time then simply provide me with a copy of its contents (or the original file as a lowest cost alternative) and I will do the remaining work for the Documents Bundle.

I note in Mr Lynch QC's latest document called "Respondents Response to Mr Little's request for Further Disclosure" in paragraph 3 Mr Lynch QC fails to record the very specific response which Mr Neill gave to the Judge and court. Now it seems that "*we should clarify that Mr Neill had a collection of miscellaneous documents on a range of issues which he made available to PWC on the basis that PWC could take any document they wished for the purposes of their enquiry. PWC has retained any documents that they did take, and Mr Neill and Magellan have no copy of any such file of removed documents as were taken and retained by PWC......*" etc on Teal.

I note in your most recent letter that you are going to ask PwC to return the documents they took. Where are the other relevant documents which MAC/Mr Neill retained?

In any event can you now finally confirm, on behalf of the Respondents, that the sole "external market forecast" and market "data from publications" document

which MAC provided to PwC (and EY) was the email and its attachment dated 1 March 2007 (based on FI March 2006 data) and disclosed directly to the Tribunal by Mr Lynch QC just before Mr Bobbi gave his evidence on 8 June 2009 and now in the Bundle at 3605B-D (EY) and 3605E-G (PWC) . If I am incorrect what other documents do the Respondents assert they provided to PwC and EY and have they been disclosed?

Subject 2

" You then proceed to say later in your letter "*I make the above comments in light of what the overwhelming content of your correspondence concerns, which is in the main is to address further technical and detailed issues concerning A340 accounting"* and later "*A very large proportion of your letter to me on 4 September relates to matters that are akin to submissions or argument. At the risk of repeating a point I have made to you on several occasions, I do not agree to litigate this case in correspondence, which is again what you are inviting us to do."*

You have stated in your letters

Mr Rae --- Pinsentmasons letter - 27 August 2009

In regard to the likely need for spare exhaust parts, the Respondents case has always been (and remains) that Dr Thamburaj's work gave rise to a calculation of the likely life span of the parts. This allowed an estimate to be made as to the likely demand of such parts. Dr Thamburaj's work concerned this and not some regulatory, mandatory requirement, that the parts be replaced after 40000 flying hours.

Mr Rae --- Pinsentmasons letter - 14 September 2009

"As you well know, our view is that Magellan's position on the likely, predicted need for spares (based on Dr Thamburaj's research) is clear and consistent."

In my letter of 4 September 2009 I set out quite clearly that I considered that despite having "warned" Mr Lynch QC about his line of questioning of Mr Bobbi on 8 June 2009 on "replacement spares" etc he, it would seem, did not fully appreciate the consequences of that outside the public courtroom in the aerospace business world. For example the "hoax" email (document 4183/4184) and certified to 20000 flight cycles emails from Aircelle to Etihad (document 4185/4186).

The aerospace regulatory processes are quite clear and the financial accounting for Non recurring Engineering and Development costs (NRC) which follows from that are also long and well-established globally. It is also the case that Mr Lynch QC and yourself have a responsibility (at least in our minds) to ensure that issues beyond just the "UK-centric litigation" are properly considered by yourselves with the Respondents. Mr Neill then attributes the blame for the further outside courtroom follow ups /misrepresentations within the industry to Mr Bobbi. That was a disgrace.

For the avoidance of doubt Mr Lynch QC **directly caused the actions** taken by Mr Bobbi and myself to verify further, beyond all doubt, that the information/evidence given by Mr Bobbi and myself was not mistaken – we have verified 100% what he and I have said. You will also recall that Magellan refused Mr Bobbi's offer to meet with them, following Mr Lynch QC having made that suggestion /remark in his cross examination, to show him further documentation to support the position you continue to state in your letters above. We have seen no aerospace / technical data yet which supports widespread spares replacements.

Your letter suggests that I am trying to litigate through correspondence and that it is solely a matter of argument etc. in a court. With respect one of the purposes for me having detailed transcripts of oral evidence, on a word for word basis, is that I can "educate" Mr Lynch QC and yourself on subject-matter for which you have very limited business experience and in so doing step beyond the reading of the "English word" in selected documents immediately before each hearing, and actually understand how profound the oral evidence is in what is being said. It is to my mind "education through correspondence" so that the consequences for your clients of that public court-room are well understood by you both and EY /PwC. It is sworn court room public evidence that everyone is responsible and accountable for. In the same way I find the legal process in an Employment Tribunal new so likewise is the aerospace industry to both of you and we all have the opportunity to learn as we go. I am actually trying to help – even though that can be deliberately misinterpreted if one wishes.

You complain about the word for word quoted evidence from Mr Bobbi's and Mr Neill's oral evidence – as I suggested before both Mr Lynch QC and you should read that evidence carefully again and learn what is actually being said and think beyond a public courtroom to its implications elsewhere. Although I have no obligation to provide them those court stenographer transcripts can assist both of your understanding, if read carefully.

It is also abundantly clear to me that Mr Dekker is in large part instructing you on some of these matters and your letter statements above. He knows full well that the International accounting policy and practice for NRC Engineering and Development costs recovery can ONLY include Repairs work when they are

1. "**scheduled" repairs** (that is NOT an ON CONDITION Service Life Policy for the Trent 500 Exhaust system as Mr Neill confirmed) with
2. "**known" revenues and costs** and
3. which are **100% certain to be carried out by the Original Equipment manufacturer (OEM).** This is why Mr Neill, from his engine experience, stated and knows that only some very specific NRC can be retained on the Balance Sheet – a certain point for repair/overhaul AND a certain revenue and cost AND a 100% OEM Repair – such as on Engines and APU's. These are the subject of mandatory documents within EASA, FAA etc for "actual" time limits/""hot service life parts" - known as LLC – Life Limited Components or sometimes LLP – Life Limited Parts.

That of course is NOT the situation on the Trent 500 Exhaust Nozzle and Plug – which is Maintenance "On Condition" (document 3625A-3625Z2 / Mr Neill's oral evidence) and confirmed by the eight airlines and Airbus. In effect the Repairs are, as

PwC say at para 8.72, simply unpredictable, with variable revenues and costs and no certainty that Magellan will carry out those Repairs.

As both Mr Neill in his email at document 3597 and PwC state in document 693 at paragraphs 8.68 **" ..... *The shortfall of 365 units is therefore required to be made up of spares in order to support the future programmes volume estimate of MAC."*** <u>and</u>

<u>at para 8.72</u> ***"It is of note that the internal report also makes reference to the requirement for repairs in its conclusion and not explicitly to the need for spares or replacement units. Management acknowledges the unpredictability of repair work and has appropriately chosen not to consider repairs in the EAC analysis. Management believes that given the estimated life of the exhaust system, there will be a combination of spare units and repair work. Further, management asserts that the requirement for spare units will support and exceed the total number of units projected in the EAC"*** (Claimant view – we know from the oral evidence of other Respondents witnesses and also Mr Neill that "***Management asserts***" is a reference solely to him).

Then at para 8.76 (following the para 8.74 and 8.75 table with the PwC calculated "1572" Units to replace or Repair by FY2021. (Claimant view - which we know to be the subject of basic logic, maths and business errors. Then on 27 August 2009 following the disclosure of the Aeronca 14 March 2007 document 3605H (2MB attached) we can see that Magellan – Mr Neill/Mr Furbay provided an analysis of "886" Spares and Repairs. Consciously PwC do not record this input anywhere in their Reports or Exhibits. At present we do not know whether this 3605H was provided to EY at all, or whether indeed EY asked for such an analysis in their deliberations in FY2006.

Para 8.76 "***In order to achieve MAC's EAC projections , only 365 replacement (i.e spare) exhaust system units would need to be delivered. This is far below the expected demand of 1,572 spare and repair units as set out in paragraph 8.75 above."*** (Claimant view : For the record it would seem that PwC have concluded that in excess of some **23%** (365/1572) of <u>their</u> Spares and Repairs calculation at Para 8.75 is acceptable for inclusion in the Q4.2006 EAC. We also know now from Mr Neill's oral evidence that although PwC did not acknowledge or refer to it anywhere they also had the Furbay/Neill 14 March analysis in late March 2007 (new document 3605H), a sum of 365?/886 or <u>**41% minimum**</u> allocation for complete replacement Spares, must have been a part of what was in Mr Neill's mind and some of his assertions in his emails and the exchanges referred to at document 3597/3598. For completeness you know that the remaining "365" "calculation" was based on the Forecast International April 2007 report and also mistakenly double counted Airbus/Aircelle WIP and inventory. Had the attached document 3605H production volumes produced by Aeronca on 14 March 2007 (and similar to the market consensus of the six other global forecasts and data from the publications cited by Mr Neill been used) then in excess of a further 700 replacement spare units would have been needed to, as PwC should have written in para 8.68 ,"***The shortfall of <u>700 +</u> units is therefore required to be made up of spares in order to support the future programmes volume estimate of MAC."***

In real business terms this would mean that every A340 aircraft in airline service would require a "Spares replacement" - not a Repair – at least once in its product life. That crucially is not what Mr Neill's said in his oral evidence repeatedly, nor in the Airbus/Aircelle Component Maintenance Manuals –doc (78.11.41 Pages 5001/5002 and 78-11.42 pages 5001/5002/5003 & 15004.page 2 now numbered 3625G/H and 3635Q/R/S/T), nor Dr Thamburaj in his emails and documents, nor the summary and conclusions in Professor Ghonem's 2003 Article, nor anybody else with actual experience within the aerospace industry. You should then revisit carefully **directly with Mr Neill and Dr Thamburaj precisely** what they are saying to their customers and the airlines to ensure you both have a proper understanding.

I warn you now in writing (as I did verbally to Mr Lynch QC on 8 June 2009) that if you continue to pursue the line you have been stating in your letters above, as the on the record representatives of the Respondents, then I will be absolutely clear to Airbus Toulouse and the contacts we have in the top management of the eight airlines (new contact via Ian Massey - Audit Chair at Vought and my friend and a former Airbus Toulouse CFO - in SAA) and elsewhere what, despite all the current REPAIRS documentation in the hands of the airlines, certification paperwork from Airbus/Aircelle and disclosed by Magellan itself, that you all believe that Mr Neill and Dr Thamburaj are predicting 100% replacements on a "Beyond Economic Repair" approach and therefore replacement spares for all of their Trent 500 Exhaust Plug and Nozzles.

I shall in fact quote the specific texts in your letters above to support that assertion from October 2009.

Let me assure you cannot do/say one thing in a public courtroom involving in excess of hundred million dollars of additional costs to the airlines and additive revenues to Magellan and then say the opposites elsewhere without consequences. Such inevitable consequences, for the avoidance of doubt, will lie with Mr Lynch QC and yourself. The rigour with which you properly consider the mounting documentary evidence and actually read Mr Neill's oral evidence, the documents recently disclosed, those requested for voluntary disclosure and those within the amended Application in the next few weeks will be evident by October 21. If I am wrong throughout then show me the documentary evidence – every Magellan action and new document disclosed to date has simply added to my "reasonable belief" in August / September 2006 that Magellan would not address the A340 NRC recovery on their Balance Sheet by a minimum of $10m, as evidenced by every action certain individuals and firms have taken since.

You then proceed to complain that once again I am asking for new documents. That is also a function of the continuing "education" process. Mr Bobbi was quite clear in his evidence that he talked to and received a copy of the Airbus Maintenance Manuals for the Trent 500 Exhaust Nozzle and Plug with multiple airlines. He consistently told the Tribunal in his evidence that these parts would most probably be repaired etc. Also that there was no knowledge or documents within the industry or indeed any discussion (done discretely) about any life limits or substantial replacement programmes for these components or challenges in the Airbus Direct Maintenance

Cost Guarantees. You continue to state on behalf of the Respondents what you have said in your most recent letters.

If you turn to my letter to Mr Tracey of PwC on 22 November 2008 (document 3474-3476 – copied to you) you will see Mr Stafford's request and the reference to these documents at Requests 3 and 4. There is nothing new – it seems we have to get the documentary evidence to continue to show how appalling the PwC "independent forensic investigation" was and perhaps hope that Mr Lynch QC and yourself have (hopefully mistakenly) embarked on a process in which you are unknowingly continuing to assist the Respondents break the law on its Public Financial Reporting. As you said you would do in your letter of 14 September 2009 you have now disclosed those complete Manuals,including the six pages which Mr Bobbi and I have from three airlines, (**78.11.41 Pages 5001/5002 and 78-11.42 pages 5001/5002/5003 & 15004.page 2 now numbered 3625G/H and 3635Q/R/S/T**) – two pages of which are in fact also correctly coloured by someone pre disclosure at the references "**return the xxxxx to the manufacturer for analysis and repair". At one point Mr Lynch QC in his cross examination seemed to suggest on 8 June 2009 that there may be different documents in existence between Magellan Aerospace and Aircelle, rather than the ones we had which were issued by Airbus/Aircelle to the airlines. Your disclosure on 17 September 2009 confirms that they are in fact perfectly identical at the relevant pages and what we fully expected regarding "On Condition**" and "**Return to Factory for Analysis and Repair**." There is of course no reference to a Recommended service life limit etc and indeed Mr Neill gave oral evidence frequently on Repairs and as you also will now have read in the transcripts on several occasions the calculation of 40000 flying hours was the "Worst Case Scenario" etc etc for the commencement of inspection/checks etc. See also the FD&T Certification paperwork disclosed on 17 September 2009.

In the simplest layman terms what Mr Neill said in his oral evidence on 27 July 2009 was that the airlines are now recommended to schedule their inspection checks, described in the disclosed Airbus/Aircelle Component Maintenance manuals, from the second removal of the Trent 500 engines for overhaul (i.e at 40000 flying hours/4650 cycles) and at all subsequent 20000 flying hours/engine removals. If any of the inspection/checks criteria are found that necessitate a repair then the Airbus/Aircelle Component Maintenance Manual you have now disclosed suggests it is returned to Aircelle in France for repair.

Mr Bobbi told the Tribunal that and also then gave evidence about Spares replacements and their "reasonable predictability" for strategy, operational planning and financial scenario/accounting purposes. I also have prior experience with this process from my procurement/contracting experience with Shorts / Bombardier on the C23A aircraft for the USAF and the IAE V2500 nacelle with Rohr/Goodrich over some ten months in 1984/1985 (EY audit them).

For education purposes in simple terms Nacelle Spares usually arise from three elements

1. <u>Initial Provisioning for Quick Engine Change Units (QECU)</u> – these are normally contracted with the initial order and are predictable based on the number of airlines operating the engine/aircraft , the airline "inventory"

policy/MRO centres and their risk of "accidental Airline damage. This information or assessment is readily available within the aircraft/engine manufacturers and some of the largest component suppliers – e.g. Rohr/Goodrich, SNECMA/Safran . Today this is also software predicted with various algorithms and from both the major software packages the data available for A340 aircraft in service would predict 16 units. While I was at MAC Magellan showed 18 units were delivered for Spares purposes in their EAC.

2. Airline Spares Inventory / Rotables - Mr Neill referred in his evidence to "Rotables". These are spare units which are generally purchased or leased (such as those offered to Virgin Atlantic in document 4263/) or exchanged. This happens when there becomes an increasing possibility of components requiring Repair in the life cycle of the product. These "rotables" are also forecast using custom software packages in what is part of a "Ranging and Scaling process" with major drivers obviously being Guaranteed Turnround Times (in MAC case 30 calendar days/25 calendar days) , Replacement prices (say $250K each = as production / Aircelle contract) , and "assessed Vendor Repair performance" . This has also been run though as part of the Mark Bobbi report December/March 2009 report with a prediction of 36 units needed for the in service A340 fleet in 2012. Separately I have now provided the detailed data from end June 2009 (see summary at document 4240A-E) to some friends in an organisation I worked with in 1985 and they have provided predictive results for Trent 500 of some **38 "rotables" units at peak in FY2012/FY2014**. It should also be noted that as some aircraft are withdrawn from service and put in long term storage it is not unusual for some of the high expense components to be removed and used as part of the "rotables" inventory, which of course reduces the purchase or lease of replacement spares. An example I would cite is Virgin Atlantic who now have two A340 600 aircraft in storage at Lourdes in September 2009 and who I understand are planning to use some "high cost" components from MSN371 as part of their "rotables" inventory to support the scheduled repairs and overhauls of specific components.

3. The final part is of course the parts which are returned for Repair and which after analysis are judged uneconomical to repair (Beyond Economic Repair - BER) and where a replacement is required. There are lots of benchmarks on this available within the industry and lead times guaranteed for the provision of those replacement spares and prices. Mr Neill you will see in the transcript referred to "heavy" repairs on a couple of occasions in his oral evidence and the associated revenues. I have obtained up to date data on this from RR / Goodrich / Vought / Bombardier and SNECMA for Engine exhaust systems. Including elements 1. and 2. the lowest number was 13% Spares (as compared with production volumes) for the In service fleet of Airbus A330's with RR Trent engines. Of the remaining eleven engine types in the survey the highest % was a current military application of some 24% in Rohr.

The market/business development people at Rohr/Goodrich estimate that the Spares market is for some 20% of the in service fleet for the Trent engine exhaust and nozzle, which is 50% higher because of the use of some thin BETA21S sheet in parts of the Exhaust system. Their estimate for the 125 aircraft in airline service is for a potential 100 spares (categories 1, 2 and 3) leaving the remainder of the market available for a Repair and Overhaul offering (see specifically the A340 exhaust nozzle and plug in their Capabilities Brochure (document 4269F). They also correctly point out that it is an important segment because of the wider strategic Goodrich relationship with RR (such as A350XWB engine nacelle and new Single Aisle product research) and as the Trent 500 engine is concentrated in 8 global airlines with some 100 plus aircraft– almost all of whom have some form of "one-stop MRO offering" from the Goodrich family of products. A380 will be similar.

If we turn now to Magellan estimates. Their representation to EY for the FY2006 audit was for approximately 1184/1200 units in service (approx 290 production aircraft) as at 1 March 2007 and some 190 units for Spares AND Repairs. If one excludes the elements 1. and 2. above which would arise from 300 A340 type aircraft in service (which would on software simulation would be 59 Spares units) then some 131 units would have been the likely "predictable" Spares replacement forecast. This would have represented Spares of some 14% of production as a % of aircraft in service.

Mr Bobbi from his detailed work and report , including reviewing the documents from Magellan in December 2008 – March 2009, gave a Spares forecast total of 104 – 130 units (including the 18 delivered) which he knew was equivalent to some 20% - 25% of the forecast total in service. In this he recognised that some BER repairs, which would lead to Spares replacements, were more likely than for the usual Inconel /Steel alternatives exhaust systems.

For my part I had estimated a total of 150 units (including the 18 already delivered) as my Shorts and Bombardier experience was of an approximately 25% being subject to being Beyond Economical Repair (BER) criteria. In hindsight my Spares estimate of 25% is probably too high as at the time I had insufficiently factored in the much higher total Spares replacement prices relative to the actual costs of some of the thinner BETA21S sheet materials which would be needed in the replacement/repairs"

Subject 3 – Related substantive matters

Earlier in your letter you say that you consider that what I am doing in correspondence to be wholly unreasonable and disproportionate in the circumstances.

I need to formally remind you, following the Grounds of Complaint, that it is the Respondents and its legal team that chose the "thick case" route and conduct for this case. My legal team consciously reduced the 41 Protected disclosures in December 2006 to 24 before filing my Grounds of Complaint. The Respondents went on to produce 44 Unpleaded allegations and challenge a complete breach of UK statutory disciplinary procedures - you still deny Automatic Unfair Dismissal (even though it is a breach of the UK SDP's and the Directors Representation letters to EY include a

provision of £60K ,presumably on advice, in the MALUK FY2006 accounts for it – doc 3929) – You probably say that's litigation, I say it's simply wrong and undoubtedly leads to **more cost and time.** Even at this late stage The Respondents could admit Unfair Dismissal and save cost/time and paper in Closing Submissions – will they – probably not?

Then an abject failure to provide relevant documents from the outset (not least A340 documents still being disclosed in December 2008 and subsequently, which were contemporary with Mr Norman's letter dated 16 February 2007 in which he said "*For the record, my clients have made it clear to me that they intend to fully and properly comply with any order for the disclosure and exchange of all relevant documents"*) . Despite the Tribunal Order in December 2008 we then have on the A340 alone the documents disclosed on 8 June 2009 (3605B – 3605F) and then on 27 August 2009 the new document 3605H to support MAC Spares and Repairs calculations. In your letter of 14 September 2009 you say that this document 3605H does not fall within the terms of the Order of December 2008. That is quite simply wrong and misleading. If Exhibit 8.5 and Spares and Repairs is relevant (Dr Thamburaj's emails) and PwC and Mr Neill are clear that substantially more Replacement Spares were needed in mid-March 2007 to meet the 1285 units in the amortisation/NRC recovery, as stated in doc 3597/3598 and PwC para 8.76, this "886" "analysis"/ document was obviously provided to PwC in support of that and therefore instantly relevant.

Certainly it is much more relevant than the Technical Reports at doc 3631-3701 (71 pages) and doc 3702- 3721(20 pages) which Mr Neill did not consider would be of any value to PwC and Mr Dekker did not provide to them. What in the Tribunal Order made them relevant – what pages would have made any sense to an auditor? or PwC.

All of these March 2007 documents should have been on the Respondents Index of Documents exchanged on 4 April 2007 in accordance the CMD1 Order. Time and again the Respondents "enforced" disclosure of relevant documents simply undermines the assertion by Mr Lynch QC about the Respondents track record in this case. It has been appalling as the documentation summary I have prepared for Closing Submissions across the 80 + Requests will demonstrate since CMD1.

In your letter of 27th August 2009 you note my reference to what I believe is professionally necessary for Mr Lynch QC and you to do and that both Mr Lynch QC and you are very well aware of our obligations to the Tribunal in respect of disclosure.

It would seem to me that any professional who now knows me and then argues that I would not ask for relevant and important documents, as illustrated by Mr Lynch QC at the 28 November 2008 interlocutory hearing, when he said ....

1. *"It would be wholly inappropriate to duplicate the complete forensic accounting already done by PwC. The test is whether the documents are necessary and for what reason. For example, if we were told why it was suspected that the documents would reveal a relevant or helpful fact, then we would reconsider our position. On the face of it, these are classic examples of yet more scrambling for documents with no necessity and no suspicion of what they would reveal. If there were a more focused application with clearer*

reasons, the Respondents would give it proper consideration. Therefore, we will not provide these documents at present, but we would give a more focused application proper consideration".

Claimant comments – I have separately forwarded two key emails on Friday 25 September at 17.32 and Monday 28 September 2009 at 13.19 so that Mr Lynch QC also has sight of the recent emails regarding the PwC Forensic investigation with this 30 September 2009 letter. This was no independent forensic accounting investigation and a waste of C$3m monies for the public shareholders of MAC. Assertions that I scramble for documents with no necessity are unfounded and grossly unfair. It is a disgrace that even now you and Mr Lynch QC do not take my Requests seriously enough to bother to get the relevant documents to look at. There are NOT multiple requests for further and further documents – there are REPEATED requests for several documents over many months since CMD4 - all far fewer in page count than the almost 100 plus pages of detailed information in the Thamburaj Technical reports which were of no value in providing to PwC or EY. You then mount entirely unfounded argument without even looking at the documents which ultimately proves to have been an obstruction of relevant documentary evidence in this case.

Mr McCreery, who accompanied me to my 29 January 2007 meeting with PwC, explicitly advised Mr Tracey of PwC that he needed to build in adequate safeguards in their investigatory process to ensure their independence given the prior history. We certainly believe Mr Hills of Pinsentmasons (and Mr Lynch QC?) , having recommended PwC Birmingham to lead an "independent forensic investigation" for Mr Dimma, should equally have understood the risks of an independent forensic investigation being carried out with Mr Dimma chairing such an investigation, having already recorded in his letter dated 14 November 2006 (doc 2676/2677) that

"*I was satisfied (and remain satisfied) that the issues you raised did not (and do not0 warrant any further steps and remedy. I considered that the issues you raised were not financial or governance issues that were of concern to me as Chairman of the Audit Committee. They did not, in my view, amount to unethical and unlawful acts on the part of the Company or any of its employees...........The matters that you were raising were* ***historic*** *and related to your working relationship with the Company. They do not merit further consideration under the provisions of Magellan's Whistleblower Protection Policy and/or Code of Ethics*."

Mr Tracey carefully read Mr Dimma's letter at our 29 January 2007 meeting. To then refuse to make any invitation for comments from us on the Court-disclosed Draft PwC report and consistently refuse to present them as witnesses in this UK case is far removed from good practise and added considerably to the overall time and costs in the process.

As you know MAC, Mr Lynch QC and you have tried to use PwC as the "experts" in absentia. As is increasingly obvious from the growing evidence Mr Tracey, as a partner of PwC UK, has overseen not just an incompetent independent forensic investigation but one in which PwC have compromised themselves ethically and

professionally in its conduct and to best practise standards in a number of substantive matters.

2. *"Disclosure should not be ordered because evidence is lacking. There is no reason to think EY did mention anything relevant in the letter (Request 14) therefore there is no reason for disclosure. This is a fishing expedition and disclosure would be at odds with the overriding objective and the heightening of the test of necessity.*

   Claimant comments - Request 14 and the EY letter dated 11 July 2007 was eventually Ordered for disclosure in December 2008 – it is now in the bundle at 3566-3575. The document was clearly relevant and the suggestion by Mr Lynch QC in a recent Submission that Pinsentmasons (and perhaps Mr Rae) ignored it because of its July 2007 date is simply not credible. Having regard to the context of Ms Hadfield of EY giving evidence and then followed with Mr Jeffreys email dated 19 October 2007 (doc 3276) where he said

   " 3. We mentioned in our letter of 4 October about expecting a request for further documents relating to the preparation of the financial statements for FY2005, which is of course relevant to a number of the Protected Disclosures. Please disclose to us the draft financial statements prepared by the First Respondent dated 26.10.06 and 1.05.07. Also Ernst and Young's letter to the First Respondents directors around 11.7.07".

   It is difficult to believe that a competent solicitor, or even a legal trainee at Pinsentmasons , could make such a basic mistake. Also we followed the request up on multiple occasions. Of course all three UK Directors were aware of the 11 July 2007 EY letter and had individually signed Representation letters to EY. They failed to provide it or them to you in accordance with the legal obligations which Mr Norman had told my solicitors he had explained to Magellan in February 2007. At exactly the same time the extensive document disclosure process was also underway in June/July 2007 following CMD4 in MAC/MALUK – I don't believe this was an oversight.

   As you know from the notes the Tribunal Chairman even commented at the start of the 19th January 2009 hearing ...."We're not going to draw any adverse inferences until we know why. The docs ID'd by the Claimant are also docs we think should have been disclosed and quite accept that explanation is needed".

3. *It is not a question of BL knowing what is in the documents. To cross the line between fishing and non-fishing you must demonstrate some evidence of relevance.*

   I think if we take the example of the A340 and refer to the MAC Annual Report for FY2006 and Request 21 we can see that the Tribunal obviously considered these documents relevant in their November 28 ruling as the Chairman said "we were swayed because the financial statements said there was reliance." As the most recent spreadsheet summary on Respondents

disclosure records the subsequent document disclosures by you in December 2008 clearly provided 6 new documents (doc 3597- 3721); at least four of which should have been disclosed by the Respondents in April 2007. Then of course we have further two relevant documents disclosed on 8 June 2009 (doc 3605B-G to EY /PwC) and one on 27 August 2009 (3605H) which are central components in the A340 case. You know that I consider that the recently disclosed Component Maintenance manuals (which was Request 16A) and the other documents in my A340 Respondents disclosure spreadsheet at 1b,5A,15A,16B,16C and 16D still to be relevant.

4. *Request 21 – we resist this application as strongly as we can. It is a matter which could have been put to RN one year ago- he was questioned at length by AS. It is completely unfair to RN and the Respondents one year later to call it an application for disclosure. It is based on a misunderstanding of RN's response to a question. RAN did not say he provided copies of other documents. He gave evidence to PwC on this area including information obtained from others in the industry and we would dispute that he stated anything different in his cross-examination.*

   If granted, this would be grossly unfair to the Respondents when their evidence is done. Where would it get us? RAN cannot give evidence. It would obvert what is fair and the overriding objective. This application has lost sight of all sense of proportionality. It is not how litigation can or should proceed. If there were an issue to pursue, it should have been pursued at the time. It would be inconsistent with the overriding objective to order interrogatories or disclosure or anything based on a misunderstanding of RN's evidence.

   AST - "publications" does not mean conversation with other people.
   AL - I will not be misquoted – RN sent data from other publications.

Following Mr Neill's Witness Recall in your letter of 27 August 2009 you said

"Moving to your email of 10 August. At point "a" you are apparently referring to a response that you say Mr Neill gave to a question from the learned Judge when giving evidence in November 2007. Mr Neill did ***not*** *respond in the way you suggest – he was not as categoric as your email states he was. He did not claim any certainty of what publications he provided to PwC/EY.*

All of the publications that were provided to PwC/EY by Mr Neill and that are in the Respondents possession have been provided to you. You will recall that Mr Neill, in his recent video link evidence, said that he recalled giving some information to PWC about a presentation given by Teal. Mr Neill does not have a copy of that document, he recalls giving PwC his only copy. There are therefore no further documents that stand to be disclosed by the Respondents on that matter"

In the transcript/notes I sent you on 31 July 2009 from my court stenographer at page 48-49 it records the following (which I set out in Attachment "A" to my email dated 26 August 2009.

Mr Neill – extract of his oral evidence via video link on 27 July 2009

CHAIRMAN : You need to ask him firstly, did he have the journal available to him, did he read it, or was he told what was in it, and if he was, who told him, et cetera.
MR LITTLE: Okay. In your previous evidence you referred to the April 2006 Teal report. Did you have that journal available to you, or how did you know what it was saying?
MR NEILL : I did not have a copy of the Teal 2006 journal, I had a presentation made by Teal over all of the state of the civil aviation business and what the likely sales would be and what products would sell, I did not get the copies of these presentations until after the end of 2006.
CHAIRMAN : **Sorry, when was that, after when?**
MR NEILL : **After 2006 ,at the beginning of 2007.**

And then shortly later

And Extract E2/5A-14Nov2007 Chairman "Data from other publications"- RAN - "Yes"

CHAIRMAN: From my note it looks as though it was the evidence that further documentation was provided. (Pause).
MR LITTLE: Okay, so on that basis, sir --
MR NEILL : Do you want me to add, sir?
CHAIRMAN : Yes, please.
MR NEILL : Judge?
CHAIRMAN : Yes.
MR NEILL : Yes, it's now two years since this happened but I **recall quite clearly,** and Mr Little knows this, that it was my practice to keep copies of all trade publication articles, documents, **as well as any forecast that we would make,** this would be, the trade publications would be Flight International and Aviation Week primarily, but other things, such as Air Transport World and the likes. What I did was I handed the file, with as much of that data in it that I had, I gave it to Pricewaterhouse. And I do not recall if the Teal presentations that I referred to earlier were in that file or not.
MR LITTLE: But none of -- well, but none of those other publications, because we looked at all of them, gave any indication of more than 200 aircraft beyond about March 2007, none of them, and we have looked at 14.
MR NEILL : If you say that, then I accept what you say, I cannot recall.
MR LITTLE: Okay.
MR NEILL : And they have the file.

I have dealt with this particular subject market Data from Publications" again earlier in this letter.

I think there are sufficient examples in the four above for Mr Lynch QC and you to reflect carefully on these type of continuing arguments for the voluntary disclosures and my updated Final Application. I think it should be clear to both of you now that you seem to be taking a professional position that you will produce argument without even looking at the documents to assess and understand them for "relevancy". To me that cannot qualify in adequately understanding your responsibilities to provide documents that are

relevant for both parties in this case in accordance with any sensible rules of conduct.

You then complain that I am raising further technical and detailed issues concerning A340 accounting. Many others and I do believe that I do understand what I am talking about and Mr Lynch QC and you have the opportunity with my Final request for voluntary disclosure (Requests 15A,16B and £84K schedule) and Application for Documents Disclosure (Requests 16C,16D and the PwC / MAC Q&A correspondence) to ACTUALLY get the documents from the Respondents and demonstrate that I am wrong.

From all the evidence since February 2007 it remains my view that Mr Lynch QC and you simply have played your role in the obfuscation and with-holding of relevant evidence in this case, through in part your failure to review the requested documents themselves. This continues to result in **more real costs and actual and elapsed time for everyone in this case as well as being unjust.**

Given the Respondents failure to meet its legal obligations for disclosure from the outset it is, in my view, unethical and unprofessional for you both to not now insist that you see the requested documents from the Respondents before deciding they are not relevant in this case and mounting further spurious argument to deny me natural justice on subject matter which I comprehensively understand and have checked as thoroughly are reasonably possible.

I am sure that when Mr Lynch QC and you read my most recent emails to Mr Edwards, PricewaterhouseCoopers and Ernst and Young that you will also realise that the efforts by Mr Dimma through PwC to "cover up" and not conduct an independent forensic investigation ought to be of some concern to you. Indeed the contemporary documentary evidence is that even on basic logic and maths in

1. A340 Pricing and
2. A340 Volumes (including market data)

- which are both fundamentals in forensics - PwC have substantively compromised themselves in their Factual analysis and Observations.

As Chairman of MAC Mr Edwards will now have the opportunity to address these matters directly with MAC Management , PwC and EY before 31 March 2010. Obviously Mr Lynch QC can indirectly contribute by obtaining the final documents and ensuring he is personally comfortable he is not an accessory to a continuation in breaching the law from various perspectives by the Respondents on A340. If I am wrong no doubt all the supporting documents will now be disclosed to someone who is also renowned for "attention to detail" – except it would seem Mr Neill at RAN55 - and does NOT conduct "fishing expeditions".

I also believe that the Pinsentmasons solicitor who certified MALUK written Board Resolutions dated 28 April 2005, on the 11 July 2007 was wrong. These were presented as being a true and complete copy of the Original and filed with

Companies House on 12 July 2007, of necessity coincident with the late filing of the MALUK FY2005 statutory financial statements, (page 17). There was emphatically no Notice of or actual MALUK Board meeting on the 28 April 2005. There is multiple contemporary documentation which points to that fact and the business activity associated with these MALUK Board Resolutions only took place after my termination of employment, even whilst I was still a UK director. Given the substance of the Board Resolutions and its relevance to part of my case I consider it is wholly reprehensible and must be a breach of the solicitor Rules of Conduct to have certified that such a duly authorised Board meeting took place on 28 April 2005 which passed those Board Resolutions.

Mr Lynch QC produced his paper for me on "Reasonable Belief" in July 2009. The decision by the Respondents and its legal team to change its position on "Reasonable Belief" from that in the letter dated 3 May 2007 (doc 3196) has also led very considerably to increased costs and time in this case. There remains no explanation as to the reasons for the change in the Respondents position on "reasonable belief" when it is such a fundamental part of any whistleblowing case in the statute and case law. Or indeed why the Respondents do not believe I had "reasonable belief" before my termination. The actions/facts after my termination simply support my protected disclosures before my termination – except PD18 and PD21. The result once again **more time and costs** to provide contemporary documentary evidence and written and oral evidence.

On multiple occasions from March 2007 to February 2009 my solicitors and I have invited the Respondents and their legal team to "update the Respondents PD schedule" and on their case "consider knocking the corners off their defences". On every occasion, whether consciously or not, the Respondents and you have chosen not to - **again that causes more time and cost for everyone.**

It would seem that Mr Lynch QC and you regard this as just another employment/litigation case in your busy days. I doubt however, if there are many legal teams who, wittingly or unwittingly, are abetting their clients in continuing to break the law of a Canadian public company by the representations and argument being made in the growing evidence in this case on A340 in a public courtroom and elsewhere.

You refer also to the costs and times incurred by the Respondents in this case. You may recall that you also had contemporary documentary and other evidence from the four Airbus UK witnesses about the 100% price increase achievement (worth some £8m/10m in the remaining contract period to FY2010) - Messrs Fairbairn / Price. The release of some £1m in A380 funds by dealing directly with the Managing Director in Airbus UK (Mr Iain Gray) and Mssrs Renson and finally also their approval and Mr Nokes confirmation of the £209K A380 invoice and payment (finally offsetting the FY2003 sales reserve release of £200K) .

Given that financial contribution to MALUK/MAC finances in the last seven weeks of my employment – half of which was on supposedly four weeks of annual holiday I consider your comments from both perspectives above to be improper and ill considered in all the current circumstances. Mr Lynch QC casually commented at one of the Tribunal hearings that MALUK seem to be doing financially all right without

me. He clearly did not integrate that evidence and then appreciate that £2m p.a. additional profit and the additional gross profits generated in £8-9m p.a new business led by Mr Archer and myself from 2004 – 2006 was significant in underpinning that change.. Indeed if one excludes these and the financial gains from resourcing to subcontract work by Mr Haydn Martin / Mike Shorrock in early/mid 2006 and compares this with the MALUK statutory financial statements for FY2007 and imminently for FY2008 (they should record at least £4.6m in Operating profit) one could believe that Mr Lynch's casual comments were inappropriate or perhaps misguided.

It is now three years since my termination and I have had no permanent job offers and very limited consultancy. That has simply got worse in the last 12 months. It is also now clear to others and me that Ms Ball's mindset (document 1711 to Mr Edwards) and the vitriolic nature of parts of her oral evidence on occasions in January 2008 to defend her actions and MAC is central in this process . It seems now that MAC's objective is to drive me into personal bankruptcy (around early December / 10 December 2009) as part of their ongoing conduct of this case and elsewhere. Mr Lynch QC and you are also consciously or perhaps up to now unconsciously part of that process.

So for the avoidance of doubt I completely repudiate your comments and will continue to provide the relevant evidence to support those comments/evidence in the Employment Tribunal and when and where necessary elsewhere. I therefore wholly reject your assertions that I have caused the **costs and time within this UK case and anticipate that my "latent" Rule 34 Application will be dealt with in Submissions.** Consistently for two years we have sought to narrow the matters within the case – on every occasion that has been frustrated.

The breadth of the Defendants case and the Claimant's case is down to the Respondents and its legal team and the conduct and choices you have all made at every stage of running their "thick" UK case. You will also recall that I set this out in more detail in my SWS 2 in mid January 2009. To date the only real people to have suffered have been my family and I and the public shareholders of MAC.

Brian Little

Sent also directly to Mr Lynch QC with email forwards of Friday 25 September 2009 at 17.32 and Monday 28 September at 15.19 re Page 13.