

[1] Tuesday, 29th June 1999

[2] (9.30 am)

[3] **MR COX:** My Lord, I wondered whether your Lordship might
[4] appreciate an update on the position. I do not know
[5] whether your Lordship has had a bundle from the claimant
[6] of a witness statement from Mr -

[7] **MR JUSTICE LADDIE:** I have read it all.

[8] **MR COX:** I am grateful. In that case, your Lordship knows
[9] some of what has been going on, albeit it is only the
[10] tip of the iceberg of the activities the defendant's
[11] solicitors and others have been pursuing. The position
[12] we are at now is that it appears, from the best we can
[13] investigate, that there is no internal evidence
[14] whatsoever to support the allegations that were made
[15] last week by the defendant and it is purely the basis
[16] put forward by Mr Hobbs in cross-examination.

[17] **MR JUSTICE LADDIE:** There is no evidence either way.

[18] **MR COX:** There is no evidence either way. There is nothing
[19] to prove it. Dr Giles is on her way, because the
[20] defendant has requested that we should have her here for
[21] cross-examination. She was due to be here this morning
[22] at 9.15. I rather suspect she has been delayed in
[23] traffic. I am told, I am afraid, that she is some
[24] distance away, because she has only just left. She was
[25] requested to be here at 9.15 am but has had, my Lord, to

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[1] stage. Plainly, without Miss Giles, there is nothing

[2] I can do except await the calling of Mr Hobbs'

[3] witnesses.

[4] **MR JUSTICE LADDIE:** Let us get on with it.

[5] **MR HOBBS:** My Lord, can I explain the position? We were
[6] told yesterday she would be here at 9.15 am, so I do not
[7] have my first witness here. He is Mr Leggatt. He is
[8] the man who cannot come back tomorrow. Your Lordship
[9] may remember he was sitting in the public gallery last
[10] week. Carson was staggered to come behind him and then
[11] Mr Lazenby -

[12] **MR JUSTICE LADDIE:** Do not worry, Mr Hobbs. When will
[13] Mr Leggatt be here?

[14] **MR HOBBS:** I am told the latest was 10.00 am.

[15] **MR JUSTICE LADDIE:** Mr Hobbs, does it come down to this:
[16] there are no witnesses now: "yes" or "no"?

[17] **MR HOBBS:** I think so, my Lord.

[18] **MR JUSTICE LADDIE:** There are no witnesses. Whose fault
[19] that is is not a matter we need worry about now. There
[20] are enough reasons for ill feeling between the parties
[21] already. If there are no witnesses, there are no
[22] witnesses. Somebody is going to pay for it at the end
[23] of the day. But there we are. I will rise until you
[24] have a witness for me. Unless there is anything else?

[25] **MR HOBBS:** Dr Giles is on her way. She was the witness

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[1] put aside other matters, both to do her examinations and
[2] to produce her report over the weekend. So I apologise
[3] for that. But it would appear there will be some delay
[4] before she can be here.

[5] **MR JUSTICE LADDIE:** We will get on with something else.

[6] **MR COX:** My Lord, may I make one further submission to
[7] your Lordship, which I feel obliged to do at this point
[8] because it is not the case, we submit, that the week
[9] your Lordship has been so kind as to grant us can wholly
[10] eradicate and remove the prejudice which is done to the
[11] claimant by a late raising - I shall use a neutral
[12] term - of a grave allegation of this kind. Had we been
[13] adverted to the existence of this remarkable allegation
[14] well before the trial, as we should, both in the
[15] pleading rather than misled completely by that, it may
[16] have been possible to pursue other enquiries. There are
[17] others. There is a Mr Slavin in Australia, who we have
[18] been unable to contact, and there are other ways in
[19] which the claimant, we submit, would have been able to
[20] prepare. The position, my Lord, is simply this: we have
[21] been able to carry out the obvious enquiries and do all
[22] that was immediately obvious at a week's notice. I know
[23] your Lordship has this well in mind, but I simply
[24] mention it for the purposes of a record being made.
[25] My Lord, I am in your Lordship's hands at this

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[1] I was proposing to examine here and now and I would hope
[2] to do her first.

[3] **MR COX:** My Lord, I have to say that the latest I have heard
[4] is that she may be approximately an hour, I assume.

[5] **MR JUSTICE LADDIE:** Why? Was she told to be here at
[6] 9.30 am?

[7] **MR COX:** My Lord, my solicitor has been quite candid. The
[8] position is - I completely apologise - it appears
[9] there has been a breakdown of communication.

[10] **MR JUSTICE LADDIE:** She thought she had to be here at
[11] 10.30 am?

[12] **MR COX:** She thought she was to receive a further call.

[13] Those instructing me believe she was told to come at
[14] 9.15 am.

[15] **MR JUSTICE LADDIE:** Mr Hobbs, you would prefer to start with
[16] her, would you?

[17] **MR HOBBS:** I am afraid I would, my Lord.

[18] **MR JUSTICE LADDIE:** I have told the parties I have to rise
[19] at 12 o'clock today. That is why we sat at 9.30 am.
[20] I am afraid that still has to be. I hope to be back by
[21] 2 o'clock. I will rise until such time as you have your
[22] first witness here.

[23] **MR HOBBS:** Your Lordship said was there any other matter.

[24] I do not know whether your Lordship wishes to know about
[25] the open correspondence that has passed between the

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[1] parties.

[2] **MR JUSTICE LADDIE:** Mr Hobbs, it may come as a surprise to
[3] you, but I am not running this case. That is very
[4] apparent. If you wish to make any submissions to me or
[5] bring anything to my attention, that is a matter for
[6] your choice. I have decided there is no point in me
[7] making further enquiries of my own volition.

[8] **MR HOBBS:** There has been open correspondence and since the
[9] response that we received from Mr Donovan Senior was to
[10] invite the attention of the court to his response to my
[11] letter and since I have had an open response from my
[12] learned friend's solicitors, I think the right thing
[13] would be to put that material into a clip and let
[14] your Lordship see it in your Lordship's private room.

[15] **MR JUSTICE LADDIE:** Thank you very much.

[16] (9.40 am)

[17] (A short adjournment)

[18] (9.45 am)

[19] **MR HOBBS:** My Lord, fortunately I am in a position now to
[20] call Frank Leggatt. The proposal is I should call him
[21] and then we should turn back to Dr Audrey Giles when she
[22] arrives, which is currently estimated at 11.30 am.

May I therefore call Frank Leggatt to the witness
[24] box, please.

[25] **MR FRANK LEGGATT (sworn)**

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[1] **A:** Petrol; petrol pricing; petrol product development; the
[2] emerging development of shops on forecourts; advertising
[3] and promotions; part of the way our network was
[4] designed, developed and constructed: more to do with the
[5] look and feel of it, than necessarily the choice of
[6] where sites were, petrol stations were; and the
[7] relationship between Shell and its different kind of
[8] retailers.

[9] **Q:** So that the promotions was really only one part of a
[10] fairly wide range of responsibilities, was it?

[11] **A:** Yes.

[12] **Q:** Between September when you first joined, I think from
[13] another division of Shell, was it?

[14] **A:** Yes.

[15] **Q:** You had been previously I think in the gas and
[16] distributor business before 1992 when you moved to
[17] retail marketing; is that right?

[18] **A:** Yes.

[19] **Q:** Between September and December is it fair to say that
[20] you would have been really getting to know the position,
[21] its responsibilities and the people who were working
[22] under you, that sort of thing?

[23] **A:** Yes.

[24] **Q:** Yes. During the course of that time, promotions being
[25] one of your responsibilities, you had discussions, as

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[1] Examination-in-chief by MR HOBBS

[2] **MR HOBBS:** Mr Leggatt, on the carousel beside you there
[3] should be a file which carries the reference C2 on the
[4] spine. In that file would you please, if you have it,
[5] turn behind tab 4. Mr Leggatt, do you have a document
[6] there with page number 122 on it and the heading
[7] "Witness Statement of Frank Leggatt"?

[8] **A:** Yes.

[9] **Q:** Look through the pages which follow them. Do not read
[10] them, but look through them to page 136.

[11] **A:** Yes.

[12] **Q:** Mr Leggatt, is that a witness statement that you have
[13] made for the purposes of these proceedings?

[14] **A:** Yes.

[15] **Q:** Mr Leggatt, are the contents of that witness statement
[16] true to very best of your knowledge and belief?

[17] **A:** Yes.

[18] **Q:** Would you please wait where you are.

[19] Cross-examination by MR COX

[20] **MR COX:** Mr Leggatt, you joined the department responsible
[21] for the Promotions Unit I think in September 1992; is
[22] that right?

[23] **A:** Yes.

[24] **Q:** What was the field of responsibility that you had, apart
[25] from promotions?

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[1] I understand it, with David Watson?

[2] **A:** Yes, and other people.

[3] **Q:** And others. How often would you see, for example,
[4] Mr Watson?

[5] **A:** Once, twice, three times a week. Something like that.

[6] **Q:** What about Mr Lazenby?

[7] **A:** Less.

[8] **Q:** Less. How often?

[9] **A:** Once a week.

[10] **Q:** Once a week.

[11] **A:** During that period.

[12] **Q:** When you first came, as I understand it, you had a
[13] number of discussions of a general kind concerning
[14] promotions strategy with Mr Watson; is that right?

[15] **A:** And others, yes.

[16] **Q:** And others. But it was not until 24th December 1992,
[17] reading your witness statement, as I understand it, that
[18] you received a note from Andrew Lazenby setting out a
[19] recommendation that you should proceed with a long-term
[20] loyalty scheme and the nature of that scheme?

[21] **A:** Yes.

[22] **Q:** You had no input of any significant character because,
[23] apart from anything else, you had only arrived in
[24] September, into the way in which that scheme had
[25] developed; is that fair? Or those ideas had developed?

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