

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

22nd June 1999

Before:

MR JUSTICE LADDIE

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)

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] Tuesday, 22nd June 1999
 [2] (10.30 am)
 [3] **MR COX:** Mr Chambers, please.
 [4] **MR JOHN ANTHONY CHAMBERS (sworn)**
 [5] **Examination-in-chief by MR COX**
 [6] **MR COX:** My Lord, there was a supplementary statement served
 [7] last night. I regret rather later than your Lordship's
 [8] order for which I beg indulgence. It was at 7.30 pm.
 [9] **MR JUSTICE LADDIE:** What on earth is the point of giving me
 [10] a copy at 10.35 am, Mr Cox? Let me read it.
 [11] **MR COX:** Thank you for your Lordship's indulgence.
 [12] Mr Chambers, would you take down a yellow bundle,
 [13] bundle C1, from the carousel next to you. Would you
 [14] also take a copy of a further statement, made yesterday,
 [15] I believe. Let me ask that you should look at that.
 [16] (Handed). Could you turn in the yellow bundle to
 [17] tab 3.
 [18] **A:** Yes.
 [19] **Q:** At the front of that you should see a frontispiece
 [20] headed "Witness Statement of John Chambers" and at the
 [21] back you should see a signature, which I hope is yours?
 [22] **A:** Yes.
 [23] **Q:** Could you help me: do you confirm that the contents of
 [24] that statement are true?
 [25] **A:** Yes, I do.

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[1] Friday from lunchtime onwards, for most of the
 [2] afternoon.
 [3] **Q:** Thank you. Were you in contact with anybody receiving
 [4] reports about what had been going on when you were not
 [5] here?
 [6] **A:** I had a discussion yesterday with Richard Woodman, but
 [7] not when I was not here, no. I have been in Harrogate
 [8] for the weekend.
 [9] **Q:** Can I ask you this: when was it that you first knew that
 [10] you had evidence to give to the effect of your
 [11] supplemental witness statement? When was it you first
 [12] knew this was evidence you might wish to give?
 [13] **A:** Yesterday.
 [14] **Q:** You did not discuss these matters in this witness
 [15] statement with the plaintiff or his advisors before
 [16] yesterday?
 [17] **A:** No. I telephoned on Sunday evening from my hotel in
 [18] Harrogate to see when I might be called, and I was led
 [19] to believe that I would be on some time yesterday. That
 [20] did not transpire. So I was able to catch a later train
 [21] down from Harrogate, which arrived at lunchtime and it
 [22] was at that point that the question of my diary entry
 [23] was raised. I in fact went home to Croydon, picked up
 [24] my diary, I found it, got straight back on the train and
 [25] came straight back here.

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[1] **Q:** Would you take the second statement which you have made
 [2] and which is presently loose.
 [3] **A:** Yes.
 [4] **Q:** Did you make that statement yesterday?
 [5] **A:** I did.
 [6] **Q:** Yesterday evening, I believe, to Mr Woodman of
 [7] Royds Treadwell?
 [8] **A:** I did, yes.
 [9] **Q:** Would you have a look at that. Does it bear your
 [10] signature at the end?
 [11] **A:** Yes.
 [12] **Q:** Do you confirm that the contents of that statement are
 [13] true?
 [14] **A:** Yes, they are true.
 [15] **Q:** Would you remain there, Mr Chambers. There will be
 [16] questions for you.
 [17] **Cross-examination by MR HOBBS**
 [18] **MR HOBBS:** Mr Chambers, I have picked up from your second
 [19] statement that you have been in court for some part of
 [20] this trial?
 [21] **A:** Yes.
 [22] **Q:** Could you please help me to understand how much of this
 [23] trial you were present for?
 [24] **A:** I was present for a short time yesterday, on Monday.
 [25] Just five for ten minutes before lunch. I was here on

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[1] **Q:** Right.
 [2] **A:** I think you have a copy of the actual diary entry
 [3] attached to this new statement.
 [4] **Q:** Yes. You see, at the back end of paragraph 6 of your
 [5] supplemental statement - do you see that?
 [6] **A:** The back end?
 [7] **Q:** You have a supplemental statement, the one handed up
 [8] loose to you just now?
 [9] **A:** Yes.
 [10] **Q:** At the end of paragraph 6 of this you say you remember a
 [11] conversation - and it is a conversation you refer to in
 [12] late 1996 or early 1997. You say:
 [13] "I remember him. [John Donovan]. I remember him
 [14] saying 'I may need your help again to try and recall
 [15] what went on with Paul King'."
 [16] **A:** Indeed.
 [17] **Q:** And it is in fact about that matter that this statement
 [18] has been prepared?
 [19] **A:** About which matter?
 [20] **Q:** Your conversation with Paul King.
 [21] **A:** Yes.
 [22] **Q:** So your evidence to my Lord is that that topic, although
 [23] it was mentioned with you late 1996 or early 1997, went
 [24] into abeyance and was not revived until yesterday or
 [25] Sunday evening?

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[1] A: That is correct.
 [2] Q: Help me on this: you left Don Marketing - I cannot
 [3] remember whether it was Don Marketing Management Limited
 [4] or Don Marketing Limited. Can you remember?
 [5] A: Yes, I remember very well.
 [6] Q: Which of the two was it? I cannot remember. Which of
 [7] the two companies?
 [8] A: It was Don Marketing Management Limited, I think.
 [9] I remember. It would be in 1983.
 [10] Q: You left them in 1983?
 [11] A: Sorry, in 1986 that would have been, yes.
 [12] Q: You went, as I understand it, to become a senior
 [13] executive with Leo Burnett; is that correct?
 [14] A: I was Managing Director of Leo Burnett Promotions, which
 [15] is a major advertising agency.
 [16] Q: Did I understand you to say it was 1987 you left, or
 [17] 1986?
 [18] A: I think it was at the end of 1986.
 [19] Q: Did you maintain contact with
 [20] John Donovan - professionally, this is - after 1986,
 [21] after you left?
 [22] A: Yes.
 [23] Q: In what connection professionally did you maintain
 [24] contact with him?
 [25] A: Well, from 1986 I was always interested in the

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[1] A: Yes.
 [2] Q: Just to check you have the same as I do, do you have a
 [3] document which says "Project 100; Strictly
 [4] Confidential"?
 [5] A: Yes.
 [6] Q: That is dated 26th June 1986 in the bottom right-hand
 [7] corner; yes?
 [8] A: (Witness nods).
 [9] Q: If I have understood the evidence and the documents
 [10] correctly, this is a proposal you were involved in after
 [11] you had left Don Marketing and gone to Leo Burnett in
 [12] 1986; is that right?
 [13] A: Yes.
 [14] Q: Do you recollect this proposal? Have a look at page 68
 [15] and you will see the contents.
 [16] A: Yes.
 [17] Q: As I understand this document, it is a Megamatch
 [18] proposal?
 [19] A: Yes.
 [20] Q: Yes. It is pursuant to this, is it not, that you sat
 [21] together with a group of people that you have just
 [22] described as "blue chip clients and Shell"?
 [23] A: That is right.
 [24] Q: Can you remember how long after this document it was
 [25] that you sat down with them? Was it 1986 or 1987? If

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[1] development of the games that I had been part of in the
 [2] early 1980 and mid-1980s and it was a natural thing for
 [3] me to talk to John, perhaps every few months, and to see
 [4] if these games could be used for one of my major clients
 [5] at Leo Burnett.
 [6] Q: Do you have any particular game or particular client in
 [7] mind?
 [8] A: The type of game was Megamatch, which I had a hand in
 [9] developing with John when I was at Leo Burnett. This
 [10] had enormous potential for some of the multi-million
 [11] pound clients of that agency and my other contacts in
 [12] the agency business. So it was a very important concept
 [13] and I felt that it would find the time at some time in
 [14] the future when that could be taken forward.
 [15] Q: Did you actually propose a Megamatch game to any of your
 [16] clients at Leo Burnett?
 [17] A: Yes. Megamatch was the subject of a very full
 [18] presentation at Leo Burnett, which included a consortium
 [19] of blue chip companies, led by Shell and including other
 [20] companies, which has been documented. I think there is
 [21] some evidence that has been laid before the court.
 [22] Q: Would you like to take volume B1, please, from the
 [23] carousel beside you. Do you have B1?
 [24] A: Yes.
 [25] Q: In this volume, could you turn to page 67, please.

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[1] it helps, my recollection is that it was some time over
 [2] 1986 and into 1987.
 [3] A: When you say "sat down", what do you mean?
 [4] Q: As I understand the position, there was a round table
 [5] meeting at some stage which you attended; is that
 [6] correct?
 [7] A: Yes.
 [8] Q: Can you remember when that was?
 [9] A: I cannot remember precisely the date. I would have
 [10] thought, yes, 1987 - 1986, the end of 1986.
 [11] Q: That is the way it looks to me.
 [12] A: The presentation was dated June 1986. I presume the
 [13] first meeting would have been at that time, and then we
 [14] would have sat down, there would have been other
 [15] meetings. You have to understand that, when an agency
 [16] puts together a proposal, Leo Burnett were putting quite
 [17] a lot of their time and effort into producing story
 [18] boards and a visual presentation to communicate this
 [19] promotion to the public at large. So this was a thing
 [20] which took a period of some time.
 [21] Q: Have you seen this document recently, the one we have
 [22] open now? Have you looked at that in recent times?
 [23] (10.45 am)
 [24] A: I have looked through my file at home, which is called
 [25] Project 100, and I have a copy of this document,

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[1] I think.

[2] Q: You see, you referred to it in your first witness
[3] statement. You actually mentioned it by name as
[4] Project 100, and I would have assumed that you had
[5] looked through it when you came to prepare that
[6] statement. Did you?

[7] A: Yes. It is a project which is etched on my brain.
[8] I was very closely associated with it.

[9] Q: I want to actually take you to the page in the
[10] bundle which has 110 on it, in the large bundle you have
[11] open.

[12] A: "The Game of the Century"?

[13] Q: Yes. Do you have that?

[14] A: Yes.

[15] Q: Do you remember this passage in this document?

[16] A: Yes, I do.

[17] Q: You have in fact yourself referred to it in your first
[18] witness statement. It says:

[19] "Successful cooperation in this promotion may also
[20] lead to future joint promotional projects for premium or
[21] continuity programmes which could also take advantage of
[22] the vast purchasing power of the Project 100 consortium
[23] to minimise unit costs. Such a joint venture would
[24] provide consumers with an opportunity to collect a
[25] particular premium item or a full set of items in a

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[1] built up during a longer period of time, rather than the
[2] original 1980s promotions, which were specifically for a
[3] twelve-week period and which rewarded consumers, yes,
[4] for their loyalty, but for their short-term loyalty.
[5] The development of that was into the longer term loyalty
[6] promotion that I think you are referring to.

[7] Q: I am not sure we are actually differing. The position
[8] then is that, what we have here is Project 100. Were
[9] you thinking at the time that this could be run as a
[10] short-term promotion amongst a whole consortium of
[11] people? Is that what you are saying?

[12] A: In 1986 the original promotion, Project 100, would have
[13] been a shorter term - typically a three-month
[14] promotion. You cannot sustain something like that for a
[15] whole year, with television advertising at maybe
[16] £500,000 or £1,000,000. You cannot continue to do that.

[17] Q: So Project 100 was conceived as a short-term promotion,
[18] as you have just mentioned it?

[19] A: Three months, yes.

[20] Q: The long-term promotional aspect of it, what change to
[21] what we see in Project 100 would that involve?

[22] A: I think it involves the idea of building up loyalty
[23] amongst - once you have a consortium together, which is
[24] a fairly unique thing in promotional terms in this
[25] country. It does not happen very often. This was seen

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[1] relatively short time."

[2] Do you remember that?

[3] A: Yes.

[4] Q: Is that paragraph there summarising what you are
[5] referring to as the multibrand loyalty promotion?

[6] A: Yes.

[7] Q: When we read in your witness statement - and I shall
[8] take you to it in a moment or two - references to the
[9] multibrand loyalty promotion or the multibrand loyalty
[10] scheme, what you are referring to is Project 100 and
[11] that footnote on it, as it were, on page 110, is it not?

[12] A: No, it is not.

[13] Q: What is it that you are referring to as the multibrand
[14] loyalty concept?

[15] A: First of all, let us define, if I may, the Project 100
[16] promotion. Project 100 was a promotion putting together
[17] major retailers and blue chip companies, but it was more
[18] in the context of a twelve-week - traditionally a
[19] three-month promotion which Shell were running. You
[20] have to understand, we had already run four of those for
[21] Shell at Don Marketing in the 1980s and that pattern of
[22] promotions had continued to some extent. The difference
[23] between the original Project 100 and a multibrand
[24] loyalty promotion is one of timing: a loyalty promotion
[25] works over a longer period of time and the rewards are

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[1] as a real break through. If we could get six or seven
[2] major retailers and companies together to pool their
[3] resources for a short-term period, the advantage of
[4] doing that over a longer term period to build up loyalty
[5] and to build up consumer awareness would be a very
[6] valuable commodity, a very valuable creation.

[7] Q: So the change is simply the duration for which you run
[8] it? You have a scheme, if it runs well for three months
[9] or six months and it is successful, you will extend the
[10] life of it for a longer period. Is that what you are
[11] referring to?

[12] A: Yes, but other things have to change. The rewards, for
[13] instance, have to change.

[14] Q: Right. Now, the proposal which was on the table in the
[15] form of Project 100 was for a common promotional
[16] currency in the form of matching halves of vouchers, or
[17] something of that kind?

[18] A: Yes, it was, yes.

[19] Q: Project 100 was not carried forward. If we turn to
[20] page 111, there is a letter which is signed apparently
[21] on your behalf?

[22] A: Yes. There is not actually a copy in here.

[23] Q: No 111?

[24] MR JUSTICE LADDIE: Letter Leo Burnett to Godfrey Morrow
[25] dated 6/1/87. It is not there.

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[1] A: I am familiar with the letter.
 [2] MR JUSTICE LADDIE: I am not.
 [3] MR HOBBS: The question is: do we have enough copies? I am
 [4] sorry, my Lord.
 [5] (11.00 am)
 [6] MR JUSTICE LADDIE: We will have some more photocopies
 [7] done. (Handed).
 [8] MR HOBBS: Can I just check with you, Mr Chambers: you have
 [9] now a page which says January 6th 1987 on it?
 [10] A: Yes.
 [11] Q: You said you were familiar with the letter and, now that
 [12] you have seen the letter, you are even more familiar
 [13] with it; correct?
 [14] A: Yes.
 [15] Q: This letter is indicating that Project 100 has been
 [16] effectively shelved for the time being?
 [17] A: Yes.
 [18] Q: That was January 1987?
 [19] A: Yes.
 [20] Q: You are writing to create a record for the file, as it
 [21] were, of what the position was in January 1987 in
 [22] relation to that project?
 [23] A: I was also writing to protect my backside. Because the
 [24] agency had put a lot of money into this as well and
 [25] I wanted to put something on the file to the effect that

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[1] you, please, and take your first witness statement at
 [2] the same time, which is in volume C1 behind tab 3. It
 [3] has the stamped page number at the bottom that I am
 [4] interested in, page 38. It is your witness statement,
 [5] it has page 2 at the top and 38 at the bottom. Do you
 [6] have that?
 [7] A: Yes.
 [8] Q: Unfortunately the paragraphs are not numbered, so I will
 [9] just point them out to you. If you look at the first
 [10] paragraph in:
 [11] "In 1986, John Donovan contacted me after I had
 [12] moved to Leo Burnett Promotions where I was Chief
 [13] Executive. He invited Leo Burnett to pitch for the TV
 [14] advertising campaign in respect of Project 100
 [15] multipartner promotion, which was essentially the same
 [16] game that Don Marketing had originally put to Mr Smeddle
 [17] and Mr Danson in 1984."
 [18] That paragraph is referring to the Project 100
 [19] proposal we have open in the other file, is it not?
 [20] A: Yes.
 [21] Q: You say:
 [22] "I attended several highly confidential meetings
 [23] of the consortium ...", and you name some names: Shell,
 [24] Woolworth, Bass Brewers, Sketchley and the Daily Express
 [25] Newspaper. You say:

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[1] the investment that Leo Burnett had made and that we had
 [2] all made was not lost and could possibly be run at some
 [3] stage in the future.
 [4] Q: Right. Did you, shortly after this, leave Leo Burnett?
 [5] A: I am just trying to think. Not shortly after this.
 [6] I was at Leo Burnett for about three years.
 [7] Q: So it would not have been 1987 then?
 [8] A: No.
 [9] Q: Right. So far as you are aware, there was no further
 [10] revival of Project 100, certainly so far as Leo Burnett
 [11] was concerned, was there?
 [12] A: No.
 [13] Q: And, so far as you are aware, there was no further
 [14] revival of Megamatch so far as Shell was concerned; that
 [15] is to say, Shell did not run Megamatch as per
 [16] Project 100, did it?
 [17] A: I was not in touch with Shell. It was not a Leo Burnett
 [18] client, so I had no way of having any information about
 [19] that.
 [20] Q: So the position then is that you in fact do not know
 [21] what happened after January 6th 1987 with regard to
 [22] Megamatch proposals so far as Shell was concerned? You
 [23] just do not know, do you?
 [24] A: No.
 [25] Q: Turn back to page 110 and just have it open in front of

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[1] "Leo Burnett made a substantial investment of time
 [2] of materials in the project on a purely speculative
 [3] basis, because we wanted to be associated with the first
 [4] multipartner promotion involving the leading retailers
 [5] in the UK. It was a highly exciting project."
 [6] You say:
 [7] "On 26th June 1986, a presentation of Megamatch
 [8] multibrand game was made to the consortium partners by
 [9] Don Marketing and my Leo Burnett account team."
 [10] Does that suggest you were not there, or were you
 [11] there?
 [12] A: Yes.
 [13] Q: Were you there?
 [14] A: Yes. It was part of my - I was, if you like, leading
 [15] the presentation as far as Leo Burnett were concerned.
 [16] Q: You say:
 [17] "Don Marketing dealt with the overall aspects of
 [18] the promotion and briefed the partners on the results of
 [19] consumer research which they had commissioned on behalf
 [20] of the consortium. Leo Burnett presented a complete
 [21] advertising campaign for Megamatch including a TV
 [22] commercial based on a 'Santa Claus - The Movie'. The
 [23] intended message to consumers was that the multipartner
 [24] promotion would be on such an unprecedented scale with a
 [25] huge quantity of gifts that it would actually seem like

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[1] Christmas had arrived. The advertising campaign was
 [2] extremely well received by the prospective partners."
 [3] In the next paragraph you say:
 [4] "Don Marketing's proposal included John Donovan's
 [5] idea of a multipartner loyalty promotion using a common
 [6] promotional currency. A reference to the concept was
 [7] contained on page 41 of Don Marketing's proposal and it
 [8] was discussed briefly during the presentation."

[9] Just pausing there, turn across to the other
 [10] document which carries the number 110 on it. That
 [11] happens to be page 41 of the proposal document for
 [12] Project 100. In other words, it has the number 110
 [13] because that is where it is in this bundle, but it is
 [14] actually 41 on its own internal numbering.

[15] A: Right.

[16] MR JUSTICE LADDIE: The marginal note is wrong; is that
 [17] right?

[18] MR HOBBS: I have not seen the marginal note, my Lord. But
 [19] this is page 41 of Project 100.

[20] Mr Chambers, your evidence in the passages I was
 [21] just reading to you, you are saying there that page 41
 [22] contains a reference to the concept, and you have
 [23] identified that as the concept of a multipartner loyalty
 [24] promotion using a common promotional currency?

[25] A: Yes.

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[1] is on page 41?

[2] A: Yes.

[3] Q: You are slightly nodding your head as well as agreeing
 [4] with me.

[5] MR JUSTICE LADDIE: Shaking his head.

[6] MR HOBBS: Half shake, half nod. What is your difficulty
 [7] with what I am showing you in your witness statement,
 [8] relative to page 41, please?

[9] A: I do not have any difficulty.

[10] Q: Okay. You say, "It was discussed briefly during the
 [11] presentation."

[12] Then you say:

[13] "I do not recall precise details of the relevant
 [14] discussions, nor do I recollect that a loyalty card was
 [15] discussed or even envisaged at that time."

[16] That is your statement, and that is correct, is it
 [17] not?

[18] A: Yes.

[19] Q: "To the best of my recollection, in general terms the
 [20] idea of accelerating the collection of vouchers or
 [21] points by them being issued as a universal currency
 [22] across a range of retail outlets was accepted as being a
 [23] potential winning vehicle for future collaboration
 [24] between the partners."

[25] A: Yes.

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[1] Q: Right. That is right, is it not? That is what you
 [2] intended to refer to? You are saying that, under the
 [3] heading "The Game of the Century" there is a
 [4] multipartner loyalty promotion proposal?

[5] A: I am not sure what distinction you are trying to make
 [6] between the two proposals. The multipartner loyalty
 [7] promotion, by changing Project 100 in a number of ways,
 [8] you could strengthen up the loyalty element of it over a
 [9] longer period of time. I am sure these matters were
 [10] discussed. It is a regular - when one has a discussion
 [11] about promotions, you look at all of the different
 [12] implications.

[13] Q: Let us see if we can take it by stages: your statement
 [14] that I was just reading to you says:

[15] "A reference to the concept was contained on
 [16] page 41 of Don Marketing's proposal and it was discussed
 [17] briefly during the presentation."

[18] I am showing you, in the other bundle, page 41 of
 [19] that proposal and I am asking you to confirm whether
 [20] that is the correct page reference, so far as your
 [21] recollection is concerned?

[22] A: So far as my recollection is concerned, yes.

[23] Q: And you are, in your statement, describing that as the
 [24] idea of a multipartner loyalty promotion using a common
 [25] promotional currency. That is your description of what

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[1] Q: Right. You had no further knowledge - I think we have
 [2] agreed this - or insight about later proposals that may
 [3] have been made to Shell by Don Marketing in relation to
 [4] any multipartner loyalty promotion, did you?

[5] A: I would have talked to John every now and again about
 [6] how business was. We had a friendship that went back to
 [7] the time I first worked for him, and it was entirely
 [8] natural for me to discuss: how are things going, what
 [9] has happened to such and such an idea that we had worked
 [10] on. These ideas take sometimes many years to come to
 [11] fruition, and I was always interested in learning
 [12] whether promotions had been progressed with different
 [13] clients.

[14] Q: Do you claim to have known what further proposals may
 [15] have been made to Shell by Don Marketing after
 [16] Project 100 had come to a standstill?

[17] A: I cannot add any more than I have already put in my
 [18] statement."

[19] Q: Thank you. In the statement that you have open in front
 [20] of you, could you turn to the last page of it?

[21] A: Sorry, which statement are we talking about?

[22] Q: The statement you have open behind tab 3 in volume C1.

[23] A: Page 39, right.

[24] Q: I am sorry, I should have started you at the bottom of
 [25] 38. You have explained that there comes a time where

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[1] you have a lunch meeting, which occurs several months
 [2] later with Mr Danson:
 [3] "He informed me that Shell had withdrawn from the
 [4] consortium because of a major change in Shell's
 [5] marketing policy. He acknowledged that the proprietary
 [6] rights to the concept remained with DMML and the rights
 [7] to the advertising campaign with Leo Burnett
 [8] Advertising. The news was very disappointing but not a
 [9] major blow, as Leo Burnett is one of the world's largest
 [10] advertising agencies, and new business pitches were
 [11] always being worked on."

[12] Then, if we go to the top of the next page:
 [13] "I believe that Mr Danson's acknowledgement
 [14] extended to all of the information and ideas in the DMML
 [15] proposal dated 26th June 1986, which included the
 [16] loyalty promotion outline concept described on page 41."
 [17] Right?

[18] A: Yes.

[19] Q: Then we come to the paragraph:
 [20] "Soon after John Donovan started Don Marketing UK
 [21] Limited, he advised me that he was having further
 [22] discussions with Shell in respect of the multibrand
 [23] loyalty scheme ..."

[24] Just pausing over that, that is the multibrand
 [25] loyalty scheme you have been referring to in all of the

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[1] Q: The different situations were these, were they not:
 [2] Mr King had just left Shell, yes?

[3] A: Yes.

[4] Q: You were, I think, possibly two years, maybe three
 [5] years, into your own agency consultancy, were you not?

[6] A: Yes, that is right.

[7] Q: And the purpose of the lunch, would I be right in
 [8] thinking, was to see whether you might find ways of
 [9] co-operating together on projects in the future?

[10] A: Yes.

[11] Q: It was a business combined with a social lunch, was it
 [12] not?

[13] A: Yes.

[14] Q: The three of you present were John Donovan, Paul King
 [15] and yourself and, as I understand it, there was nobody
 [16] else present for any part of the lunch?

[17] A: I do not think so, no.

[18] Q: No. You say you do not think so. Do you have a clear
 [19] recollection?

[20] A: It is six years ago. I can remember Paul King very
 [21] well, and John. I think there were just the three of
 [22] us.

[23] Q: Okay. In your new witness statement, if you just take
 [24] that to hand, please, in paragraph 4 on page 2 you
 [25] mention Mr King's name at the end of the preceding

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[1] preceding paragraphs, is it not?

[2] A: Yes.

[3] Q: "... and he wanted to know if I could recall the basis
 [4] on which matters had been left with Shell. He knew
 [5] I was the last person to discuss Project 100 with Mr
 [6] Danson. I mentioned I still had a copy of the
 [7] Leo Burnett memo dated 6th January 1987 which recorded
 [8] the outcome of the discussion with Mr Danson. I let him
 [9] have a copy."

[10] Yes?

[11] A: Yes.

[12] Q: That letter is the one we were just looking at:
 [13] January 6th 1987 on page 111, is it not?

[14] A: Godfrey Morrow, yes.

[15] Q: And that was the totality of your evidence in your first
 [16] witness statement in relation to Project 100?

[17] A: That is correct.

[18] Q: In your new supplemental statement you indicate that
 [19] there came a time in January 1993 when you went for
 [20] lunch with Mr King?

[21] A: Yes.

[22] Q: How clearly do you remember having lunch with Mr King?

[23] A: I remember having lunch with Mr King, I remember the
 [24] venue, I remember the discussion and I remember our
 [25] different situations at that time.

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[1] paragraph and you say "he" and that means "King",
 [2] I think?

[3] A: Yes.

[4] Q: "He was also looking for advice, which I was happy to
 [5] give and, during the discussion over lunch, the
 [6] multibrand ideas which Don Marketing had originally put
 [7] to Shell were mentioned."

[8] A: Yes.

[9] Q: That is the Project 100 material we have just been
 [10] looking at here; correct?

[11] A: Yes.

[12] Q: "Paul said it was unfortunate that the Megamatch project
 [13] had not been taken forward by Shell and their
 [14] prospective partners."

[15] That refers, amongst other things, to that letter
 [16] of January 1987 where it came to a standstill and you
 [17] wrote the letter you did; yes?

[18] A: Yes.

[19] Q: "It was evident from the conversations that Shell had
 [20] some continuing rights over the multibrand loyalty
 [21] concept."

[22] That is the one that is outlined in Project 100,
 [23] is it not?

[24] A: Yes.

[25] Q: You say:

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[1] "I have been in court during the course of this
 [2] trial and am well aware of the controversy over the
 [3] so-called option which John Donovan alleges Shell to
 [4] have taken over his multibrand loyalty concept. At six
 [5] years distance it is clearly impossible for me to recall
 [6] the precise words used during a lunch meeting lasting no
 [7] more than an hour and a half."

[8] You cannot say with certainty that the
 [9] word "option" itself was or was not used. Certainly you
 [10] never believed or had the impression of any payment
 [11] having been made by Shell, nor of any formal legal
 [12] agreement:

[13] "But, from the discussion which took place, I had
 [14] the clear impression of an arrangement that was standard
 [15] practice in the business at that time and, to a certain
 [16] extent, now: namely, that the concept had been left with
 [17] Shell on the understanding that Don Marketing would not
 [18] present it to any competitor and that, if Shell used it
 [19] subsequently, Don Marketing would be involved."

[20] Now, that is, in its own way, a reference back to
 [21] the position recorded in your letter of
 [22] January 6th 1987, is it not? As it were, you had made a
 [23] sort of statement as to the relative proprietary
 [24] positions of the parties at that time; yes?

[25] A: Yes.

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[1] assist you to do it?

[2] A: It was not going to move forward as a result of that
 [3] meeting, from what was said.

[4] (11.15 am)

[5] Q: In paragraph 6 you talk about becoming aware of the
 [6] publicity surrounding Shell's Smart Card promotion. You
 [7] say it was in late 1996 or early 1997. Had you not seen
 [8] anything about Shell Smart Card before that?

[9] A: No.

[10] Q: Are you aware in fact that it rolled out progressively
 [11] from 1994?

[12] A: Not at the time, no.

[13] Q: You are now though?

[14] A: From bits I have read, yes.

[15] Q: Do you closely read trade journals?

[16] A: It depends which trade journals.

[17] Q: Which ones do you read?

[18] A: I read - my business at the moment is very much away
 [19] from Shell and advertising as such. So I tend to read
 [20] things like Inside Housing, The Housing Press. My
 [21] business is much more involved with social housing at
 [22] the moment.

[23] Q: Right. You will need to just help me on this: in 1994
 [24] what was the trend in your business? Was it in the same
 [25] direction in 1994?

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[1] Q: What you are reiterating here in paragraph 4 is that the
 [2] concept had been left with Shell, and you say it was
 [3] left with Shell on a certain understanding. That is
 [4] what you are saying, are you not?

[5] A: Yes. We had a very good business relationship with
 [6] Shell: a matter of mutual trust and integrity.

[7] Q: You say at paragraph 5:

[8] "The context in which this was discussed was that
 [9] I was myself keen to suggest to Paul and John that we
 [10] could work together to try and get Megamatch and/or the
 [11] associated multibrand loyalty concept off the ground."

[12] That is your ambition: to see Megamatch run, is it
 [13] not, that you have just referred to in your evidence
 [14] earlier on?

[15] A: Yes.

[16] Q: You say:

[17] "John was lukewarm about this and Paul King gave
 [18] the impression that these ideas were retained by Shell."

[19] So, although you might have hoped to revive
 [20] Project 100, the evidence you are giving here is that
 [21] you were not in a position to do so?

[22] A: I was not personally in a position to do so. That was
 [23] true.

[24] Q: And they were not willing to go along with the
 [25] proposition that you should? They were not going to

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[1] A: My business is - I run my own business, so I can
 [2] be - I am aware of what is going on in other
 [3] industries. My whole background is in sales promotion
 [4] and advertising. So I occasionally see Campaign,
 [5] I occasionally see Marketing Week, because those are
 [6] subjects I am interested in.

[7] Q: Let me put it to you directly: I am slightly surprised
 [8] that, in your line of business, that you did not know
 [9] about Shell rolling out its Smart Scheme in 1994. I am
 [10] slightly surprised to hear you say that, and I am just
 [11] wondering whether there is a reason associated with the
 [12] nature of your business at that time?

[13] A: No, no reason.

[14] Q: Okay. You have exhibited to your second witness
 [15] statement two diary pages?

[16] A: Yes, I have the diary here. (Indicates).

[17] Q: Could you just pass it to me? (Handed). On the second
 [18] of those two diary pages you see an entry on
 [19] 4th November and an entry on 5th November?

[20] A: Yes.

[21] Q: The entry on 5th November seems to relate to a meeting
 [22] which you were going to have with John Donovan, meeting
 [23] him outside Shell-Mex House?

[24] A: That is correct.

[25] Q: Can you remember what that meeting was about?

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[1] A: To the best of my knowledge, that meeting was one of our
 [2] perhaps twice-yearly meetings which we might have had.
 [3] I used to meet up with John to see how things were
 [4] going, to see if there was any possibility of doing some
 [5] work together. We both like our food occasionally and
 [6] we went, I think, to a restaurant somewhere near
 [7] Shell-Mex House in Covent Garden.
 [8] Q: And the preceding day you have had a meeting with
 [9] Charles Donaldson, it looks like, for a couple of
 [10] hours. What is that word "Onyx" there on 4th November?
 [11] A: I have looked at that diary entry myself and I really do
 [12] not - I do not know. The word "Onyx" "Charles
 [13] Donaldson", I think it was a company called Onyx. But
 [14] I would have to ring that number. There is a telephone
 [15] number there, and I would be quite happy to ring it and
 [16] refresh my memory. But it has no significance.
 [17] Q: I rang it last night. It has been discontinued.
 [18] A: Has it? I am sorry. I can assure you it has no other
 [19] significance.
 [20] Q: You say "no other significance"? I have not yet learned
 [21] what significance you say it has.
 [22] A: I do not know why you should pick on that day or why you
 [23] do not quiz me about the board meeting on November 3rd.
 [24] Q: It is the word "Onyx" that I wanted your help on.
 [25] A: It means nothing to me.

[1] Q: And the evidence you have given in this supplemental
 [2] statement in the totality of your current recollection
 [3] of what was discussed between yourself, King and Donovan
 [4] at that lunch?
 [5] A: Which lunch? January?
 [6] Q: Yes, the January lunch.
 [7] A: Yes.
 [8] MR HOBBS: My Lord, I have no further questions.
 [9] Re-examination by MR COX
 [10] MR COX: Did you distinguish in your mind between the
 [11] Megamatch game concept and the multibrand loyalty
 [12] concept?
 [13] A: Yes.
 [14] Q: When the discussion was being held between Mr King,
 [15] yourself and Mr Donovan, you hoping that these ideas
 [16] might be taken forward, in respect of which idea are you
 [17] talking in your second witness statement in
 [18] paragraph 4? Just read it over to yourself, please.
 [19] A: I do not think I would have made a particular
 [20] distinction between the two types of promotion. I was
 [21] looking for anything in that discussion which would have
 [22] advanced the possibility of us doing some business
 [23] together.
 [24] Q: Right. What I want you to help us with, if you would:
 [25] if we deal with the Megamatch game concept, you had been

[1] Q: Were there discussions between yourself and John Donovan
 [2] at about this time - on 4th/5th November 1993 -
 [3] relating to something called Project Onyx which had been
 [4] taking place within Shell?
 [5] A: No.
 [6] Q: You are quite sure about that?
 [7] A: Absolutely sure.
 [8] Q: What is your best recollection then as to what the word
 [9] "Onyx" means on 4th November?
 [10] A: I would say it was a bizarre coincidence. I think there
 [11] was a company called Onyx.
 [12] Q: Who is Charles Donaldson?
 [13] A: I have no idea at this stage. I really cannot
 [14] remember.
 [15] Q: What would help you to remember?
 [16] A: I would suggest ringing that telephone number.
 [17] Q: Yes, I know. Do you have other records?
 [18] A: No.
 [19] Q: Your diary is your only record from that point in time?
 [20] A: This is six years ago. I would let you have a look at
 [21] my diaries, but I cannot remember every entry in them.
 [22] I can sure assure you that it had no significance as
 [23] regards this case. I am sure, if you go through other
 [24] pages of my diary, you will not find any references
 [25] to ...

[1] involved in the 1980s closely with that project, had you
 [2] not?
 [3] A: Yes.
 [4] Q: Do you recall the basis now upon which Shell and
 [5] Don Marketing Management Limited had collaborated in
 [6] Make Money, which is the basis of Megamatch, is it not?
 [7] A: Yes, I do. I recall it very well.
 [8] Q: Which was what?
 [9] A: Sorry?
 [10] Q: What was the basis of Don Marketing's arrangement with
 [11] Shell concerning Make Money?
 [12] A: The arrangement was a very full arrangement, where
 [13] Don Marketing were the main - Don Marketing was the
 [14] engine which drove the promotion forward.
 [15] Q: Make Money had been devised in the 1960s in a particular
 [16] form, had it not?
 [17] A: Yes.
 [18] Q: What was Don Marketing's contribution to Make Money?
 [19] A: Don Marketing's contribution to Make Money was to
 [20] totally revolutionise the way the mechanics of that game
 [21] worked.
 [22] Q: How? Do not give me the detail, but just what was the
 [23] effect of it?
 [24] A: It was a much slicker game, it was a much larger game
 [25] and it depended on the technology of printing that was

[1] being developed at that time.

[2] **Q:** As far as rights in that were concerned, what was your
[3] understanding of who possessed the rights?

[4] **A:** The rights of that game were possessed by Don Marketing.

[5] **Q:** Megamatch was a development of Make Money?

[6] **A:** Indeed.

[7] **Q:** It simply involved the playing of the game across
[8] multiples, as it is referred to, or across different
[9] retail sectors by a consortium?

[10] **A:** Yes.

[11] **Q:** The multibrand loyal concept was a concept -

[12] **MR HOBBS:** I do not want any leading on this, my Lord.

[13] **MR COX:** There will be no leading - was a concept that
[14] emerged how?

[15] **A:** The concept of the loyalty promotion, the longer term
[16] loyalty promotion, arose out of getting retailers and
[17] other people together to pool their resources and to
[18] take forward a commonality of reward and, if you like,
[19] the game pieces changed. It was no longer a game: it
[20] would become more of a currency.

[21] **Q:** Right. When we come to the discussions with Mr King in
[22] January, this background is present to your mind, is it?

[23] **A:** Yes.

[24] **Q:** Can I ask you, if you look again at your witness
[25] statement, you say in your witness statement,

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[1] acceptable through retailers like Sainsburys or

[2] Woolworth, through petrol stations, through WH Smith;

[3] whoever, and that, by gathering these pieces of currency

[4] together, in whatever form they took, a reward would be
[5] produced.

[6] That was clearly in our minds and we knew that

[7] something like this would happen in the future. It is

[8] just a matter of when the right conditions would apply

[9] and it seemed to me at that time that because of Don

[10] Marketing's excellent relationship with Shell and the

[11] trust and integrity that had always been my experience

[12] with the two companies, that they would hold on to this

[13] until the time was right to run it.

[14] **Q:** That really meant that you were shut out,
[15] did it?

[16] **A:** Well, I picked up, if you like, the

[17] inference from the meeting was that John was not really

[18] in a position to move this forward and so I did not feel

[19] that anything could be achieved in terms of moving it

[20] forward at this meeting.

[21] **Q:** Move Mega Match forward or move the

[22] multibrand loyalty scheme forward or both?

[23] **A:** Well, the multibrand loyalty scheme

[24] more importantly because Mega Match was an extension of

[25] at least four promotions that Shell had run in the 1980s

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[1] paragraph 4:

[2] "It was evident from the conversation that Shell
[3] had some continuing rights over the multibrand loyalty
[4] concept."

[5] Do you see that?

[6] **A:** Yes.

[7] **Q:** When you put that in your statement, was that correct?

[8] **A:** Yes.

[9] **Q:** Is that your impression of the meeting that you held
[10] with Mr King and Mr Donovan?

[11] **A:** Very clearly, yes.

[12] **Q:** Could you have been confused by your knowledge of

[13] Megamatch and that really the discussion only related to

[14] Megamatch?

[15] **A:** No, there was no confusion.

[16] **Q:** Why do you say that?

[17] **A:** Because we were always looking forward to developing
[18] these ideas into the future. I was present in court

[19] when we were talking about John Donovan's ability to see

[20] into the future and to predict trends, and he has done

[21] that over the years most successfully. I can give other

[22] examples, if the court wishes. This was an idea that

[23] obviously was going to go forward. The transfer, if you

[24] like, of a simple short-term three-month promotion into

[25] a longer term loyalty promotion with a currency that was

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[1] and like John, I have always been very interested as an

[2] entrepreneur, into seeing what opportunities existed and

[3] particularly with new technology coming along.

[4] **Q:** Printing technology through the 1980s

[5] had been developed, by security envelopes for these

[6] games. Shell were at the forefront of that with Don

[7] Marketing's help and it seemed logical in the 1990s the

[8] same thing would happen with other technologies but I

[9] was not privy to those at that time.

[10] **Q:** Once you had understood that it was not

[11] possible to go forward with the multi- brand loyalty

[12] concept, at your suggestion, you have told us that later

[13] on, much later on, you read something in the press

[14] concerning a multi- brand loyalty concept launched by

[15] Shell?

[16] **A:** Yes.

[17] **Q:** What was your reaction when you read

[18] that?

[19] **A:** I was quite thrilled really because I

[20] thought John Donovan had been persistent and that it had

[21] paid off eventually and that I assumed that he was

[22] involved and I rang him.

[23] **Q:** When you rang him, what did you find

[24] out?

[25] **MR HOBBS:** I did not cross-examine on this

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[1] part of his statement.

[2] **MR JUSTICE LADDIE:** Mr. Cox, keep this under
[3] re examination and what he was cross-examined on.

[4] **MR COX:** My Lord, may I be heard on it?

[5] **MR JUSTICE LADDIE:** Yes, but keep the re-
[6] examination on what was cross-examined -

[7] **MR COX:** My learned friend did cross-
[8] examine on the date and on the date of the marketing
[9] press and he expressed his own personal surprise that
[10] this witness -

[11] **MR JUSTICE LADDIE:** Absolutely, as to
[12] whether or not -

[13] **MR COX:** One of the things your Lordship
[14] will have to assess when considering the veracity and
[15] reliability of this witness, is whether he is telling
[16] the truth on all aspects on which he has been cross-
[17] examined. The reaction for your Lordship's examination
[18] of this witness, to the first news he had of the Smart
[19] card consortium is a relevant feature.

[20] **MR JUSTICE LADDIE:** I do not see how that
[21] arises out of cross-examination. Mr. Cox, I have
[22] already expressed my view that this case looks like it
[23] has a life of its own and it is going to cost the
[24] parties a lot of money, but I do not want you at any
[25] stage to feel you have been kept out of asking any

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[1] something that we very nearly had in the 1980s, in a
[2] short term promotion. The potential for this as a
[3] longer term wider promotion was enormous and it was
[4] merely a matter of waiting for the market conditions to
[5] be right.

[6] **Q:** I understand that, but I just want to
[7] make sure that I understand your position; having short
[8] term gains or promotions, it does not matter what they
[9] are, involving more than one idea, that has value of its
[10] own?

[11] **A:** Yes.

[12] **Q:** To go to the long term multi-retailer
[13] loyalty, going from short to long term, once you have
[14] taken that on board, is that right, the consequence is
[15] you then have to think on a bigger scale?

[16] **A:** Yes.

[17] **Q:** An so, once you have made that crucial
[18] decision, taken that crucial step, you then have to
[19] think in terms of broadening out the group of retailers,
[20] addressing the question of long term technology?

[21] **A:** Yes.

[22] **Q:** Addressing the question of wider
[23] accounts?

[24] **A:** Yes and conflict of interest because,
[25] and it is tremendously valuable commercial property and

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[1] questions.

[2] **MR COX:** I do not want your Lordship to feel
[3] I am pushing unnecessarily, so I will desist. Thank
[4] you, Mr. Chambers.

[5] **MR JUSTICE LADDIE:** Just before you go, as I
[6] understand it, it was really at an important moment,
[7] going from short to long term loyalty and as I
[8] understand it, that is a nugget which you thought Mr.
[9] Donovan had conceived?

[10] **A:** Absolutely.

[11] **Q:** Once you got that idea of going from
[12] short term to long term, there are certain consequences,
[13] such as how many people you bring into the consortium
[14] scope of the type of reward?

[15] **A:** Yes.

[16] **Q:** No doubt, the mechanics, the hardware
[17] from all those flowed, once you -

[18] **A:** Yes.

[19] **Q:** Is that right?

[20] **A:** Yes.

[21] **Q:** So, it was that nugget that opened into
[22] a wider project?

[23] **A:** It has tremendous commercial value and
[24] to widen an idea that originally starts off with just
[25] two or three members, into a larger consortium, is

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[1] if, for instance, Shell said, 'No, we don't want
[2] anything to do with that', there would have been an
[3] opportunity to go to Esso, for example. 'Make Money'
[4] pushed Shell's brand share up by 12% in three months.
[5] These are enormously valuable concepts.

[6] **MR JUSTICE LADDIE:** Thank you. Would you
[7] like to ask any further questions?

[8] **MR HOBBS:** No, thank you.

[9] **MR COX:** Yes, please. When you speak of a
[10] consortium, just so that his Lordship and indeed I
[11] understand, if I may, are we talking about a consortium
[12] that is open-ended in the sense that different
[13] retailers, more retailers in one sector will join or is
[14] it exclusive?

[15] **A:** It is normally sold on an exclusive
[16] basis and you find typically that if a company, say a
[17] petrol company, is involved, you would not invite any
[18] other petrol company in. A retailer like Sainsbury's
[19] would go in and that would be it. The others would be
[20] biting your hand off to get in once the thing is up and
[21] running and is seen to be a tremendously commercial
[22] success.

[23] **Q:** When you say that, you mean now. In
[24] 1986 and again in 1989 and 1990, you say normally, was
[25] it normal then?

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[1] A: No. It was difficult, as we found when
 [2] we presented Mega Match even for a three- month
 [3] promotion, that was difficult. Retailing conditions are
 [4] changing the whole time and I think generally companies
 [5] realise the commercial value because this is why you
 [6] have all the loyalty cards now.

[7] Q: There has been a development?

[8] A: Yes.

[9] MR COX: Thank you.

[10] MR JUSTICE LADDIE: Thank you very much, Mr.
 [11] Chambers.

[12] (The witness withdrew)

[13] MR JUSTICE LADDIE: Now, there is another
 [14] matter you wish to raise?

[15] MR COX: There is and I wish to raise this
 [16] matter now for particular reasons.

[17] MR JUSTICE LADDIE: Absolutely. As I
 [18] understand it there are two possibilities —

[19] MR HOBBS: Would your Lordship like any of
 [20] the witnesses who are going to give evidence, to leave
 [21] the room?

[22] MR JUSTICE LADDIE: Is there any reason why
 [23] this should be in camera? The allegations of forgery
 [24] have been made very public. Anyone who reads the
 [25] transcript will see it on every other line.

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[1] MR JUSTICE LADDIE: Secondly, you say I
 [2] could order this issue not to be pursued, cutting out
 [3] that point in Shell's case. Thirdly, you say if that
 [4] does not exist, that I should give your client
 [5] sufficient time to get material to answer the
 [6] allegation, if such material is available. Have I got
 [7]

[8] MR COX: May I rearrange number two slightly
 [9] to say not to cut out Shell. Our submission is that the
 [10] balance is put properly as follows: Your Lordship would
 [11] have to admit it at this late stage. Shell has no right
 [12] to raise a submission not pleaded, in our submission,
 [13] and the purpose of the pleading is various and your
 [14] Lordship has the point.

[15] MR JUSTICE LADDIE: That is a matter more of
 [16] formality than substance?

[17] MR COX: Exactly.

[18] MR JUSTICE LADDIE: If they are allowed to
 [19] go ahead, whether there is time for your client?

[20] MR COX: Exactly, my Lord.

[21] MR JUSTICE LADDIE: Good. When I was
 [22] reading your submission, I did not have the pleadings in
 [23] front of me. First of all, as I understand it, you say
 [24] that the letter to Mr. Horley on 24th July, 1990, which
 [25] is at whatever page it is, 46 of the pleadings, this is

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[1] MR HOBBS: In case anyone wants to suggest
 [2] any witnesses should not be here —

[3] MR COX: What is sauce for the goose is
 [4] sauce for the gander!

[5] MR JUSTICE LADDIE: There is a lot of sauce
 [6] around here! Let me see if I have this right. There is
 [7] no doubt at all, there are allegations of profound
 [8] dishonesty raised by one side against the other and vice
 [9] versa, but your position, at least in respect of some of
 [10] these allegations of forgery, is that there was no
 [11] warning about this coming?

[12] MR COX: Our position is in relation to any
 [13] document —

[14] MR JUSTICE LADDIE: Well, there is one I
 [15] will mention to you because I have a problem with one of
 [16] them, but as I understand it, your position is this:
 [17] These allegations of forgery can be dealt with in three
 [18] ways. One, just carry on as before, which you say would
 [19] be unfair to your client?

[20] MR COX: I do.

[21] MR JUSTICE LADDIE: Because the allegations
 [22] particularly made against Mr. Donovan and Mr. Sotherton
 [23] are unfair and you are not encouraging me to go down
 [24] that route?

[25] A: I do.

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[1] the one sent to Sainsbury's in July, 1990 and two
 [2] things, as I understand it, are said about this letter,
 [3] two important things are said about this letter. If you
 [4] look at 44, as I understand it, this letter is alleged
 [5] to have been drafted in collaboration with Shell in
 [6] 1990?

[7] MR COX: In circumstances which the evidence
 [8] reveals, yes.

[9] MR JUSTICE LADDIE: That is a suggestion.
 [10] So, Shell would have seen it in 1990?

[11] MR COX: Yes.

[12] MR JUSTICE LADDIE: Then there is a second
 [13] suggestion which is that Mr. Lazenby asked to see it
 [14] again?

[15] MR COX: Yes.

[16] MR JUSTICE LADDIE: In November, 1993 and
 [17] the content of the letter at 450a and 450b, contains the
 [18] manuscript notes of Mr. Sotherton?

[19] MR COX: Exactly.

[20] MR JUSTICE LADDIE: Which referred to the
 [21] fact it was produced to Mr. Lazenby in November, 1993?

[22] MR COX: Indeed.

[23] MR JUSTICE LADDIE: There are two points
 [24] which arise in relation to this document. First of all,
 [25] whether it was ever sent to Sainsbury's at all and

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[1] whether it was drafted. In other words, whether it was
 [2] drafted at the time and whether therefore, it was
 [3] drafted in corroboration with Shell. That is point one.
 [4] **MR COX:** Yes, and may I add, the suggestion
 [5] is that this letter has been constructed after March,
 [6] 1997 or in March, 1997, describing the Smart scheme as
 [7] it had already broadcast and publicised.
 [8] **MR JUSTICE LADDIE:** Yes. It is 20- 20
 [9] hindsight.
 [10] **MR COX:** Exactly. It is not clairvoyance,
 [11] it is history he is describing.
 [12] **MR JUSTICE LADDIE:** Yes, I understand the
 [13] point. So, the two arguments: One it was not produced
 [14] in May, 1990 at all and, therefore, it could not have
 [15] been drafted in collusion with Shell in 1990?
 [16] **MR COX:** Exactly.
 [17] **MR JUSTICE LADDIE:** And, secondly, and
 [18] independently, it was not taken in the November, 1992
 [19] meeting —
 [20] **MR COX:** Exactly.
 [21] **MR JUSTICE LADDIE:** Can I deal with the
 [22] second.
 [23] **MR COX:** I admit the second. The second was
 [24] amply —
 [25] **MR JUSTICE LADDIE:** It expressly says Mr.

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[1] paragraph:
 [2] "Further details of the said concept were disclosed by
 [3] the Plaintiff acting on behalf of Don Marketing during
 [4] the course of discussions with the said Paul King, one
 [5] Tim Hannigan and one Stuart Carson both of the Defendant
 [6] over the period 23rd October 1989 to 24th July 1990 from
 [7] the said Roger Sotherton acting on behalf of Don
 [8] Marketing."
 [9] **MR JUSTICE LADDIE:** And copied to Paul king
 [10] and Stuart Carson?
 [11] **MR COX:** Yes.
 [12] **MR JUSTICE LADDIE:** Wait a minute. From my
 [13] reading of Carson's witness statement, he does not
 [14] actually refer to that letter?
 [15] **MR COX:** He does not.
 [16] **MR JUSTICE LADDIE:** He does not say he did
 [17] receive it or did not receive it?
 [18] **MR COX:** No.
 [19] **MR JUSTICE LADDIE:** So, you have no basis on
 [20] which to expect the suggestion to be made that it was
 [21] not sent because it did not exist?
 [22] **MR COX:** Can I summarise Mr. Carson as we
 [23] understood it. Mr. Carson is saying there could not have
 [24] been an option because of our attitude and policy at the
 [25] time. He was not denying that he received any letter or

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[1] Lazenby; it was self- serving, does not believe —
 [2] **MR COX:** The second I perfectly understand.
 [3] **MR JUSTICE LADDIE:** So, the attack on Mr.
 [4] Sotherton's manuscript was not apparent?
 [5] **MR COX:** Perfectly apparent from witness
 [6] statements and from the pleading. May I simply put this
 [7] point to your Lordship: One knew that one was going to
 [8] face a suggestion that that letter had never been taken
 [9] at this meeting and the notes must have been appended
 [10] falsely.
 [11] **MR JUSTICE LADDIE:** That is what I am
 [12] saying. The other point is whether it was written at
 [13] all in 1990. You said in your skeleton that this letter
 [14] was raised in the pleadings and admitted?
 [15] **MR COX:** Yes.
 [16] **MR JUSTICE LADDIE:** Can you show me where
 [17] that is?
 [18] **MR COX:** I can.
 [19] **MR JUSTICE LADDIE:** Which bundle do I look
 [20] at?
 [21] **MR COX:** Bundle A, the pleadings bundle.
 [22] First, may I take your Lordship to the statement of
 [23] claim at paragraph 3. My Lord, paragraph 3 alleges that
 [24] the concept was seen by Don Marketing as the concept 4
 [25] presentation of promotional ideas. Further down the

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[1] had any indication, he said he had no recollection.
 [2] **MR JUSTICE LADDIE:** Let me tell you my
 [3] understanding before this blew up. When I read Mr.
 [4] Carson, I had assumed he was going to say that he did
 [5] not receive it, but I notice that he did not say that.
 [6] Had he received it he might have protested. We do not
 [7] grant those sort of options, but the absence of any
 [8] statement is noted from the outset in relation to this
 [9] letter. Your position is if he was going to say it was
 [10] never sent to him and does not exist, that is in the
 [11] case of forgery —
 [12] **MR COX:** He should have made it clear and
 [13] further, this, in our submission, even although he may
 [14] not have received it, it does, of course exclude or
 [15] suggest that he is suggesting that King did not —
 [16] **MR JUSTICE LADDIE:** Yes, I understand.
 [17] **MR COX:** In our submission —
 [18] **MR JUSTICE LADDIE:** Yes, of course, but here
 [19] it says it was copied to Stuart Carson. All I am saying
 [20] is the allegation it was sent to Stuart Carson, if the
 [21] case is he says he never received it, you would have
 [22] expected that to be said in his witness statement. But,
 [23] let us not worry about that. Paragraph 3, you say, is
 [24] admitted?
 [25] **MR COX:** Can I take your Lordship to the

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[1] defence which is at tab 4.

[2] **MR JUSTICE LADDIE:** Got it, yes.

[3] **MR COX:** Paragraph 3. If your Lordship kept
[4] a finger in the statement of claim, that might be a
[5] help.

[6] "In relation to paragraph 3 of the statement of claim"-
[7] the one that your Lordship has looked at- "It is
[8] admitted that Paul King, Roger Sotherton and the
[9] plaintiff met at Shell- Mex house or about 23 October
[10] 1989."

[11] Well, that is irrelevant for these purposes. It is
[12] admitted that a copy of the document headed:
[13] Presentation and a letter dated 24th July from Roger
[14] Sotherton addressed to Brian Horley, were provided to
[15] Shell UK.

[16] "Save as aforesaid paragraph 3 of the statement of
[17] claim is not admitted."

[18] Now, my Lord, paragraph 6.2 of the defence:

[19] "It is admitted that Don Marketing UK Limited
[20] thereafter wrote to Mr. Horley on 10th July and 24th
[21] July 1990 concerning matters including the 'Disneytime'
[22] and 'Megamatch' promotions."

[23] **MR JUSTICE LADDIE:** Which is the second
[24] paragraph -

[25] **MR COX:** In that letter. And, my Lord, that

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[1] may have seen it. It did not register. It did not
[2] register with us. Now, I see how foolish I have been,
[3] but it has, we submit, the hallmarks of an ambush and
[4]

[5] **MR JUSTICE LADDIE:** Whether it was an ambush
[6] or not, Mr. Cox, I am much more concerned to make sure
[7] that this dreadful trial is continuing in a way that is
[8] fair to both sides.

[9] **MR COX:** I am in your Lordship's hands,
[10] because I know your Lordship will ask me a number of
[11] other pertinent questions -

[12] **MR JUSTICE LADDIE:** No, these are pertinent
[13] enough as far as I am concerned. Your client wants to
[14] be able to get together, to show that this letter was
[15] written and sent at the time.

[16] **MR COX:** At the time and indeed -

[17] **MR JUSTICE LADDIE:** It is a matter entirely
[18] for you, Mr. Cox, but are you prepared to persuade me
[19] whether you have thought it necessary to approach
[20] Sainsbury's and get a copy of this letter from them or
[21] in view of the admission you did not think it was
[22] necessary to do that?

[23] **MR COX:** No, we did not. Until now, we had
[24] never dreamed that this theory could be advanced and
[25] still I should be surprised if this 'dreadful trial'

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[1] is the state of the pleadings. Now, my Lord, in the
[2] light of what one has now learnt, it is, I suppose,
[3] possible to construe those admissions as not accepting
[4] the letter. We would submit the contrary -

[5] **MR JUSTICE LADDIE:** Let me tell you how I
[6] read it, Mr. Cox. 6.2: It is admitted that Don
[7] Marketing wrote to Mr. Horley on 24th July concerning
[8] Disneytime and Mega Match. There is no other letter of
[9] 24th July, is there?

[10] **MR COX:** Exactly, no. And then with
[11] paragraph 3.2, copy was provided to Shell.

[12] **MR JUSTICE LADDIE:** That is slightly more
[13] ambiguous because it does not say when -

[14] **MR COX:** I agree

[15] **MR JUSTICE LADDIE:** But the only paragraph
[16] in the statement of claim which it looks like, says it
[17] was provided, supplied to Shell at the time.

[18] **MR COX:** Yes, my Lord. That is why we
[19] submit whatever the intention behind this pleading -

[20] **MR JUSTICE LADDIE:** Your client has been
[21] taken by surprise?

[22] **MR COX:** We were taken by surprise. May I
[23] say that even now we see from the chronology which my
[24] learned friend drafted, the meaning of the distinction
[25] of the use of the verb 'bore' the date. Your Lordship

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[1] goes forward, that this is theory and no more.

[2] **MR JUSTICE LADDIE:** Of course, I agree. It
[3] is a load of tosh, but it is quite important tosh?

[4] **MR COX:** It is, if it is going to be
[5] admitted as a live issue in this trial because- well,
[6] your Lordship has the point.

[7] **MR JUSTICE LADDIE:** Of course. There can be
[8] no doubt as to the importance of this because, as I
[9] think the letter of 24th July, 1990 itself says, and as
[10] you put it to me in your opening, whatever was in
[11] concept 4 in the original proposal was fleshed out and
[12] contains much more in the letter of 24th July and the
[13] 24th July letter, therefore, is a significant part of
[14] the package of information which your client says he had
[15] handed over in confidence to Shell and it will, of
[16] course, have a knock-on effect on the view I may take
[17] of Mr. Lazenby because it is possible- once again I am
[18] only talking about the possibilities, Mr. Cox- it is
[19] possible for example, for the original concept 4 never
[20] to have come to Mr. Lazenby's attention except later
[21] when it was supplied under a letter which is not being
[22] challenged and also it could be said that it contains so
[23] little by comparison with the letter of 24th July, that
[24] in itself it was not adopted by Mr. Lazenby.

[25] Do not worry about whether that is right or

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[1] wrong. Whereas Mr. Lazenby's position might be a lot
 [2] more difficult if this letter was brought and also has a
 [3] knock-on effect on the allegation of forgery against
 [4] Mr. Sotherton for the note of November, 1992. I can see
 [5] it being quite important not only to credibility of Mr.
 [6] Donovan and Mr. Sotherton, but also to the credibility
 [7] of Mr. Lazenby on a crucial issue.

[8] **MR COX:** And, of course, if it were right,
 [9] this is no more than the embellishment or icing on the
 [10] cake, if it were right that this letter were not written
 [11] then, then the idea was not developed in its fleshed out
 [12] form by Mr. Donovan.

[13] **MR JUSTICE LADDIE:** Well, that may or may
 [14] not be the case. That is actually a non sequitor. The
 [15] developed idea was not transmitted to Shell by Mr.
 [16] Donovan.

[17] **MR COX:** No, what they are saying is that
 [18] the Sainsbury's letter was drafted in 1997. If it is a
 [19] forgery, then you are only dealing with concept 4 and it
 [20] is a consequence.

[21] **MR JUSTICE LADDIE:** Yes, that may have some
 [22] effect on all sorts of things; either credibility of
 [23] your clients, nature of the case which Shell has —

[24] **MR COX:** So, what I say, my Lord, is it is
 [25] so remarkable an allegation, so centrally directed —

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[1] that at the moment it does appear to me that the crucial
 [2] piece of evidence must be Sainsbury's because, frankly,
 [3] if it is proved that the letter was drafted in July,
 [4] 1990, a number of logical points flow. First of all,
 [5] the allegation made that, ex post facto, reinforcement
 [6] of Mr. Donovan sending the fax and then no doubt you
 [7] would say if it was in fact written, proved to have been
 [8] written in 1990, one might say, 'Well, why would Mr.
 [9] Donovan not have sent it to Shell?' So, even if it is
 [10] not in their files, then it comes to questions of why it
 [11] is not in Shell's files.

[12] Now, it looks to me like finding out whether
 [13] or not Sainsbury's had a copy is crucial. One of the
 [14] points may be that you would wish to issue a subpoena
 [15] against Sainsbury's for them to produce their files.

[16] **MR COX:** That is one of the possibilities I
 [17] have been considering.

[18] **MR JUSTICE LADDIE:** But, I want to know what
 [19] we are talking about in terms of —

[20] **MR COX:** My Lord, there is more. I would
 [21] wish not only to investigate the issue with Sainsbury's,
 [22] although I rather suspect, given now what I know to have
 [23] been the game plan that we have been doing, but of
 [24] course, I want to know from Sainsbury's and if I can
 [25] track down Mr. Horley, from his directly, I want to do

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[1] **MR JUSTICE LADDIE:** I have got all the
 [2] adjectives!

[3] **MR COX:** You have the rhetoric!

[4] **MR JUSTICE LADDIE:** I understand it is
 [5] important. Yes, I understand. Before you sit down, Mr.
 [6] Cox, I can tell you straightaway that with an issue like
 [7] this, there is a possibility, of course, that Mr. Hobbs
 [8] is right and this is important. It is a possibility.
 [9] Until I have heard all the material, it is possible that
 [10] the notes on the letter of November, 1992 are forged.
 [11] If that is so, it will have a dramatic effect on various
 [12] issues in the case.
 [13] If it is so, it must follow that Mr. Donovan and Mr.
 [14] Sotherton know it is a forgery and if that is so, it
 [15] would seem to me to be quite wrong to prevent Shell from
 [16] proving the point if they can prove it.

[17] On the other hand, if it is not proved, it
 [18] would be wrong to deprive him of a proper opportunity.
 [19] Now, assume that I was minded — and this is only
 [20] discussing for a moment — Mr. Hobbs, as usual will
 [21] tell me I have the wrong end of the stick —

[22] **MR COX:** He tells us all that!

[23] **MR JUSTICE LADDIE:** He reserves it mainly
 [24] for me! Assume that I said, 'Right, your client has to
 [25] be given the opportunity to answer this', I must say

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[1] more than that, I want to see whether Mr. King can be
 [2] induced to give a statement. He is unwell. I think
 [3] that is known both to Shell and us. I have no doubt
 [4] they have carried out the same inquiries we have —
 [5] **MR JUSTICE LADDIE:** Mr. Cox, I think the
 [6] question of having Mr. King as a witness has always been
 [7] a central potential witness to the case —

[8] **MR COX:** He is ill.

[9] **MR JUSTICE LADDIE:** I have taken the view
 [10] that the parties must have taken a decision that Mr.
 [11] King is too unwell for various reasons to be called. I
 [12] am not happy about him now being made into a hook upon
 [13] which to hang —

[14] **MR COX:** Your Lordship sends arrows through
 [15] my heart, that is not my intention.

[16] **MR JUSTICE LADDIE:** Here we are, Mr. Hobbs.
 [17] It is my turn to put an arrow through his heart.

[18] **MR COX:** I am grief-stricken to think that
 [19] is your Lordship's intention! I want to examine the
 [20] case from the perspective of this new allegation and see
 [21] what evidence might be brought to court to substantiate
 [22] the integrity of my client.

[23] **MR JUSTICE LADDIE:** Mr. Cox, are you telling
 [24] me at no stage before these issues arose, had your side
 [25] contemplated tracking down Mr. Horley?

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[1] **MR COX:** No, we did not because we
 [2] understood these letters to be unchallenged in their
 [3] effect, in their contemporary nature.
 [4] **MR JUSTICE LADDIE:** I understand.
 [5] **MR COX:** But, Mr. King we did think about,
 [6] obviously.
 [7] **MR JUSTICE LADDIE:** Both sides must have
 [8] done.
 [9] **MR COX:** But, were told he was unwell. But,
 [10] now the issue has become so grave in its character, as
 [11] to suggest forgery –
 [12] **MR JUSTICE LADDIE:** You are pushing at an
 [13] open door, I have the fact it is a grave allegation and
 [14] very crucial to the case.
 [15] **MR COX:** Then I want your Lordship to
 [16] consider this: Is there any way in which forensic
 [17] scientific evidence could assist with the authenticity
 [18] of the documents? Even linguistically. There is
 [19] equipment in the Court of Criminal Appeal which is able
 [20] to analyse the text of documents particularly
 [21] surrounding contemporary documents. I am not trying to
 [22] unravel before your Lordship a long road of delay,
 [23] merely inter rorum I am simply giving your Lordship an
 [24] insight into what may be the clumsy and laboured
 [25] processes of my mind now, faced suddenly with a

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[1] assessment of the honesty of Mr. Lazenby and/or Mr.
 [2] Donovan finally, and, more than that, what it was that
 [3] was handed over by Mr. Donovan to Shell, because as I
 [4] understand it, the 24th July letter, 1990, is more
 [5] extensive in its context?

[6] **MR HOBBS:** Exactly.
 [7] **MR JUSTICE LADDIE:** It is crucial. If that
 [8] letter was handed over at the time, it is crucial to the
 [9] issues which I will have to determine, if this case
 [10] continues. So, why should Mr. Cox not be given an
 [11] opportunity to get together such material as he can to
 [12] prove that those documents were drafted, first of all
 [13] and, secondly, sent on the dates that they bear.
 [14] **MR HOBBS:** My Lord, the short answer to your
 [15] question is there is no reason, but can I say a little
 [16] bit more about the mechanics since there are mechanics
 [17] in the note handed to your Lordship this morning. Under
 [18] the old rules and under the new rules, it is permissible
 [19] to withdraw admission with the leave of the court. Now,
 [20] the machinery here is this: There were two stages at
 [21] which admissions were made which are now wished to
 [22] resile from. When I did the initial pleadings with my
 [23] learned friend Mr. Roberts, we took the documents at
 [24] face value and took them on in good faith –
 [25] **MR JUSTICE LADDIE:** And when you received

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[1] suggestion that two documents are forged. It is not an
 [2] allegation with which I am unfamiliar in the ordinary
 [3] territory in my practice –
 [4] **MR JUSTICE LADDIE:** It may come as a
 [5] terrific surprise, but allegations of forgery are made
 [6] in the hallowed grounds of the Chancery Division!
 [7] **MR COX:** Occasionally. In those
 [8] circumstances, there are a number of other
 [9] considerations.
 [10] **MR JUSTICE LADDIE:** I would like to know how
 [11] long you suggest this case should be adjourned for?
 [12] **MR COX:** My Lord, I would ask in the first
 [13] instance for some time to consider that question. I do
 [14] not know how long it will take me. Once I have
 [15] identified a programme of –
 [16] **MR JUSTICE LADDIE:** I think I ought to ask
 [17] Mr. Hobbs for his submission in relation to this before
 [18] we go any further.
 [19] **MR HOBBS:** I made admissions in my
 [20] pleadings, what I did and I signed that pleading –
 [21] **MR JUSTICE LADDIE:** Mr. Hobbs, I do not wish
 [22] you- I can see the sparks flying between you and Mr. Cox
 [23] every now and again, in the nicest possible way. Do not
 [24] worry about personal attacks. I am more concerned with
 [25] whether this, which could be absolutely crucial to my

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[1] discovery. I have already told Mr. Cox I am not worried
 [2] about the mechanics. Because this is so crucial to
 [3] withdrawing an admission or the authenticity of certain
 [4] documents disclosed to you when you discovered, that I
 [5] will give you leave to do.
 [6] **MR HOBBS:** Right.
 [7] **MR JUSTICE LADDIE:** Because it is crucial,
 [8] but I am more interested in continuing with the trial.
 [9] **MR HOBBS:** My learned friend indicated
 [10] forensic evidence with which he is more familiar than I.
 [11] If there was to be forensic evidence of the kind he
 [12] described in relation to the structure and language of
 [13] the documents, I should myself be surprised. I would
 [14] want to check the Authorities in this connection and be
 [15] surprised if it turned out to be of any assistance to
 [16] your Lordship.
 [17] **MR JUSTICE LADDIE:** I am prepared to let Mr.
 [18] Cox, Mr. Cox owes a duty to the court as much as to his
 [19] client, as you do.
 [20] **MR HOBBS:** I do.
 [21] **MR JUSTICE LADDIE:** And if Mr. Cox has
 [22] considered this and says, 'I have decided X, Y, Z are
 [23] the things I have to do in the interests of my clients'
 [24] I am not going to stand in the way.
 [25] **MR HOBBS:** I understand that is what I would

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[1] expect your Lordship to say. Another aspect of forensic
[2] matters which I have looked at is that unless you have
[3] an original document, there is very little, if anything,
[4] to be done forensically.

[5] **MR JUSTICE LADDIE:** Mr. Hobbs, that I must
[6] say is my understanding as well, but there is an
[7] original. There is a document with Mr. Sotherton's
[8] handwriting on which is something which I assume was
[9] changed by the claimant.

[10] **MR HOBBS:** I have to concede that.

[11] **MR JUSTICE LADDIE:** So, there ought to be an
[12] internal copy. That may be an original and it may be
[13] possible to date the writing on it. But, the principle,
[14] let's get the principle.

[15] **MR HOBBS:** The principle I agree with.

[16] **MR JUSTICE LADDIE:** That there has to be
[17] time for Mr. Donovan to consider this and seek
[18] information.

[19] **MR HOBBS:** If my learned friend tells your
[20] Lordship, bearing in mind all the constraints, that he
[21] requires time to explore avenues for further evidence,
[22] he can give us an indication of how long that is, I am
[23] bound to say that is appropriate --

[24] **MR JUSTICE LADDIE:** Mr. Hobbs, you will have
[25] gathered from the question I put to you, two things:

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[1] **MR HOBBS:** I understand perfectly. My
[2] position is this: At the moment there are no further
[3] inquiries I do not know about, that I would wish to
[4] make. In other words, I am not proposing to make any
[5] further inquiries myself. What I need to know and would
[6] respectfully submit your Lordship needs to know, is for
[7] my learned friend to have a discussion with those
[8] instructing him and come back in 15 minutes and give
[9] your Lordship an indication.

[10] **MR JUSTICE LADDIE:** Mr. Cox, rather than 15
[11] minutes, I am quite prepared to rise now and to sit
[12] again at quarter to two. That gives you an hour and a
[13] half to consider. There will be an adjournment, but I
[14] do not want this to go on too long because it will cost
[15] even more money.

[16] **MR COX:** Would your Lordship say 2?

[17] **MR JUSTICE LADDIE:** 2 o'clock, fine. You
[18] have a nice lunch fixed?

[19] **MR COX:** No, I have a long period, I think,
[20] of consideration and I will be here at 2 to give an
[21] estimate of the adjournment.

[22] **MR JUSTICE LADDIE:** Now, before you go, I took what for
[23] Chancery Division is not an unusual course, of calling
[24] both of you in to see me last week and I was - and I can
[25] make this quite clear - disappointed to see this trial

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[1] Either Friday or yesterday I was interested to know
[2] whether anybody had made any approach to Sainsbury's.
[3] If we are going to adjourn, whether Mr. Cox or if Mr.
[4] Cox's client decides not to approach Sainsbury's, there
[5] would be nothing to prevent you subpoena-ing, so far
[6] as it is possible, whether Sainsbury's has a copy of the
[7] letter which they were allegedly sent.

[8] **MR HOBBS:** I made an objection the other day
[9]

[10] **MR JUSTICE LADDIE:** That does not matter.
[11] That was part and parcel of the attack on the
[12] authenticity of the document. Mr. Cox says he surprised
[13] and I can understand why he says he was surprised. All
[14] I am saying, Mr. Hobbs, is whether you do it or Mr.
[15] Cox's client does it, I want to know what the position
[16] is with Sainsbury's at the time when this case returns
[17] to be resumed. What I really want to know is that I am
[18] sure that the right course must be to allow Mr. Donovan
[19] time to answer the very serious allegations that have
[20] been made. I want to know what the mechanics are going
[21] to be for giving Mr. Donovan sufficient time to do that,
[22] but without unduly delaying the further conduct of this
[23] trial.

[24] **MR HOBBS:** I understand that.

[25] **MR JUSTICE LADDIE:** That is all I need.

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[1] continuing on Monday morning. All that has happened
[2] today makes my disappointment all the greater. I am
[3] still convinced that there are unlikely to be any
[4] outright winners of this litigation. It is possible
[5] that there will be an outright winner, but financially
[6] and otherwise I can see there being a real prospect of
[7] everybody being harmed by it and that the animosity
[8] which has grown up between the parties made it almost
[9] impossible to contemplate licking their respective
[10] wounds and sorting this out for the future.
[11] I would hate the parties, as they are now in
[12] court, to go away and later to weep tears when I give
[13] judgment which is unfavourable to one or other or both.
[14] I would hate this to happen, I would hate them to be
[15] taken by surprise. I have already given that message to
[16] you, both of you and I would now say it again for the
[17] benefit of your clients, but this is an unpleasant case
[18] where everybody will come out the poorer. That is the
[19] most likely outcome. I will leave it until 2 o'clock
[20] and if you could then give me an indication of how long
[21] you need.

[22] **MR COX:** I will my Lord.

[23] (The luncheon adjournment).

[24] (2.00pm).

[25] **MR COX:** Tuesday morning, my Lord.

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[1] **MR JUSTICE LADDIE:** Adjourned until Tuesday morning?
 [2] **MR COX:** With this caveat, my Lord; it has been impossible
 [3] to make contact with an expert who - I have been able
 [4] to get thus far, I am able to identify, I believe, those
 [5] one or two who are expert in the field. If I were to
 [6] decide to advise those instructing me to obtain such
 [7] expert evidence it may be that I would be obliged to
 [8] come back before your Lordship for a longer delay. It
 [9] may be, on the other hand, that on discussing it with
 [10] the expert I will not so advise.
 [11] **MR JUSTICE LADDIE:** He may come to the conclusion that he
 [12] cannot help one way or the other.
 [13] **MR COX:** He cannot help us. So on that basis Tuesday
 [14] morning, my Lord.
 [15] **MR JUSTICE LADDIE:** You are suggesting Tuesday morning with
 [16] liberty to apply?
 [17] **MR COX:** Yes, my Lord.
 [18] **MR JUSTICE LADDIE:** Mr Hobbs?
 [19] **MR HOBBS:** I would like to be clear on this in two respects;
 [20] first of all under the old rules and under the current
 [21] rules that are operating you cannot call expert evidence
 [22] without indicating to the Court what the nature of it is
 [23] you are going to call; as a general issue, you need
 [24] leave.
 [25] I would have thought, even in this circumstance,

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[1] need to exercise it at one stage.
 [2] My learned friend has said nothing just now about
 [3] any possibility of having Mr Horley give evidence and
 [4] yet your Lordship -
 [5] **MR JUSTICE LADDIE:** Do you know where Mr Horley is? Is he
 [6] still employed by Sainsburys?
 [7] **MR HOBBS:** I am very reluctant to answer these questions -
 [8] **MR JUSTICE LADDIE:** I am asking you, Mr Hobbs.
 [9] **MR HOBBS:** I am happy to answer on that basis: Mr Horley
 [10] is, as I understand it, alive and well and in England
 [11] and recently retired. Retired, as I understand it,
 [12] within the last two or three weeks.
 [13] I believe his whereabouts could be established by
 [14] communications with the Sainsbury's Legal Department and
 [15] that there is therefore no physical impediment in his
 [16] attendance.
 [17] I must immediately say that I make no predictions
 [18] for or against, one way or the other as to the utility
 [19] of the exercise. I am saying precisely nothing over
 [20] those matters. But he is available and I thought it
 [21] right to draw your attention to this.
 [22] So far as the question of an adjournment on
 [23] forensic evidence is concerned, I ask rhetorically, is
 [24] it to be thrown at me on Tuesday of next week? Or am
 [25] I to get some advance warning? Am I to get a written

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[1] we should have some indication of what it is we are
 [2] talking about because at the moment I am completely in
 [3] the dark.
 [4] The second matter is that my learned friend is
 [5] completely silent about the possibility of Mr Horley of
 [6] Sainsburys and there is a paragraph in the White Book
 [7] that I want to show your Lordship which I have noticed
 [8] over the adjournment; may I do that?
 [9] **MR JUSTICE LADDIE:** Yes.
 [10] **MR HOBBS:** Page 697. Marginal note 38/1/9; your Lordship
 [11] can read it.
 [12] **MR JUSTICE LADDIE:** Are you suggesting I call π would you
 [13] like me to run down there and do the cross-examination
 [14] as well?
 [15] **MR HOBBS:** No, my Lord. There was an objection to me
 [16] speaking to your Lordship the other day and I am told
 [17] from behind that when I started to go into this again
 [18] that my learned friend rose and I am definitely not
 [19] going to say anything to your Lordship in any way shape,
 [20] or form about Mr Horley except to remind your Lordship
 [21] that there is this power; to tell your Lordship that
 [22] I understand that Neuberger J exercised it in not
 [23] dissimilar circumstances approximately four weeks ago in
 [24] a case called Harrison v Bloom, and that recollection of
 [25] my colleagues in chambers is that Mummery J felt the

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[1] report and the chance to deal with it?
 [2] **MR JUSTICE LADDIE:** I am sorry, Mr Hobbs, if my calling you
 [3] to your feet so precipitantly made you think that you
 [4] were just going to turn up on Tuesday and be presented
 [5] with a plate of delicacies.
 [6] I would like to know what is going to be said as
 [7] well before Tuesday. We will worry about the timetable
 [8] of what you are going to be told once we have the
 [9] overall π I assume that you will want to know by
 [10] 10.30 am on Monday morning at the latest.
 [11] **MR HOBBS:** I need to know the discipline that we are
 [12] concerned with now, so that I can have someone of my own
 [13] to assist me if I should need it. I need to know the
 [14] discipline and I need to know the upshot π I do not
 [15] need to know what they say it is going to show. I need
 [16] to know the discipline and what it is that the guy is
 [17] going to be asked to look into.
 [18] I ought, at least, to have some notice of that.
 [19] I think that is standard practice on a summons for
 [20] directions in Chancery these days.
 [21] **MR JUSTICE LADDIE:** This all a little bit abbreviated in
 [22] this case, not least because you had omitted the
 [23] authenticity of a document which you now say is a
 [24] forgery. That is water under the bridge, but that is
 [25] why we are where we are, Mr Hobbs.

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[1] Mr Cox, are you prepared to tell Mr Hobbs now the
 [2] area of expertise that you are going to enquire about?
 [3] **MR COX:** Yes. I am also prepared to say this, if I may;
 [4] Tuesday morning was fixed on the basis there would be no
 [5] expert evidence. I say "fixed", would your Lordship
 [6] forgive me? Submitted, proposed to your Lordship for
 [7] consideration of the basis that we would be ready
 [8] because we had decided and established that expert
 [9] evidence could not be of assistance.

[10] If, of course, we establish over the next day or
 [11] day or so that there is a relevant applicable and
 [12] potentially helpful field of expertise, such as the one
 [13] that I believe and suspect - which unfortunately I have
 [14] not been able to establish over this short adjournment
 [15] - not only will I inform Mr Hobbs, but of course
 [16] I will tell him which expert we are going to; the nature
 [17] of the brief that has been given to him and he will have
 [18] the report as soon as I have it. But in those
 [19] circumstances, I apprehend, I will probably be asking
 [20] your Lordship for rather longer, I am afraid, than
 [21] Tuesday morning. So in the next two days I hope to
 [22] establish (a) -

[23] **MR JUSTICE LADDIE:** Are you prepared to tell him now?

[24] **MR COX:** My Lord, now I am prepared simply to say that the
 [25] fields in which we will be examining this will be what

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[1] evidence, but you cannot do it by Tuesday, I will expect
 [2] to be presented with evidence from your expert as to why
 [3] he cannot do it by Tuesday -

[4] **MR COX:** Yes, my Lord.

[5] **MR JUSTICE LADDIE:** - and as to why he needs to take much
 [6] longer than Tuesday to do it, because I am not going to
 [7] let this case drift beyond the end of this term. If
 [8] this case is going to be fought out it will be finished
 [9] this term, if I have to start 9 o'clock in the morning
 [10] and stay on until 9 o'clock at night every day of the
 [11] week, it will finished.

[12] **MR COX:** I know, my Lord, that is a trumpet call. I know
 [13] you do not believe for a moment that I, nor any party on
 [14] my side would wish to delay it a day longer than we
 [15] could.

[16] **MR JUSTICE LADDIE:** It will be dealt with -

[17] **MR COX:** I am eager that we should have the witnesses called
 [18] by Mr Hobbs as soon as possible. I do not wish further
 [19] delay.

[20] **MR JUSTICE LADDIE:** Fine. Mr Hobbs knows now the area of
 [21] expertise that you were going to investigate. I have
 [22] made it clear to you that on an application for a
 [23] further adjournment I will expect evidence produced from
 [24] your expert explaining why he needs any longer than next
 [25] Tuesday to produce-

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[1] is called stylometrics and revolves the linguistic
 [2] analysis and examination of patterns within the letters
 [3] and examination of contemporaneous documents to examine
 [4] whether they have been written at a particular time.

[5] **MR JUSTICE LADDIE:** Do I take it that you are not going to
 [6] seek expert opinion from a forensic scientist as to the
 [7] date of the writing?

[8] **MR COX:** That I am quite convinced we cannot do. I am
 [9] afraid dating writing - I have much experience, my
 [10] Lord, of the question of handwriting -

[11] **MR JUSTICE LADDIE:** It looks like biro, does it not?

[12] **MR COX:** It is not possible to date writing. If it were
 [13] suggested, as I understand it is not, that it was not
 [14] Mr Sotherton's writing, that might be different. But it
 [15] has been put fair and square to Mr Sotherton that he is
 [16] involved in a conspiracy and, therefore, has appended
 [17] this at some later stage.

[18] His evidence, without challenge, was given that it
 [19] was his. Therefore, there is nothing, I have quite
 [20] complete confidence, that can assist me there. That is
 [21] why I say to your Lordship that I am expecting, the
 [22] likelihood is that I will be here on Tuesday morning
 [23] ready to go.

[24] **MR JUSTICE LADDIE:** Two things Mr Cox: First of all, I wish
 [25] to make it clear that if you intend to call expert

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[1] **MR COX:** If I find that out, as I apprehend I will, within
 [2] the next two days, I will deliver, in writing, to
 [3] Mr Hobbs a skeleton together with any evidence I can get
 [4] and to your Lordship.

[5] **MR JUSTICE LADDIE:** Fine. That deals with, so far as I can
 [6] see pro tem, the potentiality of expert evidence.

[7] It does not deal with the question of Mr Horley
 [8] and ¶

[9] **MR COX:** Your Lordship need have no fear on that, I am not
 [10] going to respond ¶

[11] **MR JUSTICE LADDIE:** I do not have fear on any score, I am
 [12] not a litigant.

[13] **MR COX:** What I mean by that is your Lordship may be
 [14] concerned that on our side we are pursuing, will pursue,
 [15] all the relevant necessary enquiries. Without telling
 [16] your Lordship everything we are doing, your Lordship
 [17] will have the answer to your question shortly before the
 [18] short adjournment. Your Lordship asked what do
 [19] Sainsburys say.

[20] **MR JUSTICE LADDIE:** Yes, I want to know that.

[21] **MR COX:** You will have the answer.

[22] **MR JUSTICE LADDIE:** From Sainsburys?

[23] **MR COX:** Yes, I want it from Sainsburys, not from
 [24] Mr Hobbs. We will get it from Sainsburys. However,
 [25] I want to spend some little time making sure that

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[1] Sainsburys produce all of the relevant documents, if
 [2] there are any, and they have a fully comprehensive
 [3] schedule of questions and documents that they must
 [4] produce for subpoena.
 [5] **MR JUSTICE LADDIE:** Mr Cox, I think it much better,
 [6] notwithstanding Mr Hobbs' invitation, that the parties
 [7] should produce witnesses.
 [8] **MR COX:** I agree.
 [9] **MR JUSTICE LADDIE:** But I am more than willing to wade in if
 [10] necessary, and if next Tuesday I am presented with no
 [11] Sainsburys witness, although Sainsburys are available,
 [12] in particular Mr Horley is available, and no disclosure
 [13] because nobody asked for the documents to be produced
 [14] voluntarily by Sainsburys or has subpoenaed them, I will
 [15] make the necessary orders myself.
 [16] **MR COX:** Good.
 [17] **MR JUSTICE LADDIE:** On that basis, if there is no additional
 [18] material, the case will continue with Mr Hobbs'
 [19] witnesses and Sainsburys can be put in towards the end
 [20] at a time which is convenient to Sainsburys. But one
 [21] way or another I want to hear from Sainsburys.
 [22] **MR COX:** I agree, my Lord. In the light of this so do we.
 [23] We understand there have been preliminary
 [24] communications. We have no discovery and knowledge of
 [25] what they have been. I want your Lordship to hear it

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[1] Shell requiring further discovery of certain categories
 [2] of documents.
 [3] We would be grateful for expeditious dealing with
 [4] that.
 [5] **MR JUSTICE LADDIE:** I am sure Mr Hobbs understands the
 [6] seriousness of the allegations insofar as there is
 [7] relevant discovery which has not been given; disclosure
 [8] which has not been given. No doubt he will advise his
 [9] clients accordingly. I am not going to say anything
 [10] because I do not want what the material is that you are
 [11] going to -
 [12] **MR COX:** The letter will be, as I say, with Shell tomorrow.
 [13] My Lord, that is all.
 [14] **MR JUSTICE LADDIE:** Mr Hobbs, is there anything else
 [15] you wish to say at this stage?
 [16] **MR HOBBS:** Just this; I have a witness who is going abroad
 [17] tomorrow and I am not sure when he is available again.
 [18] Is there any chance I might call him, my Lord?
 [19] **MR JUSTICE LADDIE:** Now?
 [20] **MR HOBBS:** Yes.
 [21] **MR JUSTICE LADDIE:** Does he touch upon any of the matters?
 [22] **MR HOBBS:** He is a man of whom my opponent, Mr Cox, has
 [23] already said his honesty is not in doubt.
 [24] **MR JUSTICE LADDIE:** Does he throw light upon the
 [25] authenticity of the letters of 24th July 1990 or the

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[1] from the horse's mouth. I simply want to take some care
 [2] over the drafting of the necessary documents to get them
 [3] to produce and so on.
 [4] My Lord, there are other enquiries we are
 [5] pursuing. I do not propose to recite all of them, but
 [6] they are sufficient to engage us for quite some days.
 [7] **MR JUSTICE LADDIE:** It seems to me that some sort of time
 [8] limit should be imposed. I will require you to supply
 [9] Mr Hobbs with witness statements or expert reports in
 [10] respect of anybody who you have settled upon to call by
 [11] Monday, ten o'clock next week.
 [12] **MR COX:** Yes, my Lord.
 [13] **MR JUSTICE LADDIE:** Of course that will not apply if you
 [14] find you have an expert who cannot be ready by Tuesday.
 [15] **MR COX:** Exactly.
 [16] **MR JUSTICE LADDIE:** Other than that, anybody who you are
 [17] proposing to call you must produce a witness statement
 [18] for Mr Hobbs by ten o'clock on Monday.
 [19] I also expect you to use your best endeavours in
 [20] respect of anybody whose witness statement you have and
 [21] can obtain before Monday to let Mr Hobbs have it as soon
 [22] as possible.
 [23] **MR COX:** I will do.
 [24] May I say that we will be sending, probably
 [25] tomorrow morning, a detailed and comprehensive letter to

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[1] manuscript notes purported to be date November 1992?
 [2] **MR HOBBS:** No, it is Frank Leggett. Did your Lordship
 [3] receive a list?
 [4] **MR JUSTICE LADDIE:** Yes.
 [5] **MR HOBBS:** He was number one. He was the one we identified
 [6] as number one last week and he has nothing to do with
 [7] that point.
 [8] **MR JUSTICE LADDIE:** Mr Cox, is there any reason why he
 [9] cannot be disposed of? I do not see why it gets in the
 [10] way of your client presenting his case properly.
 [11] **MR COX:** I have to say that I would prefer not to, my Lord.
 [12] **MR JUSTICE LADDIE:** How long is Mr Leggett going to be
 [13] abroad?
 [14] **MR HOBBS:** Had can be back next Tuesday, but he is going
 [15] away after that and I am not sure -
 [16] **MR JUSTICE LADDIE:** Next Tuesday, he can be the first
 [17] witness.
 [18] **MR HOBBS:** Unless there is an expert witness on the other
 [19] side.
 [20] **MR JUSTICE LADDIE:** When does Mr Leggett intend to go away
 [21] again?
 [22] Mr Leggett, when do you intend to go away again?
 [23] **MR LEGGETT:** I am away from this evening for a few days.
 [24] I am back for the early part of next week and then I am
 [25] away again. Tuesday is not a problem.

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[1] **MR JUSTICE LADDIE:** Will Wednesday be a problem?
[2] **MR LEGGETT:** Could I confirm that? I do not think so, but
[3] I am not sure.
[4] **MR JUSTICE LADDIE:** What I will do is this; I will indicate
[5] that Mr Leggett should be cross-examined on Tuesday. If
[6] necessary, I am giving you notice now, I will
[7] interpose him in front of any expert witness because
[8] I want Mr Leggett to be dealt with.
[9] We will deal with it on that basis; do not
[10] cross-examine him this afternoon.
[11] Mr Cox, you can decide how you are going to
[12] structure your response to this attack, but I want
[13] Mr Leggett dealt with at a time which is moderately
[14] convenient to him.
[15] **MR COX:** Yes.
[16] **MR JUSTICE LADDIE:** Anything else for the moment, Mr Hobbs?
[17] **MR HOBBS:** Nothing that occurs, my Lord.
[18] **MR JUSTICE LADDIE:** We will leave it like that until next
[19] Tuesday.
[20] (2.20pm)
[21] (The Court adjourned until Tuesday 29th June 1999 at 10.30am)
[22]
[23]
[24]
[25]

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[1] **MR JOHN ANTHONY CHAMBERS (sworn) 1**
[2] Examination-in-chief by MR COX 1
[3] Cross-examination by MR HOBBS 2
[4] Re-examination by MR COX 3
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