

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

CH 1998 D No. 2149.

Court No. 58  
The Royal Courts of Justice  
The Strand  
LONDON EC4

17th June 1999

Before:

MR JUSTICE LADDIE

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JOHN ALFRED DONOVAN  
(Plaintiff)

-v-

SHELL UK LTD  
(Defendant)  
(by Original Action)

AND BETWEEN

SHELL UK LTD  
(Plaintiff by Counterclaim)

-and-

(1) JOHN ALFRED DONOVAN  
(2) DON MARKETING UK LIMITED  
(3) ALFRED ERNEST DONOVAN  
(Defendants to Counterclaim)  
(by Counterclaim)

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MR G COX, assisted by MS L LANE, instructed by Royds  
Treadwell, appeared on behalf of the Plaintiffs.

MR G HOBBS, assisted by MR P ROBERTS, instructed by DJ  
Freeman, appeared on behalf of the Defendant.



**SMITH BERNAL**  
INTERNATIONAL

A LEGALINK COMPANY

[1] Thursday, 17th June 1999  
 [2] (10.30 am)  
 [3] MR JOHN ALFRED DONOVAN (continued)  
 [4] Cross-examination by MR HOBBS (continued)  
 [5] MR HOBBS: Mr Donovan, let us just get our bearings. I had  
 [6] been pressing you with questions at the adjournment  
 [7] yesterday relating to when you first became aware of the  
 [8] fact that the Shell Smart Card Scheme was a multibrand  
 [9] scheme; yes?  
 [10] A: Yes.  
 [11] Q: I had been asking you why it took you until April 1997  
 [12] to make your claim upon Shell. Do you remember that?  
 [13] A: I do.  
 [14] Q: Do you remember I put certain propositions to you, one  
 [15] of which was that you were lying in wait until after you  
 [16] had finished with the settlement negotiations and it was  
 [17] only after that that you decided to unveil your claim,  
 [18] Do you remember me putting those points to you?  
 [19] A: Yes, I do.  
 [20] Q: What I would like to do now is to show you the letter  
 [21] before action which you yourself wrote to Shell. This  
 [22] has somehow or other escaped the bundles, but I am going  
 [23] to hand up a copy to you, (Handed). I think it might  
 [24] end up in a core bundle when we have finished with this  
 [25] one.

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[1] Q: Just before we get into the detail of this, I would like  
 [2] you to take, please, volume E6. In that volume, please  
 [3] turn to page 2712.  
 [4] A: I have that.  
 [5] Q: This was a document that we looked at yesterday for  
 [6] another point. This is the transcript of one of your  
 [7] telephone conversations with David Watson. This one is  
 [8] 1st November 1993?  
 [9] A: Right.  
 [10] Q: I want to draw your attention, please, to what we see on  
 [11] page 2714. You are discussing ideas and the  
 [12] protectability of ideas and you are discussing this with  
 [13] Mr Watson. This is in the context, as I understand it,  
 [14] of your Nintendo dispute. Am I correct?  
 [15] A: Yes, that would be correct.  
 [16] Q: Right. Watson is saying to you, if you see about four  
 [17] inches from the top of the page:  
 [18] "Well, clearly there are a lot of these ideas.  
 [19] You say in this instance, without the approval of  
 [20] Nintendo, it is no idea at all. Which is why we went to  
 [21] Nintendo before we ever approached Shell and  
 [22] they provided those materials which we brought along for  
 [23] the presentations."  
 [24] Watson says: "I mean, okay."  
 [25] Then you say:

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[1] MR JUSTICE LADDIE: It either is or is not, Mr Hobbs. Let  
 [2] us make up our minds now.  
 [3] MR HOBBS: I think it should go in a core bundle.  
 [4] MR JUSTICE LADDIE: Do we have a file for a core bundle?  
 [5] MR HOBBS: B is the core bundle. I cannot remember what  
 [6] tab number we have reached now, but it is probably about  
 [7] tab 8.  
 [8] MR JUSTICE LADDIE: Thank you.  
 [9] MR COX: My Lord, we will not object to it going into a core  
 [10] bundle. I do not suppose it is going to attract any  
 [11] greater significance in your Lordship's mind because it  
 [12] is there than anywhere else. However, if the principle  
 [13] of this selection operated for the core bundle was to be  
 [14] consistent, we do not think it should go there.  
 [15] MR JUSTICE LADDIE: I never bother reading the outside of  
 [16] the bundles. Do not worry about it.  
 [17] MR HOBBS: Just before I get into the text of this with you,  
 [18] Mr Donovan, can I ask you, first of all, is Mr McMahon,  
 [19] Mr Armstrong-Holmes or Mr Sotherton in court? Are any  
 [20] of those people in court?  
 [21] A: Mr McMahon is sitting at the back.  
 [22] Q: But neither of the other two people I mentioned are in  
 [23] court; is that correct?  
 [24] A: Correct, Mr Sotherton certainly is not. I would not  
 [25] know Mr Armstrong-Holmes.

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[1] "I think you said in the conversation last week  
 [2] that being first, that your legal people say that has  
 [3] not got too much relevance to it. But, of course, if  
 [4] they speak to the Patent Office, it is the thing which  
 [5] is most important: who is first? Who can prove they  
 [6] thought of an idea first of all? We did, and we put it  
 [7] to Shell and we got Nintendo's approval first of all,  
 [8] We could not have gone about this in a more professional  
 [9] way but to no avail."  
 [10] Watson says to you:  
 [11] "But obviously patents are quite different."  
 [12] And you say:  
 [13] "No, I am just talking about the idea of the  
 [14] importance of being first with something. It really  
 [15] does make a difference."  
 [16] Watson says:  
 [17] "I mean, you may be right, that it may be better  
 [18] just to get the legal people to have a chat ..."  
 [19] Then you go off onto other matters,  
 [20] The point I am putting to you is this: it was, at  
 [21] the time of this conversation - and it remained right  
 [22] down really to the commencement of the present  
 [23] proceedings - your view that it was important to  
 [24] demonstrate that you were the first with the idea for  
 [25] which you were claiming protection?

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[1] A: I felt that, yes.  
 [2] Q: Yes, That was something that in fact you believed very  
 [3] firmly?  
 [4] A: Yes.  
 [5] Q: With that introduction then, can I close this file with  
 [6] you and go to the letter which I have just handed up to  
 [7] you, It is a rather long letter and I am afraid I am  
 [8] going to spend a bit of time on it with you, I shall do  
 [9] it as quickly as I can, but I think it needs close  
 [10] attention.  
 [11] You are writing to Dr Faye, and we see from the  
 [12] top of this letter that he is the Chairman of Shell UK  
 [13] Limited, You are writing on 27th March 1997, I am  
 [14] right, am I not, Mr Donovan, in thinking this is your  
 [15] first communication on the subject of the Multibrand  
 [16] Loyalty Scheme?  
 [17] A: After all of the putting the proposals, et cetera, yes.  
 [18] Q: This is the letter in which, as I have said already, you  
 [19] unveil your complaint?  
 [20] A: Correct.  
 [21] Q: You have, by the time you write this letter, put your  
 [22] head together with Roger Sotherton, have you not?  
 [23] A: I am not sure if I had, I had certainly spoken to the  
 [24] solicitors.  
 [25] Q: Think harder please, Surely - and we will see it as we

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[1] I apologise, We will press on.  
 [2] Did you in fact, before writing this letter, make  
 [3] investigations?  
 [4] A: I am sure that I did, yes.  
 [5] Q: If you think about it, it would be right, would it not,  
 [6] that part of your investigations involved speaking to  
 [7] Roger Sotherton?  
 [8] A: It may be the case, I cannot remember offhand, If  
 [9] I read the letter, then perhaps it would bring it back  
 [10] to me.  
 [11] Q: Is this a letter you would have written without careful  
 [12] thought before writing it?  
 [13] A: No, I would have had careful thought, yes.  
 [14] Q: Let us look at the contents of the letter, You start  
 [15] off by saying:  
 [16] "After the succession of astonishing developments  
 [17] in what Mr John Jennings has described as the  
 [18] 'Don Marketing saga' we would all be entitled to  
 [19] believe that no more bombshells were in prospect,  
 [20] However, evidence confirms that the Smart Consortium  
 [21] Scheme launched in Scotland on 14th March 1997 is making  
 [22] wrongful use of a concept we disclosed to Mr Lazenby in  
 [23] strictest confidence, under cover of our standard  
 [24] trading conditions, Specialist counsel advised us on  
 [25] 21st March that we have an even stronger claim against

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[1] go on in this letter, frankly - you have put your head  
 [2] together with Roger Sotherton about what this letter  
 [3] should say and how it should say it?  
 [4] A: I would have to read the letter again, because obviously  
 [5] it is over two years ago.  
 [6] Q: Do you have no recollection then of speaking to  
 [7] Sotherton independently of what you might see in this  
 [8] letter?  
 [9] A: No.  
 [10] Q: No recollection of speaking to him?  
 [11] A: I do not, But, if I could read the letter, then it  
 [12] would jog my memory.  
 [13] Q: On your own version of events, you knew on  
 [14] 21st July 1996 that Shell was involved with John Menzies  
 [15] in a multi-retailer scheme? On your own view of it,  
 [16] What were you doing between 21st July 1996 and  
 [17] 27th March 1997?  
 [18] A: Having a rest from the previous bouts of litigation.  
 [19] Q: Do not be flippant with me, Mr Donovan.  
 [20] A: I am not -  
 [21] MR JUSTICE LADDIE: Mr Hobbs, that is quite unnecessary,  
 [22] You asked him an immensely vague question: what were you  
 [23] doing in the course of the year? He answered with as  
 [24] much precision as your question demanded.  
 [25] MR HOBBS: I apologise, my Lord, I accept the rebuke and

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[1] Shell in this case than those already settled,"  
 [2] Look at that date of 14th March 1997,  
 [3] A: Right.  
 [4] Q: That is not correct, is it?  
 [5] A: In what way?  
 [6] Q: I thought we had agreed yesterday that you were  
 [7] aware - because you had been to the British  
 [8] Library - that in fact the consortium scheme had been  
 [9] launched with Menzies in Scotland back in 1995?  
 [10] A: Yes, I was aware from September 1996,  
 [11] Q: And you did some research, including at the British  
 [12] Library, and you found out, did you not -  
 [13] A: Yes.  
 [14] Q: - that it had been launched in 1995?  
 [15] A: Correct.  
 [16] Q: Why are you writing in this letter with reference to a  
 [17] date of 14th March 1997?  
 [18] A: That was the date when Shell launched what I considered  
 [19] to be my scheme: the multiparty scheme with ten  
 [20] partners, I did not view John Menzies myself when they  
 [21] joined as being a multiparty scheme of the type that  
 [22] I had put forward,  
 [23] Q: Why not?  
 [24] A: Because it was only one relatively small company,  
 [25] Q: What, John Menzies?

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[1] A: John Menzies,  
 [2] Q: One relatively small company?  
 [3] A: Yes,  
 [4] Q: If it had been WH Smith, would you have taken the same  
 [5] view?  
 [6] A: Probably not,  
 [7] Q: Why not?  
 [8] A: Because I perceive WH Smith as being a bigger company  
 [9] with more outlets, I did not know - I had never had  
 [10] any contact with John Menzies, I did not know the scale  
 [11] of their operation, I thought they were a fairly small  
 [12] company,  
 [13] (10.45 am)  
 [14] Q: Are you saying you did not think you had a claim against  
 [15] Shell until, either somebody very big joined with them,  
 [16] or more than one party joined with them? Is that what  
 [17] you are saying?  
 [18] A: That was my view at the time myself: that John Menzies  
 [19] was not the leading brand with national representation,  
 [20] That may have been wrong in that they did have more  
 [21] outlets than I thought, but I had never had any contact  
 [22] or dealings with them and I did not see them as being a  
 [23] major retailer,  
 [24] Q: Have you not seen their shops when you go shopping on a  
 [25] Saturday morning in different town centres?

[1] I did and it was a factor and I passed -  
 [2] Q: A different view on what, please?  
 [3] A: On the significance of John Menzies,  
 [4] Q: So you thought that somebody other than yourself might  
 [5] think that the involvement of John Menzies amounted to  
 [6] the use of your idea?  
 [7] A: Yes, in fact that has transpired to be the case,  
 [8] Because other people seem to take the view that it  
 [9] became a multiparty scheme when John Menzies joined,  
 [10] When I became aware of that, I did not recognise that as  
 [11] being my scheme because I had proposed a collection of  
 [12] the leading multiples in the country and I did not see  
 [13] it as being that,  
 [14] Q: So is this right then: you had no complaint of your own  
 [15] which you would wish to make in relation to the  
 [16] involvement of John Menzies? It is only when more than  
 [17] two people are involved in the Smart Scheme?  
 [18] A: That was the way I saw it, yes,  
 [19] Q: So are you saying that the essence of your proposal then  
 [20] was that there should be - can I say - a plurality of  
 [21] people beyond two?  
 [22] A: I was putting forward the idea of the leading - a  
 [23] collection of the leading High Street brands with a  
 [24] common currency, redemption and collection,  
 [25] Q: Are you aware that HMV and UCI were already redeeming

[1] A: I have seen John Menzies shops, but they are not a shop  
 [2] that I had ever used,  
 [3] Q: They look just like WH Smith, do they not?  
 [4] A: Similar, yes,  
 [5] Q: And you see them as frequently, do you not, as you see  
 [6] WH Smith shops?  
 [7] A: I had not myself, no, I was more familiar with  
 [8] WH Smith, Often John Menzies, the ones that I have  
 [9] seen, have been smaller: smaller scale shops,  
 [10] Q: Are you seriously telling my Lord that you went to the  
 [11] British Library to find out about when Menzies became  
 [12] involved even though you thought that the involvement of  
 [13] Menzies did not involve a use of your scheme?  
 [14] A: Yes, I am saying that,  
 [15] Q: Why did you go to the British Library to find out about  
 [16] them?  
 [17] A: Because I was interested, because of the dates, that  
 [18] when they started could have a bearing,  
 [19] Q: What was your interest?  
 [20] A: On the date that they actually commenced operation -  
 [21] Q: Why was that a matter -  
 [22] A: - in reference to the Funding Deed,  
 [23] Q: I see, Tell me then, in your own words, why you thought  
 [24] that was important?  
 [25] A: Because someone else could take a different view than

[1] partners in the Shell Smart Scheme from 1994?  
 [2] A: I am aware now and I may have seen it in the press  
 [3] cuttings at the time,  
 [4] Q: Assume you did see it in the press cuttings - because  
 [5] this was not a secret at the time - are you telling  
 [6] my Lord you thought the involvement of HMV, UCI and  
 [7] John Menzies was not enough to constitute what you would  
 [8] regard as the use of your concept?  
 [9] A: I did not feel that that was the case at the time, yes,  
 [10] Q: I am afraid I have to put it to you, Mr Donovan, that  
 [11] what you are trying to do in this letter by referring to  
 [12] 14th March 1997 is to create the impression that you  
 [13] have only recently come across information relating to  
 [14] what you would regard as the misuse of your ideas, You  
 [15] are trying to create that impression?  
 [16] A: As far as - that was the correct impression, As far as  
 [17] I was concerned, I recognised my scheme being launched  
 [18] on 12th March 1997,  
 [19] Q: And not at any stage prior to that?  
 [20] A: Not at any stage before that,  
 [21] Q: In which case, why were you investigated what Shell were  
 [22] doing before that?  
 [23] A: Because, as I say, that was my view and I knew that  
 [24] other people - if I was going to ask for advice on it,  
 [25] I had to give all the information that I could that was

[1] relevant. Since John Menzies had been mentioned in that  
[2] article, I thought I ought to find out exactly when they  
[3] started and what they were doing.

[4] Q: Sorry, Mr Donovan, but I must put it to you that in fact  
[5] you were taking the view well in advance of  
[6] 27th March 1997 that there had been a use by Shell of a  
[7] concept over which you were going to make some claims:  
[8] that you had already taken that view some time well in  
[9] advance of 27th March?

[10] A: No, no, that is not the case. The first time that  
[11] I became aware that someone else viewed the John Menzies  
[12] involvement as being multiparty was when I read the  
[13] Sue Rayner report at the end of 1996. Or 1997 I think  
[14] it was that I got that. Then I realised that someone  
[15] else took a different view than I did.

[16] Q: What do you say the date of Sue Rayner's report was?

[17] A: I think it was 1997, I cannot remember the month.

[18] Q: Mr Roberts will look at the date. It has a copyright  
[19] notice of 1996 on it.

[20] A: Because it said in there that John Menzies - it said  
[21] words to the effect that led me to believe that that was  
[22] her opinion: that it became a multiparty scheme when  
[23] John Menzies joined.

[24] Q: So you needed, as it were, the views of Sue Rayner to  
[25] tell you whether you had a claim, as you perceived it,

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[1] Mr Lazenby's predecessors as National Promotions

[2] Manager, Mr Paul King and Mr Stuart Carson."

[3] Pausing over that paragraph, you are there

[4] referring to what we know as Concept Four, are you not?

[5] A: Correct, yes.

[6] Q: And Concept Four was part of the document in which  
[7] I think you proposed the Megamatch game as well. Is  
[8] that correct, or have I got that wrong?

[9] A: No, I think the Megamatch proposal was on its own on  
[10] 12th May. There was no mention of the multiparty  
[11] loyalty scheme in that proposal, no.

[12] Q: No. But your reference in this letter we can agree is  
[13] to Concept Four? In that third paragraph there?

[14] A: Yes, the last part of that certainly.

[15] Q: You go on to say,

[16] "Roger Sotherton and I subsequently disclosed the  
[17] concepts to Mr Lazenby during a presentation to him on  
[18] 12th May 1992 and, during a subsequent meeting at  
[19] Shell-Mex House in November 1992, we gave Mr Lazenby a  
[20] copy of Don Marketing's correspondence with Sainsburys  
[21] covering the loyalty consortium concept."

[22] A: Yes.

[23] Q: I will come to that in a while. Turn the page:

[24] "We have contacted a number of potential  
[25] witnesses, including Shell and senior agency staff

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[1] over the concept?

[2] A: Well, it was the first time that I realised that someone  
[3] else looked at that and thought that it was a  
[4] multiparty. As I say, if you look at my proposal, you  
[5] can see quite clearly what I was putting forward. It  
[6] was for a group of the leading retailers.

[7] Q: So, let us be clear on this. You are saying that you  
[8] did not recognise what Shell was doing - when you  
[9] looked at it in 1996, you did not recognise it as the  
[10] use of any concept you put forward?

[11] A: No, I saw John Menzies as being a secondary brand.

[12] Q: You said "no". You are agreeing with me you did not  
[13] recognise it, when you examined it, as being a putting  
[14] into practice of your concept?

[15] A: That was my view, but I decided it was right to find out  
[16] what I could about it and pass it on to my own lawyers  
[17] so that they could take that into account.

[18] Q: You go on in the third paragraph on this page to say:

[19] "We presented to Shell two alternative executions  
[20] of our proposals for a Shell-led consortium of  
[21] participating retailers to issue and/or redeem a common  
[22] promotional currency. One was the Megamatch game, the  
[23] other a loyalty promotion using a common currency:  
[24] points, tokens et cetera which could be run as a  
[25] separate business. Both were disclosed to two of

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[1] involved in Project Hercules, your code name for the

[2] Smart project. They confirm that Mr Lazenby headed up

[3] the project team and that Smart was designed from the

[4] outset to eventually become a consortium promotion.

[5] This is further confirmed by a recent report in

[6] Marketing Week which stated Smart, the Shell scheme, was

[7] deliberately named and designed to allow it to play down

[8] the link with Shell and encompass many partners."

[9] Do you see that?

[10] A: Yes, I do.

[11] Q: You say there you have "contacted a number of potential

[12] witnesses, including Shell and senior agency staff

[13] involved in Project Hercules."

[14] I put it to you, as I put it to you yesterday,

[15] that amongst the Shell staff that you contacted was

[16] Paul King?

[17] A: Correct.

[18] Q: And I put it to you that amongst the senior agency staff

[19] involved in Project Hercules that you had discussed this

[20] matter with were the people from Senior King?

[21] A: Yes, I discussed it with Mr Mike Fairhurst, who was a

[22] former employee.

[23] Q: And Mr Mike Fairhurst it was whose conversation you tape

[24] recorded, and we looked at that yesterday afternoon?

[25] A: Originally, yes.

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[1] Q: You had discussed the involvement of that company,  
 [2] Senior King, in Project Hercules, had you not?  
 [3] A: Yes.  
 [4] Q: You say so here.  
 [5] A: I did not know it was called Project Hercules, but  
 [6] I discussed their involvement in the loyalty card  
 [7] scheme.  
 [8] Q: Right. You discussed it at some length with them, did  
 [9] you not?  
 [10] A: No.  
 [11] Q: You must have done, surely?  
 [12] A: No, not - I would guess five or ten minutes.  
 [13] Q: No, no. Come now. You are discussing detail. You want  
 [14] to know what has been going on. You went into it with  
 [15] them in considerable detail, did you not?  
 [16] A: No, I did not, no.  
 [17] Q: Did you know Senior King were making a claim against  
 [18] Shell in respect of that concept?  
 [19] A: I did. Not in respect of the multiparty scheme, no.  
 [20] The ordinary stand alone Shell scheme, yes, I knew they  
 [21] had been contemplating making a claim.  
 [22] Q: Just read into this letter you have written. The third  
 [23] line:  
 [24] "They confirmed that Mr Lazenby headed up the  
 [25] project team and that Smart was designed from the outset

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[1] A: I think about December last year.  
 [2] Q: And you did not see it in discovery documents at the  
 [3] date of this letter, did you?  
 [4] A: Just let me think about this. It was June 1997 in the  
 [5] DJ Freeman report.  
 [6] Q: Did you in fact learn that the project was called  
 [7] Project Hercules from these people, from Senior King and  
 [8] Paul King? Did you in fact learn from them that this  
 [9] was called Project Hercules?  
 [10] A: Possibly, but I cannot remember for certain. Obviously,  
 [11] if it is in there, I got it from somewhere, because  
 [12] I did not know it myself. Whether I had read it in an  
 [13] article, or one of those gentlemen mentioned it to me,  
 [14] I cannot recall now.  
 [15] Q: You must have a recollection of your discussions with  
 [16] these people? You must, surely, Mr Donovan?  
 [17] A: I recollect that I asked them questions about the scheme  
 [18] and they gave me answers. None of the conversations  
 [19] were long conversations. They were all fairly short.  
 [20] Q: Tell me then, please, what questions you would have  
 [21] asked them?  
 [22] A: Well, it would be primarily whether Mr Lazenby had any  
 [23] involvement in the scheme.  
 [24] Q: And what sort of scheme it was, correct?  
 [25] A: I cannot recall that.

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[1] to eventually become a consortium promotion."  
 [2] Do you see that?  
 [3] A: I do.  
 [4] Q: Who told you that?  
 [5] A: Mr Fairhurst and I believe that I probably also spoke to  
 [6] Mr Steve King, who, by then I think, had broken away  
 [7] from Senior King and formed his own agency.  
 [8] Q: You spoke to Paul King as well, did you not?  
 [9] A: And I spoke to Paul King.  
 [10] Q: You gave yourself, by means of at least those three  
 [11] contacts, a full briefing on the way Project Hercules  
 [12] had worked and how it had been set up, did you not?  
 [13] A: Well, as much as they gave me, I did not get  
 [14] information - nobody ever mentioned the project name,  
 [15] for example.  
 [16] Q: How do you know it is called Project Hercules then?  
 [17] A: Because of the discovery documents.  
 [18] Q: Which discovery documents?  
 [19] A: Because I must have read an article - at that time  
 [20] there were not any discovery documents. That is right.  
 [21] Q: That is right. You quickly remembered that just then,  
 [22] did you not?  
 [23] A: No, there was not any discovery.  
 [24] Q: When do you say you saw the name Project Hercules in  
 [25] discovery documents?

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[1] Q: Surely it was a matter of great interest to you to know  
 [2] what the scheme was?  
 [3] A: It was, but I cannot recall exactly what I said.  
 [4] Q: If it was a matter of great interest to you, as you  
 [5] agree it was, you must surely have asked them what the  
 [6] nature of the scheme was, what the configuration of it  
 [7] was?  
 [8] A: I may have done. I cannot recall that.  
 [9] Q: How are you able to write this letter at all then  
 [10] without knowing what the scheme was designed to be like?  
 [11] A: Certainly based on information obtained from those  
 [12] people and from any articles that I had read.  
 [13] Q: And, to get the information out of them, you had to ask  
 [14] questions about the subject matter that they were  
 [15] discussing with you, did you not?  
 [16] A: I certainly asked them questions. I raised the subject  
 [17] with them, yes.  
 [18] Q: Did you take any notes or did you make any tape  
 [19] recordings of your conversations with these people?  
 [20] A: I did not. I explained yesterday that I did not make  
 [21] tape recordings of anyone other than Mr Lazenby and  
 [22] Mr Watson and that conversation with Mr Fairhurst. No,  
 [23] I did not take any notes, no.  
 [24] Q: You are quite sure about that?  
 [25] A: Yes, other than the notes you have seen, the

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[1] conversation with Mr Steve King,  
 [2] Q: So you are going to say to me, are you not, that, if  
 [3] there is not a document in the bundles, there is no  
 [4] other document to be seen?  
 [5] A: Sorry, I do not understand that.  
 [6] Q: I am trying to find out from you whether there are more  
 [7] documents than we know about from these bundles which  
 [8] are before the court presently in which you have  
 [9] recorded the subject matter of your discussions with any  
 [10] of these people?  
 [11] A: No.  
 [12] Q: You kept it all stored in your head?  
 [13] A: Yes.  
 [14] Q: You trusted your memory?  
 [15] A: Yes, Because all I was doing was writing - I did not  
 [16] expect that Shell were going to defend the case in the  
 [17] way that they have, I thought they would be willing to  
 [18] discuss it.  
 [19] Q: You have your finger on a point there, have you not?  
 [20] You never expected to be there in this witness box  
 [21] answering questions about this, did you?  
 [22] A: No, I did not, no.  
 [23] Q: You thought they would back down on the face of this  
 [24] letter, did you not?  
 [25] A: Not - well, partly on that letter, but partly on what

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[1] "I draw your attention to Concept Four,"  
 [2] Item 2; Sainsburys letter to Don Marketing dated  
 [3] 20th June 1990, Volume E1 at page 420. You say:  
 [4] "This is a self-explanatory letter from  
 [5] Sainsburys, This was a response to a teaser letter from  
 [6] Don Marketing, of which we do not have a copy,"  
 [7] That is where Sainsburys wrote to you and said to  
 [8] the effect that, if you have a proposal to make, send it  
 [9] to us and we will think about it?  
 [10] A: Correct.  
 [11] Q: Item 3; Don Marketing's letter to Shell dated 25th June  
 [12] 1990, E1/421, This was, you say:  
 [13] "... a copy of your company's letter to Mr Carson  
 [14] confirming a telephone discussion with him earlier that  
 [15] day, when he gave his approval on behalf of Shell for  
 [16] Don Marketing to explore the prospect of a multibrand  
 [17] promotion involving Shell and Sainsburys,"  
 [18] Just to have this clear, the approval you got from  
 [19] Mr Carson, according to that letter, was a promotional  
 [20] game, was it not?  
 [21] A: It was, yes.  
 [22] Q: It is not a loyalty scheme that you got approval from  
 [23] him -  
 [24] A: That is correct.  
 [25] Q: Item 4 is Don Marketing's letter to Sainsburys dated

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[1] had happened in the past,  
 [2] Q: You thought you could send them this letter and threaten  
 [3] them with publicity and bring pressure to bear in that  
 [4] way and that they would back down, That is what you  
 [5] thought, did you not?  
 [6] A: I thought that Shell would talk to me about it, because  
 [7] we seemed to have got on a better basis with the letter  
 [8] of apology from Dr Faye, I thought they would be  
 [9] willing to discuss it and see if we could resolve it  
 [10] amicably.  
 [11] Q: The letter of apology that you refer to was part of the  
 [12] agreed terms of the settlement that you had reached in  
 [13] 1996, was it not?  
 [14] A: It was, It was a letter that was offered to me.  
 [15] Q: Let us go on with this document, You are about to  
 [16] identify a string of documents, It may be convenient if  
 [17] I give, for the transcript, the bundle references to  
 [18] each of these documents as I go through this letter,  
 [19] You say:  
 [20] "We have supplied a selection of key documents as  
 [21] follows ... Number 1 is the DM proposal to Shell dated  
 [22] 23rd October 1989, That is E1/331, That is Concept  
 [23] Four; correct?  
 [24] A: That is correct, yes.  
 [25] Q: You say:

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[1] 10th July 1990, E1/422, This was the letter offering a  
 [2] Disneytime promotion:  
 [3] "This happened to be a DM project which Shell had  
 [4] cancelled after they discovered that Disney had an  
 [5] exclusive tie-up with Esso,"  
 [6] You will agree with me, will you not, that that  
 [7] letter to Sainsburys on 10th July 1990 proposed a game,  
 [8] not a loyalty scheme?  
 [9] A: Correct.  
 [10] Q: Item 5 is Don Marketing's letter to Sainsburys dated  
 [11] 24th July 1990, E1/449, This is the letter to  
 [12] Mr Brian Horley; correct?  
 [13] A: That is correct.  
 [14] Q: You say there:  
 [15] "On 24th July 1990 we sent a further letter to  
 [16] Sainsburys following discussions which Mr Sotherton and  
 [17] I had had with Mr Brian Horley, their Advertising and  
 [18] Marketing Manager, We sent with the letter a copy of  
 [19] Concept Four from the October 1989 proposal, plus the  
 [20] cover page of the proposal,"  
 [21] I notice - and you will see for yourself - that  
 [22] you do not mention in this list of letters the letter of  
 [23] 24th July 1990 which you are supposed to have sent to  
 [24] Mr King at Shell, That is E1/446, Is there a reason  
 [25] for that not being mentioned here?

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[1] A: I really do not know,  
 [2] Q: Do you know the letter I am talking about? The letter  
 [3] to Mr King?  
 [4] A: Yes, I do, I think I know where that came from, yes,  
 [5] (11.00 am).  
 [6] Q: That letter, which is dated 24th July 1990 to Mr King,  
 [7] contains, at the back end of it, a reference to an  
 [8] option, Do you remember that?  
 [9] A: Yes, I do,  
 [10] Q: Can you please tell my Lord why that letter to Mr King  
 [11] is not mentioned or referred to, even obliquely, in this  
 [12] letter that we are looking at here?  
 [13] A: Because I did not realise I had the letter, What  
 [14] happened is, I got the report from DJ Freeman in  
 [15] June 1997 and in there it referred to the Collect and  
 [16] Select Scheme and research, I then checked some  
 [17] documents which I had, which included a report published  
 [18] by Promotions & Incentive Magazine in July 1991 and that  
 [19] set out about the background to the research that we had  
 [20] carried out on Collect and Select. That set me to  
 [21] looking for the research documents, I went through a  
 [22] lot of files and, when I found it in a box that had  
 [23] information about the Fundraiser Scheme, and because  
 [24] Mr King had somebody called Jill Shaw, who I think was a  
 [25] research person at Shell, to look at the Fundraiser

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[1] your side of it?  
 [2] A: That is correct, yes,  
 [3] Q: Therefore it is material you would have looked at before  
 [4] you wrote this letter in 1997, is it not?  
 [5] A: No, It was because there was information that came in  
 [6] the report from DJ Freeman that I had not been aware of  
 [7] before and it set me off looking for that information  
 [8] about Collect and Select, I then found the article from  
 [9] Promotions & Incentives Magazine and  
 [10] I realised - I then checked all of the research that we  
 [11] ever had on any project and I found that, in the  
 [12] Fundraiser file was the letter, Because it had a  
 [13] reference to the fact that Jill Shaw at Shell looked at  
 [14] the scheme,  
 [15] Q: You are saying, are you, that, at the date of this  
 [16] letter you have open in front of you now, you had  
 [17] forgotten about the letter to King?  
 [18] A: Yes, I had,  
 [19] Q: Are you saying also that you had forgotten about the  
 [20] existence of an option granted to Shell?  
 [21] A: I think I had, yes,  
 [22] Q: Are you saying, when you found that letter subsequently,  
 [23] that was what brought to mind the idea that there might  
 [24] be an option in place?  
 [25] A: Yes,

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[1] Scheme and that letter had ended up in that file,  
 [2] MR COX: My Lord, I wonder if I might interrupt my learned  
 [3] friend, not in any spirit of criticism, but since my  
 [4] learned friend does occasionally invite the witness to  
 [5] address your Lordship, I wonder whether I might invite  
 [6] the witness to address your Lordship when giving his  
 [7] answers,  
 [8] MR JUSTICE LADDIE: Why? I do not care who he addresses,  
 [9] If he finds it more convenient speaking to Mr Hobbs,  
 [10] I can hear him either way,  
 [11] MR COX: I know your Lordship can, but sometimes it is  
 [12] easier if your Lordship is looking -  
 [13] MR JUSTICE LADDIE: What, straight into his eyes? No, it  
 [14] does not matter,  
 [15] MR COX: No, not at all, but just to address your Lordship  
 [16] when answering,  
 [17] MR JUSTICE LADDIE: No, Mr Donovan, you address your  
 [18] answers to whoever you like, I will listen,  
 [19] A: Thank you,  
 [20] MR HOBBS: You were just telling us about finding the letter  
 [21] to Mr King of 24th July 1990 in amongst some research  
 [22] papers,  
 [23] A: That is correct,  
 [24] Q: That is research material that you looked at for the  
 [25] purposes of deciding what the history of this was from

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[1] Q: You had forgotten all about that, correct?  
 [2] A: Yes, It was seven years earlier,  
 [3] Q: Absolutely, So there is -  
 [4] A: It was five years earlier,  
 [5] Q: So there is no possibility, is there, that you could  
 [6] have mentioned it to Mr Lazenby then?  
 [7] A: Yes, I did mention it to Mr Lazenby, Because that was  
 [8] in 1992 and of course it was only 18 months earlier that  
 [9] we had arranged that with Shell,  
 [10] Q: You see, if I understand your case correctly - the case  
 [11] that is being put on your behalf - there came a time  
 [12] when you say you actually showed that letter of  
 [13] 24th July 1990 to Mr King, Are you saying you handed a  
 [14] copy of that to Mr Lazenby?  
 [15] A: Yes, I did,  
 [16] Q: You did, did you?  
 [17] A: Yes, I did, At his request,  
 [18] Q: Really?  
 [19] A: Really,  
 [20] Q: But you yourself forgot all about it?  
 [21] A: Yes, You have to remember, in the intervening period,  
 [22] I had been involved in these long battles with Shell on  
 [23] other subjects,  
 [24] Q: Before writing this letter, you checked your files and  
 [25] you checked your position and you made it a matter of

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[1] very careful deliberation what you would say in this  
 [2] letter, did you not?  
 [3] A: Yes, I did.  
 [4] Q: You are telling my Lord, are you not, that you had no  
 [5] recollection, even when you went back to all the  
 [6] documents that you had surrounding your communications  
 [7] with Shell, that you had no recollection at the date of  
 [8] this letter of the existence of that option letter?  
 [9] A: It had not come into my mind, no.  
 [10] Q: Are you sure you are telling the truth?  
 [11] A: Yes, I am. If I could just say that, even now, there  
 [12] are so many documents involved that, every time I look  
 [13] at a selection of them, I find something that I had not  
 [14] remembered. There is just so much volume of documents.  
 [15] Q: Turn the page, please, on the letter I have given you.  
 [16] The sixth document you refer to is Don Marketing's  
 [17] proposal to Shell dated 12th May 1992. This is E2/973.  
 [18] This is the proposal that you put to Mr Lazenby the  
 [19] first time you met him; correct?  
 [20] A: That is correct - well, let us just get this right,  
 [21] Megamatch, yes, that is correct.  
 [22] Q: You had never met Mr Lazenby before 12th May 1992?  
 [23] A: Correct.  
 [24] Q: You say:  
 [25] "The proposal you put to him included the

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[1] 24th July 1990. You have never claimed that, have you?  
 [2] A: To have sent him it? No.  
 [3] Q: No.  
 [4] A: No.  
 [5] Q: We shall be coming, in due course, to the meeting in  
 [6] May. I shall press on for the moment. Item number 8: a  
 [7] Shell letter to Don Marketing dated 4th August 1992.  
 [8] That is E3/1200. You say:  
 [9] "This is the letter in which Mr Lazenby casually  
 [10] mentioned that he had been speaking to a variety of  
 [11] suitable partners about the Megamatch project. The  
 [12] disclosures were made without our knowledge or consent  
 [13] and were, therefore, a flagrant breach of the  
 [14] confidentiality terms on which we had disclosed the  
 [15] concept to him. We still do not know who he had spoken  
 [16] to or on what basis of confidentiality, if any."  
 [17] A: Correct.  
 [18] Q: You had in fact made enquiries, had you not, about what  
 [19] Mr Lazenby had done around and about the time of that  
 [20] letter on 4th August 1992? You made enquiries about  
 [21] that, did you not?  
 [22] A: Sorry, I do not understand you.  
 [23] Q: You made enquiries around and about what Mr Lazenby had  
 [24] done in this connection with regard to Megamatch and  
 [25] approaches to suitable partners, did you not? You made

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[1] Megamatch game."  
 [2] Then you say:  
 [3] "It was at this time that we first discussed the  
 [4] loyalty card consortium proposal with him, as is  
 [5] confirmed by notes made by Don Marketing during the  
 [6] meeting which were handwritten on the last page of our  
 [7] copy of the proposal."  
 [8] A: Correct.  
 [9] Q: You know he denies any recollection of you discussing  
 [10] that proposal with him at that meeting?  
 [11] A: Yes, I do.  
 [12] Q: Item 7 is a letter to Shell dated 14th May 1992,  
 [13] E2/981. You say:  
 [14] "A copy of our letter to Mr Lazenby two days later  
 [15] which enclosed a copy of [Concept Four]."  
 [16] Right?  
 [17] A: Yes.  
 [18] Q: It has been your position up until now, has it not -  
 [19] and I think it remains your position - that the only  
 [20] document you sent to Lazenby in May 1992 was the Concept  
 [21] Four document?  
 [22] A: That is correct.  
 [23] Q: You do not claim - and you have never claimed - to  
 [24] have sent him a copy in May 1992 of the letter to  
 [25] Brian Horley of 24th July 1990 or the letter to King of

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[1] enquiries about that?  
 [2] A: With whom?  
 [3] Q: Did you make enquiries?  
 [4] A: I did make enquiries about the approach to Woolworth.  
 [5] Q: Of whom did you make those enquiries?  
 [6] A: This was Senior King and Mike Fairhurst in the  
 [7] conversation that you have a copy of.  
 [8] Q: Is that conversation that we have had a copy of the  
 [9] totality of your discussion with him on this topic?  
 [10] A: No, because he phoned me back some time later.  
 [11] Q: What did he tell you when he phoned you back?  
 [12] A: That he could not find the documents.  
 [13] Q: You have a clear recollection of that?  
 [14] A: Yes, I have.  
 [15] Q: Are you sure that is your recollection of what he said  
 [16] to you when he phoned you back?  
 [17] A: Yes.  
 [18] Q: At this point I would like to play to you a tape which  
 [19] you disclosed on discovery of these proceedings, which  
 [20] we re-listened to last night. At the same time I would  
 [21] like to hand to you a transcript of the conversation  
 [22] that we are just about to hear.  
 [23] Would your Lordship permit me to do this, please?  
 [24] MR JUSTICE LADDIE: Yes, of course.  
 [25] (11.15 am)

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[1] MR HOBBS: I am going to hand up the transcript so we can  
 [2] listen to it together and I am hoping that the tape will  
 [3] be at the correct starting point. (Handed). It says  
 [4] "Mike Hawkis". In fact we know from other documents in  
 [5] the case it should be H-A-W-K-Y or H-A-W-K-E-Y. We are  
 [6] not quite sure, but it is Hawkey.  
 [7] A: I think it probably should be Mike Fairhurst.  
 [8] Q: You will see that he actually says his name on the  
 [9] tape.  
 [10] A: Okay.  
 [11] (Tape recording played in court)  
 [12] Q: Do you remember that conversation now?  
 [13] A: I do now, yes.  
 [14] Q: You did not remember it a little while ago, did you?  
 [15] You did not remember it until I just played that to you?  
 [16] A: Correct.  
 [17] Q: Or did you? You remembered surely that you made  
 [18] enquiries of Senior King? You remembered surely that  
 [19] they came back to you with a response and that we have  
 [20] just listened to at least one of their responses, if  
 [21] there was more than one?  
 [22] A: There was some confusion, because I thought that I was  
 [23] speaking to Mike Fairhurst, I think in the other  
 [24] transcript that you have it said "Hawkey" on it and then  
 [25] I changed it to "Fairhurst" and it appears that

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[1] somewhere along the way that this one - I do not think  
 [2] that this is in discovery, is it? This particular one?  
 [3] No.  
 [4] Q: You tape recorded all your conversations, did you not,  
 [5] with Senior King?  
 [6] A: No, I did not.  
 [7] Q: You did, Mr Donovan, did you not?  
 [8] A: I did not.  
 [9] Q: And in fact they came back to you in response to your  
 [10] enquiries for documentation and they told you in this  
 [11] letter to your satisfaction that Mr Lazenby had not, as  
 [12] you thought, been going behind your back on Megamatch.  
 [13] That is what they told you, to your satisfaction?  
 [14] A: I had forgotten all about this conversation. Is this  
 [15] the same person who is on the other tape?  
 [16] Q: You are asking me?  
 [17] A: Yes.  
 [18] Q: Why are you asking me? You tape recorded these  
 [19] conversations.  
 [20] A: Because I did not realise that there was a taped  
 [21] conversation with - I thought this was Mike Fairhurst.  
 [22] Q: The tape I have just played to you is a tape that your  
 [23] side has disclosed to my side in this litigation on  
 [24] discovery, yes?  
 [25] A: I do not know.

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[1] Q: It is. It is a tape which came from you originally.  
 [2] A: Okay.  
 [3] Q: That was your voice on that tape?  
 [4] A: It was.  
 [5] Q: You remember that conversation?  
 [6] A: I do now, yes.  
 [7] Q: You made that tape recording?  
 [8] A: I did.  
 [9] Q: You never transcribed it?  
 [10] A: Apparently not.  
 [11] Q: And the purpose of the enquiries to Senior King was  
 [12] around and about - as I called it a little while ago -  
 [13] what was going on in connection with 4th August 1992  
 [14] letter which you had got back from Lazenby, was it not?  
 [15] A: Can I first of all just back up a little bit? You said  
 [16] that I transcribed it.  
 [17] Q: You did not?  
 [18] A: In fact I got someone else to do this. As far as  
 [19] I knew, they had prepared transcripts of all of the  
 [20] conversations, I think what happened - I can only  
 [21] guess - is that they did not do that one.  
 [22] Q: Who did you get to transcribe it?  
 [23] A: Someone called Mrs Peacock, who was a secretary who used  
 [24] to work for us some time ago.  
 [25] Q: She is the reference "SDP" which appears on so many of

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[1] your letters?  
 [2] A: Yes, correct.  
 [3] Q: She lives in Bury Saint Edmunds, does she not?  
 [4] A: No, she lives in Stowmarket.  
 [5] Q: When did you ask her to transcribe these tapes?  
 [6] A: At that time.  
 [7] Q: At what time?  
 [8] A: Whenever the - after the last conversation, which  
 [9] I think was in February 1994.  
 [10] Q: Last conversation with whom?  
 [11] A: With Shell. At some point, I cannot remember exactly,  
 [12] certainly she typed in the bulk of the tapes.  
 [13] Q: When was your last conversation with Senior King?  
 [14] A: I would have to think about that one.  
 [15] Q: You have made many records and tape recordings of your  
 [16] conversation -  
 [17] A: No, I have not.  
 [18] Q: You cannot trust your memory, can you? So you have to  
 [19] make a record, do you not?  
 [20] A: No, I asked someone else to type out all of it, because  
 [21] obviously it was quite a considerable job, I asked her  
 [22] to do it, and she spent a day doing it, I thought that  
 [23] all of whatever was on the tapes had been represented on  
 [24] these transcripts.  
 [25] Q: You had this tape transcription exercise done, I think

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[1] you said, in 1994?

[2] A: I said that I was not sure and I am still not sure  
[3] exactly when it was done.

[4] Q: Give us your best guess, on reflection, as to when the  
[5] transcripts were made?

[6] A: It is possible that there was more than one session as  
[7] well, I would have thought that the - there was  
[8] certainly one, probably towards the end of 1993 and  
[9] possibly another one.

[10] Q: Did you listen to these tapes again in doing your  
[11] research for the purposes of the letter we have open in  
[12] front of us of 27th March?

[13] A: No, because I had the transcripts, I did, on some of  
[14] the tapes from Mr Lazenby, listen to them again, but not  
[15] all of them.

[16] Q: Go back to that letter we were just looking at, Page 3,  
[17] The reference is E3/1200, Item 8; Shell letter to  
[18] Don Marketing dated 4th August:

[19] "This is the letter in which Mr Lazenby casually  
[20] mentioned that he had been speaking to a variety of  
[21] suitable partners about the Megamatch project. The  
[22] disclosure were made without our knowledge or consent  
[23] and were, therefore, a flagrant breach of the  
[24] confidentiality terms on which we disclosed the concept  
[25] to him. We still do not know who he spoke to and on

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[1] A: I had made enquiries about Woolworth, yes,

[2] Q: You in fact said, I think, that you spoke to Fairhurst  
[3] in an earlier conversation on this very topic with a  
[4] view to getting information from them?

[5] A: Now, I do not know whether there is a mix-up on the  
[6] names and whether I spoke twice to Mr Fairhurst or once  
[7] to Mr Hawkey and once to Mr Fairhurst.

[8] Q: Anyway, you spoke to someone from Senior King and you  
[9] made enquiries on this very topic?

[10] A: Yes.

[11] Q: And you had a transcript of one of those conversations,  
[12] did you not?

[13] A: Yes.

[14] Q: You are still saying, are you, that that did not jog  
[15] your memory as to help you to remember what the outcome  
[16] of those enquiries was of Senior King?

[17] A: Correct.

[18] Q: You just did not remember what they told you?

[19] A: I had forgotten about this, I knew that  
[20] someone - whoever I spoke to first had phoned me back,  
[21] So it must have been Mr Hawkey phoned me back and  
[22] I could not - I thought he had said they just could not  
[23] find the documents, Because he had left Senior King,  
[24] I had forgotten about the details of the conversation.

[25] Q: On what basis then did you make this positive statement

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[1] what basis of confidentiality, if any,"

[2] In fact, the tape we have just listened to and the  
[3] transcript we have led you to say, as you say on  
[4] page 1, Mike says:

[5] "So it was not really anything to do with you?"

[6] And you say:

[7] "No, okay. So what he said about that was true  
[8] then,"

[9] And you get to the penultimate page:

[10] "Well, it was worth the enquiry. At least it has  
[11] cleared that up in my mind."

[12] When you wrote this letter in 1997 and you made  
[13] that statement in paragraph 8, you did not believe that  
[14] what you were saying there was true, did you?

[15] A: I had forgotten about that. In fact, the other day,  
[16] when I was reading the documents, I noticed there was  
[17] some reference to Mr Lazenby speaking to Safeways and  
[18] that raised the doubt about it in my mind.

[19] Q: When you wrote this letter, you did not believe that the  
[20] statement you were making there was true, did you?

[21] A: I did believe it at the time, yes, I had forgotten  
[22] about this conversation.

[23] Q: You felt free to make an allegation, did you, even in  
[24] circumstances where, to your own knowledge, you had made  
[25] enquiries on the topic of Senior King?

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[1] in paragraph 8 in 1997?

[2] A: Because I thought that that was the case.

[3] Q: On what basis did you think that was the case?

[4] A: The best recollection that I had.

[5] Q: And your recollection of the events that you are basing  
[6] this statement on was what?

[7] A: That I did not recall that Mr Lazenby was talking to  
[8] other parties.

[9] Q: Sorry, I think you were telling me - correct me if  
[10] I have it wrong - that you thought you had a basis in  
[11] fact for making this statement?

[12] A: Yes, correct.

[13] Q: I am asking you to say, if you can, what basis it was  
[14] that led you to include this statement in this letter?

[15] A: Because I did not remember the conversation that I had  
[16] had here with the chap from Senior King.

[17] Q: That is what you did not remember. What did you  
[18] remember and what did you think?

[19] A: I only had the letter of 4th August in front of me.

[20] Q: You surmised, did you?

[21] A: Well, it was the best recollection that I had.

[22] Q: You are accusing Mr Lazenby in this paragraph in this  
[23] letter here of a flagrant breach of the confidentiality  
[24] terms on which you disclosed the concept to him. You  
[25] felt able to do that, did you?

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[1] A: Yes, because I had not recalled this conversation,  
[2] Q: I am going to put it to you - and this is a convenient  
[3] moment to do it - that you are in fact prepared to say  
[4] anything you think you need to say in order to obtain  
[5] the objective you wish to obtain and this is an example  
[6] of that?  
[7] A: No, It is an example of my memory not being one hundred  
[8] per cent on every occasion. There is a huge amount and  
[9] volume of documents. There are a lot of events, I try  
[10] to be as honest and accurate as I can, but I will not  
[11] always get it right.  
[12] Q: Let us look at item 9 in this letter we have open in  
[13] front of us. It is the Don Marketing letter to  
[14] Sainsburys of 24/7/1990, given to Shell on  
[15] 22nd November 1992. The document reference is E1/450A,  
[16] and I say "question mark". You have already mentioned,  
[17] you see, at item 5 a letter to Sainsburys and you are  
[18] now drawing a distinction between that letter at item 5  
[19] and this letter at item 9. If we look at the text under  
[20] item 9, you say:  
[21] "During a meeting at Shell-Mex House on  
[22] 22nd November 1992, which had been arranged by us to  
[23] present several Don Marketing concepts to Mr Lazenby,  
[24] Mr Sotherton and I supplied him with a copy of  
[25] Don Marketing's letter to Sainsburys dated 24th July

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[1] and probably Mr. Sotherton as well, I imagine I would  
[2] have done.  
[3] Q: You are drawing attention in paragraph 9 to Mr,  
[4] Sotherton's handwritten notes, I will come to that  
[5] later on, Item 10: "DM letter to Shell dated 19th  
[6] November 1993, "E7- 2976, Perhaps we should get it out,  
[7] Would you go to E7 please, page 2976?  
[8] A: I have that letter, yes.  
[9] Q: You remember we discussed this document yesterday?  
[10] A: I do.  
[11] Q: You remember the last portion of this letter and the  
[12] word being underlined and the point you are making  
[13] there?  
[14] A: Yes.  
[15] Q: Have that open alongside you when you look at the letter  
[16] I handed up to you:  
[17] "DM letter to Shell dated 19 November 1993, My letter  
[18] to Mr. Watson following his assertion during a telephone  
[19] conversation (your lawyers have the transcript) that  
[20] Shell could use DM concepts without involving DM,  
[21] Please note the content of the last paragraph of this  
[22] letter."  
[23] Do you see that?  
[24] A: Yes, I do.  
[25] Q: Surely you will now accept that your letter of 19th

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[1] 1990. He had specifically asked us to bring it along  
[2] with us. The enclosed copy contains Sotherton's  
[3] handwritten notes of some relevant matters agreed during  
[4] the meeting."  
[5] A: That is correct, yes.  
[6] Q: I put it to you that seeing what we have seen in this  
[7] letter so far has been the second reference to  
[8] Sotherton, yes, it is, you wrote this letter, you must  
[9] have put your head together with Mr. Sotherton about  
[10] what he did not remember about events?  
[11] A: As I said, when I had a chance to read this letter it  
[12] would jog my memory and it did on the second page where  
[13] it said I spoke to a number of people, I am sure I  
[14] spoke to Mr. Sotherton.  
[15] Q: Now that it has jogged your memory, it would be right  
[16] for my Lord to understand you had extensive discussions  
[17] with Mr. Sotherton before you wrote this letter?  
[18] A: I don't know whether I did, I must have spoken to him,  
[19] I am sure, if I said I spoke to a number of the most  
[20] important people in there,  
[21] Q: Who were a number of the most important people? Name  
[22] them.  
[23] A: The people I mentioned earlier on, Mr. King, that is  
[24] Paul King, I believe I spoke to Steve King and I  
[25] believe I spoke to either Mr. Fairhurst or Mr. Hawkins

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[1] November, 1993 and those last three or four lines, did  
[2] not contain a casual off- the- cuff throwaway remark, it  
[3] was a deliberate marker, was it not?  
[4] A: No, it was not. If it had been, if I had any knowledge,  
[5] I would have been more careful in what I said there, I  
[6] would have mentioned specifically the concept.  
[7] Q: I am putting to you now that your last three or four  
[8] lines of the letter of 19th November, 1993 were written  
[9] with an eventuality in mind which came to fruition in  
[10] this letter of 27th March, 1997. You wrote the letter  
[11] of 19th November with a view to being able to say what  
[12] you did say in the letter of 27th March, paragraph 10?  
[13] A: No, I did not.  
[14] Q: It is just a coincidence, is it?  
[15] A: It is not a coincidence, but I did not know what was  
[16] happening, I had no knowledge of it whatsoever. What  
[17] was going on behind the scenes I did not know and  
[18] because I had been talking about Mega Match I often when  
[19] we talk about Mega Match, we think of the other scheme  
[20] and on this occasion this happened and I decided to put  
[21] it on the bottom of the letter.  
[22] Q: Just a piece of passing information, is that it?  
[23] A: As I said yesterday, it was a casual throwaway thing,  
[24] yes.  
[25] Q: Casual throwaway thing not meant by you seriously, Not

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[1] meant to be taken seriously by them?  
 [2] A: If I had had any knowledge of it I  
 [3] would have been more careful and precise in what I said,  
 [4] Q: Stay with the letter I have handed up  
 [5] to you this morning, please, Item 11, Shell letter to  
 [6] Don Marketing, E6, 2745. You say that  
 [7] "Watson's response later on conceded that Don Marketing  
 [8] 'may have rights over some particular promotions based  
 [9] on the concept of various retailers using a common  
 [10] promotional currency.'" Note the reference in the  
 [11] plural to 'some particular promotions,'"   
 [12] Do you see that?  
 [13] A: Yes, I do.  
 [14] Q: You are a man who attaches immense  
 [15] importance to the precise words used in correspondence?  
 [16] A: Sometimes, sometimes not, because I am  
 [17] human,  
 [18] Q: Because you are what?  
 [19] A: I am human, I am not always right,  
 [20] Q: E6, 2745 you are treating the use of  
 [21] the plural as supporting a nuance about a recognition in  
 [22] relation to more than one promotion. That is what you  
 [23] are wishing to say in your  
 [24] paragraph 11 on page 3, are you not?  
 [25] A: Yes,

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[1] MR COX: I wonder if my learned friend would  
 [2] like to take him to the letter he has just referred to,  
 [3] MR JUSTICE LADDIE: Yes, take him to it,  
 [4] MR HOBBS: Could you go to E6 and it is page  
 [5] 2745,  
 [6] A: I was referring to my response letter  
 [7] to that which is 2746,  
 [8] Q: Shall we just start, I will go to both  
 [9] with you, shall we start on 2745, He is replying to  
 [10] your letter of 19th November, He says in the second  
 [11] paragraph:  
 [12] "It may well be that you have rights, jointly with  
 [13] Shell, in respect of the design, art work and playing  
 [14] pieces which were used in the 1984 promotion which was  
 [15] based on the 'Make Money' concept, The 'Make Money'  
 [16] concept itself, of course, predates the 1984 promotion  
 [17] and was used in the UK in 1966, following its earlier  
 [18] successful use in the USA, Therefore, although you may  
 [19] have some rights as outlined above, those rights would  
 [20] not in any event extend to a scheme, rule or method for  
 [21] playing the game or to the original concept for the  
 [22] promotion,"  
 [23] Then he says, with reference to your last paragraph:  
 [24] "I note the last paragraph of your letter regarding the  
 [25] Mega Match concept, but do not however entirely

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[1] Q: Turn the page,  
 [2] A: Are we talking about this letter now  
 [3]  
 [4] Q: Which letter?  
 [5] A: The long letter,  
 [6] Q: The one I handed up this morning,  
 [7] A: The one you handed up this morning,  
 [8] yes,  
 [9] Q: That is correct,  
 [10] A: You do not want to talk about Mr,  
 [11] Watson's letter? You made a reference to it,  
 [12] Q: I did,  
 [13] A: You don't want to talk about the  
 [14] letter?  
 [15] Q: I don't, but if you want to say  
 [16] anything, this would be a good time,  
 [17] A: Well, I let the matter rest, I  
 [18] suggested since we had other disputes going on there was  
 [19] no point in getting involved in any further problems  
 [20] unless they were intending to run a promotion in which  
 [21] case if they told me, we could discuss it, I do not  
 [22] remember the exact words, but it was along those lines,  
 [23] Q: You knew they were going to run a card-  
 [24] based scheme in 1994?  
 [25] A: No, I did not,

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[1] understand your position, You may have rights over some  
 [2] particular promotions based on the concept of various  
 [3] retailers using a common promotional currency but you  
 [4] cannot have any rights over the concept itself and there  
 [5] have been many such schemes already, One that readily  
 [6] springs to mind is the 'Air Miles' promotion,"  
 [7] Keep that open for a moment, In your letter that I  
 [8] handed up this morning, you draw attention to the use of  
 [9] the plural in the last paragraph:  
 [10] "You may have rights over some particular promotions?"  
 [11] A: Yes,  
 [12] Q: And you are drawing attention to the  
 [13] use of the plural there?  
 [14] A: Yes,  
 [15] Q: You are attaching importance to the  
 [16] nuance that you see in his use of the plural?  
 [17] A: Yes,  
 [18] Q: Now, the letter you want me to look at,  
 [19] I think, is the one on the next page, 2746, You  
 [20] remember this letter?  
 [21] A: Yes, I do,  
 [22] Q: You had a good recollection of writing  
 [23] it at the time?  
 [24] A: Yes,  
 [25] Q: If you then look at it and tell me what

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[1] it is you want to say about that letter?  
[2] A: That last paragraph:  
[3] "However, unless Shell is actively considering running  
[4] one of the relevant promotions, it seems to me that  
[5] further discussion is unwarranted at this moment,  
[6] Discussions relevant to a particular concept could be  
[7] undertaken at the appropriate time, should it ever  
[8] become necessary."  
[9] Q: What is the point you wish me to  
[10] understand?  
[11] A: As far as I was concerned, Shell left  
[12] the matter to rest on that basis, I had no idea what  
[13] was going on behind the scenes and that was it as far as  
[14] I was concerned until I read the article in July, 1996,  
[15] I thought they were just going to run a Shell stand-  
[16] along scheme.  
[17] Q: Smart scheme?  
[18] A: I probably did not know what type of  
[19] loyalty card it was, I knew they were considering  
[20] running a stand- alone Shell scheme.  
[21] Q: In the conversation that you had which  
[22] was tape recorded with Watson on 1st November, I had  
[23] shown you yesterday, using the word 'Smart' in relation  
[24] to a card scheme?  
[25] A: Right.

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[1] Q: You see, I put it to you that there  
[2] were two obstacles in your way at that time. The first  
[3] was you knew that Senior King were getting ready to make  
[4] a complaint of breach of confidence over the concept,  
[5] You knew that I put that to you yesterday?  
[6] A: No, no, you have to define the concept.  
[7] I knew that they were interested in making a claim in  
[8] respect of the stand alone scheme which they said they  
[9] put to Shell.  
[10] Q: And you knew that did you, in December,  
[11] 1993?  
[12] A: I think it was the following year in  
[13] 1994, I have to check on that. It was after I first  
[14] made contact with Senior King with that fax that I sent  
[15] to a number of agencies.  
[16] Q: I have stated my position to you and my  
[17] submission to you and my Lord, in due course, will be  
[18] that in fact you were not going to play your cards, You  
[19] were not going to reveal your hand in December, 1993 for  
[20] the two reasons I suggested to you, the first being you  
[21] did not know what Shell were coming out with exactly  
[22] and, therefore, you wanted to make your claim after you  
[23] had seen it and secondly, you had good reason to believe  
[24] that Senior King were going to make a claim in relation  
[25] to the concept of the scheme that was about to roll out?

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[1] Q: And that was 1st November, 1993?  
[2] A: Right.  
[3] Q: I put it to you yesterday and probably  
[4] on more than one occasion, that what you were doing was  
[5] watching and waiting before you played your hand in  
[6] relation to the concept you were going to claim as your  
[7] own. You were biding your time?  
[8] A: No, I was not, I just did not know  
[9] what they were doing in the background.  
[10] Q: Therefore, you did not know what to  
[11] claim and you wanted to reserve your position until you  
[12] had seen what came into the market to see if you could  
[13] claim over it?  
[14] A: No, I was more concerned about Mega  
[15] Match, I thought the interest was in Mega Match and the  
[16] comment about the other scheme was just because Mega  
[17] Match, when either I think of Mega Match, I think of the  
[18] other scheme and I put it on the end of that letter.  
[19] Q: You made a reference to concept 4 as a  
[20] marker?  
[21] A: I do not know what the correct  
[22] description would be, but I put it in there to remind  
[23] Shell we held the rights to the scheme. If I seriously  
[24] thought that they were following that path, I would have  
[25] taken more trouble in what I said.

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[1] A: No, I repeat as I did yesterday, that  
[2] the Senior King scheme that I was aware of was the Shell  
[3] only loyalty scheme, i did not know, in fact they did  
[4] not put forward a multiparty scheme in any event, did  
[5] they, which you can see from discovery.  
[6] Q: Just a minute now, When you say they  
[7] did not put forward a multiparty scheme in any event,  
[8] what are you referring to?  
[9] A: From what I have seen in discovery,  
[10] their interest was in the technology, the promotional  
[11] part was secondary, They were putting a loyalty scheme  
[12] for Shell alone as I understand it.  
[13] Q: Go back to the letter I handed you this  
[14] morning and look on page 2 and look at the paragraph at  
[15] the top please.  
[16] A: Right.  
[17] Q: It is your complaint that having  
[18] contacted a number of potential witnesses including  
[19] Shell and senior agency staff involved in 'Project  
[20] Hercules':  
[21] "your code- name for the Smart project, they confirm  
[22] that Mr. Lazenby headed- up the project team and that  
[23] Smart was designed from the outset to eventually become  
[24] a consortium promotion."  
[25] That is information you had learned as I understood you

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[1] to say, from a number of sources, some of those sources  
[2] being Senior King people?

[3] A: I don't know whether I learnt that from  
[4] Senior King people, I learnt it from someone or  
[5] something I had read.

[6] Q: Let's press on, shall we? Turn to page  
[7] 4 in the letter I handed you this morning, Item 12 is  
[8] the letter E6/2746 that we recently looked at?

[9] A: Can you repeat that number please?

[10] Q: It is the one we had open, E6- 2746.

[11] A: I have it.

[12] Q: We just looked at it.

[13] A: Right.

[14] Q: We have just been through that.

[15] A/ Right.

[16] Q: Item 13, you are referring to a letter  
[17] which came back to you on 17th February, 1994. This is  
[18] E8/3741. Shall we have a look at that? I do not want to  
[19] be accused of being in any way unfair to you. Let us  
[20] have a look at E8/3741. Do you remember this letter?

[21] A: I do.

[22] Q: It reads:

"Dear Mr. Donovan, Thank you for your letter of 20  
[24] December 1993. As you may know, David Watson has left  
[25] Shell UK to take up a post with Shell International and

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[1] foundations of the Smart consortium. His letter related  
[2] mainly to 'Make Money'. As Shell is painfully aware,  
[3] his analysis of the legal position on that subject  
[4] turned out to be mistaken. He rejected DM's rights to  
[5] 'the concept' on this false premise. We cannot be  
[6] certain of what 'concept' he had in mind, other than  
[7] that it was a game. Despite the comment in the last  
[8] paragraph in my letter of 20th December 1993, we heard  
[9] nothing further from Shell about the loyalty card  
[10] concept."

[11] That is your comment?

[12] A: Yes.

[13] Q: Right. Bearing in mind what your case  
[14] is in these proceedings, which is that Andrew Lazenby  
[15] knew full well all about concept 5, the letter to  
[16] Sainsbury's and all the rest of it from 1992, from at  
[17] least October, 1992 you would say, why did you not  
[18] respond to Mr. Lazenby's letter by reminding him as you  
[19] would have it, of what you had already told him?

[20] A: Because we were already in dispute with  
[21] Shell on Nintendo. I was now suspicious that something  
[22] was going on with 'Make Money' and those were the focus  
[23] of what I was doing. Furthermore, I did not really  
[24] understand the end part of his letter in any event.

[25] Q: He is saying he is not certain of the

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[1] your letter has been passed to me for attention, I am  
[2] not sure I am able to add much to David's letter of 2  
[3] December. This basically set out the legal position in  
[4] respect of the 'Make Money' concept. The concept itself  
[5] predates your involvement in the 1984 promotion and  
[6] therefore you have no proprietary rights in the game  
[7] concept, although you may have some rights in the  
[8] design, artwork and playing pieces which were used in  
[9] the 1984 game. Those rights would not, in any event,  
[10] extend to the scheme rules or method of playing the  
[11] game. Therefore, I am not certain of the relevance of  
[12] the final paragraph of your letter, in that given the  
[13] example of 'Make Money', there is no proprietary right  
[14] in the concept and therefore discussions would only need  
[15] to take place if Shell were considering running the game  
[16] using the same design, artwork and playing pieces.  
[17] Shell would otherwise be free to promote a game based on  
[18] that concept."

[19] That is Lazenby's letter back to you?

[20] A: Yes.

[21] Q: Have that open and go back to the  
[22] letter I handed you this morning and see what your  
[23] comment is in paragraph 14:

[24] "Mr. Lazenby took over the correspondence. This was at  
[25] a time when he was no doubt already laying the

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[1] relevance of the final part of your letter?

[2] A: Yes, but he is talking about a game  
[3] whereas I had been talking about a loyalty scheme.

[4] Q: And you did not feel it appropriate to  
[5] put him right or relieve him of his uncertainty by  
[6] responding to this letter of 17th February, 1994?

[7] A: I telephoned him a couple of days later  
[8] and you have got the transcript of the conversation  
[9] which was focussed on 'Make Money' and the Nintendo  
[10] dispute. I did not have a clue anything was going on  
[11] with the loyalty scheme that I put forward.

[12] Q: The last paragraphs of this succession  
[13] of letters we have been looking at in each case the last  
[14] paragraph is running on from the throwaway remark that  
[15] you made in the letter to Watson. Yes, but the main part  
[16] of the letters were about 'Make Money'.

[17] Q: You did not feel it necessary or  
[18] appropriate to unveil what your stance was in  
[19] correspondence to these people in relation to the  
[20] loyalty concept, did you?

[21] A: Because in my previous letter I had  
[22] said that unless Shell was intent on doing something  
[23] with one of those concepts, there was no sense in  
[24] discussing it at the time. If they decided they wanted  
[25] to adopt one of them, then we should discuss it and they

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[1] should let me know at that time.  
 [2] Q: I thought you did concede you had  
 [3] concerns about what they had in time. You wanted them to  
 [4] know you were claiming proprietary rights?  
 [5] A: I wanted them to know, I wanted to  
 [6] remind them of that.  
 [7] Q: That you had rights to the loyalty  
 [8] scheme?  
 [9] A: Correct.  
 [10] Q: What better opportunity when they are  
 [11] writing back saying they do not understand the relevance  
 [12] of your point, for you to come forward and state your  
 [13] position?  
 [14] A: Because he was focussing on 'Make  
 [15] Money', I did not understand what he was saying in his  
 [16] last paragraph, but he certainly did not say 'We are  
 [17] interested in the loyalty scheme. We are pursuing it  
 [18] and we need to discuss it.' He said nothing like that  
 [19] at all. If he had have done, then we probably would not  
 [20] have been here today.  
 [21] Q: Why would we not be here today?  
 [22] A: Then we would have discussed it and  
 resolved it, hopefully, in some way, but he chose not to  
 [24] say anything about it and I was left in the dark. I was  
 [25] then focussed, of course, on the Nintendo dispute and on

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[1] had established that contrary to the impression that I  
 [2] got from Mr. Lazenby during the telephone conversation,  
 [3] in fact Shell was producing a 'Make Money' game in North  
 [4] Wales at that time.  
 [5] Q: My point to you is that you are not  
 [6] saying anything to Lazenby about the multi- brand  
 [7] loyalty?  
 [8] A: It is because I was rather excited with  
 [9] what was going on with 'Make Money' in view of the past  
 [10] history. I did not have a clue about what was happening  
 [11] with the multi- brand loyalty concept, no knowledge  
 [12] whatsoever. I was already suing for Nintendo. I now  
 [13] discovered that in fact they were producing the 'Make  
 [14] Money' game although I had a joint rights agreement with  
 [15] them. My mind was focussed on those things,  
 [16] understandably, I thought.  
 [17] Q: Is there anything more you want to say  
 [18] on that letter of 22nd February, 1994 that we have open?  
 [19] (Pause)  
 [20] A: Only as always we were trying to say  
 [21] that we should meet and try to discuss it and resolve it  
 [22] without going to litigation.  
 [23] Q: You can close up file E8 now, thank  
 [24] you. The letter I handed you this morning, could you go  
 [25] to page 5 of it?

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[1] my growing suspicion that something was happening with  
 [2] 'Make Money'. I could not, it would have seemed rather  
 [3] unlikely that there was another venture going on based  
 [4] on an idea that I put forward to Shell.  
 [5] Q: My Lord will be the judge of your  
 [6] answers. Would you go to the letter I gave you this  
 [7] morning. Keep E8 out on the bench. The letter at  
 [8] numbered paragraph 14 goes on to refer to Don  
 [9] Marketing's letter to Shell dated 22nd February, 1994 at  
 [10] E8/3770. Now, have you got that letter at E8/3770, Mr.  
 [11] Donovan?  
 [12] A: Yes, I have.  
 [13] Q: Do you remember this letter?  
 [14] A: Yes, I do.  
 [15] Q: You are responding to the letter we  
 [16] were just looking t most recently, Mr. Lazenby's letter  
 [17] of 7th February, you responded to that?  
 [18] A: Yes.  
 [19] Q: It is all about other matters. My  
 [20] point to you is that you did not take this opportunity  
 [21] to say anything in response to the last paragraph of  
 [22] Lazenby's letter to you?  
 [23] A: I believe that in the intervening  
 [24] period I had spoken to someone and established I would  
 [25] have to read that letter through, but I believe that I

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[1] A: Right.  
 [2] Q: You are listing below the main  
 [3] similarities between the Smart consortium scheme and  
 [4] DM's proposals. Item (a):  
 [5] "A Shell- led loyalty promotion consortium using a  
 [6] Smart card. (b) A wide range of partners operating in  
 [7] different trade sectors issuing and redeeming a common  
 [8] promotional currency which enables participants to save  
 [9] up points for a wide range of redemption options much  
 [10] more quickly than if issued only by a single retailer.  
 [11] (c) A loyalty consortium promotion in which the  
 [12] partners can have a direct influence over the management  
 [13] of the scheme. (d) Positioned as a separate business in  
 [14] which potential partners have the option to share the  
 [15] costs and the benefits. (e) Uses a multi purpose smart  
 [16] card which can accumulate points and capture customer  
 [17] data. DM discussed the technology for a Shell  
 [18] consortium smart card in 1990 with a security print plc  
 [19] who specialise in supplying loyalty cards. Mr Paul King  
 [20] was present during one such discussion at the printers  
 [21] factory. (f) Possibility of using the loyalty  
 [22] consortium card for financial transactions. (g) A  
 [23] smart loyalty card which could have a universal identity  
 [24] across all of the partner companies."  
 [25] A: Right.

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[1] Q: What does (d) mean?  
 [2] A: I am not sure that that is correct, I  
 [3] think that in the proposal he suggested an option that  
 [4] it could be set up as a separate business venture  
 [5] involving the partners in the consortium.  
 [6] Q: What does that mean, a separate  
 [7] business venture, what does that mean according to your  
 [8] understanding?  
 [9] A: You have to remember that this was the  
 [10] initial proposal and that normally it would then move  
 [11] forward in consultation with the client as to how it  
 [12] would be developed. At that time I just had in mind  
 [13] that the consortium members might actually want to form  
 [14] a company to run it consisting of the consortium  
 [15] members, a separate operation.  
 [16] Q: A third party administrator?  
 [17] A: No, not as a third party, with third  
 [18] parties they do not themselves issue points like Argos  
 [19] does not issue premier points. This was a consortium of  
 [20] the issuing company, issuing and redeeming companies.  
 [21] Q: It is a Shell-led loyalty promotion  
 [22] consortium?  
 [23] A: Yes.  
 [24] Q: And you are proposing it be positioned  
 [25] as a separate business in which potential partners have

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[1] A: I think that we discussed Smart cards  
 [2] with a company from Holland called ILS Lottery Systems  
 [3] which was a subsidiary of Delarue and one of their  
 [4] sister companies was Tronick and we had the director  
 [5] come and visit us a couple of times and during one of  
 [6] those visits we discussed Smart cards.  
 [7] Q: Is there any written record of that?  
 [8] A: There is a letter probably in  
 [9] discovery, I think his name is Mr. John Orick.  
 [10] Q: You are saying you had several  
 [11] meetings, did you?  
 [12] A: We had more than one meeting with him.  
 [13] This was certainly not on the subject of Smart cards, it  
 [14] was on the subject of lotteries in general, promotional  
 [15] games, but during one of those discussions, we discussed  
 [16] Smart cards.  
 [17] Q: Tell me more.  
 [18] A: The cost of them, I think that he said  
 [19] that they were falling, the costs and it was now getting  
 [20] to be a viable proposition for a major promotion. But,  
 [21] it was not his fort, his company. It was one of the  
 [22] sister companies in the group.  
 [23] Q: So, what was it, just a throwaway  
 [24] remark or two?  
 [25] A: It was a brief discussion, that is all.

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[1] the potential to share the costs of the benefits?  
 [2] A: Yes.  
 [3] Q: Is that a Shell separate business?  
 [4] A: It would be a consortium of the  
 [5] partners but it would be Shell that would decide how it  
 [6] would be set up. It was putting the proposal to Shell  
 [7] not to any other company, so they could develop it as  
 [8] they wished.  
 [9] Q: I think you were indicating a moment  
 [10] ago when you put forward the proposal whether it was  
 [11] 1989 or 1990 I cannot remember, but when you put forward  
 [12] the proposal in the first place it was not a refined  
 [13] idea, it was something that would need to be worked at?  
 [14] A: Almost always the case.  
 [15] Q: That was true of everything that you  
 [16] said in concept 4 in fact. Something that would need to  
 [17] be refined by a process of much more detailed  
 [18] consideration and implementation?  
 [19] A: We put forward the bare essentials of  
 [20] it and then it would need to be developed and researched  
 [21] according to how Shell wanted to go with it.  
 [22] Q: It is the desirable end objective?  
 [23] A: No, it was the basics of the promotion.  
 [24] Q: Have a look at (c) on this page. What  
 [25] is all this about, you checking out Smart cards in 1990?

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[1] Q: How brief is brief?  
 [2] A: We are talking about nine years ago.  
 [3] It certainly was not a detailed discussion, no. Our  
 [4] discussions were focussed on other promotions, on  
 [5] lotteries and I think I lent him a video tape of the  
 [6] game we did.  
 [7] Q: So, you did not get into any detail  
 [8] about Smart cards?  
 [9] A: No, we did not.  
 [10] Q: You did not get into any detail?  
 [11] A: No, we did not. We discussed Smart  
 [12] cards but not in any detail.  
 [13] Q: They were a thing that cropped up in  
 [14] the conversation. You exchanged one or two sentences  
 [15] but did not get into any detail?  
 [16] A: No, not at all.  
 [17] Q: And you did not report anything to  
 [18] Shell about it?  
 [19] A: No, we did not.  
 [20] Q: Then look at paragraph (c) on page 5  
 [21] again. In the second line you say:  
 [22] "Don Marketing discussed the technology for a Shell  
 [23] consortium smart card in 1990 with a security print plc  
 [24] who specialise in supplying loyalty cards. Mr Paul King  
 [25] was present during one such discussion at the printers

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[1] factory,"  
 [2] That is not true is it?  
 [3] A: I do not think it is, I think it was  
 [4] probably at our offices,  
 [5] Q: But, you did not discuss the technology  
 [6] for a Shell consortium Smart card?  
 [7] A: No, I don't think we did, I think we  
 [8] discussed Smart cards, but I don't think we got into how  
 [9] it was going to be used,  
 [10] Q: This statement here is just false?  
 [11] A: I am not sure it is correct when it  
 [12] says about the printers factory, I think it was at our  
 [13] offices,  
 [14] Q: And it is not correct to say that:  
 [15] "Don Marketing discussed the technology for a Shell  
 [16] consortium smart card in 1990"  
 [17] - is it?  
 [18] A: I think that probably we did discuss  
 [19] Smart cards but probably we did not discuss for Tronick  
 [20] or the subsidiary of Delaruc, ILS Lottery Systems, what  
 [21] the concept was,  
 [22] Q: So, you agree with me this statement is  
 [23] false?  
 [24] A: It is not false, it is not accurate,  
 [25] Q: It is kind of in a twilight zone?

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[1] objective, regardless of the accuracy of it, Secondly,  
 [2] this is an example of you wanting to backdate to the  
 [3] earliest possible moment that you can, your concept of  
 [4] the concept for which you wished to have protection?  
 [5] A: As I said earlier, we had already put  
 [6] the proposal to Mr. King in confidence before 1990 at  
 [7] the end of 1989, So, there would not be any reason for  
 [8] that,  
 [9] Q: Turn the page, please, in the letter  
 [10] that we have open, Page 6 is under the heading:  
 [11] Originality, There are points made there by you  
 [12] distinguishing the multi- partner concept from Air  
 [13] Miles, YO remember making these points?  
 [14] A: I do,  
 [15] Q: Looking down them, I think they are all  
 [16] points which your counsel has made on your behalf  
 [17] already, so I do not propose to dwell on them, We can  
 [18] see them in the letter there, Turning the page to page  
 [19] 7, you are making statements down this page, I am  
 [20] looking at the second paragraph on page 7, You are  
 [21] saying:  
 [22] "At least we now know why Mr Lazenby and his boss, Mr  
 [23] David Watson were interested in corresponding with us  
 [24] about the loyalty concept, It very closely resembles the  
 [25] interest expressed by them in the rights to 'Make Money'

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[1] A: No, it is not accurate in that I think  
 [2] that the discussion was probably at our offices, not at  
 [3] their factory  
 [4] Q: Well, my Lord, has got your answers and  
 [5] we have the transcript, The point I want to put to you  
 [6] on this is two- fold: Firstly, this is a reflection, is  
 [7] it not, of your desire to demonstrate that you were  
 [8] there first with the idea, that is a reflection of that  
 [9] proposition?  
 [10] A: Not really, We had already discussed  
 [11] this and put it before King before then, had we not? I  
 [12] think it was probably to boost our claim and that it is  
 [13] probably not accurate in what it says, I accept that,  
 [14] Q: You accept that and it is an example,  
 [15] is it not, of you being prepared to say something that  
 [16] suits for the purposes of your objective?  
 [17] A: No, I think that I did speak to John  
 [18] Orick about Smart cards but I do not think that I would  
 [19] have disclosed to him the mechanics of the scheme, We  
 [20] just had a discussion about the availability of Smart  
 [21] cards and what the costs were at that time,  
 [22] Q: I will just sum up my position, I am  
 [23] putting it to you formally that this statement that we  
 [24] have just been looking at together at (c) is an example  
 [25] of you being prepared to state what suits your end

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[1] when they wee surreptitiously producing the 1994 'Make  
 [2] Money' promotion, The latest matter is all the more  
 [3] incredible in view of the injunction sought in the DM  
 [4] Statement of Claim issued in September, 1994, In  
 [5] paragraph 41 we alleged that Shell had acted in flagrant  
 [6] disregard of DM's rights to its concepts, Paragraph 42  
 [7] made plain our concern that unless restrained, Shell  
 [8] would seek to make wrongful use of other DM proposals,  
 [9] including our 'Mega Match' concept, based on the  
 [10] principle of a Shell led consortium of major retailers  
 [11] issuing and redeeming a common promotional currency,"  
 [12] Taking that on board and you probably remember writing  
 [13] it, do I understand you to be saying that this was  
 [14] flagging up the point in September, 1994 that you had  
 [15] concerns about Shell's use of proposals based on the  
 [16] basis of a Shell led consortium of major retailers  
 [17] issuing and redeeming a common promotional currency? Is  
 [18] that what you are saying there?  
 [19] A: It is referring to the statement of  
 [20] claim about Mega Match, is it not?  
 [21] Q: Let's take it slowly, Fourth line:  
 [22] Paragraph 42 made plain our concern that unless  
 [23] restrained, Shell would seek to make wrongful use of  
 [24] other DM proposals, including our Mega Match concept,  
 [25] based on the principle of a Shell led consortium of

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[1] major retailers issuing and redeeming a common  
[2] promotional currency,"  
[3] You are saying there that there was a concern at the  
[4] time of that document which was September, 1994, a  
[5] concern that Shell would be making wrongful use of other  
[6] proposals including that one?  
[7] A: Yes,  
[8] Q: That is what you are saying?  
[9] A: Yes,  
[10] Q: In September, 1994?  
[11] A: Yes,  
[12] Q: There was a concern?  
[13] A: Yes,  
[14] Q: Go on to the next paragraph:  
[15] Our concern should Shell's intention to poach further  
[16] promotional concepts arose from comments made to me by  
[17] Mr Lazenby and Mr Watson, claiming that Shell was free  
[18] to use the multi- partner and 'Make Money' concepts,  
[19] even though I warned them of overwhelming evidence  
[20] supporting our claims to the concepts. Their arrogant  
[21] views are evidence from the enclosed copy letters."  
[22] Do you see in the third line there, claiming that Shell  
[23] was free to use the multi- partner and 'Make Money'  
[24] concepts? What are you referring to there?  
[25] A: It is not clear in some of those

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[1] matter of "the Mega Match option for a Shell- led  
[2] promotion consortium issuing and redeeming a common  
[3] promotion currency was also touched on in my discussions  
[4] with you in May, 1995,"  
[5] Are you not?  
[6] A: I think that I probably did the Mega  
[7] Match scheme in some of the letters, maybe,  
[8] Q: May, 1995, as we know, is before the  
[9] date of the funding at tab 3?  
[10] A: Yes, it is,  
[11] Q: And you were raising your concerns in  
[12] May, 1995 because they were concerns that were running  
[13] through your mind in relation to what Shell was doing at  
[14] that time?  
[15] A: I think I probably mentioned the Mega  
[16] Match scheme, I spoke to Dr. Faye for an hour and three  
[17] quarters. So, I obviously cannot remember everything  
[18] that was said, I think I did raise or mention the Mega  
[19] Match scheme during the conversation, yes,  
[20] Q: You raised the business of Shell- led  
[21] promotion consortium issuing and redeeming a common  
[22] promotional currency in the discussions in May, 1995?  
[23] A: I think I probably did, I am not sure,  
[24] I don't know whether a copy of the notes are in the  
[25] discovery or not, I know Dr. Faye made his own notes

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[1] conversations what scheme, for example in one  
[2] conversation Mr. Lazenby said Mega Match or whatever  
[3] that scheme was, it was not clear to me which scheme he  
[4] was referring to and I was just commenting on that.  
[5] Q: What is the multi- partner reference,  
[6] what is that referring to?  
[7] A: It is referring to that exchange of  
[8] correspondence, I assume,  
[9] Q: When you wrote this letter?  
[10] A: Yes, I know, but it is some time ago,  
[11] I guess it must have been in regard to the exchange of  
[12] correspondence,  
[13] Q: Your concern related to the multi-  
[14] partner loyalty scheme, correct?  
[15] A: Yes,  
[16] Q: Go to the next paragraph:  
[17] "The Mega Match option for a Shell- led promotion  
[18] consortium issuing and redeeming a common promotional  
[19] currency was also touched on in my discussions with you  
[20] in May 1995. A copy of my notes of the meeting were  
[21] lodged with Royds Treadwell. No doubt you will be able  
[22] to check your own notes of the meeting, to which Mr.  
[23] Wiseman referred during our meeting with him and Mr.  
[24] Brown on 14 June, 1996."  
[25] You are saying there, are you not, that you raised the

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[1] about the meeting but I do not think they have ever been  
[2] put into discovery,  
[3] Q: You lodged them with your solicitors,  
[4] Royds Treadwell?  
[5] A: Correct, Are they in discovery?  
[6] Q: I have not seen them, I cannot find  
[7] them, Go to the next paragraph:  
[8] "As mentioned, we have obtained advice from specialist  
[9] Counsel,"  
[10] Pausing there, keep your finger in that page and go back  
[11] to the first page in the second paragraph:  
[12] "Specialist Counsel advised us on 21st March that we  
[13] have an even stronger claim against Shell in this case  
[14] than those already settled."  
[15] I understand you to be referring back to that when you  
[16] say in the bottom paragraph on page 7:  
[17] "As mentioned, we have obtained advice from specialist  
[18] Counsel,"?  
[19] A: We obtained it by more than one  
[20] counsel, One was certainly on the date that is  
[21] mentioned on the first page, I cannot recall, it would  
[22] have been an earlier date in respect of the other  
[23] counsel,  
[24] Q: Let's not quibble over it, It reads  
[25] on, you say:

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[1] "We supplied an extensive briefing about the Scottish  
[2] scheme including leaflets, newspaper adverts, news  
[3] reports etc., plus background information on schemes  
[4] such as Air Miles and Premier Points. In reaching the  
[5] conclusion that this claim is even stronger than the  
[6] previous ones, Counsel has taken into account the  
[7] substantial similar fact evidence accumulated from the  
[8] three claims already settled, all involving the same  
[9] manager, Mr. Andrew Lazenby."

[10] A: Correct.

[11] Q: I get the impression from reading this  
[12] that there was a wad of material that you forwarded to  
[13] counsel to enable counsel to advise?

[14] A: Yes.

[15] Q: This will have been, will it not, a  
[16] body of material referring to the Shell Smart scheme,  
[17] the way it was operated, news reports, adverts,  
[18] leaflets, you name it, as much material as you could  
[19] collect?

[20] A: Yes.

[21] Q: And you pulled that material together  
[22] because you were very interested in knowing what it was  
[23] Shell was doing in terms of the Smart scheme?

[24] A: I knew what they were doing or planning  
[25] to do on July 21st, 1996.

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[1] Q: When I started with you on this letter,  
[2] I asked why you referred to the launch on Scotland on  
[3] 14th March, 1997 which is 13 days before the date of  
[4] this letter and you gave me to understand and I think  
[5] correctly, that it was that event which led you to the  
[6] conclusion that your concept had been taken?

[7] A: Yes.

[8] Q: Therefore, I am putting back to you the  
[9] proposition that you had no reason to have been  
[10] collecting material before that date?

[11] A: I had reason because I read plans that  
[12] Dr. Faye was presenting with Lord Saatchi to various  
[13] major companies including, if I recall, Sainsbury's, the  
[14] scheme I put to Shell in confidence.

[15] Q: And you are basing this now?

[16] A: On the article in the business section  
[17] of The Times on 21st July, 1996.

[18] Q: So, you thought you had a claim,  
[19] materially, against Shell on 21st July, 1996?

[20] A: If they succeeded in putting together a  
[21] consortium and launched it, I understood, it was my  
[22] understanding that I would not have a claim or it would  
[23] not be worthwhile pursuing it unless Shell actually  
[24] launched the scheme.

[25] Q: You refer in this paragraph at the

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[1] Q: My position to you, I put it to you  
[2] formally, is that you are forwarding here material of  
[3] the kind that you would have been collecting from the  
[4] moment the Shell Smart scheme rolled out?

[5] A: No, from the moment I read the article  
[6] on July 21st, 1996. Then I was interested in anything  
[7] to do with it.

[8] Q: Can you tell me why in those  
[9] circumstances you did not think you had a claim until  
[10] 14th March, 1997?

[11] A: I mentioned that earlier on, I did not  
[12] view the John Menzies joining the scheme as being the  
[13] scheme that I put forward to Shell which was to involve  
[14] the leading brands in the country in every high street,  
[15] all operating the same scheme, I saw John Menzies as  
[16] being a second area brand, I did not even realise they  
[17] had national representation and, therefore, it did not  
[18] seem to be the same scheme.

[19] Q: So, you were not concerned about it?

[20] A: I was concerned about it, I was  
[21] interested because that was my view, but when I decided  
[22] to get further advice, I had to give them anything that  
[23] could be salient and as I said yesterday, the John  
[24] Menzies joining the scheme could have relevance to the  
[25] funding so I found out what I could about it.

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[1] bottom of page 7 to similar fact evidence. This is an  
[2] expression we discussed with some of the documents  
[3] yesterday?

[4] A: Yes.

[5] Q: When you write 'similar fact evidence'  
[6] you are referring to the earlier law suits you had had  
[7] against Shell?

[8] A: Yes, that is correct.

[9] Q: Turn to page 8. You yourself say at  
[10] the top of page 8:

[11] "I hope that you and your colleagues will understand my  
[12] bitterness and immense anger at this development,  
[13] particularly since I have twice set up a multibrand  
[14] consortium for Shell based on the same common  
[15] promotional currency principle."

[16] What are you referring to there?

[17] A: I am referring to the Mega Match scheme  
[18] I set up in June, 1986. I had a meeting with lots of  
[19] the consortium members including Shell.

[20] Q: And the proposal was to use matching  
[21] cards?

[22] A: Yes, 99.9% of the proposal was Mega  
[23] Match.

[24] Q: And you are calling the matching halves  
[25] proposal a common proposal currency principle?

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[1] A: Yes, I am?  
 [2] A: If I have read and understood many of  
 [3] these documents correctly, the use of electronic points  
 [4] is regarded by yo as just a variation on the use of  
 [5] matching halves?  
 [6] A: No, not a variation, it is a  
 [7] development. That came first and that led me to think  
 [8] of the loyalty scheme,  
 [9] Q: But you regard them both as involving a  
 [10] common promotional currency?  
 [11] A: Yes,  
 [12] Q: Look at the bottom paragraph on page 8:  
 [13] 'Regarding global exploitation, we read the report n  
 [14] 'Marketing' on 12th December, 1996 that Mr Raul  
 [15] Pinnell's appointment to Shell International includes  
 [16] responsibility for the marketing of 'loyalty  
 [17] operations'. We note from the Marketing Week report on  
 [18] 14th March that 'Smart is meanwhile being launched in at  
 [19] least one other European country, and more expansion is  
 [20] likely'. We have also read an article in the same  
 [21] magazine on 21st March giving news of the launch of a  
 [22] Shell loyalty card scheme in France in partnership with  
 [23] the Casino supermarket chain."  
 [24] The position is that this is indicating to you which are  
 [25] the relevant journals at relevant times that is ever

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[1] Do you see that?  
 [2] A: I do,  
 [3] Q: You knew and you understood, did you  
 [4] not, that what you were envisaging here was that the  
 [5] writ would be endorsed with a statement of claim which  
 [6] would fully detail the similar fact evidence and you  
 [7] expected, wished and intended, if you issued such a  
 [8] writ, it would be as you said, in the public domain?  
 [9] A: Yes,  
 [10] Q: And the reason you wanted the statement  
 [11] of claim endorsed was so that you could put all those  
 [12] earlier pieces of litigation into the public domain?  
 [13] A: Whatever was permissible in law,  
 [14] Q: You wished and intended by putting it  
 [15] on the writ, you would get it into the public domain?  
 [16] A: I was being advised by counsel and it  
 [17] would be up to them to put in whatever was appropriate,  
 [18] Q: Do not discuss the law with me and I  
 [19] will not discuss the law with you, I am discussing the  
 [20] fact of what you envisaged, You envisaged as a fact  
 [21] that if a writ was issued, endorsed with a statement of  
 [22] claim with similar fact evidence, detailed on it, that  
 [23] would have the effect of putting the earlier litigation  
 [24] into the public domain, You envisaged that as a fact?  
 [25] A: Yes, in whatever degree was

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[1] since Shell rolled out its scheme in 1994?  
 [2] A: I did after July, 1996, we did monitor  
 [3] lots of publications for that, I did often read  
 [4] Marketing and from time to time Marketing Week,  
 [5] Q: You are saying you never read them  
 [6] before?  
 [7] A: No, I have read them for years,  
 [8] Q: Absolutely, Turn to page 9, This is  
 [9] your strategy, written in your own words:  
 [10] "Please advise within seven working days whether you  
 [11] wish to deal with this matter privately i.e. Strictly  
 [12] between DM and Shell UK Ltd with no DM contact with any  
 [13] other Shell company, or whether you intend to reject our  
 [14] claim, in which event we would take the following  
 [15] steps:- 1, Issue a Writ against Shell UK Ltd, Because  
 [16] we wish to be in a position to take action prior to  
 [17] Shell's AGM, Counsel has been instructed to prepare the  
 [18] Writ endorsed with a Statement of Claim, which will  
 [19] fully detail the similar fact evidence which is clearly  
 [20] of great relevance to this claim, In this connection,  
 [21] we have supplied Counsel with a copy of the document  
 [22] entitled 'The Don Marketing Saga' (copy enclosed), so  
 [23] that she is aware of all matters which reflect on the  
 [24] ethical conduct of Shell managers in respect of the  
 [25] previous claims."

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[1] permissible,  
 [2] Q: And that indeed is what subsequently  
 [3] happened, is it not?  
 [4] A: It is,  
 [5] Q: And indeed subsequently, quite soon  
 [6] after the writ was issued in this action, which was in  
 [7] fact 1998, you did take steps yourself to circulate the  
 [8] statement of claim and the writ, did you not?  
 [9] A: We wrote, I believe to D. J. Freeman  
 [10] saying we intended to do it and they wrote back saying  
 [11] we should not do so and we did not,  
 [12] Q: You in fact supplied a copy of the  
 [13] journals and they carried articles and the writ and  
 [14] statement of claim and they in fact included a  
 [15] photograph of the back of the writ, did they not?  
 [16] A: They obtained a copy of the writ from  
 [17] the court, I think both magazines did themselves,  
 [18] Q: At your instigation?  
 [19] A: I don't know, it may have been, I don't  
 [20] recall, They were aware of the impending litigation and  
 [21] they obtained the information,  
 [22] Q: You say it may have been, it is highly  
 [23] likely that you tipped them off, is it not?  
 [24] A: I probably did, yes,  
 [25] Q: You did, Let's not beat about the

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[1] bush. You did, did you not?  
 [2] **A:** I don't remember the exact  
 [3] circumstances, but I probably did.  
 [4] **Q:** Look at item 2 here, What you are  
 [5] intending to do, if you do not get your way in seven  
 [6] days or the response you want in seven days.  
 [7] "Issue a press release to the national media and the  
 [8] marketing and petrol retailing press. Further releases  
 [9] would be issued to coincide with developments in the  
 [10] Smart consortium scheme."  
 [11] What is the point you are making there? What were you  
 [12] hoping to achieve?  
 [13] **A:** To let the public know that we had this  
 [14] complaint against Shell and that they were expanding  
 [15] what we considered to be our scheme.  
 [16] **Q:** Item 3 you were going to write direct  
 [17] to potential partner companies warning them of the  
 [18] litigation. What was that, if not to disrupt it as much  
 [19] as you could?  
 [20] **A:** I certainly wanted them to know that we  
 [21] had a potential claim on the scheme.  
 [22] **Q:** Item 4, you were going to write to John  
 [23] Jennings, Mr. Mark Moody-Stuart and Mr. Cor  
 [24] Herkstroter, as per the attached letter. Item 5 you  
 [25] were going to inform Shell International that on

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[1] **A:** I think that is clear from the letter,  
 [2] yes.  
 [3] **Q:** You were putting them in a position  
 [4] where you were saying you were going to make life  
 [5] unpleasant for them to enter further discussions with  
 [6] you about your claim?  
 [7] **A:** Yes.  
 [8] **Q:** You kept up your strategy in 1997,  
 [9] trying to get a discussion, a dialogue going with Shell?  
 [10] **A:** I did.  
 [11] **Q:** And you were throughout that period,  
 [12] using the stick and carrot strategy that we see  
 [13] exemplified in those few paragraphs?  
 [14] **A:** I think that is fair to say, yes.  
 [15] **Q:** Do you know what I mean by the G  
 [16] bundles in this case, G1 and G2?  
 [17] **A:** Yes.  
 [18] **Q:** Let us give you a flavor of it, I am  
 [19] sure it will come flooding back. Look at G1.  
 [20] **MR JUSTICE LADDIE:** Page?  
 [21] **MR HOBBS:** My Lord, page 3 really starts the  
 [22] whole thing going.  
 [23] **MR JUSTICE LADDIE:** Mr. Donovan, would you  
 [24] leave the witness box? I would like to go into camera.  
 [25] So, anybody who is not a party to the litigation or

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[1] counsel's advice, you were reserving your right to take  
 [2] legal proceedings against them.  
 [3] "The same applies to current partners in the Smart  
 [4] scheme and any company operating or associated with the  
 [5] scheme. 6. Write to the pressure group who have  
 [6] succeeded in forcing a Shell ethics related resolution  
 [7] and vote at the AGM. We would obviously supply them  
 [8] with a copy of your letter. 7. Write to all Shell  
 [9] service stations in England, Wales and Northern Ireland.  
 [10] 8. Although we have thus far refrained from taking  
 [11] libel action against the magazines which published the  
 [12] libel contained in the Shell press release dated 17  
 [13] March 1995, we will commence proceedings if we have to  
 [14] resume litigation against Shell. 9. We will raise the  
 [15] new claim and your letter at the AGM."  
 [16] **A:** Correct.  
 [17] **Q:** You are going to do all of these things  
 [18] if the recipient of this letter does not advise you  
 [19] within seven working days that he wishes to deal with  
 [20] the matter privately, that is one and one, between you  
 [21] and Shell. That is what you are going to do?  
 [22] **A:** I was hoping that Shell would agree to  
 [23] mediation again.  
 [24] **Q:** You were putting pressure on them to  
 [25] get your way?

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[1] expert should clear the court. Mr. Donovan, you are  
 [2] under oath. You must not discuss this with anybody  
 [3] outside.  
 [4] (Proceedings in camera- separate transcript)  
 [5] **MR HOBBS:** Mr. Donovan, bundle G1 is open in  
 [6] front of you and I was just going to ask you first of  
 [7] all to see the nature of the bundle. This is the  
 [8] material of similar fact?  
 [9] **A:** Yes.  
 [10] **Q:** If we look first of all at page 3,  
 [11] taking it at the bottom, you will see that this is a  
 [12] letter not signed, but your name is at the bottom to Cor  
 [13] Herkstroter, drawing his attention to various matters  
 [14] and so on and so forth. Have you at any stage seen this  
 [15] bundle before this trial started? It has been in the  
 [16] trial bundles since they were formulated.  
 [17] **A:** I have seen all of what I can see of  
 [18] these items but not necessarily in this form in these  
 [19] bundles.  
 [20] **Q:** So, you know the general nature of the  
 [21] material collected in these two G files. It is the  
 [22] campaign stuff?  
 [23] **A:** Right.  
 [24] **Q:** Have you read the skeleton of argument  
 [25] Mr. Robertson and I prepared for the purposes of this

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[1] trial?  
 [2] A: Yes, I did.  
 [3] Q: You remember the tables at the back?  
 [4] A: Yes.  
 [5] Q: This is what is in these two files, G1  
 [6] and 2 I am coming to a particular point on those, but I  
 [7] just want to be clear with you on one or two matters,  
 [8] During 1997, after you had sent that letter that we were  
 [9] concerned with just now at length this morning, you  
 [10] maintained pressure on Shell by means of indicating that  
 [11] you would go into a big PR campaign against them, Is  
 [12] that a fair assessment of what you did during 1997?  
 [13] A: Yes, I think it probably is, yes.  
 [14] Q: It reached the point where you get to  
 [15] issue a writ in 1998?  
 [16] A: Can I just backtrack, I believe that I  
 [17] wrote to Mr. Moody- Stuart soon after he became Chairman  
 [18] of Shell Transport and Trading and I asked him to  
 [19] intervene and I think I probably at some point even,  
 [20] either in that first letter of subsequent letter,  
 [21] suggested mediation, arbitration, ADR and I have  
 [22] suggested that since then in various letters during that  
 [23] period,  
 [24] Q: But, it never came to that?  
 [25] A: It was not picked up,

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[1] were not prepared to accept D. J. Freeman's stance?  
 [2] A: No, that the claim was doomed to  
 [3] failure, no, I was not,  
 [4] Q: So, we reach the point on 9th April,  
 [5] 1998 the writ in the present proceedings is issued?  
 [6] A: Yes,  
 [7] Q: And, as you expected, nearly ten months  
 [8] previous, yo know the statement of claim was endorsed on  
 [9] that write. You knew that did you not?  
 [10] A: Yes,  
 [11] Q: What happens is I am going to try and  
 [12] pick up the documents in G1, If you go towards the back  
 [13] end of it and I want to show you the correspondence in  
 [14] the immediate aftermath of the writ, page 189/G1, That  
 [15] is a letter of 14th April, 1998 from yourself to Mark  
 [16] Moody- Stuart, do you see that?  
 [17] A: Yes, I do,  
 [18] Q: This was after the writ has been issued  
 [19] and according to my understanding of the documents also  
 [20] after the point in time at which the writ has actually  
 [21] been served?  
 [22] A: I think so, yes.  
 [23] Q: That is what I thought too, We pick  
 [24] that up from later documents, On 189:  
 [25] "I thought it appropriate to brief you on the comments

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[1] Q: You did not get what you wanted in that  
 [2] respect and you maintained pressure on them?  
 [3] A: Yes.  
 [4] Q: You would not object if I called it a  
 [5] blitz of material? You were writing to them I do not  
 [6] know how frequently, sometimes letters are going out  
 [7] like one a day or sometimes more than one a day?  
 [8] A: OK, I accept that,  
 [9] Q: We get to a point in time in 1998 when  
 [10] a writ in this action is issued and the writ in the  
 [11] present action, I will just check the date for my own  
 [12] purposes --  
 [13] A: Is it possible to mention something  
 [14] else?  
 [15] Q: If you like,  
 [16] A: Because I was anxious not to get  
 [17] involved in further litigation, there was a suggestion  
 [18] made that D. J. Freeman would supply a report which they  
 [19] did in June or July, 1997 and that we would in effect  
 [20] take the case up to the discovery stage without actually  
 [21] commencing litigation and in the meantime I would not  
 [22] carry on with the campaign, I think I said that  
 [23] voluntarily, I do not think Shell tried to impose that  
 [24] on me, but that is what happened,  
 [25] Q: But, that came to nothing because you

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[1] I have just made to Marketing Week, I said that I am  
 [2] now in active correspondence directly with you as a  
 [3] result of the faxed letter I received from you on the  
 [4] day the Writ was issued, I have informed them that Mr.  
 [5] Kerkstroter is being kept fully informed,"  
 [6] This is confirming and it is the fact, is it not, that  
 [7] you were in communication with the media and in  
 [8] particular with Marketing Week?  
 [9] A: Yes.  
 [10] Q: If you turn the page in this document,  
 [11] actually turn to page 190, you are writing to him again  
 [12] on the 15th:  
 [13] "... The litigation against Shell is featured as the  
 [14] main story in this week's edition of Marketing Week  
 [15] magazine. It is also the lead story on their website.  
 [16] Please be advised that I have this morning had  
 [17] discussions with a national newspaper. They have a  
 [18] particular interest in the Writ and associated matters,  
 [19] I intend to fax across to them later today copies of my  
 [20] recent letters to you, together with a copy of the  
 [21] letter from Mr. Wiseman dated 14th May 1997, If you  
 [22] have any objection to me supplying the letters, then  
 [23] please arrange for one of your staff to contact me by  
 [24] telephone before 2pm today, so that the matter can be  
 [25] discussed, Damage limitation is still possible at this

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[1] stage,"  
 [2] If you turn the page, there is the web page?  
 [3] A: Yes.  
 [4] Q: If you turn the page, 192, there is a  
 [5] hard copy page, the full text. You will see from page  
 [6] 192 on the right-hand column:  
 [7] "Don Marketing is claiming multimillion pound damages,  
 [8] Its writ demands an injunction to prevent Shell using  
 [9] the scheme, an admission that the agency's confidential  
 [10] information was 'misused' and that all promotional  
 [11] material credits Don Marketing with originating the  
 [12] scheme. This legal case is the latest in a series of  
 [13] spars between Shell and Don Marketing. All have been  
 [14] settled out of court with the settlements remaining  
 [15] confidential."  
 [16] You see that?  
 [17] A: I do.  
 [18] Q: At that stage the press had not got  
 [19] hold of the details of the confidential matters?  
 [20] A: I assume they got this from the writ,  
 [21] from the statement of claim on the writ.  
 [22] Q: You have been in communication with  
 [23] them because there is a quote from you under the  
 [24] photographs, the third column from the left. You are  
 [25] actually quoted?

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[1] It goes on:  
 [2] "The three previous cases hinged on the same claim of  
 [3] infringement. Additional papers, lodged with the High  
 [4] Court writ, show that in 1996, Shell settled two cases  
 [5] brought by Don Marketing 'on terms favourable to the  
 [6] plaintiff'. In both cases, one a Nintendo-themed  
 [7] promotion, the other a Hollywood-themed promotion, the  
 [8] agency claimed that shell had used its ideas, given in  
 [9] confidence in 1992, without either crediting the agency  
 [10] or paying for such use. In a third case, Shell paid 'a  
 [11] substantial sum' to settle a legal action in April,  
 [12] 1994. It resulted from the re-use of the 'Make Money'  
 [13] promotion which Don Marketing first ran for Shell in  
 [14] 1981. Don Marketing is demanding a multimillion pound  
 [15] settlement in the Smart case. But, Shell, which has 14  
 [16] days after the writ's issue to respond, says, 'We are  
 [17] filing a defence and possible a counter claim.'  
 [18] And you know those appear in the similar fact portion of  
 [19] your statement of claim?  
 [20] A: Probably.  
 [21] Q: "News Analysis, page 21." If you turn  
 [22] the page you will see page 21 of Marketing Week, April  
 [23] 23rd and not to labour this, that item running across  
 [24] four columns across page 205 and down one column on 206,  
 [25] plus that photograph there, is all relating to what we

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[1] A: Yes.  
 [2] Q: And the covering letter on 189, I  
 [3] understood to be indicating you had been giving  
 [4] interviews or comments to Marketing Week?  
 [5] A: I think this is after they got a copy  
 [6] of the writ from the court and they probably telephoned  
 [7] me afterwards.  
 [8] Q: Turn on please to page 204 in this  
 [9] bundle. This is Marketing Week, April 23rd 1998. You  
 [10] see that from the bottom right-hand corner?  
 [11] A: Yes, I do.  
 [12] Q: The heading at the top is:  
 [13] "High Court papers unveil 'secret' Shell writ losses".  
 [14] You see that?  
 [15] A: Yes.  
 [16] Q: "High Court papers have revealed that  
 [17] Shell has already lost three copyright battles with the  
 [18] promotional agency that issued a High Court writ against  
 [19] it two weeks ago. The details of the out-of-court  
 [20] settlements have, until now, remained secret as part of  
 [21] the agreement reached by the two sides. In the latest  
 [22] legal action, Don Marketing is suing Shell for allegedly  
 [23] breaching its copyright on the concept idea used to  
 [24] create Shell's Smart car loyalty scheme, which is being  
 [25] tested in Scotland."

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[1] have been talking about, the similar fact evidence, is  
 [2] it not?  
 [3] A: I assume so, yes, I have not read it  
 [4] all but I assume it is the case.  
 [5] Q: And this is the material in respect of  
 [6] which you accepted in answer to my question a short  
 [7] while ago that you probably tipped them off about the  
 [8] High Court writ with a view to getting into the public  
 [9] domain by publications like this, the details of the  
 [10] similar fact evidence?  
 [11] A: Yes, whatever was legally permissible  
 [12] to do.  
 [13] Q: Would you now take --  
 [14] MR JUSTICE LADDIE: Are you going to a new  
 [15] subject? It is a matter for you.  
 [16] MR HOBBS: I will not finish it before  
 [17] 1.00 pm  
 [18] MR JUSTICE LADDIE: Let us stop now,  
 [19] (1.00 pm)  
 [20] (The Luncheon Adjournment)  
 [21] (2.00 pm)  
 [22] MR HOBBS: Could we please go to volume E10 and you can  
 [23] close up G1, if you have not already. In E10 would you  
 [24] please turn to page 4795?  
 [25] A: I have that.

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[1] Q: Thank you. This is headed "Shell Shareholders'  
[2] Organisation". Is that the same as or different from  
[3] the Shell pressure group, or is it - it has a name?  
[4] A: Shell Corporate Conscience Pressure Group.  
[5] Q: Is this the same or different?  
[6] A: It is different.  
[7] Q: Is it?  
[8] A: Yes.  
[9] Q: You are chairman of this one, are you chairman of the  
[10] other one as well?  
[11] A: I was involved in running that organisation. I cannot  
[12] remember if I was chairman or not. The difference was  
[13] that we had garages that were members of the first  
[14] organisation. We did not with this one, with this Shell  
[15] shareholders' group.  
[16] Q: We can see that this is dated 20th April 1998. It is a  
[17] letter from you to Mark Moody-Stuart. You are referring  
[18] him to a number of display advertisements in a number of  
[19] national newspapers in the run-up to AGM. You can see:  
[20] "Unlovable Shell? Now showing at", and you give  
[21] the website. Then:  
[22] "Shell Fat Cats? Now showing at", and you give  
[23] the website:  
[24] "These teaser adverts", you say, "are designed to  
[25] attract Shell shareholders, Shell employees and Shell

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[1] without substance.  
[2] "Mr Donovan has now issued a writ against Shell UK  
[3] in respect of SMART. We intend to defend his claims  
[4] vigorously in court."  
[5] You were aware of this press release at some stage  
[6] in April, were you not?  
[7] A: Yes, I was.  
[8] Q: Did you take exception to it?  
[9] A: Yes, I did.  
[10] Q: What did you not like about it?  
[11] A: Because it inferred that I had brought several claims  
[12] against Shell but it does not say that in fact they were  
[13] settled in my favour. So anyone reading it would think  
[14] that I was just a vexatious litigant who brought claims  
[15] that did not have any value.  
[16] Q: Am I right in thinking that you then commenced  
[17] proceedings for libel against Shell?  
[18] A: That is correct.  
[19] Q: And those proceedings are still pending at this present  
[20] time?  
[21] A: That is correct.  
[22] Q: Turn to page 4798. This is headed, at the top  
[23] right-hand corner, "For reactive use only". Do you see  
[24] that?  
[25] A: I do.

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[1] station operators to our website. Please note that the  
[2] website address is not currently known to anyone other  
[3] than Shell and our advisors and suppliers. The entire  
[4] content will be carefully reviewed within the next few  
[5] days. Any comments that DJ Freeman may wish to make  
[6] will be given proper consideration."  
[7] Then you enclose a survey form. That happens to  
[8] be the document which follows on the next page.  
[9] Let me take you on, against that background, to  
[10] page 4797, two pages on into the bundle. This is a  
[11] press release, headed "Mr John Donovan". Do you  
[12] remember this?  
[13] A: I do.  
[14] Q: It is dated April 1998. It makes the statement that you  
[15] see there:  
[16] "Over the last four years, Mr John Donovan, who  
[17] has a company called Don Marketing UK Ltd, has made  
[18] various claims that he or his company own rights in  
[19] respect of several Shell UK forecourt promotions. His  
[20] most recent allegations have been that his company  
[21] invented the SMART loyalty programme and that he or his  
[22] company should be compensated for its use.  
[23] "The claim has been most carefully investigated  
[24] and discussed in correspondence with Mr Donovan and his  
[25] solicitors and Shell UK is satisfied that it is entirely

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[1] Q: Do you see the date, 21st April 1998, at the bottom?  
[2] A: I do.  
[3] Q: "Mr John Donovan,  
[4] "Over the last four years, Mr John Donovan, who  
[5] has a company called Don Marketing UK Ltd, has made  
[6] various claims", and you can see there is the  
[7] reiteration of words?  
[8] A: Yes.  
[9] Q: In the third paragraph:  
[10] "In April 1994 Shell UK paid Mr Donovan for a  
[11] contribution to one forecourt promotion, after it was  
[12] established that he had some rights in respect of the  
[13] development of the concept. However he then proceeded  
[14] to claim rights to two further promotions (called Now  
[15] Showing and Nintendo).  
[16] "Mr Donovan's claims were settled on terms which  
[17] remain confidential. However, Shell UK can confirm that  
[18] the reasons for the settlement were not related to the  
[19] merits of Mr Donovan's case. Rather the settlement took  
[20] place because Shell UK viewed it as a waste of resources  
[21] to continue with an expensive legal dispute.  
[22] "Mr Donovan has recently issued a writ against  
[23] Shell UK in respect of SMART. We intend to fight his  
[24] claims vigorously in court."  
[25] Do you see that?

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[1] A: I do,  
 [2] Q: Am I right in thinking you took exception to that?  
 [3] A: I believe that I did,  
 [4] Q: Am I right in thinking that this is also the subject of  
 [5] the defamation action?  
 [6] A: I think it is certainly involved in it, yes,  
 [7] Q: Turn to page 4799, which is the next page, 23rd April,  
 [8] 1998. This is a letter from DJ Freeman. Do you  
 [9] remember receiving this letter?  
 [10] A: Yes, I do.  
 [11] Q: You can see - we can summarise it - that they have  
 [12] been giving further consideration to the contents of  
 [13] your two websites and they give the addresses?  
 [14] A: Yes.  
 [15] Q: "Our correspondence to date has focused on potential  
 [16] breaches of the confidentiality provision in the  
 [17] [funding] Deed. However, I must draw your attention to  
 [18] other obligations undertaken by you in that deed,"  
 [19] They refer you to the provisions of clause 3(b),  
 [20] which they quote?  
 [21] A: Yes.  
 [22] Q: They go on to say:  
 [23] "There is no question that the effect of the  
 [24] material published on the two websites has the effect of  
 [25] putting you in clear breach of that covenant. Although

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[1] website. You will appreciate that the Deed of 6th July  
 [2] 1995 provides that if you are in breach of any of the  
 [3] terms of the Deed all monies paid under that Deed are  
 [4] liable to be repaid. My clients fully intend to take  
 [5] steps to enforce such repayment if breaches take place."  
 [6] You remember receiving that letter, do you not?  
 [7] A: I do.  
 [8] Q: Your response is on the next page, 4803, a letter from  
 [9] you back to Mr Joseph of DJ Freeman. You are writing on  
 [10] 24th April:  
 [11] "Thank you for your faxed letter.  
 [12] "I confirm that, as I have said all along, the  
 [13] intention of myself, my father and Don Marketing is  
 [14] strictly to abide by the various agreements into which  
 [15] we have entered over time. We have taken legal advice  
 [16] to ensure that we fully understand the true ambit of all  
 [17] those observations."  
 [18] You go on to say that wherever possible, you will  
 [19] inform Shell in advance of any proposed course of action  
 [20] "to permit you the opportunity of raising objection".  
 [21] All right?  
 [22] A: Yes.  
 [23] Q: You remember writing this letter back. So on 24th April  
 [24] you are confirming an intention to abide by the  
 [25] agreement; that is the purpose of your letter primarily,

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[1] you claim to seek favourable as well as unfavourable  
 [2] comment, the whole tenor of the contents of the sites  
 [3] can leave the reader in no doubt that the primary object  
 [4] is to seek material for the purpose of denigrating  
 [5] Shell.  
 [6] "You have indicated in specific terms your wish  
 [7] to abide by the confidentiality provisions ... I should  
 [8] now be grateful to receive your specific assurance that  
 [9] you also intend to honour the terms of the other  
 [10] provisions of that Deed, including clause 3(b), and in  
 [11] consequence that all offending material on the website  
 [12] will be removed immediately."  
 [13] All right?  
 [14] A: Yes.  
 [15] Q: You respond on page 4801, 23rd April, the next page:  
 [16] "Thank you for yours ... We will carefully  
 [17] consider your comments as always and will be in contact  
 [18] as soon as possible.  
 [19] "In the meantime, I attach a copy of a letter  
 [20] faxed across to Mr Moody-Stuart."  
 [21] I do not know what that was,  
 [22] Page 4802, next page, 24th April, DJ Freeman go  
 [23] back to you. They are saying to you, in the second  
 [24] sentence:  
 [25] "I await with interest your changes to the

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[1] is it not?  
 [2] A: Yes.  
 [3] Q: Turn the page now, 4804, 24th April. Royds Treadwell  
 [4] are writing to DJ Freeman. They enclose, in the first  
 [5] paragraph, for information a copy of a writ, which they  
 [6] have been instructed to issue against Shell. They  
 [7] enclose a copy of a press release, upon which the writ  
 [8] is placed. They go on about service and proceedings.  
 [9] Would you look at the penultimate paragraph there? It  
 [10] says:  
 [11] "Would you please note that both press statements  
 [12] but particularly the second are considered to be  
 [13] flagrant breaches of clause 2 of the Funding Deed dated  
 [14] 6th July 1995, which expressly prohibits any comment on  
 [15] or disclosure to the media of anything concerning the  
 [16] previous litigation between our clients, except in the  
 [17] form of a joint press statement, to be agreed between  
 [18] the parties. No attempt to agree the statement with our  
 [19] clients was made."  
 [20] Was this letter written on your instructions?  
 [21] A: It must have been.  
 [22] Q: Next paragraph:  
 [23] "Our clients' rights in regard to these  
 [24] fundamental breaches of the Funding Deed and in  
 [25] particular their option to accept those breaches as

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[1] having repudiated the agreement is expressly reserved  
[2] and they are considering their position as a matter of  
[3] urgency."

[4] Is that your recollection of what was happening at  
[5] that time?

[6] A: Yes.

[7] Q: Right. Go to page 4809. This is your solicitors, Royds  
[8] Treadwell, writing to DJ Freeman. They are writing on  
[9] 28th April. Taking the substantive third paragraph, it  
[10] says:

[11] "As to your final paragraph the fact is that the  
[12] press releases are self-evidently in breach of the  
[13] Funding Deed and there is no room to argue to the  
[14] contrary. We should add that the press releases are  
[15] also in breach of the Letter of Agreement and the  
[16] Mediation Agreement.

[17] "Please take this letter as confirmation of our  
[18] client's acceptance of your clients' repudiation of the  
[19] agreements referred to above. The continuing  
[20] obligations provided for thereunder have therefore now  
[21] fallen away.

[22] "Although our clients are no longer constrained  
[23] as to what they may say about their previous dealings  
[24] with your clients, at present they have no intention of  
[25] saying anymore than is necessary to set the record

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[1] up in a diary. I am told it is a Tuesday. Does that  
[2] help?

[3] A: Not really, no, to be honest.

[4] Q: It does not help me either.

[5] A: I know it was a Saturday when we were making a lot of  
[6] changes.

[7] Q: My point is this: this letter says what you have just  
[8] seen, looking at it on 4809. I am right, am I not, in  
[9] taking the position that from 28th April 1998 onwards,  
[10] you felt free to carry on and to act in the way you  
[11] subsequently did because you no longer felt constrained  
[12] by the settlement agreements we have mentioned in this  
[13] letter?

[14] MR JUSTICE LADDIE: He has already answered that question  
[15] once. He said "Yes". Getting him to say it twice will  
[16] make it no better or worse than him saying it once.

[17] MR HOBBS: Your Lordship is absolutely correct, with  
[18] respect.

[19] The consequence of that we can see, and all I am  
[20] going to ask you to do is to look in a general way at  
[21] volume G2. Would you reach for volume G2? Actually,  
[22] what I think I can do is ask you to look at the index.

[23] A: I do not have that one yet.

[24] Q: Sorry. At the front of the bundle there ought to be an  
[25] index?

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[1] straight."

[2] Right? Do you remember this particular watershed  
[3] of 28th April, 1998?

[4] A: I remember the letter, yes.

[5] Q: It is right, is it not, that from that date onwards you  
[6] have felt free not to honour the obligations which are  
[7] set out in the Funding Deed and the subsequent  
[8] settlement agreement?

[9] A: Because I understood that Shell were in breach of it.

[10] Q: That is your evidence as to your understanding?

[11] A: Yes.

[12] Q: You are, I believe, accepting my point, which is that  
[13] from this date onwards you have felt free of the  
[14] restrictions in those settlement agreements?

[15] A: It would be helpful to know what day was the 28th  
[16] April.

[17] Q: Do you mean day of the week?

[18] A: Yes.

[19] Q: I honestly could not tell you. Does it matter?

[20] A: Only I am trying to recall what happened because I know  
[21] that on the weekend, on the Saturday, we were still  
[22] making changes to the websites, the text that was  
[23] actually going to appear, and it would be interesting to  
[24] know the date.

[25] Q: All right. I cannot help you on that. We can look it

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[1] A: There is.

[2] Q: How is yours written? Could you hold it up, so that  
[3] I can see from here? Okay. If you look down the kind  
[4] of things which are mentioned there, you will see  
[5] extracts from website, letter to Mark Moody-Stuart,  
[6] letter to Advertising Standards. You can probably read  
[7] it quicker than I can. You can see the general nature  
[8] of the stuff that is there?

[9] A: Yes.

[10] Q: The actual contents of these documents are not in  
[11] dispute, are they, between you and me?

[12] A: I would not have thought so.

[13] Q: Your position would be the same as mine, that they speak  
[14] for themselves, do they not?

[15] A: Yes.

[16] Q: All right. This material is what we have described as  
[17] the "campaigning material" and you would accept, would  
[18] you not, that this does demonstrate campaigning on your  
[19] part?

[20] A: In general terms, yes. Without reading all the ... In  
[21] general terms, yes.

[22] Q: The documents speak for themselves. I will not take up  
[23] time with you in the witness-box on them now. Could you  
[24] put G2 away, please?

[25] Now, do you remember that before you issued the

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[1] writ in the present proceedings, that is your writ  
 [2] against my clients, you took an assignment of rights  
 [3] from the company, Don Marketing Limited?  
 [4] A: Yes.  
 [5] Q: It was the purpose of that assignment, was it not, to  
 [6] avoid the possibility of a security for costs  
 [7] application against you?  
 [8] A: Yes, it was.  
 [9] Q: Because that had happened to you previously?  
 [10] A: Correct.  
 [11] Q: Was it also the purpose of that assignment to enable  
 [12] you, as an individual, to make an application for Legal  
 [13] Aid?  
 [14] A: No, it was not.  
 [15] Q: All right, The assignment itself, within the past few  
 [16] days, your solicitors have supplied us with a copy of a  
 [17] resolution, I am not sure it is in the bundles so  
 [18] I will hand it up to you, if I may, (Handed) Is that a  
 [19] document you are familiar with?  
 [20] A: Yes, it is.  
 [21] Q: Do you remember executing that document?  
 [22] A: Yes.  
 [23] Q: You said "yes", Did you add anything?  
 [24] A: I just wanted to check to make sure it is the one that  
 [25] I think it is, Yes.

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[1] A: This says "Core documents B", It does not seem to have  
 [2] a 6 in it.  
 [3] Q: Does it not?  
 [4] A: No.  
 [5] Q: That is a shame! We can hand up a document, Just to  
 [6] confirm that what you have been handed has the  
 [7] page number 31 on the bottom at the front?  
 [8] A: Yes, it has.  
 [9] Q: This is the assignment that was executed by your  
 [10] yourself and your father, correct?  
 [11] A: Correct.  
 [12] Q: Do you see the first paragraph numbered on the first  
 [13] page: "The assignor has no significant assets," Do you  
 [14] see that?  
 [15] A: Yes, I do.  
 [16] Q: That is true, is it not?  
 [17] A: Yes.  
 [18] Q: That was true at the date of the assignment, You  
 [19] know - I think you do know - that the company's  
 [20] accounts covering this period, or very close to it, have  
 [21] been put in recently; you know that, do you not?  
 [22] A: I do.  
 [23] Q: It is right, is it not, that the company was insolvent  
 [24] at the end of its accounting year for 1998 and its  
 [25] accounting year for 1997?

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[1] Q: All right, Was it executed on 4th April 1998 at about  
 [2] 1 pm?  
 [3] A: Yes, It says that on there, yes.  
 [4] Q: Is that your recollection as well?  
 [5] A: Yes.  
 [6] Q: It is your father's signature, is it not, AE Donovan?  
 [7] A: Yes, it is.  
 [8] Q: Then it is your signature, John Donovan, at the bottom?  
 [9] A: It is.  
 [10] Q: It refers to an assignment, you see the second  
 [11] paragraph there?  
 [12] A: Yes.  
 [13] Q: Did you execute the assignment at the same time?  
 [14] A: Yes, we did, as far as I can recall, yes.  
 [15] Q: Where was this executed? Is this your office or your  
 [16] house?  
 [17] A: It is one and the same.  
 [18] Q: Is it? So you and your father executed these documents  
 [19] at St Andrew's Castle on that date, did you?  
 [20] A: I certainly did, I feel my father might have been  
 [21] abroad at the time and it might have been done by fax,  
 [22] if I have the right date.  
 [23] Q: Right, okay, Now, let us look at the assignment, which  
 [24] is in volume B at tab 6, Volume B, tab 6 you should be  
 [25] looking for now.

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[1] A: Probably, yes, I am not an accountant's person, You  
 [2] are possibly probably right, yes.  
 [3] Q: It had an excess of liabilities over its debts by well  
 [4] over 150,000 in each year, did it not?  
 [5] A: Right.  
 [6] Q: That is your recollection?  
 [7] A: Yes.  
 [8] Q: You certified - I am just confirming for the sake of  
 [9] the record certain matters - in here that the  
 [10] certificate of value, on page 35, stamped page 35, that  
 [11] the consideration for it does not exceed in the  
 [12] aggregate the figure of £60,000; you remember that?  
 [13] A: Yes.  
 [14] Q: You have always taken the view, have you not, and you  
 [15] have said so publicly, that your claim against Shell is  
 [16] worth millions?  
 [17] A: Potentially.  
 [18] Q: That is the basis -  
 [19] A: For publicity purposes, yes.  
 [20] Q: You mean you do not believe it in your heart of hearts?  
 [21] A: I really do not know the answer to that one.  
 [22] Q: Right, Now, the contents of the document are  
 [23] self-explanatory, I will not spend more time on that  
 [24] with you, Can I just ask you this: Mr Sotherton  
 [25] I understand is to be a witness in these proceedings?

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[1] A: Yes,  
 [2] Q: Do you remember that he became a party to the Letter of  
 [3] Settlement Agreement which is in this same volume, which  
 [4] you should have open at tab 4?  
 [5] A: I do,  
 [6] Q: Let us have a look at that, tab 4.  
 [7] A: Yes, I have that,  
 [8] Q: Right, Do you see that in the heading to that letter of  
 [9] agreement which is immediately behind the tab, there is  
 [10] a list of people between whom the agreement is made: Don  
 [11] Marketing, Shell, John Donovan, Alfred Donovan, Roger  
 [12] Sotherton, Do you remember why he became a party?  
 [13] A: Yes, I do,  
 [14] Q: That reason, in brief, was because he was claiming that  
 [15] he had an agreement with you to share part of the  
 [16] proceeds of that litigation?  
 [17] A: Correct,  
 [18] Q: It is the fact, is it not, that he has an agreement  
 [19] which would extend also to the proceeds of this  
 [20] litigation?  
 [21] A: No,  
 [22] Q: Can you just look at a letter which I now wish to hand  
 [23] to you? (Handed) Is this the letter you have seen  
 [24] before?  
 [25] A: If I could just read it for a second, (Pause)

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[1] this litigation?  
 [2] A: No, It goes on to mention the specific promotions that  
 [3] he was talking about, Of course, you would have to ask  
 [4] him, My understanding is that he accepts that this was  
 [5] my idea from way back when and that I claim the rights  
 [6] to it, I do not think that he is making any claim on  
 [7] that at all, You would have to ask him that,  
 [8] Q: You say I would have to ask him, Do you mean that you  
 [9] have had no discussions with Mr Sotherton about his  
 [10] position in this action?  
 [11] A: It has always been my understanding that he has no claim  
 [12] at all in regard to this action,  
 [13] Q: Have you discussed the matter?  
 [14] A: No, I do not think we have,  
 [15] Q: You have ignored it?  
 [16] A: He has never raised it because I expect, or I am sure he  
 [17] knows that it was my concept, it was my idea that came  
 [18] off the Megamatch version,  
 [19] Q: The position is, is it not, that you were a little  
 [20] irritated, not to put too fine a point on it, in 1996 in  
 [21] March, he had solicitors coming against you for  
 [22] 17,65 per cent, because, apart from anything else, this  
 [23] held up the settlement, did it not?  
 [24] A: Yes, it was a very awkward situation; true,  
 [25] Q: Is it your evidence to my Lord that even though he is a

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[1] That was in relation to the promotions that are  
 [2] named in here,  
 [3] Q: Named in where?  
 [4] A: In this letter,  
 [5] Q: Just hold on, Look at the second paragraph on the first  
 [6] page: "We are instructed", do you have that?  
 [7] A: Yes,  
 [8] Q: " that an independent witness was present when our  
 [9] client agreed terms with Mr John Donovan, a director of  
 [10] Don Marketing, that our client would provide on a  
 [11] speculative basis his time and expertise in the  
 [12] preparation and presentation and promotion of proposals  
 [13] to Shell, In return, our client would be entitled to an  
 [14] agency commission of 17,65 per cent on any concept fee,  
 [15] commission and any other fees received by Don Marketing  
 [16] from Shell arising from the presentations that John  
 [17] Donovan and our client might make to Shell's National  
 [18] Promotions Manager, Such presentations were made at  
 [19] Shell-Mex House in 1992 on 12th May, 4th June and 24th  
 [20] November,"  
 [21] Do you see the significant of those dates, 12th  
 [22] May 1992 and 24th November 1992?  
 [23] A: I do, yes,  
 [24] Q: It is the case, is it not, that Mr Sotherton wants, if  
 [25] I can put it in the vernacular, a piece of the action in

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[1] witness for you in these proceedings and even though you  
 [2] must, I think, have prepared your letter before action  
 [3] with some degree of discussion with him, that you have  
 [4] never discussed this topic?  
 [5] A: I do not think we have, no,  
 [6] Q: You say "you do not think"?  
 [7] A: I do not think we have, I have no recollection that  
 [8] that has been discussed because I think that he knows  
 [9] that it was my idea, right from the beginning,  
 [10] Q: When you did you last see Mr Sotherton?  
 [11] A: I would guess a couple of weeks ago,  
 [12] Q: How frequently have you seen him in the last two years?  
 [13] A: I would say probably on something like a two-monthly  
 [14] basis, or three-monthly basis,  
 [15] Q: Did you sit down together to prepare your respective  
 [16] witness statements?  
 [17] A: We certainly discussed the presentations that had been  
 [18] made to Shell and it helped me to remember what had  
 [19] happened and vice, versa I am sure,  
 [20] Q: How long did that exercise take, in fact, when you were  
 [21] sitting down together? Was it over several days,  
 [22] several weeks; how long?  
 [23] A: No, it would be a day at a time,  
 [24] Q: Spread over how long a period?  
 [25] A: Spread over a couple of hours, I would guess,

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[1] Q: The letter that we just looked at, which you still have  
[2] in front of you -

[3] A: I have.

[4] Q: - refers to concepts put in, put forward in 1992 on  
[5] 12th May, 4th June and 24th November; do you see that?

[6] A: Yes, I do.

[7] Q: Is it not part of your case that the multibrand loyalty  
[8] scheme was in fact put forward on 12th May and 24th  
[9] November?

[10] A: It is, but this letter goes on to specify the promotions  
[11] that he was talking about.

[12] Q: It does, because that was the subject-matter of your  
[13] impending settlement with Shell at that time, in respect  
[14] of which he was seeking money. That is why it refers to  
[15] those specific things because that is what was then  
[16] pending?

[17] A: As I say, my understanding is he has no claim in respect  
[18] of this concept but you would have to ask him that.

[19] Q: Would it come as a surprise to you then if he does make  
[20] a claim?

[21] A: Yes, it would.

[22] Q: I want to discuss one small general matter with you  
[23] before going back to documents. Can we just confirm, so  
[24] that the position is clear, that - do you remember the  
[25] discovery stages of this procedure, in this litigation,

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[1] obtain his agreement to act as a witness.

[2] Q: There is more to it than that, is there not? Did you  
[3] not have a long discussion with him and did you not in  
[4] fact share your grievance with him?

[5] A: Yes, I probably did.

[6] Q: Did you not in fact try to see whether he would support  
[7] you with evidence which you could use against  
[8] Mr Lazenby?

[9] A: I asked him whether he would be prepared to be a  
[10] witness. He was very upset with the documents that he  
[11] had seen that involved his situation with Shell and

[12] Mr Lazenby, and I asked him whether he would be prepared  
[13] to be a witness and he prepared a witness statement  
[14] following that.

[15] Q: Did you sit down with him and prepare that statement  
[16] with him?

[17] A: No, I did not.

[18] Q: Did you discuss the contents of that statement with him?

[19] A: No, I did not.

[20] Q: I rather understood from his statement that in fact what  
[21] he put into it reflects what you may have said to him in  
[22] relation to some of the documents you were giving to  
[23] him?

[24] A: It would reflect certainly the documents that I sent to  
[25] him, yes.

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[1] where each side produces its documents?

[2] A: Yes.

[3] Q: It is right, is it not, that you were the only person on  
[4] behalf of the plaintiff, in other words, you yourself  
[5] came to DJ Freeman's offices and inspected the files?

[6] A: That is correct.

[7] Q: And that nobody else did?

[8] A: As far as I know.

[9] Q: And that, in fact, there was a large number of files  
[10] there on discovery and you did not actually succeed in  
[11] inspecting all of them, did you?

[12] A: I inspected every page.

[13] Q: Did you?

[14] A: I certainly thought that I did. There was a huge volume  
[15] of documents, tens of thousands of pages, I would guess.

[16] Q: You made your selection from those documents and your  
[17] selection, to a greater or lesser extent, appears in  
[18] some of the trial bundles here?

[19] A: Yes.

[20] Q: You did two things that I know of: you took certain  
[21] discovery documents to Mr McMahon, did you not?

[22] A: I sent them to him via fax or mail. I think I faxed  
[23] most of it to him.

[24] Q: What was the purpose of doing that?

[25] A: So that he could see what had happened and hopefully to

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[1] Q: How did you liaise with him, entirely in writing?

[2] A: By telephone and by sending him documents by fax. I may  
[3] have sent some stuff by mail.

[4] Q: How much did you send him in terms of documents?

[5] A: All of the documents that were relevant to Concept  
[6] Systems, I may have sent him a copy of the proposal  
[7] that I put to Shell; I am not sure about that.

[8] Q: Did you speak to him face-to-face at any stage?

[9] A: Yes, I went on Saturday to collect the statement from  
[10] him at his restaurant in Twickenham, I think it was.

[11] Q: Is it the same story with Armstrong-Holmes?

[12] A: No, Mr Armstrong-Holmes, I have not met him, I have  
[13] only spoken to him by telephone. I did supply documents  
[14] to him by fax, which were relevant to his situation with  
[15] Mr Lazenby.

[16] Q: It did not happen out of the blue, of course; you must  
[17] have made contact with him?

[18] A: No, this happened because I found documents in discovery  
[19] that were of interest to me because it suggested that  
[20] other people had similar problems and I tried to trace  
[21] the people, unsuccessfully, and eventually I instructed  
[22] an enquiry agent, first of all, for Mr Armstrong-Holmes,  
[23] because I did not know whether that would be successful  
[24] or not, and after he tracked down Mr Armstrong-Holmes  
[25] I then, about a week later I think it was, asked him

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[1] whether he could trace Mr McMahon.  
 [2] Q: Were there other people beyond Mr McMahon and  
 [3] Mr Armstrong-Holmes that you sought to get support from  
 [4] in a similar way?  
 [5] A: No, I did speak to Mr Peter Jones of Powerpoints at some  
 [6] stage, from the documents.  
 [7] Q: I did not quite understand that.  
 [8] A: I think his name is Mr Peter Jones. I think he was a  
 [9] managing director of Geoff Howe & Associates and I think  
 [10] they put the Powerpoints' proposal to Shell.  
 [11] Q: Right. Your interest in speaking to those people was  
 [12] because you thought that they may have a sense of  
 [13] grievance against Mr Andrew Lazenby, correct?  
 [14] A: I thought that they could be a provider of similar fact  
 [15] evidence involving Mr Lazenby and Shell.  
 [16] Q: Right. I want to move to another matter now, so if you  
 [17] would like to clear your desk and have volume E1 in  
 [18] front of you for the moment, please.  
 [19] A: Right.  
 [20] Q: Page 12, please.  
 [21] A: This is E1?  
 [22] Q: E1, page 12.  
 [23] A: I have that.  
 [24] Q: Do you recognise this document?  
 [25] A: I do.

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[1] Q: Your proposal was that the idea should be run again but  
 [2] you had got a way of indicating - no, you had a  
 [3] proposal to put forward that it required no skill of any  
 [4] kind to be involved in the game?  
 [5] A: Correct, yes.  
 [6] Q: That was to do with Lotteries Act considerations,  
 [7] I think?  
 [8] A: Yes, it was.  
 [9] Q: As part of the proposal, I would like you just, please,  
 [10] to look at page 19. Do you see that is headed "Joint  
 [11] promotion"?  
 [12] A: Yes.  
 [13] Q: "Shell may also wish to consider joining together with  
 [14] other non-competing brands/outlets for an initial or  
 [15] subsequent promotion in respect of a blockbuster Make  
 [16] Money game, where all half notes issued would be  
 [17] interchangeable.  
 [18] "In other words, a half note issued at a Shell  
 [19] site might match up with a half note of the same value  
 [20] issued by a grocery outlet. We might even be able to  
 [21] involve a daily newspaper in the promotion."  
 [22] That is Megamatch, actually, is it not?  
 [23] A: Yes, it is what is termed as Megamatch, yes.  
 [24] Q: It is a loyalty village - of course you were in  
 [25] court - in which there are interchangeable

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[1] Q: This is a 1981 proposal. Was it actually the first you  
 [2] put forward, "you" meaning your company, that you put  
 [3] forward to Shell; was this the first ever?  
 [4] A: I think that I corresponded with someone there  
 [5] previously, I think back as far as 1979.  
 [6] Q: You can see you have what I have come to recognise as a  
 [7] familiar front page on page 13, do you see that, dated  
 [8] 29th May 1981?  
 [9] A: Right.  
 [10] Q: Turning in, glance at 15 and go on to 16.  
 [11] A: Right.  
 [12] Q: Look at the bottom paragraph on 16. It says:  
 [13] "Consequently we believe the time is right for  
 [14] Shell to introduce a new Make Money promotion."  
 [15] Do you see that, page 16, the last part of the  
 [16] text?  
 [17] A: Yes, I can.  
 [18] Q: What is happening here is that there is a proposal by  
 [19] you for a re-run of Make Money. Make Money was a very  
 [20] successful game from the 1960s, which involved matching  
 [21] halves?  
 [22] A: Yes.  
 [23] Q: And you had to answer a question correctly as well to  
 [24] win a prize?  
 [25] A: Correct.

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[1] opportunities for winning prizes based on matching  
 [2] halves?  
 [3] A: Correct.  
 [4] Q: This document goes on and on page 21 there are  
 [5] manuscript notes at the bottom?  
 [6] A: Right.  
 [7] Q: Those manuscript notes say:  
 [8] "Paul insists we give joint rights if they are to  
 [9] contribute" - that is Paul King, is it not?  
 [10] A: That would be.  
 [11] Q: "... to contribute to development. Shell will not run  
 [12] MM without us and Don not to offer to other companies.  
 [13] Paul to confirm in writing for formal reply."  
 [14] A: Correct, yes.  
 [15] Q: Turn the page to page 22. Paul King writes to you?  
 [16] A: Yes.  
 [17] Q: Really it is the second paragraph:  
 [18] "I agree to pay you a figure of up to £500 to  
 [19] cover your artwork costs on the understanding that this  
 [20] promotional idea remains the sole right of Don  
 [21] Marketing/Shell UK Oil until we agree mutually to differ  
 [22] on this arrangement."  
 [23] Yes?  
 [24] A: Yes.  
 [25] Q: That is your recollection?

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[1] A: Yes.  
 [2] Q: In fact, the next letter here, on page 23, which  
 [3] immediately follows, says in the first main  
 [4] paragraph that you are confirming that position -  
 [5] A: Yes.  
 [6] Q: - just to refresh your memory on that?  
 [7] A: Yes.  
 [8] Q: There are other papers in here, perhaps I will just show  
 [9] you page 35.  
 [10] A: Right.  
 [11] Q: What happened here, we are into 1983, as you see from  
 [12] the top of the page?  
 [13] A: Yes.  
 [14] Q: Let us see if we agree on this and let us see if I have  
 [15] understood it correctly. Although your proposal was put  
 [16] forward in 1981, you came to an understanding.  
 [17] A: Yes.  
 [18] Q: Nothing happened with it, in any way, shape or form,  
 [19] until 1983 or 1984, getting into that period?  
 [20] A: I think there was a long interval. I think you saw that  
 [21] we supplied a counsel's opinion.  
 [22] Q: You did. Mr Jarworth Finney(?).  
 [23] A: That was soon after the presentation, I think.  
 [24] Q: Anyway, events did not get moving at ground level -  
 [25] A: No.

[1] core bundle B. Does that make any sense at all? Every  
 [2] time you hand another one of these documents up it is  
 [3] referred to on the transcript as "Here is another  
 [4] document"; there is no reference then to where it is  
 [5] going to be found. No doubt when this reaches the  
 [6] European Court of Human Rights, they would like to know  
 [7] what the hell is going on.  
 [8] MR HOBBS: I am terribly sorry, my Lord.  
 [9] MR JUSTICE LADDIE: Why can we not have a bundle for  
 [10] hand-ups and some way of actually cross-referring the  
 [11] documents you are handing up to the transcript?  
 [12] MR HOBBS: There is no reason why we cannot have a  
 [13] bundle X. We, as the defendants, are not responsible  
 [14] for the bundling. It is just that Core B became the  
 [15] most convenient one.  
 [16] MR JUSTICE LADDIE: The only person so far who is handing up  
 [17] documents is you. Why should Mr Cox be preparing for  
 [18] that? You are handing up documents. Right, have a  
 [19] bundle X. May I suggest that over the adjournment a  
 [20] bundle X is prepared with dividers in and somebody had  
 [21] better produce an index so we know what is what.  
 [22] MR HOBBS: Yes. We actually asked for these documents to be  
 [23] in the bundles and we were refused the opportunity to  
 [24] have them.  
 [25] MR JUSTICE LADDIE: I do not want to get involved in a

[1] Q: - until, let us say into 1984?  
 [2] A: About this time, yes, November 1983. Paul King  
 [3] contacted me about that time. It might have been  
 [4] October.  
 [5] Q: All right. I would like you to look at the footnote on  
 [6] the next page, page 36.  
 [7] A: Right.  
 [8] Q: There is a confirmation of proprietary rights. It is as  
 [9] per Shell letter and their reply and those are the two  
 [10] letters we just looked at?  
 [11] A: Yes.  
 [12] Q: Then there are two invoices - possibly two. 37 and 38  
 [13] are the invoices reflecting money up-front for the  
 [14] running of the scheme?  
 [15] A: Right.  
 [16] Q: We have just agreed that this was, insofar as it was  
 [17] described in joint terms as a joint promotion,  
 [18] essentially Megamatch. You know, do you not, that there  
 [19] was a dispute between yourself and Shell in 1984  
 [20] relating to the Make Money concept?  
 [21] A: Yes.  
 [22] Q: I am going to hand you now a letter of 18th March 1994  
 [23] from your solicitors in that connection.  
 [24] MR JUSTICE LADDIE: Mr Hobbs, so far I have just been  
 [25] slipping all of these indiscriminately in the back of

[1] bitching campaign between the solicitors. I just want  
 [2] the papers to be in an order where they can be  
 [3] considered by the Court of Appeal, or wherever else it  
 [4] goes. Right.  
 [5] MR HOBBS: There should be in front of you a letter from  
 [6] Royds Treadwell, your solicitors, dated 18th March 1994?  
 [7] A: I have that.  
 [8] Q: Do you remember this letter?  
 [9] A: Yes, I do.  
 [10] Q: This is your claim - I say "your claim", it is Don  
 [11] Marketing UK Limited's claim, re Make Money?  
 [12] A: Yes.  
 [13] Q: There has been some correspondence. This letter says:  
 [14] "Dealing with the points you have raised regarding  
 [15] the Make Money promotion we have the following  
 [16] observations.  
 [17] "The penultimate paragraph on the first page of  
 [18] your letter is plainly wrong. We enclose for your  
 [19] information copies of the following."  
 [20] There is A to F. Those are the documents that  
 [21] I just mentioned and took you to in the transcript.  
 [22] Those are the documents.  
 [23] A: Yes.  
 [24] Q: It goes on in paragraph 2 to say:  
 [25] "As to the outline sent at 1A above you will



[1] note:  
 [2] (a) the notice on the title page to the effect  
 [3] that DM 'retain full intellectual proprietary rights' to  
 [4] the proposal contained in the document."  
 [5] So that is the outline at 1A?  
 [6] A: Yes.  
 [7] Q: "(b) that our clients' standard terms and conditions  
 [8] were expressly incorporated."  
 [9] A: Yes.  
 [10] Q: There is a reference to a new Make Money promotion and  
 [11] there is a reference to a novel Make Money game. There  
 [12] are handwritten notes and then (f) says:  
 [13] "At page 4 DM suggests running the Make Money  
 [14] promotion on a joint basis, possibly involving a daily  
 [15] newspaper."  
 [16] (g) is a reference to our new Make Money game, and  
 [17] so on.  
 [18] A: Yes.  
 [19] Q: There is a row going on between the parties and between  
 [20] the solicitors about the concept and it is a row which  
 [21] is going on around about that outline, which we looked  
 [22] at first of all from 29th May 1981. Do you remember  
 [23] that?  
 [24] A: Yes.  
 [25] Q: Do you remember that a writ was issued in these

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[1] Q: It is the fact that the compromise agreement released to  
 [2] Shell UK all rights in the concept described in that  
 [3] 1981 document, did it not?  
 [4] A: I can see what you are getting at now and I regret that  
 [5] earlier on when you said that it was the same as  
 [6] Megamatch, that it was Megamatch. It released the Make  
 [7] Money game, in my understanding, where it was a  
 [8] Shell-only scheme.  
 [9] Q: The 1981 document, on the joint portion of it, referred  
 [10] to what was indeed Megamatch. That is the Megamatch  
 [11] concept, is it not?  
 [12] A: No, it was not. It was the Make Money concept involving  
 [13] Shell only. There was a mention of that. I would have  
 [14] to go back to it, as a possible option or alternative to  
 [15] that scheme.  
 [16] Q: Do you want to see the 1981 document again?  
 [17] A: Please.  
 [18] Q: You do. E1.  
 [19] A: I have it.  
 [20] MR COX: My Lord, I should just mention that this takes the  
 [21] claimant somewhat by surprise because it has never been  
 [22] adverted to in any pleadings, as far as I can recall, or  
 [23] in any other shape or form until today. It may be that  
 [24] I can discuss that be Mr Hobbs.  
 [25] MR HOBBS: Would you look at E1, page 19?

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[1] proceedings on 6th April 1994?  
 [2] A: That sounds correct, yes.  
 [3] Q: I did not make up the date.  
 [4] A: I accept that.  
 [5] Q: Do you remember that the proceedings were then settled?  
 [6] A: Yes, I do.  
 [7] Q: Could you take volume E9A? If you would not mind please  
 [8] turning to page 3988 in E9A.  
 [9] A: I have that.  
 [10] Q: This is Shell's then solicitors, Mackrell Turner  
 [11] Garrett, 8th April 1994:  
 [12] "We confirm settlement in the following terms:  
 [13] "Our clients will pay to yours the sum of £60,000  
 [14] plus VAT in settlement of all causes of action that your  
 [15] client may have against ours in connection with the  
 [16] concept known as 'Make Money' or in relation to the  
 [17] subject-matter of the proceedings issued out of the High  
 [18] Court on 6th April, action number 1927.  
 [19] "Your client releases the rights to the concept  
 [20] known as 'Make Money' to our client in perpetuity."  
 [21] A: Correct, yes.  
 [22] Q: VAT receipt in respect of £60,000 and then if you turn  
 [23] the page, there is the VAT invoice that was raised by  
 [24] Don Marketing?  
 [25] A: Yes.

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[1] A: I have that.  
 [2] Q: "Shell may also wish to consider joining together with  
 [3] other non-competing brands/outlets for an initial or  
 [4] subsequent promotion in respect of a blockbuster Make  
 [5] Money game, where all half notes issued would be  
 [6] interchangeable."  
 [7] A: Yes.  
 [8] Q: That is a common promotional currency, is it not?  
 [9] A: Yes.  
 [10] Q: "Blockbuster" actually translates, jargon-wise, into  
 [11] "mega", does it not?  
 [12] A: It could do, yes.  
 [13] Q: It did do, did it not?  
 [14] A: Yes.  
 [15] Q: You are not really in any doubt about this, that  
 [16] Megamatch is essentially what is described here, are  
 [17] you? You are not really in any doubt about it?  
 [18] A: I would have to read all of this but what we were  
 [19] putting forward was the new Make Money game, as just a  
 [20] matching half Shell-alone game. Then we put this in as  
 [21] one possible option on it. I am not a lawyer and it  
 [22] certainly was not my intention for the rights to  
 [23] Megamatch to go along with Make Money.  
 [24] Q: Could you just keep open that page 19 that we have  
 [25] there, please?

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[1] A: Yes.  
 [2] Q: I am sorry to ask you to do this, but would you reach  
 [3] for another file, which is E3?  
 [4] A: Yes. I have it.  
 [5] Q: Would you mind, in that volume, turning to page 997? Do  
 [6] you recognise this document at 997?  
 [7] A: I do.  
 [8] Q: This is a proposal, F83, of 27th May 1992. You are  
 [9] presenting it to Woolworths; right?  
 [10] A: Yes.  
 [11] Q: This is a Megamatch proposal. Would you turn to  
 [12] page 999?  
 [13] A: I have that.  
 [14] Q: There is an introduction:  
 [15] "Genuine big ideas for promotional activity are a  
 [16] rare occurrence. Don Marketing is therefore pleased to  
 [17] present an exciting game promotion concept for 1993  
 [18] which can truly be described as a big idea, the largest  
 [19] scale game ever seen in the UK.  
 [20] "The game would involve several major retailers  
 [21] operating in complementary but non-competitive retail  
 [22] trade, each with national representation, participating  
 [23] at the same time in the same epic traffic building  
 [24] promotion, Megamatch.  
 [25] "The game format would basically be the same as

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[1] promotion basis in that letter. Do you remember? Do  
 [2] you want to see it again, 18th March 1994? It is the  
 [3] one I handed up to you.  
 [4] A: Right.  
 [5] Q: We went through this.  
 [6] A: We did.  
 [7] Q: Just refresh your memory. Item 1 on the first  
 [8] page lists documents A to E. The first one is the  
 [9] outline proposal that you probably still have open. The  
 [10] second one, paragraph 2, goes running through several  
 [11] subparagraphs (a) to (g) and they specifically refer,  
 [12] (f), to the Make Money promotion on a joint basis  
 [13] involving a daily newspaper?  
 [14] A: Yes.  
 [15] Q: That is the contours of the dispute between yourself and  
 [16] Shell at that stage and it was compromised on the basis  
 [17] of the document that we looked at; correct?  
 [18] A: As far as I was concerned, and I am not a lawyer,  
 [19] I thought we were settling the Make Money game, not  
 [20] Megamatch. I think that is fairly obvious from the  
 [21] subsequent correspondence that there has been about  
 [22] Megamatch in the proposals that I put up. I had no idea  
 [23] that it could be construed that we had also settled  
 [24] Megamatch as well as Make Money.  
 [25] Q: You did raise that invoice. Perhaps we should look at

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[1] was adopted for the two most successful games ever  
 [2] conducted in the UK, Shell Make Money in 1967 and Shell  
 [3] Make Money again in 1984. It would use the same  
 [4] matching halves technique with game pieces issued on a  
 [5] no purchase necessary, one per visit basis. However, in  
 [6] Megamatch the half notes would be universally  
 [7] interchangeable between the outlets of all partners in  
 [8] the promotion, thus forming a common game currency.  
 [9] This would stimulate cross-fertilisation as a half note  
 [10] collected from a petrol station might match up with a  
 [11] half note of the same prize denomination collected from  
 [12] a participating store or restaurant."  
 [13] Yes?  
 [14] A: Yes, correct.  
 [15] Q: There is no difference, is there, between what is on 999  
 [16] and what is on page 19?  
 [17] A: No. I certainly mentioned what was to become Megamatch  
 [18] in this proposal but, as far as I was concerned, Make  
 [19] Money was just the matching halves game running on its  
 [20] own and Megamatch was involving lots of different  
 [21] retailers.  
 [22] Q: That was why, you see, I took you to that letter of 18th  
 [23] March that I handed up because your solicitors, relative  
 [24] to the writ that was issued against my clients, referred  
 [25] to that proposal and referred specifically to the joint

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[1] it again. It is E9A, 3988.  
 [2] A: 3988.  
 [3] Q: That is the first of the two documents I showed you.  
 [4] A: Yes.  
 [5] Q: "We confirm settlement in the following terms."  
 [6] Look at 1:  
 [7] "Our clients will pay to yours the sum of £60,000  
 [8] plus VAT in settlement of all causes of action that your  
 [9] client may have against ours in connection with the  
 [10] concept known as 'Make Money' or in relation to the  
 [11] subject-matter of the proceedings ...  
 [12] "Your client releases the rights to the concept  
 [13] known as 'Make Money' to our client in perpetuity."  
 [14] Then there is the invoice which your company  
 [15] raised for £60,000 plus VAT?  
 [16] A: Yes.  
 [17] Q: There we are. I have shown you those documents now.  
 [18] Could you close your files up and put them back on the  
 [19] rack? Actually, keep E1. I beg your pardon, I need E2;  
 [20] I am sorry.  
 [21] MR JUSTICE LADDIE: Do you not need E1, Mr Hobbs? Is it E1,  
 [22] E2 or both?  
 [23] MR HOBBS: Could your Lordship give me a second? I am all  
 [24] over the place at the moment. E2, please. In E2, if  
 [25] you could turn to page 952.

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[1] A: I have that.  
 [2] Q: Do you remember this letter?  
 [3] A: I do.  
 [4] Q: This was an approach by you to Mr Lazenby in his  
 [5] capacity as National Promotions Manager?  
 [6] A: Yes, correct.  
 [7] Q: This lead to the meeting of 12th May 1992 -  
 [8] A: It did.  
 [9] Q: - 13th May 1992, yes? That meeting, which subsequently  
 [10] takes place in May, is the first meeting between  
 [11] yourself and Andrew Lazenby at Shell?  
 [12] A: That is correct, yes.  
 [13] Q: In this letter, you are basically pitching for the  
 [14] opportunity to meet him and to discuss some proposals  
 [15] for marketing and game opportunities in 1993 and 1994?  
 [16] A: Correct, yes.  
 [17] Q: Would you go on in the same bundle to page 973?  
 [18] (3.00 pm)  
 [19] Do you see that this document is a proposal which  
 [20] is dated 12th May 1992?  
 [21] A: I do.  
 [22] Q: This was a proposal which you put forward to Andrew  
 [23] Lazenby and which you subsequently discussed with him at  
 [24] a meeting on 13th May?  
 [25] A: 12th May, is it not?

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[1] A: Reasonably well.  
 [2] Q: All right. How long did it last?  
 [3] A: I would guess about an hour.  
 [4] Q: Where did it take place?  
 [5] A: At Shell-Mex House.  
 [6] Q: Do you remember whether it was a meeting room or an  
 [7] office that you met him in?  
 [8] A: I guess it was a meeting room. I think it was a meeting  
 [9] room, yes.  
 [10] Q: You say that on your side there was Roger Sotherton and  
 [11] yourself?  
 [12] A: That is correct.  
 [13] Q: Did you, before you went there, discuss with  
 [14] Roger Sotherton any matters of multibrand loyalty  
 [15] schemes?  
 [16] A: No.  
 [17] Q: How did the subject of multibrand loyalty schemes,  
 [18] according to you, come up in the conversation?  
 [19] A: It came up after we had been discussing the Megamatch  
 [20] game and that Andrew Lazenby said that his management  
 [21] were concerned about competitions, what he called games  
 [22] competitions. Roger Sotherton then raised the subject  
 [23] of the loyalty scheme.  
 [24] Q: What do you say that Roger Sotherton said?  
 [25] A: He pointed out that there was an alternative execution

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[1] Q: I beg your pardon. You discussed it the same day?  
 [2] A: Yes, we did. We took the proposals with us.  
 [3] Q: Thank you. You did not send it to him in advance?  
 [4] A: No.  
 [5] Q: I see. Let us just look at the contents of the  
 [6] document, ignoring for the moment the manuscript.  
 [7] Page 974, your introduction makes it clear, in the first  
 [8] paragraph, that you are presenting two alternative  
 [9] promotional game formats for consideration by Shell?  
 [10] A: Yes.  
 [11] Q: Turn to page 975, the first game option, it says, and  
 [12] that is Megamatch, yes?  
 [13] A: Yes.  
 [14] Q: We were just discussing the match, that is what that is?  
 [15] A: Yes.  
 [16] Q: You have a graphic on page 976?  
 [17] A: Yes.  
 [18] Q: That is a kind of Megamatch graphic, showing a brewery  
 [19] brand, a petrol brand and a store brand?  
 [20] A: Correct.  
 [21] Q: Your second proposal is on 977 for Shell Treble Chance,  
 [22] and you have a graphic for that on 978?  
 [23] A: Yes.  
 [24] Q: Those were your two proposals. How well do you remember  
 [25] the meeting of 12th May 1992?

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[1] of this multibrand principle, a consortium of retailers  
 [2] led by Shell, and we went into discussing the history of  
 [3] it, the fact that we had done some research on the  
 [4] Collect and Select scheme, that we had then put up a  
 [5] proposal to Shell, that Shell had taken an option on it  
 [6] after we had had discussions with Sainsbury's.  
 [7] Q: Are you saying you mentioned an option at that meeting?  
 [8] A: I think we did, yes.  
 [9] Q: Are you saying you mentioned Sainsbury's at that  
 [10] meeting?  
 [11] A: I think we did. I would have to check my statement but  
 [12] I think that is the case.  
 [13] Q: I would like you to do it from memory. How long then  
 [14] out of the one hour do you think was devoted to the  
 [15] subject of the multibrand loyalty proposal?  
 [16] A: I guess about ten minutes or so.  
 [17] Q: Ten minutes out of an hour?  
 [18] A: Yes. Most of the time was spent focused on the other  
 [19] two proposals.  
 [20] Q: Was this ten minutes at the back end of the one hour,  
 [21] the front end or -  
 [22] A: No, it was mid-way because it was after - I think we  
 [23] discussed Megamatch first and then this came in as a  
 [24] result of that discussion.  
 [25] Q: So you are saying that Mr Lazenby was told by Roger

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[1] Sotherton that Shell already held an option on this?  
 [2] A: Yes.  
 [3] Q: Did you discuss the circumstances in which the option  
 [4] was supposed to have been given?  
 [5] A: No, I do not think we did.  
 [6] Q: You did not?  
 [7] A: I do not think so, no.  
 [8] Q: How did Sainsbury's name come into this then?  
 [9] A: Because we explained that Sainsbury's had responded to a  
 [10] letter that we had sent to them on another subject and  
 [11] that we had then sent them details of that particular  
 [12] game, which I think was a Disneytime promotion, and that  
 [13] we had also asked Stuart Carson whether it was okay to  
 [14] discuss Megamatch with Sainsbury's because Sainsbury's  
 [15] previously had never been interested at all in any  
 [16] promotional activity that we had ever put up to them.  
 [17] Q: Did you mention that there was a letter to Paul King?  
 [18] A: I cannot remember the detail. I remember that we  
 [19] mentioned the option. I cannot remember the detail of  
 [20] that. We certainly mentioned Sainsbury's.  
 [21] Q: Who did the talking on this topic: yourself or Sotherton  
 [22] or both?  
 [23] A: I think mainly Roger Sotherton did.  
 [24] Q: Did you sit silently by?  
 [25] A: No, I probably made some comment into it.

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[1] years where people had to collect up stamps and we did  
 [2] some research on it a couple of times and it showed that  
 [3] people were fed up with the amount of time it took even  
 [4] to collect enough stamps for a small item. Therefore,  
 [5] that was a weakness in all of the schemes that were  
 [6] running at the time. We pointed this out to Paul King.  
 [7] I said that we were not a research company and that  
 [8] Shell should carry out its own research, and they did.  
 [9] Their findings duplicated ours and, therefore, this is  
 [10] how we started looking at how we could get over this  
 [11] basic failing with previous loyalty schemes; the time it  
 [12] took to save up, collect enough stamps or tokens to get  
 [13] a particular item.  
 [14] Q: I need an indication from you, please, as to how  
 [15] interested you perceived Mr Lazenby to be in this  
 [16] concept; very interested, scarcely interested, what  
 [17] degree of interest do you attribute to him, based on  
 [18] your observation?  
 [19] A: The interest was not as much as he had shown in - the  
 [20] Megamatch game was the most interesting to him.  
 [21] Q: How little, relatively speaking, was his interest in  
 [22] this proposal, according to you?  
 [23] A: He was interested but not to the degree of saying, "Can  
 [24] we have another meeting about it and can you put up a  
 [25] proposal to me?". He said that he would - I told him

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[1] Q: What are you saying Mr Lazenby's contribution to these  
 [2] exchanges was?  
 [3] A: That he was interested but he said that at that time  
 [4] they were thinking about short-term activity.  
 [5] Q: Did he express interest or surprise at the fact that  
 [6] Shell was supposed to have an option on it already?  
 [7] A: No. No.  
 [8] Q: Did he ask you for further information about the  
 [9] Sainsbury's communication on the option?  
 [10] A: He did not, no.  
 [11] Q: Did he show any interest in what you say you told him?  
 [12] A: Yes, he showed some interest, but the timing was not  
 [13] right for that.  
 [14] Q: What do you mean by "some interest"?  
 [15] A: Some interest in that he did not say, "Can we move on  
 [16] because I do not really need to know about that?". He  
 [17] was interested in what we were saying.  
 [18] Q: How did he manifest his interest to you?  
 [19] A: With the questions that he asked.  
 [20] Q: What questions did he ask?  
 [21] A: About the research that we had carried out.  
 [22] Q: What research was that?  
 [23] A: That was in respect of the Collect and Select scheme.  
 [24] Q: What relevance does that have -  
 [25] A: Because it was a loyalty scheme run by Shell for some

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[1] that we had already given the proposal to Paul King. He  
 [2] said he would get a copy from him.  
 [3] Q: A copy of what?  
 [4] A: Of the proposal.  
 [5] Q: What proposal?  
 [6] A: The proposal that we put to Paul King back in 1989.  
 [7] Q: Concept Four?  
 [8] A: Concept Four.  
 [9] Q: Was there any discussion about those two letters of 24th  
 [10] July 1990?  
 [11] A: I do not think so. I think we discussed Sainsbury's.  
 [12] We said that Shell had taken an option on the scheme but  
 [13] I do not think it went any further, or into any detail  
 [14] at all about the letters.  
 [15] Q: Even on your own view of this meeting, you did not  
 [16] expect this topic to arise, did you?  
 [17] A: I was a bit annoyed at it.  
 [18] Q: Pardon?  
 [19] A: I was a bit annoyed that it had been raised.  
 [20] Q: Why were you annoyed?  
 [21] A: Because I do not consider that it is professional to  
 [22] start talking about other schemes you put into  
 [23] proposals.  
 [24] Q: From the perspective of annoyance, you would have wanted  
 [25] Roger Sotherton to not say too much about this?

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[1] A: Once he had started, there was not much I could do but  
 [2] to support him. I was not particularly pleased about it  
 [3] because, as I say, if we are going to make a proposal  
 [4] I like to be prepared to do it properly.  
 [5] Q: Which you were not at all prepared to do it properly in  
 [6] relation to that?  
 [7] A: No, we were not.  
 [8] Q: Was your perception of Mr Lazenby's position that he was  
 [9] not particularly interested in pursuing this concept?  
 [10] A: Not to the extent of - no, he did not say, "Can we  
 [11] arrange a meeting and concentrate on this proposal? Can  
 [12] you supply us with a worked-up proposal?" No.  
 [13] Q: He was not interested in knowing all about it?  
 [14] A: He was interested but the degree of interest was not as  
 [15] great as it was in the Megamatch scheme. That was his  
 [16] prime interest. He wanted to know how soon it could be  
 [17] done.  
 [18] Q: Do you have the bundle open in front of you, page 980?  
 [19] A: Yes, I have.  
 [20] Q: Whose handwriting is that?  
 [21] A: Roger Sotherton's handwriting.  
 [22] Q: Whose handwriting is it on the preceding page?  
 [23] A: That is Roger Sotherton's handwriting, I think.  
 [24] Q: Page 975, whose handwriting is that, top and bottom?  
 [25] A: That is Roger Sotherton's handwriting.

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[1] that follows the page we were last looking at.  
 [2] A: 980/A?  
 [3] Q: Yes, it comes after 980.  
 [4] A: I see that.  
 [5] Q: Have you read this document?  
 [6] A: I have.  
 [7] Q: Do you accept that the topics which he identifies, or  
 [8] which you can see are discussed in this document, were  
 [9] discussed between you at that meeting?  
 [10] (3.15 pm)  
 [11] A: Yes.  
 [12] Q: Did you see Andrew Lazenby taking notes at that meeting?  
 [13] A: No, I do not recall that.  
 [14] Q: You do not deny that he took them?  
 [15] A: I do not deny it. I cannot recall him taking any notes.  
 [16] Q: Is that because you do not actually have a good  
 [17] recollection of the meeting?  
 [18] A: I think I have a reasonable recollection of the meeting,  
 [19] but I just do not remember him taking notes, no.  
 [20] Q: Look on page 980/C. He has written three actions points  
 [21] at the bottom on 980/C:  
 [22] "Reconvened week commencing 1st of the 6th."  
 [23] Does that tally with your recollection?  
 [24] A: Yes, it sounds reasonable.  
 [25] Q: "They to develop Megamatch to named partners", I think

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[1] Q: You made no notes yourself of that meeting?  
 [2] A: No, I did not, no.  
 [3] Q: Do you normally make notes of meetings?  
 [4] A: No, I do not, no.  
 [5] MR JUSTICE LADDIE: Just a second.  
 [6] MR HOBBS: Did you yourself observe Roger Sotherton's hand  
 [7] moving the pen that wrote those words on page 980?  
 [8] A: I do not think so. I cannot remember that, no.  
 [9] Q: You cannot say when those words were written on that?  
 [10] A: All I know is that when I found the documents, when they  
 [11] were needed in connection with this litigation, then  
 [12] those were the notes that were written on there. I do  
 [13] not recall them before that.  
 [14] Q: That was the first you knew yourself that these  
 [15] manuscript notes were on there?  
 [16] A: Yes.  
 [17] Q: Right.  
 [18] A: I think they would just have been taken back and put in  
 [19] the file at that stage.  
 [20] Q: Which file did you find this document in? Was it in an  
 [21] obvious place or in a non-obvious place?  
 [22] A: I had lots of different files, I cannot remember. It  
 [23] may have been in a Megamatch file; it probably was in a  
 [24] box file.  
 [25] Q: Turn to page 980/A, which is the manuscript document

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[1] that says.  
 [2] A: Yes.  
 [3] Q: Does that tally with your recollection?  
 [4] A: Yes, it does.  
 [5] Q: "AJL [Andrew Lazenby] to approve competitions". "To  
 [6] 'apro' competition."  
 [7] Do you see that?  
 [8] A: Yes, I do. I do not know what it means but, yes, I see  
 [9] it.  
 [10] Q: You know that Mr Lazenby says that he made this note and  
 [11] that, if there had been any significant discussion on  
 [12] the point that you have mentioned, he would have made a  
 [13] note of it?  
 [14] A: Yes.  
 [15] Q: Are you able to accept that you may be wrong in the  
 [16] evidence you are giving about that meeting?  
 [17] A: No. I know that we did discuss - as you can see, it  
 [18] mentions about Megamatch, it mentions about Sainsburys  
 [19] and it was during that discussion that we went into  
 [20] the - or Roger raised the subject of the loyalty brand  
 [21] scheme. I accept that there was not a significant  
 [22] discussion. It was discussed, but the main purpose of  
 [23] the meeting was Megamatch and the other proposal that we  
 [24] presented.  
 [25] Q: If it was discussed - and you know I do not accept

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[1] that - but, if it was discussed, it was hardly  
 [2] discussed at all. That would be correct, would it not?  
 [3] A: No. I think it was discussed - I said ten minutes. It  
 [4] may have been shorter than that. It might have been  
 [5] five minutes. There was not a long discussion about it.  
 [6] There was a discussion.

[7] Q: It might have been two minutes?

[8] A: No, it was longer than two minutes.

[9] Q: You can remember that much, can you?

[10] A: Yes, I can.

[11] Q: Turn to page 981. Here is your letter of  
 [12] 14th May 1992. Do you remember sending that?

[13] A: Yes, I do.

[14] Q: You are writing to him:

[15] "Dear Andrew, Roger Sotherton and I would like to  
 [16] thank you for the time you gave to our presentation.  
 [17] With your authority, I will now be contacting the various  
 [18] potential partners we discussed in regard to the  
 [19] multibrand proposal. I will supply them with outline  
 [20] proposals, plus invitations to attend exploratory  
 [21] discussions at Shell-Mex House in June as per  
 [22] instructions."

[23] With that in mind, look at the bullet points. The  
 [24] second of his bullet points on the preceding page."

[25] "They to develop Megamatch to named partners."

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[1] A: No.

[2] Q: It does not say:

[3] "Further to our discussions, we confirm that your  
 [4] company is already holding an option, that we have had  
 [5] correspondence with Paul King, that we have had  
 [6] correspondence with Sainsburys and here are the copies  
 [7] of the letters."

[8] It does not say any of that, does it?

[9] A: No.

[10] Q: Can you explain that?

[11] A: Because, as I explained, the main focus of the meeting  
 [12] was on the other subjects, one of which I was getting on  
 [13] with. As far as I was concerned, I was just tidying  
 [14] up - because Roger had raised the subject, I decided it  
 [15] was right to send Mr Lazenby a copy of the proposal. He  
 [16] had said that the timing was not right for it, and he  
 [17] might be interested at a later date and he would put it  
 [18] on file. So I thought that was the right thing to do.

[19] Q: It is clear from this letter - and I do not think you  
 [20] suggest otherwise - that the only thing you sent was  
 [21] Concept Four, the document in which Concept Four  
 [22] appeared?

[23] A: Yes.

[24] Q: You do not claim to have sent him anything else?

[25] A: No.

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[1] Do you see that?

[2] A: Yes, I do.

[3] Q: So that is at least one thing you have in common?

[4] A: Yes.

[5] Q: Then you see it says in your first paragraph:

[6] "I will supply them with outline proposals, plus  
 [7] invitations to attend exploratory discussions at  
 [8] Shell-Mex House in June as per instructions."

[9] That tallies with the first bullet point on 980/C:

[10] "Reconvene week commencing the 1st of the 6th."

[11] Right?

[12] A: Yes.

[13] Q: Then you go on to say:

[14] "We also noted your interest in the related  
 [15] multibrand loyalty card proposal to Paul King dated  
 [16] 23rd October 1989 and I enclose a copy of the proposal  
 [17] for your further information. Please read Concept  
 [18] Four. I am glad you agreed that the idea has sufficient  
 [19] merit to be retained on file for Shell's future  
 [20] consideration at an appropriate time in the future."

[21] Right?

[22] A: Yes.

[23] Q: There is absolutely nothing in this letter about  
 [24] anything said to Sainsburys, the existence of an option,  
 [25] is there?

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[1] Q: He cannot have known about the contents of the letter to  
 [2] Sainsburys of 24th July from you or this letter, can he?

[3] A: No, all he knew was what we had said to him verbally.

[4] Q: And you had not gone into any detail about what you had  
 [5] said to Sainsburys?

[6] A: No, we had not, no.

[7] Q: You had not gone into any detail about what you had said  
 [8] to Paul King, had you?

[9] A: I do not think we went into any great detail, no.

[10] Q: You did not go into detail?

[11] A: We talked about the history of it, the connection with  
 [12] Megamatch, the research, why it came about, the fact  
 [13] that Shell took an option on it. Mr Lazenby said that  
 [14] the timing was not right and that he would just - he  
 [15] would get a copy from Paul King and he would hold it on  
 [16] file.

[17] Q: What I want to put to you is this: in fact you got the  
 [18] impression at that meeting, did you not, that he was  
 [19] relatively luke warm about the concepts you had convened  
 [20] the meeting to discuss? He was relatively luke warm  
 [21] about them?

[22] A: No, not at all. I was excited by his response to  
 [23] Megamatch and I think we talked about Make Money as  
 [24] well. He actually started asking questions about  
 [25] lead-in times for producing the game pieces and I did

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[1] not know that Shell, at that stage in the promotion  
[2] cycle, were seriously thinking about a promotional game  
[3] again. So I was very excited by what I heard.  
[4] Q: Would you in fact have known where to find on your files  
[5] the two letters of 24th July 1990 at that stage?  
[6] A: I do not - as I say, one of those letters had got into  
[7] a different file to do with a different project.  
[8] Q: So the answer is: you would not have known where to lay  
[9] your hands on at least one of those two letters at that  
[10] point in time?  
[11] A: I think the degree of interest that was shown only led  
[12] me to send him - not to make a big thing of it. Only  
[13] to send a copy of that proposal.  
[14] Q: You see, Concept Four is, on any view of it, an  
[15] incomplete version of the Multibrand Loyalty Scheme that  
[16] you claim to have put forward?  
[17] A: Well, it speaks for itself, does it not? The actual  
[18] pages that I put forward.  
[19] Q: You mean Concept Four?  
[20] A: Concept Four.  
[21] Q: Concept Four suggests that, instead of using tokens or  
[22] vouchers, you can use points recorded on a card?  
[23] A: Yes.  
[24] Q: Otherwise it is the same as Megamatch: pure and simple?  
[25] A: A lot of the elements are the same: Shell-led consortium

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[1] A: We discussed some of the information that would have  
[2] been in those letters. We probably discussed Smart Card  
[3] technology. I cannot remember the precise details.  
[4] I would have to check the witness statement. Obviously  
[5] you have to sit down -  
[6] Q: Why can you sit there and give evidence on your oath  
[7] that you did discuss Smart Card technology? How are you  
[8] able to say that as you sit there?  
[9] A: Because I believe that we did.  
[10] Q: The basis for your belief is what?  
[11] A: My memory.  
[12] Q: You are telling my Lord, are you not, that you have a  
[13] recollection in your memory, as you sit there now, of  
[14] something happening?  
[15] A: I remember the loyalty scheme being discussed. We  
[16] covered a lot of the related topics, but not in detail.  
[17] So what I am saying is some of the things in those  
[18] letters may have been discussed during the meeting. But  
[19] not in detail.  
[20] Q: Well, you say "they may have been discussed". Which  
[21] aspects of those two letters may have been discussed,  
[22] according to the recollection you have as you sit  
[23] there?  
[24] A: We discussed the option, we discussed the background,  
[25] history, the research, how it came about. We

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[1] of major retailers, common promotional currency.  
[2] Q: So it is the same thing as Megamatch, except you are  
[3] using a card with electronic points on it?  
[4] A: Well, that turns it into an entirely different  
[5] promotion, does it not? One is a short-term game, the  
[6] other is a long-term loyalty-building scheme.  
[7] Q: Why, then, did you send it to him at all on  
[8] 14th May 1992?  
[9] A: For the reason I explained: we had had a discussion, the  
[10] proposal had been discussed, Mr Lazenby said he would  
[11] get a copy from Paul King but I thought the professional  
[12] thing to do was to send him a copy of it.  
[13] Q: Was there a response to this letter of 14th May 1992?  
[14] You wrote to him and I am not aware that there was any  
[15] reply back.  
[16] A: No, there was not. He did not write back to say  
[17] that "We never discussed this, I do not know what you  
[18] are talking about". No, there was no response at all.  
[19] Q: There was just no response?  
[20] A: There was no response at all.  
[21] Q: So we can at least agree on this, can we not: the  
[22] details of the contents of the two letters of  
[23] 24th July 1990 were not known to or revealed to  
[24] Mr Lazenby at this meeting or in the immediate aftermath  
[25] of it?

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[1] probably - we may have discussed other schemes that  
[2] were around at that time. The loyalty schemes.  
[3] Q: What other schemes might there have been: Premier  
[4] Points, Mobil, Argos? All that stuff?  
[5] A: The third party schemes, yes. We may have done.  
[6] I would have to check my witness statement on that.  
[7] Q: Why do you say, as you sit there now, you may have  
[8] done? What recollection are you calling to mind?  
[9] A: Because it is difficult sitting here under pressure, as  
[10] opposed to sitting on your own quietly and writing down  
[11] your recollection. They are two different things.  
[12] Q: Mr Donovan, I am putting it to you now you are making  
[13] this up as you go along and that you have no clear  
[14] recollection of that meeting at all?  
[15] A: I have a recollection of the meeting, as I have said.  
[16] Q: And that you certainly have no clear recollection of  
[17] making any communications to Mr Lazenby about the  
[18] contents of 24th July 1990 letters, either of them? You  
[19] have no clear recollection of that, do you?  
[20] A: We did discuss some of the details that would have been  
[21] in those letters, but not in great detail.  
[22] Q: You cannot say what details you would have discussed?  
[23] A: I would want to check my witness statement first to see  
[24] what recollection I put into writing.  
[25] MR JUSTICE LADDIE: Mr Donovan, can you help me on this:

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[1] I understand very well the difficulty, because you have  
[2] been in the witness box all day. I understand that must  
[3] be tiring. It is not something I have been subjected  
[4] to, but I understand it cannot be fun. Your witness  
[5] statement was drafted by you a few months ago; correct?

[6] A: I was.

[7] MR JUSTICE LADDIE: And, for the purpose of producing your  
[8] witness statement, you tried to recall what happened,  
[9] sometimes years before?

[10] A: Yes.

[11] MR JUSTICE LADDIE: Now, on a number of occasions you have  
[12] said to Mr Hobbs in response to a question "I prefer to  
[13] see what is in my witness statement". Your witness  
[14] statement itself is merely your recollection - recent  
[15] recollection - of what happened, in many cases, years  
[16] ago. Why do you think your witness statement is going  
[17] to have a more accurate record of your memory than being  
[18] here?

[19] A: Because I sat down and thought about it at length and  
[20] wrote it down and, of course, I am under pressure in the  
[21] witness box trying to make sure that I say the right  
[22] things and do not say things that are not in there. So  
[23] it is a different situation.

[24] MR JUSTICE LADDIE: For what it is worth, do not worry about  
[25] whether you say things that are or are not in your

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[1] detail because of the response that Roger got to what he  
[2] said.

[3] Q: It was an unreceptive response?

[4] A: It was of mild interest in that "the timing is not  
[5] right".

[6] Q: What, for a long-term concept?

[7] A: For a long-term loyalty scheme. We were focussing on  
[8] the possibility of short-term promotions and that he was  
[9] very interested in the Megamatch scheme.

[10] Q: So you were talking about long-term concepts to a man  
[11] who did not have an interest in long-term concepts?

[12] A: Well, Roger Sotherton did not know what the response  
[13] would be until he raised it. Which, as I said, came as  
[14] a surprise to me and, when he started talking, then  
[15] obviously I backed up what he was saying.

[16] Q: Let me turn it round: are you surprised that Mr Lazenby  
[17] has no recollection of this matter being discussed?  
[18] Does it surprise you?

[19] A: That is a difficult question. At times Mr Lazenby has  
[20] not had a very good memory on other subjects. So, from  
[21] that point of view, no, it does not surprise me. Except  
[22] for the fact that I, of course, wrote sending a copy of  
[23] that proposal a couple of days later. But it does not  
[24] surprise me that he might not recall the detail of what  
[25] was discussed.

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[1] witness statement. Insofar as it is possible - it may  
[2] not be terribly easily - just relax and answer the  
[3] questions as to what your recollection is now. You may  
[4] have got things wrong in your witness statement. It is  
[5] always possible. You may get things wrong now, but, if  
[6] you spend your time looking over your shoulder and  
[7] worrying about whether you are inconsistent with your  
[8] witness statement, it may end up doing worse. Try your  
[9] best just to relax. If you get terribly tired, tell me  
[10] and we will have a break.

[11] A: Thank you.

[12] MR JUSTICE LADDIE: When Mr Hobbs asks you a question, do  
[13] your best to recall now what happened at the time.

[14] A: Right.

[15] MR HOBBS: Mr Donovan, I was putting it to you that, in  
[16] fact, as you sit there now, you do not have any real  
[17] recollection of the matters that you have been  
[18] discussing?

[19] A: I have the recollection of the matters that  
[20] I have mentioned already, which is the background,  
[21] history, how it came about, the research and the fact  
[22] that we had put a proposal to Paul King. We may have  
[23] mentioned about the article in Promotions and  
[24] Incentives. I think - I believe we did mention about  
[25] Smart Cards, but we did not discuss any of it in huge

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[1] Q: The reason it does not surprise you is because it was  
[2] not, even on your own view of it, a significant matter,  
[3] a significant aspect of that meeting, was it?

[4] A: As I said earlier, the main focus of the meeting were  
[5] the two proposals that we had prepared to present and  
[6] took along, two proposals for him to consider.

[7] Q: Will you agree with me that the matters you have been  
[8] discussing were not a significant proportion of that  
[9] meeting, even on your own view of it?

[10] A: Yes, they were not the main subject. They were brought  
[11] up - because we were discussing Megamatch, then it is  
[12] almost inevitable, I suppose, that Roger would think of  
[13] the loyalty scheme. He brought up the subject and we  
[14] discussed it for five to ten minutes. Then we moved on  
[15] to the other proposal.

[16] MR JUSTICE LADDIE: Mr Hobbs, we have flogged this to  
[17] death. Mr Donovan must have said at least 15 times that  
[18] it was only five minutes, that it was not the major  
[19] subject, that it was not the thing that Mr Lazenby was  
[20] most interested in. Do we have to do it over and over  
[21] again? I will then have to decide whether or not  
[22] Mr Lazenby had any recollection of it at all or so on  
[23] and so forth.

[24] MR HOBBS: I am sorry your Lordship thinks I am overdoing  
[25] it. I was just about to move on, in any event.

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[1] **MR JUSTICE LADDIE:** Good.  
 [2] (3.30 pm)  
 [3] **MR HOBBS:** Mr Donovan, what I did want to ask was this: it  
 [4] is, I think, your evidence to my Lord that you did at  
 [5] this stage have a recollection that there was an option  
 [6] in place in favour of Shell?  
 [7] **A:** Yes, we did mention that.  
 [8] **Q:** Right. There came a later point in time in 1992 when  
 [9] you came into a meeting with Andrew Lazenby? I am  
 [10] referring to the meeting on 24th November 1992.  
 [11] **A:** Yes.  
 [12] **Q:** Would you close up the file we are in and you will need  
 [13] to look at volume E3. In E3, would you turn, please, to  
 [14] page 1328.  
 [15] **A:** I have that.  
 [16] **Q:** This was the proposal which Don Marketing put forward to  
 [17] Shell UK for discussion on 24th November 1992, was it  
 [18] not?  
 [19] **A:** Correct.  
 [20] **Q:** There is nothing in the contents of that document, is  
 [21] there - I am talking about the typescript - relating  
 [22] to anything other than short-term promotions, is there?  
 [23] **A:** No, that is correct. Yes, one of them was the loyalty  
 [24] scheme, but it was short-term.  
 [25] **Q:** There is nothing in here about what we know in this

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[1] **Q:** How long was this telephone conversation?  
 [2] **A:** Short.  
 [3] **Q:** Do you have a clear recollection of it, as you sit  
 [4] there?  
 [5] **A:** Reasonably so. But it was only for a few minutes. We  
 [6] set the date and I found the letter and we took it along  
 [7] with us.  
 [8] **Q:** What did he actually say to you about that letter?  
 [9] **A:** He said that - it may have been that he was discussing  
 [10] something with Sainsburys, that there was some interest  
 [11] with Sainsburys and he would be interested in seeing the  
 [12] letter that we had sent to them about the loyalty  
 [13] scheme. So it seemed that there was some interest in  
 [14] it.  
 [15] **Q:** What did he actually say to you in terms of the request  
 [16] for the letter? What did he actually ask you for?  
 [17] **A:** He said about the letter that we had sent to Sainsburys  
 [18] regarding the Multibrand Scheme and that it would be  
 [19] helpful if he could see a copy of it.  
 [20] **Q:** Was it your understanding, according to your evidence,  
 [21] that he had not seen a copy of it before?  
 [22] **A:** Yes.  
 [23] **Q:** Was it your understanding, according to your evidence,  
 [24] that he knew nothing of its contents?  
 [25] **A:** I do not think - only whatever it was that we had

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[1] proceeding now as the Multibrand Loyalty Concept, is  
 [2] there? There is nothing in the text?  
 [3] **A:** No, there is not, no.  
 [4] **Q:** There is no reference to Concept Four, is there?  
 [5] **A:** No, there is not.  
 [6] **Q:** Your evidence, as I understand it, is that, in the  
 [7] run-up to this meeting, you were contacted by  
 [8] Andrew Lazenby?  
 [9] **A:** I think it is probably the other way round: I probably  
 [10] phoned him to set up the meeting. Early in  
 [11] November, I think it probably was.  
 [12] **Q:** Is it your evidence that you took some documents with  
 [13] you to this meeting?  
 [14] **A:** Yes. Because, during the telephone call, the multibrand  
 [15] scheme was discussed by Mr Lazenby. He brought up the  
 [16] subject and said that - commented on the Sainsburys  
 [17] correspondence and asked me if I could take in a copy of  
 [18] the letter we sent to Sainsburys.  
 [19] **Q:** What do you recollect of this telephone conversation?  
 [20] **A:** That we discussed the proposals that we were going to  
 [21] make to him and, as I say, he mentioned the loyalty  
 [22] scheme and said that it would be helpful if he could see  
 [23] a copy of the letter from Sainsburys.  
 [24] **Q:** He raised it with you, you say?  
 [25] **A:** Yes.

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[1] discussed during that first meeting.  
 [2] **Q:** So you are saying this is a sort of delayed reaction  
 [3] from him to the meeting in May?  
 [4] **A:** I did not know what had prompted that. I can now see  
 [5] from discovery why the interest was there. But, at the  
 [6] time, no, I did not know what had prompted the interest.  
 [7] **Q:** What did you say in response to his request?  
 [8] **A:** That I was happy to take the letter along.  
 [9] **Q:** Did you ask him why he was asking for it?  
 [10] **A:** I cannot remember going into any detail at all. Since  
 [11] we were going to meet with him and since he had asked us  
 [12] to take a copy, I thought that would be covered when we  
 [13] met with him.  
 [14] **Q:** So you went to a meeting on 24th November -  
 [15] **MR JUSTICE LADDIE:** Can I just ask a question: this  
 [16] telephone conversation - it does not matter who phoned  
 [17] who - are you saying Mr Lazenby asked you for a copy of  
 [18] the letter?  
 [19] **A:** Yes.  
 [20] **MR JUSTICE LADDIE:** Out of the blue? You did not remind him  
 [21] about the letter. Out of the blue he said to you ...  
 [22] **A:** Yes, he asked me for a copy.  
 [23] **MR HOBBS:** And you simply listened to the request and said,  
 [24] "Okay, I will produce this letter"?  
 [25] **A:** Yes. I said I would bring it along.

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[1] Q: The letter you are talking about is the letter of  
[2] 24th July 1990?  
[3] A: Correct.  
[4] Q: Did he identify it to you by its date?  
[5] A: No, I do not think he did.  
[6] Q: How did he describe it to you?  
[7] A: He just said "the letter to Sainsburys".  
[8] Q: And you said "Which letter to Sainsburys?"  
[9] A: No, because we had mentioned it during the meeting with  
[10] him in May.  
[11] Q: You just said, "Fine, I will get a copy and bring it  
[12] along"?  
[13] A: Yes.  
[14] Q: So the meeting takes place on 24th November 1992?  
[15] A: Yes.  
[16] Q: You and Sotherton?  
[17] A: Correct.  
[18] Q: And Andrew Lazenby?  
[19] A: Correct.  
[20] Q: Where does it take place?  
[21] A: Shell-Mex House.  
[22] Q: Was this a meeting room or office?  
[23] A: I think it was a meeting room.  
[24] Q: How long did this meeting last, according to your  
[25] recollection of it?

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[1] according to you?  
[2] A: We went over a lot of the same ground. I cannot  
[3] remember who was prompting the various topics, but we  
[4] went over a lot of the same ground about how it had come  
[5] about, the research et cetera.  
[6] Q: Did you ask him why he was interested in it?  
[7] A: Yes. He said that he could be interested in the scheme  
[8] at a later date. The timing still was not right. The  
[9] management were about to make a fundamental decision on  
[10] what they were going to do. He was still interested in  
[11] short-term activity. Which was the reason for the other  
[12] two proposals, of course.  
[13] Q: How did that part of the conversation end then? Can you  
[14] recollect?  
[15] A: Well, we made it clear that it was our idea, which he  
[16] accepted, and we mentioned that we had run some  
[17] promotions with Shell overseas: Make Money and Bruce's  
[18] Lucky Deal. We discussed how, if we were ever to get  
[19] involved, on what basis it would be. About licensing  
[20] terms et cetera.  
[21] Q: You discussed terms, did you?  
[22] A: Yes, we did.  
[23] Q: What sort of terms did you discuss?  
[24] A: We discussed whether it would be a licencing arrangement  
[25] on it, how we would get paid, whether we would be

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[1] A: I would guess between an hour and an hour and a quarter.  
[2] Q: At what point in the meeting, do you say, you tabled the  
[3] letter to Sainsburys?  
[4] A: We were talking about two proposals. I think probably  
[5] midway between the two.  
[6] Q: Do you actually remember doing it?  
[7] A: I remember the discussion. I do not remember exactly  
[8] the sequence.  
[9] Q: Who handed the letter to him, you or Sotherton?  
[10] A: I think I did.  
[11] Q: You do not remember?  
[12] A: I think it was me. I believe it was me.  
[13] Q: What did Lazenby say to you?  
[14] A: We read through the letter.  
[15] Q: You actually stopped there and then and read through the  
[16] letter?  
[17] A: Yes.  
[18] Q: For what purpose?  
[19] A: Because Mr Lazenby was interested to see what the  
[20] content was and we had another discussion about the  
[21] loyalty scheme.  
[22] Q: How long did that discussion go on for, according to  
[23] you?  
[24] A: I would say about another ten minutes.  
[25] Q: With you responding to questions from Mr Lazenby,

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[1] involved as an agency.  
[2] Q: What did you agree, according to you?  
[3] A: What we agreed was that it would be discussed and  
[4] negotiated if Shell decided to go forward with it.  
[5] Because they were still undecided about their plans and  
[6] he mentioned that, if they did run a loyalty scheme, it  
[7] would be on a Shell-only basis.  
[8] Q: In what detail did you discuss royalty payments or other  
[9] payments?  
[10] A: Not in any detail, no.  
[11] Q: Are you saying that he committed Shell to pay you for  
[12] exploitation of that concept?  
[13] A: He said that, if Shell decided to take it up, then he  
[14] would contact me, or contact us, and then that would be  
[15] the time to discuss matters like that.  
[16] Q: Are you saying that he agreed in principle - if not in  
[17] detail - to commit Shell to paying you for the use of  
[18] that concept?  
[19] A: That was my understanding, yes.  
[20] Q: What words did he use that gave you that understanding?  
[21] Can you remember?  
[22] A: The discussion left me with the clear impression that  
[23] Mr Lazenby recognised that it was our concept and that,  
[24] if Shell took it up at some stage, although it seemed to  
[25] be at some distant point, that he would contact me and

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[1] we would then discuss terms on it.  
 [2] Q: You are saying, are you, you actually said to him, as  
 [3] you handed the letter over or shortly afterwards, "This  
 [4] is our concept. Will you acknowledge that this is our  
 [5] concept?"  
 [6] A: I do not think I said that precise - what I did say  
 [7] made it plain that it was our concept -  
 [8] Q: What did you say?  
 [9] A: - and Mr Lazenby seemed to accept that and, when we  
 [10] discussed how we might be paid for it, he said the  
 [11] timing was not right to get into detail on that, but, if  
 [12] Shell took it up, then he would contact me and we would  
 [13] discuss it. But I was left with the impression that, if  
 [14] they did do the loyalty scheme, it would be with Shell  
 [15] alone. I did not know what other arrangements they had  
 [16] for that.  
 [17] Q: Just a moment: are you saying there that you discussed  
 [18] the concept and his response was "On behalf of Shell, if  
 [19] we do it, we will only do it as a Shell-alone concept?"  
 [20] A: No.  
 [21] Q: What are you saying?  
 [22] A: No. What I am saying is that Mr Lazenby said that the  
 [23] timing still was not right for the multiparty loyalty  
 [24] scheme because it was too complicated to set up, it  
 [25] would take too much time to set up and that, if they did

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[1] expensive, take too much time to set up and, if they did  
 [2] run a loyalty scheme, then it would be Shell on its  
 [3] own. Therefore, that was not my proposal.  
 [4] Q: Did you understand him to be talking about a Smart Card  
 [5] Scheme?  
 [6] A: We did discuss Smart Cards. So I was not surprised  
 [7] later on to see that it was a Smart Card Scheme.  
 [8] Q: What discussions did you have with him about Smart  
 [9] Cards?  
 [10] (3.45 pm)  
 [11] A: About the cost was still dropping and it made it a more  
 [12] practical, feasible possibility.  
 [13] Q: Are you saying that he told you what Shell's proposals  
 [14] were with regard to Smart Cards?  
 [15] A: He told me that they were considering a long-term  
 [16] loyalty scheme. Whatever it was that he said to me,  
 [17] I got the impression that Shell were making contingency  
 [18] plans, at least for their own loyalty scheme.  
 [19] Q: Do you really have any recollection of this at all?  
 [20] A: Yes, I do. I thought I had just conveyed that.  
 [21] Q: Are you sitting there replaying a mental image of the  
 [22] meeting and discussions to yourself?  
 [23] A: Yes.  
 [24] Q: So you can see and hear this in your inner mind and your  
 [25] inner ear taking place, can you?

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[1] go ahead - also I think he said it would be too  
 [2] expensive. He was worried about the cost. If they did  
 [3] go ahead with the loyalty scheme, which I got the  
 [4] impression was a likely prospect, it would be with Shell  
 [5] alone. A Shell scheme.  
 [6] Q: The loyalty scheme -  
 [7] A: Yes.  
 [8] Q: - is here what became the Smart Scheme. That is what  
 [9] we are talking about?  
 [10] A: Yes, it must be the same.  
 [11] Q: It must be the same? Why do you say it must be the  
 [12] same?  
 [13] A: Because I was talking to him at the end of November 1992  
 [14] and, of course, I see from discovery that, during that  
 [15] same period, he was talking to his colleagues about a  
 [16] multiparty scheme and that, in January the next year, he  
 [17] gave a brief to Option One for a similar scheme.  
 [18] Q: So you are saying you handed the document over and you  
 [19] anticipated that Shell would, in the not-too-distant  
 [20] future, use it, but on a mono basis?  
 [21] A: No.  
 [22] Q: Then I am not understanding you.  
 [23] A: No. My proposal was for a multiparty Shell-led  
 [24] consortium of major retailers. What Mr Lazenby was  
 [25] saying to me is that that was too complex, too

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[1] A: Yes, I can.  
 [2] Q: Was Sotherton participating in any of this?  
 [3] A: Yes, he was.  
 [4] Q: What was he saying?  
 [5] A: I cannot remember which of us was saying what, but we  
 [6] were discussing the various subjects. Again, the  
 [7] background to it, the research, the contact with  
 [8] Sainsburys and the fact that we had arranged an option  
 [9] on it.  
 [10] Q: That means you discussed the letter to King, did you?  
 [11] A: I do not know whether we did.  
 [12] Q: You just said, I think, that you discussed the option  
 [13] arrangement?  
 [14] A: We said that we had arranged an option with Shell.  
 [15] Q: Yes?  
 [16] A: I do not think it went much further than that.  
 [17] Q: You did not tell him with whom you claimed to have  
 [18] arranged the option and when?  
 [19] A: He would have been aware that it was Paul King we were  
 [20] dealing with, that we presented it to.  
 [21] Q: How would Andrew Lazenby have been aware of that?  
 [22] A: Because we told him that.  
 [23] Q: When did you tell him that?  
 [24] A: During both meetings he was aware we had originally put  
 [25] the proposal up to Paul King.

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[1] Q: I think I understood you to say that you did not have  
 [2] the letter to Paul King in a convenient place on your  
 [3] files -  
 [4] MR COX: I wonder if my learned friend would look at  
 [5] page 981 of file 2, the letter of 14th May 1992.  
 [6] MR HOBBS: File 2, page 981. Since we have this open,  
 [7] page 981 in this volume - do you have that, Mr Donovan?  
 [8] A: Yes, I do.  
 [9] Q: Do you see the second paragraph? I think I am being  
 [10] asked to direct my attention to the proposition that:  
 [11] "We noted your interest in the related multibrand  
 [12] loyalty card proposal to Paul King dated  
 [13] 23rd October 1989."  
 [14] That was Concept Four, was it not?  
 [15] A: Correct, yes.  
 [16] Q: The option letter to Paul King was supposed to have been  
 [17] dated 24th July the following year?  
 [18] A: That is correct.  
 [19] Q: Right. I do not understand you to have said that you  
 [20] communicated the text of the letter of 24th July 1990 to  
 [21] Mr Lazenby?  
 [22] A: Not at that date, no. 12th May 1992.  
 [23] Q: In fact I do not understand you to say that you have  
 [24] ever communicated the text of the letter to Paul King to  
 [25] Mr Lazenby?

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[1] A: He never asked for any further information on it.  
 [2] I thought he had an interest in Sainsburys in connection  
 [3] with something else he was doing and that was the reason  
 [4] to ask to see that letter.  
 [5] Q: Would you, in E3, please, turn to page 1345.  
 [6] A: I have that.  
 [7] Q: Do you recognise that letter?  
 [8] A: I do.  
 [9] Q: This is the letter that you wrote following up on the  
 [10] meeting of the 24th; correct?  
 [11] A: That is correct.  
 [12] Q: There is nothing in here, is there, about multibrand  
 [13] loyalty schemes?  
 [14] A: No, nothing at all.  
 [15] Q: Nothing at all. There is nothing in here about  
 [16] recognition of proprietary rights, is there?  
 [17] A: No.  
 [18] Q: There is nothing in here about confirming handing over  
 [19] any letter pursuant to an apparent request?  
 [20] A: No.  
 [21] Q: No. In fact, all the things we have just been  
 [22] discussing - at possibly too much length - not one of  
 [23] them is mentioned in this letter?  
 [24] A: No.  
 [25] Q: Why not?

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[1] A: No, no.  
 [2] Q: You have not, have you?  
 [3] A: No. It was the other letter to Sainsburys.  
 [4] Q: It was. That is right.  
 [5] A: Mr Lazenby's interest was something to do with  
 [6] Sainsburys.  
 [7] Q: Right. You mentioned - before I got that  
 [8] intervention - that you had discussed the option?  
 [9] A: Yes.  
 [10] Q: I am asking you whether you yourself had to hand or on  
 [11] your files or in your recollection the letter of  
 [12] 24th July 1990 to Paul King?  
 [13] A: No, because it had been misfiled in a file to do with  
 [14] the research for the Fundraisers project.  
 [15] Q: In fact you had forgotten all about this supposed option  
 [16] by this stage?  
 [17] A: I had forgotten the details of it. I knew that we had  
 [18] arranged an option on it. But I did not remember what  
 [19] the exact details of it were.  
 [20] Q: So, if you did not remember what the exact details of it  
 [21] were, you could not possibly be expected to tell them to  
 [22] Mr Lazenby, could you?  
 [23] A: No, only that Shell had an option on the scheme.  
 [24] Q: You say that you made that statement, as it were, in the  
 [25] abstract, without any further detail or documentary -

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[1] A: Because the main focus of that meeting on  
 [2] 24th November were the two proposals mentioned in this  
 [3] letter.  
 [4] Q: But, according to your version of events, you had just  
 [5] extracted from him a recognition of proprietary rights  
 [6] over something you had handed to him and you had got an  
 [7] agreement in principle for a remuneration or a fee?  
 [8] A: The interest was still very mild and years hence, as far  
 [9] as we were concerned, Mr Andrew (sic) was interested in  
 [10] short-term promotions at that time.  
 [11] Q: What could be more important than having a  
 [12] contemporaneous documentary confirmation of what you had  
 [13] agreed in principle, according to your view of it?  
 [14] A: I only based what I did send on - and the fact that  
 [15] I never mentioned the Multibrand Scheme at all or the  
 [16] discussions, because I was told that it was not going to  
 [17] happen for some time. If they did run a scheme, it  
 [18] would be Shell-only. So it was years away.  
 [19] Q: Surely all the more reason, from your point of view, to  
 [20] want to get the record straight in writing at the time?  
 [21] A: At that time I was interested in securing some business  
 [22] in the short-term, which was very important to me. That  
 [23] was why I mentioned about the two promotions that we had  
 [24] put to him and, in February, I sent him another fax  
 [25] about two of those schemes, the short-term schemes that

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[1] I put to him in May - in June and November 1992.  
 [2] Q: I do not think you have actually confronted the point  
 [3] I put to you. My point that I am putting to you is that  
 [4] it would have been very important from your perspective  
 [5] to have a written record confirming what you say took  
 [6] place in terms, firstly, of proprietorship of the  
 [7] concept and, secondly, in terms of remuneration for the  
 [8] use of it?  
 [9] A: From this perspective now, I wish I would have sat down  
 [10] and wrote a long letter about it. But I did not know  
 [11] this was going to happen. I only based my response on  
 [12] the impression I got from Mr Lazenby at the meeting in  
 [13] regard to the two short-term concepts and the more brief  
 [14] discussion on the multibrand scheme when it was clear  
 [15] that there was no prospects with that for a long time.  
 [16] Rightly or wrongly, I never mentioned it in the letter.  
 [17] Q: In the bundle which you have open - E3 - page 1343A;  
 [18] have you read this before?  
 [19] A: Within the last few days, yes.  
 [20] Q: It is Mr Lazenby's manuscript -  
 [21] A: I am sorry, I seem to be looking at the wrong thing.  
 [22] Q: 1343/A.  
 [23] A: I have a copy, yes.  
 [24] Q: That is a document you have looked at?  
 [25] A: Yes.

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[1] quarter.  
 [2] MR HOBBS: Would you take up volume E1 and, in that  
 [3] volume, would you turn to page 450/A.  
 [4] A: Yes, I have that.  
 [5] Q: Whose handwriting is that at the top of 450/A?  
 [6] A: That is Roger Sotherton's handwriting.  
 [7] Q: Is that his handwriting at the bottom of 450/B?  
 [8] A: It is.  
 [9] Q: Did you see him write that wording on 450/B?  
 [10] A: No.  
 [11] Q: When did you first see a copy of this document with that  
 [12] writing on it?  
 [13] A: When I searched for the documents at the start of this  
 [14] claim.  
 [15] Q: Where did you find this one?  
 [16] A: In a file, probably with Megamatch.  
 [17] Q: Is it your understanding that he is maintaining that he  
 [18] wrote this at the time? Is that your understanding?  
 [19] A: Yes, it is my understanding.  
 [20] Q: But you have no recollection of seeing him write it?  
 [21] A: I do not recollect Mr Sotherton writing notes, I do not  
 [22] recollect Mr Lazenby writing notes. They may and  
 [23] probably did do so. But, if you are asking me: did  
 [24] I see them do it? No, I cannot recollect that.  
 [25] Q: Let us look at that note on 450/B:

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[1] Q: That is Mr Lazenby's manuscript note of the meeting on  
 [2] 24th of the 11th. You can just see "24/11" in the top  
 [3] right-hand corner?  
 [4] A: Yes.  
 [5] Q: You did discuss, did you not, those matters which are  
 [6] noted in that document?  
 [7] A: Yes, we did.  
 [8] Q: There is nothing in that document about any of the  
 [9] matters you have been discussing with me in these recent  
 [10] exchanges, is there?  
 [11] A: No, there is not.  
 [12] Q: Are you surprised that there is nothing in there about  
 [13] that?  
 [14] A: Yes.  
 [15] Q: Tell me why you are surprised.  
 [16] A: Because we did discuss it. I thought that he might put  
 [17] some mention down of it. But it is true that what he  
 [18] has put down was the main focus and purpose of the  
 [19] meeting.  
 [20] (4.00 pm)  
 [21] Q: Did you see Sotherton make any notes at that meeting?  
 [22] A: No, I never saw anyone making notes at the meeting. Not  
 [23] that I can recollect.  
 [24] MR JUSTICE LADDIE: How long did this meeting last for?  
 [25] A: I think it lasted for between an hour and an hour and a

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[1] "Shell will negotiate royalty arrangements  
 [2] et cetera with us if they progress scheme at a future  
 [3] date."  
 [4] A: Yes.  
 [5] Q: "Don could work with Shell International to exploit  
 [6] overseas. Copy of this letter left with AL  
 [7] [Andrew Lazenby]."  
 [8] A: Yes.  
 [9] Q: Are you saying that that is an accurate note of what  
 [10] happened at that meeting?  
 [11] A: Yes, I remember those matters being discussed, as I have  
 [12] already said.  
 [13] Q: So we come to this, do we: Andrew Lazenby is working on  
 [14] what is about to become Project Hercules, he knows he is  
 [15] doing it and he knows that it is going to be a  
 [16] Multibrand Loyalty Scheme?  
 [17] A: Yes.  
 [18] Q: Yes. Yet, knowing that - knowing that - he commits  
 [19] Shell to negotiate a royalty arrangement with you, your  
 [20] company, in respect of what he knows he is doing?  
 [21] A: One of the things that we discussed was to put that on  
 [22] the shelf. It was on hold, and the background to that  
 [23] is that we would not put the scheme to any other oil  
 [24] company.  
 [25] Q: That is part of this too, is it?

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[1] A: Well, that was the general understanding. Once we put a  
[2] proposal up to Shell, especially if they took an option  
[3] on it, as they did on a few occasions, then that would  
[4] stop us going to another oil company, because we dealt  
[5] with Shell as a preference.

[6] Q: What I am asking you to do is just look at it from his  
[7] perspective, which is the perspective I am standing here  
[8] addressing you upon at the moment. From  
[9] Andrew Lazenby's perspective, he is working on a project  
[10] which, from the beginning of 1993 becomes  
[11] Project Hercules; right?

[12] A: Yes.

[13] Q: In your letter before action that we looked at at  
[14] considerable length this morning, you yourself stated at  
[15] the top of the second page that it was a scheme which  
[16] was intended and designed from the beginning to be a  
[17] Multibrand Loyalty Scheme?

[18] A: Yes.

[19] Q: Right. So here is Andrew Lazenby, at the back end of  
[20] 1992, doing work of that kind, working on a concept of  
[21] that kind?

[22] A: Yes.

[23] Q: And you are saying that he committed Shell to Don to  
[24] recognise their proprietary rights over that concept and  
[25] to negotiate royalty arrangements with you if they

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[1] covered by the Sainsburys letter of 24th July 1990 and  
[2] the letter to King of 24th July 1990, I am putting it to  
[3] you that your evidence as to those matters is a  
[4] fabrication?

[5] A: It is not.

[6] MR COX: I would like to be clear, if I may, because my  
[7] learned friend did indeed suggest that all of the  
[8] matters that the claimant has said, both on 12th May and  
[9] 24th November, were a complete fabrication. Indeed,  
[10] that would be consistent with his pleading, which denies  
[11] both incidents. So may I know - may we know - may  
[12] your Lordship know - whether that is still the case.

[13] MR HOBBS: There is no denial of a meeting on each of those  
[14] occasions. The extent of my admissions could not be  
[15] clearer from my skeleton argument, my Lord.

[16] MR JUSTICE LADDIE: I understood your admissions to be that  
[17] the meeting took place, but there was no discussion of  
[18] the Sainsburys letter, there was no discussion of an  
[19] option, there was no discussion of long-term multiparty  
[20] loyalty scheme. To make it clear, you had better put  
[21] all of those, one by one, to Mr Donovan, to make it  
[22] clear that he understands that you are challenging his  
[23] account in respect of all those. I thought it was  
[24] clear, but there we are.

[25] MR HOBBS: Frankly, I think the transcript is clear, to be

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[1] progressed the very idea he was working on?

[2] A: That was my understanding, yes.

[3] Q: I am sorry, but I must put it to you that this is a  
[4] complete fabrication on your part, that your evidence in  
[5] relation to the May meeting and your evidence in  
[6] relation to the November meeting in 1992 has been  
[7] embroidered to bring in these matters that we have been  
[8] discussing between you and I just now.

[9] A: You said "a complete fabrication"?

[10] Q: Yes. You are inventing the story about the Sainsburys  
[11] letter, relative to the November 1992 meeting. Do you  
[12] wish to comment on that?

[13] A: I wish that I had sent a letter after the meeting on  
[14] 22nd November. If I had known what was going on in the  
[15] background, then of course I would have done so. But  
[16] I did not know. And of course you are saying it is a  
[17] complete fabrication. You are forgetting about the  
[18] letter that I sent to Mr Lazenby on 14th May that  
[19] specifically mentioned this scheme and that Mr Lazenby,  
[20] as I understand it, has admitted receiving. So how  
[21] could that be correct?

[22] Q: The letter of 14th May refers to Concept Four; we agree  
[23] that, do we not?

[24] A: Yes.

[25] Q: And, insofar as there are other matters which are

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[1] honest with you.

[2] MR JUSTICE LADDIE: Please do it again. This is me wasting  
[3] time, not you.

[4] MR HOBBS: I am sorry, my Lord.

[5] Mr Donovan, you heard those exchanges?

[6] A: Yes.

[7] Q: Let us tick them off one by one. I am putting it to you  
[8] that, at the May meeting, there was no discussion of  
[9] what I am calling "the Sainsburys proposal" set out in  
[10] that letter of 24th July 1990? I am putting that to  
[11] you?

[12] A: No, it was discussed.

[13] Q: And I am putting to you that your evidence, contrary to  
[14] my proposition to you, is in fact a fabrication?

[15] A: I say it is not. I have given you an accurate account,  
[16] to the best of my recollection.

[17] Q: I put it to you that there was no discussion at the  
[18] May meeting in 1992 of any option arrangement relating  
[19] to what I have just called the Sainsburys proposal?

[20] A: No, it was discussed in both meetings.

[21] Q: I am putting it to you that your evidence, contrary to  
[22] my proposition to you, is in fact fabricated?

[23] A: You have taken away the word "complete" now, have you?

[24] Q: You do not accept that any of that evidence is  
[25] fabricated, do you?

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[1] A: I certainly do not.  
 [2] Q: I have that clear. Then we come to the November meeting  
 [3] in 1992 -  
 [4] MR COX: I am sorry, now I am going to get a clobbering,  
 [5] I can feel it coming from your Lordship. But I am going  
 [6] to be a little pernickety, if I may. I have not often,  
 [7] so far in this case. Is my learned friend saying that  
 [8] Concept Four was not discussed, as he has pleaded in his  
 [9] pleading, on 12th May? Because, so far, the Sainsburys  
 [10] proposal strays dangerously close to the suggestion that  
 [11] it was only the Sainsburys letter that was not  
 [12] discussed. I would like to know if he could put to the  
 [13] witness that Concept Four was not discussed on 12th May,  
 [14] just so that I can be clear. That is how it is  
 [15] pleaded. I would like to know whether it is still the  
 [16] case.  
 [17] MR HOBBS: Mr Lazenby's position is that he has no  
 [18] recollection of Concept Four being discussed.  
 [19] Mr Lazenby cannot recollect any discussion of Concept  
 [20] Four at that meeting. Do you understand?  
 [21] A: I do understand.  
 [22] Q: His position is that, if there was any discussion with  
 [23] any materiality about it, he would have remembered it.  
 [24] Do you understand that?  
 [25] A: I do.

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[1] Q: I am putting it to you that, on 24th November meeting,  
 [2] which nobody disputes took place, during the course of  
 [3] that meeting, there was no discussion of multibrand  
 [4] loyalty concepts, as you have been telling my Lord that  
 [5] there were discussions?  
 [6] A: It was discussed, on the lines I have already said.  
 [7] Q: And, in particular, my position is that there was  
 [8] absolutely no question of any royalty agreement or  
 [9] understanding of that kind in relation to multibrand  
 [10] loyalty schemes?  
 [11] A: There was a discussion about royalties, on how  
 [12] Don Marketing would be paid, but that there was no point  
 [13] in getting into it at that time because there was no  
 [14] prospect of it being run for some time.  
 [15] Q: Now, if I can draw that together: the point that I will  
 [16] be submitting to my Lord in due course is that the  
 [17] reason why you want to give this evidence that I have  
 [18] just been discussing and challenging with you is because  
 [19] you perceive that there is a need on your part to fix  
 [20] Andrew Lazenby with knowledge of those proposals which  
 [21] are to be found in those documents from 24th July 1990.  
 [22] You perceive a need to fix him with that knowledge and  
 [23] that is why you have given this evidence?  
 [24] A: No, I am just saying what happened. That is all, and,  
 [25] unfortunately, I never sent a letter after the second

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[1] Q: Therefore his position is that there was no discussion  
 [2] of any materiality about Concept Four.  
 [3] A: Well, then I would be puzzled as to why he did not take  
 [4] issue with the letter that I sent him two days later,  
 [5] enclosing a copy of the proposal and saying that it had  
 [6] been discussed.  
 [7] Q: That is your position?  
 [8] A: Yes.  
 [9] Q: You understand my contrary position?  
 [10] A: I do.  
 [11] Q: Right.  
 [12] A: I cannot understand it in view of the fact that it is  
 [13] accepted that he received that letter two days later.  
 [14] No, I cannot understand that.  
 [15] Q: I understand that you cannot understand.  
 [16] Now, the November meeting: Mr Lazenby does not  
 [17] accept that he had a telephone conversation with you in  
 [18] advance of that meeting relating to the Sainsburys  
 [19] letter of 24th July 1990. He has no recollection of any  
 [20] such conversation, and I am putting it to you that your  
 [21] suggestion that there was such a conversation is  
 [22] fabricated?  
 [23] A: And I am telling you that there was such a conversation,  
 [24] that he did make that request and that I did take the  
 [25] letter with me to the meeting.

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[1] meeting. Very fortunately for me, I did after the first  
 [2] meeting, which it is accepted he received.  
 [3] MR HOBBS: My Lord, I have put those points about three  
 [4] times to this witness. I have a little bit more left.  
 [5] I am willing to go on -  
 [6] MR JUSTICE LADDIE: Not now. How much longer?  
 [7] MR HOBBS: Not much longer, my Lord. The end is very  
 [8] clearly in sight.  
 [9] MR JUSTICE LADDIE: Who is the next witness?  
 [10] MR HOBBS: Mr Sotherton, I am told.  
 [11] MR JUSTICE LADDIE: First of all, Mr Cox, re-examination.  
 [12] How long do you expect to be in re-examination?  
 [13] MR COX: Twenty minutes.  
 [14] MR JUSTICE LADDIE: Mr Sotherton, may I anticipate you are  
 [15] going to have a little battle with him as well?  
 [16] MR HOBBS: I will have a battle with him, but it will not be  
 [17] as long as the battle I am having now with Mr Donovan.  
 [18] The witness after that, I am told, is Mr McMahon; is  
 [19] that correct.  
 [20] MR COX: Yes.  
 [21] MR HOBBS: I would expect to get to him tomorrow and after  
 [22] Mr McMahon ...  
 [23] MR COX: Mr Armstrong-Holmes.  
 [24] MR HOBBS: It is possible we might get through them.  
 [25] MR JUSTICE LADDIE: All of them?

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- [1] MR HOBBS: It is possible.
- [2] MR JUSTICE LADDIE: Thank you very much, Mr Hobbs. We will
- [3] leave it like that until 10.30 tomorrow morning.
- [4] (4.15 pm)
- [5] (The court adjourned until 10.30 am
- [6] on Friday, 18th June 1999)
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- [1] Cross-examination by MR HOBBS (continued) 1
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