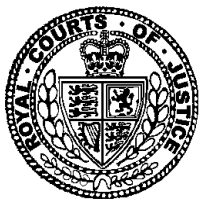

Neutral Citation Number: [2022] EWHC 161 (Comm)

Case No: CL-2019-000320

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice

Rolls Building, Fetter Lane, London EC4A 1NL

Date: 28/01/2022

Before :

MR JUSTICE ANDREW BAKER

- -

Between :

(1) VICTOR PISANTE

(2) SWINDON HOLDINGS & FINANCE LIMITED

(3) BCA SHIPPING INVESTMENT CORPORATION

(4) CASTOR NAVIGATION LIMITED

Clai

- and -

(1) GEORGE LOGOTHETIS

(2) LOMAR CORPORATION LIMITED

(3) LOMAR SHIPMANAGEMENT LIMITED

(4) LIBRA HOLDINGS LIMITED

Defen

- -

Charles Béar QC & Richard Power (instructed by **Debevoise & Plimpton LLP**) for the **Claimants**

David Allen QC & Luke Pearce (instructed by **Stephenson Harwood LLP**) for the **Defendants**

Hearing dates: 5, 6, 7, 8, 14, 15 July 2021

- -

Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.

Copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1.
The first claimant, Victor Pisante, and the first defendant, George Logothetis, were close friends for a number of years. Their friendship generated a strong sense of trust and admiration between them. As regards trust material to this case, that was particularly so on the part of Mr Pisante towards Mr Logothetis, as a result of which Mr Pisante invested substantial funds in business with Mr Logothetis (ignoring for the moment the corporate structures on both sides through and by which the business was in fact done).

2.
Mr Pisante claims that he was induced to invest as he did by false statements made to him by Mr Logothetis. He alleges that Mr Logothetis knew of the falsity, and so the primary claim made is in deceit. The claim came on for trial before me in July 2021 and I apologise to the parties that I was not more efficient in completing this judgment, with the result that I did not get it to them last term as I had hoped I would.

3.
In his submissions for the defendants, Mr Allen QC placed a heavy emphasis on the unlikelihood that Mr Logothetis might set out to defraud his good friend. I do not think Mr Logothetis did set out to defraud Mr Pisante. That does not mean he cannot be liable, however, and in that element of Mr Allen’s submissions he was to some extent tilting at a windmill.

4.
Although at times straying further in argument, the main and substantial case presented at trial by Mr Béar QC for the claimants was not that Mr Logothetis set out to trick his friend into investing. It was more that in seeking to persuade Mr Pisante to invest, Mr Logothetis told Mr Pisante things he (Mr Logothetis) knew to be untrue, and that the court was in a position on the documents, and having taken Mr Logothetis’ evidence, to assess that it was within his character to do that and not recognise or acknowledge it as the fraud it was.

5.
If that is what happened, indeed it does not matter whether Mr Logothetis appreciated that what he had done falls to be characterised as fraud. A point of principle did arise, though, depending on what view I took of the facts, whether it is sufficient for the tort of deceit that the representor make a statement that is liable to convey and does convey to the representee a matter of fact the representor knows to be untrue, reckless (not giving any thought) as to what he was conveying by what he said, i.e. reckless as to the meaning of what he was saying rather than reckless as to (not caring about) the truth or falsity of something he (the representor) realised that he was communicating.

Law

6.
There was no dispute over the principles governing a claim in deceit, apart from that one point (paragraph 5 above). Thus:

(1)

there must be a false representation of fact, made with the intention that it be relied on, that was in fact relied on;

(2)
a statement of opinion, therefore, is not actionable save insofar as it incorporates or implies a representation of fact (for example that the representor does hold the indicated opinion, or in some cases that he has reasonable grounds for holding that opinion);

(3)
similarly, a representation as to the future is not actionable save insofar as it incorporates or implies a representation as to present intention or presently held opinion (subject in turn to (2) above);

(4)
a representation may be made expressly or may be implied from words or conduct. However:

(a)
clear words or conduct are required for the implication of a representation, reflecting the principle that there is in general no duty to disclose;

(b)
a representation is not to be implied, therefore, from conduct the tenor of which is vague, uncertain, imprecise or elastic;

(c)
in consequence, where a representation is said to be implied, particular care is needed to identify with precision the content of the representation and how it is said to have been made;

(5)
a representation cannot be inferred from mere silence;

(6)
what (if any) representation has been made is ascertained objectively, but:

(a)
for a claimant to establish reliance, he will have to show that he understood the representation in the sense alleged, and

(b)
in order to establish deceit, and subject to the point now arising (paragraph 5 above), the claimant must show that the defendant understood he was making the alleged representation, i.e. that he was conveying to the defendant that which was in fact untrue;

(7)
the test for deceit, then, is whether the representor knew that the representation was false, did not believe it to be true, or was reckless as to whether it was true or false; and

(8)
while the standard of proof remains the balance of probabilities, more convincing evidence is required to establish fraud than is true of other types of allegation, because the law considers there to be a strong inherent improbability that a party would dissemble to persuade a counterparty to enter into a contract.

7.

The point of principle discussed in argument in the present case concerns the interrelationship between statements in the cases to the effect that a defendant accused of deceit must have understood that he was making the representation alleged, and the principle of deceit by recklessness. By that principle, a defendant is liable in deceit who makes a statement intended to be and in fact relied on where:

(1)
the statement is to a certain effect,

(2)
the representor appreciates that,

(3)
the statement is false (given that it was to that effect),

(4)
the representor does not know the statement to be false, but

(5)
neither does he believe it to be true, yet he makes the statement anyway, not caring whether it be true or false. Given (1) to (4) above, liability in deceit then attends that reckless untruth, for as Lord Herschell said in Derry v Peek(1889) 14 App Cas 337:

(a)
at 361, “[to] make a statement careless whether it be true or false, and therefore without any belief in its truth, [is] an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true”,

(b)
at 369, “… in all the cases … there has always been present, and regarded as an essential element, that the deception was wilful either because the untrue statement was known to be untrue, or because belief in it was asserted without any such belief existing”, and

(c)
most famously, at 374, “… fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, … the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must … always be an honest belief in its truth.”

8.
Here, as will be seen, Mr Logothetis made a statement to Mr Pisante, intended to induce and in fact inducing an investment decision by Mr Pisante that he now complains was procured by fraud, which statement was to a certain effect, and:

(1)
Mr Pisante took the statement in that way,

(2)
Mr Logothetis knew that full well not to be true, but

(3)
Mr Logothetis claims not to have appreciated that what he said would convey that to Mr Pisante or had done so.

9.
Passing over for this analysis of principle the incidence of the burden of proof:

(1)
if Mr Logothetis is wrong in that claim, and appreciated at the time that what he said would be taken to convey that which he knew to be untrue, then no point arises as to the ingredients of the tort;

(2)
if however Mr Logothetis is right in that claim, but the reason why he did not at the time appreciate that what he said would be taken to convey that which he knew to be false is because he did not give any or any proper thought to the meaning of what he was saying, then the point arises whether that is (or with some other finding or findings can be) sufficient to attract liability or whether, to the contrary, his failure to appreciate the meaning of what he was saying, even if reckless in a sense like that used in Derry v Peek, means he is not guilty of fraud.

10.
In Clerk & Lindsell on Torts, 23rd Ed., at 17-25, the law is stated in these terms for the case of ambiguous representations: “Where a statement is capable of being understood in more than one sense, it is essential to liability in deceit that the party making the statement should have intended it to be understood in its untrue sense, or at the very least that he should have deliberately used the ambiguity for the purpose of deceiving the claimant. Even though the more natural and reasonable interpretation of the statement is that put upon it by the claimant, and though on that interpretation it is untrue to the knowledge of the defendant, that will not suffice if the defendant did not understand it to be so understood.”

11.
The Editors take that to be the law not only for cases where a statement might reasonably be taken in more than one way (which, in other contexts, might be said to be the definition of ambiguity). For they add, by reference to Akerhielm v de Mare[1959] AC 789, per Lord Jenkins (delivering the opinion of the Privy Council) at 805, that “… if the defendant alleges that he understood his statement in a way that a reasonable person would not have understood it, then as a matter of evidence this may well weigh with the court in deciding whether he honestly understood it in that sense.” That appears to take it as plain that if a representor understands his statement in a sense that no reasonable person would, but in that meaning has an honest belief in its truth, then he commits no tort of deceit.

12.
The issue I have identified arises because intending to convey some asserted meaning, believing it to be true, is not the complete antithesis of intending to convey a different meaning, not believing that meaning to be true. Though it might be a rarity in practice (as Mr Béar QC and Mr Allen QC both said in argument), in concept there is the case where something is said with insufficient thought attached to the statement for a court to say what the representor meant by it.

13.
Mr Béar QC’s submission was that “if the representor does not care how their words will be taken, then they are reckless as to the truth of those words just as if they know what the words mean and don't care what the facts are.” That is because, he argued, “if I do not care what the words mean that

is ultimately no different from [not caring] what the facts are", and a representor of the first kind is, or should be regarded as, reckless as to the truth or falsity of what they have said, in the Derry v Peek sense.

14.
Mr Allen QC submitted that, "it must be shown that the defendant subjectively understood that he was making the alleged representation" (citing CRSM v Barclays[2011] EWHC 484 (Comm), per Hamblen J (as he was then) at [221]), and that "it is axiomatic that to establish liability in deceit it is necessary to show that the representor intended his statement to be understood by the representee in the sense in which it was false" (referring to the Vald. Nielsen case, infra, per Jacobs J at [1371]). Therefore, Mr Allen QC argued, "Mr Logothetis must [be shown to] have known that he was making the alleged representation; in other words, he must have known that his words carried with them the meaning now relied upon, because if he did not know that then he could not be liable in fraud and that … is a subjective knowledge."

15.
My conclusions on the facts, which come much later in this judgment, mean that I do not need to decide this fine point of possible distinction. So I shall not express a final view. Were it to arise in another case, it would merit a fuller consideration of the authorities and more fully considered and developed submissions on them than I have had in this case.

16.
I am concerned only with a case such as the present, where a representor communicates information to a representee, knowing that that is what he is doing and intending thereby to persuade the representee to take action on the strength of what is said, in the sense of relying on it, it may be alongside other considerations, in deciding whether to take that action. In other words, a case that, in the relevant respect, concerns the meaning of what a representor has said which the representor knows to have the character of a representation.

17.
Much of what is said in the cases proceeds from an understandable premise that, though the burden of proof is on the representee, such a representor, accused of fraud, will advance a case as to what he meant to convey by his communication, and an associated case that in that meaning he believed what he was saying. Here, indeed, Mr Logothetis' case is of that kind in relevant respects, saying either that (a) he accepts using the words alleged, but says he meant to convey by them a meaning, which he identifies, that he believed true, different from the meaning Mr Pisante says he took from them, or (b) he does not remember whether he used the words alleged, but accepts he may have done and says that if he did he would have meant to convey such an identified meaning, true to his mind but different from what Mr Pisante says he took him to be saying.

18.
If the representor advances a case as to what he meant by his words, as his basis for a defence that he had an honest belief in what he was saying, and he is not believed about that by the court, the proper conclusion, on the evidence taken as a whole, may be that in fact he meant by his words that which the representee alleged (and which was untrue, to the representor's knowledge), and no finer question on the definition of deceit will then arise. As it was put in Akerhielm v de Mare, supra, at 805: "The question is not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which

he understood it albeit erroneously when it was made. This general proposition is no doubt subject to limitations. For instance, the meaning placed by the defendant on the representation made may be so far removed from the sense in which it would be understood by any reasonable person as to make it impossible to hold that the defendant honestly understood the representation to bear the meaning claimed by him and honestly believed it in that sense to be true.", which I read as indicating (it is not said in terms) that with those findings made, the conclusion will be drawn, or is likely to be drawn, that the representor had in fact understood his statement to have the meaning that rendered it untrue.

19.
If the finding is that the representor meant by his words something he believed to be true (X), there is no deceit (Y). The question, it seems, is whether it is not only "if X, then Y", but "if and only if X, then Y".

20.
Mr Béar QC's proposition, that being recklessly indifferent as to what the words meant is not to be distinguished from reckless indifference as to whether what the representor meant to convey was true, proposes that it is the latter ("if and only if"), that is to say that unless the representor means by his words something he believes to be true, there is (assuming falsity and inducement) a deceit. Lord Herschell's famous formulation in Derry v Peek quoted in paragraph (c) above indeed concludes with the view that "To prevent a false statement being fraudulent, there must … always be an honest belief in its truth".

21.
Writing in The Law of Tort (3rd Ed.), in Butterworth's Common Law Series, Christian Witting puts it as follows, at para.28.5, after referring to Derry v Peek and quoting Lord Herschell's formulation: "The correct approach is to identify the meaning intended by the defendant, and then ask whether the defendant genuinely believed that meaning to be true. It may be that the defendant's intended meaning diverges from the ordinary, accepted meaning of the words used. Such 'honest blundering' is not fraud… If the defendant has deliberately used ambiguous language, he intends more than one meaning to be communicated, and a finding of fraud may be made in respect of any one of those intended meanings."

22.
That view of the 'correct approach' (for which Angus v Clifford[1891] 2 Ch 449 is cited, per Lindley LJ at 466-467 and per Bowen LJ at 471-472) would seem to accord with Mr Béar QC's submission. The representor who says something it occurs to him to say, which in fact conveys that which the representor knows full well to be untrue, and whose only defence to a charge that he knowingly spoke an untruth is to say he did not because he did not care what his words might be taken by the representee to mean deserves no better treatment under the law, it might be thought, than the representor who understands that his words will convey what in fact they convey and does not care whether, in that meaning, they are words of truth. Each, as Mr Béar QC submitted, is communicating to another, intending thereby to prompt action, recklessly indifferent as to whether that other is being misled.

23.
In Angus v Clifford, the directors of a company who issued a prospectus stating that favourable reports cited in the prospectus had been "prepared for the directors", though they had been prepared for another party, were sued for fraudulent misrepresentation by an investor. The plaintiff swore that

he understood the statements in the prospectus to mean that the reports had been made under the instructions of the directors, acting in the interest of the company, and that he was induced by those statements to take the shares. The defendants were examined as to the meaning they attached to the words “prepared for the directors,” and variously indicated they either attached no importance to the words, had not considered the meaning very carefully, or understood the words to be equivalent to “adopted by the directors”, and all denied any intention to deceive.

24.
Romer J found for the plaintiff because the statements were not true, proper care was not taken, and the statements were material. The Court of Appeal allowed the defendants’ appeal, on the basis that the plaintiff could not maintain an action of deceit on that basis. In substance, Romer J had found the directors guilty only of carelessness, not fraud.

25.
Lindley LJ considered the intentions of the directors, concluded that none of the defendants saw the importance of the phrase at all, and stated that, after Derry v Peek, “it is not sufficient that there is blundering carelessness, however gross, unless there is wilful recklessness, by which I mean wilfully shutting one's eyes, which is of course fraud.” Bowen LJ and Kay LJ agreed. On this basis, the directors were not liable for deceit, although since the statement was grossly careless, and was such a statement as to invite the action, they were not awarded their costs.

26.
Though cited by Witting, supra, for his formulation of a ‘correct approach’ that might support Mr Béar QC’s submission, a little work is needed to see why Angus v Clifford is to that effect. The directors, in the main, did not identify an affirmative meaning, other than that the reports had been prepared for them, which they thought the key words conveyed and which they believed at the time to be true. That seems very close to Mr Béar QC’s formulation of a circumstance in which a claim in deceit should lie.

27.
It is not quite the same, however, because what the directors were saying, I think, in which they were taken to be honest, is that they applied their minds to what the prospectus was conveying and did not appreciate that the key words would convey any particular meaning. That is subtly different to the case of a representor who does not apply his mind to what he is conveying by his words, because he is indifferent as to that, not caring one way or the other. I think it is the former type of case that Lindley LJ had in mind in saying (at 466) that:

“… when you read the whole of that part of the judgment [in Derry v Peek], you must take the observations on page 374, as to what is said about proof of fraud, as subject to this, that the matter to be inquired into is, fraud or carelessness. If it is fraud, it is actionable, if it is not fraud, but merely carelessness - it is not. The passages about knowledge - knowingly making it, and making a statement without believing its truth, are based upon the supposition that the matter was really before the mind of the person making the statement, and, if the evidence is that he never really intended to mislead, that he did not see the effect, or dream that the effect of what he was saying could mislead, and that that particular part of what he was saying was not present to his mind at all, that I should say is proof of carelessness rather than of fraud… We must look at the evidence, therefore, to see whether the statement… was made by them fraudulently or carelessly … .”

28.
Bowen LJ said as follows (at 471):

“It seems to me that a second cause from which a fallacious view arises is from the use of the word “reckless”. Now, what is the old common law direction to juries? ... the old direction, time out of mind, was this, did he know that the statement was false, was he conscious when he made it that it was false, or if not, did he make it without knowing whether it was false, and without caring? Not caring, in that context, did not mean not taking care, it meant indifference to the truth, the moral obliquity which consists in a wilful disregard of the importance of truth, and unless you keep it clear that that is the true meaning of the term, you are constantly in danger of confusing the evidence from which the inference of dishonesty in the mind may be drawn - evidence which consists in a great many cases of gross want of caution - with the inference of fraud, or of dishonesty itself, which has to be drawn after you have weighed all the evidence.”

29.
Provisionally, I think a jury directed to find deceit if the representor, though not conscious of the falsity of what he was saying as he spoke, said what he said “without knowing whether it was false, and without caring”, with Bowen LJ’s clarification of the sense there of ‘not caring’, would not draw the fine distinction that is necessary to reject Mr Béar QC’s argument. That jury, I suggest, would think saying something in fact untrue, not caring what it meant (and therefore indifferent as to whether the plaintiff was being misled) satisfied Bowen LJ’s definition of deceit.

30.
There are other passages in the judgments in Angus v Clifford, including those in which Lindley LJ and Bowen LJ ultimately concluded that deceit was not made out against the defendants, to the effect that a careless failure to pay any attention to the meaning of the words in the prospectus was not fraud. On balance, I do not think they are inconsistent with the views I have expressed above, but these are not simple concepts and there is a lot in those judgments.

31.
In Jennifer Ann Bonham-Carter et al v SITU Ventures Ltd[2012] EWHC 3589 (Ch), Asplin J (as she was then) dismissed a claim alleging deceit in respect of a representation as to an estate agency’s market share in relation to a particular harbour development. She found that there had been no misrepresentation, so her consideration of what would have made it deceitful if proved is obiter. Referring to Angus v Clifford and Akerhielm v de Mare, however, she indicated that in her view it was necessary for the defendants to have intended the claimants to have understood the representation in the sense rendering it a misrepresentation.

32.
In The Kriti Palm, AIC Ltd v ITS Testing Services (UK) Ltd[2006] EWCA Civ 1601, Rix LJ at [253] took the law to be that “Because dishonesty is the essence of deceit it is possible to be fraudulent even by means of an ambiguous statement, but in such a case it is essential that the representor should have intended the statement to be understood in the sense in which it is understood by the claimant (and of course a sense in which it is untrue) or should have deliberately used the ambiguity for the purpose of deceiving him and succeeded in doing so”, referring inter alia to Akerhielm v de Mare. CRSM v Barclays, supra, at [221], relied on by Mr Allen QC, is to similar effect. In neither case was the point I have identified in this case being considered, nor generally the scope or effect of the concept of deceit by reckless indifference within Derry v Peek.

33.
Finally, for this judgment, there is Vald. Nielsen Holding A/S v Baldorino[2019] EWHC 1926 (Comm), where a company's managers were held liable to the company's former owner, in part in deceit, they

having given false information in the course of a management buy-out which misled the owner into selling when it did and at an unduly low price. The managers knew that deliberately false statements were being made and were willing positively to mislead, so as with Asplin J in the Bonham-Carter case, supra, but for the opposite reason, anything touching on the point I am considering is obiter. Jacobs J said, in a general review of the law on deceit, inter alia that:

“140. Deliberate ambiguity – where the representor uses language intending to rely on its literal meaning, but hoping that the representee would understand it differently – is often a hall-mark of fraud ... In the case of an ambiguous statement, it is "essential that the representor should have intended the statement to be understood in the sense in which it was understood by the claimant (and of course a sense in which it is untrue) or should have deliberately used the ambiguity for the purpose of deceiving him and succeeded in doing so": per Rix LJ in The Kriti Palm [2006] EWCA Civ 1601; [2007] 1 All ER (Comm) 667 at [253].” Different statements at different times must frequently be read or construed together in order to understand their combined effect as a representation.

...

147. It is not necessary that the maker of the statement was 'dishonest' as that word is used in the criminal law: Standard Chartered Bank v Pakistan National Shipping Corp (No. 2) [2000] CLC 133. Nor is the defendant's motive in making the representation relevant ... What is required is dishonest knowledge, in the sense of an absence of belief in truth: The Kriti Palm, [257] (Rix LJ).

148. The ingredient of dishonesty (in the above sense) must not be watered down into something akin to negligence, however gross: The Kriti Palm, [256]. However, the unreasonableness of the grounds of the belief, though not of itself supporting an action for deceit, will be evidence from which fraud may be inferred. As Lord Herschell pointed out in Derry v Peek at 376, there must be many cases: "where the fact that an alleged belief was destitute of all reasonable foundation would suffice of itself to convince the court that it was not really entertained, and that the representation was a fraudulent one.”

34.
When it came later to determining the case before him, Jacobs J said, inter alia, that:

“213. There are two separate questions which arise when fraud is alleged: whether the representor intended to make representations in the terms alleged, and whether he made a false statement knowingly, without belief in the truth of the statement made or recklessly in the sense of not caring whether it was true or false. I am satisfied that the Claimants have proved their case in relation to both matters.

214. ... It is certainly possible, at least in theory, for a person to make a written representation without intending the representation to be understood in the manner in which the words would ordinarily be interpreted. However, the court would then need to be persuaded by credible evidence that the representor did understand the words used in a different sense. There was in my view no such evidence in this case ... I also have no doubt that Mr. Bennett knew that he was making deliberately false statements to Mr. Johnsen. The reason that he wanted to do this was straightforward. He wanted the LMS bid to succeed.”

35.
My tentative conclusion is that there is much to be said for Mr Béar QC’s proposition, if ever its correctness or otherwise would be determinative, namely that where a statement of fact is made, with

a view to inducing a contract, indifferent as to what the statement will convey, so it can be said that the representor was recklessly indifferent as to whether he was misleading the representee, that is deceit (if the statement be untrue), just as much as where a statement of fact is made by a representor aware of how it will be understood, but recklessly indifferent as to its truth. In neither case is the representor able to say he had an honest belief in a meaning he thought his words would convey.

Main Factual Narrative

36.
Mr Pisante is an Italian national who lives in Greece and New York. He is an experienced and sophisticated businessman, particularly in banking, real estate investment and asset management. After a short initial career working for Bear Sterns in New York, Mr Pisante founded the Telesis investment banking and asset management group in Greece, and later founded Bluehouse Capital, a real estate investment company with a particular focus on south-eastern Europe.

37.
Mr Pisante has also been interested in the shipping market, and this claim arises out of that interest. Before investing in the shipping sector with Mr Logothetis, he had invested in a multipurpose bulk carrier and three small container ships, in a joint venture (through corporate vehicles) with his close childhood friend Filippos Tavridakis and one other.

38.
The second, third and fourth Claimants (respectively “Swindon”, “BCA” and “Castor”) are companies indirectly owned or controlled by Mr Pisante and used by him for investments. Swindon and BCA, but not Castor, feature in the claims pursued at trial.

39.
Mr Logothetis is a British national who lives in New York. He is the Chairman and CEO of the fourth defendant (“Libra”), the parent company of a business group with diversified interests and activities in several dozen countries. Libra is owned by a trust called the Adelphia Foundation, whose sole beneficiary is Mr Logothetis’ father (during his lifetime).

40.
The second defendant (“Lomar Corp”) is a subsidiary of Libra; the third defendant (“LMS”) is a subsidiary of Lomar Corp. Lomar Corp and LMS are principally involved in the shipping sector. Following his father, Mr Logothetis has always been involved in the shipping industry, although his business interests, being all those of the wider Libra group, are now more diversified. Having just introduced Lomar Corp and LMS separately, it will not be necessary to distinguish between them again for the purpose of this judgment, and I shall therefore refer simply to “Lomar” without troubling to specify whether in any given instance strictly that is Lomar Corp, or LMS, or both.

41.
Mr Pisante and Mr Logothetis met in New York in about 2012 and became good friends. At Mr Pisante’s suggestion, Mr Logothetis rented a house in the Hamptons, where Mr Pisante had a rented home already, and they would see each other regularly at weekends and during holiday periods. They would often discuss the shipping market. They developed a high regard for each other and a warm, trusting relationship.

42.

In 2012, through special purpose subsidiaries, Lomar placed three sets of orders for up to 6 newbuild ships, in each case on a 2+2+2 structure (2 firm, option 2, further option 2). One set was for 2,200 TEU container ships to be built by Guangzhou Wenchong Shipyard Co Ltd ("GWS" or "Wenchong"), one was for 1,100 TEU container ships to be built by Jiangsu Yangzijian Shipbuilding Co Ltd ("YJZ"), and one was for bulk carriers to be built by COSCO Zhoushan Shipyard. The contract prices of the container ships varied a little, but were in the region of US$28 million for the 2,200 TEU ships and US$18 million for the 1,100 TEU ships.

43.
When placing those orders, and at all times up to and including mid-2014, the time of the events that matter most for this judgment, it was Mr Logothetis' firm and reasonable view that Lomar had entered the market as buyer at a good time. The focus of this case is the container ships, and by 2014, if not earlier, the Lomar order prices were at a discount to prompt delivery sale and purchase ('S&P') values for ships matching the ordered specification, and the expectation was that the market would rise further. The contracts and options acquired in 2012 were thus in the money, offering (on paper) 'mark to market' value of up to several million US$ per ship.

44.
The strong strategic vision for Lomar, set and driven by Mr Logothetis, was to grow the fleet. The last thing it or he wanted was to sell the orders away to other shipowners. However, the requirement to fund the order book, if it was not to be sold away in whole or in part, was set to create a serious cashflow issue for Lomar. The payment terms with the yards were for stage payments that were proportionately modest but still ran to several million US$ per ship, and very large completion instalments payable at delivery (often referred to as 'balloon payments').

45.
There was no intention for Lomar to make the balloon payments from existing resources nor any suggestion that it could have done so. Nor again was there any intention for it to be funded for those payments from elsewhere within the Libra group. That however is not the cashflow issue to which I am referring. Lomar expected to be able to raise traditional senior debt financing, by way of mortgage or sale-leaseback arrangements with ship financing institutions. So much so standard.

46.
The issue, rather, was that Lomar was set to struggle to fund, and urgently required assistance with, the stage payments. The clearest evidence of this is in internal emails the pertinent content of which, on this aspect, was redacted on disclosure and not addressed in Mr Logothetis' evidence in chief, or that of the defendants' other witnesses. From the unredacted versions, provided in the run-up to trial, it is plain that there was no arguable justification for the redactions. The redacted content is relevant and adverse to the defendants, and obviously so. I accept, on balance, Mr Logothetis' evidence that he did not have any personal involvement in the redaction process and was not shown the emails in question prior to cross-examination. But the upshot is still that Mr Logothetis' evidence in chief on this aspect was unreliable.

47.
Mr Logothetis acknowledged that "Lomar was not able to fund the capital requirements of the extensive newbuilding program from its own reserves and cash flow", but he presented a picture of (a) Lomar having substantial cash reserves, (b) the necessary funding being readily available from Libra, if required, and (c) it being "wrong to say that we "needed" partners", given the liquidity available in Libra ("from memory in excess of US$200 million").

48.
Thus, the impression was given of an orderly newbuilding programme that did not present any significant funding issue. It would not occur to the reader of Mr Logothetis' evidence in chief that Lomar faced a cashflow crisis in respect of the proportionately modest stage payments necessitating the giving up of part of the 'Libra equity', i.e. part of the ultimate ownership interest in the ships under construction that provided the significant upside the newbuilding programme was perceived to offer. Yet that was the true position, as I find below.

49.
I agree with Mr Béar QC that the case presented by the defendants, to the effect that Lomar was not urgently in need of external cash obtained in the event in part from Mr Pisante through BCA and Swindon, was put forward so as to negative both (a) any general idea that there was commercial pressure tending to make it more likely than otherwise it might have been that Mr Logothetis had more focus on what would attract Mr Pisante to invest than on strict accuracy, and (b) the specific idea that Mr Logothetis had solicited Mr Pisante to invest, i.e. had taken the relevant initiative.

50.
The defendants had committed by their Defence to the position, untenable on the evidence, that "At no point did Mr Logothetis solicit any investment from Mr Pisante; nor did he need Mr Pisante to invest in the vessels." To be clear, I do not say the second part of that is untenable, only the first. But the second part is only tenable in that it is specific to Mr Pisante, and I could not say that if Mr Pisante had declined to invest, then Lomar (or Mr Logothetis in person) would not have found another suitable co-investor. It is untenable to claim more generally, as Mr Logothetis did in his evidence, that Lomar did not need to find suitable co-investors, one of whom was (in the event) Mr Pisante.

51.
Mr Pisante and Mr Logothetis first discussed the idea of Mr Pisante participating in the Lomar newbuild container ship programme in May 2013. There was a difference in the evidence over who brought up the idea. Mr Pisante said Mr Logothetis first proposed it; Mr Logothetis said it was Mr Pisante's idea, which (he said) took him by surprise as he had not previously considered Mr Pisante as a prospective investment partner. The difference on that is peripheral, but on balance I prefer and accept Mr Logothetis' evidence on it. There is nothing to gainsay his recollection that until Mr Pisante said he might be interested in investing in the Lomar newbuild programme, he (Mr Logothetis) had not identified Mr Pisante as a potential source of funds; and it is easy to contemplate that Mr Pisante's recollection on this prior aspect might be clouded by the more memorable matter of which of the two friends initiated the relevant proposal, and on that Mr Pisante was plainly correct that it was Mr Logothetis.

52.
That is why that difference as to who first said something to the other on this whole topic is peripheral. It is clear from the resulting email exchanges, and it was the evidence of both of them, that the possible interest initially discussed was in Mr Pisante participating in one or more of the option ships, if Lomar declared its options in the newbuild programme. That was the background to the relevant initiative, as regards the Netley JVA (as it became, defined below), but that initiative came from Mr Logothetis. It involved and amounted to the soliciting of an investment from Mr Pisante, not in one or more option ships to which Lomar had no extant commitment, but in one or more of the extant firm orders.

53.

Thus, on 30 May 2013 (just after midnight, 00:12 hrs), Mr Logothetis emailed Mr Pisante as follows:

"Telika ['At the end'] the yard was a bit more tough than expected … so we will not be doing a 4th 2200/Wenchong vessel just yet. Market has seemingly turned in the shipyard-market it would appear … However I thought about this and maybe we can do one or two of the 3 x committed vessels we have at [GWS] with you on a 50/50 basis? Would be nice to do some business with you – let me know what you think. We have total 20 vessels on order and no partners so from our perspective it is probably wise to share some risk on some."

54.
In a later email, Mr Logothetis suggested to Mr Pisante "Maybe we just do one vessel 50/50 and see how it goes?", but Mr Pisante preferred to invest in two ships and discussions proceeded on that basis.

55.
Returning to the 30 May email (paragraph 53 above), the meaning of the last sentence, in my judgment, is that Libra/Lomar were the sole interested investors in some 20 newbuild ships and that Mr Logothetis was inviting Mr Pisante to co-invest in one or two of the firm orders because he saw force in the idea that they should share some of the risk on some of those as a general matter of business prudence, i.e. not because of any particular need. It was argued for Mr Pisante that the email was saying that Libra/Lomar had no co-investors (for example joint venture arrangements) in any of their business. That is not what it says. Mr Pisante's evidence was that at the time, he took Mr Logothetis' email to mean that Lomar had not used co-investment partners before more generally, but in my view that was an over-interpretation of the email.

56.
Mr Logothetis' email was nonetheless misleading, for the reasons set out in the following paragraphs.

57.
Lomar was known for having sold out at a high point in the market in 2006 and then re-entered following the market crash of late 2008 and early 2009. The re-entry was on a very large and rapid scale, involving the acquisition of 60 ships and newbuilding contracts from 2010.

58.
On 28 May 2013, Achim Boehme, CEO of Lomar, wrote to Mr Logothetis, his brother Constantine (vice-chairman of Libra), Adam Tomazos (in effect the No.2 at Libra) and Nicholas Georgiou, Lomar's Chief Operating Officer. This was one of the emails inappropriately redacted on disclosure. It contained significant bad news concerning Lomar, as Mr Logothetis' response on 30 May 2013 makes clear (also the subject of inappropriate redaction when disclosed): "It is very very painful to be using Libra equity for saving fleets instead of growth but it is what it is …".

59.
Mr Logothetis' response also noted that: "The first measure we took is we have gone to some friends to partner on the first 2 x Wenchong vessels… the main point for us is to find a partner to cover the next payment in July."

60.
The previous evening, 29 May 2013, Mr Logothetis had written to his family (another email to which redactions were wrongly applied), saying "Victor Pisante will approach him now for W1+2 [i.e.

Wenchong] to cover July payment. Lomar has consumed $9.5mio in 40 days." Within fifteen minutes, he emailed Mr Pisante (paragraph 53 above).

61.
The position concerning partners in the newbuilding programme was in fact that Lomar already had at least two – one (the Romero family) with 50% of two of the bulk carriers, and one (a Mr Fashka) with 50% of the 2,200 TEU container ships (the Queen Esther). Mr Fashka had apparently not yet signed any contract but was being treated by Mr Logothetis internally as, and was in his mind, a done deal. When Mr Logothetis reported to his brother on 30 May 2013 that Mr Pisante would co-invest, which his brother noted as "V good news!", Mr Logothetis replied: "Y very very good u will like him he is a top guy between fashka, Romero and victor we have commitments of 25-20mio! Like a mini fund".

62.
On 2 June 2013, when emailing his in-house lawyer Martin Benny to introduce him to what he had been discussing with Mr Pisante, and to prepare him for taking that forward and documenting it, Mr Logothetis emphasised that "He does not know we have partners in other NB's – please bear this in mind". This was obviously a warning to Mr Benny not to disclose the existence of other partners. He (Mr Benny) was not told that Mr Logothetis had in fact positively misrepresented the position to Mr Pisante.

63.
In fact, a third external investor prior to Mr Pisante, the Mavridoglou family, also held a small share, through a family arrangement that should have been recognised by Mr Logothetis as falsifying his claim to have no partners, but which he might not have seen in that way. That however does not excuse the fact that Mr Logothetis' first witness statement referred to the Mavridoglou family in such a way as to give the misleading impression that theirs was the only extant arrangement that might arguably have been thought of as a prior partnership, making no mention of the Romero or Fashka arrangements (at the time obscured in the disclosure by the redactions).

64.
The true position as regards Lomar's commercial reason for pursuing Mr Pisante's interest is that it was one of the available measures identified by Mr Logothetis, and in this case pursued personally by him given his connection with Mr Pisante, to deal with a serious impending cash crisis at Lomar. That is plain enough from the emails referred to in paragraphs 58-60 above.

65.
Mr Logothetis sought to explain such evidence away, claiming that there were no real financial issues and he was guilty of no more than hyperbole in encouraging the senior management at Lomar to be disciplined about their use of cash. The insuperable difficulty with that evidence is that it failed to explain the very painful giving up of Lomar's 'equity' in the new fleet. Using cash deposits, if there were any available in principle for use by Lomar, to fund that fleet, would have been precisely the sort of thing Mr Logothetis was preaching to Lomar that they should be used for, in line with the strategic vision to grow the fleet. Neither Mr Logothetis in evidence nor Mr Allen QC in argument had any answer to that point, in my judgment. The attempt to explain away the contemporaneous material was, I consider, simply not credible in any event. I regarded it as a concocted interpretation of Mr Logothetis' messaging to his team at Lomar, which messaging was in turn no more than a reflection of his candid internal messages within his family.

66.
The true position (as the unredacted emails make clear) is that:

(1)
in Mr Logothetis' view at the time, the financial position at Lomar was "staggering and unsustainable" and put Lomar "on life support";

(2)
the problem was unexpected at the time (there being no crisis in the market in the first part of 2013), and caused Mr Logothetis to introduce what he himself described as the "new idea" of bringing Mr Pisante into existing vessels so that (as in due course it was) Mr Pisante's cash could be allocated to cover various newbuilding instalments, giving up 50% of the expected 'upside' on those ships (unnecessarily, if Mr Logothetis' evidence were to be believed).

67.
Finally, as regards the shipyard and the decision not to take up an option in May 2013 (i.e. the reference to "not doing a 4th 2200/Wenchong vessel just yet", paragraph 53 above), one of the redactions applied to this sequence of emails on disclosure covered up clear evidence that that was a direct response to Lomar's cash position; and there was no evidence that the yard had created any relevant difficulty at all.

68.
Mr Logothetis accepted that, even as between friends as this was, what he said about the newbuilding programme in which Mr Pisante might decide to become a partner, and about Lomar's reasons for being happy for Mr Pisante to do so, were matters of importance on which Mr Pisante was likely to rely. I accept in that regard Mr Pisante's evidence in chief that: "[Mr Logothetis] did not tell me of any financial or cash flow difficulties on his side, and I had no reason to suspect that there were any. Had that come to my attention, I would have had concerns about becoming business partners."

69.
On 4 June 2013, a meeting took place between Mr Pisante and Mr Logothetis, at which the proposed investment was discussed in further detail. Mr Pisante indicated that he was prepared to invest without contracts being drawn up, but Mr Logothetis insisted that any investment ought to be properly documented.

70.
Shortly after that meeting, Mr Logothetis instructed Mr Benny to start the process of drawing up the relevant paperwork for the agreement.

71.
On 26 June 2013, following further discussions and board approvals from the relevant entities within the Libra group, a joint venture agreement was entered into between BCA and Lomar ("the Netley JVA").

72.
Under the Netley JVA, BCA acquired and Lomar retained a 50% interest in Netley Holdings Limited ("Netley"), which was the immediate parent of four SPVs for GWS 2,200 TEU ships, namely:

(1)
Bieston Investments Limited ("Bieston"), which had ordered the Barry Trader (as she was named when built);

(2)
Winkell Holdings Limited ("Winkell"), which had ordered the Kimolos Trader (as she became);

(3)
Pitten International Limited ("Pitten"), which held an option to order, and later ordered, the Kalamata Trader (as she became); and

(4)
Tabilk International Limited ("Tabilk"), which held an option to order, and later ordered, the Kea Trader (as she became).

73.
Pursuant to the Netley JVA, BCA and Lomar each lent Netley c.US$9.5 million so that Netley could in turn fund the payment obligations of Bieston, Winkell, Pitten and Tabilk towards the purchase of their respective ships. Later, the Netley JVA was extended to a fifth GWS ship, the Kalamoti Trader, involving further loans by BCA and Lomar to Netley, each of US$897,500. The Kalamata Trader, Kea Trader and Kalamoti Trader came to be discussed and dealt with together, and so were often referred to as "the K Ships". I shall also use that term for them, making it clear that, as in the parties' usage, the Kimolos Trader was not a K Ship.

74.
In about February 2014, Lomar commenced negotiations with a Chinese lease-finance house, ICBC Leasing ("ICBC"), for a sale and leaseback transaction that could release (most of) the funds invested in, inter alia, the Barry Trader and Kimolos Trader. As Mr Logothetis wrote in an email to Lomar on 13 February 2014, the attraction for Lomar was that it would cover its cash-flow issues, providing an immediate solution that avoided any need to lose ships from the Lomar fleet. In turn, he saw that as putting Lomar in a position to go to KKR (that is, Kohlberg Kravis Roberts & Co LP, a well-known private equity firm) to propose a more substantial capital-raising exercise.

75.
A problem emerged because, as Mr Georgiou of Lomar noted on 24 March 2014 after discussions with ICBC on a draft term sheet, "ICBC are asking for confirmation that the SPVs are 'wholly owned by Lomar Corp'. We have NOT told [the broker, Northcape] or ICBC of the JV's [sic.] in place but the time to disclose this is soon… For now, we can reply here 'controlled by Lomar Corp' but our counter may prompt the question why we cannot accept that and we need to be prepared to explain and elaborate further on Thursday [27 March]."

76.
The proposal to represent that the SPVs were controlled by Lomar was itself a proposal to misrepresent the position in circumstances where the Netley JVA was 50:50 between Lomar and BCA. It did not satisfy ICBC anyway, as Constantine Logothetis reported to Mr Logothetis by email on 27 March 2014 that: "Victor needs to be out of spc s [sic.] as Chinese have requested specific info and we have only told them of [redaction]." The mention to ICBC of the other partner alone was misleading by omission and created an untrue impression. At some point prior to this, Mr Logothetis and Mr Pisante had had some initial discussion of the possibility that Lomar might ask to restructure BCA's investment so it was not a co-owner of Netley, and Mr Pisante had indicated he was likely to be happy with that. That does not justify or excuse the misstatement to ICBC of the position as it then stood.

77.
In those circumstances, Mr Logothetis asked Mr Pisante if he would indeed be happy to have his indirect 50% interest in the Barry Trader and Kimolos Trader changed from a shareholding pursuant to the Netley JVA to a derivative interest. By an email sent on 29 March 2014, Mr Logothetis wrote to Mr Pisante as follows:

“We have not disclosed to them [ICBC] your shareholding as we did not want to ‘rock’ any boats … presume this is ok with you if you were to take silent share going forward either via option agreement or some silent docs? We have discussed this before and hope this is ok with you? They want/need to feel like they are dealing with Lomar as they know us etc [and] a snap decision was taken last week.”

78.
Mr Pisante promptly confirmed that he was happy to proceed on that basis: “I am absolutely ok to accommodate whatever is needed, so no need to think twice about it.” I agree with a submission by Mr Béar QC that Mr Logothetis’ email of 29 March was itself misleading, in suggesting that there had been only a non-disclosure to ICBC of the existence of partners rather than a positive misstatement of the position.

79.
It came to be agreed that Mr Pisante’s interest would be taken out of the ownership structure for the ships by using an equity tracker fee agreement (an “ETFA”), a form of agreement Libra had used before. Thus, ultimately, the following agreements were entered into in early June 2014:

(1)
two share transfer agreements dated 5 June 2014 between Netley and Lomar pursuant to which Bieston and Winkell were sold to Lomar at par value;

(2)
a deed of assignment dated 5 June 2014 by which BCA’s rights as lender to Netley in respect of Bieston and Winkell were assigned to Lomar for a price payable by Lomar to BCA of US$7,654,500, the amount of the lending, leaving the Netley JVA to cover the K Ships, towards the cost of which BCA had lent Netley c.US$2.1 million;

(3)
an ETFA dated 6 June 2014 between Swindon and Libra under which Swindon promised to pay Libra US$7,654,500 in consideration for the right to receive an ‘Equity Tracker Fee’ of (in summary) 50% of Lomar’s indirect economic interest in the Barry Trader and Kimolos Trader (“ETFA 1”); and

(4)
an agreement dated 9 June 2014 by which Swindon’s liability to pay US$7,654,500 to Libra under ETFA 1 was offset against Lomar’s obligation to pay the same sum to BCA under the assignment.

80.
Thus, no cash had to or did change hands, and BCA’s indirect 50% ownership interest in the Barry Trader and Kimolos Trader was transformed into a derivative financial interest held by Swindon by way of its contractual right to receive payments from Libra under ETFA 1, referenced to 50% of Lomar’s indirect ownership interest in those two ships.

81.
The ICBC transaction concluded on about 18 June 2014, when a memorandum of agreement was entered into for the sale of six ships, including Barry Trader and Kimolos Trader, to ICBC subsidiaries or nominees. The Barry Trader and Kimolos Trader were each priced at US$31 million and were delivered to the respective ICBC companies on 20 June 2014 and 13 August 2014. It was common ground that, as a result of this transaction and following discussion on the figures (in particular as to how much of the prior funding of Bieston and Winkell to leave in place to cover future owners’ liabilities), Swindon was entitled to be paid US$6.25 million by Libra under ETFA 1.

82.
In the meantime, Lomar had been in discussion with KKR, as foreshadowed in February by Mr Logothetis (paragraph 74 above). In late 2013 a Libra group company had concluded a deal with KKR to fund an investment in helicopters. At a lunch on 19 March 2014, Henry Kravis, the head of KKR, told Mr Logothetis that he would be interested in doing a similar deal in the shipping market. Mr Kravis said that US$100 million could be available from KKR funds for investment in shipping through a joint venture arrangement with Lomar, and Mr Logothetis was excited and very keen.

83.
An investment deal with KKR was ultimately concluded, closing in August 2014. I shall come on to the detail, but in broad outline it involved the creation of a new joint venture vehicle, Orchard Marine Ltd ("OML"), and a holding company owning OML, Orchard Marine Holdings Ltd ("OMHL"). Lomar had 60%, KKR 40%, of the common stock, and KKR also had (up to) 20,000 preferred shares. The preferred shares entitled KKR to an annual return of 9%, and no more, payable in quarterly dividends, on its major capital contribution, plus (of course) the eventual return of that capital. Such a use of preferred shares, with capped return, is functionally equivalent to subordinated debt financing under which the debt to the subordinated lender (here, that would be KKR) ranks for payment not only after secured debt but also after ordinary trade creditors, having preference therefore only over the repayment of the equity funding paid in by the ordinary stockholders of the company.

84.
As ultimately transacted: Lomar first created OML, 100% owned by it, and caused it to take on the indirect ownership of (the contracts for) eight ships, including the K Ships; then under the Lomar-KKR deal, (a) KKR initially took 40% of OML (i.e. 40% of the common stock), leaving Lomar with 60%, plus a first tranche of preferred shares (issued by OML), (b) the common stock, in that same 40:60 split between KKR and Lomar, was later translated into common stock in OMHL, which in turn owned 100% of (the common stock of) OML; Swindon had a derivative investment referencing OMHL in the form of an ETFA with Libra, entitling it to benefit as if it owned 30% of Lomar's 60% of the common stock. Over time, as more of the KKR funding was drawn down, they received further preferred shares to match.

85.
Lomar instructed Teneo Capital ("Teneo"), a US investment bank, to assist it in negotiating with KKR, and KKR retained Deloitte for financial due diligence, accounting and tax advice, and Simpson Thatcher & Bartlett LLP as transaction attorneys.

86.
As negotiations were starting up in earnest with KKR, major problems came to light in Lomar as Mr Logothetis noted to Mr Tomazos on 30 March 2014: "Obv we have very serious matters at Lomar which to be frank were a bit of a bolt out of the blue. Having said that we have to solve and we will and we proceed with the below [i.e. KKR] as it helps us with some existing matters." He envisaged putting seven ships into any joint venture with KKR, so that "at a stroke we would be cash neutral going forward on the NB vessels which lets face it is HUGE."

87.
What exactly had happened as a 'bolt out of the blue' creating urgency, or greater urgency, about getting a deal with KKR, was not in evidence. Neither Mr Logothetis nor Mr Tomazos, who were cross-examined about it, gave any evidence that might assist. In both cases, I felt there was more they could have said but were unwilling to say because of the untenable line that had been adopted that Lomar

did not have funding issues over its ability to service the pre-delivery stage payments on the newbuilding fleet.

88.
On 4 April 2014, Mr Logothetis had lunch with Mr Pisante, at which he told Mr Pisante about the proposed KKR deal, and asked Mr Pisante if he would be interested in participating in it, by rolling over his 50% share in the K Ships into the new structure. Mr Pisante indicated that in principle he would be happy to do so, and to participate on an indirect (silent) basis, as he had by then confirmed he would do for the ICBC transaction.

89.
The KKR transaction was an important one for the Libra group. Mr Boehme led the negotiations on behalf of Lomar, together with Mr Tomazos, Mr Georgiou and Nick Bailey (Lomar's Commercial Director at the time). Charles Attlee (a legal consultant to the Libra group) and Emmanouil Kouligkas (Lomar's CFO) also worked on the deal but played no material part in the commercial negotiations with KKR. Mr Logothetis was also involved and was the principal decision-maker on the Libra/Lomar side of the deal. He met with Teneo on a number of occasions, although the bulk of the detailed work was undertaken by Mr Boehme, Mr Tomazos and the rest of the Libra/Lomar team.

90.
As recorded in an email exchange between Mr Kouligkas and Mr Tomazos on 16 April 2014, KKR had by then been told the untruth that the ships it would be proposed to put into any Lomar-KKR joint venture were "100pct Lomar", so that historic financial information in the form held by Mr Kouligkas that would demonstrate the contrary was not to be shown to KKR or Teneo. In due course, this would be carried through to ensuring that the due diligence documents provided for review by KKR did not show the historic picture, only the picture after Mr Pisante's 50% share in the K Ships had been translated to a derivative interest under an ETFA, so as to avoid KKR becoming aware that they had earlier been given incorrect information. Mr Attlee sought to gainsay that last conclusion when cross-examined by Mr Béar QC about it. I did not find his evidence on the point credible, and the tenor of Mr Attlee's relevant email was clear: the data room was to evidence only the ownership position after a date when Mr Pisante's 50% share in the K Ships had been taken off the books to avoid what would otherwise be an issue over the way matters had previously been described to KKR in the negotiations.

91.
On 20 April 2014, Harry van Dyke of Teneo sent a draft term sheet to KKR dated 19 April 2014 setting out the parameters of a deal as then proposed by Lomar. The draft term sheet had been the subject of discussion between Mr van Dyke and Mr Tomazos. It proposed that there be a newly created subsidiary of Lomar, to which Lomar would contribute "eight newbuild container ships currently in various stages of construction", and "Such contribution will be valued at $40 million." Internally, Mr Logothetis was assessing that, as there might also be a second ICBC deal to be done later, Lomar now had "a path to extract a further 20mio from the NB installments [sic.] AFTER the current ICBC deal [US$10m from a KKR deal, US$10m from an ICBC No.2] … which further cements Lomar and could provide a dividend to Libra also."

92.
Mr Logothetis and Mr Pisante met again on 20 April and Mr Pisante reiterated his interest in the K Ships being part of any KKR deal.

93.

The eight ships referred to in the Lomar draft term sheet for KKR were four 1,100 TEUs under construction (the “T Ships”, as Lomar had names in mind of Trinidad Trader, Tacoma Trader, Tampa Trader and Toronto Trader), the three K Ships, and the Queen Esther. As I have already mentioned, the Queen Esther was also the subject of a 50:50 joint venture and so was only owned (indirectly) by Lomar as to 50%. That was not mentioned to KKR at this stage. There was also no mention of Mr Pisante’s involvement, and KKR were never told of it.

94.
The draft term sheet proposed that the new Lomar entity would issue common stock that paid no dividend and preferred shares paying a dividend of 9% per annum, 5% in cash and the balance in additional preferred shares, following it seems the model that had been used in the helicopter transaction, with Lomar taking 100% of the common stock on incorporation of the new entity in return for the eight ships. KKR would come in with:

(1)
a commitment to invest up to US$115 million in preferred shares, such investment to be “structured as an equity commitment line where the Company [i.e. the new vehicle] can cause [KKR] to acquire Preferred shares in periodic draw downs described below [capital calls each of not less than US$20 million], … to be used by the Company to acquire and/or invest in new and/or used container ships of between 1,000 and 9,000 TEU …”;

(2)
a commitment, with any first draw down, to purchase 25% of the common stock from Lomar for US$10 million.

95.
Shortly after the draft term sheet was sent to KKR, Mike O’Donovan of KKR wrote to Mr van Dyke to ask how Lomar was valuing the newbuilds that would be its proposed equity contribution. At a meeting on 24 April 2014 between Lomar and KKR, it was agreed discussions could proceed on the basis that Lomar’s contribution would be valued at US$40 million, but that such a value would need to be evidenced. However Lomar might have in mind to go about that, it was obviously not an exercise in just evidencing book value. In any accounts, the newbuilds were and would be on the balance sheet at cost, valuing the ships under construction by reference to the pre-delivery instalments paid to date. That would have been something more like US$10-15 million, rather than anything close to US$40 million, and evidencing it would have been a simple matter of showing KKR the shipbuilding contracts and proof that instalments were paid up to date.

96.
On 27 April 2014, in an internal email to various colleagues in relation to the KKR deal, Mr Logothetis said that a large part of the negotiations to come with KKR would focus upon this valuation exercise. That was because on the draft term sheet under discussion, as presented to KKR, the proposal was to sell a share of the common stock of the new joint venture vehicle for a price set by whatever value was ultimately agreed with KKR in that respect.

97.
As Mr Logothetis put it, “Given the structural agreement to sell part of the common equity in the existing contracts every validation of value you get is valuable”. His email also explained the valuation concept Lomar would seek to use, viz. to treat (the contracts for) the 1,100 and 2,200 TEU ships as worth, respectively, US$22.5 million and US$30.5 million per ship, less “the debts to the yards”, i.e.

all the further instalments that would need to be paid up to delivery, as that would get Lomar to "almost 40mio".

98.
Mr Logothetis' figures of US$22.5 million and US$30.5 million per ship were derived from S&P valuations obtained from the well-known brokers Howe Robinson and Braemar earlier in April 2014, for the purpose of the ICBC transaction. They valued completed, charter-free ships, available for prompt delivery, at US$22 million and US$31 million (Howe Robinson), US$22.5 million and US$31.5 million (Braemar), but Mr Logothetis also asked in his email, "what would one have to pay today to order 1,100 and 2,200 vessels from a good yard starting from scratch?"

99.
The broker valuations were sent to KKR on 28 April 2014 by Mr Tomazos, who explained that they were "brokers values for the 2014 built vessels (not part of [the KKR] proposal)" and stated an expectation "for an even higher value on the 2015 or 2016 builts based on forward delivery and expectations today." Mr O'Donovan replied the same day, saying that KKR would "… work with the assumption of 10mm USD of investment and 30mm USD of appreciation for the vessels being contributed in the interim."

100.
Thus, as between Lomar and KKR, any talk of a US$40 million valuation of, or value for, the ships being contributed concerned the total capital value (net of borrowing) it was thought the ships would have when completed, all going well, in 2015/2016, and thus the shipowners' aggregate anticipated equity in the fleet. In that, I use the word 'equity' as one would when calling the net value of a home in excess of the redemption value of a mortgage on it the homeowner's equity, which is a familiar use of the word in relation to ship owning as it is in relation to home owning. An estimate for that anticipated value was obviously of potential interest to KKR in making their commercial decision whether to enter into a joint venture with Lomar, and if so on what terms, under which Lomar's only capital contribution would be the part-built ships in question (or, more strictly, the shipbuilding contracts relating to them) as they then stood in 2014.

101.
On 29 April 2014, Mr Bailey emailed Mr Tomazos reporting that Howe Robinson had told him that "basis 2015/16/17 delivery" they would be able to value the 1,100 TEU ships at US$23.5 million and the 2,200 TEU ships at US$32.5 million. Howe Robinson later did provide valuation certificates dated 13 June 2014 for two of the 2,200 TEU ships, the Queen Esther (due to be) built 2016 and the Kalamata Trader (due to be) built 2015, stating an opinion that the charter free market value of the ship in question "as of 13th June 2014 on the basis of a delivery in 2016 [respectively, 2015] between a Willing Buyer and Willing Seller is to be: USD 32,500,000". Presumably, and without being able to say whether this was made clear to Mr Bailey when Howe Robinson spoke to him in April, that was the type of opinion they had in mind could be provided.

102.
I consider that those certificates expressed an opinion that were a willing buyer and willing seller to be found for a contract in June 2014 for the sale of the specified ship (yet to be built), for delivery at the later time specified, Howe Robinson would expect the agreed price to be US$32.5 million. Even without the extensive disclaimer set out in the valuation certificates, but on any view with it, the certificates gave no opinion as to whether a willing seller would have any chance of finding a willing

buyer for such a contract (or vice versa). They were not opinions that any market existed on which, if it did exist, the broker's view would be that US$32.5 million should be the current market price.

103.
Mr Bailey's email went on to caution that "if we got the brokers to look at values basis a novation (and stipulate that in the wording) it would likely have a lower value. As Brokers are not used to giving values on a novation basis it is not easy to just ask them how much lower this would be … but they would work backwards from USD23.5/USD32.5m being a delivered cost …". Absent any evidence that there was a forward sale and purchase market of the sort notionally assumed, but not suggested to exist, by the Howe Robinson June valuation certificates, it is obvious that "values basis a novation" would have been the way to (attempt to) assess a present value of what Lomar had in hand, available to be contributed for the common stock of the joint venture company, if that was not valued conventionally, i.e. on a booked cost basis.

104.
Mr Logothetis was blind copied into a brief reply Mr Tomazos sent to Mr Bailey. He responded that Mr Bailey's update was "very very positive!", and that a calculation using the new, higher headline figures (and the method in paragraph 96 above) gave "220mio total leaving equity of $45.5mio!", but added that "We should NOT be greedy and the $40mil is a nice number …".In a further email that day, Mr Logothetis reiterated that "the numbers sourced today by Nick B are massively positive", and said that "Hopefully we can get KKR to agree the validity of brokers values or just gain comfort with the $40mio number. Either way we have good ammunition here to get this through."

105.
On 30 April 2014, Mr van Dyke reported by email to Mr Tomazos on a call he had had with Mr O'Donovan from KKR, to preview a revised draft term sheet that KKR would be sending that would propose "$125 mm, all in preferred" and "Equity split 55% Lomar, 45% KKR", with "Assume value of $40 mm to be confirmed through due diligence". Mr Tomazos forwarded the email to Mr Logothetis. In context, the reference to the US$125 million in funding to be committed by KKR being "all in preferred" indicated that KKR's draft term sheet would propose that it pay nothing for 45% of the common stock, rather than paying US$10 million for 25% as Lomar had proposed.

106.
Mr Logothetis commented in an email to his family that day (30 April) that: "Unfo the news is not so great … their proposal is based on NO common … means the $40 mio of value is effectively irrelevant … Also means zero funds off the table which is 15-20 mio worse where we thought we were this morning." In relation to "NO common", in fact KKR proposed taking 45% of the common stock. Mr Logothetis' point was that this would be for no separate consideration beyond the commitment to lend the joint venture vehicle up to US$125m for preferred shares, in other words there would be no separate purchase of common stock and so no cash extraction for Lomar.

107.
Mr Logothetis expressed the view that it should be possible to "find creative way to extract 10 mio", but the following day Teneo reported that KKR had said they had a "real issue" with any money going out of the joint venture to Lomar. The priority of extracting cash was emphasised in Mr Logothetis' internal response: "as things stand we wouldn't do this basis no money out. We would lose the ability to monetize and would b prepared to drop this if they insisted here."

108.

Thus, KKR were proposing that they would get preferred shares intended to return 9% per annum on their funding of the new venture, with a commitment to provide funding of up to US$125 million (as might be drawn down), and, for no consideration on top of that preferred share funding commitment, 45% of the common stock. The nil consideration for the common stock at this stage proposed by KKR usefully illustrates a point of some importance to the case:

(1)
It would not be credible to suggest that if Lomar incorporated the proposed new company, taking 100% of its common stock in return for contributing the eight ships, that company would have nil value.

(2)
The nil consideration for KKR's common stock, had that been the final deal, would not have implied that the common stock had nil value, because it would have been part of a bigger and more complex joint venture funding package.

109.
Similarly, a final deal as part of which KKR bought 25% of the common stock from Lomar for US$10 million, as had been proposed by Lomar, would not imply that the common stock was worth US$40 million. It would indicate only that KKR as venture capitalists doing the deal that was being done were willing to have US$10 million of their funding allocated to an acquisition of 25% of the common stock, allowing Lomar to take that much in cash out of the structure at that point, all as part of the overall package. The value in fact of KKR's 25% of the common stock would have no necessary relation to the US$10 million paid to Lomar for it at all.

110.
Later on 30 April 2014, Mr O'Donovan sent Mr Tomazos (and Mr Tomazos forwarded to Mr Logothetis) a draft term sheet with the revised proposed structure thus trailed. It was prepared from Lomar's original term sheet, using tracked changes. The sections for a purchase of 25% of common stock for US$10 million and for Lomar to incorporate the new joint venture vehicle first as a wholly-owned subsidiary, for a contribution of the eight part-built ships valued at US$40 million, were struck through. Instead, "NewCo", as KKR's draft term sheet called it, would be a joint vehicle from the outset, with Lomar receiving 55% of NewCo's common stock in return for the eight ships, and the 'Investors' (being "KKR, on behalf of itself and certain of its managed funds and accounts, and its affiliates") having a commitment to make "up to a $125 million investment in NewCo for Series A Preferred Shares … and 45% of NewCo's fully diluted Common Equity …".

111.
The slight complication that the Investors as defined were to be the joint venturers, rather than (just) KKR, does not matter for my purposes, so I shall overlook it and treat KKR and the Investors (as defined) as synonymous in what follows. KKR proposed a dividend of 9% per annum, payable quarterly, on the preferred shares, with an option in NewCo to pay up to 4% by further preferred shares rather than in cash, for 5 years from initial closing, thereafter 11% all in cash.

112.
The covering email said that the proposed equity split, i.e. KKR's proposal that they should have 45% of the common stock, was"based on a 40mm contribution by Lomar ($10mm in cash deployed & $30mm mtm on the orders – all to be substantiated)." That confirms and reflects paragraph 100 above. This was an offer subject to contract that, if there was a substantial basis that could be demonstrated to KKR's satisfaction for estimating anticipated shipowners' equity in the ships if

completed of US$40 million, KKR would be content in principle to commit to funding of up to US$125 million, in return for preferred shares providing for a return of 9% per annum and 45% of the common stock.

113.
The final deal split the common stock 40:60 rather than 45:55. It is tempting to say that if the terms of the final deal were otherwise the same as this 30 April draft term sheet, KKR must have become content that, in the sense just described, estimated anticipated value greater than US$40 million was 'substantiated', in the sense just stated, perhaps the US$45 million that Mr Logothetis said it might be greedy to propose. I resist any such temptation, however, because I cannot say that 45% "based on … 40mm" was more than a negotiating position.

114.
For the same reason, it does not follow from the fact that KKR at this point said their offer to take 45% of the common stock was "based on … 40mm", and the fact that a deal was in due course done under which they took no more than that (in fact a little less), that they were satisfied that estimated anticipated value of US$40 million had been substantiated. The evidence at trial was that nobody from KKR ever wrote or said that they were so satisfied. KKR's final motivations and assessments, in deciding to do the deal in fact done, would need to be investigated through their (internal) documents or with their decision-makers for me to be in a position to make any finding on that, and such an investigation did not form part of these proceedings.

115.
It was at this time that the idea came up that Mr Logothetis should propose to Mr Pisante that he not only agree to the K Ships going into the KKR deal, but also that he invest in that deal the immediate cash proceeds to which the ICBC deal would entitle him in respect of the Barry Trader and Kimolos Trader. Mr Logothetis recalled this in an email in August 2014, as the KKR deal was approaching completion. Mr Logothetis wrote to Mr Tomazos and his family: "remember that lunch with CML [i.e. his brother Constantine] in the Rib Room in the darker days of April when the idea to 'roll' his shares came?? Good one!!" This was an element of the creative thinking required to ensure that Lomar could extract cash where KKR had baulked at allowing it to do so directly as part of the joint venture terms. As Mr Logothetis explained to Mr Tomazos in an email on 8 May 2014: "Also remember that if VP rolls over which he should then we will have some extra funds to play with."

116.
On 9 May 2014, Mr Tomazos sent to Mr van Dyke "an initial flurry of documents that relate to the balance sheet of the proposed JV as at 30 June 2014". He said that "the 2014 valuations" had been used "for the purpose of calculating the NAV in the model though we also called brokers … and they confirmed that the valuation for 2015 and 2016 would be higher to the tune of c.USD 8 mill. with values obtained verbally of USD 32.5 mill. for the Wenchongs and USD 23.5 mill. for the YJZ vessels. In the interest of getting the deal done quickly, not missing the potential in the market and agreeing to our other terms we will not insist on a precise market valuation and are happy with the USD 40 mill. NAV number as the BASE if KKR are happy as well."

117.
The documents sent were a revised draft term sheet, a spreadsheet presenting financial information in the form of a balance sheet for NewCo as at 30 June 2014, and some additional supporting schedules for some of that information.

118.

The revised draft term sheet unpacked what had previously been stated loosely as Lomar contributing ships, proposing that Lomar would contribute its interest in the companies holding the contracts for the eight newbuildings. It proposed that Lomar would take 62.5% of the common stock of NewCo in return, and added: “Note that the Lomar interest in Rotherham Holdings Pte Limited (Queen Esther) is 50% and the existing JV partner will remain.” It proposed that KKR would commit to investing up to US$125 million in return for preferred shares and 37.5% of common stock. It reintroduced the idea of some of the KKR funding commitment being a purchase price for common stock, rather than being all advanced against preferred stock, stating that the first capital call would be required to be at least US$25 million and that “As part of the Initial Closing, the Investors will purchase common shares from NewCo representing 37.5% (post money) of NewCo’s fully diluted Common Equity for a total purchase price of $24 million …”. It also added a new provision as regards the “Use of Proceeds” that “c$5 million of the proceeds from the Initial Closing will be paid to Lomar to repay current liabilities to Lomar and, as applicable, retire part of an intercompany loan (with the balance being capitalized as contributed surplus or share premium).”

119.
Finally, this 9 May revised draft term sheet introduced the idea of a ‘clawback’ of common stock if the full US$125 million was not drawn down, proposing that in that case KKR’s 37.5% of common stock would be reduced pro rata and additional preferred shares would be issued to KKR instead. The other formulae proposed were logical, if a little complex, but the simple part was that (for example) if the total drawn down were US$100 million (80% of the commitment), KKR’s common stock would be reduced to 30%, being 80% of 37.5%.

120.
As a matter of arithmetic, US$24 million for 37.5% is equivalent to US$40 million for 62.5% (24 x (62.5 / 37.5) = 40). However, as in paragraph 109 above, if Lomar’s 9 May revised proposed terms had been agreed, given the complex, packaged nature of the proposed deal, that would not imply that Lomar would have shareholder’s equity in NewCo worth US$40 million. In fact, a fortiori, since the US$24 million for 37.5% would not be a price for a sale of common stock by Lomar, but a subscription contribution to NewCo.

121.
In the ‘balance sheet’ sent by Mr Tomazos, the sole assets, identified as “Non-current assets”, were the eight ships, to which a value of US$46,737,500 was attributed, comprising their book values as ships under construction (instalments that would have been paid by 30 June 2014) of US$21,051,560 plus “Asset revaluation” of US$25,685,941, which was the ‘mark-to-market’ uplift calculated using Mr Logothetis’ method (paragraph 96 above). There was no prospect of NewCo’s balance sheet being prepared in that way. As the defendants accepted by pleading that the ‘mark-to-market’ uplift represented anticipated future profit, it would not have been booked as part of NewCo’s balance sheet until (all going well) it accrued during 2015 and 2016, ship by ship as the ships were completed. That does not mean presenting the figures in this way, in the deal negotiation between Lomar and KKR, was not meaningful or potentially useful for KKR, given paragraph 100 above.

122.
There was also a subtlety in the book values of the ships under construction, namely that on the T Ships the shipyard had extended credit terms so that of the US$8,255,000 in instalments paid (or that would be paid by 30 June 2014), US$3,375,000 had been (or would be) paid by borrowing from the yard at 6% per annum. The borrowing from the yard on each ship was repayable in 28 quarterly instalments from 3 months after delivery. That lending, including interest accrued to 30 June 2014,

was treated as part of the book values of the T Ships, and was then included, to balance that, as “Loan (Yard)” in the “Non-current liabilities”. This seems creative, since NewCo was to own the SPVs that held the contracts, so that its relevant balance sheet asset value would be net of the shipyard credits. But again, as long as it was not being said that NewCo’s opening balance sheet would in fact be prepared in this way, it was not an unhelpful way for Lomar to present to KKR financial information relating to the ships under construction within the context of their negotiation of a KKR funding deal of the type under discussion.

123.
The paid instalment amounts, net of yard credit on the T Ships, were shown in the “Non-current liabilities” as “Loan Lomar Corp/Libra”, which was not correct on the K Ships, nor, I infer, on the Queen Esther. On the K Ships, the relevant loan was from Netley and if for some reason it was appropriate to show that as if it were a loan from Netley’s shareholders, it should have been shown as “Loan Lomar/BCA (50:50)”. I infer that the equivalent point would have been true for the Queen Esther. The true position on Queen Esther was indicated, indirectly, in the “Summary of Shareholders Equity” at the bottom of the ‘balance sheet’, where a total was given of US$43,045,861, split between “Lomar/Libra” (US$38,997,105) and a “Non-controlling interest” on the Queen Esther (US$4,048,757).

124.
Thus, a figure of US$39 million, close to the target of US$40 million that KKR wanted Lomar to substantiate, labelled as Lomar’s ‘shareholders’ equity’, was given in this ‘balance sheet’. If the Netley JVA had been treated in the same way as the joint venture arrangement on the Queen Esther, that figure would have been US$32 million (after deducting 50% of the ‘shareholders’ equity’ shown for the K Ships, which was US$13,920,038, i.e. after deducting US$6,960,019).

125.
Mr Tomazos’ 9 May email also dealt with the Queen Esther joint venture, telling KKR that Lomar had “a 50/50 JV on one of the ships (Queen Esther) with a partner based in Panama … . His equity interest is netted off for calculation purposes of course. There is a possibility to buy him out if we were to wish to do this. This could be done relatively quickly.” This was misleading in not mentioning that the K Ships were also subject to an extant 50:50 joint venture, and reinforced the misleading ‘balance sheet’ presentation of the K Ships as 100% Lomar/Libra without any netting off of BCA’s indirect 50% ‘equity’.

126.
The fact that Lomar, through Mr Logothetis, reasonably could be confident that Mr Pisante would agree to having BCA’s interest in the K Ships taken off the books into an ETFA, as in due course it was, does not stop Mr Tomazos’ presentation of the position as it stood from being misleading. All that was needed to avoid that was for Mr Tomazos’ covering email to explain that in fact all four of the 2,200 TEUs were subject to 50:50 joint ventures, but the ‘balance sheet’ was prepared on the assumption that the K Ships joint venture partner would be taken off the books through an ETFA. But giving that explanation might give rise to uncomfortable questions for Lomar as to why it had not funded this very attractive newbuild programme itself; and KKR could not be told that Mr Pisante/ BCA could or would be bought out, because (in context) that would have been a misleading description of a plan to maintain his 50% share, translated into a derivative obligation of Libra’s. It is thus possible to understand, if not to excuse, the misleading presentation to KKR.

127.

Also on 9 May 2014, Mr Logothetis emailed Mr Pisante from Hamburg, reporting to him that ICBC had approved its financing deal, and Mr Pisante replied with congratulations. The following day, 10 May 2014, Mr Logothetis replied to thank Mr Pisante for the congratulations, and to inform him that subjects had been lifted on the Kalamoti Trader and that "we should have an agreement with KKR I hope on Monday (or Weds) …" which would mean "… many, many more vessels to come which we shall place into KKR structure".

128.
This served to introduce the pitch to Mr Pisante to invest the cash the ICBC deal would generate for Swindon into Lomar's venture with KKR (i.e. to pursue the idea to get him to 'roll' his shares, see paragraph 115 above). Thus, "Wanted to speak to you about this [i.e. all the positive news about how big the KKR deal would be] to see if you wanted to roll over funds into KKR deal. Let's speak next week. We will be pushing all new vessels into KKR deal and 125mio is amount we have agreed with them. Now is the time also to start doing what we discussed on the shareholding and we have some ideas how to structure which need to discuss with you."

129.
On Mr Logothetis' side, the sequence, in more detail, was that:

(1)
He was informed on 10 May 2014 that an agreement had been made with the yard for a 6th Wenchong vessel. This was understood to be going into Netley.

(2)
Mr Logothetis replied internally, "I will now start the process with VP to make his shareholding silent and also to get him to roll his equity into KKR as we discussed".

(3)
Within a minute, he sent his email to Mr Pisante with, as Mr Béar QC fairly described it, "a series of good news announcements", and then the invitation to Mr Pisante to consider rolling over the funds the ICBC deal would generate for him into the KKR deal.

130.
Mr Pisante responded the same day, saying he had been in Eastern Europe and was in Athens, but heading to London. He said this on the anticipated KKR venture: "As always, I am happy to follow your lead both on restructuring the shareholding structure to accommodate ICBC and KKR and also on rolling over equity into the KKR venture."

131.
Thus, there were now two elements to the proposal for Mr Pisante: firstly, the inclusion of the K-Ships as part of Lomar's initial capital contribution to any joint venture with KKR, which required Mr Pisante's agreement as they were held by Netley; secondly, the chance to invest whatever would fall due from the ICBC deal under (what became) ETFA 1 in the KKR deal. The amount that ETFA 1 would generate as a short-term payable to Swindon was not final. Mr Logothetis' proposal was for Mr Pisante to reinvest up to whatever that amount came to be (in the event, US$6.25 million).

132.
In his evidence at trial, Mr Logothetis insisted that if Mr Pisante had decided to 'cash out' ETFA 1 (as it became) rather than roll-over (reinvest), that would have been fine by Mr Logothetis; he would have ensured that Libra paid Swindon what was due, that is to say (in the event) US$6.25 million. I accept

that evidence, up to a point. That is to say, I accept that if Mr Pisante's final decision had been to take 'his' US$6.25 million out, Mr Logothetis would have found some way to accommodate that. At the same time, however, I find that Mr Logothetis was keen – and far keener than he was willing to accept at trial – that Mr Pisante not cash out, but keep US$6.25 million invested in the Lomar newbuilding fleet, to the benefit in the short term of Libra/Lomar.

133.
On 12 May 2014, Mr Pisante and Mr Logothetis spoke about the KKR deal on the telephone. Mr Pisante was in London on business, and took the call during the course of one of his meetings. Mr Pisante's evidence was that he recalls Mr Logothetis telling him that Lomar's contribution to the KKR deal being negotiated would be: "approximately $40 million in equity…in the form of 'cash and ships'", a turn of phrase Mr Pisante says stuck with him thereafter because it was a bit like 'fish and chips'. Mr Logothetis' evidence was that he "struggle[s] to remember precisely what I said on the call", but "I may have used those words".

134.
There are two contemporaneous reports of this key conversation:

(1)
Mr Logothetis reported that day, 12 May, by an email to all the other senior individuals at Lomar/ Libra.

(2)
Mr Pisante reported the following morning, 13 May, in an email to BCA colleagues, forwarding an email sent to him the previous evening by Mr Benny with a pro forma ETFA wording.

135.
Mr Logothetis' email of 12 May was in these terms:

"I spoke to VP at length on everything:

1)
He is overall very very happy with everything.

2)
In terms of shareholding structure we discussed this and:

a.
I said having thought about this the best way to do this was to sign an ETF at the Libra level.

b.
He said he is 'very flexible, not at all sensitive, very open minded' and wants to be 'as easy as possible'.

c.
I told him we had done this before … and agreed to send him a draft ETF copy so he can read it. …

d.
He will then approve and we shall then need to start the process for the ICBC vessels to change to ETF.

e.

If KKR goes ahead and he agrees to roll then what will happen is we will have an ETF at the Libra level showing that VP owns say 33% of the KKR vehicle…

f.
He will still own 50% of the ICBC vessels (again via ETF) …

3)
In terms of roll-over of equity from ICBC deal to KKR he wants 1-2 days to think about it but I think he will agree to roll-over the great majority of the funds released. He MAY I think want 1-2mio out but he will confirm to me in the next 1-2 days. I told him there was no min/max and when we hear we would then (only after KKR is done) agree numbers/shareholding – if he rolls it all over he is likely to have ABOUT 33% of our shares in the KKR deal. Obv post-KKR there is no further equity to be called from him or us and KKR will fund everything going forward on the 8 x vessels.

4)
GWS6 [i.e. Kalamoti Trader] – we agreed to call money for this vessel in the next 1-2 days. …;

…

c.
Total funds to be called $1,795mio from s/h [i.e. shareholders] of which $897,500 from VP.

…"

136.
In a short further email later that evening (12 May), to his brother, Nicholas, who had asked if Mr Logothetis was happy with where matters had reached, Mr Logothetis replied, "Y I THINK OVERALL VERY GOOD. WE GET 5MIO OUT, COVER ALL NB FUNDING ON THE LAST 8 VESSELS, RELEASE SAY 5-7MIO FROM VICTOR AND CAN EXPAND LOMAR WITHOUT ANY FRESH FUNDS AT ALL FROM US." The reference to taking US$5 million out (with any cash from Mr Pisante being on top of that) was to the fact that Lomar was by this stage hoping that KKR would agree (at a meeting set for the following day, 13 May) to the idea of Lomar taking US$5 million out in cash at closing (paragraph 118 above).

137.
Mr Pisante's email of 13 May was as follows:

"I would like to update you in relation to two transactions that are being done in relation to Lomar/ Netley which require BCA to restructure its ownership as BCA had not been disclosed to the counterparts so as not to complicate matters

The first is a transaction with ICBC leasing where they are doing a sale leaseback of six Lomar vessels, in two of which BCA has 50% share, namely the Barry Trader and the Kimolos Trader.

The second is a deal whereby Lomar will contribute another 8 new building vessels to a joint venture with a KKR fund, in 3 of which BCA has a 50% share … . BCA will also contribute its proceeds from the ICBC deal (about $7mm) to this joint venture. The Lomar equity contribute to the joint venture in cash and in vessels will be approximately $40mm and BCA's interest is about 35% of that.

In both transactions, in order to facilitate the disclosure required, I have agreed to move BCA's ownership so that we do not appear directly. Lomar is proposing the attached agreement [i.e. the ETFA].

Please review it and if need be ask for advice. I will not be able to focus on this much for the next few days but please discuss it with Martin [Benny] so that we can get comfortable with what they propose."

138.
On 19 May 2014, KKR sent Mr van Dyke, using tracked changes on Lomar's 9 May version, a yet further revised draft term sheet, following the meeting the negotiating teams had by then had on 13 May. Mr van Dyke forwarded that email and revised draft to Mr Tomazos and Mr Logothetis the next day, 20 May 2014.

139.
The key changes from the 9 May proposed terms were that (a) the common stock was to be split 40:60 rather than 37.5:62.5, (b) only US$5 million of the first draw down (min.US$25 million) was to be treated as purchasing KKR's common stock, all the rest of KKR funding being always in preferred shares, with a simpler clawback arrangement for the case where not all of the US$120 million committed to be provided against preferred shares was drawn down, and (c) the use of proceeds provision was simplified to say, in material part, just that US$5 million of the Initial Closing proceeds "will be paid to Lomar". In addition, NewCo was to have "no payables or liabilities upon closing other than those associated with the existing ship financing" details of which would be exhibited. From the covering emails from Mr O'Donovan and Mr van Dyke (when forwarding), it appears that these revised proposed terms reflected what had been agreed in principle at the meeting the previous week.

140.
On 1 June 2014, Mr Logothetis sent an email to Mr Tomazos expressing frustration about the speed with which the negotiations with KKR were progressing, and suggesting that in hindsight it would have been better to try to do the deal competitively. He expressed his take on things as being that, "At the end of the day we are placing $40mio of equity into the deal and there is no shortage of people that would like to partner with us."

141.
On 4 June 2014, a meeting took place between Alex Iordanides (the CFO of Bluehouse) and the Lomar team. The Lomar representatives explained that the deal with KKR was still under discussion with respect to its final details, and said that Mr Pisante's percentage participation would depend, among other things, on what values were finally agreed for the ships that were to be contributed, so Lomar was unable to provide any concrete numbers. It was submitted for the defendants that, as reported to Mr Pisante at the time, this told him that the ships, as contributed to the KKR venture, were not to be valued at cost; in other words that there must be some type of 'mark to market' revaluation going on. In cross-examination, Mr Pisante did not agree with that proposition. Nor do I. What Mr Iordanides had been told was consistent with Mr Pisante's understanding that ships under construction contributed as equity would be valued at cost, so the exact value in that regard would be fixed between Lomar and KKR by reference to final accounting as at whatever effective completion date was agreed for the KKR deal.

142.
The next day, 5 June 2014, Mr Logothetis and Mr Pisante had lunch, during which Mr Pisante confirmed that he would roll over his entire investment into the proposed KKR venture, i.e. his 50% of the K Ships and all of the cash that would otherwise come out to him due to the closing of the ICBC transaction. Mr Logothetis told Mr Pisante that in the coming days he would get some numbers together and discuss what their respective shareholdings would be.

143.
On 17 June 2014, Mr Logothetis met Mr Pisante at the Grand Bretagne Hotel in Athens. The main purpose of this meeting was to discuss other matters, but after those discussions Mr Pisante and Mr Logothetis also talked briefly about the KKR transaction. Mr Pisante again confirmed willingness to roll over his equity to be released from the ICBC deal into the KKR transaction.

KKR Completion & ETFA 2

144.
In the meantime, discussions with KKR, and its due diligence processes, continued. An issue arose around the time of Mr Logothetis' meetings with Mr Pisante just mentioned, about certain costs payable by Lomar in connection with the ships it was to contribute. As explained by Mr van Dyke in an email of 29 June 2014, KKR had been "operating on the assumption that the value of what Lomar is contributing to the JV is between $40 and $45 mm", and were concerned that their "equity cushion" might be diminished by these extra costs. A detailed note in response was sent to KKR by Teneo on 2 July 2014.

145.
Also in June 2014, an issue arose out of the fact that KKR had received some ship valuations which appeared to suggest the valuations obtained by Lomar were too high. It was explained to KKR that the ships on which those valuations were based were not comparable to the ships Lomar had ordered (for example they did not have the eco benefits of the Lomar ships), and so, it was suggested, the valuations Lomar had obtained had not been undermined.

146.
KKR's due diligence in relation to the valuation of the ships continued into July 2014, and further notes were sent by Mr van Dyke to KKR on 7 July 2014. In addition, revised 'balance sheets' for OML were circulated to KKR on 30 July 2014 and 8 August 2014.

147.
Meanwhile, as noted above, in May/June Mr Logothetis had told Mr Pisante that his indirect interest in the K Ships, through BCA and via Netley, had not been disclosed to KKR, and Mr Pisante had made clear that he was happy for that interest to be restructured so as not to complicate the KKR deal for Lomar. That restructuring was finally effected in late July 2014:

(1)
Two share transfer agreements dated 25 July 2014 were concluded pursuant to which Netley transferred its shareholding in Pitten and Tabilk to Lomar for par value.

(2)
An ETFA dated 25 July 2014 was concluded pursuant to which Swindon promised to pay Libra the sum of US$2,741,250 in consideration for the right to receive an Equity Tracker Fee representing (in broad effect) 50% of Lomar's interest in Pitten and Tabilk, and indirectly therefore in the K Ships ("ETFA 2").

(3)
A deed of assignment dated 28 July 2014 was executed pursuant to which it was agreed that in consideration of Lomar paying BCA the sum of US$1,843,750 and US$897,500 (totalling US$2,741,250), BCA's rights in respect of that lending would be assigned to Lomar.

(4)

An agreement dated 28 July 2014 was concluded by which the sum of US$2,741,250 payable by Swindon to Libra under ETFA 2 would be offset against the obligations of Lomar to pay to BCA the equivalent sum under that assignment.

148.
The net effect of these agreements, therefore, was that BCA's indirect interest in the K Ships, i.e. its indirect shareholding, via Netley, in the SPVs that held the K Ship contracts, in which the transactions treated it as having invested US$2,741,250, was translated into a derivative interest held by Swindon under ETFA 2, issued to it by Libra.

149.
On 8 August 2014, in preparation for closing the KKR transaction:

(1)
A contribution agreement was entered into between Lomar and OML, pursuant to which Lomar sold to OML its shares in the five SPVs which held the contracts for the eight ships being contributed, for total consideration of US$12,945,250, to be paid as (a) 5,000 US$1 shares at par plus a share premium of US$9,369,000 (which is US$1,873.80 per share) and (b) $3,571,250 in cash.

(2)
A novation agreement was entered into pursuant to which Lomar sold to OML at par its rights in a loan of US$1,428,750 it had made to Kilton (the SPV for the Queen Esther).

(3)
It followed from these transactions that Lomar was entitled to a cash payment of US$5 million ((1)(b) + (2) above).

150.
If I understood correctly the slightly complex accounting undertaken so as to generate a cash payable of US$3,571,250 due from OML, it had the effect of increasing to the US$2.7 million, from US$2.1 million odd, the amount effectively treated in the accounts as having been invested, indirectly, by Mr Pisante, which was in turn taken into account, in anticipation it therefore seems, in the drafting of ETFA 2 and associated transactions.

151.
Under the terms of ETFA 2, the consideration paid by OML for the SPVs (see paragraph (1) above), to the extent attributable to Pitten and Tabilk, was an 'Exit Receivable' entitling Swindon to 50%. More precisely, ETFA 2 entitled Swindon to a payment by Libra of 50% of the cash portion, and to a transfer of 50% of the portion paid in kind (i.e. to some of the shares in OML issued to Lomar). No attention appears to have been paid to that at the time, as it was by then the agreement in principle that all of Swindon's entitlements would be rolled over into the KKR deal. There may, though, be this connection (but whether this is correct I find somewhat obscure and so I make no firm finding), namely that the uplift from US$2.1 million to US$2.7 million to which I referred in the previous paragraph may have reflected the accounting aspects of completing the KKR deal that generated the cash payable to Lomar that in turn constituted the cash Exit Receivable.

152.
Prior to ETFA 2, Mr Pisante was invested indirectly in the Barry Trader, the Kimolos Trader, and the K Ships, partly through BCA (the Netley JVA) and partly through Swindon (ETFA 1, itself having taken the place of part of BCA's investment in Netley). By early August 2014, with ETFA 2 in place, Mr

Pisante's indirect investment in those five ships was all through Swindon (ETFA 1 and ETFA 2). The intention had become (since May/June) for him to remain fully invested (not cashing out at this point, to whatever extent he might have been entitled to do so). That intention was finally given effect by ETFA 3 (see below).

153.
On 15 August 2014, the KKR transaction completed, with a share purchase agreement being entered into between OML, Lomar and KKR (the "SPA"). It recited inter alia that Lomar now held 6,000 shares in the common stock of OML at par value of US$1 per share plus a share premium of US$9,369,000, having contributed its interest in the five SPVs, and the loan to Kilton, for a total consideration of US$14,374,000, of which it was taking out US$5,000,000 in cash. That meant Lomar's contributed shareholder capital at closing would be US$9,375,000, and that was duly reflected in OML's accounts.

154.
The SPA then provided for OML to issue and sell to KKR, and for KKR to buy, 4,000 new common shares (meaning KKR and Lomar would have their agreed 40% and 60% respectively of the fully issued common stock (10,000 shares)), for a total consideration of US$6.25 million, plus 20,000 preferred shares, for a total consideration of US$18,050,000, and for KKR to pay up to US$100 million for further preferred shares pursuant to capital calls as might be made in accordance with the SPA. The SPA contained a clawback provision in relation to the common shares that would be triggered if the full amount of the US$100 million commitment was not drawn down.

155.
As mentioned above and envisaged by section 3.6 of the SPA, a restructuring of the joint venture later took place in which Lomar's and KKR's common stock holdings in OML were converted into equivalent holdings in OMHL, for which an Amended and Restated Shareholders Agreement of OML was entered into dated 22 October 2014.

ETFA 3

156.
On 9 August 2014, Mr Logothetis had written to Mr Pisante informing him that the KKR deal would shortly be signed, and stating that "next week we will def speak and agree whatever the number is, insert into ETF and be done with it." On 16 August 2014, Mr Logothetis wrote to Mr Pisante to confirm that the KKR deal had closed and suggesting that they speak the following week as Mr Logothetis was taking a few days off.

157.
In the event, they did not speak on that until a telephone call on 28 August 2014, when they agreed that Mr Pisante's indirect interest would be 30% of Lomar's share of OML. Mr Logothetis portrayed this in his evidence as a process involving uncertainty as to precisely how Mr Pisante's shareholding should be calculated, and an agreement in the end to split a difference at 30%. The reality is that there was no negotiation, nor any attempt to calculate anything, or present and agree a calculation, over the telephone. The gist, rather, was that Mr Logothetis told Mr Pisante that his share of what had now been closed with KKR amounted to 30%, and Mr Pisante did not quibble.

158.
With agreement on that percentage, Swindon's derivative investment interest in the Lomar-KKR venture could be documented. The following agreements were finally entered into on 3 November 2014:

(1)
a further ETFA ("ETFA 3"), pursuant to which Swindon agreed to pay the sum of US$6,250,000 (reflecting the sum due to Swindon under ETFA 1) and US$2,741,250 (reflecting the sum treated as effectively invested by Swindon in ETFA 2, the payment of which by Swindon was to be satisfied by Swindon giving up its rights under ETFA 2), in return for an Equity Tracker Fee representing 30% of Lomar's interest in OMHL; and

(2)
an agreement by which Swindon's obligation to pay US$6,250,000 for ETFA 3 was offset against Libra's obligation to pay the same sum to Swindon under ETFA 1.

159.
Thus, as with the prior ETFAs, no cash changed hands between Swindon and Lomar/Libra. Swindon's rights to be paid US$6.25 million under ETFA 1 and to receive any sums that might be or become payable under ETFA 2, were superseded by its right to receive sums, if any, that might become payable under ETFA 3. The offsetting agreement (paragraph (2) above) was no more than a mechanism for giving effect to Mr Pisante's agreement to put his ICBC cash into ETFA 3. If, as the claimants claim, ETFA 3 was induced by misrepresentation, indeed they say by fraud, then that offsetting agreement must stand or fall with ETFA 3. In the rest of this judgment, therefore, when I refer to ETFA 3 it should be understood that I mean ETFA 3 together with the offsetting agreement that came with it.

Events in 2015

160.
In February 2015, Mr Iordanides asked Lomar if he could be provided with the year-end financial accounts relating to Mr Pisante's investments with Lomar. Mr Kouligkas passed this request on to Mr Logothetis, who said "of course no issues at all.", and the information was provided on 13 February 2015.

161.
On 2 March 2015, Mr Iordanides followed up with a request for the starting balance sheet or capitalisation of OML prior to the KKR investment. This was provided by Mr Kouligkas on 11 March 2015 and showed, accurately, Lomar shareholder's equity of US$9,375,000. In a further email a couple of hours later, Mr Kouligkas re-sent that balance sheet, stating "Pressed the send button too quick. The Balance Sheet is based on the Accounting/book values (not market values).Also, it goes without saying, should you wish to discuss this please let me know." Mr Pisante's evidence was that receiving that balance sheet was a real blow to the stomach, and there was a sharp issue at trial over that evidence, the defendants' submission being that it was untruthful.

162.
On 18 March 2015, Mr Logothetis sent Mr Pisante an email updating him on certain additional ships which had been acquired by OML. Mr Pisante responded the next day thanking Mr Logothetis for the update, and saying "Amazing what has been accomplished so far and now all we need a bit of tailwind from that market."

163.
Thereafter, quarterly financial reports were sent by Lomar to Mr Iordanides on behalf of Mr Pisante.

Piraeus Bank

164.
In late 2015, Mr Pisante and Mr Logothetis became involved in discussions relating to capital being raised by Piraeus Bank, in the midst of the Greek financial crisis. Through Libra, Mr Logothetis was planning to make an investment of about €200 million, and the discussions related to whether Mr Pisante wished to participate.

165.
On 18 November 2015, Mr Pisante sent Mr Logothetis a proposal for him to participate in an amount of €5 million, as part of a package deal. In response to this, Mr Logothetis informed Mr Pisante that "this will not work. We have done 3 more deals this morning and the window is unfo closing … ."

166.
Following further discussions, on 24 November 2015, Mr Pisante agreed with Mr Logothetis that Mr Pisante would participate in Libra's investment in the amount of €5 million, through one of his companies, and that Libra would provide €500,000 of 'first loss' insurance on that participation.

167.
On 25 November 2015, in accordance with the discussions on 24 November 2015, Swindon transferred €5 million to Peninsula Worldwide Inc, a subsidiary of Libra, which was used to fund the acquisition by another Libra subsidiary, Carrera Navigation Inc, of 16,666,666 shares in Piraeus Bank on behalf of Swindon. The shares were transferred to Swindon in January 2016.

168.
By January 2020, Swindon had sold about 70% of those Piraeus Bank shares, at a loss the claimants said was about €4 million.

169.
Following late disclosure by the claimants, the defendants agreed at trial that Libra has a liability to Swindon for €500,000 in respect of the loss Swindon made on selling its Piraeus bank shares. After discussion of the position during closing argument, and further correspondence between the parties, it was agreed that although the only claim pleaded was by Mr Pisante personally against Mr Logothetis personally, judgment should be entered for Swindon against Libra for €500,000, with any argument over whether, and if so on what basis, to award interest, and costs, to be dealt with after judgment, and that the claimants would not seek any judgment against Mr Logothetis personally on this aspect of the case. I express no view here on whether there would have been a basis for such a judgment. However, so there can be no future doubt about the outcome, that personal claim should be dismissed, or in some other way disposed of without judgment against Mr Logothetis, in the Order to be made upon this judgment.

<u>2016 Joint Venture</u>

170.
On 3 March 2016, a joint venture agreement was entered into between Lomar and BRE Shipping Investments Corp ("BRE"), another company associated with Mr Pisante, in connection with the purchase of two sister ships, the Delaware Trader and the Washington Trader.

171.
In the summer of 2018, that further joint venture arrangement was split up by an agreement whereby BRE would acquire Lomar's shares in the Washington Trader, and Lomar would acquire BRE's shares in the Delaware Trader, leaving each side owning 100% of one ship.

172.
In late 2018, an agreement was reached whereby Lomar would pay to BRE and Castor the sum of US$5.5 million (representing the amount BRE had paid in relation to the Washington Trader), in instalments of US$4 million and US$1.5 million, in consideration of BRE and Castor consenting to the Washington Trader being sold to a company called Pender Shipping Pte Ltd. A claim was initially brought in these proceedings for payment of the sum of US$1.5 million in connection with this agreement, but that sum was paid and the claim fell away.

Market Downturn

173.
Shipping markets suffered a huge downturn during 2016, causing a substantial decline in the value of the ships which were the subject of the KKR joint venture. Mr Pisante raised concerns with Mr Logothetis about the market situation, but Mr Logothetis said it was important to be patient.

Deloitte

174.
In late 2016, Mr Pisante instructed Deloitte to investigate and prepare a report on his investment in OMHL. In the course of their investigation, Deloitte sought and obtained documents from Lomar. No concerns appear to have been raised internally within Lomar about the fact that Deloitte were investigating.

175.
Deloitte provided its report on 26 July 2017. The report, the substance of which was only a few pages long, noted at the outset that it did not constitute an audit and was based upon limited information. It raised three “matters of interest” arising out of Deloitte’s investigation, namely that:

(1)
Swindon’s contribution of US$6.25 million to the KKR joint venture (as Deloitte characterised it) was not reflected in OMHL’s accounts.

(2)
Lomar’s effective net contribution as at 30 June 2014 appeared to have been only US$6,633,750 (as Deloitte calculated it).

(3)
There was a need to investigate whether Lomar’s disposal of Pitten and Tabilk, by the sale to OML as part of preparing to close the KKR deal, meant that a payment was due under ETFA 2.

Fraud Alleged

176.
On or about 14 November 2018, in a meeting between Mr Pisante and Mr Logothetis, Mr Pisante raised concerns about the KKR transaction and the way in which it was set up. Mr Pisante told Mr Logothetis he felt he had been outsmarted. Mr Logothetis acknowledged that he did not remember what had been done, how things had been calculated, and what precisely had been agreed, and said he would need to get the full facts in order to respond. He reassured Mr Pisante that if something wrong was done then it needed to be changed.

177.

Following this meeting, on 15 November 2018 Mr Logothetis sent Mr Pisante a long email making suggestions as to the way forward, and stating, “I remember very very clearly that we had to inject $40/45mio of equity/ NAV to get the pref. this was a pre-condition…”.

178.
Mr Tavridakis met Lomar on 28 November 2018, and Mr Logothetis received a report of the meeting by email that day. Mr Tavridakis explained to Lomar that Mr Pisante’s complaint concerned the fact that, as had been reported to him by Deloitte, his cash released from the ICBC financing of the Barry Trader and Kimolos Trader was put into OML while Libra was paid a similar amount for doing the KKR deal, and the fact that, while Mr Tavridakis felt Mr Pisante should have raised his concerns earlier, this was something that had “been on his [i.e. Mr Pisante’s] chest for some time and left bubbling under. … VP had in any case suspected that something was not right with OML from the start with the funding/share distribution.”

179.
Mr Logothetis’ internal response to that report, noting that “Yes OML was not as transparent as it should have been. Even for me to be frank”, did not engage with the complaints. Nor did Mr Logothetis do so directly in response to Mr Pisante’s pertinent questions in a subsequent email exchange between them on 11-12 December 2018, following an email from Mr Logothetis on 9 December 2018 saying he was keen to “clear the air”. This led Mr Pisante to conclude, as he wrote to Mr Logothetis, that:

“It would be extremely easy for Lomar to provide clarity on these transactions and the fact that this is not happening is a cause for concern, as is the effort to move the discussion to the situation post KKR, when it is obvious that the issues occurred pre KKR.”

180.
Most significantly, Mr Logothetis simply ignored the fundamental complaint that Mr Pisante could not see that ‘his’ money (the US$6.25 million) had gone into the KKR joint venture, contrary to what Mr Pisante was saying he had been led to expect.

181.
All this culminated, on 22 January 2019, in a further meeting between Mr Pisante and Mr Logothetis. A detailed report of this meeting was sent by Mr Logothetis to his colleagues at Libra shortly after, in which he described it as “one of the worst meetings I have ever had”. In his evidence in chief, Mr Logothetis said that he recalled Mr Pisante “shouting and screaming at me in a restaurant telling me that I had stolen his children’s school fees” and saying he had been “cheated”, and that “no words could calm him down.”

182.
Mr Logothetis sent Mr Pisante a long email the following day, saying that “Everything you have accused me, Lomar management and Libra of is absolutely incorrect”,and suggesting that Mr Pisante appoint an auditor to conduct a detailed investigation into the matter. Mr Logothetis forwarded his email to Mr Tomazos, noting that he had been through the documents relating to the KKR transaction and that it was all fine and “very very clear. VERY clear… we swapped the equity in the 3 x 50% owned vessels + 6mio cash into 30% stake in the overall fleet. Numbers all add up to the nearest 500k … .”

183.

Mr Pisante was not satisfied and did not accept Mr Logothetis' offer to seek to resolve the matters amicably with the assistance of an auditor. This Claim was commenced in May 2019.

No Reliance Clause

184.
I find it convenient, because it will clear the decks to deal with it now, to consider next a defence raised under clause 11.2(a) of ETFA 3. It was not suggested that the clause can shield against liability in deceit, but it applies (if it does) to defeat the only other pleaded claims that remained live at trial, namely a claim for rescission for (non-fraudulent) misrepresentation and/or for damages under s.2(1) of the Misrepresentation Act 1967.

185.
Clause 11.2 of ETFA 3 provided as follows (with internal numbering added to clause 11.2(a) for convenience):

"11.2 The ETF Holder [i.e. Swindon] confirms that:

(a) it [(i)] has made its own assessment of whether to participate in the arrangements set out in this letter and [(ii)] has not relied on any information or representation given to it by or on behalf of the Issuer [i.e. Libra], except as set out in this letter;

(b) it has sufficient knowledge and experience in financial and business matters to determine whether it is in its interests to enter into the arrangements set out in this letter, it is capable of evaluating the merits and risks of such arrangements, understands the risks of loss, and is able to bear the same."

186.
Fraud aside, as I have said, Mr Allen QC submitted that clause 11.2(a)(ii) (as I have numbered it) could not be clearer or simpler. The claims made require it to be asserted that Swindon, acting by Mr Pisante, relied on information and representations made to it by Libra, acting by Mr Logothetis, in assessing whether to sign up to ETFA 3. By clause 11.2(a)(ii) Swindon confirmed, as a matter of contract, that it had not done so. The necessary assertion therefore cannot be made.

187.
In short, I agree with Mr Allen QC. I was invited by Mr Béar QC to give clause 11.2(a) a different meaning, such that clause 11.2(a)(ii) did not apply to representations concerning the terms or structure of the Lomar-KKR joint venture. His submission sought to draw a distinction between representations as to whether Swindon should agree to ETFA 3 and representations as to what it would be investing in if it did. He cited in support of that distinction CRSM v Barclays, supra, at [490], [515] and [526]-[527].

188.
The clauses Hamblen J had to consider in that case did not contain language similar to, or in any event language as clear as, that of clause 11.2(a)(ii). If clause 11.2 had contained only paragraphs (a)(i) and (b), Mr Béar QC's submission would have been well-founded. But it did not.

189.
There was in my view a non sequitur in Mr Béar QC's argument on clause 11.2(a), as in fact worded. The argument accepted (or asserted) that the clause was "an agreement that Cs have made their own assessment of whether to participate in the arrangements and have not relied on information or representations in making that assessment" (my emphasis), and contended that in consequence a

representation “as to what Lomar was investing in the deal and how they would use VP’s ICBC proceeds” was not caught.

190.
The premise is a fair paraphrase of clause 11.2(a) (indeed, it is not that far from a repetition of it). However, there is no limitation in the wording I have emphasised, which paraphrases clause 11.2(a)(ii), on the subject matter of representations falling within its scope. That is what makes clause 11.2(a) dissimilar in effect to the clauses in CRSM v Barclays, as Hamblen J construed them, not similar in effect as Mr Béar QC contended.

191.
Since the claim asserts that Swindon’s decision whether to participate in ETFA 3 was induced by misrepresentations made by or on behalf of Libra, clause 11.2(a) is engaged and cuts the claim off (absent fraud). The claim by Swindon under s.2(1) of the 1967 Act, likewise any claim for rescission for non-fraudulent misrepresentation, therefore fails in limine, and there is liability herein only if deceit is established.

The Witnesses

192.
Mr Pisante and Mr Logothetis were the principal witnesses at trial.

193.
I found Mr Pisante to be generally straightforward, careful, determined, but capable of becoming irate or excitable if he felt things were not right. I assessed him to be sincere in his claim and honest in his evidence. I judge him to have a firm, earnest and honest belief that the KKR transaction, and where he would fit into it, was misdescribed to him by Mr Logothetis. At the heart of that belief, I am satisfied, Mr Pisante remembers how, relying on and trusting implicitly what Mr Logothetis told him about those matters, he (Mr Pisante) expected to find that the Lomar-KKR joint venture vehicle (that is to say, in the event, OML) had opened with Lomar shareholder equity in its accounts of US$40 million, from a capital contribution by Lomar taking the form of (i) eight ships (including the K Ships), plus (ii) substantial cash, and he remembers a sinking feeling, confusion, and anxiety over what to do about it, when that was not what he found.

194.
Mr Pisante feels badly let down, indeed cheated, by Mr Logothetis, and in my judgment the claim that has been brought is not, as Mr Allen QC submitted, a lawyers’ construct. Mr Pisante’s lawyers of course take responsibility for any analysis of the factual evidence available to them so as to articulate, if they could, causes of action giving legal effect to Mr Pisante’s sense of having been cheated, but that is a different point. Whether what Mr Logothetis said to Mr Pisante, engendering in him the understanding that turned out not to match the reality, involved actionable misstatements of fact, and if so whether in that regard Mr Logothetis was without fault, careless, or fraudulent, are for me to judge. But I have no doubt that the claim was honestly brought and pursued.

195.
Mr Logothetis is impressive and charismatic, with an air of substantial self-confidence. He is loquacious and expansive, but his charm and gift of the gab belie an unsatisfactory attitude towards the simple matter of factual accuracy when putting business together for the benefit of Lomar/Libra. He will focus on generating a good feeling for a deal, on being persuasive, potentially at the expense

of accuracy where that might complicate things and he feels able to see the inaccuracy as a white lie. But there are no white lies in statements of fact made with a view to persuading someone to do a deal.

196.
In a candid answer, Mr Tomazos said of the Lomar/Libra way of doing things, in summary, that they tried to be clever with how things were presented, but that meant walking a line between being clever and being bad. As it seems to me, that is not an easy line to tread, and someone trying to do so the whole time, or often, may well cross onto the wrong side of it from time to time.

197.
I agree with Mr Béar QC that Mr Logothetis was shown to be an entrepreneur with a propensity that makes it plausible he might have misled Mr Pisante. That was shown by the documentary evidence and by some of Mr Logothetis' answers in cross-examination, such as, for example, an answer saying that it was a "strong thing" to call telling a counterparty one thing, the truth to his knowledge being different, a misrepresentation. Rather, to his way of thinking, as I assess it, that is par for the course, the sort of thing that happens, a common incident of putting deals together, and he would back himself to smooth out or get over any resulting bumps in the road.

198.
I believe Mr Logothetis that he had no sense, prior to Mr Pisante raising concerns in November 2018 leading to the catastrophic lunch in January 2019, that he had misled Mr Pisante. However, I find it easy to envisage that, if Mr Pisante was misled, Mr Logothetis might not recognise how that was his doing or have the self-awareness to recognise the plausibility of the claim, or might simply not remember well enough what he had said to be able, in truth, to say one way or the other.

199.
None of that, of course, is or can be any finding against Mr Logothetis on the particular claims pleaded. He is not to be found guilty of fraud wholly or substantially because of my conclusion that, given his attitude towards his business negotiations, he did not appreciate the importance of simple factual accuracy in his dealings, so as to be capable of fraud. However, that element of his make-up can lend support to Mr Pisante's claims, if there is otherwise serious evidence for them, and may serve to blunt the arguments of inherent implausibility pressed by Mr Allen QC as to whether Mr Logothetis would really have defrauded his good friend.

200.
The other factual witness evidence at trial came from:

(1)
A statement provided by Mr Tavridakis, who could not attend trial for medical reasons, put in by Mr Béar QC as hearsay evidence.

(2)
Written evidence in chief and oral evidence at trial from Messrs Attlee, Tomazos, Kouligkas and Benny, all called by the defendants.

201.
Mr Attlee was for many years in private practice as a solicitor, culminating in six years or so as managing partner of the London office of Bryan Cave LLP. He was a transaction lawyer, not a litigator. He was closely involved in the documentation of the KKR joint venture transaction, and the structuring of the completion accounts of OML, and had some involvement in the preparation of the

draft term sheets used in the negotiations between Lomar and KKR, but was not involved in the commercial negotiations or decision-making.

202.
I regret to say that Mr Attlee was an unsatisfactory witness. He had allowed himself to become highly agitated by following the trial as it progressed prior to his being called. He seemed to think it his task to respond with argument to what he perceived to be lines taken by Mr Béar QC in cross-examining Mr Logothetis. He had personal responsibility for approving the redactions in the disclosure. He said that he took account of legal advice received, but he professed himself unable to see, though it was completely obvious, that there was in fact no sensible justification for those redactions. All that said, when he managed to focus on, and answer, questions about the technicalities of the deal structure, and the balance sheet engineering required (a particular forte of his), I could see that Mr Attlee had read back into the detail comprehensively and was able to give accurate and helpful explanations. His evidence did not assist much on the significant issues in the case as regards liability, but was important for a full understanding of the KKR deal as finally executed.

203.
Mr Tomazos was intelligent, calm and fair. His evidence was given carefully. I judged that he was generally doing no more than saying what he could honestly say, to the best of his recollection, although as I mentioned above, on one point concerning Lomar's financial position I judged that he was in a position to say more but was unwilling to do so. He was clear that the nature of the valuation exercise by which Lomar sought to substantiate for KKR a US$40 million projection was as I have found (paragraph 100 above), that he recalled being told that it was no longer an issue, and took that to mean KKR were happy that US$40 million had been substantiated, but that KKR never confirmed agreement to that, or any other, particular figure.

204.
Mr Kouligkas gave evidence about certain aspects of the accounting treatment of the newbuildings in Lomar's accounts, and within or in connection with the KKR deal. He had very little involvement with the discussions between Lomar and KKR, but was more involved, with Mr Attlee, in the preparation of the deal completion accounts when the transaction closed. Mr Benny was likewise, and meaning him no disrespect, a minor witness. I did not think his evidence took matters further either.

The Pleaded Case

205.
The case, to the extent pursed at trial, that Mr Logothetis misrepresented matters to Mr Pisante, inducing ETFA 3, is pleaded as follows in the final iteration of the Particulars of Claim as re-re-re-amended at the start of the trial (the re-re-re-amendments being marked below by underlining):

"27. … in or around May 2014, Mr Logothetis explained to Mr Pisante that he was entering into a joint venture with a fund managed by [KKR]. During a telephone call between Mr Pisante and Mr Logothetis on (or around) 11 May 2014 [viz., in fact, 12 May 2014], Mr Logothetis represented to Mr Pisante (and Swindon and BCA) that Lomar was contributing approximately US$40 million in equity to the joint venture, and that this would include both cash and ships. … [Reference was made to Mr Pisante's email of 13 May 2014 (paragraphs (2) and 137 above), and one of Mr Logothetis' emails in November 2018 as evidence in support.]

28. Mr Logothetis suggested that Swindon contribute the sum owed to it under ETFA1, namely US$6,250,000 and the sum of US$2,741,250 (which Swindon and/or BCA had contributed in return

for … ETFA2), in return for a 30% interest in Mr Logothetis's share in his joint venture with KKR, which was named [OML], and that the sum of US$6,250,000 would be invested by Lomar in OML. The holding company for OML was [OMHL]. Specifically … during the said telephone call, Mr Logothetis told Mr Pisante that by contributing Mr Pisante's 50% share of the three K Ships as well as his share of the proceeds from the ICBC sale and leaseback to the joint venture, he would be entitled to 30-35% of Lomar's share in OML. The impression therefore given by Mr Logothetis was that the share of the proceeds from the ICBC transaction would be invested in OML.

28A. By May 2014, … the established basis of dealing between Mr Pisante and Mr Logothetis (and their respective companies) was one of equal treatment, where Mr Pisante came into deals on the same basis as Mr Logothetis. In that context, the representation that Lomar was contributing approximately US$40 million in equity to the joint venture with KKR meant (and, as Mr Logothetis knew, would be understood by Mr Pisante to mean) that Lomar's US$40 million contribution would be calculated on the same basis as Mr Pisante's contribution. Alternatively, following and in line with the parties' previous dealings …, Mr Logothetis thereby impliedly represented that the contributions of Lomar and Mr Pisante to the joint venture with KKR would be on the basis of equal treatment.

29. Mr Logothetis explained to Mr Pisante that, as Mr Logothetis had contributed US$40 million to OML, Mr Pisante would be gaining a 30% share of an investment worth US$40 million (which would therefore be worth US$12-13.5 million) in return for a cash contribution of US$8,991,250.

…

32. The representations pleaded at paragraphs 27-30 above are referred to herein as the "**KKR Representations**".

33. In reliance on the KKR Representations, Swindon entered into [ETFA 3] … [and] gave up its rights under ETFA1 to receive a fee of US$6,250,000 and its rights under ETFA2.

…

36. In fact, the KKR Representations were false as:

(a) Lomar did not intend to contribute and/or had not agreed to contribute, had not contributed and did not in fact contribute US$40 million to the joint venture with KKR [but only] a non-cash contribution with a value totalling US$9,375,000. …

(b) Lomar did not intend to contribute and/or had not contributed, and did not in fact contribute to OML or OMHL, the US$6,250,000 which was owed to Swindon under ETFA1.

(bb) In any event (as pleaded at para 36(e)(i) below), Lomar did not contribute both cash and ships to the joint venture: it only contributed ships (i.e. its share of vessels under construction).

…

(e) The representation as to equal treatment was false (as Mr Logothetis knew by, at latest, the end of June 2014) in [that]:

(i) Mr Pisante (through his companies) invested actual cash whereas Lomar did not do so, and indeed Lomar ended up receiving cash (in the amount of US$5 million paid to it at or around the completion of the KKR deal), whereas Mr Pisante received no such benefit;

…

…

39. The KKR Representations were made fraudulently; Mr Logothetis knowing them to be false, alternatively being reckless as to their truth. …

…

41. The KKR Representations were made with the purpose of persuading Mr Pisante to reinvest monies which he was entitled to receive from Mr Logothetis's companies …"

206.
I have omitted from paragraph 36(e) of the pleading some additional respects in which it was said that the alleged representation of equal treatment was false. They asserted that Lomar's and Mr Pisante's respective indirect 50% interests in the K Ships were not given equivalent treatment in the KKR trade. But they were.

207.
I considered that it was just to permit the re-re-re-amendments since, bearing in mind the previous iterations of the pleading, the Further Information that had been served in the case, and the parties' evidence and argument as prepared for trial, in my view (a) they did no more than clarify aspects of the case it was clear were being advanced and it was clear were understood by the defendants to be being advanced, and (b) the defendants were able, ready and properly prepared to seek to meet those aspects of the case.

208.
That said, I do not regard the claimants' pleading style as satisfactory. Setting out several paragraphs of narrative text, followed by a plea defining a set of representations compendiously as all such representations as may have been pleaded by those narrative paragraphs, is no way to plead a misrepresentation claim. Even if fraud is not to be alleged, but especially if it is, a statement of case for a misrepresentation claim ought to plead, succinctly but clearly, and severally, each material representation intended to be alleged, in each case including or supported by particulars of how, when, by whom and to whom the alleged representation is said to have been made.

209.
In this case, although it does not excuse the poor pleading, the representations were ultimately clear enough because of the particulars of falsity, since each main particular of falsity in substance identified the aspect of the narrative paragraphs compendiously defined to be the 'KKR Representations' that was relied on. Thus, for example, the plea as a particular of falsity that Lomar had no intention to contribute and had not agreed to contribute US$40 million, but rather only a non-cash contribution valued in the event at US$9,375,000, made clear that one representation relied on was that Lomar was contributing US$40 million in equity to the KKR joint venture.

210.
In the claimants' skeleton argument for trial, the representations relied on and to be pursued at trial were formulated as follows, namely:

(1)
that "VP's ICBC cash (the $6.25m) would be invested into the KKR joint venture";

(2)

that “Lomar would be making an equity contribution to the KKR JV which (a) would include both cash and ships; and (b) would be approximately $40m”;

(3)
“By implication from the parties’ established course of dealing, that VP and Lomar would be treated equally”.

In my view, that case was fairly raised by the formal pleading and there was no element of surprise or other unfairness about assessing liability by reference to it. The trial proceeded on the basis of that formulation.

211.
Mr Allen QC submitted that, aside from all the other points he made, those are all alleged statements as to the future and not actionable representations at all. In the circumstances of this case, however, that is simplistic so as to be incorrect. In at least some of what Mr Logothetis said to Mr Pisante, he was describing a matter of present fact, namely the nature and (proposed) terms or effect of a transaction Lomar was negotiating with KKR. In that regard, the prospective aspect of any statements he made would or might relate to how, on what Mr Logothetis was saying, the deal under negotiation would operate if concluded, or what that deal (if concluded and performed) would mean Lomar would do. Subject to considering with care what it may have been proved was actually said, the statements relied on are therefore capable, in principle, of being, or including, statements as to matters of then present fact.

212.
To illustrate by an invented example, if Mr Logothetis had told Mr Pisante that under the KKR deal being negotiated, Lomar would contribute 20 ships, I would consider it a straightforward conclusion that he had misrepresented the proposed terms of the deal, a matter of present fact at the time of the statement, they having been that Lomar would contribute 8 ships (for this purpose passing over the fact that strictly Lomar was not contributing ships at all but companies holding shipbuilding contracts).

213.
If the statement made had a different nature or scope, the conclusion might be different. For example, if the statement had been that Lomar was negotiating a multi-ship joint venture with KKR and had in mind to contribute 20 ships, that would not be falsified without more by the fact that the draft terms as they then stood provided for a contribution of only 8 ships, although of course that would be relevant to the question whether Lomar did then have in mind a larger contribution. In that different example, there would still have been a representation as to present fact, but only the fact of Lomar’s then present intention.

214.
Before turning to consider on its merits the case thus pursued, I note that the claim is that misrepresentations induced ETFA 3, a contract between Swindon and Libra, and the associated discharge of Libra’s debt to Swindon of US$6.25 million under ETFA 1 and surrender of ETFA 2, also a contract between Libra and Swindon. That is important to a consideration of the proper parties to the claim and to the question of relief.

Liability

215.

The issue to be determined, therefore, for each of the statements alleged by the claimants (paragraph 210 above), is whether it amounted to or involved any representation (i.e. statement as to a matter of present fact) made with a view to inducing Swindon to enter into ETFA 3 and in fact inducing it to do so that was (a) untrue and (b) made deceitfully by Mr Logothetis.

Parties

216.
I have explained already that Castor was only joined as a claimant because of a separate claim that fell away after it was paid (see paragraphs 38 and 172 above). The other claimants are Mr Pisante, Swindon and BCA, but it follows from paragraphs 214-215 above that the only party that might have a claim is Swindon.

217.
Though Mr Pisante was the representee, that was as directing mind of and decision-maker for Swindon. The decision and consequent action said to have been induced are Swindon's decision, acting by Mr Pisante, to participate indirectly in the Lomar-KKR joint venture by an arrangement such as ETFA 3, and its consequent action in concluding ETFA 3 with Libra. That decision involved, in particular, decisions by Swindon to pay for ETFA 3 by giving up US$6.25 million payable to it by Libra under ETFA 1 and releasing Libra from ETFA 2. There is no viable claim by Mr Pisante personally, or by BCA, even though (as regards BCA) the representations were made prior to ETFA 2, at a time when BCA held the indirect 50% interest in the K Ships through the Netley JVA.

218.
That is not only a matter of the correct legal analysis of the claim pursued, attacking as it does only ETFA 3. It also reflects the factual reality that Mr Pisante needed no persuasion to take his indirect 50% interest in the K Ships off the books into derivative form, in the event, that is, to accept ETFA 2 and the associated transactions needed to take the K Ships out of the Netley JVA. The decisions that were different in kind and did require Mr Pisante to be persuaded (albeit his friendship with Mr Logothetis meant he was reasonably readily persuaded), were for his 50% interest in the K Ships to go into the KKR joint venture vehicle and, especially, for his cash from ETFA 1 (in the event, US$6.25 million) to be invested indirectly in that vehicle.

219.
Having just said that Swindon's investment of its US$6.25 million in the KKR joint venture vehicle was, and was always going to be, indirect, it is convenient to touch on a consequence, although it goes to the meaning of what Mr Logothetis said to Mr Pisante and so to the question whether any (mis)representation was made, rather than to the current question of which parties are in play. Mr Pisante well understood that Swindon was not to be party to the Lomar-KKR joint venture. Swindon was not itself going to be contributing its US$6.25 million in cash to the joint venture vehicle, in the event OML or OMHL. Moreover:

(1)
as Mr Pisante knew, ETFA 3 was only finally entered into, and so Swindon in fact only paid that cash (by giving up its right to receive it from Libra), several months after the Lomar-KKR joint venture deal had closed and whatever equity contribution was being made on the Lomar side would have been made; and

(2)

it was plain on the face of ETFA 3 that Swindon was paying that cash (giving up its right to receive it) to Libra, as part of the price paid to Libra for rights granted by ETFA 3.

220.
Mr Pisante therefore cannot sensibly have thought, and I do not believe he did think, that "[his] ICBC cash (the $6.25m) would be invested into the KKR joint venture" (paragraph (1) above), if that means either that Swindon would itself contribute US$6.25 million to OML/OMHL, or that Lomar would do so following payment of that sum by Swindon. I shall return to this when considering the representations alleged, but in short it is part of my reasoning for a conclusion that the case stands or falls on paragraph (2) above.

221.
Mr Pisante insisted in cross-examination on this aspect that based on what Mr Logothetis had said to him, he was certain that his money "was being invested into KKR. There's not a single doubt in my mind it was going into KKR. Had it not gone into KKR I would not have invested into this [venture]". In my view, Mr Pisante appreciated, at the time and when giving evidence, that this could only be in the indirect sense that his decision to roll over his ICBC cash funded part of what he understood was to be Lomar's cash contribution to KKR, and there was some degree of crossed purposes in the questions and answers in cross-examination therefore. I was satisfied that, with that clarification as to what he meant by it, Mr Pisante was giving reliable evidence of his understanding at the time based on what Mr Logothetis had said to him.

222.
Returning to the question of relevant parties, Swindon is thus the only relevant claimant, though I shall hardly mention it again below because the facts are all about Mr Pisante on its behalf. On the defendants' side:

(1)
any deceit was practised by Mr Logothetis and will attract personal liability on his part;

(2)
though first and foremost speaking to Mr Pisante as his friend, clearly in persuading him, as Mr Logothetis did, to roll the K Ships and the ETFA 1 cash into the Lomar-KKR joint venture, Mr Logothetis, being Chairman and CEO, was speaking as and for Libra. This is not one of those cases where the company might say it should not be liable for the fraud of the individual by which it acted or who acted on its behalf; but

(3)
in the relevant respect, Mr Logothetis was not representing or acting for Lomar. Of course, as an individual, and as or speaking for Libra, he was in a position to tell Mr Pisante what Lomar was doing with KKR and how he (Mr Logothetis) was inviting Mr Pisante to be involved, indirectly, in that venture. Stated in those very general terms, that is the subject matter of the misrepresentations it is said he made. But in my judgment, that does not render Lomar liable.

223.
My conclusion, then, is that the viable claim here, if made out on the facts, is a claim by Swindon against Libra to rescind ETFA 3 on the ground of fraud and for monetary or other relief consequent upon rescission and/or a claim by Swindon against Libra and Mr Logothetis personally for damages for deceit, taking care over any question of election between remedies (if it arises) and the need to

avoid any double-counting if monetary relief consequent upon rescission and damages are both awarded. There is no claim by Mr Pisante or BCA, and no claim against Lomar.

General Points

224.
On both sides, general points were relied on as overarching submissions concerning the plausibility (so the claimants said) or implausibility (so the defendants said) of the fraud case being advanced. I have touched on some of them already, but it is convenient to consider them together now before turning to the individual misrepresentation allegations on which the case depends. They are important aspects that I have borne in mind throughout, both because they indeed arch over (or to mix my imagery, they underpin) the parties' particular submissions as to whether the individual allegations work and/or were made out on the evidence, and because they ensure, if borne in mind throughout, that (as Mr Allen QC put it) the court does not get lost in the detail of the forensic weeds so as to fail to stand back and survey the landscape as a whole.

225.
The defendants advanced five such general points, although there was some overlap.

226.
First, the defendants said, Mr Logothetis and Mr Pisante were close friends and Mr Logothetis thought highly of Mr Pisante. I agree with that. It was said that, therefore, "It is, to say the least, inherently unlikely, against that background, that Mr Logothetis would have set out to defraud Mr Pisante". I agree with that too, and do not believe that Mr Logothetis practised here any calculated or pre-meditated confidence trick upon Mr Pisante (although there was some material justifying such a case being put, as Mr Béar QC fairly did). That must rightly be recalled throughout; but it may not render it inherently implausible that in presenting what Lomar was doing with KKR to Mr Pisante, with a view to persuading him to invest, Mr Logothetis may have said things that, to his knowledge, were not accurate. That requires a closer examination of matters of character.

227.
Second, then, the defendants rightly submitted that Mr Logothetis' character is relevant. They referred first to the fact that Mr Logothetis is a highly successful and respectable businessman of a global group of companies, head of the Libra Group, a multinational business group with diversified interests and activities in approximately 35 countries, the aviation division of which had assets at the time of about US$1 billion. The defendants also relied on an unsubstantiated claim made by Mr Logothetis in his oral evidence that Lomar itself (as distinct from the Libra group as a whole, or Libra specifically at the head of the group) had cash deposits of many tens of millions of dollars. I do not accept that evidence, which is contradicted by the emails originally disclosed in redacted form.

228.
That Mr Logothetis is and has been a successful entrepreneur on an impressive scale says little if anything of relevance about his character. Business history is littered with fraudsters of whom that could be said. There was no good character evidence to support a particularised finding as to Mr Logothetis' respectability, a matter of business and personal reputation, or honesty, in the experience of others. He is entitled to be treated, as Mr Allen QC submitted, as a man of good character in the sense that he has no past history of findings of fraud, dishonesty or sharp practice, and I had that well in mind in my assessment of him.

229.

The defendants submitted, further, that the evidence as a whole (documentary and oral) had shown Mr Logothetis to be an open, honest and transparent character, and that cross-examination had not revealed any basis on which to conclude that he is the type of man who would carry out a premeditated, serious fraud of the type alleged against a close friend. There was again the tilting at the windmill of premeditation. That aside, I do not agree with this submission. I consider that Mr Logothetis does regard himself as open, honest and transparent, but that there is a lack of self-awareness in that respect. This is the flip-side of one of the claimants' general points, namely propensity, so I shall leave that there for now and move to the defendants' third point.

230.
Third, then, the defendants argued that it is telling that Mr Logothetis at no stage sought to hide anything from Mr Pisante about the KKR transaction. As they submitted, Mr Logothetis knew that Mr Pisante had access to in house lawyers and accountants, and that he might read and scrutinise the documents relating to the KKR deal, and was unconcerned about the prospect. Moreover, after the fact, when Mr Pisante (through Mr Iordanides) requested financial information relating to the KKR deal, including original joint venture balance sheets, it was provided promptly and without demur.

231.
The submission was that if Mr Logothetis had knowingly committed a fraud against Mr Pisante of the type that could easily be discovered by provision of this information, he would not have acted in this way, and there would be evidence of concern on his part about Mr Pisante's requests for information. I consider this a significant point, and I agree it renders it inherently unlikely that Mr Logothetis was conscious of having given Mr Pisante misinformation.

232.
My assessment is that there is a balancing plausibility in Mr Logothetis' character (see paragraph 198 above). As Mr Allen QC fairly accepted, none of these general points necessarily answers the charge of fraud in the case, they cannot be more than standing features to be recalled when deciding, on the whole of the evidence, whether the claimants have discharged their heavy burden of establishing fraud. In the case of this aspect, both sides of the point as I have identified them need to be borne in mind in that way throughout, and I have done so.

233.
Fourth, and connected to the third point, the defendants relied on the fact that when Mr Pisante came to make his allegation that he had been misled, Mr Logothetis was upset and taken aback, but responded promptly, and in detail, in terms which are generally consistent with the case he advanced at trial. Mr Logothetis also corresponded internally in terms suggesting that he believed the allegations were wrong and did not think he had anything to hide. Mr Logothetis seems to have been confident that Mr Pisante had misunderstood the position, and that a scrutiny of the relevant documents would show the allegations he was making to be wrong.

234.
That said, as I have noted (paragraphs 179-180 above), Mr Logothetis did not grapple with the central features of Mr Pisante's expressed concerns, namely that Lomar was taking cash out by setting up the KKR joint venture even as he (Mr Pisante) was putting cash in, and that he could not see that, or how, his cash had in fact gone into the joint venture vehicle as he was expecting based on what Mr Logothetis had said to him. Mr Logothetis seems to have focused solely on the narrow point that since he felt that Lomar had substantiated the US$40-US$45 million of value that he and Lomar had talked

about with KKR, there should not be an issue, and that that substantiation would all be in the documents, so the documents ought to clear things up.

235.
As with the third point, therefore, I agree with Mr Allen QC that those matters indicate that, after the fact, Mr Logothetis was not conscious of having misled Mr Pisante in relation to the KKR deal. I had them in mind when finding, as I did in paragraph 198 above, that Mr Logothetis was indeed taken aback when the allegations arose, especially at and after the terrible lunch with Mr Pisante in January 2019. Also as with the third point, the balancing conclusion I noted in paragraph 198 above must be borne in mind, however. In addition, in relation to this point (which picks up several years after the event), I am satisfied that Mr Logothetis had little recollection of exactly what he had said to Mr Pisante so as to be able reliably to assess for himself whether he had or might have said something misleading.

236.
Fifth, and finally, the defendants submitted that Mr Pisante's conduct after the fact was not consistent with an understanding on his part that Mr Logothetis had lied to him about Lomar's investment in OML. Mr Pisante was sent in March 2015 the opening balance sheet for OML showing that Lomar had not made an equity contribution of (anything like) US$40 million, and suggesting that Lomar had contributed only ships, not cash and ships. Yet the complaint that he had been misled, indeed (he had come to think) cheated and defrauded, came only some years later; and in the meantime Mr Pisante had continued his friendship with Mr Logothetis and done other shipping business with him.

237.
Mr Pisante's evidence was that he was "crestfallen", and felt "punched in the gut" on receipt in March 2015 of the OML opening figures; it seemed to him like he had managed to invest c.US$9 million for a 30% share in c.US$9.3 million. The defendants submitted that I should reject that evidence, contending that "it is simply inconceivable that he would have acted in this way [i.e. as summarised in the previous paragraph] had he understood that he was or might have been the victim of a serious fraud." In cross-examination, Mr Pisante agreed it was a mistake on his part not to confront Mr Logothetis much sooner. This the defendants argued was "not a plausible response. If Mr Pisante had really felt crestfallen or punched in the gut, he would at the very least have immediately asked questions."

238.
The defendants also noted that the claimants had pleaded (as part of the claim by Castor that was later struck through when the amount claimed was paid) that when the further joint venture referred to in paragraph 170 above was agreed in or around December 2015 (I assume that meant agreed in principle, since the contract came in March 2016), that was "before Mr Pisante became concerned about the accuracy of the KKR Representations". That is inconsistent with Mr Pisante's evidence concerning the OML balance sheet as seen by him in March 2015. In cross-examination, Mr Pisante was troubled by that and did not claim to have any real answer for it; but having seen the point that was being put to him, he said "I understand, my Lord. You know, I was concerned in December 15, [but] I already had concerns, we know that I had concerns from March." (I have inserted the "but" to make clear the sense that answer had, as given by Mr Pisante.)

239.
These are serious points raised by the defendants, and I considered them carefully in assessing Mr Pisante's evidence and reaching the conclusions I set out in paragraph 193-194 above. I was satisfied,

despite the points made by the defendants, that Mr Pisante's evidence about March 2015 was truthful and reliable, and I accept it.

240.
As one might expect, Mr Pisante's written evidence in chief dealt with the delay between the blow to the stomach, as he said it had been, in March 2015, and confronting Mr Logothetis only in November 2018. In summary, his evidence was that:

(1)
he buried his head in the sand for a period, hoping there was an innocent explanation for the fact that the OML balance sheet was very different to what he had expected and not wanting, by raising concerns, to jeopardise what was by then an important friendship between him and his family and Mr Logothetis and his;

(2)
he participated in the further joint venture through BRE in that same frame of mind, but only having satisfied himself that the commercial proposition was valid and could be overseen by Mr Tavridakis;

(3)
in 2016 he began to address the concern he had that things were not right in, and he had been misled about, the earlier business done with Lomar. He took steps, at the same time as the BRE venture was being documented, to extricate BCA's minority shareholders from the Netley JVA, by having that transferred from BCA to Swindon (in which those shareholders had no interest), and sought (unsuccessfully) to persuade Lomar to re-transfer the Barry Trader and Kimolos Trader to the Netley JVA joint venture. Then in May 2016, via Mr Iordanides, Mr Pisante sought and obtained audited accounts for inter alia OML, under a pretext that they were needed for an audit of Swindon's shipping activities, and in October 2016 he took steps to commission Deloitte to investigate and provide the report they eventually provided in July 2017.

241.
I accept all of that evidence. I consider that it was truthful evidence of events Mr Pisante would not be likely to have forgotten or misremembered, and for which there is good support in the documentary record. The strength of his bewilderment that (as he now saw it) Mr Logothetis had misled him, and of his reluctance to confront his very good friend about that, is only further demonstrated by the fact that Mr Pisante then, in effect, sat on the Deloitte report for another year.

242.
I accept his further evidence on that, namely that he was eventually provoked to grasp the nettle with Mr Logothetis when the shipyard refused to release the Washington Trader, claiming non-payment of instalments though Mr Pisante's side had fully funded its share, and Lomar did not wish to give a guarantee for its agreement to reimburse BRE. Mr Pisante saw this as a tipping point and felt he could not put off confronting his friend any longer. Hence their meeting in November 2018.

243.
For their part, the claimants advanced two general points, for which the evidence overlapped, namely propensity and motive.

244.
First, as to propensity, the claimants submitted that it was "plain from the evidence that the corporate culture at Lomar and Libra (led by [Mr Logothetis]) was one in which individual executives were

content to lie to business partners where it was considered that this would benefit the Lomar business and could be justified by reference to the favourable outcomes that they expected both Lomar and the proposed counterparty to receive from the proposed deal". I agree with that submission, with the qualification that it was not clear to me that the business practice that was evidenced was recognised within Lomar and Libra as telling lies. It should have been, for the practice involved making statements of fact that were known to be untrue.

245.
The candid evidence of Mr Tomazos to which I referred in paragraph 195 above spoke to the modus operandi, and on the whole of the evidence I was satisfied that the corporate culture in that regard was set at the head, i.e. by Mr Logothetis. That was confirmed, in my view, by Mr Logothetis' evidence in cross-examination upon being reminded or shown examples of Lomar deal negotiation lies to be found in the disclosed material, which was to endorse them as normal, to excuse, to seek to justify. It was not to indicate (because, I consider, Mr Logothetis did not have) any sense that they were not, under his leadership, how he expected or wanted Lomar business to be conducted.

246.
Again, I touched on that in paragraph 195 above. To Mr Logothetis' way of thinking, what mattered were the "themes and feelings" (another way of saying motives) behind the use of misleading words, "misleading can be contextual", "the feelings are more important than the words". Allied to that approach, Mr Logothetis acknowledged in relation to one of these points (but I consider this would generalise for business negotiations in which he was involved), "I don't remember exactly the words that I used, I remember the themes and the feelings". Hence the particular cross-examination answer I mentioned in paragraph 197 above, saying that if the Lomar team had told KKR (as they had) that Lomar was the 100% owner of the (contracts for) ships to be contributed to OML, then (a) that would have been untrue, but (b) "I think misrepresentation is a strong word. This happens in business as people negotiate transactions."

247.
That this approach to business negotiation was personal to Mr Logothetis, not only a rogue practice of others below him in Libra/Lomar, was also shown by his early interactions with Mr Pisante that led to the Netley JVA. Thus:

(1)
In May 2013, it was not true, and Mr Logothetis did not when saying it to Mr Pisante believe it to be true, that Lomar had no partners in the newbuilding programme in relation to which he was encouraging Mr Pisante to come on board as a co-investor. Mr Logothetis was unable to give any satisfactory answer for this in cross-examination. He called it "a mistake" but struggled to articulate what he meant by that. Mr Béar QC asked me to say that the answer was dishonest, i.e. there was no sense in which giving this untruth to Mr Pisante was a mistake, and Mr Logothetis knew that when giving his evidence. I understand the submission, but I do not accept it. In my judgment, Mr Logothetis was accepting with hindsight that it had been a mistake to say what he said to Mr Pisante, but was unwilling or unable to acknowledge that that meant he had lied to his friend. In questions that followed, relating to the point I make in the next sub-paragraph, Mr Logothetis gave the revealing self-justification for this episode that "at the end of the day, I was approached, pressed, we sold 50% of two ships to someone at a relatively low point in the market, with great expectations that the market would go up. Shame it took 7 years for that to happen."

(2)

At the time, Mr Logothetis was careful to warn Mr Benny, instructed to move things forward with Mr Pisante, that “He does not know we have partners in other NB’s – please bear this in mind”. Even this involved a positive and misleading spin. There is a significant difference between taking care not to disclose something that has not been disclosed before (and, implicitly, that Mr Logothetis would prefer not to disclose, for whatever reason), and managing the problem that Mr Pisante had been told a positive untruth. Mr Logothetis’ email was plainly designed to give Mr Benny the impression he was dealing with the first type of situation. I do not think Mr Logothetis had any relevant recollection, and (again, tellingly as to his character) appeared not to understand the important distinction I have just drawn or the fact that, obviously, Mr Pisante should have received a corrective message, not a cover-up. I do not accept his explanation that at the time all he was doing was trying to ensure Mr Benny maintained professional distance with Mr Pisante notwithstanding that Mr Logothetis’ primary relationship with him was a personal friendship, and did not disclose confidential information about Lomar’s partnerships. He was choosing to emphasise to Mr Benny to say nothing about other partners (though, in my judgment, Mr Benny would not have been likely to disclose things without checking that he could), because Mr Pisante had been told there were none and Mr Logothetis’ instinct was to leave that where it was rather than correct it, lest it rock the boat.

(3)
The same investment solicitation email contained two further lies to Mr Pisante, namely:

(a)
that the shipyard had been difficult with Lomar and that was why Lomar was not exercising its option, which was false spin, a cover story to explain why Mr Logothetis was picking up on Mr Pisante’s interest in principle in becoming involved by proposing that he take a 50% interest in one or two of the firm ships, something for which in my judgment Mr Logothetis felt he needed a good line to avoid telling a prospective co-investor the much less attractive truth that Lomar had a looming cash crisis over funding their existing commitments;

(b)
that bringing in a co-investor like Mr Pisante was just a general matter of prudent de-risking, whereas (again) the truth is that Lomar, at Mr Logothetis’ specific direction, was engaged in an urgent search for external funds to avert the impending cash crisis.

248.
From the perspective the court now has, which of course includes hindsight, it can be said it was probably unnecessary for Mr Logothetis to spin these lines to Mr Pisante. I do not mean that Mr Pisante would have invested if he had been told about the Lomar cash crisis – I do not think he would have done so – although I do consider that he would not have been concerned if told the true position regarding the existence and then current extent of other investment partners. My point here, rather, is that the starting point of the law is caveat emptor, even in a business deal done by good friends between whom there is an imbalance of available knowledge and information where the less informed friend is trusting of the other.

249.
If Mr Logothetis had found a way of developing Mr Pisante’s initial interest without saying anything factually inaccurate, I envisage the Netley JVA would still have come about. The episode is therefore revealing of Mr Logothetis’ character in the relevant respect. He could not help but approach the sales pitch (because that is still what it was, even if it was Mr Pisante rather than a total stranger or a

ship finance house) on the basis that there should be a story for everything and, in presenting such stories, themes and feelings were (to Mr Logothetis) more important than the words used.

250.
The corporate propensity was shown by how Lomar misrepresented both to ICBC and to KKR the extant arrangements in relation to the newbuilding programme. Thus, Lomar misrepresented to ICBC that it controlled the Barry Trader and the Kimolos Trader and that it only had one partner (not being Mr Pisante/BCA). The intention was that by the time any deal with ICBC closed, Lomar would have been taken off the books, but that does not justify the misstatement of the extant position.

251.
Cross-examined as to that, Mr Logothetis saw the misrepresentation as justified: “I think in this particular case if it achieves the excellent terms for the financing that ultimately got done, some flexibility is normal business practice, I would go so far as saying.” To similar effect in relation to KKR, as I have mentioned twice already, Mr Logothetis felt there was some subtlety so that it was a “strong thing” to label the false statement of fact made to KKR a misrepresentation.

252.
There was also (as to corporate approach) a revealing answer by Mr Benny. He agreed that, in an email of his in relation to what became the Netley JVA, and the possibility that there was a discrepancy between what the accounts recorded and what Mr Logothetis had told Mr Pisante, he was saying that the books should be altered to fit the misrepresentation.

253.
I do not accept Mr Allen QC’s submission that to reach the conclusions as to propensity or business approach that I have reached from the material available is to blow a few minor incidents out of proportion. Firstly, the claimants are inevitably restricted in their exploration of these points to material sufficiently related to the main issues as to have come through in disclosure. It would have been regarded as disproportionate to suggest that this litigation should extend to a more wide-ranging audit of Libra and Lomar’s business practices. Secondly, I do not regard the particular incidents found in the disclosure as minor. Thirdly, the evidence extended, in exploring those incidents, to the attitudes underlying and generating them.

254.
Overall, I accept the submission by Mr Béar QC that “if there were no deliberate misrepresentations or knowing or reckless misrepresentations made to Mr Pisante in relation to his participation in the KKR JV, then that would be the only transaction, the only interaction, with anybody that your Lordship has seen detailed evidence on in this case where there would not have been …, it would be unusual in its honesty.” That is not a basis for finding the fraud alleged to be proved (see again paragraph 199 above); but I consider that the general submissions by Mr Allen QC as to the inherent implausibility (as he contended) of the claimants’ case are very substantially muzzled.

255.
For completeness, though, I do not accept one further instance relied on by Mr Béar QC as clear evidence of propensity further supporting the conclusions I have reached. In preparation for what turned out to be the major confrontation over lunch in January 2019, Mr Logothetis was understandably concerned to be reminded from the documents of how the business of Lomar contributing value of US$40 million was dealt with. In one email, he asked Mr Tomazos to dig out a copy of the KKR term sheet, emphasising that he was interested in seeing “The ORIGINAL one”. Though Mr Logothetis in cross-examination seemed to struggle somewhat to accept this simple truth,

he was obviously in that email recalling that the original draft term sheet prepared by Lomar made specific reference to valuing Lomar's equity contribution at US$40 million.

256.
Notwithstanding that rather unattractive passage of evidence, I am not satisfied that Mr Logothetis had in mind to show that term sheet to Mr Pisante and pretend it was the final deal, when of course it was not, which was the submission made by Mr Béar QC. The difficulty with what Mr Logothetis had said to Mr Pisante about the value of the proposed Lomar contribution concerns what precisely it caused Mr Pisante at the time to think was being valued at US$40 million. I do not believe that Mr Logothetis was conscious in January 2019 of that important subtlety.

257.
Second, as to motive, the claimants say, and I agree on the evidence, that the impending cash crisis at Lomar created a clear incentive to say whatever might be thought necessary to persuade Mr Pisante to invest (likewise, to get the ICBC and KKR deals through). There is an overlap with some of the points I have just been discussing, of course, because without doubt one element of what I have said was misleading spin, given to (all of) Mr Pisante, ICBC and KKR, was presenting the Lomar newbuilding programme as one that was not creating any fiscal difficulty for Lomar, so as to avoid disclosing the cash flow concerns. Beyond that important explanatory link for some of what was said, I do not consider the evidence of Lomar's need for cash adds materially to the claimants' case as to propensity.

258.
That is not only a matter of making sure not to count twice a feature of the case adverse to the defendants, given the connection between the two general points. It is that motive as a truly separate point, at all events in this case, says that Lomar and Mr Logothetis set out to deceive, and I do not believe they did.

259.
I turn, then, to consider in turn the elements of liability on the deceit claim pursued at trial.

Materiality / Intention to Induce

260.
I start with the simplest points, which have relevance to all of the alleged representations. Mr Logothetis' purpose, in describing and explaining the KKR deal in prospect to Mr Pisante in May and June 2014, was to persuade him to invest indirectly in it, and especially to 'roll over' his ICBC cash so it was invested indirectly in that deal, over and above agreeing to the K Ships going in. Furthermore, he understood that he was Mr Pisante's source of information about the KKR deal and what it would involve, and expected that what he told Mr Pisante in that regard would be a factor in any decision by Mr Pisante to invest. As Mr Logothetis put the last point in cross-examination, "some of it is what I said, the rest is his own balance sheet, how much risk he wants to take, how he feels that day, does he believe in the market."

261.
I am satisfied, therefore, that what Mr Logothetis told Mr Pisante about the KKR deal in prospect was said with intent to induce him (a) to confirm his willingness to the K Ships being put into the KKR deal and (b) to decide to roll over his ICBC cash, leading to a contract such as ETFA 3.

262.

Moreover, a description or explanation of the KKR deal in prospect, provided by Mr Logothetis to Mr Pisante with a view to persuading him to invest, was plainly material to any such investment decision by Mr Pisante. That renders inherently plausible Mr Pisante's claim, and evidence, that what Mr Logothetis told him did influence his decision (he relied on it and invested because of it), and in law creates a rebuttable presumption that it did so (albeit I consider the facts clear without the need for the claimants to rely on that presumption).

Misrepresentations

263.
For convenience, I repeat that as finally formulated for and pursued at trial, the claimants allege misrepresentations to the effect:

(1)
that "VP's ICBC cash (the $6.25m) would be invested into the KKR joint venture";

(2)
that "Lomar would be making an equity contribution to the KKR JV which (a) would include both cash and ships; and (b) would be approximately $40m";

(3)
"By implication from the parties' established course of dealing, that VP and Lomar would be treated equally".

Representation (1)

264.
I have the following initial observations concerning the alleged representation that Mr Pisante's ICBC cash "would be invested into the KKR joint venture":

(1)
the claimants' formulation does not distinguish between Mr Pisante and his companies – he personally would have no entitlement under ETFA 1, which would be between Libra and Swindon – but in that regard, the claimants' formulation is loyal to how matters would have been articulated between Mr Pisante and Mr Logothetis, i.e. Mr Logothetis would indeed have talked to Mr Pisante about 'your cash', 'your ships', 'your share of the K Ships', etc., and to others he would have referred to 'his cash', etc.;

(2)
Mr Pisante was not told, and did not understand, that there was any thought that he (through one of his companies) would actually be in the joint venture;

(3)
Mr Pisante was not told, in terms, that his cash would go into the joint venture company;

(4)
as I have said already (paragraph 220 above), given sub-paragraphs (2)-(3) above, Mr Pisante could not sensibly have thought at any stage that he would be paying money into the joint venture vehicle, and he knew by the time he actually released his US$6.25 million to Libra that the KKR joint venture had already closed – and so Lomar must already have made whatever equity contribution it was making – nearly three months before.

265.
The allegation of a relevant representation, then, is founded upon the fact that Mr Logothetis described what he was inviting Mr Pisante to consider doing with his ICBC cash (the US$6.25 million, as things turned out) as a ‘roll over’ of that money ‘into the KKR joint venture’. I am confident on the evidence that Mr Logothetis did use that language. Indeed, that was not in dispute.

266.
The difficulty for the claimants is that those words, as used in context by Mr Logothetis, do not themselves carry any particular meaning beyond this, namely (as Mr Allen QC put it) that “rather than cashing out his investment, Mr Pisante would reinvest it in a larger deal”. Saying that Mr Pisante’s cash would ‘roll over into the KKR deal’ (or something to similar effect) says only that it would be put at risk by reference to that deal, begging the question of how exactly that would be done, i.e. what (type of) transaction, more precisely, Mr Pisante was going to do.

267.
It was a natural use of language to say that the cash would ‘roll over’ because of, and as a reference to, the proposed source of funds. It identified that Mr Logothetis was asking Mr Pisante to think about the funds about to fall due to him thanks to the ICBC deal and whether he wanted to take them out as cash or reinvest. As regards the proposed destination of funds, what Mr Logothetis said to Mr Pisante was no different than if, absent any imminent entitlement under ETFA 1, he had simply asked Mr Pisante to consider putting some cash ‘into the KKR deal’, or ‘into the new Lomar joint venture with KKR’, or the like. Given the appreciation that both men had, and that each knew the other to have, that they were not talking about Mr Pisante sitting alongside Lomar as a party to the joint venture, the only response that language, for its own part, would reasonably elicit is ‘meaning what exactly?’, the answer to which being (in context) ‘buying an ETFA referenced to OML’.

268.
In fact, recalling that Mr Pisante was confirming at the same time that he was happy for the K Ships to be put into OML, with his 50% being translated into an ETFA, that answer would have been, more completely, ‘buying a second ETFA (or larger ETFA) referenced to OML’. Or again, with ETFA 3 in his hands, if asked what he had done with his US$6.25 million, Mr Pisante could sensibly have answered, and I think probably would have answered, ‘it has gone into Lomar’s new joint venture with KKR’, simply on the basis of its having been used to buy ETFA 3 from Libra.

269.
Notwithstanding all of the above, I am satisfied that Mr Pisante did come away from what Mr Logothetis told him about the KKR deal in prospect thinking that if he rolled over his ICBC cash, it would go into the joint venture vehicle (in the event, OML), but in the indirect sense that it would effectively fund that much of Lomar’s cash contribution to that vehicle. However, that is because Mr Logothetis told him in the key telephone call on 12 May 2014, as I find below, that Lomar was contributing cash and ships. It is not because being told that his funds would ‘roll over into the KKR deal’ (or similar) itself connoted that.

270.
Understanding that Lomar was putting in cash, and that he was indirectly providing cash, makes it a logical and reasonable conclusion to reach that, in business terms and whatever the exact legal structure, Mr Pisante’s cash would be used indirectly as part of providing OML with its initial capital, or funding that provision after the fact. That does not posit, as Mr Allen QC argued, an understanding by Mr Pisante that Lomar’s contribution to OML would be greater or lesser depending on whether he

rolled over his cash. It posits the understanding Mr Pisante in fact had, namely that Lomar was negotiating a deal under which it would contribute US$40 million, and if Mr Pisante rolled over his cash, Lomar's contribution would to that extent be funded effectively by Mr Pisante, whereas if he did not then Lomar would have to fund it without the benefit of Mr Pisante's cash.

271.
In that regard, I do not accept an answer Mr Logothetis found himself giving at one point in his cross-examination which appeared to suggest a recollection of drawing a distinction, when speaking to Mr Pisante, between the ships, which would go into the joint venture vehicle, and any cash rolled over, which would not. Mr Logothetis appreciated that distinction at the time, since he knew that the KKR deal in prospect did not involve any cash contribution from Lomar; but he did not explain that to Mr Pisante.

272.
As that discussion demonstrates, it is not possible to treat entirely separately the different strands of what Mr Logothetis said to Mr Pisante when it comes to identifying and explaining what Mr Pisante understood, and why. On the more immediate question of whether the first of the representations alleged by the claimants was made, by Mr Logothetis inviting Mr Pisante to 'roll over' his ICBC cash 'into the KKR joint venture' (or similar), the answer is that it was not.

273.
For completeness, I also do not accept in relation to this first basis for the claim that a representation of fact was made at all by what Mr Logothetis said. I agree with Mr Allen QC's submission that asking if Mr Pisante would like to 'roll over' his cash, or proposing that he do so, is by nature an invitation to treat, not a statement of fact, begging the question of what type of new transaction was being proposed (see paragraph 267 above). That is because it was by way of shorthand description for a transaction that Mr Logothetis (for and on behalf of Libra and/or Lomar) might agree in principle with Mr Pisante (for and on behalf of one or more of his companies), getting others then to draw something up to give it legal effect. It was not by way of description or explanation of the KKR joint venture in prospect, as it was being negotiated between Lomar and KKR, which I have said could amount to or involve a representation as to present fact (see paragraphs 211-212 above).

Representation (2)

274.
By way of immediate contrast, however, if Mr Logothetis told Mr Pisante, as Mr Pisante reported contemporaneously to his colleagues that he had, that Lomar's equity contribution to the KKR joint venture (a) would include both cash and ships, and/or (b) would be approximately US$40 million, he would obviously have been talking about what the KKR deal under negotiation would provide for (if concluded). That did not involve a promise that any final deal would be in that form, but it did involve a representation as to present fact, namely the terms and effect of the proposed KKR deal as they then stood.

275.
Strongly supported by that contemporaneous report of what he had been told, and on my assessment of Mr Pisante's testimony about it, I have no doubt that Mr Logothetis did tell Mr Pisante in their telephone conversation on 12 May 2014 that Lomar would be contributing "cash and ships", as well as that Lomar's equity contribution would be US$40 million. It overstates the position to say, as Mr Béar QC submitted, that Mr Logothetis conceded both parts of that. He did accept in evidence that he told

Mr Pisante that Lomar would be contributing equity of US$40 million. More formally, the defendants conceded the point at trial to this extent:

(1)
In their skeleton argument, the defendants agreed that “Mr Logothetis made a representation on the call of 12 May 2014 about the value of Lomar’s intended contribution”, and that “the contemporaneous evidence suggests that he told Mr Pisante that Lomar was intending to contribute approximately US$40 million to the KKR joint venture.”

(2)
In their written closing argument, the defendants accepted, more simply, that “during the telephone call on 12 May 2014, Mr Logothetis stated to Mr Pisante that Lomar was intending to contribute approximately US$40 million in equity to the joint venture.”

276.
I do not think it probable, however, that Mr Logothetis would have expressed himself in terms of Lomar’s intention, as the defendants’ concession has it. He was describing and explaining to Mr Pisante the structure of the KKR deal in prospect. His language will have been that of what Lomar would do under that deal, which amounts to or involves a statement as to then present fact, namely what the terms for the proposed deal as they then stood provided for. I consider it correct to say that also involved an implied statement as to Lomar’s intention, since the tenor of the conversation as a whole was that Lomar intended to transact with KKR along the lines that Mr Logothetis was explaining.

277.
Mr Allen QC relied on the fact that the US$40 million representation was originally pleaded as US$40-45 million. Mr Pisante was cross-examined about that. In my judgment, the original pleading indicated no more than counsel properly hedging their bets on how the evidence would come out, given that they had (and pleaded reference to) both Mr Pisante’s 13 May 2014 email saying he had been told US$40 million and Mr Logothetis’ email to Mr Pisante in November 2018 saying he had said US$40-45 million. Mr Pisante said he regarded his recollection of what Mr Logothetis actually said, viz. about US$40 million, as consistent with the pleading, but was clear (and I accept) that that was and is indeed what he recalls. This pleading point, and the cross-examination of Mr Pisante on it, did not leave me concerned, as Mr Allen QC submitted it should, as to the reliability of Mr Pisante’s recollection of what Mr Logothetis told him; and it was a very long way away from justifying the further submission he made that Mr Pisante was shown to be willing to say whatever he thought most helpful to win the case, whether true or not.

278.
It was also submitted for the defendants that Mr Pisante must have appreciated that there was something not right about his claimed understanding of Lomar’s deal with KKR (US$40 million in cash and ships), because on that basis his US$9 million (50% of the K Ships, plus US$6.25 million) should have given him 22.5%, not 30%, of Lomar’s total. Mr Pisante realised at the time, as he made clear in his evidence and as was evident from a spreadsheet prepared by Mr Iordanides in May 2014 that indicated this, that he was in effect being told that his US$9 million would translate into US$12 million within the joint venture vehicle’s accounts. I accept his evidence that he did not know or understand what exactly generated that effect, if it was real (in one answer he indicated he thought it seemed “too good to be true”), but it did not cause him to realise either (a) that the ships were going in at anything other than cost, or (b) that Lomar was not making a substantial cash contribution as

well as putting in ships. If this investment was not with Mr Logothetis, whom he trusted, I consider he may have asked more questions, and perhaps he should have done even though it was Mr Logothetis. He did not, however, given the personal relationship, and so he did not come to realise, or suspect, that he had an inaccurate understanding of what Lomar was doing with KKR until March 2015.

279.
As regards “cash and ships”, Mr Logothetis did not remember whether he had said that. His acceptance that he might well have done so conceded the plausibility of the claim that he did, but that is not an admission that the words were said. Mr Béar QC noted, in addition, that Mr Logothetis accepted in cross-examination that Mr Pisante’s email was an accurate note of what had been said; but I do not believe he was then remembering anything more than he had previously remembered. The gist of that answer, in my judgment, was an acceptance that the state of his recollection meant that, as a witness, he was unable to dispute the accuracy of Mr Pisante’s email.

280.
The claim that “cash and ships” was said is plausible not only because of Mr Logothetis’ concession that he might well have said it. The general basis for Mr Pisante’s shipping investment activity with Mr Logothetis was that he was happy to follow Lomar’s lead, i.e. do as it did. The target for Mr Logothetis on 12 May 2014 was to get Mr Pisante to commit in principle to rolling over his cash, or at least confirm that he would consider it, so that it would be, from Mr Pisante’s perspective, invested in the KKR deal. That is to say, Mr Logothetis was hoping to get Mr Pisante (as he (Mr Pisante) would see it) to invest cash as well as ships in the KKR joint venture.

281.
So the theme was the KKR deal in prospect, what it was and how it would work as between Lomar and KKR, and the feeling to be generated was one of comfort on Mr Pisante’s part that it would be a good investment destination not only for the K Ships but also for free cash otherwise about to become available to Mr Pisante from the ICBC deal. On the evidence, I consider it entirely plausible that Mr Logothetis found himself telling Mr Pisante that Lomar was putting in “cash and ships”, because that is what he was asking Mr Pisante to do, and the themes and feelings of the discussion were more important for Mr Logothetis than the words he used.

282.
It is simultaneously true that, from Mr Logothetis’ point of view, it made no sense to suppose that Lomar would put cash in, as well as ships, given how hard he and the Lomar team were working to try to find ways of getting cash out. But Mr Pisante did not know any of that.

283.
It is not true in a more general, abstract, sense, as Mr Logothetis said in his evidence and Mr Allen QC submitted, that it would make no sense for Lomar to be putting cash in (to the KKR deal), given that its main feature (as Mr Pisante understood) was a huge funding commitment (up to US$125 million) by KKR. To the contrary, and as Mr Béar QC submitted, so far as anyone could tell who was, like Mr Pisante, outside the Lomar-KKR negotiations, it might well have been the case that KKR wanted more Lomar skin in the game than just the eight (part-built) ships, by way of base capital, as part of the price for its massive funding commitment. Mr Pisante would not have had reason to question the notion that Lomar was putting in “cash and ships”. There was not an inherent (abstract) implausibility about that proposition.

284.

Further, I am satisfied on the evidence that when Mr Pisante, initially in March 2015 and thereafter in 2016-2017, sought to understand what had been done, he was looking to see where cash had gone in to OML by way of seed capital from Lomar, expecting to find such cash in the accounts. Realistically that can only be because his understanding from what Mr Logothetis had told him about the KKR deal in prospect was that there would have been such a cash contribution. Moreover, for completeness and as Mr Pisante was able to recall and explain in his oral evidence, he was not concerned to know exactly how much cash Lomar was putting in, because he trusted Mr Logothetis and because he had a good enough general understanding of the shipbuilding programme to assess that, since the part-built ships would be accounted for at cost in the joint venture vehicle's books, if Lomar's equity going in was US$40 million, then the cash going in had to be much greater than the (up to) US$6.25 million he was being invited to put at risk.

285.
In the context of a discussion as to whether Mr Pisante would be happy to put his free cash into the KKR deal, in addition to ships (i.e. his share of the K Ships), there was nothing ambiguous about a statement by Mr Logothetis that the deal in prospect was for Lomar to contribute "cash and ships". It meant, Mr Pisante understood it to mean, and in my judgment Mr Logothetis in that moment must have realised and did realise that it meant, cash as well as (separate from and in addition to) the (part-built) ships. That is why Mr Pisante did not think particularly hard about putting cash in to his investment in the KKR joint venture, as well as (his share of) the K Ships. He was in that respect (as he saw it) doing as Lomar was doing; and I accept his evidence that he would not have put his free ICBC cash in if he had not thought that Lomar was putting cash in – indeed, I do not believe it would have occurred to him to consider doing so. I also agree with Mr Béar QC's submission that when, in an email to Mr Kouligkas in early March 2015, Mr Logothetis described "the way this was done" as "we approx. contributed I think $40 million of equity or maybe more … some this was from us (equity in the YJZ and GWS, cash), some from VP shares in the vessels and some from the $6.25 million he was due on ICBC." (my emphasis), the probability is that Mr Logothetis was in fact recalling how he had explained the KKR deal to Mr Pisante, rather than what Lomar actually did.

286.
On that point, Mr Allen QC noted that in the Reply, the claimants pleaded that in the relevant conversation, "Mr Pisante was told by Mr Logothetis that the cash sum of $6.25 million would be invested by Lomar in OML. In particular, Mr Logothetis said to Mr Pisante that Mr Pisante would be contributing cash and ships to the joint venture in return for a 30% share of Lomar's share in the joint venture." It was put to Mr Pisante that his evidence was inconsistent with this pleading. Mr Pisante did not agree. The cross-examination on this point also did not cause me to doubt the reliability of his basic recollection of what he was told. There is a need to bear in mind the possible distinction between what Mr Logothetis actually said, what it meant, without more, and what, in consequence and overall, Mr Pisante took away.

287.
In my judgment, that pleading in the Reply was focused upon the last of those and not upon drawing those finer distinctions. Mr Pisante's recollection is clear, namely that:

"A. … this [referring to the Reply pleading] is what we discussed. I mean, my contribution to KKR could only be the three vessels we had jointly, plus some or all of the cash from ICBC, that was going to be my contribution.

Q. So you agree that George said that you would be contributing cash and ships?

A. We were both contributing cash and ships … we were going into this together –

Q. … Do you accept that George said to you that you would be contributing cash and ships?

A. No, I don't remember if he said to me but I remember he said that he was contributing cash and ships, in – in effect, in practice, I was also going to follow by contributing the ICBC cash and the three K ships.

Q. But this isn't what you say here [in the Reply], you don't say in effect or in practice, you say that Mr Logothetis said to you that you would be contributing in cash and ships, you're equivocating.

A. I am not equivocating, I am 100 per cent certain that Mr Logothetis told me that he was contributing around 40 million into the KKR joint venture in the form of cash and ships. It follows that my contribution, which was the ICBC cash and the K ships, is also the same, I am not sure I understand –

Q. Well, I think you do understand. Here, Mr Pisante, you [see] you authorise [it] to be said that Mr Logothetis said to you that you would be contributing cash and ships. Now, did Mr Logothetis say that to you?

A. I stand by my witness statement, paragraph 35. Mr Logothetis told me he was contributing 40 million in equity in the form of cash and ships. He told me that. I'm 100 per cent certain."

288.
Mr Pisante's '100% certainty' was, I think, an overstatement in the heat of the cross-questioning. But it did not cause me to doubt that he still recalls being told that Lomar's equity contribution would be about US$40 million by way of "cash and ships", and making at the time the reassuring connection that therefore the invitation to invest in the KKR deal his ICBC cash, and not just his share of the K Ships, only invited him to follow what Lomar was doing.

289.
I am conscious that the focus here is upon a single conversation, for which as Mr Pisante explained he stepped out of a meeting at JP Morgan's offices in London in connection with his primary real estate investment business. However, it was a full enough conversation for Mr Logothetis to report at the time that he had spoken to Mr Pisante at length about everything relevant, it was a telephone call initiated by Mr Logothetis for the specific purpose of updating Mr Pisante about the KKR deal and explaining to him more about it than they had discussed before, so as to persuade him (if he could) to confirm willingness for the K Ships to go in, and to agree in principle to roll his ICBC cash in as well, and it was a conversation between two close friends who were also sophisticated businessmen, comfortable with a substantial level of trust and informality in relation to the shipping investment business they had come to be doing with each other. I am satisfied that what was said on the call was intended to be, and was, taken seriously as Mr Logothetis' description of the transaction structure between Lomar and KKR by reference to which he was proposing that Mr Pisante invest, in particular, the cash of US$7 million or so (in the event, more precisely, US$6.25 million) to which the ICBC transaction was about to entitle Mr Pisante. In my judgment, there is no difficulty, if the necessary facts are otherwise established, in holding that a liability for deceit arose out of what Mr Logothetis told Mr Pisante on the call.

290.
Since Mr Logothetis did not recall the detail of the conversation, he was not in a position to claim recollection of what, at the time, he meant by telling Mr Pisante that Lomar's contribution would be in

“cash and ships”. In his written evidence in chief, he said that if he had used those words, he “would have been referring to (a) the cash that had gone in (to pay the shipyards), plus any cash that would go in going forward and (b) the equity in the ships that existed at the time. This was our contribution to the KKR deal.” To be clear, as he clarified in cross-examination, what Mr Logothetis had in mind in that evidence, by the second part of element (a) (“any cash that would go in going forward”), was any pre-delivery instalment amount that had not yet fallen due but would have done so and been paid prior to the effective completion date of the KKR deal.

291.
I do not accept that Mr Logothetis would have had that meaning in mind when telling Mr Pisante that Lomar would be putting in “cash and ships”. It is a strained and unnatural meaning, and not, in my view, a use of language that anyone honest in Mr Logothetis’ position in May 2014 would have made. Being unwilling or unable to challenge Mr Pisante’s clear recollection (and contemporaneous record) as to what Mr Logothetis had said, and accused of fraud by reference to it, I consider that Mr Logothetis saw it as a forensic necessity to come up with a meaning for the language seemingly used that he could then say he would have believed to be true at the time. This evidence was thus an attempt to create plausible deniability. But it was an attempt that failed. I am confident that if Mr Logothetis meant to explain to Mr Pisante that Lomar would be contributing ships and that that contribution was being valued in a particular way (his (a) plus (b)), that is what he would have explained and he would never have said that that contribution amounted to putting in “cash and ships”.

292.
Mr Allen QC relied on the email from KKR referred to in paragraph 112 above. He said that might have been in Mr Logothetis’ mind when speaking to Mr Pisante on 12 May 2014, causing him to refer to “cash and ships” in the meaning just discussed. I do not accept that possibility. KKR’s email stated in a neat summary form that they were being asked to consider that Lomar’s prospective contribution of ships would bring value to the joint venture that might be calculated as ‘cash deployed’ plus ‘mtm’, that is to say book value plus anticipated profit. Mr Logothetis, I am sure, understood that at the time. It would have informed what he said to Mr Pisante if he had chosen to explain that Lomar would be contributing ships and KKR was looking to be satisfied that those ships had the realistic potential to provide value of US$40 million in due course. It would not have caused him to describe Lomar’s prospective equity contribution of ships (only) as Lomar putting in “cash and ships”.

293.
Though the nature of Mr Logothetis’ evidence, therefore, was not to deny that he would ever have said “cash and ships” because he would have known it to be untrue, I have considered carefully nonetheless Mr Allen QC’s plea to the inherent unlikelihood, as he contended, that Mr Logothetis would tell his good friend Mr Pisante something about the KKR deal, appreciating as he said it that it was not true. In my judgment, the evidence outweighs any such inherent improbability, and does so by a clear margin. I consider that Mr Logothetis said what it seemed to him in the moment needed to be said to generate the feeling he wanted to generate, not troubling over the accuracy of what he was saying.

294.
I turn to the meaning of what Mr Logothetis said about US$40 million. It is common ground that he said it was (the value of) the “equity” that Lomar was contributing. The complexity of the corporate and financing structures aside, the business reality here is that Mr Logothetis and Mr Pisante were shipowners talking about their co-owned ships, and as I noted earlier in this judgment, in that context

the word ‘equity’ is capable of referring to what the ships are worth, or will be worth as regards incomplete newbuildings, net of any ship-specific borrowing. As a common use of language, shipowners have equity (or net equity) in their ships, as mortgagor homeowners have equity in their mortgaged homes.

295.
So there is capacity here for ambiguity, depending on exactly what was said. If Mr Logothetis had said to Mr Pisante what he claimed at trial he might have meant by saying “cash and ships”, i.e. if he had said that Lomar would be contributing (a) the cash invested in the ships and (b) “the equity in the ships”, that would not have been an ambiguous use of the word ‘equity’. The sense would plainly have been that of a shipowner’s equity in his ships. It would have been an unusual use of the word ‘equity’, however, because in that meaning the shipowner’s equity would include his cash invested. The use of language by KKR in the email considered in paragraph 292 above illustrates that point. It distinguished between cash deployed and mark-to-market (future) profit as the two elements that would between them make up the shipowners’ equity in the ships when they were fully built and delivered. It would not have occurred to them, or to Mr Logothetis, to point to the mark-to-market element and say ‘that is the shipowners’ equity’, treating the cash deployed as something other.

296.
Mr Logothetis believed that the eight (part-built) ships to be contributed to OML represented future value of about US$40 million for the joint venture, in that he believed that the ships would all be fully built and delivered, and would at that point provide between them shipowners’ equity of (at least) US$40 million. Of course, nothing was guaranteed, so that was an opinion involving anticipation and estimation, but even without KKR having in terms confirmed whether they agreed with that valuation, Mr Logothetis had reasonable grounds for his belief.

297.
The difficulty for Mr Logothetis, however, is that that is not what he said. Even as conceded by the defendants, he told Mr Pisante that Lomar was to contribute “approximately US$40 million in equity to the joint venture”. Whereas “equity in the ships” would give one sense to the word ‘equity’, in my view “US$40 million in equity to the joint venture” reasonably would give it the different sense of shareholders’ equity in the joint venture vehicle. I am sure that is the meaning Mr Pisante put upon what he was told would be US$40 million.

298.
Furthermore, Mr Logothetis did not say only that Lomar would contribute about US$40 million in equity. He said it would contribute US$40 million in equity in the form of cash and ships. That could only reasonably be taken as a use of the word ‘equity’ to mean shareholder’s equity – in context, Lomar’s seed capital to the new joint venture company (in the event, OML).

299.
As a statement concerning the terms of the KKR deal in prospect, and as a statement of Lomar’s then present intention, that was a misrepresentation. Those terms did not provide for an equity contribution of US$40 million by Lomar as shareholder, and Lomar did not intend to make such a contribution. It intended to contribute, and the proposed terms provided for it to contribute, in return for its shares in OML, eight ships that would constitute shareholder’s equity of more like US$10 million, and nothing like US$40 million.

Representation (3)

300.
I can take this final alleged representation more shortly. I think it adds nothing in view of the conclusions I have reached about how Mr Logothetis described the equity contribution Lomar would make under the KKR deal in prospect.

301.
It was Mr Logothetis' and Mr Pisante's joint understanding that no distinction would be drawn within the KKR joint venture between the two 50% shares in the K Ships. I need make no finding as to whether a representation to that falls to be was implied from the absence of a statement informing Mr Pisante that there would be unequal treatment of those shares, which is what the claim of an implied representation amounted to. Any such implied representation, if a matter of fact, would have been true and believed by Mr Logothetis to be true.

302.
The claimants argued that the implied representation they alleged was falsified by the fact that, under the contribution agreement to prepare OML for the KKR joint venture (paragraph 149 above), Lomar received, in part, cash for its contribution of (the SPVs that held the contracts for) the K Ships, and Mr Pisante (through Swindon) did not share in that cash. However, that was not some unequal treatment, within the KKR joint venture, of Lomar's 50% and what had been BCA's 50% of the KKR that had been translated into Swindon's derivative investment under ETFA 2. Swindon was entitled to 50% of that cash generated for Lomar, by operation of ETFA 2. Mr Logothetis did not say anything to imply that by giving up ETFA 2 (plus the US$6.25 million in cash) in return for ETFA 3, Swindon would not be giving up that entitlement; and in any event I cannot say that ETFA 3 did not involve, in effect, Swindon receiving that 50% (see paragraph 151 above).

303.
As regards the US$6.25 million, given that Mr Pisante understood that Lomar was putting in cash as well as ships, it is no surprise that he expected his US$6.25 million to be treated via ETFA 3 in the same way, pari passu as to the amount involved, as Lomar's cash contribution (indeed, as he saw it, his US$6.25 million would effectively fund, indirectly, that much of Lomar's cash contribution). The operative and important statement, therefore, was that Lomar was putting in "cash and ships", without which there would have been no question of Mr Pisante investing cash and ships.

304.
Had Mr Pisante not been told that Lomar was putting in cash as well as ships, I do not see how there could be any implied representation that his US$6.25 million cash investment would receive equal treatment, pari passu, with some investment of Lomar's. Ex hypothesi, he would have been told that there was no equivalent investment on Lomar's part. I say that because it is not credible to posit that in the absence of "cash and ships", nothing would have been said to Mr Pisante about what Lomar was putting in to the KKR joint venture. He was always going to be told that the KKR deal in prospect was one that provided for the eight Lomar ships, including the K Ships, to go in. Had he not been told that it would also provide for Lomar to put in cash, Mr Pisante could only sensibly have understood that Lomar would be putting in only those ships.

Conclusion

305.
For the reasons set out above, I conclude and find that on 12 May 2014, Mr Logothetis did misrepresent to Mr Pisante that the KKR joint venture deal being negotiated by Lomar was one under which Lomar would contribute US$40 million in shareholder's equity by contributing both ships (in

context meaning, as both of them appreciated, shipbuilding contracts held by companies within the Lomar group, or those companies themselves) and cash (meaning cash in addition to and separately from the ships to be contributed). For the purpose of spelling that out in that way, I have found it convenient to refer to ships before cash. The gist of what Mr Logothetis said had the words the other way round. It was, as Mr Pisante reported internally at the time, that "the Lomar equity contribut[ion] to the joint venture in cash and vessels will be approximately $40 [million]"; and I accept further that as regards "cash and vessels", the words Mr Logothetis actually used, which were memorable and have stayed with Mr Pisante, were "cash and ships".

306.
That was a representation as to a matter of present fact, viz. that for which the proposed terms of the KKR deal as they stood provided, and carried with it a statement of Lomar's intention, and in both respects it was a misrepresentation in both of its aspects:

(1)
the deal being negotiated with KKR was one under which Lomar would not be contributing cash, nor did Lomar have any intention of doing so, to the contrary at the time of Mr Logothetis' relevant explanations of the deal to Mr Pisante, in May and June 2014, at all times thereafter, and in the final deal as done: (a) Lomar's contribution was to be (and was) only the eight ships; and (b) far from putting any cash in, Lomar was to be entitled to (and in fact became entitled to and received) US$5 million in cash out;

(2)
the eight ships thus to be contributed, and in fact contributed, were not and were never going to be shareholder's equity of US$40 million in the joint venture vehicle (in the event, OML), rather they would amount to shareholder's equity, properly accounted for, of more like US$10 million in OML, the US$40 million of 'value' that Lomar had sought to persuade KKR to consider as available from Lomar's contribution representing, for the most part, anticipated future profit, not equity contributed at inception.

307.
There was no representation that Mr Pisante's (more strictly, Swindon's) cash of (in the event) US$6.25 million would itself go into the KKR joint venture vehicle, to the extent (if at all) that any such representation would say more than that Lomar was to contribute cash as well as ships (which adds nothing).

308.
Similarly, there was no representation that Mr Pisante (more strictly, his relevant company or companies) would be treated equally with Lomar, to the extent (if at all) that any such representation would say more than that Lomar was to contribute cash as well as ships (which adds nothing) and/or that BCA's 50% of the K Ships (as it was at the material time) would be treated in the same way in the KKR joint venture as Lomar's 50% (which was true).

Inducement

309.
Mr Logothetis' explanation that under the proposed deal, Lomar was to put in cash and ships as equity of US$40 million was material, and plainly so, to Mr Pisante's decision to roll over his ICBC cash. It was also material to a decision by him to agree to the K Ships going in to the joint venture.

310.
As to the latter, however, I consider that Mr Pisante needed little persuasion. It was enough, for him to agree to the K Ships going in, that Mr Logothetis and Lomar thought it a good idea to put them in, which undoubtedly they did, as part of Lomar's contribution to what was planned to be a bigger fleet utilising the proposed KKR funding facility. Furthermore, I am confident that as long as his 50% of the K Ships would be valued within the joint venture in the same way as Lomar's 50%, as it was, then Mr Pisante would have agreed to the K Ships going in, even if told that they would represent capital valued at cost, in the normal way, and that the eight ships of which the K Ships would be three, accounted for in that way, were to be Lomar's only contribution.

311.
Further again, it was clear to me that Mr Pisante needed no persuasion at all to go 'off the books', if Mr Logothetis asked him to. So long as the prospective deal with KKR itself was intended to be, as it was, a deal between KKR and Lomar to which Mr Pisante was not intended to be a direct party, through any of his companies, Mr Pisante's 50% share of the K Ships would have been translated into an ETFA, the contractual tool used by the Libra group for that kind of circumstance.

312.
As to the former, i.e. rolling over the ICBC cash, I am satisfied that Mr Pisante would not have thought to do so, or suggest doing so, unless prompted by Mr Logothetis, and that he only agreed to do so, such that he would be indirectly contributing cash as well as ships, because he understood from Mr Logothetis that Lomar would be contributing cash as well as ships.

313.
Those assessments on the evidence mean I can and do find that ETFA 3, as in fact concluded, was induced by misrepresentation. Mr Pisante would not have agreed to it, and Swindon would not have entered into it, without Mr Logothetis' misdescription of the KKR joint venture in prospect as one under which Lomar would contribute US$40 million in equity by way of cash and ships.

314.
They also mean, however, that I can and do find further that:

(1)
the misdescription of the KKR deal by Mr Logothetis did not induce Mr Pisante to agree to the K Ships going into the KKR joint venture, or to having his 50% share of the K Ships taken off the books;

(2)
without the misdescription, i.e. but for the misrepresentation made to Mr Pisante, it is not that Swindon would have been left with ETFA 2, but rather a third ETFA would still have been concluded ("ETFA 3*"), by which Swindon would have bought, on terms equivalent to those of ETFA 3, the economic equivalent of a 15% share of Lomar's share of OMHL, in return for giving up ETFA 2.

315.
In relation to the second of those further findings, for completeness I should say that neither side invited a finding that the Lomar-KKR joint venture would not have gone ahead without Mr Pisante rolling over his ICBC cash. On the defendants' side, indeed, it was implicitly their positive case that it would have done so, in that they submitted, and I accept, that if Mr Pisante had set his face firmly against rolling over his cash, Mr Logothetis would have accepted that and moved on. The defendants relied on that as part of their attempt to suggest that Lomar was not facing a major cash crisis, so that (they argued) Mr Logothetis was indifferent to whether Mr Pisante's cash came in and therefore

unlikely, or less likely, to have been trying hard enough to persuade Mr Pisante for misrepresentation to have been a real possibility. Though I have rejected that part of the defendants' case, finding that Mr Logothetis was far keener than he was willing to admit to get Mr Pisante's cash for Libra/Lomar, taking the evidence as a whole I consider that Mr Logothetis and the Lomar team would probably have found a way to manage without that cash and still do the KKR deal as actually done.

316.
As regards the figure of 15% in paragraph (2) above, I need say here only that it is the 15% I find, when considering the question of relief, below, would have been identified and agreed as the share of Lomar's share of OML/OMHL that should be treated as attributable to what had originally been Mr Pisante's indirect 50% share of the K Ships.

Fault

317.
The nature of the misrepresentation case as regards 'cash and ships' is such that as part of considering whether there was any misrepresentation, I have identified my conclusions, and the reasons for them, as regards fault. In line with the dictum in Akerhielm v de Mare I quoted in paragraph 18 above, Mr Logothetis' case at trial put upon the explanation he gave to Mr Pisante about Lomar's prospective equity contribution to OML a meaning so far removed from the sense in which it would have been understood by any reasonable person as to make it impossible to hold that when giving that explanation to Mr Pisante he understood what he was saying to have that meaning and as a result had an honest belief in the truth of what he was saying.

318.
On the whole of the evidence, I am satisfied that in that moment, Mr Logothetis appreciated that he was telling Mr Pisante, falsely, that Lomar would be contributing cash as well as ships.

319.
As regards his statement that the equity contribution would be US$40 million, the position is more complex, although the result is the same.

320.
I am sure that at the time, and for that matter also subsequently when Mr Pisante's allegations came to be made, Mr Logothetis generally associated US$40 million, as a figure related to the KKR deal, with the valuation exercise he had driven and directed. That was an exercise in trying to get KKR to be comfortable with the idea that the eight ships should ultimately bring to the joint venture, or represent for it, value in about that amount (if not more).

321.
However, what Mr Logothetis said to Mr Pisante tied that figure to an equity contribution to the joint venture vehicle taking the form of cash and ships. Mr Logothetis did not believe that Lomar would be contributing US$40 million in cash and ships, because he knew full well that Lomar would only be contributing ships. In my view, he must have appreciated as he spoke to Mr Pisante that he was making that association. He was telling Mr Pisante that Lomar was putting in US$40 million in cash and ships, as part of his invitation to Mr Pisante to put in cash as well as ships. He was putting forward an account of what Lomar was in the process of agreeing with KKR that he did not believe to be true.

Conclusion

322.
In the light of the findings I have made above, Mr Logothetis and Libra are liable to Swindon for deceit, in that Mr Logothetis induced Mr Pisante by deceit concerning the equity contribution by Lomar for which the KKR deal in prospect would provide, and Lomar's intentions as to its equity contribution to that deal, to roll over his ICBC cash, so that Swindon entered into ETFA 3 rather than (as otherwise it would have done) what I have called an ETFA 3*.

Relief

323.
There is a simple and a complex element to the question of relief.

324.
The simple element is this, and it was common ground:

(1)
Firstly, Swindon is entitled to an order rescinding ETFA 3.

(2)
Secondly, as monetary relief consequent upon that rescission, Swindon is entitled against Libra to payment of US$6.25 million, plus interest which will be interest in the general equitable discretion of the court.

(3)
Thirdly, Mr Logothetis is liable to Swindon in damages in respect of its having paid US$6.25 million to Libra for ETFA 3, plus interest which will be interest in the discretion of the court under s.35A of the Senior Courts Act 1981.

325.
Of course, Swindon is not entitled to recover twice. Any payment by Libra in respect of its monetary liability under paragraph (2) above will discharge to the extent of the payment Mr Logothetis' damages liability under paragraph (3) above, and vice versa.

326.
The complex element concerns the surrender by Swindon of ETFA 2 as part of the consideration provided by it to Libra in return for ETFA 3. An analysis might be that: ETFA 3, discharging ETFA 2, is rescinded ab initio; therefore ETFA 2 has not been discharged (or must now be treated as having not been discharged); therefore, Swindon has lost nothing, save perhaps for time-related loss if there is an entitlement under ETFA 2 that Swindon must now be treated as having that was not paid at the time because ETFA 3 had superseded ETFA 2. On that view, the fair and logical relief to grant might be an account or inquiry into such entitlements, and perhaps declaratory relief as to the status of ETFA 2 today.

327.
However, firstly, what that relief would involve or require in practice is not clear to me and might be complex and difficult. Secondly, it would mean giving no effect to my related conclusions that ETFA 2 would have been surrendered anyway, without the deceit, and that the deceit did not induce that surrender. It treats the aim of any further relief as being to model the position Swindon would have been in if it had not entered into ETFA 3 and had instead taken its ICBC cash out and held onto ETFA 2, whereas I have found that without the deceit Swindon would not have entered into ETFA 3 and instead would have taken its ICBC cash out and entered into an ETFA 3*.

328.
The question of the proper relief to grant, if any, in respect of the surrender of ETFA 2 as part of entering into ETFA 3 was not the subject of fully developed consideration or submissions for and at trial. The claimants invited me, as their primary case, to conclude that there should be additional monetary relief to the tune of US$3,678,750, and I deal with that primary claim below. The defendants made no admission that it was appropriate to grant monetary relief, but submitted that any such relief should not exceed US$2,741,250.

329.
In what follows, I explain why I do not accept the claimants' invitation. I also explain why I accept the premise of the defendants' submission, namely that one element of the claimants' proposed calculation properly should not be included, but do not consider that it must lead to there being a maximum recovery of US$2,741,250 as the defendants proposed. My final conclusion is that more work needs to be done, if a resolution cannot be agreed between the parties. In the course of all that, I shall make such findings as I consider I am able to make that may inform the parties as they attempt to agree an outcome or formulate further submissions if they cannot agree.

330.
I have not accepted Mr Logothetis' claim that there was some element of negotiation with Mr Pisante in relation to fixing at 30% the share of Lomar's share of OMHL that ETFA 3 would reflect. However, I accept an explanation he gave indicating that he, and Lomar, considered the K Ships to represent 30%, by value contributed, of the eight ships put into OML, so that Mr Pisante's 50% share of the K Ships should be reflected by a 15% share of Lomar's share of OMHL, granted to Swindon in derivative form under ETFA 3. The other 15% granted in that form was therefore what Swindon purchased with its ETFA 1 cash of US$6.25 million. That was not set out on the face of ETFA 3, nor do I find that it was explained to Mr Pisante, but I accept that it was the basis upon which the ETFA 3 percentage was in fact set by Mr Logothetis at the 30% with which Mr Pisante did not quibble.

331.
In the 'balance sheet' presentation of figures relating to the eight ships contributed that was used by Lomar with KKR (paragraph 121 above), the K Ships were marked as contributing c.US$6.4 million of c.US$21 million at cost, or c.US$14.1 million of c.US$46.7 million with the 'mark-to-market' uplift (anticipated future profit) added. On either measure, they amounted to 30% of the total.

332.
Mr Béar QC argued that the shipyard credits utilised in part-payment of the paid-up instalments on the T Ships should be removed from any such assessment of the proportionate contribution of the K Ships, because that was debt owed by the SPVs in question to the yard, not to Lomar. Making that adjustment would reduce the eight-ship total by c.US$3.4 million. That in turn would increase the K Ships' proportion of the whole, by my calculation, to 36.4% at cost or to 32.5% with the 'mark-to-market' uplift. Those percentages appear consistent with the K Ships' proportion of shareholders' equity net of, respectively including, mark-to-market revaluation.

333.
I see the force of Mr Béar QC's point, but I do not feel qualified without expert accountancy evidence, for which neither side sought permission in this case, to judge that it is the correct accounting treatment of the point (if there be a single correct treatment), so as to say that the claimants have established that the K Ships should be regarded as having contributed more than 30% of the whole. Furthermore, I see no reason to suppose that Mr Logothetis would have proposed anything other than

the 15% he had in mind for Mr Pisante's 50% share of the K Ships, as the percentage to be reflected in ETFA 3, or that Mr Pisante would have quibbled over that percentage if the ICBC cash was not being rolled over.

334.
I find that without that extra element to the arrangements that came to be given effect by ETFA 3, Mr Logothetis and Mr Pisante would have agreed to fix BCA's indirect 50% interest in the K Ships as equivalent to 15% of Lomar's indirect interest in the eight ships after BCA's interest in the K Ships had been translated into ETFA 2. Hence my finding that ETFA 3*, as I have called it, would have been a swap of ETFA 2 for (the economic equivalent of) 15% of Lomar's share of OMHL.

335.
By the contribution agreement, the transaction under which the eight ships were contributed (or, more strictly, the transaction by which the SPVs holding the contracts for those ships were sold by Lomar to OML), OML paid US$12,945,250 for them. That total consideration was paid as 5,000 US$1 shares at par plus a share premium of US$9,369,000, plus US$3,571,250 in cash. It was accepted for the defendants by Mr Pearce, who dealt clearly and helpfully with these matters in closing, that on the terms of ETFA 2 those were Exit Receivables so that if ETFA 2 had remained in place, Swindon would have been entitled to a pro rata share of that consideration.

336.
Mr Logothetis and Mr Pisante, I have found, would have agreed to set that share at 15%. Thus, the contribution agreement followed by the successful closing of the KKR deal, so that the cash consideration under the contribution agreement became immediately payable, entitled Swindon under ETFA 2 to:

(1)
payment by Libra of 15% of US$3,571,250, which is US$535,687.50, and

(2)
15% of the 5,000 US$1 shares in OML (with share premium of US$1,873.80 per share), which is 750 US$1 shares with share premium of US$1,405,350.

337.
For regulatory reasons affecting KKR and identified at a late stage in finalising the joint venture deal with Lomar, they needed to be shown in OML's accounts as having paid US$1,875,000 more than was originally intended to be shown as their consideration for the acquisition of 40% of the common stock. In the post-KKR balance sheet of OML at completion as finally drawn, that was attributed to Pitten and Tabilk, the SPVs for the K Ships. ETFA 3 meanwhile attributed value of US$2,741,250 to Swindon's rights under ETFA 2, for the purpose of treating it as having paid the purchase consideration for ETFA 3.

338.
Mr Béar QC proposed that since ETFA 2 was surrendered in return for ETFA 3, then if ETFA 3 were rescinded, Swindon should be awarded, as further equitable compensation consequent upon the rescission, or damages for deceit, that is in addition to the US$6.25 million:

(1)
US$2,741,250, plus

(2)

An appropriate proportion of the US$1,875,000, which Mr Béar QC argued should be either (a) 50%, since it was in fact attributed entirely to the K Ships in OML's accounts as finally drawn, alternatively (b) 50% of whatever proportion the court treated the K Ships as having contributed generally, on the basis that the attribution of the US$1,875,000 to Pitten and Tabilk was fortuitous (from Swindon's perspective), and "a different mechanism could have been chosen (pro rata allocation across all 8 SPCs)".

339.
Adding US$937,500 (50% of US$1,875,000) to US$2,741,250 would give the figure I identified above as Mr Béar QC's primary case on this aspect of relief, US$3,678,750. Mr Pearce's argument that if additional monetary relief be granted it should not exceed US$2,741,250 was an argument that, whatever else might be the case, nothing should be added for the US$1,875,000.

340.
As regards that argument, Mr Béar QC was right to say that the allocation of the US$1,875,000 to Pitten and Tabilk in the OML accounts was fortuitous. He was wrong, however, to say (as in effect he did) that if not done that way, it could only have been done by pro rata allocation across the SPVs. What it means to say that the allocation to Pitten and Tabilk was fortuitous is that there was no accounting reason why it had to be allocated to them, but also nothing wrong with making that allocation. Equally, therefore, it might have been allocated entirely across others of the SPVs.

341.
The true position indeed is that it mattered not where it was put, given what it represented. As Mr Attlee said in his written evidence, and explained in cross-examination, it did not represent any real additional value, neither did it mean that the K Ships had in reality contributed any greater proportion of the value contributed by the eight ships than might otherwise have been assessed.

342.
That is because it was one half of a balanced accounting device, used solely to meet the regulatory requirement, the other half being a matching discount (in fact, strictly, additional discount, as there already was an element of discount) on what KKR paid for its preferred shares. As Mr Attlee put it, and I accept, "the additional value being thrown at the common was additional discount for the prefs, and over … time one would expect both to unwind, the discount on [the] prefs would unwind and the 1.8 would unwind in the SPCs. So it was a figure thrown in to make up a total, to change the transaction accounts, but it wasn't real value going to the parties or intended as such."

343.
So I accept Mr Pearce's argument that the US$1,875,000 nominally added to Pitten and Tabilk in the completion accounts for the KKR joint venture is not relevant to any question of monetary relief in favour of Swindon for giving up ETFA 2 as part of the purchase consideration paid for ETFA 3.

344.
As I indicated above, however, that does not mean I accept also the conclusion for which Mr Pearce contended, namely that Swindon's maximum monetary relief should be US$2,741,250. The logic for that conclusion, as I understood it, was to say that (a) any such monetary relief would be being assessed as at the date when ETFA 2 was given up, and (b) the court should not put a greater value on the rights given up than the parties did in treating that surrender as part of the consideration for ETFA 3.

345.

ETFA 3 is to be rescinded, so any consideration of monetary relief proceeds on the hypothesis that ETFA 3 never existed. However, the operative effect of the deceit I have found to have occurred was limited to inducing Mr Pisante to give up his ICBC cash, resulting in ETFA 3 (30%) rather than ETFA 3* (15%), in either case ETFA 2 being surrendered in return. With help, again, from Mr Attlee's evidence, I can say that the US$2,741,250 portion of the purchase price for ETFA 3 that was treated as balanced, and therefore paid for, by the surrender of ETFA 2, was derived from the actual accounting treatment of the K Ships as contributed to OML (inclusive of the accounting entries used to generate the cash payable to Lomar under the contribution agreement).

346.
It seems to me that I can therefore find, and I do find, that without the deceit, there would have been an ETFA 3*, otherwise on terms equivalent to those of ETFA 3, but which granted Swindon an indirect participation of 15% (rather than 30%) of Lomar's share of OMHL, in return for the surrender of ETFA 2 (only, not also the surrender of the US$6.25 million then payable under ETFA 1), which would have been treated as discharging a purchase price for ETFA 3* that would have been stated as US$2,741,250.

347.
Whether it is right in those circumstances to grant Swindon monetary relief consequent upon rescission, in addition to the US$6.25 million, either at all, or without further enquiry, and if so whether it should be US$2,741,250 or some other amount, I do not feel adequately briefed by the submissions at trial to decide. A mass of material was assimilated and presented for a trial very efficiently kept within six sitting days, so I do not mean by that any significant criticism of the parties or their advisers. But it means that I shall need assistance from counsel when this judgment is handed down in order to consider how this aspect of further relief, if any, to be granted to Swindon should be dealt with.

348.
In the case of Mr Logothetis' personal liability, which can only be in damages, and subject to any submissions made when this judgment is handed down, I envisage that means that the order for him to pay Mr Pisante US$6.25 million, plus interest, should be by way of payment on account of a final damages amount to be assessed, since in concept there is but a single cause of action for a single award of damages against him.

Result

349.
For the reasons set out in this judgment, Swindon is entitled to rescission of ETFA 3 and I shall grant such rescission. There will be judgment for Swindon against Libra for US$6.25 million, plus equitable interest to be determined by the court if not agreed, consequent upon rescission. There will be judgment for Swindon against Mr Logothetis for damages to be assessed, with a payment on account of US$6.25 million, plus interest to be determined by the court. The money judgments against Libra and Mr Logothetis need to be entered in such terms as will ensure there cannot be a double recovery.

350.
The question of what, if any, additional relief consequent upon rescission ought to be granted against Libra, and/or whether damages in addition to the above monetary relief should be awarded against it, and the final assessment of damages against Mr Logothetis, will require further consideration, if a final resolution is not agreed between the parties in the light of this judgment. With the assistance of

counsel, I shall aim to settle directions when this judgment is handed down with a view to bringing those matters to a final determination.

351.
There will also be judgment for Swindon against Libra for €500,000 in respect of the loss Swindon suffered on its Piraeus Bank shares (see paragraph 169 above), and it will be necessary to consider, upon the handing down of this judgment, what order to make in relation to that matter in respect of the pleaded claim, which was by Mr Pisante against Mr Logothetis rather than by Swindon against Libra, and what order (if any) I can or should make in respect of interest or costs in relation to that aspect of the case.