On behalf of the Applicants
Deponent: Allan Watson Graham
Fourth Witness Statement of deponent
Exhibit: AWG4 to AWG6
Dated:

IN THE HIGH COURT OF JUSTICE **146 OF 2002**

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF EDI REALISATIONS LIMITED (FORMERLY MARSHALL EDITIONS LIMITED) (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MICHAEL VINCENT MCLOUGHLIN AND ALLAN WATSON GRAHAM
The Joint Administrators of EDI Realisations Limited
Applicants

and

(1) HM REVENUE AND CUSTOMS
(2) NEWSCREEN MEDIA GROUP PLC
(3) THINK ENTERTAINMENT PLC
(4) MR CHRISTOPHER JONES
Respondents

EXHIBIT AWG6

This is the exhibit marked "AWG6" in the Fourth Witness Statement of Allan Watson Graham.

Signed: .....

Full Name: Allan Watson Graham

IN THE HIGH COURT OF JUSTICE
COMPANIES COURT
CHANCERY DIVISION

Case No: 146 of 2002

The Royal Courts of Justice
The Strand
London WC2A 2LL

20th March 2006

Before

CHIEF REGISTRAR BAISTER

M V McLOUGHLIN & A W GRAHAM
(In their capacity as joint administrators of EDI Realisations Limited
Formerly Marshall Editions Limited)
(Applicant)

-v-

H M REVENUE & CUSTOMS (1)
NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)
(Respondents)

PROCEEDINGS

APPEARANCES:

For the Applicant: MR ALLISON
For the Defendants:
Christopher Jones: IN PERSON

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55 Queen Street
Sheffield S1 2DX

M V McLOUGHLIN & A W GRAHAM
-v-
H M REVENUE & CUSTOMS (1)
NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)

20th March 2006

PROCEEDINGS

THE REGISTRAR: Good morning Mr Allison.

MR ALLISON: Good morning sir.

THE REGISTRAR: Come on in.

MR ALLISON: Sir, I hope that you've....

THE REGISTRAR: I have got a skeleton and I have got a bundle.

MR ALLISON: I'm delighted.

THE REGISTRAR: Which if you pardon the colloquialism is a bloody miracle these days.

MR ALLISON: Well that's why I start with the question.

THE REGISTRAR: Exactly, so I do know what this is about.

MR ALLISON: I am delighted that my Clerk and the court office have got it to you.

THE REGISTRAR: So am I, absolutely, so thanks very much for that.

MR ALLISON: Sir I apologise if I cut out mid submission any point this morning, I'm struggling a little.

THE REGISTRAR: No, no, no, it's fairly straightforward really. It's just a matter of who we....

MR ALLISON: Well it is. I mean what I say in principle is these could well be trust monies.

THE REGISTRAR: Yes.

MR ALLISON: The terms of the CVA suggest that the monies were received for a specific purpose under the terms of the CVA and were paid across to us pursuant to that purpose, therefore it seems to me there's a pretty good argument that they could well be trust monies.

THE REGISTRAR: Exactly.

MR ALLISON: Now of course in many ways we'd rather they weren't trust monies because there may be other investigations which we might want to bring, but we can't deplete those monies

without the court determining who is entitled, whether it is the company or the other parties I mention but I say that we shouldn't have to be taking those steps and moving down that road without having security that we will actually get paid for what we say is doing the task of ensuring these issues are properly raised and litigated, so that if you like deals with the second point first.

THE REGISTRAR: Yes it does.

MR ALLISON: Which is the fact that I say this is a straightforward case for a Barclay Applegate order. Sir, I hope that's sufficiently dealt with in the skeleton.

THE REGISTRAR: Yes, well I have no hesitation, it is bog standard isn't it in that sense.

MR ALLISON: Well I am most obliged for that indication.

THE REGISTRAR: So what is the form of order I actually make on that? Let's have a look at the application. It's not actually in there.

MR ALLISON: Well the application doesn't....

THE REGISTRAR: No it doesn't no, well fair enough.

MR ALLISON: It's further on in relief actually but I think it's important to do it now rather than later.

THE REGISTRAR: Yes, no, no, it's perfectly alright. You've kindly given me a copy so is there any form of wording there?

MR ALLISON: There's not because in that case it wasn't actually clear at the time. The very last paragraph of the judgment deals with really what in essence the judge was doing.

THE REGISTRAR: Well why don't I just say, they are administrators of this case aren't they, the two of them?

MR ALLISON: They are two. I'd ask - 2B of my skeleton I would respectfully suggest deals with the point because in Barclay Applegate they didn't know at the time the application was made whether there would be sufficient other funds from realisations to meet other costs whereas here we know this is the cash that is left.

THE REGISTRAR: Well I will say 'The administrators' costs, remuneration and expenses of and incidental to their investigation of ownership of the funds as defined in paragraph 2 of the application'. I will put 'and the evidence in support' just in case 'be paid' I shall put 'out of the fund'. I think that will do actually. I don't need to go 'if and what have you' because if anybody comes along to the proceedings, it is always the case that they can apply to vary that can't they?

MR ALLISON: The only thing, hopefully it will be taken as read but we have costs, joint administration, remuneration costs and expenses of and incidental to their investigation of ownership of the funds, could it just say expressly, including the costs of this application?

THE REGISTRAR: Yes, 'to include the costs of and incidental to this application', yes quite right, so that goes in after 'in support'. Good, so that deals with that. I have just really got to go through – I mean I can't see any reason to disagree with what you say.

MR ALLISON: Paragraph 13 of my skeleton will be a useful start point.

MR JONES: Excuse me sir, this is to do with this case.

THE REGISTRAR: Oh yes, splendid. Are you a party?

MR JONES: I am Christopher Jones from the Just Action Group. Are you from KPMG?

MR ALLISON: I am counsel, yes.

MR JONES: You're counsel. Can I observe?

THE REGISTRAR: Yes, I mean of course yes, all I have done so far is make an order that provides for the administrator's costs of sorting out what this fund might be to come out of the fund, which is a pretty normal thing to do. If anybody is upset about it at a later stage, they can always apply to vary that order because of course they haven't yet been heard. Right, Mr Allison and I were just going to consider who ought to be joined to this application so that they can be heard later. Right, so we will have a shortfall in any event on the preferential creditors won't we I think, Mr Allison?

MR ALLISON: No we won't. What we have here is, if it's the company's monies of course it is easy.

THE REGISTRAR: Yes.

MR ALLISON: If it is a trust claim on behalf of the press, the press are – we have the Inland Revenue in the sum of £324,000, then we have a small number of employee claims.

THE REGISTRAR: Yes.

MR ALLISON: So there will be a balance, even in the event that the trust claim is held to arise in favour of the press, there will be a balance. Now in the event that the payment of the £356 and the payment of the smaller sum of £180 are held to be trust payments, then they would in the ordinary course resort back to the paying party, whilst the purpose has been satisfied and that would be Newscreen, the parent, but of course there is an argument that it is only the £356 that is the trust payment that was earmarked for the press and the other money should just be treated as general company monies, which is something that will have to be determined in due course.

THE REGISTRAR: Alright, yes.

MR ALLISON: But clearly I think the Inland Revenue must be given the opportunity to become a party.

THE REGISTRAR: Yes.

MR ALLISON: Now it may that they in accordance with normal practice will write to us and say, look you put the arguments, that's fine.

THE REGISTRAR: Yes, well let's join them anyhow, so we make the following as respondents: a) HM Revenue and Customs, that is an obvious one.

MR ALLISON: Can we deal with Newscreen next, and come back to the shareholders last?

THE REGISTRAR: Yes.

MR ALLISON: Newscreen is the parent company. Now Newscreen was one of the three companies that went into CVA and was the company that made the two payments to EDI Realisation, so to the extent that the payment was a trust payment for a particular purpose and to the extent that after the satisfaction of that purpose there is a balance of funds, then in ordinary principles they would result back to Newscreen and you will see that I have referred to the relevant evidence of Mr Graham, the details of the correspondence that he has had with the joint liquidators of Newscreen who claim that they are entitled to the monies, and it is unsure whether they claim they are entitled to the balance or the entire sum, I think they are actually asking for the balance after the press have been paid, but I think we should give them the opportunity to argue for more if they wish to do so.

THE REGISTRAR: We certainly should. What is their proper name?

MR ALLISON: It is page 240 is the letter. I think strictly the party entitled would be the company, so it would be the company that would be joined.

THE REGISTRAR: Yes, that would be Newscreen Media Group plc, yes okay. No doubt the liquidator then will see that he gets the right place or deal with it himself. That is probably sufficient isn't it?

MR ALLISON: It is yes. And then you will see that there is a company called Think.

THE REGISTRAR: Yes.

MR ALLISON: Now Think is the company that purchased in the restructuring of Newscreen, you will have seen that detailed in the evidence of Mr Graham.

THE REGISTRAR: Yes.

MR ALLISON: Now the key thing in that regard is they say that following the purchase they are entitled, now the relevant evidence you will find in relation to the restructuring is at paragraph 23, page 7. The Section 110 'Restructuring and Transfer, Newscreen's assets transferred to Think in consideration of the issue of shares in Think to the shareholders of Newscreen pro rata' so Think say, and Mark Hardy is a director of Think and he has said that he believes that Think are entitled following the Section 110 transfer, now in that regard again it is not clear whether he says the whole of the funds or part of the funds, but Think clearly is the transferee under the Section 110 agreement, should be given the chance to argue the toss over it.

THE REGISTRAR: Yes he should be, absolutely right. So I will say Think.

MR ALLISON: Essentially hopefully what will become immediately apparent from really what I've said is that to a certain extent we're relatively neutral in what happens to these funds but of course we can't come out of administration and we can't discharge and release it until we know who is entitled.

THE REGISTRAR: Until you know what's going on, so we will join Think Entertainment plc.

MR ALLISON: Then you've got the shareholders.

THE REGISTRAR: Yes.

MR ALLISON: Now this is a rather curious one. It might be best just to take you to the evidence in that regard, paragraph 19 through to 25.

THE REGISTRAR: We've simply got a gentleman behind there, I don't know whether he's a shareholder?

MR ALLISON: Well I think you might want to hear from – I think it's Mr Jones, in due course.

THE REGISTRAR: What are you suggesting?

MR ALLISON: Well there are two things really in relation to this. One is that Michcon have written to us to say that they think that Newscreen is entitled because the offer was done properly. Now you may have seen some of the documentation but what happened is there were earlier offers and what happened is the monies put in for earlier offers, if you signed a form and got put in for this offer again. Now the only way in which you could ever conceive a claim arising on behalf of these shareholders is if they paid more funds to Mishcons than they got back in shares.

THE REGISTRAR: Yes.

MR ALLISON: Now in that event the balance between what they got in shares and what they paid would arguably be a trust claim.

THE REGISTRAR: It would be yes.

MR ALLISON: However, frankly I think their claim would be against Mishcons rather than anyone else possibly and it is hard to see how the joint administrators of EDI would be touched with the notice necessary for any trust claim in any event.

THE REGISTRAR: Yes.

MR ALLISON: So what we did though is we tried, as detailed in Mr Graham's statement, to identify a suitable representative of this action group. Now to do that we read their website and it is immediately apparent from reading their website that they don't all agree with each other and there are vastly diverging views, but none of which really fasten on to whether they are entitled to any of these monies, they really fasten on to the fact that lots of people think Mr Hardy has been a very naughty boy, personally he is now in charge of Think and it is not something that at this stage in the administration that we can comment on, we have just got to work out whether it is a trust claim to these funds or not. Now there are two ways, it seems to me, of doing this; one we either, in my respectful submission, take judicial notice of the fact that it would be such a (inaudible) claim in any event and it would be such a minor claim frankly that we don't involve them in this application.

THE REGISTRAR: Yes.

MR ALLISON: The alternative is to advertise to see if anyone wants to become a party, but that could frankly – the costs of that could vastly outweigh the benefit.

THE REGISTRAR: Yes, I mean how many of these folk are involved?

MR ALLISON: Mr Jones might be able to help you further. It might be worth listening to him on this point.

THE REGISTRAR: What do you think Mr Jones?

MR JONES: Well of the Action Group there are 3,000 members. I simply came along today to listen to obviously the orders directed but a primary concern is the fact that the funds which were raised in 2002, and I appreciate of course that really it was the company as it was then called Just Group plc which had a share offer which raised funds. Whilst the company was in administration my primary concern and the concern of fellow Action Group members is that it had come to light that information that was given to the shareholders to raise that money was deceptive.

THE REGISTRAR: Yes, which is not something that I am dealing with.

MR JONES: I appreciate that, I can understand that.

THE REGISTRAR: So the real question that I would appreciate, if you can't give assistance don't feel just because you've bowled up you've got to be pinned against the wall, is to identify one or two, if there are any obvious factions or perhaps some sort of leader as it were, who could just be joined to this action. Now the fact that the person involved is joined doesn't mean he or she has to do anything, they can choose to ignore it, but it does give anyone an opportunity to come along and file evidence and say why it is thought that the shareholders have a claim, so the ideal would obviously be to nominate somebody who enjoys a measure of trust among that general body of shareholders.

MR JONES: Right.

THE REGISTRAR: Have you any suggestions?

MR JONES: That is a difficult one.

THE REGISTRAR: Or I could do two or three if necessary if you thought there were different caps I suppose, but we don't want to join 3,000 people if possible, particularly if they're all going to come along and tell me things as people often do, not because of any bad motive. You know, stuff that's off beam that then adds itself to the costs and depletes it, so someone who is going to be fairly sensible you think?

MR JONES: Well I would be happy to put myself forward as I was involved in the rescue throughout.

THE REGISTRAR: Well that's fine by me.

MR JONES: As the vice chairman of the Action Group and that's why I am here today.

THE REGISTRAR: Okay, well why don't I join you then, and if there is a website, the obvious thing would be to publicise it there and if anybody else wanted to apply, I suppose they could as well.

MR ALLISON: They would be at liberty to apply.

THE REGISTRAR: We're not going to encourage them.

MR JONES: So we would be at liberty to add another one or two individuals?

THE REGISTRAR: Yes, I mean as I say, I think I'd only want to add other individuals if I thought that there was some row between the shareholders as to who gets what, but obviously as Mr Allison says, the amount is likely to be pretty small, we obviously don't want to make the thing more complicated than necessary.

MR ALLISON: Sir, if I could just clarify, I think – I don't know to what extent Mr Jones is aware, this is to resolve who is entitled to the funds sitting in this bank account. I think that the complaint that Mr Jones is making is that maybe there were misrepresentations by the directors in the context of raising the funds.

THE REGISTRAR: Which would be a different matter, but I think he's understood that actually, he nodded on that.

MR ALLISON: Because of course if these monies are trust monies, we can't use these monies to investigate those allegations.

THE REGISTRAR: Yes that's right.

MR JONES: No I understand.

THE REGISTRAR: Well what is your full name Mr Jones?

MR JONES: It is Christopher Andrew Jones.

THE REGISTRAR: Christopher Andrew Jones and you've got an address for Mr Jones have you? You all know where he is?

MR JONES: You should have.

THE REGISTRAR: Yes, because they will have to formally serve you with the bundle so you properly know what's going on, then what I shall put is that thirdly 'Mr Jones notify the other joint action group shareholders of this order by publicising it on the JAG's website' because as I say I am thinking aloud, but you were nodding as I was exploring that idea, so I suppose you are happy to do that, it is not going to cost you, then fourthly 'They be at liberty to apply to be joined to this application'. I will just leave that very wide at the moment Mr Allison.

MR ALLISON: Sir yes.

THE REGISTRAR: Is there anything else I can do? I think we've got to – probably the best thing is if I don't give any further directions isn't it, I'll just give a return date for anybody to bowl up and we can decide what the camps are.

MR ALLISON: Where we are.

THE REGISTRAR: You might know, if you know it might be possible to agree an order, if not we'll hack it out here.

MR ALLISON: I think so, I mean the key as I said at the start, the key thing from us is of course we, in relation to where these monies go, we are essentially neutral.

THE REGISTRAR: Yes.

MR ALLISON: Save that as sir you've recognised we are fully entitled to our costs of ensuring they go to the right place and that is why we feel duty bound to bring the matter before the court.

THE REGISTRAR: Yes, it may be something everyone can agree.

MR ALLISON: We would hope that maybe as well.

THE REGISTRAR: Very often once you make these orders, people can go into a huddle in a meeting and sort it out among themselves which obviously saves a huge amount of money, so fifthly then I will adjourn to, well I suppose about three or four weeks, four weeks I am included to say.

MR ALLISON: I don't know if there is a date immediately after the Easter vacation, so that would be about five, because I think three weeks and then we're in the Easter vacation.

THE REGISTRAR: Yes, I could offer you either the 15th of May or the 12th of June. The 15th of May is only five weeks away according to this. That can't actually be quite right can it?

MR ALLISON: It sounds like it is seven weeks at least to me.

THE REGISTRAR: Yes, they've messed up here as usual.

MR ALLISON: If there is anything around about the 27th of onwards, towards the very end of April, otherwise the 15th of May would be fine.

THE REGISTRAR: You could have the 8th of May?

MR ALLISON: I'm actually slap bang in the middle of a trial then, I think it's probably better ....

THE REGISTRAR: I think it's probably better to go a bit long because my guess there will be talk that goes on. I will adjourn this....

MR ALLISON: Could we have thirty minutes again on that occasion?

THE REGISTRAR: Yes you can, the 15th of May at, well I'll make it 12.30, half an hour. That is probably all I need to do isn't it?

MR ALLISON: Sir that is, because costs is dealt with in paragraph 1.

THE REGISTRAR: Costs are dealt with in any event, so splendid. Alright, well thanks for coming Mr Jones. Excellent, shall I put Mr Jones down as having been heard?

MR ALLISON: Yes sir.

THE REGISTRAR: Why not, I will put ....

MR ALLISON: Are you happy for the office to draw the order or would like....

THE REGISTRAR: I am happy for the office to draw the order but on the other hand....

MR ALLISON: Would it be easier if I were to lodge an order?

THE REGISTRAR: Always frankly these days, yes, it's getting so unreliable here.

MR ALLISON: I will lodge it.

THE REGISTRAR: That is splendid, I will put 'Counsel's order' then. It is miles better if you do it.

MR ALLISON: Sir of course.

THE REGISTRAR: Splendid. Thanks very much everyone. Do you want actually to recycle the bundle as well? It is unmarked at the moment so if I give that back it can be updated and save somebody a bit of photocopying. Thanks very much everyone, good day.

IN THE HIGH COURT OF JUSTICE
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Case No: 146 of 2002

The Royal Courts of Justice
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15th May 2006

Before

MR REGISTRAR SIMMONDS

M V McLOUGHLIN & A W GRAHAM
(In their capacity as joint administrators of BDI Realisations Ltd,
Formerly Marshall Editions Ltd)
(Applicant)

-v-

H M REVENUE & CUSTOMS (1)
NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)
(Respondents)

PROCEEDINGS

APPEARANCES:

For the Applicant: MR ALLISON

For the Respondents:
Newscreen Media Group: MR SMITH
Think Entertainment: MR HARDY

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M V McLOUGHLIN & A W GRAHAM

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H M REVENUE & CUSTOMS (1)
NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)

15th May 2006

PROCEEDINGS

THE REGISTRAR: Good morning.

MR ALLISON: Sir, I appear on behalf of the joint administrators. Sir, you may...

THE REGISTRAR: It is a Barclay Applegate order isn't it?

MR ALLISON: It is sir. On the last occasion what happened is we've got in excess of half a million pounds in an account. Now that money flowed to us via the CVA of another group company. The question in relation to that money is whose money is it? There are several alternatives. We did not feel that we were able, as Officers of the Court, to come to that determination without the assistance of the court. That is particularly so in circumstances where as you may see today, there are diametrically opposed schools of thought lower on down the chain.

Now in relation to these funds, we identified a number of parties and at the last occasion the court made directions for joinder of those parties. The first one was the preferential claim in essence, then there was the liquidators of a company called Newscreen. Now that – we'll come to Mr Jones in a moment, he's none of the parties.

The second worthy liquidators are a company called Newscreen. Now Newscreen is the company under the terms of whose CVAs the cash flowed to us as administrators of another group company. You also have Think which is the company pursuant to which a transfer of the business of Newscreen has taken place. Think is represented in court today by Mr Hardy and Newscreen is represented by my learned friend Mr Smith. Now it is my understanding that as between Think and Newscreen there is an agreement that the point as to whether the one/ten transfer led to the funds going – the entitlement of the funds passing to Think is something that can be determined outside the context of these proceedings, because it is accepted that they would in essence have the same claim into the funds in our hands, so that issue can be parked for the moment.

The final person is Mr Jones who was joined as a representative of what's called the Just Action Group, who are a group of shareholders who contributed funds into the CVAs.

Now on the last occasion the court made an order for joinder of those parties and the court ordered that in the normal course that our costs could come out of the funds in connection with investigating the funds and the cost of this application. Now today as it was also indicated on the last occasion, we wanted to see who came before you sir today to a certain entitlement.

THE REGISTRAR: Yes, it appears you've got a full house.

MR ALLISON: It does, it appears that we – I think this vindicates frankly for us the fact that it is important to have the court's guidance on this matter rather than us taking a decision without the

input of the court and it was indicated on the last occasion by the court that let's see who comes and then they should put in evidence saying what if any entitlement they have to the funds and that is in essence what we ask you to do today sir.

THE REGISTRAR: Right.

MR ALLISON: Now in relation to timetable, we're reasonably relaxed as to how long it should be. We suggest that twenty-one days should be more than sufficient for them to do so. In relation to whether we should put in any further evidence before they go, that's an issue that may arise; we say no, you've seen the witness statement of the administrator. It points out how....

THE REGISTRAR: Does the administrator make any claim to it at all?

MR ALLISON: Possibly we do, I mean this is the thing. Possibly we do but again it would be a trust claim, it wouldn't be a claim that the monies are necessarily company monies to use in the ordinary course within the context of the administration, hence the Barclay Applegate order. One possible incidence of the CVAs is that the monies were paid to us as administrators of this company to do, amongst other things, meet the preferential claims within the group, pay the bank and discharge the costs of the administration, so to that extent they could be held on trust to meet the costs and expenses of the administration.

I don't know if you have the witness statement of Mr Graham there. It may be that I can very quickly point you to a couple of relevant paragraphs.

THE REGISTRAR: Yes, I've got Mr Graham, Mr Johnson.

MR ALLISON: Well it is just paragraph 12 recites a few terms of the CVA that you may find of interest. So sir the monies that come to us under the CVA you will see, paragraph 12A 1.1 'The definition of the preferential creditors', creditors to the group, the group including this company, whose claims are preferential at the normal date, then there is an estimate of those claims and that they are going to be paid by the supervisors in the CVAs. Now there are preferential claims within this company that haven't been discharged by the supervisors of the other CVAs.

THE REGISTRAR: So it may be under my description 'a fund impressed with responsibilities'?

MR ALLISON: Yes, you could characterise it thus, then you will see at paragraph C in relation to the shortfall to the bank, the bank has been paid, then D there in essence was a Spectrum Plus issue, that has now been resolved and then again the bank, so that is where we are and you see going down the evidence at paragraph 13....

THE REGISTRAR: Well do you think that you need any further evidence?

MR ALLISON: No we don't, that is why I was going to show you paragraph 13.

THE REGISTRAR: Yes, are you being goaded by anybody else to put it in?

MR ALLISON: Well Mr Smith may I think suggest, is there anything further we want to put in, to which we say no at the moment.

MR SMITH: Sir, all we were referring to, it's just at paragraph 3 of the statement, I don't

know if you have that sir to hand? I mean we were really picking up on what the administrators say in their own statement and it says at paragraph 3 "This witness statement is not intended to provide a comprehensive history of the case. We have obviously made a preliminary statement, it seems a more detailed witness statement is likely to be required at a later stage" and our observation is simply this, it seems to make sense to us to have one round of evidence where the administrators put in their evidence first then we respond, then they reply.

THE REGISTRAR: Well I agree with that entirely.

MR SMITH: Rather than we respond to their current statement then they put in a further statement, then we respond again and that would be, you know, costs chasing costs, and I mean that is simply our observation, so if they don't want to put in anything else at all, fine.

THE REGISTRAR: Well Mr Allison, would it cover the position if I was to say the applicant serve further evidence if so advised and give you a cut off date and if you want to review it, then you can put in your evidence and if you don't want to put in the evidence, that is the end of it and you are stuck with what you put in.

MR HARDY: Sir, it was just on this one point?

THE REGISTRAR: I will come to you in a moment, can we just try and categorise?

MR ALLISON: That is very helpful but our position in relation to the evidence is that there is nothing else for us to put in now until we see what if anything anyone wants to say as to entitlement. The key for us at the moment is information within our hands, is how we got the money, how we got the money is in paragraph 13 in the exhibits.

THE REGISTRAR: Well what you are saying is the advice at the present moment is that you are not going to put in any further evidence?

MR ALLISON: Yes, we are ready to hear whatever entitlement other parties wish to assert.

MR SMITH: Well sir can I just clarify as long as any evidence in reply is genuinely evidence in reply.

THE REGISTRAR: Well if it isn't then you are going to have to have a squabble on whether I give leave to whoever is here to file evidence in rejoinder.

MR SMITH: Well we just raise that flag.

THE REGISTRAR: Yes alright, well it's been raised. What are you calling yourselves here; respondents? Are you respondents, defendants or?

MR SMITH: We are respondents sir.

MR ALLISON: They are respondents, it is an application for directions sir.

THE REGISTRAR: Right, respondents to file and serve evidence in answer, and this applies to all of you, yes?

MR SMITH: On that could we ask for twenty-eight days sir?

MR ALLISON: Sir, I won't say anything in regard to that, that would be fine.

MR SMITH: Sir I would just like to address you on that point?

THE REGISTRAR: Yes.

MR HARDY: Because the company having no resources isn't able to get legal representation, so I'm doing it as a litigant in person and I am somewhat experienced in that effectively, and it is my intention to make other applications, counter applications and I am concerned that we don't get different timetables for all the different bits, so what I would like.....

THE REGISTRAR: What are the nature of these counter applications?

MR HARDY: Sir, the essence of this claim I think that the administrators are here under a false assertion, let's put it that way. The money came from the CVA and the money was paid to the administrators to be held in trust. They were not empowered to transfer any monies down to third tier subsidiaries. The counter-claim is for restitution of damages for breach of trust, which is a very serious allegation, I do understand that, but it's...

THE REGISTRAR: Well they haven't done anything with it yet.

MR HARDY: Well they have unfortunately. They've spent a vast amount and this is why one of the concerns that I think we have a common interest in is ascertaining as preliminary evidence where the money they received was dispersed because what is in the witness statement does not tally with the filings at Companies House, to the tune of hundreds of thousands of pounds and that is why, if at all possible...

THE REGISTRAR: Alright, well if you are going to pursue a claim along those lines then you are going to have to do that.

MR ALLISON: Sir, if I can briefly? Mr Jones appeared on the last occasion, I know Mr Hardy's here today, Mr Jones appeared and said to, I think it was Registrar Baister on the last occasion, there may be other claims, this isn't necessarily all of it, and the very clear direction given was, if you have such claims you must make them outside the context, this is to decide who is entitled to these funds.

THE REGISTRAR: Well that's fine, my current attitude, until I get the claims before the court. So if I say the 16th of June, that is the respondent's evidence? The applicant's evidence in reply Mr Allison?

MR ALLISON: Could we have twenty-one days thereafter?

THE REGISTRAR: Which is the 7th of July, alright. Anything further?

MR ALLISON: From our side, there are no further directions we seek on this direction.

MR SMITH: Sir, there is an application to liquidate we wish to make in relation to the costs of these proceedings. Now sir you will see from the order last time the applicants obtained an order from the court that their remuneration costs and expenses and so on and so forth be paid out of the trust funds. Now so far as my clients is concerned, they are liquidators of the company who have been joined to the application by a court order. There are virtually no funds in the liquidation of this

company from which to finance the representation which the court has envisaged by its order and in those circumstances what we seek from the court is essentially....

THE REGISTRAR: You would like an order the same as Mr Allison's?

MR SMITH: Exactly, exactly sir. Now sir if I can perhaps address you on that point? I have a couple of cases I wanted to hand up.

THE REGISTRAR: Mr Smith, help me in this regard? A Barclay Applegate order and forgive, I am not being patronising, I am just rehearsing it in my own mind, a Barclay Applegate order is somebody there who has said 'Look, I've got this money, I don't know what to do with it, please help me and by the way I'm going to incur costs and it is reasonable that I should be paid out of the fund'. Your clients are making a claim to that fund?

MR SMITH: Yes.

THE REGISTRAR: Is it fair that if your clients lose and do not form part or establish any claim to that fund, that they should have their costs paid in regard to that losing claim?

MR SMITH: Yes it is fair sir, and perhaps I can hand up a case to which I want to refer you. There is another case I want to show you sir as well. This is a case and the decision of Mr Justice Evans-Lombe, *Re AXA*, it was a question of a pre-emptive costs order and this decision is quite helpful because it draws together a number of the earlier authorities on this issue. Now sir what happened in that case, it was a situation where AXA was making application under what was then the Insurance Companies Act 1982 for the transfer of some of its business from one entity to another, it is now Part 7 of FISMA and what the court decided in that case was that it was appropriate for a person making representations in relation to that transfer to be entitled to his costs. Now sir at B of the held part of the head note, just below letter E on the second page of the report, Mr Justice Evans-Lombe summarised the position in relation to that.

THE REGISTRAR: Sorry, which page am I?

MR SMITH: On the second page of the report, page 448.

THE REGISTRAR: Yes I see.

MR SMITH: It's B of the held section of the head note, just below E, and he said "The representor in that case was in the analogous position of a shareholder bringing a derivative action or a member of a pension fund bringing an action to compel the trustees or others to account to the fund, both of whom would be entitled in appropriate circumstances to a pre-emptive costs order" so those are two of the situations in which a respondent or representor is entitled to a pre-emptive payment out of the fund. "In this case" he went on to hold "the representor's presence was necessarily for the proper testing of the provisions of the scheme to determine whether they were fair under relevant legislation (inaudible). In addition M was in genuine need of funding and accordingly the court was exercise its jurisdiction to make a pre-emptive costs order in favour of M, the court would order AXA to pay M's costs up to a specified limit". Now sir if I can just observe a couple of the key points there apply equally in this case in that the court has clearly decided that our presence is necessary in order to properly determine the question of entitlement to this fund and we have therefore been joined as respondents. Secondly we don't in fact have any funds with the liquidation with which to fund that representation and as an office holder, it would be most unfair I would submit, for my clients as liquidators to be left in the position of having been joined as respondents to

the court application but have no means of funding that representation at all and sir....

THE REGISTRAR: Well I would challenge you on that. You have got a whole body of creditors who are interested in this.

MR SMITH: Well sir I'm not sure that's right because....

THE REGISTRAR: Well yes you have, surely you've got creditors haven't you, or contributories then?

MR JONES: Which is me effectively.

MR SMITH: Well sir what we have is a number of other respondents to the application in the form of Mr Jones and Think Group.

THE REGISTRAR: Yes, well I can assure you over the years of practice I have (inaudible) from this very point that I couldn't pursue things because the creditors were not prepared to cough up two things; 1) to fund me and 2) to fund a claim for adverse costs and many things weren't addressed on that principle.

MR SMITH: Sir, I mean what I comment on that is as follows. I mean the practicality of these proceedings is they are extremely contentious, extremely complicated, there are a number of different vested interests and the chances of our clients procuring any funding from any of these other bodies, creditors or contributors I would respectfully suggest is absolutely zero and there is such a degree of conflict, counterclaim, counter accusation going on here, I mean we believe that is not likely at all and sir, if I can just hand you this case as well sir? This is a very similar piece of litigation in relation to the Tiny Computers matter regarding the question of the ownership of funds in trust and sir you will probably recall the Tiny Computers insolvency. Now it is not clear from this report at all but I understand from speaking to those involved in this case, at an earlier stage of that litigation, his Honour Judge Weeks QC made an order in the favour of the respondents, exactly on the lines which I am seeking from the court today and essentially the reasoning there was that as here, it was a case of where the court needed to determine the ownership of a trust fund and that it identified respondents who were appropriate to join to that application to enable the proper determination of the question and therefore in the circumstances it was fair and just that those respondents should have some means of being able to fund that representation. Now sir, I mean if the court is at all concerned about level of costs, I mean could I suggest one way of dealing with that would be to insert a ceiling subject to the question of further review, i.e. costs up to x and any amount above that, you know, not to be withdrawn without the consent of the administrator or application.

THE REGISTRAR: X is always an unknown factor. Enlighten me, what's your ceiling?

MR SMITH: Well it is.

MR HARDY: Before you decide that, can I perhaps give a little bit of assistance, I am sorry to interrupt, but given that the only reason they are here is because of the Section 1.10 reorganisation which created a member as a voluntary bankruptcy but converted to a creditors voluntary, it seems to me that because they have no assets, they were all devolved under Section 1.10 agreement, it is logical to me that they have the order that he is seeking but that other parties don't, particularly given the contentious nature of the counter claims is from those other parties against the liquidators, so in your deliberations factor me out. I don't speak of course for Mr Jones.

THE REGISTRAR: Mr Allison, do you raise any objection to that?

MR ALLISON: What I say and Mr Smith and I have discussed this point, what I say is as follows, I say it is not in our gift to consent to it.

THE REGISTRAR: Well I didn't ask that question, I said did you raise anything against it?

MR ALLISON: Well sir what we say is we are not aware of any case in which this has happened and this has been brought to our attention today but we haven't seen any reasoning behind it. It is rather different to the scheme style case of pre-emptive costs order which in essence is the *AXA -v- Equity* case. Here there is a case in which people are in essence asserting an entitlement to the fund and if they lose that entitlement to the fund, we don't see why necessarily they should be entitled to their costs thereon. We are the party who is in the position of the trustee and it is therefore natural under well established principles that we should have our costs but in relation to parties asserting adversarial interest to that fund, it is not immediately clear why that fund should be depleted by them seeking to establish an entitlement to the fund, such depletion which will give rise if they don't succeed to less cash being available to others. Now in the ordinary course you would expect, as I think sir you quite rightly observed in my respectful submission, that creditors or shareholders if you don't have creditors, should be the first port of call in which to seek any funds to pursue this action. Now that is as far as we take it; we don't formally oppose nor do we formally consent, but we think it may be stretching the principles in particular of adversarial litigation to give them that right at this stage. We think if the court does wish to consider it, it would be more appropriate to consider at the close of the proceedings when the entitlements have been worked out.

MR SMITH: Can I just comment on that sir? I mean the position here is that of course we've been joined as respondents by a court order....

THE REGISTRAR: I accept that but....

MR SMITH: We have no means of funding our representation.

THE REGISTRAR: Well maybe, but you see you have the alternative to say 'Thank you very much, we have no claims on this fund, please release us from these proceedings'.

MR SMITH: Well I mean how the court would release an office holder from....

THE REGISTRAR: Well if you are saying 'We have no claim to these funds'.

MR SMITH: Well we may have a claim to these funds, but the question is how do we fund....

THE REGISTRAR: Mr Smith that before I make or a court makes any decision in this regard in support of your application, I would like – do you have creditors in your company?

MR SMITH: Well as I understand the position, sir what happened was as follows. The company originally went into members voluntary liquidation and then there was subsequently an agreement by which its business essentially was transferred to Think Entertainment Group so what is left I believe is actually very little. Now I don't have precise instructions now as to exactly whom the creditors are.

THE REGISTRAR: Let's assume, well let's deal with two potential scenarios, first that you

have a residual body of creditors, secondly that you have no creditors at all.

MR SMITH: Yes.

THE REGISTRAR: In either case, if you want to pursue this application to be protected by a similar order as the trustees of the fund are under the Barclay Applegate provisions, I wish a statement from the liquidator that he has written to the creditors saying that there is a potential interest in a fund, will they be prepared to finance the liquidator being represented. If there are no creditors, the same question is posed to the contributories because if there are no creditors, they will receive a distribution on the surplus.

MR HARDY: The problem sir is there are 57,000 shareholders. This is one of the most high profile cases that is going to come before the court for many years unfortunately and nobody has the money to circularise them. I mean you are looking at £50,000 sir. That is one of the problems ....

THE REGISTRAR: Well that in itself begs some questions doesn't it, that if there is a surplus there.....

MR HARDY: Sir, a lot of the evidence isn't in front of you yet, but I don't think there's any disagreement that the documents, the sworn documents that brought Think into existence under a Section 1.10 included £300,000 as coming from EDI to the companies upon the representations....

RULING

THE REGISTRAR:

1. At the present moment I am not inclined to make an order for the benefit of those parties which have been brought in on the Barclay Applegate principles, particularly where a liquidator has potential recourse to funding for those interested. It has been a long established principle that liquidators will not progress or defend proceedings where they are without funds and the beneficiaries will not support the liquidator. The matter has changed somewhat in the last years because of the facility of conditional fee agreements, but that I think is something different. If you have creditors who are not prepared to fund litigation and there are insufficient funds in the company, then it is my view that it is in very, very exceptional circumstances that they should be funded from the trust fund which is being investigated.

MR SMITH: Sir, could I suggest this? We will put in some further evidence dealing with the points which you raise in your judgment sir, and then this matter and we anticipate being able to do that I assume quickly and then this matter is adjourned for a further hearing.

THE REGISTRAR: Well Mr Smith, I think that this is a matter of some considerable

importance as a matter of principle and if you are going to pursue this and that contesting claims within a Barclay Applegate scenario, I am inclined to send it to the judge because that would be very useful to have positive guidance on this particular matter.

MR SMITH: Well we would certainly agree with that sir. Sir, can we suggest directions are given to listing this matter for a half day appointment in front of the judge?

THE REGISTRAR: When, now?

MR SMITH: Now, that directions are given for that.

THE REGISTRAR: What about some evidence?

MR SMITH: Well we would presumably take on the role of applicants and we would be able to file any evidence shortly and then directions be given thereafter for the filing of evidence in response and a half day appointment in front of the judge.

MR ALLISON: Well from my mind sir, I think it is the quite proper course to take if I may say so. In relation to evidence, well you've got my submissions, we are essentially neutral though we think it is not a question to be dealt with summarily. We find it very unlikely that we would want to put in evidence in opposition although I can't really say that with absolute uncertainty until we've seen the evidence.

THE REGISTRAR: As to costs of – it's Newscreen isn't it?

MR SMITH: It is Newscreen sir.

THE REGISTRAR: Newscreen, "The liquidator should file and serve evidence in support of his application to benefit from a Barclay Applegate provision. Other parties to be at liberty to file evidence in answer". Now I'm cutting it off there Mr Smith, at risk of it getting out of hand. "Adjourn question of Newscreen's application to the judge. Parties to attend listing office forthwith". Get this before the judge because the sooner you get that order, you will know where you stand because if you don't get your order and your creditors are not sanguine, you are out, as we say.

MR HARDY: Which will complicate things immensely sir. Could I therefore ask that there be no order as to the other respondents giving evidence in response to this evidence until that matter is dealt with, because what I don't want to get embroiled in is having to brief the Newscreen Media with vast amounts of stuff that is going to go the root of the entitlement to the money.

THE REGISTRAR: You are suggesting that, sorry – are you suggesting that the question of costs goes up before and is determined before the directions I have given previously, bite?

MR HARDY: I think it is absolutely critical sir because if the Section 1.10 reorganisation within a CVA, or following on from the CVA and now it is converted from members to creditors, it is a horrendously complicated case.

MR ALLISON: Sir I don't for a moment accept what Mr Hardy says about it being a horrendously complicated case or one of the most important cases to come before the court for many years, nor do I accept that Mr Hardy and Newscreen are meant to have a unity of interest, not necessarily want to do different things. I do however accept that it would be precipitous for those directions to bite before Mr Smith's clients know whether they funds or not, so we wouldn't.....

THE REGISTRAR: Well in that event I just simply put my pen through the two previous directions of time.

MR ALLISON: Well you do.

THE REGISTRAR: I have said the 16th of June and the 7th of July. You are hardly likely to get up before the judge in that time are you, or before?

MR ALLISON: I doubt it sir. Well sir I think for the time being what we might prefer to have to ensure that the timetable you have determined on today, at least to a certain extent stays, is maybe to put both of those dates back by a month, to give us breathing time with liberty to apply. Now if necessary that can all be done by parties writing into you by consent, but that would ensure that the parties actually do have some impetus to go forward and get this thing fixed up.

MR SMITH: With liberty to apply?

THE REGISTRAR: With liberty to apply for which trial, because all I am putting up to the judge is the question of the liquidator, in fact possibly a wider principle, that the competing parties should they benefit from a Barclay Applegate when the success of their application and the strength of their application for an interest in the funds is yet to be known.

MR ALLISON: Sir, do we have the 16th of July then the 7th of August?

THE REGISTRAR: Yes.

MR HARDY: One last sir, because I wasn't given notice of the first hearing unfortunately, I would like to apply to be added as a respondent personally and on behalf of other entities. It is a very complicated case and I would like to make that application ex parte to the Registrar so that....

THE REGISTRAR: What is your application? What is your interest?

MR HARDY: My interest is that unfortunately, because I was brought into this thing eighteen months ago and there is evidence that there was loss of communication with the administrators and that these monies were always going to be released and I personally relied upon, as did the Inland Revenue and other creditors including solicitors and so on, the representations of the KPMG administrators that the monies were going to be forthcoming, we relied on that to our detriment, to assume that the company could carry on trading whilst it was not insolvent. My fees remain unpaid, Addleshaw Goddard's fees remain unpaid, there are a lot of competing interests in this, but rather than have everybody tied down with numerous applications to you, I would like to make an application ex parte for you to be able to review it and then give directions as to whether the other parties should be served, because there are a lot of matters in here, particularly relating to other administrations within the group and I think some of the matters can be consolidated in this hearing conveniently and dealt with very swiftly but others I suspect you will decide cannot be but unfortunately I cannot afford, or the company cannot afford to go out and get lawyers to represent itself because all this money has been held back now for four years.

MR ALLISON: Sir if I may, of course it's....

THE REGISTRAR: Mr Allison, I'm not going to deal with it now. You make your application. If you are pursuing a separate application then there is a question of having either a consolidation or an application being heard together but I think your application must be made. Why

do you need to make it ex parte?

MR HARDY: I'm just trying not to get all the lawyers involved and everybody else there.

THE REGISTRAR: Because if you personally have what you consider it to be, a proprietorial claim or an indemnity claim as against that fund beneficially to you personally, then you had better make application either against the fund or make a formal application to be joined as a respondent with supporting evidence.

MR HARDY: Sir, can I refer to and put in the relationship of the other parties so that when you see the application you can decide whether the matter should be consolidated. I am concerned for the efficiency of justice on this sir, we don't want to be here for years and years and years litigating as between all the administrators.

THE REGISTRAR: Well you are asking me to crystal ball gaze there; until I see it I don't know.

MR HARDY: Do you want me to make the application on notice to all the other parties then?

THE REGISTRAR: Yes. I am now going completely off the record. I had not a dissimilar matter where the fund was fifty percent (inaudible), it was £750,000. Now what have we got here, half a million? Well I can bet my bottom dollar that I know how this fund is going to be dissipated and any potential beneficiary is not going to see a jot out of this. It is going to go in costs and I was able through judicial arm twisting to make a direction that if anybody didn't like it, they could come along and tell me why, but I just said that this previous fund, now I haven't seen enough of this to be able to form a view of cutting through, but what does worry me here very considerably is that this fund is going to be dissipated in costs and I ask parties here today to consider that real possibility and whether any form of mediation may be more efficient and produce funds to potential beneficiaries than wasting and frittering it away amongst the lawyers. I say no more. I do put it in people's minds. I have seen these cases over the years and what is left for distribution is really quite pathetic. I raise that with you.

MR ALLISON: Thank you sir.

MR SMITH: Thank you.

THE REGISTRAR: It is grey hairs and long teeth that caused me to say that.

IN THE HIGH COURT OF JUSTICE
COMPANIES COURT
CHANCERY DIVISION

Case No: 146 of 2002

The Royal Courts of Justice
The Strand
London WC2A 2LL

18th December 2006

Before

REGISTRAR DERRETT

M V McLOUGHLIN & A W GRAHAM
(In their capacity as joint administrators of EDI Realisations Limited
Formerly Marshall Editions Limited)
(Applicant)

-v-

H M REVENUE & CUSTOMS (1)
NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)
(Respondents)

PROCEEDINGS

APPEARANCES:

For the Applicant: MR ALLISON
For the Defendants:
Christopher Jones: IN PERSON

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M V McLOUGHLIN & A W GRAHAM

-v-

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NEWSCREEN MEDIA GROUP PLC (2)
THINK ENTERTAINMENT PLC (3)
CHRISTOPHER JONES (4)

18th December 2006

PROCEEDINGS

REGISTRAR DERRETT: Before we start, I received a telephone(?) message from I think Eversheds which suggested I might have a conflict in dealing with this matter. I have read the papers, I am satisfied that I do not have a conflict but I think it is right that I should say that I acted on behalf of Coopers and Lynes(?) in respect of various liquidation matters where Mr Hardy(?) was a Defendant in those proceedings. I tell you all that, if anybody has any points to raise on that then obviously I will hear what you have to say.

MR ALLISON: Madam, we don't for a moment think it is a conflict that prevents you from hearing the case, we just thought out of courtesy you would rather know about that in advance and be able to consider it, we thought you should do before today, in fairness to Mr Hardy as well (inaudible), he had notified us of that.

So in that event, Madam, if I could simply proceed. I appear on behalf of the Applicants, the joint administrators of the company. Before you today you have Mr Prelling(?) sitting two to my right on behalf of Revenue & Customs. You have Mr Frith(?) to my left representing the liquidator of Newscreen Media. You have Mr Hardy at the very end of the row representing Think Entertainment Plc, and you have Mr Jones sitting next to me.

REGISTRAR DERRETT: Thank you very much.

MR ALLISON: Madam, hopefully you will have received a skeleton argument from me, and hopefully you will have also received a skeleton argument from Mr Frith.

REGISTRAR DERRETT: I have received that this morning, yes, I have had an opportunity of looking at that.

MR ALLISON: Madam, outside Court this morning I was handed two documents. The first document is a witness statement by Mr Jones, now he informs me that that was faxed to the Court this morning, so that may have reached you it may not have done.

REGISTRAR DERRETT: Yes, it arrived at 11.54 and I have not read it, it was also in a mess so I am afraid I could not work out which way it was supposed to go. I have been handed since - and also it was not signed, but I have since been given the signed version of the document, but I have not read that.

MR ALLISON: I should also highlight in relation to my skeleton of course certain people being litigants in person, that was circulated by e-mail on Friday morning when it was lodged with the Court, so everyone has had sufficient notice of that document.

Now it is of great delight to us that Mr Jones has now seen fit to lodge his evidence, and in that regard, although we, from our very quick review outside Court, wholly disagree with the content of the evidence, at least the evidence is now on the Court file and we hope that we can get away from the sideshow of correspondence and e-mails that has been causing great expense to the funds that are being determined by the Court in this action. So we do have Mr Jones's evidence in.

Now in relation to Mr Hardy ...

REGISTRAR DERRETT: Sorry, I have also got Mr Twizzle's(?) statement, you did not mention that.

MR ALLISON: Oh that, we received that at the time, as mentioned in my skeleton argument.

REGISTRAR DERRETT: It is in. I have not got the exhibit to that though, and I have not seen the exhibit, but I do have a signed version of the statement.

MR FRITH: Right, well I do have a copy of the exhibit here, which to the extent we need to make reference to it I will be able to do that at the appropriate time. I apologise for that.

MR ALLISON: So that is why in my skeleton we don't say that we seek any specific relief as against that Respondent today because we received that evidence on Friday.

The second document that I mentioned that I was handed outside Court this morning was a skeleton argument on behalf of the third Respondent, Think Entertainment Plc, that has been prepared with Mr Hardy. Now ...

MR HARDY: Madam, perhaps I can help you on this. I don't propose that you need to read that because I was unaware of the change of the CPR Rules, I was asking for a stay, and then referred to other matters ....(inaudible)

MR ALLISON: Now it is an interesting document that amongst other things, and I think you need to be aware of this for the purpose of this morning, suggests that both the Applicants, those instructing me, and in fact me, are guilty of a criminal breach of trust, perverting the course of justice, perjury and receipt of the proceeds of crime. So the allegations that are contained within that skeleton argument are wholly consistent with the bold assertions which I make reference to in my skeleton argument which have formed the basis of correspondence and e-mails received since the last hearing.

MR HARDY: Ma'am, in that case you ought to have a copy for(?) the Court record if that is all right.

MR ALLISON: Now I don't know whether you wish to skim read it or not. I do not think you need to. What I want to achieve today, if at all possible, and I think if I put it at its most neutral, at least I am sure from where our skeletons go that Mr Frith will agree with me in this much, is bringing a speedy resolution to this matter, if at all possible, whilst minimising the cost of these proceedings to ensure that the fund that is presently being argued about is not depleted to such an extent that any victory is merely a (inaudible) for whoever obtains it.

Now in that regard you will have seen that this matter has been before the Court on two previous occasions. The first occasion was us seeking to determine who should be the Respondents. Now, Madam, you have probably got a fairly good steer from our evidence and my skeleton who we think probably is entitled to this money, but due to the drum beating that has been going on before we were able to decide what to do with this money we thought it only prudent to bring these other potential Claimants to the attention of the Court, and the Court determine that in the circumstances of the evidence of the first witness statement of Mr Graham they should be joined as parties to the application. But also on that occasion the Court quite properly ordered that our costs should come out of the funds because we are not quite sure where they are going at the moment.

Now the second occasion was when it came before Mr Registrar Simmonds, and that is of more import to what we seek today. Now that was on the 15th of May, so that is some seven months ago. Now you should have a skinny bundle and two fatter bundles. Now the skinny bundle at tab 5 has the order which was made by Mr Registrar Simmonds on that occasion. Now although the seal is rather late, if you turn it up you will see it was the 15th of May when the order was made.

Now that order provided, in so far as material, paragraphs 1 and 2 are material for today because the third Respondent has not sought to pursue their rather novel application in relation to Barclay Applegate relief. That is that the Respondents had to file and serve their evidence by the 16th of July. Now the reason why two months was given by the Court was to enable the application at paragraph 3 to be made in the meantime, that's why it was rather longer than you normally would expect to see on a direction for the service of evidence. Unfortunately that date came and went, we received nothing. We received on the 14th of December the evidence of the second Respondent, the witness statement of the liquidator of the second Respondent. Now in my skeleton I said I would make submissions in relation to that delay today. I do not seek to ask you to exclude that evidence, it may be relevant in terms of costs at a later date but I don't make any more points in that regard today.

So, Madam, there has been seven months in which these Respondents have had the opportunity to file and serve evidence. What I seek today, as indicated in my skeleton, is some sanction from the Court for their failure to do so. Now in light of the facts that have occurred since the last hearing, you will have seen that summarised in the statement of Mr Graham and my skeleton, ie the barrage of correspondence which we have been faced with, we feel that really now is the time the Respondents must put evidence in if they wish to assert an interest in this fund, and we say that the correct order of the Court to make would be that in the event that they do not do so within seven days they be debarred from both taking any part in these proceedings and also claiming any interest in the fund.

Now I state in my skeleton that I seek that order as against only the third and the fourth Respondents. I do not seek that relief against Revenue & Customs, they haven't been a chain round our neck who are eradicating whatever fund is available to the people who would participate in the fund. So I do seek that order against the third and fourth Respondents. Now in relation to the fourth Respondent we have his evidence today, so I do not pursue that application, but I do pursue that application in relation to the third Respondent.

Now, Madam, I don't know whether you have had an opportunity to read the references that I make to the bundle in paragraph 22 of my skeleton argument.

REGISTRAR DERRETT: Yes, I have read - no, I have not read all of those, no, sorry, I have not read all of those, no.

MR ALLISON: Madam, in summary, what is contained therein, and this was foreshadowed before Registrar Baister on the first occasion and on the second occasion before Registrar Simmonds, there are wide ranging allegations in relation to the conduct of the administration, which are all set forward as bold assertions. The word 'fraud', the word 'crime' and the words 'breach of trust' are used on a regular basis. Now we at the present time have felt obliged to respond to all of those allegations. We do not think it is in anyone's interest for us to do so in going forwards. The Court has already made it plain that the question in this application is a narrow one, namely who is entitled to these funds. If Mr Jones, Mr Hardy, or anyone else genuinely believes that as a matter of substance and law the insolvency practitioners, which I represent today, have acted in their breach of duty in the administration of the estate of EDI Realisations, then of course it is up to them to bring proceedings to that effect. But in relation to these proceedings it must be noted that the allegations need to centre on to the funds.

So what I ask for you also today is, in a rather unusual way, although I ask for the words that the Court have given on previous occasions to be reinforced today, is that we do not need on this application to deal with these sort of allegations, and I really ask that we do not need to answer their correspondence in that regard. Now if they want to put in witness evidence, great, Mr Jones has done, and of course we will reply to those parts that we see fit on this application in so far as they are relevant. We will do likewise with Mr Hardy, if and when he files evidence on behalf of Think Entertainment Plc, but otherwise Madam we don't see it is in the interests of any of the Respondents before the Court for us to have undertake the time consuming and expensive exercise in responding to almost daily e-mails and letters.

Madam, that is all I have to say to you this morning, and they are the directions we seek, apart from those the consequential ones are of course those to take this matter to a speedy hearing.

REGISTRAR DERRETT: Yes. Right, thank you Mr Allison. (Inaudible) Revenue & Customs have anything to say?

MR PRELLING(?): Well we didn't put any evidence in during the summer and when we were last given an opportunity to do so on the 15th of July because it was felt I think at that stage there was not a lot that we could add to this. However, I am now faced with the situation in which, during the last few working days, I have had a second witness statement from Alan Graham, which actually I think arrived on my desk on the 15th of December, and I have now been served with other things as well. So, what I would be asking for, for Revenue & Customs, is 35 days given the fact that there is the Christmas period in between to actually respond to any of these things that have come in, put in by way of a further witness statement.

REGISTRAR DERRETT: A witness statement, you have not put in any witness statements.

MR PRELLING: No, a witness statement, a witness statement, yes.

MR FRITH: Yes, Ma'am, the reason again, in terms of the delay, is that, what was also mentioned at the last hearing, is Mr Registrar Simmonds gave a very firm indication to the parties they ought to consider mediation. Indeed, a lot of time you can see from the correspondence was spent, and it is in the evidence if you want me to take you to it, in trying to identify a suitable date.

Now one of the things that I think would possibly be achieved today is, and I think my learned friend has actually mentioned it, is an indication as to what can and cannot be determined by

this application, and certainly the allegations that I have seen raised are not appropriate to be dealt with within this application, and it is tending to obfuscate the issue, the issue being who is the beneficiary entitled to receive funds that are held in trust by my learned friend's clients.

I have included in my skeleton a request, that it may or may not be appropriate to pursue because there are certain elements that we are concerned about. Without going too much into the issues, Ma'am, just so you have a flavour of it, this is a case about who is the beneficiary under a trust created by a Company Voluntary Arrangement, imposed not by Directors but by administrators and insolvency practitioners, and on any view the CVA is ambiguous because there is a conflicting amount, and my learned friend first put in his skeleton, it is in and around Clause 4.8, where it refers to preferential creditors being £198,000. That is a figure prepared by the administrators themselves after five months in office, and put bluntly, my learned friend's argument has hinted that he wants the way to go, which is that the money goes to HM Customs & Excise, the first Respondents. The fact remains that on his allowances the preferential creditors were not £198,000, and in my respectful submission he has to concede that that is an error, and also (inaudible), but it is an error where in fact the true figure should not have been £198,000, it is in fact 630 or 40,000(?), you can get that Ma'am, and I can take you to it, but it is in the exhibit which regrettably you don't appear to have received, but in essence that relates to an outcome statement prepared as part of the Section 23 meeting some two months prior to the proposal, in which you can see quite clearly the £198,000 - it is actually £181,000, I am sorry, it is a payment of £179,000 and a further payment of £2,000 as being the preferential creditors in Newscreen alone, and we feel that it is all (inaudible) the definition clause, and the clause as being indicative of what it is meant, but of course the proposal includes not only those clauses, it includes the statement of affairs, and that at the very least we would appreciate an explanation as to why it is that figure was grossly under represented, and it is, if you do the mathematical equation, it is wrong by a factor of 242%.

Now I have to say that the frustration that has been felt is that this is a situation not involving a normal stakeholder (inaudible) arrangements where the administrator arrives on the scene, he has a fund, he doesn't know how to deal with it, he's no evidence in relation to its creation, and he has to rely upon the evidence filed by the Respondents to help him explain where the fund should lie, and he seeks some form of immunity from a suit.

This is a situation arising from a CVA proposal prepared by the administrators instructed by the same solicitors that are representing here today, in which there is an error of significant proportions in relation to the preferential creditors, and we say that the preferential creditors of EDI are not beneficiaries under the terms of the trust created by the CVA, that is our case, and we say that there is a significant amount of supporting evidence, both in the form of the documents that are in front of you and in the CVA itself, we don't need to go outside that to highlight the problem, it is clearly there, and also certain other aspects, for example the administrators themselves represented to the Directors of Newscreen when they were preparing their statutory declaration of insolvency for the purposes of (inaudible) voluntary liquidation that they could expect to receive the sum of £300,000 back.

Now we say that is consistent with an analysis that these funds and the actual definition of the trust, and the beneficiary under the trust was not the preferential creditors of EDI, but the preferential creditors of a group consisting of the three CVA companies, because beyond that it would be very surprising that the investors who in fact funded these payments, by which were the subscription to shares in Newscreen, should see their investment not with a view to promoting the intellectual property rights in these rather remarkable looking pieces of cartoon work, but in fact to pay the

Government in terms of the preferential creditors in a limited company for the purposes of the CVA, and as we say, we find it very surprising indeed that there is such an error in the CVA and in the preferential creditors, (inaudible) and the other thing which is of most significance is that in the document where the CVA came to an end, which is exhibited to Mr Twizzle's affidavit, and perhaps Ma'am if I can just ask you to look at that. I can hand up the exhibit now (inaudible). (Inaudible) to consider a final payment in the CVA itself, appears at page 43. Just that document there, I won't trouble you with the entirety, but if you look at the, you will see a little bracket that is round there.

REGISTRAR DERRETT: Yes.

MR FRITH: Now those four payments are preferential creditors that have been paid by the supervisors of Newscreen, and if you total them up they come to £181,000. Now just briefly in relation to that, I just take you to (inaudible), and again there is a marking which doesn't appear on the original but it is useful (inaudible) your attention, you will see that there are two payments made there, there is 179 and 2, which coincide with the £181,000 which has been paid already.

So in a nutshell we say that preferential creditors of Newscreen have already been paid, and (inaudible) and that as a result, bearing in mind you have got 181 as compared to the 198, that is a ratio which is more consistent with the reality of the situation than a ratio between 198 and, if you total all the preferential creditors along that line, you will see, and there are certain (inaudible) it comes out at £600,000.

So we say it was never the intention at all that the preferential creditors of EDI should form part of, are in fact the beneficiaries under the terms of this CVA and that in those circumstances my clients claim that the money should come back to them in their capacity as the liquidators of Newscreen.

Ma'am, unless there is anything else I can help you with, those are my submissions.

REGISTRAR DERRETT: Thank you.

MR JONES: May I now talk for the shareholders? Sorry, my apologies.

MR HARDY: The Applicants asked the Court to join Think Entertainment, the Court (inaudible). The third Respondent is quite happy to rely upon the evidence in Court, Mr Frith is clearly right that this money was paid in breach of trust to EDI from the CVA funds as is evidenced on page 26 of Mr Twizzle's exhibit. I don't think that is before you at the moment, but it says, "CVA financing £524,000, (inaudible) to be paid(?)", that is what Mr Frith refers to, it is clearly (inaudible), without any argument, and therefore should be refunded. It is not for Think Entertainment to be squabbling, or any of the (inaudible), to be squabbling in this simple EDI matter.

REGISTRAR DERRETT: You do not wish to put in any evidence?

MR HARDY: No, I don't need to Ma'am because I am taking a point of law, and the only thing I would draw your attention to is Mr Graham's second witness statement, that he states at paragraph, page 6, sorry, page 7 of his second statement, "Possible Respondents for the application".

REGISTRAR DERRETT: I am sorry, I am not with you.

MR HARDY: Oh I am sorry, this is on his ...

REGISTRAR DERRETT: His first(?) witness statement?

MR HARDY: Yes, (inaudible), I do apologise, first witness statement. (Inaudible - books being moved near microphone) and in his second witness statement he says that he has responded to my request for a list of all the preferential creditors in the entirety of the liquidation. He has not done so, there is no evidence of that in front of you, and it beggars belief that he could transfer the £524,000, being the unclaimed amount in the estate, to one subsidiary and say only preferential creditors are going to be paid. If there are preferential creditors to be paid then I think you ought to order the Applicants to lodge a full list of all the preferential creditors in all the companies. This is a matter of the CVA, it is nothing to do with EDI. It is just a point of law, Ma'am, that I think does not need to lodge evidence.

REGISTRAR DERRETT: Yes.

MR JONES: My, on behalf of the shareholders, overriding point is the fact that - if I could first of all explain, turning to my statement. I had explained, and apologise, well explained the reason for the delay which is in fact attributed to several factors, one seeking further information. In particular I was asked by the CID, that is the, obviously the Criminal Investigation Department, not to compromise a criminal investigation, and they in fact asked me to seriously consider my position with regard to that. That, needless to say, as I say in paragraph, well I was asked by the CID not to compromise the investigation and (inaudible) - here we are, at paragraph 3, 3.10 - it was considered that the admissions, and these are serious genuine admissions by former Directors, who I have to stress I have worked with, because I am talking not just as a shareholder, although I am talking on their behalf, but I was involved in the rescue process which raised these funds. I had meetings and regular communications with the administrators, Mr Graham, and the primary Director involved was Alison Lord(?), and I have, due to the severity of the matter, and for my personal (inaudible) to substantiate the facts because of many discrepancies and many inconsistencies in statements, I telephoned those Directors and taped the conversations and obtained clear admissions of serious, very serious false accounting, involving invoices of up to £10 million, that were not disclosed to me or the shareholders when this funding was obtained, and I am looking to the Court, and I do appreciate obviously what Counsel have said this morning, and I fully agree, I have to say, with what Mr Frith has said.

I do have a number of comments in response to Eversheds opinion. They were the solicitors for the administrators in 2002 when this CVA was proposed by the administrators, and as has already been pointed they are the same two individuals as who are the administrators of EDI. Now - and again, as Mr Frith as pointed out, the EDI administration was a separate, although a subsidiary company, was not subject to the CVA. So I think we have clearly established that and I think the administrators have admitted that themselves.

Whether it was appropriate to transfer the funds is obviously one issue. The costs factor here is significant because they have deducted some £200,000, having transferred the funds themselves, having complicated matters themselves, and then sought to take advantage of that position by awarding themselves £100,000 fees each. They have substantially, and I have put this in my statement, it is a statement of facts, it is the statement of truth I signed, I have put in evidence to substantiate that they have been wholly evasive and indeed misleading in their replies. The allegations of fraud relates to the administration of the group which did the CVA's under the

administrators, Mr Graham and Mr McLoughlin. Now they had then transferred these funds to EDI. They had decided, as KPMG partners, to instruct Messrs Eversheds. The correspondence in respect of the allegations of fraud cannot be attributed to EDI, therefore it is wholly inappropriate and incorrect for the administrators to take fees effectively - and I am sorry to use this word but it seems to sum up the situation - for their misconduct. They have transferred the funds ...

REGISTRAR DERRETT: Yes, (inaudible) an order was made by Chief Registrar Baister inviting them to take their funds. Now if you wish ...

MR JONES: Yes, I do understand Ma'am, yes.

REGISTRAR DERRETT: If you wish to challenge that position then you should appeal that order.

MR JONES: Right, okay, I have asked the Court to reconsider it, I understand. Then I will have to do so, okay.

REGISTRAR DERRETT: It is not something that is before me today, so I cannot entertain that application. If you have reason to object to it then you should have either appealed ...

MR JONES: Yes, I do believe that insufficient information was given to the Court in order to obtain that order and I will put in an application to that effect.

Turning back to the funds, if an issue of fraud, which is quite clearly evidenced in my statement, and in e-mails which I have provided, and statements by former Directors. If that is considered not to be an issue, although the funds are the proceeds of the shareholder funding by (inaudible), the administrators were in charge or responsible for the administration of the company and therefore the share offer, they withheld, and I have evidence, considerable, damaging material information, which would not have led to my supporting the share offer, I became a Director of the company, I was ousted by the former Financial Director, who has been named by four former Directors as having fabricated and falsified invoices. Now these invoices were used, as is proven in my evidence, to obtain the sharehold support and funding. These funds, therefore, are the proceeds of that deception.

REGISTRAR DERRETT: Well you have set out what your position (inaudible) in this evidence which now needs to be answered.

MR JONES: I appreciate that, yes.

REGISTRAR DERRETT: I think (inaudible) this application is focussed simply on these funds and who they should rightly be repaid to. The other issues which you are alluding to are matters which, on the face of it, appear to fall completely outside the remit of this application, but it is a matter for the administrators to see how they would choose to respond to evidence which you have now put in, all right.

MR JONES: Right, thank you Ma'am.

REGISTRAR DERRETT: Thank you Mr Jones.

MR HARDY: I did give the others with my skeleton argument a copy of the decision of (inaudible) in the Court of Appeal which is referred to in my skeleton argument, this is related to trusts, the CVA, and monies all giving rise to a trust (inaudible).

REGISTRAR DERRETT: Thank you very much Mr Hardy.

MR JONES: Sorry Ma'am, there was one other point that I needed to make, and that is in terms of the, if it is determined that the shareholders are not entitled to these funds then one must question why they have been added, or why the administrators thought it fit to add them as a Respondent if they can clearly see that they are not entitled to them.

Secondly, in terms of Mr Hardy's comment that Think and Newscreen don't need to be squabbling, to quote him, over the payment. I believe that a major reason for this application in the first instance, and therefore as an issue on the costs factor, is the fact that Mr Hardy of Think Entertainment, and indeed Newscreen Media Group in liquidation, were in dispute as to whether the fund, who the funds should go to, and I do think that, to come to an agreement many, many months later, as if to say they shouldn't be disagreeing, should have a bearing on the costs.

REGISTRAR DERRETT: Well it may at the end of the day, at this stage no. I mean the only thing I would say to you is this, again an order of this Court was made joining you (inaudible) as Respondent, and if you object to that order then that is an order which you should seek to either appeal or seek (inaudible).

Yes, right Mr Allison, what do you say in response?

MR ALLISON: I will try and be brief in view of the time. If I can just start with Mr Jones first. In regards to any complaints as to why the shareholders were joined, Madam that is a completely unfair characterisation of the facts. We in our witness statement set out the fact that shareholders had been banging the drum in relation to these monies and said that the Court may, in those circumstances, wish to join someone. Mr Jones in fact appeared at the hearing when the Court was determining whether to join someone and said, I should be joined and he should be the representative.

MR JONES: I didn't say that, no, no, I was asked if I would represent the cause and I agreed, I didn't offer.

MR ALLISON: So the Court made the decision that there should be a representative, but not us.

In relation to Mr Hardy, sorry, in relation to Mr Jones we have his evidence now and of course will respond to the extent we see fit on terms of relevance and costs.

Now in relation to Mr Hardy (inaudible) recorded for the record, it was a very clear statement that he does not wish to put in evidence on behalf of the third Respondent. He has made some rather puzzling points about something being a clear breach of trust, of course that can be discussed as a point of law in the future on this case.

Coming to Mr Frith, there are only two points I wish to make in relation to the second Respondent. The first is the suggestion of mediation. We would dearly love to see this matter be

resolved as cheaply and as quickly as possible, through mediation or another process. It is just not going to happen. It is not going to happen in particular because there are two people who have trouble being in the same room let alone speaking to one another, so we do think that on the facts of this case mediation really isn't going to offer (inaudible).

The other point was in relation to the drafting of the CVA. Lots of points have been made by saying it was Mr Graham and Mr McLoughlin who are those behind the scene here, that is simply not true. We are the administrators so of course we are the people who have to put the proposals forward. However, the proposals were drafted by those people who took the appointment as supervisors, this is not the usual case where the administrators also take the job as supervisors. The proposals were drafted by Begbies Trainer(?), Begbies Trainer were the people who communicated with creditors, Begbies Trainer were the people who officiated at the meeting of creditors and were appointed as Chairman of that meeting. So it is not us.

So they are the points that you may need for your record this morning. In relation to timing, the Revenue & Customs have indicated that they want some time to consider whether to put in evidence. It is unfortunate that it is rather late that they want to do so. We had hoped from our correspondence with them that they wouldn't need to as it is a pure point of construction, but if they wish to you will have seen from my skeleton, from our evidence, that we think they are probably the party who is entitled to the money in any event, so the Court may feel that it is worth having some evidence from them.

Now in relation to Mr Jones, of course we would want to respond to Mr Jones's evidence. 35 days was the figure that was given to the Court for the Revenue to put in evidence. Now of course there is the Christmas period, what I will ask though is if the following two things could be done within 28 days. The first of those is for Revenue & Customs to put in their evidence, and the second of those is for us to respond to the evidence of Mr Jones. I think it is appropriate for those to happen on the same date, and I think that after the service of the evidence of Revenue & Customs we would like simply 14 days to respond to that.

REGISTRAR DERRETT: What about Mr Twizzle's evidence, do you want to respond to that?

MR ALLISON: Well we may but I think it really does bring to the fore the fact that it is going to be a point of law and a point of construction. If you could give us liberty to do so if so advised that would be satisfactory.

REGISTRAR DERRETT: Very well, thank you.

MR ALLISON: Madam, that hopefully takes us through to 42 days from today's date, with 28 days - 28 for us to reply to Respondents 2 and 4.

REGISTRAR DERRETT: Yes, and 28 for Respondent 1 ...

MR ALLISON: Respondent 1 to put in evidence.

REGISTRAR DERRETT: And 14 for you after that.

MR ALLISON: If so advised to reply to that.

The other matter that I mentioned was if we could, to the extent that you feel willing and able to do so, is to give us some clear guidance on the fact that we do not need to answer each and every document that comes in from Mr Hardy and Mr Jones in particular, we fear otherwise there won't be any money there by the time this gets completed, which we don't think can be in the interests of any of these parties.

REGISTRAR DERRETT: Yes, yes Mr Allison, and whilst I think that is quite correct, the more you have to deal with correspondence necessarily or unnecessarily received (inaudible) deplete this fund, however I have to say that I do not consider it appropriate for this Court to make such an order, it is really a matter for you and - for the solicitors and the administrators to determine how they should respond to correspondence. Obviously if it is regarded that the letters coming in are not relevant to this application then a limited response should be made.

MR ALLISON: Madam, that is probably sufficient guidance for us as your Officers of the Court in this regard, that we only need to respond to matters relevant to this application.

REGISTRAR DERRETT: Yes, I mean clearly if wide ranging allegations are being made at the end of the day it has to be a matter for you if you choose not to respond to them, but equally I would say to Mr Hardy and Mr Jones obviously you should confine yourself in respect of this application to the matters which are relevant to this application because ultimately it will simply be dissipating funds.

MR JONES: I do understand that Ma'am, which is why ...

REGISTRAR DERRETT: If there are separate matters which you wish to proceed with then they must clearly be distinctly drawn and if necessary you must make appropriate applications.

MR JONES: My correspondence was headed, "(inaudible) in administration", and not relating to EDI. They chose to instruct Eversheds and then charge those fees to EDI. They have done that, I am sorry, I have put in evidence to prove it.

MR ALLISON: That is not something for today.

REGISTRAR DERRETT: No, at the end of the day if that is an issue on the costs and how money has been allocated then obviously that is something the Court will have to deal with at that stage.

MR ALLISON: (Inaudible) Barclay Applegate order at the conclusion of proceedings. The only other matter is where we go after those 42 days, whether you think we should come back and see you again there or whether we can simply set this matter down. I would prefer to simply set this matter down. I would rather not have to incur the costs and have others incur the costs of coming back.

REGISTRAR DERRETT: No, I can see that. There is not going to be any need for further disclosure is there, or if there is ...

MR ALLISON: If there is a specific disclosure application could be made.

REGISTRAR DERRETT: Yes. (Inaudible) Respondents is that if there are documents

which you say are being withheld from you for whatever reason by the Applicants then you must make an application to the Court for specific disclosure.

MR HARDY: Madam, could you address the point that I raised on the totality of the preferential creditors within the trust group that Mr Graham has referred because it is not just the EDI ones which are relevant. The CVA fund, if the CVA was to deal with preferential creditors the Court needs to know the totality of those preferential creditors in all the (inaudible).

MR ALLISON: Madam, they simply don't and that is a classic example of why Mr Jones and Mr Hardy are misguided. We are holding these funds in our capacity as office holders of EDI Realisations. The question is whether under the CVA EDI Realisation preferential creditors must be paid from this fund. What the preferential creditors are in any of the other companies has nothing whatsoever to do with this issue.

REGISTRAR DERRETT: (Inaudible) Mr Allison is quite right there, Mr Hardy, you are here dealing with the preferential creditors of EDI Realisation Limited. What the position may or may not be in respect of the other companies is simply not a matter which is relevant to this application.

MR FRITH: So in that case it is for me to make application that the £524,000 was paid to EDI in breach of trust?

REGISTRAR DERRETT: Well if you feel that that is a relevant - well it is not a relevant matter to this application. You are confined here to dealing with who are the preferential creditors of this company and what is their entitlement to be paid.

MR ALLISON: That would be a misfeasance claim against any one who he said was involved in procuring or causing that payment to be made.

MR FRITH: Absolutely, my concern is that ...

REGISTRAR DERRETT: It would have to be separate proceedings if that is what you wished to do Mr Hardy.

MR FRITH: Within this application or not?

REGISTRAR DERRETT: No. It would have to be entirely separate proceedings because you are dealing with a fund which the Court is to determine who it is to be paid to, and the suggestion, well, (inaudible) from the Applicants is that it ought to go to the preferential creditors.

MR ALLISON: That is our construction of the documents.

REGISTRAR DERRETT: Yes, but it is simply a matter of construction of the documents as to how the fund is to be dealt with. So the matters that you are raising are outside that Mr Hardy, but if you do have concerns that the money, there was some misfeasance on the part of somebody, then misfeasance proceedings would have to be brought.

MR FRITH: Ma'am, I understand that, is it not relevant that the source of these funds on the face of the documents was described as CVA funding, and it is the CVA that is in question. If it is

not, then fine, but if it is then it is within this application is my submission.

MR ALLISON: The CVA, Madam, has been terminated, it hasn't been set aside.

REGISTRAR DERRETT: My interpretation as at today is that you are simply here determining what should happen to this money, what has happened to the CVA is a separate matter which may not - I do not see it can have any bearing on this fund.

MR ALLISON: So Madam, simply then it is listing the matter for trial.

MR JONES: Before you do that, Ma'am, may I just make one point on mediation. I have never objected to mediation, I think it is a good idea. What had to be established first was the facts and copy correspondence, a lot of which I have had trouble getting hold of. I am all for mediation ...

REGISTRAR DERRETT: Well I am delighted to hear that, perhaps that is something ...

MR ALLISON: If all Respondents do join and make a suggestion to us as to the terms on which they are prepared to mediate, we also would be delighted.

REGISTRAR DERRETT: But it is something which - mediation will only work if you are all going to co-operate with it, so the Court cannot make any further orders in respect of that, but the Court obviously last time gave a very clear indication that it thought it would be sensible, and I am sure it would be sensible. But if the fact of the matter is you cannot sit down together, so be it, that does happen sometimes, but there is no point - if you are going to go down that route then all of the Respondents must get together and agree (inaudible).

MR ALLISON: I am very mindful of the time, but we don't think it is a good use of our time to be negotiating separately with each Respondent as to the terms on which they would mediate. If they come to us with an agreed proposal, so be it.

REGISTRAR DERRETT: I think that is right, there is no point - you have obviously tried (inaudible).

MR JONES: One problem, if I may say, with mediation was Mr Hardy wanted a without prejudice meeting, without me being there to represent the fourth Respondents, the shareholders, which is quite ridiculous. So that is what I objected to, I don't object to mediation.

REGISTRAR DERRETT: Mediation can only work, Mr Jones, if all parties agree.

All right, I am making that order then that the first Respondent file and serve evidence in answer by 4pm on, I am going to say the 15th of January, and the Applicant do file and serve evidence in reply to the first Respondent's evidence in answer, if so advised, by 4pm on the 29th of January.

In respect of all other evidence - sorry, in respect of the evidence in answer of the second Respondent and fourth Respondent, the Applicant to file and serve evidence in reply, if so advised, by 4pm on the 15th of January, and I think as a recital to the order I think I will say, and upon the third Respondent confirming that it does not intend to file or serve any evidence.

Right, after that, that will take us to the 29th of January, I am going to direct that there should

be listing certificates, certificates of readiness filed by, if we say 5th of February that ought to be (inaudible).

MR ALLISON: Yes.

REGISTRAR DERRETT: And then that gives you all an opportunity to put in a time estimate, an indication of dates when you are available and not available, and also all of you to confirm that this case is ready for trial, and then there will be what we call a non attendance pre trial review when the papers will simply be put before the Registrar and the Registrar will consider them and fix a date, and that non attendance pre trial review will take place on the 12th of February. After that then a date will be fixed, because until you (inaudible). All right. So those are my directions then for today, and I think I have made it clear you should confine yourselves to the specifics of this application.

MR ALLISON: Yes Madam. Madam, apologies about the time.

REGISTRAR DERRETT: So be it. Thank you very much.
