Neutral Citation Number: [2021] EWHC 144 (Ch)

Claim No: C30LS701

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (ChD)

Leeds Combined Court Centre,
The Courthouse,
1 Oxford Row,
Leeds, LS1 3BG.

Date: 05/02/2021

Before:

HIS HONOUR JUDGE KLEIN SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

(1) MARK KENNETH BABER SAXBY
(2) ANDREW JOHN WINTERBURN
(3) GARY DICKINSON
(4) JEREMY WILSON **Claimants**
- and -
UDG HEALTHCARE (UK) HOLDINGS LIMITED **Defendant**

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Gregory Pipe (instructed by **Clarion Solicitors Ltd.**) for the **Claimants**
James Potts QC and Seamus Woods (instructed by **Pinsent Masons LLP**) for the **Defendant**

Hearing dates: 5-6, 9-13, 16-20, 23-27, 30 November and 4 December 2020

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE KLEIN

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and by release to BAILII. The date and time for hand-down is deemed to be 10:30 a.m. on 5 February 2021

HH Judge Klein:

1. This is the judgment following a trial of "all issues in the action except the amount of any damages and interest payable to the Claimants for which the Defendant may be liable"[1] in a claim arising out of the sale, by the Claimants (and the other shareholders) to the Defendant, on 30 November 2010[2], of their shareholdings in World Events Group Ltd. ("WEG"). Broadly, the Claimants contend that they were induced to sell by actionable misrepresentations, some of which were fraudulent, made at a meeting on 12 November 2010 ("the Meeting"), principally by Graham McIntosh, which also amounted to negligent misstatements.

Companies and corporate structures

2. The corporate structure of the group of which the Defendant is a part ("the UD group") is complex and made more so because some company names have changed since 2010. During the course of the trial, except when it was necessary to do so, the parties did not make bright line distinctions between the different companies (or divisions within those companies). In fact, different speakers referred to the same entities by different names and, at times, I had to check which company or division was being talked about. All this is hardly surprising. As I shall explain, in the management of the group's companies (so far as that is relevant in the present case) and in events leading to the share sale and purchase agreement ("the SPA"), there were few distinct corporate boundaries.

3. It is necessary, however, to briefly sketch the formal corporate structures of the UD group and of WEG prior to the sale, referring to company names as they were in 2010. It is also helpful to identify, at the same time, some of the key individuals within those companies in 2010; noting, however, that some individuals had a formal role in more than one company in the UD group and that some of them appear to have had informal roles in other companies within the group.

WEG

4. WEG provided events management services; principally to pharmaceutical companies. It operated principally in the UK, from Cleckheaton in West Yorkshire, and in the US (through its US subsidiary), from Lambertville in New Jersey, but it also had offices, and provided services, elsewhere in the world.

5. Graham Keene was WEG's chairman and its majority shareholder. He owned or controlled about 90% of the voting shares and about 60% of the equity at the time of the transaction.[3] His shareholding allowed him to control board appointments and to

[1] See the consent order dated 1 April 2019 ("the Consent Order").
[2] All the events to which I refer in this judgment took place in 2010 unless I specify a different year.
[3] When I refer, in this judgment, to the transaction, I mean the sale, by the Claimants and the other WEG shareholders, to the Defendant, of their shareholdings in WEG, and the negotiations leading to the sale which culminated in the SPA.

exercise drag along rights to compel his fellow shareholders to sell their shareholdings if he elected to sell his.[4]

6. Martin Parry was WEG's managing director. He disposed of 400,000 D shares on the sale.

7. Andrew Winterburn was WEG's European director. He disposed of 500,000 A, B and D shares on the sale.[5]

8. Mark Saxby was WEG's group sales and marketing director. He disposed of 220,000 D shares on the sale.

9. Gary Dickinson was chief executive officer of World Events Inc ("WEI"), WEG's US subsidiary. He disposed of 170,000 D shares on the sale.

10. Jeremy Wilson was WEG's finance director. He disposed of 120,000 D shares on the sale.[6]

11. One-half of Mr Parry's shareholding, Mr Winterburn's D shares, 200,000 of Mr Saxby's D shares, at least 150,000 of Mr Dickinson's shares and all of Mr Wilson's shareholding were allotted to them under share option agreements which made the shares available to them on Mr Keene's disposal of a controlling interest in WEG (i.e. the sale).

The UD group

12. United Drug plc ("the Plc") was the group's ultimate parent company. Its chief executive officer was Liam FitzGerald and its board included Christopher Corbin and Barry McGrane (the Plc's finance director). Employed by the Plc at the time was, and still employed by it is, Liam Logue, who is now (and was at the time) the Plc's corporate development director.

13. The Defendant is a direct subsidiary of the Plc. The other companies in the UD group to which I refer are either direct or indirect subsidiaries of either the Plc or the Defendant.

14. The UD group operated within divisions; mainly health-related, including the Contract Sales and Marketing Services division ("the CSMS division").

15. The CSMS divisional finance director was Steven Bainbridge and its US finance director was Neville Acaster.

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[4] See Articles 11.3.4 – 11.3.5 of WEG's Articles of Association. The shareholders dragged along were entitled to the same price for their shares as Mr Keene was due to be paid for the same class of shares.

[5] Although nothing turns on this, it appears that Schedule 1 to the SPA wrongly designated Mr Winterburn's D shareholding as a holding of C shares.

[6] When I refer, in this judgment, to the WEG shareholders, I mean the Claimants, Mr Keene and Mr Parry. There were others who had very small shareholdings in WEG who also disposed of those shareholdings by the SPA.

16. Ashfield In2Focus Ltd. ("AI2F"), based in Ashby-de-la-Zouch in Leicestershire, was a CSMS divisional company. Mr Corbin was its managing director, Steven Mate was a management account employed by it and its in-house solicitor was Clare Bates.

17. Universal Procon Inc. ("UPUS") was a US-based CSMS divisional company. It itself was made up of two divisions; a logistics division ("US Logistics"), which provided services from the US similar to those provided by WEG (i.e. mainly healthcare events management services), and a creative services division ("US UCS") which included a business referred to at the trial as TMM. UPUS also had a subsidiary company; GET US LLC ("Get"), which provided what have been described as destination management services (e.g. dinner reservations for participants at events organised by US Logistics). Adam Gordon was UPUS' president. US Logistics, at least, operated principally from an office in Ivyland in Pennsylvania (which is close to Lambertville), but it also had a subsidiary office in Indianapolis in Indiana which serviced a principal client; Eli Lilly & Co. ("Lilly").

18. Universal Procon Ltd. ("UPUK") was also a CSMS divisional company. It was also itself made up of two divisions; a logistics division ("UK Logistics"), which provided services from the UK similar to those provided by WEG and US Logistics, and a creative services division ("UK UCS"). It too had a subsidiary company; Air Travelworld Ltd. Graham McIntosh was UPUK's managing director. UK Logistics, at least, operated from an office in Yeadon in West Yorkshire (close to Cleckheaton).

19. Mr McIntosh and Mr Corbin had worked closely for many years. They had worked together in what was (or became) AI2F before it was disposed of to the UD group. Prior to that disposal, Mr Corbin had held a controlling interest in AI2F. Although Mr Gordon was UPUS' president and Mr McIntosh was UPUK's managing director, as Mr Gordon confirmed, he reported to Mr McIntosh.[7] [8]

The SPA

20. As I have indicated, by an SPA, entered into on 30 November 2010, the shareholders in WEG sold their shares to the Defendant. The SPA is complex and, for the purposes of this judgment, it is enough to give a broad brush summary of its relevant provisions; as the parties did at the trial.

21. The consideration payable under the SPA to the shareholders ("the sellers") was in three parts; namely (i) initial consideration of about £13.05 million, (ii) £300,000 which was retained to meet any breach of sellers' warranty claims and (iii) contingent deferred consideration ("contingent consideration").

22. The sellers were entitled to contingent consideration if, during "the Earn-Out Period", "the Relevant Profits" exceeded £11.4 million.

[7] The parties agree that Mr McIntosh was UniversalProcon's group managing director (see paragraph 1(e) of the Amended Particulars of Claim ("the Particulars of Claim") and paragraph 2 of the Re-amended Defence ("the Defence")).

[8] In the claim, and particularly at the trial, when the parties spoke of UniversalProcon, they meant UPUS, UPUK and their respective subsidiaries and that is the approach I will take in this judgment.

23. For each £1 the Relevant Profits exceeded £11.4 million up to and including £14.1 million, the sellers would be entitled to receive £1 contingent consideration. So, if the Relevant Profits in the Earn Out Period were £14.1 million, the sellers would be entitled to receive £2.7 million contingent consideration.

24. For £1 the Relevant Profits exceeded £14.1 million, the sellers would be entitled to receive an additional £0.50 contingent consideration, up to a maximum (for the sellers combined) of £750,000 (described as an "upside" at the trial).

25. The Earn-Out Period was a period of 37 months, beginning on 30 November 2010 and ending on 31 December 2013.

26. If the Relevant Profits in the financial (13 month) period ending on 31 December 2011 ("Year 1") exceeded £4.4 million, the sellers would be entitled to an advance payment of £900,000 (one third of £2.7 million) and, if also the Relevant Profits in the financial (12 month) period ending on 31 December 2012 ("Year 2") exceeded £4.7 million, the sellers would be entitled to a further advance payment of £900,000. The advance payments were subject to a claw-back provision in the event that the Relevant Profits in the Earn Out Period did not exceed £14.1 million.

27. The Relevant Profits were the profits, in fact the combined Earnings before Interest and Taxation ("EBIT"),[9] in the Earn Out Period of WEG (including WEI) and UniversalProcon. It was expected, or hoped, by the key individuals, that the combined EBIT of WEG and UniversalProcon during the Earn Out Period would be enhanced by what were described at the trial as "synergy savings", achieved following the combination of WEG and UniversalProcon.

28. Broadly, therefore, for the Claimants to receive their proportion of £2.7 million contingent consideration, the EBIT (including synergy savings) of the combined business, for the period from 30 November 2010 to 31 December 2013, had to be £14.1 million and, for them to receive their proportion of the £900,000 advance payments after Year 1 and after Year 2, the EBIT (including synergy savings) for the combined business had to exceed £4.4 million in Year 1 and £4.7 million in Year 2.[10]

Statements of case

29. At the beginning of the trial, I indicated to the parties that I intend to adopt the approach to their statements of case which was endorsed by the Court of Appeal in *UK Learning Academy Ltd. v. Secretary of State for Education* [2020] EWCA Civ 370; namely that, save where it is just to depart from the parties' pleaded cases, they mark out the parameters of the dispute between the parties. In *UK Learning Academy Ltd.*, David Richards LJ said, at [47]:

[9] To be a little more precise, the Relevant Profits were the EBIT as adjusted in accordance with Schedule 11 to the SPA, but nothing really turns on this.

[10] In this judgment, when I mention "the earn out target", I refer to (i) the target of £14.1 million EBIT for the combined WEG-UniversalProcon business in the Earn Out Period, which, if met, would trigger payment of £2.7 million conditional consideration and (ii) as the context requires, the targets for payment of the advance payments in Year 1 and Year 2.

> "…the statements of case ought, at the very least, to identify the issues to be determined. In that way, the parties know the issues to which they should direct their evidence and their challenges to the evidence of the other party or parties and the issues to which they should direct their submissions on the law and the evidence. Equally importantly, it enables the judge to keep the trial within manageable bounds, so that public resources as well as the parties' own resources are not wasted, and so that the judge knows the issues on which the proceedings, and the judgment, must concentrate…That is not to say that technical points may be used to prevent the just disposal of a case or that a trial judge may not permit a departure from a pleaded case where it is just to do so (although in such a case it is good practice to amend the pleading, even at trial), but the statements of case play a critical role in civil litigation which should not be diminished."

As a result, the Defendant applied to re-amend its Defence, which I permitted in part, for the reasons I gave in an extempore judgment.

30. The parties' witness statements and the cross-examination at the trial ranged over a broad territory and, more or less, was not obviously confined to the pleaded issues. Although I did not stop the cross-examination, it took place in circumstances where the parties were aware of the approach I intend to adopt. Having considered the matter carefully, because this is a high value, high cost, commercial claim in which the parties have been represented throughout by very competent and experienced lawyers, I have concluded that the issues I have to resolve ought to be the pleaded ones and that is how I should proceed. So, I ought to set out the parties' pleaded cases but, before I do so, I need to make some introductory remarks about the Meeting.

The Meeting – introductory remarks

31. The sixth day of the trial was the tenth anniversary of the Meeting. Whether because of faded recollections or otherwise (I will have to decide), there is hardly any agreement between the parties about what happened at the Meeting, who was present at various points in the Meeting or what was written down at the Meeting. The parties agree that the key features of a contingent consideration proposal ("the contingent consideration proposal") (the full terms of which found their way, in due course, into the SPA, as I have already set out) were presented to the WEG shareholders present at the Meeting. The parties also agree that a powerpoint presentation ("the Presentation") was given at the Meeting, but they cannot agree precisely when it was given, what slides were shown or the order in which slides were shown. The parties also apparently agree that Mr Winterburn, Mr Saxby and Mr Parry, who were present at the Meeting, were given a paper copy version of slides which were in the Presentation but, because they do not agree what slides were shown, they do not agree whether the paper copy version was or was not a paper version of the full slide deck which made up the Presentation.

32. There are various slide decks in the trial bundle, as follows:

i) A slide deck which Mr McIntosh sent to Mr Gordon, Mr Acaster, Mr Mate and Mr Bainbridge as an attachment to an email dated 9 November 2010. This slide deck appears to be the first in time and comprises fifteen slides which appears to relate to both UPUK and UPUS but, perhaps, more to UPUK;

ii) A slide deck sent by Mr Acaster to Mr Gordon as an attachment to a later email also dated 9 November. This slide deck contains nineteen slides. There are four slides which are additional to the fifteen Mr McIntosh sent earlier that day and a further slide, which is a pie chart relating to US clients, which is a replacement for a slide in the earlier slide deck, as follows:

   a) A slide entitled "US Net Revenue (Logistics) Booked" ("the Acaster US Booked Business slide");

   b) A slide entitled "US Net Revenue (Logistics) Forecast";

   c) A slide showing a pie chart identifying UPUS' (or, perhaps, US Logistics') 2009 clients as Pfizer, Lilly, Roche, Wyeth, Shire and Pharmnet;

   d) A slide showing a similar pie chart for 2010, but identifying the clients as Pfizer, Lilly, Roche, Shire, Forest Labs, Millennium and GSK;

   e) A slide entitled "Consolidated Office Savings";

iii) A slide deck sent by Mr Gordon to Mr McIntosh, copied to Mr Acaster, as an attachment to an email dated 10 November. This slide deck contains 19 slides. The slide deck focuses more on the UPUS business than do the previous slide decks. It includes:

   a) The Acaster US Booked Business slide;

   b) A slide entitled "Business Development" which refers to "Cross company opportunities" and, for example, the CSMS divisional business development director;

   c) A second "Business Development" slide which refers to being in the "final stage" of a Lilly business opportunity and to further business opportunities with various companies, including, as identified, Sanofi, Roche (in relation to advisory board and investigator meetings), Pfizer Emerging Markets, Millennium, Shire and Forest (in the case of the last four, under the heading "Account Management Opportunities");

   d) A third "Business Development" slide which records that UPUS had "added 2 clients to the roster last year…plus (a bit) of" a third company (referred to as Amylin) and notes further "emerging opportunities" with companies identified as Ther-Rx and Prostrakan and "developing opportunities" for Get and US UCS;

   e) Slides setting out Get "recent wins", "active proposals", "current hot leads/contacts", "hotel/venue hot leads", "upcoming appointments" ("the Get promotional slides");

f) A slide recording that Get "Financials" were to follow;

iv) A slide deck sent by Mr McIntosh to Mr Gordon and Mr Acaster, as an attachment to an email dated 11 November ("the McIntosh slide deck"). This slide deck contains 82 slides. It is the version of the slide deck which is referred to in Mr McIntosh's witness statement as UDG-0007347.[11] It includes:

a) The Acaster US Booked Business slide except that, in the version of the slide in this slide deck the word "Logistics" has been removed so that the slide is entitled "US Net Revenue Booked";[12]

b) Some of the slides are the same as those which appear in the earliest slide deck;

c) Some of the slides are the same as, or similar to, those which Mr Gordon sent to Mr McIntosh;

d) There is a pie chart apparently identifying UPUK's 2009 clients, a pie chart apparently identifying UPUK's 2010 clients, a table of "other small [UK] wins", two tables of "other [UK] opportunities" listing pharmaceutical companies, a table including "other proposals [UPUK was] working on" showing pharmaceutical companies, a table showing potential AI2F clients, a table showing UPUK's healthcare contacts, a pie chart identifying, by name, UPUS' major clients in 2009, a similar pie chart relating to UPUS' clients, the three "Business Development" slides Mr Gordon sent to Mr McIntosh, a table showing UPUS' contacts, slides showing Emerging Market opportunities, a table showing European/Asia contacts and slides apparently showing UniversalProcon's relationship with four clients.

The slides in this deck seem to be in a somewhat random order;

v) A further slide deck containing 82 slides ("the Bates slide deck") which the Defendant contends contains the same slides as the McIntosh slide deck, although in a different order. I refer below to a note prepared by Ms Bates which the Defendant contends is a contemporaneous note of almost all the Meeting. In the trial bundle is a copy of that note which is cross-referred to the Bates slide deck.

33. As I have said, Mr Winterburn, Mr Saxby and Mr Parry were given a paper copy version of slides which were in the Presentation ("the Claimants' slide deck"). The Claimants' slide deck contains thirty seven slides. All those slides appear in the McIntosh slide deck and the Bates slide deck and, in the Claimants' slide deck, the

[11] Disclosure has been extensive in this case and each of the documents has been given a reference number; the Defendant's documents being designated "UDG", followed by a number. The witness statements did not exhibit documents referred to. Rather they cross-referred to disclosed documents by the document reference numbers.

[12] Where, for ease of reading, it is necessary to distinguish this slide, which I generally refer to as the US Net Revenue Booked slide, from the Acaster Booked Business slide, I will refer to it as "the McIntosh US Booked Business slide".

sequence in which those slides appear is largely the sequence in which they appear in the Bates slide deck.

34. To complicate matters further, there is more than one annotated version of the Claimants' slide deck in the trial bundle, because Mr Winterburn and Mr Saxby annotated their copies, apparently both at the Meeting and since then over the last ten years.

The Particulars of Claim[13]

35. The Claimants contend that UPUS was in significant decline by October 2010, because it was providing a poor standard of service, it was losing staff, it was losing clients and it had few new clients from which it could expect to generate significant income. The Claimants further contend that UPUS had no real prospect of enjoying a significant improvement in fortunes in the following two to three years and that Mr Corbin and Mr McIntosh were desperate for the acquisition, by the UD group, of WEG.[14]

36. The Claimants note (and the Defendant does not dispute that) WEG's shareholders and the Plc agreed heads of terms in August ("the August Heads of Terms") for the sale and purchase of the shares in WEG. Under the August Heads of Terms, there was a non-binding agreement that £16.2 million would be paid for the shares in WEG and that the £16.2 million comprised (i) initial consideration of £13.5 million and (ii) deferred consideration of £2.7 million, payable in 3 annual instalments of £900,000 ("the deferred consideration"). Importantly, the payment of the deferred consideration was conditional only on the senior management team (principally the Claimants and Mr Parry) remaining in WEG's employment.

37. The Claimants note that, in October 2010, the Defendant asked WEG's shareholders to consider a different arrangement for the acquisition of the shares; i.e. the substitution of what turned out to be contingent consideration in place of the deferred consideration.

38. The Claimants contend that they were reluctant to agree to any proposal for contingent consideration because they had no detailed knowledge of UniversalProcon's finances or business and that, as the Defendant knew, they would have to rely entirely on the Defendant for detailed information about UniversalProcon's "customer base, turnover, profitability, prospects, mode of operation, cost base, intended mode of operation, relevant management decisions and operating costs".

39. The Claimants contend that, prior to the Meeting, Mr McIntosh prepared the Presentation with the "specific intention of persuading the Claimants and Mr Parry to

[13] The Particulars of Claim is a substantial document and contains a significant amount of background information. What now follows is intended to be a summary for a reader who does not have a long time to consider every word, and phrase, in the Particulars of Claim carefully. To be clear, in reaching my decision, I have had in mind the actual contents of the Particulars of Claim. I have adopted the same approach in relation to the Defence and to the Amended Reply.

[14] Formally, of course, the Defendant purchased the shares in WEG from WEG's shareholders. However, it is sufficiently accurate to talk of the Defendant's acquisition of WEG.

accept the contingent…consideration terms which the Defendant now wished them to accept" and the Claimants further contend that the Defendant's objective at the Meeting was (quoting from the email, dated 9 November 2010, by which Mr McIntosh sent his initial slide deck to Mr Gordon and Mr Acaster) "to present a picture which gives them confidence that we are comfortable in playing our part in hitting the numbers".

40. The Claimants contend that, unknown to them before the Meeting:

i) The net revenue for US Logistics in a draft budget for FY2011[15] ("the US Logistics Draft Net Revenue Budget 2011") in August 2010 was $7.87 million, that, by an email dated 4 August 2010, Mr Mate had asked Mr Acaster to increase that figure by $150,000 to $8.02 million and that, in a long email dated 10 August 2010 and attachment, Mr Gordon had advised in detail why, in his opinion, the risks of increasing that net revenue line in the draft budget outweighed the benefits of doing so;

ii) Mr McIntosh was aware that UPUS' budget "was at best speculative in August 2010 and was highly unlikely to be achieved";

iii) UPUS' actual budget for FY2011 did make provision for $8.02 million net revenue;

iv) After the approval of that budget, UPUS' business deteriorated. To illustrate their case in this respect, the Claimants attach a schedule to the Particulars of Claim ("the POC schedule");

v) UPUS' budget was unrealistic when it was created. They further contend that, in any event, by November 2010, there was no realistic prospect of it being achieved;

vi) By a forecast ("the Job Log") which Mr Gordon sent, without criticism, to Mr McIntosh as a further attachment to his (Mr Gordon's) 10 November 2010 email by which he sent his slide deck to Mr McIntosh (and copied in Mr Acaster), the FY2011 net revenue forecast for UPUS was $7.623 million which was "equally unrealistic and fantastical" as Mr McIntosh knew.[16]

41. It turns out that the POC schedule was either prepared, or contributed to, by Richard Pughe, the Claimants' forensic accountant, and that it represents his views about US Logistics' prospects in FY2011. The POC schedule sets out US Logistics' clients and budgeted net revenue for FY2011 as set out in the US Logistics Draft Net Revenue Budget 2011 (but amended to take into account the addition of $150,000 net revenue) ("the Budget figure") and as set out in the Job Log and then sets out a "reasonable forecast" as at November 2010 with some commentary. The clients listed are Amylin Pharmaceuticals Inc. ("Amylin"), Lilly, Millennium Pharmaceuticals Inc. ("Millennium"), Pfizer Inc.'s convention housing business ("HCAM"), Pfizer Inc.'s

[15] When I refer, in this judgment, to FY2011 for example, I have in mind the UD group's 2011 financial year, which ran from October 2010 to September 2011.
[16] In fact, the budget, budget figures and forecast figures referred to in this paragraph and in the Job Log for example relate only to US Logistics.

emerging market business ("EM"), F. Hoffman-La Roche AG[17] ("Roche"), Forest Laboratories Inc. ("Forest"), Shire plc ("Shire") and "New Business". The schedule contains the following financial information:

	Budget figure ($)	Job Log ($)	"Reasonable Forecast" ($)
Amylin	155,000	118,508	118,508
Lilly	2,779,000	2,859,000	2,200,000
Millennium	325,500	415,000	415,000
HCAM	750,130	220,000	200,000
EM	1,000,000	985,000	228,000
Roche	2,100,000	2,260,000	2,100,000
Forest	300,000	150,000	1,000
Shire	310,378	225,000	0
New Business	300,000	390,000	200,000
Total	8,020,008	7,622,508	5,470,508

42. The POC schedule contains commentary to the following effect:

i) In relation to Lilly, because Mr Gordon had said, in August 2010, that work from Lilly (to which I make further reference below) was fully at risk and had been aggressively budgeted, and because the contract to undertake that work was not finally signed until December 2010, a reasonable forecast is as shown in the schedule;

ii) In relation to EM, in part because (according to the commentary), a third party events management company had taken over healthcare events management for EM before the Meeting, a reasonable forecast is as shown in the schedule;

iii) In relation to Roche, because (according to the commentary) US Logistics had performed poorly and had been given a last chance in October 2010, a reasonable forecast is as shown in the schedule;

iv) In relation to Forest, because Mr Gordon had said, in August 2010, that work from Forest was at risk and only $1,000 worth of work had been booked (or was almost booked) with no further work on the radar by November 2010, a reasonable forecast is as shown in the schedule;

[17] Or, perhaps, a US subsidiary.

v) In relation to Shire, because Mr Gordon had said, in August 2010, that there was a real possibility of no work from Shire in 2011 and because no work had been booked by November 2010, a reasonable forecast is as shown in the schedule;

vi) Because new business is at risk by its very nature, a reasonable forecast is as shown on the schedule.

43. The Claimants contend (and the Defendant accepts) that Get was treated as part of UPUS and the Claimants further contend that its net revenue was also at risk, because its business was contingent on US Logistics' success and on work from Celegne Corpn. which had not been won.

44. The Claimants then turn in detail to the Presentation which they contend was "utterly misleading as to UniversalProcon's prospects", noting, in passing that, although Mr Dickinson was not present at the Meeting, the Defendant appreciated (as it admits) that information from the Meeting passed on to him would be relied on by him to decide whether to agree to the contingent consideration proposal.

45. The Claimants contend that the Presentation was of the slides which are in the Claimants' slide deck.

46. The Claimants contend that:

> "From time to time, when presenting the slides, Mr McIntosh represented that certain figures within the slides could be expected to be achieved easily. He used a number of forms of words, interchangeably to express this proposition. The phraseology included statements that achieving figures in question "would be a breeze", that the figures were "soft targets" and that the figures "should easily be beaten"."

By the conclusion of the trial (and as Mr Pipe, the Claimants' counsel confirmed in closing), I understood the Claimants' case to be that Mr McIntosh used the phrases in question to refer to the earn out target.

47. The Claimants then set out, by reference to slides (numbered according to where they appear in the Claimants' slide deck), misrepresentations which they contend were made on the Defendant's behalf at the Meeting (in some cases, where I indicate, which, they contend, were fraudulent misrepresentations too).[18]

UP EBIT 1 (Claimants' Slide 4)

48. This slide shows a bar chart which apparently shows UniversalProcon's EBIT for the years 2008, 2009 and 2010 as, respectively, £1.81 million, £2.17 million and £2.34 million.

[18] I refer to the slides in question below, and elsewhere in this judgment, by their titles, with the addition of numbering where more than one slide has the same title.

49. The Claimants contend that Mr McIntosh said that the EBIT had been achieved by controlling overheads and increasing sales. The Claimants contend that Mr McIntosh impliedly misrepresented that sales "were increasing and had done so year on year" (and that this was a continuing misrepresentation until the SPA was entered into).

UP EBIT 2 (Claimants' Slide 5)

50. This slide shows that same information as the UP EBIT 1 slide but with the addition of a taller bar, labelled "2011 Forecast" and annotated £2.77 million.

51. The Claimants contend that Mr McIntosh misrepresented that net revenue could be expected to increase in FY2011. The Claimants contend that that misrepresentation was made fraudulently.

52. The Claimants further contend that there was no basis for the £2.77 million EBIT prediction for FY2011 and, so, that prediction is an actionable misrepresentation which amounts to a fraudulent misrepresentation.

Financials for UP Group (Claimants' Slide 9) and *Margin Analysis for UP Group (Claimants' Slide 10)*

53. These slides shows a table, the key features of which I set out here:

	Actual £ FY2009	Actual £ FY2010	Forecast £ FY2011
Gross Profit	11,588,548	10,672,437	11,197,000
Overheads	4,807,706	4,194,464	3,949,000
EBIT	2,165,701	2,336,582	2,774,000

54. During the trial, the figures given for gross profit in this slide were more commonly referred to as the net revenue figures. That is because WEG and the UD group used different terminology for the same accounting entries. WEG used the phrase "gross profit", and the UD group used the phrase "net revenue", to mean sales (that is revenue invoiced to clients) less third party (or, as referred to by some witnesses, pass through) costs.[19] Indeed, the Claimants plead that those present were told that gross profit equated to net revenue.[20]

55. The Claimants contend that the prediction of net revenue (gross profit) for UniversalProcon for FY2011 of £11.197 million is an actionable misrepresentation because there was no basis for that prediction and, in any event, because UniversalProcon's customers and sales were falling. The Claimants contend that the (alleged) misrepresentation amounts to a fraudulent misrepresentation.

[19] Because these accounting entries were more commonly referred to during the trial as "net revenue", that is how I shall refer to them in this judgment.
[20] See paragraph 16(l) of the Particulars of Claim.

56. The Claimants contend that they relied on the net revenue (gross profit) figure shown in these slides to substantiate "the EBIT figure".

Client/Headcount (Claimants' Slide 11)

57. This slide contains the text:

> "Clients – increased client base due to cross selling opportunities in CSMS and development of BD [(business development)] within existing roles."

It also shows:

i) In the UK, clients increasing from nine in FY2009 to twenty two in FY2010 and being forecast to increase in FY2011 to twenty six;

ii) In the US, clients increasing from five in FY2009 to six in FY2010 and being forecast to increase in FY2011 to ten.[21]

58. It is difficult to be clear what is the misrepresentation which the Claimants allege in relation to this slide. This slide did not feature heavily in the trial and it is not shown on the schedule of misrepresentations I asked Mr Pipe to prepare to help me at the trial. As I read the Particulars of Claim, the Claimants' complaint in relation to this slide is that the prediction that clients would increase in FY2011 was without foundation and so amounts to an actionable misrepresentation.

UP Group Net Revenue Forecast (Claimants' Slide 16)[22]

59. This slide shows a bar chart. On the right hand side of the chart are two, differently coloured, bars which look to be the same height, the left hand one of which is labelled "Budget" and the right hand one of which is labelled "Forecast". By reference to the scale on the left hand side of the chart they reach somewhere between £9 million and £10 million.

60. The Claimants contend that, when this slide was displayed, those WEG shareholders who were present were told that the forecast was accurate. The Claimants contend that that statement was a misrepresentation.

61. The Claimants contend that the forecast shown on this slide was "a fantasy" and, because the forecast of between £9 million and £10 million was in fact not the Defendant's forecast of net revenue for UniversalProcon for FY2011, by presenting those figures as such on this slide, the Defendant made a fraudulent misrepresentation.

Business Booked (Claimants' Slide 17), UK Net Revenue Booked (Claimants' Slide 18) and *US Net Revenue Booked (Claimants' Slide 19)*

62. The Business Booked slide is a title slide.

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[21] It also repeats the gross profit information shown on the two immediately preceding slides.
[22] The Claimants also rely on the preceding slide which is a title slide bearing the legend "Forecast".

63. The UK Net Revenue Booked slide contains the following text:

> "Confirmed
>
> Provisional A
>
> No radar
>
> 1 month
>
> 46.7%".

64. It also shows a bar chart with a "Budget" bar annotated £4.44 million and a "Booked" bar annotated £2.39 million.

65. The US Net Revenue Booked slide is the McIntosh US Booked Business slide. It contains the following text:

> "Confirmed
>
> Provisional
>
> 1 month
>
> 41.2%".

66. It too also shows a bar chart but with the Budget bar annotated $8.02 million and the Booked bar annotated $3.31 million.

67. The Claimants contend that, when introducing these slides, Mr McIntosh explained that booked business was business which was confirmed and for which there was a purchase order or in respect of which a purchase order was expected.

68. In fact, the Claimants contend, in relation to UPUS, according to the Job Log, only $2.915 million of work was then confirmed with a purchase order or a purchase order expected and, as the Job Log shows, the figure of $3.31 million included other less certain work, including work on the radar.

69. The Claimants contend that it was fraudulently misrepresented that UPUS had $3.31 million booked business (i.e. work for which there was a purchase order or in respect of which a purchase order was expected and excluding work which was only on the radar). The Claimants also contend that Mr Mcintosh fraudulently misrepresented that work which was only on the radar was not "included". It is not entirely clear in what the Claimants contend work which was only on the radar was not included.[23]

70. The Claimants contend that, had the true figure for UPUS' booked business been shown on the slide, they would have been put on notice that the budget and forecast

[23] Consideration of this plea is complicated further by the fact that, whilst the figures pleaded in relation to the US Net Revenue Booked slide are those contained in the Job Log, they only relate to US Logistics and not Get or US UCS (because the Job Log only related to US Logistics) and, as is clear from the Acaster US Booked Business slide, the slide only contains details relating to US Logistics and not to Get or US UCS.

figures were highly unlikely to be met and they would have been alerted to the divergence between UPUS and UPUK in relation to the extent of booked business.

2010/11 Savings (Claimants' Slide 21)

71. The 2010/11 Savings slide is the first of two slides which follow a title page slide entitled "Planned Savings". It shows the following information:

"2 x UK Heads	£160k
3 x US Heads	£70k
Office closures	£195k
Total	£425k".

72. As I understand the Claimants' complaint in relation to this slide, it is as follows; namely that, when this slide was shown, Mr McIntosh said that UPUK's Yeadon office and UPUS' Indianapolis office were going to close, even though, in fact, no decision had been made to close either office, so that Mr McIntosh misrepresented that those offices were going to close and that £195,000 would be saved.

UP EBIT 3 (Claimants' Slide 22)

73. This slide shows the same information as the UP EBIT 2 slide shows, save that the 2011 Forecast bar has an additional section at its top which is annotated "£425k" and save that, above this bar, is the annotation "£3.20m".

74. Of this slide, the Claimants plead:[24]

> "In the premises, there was no realistic basis for the predicted EBIT and the predictions were without foundation, made negligently and untrue."

75. I take this plea to be a repetition of the Claimants' complaints in earlier parts of the Particulars of Claim, so that, if those earlier complaints are made out,[25] the complaint in relation to this slide will also be made out, but, if those earlier complaints are not made out, the complaint about this slide will fail too.

Savings (heads) (Claimants' Slide 24) and *Savings (other) (Claimants' Slide 25)*

76. The Savings (heads) slide appears to set out reductions, or possible reductions, in headcount (staff numbers) across various departments in both WEG and UniversalProcon following the acquisition of WEG by the UD group.

77. The Savings (other) slide shows savings, or possible savings, following the acquisition, in the following "departments": Lambertville, Indianapolis, Procurement, ATOL, Sponsorship, Get.

---

[24] See paragraph 16(t) of the Particulars of Claim.
[25] Or, rather, were made out if pursued.

78. As I understand it, in relation to these slides, the Claimants repeat an earlier complaint; namely, that Mr McIntosh misrepresented that the Yeadon and Indianapolis offices were going to close.

Joint Budget 1 (Claimants' Slide 28), *Joint Budget 2 (Claimants' Slide 29)*, *Joint Budget 3 (Claimants' Slide 30)* and *Joint Budget 4 (Claimants' Slide 31)*[26]

79. The Joint Budget 1 slide shows a bar chart, with a bar for 2011 annotated £4.4 million, a bar for 2012 annotated £4.7 million and a bar for 2013 annotated £5 million. The total for all three years is £14.1 million. It has not been disputed that this slide shows the earn out target.

80. The Joint Budget 2 slide is also a bar chart showing three bars, labelled 2011, 2012 and 2013. The 2011 bar is annotated £4.9 million. The 2012 bar is annotated £5.6 million and the 2013 bar is annotated £6.1 million. Each bar is split into three different coloured parts. There is no dispute that the middle parts ("the blue bars") are intended to show UniversalProcon's EBIT contribution to the total for the years in question. The blue bar for 2011 is annotated £2.7 million (a sum which is close to UniversalProcon's budgeted EBIT for FY2011 of £2.77 million). The blue bar for 2012 is annotated £2.9 million and the blue bar for 2013 is annotated £3.1 million. The top part of the bars are coloured green ("the green bars") and the bottom part of the bars are coloured yellow ("the yellow bars"). The parties agree that they are intended to represent WEG's EBIT contribution to the total for the years in question and savings for those years. The parties disagree which of the green bars and yellows bars relate to these two elements. The Claimants contend that the green bars relate to savings and the yellow bars relate to WEG's EBIT contribution. The Defendant contends the opposite; that the green bars relate to WEG's EBIT contribution and the yellow bars relate to savings. The green bars are annotated £1.3 million for 2011, £1.5 million for 2012 and £1.5 million for 2013. The yellow bars are annotated £900,000 for 2011, £1.2 million for 2012 and £1.5 million for 2013.

81. The Joint Budget 3 slide is the same as the Joint Budget 2 slide except that a red line is superimposed running through the green bars and is intended to show where the targets shown in the Joint Budget Slide 1 sit in relation to the bars. The slide effectively provides a visual comparison between 3 sets of figures in the 2 preceding slides; that is, £4.4 million vs. £4.9 million, £4.7 million vs. £5.6 million and £5 million vs. £6.1 million.

82. The Joint Budget 4 slide is also a bar chart. One bar is labelled "Budget" and is annotated £14.1 million (i.e. the earn out target). A second bar is labelled "Budget plus" and annotated £15.1 million. A third bar is labelled "Potential" and is annotated £16.6 million (i.e. the combination of the sums of £4.9 million, £5.6 million and £6.1 million shown on the two preceding slides).

83. The second bar needs a bit of explanation. I have already explained that the SPA made provision for an upside of up to £750,000 paid at the rate of £0.50 in the £1 if the earn out target was exceeded. It is not disputed that an earlier proposal for an upside was put to the WEG shareholders present at the Meeting. That earlier proposal

[26] In fact, the Claimants do not plead in relation to the Joint Budget 4 slide, but it is helpful to mention it here.

provided for an upside of up to £500,000. To be paid that upside, at £0.50 in the £1, the combined WEG-UniversalProcon business would need to achieve £1 million EBIT is excess of the £14.1 million target EBIT. The second bar was intended to represent that possibility.

84. The Claimants contend (as I read paragraph 16(y) of the Particulars of Claim in context) that, when presenting the Joint Budget 2 slide, Mr McIntosh represented that UniversalProcon's forecast EBITs for 2011, 2012 and 2013 were as shown by the blue bars as annotated, and that this was a fraudulent representation "for the reasons set out above" in the Particulars of Claim because "the forecast for 2011 was simply untrue and fantastical". The Claimants' contention is effectively the same as one they make in relation to the UP EBIT 2 slide, but in different words.

85. The Claimants also effectively contend that Mr McIntosh represented that the savings which could be achieved were represented by the green bars for which, the Claimants also contend, there was no basis, so that this representation was fraudulent.

86. The Claimants further contend that, when presenting the Joint Budget 2 slide and the Joint Budget 3 slide, Mr McIntosh fraudulently misrepresented that the earn out target was "soft", "should easily be beaten" and (when presenting the former slide) "would be a breeze".[27] It is important to understand precisely what the Claimants plead in relation to these allegations. They plead, at paragraphs 16(y) – (aa) of the Particulars of Claim:

> "Mr McIntosh stated that with [UniversalProcon] forecast to achieve 2011 EBIT of £2.77 million and with each achieving steady growth along with realising the savings that had been identified the earn out targets presented on [the Joint Budget 1 slide] were "soft targets" and "should easily be beaten" and "would be a breeze".
>
> There was no basis for the predicted EBITs of UniversalProcon and the level of savings presented. The impression given was deliberately alternatively recklessly false and given to persuade the Claimants to enter the SPA which both Mr McIntosh and Mr Corbin were so desperate to conclude. UniversalProcon's profits and customer base were declining and the projection made was not realistic and not justified by the information available to Mr McIntosh. The predicted figures were fraudulent alternatively mere misrepresentations, without foundation, made negligently and untrue.
>
> Equally, the suggestion that the target figures were easily achievable was a misrepresentation. In the face of a decline in business on the part of UniversalProcon, such a statement was

[27] In relation to the Joint Budget 2 slide, the Claimants contend that the alleged misrepresentations were fraudulent (or negligent). In relation to the Joint Budget 3 slide, they do not allege that the misrepresentations were fraudulent. I do not think that anything turns on the difference in the pleading.

> without foundation and, in the premises, fraudulent, alternatively made negligently and untrue."

87. This is a convenient point to refer to other slides which appear in the Claimants' slide deck and to deal with a further misrepresentation plea relating to Lilly.

UP GP (Claimants' Slide 3)

88. This slide is a bar chart which purports to show UniversalProcon's gross profit (i.e. net revenue) for FY2008 as £11.6 million, for FY2009 as £10.7 million and for FY2010 as £11.2 million.

89. The Defendant accepts that there is an error in this slide. The reference to FY2008 should be to FY2009, the reference to FY2009 should be to FY2010 and the reference to FY2010 should be to FY2011.

UP Group Sales 2009 v 2010 (Claimants' Slide 6)

90. This slide is a bar chart of what are said to be UniversalProcon's (and, perhaps its subsidiaries') sales in 2009 and 2010. The slide clearly shows that "sales" were lower in 2010 than in 2009.

Monthly Financials UP Group (Claimants Slide 13) and *Cumulative Financials UP Group (Claimants' Slide 14)*

91. The Monthly Financials UP Group slide contains 4 tables, labelled "Sales", "GP", "Overheads" and "EBIT". Each table has a row for 2009 and a row for 2010 and displays figures for each month. The Cumulative Financials UP Group slide appears to contain the same information but shown cumulatively, month on month, and shows the following information:

	2009 (£)	2010 (£)
Sales[28]	11,588,548	10,672,437
GP	7,542,530	6,821,260
Overheads	5,376,829	4,484,678
EBIT	2,165,701	2,336,582

Production Work (outsourced) (Claimants' Slide 33)

92. This slide shows a table listing clients, some events and the scope of some creative work undertaken.

Lilly

[28] The figures shown for sales in this slide are shown on other slides as gross profit (or, as I have explained, as referred to during the trial, net revenue).

93. Although it was not immediately clear to me, as Mr Pipe explained to me in closing, the Claimants allege a further misrepresentation by Mr McIntosh at the Meeting. They contend that he misrepresented that the predicted fee income (which I understand to be a reference to net revenue) from Lilly "for 2011 would be the same as for 2010". What is not clear to me is whether the Claimants invite me to compare the FY2011 budget, or a FY2011 forecast, for net revenue for Lilly work against UniversalProcon's FY2010 budget or against what UniversalProcon actually achieved in FY2010 and the impression I was left with, following Mr Pipe's closing, was that the Claimants invite me to judge the truth of the alleged representation against both UniversalProcon's budgeted and actual net revenue in relation to Lilly in FY2010.

94. The Claimants then plead what they say are the consequences of what they allege about the Meeting.

95. They contend (and the Defendant accepts) that Mr McIntosh was in a position of expertise to provide information about UniversalProcon's finances and prospects and to comment on the accuracy of the information contained in the Presentation. They rely, in particular, on the following matters:

> "a. All financial information as to UniversalProcon's prospects and performance was shared with Mr McIntosh. He was in regular and frequent contact with Mr Gordon and Mr Acaster who provided him with this information and with the performance of key accounts;
>
> b. Monthly forecasts were sent to him at the beginning of each month as to UniversalProcon's prospects;
>
> c. He was fully apprised of the risks associated with client business and knew the likely sales that would be made;
>
> d. He had been involved in the industry for some time and, it is averred, must have known the lead time from meeting a new client to achieving substantial business."

96. As I have already indicated, the Claimants bring a claim for fraudulent misrepresentation. They rely, in the alternative, on section 2(1) of the Misrepresentation Act 1967. In the further alternative, they bring a claim for negligent misstatement. They contend that the Defendant owed them a duty of care and that, in making the Presentation, Mr McIntosh, and thereby the Defendant, were negligent.[29]

97. The Claimants contend that, in reliance on what was said at the Meeting, in particular during the Presentation, they entered into the SPA.

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[29] Although paragraph 19 of the Particulars of Claim may suggest otherwise, I do not understand the Claimants' negligent misstatement claim in fact to be any broader than their misrepresentation claim. The Claimants' causation pleading for example (see paragraphs 21, 26 of the Particulars of Claim) relates only to what was presented at the Meeting and, as I shall explain later in this judgment, the Claimants' negligent misstatement claim as developed at the trial was no broader than their misrepresentation claim.

98. They note that the earn out target was not met, which is not disputed. In fact, to be clear, neither the pre-conditions for the advance payments nor the pre-conditions for the payment of any conditional consideration were met, as they note and as is not disputed.

99. They therefore bring a damages claim. At this trial, I do not need to decide issues relating to quantum. The Claimants value their claim on two different bases. They contend that, had they not entered into the SPA, the Defendant would have completed the transaction for £16.2 million as contemplated in the August Heads of Terms and, in consequence, they claim about £1.94 million. They contend, alternatively, that they would have retained and increased their shareholdings, they would have continued to receive dividends, they would have continued to receive their remuneration as directors of WEG and would then have sold their shares to a third party. They claim for all that loss, less the consideration they actually received and their earnings for about two years. On this basis, as pleaded, they claim up to about £5.33 million (but they reserve the right to claim more).

The Defence

100. The Defendant denies the allegations of decline, by October 2010, in UPUS' business and contends that, during FY2011, UPUS' EBIT increased. It also denies that Mr Corbin and Mr McIntosh were desperate for the transaction to be completed.

101. The Defendant admits that, in October 2010, the sellers were asked to accept a contingent consideration proposal in place of the deferred consideration. The Defendant gives, as the reason for the proposal, that Grant Thornton Corporate Finance Ltd. ("GT"), which was instructed by the UD group to conduct due diligence of WEG ("the due diligence exercise"), "uncovered concerns relating to the financial information provided by [WEG's shareholders] prior to signing the [August] Heads of Terms".

102. Whilst the Defendant does not admit that the Claimants were reluctant to agree to any contingent consideration proposal, it accepts that, save in relation to Lilly, the Claimants did not have detailed knowledge of UniversalProcon's finances or business immediately before the Meeting. However, the Defendant contends, it was willing to provide any financial information the Claimants required to give them comfort about the transaction and it (and, in particular, Mr Logue) encouraged the Claimants to carry out due diligence of UniversalProcon in circumstances where the completion of the transaction was not subject to a time limit and where the Claimants were advised in the transaction by solicitors and corporate finance advisors, so that the Claimants did not have to be entirely reliant on the Defendant for information about UniversalProcon's finances and business.

103. The Defendant contends that the purpose of, and intention behind, the Presentation was to inform the WEG shareholders about UniversalProcon's business and to explain the contingent consideration proposal.

104. The Defendant contends that Mr McIntosh did not know, in August 2010, that UPUS' FY2011 budget was speculative at best or that it was highly unlikely to be achieved. Rather, the Defendant contends, Mr McIntosh honestly and reasonably believed that

Mr Gordon's opinion, as expressed in his 10 August 2010 email and attachment, did not justify an alteration to the budget.

105. The Defendant denies that UPUS' business deteriorated after its FY2011 budget was approved, that the POC schedule accurately represents the state of UPUS' business in November 2010, that the budget was unrealistic when it was created, that, by November 2010, there was no realistic prospect of it being achieved, or that the Job Log was unrealistic or fantastical and that Mr McIntosh knew that.

106. The Defendant denies the Claimants' contentions about Get.

107. It denies that the Presentation misled about UniversalProcon's prospects. It also denies that the only slides which were shown were those in the Claimant's slide deck. Rather, it contends, all the slides in the McIntosh slide deck were presented, except the Get promotional slides.

108. The Defendant denies that Mr McIntosh said at the Meeting that any figures could be easily achieved or that they would be a breeze, or that any targets were soft or that they (or other figures) should be easily beaten.

109. As to the UP EBIT 1 slide, the Defendant does not admit that Mr McIntosh said that UniversalProcon's EBIT had been achieved by controlling overheads and increasing sales and it denies that he impliedly represented that sales were increasing and had done so year on year.

110. As to the UP EBIT 2 slide, the Defendant does not admit what, if anything, Mr McIntosh said about the forecast EBIT for FY2011. It denies that anything was said about net revenue.

111. As to the Financials for UP Group and Margin Analysis for UP Group slides, the Defendant accepts that sales had fallen in 2010 from 2009 but it denies the misrepresentation allegations made by the Claimants in relation to these slides.

112. As to the Client/Headcount slide, the Defendant denies the Claimants' allegation of misrepresentation.

113. It is difficult to make sense of the Defendant's response to the Claimants' contentions in relation to the UP Group Net Revenue Forecast slide. It appears to me that, by the Defence, (i) it does not admit that any statement was made, when this slide was presented, about the accuracy of the forecast shown, (ii) it avers that the forecast was accurate and (iii) it avers that it was represented that the forecast was UniversalProcon's actual forecast but it denies that that representation was deliberately or recklessly false. I think that, in closing, Mr Potts QC (leading Mr Woods), the Defendant's counsel, effectively agreed with at least parts (ii) and (iii) of my analysis.

114. As to the Business Booked slides, the Defendant denies that Mr McIntosh stated that booked business was confirmed business with a purchase order or in respect of which a purchase order expected. It points out that the slides which follow the title slide refer to provisional work. It acknowledges that, in relation to UPUS, the figure of $3.31 million shown on the US Net Revenue Booked slide includes work which was on the

radar and contends that that was clear because the US Net Revenue Booked slide does not say "No Radar" as the UK Net Revenue Booked slide does and because Mr McIntosh said that the US Net Revenue Booked slide included work on the radar. The Defendant pleads:

> "…it is admitted that the business for which there was a confirmed purchase order was less than the business shown as booked in Slides 18 and 19. That is because the business shown as booked in those slides included provisional bookings (and, in respect of the US business, RADAR business), as was made clear in the legend at the side of each slide and explained by Mr McIntosh.

The Defendant does not plead an alternative case, in response to the Claimants' claim of misrepresentation in relation to the US Net Revenue Booked slide, on the hypothesis that Mr McIntosh said that the Business Booked slides showed only work which was confirmed with a purchase order or in respect of which a purchase order was expected.

115. As to the 2010/11 Savings slide (and other slides in respect of which the Claimants make similar complaints), the Defendant admits that Mr McIntosh said that the Yeadon office would be closing and it avers that that office did close. The Defendant denies that Mr McIntosh said that the Indianapolis office was going to close. The Defendant avers that no decision had been taken to close the Indianapolis office and that it was intended that the number of staff at the Indianapolis office would be reduced (or, perhaps, relocated).

116. As to the Joint Budget 2 slide, the Defendant avers that the green bars represent WEG's EBIT contribution to the sums on the slide (so that the yellow bars relate to savings). The Defendant does not admit that Mr McIntosh said that the blue bars represented UniversalProcon's forecast EBIT but it denies that, if he did say that, that was false. In any event, the Defendant denies that there was no basis for its EBIT forecasts or that the forecasts were false.

117. The Defendant denies that Mr McIntosh described the earn out target in the ways alleged in the Particulars of Claim.

118. The Defendant makes no admission about whether Mr McIntosh said anything about UniversalProcon's forecast for Lilly fee income in FY2011 but it denies that any statement he made was untrue.

119. The Defendant contends that, at the end of the Meeting, Mr McIntosh invited the WEG shareholders present to let him know if they needed any further information.

120. The Defendant denies that the Claimants relied on any representations made at the Meeting. In fact, the Defendant denies that reliance on any representation was intended.

121. The Defendant contends that it had reasonable grounds to believe and did believe up to the making of the SPA that any representations made were true.

122. The Defendant denies that the Claimants were owed a duty of care and it contends that there was no negligence.

123. The Consent Order recited that the parties had agreed:

> "…that any new claims arising out of the amendments to the Particulars of Claim set out in the draft attached to the Claimants' solicitor's letter of 14 December 2018 ("draft Amended Particulars of Claim") shall be deemed for limitation purposes to have been brought on the date of this Order, unless the Court determines at trial that any such claims arose out of the same facts or substantially the same facts as a claim in respect of which the Claimants had already claimed a remedy".

The order provided, in consequence, that:

> "The Claimants have permission to amend their particulars of claim in the form of the draft Amended Particulars of Claim on the agreed terms recorded above, such that any new claims arising out of the amendments shall be deemed for limitation purposes to have been brought on the date of this Order unless the Court determines at trial that any such claims arose out of the same facts or substantially the same facts as a claim in respect of which the Claimants had already claimed a remedy in their Particulars of Claim."

The amendments referred to were those by which the Claimants allege fraud against the Defendant.

124. By the Defence, the Defendant raises a limitation defence to the Claimants' claim for fraudulent misrepresentation.

The Amended Reply

125. The Claimants contend that the reason why they were asked to accept a contingent consideration proposal was not because of any due diligence concerns which GT had but because the UD group had discovered that (as it turns out, as a result of International Financial Reporting Standards 3 – Business Combinations ("IFRS3")) the deferred consideration would result in an expense having to be posted to the Defendant's Profit and Loss account ("the IFRS3 issue"), which was unacceptable to the UD group, and because it might have tax implications (as it turns out, for the Claimants (because their deferred consideration might be treated as employment income)). The Claimants contend that, neither prior to nor at the Meeting, were any due diligence concerns mentioned at all or as the reason for the contingent consideration proposal.

126. The Claimants also contend that there was an express refusal to provide detailed financial information about UniversalProcon. In particular, the Claimants contend that, at the Meeting, "Mr McIntosh refused to disclose financial information on the breakdown of the client base by individual revenue amounts or to provide details of

prospective clients because to have done so would have assisted WEG as a competitor had the sale not completed".

127. In response to the Defendant's limitation defence, the Claimants rely on sections 32(1)(a), (b) of the Limitation Act 1980. They plead:

> "The Defendant concealed documents from which the deceit could have been discovered by refusing the Claimants access to information at the [Meeting] as pleaded. The [Defendant] continued to conceal that information by refusing to provide access to documents containing the information, despite the Claimants' requests by their solicitors that it do so. The Claimants were unable to discover the fraud and the information necessary to plead it prior to disclosure in these proceedings, the last tranche of which was provided by the Defendant [on] 20 September 2018 and limitation did not begin to run prior thereto."

The Claimants' case in closing

128. Counsel helpfully provided me with written closing submissions. At paragraph 8 of his closing submissions, Mr Pipe said this:

> "This is a clear case of misrepresentation by D, an expert in the information it was providing to Cs, to persuade them to sell their shareholdings in…WEG…on partially deferred, performance-based contingent consideration terms. On the evidence which the Court heard, there were misrepresentations made during the Meeting…as to:
>
> 8.1. UniversalProcon's forecast net revenue in 2011 and its accuracy;
>
> 8.2. The level of Lilly net revenue included within the net revenue forecast…;
>
> 8.3. UniversalProcon's US booked business as at 12-11-10…;
>
> 8.4. The ease with which the joint targets could be achieved…"

He elaborated on these points; principally at paragraphs 109 – 136 of his closing submissions.

129. When I read those submissions, it struck me that Mr Pipe may either, on instructions, be abandoning the rest of the Claimants' case or he may have merely been focusing on what the Claimants regarded as their best case, leaving me to continue to determine the balance of the claim (on liability). I asked Mr Pipe to confirm whether or not the Claimants were relying solely on the misrepresentations summarised in paragraph 8 of his closing submissions. Because I did not want Mr Pipe to commit to an answer before I was sure that he had taken instructions from the Claimants and because I did not want the Claimants to feel under undue pressure to confirm their

instructions to Mr Pipe, I invited him to take the lunch adjournment to confirm what his instructions were. Following the adjournment, he did confirm to me, on instructions, that the Claimants were proceeding with their claim only on the alleged misrepresentations summarised in paragraph 8 of his closing submissions. Out of an abundance of caution, I spelt out the consequences, as it seemed to me at the time, of that decision; that is, that I do not have to determine the balance of the Claimants' pleaded allegations and that, if they do not succeed on their claim as summarised in paragraph 8 of Mr Pipe's closing submissions, their claim will fail. Mr Pipe confirmed to me that that was clear.

130. I need to make a number of points about the Claimants' decision to limit their claim in the way they have.

131. Although some of the Claimants' allegations no longer require a determination, nevertheless, I will have to consider some of those abandoned allegations, because they are relevant to my determination of the remaining allegations.

132. Having reached the conclusions I set out in this judgment, I have reflected further on the Claimants' decision. Having done so, I do think that they were right not to proceed with the balance of their claim.

133. The Claimants' decision means that I need to determine their claim in relation to only certain of the slides they pleaded (and, in the case of some of those slides, I need to determine only some of the allegations they pleaded). I asked Mr Pipe to identify for me the slides which remain in issue. He helpfully did so by reference to his closing submissions and to paragraphs of the Particulars of Claim. The slides that remain in issue are the following: UP EBIT 2, Financials for UP Group, Margin Analysis for UP Group, UP Group Net Revenue Forecast, Business Booked, UK Net Revenue Booked, US Net Revenue Booked, Joint Budget 2 and Joint Budget 3. The slides that are no longer in issue are the following: UP EBIT 1, 2010/11 Savings, UP EBIT 3, Savings (heads) and Savings (other).

134. It is important to keep in mind certain pleaded allegations which the Claimants no longer pursue. These are that:

    i) There was no basis for the prediction of a FY2011 EBIT for UniversalProcon of £2.77 million;

    ii) There was no basis for savings of £1.3 million in 2011, £1.5 million in 2012 and £1.5 million in 2013;

    iii) Mr McIntosh misrepresented that UPUS' Indianapolis office was going to close.[30]

[30] Because I am uncertain about what misrepresentation the Claimants alleged in relation to the Client/Headcount slide, and because Mr Pipe maintained in closing that UniversalProcon's client numbers were falling, most favourably to the Claimants I do not proceed on the basis that they positively conceded that it was not a misrepresentation for Mr McIntosh to claim that UniversalProcon's client base was forecast to increase in FY2011.

That these allegations are no longer pursued is particularly relevant in relation to the Claimants' contention that the earn out target was represented as being soft or a breeze or as one which should be easily beaten. As is clear, particularly from Mr Pipe's closing submissions, the Claimants maintain that those statements, if made, were misrepresentations because, they contend, (i) Mr McIntosh accepted, in cross-examination, that he did not believe that those statements were true (although he disputes that he made them), (ii) the Defendant's expert accepted that those statements would not have been true and (iii) Mr Corbin accepted that the earn out target was not easy. At paragraph 136 of his closing submissions, Mr Pipe said:

> "Given Ds' witnesses' acceptance that there was no basis for saying that the targets were easy and Mr McIntosh's assertion that he knew them not to be so, if the Court accepts that these representations were made, they are misrepresentations of fact by Mr McIntosh and this amounts to deceit. A false statement of one's own belief is such a misrepresentation. At the very least it is a negligent statement."

135. It is also relevant to keep in mind that the Claimants contend that, in introducing the UP EBIT 2 slide (a slide still in issue), Mr McIntosh said that the EBIT forecast of £2.77 million "would be achieved by building on the same management principles as the previous three years through reducing overheads, the efficient use of productive labour and increasing net revenue through existing and new customers". The Claimants no longer allege that Mr McIntosh represented that, when he presented what they assert is the immediately preceding slide (the UP EBIT 1 slide), he impliedly misrepresented that sales were increasing and had done so year on year.

Chronology

136. I have already made a comment about the approach I am taking to the statements of case in reaching my decision.

137. The trial bundle is extensive, running to about 12,500 pages (although I estimate that, by the end of the trial, reference had been made only to the witness statements and to about an additional 250 pages). I was also provided with long (but very helpful) written opening and closing submissions from counsel, running to about 400 pages. In the end, I heard oral evidence from fourteen factual witnesses and two forensic accountants. In reaching my decision, I have considered all the evidence I heard and to which I was referred and I have considered all the submissions made on behalf of the parties. In this section of the judgment I set out chronologically what I have concluded are the key events and documents. Just because I do not refer to a particular event or to a particular document in this, or in any other section, of the judgment, that does not mean that I have not had the matter in mind when reaching my decision. Similarly, just because I do not refer to a particular piece of evidence in this judgment, that does not mean that I have not had it in mind when reaching my decision. What I have sought to do in this judgment is to set out what I have concluded is the key evidence which has led me to reach the decision I have reached.

138. Because the contemporaneous documents have been key to my decision, I need to set them out in detail, as a result of which this section of the judgment is long.

139. Precision Corporate Finance Ltd. ("Precision") was a company providing corporate finance services. In 2007, it had acted for Universal Conference and Incentive Ltd. when that company was acquired by the UD group. In 2008, Precision was engaged by WEG to find a buyer for the company and it introduced WEG's directors to the UD group. The transaction did not proceed then but, in early 2010, the possibility of an acquisition of WEG by the UD group was resurrected; although which side resurrected the transaction is not clear. It was always expected that, if WEG was acquired by the UD group, it would form part of the CSMS Division, so that Mr Corbin and Mr McIntosh were individuals whose support for the transaction was important.

140. On 26 February 2010, Mr Corbin emailed Mr Logue (who was the person in the UD group who had oversight of the financial aspects of corporate acquisitions, such as the one in this case) saying that the acquisition of WEG made "huge sense", because (i) it would allow synergy savings (i.e. the closure of WEG's Lambertville office and the closure of UPUK's Yeadon office), (ii) it would expand UniversalProcon's client base and (iii) it would provide UniversalProcon with access to WEG's already-opened overseas offices in Hong Kong, Amsterdam, Berlin and Basel, which Mr Corbin said UniversalProcon required in order to retain work from Lilly and Pfizer. These are reasons for the transaction which came to be repeated throughout its course.

141. I should say something about the third reason. It has not been disputed that, by 2010, pharmaceutical companies were seeking to engage events management companies which had a global presence and, for that reason, events management companies were beginning to face competition from travel management companies, such as American Express Co., which already had a global presence. UniversalProcon had a presence in the US and in the UK but not elsewhere. WEG had opened a number of offices globally; particularly in Europe and South-East Asia. WEG was one of the few events management companies which had done so.

142. On 4 March 2010, a confidentiality agreement was entered into.[31]

143. By 29 March, Mr Wilson was working on a response to the UD group's initial request for information, Mr Corbin was emailing Mr Logue saying that the transaction needed progressing with real urgency and Mr McIntosh was emailing Mr Logue stressing how important the transaction was to the UniversalProcon business.

144. As I have already said, Lilly was an existing customer of UniversalProcon; in particular, US Logistics. In early 2010, Lilly had indicated that it was going to begin a re-tender exercise ("the Lilly competition") for its work. On 30 April, it published its Request for Proposal ("RFP"); effectively, an invitation to tender. The RFP invited tenders not only for US work but also for work globally, including in Europe, where, as I have said, outside the US and the UK, WEG had, but UniversalProcon did not have, offices. The RFP followed a Request for Information which Lilly had published at the beginning of 2010,[32] apparently shortly after the possibility of an acquisition of

[31] In a number of places in this section of the judgment, I mention that an event (a meeting, telephone call etc.) took place. In respect of some of those events, one or other of the parties does not admit that the event occurred. Where I refer to an event without qualification, I am satisfied that the event occurred.

[32] Penny Callaghan referred to the expectation of a Lilly RFP as if it was common knowledge on 12 February 2010.

WEG by the UD group had been resurrected. UniversalProcon and WEG agreed that they would submit a joint tender in the Lilly competition (even though the transaction was only at a very early stage) and, on 14 June, they did so.

145. On 30 April, Mr Logue informed Precision by email (probably after a telephone call with Neil Ackroyd, Precision's managing director) about the terms of the UD group's proposal to acquire WEG. The UD group proposed principally to pay £14.5 million. £2 million of the consideration was proposed to be deferred and contingent on the continued employment of key individuals for two years post-acquisition and on the agreement, by those individuals, to restrictive covenants. Mr Logue said that "there would be no profit-related earn out on the strict assumption that the revenue pipeline strongly supports the projections". He added that:

> "…we can say with confidence that these terms would represent a significant premium to market rates, which would only be justified on the synergy in combining World Events and UniversalProcon."

146. Mr Keene and Mr Corbin dined together on 12 May. After the dinner, Mr Corbin reported to Mr Logue, Mr McIntosh and Mr FitzGerald that the parties' valuations of WEG were "very different". He reported that Mr Keene had indicated that a purchase price of £18.5 million would be acceptable. Mr Corbin suggested that a deal might be done at £16 million to £17 million but that, if the price agreed was £17 million, there would need to be £1 million of savings to justify an adequate return on the sum paid. He also reported that the WEG shareholders were not desperate to sell. He concluded:

> "On balance in spite of the large premium we'd have to pay, my view, which would need to be supported by a thorough due diligence process, is that we should increase our offer [from £14.5 million] and attempt to buy World Events.
>
> If we don't it'll take a long time to organically create the number 1 agency and in doing so we may well go backwards with our current business."

147. Mr Logue suggested, in an email to his assistant, that a price of £15.5 million "would do it" but he thought that a price of £16 million was too high. He said that, to justify a total price of £15.5 million, there would have to be "confidence in the synergies".

148. On 13 May, Mr Corbin told Mr McIntosh that UniversalProcon was £900,000 behind budget for FY2010, which was due to the performance of UPUK. He described UPUK's financial performance as "horrible".

149. On 16 June, US Logistics received very positive feedback from Roche about its performance at a Roche conference.

150. On the same day, Mr Logue emailed Mr Ackroyd to record their previous day's conversation. Mr Logue said that the UD group was prepared to pay, principally, £15.5 million for the acquisition of WEG. He described the offer as the "final" offer. He said that part of the consideration would be deferred. £2 million would be payable on condition that the WEG management team continued to be employed for three

years and "£1m will be an earn-out based on a 3 year earning target for Universal and WEG combined to incorporate synergies. The target will be set reasonably". He continued:

> "How monies may be split between Graham Keene and the management shareholders is partly an issue for the vendors rather than something for us to dictate. However we would want to be satisfied management are happy with their deal and are not caught in the middle of terms agreed by the dominant shareholders on either side of this transaction."

Mr Ackroyd responded shortly after, noting that he thought that he and Mr Logue had discussed the possibility of a £500,000 upside.

151. On about 21 June, Mr Gordon commented on a draft paper about the transaction Mr McIntosh had prepared for the Plc's board. The draft paper suggested annual gross sales growth of about 7%. Mr Gordon commented:

> "Growth of net margin of 7% should be eminently achievable but known RISKS in US relayed *(sic)* to Lilly, Pfizer and Shire business. Are there others?"

The previous day, Mr Acaster had said that a 7% sales growth assumption was reasonable, although he cautioned (amongst other matters), that:

i) The Lilly work was at risk;

ii) Both WEG's and UniversalProcon's profit had declined in 2010 from their 2009 level.

152. The draft paper (which went through various iterations) explained that UniversalProcon's FY2010 poor performance was due to the performance of UPUK, in particular to the loss of three clients in FY2010; identified as Pfizer EMOP (European Congresses) ("EMOP") with the loss of £750,000 revenue, Improvement Foundation with the loss of £250,000 revenue and Schering-Plough Merck Investigator Meetings ("Duke") with the loss of £400,000 revenue. The draft paper emphasised the need for UniversalProcon to have a global presence. The draft paper forecast synergy savings "falling to EBIT" following the combination of WEG and UniversalProcon as £469,000 in 2011, £883,000 in 2012, £1.202 million in 2013 and £1.202 million in 2014.

153. Heads of terms were circulated on 29 June ("the June Heads of Terms"). The consideration for the transaction was effectively as Mr Logue had set out in his 16 June email.

154. On 3 July, Mr Saxby circulated his thoughts about the June Heads of Terms to WEG's board. He said, amongst other things:

> "Presuming the £1m conditional deferred payment is to be borne by the management team then again this is a significant proportion of their overall holding. It seems effectively to be an

> earn out and if that is the case then it seems to have downsides only – any earn out I have heard of has upsides too, to motivate the management team….
>
> I feel this would be very difficult for us to agree to without knowing the state of [UniversalProcon's] finances and having the benefit of due diligence carried out on their books. As an aside, Mac mentioned to myself and Andrew that they had lost in the region of $700k this year on a bad deal with a virtual meeting software business, how would we be meant to know about this and any other skeletons they may have? To my mind the best and fairest way for them to manage this would either be based on contribution from WEG clients or savings made…
>
> I do feel that a huge onus seems to be on the ongoing management in every respect and, as I mentioned above, it is all stick and no carrot. This does not endear them to me at the prospect of them being a future employer! The bizarre thing is that it would appear to be beneficial if one was to be exiting rather than staying.
>
> This might appear unduly negative but I suppose this is only likely at this stage of the proceedings. There is a fair amount of "devil in the detail" which I have highlighted.
>
> All of that said, the amounts concerned to fix this are not large in the overall scheme of things and obviously any future management option or incentive scheme would only pay out if they were getting a return on their investment so they cannot lose from putting something like this in place."

He also asked whether interest would be payable on the deferred consideration.

155. Mr Parry also commented on the June Heads of Terms contingent consideration proposal. He too asked if interest would be payable on the deferred consideration. He was concerned that the WEG shareholders could not control whether UniversalProcon met its part of the target and he suggested that the WEG shareholders meet with the UD group team and "agree this through the [due diligence] process". He also noted that, "bearing in mind [UniversalProcon's] recent press releases, redundancies and lack of management team", difficulties might arise if WEG staff reported to UniversalProcon rather than to higher up in the UD group.

156. The WEG shareholders had (or intended to have) a conference call to discuss the June Heads of Terms on 5 July.

157. On 8 July, Mr Keene and Mr Ackroyd dined with Mr Corbin and Mr Logue ("the 8 July dinner"). Mr Ackroyd emailed Mr Logue the following day to summarise their discussions. He noted that:

> "We…discussed at length the £3m of deferred consideration. I believe that we agreed in principle that some element of the

> consideration would be paid as interim instalments with interest? With you, Liam, to come up with a proposal. It was further suggested by you that the share consideration would be issued at the price on the day of issue (not completion). It was also left with you to consider making the entire £3m only contingent on continued employment rather than targets, as these would be difficult to agree without detailed [due diligence] on UP."

Mr Corbin emailed Mr Logue on the same day saying that "it really would be good to get this deal and associated [due diligence] moving asap, so that we can aim for a closing some time in October or early November…"

158. On 13 July, Mr Logue emailed Mr Corbin following a discussion he had had earlier that day with Mr Ackroyd. He explained that the WEG shareholders wanted the deferred consideration to be conditional only on the management team's continued employment and not also contingent on any target. He said that he had told Mr Ackroyd that the UD group "could do £900k, £900k and £900k at the end of Years 1, 2 and 3 reflecting the facts of higher interest cost from earlier payment and that the earn-out was effectively guaranteed". In other words, he proposed that the deferred consideration be reduced from £3 million to £2.7 million, with no interest, but on the basis that its payment was no longer contingent on any target being met.

159. In the same month (probably about 13 July), Mr Logue oversaw the preparation of a paper for the Mergers and Acquisitions sub-committee of the Plc board. The paper identified two alternatives to the acquisition of WEG. The first alternative was for UniversalProcon to remain as it was, based in the US and the UK, which the paper identified as a serious threat to the business. The second alternative was for UniversalProcon to grow organically (rather than by acquisitions). This alternative was rejected because of the cost and time it would take for UniversalProcon to be in a position to compete with those competitors which already had a global footprint. The paper suggested that WEG's adjusted EBIT forecast for 2010 (once losses incurred in relation to the overseas (i.e. not UK or US) offices were added back) was £1.382 million. The paper noted that WEG's fee income was forecast to decline in 2010; amongst other reasons, because, according to the WEG management team, "lead times on new events (from time the contract is awarded) have shortened so WEG has less visibility to events expected in the months to come". The paper set out the same synergy savings as had been set out in Mr McIntosh's draft paper. The paper noted that UniversalProcon was forecast not to meet its budgeted EBIT for FY2010 (as, I understand, in fact it did not) because of the performance of UPUK but the paper also noted:

> "Business development is the key business priority for UP (and the key strategic imperative) for continued success in the UK and US. A new business model was introduced after the UK business moved to Ashby de la Zouch, incorporating a Business Development Manager/Client Account Manager model. In a relatively short space of time, this business model has proved successful. The next step is to implement a similar model in the US.

> In only 4 months the UK has added 13 new clients, bringing in an additional £350k of revenue. The new clients include: Celgene, Archimedes, Phadia, Rochester, Novartis, Nutricia, ProStrakan, Flynn, Leo, Allergan, Tri-ducive, and Grunenthal."

160. Mr Corbin continued to promote the transaction. He emailed Mr Logue on 15 July saying that "the strategic rationale, Lilly, globalization etc. makes this deal irresistible…" He suggested that "without the deal [UniversalProcon] will give up approx. $1m profit from the Lilly deal, that we are in partnership with WEG over at the moment and couldn't possibly win without them…" He added that "…without WEG we are unable to present ourselves as a global supplier, which could cost us some existing business and preclude us from winning some new business…" He acknowledged that the consideration was a "premium price which is now even higher than expected" but he continued to be enthusiastic about the transaction and saw it as vital.

161. On 16 July, Mr Ackroyd emailed Mr Logue, following up on Mr Logue's request for further information. Mr Ackroyd said that he had spoken with Mr Keene and Mr Wilson, who had commented that "the trend over the last 6 months or so has been for events to come in with shorter lead times [which] has adversely affected the forecast but not the expectation…"

162. On 20 July, Mr Gordon informed Mr McIntosh that HCAM had decided that US Logistics would not receive any of its work in 2011.

163. On 26 July, Mr Dickinson emailed the other Claimants and Mr Parry recording that none of them were happy because they, rather than Mr Keene, were bearing the £300,000 reduction, to £2.7 million, in the deferred consideration. He said that Mr Saxby understood that the UD group's proposal was "a good deal but [he] feels we are taking the "pain" on our own". He said that Mr Saxby had suggested that, if they could not persuade Mr Keene to "bear his share", they should try to re-negotiate the deferred consideration element of the proposal so that the WEG shareholders, Mr Keene excepted, received an extra £50,000 a year. Mr Dickinson continued that Mr Saxby agreed "that it could be difficult to put in a performance piece to catch up the 300k and negotiate decent go-forwards contracts".

164. The next day, Mr Dickinson reported to the same correspondents that Mr Keene was "not too convinced that [increasing the deferred consideration by £50,000 a year] would "fly"" and was worried that it might "push Liam into a corner that could lean him recommending they pull out of the deal."

165. By August, the UD group's budgeting exercise by which the FY2011 budgets would be set for the companies and divisions in the group was well advanced. A US Logistics draft net revenue budget for FY2011 ("US Logistics' August draft revenue budget") had been prepared. It showed the following information:

	FY2010 Budget ($)	FY2010 Forecast ($)	"AG original"[33] FY2011 Budget ($)	FY2011 Budget (V1) ($)	FY2011 Budget (V2) ($)

[33] "AG" is likely to refer to Mr Gordon.

Amylin	0	0	156,000	155,000	155,000
Lilly	3,000,000	2,464,307	2,500,000	2,800,000	2,779,000
Forest	0	301,839	300,000	300,000	300,000
Millennium	0	235,702	300,000	305,000	325,000
EM	1,000,000	1,503,299	1,500,000	1,000,000	1,000,000
HCAM	900,000	1,109,759	1,000,000	1,109,759	750,130
Roche	1,800,000	1,644,333	1,475,000	2,100,000	2,100,000
Shire	200,000	297,186	350,000	350,000	310,378
Others[34]	450,000	74,317	187,000	0	150,000
Total	7,350,000	7,630,742	7,768,000	8,119,759	7,870,008

166. On 4 August, Mr Mate emailed Mr Acaster asking for UPUS' draft budget to be amended to include £100,000 ($150,000) additional revenue and £100,000 less for a management fee charge. He added, in an email, dated 9 August, to Mr Gordon:

> "UD as an organisation are looking for the CSMS division to achieve double digit growth each year. The increase in revenue gives the US an increase in operating profit growth from 0.07% to 3.43%..."

167. On 10 August, as I have noted, Mr Gordon emailed Mr McIntosh, saying:

> "…The bottom line is that I think the risks associated with raising the Net Revenue line outweigh the potential benefits. Probably no surprise in that "I would say that wouldn't I" but I believe the attached analysis supports that conclusion.
>
> The punch line:
>
> Leaving aside the Lilly business risk and all else being equal, the known requirement to replace HCAM $525k means an existing "new" business target for 2011 in the US of $675k just to achieve the budgeted net revenue. As a measure, this is more than we will have "won" in total in in the US and that was from relationships built over a considerable period of time.
>
> Should either or both the Shire account ($310k) and Forest account ($300k) require replacement this would mean a new business target for 2011 in the US of $985k or, at worst, $1,285k.

[34] This is a reference to new business.

> None of the above figures takes account of the budget amendment request to increase the US…Logistics Net Revenue by £100k ($150k) which would revise those targets further as follows:
>
> New Business Target incl. HCAM replacement: $825k
>
> As above but including Shire replacement: $1,135k
>
> As above but including Forest Replacement: $1,435k.
>
> No doubt we can discuss further when you have had a chance to absorb the above and attached and we can decide what level of risk is acceptable in the circumstances."

168. He attached a three page document ("the Gordon August budget analysis") setting out some of the financial data in US Logistics' August draft net revenue budget and which made comments about each of the lines in that draft budget by reference to opportunities and risks/threats:

i) In relation to Lilly, Mr Gordon noted that the Lilly competition could lead to a substantial increase in US-based business. He noted however that there was a risk that UniversalProcon and WEG might not be appointed a sole supplier, or a supplier at all, to Lilly;

ii) In relation to EM, Mr Gordon said that he was "not at all certain or comfortable with the US figure yet". He noted, however, that there was "an outside possibility" of US Logistics providing support to EM at congresses and conventions. He thought that the budget of $1 million was achievable, but he was concerned that US Logistics might only benefit from revenue derived from events in the US;

iii) In relation to HCAM, Mr Gordon said that the opportunities were unclear. He suggested that there was a possibility that US Logistics might obtain some work after January 2011 but that that was unlikely. He explained that, if US Logistics obtained no work from HCAM in 2011, there would be a net revenue "hole" of $525,000, which either had to be filled or had to be counterbalanced by additional gross profit and/or savings of $300,000;

iv) In relation to Roche, Mr Gordon noted that, in addition to budgeted net revenue, there was a possibility of further work arising out of investigator meetings and advisory boards. He said, however, that that further work was speculative at best. He described the Roche draft net revenue budget as being "the second most aggressively budgeted account in the US for 2011 next to Lilly";

v) In relation to Shire, Mr Gordon described the budget as "cautious". He noted that there could be an "upside" of $100,000 – $200,000 but there was then no evidence to justify that. He said that there was a real possibility that US Logistics would obtain no work from Shire in 2011;

vi) In relation to Millennium, Mr Gordon said that there was a possibility of US Logistics obtaining an additional $100,000 worth of work but that there was then no evidence to justify that. He noted that the volume of work from Millennium and its commitment to US Logistics was unknown;

vii) Mr Gordon made similar comments in relation to Forest as he had done in relation to Millennium but, in the case of Forest, he noted that there were ongoing problems with the "client['s] approach";

viii) In relation to Amylin, Mr Gordon said that the budget "should be secure";

ix) In relation to Others (new business), Mr Gordon noted that the FY2010 forecast did not include Forest or Millennium work. He said that there was "clearly a need and opportunity to win more new US business in 2011 [and that] account management structure, support, training and implementation [were] required as a matter of priority". He repeated what he had said about new business in his covering email.

169. The August Heads of Terms were entered into on 17 August. They were expressed to be subject to satisfactory due diligence and the approval of the Plc's Mergers and Acquisitions sub-committee. The consideration payable for the acquisition of WEG was (effectively) £16.2 million, made up of £13.5 million initial consideration and £2.7 million deferred consideration, payable over three years at the rate of £900,000 a year on condition that the WEG management team continued to be employed for three years. Clause 6 of the August Heads of Terms set out "Other Significant Conditions and Assumptions" to which the transaction was subject. They included that:

i) WEG's 2010 profit projection showed no less than £1.5 million adjusted EBIT (which reflected WEG's overseas office costs) and trading to the completion of the transaction in line with the projection;

ii) WEG's "pipeline" of contracted revenue was not less than £13 million;

iii) WEG's pipeline of order prospects was sufficient to support future trading in line with 2010 levels;

iv) No material adverse issues arose in the UD group's due diligence investigation of WEG's business.

The parties also acknowledged, by the August Heads of Terms, that their 4 March 2010 confidentiality agreement remained in full force and effect.

170. The August Heads of Terms had been circulating in draft for a few days before they were signed. Mr Saxby had commented on them on 9 August, when he said that his "blood [had been] boiling at the weekend". He seemed to be objecting to (i) the principle that part of the consideration would be deferred, (ii) the fact that, whilst now only conditional on continued employment (rather than contingent on performance), the amount of deferred consideration had been reduced by £300,000 and (iii) the fact that the risks of the transaction would be borne by the "ongoing management".

171. On 23 August, Mr Gordon sent an email, copied to Mr McIntosh, which was part of an email chain. Mr Gordon spoke positively about discussions which US Logistics employees had had with Shire. Mr Gordon said he was confident that US Logistics would "re-establish relationships" and that "future business would result".

172. On 3 September, a budget presentation was made to the CSMS divisional board. In relation to AI2F, it was noted that Lilly and Pfizer were "downsizing". In relation to UPUS, a slide referred to HCAM.

173. On 7 September, Mr Gordon sent a round-robin email about the Lilly competition, including to individuals in WEG and to Mr McIntosh. He expressed the view that there was room to manoeuvre on pricing, although he noted that Lilly thought that the previous pricing proposal was "just wrong". He noted that he had been told that Lilly was likely to split each category of work between three providers but that "if we were providing services already and could expand on existing relationships we would almost certainly be in a position to secure more than this amount".

174. Mr Logue emailed Mr McIntosh (apparently copying in Mr Corbin) on 30 September. He explained that, because of IFRS3, the linking of deferred consideration to the continued employment of the WEG management team, as the August Heads of Terms had done, would result in a "P&L" expense which was unacceptable to the UD group. He suggested an alternative (linking the payment of deferred consideration to observance of a restrictive covenant) which might allow the WEG shareholders (Mr Keene excepted) to receive deferred consideration but which would not result in an expense being posted to any profit and loss account. On the same day, Mr Corbin responded: "Give them easy targets", to which Mr Logue responded, in turn: "It will have to be easy to achieve targets but no tie to employment. We will need to base it on targets for the combined entity", to which Mr Corbin then replied: "Exactly".

175. The next day, 1 October, Mr Logue emailed David Taylor of Precision (copying in Mr Ackroyd). The email only makes sense if they had been in communication about the IFRS3 issue already. Mr Logue said:

> "…Our idea, to get round [IFRS3] is to base the deferred payments instead on "soft" targets to be achieved over 3 years.
>
> …I can have Mac [(Mr McIntosh)] and Martin [(Parry)] discuss what a "soft target" might look like."

Mr Taylor asked Mr Logue not to arrange any discussions between Mr McIntosh and Mr Parry until Precision had spoken to Mr Keene on the subject.

176. On 4 October, Mr Taylor emailed Mr Logue, saying:

> "As Neil [(Ackroyd)] mentioned our view is that even with "soft" targets this will be a problem for WEG… "

He also dealt with the due diligence exercise. He said that GT had sought the permission of WEG's board to the release of commercially sensitive information to the UD group but that the board had declined to give permission until the question of the conditions for the payment of the deferred consideration were settled.

177. On 5 October, the Plc's board approved the UD group's (and, presumably, UniversalProcon's) FY2011 budget and Mr McIntosh replied to Mr Logue's 30 September email saying that he was "moving towards the idea of putting in targets which are not linked to employment/service". Mr Corbin responded: "We need some achievable targets".

178. It appears that the following day, 6 October, some or all of the WEG shareholders had a meeting. Mr Saxby's contemporaneous note records:

> "…Suggested link to soft targets.
>
> Either no targets and £900k or £1m x 3 with targets…"

179. On 7 October, Mr McIntosh emailed Mr Logue (copying in Mr Corbin and Ms Bates (who was also copied into the 30 September email chain)), in response to the suggestion, proposed in an email from Mr Taylor, that the payment of the deferred consideration might be linked to compliance with a restrictive covenant and thereby avoid the IFRS3 issue, saying: "My view is still to go down the "soft target" route".

180. On 7 October, Mr Keene emailed Mr Ackroyd and Mr Taylor, and Mr O'Connell (of Kerman & Co. ("Kermans") (the WEG shareholders' solicitor)), copying in Mr Parry and Mr Wilson:

> "All are strongly against any link to targets of any density (soft or hard!) for the same reasons as when the Heads were negotiated. Namely the agreed strategy of bringing the two businesses together immediately and [WEG] having very little knowledge of the UniversalProcon numbers and therefore unable to realistically discuss targets for a joint business until post deal.
>
> Martin Parry's deferred consideration to remain unchanged and paid fully over two years."

Later the same day, Mr Logue emailed Mr Corbin and Mr McIntosh, copying in Ms Bates: "They are holding firm on resisting the "soft targets". I have asked them for other ideas."

181. On 8 October, Mr Keene spoke with Mr Corbin. Mr Keene summarised that conversation in an email to Precision and Mr O'Connell, copying in Mr Parry and Mr Wilson, on 11 October. He said:

> "To summarise Chris was very clear on the following:
>
> This was UD's problem not ours.
>
> UD want to avoid the P&L hit and need to find a solution and "we will".
>
> Although the option to take the P&L hit was still a possibility but not desirable.

> It was Chris who had suggested weak targets to resolve the situation but he was advised that auditors would not support.
>
> The non-compete solution is still very much on the table although their employment lawyer had advised against this solution but UD still taking tax advice to see if this is a possible solution.
>
> If the only solution is to treat the deferred consideration as some form of management option then UD will guarantee the money to our team.
>
> I guess this is now back with Neil and David to resolve with Liam.
>
> I asked Chris to update our management team who are all meeting with him and Graham Mac later this morning."[35]

182. On 9 October, Mr Parry emailed the Claimants referring to an 11 October meeting with Mr Corbin and Mr McIntosh, saying that they would be joined by Mrs Corbin and Mrs McIntosh. It is clear that, by this stage, Mr Parry, for example, had had a number of meetings with Mr McIntosh about the practicalities of combining WEG and UniversalProcon and that he had been joined at at least one meeting by Mr Saxby. He spoke in the email of having had "a very good day" with Mr McIntosh and of previously having had a "good session" with him, and he referred to Mr McIntosh as "Mac"; the nickname by which Mr McIntosh was conventionally known in the UD group. He added:

> "Mac has also asked me for my thoughts on how the combined company's management structure could be set up to meet the demands of the new business and provide a succession plan for when I leave the business in two years' time. I have therefore sent him the attached draft organisation chart, which is an extension on how we are currently structured and which I believe would offer us all the opportunities to develop our careers within the new ownership going forwards. Mac has sent this on to Chris and I assume this will form the basis of our discussions on Monday. I do not yet know how Mac and Chris see the new structure, which may be different to my suggestion…"

183. The Claimants (perhaps, except Mr Dickinson) and Mr Parry met Mr and Mrs Corbin and Mr and Mrs McIntosh on 11 October and the Claimants and Mr Parry had a follow up meeting (perhaps a teleconference) the following day.

184. On 13 October, Mr Gordon notified Mr McIntosh, amongst others, that HCAM had formally terminated its relationship with US Logistics from 1 January 2011. Mr

[35] This is the latest document written before the SPA was entered into, to which I was taken, which refers to "weak" targets or something similar.

Gordon did, though, ask one of his correspondents to explore further the possibility of Pfizer renewing the Master Services Agreement (a multi-year umbrella agreement) which UniversalProcon had with Pfizer, as Pfizer had suggested it would be willing to do. He also asked to discuss with her the possibility of obtaining congress/convention work from EM. (In fact, on 8 October, Mr McIntosh and Mr Gordon were told informally that Pfizer would be entering into a three year Master Services Agreement from January 2011, in response to which Mr Gordon (copying in Mr McIntosh) said that it would protect US Logistics' "ability to service [EM] business and perhaps [Pfizer's] convention business as well". He also suggested that it might give US Logistics an advantage for other Pfizer work).

185. On the same day, 13 October, GT completed its first draft due diligence report ("the 13 October DD report"). GT reported as follows:

i) WEG was then forecasting its EBIT for 2010 at £774,000 and for 2011 at £943,000. The increase in the forecast EBIT was partly attributable to WEG's expectation that its overseas offices would generate £1.4 million fee income in 2011;

ii) The successful contribution of the majority of WEG's overseas offices was then unproven, with only one new overseas office, in the Netherlands, not being loss making. The Swiss office did not generate any business in the year it was open. The German office had only converted business for one client;

iii) The pipeline of work in the majority of WEG's overseas offices had yet to materialise and its Hong Kong office was forecast to generate only 7% of its budgeted income in 2010;

iv) WEG's pipeline of work included about £6 million of contracted income, which was about £1 million short of WEG's forecast figure. The WEG management team expected a further £500,000 – £600,000 of uncontracted work to materialise in 2010;[36]

v) For the seven months to July 2010, WEG's EBIT exceeded its budget by £840,000. GT reported that the WEG management team had commented that "this is not by design [because] it can be difficult to budget with accuracy, as bigger events are not systematic, and can have a bearing on the overall results";

vi) The lead time for the majority of WEG's work was about three to six months and, in the case of congress attendance projects, the lead time may have been about 18 months. GT reported that the WEG management team had commented that "this year they have noticed the lead times reduce, as clients wait until as late as possible before engaging their services [which] is a symptom of the current economic environment, as clients delay decisions as late as possible";

vii) In the case of WEI:

[36] It is not disputed that GT wrongly denominated these sums in Euros rather than Pounds Sterling.

a) Work from Johnson & Johnson had been budgeted in 2010 at £350,000 but was reforecast at £196,000;

b) Work for Sanofi-Aventis SA had been budgeted in 2010 at £40,000 but was reforecast at £5,000;

c) Work for Wyeth LLC had been budgeted in 2010 at £650,000 but was reforecast at £930,000.

186. WEG's board permitted the commercially sensitive parts of the 13 October DD report to be released to the UD group on the same day.

187. On 15 October, Mr Logue emailed Mr Taylor that he had received the 13 October DD report and that he was planning to meet GT on 20 October. As a result, he said, he had decided to postpone a planned meeting on the same day with "the WEG team".

188. On 18 October, Mr Logue sent the 13 October DD report to Mr McIntosh and Mr Corbin. He expressed concerns in the accompanying email, as follows:

> "While the 2010 forecast is in line with the numbers we had in the board document, there remains a gap to meet the 2010 forecast based on contracted revenues to date. This despite enhanced profits through high FX gains this year.
>
> Also need to spend some time to understand the underlying profit performance before new office costs to make sure it fits with our earlier analysis.
>
> Our assumption was to addback new office losses to normalize profits on the basis that new offices will be at break-even or better next year. Clear from the document that there are some challenges in the new offices. Hong Kong will continue to be loss-making next year and there are planned losses from new offices in France, Spain and Italy which will be additional costs. Need to consider EPS impact of this.
>
> 2011 pipeline looks weaker than I would expect.
>
> World Events are clearly experiencing some margin pressures.
>
> Profits were enhanced in the past 2 years by some big events – more so than we were told about in our earlier analysis."

On the same day, Mr Logue emailed Mr Taylor. He noted that they had had a discussion and he asked Mr Taylor to ask Mr Wilson to provide further information including an "outline of contracted revenues for 2011". He explained that a further update would be required closer to the completion of the transaction "so we have clarity on what 2010 will look like and how the first half of 2011 looks".

189. On 19 October, Mr FitzGerald emailed Mr Corbin:

> "There are a few things in the DD document on World Events that give cause for concern:
>
> The run rate on the business seems to have dis-improved considerably. They will do very well to get to the forecast and the momentum/pipeline going into next year looks weak according to the analysis.
>
> None of the overseas offices are performing to expectations and many look like they will not reach breakeven for some time. Hong Kong for example has done 7% of expected revenues!
>
> Their numbers include add backs on directors' bonuses which I don't think is realistic for the future. Also EBIT includes FX and interest gains which aren't sustainable. The recent FX gains are nearly 300k.
>
> The underlying business needs working capital and the cash we thought might be there isn't in reality.
>
> I fear going into the transaction with a clear risk that they will miss their earn-out is always a bad formula.
>
> We may need to look at valuation again on the back of the report and before we sit down with their team for dinner in November."

Mr Corbin replied, expressing the view that, if the UD group sought to re-negotiate the terms of the transaction, it would fall apart. He stressed how important he thought the transaction was. He maintained that the transaction was "a good deal" for the UD group and that, if it did not proceed, UniversalProcon would be marginalised. Mr FitzGerald responded the same day, noting that, whilst the deal was an "important" one, the 13 October DD report had raised some "significant issues" and that some of the issues had to be raised with WEG. Mr Corbin replied, saying that he had spoken with Mr McIntosh, who agreed that "we should take issues up with them", and that Mr McIntosh was going to speak with Mr Parry in the hope of arranging a meeting.

190. On the same day, 19 October, Mr Taylor confirmed to Mr Logue by email that Mr Wilson had sent the information Mr Logue had requested to GT. He said that the information showed that WEG's adjusted EBIT forecast for 2010 was £1.78 million.

191. On 25 October, Mr Acaster emailed Mr McIntosh, copying in Mr Gordon and Mr Mate. He attached a copy of a spreadsheet labelled "Forecast vs Budget 2011 Oct 22" (a UPUS forecast for 2011) and commented:

> "Forecast EBIT – $2,890k
>
> Budget EBIT – $2,889k
>
> We are anticipating to be approx. $500k down on budget in terms of total net revenue and we have therefore taken out

> heads or delayed the appointment of heads to get us back to budget EBIT.
>
> I believe that it would be worth having a catch up in the near future to discuss the assumptions we have made on a more detailed basis including those in relation to the phasing of the forecast."

192. The accompanying spreadsheet showed that the EBIT forecast had been kept on budget by reducing the "productive labour" line by $249,000 and by reducing the "overhead before staff bonus" line by $251,000.[37]

193. On 26 October, Mr Corbin reported to Mr Logue that "we have a meeting with WEG at 2:30 p.m. today to go through issues." Mr McIntosh prepared, or made, notes of the meeting ("the 26 October meeting").[38] The notes record:

> "1.5M in heads
>
> 16.2M
>
> Multiple of 10.8
>
> Most companies selling at 5-8 multiple
>
> 774K multiple 21
>
> What is included in the number for UD, as a standalone co need a level of profitability that is repeatable…
>
> ISSUES
>
> …Add back of overseas offices set up costs if they will break even??...
>
> China & Singapore will still make losses in 2011
>
> FRANCE
>
> Need to show the 140K relates to 1st 6 months then ADD BACK
>
> SPAIN
>
> ITALY…"

[37] This line includes staff who did not constitute productive labour.
[38] In fact, the document in the trial bundle is an email, dated 4 May 2011, which Mr McIntosh sent to himself, the subject line of which reads: "Theatre Meeting 261010". Project Theatre was the name by which the transaction was known.

194. On 27 October, Mr Wilson emailed Mr McIntosh referring to the previous day's meeting, attaching some information, and saying that he was available to discuss the information before the following day's meeting.

195. Also on 27 October, GT sent some further slides to Mr Logue. They showed that, by this time, WEG had forecast an adjusted EBIT for 2010 of £1.78 million, but GT believed that the adjusted EBIT should be £758,000 which was "£624k below the target in the heads of agreement (£1.382m)", and that WEG had forecast an adjusted EBIT for 2011 of £1.503 million but GT believed that the adjusted EBIT should be £650,000 which was "£732k below the target in the heads of agreement (£1.382m)".[39]

196. The following day, 28 October, GT gave a presentation to the UD group of its second draft due diligence report ("the 28 October DD report"). The slide which Mr Logue had received the previous day and to which I have referred was in the report. GT also reported as follows:

    i) WEG had increased its EBIT forecast for 2010 from £774,000 to £1.076 million;

    ii) WEG had not increased its EBIT forecast for 2011 from £943,000;

    iii) It had discussed with the WEG management team WEG's pipeline for 2011 and the management team had indicated that "they typically do not have significant contracted income by this stage in the year, due to short lead times (they indicated they would still be taking on new jobs for Q1 [2011] for the rest of the current year)";

    iv) For Quarter 1 2010 (January – March 2010), WEG's fee income was £1.16 million but, as at 30 November 2009, WEG had a pipeline of £880,000 fee income.

197. Following the meeting (on the same day (28 October)), GT's Anthony O'Boyle contacted Mr Wilson saying:

> "…We are keen to get comfortable somehow regards the 2011 projected income level…[H]owever, as you have already discussed, it is difficult to do so from the review of the pipeline. Can you provide any other information that will help give us comfort on the 2011 projected fee income figure?"

198. On the same day, there was an exchange of emails between US Logistics (including Mr McIntosh and Mr Gordon) and Roche. Roche's event manager recorded that Roche had experienced issues with US Logistics' service and that that service was below US Logistics' "outstanding performance" over the three previous years. The email chain also recorded that, following further discussions between Roche and US Logistics, "the team feels confident in keeping Universal as their preferred event

[39] The adjusted EBIT which was a pre-condition in the August Heads of Terms was £1.5 million (at least for 2010), but this did not take into account rent that would become payable, post-acquisition, for the Cleckheaton premises. After rent was added back, the August Heads of Terms effectively set a target adjusted EBIT of £1.382 million.

management agent for now [but] Universal has been informed about a final ultimatum though…AHA will be a good opportunity to monitor their performance…" The email from which I have just quoted was, in fact, an internal email written to the person who may have been the head of the Roche team which held the event. She replied: "If the team recommendation is to give the agency a second chance, I would align with it with the reservation of no tolerance for any underperformance from this agency in the future."

199. On 31 October, Mr Keene emailed Mr Corbin. He noted that he and Mr Corbin had had a discussion on 29 October and that Mr Corbin had updated him about "the delay in the process". He noted that Mr Corbin had confirmed that two issues needed clarification. The first related to a dividend payment. The second related to a foreign exchange gain. He added that WEG had received additional questions which did not relate to the two matters which apparently required clarification. He expressed some frustration because, he said, WEG had met the financial pre-conditions in the August Heads of Terms. He concluded that he was "reluctant to see the process extended any further" than 10 November.

200. Mr Corbin forwarded Mr Keene's email to Mr Logue saying that "we need to get this deal completed asap in my opinion…"

201. At 3:45 am on 1 November, Mr Corbin sent to Mr McIntosh the draft of an email he proposed to send to "Liam" (probably Liam FitzGerald), which Mr Corbin believes he did not in fact send. The email said:

> "At our meeting last Thursday, Grant Thornton commented that all they were doing was presenting "facts". My observation is that whilst that may well be true from a purely financial perspective, there are a series of facts that they are NOT presenting, largely due to the fact that they have failed to grasp a full understanding of the Event Management arena. Indeed one very important fact worth noting is that at no time during Due Diligence did they come to talk to myself or anyone in a senior position in UP before commencing or finalising their DD. Consequently they have failed to understand the following "facts":
>
> 1. The pharmaceutical industry is determined to "Globalise" its procurement of conferences and events. This is driven by a belief that consistency is needed and, that globalisation and the utilisation of fewer suppliers will inevitably lead to cost reduction.
>
> 2. It is a widely held view that non-Global players will end up with only local/regionalised work in this sector.
>
> 3. World Events have responded to this by investing in the creation of a "Global" network.
>
> 4. UP have NOT invested in such a Global network.

5. WEG are therefore in a better long term position than UP to face the future demands of the Pharmaceutical Industry.

6. UP are in a better short term financial position than WEG.

7. The combination of the two companies will provide both good short term results and ensure a positive long term outcome.

8. The Globalisation concept has been proven by our combined success with the Lilly pitch.

9. Failure to proceed with this deal will mean that UP will have to invest considerable time and money in order to "Globalise", and in the interim we may lose the Lilly deal.

10. In the meantime our business is likely to go backwards, and may never recover.

11. WEG possess a more experienced conference & event management team than UP.

12. WEG possess greater creative skills than UP – something we desperately need to add to our current organisation. We lose pitches as a result of this weakness.

13. The acquisition of WEG has both defensive and offensive characteristics.

14. There are major cost savings which can be achieved as a result of this acquisition.

15. There are no other comparative companies that we want to buy.

16. WEG possess a complimentary client list to UP.

17. The combined company will be the leader in its field and therefore the "go to" partner of choice for the pharmaceutical industry.

18. The WEG management team (Graham Keene is leaving) are strongly committed to this acquisition and are excited by the future prospects.

19. We have taken 2 years to assess this company, they have an excellent reputation for quality and delivery.

I could go on, but in summary I believe that this acquisition is CRITICAL to the ongoing success of our conference and event management business and, that in the current circumstances we should proceed asap to a positive outcome at the agreed price."

202. In fact, a little later that day, Mr Corbin did send a very long email to Mr FitzGerald in which he said that:

i) GT had been excessively cautious;

ii) The WEG management team believed that GT had failed to "gain a good understanding of the WEG business";

iii) He and Mr McIntosh had met WEG and that, following that meeting, he and Mr McIntosh thought WEG's adjusted EBIT for 2010 was about £1.55 million;

iv) The future of the events industry lay in being a global supplier. He continued:

> "WEG have been and still are investing in an international office infrastructure that is absolutely necessary if they wish to become a Global supplier. We have not made these investments, yet if this deal does not proceed we will have to make these investments. Mac is doing a review of how much it would cost to make such investment in financial terms, yet to this we need to add the fact that such an independent route taken by UP would probably take about 3 – 4 years to complete, and would cost us a great deal of potential business";

v) UniversalProcon and WEG had won "the Lilly business". He noted that, in the Lilly competition, they had been appointed as Lilly's suppliers in the USA and Europe and that they were then at the contract negotiation phase. He said that, if the transaction did not take place, he was concerned about the viability of UniversalProcon's relationship with Lilly, which he valued at £1.4 million of EBIT, and which, in turn, might lead to a loss of Lilly work for AI2F. He was concerned that WEG would then become a competitor and retain for itself Lilly's work;

vi) EM had promised to give UniversalProcon more work once it opened an office in Asia. He was worried that, if the transaction did not take place, UniversalProcon would lose all the EM work;

vii) Synergy savings were estimated at £500,000 in Year 1 and £1 million in Year 2;

viii) He appreciated that the price intended to be paid for the acquisition of WEG was high. He thought that, if the transaction completed, the WEG-UniversalProcon combined business would be the number one healthcare events management company but that, if the transaction did not complete, UniversalProcon would decline;

ix) This was a transaction which the UD group had to do.

Mr FitzGerald replied, almost straight away:

> "I know this is a deal you really want to do for the reasons you set out which I understand. However the sustainable profit and cash positions are different than we had initially understood and we're already paying a very toppy price. The outcome of the DD has to be made known to the M&A committee and I can't simply put the DD to one side and say just do it anyway. Doing the deal to protect the position with Lilly isn't really an issue we should consider. I think this is the right deal to do from a UP perspective but when you take out add backs, FX gains, and uncertainty about next year, the price is too high and there is a good chance we will end up fighting over the earn-out. I don't think we've much alternative other than to go back to [Graham Keene] and reason with him on these issues however difficult.
>
> I think we should try to have a conference call this afternoon to discuss. I am not fully up to speed on what was in the heads vs. what the DD says. However I can't go back to the M&A committee and simply say that we really need to do the deal at this price and that you will accept responsibility. It won't be approved on that basis."

203. At about the same time, Mr McIntosh drafted an email to be sent to Mr Logue, which Mr Corbin urged him to send. It set out what Mr McIntosh perceived to be the risk to UniversalProcon if the transaction did not complete. He said that the immediate risk was the loss of work from Lilly, which was UniversalProcon's largest customer (giving UniversalProcon 21% of UniversalProcon's business). He also thought that the synergy savings could be greater than had been set out in the paper which had been provided earlier to the Plc's board.

204. At about noon on the same day, Mr Corbin sent a further email to Mr FitzGerald extolling the transaction. He argued, with some analysis, that WEG had met the financial pre-conditions in the August Heads of Terms.

205. At some point on the same day, there was an AI2F board meeting at which Mr Corbin was reported to have "advised members that [GT] supplied an incorrect due diligence report" in relation to the transaction.

206. A UD group teleconference took place at 5:30 p.m. on 1 November ("the 1 November teleconference"). Present were Mr FitzGerald, Mr McGrane, Mr Corbin, Mr McIntosh, Mr Bainbridge and Mr Logue. Mr Logue prepared a slide presentation for the call. In the conclusion section, Mr Logue wrote:

> "The acquisition of WEG at our originally proposed terms can only be justified if the 2011 projections can be believed. At face value, these look challenging with:
>
> 1. A 40% increase in fee revenue budgeted;
>
> 2. Loss of exceptional FX gains in 2010;

> 3. Bonus not budgeted at this trading level;
>
> 4. Needs strong performance from the new offices.
>
> However A2IF have reviewed the projection and with new business's *(sic)* coming from Lilly, GSK etc. it's believed the target can be achieved. (GT doing additional analysis).
>
> In addition, long-term the projections require belief that the internationalisation strategy will be successful.
>
> Also worth considering is:
>
> 1. Potential lost income of £1.8m with Lilly by UniversalProcon if the merger does not complete.
>
> 2. Additional potential cost/revenue synergies for the merger. For example the model does not allow for a cost saving on closing the leased Cleckheaton offices of WEG or any venue sourcing income.
>
> 3. Neither does the valuation model factor in the costs of opening international offices to attain the infrastructure WEG currently have. This is estimated at €1.6m over 3 years."

207. Late in the evening of 1 November, Mr Logue emailed Mr FitzGerald, Mr McGrane, Mr Corbin, Mr Bainbridge and Mr McIntosh:

> "I reached Precison *(sic)* Corporate Finance to highlight our concerns. Understanding on their side on some of the points but not agreement on all GT's addbacks.
>
> They suggested a way forward:
>
> - they will talk to me in more detail tomorrow about our concerns and GT's analysis.
>
> - have requested a face to face meeting to see if we can find a solution. Later this week.
>
> - GK is clear he will not budge on price.
>
> - however they believe a risk-share could be a workable solution."

Mr McIntosh replied shortly after:

> "Thanks for the update Liam, does this mean GK [(Mr Keene)] is willing to put some of his monies at risk?
>
> I will look at different scenarios on how we may shape some risk share deal.

> I really hope we can gain agreement as not doing the deal really puts us in a difficult position with Lilly. If we lose Lilly UK and Lilly US we lose €2M of net revenue which equates to €1.3M of lost GP.....this is a real possibility.
>
> Will start work on some risk share scenarios tomorrow."[40]

208. The following day, 2 November, Mr Logue asked for a meeting to be arranged (at Mr Ackroyd's initial suggestion) on 5 November ("the 5 November meeting") between him and Mr Corbin and Mr Keene and Mr Ackroyd. He was later informed that Mr Ackroyd, Mr Parry and Mr Wilson would be attending on WEG's behalf and that the meeting would take place in Ashby-de-la-Zouch. On the same day, Mr Parry wrote to Mr McIntosh suggesting that WEG would not make a profit from the Lilly work (or, perhaps, part of that work), at least in the first year, at the proposed rates and that WEG was only proceeding to the contract stage of the Lilly competition because it expected to be acquired by the UD group.

209. On 3 November, Mr Logue wrote an internal email saying that the transaction was going to be re-negotiated because of GT's due diligence reports.

210. On 4 November, Mr O'Boyle sent Mr Logue some amended pages to the 28 October DD report "as discussed" at the previous week's meeting ("the 4 November DD report"). In particular, an addback had been made for losses sustained by WEG's overseas offices. The report also showed that:

    i) WEG had increased its forecast EBIT for 2011 from £943,000 to £1.315 million to reflect the EBIT it forecast to earn from Lilly work in 2011;

    ii) WEG had forecast net revenue of £720,000 from Lilly in 2011 and EBIT from Lilly of £372,000;

    iii) WEG continued to forecast net revenue from its newly established overseas offices of £1.4 million;

    iv) GT's opinion was that: "based on the growth being projected, the limited experience to date at the foreign offices, and the low level of fee income contracted to date…there is risk over the achievement of the projected fee income for [2011]";

    v) WEG had forecast an adjusted EBIT for 2011 (with the overseas offices losses added back) of £1.657 million;

    vi) GT's opinion was that, even with the overseas offices losses added back, WEG's adjusted EBIT for 2011 should be £1.379 million. GT noted twice that

[40] This email chain was only disclosed by the Defendant during the course of the trial. It had not been found when keyword searches were carried out because Mr Logue had misspelled Precision. The Claimants consented to its admission in evidence. It was disclosed after the Claimants' witnesses had given evidence. Mr Potts did not apply to recall any of the Claimants' witnesses to cross-examine them about it. I will have to bear in mind these points.

> this calculation assumed that a £222,000 addback for the overseas offices losses was allowed

211. The 5 November meeting then took place. There is a dispute, which I will have to resolve, about whether Mr Wilson was present.

212. On 8 November, Mr Corbin emailed Mr Logue and Mr McIntosh:

> "Spoke briefly with Liam L [(Logue)]. The earn out will need to be 3 years and targets will need to be about 4.4m, 4.8m and 5m to get the returns we need to justify the upfront payment. They seem reasonable to me. But don't mention to Martin or anyone at WEG yet.
>
> Might be worth dropping in to conversation with Martin that the earn out might have to be 3 years and it might be worth arranging a day when they can come to see our UP performance this week, plus what we expect as savings/synergies.
>
> Ps we will build an upside in for them."

The "day" Mr Corbin referred to became the Meeting.

213. A little later the same day, Mr Corbin emailed Mr Logue and Mr McIntosh again, saying:

> "Think you need to get Martin, Jeremy and any others to Ashby this week to go through any questions they have re [UniversalProcon] so that we can agree some targets for the earn out. This will allow us hopefully to move onwards. You'll need to be able to go through the numbers and proposed synergy expectations."

214. Ms Bates also emailed Mr Logue the same day, saying that she understood from Mr McIntosh that WEG's board was meeting the following day "to consider the proposals put [to] the management on Friday [(5 November)] with regard to the restructuring of the deal".

215. On the same day, 8 November, Mr Acaster emailed Mr McIntosh and Mr Gordon attaching the UPUS October EBIT summary. In the email, Mr Acaster said that the actual EBIT for the month was $200,571, as compared to the budgeted EBIT of $179,000.

216. On 9 November, Mr O'Boyle emailed Mr Wilson, chasing for the information he had previously sought in his 28 October email. He also noted that Mr Wilson had had a meeting with Mr Logue the previous Friday (5 November). Mr Wilson replied:

> "We have another meeting lined up with [Mr Logue] and the other members of UD this Friday. We do not feel that it is appropriate to provide further information until things are clearer following that meeting."

217. On the same day, 9 November, WEG's board met. During the trial, Mr Keene made available a copy of the board minutes. The meeting was attended by Mr Keene, the Claimants, Mr Parry, Andrew Tattersall (WEG's operations director), Sara Wicks, the WEG directors' personal assistant (and two other people in relation to particular items on the agenda). The board minutes do not record any detailed discussion about the terms of the transaction, although Project Theatre was apparently mentioned.

218. As I have said, in preparation for the Meeting, Mr McIntosh sent the first version of the slide deck to Mr Gordon, Mr Acaster, Mr Mate and Mr Bainbridge under cover of an email dated 9 November, in which Mr McIntosh said:

> "As you are aware we are at a critical point in the…acquisition.
>
> What will be on offer is the same upfront payment with one BIG difference....they will have to agree to hit combined EBIT numbers over the next three years.
>
> Graham Keene will leave with his money with all the risk left with the remaining directors to earn a further £2.7m payment over the three years.
>
> If they do not agree to this the deal is off. This is now the only way UD will agree to the acquisition.
>
> As the structure of the deal has now changed and if they agree to the joint EBIT budgets I am sure each individual is going to want to play a part in ensuring the numbers are met.
>
> We are meeting with them on Thursday to share the EBIT budget numbers.
>
> Our objective at the meeting is to present a picture which gives them confidence that we are comfortable in playing our part in hitting the numbers.
>
> I have started to work on a presentation (see attached), basically a dump of info which I think the USA may want to follow and then we probably need to pull the two different stats into one.
>
> Myself and the two Steves are working on the presentation this afternoon and tomorrow."

I have already explained that Mr Acaster's slide deck followed later that day, that Mr Gordon's slide deck followed the day after that and that the McIntosh slide deck followed two days later, on 11 November. I have also said that Mr Gordon's slide deck was accompanied by the Job Log, which he sent to Mr McIntosh without criticism or, indeed, comment. The POC schedule usefully compares US Logistics' FY2011 Budget (V2) in the US Logistics' August draft revenue budget with the sums in the Job Log.

219. The Job Log also contains the following information:

i) Forecast net revenue for US Logistics was then $7.623 million (95% of the FY2011 budget figure of $8.020 million);

ii) $2.915 million (or 36.35% of US Logistics' budgeted net revenue for FY2011) was confirmed or provisional A/B work and $393,540 was provisional C work (or work which was on the radar) in relation to US Logistics. Together this amounted to about $3.31 million of work (or 41.26% of US Logistics' budgeted net revenue for FY2011).

The Job Log did not contain any information about Get or US UCS.

220. The Meeting took place at the Blenheim House Hotel in Etwall, Derbyshire. As I have said, almost all aspects of the Meeting are in dispute, and there is little about the Meeting on which the parties agree. The parties agree that Mr Parry, Mr Saxby, Mr Winterburn and Mr Wilson, and Mr McIntosh, were present throughout. They agree that Mr Corbin, Mr Logue and Ms Bates were present for parts of the Meeting. They agree that the Presentation was made and that the contingent consideration proposal (i.e. the key features of what became the contingent consideration) were presented. They agree that Mr Saxby and Mr Winterburn (together with Mr Parry) were given the Claimants' slide deck.

221. Mr Wilson made a short note of the Meeting. I did not understand it to be disputed that his note ("the Wilson note") was made at the Meeting. The note begins by setting out the consideration for the acquisition of WEG (£16.2 million). It then says: "14.1 EBIT over 3 yrs", which is clearly a reference to the earn out target. Then there is a reference to "11.4m", which a reference to the EBIT which had to be achieved for any contingent consideration to be payable. Adjacent to the columns of writing which include the "11.4m" note, Mr Wilson wrote: "0.5m upside. £1m over 14.1m split 50/50". This is a reference to an upside under which the WEG shareholders might share in £500,000 additional consideration. Below this section of the Wilson note, Mr Wilson wrote "£1.5m => £750k 50p/£1", which is clearly a reference to the upside which was set out in the SPA in due course. Immediately below this note is a table labelled "UP Budget" comprising three columns "UP", "WE" and "Savings", with the figures for the "WE" column higher than those in the "Savings" column. At the bottom of the note, Mr Wilson wrote: "pound for pound from 11.4 => 14.1. Then 50p/£1 to £15.6m i.e. £750k upside". This too is clearly a reference to the upside which was set out in the SPA in due course.

222. Ms Bates made a note, which the Defendant contends, but the Claimants dispute, she made at the Meeting ("the Bates note"). As I have said, the Defendant has cross-referred the Bates note to the Bates slide deck. The Bates note is handwritten and runs to five A4 pages. What it actually means is also disputed. So far as I can I reproduce below part of the Bates note, with any additional commentary and references to the Defendant's cross-references to the Bates slide deck in brackets:

> "Project Theatre 12/11/10
>
> Meeting 5/11 – GT DD had painted diff picture to one started with…
>
> Proposal (has approval of Liam F) [i.e. Mr FitzGerald]

Need to keep upfront paymt the same i.e. £13.5m…

£2.7m deferred on target based earn out on combined entity – based on trading profits of UP + WEG

over 3 yrs get to £14.1m EBIT

£4.4m calendar yr 2011

£4.7m [ditto] 2012

£5m [ditto] 2013

[To the right of this table, in apparently slightly smaller handwriting, is a further three column table which mirrors the table labelled "UP Budget" in the Wilson note]

[The note continues under the left hand table]…£0.5m upside for every £1 over £14.1m split 50/50 up to £0.5m…

Martin Parry – risk on mangmt team of getting nothing is a serious factor as over 50% of their £ is deferred…

Would prefer equitable downside to upside i.e. guaranteed minm paymt of £2.2m

Must show return on capital employed

Want confirmation will still get their director bonus.

Mac's presentation

Slide 2 [the UP EBIT 1 slide]

Despite GP [net revenue] lower, increased EBIT

In 2010 lost [EMOP], Duke…Improvement Fdtn…

* consolidated numbers for US + UK – can be provided split roughly 60:40 US:UK for 2011.

Slide 3 [the UP Group Sales 2009 v 2010 slide]

Total sales dropped due to losing clients…

* Breakdown of # mtgs per month + # delegates per month

13 [the 2010/11 Savings slide]

…close Yeadon + Indie…

> Poss pushback from Lilly re Indie closure but keep key client facing people [This note appears to be in smaller handwriting and between lines in the daybook Ms Bates was using].
>
> 14 [the UP EBIT 3 slide]
>
> Ivyland headcount will increase to accommodate Indie closure…
>
> 20 Joint Budget (split by co contbn + savings) [either the Joint Budget 2 slide or the Joint Budget 3 slide]
>
> Way in excess of earn out targets"

There then follows a list of 27 slides, by name, which are not in the Claimants' slide deck but which are in the McIntosh slide deck and the Bates slide deck. The slides that I refer to in paragraph 32(iv)(d) above are referred to. The Get promotional slides are not referred to. In most cases, the Bates note only refers to the slide name together with a number. From time to time, though, the Bates note contains further information, such as, as follows:

i) In relation to the pie chart showing UPUK's 2010 clients, Ms Bates wrote: "much more diverse client base";

ii) In relation to the "other small wins" slide, Ms Bates wrote: "Warner Chilcott will be big";

iii) In relation to one of the slides showing other UK opportunities, Ms Bates wrote: "not leveraged all AI2F's client relationships. Not leveraged InforMed clients. InforMed – easy wins for UP are investigator meetings – just introduced InforMed to Archimedes – working together";

iv) In relation to the Emerging Markets opportunities slides, Ms Bates wrote: "James Thompson – focus on Pfizer emerging markets…he brings in $1.6m".

The Bates note concludes with the following two entries: "Fincls for UD group" and "Info on Get US".

223. Mr Saxby made a number of annotations on his copy of the Claimants' slide deck at the Meeting. He annotated the 2010/11 Savings slide, against the reference to office closures: "Indy & Yeadon". He annotated the green bars on the Joint Budget 2 slide: "WE". He annotated the yellow bars: "Savings".

224. Mr Winterburn made a number of annotations on his copy of the Claimants' slide deck at the Meeting. One of the annotations which featured at the trial was Mr Winterburn's annotation of the US Net Revenue Booked slide on which he wrote: "Same as 2010 Lilly". I do not think that the Defendant accepts that that was a contemporaneous annotation but I am prepared to proceed on the basis that it was. A second annotation which Mr Winterburn made, on the 2010/11 Savings slide, was: "Close Yeadon & Indianapolis". A third annotation Mr Winterburn made was to the Joint Budget 2 slide. He annotated the green bars: "Savings". He annotated the yellow bars: "WEG".

225. Shortly after the Meeting ended, Mr Saxby emailed Mr Parry, Mr Winterburn and Mr Wilson (with a request that Mr Parry forward the email to Mr Dickinson):

> "Further to our meeting today I volunteered to have a stab at summarising what was put on the table today – Jeremy is driving us after all.
>
> - the 2.7m is wholly at risk if targets are not met
>
> - targets are based on a combination of UP and WE EBIT plus savings arising from the consolidation of the two businesses
>
> - the targets were set as follows: 2011 4.4 2012 4.7m and 2013 5.0m (total 14.1)
>
> - in order for the deferred amount payment to be triggered a figure of 11.4m has to be achieved over 3 years
>
> - once the 11.4 amount is reached then payment will be made on a 1 for 1 basis up to 14.1m
>
> - on any amount over 14.1m an additional payment above the 2.7m will be made on the basis of 50p for every 1 up to a ceiling of 15.6 - this would be the equivalent to a total of 750k
>
> - the payment schedule for each year will be based on the targets for each year as above - exact details to be confirmed but one would assume that payment would be triggered once 80% of the target has been reached each year i.e. on a pro-rata basis to the 3 year target
>
> - should a target not be met in any given year then the cumulative numbers over the three year period would apply to create in effect a "roll-over scenario"
>
> Any different interpretations to these please circulate your comments."

226. That evening, Mr Parry and Mr Wilson had a teleconference with Mr Keene, Precision and Kermans to update them about the Meeting. Mr Parry reported, in an email sent on 15 November to the Claimants:

> "…The general view was that this was a positive position, particularly now that the additional £500k has increased to £750k for the remaining shareholders, for achieving agreed targets. We reconfirmed however that the remaining shareholders were still concerned that the whole of the deferred consideration was at risk for the remaining shareholders only and got no response from either Graham or Neil on this point."

He then referred to Mr Saxby having produced "a summary of our understanding of what was presented", which is likely to have been a reference to Mr Saxby's email to which I have just referred.

227. Late on 12 November, Mr McIntosh also emailed Mr Acaster: "Talked to the CEO tonight. WEG management team are all on board. Should now go through".

228. Mr Winterburn spoke with Mr Keene on 14 November. He then sent an email to Mr Parry, Mr Saxby and Mr Wilson, but not to Mr Dickinson, in which he said:

> "I have just finished my call with [Mr Keene] which was friendly but probably as we all expected did not see any change in his position, although he did recognise the points being made. I did not structure the call as a formal business discussion but purely as me catching up with him as he had contacted me to look at dates for a potential visit to Amsterdam so we agreed to catch up this morning.
>
> I did position the state of the market and pressure on pricing etc. plus that the management team see this deal as the best way forward for the business. He is very relaxed as to whether the deal goes forward or not. I cannot detect any real need or want from his point of view which makes any form of negotiation/discussion very hard as he is not desperate to sell and does seem ambivalent as to whether the deal goes through or not.
>
> I advised the meeting on Friday had gone well and there was definitely a willingness on UD's side to make the deal work and to give the management team realistic and achievable targets BUT there was still the risk of getting nothing as a worst case scenario. I highlighted that this risk was still a concern to the management team (plus my own personal situation in this which he acknowledged) but he did not give any feedback outside the fact that the numbers are in our control and based on the initial feedback from Martin & Jeremy on Friday the chances of not hitting them are probably quite low plus there is now a potential upside that was not on the table before.
>
> I did broach the property being used to protect the deferred payment for all shareholders and is that something he would be prepared to consider (I said this was my idea and that I advised the management team I would discuss this with GLK). Graham did not really see how this could be managed due to other shareholders such as Frances & the Wrighton boys have shares in the property and felt they would want their cash on the value of the property not to be put at risk.
>
> In summary I think Graham will not change his position despite the fact that the deferred payment is at risk for the rest of the management team moving forwards.

> I think it was Neil who said on Friday that Graham does not seem to be worried if the deal does not go through or not, I can only reiterate this point, and without becoming confrontational with him which I know from past experience does not work we are very much as we were in our discussions.
>
> Gary & Mark you may want to reiterate the management team's concerns regarding the deferred payment being completely at risk (plus mention my idea regarding the property) but I do not see Graham changing his position on this based on our informal friendly conversation this morning."

229. On the same day, Mr Saxby met Mr Dickinson in the US. They discussed some of what happened at the Meeting.

230. On 15 November, a paper was written for the Plc's Acquisition and Finance sub-committee. The following points were made in the paper:

    i) In August, when the sub-committee approved the transaction, it had been assumed that WEG's 2010 adjusted EBIT was £1.382 million;

    ii) GT's due diligence reports had highlighted several concerns with respect to WEG's 2010 trading and the adjustments made to its accounts, which called into question a recurring adjusted EBIT of £1.382 million;

    iii) As a result, the terms of the transaction had been re-negotiated;

    iv) The re-negotiation made provision for the contingent consideration, which reduced the risks in the transaction for the UD group, with a £750,000 upside for the WEG shareholders (other than Mr Keene);

    v) As part of the re-negotiation, meetings had taken place in November with WEG's "entire senior management team";

    vi) The earn out target was calculated by reference to an adjusted EBIT for WEG (before rent) of £1.315 million for 2011 and £1.5 million for each of 2012 and 2013, and by reference to the synergy savings (less restructuring costs) of £403,000 for 2011, £862,000 for 2012 and £1.277 million for 2013.

231. On 16 November, Mr Logue emailed Mr Taylor indicating that 30 November was not a fixed deadline for completion of the transaction, that he was content for completion to take place in the second week of December, but that he would prefer an earlier date for completion if possible. Later that day, Mr Logue emailed Mr Taylor again, informing him that the Plc's board had approved the contingent consideration terms.

232. On the same day, 16 November, Mr Gordon was forwarded an email relating to Pfizer, which he then forwarded to Mr McIntosh. The email was the subject of some cross-examination of Mr Pughe in particular. I am satisfied that the email suggested a possibility of obtaining some HCAM work again. Mr Gordon commented, when he forwarded the email to Mr McIntosh: "Interesting…a glimmer perhaps…but a glimmer nevertheless".

233. On 17 November, Mr Gordon circulated an updated Job Log ("the Job Log 2"). It largely showed the information contained in the Job Log, save that, by then:

    i) $3.307 million (or 41.24%) of US Logistics' budgeted net revenue for FY2011 was confirmed or provisional A/B work and $122,724 was provisional C work or work which was on the radar. Together this amounted to $3.34 million (or 42.77%) of US Logistics' budgeted net revenue for FY2011;

    ii) $3.713 million (or 36.64%) of UPUS' budgeted net revenue for FY2011 was confirmed or provisional A/B work. This included Get and US UCS work.

234. On 23 November, a CSMS divisional forecast for 2011 was prepared. It showed that UPUS was forecast to be significantly behind the FY2011 budget in terms of net revenue but that UPUK was forecast to be marginally ahead of budget in terms of net revenue. However, it also showed that both UPUS and UPUK were forecast to be ahead of the budgeted EBIT for that year; in the case of UPUS by about 2.5%.

235. On 26 November, a meeting took place at Kermans' offices ("the 26 November meeting"). Mr Parry and Mr Wilson were present. Mr Keene was also present but, for some or all of the time, he was in a different room. Representatives of Kermans and Precision were present. Mr Logue, Ms Bates and the Defendant's solicitors were also present.

236. As I have said, the transaction completed on 30 November when the SPA was entered into.

237. On 21 December, the Lilly Master Services Agreement, which was the culmination of the Lilly competition, was signed.

238. By January 2011, Mr Gordon was forecasting that US Logistics' net revenue for FY2011 was going to be between $6.5 million and $7.24 million (compared to the budgeted net revenue of $8.02 million).

239. In February 2011, the combined WEG-UniversalProcon business merged and became known as Universal World Events ("UWE").

240. By April 2011, Mr McIntosh was warning the Claimants that UWE's EBIT forecast had "fallen dramatically since" the February 2011 forecast. He was also emphasising the importance of making savings, freezing recruitment and carrying out business development. He said that he was focused on "hitting" the earn out target, amongst other matters.

241. By May 2011, Mr McIntosh was warning the Claimants that the earn out target was "at risk [but that] we do have time to remedy the situation".

242. On 15 May 2011, Mr Thompson, who was in charge of work from EM, emailed Mr Dickinson, who, by then, was in charge of UWE's US operation, copying in Mr McIntosh, informing them that EM had cancelled that year's regional summits. He said that "this has come completely out of the blue for us" and that he had "absolutely no inkling that [EM] would take such drastic action at this late stage". He said that there would be a "huge hit" to revenue.

243. On 30 May 2011, Mr Saxby wrote to Mr McIntosh; I understand to express his disappointment about the decision of UWE's board to close the Cleckheaton office. He also addressed his own remuneration package and said:

> "When the deal was such that the earn out figures were guaranteed it gave me the certainty that I needed. We were persuaded that the target figures were "really soft" and it would be a breeze, so they were as good as guaranteed, on that basis, and in good faith we agreed to change the structure of the deal."

244. The following day, Mr Bainbridge emailed Mr FitzGerald forecasting that the Year 1 earn out target was unlikely to be met because of UPUS' poor performance.

245. In November 2011, Mr Saxby sent a draft paper to Mr Winterburn for his comments. In it, Mr Saxby wrote that the change, from the deferred consideration proposal in the August Heads of Terms, to the contingent consideration proposal was so that the UD group could "avoid tax charges being paid out of the P&L". He continued:

> "To effect the change a presentation was made in Sept/Oct 2010 and a document provided demonstrating that UP would hit an EBIT of £2.8m in 2010/11 and that this combined with an EBIT of £1.0m from WE and cost savings of £0.5m would make a first year target of £4.3m. The target would then increase in the successive two years. These targets were described as "soft" and that achieving them would be a "breeze". The ongoing directors had reservations about the fact that the 7% discount was still being incurred. UD then came back with an offer that allowed this amount to be regained by further over achievement of these "very soft" targets. In addition the targets could be achieved on a cumulative basis so if for example there was a shortfall in year 1 this could be recuperated in year 2 and 3.
>
> On the basis of the numbers presented by UP the ongoing directors agreed to the change in the structure of the deal to accommodate the wishes of UD. As a result the deal proceeded."

246. On 31 March 2014, Mr Logue notified the Claimants that the earn out target had not been met because the relevant EBIT for 2011 to 2013 (taking into account synergy savings) was £10.756 million.

247. On 7 May 2014, Mr Saxby wrote to Mr Logue again. In a long letter, he said:

> "In the final three weeks leading up to your purchase of the Company, you asked the Sellers to renegotiate a change in the structure of the sale of the Company, specifically the Sellers were advised in order to avoid the deferred consideration payments being paid out of the United Drug plc profit and loss accounts and for certain tax reasons.

> At a meeting held on 12 November 2010 a written Powerpoint presentation was made to the Sellers by Chris Corbin, Board Director of United Drug plc and Graham McIntosh, Managing Director of UniversalProcon. At the same time a hard copy of this presentation document was provided to each of the Sellers. This document set out financial data and analysis featuring actuals, forecasts and targets for UniversalProcon, the Company together with budgets and combined savings on the merger of the two businesses.
>
> At the meeting, Chris Corbin and Graham McIntosh represented that the targets set out in the presentation document were "soft targets which should be easily beaten". It was also represented that achieving them would be "a breeze". The financial data and forecasts were presented in a manner to make this point.
>
> Chris Corbin then made a revised offer on United Drug plc's behalf which provided for a further deferred consideration payment amount of up to £750,000 to be paid to the Sellers should the financial targets set out in the presentation document be exceeded. This was done to reinforce the ease at which the numbers should be achieved. It was communicated that the targets could be achieved on a cumulative basis so if, for example, there was a shortfall in year 1 this could be recuperated in year 2 and 3 and vice versa.
>
> On the basis of the written representations at the meeting (and as set out in the presentation document), the sentiment expressed behind them, the additional earning potential, the verbal representations made by Chris Corbin and Graham McIntosh at the meeting and in order to assist United Drug plc, the Sellers agreed to the change in the structure of the deal to accommodate the wishes of United Drug plc. As a result, the Sellers signed the Sale and Purchase Agreement on 30 November 2010."

He also contended that the Claimants were "not afforded the opportunity of due diligence and when [they] asked for further breakdown of clients spends", they were told that this information was commercially sensitive and would not be available until after completion of the SPA. Mr Saxby continued that the Joint Budget 2 slide contained the following data:

	2011 (£)	2012 (£)	2013 (£)
UniversalProcon	2.7 million	2.9 million	3.1 million
WEG	1.3 million	1.5 million	1.5 million
Savings	0.9 million	1.2 million	1.5 million

248. On 26 May 2014, Mr Logue rejected these claims and set out effectively the case the Defendant continues to maintain.

249. On 7 July 2014, Mr Saxby wrote another letter to Mr Logue. In it, he said that the reason the Claimants carried out no due diligence was because Mr McIntosh had said at the Meeting that he would not provide them with "information relating to the numbers behind client breakdowns until the SPA was signed because the information was commercially sensitive". He continued:

> "Draft extracts of the Grant Thornton report were also shown to Jeremy Wilson, Finance Director of the Company, so that he could provide further information to you and your advisers. Jeremy Wilson went to Dublin to Grant Thornton's offices specifically to answer questions from Fergal Fitzmaurice. He was not afforded the opportunity to ask any questions on behalf of the Company."

Again, he set out the same data as was contained in his 7 May 2014 letter.

250. On 11 November 2016, the claim was begun.

Approach to witness evidence

251. At its heart, this case is about what happened at the Meeting; in particular, what Mr McIntosh said at the Meeting. The parties' cases depend, a little more, in the Claimants' case, or a little less, in the Defendant's case, on the testimony of their witnesses. The Meeting took place ten years ago. The claim was begun four years ago and the parties have been in dispute for longer still. They have had many years, and many opportunities, to reflect on and rationalise the contemporaneous documents and to discuss, and tell and re-tell, their stories, and they have done so. They have had the assistance of specialist lawyers who have supported them in the preparation of comprehensive witness statements and their thorough preparation for the trial; a trial at which the Claimants made a number of fraud allegations. How then should I approach the testimony of the parties' witnesses? This is a question which trial judges often have to ask themselves.

252. Perhaps the most comprehensive, and well-known, answer has been provided by Leggatt J; particularly in *Gestmin SGPS SA v. Credit Suisse (UK) Ltd.* [2013] EWHC 3560 (Comm) (as it happens, a misrepresentation and negligent advice claim) where the Judge said, at [15] – [22]:

> "An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.
>
> While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's

memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called "flashbulb" memories, that is memories of experiencing or learning of a particularly shocking or traumatic event…External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been

> "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.
>
> …In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."[41]

253. The approach which commended itself to Leggatt J was for a trial judge, in a case such as this one, to approach oral testimony with care and to base their determination about what happened at a particular event (such as the Meeting) largely on the contemporaneous documents, the undisputed facts and the probability that something was, or was not, said or done.

254. Leggatt J was not the first, or only, judge to speak of the centrality of contemporaneous documents and probabilities in factual determinations. By way of example, in *Khakshouri v. Jimenez* [2017] EWHC 3392 (QB) (a fraudulent misrepresentation case), Green J adopted the same approach to witness evidence and made the following point, at [15], about "the relevance of documentary evidence and the overall logic of a case in the context of potentially inconsistent oral evidence":

[41] The Judge returned to this subject in *Blue v. Ashley* [2017] EWHC 1928 (Comm) at [65] – [69] and it is now addressed in the Statement of Best Practice in relation to Trial Witness Statements appended to CPR Practice Direction 57AC.

> "The credibility of witness evidence should be evaluated against the contemporary documentation and overall probabilities: see e.g. per Robert Goff LJ in *Armagas Ltd. v. Mundogas SA* [1985] 1 Lloyd's Rep 1 at pages [56] – [57]:
>
> > "…I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth.""

It is perhaps notable that, as in this case, in *Armagas* allegations of fraud were made.

255. More recently, in *Simetra Global Assets Ltd. v. Ikon Finance Ltd.* [2019] 4 WLR 112, Males LJ said, at [48]:

> "…I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence."

The Judge then referred to what Robert Goff LJ had said in *Armagas* as the "classic statement".

256. None of this is to say that witness testimony should simply be ignored and the factual issues determined solely on the contemporaneous documents and probabilities. Leggatt J did not say as much, and nor did Green J or Males LJ, or Robert Goff LJ before them. Rather, all those judges had in mind, and in the case of Leggatt J gave a warning about, the fallibility of memory and suggested that, in a case such as this one (a commercial misrepresentation claim), a trial judge should test a witness's assertions against the contemporaneous documents and probabilities and, when weighing all the

evidence, should give real weight to those documents and probabilities.[42] That is the approach which I have concluded I should take in this case.

257. I should also say something more about probabilities; particularly the probability that Mr McIntosh in particular made fraudulent misrepresentations. Both Mr Pipe and Mr Potts drew to my attention what Bryan J said in *National Bank Trust v. Yurov and ors* [2020] EWHC 100 (Comm). At [50], the Judge said:

> "The burden and standard of proof: In relation to a claim raising allegations of fraud, the burden of proof is upon the claimant as in an ordinary civil claim, and the fact that fraud is alleged does not change the standard from being on the balance of probability – see *In Re B (Children)* [2009] 1 AC 11 at [13] per Lord Hoffmann. As was said by Lord Hoffman in *In Re H (Minors)* [1996] AC 563, 586E – G:
>
> > "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence…Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.
> >
> > Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."
>
> In *In Re B (Children)* the House of Lords emphatically re-iterated that there is only one civil standard emphasising that any logical or necessary connection between the seriousness of an allegation and its inherent probability is to be rejected; inherent probabilities are simply something to be taken into account as a matter of common sense in deciding where the truth lies (see Lord Hoffmann at [13] to [15]).

[42] See also *Martin v. Kogan* [2020] ECDR 3 at [88] – [89].

> Inherent probabilities: In applying the civil burden of proof on the balance of probabilities, inherent probabilities can be weighed alongside or against specific evidence from a particular case. But care must be taken in working out what in a particular case is inherently probable or improbable. It is generally correct that, absent other information, the more serious the wrongdoing, the less likely it is that it was carried out, because most people are not serious wrongdoers. The standard of proof remains the same, but more cogent evidence is required to prove fraud than to prove negligence or innocence because the evidence has to outweigh the countervailing inherent improbability…"

I have borne in mind what the Judge said.

Absent witnesses

258. Mr Parry played a key part in the transaction. In fact, as the contemporaneous documents show, he played a far more central part in the transaction than the parts played by Mr Saxby, Mr Winterburn or Mr Dickinson. As the contemporaneous documents also show, whilst Mr Wilson was heavily involved in the due diligence exercise, Mr Parry's part in the transaction was broader. From the perspective of the UD group, Mr Parry led the negotiations about the deferred consideration; including, I am satisfied, at the Meeting. This is all hardly surprising. Mr Parry was WEG's managing director. Mr Parry was not called by the Claimants to give evidence. I was not told that there was a reason why he could not be called.

259. The Claimants served a witness statement by Mr Ackroyd. He was on the trial timetable as a witness whom the Claimants intended to call. Shortly before he was due to be called, the Claimants elected not to call him. Mr Pipe said: "Having reviewed the evidence to date, we do not believe that we need to call Mr Ackroyd to give evidence".[43] Mr Ackroyd was the Claimants' lead advisor at Precision. He passed on information about WEG's lead times for work. Many of Mr Logue's conversations about the terms of the transaction, including about target-based consideration, were with Mr Ackroyd. Mr Ackroyd was present at the 8 July dinner when due diligence may have been discussed. He is likely to have been in a position to shed some light on the Claimants' approach to due diligence of UniversalProcon and whether before the SPA was entered into and, if so, when the Claimants knew about the outcome of the (GT) due diligence exercise.

260. What approach should I take to their absence from the trial?

261. In *Manzi v. King's College Hospital NHS Foundation Trust* [2018] EWCA Civ 1882, the Senior President of Tribunals said, at [28] – [30]:

> "…The claimant submits that it is a basic tenet of natural justice that it is unjust for a claimant to have to defend herself

[43] When notified of the Claimants' intention not to call Mr Ackroyd, Mr Potts did indicate that he would be inviting me to draw an adverse inference from Mr Ackroyd's absence.

> in the civil courts against calculated silence. This is particularly so in clinical negligence cases where there is an asymmetry between the knowledge of the patient and their doctors. The claimant relies on *Wisniewski v. Central Manchester Health Authority* [1998] PIQR P324. In that case Brooke LJ derived four principles from previous case law:
>
> (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.
>
> …*Wisniewski* is not authority for the proposition that there is an obligation to draw an adverse inference where the four principles are engaged. As the first principle adequately makes plain, there is a discretion i.e. "the court is entitled [emphasis added] to draw adverse inferences". An appellate court will be hesitant to interfere with the exercise of such a discretion given that it is being exercised in the knowledge of all the nuances of evidence that are in the knowledge of the judge who receives that evidence…"

262. With hindsight at least, I would have benefited from hearing Mr Ackroyd in evidence. However, at the time the Claimants elected not to call Mr Ackroyd, Mr Pughe had not been cross-examined. It seems to me that the Claimants had intended to rely heavily on Mr Pughe's evidence; in particular, in relation to those pleaded misrepresentations which related to the achievability of forecasts. I cannot think that the Claimants expected that Mr Pughe's cross-examination would take the turn it did (about which I have more to say). Against that background, it seems to me that the reason given for the Claimants' decision not to call Mr Ackroyd was entirely credible and it would not be appropriate to draw an adverse inference from his absence.

263. Mr Parry's absence is more problematic. As I have said, I do not know why he was not called to give evidence; although it is true that I did not ask why. In those

circumstances, I do not think that it would be fair to draw any adverse inference from Mr Parry's absence.

264. I turn then to consider the witnesses who gave oral evidence. Because of the approach I have indicated I will take to witness evidence and because of the limited way in which the Claimants now pursue the claim, I will only summarise key parts of the witness evidence, even though I have borne it all in mind, as I have indicated.[44] [45]

265. I begin with the Claimants' witnesses.

Andrew Winterburn

266. Mr Winterburn has spent over 30 years working in the events management industry.

267. He (and Mr Saxby and Mr Dickinson) provided an overview of the healthcare events management industry in general. He said that it takes a long time for healthcare events management companies to obtain new clients and then to obtain significant business, that relationships between events management companies and their healthcare clients tend to be long term and that clients book events many months in advance. He said that the loss of a major client can present a significant risk because, generally, it takes a long time to replace lost business. He added that, in 2010, the larger healthcare companies were interested in dealing with events management companies which had a global presence (such as WEG, which had offices in the UK, the USA, Europe and Asia) rather than, say, a focus on the UK or the USA.

268. He (and Mr Saxby and Mr Wilson) said that it was well known that Mr Keene's aim was to sell WEG; although there was no fixed timescale for the sale.

269. He explained that he was not actively involved in the transaction, because he was based in Holland at the time and was heavily involved in the day to day management of WEG's business. He said that the transaction was, on WEG's side, run principally by Mr Keene, Mr Parry and Mr Wilson. He said, in cross-examination, that because Mr Keene, Mr Parry and Mr Wilson were not actively engaged in the delivery of events, information supplied by them to GT, in particular about lead times, may have been wrong.

270. He said, in his witness statement, that, when the June Heads of Terms were circulated, he concluded that he was not "remotely keen" on the proposal for contingent consideration.

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[44] Ms Fantoni, the Claimants' solicitor, filed a witness statement which the parties agreed, at the outset of the trial, I could read. The witness statement only contains multiple hearsay; namely, allegations which Prad Mistry told Ms Fantoni he had heard from Mr Corbin, which, in turn, Mr Corbin must have heard from a third party, relating to Mr McIntosh's employment following his departure from UniversalProcon. The allegations, even if true, have very little, if any, relevance to this claim. Mr Mistry was not called to give evidence, even though a witness summary in relation to his evidence had been filed and served. The allegations were not put to Mr McIntosh, and Mr Corbin was not asked to comment on them. I therefore attach no weight to Ms Fantoni's witness statement.

[45] A number of the witnesses were permitted to file responsive witness statements after the first round of witness statements were exchanged. Mr Acaster and Mr McIntosh were also permitted to file a third witness statement in response to Mr Gordon's deposition. Save where I indicate otherwise, when I refer to those witnesses' witness statements, I am referring to their first witness statements.

271. The picture he painted is that, in advance of the Meeting, he understood that a proposal for contingent consideration was going to be made because the IFRS3 issue (which, in cross-examination, he described, at one point, as a tax issue) had to be addressed and that the earn out target was to be soft (so that the payment of contingent consideration was "guaranteed" (or, as explained by other Claimants almost guaranteed)). He said, in cross-examination, that he was not aware that the due diligence exercise had given rise to any concerns within the UD group or was a basis for the UD group wishing to change the terms of the transaction. Indeed, he went further. He was adamant in cross-examination that the due diligence exercise was not discussed at all at the Meeting. He said that the Claimants were opposed to even soft targets, when they were suggested in October 2010, because Mr Keene was not bearing the risk of those targets not being met; Mr Keene having made clear that he would not agree to the sale of his shares in return for contingent consideration.

272. He said that the purpose of the Meeting was for the Defendant to set out the terms of the earn out target to the WEG shareholders; an earn out target which, he said in cross-examination, would guarantee the payment of the contingent consideration. He said that he recalled it being said that the earn out target was soft, a breeze and easily achievable.

273. He said, in his witness statement, that, on being shown the UP GP slide, he noticed that UniversalProcon's net revenue for FY2010 had increased from its net revenue in FY2009 but that it was only some time after the SPA had been entered into that he deduced that the slide showed the net revenue for the wrong years. He said that, had the slide been accurate, he would have been concerned and would have questioned the achievability of the earn out target.

274. However, in his witness statement, he also accepted that Mr McIntosh had made clear at the Meeting that net revenue had declined in FY2010 from its FY2009 level and, in cross-examination, he accepted that the WEG shareholders present were told that UniversalProcon had lost clients in 2010 and that sales had declined but that its EBIT had increased. Later in his cross-examination, he accepted that, by the end of the Meeting, he appreciated that UniversalProcon's net revenue (or, to use the phrase he used in cross-examination, its gross profit) had declined in 2010 from its 2009 level.

275. He said that Mr McIntosh told the WEG shareholders present that UniversalProcon's financial year started in October.

276. He said that he does not recall the UP EBIT 2 slide being discussed.

277. His witness statement suggests that he paid little, if any, attention to the net revenue figures shown on the Financials for UP Group and the Margin Analysis for UP Group slides.

278. He said that he does not recall the "context" of the UP Group Net Revenue Forecast slide or whether the difference between "budget" and "forecast" was explained to the WEG shareholders present at the Meeting. He did not suggest that it was said that what was shown on this slide was "accurate".

279. Of his reference to "Same as 2010 Lilly", Mr Winterburn said, in his witness statement, that Mr McIntosh said that UniversalProcon had not adjusted "their 2010 Lilly figures in their 2011 budget".

280. He said that Mr McIntosh said that UPUS' Indianapolis office would be closing.

281. He said that the first time the earn out target was discussed at the Meeting was when the Joint Budget 1 slide was presented, at which point Mr McIntosh said the earn out target was soft, a breeze and could (or, perhaps, would) be easily beaten.

282. He said that he recalled one of the other WEG shareholders present, he thought Mr Wilson, asking for a client breakdown but Mr McIntosh refusing, because the information was commercially sensitive. He said that he recalled that Mr McIntosh was "very clear that under no circumstances would they show us details of their clients and their value on the basis that we were a direct competitor and if the deal did not go through, we would then be privy to their confidential commercial information". He said that Mr McIntosh was "emphatic" about this.

283. Consistently with his annotation of the Joint Budget 2 slide, he said that he recalled Mr Saxby asking for clarification about the composition of each of the three bars on that slide and that Mr McIntosh said that green bars related to savings and the yellow bars related to WEG's EBIT contribution.

284. He accepted in cross-examination that he could not recall the upside being increased at the Meeting from £500,000 to £750,000.

285. He also accepted in cross-examination that he did not check the Claimants' slide deck after the Meeting and before the SPA was entered into, because, he said, he felt comfortable and confident about the numbers.

286. He was cross-examined about his 14 November email, summarising his discussion that day with Mr Keene, in which he said:

> "…I advised the meeting on Friday had gone well and there was definitely a willingness on UD's side to make the deal work and to give the management team realistic and achievable targets BUT there was still the risk of getting nothing as a worst case scenario. I highlighted that this risk was still a concern to the management team…
>
> Gary & Mark you may want to reiterate the management team's concerns regarding the deferred payment being completely at risk…"

He appeared to accept that that was an accurate (but not verbatim) record of what he had told Mr Keene. He said that he did not tell Mr Keene that the WEG shareholders present at the Meeting had been told that the earn out target was soft. He said that he did not tell Mr Keene the whole truth about what was said at the Meeting.

287. Commenting in his witness statement on events after the SPA was entered into, he said:

> "In my experience McIntosh had a unilateral approach to the way he presented UP/WEG monthly accounts back to the Ashfield division and ultimately UD at a group level. He would manage the numbers to show a more positive forecast. One specific example I recall is that one year the end of year accounts for the Dutch office showed a significant profit in excess of £450K but this was moved to the UK business without any consultation with Penny Callaghan or myself who were the Directors responsible for this area of the business…[to bolster the UK end of year position]…"

In cross-examination, he accepted that the Dutch office closed during 2011; i.e. within the first year after the transaction had completed. He was taken to UWE's management accounts for FY2011 which showed that €37,795, but only that amount, was posted as the Dutch office's EBIT in that financial year. He said that, after the Dutch office closed in 2011, income was still being received in relation to the Netherlands and that he believed that it was in 2012 when the Dutch office made a profit of £450,000, but he conceded that, in 2012, the related costs, for example of employees working remotely in the UK, was posted to the UK office in the accounts. He also accepted that the Dutch office was not "a cash cow".

Mark Saxby

288. Mr Saxby's career was in advertising and marketing until he joined WEG's predecessor company (World Events Management Ltd.) in 2005. Since his departure from UWE in October 2013, he has continued to be involved in the events management industry.

289. Having described how client relationships were developed in the healthcare events management industry, Mr Saxby said in his witness statement that:

> "…WEG, as a pharma events business providing logistical services – meaning it was not subject to the subjectivity of the marketing communications nor creative events world – for meetings scheduled to take place months and months in advance with long term client relationships in place, usually had in excess of around 75% of the business being confirmed, business under discussion (BUD) (repeat business) and expected other business at the start of the financial year. This means that business was confirmed or well underway in terms of being planned or we were very certain would happen, given that we had dealt with those events for a number of years."

290. He said that, on the WEG side, the transaction was run principally by Mr Keene and Mr Parry. He acknowledged that Mr Keene and Mr Parry kept the other WEG shareholders up to date (as Mr Wilson would have done on significant issues, he accepted in cross-examination).

291. He said that he was "even more concerned" about the proposal, in the June Heads of Terms, for contingent consideration.

292. He said, in cross-examination, that, although he appreciated in October 2010 (when Mr Keene sent his 11 October email) that the UD group's auditors would not accept soft (or weak) targets, he assumed that they might be persuaded by the group to agree to soft targets.

293. In his witness statement, he accepted that, at the start of the Meeting, as a reason for the terms of the transaction having to be changed, Mr Corbin identified "feedback from the due diligence" but, Mr Saxby continued, Mr Corbin did not "elaborate on what issues had arisen".

294. He accepted too, in cross-examination, that it is likely he knew that the 26 October meeting had been arranged to discuss GT's concerns arising out of the due diligence exercise. He also accepted that, on 5 November, the UD group delivered an ultimatum to WEG that the terms of the transaction had to change because of GT's adverse due diligence conclusions, and that three options were proposed as solutions (including that part of the consideration for the UD group's acquisition of WEG would only be payable if an earn out target was met). He then said that, on reflection, he was not aware that the outcome of the due diligence exercise had been adverse and that he would have remembered if it had been. He added that he could not say whether he was told, at the time, about the three options but he continued to think that there were issues arising from the due diligence exercise. He then said that there was a "great likelihood" that he was told about the three options but that he could not say with certainty that he was told about them. He later said that he could not recall whether he was told about the three options but that it is likely that he was told about them. However, towards the end of his cross-examination he said that he went to the Meeting to be persuaded to agree to a contingent consideration proposal.

295. Also on the second day of his cross-examination, he said that the reason given at the Meeting for the change in the terms of the transaction was the IFRS3 issue and he was "possibly aware", before the Meeting, that the landscape had changed because of GT's due diligence reports. He also said that he did not recall due diligence issues being discussed at the beginning of the Meeting.

296. In a lengthy re-examination, he said that the contingent consideration proposal was presented at the Meeting because of the IFRS3 issue. He also resiled from his claim, in cross-examination, that he knew that the UD group's auditors would not accept soft targets. He said that he could not remember being told this. He also said that he was not aware of any adverse due diligence conclusions before the Meeting. It appears to have been his case, in re-examination, that prior to the Meeting he did not know that the UD group was proposing altered transaction terms.

297. He was also asked about figures which appear in the Wilson note labelled "UP Budget" which also appear in the Bates note. Mr Saxby said, in cross-examination, that those figures were not presented at the Meeting but he then accepted that his recollection might be wrong, adding that there was no logic to these numbers.

298. Like Mr Winterburn, Mr Saxby said that "at the time" he did not appreciate that there was the error in the UP GP slide (which therefore did not reveal a "decline in sales" in 2010), although he accepted, as Mr Winterburn did, that, during the Presentation, Mr McIntosh said that sales had decreased. He also said, in his witness statement, in relation to the Financials for UP Group and Margin Analysis for UP Group slides that

they showed a decline in net revenue from 2009 to 2010 and that he recalls that "this was of concern".

299. He said that Mr McIntosh said that "the revenue for Lilly in 2011 was expected to be the same level as achieved for 2010". He continued that the WEG shareholders "did not know if this was a prudent judgment…or a risk-laden one".

300. He said that Mr McIntosh said at the Meeting that the Indianapolis office would be closed.

301. He said that, amongst other information he asked for at the Meeting, he asked for UniversalProcon's client numbers and a breakdown of UniversalProcon's clients but that Mr McIntosh "categorically stated that we absolutely could not have this information". He added that Mr McIntosh was "clear at the Meeting that he would not negotiate on the point and no information on their clients would be provided to us".

302. He too said in his witness statement that the first time the earn out target was set out was when the Joint Budget 1 slide was presented and that Mr McIntosh described them as soft and easy to achieve. He could not recall though if Mr McIntosh described them as "a breeze".

303. In cross-examination, he said that he did not think that the earn out target was discussed at the beginning of the Meeting, because it would not make sense to propose contingent consideration without an explanation.

304. It will be recalled that, on his copy of the Claimants' slide deck, Mr Saxby annotated the green bars as referring to WEG and the yellow bars as referring to savings. It will also be recalled that the Claimants' pleaded case is the opposite; namely, that Mr McIntosh said that the green bars related to savings and the yellow bars related to WEG's EBIT contribution. Mr Saxby concurred with the Claimants' pleaded case but did not explain in his witness statement how come he annotated the Joint Budget 2 slide in the way he did. Indeed, he did not acknowledge at all that, on the Claimants' case, he mis-annotated the slide. Rather, he said:

> "I recall McIntosh explaining that this slide included a breakdown of the proposed EBIT budget for UP and WEG, also taking into account savings and it was for the calendar year, in line with the earn-out periods rather than financial year. For example, between 1 January and 31 December 2011, WEG (which I refer to as WE in my notes) was budgeted to achieve EBIT of £900,000 [(i.e. the yellow bar)], UP was budgeted to achieve EBIT of £2.7m and there would be combined costs savings of £1.3m [(i.e. the green bar)]…"

305. In cross-examination, he was asked to explain why he later annotated another copy of the Joint Budget 2 slide, showing the yellow bars as referring to the WEG EBIT contribution and the green bars as referring to savings. He said effectively that he could not rationalise his original annotations which conclusion was reinforced after he studied Mr Winterburn's annotations on his (Mr Winterburn's) copy of the same slide.

306. Mr Saxby said that he recalls that he had the Claimants' slide deck with him when he met Mr Dickinson in the US when he reported on the Meeting but he cannot recall what he discussed with Mr Dickinson. He said in his witness statement that he "would have told" Mr Dickinson that it had been said that the earn out target was soft and easy to achieve. In cross-examination, he accepted that he could not recall showing the Claimants' slide deck to Mr Dickinson.

307. It appears that Mr Saxby did not review the Claimants' Slide Deck after the Meeting and before the SPA was entered into.

Jeremy Wilson

308. Mr Wilson qualified as a chartered accountant in 1997. He joined World Events Management Ltd. in 2004, eventually becoming its finance director and, in due course, he became WEG's finance director.

309. In cross-examination, he said that he knew about lead times in the healthcare events management industry from discussions with his WEG colleagues. He said that he could not recall whether he told GT that lead times were shortening, but, later in his cross-examination, he said that he would not have told GT that lead times were shortening. He suggested that Mr Parry may have told GT that lead times were shortening.

310. He said that he was not attracted to the contingent consideration proposal which was in the June Heads of Terms, because the WEG shareholders were not fully in control of the whole business (presumably he had in mind UniversalProcon) and because the consideration, if paid, would be by an allotment of shares.

311. He said that he was not really involved in the transaction on the WEG side before the due diligence exercise began. He acknowledged that he was heavily involved in the due diligence exercise.

312. He said that he recalls the UD group refusing a request on WEG's behalf before August 2010 for due diligence of UniversalProcon. He said that that request (which, he said in cross-examination, he was "absolutely certain" was made) was "flatly refused". When pressed by Mr Potts on who requested due diligence, he could not say, but he suggested that it might have been Mr Parry. He added that Mr Parry had told him that a request for due diligence had been made. In the later part of his cross-examination, he said that WEG made a request for information about UniversalProcon's business (i.e. due diligence) a number of times at different times in the transaction.

313. It must be noted that, in his second witness statement, Mr Wilson said that, at some point in the transaction, "they may have offered for us to request information" but, when he was taken to that evidence in cross-examination, he said:

> "…I am saying that [Mr Logue] may have but I wasn't in the room at the time if he did because I don't remember it and if he had have made that offer at that point that would have been a very dramatic change because previously it had always been closed down."

He then speculated that Mr Logue had offered Mr Parry the opportunity to request further information.

314. The impression Mr Wilson gives in his witness statement (particularly when read with his second witness statement) is that, prior to the Meeting, he understood that the UD group was proposing contingent consideration, based on soft or weak targets, to deal with the IFRS3 issue. In cross-examination, he said that he was not aware at the time of any due diligence concerns which GT had about WEG.

315. He too said, in his witness statement, that he did not appreciate "at the time" the error in the UP GP slide and that he would have been concerned had he known that UniversalProcon's performance had "reduced" from 2009 to 2010, but he effectively acknowledged in a later part of his witness statement that he appreciated, from the Cumulative Financials UP Group slide, that UniversalProcon's net revenue had declined in FY2010 from its FY2009 level and, in cross-examination, he accepted that, before the end of the Meeting, he appreciated that its net revenue had declined in FY2010 from its FY2009 level.

316. In cross-examination, he confirmed that Mr Saxby's 4 July 2014 letter was written on his behalf but he denied the assertion in the letter that "draft extracts of the [GT] report were also shown to [him] so that he could provide further information to [the UD group] and [its] advisers". Mr Wilson then said that, if he was shown extracts from a GT report, he was not shown any of GT's opinions about WEG's "numbers". He then suggested that, if he was shown parts of one or more of GT's reports, that was so he could "sense check their numbers".

317. He was cross-examined about Mr O'Boyle's 28 October email to him, in which Mr O'Boyle said:

> "…We are keen to get comfortable somehow regards the 2011 projected income level…[H]owever, as you have already discussed, it is difficult to do so from the review of the pipeline. Can you provide any other information that will help give us comfort on the 2011 projected fee income figure?"

Mr Wilson said that that GT's desire to "get comfortable somehow" in relation to WEG's forecasted income for 2011 did not mean that GT was uncomfortable with the information provided up to that date.

318. He did not suggest that Mr McIntosh said anything about net revenue when he (Mr McIntosh) presented the UP EBIT 2 slide.

319. Mr Wilson too said that Mr McIntosh said at the Meeting that the Indianapolis office would be closing, that the earn out target was first mentioned when the Joint Budget 1 slide was presented and that the green bars relate to savings and the yellow bars relate to WEG's contribution to the overall figures shown on the Joint Budget 2 slide.

320. He said, in his witness statement, that he "distinctly remembers" that, when the Joint Budget slides were being presented, it was really Mr Corbin who was "more and more animated" about the achievability of the earn out target; although Mr Wilson did add that Mr McIntosh said that the earn out target was easily achievable.

321. In his witness statement, Mr Wilson referred to a teleconference the WEG shareholders held on 17 November 2010 ("the 17 November teleconference"). He said:

> "During the call, Graham asked each of us in turn what we thought about the deal and specifically, whether we were in favour of going ahead with it. Martin, Gary, Andrew and Mark all gave similar answers which were along the lines of being concerned that a lot of our consideration was at risk but that they had been convinced by Corbin and McIntosh that the earn-out targets were easily achievable and that they were prepared to support the deal. I was last in line and I said that there was too much risk on the Ongoing Shareholders and that we could lose half of our consideration. I wanted Graham to share in the risk so that my risk would be reduced. I was put in my place. Graham said something along the lines of "So Jeremy, am I going to go back to United Drug and say you're the only one which doesn't support the deal?" The others didn't say anything. Graham's comment did not persuade me to do the deal. I accepted it because I wanted to be part of the future of WEG and UP and having considered what we had been told at the Meeting, I thought it would work and that we could achieve the targets."

He said earlier in his witness statement that, as a result of the Meeting and the Presentation in particular, he had already concluded that "there was enough margin in the target [(i.e. there was a sufficient difference between the sum of £16.6 million (the combination of the three bars in the Joint Budget 2 slide) and the earn out target of £14.1 million)] that we would achieve the targets [(i.e. the earn out target)] no matter what".

322. He was asked, in cross-examination about what he had said in his witness statement about the 17 November teleconference. The following exchange then took place:

> "Mr Potts: You refer to the fact of going round in turn and it being said that the concern was that a lot of consideration was at risk but they had been convinced by Mr Corbin and Mr McIntosh that they were easily achievable and were prepared to support the deal…But what you said here is that you said that there was too much risk on the ongoing shareholders that they could lose half of the consideration. Yes?
>
> A. That's what I say there, but when I was referring to risk I was thinking about risk from a weighted perspective. So, I was combining together kind of the likelihood that we wouldn't get it, combined with the amount of value that was at risk, if that slim likelihood of not getting it had turned out to be the case.
>
> Q. Just to be clear, what you were saying here was that you were saying that you did not think that you should proceed because of the risk. That is what you expressed. Correct?

A. I was expressing my concern around the level of combined value and small percentage likelihood of risk.

Q. I am not sure that is an answer to my question, Mr Wilson. I am so sorry. I will put it again. You were saying that because of the risk you did not want to proceed. That is right, is it not?

A. No. I was expressing concern.

Q. You said it is too much risk --- too much risk to proceed. That is what you are saying, is it not?

A. No. I've just explained what I meant by too much risk…

Judge: Mr Wilson, all Mr Potts is asking you is, when you say too much risk, too much risk for what?

A. Too much risk to be completely comfortable.

Judge: About?

A. About proceeding with the deal and so I was hoping that by expressing that view that Mr Keene might find a way to help us mitigate against that total level of risk in a combination of the slim likelihood and value.

Mr Potts: What you were saying is as currently structured you were saying that there was too much risk to proceed as that was as structured. That is right, is it not?

A. As I've just said, I was saying that there was too much combined risk for me to be comfortable, so I was hoping that Mr Keene might find a way to help mitigate that risk.

Judge: Just so I am clear, at this stage you were still uncomfortable about the transaction?

A. I was still --- I was trying to position to Mr Keene that there was still, um, significant total risk because, although we had been given soft targets that we were very comfortable we would achieve, there was always the slim chance that something, some kind of force majeure type of event might have meant that we wouldn't get our consideration…I was just going to add that since the first consideration element was so significant, I hoped that Mr Keene might find a way to help mitigate that.

Judge: The note I have got of your evidence just now is that there was too much risk for you to be comfortable to proceed with the deal. If there is too much risk for you to be comfortable, does it not follow that you were uncomfortable about something?

> A. Yes, I was uncomfortable about the potential force majeure type event that might mean that we might not get our consideration…I think it's because I was just trying to --- I was just trying to persuade Mr Keene to help mitigate that risk. So, I was positioning that I felt uncomfortable with the deal…
>
> Mr Potts: The reference, the matter that you say that you were uncomfortable about, was the reference, you say, to force majeure. That is right, is it not? That is the only thing you have mentioned to my Lord.
>
> A. Yes, that's right, yes.
>
> Q. But you were aware, Mr Wilson, that there had already --- the offer which had been made contained an offer to deal with force majeure, act of god, did it not?
>
> A. It helped, but it didn't go all the way --- it didn't cover all of it….
>
> Q. So, you would get that there would be a guaranteed amount of 50 per cent of the money in the events of a force majeure. Correct?
>
> A. Correct…That's only 50 per cent. It still left a considerable amount of consideration at risk.
>
> Q. Mr Wilson, I suggest to you that what you have said in your statement is clear and what you said to my Lord is also the case, that at the time you expressed a view that there was too much risk to proceed with the transaction. That is the true position, is it not?
>
> A. No. As I said, I was positioning to Mr Keene that a significant proportion of our consideration was at risk, albeit it's a minimal risk, but still nevertheless a risk.
>
> Q. You do not just say a minimal risk. You [did not] just say: well, I said that there was a minimal risk on the ongoing shareholders that we could lose half our consideration. It does not say that. It says that you say there was too much risk, not minimal.
>
> A. That's because any level of risk was too much to be completely comfortable and that's what I was trying to convey to Mr Keene."

I have to say that the impression I was left with at the time was that Mr Wilson was prevaricating in his answers on this subject and was trying to justify his claim that he had been persuaded that the earn out target was soft in the face of his own evidence

that, on 17 November, he "said that there was too much risk on the Ongoing Shareholders and that [they] could lose half of [their] consideration".

323. He said, in cross-examination, that the Wilson notes were all the notes he took of the Meeting, that he was not given a copy of the Claimants' slide deck and that he did not look at his colleagues' copies of that deck.

324. There were a number of instances in his cross-examination when Mr Wilson said that events had not occurred and, when asked to explain how he knew that, he said that that was because he could not remember them occurring and that he would have remembered if they had occurred.

325. He was cross-examined about a part of his witness statement in which he tabulated and commented on emails which he said showed that US Logistics had lost, or was at risk of losing, customers. This part of his witness statement was almost word for word the same as a similar section in Mr Saxby's witness statement and was very similar indeed to a similar section in Mr Winterburn's witness statement. When asked to explain how come this was so, he said that this was purely coincidental. Such a suggestion was wholly unrealistic. In re-examination, he said that his solicitors prepared the wording in the table based on the information provided by him. This made more sense.

Gary Dickinson

326. Before he became chief executive officer of WEI in December 2006, Mr Dickinson had worked in human resources; particularly in the pharmaceutical sector.

327. Because he was based in the US and was very focused on WEI's business, and because, as he fairly acknowledges in his witness statement, the other WEG shareholders were closer to the transaction than he was, and so, by his own admission, to a degree at least he depended on their views about aspects of the transaction, Mr Dickinson had little to say about it. He could not recall what the purpose of the Meeting was.

328. He explained that he met Mr Saxby in the US on 14 November 2010. In his witness statement, he said:

> "Mark and I did meet on 14 November in Princeton NJ along with my wife. He explained what had happened at the Meeting, in that a Powerpoint presentation had been given and earn out targets had been set which he and the other shareholders who had attended…had been assured by what they had been told by McIntosh and Corbin would very likely be hit. I accepted and relied on what Mark told me in deciding to agree to accept the deal. I do not think that Mark showed me a copy of the Powerpoint presentation document. I remember that he was frustrated that the deferred consideration was not guaranteed but I trusted Mark and was reassured. From what he said McIntosh and Corbin had said in the Meeting that the targets were easily achievable."

In cross-examination, he explained that he trusted his fellow WEG shareholders and that they had experience. He said that Mr Saxby had had assurances from Mr Corbin and Mr McIntosh which satisfied him (i.e. Mr Dickinson). Mr Potts suggested to Mr Dickinson that he may have misremembered whether he had been told that the WEG shareholders present at the Meeting had been told that the earn out target was easy to achieve. The following exchange took place:

> "Q. Well, I suggest to you, Mr Dickinson, that you are mistaken about that and obviously this is a long time ago and there is a danger of hindsight. I suggest to you that you are mistaken about that and there was nothing said to you, said at the meeting, about these targets being easy to achieve. You have misremembered on that point.
>
> A. It might have been, yes. It might have been mis-remembered but as I say, there was a time between that and the actual assigning the SPA we could have pulled out beyond that.
>
> Q. So, I think you are accepting --- firstly, you are accepting that you may have misremembered?
>
> A. Yes, I might have misremembered. It's a long time ago."

Later, the following exchange took place between Mr Potts and Mr Dickinson in the context of Mr Winterburn's 14 November email:

> "Q. I understand that you understand what your case is meant to be and what hinges on it, Mr Dickinson, but I am not asking about that. I am asking you that this email represents your understanding at the time, which is that you appreciated that this was a real target in the context of due diligence issues. Correct?
>
> A. I guess so, yes.
>
> Q. And you accepted at the time that what had been presented is what is said here, which was that there was a willingness to give you realistic and achievable targets. That is right, is it not? You can see that in the second line of the third paragraph.
>
> A. Yes.
>
> Q. And that represented your understanding at the time?
>
> A. Yes."

329. Mr Pipe asked Mr Dickinson, in re-examination, to recount his 14 November meeting with Mr Saxby. He said:

> "A. Just to set the scene, my Lord, we were in a hotel in downtown Princeton. My wife and I were living in Princeton downtown at the time, and we met with Mark because he was

> coming over to Princeton to help me present to an industry meeting about what was going on in the pharmaceutical meeting industry at the time. And it was very convivial, we actually went out for dinner, the three of us, and I was asking Mark: well, how had it gone, how did the meeting go down, what happened? Mark just basically gave me the top line in terms of what had happened, and that whilst he was still not a hundred per cent happy with the terms and was still a little bit --- I think we were all a little bit aggrieved that Mr Keene was walking away with all this money and we had to wait for ours, he convinced me, and again the words at this stage I can't remember but he convinced me that he had been assured by UDG that these numbers --- they had done it before and these numbers, we could achieve these numbers over the next three years, and that it was fine, and that he had turned – and he was going to sign the deal…I also would add that it wasn't just Mark; he was kind of speaking on behalf of the other three, so Mr Winterburn, Mr Wilson and Mr Parry.
>
> Mr Pipe: And in your witness statement you have talked about being told that there were soft targets, and I think you indicated today you were not sure precisely you were told about that. When do you think it is likely that you were told about that?
>
> A. I think it's likely that I was told about it at that meeting. I'm feeling that that was the first time that there was an opportunity to say that, but, you know, I'm on oath to say the truth, and I honestly can't remember. I can't recall. We've been talking about this for 10 years."

Mr Dickinson did conclude his re-examination by saying that his "recollection of what [he] was told of the targets at the time was that the people who had been at [the] Meeting were assured that they were easily achievable."

330. Mr Dickinson was asked about his 26 July email in cross-examination. In the email, he had said: "[Mark] also agrees that it could be difficulty to put in a performance piece to catch up the 300k" (which represented the difference between the £3 million deferred consideration in the June Heads of Terms and the £2.7 million deferred consideration in the August Heads of Terms). He explained that his reference to a "performance piece" was a reference to contingent consideration.

331. He explained that Mr Keene was a difficult person to negotiate with because he (Mr Keene) was unwilling to move. He described Mr Keene as being "very forceful".

Graham Keene

332. The picture Mr Keene paints is of a focus, before 2010, on growing WEG's business, with the question of a sale being a subsidiary consideration. He said that he was not in a rush to sell "from a financial perspective".

333. He said that, following the receipt of the June Heads of Terms, the WEG shareholders were "adamant" that contingent consideration "was not appropriate".

334. He dealt with the 8 July dinner. He said, in his witness statement, that he could not recall the "precise detail" of what was discussed but that he was reminded, by reading Mr Ackroyd's 9 July email, that he said to Mr Corbin and Mr Logue that the WEG shareholders could not agree to contingent consideration before having carried out due diligence of UniversalProcon but that Mr Corbin "was quite clear that, as WEG and UniversalProcon were direct competitors, they would not entertain opening up their books to us". As a result, he said that he told those present that the WEG shareholders "would not want to agree to deferred consideration based on targets of the combined business". By the time of his cross-examination, Mr Keene was able to say that he was "100% definite" that, at the dinner, he had requested that due diligence on UniversalProcon be carried out.

335. He said that he regarded himself as the principal in the transaction, on WEG's side, but that he involved Mr Parry and Mr Wilson early on in the transaction. He also said that Mr Ackroyd and Mr Taylor of Precision reported to him.

336. He said that he was not aware of any adverse conclusions from the due diligence exercise.

337. He said that he would not have proceeded with the transaction if the other WEG shareholders were not happy with it.

Adam Gordon

338. Adam Gordon's employment by UPUS was terminated in March 2011. He is subject to post-termination confidentiality obligations. The UD group was not prepared to release him from those obligations, even to a limited extent to allow him to give evidence voluntarily. At a pre-trial review, following a suggestion which I made, the parties agreed a way in which Mr Gordon could give evidence at the trial. The Claimants obtained a subpoena from the US District Court in the District of Massachusetts, unopposed, to compel Mr Gordon to being deposed by the Claimants before trial. The deposition was ordered to be, and was, in accordance with the procedures which apply in this jurisdiction. So, for example, Mr Gordon affirmed in accordance with those procedures. That deposition took place, in the presence of Mr Woods on behalf of the Defendant, and it was transcribed. The transcription was provided to the Defendant before the trial and I directed that it would stand as Mr Gordon's evidence in chief. The subpoena also compelled Mr Gordon to attend the trial to be cross-examined, as he was, by video link.[46]

339. Mr Gordon made the following points in his deposition.

340. He was in almost daily contact with Mr McIntosh, who took a keen interest in UPUS and who regularly visited UPUS' operation. At the beginning of 2010, the focus of the UPUS business was not on business development (i.e. the obtaining of new clients

[46] As I have already noted, I also permitted Mr Acaster and Mr McIntosh to file witness statements before the trial which responded to Mr Gordon's deposition.

and new business), because UPUS had recently been restructured as a result of which a number of key individuals lost their employment. Mr McIntosh was extremely focused on business development.

341. By 2010, large healthcare companies tended to select events management companies as suppliers by a tendering process (such as that used in the Lilly competition), which generally took at least six months to complete. To be invited to tender, an events management company needed a relationship with the healthcare company which invited the tender. How long after a successful tender work was obtained, and what work was obtained initially, depended on the extent of the existing relationship. The smaller companies, such as Forest, tended to give work, initially on a trial basis, based on relationships which had been developed.

342. Lead times for events depended on the size of an event. Congresses might be planned up to two years beforehand. Extremely large meetings might be planned up to a year beforehand. However lead times could be "shortened to a matter of weeks" depending on the nature of an event. Lead times could "vary enormously, but there were some principles in terms of certain types of meetings and certain lengths of planning".

343. Had US Logistics lost Lilly as a client, a significant number of employees would have had to be made redundant. The lost work might have been replaced the following year if US Logistics was "really lucky", but it might have taken longer if it had no similar new business in the pipeline.

344. He and Mr Acaster initially drafted UPUS' FY2011 budget, based, in part at least, on the views of UPUS' client account managers, and that draft then went through "a back and forth process" with Mr McIntosh. His (Mr Gordon's) draft would be his "best case" and the budget had to show net revenue growth "at double digit levels year over year", because the Plc is a plc and its shareholders expected the business to grow. To budget for the period after the first quarter of a year was an "informed" "subjective process".

345. UPUS' performance in 2009 and 2010 was good and its business grew, but there were some performance failures because of the restructuring of the business. In August 2010, he thought that growing UPUS in FY2011 would be "extremely challenging" and he thought that a FY2011 net revenue budget of over $8 million for US Logistics was not realistically achievable; although he may not have said that in terms in the Gordon August budget analysis or accompanying 10 August email. There was always a risk to every budget.

346. Those in a business who have to deliver budgeted growth try to set a revenue budget "at the lowest possible level" and he was regarded by others in UniversalProcon as being "a conservative forecaster" who "underpitched" and as someone who "would always beat [his] numbers". He disagreed with that assessment.

347. Commenting on the Gordon August budget analysis, in August 2010:

    i) He thought that the Lilly net revenue draft budget was aggressive, because part of Lilly's rationale in running the Lilly competition was to drive down prices and because, at that stage, it was not known whether US Logistics would get an increased volume of work if it was successful in the competition – although

Lilly had indicated "overall meetings volume" (and that more work would be forthcoming) which US Logistics used for some of its assumptions when it provided prices to Lilly as part of the tender process;

ii) He thought that the Roche net revenue draft budget had some "reasonable historical substance" which justified its level;

iii) The draft net revenue budget for Millennium was based on "the best known information at the time";

iv) He could not say that the draft budget was not achievable. It was not clear whether he was referring to the one which budgeted UniversalProcon's net revenue at $8.02 million or the earlier iteration which budgeted $150,000 net revenue less (He said later in his deposition that, by the Gordon August budget analysis and accompanying 10 August email, he was saying that the FY2011 net revenue draft budget was "tough" and "difficult…, if not impossible, to achieve").

348. It was highly unlikely that WEG could have taken on alone all the work which was in fact won in the Lilly competition, if the transaction had fallen through, because WEG did not have a significant US presence. It was also unlikely that Lilly would have awarded its European work to WEG alone. Had WEG not been acquired by the Defendant, both companies might have "lost out" in the Lilly competition.

349. He believed that he produced the Job Log and made the forecasts in it.

350. The Job Log showed about $537,000 net revenue from Lilly work for FY2011 which was confirmed with a purchase order or in respect of which a purchase order was expected. It also forecast $2.859 million net revenue from Lilly work in FY2011. It was a realistic or possible forecast at least but, if asked, he would probably have been "pushing for" a lower number of between $2 million and $2.5 million.

351. The Job Log showed about $229,000 net revenue from EM work for FY2011 which was confirmed with a purchase order or in respect of which a purchase order was expected. It forecast $985,000 net revenue from EM work in FY2011. This was a perfectly possible forecast. Based on Mr Thompson's assessment, that forecast was "eminently achievable".

352. Mr Thompson, on whose assessment EM forecasts were at least partially based, was "always very bullish" about winning EM work and was "pretty successful" in doing so in FY2010.

353. The forecast in the Job Log for net revenue from Roche work in FY2011 was $2.26 million. That was achievable. In fact, that level of net revenue was likely.

354. The forecast in the Job Log for net revenue from Shire work in FY2011 was $225,000. He could not say whether that forecast was likely to be achieved. At the time, he thought that it would be difficult to achieve.

355. He could not recall why he forecast $415,000 net revenue from Millennium work in FY2011, but he thought he had a basis for doing so.

356. The forecast in the Job Log for net revenue from Forest work in FY2011 of $150,000 was realistically achievable but not likely.

357. However, the forecasted net revenue for US Logistics for FY2011 as shown on the Job Log (which was the sum of the forecasts for the work set out above together with new business which was forecast of $390,000) (a forecast he believed he had made, as I have noted) was not realistically achievable.[47]

358. The acquisition of WEG by the UD group was very important to Mr McIntosh because UniversalProcon would thereby achieve a European presence.

359. In cross-examination, Mr Gordon gave the following evidence.

360. When asked by Mr Potts to estimate the lead time for events, he said that "it depends" and that, as a matter of logic, the larger the event, the longer the lead time was likely to be.

361. The preparation of a budget depends on business judgment and experience. From the second quarter of a financial year onwards, that preparation requires informed subjectivity. The further into the future a forecast looks, the more subjective the forecast is and the greater the range of reasonable outcomes. Different experienced forecasters in a business can have different views about the achievability of a budget.

362. When, in June 2010, in commenting on a paper Mr McIntosh had drafted, he said: "Growth of net margin of 7% should be eminently achievable but known RISKS in US relayed (sic) to Lilly, Pfizer and Shire business. Are there others?", he intended to say that, in ordinary circumstances, without risks, 7% growth was eminently achievable by UPUS, but there were known risks. He accepted, however, that his comment might have been interpreted as a "thumbs up" to 7% growth year on year.

363. It was expected that UPUS would grow but it was not a requirement that it showed double digit growth.

364. He was not sure what he meant when he said in his deposition that, in August 2010, he could not say that the draft budget was unachievable. He may have meant that, in practice, it was not acceptable for him to say that the draft budget was not achievable.

365. The Job Log represented his honestly held belief of US Logistics "best case" outcome for FY2011, but US Logistics' FY2011 net revenue could have been higher or lower than he was forecasting at the time.

366. Mr McIntosh was entitled to be more positive about the benefits of business development in the US than he was, but, in his opinion, Mr McIntosh was overly optimistic. Mr McIntosh had a business development background but not in healthcare events management.

367. In re-examination, Mr Gordon was very critical of the assumption that US Logistics would obtain more work from Lilly in FY2011, following the Lilly competition, than it had in FY2010.

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[47] He was not asked to, and did not, explain how this conclusion was consistent with his earlier evidence.

368. He also said that a "best case" forecast was a forecast which he believed he could achieve.

David Taylor

369. As I have said, Mr Taylor worked at Precision with Mr Ackroyd. He assisted Mr Ackroyd in the transaction.

370. In cross-examination, Mr Taylor explained that he recalled little of the transaction and his evidence was largely based on reading the contemporaneous documents to which he had access. He added that he could not recall specific conversations. He did say, however, that he remembered specific things about the transaction.

371. He said that, during the transaction, his main contacts were Mr Keene and Mr Wilson, who, from his observation and from what he understood, disseminated information to the other WEG shareholders. He said that he had little contact with Mr Parry.

372. He said, in cross-examination, that, by 11 October 2010, the suggestion of soft targets was "off the table", because the Defendant's auditors would not support them.

373. He also said that he would have informed Mr Wilson about the release, to the UD group, of the 13 October DD report.

374. He was cross-examined about Mr Logue's 18 October email to him, in which Mr Logue referred to a discussion he had had with Mr Taylor and in which Mr Logue asked Mr Taylor to ask Mr Wilson to provide further financial information as soon as possible. Mr Taylor said that he could not recall the discussion but that, had he had a discussion as Mr Logue's email suggests he had had, he would have reported it to Mr Wilson and would have explained that the requests for further financial information had followed the receipt by the UD group of the 13 October DD report.

375. Mr Taylor appeared to accept, in cross-examination, that, by 18 October 2010, he knew that GT had expressed concerns in the due diligence exercise, because, in his 19 October email to Mr Logue in reply to Mr Logue's 18 October email, he referred to WEG's adjusted EBIT forecast for 2010 as being £1.78 million and, as he accepted in cross-examination, he made this point because GT had suggested that the £1.5 million EBIT target, which was a precondition in the August Heads of Terms, had not, or might not, be met. He also accepted that WEG had provided him with the £1.78 million forecast for the purpose of meeting GT's concerns. He resiled from this somewhat in re-examination.

376. Later in his cross-examination, he accepted that, by late October 2010, he knew that GT had raised "adverse issues" during the due diligence exercise.

377. In his witness statement, he said that he could not recall an offer from Mr Logue for due diligence to be performed on UniversalProcon. He believed that, had such an offer been made to him, he would have brought it to the attention of the WEG shareholders, Mr Ackroyd and Mr O'Connell. He said that he could not recall doing so and he did not have an email in which he did so.

Daniel O'Connell

378. In his witness statement, Mr O'Connell said that he could recall that the WEG shareholders did not want to accept any contingent consideration proposal. He also said that he recalled that, following the Meeting, "the general tone of the shareholder clients was that the deferred consideration targets would be easy to achieve." He said that he could not recall Mr Logue offering, through him (Mr O'Connell) for due diligence of UniversalProcon to be carried out. He did not recall having "a line of direct communication with Liam Logue" and he pointed out that he "would have been professionally obligated to direct all communications with United Drug through their lawyers".

379. I turn now to the Defendants' witnesses.

Liam Logue

380. Mr Logue acknowledged that he was keen to do the transaction and that WEG was an attractive target for the UD group. However, he described himself as the "head" of the deal, "sometimes [having] to keep in check" Mr Corbin, the "heart" of the deal who had "real vision" about how the CSMS division could be developed. He acknowledged, in cross-examination, that Mr Corbin and Mr McIntosh were enthusiastic about, and emphasised the importance of, the acquisition by the UD group of WEG, but, from what he observed, they were not desperate for the acquisition to take place.

381. He said, in his second witness statement, that he remembered the 8 July dinner. He said that he could not recall Mr Corbin refusing to allow due diligence of UniversalProcon. In cross-examination, he said that, at the dinner, it was made clear that, if an element of the transaction was contingent consideration (at that time, of £1 million), the WEG shareholders would have to do an analysis of UniversalProcon's numbers (i.e. due diligence of UniversalProcon would be required). He continued that due diligence of UniversalProcon was not then refused. He said later that he could not recall any refusal.

382. He said, in his witness statement, that the proposal for soft targets related to the IFRS3 issue – to reflect what he regarded as a "heavy-handed" approach to accounting set out in that accounting standard – but that "matters then completely changed" when he received the 13 October DD report which gave him "significant cause for concern" which "raised questions for [him] on [WEG's] underlying sustainable profit". In cross-examination, he said that the "alarm" had been raised by the 13 October DD report.

383. He said that, on 18 October, 2010 he spoke with Mr Taylor and informed him of his concerns and said that further information to understand WEG's financial position was required.

384. Mr Logue was cross-examined about the 1 November teleconference. He said that, despite Mr Corbin's email correspondence of the same day, at the teleconference it was decided that the transaction could not proceed on the terms in the August Heads of Terms, even though GT was still undertaking some work. He accepted that Mr Corbin thought that GT had missed "the bigger picture".

385. He said that, on 1 November 2010, he spoke with Mr Ackroyd and informed him that, because of GT's opinions, by then in the 13 October DD report and 28 October DD report, the transaction could not proceed without a change in its terms. He said that Mr Ackroyd proposed an all parties meeting, which took place on 5 November, attended, on the WEG side, by Mr Parry, Mr Wilson and Mr Ackroyd. In cross-examination, he said that he was sure that Mr Wilson was present at the 5 November meeting. He said, in his witness statement, that, at the 5 November meeting, it was made clear that the UD group was "not comfortable" with what had emerged from the due diligence exercise and that was why further financial information had been requested, so that the UD group would not agree to proceed with the transaction on the terms in the August Heads of Terms. In cross-examination, he said that, at the start of the 5 November meeting, Mr Corbin said that GT had raised concerns, that he (Mr Corbin) did not agree with all of them but that Mr FitzGerald had instructed that GT's concerns were so significant that the transaction could not proceed on the basis of the August Heads of Terms. Mr Logue accepted that GT's conclusions were not laid out at the 5 November meeting, because Mr Corbin thought there was no point in doing so, and he agreed that the attendees on WEG's behalf were not shown any of the due diligence reports. He said that Mr Corbin outlined the options which were then agreeable to the UD group; which were (1) to delay completion of the transaction until 2011 so that the WEG shareholders could establish that WEG's underlying profit was higher than GT thought, (2) to revise (downwards presumably) the consideration payable for the acquisition (which would have impacted Mr Keene to the same degree as the other WEG shareholders) or (3) to revise the structure of the deal (i.e. so that part of the consideration would be contingent on meeting an earn out target). Mr Logue said that Mr Parry said that Mr Keene would never agree to the sale of his shares in return for contingent consideration, so that the risk of any earn out target being met would fall on the Claimants and Mr Parry. Mr Logue said that he responded that that seemed an unreasonable position for Mr Keene to take, but that that was not a matter for the UD group. He said that, at the end of the 5 November meeting, it was agreed to proceed in principle with the third option and that he (Mr Logue) would work out a contingent consideration proposal and present it to Precision.

386. He said that the contingent consideration proposal was devised so that the transaction would deliver a return on investment acceptable to the UD group but also so that the earn out target was at a rate which was "readily achievable rather than aspirational".

387. He said that he informed Mr Corbin about the terms of the proposal on 8 November 2010.

388. He said that he attended the introductory part of the Meeting but that he and Mr Corbin had to leave to attend another meeting, so that he was not present for any part of the Presentation. He thought that Mr Corbin returned to the Meeting after an hour or so. He said that he could not recall any "substantive discussion" before he and Mr Corbin left the Meeting.

389. He dealt in his witness statement with the 26 November meeting. He said, in his witness statement, that:

> "During the meeting, the Management Shareholders [(i.e. Mr Parry and Mr Wilson)] raised the point that they felt like they were relying on projections of [UniversalProcon] and had not

> performed due diligence on the business in detail. I was very clear that they could request more information if they wished and we could wait until they were comfortable with the deal. At the meeting I recall that the vendors were seeking some form of warranty to underwrite the [UniversalProcon] projections. I made it clear warranties around future projections are not customary in acquisitions. We were not receiving any such warrant from WEG's vendors and in turn would not provide such a warranty for [UniversalProcon]. I made clear that if the vendors were uncomfortable with [UniversalProcon's] projections, they were entitled to do more diligence."

In cross-examination, he said that this was the only occasion when he had offered, in terms, due diligence of UniversalProcon. He said that he did not discuss due diligence of UniversalProcon with Mr Taylor or Mr O'Connell before the 26 November meeting.

390. He said that he would have been content to delay completion of the transaction until after 30 November.

391. Conscious though I am of what I have said about how I will approach witness evidence, I have to record that, in cross-examination, Mr Logue struck me as a witness who was doing his best to be even-handed and to present an accurate picture of what happened in 2010. I was particularly left with the strong impression that he genuinely believed that due diligence of UniversalProcon was not refused.

Penny Callaghan

392. Ms Callaghan has worked in the healthcare events management industry since 1995. By about 2010, she was a business director, apparently in UPUK.[48] One of the accounts she managed was the Lilly account in the UK. She became a UWE board director in 2012, when she became responsible for its EU offices. She now manages its UK operations.[49]

393. In her witness statement, she said that, in 2010, there was less emphasis, in the healthcare events management industry, on business development. Pharmaceutical and other healthcare companies tended to approach events management companies offering them work if they had a good reputation as, she suggested, UniversalProcon had. She said:

> "The timescales for winning new work depends on a number of factors, including the nature of the client and the type of work we are pitching for. A big account, capable of needing services equating to half a million pound in revenue, can take many months to win, but depending on the nature of the process, the competition, the work involved and how you gel with the

[48] Her statement is not clear about which company in the UD group formally employed her.
[49] I have already commented on the complexity of the UD group's corporate structure. Matters are complicated further because of a name change. UWE is now called Ashfield Meetings & Events Ltd.

> client, the chemistry and personality in pitches, it can be much shorter. I remember the process for the Lilly pitch in 2010 took almost a year, whereas a pitch we did to Boehringer Ingelheim only took a few months."

In cross-examination, she said that, sometimes, before an events management company gets an opportunity to tender for new work, the company needs to have built a relationship with the healthcare company in question for up to three years. Occasionally, however, invitations to tender or large pieces of work come to an events management company which has no prior relationship with the client.

394. She also suggested that the lead time between winning a new client and managing the first event for that new client is often short. She said that, some new clients have asked her to begin work immediately. More generally, she said, the lead time for small events is generally about 6 weeks, but for large conferences and congresses, a lead time of nine to twelve months is the generality. In cross-examination, she said that average lead time for events in 2010 was three to six months.

395. She acknowledged that relationships with clients can be very long term but she said the length of the relationship can depend on the performance of the events management company and "internal politics within the client". By internal politics, she apparently meant, her cross-examination suggested, that procurement departments in a healthcare company might launch a re-tender exercise for appointment as that company's events management supplier. She said that how long it takes to plug a "revenue gap", when a client is lost, depends on the extent of the gap and what is already in the pipeline of future work.

Neville Acaster

396. In his witness statement, Mr Acaster said that, apparently in the summer of 2010, he thought that US Logistics could achieve its budgeted net revenue but that there were notable risks. He added that no-one thought that the budget (he probably meant the budgeted net revenue) was not achievable. In his second witness statement, he said that "we felt that the budget was realistic and could be achieved, but there were (as there always are) risks involved. This is normal in business".

397. In his witness statement, he said that the slides he prepared for the Presentation were "consistent with the budgets set for the business".

398. He dealt with the Job Log in his third witness statement. He said that he could not recall who prepared it. He thought that either he or Mr Gordon could have prepared it, perhaps with input from the other. He said that the Job Log was prepared by reference to the "best available information at the time" and represented a "realistic estimation" at the time, based on "current available information", of US Logistics' net revenue for FY2011. He said that the Job Log showed that net revenue was just less than 5% below budgeted net revenue for US Logistics and, bearing in mind that only one month in FY2011 had elapsed, "it was realistically possible that a deficit like this could be made up". He added that, in November 2010, he considered "the budget figure remained achievable".

399. In cross-examination, he was asked about his 25 October email to Mr McIntosh in which he advised that UPUS was on budget for EBIT but was down $500,000 on budgeted net revenue, so that "heads" had been taken out of the budget and provision had been made to delay the appointment of "heads". He explained that, because of the reduced net revenue forecast, to bring the forecast EBIT into line with the budgeted EBIT, a decision was taken not to employ extra staff whose employment had been budgeted. This, he said, was a "major" part of the task to ensure that UPUS was on budget for EBIT. He said that, whilst his reference to taking out "heads" might have been a reference to making existing staff redundant, it could have been a reference to the decision not to employ staff whose employment had been budgeted.

Clare Bates

400. Ms Bates qualified as a solicitor in 2000.

401. In her witness statement, she said that she attended all internal management meetings relating to the transaction.

402. She said that the strategy at the time was to grow UniversalProcon quickly "organically and inorganically" to "become the number one player" in the healthcare events management industry. She did not understand, however, that the transaction was critical to the future of "the business".

403. She said that, usually, WEG was represented at meetings by Mr Parry and Mr Wilson who "seemed very capable individuals [who] were certainly not a pushover when negotiating".

404. She said that the results of the due diligence exercise caused the Plc's board to require a change to the terms of the transaction from those in the August Heads of Terms. She described the issues raised in the due diligence exercise as so "serious" that there was discussion about a price reduction.

405. She gave the following evidence in her witness statement about the Meeting.

406. She recalled Mr Corbin asking her, before the Meeting, whether information could be shared with the WEG shareholders. She said she responded that it could be, because a non-disclosure agreement was already in place and the WEG shareholders needed to see the information before making a decision. She added that Mr Logue "was also mindful that [the Defendant] needed to give [the WEG shareholders] information because they were having to accept all the risk of the [contingent] consideration…" Whilst, in cross-examination, she accepted that a non-disclosure agreement did not guarantee that a competitor would not misuse information given under it, she said that there were "mechanisms" to protect the UD group's confidential information. She accepted that she would have been concerned if she had been asked to provide to WEG detailed contract information, because it would contain information which is confidential to UniversalProcon's client.

407. The Bates note, which she made, was a detailed contemporaneous note of the Meeting. That was her practice, as a solicitor. She added that the Bates note "run[s] through what was said at the Meeting and what was shown on the slides to all

attendees". She said that she did not amend the Bates note after the Meeting. She left the meeting, at about 2:30 p.m. or 2:45 p.m., before it had "quite finished".

408. In cross-examination, she rejected the suggestion that the first page of the Bates note, which dealt with matters before the Presentation, was a record of information reported to her before the Meeting, which she wrote up before the Meeting. She also rejected the suggestion that she amended the Bates note after the Meeting.

409. She said, in her witness statement, and maintained in cross-examination, that the Claimants' slide deck does not contain all the slides which were presented at the Meeting. She said that the Bates note establishes that many more slides were presented.

410. She said that it was made clear that the terms of the transaction had to change because of the outcome of the due diligence exercise and that the contingent consideration proposal was the result.

411. She said, in her witness statement, that Mr McIntosh informed the WEG shareholders present at the Meeting that UniversalProcon had lost EMOP, Duke and the Improvement Foundation as clients.[50] She said that she recalled this part of the Presentation and that the WEG shareholders present at the Meeting "were very confident that they could win this business back". She said:

> "They made comments along the lines of: "Yes we know you lost this customer and this is why we think it happened", "We will send in our people to turn it around because we have them as a client too" and "We will get Pfizer back on side"."

In cross-examination, she said that the WEG shareholders' response sticks in her mind.

412. She said that she recalls, from looking at the Bates note, the discussion about the possibility of the Indianapolis office closing. She said that "the business was trying to explore alternative ways with Lilly to service the contract whilst still have a presence in Indianapolis". In cross-examination, she said that it was explained at the Meeting that the closure of the Indianapolis was a serious consideration but that, before a final decision could be made, US Logistics had to engage with Lilly because the Indianapolis office only serviced Lilly work.

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[50] To be clear, in this part of her witness statement Ms Bates was referring to the Bates note, which does not refer to EMOP in terms. Instead, it refers to a Pfizer account. The account referred to is clearly the EMOP account. Mr McIntosh suggested in his second witness statement that the Pfizer account referred to in the Bates note was the HCAM account. I am clear that that is incorrect and that the reference is to EMOP. In cross-examination, Mr McIntosh maintained that he did refer to the loss of HCAM work. Mr McIntosh was taken, in cross-examination, to his June draft paper for the Plc's board which referred to EMOP work being lost. He thought that he had meant to refer to HCAM. He was wrong about that. Not even informal notice of the loss of HCAM work had been given by then. Mr McIntosh also seemed to think that EMOP and EM were the same. They were not. I bear in mind that Mr McIntosh's recollection on these points of detail is faulty. In response to a question from me, he acknowledged that he could not recall what he said about Pfizer at the Meeting other than that £750,000 revenue had been lost.

413. She said, in her witness statement, that her practice was, and continues to be, that asterisked notes represent action points. She said that, during the Meeting, the WEG shareholders present were made aware that they could carry out due diligence of UniversalProcon and that they could request any information they needed to decide whether to accept the contingent consideration proposal. She said that the asterisked notes were just such requests for information. (In cross-examination, she said that the WEG shareholders present were invited to tell the UD group representatives at the Meeting what information they required). She said, in her witness statement, that she recalled discussing with Mr Logue how surprising it was that the WEG shareholders did not seek further information about UniversalProcon.

414. She described Mr Corbin as a "big character, lots of fun and [as] always [having] a presence in the office". She described Mr McIntosh as "a strong character", known for working really hard. She thought that he would be "enthusiastic and positive when talking about the achievability of the targets…but he was not misleading".

415. By the time she made her witness statement, she was no longer employed in the UD group and she remains a solicitor.

416. She remembered attending a further meeting, which is likely to have been the 26 November meeting. She said that Mr Parry and Mr Wilson were present, together with representatives from Precision and Kermans. She said that Mr Keene was also at Kermans' office where the meeting took place, but in a different room. Her impression was that Mr Keene "was tired of the negotiations and just wanted to get his money and get out". She felt that "this pressured [the Claimants and Mr Parry] somewhat".

Graham McIntosh

417. Mr McIntosh became UniversalProcon's group managing director in June 2010, having spent the earlier part of 2010 working with the former managing director in a handover period. In his witness statement, Mr McIntosh said that UPUS was performing well at the time but that UPUK was not, being behind budget. He said though that, having put in a lot of work, he found that UPUK's position was "a lot brighter" by the middle of 2010. He said that his focus was on business development. He said that, in 2010, UniversalProcon was on a "far more secure footing", having been completely restructured.

418. His evidence about how work was won, lead times for work and the consequences of losing a client largely concurred with what Ms Callaghan had said.

419. He said that, in the Lilly competition, UniversalProcon had agreed smaller margins on the basis that it would get a higher volume of work. The point he was effectively making, as is apparent from his third witness statement, was that, because of the joint tender by WEG and UniversalProcon, Lilly appointed them a supplier in relation to its European work, where, before, UniversalProcon did not have a presence. The expectation was that the additional work would come from Lilly's European businesses. Mr McIntosh said that he was more optimistic than Mr Gordon of winning European work from Lilly. It is not clear when he claims to have been more optimistic than Mr Gordon but he was likely to have been in August 2010, when the appropriate net revenue budget for Lilly was still being debated.

420. Mr McIntosh said, in cross-examination, that, by 1 November 2010, there was a risk that US Logistics would not retain any Lilly work; although that was not a significant risk and he did not think that that risk would materialise. He said that, whatever happened with the transaction, he expected US Logistics would retain Lilly's US work.

421. He gave the following evidence.

422. He was not heavily involved in the negotiation of the transaction or its terms. That was left to Mr Logue and Mr Corbin. At an early stage, he discussed the transaction with Mr Corbin. He and Mr Corbin agreed that WEG was "a great fit" and that the combined WEG-UniversalProcon business would benefit from "significant synergies". The transaction was not "business critical" to UniversalProcon. The attraction of the transaction was that immediate access would then be available, through WEG's overseas offices, to markets outside the UK and the US. In cross-examination, he said that the acquisition of WEG by the UD group was important if it took place on the right terms. He accepted, later in his cross-examination, that, if the acquisition did not take place, there was a risk that Mr Thompson would leave and take with him all the EM work, and so put at risk about $1 million net revenue which could not be easily made up from other business. He also accepted that the most important transaction for UniversalProcon in 2010 was the acquisition of WEG.[51]

423. He considered, and continues to consider, UniversalProcon's FY2011 budget to be reasonable. He said:

> "…It was my business that I was responsible for – my credibility as a Managing Director was on the line. I wanted it to grow, to hit its targets, to pay its staff bonuses and be a good place to work. My own bonus and performance review was also based on meeting the budget. There is no advantage to me whatsoever in setting impossible budgets."

424. He was cross-examined about the Gordon August budget analysis. He said, for example:

> "Millennium was a new client and I seem to remember going to several dinners, and I forget the gentleman's name, but he was responsible within Millennium, which is part of Takeda, of giving out all the events throughout that year. And Gavin Houston --- sorry, my apologies, Adam, and I can't remember the lady's name in UniversalProcon, they had a fantastic relationship with that gentleman and I'd been to dinner with that gentleman. So I knew that gentleman was there. Part of my thinking would be that Millennium is going to do better than what we believe it's going to do."

He accepted that Mr Gordon was in a better position than he was to comment on the UPUS business.

[51] On the third day of his cross-examination, he resiled from that claim.

425. He said that he honestly believed everything in the Presentation and what he said at the Meeting. He said that the original slide deck was prepared by him, Mr Bainbridge and Mr Mate, as were the slides which were actually used in the Presentation. He said that the Presentation was of the McIntosh slide deck.

426. He acknowledged that, following the receipt of the 13 October DD report, he and Mr Corbin were still very keen on the transaction but, he said, the view of the Plc's board, nevertheless, was that the terms of the transaction had to change. He did not have any input in fixing the terms of the contingent consideration proposal. He thought the earn out target was achievable, but not easy. The earn out target "represented a significant discount on the total of combined forecasts plus expected synergies".

427. He said that he did not say that the earn out target was soft, a breeze or easy to achieve. He believes that he would have said that it was "achievable" and "fair". He believes that he would have said that he was excited about the acquisition of WEG by the UD group but that he would not have guaranteed anything.

428. In cross-examination, he apparently said that he did not believe that the earn out target was easy to achieve and he may have said that it would have been dishonest, and that there was no basis for him, to say that it was soft, a breeze or easy to achieve. However, he may actually have been referring to the £4.9 million, £5.6 million and £6.1 million sums shown on the Joint Budget 2 slide which each comprised a WEG EBIT contribution, a UniversalProcon EBIT contribution and savings. The earn out target was a proportion of those sums. I remain unclear about to precisely what Mr McIntosh was referring because counsel did not always clearly distinguish between the earn out target itself and the larger "joint budget" which comprised the WEG and UniversalProcon EBIT contributions and a savings element and because Mr McIntosh did not give his oral evidence clearly.

429. Later in his cross-examination, the following exchange took place between Mr Pipe and Mr McIntosh:

> "Q. I think it is fair to say that Mr Corbin was of the view that the targets which had been set would easily be exceeded. Correct?
>
> A. Yes."

As I have said, there was a lack of precision in the use of the word "targets" by counsel. That was significant in the context of this exchange because, just before, Mr Pipe had been referring to events at the end of October and 1 November 2010, so a number of days before Mr Logue had devised the contingent consideration proposal. As I have also said, Mr McIntosh's responses in cross-examination were not always clear. I was not sure precisely what Mr McIntosh meant by his answer and I asked him to clarify what he meant. The following exchange took place between me and him:

> "Q. …What are the targets there that you are referring to?
>
> A. So, I think my understanding was that it was in relation to the targets within the Grant Thornton document. Because I

> think in previous emails Chris [Corbin] is saying that Grant Thornton aren't looking at the bigger picture, which is correct, and I think his email drafts out why he mentioned add backs, et cetera, why you should be looking at that figure more than the initial report of Grant Thornton.
>
> Q: What targets were referred to in the Grant Thornton reports?
>
> A. I'm guessing the --- I'm thinking of the difference between the Grant Thornton numbers, then with the add backs back in, which would WEG achieve these three year numbers as their part. It would be useful, my Lord, if I could see the next page of the transcript to see what moved on, if that's possible.
>
> Q: That is not a problem. Page 81 [of the transcript]. You can see there the reference to page 2336 [of the trial bundle]…:
>
> > "Question: Can we have a look at page 2336, the second page of the email. Mr Corbin says, about a third of the way down:
> >
> > > "If the deal falls apart at this late stage I have some real concerns about the viability of our arrangement with Lilly. If WEG decided to go alone, they have the ability to deliver all of Lilly's needs in the US, BUT we do not have the ability to deliver in Europe. So we run the risk of losing ALL of the Lilly business, with net revenues of about £6m and EBIT of circa £1.4m.".
> >
> > Remember your email of 1 November.
> >
> > Answer: Yes.
> >
> > Question: it is fair to say that the expectation within the business was that if Lilly was lost, EBIT of £1.4 million would be lost. Correct?"
>
> And you said: "It was a risk, yes." Does that help you explain to me what you were referring to?
>
> A. It doesn't. If Mr Pipe asked the question, in relation to what did Mr Pipe think?..."

430. Mr McIntosh said that, at the Meeting (which he accepted was "partly to enthuse" the Claimants), he explained clearly to the WEG shareholders present that sales had declined in 2010.

431. He said that he and his team were under extreme time pressure in putting the Presentation together. He acknowledged that there was an error in the UP GP slide and that he missed it. He did not accept Mr Pipe's suggestion that he had been careless. Rather, he re-emphasised the time pressure he was under. He also accepted

that there was an error in the UP Group Net Revenue Forecast slide which he did not pick up at the time. He accepted that, in that respect, he was careless.

432. He said that he could not remember whether, when presenting the UP EBIT 2 slide, he said that the forecast £2.77 million EBIT for FY2011 would be achieved in part by increasing net revenue.

433. He accepted that the reference, in the Financials for UP Group slide, to the gross profit (net revenue) forecast was to the net revenue budget for UniversalProcon for FY2011.

434. He said that, in introducing the Business Booked slides, he explained that "business booked" was confirmed business for which there was a purchase order or in respect of which a purchase order was awaited.

435. He accepted that he removed the word "Logistics", which had appeared in the Acaster US Booked Business slide but which did not appear in the US Net Revenue Booked slide (the McIntosh US Booked Business slide); although he suggested immediately afterwards that he could not remember doing so. He said that he could not recall why he removed the word. He said that he did not intend that a false impression would be given or to mislead but he accepted that, by removing the word, a false impression was given and that there was no reasonable ground for putting that slide forward as showing UPUS' booked business.

436. He accepted that the US Net Revenue Booked slide included work on the radar and that it was misleading to present work which was only on the radar as booked business. He said that he did not realise that the slide included work which was only on the radar and that it was careless of him not to check whether or not it did.

437. He said that he could not recall whether or not he said that the net revenue budgeted for Lilly work in FY2011 was "the same as in" FY2010.

438. He said that he "categorically" did not say that the Indianapolis office would definitely close. He explained that whether or not it did depended on Lilly's view.

439. He said that he did not refuse to provide client information to the WEG shareholders.

Christopher Corbin

440. Mr Corbin explained in his witness statement why he wanted WEG to be acquired; because (i) it had a European presence, (ii) it had a different client base, (iii) the management team appeared to be strong and (iv) he perceived the potential for significant "synergies". He said that he was convinced the combined WEG-UniversalProcon business would be successful. However, he said, the transaction was not "business critical".

441. In cross-examination, he said that he thought that the net profits which the combined business would achieve would be greater than the profits that WEG and UniversalProcon separately could achieve, because of synergies.

442. He said, in his witness statement, that, once it was decided, in November 2010, that the terms of the transaction had to change, he pressed the UD group to offer an upside

to the WEG shareholders (Mr Keene excepted) to motivate them; though he thought that the earn out target was "reasonable and achievable".

443. He dealt in detail, in his witness statement, with the UD group's budgeting process which began in March or April for the year beginning the following October. He explained in detail how contributions to the budgeting process were made at different levels of the business and how draft budgets were tested.

444. He explained that a reason for acquiring other companies was because that speeded up the growth in the UD group, which investors expected to see. He said that the group "virtually always hit its numbers" and, in his second witness statement, he said that the CSMS division never failed to achieve its budget.

445. In cross-examination, he explained that, when preparing a budget, if work from an existing client was not even on the radar, provision should nevertheless be made for work from that client. He said that, by the time he had "built a budget", he might not have a single contract for the year in question.

446. He continued that, based on the information provided by WEG, he thought that the pre-conditions in the August Heads of Terms would be met but that there was scepticism from others, including Mr FitzGerald, about that.

447. Of the Meeting, he said in his witness statement:

> "Mac [(Mr McIntosh)] put a presentation together for the meeting with members of his team. I do not remember being involved in the drafting of the presentation. The presentation gave reassurance that [UniversalProcon] was in good health and set out our budgets and forecasts for the coming years. These were the same budgets and forecasts that we used for the entire business…and which we used whether the acquisition completed or not – they were not just for this deal. We presented that the earn-outs were very achievable, as this is what we thought at the time. I believed the business would be a success."

448. He said, in his second witness statement, that, at the Meeting, he would not have described the earn out target as soft, a breeze or easy to achieve.

449. It was clear to me that, whilst Mr Corbin was an engaging witness in cross-examination, he does not recall any details about the transaction. He admitted that he recalled "general themes" but not matters of detail. He could not recall who Mr Ackroyd was. He could not recall that it was GT which carried out the due diligence exercise. He could not recall whether due diligence was discussed during the 8 July dinner. He could not remember any resistance to soft targets by the WEG shareholders. He could not remember the 26 October meeting. At points in his cross-examination, I felt that he thought that he, rather than Mr Logue, had devised the contingent consideration proposal.

450. He said, in cross-examination, that he could not remember what he, or anyone else, said in any meeting ten years ago. He continued:

"A. I'm able to say that the comment that was made in the witness statements about "easy" and "soft" and "a breeze", from other documentation, appear to be very incorrect.

Q. But you cannot actually remember whether it was said or not?

A. I can tell you that wouldn't have been terminology used, but I cannot remember whether it was said or not.

…My Lord, I was asked about whether I remember it being said and I can't remember, because I don't remember what was said in the meeting, I'm sorry...

But the point I was trying to make is that there is ample evidence, if we look for it, that words like "easy", "soft" and other things that have been referred to would not have been used because it had been clarified before the meeting, there is a document from Mr Keene which he notes a meeting with myself, or a telephone call, I'm sorry, on 11 October, I believe. He talks about me being supportive, explaining the problems we were having with the earn out and he states very clearly in it that the auditors would not allow weak targets. And that email that Mr Keene sent is copied to Mr Parry. Mr Parry was in the meeting. I just found it interesting that Mr Parry isn't part of the complainants. So, he knew weak targets, which then you could transfer I suppose into this phrase that everybody likes to use of "easy and soft", were not going to be applicable. So, I can't imagine those words would have been used.

And in addition, Mr Winterburn after the meeting refers to the targets in another memo as "reasonable and achievable" and in a memo, an email, sorry, that I wrote to Mr McIntosh after I had been given the targets by UDG, because I didn't create them, I referred to the line: "They seem reasonable to me."

…Sorry, just to finish, the point I am trying to make is the words "reasonable and achievable" are words that have been used by Mr Winterburn in relation to the targets. That's how, I'm sure, I would have referred to the targets. There's no note that I've seen in Ms Bates' notes that I thought the targets were easy or soft. And I had previously asked some time ago, if we remember, on 30 September, I think you showed me an email yesterday, where I asked for easy to achieve targets. And it was obvious that had been declined. And Mr Parry was aware that it had been declined and I think potentially, it looks from the previous witness statement that you showed me, that Mr Wilson knows what the content of the email that Mr Keene sent out was and the email clearly stated that weak targets were not acceptable to the auditors."

He maintained, however, that he thought that the earn out target was "very achievable". He also described the earn out target as "commercially conservative [and] achievable".

451. The following exchange took place between me and Mr Corbin:

> "Q. …So, my first question is: what do you mean by the phrase "very achievable"?
>
> A. It calls to mind to me that there was considerable potential leeway in the achievement of the numbers.
>
> Q. …Does "very achievable" mean the same thing as "soft" or "a breeze"…?
>
> A. No, not at all, my Lord.
>
> Q. Does…"very achievable" mean the same thing as "easily achievable"?
>
> A. No, my Lord.
>
> Q. …Are you able to explain to me what you think the difference is between, on the one hand, "very achievable" and, on the other hand, "easily achievable"?
>
> A. Yes. I would never use the word "easy" in relation to business. I think business is tough. I think the business environment is tough. Some things are more achievable than others in business and in the world and I was trying very clearly, as part of that presentation Mr McIntosh has put together and his team, to demonstrate that here is something which is, I could have said "eminently achievable" or "seriously achievable". It was achievable and from what I can see, particularly with the point I made about savings, and so on, and the lack of expected sales growth from World Events, which according to that chart they were already achieving more than 1.3 million when we purchased the company, these targets seemed very achievable to me. They seemed eminently achievable. They didn't seem easy and the reason they are not easy is something can always go wrong. And I've been in business too long to think that things can't go wrong and sometimes things do go wrong. But as I stood there in November of 2011, they seemed reasonable and achievable to me.
>
> Q. …Now, if we go back to that sentence, and you know lawyers pick over individual words, Mr Corbin, what you say is: "We presented that the earn outs were very achievable." You have been asked a lot about your recollection of the 12 November meeting and I have got your evidence about how

> much you recollect and why there are parts, or a lot, that you do not recollect, and the circumstances that have occurred in the last ten years or so…Do you yourself remember saying the earn outs are very achievable?
>
> A. No.
>
> …And if I could make a note that I think is important
>
> …The only other point I was going to make, which is a pedantic thing about the sentence, is I tend to, and I've always tended to in business, talk about the royal we. So, I don't think that I achieve anything, I think we achieve things. And I don't believe that it's about me. I always think it's about us. And that is the way I speak. So, it tends to be the way I speak when I write a sentence: "We presented".
>
> Q. …Do you remember Mr McIntosh at the meeting saying that the targets were very achievable?
>
> A. No."

Assessment of witness

452. The approach of Mr Winterburn, Mr Saxby and Mr Wilson to the UP GP slide exemplifies more general concerns I have about their evidence.

453. The UP GP slide, in context, contained an obvious error, in that it misattributed UniversalProcon's net revenue to the wrong financial years, as I have explained. Mr Winterburn, Mr Saxby and Mr Wilson were senior managers in a company which, on any basis, was valued in millions of pounds. They were experienced in the healthcare events management industry and, I am satisfied, were proficient in analysing financial data. There is no dispute that they were told at the Meeting, effectively, that gross profit equated to net revenue. The UP Group Sales 2009 v 2010 slide (which Mr Winterburn annotated "net revenue") showed a decline in sales in FY2010 from FY2009. The Financials for UP Group and Margin Analysis for UP Group slides showed the correct figures for what was described in terms in those slides as "gross profit". The Monthly Financials UP Group and Cumulative Financials UP Group slides showed the same information, but labelled as "sales". I appreciate that "gross profit", "net revenue" and "sales" were used interchangeably at the Meeting but, if nothing else, the Financials for UP Group and Margin Analysis for UP Group slides showed the correct information labelled as "gross profit". It was, therefore, a striking contention that Mr Winterburn, Mr Saxby and Mr Wilson were led into error by the UP GP slide as they contended in their witness statements.

454. If anything, this is reinforced by their witness statements themselves, which were not obviously internally consistent. Mr Winterburn acknowledged that Mr McIntosh had made clear at the Meeting that UniversalProcon's net revenue had declined in FY2010 from its FY2009 level. Mr Saxby acknowledged that Mr McIntosh had said at the Meeting that sales had decreased in FY2010 from their FY2009 level. He says that he appreciated, at the time, from the Financials for UP Group and Margin Analysis for

UP Group slides (the slides that refer to "gross profit" in terms) that net revenue had declined. As is clear from Mr Wilson's witness statement, he appreciated that net revenue had declined, from the Cumulative Financials UP Group slide.

455. Mr Winterburn and Mr Wilson in particular accepted, in cross-examination, contrary to their case as set out in their witness statements about the UP GP slide, that, by the end of the Meeting, they appreciated that UniversalProcon's net revenue had declined in FY2010 from its FY2009 level.

456. This may explain why the Claimants did not pursue their claim in relation to the UP EBIT 1 slide. It will be recalled that they pleaded that Mr McIntosh impliedly misrepresented that sales "were increasing and had done so year on year". I am satisfied that a reasonable person would not have inferred such a statement from the Presentation and from what Mr McIntosh said. The UP Group Sales 2009 v 2010, Monthly Financials UP Group and Cumulative Financials UP Group slides showed, in terms, that UniversalProcon's "sales" had declined in FY2010 from their FY2009 level and, in the light too of what was admitted in cross-examination Mr McIntosh said at the Meeting, it is improbable that Mr McIntosh said anything which suggested that sales had increased year on year.

457. The Client/Headcount slide showed UniversalProcon's client numbers. The Production Work (outsourced) slide lists some clients for which creative work was undertaken. These are slides in the Claimants' slide deck. Yet Mr Saxby maintained that Mr McIntosh would not provide UniversalProcon's client numbers or a breakdown of its clients.

458. Whatever was actually attributed by Mr McIntosh at the Meeting to the green bars and the yellow bars, it is notable that Mr Saxby annotated the green bars as referring to WEG and the yellow bars as referring to savings. He effectively maintained that the green bars related to WEG and the yellow bars related to savings in his 7 May 2014 letter. Yet, without explanation in his witness statement, and without obviously having done so, he did not stand by his contemporaneous annotations in his witness statement. It was only in cross-examination that he explained that his case had changed because his contemporaneous annotations were not consistent with his case as it eventually became.

459. So far I have considered the evidence of Mr Winterburn, Mr Saxby and Mr Wilson about certain slides in the Presentation. There are other aspects of their evidence about which I must now comment.

460. First, I was struck by the evidence of those Claimants who dealt with the subject about the lead times for events. They each painted a picture of largely consistent and unchanging lead times and it seemed to me that, in their evidence, they tended to emphasise that lead times were longer rather than shorter.

461. Mr Gordon's evidence, which recognised that, as a generality, there was a pattern to lead times but which more obviously acknowledged that, in a service industry such as the events management industry, lead times for events can be more fluid, struck me as having an air of realism to it. More importantly, the contemporaneous evidence supports that proposition. GT recorded that the WEG management team had commented that "bigger events are not systematic". As early as July 2010, it was

being reported that the WEG management team had commented, not to GT, but to the UD group, that lead times for events had shortened. Mr Ackroyd himself reported, about the same time, that Mr Keene and Mr Wilson had told him that lead times had shortened. This was also something which the WEG management team apparently reported to GT in the due diligence exercise later in 2010. In the 13 October DD report, GT noted that the lead time for the majority of WEG's work was only about three to six months. In the 28 October DD report, GT reported that the WEG management team had spoken of lead times being short, which was consistent with GT's financial analysis.

462. Mr Winterburn suggested that Mr Keene, Mr Parry or Mr Wilson provided GT with incorrect information about lead times. What is clear, however, is that not only was that information being provided to the UD group and to Precision (Mr Ackroyd), the information being provided was not only about lead times themselves. It extended to the assertion that lead times were shortening.

463. Secondly, it does not reflect well on Mr Winterburn that he was constrained to accept that he did not tell Mr Keene the whole truth about what was said in the Meeting.

464. I am also troubled about Mr Winterburn's criticism of Mr McIntosh in relation to the accounting of revenue from the Dutch office. The treatment of revenue from the Dutch office had nothing to do with the issues in the case. I can only suppose that Mr Winterburn's criticism was made to undermine Mr McIntosh's credibility. As Mr Winterburn's cross-examination revealed, the criticism was unwarranted. It was entirely reasonable to attribute the profit, which Mr Winterburn contended was wrongly attributed to UWE's UK office, to that office when the related costs were being attributed to the same office.

465. Mr Saxby gave evidence about the recurrence of events. The impression he gave in his witness statement was that, at the beginning of the financial year, WEG was "very certain" that the majority of events, perhaps the vast majority, of events would happen. That was not consistent with what GT reported or with what a number of sources record the WEG management team as having said.

466. Mr Saxby's evidence about what he knew about the purpose of the 26 October meeting, about whether, by 5 November 2010, the UD group had informed the WEG shareholders that the terms of the transaction had to change and what they had been informed was incoherent.

467. In his witness statement, he said that, at the start of the Meeting, as a reason for the terms of the transaction having to be changed, Mr Corbin identified "feedback from the due diligence". In cross-examination, he resiled from that, even though he had only recently read his witness statement and confirmed the truth of that evidence in it.

468. Mr Saxby said that he did not think that the earn out target was discussed at the beginning of the Meeting, not because he could recall that it was not, but rather because it did not seem to him to be logical that it would have been.

469. He claimed figures which appear in what is not disputed to have been the contemporaneous Wilson note were not presented at the Meeting. He then

acknowledged that his recollection might have been wrong but seemed to suggest that the reason for his original evidence was because there was no logic to those figures.

470. By November 2011, Mr Saxby had misremembered, in his draft paper which he sent to Mr Winterburn, the date of the Meeting and, apparently, how the earn out target was calculated. He also did not refer to the initial £500,000 upside offer.

471. Mr Wilson's evidence in response to what Mr Saxby had said in his 4 July 2014 letter about the information provided to Mr Wilson (i.e. extracts of a GT report) was concerning. Either Mr Saxby mis-recalled that Mr Wilson had been provided with GT report extracts or Mr Wilson mis-recalled that he had not been provided with them. What is odder though was Mr Wilson's suggestion that, if he was provided with extracts of a GT report, he was not shown GT's opinions about WEG's "numbers". Why then was he being provided with those extracts? He later suggested that, if he was shown extracts, that was so he could "sense check" GT's "numbers". That was an acknowledgment that he might have been asked to comment on GT's opinions.

472. There can be only one reasonable interpretation of Mr O'Boyle's 28 October email to Mr Wilson, in which Mr O'Boyle said that GT was "keen to get comfortable somehow regards the 2011 projected income level". It is that GT was concerned (uncomfortable) about WEG's profitability. I do not understand how Mr Wilson can have maintained that GT was not concerned or uncomfortable about some of the data, as Mr Wilson suggested in cross-examination.

473. I have already commented critically on Mr Wilson's evidence in cross-examination in relation to the 17 November teleconference. Mr Wilson's evidence about the teleconference, in his witness statement, was also striking. He did not need to recount what happened at the teleconference in his witness statement. Indeed, his evidence was, on a fair reading, contrary to his interest, because it suggested that he had not been persuaded that the earn out target was soft and that Mr Keene put pressure on him ("put [him] in [his] place") to proceed with the transaction; which may explain why his witness statement then continued with his justification for entering the transaction as being what he was told at the Meeting. In the present context, the important point is, though, that, if it is right that Mr Wilson had already been persuaded that the earn out target was soft, then, on a fair reading of his witness statement, he gave Mr Keene a false picture of what he perceived to be the degree of risk in the transaction.

474. I have also commented critically on other parts of Mr Wilson's cross-examination.

475. It is unsurprising that the Claimants have been discussing the dispute for many years, as Mr Dickinson suggested. I am satisfied that what has happened is that, over time, Mr Winterburn, Mr Saxby and Mr Wilson, in particular, have developed their case and then, more or less, have tried to rationalise what they have recalled to fit that case. The more they have done so, the stronger has become their belief that what they have rationalised is what they actually recall. The warning which Leggatt J gave in *Gestmin* is particularly apposite in the case of Mr Winterburn, Mr Saxby and Mr Wilson.

476. Additionally, as I have noted, there are aspects of the evidence of Mr Winterburn, Mr Saxby and Mr Wilson which otherwise establish that they are unreliable historians at least.

477. Mr Dickinson had little to say about the transaction, in general, and the Meeting, in particular. He freely acknowledged that his recollection may have been faulty and that he has been discussing the dispute with the other Claimants for many years.

478. I propose, therefore, to attach no weight to the Claimants' evidence, save where that evidence is contrary to their interest or save where it is corroborated by contemporaneous documents or reinforces (and so itself corroborates) a conclusion I would have reached in any event.[52]

479. I should say something briefly about Mr Keene as a witness. Mr Keene said that Mr Corbin refused Mr Keene's request, at the 8 July dinner, for due diligence of UniversalProcon to be carried out. I doubt, though, that he has any independent recollection of that refusal. It seemed to me that, in giving that evidence, he relied on Mr Ackroyd's 9 July email. However, that email was ambiguous. It did not say, in terms, that Mr Corbin refused any due diligence request. All it said was that, if contingent consideration was to be a feature of the transaction, due diligence of UniversalProcon was likely to be required. Mr Ackroyd's email is equally consistent with Mr Keene having sought to dissuade the UD group from its contingent consideration proposal in the June Heads of Terms by pointing out that a disadvantage for the UD group would be that due diligence of UniversalProcon would then be required.

480. As I shall also explain, I have concluded that the WEG shareholders knew, before the Meeting, that GT had reached adverse conclusions in the due diligence exercise. I therefore reject Mr Keene's evidence that he did not know of those conclusions. As WEG's major shareholder, he was the person most likely to know about those conclusions.

481. I have already commented on Mr Logue and Mr Corbin as witnesses.

482. As I have also already said, there was a lack of clarity in Mr McIntosh's oral evidence and he was confused about some detail; for example, he failed to properly distinguish between HCAM, EMOP and EM. I need to bear this in mind in reaching my decision.

483. I comment on Ms Bates' evidence below, when I consider the content of the Presentation.

Expert Evidence – Richard Pughe

484. Mr Pughe, the Claimants' expert forensic accountant, prepared two reports and contributed to an experts' joint statement. Shortly before he gave oral evidence, he sustained a shoulder injury for which he was prescribed pain relief tablets. A side effect of the tablets which he was prescribed is drowsiness. So that his mental acuity was not impaired whilst he was being cross-examined, he decided not to take the

[52] I make further comments about the Claimants' evidence in later sections of this judgment, which reinforce my conclusion that this approach to their evidence is the correct one.

tablets until after his cross-examination was completed. This meant that he was in pain throughout his cross-examination. He told me that he had not slept well overnight before the first day of his cross-examination. I will need to bear all this in mind, when I assess his oral evidence.

485. Before I turn to what Mr Pughe said in his reports and the joint statement, I must record that, in examination-in-chief, he asked to remove sections of his report relating to a reversal, by UniversalProcon, of a reduction in the cost of sales which it had made in November 2010. About that reversal, Mr Pughe said in his report:

> "I can see no legitimate explanation for a sudden reversal of the previous reduction in the cost of sales if [UniversalProcon] forecast with any degree of diligence or accuracy as their witnesses claim to be the case. It is for the court to determine, absent evidence to the contrary, whether the pattern of cost of sales forecasts is indicative of a simple mistake, reckless inaccuracy or deliberate massaging of the figures up to March 2011 to conceal the true scale of the problems facing UPUS."[53] [54]

He explained that, on reflection, the movement in the cost of sales was probably attributable to the closure, after November 2010, of WEI's Lambertville office.

486. Mr Pughe gave the following evidence in his reports and the joint statement.

487. By the 28 October DD report, GT believed that WEG's adjusted EBIT for 2010 should be £758,000 and, for 2011, should be £650,000. However, the Defendant apparently set the earn out target by reference to WEG's own 2011 forecast EBIT of £1.3 million (before rent). He "would have expected the target for the WEG element to be set as achievable around [GT's] figures after adjustment, not at…[the] higher WEG figures [which] leave little leeway in the WEG side of the equation".

488. UniversalProcon's FY2011 budget should have been, but was not, its best estimate of its trading performance for the period. On the basis that Mr Corbin said in his witness statement that, in the scenario that UniversalProcon had no confirmed business for FY2011, a nil budget could not be presented to the Plc's board, "in a situation where a client was lost or clients were not going to grow or produce income, management may not have had the ability to put a realistic budget to the board and investors as this would not be acceptable or allowed. That calls into question the veracity of the FY2011 budget…"

489. In relation to the Gordon August budget analysis and the accompanying 10 August email, he said:

> "Gordon raises many concerns…and, whilst it is a matter for his evidence, I am surprised that a request for an insignificant £100,000 increase in net revenue – or less than 2% – would

[53] Mr Pughe actually referred in this section of his report to the Defendant rather than UniversalProcon. His comment related to UniversalProcon however.
[54] To similar effect was paragraph 8.19 of his report, which Mr Pughe also asked to remove.

> prompt such a lengthy email from Mr Gordon. From the language in the email it seems to me that he was materially concerned at the level of the US budget. I will deal with each element in turn below, but I note here that he sets out the following serious issues under the headings "Risks/threats" in the attachment to his email…:
>
> Lilly – no business!
>
> Pfizer HCAM – $525k net revenue "hole"
>
> Roche – Qtr2 still unknown...second most aggressively budgeted account
>
> Shire – real possibility that this account will not renew in 2011
>
> Millennium – unknown volume and commitment. $75k in 2010 due to one event that is unlikely to repeat
>
> Forest – unknown volume and no commitment/known programs yet in 2011."

490. He produced a table which he said showed the information in UPUS' "final budget" for FY2011, in the Job Log (with additional information about Get and US UCS) ("the Pughe Job Log") and in later forecasts. The table showed:[55]

i) Budgeted net revenue of $10.135 million, converting to £6.75 million at a £:$ exchange rate of 1:1.5;

ii) Forecast net revenue in the Pughe Job Log of $9.577 million, converting to £6.055 million at the lower £:$ exchange rate of 1:1.58;

iii) Forecast "best" net revenue in December 2010 of $9.085 million, converting to £5.744 million at the lower exchange rate.

He continued:

> "Within 15 days of the SPA, UPUS produced the December 2010 forecast which showed a reduction in net revenue of £(1,012,570). I have seen no evidence in disclosure of any event or news which caused such a reduction in forecast net revenue."[56]

What Mr Pughe was comparing was the budgeted net revenue, when converted to Pounds Sterling at the higher exchange rate, against the December 2010 forecast net revenue, when converted to Pounds Sterling at the lower exchange rate. When the same exchange rate was applied to both conversions, the reduction in net revenue was about £700,000. If the same approach is taken to comparing the FY2011 budgeted net

[55] I have rounded the figures shown in the table.
[56] He made similar points later in his report, at paragraphs 8.6 – 8.7.

revenue figure with the forecast net revenue in the Pughe Job Log and then the forecast net revenue in December 2010:

iv) The reduction from the budget figure to the Pughe Job Log figure is about £372,000;[57]

v) The reduction from the Pughe Job Log figure to the December forecast is about £328,000.

491. His opinion was that UPUS' FY2011 budget "not achievable and a fantasy".[58] He explained:

> "I…have shown that, especially in the USA, the net revenue in the budget was materially at risk given the fact that, at the time of the November Presentation, clients were lost or at risk. The FY2011 budget set in August 2010 and included as a forecast in the November Presentation was not achievable and was a fantasy."

On the same basis, in his opinion, the forecast in the Job Log, "like the FY2011 budget, was a fantasy".

Later in his report, he repeated that:

> "…UPUS included in its budget and forecasts net revenue of very significant sums from clients who were either lost or at risk and therefore, unless other elements of the UP Group were to hugely over-perform (which they were not forecast to do), the chances of meeting the budgets or forecast were a fantasy."

492. In expressing these opinions, he took into account, amongst other matters:

i) In relation to Lilly, (i) that the Lilly Master Services Agreement was not signed until 21 December, so "the entire Lilly contract can be said to be at risk" and (ii) at least to a degree, that the 3 September budget presentation made to the CSMS divisional board noted, he said, that Lilly was downsizing;

ii) In relation to Roche, that US Logistics had, he said, "service issues";

iii) In relation to EM, that, by mid-October 2010, there were, he said, "very significant doubt as to any revenue at all". He prayed in aid the 16 November email exchange I have referred to which, as I have said, I am satisfied relates

[57] It may be worth recalling that US Logistics had budgeted for about $750,000 net revenue from HCAM in FY2011 and that the Job Log forecast $220,000 net revenue; a reduction of $530,000 in net revenue, or about £350,000 at the higher exchange rate.

[58] He repeated his opinion that UPUS' FY2011 budget was "a fantasy" and that the forecast in the Job Log was "a further fantasy" later in his report.

not to EM but to HCAM, but which Mr Pughe believed, before his cross-examination, related to EM;[59]

iv) In relation to Shire, that the Job Log showed no confirmed business and nothing on the radar, that, he said, there were also "service issues" and that Mr Gordon had said in the Gordon August budget analysis that there was a real possibility that the account would not renew in 2011;

v) In relation to Forest, that the Job Log showed only a minimal amount of confirmed work and that Mr Gordon had warned of risks in the Gordon August budget analysis.

493. I turn now to Mr Pughe's cross-examination.

494. He accepted that the purpose of the contingent consideration proposal was to slightly de-risk the transaction for the Defendant; so guarding against the risk that it might overpay for the acquisition of WEG. He also accepted that an earn out target works to incentivise the seller of a business to improve that business and make synergy savings. He accepted that, when a buyer proposes contingent consideration, it is effectively challenging the seller to generate the profits which the seller has forecast, in circumstances where the buyer is doubtful that those profits can be made, with the result that, if those profits are made, the seller will receive further consideration (i.e. contingent consideration), which reflects the enhanced value (profitability) of the business being sold, but, if those profits are not made, the seller does not receive further consideration, which reflects the reduced value (profitability) of the business. He accepted that the suggestion, in his report, that the earn out target should have been calculated by reference to GT's, rather than WEG's own, forecast of WEG's EBIT did not make sense.

495. He accepted that his report did not provide a balanced representation of the Gordon August budget analysis, because it quoted the risks which Mr Gordon suggested but none of the opportunities he identified. He accepted that his report should have set out those opportunities. In relation to Roche, he accepted that his quotation from the Gordon August budget analysis was a partial quote which selectively edited out the more positive points Mr Gordon actually set out in the analysis.

496. He was taken to the analysis, in the 13 October DD Report, relating to WEI's budgeting and forecasting of net revenue. He was also told, correctly, that Mr Dickinson accepted in cross-examination that it was difficult to forecast at an individual client level. He had said in the report that: "given the nature of the business and the lead time for work, it is inconceivable that the level of lower net revenue [shown in the post-November 2010 UPUS forecasts] was not able to be contemplated…in November 2010". He accepted that, if the information in the 13 October DD Report and from Mr Dickinson was correct, that opinion in his report was undermined.

[59] In his addendum report, which he prepared to deal with the evidence Mr Gordon gave in his deposition, Mr Pughe maintained that the email exchange related to EM. Mr Gordon had explained, in his deposition, that the email exchange related to HCAM, not EM. Because Mr Pughe misread the transcript of the deposition, he said that Mr Gordon's view, in his deposition, was that "there was no realistic chance of achieving…the $985k forecast [in the Job Log]".

497. In his report, he had identified instances, in January 2010, of service issues (poor performance) by UniversalProcon. He was taken to email correspondence from the same time which showed that Millennium was interested in working with US Logistics. He accepted that, in identifying only services issues in January 2010 in his report, he had not taken an even-handed approach.

498. He accepted that, in preparing his report, he had not taken account of:

i) WEI's forecasts for net revenue for 2010 and 2011;

ii) What GT recorded WEG's management told GT about lead times for work;

iii) Mr Gordon's evidence about the lead times for work. He said that he had missed that evidence when he was preparing his addendum report.

499. He was asked about his opinion that the net revenue forecast for FY2011 in the Job Log was a fantasy. He acknowledged that "fantasy" is a strong word. He said that, having heard some of the evidence, "fantasy" was an "excessive" description of that forecast and an emotive word. He said that it might have been better to say that the forecast was "not realistically achievable". He acknowledged that the word "fantasy", when referring to an analysis, could connote that the person who has prepared that analysis does not honestly believe it is true and that he should have taken greater care in using that word in his report. He said, however, that it was not his intention to allege dishonesty.

500. Whilst being cross-examined about his opinion on the Job Log net revenue forecast, he acknowledged that Mr Gordon was working in the business at the time he apparently compiled the Job Log, that he (Mr Pughe) had no experience of the business, that 10 years have elapsed since the Job Log was prepared and that it was likely that there were more documents available at the time than when he considered the Job Log.

501. It was put to Mr Pughe that Mr Acaster had said that a 5% shortfall in net revenue in the first month of a financial year could be made up in later months, that Mr Acaster had said that UPUS could achieve its budgeted EBIT and that this evidence was not challenged. Mr Pughe accepted that he could not challenge that evidence or Mr Acaster's judgment about the achievability of the budget. He also accepted that, if it was Mr McIntosh's judgment that the budgeted EBIT could be achieved, he could not challenge that judgement either.[60]

502. He was asked about his opinion of the forecast net revenue from Lilly work. His "reasonable forecast" in the POC schedule for net revenue from Lilly work was $2.2 million. He was taken to the 4 November DD report, which had apparently recorded WEG's forecast about the net revenue it would receive from Lilly work in 2011 and its forecast of the profitability of that work. Mr Pughe accepted that this showed that WEG thought, by 4 November 2010, that the Lilly work was not at risk. He said that he had not taken this information into account when he had prepared his reports. He maintained that there was a risk in relation to the Lilly work on the ground that the

[60] In re-examination, Mr Pughe said that he disagreed with these opinions of Mr Acaster and Mr McIntosh.

Lilly Master Services Agreement had not been signed but he said that, if I concluded that that was a mere formality, his conclusion about the risk relating to the Lilly work on this ground would change.

503. Mr Pughe also accepted that, in claiming that "Lilly was downsizing", he had misread the September 2010 budget presentation to the CSMS divisional board. That presentation had commented that Lilly was "downsizing" but that comment had related to its relationship with AI2F, not UniversalProcon, as Mr Gordon had said in his deposition. Mr Pughe acknowledged that he had not picked up on that evidence when he was preparing his addendum report.

504. Mr Pughe had said in his report that:

> "[The Job Log] shows that at November 2010 there was only Confirmed and Provisional A/B work for Eli Lilly of $537,249 (only 19.33% booked compared to the 41.2% represented). There was a further $385,040 of Radar business giving a total for the rest of the year of $922,289. This meant that $1,936,711 was still to win for the year ahead without any of this being even on the radar. Given the lead times for such significant revenue, this could not be said to be a breeze or easy to achieve, especially at a time when the contract was uncertain and there was a global price reduction for Eli Lilly."

It was pointed out to him that, ultimately, US Logistics obtained $2.118 million net revenue from Lilly work in FY2011. He accepted that that would support the conclusion that a significant amount of net revenue from Lilly work could be generated in FY2011 even though it was not on the radar. He accepted that that also undermined the opinion which I have just quoted. He accepted that this opinion should be removed from his report.

505. Mr Pughe then explained that his view had been that no work which was not at least on the radar should be included in a forecast.

506. He accepted that he could not say that Mr McIntosh did not have a reasonable basis, at the date of the Meeting, for his conclusion that Lilly could generate significantly more business for US Logistics.

507. In his report, in relation to Roche, Mr Pughe had referred to the 28 October email exchange which related to US Logistics' performance. Mr Pughe accepted that, presenting a balanced view of the email exchange, he should have quoted an extract which does not appear in the report. He accepted that his selective quotation from the email exchange was not fair or even-handed and did not accurately represent the exchange. He then accepted that his selective quotation created a misleading impression of the part of the particular email from which he quoted.

508. He acknowledged that he did not take issue with the forecast net revenue in the Job Log from Roche work.

509. He was asked about EM work. As I have noted, his opinion in the report was based, in part, on a misreading of the 16 November email exchange to which I have referred, and as he accepted.[61] He had said in his report that:

> "It is clear that Pfizer EM was officially lost to BCD and UP had known about this for some time prior to November 2010. The inclusion of any amount in any representation to the WEG directors was misleading and a fantasy."

He said that that was no longer his view and that he should have removed this paragraph from the report.

510. He was taken to three further occasions when he had suggested that the budgeted net revenue for UniversalProcon and the net revenue forecast in the Job Log were fantasies. He said that he would prefer not to use that word.

511. In re-examination, he maintained that work from Lilly was at risk, not on the ground that the Lilly Master Services Agreement had not been signed, but on the ground that Mr McIntosh had said that, if the UD group did not acquire WEG, Lilly work was at risk.

Expert evidence – Robert Parry

512. Mr Parry, the Defendant's expert, prepared a report, contributed to the experts' joint statement and, just before he was called to give evidence, prepared a sheet of amendments to his report. He had heard Mr Pughe's oral evidence that the alteration in the accounting treatment of the cost of sales in April 2011 by UniversalProcon was probably attributable to the closure, after November 2010, of the Lambertville office. Mr Parry considered that evidence and agreed with it. This meant that he had wrongly not taken into account that some WEI revenue and costs were probably included in UPUS' results in FY2011 and amendments to his report were required as a result.

513. In his report, Mr Parry expressed the following opinions.

514. US Logistics' underperformance in FY2011 was the key reason why UniversalProcon's FY2011 budget was not achieved. US Logistics underperformed because of "client actions and event cancellations that could not have been known about in November 2010" amongst other reasons.

515. He had not seen anything to suggest that UniversalProcon's FY2011 budget had been prepared falsely. However:

> "It appears that at the time of finalising the FY2011 budget (August 2010), based on the emails forwarded from Lisa Thompson, [UniversalProcon] should have been aware it was

[61] He said in his addendum report that Mr Gordon had said that there was no realistic chance of US Logistics achieving the forecast net revenue from EM work shown in the Job Log. He accepted that he had misread the transcript of Mr Gordon's deposition. He accepted that he had probably misinterpreted Mr Gordon's evidence "by a mile".

> unlikely that it would be receiving work from…HCAM in the calendar year 2011.
>
> For Pfizer HCAM, $224k was budgeted for the first quarter of FY2011 (October to December 2010) and $526k for the final three quarters (January to September 2011), making the total of $750k…
>
> It appears that for this client the budgeted net revenue was too high given the notification that work would not be provided in 2011. Net revenue budgeted for Pfizer HCAM for the final three quarters should therefore have been excluded from the budget or have been reclassified under the heading of new business needing to be sourced elsewhere…
>
> In the context of longer lead terms to win larger projects, the re-allocation of the…HCAM quarters 2 to 4 figure of $526k to unidentified new business sources appears a more challenging target than for identified clients with an existing relationship."

516. UWE's FY2011 (not calendar year 2011) EBIT was £2.933 million.

517. On a consolidated basis, UniversalProcon was ahead of budget for net revenue and EBIT for the month of October 2010.[62] UPUK was ahead of budget on both measures. UPUS was very slightly behind budget for net revenue but ahead of budget for EBIT. On a consolidated basis, UniversalProcon was ahead of budget for net revenue and EBIT for the month of November 2010. UPUK was ahead of budget on both measures. UPUS was behind budget for net revenue by about 15% but was on budget for EBIT.

518. It is convenient to note here what the experts said about this information in their Joint Statement:

> "In relation to the October 2010 Management Accounts showing the UP business to be ahead of budget, Pughe notes that the October 2010 budgets were set low…and so being on budget for that first month meant nothing in Pughe's opinion. By way of example – the 2010 actual results for October were Net Revenue of £931,802 and EBIT of £112,717. These were on actual net revenue for the year of £10,672,437. Given the fact that the FY2011 budget net revenue was £11,197,000 an increase 4.9%, one could expect a reasonable budget for October 2010 to be therefore 4.9% greater than the 2010 actual figures – therefore net revenue of £977,460 and EBIT of £118,240. The October 2010 budget net revenue was only

[62] Mr Parry relied on UniversalProcon's October 2010 management accounts. The experts agreed in the Joint Statement that it is unclear if those management accounts were available by the time of the Meeting. The metadata of the document relied on by Mr Parry suggests that the document was first created on 11 November 2010 by Mr Mate. It is unclear what information Mr Mate (or others) had available before the Meeting, which was on the next day.

> £769,256 some 22% lower than expected. Pughe does note that the EBIT for October 2010 was high.
>
> Parry notes that [UniversalProcon's] net revenue in October 2010 was £808,168 actual and £769,256 budget. That is 98% and 93% respectively of the actual net revenue of £824,960 achieved for October 2008 in FY2009, when net revenue for the full year was £11.6m. 98% of £11.6m would be £11.4m. (i.e. greater than the £11.2m for 2011 shown in the Presentation). The October 2010 EBIT was £117,731, which was also greater than actual in both October 2008 (£20,709) and October 2009 (£112,717). Parry does not assume the pattern of month to month budgeted net revenue should exactly mirror the prior year actual as Pughe assumes, but notes the FY2011 October EBIT actually achieved was greater than achieved in October in both FY2009 and FY2010."

519. Continuing with Mr Parry's opinions as set out in his report, he expressed the view that, based on UniversalProcon's performance in October 2010, there was no basis for forecasting a lower net revenue budget for FY2011 than the budgeted £11.197 million.

520. He noted that the UP Group Net Revenue Forecast slide does not include sums for Get, US UCS or UK UCS and the slide does not show "the full net revenue forecast".

521. Although he acknowledged, in a single sentence in paragraph 8.68 of his report, that the US Net Revenue Booked slide contains no information about Get or US UCS, and although he apparently appreciated that the Claimants criticise this slide for not accurately showing UPUS' booked business, he made no comment on the absence of information about Get or US UCS, even though his discussion of this slide was in the section of his report in which he "set[s] out [his] comments on the specific complaints…in the…Particulars of Claim".

522. He gave the following evidence in cross-examination.

523. He explained that there is a difference between a budget and a forecast. He said:

> "Q. Can I suggest to you that the budget is not actually a forecast at all, it is a target. Is that fair?
>
> A. At the time it is produced I would think it was both, my Lord.
>
> Q. If it has to show growth, is that not a clear indication that the imperative of targeting takes precedence over the accuracy of forecasting?
>
> A. I think that would be quite a short term view, my Lord, because if you simply put a budget which one had no hope of achieving, then you would be on the back foot very quickly. But again it is a matter for the witnesses, but I think they would

be expected to put in a budget that they could try and achieve but mindful of the need for growth and controlling costs and the other things that are referred to in the budget instructions.

Q. So it is a target.

A. It is both, is it not? When it is first produced it is: what do you think you can do next year? There has to be – it is a target, and at that stage I think most people would regard it as a forecast. They would not produce a budget and say: "We have a totally different forecast." That would be quite unusual, I think.

Q. In UDG you could not forecast to go backwards. Do you think it is fair, as an expert, realistically to expect to go forwards every year, to actually anticipate that that will happen every year?

A. One would have to look at the track record of the business, the market. In fact inevitably there is always ups and downs in businesses, but most Plc environments are looking for and achieve growth, and if they do not achieve growth then it gets reflected accordingly in the investors' attitude towards the business.

Q. I suggest to you the fact that in the preceding year the budget target was not met, just as it was not in this year, 2011, reflects negatively on any suggestion that the budget truly was a forecast. Do you agree?

A. No, I do not think I do, my Lord. I think at the time the budget was produced would they have had a separate forecast saying something different? It seems unlikely. There is obviously an element of target, as you say, in a budget, and especially if the budget is saying: "We are looking for growth," then there is an element of target in there to motivate people to achieve that result. No doubt people's remuneration – it would typically be the case that if there are incentives for performance, then usually they would be linked to overachievement of budget.

Q. Given at least the partial target nature of a budget, do you agree with me that presenting in this slide [(the Financials for UP Group slide)] that on the right hand column the figures were forecast rather than budget is misleading in itself?

A. Not necessarily, my Lord, because again if the people applying their judgment have said: "Okay, we still think our budget is as good as anything for where we think we will end up," then the budget is still the forecast. What typically happens in large corporate environments and Plc environments is a

> budget is produced and then perhaps at the end of each month or possibly at the end of each quarter they would revise – they would take the actual for the month and add that to the budget for the rest of the year. It is quite common to say that is now the revised forecast. Sometimes they produce a full revised forecast, but during the first month or with the benefit of the first month's account, can I say that somebody applying their judgment says: "We are just not going to hit budget, so our forecast needs to come down"? I am not sure I can. If they did not think they could achieve the budget at that time then, yes, it is wrong to show the forecast at the budget level."

524. UniversalProcon did not meet its FY2010 budget. UPUK did not achieve its budgeted FY2010 EBIT; in part because it lost EMOP, Duke and the Improvement Foundation as clients. UPUS exceeded its FY2010 EBIT budget. On a consolidated basis, the business did not meet its FY2010 EBIT budget.

525. Considering the contemporaneous documents, he could not say that UniversalProcon's FY2011 budget was unreasonable.

526. From the documents he saw, there was nothing to suggest that UniversalProcon's budget was not prepared in a way which was conventional for that sort of business.

527. He was asked specifically about his opinion, that there was no basis for UniversalProcon forecasting a lower net revenue sum for FY2011 than the budgeted sum of £11.197 million, by reference to Mr Acaster's 25 October email in which Mr Acaster warned Mr McIntosh that it was anticipated that UPUS would be about $500,000 "down on budget in terms of total net revenue". He said:

> "Q. Now, by 12 November, the date of the slide show, we have seen that Mr Acaster, on 25 October, was saying that the net revenue for the USA was down by half a million – you have seen that, have you not?
>
> A. Yes.
>
> Q. The forecast net revenue. We know that HCAM was lost even before the budget was set, yes?
>
> A. Even before it was finalised, yes, my Lord.
>
> Q. We know that nobody was saying, at least nobody said, that the $500,000 hole, which Mr Acaster had identified in October, had been filled by anything in the budget.
>
> A. …There was nothing specifically identified in that document we looked at, that they were going to have a discussion about.
>
> Q. Mr Parry, have you seen anything between 25 October and 12 November which indicates that the net revenue hole that Mr

> Acaster identifies is made up by forecast business from anyone else?
>
> A. No, I don't think I have, my Lord.
>
> Q. …By reference to the evidence that you have seen do you agree with me that, on the 12 November, it would be inaccurate to say that the forecast net revenue for UniversalProcon was as per the budget figure?
>
> A. …Yes, if you were to take the 25 October document and say there is no judgment applied beyond that, then, no, it's not fair to assume that the forecast is the same as budget. If the people at the time – and I think this is the witness evidence for his Lordship – say, "Well, actually, we thought the hole could be made up" – obviously, we don't, as far as I'm aware, have specific indications of who it would be made up by – so, if we're to say they apply their judgment and think they can still do it, well, that's a matter for them based on their experience. If it's purely in terms of the budget document and anything else we've seen subsequently – so, not assuming there's going to be any new business and not assuming there's going to be any extra business for existing clients – then, no, it's not fair to assume they could still hit budget, that net revenue level.
>
> Q. Have you seen anything at all that indicates that, within the United Kingdom part of UniversalProcon, there was any new business which was forecast to make up for that net revenue shortfall element, that forecast that net revenue shortfall being made up?
>
> A. I'm not aware of any document that specifically says, "We would make up that net revenue by this client", either in the UK or the US."

528. He was also asked about the effect, on UniversalProcon's FY2011 net revenue budget, of the lowering of the £:$ exchange rate between the budget date and November 2010. He expressed the view, as I understood his evidence, that, if UniversalProcon did not hedge against exchange rate fluctuations (as it apparently did not), that ought to have been reflected in UniversalProcon's net revenue forecast as at November 2010. Indeed, he accepted that an £11.197 million FY2011 net revenue forecast for UniversalProcon was not realistic in November 2010. However, in his final answer in cross-examination, he returned to a point he had made earlier and said:

> "…Just on the contemporaneous documents alone, I can understand why at that time, one month, effectively, into the new year, the management of the business might say, "Well, actually, our best guess at the outturn for the year is still the budget." There will be some ups and downs throughout it but I do not think we can say it is unreasonable. His Lordship has listened to the evidence of the key witnesses and it would be a

> call for his Lordship. I do not think there is enough there for me to say that no, this overall forecast as it was put – there are so many things which go one way that the budget at that point in the year is unachievable."

It is not clear to me whether Mr Parry was speaking (or had, in fact, been asked) about UniversalProcon's FY2011 EBIT budget or whether he was speaking, perhaps also, about its FY2011 budgeted net revenue.

Expert evidence – discussion

529. One of the curious features of this case is that the Claimants led evidence from Mr Gordon (who apparently made the forecasts in the Job Log and who believed that, in the case of one named client, the forecast was eminently achievable, and, in the case of other named clients, that the forecasts were justified), yet their pleaded case (based on Mr Pughe's assessment, at least in part) was that the forecast net revenue in the Job Log was unrealistic and fantastical, a contention with which Mr Pughe concurred in his reports.

530. Also, as it happens, in the light of the conclusions I have reached, the expert evidence does not assist.

531. I should say something, nevertheless, about that evidence.

532. There were troubling presentational features of Mr Pughe's reports.

533. Like Mr Parry I must acknowledge, Mr Pughe altered his opinion in examination-in-chief in relation to UniversalProcon's decision to reverse its previous reduction in the cost of sales. As I have explained, both Mr Pughe and Mr Parry belatedly appreciated that that decision was probably attributable to the closure of the Lambertville office and, it seems, that it was a legitimate decision. What is somewhat troubling about Mr Pughe's approach is that he invited me, in his report, to determine whether or not UniversalProcon's decision might have been an instance of "deliberate massaging of the figures up to March 2011 to conceal the true scale of the problems facing UPUS". Mr Pughe invited me to make that determination when there was apparently no positive evidence that UniversalProcon's decision might have been dishonest.

534. He accepted that his opinion that the earn out target should be fixed by reference to GT's, rather than WEG's own, forecast of WEG's EBIT did not make sense.

535. He accepted that, in his report, he did not provide a balanced representation of the Gordon August budget analysis.

536. He accepted that, in his report, he did not present a balanced picture of UniversalProcon's clients' perception of its performance.

537. He accepted that he had not considered other evidence. So, for example, he failed to consider the 13 October DD report analysis relating to WEI and Mr Dickinson's evidence, before making criticisms about the Job Log.

538. In analysing his table (which contained the Pughe Job Log) which compared UPUS' FY2011 budgeted net revenue with later forecasts, he failed to acknowledge the

movement in exchange rates between the time of the budget and later. In carrying out his analysis, Mr Pughe cannot, and ought not to, be criticised for applying the lower £:$ exchange rate which applied by December 2010. However, rather than drawing attention to the fact that his analysis took into account the fluctuation in exchange rates, troublingly in my view, having identified the exchange rate fluctuation, he said, as I have already quoted: "I have seen no evidence in disclosure of any event or news which caused such a reduction in forecast net revenue." There was an event which partly explained "such a reduction"; namely, the exchange rate fluctuation, to which he did not draw attention in his analysis. By not drawing attention to the exchange rate fluctuation in his analysis, Mr Pughe presented a difference between levels of forecast net revenue which was starker than what a more balanced approach would have shown.[63]

539. He had alleged FY2011 that budgeted net revenue for UniversalProcon and net revenue forecast in the Job Log were fantasies. The word "fantasy" is a strong word; a word which, by Mr Pughe's own admission, is emotive and can connote dishonesty. He then repeatedly sought to distance himself from that word in cross-examination.

540. His interpretation of Mr Gordon's deposition evidence about the achievability of the net revenue from EM work forecast in the Job Log, which he (Mr Pughe) used to reinforce his conclusion about the achievability of the overall net revenue forecast in the Job Log, was the opposite of what Mr Gordon actually said.[64]

541. Turning now to still more significant matters, Mr Pughe's key conclusion remained that the net revenue forecasts in the Job Log were not realistically achievable.

542. His opinion was that only work which was at least on the radar should be included in a forecast. Put another way, his opinion was that, if work was not on the radar at least, net revenue from it was not something which a forecaster could properly think was realistically achievable. I reject that opinion so far as it relates to UniversalProcon. It fails to recognise that, whether the Claimants' or the Defendant's view about lead times is correct, before the beginning of a financial year, when a budget is being prepared, and in the first month or so of the financial year (when the Job Log was prepared), the experience of client account managers and senior management heavily involved in the business (such as Mr Gordon, in the case of UPUS) could justify them forecasting for work which was not even on the radar but which might be awarded at relatively short notice. If Mr Pughe's approach was the right one, net revenue from Lilly work should had been forecast by US Logistics in November 2010 at about $920,000 when, in fact, the net revenue which was actually achieved in FY2011 was $2.118 million. Lilly was an established client of US Logistics and, as I say below, the outcome of the Lilly competition was substantially settled. It would be uncommercial to conduct a business on the basis that an established client is only going to provide about 45% of the net revenue which, as it turns out, it is willing to provide. Even Mr Gordon, an apparently conservative forecaster, did not take that approach.

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[63] It is right that I should note that Mr Pughe did refer to the exchange rate fluctuation in other parts of his report.

[64] In fairness to Mr Pughe, the transcript of Mr Gordon's deposition was long. Further, what Mr Gordon was actually saying required careful reading of the transcript.

543. Mr Pughe overestimated the degree of risk to, and so underestimated the achievability of US Logistics' forecast of net revenue from, Lilly work. By the Meeting, in practice the contractual arrangement between UniversalProcon, WEG and Lilly was settled (or substantially settled), and the signing of a Master Services Agreement was a mere formality. WEG believed as much, otherwise it would not have increased its 2011 forecast EBIT by £372,000 to reflect Lilly work. Mr Gordon felt able to increase the forecast net revenue from Lilly work in the Job Log from the budgeted net revenue figure and all the contemporaneous documents indicate that all those involved in the Lilly competition believed that the arrangements were substantially settled. In those circumstances, by Mr Pughe's own admission, the fact that the Lilly Master Services Agreement had not been signed did not give rise to a risk in relation to the Lilly work.

544. Mr Pughe misread the CSMS divisional board presentation and wrongly assumed that Lilly was "downsizing" so far as work being awarded to UniversalProcon was concerned.

545. He overestimated the degree of risk to, and so underestimated the achievability of US Logistics' forecast of net revenue from EM work, because he misread contemporaneous emails.

546. As I have said, I did not understand him to take issue with the Job Log forecast of net revenue from Roche work. (If I am wrong about that, and he did take issue with the forecast, I am satisfied that that is likely to be because he placed too much weight on the service issues which he did not set out in a balanced way in his report).

547. The POC schedule shows that Mr Pughe took no issue with the net revenue forecast in the Job Log for work from Amylin, Millennium and, save to a minimal extent, HCAM. The Job Log net revenue forecasts for work from Amylin, Millennium and HCAM, and Lilly, EM and Roche, amount to 90% of US Logistics' FY2011 forecast net revenue as at November 2010. Assuming that Mr Pughe misjudged the risks associated with Lilly, EM and Roche, the accuracy of his opinion, that the overall Job Log net revenue forecast was not realistically achievable, turns on the achievability of only 10% of the net revenue forecast.

548. Mr Potts repeatedly pressed Mr Pughe about his (Mr Pughe's) general duties as an expert.

549. CPR Practice Direction 35 makes clear that:

> "2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.
>
> 2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.
>
> 2.3 Experts should consider all material facts, including those which might detract from their opinions.
>
> 2.4 Experts should make it clear –

> (a) when a question or issue falls outside their expertise; and
>
> (b) when they are not able to reach a definite opinion, for example because they have insufficient information.
>
> 2.5 If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court."

550. Although Mr Potts suggested that Mr Pughe had assumed the role of an advocate for the Claimants, I do not accept that criticism. When invited to do so in cross-examination, Mr Pughe willingly accepted that he had painted an unbalanced picture. He did not present as an expert who had assumed an advocacy role.

551. It is the case that Mr Pughe did not consider all the material facts, but I am not satisfied that he deliberately chose to ignore material evidence. Whilst Mr Pughe's failure to consider material facts cannot be justified, an explanation for that failure may be that there was extensive documentary material which, as I found, was difficult to navigate at times.

552. However, even taking into account the pain Mr Pughe was in when he was giving evidence, because of the troubling presentational features of his reports and because of the broad criticisms I have made about his approach to his key conclusion, on this occasion I have no confidence in Mr Pughe's opinions and I am compelled to attach no weight to them.

553. I have more confidence in Mr Parry's evidence. On the whole, his evidence was more balanced than Mr Pughe's. There were two aspects of his (Mr Parry's) evidence, however, which mean that his evidence should be approached with some caution.

554. First, as I have noted, Mr Parry made no comment about the absence of information about Get and US UCS in the US Net Revenue Booked slide. If, as he indicated he was doing in the section in question of his report, he was commenting on the Claimants' complaints, I would have expected him to say rather more about these omissions from the slide. There are two points that can be made in response to this criticism, though. First, Mr Parry's omission was not put to him in cross-examination. Secondly, and more significantly in my view, he was able to be critical, in his report, of UniversalProcon for including a line, in its FY2011 budget, making provision for $750,000 net revenue from HCAM work.

555. Secondly, he said in his report that there was no basis, at the time of the Meeting, for forecasting a lower FY2011 net revenue sum for UniversalProcon than the budgeted £11.197 million. It is true that the basis for that opinion was UniversalProcon's performance in October 2010. However, in reaching his conclusion, he did not take into account Mr Acaster's 25 October email in which Mr Acaster indicated that UPUS was in fact forecasting a lower net revenue sum[65] and, in cross-examination, he (Mr

[65] I understand that Mr Acaster's 25 October email was not found until after Mr Parry had prepared his report. However, as he confirmed to Mr Pipe, he had seen, or was aware of, it before his cross-examination. Yet, he did not amend his report.

Parry) felt constrained to accept that an £11.197 million net revenue forecast for FY2011 for UniversalProcon was not realistic in November 2010.

Relevant legal propositions

556. Counsel made few legal submissions at the trial. Their focus, correctly in my view, was on the factual disputes between the parties. In any event, the parties did not disagree about the relevant legal principles (save marginally on causation) and counsel helpfully provided me with an (almost) agreed list of issues they said I ought to determine. Because the parties did not really disagree about the relevant legal principles, I briefly set out a number of those principles which have turned out to be relevant to my decision, by reference to what is said in Cartwright: Misrepresentation, Mistake & Non-disclosure (5th ed).

557. In this case, some of the alleged misrepresentations depend on what particular slides showed. The Presentation took place at the Meeting and was given by, or to, the people present. To determine what was represented, it is necessary to contextualise the Presentation and to consider the representee's attributes. As Cartwright explains, at paragraphs 3-06 – 3-08:

> "…Where the alleged misrepresentation was express, the question is how a reasonable person in the claimant's position would have understood the words used. Where it is alleged that there was an implied representation, the question is what a reasonable person would have inferred was being impliedly represented by the representor's words and conduct in their context. The Court of Appeal has recently said that a helpful test is "whether a reasonable representee would naturally assume that the true state of facts did not exist and that, if it did, he would necessarily have been informed of it", although it also emphasised that this was not to water down the requirement that there must be clear words or clear conduct of the representor from which the relevant representation can be implied [(see, for example, per Picken J in in *Marme Inversiones 2007 SL v. Natwest Markets plc* [2019] All ER (D) 140 (Feb) at [119])].
>
> It is possible that, even when tested objectively, a statement could equally well be understood in different senses: it is simply ambiguous. It will then be for the representee to establish the meaning of the words which he actually understood; it is not enough for him simply to claim that one of the meanings was actionable, or to leave it to the court to decide the "ordinary" meaning.
>
> …The interpretation of communications is always dependent on their context, and this is no less true for (mis)representations. If, for example, the statement which is alleged to have been a misrepresentation was made by the defendant in answer to a question put by the claimant, it may be

> necessary to construe the question in order to ascertain the true meaning of the answer…
>
> … A statement of fact which is literally true may (on its proper interpretation) be a misrepresentation by reason of the concealment of relevant facts; or it may contain further statements by implication which are false and therefore actionable."

558. For a representation to be actionable, it must be untrue. As Cartwright explains, at paragraph 3-05:

> "A representation may be true without being entirely correct, as long as it is substantially correct and the difference between what is represented and what is actually correct was not material – that is, it would not have been likely to induce a reasonable person in the position of the representee to enter into the contract."

559. Further, the representation must be untrue when it is acted on by the representee. As Cartwright explains, at paragraph 3-12:

> "…a misrepresentation which is made but is adequately corrected before the representee acts upon it is no longer actionable. In such a case it can be said either that there is no longer a misrepresentation, or that the representee in acting in the knowledge of the truth is no longer relying on the representation. The correction may be made by the representor, or by a third party, or by the representee independently discovering the truth. But the correction must be sufficient to remove the effect of the original misrepresentation: a partial or inadequate statement is not sufficient…"

As Clarke LJ explained in *Assicurazioni Generali SPA v. Arab Insurance Group* [2002] EWCA Civ 1642, at [63] – [64]:

> "Where the insured or reinsured corrects the misrepresentation or discloses the material fact before the insurer or reinsurer enters into the contract, the latter will not be entitled to avoid the contract for misrepresentation or non-disclosure. In such circumstances it may be said that there was no longer any or any material misrepresentation or non-disclosure or it may be said that there was no inducement. Perhaps it does not matter.
>
> The correction must be fairly made to the insurer or reinsurer such that the corrected picture is fairly presented on behalf of the insured or reinsured and comes to the knowledge of the insurer or reinsurer. It is not sufficient to say that he would have discovered the true position if he had acted with all due care...As I see it, it will in each case be a question of fact whether the misrepresentation was corrected so as to ensure

> that the corrected facts came to the knowledge of the insurer or reinsurer or whether, when the contract was made, the insurer or reinsurer was induced to make it by the original material misrepresentation or non-disclosure."

560. A number of the alleged misrepresentations in this case were predictions by Mr McIntosh (if he did, in fact, make those predictions). Whether those predictions can amount to actionable misrepresentations turns, in part at least, on whether they carried any factual implication. From time to time during the trial, the predictions were characterised as opinions, but ones which carried a factual implication. One has to be careful, however, not to label the predictions in issue (if made) as "opinions" and then to try to fit them into the jurisprudence which establishes when opinions can amount to actionable misrepresentations. Ultimately, predictions are about events which may happen in the future. As to future events, Cartwright explains, at paragraphs 3-43 – 3-45:

> "When it is said that a statement, to be actionable, must be one of fact, it means that the statement must be of present fact: not "future fact", that is, not a statement of what will happen in the future, nor a statement of what the speaker will do in the future. A statement of what will happen in the future is a representation of the speaker's present belief about future events. A statement of intention is a representation of the speaker's present plan for his future conduct. If he does not have that belief or that plan at the time he speaks, he is not telling the truth about his present state of mind. His representation can be characterised as a fraudulent representation of fact and therefore actionable…
>
> An honest statement of what will happen in the future is quite different from a statement of fact. It is simply a prediction, not a representation. "A statement as to a future state of affairs can in itself neither be true nor false at the time it is made, since the future cannot be foretold."…If one party wishes to hold the other liable in the event that the prediction is not borne out by the facts as the future finds them, or the promise is not kept, he has the means available within the law to do so, but not within the rules of pre-contractual misrepresentations. The mechanism provided by the law for remedying such mispredictions or promises is the contract itself. If a contract contains as a term guaranteeing that a future event will happen, or that the party will do some identified act, then there will be a breach of contract if that event does not happen, or if the party fails to keep his promise. Put this way, it ought to be clear that a person who receives a statement of future fact or intention ought generally not to be entitled to rely on it: if he wishes to obtain a remedy he should ask for a warranty in the contract to the effect that the fact will turn out as represented, or that the promise will be kept.

> …As with all representations, however, it is necessary to examine carefully any statement of the future facts or of intention, to ensure that there is no sufficient statement of (present) fact contained within it. If there is, then it might be an actionable representation. It has been held that a statement of future fact could contain an implication not only that the statement is made honestly, but also that it is made on reasonable grounds.
>
> Although a statement of the likely future profits of a business may be simply a prediction (and therefore not actionable) it can sometimes be construed as a statement of the existing profitability of the company – its present capacity to make a particular return – and therefore be characterised as a present fact, or a statement that the representor had reasonable grounds of fact for making the prediction…This, then, is similar to the approach described earlier in relation to statements of opinion: normally such a statement is not actionable because the recipient is not entitled to rely on it. In the case of statements as to the future, this is because there is no more than a misprediction or an unwarranted promise. But the words of the statement must be considered carefully, to see whether there is more than this: and in particular whether the particular statement, in its particular context (looking therefore also at the particular positions of the parties, their knowledge and the interpretation which can reasonably be placed by the representee on the statement), can be characterised as one of fact, on which reliance can therefore properly be placed."[66]

It has to be remembered that, in claims for negligent misstatement, the claimant is not required to establish that a statement of fact was made but, as in the case of (other) misrepresentation claims relating to predictions, in negligent misstatement claims there is a focus on whether the representor had reasonable basis for the prediction. As Cartwright explains, at paragraph 6-43:

> "[The representee must establish] that in making the statement [the representor] fell below the standard of care imposed on him by the duty [of care]. The duty is only one of reasonable care: a duty to take such care as a reasonable person would take

[66] As to the approach Cartwright described earlier in relation to statements of opinion, he said, at paragraph 3-19: "…In deciding whether there is such an implied statement of fact, the question is what the representee was entitled to understand. A key issue is the balance of information (or access to relevant information) held by the representor and the representee respectively. If the representee has significantly less information than the representor about facts or other circumstances which are relevant to the "opinion" expressed, it is more likely that he will be held to be entitled to rely on the statement as being more than just an opinion…"

> in the defendant's position. It is not a duty to be accurate…"[67] [68]

561. The Defendant may have contended that it did not intend the Claimants to rely on the Presentation, so that any misrepresentations are not actionable. As Cartwright explains, at paragraph 3-50, the contention by a representor that it did not intend its representee to rely on its representations is not a strong defence to a claim:

> "It is sometimes said that all the remedies have a minimum requirement as to the defendant's state of mind: he cannot be held responsible for the consequences of his statement unless he intended the representee to act on it. This requirement should not, however, be viewed as a significant hurdle for the representee to overcome. It is usually stated most explicitly in relation to the tort of deceit, where the courts often couple it with the requirement to prove the defendant's fraud, and in that context it can be seen naturally to have a positive subjective content. However, in relation to the other remedies, it means only that the representor, in making the statement, realised that his statement would be received by the representee and that he might therefore act upon it…"

562. Reliance on a misrepresentation is a necessary ingredient which must be established for a claim arising out of that misrepresentation to succeed. As Cartwright explains, at paragraph 3-51:

> "…the statement must have been present to the claimant's mind at the time when he took the course of action on which he bases his claim (such as entering into the contract), but the claimant need not prove that he believed that the statement was true: it is sufficient that, as a matter of fact, he was influenced by the misrepresentation, that the fact of the misrepresentation was a material cause of his entering into the contract…"

In fact, in cases of non-fraudulent misrepresentation, at least, what has to be established is that the representee would not have entered into the contract but for the misrepresentation.[69] In this case, it was not disputed that the "but for" test also applies to damages claims for fraudulent misrepresentation.[70]

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[67] In paragraph 89 of his closing submissions, Mr Pipe accepted that the Claimants' negligent misstatement claim would be unlikely to assist them, if their claims for fraudulent misrepresentation and under section 2(1) of the Misrepresentation Act 1967 fail.

[68] Also see Cartwright, at paragraph 7-24.

[69] See per Longmore LJ in *BV Nederlandse Industrie Van Eiprodukten v. Rembrandt Enterprises Inc.* [2020] QB 551 at [15].

[70] See paragraph 101.4 of Mr Pipe's written closing submissions. It may be that the weight of authority in fraudulent misrepresentation cases (and, perhaps, by extension, in claims relying on section 2(1) of the Misrepresentation Act 1967) is to the effect that all the representee needs to show is that the misrepresentation was in his mind when he decided to enter into the contract and that it influenced (or contributed) to his decision to do so (see per Picken J in *Marme* at [304], [317]), but, as it happens, I do not need to determine that issue in this case.

563. When determining whether a representee has relied on a misrepresentation, a court needs to consider on whom the legal and evidential burden of proving reliance lies. Critically, so long as the representation is material (that is, it is a representation which was capable of causing the representee to act (in cases such as this one, by entering into the contract in issue)), the representor has the evidential burden of establishing that the representee did not rely on the misrepresentation. Cartwright explains the position thus, at paragraph 3-54:

> "The burden of proof of reliance is on the claimant. But if a representation is such that it was likely that a person in the representee's position would rely on it, a court may find it easier to believe the representee's assertion that he did rely on it: the materiality of the statement is evidence that goes towards establishing reliance. Materiality is not necessary to establish reliance: the question is whether the court is satisfied that the representee actually relied on the statement. And materiality of the statement is not sufficient of itself to establish reliance. It was once said that there is an inference in law that a statement, if material, was relied on by the person to whom it was addressed. But this has been rejected in favour of a rule, now well established in the context of a range of remedies for misrepresentation, that materiality of a statement raises an inference in fact that it was relied on….
>
> The weight which such an inference of fact can carry will depend on the circumstances of the contract: the degree to which action by the representee on the basis of the particular misrepresentation was likely, and the available evidence of other grounds for the representee's actions. But in substance the effect of the rule is that, once a statement is shown to be material, the representor will have the burden of adducing evidence to rebut the inference that his representation was relied on by the representee. It has sometimes been suggested that this inference (of fact) of inducement is limited to cases of fraud; it may well be easy to establish the representee's reliance where that was the fraudulent representor's intention, but it is not limited to such cases."

564. The Claimants allege that the alleged misrepresentations on which they continue to rely were made fraudulently. It is necessary therefore for me to consider (i) what state of mind has to be established for a misrepresentation to be found to have been fraudulent and (ii) whose mind is in issue. Cartwright provides answers to both those questions; at paragraphs 5-13 – 5-14, 5-21:

> "To establish a claim in the tort of deceit the representee must show that the representor was fraudulent, in that he did not honestly believe that his representation was true; and that he intended the representee to act upon the statement. The tort is one of intention; simple lack of care does not suffice, either as to the truth of the statement, or as to the realisation that the statement might have the consequence that a person in the

representee's position might suffer harm by acting on it. In any claim in the tort of deceit, therefore, the enquiry into the defendant's state of mind is a very significant element – and one which the courts require to be proved strictly.

…[I]f he knew the truth but it was not present to his mind when he made the statement and so he had forgotten it, or did not realise the significance of the information he had at his disposal, he is not dishonest for the purposes of the tort of deceit…

The questions which arise in the case of a misrepresentation made not by the defendant, but by his agent or employee, have been mentioned already. A little more detail is necessary here, to examine how the courts analyse the issue with particular reference to the need to show fraud before a claim in deceit is established. Three separate cases can be addressed (in each case assuming that the statement is made to the representee who then acts on it and suffers loss):

(1) The defendant, D, authorises the statement to be made by his agent or employee, A. D knows that it is false. In this case there is no difficulty in establishing D's liability in deceit. He is clearly fraudulent for the purposes of his primary liability under the tort: the fact that he uses an agent to make the statement does not prevent it being his representation for the purposes of the tort. If A also knows that the statement is false, or at least does not honestly believe that it is true, he too will be liable personally in deceit.

(2) D does not know that A is making the statement. A, who makes the statement, knows that it is false. Here D is not liable as a primary tortfeasor in deceit, because he does not personally have the necessary fraudulent state of mind. But the elements of the tort are satisfied as regards A, who is therefore personally liable in deceit. Whether D is liable, not as a primary tortfeasor but vicariously, depends on the application of the normal rules of agency and vicarious liability: if A made the statement in the course of his employment or within the scope of his authority as agent, then D is liable.

It makes no difference that D was not himself fraudulent, nor that (if such is the case) D did not gain personally by A's tort.

(3) D does not know that A is making the statement. A, who makes the statement, does not know that it is false. But D does know the circumstances which make the statement false: that is, if D had known that the statement was being made, he would have known that it was false. The tort of deceit is not here committed at all. Neither D nor A has the necessary fraudulent state of mind. Even on the assumption that A's statement was

> made in the course of his agency or employment, the fact that D would have had the necessary state of mind had he known that the statement was being made does not make him in fact fraudulent: "You cannot add an innocent state of mind to an innocent state of mind and get as a result a dishonest state of mind.""

The context of the Meeting

565. I set out below the conclusions I have reached about the events leading up to the Meeting.

566. WEG was on the UD group's radar as a target company for acquisition from 2008 and the WEG shareholders had expressed an interest in selling the company to the UD group then. That Precision had been engaged by WEG to find a buyer suggests that there was a rather keener interest in a sale of the company than the Claimants and Mr Keene suggested in evidence.

567. At the beginning of the transaction, the UD group was willing to proceed on terms that did not include contingent consideration, but only on the basis that WEG's own projections, I am satisfied of profitability, were "strongly supported", as Mr Logue's 30 April email indicated. Even then, the view of Mr Logue at least was that the price he proposed for WEG's acquisition was "a significant premium to market rates". Mr Keene had a different view of WEG's value, as Mr Corbin reported following his 12 May dinner with Mr Keene. At that time, Mr Corbin recognised that, at about £16 million for the acquisition, the UD group would be paying "a large premium" and he also recognised that the price would have to be supported "by a thorough due diligence process".

568. That the UD group's focus was on WEG's profitability is clear from the pre-conditions in the August Heads of Terms.

569. The UD group discovered the IFRS3 issue in about September 2010 and, to overcome that issue, payment to the WEG shareholders partly on satisfaction of soft targets was proposed. However, before the workability of that as a solution could be fully explored, Mr Corbin told Mr Keene, on 8 October, that the UD group's auditors, or perhaps the Defendant's or UniversalProcon's auditors, it matters not, had rejected that as a solution, as Mr Keene confirmed in an email which was copied to Mr Parry and Mr Wilson.

570. If Mr Winterburn and Mr Saxby did not learn this in any other way, they, at least, were provided with the information at their 11 October meeting with Mr Corbin and Mr McIntosh, as Mr Keene had requested.

571. This is a convenient place to say something about the Claimants' knowledge. It is clear to me, from the contemporaneous documents, that Mr Parry and Mr Wilson, who were heavily involved in the transaction by this stage, had a close relationship with Mr Winterburn, Mr Saxby and Mr Dickinson, and kept them informed of all the matters I set out below in this section of the judgment (as well as the rejection, in October 2010, of soft targets as an option).

572. By this stage of the transaction, relations between Mr Corbin, Mr McIntosh and Mr Parry were very cordial.

573. Following the UD group's receipt of the 13 October DD report, Mr Logue's perception of the transaction and the price to be paid for the acquisition of WEG changed significantly. A number of consistent themes ran through GT's work right up until its completion in November 2010:

    i) GT believed that the WEG management team had substantially overestimated WEG's profitability – a key measure of the benefit of the transaction from the UD group's perspective;

    ii) GT believed that the WEG management team had substantially overestimated the profitability of WEG's overseas offices.

574. On 13 October 2010, WEG's board permitted the commercially sensitive parts of the 13 October DD report to be released to the UD group. I am satisfied that the Claimants appreciated that the UD group would then very shortly receive an opinion from GT about the outcome, so far, of the due diligence exercise.

575. I am satisfied that Mr Logue outlined GT's concerns, in relation to WEG's profitability at least, to Mr Taylor on 18 October. That is most consistent with Mr Logue just having received and reviewed the 13 October DD report, having then had a conversation with Mr Taylor, as Mr Logue's 18 October email indicates, and having requested further information to support WEG's profitability, and with Mr Taylor then emphasising, in his 19 October email, that WEG's adjusted EBIT forecast for 2011 met the pre-conditions in the August Heads of Terms.

576. It is probable that Mr Taylor informed Mr Wilson, also on 18 October, that GT had reached adverse conclusions, when he contacted Mr Wilson to ask Mr Wilson to provide the further information, which Mr Wilson then provided the following day. There would be no reason for Mr Taylor not to pass on this information to one of his clients (Mr Wilson) and this conclusion is consistent with Mr Taylor's evidence in cross-examination.

577. I am satisfied that, from the middle of October 2010, the Claimants were aware that GT had reached adverse conclusions in the due diligence exercise.

578. It was at this time that Mr FitzGerald laid down a marker to Mr Corbin that, because of GT's concerns about WEG's profitability and about the success of its overseas offices amongst other matters, the price for WEG's acquisition might have to be re-negotiated.

579. Mr Corbin acknowledged that concerns had been raised and asked Mr McIntosh to arrange the 26 October meeting. It is improbable that, when he arranged the meeting, Mr McIntosh did not tell Mr Parry, who he is likely to have contacted as Mr Corbin had apparently asked him to do, that the meeting was to discuss GT's due diligence concerns.

580. Mr McIntosh prepared notes for the 26 October meeting. I am satisfied that the notes which are set out in his 4 May 2011 email to himself are in fact contemporaneous

with the meeting, because they refer to WEG's own 2010 EBIT forecast of £774,000 which WEG increased as shown in the later 28 October DD report.

581. Having regard to those notes, I am satisfied that Mr McIntosh made clear to Mr Parry, who is likely to have attended, as well as Mr Wilson, who, I am satisfied from his 27 October email, attended, that the price of £16.2 million was too high if WEG's 2010 EBIT as WEG had forecasted was £774,000. He also made clear that there were real concerns about the profitability of WEG's overseas offices. Bearing in mind how the 26 October meeting came about, and bearing in mind the timing of the meeting, it is likely that Mr Parry and Mr Wilson then appreciated that one of GT's concerns was the profitability of WEG's overseas offices. It may well have been at this meeting that the WEG management team informed Mr Corbin that they believed that GT had failed to "gain a good understanding of the WEG business" as Mr Corbin's 1 November email suggested they did.

582. Mr Wilson's 27 October email only makes sense if Mr Parry and Mr Wilson were also told that the UD group was meeting GT the following day to discuss due diligence.

583. Matters became still bleaker, from the UD group's perspective, when GT provided it with a presentation of the 28 October DD report.

584. I am satisfied that, on 28 October 2010, Mr Wilson appreciated that GT continued to have concerns about WEG's profitability. That is what Mr O'Boyle's 28 October email said clearly.

585. Before the 1 November teleconference, Mr FitzGerald made his position clear to Mr Corbin; that the proposed price for the acquisition of WEG was too high. At the teleconference, Mr Logue laid out the competing arguments for and against renegotiating the terms of the transaction. Bearing in mind Mr Corbin's enthusiasm for the transaction, Mr Corbin is likely have resisted a renegotiation of the transaction, but that was to no avail and it was agreed that a renegotiation had to take place.

586. Although Mr Corbin and Mr McIntosh were vocal enthusiasts for the transaction, I am satisfied that they recognised that the circumstances had changed following the 1 November teleconference. Perhaps Mr Corbin had brought to mind his comments following his 12 May dinner with Mr Keene. More probably, he and Mr McIntosh accepted that the will of the majority following the 1 November teleconference, and, in particular, the will of Mr FitzGerald, the Plc's chief executive officer, was that the transaction could not proceed on the basis of the August Heads of Terms and could only proceed on the basis that the risk that the UD group would not receive a sufficient return on its capital employed in acquiring WEG was reduced. There is no contemporaneous document which suggests that, after the teleconference, Mr Corbin, in particular, or Mr McIntosh were still actively promoting the transaction in writing within the UD group as they had done before 1 November and there is no document in which they suggested soft targets. Instead, as Mr Corbin's 8 November email suggests, his focus, at least, was on "reasonable" targets. It is likely that he sought to keep the transaction alive by pressing for an upside for the WEG shareholders, as he suggested in evidence. Mr McIntosh also recognised that a significant change in perceptions about the viability of the transaction had occurred by the time of the 1 November teleconference; as he suggested in his 9 November email to Mr Gordon,

Mr Acaster, Mr Mate and Mr Bainbridge. He also recognised, by the time of his email, that the contingent consideration proposal included a commercial, rather than a soft earn out target because he recognised that UniversalProcon had a role in "hitting the numbers".

587. Following the 1 November teleconference, Mr Logue told Precision that the UD group had decided that the price proposed to be paid for the acquisition of WEG was too high in the light of GT's concerns. It was Mr Ackroyd, as the lead advisor at Precision, who probably proposed a solution which might meet Mr Keene's likely unwillingness to accept a reduction in price for his shares but which might also meet the UD group's concern that it was at risk of paying too much; namely, a meeting to discuss solutions which might include a contingent consideration proposal. Perhaps Mr Ackroyd had in mind the contingent consideration proposal in the June Heads of Terms. These conclusions are supported by the 1 November email chain which was belatedly disclosed by the Defendant. I have considered this email chain carefully. I do not regard it as ambiguous and I do not believe that my view of what it says would have changed had the Claimants or their witnesses been cross-examined about it. Mr Logue's evidence is also consistent with these conclusions.

588. I am satisfied that the UD group's view, and, in particular, Mr Logue's view of the transaction did not improve on receipt of the 4 November DD report. GT was still expressing concern about WEG's profitability and it was still suggesting that there were doubts about the profitability of WEG's overseas offices. Whilst GT suggested that WEG's adjusted EBIT for 2011 was forecast to be £1.379 million, GT emphasised that that took into account an addback for overseas office losses. It was clear from the 4 November DD report that GT was still waiting for information from Mr Wilson and, as matters then stood, that it did not support that addback. Ignoring the addback, the forecast for WEG's adjusted EBIT for 2011 was about £1.157 million, significantly below what the August Heads of Terms had contemplated.

589. The 5 November meeting took place. I am satisfied that, contrary to his evidence, Mr Wilson was present, as Mr Logue was informed he would be and as Mr O'Boyle suggested he was, without dissent from Mr Wilson in his 9 November email to Mr O'Boyle. In any event, Mr Parry is likely to have been present. I am satisfied that one or other of them reported the outcome of the meeting to Mr Winterburn, Mr Saxby and Mr Dickinson.

590. The principal purpose of the 5 November meeting was for those present to discuss the consequences of the UD group's decision that the terms of the transaction had to change and possible alternative transaction terms. This is the scenario which is most consistent with the UD group's decision, Mr Logue's conversation on 1 November with Mr Ackroyd and the 1 November email chain. It is also consistent with Mr Wilson's 9 November email in which he indicated that the WEG shareholders were unwilling to provide further information until things became "clearer" at the Meeting.

591. Mr Logue recounted what happened at the 5 November meeting. I accept his evidence. I have already commented favourably about him as a witness and I have noted where his evidence, particularly relating to events after the 1 November teleconference, is consistent with the contemporaneous documents. Indeed, Mr Logue's evidence is consistent with findings I have already made in this section of the judgment.

592. When the 5 November meeting opened, those present were informed that the UD group was "not comfortable" with what had emerged in the due diligence exercise. Mr Corbin explained that Mr FitzGerald had made clear that the terms of the transaction had to be renegotiated. Three alternative proposals were tabled at the meeting and it was agreed in principle that Mr Logue would develop a contingent consideration proposal.

593. Following the 5 November meeting, there was a real risk that the transaction might collapse because whether the transaction completed depended on whether the WEG shareholders accepted a commercial earn out target. Mr McIntosh suggested as much in his 9 November email to Mr Acaster and others. Mr Wilson's 9 November email, by which the WEG shareholders refused to provide further information to GT, is also consistent with this conclusion.

594. I am satisfied therefore that, before the Meeting, the Claimants appreciated that:

i) A soft earn out target was no longer being proposed;

ii) GT had reached adverse conclusions in the due diligence exercise – conclusions the Claimants disagreed with. That they appreciated that GT had reached adverse conclusions is also consistent with Mr Saxby's witness statement evidence that Mr Corbin briefly referred to "feedback from the due diligence" at the start of the Meeting. Mr Corbin would have had to say no more, because the Claimants were already aware of GT's concerns. To be entirely clear, in the light of what I have said, I reject the Claimants' case that, before the Meeting, they were not aware the GT had reached adverse conclusions in the due diligence exercise;

iii) The UD group would only proceed with the transaction if its terms were renegotiated;

iv) The purpose of the Meeting was to present a commercial, as opposed to soft, earn out target to the WEG shareholders.

595. All these conclusions, reinforce the views I have expressed above about the Claimants' (and Mr Keene's) evidence.

<u>The Bates note</u>

596. I have concluded that the Bates note is an accurate contemporaneous, but obviously not complete or verbatim, note of the Meeting.

597. By 2010, Ms Bates had been a solicitor for about ten years. Her evidence was that her practice was to take contemporaneous meeting notes. There is no reason why she might have departed from that practice in this case. Ms Bates has not been employed by the UD group since 2016. She has no interest in the outcome of the claim.

598. There are features of the Bates note itself which indicate that it is a contemporaneous note.

599. The note opens with a reference to the 5 November meeting and a brief reference to GT's due diligence work. It is probable that the Meeting opened with just such a short

discussion. Mr Parry and Mr Wilson had been at the 5 November meeting. Mr Winterburn and Mr Saxby had not been. Mr Corbin had made reference to GT's concerns at the 5 November meeting. The Meeting was effectively a follow up meeting. It seems most logical that some passing reference, but no more than a passing reference, was made, when the Meeting opened, to the 5 November meeting and to GT's due diligence concerns, just, as it happens, as Mr Saxby said in his witness statement.

600. Ms Bates is unlikely to have been present at the Meeting when Mr Corbin proposed the increased £750,000 uplift. There is no reference to it in the Bates note. There is no dispute that it was proposed towards the end of the Meeting and I have no reason to doubt that Ms Bates left before the end of the Meeting and before the time when the proposal was put. The Bates note does, however, refer to the initial proposal for a £500,000 uplift. It would be odd if the two proposals were made close in time. The Bates note suggests that the initial proposal was made early in the Meeting, which is logical.

601. Interestingly, in dealing with the contingent consideration proposal (including the uplift), the Bates note is consistent with the Wilson note.

602. The Wilson note presents the £500,000 uplift proposal next to the terms of the contingent consideration proposal. The Wilson note makes two references to the increased £750,000 uplift proposal. The first reference, one of only about two not written on a line in Mr Wilson's lined notebook is immediately underneath the terms of the contingent consideration proposal. The second reference is at the end of the Wilson note. Subject to the first of the references in the Wilson note to the increased £750,000 uplift proposal, both the Bates note and the Wilson note present what is referred to in the Wilson note as the "UP Budget" immediately after the record of the contingent consideration proposal with the initial £500,000 uplift proposal.

603. I think that it is more likely that the figures in the "UP Budget" table in the Wilson note were presented as part and parcel of the presentation of the contingent consideration proposal including the initial £500,000 uplift proposal – so early in the Meeting – than that the figures in that table were presented at a much later point in the Meeting. I think it is more likely that the first of the references, in the Wilson note, to the increased £750,000 uplift proposal was added towards the end of the Meeting (and so not on a line in Mr Wilson's notebook) when that proposal was presented, with Mr Wilson expanding on his note about that proposal at the bottom of the page, where there was available room.

604. Mr Pipe said, in his closing submissions:

> "It is more likely that the first page of Ms Bates note reflects internal, pre-meeting discussions. This fits with the visually apparent insertion of the three columns of figures in her notes which appear to have been added sometime after this note was originally penned…"

As I have just explained, I reject that submission.

605. The first page of the Bates note records that Mr Parry expressing concern about the contingent consideration proposal and put forward an alternative proposal and it records the rejection of that alternative proposal. It is unlikely that Mr Parry would have put his proposal without prior consultation with the other WEG shareholders. It is probable that that alternative proposal was put after the end of the 5 November meeting when a contingent consideration element to the transaction became a probability again. There is nothing to suggest that that alternative proposal was put before the Meeting. It is likely, therefore, that it was put at the Meeting by Mr Parry following a discussion of the WEG shareholders after the 5 November meeting.[71]

606. The first page of the Bates note also records that the WEG shareholders present wanted confirmation that they would continue to receive their directors' bonuses. That request is most likely to have been made at the Meeting, the WEG shareholders having had an opportunity to reflect on, and discuss, the 5 November meeting.

607. Although later pages in the Bates note tend to refer to slides only by a number and a title, I am satisfied that those pages are a contemporaneous note of what was presented because, in places, Ms Bates does record information, on lines in her lined notebook, which appears to be commentary on slides being presented.

608. I therefore accept Ms Bates' evidence that the Bates note is a contemporaneous note of the Meeting and I have no reason to doubt its accuracy. This conclusion leads to a further conclusion; namely, that Ms Bates' other evidence is likely to be accurate.

609. I recognise, as Mr Pipe pointed out in closing, that Mr Logue said that he could not recall any substantive discussion before he left the Meeting, which may be inconsistent with the Bates note, but Mr Logue's failure of recollection does not, I am satisfied, undermine the conclusion I have reached about when the Bates note was prepared. There was no particular reason for Mr Logue to believe, at the time of the Meeting, that it was to be a key event about which he would be cross-examined ten years later. He had already developed the contingent consideration proposal. Mr Corbin, rather than Mr Logue, is likely to have led the Meeting on the UD group's behalf and, in the light of the conclusion I reach below about the UD group's willingness to provide further information to the WEG shareholders, the Meeting was unlikely to appear to Mr Logue, at the time, as having the importance it has gained since.

610. A number of consequences flow from these conclusions.

611. The Presentation contained many more slides than in the Claimants' slide deck, contrary to the Claimants' case. This is also consistent with the Meeting having lasted five hours, as it apparently did.

612. The Presentation was of the Bates slide deck. That slide deck, unlike the McIntosh slide deck, follows the course of the Bates note. That the Bates slide deck, rather than the McIntosh slide deck, was used is also consistent with the fact that the slides in the McIntosh slide deck are in a somewhat random order, as I have noted, and with the

[71] This reinforces the conclusions I have already reached about the 5 November meeting.

fact that the Bates slide deck largely follows the order of those slides in the Claimants' slide deck.

613. The contingent consideration proposal was presented for the first time in the early part of the Meeting, contrary to the Claimants' case.

614. The WEG shareholders present at the Meeting were likely to have suggested that they could regain clients lost by UniversalProcon, as Ms Bates suggested in evidence.

615. I have already rejected the Claimants' now abandoned claim of an implied misrepresentation in relation to the UP EBIT 1 slide. That conclusion is reinforced by two entries in the Bates note. In relation to the UP EBIT 1 slide itself, the note records Mr McIntosh as having said: "Despite GP lower, increased EBIT" and, in relation to the UP Group Sales 2009 v 2010 slide, it records Mr McIntosh as having said that: "Total sales dropped due to losing clients".

616. As Ms Bates and Mr McIntosh suggested, and contrary to the Claimants' case, Mr McIntosh explained that the Indianapolis office might not close if Lilly objected. It is probable that Mr McIntosh initially suggested that the Indianapolis office was going to close but later qualified that, because the qualification is recorded in smaller writing, and not on a line in Ms Bates' lined notebook, on the Bates note and because there is a note, slightly below the qualification, on the Bates note, that the "Ivyland headcount will increase to accommodate Indie closure".

617. Mr McIntosh presented a considerable amount of information about UniversalProcon's clients to the WEG shareholders present at the Meeting; including the names of existing and potential clients and client contacts, contrary to what Mr Winterburn apparently said in his witness statement.

618. This is a convenient place to say something about due diligence of UniversalProcon.

619. I am not satisfied that the UD group firmly refused any request, in July 2010, for due diligence of UniversalProcon. I have already commented on Mr Ackroyd's 9 July email. A firm refusal at the 8 July dinner, as Mr Keene suggested, is not obviously consistent with Mr Corbin's later discussion with Ms Bates when he asked about the information which could be provided to the WEG shareholders. It is not obviously consistent with the view Mr Logue said he took to the provision of information to the WEG shareholders, which Ms Bates corroborated. It is equally probable, at least, that the possibility of due diligence of UniversalProcon in the summer of 2010 was not pursued, because Mr Keene had indicated an unwillingness on the part of the WEG shareholders to agree any form of contingent consideration proposal, and because, at that stage, on the limited information then available, the UD group was willing to effectively substitute £700,000 deferred consideration in place of £1 million contingent consideration. (The deferred consideration in the June Heads of Terms was for a total of £3 million, whereas the deferred consideration in the August Heads of Terms was £300,000 less).

620. Whatever the state of affairs in the summer of 2010, by November, the UD group was willing to provide internal confidential information, including financial information, about UniversalProcon to the WEG shareholders and, I have concluded, contrary to

the Claimants' case, the provision of internal financial information relating to UniversalProcon was not refused at the Meeting for the following reasons.

621. As I have already concluded, confidential client information was provided at the Meeting and further financial information ("consolidated numbers") promised (albeit not apparently then delivered). Further, Ms Bates indicated, prior to the Meeting, to Mr Corbin that information, including (confidential) information protected by a non-disclosure agreement, could be provided to the WEG shareholders. Perhaps most significantly, I am satisfied that Mr Logue did indicate, at the 26 November meeting, that the WEG shareholders could request further information. I have already commented favourably on Mr Logue as a witness. His evidence was corroborated by Ms Bates, as I have already noted. His indication at the 26 November meeting is consistent with the other matters I have referred to in this paragraph and, most strikingly perhaps, that he gave the indication is consistent with Mr Wilson's evidence in his witness statement that such an indication may have been given. That evidence is contrary to the Claimants' interest. It did not have to be volunteered by Mr Wilson. Although Mr Wilson sought to resile from this evidence in his oral evidence, that rang somewhat hollow when I heard it and is another example of Mr Wilson's prevarication in his oral evidence.

622. The conclusions I have reached in this section of the judgment reinforce the assessment I have already made about Mr Winterburn, Mr Saxby and Mr Wilson in particular as witnesses and further justify the approach I have decided I should take to their evidence.

623. This is also a convenient place to say something about the Joint Budget 2 slide.

624. I am satisfied that the green bars relate to WEG's EBIT contribution to the total figures shown on that slide and that the yellow bars relate to savings. It is therefore improbable that Mr McIntosh misattributed those bars. Rather, consistently with Mr Saxby's contemporaneous note and 2014 correspondence, Mr McIntosh, I have concluded, did correctly attribute the green bars to WEG's EBIT contribution and the yellow bars to savings.[72] As Mr Pughe acknowledged in cross-examination, the whole purpose of the contingent consideration proposal was to de-risk the transaction for the UD group, so that the price which the WEG shareholders sought (£16.2 million) would only be payable if WEG was actually almost as profitable as WEG had forecast and almost as profitable as the August Heads of Terms had contemplated. That the UD group might be prepared to pay £16.2 million for WEG (i.e. the price contemplated in the August Heads of Terms) if WEG's EBIT contribution in 2011 was only £900,000 (as shown in the yellow bar for that year) makes no sense. Such an approach would be wholly contrary to the UD group's stance in its internal paperwork (for example, the 15 November paper written for the Plc's Acquisition and Finance sub-committee), and to the concerns being expressed by Mr Logue internally and externally and by Mr FitzGerald internally. It would be contrary to the concerns about overpayment raised during the 26 October meeting. It would be wholly contrary to the UD group's decision to renegotiate the terms of the transaction at the 1 November teleconference.

[72] This too reinforces the conclusions I have already reached about Mr Winterburn, Mr Saxby and Mr Wilson as witnesses.

625. That the yellow bar for 2011, annotated £900,000, relates to savings makes sense as it happens. The different bars on the slide are annotated with round numbers. Mr McIntosh indicated at the Meeting that, whether or not the transaction completed, UniversalProcon forecast saving £425,000 in 2011. From the summer of 2010, Mr McIntosh and later the UD group more generally had been forecasting synergy savings "falling to EBIT" of £469,000 for 2011. The two sums combined total £894,000.

The UP EBIT 2 slide

626. As pleaded, the Claimants' case is that the statements Mr McIntosh made in relation to this slide followed on, seamlessly it appears, from his statements in relation to the UP EBIT 1 slide. The Claimants plead, at paragraph 16(e) of the Particulars of Claim, in relation to the UP EBIT 2 slide, that:

> "…reference was made by Mr McIntosh to the 2011 forecast EBIT of £2.77m and that it would be achieved by building on the same management principles as the previous three years through reducing overheads, the efficient use of productive labour and increasing net revenue through existing and new customers…"

It will be recalled that the Claimants' pleaded case in relation to the UP EBIT 1 slide was that Mr McIntosh impliedly misrepresented that sales "were increasing and had done so year on year". This contention is no longer pursued by the Claimants and, as I have indicated, I would have rejected it had it been; which calls into question the foundation for the single representation which the Claimants allege in relation to this slide, the UP EBIT 2 slide; namely, that net revenue could be expected to increase in FY2011.

627. The slide did not present any information about net revenue. There was no particular reason for Mr McIntosh to refer to net revenue when presenting this slide, which is likely to have been intended to show that UniversalProcon's forecast FY2011 EBIT was even higher than its FY2010 EBIT.

628. There is no evidence which corroborates Mr Saxby's claim (made in his witness statement) that Mr McIntosh made the representation the Claimants allege in relation to this slide.[73] Taking into account too my conclusions about Mr Saxby as a witness, I am not satisfied, therefore, that Mr McIntosh did make that representation.

The Financials for UP Group and Margin Analysis for UP Group slides

629. It will be recalled that the Claimants contend that the prediction of UniversalProcon's FY2011 net revenue at £11.197 million is an actionable misrepresentation because there was no basis for that prediction and because UniversalProcon's customers and sales were falling. In fact, on a careful reading of the Particulars of Claim, the Claimants appear to go further and contend that it was misrepresented that net

[73] In fact, Mr Winterburn cannot recall the slide being discussed and Mr Wilson did not suggest that net revenue was mentioned when this slide was presented.

revenue of £11.197 million for FY2011 was UniversalProcon's forecast at the time of the Meeting.

630. Bearing in mind that these slides use the word "forecast", and bearing in mind too that, as Mr Parry explained, there is a difference between a budget and a forecast, a reasonable person, in the Claimants' position, presented with these slides would have understood them as representing that net revenue for UniversalProcon for FY2011 was being forecast, at the time of the Meeting, at £11.197 million.

631. As it happens, Mr McIntosh understood, as Mr Acaster may also in fact have understood, the slides as representing what had been budgeted for UniversalProcon's FY2011 budget.

632. In fact, as Mr Acaster's 25 October email makes clear, UPUS was then being forecast to achieve about $500,000 less net revenue than had been budgeted. Indeed, it is likely that UPUS was then being forecast to achieve $557,393 less net revenue, as the Pughe Job Log suggests. There has been no suggestion that anyone in fact revisited this forecast, or considered that it was wrong, before the Meeting. Mr McIntosh had no reason to consider that it was wrong, because he thought that he was presenting the budget, rather than a forecast, figure.

633. Towards the end of November 2010, UPUK's FY2011 net revenue was forecast to increase by only about £21,000. It is unlikely therefore that in October or November its FY2011 net revenue was forecast to increase by the Pounds Sterling equivalent of $557,393; £352,394 at the lower £:$ exchange rate of 1: 1.58.

634. I have concluded, therefore, that, at the time of the Meeting, £11.197 million net revenue for UniversalProcon for FY2011 was not being forecast. Instead, somewhat less (about $557,000 less) revenue was being forecast. It follows that the representation, that net revenue of £11.197 million for FY2011 was UniversalProcon's forecast at the time of the Meeting, was incorrect. I am not satisfied that it was substantially correct or that the difference between what had been budgeted and what was being forecast (about $557,000) was immaterial. At the lower exchange rate, the forecast was only marginally (£172,169) above UniversalProcon's FY2010 net revenue and further below its FY2009 net revenue than the FY2011 net revenue budget indicated. I have concluded, therefore, that these slides misrepresented that net revenue for UniversalProcon of £11.197 million was being forecast for FY2011 at the time of the Meeting.

635. The picture would have been starker, if the lower £:$ exchange rate in November 2010, which affected the whole of UPUS' forecast net revenue when converted to Pounds Sterling, had been applied to the forecast. The Pughe Job Log suggests that, taking into account the lower exchange rate, in November 2010, UPUS' net revenue for FY2011 was being forecast at about £700,000 less than the budget figure, which would have resulted in a UniversalProcon FY2011 net revenue forecast of about £10.495 million (or £10.516 million, if UPUK's forecast additional £21,000 net revenue is taken into account), which was below UniversalProcon's net revenue for FY2009 and FY2010.

636. Although the Claimants make a broader attack on these slides as I have indicated, having found this misrepresentation established, I have concluded, on reflection, that I

do not need to reach a decision in relation to the Claimants' broader attack, which takes them no further in the light of my overall decision.

637. Was the misrepresentation a fraudulent misrepresentation? As Cartwright has explained, a representor is only fraudulent if he did not honestly believe in the truth of his representation, and, if the representor knows the truth but the truth was not present in his mind at the time he makes the representation, because he has forgotten the truth or because he does not appreciate the significance of the information before him, he is not dishonest.

638. The Presentation was prepared in a couple of days by a number of people, overseen by Mr McIntosh. They had no reason to think that, after the Meeting, the WEG shareholders would not test the accuracy of, or ask for further details about, the information. Mr McIntosh's claim that he thought he was presenting the budget figure for UniversalProcon's FY2011 net revenue is credible and one I accept. £11.197 million was the budget figure, as Mr McIntosh is likely to have recalled. I was taken to no evidence which indicates that, in the couple of days before the Meeting, Mr McIntosh saw any document which had a different combined FY2011 net revenue figure of UPUS and UPUK. It is just as probable as any other scenario that whoever provided the data in the slide believed that they were providing FY2011 budget data. I am therefore not satisfied that the significance of Mr Acaster's 25 October email or the accompanying data was appreciated or was brought to mind in the couple of days before the Meeting. I am therefore not satisfied that the case for a fraudulent misrepresentation is made out.

The UP Group Net Revenue Forecast slide

639. It will be recalled that the Claimants contend that it was misrepresented, by this slide, that UniversalProcon was forecasting net revenue for FY2011 of between £9 million and £10 million and that that was an accurate forecast.

640. In the case of this slide, which purports to contain information about budgeted and forecast net revenue, even more than in the case of the slides about which I have just commented a reasonable person would have understood it to represent that UniversalProcon was forecasting net revenue for FY2011 of between £9 million and £10 million at the time of the Meeting. Indeed, the Defendant admits in the Defence that it was represented that the forecast was UniversalProcon's actual forecast. As I have already noted (and, as Mr McIntosh accepted and Mr Parry explained), UniversalProcon was not forecasting at that level at the time of the Meeting. The difference between what the slide shows and what was actually being forecast was substantial; probably about £1 million. I am therefore not satisfied that the representation was substantially correct and I have concluded that the Claimants' claim that the slide misrepresented UniversalProcon's FY2011 forecast net revenue is made out.

641. However, I have concluded that, when the slide was presented, no-one said that it was accurate. There was no need to make such a remark; particularly part way through a presentation the whole of which was intended to be accurate. In any event, Mr Winterburn and Mr Saxby do not say that that remark was made and Mr Wilson gives no evidence about the slide at all.

The Business Booked, UK Net Revenue Booked and US Net Revenue Booked slides

642. The Claimants contend that, when introducing these slides, Mr McIntosh explained that booked business was confirmed business for which there was a purchase order or in respect of which a purchase order was expected. Mr McIntosh accepted, in cross-examination, that he did say that when he introduced the slides.

643. He also accepted that the US Net Revenue Booked slide was misleading in presenting work on the radar as booked business.

644. In the light of Mr McIntosh's admitted introduction to these slides, I am satisfied that a reasonable person in the Claimants' position would have understood the US Net Revenue Booked slide as showing only work for which there was a purchase order or in respect of which a purchase order was expected. It is true that the slide is annotated with the word "Provisional", but it has not been suggested that that annotation was commented on during the Presentation and, if Mr McIntosh, who was presenting did not appreciate, as he did not, that the UK Net Revenue Booked slide said "No radar" but that the US Net Revenue Booked slide did not, it is unlikely that a reasonable person in the Claimants' position would have noted the distinction.

645. The Claimants also contend that the slides misrepresented that UPUS had $3.31 million booked business (i.e. work for which there was a purchase order or in respect of which a purchase order was expected) at the time of the Meeting.

646. As it happens, it is likely that it was substantially correct that UPUS had $3.31 million booked business at the time of the Meeting. As the Job Log shows, and the Claimants accept in the Particulars of Claim, US Logistics had $2.915 million booked business on 9 November 2010. By 17 November, only five days after the Meeting, that figure had increased to $3.307 million; an increase of $392,000 in eight days. By the same date, so from 1 October to 17 November 2010, Get and US UCS had obtained about $406,000 booked business, the majority of which business is likely to have become booked business before the Meeting, because the Meeting was so close in time to 17 November. It is likely too that the difference between UPUS' actual booked business at the date of the Meeting and $3.31 million was not material. The difference is likely to have been so small as not to have influenced a reasonable person.

647. However, the Defendant admits[74] that the $3.31 million sum included work which was only on the radar. In fact, as I read the Defence,[75] I have to take the Defendant to admit that, in fact, at the time of the Meeting, UPUS had only $2.915 million booked business (so meaning that as much as $395,000 work was only on the radar). As Mr Corbin explained in cross-examination, the level of booked business "would be a factor that would help determine how EBIT was going to be driven…[S]o it would be amongst a group of important factors."

648. In the light of these admissions and of the conclusions I have reached, I am compelled to conclude that it was incorrect to represent, as the US Net Revenue Booked slide did (or must be taken to have done), that UPUS had $3.31 million booked business at the

[74] See paragraph 22.4 of the Defence.
[75] See paragraphs 22.1 – 22.3 of the Defence.

time of the Meeting, and that I am not satisfied that that was substantially correct or that $395,000 non-booked business was immaterial. In these circumstances, I am compelled to conclude that there was a misrepresentation by showing, on the US Net Revenue Booked slide, that UPUS had $3.31 million booked business at the time of the Meeting.

649. However, I have concluded that the misrepresentation was not made fraudulently. There is no evidence that anyone else actually knew that Mr McIntosh was going to introduce the slides as he actually did and so was going to wrongly qualify the slides as only showing work for which there was a purchase order or in respect of which a purchase order was expected. Mr McIntosh's admission about how he introduced the slides was volunteered, as was his acceptance that, by removing the word "Logistics", the US Net Revenue Booked slide gave a false impression. His evidence, particularly in this context, struck me as credible and truthful. He rejected the suggestion that he intended to mislead by his introduction. I can think of no good reason why Mr McIntosh would have consciously given a false impression of what the slides showed if he knew the truth. The much more probable explanation is that, in the haste to put together the Presentation and prepare for the Meeting, Mr McIntosh had noted that the UK Net Revenue Booked slide was limited to booked business, so excluding non-booked business (including radar), had noted that that slide was one he had initially distributed on 9 November and had assumed that, as he suggested in his 9 November email they should, the UPUS team (Mr Gordon and Mr Acaster) had taken the same approach in the preparation of UPUS' equivalent slide.

650. The Claimants also apparently contend that Mr McIntosh represented that work which was only on the radar was not included in the US Net Revenue Booked slide (or, perhaps, in the sum of $3.31 million). There was no reason for Mr McIntosh to make such a representation, having given the introduction to the slides which he admitted he gave. The Claimants' contention turns entirely on their uncorroborated evidence; particularly that of Mr Saxby. In the light of the conclusions I have already reached, I am not satisfied that Mr McIntosh did make this further representation.

<u>The Joint Budget 2 and the Joint Budget 3 slides</u>

651. The Claimants' complaint which is pursued particularly in relation to these slides is that Mr McIntosh misrepresented that the earn out target was soft, should be easily beaten[76] and would be a breeze.

652. I ought to make two preliminary points.

653. First, as pleaded, the Claimants' complaint is founded on two further allegations; namely, that Mr McIntosh mis-predicted the achievability of UniversalProcon's FY2011 EBIT forecast of £2.77 million and that he mis-predicted the achievability of savings. It will be recalled that neither of these allegations is now pursued by the Claimants.

654. Secondly, the achievability of the earn out target depended on three factors; namely:

[76] In fact, it was never put to Mr McIntosh in cross-examination that he used this phrase. Rather, it was put to him that he had said that the earn out target was easy to achieve.

i) The achievability of UniversalProcon's EBIT contributions and of the savings shown on the Joint Budget 2 slide (which are not the subject of any complaint now by the Claimants);

ii) The achievability, by WEG, of its EBIT contributions as shown on that slide (which has never been the subject of any complaint by the Claimants and is likely to have been particularly within the knowledge of the WEG shareholders);

iii) How closely aligned the earn out target was to the totals for each year shown on the Joint Budget 2 slide. As to this last factor, the Joint Budget 3 and Joint Budget 4 slides accurately showed, in different ways, the degree of that alignment.

I have struggled, therefore, to understand how the Claimants can maintain their claim in relation to these slides. In particular, I have struggled to understand how the WEG shareholders present at the Meeting left it with a false sense of the achievability of the earn out target. As it happens, for the reasons I now give, I do not need to finally resolve that struggle.

655. As I shall explain, I have come to the clear conclusion that Mr McIntosh did not describe the earn out target as soft.[77]

656. The claim that Mr McIntosh so described the earn out target relies entirely on the Claimants' uncorroborated evidence. I have already explained why I attach no weight to their uncorroborated evidence.[78]

657. As I have already found, before the Meeting, the Claimants appreciated that:

i) A soft earn out target was no longer being proposed;

ii) The terms of the August Heads of Terms were no longer acceptable to the UD group because it believed that those terms created too great a risk that it might overpay for the acquisition of WEG;

iii) The purpose of the Meeting was to present a commercial, rather than a soft, target.

658. It would therefore have been a striking, and very improbable, feature of the Meeting if the earn out target had been presented as soft. Some note or other contemporaneous

[77] I do not understand the Claimants to continue to allege that Mr Corbin misrepresented the achievability of the earn out target but, in case they do, I should make clear that I am satisfied, largely for the reasons I give in rejecting the Claimants' claim against Mr McIntosh, that, if maintained against Mr Corbin, that claim ought to be rejected too.

[78] To be clear, if it is more correct to say that Mr Saxby's self-generated documents are capable of being corroborative evidence, I attach no weight to them because (i) they are not wholly accurate or entirely consistent with the Claimants' case, (ii) I must approach them in the same way as I approach the rest of Mr Saxby's evidence, (iii) they are not contemporaneous to the Meeting and (iv) they were written after the relations between he and Mr McIntosh had broken down somewhat and after there was a patent risk that the earn out target would not be met.

record is likely to have been taken or made of the use of that word. However, there is no such note or other record.

659. Although Mr Corbin was a vocal enthusiast for the transaction and first suggested easy targets, following the 1 November teleconference, the circumstances changed. A firm decision was taken, particularly by Mr FitzGerald, that the terms of the transaction had to be re-negotiated. From then on, Mr Corbin's approach to the transaction also changed. He had not promoted soft targets for some weeks. He knew that, as an option, they had already been rejected. His became less vocally enthusiastic about the transaction, at least in writing. At the 5 November meeting, he presented a more downbeat picture; effectively indicating that Mr FitzGerald had made a decision that the terms of the transaction had to be renegotiated and that he was bound to give effect to Mr FitzGerald's wishes. He is likely to have been party to the discussion at that meeting during which commercial earn out targets were discussed. Mr Corbin began to talk of the earn out target as "reasonable". His focus thereafter appears to have been on providing an upside as a term of the transaction.

660. It is therefore improbable that Mr Corbin described, or would have described, the earn out target as soft.

661. Mr McIntosh was more junior in the UD group structure than Mr Corbin. He had been a less vocal enthusiast of the transaction in general and soft targets in particular. If it is improbable that Mr Corbin described the earn out target as soft, even more so is it improbable that Mr McIntosh did so. Indeed, in his 9 November email, Mr McIntosh suggested that the transaction could only proceed if the WEG shareholders accepted a commercial earn out target.

662. At the start of the Meeting, Mr Corbin made a passing reference to GT's due diligence concerns. When the contingent consideration proposal was presented early in the Meeting, no reference was made to the earn out target being soft, as it most likely would have been, had that been Mr Corbin's, or Mr McIntosh's, view. There is no reference to such a description of the earn out target in the Bates note and, had that description of the earn out target been given, it would have been recorded in the Bates note, as she later recorded "Way in excess of earn out targets" when the Joint Budget 2 or Joint Budget 3 slide was being presented. Rather, the point was made that the UD group had to "show a return on capital employed". These features, as recorded in the Bates note, are inconsistent, more or less, with the earn out target being described as soft.

663. Initially, the WEG shareholders were offered a £500,000 uplift. If Mr Corbin or Mr McIntosh believed the earn out target was soft, or thought that the WEG shareholders might accept such a suggestion, it is not likely that Mr Corbin would have increased the proposed upside to £750,000, when the lower, £500,000, proposal had not been rejected. Yet, that is what he did.

664. After the Meeting, none of the Claimants suggested that the earn out target was, or might be, soft, or had been described as soft, as I would have expected them to do had that word been used. To the contrary, their focus was on the risk presented by the earn out target.

665. I reject Mr Winterburn's claim that he did not tell Mr Keene the whole truth about what was said, at the Meeting, about the achievability of the earn out target, when he spoke with Mr Keene shortly thereafter. His 14 November email, in which he recorded his conversation with Mr Keene, was sent only to Mr Parry, Mr Saxby and Mr Wilson; all of whom were at the Meeting. If he, or they, had conceived a plan to present a not wholly truthful picture to Mr Keene, that is likely to have found some reference in his email.

666. If too the Claimants had left the Meeting thinking that the earn out target was soft, they are unlikely to have pushed Mr Keene to offer up the Cleckheaton property as security, as they (or one or more of them) did.

667. It would have been short-sighted for Mr McIntosh to promote the earn out target as soft, if he did not believe it was so. If the transaction proved not to be successful, he was at risk of being criticised.

668. Since the Meeting, the Claimants' case about what was said has changed. For example, in his 30 May 2011 letter to Mr McIntosh, Mr Saxby suggested that the phrase used to describe the earn out target was "really soft". In his letter, he put speech marks around that phrase (but did not around the word "breeze" in the same sentence) which suggests that he wished to indicate that "really soft" was reported speech.

669. Finally, and perhaps interestingly, in part of his re-examination, before he apparently resiled from what he said, Mr Dickinson said that Mr Saxby had convinced him that: "UDG…had done it before and…we could achieve these numbers over the next three years…" That does not suggest that Mr Saxby reported that the earn out target was anything other than achievable.

670. I have also concluded that Mr McIntosh did not describe the earn out target using the other words the Claimants ascribe to him (i.e. that it was a breeze, that it was easy to achieve, or that it should be easily beaten).

671. As I have indicated, it was not put to Mr McIntosh that he said that the earn out target should be easily beaten but, whether the Claimants' case is that he said that the earn out target should be easily beaten or was easy to achieve, does not really matter.

672. It is true that the words ascribed by the Claimants to Mr McIntosh were not, or were only hardly, used in emails when solutions to overcome the IFRS3 issue were being discussed. It is also true that targets which were a breeze, should be easily beaten, or which were easy to achieve were not recorded, by Mr Keene, as having been apparently rejected in terms by auditors. Nevertheless, the reasons I have given for rejecting the Claimants' contention that the earn out target was described as soft apply with almost equal force in the case of the other words ascribed to Mr McIntosh. In fact, it may be said that my rejection of the Claimants' case that the earn out target was described as soft undermines their case that Mr McIntosh used the other words ascribed to him.

673. As I have said, the Bates note records that, in presenting the Joint Budget 2 or Joint Budget 3 slide, the following was said: "Way in excess of earn out targets". That is likely to refer to the £4.9 million, £5.6 million and £6.1 million sums shown on the

Joint Budget 2 and Joint Budget 3 slides and the extent to which the earn out target fell below those sums. To similar effect, in cross-examination, Mr McIntosh accepted that the earn out target "represented a significant discount on the total of combined forecasts plus expected synergies". I accept that the £4.9 million, £5.6 million and £6.1 million sums were described as being "way in excess of" the earn out target. Whether or not that was so was something which the WEG shareholders present could easily judge for themselves, as I have noted. On careful reflection, I have concluded that the assertion that that those three sums were "way in excess of" the earn out target gave no indication about the achievability of the earn out target.

674. I have already concluded that Mr McIntosh was a poor witness in cross-examination. I considered that conclusion before deciding whether or not Mr McIntosh described the earn out target in the ways ascribed to him by the Claimants. That Mr McIntosh was a poor witness in cross-examination does not make it more probable than otherwise that he would have used the words ascribed to him or that he would have misdescribed the achievability of the earn out target.

675. Mr McIntosh had said, before the Meeting, in his 9 November email, that: "Our objective at the meeting is to present a picture which gives them confidence that we are comfortable in playing our part in hitting the numbers." I considered this evidence too before deciding whether or not Mr McIntosh described the earn out target in the ways ascribed to him by the Claimants. As I have said, in the 9 November email, Mr McIntosh explained that the transaction would only proceed if the WEG shareholders agreed "combined EBIT numbers over the next three years". I am satisfied that Mr McIntosh's "objective" was to explain to the WEG shareholders present at the Meeting why he, in particular, then believed, as he is likely to have done at least, that UniversalProcon was then on course to meet its FY2011 EBIT budget, that there was a realistic prospect that it would increase its EBIT in later years and that it had at least good prospects of contributing to the savings as shown on the Joint Budget 2 slide for example. There is nothing in Mr McIntosh's email which makes it more likely than it would otherwise have been that he misdescribed the achievability of the earn out target.

676. In his witness statement, Mr Corbin said that: "We presented that the earn-outs were very achievable". In answer to a question from me, he suggested that he thought the earn out target was "eminently achievable" or "seriously achievable". I considered this evidence too before making my decision about whether Mr McIntosh described the earn out target in the ways the Claimants ascribe to him, but I concluded that this evidence did not assist one way or the other. As I have already said, it is clear to me that Mr Corbin does not recall any details about the transaction. In any event, as Mr Corbin effectively suggested in his answer, I am satisfied that it does not follow that because an earn out target is very achievable, eminently achievable or seriously achievable, it is a breeze or easy to achieve, or should be easily beaten. An earn out target of the sought Mr Corbin contemplated might nevertheless require hard work, difficult decisions about costs cutting necessary to make savings and luck.

677. Mr Pipe submitted in closing, first, that something must have caused the Claimants, who were adamantly opposed, before the Meeting, to any earn out target, to agree to it after the Meeting and, secondly, that the only explanation for the Claimants' volte-face was that Mr McIntosh misrepresented the achievability of the earn out target in particular. I am not sure that I do have to find an alternative explanation (as, in fact, I

understood Mr Pipe to suggest) for the Claimants' decision to enter into the SPA, because if I had to, that might come dangerously close to reversing the burden of proof, but, as it happens, I have come to a clear conclusion about why the Claimants entered into the SPA having previously been unwilling to accept an earn out target, which I consider below when I discuss whether the Claimants relied on any of the misrepresentations which they have established.

The Lilly "misrepresentation"

678. The Claimants complain that Mr McIntosh misrepresented that UniversalProcon's predicted net revenue from Lilly work in FY2011 was the same as FY2010 budget and/or was the same as the net revenue actually achieved in FY2010. As I have recorded above, the actual state of affairs in relation to Lilly was:

	FY2010 Budget ($)	FY2010 Forecast ($) (as at July 2010)[79]	FY2011 Budget ($)	FY2011 Forecast ($) (as shown in the Job Log)
Lilly	3,000,000	2,464,307	2,779,000	2,859,000

679. The Claimants' case depends entirely on the oral testimony of Mr Winterburn, and Mr Saxby, and on a single annotation, by Mr Winterburn, on the US Net Revenue Booked slide: "Same as 2010 Lilly".

680. Consistent with my approach generally to the Claimants' evidence, I should approach the oral testimony of Mr Winterburn and Mr Saxby with care. Further, Mr Winterburn has misannotated slides. He misannotated the 2010/11 Savings slide (or, perhaps, did not update his initial annotation, once he was told that the Indianapolis office might not close) and he misannotated the green bars and the yellow bars. Additionally, the annotation in issue relating to Lilly appears on the US Net Revenue Booked slide and does not make clear what was the same as "2010 Lilly".

681. Had I had to decide the issue, I have real doubt that I would have concluded that Mr McIntosh made the statement about Lilly attributed to him by the Claimants.

682. However, Mr Pipe pointed out in closing, correctly, that Mr McIntosh could not say whether or not he did make the statement and, in any event, more importantly that Mr Winterburn was not challenged on his evidence that UniversalProcon "had not adjusted their 2010 Lilly figures in their 2011 budget, i.e. that they had assumed the same level of Lilly work".

683. It is difficult to know what "2010 Lilly figures" Mr Winterburn was referring to. He may have been referring to US Logistics' FY2010 net revenue budget for Lilly work or he may have been referring to the net revenue US Logistics actually achieved in FY2010.

[79] I am not sure I was ever told how much net revenue was obtained from Lilly work by UniversalProcon in FY2010.

684. To say that UniversalProcon's FY2011 November 2010 forecast for net revenue from Lilly work was the same as UniversalProcon's FY2010 budget was not a misrepresentation. The difference between the two sums is small ($150,000) and I do not think that that difference is likely to have induced a reasonable person in the Claimants' position to enter into the SPA when they would not otherwise have done; particularly because the FY2011 forecast was lower than the FY2010 budget figure.

685. Looking at paragraph 143 of his witness statement carefully, it is reasonable to suppose that Mr Winterburn's evidence was in fact to the effect that Mr McIntosh misrepresented that US Logistics' FY2011 budgeted net revenue from Lilly work was the same as the net revenue actually achieved from Lilly work by US Logistics in FY2010. That was not correct. I am not satisfied that that statement was substantially correct or that the difference between the two sums was immaterial.

686. In those circumstances, most favourably to the Claimants, I will proceed on the basis that Mr McIntosh misrepresented that US Logistics' FY2011 net revenue budget for Lilly work was the same as the net revenue actually achieved from Lilly work in FY2010.

Summary of misrepresentations

687. I proceed on the basis that the Claimants have established the following misrepresentations in the Presentation (or at the Meeting); namely that:

i) UniversalProcon was predicting net revenue of £11.197 million for FY2011 at the time of the Meeting;

ii) UniversalProcon was predicting net revenue of between £9 million and £10 million for FY2011 at the time of the Meeting;

iii) UPUS had $3.31 million booked business at the time of the Meeting;

iv) US Logistics' FY2011 net revenue budget for Lilly work was the same as the net revenue actually achieved from Lilly work in FY2010.

Reliance

688. I proceed on the basis that there is an evidential burden on the Defendant to establish that, in entering into the SPA, the Claimants did not rely on these misrepresentations (and, to be clear, these misrepresentations alone, because they are the only ones which the Claimants have established).

689. For the following reasons, I have come to the clear conclusion that the Claimants did not have in mind and were not influenced by these misrepresentations, and so did not rely on them, in entering into the SPA.

690. The Claimants' case is based on their own assertions of reliance. I have to bear in mind, in the present context, my general criticisms of the Claimants as witnesses and my rejection of other parts of their case which turn on their evidence.

691. The misrepresentations were points of detail in a significantly larger body of information (contained in more than 60 slides) (at a meeting, the purpose of which,

from the Claimants' perspective, was to learn about what turned out to be an EBIT- and savings-based contingent consideration proposal). For example, the £11.197 million net revenue prediction on the Financials for UP Group and Margin Analysis for UP Group slides was one figure out of a number deployed for those slides' principal purpose; that is, to present details about UniversalProcon's EBIT.

692. It is apparent that the WEG shareholders present at the Meeting did not pay attention to points of detail during the Meeting.

693. They were all members of the senior management team in a business which, on any analysis, is likely to have had a value of many millions of pounds. It has not been suggested that they did not have some experience of analysing financial data. Mr Wilson is a chartered accountant and was WEG's finance director. However, despite having been repeatedly shown that UniversalProcon's net revenue for FY2011 was being forecast as £11.197 million, none of them appreciated that the UP Group Net Revenue Forecast slide showed a forecast of about £1.5 million less. Nor did any of them appreciate that the budgets shown on the booked business slides, when combined, were, in Pounds Sterling equivalent, similarly lower than the £11.197 million sum apparently forecast; although I accept, in this latter case, this inaccuracy in the booked business slides would have been much more difficult to immediately pick up by someone not experienced in financial analysis.

694. Indeed, as I have noted, Mr Winterburn's own witness statement suggests that he did not pay much attention to the net revenue figures shown on the Financials for UP Group or the Margin Analysis for UP Group slides, or to the UP Group Net Revenue Forecast slide.

695. There is no evidence to suggest that Mr Winterburn or Mr Saxby knew much about the US healthcare events management business. So they are unlikely to have read much into the misrepresentation that UPUS had $3.31 million booked business at the time of the Meeting, even if they made comparisons to the information on the UK Net Revenue Booked slide. Whilst Mr Wilson's evidence was that the amount of booked business shown on the US Net Revenue Booked slide looked good when compared to WEI's position, he had no way of telling whether the booked business as shown was good or bad when compared to UPUS' performance in previous years or whether it was good or bad compared to UPUS' FY2011 expected performance at that stage.

696. Mr Saxby acknowledged, properly in my view, that he could deduce nothing from the misrepresentation that US Logistics' FY2011 net revenue budget for Lilly work was the same as the net revenue actually achieved in FY2010. I do not think that any of the Claimants could have deduced anything from this misrepresentation. The WEG shareholders did not know the amount of net revenue from Lilly work actually achieved in FY2010. Nor did they know the volume of Lilly work which US Logistics had obtained in FY2010 or the volume of work it had budgeted it would obtain in FY2011.

697. In the light of his own evidence, I am satisfied that Mr Dickinson was not aware of the misrepresentations before he entered into the SPA. What other evidence there is about what Mr Dickinson knew at the time merely reinforces this conclusion.

698. Mr Wilson did not have, or obtain, a copy of the Claimants' slide deck before he entered into the SPA or study it after the Meeting. He did not record the misrepresentations.

699. Mr Winterburn and Mr Saxby did not review the Claimants' slide deck after the conclusion of the Meeting before entering into the SPA.

700. No-one provided a copy of the Claimants' slide deck to WEG's professional advisors.

701. Whilst it may be claimed that the Claimants did not need to consult the Claimants' slide deck because they had in mind the misrepresentations in issue, because those misrepresentations were points of detail and because there is no reference to any of them in any of the contemporaneous documents – nor is there any evidence that any of these points of detail was discussed after the Meeting – I think that such a claim is improbable. Rather, what is more probable is that none of the WEG shareholders recalled these points of detail after the Meeting.

702. As I have said, I have come to a clear conclusion about why the Claimants entered into the SPA, having previously been unwilling to accept an earn out target, as I shall now explain.

703. I need to make two preliminary points.

704. First, by 2010, there was a greater focus on the sale of WEG than some of the Claimants' evidence might have suggested. A sale had been on the agenda, although not as the principal item, since 2008; so for about 2 years before the transaction.

705. Secondly, the Claimants were not as opposed in principal to a contingent consideration proposal as their evidence suggested and as they, or rather Mr Keene, presented to the UD group at the time. Their opposition was somewhat more nuanced and complicated. As Mr Saxby's 3 July email and Mr Dickinson's 26 July email indicate, what the Claimants objected to were the risks inherent in a contingent consideration proposal, particularly absent appropriate due diligence being carried out, without a sufficiently counter-balancing benefit. As Mr Saxby said: "any earn out I have heard of has upsides too". The Claimants' opposition to contingent consideration was also complicated by the fact that it was in part as a result of what they saw as the imbalance created by Mr Keene's unshakeable unwillingness to share any contingent consideration.

706. By October 2010, a good relationship had developed between some of the WEG management team, or Mr Parry at least, and Mr McIntosh. As Mr Parry's 9 October email suggests (and as Mr Corbin suggested in evidence), the WEG management team (Mr Keene excepted), expected to have key roles in the combined WEG-UniversalProcon business and so, to a degree, control over its direction and success. The combined business would be part of the UD group, the ultimate parent of which was an Irish plc and the transaction would allow them, they believed, "to develop [their] careers", as Mr Parry suggested in his email. Before the 13 October DD report, the Claimants were, for these reasons, enthusiasts about the transaction. As Mr Winterburn was still saying, in his 14 November email: "the management team see this deal as the best way forward for the business".

707. So GT's adverse due diligence conclusions, the fact that the UD group would not proceed with the transaction on the basis of the August Heads of Terms and the fact that, by 5 November, there was a real risk that the transaction would collapse, are likely to have been a significant disappointment to the Claimants; particularly after they had agreed the August Heads of Terms and the transaction had been proceeding for many months.

708. It is likely, therefore, that, when they arrived for the Meeting, Mr Parry, Mr Winterburn, Mr Saxby and Mr Wilson were concerned about the terms of the contingent consideration proposal they had come to hear being presented. By the end of the Meeting, they are likely to have been pleasantly surprised about its terms.[80]

709. At the Meeting, they learned that UniversalProcon was forecast to achieve a FY2011 EBIT of £2.77 million.

710. They also learned the following.

711. The UD group had apparently assumed, on the Joint Budget 2 slide, that, for example for 2011, £900,000 savings could be made by the UniversalProcon-WEG combined business, although it expected that considerably more could be saved. It is to be remembered that the Joint Budget 2 slide was presented only shortly after the slides relating to savings had been presented, and it was at this point that the contingent consideration proposal was considered a second time, it having been presented initially at the beginning of the Meeting. It is also to be remembered that, when the contingent consideration proposal was presented at the beginning of the Meeting, the earn out was said to be based on "trading profits of [UniversalProcon] and WEG", according to the Bates note. The Joint Budget 2 slide presented the £900,000 savings the UD group had apparently assumed as additional to the trading profits of the combined business. Importantly, as the Joint Budget 2 slide suggested, the UD group had assumed that savings, including synergy savings, could be made in addition to UniversalProcon's and WEG's EBIT contributions, and this Mr Winterburn, Mr Saxby and Mr Wilson are likely to have recalled. (They are likely to have appreciated, in any event, that on the combination of WEG and UniversalProcon there were likely to be synergy savings).

712. In constructing the proposal, the UD group had also assumed a £1.3 million EBIT contribution from WEG in 2011. Throughout the transaction, the WEG management team believed that WEG was a more profitable and successful business than GT believed and that WEG's overseas offices were likely to be much more successful than GT thought. Shortly before the Meeting, WEG was forecasting an adjusted EBIT for 2011 of £1.657 million.

713. In constructing the proposal, the UD group had set the earn out target below the combination of the WEG contribution, the UniversalProcon contribution and savings

[80] I accept that it is likely that Mr McIntosh was positive when he made the Presentation both about UniversalProcon and the transaction, but his positively about UniversalProcon is likely to have stemmed from his belief that it could achieve an EBIT of £2.77 million in FY2011 (which the evidence suggests was how its success was measured) and because of his enthusiasm for, and success in the UK in, business development. It is unlikely that he paid any, or any real, attention to the points of detail which I have held to be misrepresentations.

as shown on the Joint Budget 2 slide for example. Over three years, the earn out target represented only 85% of that combination.

714. Even bearing in mind Mr McIntosh's positivity, I have concluded that, when they left the Meeting, Mr Winterburn, Mr Saxby and Mr Wilson are likely to have appreciated that the contingent consideration proposal carried a real risk, in particular because they had no independent basis for assessing the achievability of UniversalProcon's EBIT forecast or the achievability of the contemplated savings, but that that risk was mitigated (i) because the WEG contribution calculated by the UD group as shown on the Joint Budget 2 slide for example was substantially below the EBIT the WEG management team expected it to achieve, (ii) because the UD group assumed that there could be savings in addition to the EBIT contributions and because synergy savings were likely, (iii) perhaps because the assumed savings were substantially less than what had been presented as possible savings, (iv) because the contingent consideration proposal was set below the EBIT contributions and the assumed savings and (v) because they believed that they could, and would be in a position to, make UniversalProcon more successful.

715. Some of these points can be illustrated in the following way. The earn out target for 2011 was £4.4 million. On the assumption that WEG's actual EBIT contribution was £1.657 million and that the savings made were £900,000, UniversalProcon's actual EBIT contribution for 2011 only had to be £1.843 million for an advance payment to be made. £1.843 million apparently represented less than 70% of UniversalProcon's forecast FY2011 EBIT. Looked at another way, with an earn out target for 2011 set at £4.4 million, and on the assumption that WEG's actual EBIT contribution would be £1.657 million, to meet the 2011 earn out target the UniversalProcon EBIT contribution and the savings achieved only had to be £2.743 million, £857,000 less than, or about 76% of, a UniversalProcon EBIT contribution of £2.7 million and savings of £900,000.

716. In this context, the offer of a £750,000 upside represented a significant counter-balancing benefit to the risks in the contingent consideration proposal and was attractive, as Mr Parry reported in his 15 November email.

717. The Claimants are likely to have appreciated that, as GT had reached adverse due diligence conclusions about WEG (i) there was a risk that another prospective buyer may receive similarly adverse advice, and (ii) in fact, WEG's value was somewhat less than £16.2 million and, perhaps, was closer to £13.05 million (the initial consideration under the SPA) or, at least, that another prospective buyer might only offer about £13 million for WEG. Mr Winterburn did make a point, in his 14 November email, about "the state of the market and pressure on pricing".

718. The transaction was not an imperative for Mr Keene, as Mr Winterburn's 14 November email suggests, for example. Mr Keene was the majority shareholder. He had complete control over whether or not the transaction proceeded at all and whether or not the Claimants benefited at all from their share option agreements. As he was entitled to, he was unwilling to share with the other WEG shareholders any part of the risk of the contingent consideration proposal or to support the offering of the Cleckheaton property as security for the contingent consideration, and, as the evidence indicates, he was unmoveable on these matters. He was keen for the transaction to be completed (as he had been from July when he cautioned Mr

Dickinson against a renegotiation of the terms of the transaction) but only on the basis that the shareholdings of the other WEG shareholders alone were disposed of in return for any contingent consideration. If the Claimants were then to realise any value at all from their share option agreements, they had to accept the contingent consideration proposal and, more than that, they had to accept it disproportionately because Mr Keene was unwilling to accept contingent consideration for his shareholding.

719. It is inherently probable that, for these reasons, or, to put it another way, in the circumstances which existed in November 2010 (which were very different from those which existed at the early stages of the transaction), the Claimants concluded that there was a real and appreciable risk to accepting the contingent consideration proposal (as Mr Parry acknowledged at, and after, the Meeting and as some of the Claimants did after the Meeting), but that the risk was one they would take; in the case of Mr Wilson, probably also because he did feel under pressure to accept the proposal at the 17 November meeting. He was the youngest of the WEG management team. None of his colleagues expressed reservations about the transaction at the Meeting. Keen for the transaction to be completed, but keen too that others alone accepted the contingent consideration proposal, Mr Keene did put pressure on Mr Wilson, at the 17 November meeting, to accept the contingent consideration proposal. That to me seems to be what most probably occurred at the 17 November meeting, in the light of Mr Wilson's evidence and the description of Mr Keene, by Mr Winterburn and Mr Dickinson, as a strong personality. To be clear, I do not criticise Mr Keene for putting pressure on Mr Wilson. The WEG shareholders were businessmen. The transaction was a commercial one. There is no reason why self-interest could not feature in the approach they each took to the transaction.

720. In the case of Mr Dickinson, my conclusion is reinforced because, in the light of his own evidence, if nothing else, it is clear that Mr Dickinson decided to enter into the SPA, not because of the misrepresentations (which he knew nothing about), but because he trusted the judgment of his colleagues who had decided to enter into the SPA.

Disposal

721. As I have explained, the Claimants have established the following misrepresentations in the Presentation (or at the Meeting); namely that:

i) UniversalProcon was predicting net revenue of £11.197 million for FY2011 at the time of the Meeting;

ii) UniversalProcon was predicting net revenue of between £9 million and £10 million for FY2011 at the time of the Meeting;

iii) UPUS had $3.31 million booked business at the time of the Meeting;

iv) US Logistics' FY2011 net revenue budget for Lilly work was the same as the net revenue actually achieved from Lilly work in FY2010.

722. However, as I have also explained, I have come to the clear conclusion that the Claimants did not have in mind, and were not influenced by, these misrepresentations, and so did not rely on them, in entering into the SPA.

723. I will hear further from counsel about the consequences of this decision but, as presently advised, it seems to me inevitable that the claim must be dismissed.

Postscript

724. I hope that it goes without saying that I am grateful to Mr Pipe, Mr Potts and Mr Woods for all their assistance during the trial. The Covid-19 pandemic had a significant impact on the trial as it has had on so many aspects of daily life. Until shortly before the trial began, it was anticipated that the trial would be a hybrid trial and a lot of work was done to ensure that that hybrid trial would run smoothly. At almost the last moment, I had to order that the trial proceed as a fully remote trial. That the trial was to be a fully remote trial meant that further work had to be done to make sure it ran smoothly. Almost inevitably, there were some problems with the videolinks. Counsel and the parties' solicitors, in particular Ms Fantoni of Clarion Solicitors and Mr Mitchell of Pinsent Masons, deserve much of the credit, and my thanks, for ensuring that the trial ran without interruption and so efficiently, and so that the technical problems had no impact on it. The trial participants used an electronic trial bundle managed by XBundle. I must thank the team at XBundle, in particular Mr Agombar, for all the support they gave to the trial participants, especially me, even outside court hours. Having a managed electronic trial bundle allowed the trial to run much more smoothly than it ever could have done with only a paper bundle or a non-managed electronic bundle. Because of the hard work of counsel, the solicitors and XBundle, the trial, although fully remote, was as fair as a face to face trial would have been.