

Log test 2

ALPHA DEVELOPER 07

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By Jaswant patel

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BEFORE THE INTERNATIONAL COURT OF ARBITRATION
INTERNATIONAL CHAMBER OF COMMERCE

B E T W E E N :

Primetals Technologies India Private Limited

Claimant

- and -

- (1) Steel Authority of India Limited;
(2) Pomini Long Rolling Mills SRL (Pomini LRM); and
(3) Shriram EPC Limited

Respondent

- before -

Log test 2

Wednesday, 16 Oct 2024

1 (8.58 am)

2 MR ZELJKO GRGUREV

3 PRESIDENT: Mr Grgurev, before I invite Mr Catchpole to ask

4 further questions, I just remind you that the oath which

5 you took {A1} yesterday remains in force and applies to all

6 of your evidence. Do you understand?

7 WITNESS: Yes, sir.

8 PRESIDENT: Mr Catchpole.

9 MR CATCHPOLE: And before I ask any questions, one very

10 small matter of housekeeping relating to the

11 supplemental {A2} agreements 1 to 3, which were disclosed to

12 the claimants in redacted form.

13 I sought to understand why the redactions have been

14 applied and it transpires that, as one would expect, it

15 has -- the agreements {A3} all have confidentiality clauses

16 in them and they don't just relate to -- there's other

17 trade subcontractors referred to. However, the

18 confidentiality clauses do contain a provision tt that

19 say -- that doesn't apply if there's an order of the

20 tribunal.

21 So if the tribunal was minded to make an order that

22 we disclose the unredacted versions of all three

23 agreements, we have copies of them available. But it's

24 a matter I can't make a submission on.

1 PRESIDENT: Mr Hickey, do you apply for such an order?

2 MR HICKEY: Yes, please.

3 PRESIDENT: The order is granted.

4 MR CATCHPOLE: Then they will be made available. Thank you.

5 Cross-examination by MR CATCHPOLE (continued)

6 MR CATCHPOLE: Good morning, Mr Grgurev. When we broke last

7 night, we were just looking at your involvement in the

8 submission and preparation of the EOT claims at the end

9 of 2020 that went to Omnium, just to orientate

10 ourselves. I just want to follow that trail, if we may.

11 Could we just go to D10284-2, please.

12 Here we have an email from Omnium, which is sent to

13 Mr Kumar of Specon, and Mr Kumar was?

14 A. Sunil was our accounts, yeah.

15 Q. It was copied to you, you're the last copy recipient,

16 and he is asking, Omnium are asking for further

17 information, you see the second paragraph:

18 "We note that we have only received the cost code

19 summary page which states the cost incurred, the type of

20 cost and then the description of 'Project Cost'. This

21 is not sufficient for the exercise we are undertaking

22 and we will require the ledger with descriptions,

23 supplier information, cost incurred and invoice

24 reference for each item..."

25 They're asking for further substantiation from

1 Specon; is that right?

2 A. That's correct, yeah.

3 Q. The only person who can give that information is Specon?

4 A. It's our account office, head office, yes, Mr Sunil,

5 yeah.

6 Q. If one goes up the page, page 1, same document, please,

7 go up, page 1, you can see that that information is then

8 being provided for certain samples?

9 A. Yes.

10 Q. If we could then go forward to D10386 and start at

11 page 5 on that.

12 What you can see here, not an email exchange you

13 were involved in, but if you go to page 5, please,

14 16th -- keep going down. That's it, thank you.

15 This is Omnium liaising with Mr Patze, 16 November,

16 and what we see is that he is saying to Mr Patze:

17 "As discussed on the phone, please see below request

18 for further substantiation required from Specon to

19 conclude the attached claim ..."

20 Then he lists a whole load of items that are

21 required.

22 Mr Patze is following up on his own to see whether

23 Omnium have got all the information they need from

24 Specon; is that right? Is that looking after your

25 interests?

1 A. Yes, yes. Yes, counsel.

2 Q. If we then please go up slightly on that, you see

3 Mr Patze is responding, saying -- well, this is in

4 relation to additional engineering drafting claim:

5 "Hi Charlie,

6 In continuation of the Email below, please find also

7 in attachment the SDIR log ... for SDIRs specifically

8 related to M2M3 scope ..."

9 So he's actually proactively providing information

10 in support of your claim; is that right?

11 A. That's correct, counsel.

12 Q. Then on -- if you go, please, to D10386-4 -- sorry, that

13 is what we're on.

14 If you then go up, please, to right at the top of

15 the page, email of the 19th -- sorry, go down one, if

16 you go down a little bit further. Sorry. Keep going

17 down to the email next. The next email.

18 So Bernard Patze then emails you directly, says:

19 "Please see below the mail received from Charlie.

20 Let's have maximum information available by

21 Saturday."

22 You're directly involved in these discussions?

23 A. Yes, of course, counsel. I can see from quickly reading

24 through the above email from myself, that this is the

25 part of the design revisions and everything, all this

1 history and trackers that were mentioned in the previous
2 mail that you showed.
3 Q. Yes, but this is your --
4 A. So, yes --
5 Q. This is Specon's claim --
6 A. Yes, yes, yes.
7 Q. -- and you're the one -- he's actually trying to get you
8 to get the substantiation that Omnium need in order to
9 make an assessment; is that right?
10 A. That's correct.
11 Q. Looking after your interests, is he?
12 A. Absolutely.
13 Q. Could we go up, please. Then you respond, and you say:
14 "Please find herewith enclosed complete
15 substantiation documents requested by Omnium, including
16 specific impact and quantum of SDWGS that required
17 redesign, against each and every RFI response received,
18 as well as FCN Sketches ...
19 ... obvious ... that ... majority ..."
20 Skip over. And then to be fair, the last paragraph
21 on the next page:
22 "We have tried to provide information within short
23 time permitted against initial query of Omnium for the
24 4 elements listed thereto."
25 And you say:

1 "This exercise will require substantially more time

2 to prepare, but we will start working on it."

3 So is this right, that the sort of substantiation

4 that was being required, in order to justify your

5 claims, hadn't yet -- you hadn't actually started the

6 exercise to compile that; was that right?

7 A. Can you repeat your question?

8 Q. At this stage, even though you were in advanced

9 discussions with, effectively, Omnium, trying to

10 substantiate your claim, the information that you

11 require, Specon requires, in order to be able to

12 substantiate it, has not yet started to be prepared?

13 A. As you can see here, the email response, the email

14 addressing to me, I have organised my team and responded

15 to Bernard, but all the documentation related to the

16 revision of the design, or all the substantiation that

17 is gathered for Besix is available on Aconex.

18 I mean, we all have access to Aconex, but we

19 recognise this proactive approach of Mr Bernard and

20 I put, as you can see in my comments, complete

21 engineering team to gather him as better quality

22 information as he requested, yeah.

23 Q. You're not suggesting, are you, that the JV had

24 a responsibility to formulate your claim for submission

25 to the employer? You had to do that, didn't you?

1 A. That's correct, yeah. We have to do it, yeah.

2 Q. Could you then go, please, to D10394-2.

3 This is an email from you, 6 December 2020:

4 "Please find herewith attached SPECON's Consolidated
5 Claims Summary Report, as requested by Omnium during
6 initial meeting with them in our Head Office. We will
7 share it formally with you under cover of letter
8 tomorrow. You are kindly requested to forward it to
9 them BTB, for perusal and consideration."

10 What does "BTB" mean?

11 A. Back-to-back.

12 Q. Why are you saying it should be back-to-back?

13 A. I mean, comprehensively.

14 Q. And also that the valuation and the payment, if any, was
15 going to come from the employer and then be passed down
16 to you by the JV?

17 A. Correct, yeah.

18 Q. There's been meetings; were you at the meetings with
19 Omnium?

20 A. No.

21 Q. So far, is there anything wrong with what the JV has
22 done in handling and pursuing your claims?

23 A. No, I mean, many of these emails I was not copied, but
24 I can see that Mr Bernard Patze acted proactively and we
25 have responded fairly promptly to their request, as you

1 can see from this email.

2 Q. It's all of this information and that claim which leads

3 to the Omnium valuation that eventually goes into the

4 supplemental agreement that you sign with the JV

5 in June?

6 A. Yes, after the supplemental agreement of the JV with the

7 client, I suppose, yes.

8 Q. That's the 48 -- you have a credit for 48.3 million that

9 comes out of their assessment of all of the claims that

10 were being submitted through the JV by Specon at this

11 time?

12 A. Again, counsel, the negotiation of our settlement

13 agreement was done by our COO and CEO. This sum that

14 was agreed with your client in June, five months after

15 their agreement with the client, was negotiated by my

16 management. You can see here, they're copied, Stelios

17 and Mr Thrasos.

18 Q. You knew -- and just so we're clear, I'm not saying it's

19 the engineer's assessment -- you knew that the result of

20 all these submissions -- so for prolongation costs,

21 disruption, engineering and wild air, all going in,

22 Omnium valued them at about a 48.3 million dirhams?

23 A. Yeah. I mean, this information I don't have, counsel.

24 I mean, what I have is the document that my company

25 agreed with Besix during negotiations, so exact figure

1 of Omnium allocated to us, we were never shared that,
2 that report or any details of it.

3 Q. If Omnium -- assume Omnium did value it at around
4 48.3 million. Does it follow from that that they did
5 not find that the vast majority of your claim had been
6 substantiated?

7 A. Can you repeat the question?

8 Q. If they valued your claims at about 48.3 million
9 dirhams, does it follow that they did not accept that
10 most of your claims had been substantiated by Specon?

11 A. I'm not aware to have seen response from or shared
12 response from Omnium or any evaluation of our claims,
13 prior to the supplementary agreement.

14 Q. As far as I'm aware, no further claims, EOT claims or
15 claims for disruption or prolongation costs, are
16 submitted by Specon after the end of 2020 until
17 termination?

18 A. Not sure, counsellor, not sure. The nature of the
19 supplementary agreement was specific of what to do to
20 the end of the project committed to the client. So
21 I really don't recall if we have worked on some claims
22 or something, but --

23 Q. You're the project director. Do you recall ever
24 submitting further claims for prolongation, EOTs,
25 disruption, additional engineering costs, wild air, in

1 the period January 2021 through to November 2021?

2 A. I would say that for any late information from design or

3 variation elements of the works, we would continue to

4 produce the notices. Did we submit the claim or update

5 of the claim? I really don't remember anything like

6 that.

7 Q. Those submissions we have been looking at also resulted

8 in an extension of time being granted to Specon. Do you

9 recall that?

10 A. I repeat, counsel, that the agreement, our supplementary

11 agreement that was shared with me, is the result of the

12 lump sum negotiation with the project management of your

13 client. We have no detailed information of or written

14 document from your client saying that we have been

15 granted extension of time.

16 Q. Can we look at D8679-1.

17 It seems Mr Hickey has a problem.

18 MR HICKEY: My transcript is frozen. You carry on.

19 MR CATCHPOLE: Do you see here we have a letter,

20 31 March 2021, addressed to you as project director? Do

21 you see that?

22 A. Yes.

23 Q. Do you see what the heading says? It says,

24 "... Re: Extension of Time"; do you see that?

25 It says:

1 "The Contractor has been carrying out discussions
2 and negotiations with the Employer in order to secure an
3 extension to the Project's Time For Completion and an
4 agreement on how and when the Project is to be completed
5 by. When these discussions commenced, the Contractor
6 made the Subcontractor aware of them and what their
7 intended purpose was."

8 That was right, isn't it? You knew about those?

9 A. Yes.

10 Q. "The Contractor hereby records that they have entered
11 into a Supplementary Agreement with the Employer. In
12 accordance with our obligation under Sub-Clause 14.3 of
13 the Conditions of Subcontract, we hereby notify you that
14 as a part of the aforementioned Supplementary Agreement,
15 the Employer has revised the Project's Time For
16 Completion from 30th April 2019 to 10th December 2019."

17 That would be the date for completion in the rev 7
18 programme. Do you recall that?

19 A. This, counsel, if you don't mind, this date adjustment
20 was there for three, four years. The main contract
21 completion date was April 2019, where we, one year later
22 in 2017, when we were awarded the contract, our
23 completion date was 30 August 2019.

24 So this movement from 30 April to the revised date
25 of the revision 7, you're correct, to December. It's,

1 in my opinion, informing us of both, adjusting their
2 original gap against our completion date --
3 Q. -- (overspeaking) -- can we look at what the facts are:
4 "As a consequence of this, the Subcontractor's Time
5 For Completion has also been revised to
6 10 December 2019."
7 Do you see that?
8 A. Yes, yes, I --
9 Q. That is a formal grant of an extension of time to Specon
10 to 10 December 2019; is that right? (Pause)
11 Is that right?
12 A. I would say that this is the completion date of the
13 programme 7 that we have not formally accepted.
14 Q. Is that a formal extension of time to the
15 subcontractor's time for completion under the
16 subcontract?
17 A. This is revised completion date under the programme 7,
18 in my opinion, by --
19 Q. Is this a formal extension of time to the
20 subcontractor's time for completion under the
21 subcontract?
22 A. We could consider this as extension of time up
23 to December 2019 if the revision 7 programme was issued
24 formally to us as a revised contractor baseline
25 programme. But --

1 Q. Was this a formal extension of time to the
2 subcontractor's time for completion under the
3 subcontract?

4 A. It is revised time for completion of the project date,
5 yes.

6 Q. Thank you. It's not very difficult, is it?
7 So why did you say a moment ago that you did not get
8 an extension of time?

9 A. Because in my opinion, we have lost our right for
10 a proper extension of time claim because the main
11 contractor opted to issue the revision 7 programme with
12 this completion date for monitoring purpose only,
13 therefore as a target programme, not as a revised
14 contractor's programme.

15 Q. What has that got to do with anything, Mr Grgurev? This
16 is the consequence of, amongst other things, putting
17 forward your claims for extensions of time, along with
18 JV's, other trade contractors' as well?

19 A. It is my opinion, counsel. You know, it's my opinion
20 from experience before in a similar case, yeah.

21 Q. Would it be possible that your opinion is actually
22 seeking to argue a position that you would like to argue
23 on behalf of Specon, rather than actually what happened?

24 A. That's not my intention.

25 Q. Do you have an interest, financial interest in the

1 outcome of this case, as a matter of interest?

2 A. Absolutely not, counsel.

3 Q. Can we please come back to your general criticism of the

4 JV, which you have in your first witness statement at

5 3.3(b) and we have it at B9-13.

6 This was the paragraph we looked at before.

7 A. Yes.

8 Q. The second general criticism which we will look at is

9 the "SBJV's failure to provide an updated Main

10 Contractor programme".

11 I know this is subject to an errata from you, which

12 we will look at, but I just want to skim over what you

13 said in your witness statement, please, and what the

14 criticism is.

15 If we could go to paragraph 4.6, if we start here,

16 this is under the heading about -- a general heading

17 about programmes, and I'm going to skim over them, but

18 just to refresh your memory of what you said, you said

19 in 4.6:

20 "Not having an updated subcontract programme also

21 caused complications with managing the Subcontract Works

22 internally."

23 Does it follow from that that, whatever the reason

24 was, you felt at the time that you had problems managing

25 the subcontract works internally?

1 A. Yes, counsel. What is your question?

2 Q. Does it follow from what you've just said, whatever the
3 cause, that you felt, at the time, that you had
4 complications with managing the subcontract works
5 internally?

6 A. As this paragraph 4.6(a) clearly shows, this is the
7 communication of my -- as an example -- of my test and
8 commissioning manager. It relates to the access granted
9 to our works and readiness of combine all other
10 services, for example, the rooms. Regardless of our
11 readiness, we depend on the closing of the door, closing
12 of the other activities of other contractors.

13 Q. All I'm asking is a simple question.

14 A. Yes, please.

15 Q. First sentence, you say the fact that you did not have
16 an updated subcontract programme "caused complications
17 with managing the Subcontract Works internally". Do you
18 see that?

19 A. Yes.

20 Q. Does it follow from that that, whatever the cause, your
21 view, at the time, was that you were having
22 complications with managing the subcontract works
23 internally?

24 A. I didn't mention the word "complication". I just
25 mention I had to manage the issues internally, as I can

1 see here.

2 Q. Shall we read it again, Mr Grgurev?

3 A. Yes, please.

4 Q. "Not having an updated subcontract programme also caused
5 complications..."

6 Is that your word or did someone else put it in
7 there?

8 A. "... complications with managing the Subcontract Works
9 internally", counsel, means we had constraints, we had
10 lack of information of the preceding activities, because
11 we were never shared the monthly updates of the
12 programme from contractor in five years. So we had to
13 organise, in the way, to follow; wherever the work we
14 observed was ready by other contractors, we would then
15 plan our day-to-day activities.

16 Q. Does it follow that at the time, you are saying that
17 there were complications with you managing the works
18 internally at Specon?

19 A. I'm trying to say in this statement, in this sentence,
20 that it also caused complications to us to manage the
21 subcontractor works internally.

22 Q. All I'm asking you: does it follow, as a matter of fact,
23 that it caused complications, so you actually had
24 complications with managing the subcontract works
25 internally?

1 A. We were caused complications, counsel.

2 Q. So the answer is yes, it did? You had complications
3 with managing?

4 A. Yes, yes, of course, which is elaborating on --

5 Q. It's not very difficult, is it? It's "yes" or "no";
6 that does help sometimes.

7 Paragraph 4.7:

8 "However, as explained ... despite our requests,
9 SBJV failed to provide any updated Main Contract
10 Programmes ... This greatly impacted Specon, as we could
11 not accurately update our own Subcontract Programme, as
12 we did not have knowledge of the progress or status of
13 the predecessor works."

14 A. That's correct.

15 Q. 4.8, you say:

16 "... it is highly relevant for the MEP Subcontractor
17 to have [it] so that it can coordinate, integrate, and
18 plan its activities."

19 Then it says there's lots of dependencies.

20 4.9, you then deal with the revised programmes, it
21 says:

22 "Over the course of the Project, SBJV issued
23 'Contractor Revised Programmes'. These 'Contractor
24 Revised Programmes' were issued as follows."

25 The first one is:

1 "on 9 January 2018, SBJV issued via Aconex

2 transmittal the Rev 07 Programme..."

3 So that's -- you identify that that, as far as

4 you're concerned, is the formal issue of the rev 7

5 baseline programme; is that right?

6 A. This is not rev 7 baseline programme, because your

7 client opted to call it monitoring purpose only

8 programme, which define it as target programme.

9 Q. Why did you call it the rev 7 baseline programme?

10 A. This is in brackets, counsel.

11 Q. I know it is, but they're your words, so why did you

12 call it that?

13 A. With brackets, in the entire context of this section 4,

14 you can elaborate my statement and details of my

15 statement. We have never received a revised baseline

16 programme from the main contractor, neither as

17 revision 7, neither as revision 8, despite it was

18 approved by the client to issue it to all

19 subcontractors, revision 8 as a baseline programme.

20 Q. Did you understand that what was issued to you on

21 9 January 2018 was part of the rev 7 -- finalised rev 7

22 programme that was being issued, for whatever purpose,

23 by the JV?

24 A. It is acknowledged as such and I think that I have

25 acknowledged it as such, to the extent of its

1 definition. They call it monitoring purpose only.

2 Q. Right, and you say, to be fair to you, in 4.10, that:

3 "These 'Contractor Revised Programmes' showed the

4 MEP activities in complete isolation."

5 And didn't include any other activities.

6 Then in 4.11, you say:

7 "Even when producing these updated revisions, SBJV

8 would issue the 'programme' for 'use to monitor and

9 record the progress of the Works'. These 'updates' were

10 prepared in isolation and did not include any

11 predecessor activities and simply appeared to set out

12 the duration of the M2 and M3 Works."

13 Yes?

14 A. Yeah, that initial file, yes, that's correct.

15 Q. Then please can you go forward to paragraph 4.14.

16 You say:

17 "... 9 January ... Aconex transmittal, SBJV issued

18 the Rev 07 Baseline Programme."

19 Told you what you had to do with it.

20 Then 15, you said:

21 "I did not, nor do I have any knowledge that anyone

22 else at Specon, had any input in the discussions, or

23 decisions which led to the finalised Rev 07 Baseline

24 Programme."

25 So that's presumably the finalised rev 7 on

1 9 January; is that right?

2 A. Yes, yes. I mean, this point 4.14 is clearly a request
3 from your client for us to produce loading of the
4 programme. They have shared at that time basically MEP,
5 MEP file, and ask us to incorporate the resource load,
6 the quantities and the cost load, yeah, as we did
7 similarly in rev 7, yes.

8 Q. 4.17, you say you wrote asking for further information
9 and said you would produce your own programme once it
10 was formally issued.

11 4.18, you say you write on the same day requesting
12 additional information, because you needed it to prepare
13 your programme.

14 Then on 4.19, you say we did not get a response, so
15 wrote another letter on 5 March.

16 Then 4.20, which is the one that is the subject of
17 an errata, you say:

18 "I do not recall receiving any response from the
19 SBJV to the above letters and SBJV did not provide the
20 master Rev 07 programme, or the additional information
21 requested."

22 You say you continued to raise this at various
23 meetings. That has now been revised, if you want to see
24 it, to B9A-2, please. Two amendments. The first one --
25 the other one relates to the rev 8 programme:

1 "I do not recall specifying any response from
2 SBJV ..."
3 Then you had asserted that we didn't provide the
4 full master programme, but it's been brought to your
5 attention:
6 "... that SBJV issued the Rev 07 Baseline Programme
7 to Specon by way of letter dated 15 April ... However,
8 this programme was issued 'to monitor and record
9 progress' only."

10 So does it follow from that that at the time, you
11 were unaware -- is this your evidence -- that you had
12 actually been issued the full rev 7 programme showing
13 all stakeholders' interests?

14 A. Yeah, I mean, as you can see, the trail, it end up end
15 of March and actually three weeks later, yes, it came to
16 my knowledge. I mean, this was years back, you know --

17 Q. So, to be clear, to your knowledge, you do not recall
18 ever seeing or receiving the full rev 7 programme?

19 A. Comprehensive, yes. I mean, this is obviously fact.

20 Q. Can we look at that, please. D340. This is the
21 transmittal to which you refer. Indeed, it does show,
22 if we go down a little bit, under message, that you are
23 required to action the items mentioned below, resource
24 load the programme with manpower, resource load the
25 programme with quantities and generate KPIs.

1 Why would you be required to generate KPIs?

2 A. We have used -- I mean, your client has used the KPIs
3 basically to run the project.

4 Q. So what's the purpose of the KPIs?

5 A. KPIs is to establish the planning -- short-term planning
6 or the task of different contractors and assign the
7 specific task to be achieved on short term.

8 Q. Is this right, that Specon are being asked to produce
9 their KPIs in order to meet their obligations in
10 accordance with this programme?

11 A. KPIs, yes. Yes, as a part of the planning, yes. KPIs
12 are led by the multiple contractors' involvement, so you
13 have to -- for short-term planning, you use the KPIs
14 from all the subcontractors together.

15 MR STEWART: Mr Catchpole, just so I understand, this is
16 9 January.

17 MR CATCHPOLE: Yes.

18 MR STEWART: Is this the one -- is this the full version?

19 MR CATCHPOLE: No.

20 MR STEWART: Right.

21 MR CATCHPOLE: Were you aware that this was actually a work
22 in progress? It wasn't an issue of -- it was being
23 developed at the time and Specon's input was being
24 sought into the development of rev 7 programme? Do you
25 recall that?

1 A. Not prior to 9 January.

2 Q. Do you recall that 9 January, it was not an issue of the
3 final version or an extract of it; it was a work in
4 progress where the JV was trying to get Specon to input
5 into and develop a programme which would eventually
6 become rev 7?

7 A. But this is, counsel, the part of my confusion.

8 I recall that initially, we received only in isolation
9 the MEP activities, with the same request: produce the
10 loading, produce this. You can see the trail of the
11 correspondence going all the way for three months up to
12 the end of March. Yes, and then eventually, on Aconex,
13 we received the full programme, yeah.

14 Q. Do you recall that when this is issued, it was
15 a tentative programme in January 2018, but what was
16 going on was that the JV was wanting Specon to get
17 involved in developing the rev 7 programme?

18 A. Again, counsel, once you share to each subcontractor his
19 activities in isolation, this is not participation in
20 developing the programme. This is to fill up your part
21 for the fraction of the programme that your client
22 wanted to put together then as a complete programme.

23 Q. Is it your evidence that you did not understand that
24 what was going on at this time was that the programme
25 would be developed in collaboration with all of the

1 subcontractors, including Specon?

2 A. What I recall is we have never been invited to any
3 workshop leading to 9 January. Since 9 January, my
4 planning team might have participated in some of the
5 workshops leading to the full disclosure in April that
6 you showed me.

7 Q. Did they or didn't they, to your recollection?

8 A. I cannot remember.

9 Q. D498-7, please.

10 Can we go down to page 7, please.

11 D498-7. It's the wrong reference.

12 Who was Sheik Sarhan?

13 A. This is our planning manager at the time, yeah.

14 Q. Can you go down, can you go to the bottom email, up
15 a bit, up a bit, please. Thank you, on page 7.

16 That's it.

17 So here we have Mr Sarhan sending an email to you on
18 14 February, and he is actually looking at tentative
19 manpower histogram, as per rev 7. Do you see that?

20 A. Yes, yes.

21 Q. He's working on how to resource and plan Specon's works
22 in accordance with a tentative programme; is that right?

23 A. He's done the extract of the comprehensive programme
24 rev 7 for MEP activities only. So we have collaborated.

25 That's why I'm trying to say I have -- that's why

1 I mention earlier, I was not 100 per cent sure, but we
2 were cooperative, even though we were shared extract of
3 MEP activities in isolation. So we can still do the
4 loading, we can still make a calculation of labour, but
5 that doesn't constitute knowledge or involvement in
6 overall programme creation, yeah.

7 Q. Could we just go up a little bit further on page 7. So
8 Mr Markou is getting involved and he's saying: that
9 doesn't work, the mobilisation is too steep, have you
10 checked you have sufficient materials? There's a big
11 jump in May. So he's got a whole load of thing about
12 the sequencing, planning, how it's going to work; is
13 that right?

14 A. Yes, that's our general manager, Costas, yes. He's
15 giving some comments on that work prepared by planner,
16 yeah.

17 Q. Then on page 2 of the same -- go down a little bit.
18 That's it.

19 Mr Thrasyvoulou comes in, same day, saying: that's
20 not what the charts suggest, they suggest an extra
21 6 million AED from previously calculated for men, based
22 on your planning. Do you see that?

23 A. He's comparing it, I believe, to baseline 6 and
24 allowance in the budget for the manpower, yeah.

25 Q. Then if we could go up to the bottom of page 1, you come

1 back and say, dealing with concerns of senior
2 management, that you'll "... review it with Sarhan and
3 revert back to you". Do you see that?
4 A. Yes, I will cross-check works of my planner, yes, yes.
5 Q. If we look at the top of page 1, that's exactly what
6 happens: Mr Sarhan goes and sends back comparisons.
7 Can you go to D19, please.
8 Top of the page, please. Sorry, no, go down, that's
9 right. See at 14 February -- do you know who Mr Nelson
10 Telan is?
11 A. One of the planners from your client, yeah, I believe.
12 MR STEWART: Is this date right? 2017?
13 MR CATCHPOLE: Actually, that can't be right.
14 A. It's actually not right, yeah.
15 Q. That can't be right. Just go up a moment, just go up to
16 the top before I put the wrong question.
17 No, that is a wrong reference.
18 A. I think this is --
19 Q. Can we go to D558. That is dealing with rev 6, I think.
20 A. It's even old logo of our company, from 2017.
21 Q. Thank you, Mr Stewart. I was about to put something
22 that was wrong.
23 If you go down to -- that's also a wrong reference.
24 Go down.
25 No. Sorry.

1 Is that D558?

2 Maybe I'll come back to that in a moment. That

3 reference has obviously gone wrong.

4 Keep going up.

5 Anyway, we'll skip over that and come back in

6 a moment. (Pause)

7 Could you please now go to D1174. This is the cover

8 letter -- sorry, could we go to D588 first. It's

9 because I can't read my own writing, probably.

10 You see here some time later, and we see that

11 Mr Sarhan is emailing Mr Telan and he's included:

12 "... the Final rev 7 loaded with quantities,

13 manhours and I have revised the cost as discussed for

14 the builders work and embedded works.

15 Please also let me know when you can share the XER

16 file with us."

17 He's actually putting -- having direct meetings with

18 the planner, SBJV, and he's providing Specon's input

19 into the programme that's being developed; is that

20 right?

21 A. Yes, I believe this is the complying with this PDF files

22 that they share with us in isolation of MEP, yes, he

23 have loaded it and he got my green light to share it

24 with your client, yes, on 24 February, yeah.

25 Q. Can you go down on that document, please. We see that

1 there's -- the extract, he's put it all in.

2 A. Yes, in PDF file, yes.

3 Q. So can we come back to paragraph 4.14 in your first
4 witness statement, B9-17.

5 First of all, is this right, the January 2018

6 transmittal was not the extract from the final version;

7 it was a programme that was being worked on by the JV,

8 in collaboration with the various subcontractors that it

9 had, to get to a final version?

10 A. Not that I'm aware of, counsel.

11 Q. Paragraph 4.15:

12 "I did not, nor do I have any knowledge that anyone

13 else at Specon, had any input in the discussions, or

14 decisions which led to the finalised Rev 07 Baseline

15 Programme."

16 That's not correct. Mr Sarhan and indeed you

17 personally were involved in giving input and discussions

18 and information into the development of the rev 7

19 programme?

20 A. Counsel, as I already stated, you can see in the

21 document that was shared, it's basically extract of the

22 MEP activities asking us to fill up the gaps. Leading

23 to the comprehensive programme, an involvement of all

24 subcontractor, neither my planner, neither myself,

25 neither anybody in my company was involved prior to

1 issuance, even that PDF file in January.
2 After we received this PDF file in January, my
3 planner would of course approach me, because this is not
4 comprehensive programme, I told him to comply, and
5 that's what he did.

6 This is not creating programme. This is basically
7 calculating, on the PDF file, proposed loading of the
8 cost and the manpower based on the data of the baseline
9 previously.

10 Q. And it would have to involve an assessment of the
11 sequence, your planned sequence of works, so you can get
12 your manpower worked out, make sure that it fitted,
13 suggest adjustments to it. Would that be fair?

14 A. As well, yes, yes.

15 Q. So I come back to, since it was the thing that led up to
16 the formal issue, it's not right to say that no one at
17 Specon, whether you or anyone else, had any input in the
18 discussions or decisions which led to the finalised
19 rev 7 programme issued in April, is it?

20 A. Yes, in my statement I'm referring to 9 January, not
21 to --

22 Q. You are referring to the finalised rev 7 programme,
23 which is issued in April. So is that statement true or
24 untrue? Did you or anyone else at Specon have any input
25 into the discussions and decisions which led to the

1 finalised rev 7 programme which was issued in April?

2 A. Yes, we did, to the extent of the MEP extract provided
3 to us at the time.

4 Q. How did you come to make that statement, that untrue
5 statement, in your witness evidence?

6 A. I do not consider working on the extract list of
7 activities, in PDF format, without Primavera files, to
8 be being actively involved in sequencing or deciding --
9 creating the programme, what you call tentative
10 programme rev 7. This is just a technical compilation
11 of the MEP works in isolation.

12 Q. Please now go forward to D1174.

13 This is the letter which enclosed, was, the formal
14 issue of the full rev 7 programme. Do you see that? If
15 you would like to go to D10974, this is the transmittal
16 that sent it. If we just scroll down a little bit,
17 please, keep going, keep going, keep going.

18 Under this transmittal were sent various
19 attachments, including the Primavera file.

20 A. This on 15 April, yes, agreed.

21 Q. That Primavera file is the full file. Could you please
22 now look at your first witness statement,
23 paragraph 4.16, B9-17.

24 If you look at 4.16, you stated:

25 "[It] was for 'use to monitor and record the

1 progress of the Works'."

2 That statement actually comes from the transmittal,
3 the letter and the transmittal, that you have footnoted
4 in footnote 13. Do you see that:

5 "ZG-5 - Letter from SBJV to Specon ... dated
6 15 April..."

7 A. The one that you showed me, counsel, just a moment ago,
8 in the first paragraph it says that, yeah. It's the
9 second sentence in the first paragraph, yeah.

10 Q. The point is, Mr Grgurev, if you had taken even the
11 basic step of checking that letter and checking the
12 transmittal before writing your witness statement, you
13 would have known that the full version of the programme
14 was issued on that date, wouldn't you?

15 A. Correct.

16 Q. Does it follow from that that when writing this witness
17 statement, you did not bother to check that letter and
18 the transmittal to see whether what you were saying was
19 accurate?

20 A. Yes.

21 Q. Why not?

22 A. It's a huge amount of, counsel, documents that you have
23 to go through. This is -- my statement is prepared
24 years after the project time. So, yes, I mean, that's
25 why I issued errata. You know, I corrected myself

1 through it, yeah.

2 Q. Corrected when someone else pointed it out to you,

3 I think it would be fair to say; is that right?

4 A. What do you mean?

5 Q. Well, it says:

6 "It has been drawn to my attention that..."

7 A. Yes, yes, yes, I was advised, yes, correct.

8 Q. So let's start again.

9 So this is -- you have used this for making

10 trenchant criticisms of my client for not issuing the

11 full programme, where in fact that allegation is not

12 true; is that right?

13 (Pause) Is that right?

14 A. It's correct, counsel.

15 Q. How -- do you think it's appropriate for a project

16 director, giving evidence of fact, to make wild

17 assertions like that in their witness evidence without

18 doing basic checks to see whether what they are saying

19 is true?

20 A. Because by my recollection --

21 Q. Do you think it's appropriate for a project director,

22 making wild assertions like that, to make them without

23 doing basic checks on the documents he's actually

24 referred to, to make sure whether what he is saying is

25 true? "Yes" or "no"?

1 A. Yes, counsel.

2 Q. Thank you. Could we then see what happens as a result

3 of all that.

4 Could you please go to M251. This is a letter from

5 us to Specon, saying:

6 "We refer to the above Project ... and wish to

7 record that at the time of writing, we have not received

8 the requested programme for the carrying out of your

9 Subcontract Works."

10 They say: we want it by 23 May, otherwise we will

11 deduct some money. Do you recall receiving that letter?

12 A. I mean, I see it here, counsel, now on the screen, yeah.

13 Q. They're telling you: please will you produce a revised

14 subcontract programme for your work in accordance with

15 the rev 7 programme you have just been issued,

16 15 April 2018. Is that right?

17 A. Yes, yes, basically asking us the subcontractor's works

18 programme, based on the programme which is target

19 programme, not revised baseline programme, yes.

20 Q. Could we have M252, please.

21 You write back and effectively you say that -- you

22 refer to the letter, you then refer to the clauses of

23 the contract. At the end of the second paragraph, you

24 say:

25 "We wish to inform you that the Rev 7 programme has

1 no contractual significance and we have no obligation to

2 comply with it, unless instructed to do so it."

3 We're only going to follow the rev 6 programme. Is

4 that right?

5 A. That's correct.

6 Q. Was that your attitude, that you weren't going to

7 produce a programme to show how the works could be --

8 standalone programme, developed in detail in accordance

9 with the rev 7 programme as instructed?

10 A. If the rev 7 and consequent programmes were issued to us

11 as a formal revised contractor programme, we have

12 obligation under the contract to issue the subcontract

13 programme within two weeks.

14 Q. But you were refusing to do so until it was adopted as

15 a formal subcontract programme; is that right?

16 A. Correct, yes.

17 Q. Is that how you proceeded, then?

18 A. Yes, yes, yes, because in my opinion, and as stated

19 here, this is a rather target programme than a revised

20 baseline programme issued by the contractor.

21 Q. You don't think it's appropriate for the major MEP

22 subcontractor to produce a programme, as instructed, to

23 try and meet the targets that have been set?

24 A. Contractually, we have provided input as requested by

25 the main contractor, as we have discussed just a short

1 while ago.

2 Q. Your attitude --

3 A. It was embedded, but subcontractor programme, we have
4 obligation to issue it only upon receipt of the revised
5 baseline or revised contractor programme.

6 Q. So you do not think it is appropriate, is that right, at
7 this time, for the major MEP subcontractor on this site,
8 to issue a programme that fits in with the targets that
9 the JV are saying we're trying to work to, to show how
10 they were going to do their work in accordance with
11 those targets?

12 A. I mean, my statement in the last paragraph is clear
13 here, counsel.

14 Q. So the answer is no, you didn't think it was
15 appropriate?

16 A. No.

17 Q. And you didn't do it?

18 A. Yeah.

19 Q. Could we go to D11332, please.

20 This is a letter from Specon to SBJV. Sorry, can
21 you just go up.

22 Yes, Specon. You had requested an extension of time
23 and then, very belatedly, extension of time, which is
24 based on the rev 7 programme.

25 Second paragraph:

1 "In compliance with your request, we submit herewith
2 for your review and comment a programme referenced
3 'Rev. 7 MEP Monitoring Programme', together with
4 a programme narrative. We note that the Rev. 7
5 programme issued to us ... has a data date of
6 Nov. 2017."
7 And it doesn't include for this.
8 Then you make allegations about an entitlement to
9 extension of time.
10 So is this right: you did in fact then prepare
11 a standalone MEP programme based on rev 7 and submit it
12 for review and comment; do you recall that?
13 A. Yes, tagging it properly, monitoring programme, yes,
14 yes.
15 Q. If we could look at M301.2, please.
16 This is the transmittal that sent that programme,
17 and you see that it is indeed issued for comment in the
18 text box in the middle, yes?
19 A. Yes, as a monitoring programme, yes.
20 Q. Is this right, that Specon was able to develop an
21 updated subcontract programme, based on the rev 7 full
22 version, but you were -- is that right? That's what you
23 were doing? You were able to do it?
24 A. We have issued it based on the data received from the
25 main contractor, yes. We have issued it eventually

1 in July, yes.

2 Q. So you can do it? You can plan your works, on
3 a standalone programme, if you want to do so; is that
4 right?

5 A. Correct, yeah.

6 Q. But you were refusing to commit to it; is that right?

7 A. What I recall, counsel, is that by abandoning baseline
8 rev 6 programme, we are exposing ourselves
9 contractually. That's why we were basically asking for
10 a formal instruction or issuance of the formal revised
11 programme from the contractor.

12 Q. But you were refusing -- whatever the reason, you were
13 refusing to commit to following that programme; is that
14 right?

15 A. We were not refusing to commit. We were refusing to
16 acknowledge that programme as a revised baseline
17 programme, as it was target -- as target programme,
18 basically, for purpose of progress monitoring. So in
19 this submission, we have called it the same, monitoring
20 programme, yeah.

21 Q. Were you actually working to the rev 7 programme and
22 following what was in there, or not?

23 A. To certain extent, yes, yes.

24 Q. What does that mean?

25 A. That means that the things develop very fast in that

1 project. Assumptions of the certain design received,
2 say for the provisional sum area, or the achievement of
3 other contractors, were quickly -- superseded the dates
4 indicated in that programme. So we have worked together
5 with your client to identify the areas of work. That
6 what led basically then to eventually the next version
7 of the monitoring programme and so on.

8 Q. Yes, you worked together collaboratively?

9 A. Yes.

10 Q. With JV, which eventually led to the development of the
11 rev 8 programme?

12 A. Not contributing to that, but collaboratively throughout
13 our project we were collaborating with your client.

14 Q. Could we go to M253, please.

15 What we see has happened is there's an email to the
16 JV that you're responding, because DEC, so that's the
17 engineer, has said -- has recorded concerns about the
18 rate of progress. You respond saying:

19 "... refer to the above referenced letter ... to

20 SBJV wherein the Engineer states:-

21 ""We are currently monitoring and recording progress
22 of the Works by the Contractor according to it's revised
23 Programme (Revision 7)...!."

24 Then you said:

25 "In submitting a revised programme to the Engineer

1 ... you are requested to confirmed if the Time for
2 Completion for the Main Contract Works has been revised
3 based on the Rev 7 programme."
4 You say:
5 "We are concerned that the Main Contractor has made
6 commitments to the Employer based on the Rev 7 programme
7 without issuing any notifications or formal instructions
8 under the M2 & M3 Subcontract works."
9 Now, you then discover that in fact, an extension of
10 time had not been granted to the SBJV at that stage; is
11 that right?
12 A. Where does it state that? We are just --
13 Q. I'm asking you whether you recall that you discovered
14 that.
15 A. Can you repeat the question, counsel?
16 Q. You then discovered after sending -- you were trying to
17 get an extension of time based on the rev 7 programme,
18 and you were saying, effectively: have you got an
19 extension of time under the main contract? That's what
20 you were asking?
21 A. In the context of this letter, we are referring, we are
22 reminding your client of his obligation to -- in case
23 that he have obtained extension of time, that he have
24 obligation to share it to his subcontractors. This is
25 what this letter is about. We are concerned and

1 questioning, we are not concluding anything.

2 Q. M303, please.

3 That definitely doesn't look right. It's my

4 mistake, M305. My handwriting is deteriorating with

5 decrepitude.

6 It's a letter from the JV to Specon, 26 September

7 now, "Main Contract Revised Programme and Time For

8 Completion":

9 "We refer to the above Project and to your recent

10 letter ... Having reviewed the content of your letter,

11 we advise that we are fully aware, of our obligations...

12 At this point in time, there have been no grounds to

13 make such a notification ..."

14 le: we have not received an extension of time; yes?

15 A. Correct, yeah.

16 Q. "With regards to your statement that you have not

17 received any notification of formal instruction

18 concerning the Rev 07 Programme ..."

19 Refer back to the letter of 15 April:

20 "In this letter, you were instructed to submit a new

21 Subcontract Programme based on the Rev 07 Programme. To

22 date, we have not received a programme that satisfies

23 this instruction."

24 And that was right, wasn't it?

25 A. This is two months after we have shared with them that

1 programme. I mean --

2 Q. For comment?

3 A. For comment, yeah, so this is two months later, they are
4 saying generally, your client saying generally, that it
5 did not satisfy them, to which extent and the details
6 of, unknown.

7 Q. Then could we go to M255, please.

8 This is a letter of 11 October from the JV, which
9 sets out why what had been submitted in July was in
10 their view, not appropriate. Do you see that?

11 A. Can you go to the next page.

12 Q. Yes, of course. Please. (Pause)

13 A. Yes.

14 Q. What they're essentially saying, is this right, was: we
15 think the programme you submitted in July was one that
16 had been developed to support your extension of time
17 claim that had been made about 16 days before. And
18 that's what had happened, wasn't it, you had developed
19 a claim-based programme and submitted it for comment; is
20 that right?

21 A. What I see here, counsel, rather these are technical
22 comments to that programme. This is usual exchange of
23 the planners that happened both ways, you know. I'm
24 sure that your client also in proposing programme would
25 cut the float, use the float for civil activities.

1 These are technical comments, we acknowledge it, you
2 know, and --
3 Q. But to be fair to you, Mr Grgurev, the response is not
4 that you acknowledge it, because it is -- just so you
5 see it, M326, before you say something which would be
6 unfair of me to ask you about.

7 M326. You effectively reject the criticisms, in
8 a very general way, suggest that the technical issues
9 are resolved in a meeting and that's it.
10 Then after this, there are -- no further document or
11 programme is submitted by Specon as their standalone
12 programme from the rev 7 programme. Do you recall that?
13 You refused to do it, effectively?

14 A. I mean, if you refer to the last paragraph -- before
15 last paragraph, I mean, as I earlier said, these are the
16 technical issues between the planner, and the best way
17 to resolve it is we suggested the two planners to meet,
18 because this is nothing else but technical comments on
19 some activities and observation from your client.

20 Q. They weren't asking for help in incorporating the
21 programme into our programme. What they were saying is:
22 we want your programme. It is properly formulated and,
23 as a matter of fact, it is right that you never issue
24 one, do you?

25 A. As stated in this letter, we see our submission from

1 July to be a sufficiently qualified and sequenced
2 programme for monitoring purpose of the progress. We
3 are suggesting here to have a meeting and openly discuss
4 and clarify any issues that are questionable from your
5 client.

6 Q. Could you please look at your first witness statement,
7 paragraph 4.15, B9-17.

8 You see the last bit of this, witness statement 4.15
9 said in relation to the rev 7 programme:

10 "Therefore, it was completely unusable for planning
11 and coordinating works, as we had no insight into when
12 other Project stakeholders' works were intended to take
13 place prior to, alongside and after our works."

14 Do you see that?

15 A. Yes.

16 Q. That statement is untrue, isn't it, Mr Grgurev?

17 A. We went through it earlier. This is my oversight of the
18 detailed programme --

19 Q. That statement is untrue, Mr Grgurev, is that right?

20 Is that right?

21 A. Yes. Yes, counsel.

22 Q. Now, as we've seen, absolutely no difficulty at all in
23 you using the programme to plan, set out, allocate
24 resources, do everything you need to do; is that fair?

25 Because you're doing it?

1 A. Yes, yes, yes.

2 Q. Can we then, please, look at D2497.

3 This is from you to Mr Paquier and others: "Copy of
4 Site Progress -- up to 7 September 2018", so the period
5 we were just talking about:

6 "Re our discussion this morning regarding the status
7 and adequate look ahead planning of our activities,
8 please find herewith enclosed status template of the
9 RT3, concorded with Michael and Philip in the last
10 week's meeting, as acceptable monitoring format,
11 covering all key aspects for both of us, in terms of
12 timely release to us and in terms of our committed
13 completion date per floor (including WIR) that will
14 trigger for you dismantling of the scaffolding and in
15 some cases wall closure."

16 So, starting there, why are you focused on the WIRs?

17 "... our committed completion date ... (including
18 WIR) ..."

19 A. This is part, as I recall, of this micromanaging through
20 KPIs of the progress of the hotel towers rooms, so we
21 have collaborated, our project managers were daily
22 liaising with them, so the WIR is part of that sheet,
23 I believe.

24 Q. What is a WIR?

25 A. Work inspection report.

1 Q. Why is it important? Why are you -- why have you got

2 "... committed completion date per floor (including

3 WIR) ..."

4 A. WIRs are part of the quality control procedures to

5 ascertain that the works completed are inspected prior

6 to releasing it, for example, following activities like

7 closing ceiling or whatever.

8 Q. It's the point at which the work can be completed to

9 enable following trades then to do their work?

10 A. Yes, yes, it's a record of completed works, yeah.

11 Q. So, is this right, that here we see what Specon are

12 doing is enclosing a template which Specon is saying

13 will enable acceptable monitoring of all key aspects of

14 your works and also enable SBJV to ensure that access is

15 given, areas are cleared, in order for you to meet your

16 scheduled works?

17 A. Yes, this is, that I recall, the template which shows

18 all the contractors' targets on the short-term basis,

19 yeah.

20 Q. Then you go on, and you say, third paragraph:

21 "This document, combined with KPI based on the final

22 take offs, (now that the final selection of major

23 equipment is almost there), should enable in the future

24 smooth monitoring of the true status of these Works."

25 Is that right?

1 A. Yes.

2 Q. So as far as you're concerned, whatever this mechanism
3 is is a good tool for monitoring and planning your
4 progress; is that right?

5 A. Counsel, as stated in my statement, I never denied that,
6 that KPI is a good tool. But it's not enough. That's
7 what I said, you know, in my comments.

8 So it is one of the tools that you can use in
9 progressing on the project, especially in situation of
10 lot of changes and design delays and so on, yeah.

11 Q. "Our primary responsibility is to catch up with WIRs for
12 the areas completed, and regular/timely submission of
13 clearance documents for below floors, and of course
14 timely lookahead planning, on short terms and overall,
15 in close cooperation with your team."

16 A. Yeah.

17 Q. So is this right, that what was happening was that you
18 were undertaking works, but either those works were not
19 fully complete for the purposes of WIRs, or there were
20 defects or things like that that needed to be corrected
21 before a WIR would be approved?

22 A. Specifically, we are talking here about the hotel
23 towers. The works has to be inspected prior to closing,
24 for example, walls or ceiling, before the covering, you
25 should have all this WIR in place. So it's specific for

1 the hotel tower. You know, it doesn't apply similarly
2 in the parking or areas, plant rooms or areas where it's
3 open, but, yes --
4 Q. But it's your responsibility and what you're saying is:
5 we've done quite a lot of the work, but we've still got
6 other work to do that is required in order to get the
7 WIRs that we need?
8 A. Yes, yes. That's correct, yes. I mention couple of
9 floors or something in the context of all this.
10 Q. We can infer from this that you must be behind if your
11 primary responsibility is to try and catch up; is that
12 right?
13 A. It doesn't -- this email is not specific of which floor
14 we are talking about, but obviously, yes, there were
15 some WIRs to be caught up, as I stated in my email.
16 Q. The KPI trackers had been introduced effectively as the
17 construction -- your construction works commenced on
18 site. Do you recall that?
19 A. The KPIs were originated by your client.
20 Q. Have a look at D426, please.
21 This is an email from your planner, sending through
22 to the team, the SBJV team, in February of 2018.
23 It says, "Please find attached KPIs Updated ..."
24 So would this be the process?
25 A. Yeah, I mean, you can see here, this is the part of this

1 cooperation after 9 January. One of the requests from
2 the contractor was the KPIs, MEP KPIs, you know. So
3 this particular mail, I think it's in the context of us
4 complying with request from your client, despite what we
5 received, you know, extraction of the MEP activities.

6 Q. Is this right, you were actually following the SBJV
7 rev 7 programme and planning on the basis of that work?

8 A. No.

9 Q. Even from 9 January?

10 A. These KPIs are the MEP KPIs for particular areas, as you
11 can see here.

12 Q. Look in the attachments:

13 "06 -- Basement Areawise KPI (SBJV Rev. 07) ..."

14 A. Yes, as part of the developing/fulfilling the request in
15 that 9 January directive from your client, yeah.

16 Q. Is this fair, that even what you received on 9 January
17 was sufficient for you to be able to develop the KPIs
18 and then update them and monitor your works and progress
19 against them?

20 A. Yeah, I mean, of course, based on that PDF file that we
21 received, we can develop the balance quantities. This
22 is part of our obligation under the contract, to know
23 our remaining quantities and to create KPIs based on
24 them, yeah.

25 Q. D427, please.

1 Just so we get a flavour of it, these are the sorts
2 of very detailed KPIs about your activities; is that
3 right?

4 A. Yes.

5 Q. This is about you saying what sequence of work you're
6 going to be following, what your expected productivity
7 is, what your expected output is? Is that right?

8 A. Yes, yes.

9 Q. Then you're telling the JV how that's going to happen
10 and then you monitor against it?

11 A. Yes, and discuss with them eventually sometimes, yeah.

12 Q. A very effective tool for getting oversight for how
13 things are progressing against your plan for the work;
14 is that right?

15 A. The KPI is a standard tool, counsel, but it's not the
16 only tool that you need to use --

17 Q. No, I'm not suggesting it is, but it's a very effective
18 tool?

19 A. It's a very effective tool, absolutely, agreed, and my
20 statement also say that.

21 MR STEWART: These numbers, 79, what is that? Is that men?

22 A. No, these are the metres of the conduit. This is
23 particular I think GI conduits, yeah.

24 MR CATCHPOLE: For example, and this is one of the issues,
25 that for measured works, you would get paid sometimes on

1 a linear metre basis; is that right?

2 A. Not in our case, I mean, our evaluation of the progress
3 is based on the loaded programme, yeah, not on the BOQ,
4 yeah.

5 Q. No, not on the BOQ, but you would -- in terms of when
6 you come to put in your applications for payment,
7 effectively there would be a view taken about how many
8 metres should have been achieved in the week, based on
9 KPIs like this?

10 A. Part of the entire programme loadings, yes, correct.

11 Q. Then that would be translated into -- whatever the
12 weighting is results in a figure?

13 A. Yes, yes, but in this case, this is for monitoring of
14 the execution teams, what they have to do per day, yeah.

15 Q. Yes. Then you add on top of that -- and I'm certainly
16 not saying -- then there was the war room process.

17 Is this fair, that that enabled coordination between
18 different trades on site, where necessary, in real time?
19 Would that be fair?

20 A. Yes, again, a good tool, standard tool applied on any
21 project, but on short term. On short term. What was
22 discussed there is basically day-to-day activities to
23 one week with look-ahead of another one week, based on
24 all contractors involved. So up to 30 subcontractors,
25 whatever your client had.

1 So all the key construction people were there and
2 monitoring what was achieved that particular day and the
3 next day and so on. So daily briefing and planning of
4 the short-term activities, yes.

5 Q. Let's just pause there. What actually was going on was
6 that they would take look-aheads, sometimes two months,
7 normally a month, of all activities, for all trades, and
8 they would extract that effectively from KPIs and the
9 rev 7 programme in this case; is that right? Would that
10 be the starting point?

11 A. Yes, I mean, normally, normally, and considering again
12 the situation of the project, of unknown-about design
13 for particular areas, when it will be, so it was
14 normally the focus on the week, commencing week, plus
15 maximum two weeks' look-ahead. So let's say one plus
16 two weeks, yeah.

17 Q. Let's start -- what happened was there were look-aheads
18 based on each subcontractor saying what they were
19 planning in their works?

20 A. Yeah.

21 Q. It would be two months and a month. Then they would
22 develop from that the look-aheads for each week in that
23 month?

24 A. Correct, yes, yes, correct.

25 Q. So in the war rooms -- so all of these start with, say,

1 a month look-ahead, which is what you were advising in
2 your case you were planning to do during that month; is
3 that right?

4 A. The document was created by your client, by the main
5 contractor, and it's basically the document which list
6 all of the subcontractor in sequence. So you can, in
7 the same time, see the sequence, have they achieved,
8 what are their quantities, and it leaded to your columns
9 where your contract has to then achieve certain task,
10 but was always cross-checked against the preceding
11 contractors', or rather subcontractors' activities.

12 Q. That's exactly right. My client would compile
13 everything, because it's getting --

14 A. Yes, had the master plan.

15 Q. -- information about what the planned work was?

16 A. Yes.

17 Q. The progress that was expected was coming from each
18 subcontractor?

19 A. Correct.

20 Q. So the plan would then be to have a month, break that
21 down into weekly and sometimes two-weekly look-aheads?

22 A. Yeah. Actual weekly target plus forecast for the coming
23 weeks, yes.

24 Q. Then that is pinned up, effectively, with a whole load
25 of other charts?

1 A. Yeah.

2 Q. Everyone is there, and on a daily basis they are
3 checking what progress is being made; is that right?

4 A. That's correct.

5 Q. That enables you, as Specon, the JV, to know whether,
6 for example, the expected release of areas is going to
7 happen in accordance with your plan; is that right?

8 A. It's the first-hand look-ahead of readiness, but on
9 short term, yes, yes.

10 Q. But it's telling you, at a very granular level: looking
11 at this, they're not going to make that date, so we're
12 planning to go in there in two weeks' time, they're not
13 going to be ready, what are we going to do? We have got
14 to shift our emphasis and work in a slightly different
15 area and plan according to that; is that fair?

16 A. Yeah, it was combination of, in some cases, the rooms,
17 which are as per the programme that you are referring
18 to, counsel, were not achieved by the contractor, then
19 the teams assigned for that floor were sent to alternate
20 areas. That was also part of this war room exercise.
21 So trying to maintain the labour there and work wherever
22 access was available, rather than exactly as planned,
23 you know, yeah.

24 Q. In real time, it's giving you updates, realistic
25 updates, as to what the likely progress of the future

1 works is, so that you could look at the structure and
2 say: that's not going to be ready for when we're
3 planning to go in in the future, so we have to adjust
4 our resources or our planning accordingly. Is that
5 fair?

6 A. To the extent within the forecast of the few weeks, yes.
7 Not further than that.

8 Q. It would be obvious, wouldn't it? If you're standing
9 there and the structural guys are saying, well, we have
10 haven't actually built level 5 of the hotel yet, and
11 you're planning to go into level 5 in two months' time,
12 as an experienced construction project director, you're
13 going to say, well, they're never going to be ready, so
14 we're going to have to do something; what are we going
15 to do?

16 A. Yeah, I mean, you use example of the structure. It was
17 rather much more complex. When we talk about the hotel,
18 we are talking about the 20, 30 subcontractors and their
19 obligation to complete the works prior to MEP works,
20 rather than physically that you know that the structure
21 will not be built. We are talking here multiple
22 contractors contributing to global achievement by all of
23 us, yes, with progress, yeah.

24 Q. But this is against -- multiple contractors against the
25 work that they have planned to do, the resources that

1 they have committed?

2 A. Yeah, I agree.

3 Q. It also enables, I imagine, on a daily basis, that if

4 you -- take the hotel rooms, for example. You're

5 planning to go into, in that week, hotel room 501. When

6 you get there, there's still -- someone has left some

7 materials, they used it as a storage site?

8 A. Correct.

9 Q. You have to say to them: you need to clear it. And they

10 get the people in, clear it, and so you can deal with

11 that sort of immediate response to problems like that?

12 A. Absolutely, yes, agreed.

13 Q. It sounds to me like a coherent and logical, planned

14 mechanism to enable that everyone can coordinate their

15 work and progress; is that a fair ...?

16 A. As I already said, counsel, absolutely standard tool

17 used in construction on short term, on immediate task

18 forecast of the several weeks, maximum.

19 Q. But no mismanagement in using that process; you're not

20 criticising the JV for using the process, are you?

21 A. No. In my statement, as I remember, I stated that this

22 is one of the standard tools of the construction, yeah.

23 I criticise that this is not the only tool that you

24 need to use to plan properly your works.

25 Q. You're right. Can we look, please, at D1167.

1 This is an email -- a letter from Faithful+Gould.

2 It is dealing with the start of the -- so they are the

3 project manager before Turner International were

4 appointed. Do you recall they were the ones who

5 actually started the war room process? It wasn't my

6 client; it was Faithful+Gould who started it as the

7 project manager?

8 A. Counsel, that I'm aware, this is initiative from your

9 client team.

10 Q. If you could go then over to page 2, it's not very

11 clear, but you can see -- actually, go to page 3, page 3

12 is easier. Can you see there are colours given to

13 various types of meetings. Black is the war, the daily

14 sessions, but then there are a whole load of other

15 meetings, weekly meetings, procurement, submittal

16 reviews, strategies. So there's a whole load of other

17 tools being applied on the project to manage it; is that

18 right?

19 A. This suggests the meetings in the war room of the client

20 offices. They had their own war room. I have attended

21 the meetings with their consultants and clients and this

22 is their own war room.

23 War room we have talked a short while ago is the war

24 room in the different section of the project. There was

25 one in the basement and there was one in the towers.

1 This was initiated by our team. This war room and war
2 meeting daily briefing is, I believe, because I was not
3 copied on this, but I'm aware that they had their own
4 war room with written "war room" on it, in the client's
5 office.

6 Q. You see in item 5, right over in the right-hand column:
7 "The intent of the War Room meetings is to flag up
8 issues that are having an impact on site works and that
9 which require immediate resolution, thus allowing on
10 site activities to push on without delay."
11 That broadly was the same in the war room meetings
12 that you attended?

13 A. And you can see chairperson Andrew Pugh, yes.
14 I believe this is their schedule for their own war
15 room critical strategic --

16 Q. Listen for the question.

17 A. Yes, please.

18 Q. It wasn't the only tool that was being used. You had
19 specific coordination meetings, you had engineering
20 update meetings, you had planning meetings on a regular
21 basis, and weekly basis; is that right?

22 A. That's correct.

23 Q. So it's part of an overall management of the project?

24 A. Yes, as per the contract, you know, we have obligation
25 to meet your client weekly, bi-weekly and monthly as per

1 the --

2 Q. Can I suggest to you that it was a very effective way of

3 trying to manage a very complex project, throughout the

4 time that Specon was on track. Do you think that's

5 fair?

6 A. Yes, it's a fair comment.

7 MR CATCHPOLE: I wonder whether that's a good time to break?

8 PRESIDENT: Thank you. We'll adjourn for 15 minutes.

9 Resume at 10.45.

10 (10.30 am)

11 (A short break)

12 (10.45 am)

13 MR CATCHPOLE: Could we go, please, to your first witness
14 statement, paragraph 9.7, at B9-56.

15 You say here -- this is dealing, just so we

16 orientate ourselves, with the contracharges that were

17 levied by the JV.

18 In 9.7, you say:

19 "Myself, together with my team, would always

20 consider this correspondence [which is the list of works

21 that would be sent to you by the JV, listing what they

22 had done in that particular month] and acknowledge where

23 we agreed with the deductions and identified where the

24 deductions were disputed. The majority of the

25 backcharges were disputed."

1 I was surprised by that. Can we just look at D9886.
2 Just so we're clear. If we could expand that document
3 a bit, please. Thank you, that's fine.
4 If you look at this chart, this was the sort of
5 summary of the positions the parties had got to, just
6 before termination.
7 If you look in the right-hand side, you can see
8 Specon's position. Effectively, the vast majority --
9 the contracharges are all agreed. It's about
10 123 million in total, I think. Do you recall that?
11 That's a very, very substantial sum --
12 A. This process was -- we had regular meeting with the
13 commercial manager, Francois, even with Bernard at the
14 time, and the elements of this account were agreed and
15 certain specific contracharges that I mention in my
16 statement were disputed, you know, like, builder's work
17 charges, the charges for the salaries of their staff and
18 things like that, yes, yes --
19 Q. The vast majority of the backcharges, contracharges,
20 were actually agreed by Specon; is that right?
21 A. You are talking about the section --
22 Q. I'm talking about --
23 A. -- number 3, because -- (Overspeaking) --
24 Q. -- using this to say why I was surprised when I saw that
25 in your witness statement?

1 A. This is a status of account, counsel, summary sheet of
2 tentative status of account.

3 The contracharges, there was a separate section in
4 the IPA, with listing dozens and dozens of different
5 type of contracharges. This is the final account
6 summary sheet.

7 Q. Can we go to D508. Sorry, that's wrong.

8 N1, page 184, please.

9 This is Specon's opening submissions in these
10 proceedings, and it identifies all of the amounts that
11 they agree are valid contracharges or payments made.

12 Can you see?

13 So payments on behalf of Specon, 77.6 million?

14 A. Yep.

15 Q. Materials supplied, between 3.8 and 4.3 million.

16 Manpower supplied on behalf of Specon, 40.3 million,
17 huge number for men; is that right?

18 A. What was the question, counsel?

19 Q. What I'm putting to you is that the vast majority, the
20 overwhelming majority of the backcharges were accepted
21 as valid by Specon at the time and now?

22 A. I can see here some of the contracharges that
23 I specifically reject with reason, with a strong
24 reasons, like builder's work, coring and closing
25 openings, plinths. There are multiple here items. Here

1 it says liability admitted.

2 Q. Yeah, by Specon.

3 What I'm suggesting to you is that at the time --

4 you may have had arguments, because you were trying

5 to -- but at the time, Specon accepted the vast majority

6 of the very substantial contracharges that were levied.

7 Do you think that's fair?

8 A. There are records of that, counsel. Anything that is

9 related to, for example, material supply that you

10 mention or something which is against invoices or

11 against my letter requesting that invoices to be -- of

12 course this is straightforward. But there were many

13 other. Staff supply on behalf of Specon, this was, up

14 to the last day of termination, that was contested.

15 Q. Just as a matter of --

16 A. Some other listed here, which have a tag "yes".

17 Q. As a matter of interest, just take some big numbers

18 there.

19 A. Yes, please.

20 Q. Payments on Specon's behalf, so these are payments made

21 that Specon would otherwise have made, 77.6 million.

22 Material supplied, let's take 3 million, so let's call

23 that 81 million. Then manpower supplied, 40 million.

24 So let's call it 120 million.

25 MR HICKEY: Sorry, Mr Catchpole, this witness is

1 obviously -- this is my opening, and the column on
2 quantum is "N/A". It doesn't mean it's agreed.
3 MR CATCHPOLE: Right. Sorry.
4 So you don't accept --
5 MR HICKEY: I don't mind the first two, which --
6 MR CATCHPOLE: Okay, the first two.
7 MR HICKEY: -- suggest some numbers, but the third one
8 I think is a bit unfair --
9 MR CATCHPOLE: My apologies.
10 81 million. Just take 81 million as a figure. What
11 was your project budget when you were project director?
12 What was the project budget that was given to you? Do
13 you recall?
14 A. I don't recall precisely. I had a page given by my
15 board of directors. I can't recall exact figure.
16 Q. 5 million?
17 A. Sorry?
18 Q. 500 million?
19 A. I can't remember.
20 Q. At that sort of level?
21 A. I can't remember, but yes, something, few hundred
22 millions, yes.
23 Q. This is a huge proportion of your original project
24 budget that we are paying for; is that fair?
25 A. What is your question?

1 Q. It's a huge proportion. We're paying out effectively
2 a huge percentage of what was your original project
3 budget; is that fair?

4 A. Yes, but we are not comparing, with all respect,
5 counsel, the like to like. On the top of our original
6 works, our subcontract budget, we have multiple hundred
7 of millions of variations executed on this project. We
8 are talking -- that's one.

9 Two, this figure I'm not familiar with. I had my
10 own files with discussing final account of the total
11 expenditure on behalf of Specon for material and
12 invoices and whatever, yeah.

13 But we cannot discuss about the subcontract value
14 budget. We are talking subcontract value plus
15 provisional sums plus variation works, which are much
16 higher. We're talking 850, 900.

17 Q. So it's still a huge proportion. Even that's still
18 10 per cent, even at that sort of figure?

19 A. Yeah, if the figure is confirmed. I'm looking at it --

20 Q. Just assume it's right, since they admit it?

21 A. Assume it's right.

22 Q. It's still a huge proportion, even taking account of
23 everything you have said?

24 A. Yeah.

25 Q. I just wanted to also discuss with you, if we may, the

1 evidence that you were giving yesterday about when sort
2 of the -- I think it's been called by Specon -- "cash
3 starvation" started.

4 As I understand your evidence -- is your evidence
5 that that really started, that you started getting nil
6 payments in October 2020, from your recollection?

7 A. That I recollect, yes.

8 Q. Can we just examine that, please. Could we start
9 looking at some of the IPCs. B35.103-1.

10 So we orientate ourselves, the tribunal haven't seen
11 these before, so we'll just try and get the format.

12 We see "Interim Payment Certificate" at the top and
13 this one is IPC 44. If we then just drop down below it,
14 it's 4 July 2020?

15 A. Yes.

16 Q. The invoice receipt date is 23 July 2020. Do you see
17 that? Just so we -- not specific figures, but broadly,
18 once there is a certificate, if anything is paid, it
19 will be paid about 72 days later?

20 A. Correct, yeah.

21 Q. So we're looking at here a payment that would be made
22 end of August -- sorry, end of September, broadly? End
23 of September, beginning of October. Yes?

24 A. Correct, yeah.

25 Q. Just running down the first box we've got, we see "Works

1 Done", and that, with one exception, which is the one in
2 red, is the Arcadis valuation for the work done; is that
3 correct?

4 A. Can you rephrase your question?

5 Q. The first box says "Works Done", "Works for M2/M3",
6 "Cumulative", "Previous", "This Certificate". That's
7 Arcadis. It's their valuation?

8 A. That's correct, yeah.

9 Q. The next one, "Correction for Non Conforming Works",
10 which we see is in red, that is for NCRs where DEC --
11 not my client, DEC -- has levelled a penalty for failing
12 to complete and close out NCRs; is that right?

13 A. Yes, yes.

14 Q. What happens is that they effectively withhold payment
15 until the NCRs are cleared and then that money will be
16 released?

17 A. Correct, yes.

18 Q. In "This Certificate", we can see the gross amount
19 certified is 9.5 million, and then in the advance
20 payment, next box, you had to pay back advance payments
21 that had been made in instalments, so the amount coming
22 is reduced to 8.5 million?

23 A. Yep.

24 Q. And then there's "Retention", and then you go down and
25 there will be, for example, under "Deduction", there is

1 work by contractor. That's by my clients, for example,
2 doing work you've requested them to do, such as the sort
3 of coring or scaffolding or whatever it may be; is that
4 right?

5 A. Yeah, that was contested, yeah, yeah.

6 Q. Then --

7 A. This is deduction, yes, yes, correct.

8 Q. But it's for the work that we have done, we say on your
9 behalf?

10 A. Yes, yes.

11 Q. Then right at the bottom, we see another "Deduction",
12 the last box, which includes contracharges and in this
13 month, there is nothing.

14 If we then go down to the bottom, keep going down,
15 we can see that the net amount due is therefore
16 8.4 million AED?

17 A. Yeah.

18 Q. That cash is then paid, and in this case would be paid
19 at the beginning of October 2020?

20 A. Correct, yeah.

21 Q. So, cash coming in at the beginning of October 2020,
22 according to the valuation; yes?

23 A. Yes.

24 Q. Go to the next certificate, number 45, B35.105-1.

25 This is slightly different. This is IPC 45. It's

1 the next in sequence. It doesn't actually have an
2 invoice date, because it's not about a claim by Specon.
3 Can you see under "Advance", there is effectively an
4 amount paid, if you look down the penultimate entry,
5 "Advance Payment No. 05" is 25 million? Yes? You see
6 under "Net amount due", 21 million after deduction,
7 nothing from my client.
8 So this is an advance payment being made. Do you
9 recall that?
10 A. Which date is that? Can I see the bottom?
11 Q. This is around July --
12 A. Oh, also in July, yes.
13 Q. July 2020.
14 A. Can I see the bottom of the page?
15 Q. Yes, keep going.
16 A. The dates?
17 Q. Can you go down, please. Sorry, it comes through --
18 it's October. I think there was a -- negotiated. So
19 this is coming through in October; yes?
20 A. (Witness nodded).
21 Q. Is that right?
22 A. Yes, yes.
23 Q. There's 21 million AED in cash coming to Specon
24 in October 2020, or shortly thereafter, or 72 days
25 thereafter, whenever it is; yes? Do you recall that?

1 A. Yes, yes.

2 Q. If we go to the next certificate, please, in the

3 sequence, which is 46. B35.107-1.

4 Just going through the same sequence, you see this

5 is 46. It's dated, the invoice date is 24 August 2020.

6 So this will be paid in the beginning -- end

7 of October/beginning of November, yes? Is that right?

8 A. That's correct.

9 Q. Sorry, you have to say it for the transcript, I'm

10 afraid.

11 A. Yes.

12 Q. We see the same process. You've got works for M2/M3, so

13 that's the valuation, 5.6. You then have the NCR

14 process, which in this case I think is actually adding

15 some of the money back that's been retained?

16 A. Yes.

17 Q. Then material on site valued by Arcadis, works done,

18 gets to 9.4 million in this case. Yes?

19 If we work down, just go down the certificate,

20 please, you see under "Work by Contractor" in this

21 particular certificate, there's 129,000, it's not very

22 much. Again, no contracharges levied, so it comes up

23 with a net result of 9.2 million. Yes?

24 A. Yes.

25 Q. So at the beginning of -- end of October/beginning

1 of November, there's going to be a 9.2 million payment

2 to --

3 A. May I see the bottom of the page, please?

4 Q. Yes, of course.

5 A. Yes. In October, yeah.

6 Q. Okay. Then if we could go to the next one, please,

7 B35.112-1.

8 This is now number 47, 24 September, a month later.

9 Here we see that in the works done, 5.7 million is

10 valued. There's a massive withholding of, for

11 non-conformances, 1.7 million, a minus figure, yes?

12 This is because Specon has not corrected NCRs and DEC

13 have levied a penalty; is that right?

14 A. Yes, I mean, we have dealt with the NCRs. I recall this

15 was lot of minor, minor observations that were covered

16 with NCR and, I mean, this is -- on interim basis, they

17 have deducted or reduced and based on the movement of

18 the closure of the NCRs.

19 Q. The point is, it's not my client deducting it. It's

20 because DEC have said --

21 A. Yes, yes, it's Arcadis, yes.

22 Q. The gross amount certified for this month is

23 5.5 million?

24 A. Yeah.

25 Q. There are some repayments of advances, advance payments,

1 and then you go down to "Work by Contractor". In this
2 month there's quite a lot of work done, so it's 438,000,
3 but no contracharges.

4 So a net payment, at the bottom we see 4.87, and
5 given this is September, you're going to be expecting it
6 end of November/beginning of December.

7 So again, cash coming in in accordance with the
8 valuation process?

9 A. Correct.

10 Q. So far, no cash starvation in the last quarter of 2020?

11 A. We can continue if you don't mind.

12 Q. We can. I'm just asking you.

13 A. What you have to understand, counsel, is that, yes, this
14 is correct, these are the figures certified to us
15 between July and September, yes, yes, these are correct.

16 Q. And the payments that you get during that period?

17 A. Yes, 60 days later.

18 Q. So we can take it there's no suggestion of cash
19 starvation during October, November, December; is that
20 right? Because you're getting full value of what you've
21 been certified?

22 A. What you have been certified two months earlier, yes,
23 yes.

24 Q. If you could then go to the next one, we will keep going
25 through, B35.116-1.

1 This is a slightly different one, but this is
2 now October, IPC 48. We see the works done, certified
3 at 4 million. No deductions for NCRs. Got the material
4 on site, additional works, and then you've got a figure
5 of 5.85 million. But in that month, against that
6 certificate, Arcadis are saying, advance payment, you
7 have to make repayments; is that right?
8 A. Correct.
9 Q. My client?
10 A. Yes.
11 Q. So the actual value that is certified is 1,177,000; yes?
12 A. Yes.
13 Q. In this month, against that figure, it is correct to
14 say, if you look at the work done by the contractor,
15 they levy a deduction for work done in the same amount?
16 A. Yes.
17 Q. That's the first time we see it?
18 A. Yes.
19 Q. That's against a modest valuation, because the bulk of
20 the value has been taken out by having to repay the
21 advance payment; is that right?
22 A. Correct, yeah.
23 Q. This will be -- if we go back up to the top, just for
24 the date?
25 A. This was October --

1 Q. 25 October?

2 A. Yes, starting with -- (Overspeaking) --

3 Q. So it's going to be December/January -- end of

4 December/beginning of January.

5 Again, the reason it's coming down to nil is not

6 because of what my client is doing; it's largely because

7 of the repayment of the advance payment instalments?

8 A. And your client imposing the deductions.

9 Q. Yes, for work that it has done on your behalf?

10 A. 1.2 million, yeah.

11 Q. For work that it has done on your behalf; is that right?

12 A. It was disputed by us, yeah, to certain extent.

13 Q. Right. If we then go to IPC 49, please?

14 A. November.

15 Q. B35.118-1.

16 We then see you get a good valuation in this one,

17 again no NCRs, 6.8 million, but out of which the

18 repayment of the advance that Arcadis are (unclear ...)

19 is 4.1, so it leaves you with only 2.6 million?

20 A. Yes.

21 Q. Two-thirds of it goes in advance repayments?

22 A. Correct.

23 Q. It's right that on that one, SBJV do say: well, we have

24 done work for you to that value, so we are going to --

25 and this is something that's going to be paid -- nil,

1 but it would be due for payment, if it was anything, in
2 end of February/beginning of March?

3 A. Yes.

4 Q. But the bulk of the reduction is actually repaying the
5 advance payments that you've been given in the past; is
6 that right?

7 A. Correct, yes.

8 Q. Then we have IPC 50, B35.120-1.

9 This is December, so we're now looking at payments
10 that will be 72 days later.

11 Again, similar sort of pattern, but in this one,
12 first of all, you've got the works done. There's a very
13 substantial adjustment for material on site. So,
14 against what has previously been certified, Arcadis are
15 deducting nearly 3 million and that would be expected,
16 because that just reflects the fact that the value of
17 the work coming -- the value of materials coming in is
18 much less than the amount that's been released to site?

19 A. Correct, correct, counsel.

20 Q. Then additional works gets you 5.8 million after that
21 deduction, and we then have work by contractor and
22 contracharges which eat up that remaining amount.

23 This is work that we've paid for and now, because
24 there is a positive payment in your favour, my clients
25 have said: now we're going to recover it against that

1 payment?

2 A. Yes, correct.

3 Q. If we then -- and that pattern is the same for the next
4 month, if we can look at it, B35.122-1.

5 We have the same pattern. So works for M2/M3,
6 3 million. Material on site, another 2 million
7 adjustment?

8 A. Yes.

9 Q. So you get down to just under 2 million, which is not
10 a huge sum of money in terms of the work that's ongoing,
11 is it?

12 A. Correct, yes.

13 Q. So that's all in theory you're entitled to. But against
14 that, we see that some -- that it's been eaten up by --
15 if you look at "Work by contractor", none. But the
16 contracharges that have been levied for payments made on
17 your client's behalf are 2 million. So effectively it
18 balances it out?

19 A. Yes.

20 Q. We then have, if we could go to IPC 51, B35.122-1.

21 Sorry, that's wrong. B35.124-1. IPC 52.

22 Now we're in February and something else happens.

23 So if we look at the same pattern, 4 million certified,
24 but then there is a major adjustment made by Arcadis for
25 materials on site of 23 million, and it is that which

1 makes this an entirely negative valuation. Nothing to
2 do with my client; is that right?

3 A. That's correct. This was discussed in the coming months
4 with Arcadis and you will see adjustments of that
5 figure, yeah.

6 Q. But the point is it's not anything -- we're not levying
7 anything in this one, because there's nothing to levy
8 against. It's a negative amount.

9 If we go then, please, to IPC 53, B35.126-1.

10 This is now March. The value of your work done is
11 just 995,000. The additional works is 1.2. Arcadis
12 have made massive deductions again, which is correction
13 of non-performing works, that's the penalty,
14 4.2 million, and material on site is at a negative 6.2.

15 So you've got a negative valuation from Arcadis of
16 8.3 million. Do you see that?

17 A. Yeah.

18 Q. Nothing to do with my client. This is straightforward
19 certification by cost consultant.

20 Understandably, that's despite the fact, if you look
21 down, "Work by Contractor", at this stage we're saying
22 we've got 12 million dirham outstanding, but obviously
23 we can't take anything, because you have a minus
24 8 million certificate.

25 Then if you go forward again, please, to IPC 54,

1 B35.128-1.

2 Now in April 2021, IPC 54, same thing. Very limited

3 value of work done, penalty for not completing NCRs, and

4 then a massive deduction. A reduction for material on

5 site, 5 million, results in a negative valuation from

6 Arcadis of 4.9 million.

7 A. Correct.

8 Q. Yes?

9 A. Yes.

10 Q. Thank you.

11 You see that there is work done that's claimed,

12 which is 2.9 million, but of course we can't

13 contracharge you for that, because you've got a negative

14 valuation, so there's no cash coming in. And there's

15 contracharges levied of 14 million. You can't have

16 that, so your now net amount due on this certificate is

17 about minus 60 million AED. Yeah?

18 A. Yes.

19 Q. What I suggest to you that shows is, first of all, there

20 was no cash starvation by my client at any stage. Do

21 you agree with that?

22 The reason you're getting nil or very, very low

23 certificates is because either -- well, first of all,

24 the value of the work you're doing is very low from

25 Arcadis. Then the deductions they're making are very

1 high and your obligation to make payments against the

2 advance payment means that money is eaten up.

3 Do you think that's fair?

4 A. I mean, looking to this certificates, yes. But in terms

5 of managing project, you will understand the context of

6 my statement, that we basically do not have a sufficient

7 funds on the project, yeah.

8 PRESIDENT: Sorry, "Work by Contractor", what is that? How

9 does that differentiate from contracharges? Because

10 I look at this one, for example, work by contractor is

11 almost 3 million dirham, but works on M2/M3 were valued

12 at 1.2. So what were the works being done by the

13 contractor? Can you ...

14 MR CATCHPOLE: I think I can probably help.

15 "Works by Contractor", would this be fair, is

16 generally work that's done on site for you, such as

17 provision or -- you know, coring, it may include some

18 labour, it may -- well, provision of scaffolding, things

19 like that?

20 A. Yes. Sorry, in that contracharges that you said, there

21 are several sections that we were discussing monthly.

22 So for example, the builder's works, to give you

23 example, builder's works of the main risers, that have

24 been executed by the contractor in early stages in 2016,

25 and after all the design is completed, needs to be

1 corrected. All this cutting of the cores, they were
2 charging us as a work done by contractor. Okay?
3 Similar for grouting around the openings for the
4 drainage in the hotel rooms, despite that the design of
5 the rooms change multiple times over the project.
6 So any of these extra works shifting, because of the
7 tiling drawing being very late, coordinated and
8 executed. So any of these abortive works by the
9 contractor were charged as work done by the contractor
10 on our behalf, even though it's not fair.
11 So we have contested them, but these are the type of
12 works that the contractor believe that they have done on
13 our behalf, but basically, in my opinion, these are the
14 claims to the client or designers or whatever. Yeah.
15 So they were part of the overall contracharges list and
16 they distinguish them in this way.
17 Q. It's the contracharges here -- sorry.
18 PRESIDENT: No, you go.
19 MR CATCHPOLE: The contracharges are payments made by the JV
20 effectively to Specon's creditors, material suppliers,
21 sub-subcontractors, people like that?
22 A. Yes, correct, yeah.
23 Q. That's the broad distinction?
24 A. And the work --
25 PRESIDENT: So it's not just labour, it's payments made,

1 material supplies, all of that.

2 MR CATCHPOLE: Everything.

3 PRESIDENT: Thank you.

4 MR CATCHPOLE: Broadly, it's third party debt (unclear --

5 coughing) that we're paying, as opposed to work done on

6 site, in crude terms.

7 MR STEWART: Can I just ask one question arising us of what

8 you said?

9 A. Yes, sir.

10 MR STEWART: Work by the contractor, for which we see the

11 sum here as at the cumulative date at 37.537 million,

12 that 2.976 million will have been work done in the

13 period of this certificate? Or was that -- you seem to

14 be suggesting it referred back to an earlier time?

15 A. All this works done by contractor, or contracharges for

16 a payment done on behalf of Specon or contracharges, for

17 the salary of their staff, are discussed with them. We

18 had regular meeting with them, but they should represent

19 the monthly contribution. But as we could see from the

20 last few certificates, they were using the available

21 balance of the certified amount to recover some of the

22 money, basically. It's not actual for that month.

23 Probably in their opinion, the amount due is much

24 higher. So they, based on the available amounts, they

25 deduct what's available, like they did 1.2, 1.7, 2.2.

1 The fact is that most of this work done by
2 contractor, because they physically have never done any
3 work on behalf of us as MEP. They have done the work,
4 builder's work, civil works that they believe they
5 should contracharge us, which we then challenged.

6 MR CATCHPOLE: To be fair, a substantial part of the work by
7 contractor will also be things like the labour that SBJV
8 was providing to Specon at this time?

9 A. This is not considered as work done by contractor. They
10 are basically, either in agreement or in disagreement
11 with us, bring the labour. This labour were then
12 supervised by us, and they were part of globally our
13 resources. So this labour do not constitute work done
14 by contractor. That was their basically just labour.

15 Q. What was paying for it? The JV was paying for the
16 labour?

17 A. JV was paying and then deducting from us the first next
18 certificate, yes.

19 Q. That's what I'm saying, that in the deduction for work
20 by contractor is the cost of providing that labour?

21 A. We have to see the breakdown of typical attachment to
22 the IPC. There is a document which has multiple
23 sections and titles to it, but what I see is in the
24 terms of work done by them is like this grouting,
25 builder's work, which there is a story behind. We came

1 to the project one year later. All this are as a result
2 of any changes of design, which continuously change.
3 Any builder's work, they would then debit it to us,
4 which we challenged, which we disagreed to be right
5 thing to do.

6 Q. Just to continue the story -- sorry.

7 MR COLE: Sorry, just before we go on, whilst we have these
8 before us, Mr Grgurev, can you explain how the material
9 on site valuation comes about? We seem to have, if
10 I understand this correctly, about 1.1 million done by
11 you on M2 and M3, and there's 2.9, so 3 million done in
12 respect of contractor's work. So 4 million altogether.

13 Yet the material on site adjustment is 6 million.

14 That's rather suggesting that 6 million worth of
15 materials have been used. How does that work?

16 A. Yeah, I mean, what I recall, sir, from that time, this,
17 around 30 million that Arcadis suddenly deducted from
18 us, this was action taken by them in that particular
19 month, I think month before this. And then we have
20 gradually did the multiple inspections and eventually
21 slightly adjusted all these figures.

22 There were some -- this was set in action after four
23 years of project, that they have done this in
24 a particular month, which we saw here. It happens
25 suddenly in one month.

1 But it was not based on the inventory or something
2 like that. It was then discussed and challenged, and in
3 presence of the main contractor we have done a series of
4 verification, what is left.

5 Then these figures were corrected in a subsequent
6 certificate.

7 MR COLE: Okay. Thank you.

8 MR CATCHPOLE: Just so we -- shall we just continue this
9 process, because it's a big theme, that somehow my
10 clients were stopping you getting money and improperly
11 taking your money. I just want to actually look at what
12 was actually happening.

13 B35.130-1, which is IPC 55. I'm going to be fair to
14 you and go through them.

15 Now we're in May 2021, so we're looking at payments,
16 if there were any to be made. That would be made at the
17 beginning of July, effectively -- end of July.

18 We see that the value of work certified is
19 1 million. Correction, again penalty applied for not
20 correcting defects. Material on site. And you do have
21 some additional works, and you get a very, very modest
22 value of 770,000. That would be, even if you received
23 that money, insufficient to funds the work that you've
24 got to do. Would that be fair?

25 A. Yes, agreed.

1 Q. We see no advance payment deductions made in this month.

2 The work done by the contractor, the claim is high,

3 3.4 million. Contracharges, that's payments to Specon's

4 creditors, 13 million. And so you're now up with

5 a negative certificate of about minus 75 million; yes?

6 But the driving point again is the actual top line

7 valuation is very, very low from Arcadis. Yes?

8 A. Yes.

9 Q. I suggest to you this isn't about cash starvation by my

10 client; it's just because you're not getting the value

11 of the works certified. Is that fair?

12 A. Yes, counsel.

13 Q. Then we see, B35.132-1, something completely different.

14 This is IPC 56. Do you recall that the financial

15 position of Specon, was so desperate that Mr Stelios

16 Thrasyvoulou went to the JV and begged them to give him

17 15 million AED to keep the bank accounts open? Do you

18 recall that?

19 A. I was not present in the meeting, so that's why

20 I mention earlier.

21 Q. You see, this is an advance payment of 15 million coming

22 from my clients to you. Do you recall that being made?

23 A. Yes, I mean I have seen certificate.

24 Q. You recall it being made?

25 A. Yeah, yeah.

1 Q. This is not money that the employer has given to the JV.

2 This is money that the JV is taking out of its own bank

3 account and giving to Specon; is that right?

4 A. I cannot confirm that, but I'm aware of this

5 certificate, counsel. This was in the time leading to

6 the supplementary agreement, I believe it's part of --

7 yeah, yeah. But I was not present in that meeting or

8 discussions.

9 Q. Do you think making an on-account payment of 15 million

10 AED is cash starvation by my client of your client?

11 A. This is advance payment, yeah. It's not starvation.

12 Q. It's not, is it?

13 A. Yeah.

14 Q. Do you know whether any of that 15 million found its way

15 into your budget to spend, actually spend on the works?

16 A. As I stated yesterday, I was not part of -- I didn't

17 have access to the accounts.

18 Q. Is the answer no -- as far as you're aware, this

19 15 million, the substantial part, never made it into

20 actually being spent by Specon on the work?

21 A. This cannot be confirmed or denied by me, counsel.

22 Q. If we look at where -- I have sympathy with you,

23 Mr Grgurev. You must have been in an awful position as

24 the project director on site. Would that be fair?

25 A. I mean, it's a strategy of the company to control the

1 finances themselves, but --

2 Q. Forget about the strategy. You were at the coalface.

3 You were the one who has to deliver?

4 A. Yeah.

5 Q. And you literally have no money in which -- no resources

6 being given to you to enable the work to progress; is

7 that right?

8 A. In this period, yes. Most of the project, that was not

9 the case. It was good times, major certifications, and

10 so on. In this period that we just went through, of

11 course this minimum amounts would not be sufficient to

12 cover the bills that I have to approve, yeah.

13 Q. This period, so we are clear, we are talking from

14 October 2020 through to termination?

15 A. Through termination.

16 Q. It must have been -- I have to say, it must have been

17 incredibly frustrating for you professionally to be in

18 that position; is that fair?

19 A. It's fair to say that.

20 Q. Inevitably, you are not able to make the progress that

21 you need to make unless you have the resources you need

22 to do the work?

23 A. Yes, but if I may say, counsel, at that time, most of

24 the material is there. Okay? Majority of the resources

25 is ours. So even yesterday you suggested that this

1 resources, that were sometimes agreed by me and
2 sometimes without agreement brought here, they were
3 a fraction of the overall resources present on site.

4 Q. We'll look at that in a moment.

5 A. Sure, sure.

6 Q. I'm going to give you -- that is not reflected by the
7 records, so we will look at it --

8 A. We can look at it, yeah, no problem.

9 Q. So, you are agreeing with me that in this period we are
10 talking about, whoever is at fault, for you on site, you
11 are not able to make the progress that you wanted to
12 make or would otherwise have made because you do not
13 have the resources available to you?

14 A. Again, I would disagree with that, counsel, because we
15 had the material in our stores. So the critical element
16 of the job is the people, and the material and
17 equipment. We had our stores full of material. Why
18 these people worked and without maybe being paid, that's
19 another story, but we had progressed with the works in
20 this months, leading to the supplementary agreement.

21 Q. But not as much as you could have done had you been
22 properly resourced -- from whatever source. If you had
23 the proper resources, you could have made much better
24 progress; is that fair?

25 A. I would really appreciate, counsel, that we look through

1 the proportion of the resources contributed by the main

2 contractor, because you --

3 Q. I will happily take you to that in a moment.

4 A. Yeah.

5 Q. But do you agree from your memory --

6 MR HICKEY: Sorry, I can't see it on the [draft] transcript,

7 because you're overspeaking. Sorry.

8 MR CATCHPOLE: I'm terribly sorry. It's very rude. It

9 happens in these proceedings.

10 The point is to get your evidence, not to hear me

11 talking over you.

12 So if I am talking over you, stop me, or Mr Hickey

13 will. All right?

14 A. Sure, sure, counsel.

15 PRESIDENT: Perhaps you could ask the question again. Do

16 you want to repeat the question, so that we've got his

17 answer on transcript?

18 MR CATCHPOLE: I think we're agreed that you were not able

19 to make the progress that you believed you could make at

20 the time -- you were making progress, but you couldn't

21 do what you believed you could make if you had been

22 properly resourced?

23 A. Counsel, of course, if we had proper cashflow that we

24 can produce more, of course. But I repeat, what

25 I remembered from 2020, because that was -- 2021, the

1 month leading to the supplementary agreement, we had
2 people on site, we were working, all our 14 specialist
3 subcontractors were with us and they were working,
4 despite this cashflow situation.

5 So, could it be better? Yes. But is the
6 predominant factor to improve the progress, the
7 contribution of 80 or 100 labourers that your client
8 brought to site? I would not agree that this was the
9 crucial contribution overall, considering the
10 14 specialist subcontractors, their technicians, highly
11 technical, and our resources at the moment on site --
12 (Overspeaking) -- through the numbers.

13 Q. And for obvious reasons, you would regard your
14 specialist subcontractors as some of the critical
15 activities?

16 A. Absolutely, yeah, absolutely.

17 Q. That's fair.

18 Can we look, please -- we'll go to the resources,
19 because I promised to do that. Can we go back to your
20 witness statement at B9, page 55, please.

21 It's section 9, "Deductions and Back Charges". What
22 you say in paragraphs 9.1 to 9.3 is:

23 "As explained above, the Project was suffering
24 significant delays and as a result Specon was instructed
25 to procure additional labour and 'accelerate' the works.

1 "Specon deployed additional labour which was
2 actually provided by SBJV. However, instead of paying
3 Specon for the costs incurred to complete the works and
4 variations, SBJV back charged Specon for the additional
5 resources brought on site.
6 "In addition, SBJV would unilaterally assign
7 additional labour to Specon even though it was not
8 necessary (for example, works could not be progressed as
9 access issues had not been resolved or design issues
10 were still ongoing). However, Specon could not refuse
11 this additional labour as SBJV would simply arrange for
12 labour to be made available at site and Specon were
13 instructed to utilise them. SBJV would then 'back
14 charge ' Specon for providing this labour ..."
15 Can we just have a look at that? Could you be shown
16 B55-4. If we could blow up the graph in the middle,
17 please.
18 Just so you know what this is, this is something
19 prepared by Mr Dinesh Justin, one of JV's witnesses, to
20 identify the manpower on site for different
21 subcontractors and Specon.
22 If you look at the red line, that is the MEP --
23 that's Specon's manpower graph. Do you see?
24 A. Can you zoom it a little bit more? I can't see any
25 numbers or anything.

1 Q. If you could zoom it a bit more.

2 A. It's not clear.

3 Q. You can see the various subcontractors listed in the top
4 right?

5 A. Yep.

6 Q. And it's the sort of graph over time, and what it's
7 showing is that, really, as at August 2019, which is the
8 big spike, that's when you hit peak labour of just over
9 2,000 men. Does that accord with your recollection?

10 A. I'm not 100 per cent sure, counsel, to confirm this
11 figure, because I'm not sure if this is including also
12 my specialist --

13 Q. No, I don't think it includes your specialists.

14 A. They are part of my contract. It looks like that, yes.

15 PRESIDENT: Mr Catchpole, the contractors are not Specon's
16 subcontractors; they are SBJV's subcontractors?

17 MR CATCHPOLE: Yes.

18 PRESIDENT: Is that right?

19 MR CATCHPOLE: That's right?

20 A. Sir, the 14 specialist contractor were working directly
21 under our contract, like Siemens, Honeywell, so their
22 technicians should be here.

23 MR CATCHPOLE: I'm just at the moment interested in the
24 amount of support that the JV gave to Specon.

25 A. Sure, yeah.

1 Q. So you have 2,000, just over 2,000 men, August 2019.

2 Then there was a fairly dramatic decline towards, as you

3 demobilise, towards the end of 2019; do you recall that?

4 A. End of 2019?

5 Q. Yes, it drops fairly dramatically.

6 A. Can you point on the curve here which month you are

7 referring --

8 Q. Yes, do you see where the peak is?

9 A. Yes.

10 Q. Just look to the right and it goes down to about just

11 after where it says November 2019?

12 A. Because I see here --

13 Q. If you look at the big screen behind you?

14 A. -- April 2020. April 2020.

15 Q. No, no. If you look behind you, can you see there's

16 a peak which has, just to the left of the text box, just

17 over 2,000 men? Move that hand over? Yes, there.

18 Thank you.

19 A. Okay.

20 Q. Then it drops down dramatically?

21 A. This first next peak?

22 Q. Yes, then which brings you into sort of mid -- around

23 November, early December -- sorry, around

24 early December 2019?

25 A. December, January, yes.

1 Q. Then there was a spike, which coincided I think with an
2 advance payment being made. Do you recall why there was
3 a spike there, why you have more resources?

4 A. Sorry?

5 Q. Just at the beginning of 2020, you see it drops down,
6 then it goes up rapidly, just to the left of that text
7 box?

8 A. The last ...

9 Q. Yeah. Do you recall why that was happening?

10 A. I recall the first drop at that time about December,
11 based on the level of access. We have reduced 200
12 units, or something like that. I can't read the number,
13 but it should be 1,800 or something like that. That was
14 by me as a project director.

15 Q. You decided to demobilise?

16 A. Based on the available access, yes, at that point. You
17 know, we hadn't had bridge, we hadn't had vast areas,
18 but there was 10 per cent reduction of the resources for
19 a very short period of time, and then it was reinstated
20 a month later, January.

21 Q. Then it drops completely, literally almost falls off
22 a cliff, at the beginning of 2020?

23 A. This ...

24 Q. You don't recall that?

25 A. I don't remember that we have dropped to zero or

- 1 something like that.
- 2 Q. No, no, not zero. To be fair, if we could just go over
- 3 to the left-hand side of the graph --
- 4 A. What is the number?
- 5 Q. Can you just scroll across, please, so we can see the
- 6 number. It's about 1,000-odd men, the figure, 1,200 --
- 7 A. And this is based on what report?
- 8 Q. These are the clocking-in keys, for when the workers are
- 9 working?
- 10 A. To be honest, counsel, I don't remember that we would
- 11 drop 1,000 people in a month of January 2020 or
- 12 something like that.
- 13 Q. If that occurred, that would be a dramatic reduction in
- 14 manpower by Specon, yes?
- 15 A. So I cannot corroborate with this data that we dropped
- 16 drastically 1,000 people.
- 17 Q. If it occurred, that sort of level of manpower across
- 18 all areas would certainly mean that you were not
- 19 progressing the works efficiently; is that right?
- 20 A. Yes, if this data correct. I simply don't recall
- 21 anything like that, you know, from that time, yeah.
- 22 Q. I appreciate that. We then see, if you keep looking at
- 23 that graph, there is then a very dramatic decline, and
- 24 that coincides with Covid. Do you recall that? Specon
- 25 itself laid off 400 men, actually laid them off?

1 A. Ah, yes, you are talking now about the Covid period?

2 Q. Yes.

3 A. 2019 to 2020, yes, yes. March, yeah, yeah, okay.

4 Q. We have to be careful with these figures because I think

5 on site, they stopped requiring people to clock in?

6 A. Ah, now we probably agree, because we didn't had

7 reduction. I had even purchased 12 buses to comply with

8 the rule of 30 per cent occupancy. So this is rather

9 checking the records of the time, because we have hand

10 signatures of all our labours daily, that record can be

11 checked, definitely, we didn't demobilise them from site

12 or something like that, throughout the Covid period.

13 Q. Do you recall at the end of the Covid period, in August,

14 that the JV were complaining that you were not

15 remobilising fast enough?

16 A. August 2020? Do you have any letter or something?

17 Q. I'm restricted on time. I'm just asking whether you

18 recall one of the things that was being said was that

19 unlike some of the other subcontractors, Specon was not

20 remobilising fast enough?

21 A. Counsel, if I may say, during the Covid period, I was

22 there every day. I was there every day. We have

23 followed the rules of the government. I have, out of

24 200 plus staff, design, engineers, procurement, put to

25 work from home, staff, any staff in the office, to first

1 create the space and everything, and whoever is not
2 directly involved in the construction. Okay?
3 So the construction site engineers, project
4 managers, they were there throughout the Covid, even
5 though we had totally on the project, I don't know,
6 2,000, 3,000 cases or something. I was personally there
7 throughout that period. So everybody suffered during
8 this period.

9 But we have kept going, in terms of the
10 construction.

11 Q. That wasn't the question. The question was, do you
12 recall that the JV was saying to you, you haven't got
13 enough resources, you've got to remobilise more quickly,
14 from August onwards?

15 A. August 2020. We were in contact throughout the five
16 years' project, counsel. So they were always
17 discussing, we were discussing labour and I have
18 complied. I have sometimes accepted the calculations of
19 their project managers, sometimes I didn't. But we had
20 always the presence of the -- I can't recall that
21 particular month of August, yeah.

22 Q. If we just go, just scroll across on the graph we're
23 looking at, please?

24 A. Yes, please.

25 Q. At the bottom, you can see it's August 2020, and if you

1 follow the red line, that is Specon's labour. What you
2 see is that it gets up to a peak of around 782?

3 A. Okay.

4 Q. In mid-October 2020. And then it constantly declines
5 over the rest of the project. The number of men that
6 Specon were providing briefly got up, but nowhere near
7 the sort of levels we looked at pre-Covid. Does that
8 accord with your recollection?

9 A. Yeah, but I mean, you have to bear in mind, counsel,
10 where we were in terms of progress at that point of
11 time, you know, overall. So I have to disagree with
12 this graph showing period from April through August that
13 reflects the true presence of our labour on site,
14 because this was not based on the verification of the
15 correct records.

16 This is assumption in situation where we have a peak
17 of Covid situation on project, and you're basically
18 saying that we had --

19 Q. I'm asking you --

20 A. -- a couple of hundred people or something.

21 Q. Immediately after Covid, so after August '20, did you
22 ever get back up to the sort of levels of labour which
23 Specon was providing prior to Covid?

24 A. No, because, as you can see here, even in this graph,
25 the peak labour was, I recall, 2,700 with our

1 specialists there, about 400, 500.

2 During 2018, 2019, we have done this bulk of the --

3 what we discussed yesterday: plant rooms, risers,

4 horizontal distribution in the corridors of the hotel

5 rooms. So the bulk of the work was completed by end of

6 2019, and during the Covid we were continuing following

7 the accessible areas and design given for the

8 provisional, some areas, mainly in the public area, like

9 ballroom, the spa, which consists of 300 rooms per se,

10 which design was given to us end of 2019, and so on.

11 Q. I'm not tying you to figures, but do you recall that

12 what's shown on this graph broadly accorded with your --

13 for whatever reason, you rose to a peak of just under

14 800 Specon people, October-ish 2020, and then the number

15 of Specon direct people declined over the

16 remaining year?

17 A. Again, what I recall in that end of 2020, together with

18 our specialist, we were over 1,000. These figures, I'm

19 not sure that they reflected the full number of Specon

20 and their subcontractors.

21 Q. I'm just asking about Specon's labour at the moment.

22 Does that accord with your recollection about what

23 Specon were providing?

24 A. I really don't remember, counsel, but I remember that we

25 were always talking about 1,200, something like that.

1 Never 700 or something like that. Considering also our
2 specialist contractor, which are mechanical, electrical,
3 ELV.

4 Q. We'll come on to the specialists in a moment. I'm just
5 interested for the moment -- I keep saying -- in your
6 Specon labour, all right?

7 Do you recall that this graph, the red graph I'm
8 looking at, 800 men, sort of roughly, as a peak, it then
9 declines over time, for whatever reason, on this sort of
10 level. I'm not tying you to the numbers. Does that
11 accord roughly with your recollection of what Specon
12 were providing?

13 A. In principle, I would say yes. I would say yes, because
14 in that period, leading to the 2021 and end of 2020, the
15 majority of the outstanding works were related to our
16 specialist, like Naffco, like Honeywell, like -- you
17 know? So the bulk work of Specon was related to the
18 final fix, wherever accessible, where the ceiling was
19 closed, where the walls were closed, so -- and the rest
20 of it, majority of the works, which it seems is not
21 represented here, is by our specialist.

22 Q. Now just look at the brown-orange line. They are the
23 numbers of men that SBJV provided to Specon over the
24 same period.

25 A. This is --

- 1 Q. Perhaps could you zoom in a little bit, please.
- 2 A. Yeah.
- 3 Q. It may be clearer if you want to look at the figures
- 4 on ...
- 5 A. Yeah. What it says there? 1,000?
- 6 Q. Go up to -- over 1,000. If you look behind you?
- 7 A. Yes, sorry.
- 8 Q. Rises up to 1,000, varies over time but it keeps going
- 9 up to about 1,700.
- 10 So that's the number of men?
- 11 A. Absolutely disagreed. Absolutely disagreed, counsel.
- 12 Q. You don't agree with any of that?
- 13 A. I agree that this initial one where they maybe provided
- 14 maximum -- maximum people they have provided to us at
- 15 the same time never exceeded 150 to 280 people. Here
- 16 you're talking about 1,000-something people. That never
- 17 happened, in my recollection.
- 18 Q. I have to put it to you that's not right, and that's why
- 19 there was such a massive contracharge for about
- 20 40 million AED?
- 21 A. That's why it has to be checked, counsel, because this
- 22 never happened in my opinion. Just, what I remember,
- 23 that was only a partial discussion of 80 people here,
- 24 100 people there. If they have brought -- I don't know
- 25 what this number is representing and if my counsel had

1 records of it or substantiation of it, but I absolutely
2 do not recollect this kind of numbers of labour inputted
3 in 2021, absolutely not.

4 Q. Do you think that if that had been the case, and
5 contracharges were being levied running into tens of
6 millions, that Specon might have actually disputed that
7 at the time?

8 A. Did we dispute the contracharges you mean? Constantly
9 we have disputed that.

10 Q. Did you dispute the sort of levels we were claiming for
11 additional labour --

12 A. Labour, mm-hmm.

13 Q. Do you accept that there were anything like this number
14 of men, the red and the orange lines, deployed -- forget
15 about your specialist subcontractors -- deployed by
16 Specon to perform Specon's works during late 2020
17 through to 2021?

18 A. Can you repeat the question, counsel?

19 Q. Do you accept the level of labour, the sort of numbers
20 of men, just generally, that you had, for example, in
21 early 2021, you've got well over 1,000 men which are
22 direct, under Specon's supervision, working on the MEP
23 scope of work?

24 A. You are pointing to the right-hand side, the brown
25 curve, yes?

1 Q. Yes.

2 A. Absolutely no. Absolutely no, in my opinion.

3 Q. They just weren't there?

4 A. They were not there, yeah. I can't imagine this amount
5 of labour in that period of the changing, when we talk
6 about 2021 when the SBJV signed the agreement and we
7 were going towards the agreement, our own supplementary
8 agreement. There were some even approvals from me for
9 a specific list of labour, but not to that extent, not
10 to that extent.

11 Q. All right.

12 A. Is this cumulative, 1,087, against 800 --

13 Q. -- (overspeaking) -- over time. So at specific time
14 points based on the time records, as I understand it,
15 hand keys.

16 A. Yes, but what confused me is you showed that Specon had
17 their own 800 people, say 792, then you show the brown
18 line, 1,100, say, yeah? Right? So are you suggesting
19 that we brought from JV 300 people or what?

20 Q. I'm suggesting --

21 A. Or 1,000?

22 Q. What I'm suggesting is that the JV was supplying the
23 vast majority of the labour and resources, manpower
24 resources, that Specon required in order to carry out
25 its works during 2021?

1 A. I don't recall that, counsel, with all due respect. To
2 this extent it never happened while I was there.

3 Q. Can we look at some -- do you accept that you were
4 making specific requests for manpower to be provided by
5 SBJV?

6 A. Yes, I did, yes, yes, I did, yeah, in some occasions,
7 yes.

8 Q. And you can say -- let's just have a look at it, then.

9 There are many examples of this. Could we look at
10 D8032-2.

11 This is Specon, your construction director,
12 I believe?

13 A. Yes, correct, Firas, yes.

14 Q. Asking for 54 men for basement car parking, and then
15 residential corridor, ballroom, so different area,
16 another 40 men, 10 December?

17 A. Yes, I was not copied on this, but, yes, it was --
18 sometimes it's with my knowledge and the approval for
19 Firas, yes, yes. He would come first to me. That's
20 what I mentioned, counsel. Sometimes we have agreed
21 with your client for some limited additional people. As
22 you can see here, we are talking 90 people at this time.

23 Q. You made multiple requests. We have lots of
24 correspondence where you're actually asking --

25 A. I understand that, but you know, what we have to check

1 is what actually materialised and when physically these
2 people become assigned to us and the timesheets shows
3 that. It should not be based on the emails, issuance
4 requests.

5 Q. We can --

6 A. You should check the timesheets, yeah.

7 Q. We will do that. Don't worry.

8 Can we look at, continue on our journey through
9 2021, please?

10 A. Sure, sure.

11 Q. Would this be fair: that throughout 2021, Specon was
12 actually unable to pay its specialist subcontractors?

13 A. Again, counsel, as I stated already yesterday, the
14 handling of the invoices and finances of the project was
15 done by the head office. Yes, I was aware of
16 non-payment of some specialist or suppliers of the
17 labour, yes, because they were coming to my office.

18 Q. It was unable to pay its suppliers even for basic
19 materials; is that right?

20 A. Sorry?

21 Q. It was unable to pay its suppliers even for basic
22 materials; is that right?

23 A. It's various situation at various times. Of course when
24 you come to this stage of the project, counsel, all you
25 need is small materials, like fittings, valves, you

1 know, things like that, especially when the design is

2 changed. So, yes, I would say yes.

3 Q. There are no design changes in 2021 of any significance,

4 are there?

5 A. In 2021, no. But July 2020 we were still getting some

6 changes.

7 Q. Can we look, please, at some of your specialist

8 subcontractors. So let's start with SIBCA. SIBCA were

9 providing --

10 A. Central battery system.

11 MR CATCHPOLE: I've got two minutes left, I'm being told, so

12 that might be ...

13 PRESIDENT: 12.15.

14 MR CATCHPOLE: 12.15. Thank you.

15 (Discussion off the record)

16 MR CATCHPOLE: SIBCA were providing the emergency lighting,

17 central battery system?

18 A. Central battery system.

19 Q. Obviously that was work that was critical for DCD

20 approval?

21 A. Yes, fire life safety system, yeah.

22 Q. Can we pick up the story, say from 25 March 2021. Could

23 we go, please, to D11737.1.237-4. A snappy reference.

24 We see here that this is -- if you go up, it's from

25 Specon, it's to Mr Paquier, and it's saying:

1 "Package M2/M3: Request to Arrange Payment on
2 Behalf of Specon ... Sibca Electronic Equipment ...
3 ...
4 We write in reference to the above subject matters
5 and refer to our discussion and agreement for you to
6 provide us with assistance to the problem we are
7 experiencing as a result of cashflow problems on the
8 Project resulting from the delay in finalizing our
9 account.
10 As a consequence of this cashflow problem, we hereby
11 make a request for you to arrange for the supply of
12 materials/services/Subcontract Agreements payments on
13 our behalf ..."
14 Then:
15 "We advise you that, there is an urgent requirement
16 of organising the materials/services to ensure that our
17 Subcontract Works can Progress..."
18 This is a substantial payment to SIBCA. Do you
19 see that?
20 A. Yeah, these are the already executed works, IPCs 11
21 through 15, yeah.
22 Q. No. What he's saying, Mr Grgurev, is that there are
23 outstanding IPCs that Specon has not paid?
24 A. Yes, yes, I agree with you.
25 Q. And that SIBCA is demanding payment before it will do

1 any further work. Do you recall that?

2 A. Yes, yes. In that period, there were multiple letters

3 like this, yeah, from the specialist, yeah.

4 Q. We can have a look at the IPCs, if we go to page 7 of

5 the same document.

6 This is the interim payment certificate and we see

7 it's from July 2020, concerning work done in June 2020.

8 Can you see the top right?

9 A. Yes, yes.

10 Q. Then we go on page 9. This is the IPC covering

11 July 2020. Do you see that, top right?

12 A. Yeah.

13 Q. Then IPC 13 on page 10, please. August 2020, do you see

14 that?

15 A. Yes.

16 Q. Then September 2020, page 11. Then page 12,

17 October 2020. These relate to certificates that were

18 certified and due over -- even the last one, five months

19 before Specon come to SBJV asking for us to clear the

20 debt. Yes?

21 A. Yeah.

22 Q. At that stage, it's urgent. Do you recall why it was

23 urgent?

24 A. Can you repeat the question?

25 Q. Do you recall why Specon was saying it was urgent that

1 the payment was made?

2 A. I believe in the context of achieving the completion of

3 the fire life safety pertaining to this company, yeah.

4 Q. Yes, and SIBCA was not progressing its works until

5 Specon paid the outstanding debts. That's right, isn't

6 it?

7 A. I do not recall. Of course they would like to be paid.

8 We would all like to be paid our certificates on time.

9 But what I recall is that they were all cooperative with

10 us. Of course, I have -- we have initiated this letter

11 asking for financial assistance to your client for this

12 specific contractors, yeah.

13 Q. Do you recall that SIBCA demobilised from site?

14 A. There was a brief period, yes. There was a brief period

15 I would say that they have left the site, yes, yes.

16 Q. Do you recall when that period was?

17 A. I don't recall. I don't recall.

18 Q. Whatever that period was, would it be fair to say that

19 they were not progressing their work?

20 A. If you can assist me, tell me which specific period they

21 were? But there was a very brief period that they were

22 upset. I don't recall, really. I can't remember. Five

23 years of the project.

24 Q. That's fair enough. D8733, please. 6 April 2021.

25 A. Okay.

1 Q. The JV is writing to Specon, saying:
2 "Further to our recent monitoring and Site
3 observations we need to express our concern due to the
4 non-attendance of your specialist sub-contractor, Sibca.
5 From the Site records it is noted that there has
6 been no attendance of Sibca since Thursday
7 28th March 2021 ..."
8 Just bear in mind that that is three days after you
9 made the urgent request:
10 "... and currently there is no intention of
11 returning to Site.
12 The explanation for this non-attendance has been
13 given as payment issues and lack of variation approvals.
14 It is required that you provide a full explanation
15 of these actions together with an action plan/recovery
16 programme."
17 Then it says:
18 "... you are required to take such steps as are
19 necessary to expedite progress ...
20 You are further required to provide us with full
21 details of the steps that you intend to take within
22 3 days of receipt of this letter."
23 JV is saying, in terms: your specialist
24 subcontractor has left the site, we are instructing you
25 to give us a -- to remedy it, and to provide us with an

1 action plan to recover the delays that are being caused

2 as a result. Yes?

3 A. Yeah, yeah. I understand.

4 Q. Is it fair to say that you didn't respond to that

5 letter? You never provide an action plan or ...?

6 A. What I recollect, and I think it's part of my statement,

7 all of this FLS specialist, including SIBCA, have

8 achieved the substantial -- substantially completed all

9 accessible areas by end of August --

10 Q. That wasn't the question --

11 A. -- or September 2021. So action was taken, yeah.

12 Q. That wasn't the question. You did not respond --

13 there's lots of this correspondence and almost

14 invariably you never respond, you never provide an

15 action plan or remedial steps, you never provide the

16 details of what you are going to do to overcome the

17 delays; that's right, isn't it?

18 A. There are many tools than you can use in reporting. We

19 have reports given to your client. We have had

20 a monthly reports which -- and weekly meetings with your

21 client's MEP managers where we have discussed the

22 details of the action and completion. The fact is that

23 we have completed these works substantially by

24 early September.

25 Q. It is right that -- and there are multiple letters like

1 this in 2021, that's right, on different aspects at

2 work, yes?

3 A. Sorry?

4 Q. There are multiple, many, many letters like this

5 requiring you to give the JV action plans and recovery

6 plans within a specified period of time; is that right?

7 A. There were, there were some letters, yeah.

8 Q. Almost without fail, you never actually provide an

9 action plan or a recovery programme; is that right?

10 A. I would not put it generally in that sense. We can

11 check the records, what it --

12 Q. Yes, I can check the records. Do you recall ever

13 providing an action plan or a recovery programme in

14 answer to this sort of correspondence? An actual plan

15 and recovery programme?

16 A. Our look-aheads and our monthly reports to the JV

17 demonstrate -- and we provided a plan, it's part of my

18 statement -- extract of the plans, where we are and how

19 we intend to finish for this specialist systems,

20 specially for the civil defence. Here we are talking

21 about the civil defence trade.

22 Q. Anyway, having made the request of the JV, the JV makes

23 the payment. Do you recall that?

24 A. There were several payments of the JV of similar nature,

25 yeah.

- 1 Q. If we look at D11737.1.237-13.
- 2 There we are. This is made on -- finally it gets
- 3 through the accounting process, 28 April 2021.
- 4 5.5 million AED. And SIBCA issues a receipt, albeit
- 5 a month later, D11737.1.237-2.
- 6 MR COLE: I think it's thousand, rather than million.
- 7 MR CATCHPOLE: Sorry, did I say "million"? Sorry. That's
- 8 a mistake. No, 500 million would be ...
- 9 There we are. There's the receipt.
- 10 A. Okay.
- 11 Q. But do you recall that it didn't actually start
- 12 remobilising until shortly before it issued this
- 13 receipt; it started remobilising about 22 May?
- 14 A. I can't confirm that, counsel.
- 15 Q. If that's right, there's about a two-month delay while
- 16 SIBCA are not on site. Do you recall that?
- 17 A. I can't confirm that, counsel, two months.
- 18 Q. Do you recall a major subcontractor, specialist
- 19 subcontractor not being on site for a lengthy period of
- 20 time in 2021 because you had not paid them?
- 21 A. I can't remember that, counsel. For that period of
- 22 time, for two months entirely. And then in August they
- 23 finish all the available works.
- 24 Q. We'll look at that.
- 25 A. I can't remember that basically half of that time they

1 were not present on site. Then in only two months,
2 completed basically all the works that are available.
3 Q. Can we look at D8882, please, a letter of 17 May, just
4 shortly before SIBCA come back on site, still lack of
5 site attendance:
6 "Further to our recent correspondence ... dated
7 06th April 2021 it has been noted that this
8 correspondence was blatantly ignored by Specon and there
9 has been no improvement in the situation.
10 The previous letter ... requested an update and an
11 explanation of the works, but this was never addressed
12 and never submitted by yourselves.
13 Sibca has not re-mobilised and there is no
14 progress."
15 Do you recall receiving that letter?
16 A. I obviously received it, counsel.
17 Q. That's a very serious letter. Would that be right?
18 Saying you have ignored specific instructions to give us
19 a recovery programme and an action plan and to resolve
20 the situation with your subcontractor.
21 A. There were multiple letters in that period of similar
22 connotation --
23 Q. There may be multiple letters, but they're factually
24 right, aren't there? SIBCA have been off site, you have
25 been told to sort it out. You have been told to give

1 the JV an action plan and a recovery programme and you'd
2 simply ignored that request and instruction. That is
3 right.

4 A. I have to go through the records of that period. I'm
5 not 100 per cent sure. But I remember these kind of
6 letters, receiving them daily from client, your client,
7 but did we communicate with our subcontractor? Did we
8 take whatever is possible other than payment of the
9 money due, which eventually happened through your
10 client? What I recall, that when we reached the -- a
11 few months later, September, that majority of this FLS
12 system, including SIBCA works, were achieved.

13 Q. We're coming to that, I promise you we will come to
14 that.

15 A. I'm sure you will.

16 Q. But the short point is, factually correct, they have
17 been off site for the best part of two months.

18 A. Mm-hmm.

19 Q. You ignore the correspondence from the JV and you don't
20 ever put forward an updated plan or recovery plan to
21 recover the delays that have occurred. Do you agree
22 with that?

23 A. It might be that I didn't answer this letter, yes.

24 Q. Is it also -- I think to be fair to you, I think daily
25 records is probably overstating it, but there were, as

1 you rightly say, many, many, many letters of a similar
2 nature across all of Specon's works, saying: you're not
3 progressing, you're not doing what you should, give us
4 an action plan. To which you do not respond. Is that
5 fair?

6 A. I mean, generally throughout five years of the project,
7 we have, as you can see from the records, responded
8 basically within day or two. Yes, this letter, maybe
9 I didn't --

10 Q. I'm not suggesting -- I'm saying in 2021, the general
11 approach of you -- you personally -- on the site team,
12 was to ignore and not respond to formal correspondence
13 of this type?

14 A. That was not intent, counsel --

15 Q. But do you agree factually, that is what happened: you
16 did not respond to formal letters like this?

17 A. Maybe, maybe, yes.

18 Q. Do you agree that factually, that is what happened: you
19 generally did not respond to formal letters like this
20 during 2021?

21 A. We responded in 2021 majority of the correspondence to
22 SBJV. Maybe this letter I didn't respond it, yes.

23 Q. No, no, I'm putting to you that you did not respond --
24 generally you did not respond, you did not provide
25 action plans, you did not provide recovery programme,

1 you did not provide explanations of what you were going
2 to do formally in response to letters like this?
3 A. So you are saying 100 per cent I didn't reply to any of
4 these contractual --
5 Q. No, I'm not. You certainly do start to write letters
6 later on.
7 A. Now you are coming in my words. You didn't let me
8 respond.
9 So are you saying, counsel, that I didn't respond to
10 any of this directives from Specon throughout 2021?
11 I would not agree to that.
12 Q. No, I'm saying that generally, generally -- so there
13 were some -- you did not respond?
14 A. Some of the letter I did not respond, I agree to that.
15 Q. Just so we're clear, another request made:
16 "We formally request, again, that you provide a full
17 explanation of these actions together with an action
18 plan/recovery programme."
19 Then drop down to the third paragraph from the
20 bottom:
21 "We insist that unlike the previous correspondence
22 you DO NOT ignore this issue."
23 Do you recall receiving multiple letters saying:
24 you've ignored our previous correspondence, do not
25 ignore this one? Across the board during 2021?

1 A. In the few occasions I remember this approach of your
2 client, in that period, yes. Specifically in that
3 period, yeah.

4 MR CATCHPOLE: I wonder whether that's an appropriate
5 moment?

6 PRESIDENT: Certainly, Mr Catchpole.

7 We'll adjourn for lunch for an hour. Before we do,
8 though, the tribunal has a request for some assistance.

9 As we've noticed, it takes quite a while to load up
10 the subcontract, and because that's a document we're
11 looking at regularly, we would like a hard copy of that
12 for each tribunal member. All we need is the general
13 conditions and appendix G.

14 While we're asking for hard copies, I think it would
15 also be of assistance to us if we could have a hard copy
16 of the supplementary agreement between SBJV and Specon
17 in 2021, and also the three supplementary agreements
18 between SBJV and the employer, ideally in unredacted
19 form if they're going to be provided in that form.

20 If they could be provided due course, there's no
21 rush, just in due course, either in an A5 bound version
22 or, if it's easier, A4 with hole-punches that we can put
23 in our folder.

24 MR HICKEY: We will see to that.

25 PRESIDENT: Mr Grgurev, we're going to adjourn now for an

1 hour. During that time, the same rules apply as they
2 applied overnight: you shouldn't talk to anybody about
3 the evidence that you're giving, so just keep your own
4 company during that hour and we will resume at 1.15.

5 WITNESS: Thank you, sir. Yes, sir.

6 (12.17 pm)

7 (The luncheon adjournment)

8 (1.15 pm)

9 MR CATCHPOLE: Good afternoon. Before we continue with the
10 story of SIBCA, when we were having a discussion about
11 labour resources, you said that to your recollection,
12 your exact answer was:

13 "I agree that this initial one that where there
14 maybe provided maximum -- maximum people they have
15 provided to us at the same time never exceeded 150 to
16 280 people."

17 Yes?

18 A. Yeah, estimated on average, yes, at peak, yeah.

19 Q. I just want to give you an example. Could you look at
20 E710-1, please.

21 Who is Mr Firas Ahmad?

22 A. Construction director.

23 Q. Construction director.

24 A. Of Specon, yeah.

25 Q. He is saying here -- an email which is sent to Mr Sabri,

1 and he's actually setting out how many men he wants
2 SBJV -- sorry, how many people are on site on this day
3 just in the podium who have been supplied by SBJV and
4 how many are supplied by Specon. Do you see that?
5 He says, on 7 September 2021, SBJV supply on that
6 particular day, just for the podium, 553 men as opposed
7 to 100 from Specon.
8 A. Can I see the Firas ...?
9 Q. Yes. Of course. You see?
10 So what I'm putting to you is that what you've been
11 saying is simply not right, Mr Grgurev. They were -- we
12 were providing hundreds of men across this project on
13 a daily basis?
14 A. But, you know, do you have a full trail of this email or
15 are you just focus me on that --
16 Q. I'm asking you whether you -- first of all, your
17 recollection?
18 A. My recollection, we discussed initially beginning of the
19 year, and just before the 2021, 2020 December, when
20 I have allowed up 100, 150, 180 people here. Here
21 you're talking -- can I see the full trail of this
22 email, please?
23 Q. Just stick with this. I'll take you to something else
24 in a moment. I just want to see whether your
25 recollection is correct with the evidence you gave.

1 What I'm putting to you is, you see here, Specon are
2 having from us, supplied by us, hundreds of men, just
3 for the podium, in September 2021?

4 A. In 7 September 2021. I cannot confirm that. You know,
5 maybe you are correct, for that period of time, yeah.

6 Q. If we go to E435.995-1, please.

7 Do you recognise this? This is the daily site diary
8 and progress report for the same day, 7 September, yes?

9 If you look down in the bottom left-hand corner, when it
10 comes up. (Pause)

11 Can you go down to the bottom of the page, please.

12 Can you see there's a signature there, it says "For
13 MEP contractor". Now, it should be you, but someone
14 else has signed in your place.

15 A. Mm-hmm.

16 Q. Do you recall you were signing, or someone on your
17 behalf was signing daily manpower reports throughout?

18 Do you recall that? Do you recall it?

19 A. This particular document I haven't signed, but can I see
20 the document? This is --

21 Q. Answer the question.

22 A. This is our timesheet or is SBJV --

23 Q. This is your report signed by one of your
24 representatives.

25 A. Okay, yes, yeah, mm-hmm.

1 Q. That happened daily, didn't it?

2 A. Yes, this is our daily sheet, yeah.

3 Q. Could we go up a little bit. Keep going a little bit.

4 In the middle of the page, can you see that there is an

5 entry there, the bottom green one, "HIRED SBJV",

6 1,145 men. Do you see that?

7 A. Yes.

8 Q. How many you -- your personnel are signing off men

9 provided by SBJV on 7 September 2021, 1,145 men. Is

10 that right?

11 A. Yeah, I mean, I'm trying to understand the -- absolutely

12 this cannot be the case.

13 Q. Is this right: there is a record every day?

14 A. Mm-hmm.

15 Q. That's where those figures are taken from that I was

16 showing you before. All right?

17 A. Okay.

18 Q. So, can we come back to this. Do you accept that

19 throughout -- from October 2020 throughout 2021, SBJV

20 was providing hundreds, in many cases over 1,000 men,

21 rising up to about 1,700, I think, per day?

22 A. I disagree with that.

23 Q. Even though it's signed off by your staff?

24 A. You're talking September 2021. You're not talking

25 October 2020.

1 If you show me the record of 2020, our daily sheet,

2 we will see huge a difference or zero.

3 So I cannot accept general statement, counsel, with

4 all due respect.

5 Q. Can you explain why you think there was only 100, 150,

6 200 men maximum ever provided by SBJV, when the records

7 on this day, just as an example, are showing over 1,100

8 men are being provided?

9 A. Because as I said initially, counsel, the labour that we

10 have accepted that are required for the project, we

11 have -- and I have issued actually the letter to SBJV

12 for the labour that we actually needed.

13 The labour brought on site, without the consent of

14 us as a main contractor for MEP, just because they

15 decided so, these people, yes, of course they are

16 counted for, but did we agree to that labour to be here?

17 No.

18 Q. Hang on. So you're saying, is this right, you're saying

19 that one of your staff -- do you recognise whose

20 signature that is?

21 A. I have no idea. I was trying to guess whose signature

22 is that, yeah.

23 Q. One of your staff signs off on a daily sheet for the

24 manpower of Specon, including those that have been hired

25 by SBJV, at over 1,000 men, and you are seriously saying

1 that those men were not necessary or accepted by SBJV?

2 A. By Specon.

3 Q. By Specon?

4 A. By Specon. Not all of them, absolutely not, yeah.

5 Absolutely not, counsel. We have a record when I have

6 give approval to bring some resources. We are talking

7 here two -- a month and a half before the termination,

8 when these things went out of control, to say so, if

9 I may say.

10 So we should look at the time of the genuine,

11 genuine discussion that we had, say early 2021, or

12 January 2021, February 2021.

13 I have no idea whose signature is that. I would

14 really like somebody check the signature, because I have

15 no idea who signed that.

16 Q. We've got all the records, so we can go through them.

17 A. Yeah, please.

18 Q. Thank you.

19 Anyway, back to the story with SIBCA. Can we go

20 back to D8882. You recall we were looking at this

21 letter, 17 May 2021. We discussed the fact that you

22 hadn't responded to the previous letters. SIBCA hadn't

23 remobilised, best part of two months on.

24 Would it be fair to say that if you've got

25 a specialist subcontractor like this, who has literally

1 walked off site for, say, six weeks or so, that that's
2 likely to be highly disruptive to Specon's work?
3 A. This will be disruptive to the Specon work, yes, I agree
4 with you, to the extent of where the SIBCA was at the
5 time of abandonment of the site, in terms of progress.
6 And another fact to consider is where the SIBCA was two
7 months after this letter of 17 May, when they completed
8 all available areas. And we have a report and monthly
9 report and your client's report to the clients,
10 declaring that.
11 So eventually, the damage of this impact was
12 mitigated in a way that they have progressed and
13 completed available works in the near future, in
14 a couple of months afterwards.
15 Q. Could we look at D9004.
16 This is a Specon presentation. Would that be right?
17 A. This is readiness status, yes.
18 Q. It's an exhibit to your witness statement, in fact.
19 Could we go to page 12, please. We see this is your
20 plan for completion shortly after SIBCA have
21 remobilised. Let me just see if I've understood it
22 correctly.
23 A. Correct, yeah.
24 Q. As at 6 June, SIBCA has only managed to install 48 out
25 of the 1,058 emergency light circuits that are required;

- 1 is that right?
- 2 A. Yes, yes.
- 3 Q. But you are projecting that it will finish the lights by
- 4 the end of July 2021, by working exponentially, starting
- 5 with 70 lights being installed in the week ending
- 6 17 June 2021; is that right?
- 7 A. That's correct, yes.
- 8 Q. Then 90 lights the following week?
- 9 A. Yes.
- 10 Q. Then rising to 200 lights or circuits in the week ending
- 11 29 July?
- 12 A. Yes, that was the plan, yes.
- 13 Q. Would it be fair to say that's a highly aggressive plan?
- 14 A. Yes, it's a plan --
- 15 Q. Is it a highly aggressive plan?
- 16 A. It's a highly aggressive plan, yes.
- 17 Q. Now let's look what the actually happened. D9383.
- 18 It's another one of your exhibits. Now we're at
- 19 3 August, so a few days after 29 July.
- 20 A. Yes.
- 21 Q. If we could go to page 7. We have the same graph for
- 22 SIBCA and we see that by the -- although you had
- 23 predicted completion by 29 July, by that date, they had
- 24 actually managed to do 90 out of the 1,058?
- 25 A. Correct, yeah.

1 Q. So is it fair to say that, for whatever reason, Specon
2 and SIBCA are not progressing the works as planned?

3 A. Correct.

4 Q. You're now predicting even greater performance going
5 forward, notwithstanding what's happened in the past.

6 You're now going to do, according to this, you'll start
7 at 90 and then you're going to go effectively 284 in the
8 following week -- sorry, 194 in the following week, then
9 192, then 196, then 197 -- so a huge number compared to
10 whatever had been achieved before; is that right?

11 A. That's correct, yeah.

12 Q. And can I suggest to you that wasn't a realistic plan,
13 just could not be achieved?

14 A. Yes.

15 Q. Do you recall that shortly after this presentation,
16 SIBCA walked off site again?

17 A. Could be, yes.

18 Q. Could we look at L3394, please.

19 This is a letter from SIBCA to you of
20 18 August 2021. Do you see that? Do you see that?

21 A. Yes, I'm trying to read it.

22 Q. Do you recall this -- receiving a letter from SIBCA?

23 A. Yeah.

24 Q. I will take you through it:

25 "... Mr. ... Grgurev,

1 We refer to following:

2 ...

3 With reference to the above subject and we refer our
4 Email correspondences above, where our follow up
5 management meetings happened during 4th Week of
6 June 2021. We regret to inform that M/s SPECON failed
7 to issue payment certificates and variation acceptance
8 in timely manner to M/s SIBCA."

9 A. Yes.

10 Q. "Refer to our Letter of Award ... Item 2 -- Payment
11 terms where it was agreed that certification of the
12 works should issue in 45 days from the date of our
13 application. Please be informed that M/s SIBCA didn't
14 receive any payment certificate from November 2020 to
15 till date ..."

16 In other words, they're saying they have not
17 received a signed certificate for the best part of nine,
18 ten months.

19 Is that factually correct?

20 A. I'm not sure, counsel.

21 Q. "Pursuant to Subclause 16.7(b) Valuation of
22 Variations ... SPECON should confirm in writing his
23 acceptance of Subcontractor's proposal within 30 days
24 which was not provided to M/s SIBCA till date.

25 Please be informed that the above stated were

1 affecting our cash flow completely and the procurement
2 of the materials that yet to be delivered to the Project
3 for the above said variation works.

4 Hence, we hereby request M/s SPECON to issue the
5 pending payment certificates and variation order with in
6 48 hours for this letter. If its fail to comply our
7 request, we will demobilize our team from the site until
8 resolving above mentioned issues."

9 Do you recall that? And that's what they did, they
10 demobilised; is that right?

11 A. Yes, after they received the payment for the five
12 certificates that we discussed earlier.

13 Q. Could you please look at L3391.

14 This is a draft letter, Specon internal draft
15 letter, not sure whether you will have seen that. It's
16 a draft letter to SBJV.

17 What it's saying is, second paragraph:

18 "For the record we attach herewith the financial
19 summary of the current Interim Payment Certification for
20 the period November 2020 until May 2021 ... representing
21 the full amount currently outstanding ..."

22 This is to SIBCA:

23 "For further ratification and clarification, the
24 June and July 2021 Interim Payment Application are
25 currently not due for certification ..."

1 Then:
2 "To progress and eliminate any further exchange of
3 unnecessary correspondence please be advised that as of
4 the 17th of August 2021 the above identified amount ...
5 was initiated for payment via a Current Dated
6 Cheques ..."
7 And:
8 "To eliminate further unnecessary exchanges and
9 resolve such challenges we recommend direct contact with
10 our Project Director ..."
11 That's you.
12 If you then go to the attachment at L3392, we see
13 that this is Specon saying it's in relation to SIBCA,
14 that you had paid the initial 4.5 million. There was
15 then the ones we have seen before, where the JV had
16 paid, and now there's a huge amount outstanding from
17 November 2020 through to May 2021. And what you're
18 wanting is for SBJV to bail you out; is that right?
19 A. The outstanding 295K, yeah.
20 Q. So you're entirely dependent at this stage, is this
21 right, on the JV making payments, because Specon can't
22 afford to do so; is that right?
23 A. In August 2021, yes.
24 Q. Then if you could go to D11090.1. 5 September 2021, you
25 receive a letter sent to you from the JV:

1 "Further to our previous correspondence dated 17 May
2 and dated 6 April 2021, it has been noted that despite
3 the correspondence the situation has recurred."

4 "The situation" being SIBCA have walked off-site; is
5 that right?

6 A. Yes, I can see the letter, yeah.

7 Q. "The previous letters highlighted the fact that SIBCA
8 were not providing the staff required to complete the
9 works and requested a reply from Specon but as usual
10 there was no response."

11 Is that right? Is that right, that you didn't
12 bother responding, as I said, to the previous letters
13 about this issue?

14 A. I'm not sure if I responded this letter particularly,
15 but what I am sure is that here you're talking about one
16 out of many fire life safety trades that involved in the
17 civil defence. You are talking only about SIBCA and it
18 seems you are not considering all the other trades that
19 are --

20 Q. Don't worry, we'll look at some of the other trades.

21 A. Any time.

22 Q. In due course.

23 A. Yes, please.

24 Q. "As you are aware, the completion of this system is
25 critical in the obtaining of the DCD approval..."

1 Is that correct?

2 A. Yes, that's correct.

3 Q. "... which is a key element in the progression of the

4 completion of the project and the agreed date of

5 24th October 2021 is set for final approval."

6 Is that correct?

7 A. Yeah, that's one of the milestones of the supplementary

8 agreement.

9 Q. When we're talking about final approval, that means that

10 DCD has to have inspected on a number of occasions, had

11 their comments taken into account, and then issue

12 approval, which is a time-consuming process, can take --

13 A. It's -- to correct you, it's only basically two visits

14 from the authority. Initial visit, where you should be

15 complete in all aspects of MEP, but as well as civil,

16 and they produce the list of comments. Once the

17 comments are substantially closed, when you feel

18 comfortable for final inspection or a second inspection,

19 which is within the two weeks, they come and issue you

20 with DCD certificate if you have passed or, if you

21 didn't comply, they will have to be called again. So

22 the target of the second inspection was 24 October.

23 Q. Target of final approval from DCD?

24 A. That means final inspection, you know, and then they

25 will issue the same day the certificate, they normally

1 issue it -- I have --

2 Q. If.

3 A. -- from all other projects that --

4 Q. If they approve it.

5 A. If it's acceptable. But it's not dependent only on the

6 MEP, it's widely dependent also of others.

7 Q. At the moment I am interested in the MEP.

8 A. Sure, sure, sure.

9 Q. Then the penultimate line:

10 "We insist that unlike the previous correspondence

11 you DO NOT ignore this issue.

12 You are required to provide us with full details of

13 the steps that you intend to take within 3 days of

14 receipt of this letter."

15 Is this fair: you do not respond, at all. You do

16 not respond, certainly within three days of receipt of

17 this letter, with any details of the steps that you

18 propose to take?

19 A. What I recall, counsel, is that we have responded

20 comprehensively of all FLS systems readiness, including

21 SIBCA, I believe 2 November, something like that, with

22 hundreds of photos.

23 Q. Listen to the question. You do not respond to this

24 letter setting out the details of the steps that you

25 intend to take to remedy the situation that has been

1 created by SIBCA walking off site, do you? You don't
2 respond.

3 A. I am not sure if I responded, but if you by your record
4 say that I didn't respond it, I confirm, yes.

5 Q. This is one of the letters, many letters, that ends up
6 in the termination notice for your failure to respond to
7 formal correspondence or to take action to deal with the
8 issues that have arisen as a result of your default in
9 paying subcontractors or progressing the works. Are you
10 aware of that?

11 A. I don't know how to comment on that, counsel. You're
12 experienced counsellor, you think that a few
13 unresponding letters merit termination of the contract?
14 Apologies for that.

15 Q. This isn't a few unresponding letters?

16 A. It is few. I have been through termination letter.
17 So -- sorry, please.

18 Q. Go on. No, please, you continue.

19 A. No, no, you continue, counsel.

20 Q. This is about a critical system, about your specialist
21 subcontractor repeatedly walking off site, causing
22 delays to a critical activity, and the JV is instructing
23 you to respond to say what are you going to do about it,
24 tell us how you're going to recover these delays.
25 That's what they're doing, isn't it? They're entitled

1 to do that; yes? You're nodding?

2 A. Yes, yes, yes.

3 Q. You don't respond?

4 A. For that particular trade, yes, yes.

5 Q. Why not?

6 A. We have received multiple letters from multiple trades

7 of course where we took action, like firefighting, fire

8 alarm, which is much more critical trade, which was

9 going well; interface trades like fans and everything,

10 all this which was done. I don't know why this

11 particular letter was not responded. We simply didn't

12 respond.

13 Q. Can we go to -- bear in mind this is 5 September --

14 D11737.1.80.

15 It should be SBJV 007 0022056.

16 I may have given you the wrong reference.

17 It is D11737.1.80. It's coming up on our screen on

18 eTabella, for some reason, but not on yours.

19 (Pause)

20 There we are. Thank you.

21 Page 80, please. Do you see that? I should go

22 back. Can we go to page 3, please, first of all.

23 21 days, three weeks later, Specon write to the JV

24 asking for an urgent requirement to pay SIBCA. Any idea

25 why there was a delay of three weeks in getting --

1 approaching the JV with the begging bowl again? No?

2 A. I remember this letter, like the other letter. Why it

3 was couple of weeks late, I don't remember.

4 Q. On a critical activity; is that right?

5 Could you please go to page 80 now. That was the

6 27th that request was made.

7 Go to page 80 in that document, please.

8 You actually had it a moment ago. 80. That's it.

9 Thank you.

10 Do you see this? This is the cheque that is written

11 on the same day. Is that cash starvation by the JV not

12 providing support to Specon? Or is that acting to try

13 and help you through?

14 A. In this case, absolutely assisting yes, yes, it helped.

15 Q. So, now we've got to get SIBCA to remobilise, is that

16 right? What they've got to do, they've got to pull

17 cables, terminate panels, install another 968 lights

18 across a vast area, podium, hotels, residential towers;

19 is that right?

20 A. It's not right. The activities are divided in

21 sequences. As I recall, the pulling of the cable was

22 done actually by our teams. The SIBCA is responsible

23 for full completion and testing of the circuits. That

24 means final fix and the panels terminations, I believe,

25 in their case, yeah.

1 But their plan that we saw earlier is divided by
2 circuit. But it doesn't mean that they haven't pulled
3 cable throughout the project. It's only that they
4 didn't complete it 100 per cent final fix and
5 termination of the panels.

6 Q. I'm going to suggest to you that it would be impossible
7 by -- here we are at the end of September, for SIBCA to
8 remobilise and do all of that work, whatever it had, and
9 still achieve final approval from DCD, three to four
10 weeks later on 24 October. Do you agree with that?

11 A. I agree with that, but there are other parallel factors
12 that delayed this invitation for civil defence on
13 24 October. I think one of my last letters I wrote
14 asking your client, what is the revised date and when is
15 the intention to call DCD.

16 Q. I want to be fair to you. Can you go to D9928-3.

17 A. Yes.

18 Q. Sorry, can we actually go to the top of the page. This
19 is the letter I think you were referring to earlier,
20 2 November 2021?

21 A. Correct, yes.

22 Q. If we go to page 3, it says:

23 "Central Battery System (CBS):

24 3.1 Current Status

25 3.1.1 Basement Area 100% readiness .."

1 So we're now after the date for final approval, DCD:
2 "... in Back of House, Front of House and Parking
3 Areas.
4 3.1.2 Podium Area ..."
5 You're saying you will be complete within seven
6 days, so by the 9th. So that would be two to three
7 weeks after the date for final approval; is that
8 correct?
9 A. It says:
10 "... Complete readiness with within 7 days of this
11 communique."
12 Which means by 9 November, yes.
13 Q. The date for final approval was -- (overspeaking) --
14 A. 20 October, yeah, yeah.
15 Q. Then, "Dependencies affecting above completion", you say
16 you are dependent on ID works, which are outstanding and
17 outside your control.
18 "Available Options ... within the ambit of Fire
19 Alarm System ...
20 CBS Residential Towers: System ... is substantially
21 completed in all floors and Towers, with the exception
22 of Core C and ready for DCD Inspection up to Level 32."
23 And then "CBS Hotel Towers".
24 So you're asserting that you can get there, you're
25 not there yet, but you can get there within about seven

- 1 days; is that right?
- 2 A. Yes.
- 3 Q. But if one looks at what you're actually saying, you say
- 4 there that the hotel towers, for example:
- 5 "The Central Battery System has achieved full
- 6 Readiness in all the Towers up to Level 19."
- 7 How many levels were there in the towers?
- 8 A. Depending -- I don't recall exactly, but 40-something at
- 9 the highest tower, 43?
- 10 Q. What you're saying is that they're ready in less than
- 11 50 per cent of the areas; is that right?
- 12 A. About that, yes.
- 13 Q. So they're not 100 per cent ready.
- 14 A. They're not 100 per cent ready, for reason, you know.
- 15 It's here in this letter, the rest of -- the reason why
- 16 it's not ready.
- 17 Q. Let's have a look at that. Could you please now go to
- 18 another presentation, an internal one, 10 November,
- 19 which is at M303-66. Just so that my learned friend
- 20 knows this, this is one of the documents that we
- 21 identified and went into the bundle. Can we just start
- 22 on page 1, please.
- 23 Two pages of it were in exhibits that were already
- 24 in, so it was partially exhibited before.
- 25 MR STEWART: Sorry, what is this document?

1 MR CATCHPOLE: This is a Specon internal presentation.

2 Sorry, a Specon presentation that's been prepared and

3 normally it would be presented to SBJV; is that --

4 A. Has it been presented to SBJV?

5 Q. This one hasn't. This is the last one after

6 termination. But it's a Specon document.

7 A. I understand, but that was not formally shared with or

8 presented to your client?

9 Q. No, that's absolutely right, it wasn't. All I'm saying,

10 it's a Specon document, which is part of -- these are

11 the documents that were being put forward on all the

12 areas, systems?

13 MR HICKEY: It wasn't put forward. He just said it wasn't

14 put forward.

15 A. It was not put forward.

16 MR CATCHPOLE: As I've said, this one is after termination,

17 and it was not. It's entirely internal.

18 But the documents we were talking about, when we had

19 the disclosure application, it's these presentations,

20 some of which -- and others like this. But these are

21 presented every week, effectively.

22 Could we then -- because we have looked at the

23 preceding versions of this. It's effectively the update

24 of what we've been looking at before.

25 If we could go to page 66. That's not right.

1 Sorry. (Pause).

2 It should be slide 66 in the PowerPoint. Maybe it's

3 just taking a long time to ...

4 This is Specon's internal summary as at 10 November,

5 three days after the first termination notice is sent,

6 in relation to the central battery system.

7 If we look down at the bottom graph, can you see

8 it's got the 1,058 circuits, do you see that? It's got

9 "TT" and then 1,058?

10 A. Yes, but counsel, I cannot accept this document which

11 was never formally shared with your client. I don't

12 know who put their hands on this document and how, but

13 that was never formally shared with your client. There

14 were staff problems from your client taking our staff,

15 so this is informal document. You cannot refer, in my

16 opinion, here, the document which has never been

17 formally shared with you, that you have put your

18 hands on -- (Overspeaking) --

19 Q. Well, I am referring to it at the moment --

20 A. -- your client.

21 Q. And so I ask you this question. It's 1,058 and do you

22 see that over in the right-hand side, it's got

23 percentage -- progress in percentages. It's got them

24 split by areas and it's saying final fix by area,

25 57 per cent, pre-commissioning, 52.17 per cent and

1 commissioned, 10.11 per cent. Do you see that?

2 A. Yeah, I can see that, but I don't recognise this to be
3 a document --

4 Q. What I'm suggesting --

5 A. It could be fiddled with, you know. I can't -- I don't
6 even recall it. I don't even recall this document.

7 Q. Right.

8 A. The last document that we officially sent to your client
9 is 2 November document that you read through some
10 paragraphs, but you didn't take it in consideration in
11 its entirety.

12 Before that, we have a report and plans
13 in July, August that you correctly shown and
14 in September, and the 2 November was the last detail
15 report share with your client. This one I really --
16 I don't recall --

17 Q. You doubt the accuracy. If this is right, is this fair,
18 you were nowhere near complete in relation to
19 installation of the panels on CBS, and you were nowhere
20 near complete in relation to the loops and circuits and
21 emergency lighting. Would that be fair?

22 A. I would disagree with that.

23 Q. Well, if this is right, it must follow, mustn't it?

24 A. Sorry?

25 Q. If this is right, it must follow that you were nowhere

1 near complete on SIBCA's works by the time --

2 A. I would refer you again to the formal letter and very

3 detailed report of all FLS trades and areas of no access

4 from your client, dated 2 November. This is the formal

5 communique.

6 This one, I really don't --

7 Q. I know it's the formal. What I'm saying is the reality

8 is very different.

9 A. This is not reality. This document, I don't agree that

10 this is document that has ever been shared through

11 formal channels or contractually with your client.

12 I don't know who provided you, who created this

13 document. I certainly haven't issued to your client or

14 approve it, or been reviewed.

15 Q. Shall we look at the fire dampers, please?

16 A. Please.

17 Q. So we're going to a different one. Another activity

18 that's critical for meeting DCD approval and therefore

19 milestone 6; would that be correct?

20 A. I mean, you keep going, counsel. I cannot comment on

21 this document.

22 Q. I know. Not on this, I'm not going on this document.

23 A. Please.

24 Q. I'm just asking a general question: the fire dampers, so

25 we're going to a different subject, another essential

- 1 requirement for meeting DCD approvals?
- 2 A. Fire dampers you said, sorry?
- 3 Q. Yes.
- 4 A. Fire dampers. Yes, okay.
- 5 Q. Right? Could we please go to L5300.
- 6 This is an Excel spreadsheet containing Specon's
- 7 internal summary on the status of the dampers at the
- 8 beginning of October 2021. You can see the date is
- 9 3 October 2021. Do you see that, top left?
- 10 A. This belongs to which document, counsel?
- 11 Q. This is a Specon internal document, the summary of the
- 12 status of the fire dampers as at the beginning of
- 13 October 2021. Okay? So it comes from Specon, comes
- 14 from their disclosure.
- 15 Can we look, please, at the tab that says "hotel
- 16 sum". If we look at that, can you see the blue columns,
- 17 and we look at the -- no, the "Hotel Sum", left-hand
- 18 tab, please.
- 19 A. Yes.
- 20 Q. You see it's got two entries, there's the motorised fire
- 21 smoke dampers in the hotel, this is just the hotel, and
- 22 from this, what Specon are saying, internally, is the
- 23 total number of dampers is 2,343. Do you see that? And
- 24 that by 3 October, they've completed internal Specon
- 25 testings of 1,855. 79 per cent have been tested

- 1 internally.
- 2 A. Yes.
- 3 Q. Approvals have been achieved, 1,333. Do you see? But
- 4 24 are under review with DEC, 13 have been rejected with
- 5 code C and then there's a balance of 485 which are said
- 6 to be ready with QA/QC. Do you see that?
- 7 A. Yes, yeah, that means --
- 8 Q. The 485 is simply the mathematical product of everything
- 9 that hasn't been encompassed in the (unclear ...). What
- 10 it means is it's with Specon's internal people to do
- 11 their internal testing?
- 12 A. When it says with QA/QC, it's to raise WIR. It doesn't
- 13 mean it's not installed. It means to raise WIR and
- 14 submit formally to your client.
- 15 Q. But this is Specon raising the WIR?
- 16 A. Yes, yes, Specon, yeah. If this is the Specon document.
- 17 Because you are showing me some tables.
- 18 Q. Just assume it is.
- 19 A. I'm not sure how did you --
- 20 Q. If I --
- 21 A. Was it officially cancelled, this clause to them, or
- 22 this is --
- 23 Q. I have just said, it's an internal document.
- 24 A. But have you --
- 25 Q. It's disclosed in these proceedings, but it was not

1 disclosed at the time.

2 A. Has it been disclosed, counsel?

3 Q. Can you just answer the questions? Just work on the

4 basis this is a Specon document and the "UR with DEC",

5 means that the inspection has been raised with DEC, ie,

6 WIRs have been raised inviting them for inspection?

7 A. Yeah, to catch up with the WIRs, yes, yes, that means

8 work is done; it's only that this element of work still

9 need a formal inspection by DEC, yes.

10 Q. Just if we could look, then, at ...

11 Can we have that as an Excel spreadsheet, please?

12 (Pause).

13 Getting back to the hotel summary tab, the left-hand

14 one, please.

15 If you could just hover over the cell M7, please.

16 485, just put the cursor on there, so we can see what

17 the formula is.

18 What we can see, if we follow that formula through,

19 is effectively anything that has been internally tested,

20 but has not yet been formally approved and submitted, is

21 marked as QA/QC. So 26 per cent of the items tested by

22 Specon, 485 out of the 1,855, are with their QA/QC team,

23 right?

24 A. It says "ready/with QA/QC"; means completed with QA/QC

25 to raise WIR, correct, yeah.

1 Q. But you've still got, out of that, if we take away the
2 test completed, 1,855, from the total number of dampers
3 of 2,343, you've got another 21 per cent, 488 dampers,
4 which haven't even been tested internally yet?

5 A. This is not tested internally. This means completely
6 installed and tested, but WIR not raised. It's
7 completely different.

8 Q. Total number of dampers --

9 A. They're not tested.

10 Q. Total number of dampers, 2,343. Take away the 1,855,
11 leaves 488.

12 A. Yeah.

13 Q. So they are not complete yet, not ready to be considered
14 by QA/QC for raising a WIR; is that right?

15 A. How it works, counsel, is that the fire life systems,
16 like fire dampers or duct fire life system dampers and
17 motorised dampers, they are inspected by our
18 commissioning team, they are inspected by our
19 independent fire life safety consultant and they receive
20 the sticker that they have passed -- that they have been
21 installed in a proper manner. This WIR is only to raise
22 the inspection with DEC to make sure to go physically
23 see it and see the sticker of the third party and that's
24 it.

25 Q. But if we then -- what that means in practice is, as

1 yet, for whatever reason, something like 42 per cent of
2 the total dampers are not yet at a stage where the WIR
3 request has been submitted; is that right? 485 plus the
4 difference?

5 A. Yeah. The dampers installed, but without WIR on
6 3 October 2021, yes.

7 Q. Of the ones that have been approved, again, just
8 mathematically, you've only got 56.9 per cent. That's
9 133 over -- sorry, 1,333 over 2,343.

10 A. You mean the one with WIR?

11 Q. Yes.

12 A. Yeah.

13 Q. If you, please, just looking at that --

14 MR STEWART: If we're just leaving this, can I just ask, who
15 rejects with code C? Is that rejected by the DCD?

16 A. No, DEC. DEC is our supervision consultant, sir.

17 MR STEWART: So if it's rejected with code C, it's rejected
18 by DEC; is that right?

19 A. Yes, that means this is the inspection that they were
20 not satisfied with the --

21 MR STEWART: I'm only asking who's doing the rejection.

22 A. DEC, yeah, the supervision consultant of the client.

23 MR CATCHPOLE: Can we just look at that 1,333 figure
24 compared against Specon's projections.

25 In the Excel, can you un-hide, please, the hidden

1 columns between column C, "Total Dampers", and column K,
2 "UR with DEC".

3 We want to un-hide, there's columns hidden, and see
4 A, B, C, and then it goes E. That's it, keep going,
5 thank you. And G as well -- J. Between I and K. J is
6 missing.

7 So if we look at this, what it's telling us is that
8 the 1,333 actual approvals, as at 3 October 2021, is
9 389 behind what Specon had planned to have hit by
10 15 July 2021.

11 You see, if you look at column F, plan was --

12 A. Yeah, plan is 1,722, counsel, yes.

13 Q. So that's two and a half months before and Specon have
14 failed to achieve sufficient progress to meet the
15 planned targets; is that right?

16 A. Yes, yes, correct.

17 Q. The picture on the fire dampers is even more dire. Only
18 348, we can see, actual approvals in column I out of
19 946, so only 36 per cent approved. Is that right?

20 A. Correct.

21 Q. Specon is behind its July target of 227 by 379. Yes?

22 A. In July, yes. It says 1 July, 8 July, yeah.

23 Q. So is this fair to say, that Specon's progress in that
24 period is dramatically behind what was required to
25 achieve the planned progress?

- 1 A. What was planned, yes, what was presented, yes.
- 2 Q. And you are dramatically behind what was required to
- 3 achieve the planned progress?
- 4 A. I would not call dramatic to complete 80 per cent of the
- 5 dampers, motorised dampers.
- 6 Q. If we could look at the MSFD podium tab.
- 7 A. Yes, please.
- 8 Q. If we could expand it, I'm interested in line 44.
- 9 You might need to see the top columns, if possible.
- 10 So if you could freeze the top few panes, so we can see
- 11 what we're talking about.
- 12 We're here, podium smoke fire dampers, balance of
- 13 works, 29 September. If you look at the pink entry at
- 14 line 44, the first one is 71, weekly plan was 71.
- 15 That was, in total, what you were hoping to achieve
- 16 in that week; is that right?
- 17 A. Completed as of 7 October, 199 out of 270, total balance
- 18 71, yes.
- 19 Q. But the logic of that is that if you then look at the
- 20 electrical installation, second column, there are 90 --
- 21 these are balance -- these are the 90 -- 71 outstanding
- 22 for the mechanical installation, 90 outstanding, that's
- 23 half of them for the electrical termination, and for the
- 24 readiness for T&C, the balance outstanding, 196.
- 25 So works very substantially incomplete at that date?

1 A. On 7 October, yeah. And the planned for, the balance,
2 three weeks, for testing and commissioning, 55, 86 and
3 58, yeah, up to 21 October, yeah.

4 Q. Is this fair, that of the 270-odd dampers in the podium,
5 196 of them have not yet passed the internal testing,
6 ie before they can even invite DEC to come?

7 A. This is not correct, counsel. I disagree with that.

8 The dampers are installed. Here we are talking
9 different things. Completed damper inspected by third
10 party FLS and stamp and put with the sticker next to it
11 is 199, almost 200 out of 270.

12 Electrical termination, the wires are already there
13 for the motorised -- for the Belimo motor. Termination,
14 yes, 50 per cent of it, but it's fairly simple job
15 to do.

16 Testing and commissioning, yes, of course, balance
17 196. This is the final checking of the signal from the
18 fire alarm to that damper, which is programming
19 basically. Once this termination is done.

20 Q. I'm going to test you. What you're actually doing, what
21 we see here is you're just making projections for the
22 week to try and achieve completion of works that there
23 was no realistic prospect of you doing in the time
24 available between the end of September and the date for
25 the final DCD approval of 24 October. There's no chance

1 of you getting --

2 A. This is only functional test inspection from our testing
3 and commissioning team. This is not overall. This is
4 the last activity which is called readiness of TC
5 functional test.

6 Q. Just bear with me a moment, please.

7 Can we go to D9892, please.

8 This, then, is a letter from my clients to you. We
9 see it is saying, 27 October, so that's three days after
10 DCD approval should have been -- final approval should
11 have been obtained. Do you see that?

12 A. Yes, yes, yes.

13 Q. If you go down, sort of the fourth bullet point up from
14 the bottom, it says:

15 "MSFD functionality test -- 0% functional test have
16 been signed off in the Podium, 27% of basement
17 functional tests in the Podium & 43% of functional tests
18 in the Hotel remain."

19 So is this the position, that although you've just
20 said that this is sort of fairly straightforward work
21 for your team, they have not done it?

22 A. Yeah, this is commissioning activity, as I said, yes.

23 Q. Is this the position, that although, as you've just
24 said, this was fairly straightforward work by your team,
25 they have not done it?

1 (Pause)

2 "Yes" is the answer, isn't it?

3 A. This is the record of your client.

4 Q. You're doubting my client. Right. Shall we have a look

5 at -- could we please look at L5301, please.

6 Unfortunately, this one doesn't tell us -- this is

7 another internal Specon document, now 31 October, seven

8 days after DCD should have been obtained. If we look at

9 "hotel sum", please, we can find out what happened in

10 the hotel.

11 You see that despite having only achieved 1,333

12 actual approvals, we have now crept up to 1,345 out of

13 the 2,343. Three are with DEC; 20 have been rejected

14 and there's 732 have not yet been submitted to DEC.

15 Is that right? Do you see that?

16 A. Yes, I can see.

17 Q. So it follows that your clients haven't done it.

18 Could we see whether there are -- I think there are

19 some columns hidden after column J. Can we go into the

20 Excel spreadsheet, please. And keep N -- sorry, between

21 J and N.

22 Thank you very much. Just see what's there.

23 There should be K and L should be there as well,

24 I imagine.

25 Right. So, when we un-hide the columns, what we see

- 1 is that Specon are internally showing the balance to
2 install -- they haven't actually installed them yet --
3 is 137. Do you see that?
- 4 A. Yes, this corroborates with what I told you. These are
5 physically installed but a certain element of
6 commissioning and termination of wires is not done.
- 7 Q. No. What it says is the balance to install, ie 137 have
8 not been installed. That's what's happened, isn't it?
- 9 A. Correct, yes. Agreed.
- 10 Q. The balance to terminate and energise, they haven't done
11 the termination yet, is 490?
- 12 A. About a quarter, yeah.
- 13 Q. So it's not just about simple work being done. You just
14 haven't completed the work that is required?
- 15 A. Yes.
- 16 Q. Then if we look at the fire dampers, that's even more
17 remarkable. Incredibly, the number of fire dampers that
18 have achieved approval is exactly the same as it was on
19 the last sheet that we looked at, 348. So you've
20 achieved zero progress in achieving approvals; is that
21 right?
- 22 A. As per this sheet, yes.
- 23 Q. The number of rejected from DEC has leapt up to now 83?
- 24 A. Yes.
- 25 Q. You've got 56 that you've still got to install; is that

1 right? (Pause)

2 Yes?

3 A. Yes.

4 Q. If we look, please, at the "HTMSFD2" tab, you can see

5 that this is your weekly plan, which was being referred

6 to in your letter of 2 November that we looked at

7 earlier, and if we could just look at the -- just go

8 down so we can see the totals.

9 The weekly plan, as I understand it -- if we just

10 look at -- we've got in the right-hand side, you're

11 expecting functional testing of 243 in one week and --

12 MR STEWART: Do you mean 2,343?

13 MR CATCHPOLE: The very right-hand side.

14 MR STEWART: Oh, sorry, yes.

15 A. The balance, sir.

16 MR CATCHPOLE: All that happens is whenever there's

17 a balance to be done, you just project you're going to

18 do it in a week?

19 A. Functional test by my commissioning team, yes.

20 Q. What's happening is, and we see it throughout, every

21 time there is a balance of work to be done, you just

22 assume you can do it in a week and just put it in?

23 A. I don't understand your question.

24 Q. What I'm putting to you is this is wholly unrealistic;

25 you'd never achieve that level of testing and

1 commissioning?

2 A. Even this document that I don't know how -- which
3 document this is, it shows 90 per cent completion of the
4 hotel towers, and you are talking about 10 per cent that
5 we will not achieve projecting target. Many, many of
6 the records that I put in my -- and the facts on site is
7 that the main contractor was not ready, your client was
8 not ready with the civil works in multiple areas in
9 these towers, and maybe these dampers are actually in
10 the floors where they didn't finish the ceilings and --

11 Q. Maybe there was a goblin somewhere, Mr Grgurev.

12 A. But -- yeah, but --

13 Q. This is about your work which you are telling us --

14 A. Yes.

15 Q. Now, are you saying, as a matter of fact, that the
16 reason you could not do any of this work and achieve the
17 completion is because of something my client did?

18 A. No. I will repeat my answer. You can clearly see here,
19 we are talking about 2,400 dampers installed, the
20 testing and commissioning was not performed on about
21 10 per cent of it. Right? At this date here, of
22 31 October.

23 Yes, there was some commissioning testing signal to
24 be done. Yes, we projected in one week to achieve
25 200 dampers.

1 Q. What I'm putting to you is that when you're representing
2 to my client on 2 November that you can achieve all this
3 by 9 November, it's simply not realistic or true.

4 A. Counsel, with all due respect, this is 31 October.

5 Q. Right?

6 A. This is the projection from 31 October.

7 Q. But we agree --

8 A. Before I issue formally my report, our report, on
9 2 November. At this time, if this is Specon document,
10 it projects to finish in one week, which is again
11 8 November, additional 243 damper tests, which is not
12 unreasonable to plan like that.

13 Q. If we go back to your letter of 2 November, D9928,
14 please.

15 Could we please go down to page 4.

16 If we look at 4.1.3, please. You say -- so we're
17 now after the date for which final approval from DCD
18 should have been obtained, saying:

19 "The total number of Installed Fire Smoke Dampers on
20 the Project amount to 4101.

21 -- The total number in readiness ... 3800.

22 -- A further 100 Units in the Podium and 200 units
23 in the Hotel Towers will be completed ... within seven
24 days ..."

25 That's what we have just been looking at:

1 "-- Balance of the pending units were delivered on
2 the 27th October 2021 and currently being installed."
3 Just pause there. So we agree that you have missed
4 the deadline for milestone 6, whatever has happened?
5 A. Yes, yes, I mean, and it corroborate with the schedules
6 that we went through in terms of physical installation
7 of bits and pieces, yeah.
8 Q. Indeed, you had only had materials, relevant equipment
9 and materials delivered on 27 October, that's three days
10 after the deadline had passed?
11 A. Yes, yes. This is our statement, yes.
12 Q. And you're not even in the testing and commissioning
13 phase with those; you are undertaking the installation
14 work; is that right?
15 A. For some quantities, yeah. It's clearly here. It's
16 declare by us.
17 Q. Can we look at a different system, please. Background
18 music system.
19 Probably, sir, it might be a good time for a break,
20 because I'm going to a different topic.
21 PRESIDENT: We are supposed to go through to 2.45.
22 MR CATCHPOLE: I'm afraid I broke my watch, so I'm entirely
23 dependent upon someone whispering in my ear.
24 PRESIDENT: The plan, according to the timetable, you're to
25 go to 2.45, then we take a 15-minute break, then one

1 hour; but if you want to break now?

2 MR CATCHPOLE: No, no, I'm quite happy to go now. I think

3 obviously Mr Kazmi is fed up of listening to me,

4 I guess, and needs a coffee to keep himself awake.

5 MR HICKEY: Sorry, at the risk of incurring wrath, I mean,

6 you have just explained why it is you're not keeping to

7 your time estimate, but just -- and I'm not

8 criticising --

9 MR CATCHPOLE: I'm conscious that I'm overrunning with this

10 witness and that is very conscious. I don't think I'm

11 going to be as long with some of your other witnesses.

12 MR HICKEY: What I'm trying to get at is, will you get to

13 Mr Sarhan today, or can I --

14 MR CATCHPOLE: I won't get to Mr Sarhan today, definitely.

15 MR HICKEY: Take as much time as you need.

16 PRESIDENT: Mr Catchpole.

17 MR CATCHPOLE: Thank you.

18 Background music system, please. So let's look at

19 this system. Could we go to L5299.

20 We're looking here at an example of procurement

21 during this 2021 period. You see we are at

22 24 June 2021. This is the "GBM procurement logs balance

23 material to be delivered.xls", again a Specon document.

24 Do you see that?

25 A. Yes.

1 Q. Would you have been involved in reviewing these or
2 ordering the materials or procuring them or would that
3 be done at head office as well?

4 A. The procurement is done through me, yes. We have
5 procurement team on site, we had, yeah. Then the head
6 office do the issuance of the POs.

7 Q. If we just look down the list, this is 24 June. Is this
8 right, there's a very large quantity of items that have
9 not yet been ordered; that's what this is recording. Is
10 that right?

11 A. Yep.

12 Q. Many of them have a lead time of 16 to 18 weeks; is that
13 right?

14 A. Yes, counsel, yes.

15 Q. So that's four and a half months --

16 A. Why I'm holding answer, because I am aware that this --
17 because it says "control room equipment and IDF room
18 equipment".

19 I know that the control room equipment, which is in
20 the next to the ballroom, they have been completed. So
21 why it says here that it's to be purchased or something.
22 Because I know physically that it was achieved. Except
23 IDF room equipment. If they suggest a data centre, that
24 was the late variation of 18 million released to us.
25 I'm trying to read here the elements of equipment.

- 1 But it talks about music, background music system
2 workstation. Okay.
- 3 Q. But if you've got a procurement period of 16 to
4 18 weeks, four and a half months, so if we're at the end
5 of June, we're looking probably late October/early
6 November; is that right? Just to get the materials
7 installed?
- 8 A. Yeah, yeah. This central control, like management
9 system, speaker management system.
- 10 Q. If we look at the GRMS, that's the guestroom management
11 system, similar pattern, except the lead time on these
12 is eight to ten weeks, but still not --
- 13 A. Yeah. Again, this is for the bridge suite, bridge --
14 two-bay, three-bay suite, presidential suite, royal
15 suite. These are one of the last provisional sum design
16 released to us. So this is probably correct. But this
17 is not because the Specon ordered this equipment late.
18 You have to check the time when the design for this
19 rooms --
- 20 Q. We will.
- 21 A. It's one of the last provisional sums released to us,
22 I think. AV wise, June or July, actually this month was
23 released to us as AV design for the suites.
- 24 Q. Then if we look at the AV, we've got a similar pattern.
- 25 A. Again, we are talking about going through the titles of

1 the room. These are the latest provisional sum released
2 to us, level 22, teen club, kids zone --
3 Q. Your evidence is that this is all due to --
4 A. Late design of the provisional sum areas released, yes.
5 Late specialist design.
6 Q. But again, what we're seeing is many of these, again
7 16 to 18 weeks' lead time; is that right?
8 A. Some, yeah, most four to six, six to eight weeks, but
9 for this type of Meyer Sound, this is correct, 16 to
10 18 weeks.
11 But repeat, counsel, this is -- you have to check
12 the record when the AV design for this provisional sum
13 was released to us, very, very late. I think the latest
14 one end of July, even after this one month, we received,
15 last provisional sum, AV design.
16 Q. Could we please go to D9473-1. We're now on
17 8 August 2021. The heading is "... ELV Integration with
18 Schindler -- Reminder".
19 Then the letter reads:
20 "Further to the SBJV correspondence ... issued
21 27th July 2021 we are still to receive any reply to this
22 critical item."
23 So is this fair enough, another letter where you
24 have been asked for a response and had not responded?
25 (Pause).

1 A. Okay. It's talking about limited scope in the
2 elevators, the cameras and speakers, yeah.

3 Q. You had correspondence addressed to you, you hadn't
4 responded to it, about the delays in procuring and
5 delivering and fixing speakers and cameras in relation
6 to the lift lobbies; is that right?

7 A. Yes.

8 Q. "As stated previously, it has been demonstrated by all
9 the subcontractors, including Specon, that there was no
10 agreed methodology to undertake the works stated above.

11 As these subcontractors are all employed by Specon then
12 Specon should be the contractor taking the lead; this is
13 not the case.

14 These works have been delayed multiple times so far
15 throughout 2021 and each agreed date is missed without
16 progress being made or any explanation."

17 That was accurate, would that be fair?

18 A. It's a long story behind the cameras and speakers in the
19 elevator cabins under the responsibility of your client.

20 It's a very long story, design story.

21 Q. Well, is this fair, that multiple times during 2021, the
22 works in question had been delayed? (Pause)

23 Yes? Do you agree?

24 A. Do I agree with this statement? I do not agree.

25 Q. Do you agree that it's factually correct that dates that

1 had been agreed with you and your sub-subcontractors

2 were then never met?

3 A. For this particular task of the cameras and the

4 speakers, I would refer you, counsel, to the design

5 story behind the selection and final selection and how

6 many times --

7 Q. Before we get to the design story, do you agree that the

8 dates that you positively agreed for installation, on

9 multiple occasions, were never met?

10 A. Of this particular loudspeakers and the cameras? Could

11 be. I don't remember. No, I don't remember particular.

12 This is very limited scope, so I don't remember all

13 these details.

14 Q. Do you agree that in relation to this particular scope,

15 that when you didn't meet those dates, you never

16 provided an explanation as to why the dates had been

17 missed?

18 A. This kind of third fix items' split of the scope are not

19 subject of the regular tracking, counsel. This is

20 particular -- whenever your client was ready with

21 finishes in the elevators, he started asking us about

22 this particular final fix, that for some reason were not

23 in the part of the Otis contract, but he wanted us to

24 supply as a final fix.

25 I don't remember that this was even instructed as

1 a variation at certain point, but I remember the
2 multiple changes and coordination meetings with your
3 client's elevator contractor, to try to find
4 architecturally acceptable solution. So I remember the
5 long story about it.

6 Q. It then goes on:

7 "As of 08th August 2021 the following materials are
8 now critical for the progress of Elevator Handover:
9 -- Supply and fix of the 25 Speakers from GBM."

10 That's a Specon subcontractor; is this right?

11 A. Yes, yes, audiovisual specialist, yes.

12 Q. "-- Supply and fix of the 58 Cameras from Honeywell."

13 And that's a Specon subcontractor; is that right?

14 A. Correct, for security, yes.

15 Q. Is this right, that as far as you understood at this
16 time, the supply and fix of those materials was now
17 critical to the progress of another trade?

18 A. We are not shared the status of progress of their other
19 subcontractors. So it might be that they were ready for
20 handover, that they had all the international
21 certification and third party test of the elevators, but
22 we are not shared any kind of information of the status
23 of these elevators.

24 Q. "We request that you reply to this correspondence with
25 a detailed plan with delivery & installation dates for

1 all outstanding items, including the above, and also
2 a report which will explain the reason for these delays
3 and inactivity and identify clearly what steps you will
4 take to remedy the ongoing current problem.
5 Due to the urgent nature of this issue, we require
6 that you submit this fully detailed reply within 2 days
7 of receipt of this correspondence.
8 We do not expect that this request to be ignored yet
9 again [underlined]. A refusal or failure to submit the
10 requested documentation will be noted and recorded for
11 further action.
12 This situation is urgent, and your refusal to
13 mitigate further delays is totally unacceptable. These
14 delays are now having a direct effect on the ability of
15 third parties to undertake their works in accordance
16 with the project completion plans."
17 Okay? Did you understand, by this stage, that the
18 SBJV had got more than fed up with your failure properly
19 to perform your work?
20 A. Counsel, with all due respect, with all due respect,
21 this last couple of months before the unlawful
22 termination, there is a couple of dozen of this letter
23 and you can go one by one, you know. That does not
24 justify decision of your client. I would not call it
25 this is --

1 Q. Let the tribunal --

2 MR HICKEY: Let him finish.

3 MR CATCHPOLE: Sorry, let the tribunal decide whether my
4 client's actions were justified.

5 A. Yes, yes.

6 Q. Answer the question from the facts. Did you understand
7 that my clients, by this stage, were losing, had
8 completely lost patience with you in your failure to
9 perform and failure to respond to formal notices
10 requesting details about how you were going to recover
11 delays?

12 A. Which we very soon afterwards understood why they were
13 writing these letters, and why they never answered the
14 letter for years, important letters on the programme and
15 things like that, they ignored through five years of the
16 project.

17 So I can answer to your question, but this
18 definitely is not the item that a life of Otis final
19 inspection and TUV inspection or something like that
20 depends on. This is the final fix item, it is not part
21 of the critical items that -- so this letter, similar to
22 the other letters that you have mentioned, are all
23 basically in this period, closing to the termination
24 date, basically, trying to create some kind of
25 atmosphere of conflict. But at that point of time,

1 in August 2021, we were -- where we were in terms of the
2 progress, I would say very reasonably under all the
3 circumstances, completed the project to close to
4 90 per cent, if not more.

5 So all this time, you are not asking me about the
6 one and a half year lost on the project of the design
7 changes and everything that we have absorbed as
8 a contractor.

9 You don't ask me that we have done the design on
10 behalf of a client and a designer from New York,
11 multiple times.

12 So all this is not part of your question. Your part
13 is the two letters or three letters in the last
14 two months leading to the termination that are reason
15 that your client has terminated us.

16 With all due respect, I don't work any more with
17 Specon, but, keep going, you know, I mean --

18 Q. I will. Do you think, and is this right: yet again, you
19 failed to respond to the instruction to give the action
20 plan that they were demanding and the report. You did
21 not --

22 A. 20 cameras, yes.

23 Q. Yes.

24 A. We failed, yeah.

25 MR CATCHPOLE: I wonder whether that would be a convenient

1 moment.

2 PRESIDENT: We'll adjourn for 15 minutes, so we'll resume at

3 around 3 pm for another hour.

4 (2.42 pm)

5 (A short break)

6 (3.02 pm)

7 MR CATCHPOLE: Different contractor, please. Honeywell.

8 They're the fire alarms, yes, being critical to DCD

9 approval?

10 A. Yeah.

11 Q. Can we pick the story up in early 2021, please. We go

12 to D8443.

13 We see, if we could go down to the email of

14 15 February, keep going, please, keep going. Stop,

15 there please. Go back up.

16 This was in response to a complaint made by, I think

17 it's Mr Thrasyvoulou, to the employer about the way they

18 felt they were being treated.

19 No, it's Mr Al Sadek who wrote this.

20 The response comes back from the employer, I don't

21 know whether you saw, 15 February:

22 "We will certainly discuss this with Valery [that's

23 Mr Paquier], however kindly note our observations on

24 Specon performance in general:

25 "1. While it might be true in certain areas that

1 clearances are still required from others, this does not
2 apply to all, and to the Hotel as an example where
3 Testing & Commissioning is not progressing well due to
4 shortage in Specon teams."

5 So were you aware at mid-February 2021, the
6 employer, at the highest level, was concerned about the
7 shortages in Specon's team leading to a failure properly
8 to progress its works?

9 A. This is the project manager, Basel, Mr Basel, writing to
10 the client, Mr Issam Galadari, yes.

11 Q. Were you aware that that was -- the project manager was
12 concerned about the failure of Specon to progress its
13 works, because of shortages in Specon's teams?

14 A. Yeah, I mean, I can read the first line, yes.

15 Q. And you were aware of that at the time, were you?

16 A. I was not aware, I was not copied in this
17 correspondence.

18 Q. Then it says:

19 "2. Some Material was delivered over the past month,
20 however the statement [that had been made by Specon]
21 that all material is available in ... stores is not
22 accurate as they still have issues with sourcing several
23 items (particularly where L/C's are required). For
24 examples, the team are reporting issues with the
25 following material, where it was discussed with SBJV to

1 issue the required LC's as needed to secure the
2 material.

3 "a. Duct work.

4 "b. Thermal installation.

5 "c. Acoustic insulation.

6 "d. Pipes and clamps for drainage and water
7 supplies.

8 "e. Consumables are missing on site such as nuts
9 washers, threaded rods and welding rods."

10 Is this right, that by the time we get to
11 February 2021, reports coming back from Specon's own
12 people on site is that there are shortages of critical
13 materials that they need in order to progress their
14 works?

15 A. Yes, you can see here, yeah, from this --

16 Q. Factually, that was right, there were shortages of these
17 types of materials?

18 A. Yeah, this beginning of 2021, yes.

19 Q. That would inevitably cause delays to progress, Specon's
20 ability to progress, because you didn't have the
21 materials to install?

22 A. Of course, yeah.

23 Q. The third one is:

24 "Salaries to their staff [that's Specon staff] is
25 not paid since November 2020, and this is impacting the

1 timely action from such staff, which in turn is
2 impacting the progress of works. This delay in salaries
3 has been going on for at least 6 months."
4 Again, we have the project manager here, overall
5 project manager. And it was factually right, that there
6 had been months where the staff at Specon had not been
7 paid; is that right?
8 A. Correct, yeah.
9 Q. It's also fair to say that understandably, the fact that
10 they had not been paid affected and impacted on their
11 work progress?
12 A. I agree with you. I agree with that statement, yeah.
13 Q. You agree that that had been something that had been
14 happening by this stage for about six months; is that
15 about right?
16 A. Several months, yeah, but the records shows also our
17 request and main contractor assisting, I think December
18 or January, in some payments, but, yes, it was multiple
19 months' issue, yeah.
20 Q. If we could go then down to item 4:
21 "Impact of Payment to Specon subcontractors is
22 delaying the works on site, response time and progress,
23 such follows:
24 "a. Honeywell have minimal resources on site for
25 security and Fire Alarm due to payment issues."

1 Factually, that was right in February 2021; is that

2 right?

3 A. I can't remember for sure, but could be, yeah.

4 Q. Do you recall --

5 A. Do I recall Honeywell number of people in February?

6 I truly don't remember, no.

7 Q. Do you recall they had very, very few resources on site

8 in the early part of 2021?

9 A. I would recommend we verify the records, you know, of

10 the true presence, you know.

11 Q. "CSI are having very minimal resources on site due to

12 payment issues. (CSI are doing air and water

13 balancing)."

14 Do you recall that CSI had very minimal resources on

15 site because they had not been paid?

16 A. Again, I don't recall, but CSI is a very small number of

17 technicians doing balancing of the hotel rooms and

18 around the other areas which are available. This is

19 very limited impact overall, but could be, yes.

20 Q. Balancing -- air and water balancing may not involve

21 that many men, but that is quite a time-consuming task,

22 given the scale of the job that they had to do?

23 A. Yeah, but you have to bear in mind, counsel, at that

24 time, in January/February 2021, we were already -- most

25 of the hotel rooms have already been balanced, and areas

1 of balancing were just completed areas, areas gradually
2 completed in the podiums, I would say, in that time,
3 yeah. But the hotel rooms, majority was done, except
4 for the provisional sum areas, like I mentioned, the
5 spa, huge area, the ballroom and associated kitchens and
6 diners.

7 Q. But you agree with me that the nature of the work
8 they're doing, albeit it doesn't require hundreds of
9 men, does take -- it's quite time-consuming to
10 actually --

11 A. Time-consuming, and it's important, their role is
12 important, yes, agreed.

13 Q. "Intercool still have issues with payments and are
14 holding many stress analysis reports, inspections, and
15 other paper work."

16 Do you recall that position in 2021?

17 A. Stress analysis report, at that time in 2021? I mean...

18 Q. Do you recall them holding on to the stress analysis
19 reports because they hadn't been paid?

20 A. I really don't recall that, no, but -- these are the
21 third party specialists issuing certificates, but at
22 that time, all this special supports in the main risers
23 or plant room, this is all behind us at that point, you
24 know, so I really -- could be, could be that there were
25 some elements of work, especially associated in the

1 podiums, still ongoing, could be.

2 Q. Number 5, this is the project manager for the whole job:

3 "Certain senior staff are not on site anymore, and

4 seem to have been moved to another project."

5 Is that factually right, that senior staff had been

6 moved from Specon team?

7 A. In February 2021, I'm not aware of any major senior

8 staff that is moved. We still had engineering fully in

9 place, we had commercial department, we had procurement

10 department. I don't understand which senior staff he's

11 referring to. All the key project manager, construction

12 manager, construction director, all departments were

13 there. You will discuss with some of them here. They

14 are all witnesses.

15 Q. "6. Specon has been requested many times to improve

16 their Mechanical Commissioning staff. No action has

17 been taken to date, and we need at least two senior

18 mechanical engineers to support the mechanical

19 commissioning team."

20 Is that right? Do you recall that Specon had been

21 requested on many occasions to improve their mechanical

22 commissioning staff?

23 A. I mean, not that I recall that Mr Basel asked personally

24 to me something like that. But based on the stage of

25 the project at that point and requirements for the

1 commissioning and proportion of the mechanical services,
2 definitely it could be -- it's a valid point maybe that
3 we needed a couple of guys more, yeah.

4 Q. They weren't provided, as I understand it; is that
5 right?

6 A. Sorry?

7 Q. They weren't provided? You didn't add?

8 A. I don't remember, counsel, if he have reacted to it,
9 because this is communication between him and Mr Basel
10 and directly client. But I could see in the trail that
11 my CEO was copied and he reacted, but I was not copied,
12 this document.

13 Q. "7. In general, the commissioning of Specon systems is
14 almost at stand still with minimal progress achievement
15 of less than 0.5% every two weeks. Currently the
16 project is at around overall 16% commissioning progress
17 only."

18 A. I mean --

19 Q. Is that a fair summary of what was happening in
20 February 2021?

21 A. I would say yes, from my experience, the commissioning,
22 to cross the stage 1 of the commissioning requires -- to
23 be able to reach to the stage 2 of commissioning
24 requires WIRs. Stage 2 to stage 3 is basically -- so
25 this 16 per cent maybe at that stage would be

1 reasonable. Because then it accelerate, depending how
2 you reach certain stage of the commissioning, and last
3 stage is interfaces between the different trades. Then
4 you grab through the percentages, but initially,
5 average, average for the stage 1 and 2, yes, that would
6 be fair comment.

7 Q. Can we have L1879.

8 MR STEWART: Sorry, I assume we don't have a translation of
9 Mr Riad Al Sadek's letter which this is a response to?

10 MR CATCHPOLE: I have seen a translation, but not an
11 official one. We can provide --

12 MR STEWART: It's simply that this letter is obviously
13 responding to what Mr --

14 MR CATCHPOLE: It's effectively a repeat of what is said in
15 these proceedings, that they have been treated -- well,
16 you can see it from the last -- unfairly, it's not
17 right, they're not being paid. That sort of thing.

18 This is the project manager rather than us responding,
19 because it's been elevated to a high level.

20 Could you please go to L1879. (Pause)

21 You're drafting a response, which is why I'm -- so
22 you're saying:

23 "Dear Stelios,

24 "Please find here below draft response, point by
25 point. Some of the comments are way outdated in terms

1 of actuality, therefore please find as follows:

2 "Point 1: Our summary of clearances awaited Project

3 overall is accurate presentation of the facts to date.

4 As far as the comment about the hotel towers, obviously

5 our progress and handing over of close to 710 rooms with

6 completed MEP 1st/2nd Fix Services to ID subcontractors,

7 out of which we have only received back only 460, to

8 date, is not an issue. Completion of 1st/2nd fix and

9 hand over to the ID Works of 4 out of 5 hi end suits,

10 ahead of the Program, we assume is not an issue. With

11 regard to Testing and Commissioning in the Hotel Towers

12 supposed shortfalls, mentioned thereto, we are

13 progressing with Electrical T&C in accordance with the

14 Plan agreed with SBJV. With regards to Mechanical

15 Testing and balancing, we have had shortfall of

16 balancing teams for couple of weeks, which since two

17 weeks ago has been remedied and 6 balancing team are now

18 present in Hotel Towers, in accordance with the plan and

19 requirements..."

20 So you're saying, yes, we had a problem and now

21 we've got some more people on board. And you were going

22 to try and get a second third party testing and

23 balancing company, Sutton, to get involved. Do you

24 recall whether they were involved?

25 A. I don't remember. I don't remember, counsel.

1 Q. Point 2 --

2 A. But, yes, I remember the name Sutton. Sutton, we
3 contacted them, yeah.

4 Q. "Point 2: The statement is inaccurate, in sense, that
5 Specon has during the course of last 4 years of Project
6 procured exclusively through its own bank facility,
7 close to 300 million of material, plant and Final Fix
8 material. At the moment we can say that we have in our
9 Site stores 83 million of mostly Final Fix material ..."

10 And then you go on:

11 "... as well for about half of this value equipment
12 of our specialist ELV/FLS/Security Subcontractors. This
13 completely autonomous procurement financing by the
14 Specon, has without question asked, and despite
15 continuous difficulties to get our Variation Account
16 agreed and honoured, absorbed procurement of plant and
17 materials for close to 1500 Variations received to date
18 from the Project Managers and Engineer, via Main
19 Contractor. Therefore, and considering continuous flow
20 of further Varied Works still instructed to Specon
21 almost daily, we can with certainty state that most
22 rather [than] all material and Final Fix are on site..."

23 So that was saying: the employer and the engineer,
24 its engineer, have been instructing lots of changes and
25 we've had to absorb those?

1 A. Yeah, because of the nature of material, counsel, that
2 you have quoted above from Mr Basel, is for this
3 continuous revisions of the ID works or -- so you need
4 a small material, you need pipes, fittings, small
5 valves, things like that, ducts, you know, yeah.

6 Q. "With regard to First Fix material and accessories
7 listed by the Project Manager, it is true that we faced
8 some difficulties with our suppliers, but this is now
9 matter of past, and none of the listed material is an
10 issue ... at the moment."

11 It's right, though, isn't it, that those materials
12 became issues again in the later months of 2021?

13 A. Correct, yeah.

14 Q. "We have welcomed positive initiative by the Client
15 [that's the employer] to agree with all Project
16 Participants fair and reasonable Revised RFA including
17 fair compensation for prolongation ..."

18 That's the reference to the rolling final account
19 that's been ongoing for two years by this -- three years
20 by this stage; is that right?

21 A. Yeah, but at certain point, the client itself jumped in
22 and what we didn't discuss here is this huge number of
23 small and medium variations, a variation account in
24 general, so where the client basically jump in intensive
25 workshops in a period of three weeks, we have basically

1 went through the account of 105 million of variations or
2 something like that.
3 So that contributed also to the cashflow, when you
4 look, we were talking about certificates only works, but
5 we didn't look the movement and there is no movement on
6 the variation, because they were not agreed or finalised
7 for whatever reason, yeah.

8 Q. But you've been involved, and that was a
9 process -- (overspeaking) --

10 A. Yeah, I was personally involved in each and every
11 variation, yeah.

12 Q. You say:

13 "While being close to agree this figure with the
14 Client/Contractor, we have not yet reached it. In the
15 meanwhile we have been faced with unreasonable zero
16 certification by the Contractor for month of October
17 and November, that never happened in the past 46 monthly
18 certificates. This has caused sudden shortfall of the
19 operation cash flow, resulting in irregularity of staff
20 salary payment for our Project Staff."

21 It's not the contractor who was valuing at zero. We
22 have looked at it; it was Arcadis valued effectively at
23 zero after taking account of advance payments with some
24 contracharges being levied for those certificates?

25 A. Yeah, I mean, combination of, counsel, yes. Yes, we

1 discuss it earlier, yeah.

2 Q. Then 4:

3 "As a result of [the cashflow], yes, we have faced

4 some difficulties to honor October certificates to some

5 of our Specialist. The amount ['owing', I think it

6 should say] is nominal. The main reason for them

7 exercising this pressure on us, is not certification of

8 one month payment due, but rather their impatience of

9 not having their BTB [back-to-back] Variations agreed,

10 which we can't exercise until such a time that we

11 conclude our Revised Subcontract Value including

12 Variation Account ourselves ..."

13 Which is the revised contract value with Arcadis and

14 the employer through the RFA account?

15 A. This is the, rather, variation account, because some of

16 these variation are essential for this specialist, for

17 example, the data centre were 20 million of GBM works.

18 There was very slow -- I recall very slow flow of

19 the formal VOs to us. I think that we have totally

20 received 10 million, 10.3 million of the VOs, if I can

21 recall. But the account of variation was 150,

22 180 million, something like that. So many, many

23 variation and that's the element of the payment that we

24 were receiving through Arcadis and through main

25 contractor, some kind of on-account payments, knowing

1 that the variation have been already actioned and
2 executed, but not formalised.

3 So this problem caused back-to-back problems to our
4 specialist, because they had millions worth, each of
5 them, of variation and we have seen it in the letter of
6 SIBCA as well, mentioning variation not concluded, yeah.

7 Q. Although you had received, as you rightly say, both from
8 the employer and directly from the JV, on-account --
9 substantial on-account payments to assist with that
10 process?

11 A. Against some of this variation, yeah.

12 Q. Then it says, under point 4:
13 "a) Honeywell team for both Security and Fire Life
14 Safety Systems is present on Site, but their execution
15 Sub-Sub are not for the last 3 days."
16 So the people actually doing the work are not on
17 site?

18 A. Physical labourers, the engineers from Honeywell, yes,
19 correct.

20 Q. In relation to the staff salaries, could we look at
21 L1883.
22 This is again draft, Mr Thrasyvoulou coming back.
23 Just point 3:
24 "The delay in salaries is also unfortunately an
25 effect of non-payment for the last three months by the

1 Main Contractor [that's the certification point], noting
2 that we have previously managed all salary payments on
3 a project which is now more than 12 months past its
4 finish date and where the full value of our original
5 contract prelims is still not certified."

6 That's what underlies this. He then goes on to say
7 he wants to do a commercial deal with the client,
8 basically.

9 Do you recall that that was at a period where the JV
10 had actually given money specifically to pay the staff
11 salaries to Specon for November 2020?

12 A. I don't recall if it was November, but I can confirm,
13 because I have been instructed to initiate letters to JV
14 and ask to pay the staff salary, yes. On one or two
15 occasions, yeah, I remember that.

16 Q. D8108. This is 23 December Specon had written and
17 saying, we can see in the text box, that they wanted the
18 JV to pay the total monthly staff salary for
19 November 2020?

20 A. Yeah.

21 Q. Do you recall that that money was provided for that
22 purpose by the JV?

23 A. I cannot confirm it 100 per cent to be sure, because we
24 asked more than one time and sometimes they did honour,
25 but sometimes they didn't. So this particular, if it

1 was paid or not, I'm not sure.

2 Q. D8413. Do you recall receiving this letter in

3 February 2021, again from the JV, "Staff Non-attendance

4 at Daily War Rooms". You say:

5 "We draw your attention to a fundamental and serious

6 problem which is in danger of seriously delaying the

7 project and potentially causing substantial problems to

8 other subcontractors.

9 "The daily coordination between all subcontractors

10 is pivotal to the completion of all areas ... as such we

11 write to raise concern regarding the Specon staff

12 refusal to attend Basement, Podium and Hotel War Rooms.

13 "The reason given by your staff for non-attendance

14 is that they have not received their salaries for four

15 months which obviously has an effect on their [morale]

16 and motivation."

17 Then skipping over the next, it says:

18 "We remind that as per your request ... dated

19 23rd December 2020 the SBJV released monies for the

20 purpose of payment of your staffs' November 2020 salary

21 however it is apparent that your staff has not received

22 their November salary.

23 "This was not the terms of the financial

24 assistance."

25 So do you recall that there was then a problem in

1 February where Specon staff, who had not been paid their
2 salaries, were not attending the daily war room
3 meetings?

4 A. It could have been possible at that time. I repeat,
5 counsel, I was part of it, I was without salary. This
6 is handled by our CFO and the management, you know?
7 This kind of question should go their direction. I can
8 only confirm to you, yes, that in some occasion, your
9 client has assisted by paying one month's salary and
10 maybe one month more afterwards. It was -- it happened,
11 because I wrote these letters, as you can see. You can
12 see the letters were initiated by me, requesting
13 directive from my management.

14 Q. Sorry to hear you didn't get paid, but do you recall
15 that the fundamental problem was that --

16 A. The project managers, you can ask them directly when
17 they witness here, they are both here in the hearing.
18 Because these are the guys who go in that war rooms
19 daily, which is the two project managers that you --

20 Q. Do you recall, however, that what had happened was the
21 money had been paid by SBJV to pay the November
22 salaries, but had been used not to pay -- had been used
23 by Specon, I'm not saying it had got elsewhere, but they
24 had not used that money to pay the salaries?

25 A. Again, I understand what your question is, counsel,

1 I understand completely the question.

2 Q. Look at D8450.

3 A. Yeah, because I don't have control over it, you know?

4 The transfer of money to our project account, it's not

5 controlled by me. So I cannot --

6 Q. That is unusual, isn't it?

7 A. I will not comment.

8 Q. Is it unusual? It is, isn't it?

9 A. I am doing it for many years, you know? Sometimes, you

10 know, sometimes -- I work for international companies

11 all my life. Sometimes, like, I built the biggest

12 hospital in Europe, Motol Hospital. I had a full

13 authority of each and every payment. But in some cases,

14 with some other Italian company, I didn't have. They

15 were doing all the processing, I only communicated

16 to them.

17 In this case, it's similar. Is it better to have

18 a full authority by the project director? Absolutely.

19 Because I can control the money in the bank.

20 Q. Yes; you control the money, you control the cost, you

21 control the procurement, you can control the plan?

22 A. One of the roles is to look forward, all your incoming

23 invoices as a project director, and ensure the balance,

24 but unfortunately in this particular case, I didn't have

25 that ability to do.

1 Q. I'm not suggesting you did.
2 D8450. Then there was a notice to correct issued on
3 16 February from the JV. Do you happen to know whether
4 that resulted in payments being made?

5 A. I don't remember. I apologise, but really I don't
6 remember.

7 Q. Coming back to Honeywell, please, L2201.

8 Please go down to the email of 22 March, which is
9 down below, please.

10 This is from Mr Hamza of the JV, to, amongst others,
11 the construction director and yourself. It says:

12 "I met last week with Honeywell project manager and
13 his team, explained what they are facing in order to
14 achieve civil defence target as follow:

15 -- Balance ceiling closure inspection:

16 20 apartments, plan attached and target to finish by
17 first week of April.

18 -- Final fix installation: over 60+ apartments

19 waiting for Honeywell and No. are increasing 12 per
20 week, full plan attached and target to finish by
21 13th May.

22 -- Corridors wooden ceiling and final fix: plan
23 attached and target to finish by 22nd April.

24 -- T&C for loop and preparation for the [I think it
25 should be 'course'] and effect: required itself

1 13 technicians 4 per tower.

2 How we supposed to do all that with currently

3 6 people from Honeywell in all residences?"

4 Do you recall -- and it would not have been possible

5 for them to have progressed their works --

6 A. Yes, that refers to our responsibility for the FLS

7 systems, because it has to be done by one contractor.

8 So we were doing all the FLS system also for the

9 residences. So there was a push in completing the

10 apartment which was pretty steady going behind, for

11 many, many years behind, but there was a push in the

12 progress of the apartments. Once all the ID design, and

13 they even cladded the corridors and everything.

14 I recall that.

15 So this is I think the construction manager from

16 Besix, Wael, for residences, yeah.

17 Q. Is this right, that it would have been impossible for

18 them properly to progress their work, Honeywell --

19 A. With the six people? Absolutely not, yeah.

20 Q. They couldn't do it?

21 A. No, no way.

22 Q. Is it right that the Honeywell resourcing is down to six

23 people because they hadn't been paid?

24 A. I cannot confirm that. Again, you have to bear in mind

25 that, similar to SIBCA, the cabling is done by us. It's

1 a clipping of the red cable to the ceiling by our
2 electrician, and then job of the Honeywell basically is
3 just to put the detector, programme detector and
4 terminate them on both ends. This is the duty. But
5 definitely with six people for this number of apartments
6 that they mention here, it's not enough, yeah.

7 Q. Could we go up to 29 March, please in this email chain,
8 from Mr Abdullateef. Go up, please.

9 It says, this is internal to the JV and it's
10 saying -- sorry, copied -- no, it's copied to you.
11 Sorry, it's sent to you, amongst other JV personnel:
12 "Yves/David,
13 I seek your support to resolve ASAP, I'm almost
14 stopped everywhere and will not be able to have the
15 ceiling closure & paint for the last area ready on May
16 to achieve DCD milestone as per the current program.
17 Also Corridor joinery is stopped in terms of
18 production & installation on site due to the same.
19 This will jeopardise the project completion date."
20 We can see that is caused by, he is saying, the lack
21 of Honeywell resources in the residences?

22 A. In the March. I really don't recall this gentleman
23 Muhammad Abdullateef, which area he was covering for the
24 Besix --
25 Q. But --

1 A. He's not saying where.

2 Q. It's in the residences.

3 A. Is it still in residence? Yeah.

4 Q. But he is recording, correctly, that the hold-up, if

5 there's going to be one, is with Honeywell?

6 A. Honeywell, yeah.

7 Q. Could you please then go up to the next email.

8 Mr Maloney then emails back and including to you and

9 he says:

10 "Muhannad,

11 The situation with Honeywell gets more precarious by

12 the day.

13 -- Honeywell are owed certificates which Specon

14 refuse to issue -- the reason is unknown as Specon being

15 without bank facilities can request payment against the

16 certificate from the JV as done previously.

17 -- Honeywell require agreement on their

18 variations -- Specon senior management refuse to meet

19 with them to discuss/agree -- this has been the status

20 for the past few weeks.

21 Due to the above Honeywell are refusing to order

22 materials and provide sufficient manpower for the

23 project further to that if the above are not resolved in

24 the next days I believe Honeywell will remove all their

25 manpower from the project again.

1 Zeljko,
2 Thanks to discuss with your management and confirm
3 that the above two issues will be addressed and resolved
4 today/tomorrow."
5 Do you remember there's a crisis now where Honeywell
6 are effectively refusing to do any further work until
7 you pay them?
8 A. Yeah, there are two elements here, counsel. The one
9 that I mentioned, he's mentioning that nobody is meeting
10 Honeywell and other specialist on the variation. We are
11 absolutely meeting them. We build our variations
12 back-to-back because we represent them. The problem and
13 the loss of patience is that this variation didn't reach
14 the conclusion and the formal VOs swiftly. It took
15 months and months to conclude.
16 So they were building up impatency, not only
17 Honeywell, majority of this specialist. But all of
18 their variation can be checked in the variation log,
19 submitted by us and discussed with your client and
20 they're there. They are all submitted, but they were
21 not concluded.
22 The other issue is of course the payment of the
23 monthly certificates and issuance of the certificates,
24 yes, this is similar to the other specialist, yeah.
25 Q. If we go up, your response comes back:

1 "-- We are not refusing to issue certificates; we
2 are unable to issue certificates given that the SBJV net
3 certification to ourselves is zero for the last
4 6 months."

5 So that's then going back to the IFCs that we
6 looked at.

7 A. Yes.

8 Q. "This has naturally impacted our banking facilities
9 which we have clearly explained to the SBJV on numerous
10 occasions. The solution to this matter is formalising
11 the agreement of our final account and/or immediate
12 certification to SPECON, matters which were both again
13 discussed with SBJV senior management on numerous
14 occasions. As such the first step in resolving this
15 issue remains with yourselves.

16 -- It should be noted that we have already requested
17 the SBJV to pay Honeywell directly -- unfortunately,
18 this has had to be placed on hold as Honeywell use the
19 same facilities through HSBC as ourselves, which creates
20 a major issue as I'm sure you will understand --
21 including breach of covenants. Again, the sooner our
22 final account is agreed and/or a significant certificate
23 is issued to SPECON, the sooner such issues will be
24 dealt with."

25 Is this right, that you, Specon, had covenants with

1 your bankers, HSBC, that all monies you received on the
2 project had to go into the HSBC accounts?

3 A. Yeah, I mean, it's a part of the contract with your
4 client to have a dedicated account for that project, you
5 know, not to use the company accounts. So it was HSBC
6 account.

7 Q. If HSBC found out that payments were being made directly
8 to Honeywell, that would have been a breach of your
9 banking covenants, as you understood it?

10 A. Yes, yes.

11 Q. Is this all right, also true: that the short position as
12 at this stage, 30 March, is Specon cannot afford itself
13 to pay its subcontractors and progress the works?

14 A. Again, the financial situation of the company, counsel,
15 with all due respect, I mean, you can address it to our
16 CFO, because really I didn't have control of it.

17 Q. I'm not suggesting that you do.

18 L2669. Now going forward to May/June 2021.

19 A. Yep.

20 Q. This chain of emails, could we start with an email of
21 30 May.

22 Going down, it's from Danut Paun. He is emailing,
23 saying:

24 "Dear gents,

25 Please see the update ..."

1 He lists the hotels by levels available. If one
2 reads through the highlighted bits, it's recording:
3 HT1 installation balance only lift lobby, Honeywell
4 cable pulling.
5 HT2 installation balance only one area where is
6 required cable pulling.
7 HT1 installation balance only lift lobby ...
8 ... corridor ready for Honeywell final fix.
9 ... Honeywell cable pulling.
10 HT1 corridor ... ready for Honeywell final fix."
11 And so on.
12 So a lot of the works are then waiting for -- are
13 with Honeywell to do.
14 If you could go up to the next --
15 A. Sorry, counsel, to interrupt you. Again, the cable
16 pulling is done by our resources, our electricians, you
17 know, so this guy, I don't know this gentleman from
18 Besix. I don't recall him. But he was probably one of
19 the construction managers for them in the towers.
20 So the cable pulling is done by us, it's executed by
21 our electricians, yeah. So in any case, he's
22 highlighting certain works not completed by Honeywell.
23 Final fix definitely is by Honeywell.
24 Yes, please.
25 Q. If we go up to 1 June. We have here that the -- he's

- 1 identifying that there is work that they are still
- 2 waiting for Honeywell to proceed, on most all of the
- 3 levels that are identified in yellow?
- 4 A. And the green, done, yeah.
- 5 Q. Green, done?
- 6 A. Understood, yeah.
- 7 Q. Go up again, please.
- 8 Then stop there. Same day, he's saying:
- 9 "As you see in below the civil team cannot close the
- 10 ceiling above level 35 because the cable FP200 1.5 mm is
- 11 not available at site!
- 12 Please confirm that delivery date is for tomorrow.
- 13 Honeywell cannot delay the sequence of work."
- 14 This is to Honeywell from someone at Specon; is that
- 15 right?
- 16 A. No, Mohamed Lachaar is the Besix employee, construction
- 17 manager.
- 18 Q. But it's going to Honeywell, saying --
- 19 A. He's writing directly to our specialist, yeah.
- 20 Q. Saying --
- 21 A. I was looking. I was not copied here, yeah.
- 22 Q. "You haven't got the material on site. Must be
- 23 tomorrow".
- 24 A. He's telling them directly, Honeywell, the Besix
- 25 construction manager.

1 Q. Can we go up again to 6 June.
2 He is emailing again, internally, and also to
3 Honeywell and he's saying:
4 "The situation ... going to delay the DCD
5 milestone."
6 It's copied to you:
7 "-- There is no resources from Honeywell (only
8 15 technicians are at site when we need at least 90 ...)
9 -- The fire alarm cables FP200 ... is not available
10 (it was supposed to be delivered on Thursday 03/05!)"
11 That was a month before. Do you recall that crisis
12 coming, that Honeywell had virtually none of the
13 resources they required and also hadn't delivered
14 materials for over a month?
15 A. I mean, if I may say from my experience and knowing
16 these guys, I know this Mohamed Lachaar very well. Of
17 course there were some shortcomings. I would agree in
18 that. But here we are talking on 3 May, dramatic mail
19 from him to his internal team. Yes, there were some,
20 definitely, for the reason that we have discussed
21 earlier, which explanation should come from somebody
22 else.
23 Q. On the ground, Honeywell have a fraction of the number
24 of men they need and they don't have the materials and
25 they have not had them for a month; is that right?

1 A. Yeah, but they are linking the fire alarm cable FP200,
2 the cables are installed and procured by us, so it's
3 again the problem of Specon, you know, but this
4 gentleman, Mohamed Lachaar, who is the construction
5 manager assigned to the ... he's not aware of that and
6 he's writing directly to Honeywell.

7 We were procuring this cable ourselves, so there was
8 some shortage in procurement from our end, I would
9 rather say.

10 Q. That's holding works up, it's at least a month's worth?

11 A. Yes, yes, but you know, there are records much later in
12 the 2021, when the Honeywell was already achieved
13 certain progress, but the areas, the walls with the
14 Honeywell cables in for the devices are still not
15 finished and so on. There are, especially this level,
16 higher levels of the tower, they were still open.
17 But, yes, could be that there was some shortcoming
18 at that time, yeah.

19 Q. Could we go up to the 1 June letter from Mr -- email
20 from Mr Markou?

21 A. Mr Markou.

22 Q. Sorry, you have gone too far. 1 June. Keep going up,
23 please.

24 A. Up.

25 Q. Sorry, it's not there, that's why. Sorry about that.

1 It's L2824.

2 If you could go down to 1 June, there should be an

3 email from Mr Markou of Specon. That's it, thank you.

4 2 June. So Mr Markou, who is, what, at Specon?

5 A. General manager.

6 Q. General manager --

7 A. Used to be general manager.

8 Q. He is emailing both Specon employees and Honeywell,

9 and says:

10 "Gents,

11 How is it possible to have no fire alarm cable, the

12 most fundamental material for your scope?"

13 Fair point? Good point? Is that right? It's the

14 most fundamental material you need to do it; is

15 that right?

16 A. I really believe that -- maybe we bought it from them,

17 but the installation of the cables was definitely by us.

18 I'm not 100 per cent sure.

19 Q. "If you do not have that, what chance is there of

20 achieving any progress??"

21 With the answer to that question be none?

22 You agree?

23 A. Yes.

24 Q. "Has Honeywell now given up at site???"

25 So even Specon has got to the point of saying --

- 1 A. What's going on, yeah.
- 2 Q. Yes, and it's been going on for some time; is that
- 3 right?
- 4 A. Correct.
- 5 Q. "Will you accept others bringing materials/resources on
- 6 your behalf, because that is what will probably
- 7 happen?????"
- 8 So he's now saying: for goodness sake, it's so bad
- 9 the likelihood is someone is going to step in and we'll
- 10 have to get someone else to do it?
- 11 A. Yeah, to bring somebody to do it on your behalf, yeah.
- 12 Q. Is this fair, that at this point in 2021, Honeywell's
- 13 works are being delayed, for whatever reason, because
- 14 they are not progressing it, they are not getting the
- 15 materials they need and they're not installing them?
- 16 A. But -- yes, this is the record, but I would say that
- 17 they did react eventually in the coming months. There
- 18 was a good progress from them, that I recall, yeah.
- 19 Q. Just go up, please, on the same email chain. We see
- 20 that Honeywell do respond saying:
- 21 "The issue is that entire cable delivered to site is
- 22 pulled. Now a huge [quantity] of this cable belongs to
- 23 the VO scope that needs settling and we are really
- 24 getting hammered from our finance team as they are
- 25 really not ready to support these kind of business

1 dealings.

2 The reason for the delay from morning is that I am

3 trying to get a financial hold release on this project.

4 I have now got it for procurement of cables and have

5 advised Subash and team to get the cables to site."

6 Let's just pause there.

7 A. So he reacted same day, basically, the GM, yeah.

8 Q. But he's saying -- he has -- that Honeywell have put

9 a financial hold on the project.

10 A. Because of the variations that we have discussed,

11 counsel, earlier. So the closure of the and approval of

12 the, formal approval of the VOs and issuance of the VOs

13 also played a role in this financial constraints. To us

14 and to specialist contractor, because you can see here

15 that their GM is saying that the cables, originally

16 hundreds of kilometres for the project, they have been

17 delivered and installed. Now, because of the changes,

18 constant changes of the design, architecturally, late

19 inputs of the provisional sum, which were work in

20 progress marked on the drawings, basically, blank

21 drawings, for the areas, now that they have received,

22 this represent variation to them. So, not only to them,

23 to majority of the ELV contractors.

24 Q. That's not the JV's fault. If they were variations,

25 that's coming from the employer and it's the delay by

1 the employer in finalising the variation account?

2 A. Yeah, but it always goes through your client, you know,
3 upwards and downwards, it pass through the main
4 contractor, and the main contractor is part of this
5 discussions.

6 Q. Of course.

7 A. And of course they are in direct contact with the
8 client, their job is to push the client to issue VOs and
9 when they receive them, to be passed as quickly as
10 possible to us for endorsement or signature or whatever.

11 Q. You're involved in the very process in trying to
12 finalise things?

13 A. Yes, and following up daily and fighting, yeah.

14 Q. D9004-4, please. We ought to go to page 1. So back.
15 We have seen this before, it's one of the exhibits to
16 your witness statement.

17 A. Initial report, yeah.

18 Q. This is June 2021. If we could go to page 4, please.
19 Even though Honeywell have effectively stopped work,
20 you're projecting a massive ramp-up in their work; is
21 that right?

22 A. Yes, yes, yes, this was received from them, yeah.

23 Q. There was no prospect of that happening unless Specon
24 paid them?

25 A. Or resolved the variations, yeah.

1 Q. And there was no prospect of Specon paying them, because
2 it didn't have the money and the variations hadn't been
3 resolved?

4 A. Yeah.

5 Q. If you go down to D9383, please. Go to slide 4, please.

6 We'll start with slide 1 and then go to slide 4.

7 Sorry, start with slide 1, please.

8 Just to orientate ourselves, we have now gone

9 forward two months, 3 August.

10 Go to slide 4, please.

11 Despite the projections that were made and the

12 promises to perform, if we look at the percentage

13 overall completion, it's pitiful. It's 26.5 per cent,

14 29.95 per cent; is that right?

15 A. At that time, yes, one-third of the job, yeah.

16 Q. If you go to the next slide, again what you're then

17 projecting is you adjust what was the planned

18 performance up to 17 June.

19 Instead of planning the dramatic increase that you

20 had been shown when we looked at it, you were never

21 planning to do any work in those months, and you've got

22 another dramatic increase going forward in August?

23 A. Yeah.

24 Q. We say that's equally wishful thinking, because Specon

25 were not paying Honeywell at that time; is that right?

1 A. Yeah, but you can see that they did progress, to certain
2 extent, in July. It's not that they abandoned the site.

3 So of course, we are in any projections with our
4 specialist, we always try to squeeze them, to produce as
5 much as possible, of course, aiming to the final date of
6 24 October. This is projection to August only.

7 Q. Then could we please go to D9473, a letter we have
8 previously looked at, 8 August, in relation to the ELV
9 installation.

10 Fourth paragraph down, we have looked at this in the
11 context of the speakers:

12 "As of 08th August 2021 the following materials are
13 now critical for the progress of Elevator Handover:
14 ...

15 -- Supply and fix of the 58 Cameras from Honeywell."
16 So they hadn't --

17 A. We went through this letter earlier.

18 Q. I'm just dealing with Honeywell. Honeywell haven't --

19 A. Okay. The security cameras from Honeywell, yeah, yeah.
20 The security part of Honeywell, yeah.

21 Q. You again get -- this one you do respond to: D11078.5.
22 This letter, 17 August, doesn't respond with an
23 action plan or anything.

24 If you look at what it says in table 1, it finds
25 excuses and seeks to say: well, we can't install or we

1 never could because there were civil dependencies.

2 A. Yeah. Thank you. (Pause).

3 Q. Yes? But that wasn't the reason why Honeywell had not

4 been able to progress the works.

5 The reason why Honeywell had not been able to

6 progress the works was because they had refused to put

7 the staff and materials on the site because they had not

8 been paid?

9 A. Yeah. I mean, but there are facts behind this status.

10 These are not excuses.

11 Yes, it's fact that they have reduced maybe

12 resources on the project, but these are all factual.

13 I think that this letter was substantiated with

14 further details. It's not only that schedule here on

15 the first page.

16 Q. L3306, please. Mr Avraamides of Specon?

17 A. Yes.

18 Q. He is telling everyone at Specon, including yourself --

19 sorry. I ought to say, the date is 10 August:

20 "As discussed I would to highlight to you and

21 everyone in [copy] that milestone 4 is already

22 impossible to be achieved and milestone 5 is heading to

23 the same direction and very soon it will be also

24 irreversible.

25 Reasons:

1 -- GBM test teams: as of today and the last 8 weeks
2 GBM have 1 testing team (2 at best) for the whole
3 project while only Podium require 3 (huge impact on
4 milestone 4). Final fix items are still not confirmed
5 and some of them are long lead items (mostly affecting
6 milestone 5).
7 -- Honeywell teams are reduced significantly the
8 last 4 weeks affecting all tests and final fix
9 activities."
10 And so he goes on.
11 So is this fair, that at 10 August, within Specon,
12 it was understood that it was now impossible to achieve
13 milestone 4, because of the reasons set out here,
14 including Honeywell's progress?
15 A. Yeah, that's our project manager for the podiums.
16 Of course we have seen, you have showed my earlier,
17 the schedule of procurement from GBM, for example.
18 There are, of course, late provisional sum designs,
19 like British restaurant, Robatayaki -- you name it.
20 This is our PM, who is in charge of all the works in
21 that area. Of course he's concerned that certain
22 critical elements of the material, and he's trying to
23 highlight to us, as management, for the ELV systems.
24 But we know that one and a half, six weeks later, we
25 have walked through that podium levels and received the

1 congratulations from your client's head managers and the
2 client itself.

3 So a huge, huge effort was done in the coming weeks,
4 and it was recognised by everybody, in these podium
5 areas, against all odds.

6 Q. So you're saying, you didn't accept it was impossible to
7 achieve it; is that right?

8 A. It was actually achieved, six weeks later, and we had
9 a fantastic lunch paid by your client.

10 Q. I think we might be running short of ...

11 PRESIDENT: Yes, we are at time.

12 So we'll adjourn now until 10 am tomorrow morning.

13 Mr Grgurev, I'm afraid we'll need you again
14 tomorrow. Same rules apply as last night. Keep your
15 own counsel. Don't speak to anybody at all about your
16 evidence.

17 If you could be back here a little before 10 am
18 tomorrow morning. Thank you.

19 WITNESS: Thank you, sir.

20 (4.00 pm)