

Day05

HADEED EMIRATES CONTRACTING CO. L.L.C. (UAE) v ALTAQA ALTERNATIVE SOLUTIONS GLOBAL FZE (UAE)

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By Rajendra Patel

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Between

HADEED EMIRATES CONTRACTING CO. L.L.C. (UAE)

Claimant

- and -

ALTAAQA ALTERNATIVE SOLUTIONS GLOBAL FZE (UAE)

Respondent

- before -

Day05

Friday , 20 Sep 2024

Annotations

Page	Source text	Note	Issues
223	mnoon? PRESIDENT: No, it's okay. Certainly my transcript has what you said		<div></div> EXCHANGE RATE OF TOP
223	we had the letter of spk's letter of 17 June, which is B41, which again said that SEPSCO should apply SWPC's approach to all invoices issues since January 2014 and to all future invoices until the issue is resolved.		<div></div> EXCHANGE RATE OF TOP
222	on our preferred basis, pointing out that ^^ SWPC to dispute supplementary invoice under clause 10.5. That was rejected on 8 June 2014, which is B39, by SWPC. SWPC said that its indexation approach should be used until the dispute is settled. Then we hav		<div></div> EXCHANGE RATE OF TOP
222	BITRATOR: Yes. Thank you very much and I look forward to receiving the rest of the documents from both parties. (5.13 pm) (The hearin		<div></div> EXCHANGE RATE OF TOP
221	een treated fairly during in hearing and throughout the course of the present proceedings. MR HOWELLS: I confirm on behalf of the respondent. Thank you. SOLE ARBITRATOR: Thank you very much. Does the claimant h		<div></div> EXCHANGE RATE OF TOP
221	and always respecting the rules of the quorum, which sometimes fall away during hearings. With all of that said, I wish to ask the claimant whether you be		<div></div> EXCHANGE RATE OF TOP
220	y and Mohammed for their patience over the past five days. Everyone who's put a lot a time into organising this hearing and the experts, sometimes as arbitrators we joke tha	FGFJGKDJHF GKJ HDKFG DFG DFG	<div></div> RATE OF TOP
220	er 18, no longer than 150 pages. On November 29, the parties will submit reply post-hearing briefs, no longer than 50 pages. On December 13, the parties will submit their cost submissions.		<div></div> RATE OF TOP
219	f the record) SOLE ARBITRATOR: We're going to back-to-back order record. I'm going to record all of this. And then I'm going to ask you the usual,		<div></div> RATE OF TOP
220	to confirm that both parties agree that there's no dispute about the use of time during the hearing. Have I omitted anything? MR HOWELLS:	SD A SDASD ASD	<div></div> RATE OF TOP

Highlights

Page	Source text	Note	Issues
219	<p>Thank you.</p> <p>WITNESS: Thank you.</p> <p>(Witness was released)</p> <p>SOLE ARBITRATOR: Shall we go off the record for a few</p>		<div><div></div>EXCHANGE Unassigned</div>
221	<p>digestible pieces of information, so thank you to everyone for that.</p> <p>And to counsel for having made this a pleasant experience and always respecting the rules of the</p>		<div><div></div>EXCHANGE Unassigned</div>
221	<p>SOLE ARBITRATOR: Same question to the respondent, do you believe you've been treated fairly during in hearing and throughout the course of the present proceedings.</p> <p>MR HOWELLS: I confirm on behalf of the respondent. Thank you.</p> <p>SOLE ARBITRATOR: Thank you very much.</p> <p>Does the claimant have anything further before this hearing is closed?</p> <p>MR SULEMAN: No, thank you.</p> <p>SOLE ARBITRATOR: Does the respondent there anything further before this hearing is cloe.</p> <p>MR HOWELLS: No, thank you, save to say Madam Arbitrator</p>		<div><div></div>RATE OF TOP</div>

1 08:37:11	test test test test test test test.
2 08:38:21	Good morning, this is day 5. Mic number 1 testing,
3 08:38:28	testing mic number 2, testing mic number 3, testing mic
4 08:38:42	number 4, testing mic number 5, testing mic number 6
5 08:38:56	
6 08:38:56	
7 08:38:57	
8 08:38:57	
9 08:38:58	
10 08:38:58	
11 08:38:59	
12 08:38:59	
13 08:39:02	
14 08:39:36	
15 08:39:37	
16 08:39:37	
17 08:39:38	
18 08:39:38	
19 08:39:38	Marge 345R7B8G
20 08:39:40	
21 08:39:40	
22 08:39:43	
23 08:39:47	(9.30 ^ am)
24 09:22:26	
25 09:22:27	Mr Michael Edward Saulsbury

1 09:29:50 SOLE ARBITRATOR: Good morning, everyone. We are back on

2 09:29:53 the record. This is day 5 of the evidentiary hearing in

3 09:29:58 ICC case 26620.

4 09:30:01 This is the last day of the hearing.

5 09:30:03 Mr Saulsbury, I wish to remind you that you remain

6 09:30:06 under oath.

7 09:30:07 Do you confirm that you have not discussed the case

8 09:30:09 and your testimony with anyone since we left each other

9 09:30:13 yesterday evening.

10 09:30:14 WITNESS: I confirm, yes.

11 09:30:15 SOLE ARBITRATOR: Thank you very much.

12 09:30:18 Mr Suleman, the floor is yours and I remind the

13 09:30:21 parties that we have approximately three hours per side

14 09:30:24 left.

15 09:30:24

16 09:30:24 Cross-examination by Mr Suleman (continued)

17 09:30:27 MR SULEMAN: I just want to pick up on one thing before we

18 09:30:30 move on from window 4, which is where we left off

19 09:30:32 yesterday.

20 09:30:33 If we could please turn to the joint statement, this

21 09:30:38 is E49-23, if particular this is point 48.

22 09:30:59 There's somewhat of a disagreement on this, but you

23 09:31:03 do recognise there that resources -- performance and

24 09:31:06 resources were likely caused the completion slabs ^^ on

25 09:31:11 2 February. Mr Dean has been perhaps a little more

1 09:31:15 precise. He identifies the late payments

2 09:31:20 between July 2016 and February 2017?

3 09:31:23 A. He identifies that, yes, but I think if we would refer

4 09:31:28 to his cashflow analysis, which I think is what he's

5 09:31:33 identifying here, what we see is that there is a very

6 09:31:38 limited period, I think only in September 2016, where is

7 09:31:46 cashflow was negative.

8 09:31:47 So over that overall period, no, I don't think

9 09:31:53 cashflow is particularly relevant over that period,

10 09:31:57 which is why, in my analysis and my report, I've not

11 09:32:02 made reference to cashflow until after February 2017.

12 09:32:10 Q. In which window do you refer to cashflow as a factor?

13 09:32:13 A. To the blockwork from February 2017 to October 2017. So

14 09:32:22 that will be in the next window.

15 09:32:25 Q. In the next window. But in this window, did you go

16 09:32:31 through the process -- aside from cashflow, did you go

17 09:32:34 through the process of the payment ^^?

18 09:32:36 A. No, I didn't. I think that's something that's being

19 09:32:39 dealt with by others. I did, however, look at Mr Dean's

20 09:32:44 cashflow analysis that was in his first report, in that

21 09:32:49 he's pointing to here (and when I looked at that ^ when

22 09:32:53 I identified is that the cashflow problems statisticked

23 09:32:59 after February 2017.

24 09:33:03 Up to that point, by and large, Mr Dean doesn't

25 09:33:06 identify any cashflow problems. So I would disagree

1 09:33:10 that his statement -- with his statement made here in

2 09:33:13 the joint statement about the cashflow or the late

3 09:33:15 payments over that period.

4 09:33:18 Q. But what I want to understand is your approach to this,

5 09:33:21 because Mr Dean and yourself both agree that this is ^^

6 09:33:26 effectively in that period?

7 09:33:30 A. I think, as I said yesterday, I think there were

8 09:33:33 resource issues from the very beginning, including this

9 09:33:36 period, yes.

10 09:33:38 Q. Once you both identified that, Mr Dean then goes to

11 09:33:42 understand why there's a resource shortfall. He carries

12 09:33:46 out his analysis. Was your approach to look at

13 09:33:49 Mr Dean's analysis or simply ^^?

14 09:33:52 A. Yes -- (overspeaking) -- ^^.

15 09:33:52 Q. The reason for the resource shortfall ^^?

16 09:33:54 A. I don't have any issue with Mr Dean's cashflow analysis.

17 09:33:57 I think one of the things he's done in that analysis is

18 09:34:01 take account of the advance payment and look at payments

19 09:34:05 then coming in and coming out. I think that was looked

20 09:34:08 at with Mr Dean a little bit yesterday.

21 09:34:12 Again, it's not entirely precise, for I think the

22 09:34:16 reasons that were explored yesterday, but by and large,

23 09:34:18 when you factor in the as advance payment and look at

24 09:34:22 the cash flow in/cashflow out, it doesn't identify

25 09:34:25 there's a problem until after February 2017. So that's

1 09:34:30 why I've not mentioned cashflow as an issue prior

2 09:34:38 to February 2017.

3 09:34:38 Q. In principle at least you would agree that if there's

4 09:34:40 draws in making payments to Hadeed ^^ subcontractors

5 09:34:46 that can cause a delay?

6 09:34:47 A. It may, it may not. It's hard to generalise.

7 09:34:51 Q. Would you say it would have been likely to affect?

8 09:34:54 A. It may and it may not. I've seen it where it does

9 09:34:58 affect resources. I've also seen where it doesn't

10 09:35:01 affect resources, for other reasons, such as having

11 09:35:04 advance payments.

12 09:35:05 Q. Would you say in principle at least, delays in making

13 09:35:08 payments would affect the associated manpower levels?

14 09:35:12 A. Like I said, it can sometimes and it cannot other times.

15 09:35:17 It just depend. So the answer to your question is have

16 09:35:20 I seen it? Yes. Have I seen it in other instances

17 09:35:23 where it didn't? Also yes.

18 09:35:24 Q. But you can't say whether or not it would be likely, in

19 09:35:27 principle?

20 09:35:28 A. I mean, as a principle, I think, yes, it can be an

21 09:35:32 issue. But it also depend on the circumstances.

22 09:35:36 Q. Could I please take you to your first report, E23,

23 09:35:51 page 120, paragraph 4.196(c).

24 09:36:09 You do agree that in principle, delays in making

25 09:36:14 payments to subcontractors and suppliers would have been

1 09:36:16 likely to affect their associated manpower levels ^doc)?

2 09:36:19 A. Yes, I accept that.

3 09:36:20 Q. Not that it entirely depend -- I asked you earlier

4 09:36:24 whether that would have been likely to ^^ you said,

5 09:36:27 well, it depends. Sometimes it can, sometimes it can't?

6 09:36:30 A. I think it does depend. As a principle, I said yes,

7 09:36:33 I've seen it. I've also said, no I haven't seen it.

8 09:36:40 Q. Would the principle that you set out there, that you're

9 09:36:43 referring to payments to subcontractors, that principle

10 09:36:45 would also, you would accept, would apply to any direct

11 09:36:48 payments to Hadeed, in terms of their effect on

12 09:36:52 associated manpower levels?

13 09:36:53 A. Sorry, direct payments to Hadeed?

14 09:36:56 Q. As opposed to the subcontractors, that was the

15 09:37:00 arrangement post July?

16 09:37:02 A. Sorry, can you just repeat the question?

17 09:37:04 Q. The principle you set out there, you say in Prince

18 09:37:07 profit and loss at least, delays in ^reading...)

19 09:37:09 subcontractors and suppliers would have been likely to

20 09:37:12 affect their associated manpower levels." ^doc.

21 09:37:15 Presumably, that means if payments had been made

22 09:37:19 direct ^^ Hadeed are paying the subcontractors, that

23 09:37:22 principle you would say would also apply?

24 09:37:26 Yes, so if payments are made to Hadeed and Hadeed does

25 09:37:29 not make them to subcontractors, then, yes.

1 09:37:39 Q. So we'll go through the remaining windows, but when you

2 09:37:41 carried out your delay analysis, in light of your

3 09:37:44 recognition of this, at least in principle, did you

4 09:37:47 compare payments being made to Hadeed to the manpower

5 09:37:49 levels?

6 09:37:54 A. No, I think -- well, it's something that Mr Dean did,

7 09:37:58 it's something that I definitely considered, yes.

8 09:38:01 Q. My question is did you carry out the analysis in did you

9 09:38:03 carry out analysis of the payments being made to Hadeed

10 09:38:06 and the associated manpower levels at that time?

11 09:38:12 A. Did I do my own analysis of that? No, I looked at what

12 09:38:17 Mr Dean did and I had no issues with that. That's why

13 09:38:21 I've made reference to his chart here on 197 on what he

14 09:38:25 includes about resources. That's why I had regard to

15 09:38:28 his cashflow analysis. I department see anything wrong

16 09:38:31 with it, so I didn't see a need to do anything different

17 09:38:35 or separate on my own. ^.

18 09:38:37 Q. But you would agree with Mr Dean's analysis, the

19 09:38:42 entirety of his analysis on the impact that late

20 09:38:47 payments had on the associated manpower levels?

21 09:38:49 A. No, I didn't say that. What he set out in his first

22 09:38:56 report about the cashflow, I have no issues with that.

23 09:39:02 What he's set out in terms of the resources, which is

24 09:39:06 here portfolio, which is his chart that I'm commenting

25 09:39:08 on at paragraph 4.197, I also don't have any issues with

1 09:39:13 that.

2 09:39:14 What I have an issue with is where he was pointing

3 09:39:16 to late payments in a period of July 2016

4 09:39:23 to February 2017 as the issue, because I think that is

5 09:39:26 inconsistent with the cashflow analysis.

6 09:39:34 Q. Could we please turn to your second statement, your

7 09:39:38 second report, this is at E42, page 83.,

8 09:40:07 paragraph 4.158.

9 09:40:15 ^^ that's what you were explaining, that you

10 09:40:19 recognise the cashflow issues?

11 09:40:20 A. Yes, correct, which is why, based on that information,

12 09:40:25 why I have now mentioned cashflow as a reason for the

13 09:40:31 decreasing resources from March 2017, but not before.

14 09:40:40 Q. Did you -- and if this is outside your purview. When

15 09:40:44 you came to the conclusion you did in paragraph 4.158,

16 09:40:52 did you look at the cause behind the cashflow issues?

17 09:40:59 A. No, I don't think Mr Dean and I have done that. It was

18 09:41:04 simply the cashflow.

19 09:41:10 Q. In light of the principle that you set out earlier, in

20 09:41:12 principle, you accept late payments can impact the

21 09:41:15 manpower and the level. Did you not think you had to

22 09:41:17 look at the reason for the cashflow issues in order to

23 09:41:22 determine the cause?

24 09:41:26 A. No, I think that involves getting into invoicing

25 09:41:30 arrangements, quantity surveying, in terms of the bill

1 09:41:33 of quantities. Again, that's not something that I have

2 09:41:37 experience or expertise in.

3 09:41:40 Q. The question of the cause behind the cashflow issues

4 09:41:43 really is a matter that's outside your purview?

5 09:41:47 A. Yes, I think it's also an issue that is in dispute

6 09:41:50 between the parties over that, in terms of the payments

7 09:41:52 and the timing. Again, that's something that others

8 09:41:55 have looked at and as I said, deals with issue that is

9 09:42:00 invoicing and bill of quantities, which is not my area

10 09:42:02 of expertise.

11 09:42:04 Q. The question of whether -- when we're looking at each of

12 09:42:07 these windows, late payments affected resources on the

13 09:42:13 ground, and whether or not those were a cause of the

14 09:42:18 delay, is outside your purview?

15 09:42:23 A. Whether or not the payments are made late by reference

16 09:42:27 to the payment applications by Hadeed, the certification

17 09:42:34 by Fittons, in the timing of then the payments being

18 09:42:37 made to the bank account, no, it's not something I've

19 09:42:40 looked at.

20 09:42:42 I think from a delay expert perspective, when I'm

21 09:42:45 trying to look at the causes of delay, there is only so

22 09:42:47 far I can take it before I'm now trespassing into

23 09:42:52 quantity surveying and quantum issues.

24 09:42:54 Q. I appreciate that. In your report, wherever you

25 09:42:58 highlight a lack of resources or the shortage of

1 09:43:05 manpower, you do not look behind the causes of that?

2 09:43:12 A. Where I can, I've tried to identify where I think it's

3 09:43:16 relevant. So again, when we look at the cashflow, that

4 09:43:24 became negatives more significantly from March 2017.

5 09:43:29 So because that was identified by Mr Dean and

6 09:43:33 I agree with what he showed, it's at that point where

7 09:43:37 I've said: I think cashflow and resources is a cause of

8 09:43:43 delay at that point. But the priority that point, from

9 09:43:47 what I have looked at, it doesn't appear ^^ cashflow

10 09:43:54 was

11 09:43:54 running in a negative amount when you fact ^^ payments

12 09:43:57 that were made, so I have not mentioned it prior to that

13 09:44:01 point.

14 09:44:02 Q. If we could turn back to the joint statement, E49,

15 09:44:10 page 44.

16 09:44:20 My apology,, I think it's point 44, rather than page 44. This is page 21, please.

17 09:44:48 I'm trying to understand in in layman's terms.

18 09:44:51 You're the expert here. Further opted page. ^^ does

19 09:45:02 cast-in completion of the mezzanine slab on 2 February

20 09:45:06 mean ^doc) in real terms? What does that mean?

21 09:45:09 A. It means the concrete was poured and the work inspection

22 09:45:14 for that pour was issued.

23 09:45:16 Q. In your experience, do you think blockwork work fronts

24 09:45:21 on the mezzanine slabs could commence the next day on

25 09:45:26 the mezzanine slab?

1 09:45:27 A. No, and the baseline programme doesn't say that either.

2 09:45:32 It has a period between the casting and the commencement

3 09:45:35 of blockwork of a lag of 14 days, and that allows for

4 09:45:39 the curing period.

5 09:45:43 Q. How do you say the critical path shifts to the

6 09:45:47 blockworks before the blockworkings can start?

7 09:45:55 A. I think you do have to allow for the curing period and

8 09:45:59 that's what I've allowed. I'm not saying they ^^

9 09:46:03 blockwork the next day because that's not in accordance

10 09:46:05 with the baseline programme. After that slab curing,

11 09:46:08 the next delay I've measured to blockwork, in terms of

12 09:46:11 its progress, accounts for the curing period. I'm not

13 09:46:16 measuring the delay to starting the blockwork

14 09:46:19 immediately on 2 February. I'm accounting for that

15 09:46:24 period, when I then measure delay to blockwork on

16 09:46:28 12 July 2017.

17 09:46:31 Q. Could we scroll a little further down the document to

18 09:46:45 53, page 25.

19 09:46:48 What you set out there is that the necessary work

20 09:46:51 fronts for the blockworks were available after casting

21 09:46:54 the mezzanine slab on 2 February?

22 09:46:58 A. Right, and then I've identified that the baseline

23 09:47:01 programme already allowed for the 14-day curing period.

24 09:47:04 They also had the work fronts on the ^^ I'm accounting

25 09:47:08 for both the ground floor being available and I'm

1 09:47:10 accounting for the baseline programme having the curing

2 09:47:12 period.

3 09:47:13 Q. Does that not then mean that the blockworks -- as you

4 09:47:18 identifies, the blockworks can't start for 14 days and

5 09:47:22 therefore, the mezzanine slabs remain on the critical

6 09:47:24 path until the blockworks can start, so it's 2 February

7 09:47:28 plus 14 days, that takes us, I think, to 16 February?

8 09:47:32 A. You could look at it that way, yes, I wouldn't disagree.

9 09:47:36 Q. Is that the way you looked at it?

10 09:47:37 A. Yes, that's why I mention the 14-day curing period.

11 09:47:52 Q. Could we then please turn to page 24. This is slightly

12 09:47:57 further up the page, item 51.

13 09:48:07 You say blockworks ceased to be critical on its own

14 09:48:13 and by approximately 12 January." ^doc.

15 09:48:15 What did you mean by "on its own"?

16 09:48:17 A. By that point, MEP activities were also critical in

17 09:48:22 addition to blockwork. Mr Dean's position that

18 09:48:26 blockwork was critical on its own, all the way through

19 09:48:31 26 May 2018, is something that I disagree with.

20 09:48:35 Q. Would you say that blockwork was as critical as MEP?

21 09:48:41 A. I think they were both critical, and that's what I've

22 09:48:44 said, they were both critical from 12 July onwards until

23 09:48:49 blockwork was completed. I think you also have to think

24 09:48:53 about how much work follows the MEP, so there's a lot of

25 09:48:58 MEP to do, it's a long period to do it. The MEP is then

1 09:49:03 tied with testing and commissioning and authority

2 09:49:06 approvals, so in terms of thinking about the longest

3 09:49:08 sequence to get to completion, MEP becomes much more

4 09:49:14 significant than blockwork.

5 09:49:21 Q. Would you, at this point, consider if there were any

6 09:49:24 supplier issues, payments to blockwork suppliers, would

7 09:49:28 that influence progress of blockwork?

8 09:49:32 A. Yes, I think that's why in the period from March 2017 to October 2017, I've identified those payment issues.

9 09:49:48 Again, it's what Mr Dean's cashflow analysis shows, is

10 09:49:52 that the problem starts from March and what we see is

11 09:49:55 a decreasing level of resources from that point, to the

12 09:49:59 negligible level in July, and then we have a suspension

13 09:50:03 of daily progress reporting until 4 October 2017. So

14 09:50:07 over that period, yes, that's one of the periods I've

15 09:50:10 identified cashflow and resources.

16 09:50:14 Q. But aside from ^^ I specifically want to focus on the

17 09:50:17 blockwork supplier. Did you look into whether there

18 09:50:20 were any payment issues with the blockwork supplier?

19 09:50:23 A. No.

20 09:50:23 Q. In that window? Did you think you needed to look into

21 09:50:26 that to understand the causes behind the blockwork

22 09:50:32 delay?

23 09:50:32 A. Possibly. I'm not sure I had that information available

24 09:50:34 to me.

25 09:50:37 Q. Could we please turn to P5.7.

1 09:51:08 It might be helpful to put it into alphabetical
2 09:51:11 order, please, from the supplier name.
3 09:51:20 Before I take you through this document, is in
4 09:51:22 a document that you considered?
5 09:51:24 A. I've seen this document, yes.
6 09:51:25 Q. You have? Did you review the supplier payment chain in
7 09:51:33 this document?
8 09:51:34 A. Not in detail, no.
9 09:51:37 Q. If you scroll down to B, BU, please. Buck Mak is the
10 09:51:52 item that we're looking for ^doc name).
11 09:52:00 If it's ordered alphabetical and then to buck Mak ^.
12 09:52:10 It's line 99, I believe. We can see there buck Mak is
13 09:52:27 BUCOMAC ^ the blockwork supplier?
14 09:52:35 A. Yes, I see that.
15 09:52:36 Q. We've got the relevant dates where the submittal date,
16 09:52:43 the payments are not being made to buck Mak in that
17 09:52:48 window?
18 09:52:51 A. That's what it says. There is a reply date in column M,
19 09:52:54 I'm not sure in that's significant or not, but it looks
20 09:52:58 like the submittal date was 29 August and there's
21 09:53:01 a reply date of 12 September 2017. So I don't know what
22 09:53:05 that is and I don't think I can help very much with the
23 09:53:08 details of these payments to this subcontractor.
24 09:53:16 Q. Did you not think it was a key part of your analysis,
25 09:53:18 when looking at delays with blockwork, to look at this

1 09:53:22 document and get to the bottom of what's going on here

2 09:53:24 or at least consider that in your report?

3 09:53:26 A. Like I said, I have identified in this period, that

4 09:53:29 payments and resources are the delay to blockwork. As

5 09:53:35 I tried to explain, there's only so far I think I can

6 09:53:38 take that before I'm getting into quantity surveying in

7 09:53:43 cost related issues.

8 09:53:51 Q. In much of your analysis for windows 4 onwards, there do

9 09:53:57 in fact be a more simple explanation for the fairly

10 09:54:00 complex explanation that perhaps fall within your per

11 09:54:02 tease, that payments are not being made to suppliers and

12 09:54:05 the work is slowing down?

13 09:54:06 A. I with that, that's why I've identified that as a cause

14 09:54:10 of delay, along with the resources, between March --

15 09:54:14 after March 2017, yes.

16 09:54:26 Q. Could we please turn to E42, page 117. This is your

17 09:54:34 second report. (Pause).

18 09:55:24 Paragraph 4.204, please. Would you say that the

19 09:55:40 hold on mop would also include final fixing on MEP ^?

20 09:55:45 A. Sorry, say that again?

21 09:55:47 Q. Would the hold on MEP also include final fixing?

22 09:55:51 A. What hold on MEP are you talking about sorry?

23 09:55:53 Q. The internal finishes that we're now dealing with here.

24 09:55:56 A. No, the way I read the hold on internal finishes relates

25 09:56:02 to architectural finishes. That's the way I read the

1 09:56:08 documents related to the hold.

2 09:56:25 Q. If we could turn very briefly, I'm not going to take you

3 09:56:28 through every single window where you've identified

4 09:56:31 resource issues, but E23, page 154. It's

5 09:56:55 paragraph 4.256.

6 09:57:02 About halfway down, where it says:

7 09:57:04 "As with window 5 ..."

8 09:57:13 Again you set out there exactly what you just said

9 09:57:18 today, that you do identify that there was likely to be

10 09:57:23 a delay. This is quite a large window, July 2017

11 09:57:32 to March 2018. You said you're unable to identify the

12 09:57:39 quantity, qualify the extent?

13 09:57:41 A. Yes, as I said, I think what I have tried to do in

14 09:57:46 particular on the MEP, is look at a number of different

15 09:57:51 programmes that Hadeed submitted, starting

16 09:57:59 from April 2018, with those programmes there were

17 09:58:03 specific resources associated with the MEP manpower.

18 09:58:11 I then

19 09:58:11 tried to track through all of the actual resources and

20 09:58:14 compare that with the plan. From that analysis, which

21 09:58:17 I've done on a month-by-month basis, up to October 2018,

22 09:58:21 after which we don't have any further daily reports,

23 09:58:25 I ifide Id that there were not enough resources on the

24 09:58:30 MEP to meet the plans that were put forward.

25 09:58:34 Q. To the extent that you're able to assist us, you can

1 09:58:37 only say that there was a reduced manpower. I think

2 09:58:40 we've covered this already, but you can't go beyond any

3 09:58:42 explanation as to the cause behind the reduced manpower?

4 09:58:47 A. No, I think again it trespasses into some of the quantum

5 09:58:51 issues, although what I would say is it reached by this

6 09:59:00 point, when this programmes are being put in place by

7 09:59:04 Hadeed during 2018, my understanding is that the direct

8 09:59:06 payments to the subcontractors were in place at that

9 09:59:09 point. So again, I'm focusing on the plans that Hadeed

10 09:59:12 was putting forward, the MEP resources that were said

11 09:59:17 that would be deployed within those programmes and

12 09:59:21 compare that to the actuals. That's the analysis that

13 09:59:26 I've done.

14 09:59:29 Q. Finally, if we look at your second statement, E42,

15 09:59:42 page 108, paragraph 4.191. That's very clear. That's

16 10:00:04 exactly your position. The cashflow and reduced

17 10:00:10 resource levels were likely to have been the main cause

18 10:00:12 to blockwork construction over that period?

19 10:00:14 A. Yes, so we know we have a gap in daily reports over that

20 10:00:19 period. We know that resources by July had reduced to

21 10:00:24 the negligible level. That's the period, I think, when

22 10:00:30 the direct payments to subcontractors were being put in

23 10:00:33 place. So that's why over that period, I've identified

24 10:00:37 the cashflow and the resources.

25 10:00:50 Q. I'm sure you'll be glad to hear I'm nearly finished with

1 10:00:53 my questions. What I'm going to propose to you is go

2 10:00:55 back over some of the issues we touched on yesterday

3 10:00:58 briefly, just to address some of the issues you

4 10:01:01 mentioned. This is back to window 3, if we turn to E42,

5 10:01:07 page 41, please.

6 10:01:26 This is a chart that we saw a great deal yesterday

7 10:01:29 and Mr Dean was asked about this chart as well.

8 10:01:32 Can you just, looking at the last two bars there,

9 10:01:35 the foundations and the steel frameworks. The

10 10:01:45 foundations there, at that point, are clearly more

11 10:01:47 prolonged than the steelworks, at that point, by 25 July

12 10:01:54 at least?

13 10:01:55 A. Sorry, I'm not understand -- I don't think I understand

14 10:01:57 the question or how you've reached that.

15 10:02:00 Q. If you look at the two bars there, how do you interpret

16 10:02:04 those two bars? Which one is more prolonged by 25 July?

17 10:02:11 A. Well, I'm not sure that's necessarily the way to view

18 10:02:17 it. So the steel erection, there's a black line at the

19 10:02:21 end of it, which was to indicate that it wasn't yet

20 10:02:25 complete by that point.

21 10:02:29 I think you've got to -- what I was trying to do

22 10:02:32 here is not make the points I think you're trying to

23 10:02:35 make, but what I was trying to do is demonstrate that it

24 10:02:38 was never the intention to have all of the foundations

25 10:02:42 finished before progressing the steel erection.

1 10:02:49 In terms of the summary blue bars, which is the

2 10:02:52 as-built at the bottom, I think the context underlying

3 10:02:55 them is very important. So as I mentioned, by 30 April,

4 10:03:02 we know that 95 per cent of the foundations were already

5 10:03:05 casted, so the period from 30 April to 24 July, although

6 10:03:10 it went on several months, is the last 5 per cent of

7 10:03:14 those foundations, plus the tie beams as well.

8 10:03:19 Then if you look at the period from 30 April to

9 10:03:24 24 July, on the steel erection as I mentioned yesterday,

10 10:03:27 that accounts for 65 per cent of the overall steel

11 10:03:30 erection. So if you're trying to equate 5 per cent of

12 10:03:34 foundations with 65 per cent of steel erection, over

13 10:03:39 that 30 April to 24 July, that reinforces my conclusion

14 10:03:45 that actually, what's critical and what's driving and

15 10:03:48 what's significant is the steel erection.

16 10:03:55 So it was simply a summary to try to demonstrate

17 10:03:58 that comparison. I don't think the last 5 per cent of

18 10:04:01 the foundations, in terms of saying that's more

19 10:04:03 prolonged, would change my view about what was critical

20 10:04:06 from 30 April.

21 10:04:14 Q. This is my final question. Could we please turn to E23,

22 10:04:19 page 51, paragraph 4.66.S? The hold that both you and

23 10:04:43 Mr Dean have considered.

24 10:04:49 You will have seen the evidence that the hold meant

25 10:04:53 that ^^ they were unable to carry out the casting of

1 10:04:56 concrete for the foundation of the main building?

2 10:04:59 A. Yes, over that period, over the period I've identified

3 10:05:05 in this paragraph.

4 10:05:06 Q. What did you identify? I'm trying to understand. What

5 10:05:09 did you identify was the delayed period caused by that

6 10:05:13 hold?

7 10:05:17 A. That is the 70 to 76 days and the reason why I've put

8 10:05:23 that range is because what I've tried to explain in this

9 10:05:25 paragraph,.

10 10:05:28 So what we see is on 10 January 2016, that there

11 10:05:32 were -- and this is in the paragraph above -- WIRs

12 10:05:36 raised and approved on that day. So work was carried

13 10:05:38 out that day.

14 10:05:42 So I therefore identified that the hold probably

15 10:05:45 started, for the first day that works were on hold on 11 January 2016.

16 10:05:53 I also said in this paragraph that that's consistent

17 10:05:58 with HEC, Hadeed, raising a notice of delay the

18 10:06:01 following day, stating it was unable to carry ^^ the

19 10:06:05 works. To me that was consistent. I then identified

20 10:06:08 a range of dates, within about a week, for when the hold

21 10:06:12 was lifted.

22 10:06:13 So in one case, I identified -- and I think we

23 10:06:17 looked at with Mr Dean, that some of the casting was

24 10:06:20 identified as having recommenced on the 21st. So that's

25 10:06:24 sort of the lower end of the period of the hold.

1 10:06:28 But I also identified in the daily reports that

2 10:06:31 a hold was identified and listed in those daily reports

3 10:06:34 all the way through 26 March 2016. Between those two

4 10:06:40 documents, I'm not sure I can tell exactly within that

5 10:06:43 period when the hold was lifted, which is why I've given

6 10:06:46 the range of 70 to 76 days. So from 11 January to

7 10:06:53 20 March or 26 March. I think my point here with

8 10:06:58 Mr Dean and I tried to highlight in in my presentation,

9 10:07:02 is I don't accept that the hold was in place through

10 10:07:05 later in April. It was definitely released by some

11 10:07:10 point between 20 and 26 March.

12 10:07:21 Q. I did say it was going to be my final question. One

13 10:07:25 final question. This is just your report as a whole,

14 10:07:27 and I think I anticipate your answer.

15 10:07:31 You are not here to give your expert opinion on any

16 10:07:39 issues surrounding confusion on the ground. KAOS in

17 10:07:42 terms of engineer's role, approvals of payments,

18 10:07:50 miscommunication between various individuals?

19 10:07:55 A. Perhaps you could may be take those in turn. I think

20 10:07:59 probably raising several different issues at once.

21 10:08:05 Q. Okay. If we take the approvals, for example, approval

22 10:08:08 for payment release for the suppliers. This is at the

23 10:08:10 point where Altaaqa are directly paying the

24 10:08:14 subcontractors and the suppliers?

25 10:08:17 A. Sorry, that's why I was asking. So in terms of

1 10:08:20 approvals of drawings, DWC type approvals, I think, yes,

2 10:08:26 that is something that I've looked at. In terms of

3 10:08:30 getting into the detail of specific approvals of

4 10:08:33 payments to subcontractors, no, that's not something

5 10:08:36 that I've looked at, and I think does fall outside my

6 10:08:40 expertise.

7 10:08:41 Q. If we look at, for example, document G326. As

8 10:08:47 I understand, you're saying this analysis of this falls

9 10:08:51 outside of your analysis. This is the engineer asking

10 10:08:57 for payment to be released for Bucomac, we just looked

11 10:09:00 earlier at the spreadsheet. This is outside your

12 10:09:02 analysis. You're not concerned with what's going on

13 10:09:07 here. Who's asking for payment, when payments are made,

14 10:09:10 when the document was passed on from Mr Chevreau to

15 10:09:13 Mr Shamsi, all of that is outside your analysis?

16 10:09:16 A. Yes, correct, I've not addressed that, no.

17 10:09:24 Q. It's also outside your analysis to look at the various

18 10:09:27 parties' contractual compliance. If the engineer is

19 10:09:29 complying with its contractual obligations, for example,

20 10:09:32 that's outside your analysis?

21 10:09:35 A. Contractual responsibilities under the contract, no,

22 10:09:37 that's also not something I've looked at or think it's

23 10:09:41 my in my expertise to address.

24 10:09:45 MR SULEMAN: Thank you. I have no further questions.

1 10:09:50 Re-examination by Mr Howells

2 10:09:52 MR HOWELLS: I have one question and it relates to the pen

3 10:09:55 ^^ also the spreadsheet of subcontract payments you were

4 10:09:58 asked to look at at P5.7 Mohammed if you can just bring

5 10:10:02 that up up in the format you had it before.

6 10:10:04 You were being shown this document, it had been

7 10:10:06 sorted to show supplier names alphabetically. You were

8 10:10:15 being pointed to lines 99, 100 and 101, Bucomac?

9 10:10:20 A. Yes.

10 10:10:20 Q. You were I think you identified you looked at the

11 10:10:23 submittal date, you weren't asked about the next column,

12 10:10:25 column F, cancelled, if we look at the three that you

13 10:10:31 were looking at, so line 99, Bucomac, 29 August, it says

14 10:10:35 cancelled. Do you know who cancelled the request or

15 10:10:41 why?

16 10:10:41 No, I don't.

17 10:10:43 Q. Line 100, the next submittal for a payment to Bucomac,

18 10:10:53 some seven months later, in February 2018, appears to be

19 10:10:58 a request for 1,600 dirhams was rejected. Do you know

20 10:11:04 who rejected the application and why?

21 10:11:06 A. No, I don't.

22 10:11:07 Q. Do you know why there was a gap between August

23 10:11:10 and February for request for payment?

24 10:11:16 A. No, I don't.

25 10:11:17 Q. 101, same question, rejected line, with no figure

1 10:11:19 applied for the figure. Do you know who rejected that

2 10:11:22 and why?

3 10:11:23 A. No, I don't.

4 10:11:24 MR HOWELLS: Thank you. Those are my questions.

5 10:11:35 SOLE ARBITRATOR: Mr Saulsbury, thank you very much. I have

6 10:11:36 no questions for you.

7 10:11:38 As I said to Mr Dean, the cross-examination exercise

8 10:11:41 is difficult one, so thank you very much. Both your

9 10:11:45 expert reports, as well as both your joint statement is

10 10:11:49 on the record as well as your oral testimony. You are

11 10:11:52 now discharged as a witness. Thank you very much.

12 10:11:55 WITNESS: Thank you.

13 10:11:56

14 10:11:56 (Witness was released)

15 10:12:16 SOLE ARBITRATOR: Shall we proceed directly to the

16 10:12:20 claimant's quantum expert, Mr Olwagen.

17 10:12:29

18 10:12:29 Mr Juan Olwage

19 10:13:32 SOLE ARBITRATOR: Good morning, Mr Olwagen. Welcome.

20 10:13:36 I think you've heard everything by now on repeat,

21 10:13:40 but if I can ask you first to state your name for the

22 10:13:42 record.

23 10:13:43 WITNESS: Yes, my name is Juan Olwagen I'm here today as the

24 10:13:53 claimant's quantum expert.

25 10:13:56 SOLE ARBITRATOR: Could I ask you to state the oath on the

1 10:13:58 record.

2 10:13:59 WITNESS: Yes. I swear by almighty God that the evidence

3 10:14:05 I shall give is my own impartial, objective and unbiased

4 10:14:10 opinion within my area of expertise and not influenced

5 10:14:14 by the pressures of dispute resolution process and shall

6 10:14:18 constitute my true and professional opinion.

7 10:14:22 SOLE ARBITRATOR: Thank you. I have before me your quantum

8 10:14:27 expert report dated 20 February, a second quantum expert

9 10:14:31 report dated -- sorry, 20 February 2023, a second report

10 10:14:35 dated 3 March 2024 and a third report dated

11 10:14:43 12 August 2024, as well as a joint statement prepared by

12 10:14:46 both quantum experts, dated 4 September 2024.

13 10:14:50 Do you confirm the content of those reports.

14 10:14:53 WITNESS: I do.

15 10:14:54 SOLE ARBITRATOR: Do you have any corrections to make to any

16 10:14:56 of those reports.

17 10:14:57 WITNESS: I have a correction, and I'll be dealing with that

18 10:15:00 in the presentation. I've outlined it and I'll address

19 10:15:03 it.

20 10:15:04 SOLE ARBITRATOR: Very well. Thank you very much.

21 10:15:06 Mr Olwagen, there won't be no direct, so it be just

22 10:15:10 be your presentation to begin with and you have up to 45

23 10:15:13 minutes. Thank you.

24 10:15:15

25 10:15:15 Presentation by Mr Olwagen

1 10:15:17 WITNESS: I appreciate it is 71 slides long, but I will be
2 10:15:19 skipping over some of them to the more important points.
3 10:15:23 Thank you for giving me the time here today to
4 10:15:26 present my analysis and opinion to all of you.
5 10:15:30 As I've said, my name is Juan Olwagen and I'm here
6 10:15:33 today as the claimant Hadeed's quantum expert. I am
7 10:15:37 employed by a consulting firm called Berkeley research
8 10:15:41 group or BRC for short. I'm an associate director at
9 10:15:47 BRG, but I am a quantity surveyor by profession.
10 10:15:54 Next slide, please.
11 10:15:58 The valuations that I have provided across my
12 10:16:03 reports and in my joint statement and in the quantum
13 10:16:06 joint statement, rather, are made on
14 10:16:09 a figures-as-figures basis. What I mean by this is that
15 10:16:13 the amounts in these reports valued are not presented as
16 10:16:17 validating and/or verifying that there is an entitlement
17 10:16:20 to any amount or where it is relevant, that the amounts
18 10:16:24 valued represent costs or actual losses that have
19 10:16:28 actually been incurred.
20 10:16:30 So that means the experts have carried out
21 10:16:33 a figures-as-figures valuation on the parties'
22 10:16:35 respective positions and facts and sometimes those
23 10:16:40 positions and facts differ and we have not decided who's
24 10:16:44 right and who's wrong, and we've tried to value the
25 10:16:47 documents as presented.

1 10:16:49 In the same way where I have said throughout my

2 10:16:51 reports where I am unable to make a valuation, I'm not

3 10:16:54 saying there's no entitlement to those amounts. It's

4 10:16:59 merely that I, as a quantity surveyor, am unable to

5 10:17:03 value it based on the information available. I think

6 10:17:06 that's an important clarification.

7 10:17:08 Next slide, please.

8 10:17:15 This slide sets out the agreements and disagreements

9 10:17:20 between Mr Boulwood and myself. These amounts are

10 10:17:26 taken from the valuations at the time of the quantum

11 10:17:31 joint statement. As I've said, I've made a correction

12 10:17:35 that I will be addressing and Mr Dabbas has provided ^

13 10:17:41 as I understand it, further analysis in his

14 10:17:47 presentation, that I had not at site at the time I was

15 10:17:51 preparing this presentation. So Mr Boulwood's further

16 10:17:54 analysis brings us closer together on some of the

17 10:17:59 valuations and I'm grateful to Mr Boulwood for that.

18 10:18:02 So these differences here aren't the differences as

19 10:18:05 they actually stand today. These are the differences at

20 10:18:08 the time of the joint statement ^^ the differences on

21 10:18:16 Hadeed's claims are the prolongation cost claim,

22 10:18:20 Hadeed's claim for unabsorbed head office overheads a ^^

23 10:18:24 fluctuation costs claim and the head office overheads

24 10:18:26 and foregone on negative vergeses as well as the

25 10:18:29 interest claims differences a bit late.

1 10:18:39 On next slide, please.

2 10:18:41 On Altaqa's counterclaims, the respondent's

3 10:18:44 counterclaims, the differences primarily relate to the

4 10:18:48 cost incurred to complete the ^^ the cost incurred

5 10:18:52 throughout the prolongation of rental contracts and

6 10:18:56 utilities and the cost for third party services.

7 10:19:02 Can you please skip to slide 9.

8 10:19:16 This is Hadeed's claim for its prolongation costs.

9 10:19:20 By way of background, this is a claim for Hadeed's time

10 10:19:22 related prolongation costs. These are resources that

11 10:19:25 are deployed to the project on an ongoing and time

12 10:19:29 related basis. The premise of this claim is that these

13 10:19:34 time related resources that were deployed to the project

14 10:19:39 would be prolonged or be on site for a longer period of

15 10:19:43 time if there are delays, critical delays to the

16 10:19:47 projects.

17 10:19:48 In terms of what makes up this prolongation claim,

18 10:19:52 there are three main components, there are many items of

19 10:19:55 individual costs grouped within these three components,

20 10:19:58 but these are the three, I would say, main cost heads

21 10:20:02 that make up ^^ those are staff costs, these are the

22 10:20:06 time related staff deployed to this project, the site

23 10:20:10 running costs, these are more miscellaneous costs to

24 10:20:15 sustain the site and the people on that site, drinking

25 10:20:18 water and those types of things and then transportation

1 10:20:20 costs. Those transportation costs are things like buses

2 10:20:27 and other types of equipment such as generators required

3 10:20:30 to produce temporary power for the site on an ongoing

4 10:20:33 basis.

5 10:20:34 The table on screen presents that there is

6 10:20:37 a difference of about 1 million dirhams between

7 10:20:40 Mr Boulwood and I, but that was the position or the

8 10:20:43 valuation at the time of the QJS and that difference has

9 10:20:47 now been narrowed. At the time of the QJS, it primarily

10 10:20:53 related to the transportation costs as you can see, but

11 10:20:56 Mr Boulwood has now I believe in his presentation,

12 10:20:58 addressed that valuation and in the primary agreed with

13 10:21:02 my valuation, and that bridges the difference between

14 10:21:08 the experts and I think we're only about 300,000 or so

15 10:21:12 dirhams apart on the primary. I'll get to

16 10:21:16 Mr Boulwood's alternative valuation on that in

17 10:21:29 a moment.

18 10:21:29 Next slide, please.

19 10:21:30 The quantum experts are only here to value Hadeed's

20 10:21:33 cost. We don't know where the delays were or where they

21 10:21:37 would be awarded and we've relied on the delay experts

22 10:21:40 for that.

23 10:21:42 What Mr Boulwood and I have done is quite typical,

24 10:21:45 is that we have agreed daily rates of costs and

25 10:21:49 alternative daily rates of costs for these three

1 10:21:52 headings, that the arbitrator may use to value the

2 10:21:56 delays in the periods in which those delays fall.

3 10:22:01 Is although there are different alternatives, you

4 10:22:04 could say there's overlapping areas of agreement across

5 10:22:07 these alternatives that Mr Boulwood and I have valued

6 10:22:09 on a figures-as-figures basis.

7 10:22:13 The difference between the figures we carry forward

8 10:22:16 our valuation mainly relate to the alternative

9 10:22:22 valuations and the cost of foremen.

10 10:22:26 Mr Boulwood and I have a minor disagreement, it's

11 10:22:28 worth about 300,000 dirhams, I believe, on if whetherr

12 10:22:32 if men are time related costs. What we mean ^.

13 10:22:38 They are priced in the unit rate for the work.

14 10:22:41 What we mean by that is we disagree that if there's

15 10:22:44 a critical delay to the project, would foremen also be

16 10:22:48 delayed by that critical delay.

17 10:22:52 Please turn to the next slide.

18 10:22:56 On the first issue of disagreement, it's whetherr

19 10:22:59 if moan are priced into the unit rates for the measured

20 10:23:05 works.

21 10:23:10 My understanding is foremen are ^^ rules of

22 10:23:14 measurement in this contract, I understand that

23 10:23:16 supervision is priced under the general arrangement

24 10:23:20 section of the will of quantities ^^ straightforwardly

25 10:23:28 call that preliminaries and items priced under

1 10:23:31 preliminaries are distinct from unit rates for works,
2 10:23:35 which are set out elsewhere in the BOQ.
3 10:23:38 Because foremen are there to supervise, I've taken
4 10:23:42 it that this contract says foremen are priced under
5 10:23:44 these time related preliminaries rather than the unit
6 10:23:47 rates for the work.
7 10:23:51 Next slide, please.
8 10:23:57 Now on whether foremen are time related. I consider
9 10:24:00 that based on the duration that these foremen were
10 10:24:05 deployed to the project and that's sometimes between as
11 10:24:10 long as 26, 27 or 28 months, which is twice as long as
12 10:24:14 original 12 month contract period. My understanding is
13 10:24:18 that they were there for almost twice as long as the
14 10:24:21 original contract period, which suggests to me that they
15 10:24:23 were delayed along with the project and that's why I've
16 10:24:28 considered them to be time related and carried those
17 10:24:30 costs forward to my valuation.
18 10:24:35 If Mr Boulwood's -- this is not something I've
19 10:24:37 addressed in my slides. It comes out in Mr Boulwood's
20 10:24:40 presentations on the Hadeed transport costs. These are
21 10:24:44 the costs for buses and generators.
22 10:24:46 I believe I valued it in the sum of around 700,000
23 10:24:52 or something and Mr Boulwood agrees with that valuation
24 10:24:56 in the primary position.
25 10:24:59 In the alternative position that Mr Boulwood

1 10:25:01 presents in his presentation, he us excludes the cost of

2 10:25:06 generators from that 700 something thousand ^^

3 10:25:12 Mr Boulwood excludes on the basis that he considers

4 10:25:14 generators might be task related and what I understand

5 10:25:17 Mr Boulwood means by that is that they might not be

6 10:25:21 delayed by the project.

7 10:25:24 I disagree, because the generator, some of them

8 10:25:28 group of generators ^^ they were there for much longer

9 10:25:30 than the original project period and it suggests that

10 10:25:34 they were delayed when the project was delayed.

11 10:25:38 Another minor point on why I disagree with

12 10:25:40 Mr Boulwood excluding these generators from Hadeed's

13 10:25:43 valuation, is that we encounter these generators at two

14 10:25:49 places and I think we've heard the fact witnesses talk

15 10:25:52 about these generators as well.

16 10:25:54 The first place we uncoreter these general rayr are

17 10:25:57 under Hadeed's claim for prolongation costs and they are

18 10:26:00 saying these generators were there to power the site on

19 10:26:04 202409200032 an ongoing basis and that Altaaqa's counterclaims, we

20 10:26:08 also see these generators make an appearance under the

21 10:26:11 counterclaim for the prolonged rental contracts and

22 10:26:15 utilities and Mr Boulwood and I have valued those

23 10:26:19 generators at that counterclaim.

24 10:26:23 Those generators do the same thing, they provide

25 10:26:25 temporary power and both parties with were claiming for

1 10:26:28 them on that basis, but Mr Boulwood's alternative re

2 10:26:31 moves that from Hadeed's claim, but allows it in

3 10:26:35 Altaqa's counterclaim and I think that creates a slight

4 10:26:37 imbalance on the alternative valuation.

5 10:26:51 Please skip forward to slide 17.

6 10:26:56 This is Hadeed's claim for its head office overheads

7 10:27:01 and profit and a lot has been said about this claim.

8 10:27:06 I've set out in the quantum joint statement that

9 10:27:10 despite the nomenclature used or this title of head

10 10:27:14 office overheads and profit, the way it is described and

11 10:27:17 the way it has been valued, it is a claim for what we

12 10:27:20 call unabsorbed head office overheads. That is a claim

13 10:27:25 for the loss of opportunity to earn revenue from other

14 10:27:28 sources from which to defray your ^^ head office

15 10:27:36 overheads expenditure.

16 10:27:38 It's very important to note, based on my

17 10:27:40 understanding of this being an unabsorbed head office

18 10:27:42 overheads claim, it is not a claim for a loss of

19 10:27:45 overheads or a claim for additional overheads. It's

20 10:27:50 a claim for a loss of revenue and that causes confusion

21 10:27:53 I think because of the nomenclature used sometimes,

22 10:27:57 but it's a claim for a loss of revenue.

23 10:28:00 My valuation based on a formula approach is

24 10:28:03 6.8 million, whereas Mr Boulwood's valuation is about

25 10:28:11 1.8 million.

1 10:28:14 ^^ QJ. Is that Mr Boulwood and I have quite a bit
2 10:28:17 of difference between us on the principles I believe.
3 10:28:21 So I think it's worthwhile that I explain my
4 10:28:23 understanding of what this claim is.
5 10:28:26 Firstly, let's us what overheads are. My
6 10:28:30 understanding is that overheads are head office
7 10:28:34 facilities, such as Hadeed's physical head office
8 10:28:38 premises, where it houses its operation, salaries of its
9 10:28:43 heads office and administrative staff as well as
10 10:28:45 utilities, electricity, water, to sustain its head
11 10:28:48 office. It's kind of its base of operations, it's
12 10:28:52 administrative core and obviously from there, they go
13 10:28:55 out and do other projects, but that's where the company,
14 10:28:58 if you can call it that, or the business is being
15 10:29:01 administrated from -- sorry, not the project.
16 10:29:06 Why that's important is because how do we pay for
17 10:29:09 that head office? You pay for the head office from the
18 10:29:13 revenue you generate as a business and in Hadeed's case,
19 10:29:17 their business is construction. So the revenue that
20 10:29:19 comes from these construction contracts are used to pay
21 10:29:23 for their headquarters. That's how this works.
22 10:29:26 The amount of head office overhead contribution,
23 10:29:30 money to pay for your overhead that you can extract or
24 10:29:34 earn from anyone contract is fixed, because it's priced
25 10:29:37 in a tender stage. It's fixed.

1 10:29:40 If a project is delayed and the contract's resources

2 10:29:46 are still deployed to that project -- sorry, I'm going

3 10:29:49 ahead of you. Can you please skip to the next slide.

4 10:29:52 Sorry.

5 10:29:55 That's the slide I was trying to explain.

6 10:29:57 If a project is delayed and its contract resources

7 10:30:01 are still deployed to that project, but they are not

8 10:30:04 earning any additional revenue or contribution because

9 10:30:10 the revenue they can earn from that project is fixed, in

10 10:30:13 that case, there may be a loss of opportunity for the

11 10:30:17 contractor to re deploy its resources to other more

12 10:30:21 gainful opportunities and projects from which it could

13 10:30:25 extract or generate further revenue for which to pay for

14 10:30:28 its head office overheads. That's what this claim is

15 10:30:31 about.

16 10:30:36 Next slide, please.

17 10:30:38 So what is it that we're being valued? What is it

18 10:30:40 that needs to be valued ^?

19 10:30:44 This is best explained graphically. There are two

20 10:30:47 scenarios. The one on the left is a scenario without

21 10:30:50 delay and the one on the right is a scenario with delay.

22 10:30:55 There are four basic components in both scenarios, is

23 10:30:58 that there's revenue or income from contracts and then

24 10:31:01 there is a cost associated with that contract, that's

25 10:31:04 paying for your staff costs and your materials on that

1 10:31:07 contract.

2 10:31:08 What you're left with is what accountants would call

3 10:31:11 gross profit or surplus revenue from which to pay your

4 10:31:15 head office overheads. That's generally how this works.

5 10:31:20 But in the scenario with delay, you may sometimes

6 10:31:24 have a situation where you still have the revenue, but

7 10:31:28 because you can't take on more projects, you have

8 10:31:31 reduced revenue, you still have contract costs and you

9 10:31:34 still have a surplus revenue or gross profit from which

10 10:31:37 to pay for your head office overheads, but it is

11 10:31:40 a reduced surplus revenue, but you still have to

12 10:31:42 maintain your head office, irrespective of how much

13 10:31:45 money you're earning. So your head office costs are ^^

14 10:31:51 disproportion ^^ gross profit or sur ^^ that loss of

15 10:31:56 opportunity comes from in my understanding and that's

16 10:31:58 why I've said it's a loss of opportunity on revenue, not

17 10:32:01 overheads.

18 10:32:03 Next slide, please.

19 10:32:09 An issue has been raised on Hadeed Abu Dhabi's

20 10:32:15 financial statements. The quantum experts have valued

21 10:32:20 Hadeed's claim for unabsorbed from head office overheads

22 10:32:23 based on Hadeed's Abu Dhabi financial statements.

23 10:32:29 I understand from the witness evidence that Mr Dabbas

24 10:32:33 says Hadeed is financed that Hadeed Abu Dhabi and that

25 10:32:36 Hadeed Dubai would return all the costs and compensate

1 10:32:39 Hadeed an about a for the losses.

2 10:32:41 So based on what we've heard the witnesses say,

3 10:32:45 I and Mr Shamsi's evidence as well about Altaaqa

4 10:32:49 auditing Hadeed Abu Dhabi and the relatedness,

5 10:32:51 I understand that Hadeed's head office is based in Abu

6 10:32:56 Dhabi and that Hadeed Dubai was merely used as you could

7 10:33:00 call it a conduit through which to undertake this

8 10:33:03 project or works in Dubai.

9 10:33:06 I therefore understand that Hadeed Abu Dhabi and

10 10:33:09 Hadeed Dubai are a part of the same was and that the

11 10:33:15 administrative centre of the Hadeed business is based on

12 10:33:20 Dubai and that's where their headquarter is.

13 10:33:24 Why that's important where the headquarter is we

14 10:33:26 were trying to value a loss and that loss of opportunity

15 10:33:32 ^^ that loss arose, that's my understanding. In the

16 10:33:36 case of Hadeed's claim and on Hadeed's position, that

17 10:33:38 loss would arise in Hadeed's head office, which is in

18 10:33:43 Abu Dhabi.

19 10:33:45 Next slide, please.

20 10:33:49 I a bit more on this relatedness aspect. These are

21 10:33:53 extracts from the Hadeed Abu Dhabi financial statements

22 10:33:55 that the experts have used, where you can see some money

23 10:34:00 knowing from Hadeed Dubai ^ to Hadeed Abu Dhabi. The

24 10:34:07 point of this is only to show that there's a relatedness

25 10:34:11 between the parties -- sorry, between those Hadeed Abu

1 10:34:15 Dhabi and Hadeed Dubai.

2 10:34:17 Next slide, please.

3 10:34:21 This is further on the relatedness aspect on the

4 10:34:24 left we see an invoice on this project that is raised by

5 10:34:30 Hadeed Dubai and the payment for that invoice or payment

6 10:34:35 application is made to Hadeed Abu Dhabi, showing that

7 10:34:39 relatedness aspect.

8 10:34:42 Next slide, please.

9 10:34:48 This is an extract from the advance payment

10 10:34:50 guarantee. It's extended in favour of Altaqa on this

11 10:34:57 project, but it was secured by Hadeed Abu Dhabi. That

12 10:35:02 just comes to the point of why I understand these

13 10:35:04 parties were related to each other, but Hadeed Dubai and

14 10:35:10 Abu Dhabi were also related in regards to this project,

15 10:35:13 because Hadeed Abu Dhabi is getting financial

16 10:35:17 instruments for this project, which relates to Hadeed

17 10:35:20 Dubai.

18 10:35:21 Next slide, please.

19 10:35:30 The experts agree that a formula may be used to

20 10:35:33 value head office overheads. That's a point of

21 10:35:35 agreement. The experts also agree that a prerequisite

22 10:35:37 to valuing a claim for unabsorbed head office overheads

23 10:35:41 is that it must be demonstrated that Hadeed had lost the

24 10:35:43 opportunity to work on other projects. Mr Boulwood and

25 10:35:47 I agree that that aspect of loss is a matter of fact and

1 10:35:51 falls outside our scope.

2 10:35:53 The experts have also agreed to use the Emden

3 10:35:56 formula for the basis of this valuation and the experts

4 10:36:01 have based our valuations on Hadeed Abu Dhabi's

5 10:36:04 financial statements.

6 10:36:06 There are a lot of agreements between Mr Boulwood

7 10:36:08 and I . We use the same formula, we use the same

8 10:36:11 contract price and we use the same financial statements

9 10:36:14 and the same periods of delay in our valuation, but our

10 10:36:17 valuation is about 5 million dirhams apart.

11 10:36:21 The reason for that is because of the overhead

12 10:36:25 percentage that we have used in our calculations.

13 10:36:29 I have adopted overhead percentage of 8.39 per cent and

14 10:36:33 in the alternative, 6.66 per cent, whereas Mr Boulwood

15 10:36:37 has adopted an overhead percentage of 2.25 per cent.

16 10:36:42 The difference, the 5 million dirham difference

17 10:36:45 between Mr Boulwood and I is driven by that percentage

18 10:36:49 difference.

19 10:36:50 Both Mr Boulwood and I have used the financial

20 10:36:52 statements and the general and administrative expenses

21 10:36:56 from these financial statements, which we consider to be

22 10:37:00 the overheads to get to those percentages. The

23 10:37:04 difference is that my valuation, in my valuation ^,

24 10:37:09 I have taken the overhead percentages or amounts as

25 10:37:12 confirmed by the auditors on those financial statements.

1 10:37:15 I've not questioned what the auditors have done and

2 10:37:19 that's because I'm not an account and and I'm not

3 10:37:22 experienced in do so.

4 10:37:25 Mr Boulwood has also used the financial statements,

5 10:37:28 but Mr Boulwood makes several adjustments and

6 10:37:32 exclusions to that overhead position and in a sense,

7 10:37:37 overrides the valid overheads that Hadeed's auditors

8 10:37:40 have confirmed.

9 10:37:43 Next slide, please.

10 10:37:45 Skip to 26.

11 10:37:52 This slide shows effectively what the difference

12 10:37:57 with the overall percentage would be. It shows the

13 10:38:00 items of overhead expenditure which Mr Boulwood has

14 10:38:03 included in his valuation and some of the overhead

15 10:38:08 categories that Mr Boulwood has excluded from his

16 10:38:11 valuation.

17 10:38:20 Can we skip to slide 29, please.

18 10:38:28 Another difference -- I don't think this has an

19 10:38:31 impact on the valuation, but it is a difference on the

20 10:38:34 principle, I think, and it's importance to raise it.

21 10:38:37 Mr Boulwood raises it several times and Altaqa in

22 10:38:41 their skeleton arguments raises as well, is that

23 10:38:45 Hadeed's head office overheads would be covered by the

24 10:38:50 revenue achieved. My response to that is that that is

25 10:38:58 exactly what is to be expected, because the business has

1 10:39:02 to pay for its head office overheads from money

2 10:39:05 generated from contracts. So that's how this works.

3 10:39:11 Mr Boulwood's point that Hadeed was profitable

4 10:39:13 might suggest that Hadeed might have been, if they could

5 10:39:19 take on other project, they would have continued to be

6 10:39:22 profitable, to be able to pay for their head office

7 10:39:25 overheads.

8 10:39:27 That's why I I reiterated this point about being

9 10:39:30 able to cover overheads from revenue or additional cost

10 10:39:33 ^^ which Mr Boulwood talks about in the QJS. Why

11 10:39:39 I don't thinks that relevant to what I have done is

12 10:39:41 because this is not about a loss of overheads, it is

13 10:39:45 about a loss of opportunity for Hadeed to earn revenue

14 10:39:49 from other contracts, from which to offset its

15 10:39:54 overheads.

16 10:39:54 Even if Hadeed is able to pay for its overheads from

17 10:40:00 its revenue, Hadeed's position is that had it been able

18 10:40:03 to take on other projects, it would have earned more

19 10:40:07 revenue, so head office would have been eating a lesser

20 10:40:10 amount of their overall gross profits, so there's still

21 10:40:13 a loss there on Hadeed's position.

22 10:40:16 Can we skip to page 31, please.

23 10:40:25 This is Hadeed's fluxuation cost claim. This is

24 10:40:33 a claim for increase from Hadeed's cost to carry out the

25 10:40:36 project over extended period and after September 16. In

1 10:40:40 essence, Hadeed says that it cost more to procure the

2 10:40:43 goods and services it required to complete the project

3 10:40:46 during the extended period, compared to what it would

4 10:40:50 have cost Hadeed were it able to procure these same

5 10:40:52 goods and services during the original contract period.

6 10:40:55 My valuation is 960,000 dirhams and there's

7 10:41:01 overlapping agreement where Mr Boultonwood values that

8 10:41:03 same amount in his alternative, but Mr Boultonwood's

9 10:41:06 primary is nil.

10 10:41:08 Can we please skip to slide 33.

11 10:41:13 What are we trying to value? The claims that being

12 10:41:16 made here and the thing that needs to be valued is the

13 10:41:20 difference in Hadeed's costs for goods and services

14 10:41:23 related to the project in the extended period compared

15 10:41:26 to what the same goods and services would have cost

16 10:41:29 during the original contract period. That graphic is

17 10:41:32 probably the easiest way to explain it and I'll use

18 10:41:36 a counterfactual example here. Let's consider a pallet

19 10:41:39 of bricks or blocks. What Hadeed is effectively saying

20 10:41:44 is that during the original contract period, that first

21 10:41:47 12-month period, the cost of these materials would have

22 10:41:51 been 500 dirhams on average for a pallet of bricks but

23 10:41:58 in the later extended period, the three-year overrun

24 10:42:01 period, those same materials cost more and in this

25 10:42:04 example, hypothetically, cost 600 dirhams.

1 10:42:09 So there's a difference of 100 dirhams. So Hadeed

2 10:42:11 still had to procure the same amount of materials for

3 10:42:14 this project to complete it, but they were paying more

4 10:42:19 to procure those materials at a later, three years

5 10:42:23 later, compared to what they would have paid for those

6 10:42:25 materials in the original period.

7 10:42:27 So we call this inflation. It's the same what we

8 10:42:30 experience in our daily lives where bread used to cost X

9 10:42:34 amount of dirhams three years ago and now it seems to

10 10:42:38 have gone through the roof after the cost of living

11 10:42:42 crisis that we find ourselves in.

12 10:42:46 There are a couple of -- I'll just stay on this

13 10:42:48 slide for now. There are a couple of agreements between

14 10:42:51 Mr Boulton and I, is that based on Hadeed's costs in

15 10:42:55 the extended period and Dubai published statistics

16 10:43:02 published inflation indexes, we can see that there is

17 10:43:04 a change in cost between these two periods, some costs

18 10:43:09 go down and some costs go up. So it's important to note

19 10:43:12 we valued the difference in cost. Some going up, some

20 10:43:15 going down.

21 10:43:15 But in the overall seasons, the costs have gone up

22 10:43:18 over that period.

23 10:43:20 On the direct cost approach, Mr Boulton and I --

24 10:43:24 I've done this in the QJS and Mr Boulton has done this

25 10:43:28 in his presentation. We've also looked at Hadeed's

1 10:43:31 concrete costs between the two periods and we've seen

2 10:43:34 that on a sample basis, that the cost of concrete cost

3 10:43:38 more in the later period compared to the earlier period,

4 10:43:41 but that is a very narrow sample and it's only based on

5 10:43:45 concrete, not on all of Hadeed's costs, but the point

6 10:43:48 that I made in the QJS was that the actual increase in

7 10:43:51 the cost of concrete was about 9 per cent, 9.2 per cent,

8 10:43:56 whereas the inflation valuation that we have used on the

9 10:43:58 inflexing ^^ increased 5 per cent. In that example the

10 10:44:02 inflation valuation is more conservative valuation.

11 10:44:06 Despite being able to value -- ^^ principle

12 10:44:10 disagree. Between Mr Boulwood and I, it's that despite

13 10:44:14 we can see that there might be a cost increase,

14 10:44:17 Mr Boulwood does not value a primary position on the

15 10:44:21 basis -- and this is my understanding based on what ee

16 10:44:23 seen on the presentation, Mr Boulwood might have

17 10:44:25 a different opinion.

18 10:44:27 But Mr Boulwood doesn't carry forward a valuation

19 10:44:30 because he considers that the costs for these materials

20 10:44:33 in this extended period were paid by Altaaqa to Hadeed

21 10:44:37 and we've just seen that over the last couple of days,

22 10:44:40 where Altaaqa made payments directly to Hadeed's

23 10:44:42 suppliers.

24 10:44:44 So understand Mr Boulwood is saying because Altaaqa

25 10:44:46 paid these amounts on Hadeed's behalf, Hadeed never

1 10:44:50 incurred that additional cost. Why I disagree with that

2 10:44:55 is those costs that Altaaqa paid on Hadeed's behalf, the

3 10:45:00 experts have set off those costs against sums due to

4 10:45:06 Hadeed, when we value the net amounts outstanding, so

5 10:45:10 we've charged those payments back to Hadeed elsewhere in

6 10:45:12 the valuation and at the point of us doing so, those

7 10:45:15 amounts paid by Altaaqa do become a cost to Hadeed, if

8 10:45:20 that makes sense.

9 10:45:29 Can we please skip to slide 39. In relates to the

10 10:45:36 negative variations and the overheads and profit

11 10:45:39 foregone. I'm not going to go into too much detail

12 10:45:42 here. I think the QJS sets out the difference ises

13 10:45:47 quite clearly and the experts have provided alternative

14 10:45:50 valuations. The only thing I want to address on this

15 10:45:53 slide is where there's a correction to my opinion. In

16 10:45:58 my second report and the QJS I made a valuation of

17 10:46:04 1.4 million around there, but I made an arithmetical

18 10:46:09 error, it's just something on a calculator, and if I fix

19 10:46:12 that, it revise my valuation down to 1.2 million.

20 10:46:17 I think Hadeed's claim is based on my valuation, so

21 10:46:21 I would expect it to come down commensurate with that

22 10:46:24 down to 1.2 million.

23 10:46:34 Can we please skip aheads to slide 44. Heed has

24 10:46:44 presented eight interest claims. I valued all eight of

25 10:46:46 those claims on a figure as figures basis. Mr Boultwoood

1 10:46:51 has valued two of those and I think Mr Boulwood has

2 10:46:54 valued further alternatives in the QJS, but they weren't

3 10:46:57 carried forward, I believe, to the main valuation. So

4 10:47:01 that's really the difference in the figure is that

5 10:47:06 I valued all of them and Mr Boulwood hasn't valued all

6 10:47:09 of them so I can't really ^^ can we please skip

7 10:47:18 ahead to page 48. In relates to the

8 10:47:26 interest on late payments and this is something we've

9 10:47:29 heard the witnesses speak about at length in the last

10 10:47:31 couple of days. Just a correction on that slide.

11 10:47:33 I believe I say there it should be 60.1, I say it's

12 10:47:38 60.1, but I believe it's clause 60.1. Apologies for

13 10:47:41 that.

14 10:47:46 Hadeed has an interest claim for the interest on

15 10:47:49 late payment. Hadeed's position is that it was paid

16 10:47:53 late and Altaqa's position is that it did not pay

17 10:47:56 Hadeed late.

18 10:47:59 The contract sets out roughly a 51-day payment cycle

19 10:48:04 that starts when the contractor submits a payment

20 10:48:08 application and it ends on a payment from what I've

21 10:48:14 heard from counsel and the fact witnesses in the last

22 10:48:17 couple of days is I understand that the disagreement

23 10:48:21 mainly relates to when does this 51 day process start?

24 10:48:26 Does it start when Hadeed first submits its payment

25 10:48:29 application? That's Hadeed's position. I understand

1 10:48:35 Altaaqa's position is that there were rejection and

2 10:48:38 revised payment applications, so that 51 day payment

3 10:48:41 cycle only starts at the end of that.

4 10:48:44 It's not for the experts to get involved with that,

5 10:48:47 but we have considered both parties' positions in our

6 10:48:52 alternative valuations what the witnesses spoke about,

7 10:49:04 I would bring this ^^ dates on payment applications and

8 10:49:07 which dates should be the correct dates.

9 10:49:15 But in the sessionses that I was here, I wasn't at

10 10:49:17 all of them, but I didn't see much talk about the

11 10:49:20 amounts that should have been paid. The issue is a bit

12 10:49:23 more nuanced. There's a document that says an amount

13 10:49:26 for payment on it and then there's an issue of when does

14 10:49:30 that payment become due? But the question is is that

15 10:49:35 amount on that payment application reflective of the

16 10:49:38 value of the works at that point in time.

17 10:49:43 I don't think that issue has been sufficiently

18 10:49:48 addressed. What I could see happen and bear in mind, we

19 10:49:54 have limited information on which to make our

20 10:49:57 understanding, is what we sometimes call latent

21 10:50:02 valuations or catch up valuations.Ing that when

22 10:50:05 a contractor does works, it's not certified at that

23 10:50:08 point in time, because there are disagreements, and

24 10:50:11 those works are only certified much later. If you're

25 10:50:16 just looking at certificate ^^ later on time, you ^^

1 10:50:19 you're not looking at what the value of the works should
2 10:50:22 have been.
3 10:50:22 There are a couple of examples on this if we look at
4 10:50:26 the later, I believe, payment applications, for example,
5 10:50:28 I think 38, I think that was the last one that the
6 10:50:33 engineer approved, but hood did submit payment
7 10:50:36 applications after 38. They were just never certified.
8 10:50:40 That's my understanding ^^ cumulative valuation of
9 10:50:49 16 million and I think that's around September 2018,
10 10:50:52 works up to September 2018.
11 10:50:54 But then we fast forward almost a year, not quite,
12 10:50:57 but almost a year to the date of the ISA and I think the
13 10:51:01 interim statement of account shows a valuation of
14 10:51:11 27 million. What that shows, if you look at how the
15 10:51:13 variations are being handled I believe at certificate
16 10:51:19 38, there's not a money in there for variations, because
17 10:51:22 those sums are agreed later in the ISA.
18 10:51:25 But the problem that creates is that Hadeed was
19 10:51:27 carrying out these variations and other works earlier on
20 10:51:30 in the contract, but they're only being -- and they have
21 10:51:34 spent money likely doing that, but these valuations are
22 10:51:37 caught up, I believe, later at the end of it. So it's
23 10:51:41 not just an issue of rate payment, but there's an issue
24 10:51:43 of that amount that may be should have been paid weren't
25 10:51:46 paid and that might introduce cashflow problems when you

1 10:51:52 have essentially catch up valuations.

2 10:51:59 I just thought that was important to note.

3 10:52:05 Also, on I think -- I'll keep that for later.

4 10:52:09 Can we please skip ahead to slide 50.

5 10:52:19 This is the start of Altaaqa's counterclaims on

6 10:52:22 their cost to complete the works and rectify defects.

7 10:52:28 There are two parts to this claim. The first is the

8 10:52:31 cost to complete the project and the second is the cost

9 10:52:36 of rectifying defects.

10 10:52:39 Next slide, please.

11 10:52:43 As far as the principles go, the experts are

12 10:52:47 generally agreed here. On part 1, the cost to complete

13 10:52:49 the project, the experts agree that this claim should be

14 10:52:53 valued as the additional cost, or extra over cost

15 10:52:57 incurred by Altaaqa to complete the project in Hadeed's

16 10:53:00 stead and in requires a valuation of the difference

17 10:53:03 between the costs Altaaqa incurred to complete the works

18 10:53:06 compared to what it should have cost under Hadeed.

19 10:53:09 The experts also agree that we are unable to trace

20 10:53:11 the costs presented by Altaaqa for the works completed

21 10:53:14 to any works that were in Hadeed's scope at the time of

22 10:53:17 termination or that were incomplete at the time of

23 10:53:20 termination.

24 10:53:21 The costs to rectify defects, the experts again

25 10:53:24 agree the principle that the full cost of rectifying the

1 10:53:28 defects should be valued, but what I mean by that, what

2 10:53:32 we mean by that or I mean by that at least is that in

3 10:53:34 extra over principle doesn't apply to the valuation of

4 10:53:37 defects, but what's very important is that the amounts

5 10:53:42 we're valuing for the defects actually relate to defects

6 10:53:45 in Hadeed's works and not to something else.

7 10:53:48 On that front, the experts -- the only link between

8 10:53:52 the costs presented and the provisional taking-over

9 10:53:55 certificate requiring defects is the amounts for expert

10 10:54:00 coated, and that's the epoxy flooring in main building

11 10:54:03 for 220,000 dirhams. We can't link any of the other

12 10:54:06 costs.

13 10:54:08 Next slide, please.

14 10:54:12 The reason why the experts agree this principle is

15 10:54:15 because there's three possible outcomes to the way this

16 10:54:18 can go. The cost to complete valuation, you have

17 10:54:23 scenario 1, where the original contractor's work and the

18 10:54:29 new completion contractor's works equal the same amount

19 10:54:31 as the contract price and then there's no additional

20 10:54:36 cost for the owner to complete it. They will have a bit

21 10:54:39 more make, because there's two sets of contractors, but

22 10:54:42 there's no additional cost.

23 10:54:44 Scenario 2 is a scenario of additional cost where

24 10:54:46 the combine cost of the new completion contractors and

25 10:54:49 the original contractors exceeds the contract price ^^

1 10:54:55 scenario be is where the original contractor and the new

2 10:55:00 completion contractors are less than the original

3 10:55:01 contract price, which can be a cost saving. So there's

4 10:55:05 three possible scenarios and that's why that test is so

5 10:55:08 important.

6 10:55:10 Next slide, please.

7 10:55:14 To be able to do that valuation or that process

8 10:55:23 of -- to be able to make that comparison, the experts

9 10:55:26 require certain information, and that is a record of the

10 10:55:30 value of the works completed by the original contractor

11 10:55:33 at the time of termination. That is vitally important

12 10:55:37 in a termination type valuation, because this will

13 10:55:42 inform us how much work the original contractor

14 10:55:46 completed and how much work they did not complete and

15 10:55:49 perhaps was defective.

16 10:55:51 We also need a record, a clear record of the new

17 10:55:54 works, the replacement contractor has completed ^ to be

18 10:55:57 able to make that comparison, and we need similar

19 10:56:01 information for the defects.

20 10:56:04 Next slide, please.

21 10:56:06 The experts are in a difficult position here,

22 10:56:11 because we do not have those records. The contractor --

23 10:56:13 I'm not going to read out all of these things, but the

24 10:56:17 contract has mechanisms in place to safeguard what

25 10:56:20 I would call the progress of the works in valuation

1 10:56:26 terms. It says that certain things have to be done on

2 10:56:28 termination, it includes a valuation at the date of

3 10:56:30 termination, that that's quite clear. Mr Chevreau

4 10:56:34 explained to us the other day that I think his

5 10:56:39 understanding is informed of the status of those works

6 10:56:43 based on payment application 38, and I think Mr Chevreau

7 10:56:47 said that based on that application, he believed that

8 10:56:50 40 per cent of the works were outstanding.

9 10:56:52 On the face of application 38, it's signed in 2019,

10 10:57:00 but it says on its face that it's for works up

11 10:57:05 to September 2018, and that's almost a year before

12 10:57:07 actual termination takes place. I'm not sure in that

13 10:57:14 is an

14 10:57:16 accurate ^^ of the after IPA 38, there's a clear

15 10:57:20 breakdown in the certification process, because we can

16 10:57:23 see Hadeed submit I think payment applications up to

17 10:57:27 number 40, but I don't belief those were certified.

18 10:57:32 Even if Hadeed stopped issuing payment applications

19 10:57:35 after then, I believe clause 14(9) of the contract has

20 10:57:45 I would call it a safety net built in to protect the

21 10:57:51 valuation where it says if a payment application is not

22 10:57:54 received, the engineer would step in and record the

23 10:57:58 progress of the works. That's to keep a clear record of

24 10:58:01 where things stand on a monthly basis.

25 10:58:05 Another reason I say why this valuation record

1 10:58:07 I think breaks down is the delay experts have said the

2 10:58:12 work started in September 2015 and up until termination,

3 10:58:19 there's about 48 months within that period, but we only

4 10:58:22 see 38 payment applications. So there's about 10

5 10:58:26 missing somewhere, where there should be 48 records of

6 10:58:30 the works completed.

7 10:58:31 We don't see that and that is what make this is

8 10:58:35 difficult for the experts.

9 10:58:39 What further adds challenge is the issue of other

10 10:58:42 contractors on this project and the issue of omissions.

11 10:58:48 We don't know if some of these completion costs were

12 10:58:51 actually costs carried out by other project -- other

13 10:58:55 contractors that would have maybe always been required

14 10:58:58 or if it was part of ^^ Altaqa omitted from Hadeed and gave to

15 10:59:06 others ^^

16 10:59:07 cost to completion, but on the defects issue, when there

17 10:59:10 are other contractors involved, it's quite common that

18 10:59:13 contractors leave defects behind.

19 10:59:16 So if Hadeed was likely to leave defects behind, as

20 10:59:21 the respondent has said, then these other completion

21 10:59:24 contractors would likely have also left defects behind.

22 10:59:29 That's why we need a very clear record of who did what

23 10:59:31 and who left which defects to be able to make a cheer

24 10:59:35 valuation.

25 10:59:42 Next slide, please.

1 10:59:47 I'll be very beer here. This cost to complete

2 10:59:50 valuation the end the defects valuation, the same way we

3 10:59:54 value Hadeed's works, we have to value Altaaqa's claim

4 10:59:57 for these works because it's a function of valuation.

5 11:00:00 To value something, it's a reasonably

6 11:00:03 straightforward process if you have the information, but

7 11:00:05 you need to define the thing what's being valued, what's

8 11:00:08 the nature of it, what is it and what's the extent of

9 11:00:10 it. Quantify that thing that you are trying to value,

10 11:00:14 price the thing that you are trying to value and then

11 11:00:17 apply the quantities to the price to value that thing.

12 11:00:20 That's how quantity surveys value.

13 11:00:25 That's not the process that was followed in my

14 11:00:28 understanding of this counterclaim. It's kind of in

15 11:00:30 reverse, where Altaaqa submits costs for the completion

16 11:00:33 of works and defects and they are saying those relate to

17 11:00:38 defective or incomplete works, but it's kind of in

18 11:00:41 reverse. You have to start with what is the defect and

19 11:00:43 then you define it, quantify it, price it. You don't

20 11:00:46 start with the outcome, the cost and then say that is

21 11:00:50 then incomplete or defective works. That's why this

22 11:00:52 valuation was so challenging.

23 11:00:56 Skip to slide 57, please.

24 11:01:05 Mr Boulwood and I agree the principles, but we

25 11:01:10 carry forward different valuations to our summaries.

1 11:01:20 I'm unable to value this claim as I've said due to the

2 11:01:23 limited information and I don't think I can provide the

3 11:01:26 arbitrator with an independent valuation. I just don't

4 11:01:29 have what I need.

5 11:01:33 Mr Boulwood I believe has had similar difficulties,

6 11:01:36 but where the difference comes in is that Mr Boulwood's

7 11:01:39 valuation is in some ways provisional and incomplete,

8 11:01:42 because it's based on the second report valuation, where

9 11:01:46 he's confirmed he was not able to make the valuation in

10 11:01:51 the round, which is the additional costs.

11 11:01:55 So the difference in the figures that are pulled

12 11:01:57 through to the valuation summary is that I understand

13 11:01:59 Mr Boulwood carries forward his figures based on

14 11:02:03 instruction from Altaqa that these are the additional

15 11:02:05 costs to complete.

16 11:02:08 I could not do that because those instructions were

17 11:02:12 not on me, but the experts couldn't meaningfully engage

18 11:02:18 because of that instruction standing in the way.

19 11:02:22 Skip to slide 58, please.

20 11:02:27 So again, just what are the incomplete works? All

21 11:02:34 the experts have to go on are the provisional

22 11:02:36 taking-over certificate and that shows six items of

23 11:02:38 incomplete work or defective work.

24 11:02:41 The cost that we're seeing presented by Altaqa and

25 11:02:44 the experts agree this, we can't link them to these six

1 11:02:47 items, so we can see there's works being done, but we do

2 11:02:51 not know who they relate to or how they relate to

3 11:02:54 Hadeed.

4 11:02:54 The exception to that is item 4 being the epoxy

5 11:02:58 coating in basement 1, where the provisional taking-over

6 11:03:00 certificate shows that there was epoxy coating to be

7 11:03:06 completed and we can see Altaaqa present 220,000 dirhams

8 11:03:11 for epoxy coating in building 1. That's as far as we

9 11:03:14 can see.

10 11:03:18 If we skip to slide 60. This is Altaaqa's

11 11:03:28 counterclaim for -- sorry, I see I have made a slight

12 11:03:32 mistake. I have copied and waste, I say it's Hadeed's

13 11:03:36 claim to prolong rental contracts, that should be

14 11:03:39 Altaaqa's claims. Apologies for that.

15 11:03:41 Prolonged rental contracts and you tilted. ^doc).

16 11:03:47 Skip to slide 62, please.

17 11:03:52 This is where Altaaqa says it had to maintain these

18 11:03:54 temporary facilities from which it operates its business

19 11:03:57 for a longer period of time as a result of the delays as

20 11:04:00 well as generators.

21 11:04:03 The experts once again agree the principle that this

22 11:04:06 should be valued as the additional cost incurred by

23 11:04:08 Altaaqa and this is a difference between Altaaqa's costs

24 11:04:13 of renting these temporary facilities from the original

25 11:04:16 completion date and the cost Altaaqa should have

1 11:04:18 incurred by moving into its new permanent facility and

2 11:04:22 the experts also agree that Altaaqa has not provided

3 11:04:26 information to support the one side of that calculation

4 11:04:28 being the cost Altaaqa should have incurred by moving

5 11:04:32 into its new facilities.

6 11:04:34 I have not been able to value this claim, because

7 11:04:37 I've only seen the cost side, but not what the costs

8 11:04:40 should have been side, so I can't value the additional

9 11:04:43 cost.

10 11:04:46 Where there's some disagreement is on what the costs

11 11:04:50 should have been. The experts agree they have not seen

12 11:04:54 anything, but I do understand that Mr Boulwood's

13 11:04:57 understanding -- Mr Boulwood had discussions with

14 11:05:01 Mr Shamsi is what was set out in the QJS.

15 11:05:06 I was not invited to those discussions or part of

16 11:05:11 discussions with the witnesses ^ so I've not seen

17 11:05:13 evidence to support these discussions, but Mr Boulwood

18 11:05:16 seems to tie his opinion based on those discussions and

19 11:05:20 in my view, it creates a slight imbalance between the

20 11:05:23 information available to the experts and that I'm unable

21 11:05:26 to engage on.

22 11:05:28 I understand those discussions relate to what

23 11:05:33 Altaaqa's costs would have been if it operated from its

24 11:05:36 own facility and Mr Shamsi, through Mr Boulwood I think

25 11:05:39 says those costs would be negligible, but I maintain my

1 11:05:44 opinion in the QJS, where I have said this building cost

2 11:05:48 32 million dirhams and there would be a cost associated

3 11:05:51 with owning that asset and operating from that asset. I don't think it can be nil.

4 11:06:01 Please skip ahead to page 64.

5 11:06:08 This is the issue related to generators and fuel.

6 11:06:12 On this one, the experts did make a valuation,

7 11:06:17 1.3 million, there's a 40,000 millimetre or so

8 11:06:20 difference that relates to fuel ^.

9 11:06:21 I think it's straight forwardly explained in the

10 11:06:25 QJS. The main thing that I want to bring up here is

11 11:06:29 whether these costs are reasonable. Altaaqa says these

12 11:06:34 generators were used to complete the project

13 11:06:36 between June 2019 and March 2021. That's a two year

14 11:06:44 period. In

15 11:06:44 that time, based on the costs presented by Altaaqa,

16 11:06:49 I believe they ^^ value 1.8 million dirhams. That's

17 11:06:54 about 6 per cent of the contract price, so compared to

18 11:06:58 what Hadeed had to do, it's a very small amount, it's

19 11:07:01 6 per cent at contract price.

20 11:07:03 But they took two years to complete that small

21 11:07:06 amount of work. Because it took Altaaqa two years to

22 11:07:12 complete effectively 6 per cent of the contract price,

23 11:07:15 what it does it keeps these generators on site for such

24 11:07:18 a long period that it generates a significant cost, the

25 11:07:23 cost is almost for just these generators and fuel is

1 11:07:26 almost equivalent to I think one of Mr Mr Boulwood's

2 11:07:31 alternative valuations of all of heed's time-related

3 11:07:34 costs for a much longer period and when there was a lot

4 11:07:37 more works to be done.

5 11:07:40 The witnesses have also not explained what these

6 11:07:42 generators -- they've said it relates to temporary

7 11:07:45 power, but there's between 500 and 1,000kVA of

8 11:07:48 generating capacity, which is quite significant, when

9 11:07:52 you consider that the cost to complete that Altaqa has

10 11:07:55 presented are in some ways, manual labour works, it's

11 11:07:59 painting here, it's fixing a ceiling here, it's doing

12 11:08:03 paving outside.

13 11:08:04 That work doesn't normally require generator, it's

14 11:08:08 hand tools and labour?

15 11:08:10 A. So I'm not sure what all of this ^ generating capacity

16 11:08:13 was doing.

17 11:08:15 Another point that I'm unsure of is Altaqa omitted

18 11:08:21 about 30 per cent of Hadeed's contract scope. It row

19 11:08:24 moved # million dirhams from Hadeed's contract and gave

20 11:08:26 that to others to complete, I understand.

21 11:08:29 So in these temporary power generators were brought

22 11:08:33 on to provide power for these other contractors to

23 11:08:36 complete these omitted works then I don't think you can

24 11:08:40 claim those costs from hood, because they relate to

25 11:08:43 those costs relate to the completion of the omitted

1 11:08:49 works.

2 11:08:53 Can we please skip to slide 67.

3 11:09:05 This is the last one. It's Altaqa ease claim for

4 11:09:10 third party services. This is in effect where Altaqa

5 11:09:16 is saying that as part of Altaqa's core business is it

6 11:09:19 had to -- I understand it rented out generators to

7 11:09:23 various clients and that is part of these service

8 11:09:29 arrangement, Altaqa had to ^ take some of these

9 11:09:33 generators back in and service, repair and overhaul

10 11:09:37 them, which is fine. They're saying had they had the

11 11:09:41 project on time, they would have -- and Mr Shamsi

12 11:09:43 I think confirm this as well, that they would have

13 11:09:46 serviced and repaired ^^ within their own workshop and

14 11:09:49 because they did not have that workshop by the original

15 11:09:52 completion date, they had to out source the servicing

16 11:09:55 and repair of generators to this Al-Baharra, in third

17 11:09:58 party.

18 11:09:59 Again, the experts agree that in extra over approach

19 11:10:03 applies, so it has to be valued as the difference

20 11:10:07 between what Altaqa costs were to a ^^ to Al-Bahar,

21 11:10:11 compared to what its costs would have been to service

22 11:10:15 and repair those generators in its own facility using

23 11:10:19 its own labour and the experts agree that we do not have

24 11:10:23 sufficient information to value this difference or that

25 11:10:28 additional cost.

1 11:10:31 Because we don't know who Altaaqa's own costs should

2 11:10:34 have been to service those generators. Mr Shamsi in his

3 11:10:38 second witness statement has provided an amount for

4 11:10:41 labour, Mr Shamsi I believe has been informed by their

5 11:10:44 operations director that Altaaqa paid its own

6 11:10:48 technicians to service these generators US\$30 per hour.

7 11:10:52 We have not seen any breakdown of that amount and

8 11:10:56 I believe the operations manager gave that figure to

9 11:10:59 Mr Shamsi is not a witness in this arbitration S we're

10 11:11:01 unable to test that, but we've recognised that as

11 11:11:04 evidence and we have both experts have attempted

12 11:11:07 a valuation based on that figure in Mr Shamsi's witness

13 11:11:11 statement.

14 11:11:13 Next slide, please.

15 11:11:16 So Al-Bahar's costs, we can see are made up of four

16 11:11:20 components. The first one is labour, the supply of

17 11:11:22 technicians, the second one is vehicle mileage charges,

18 11:11:25 the third one is replacement parts and the fourth one is

19 11:11:27 allowance for facilities, tools and consumables.

20 11:11:32 Because Altaaqa's evidence only goes to the cost of

21 11:11:34 labour for servicing these generators, so we could only

22 11:11:38 attempt to see would Al-Bahar's cost for its technicians

23 11:11:41 to service this be more on the labour than Altaaqa's

24 11:11:47 costs? So we could only engage on the labour. But we

25 11:11:51 don't know, the experts don't know how much of

1 11:11:54 Al-Bahar's overall costs actually relate to labour, so

2 11:11:58 it's very difficult to strip out the labour from

3 11:12:00 Al-Bahar's costs.

4 11:12:03 In an attempt to do that, the experts have both ^^

5 11:12:07 I have assumed that 50 per cent of the cost of servicing

6 11:12:11 generators using Al-Bahar relates to the cost of labour,

7 11:12:16 whereas the other 50 per cent relates to replacement

8 11:12:19 parts things like radiators, inobjectors,

9 11:12:26 things line

10 11:12:27 that.

11 11:12:27 Mr Boulwood considers 85 per cent of the cost

12 11:12:29 relates to labour and 15 relates to replacement parts

13 11:12:33 and other costs.

14 11:12:35 In the QJS, Mr Boulwood has provided a sample, but

15 11:12:40 that sample was given on the submission day, so I didn't

16 11:12:44 have time to address it in that QJS, so I address it for

17 11:12:48 the first time now in this presentation.

18 11:12:51 Mr Boulwood is saying that his sample of the

19 11:12:54 Al-Bahar costs suggests that 75 per cent of those

20 11:12:55 amounts relate to labour.

21 11:13:00 Next slide, please.

22 11:13:04 That's an extract of Mr Boulwood's sample.

23 11:13:08 Mr Boulwood is trying to take the Al-Bahar invoices and

24 11:13:13 split it into labour allocation and transport and

25 11:13:15 consumable allocation. Mr Boulwood find labour is

1 11:13:20 75 per cent, but what I've noted is Mr Boulwood only

2 11:13:23 considers the cost of labour and transport and

3 11:13:27 consumables, I don't see where the cost of the

4 11:13:29 replacement parts, which could be a significant cost, if

5 11:13:33 that's allocated under labour or the transport, I just

6 11:13:35 can't see it from here.

7 11:13:40 If we go to the next slide, please, that shows an

8 11:13:43 extract of one invoice that Mr Boulwood has sampled and

9 11:13:46 it shows a screenshot of that invoice. Mr Boulwood

10 11:13:52 finds that there's 77,000 -- sorry, the invoice is #

11 11:13:58 7,000, but the labour is 45 ^^ Mr Boulwood's sample.

12 11:14:01 But the labour on this invoice that I could identify was

13 11:14:08 25,500. So I'm not sure where that amount came from.

14 11:14:14 Then Mr Boulwood samples 12,150 for transport and

15 11:14:18 consumables, but the transport and consumables that

16 11:14:22 I can see from that invoice is 2,800. So I wasn't able

17 11:14:25 to follow it, but it might be that Mr Boulwood split

18 11:14:29 the invoice in a different way. It's just that I can't

19 11:14:31 follow it.

20 11:14:32 Next slide, please.

21 11:14:37 I have attempted to follow Mr Boulwood's sample

22 11:14:40 those 10 invoices ^ and what I've tried to do is where

23 11:14:44 I could see labour on the invoice, I have noted it, and

24 11:14:48 where I could see other costs, I've noted that as well

25 11:14:54 and I've expressed that as a proportion.

1 11:14:57 What I came to was that in overall terms, labour on

2 11:15:02 those invoices I could see was about 47 per cent of the

3 11:15:07 total cost of servicing generator, which would mean that

4 11:15:12 the remaining 53 per cent or so would relate to other

5 11:15:14 things, such as replacement parts, consumables, vehicle

6 11:15:18 mileage charges, things that the experts can't really

7 11:15:21 value because we've not seen an equivalent cost of what

8 11:15:25 Altaqa's own costs would have been for those, but this

9 11:15:29 just reinforces my valuation of the labour being closer

10 11:15:32 to 50 per cent.

11 11:15:34 Thank you. That's all I have for today.

12 11:15:38 SOLE ARBITRATOR: Thank you very much.

13 11:15:43 I think this is a good time for us to take

14 11:15:46 a 15-minute break.

15 11:15:48 It's 11.15, we'll resume at 11.30 and as I've

16 11:15:51 mentioned to other witnesses, you're sequestered, so

17 11:15:55 please ensure you don't discuss the case or your

18 11:15:57 testimony with anyone during our break. Thank you very

19 11:15:59 much.

20 11:16:03 WITNESS: I understand. Thank you.

21 11:16:05 (11.16 am)

22 11:16:07 (A short break)

23 11:16:09 (11.30 am)

24 11:30:54 SOLE ARBITRATOR: We're back on the record. Mr Howells, the

25 11:30:56 floor is yours.

1 11:30:57

2 11:30:57 Cross-examination by Mr Howells

3 11:30:59 MR HOWELLS: Good morning, Mr Olwagen?

4 11:31:00 A. Good morning, sir.

5 11:31:02 Q. So I want to get back to just some basic principles

6 11:31:05 first?

7 11:31:05 A. Okay.

8 11:31:07 Q. We dive in ^^ probably started there.

9 11:31:09 Let's just start here. Before considering the

10 11:31:11 claims each party have against each other, the claims

11 11:31:14 and the counterclaims, you would accept, wouldn't you,

12 11:31:19 that it's appropriate ^^ on the contractual payments?

13 11:31:25 A. Sorry, can you repeat that last part?

14 11:31:27 Q. You would accept, wouldn't you, that it's the correct

15 11:31:29 that the tribunal need to ascertain the correct position

16 11:31:31 on the contractual payments?

17 11:31:35 A. Yes, our expert's valuations follow the documents, but

18 11:31:39 it's ultimately for the tribunal to decide, yes.

19 11:31:43 Q. For the purposes of this process, the start point is

20 11:31:45 let's work out what the contractual payment position is?

21 11:31:49 A. Are you referring to the net valuation, the overall

22 11:31:51 valuation, Mr Howells?

23 11:31:53 Q. On the account, the contract account.

24 11:31:56 A. Yes, because we value the sums due to Hadeed and set off

25 11:32:00 from that --

1 11:32:01 Q. Don't worry about what you've been valuing. This is the
2 11:32:03 arbitrator's job now?
3 11:32:04 A. Yes.
4 11:32:05 Q. You're here to assist the arbitrator, yes?
5 11:32:07 A. Yes.
6 11:32:08 Q. Her job to do it less that's what I said, sir.
7 11:32:11 Q. So to do that, the tribunal need to do a number of
8 11:32:14 things, I'm doing to put them to you one by one?
9 11:32:17 A. Okay.
10 11:32:17 Q. Need to ascertain the final contract price according to
11 11:32:20 the contract?
12 11:32:26 A. They may wish to, but it's about how much value was
13 11:32:29 carried out.
14 11:32:32 Q. Start point will be to work out what the contract price
15 11:32:36 is?
16 11:32:36 A. The contract price is in the contract, sir.
17 11:32:40 Q. That means the original contract price --
18 11:32:43 A. Yes.
19 11:32:44 Q. Work out what the variations were by way of addition?
20 11:32:49 A. This is re-measurable contract, so you have to value the
21 11:32:52 works. Let me just explain this. The experts started
22 11:32:56 with the 32 million dirham contract price, less
23 11:33:00 omissions plus additions, because --
24 11:33:02 Q. Slow down. Rather than anticipate where I'm going --
25 11:33:05 A. No, no.

1 11:33:06 Q. I'm a simple man and do it really simply bit by bit.

2 11:33:10 All I'm doing at the minute is working through where

3 11:33:14 you've started from and in your answer there, you've

4 11:33:16 tried to rush forwards. So let's just slow down a bit,

5 11:33:19 okay, and do it bit by bit. Work out what the

6 11:33:23 variations were?

7 11:33:24 A. You should, yes.

8 11:33:26 Q. There they're additional works?

9 11:33:28 A. Yes.

10 11:33:28 Q. Or omissions from the works?

11 11:33:30 A. Yes.

12 11:33:32 Q. That will help the tribunal ascertain the total

13 11:33:35 amount -- sorry, after that, sorry, the tribunal need to

14 11:33:38 ascertain the total amount actually paid towards the

15 11:33:43 final contract price over the course of the works?

16 11:33:47 A. Yes, but before that, there has to be adjustments for

17 11:33:51 the retentions and deductions, so there's further aspect

18 11:33:54 to that. It's not as straight forward as those

19 11:33:58 components.

20 11:33:59 Q. If you're in interim payment stage, yes. At the final

21 11:34:01 stage, looking back of the contract effectively

22 11:34:04 completed, you don't have to worry about the retention,

23 11:34:06 because you need to work out what the contract price is,

24 11:34:09 what you've paid and therefore what might be owing?

25 11:34:12 A. I hear what you're saying, but you have to in the final

1 11:34:15 account, show, for example, the amount of retention that

2 11:34:18 you've taken off and in the final account, you have to

3 11:34:20 show that you are releasing that same amount of

4 11:34:22 retention. So in every final account that I've

5 11:34:26 prepared, I've shown the amounts withheld and released

6 11:34:29 on those final accounts.

7 11:34:32 Q. I want to suggest to you that's fine, if you are in

8 11:34:35 a pure final account scenario or contract, yes? You

9 11:34:42 have given the answer in your answer last time. If

10 11:34:45 you're doing a final account, that's what you do to

11 11:34:47 produce the final account?

12 11:34:48 A. I've just said what you need to do to produce a time

13 11:34:51 account.

14 11:34:52 Q. We are not in final account scenario, because the

15 11:34:55 contractor didn't achieve completion of the works?

16 11:34:59 A. Okay.

17 11:34:59 Q. Agreed?

18 11:35:00 A. Yes, there's a termination.

19 11:35:03 Q. So the tribunal is not asked with producing the final

20 11:35:07 account in that formal sense as you've describing?

21 11:35:09 A. Okay.

22 11:35:10 Q. Do you agree?

23 11:35:11 A. It's for the tribunal to decide.

24 11:35:16 Q. So I'm going to suggest to you that for these purposes,

25 11:35:18 without the immediate to go through the formal final

1 11:35:20 account process, I think we've agreed you work out the

2 11:35:24 price, that means working out the variations by way of

3 11:35:27 additional work, working out the omissions and I suggest

4 11:35:30 that the next thing the tribunal need to do is to

5 11:35:33 ascertain the total amount paid?

6 11:35:35 A. And the claims as well. -- (overspeaking) -- ^^.

7 11:35:39 Q. This section started with me saying to you don't worry

8 11:35:42 about the claims for the minute, let's just look at the

9 11:35:44 contract situation, yes. We will come on to the claims

10 11:35:48 and the counterclaims?

11 11:35:49 A. My point is that there are more ingredients to this

12 11:35:52 final account process than what you are setting out

13 11:35:55 there, sir, that ^ ^.

14 11:35:56 Q. We can't do it all in one go. We have to break this

15 11:35:59 down bit by bit?

16 11:36:00 A. Okay, that's fine.

17 11:36:01 Q. Rather than jump forwards every time, just stick with

18 11:36:05 me, I'm going to give you plenty opportunity to talk

19 11:36:08 about the claims and to make your points about the

20 11:36:09 counterclaims as well, but let's just go through it bit

21 11:36:12 by bit?

22 11:36:13 A. The point I'm making is it sounds to my and I might be

23 11:36:17 misunderstand ^^ final account is limited to those

24 11:36:19 components, where there are more components that should

25 11:36:22 be present in the final account and that's the only

1 11:36:25 point I'm trying to make.

2 11:36:28 Q. When considering the contractual payment position, if

3 11:36:32 there are disputes about the valuation of variations, so

4 11:36:37 thinking just about variations for the minute, don't

5 11:36:40 worry ^^ figure else, just variation for these

6 11:36:43 questions. Understood?

7 11:36:44 A. Yes.

8 11:36:44 Q. Keep your minds focused on variations?

9 11:36:46 A. Okay.

10 11:36:50 Q. If there are disputes about the valuation of variations,

11 11:36:52 that needs to be resolved by this tribunal?

12 11:36:56 A. It's a matter for the tribunal, yes.

13 11:37:00 Q. Here in this case, the dispute as to entitlement as to

14 11:37:07 whether there is to be any further valuation of

15 11:37:10 variations, beyond the amounts stated as agreed by the

16 11:37:13 parties in the ISA of July 2019, depends on the ^^ just

17 11:37:23 look at just ^^ whether the tribunal considers that she

18 11:37:26 should go beyond the ISA?

19 11:37:27 A. That's a matter for the tribunal, yes.

20 11:37:30 Q. You've dealt with that in the joint statement of

21 11:37:32 Mr Boulwood in three sections?

22 11:37:33 A. Okay.

23 11:37:35 Q. So joint statement, section 3 is the first bit, and that

24 11:37:41 is at E50, page 17. You have broken into three parts

25 11:37:54 with Mr Boulwood?

1 11:37:55 A. Yes, following the way it's been claimed, is that's

2 11:37:58 where that structure comes from.

3 11:38:00 Q. Thank you. This is the first part, this is the approved

4 11:38:03 variations and agreed and you confirm that of 15 of

5 11:38:06 those, that's agreed between the parties, the agreements

6 11:38:09 contained within the ISA?

7 11:38:11 A. Yes. Sorry, I just lost my screen here.

8 11:38:19 Q. Back on?

9 11:38:19 A. Yes. Just a point on this again. With the experts

10 11:38:23 chose very specific lea here, it's not that we agree to

11 11:38:26 those amounts, it's that the parties agreed those

12 11:38:29 amounts and we therefore carry it forward to our

13 11:38:32 coolation. So it's not the experts saying we agree, we

14 11:38:35 are acknowledging the parties agreement.

15 11:38:37 Q. The parties agreement is in the ISA?

16 11:38:39 A. Yes, and that's what it says there, sir.

17 11:38:41 Q. Next one, section 4, E50, page 20. The box that says

18 11:38:50 quantum experts agreements. This is the section on the

19 11:38:54 variations, there are 22 of those, where there are

20 11:38:59 4 million-odd dirham defence between the parties for 22

21 11:39:02 variations, where the ^^ that is they are variationsings

22 11:39:06 but there's a valuation dispute?

23 11:39:10 A. Correct there to help the tribunal what you say in the

24 11:39:14 second paragraph is the experts agree there's not

25 11:39:16 sufficient information to carry out independent

1 11:39:17 valuation of that claim beyond what the ISA says?

2 11:39:23 A. That is correct.

3 11:39:24 Q. Can I put a proposition to you, that the effect of your

4 11:39:28 agreement with Mr Boulwood is that even if Hadeed

5 11:39:32 persuades the tribunal that the ISA is not binding, you

6 11:39:38 and Mr Boulwood think that the figure that she should

7 11:39:41 apply is the figure agreed in the ISA?

8 11:39:43 A. No, I wouldn't tell the tribunal what to do. All that

9 11:39:46 that says is that Mr Boulwood answer I were not able to

10 11:39:52 value a portion of the variations claimed over and above

11 11:39:56 the sums in the ISA because we didn't have the

12 11:39:58 information to do that.

13 11:40:00 Q. Sorry, finish by all means, I'm done, sir, thanks.

14 11:40:06 Q. These because Hadeed provided neither you nor ^^ to

15 11:40:09 assist in the valuation?

16 11:40:10 A. No, that's not strictly correct. Hadeed has provided

17 11:40:14 information for its variations, but the information

18 11:40:18 provided was not sufficient or sufficiently detailed to

19 11:40:21 allow Mr Boulwood and myself to carry out an

20 11:40:24 independent valuation.

21 11:40:27 Q. Section 5 of the joint statement, bundle E50, page 24.

22 11:40:37 We have four variations, which we can see in the top

23 11:40:41 box, which are under the heading of disputed variations?

24 11:40:45 A. I can see those.

25 11:40:47 Q. They're listed there. We'll break them into two parts.

1 11:40:51 We're going to take items 1 and 2 first, gate pass fees,

2 11:40:55 a claim of 51,000-odd dirhams, MEP piping rainwater

3 11:41:00 claim at 96,900 dirhams?

4 11:41:04 A. I can see those.

5 11:41:08 Q. If we can look at the document that we've been looking

6 11:41:10 at over the course of the arbitration, G648, page 3.

7 11:41:27 I know you're not been here for every day, but

8 11:41:30 you'll remember this one?

9 11:41:31 A. I remember this one, the colours give it away.

10 11:41:33 Q. Yes, the one that the eyes drag to is the reds colour in

11 11:41:36 the ^^ very helpfully that's the one that cone obtains

12 11:41:39 the two items we're interested in?

13 11:41:40 A. Yes.

14 11:41:43 Q. In the statement of account that the tribunal has heard

15 11:41:45 about from Mr Dabbas and from Mr Chevreau and from

16 11:41:49 Mr Shamsi, the to items that we were looking at in the

17 11:41:57 joint statement ^^ gate passes and MEP rain water?

18 11:42:01 A. Yes.

19 11:42:02 Q. 51,000 and 96,000 respectively?

20 11:42:05 A. Yes, I can see those.

21 11:42:07 Q. Are marked on this statement of account as having been

22 11:42:10 considered and rejected?

23 11:42:12 A. That's what it shows there, sir.

24 11:42:17 Q. Back to the joint statement, E50, page 24, I say ^^

25 11:42:28 items 3 and 4 next, so the server room, the electrical

1 11:42:31 work and the epoxy floor paint?

2 11:42:37 A. Yes.

3 11:42:38 Q. 15,420 and 2,449 respectively?

4 11:42:42 A. I can see those ^.

5 11:42:48 Q. I think the tribunal sought to select that certainly

6 11:42:52 with one of the witnesses. I'm pretty sure it was

7 11:42:55 Mr Chevreau and I think we all came to the conclusion

8 11:42:57 that they weren't listed on the statement of account

9 11:43:00 document that we've just been looking at?

10 11:43:03 A. Yes.

11 11:43:04 Q. ^^ I just want to look at the evidence that Hadeed has

12 11:43:08 provided for that. The evidence is in Mr Dabbas' first

13 11:43:13 witness statement, paragraph 141 at D2, page 30.

14 11:43:31 The remaining variations, variation 4 server room,

15 11:43:36 variation 5 epoxy floor paint, yes, you see those?

16 11:43:40 A. Yes.

17 11:43:42 Q. 142:

18 11:43:42 "I enclose a document put together ^reading...)

19 11:43:45 comments." ^doc.

20 11:43:46 Footnote 123 at the bottom, please. Missing

21 11:43:51 variation orders informational document prepared by

22 11:43:54 Hadeed SD-47." ^doc.

23 11:43:55 Did you look at this when you were going through

24 11:43:57 your valuation possess?

25 11:44:01 A. I can't specifically recall, but what I do recall on

1 11:44:03 these variation orders up until the second report,

2 11:44:07 I could not make a valuation of them, because I didn't

3 11:44:09 have sufficient information. So whatever I did look at

4 11:44:12 at that time was not sufficient and I've said that in my

5 11:44:16 second report.

6 11:44:17 Q. SD-47 is at P5.7.

7 11:44:28 No, it's not. Give me two seconds. Excuse me,

8 11:44:34 Mr Olwagen. Sorry.

9 11:44:41 Can you find SD-47 for me, please?

10 11:44:52 P5.18, there we go.

11 11:44:55 This is SD-47. It's the document Mr Dabbas said was

12 11:44:58 prepared by his staff. At the bottom, variation claims

13 11:45:04 that are yet to be approved, item 4 server room, item 5

14 11:45:08 epoxy floor paint ^doc) remarks TBC, to be confirmed

15 11:45:15 with footnote 6 and 7 in the bottom footnote 6 we are in

16 11:45:20 the process of gathering evidence, we are in the process

17 11:45:22 of gathering evidence." ^doc?

18 11:45:24 A. Yes.

19 11:45:24 Q. I appreciate you're only valuing, but that doesn't help

20 11:45:27 very much you nor the arbitrator, does it?

21 11:45:29 A. Yes, but let me clarify this point. Up until my second

22 11:45:33 report, I said there's not sufficient information to

23 11:45:36 value it. Why there's a figure in my column in the QJS

24 11:45:40 is because Mr Boulwood has valued it, so it was not me

25 11:45:43 valuing, sir, it was Mr Boulwood. Then Mr Boulwood

1 11:45:46 made several experienced based assumptions and I agreed

2 11:45:52 with Mr Boulwood's assumptions and adopted

3 11:45:54 Mr Boulwood's figure. So it was never me. I maintain

4 11:45:57 in my first and second report that I could not value

5 11:45:59 this, but I believe I agreed with Mr Boulwood's

6 11:46:02 valuation. I think that's how the figure ends up in the

7 11:46:05 QJS, sir.

8 11:46:07 Q. I haven't asked you about that?

9 11:46:09 A. No, but you're asking me --

10 11:46:10 Q. No, I haven't -- (overspeaking) -- ^^?

11 11:46:12 A. That's what I understood, sir. I'm explaining how --

12 11:46:15 Q. I'm simply asking you to track through the documents

13 11:46:17 with me to show the arbitrator the position that Hadeed

14 11:46:20 has?

15 11:46:20 A. I thought you were asking me if I considered this to be

16 11:46:23 sufficient information for my valuation.

17 11:46:25 Q. I haven't asked you that?

18 11:46:27 A. That's what I understood. Apologies if I misunderstood.

19 11:46:29 Q. The position is having traced through the documents and

20 11:46:32 shown the arbitrator the documents that were available,

21 11:46:35 you agreed there isn't sufficient information on which

22 11:46:37 to value?

23 11:46:38 A. That's what I've said all along, sir, yes.

24 11:46:51 Q. When we were attempting to go through my very basic

25 11:46:55 fundamental propositions as to what you think about or

1 11:46:57 what the arbitrator thinks about for the purposes of

2 11:47:00 considering the position on the contract, we discussed

3 11:47:03 variations, those additional ones, which we have just

4 11:47:06 been looking at?

5 11:47:07 A. Okay, yes.

6 11:47:07 Q. And variations by way of omission, yes?

7 11:47:11 A. Yes.

8 11:47:13 Q. I think we're all agreed on the value of the omissions?

9 11:47:16 A. That's my understanding, the parties agree them, yes.

10 11:47:21 Q. In your assessment, you have, however, sought to value

11 11:47:26 a claim for overheads and profit on omissions; yes?

12 11:47:35 A. That is correct.

13 11:47:36 Q. Which as you've identified today, is amended to 1.2, but

14 11:47:43 it's basically a claim?

15 11:47:44 Yes.

16 11:47:44 Q. Can I put to you that thinking about the

17 11:47:48 characterisation of the process of considering

18 11:47:54 a contract -- I use the word valuation in very ^^

19 11:47:58 appreciate got a formal idea in mind?

20 11:48:00 A. Yes.

21 11:48:00 Q. But in thinking about the value of a contract, when you

22 11:48:02 omit by variation, then at least in principle in most

23 11:48:09 contracts, you would apply the valuation rules to the

24 11:48:11 contract, to work out what the omission value is?

25 11:48:16 A. Sorry, I'm not sure I get that. Can you just explain

1 11:48:18 that last path again.

2 11:48:20 Q. When you consider a contract ^, you can vary it by

3 11:48:23 adding work?

4 11:48:26 A. Correct.

5 11:48:27 Q. Sometimes you can vary it by omitting work?

6 11:48:29 A. Yes.

7 11:48:30 Q. The content of your negative variations overhead and

8 11:48:34 profit asset relates to the latter of those, omissions?

9 11:48:37 A. The omission in isolation, is that what you mean?

10 11:48:40 Q. Yes.

11 11:48:40 A. That's correct, that's my primary. I do have an

12 11:48:43 alternative on that as well, but that is my primary,

13 11:48:46 correct.

14 11:48:47 Q. ^^ omissions are variations as much as additional works

15 11:48:51 are less that's what the contract says.

16 11:48:52 Q. The contract, as you say, is what governs here. C1,

17 11:48:59 page 33, please.

18 11:49:10 Clause 51 is the clause which deals with variations

19 11:49:13 in this contract. The engineer has a right at any time

20 11:49:18 by giving a written notice to propose any changes,

21 11:49:20 modifications, additions or omissions to it in or from

22 11:49:23 the works." ^doc.

23 11:49:25 Then there's a question about notification. 51(2)

24 11:49:30 in writing and the like, yes, is you're I which are of

25 11:49:33 that?

1 11:49:33 A. Yes.

2 11:49:34 Q. You're also aware I think Mr Chevreau told the tribunal

3 11:49:36 that unlike a standard 1987 fourth edition red book,

4 11:49:43 these parties have agreed to omit the valuation rules on

5 11:49:46 variations that would have been contained in clause 52?

6 11:49:51 A. Okay.

7 11:49:52 Q. If we scroll down, it's quite easy to see here?

8 11:49:56 A. Okay.

9 11:49:56 Q. Because they didn't even bother to re-number.

10 11:50:02 A claim for overheads and profit on omitted works,

11 11:50:09 as you've advanced, given there is no provision in the

12 11:50:14 contract for the valuation of omissions by reference to

13 11:50:17 overheads and profit, needs to be regarded as being

14 11:50:20 a damages claim, doesn't it?

15 11:50:23 A. I need to look at what Hadeed's position on it is. I'm

16 11:50:26 not sure in which way it's presented. It's not for me

17 11:50:29 to say what it is, sir. It would only be a damaged

18 11:50:32 claim if Hadeed is advancing it in that way. I'm not

19 11:50:35 a lawyer, sir.

20 11:50:36 Q. Okay. Think about it from the perspective of

21 11:50:40 a surveyor?

22 11:50:40 A. Ing okay.

23 11:50:40 Q. When you're presented with a contract and you're asked

24 11:50:42 to value works and you're valuing variations?

25 11:50:45 A. Yes.

- 1 11:50:46 Q. First port of call is the contractual variations
- 2 11:50:51 clauses?
- 3 11:50:51 A. Yes.
- 4 11:50:51 Q. Where you would start?
- 5 11:50:53 A. Yes.
- 6 11:50:54 Q. And you would then look for any valuation rules in the
- 7 11:50:57 contract?
- 8 11:50:57 A. Yes.
- 9 11:50:58 Q. Sometimes they will be expressed in the contract itself?
- 10 11:51:03 A. Correct.
- 11 11:51:04 Q. In the 1987 edition of the red book, it would have been
- 12 11:51:07 in clause 52?
- 13 11:51:09 A. If you say so, yeah.
- 14 11:51:11 Q. Which is not here?
- 15 11:51:12 Okay.
- 16 11:51:13 Q. Then you think to yourself: what other rules do I apply?
- 17 11:51:17 If it's not in the contract, then there are no rules as
- 18 11:51:20 to the valuation of variations, are there?
- 19 11:51:25 A. Not in the contract, but my role here -- you've likened
- 20 11:51:28 my role there to a surveyor and the surveyor on this
- 21 11:51:32 contract preparing payment applications or certificates
- 22 11:51:34 is to follow the rules of the contract, but I'm an
- 23 11:51:38 expert witness here, sir, and I have been asked to value
- 24 11:51:41 the claims as presented by the parties and on the legal
- 25 11:51:46 and factual basis presented by the parties and that is

1 11:51:49 what I have valued.

2 11:51:52 So I don't agree that I just need what the contract

3 11:51:55 says. If one party, and that includes both parties, say

4 11:51:59 something else, then ^^.

5 11:52:06 Q. This contract provides, if we go back to 51, please.

6 11:52:22 (Pause).

7 11:52:26 51(2), I'm going to suggest is the correct answer.

8 11:52:31 51(2) ^reading...) five days of receipt of the notice

9 11:52:34 proposed variations the contractor shall inform the

10 11:52:36 engineer of the cost of such variation including

11 11:52:40 a reasonable cost brack down and four mutually end

12 11:52:42 ^reading...) add judgment to the contract price plus

13 11:52:45 extension of time or changes." ^doc.

14 11:52:48 What this contract says in respect of variations, be

15 11:52:52 they by way of change, modification, addition or

16 11:52:54 omission, what the contractor is to do is to identify

17 11:52:58 the cost within the contract price with respect to the

18 11:53:01 omission or the addition or the change. Yes?

19 11:53:06 A. It says that, yes.

20 11:53:07 Q. This contract doesn't provide for the contractor to make

21 11:53:10 a claim for overheads and profit?

22 11:53:14 A. That is Altaaqa's position, I understand, yes.

23 11:53:16 Q. This contract doesn't do so, does it? It's not there in

24 11:53:19 this contract?

25 11:53:19 A. No, it doesn't appear to be there.

1 11:53:29 Q. Back to my fundamental point, so we have been through
2 11:53:32 variations, as, omits, and I said the next bit I suggest
3 11:53:37 to you, which I think you agreed broadly, was you then
4 11:53:40 look and see how much had been paid?
5 11:53:43 A. Before that, you normally look at the deductions
6 11:53:46 required under this contract, sir.
7 11:53:50 Q. Deductions being?
8 11:53:51 A. Retention and deductions for balance for advance
9 11:53:54 payment, that feeds into any valuation and we see that
10 11:53:56 from the payment applications and certificates as well.
11 11:54:00 I'm just giving you all the components.
12 11:54:01 Q. I think my reaction to that have been ^^ that's all very
13 11:54:05 well in the context of a formal final valuation or final
14 11:54:09 account process, but we're not doing that here. We're
15 11:54:11 trying to work out the position between the parties at
16 11:54:13 the end of this contract, which didn't achieve final
17 11:54:16 account?
18 11:54:17 A. No. Yeah, I hear you, sir, but on an interim valuation,
19 11:54:21 you still have to show what the balance of the retention
20 11:54:25 is and advance payments are. You have to do that, the
21 11:54:30 contract says that.
22 11:54:31 Q. Where you're going wrong, I suggest, is you're ^^
23 11:54:34 interim valuations and final valuations. This is
24 11:54:38 a somewhere ^^ where the contract has come to a close
25 11:54:41 somehow, works were not formally complete under the

1 11:54:44 contract, there was no final account process, but this

2 11:54:47 tribunal is also not in a position where it's being

3 11:54:49 asked to undertake an interim account. It's trying to

4 11:54:51 work out where on the money, the parties stood or now

5 11:54:57 stand on that?

6 11:54:58 A. Exactly to that point, sir. This is a termination

7 11:55:00 dispute. In every termination valuation that I've done,

8 11:55:04 the ash traitor or the tribunal always want to know what

9 11:55:10 the status of the retentions and the ad vans payments

10 11:55:12 are, because that's a fundamental part of a termination

11 11:55:16 valuation, because rek, ^^ through the contract, so you

12 11:55:23 need to understand where the balances of re tegses and

13 11:55:26 advance payments sit. It is vitally important in

14 11:55:30 a termination contract, a valuation rather ^.

15 11:55:34 We're not in termination, actually. We're in an

16 11:55:38 expulsion scenario, but under clause 62 ^^?

17 11:55:41 A. For valuation terms ^^.

18 11:55:44 Q. Let me know ask the question. I'm going to suggest that

19 11:55:47 for those purpose, all the points you're making are

20 11:55:49 captured by the following, which are relatively

21 11:55:51 straightforward and you've agreed with Mr Boulwood. To

22 11:55:53 work out the position with respect to what's been paid,

23 11:55:57 there are three elements in this case which are not ^^

24 11:56:04 but relevant to this case.

25 11:56:05 First, identify what was the total advance payment

1 11:56:12 made?

2 11:56:14 A. Sorry, it's part of the valuation.

3 11:56:15 Q. Understanding the position of account, small A, between

4 11:56:19 the parties at this point in time ^. To understand ^^

5 11:56:23 worked out what the total value that Hadeed might be

6 11:56:26 entitled to, you need to work out what they've been paid

7 11:56:28 so far. To do that, you start off, number 1, how much

8 11:56:32 advance payment was paid. It's an amount of payment.

9 11:56:36 Q. We know that, that's agreed. That's 3,214,293 dirhams?

10 11:56:42 A. Yes.

11 11:56:47 Q. How much was paid to Hadeed direct?

12 11:56:49 A. That is correct.

13 11:56:49 Q. We know that. That's agreed. 11,599,371.35 dirhams?

14 11:56:56 A. Okay.

15 11:56:57 You've agreed that with Mr Boulwood?

16 11:56:59 A. Let me just point to my table, but it sound about right,

17 11:57:02 yes.

18 11:57:03 Q. If we're looking at the table, in the joint statement,

19 11:57:07 that's E50, page 6, line 22, I think was the last one

20 11:57:17 I referred to.

21 11:57:33 Sorry, gave you 599, 11,590,371.35 apologies?

22 11:57:40 A. But I think just to help us on this path, I think you

23 11:57:43 mention the advance payment first, right?

24 11:57:45 Q. Mm-hmm.

25 11:57:48 A. That number comes in in my table at 12, that's where we

1 11:57:53 see it the first time.

2 11:57:54 Q. Yep.

3 11:57:55 A. First advance payment. At the point of termination on

4 11:57:58 that valuation, it's 3,032,000 dirhams, but as you

5 11:58:04 rightly said, sir, Hadeed received 3.2 million in

6 11:58:07 advance payment. So there's a further balance that

7 11:58:11 I need to correct from that I do a total 19, where

8 11:58:16 I deduct a further 181,000. So that basically brings

9 11:58:22 that 12 and 19 to the value of advance payment of the

10 11:58:26 3.2 that you've said. So that's where that 3.2 comes

11 11:58:29 in. I know it's split a bit more complex, but this is

12 11:58:33 termination valuation and it is complex. Then the other

13 11:58:36 amounts you've pointed to are at 22 and 23.

14 11:58:41 Q. We're agreed, the amount of advance payment actually

15 11:58:43 made, the amount of the sum paid in total to Hadeed,

16 11:58:52 yes?

17 11:58:52 A. Yes.

18 11:58:52 Q. In this case, unlike many, because as we know there were

19 11:58:56 payments made direct at the request of Hadeed to its

20 11:59:00 subcontractors by Altaaqa, we need to work out how much

21 11:59:03 was paid direct by Altaaqa to the subcontractors?

22 11:59:08 A. Yes.

23 11:59:08 Q. And you've agreed that figure at 77,066,981.30 dirhams?

24 11:59:15 A. Yes.

25 11:59:16 Q. As a point of clarity there, for the arbitrator, that's

1 11:59:19 the figure recorded in the interim statement of account.

2 11:59:24 The parties have different figures, but the experts

3 11:59:27 could not value wait contract amount was, so we

4 11:59:32 defaulted back on to the amount -- the last amount we

5 11:59:34 could see agreed for that, and that's how that

6 11:59:37 17 million comes into the valuation. But, yes, both

7 11:59:39 experts have adopted it.

8 11:59:41 Q. When you compare the amounts of the contract price, once

9 11:59:49 you've added the valuations and omitted omissions and

10 11:59:52 compared that to the total amount of money paid overall,

11 11:59:57 Hadeed, you agree, have been overpaid?

12 12:00:03 A. So that's line 25 on screen, at the point in time before

13 12:00:10 we released retention and consider Hadeed's claims, I do

14 12:00:14 agree at that point in time, that shows that Hadeed owes

15 12:00:19 Altaqa 4.5 million dirhams.

16 12:00:21 Q. The 4.5 million comes from the fact that you have, when

17 12:00:24 dealing with retention, -- let me rephrase that.

18 12:00:30 There's a difference between you and Mr Boulwood

19 12:00:32 between the figure that Mr Boulwood assesses

20 12:00:36 overpayment of 4.8 million dirhams?

21 12:00:40 A. Okay.

22 12:00:41 Q. Which is the same as the ISA figure?

23 12:00:43 A. Okay.

24 12:00:44 Q. And the figure which in the majority of your valuations,

25 12:00:47 comes in at 4.5 million?

1 12:00:50 A. Okay.

2 12:00:51 Q. Line 25?

3 12:00:53 A. Okay, I can see there's a difference.

4 12:00:56 Q. The difference there, as I understand it, relates to the

5 12:00:58 way that you have assessed retention and advance payment

6 12:01:05 recovery?

7 12:01:05 A. Okay.

8 12:01:12 Q. Yes in these are your calculations. You have got to ^^?

9 12:01:15 A. Those are my numbers. Yes, you can see the inputs into

10 12:01:17 those, yes. I have ran those deductions, those

11 12:01:21 retentions and advance payment according to how the

12 12:01:23 contract says you run them, which is basically

13 12:01:27 10 per cent reduction on the value certified at that

14 12:01:29 point in time, which is -- that's why those amounts of

15 12:01:33 202409200088 advance payment and retention are 3.02 million, which is

16 12:01:38 10 per cent or it's parasitic if you will on the value

17 12:01:42 at item 10, which is the value of the works at that

18 12:01:44 point in time. That's why I got to those numbers, sir

19 12:01:48 ^.

20 12:01:48 Q. I think what you've -- in answer earlier on, what you've

21 12:01:51 said about the retention is what you need to account for

22 12:01:54 is retentions retained from payments over time?

23 12:01:57 A. That's Mr Boulwood's position, but the contract says

24 12:01:59 you have to value the retention position based on the

25 12:02:03 valuation. So if my valuation is 30 million, I have to

1 12:02:08 value retention at that valuation. It's the same as any

2 12:02:11 interim payment certificate, the retention moves along

3 12:02:15 with the amount valued in that month, so it changes at

4 12:02:19 that point this time. That's how this contract says it

5 12:02:23 works and that's quite typical of most construction

6 12:02:26 contracts.

7 12:02:27 Q. What we know of this scenario, in the circumstances

8 12:02:31 where as a result of the arrangements made between the

9 12:02:32 parties, the contract didn't proceed in accordance with

10 12:02:38 a nom AI contractual scenario, where there are

11 12:02:40 certificates paid each month by employer, but actually

12 12:02:43 for a very significant period of time, payments were

13 12:02:46 made direct to subcontractors?

14 12:02:49 A. Okay.

15 12:02:49 Without reference to a certified amounts under the

16 12:02:52 contract ^?

17 12:02:53 A. Okay.

18 12:02:54 Q. When you say okay, are you acknowledging or are you

19 12:02:56 agreeing?

20 12:02:57 A. No, I'm acknowledging what you're saying.

21 12:02:59 Q. Do you or do you not accept that for a significant

22 12:03:01 period of time, over this contract period, payments were

23 12:03:05 made direct to subcontractors without reference to the

24 12:03:07 certified amounts appearing in certificates?

25 12:03:17 A. I'm trying to understand that question, sir. So what

1 12:03:20 I can see is that a certificate is being made,

2 12:03:25 Mr Chevreau signs it in handwritten form and he says

3 12:03:28 this amount would be paid to subcontractors or Hadeed's

4 12:03:32 suppliers. That's all I can see, sir.

5 12:03:35 But I'm not sure what the payment part has to do

6 12:03:37 with retention, because retention is not valued on

7 12:03:39 payment. Retention is valued on the gross cumulative

8 12:03:42 valuation of the works. That's something that happens

9 12:03:45 before payment comes in.

10 12:03:49 Q. I think you probably mixed things up there, haven't you?

11 12:03:52 There's been no certification of amounts payable to

12 12:03:56 subcontractors. There's been approvals for payment, but

13 12:03:59 those were not contract certifications or approvals,

14 12:04:02 were they? They were simply a response to a request by

15 12:04:05 Hadeed to pay an invoice?

16 12:04:07 A. I think my understanding from listening to Mr Chevreau

17 12:04:10 is different. The scenario Mr Chevreau explained to me

18 12:04:13 was that they would certify an amount and then they ran

19 12:04:17 a statement of account that was linked to that amount

20 12:04:22 certified. So I don't think it was an open chequebook,

21 12:04:25 sir, in a way. Because he described it as a statement

22 12:04:28 of account in a way.

23 12:04:31 Are you suggesting that Mr Chevreau didn't certify

24 12:04:33 the works but just made payments?

25 12:04:38 Q. Mr Chevreau carried -- (overspeaking) -- ^^?

1 12:04:40 A. I just don't understand what happened here.

2 12:04:42 Q. ^^ you have looked at that the interim payment

3 12:04:45 applications. That's the payment ^^ you have been

4 12:04:47 through and you explained to the tribunal that you've

5 12:04:49 been through and seen the -- (overspeaking) -- ^^?

6 12:04:52 A. No, sir, my evidence was in my presentation was slightly

7 12:04:54 different. I have seen Mr Chevreau sign a payment

8 12:04:59 application up until certificate 38, but there were

9 12:05:02 payment applications after that, up until I believe 40,

10 12:05:05 which Mr Chevreau did not sign, sir, and let me finish,

11 12:05:09 please ^^.

12 12:05:10 When you look at the last interim payment

13 12:05:11 application 38, which then jumps to the ISA, I think

14 12:05:21 payment 38 had an amount of 16 million and then the ISA

15 12:05:24 202409200091 jumps to 27 million.

16 12:05:28 Q. You know why that is, they took into account and

17 12:05:31 Mr Shamsi explained, the fact that millions of dirhams

18 12:05:33 had been paid direct to the subcontractors?

19 12:05:36 A. Sir, payment and valuation are two separate things. You

20 12:05:38 have to certify the works. Payment is a completely

21 12:05:42 separate process. I don't think -- I don't understand

22 12:05:46 why we're mixing them up and I have clearly dealt with

23 12:05:49 them at two different ^^ you start with valuing the work

24 12:05:52 and you'd just for payment at the end.

25 12:05:54 The engineer has to certify and then payment happens

1 12:05:56 after that, sir.

2 12:05:58 Q. The problem that your approach takes which is

3 12:06:01 formalistic, I'm doing to suggest, in this far you,

4 12:06:03 which takes no accounts of the fact the parties departed

5 12:06:06 from the contract from June 2017 is by applying formally

6 12:06:13 the valuation rules of the contract, particularly with

7 12:06:16 respect to retention, and also I'm going to suggest with

8 12:06:19 respect to your assessment of the advance payment

9 12:06:22 recoveries, it takes no proper account of the fact of

10 12:06:25 what occurred here, which was the parties, while

11 12:06:29 continuing on one track to have certificates --

12 12:06:33 applications presented and certified by the engineer, on

13 12:06:37 another track separately, a matter of fact, proceeded

14 12:06:41 outside the contract to have subcontractor invoices

15 12:06:47 presented with a request for payment, Mr Chevreau dealt

16 12:06:51 with separately.

17 12:06:52 Only in July 2019 do they come back together again?

18 12:06:57 A. I don't understand what that has to do with how

19 12:07:00 I present my figures. Because, yes, the certification

20 12:07:03 process, as we've all seen, did kind of fall flat,

21 12:07:08 because they stopped issuing certificates, but the

22 12:07:11 ingredients in this valuation are very similar to the

23 12:07:15 ones in the ISA, where they take retention off and they

24 12:07:18 adjustment for advance payment and I have done that in

25 12:07:21 my figures as well. So I don't understand what I've --

1 12:07:24 Q. In doing --

2 12:07:26 A. -- done different.

3 12:07:27 Q. In doing that, what you achieve, mathematically, is

4 12:07:32 a reduction in the apparent underpayment -- sorry,

5 12:07:37 a reduction in the apparent overpayment of Hadeed, which

6 12:07:39 we can see if we cast our eye along line 25, and look at

7 12:07:44 your valuations, which are which sit on line 25,

8 12:07:49 starting at 4.5 million, there are three 4.5 millions

9 12:07:56 less those are alternative positions. Maybe go from

10 12:07:58 column E. It's easy reference point.

11 12:08:01 Q. Can we just go up to see which column E is?

12 12:08:05 A. It's the third one with numbers.

13 12:08:09 Q. It's your 1,240 day one. If we follow our eyes down

14 12:08:13 that one, 4.5?

15 12:08:17 Yes.

16 12:08:17 Q. Which is a difference of 200,000-odd, 300,000 odd, from

17 12:08:25 the sum agreed by the parties ISA?

18 12:08:28 A. From the ISA,.

19 12:08:30 Q. That's as a result of way you have treated the advance

20 12:08:32 payment recovery in part, yes?

21 12:08:37 A. I'm not exactly sure where those differences come from,

22 12:08:40 but I can say there's a difference, sir. But I have --

23 12:08:46 Q. These are ^^ if you cast your eye down column E, 181,000

24 12:08:53 in line 19?

25 12:08:55 A. Yes, that's a deduction, by the way.

1 12:08:57 Q. That's a deduction?

2 12:08:58 A. So it's a form of ^^ I'm taking money -- that's money to

3 12:09:02 Altaaqa, just to be clear.

4 12:09:04 Q. Effectively comes off, doesn't it, from the .8 million?

5 12:09:09 A. No, no. The of sit, sir. It comes off the sums due to

6 12:09:13 Hadeed.

7 12:09:14 Q. In which case, somewhere else in that column we can't

8 12:09:16 see, is not just the 300,000 difference between he

9 12:09:21 .5 million and 4.8 million, but another 300,000

10 12:09:25 difference somewhere else which we can't see?

11 12:09:29 A. Might have to do with the variations we've carried

12 12:09:31 forward, which might be in that amount, if you scroll

13 12:09:34 up, might be 250 in column 7, the amount we've carried

14 12:09:38 forward, sir.

15 12:09:40 Q. That's all agreed.

16 12:09:45 A. Remember, no, where it might come from is Mr Boulwood

17 12:09:50 has advance payment at 3.2 million. Sorry tax will add

18 12:09:54 up down there.

19 12:09:56 I'm not sure where the difference is from the its A,

20 12:10:00 but the amounts that are in here and not the ISA is item

21 12:10:06 7 and that would also, I think, have an effect on the

22 12:10:09 10 per cent retention and advance payment, where is

23 12:10:12 where this might be slight differences, because it's

24 12:10:14 10 per cent of the sum certified.

25 12:10:16 Q. Just try again, then, so I understood that. Line 25,

1 12:10:23 which is where we were at, column E, 4.5 million, may,

2 12:10:28 you say, differ as a result of column E containing

3 12:10:33 a valuation by you of an additional quarter of a million

4 12:10:38 dirham for the disputed variations, in line 7?

5 12:10:43 A. Okay, yeah, from the ISA.

6 12:10:46 Q. Yes?

7 12:10:46 A. Yes.

8 12:10:47 Q. Case your minds back to where we were on that. Those

9 12:10:49 were the four variations which you said you think were

10 12:10:55 insufficiently evidenced to give a valuation of?

11 12:10:57 A. That's correct.

12 12:10:57 Q. So the tribunal can put a red line through 254 there and

13 12:11:00 insert 0?

14 12:11:03 A. Not if they find those sums are due to Hadeed.

15 12:11:08 I wouldn't tell the arbitrator what to do.

16 12:11:10 Q. If she guides having looked at what we've looked at

17 12:11:13 today, which is that the variations 1 and 2 were

18 12:11:16 discussed and re objected at the meetinging for the ISA,

19 12:11:22 gate passes and MEP piping?

20 12:11:23 A. Okay.

21 12:11:24 Q. And that Mr Dabbas' evidence on the certainer room and

22 12:11:28 the epoxy paint left her with basically no evidence at

23 12:11:33 all because the document said we're still ^^ she decided

24 12:11:36 that meant 254 should read 0 or anything?

25 12:11:39 A. Okay.

1 12:11:40 Q. She could put a line through 254?

2 12:11:47 A. If the tribunal does -- that's a very complex question

3 12:11:49 for I think something that's may be more simple, sir.

4 12:11:51 Are you asking me if the arbitrator does not award the

5 12:11:56 254,000, what happens? Is that what you're trying to

6 12:11:58 ask?

7 12:11:59 Q. Fair enough, that's a ^^ -- (overspeaking) -- ^^.

8 12:12:02 Q. 255, take it out and you'll get to 4.8 million ^^?

9 12:12:07 A. I'll have to run the numbers, sir, because what you have

10 12:12:10 to remember is if the 254 gets removed, then line item

11 12:12:19 10, the subtotal of the valuation of the works would

12 12:12:22 also reduce to closer to 30 million. What would then

13 12:12:25 change or what the contract tells us the change is the

14 12:12:27 retention would change at line 12, it will change --

15 12:12:32 sorry, advance payment will change at line 12, line 13

16 12:12:37 would change, line 17 would change, line 18 would

17 12:12:40 change, line 19 would change and throughout that

18 12:12:43 process, there would be a conditions. But I can't tell

19 12:12:45 you exactly what it will be without running those

20 12:12:47 numbers --

21 12:12:48 Q. What that would illustrate, isn't it, that there's

22 12:12:51 a hypothetical and slightly unreal nature as to was

23 12:12:53 you've done in column E there, for example, because as

24 12:12:57 you've just pointed out, if you treat your figure for

25 12:13:02 disputed variations as being not shown, not proven, and

1 12:13:08 it's a 0, taking that figure out will, as you say, have

2 12:13:11 knock-on effects for all of your calculation, because

3 12:13:13 they're all hypothetical based upon the idea of

4 12:13:16 undertaking a final account valuation?

5 12:13:21 A. No, I disagree. It is a function of how the deductions

6 12:13:27 and adjustments work under the contract. It's not for

7 12:13:30 me -- the contract says retention is 10 per cent and

8 12:13:34 advance payment recovery is 10 per cent of the amounts

9 12:13:37 valued.

10 12:13:39 So it's not me introducing anything hypothetical or

11 12:13:44 theoretical. I'm doing what the contract says we need

12 12:13:47 to do in the valuation. But to make this, I think

13 12:13:51 perhaps more straightforward, the experts have provided

14 12:13:55 our native calculation sheets with the QJS. If the

15 12:13:58 arbitrator was to find that any of these amounts above

16 12:14:01 those totals should not be awarded, if you delete those

17 12:14:05 amounts, all these formulas, it's a formulaty

18 12:14:09 calculation, so they will calculate the right amount.

19 12:14:12 That is typical of how quantity surveyors value

20 12:14:14 construction works.

21 12:14:18 Q. Where we got to is the reason why you differ from

22 12:14:22 Mr Boulwood on your valuation of the position under the

23 12:14:26 contract before considering claims and counterclaims,

24 12:14:29 the difference between 4.5 and 4.8 is the insertion in

25 12:14:33 that line 7 of a figure for disputed variations?

1 12:14:40 A. My disagreement with Mr Boulwood?

2 12:14:43 Q. Just looking at line 25, as you have sprayed it,

3 12:14:47 4.8 million is where he gets to, 4.5 is where you get

4 12:14:53 to.

5 12:14:56 A. If you turn to Mr Boulwood's valuation, Mr Boulwood

6 12:15:04 also has those figures in his, because remember I'm

7 12:15:06 saying I'm agreeing with Mr Boulwood's figures there.

8 12:15:09 I'm putting those in there, because I agree with certain

9 12:15:13 experience based deductions or assumptions Mr Boulwood

10 12:15:15 has made, so I'm effectively following him and carrying

11 12:15:18 that number in. So I think Mr Boulwood and I agreed

12 12:15:21 that that number is there. So that's not the reason for

13 12:15:23 the difference.

14 12:15:25 The reason for the difference between Mr Boulwood

15 12:15:27 and I is that Mr Boulwood I believe has a nil amount

16 12:15:31 for retention in his table which I've plugged in there,

17 12:15:35 which creates a difference.

18 12:15:39 So Mr Boulwood has nil for retention in his table

19 12:15:41 and I've just followed his style of calculating. What

20 12:15:45 I think is causing confusion is, sir, these adjustments

21 12:15:50 that Mr Boulwood and I have done in a different way.

22 12:15:53 But if you look at the totals of my table compared

23 12:15:57 to Mr Boulwood's table, although we run the figures in

24 12:16:00 a different way, I show more steps, because I show the

25 12:16:03 re discussion of retention and advance payments and the

1 12:16:07 status of the balance of advance payment at term

2 12:16:10 nationness which is very important. Mr Boulwood's

3 12:16:12 table doesn't show those steps, but if you look at the

4 12:16:17 last totals in Mr Boulwood's tails and mine, they are

5 12:16:19 the same.

6 12:16:20 So sir, I've just run the numbers in a different

7 12:16:23 sequence, if you will, but they get to the same ultimate

8 12:16:28 answer and that's very important to note.

9 12:16:31 Q. Which is not reflected in line 25?

10 12:16:34 A. Because of what Mr Boulwood does with retentions, sir,

11 12:16:37 but when you get to the end of it, you see the numbers

12 12:16:41 balance out again, because of add judgments made below

13 12:16:44 25, sir. So if you scroll down, you'll see what I mean.

14 12:16:50 Q. When I asked you earlier on the reason why 4.5 was the

15 12:16:53 outturned figure in line 25, you said you weren't quite

16 12:16:56 sure, be it looked like it was a variation figure?

17 12:16:59 A. No, between the ISA, sir. You then started comparing it

18 12:17:02 to Mr Boulwood, so the difference between --

19 12:17:06 Q. Mr Boulwood is 4.8, which is the ISA figure. Sorry.

20 12:17:11 Q. In the ^^ the last column there, I appreciate it's the

21 12:17:13 way you've expressed this ^^?

22 12:17:15 A. That's on Altaqa's position. Go to heed's position,

23 12:17:18 it's different. Remember there's alternative valuations

24 12:17:24 of the parties respective position, that's why there's

25 12:17:26 some travel in these numbers F you're comparing column

1 12:17:30 E, you have to compare that with column I, which is

2 12:17:35 Mr Boulwood's valuation on that same valuation. We

3 12:17:37 can't compare my valuation an Hadeed's position to

4 12:17:40 Mr Boulwood's value on Altaaqa's position. We'll never

5 12:17:42 be able to get to the same numbers because the parties

6 12:17:46 positions are substantially different.

7 12:17:58 Q. Can you go back, please. (Pause).

8 12:18:01 Sticking with this document for now, then --

9 12:18:04 SOLE ARBITRATOR: Sorry could I. Does the reconciliation

10 12:18:11 occur at line 29, columns E and I?

11 12:18:19 The third column with numbers and the the seventh

12 12:18:30 column with numbers?

13 12:18:33 A. Between Mr Boulwood and myself?

14 12:18:34 SOLE ARBITRATOR: Yes.

15 12:18:35 That's correct. And the reason that we meet up back

16 12:18:37 there again is because retention, where I show in my

17 12:18:42 calculations, retention being deducted, but then being

18 12:18:45 released. So I show two stage process where

19 12:18:49 Mr Boulwood doesn't show that two stage process.

20 12:18:52 That's why at that point we get back together where

21 12:18:54 Mr Boulwood does his release of retention. That's

22 12:18:57 a good observation.

23 12:19:03 MR HOWELLS: Sticking with page 6 of em50, looking below the

24 12:19:07 orange line there, lines 30 to 37, descriptions there.

25 12:19:18 A. Yes, sir, I can see those.

1 12:19:22 Q. Prolongation cost claim overheads and profit claim,

2 12:19:25 fluctuation cost claim ^doc). These are all claims that

3 12:19:29 Hadeed will only have if it can prove, first, an

4 12:19:33 entitlement to an extension of time?

5 12:19:41 A. Those figures run -- are calculated against inserted

6 12:19:48 delay position, yes, so there needs to be delay, yes.

7 12:19:52 Q. And I believe there is to some extent the submissions

8 12:19:55 made by Hadeed, but what Hadeed have said is that with

9 12:19:59 respect to those claim, so claims for financial impacts

10 12:20:04 of delay, so prolongation type costs, Hadeed says it can

11 12:20:09 claim those only if it can show the extension of time to

12 12:20:12 which it might show entitlement was result of a breach

13 12:20:15 of contract by Altaaqa. That's the position?

14 12:20:19 A. Okay.

15 12:20:20 I assume you understood that when you were thinking

16 12:20:21 about how to approach these?

17 12:20:25 A. The way the experts value this is we value the costs we

18 12:20:30 see against the delays. That's what we do.

19 12:20:35 Remember, we don't factor in whether Hadeed is

20 12:20:39 entitled to make a claim or not. It's a process of peer

21 12:20:44 evaluation, not looking at who's right, who's wrong, who

22 12:20:48 has entitle, who doesn't. It's the process of pure

23 12:20:52 calculation, if you will ^.

24 12:20:54 Q. Point being that on the basis of Hadeed's claims, these

25 12:20:56 are damages claims rather than pure valuations, in fact

1 12:21:00 questions of damage?

2 12:21:02 A. You would have to look at their pleadings, sir. I'm

3 12:21:04 just here to value.

4 12:21:06 Q. I'm sure as you understand from working in this region,

5 12:21:08 when it comes to the question of damages, a party must

6 12:21:11 prove to a tribunal it suffers actual loss?

7 12:21:15 A. I can't comment on the legal position, sir. I'm sorry,

8 12:21:17 I'm not a lawyer.

9 12:21:20 Q. Looking at the contractual provisions, which I think

10 12:21:23 I assume you probably looked at the contractual

11 12:21:25 position?

12 12:21:25 A. We looked at the contract, yes, at some points.

13 12:21:28 Q. And in respect of those three items, prolongation costs,

14 12:21:32 overhead and profit costs and fluctuation costs, you'll

15 12:21:35 have oned that there are no contractual provisions that

16 12:21:38 make ^ -- that give an entitlement under the contract to

17 12:21:41 those sorts of heads of claim?

18 12:21:44 A. Okay, I believe that's Altaaqa's position.

19 12:21:48 Q. Have you looked at the contract and spotted anywhere

20 12:21:50 where there is an entitlement to prolongation costs?

21 12:21:52 A. I don't think the word prolongation is used, sir.

22 12:21:55 Q. Or time-related costs?

23 12:21:57 A. I don't recall that word being used.

24 12:21:59 Q. Or loss and expense?

25 12:22:02 A. I can't recall, sir.

1 12:22:03 Q. Or an entitlement to overheads and profit being paid?

2 12:22:08 A. I don't think the ^^.

3 12:22:10 Q. There's no fluctuation clause in the contract either, is

4 12:22:12 there?

5 12:22:12 A. I don't believe so, no.

6 12:22:19 Q. Let's look at prolongation costs first. This is in your

7 12:22:26 presentation today.

8 12:22:44 You skipped over, but it's a summary slide which

9 12:22:47 will ^^ if we look at slide 5, your primary valuation on

10 12:22:52 Hadeed position.

11 12:23:05 You identify prolongation 3.47 million is your

12 12:23:10 primary valuation?

13 12:23:14 A. That's correct.

14 12:23:17 Q. If one looks, then, at slide 9, we see that broken down.

15 12:23:31 Olwagen position, so the basis, you identified delay

16 12:23:35 I will rates but the 3.47 is the total you give ^^ for

17 12:23:40 an outcome in the tribunal were to decide that Hadeed

18 12:23:42 were entitled to extension of time of 1,240 days?

19 12:23:47 A. That's correct.

20 12:23:51 Q. Your second position on that column is if Hadeed are

21 12:23:54 entitled to extension of time of 1,112 days?

22 12:23:59 A. That is correct.

23 12:24:00 Q. That reflects the 128 day period between May

24 12:24:04 and September, effectively, isn't it? 128 days taken

25 12:24:07 out?

1 12:24:09 A. I don't specifically know that 1,112 days is based on

2 12:24:15 Mr Saulsbury's ^^ those delays, are those are in the

3 12:24:17 appendices we have just taken the delays as the delay

4 12:24:20 experts have provided.

5 12:24:23 Q. So as you've identified on slide 10, there's

6 12:24:27 a disagreement between you and Mr Boulwood as to two

7 12:24:32 alternative ways of looking at the prolongation costs,

8 12:24:35 giving you two different daily rates. The essence of

9 12:24:40 the disagreement between you is as to the cost of

10 12:24:43 foremen?

11 12:24:45 A. Yeah, I'm never really sure which way it is. I think

12 12:24:48 I mix them up sometimes.

13 12:24:54 Q. Your figure, which includes the cost of foremen, at

14 12:25:02 2,229.44 per day, comes from the analyses you have

15 12:25:04 undertaken as based upon Hadeed's staff costs salary

16 12:25:10 costs, which is in the spreadsheet we find at E18?

17 12:25:19 A. It's important to note, both of those amounts,

18 12:25:22 Mr Boulwood and I agree those amounts. The only

19 12:25:24 difference is we carry forward different ones to our

20 12:25:27 valuations, but we both agree those amounts as a daily

21 12:25:31 rate of cost.

22 12:25:32 Q. E18 is your revised staff cost evaluation spreadsheet.

23 12:25:46 As I understand it, this is your spreadsheet, revised

24 12:25:52 spread sheet of salaries. You take the foremen out of

25 12:25:57 this, so we can probably do that quickly by taking

1 12:25:59 column G, filtering it, deselect all, scroll down, find

2 12:26:12 foreman".

3 12:26:27 Those are the names of the men you have identified

4 12:26:32 from Hadeed's salary database or information have the

5 12:26:40 nomination or designation foreman"?

6 12:26:43 A. Yes, that looks to be the right people.

7 12:26:47 Q. While it's a new piece of work, slide 12, I think we can

8 12:26:51 see all those names were the ones you pull forward onto

9 12:26:54 your table at slide 12?

10 12:26:57 A. Yes, I've spread them over the period or shown them over

11 12:27:00 the period.

12 12:27:05 Q. What you're relying upon is the fact Hadeed give each of

13 12:27:08 these men, for salary purposes, the name "foreman"?

14 12:27:13 A. Hadeed have designated these men as "foremen", that's

15 12:27:17 correct.

16 12:27:18 Q. The dispute between you in essence between you and

17 12:27:21 Mr Boulwood is whether these men called foreman for

18 12:27:27 salary purposes on the site undertook task related work,

19 12:27:32 that is they were working to move forward the works

20 12:27:35 themselves, yes?

21 12:27:37 A. Effectively, if they were manual labour.

22 12:27:39 Q. Manual labour, yes. Or time related?

23 12:27:43 A. Not manual labour, yes.

24 12:27:44 Q. Not manual labour, and as you say, supervising?

25 12:27:47 A. Yes.

1 12:27:48 Q. You've taken the word "foreman" to mean non-manual
2 12:27:52 supervising?
3 12:27:52 A. That's my understanding, sir.
4 12:27:58 Q. There's no information provided by Hadeed to anybody as
5 12:28:01 to what any of these six or seven men actually did on
6 12:28:07 site at any point in time?
7 12:28:08 A. All that we have are the project attendance records
8 12:28:13 which show these individuals being there and being
9 12:28:16 classified foreman, but, yes, I don't know who they were
10 12:28:19 doing on a day-to-day basis, apart from Hadeed says they
11 12:28:23 were ^^.
12 12:28:25 Q. ^ we have the salary information which calls them
13 12:28:27 foremen?
14 12:28:28 A. Okay.
15 12:28:28 And we've got information about who was on site?
16 12:28:32 A. Yes, I have to check into the exhibits, but it might be
17 12:28:37 that that picture was stitched together from two
18 12:28:40 different documents, if that's what you're saying.
19 12:28:42 Q. We're going to look at the ^^ some example of the site
20 12:28:44 information just now?
21 12:28:45 A. Okay.
22 12:29:03 Q. You've also referred on slide 11 today to ^^ principles
23 12:29:11 with measurement unfortunately?
24 12:29:14 A. Yes.
25 12:29:15 Q. As an additional point justification as to why you would

1 12:29:20 exclude supervisors from unit rates and treat them as

2 12:29:25 being overhead?

3 12:29:27 A. Can you be specific with what you mean is overheads?

4 12:29:30 Site overhead being preliminaries or head office

5 12:29:33 overhead?

6 12:29:34 Q. For these purposes, prolongation costs, so site costs?

7 12:29:37 A. So preliminaries, okay. I prefer if we not use the word

8 12:29:40 overheads, sir. The term in construction is

9 12:29:44 preliminaries.

10 12:29:44 Q. Staff costs, using the slide title, then?

11 12:29:48 A. Yes, staff costs.

12 12:29:51 Q. You refer to pomy and clause 57POMI ^ of the contract we

13 12:29:57 see there at C1, page 36.

14 12:30:12 Smaller, please, smaller, please.

15 12:30:17 Clause 57, you refer the tribunal to that POMI is

16 12:30:21 referred to in the ^^ clause 57, yes?

17 12:30:25 A. Yes.

18 12:30:26 Q. POMI is a series of valuation rules for the measurement

19 12:30:32 of a re-measurement contract, isn't it?

20 12:30:36 A. It's a set of ^^ very technical is maybe something else,

21 12:30:40 but --

22 12:30:41 Q. Measurement rules?

23 12:30:42 A. Measurement basically says what's included in certain

24 12:30:44 measurable items, it's a measurement guide is my

25 12:30:47 understanding.

1 12:30:49 Q. The extract you've given to the tribunal is not in the

2 12:30:51 record as such, but the extract you've given on your

3 12:30:53 slide 11 simply says that when you measure works, you

4 12:30:58 exclude people who are supervisors?

5 12:31:04 A. My understanding is that -- I think POMI is a bit more

6 12:31:07 specific, sir. It's saying that the BOQ -- an item in

7 12:31:15 the BOQ must be scheduled that says contractors

8 12:31:19 administrative arrangement, says an item shall be given

9 12:31:22 for contractors administrative arrangements and that

10 12:31:25 shall include those five items, which include site admin

11 12:31:28 and supervision.

12 12:31:32 Q. It doesn't tell you anything about whether a foreman is

13 12:31:34 a supervisor or not a supervisor?

14 12:31:36 A. It doesn't.

15 12:31:37 To understand that, you need to know what a particular

16 12:31:40 man who is being paid as a foreman was doing on the

17 12:31:43 site?

18 12:31:43 A. Preferably, yes.

19 12:31:45 Q. Whether he was holding a shovel or not holding a shovel

20 12:31:48 tax put it colloquially?

21 12:31:50 A. Yes.

22 12:31:52 Q. What you've done is to when trying to work out whether

23 12:31:55 these men who are called foremen for salary purposes,

24 12:31:58 were supervisors, is to go through and identify what

25 12:32:03 their employment period was. That's what you've done in

1 12:32:08 slide 12?

2 12:32:09 A. It's a bit more than that, sir, and it's in the QJS. We

3 12:32:12 explain it a bit there.

4 12:32:16 There were other -- the issue was, I think, what

5 12:32:19 Mr Boulwood and I discussed in the QJS, is are these

6 12:32:23 foremen supervising or not? Because different

7 12:32:28 contractors structure their internal arrangements

8 12:32:30 differently. In this case, we pointed out in the QJ.

9 12:32:33 Is that there were also -- there was also a designation

10 12:32:35 for chargehands, which is sometimes called a lesser

11 12:32:40 foreman in casual terms and it was my understanding due

12 12:32:44 to the presence of those chargehands that those

13 12:32:46 chargehands were embedded perhaps in these themes of

14 12:32:50 labourers and doing that (Teams ^ supervision basically

15 12:32:54 as you say, Mr Howells, supervising with the shovel this

16 12:32:58 their hands. That was what I understood the charge hands

17 12:33:06 were doing and the fore ^^ would have some

18 12:33:10 hyperlevel ^^ responds and maybe don't work with their

19 12:33:13 hands, so to speak. That is my understanding from the

20 12:33:15 available information.

21 12:33:16 Q. Looking, then, at the table on slide 12, which you have

22 12:33:19 produced and identifying so Mr Faraz riewk, just take

23 12:33:27 the first, one of the first periods ^doc name). And

24 12:33:31 we'll just a couple of examples. Let's look at February 16 when according to your table, Mr Faraz

25 12:33:40 look is the only foreman on the site, you treat him as

1 12:33:45 being the supervisor, yes?

2 12:33:47 A. That's what it shows there, yes.

3 12:33:49 Q. We can't look at all the daily construction records, but

4 12:33:52 what I'm going to do is take you through examples taken

5 12:33:57 from one of the each of the months where he's identified

6 12:33:59 as being the sole supervisor in your table?

7 12:34:02 A. Okay.

8 12:34:03 Q. So J2, please. This is 21 February 2016.

9 12:34:12 A. This is Mr Ca limb Farooq, right ^doc name).

10 12:34:15 Q. Yes. This is the Hadeed daily site report for

11 12:34:30 21 February 2016, we're looking at the work and visitors

12 12:34:34 staff box. Third column along, under draftsman,

13 12:34:39 plumbers, safety officer, civil MEP supervisors, so

14 12:34:42 three of them recorded on site?

15 12:34:44 A. Okay.

16 12:34:44 Q. On that day. I'm going to do three more and then ask

17 12:34:49 you the questions about these documents. We're going to

18 12:34:51 move forward one ^^ J5, please. It should be 15 March.

19 12:34:58 We don't have all of these, so I've just chosen one per

20 12:35:01 month for now.

21 12:35:05 A. Is this the full page?

22 12:35:07 Q. Yes, by all mean, scroll down?

23 12:35:09 A. No, I'm just trying to get an understand about --

24 12:35:11 Q. I'm going to ^^ workmen, ^^?

25 12:35:13 A. You are looking at basically we call the head count.

1 12:35:16 Q. Yes.

2 12:35:17 A. Okay.

3 12:35:17 Q. Again third column, civil ^^ three supervisors on to day

4 12:35:23 in March?

5 12:35:24 A. Okay.

6 12:35:25 Q. Forward about a month, J21, 26 April. Again, workmen

7 12:35:42 visit staff, third column, totals, now five supervisors

8 12:35:47 ^doc) and then last one, just to take us forward another

9 12:35:52 few weeks or so, J32, 8 June. Slightly different in terms of

10 12:36:06 presentation, but it's still the third column

11 12:36:09 along, under draftsman, if you cast your eye down to the

12 12:36:13 fourth line, four ^^ six supervisors in total?

13 12:36:18 A. I can see that, yes.

14 12:36:20 Q. What I suggest is that those records we have looked at

15 12:36:24 of the people on site given their site denominations,

16 12:36:30 simply don't coincide with the way you've assessed that

17 12:36:35 particular gentleman's supervision role for those

18 12:36:38 months. You've identified one person only as supervisor

19 12:36:40 on report and they're reporting many, many more?

20 12:36:44 A. I've identified foremen, sir. The term supervision is

21 12:36:47 from POMI, it's not my term. I've identified foremen,

22 12:36:51 sir. I've said -- I didn't say foremen I I think are

23 12:36:56 supervisors. I hety -- let me be sure about what term

24 12:37:02 I used. I said the role of ^^ I didn't say he was

25 12:37:06 called a supervisor. There's a nomenclature issue here.

1 12:37:10 I think someone maybe in Hadeed's accounts department is

2 12:37:13 calling someone a foreman and someone on site is may be

3 12:37:15 calling I it a supervisor. I can't say anything more

4 12:37:18 than that.

5 12:37:20 Q. What it illustrates is that you've made a series of

6 12:37:22 assumptions based upon a designation given in salary

7 12:37:27 information about what particular individuals may or may

8 12:37:29 not have been doing on site?

9 12:37:32 A. Yes, because we're trying to value costs, so that's

10 12:37:35 where you would look for that information.

11 12:37:37 Q. The key thing site staff costs is to actually understand

12 12:37:41 something about what the people are doing on site,

13 12:37:43 because unless you can be sure they are purely time

14 12:37:46 related, as upon thosed to task related, then you

15 12:37:49 wouldn't -- you account for time and not for tasks?

16 12:37:52 A. Yes, that is a valid point, but there's another reason.

17 12:37:56 It wasn't as straightforward as that, is that ^^

18 12:38:02 Mr Karim Farooq was on the site for 26 months. So

19 12:38:07 whether he was supervising or a foreman, he was there

20 12:38:11 for twice as long as the original contract period and

21 12:38:14 I've assumed that he was being delayed by the contract.

22 12:38:19 That's also what Mr Boulwood and I have done is when we

23 12:38:21 decide which staff are time related or not, it's in both

24 12:38:24 of our reports we typically look at how long these

25 12:38:26 people were there as well. So that's one of the,

1 12:38:30 I would say, as part of our analysis of how we

2 12:38:35 distinguish between resource we considered time related

3 12:38:37 or not. I think that's also something we need to look

4 12:38:40 at.

5 12:38:41 Q. We also note that works carried on for longer than that,

6 12:38:47 man could have been holding a shovel for 26 months?

7 12:38:49 A. I hear you, but based on POMI, if that resource is

8 12:38:54 priced under the preliminaries, the preliminaries are

9 12:38:56 priced for a 12-month contract period, if that person is

10 12:38:59 there for longer than 12 months, this would be an

11 12:39:02 additional costs that's not being recovered from the

12 12:39:05 preliminaries, sir,.

13 12:39:07 That answer assumes -- -- (overspeaking) -- ^^ in the

14 12:39:11 preliminaries.

15 12:39:12 Q. Assumes the answer already. If he's a supervisor, he

16 12:39:15 should be in the preliminaries, therefore his price in

17 12:39:18 the pri hims. I'm sirring ^^ the way you have

18 12:39:21 approached it is to make that assumption, based upon the

19 12:39:22 nomination he's given in the staff salary information,

20 12:39:26 which doesn't tell you anything about what he was

21 12:39:28 actually doing and that's the important thing.

22 12:39:30 A. Yes, we agree. We don't know what he was actually

23 12:39:34 doing, to.

24 12:39:35 Q. Apportionment, then, please. So looking all the your

25 12:39:37 slides. 13 onwards. 13, 14, so of the slides.

1 12:39:45 Disagreement between you and Mr Boulwood is about

2 12:39:47 whether or not there should be a percentage reduction of

3 12:39:50 the as settlement of the whatever prolongation costs

4 12:39:53 might be payable. To reflect the fact that as far as the delay

5 12:40:05 experts are concerned runs through the main

6 12:40:08 building. Mr Boulwood says it's quite difficult to

7 12:40:09 tell what's doing what on site because we haven't got

8 12:40:11 the information, so just in a fairly broadbrush way,

9 12:40:15 let's see what the main building's value was by

10 12:40:18 comparison with the overall value of the contract?

11 12:40:20 A. Yes.

12 12:40:20 Q. 53.8 per cent. He says if the delay is being driven by

13 12:40:24 the main building, then one way of reflecting the fact

14 12:40:28 that the main building is in delay is to apply that

15 12:40:32 proportion of the main building's value to the overall

16 12:40:34 contract value?

17 12:40:35 A. That's what he says, yes.

18 12:40:37 Q. It's a bit rough and ready obviously, yes?

19 12:40:40 A. I've said I quite strongly disagreed with this approach.

20 12:40:46 Of why we apportion, because the time-related costs that

21 12:40:50 Mr Boulwood and I have already agreed were an attempt

22 12:40:54 to exclude tasks specific resources. So if the main

23 12:40:58 building is delaying the project, you have to value all

24 12:41:01 of the project wide time-related resources, plus the

25 12:41:06 resources delayed on the main building. So it's

1 12:41:09 a process of additions, sir, not by cutting the project

2 12:41:13 wide time-related resources in half. That is something

3 12:41:17 I can just cannot agree with, sir.

4 12:41:19 If you go to the next slide where I've shown on the

5 12:41:22 project manager, if the main building is -- I'm on slide

6 12:41:27 15. If the main building is delaying the overall

7 12:41:31 project, then we'll take it that the project manager, if

8 12:41:34 there's one of them, would be there for longer. The

9 12:41:37 main building is driving the delay to the overall

10 12:41:39 project.

11 12:41:40 Mr Boulwood's valuation would cut that project

12 12:41:43 manager in half and straightforward terms, if the main

13 12:41:47 building is delaying the project, the project manager

14 12:41:51 would be there longer and you need to value the full

15 12:41:53 person, not half of the project manager. So it's

16 12:41:57 a principle of valuation, sir, that I don't agree with,

17 12:42:00 because by apportioning these costs, we are excluding

18 12:42:05 costs that we have already excluded and that was my

19 12:42:08 position in the QJS.

20 12:42:13 Sorry, sir, what I will say is if you may be want to

21 12:42:16 make an apportionment, you have to start with all of

22 12:42:19 Hadeed it's staff costs. Remember the sums that

23 12:42:22 Mr Boulwood and ^^ already a reduced valuation of costs

24 12:42:25 that we think are time related.

25 12:42:27 If you want a more rough and ready approach, you

1 12:42:29 have to ^^ I think I said in the QJS there's 91 staff

2 12:42:39 members and we have only valued 40 of them or so. If

3 12:42:42 you want to apportion you have to start with 90, not

4 12:42:44 with 40. You have to cut from a higher base is what I'm

5 12:42:47 saying.

6 12:42:48 Q. I understand who you're saying. I put my points now?

7 12:42:50 A. Yes.

8 12:42:53 Q. The delay experts have identified while they're focus

9 12:42:57 has been on the main building, that at certain points in

10 12:43:00 team and particularly towards the end of the project,

11 12:43:02 the other buildings were also significantly in delay,

12 12:43:08 such that they may have come close to the critical path.

13 12:43:12 Are you aware of that?

14 12:43:14 A. Okay.

15 12:43:16 Q. Hadeed has not given any explanation as to why it was

16 12:43:19 late with works in other buildings on the site?

17 12:43:22 A. Okay.

18 12:43:23 Q. Has not purported to give any explanation or seek an

19 12:43:26 extension of time for those?

20 12:43:28 A. Okay.

21 12:43:28 Q. If the situation is that Hadeed was delayed with other

22 12:43:31 works elsewhere on the site, because of its own issues,

23 12:43:39 which although looked at retrospectively, didn't drive

24 12:43:41 the critical path, nonetheless were paced against it,

25 12:43:46 then the costs Hadeed incurred in its staff in those

1 12:43:51 areas of the site were not caused by the critical path

2 12:43:56 delay in the main building, but were caused by Hadeed's

3 12:44:00 own delays. Do you accept that?

4 12:44:02 A. Yes, and that's why we have excluded the costs of those

5 12:44:04 other items from our valuation and why attempting to

6 12:44:09 apportion them again is a double deduction.

7 12:44:15 Q. As I understand it, your removal of other staff is not

8 12:44:21 a building based removal, it's simply an attempt to

9 12:44:25 identify who you think might have been acted by the

10 12:44:27 delay?

11 12:44:28 A. The critical delay ^^ the core critical delay on the

12 12:44:31 site. It's driven by the designations of these people

13 12:44:34 and typically how long they were there. I think I said

14 12:44:36 we start with 91 staff and we remove at least I think 41

15 12:44:42 or we ends on 41, but we removed a considerable amount

16 12:44:45 of staff from this valuation to get to the core

17 12:44:49 resources that Mr Boulwood and I believe would be there

18 12:44:52 longer in there's a critical delay, not a delay to

19 12:44:55 localised buildings, but a critical delay to the overall

20 12:45:00 project.

21 12:45:01 Q. Take your project management example and let's just

22 12:45:04 hypothetical size for ^^ building B1, main building,

23 12:45:07 critical delay, the critical delay is 10 months?

24 12:45:12 A. Okay.

25 12:45:13 Q. Beyond construction period. Building B2 is not on the

1 12:45:17 critical path, but is also delayed by nine months and

2 12:45:22 three weeks for reasons entirely down to Hadeed?

3 12:45:26 A. Okay.

4 12:45:26 Q. So it doesn't affect the critical path, butless where

5 12:45:30 there are people working on building B2?

6 12:45:32 A. Okay.

7 12:45:33 Q. Project manager is managing Chris accurately delay in B1

8 12:45:37 and managing all the staff in B2 that are also delayed

9 12:45:42 because Hadeed is delayed in B2?

10 12:45:43 A. Okay.

11 12:45:45 Q. The work that the project manager does on B2 is not

12 12:45:48 caused by critsd call delay, it's caused by ^^ still

13 12:45:53 work that's doing?

14 12:45:54 A. Okay.

15 12:45:54 Q. He's still there to deal with delays?

16 12:45:55 A. Yes. What you're trying up now is a ^ technical point

17 12:45:59 of apportionment and that is a point of law, whether

18 12:46:03 you're allowed to apportion or not. What Mr Howells has

19 12:46:06 explained now is that the project manager is working

20 12:46:09 across the project, he's working on in his hypothetical

21 12:46:12 example, build 1, and he's working on building 2,

22 12:46:15 because he's supervising the whole project. So he looks

23 12:46:17 at everything. I think Mr Howells said that building 2

24 12:46:22 is not critical, but there's nine months delay, but

25 12:46:25 building 1 is critical, 10 months delay.

1 12:46:28 The outcome of that, sir, is the project manager is
2 12:46:31 there for longer and that's what we're valuing. But
3 12:46:36 whether you want to apportion that, sir, that's a matter
4 12:46:39 of law. But I'm simply saying he's there for 10 months
5 12:46:41 longer during a period of critical delay and it's
6 12:46:45 typical for quantity surveys, what we do to value the
7 12:46:49 resources that are there longer as a result of critical
8 12:46:54 delay.
9 12:46:54 Q. The apportionment I think you've now characterised it as
10 12:46:57 a legal issue. That's basically what Mr Boultonwood is
11 12:46:59 saying, isn't it? If that's what the tribunal decides,
12 12:47:02 that you're taking just our example of the project
13 12:47:05 manager is there any way ^^ dealing with other delays,
14 12:47:08 nothing to do with the case itself, then there should be
15 12:47:11 some recognition of that fact in the amount of money
16 12:47:15 that may be applied in awarding?
17 12:47:19 A. No, I think I would still disagree, because Mr Boultonwood
18 12:47:23 is apportioning an already reduced amount. Many
19 12:47:26 Mr Boultonwood wants to apportion, you have to apportion
20 12:47:29 from the full costs on that project. So you can't
21 12:47:31 proportion from a lower base. You have to go back, add
22 12:47:36 in all the costs we've already exclude and then cut them
23 12:47:40 and a half, if you want to apportion ^^ . We have
24 12:47:42 already excluded costs that are not critical. As
25 12:47:46 a matter of voltation, I wouldn't agree with that.

1 12:47:48 Q. The other area of disagreement in prolongation is the

2 12:47:52 transport costs. These for that we'll go to E50,

3 12:47:58 page 43, please.

4 12:48:11 This is your description of the situation. You say

5 12:48:16 in your second report you have been given -- by the time

6 12:48:19 of your second report, you had had further information.

7 12:48:23 They came just before submission deadline didn't deal

8 12:48:25 with it ^ in your second report, but you said you would

9 12:48:27 deal with it in the joint statement. That's transport

10 12:48:31 costs, that's correct.

11 12:48:32 Q. Then you've identified that ^^ for the purposes of the

12 12:48:34 joint statement was to go through a series of documents

13 12:48:38 which I think, yes, if you scroll down to the next page,

14 12:48:45 where you describe them, in the second line of text,

15 12:49:06 having tabulated them in the table there, you say regard

16 12:49:08 the link between these amounts of the project and note

17 12:49:11 the invoice provided record the amounts against this

18 12:49:15 project." ^doc.

19 12:49:16 Then you set out by footnote, 41 and 42, the various

20 12:49:23 invoices?

21 12:49:32 A. Yes, yes, I do that.

22 12:49:33 Q. You're aware that having had submissions from the

23 12:49:36 parties, the arbitrator have excluded all those invoices

24 12:49:39 there the record?

25 12:49:43 A. No.

1 12:49:44 Q. You're not aware of that?

2 12:49:45 A. Sorry, sir. This information was provided with my

3 12:49:48 second report on 3 March 2024. That's I think the

4 12:49:56 documents the arbitrator excluded were documents to the

5 12:49:58 QJS, sir. These are documents provided with my second

6 12:50:02 report on 3 March, I believe. So the documents were

7 12:50:06 available and common to the experts from that submission

8 12:50:09 date. So I don't think they were removed, sir.

9 12:50:21 I'll just make sure for you.

10 12:50:24 SOLE ARBITRATOR: I believe that's true.

11 12:50:26 MR HOWELLS: Apologies. Part of the problem is we have two

12 12:50:28 sets of JO references for exhibits.

13 12:50:33 So transport, then, briefly. If we scroll back up

14 12:50:40 to page 43. You identify these are invoices from

15 12:50:50 Tazweed Cargo transport to Hadeed, yes, cash receipt

16 12:50:54 vouchers?

17 12:50:54 A. That's the name of the invoices, yes.

18 12:50:56 Q. You identify after paragraph 2 there, you note Tazweed

19 12:51:04 Cargo Transport and Hadeed Emirates ^^ ^ common

20 12:51:08 ownership?

21 12:51:08 A. I do note that, yes.

22 12:51:14 Q. That we can see again, actually, when you deal with

23 12:51:18 slightly different question on slide 21?

24 12:51:21 A. Yes.

25 12:51:21 Q. You've identified taking screenshots from the financial

1 12:51:26 statements of Hadeed Abu Dhabi, Tazweed Cargo Transport

2 12:51:34 as being related parties recorded in the accounts?

3 12:51:37 A. Yes, and I think it's not shown on this screenshot, but

4 12:51:41 I think in the actual audited statement when you look

5 12:51:45 above those documents, the auditors say they are

6 12:51:48 related, and that's where I got my understanding from,

7 12:51:50 it's from the auditors.

8 12:51:50 Q. Yes, I think there's a note beneath saying they're all

9 12:51:54 under common ownership?

10 12:51:55 A. That's where I got that understanding from, yes.

11 12:51:58 Q. Just while we're on this slide, looking at these

12 12:52:00 extracts you have taken from the audited accounts for

13 12:52:06 15, 17 and 18, each company listed there -- I appreciate

14 12:52:12 the numbers change a bit, but if we take 2018, the one

15 12:52:16 at the bottom, will have its own company accounts?

16 12:52:24 A. I can't say. I don't know.

17 12:52:27 Q. Because they're all invoicing -- well, it appears if

18 12:52:31 what you've identified from the sales invoice on the

19 12:52:33 transport, they produce invoices and sales receipts and

20 12:52:37 cash receipts inter-company?

21 12:52:41 A. So two different things here. We're seeing money move

22 12:52:43 across the companies on the balance sheet if you will

23 12:52:46 and then on the valuation of these transport costs,

24 12:52:50 there were sales invoices and sale receipts, which

25 12:52:55 acknowledge I think receipt of a payment, if I'm not

1 12:52:58 mistake en.

2 12:53:00 My valuation is not base on the audited financials

3 12:53:02 of theses could, my valuation is based on invoices from

4 12:53:05 Tazweed and payment receipts from as the wide which is

5 12:53:10 at my JO72. So that's the basis of where these numbers

6 12:53:13 are coming from, not from the audited statements.

7 12:53:17 Q. No, it's a more ^^ we were looking just at the extract

8 12:53:21 here. Slightly broader question than just Tazweed, but

9 12:53:24 looking at the list of companies there with ^^ you're

10 12:53:27 not an accountant, but for these purposes, you're making

11 12:53:29 a point about accounts. Each of these companies will

12 12:53:32 have its own accounts because what you see as

13 12:53:35 receivables move back and forth between separate

14 12:53:37 companies, each one will reflect the receivables paid

15 12:53:41 to, received from other companies?

16 12:53:44 A. I understand who you're saying, but I can't say, because

17 12:53:47 I've not seen those.

18 12:53:50 Q. You would expect them to be there, though?

19 12:53:52 A. If there's a requirement that they need to be audited,

20 12:53:55 then I would expect them, but I'm not sure what the UAE

21 12:53:57 requirements are with auditing and if all financial --

22 12:54:01 I'm not sure if all companies have to be audited out

23 12:54:03 here or at this time have to be. I just don't know,

24 12:54:06 sir. I can't help you there.

25 12:54:18 Q. Just on transport, before we move on to the next point

1 12:54:21 on this slide, I think as you point out, we're back to

2 12:54:28 E50, page 43.

3 12:54:34 As you identify, you say it's important to note

4 12:54:36 these are related tent Is under common ownership.

5 12:54:44 There's a point you're identifying there that the

6 12:54:48 fact of invoice -- certainly invoices or sums charged

7 12:54:52 are charged as a result of decisions made by people who

8 12:54:56 are basically common owners of Tazweed and Hadeed as how

9 12:55:00 much they identify is payable as between each company?

10 12:55:06 A. I do point out the point that they were related, because

11 12:55:09 I think it's important for the arbitrator to understand

12 12:55:11 that. So I just do that for the sake of transparency,

13 12:55:14 point out that --

14 12:55:16 Q. The implication in saying it's important is what I've

15 12:55:18 said, isn't it? That you have to be aware that if

16 12:55:20 you're looking at inter-company charging, particularly

17 12:55:25 as you say here with common ownership, that you may not

18 12:55:29 be seeing transactions for proper value?

19 12:55:33 A. I'm not saying that, sir. I wouldn't say -- are you

20 12:55:39 suggesting they made these numbers up, sir?

21 12:55:42 Q. No, these are the invoice figures, but the person who

22 12:55:45 decides how much is invoiced and how much is paid will

23 12:55:47 be thinking about the companies as whole, I think is ^^?

24 12:55:51 A. I'm merely pointing out that they are related, so we

25 12:55:54 have to be aware of that. I wouldn't go as far as to

1 12:55:57 suggest what you just said.

2 12:55:58 Q. Why do you think the tribunal should be aware of it,

3 12:56:00 then?

4 12:56:00 A. Because it's my duty to do my analysis in a transparent

5 12:56:03 way. So if I can see they're related, I think I should

6 12:56:06 say that. Only a point of ^^.

7 12:56:10 Q. Just out of interest?

8 12:56:11 A. I just told you.

9 12:56:12 Q. Just as a matter of interest ^^?

10 12:56:13 A. Sorry.

11 12:56:14 Q. A matter of interest that they've related or is there

12 12:56:16 somebody to be taken from that ^^?

13 12:56:17 No, just that they've related, sir.

14 12:56:22 Q. I'm about to move on to the next topic. We're 5 to 1,

15 12:56:27 I think. If we take our hour now and come back at 5 to?

16 12:56:32 SOLE ARBITRATOR: Is in a good time.

17 12:56:33 MR HOWELLS: Yes, I'm about to move to another topic.

18 12:56:36 SOLE ARBITRATOR: Okay.

19 12:56:40 It is 5 to 1, so would the parties like to shorten

20 12:56:44 the lunch break? How are we doing on time before we

21 12:56:47 make that decision?

22 12:56:51 MR HOWELLS: Before I started just now, I had agreed it was

23 12:56:55 one hour 10 to Mr Suleman and I at that point had 2

24 12:56:59 hours 55. I calculate 11.30 to 12.55 is one hour 25, so

25 12:57:05 that makes it one hour 30 left for me.

1 12:57:11 SOLE ARBITRATOR: One hour and po and 1 hour and so.

2 12:57:14 MR HOWELLS: It sounds like it may not be agreed.

3 12:57:17 MR SULEMAN: Roughly, that's right. We haven't done our

4 12:57:19 maths. But roughly that does sound right.

5 12:57:21 SOLE ARBITRATOR: We have another two hours and 45 minutes,

6 12:57:24 roughly.

7 12:57:25 So if we dock back at quarter to 2, that should

8 12:57:34 be -- I'm in your hands. Would you prefer to come at 2?

9 12:57:39 MR SULEMAN: I don't really have any preference. We're on

10 12:57:42 time.

11 12:57:42 MR HOWELLS: 1.5 is fine, absolutely.

12 12:57:45 SOLE ARBITRATOR: Let us kilometre back at 1.45, please.

13 12:57:48 Mr Olwagen, you're obviously still under oath and ask

14 12:57:50 you not to speak to anyone about the case.

15 12:57:52 WITNESS: I understand.

16 12:57:53 SOLE ARBITRATOR: Thank you. We'll come back at 1.45.

17 12:57:57 (12.58 pm)

18 12:58:01 (The luncheon adjournment)

19 12:58:02 (1.45 pm)

20 13:45:15 MR HOWELLS: Mr Olwagen, good afternoon.

21 13:45:16 A. Good afternoon.

22 13:45:17 Q. Moving on now to what's called the head office overheads

23 13:45:21 and profits claim, which you've obviously identified as

24 13:45:25 a slight misnomer. You dealt with at slide 18 of your

25 13:45:30 presentation this morning. It's also dealt with in the

1 13:45:33 joint statement.

2 13:45:42 You have quoted a bit from a book there,ra mass book

3 13:45:46 ^ define more clearly what ^^ being discussed from your

4 13:45:50 per intertive, the unabsorbed overheads point?

5 13:45:55 A. Yes, I have quoted.

6 13:46:00 Q. As a definition of what you've been focused upon, which

7 13:46:02 is the situation where a contractor can show, because of

8 13:46:07 delay and disruption, it's being prevented from taking

9 13:46:09 over other ^^?

10 13:46:10 A. I was explaining the premise of an unabsorbed head

11 13:46:14 office overheads claim, yes.

12 13:46:15 Which is what you say you've been doing?

13 13:46:20 A. Yes.

14 13:46:21 Q. That's also addressed at, not the note, E50, page 52 in

15 13:46:25 the joint statement. In the position in the

16 13:46:37 introduction, (box ^ where you describe it as being

17 13:46:46 after the table there, Hadeed says it's a claim for lost

18 13:46:53 opportunity to generate contribution." ^doc.

19 13:46:56 Then you identify a couple of examples that Hadeed

20 13:46:59 relies upon. Deprived of its ability to bid for

21 13:47:08 a larger --

22 13:47:09 A. Sorry, sir. I can't hear.

23 13:47:10 Q. On the screen, joint statement?

24 13:47:11 A. Yes.

25 13:47:13 Q. Repeated what the claim is here is a loss of opportunity

1 13:47:16 to generate contribution, you say ^doc)?

2 13:47:24 A. I think I address that there's maybe two parts to it as

3 13:47:26 well. Yeah, my understanding of this claim is there.

4 13:47:32 Actually, you referring to the introduction, right?

5 13:47:34 Q. Yes.

6 13:47:35 A. Yeah, that's joint column, joint table between

7 13:47:38 Mr Boulwood and I .

8 13:47:40 Q. Page 57 as well, please. Quantum expert agreements

9 13:47:56 ^doc), first box, quantum experts agree that a formula

10 13:48:05 may be used it's a prerequisite to ^^ it must be

11 13:48:09 demonstrated that Hadeed lost an opportunity to work on

12 13:48:12 projects. That's for the other arbitrator to decide."

13 13:48:15 ^doc?

14 13:48:17 A. Yes.

15 13:48:18 Q. I think you agree with Mr Boulwood, arbitrator must

16 13:48:20 persuade whether she's persuaded that Hadeed Dubai was

17 13:48:24 prevented from tendering for other projects as a result

18 13:48:26 of being caught up on this project for a period of time?

19 13:48:29 A. It's for the arbitrator to decide if there's a loss.

20 13:48:39 Q. With respect to that, and in terms of the other part of

21 13:48:42 your agreement, which is to look at the use of

22 13:48:45 a formula, which is the first sentence in that box,

23 13:48:50 you've adopted Emdens and Mr Boulwood has agreed to use

24 13:48:54 Emdens with you?

25 13:48:55 A. Yes.

1 13:48:59 Q. You have said in your slides this morning, slide 24,
2 13:49:12 that there's an agreement that that should be applied to
3 13:49:15 the Abu Dhabi financial statements?
4 13:49:18 A. I've said we've used to use the Abu Dhabi financial
5 13:49:21 statements, yes.
6 13:49:23 Q. That's not quite right, is it? Mr Boulwood has made
7 13:49:25 clear throughout that he considers the Abu Dhabi
8 13:49:27 financial statements inappropriate for this purpose,
9 13:49:30 because they relate to a different company?
10 13:49:33 A. But what I'm saying is the experts based their formula
11 13:49:36 calculation on Hadeed Abu Dhabi's financial statements.
12 13:49:40 Mr Boulwood has maintained throughout that's not the
13 13:49:43 appropriate company to use for Emden?
14 13:49:47 A. That's his position, but we both use it to value. I'm
15 13:49:49 making a point of valuation, not whether it's
16 13:49:51 appropriate to do so or not. I'm saying both experts
17 13:49:53 have used the same data set, if I can put it that way.
18 13:49:57 That's all that that's saying there.
19 13:49:58 Q. Okay. Page 56 of E50.
20 13:50:14 Actuals it's 57, sorry. Back to the expert
21 13:50:18 agreement on page 57.
22 13:50:25 Second box, after the further agreement on the
23 13:50:29 threshold, quantum experts haven't seen the accounts for
24 13:50:32 Hadeed Emirates Contracting LLC the entity in this
25 13:50:35 arbitration." ^doc.

1 13:50:36 Have you asked to see the accounts for Hadeed

2 13:50:39 Emirates contracting Dubai?

3 13:50:40 A. I have, yes.

4 13:50:41 Q. What were you told?

5 13:50:42 A. I was told that those accounts were not available

6 13:50:45 because they were not audited. But for the sake of

7 13:50:50 transparency, I was provided with a document for Hadeed

8 13:50:56 Emirates contracting for 2019 during the QJS process.

9 13:51:04 Q. Where's that?

10 13:51:05 A. Sorry.

11 13:51:06 Q. Where's that?

12 13:51:07 What do you mean where's that.

13 13:51:09 Q. Where is it? Where's that 2019 document?

14 13:51:11 A. It's not in evidence. I'm explain that is in the QJS,

15 13:51:14 that was provided to me for 2019, for one year S there

16 13:51:18 were actually two versions of it provided, I believe.

17 13:51:24 Q. When I asked you earlier on about whether or not

18 13:51:26 accounts were produced for other companies related

19 13:51:29 companies when we were looking at your slide, you said

20 13:51:31 you didn't know. Actually you did know that Hadeed

21 13:51:35 Dubai had produced accounts, but they hadn't been

22 13:51:39 audited?

23 13:51:40 A. For Hadeed Dubai as I said, I thought we were speaking

24 13:51:43 about Tazweed, I think it was Tazweed there, but I've

25 13:51:46 just told you I've seen two versions of an account for

1 13:51:51 2019 for Hadeed Dubai.

2 13:51:53 Q. You chose not to use the Hadeed Dubai accounts or refer

3 13:51:56 to them for the purposes of considering how to apply

4 13:52:00 Emdens to this question?

5 13:52:01 A. Yes, and I've explained why in my presentation, that

6 13:52:04 Hadeed's position is that the loss is in Hadeed Abu

7 13:52:07 Dhabi, so not Hadeed Dubai.

8 13:52:09 Q. Wouldn't it be more appropriate, given your position as

9 13:52:11 an expert, trying to assist the tribunal, to identified

10 13:52:15 in transparency before now that you've been provided

11 13:52:18 with copies of unaltered accounts for Hadeed Dubai?

12 13:52:23 It was in the QJS process, so quite late, at the end,

13 13:52:27 and -- (overspeaking) -- ^^ in a meeting, sir.

14 13:52:28 Q. Wouldn't be it more appropriate, given your ^^ trying to

15 13:52:31 assist the tribunal, to have identified in transparency

16 13:52:35 before now, that you have been provided with copies of

17 13:52:38 unaudited accounts for Hadeed Dubai?

18 13:52:41 A. One account, sir, 2019, and the reason I did not do

19 13:52:45 anything -- usually, I would try and make an alternative

20 13:52:47 valuation, but you can't do it on one account. We need

21 13:52:50 a full range of accounts, sir.

22 13:52:52 Q. Wouldn't it have been more appropriate, given your

23 13:52:54 position as an expert trying to assist the tribunal, to

24 13:52:58 identified in transparency before now, before today,

25 13:53:00 that you have been provided with copies of unaudited

1 13:53:03 accounts of Hadeed Dubai? Do you accept it would have

2 13:53:05 been more appropriate to have done so rather than

3 13:53:08 carrying on referring to it Hadeed ^^?

4 13:53:11 A. It might have been something worth mentioning, but again -- (overspeaking) -- ^^.

5 13:53:14 Q. Then why didn't you?

6 13:53:15 A. Because the claim is based on Hadeed Abu Dhabi. I would

7 13:53:18 be valuing the wrong thing if I used it sir.

8 13:53:22 Q. So you knew for the purposes of valuing a claim for

9 13:53:26 overheads and profit, for this claimant company, that

10 13:53:31 you had seen accounts for that company?

11 13:53:35 Two sets of accounts was structured differently. It's

12 13:53:40 very important of the it's not for me ^^ to inject

13 13:53:46 information here that might be wrong as well. Can I be

14 13:53:50 blunt? I didn't consider those accounts to be properly

15 13:53:54 audited and a real reflection of what it should have

16 13:53:58 been. So I didn't deal with them.

17 13:54:01 Q. To ^^ dancing around the answer. You understand the

18 13:54:04 point, don't you? Mr Dabbas has said there are two

19 13:54:07 separate companies?

20 13:54:07 A. Yes.

21 13:54:09 Q. And this company we're dealing with is the Dubai

22 13:54:13 company?

23 13:54:13 A. Yes.

24 13:54:14 Q. And this company, the Dubai company, is making a claim

25 13:54:17 which you value at about 7 million dirham?

1 13:54:20 A. We understand that, yes.

2 13:54:21 Q. Based upon the application of a formula?

3 13:54:23 A. Yes.

4 13:54:24 Q. Which you've adopted because there is no information

5 13:54:27 about Hadeed Dubai's head office?

6 13:54:29 A. No, that's not correct. It's because Hadeed's position

7 13:54:33 is that their head office is in Abu Dhabi. That's my

8 13:54:38 understanding. We're valuing those. I know what you're

9 13:54:43 saying, but I'm valuing what their position is.

10 13:54:48 Q. Having been shown information about the claimant, which

11 13:54:51 is relevant to the application of the Emden formula, you

12 13:54:55 decided not to tell the tribunal about it?

13 13:54:57 A. That's not correct, sir. It was not relevant to the

14 13:54:59 thing we need to value, because the thing we need to

15 13:55:01 value is Hadeed Abu Dhabi in this claim, the way the

16 13:55:05 claim has been presented, sir.

17 13:55:07 Q. You thought it irrelevant to identify that in fact,

18 13:55:12 notwithstanding Mr Boulwood's repeated references to

19 13:55:14 the fact this was the wrong company to refer to, that

20 13:55:18 you should be referring to Dubai and not Abu Dhabi, you

21 13:55:20 didn't identify for the tribunal that you knew

22 13:55:23 information about the Dubai company?

23 13:55:25 A. It was never in evidence, sir, that's one point. The

24 13:55:28 claim was for Hadeed Abu Dhabi, and that's what needed

25 13:55:33 to be valued, sir.

1 13:55:53 Q. Fluctuations we have discussed earlier on that you

2 13:55:56 identified that reading the contract, there's no

3 13:55:59 fluctuations clause or n time under the contract for

4 13:56:02 indexation with respect to inflation in costs?

5 13:56:08 A. Yes.

6 13:56:10 Q. You have provided a valuation based upon two different

7 13:56:14 indices in your first report, you provided a valuation

8 13:56:19 based upon an Abu Dhabi statistical index?

9 13:56:22 A. That's correct, in my first report, yes.

10 13:56:23 Q. And that Abu Dhabi index that you use in your first

11 13:56:27 report as you identified, relates to construction of

12 13:56:31 towers?

13 13:56:31 A. In the first one, yes, yes.

14 13:56:33 Q. And in your second report you adopted a different index,

15 13:56:37 which is the Dubai index for inflation, CPI?

16 13:56:41 A. From the statistics centre, yes, that's correct.

17 13:56:43 Q. In more recently, in order to provide some, if you like,

18 13:56:52 check of what you say is a reasonableness of that

19 13:56:55 statistical as approach, you're undertaken a review of

20 13:56:59 concrete costs, as you describe this morning?

21 13:57:01 A. That's correct, the experts were engaging in the QJS on

22 13:57:04 an example of concrete and I then sampled an example of

23 13:57:08 that. That's correct, yes.

24 13:57:09 Q. That's at E58. This is JO15 to the joint statement is

25 13:57:31 that right? I'm afraid do I get confused as to which

- 1 13:57:33 your JO numbers are. This is the JO to the joint
- 2 13:57:36 statement, is it, or the JO to your second report?
- 3 13:57:39 A. The concrete would have been in the QJS.
- 4 13:57:46 Q. Okay, so the joint statement?
- 5 13:57:47 A. That's the one there, looks like it.
- 6 13:57:50 Q. Yes, we can see all the columns, please, Muhammad.
- 7 13:57:57 So make it a bit smaller, please.
- 8 13:58:06 If we can just scroll down a legal bit, please, so
- 9 13:58:09 we can see column headings and the like, a bit further,
- 10 13:58:12 please -- no, I mean up, then. Or down, the other way.
- 11 13:58:20 Thank you.
- 12 13:58:21 So this is appendix JO15. What you've done is
- 13 13:58:29 you've taken effectively from invoices which are the
- 14 13:58:34 references in the document references on the right-hand
- 15 13:58:36 side in column K?
- 16 13:58:39 A. That's correct.
- 17 13:58:40 Q. Categorised them by reference to the class of concrete?
- 18 13:58:43 A. Correct.
- 19 13:58:44 Q. Which we see in C?
- 20 13:58:45 A. Yes.
- 21 13:58:45 Q. So class 20, which is pretty standard slab type
- 22 13:58:49 concrete?
- 23 13:58:49 A. Yes.
- 24 13:58:50 Q. Through to C45, which is high grade heavy duty concrete?
- 25 13:58:54 A. Okay.

1 13:58:55 Q. Yes?

2 13:58:55 A. Sorry, repeat that last --

3 13:58:57 Q. C45, high grade heavy duty concrete?

4 13:58:59 A. If you want to call it that. I've just noted --

5 13:59:03 Q. ^^ very strong stuff?

6 13:59:04 A. It is, yeah.

7 13:59:08 Q. What you've done is you've broken down -- let's just

8 13:59:11 take the first category, class 20 to items

9 13:59:19 pre October 2016 on the basis that is when you identify

10 13:59:21 the prolongation period to commence effectively?

11 13:59:24 The overrun period, if I can call it that, yes, yes.

12 13:59:27 Q. From October 2016. Prior to that, using our first

13 13:59:33 category, items number 2 to 9 are C20, concrete, through

14 13:59:41 to May 2016 and you've cross-referenced that to invoices

15 13:59:47 in exhibit JO66, yes?

16 13:59:50 A. Yes.

17 13:59:51 Q. Those were all invoices which were paid by Hadeed?

18 13:59:56 A. Yes, they were from that sample from the prolongation,

19 13:59:59 yes.

20 14:00:01 Q. Then post-2016, for our purposes here, lines 11 -- items

21 14:00:10 11 and 12, 11 January, 29 December, those ones, do you

22 14:00:15 see those?

23 14:00:16 A. I see them, 11 to 13, yes.

24 14:00:18 Q. Looking across to column K, JO78, RDP, that's

25 14:00:22 a reference to the respondent's document production ^^?

1 14:00:25 A. That's correct.

2 14:00:26 Q. ^^ that was all the documents provided by the respondent

3 14:00:28 ^doc) for the invoices that respondent had paid direct

4 14:00:32 to subcontractors and suppliers?

5 14:00:34 A. That's correct.

6 14:00:35 Q. To understand this spreadsheet, what one does, if one is

7 14:00:38 looking down the K column, is JO66 means paid by Hadeed,

8 14:00:44 JO78 means paid by Altaaqa?

9 14:00:50 A. Yes, I think you can say that.

10 14:00:52 Q. All of the invoices paid after I think February 2017, if

11 14:00:56 one were to cast one's eye down this spreadsheet, and

12 14:01:03 just using that division as a means of describing it,

13 14:01:07 anything after February 2017, which I think we can see,

14 14:01:12 a bit further down, class 37, bit further down, bit

15 14:01:16 further down. That's it, thank you. Item 58 there.

16 14:01:24 That's the latest date for a JO56 item ^ February 2017?

17 14:01:31 A. Yes ^^.

18 14:01:32 Q. All the later items are paid by Altaaqa. Could I think

19 14:01:40 ^ you addressed this to some extent in your presentation

20 14:01:43 this morning. What you recognise is to the extent there

21 14:01:45 were increased concrete prices, for the purposes of your

22 14:01:49 check analysis in this document, all of those were

23 14:01:52 incurred by Hadeed?

24 14:01:56 A. Yes, the purpose of using these documents were to look

25 14:02:02 at cost of concrete in the one period and the other

1 14:02:04 period and make a comparison and we used those invoices

2 14:02:09 to do that. Why I'm saying it is a cost to Hadeed,

3 14:02:13 although Altaqa paid it, the way we've discussed this

4 14:02:16 morning is that we are setting those payment amount off

5 14:02:21 against Hadeed, which then makes it ultimately or

6 14:02:23 effectively Hadeed'ss could.

7 14:02:26 Q. Except you're not quite doing that, are you? This is

8 14:02:29 a check undertaken of what your primary case is, which

9 14:02:31 is the application of a statistical analysis based upon

10 14:02:35 the Dubai indexes?

11 14:02:38 The indexes was an analysis we looked at and then in the

12 14:02:44 QJS process, Mr Boulwood said he would I think he makes

13 14:02:47 an example on create in the QJS, that he would prefer to

14 14:02:50 look at something like concrete, let's compare the cost

15 14:02:54 of concrete invoices and that's what I've done here. So

16 14:02:57 it's in response to something that Mr Boulwood

17 14:02:59 mentioned in the QJS that we should look at the actual

18 14:03:01 costs across the period. That's all that this certain

19 14:03:05 toss do there.

20 14:03:07 Q. What you've actually done in terms of am preaching the

21 14:03:09 valuation is to apply the indexes?

22 14:03:12 A. That is correct, yes.

23 14:03:14 Q. This is a check?

24 14:03:14 A. It's a sample basis of to see if there's an actual cost

25 14:03:18 increase, yes.

1 14:03:19 Q. We can see from the check it ^^ illustrates the fact

2 14:03:22 you're been using information about sums paid by

3 14:03:27 Altaaqa?

4 14:03:27 A. Yes.

5 14:03:28 Q. But when it comes to actually considering the valuation

6 14:03:31 itself, what you've done is to use the indexes?

7 14:03:36 A. That is correct.

8 14:03:37 Q. Your point this morning about this sort of robbing Peter

9 14:03:41 to Paul observation, if you like, which is ^^ by the end

10 14:03:46 of the contract and Altaaqa's payments accounted against

11 14:03:51 Hadeed ^, you've removed from that, because all you've

12 14:03:55 done is you've insetted a hypothetical additional

13 14:03:58 percentage basis, haven't you, by using the indecisions

14 14:04:03 as being the hypothetical inflation on everything ^^ in

15 14:04:15 the later period, but we derive -- (overspeaking) -- ^^

16 14:04:19 we charge them to Hadeed, sir.

17 14:04:22 Let me ask you this, to be clear on this. Is

18 14:04:26 Altaaqa looking to be paid back the money that they paid

19 14:04:29 on Hadeed's behalf or are you giving that to Hadeed?

20 14:04:34 Because that's the point of disagreement between

21 14:04:36 Mr Boulwood and I .

22 14:04:38 If you're claiming the cost you paid on Hadeed's

23 14:04:42 behalf from Hadeed, then it becomes Hadeed's cost.

24 14:04:45 That's the straightforward point this I'm making.

25 14:04:47 Q. Then you're not asking the right question. ^^ you can't

1 14:04:51 ask me questions anyway, but you're not asking ^^

2 14:04:55 because the way you've expressed that as being are you

3 14:04:57 claiming the money back, or are you claiming that

4 14:05:01 Altaqa gets paid the extra over, not a question that

5 14:05:03 arises in this case T only question that arises in this

6 14:05:05 case is whether or not when you compare the total amount

7 14:05:09 owed to Hadeed to the total amount paid by Altaqa, to

8 14:05:12 Hadeed or for Hadeed, is there a difference? The sans

9 14:05:18 yes, there is a difference. We've agreed earlier on

10 14:05:20 that we've overpaid, but the question doesn't rise, are

11 14:05:22 we trying to recover inflationary cost. The question is

12 14:05:26 simply has there been overpayment?

13 14:05:28 A. I don't know who this has to do with this valuation.

14 14:05:30 What this valuation seeks to do is not as broad as that.

15 14:05:34 It seeks to answer the question: did Hadeed pay more for

16 14:05:39 the same goods and services required to carry out this

17 14:05:43 contract in the later period compared to what it would

18 14:05:46 have paid had it been allowed to procure those goods and

19 14:05:50 services in the earlier period? That's straight

20 14:05:53 forwardly what we're trying to value and that is the

21 14:05:55 valuation on Hadeed's position and that's --

22 14:05:59 Q. It's wrong for two reasons. One, Hadeed didn't pay

23 14:06:01 anything in the later period?

24 14:06:03 A. They --

25 14:06:03 Q. The proposition is wrong?

1 14:06:05 A. It becomes money against them at the point this time

2 14:06:07 we're setting off from an amount due to them ^^.

3 14:06:10 Q. The second point is it's not an actual payment anyway,

4 14:06:13 it's a hypothetical ^^ index of inflation?

5 14:06:17 A. The valuation is based on isolating the additional

6 14:06:22 costs, the change in costs, costs go up and down. Using

7 14:06:26 inflation ^.

8 14:06:28 Q. Using index?

9 14:06:30 A. But the base of that is actual cost, sir.

10 14:06:33 Q. You have taken an index value, statistical index?

11 14:06:37 Correct.

12 14:06:38 Q. And applied it to certain materials. But actually,

13 14:06:43 there is no information to show that Hadeed incurred

14 14:06:47 those costs, because the information you've got is only

15 14:06:50 as to what Altaqa paid?

16 14:06:53 A. No, that's incorrect, sir. The primary valuation that

17 14:06:56 you've speaking about takes the costs from Hadeed's

18 14:07:00 ledger, their accounting ledger, and the experts have to

19 14:07:03 use that on the alternative and use the inflation index

20 14:07:07 to see what those costs should have been in ^^ we use

21 14:07:10 the accounting ledger for that, sir. That's how that

22 14:07:14 valuation as carried out.

23 14:07:19 Q. We are running short of time, so late payment interest,

24 14:07:21 please.

25 14:07:23 In you have dealt with at slides 45 to 48 of this

1 14:07:27 morning's presentation. You set out your calculations

2 14:07:34 in your first report at E7-108.

3 14:08:05 The section I'm going to dive a little bit in, we're

4 14:08:08 running a bit short of time in, I'm going to dive

5 14:08:10 straight in, the calculation you've done, just for

6 14:08:12 context, is to make an assessment as to when you

7 14:08:22 consider payment should have been made applying a rule

8 14:08:27 which you have expressed in graphical terms on slide 48?

9 14:08:36 A. Yes, I explained that payment cycle in slide 48. What

10 14:08:41 I have done is explain it at page 108 where you have

11 14:08:45 taken me.

12 14:08:59 Q. Those are the, if you like, the rules you applied in

13 14:09:05 484(i) to (iii)?

14 14:09:06 A. Yes.

15 14:09:06 Q. I think it's fair to say that the majority of the

16 14:09:09 calculations you've undertaken and what we're about to

17 14:09:11 look at are undertaken on the basis of 484(iii). So an

18 14:09:17 approval date can be identified within not within 14

19 14:09:20 days ^reading...) submission date, so you have

20 14:09:22 recalculated the payment due days based upon that 51-day

21 14:09:25 cycle?

22 14:09:26 A. I think that's correct. Most of them are based on that,

23 14:09:29 yes.

24 14:09:30 Q. We can have a look then -- we're going to use invoice 14

25 14:09:32 or application 14, because the tribunal has heard about

1 14:09:35 that one.

2 14:09:39 If we can go to page 112.

3 14:09:48 Here we have payment request number 14

4 14:09:54 for July 2016. You identify the application date of

5 14:09:58 31 July and you state the certification date was

6 14:10:01 4 September. Therefore, you calculate the due date to

7 14:10:04 be 24 September. That's because you calculated the 51

8 14:10:08 days from 31 July?

9 14:10:13 A. South about right. Might not be exactly 51 days because

10 14:10:17 there's working days and calendar day ^^ but around

11 14:10:20 about.

12 14:10:20 Q. It's actually 52 -- (overspeaking) -- ^^?

13 14:10:23 A. -- (overspeaking) -- ^^ working and calendar, so it's

14 14:10:25 seven working days, 14 working ^^ 30 calendar days?

15 14:10:30 A. Yes, that's chat ^^.

16 14:10:32 Q. That's gets you to 24 September, this one?

17 14:10:34 A. That's what it says, yes.

18 14:10:36 Q. And you am plead, when you calculate the interest, you

19 14:10:39 calculate it based upon the sum of 383,969.33 dirhams?

20 14:10:46 A. That's what it says there, yes.

21 14:10:50 Q. Just before we start looking at how that's done, very

22 14:10:53 quickly, we can see the calculation of the interest

23 14:10:57 itself at E7-121. Scroll down. We're looking at lines

24 14:11:14 26 and 27.

25 14:11:23 It's on the screen or it's page 121 of your report.

1 14:11:27 Do you have that?

2 14:11:30 A. Yes.

3 14:11:32 Q. What you've done is you identify what you calculate the

4 14:11:34 payment date or the due date to have been, 24 September,

5 14:11:39 yes, line 26?

6 14:11:42 A. Let me just go down on paper. Yes.

7 14:11:44 Q. And you then have logged that against what you think is

8 14:11:48 the receipt payment on 26 October?

9 14:11:54 A. Yes, I run this on a kind of plans outstanding basis,

10 14:11:58 a running balance.

11 14:11:59 So that run int's the variation calculations, we'll see

12 14:12:03 how that works in just a seconds. You applied

13 14:12:06 a 9 per cent interest rate, which is the rate you've

14 14:12:08 been asked to apply being the Dubai court rate?

15 14:12:10 A. Yes.

16 14:12:12 Q. That for payment request 14 for the period between

17 14:12:17 24 September and 26 October, you calculate gives a total

18 14:12:21 interest of 3,029 dirhams, roughly?

19 14:12:24 A. That's what it says, yes.

20 14:12:32 Q. Mr Mr Chevreau and ^^ day 3, pages 131 onwards and we

21 14:12:36 looked at, in particular, some documents at G661,

22 14:12:44 please, which is entitled invoice 14, the first

23 14:12:50 application. It's an invoice 14, this is the first

24 14:13:01 application dated 31 July, which is the date you have

25 14:13:04 taken as the submission date?

1 14:13:06 A. Sorry, sir. Just on that, I didn't have an Excel
2 14:13:10 version. The ones that I have in my report were PDFs.
3 14:13:15 So I'm not sure in this is in my exhibit, so I might
4 14:13:18 have been looking at a different document.
5 14:13:20 Q. Okay. 31 July 2014, this is the one that Mr Chevreau
6 14:13:23 has looked at 589,658 claimed on 31 July?
7 14:13:29 A. That's what it says there.
8 14:13:31 Q. Mr Chevreau, do you remember, explained that he had gone
9 14:13:34 through that with the QS at Hadeed and disagreed with
10 14:13:39 that figure, so it was re-submitted again?
11 14:13:42 I faintly recall -- (overspeaking) -- ^^.
12 14:13:47 Q. G662. If you remember, we looked at this one and the
13 14:14:13 figure was difference, it's 416,000?
14 14:14:15 A. Yes, so it came down from the previous one.
15 14:14:17 Q. Down from the ^^ 31 July and Mr Chevreau gave evidence
16 14:14:21 to the tribunal that was because Hadeed hadn't changed
17 14:14:24 the date at the top of the document?
18 14:14:25 A. I can see that.
19 14:14:27 Q. We, doing our best, had a look at the properties and he
20 14:14:31 thought probably the properties which showed the print
21 14:14:33 date of 9 August was a fair indicator as to the date on
22 14:14:37 which that was --
23 14:14:39 -- (overspeaking) -- ^^
24 14:14:39 A. I remember that being said, yes.
25 14:14:40 Q. That was his evidence. Then we looked at G663, which is

1 14:15:05 the figure of 383969 which you have used for your

2 14:15:11 calculations?

3 14:15:11 A. Yes, so that must be the amount that I've seen on the

4 14:15:14 PDF version that I was provided with at the time --

5 14:15:17 Q. Mr Chevreau's evidence of that was again the date hasn't

6 14:15:19 been changed by Hadeed?

7 14:15:20 A. Yes, we can see that.

8 14:15:21 Q. Begin, we looked at the properties and he thought

9 14:15:23 probably it was a fair indication that when he had seen

10 14:15:26 it was the end of August?

11 14:15:28 30 August, okay.

12 14:15:30 Q. I think the other evidence we've had of that is when it

13 14:15:32 was put to Mr Chevreau by Mr Suleman, that it was signed

14 14:15:36 off around 4 September, which is consistent with what

15 14:15:39 you've said?

16 14:15:42 A. Yeah, if I have that date, it's taken from Mr Chevreau's

17 14:15:44 handwritten comments on the PDF, yes.

18 14:15:48 Q. About five days after receiving the version you rely

19 14:15:51 upon ^^ purpose of your interest calculation?

20 14:15:53 A. Yes.

21 14:15:57 Q. What I'm going to suggest to you is what you've done

22 14:15:59 with respect to this invoice and others like it, where

23 14:16:02 you had foil ^^ every single one, but it's taken the

24 14:16:06 final amount submitted by Hadeed?

25 14:16:09 A. Certified amount.

1 14:16:10 Q. Certified amount?

2 14:16:11 A. Yes.

3 14:16:13 Q. But used the date on the document, which is the date of

4 14:16:17 the first submission?

5 14:16:19 A. Yes.

6 14:16:20 Q. And calculated interest payable by Altaqa on the

7 14:16:28 fiction that Altaqa had an obligation to pay the

8 14:16:32 revised amount based upon the first day, that

9 14:16:38 a different submission was made?

10 14:16:38 A. Yes, I've run it from the first day the submission was

11 14:16:42 made.

12 14:16:43 Q. That's not correct, is it? That's not accurate.

13 14:16:47 A. My understanding of the payment process is that the

14 14:16:51 certification process starts when the contractor submits

15 14:16:56 a payment application and there's 14 working days for

16 14:17:00 the engineer to review it. So any -- this process that

17 14:17:06 Mr Chevreau described of rejecting payments and revising

18 14:17:09 payments, there's not something for that in this

19 14:17:14 contractual mechanism. The point is it should have been

20 14:17:17 wrapped up in 14 working days and then the engineer

21 14:17:21 should certify it.

22 14:17:23 I do understand the respondent's point on this. All

23 14:17:26 that I'm saying is that Hadeed has a different point on

24 14:17:29 it, and on the respondent's point, we have valued the

25 14:17:33 interest at nil, so we've given that. But on Hadeed's

1 14:17:36 point that the payment cycle starts on the first date of

2 14:17:40 submission and does not restart with every subsequent

3 14:17:42 rejection or revision, that's Hadeed's case, and we've

4 14:17:47 valued that case.

5 14:17:49 So this is valuing Hadeed's case and that's why that

6 14:17:51 was done, sir.

7 14:17:52 Q. Why didn't you value it on the basis of the 500,000-odd

8 14:17:55 that was originally claimed when it was originally

9 14:17:57 submitted?

10 14:17:58 A. Because that's not the amount that was certified

11 14:18:01 finally, because that amount is not due.

12 14:18:03 Q. It wasn't certified until 4 September?

13 14:18:06 A. But the payment cycle says when it should be certified.

14 14:18:08 The engineer has 14 days. Remember --

15 14:18:12 Q. How could Mr Chevreau certify 383,000 within 14 days of

16 14:18:17 31 July when that hadn't been the submission Hadeed had

17 14:18:20 made?

18 14:18:20 A. No, sir, I think we have a different understanding of

19 14:18:22 the process. The contractor submits a payment

20 14:18:25 application, the engineer reviews it, and if the

21 14:18:28 engineer doesn't agree, he issues his payment

22 14:18:33 certificate, noting the parts of the application agreed

23 14:18:35 and giving reasons for not agreeing to the other parts.

24 14:18:39 You can't lock the contractor into an endless cycle

25 14:18:44 of rejections and revisions and sir, the point on which

1 14:18:49 Mr Chevreau was objecting these applications, there's no

2 14:18:52 process for that that I could see in the contract, so

3 14:18:55 I couldn't model what Mr Chevreau says should have

4 14:18:59 happened. So I've modelled what I could based on the

5 14:19:03 case presented by Hadeed.

6 14:19:15 Q. Let's look at some later invoices, back to E7, page 112.

7 14:19:30 You remember that invoice 18 is one that's been

8 14:19:34 discussed, November 2016 invoice or payment request?

9 14:19:41 A. I can't specifically recall. There were a counsel

10 14:19:43 pull --

11 14:19:44 Q. The November 2016 one which has been discussed numerous

12 14:19:47 times because the point is being made November 2016 was

13 14:19:49 the last invoice that was then certified and paid

14 14:19:52 in February 2017? Do you remember that?

15 14:19:56 A. Just give me one second, sir, please.

16 14:20:02 Can you just re-ask that question.

17 14:20:03 Q. Just to get context, a number of point have been made,

18 14:20:07 particularly by Mr Suleman about November 2016 interim

19 14:20:11 payment application or payment request, which is the one

20 14:20:14 if you look at --

21 14:20:16 A. November 2016, yes, yes ^^.

22 14:20:19 Q. Which is ^ the last one paid by Altaaqa and it's also

23 14:20:24 been identified that that was paid in February 2017?

24 14:20:28 A. Let me just confirm that. It is the last one that

25 14:20:31 I believe was paid directly to Hadeed.

1 14:20:35 Q. Now we've got context, I want to look at the next one,

2 14:20:38 please. So that's November. If we look at your

3 14:20:44 calculations of interest, E7, page 122.

4 14:20:56 So we're now back to the interest calculation?

5 14:21:03 A. I can see that, yes.

6 14:21:06 Q. 34 is the request. 35 is the date for February.

7 14:21:14 A. Yes, of that same payment amount, yes, I can see that.

8 14:21:18 Q. Calculate interest on that one beneath that, you then

9 14:21:24 calculate interest on I think it's a cumulative basis,

10 14:21:27 at 9 per cent for every other payment request from 19

11 14:21:33 through to 40 on that page on the screen?

12 14:21:39 A. Yes.

13 14:21:39 Q. On the basis that you say that every single one of those

14 14:21:42 was -- because it went unpaid, Hadeed is entitled to

15 14:21:45 interest for non-payment of all of those?

16 14:21:49 A. No, it's not quite like that. If you go on the previous

17 14:21:52 page, I've explained what I have done. When I was

18 14:21:56 looking at this at the time of the first report, when we

19 14:22:00 look at certificate 19, which is the one after

20 14:22:04 the November 2016 one, 227 ^^ on the face of those PDF

21 14:22:10 certificates -- and I do discuss in my first report,

22 14:22:14 Mr Chevreau signs them saying approved for payment",

23 14:22:18 I believe, but we never see that payment going to

24 14:22:22 Hadeed.

25 14:22:22 But that's only relevant up until 27, I believe.

1 14:22:28 But then for after that, I think 28 up to 38, we see the

2 14:22:33 emergence of Mr Chevreau's handwritten comments, that

3 14:22:36 payments are made directly to suppliers. Then I've

4 14:22:39 addressed that at paragraph 491 of my first report as

5 14:22:45 well. I've explained my limitations on that as well and

6 14:22:50 what I've done.

7 14:22:54 Q. Do finish?

8 14:22:55 A. No, I just wanted to give you the full context about

9 14:22:58 what I've had to do, because the information is -- it's

10 14:23:01 not that clear with regard to the certification process.

11 14:23:06 Understood as you're identified the point I'm about to

12 14:23:08 make to you is that with respect to all of the payments

13 14:23:11 19 through 40, given what you've assessed with or agreed

14 14:23:17 with Mr Boulwood that there is overpayment overall, the

15 14:23:22 calculation of interest is being made in the period that

16 14:23:24 relates to payment requests and certification by

17 14:23:32 Mr Chevreau when subcontractors were being paid direct,

18 14:23:37 is effectively a double count, isn't it?

19 14:23:40 A. It's a bit more nuanced. If you look at item 59 there,

20 14:23:45 that's why I introduce a negative into this calculation,

21 14:23:50 because that's the first time where there's --

22 14:23:54 Mr Chevreau is discussing the statement of account, how

23 14:23:56 he was running this. That is the first time we see how

24 14:23:59 much money Hadeed owes Altaqa and that negative

25 14:24:05 4.8 million is a function of sums due to Hadeed --

1 14:24:11 sorry, sums due to Hadeed, offset by payments made to

2 14:24:15 subcontractors by Altaaqa.

3 14:24:16 So it's not as clear as what you've said there.

4 14:24:20 I've explained that limitation at paragraph 491 of my

5 14:24:25 first report and why I've done that.

6 14:24:29 Q. You discount the interest at the point of the ISA

7 14:24:34 in July?

8 14:24:36 A. We kind of acknowledge where Hadeed at the point in time -- I think the first point in time it was

9 14:24:42 identified where Hadeed owed Altaaqa money on the ISA.

10 14:24:50 But the problem and the difficulty with this valuation

11 14:24:56 is by throwing in all the money into this valuation, all

12 14:25:01 the money Altaaqa has paid n Hadeed's behalf, you have

13 14:25:05 to address on the other side of that calculation, how

14 14:25:07 much money Hadeed should have been certified to Hadeed ^

15 14:25:12 and we can't really complete that process, because as

16 14:25:16 I think Mr Chevreau said or you said earlier, sir, that

17 14:25:20 that certification process kind of broke down at the

18 14:25:23 point where Altaaqa was paying those amounts directly.

19 14:25:28 To do this properly, what we would need is an

20 14:25:31 accurate certification of the works, when they were

21 14:25:35 done. For example, when the variations were carried

22 14:25:38 out, we need to know what the value of those are in the

23 14:25:43 month that they were carried out. To then be able to

24 14:25:48 run I would say mathematically accurate interest

25 14:25:51 valuation, we would need to know every date of payment

1 14:25:57 made by Altaaqa, as it's bringing down that balance owed

2 14:26:01 to Hadeed.

3 14:26:03 Mr Chevreau confirmed there were 500 individual

4 14:26:05 payments made. So to do this with complete accuracy,

5 14:26:08 requires a great deal of information that is just not

6 14:26:13 available to the experts. That's why I have, in my

7 14:26:18 opinion section, in Friday priers report, I have

8 14:26:21 explained the limitations and what I have done there,

9 14:26:23 just so that it's not lost. It's paragraph 491.

10 14:26:33 HOWELLS: Thank you. Those are my questions.

11 14:26:44 MR SULEMAN: Nothing in re-direct.

12 14:26:49 SOLE ARBITRATOR: Mr Olwagen, thank you very much for your

13 14:26:51 presence today. You're discharged as a witness and both

14 14:26:55 your three expert reports plus your joint statement ^

15 14:26:58 and your oral testimony now form part of the record.

16 14:27:00 Thank you very much.

17 14:27:02 WITNESS: Thank you, Madam Arbitrator.

18 14:27:03

19 14:27:03 (Witness was released)

20 14:27:05 MR HOWELLS: Statement of account I think for us is an hour

21 14:27:07 and 10 still for, Suleman 49 minutes ^.

22 14:28:43

23 14:28:43 Mr John Boulthwood ^

24 14:28:50 MR SULEMAN: We can confirm those timings.

25 14:28:53 SOLE ARBITRATOR: Could you repeat them, please.

1 14:28:54 MR SULEMAN: There were 49 minutes for the presentation for

2 14:28:58 Mr Boulwood and one hour and 10 remaining for my

3 14:29:01 cross-examination.

4 14:29:06 SOLE ARBITRATOR: Agreed?

5 14:29:07 MR HOWELLS: Yes, thank you.

6 14:29:10 SOLE ARBITRATOR:

7 14:29:46 Good afternoon, Mr Boulwood.

8 14:29:49 WITNESS: Good afternoon.

9 14:29:49 SOLE ARBITRATOR: Welcome. As you know, this is the last

10 14:29:52 day of the evidentiary hearing I can C case 26620. You

11 14:29:56 appear as a witness on quantum.

12 14:29:59 Could I ask you to state your full name for the

13 14:30:01 record, please.

14 14:30:04 WITNESS: John Andrew Lewis Boulwood.

15 14:30:07 SOLE ARBITRATOR: Could I ask you to state the oath.

16 14:30:12 WITNESS: I swear by almighty God that the evidence I shall

17 14:30:16 give is my own, impartial objective and unbiased opinion

18 14:30:21 within my area of expertise not influenced by the

19 14:30:24 pressures of the dispute resolution process and shall

20 14:30:28 constitute my true and professional opinion.

21 14:30:30 SOLE ARBITRATOR: Thank you.

22 14:30:32 Mr Boulwood, I have your expert report dated

23 14:30:36 24 July 2023 in front of me as well as your expert

24 14:30:38 report dated 1 July 2024, together with your joint

25 14:30:44 statement as quantum experts with Mr Olwagen, dated

1 14:30:49 4 September 2024, do you confirm the content of those

2 14:30:51 reports.

3 14:30:53 WITNESS: Yes, I've got onerra, but I think I will be taken

4 14:30:57 to that.

5 14:30:57 SOLE ARBITRATOR: Was going to be my next question relating

6 14:30:59 to the errata. There is one errata in your report,

7 14:31:03 which Mr Howells has shared with us, do you confirm that

8 14:31:06 errata and do you have anything ^^ any other corrections

9 14:31:10 you would like to make.

10 14:31:11 WITNESS: No, that was the one that I wanted to draw your

11 14:31:13 attention to.

12 14:31:14 SOLE ARBITRATOR: Okay. Thank you very much.

13 14:31:25 I think you know the process very well. You have up

14 14:31:28 to 45 minutes for your presentation and then we'll

15 14:31:31 proceed with the cross-examination.

16 14:31:34

17 14:31:34 Presentation by

18 14:31:34 WITNESS: Firstly, thank you, Madam Arbitrator, for the

19 14:31:37 opportunity to present to you today. I will use the

20 14:31:44 screen, but I will also use the projection behind me.

21 14:31:48 There is a few slides that I think will benefit from me

22 14:31:50 working through some of the more complicated slide with

23 14:31:53 a laid ever pointer, so I plan to do that.

24 14:31:57 Next slide.

25 14:32:02 I think we've just been through on the right-hand

1 14:32:03 side of the page, the reports and the errata.

2 14:32:09 The presentation is in two broad parts. The focus

3 14:32:14 of the presentation is to look at the summary figures

4 14:32:17 and what I'm trying to do here is help you with where

5 14:32:21 the main differences are. Initially I'll look at the

6 14:32:24 Hadeed claim summary figures and the differences and

7 14:32:27 then slide 21 onwards I've got three slides, which deal

8 14:32:32 with differences on the counterclaims summary figures.

9 14:32:35 So I'll focus on the differences.

10 14:32:39 Next slide.

11 14:32:43 In terms of my CV, you have my CV at appendix 1 to

12 14:32:46 the first report. I'm a chartered quantity surveyor,

13 14:32:51 I have 35 years of experience in valuations, since

14 14:32:54 qualification.

15 14:32:56 I was a former partner in Turner and Townsend.

16 14:33:00 I set up my own practice around three years ago. I've

17 14:33:02 been working in the Middle East for the best part of 20

18 14:33:05 years, flying in initially and then since 2015, I've

19 14:33:09 been present here and I've assisted tribunals on over

20 14:33:13 150 reports and at hearing stage on a number of

21 14:33:17 occasions.

22 14:33:18 Next slide.

23 14:33:22 In terms of this slide, the broad scheme of this

24 14:33:28 slide -- and we will follow the individual -- each of

25 14:33:42 these in turn, so this slide that I have here is

1 14:33:47 a summary slide. You will see that basically, I'm in

2 14:33:52 the green, Mr Olwagen is in the grey shaded, so I've got

3 14:33:56 a scale here in monetary terms and this is really just

4 14:34:01 to show graphically where the main differences are on

5 14:34:07 each of the Hadeed claim summary main differences.

6 14:34:12 Later in the presentation, at slide 21, I have

7 14:34:17 a similar slide to this, which is really the landscape

8 14:34:21 of where the differences arise on the account.

9 14:34:26 I'll take through each of those in ^ turn.

10 14:34:31 The references that I've got at the bottom of the

11 14:34:34 page here in terms of expert references, just to give

12 14:34:37 you a steer in terms of where the discussion is, I think

13 14:34:41 it would be fair to say that in the quantum joint

14 14:34:44 statement, we covered a number of topics, it did bring

15 14:34:49 together our respective views. It probably is a summary

16 14:34:52 of where the positions were. There's been a little bit

17 14:34:56 of evolving opinion even in the last stages of the joint

18 14:35:00 statement process.

19 14:35:01 I will pick up on a couple of those areas in the

20 14:35:05 presentation.

21 14:35:08 Next slide.

22 14:35:12 The first one I think we've covered ground during

23 14:35:15 the course of today to do with the variations. The

24 14:35:20 question here at one level is a legal question about the

25 14:35:26 interpretation of the ISA.

1 14:35:31 The green bar shows the valuation of just over
2 14:35:36 4 million. In terms of the question of the claim that
3 14:35:39 was made by Hadeed for the extra over costs, which was
4 14:35:44 originally circa 6 million, so nearly 2 million extra,
5 14:35:49 that has been investigated by Mr Olwagen. In my reply
6 14:35:56 report, I responded broadly saying that if you are to
7 14:35:58 value the extra over variations, you must investigate
8 14:36:04 the direct costs of the works, looking at the overheads
9 14:36:08 and the mark-ups and the overhead profit supplemental to
10 14:36:14 the direct cost. You cannot do that. You have got to
11 14:36:18 do the direct work almost first.
12 14:36:20 I think we've got to and Mr Olwagen has a figure
13 14:36:23 which he describes as his upper limit of 5.2 million.
14 14:36:28 That's the dotted bar at the 5.2 is an upper limit. I'm
15 14:36:36 not clear whether Mr Olwagen is saying that's
16 14:36:39 a valuation, but I think we are agreed on the ISA. I'm
17 14:36:42 actually unclear on his position. My position is
18 14:36:45 there's no records to do the direct cost assessment even
19 14:36:50 if it were something that you were to consider above and
20 14:36:54 beyond the ISA.
21 14:36:55 I think next slide.
22 14:37:04 Very different figures. Just to remind you what we
23 14:37:08 are talking about here. This is in relation to the
24 14:37:12 deduction of around 8 million of omitted variations.
25 14:37:18 The claim being made is to claim upon those works, which

1 14:37:22 have not been executed by Hadeed, but it's claim for the

2 14:37:27 overhead and profit on that work that they've missed out

3 14:37:30 on. So that's the nature of the claim before you.

4 14:37:36 My valuation, which is the 67,850, looks at things

5 14:37:42 differently. Figures as figures, if I was to run the

6 14:37:45 calculation that Mr Olwagen has run, I can get to his

7 14:37:48 number.

8 14:37:49 But my point is that you should look at things in

9 14:37:53 the round. If we're really asking ourselves is in

10 14:37:56 a profit that's been foregone, if you consider the

11 14:38:00 additions that have also been varied, which are also

12 14:38:05 coincident I will around 8 million, and you look at

13 14:38:08 those in the round, actually the net loss in terms of

14 14:38:13 ads and omits that have been varied against the original

15 14:38:15 contract sum, is a negligible difference. Both are

16 14:38:20 around 8 million. The ads and the omits. Therefore,

17 14:38:23 a very minor difference in terms of valuation. I got

18 14:38:29 follow-on slide ^^ but that in essence is the difference.

19 14:38:36 Next slide.

20 14:38:41 Prolongation of overheads. I think that is been

21 14:38:43 a topic, Madam Arbitrator, that's been before you and

22 14:38:47 it's been well aired. It is a significant difference.

23 14:38:52 Even in the last half hour, listening to the

24 14:38:56 evidence before you, I'm hearing that. There may well

25 14:39:03 be Dubai accounts. There is a ^^ and the Dubai accounts

1 14:39:11 would be more relevant than the about a tab accounts.

2 14:39:14 I said this in the first report.

3 14:39:16 So I'm very surprised that I sit here in a hearing

4 14:39:19 today, to hear that the information that I've been

5 14:39:22 asking for maybe available, because if you ask yourself

6 14:39:25 a simple question in terms of connectivity, put to one

7 14:39:28 side the bank cheques and all the of things about where

8 14:39:32 money has flowed, in terms of the overheads and what may

9 14:39:37 be additional support to this project, that's not on the

10 14:39:40 project, this is about off site overheads, then it would

11 14:39:43 be the Dubai entity which is the most pertinent one, and

12 14:39:48 that's something that I've said from my very first

13 14:39:51 report.

14 14:39:53 We've got no records and I think this is important,

15 14:39:56 I'll come onto it. We've got no records that explain

16 14:40:00 even if we are using the Hadeed Abu Dhabi accounts,

17 14:40:04 we've got no records to explain what support has been

18 14:40:10 furnished. We do have the chief executive officer from

19 14:40:15 the head office included in the salaries and value by

20 14:40:19 Mr Olwagen and I in the time related staff costs.

21 14:40:25 What occurs to me is seeing as we valued presumably

22 14:40:28 the most senior perhaps the second most senior person in

23 14:40:32 the head office, if it were true that we've had staff

24 14:40:38 allocated to this project in the head office, why is it

25 14:40:42 that when we look at the particular names of particular

1 14:40:44 people from the head office, all wealth is the CO? If

2 14:40:48 it could have been done for the CO, why was time not

3 14:40:51 recorded for others in the Abu Dhabi head office? Truth

4 14:40:56 is, we don't have any records specifically of what

5 14:40:59 people were doing or what efforts were occurring in Abu

6 14:41:04 Dhabi above and beyond the COO that I valued.

7 14:41:08 So accordingly, my primary valuation, particularly

8 14:41:11 if we're going down an overheads route, is nil. I'll

9 14:41:15 come on to the examination in my slides. If what's

10 14:41:23 being argued here is that there's been a decline in

11 14:41:26 overheads through projects that have been turned away,

12 14:41:31 then the way to examine that is the method that I've

13 14:41:35 examined, Mr Olwagen has not engaged in that, and is the

14 14:41:39 one that gets to 667,000.

15 14:41:43 I'll come onto it, but in essence, I look at the

16 14:41:46 shortfall on revenues comparing it with prior year 2015,

17 14:41:52 with the contract years 2017 and 2018. I've got

18 14:41:58 a specific slide and I say in the event that your

19 14:42:01 revenue is less than it was two years prior, let's have

20 14:42:04 a look at the relativity of that reduction in real terms

21 14:42:08 in your revenue and I put 2.5 per cent as an overhead

22 14:42:13 contribution. I assess that vis-à-vis the reduction in

23 14:42:17 the ^^ I've got a slide on it. I'll come into it, but

24 14:42:20 it's a different methodology.

25 14:42:31 Again, you've had the discussion through the

1 14:42:34 cross-examination of Mr Olwagen. I was actually quite

2 14:42:38 surprised by his answer.

3 14:42:42 The exercise that we have done to get to site wide

4 14:42:45 valuation is to look at the title relate ^^ there were

5 14:42:54 90 people, we ended up with 41.

6 14:42:57 We did that because we re moved in the long list

7 14:42:59 that was originally on the table, those people that were

8 14:43:03 task related. We don't need to go back over old ground

9 14:43:08 and revert to the longer list. We took them out because

10 14:43:11 they were task related ^^ figures and figures daily rates

11 14:43:19 to assist you was base on 41. The point that

12 14:43:22 I raised and Mr Olwagen has argued in principle about,

13 14:43:26 not engaged in figures, is something that occurred to me

14 14:43:31 between my first and second reports, when I understood

15 14:43:34 a little bit more about what the delay experts were

16 14:43:37 saying with regard to the criticality of critical delays

17 14:43:43 and those delays being felt in the main building.

18 14:43:49 As soon as I understood that, I realised that the

19 14:43:52 site wide valuation that we had undertaken presupposed

20 14:43:56 that every resource was attaching to the main building.

21 14:44:01 Just to clarify again something that Mr Olwagen said

22 14:44:05 this morning, to take the project manager, if you were

23 14:44:09 to decide that certain positions are site wide, you have

24 14:44:16 the valuation of the 3.4 million, which assumes

25 14:44:21 everybody is.

1 14:44:21 Mr Olwagen and I are very close on figures if you go
2 14:44:24 down that route.
3 14:44:26 But if you decide that this is a good point, that
4 14:44:29 actually you've got to attach delays there the main
5 14:44:32 building to resources on the main building, which is
6 14:44:34 usually the mechanism, the first point is the second
7 14:44:39 bullet point here. You would need to have the records
8 14:44:43 that identify who is working where on the project. We
9 14:44:46 don't have that. If I had that, I would have looked at
10 14:44:51 those resources that are on the main building, attached
11 14:44:53 their names to it and picked them off. But instead,
12 14:44:58 because of the lack of records, they're not provided to
13 14:45:01 me to say where people are working in an area.
14 14:45:05 I've made an assessment pro rata the distribution of
15 14:45:09 the original tender and the original tender indicates
16 14:45:13 53.8 per cent of this project was in the main building.
17 14:45:16 So that's a broad ratio.
18 14:45:18 But in the joint statement, to address the concerns
19 14:45:22 that Mr Olwagen had, he didn't engage in figures in the
20 14:45:25 evaluation ^^, the positions that he said are bound to
21 14:45:31 be site wide, even in a proportion all the setting, pro
22 14:45:35 ^^ and a few others I have given you the rates per day
23 14:45:38 for those people if you wanted to add those on to my
24 14:45:44 1.5 million on that alternative approach.
25 14:45:49 Next slide.

1 14:45:53 In terms of fluctuations, again it's been aired

2 14:45:56 during the course of today. The valuation where I've

3 14:46:02 been at zero really has been a methodology point. The

4 14:46:05 point that I raised at the very outset was that where

5 14:46:11 Mr Olwagen in his first report, he did an ^^ tall

6 14:46:16 towers. This whereas fall in Jebel Ali is not a tall

7 14:46:20 tower. So a completely inappropriate index, the nature

8 14:46:23 of the works associated with a tall towers compared with

9 14:46:27 a warehouse, okay, some commonality about concrete, but

10 14:46:32 it's different at many levels it's different, much more

11 14:46:34 glazing and facade in a tall tower.

12 14:46:37 So it wasn't the correct index.

13 14:46:41 Mr Olwagen moved on to the yeu statistical index,

14 14:46:45 but in my first report, I said the way to do this and

15 14:46:48 it's the way the quantum experts usually go about this,

16 14:46:51 is you look at the inflation that's been incurred within

17 14:46:56 the project you don't need to go ^^ which is what

18 14:47:02 Mr Olwagen did in his second report, which ^^ that can be

19 14:47:11 anything from a bag of fruit to fuel costs to all of

20 14:47:13 the thing that is we all know as lay people around what

21 14:47:16 drives inflation.

22 14:47:18 The real question is have you got an index that is

23 14:47:21 pertinent if you're going to use one? I even gauged in

24 14:47:26 that method, but it didn't mean I removed my caveat that

25 14:47:32 the best way to do this is through actual demonstrable

1 14:47:36 incurred cost comparing the purchases that you are

2 14:47:38 making before the original completion date with

3 14:47:43 purchases after. That's a much better method. I've got

4 14:47:46 a slide, I'll come onto it.

5 14:47:54 Next slide.

6 14:47:54 This is a complicated slide, but I wanted to, Madam

7 14:47:59 Arbitrator, just really make a step back point about the

8 14:48:03 claims that are being made in this arbitration in

9 14:48:07 monetary terms. If we look on the left-hand side of the

10 14:48:13 scale, I'm just pointing here at the 4.867 million. In

11 14:48:19 the original contract value -- and this is using the

12 14:48:24 percentages of Mr Olwagen in terms of the overhead and

13 14:48:29 profit at 17.85 per cent, if I calculate that, the

14 14:48:36 original scheme of things was 32 million of contract

15 14:48:39 price and a contribution of 4.8 million.

16 14:48:44 There's a debate about financing and paying

17 14:48:49 subcontractors after February 2017, Altaqa stepped into

18 14:48:52 the payment. But at the end of the project, the revenue

19 14:48:56 that has been delivered on the project is still around

20 14:49:03 32 million. In the beginning it was 32 million, in the

21 14:49:05 end with the variations, the revenue that has been

22 14:49:07 received by Hadeed is 32 million.

23 14:49:10 Revenue wise, not much has changed. But when you

24 14:49:13 look at the overhead and profit contributions that being

25 14:49:17 sought, as a function of revenues, if you follow this

1 14:49:23 through and I'll touch upon the negative variations

2 14:49:26 we've already discussed ^ we discussed this one, the

3 14:49:32 negative variations, there's at least overhead and

4 14:49:37 profit on the agreed variations, there's overhead and

5 14:49:40 profit on the disputed variations that are being

6 14:49:44 claimed, and then there's the Emdens formula

7 14:49:49 6.154 million, which again is being claimed.

8 14:49:50 All of this moves to a right-hand bar of

9 14:49:59 13.36 million. If you look at this in terms of

10 14:50:03 32 million of revenue delivered at the end of this

11 14:50:06 project, the claims that are being made are circa 13.361

12 14:50:12 against a revenue that is pretty well in line with what

13 14:50:15 was envisaged at the beginning and for which Hadeed

14 14:50:19 would have accepted 4.867 of overhead.

15 14:50:22 I just make that point against the backdrop of

16 14:50:27 whether losses have been demonstrated for overheads and

17 14:50:31 profit.

18 14:50:32 Next slide.

19 14:50:45 Sorry, could I ask what time did I start?

20 14:50:52 MR HOWELLS: 14.31 ^.

21 14:50:56 A. This.

22 14:51:00 WITNESS: ^^ Mr Olwagen I'll say components upon this in his

23 14:51:03 hearing presentation. I don't think he actually

24 14:51:07 addresses the point that I make. My point is a very

25 14:51:10 simple one, which is before you, through an Emdens

1 14:51:14 formula for prolonged overhead contribution, is

2 14:51:20 a significant number. On Mr Olwagen's figure,

3 14:51:25 7 million.

4 14:51:25 The stand back point is in. If we look at the red

5 14:51:32 box here, this is the gross profit of Hadeed year on

6 14:51:40 year. It says they're a profitable business. It says

7 14:51:46 they're making between 21 per cent and even in their

8 14:51:52 worth year, to 18, 11 per cent ^.

9 14:51:57 Now, as a broad point, if you're in profit, you're

10 14:52:01 in profit because you have covered your costs, including

11 14:52:07 your overhead costs.

12 14:52:11 The yearly overheads, which are the line down below,

13 14:52:18 if you compare them in a relatable fashion, taking may

14 14:52:26 be 2017 as a year, profit that year, just indicating

15 14:52:30 here the 8.426 of profit in 2017.

16 14:52:40 So in dollar terms, circa north of maybe 25 million.

17 14:52:45 SOLE ARBITRATOR: Sorry, could you repeat what you just

18 14:52:47 said? In 2017.

19 14:52:50 WITNESS: In 2017, 18.426 million of profit. If you now go

20 14:53:10 down below and look at the relatable profit that could

21 14:53:15 be arguably, we don't have the records, relatable to

22 14:53:18 this project, 1.249. So the point is in. You're in

23 14:53:27 profit ^^ they're not going to ^^ you haven't got

24 14:53:34 a ^^

25 14:53:35 I make.

1 14:53:37 Mr Olwagen answers this by saying that profit is one
2 14:53:39 thing, overheads are another thing and cash are another
3 14:53:43 thing. I agree. They're all different things. But if
4 14:53:46 you've covered your overheads and you're in profit,
5 14:53:50 where is the loss? I still maintain that point.
6 14:53:53 Next slide.
7 14:53:59 Tracking through into -- we're still in the Emdens
8 14:54:04 formula consideration. What I'm doing here, and this is
9 14:54:11 my point that I made earlier, which is if you can get
10 14:54:16 over the causation issues, Madam Arbitrator, and you
11 14:54:19 decide there's causation here, if you then get into
12 14:54:24 what's the shortfall in revenues, and I mentioned it
13 14:54:28 earlier.
14 14:54:29 What I've done here is I've compared as an anchor
15 14:54:32 year, the revenues that were in place prior to this
16 14:54:39 contract. So in 2015, we can see that the revenues were
17 14:54:49 159 million. That's the revenues at line C. If you
18 14:54:54 compare that with 2017, the first year of overrun
19 14:54:59 period, revenues decline compared with 2015, 153 million
20 14:55:05 plays 159 million. Revenues decline by circa 6 million,
21 14:55:10 more accurately 5.745 million. If I apply my relatable
22 14:55:15 overhead at 2.25 per cent, I get to 129,000.
23 14:55:20 Similarly, if I do the same exercise, take the
24 14:55:26 135 million of turnovers in 2018, compare it with the
25 14:55:33 159 from the 2015 calendar year, there is a more

1 14:55:37 significant drop in revenue circa 24 million, more

2 14:55:41 precisely 23.915. Again, 2.25 per cent relatable

3 14:55:47 overhead, maybe just over half a million, 538,000 of

4 14:55:53 decline.

5 14:55:53 That pre exposes all of that is attaching and

6 14:55:56 because of this project, but I think it gives you that

7 14:56:00 test and it's the reason why I've got the heading to the

8 14:56:03 slide is do you have an anomalous result when you're

9 14:56:06 asking for 7 million of overhead when on my figures,

10 14:56:11 assuming everything is related to, you know, the client

11 14:56:18 on this side of the table Altaqa, if they're to blame

12 14:56:21 for everything, you get 667,000 on a declining revenue

13 14:56:27 calculation.

14 14:56:27 Mr Olwagen does not engage in figures in that, he

15 14:56:30 just criticises the method.

16 14:56:35 Next slide.

17 14:56:41 Turning to the overheads and profit. As

18 14:56:47 I mentioned, I can agree with Mr Olwagen figures as

19 14:56:49 figures. If it is to look in isolation at works omitted

20 14:56:54 and put a percentage for overhead and profit on it,

21 14:56:58 I can agree with him figures as figures.

22 14:57:02 But any concern is that if this is about loss, if we

23 14:57:08 compare -- and I'll just do the right-hand box because

24 14:57:12 this is the headline, really. The tendered overhead and

25 14:57:15 profit in the project on this basis of calculation again

1 14:57:20 using Mr Olwagen's percentages, 4.499 million, would

2 14:57:26 have been what would have been generated from the

3 14:57:29 original project.

4 14:57:31 If you compare it with the revenues that were

5 14:57:32 achieved, so these are the revenues that were achieved, the

6 14:57:38 31.652, that generates like for like, same percentage,

7 14:57:42 so I'm using the 8.39 head office overhead ^ 5-point # 1

8 14:57:49 profit and risk allowance.

9 14:57:51 If I run with those unconditionals shall

10 14:57:54 percentage, but just apply them to the comparative

11 14:57:58 turnovers planned at tender with a value of work done at

12 14:58:02 termination, they're very similar in terms of the

13 14:58:05 contribution that we've made. That's how I get to the

14 14:58:12 67,850, if you look at it in the round, which is the

15 14:58:15 basis of that number.

16 14:58:17 Next slide.

17 14:58:25 I just want to emphasise on the no records point,

18 14:58:30 that if we were to look at the Society of Construction

19 14:58:32 Law, if we were to look at the guide which Mr Olwagen

20 14:58:38 raises in his first report, which is the RICS guide for

21 14:58:42 ascertaining loss and expense, the first method is to

22 14:58:47 look at head office staff that might be deployed and

23 14:58:53 consumed associated with the project.

24 14:58:56 The only named person that we have is the COO from

25 14:58:59 the head office. We have no records to describe who and

1 14:59:06 what additional support was being provided from Abu

2 14:59:10 Dhabi, let alone Dubai if Dubai does have a set of

3 14:59:14 accounts here, we've just not been given that evidence.

4 14:59:19 So we have a real lack of records in terms of

5 14:59:27 exactly what overhead is it? What overhead efforts are

6 14:59:31 being incurred?

7 14:59:33 The picture that you've got here is my having a go

8 14:59:39 at what might be relatable as overhead. Whether do

9 14:59:44 I say having a go? Because usually, quantum experts

10 14:59:47 will be given the opportunity to go to the entity

11 14:59:51 involved in the arbitration, go see the accounts

12 14:59:55 department, inspect the records and understand what's

13 14:59:58 behind the records to do the kind of exercise that I've

14 15:00:01 done here.

15 15:00:03 Mr Olwagen is critical that I'm not an accountant.

16 15:00:06 I'm not an accountant, but for the last 20 years, with

17 15:00:11 other quantum experts, I've done exactly this type of

18 15:00:14 exercise, which is to work out what are -- now that

19 15:00:20 we're in a formula setting -- the things thattable to

20 15:00:26 this project? This is an imperfect world. But for

21 15:00:29 sure, when you look at the use of formulas, and this is

22 15:00:32 why you have different numbers on the formulas when

23 15:00:36 using Emdens between myself an employer ol, it is wrong

24 15:00:42 even though it's Mr Olwagen's method, it is wrong to

25 15:00:45 presume that every part of the head office is

1 15:00:51 allocatable and in some way connected to the project.

2 15:00:55 Simple examples. The C suite ^^ service the company

3 15:01:00 in any event. HR department, there to service the

4 15:01:04 company in any event. Finance, same. They're run

5 15:01:09 progress objects. They're not connected to ^ or doing

6 15:01:12 work in projects unless a project accountant has been

7 15:01:16 seconded into the project. Marketing functions,

8 15:01:19 et cetera. Most quantum experts would agree take those

9 15:01:22 out of the relatable overhead because that's business as

10 15:01:26 usual.

11 15:01:31 That's what I've done in this exercise and having

12 15:01:36 taken out and adjusted the spreadsheet on the left-hand

13 15:01:40 side in 2015 through to 2019, I've then calculated what

14 15:01:47 condition sieve bring, in an overheadsetting, for dens

15 15:01:52 may be relatable ^ and that's how I've got to my

16 15:01:55 percentages which are calculated here, and then across

17 15:02:00 the five-year period, the 2.25 per cent.

18 15:02:04 Next slide.

19 15:02:13 This is an item that came up late in the day.

20 15:02:15 I agree with Mr Olwagen that the evidence was there

21 15:02:19 earlier. The truth is Mr Olwagen and I didn't get to it

22 15:02:26 until late in the day in QJS 1. That's just the reality

23 15:02:29 of how it played out.

24 15:02:31 Having looked at it since QJS 1, the transportation

25 15:02:37 cost heading is slightly misleading in the sense that

1 15:02:41 items 8 through to 14 are generator costs. The reality,
2 15:02:50 Madam Arbitrator, is that neither I nor Mr Olwagen can
3 15:02:52 tell you what the generators were doing. They could
4 15:02:56 have been powering lighting, they could have been
5 15:02:58 powering hand tools. Mr Olwagen this morning said that
6 15:03:02 I was being inconsistent to include generators on the
7 15:03:08 post-termination costs, whereas raise a question about
8 15:03:12 whether they are task related here.
9 15:03:14 To points. One, as I understand the valuation under
10 15:03:18 the counterclaims, it's to look at that cost, which
11 15:03:21 Altaaqa have incurred, and that's what I've done, and it
12 15:03:27 includes generators.
13 15:03:28 When we look at the situation vis-a-vis
14 15:03:31 a prolongation claim for generators, it's different with
15 15:03:35 Hadeed. Why is it different? Because Hadeed are paid
16 15:03:39 to do the works. They have unit rates and other
17 15:03:43 recoveries where they can get generator costs. Hadeed
18 15:03:50 always priced for the generators and would have been
19 15:03:52 making recoveries for it. So to the extent that, and
20 15:03:59 difficult ^^ these generators you were to regard as time
21 15:04:03 related, then of course we can value them and assist you
22 15:04:07 to value them in the claim.
23 15:04:08 But my point is that the original deal with Hadeed
24 15:04:16 was to provide these generators, whereas Altaaqa
25 15:04:20 post-termination never signed up to provide generators,

1 15:04:24 nor did they include for them in their tender price,

2 15:04:28 because Altaaqa never had a tender price, whereas Hadeed

3 15:04:32 did. I think that is the difference.

4 15:04:36 It affects the run rates, but you have the slide,

5 15:04:38 Madam Arbitrator, and hopefully that one is clear.

6 15:04:42 Next slide.

7 15:04:51 Generators again, one of the points and it goes to

8 15:04:55 my errata point in the beginning, which was errata to do

9 15:05:00 with generators.

10 15:05:03 If it's correct that Hadeed should have come to this

11 15:05:07 project with its own equipment and to be fit to do the

12 15:05:11 project with its own equipment, rather than hire the

13 15:05:15 generators in, it makes a significant difference in the

14 15:05:19 valuation.

15 15:05:21 If you were looking at the costs of generators,

16 15:05:25 these things usually cost, depending on the size of the

17 15:05:29 generator, anything up to 25,000 dirhams. When you look

18 15:05:35 at the life cycle in the accounts, according to the

19 15:05:38 write down from Hadeed, over a five-year period, I have

20 15:05:41 run some figures, all of this after the QJS, because

21 15:05:45 it's the first time it came along, and on my reckoning,

22 15:05:49 if you compare the depreciation cost, which is the box

23 15:05:54 on the right-hand side, if it had been owned equipment,

24 15:05:58 compared with the rental cost that we have as presented,

25 15:06:02 we can see that it's a significant difference in cost.

1 15:06:10 217,000 compared with 37,479, 17 per cent. In short,

2 15:06:21 it's about a six times factor in terms of taking the

3 15:06:24 burden of rental as opposed to depreciation.

4 15:06:28 Next slide.

5 15:06:39 This is a summary slide and Madam Arbitrator, it's

6 15:06:42 to try to help you.

7 15:06:46 What I've done here is literally summarise what

8 15:06:51 often has been -- and I apologise for it --

9 15:06:54 a complicated debate. If you want to find daily rates,

10 15:06:58 the ones in green are ones that have been agreed by the

11 15:07:04 quantum expertsth whilst we have a long debate about the

12 15:07:09 transportation costs, you do have the range of figures

13 15:07:11 on whether they're time or task related or not.

14 15:07:14 The discussion about the foremen and I'll just say

15 15:07:18 very briefly on the foremen, and you've got the rate

16 15:07:25 there, the 303.

17 15:07:27 Chargehands usually sit within a gang. So you might

18 15:07:33 have six workers and one chargehand. A foreman usually

19 15:07:37 works across groups of workers. They usually in the

20 15:07:42 field, they usually at the workface and that's why

21 15:07:46 I regard them as not time related.

22 15:07:48 The new point that's been raised around POMI I got

23 15:07:52 to say it's completely irrelevant, actually. I would

24 15:07:55 say it's completely irrelevant and I can expand upon

25 15:07:58 that if I get time.

1 15:08:01 The things that we have down below are the run rates

2 15:08:04 for the time related overheads which gives you the range

3 15:08:08 of figures from my saying there's been no demonstrable

4 15:08:13 loss, which is my alternative 1, through to my decline

5 15:08:17 in revenue, that's 617,000, if it's a per diem, they

6 15:08:22 quites to 914. My Emdens overhead formula on a per diem

7 15:08:29 the 1.482. If you go with Mr Olwagen's calculation

8 15:08:34 using the full overhead, it's about 5,300.

9 15:08:39 Next slide.

10 15:08:45 Fluctuations, again, a new emerging and nuanced

11 15:08:55 consideration. Mr Olwagen has brought something further

12 15:08:57 forward his opinion ^^ I've been thinking on my feet or

13 15:09:03 as it's been sat here this morning as to what is before

14 15:09:06 you.

15 15:09:06 I think what's being said is that somehow, the

16 15:09:10 fluctuation costs were back charged and therefore

17 15:09:13 incurred. But the reality is that Altaaqa have stepped

18 15:09:22 in to pay for services and goods, as I understand it

19 15:09:30 from around the first quarter of 2017. There's a bit of

20 15:09:32 a lag on those payments.

21 15:09:35 The reality is that the inflation was incurred and

22 15:09:39 paid for by Altaaqa as it stepped in and this is just an

23 15:09:48 example of one of the checks.

24 15:09:49 Next slide. I think I've only got Thai minute, so

25 15:09:53 I'll speed up.

1 15:09:55 In terms of the calculation that's been done in

2 15:10:02 style is actually methodology wise, what I asked to be

3 15:10:07 done in my first report.

4 15:10:09 In terms of methodology, putting to one side that

5 15:10:12 issue that you have about the backcharge and how all of

6 15:10:14 that works, in terms of methodology, we do compare,

7 15:10:19 Mr Olwagen brings it forward, but just on concrete, in

8 15:10:24 this instance, we do compare -- and if you can see row

9 15:10:30 16, which compares with row 15. So I agree figures as

10 15:10:34 figures, what Mr Olwagen has done as a method.

11 15:10:37 What you've got is 120 quantity at a differential ^^

12 15:10:46 6-point ^^ springs from the 198.27 compared with the

13 15:10:51 2015 ^^ an jo ^^ ## 3. That's the extra over cost of

14 15:10:56 the inflation.

15 15:10:56 You apply it to the quantity that's bought after the -- what is it? The October 2016 and you can work

16 15:11:09 that out. I'm doing it quickly, but each one of those

17 15:11:12 yellow lines does the same thing. What's the quantity

18 15:11:15 after October 2016? What's the differentiate rate of

19 15:11:18 extra over inflation? And you can dispute amount.

20 15:11:22 If you do compute an amount, it comes to 40,727 as

21 15:11:30 the only evidence that's been brought forward at the

22 15:11:32 last minute in the QJS 1 process I've examined it.

23 15:11:36 I can get to the same figures as Mr Olwagen on this.

24 15:11:40 But that's it in terms of checking actual costs.

25 15:11:43 Putting to one side the hurdle of whether it gets

1 15:11:46 charged back and all of that discussion.

2 15:11:49 If you divide it by the same method as Mr Olwagen

3 15:11:52 does, which is divide it by the extend period, the

4 15:11:57 122 ^^ you get to 33.25 dirhams a day, which I think

5 15:12:02 I've got on the next slide or it's in the notes on the

6 15:12:05 right.

7 15:12:06 Next slide.

8 15:12:10 This has been covered this morning. It's just to

9 15:12:12 illustrate that in the inflationary space, which is

10 15:12:20 theoretical and based on not costs, it's not correct to

11 15:12:24 say it's based on costs. The only cost inflation that

12 15:12:27 we have is that comparison of concrete purchases.

13 15:12:32 This is applying a statistical index to a cost

14 15:12:35 ledger. It's not the same thing as comparing invoice

15 15:12:39 costs with invoice costs. Mr Olwagen said it was cost

16 15:12:42 based. It's not. It's base off an index. I just want

17 15:12:45 to make that point.

18 15:12:49 794,000 of that sits in the Altaaqa purchases space.

19 15:12:56 Mr Olwagen and I agree that, that that sits in that

20 15:13:00 element of the Altaaqa purchases if you go down the

21 15:13:03 published indices rusted of calculation.

22 15:13:06 Very quickly, I think I've got -- next slide.

23 15:13:09 I think I've got three slides on the main

24 15:13:18 differences. This is the landscape slide. I'll just

25 15:13:22 take each of them in turn. Some of those are agreed, so

1 15:13:25 I just look at the ones where there aren't some
2 15:13:31 differences ^.
3 15:13:31 Next slide.
4 15:13:37 In terms of the defective works, I think it came up
5 15:13:43 this morning, in terms of the epoxy coating, the reason
6 15:13:47 I've got it in green is I agree with Mr Olwagen if you
7 15:13:50 can only attach causation wise certain elements of the
8 15:13:54 epoxy to building 1, I agree with him on the 220 ^^ if
9 15:14:00 as Altaaqa is all of this work, it's the 270,802.
10 15:14:04 Mr Olwagen says he's unable to value the next two, so he
11 15:14:07 just have my figures. Then there's a minor difference
12 15:14:11 on item 4, fixes as figures, which relates to the
13 15:14:15 application of VAT.
14 15:14:16 The reason why I've hee lighted it green is
15 15:14:19 depending what you do with that, we agree figures as
16 15:14:22 figures.
17 15:14:22 Next slide.
18 15:14:27 On this one, the broad point that I would make here
19 15:14:33 is that Mr Olwagen and I, with the exception of modern
20 15:14:41 freight company, we actually agree the amount of rental
21 15:14:44 monies that have been spent by Altaaqa. That might not
22 15:14:48 be obvious to you, but we actually agree the amount
23 15:14:51 spent.
24 15:14:52 What Mr Olwagen does with regard to the modern
25 15:14:55 freight company on his 1.7 million valuation, so I'm

1 15:15:00 looking at row 2, item 2, the difference here,

2 15:15:07 Mr Olwagen applies a sense check on the area that's in

3 15:15:12 the contract, multiplies it by the rate and he comes to

4 15:15:18 a different amount too that which has been paid and

5 15:15:21 administered by Altaaqa.

6 15:15:24 The actual payments are this 2.041. Mr Olwagen

7 15:15:29 comes along after the event and red pens the contract

8 15:15:33 administration, so he's effectively he wouldn't have

9 15:15:35 paid the value that Altaaqa did. He does it by

10 15:15:38 reference to the contract and a meter squared rate.

11 15:15:43 If Mr Olwagen is correct on that, his arithmetic is

12 15:15:48 correct, I can agree figures as figures.

13 15:15:51 The big issue here is that there's two methods of

14 15:15:55 valuation. Altaaqa's position is there is no deduct.

15 15:15:59 I think you've heard a lot during Mr Olwagen's

16 15:16:03 presentation about the things that I've agreed to.

17 15:16:06 Madam Arbitrator, the things that I've agreed to are

18 15:16:09 those things that are in the joint statement and/or

19 15:16:13 whatever my expressed opinion is in the reports.

20 15:16:17 In terms of the methodology, I have engaged in the

21 15:16:20 deduction, which is the Hadeed defence position. So

22 15:16:26 I agree if that methodology is to make a deduct and it's

23 15:16:29 a legal point, I believe there's evidence before you.

24 15:16:34 The question here is on rentals, if you had had a new

25 15:16:40 facility, you wouldn't have had the rentals, but what

1 15:16:43 cost would you have suffered? You've got a brand new

2 15:16:46 facility that you would have used.

3 15:16:48 My assessment is that this would be a pretty

4 15:16:52 de minimus adjustment. I have made a deduction here of

5 15:16:56 235,000 and I've allowed just a theoretical assessment

6 15:17:00 of some maintenance allowance on the basis of cleaners

7 15:17:07 and effectively a foreman or security person, assuming

8 15:17:13 some ongoing involvement.

9 15:17:17 My point is I don't think the deduct here will be

10 15:17:19 a big deduct. Can I hand on heard say exactly what it

11 15:17:23 is this? No. By I've tried to assess what the deduct

12 15:17:29 might be. Mr Olwagen doesn't engage in Hadeed's

13 15:17:33 deduction that they bring forward. He always paints it

14 15:17:38 into the too difficult to look at it. I think we could

15 15:17:40 have done something with this. He didn't engage figures

16 15:17:43 as figures, he was unable to value.

17 15:17:44 I believe I got one more slide, unless I'm wrong.

18 15:17:52 Again, I'm on oath. I will say this to you. It's

19 15:17:57 a difficult one. This is a tricky thing to assess in

20 15:18:01 terms of what were the extra over third-party costs be

21 15:18:07 if you're in the Hadeed position that you've got to work

22 15:18:10 out what is the extra over cost?

23 15:18:13 But what I would say is the likes of Caterpillar and

24 15:18:19 organisations that are pretty unique, almost monopoly

25 15:18:28 type maintenance of things like this, they don't come

1 15:18:33 cheap when you outsource them. It's as simple as that.

2 15:18:37 They are expensive. That will be true with regard to

3 15:18:40 the labour and with regard to the parts and I'll come

4 15:18:44 oning to the parts in a seconds.

5 15:18:47 The broad difference between us on the labour, so

6 15:18:50 this first slide is about the labour, is how do you

7 15:18:54 compare the labour.

8 15:18:57 What Mr Olwagen does in his hearing presentation,

9 15:19:00 it's the first time that I've seen it, is he looked at

10 15:19:04 the invoices that have been rendered by Al-Bahar, but he

11 15:19:10 only picks up the labour, where it says labour.

12 15:19:13 The difference between us and it's not perfect,

13 15:19:17 because the breakdown of the invoices doesn't give you

14 15:19:20 the granularity, is I can see the labour that is said to

15 15:19:26 be labour, but in other items, such as the

16 15:19:29 reconditioning of even agains, Mr Olwagen regards the

17 15:19:34 reconditioning of engines as not having any labour in

18 15:19:38 them, but they must have labour this them. It's

19 15:19:41 a labour intensive activity.

20 15:19:43 Can we, on the face of the invoice, add few exactly

21 15:19:47 what's in an amount which just says re conditioning?

22 15:19:50 Neither of us can. But what I've done is I've said

23 15:19:53 logically re considering must involve labour. Just

24 15:19:57 because you've got labour elsewhere doesn't mean that

25 15:19:59 that item wouldn't have labour in it.

1 15:20:03 That is why you have 49, according to the latest

2 15:20:06 analysis, 49 per cent compared with 85 per cent.

3 15:20:10 Because I think labour would be in the other items.

4 15:20:12 The calculation here then tries to work out the

5 15:20:20 differential rate in labour. Depending on how much

6 15:20:22 labour you say is in the invoices, you can work out on

7 15:20:27 the Al-Bahar rate at \$165, how much there is in terms of

8 15:20:32 hours and then you can apply the extra over rate to it,

9 15:20:37 to assess the extra over cost.

10 15:20:40 Sorry, I think I'm over running, but the final

11 15:20:46 slide, which is the second part of the conversation with

12 15:20:55 regard to Al-Bahar, which is depending what you do with

13 15:20:58 the labour, the balance of the conversation is that

14 15:21:05 which is in ^ in the consumables and this is broadly

15 15:21:14 parts, mileage. Depending on what you allow -- and I've

16 15:21:20 run the two alternatives on the 85 per cent or Boultonwood

17 15:21:24 on 50 per cent, so they got figures as figures.

18 15:21:28 You're left with a balance for the consumables

19 15:21:30 that if you're on 85 per cent, it's around 369,000

20 15:21:34 that's in the consumables or if you're run the

21 15:21:39 50 per cent or the 49 according to Mr Olwagen, circa

22 15:21:44 1.2 million, I think the point for me is that that would

23 15:21:48 be cost which would have a consumable cost if Altaqa

24 15:21:52 were to do it themselves.

25 15:21:54 But the point is that you're buying from a firm like

1 15:21:57 Caterpillar and it's likely to be at a premium and it's

2 15:22:00 bounds to have mark-ups, sales mark-ups, purchase

3 15:22:03 mark-ups and they will want to make money through those

4 15:22:07 consumables.

5 15:22:08 Can I tell you how much there is? I don't know,

6 15:22:10 because I don't have the transparency of their figures.

7 15:22:14 I think, Madam Arbitrator, that's the end of my

8 15:22:16 presentation.

9 15:22:18 SOLE ARBITRATOR: Thank you, Mr Boulwood.

10 15:22:27 I think this would be a good time for a 15-minute

11 15:22:29 break.

12 15:22:33 It is 15.22, let's come back at 35. Would that be

13 15:22:40 enough time?

14 15:22:43 MR SULEMAN: If we could do 40.

15 15:22:45 SOLE ARBITRATOR: We'll be back at 15.40. As I've told

16 15:22:48 other witnesses, Mr Boulwood, you're sequestered, so

17 15:22:52 please do not discuss the case or your testimony until

18 15:22:55 we come back and you remain under oath. Thank you.

19 15:22:59 (3.23 pm)

20 15:23:02 (A short break)

21 15:23:04 (3.40 pm)

22 15:40:48 SOLE ARBITRATOR: Mr Boulwood, we're back on the record and

23 15:40:50 you remain under oath and I trust since I saw you

24 15:40:53 sitting here, that you have not had any discussion about

25 15:40:55 the case with anyone.

1 15:40:58 WITNESS: Correct.

2 15:40:58 SOLE ARBITRATOR: Thank you.

3 15:41:00

4 15:41:00 Cross-examination by Mr Suleman

5 15:41:05 MR SULEMAN: Good afternoon, Mr Boulwood?

6 15:41:06 Good afternoon.

7 15:41:12 Q. What I propose do is not go through the points on which

8 15:41:16 you and Mr Olwagen agree. I think it's clear from the

9 15:41:20 joint statement that on some of the aspects of where

10 15:41:25 you've taken a different approach, but arrived

11 15:41:28 essentially at the same figures and Mr Olwagen explained

12 15:41:31 his approach and I can see from the joint statement,

13 15:41:33 your approach. But when you're arrived at the same

14 15:41:36 figure, I propose not to go into that, because it's

15 15:41:39 clear how you've approached it differently.

16 15:41:41 But what I'm going to start with is something you

17 15:41:47 addressed in your PowerPoint slides ^^ this is the

18 15:41:52 transportation costs. This is slide E518, page 16.

19 15:42:14 You explained why you took a different approach when

20 15:42:17 it came to the generators under Hadeed's prolongation

21 15:42:22 claim and those under Altaaqa's one of your explanations

22 15:42:28 was essentially in Hadeed had to use generators under

23 15:42:31 the contract in any event, but the contract, as you

24 15:42:36 knowings was for a 12-month period. How were you ating

25 15:42:40 for the use of the generators beyond the initial

1 15:42:45 12-month period?

2 15:42:47 A. The point would be that if generators are connected with

3 15:42:52 the works, so task related generators, they would be

4 15:42:55 connected with undertaking the works, whereas if they

5 15:42:59 are time related generators, they, in principle, could

6 15:43:05 be prolonged. It really depend on evidence as to what

7 15:43:07 the generators are doing. How do I account for it? It

8 15:43:17 depends ^^.

9 15:43:17 Q. We can see on the screen there your calculations. You

10 15:43:21 explained why you were making -- essentially

11 15:43:27 depreciation of the figures and you explain the basis on

12 15:43:30 which you were doing that. Was that because you didn't

13 15:43:32 have the invoices for the generators, the actual

14 15:43:39 figures?

15 15:43:39 A. Sorry, the depreciation is based on an assessment of

16 15:43:47 what a generator had it been owned, would have cost in

17 15:43:51 terms of a depreciation rate.

18 15:43:54 Q. But my question is --

19 15:43:56 A. It's not relevant to invoices. The claim ^^ for the

20 15:44:01 transportation costs is to bring forward generator

21 15:44:05 invoiced costs and to the extent that those have been

22 15:44:09 brought forward by Mr Olwagen, we have the evidence, we

23 15:44:13 have the run rate for rental of generators. My point is

24 15:44:17 a slightly different one, which is should, in an overrun

25 15:44:21 period, the employer pay for general ray for, if it

1 15:44:27 should have been assumed that a competent contractor

2 15:44:31 would come along with its own equipment. That was the

3 15:44:34 point I was raising.

4 15:44:35 I wasn't querying the invoices for the generators.

5 15:44:39 Q. We do in fact have those invoices you can take a quick

6 15:44:42 look at those, N17 #, please. These are some of the

7 15:44:53 invoices I'm sure you've seen these before.

8 15:45:03 You don't query those figures, you don't query that

9 15:45:07 they in fact relate to what ^^ state on their face on

10 15:45:10 the face of the documents. As I understand, your

11 15:45:15 explanation is we shouldn't regard the invoices at face

12 15:45:19 value for the reason that you're explained?

13 15:45:20 A. No, it's not what I'm saying. What I'm saying is that

14 15:45:24 the invoices on the screen, which is a connected company

15 15:45:27 we know that from the accounts information that we

16 15:45:31 learnt if Mr Olwagen's hearing presentation, Tazweed is

17 15:45:34 a connected company and it's renting equipment to the

18 15:45:40 connected company, which is Hadeed Dubai. So this is

19 15:45:43 rental of equipment, but it could well be equipment

20 15:45:47 that's owned by Tazweed, another part of the teed group,

21 15:45:52 but it's been charged at rental rates.

22 15:45:55 Tazweed could have provided the underlying purchase

23 15:46:00 information associated with this. So what you have is

24 15:46:02 the classic situation of an internal hire company hiring

25 15:46:07 equipment at rental rates to its sister company. What

1 15:46:11 I'm saying is that's a cosy arrangement if you can get

2 15:46:16 those rental rates.

3 15:46:28 Q. We can see your calculation of Altaaqa's cost of

4 15:46:37 generators, that comes to roughly 1.3 million?

5 15:46:42 A. I could check, but I could double-check, but I take your

6 15:46:46 word for it.

7 15:46:47 Q. The figure you come for Altaaqa's cost to generators is

8 15:46:50 the same as the entirety of Hadeed's prolongation costs,

9 15:46:55 which is for a longer time period.

10 15:46:58 A. Again, I could check. I don't know off the top of my

11 15:47:04 head the comparable values of the claim, so perhaps we

12 15:47:07 should check that. But if you want me

13 15:47:10 to -- (overspeaking) -- ^^ work on the basis of thats

14 15:47:11 songs, I could, if it speeds things up. But we should

15 15:47:14 really check, I expose.

16 15:47:16 Q. Absolutely. They're set out in the -- well, your

17 15:47:21 generator ago settlements for Hadeed are in your

18 15:47:23 PowerPoint slide, the one that we just looked at,

19 15:47:27 Altaaqa's generator costs are in the joint statement?

20 15:47:30 A. I haven't memorised them.

21 15:47:37 Q. The next -- I think looking at your -- the joint

22 15:47:40 statement as a whole, the main issue at which there's

23 15:47:42 a very big difference in the valuation between

24 15:47:46 Mr Olwagen and yourself, is that related to overheads?

25 15:47:58 A. That's correct.

1 15:48:02 Q. Mr How took Mr Olwagen to the various contractual

2 15:48:05 provisions and he put the question that there was no

3 15:48:08 provision for overheads. I'm not proposing to take you

4 15:48:12 through the contract. What I'm going to suggest to you,

5 15:48:18 and you may say this is outside your expertise, as

6 15:48:21 Mr Olwagen did, that under UAE law, there would be

7 15:48:25 a basis for claiming overheads and that's the basis on

8 15:48:27 which you and Mr Olwagen carried out your assessment?

9 15:48:30 A. I'm not going to comment on the law.

10 15:48:33 Q. The basis on which and Mr Olwagen decide to carry out

11 15:48:36 these assessments was because essentially that's

12 15:48:38 Hadeed's pleaded case, and as quantum experts, you're

13 15:48:42 carrying out an assessment of ^^ pleaded cases nothing

14 15:48:46 more, nothing less?

15 15:48:49 A. It's a topic that the quantum experts are valuing on the

16 15:48:53 basis that a claim is made for time and one of the

17 15:48:57 species of costs is time related head office overheads,

18 15:49:01 which are essentially off site overheads. So on that

19 15:49:05 basis, I've engaged in the topic.

20 15:49:12 Q. If we could have a look now at E50, page 7. This is the

21 15:49:19 joint statement.

22 15:49:49 Forgive me, it's E50, page 57.

23 15:49:57 We can see there the agreement that both of you

24 15:50:07 agree on the formula and you both agree that it's

25 15:50:13 a prerequisite that unabsorbed head ^ck reading...) lost

1 15:50:17 an opportunity to work on other projects." ^doc?

2 15:50:19 A. Yeah, typically, that paragraph says that, but it needs

3 15:50:24 to be read together with all of my other evidence and

4 15:50:28 hopefully it's pretty clear that the evidence I've given

5 15:50:32 throughout and today at this hearing, I still maintain,

6 15:50:37 that in act door dance with the RICS guide, in

7 15:50:39 accordance with SCL principles, you should work out

8 15:50:46 common central connected overhead that's incurred in

9 15:50:48 a head office and use of any of the formulas is a last

10 15:50:56 re sort. It should be viewed this that context, ^^ that

11 15:51:05 we shouldn't really

12 15:51:06 be in that space.

13 15:51:07 To the extent that that's all you're left with, you

14 15:51:10 can work with a formula. My preference is Eichleay, but

15 15:51:15 Mr Olwagen engaged with Emdens and if we're using

16 15:51:18 formula, we can use formula. But we know that a formula

17 15:51:25 is just what it says. It calculate aciformla, it

18 15:51:29 generates a number. How on earth it connects to that

19 15:51:32 which was incurred as sustained overhead that was

20 15:51:36 working on the project, nobody knows. It's just a last

21 15:51:40 re sort calculation. But you can run figures on I, as

22 15:51:47 quantum figure experts do.

23 15:51:49 Q. If you have a look ^^ it's E518, slide 7.

24 15:52:28 In your assessment, you set out, you explain this

25 15:52:32 especially in your presentation, you explain that the

1 15:52:34 revenue that you were calculating was on the basis of

2 15:52:38 32 million, you said, for a is the month period. I'll

3 15:52:41 turn to the subsequent 197yap slides in which you

4 15:52:44 address this ^?

5 15:52:47 A. Not wishing to be rude, that's quite a general question.

6 15:52:52 The use of the 32 million is -- it can be two things.

7 15:52:59 It can be the circa number for the contract sum in the

8 15:53:04 beginning and the spends number terms of the value of

9 15:53:09 work done at termination. You would have to be a bit

10 15:53:13 more specific about what you're asking

11 15:53:16 me, -- (overspeaking) -- ^^.

12 15:53:17 Q. Absolutely, I turn to the question now. What I'm trying

13 15:53:19 to understand is your evaluation of overheads, as

14 15:53:24 I understand, you assess the revenue as 32 million,

15 15:53:29 that's what you set out in your presentation?

16 15:53:34 A. Sorry, it's the same answer. It's too vague for me to

17 15:53:39 add anything more than I said on the previous answer.

18 15:53:41 Q. Okay. My question to you is going to be this. This was

19 15:53:45 what Mr Olwagen addressed. Mr Olwagen explained that

20 15:53:48 over the three-year period, his assessment is on three

21 15:53:52 years of revenue rather than one year and he's saying

22 15:53:55 the relevant period for prolongation looking at

23 15:53:58 overheads is looking at the three years effectively it

24 15:54:01 will be 96 million.

25 15:54:03 A. That's not correct. We've both used emdones on exactly

1 15:54:06 the same number of day that is feeds into the Emdens

2 15:54:08 formula.

3 15:54:16 Q. If we look at slide 11 over the page.

4 15:54:55 You looked at a five-year period, we can see from

5 15:55:00 the figures there, 2015 to 2019. I take your point.

6 15:55:06 You've added there on the side you're referring to Abu

7 15:55:08 Dhabi rather than Dubai entity?

8 15:55:14 A. Well, we should have had the Dubai accounts. All we've

9 15:55:18 got to work with is five years of accounts that were

10 15:55:23 produced in relation to the Abu Dhabi entity.

11 15:55:29 I complained about that in the first report, but this is

12 15:55:32 data from the Abu Dhabi account.

13 15:55:37 Q. Hadeed's claim, as you know, is pleaded on the basis

14 15:55:41 that the losses were incurred at the Abu Dhabi

15 15:55:48 headquarters, which are then effectively felt by the

16 15:55:52 Dubain'ty. That's the basis on which the case is

17 15:55:55 pleaded?

18 15:55:55 A. I think pleading something and then independently

19 15:55:57 checking something are two completely different things.

20 15:56:01 You have to have the evidence to perform the checks.

21 15:56:08 Q. I'll come back to this in a moment. Could I, for the

22 15:56:11 time being, go to the considerations surrounding --

23 15:56:16 I think this is again where there's quite a lot of

24 15:56:18 difference between Mr Olwagen and yourself when it comes

25 15:56:21 to the counterclaims.

1 15:56:28 Because Mr Boulwood, particularly the -- forgive

2 15:56:34 me, I'm just finds doing page reference. (Pause).

3 15:57:01 This is particularly E50-104. If we go four

4 15:57:15 paragraphs down. Would you be able to give a brief

5 15:57:29 summary of your discussions with Mr Shamsi?

6 15:57:33 A. On the rental facilities?

7 15:57:35 Q. Yes.

8 15:57:35 A. I can do, yes. Broadly, the discussion around the

9 15:57:40 rental facilities, we have agreed the costs that have

10 15:57:48 been incurred in terms of expenditure post-termination

11 15:57:51 by Altaaqa on the rental.

12 15:57:57 The one that I mentioned in the hearing presentation

13 15:57:59 is that -- I can never remember the full name of it, but

14 15:58:04 modern ran -- I can't remember. But anyway, that

15 15:58:07 particular one Mr Olwagen looked at the contract and

16 15:58:16 checked the rate per metre squared in the contract and

17 15:58:20 he applied it to the area that ^^ was a certificating

18 15:58:28 and he did a calculation on a monthly basis that

19 15:58:32 revisited evaluation of the monthly amount that had been

20 15:58:35 paid by Altaaqa. So that was one of the variables.

21 15:58:43 Then if we're going on to the generator and fuel

22 15:58:46 costs, the only issue that was between us in terms of

23 15:58:51 expenditure was the certain fuel costs arose prior to

24 15:58:56 a certain date, Mr Olwagen questioned whether those

25 15:59:01 amounts should be attached, cause and effect wise, to

1 15:59:06 the claim.

2 15:59:07 In terms of the expenditure, there's a few

3 15:59:09 differences between us. The big challenge is that on

4 15:59:15 the Hadeed defence position, which is that there should

5 15:59:17 be a deduct, the question is what if the facility had

6 15:59:23 been completed on time and thus avoided the rental cost?

7 15:59:29 What would the running costs of the Hadeed facility cost

8 15:59:34 to provide these storage areas and the yards, to which

9 15:59:38 Mr Olwagen raises the point, but doesn't put a figure on

10 15:59:42 it. Whereas I make an assessment of some maintenance

11 15:59:46 costs and some cleaning costs and I provide a deduct,

12 15:59:53 jurisdiction as an assessment.

13 15:59:54 Q. When did you meet Mr Shamsi?

14 15:59:56 A. When?

15 15:59:57 Q. Yes.

16 15:59:58 A. I didn't meet him in person. When this was raised,

17 16:00:01 I did ask Mr Shamsi via a teams telephone conference, it

18 16:00:06 was about 20 minutes long and I said one of the

19 16:00:10 questions that's been raised in the Hadeed defence is

20 16:00:17 have you got any ongoing costs, to which the answer was

21 16:00:22 none. That was the answer that he gave. I said, well,

22 16:00:25 presumably there's some maintenance or upkeep or

23 16:00:28 sweeping the yard or something, so I made an allowance

24 16:00:31 to try to engage with the case that Hadeed were asking

25 16:00:35 what would the costs have been had the new facility been

1 16:00:38 built. I think it calls to about -- I can't remember

2 16:00:41 now, but about 350,000 as a deduct.

3 16:00:43 Q. Did he provide any documents to you to support --

4 16:00:47 A. No -- (overspeaking) -- ^^.

5 16:00:47 Q. Did you ask for anything?

6 16:00:49 A. I did ask, is there anything associated with the running

7 16:00:52 costs, any operating accounts or anything similar, any

8 16:00:58 invoices, any charges? Would there be an insurance

9 16:01:02 policy? I did ask is there anything on that? But

10 16:01:05 again, we were late in the day on the joint process, so

11 16:01:08 I did ask for that. I was given nothing. ^^.

12 16:01:12 Q. This was fairly recent, this was just before the joint

13 16:01:14 statement; is that right?

14 16:01:16 A. Literally --

15 16:01:17 Q. -- (overspeaking) -- ^^?

16 16:01:18 A. I think that occurred -- if we served joint statement on

17 16:01:20 the Tuesday, I think it was around the Wednesday of the

18 16:01:23 previous week.

19 16:01:24 Q. Did you offer plough the opportunity to speak to

20 16:01:27 Mr Shamsi?

21 16:01:27 A. I was getting no document, so I didn't, no.

22 16:01:31 Q. Your assessment is based entirely on a private

23 16:01:33 conversation you had with Mr Shamsi at which you take at

24 16:01:37 face value?

25 16:01:38 A. The Shamsi conversation gave me nothing in terms of any

1 16:01:42 information that would inform an assessment, so

2 16:01:46 I theorised with regard to what the cleaning of the yard

3 16:01:49 would be and what a brand new facility maintenance cost

4 16:01:54 would be. I would expect a facility like this to have

5 16:01:57 a life cycle of, you know, decades. So, you know, in

6 16:02:02 terms of the costs of a brand new facility, particularly

7 16:02:06 bearing in mind that pot of that would have been under

8 16:02:09 a defects liability as well.

9 16:02:13 Q. You may have heard a great deal was made about one party

10 16:02:15 having access to some information that another doesn't.

11 16:02:19 A. I was provided with no information.

12 16:02:21 Q. But you had a discussion with Mr Shamsi on which --

13 16:02:24 A. But -- (overspeaking) -- ^^?

14 16:02:26 A. Not information. I was provided with a discussion and

15 16:02:31 no information was provided.

16 16:02:33 Q. And your --

17 16:02:34 A. If I had received information, I would have provided it

18 16:02:37 to plough, but actually, the conduct of the joint

19 16:02:39 statement was something that I was trying to close down

20 16:02:43 and plough was bringing forward new analysis, further

21 16:02:47 opinion, et cetera, et cetera, and I didn't think it was

22 16:02:52 something that particularly as we're already

23 16:02:54 overrunning, that I was going to expand upon a further

24 16:02:57 analysis. I had no further documents. So I did my best

25 16:03:02 in the absence of any information.

1 16:03:12 Q. There's only ^^ key disagreement, fluctuation is another

2 16:03:14 issue on which there's significant disagreement. You

3 16:03:18 would have heard Mr Olwagen's explanation to Mr Howells'

4 16:03:21 questions on this. Correct ^^ is that your position is

5 16:03:29 effectively it's Altaaqa who incurred the cost, for

6 16:03:32 example, when it comes to concrete and it's charged back

7 16:03:37 to Hadeed. Altaaqa are not Hadeed's costs

8 16:03:43 ^^ -- (overspeaking) -- ^^ simplifying?

9 16:03:44 A. No, it's just wrong, actually. ^ ^ find it in any first

10 16:03:54 report, is that if quantum experts are to examine the

11 16:03:58 costs of inflation in a contract, you would look at the

12 16:04:05 cost literally demonstrable by an invoice during the

13 16:04:08 contract period with similar purchase for exactly the

14 16:04:12 same material at a later date, compare those two

15 16:04:17 invoices, hopefully or presumably via the very same

16 16:04:20 supplier and see if there's a differential in the

17 16:04:22 purchase rate. That is the method.

18 16:04:24 Again, late in the day, and something that's not

19 16:04:28 been opined upon in extant report, we have three the

20 16:04:32 presentation of Mr Olwagen, a new theory about charge

21 16:04:35 back. I've not considered it. It's something that's

22 16:04:37 been made during the course of this hearing, so to the

23 16:04:40 extent that that is something that's now been asked for

24 16:04:44 opinion on, I'm learning an evolving opinion. I've

25 16:04:49 never expressed an opinion on that.

1 16:04:58 If we look at your slides, E518, slide 18.

2 16:05:25 Particularly, the section you've got there, second

3 16:05:27 bullet point,.Qua have paid for the purchases upon which

4 16:05:31 Mr Olwagen seeks Hadeed inflation." ^doc?

5 16:05:36 A. Sorry, you haven't asked a question.

6 16:05:37 Q. My question is reason ^ suggesting it's Altaaqa who have -- (overspeaking) -- ^^?

7 16:05:45 The backcharge point I've not considered. It's exactly

8 16:05:49 right, that this slide is showing that on

9 16:05:53 9 November 2018, quite a long period on, the payment has

10 16:05:58 been made by Altaaqa Alternative Solutions and it's just

11 16:06:02 a point that the payment of the red box invoices is

12 16:06:09 something that in terms of who suffered the inflation,

13 16:06:12 paying those invoices, it was clearly paid by Altaaqa

14 16:06:16 and they absorb the inflation through that payment.

15 16:06:20 Q. Altaaqa are deducting that effectively from Hadeed, are

16 16:06:24 they not?

17 16:06:25 A. I've never considered this in any of my opinions. It's

18 16:06:28 something that's new to me. I would need to have time

19 16:06:31 to consider and form an opinion on whatever this is.

20 16:06:36 It's not been something I've formed opinion on.

21 16:06:38 Q. It's something Mr Olwagen has formed an opinion on?

22 16:06:42 A. Late in the day and through his hearing presentation,

23 16:06:45 yeah.

24 16:06:46 Q. Is it something you should have formed an opinion on?

25 16:06:49 A. I've not considered it -- (overspeaking) -- ^^ I've not

1 16:06:51 considered it.

2 16:06:54 Q. Why not?

3 16:06:57 A. Late in the day and I'm something that I'm just learning

4 16:06:59 about.

5 16:06:59 Q. Why was it not for you to consider independently of

6 16:07:02 anything Mr Olwagen is ^^ didn't you have to consider if --

7 16:07:07 A. The usual scheme of things is that you exchange reports,

8 16:07:11 you go into a joint process, on extant opinions, you

9 16:07:16 narrow opinions on opinions that are on the record and

10 16:07:19 that you don't have an evolving opinion that late in the

11 16:07:23 day, sat here before Madam Arbitrator I'm asked to

12 16:07:26 consider something that Mr Olwagen has now considered

13 16:07:28 for the first time. All I'm saying is you've asking me

14 16:07:32 to make a rushed opinion about something I've not

15 16:07:35 considered and I'm uncomfortable doing that.

16 16:07:38 Q. Isn't the issue this, that throughout -- we can see

17 16:07:41 a theme throughout the reports, is that for example,

18 16:07:43 when it calls to transportation costs, you made exactly

19 16:07:46 the same point, Mr Olwagen you said formed an opinion

20 16:07:49 later ^^ independently form an opinion on these issues

21 16:07:54 as an independent expert in this matter. You don't have

22 16:07:56 to wait for Mr Olwagen to form an opinion and then you

23 16:07:59 counter that opinion?

24 16:08:01 A. The second report of Mr Olwagen with regard to the

25 16:08:05 transportation said that we would look at it in joint

1 16:08:08 process and I would have been happy if that had been

2 16:08:13 explored on day 1 I don't was to trance guess the ^^

3 16:08:18 supported on day 1 rather than Mr Olwagen working

4 16:08:21 through the weekend, after an extended date, and

5 16:08:24 dropping that analysis on me on the day before the

6 16:08:28 Tuesday and I didn't even get provided with the analysis

7 16:08:32 until we were signing the reports.

8 16:08:35 So it was late in the day, should I I have looked at

9 16:08:38 it? In order gnarl, I would expect the quantum expert

10 16:08:43 that's closest to the particular side to make the

11 16:08:46 running on topics, it was left that Mr Olwagen was going

12 16:08:50 to bring it into the joint process and frankly, it could

13 16:08:53 have been examined in Mr Olwagen's first report in his

14 16:08:57 first report, Mr Olwagen didn't consider any of the

15 16:08:59 running costs, which frankly is quite extraordinary. He

16 16:09:03 left all of that until his second report and then he

17 16:09:07 didn't look at the bringing forward of the information

18 16:09:10 and the examination of the transport costs.

19 16:09:12 So you can blame me for doing late to the party, but

20 16:09:16 there's also a theme that this is a late and evolving

21 16:09:21 prolongation cost. Most quantum experts would have put

22 16:09:23 all of this on the table in the first report.

23 16:09:32 Q. We can see Mr Olwagen's analysis at least E50, page 60,

24 16:09:38 please. Further down the page, we've got a very

25 16:09:56 detailed analysis from pl. This is your opinion is

1 16:10:04 effectively I don't have enough time to form a view?

2 16:10:10 A. Sorry, which topic?

3 16:10:12 Q. I think it's exactly what you say there. I'm simply

4 16:10:14 reading what you've said there, you have not understood

5 16:10:16 I can even a view, new analysis that you haven't effect

6 16:10:20 had time to consider ^^?

7 16:10:22 A. Only given a few hours and you haven't been given the

8 16:10:25 analysis, is it not dissimilar to what Mr Olwagen did

9 16:10:29 with regard to third party charges? Same same.

10 16:10:31 Q. This was on 4 September we are now on 20 September, you

11 16:10:35 still dot no have the opportunity to form a view on any

12 16:10:38 of this?

13 16:10:39 A. Sorry, on what?

14 16:10:40 Q. On this, on the issue that we're considering?

15 16:10:42 A. What issue are we talking about.

16 16:10:44 Q. The one that we've been speaking for the ^^?

17 16:10:47 A. Transportation costs.

18 16:10:48 Q. On Altaqa paying for things which you addressed in your

19 16:10:52 slides, the slides we went to a moment ago, your

20 16:10:56 slide --

21 16:10:56 A. I'm not going to be pushed to form an opinion on

22 16:11:00 something which I have not considered. I can't help

23 16:11:03 you. I'm sorry.

24 16:11:04 Q. I won't address that any further. My point is simply

25 16:11:06 that you've avoided dressing this in the joint statement

1 16:11:11 ^ on the page that we're looking at. Mr Olwagen

2 16:11:13 addressed it today. You were cross-examined on it tot

3 16:11:16 ^^ at some length, but you still are not in a position

4 16:11:20 to form an opinion on this?

5 16:11:21 If you want me to kind of shoot from the hip on a view,

6 16:11:24 I've lend to what's occurred today and I any it's a bit

7 16:11:28 of a su real world, is this is a surreal world where the

8 16:11:32 employer pays for things that originally the contractor

9 16:11:40 Hadeed should have paid for themselves, step in and pay

10 16:11:43 those and then after the event, get challenged for the

11 16:11:51 inflationary costs. If you're asking me to form an

12 16:11:54 opinion on that and if you ask me to run figures as

13 16:11:57 figures, I could. But I think what I will be saying is

14 16:12:02 there will be also a conversation that having theed in

15 16:12:09 to fund virtually 50 per cent of the project, in terms

16 16:12:11 of direct purchases, there's a funding spends to do with

17 16:12:15 financing amount of purchases which you would probably

18 16:12:21 set off against this claim.

19 16:12:24 And here we are in an evolving word in the hearing,

20 16:12:27 be if ^^ you would again to look at it in the round,

21 16:12:30 that money doesn't get free issue and you would have to

22 16:12:33 set off the funding of making those purchases against

23 16:12:37 this very odd thing that there's a backcharge now for

24 16:12:39 inflation that arose from Altaaqa helping out on

25 16:12:43 cashflow.

1 16:12:44 Because what we're talking about here is inflation

2 16:12:47 extra over cost of purchases. Fine. There's a cost

3 16:12:50 associated with that. No doubt. But there's also an

4 16:12:55 expense, which the employer is being put to, which is

5 16:12:57 that they are funding out of the balance sheet of the

6 16:13:01 employer, funding purchases and if you want to look at

7 16:13:07 these things, there is a connected consequence for the

8 16:13:11 employer.

9 16:13:11 Q. Isn't the point exactly this, that Mr Olwagen explained

10 16:13:13 that the funding was passed on. The cost is passed on

11 16:13:17 to Hadeed?

12 16:13:18 A. No, no the inflation -- you're talking about the

13 16:13:20 inflation, aren't you?

14 16:13:21 Q. Yes. Not the understanding. I'm talking about the

15 16:13:23 funding you're talking about the inflation.

16 16:13:25 Q. But the costs incurred here, the costs incurred by

17 16:13:29 Altaqa, they have been passed on to Hadeed?

18 16:13:32 A. I'm not looked at this. But my point was that if I were

19 16:13:36 to look at it, there's also the connected point if we're

20 16:13:40 stepping into this world of purchases weren't a favour,

21 16:13:44 which is effectively what this inflation is now being

22 16:13:48 positioned as, as a backcharge. Then you've got

23 16:13:53 a connected point, which is there was also a benefit

24 16:13:56 that cashflows were assisted and that wasn't the

25 16:13:59 original regime under the contract. The original regime

1 16:14:01 was that Hadeed would fund and pay for all of its

2 16:14:05 subcontractors, so there's a connected quid pro quo in

3 16:14:08 that equation.

4 16:14:29 Q. This is just my final question. We'll park this after

5 16:14:31 this question. In terms of the costs -- and

6 16:14:35 I appreciate you said you're having to consider this for

7 16:14:38 the first time today, despite it being Mr Joint

8 16:14:41 statement. The costs incurred by Altaaqa here are

9 16:14:48 essentially the same costs that would otherwise have had

10 16:14:50 to directly pay Hadeed. They would have paid Hadeed,

11 16:14:54 Hadeed would have costed ^^ what's happened is they're

12 16:14:57 paying Altaaqa ^^ directly paying the suppliers and

13 16:15:03 deducting it from the money that it would have otherwise

14 16:15:06 have paid Hadeed?

15 16:15:09 A. Sorry, the question is too general for me to understand

16 16:15:12 it.

17 16:15:13 Q. I'm not going to push it any further than this. The

18 16:15:15 costs here, the reason you say that the fluctuation

19 16:15:19 can't be --

20 16:15:20 A. Sorry, are you talking about Altaaqa's counterclaims or

21 16:15:23 fluctuations.

22 16:15:24 Q. Fluctuation. This is the page we're currently on.

23 16:15:27 A. Okay, because you did talk about at one point, Altaaqa's

24 16:15:29 claims. I think. Copy look at the transcript --

25 16:15:32 -- (overspeaking) -- ^^ I'm just getting confused

1 16:15:34 Q. Page E50-60. The one that's on the -- sorry, the one
2 16:15:43 that's in front of you. That's the page we're on.
3 16:15:45 A. Is this is still the fluctuations.
4 16:15:47 Q. Yes.
5 16:15:48 A. Okay.
6 16:15:49 Q. I'm not sure where the confusion is. I appreciate
7 16:15:53 Mr Boulwood, if you're not in a position to answer the
8 16:15:54 questions, because you haven't considered this, I'm
9 16:15:57 happy to park this here. I don't wish you to say
10 16:15:59 anything that you're not -- (overspeaking) -- ^^?
11 16:16:02 A. Ask me the question -- (overspeaking) -- ^^.
12 16:16:04 Q. The question was that the costs that you say Altaaqa
13 16:16:07 incurred and that you have addressed -- again, we can go
14 16:16:11 to your slides, because you've addressed this in your
15 16:16:15 slides.
16 16:16:17 A. The backcharge point I haven't addressed in my slides.
17 16:16:20 If you're still on the backcharge point.
18 16:16:22 Q. We're on E518, page 18. We're on the second bullet
19 16:16:28 point. Your position remains nil value because it's
20 16:16:32 Altaaqa who have paid for the purchases.
21 16:16:38 A. My primary position on nil value is that in terms of the
22 16:16:42 analysis and the methodology, an actual cost methodology
23 16:16:48 should have been done. The west that was done by
24 16:16:51 Mr Olwagen after my prompting this in my first report,
25 16:16:53 was that in the QJS 1 process, for the first time,

1 16:16:59 Mr Olwagen engaged in the methodology that I proposed,

2 16:17:01 which is that we compare early invoices with late

3 16:17:05 invoices to establish differential invoice cost.

4 16:17:11 My position is, at best, Mr Olwagen and to his

5 16:17:14 credit he admit, ^^ done a minimal sampling of one

6 16:17:18 species of cost for concrete grads ^^ to around 40,000

7 16:17:28 dirhams and and I think for me, the it shows the 900-odd

8 16:17:32 on the statistical UAE index is out of the wall park.

9 16:17:36 The only evidence that's been brought forward at the

10 16:17:40 last minute in JYS is is these concrete ^^ it's around

11 16:17:45 40,000 dirhams worth of differential in cost. The

12 16:17:48 statistical analysis, which is still Mr Olwagen's

13 16:17:52 opinion in the QJS 1, he maintains the statistical Dubai

14 16:17:57 analysis, whereas my position is we should have done

15 16:18:01 this all the way along, it came along very late and to

16 16:18:04 the extent that it's been done, it demonstrates

17 16:18:09 AED40000.

18 16:18:09 If the backcharge point is a good one, it's 40,000

19 16:18:13 dirhams associated with the backcharge in terms of

20 16:18:15 demonstrable cost, but I've not investigated the

21 16:18:18 backcharge point.

22 16:18:29 Q. I want to understand the figures you've got on page E50,

23 16:18:34 page 9, 6.3. This is where you're removing those same

24 16:18:58 costs from Hadeed for the subcontractors?

25 16:19:05 A. That is correct.

1 16:19:06 Q. Isn't that exactly, when we were discussing backcharge,
2 16:19:10 isn't essentially the position where you're ^^ this is
3 16:19:13 what pl explained. You've de duct it in Hadeed and at
4 16:19:16 the same time, Hadeed are not entitled to fluctuation?
5 16:19:20 As I said at the beginning of all of this question, it's
6 16:19:22 a sur real world, isn't it, because it was entirely in
7 16:19:28 the management of Hadeed to make purchases for this
8 16:19:31 project to ^^ they could have hedged against inflation,
9 16:19:39 they could have done a number of things. So simply
10 16:19:41 saying that it's a backcharge is not the whole picture
11 16:19:45 here. There was a derogation of respond. When the
12 16:19:48 purchasing moved elsewhere, the original obligation for
13 16:19:52 purchasing, hedging against inflation, delivering this
14 16:19:56 project sat with Hadeed.
15 16:19:58 Now, there's been emerging costs that have been paid
16 16:20:02 by the employer, no doubt. But to say that through
17 16:20:08 a Dubai index, somehow there's some connectivity and it
18 16:20:12 was the questioning that counsel for Altaqa raised.
19 16:20:17 There is no analysis brought forward by Mr Olwagen, he
20 16:20:20 still relies on the Dubai statistics to the extent
21 16:20:23 they've got actual costs that might sit within this
22 16:20:26 deduction of the 17 million, we've only seen 40 dhow of
23 16:20:32 it done on a basis that might be traceable and we
24 16:20:35 haven't traced it, we haven't traced it.
25 16:20:38 At the moment, the analysis of Mr Olwagen is based

1 16:20:44 on a statistical analysis to get us to a number of

2 16:20:48 900,000. That is not extracting out the actual costs of

3 16:20:52 inflation that have been sustained through the

4 16:20:55 subcontracts. The best that we've got is a system which

5 16:20:58 that does identify around AED400,000. I can't remember

6 16:21:02 the figure. But, you know, put simply, the analysis has

7 16:21:07 not been done to do the exercise of actual cost and it's

8 16:21:11 not been done to then trace it on to the backcharge if

9 16:21:17 Madam Arbitrator would like the quantum experts to do

10 16:21:18 that exercise, I can assist, of course I can. But

11 16:21:22 I would need time to do it. But ^^ the actual cost

12 16:21:25 analysis goes to about 40,000. The stay test call

13 16:21:29 analysis just runs an index. It doesn't trace anything.

14 16:21:34 So what we've got at the moment is 40,000 dirhams

15 16:21:37 worth of concrete where we've applied the correct

16 16:21:40 method, the method I was wanting to do, has it been

17 16:21:44 traced into that 17 million? Nobody has done it.

18 16:21:48 That's where we are.

19 16:21:57 Q. Fine. I did say ^^ final question on this before I move

20 16:22:01 on. You only referred to this arrangement the invoices

21 16:22:04 have been paid direct to subcontractors as funding from

22 16:22:07 the balance sheet. Isn't this simply an arrangement

23 16:22:12 that originally was that Altaqa would pay Hadeed.

24 16:22:16 Hadeed would pay the subcontractors and there's now

25 16:22:19 a direct arrangement Altaqa are paying subcontractors,

1 16:22:22 they then deduct it essentially pass the cost on to

2 16:22:26 Hadeed. It's really frankly as simple as that, is it

3 16:22:29 not?

4 16:22:29 A. I think you missed the point. In the event that

5 16:22:32 purchases are made and then there's a correction at

6 16:22:36 a later date, the difference between when payments were

7 16:22:41 being made and a correction at a later date, there's

8 16:22:46 a lag. Somebody is making the purchases and funding

9 16:22:48 those out of their own back pocket. That's called

10 16:22:51 funding, and that's the point that I'm making, and that

11 16:22:56 has a cost. So I'm just saying, if you move into this

12 16:23:00 world, I don't know, I'll take instruction upon it.

13 16:23:03 It's not ^^ not considered it, the back charge, but if

14 16:23:05 you ask me, of course. Somebody has paid for these and

15 16:23:10 sure, there might be a balancing equation at the end,

16 16:23:13 sure ^^ extract out the invoice ^^ troughs it through,

17 16:23:17 but you need to do it with the res of it too and that

18 16:23:19 exercise has not been done. That's all I'm saying.

19 16:23:22 Q. Your assessment, you assess it as nil value is simply

20 16:23:25 because you haven't had the time to carry out the

21 16:23:28 assessment?

22 16:23:28 A. I assess it as nil value on the basis that the records

23 16:23:31 have not been brought forward and to the extent that the

24 16:23:35 records that we do have on the sampling basis were able

25 16:23:40 to be examined a methodology of actual cost, I can see

1 16:23:43 about 40,000 dirhams worst.

2 16:23:44 Q. But what we know and you will have seen this from the

3 16:23:47 documents on the record, the payments are directly

4 16:23:49 linked to payments which are certified by the engineer.

5 16:23:54 These are certified payments to the subcontractors that

6 16:23:56 have been paid out?

7 16:23:59 A. What does that mean? I don't understand where you're

8 16:24:01 going with that.

9 16:24:02 Q. Would those not be the figures you would then use to

10 16:24:05 assess costs which are being passed on to Hadeed?

11 16:24:07 A. I will try again. You coming pair the invoiced costs to

12 16:24:10 work out the differential and then you would have to

13 16:24:12 trace the invoice costs into the backcharged amount and

14 16:24:18 as I say again, that exercise has not been done to the

15 16:24:21 extent that actual cost demonstrable has been produced,

16 16:24:25 late in the day, in the joint process, I didn't even get

17 16:24:28 the analysis of Mr Olwagen until the time we were

18 16:24:32 signing it. And the best that we have is an actual cost

19 16:24:36 exercise that I've investigated because of that

20 16:24:40 lateness, between QJS 1 and in hearing, and I've given

21 16:24:45 the opinion that I can give and it's about 40,000

22 16:24:49 dirhams worth of concrete inflation.

23 16:24:53 Q. I'll park that there.

24 16:24:55 If I could take you then back to the joint statement

25 16:24:59 and final few questions on the counterclaim. This is

1 16:25:06 page E50-86 is where it starts, but really it's 87.

2 16:25:48 The figures we have here, we've got a position

3 16:25:53 whereby Mr Olwagen has reached a view that he's unable

4 16:25:55 to value those invoices. You were able to value those

5 16:25:59 invoices, how did you value those invoices? If we start

6 16:26:03 with I Ram Afghan building?

7 16:26:05 A. I think that's slightly misleading as a table because

8 16:26:08 when it came to the checking of the invoices as I said

9 16:26:11 in my hearing presentation, Mr Olwagen and I have agreed

10 16:26:17 the invoiced costs and that can be found in the joint

11 16:26:21 statement as an agreement. So I don't think the premise

12 16:26:23 of the question is correct.

13 16:26:26 Q. Forgive me, the invoices are agreed as --

14 16:26:30 A. Figures as figures, the invoiced costs, ^^ the premise

15 16:26:33 of the question is not correct.

16 16:26:34 Q. I see. So you haven't actually looked mind the

17 16:26:37 figures -- (overspeaking) -- ^^?

18 16:26:38 A. Both of us have looked behind the figures and we've ^^

19 16:26:42 figures as figures as the quantum experts.

20 16:26:44 Q. We can see --

21 16:26:45 A. There's no disagreement on invoiced costs incurred.

22 16:26:50 Where we get to disagreement is through the question of

23 16:26:56 whether there should be a deduct.

24 16:26:59 Q. We can see in your E31, page 87.

25 16:27:20 A. Sorry, which report is this?

1 16:27:22 Q. This is I believe this is your first report. Yes, it's

2 16:27:26 your first report. Paragraph 433, please, page 87.

3 16:27:50 That's where you say ^^ complete the project documents

4 16:28:00 not possible to rek size the climbed items ^reading...)

5 16:28:03 outstanding works a ^reading...) okay contract

6 16:28:07 termination." ^doc.

7 16:28:10 Essentially, if I understand correctly, you're

8 16:28:11 saying it's a matter for the tribunal and not you?

9 16:28:15 A. Sorry, 433?

10 16:28:18 Q. Yes, please.

11 16:28:19 A. Sorry, can I just read it for a second?

12 16:28:21 Q. Yes, of course.

13 16:28:30 A. I think who I would say, just to help on this one, is

14 16:28:34 the manner in which the contract was executed in terms

15 16:28:42 of the management of the works and the direct

16 16:28:46 subcontractor payments, makes tracing payment more

17 16:28:51 difficult. But what should have been done is at

18 16:28:55 termination, there should have been a walk of the site

19 16:28:58 to identify exactly what the status of the works is.

20 16:29:03 I've been involved in 20 plus termination cases. Sadly,

21 16:29:08 the contract administration often, because people are

22 16:29:13 going in different directions and falling out, there

23 16:29:15 isn't an exact record of the outstanding works. There's

24 16:29:19 not often a site walk around that's agreed.

25 16:29:23 We're in the same position here.

1 16:29:25 Q. What did you do in that event? When you're presenting

2 16:29:28 with invoices and you don't have any way to rek ^^ you

3 16:29:31 don't have any way to reconcile the items claimed

4 16:29:33 against the outstanding work, how do you quantify?

5 16:29:36 It's very difficult to trace the works back. I think

6 16:29:39 what I would say is that quantum experts are agreed that

7 16:29:42 we can't trace the works back. What I've not perhaps

8 16:29:48 said in the report is that in circumstances where you

9 16:29:54 bring in contractors to complete the works afterwards,

10 16:29:57 it's more progress tick than the costs that you have

11 16:30:01 secured to finish the whole project in competition.

12 16:30:08 I can't trace it back, but I would expect post

13 16:30:15 completion contractors to not give the tightest of

14 16:30:18 prices compared with those which were sought ^^ problem

15 16:30:23 pro just ^^ but tracing to the exam scope of work

16 16:30:28 I can't do that. And nor can Mr Olwagen. I think both

17 16:30:35 of us are unable to value in terms of that connectivity

18 16:30:39 to the works. But we do recognise the expenditure

19 16:30:44 that's been incurred.

20 16:30:50 Q. I think I anticipate your answer. You can't be sure

21 16:30:53 that those works, the costs here, don't relate to the

22 16:30:56 omissions?

23 16:30:59 A. I don't really see that as that relevant a point.

24 16:31:06 I think we have the debate in the joint statement on

25 16:31:11 this point. Mr Olwagen, I think, raises the point that

1 16:31:15 these completion works could have been the omitted

2 16:31:17 works, but I'm not sure and it may well be a legal

3 16:31:22 matter too, that that's necessarily the test. I think

4 16:31:24 the test is what works were left to be done, whether

5 16:31:28 they were in the executed directly or the executed

6 16:31:33 through subcontractors, I don't really see that that

7 16:31:36 impinges upon the primary question, which is what works

8 16:31:38 were left to be done.

9 16:31:41 Q. We can see in fact in the joint statement, E50, page 94,

10 16:31:48 please, seconds half of the page, we can see there you

11 16:31:55 set out that your position is provisional and

12 16:32:02 I assume --

13 16:32:03 A. Yeah. I cannot be sure. Hence, provisional. But it's

14 16:32:06 not unusual for a quantity surveyor to in circumstances

15 16:32:11 where there is a caveat, it's not a firm figure, it's

16 16:32:14 provisional, for the reasons we've said.

17 16:32:18 Q. Your provisional figure is the invoices that Altaaqa

18 16:32:22 have paid, effectively, or say that they have paid?

19 16:32:27 A. Correct.

20 16:32:27 Q. You can only give a final opinion once a determination

21 16:32:30 has been made by the tribunal?

22 16:32:34 A. Depending if the tribunal seeks further assistance, yes.

23 16:32:37 Q. Yes, no, of course. What I mean to say is you have

24 16:32:39 taken forward the figures we have on the table on the

25 16:32:43 first or second page, those are provisional figures

1 16:32:45 based on the invoices you have seen?

2 16:32:47 A. Correct.

3 16:32:48 Q. Effectively, the exercise you've carried a it is

4 16:32:51 tallying of the invoices and saying this is what the

5 16:32:54 figure comes to?

6 16:32:56 A. It's the expenditure that's been incurred and in terms

7 16:32:59 of whether it will be ^^ as I say, my experience is that

8 16:33:08 post contract works are generally more expensive than

9 16:33:11 the value that is left in the remaining part of the

10 16:33:15 contract. It's why actually I would disagree with

11 16:33:18 Mr Olwagen's three scenarios on post completion.

12 16:33:21 I think the one on the left-hand side of his hearing

13 16:33:25 presentation indicates that, you know, it would always

14 16:33:27 be the same. In 30 years of experience of many

15 16:33:32 termination cases, I've never seen that scenario. It's

16 16:33:36 always more.

17 16:33:51 Q. Finally on -- we touched on this, but the figures for

18 16:33:58 the rental contracts and utilities. I think we covered

19 16:34:09 the base on that. If we just finally cover ^^ in your

20 16:34:15 slides, you mentioned the costs incurred by Al bar, the

21 16:34:22 third party?

22 16:34:22 A. Sorry, which one are you on.

23 16:34:24 Q. I'll just take you to your slides?

24 16:34:26 A. Utilities?

25 16:34:27 Q. Yes.

1 null

2 null

3 null

4 null

5 null

6 null

7 null

8 null

9 null

10 null

11 null

12 null

13 null

14 null

15 null

16 null

17 null

18 null

19 null

20 null

21 null

22 null

23 null

24 16:36:31 my experience is that that description I would take as

25 16:36:36 including labour and parts. You can't reconfigure an

1 16:36:41 engine for a generator or the like without it involving

2 16:36:47 labour.

3 16:36:47 I say I should make an assessment of those items for

4 16:36:51 labour. Mr Olwagen doesn't, and that's why I'm at

5 16:36:55 85 per cent and he's at 50 per cent. That's the broad

6 16:36:59 reason behind it. But as I said in the hearing

7 16:37:01 presentation, it's tricky. It's not scientific and

8 16:37:06 accurate, but I do think it's wrong that Mr Olwagen only

9 16:37:10 extracts the labour only, because it says labour.

10 16:37:15 I think there will definitely be labour involved if

11 16:37:19 reconfiguring an engine, because it's an impossibility

12 16:37:22 to reconfigure something without there being labour in

13 16:37:26 it.

14 16:37:27 Q. You may or may -- perhaps you didn't hear the evidence

15 16:37:30 of Mr Shamsi earlier in the week, where he explained

16 16:37:35 that Altaqa did regularly outsource to Al bar priority

17 16:37:45 2016?

18 16:37:45 A. I follow the transcript, yes.

19 16:37:47 Q. You did, yes. He wasn't able to say precisely how many

20 16:37:55 in any, there was any difference between the out

21 16:37:57 sourcing to Al bar prior to 2016 and after 2016. Did

22 16:38:07 you look at any of the figures and make an independent

23 16:38:10 assessment of how much, if any, there was a difference

24 16:38:12 between the outsourcing to Al bar prior to 2016? I use

25 16:38:16 Al bar as one example, prior to to 16?

1 16:38:18 A. I'm not sure there's any evidence on the record of that,

2 16:38:23 to enable such an examination. But the answer is no.

3 16:38:43 MR SULEMAN: Thank you Mr Boulwood. Those are my

4 16:38:48 questions. Chl Mr Howells, do you have.

5 16:38:56 MR HOWELLS: No, thank you.

6 16:38:57

7 16:38:57 Questions by TRIBUNAL

8 16:38:57 SOLE ARBITRATOR: Could I ask you to walk me through the

9 16:38:59 point on the foremen that was raised substantially with

10 16:39:01 Mr Olwagen. I'm not entirely confident that I've

11 16:39:06 understood the basis on which, if the issue is relevant,

12 16:39:11 I should be considering the inclusion or exclusion of

13 16:39:14 the foremen. Can you talk me through that again?

14 16:39:19 A. Sure.

15 16:39:19 SOLE ARBITRATOR: I read the joint experts' report. I just

16 16:39:23 can't quite put my finger on the reasoning?

17 16:39:27 A. I'll try. Broadly, the question of po longed resources

18 16:39:35 has to draw a distinction between, in old parlance,

19 16:39:43 white collar and blue collar personnel. The white

20 16:39:46 collar are time related, they assist in the cabin. The

21 16:39:51 blue collar are in the field and working in the field.

22 16:39:57 The people who are working in the field are regarded

23 16:40:00 as task related. The people who are supervisory and in

24 16:40:05 the office are time related. There's basically an

25 16:40:12 organisational divide between those that quantity

1 16:40:15 surveyors regard as time related and those that are at
2 16:40:19 the workplace.
3 16:40:21 So clearly, labourers, carpenters, masons, brick
4 16:40:25 layer, whatever they might be, everyone agrees that they
5 16:40:28 are trade and labour.
6 16:40:29 The chargehand Mr Olwagen and I have agreed the
7 16:40:33 chargehand sits within the gang. The foreman will work
8 16:40:38 across work groups. So to deliver a project, there's
9 16:40:42 not just one gang. You can't have just six people.
10 16:40:46 I don't know what the headcount was on this project. So
11 16:40:48 you'll have a series of gangs and the foreman looks
12 16:40:51 across the gangs. He's out in the field and therefore,
13 16:40:56 he's task related.
14 16:40:59 What we don't have in fairness to Mr Olwagen, is
15 16:41:04 anything that tells us what was priced in the unit rates
16 16:41:10 to know what the formation of a unit rate would be to
17 16:41:14 say what was the gang and the make-up of the labour in
18 16:41:18 the unit rates for the valuation of the re-measurement
19 16:41:20 of the works.
20 16:41:21 But that is the distinction, that resources that are
21 16:41:26 in the field are getting on with the works. The foremen
22 16:41:30 are there because of the works. The site manager and
23 16:41:33 the project manager sat in the office, they're there to
24 16:41:37 see the job from the beginning till the end and they're
25 16:41:39 time related.

1 16:41:42 I don't know if that explains it.

2 16:41:45 SOLE ARBITRATOR: That is helpful. Thank you very much.

3 16:41:49 Anything else for Mr Boulwood.

4 16:41:51 MR SULEMAN: No thank you.

5 16:41:52 MR HOWELLS: No thank you.

6 16:41:53 ARBITRATOR: Thank you very much, Mr Boulwood. Your

7 16:41:56 expert reports form part of the record as well as your

8 16:41:58 oral testimony today. You are discharged as a witness.

9 16:42:01 Thank you.

10 16:42:02 WITNESS: Thank you.

11 16:42:03

12 16:42:03 (Witness was released)

13 16:42:13 SOLE ARBITRATOR: Shall we go off the record for a few

14 16:42:14 minutes to discuss timing issues and then go back on the

15 16:42:19 record so that it's not all in detail.

16 16:42:22 MR SULEMAN: Yes.

17 16:42:22 MR HOWELLS: Yes.

18 16:42:24 SOLE ARBITRATOR: We're off the record.

19 16:42:26 (Discussion off the record)

20 17:02:44 SOLE ARBITRATOR: We're going to back-to-back order record.

21 17:08:39 I'm going to record all of this. And then I'm going

22 17:09:03 to ask you the usual, my usual question

23 17:09:12 I'm going to read off what I believe we've agreed.

24 17:09:16 The parties will exchange proposed corrections to the

25 17:09:22 hearing transcripts by October 18, agreed corrections

1 17:09:26 will be submitted to Lloyd Michaux on 22 October.

2 17:09:32 The parties will submit post-hearing briefs

3 17:09:37 on November 18, no longer than 150 pages.

4 17:09:42 On November 29, the parties will submit reply

5 17:09:46 post-hearing briefs, no longer than 50 pages.

6 17:09:52 On December 13, the parties will submit their cost

7 17:09:55 submissions.

8 17:10:01 In the meantime, the claimant may raise any

9 17:10:05 objections it has to the version of the BOQ which was

10 17:10:12 emailed on 14 December 2014 by the claimant to the

11 17:10:17 respondent and which forms part of the record at

12 17:10:20 exhibits C8 through 19. The claimant may do so by

13 17:10:31 27 September.

14 17:10:35 I also wish to confirm that both parties agree that

15 17:10:40 there's no dispute about the use of time during the

16 17:10:43 hearing.

17 17:10:43 Have I omitted anything?

18 17:10:46 MR HOWELLS: No, thank you.

19 17:10:47 MR SULEMAN: No thank you thanks.

20 17:10:50 SOLE ARBITRATOR: All right. All of that said, I wanted to

21 17:10:56 thank Nicky and Mohammed for their patience over the

22 17:11:00 past five days. Everyone who's put a lot a time into

23 17:11:06 organising this hearing and the experts, sometimes as

24 17:11:13 arbitrators we joke that when we receive a joint

25 17:11:16 statement, we then need a statement to understand the

1 17:11:18 joint statement, but this wasn't the case in the
2 17:11:22 circumstance I really, I found both joint statements
3 17:11:29 understandable and reducing elements into bite size

4 17:11:35 digestible pieces of information, so thank you to
5 17:11:39 everyone for that.
6 17:11:43 And to counsel for having made this a pleasant
7 17:11:49 experience and always respecting the rules of the

8 17:11:54 quorum, which sometimes fall away during hearings.
9 17:11:58 With all of that said, I wish to ask the claimant
10 17:12:03 whether you believe that you've been treated fairly
11 17:12:05 during in hearing and throughout the course of the
12 17:12:08 present proceedings.
13 17:12:10 MR SULEMAN: Yes, I can confirm that.

14 17:12:12 SOLE ARBITRATOR: Same question to the respondent, do you
15 17:12:14 believe you've been treated fairly during in hearing and
16 17:12:16 throughout the course of the present proceedings.
17 17:12:18 MR HOWELLS: I confirm on behalf of the respondent. Thank
18 17:12:20 you.
19 17:12:21 SOLE ARBITRATOR: Thank you very much.
20 17:12:22 Does the claimant have anything further before this
21 17:12:24 hearing is closed?
22 17:12:25 MR SULEMAN: No, thank you.
23 17:12:27 SOLE ARBITRATOR: Does the respondent there anything further
24 17:12:29 before this hearing is cloe.
25 17:12:30 MR HOWELLS: No, thank you, save to say Madam Arbitrator

1 17:12:33 thank you very PowerPoint glor time your paished and

2 17:12:35 good hue pure and to repeat your thanks to Nicky and to

3 17:12:39 Mohammed for as ever, their patience and hard work.

4 17:12:42 SOLE ARBITRATOR: Yes. Thank you very much and I look

5 17:12:45 forward to receiving the rest of the documents from both

6 17:12:47 parties.

7 17:12:52 (5.13 pm)

8 17:12:54 (The hearing was concluded)

9 17:12:55 N D E X

10 17:44:48 2.01 pm)

11 14:01:38 PRESIDENT: Mr Robb, if you would like to continue.

12 14:01:41 MR ROBB: If I could just do very brief recap of the last

13 14:01:44 bue bits of correspondence that I had taken you to.

14 14:01:50 So we looked at letter of 4 June 2014, which was

15 14:01:59 B38. That was where SEPCO had said we would rather

16 14:02:02 invoice on our preferred basis, pointing out that ^

17 14:02:08 SWPC to dispute supplementary invoice under clause 10.5.

18 14:02:16 That was rejected on 8 June 2014, which is B39, by

19 14:02:21 SWPC. SWPC said that its indexation approach should be

20 14:02:24 used until the dispute is settled.

21 14:02:27 Then we have 12 June 2014, which is B40, SEPCO again

22 14:02:31 suggested that it should raise supplement are you

23 14:02:33 invoices on its preferred basis as the temporary

24 14:02:37 measure. At the end of the letter, SEPCO made clear

25 14:02:39 that if SEPCO lost loss indexation dispute SWPC would be

1 14:02:44 entitled to ^^ had been paid to SWPC ^ and the sum that

2 14:02:49 it should have paid applying the indexation compute as

3 14:02:52 determined.

4 14:02:53 PRESIDENT: Mr Robb, can I just check, the transcript

5 14:02:55 doesn't seem to be working ^^.

6 14:04:09 (short break for technical issue)

7 14:06:01 MR ROBB: Shall I resume from where I started this

8 14:06:02 after~~noon~~?

9 14:06:03 PRESIDENT: No, it's okay. Certainly my transcript has what

10 14:06:05 you said. I just then noticed it wasn't updating.

11 14:06:08 MR ROBB: I think I just dealt with B40. That's right. So

12 14:06:11 I've done B40.

13 14:06:13 PRESIDENT: Yes.

14 14:06:15 MR ROBB: Then we had the letter of spk's letter of 17 June,

15 14:06:19 which is B41, which again said that SEPCO should apply

16 14:06:23 SWPC's approach to all invoices issues

17 14:06:27 since January 2014 and to all future invoices until the

18 14:06:29 issue is resolved.

19 14:06:32 Then we get to 10 September letter from SEPCO, which

20 14:06:35 is B46. If you scroll down a little bit, the key part

21 14:06:49 is the third substantive paragraph, having said the

22 14:06:52 above.

23 14:06:53 PRESIDENT: Mr Robb, we have the same problem, the

24 14:06:56 transcript has stopped again.