

# **THE PLAINTIFFS' PARTICULARS OF CLAIM**

## **DRAFT**

1. The Plaintiffs are listed in the schedule attached marked "X".
2. The Plaintiffs:
  - 2.1 sue in their own interests and in the public interest as contemplated by sections 38(a) and 38(d) of the Constitution of the Republic of South Africa, 1996 (hereafter referred to as "the Constitution"),
  - 2.2 seek relief:
    - 2.2.1 that is in the public interest given the values of accountability and responsiveness which inform governance in the Republic of South Africa;
    - 2.2.2 which involves infringements of the human rights of the public in South Africa, in particular those rights guaranteed to all in Chapter Two of the Constitution which require resources of the state in order for the state to respect, protect, promote and fulfil them; and
    - 2.2.3 which impugns conduct (concerning the purported conclusion and implementation of the agreements annexed marked "A" and "B") that is inconsistent with the Constitution in the respects pleaded fully in the three claims below.

3. The First Defendant is the Government of the Republic of South Africa, acting through its National Treasury, Department of Finance, Department of Defence and its Department of Trade and Industry, care of The State Attorney's Office, 255 Frances Baard Street, Pretoria, Gauteng.
4. The Second Defendant is the Armaments Corporation of South Africa SOC Ltd, a state owned enterprise and statutory body established in terms of section 2 of the Armaments Development and Production Act of 1968 and the Armaments Corporation of South Africa Limited Act 51 of 2003 (as amended) of corner Delmas Drive and Nossob Street, Erasmuskloof Ext 4, Pretoria, Gauteng.
5. The Third Defendant is British Aerospace (Operations) Limited, whose address is First Floor, Building 2, Cambridge Park, Bauhinia Street, Highveld TechnoPark, Centurion.
  - 5.1 The Third Defendant is a subsidiary of BAe Systems PLC,
  - 5.2 BAe Systems PLC is a publicly quoted company in the United Kingdom in which the Fifth Defendant, the Secretary of State for Business, Innovation and Skills of Her Britannic Majesty's Government, holds one 'Special Share.'
6. The Fourth Defendant is Barclays Bank PLC, Canary Wharf, London c/o of ABSA Head Office, Seventh Floor, Barclays Towers West, 15 Troye Street, Johannesburg, Gauteng.

7. The Fifth Defendant is Her Britannic Majesty's Secretary of State, acting through UK Export Finance (prior to 2010 known as the Export Credit Guarantee Department), whose place of business in South Africa is at the British High Commission, 22 Hill Street, Pretoria.
8. The Sixth Defendant is the Speaker of the House of Assembly, Houses of Parliament, Parliament Street, Cape Town, Western Cape.
9. No relief is sought against the Third, Fourth, Fifth and Sixth Defendants who are joined because of their legal interest in the relief claimed in the matter against First and Second Defendants.
10. The seat of the executive branch of the First Defendant is in Pretoria thus affording jurisdiction to the above Honourable Court.

**BACKGROUND FACTS:**

11. On 3 December 1999 the First, Second and Third Defendants, at a place unknown to the Plaintiffs, entered into a written agreement for the procurement of:

- 11.1 24 Hawk LIFT aircraft together; with the associated products, spares, ground support equipment and services, and
- 11.2 28 Gripen ALFA aircraft; together with the associated products, spares, ground support equipment and services

(collectively hereafter referred to as “the aircraft”).

- 12. A copy of the procurement agreement, signed by the then Minister of Defence, MGP Lekota, the Secretary for Defence, J Masilela, the acting director general of the Department of Trade and Industry, B Roberts, the chairman of Second Defendant, R F Haywood, and the chief executive of the Third Defendant, J Pix Weston is annexed, marked “A” (hereafter referred to as the “Procurement Agreement”).
- 13. The Total Contract Price of the Procurement Agreement has been redacted by, or on behalf of the First Defendant, from the copy annexed marked “A”.
- 14. The redaction was contrary to the spirit of openness, accountability and responsiveness as contemplated in section 1(d) of the Constitution of the Republic of South Africa.

15. In terms of clauses 4.2 and 4.3 of the Procurement Agreement, the Third Defendant undertook to perform certain “...*direct and indirect Defence Industrial Participations (DIP) and National Industrial Participations (NIP) activities*”.
16. It was an express condition precedent of the Procurement Agreement that it was subject to receipt by not later than 15 April 2000 by the Third Defendant “...*of all governmental approvals or authorisations necessary to allow the [Third Defendant] to commence performance of its obligations*” as recorded in clauses 3.1 and 3.1.1 thereof.
17. The Procurement Agreement provided remedies to the First and Second Defendants in the event of bribes or illegalities tainting the agreement. Clause 20 under the heading “*Remedies In Case Of Bribes*” provides:

“20.1            *If the Seller [Third Defendant] or any of its members or representatives in relation to negotiating, entering into or execution of the Agreement, has:*

20.1.1           *been convicted of having committed an offence under the Prevention and Combatting of Corrupt Activities Act or analogous legislation in any relevant jurisdiction by for example having*

*promised or caused on its behalf to be promised, offered or given any kind of illegal gift, illegal advantage or illegal consideration; or*

20.1.2 *been convicted of fraudulent, illegal or criminal acts in obtaining or in the execution of the Agreement”;*

*then Armscor [Second Defendant] and the South African Government [First Defendant] acting together may summarily cancel the agreement and claim damages resulting from the cancellation or claim an amount of 5% of the Total Contract Price as agreed pre-estimated liquidated damages.”*

18. The Procurement Agreement contains no provision for the payment of agents’ fees, commissions, consultants’ remuneration and middle-men charges.
19. In terms of the loan agreement referred to below the First Defendant borrowed from the Fourth Defendant, a foreign international bank, in order to finance the acquisition of the aircraft from Third Defendant, which

borrowings by the First Defendant were supported by the Fifth Defendant in the manner defined in the said loan agreement.

20. A copy of the loan agreement to which First, Fourth and Fifth Defendants were a party and which was signed by then Finance Minister Trevor Manuel of behalf of First Defendant, G Buck on behalf of the Fourth Defendant and C Leeds on behalf of the Fifth Defendant on 25 January 2000, is annexed marked “B” (hereafter referred to as the “Loan Agreement”).

### **PLAINTIFFS’ FIRST CLAIM:**

#### **UNCONSTITUTIONALITY OF THE PROCUREMENT**

21. The Procurement Agreement is invalid ab initio in that its conclusion amounts to conduct that does not comply with the provisions of section 217 (1) of the Constitution which requires that when an organ of state contracts for goods or services, it must do so “*in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*”
22. The conclusion of the Procurement Agreement is, in the light of the facts and circumstances pleaded in paragraphs 23 to 28 below, conduct that is

inconsistent with the Constitution and is accordingly invalid in terms of section 2 of the Constitution.

23. The Plaintiffs specifically plead that the aircraft procurement from Third Defendant was not fairly concluded by reason of the following facts and circumstances:

23.1 The socio-economic rights and needs of the majority of South Africans in 1999 and thereafter strongly militated against the incurring of enormous expenditure on the aircraft which at the time of acquisition were not reasonably necessary, appropriate or useful for the defence needs of South Africa and which have not subsequently been reasonably necessary, appropriate or useful for the defence needs of the South Africa;

23.2 The Defence White Paper of 1996 noted that there were no conceivable or realistic foreign military threats to South Africa and that, after the heavy militarisation during the apartheid era, priority ought to be given to the realisation of socio-economic rights, including poverty eradication, in the post-apartheid democratic era.

23.3 The aircraft purchased from Third Defendant remain unsuited, alternatively, have very limited suitability, for any peacekeeping or other military role that South Africa had or may have in Africa, or elsewhere.

23.4 The financial risks involved in incurring foreign currency liabilities by borrowing money from the Fourth Defendant, on the onerous terms set out in the Loan Agreement, in particular in clauses 22, 23 and 24, in order to purchase unnecessary, inappropriate and unsuitable aircraft has had the effect of severely compromising South Africa's:

23.4.1 fiscal health,

23.4.2 economic prosperity and socio-economic progress and

23.4.3 successful transition to a constitutional democracy in which human rights are respected, protected, promoted and fulfilled in the manner required by section 7(2) of the Bill of Rights which is Chapter Two of the Constitution.

24. The Plaintiffs specifically plead that the procurement of the aircraft was not equitable as they were:

24.1 the most expensive aircraft on offer in the tender process,

24.2 unsuitable for, alternatively of very limited suitability for, South Africa's defence needs,

24.3 overpriced,

24.4 acquired through tender processes and procedures that were manipulated to favour success of the bid by the Third Defendant by the adoption of what the then Minister of Defence, Joe Modise called "a visionary approach", whereby the cost of the aircraft was excluded as a factor for consideration in the procurement evaluation and adjudication process and the eventual award of the tender that culminated in the conclusion of the Procurement Agreement, thereby negating the constitutional requirement of cost effectiveness; and

25. The Plaintiffs specifically plead the aircraft were not acquired in a transparent manner as:

- 25.1 Lower bids from Italy and the Czech Republic were irrationally rejected in favour of the bid by Third Defendant,
- 25.2 The DIP and NIP provisions in the Procurement Agreement played a disproportionate and untoward role in the negotiations and adjudication process which preceded the conclusion of the Procurement Agreement,
- 25.3 The First Defendant concealed, and denied the Auditor General and members of the National Assembly access to, information regarding the DIP and NIP provisions on the spurious basis that these DIP and NIP offsets contracts were “commercially confidential”.
- 25.4 Sound advice and recommendations from the South African Air Force regarding its actual needs were ignored,
- 25.5 The initial cost of the procurement and the financial risks arising from fluctuations of exchange rates in foreign currency consequent on embarking on what was at that time the single largest procurement in the history of South Africa were ignored or not given sufficient weight,

26. The procurement of the aircraft was not competitive because:

26.1 lower and more suitable bids were rejected,

26.2 the South African Air Force recommended the acquisition of Aermacchi aircraft in preference to those supplied by Third Defendant,

26.3 The Aermacchi bid was lower than that of Third Defendant,

26.4 The Aermacchi bid was nonetheless rejected.

27. The acquisition of the aircraft was not cost-effective because:

27.1 the highest priced bid was accepted by the First and Second Defendants,

27.2 The so-called “visionary approach” of the then Minister of Defence precluded taking cost into account in the decision to procure the aircraft from Third Defendant, thereby infringing the express mandatory provisions of section 217 of the Constitution.

28. The procurement of the aircraft was not an efficient, economic and effective use of resources as required in terms of section 195(1)(b) of the Constitution because:
- 28.1 too many aircraft were procured given the reasonable defence needs of the country;
  - 28.2 there were, and remain, insufficient certified and qualified pilots in South Africa to operate the Gripen Alphen aircraft; and
  - 28.3 the operating budget of the South African Airforce is such that there is insufficient funding available to pay properly for maintenance of the aircraft, fuel for the aircraft and training for crew and mechanics for the aircraft.
29. In the circumstances the procurement agreement was and is inconsistent with the Constitution, particularly section 2 of the Constitution.
30. In the premises, the Procurement Agreement falls to be declared invalid.
31. As a consequence of the invalidity of the Procurement Agreement, the aircraft supplied by the Third Defendant must, in law, be returned to it by

First and Second Defendants against the refund of all monies paid thus far, together with mora interest.

**PLAINTIFFS' SECOND CLAIM:**

**ILLEGALITY OF THE PROCUREMENT:**

32. In terms of section 16 (1) of the Exchequer Act 66 of 1975, as amended, (hereafter the "Exchequer Act"), which was in force at the time the loan agreement was concluded, the Minister of Finance was only permitted to borrow moneys to:
- 32.1 finance anticipated deficits in the Exchequer Account in terms of section 16(1)(a) of the Exchequer Act;
  - 32.2 obtain foreign currency in terms of section 16 (1)(b) of the Exchequer Act, and
  - 32.3 maintain a credit balance in the Exchequer account in terms of section 16(1)(c) of the exchequer Act.
33. In terms of section 17 of the Exchequer Act, the Minister of Finance was only permitted to borrow further amounts, in addition to those borrowings

permitted in terms of section 16 of the Exchequer Act, after consultation with the South African Reserve Bank, and then only for the proper regulation of internal monetary conditions.

34. The Plaintiffs plead that the then Finance Minister Trevor Manuel, on behalf of the First Defendant, had no authority:

34.1 in terms of sections 16 (1) (a), (b) and (c) of the Exchequer Act, to borrow money by entering into the Loan Agreement for the purpose of aircraft procurement by concluding the Loan Agreement or,

34.2 in terms of section 17 of the Exchequer Act, to borrow monies by entering into the Loan Agreement with an international bank or foreign institution for the purposes of aircraft procurement.

35. Alternatively, and only in the event that section 17 of the Exchequer Act applies, the then Finance Minister Trevor Manuel, on behalf of the First Defendant, had no authority in terms of section 19 (1) of the Exchequer Act, to borrow monies by entering into the loan agreement with the Fourth Defendant, supported by the Fifth Defendant, for the purposes of the aircraft procurement, inasmuch as he was empowered to borrow money in the Republic only and the Fourth and Fifth Defendants were an

international bank and foreign institution respectively and were not located within the Republic.

36. The conduct of the Minister of Finance in concluding the Loan Agreement was and remains, unauthorised and unlawful in terms of the Exchequer Act.
37. Accordingly, the Loan Agreement, underpinning the procurement of the said aircraft, is invalid for want of compliance with sections 16 and 17, alternatively 19, of the Exchequer Act.
38. In the premises, the Loan Agreement falls to be declared invalid.
39. The loan to the First Defendant from Fourth Defendant supported by Fifth Defendant is, in law, of no force and effect and unenforceable in consequence of its invalidity.

**PLAINTIFFS' THIRD CLAIM: in the alternative to the Plaintiffs' first and second claims, and only in the event of the said claims not succeeding:**

### **BRIBERY AND CRIMINALITY**

40. For the purposes of this claim, reference to “BAe” shall be to BAe Systems PLC, as more fully described in paragraph 5.2 above.
  
41. During 2011 BAe, the ultimate holding company of the Third Defendant, entered into a plea bargain with the United States Department of Justice and agreed, inter alia, to pay a criminal fine of \$400m (approximately R5,900 billion at current exchange rates) the plea bargain agreement included:
  - 41.1 an admission by BAe that it had made payments of at least £135m and \$14m (which is a total of approximately R2,200 billion at current exchange rates) to advisors and agents to secure contracts globally;
  - 41.2 an admission by BAe that the it made payments to certain advisors through offshore shell companies; and
  - 41.3 an undertaking by BAe, as a remediation measure, that it would retain an independent compliance monitor so as to ensure it operated in a transparent, honest and responsible manner in future.

42. During 2012, BAe entered into a plea agreement with the United States Department of State and agreed to pay a fine of \$79m (approximately R1,100 billion at current exchange rates) for violating a number of arms trading regulations in the United States, BAe admitting that it had made over 1000 payments to unauthorized brokers globally between 1995 and 2007.
43. Based on information obtained by the Department of State, BAe's representative, Red Diamond Trading Ltd, made payments to brokers involved in securing the sale of aircraft to South Africa, although BAe failed to disclose the payments as required.
44. The Third Defendant was at all material times represented by Red Diamond Trading Company Limited (hereafter referred to as "Red Diamond") , a company incorporated and registered in the British Virgin Islands, beneficially owned by BAe and representing BAe.
45. On or about 14 July of 2004, the then Director of the Serious Fraud Office in the United Kingdom (hereafter "the SFO") accepted and commenced with an investigation, in partnership with the Ministry of Defence in the United Kingdom, involving allegations of bribery and corruption by BAe's

international system of advisers in relation to the sale of the aircraft by BAe to the First Defendant.

46. The SFO investigation identified that BAe employed a network of advisers to assist in the marketing of its products including:

46.1 a business unit titled 'Head Quarter Marketing Services' [subsequently named 'International Business Support'], a division of BAe; and

46.2 Red Diamond.

47. The SFO investigation further identified that BAe operated a system of 'overt' and 'covert' advisers worldwide to assist and enhance its marketing effort in the sale of its products.

48. Consequent on the above investigation the SFO established that under and through banking accounts of Red Diamond held with Lloyds TSB, payments of in excess of £ 115 million (approximately R2, 500 billion at current exchange rates) had been paid to advisers to assist BAe in the securing and maintaining the aircraft acquisition by the First Defendant.

49. More specifically, the SFO investigation established that in relation to the acquisition of the aircraft by the First Respondent from BAe, in excess of :

49.1 £ 103 million had been paid from the Red Diamond bank accounts in the United Kingdom to covert advisers; and

49.2 £ 12 million had been paid from its [BAe's] bank accounts directly to overt advisers.

50. Based on Annex "2" to an affidavit dated 9 October 2008 by Gary Daniel Murphy, Principal Investigator employed by the SFO, which document is attached hereto as the schedule annexed marked "C", the following information was identified in relation to payments by Red Diamond and BAe Marketing Services:

50.1 Details of the payer bank, by account name;

50.2 The date of payment;

50.3 The amount of the payment;

50.4 The beneficiary of each payment;

- 50.5 The beneficiaries' bank; and
- 50.6 The country of the beneficiaries' bank.
51. The total value of the payments reflected in the schedule annexed marked "C" are in excess of £ 115 million (approximately R 2,53 billion at current exchange rates).
52. In the abovementioned affidavit, Murphy asserts that consequent on the investigations by the SFO, payments made to BAe agents by Red Diamond were made in order to assist in securing and maintaining the acquisition of the aircraft by the First Defendant.
53. Having regard to the provisions of clause 20.1.2 of the Procurement Agreement, entitled "*Remedies In Case Of Bribes,*" the Third Defendant, being member of the group of companies styled BAe and specifically a subsidiary of BAe alternatively a representative of BAe, has been convicted of "illegal or criminal acts".
54. There is no provision on the Procurement Agreement for payments of the nature set out in the schedule annexed market "C" which, on the contrary,

are proscribed by the express provisions of section 20 of the Procurement Agreement.

55. The First and Second Defendants are accordingly entitled to invoke clause 20 of the Procurement Agreement but contrary to the public interest they have not done so.
56. This failure to invoke the remedies in case of bribes clause in the Procurement Agreement is irrational.
57. The aforementioned affidavit by Murphy and the information in the schedule annexed marked "C" appears as documentation annexed to an ex parte application in this Honourable Court, launched by the National Director of Public Prosecutions on 19 November 2008 in which he sought, and obtained, an order for the issuing of search warrants against the Third Defendant in terms of section 29(5) and 29(6) of the National Prosecuting Authority Act, number 32 of 1998 (as amended).
58. In the said application, the applicant was granted search warrants in terms of section 29 (5) and (6) of the National Prosecuting Authority Act No 32 of 1998 (as amended) enabling him to search for and seize documentation at Third Defendant's premises in Gauteng and the Western Cape.

59. A portion of the bribes so paid, the exact amount of which is unknown to the Plaintiffs, was paid over to or made available directly or indirectly for the ultimate benefit of the African National Congress to, inter alia, help fund its 1999 general election campaign.
60. In September 2010, General Anwa Dramat, the then head of the Directorate of Priority Crime Investigation (DPCI), informed the Standing Committee on Public Accounts (Scopa) in the National Assembly that the documentation so seized was stored in 3 ‘Maersk-sized’ shipping containers which contained 460 boxes of documents and 4.7 million computer pages.
61. A criminal investigation into, inter alia, the bribes set out in the schedule annexed marked “C” under docket number CAS 916/11/2009 was abandoned by the DPCI in September 2010 due to lack of personnel in its ranks to mount so large an investigation.
62. That criminal investigation, the search and seizure application and the large quantity of documentation seized were drawn to the attention of the Constitutional Court in case number 103/10.

63. The application under case number 103/10 was brought to compel the President of the Republic of South Africa, as first respondent, to appoint a commission of inquiry into, inter alia, the Procurement Agreement in respect of the aircraft acquired from Third Defendant by First and Second Defendants.
64. The First Defendant was the second respondent in the said application.
65. No attempt was made by either of the respondents in the said application to rebut the evidence of malfeasance and misfeasance in respect of the Procurement Agreement which evidence, including the schedule annexed marked "C", was placed before the Constitutional Court in the said application.
66. Instead, and on the court-appointed date, (namely 15 September 2011) for the filing of answering affidavits in the matter, the President of the Republic of South Africa announced his intention to appoint the Arms Procurement Commission.
67. The said Commission has been appointed, has heard evidence, and has reported to the President. It has taken no interest in the documentation seized by the National Director of Public Prosecutions.

68. In the light of the bribes and criminal accounting illegalities pleaded above, the First and Second Defendants are in law entitled to:

68.1 cancel the Procurement Agreement; and

68.2 tender return to the Third Defendant of such aircraft as are still in their possession against the refund of all amounts paid to the Third Defendant in terms of the Procurement Agreement together with mora interest.

69. The plea bargain agreements concluded with BAe as referred to in paragraphs 42 to 45 above and the criminal fines imposed on and agreed to by BAe in the United States trigger invocation of clause 20.1 of the Procurement Agreement which entitles the First and Second Defendants summarily to cancel the Procurement Agreement and claim damages resulting from the cancellation or claim an amount of 5% of the Total Contract Price as agreed pre-estimated liquidated damages.

70. The bribery by Red Diamond on behalf of BAe and the Third Defendant entitles the First and Second Defendants summarily to cancel the agreement and claim damages by way of the common law remedy which is based on the principle that “fraud unravels everything”.

71. To the prejudice of the public interest, the First and Second Defendants have not invoked either their express contractual or their common law remedies that are available to them as a consequence of the bribery and criminal illegality that has occurred as pleaded above.
72. The Plaintiffs are not able to quantify the damages that the First and Second Defendants will suffer on cancellation of the procurement agreement nor are they able to compute whether such amount exceeds the 5% of the Total Contract Price which is the pre-estimated liquidated damages agreed upon with Third Defendant. The Plaintiffs are not even able to calculate the said 5% because the First Defendant has redacted the copy of the procurement agreement annexed marked "A" by deleting all references to the said price.
73. The First and Second Defendants are in a position to quantify the damages that they have suffered due to the tainting of the Procurement Agreement by the bribery set out in the schedule annexed marked "C" and the illegality that led to the conviction in the United States.
74. The First and Second Defendants are bound by the values and principles set out in section 195(1) of the Constitution.

75. The failure by the First and Second Defendants to cancel the Procurement Agreement and to claim damages from the Third Defendant in such amount as is most advantageous to the First Defendant constitutes a breach of the requirements of subsections (a) (b) (e) (f) of section 195(1) read with sections 1(c) and 1(d) of the Constitution in that it is not ethical, economical, effective, responsive and accountable to fail to so cancel.
76. The Plaintiffs are accordingly entitled, in the public interest, to claim an order compelling the First and Second Defendants to cancel the Procurement Agreement and to claim damages from the Third Defendant whether at common law or in terms of the provisions of clause 20.1 of the Procurement Agreement.

WHEREFORE the Plaintiffs claim:

In respect of the first claim:

- (a) An order directing First and Second Defendants forthwith to take all steps that may be necessary, to impugn the validity of the Procurement Agreement annexed to the Particulars of Claim marked "A". Alternatively to (a) and only in the event of the relief claimed in (a) not being granted:

- (b) An order declaring the Procurement Agreement, a copy of which is annexed to the Particulars of Claim marked “A”, invalid.
- (c) An order directing First and Second Defendants forthwith to take all steps that may be necessary, to impugn the validity of the Loan Agreement annexed marked “B”. Alternatively to (c) and only in the event of the relief claimed in (c) not being granted:
- (d) An order declaring the Loan Agreement, a copy of which is annexed to the Particulars of Claim marked “B”, invalid and

Alternatively and in any event:

- (e) An order directing the First and Second Defendants to tender return of the aircraft acquired to Third Defendant against repayment of all amounts paid to the Third Defendant by First Defendant on account of the Total Contract Price as defined in clause 2.2.6 of the Loan Agreement plus mora interest.

In the alternative to prayers (a), (b) (c) (d) and (e) and only in the event of no relief being granted in terms of the said prayers:

- (f) An order directing the First and Second Defendants forthwith to take steps to cancel the Procurement Agreement, a copy of which is annexed to the Particulars of Claim marked “A”, whether by negotiation, mediation, arbitration or litigation.
- (g) An order directing the First and Second Defendants, pursuant to the said cancellation to tender return of the aircraft acquired from Third Defendant against repayment of all amounts paid on account of the said Total Contract Price and such damages as the First and Second Defendants may be entitled to claim from Third Defendant plus mora interest in respect of the amounts paid on account.
- (h) An order directing First and Second Defendants as well as any other Defendants who defend this action to pay the costs of suit of the Plaintiffs, jointly and severally, the one paying the others to be absolved, such costs to include the costs of engaging three counsel and the qualifying expenses of all expert witnesses in respect of whom notices in terms of Rule 36(9)(b) are delivered.
- (i) Further or alternative relief.

