N I A O

Northern Ireland Audit Office

Department of Enterprise, Trade and Investment

De Lorean: The Recovery of Public Funds

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

HC287 12 February 2004

Cover photograph and photograph on pages 16, 18, 26 and 32 provided by Pacemaker Press International Limited.

N I A O

Northern Ireland Audit Office

Report by the Comptroller and Auditor General
for Northern Ireland

Ordered by the House of Commons
to be printed 11 February 2004

De Lorean: The Recovery of Public Funds

HC287 BELFAST: The Stationery Office £13.50

This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987. The report is to be laid before both Houses of Parliament in accordance with paragraph 12 of the Schedule to the Northern Ireland Act 2000, the report being prescribed in the Northern Ireland Act 2000 (Prescribed Documents) Order 2002.

J M Dowdall
Comptroller and Auditor General

Northern Ireland Audit Office
11 February 2004

The Comptroller and Auditor General is the head of the Northern Ireland Audit Office employing some 100 staff. He, and the Northern Ireland Audit Office, are totally independent of Government. He certifies the accounts of all Government Departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources.

For further information about the Northern Ireland Audit Office please contact:

Northern Ireland Audit Office
106 University Street
BELFAST
BT7 1EU
Tel: 028 9025 1100
email: info@niauditoffice.gov.uk
website: www.niauditoffice.gov.uk

List of Abbreviations

ADR	-	Alternative Dispute Resolution
DETI	-	Department of Enterprise, Trade and Investment
DMC	-	De Lorean Motor Company
DMCL	-	De Lorean Motor Cars Limited
DOC	-	Department of Commerce
DRLP	-	De Lorean Research Limited Partnership
GPD	-	GPD Services Incorporated
HMG	-	Her Majesty's Government
NIAO	-	Northern Ireland Audit Office
NIDA	-	Northern Ireland Development Agency
NIO	-	Northern Ireland Office
RICO	-	Racketeer Influenced and Corrupt Organisations Act
SFO	-	Serious Fraud Office
TSD	-	Treasury Solicitor's Department
UK	-	United Kingdom
US	-	United States
VAT	-	Value Added Tax

Table of Contents

EXECUTIVE SUMMARY

Introduction

1. Between July 1978 and February 1982, Government provided assistance totalling some £77 million in support of a proposal to establish a sports car manufacturing project, De Lorean Motor Cars Limited (DMCL), in Northern Ireland. The project aimed to produce up to 30,000 cars a year, with a workforce rising to 2,000 over five years.

2. The research and development work for the car was to be performed by Lotus Cars Limited, under an agreement with GPD Services Incorporated (GPD) a Swiss-based company who retained the services of Lotus. The agreement provided for GPD to receive a total of US $17.65 million (some £8.83 million). However, DMCL paid GPD/Lotus a further US $23 million (£11.5 million) on a 'cost plus' basis for, allegedly, additional development work. It was subsequently discovered that none of the initial sums paid to GPD (US $17.65 million) had been received by Lotus. This became known as 'the GPD fraud'.

3. In February 1982, some 12 months after starting full-scale production, DMCL, the Northern Ireland company, went into receivership. Production ceased in May 1982 and the manufacturing plant closed in October 1982. In November 1982, the Belfast High Court ordered the company to be wound up, and appointed Joint Liquidators from a Belfast-based firm of accountants. In December 1983, the De Lorean Motor Company (DMC - the US parent) of Michigan went into liquidation, with the US Court appointing a 'Trustee' (the equivalent of a liquidator in the UK).

4. Over the 20-year period from 1982 to 2002, a wide range of actions, including a number of litigation proceedings, were undertaken in the bid to recover public funds lost as a result of the failure of the project. This report summarises the outcomes of the receivership and the recovery process.

Main Findings

Review of the Overall Outcome (Part 2 of the Report)

Registering of Claims

5. Following the collapse of the project, the Department registered a claim for £61 million with the Receivers of DMCL. In addition, claims of US $34 million and US $32 million, lodged by the Department and the Receivers respectively against the DMC Trustee, were admitted (2.11).

6. In January 1985, the Department lodged a claim for damages of £73.3 million, in both Belfast and London, against Arthur Andersen, auditors of the De Lorean group of companies in the United Kingdom and the United States. These claims were based largely on Arthur Andersen's failure to disclose the GPD fraud in its reports on DMCL's accounts. Shortly afterwards, in February 1985, the Department also lodged a claim against Arthur Andersen in New York, for US $100 million, including punitive damages of US $20 million. Overall, the Department's approach in submitting claims was to 'cast the net' as widely as possible, in order to maximise the possibility of recovery (2.11).

7. In addition to the Department, a number of other Government bodies - including Inland Revenue, Customs and Excise, Department of Health and Social Services and Department of the Environment - were owed £3.55 million by DMCL. Comprising unpaid taxation, national insurance contributions and rates, these sums were over and above the financial assistance provided by the Department to the company (2.12).

Amounts Recovered

8. Since the collapse of the project in 1982, various sums have been recovered by the Department. Primarily, these monies have come from settlements of litigation proceedings and the realisation of assets by the Receivers. In the period to January 2003 (when the recovery process effectively came to an end), the Department had recovered a gross total of £40.45 million (2.13).

9. One of the Department's most significant recoveries was the settlement of £20.72 million reached, in November 1997, with Arthur Andersen. In addition, the Department received a series of distributions totalling £15.64 million from the Receivers, these being the net proceeds from their

realisation of the DMCL assets and from the settlements of court actions arising out of the misappropriation of the monies paid to GPD. The Department also received £1.59 million from the US Trustee of DMC, in relation to its claim of US $34 million (2.14).

10. Against the gross recoveries of £40.45 million, the Department incurred direct costs of £20.72 million, largely legal fees and expenses, resulting in a net recovery of £19.73 million. The figure for direct costs does not include the Department's administrative costs of the recovery process, incurred between 1982 and 2002. The Department told us that the handling of the De Lorean case was considered part of the normal recoveries function and there is no policy of keeping time records for individual cases. Given the longevity of the process – some 20 years – and the significant staff time involved, it is likely, in our view, that these costs amounted to a substantial sum (2.15 and 2.17).

11. In addition to the monies recovered by the Department, other recoveries by Government from DMCL totalled £3.55 million (paragraph 7). A further sum of £2.25 million was also recovered by Inland Revenue from settlement of an action against the 'Chapman Estate' which arose out of the GPD fraud (Mr Chapman was the former managing director of Lotus) (2.16).

Actions of the Receivers, Joint Liquidators and DMC Trustee (Part 3)

12. Following the collapse of the De Lorean project, the Receivers, the Joint Liquidators and the DMC Trustee pursued recovery of monies on behalf of creditors.

Receivers (United Kingdom)

13. Overall, the Receivers realised £12.11 million (net) from trading activities and asset realisation and £8.62 million (net) from litigations. After receivership fees and expenses of £2.99 million, a sum of £17.67 million was available for distribution. Of this, £13.84 million went to the Department and some £3.55 million to other government creditors (3.2 to 3.6).

Joint Liquidators (United Kingdom)

14. The Joint Liquidators represented some 600 unsecured creditors of DMCL, owed a total of around £14 million, excluding the Department's claim. In

the period since 1982, monies realised by the Joint Liquidators were limited. Consequently, they paid a first and final dividend to unsecured creditors with agreed claims, at the rate of 4.1 pence in the '£'. The total dividend to unsecured creditors amounted to £150,000 and the liquidation is now closed (3.7 to 3.11).

DMC Trustee (United States)

15. The Trustee's action against Arthur Andersen commenced in October 1984 and claimed damages of US $100 million. The case was effectively dormant for some years but finally went to trial in February 1998 following the Department's November 1997 out-of-court settlement with Arthur Andersen. In March 1998, a New York State Court found that Arthur Andersen had been negligent in failing to detect and report the fraudulent activities relating to the GPD transactions. The jury 'awarded' the Trustee US $46 million, plus accrued interest, in damages. In total, this amounted to around US $109 million.

16. In January 1999, prior to an appeal being heard, the parties agreed a settlement whereby Arthur Andersen would pay a sum of US $27.75 million to the Trustee in full and final settlement of the action. Although the Department and the Receivers comprised 77 per cent, by value, of the Trustee's creditors, under the terms of the Department's earlier settlement with Arthur Andersen in November 1997, any further distributions by the Trustee either directly to the Department, or via the Receivers, would have had to be repaid to Arthur Andersen. As a result, the Department did not qualify for a distribution from the Trustee's settlement (3.12 to 3.15).

The Department's Action Against Arthur Andersen – Negotiations and Settlement (Part 4)

17. In early 1985, the Department initiated legal proceedings against Andersen in Belfast, London and New York for the recovery of damages. The initiation of the action reflected Government's determination to recover as much as possible of the public money invested in the De Lorean project and to take action against those who it considered may have been responsible for such losses. It also wished to hold (and to be seen to hold) professionals to proper standards of honesty and propriety in their conduct. The Department's case was based largely on Andersen's failure to disclose the GPD fraud in its reports on the accounts of DMC, as a result of which the Department had continued to invest in the project (4.3).

18. The Department's action against Andersen between 1985 and 1997 was largely conducted in the United States jurisdiction. Under US law, there was the potential for a considerably higher level of damages to be won. Also, most of the alleged misconduct had taken place in the United States (4.5 to 4.8).

Treasury Solicitor's Department

19. In 1989, the Department commissioned a review by the Treasury Solicitor's Department (TSD) to provide assurance that, in the face of mounting legal costs, the case against Andersen was worth pursuing. Thereafter, what became known as the 'running note' was periodically updated. The Department told us that, while the running note was the work of TSD, it reflected and was informed by the ongoing advice of the Department's US lawyers, whom it described as being of the highest reputation. It said that it took account of developments in the law in the United States and of the evidence which was being collected through the process of discovery of documents and the depositions of witnesses. On each occasion, between March 1990 and February 1997, the running note indicated a strong prospect of the Department recovering very substantial damages, possibly far outweighing the costs associated with the action.

20. In March 1997, at the Department's instigation, a review of the fundamental strengths and weaknesses of the Department's case was undertaken by a TSD official not previously involved in the case. While confirming that there was indeed a well-based case against Andersen, the reviewer noted a number of matters which gave him cause for concern.

21. The reviewer considered that a good outcome in terms of liability and quantum was by no means certain and that there were a number of ways in which the case "could go badly wrong" for the Department. His view was that, in weighing the likely damages against costs to date and likely future costs, "the balance of advantage has swung firmly in favour of making efforts to bring this case to an honourable conclusion by way of settlement". Noting that the Department's direct legal costs were "huge" - some £18.5 million to March 1997 - the reviewer considered that it would be "irresponsible" not to seek some compromise position (4.9 to 4.13).

Alternative Dispute Resolution (ADR) Proceedings

22. In September 1997, the Commercial Court in London ordered the Department and Arthur Andersen to enter into 'Alternative Dispute Resolution' (ADR) proceedings. Under the ADR procedure, a mediator acceptable to both parties is appointed. The mediator's role involves shuttle diplomacy between the parties with a view to reaching a settlement figure. The Department and its advisers decided that the bottom line figure for a negotiated settlement, covering both its own action and its interest in the DMC Trustee's case against Andersen, would be US $35 million (4.17 to 4.19).

23. In early November 1997, the Department agreed a settlement of US $35 million with Andersen, through the ADR procedure. The settlement was approved by the Secretary of State and, on 14 November 1997, Parliament was notified. The Department told us that, had it insisted on a higher settlement figure than US $35 million, the negotiations with Andersen would have collapsed. It said that it would then have faced either a trial in the English Court or the New York State Court, with significantly increased legal fees and no guarantee of achieving a better return than the settlement amount and the possibility that the case could have been lost in one or other of the jurisdictions. It also emphasised that, in the United States, no legal costs are recoverable - even if a case is won – and, in such circumstances, it would undoubtedly have faced the prospect of long drawn-out appeal proceedings (4.20 to 4.23).

How much was Secured for the Taxpayer?

24. The Department's settlement of US $35 million equated to some £20.72 million. Against this, it incurred substantial costs. Over the period 1985 to 1997, the Department's direct legal costs amounted to some £20.32 million. However, this figure does not include the Department's administrative costs over the period, TSD's costs between 1985 to 1991 (when TSD did not charge for their services), or the administrative costs of other Departments involved at various times in the action. The Department told us that it was unable to calculate the level of these administrative and legal costs (4.24 and 4.25).

25. The Department commented that, in addition to its objective of recovering damages from Andersen, it was also seeking to uphold a principle – as Andersen's negligence had contributed to the loss of public money, it was

regarded as important that they be held to account. It said that this was not simply a commercial issue - Government has a responsibility to hold professionals to proper standards and this may sometimes make it necessary to litigate even where there is no direct financial benefit (4.26).

Could an Acceptable Settlement have been Achieved Earlier?

26. Over the period December 1989 to February 1991, the Department and its advisers had entered into negotiations with Andersen's advisers in an attempt to arrive at a settlement. Arthur Andersen's solicitor offered to settle both the Department's and the Trustee's cases for US $4.6 million, (at that time, some £2.4 million), without prejudice to liability. The Department formally rejected the offer and counter-proposed £55 million. Following further exchanges, the Department and its legal advisers took the view that because the parties were so far apart there did not appear to be a basis for negotiation at that time. Although it was Andersen who had initiated the settlement talks, the Department said that both it and its advisers concluded that Andersen had not been genuinely interested in reaching a reasonable settlement, on the basis that the only offer put forward by Andersen was £2.4 million, which fell short of the legal costs at that time (4.27 to 4.35).

27. We put it to the Department that, with the decision to break-off active negotiations with Andersen, an opportunity to achieve a satisfactory outcome may have been lost. The Department said it believes that there was no realistic opportunity to do so and that there is no evidence of Andersen's seriousness in wishing to settle at that time. The Department also said that, in its opinion and that of TSD and the US lawyers, Andersen was not negotiating in good faith but was hoping that the Department was or would soon become so 'war weary' that it would settle on any terms. It was partly for this reason and not only because the parties were so far apart that it was agreed not to continue discussions (4.36 and 4.37).

Why Progress of the Action against Arthur Andersen was Slow

28. The Department told us that the action against Andersen was a very complex process and, therefore, necessarily very time-consuming and costly. Andersen had sought to prolong the action, with the Department having little or no control over the speed of the proceedings – as one of the largest global accountancy firms, Andersen had substantial resources, significant indemnity cover and, most important, substantial experience of

defending actions brought against it. It would have had a resource, both internally and in the form of external legal advisors, where principal activity was defending negligence actions (4.38 to 4.40).

Lessons for Future Application

29. We asked the Department whether there were any lessons it had learned from its conduct of the case that could be of future use to Government departments and agencies involved in a major litigation process. The Department said that lessons had been learned:

(1) the consideration of the use (and early use) of the Alternative Dispute Resolution (ADR) procedure (including, but not limited to, mediation) as a way of resolving disputes is now Government policy and the courts are also committed to promoting ADR. Consequently in major litigation, there is a greatly increased focus on the use of ADR and the positive conclusion of the process in this case has been influential in the change of policy. It remains important to recognise that ADR can only be successful if both parties to a dispute are committed to it. The Department said it remains of the view that, for the reasons set out in paragraphs 4.38 to 4.40 and Appendix 4, Andersen would not have committed to ADR at any significantly earlier stage and without the direction of the court in September 1997;

(2) in addition, the Department said that over the period since this case began there had developed within Government a greater recognition of the need for continual review of the costs and the objectives of litigation and the relationship between the two. In particular, a department engaged in litigation should seek formal independent reviews as and when major milestones are reached in the litigation process. The review(s) should be undertaken by a lawyer not directly involved in the case, as was the Treasury Solicitor's Department review of March 1997. With hindsight, this review should have been undertaken earlier in the process;

(3) the Department's opinion is that it would be difficult to extrapolate other lessons of general application from the litigation other than to emphasise the following:

- a Government department which commits to litigation in any jurisdiction, but particularly in a foreign jurisdiction and where

substantial damages are being sought from a powerful organisation that is well-insured, and with a 'name' as well as a 'pocket to defend', must be prepared for the long haul

- in pursuing such action, it is essential that a close working relationship is maintained between the Department, its in-house lawyers/Treasury Solicitor's Department and the foreign lawyers. The Department must be kept fully informed at every stage of the litigation process, as was the procedure in this case

- all opportunities for legitimate commercial leverage should be taken so as to exert maximum influence on defendants to settle at an acceptable figure

- Government departments, while taking guidance from their legal team, must retain overall responsibility for assessing realistic settlement options. In considering such options, the Government's responsibility to hold professionals to proper standards as well as the achievement of what might be considered an acceptable settlement figure, must be taken into account (4.41).

Part 1

Introduction

1.1 Between July 1978 and February 1982, Government provided assistance totalling some £77 million in support of a proposal to establish a sports car manufacturing project, De Lorean Motor Cars Limited (DMCL), in Northern Ireland. The project aimed to produce up to 30,000 cars a year, with a workforce rising to 2,000 over five years.

1.2 In February 1982, some 12 months after starting full-scale production, DMCL went into receivership. Production ceased in May 1982 and the manufacturing plant closed in October 1982. During its short period of operation, DMCL had produced over 8,000 cars and achieved a peak employment level of 2,600.

1.3 Following closure of the plant, the then Department of Economic Development – now the Department of Enterprise, Trade and Investment (the Department) - lodged claims totalling some £61 million with the Receivers of DMCL. In addition, the Department and the Receivers lodged claims totalling US $86 million in the United States against the parent De Lorean Motor Company (DMC).

1.4 In July 1984, the Committee of Public Accounts reported[1] that, *"the De Lorean project represents one of the gravest cases of the misuse of public resources to come before us in many years"*. The Committee identified a number of important lessons from the failure of the project, to assist the Department and other Government bodies in the future use of industrial development funds.

1.5 The Committee noted that there were still a number of matters relating to the project which had not been fully resolved, including enquiries by the police and Receivers into the affairs of DMCL and investigations in the United States by a committee of unsecured creditors (including representatives of the Department and the Receivers) into the affairs of

[1] Twenty-fifth Report of Session 1983-84 (HC 127)

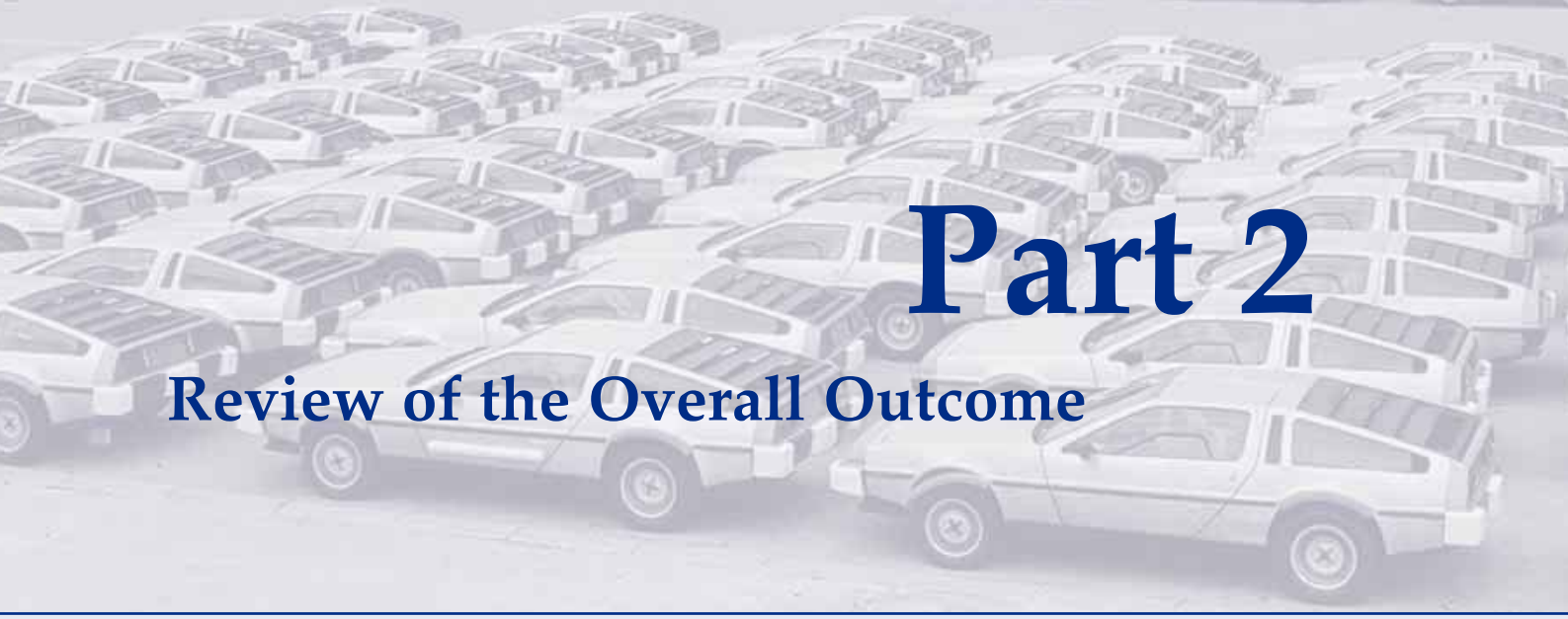
DMC. The Comptroller and Auditor General for Northern Ireland undertook to monitor progress and to report on the outcome.

1.6 Over the 20-year period from 1982 to 2002, a wide range of actions, including a number of litigation proceedings, have been undertaken in the bid to recover public funds lost as a result of the failure of the project. One of the main proceedings - the Department's action against Arthur Andersen, the De Lorean companies' auditors - was settled in November 1997, with an amount of almost £21 million being paid to Government.

Scope of the NIAO Review

1.7 This report summarises the outcomes of the receivership and the recovery process, as follows:

- Review of the Overall Outcome (**Part 2 of the Report**)
- Actions of the Receivers, the Joint Liquidators and the DMC Trustee (**Part 3**)
- the Department's Action against Arthur Andersen – Negotiations and Settlement (**Part 4**).



Part 2

Review of the Overall Outcome

Background

The De Lorean Project

2.1 In June 1978, a Toronto-based investment bank working on behalf of the De Lorean Motor Company (DMC) of Michigan, USA contacted the former Northern Ireland Department of Commerce (DOC) suggesting a meeting to discuss a proposal to establish a sports car manufacturing project in Northern Ireland. A few days later Mr John Z De Lorean, President of DMC, met with DOC officials to outline the project. Mr De Lorean stated that, through the formation of a research partnership, he was raising capital to develop a new sports car to commercial production stage and to establish and finance a marketing network. He stated that he would need an additional US $85 million to finance commercial production and was seeking a sizeable contribution towards this sum.

2.2 Some seven weeks later, in July 1978, a master agreement was signed by DOC, the Northern Ireland Development Agency (NIDA)[2], DMC, De Lorean Motor Cars Limited (DMCL - the new Northern Ireland-based manufacturing company) and the John Z De Lorean Corporation, which owned DMC. Under the agreement, DOC was to provide grant and loan assistance of £35.19 million and NIDA was to subscribe £17.76 million share capital and provide (or guarantee) a loan of £7.92 million. Against Government's total support of £60.87 million, DMC was to subscribe £0.55 million share capital in DMCL. DMCL was to endeavour to employ 2,000 persons by the end of five years following commencement of production and to pay a royalty to NIDA on each car sold. The project aimed to produce some 30,000 cars each year.

2.3 Under a September 1978 amendment to the master agreement, DMC was

[2] In September 1982, DOC and NIDA merged to form the Industrial Development Board for Northern Ireland.

required to form the De Lorean Research Limited Partnership (DRLP) to fund the future development of the sports car to production stage, thereby enabling NIDA to withdraw its offer to provide or guarantee the loan of £7.92 million.

2.4 The research and development work for the car was to be performed by Lotus Cars Limited of Norwich (Lotus), under an agreement between DMCL, DRLP and GPD Services Incorporated (GPD) a Swiss-based company who retained the services of Lotus. The agreement provided for GPD to receive a total of US $12.5 million (some £6.25 million) from DRLP and US $5.15 million (some £2.58 million) from DMCL. However, DMCL paid GPD/Lotus a further US $23 million (£11.5 million) on a 'cost plus' basis for, allegedly, additional development work. It was subsequently discovered that none of the initial sums paid to GPD (totalling US $17.65 million) had been received by Lotus. This became known as 'the GPD fraud'.

2.5 Construction of the DMCL factory began in October 1978 and lasted some 28 months. Over that period, a number of financial and other difficulties were encountered by the project, which necessitated the provision, by DOC, of additional loan finance of £14 million.

2.6 On completion of the factory complex in February 1981, production of the car commenced on a full-scale basis. That same month, in response to DMCL's short-term cash requirements, further assistance was provided in the form of loan guarantees, up to a maximum of £10 million and valid until 31 December 1981. Loan guarantees, up to a maximum of £10 million, were again issued in January 1982. This brought DOC/NIDA's total support to some £77 million.

2.7 After a further approach from DMCL in January 1982 for financial assistance, Government announced that an assessment of the performance and future prospects of DMC and DMCL was to be carried out by consultants. That assessment concluded that there was no commercial case for further Government assistance to DMCL.

Receivers (United Kingdom)

2.8 On 19 February 1982, DMCL was placed in receivership[3]. Receivers were appointed from Cork Gully, a London-based firm of Chartered Accountants. Unable to secure a re-financing of the operation, the

[3] The Joint Receivers subsequently changed the name of DMCL to DSQ Property Company Limited. For the purposes of this Report, the company is referred to throughout as DMCL.

Receivers ceased production in May 1982 and the manufacturing plant closed in October 1982. During its short period of operation, DMCL had produced over 8,000 cars and achieved a peak employment level of 2,600.

Joint Liquidators (United Kingdom)

2.9 In November 1982, on the petition of 'Renault' - the suppliers of engines for the De Lorean car and the largest unsecured trade creditor of DMCL - the Belfast High Court ordered the company to be wound up, and appointed Joint Liquidators from a Belfast-based firm of accountants.

DMC Trustee (United States)

2.10 In December 1983, DMC went into liquidation. The United States Bankruptcy Court appointed a Trustee for the company. His role - to achieve maximum realisation of DMC's assets, for the benefit of the creditors of the company - is the United States equivalent of a liquidator in the United Kingdom.

The Recovery Process

Registering of Claims

2.11 Following the collapse of the project, claims were registered by various creditors of DMCL and DMC for the recovery of monies owing. Overall, the Department's approach in submitting claims was to 'cast the net' as widely as possible, in order to maximise the possibility of recovery. Consequently, a number of individual items, against which recovery was being sought, featured in more than one claim. Major claims included:

(1) The Department's Claim against DMCL (In Receivership)

The claim lodged by the Department with the Receivers of DMCL was for £61 million, made up as follows:

Figure 1 : The Department's Claim against DMCL (In Receivership)

	£ million	£ million
Secured Claims:		
Secured Loans	21.67	
Secured Guarantees	0.35	**22.02**
Unsecured Claims:		
Guaranteed by DMC - Loans	9.89	
- Guarantees	10.00	**19.89**
Grants - plant & machinery	7.24	
- building	6.72	
- tooling	4.73	**18.69**
Royalties		**0.77**
Factory Rent		**0.05**
	Total Claim	**£ 61.42 million**

Source: DETI

(2) Claims Against the DMC Trustee

Both the Department and the Receivers lodged claims – of US $34 million and US $52 million respectively – against the US Trustee of DMC. However, of the Receivers' claim, only US $32 million was admitted. Together, the Department's and Receivers' claims accounted for some 77 per cent of the allowed claims lodged with the Trustee.

(3) Claims Against Arthur Andersen

In January 1985, the Department lodged a claim for damages of £73.3 million, in both Belfast and London, against Arthur Andersen, auditors of the De Lorean group of companies in the United Kingdom and the United States. These claims were based largely on Arthur Andersen's failure to disclose the GPD fraud (paragraph 2.4) in its reports on the DMCL accounts. In February 1985, the Department also lodged a claim against

Arthur Andersen in New York, for US $100 million, including punitive damages of US $20 million. In addition, by invoking the 'Racketeer Influenced and Corrupt Organisation Act' (RICO) - which provided for damages to be trebled - the Department initially sought total damages of approximately US $260 million in the US Federal Court in respect of Arthur Andersen's alleged negligence, breach of contract, common law fraud, and fraud in connection with the sale of securities and violation of the Act. However, a judicial ruling disallowed the RICO element of the Department's claim. Subsequently, the DMC Trustee lodged a claim against Arthur Andersen, for US $100 million, also in New York.

Other Claims

2.12 In addition to the Department, a number of other Government bodies - including Inland Revenue, Customs and Excise, Department of Health and Social Services and Department of the Environment - were also owed monies by DMCL. Comprising unpaid taxation, national insurance contributions and rates, these sums were over and above the financial assistance provided by the Department to the company - see **Figure 2**.

Figure 2: Other Government Claims Against DMCL (In Receivership)

Preferential Creditors		**£ million**
DHSS	National Insurance Contributions for employees	1.65
Inland Revenue	PAYE income tax deducted from employees' salaries and wages	1.62
Department of Economic Development: Redundancy Branch	Subrogated claim for salaries, wages and holiday pay of former employees	0.18
Department of the Environment (NI)	Rates	0.09
HM Customs & Excise	Car Tax	0.01
		Total £ 3.55 million

Source: DETI

Amounts Recovered

2.13 Since the collapse of the project in 1982, various sums have been recovered by the Department. Primarily, these monies have come from settlements of litigation proceedings and the realisation of assets by the Receivers. In the period to July 2003, the Department had recovered a gross total of some £40.45 million. Against this, however, it had incurred direct costs of £20.72 million, resulting in a net recovery of £19.73 million.

2.14 One of the Department's most significant recoveries was the settlement of £20.72 million reached, in November 1997, with Arthur Andersen. In addition, the Receivers distributed a total of £15.64 million to the Department over the period from 1982, these being the net proceeds from their realisation of the DMCL assets and settlements of court actions arising out of the misappropriation of the monies paid to GPD (paragraph 2.4). The Department also received a payment of £1.59 million from the DMC Trustee in relation to its claim of US $34 million (paragraph 2.11 (2)).

2.15 The Department's direct costs have largely comprised legal fees and expenses, incurred in the action against Arthur Andersen and the registration and pursuit of the claim against the DMC Trustee. Details are summarised in **Figure 3**. A fuller analysis of the Department's receipts and payments is attached at **Appendix 1**.

Figure 3 : The Department's Receipts and Payments to January 2003

Receipts:	£ million	£ million
Settlement with Arthur Andersen	20.72	
Receivers' Distributions - Cash	13.84	
- 'In Specie'	1.80[1]	
Other Government Departments	2.50[2]	
DMC Trustee Dividend	1.59	**40.45**
Payments:		
Action against Arthur Andersen	(20.32)	
Claim against DMC Trustee	(0.38)	
Other Actions	(0.02)	**(20.72)**
	Net Recovery	**£ 19.73 million**

Source : DETI

Notes :
1. The figure for distributions 'in specie' from the Receivers is a non-cash sum of £1.80 million, being the valuation of the former DMCL factory, and certain plant and machinery, assigned to the Department after closure.
2. Comprises monies owed to DMCL for criminal damage compensation, European Social Fund grants and VAT refunds.

2.16 In addition to the monies recovered by the Department, other recoveries by Government totalled £5.8 million (£3.55 million by other preferential creditors (see paragraph 2.12) and a further sum of £2.25 million recovered by Inland Revenue from the settlement with the Chapman Estate (paragraph 3.5)).

Administrative Costs

2.17 The amounts in Figure 3 do not include the Department's administrative costs, incurred between 1982 and 2002, in the recovery of sums owing. The Department told us that while this was a very significant piece of work, carried out over a long period of time, the pursuit of the De Lorean case was considered part of the normal recoveries function and there is no policy of keeping time records for individual cases. It also said that no

extra staff had been employed to handle this case. Given the longevity of the process – some 20 years – and the significant staff time involved, it is likely, in our view, that these costs amounted to a substantial sum.

Outstanding Matters

2.18 When we completed our review, the DMCL receivership was close to being finally wound up - the Receivers held cash balances of some £29,000 to cover outstanding fees, disbursements and related closure costs.

Part 3

Actions of the Receivers, Joint Liquidators and DMC Trustee

3.1 Following the collapse of the De Lorean project, the Receivers, the Joint Liquidators and the Trustee of DMC pursued recovery of monies on behalf of creditors. We reviewed the main elements in the recovery process.

The Receivers (United Kingdom)

3.2 The Receivers focused on two main areas of activity:

- Trading Activities & Asset Realisation
- Litigation proceedings.

Since their appointment in February 1982, the Receivers have realised a net recovery of some £17.67 million, as follows:

Figure 4: Receivers' Receipts and Payments, February 1982 to January 2003

	£ million (gross)	£ million (net)
Trading Activities & Asset Realisation:		
Receipts	24.21	
Payments	(12.10)	12.11
Litigations:		
Receipts	13.83	
Payments	(5.21)	8.62
Other:		
Payments		(0.07)
Less: Receivership Fees and Costs		(2.99)
Net Recovery		**17.67**
Payments to DETI (to January 2003)		**(13.84)**
Other Distributions		**(3.80)**
Cash in Hand (at January 2003)		**0.03**

Source: DETI

The figure for payments to the Department (£13.84 million) excludes:

(1) a non-cash sum of £1.80 million, being the valuation of the former DMCL factory and certain plant and machinery assigned to the Department after closure;

(2) sums totalling £2.50 million, due to the company at the date of receivership but retained by, or recovered directly by, the Department – VAT refund £0.67 million; European Social Fund grants £0.63 million; NIO Criminal Damage compensation £1.20 million.

A detailed analysis of the Receivers' receipts and payments over the period to January 2003 is attached at **Appendix 2**. We reviewed the outcome in each main area of activity.

Trading Activities & Asset Realisation

3.3 Following their appointment in February 1982, the Receivers continued to trade for some eight months, while seeking a buyer for the restructured manufacturing operation. When these efforts proved unsuccessful the Receivers began disposal of the DMCL assets. Overall, the Receivers realised some £24.21 million from trading activities and the realisation of assets. The main sources of recovery were:

- the sale of cars and parts for £13.7 million
- interest on deposits and exchange gains (on transfers between US $ and £ sterling), totalling some £3.31 million
- the sale of company houses and other fixed assets for £1.48 million
- receipt of a dividend of £1.45 million from the DMC Trustee in respect of the claim for US $32 million (paragraph 2.11(2))
- the DMCL bank balance of £1.02 million.

After allowing for costs - mainly manufacturing and trading expenses - net proceeds amounted to £12.11 million.

Litigations

3.4 As a result of the misappropriation of US $17.65 million paid to GPD (paragraph 2.4), the Receivers entered into a series of litigations aimed at recovery. In the United Kingdom, actions were taken against Lotus Cars, the estate of Mr Colin Chapman (the former managing director of Lotus who had died in December 1982), Mr Frederick Bushell (the former finance director of Lotus), and Mr De Lorean. In Switzerland, the

Receivers commenced actions against GPD and Mr De Lorean. Arising out of the successful UK action against Mr De Lorean, the Receivers also initiated enforcement proceedings in the United States.

3.5 After deduction of legal fees and expenses, the net sum recovered from litigations amounted to £8.62 million. Details are set out in Figure 5. Summaries of the actions are set out in **Appendix 3**.

Figure 5 : Receivers' Recoveries from Litigation Proceedings

	£ million	£ million
Recoveries:		
Mr De Lorean	4.98	
Chapman Estate	4.67	
Mr Bushell	3.00	
Lotus	1.00	
GPD	0.18	13.83
Less:		
Legal Fees & Expenses		(2.96)
Inland Revenue (settlement with Chapman Estate)		(2.25)
	Net Recovery	**£8.62 million**

Source: DETI

Receivers' Fees, Costs and Distributions

3.6 Since its establishment in 1982, the receivership itself has incurred fees and costs of £2.99 million. The Receivers have also made a series of distributions to DMCL creditors, including a total of £13.84 million paid to the Department and £3.8 million paid to other creditors, mainly DHSS (national insurance monies) and Inland Revenue.

The Joint Liquidators (United Kingdom)

3.7 The Joint Liquidators represented some 600 unsecured creditors of DMCL, owed a total of around £14 million, excluding the Department's claim. In the period since 1982, monies realised by the Joint Liquidators have been limited. In July 1984, the Joint Liquidators wrote to the Prime Minister seeking financial relief for the unsecured creditors. They were informed

that Government was not prepared to accept liability for the debts of DMCL.

Joint Liquidators against Arthur Andersen

3.8 Following the Department's issuing of writs against Arthur Andersen in Belfast and London, and later in New York, the Joint Liquidators initiated similar proceedings in Belfast. In February 1985, a writ, valid for 12 months, was issued by the Belfast High Court. However, as the Joint Liquidators had no funds with which to pursue the case, the writ was not served within the required period. The Joint Liquidators proposed that funds should be provided to enable them to pursue the litigation - 85 per cent from Government and 15 per cent from Coface (the holding company of Renault, the largest unsecured trade creditor). However, neither Government nor Coface provided funds.

3.9 Although the Court granted a time extension, Arthur Andersen appealed and the case went to the House of Lords. In May 1989, a judgement was given in favour of Arthur Andersen. The Joint Liquidators did not renew the action. Over the period 1993 to 1998, the Joint Liquidators and representatives of the unsecured creditors met with Government on a number of occasions, seeking assurances that the position of the unsecured creditors would be considered in any settlement between the Department and Arthur Andersen. However, no financial support has been provided by Government at any stage.

3.10 In 1999, as part of the settlement process between the DMC Trustee and Arthur Andersen, the Joint Liquidators were paid a sum of US $1.5 million (some £1 million) by the Trustee in return for their consent to the Trustee's settlement with Arthur Andersen - because the Joint Liquidators retained a proprietary interest in the DMCL estate (ie as creditors), the DMCL estate's interest in the Trustee's estate (through the receivership) could not be waived without the Joint Liquidators' agreement.

3.11 The payment to the Joint Liquidators was not therefore a dividend or distribution from the Trustee, but rather a sum paid in return for their agreeing not to challenge the Trustee's settlement with Arthur Andersen. Although receiving some £1 million from the Trustee, the Joint Liquidators had substantial outstanding costs in respect of legal fees, their own remuneration and a notification by Inland Revenue of tax liabilities in excess of £2 million. Consequently, the Joint Liquidators paid a first

and final dividend to unsecured creditors with agreed claims, at the rate of 4.1 pence in the '£'. The total dividend to unsecured creditors amounted to £150,000 and the liquidation is now closed.

The DMC Trustee (United States)

3.12 On liquidation, DMC was found to have few tangible assets. Following a detailed examination of DMC's affairs, the Trustee filed claims for damages and recoveries against Mr De Lorean and other parties, including former trade partners, directors and officers of DMC and DMC's auditors, Arthur Andersen. Most of the actions commenced by the Trustee were settled out of court. Excluding the action against Arthur Andersen, the Trustee recovered more than US $20 million for the estate of DMC, including an amount of US $9.5 million from Mr De Lorean. From these monies, the Trustee paid an interim dividend in 1990 to DMC's creditors, including sums of £1.59 million to the Department (paragraph 2.14) and £1.45 million to the Receivers (paragraph 3.3).

DMC Trustee against Arthur Andersen

3.13 The Trustee's action against Arthur Andersen commenced in October 1984 and claimed damages of US $100 million for negligence, fraud and breach of contract in the preparation of DMC's financial statements. The claim was based largely on the alleged fraudulent intent of the GPD agreement of November 1978, and on various allegedly fraudulent transactions by Mr De Lorean and other directors of DMC, by which assets of the company were dissipated and diverted to the detriment of DMC's creditors, all of which Arthur Andersen, as DMC's auditors, had failed to detect and report.

3.14 The case was effectively dormant for some years, pending resolution of the jurisdiction issue in the Department's action against Arthur Andersen - whether the case should be heard in London or New York. The Trustee's case finally went to trial in February 1998 following the Department's November 1997 out-of-court settlement with Arthur Andersen. In March 1998, a New York State Court found that Arthur Andersen had been negligent in failing to detect and report the fraudulent activities relating to the GPD transactions. Adjudging that Arthur Andersen had been 60 per cent to blame for the non-disclosure of the GPD fraud (the corollary of this judgement being that DMC's officers and directors had been 40 per cent culpable), the jury 'awarded' the Trustee US $46 million, plus accrued

interest, in damages. In total, this amounted to around US $109 million. The award was, however, subject to appeal, confirmation and/or denial by the presiding judge.

3.15 In January 1999, prior to an appeal being heard, the parties agreed a settlement whereby Arthur Andersen would pay a sum of US $27.75 million to the Trustee in full and final settlement of the action. The settlement was later ratified by the US Bankruptcy Court. Even though the Department and the Receivers comprised 77 per cent, by value, of the Trustee's creditors, under the terms of the Department's settlement with Arthur Andersen in November 1997 (see Part 4 of this report), any further distributions by the Trustee either directly to the Department, or via the Receivers, would have had to be repaid to Arthur Andersen. As a result, the only creditors which 'qualified' for a distribution from the Trustee's settlement were Coface and a number of US-based low value creditors of DMC - in effect, the remaining 23 per cent, by value, of the Trustee's creditors.

Part 4

The Department's Action Against Arthur Andersen – Negotiations and Settlement

Introduction

4.1 In November 1997, the Department's claim against Arthur Andersen (Andersen) was settled for US $35 million (some £20.72 million). The agreement was a 'global settlement', in that it encompassed the Department's and Receivers' 77 per cent interest in the DMC Trustee's case against Andersen (paragraph 2.11(3)). Andersen also agreed to allow repayment, to the Receivers, of a loan (amounting at that time to some £2 million) which had been provided to the DMC Trustee to help the latter finance his action against Andersen. The settlement brought to a close, over 12 years of litigation proceedings in the United States, Great Britain and Northern Ireland.

4.2 In reviewing the conduct of the case over the period 1985 to 1997, we focused on two key aspects:

- **how much was secured for the taxpayer ?**
- **could an acceptable settlement have been achieved earlier ?**

Background

The Case Against Andersen

4.3 In early 1985, the Department initiated legal proceedings against Andersen in Belfast, London and New York for the recovery of damages (paragraph 2.11(3)). The initiation of the action against Andersen reflected Government's determination to recover as much as possible of the public money invested in the De Lorean project and to take action against those who it considered may have been responsible for such losses. It also

wished to hold (and to be seen to hold) professionals to proper standards of honesty and propriety in their conduct. The Department's case, which alleged negligence, breach of contract, and common law fraud, was based largely on Andersen's failure to disclose the GPD fraud (paragraph 2.4) in its reports on the accounts of DMC and DMCL - as a result, the Department had continued to invest in the De Lorean project.

4.4 In the United States, the DMC Trustee also brought an action (paragraph 2.11(3)) against Andersen. Based on broadly similar lines as the Department's case, damages in excess of US $100 million, including interest, were sought. Both the Department and the Trustee's cases were litigated in parallel but, in order to minimise costs incurred by the Trustee (who had limited funds available), the brunt of the casework fell to the Department through their US lawyers and the Treasury Solicitor's Department (TSD), who acted as the Department's 'in-house' legal advisers.

Jurisdiction

4.5 The DMC Trustee's claim could only be pursued through the US courts. In line with legal advice, the Department's preference was that its case should also proceed in the United States – under US law, there was the potential for a considerably higher level of damages to be won and most of the alleged misconduct had taken place in the United States. It was also believed that running the DMC Trustee's and the Department's cases together would add to the pressure on Andersen. However, there were doubts as to whether the US court would accept jurisdiction of the Department's case and so, in order to keep its options open, the Department also filed claims against Andersen in London and Belfast.

4.6 The Belfast action was later dropped and, following an unsuccessful attempt by Andersen to have the US case dismissed, the London action was 'stayed' in 1987 while the US action proceeded. Accordingly, the Department's action against Andersen between 1985 and 1997 was largely conducted in the United States jurisdiction.

4.7 Until early 1997, the action was fought in the US Federal Court (due to the nature of some elements of the claim against Andersen). However, in February 1997, the US Federal Court dismissed all that remained of the Department's federal claim and left it with the option of filing its common law claims in the State Court of New York. The Department told us that,

in 1985, when the federal claim was filed, this would have been an unattractive option even for common law claims but, in the intervening years, New York had created a 'Commercial Division' in its State Court which could act with considerable speed. With an assurance from its US lawyers that the Federal Court ruling did not reduce the amount of damages it should claim against Andersen, the Department refiled its case in the New York State Court in March 1997.

4.8 In May 1997, the refiling was formally opposed by Andersen on the basis that the United States was not an appropriate forum for the case. If Andersen were successful, the US action would cease, whereupon the case could only be pursued in London, where potential damages were significantly lower. In the event, the New York State Court rejected Andersen's plea and trial dates for both the Department's and the DMC Trustee's cases were scheduled for January 1998.

Treasury Solicitor's Department (TSD) Running Notes

4.9 In 1989, the Department had commissioned a review by TSD to provide its Accounting Officer with assurance that, in the face of mounting legal costs, the case against Andersen was worth pursuing. Thereafter, what became known as the 'running note' was periodically updated. The Department told us that, while the running note was the work of TSD, it reflected and was informed by the ongoing advice of the Department's US lawyers, whom it described as being of the highest reputation. It said that it took account of developments in the law in the United States and of the evidence which was being collected through the process of discovery of documents and the depositions of witnesses. On each occasion, between March 1990 and February 1997, the running note indicated a strong prospect of the Department recovering very substantial damages, possibly far outweighing the costs associated with the action.

4.10 Successive running notes advised against the Department initiating any settlement negotiations, although realistic settlement proposals could be considered. The running notes included advice on target figures "worth considering" in a pre-trial settlement. These figures peaked, in February 1997, at US $81-89 million, as follows:

Figure 6: Running Note – Reasonable Settlement Levels

Running Note Date	"Worth Considering" £ million	Equivalent to US $ million
Late March 1990	20	32.5
February 1992	30	53
April 1992	30	53
January 1993	35-37	54-57
June 1993	40-42	60-63
September 1994	44-47	69-73
May 1996	50-55	76-83
February 1997	50-55	81-89

Source : DETI / TSD

TSD Review of March 1997

4.11 In March 1997, at the Department's instigation, a review of the fundamental strengths and weaknesses of the Department's case was undertaken by a TSD official not previously involved in the case. While confirming that there was indeed a well-based case against Andersen, the reviewer noted a number of matters which gave him cause for concern, namely causation, limitation and contributory negligence.[4]

4.12 One of the main areas of concern was that he felt insufficient allowance may have been made for the Department's possible contributory negligence surrounding the GPD fraud. The reviewer noted that the

[4] **Causation:** The Department would have had to convince the court that as a consequence of Andersen's failure to draw the GPD fraud to the Department's attention, Government continued to invest in the project, which it would not otherwise have done. Government's case on this issue was that Andersen's negligence led to a loss of public funds. The independent reviewer's concern was that Andersen's lawyers would succeed in convincing the court that there was an absence of such 'causation' – they would have argued that successive Governments were so anxious to provide jobs in West Belfast that they would have continued to support the project, even if the fraud had been revealed by Andersen. Also, they may have argued that the project was doomed at the start and that Government would have lost its money anyway.

Limitation: In negligence cases in New York, there is a three-year limitation period within which actions must be initiated. There was some uncertainty as to whether the court would accept that the Department's action for negligence had been initiated within the three-year limit.

Contributory Negligence: The Department was potentially vulnerable on a number of aspects, including the effectiveness of its Nominee Directors on the DMCL Board and whether there had been sufficient investigation into concerns that had been raised about the operation of the De Lorean group of companies, prior to the project's failure.

estimates of the quantum of likely damages did not reflect any discount for contributory negligence. In summing up, the reviewer considered that a good outcome in terms of liability and quantum was by no means certain and that there were a number of ways in which the case "could go badly wrong" for the Department. His view was that, in weighing the likely damages against costs to date and likely future costs, "the balance of advantage has swung firmly in favour of making efforts to bring this case to an honourable conclusion by way of settlement".

4.13 The reviewer also commented that it was some seven years since negotiations with Andersen had last been conducted – the one attempt at settlement (in 1990), which was initiated by Andersen (who offered £2.4 million), had been firmly rejected, with no initiative having been taken since, by the Department, because "it never seemed to be the right time". Noting that the Department's direct legal costs were "huge" - some £18.5 million to March 1997 - the reviewer considered that it would be "irresponsible" not to seek some compromise position.

The Decision to Seek a Settlement

4.14 Following the US Federal Court decision in February 1997 to dismiss the Department's federal claim (paragraph 4.7), Andersen commenced proceedings – referred to as the 'anti-suit action' - against the Department, in the Commercial Court in London. In doing so, Andersen was seeking declarations:

(i) that the Commercial Court was the 'natural forum' for the Department's claim against Andersen; and
(ii) preventing the Department from pursuing its claims in the New York State Court.

In March 1997, Andersen also issued a summons in the action commenced by the Department in 1985, but which had lain dormant for 10 years (see paragraph 4.6), seeking to lift the 'stay' of that action.

4.15 Andersen's reasons for seeking to change the forum of the case from New York to London were that the Department's case was weaker under English law and the potential damages which the Department might secure were much lower in England. Advice to the Department from Counsel was that the prospects of substantial damages in the English proceedings were not good – even if the Department won, damages could

be as little as £3 million and at the most optimistic level were unlikely to be in excess of £12 million.

4.16 In the wake of the TSD March 1997 review and the actions commenced by Andersen in London, a series of meetings in May and June 1997, variously involving the Department, the Attorney General and Solicitor General, TSD, Counsel and the Department's US lawyers, were held to discuss, inter alia, whether the case should be settled by negotiation. At the final meeting on 23 June 1997, it was agreed that negotiations should be opened that week.

Alternative Dispute Resolution (ADR) Proceedings

4.17 At the hearing of Andersen's application in London on the anti-suit action in early July 1997, the Court was told that the Department and Andersen were holding discussions about a settlement. Pending the possible resolution of the case through negotiation, the Court reserved judgement on the forum issue. However, the negotiations between the parties did not result in an agreement and so, on 19 September, the judge in London ordered the parties to enter into ADR proceedings, with a target completion date of 31 October 1997.

4.18 Under the ADR procedure, a mediator acceptable to both parties is appointed. The mediator's role involves shuttle diplomacy between the parties with a view to reaching a settlement figure. In early October, a former Lord of Appeal was appointed as mediator. Following preliminary meetings with the parties, the ADR procedure began on 28 October.

Bottom Line Settlement Figure

4.19 Over the period May to October 1997, the Department and its advisers had been considering the 'bottom line' figure for a negotiated global settlement with Andersen. It was eventually decided that the figure would be US $35 million, covering both its own action and its interest in the DMC Trustee's action. (The Trustee, however, had already decided that his own case would not be part of the ADR procedure envisaged by the London Judge and would go to trial in New York, irrespective of whatever may happen to the Department's case).

Settlement Outcome

4.20 On 4 November 1997, the Department agreed a settlement of US $35 million with Andersen, through the ADR procedure. The proposal was submitted for approval to the Secretary of State for Northern Ireland. In recommending acceptance, the submission explained:

"…..
If this case goes forward to trial in New York there is the theoretical possibility that the Government will secure a very large sum indeed by way of damages together with interest if the jury upholds all the Government's claims. The total amount of HMG's claim is some $321 million inclusive of simple interest and net of recoveries that the Government has made in other actions. A settlement for a sum representing little more than 10% of Arthur Andersen's total exposure is on the face of it less than generous, but [we are] *absolutely convinced, having studied the strengths and weaknesses of the case and bearing in mind* [the mediator's] *own assessment that settlement of $35 million is fair and reasonable. The Government faces considerable problems in establishing that any negligence or fraud of Arthur Andersen caused the Government losses of the order that it claims. In particular, Arthur Andersen maintains that the project would have failed in any event. Under the English law of causation Arthur Andersen have a good prospect of succeeding in their assertion and although the American law in causation is apparently less strict, the Government nevertheless faces an uphill struggle in establishing losses of anything like the magnitude …. set out above. In addition it is possible that the Government's claim would be reduced in the United States of America to reflect comparative negligence by NIDA/DOC*[5]*, or its nominee directors on the Board of DMCL. Moreover the further costs which would have been incurred in pursuing the view to sue would have run into millions of dollars.* [We] *have no hesitation in recommending acceptance of $35 million ...; indeed … the Treasury Solicitor and his team have secured a good outcome from these negotiations.*
…"

The settlement was approved by the Secretary of State and, on 14 November 1997, Parliament was notified.

4.21 The Department told us that, had it insisted on a higher settlement figure than US $35 million, the negotiations with Andersen would have collapsed. It said that it would then have faced either a trial in the English Court or the New York State Court, with significantly increased legal fees and no guarantee of achieving a better return than the settlement amount

[5] The former Northern Ireland Development Agency/Department of Commerce, funders of the De Lorean project.

and the possibility that the case could have been lost in one or other of the jurisdictions. It also emphasised that, in the United States, no legal costs are recoverable - even if a case is won – and, in such circumstances, it would undoubtedly have faced the prospect of long drawn-out appeal proceedings.

4.22 As the settlement with Andersen was a 'global' one, it included a clawback arrangement, whereby the Department would repay to Andersen any further dividend it received from the Trustee (directly, or through the Receivers). However, Andersen did agree to allow repayment of a loan (amounting at that time to some £2 million), which had been provided by the Receivers to the DMC Trustee between 1994 and 1998, to help the latter finance his action against Andersen. It was also agreed that the Department's US lawyers would not help the Trustee with his case against Andersen, and that the Department would not provide direct or indirect financial assistance to the Receivers for the purpose of funding the Trustee's action.

4.23 On conclusion of the agreement, the ADR mediator issued a statement as follows:

STATEMENT OF THE MEDIATOR

After a week of intensive negotiation there remained a relatively narrow but apparently unbridgeable gap between the parties. Accordingly, as required by Clause 8 of my letter of engagement as an independent mediator I recommended to the parties a settlement figure of $35,000,000.

After further reflection the parties have agreed to settle at this figure. I have no doubt they have made a wise decision. If this action is tried it will involve the investigation of events that occurred nearly twenty years ago and the valuation of judgements made at that time. Both the facts and the law will be difficult to decide and the outcome of the litigation is impossible to predict with any confidence, particularly if it is tried by a jury in the New York State Court. What is certain is that both sides will incur very substantial further costs if this litigation continues which will almost certainly exceed the gap between them before I made my recommendation.

> *In my opinion this settlement reflects the sums at stake in the litigation, the extraordinary difficulty of predicting the result, and the sound commercial sense of bringing to an end litigation, in which the parties have already been locked for over twelve years, at a figure which is in my view fair to both parties.*

How much was Secured for the Taxpayer?

4.24 The Department's settlement of US $35 million equated to some £20.72 million. Against this, it incurred substantial costs. Over the period 1985 to 1997, the Department's direct legal costs amounted to some £20.32 million, as follows:

Figure 7: The Department versus Arthur Andersen – Direct Legal Costs, 1985 to 1997

		£ million	£ million
US Lawyers:	Fees	14.45	
	Disbursements	3.17	17.62
TSD :	Fees	0.69	
	Disbursements	0.41	1.10*
Other Costs:			1.60
		Total	**£20.32 million**

Source: DETI

*TSD costs date from 1991 only. Prior to that date, no charges were made by TSD.

4.25 The figure of £20.32 million does not, however, include:

- the Department's administrative costs over the period
- the administrative costs of other Departments involved at various times in the action

- TSD's costs between 1985 to 1991 (when TSD did not charge for their services).

The Department told us that it was unable to calculate the level of these administrative and legal costs. Given the longevity – 12 years - of the case, its complexity and the significant staff time involved, it is likely, in our view, that these costs amounted to a substantial sum.

4.26 The Department also commented that, in addition to its objective of recovering damages from Andersen, it was also seeking to uphold a principle – as Andersen's negligence had contributed to the loss of public money, it was regarded as important that they be held to account. It said that this was not simply a commercial issue - Government has a responsibility to hold professionals to proper standards and this may sometimes make it necessary to litigate even where there is no direct financial benefit. The Department also noted the comments, more recently, of the Public Accounts Committee of the Northern Ireland Assembly in its 2001 report[6] on fraud in the former Local Enterprise Development Unit, that the prosecution of fraudsters through the criminal and/or civil process sends a strong deterrent signal to those who might be tempted to commit fraud.

Could an Acceptable Settlement have been Achieved Earlier ?

4.27 In view of the build-up of costs to such a high level, particularly in the later years of the action, we examined whether an acceptable settlement might have been achieved at a much earlier stage in the case. We noted that, over the period December 1989 to February 1991, the Department and its advisers entered into negotiations with Andersen's advisers in an attempt to arrive at a settlement.

The Attempt to Settle in 1989-91

4.28 In December 1989, Andersen's representatives suggested to Government that it should direct the Treasury Solicitor to begin discussions on the terms of a possible settlement. A review, in March 1990, of the Department's claim - the first of the 'running notes' (paragraph 4.9) - stated:

[6] Eleventh Report of Session 2001-2002 (11/01/R)

> *"Our American lawyers are reluctant to advise on a reasonable target figure if an opportunity of settling the case arises. As the case looks at present* [to TSD] *it would appear that offers in excess of £20 million would be worth considering further ..... not to be taken as an absolute floor".*

Opening of Negotiations

4.29 TSD told Andersen's London solicitor in late March 1990 that a detailed review had concluded that the Department's case against Andersen had a very good prospect of success - the Department expected £70-80 million if the case was won, in either the UK or US. Andersen's solicitor responded that £70-80 million was much higher than Andersen was prepared to contemplate, but made clear that Andersen nevertheless wished to discuss a settlement.

4.30 Andersen's solicitor asked the Department to set out, as a basis for negotiation, how its assessment of damages had been reached. The Department's response in May 1990, based on professional advice, put its claim at some £123.4 million, including interest of £57.7 million. A possible further £23.3 million, including interest, was also mentioned.

The September / October 1990 Meetings

4.31 The Department's advisers met Andersen's solicitor in September 1990. In preparation, they had prepared a revised calculation of a possible settlement figure, totalling some £55 million, including interest. At the meeting, in response to a direct question as to how much Andersen was willing to pay to be rid of the case, Andersen mentioned a maximum of US $17.6 million (in effect, the GPD fraud amount), some of which would be due to the DMC Trustee. However, towards the end of the meeting, Andersen's solicitor remarked about settlement in the band £5 million to £20 million. The Department's advisers stated that an amount of even £20 million would not be acceptable. It was agreed that settlement proposals should proceed in writing.

4.32 Later that month, Andersen's solicitor asked for an urgent meeting and offered to settle both the Department's and the Trustee's cases for US $4.6 million, (at that time, some £2.4 million), without prejudice to liability. The Department's professional advisers responded to the effect that "the offer was derisory" but that it would be considered.

4.33 In early October 1990 the Department formally rejected the offer of US $4.6 million and counter-proposed £55 million. In his January 1991 reply, Andersen's solicitor said that his client viewed its maximum arguable exposure to Government as US $5.15 million, which could be increased for interest, but reduced by amounts received in settlement with other parties. He concluded that the Department's demand of approximately US $100 million was unrealistic - were the Department prepared to adopt a realistic approach, Andersen would be willing to continue discussions.

Failure of Negotiations

4.34 The Department's US lawyers took the view that because the parties were so far apart there did not appear to be a basis for negotiation at that time. TSD and the Department agreed. In February 1991, TSD wrote to Andersen's solicitors saying there was no basis on which negotiations could usefully be continued. The minutes of a subsequent meeting between the Department, TSD and the Department's US lawyers noted:

> *"A letter has recently issued to Andersen's solicitors in the terms agreed. It is now up to them to start again if they have further proposals with regard to settlement. It was considered that the reason for the overtures to date was to produce a few one-sided letters which might be seen by the decision makers".*

4.35 It is not possible to determine how serious Andersen was about achieving a settlement. Although it was Andersen who had initiated the settlement talks, the Department said that both it and its advisers concluded that Andersen had not been genuinely interested in reaching a reasonable settlement, on the basis that the only offer put forward by Andersen was £2.4 million, which fell short of the legal costs at that time. Settlement anywhere in the range of £5 million to £20 million, when the Department's costs stood at £4 million (in February 1991) would, as things have turned out, have been a better commercial outcome than the actual settlement of £20 million in 1997, by which time the Department's direct legal costs alone had risen to virtually the same amount.

4.36 We put it to the Department that, with the decision to break-off active negotiations with Andersen, an opportunity to achieve a satisfactory outcome may have been lost. The Department said it believes that there was no realistic opportunity to do so and that there is no evidence of

Andersen's seriousness in wishing to settle at that time. The Department also said that, in its opinion and that of TSD and the US lawyers, Andersen was not negotiating in good faith but was hoping that the Department was or would soon become so 'war weary' that it would settle on any terms. It was partly for this reason and not only because the parties were so far apart that it was agreed not to continue discussions. The Department also commented that both the large figures referred to by TSD (paragraphs 4.30 and 4.31) and the derisory figures put forward by Andersen's solicitors (paragraphs 4.32 and 4.33) were no more than bargaining tools and the Andersen figures of £5 million to £20 million (paragraph 4.31) were not formal offers but only vague hints – the only firm offer was £2.4 million.

4.37 The Department added that, at the time of the discussions in 1990-91, the law in England and in the United States was more favourable to plaintiffs in such cases than it subsequently became – cases decided after 1990-91 were less favourable to plaintiffs. It also told us that the judge in charge of the case in New York became ill and was replaced, in January 1994, by another judge whose view of such claims was perceived by the Department's professional advisers to be less sympathetic. The Department said that neither of these developments was foreseeable at the beginning of 1991.

Why Progress of the Action against Arthur Andersen was Slow

4.38 The Department told us that the action against Andersen was a very complex process and, therefore, necessarily very time-consuming and costly. Andersen had sought to prolong the action, with the Department having little or no control over the speed of the proceedings – as one of the largest global accountancy firms, Andersen had substantial resources, significant indemnity cover and, most important, substantial experience of defending actions brought against it. It would have had a resource, both internally and in the form of external legal advisors, where principal activity was defending negligence actions.

4.39 Furthermore, we were told that there would have been no incentive or pressure on Andersen to make other than a nominal value settlement offer until a very late stage in the litigation. This was because Andersen would be consistently advised by its lawyers:

- that they had a good prospect of avoiding any claim due, inter alia, to the 'contributory role' of the Department's non-executive directors in DMCL

- to let the legal process run on the basis that, for example:

  - its liquidation costs were being met from its professional indemnity insurance, which provided for the payment of legal costs in addition to any other costs, up to specific policy/excess limits

  - the litigation was highly complex and likely to be protracted

  - various procedural issues or demands may arise which would pressure the Department/Government into considering 'throwing in the towel', such as the need to produce Cabinet papers

  - the voluminous discovery exercise may well reveal significant information and documentation helpful to Andersen.

4.40 A summary of the main events in the case against Andersen, which illustrates many of those occasions on which considerable inputs by the Department and its legal advisors were required, is set out at **Appendix 4**.

Lessons for Future Application

4.41 We asked the Department whether there were any lessons it had learned from its conduct of the case that could be of future use to Government departments and agencies involved in a major litigation process. The Department said that lessons had been learned:

(1) the consideration of the use (and early use) of the Alternative Dispute Resolution (ADR) procedure (including, but not limited to, mediation) as a way of resolving disputes is now Government policy and the courts are also committed to promoting ADR. Consequently in major litigation, there is a greatly increased focus on the use of ADR and the positive conclusion of the process in this case has been influential in the change of policy. It remains important to recognise that ADR can only be successful if both parties to a dispute are committed to it. The Department said it remains of the view that, for the reasons set out in paragraphs 4.38 to 4.40 and Appendix 4, Andersen would not have committed to ADR at any significantly earlier stage and without the direction of the court in September 1997;

(2) in addition, the Department said that over the period since this case began there had developed within Government a greater recognition of the need for continual review of the costs and the objectives of litigation and the relationship between the two. In particular, a department engaged in litigation should seek formal independent reviews as and when major milestones are reached in the litigation process. The review(s) should be undertaken by a lawyer not directly involved in the case, as was the Treasury Solicitor's Department review of March 1997. With hindsight, this review should have been undertaken earlier in the process;

(3) the Department's opinion is that it would be difficult to extrapolate other lessons of general application from the litigation other than to emphasise the following:

- a Government department which commits to litigation in any jurisdiction, but particularly in a foreign jurisdiction and where substantial damages are being sought from a powerful organisation that is well-insured, and with a 'name' as well as a 'pocket to defend', must be prepared for the long haul

- in pursuing such action, it is essential that a close working relationship is maintained between the Department, its in-house lawyers/Treasury Solicitor's Department and the foreign lawyers. The Department must be kept fully informed at every stage of the litigation process, as was the procedure in this case

- all opportunities for legitimate commercial leverage should be taken so as to exert maximum influence on defendants to settle at an acceptable figure

- Government departments, while taking guidance from their legal team, must retain overall responsibility for assessing realistic settlement options. In considering such options, the Government's responsibility to hold professionals to proper standards as well as the achievement of what might be considered an acceptable settlement figure, must be taken into account.

Appendices

DETI:
RECEIPTS AND PAYMENTS FEBRUARY 1982 TO JANUARY 2003

	Notes	£ million	£ million	£ million
RECEIPTS				
Receivers:-				
Cash			13.84	
In Specie (valued at October 1984)	**1**			
- Leasehold Land		1.70		
- Plant and Machinery		0.10	1.80	15.64
Other Government Departments:-				
H M Customs and Excise: VAT Refund (December 1983)			0.67	
European Social Fund Grants (January 1984)			0.63	
NIO: Criminal Damage Compensation (March 1983 and April 1986)			1.20	2.50
DMC Trustee:-				
Dividend (December 1990)	**2**			1.59
Settlement with Arthur Andersen	**3**			20.72
TOTAL RECEIPTS				**40.45**
PAYMENTS				
DETI v Arthur Andersen				
US Lawyers:				
Legal costs		14.45		
Disbursements		3.17	17.62	
Treasury Solicitor's Department:				
Legal Costs		0.69		
Disbursements		0.41	1.10	
Expert Witnesses:				
Accountancy Matters		0.41		
Car Industry		0.11	0.52	
Miscellaneous			0.01	
Third-Party Action against DMCL Nominee Directors:				
Legal Costs	**4**		1.07	20.32
Chapter VII Claim against DMC				
Legal costs and disbursements	**2**			0.38
Other Legal Advice	**5**			0.02
TOTAL PAYMENTS	**6**			**20.72**
SURPLUS OF RECEIPTS OVER PAYMENTS				**19.73**

Source: DETI

Notes to the Receipts and Payments Account

1. **In Specie**: This was a non-cash award to the Department, being the valuation of the former DMCL factory and certain plant and machinery assigned to the Department after closure.

2. **DMC Trustee**: Following the liquidation of DMC in December 1983, the Department lodged direct claims with the DMC Trustee totalling US $34 million. These claims were in respect of guarantees given to DOC by DMC in relation to the liabilities of DMCL. When an interim dividend of nine per cent was paid to DMC's creditors by the Trustee, the Department received some £1.59 million.

3. **Settlement with Arthur Andersen**: In January 1985, the Department lodged a claim, in Belfast and London, against Arthur Andersen, auditors of the De Lorean group of companies. In February 1985, the Department also lodged a claim in New York. In January 1997, the Department entered into an agreement whereby Arthur Andersen paid US $35 million in full and final settlement of the claims.

4. **Third-Party Action against Nominee Directors**: Legal costs incurred by the Department in relation to the defence of the "third-party" action brought by Arthur Andersen against the DOC/NIDA nominee directors of DMCL.

5. **Other Legal Advice**: Legal costs incurred in respect of English legal counsel relating to:

   - ***De Lorean v Receivers***: In April 1988, Mr De Lorean filed a complaint in the US Courts against the Receivers and others in retaliation for the Receivers' London action against him (see Appendix 3). The action was terminated as part of the settlement reached in that case.

   - ***DMCL v Lotus Third-Party Claims***: In January 1986, the Receivers commenced proceedings in the High Court in London against Lotus and others (see Appendix 3). In October 1987 Lotus, as part of their defence, filed a third-party action against the DOC/NIDA Nominee Directors of DMCL. The third-party action was terminated as part of the Receivers' settlement with Lotus.

6. The figures opposite do not include the Department's administrative costs. The Department told NIAO that it was unable to calculate the level of these additional costs (see paragraph 2.16).

RECEIVERS:
RECEIPTS AND PAYMENTS FEBRUARY 1982 TO JANUARY 2003

	Notes	£ million	£ million	£ million
TRADING RECEIPTS AND PAYMENTS				
Receipts:				
Disposal of stock	**1**	13.70		
Bank balance transferred from DMCL		1.02		
Training grants		0.80		
VAT recoveries		0.83		
Other receipts	**2**	0.63	16.98	
Payments:				
Manufacturing and trading expenses	**3**	(7.53)		
Legal fees and disbursements	**4**	(2.95)		
VAT paid on expenses		(0.93)		
Insurance premiums	**5**	(0.69)	(12.10)	4.88
ASSET REALISATIONS				
DMC Trustee: Dividend	**6**		1.45	
Disposal of fixed assets			0.96	
Surplus from DMCL pension fund			0.99	
Disposal of company houses			0.52	
Interest received	**7**		2.37	
Exchange gain	**8**		0.94	7.23
LITIGATION				
Receipts:				
Legal Settlements (related to GPD contract):-	**9**			
With J Z De Lorean ($9.5 million)		4.98		
With Chapman Estate		4.67		
With Bushell		2.94		
With Lotus Cars		1.00		
Share of Swiss bank account ($0.35 million)		0.18		
Recovery of Security for costs	**10**	0.06	13.83	
Payments:				
Legal fees and disbursements	**4**	(2.96)		
Inland Revenue (settlement with Chapman Estate)		(2.25)	(5.21)	8.62
RECEIVERS' FEES AND DISBURSEMENTS				
Fees			(2.65)	
Disbursements			(0.34)	(2.99)
DISTRIBUTIONS				
Distributions to DETI	**11**		(13.84)	
Preferential Creditors	**12**		(3.56)	
Secured under liens and hire purchase agreements			(0.15)	
DMCL Pension Plan Contingency Fund			(0.05)	
Unsecured Craig Corporation	**13**		(0.04)	(17.64)
OTHER PAYMENTS				
Contribution to Joint Liquidators' and other costs			(0.05)	
Other miscellaneous payments			(0.02)	(0.07)
CASH IN HAND	**14**			**0.03**

Source: DETI

Notes to the Receipts and Payments Account

1. **Disposal of stock**: Stock includes new cars, used cars and parts.

2. **Other receipts**: Includes option monies (deposits received for the purchase of certain assets) and insurance claims in respect of damage to property.

3. **Manufacturing and trading expenses**: Salaries, wages, materials and overheads.

4. **Legal fees and disbursements**: Legal fees and disbursements comprise the following:

	£m
Payments to US lawyers in respect of all aspects of the receivership in the US	3.27
Payments to principal UK legal advisors on receivership	1.21
Legal costs arising from Swiss actions	0.19
Other	1.24
Total	5.91

5. **Insurance premiums**: Includes premises, fixed plant and machinery and employers' liability insurance.

6. **DMC Trustee**: Following the liquidation of DMC in December 1983, the Receivers filed a claim with the DMC Trustee for US $52 million in respect of loans to DMC and other sums due. The claim was reduced by negotiation, and an interim dividend of nine per cent was paid to the creditors by the Trustee. The Receivers received some US $2.8 million (£1.45 million).

7. **Interest received**: Accumulated interest earned on realisations lodged by the Receivers during the course of the receivership.

8. **Exchange gain**: Accumulated funds generated as a result of fluctuations in the exchange rate. The amount includes one major exchange gain of some US $0.8 million.

9. **Legal Settlements (related to GPD contract)**: Receipts from various legal actions related to the misappropriation of US $17.65 million paid to GPD for the development of the De Lorean sports car. Details of individual recoveries are set out in Appendix 3.

10. **Recovery of security for costs**: Recovery of £57,000 security for costs on settlement of the Receivers' action against Bushell in the UK courts.

11. **Distributions to DETI**: The figure for distributions to the Department excludes a non-cash sum of £1.8 million, being the valuation of the former DMCL factory and certain plant and machinery assigned to the Department after closure.

12. **Preferential Creditors**: Payments to the Department of Health and Social Services, Inland Revenue, Customs and Excise, Redundancy Branch of the Department of Economic Development, the Department of the Environment for Northern Ireland and 173 DMCL employees.

13. **Unsecured Craig Corporation**: Following the liquidation of DMC, the Craig Corporation, an unsecured creditor of the company, filed a claim with the DMC Trustee for US $1 million. The US Court ruled that US $0.07 million of the claim should be paid out of sums payable to the Receivers of DMCL by the DMC Trustee. The Receivers subsequently paid to the Craig Corporation £0.04 million in settlement of this element of the claim.

14. Provision for the Receivers' outstanding fees, disbursements and closure costs.

a. United Kingdom Actions :

Receivers against Lotus Cars Limited, the Chapman Estate and Mr Frederick Bushell

1. These actions followed discovery of the misappropriation of US $17.65 million paid to GPD for the development of the De Lorean sports car.

2. Investigations by the Receivers, the Serious Fraud Office (SFO) and the police found that the missing funds had been diverted for the personal benefit of Mr De Lorean, Mr Chapman, Mr Bushell and others.

3. In January 1986, the Receivers commenced proceedings in the High Court in London against Lotus, the Chapman Estate (Mr Chapman had died in December 1982) and Mr Bushell for the recovery of the misappropriated funds. In July 1987, Mr De Lorean was joined as a defendant in the proceedings, in the United States.

Outcomes

4. In January 1989, the Receivers agreed a settlement with **Lotus** for **£1 million**. Under the conditions of settlement, all Lotus' claims against the other parties involved were assigned to DMCL.

5. The claim against the **Chapman Estate** was settled in November 1991, proceeds being shared with Inland Revenue, another of DMCL's preferential creditors. Under the settlement, some **£4.67 million** has been paid to the Receivers, of which £2.25 million was transferred to Inland Revenue.

6. In July 1989, a joint criminal investigation by the SFO and the police led to **Mr Bushell** being charged with conspiracy to defraud. Mr Bushell pleaded guilty to the criminal fraud charges and was sentenced at Belfast Crown Court to a three-year term of imprisonment and a fine of some £1.6 million. In addition, he was ordered to pay costs of up to £0.1 million. A Compensation Order for **£0.7 million** was also made against him in favour of DMCL. This was paid in September 1992.

7. Progress in the civil action against Mr Bushell was slowed by the criminal proceedings and subsequent imprisonment. However, in February 1995, the Receivers' application for summary judgement was granted and Mr Bushell was required to pay an interim award of £0.2 million to the Court. In late 1996, the Receivers entered into a settlement with Mr Bushell under which property worth **£0.96 million** and cash of **£1.28 million** (including the interim award) were recovered.

b. Swiss Actions :

Receivers against GPD, Mrs Juhan, Mr Wittmer and Mr De Lorean

1. In November 1984, the Receivers commenced a series of actions in the Swiss Courts aimed, inter alia, at recovering US $0.25 million (part of the misappropriated GPD funds) held on deposit with a Swiss bank since November 1978. The actions were against GPD, Mrs Juhan (controller of GPD), Mr Wittmer (GPD's lawyer) and Mr De Lorean.

2. In November 1987, the Swiss Court awarded the full amount in the deposit account to the Receivers. However, on appeal, the Court awarded 50 per cent to GPD. Accordingly, some **US $0.35 million** (including interest) was paid to the Receivers in September 1992.

c. United States Actions:

Receivers against Mr De Lorean

1. In July 1987, Mr De Lorean was joined, as a defendant in the United States, in the Receivers' action against Lotus, the Chapman Estate and Mr Bushell. In response, Mr De Lorean filed a complaint in April 1988 in the Federal Court in California against the Receivers, the Department's US lawyer and others, alleging malicious conspiracy to institute wrongful proceedings against him and to encumber his assets so as to render him incapable of defending himself.

2. In June 1988, the London High Court quantified a default judgement against Mr De Lorean, in the sum of £30 million. The Receivers commenced proceedings in the United States to have the London judgement enforced. While the US Court granted summary judgement in favour of the Receivers, Mr De Lorean appealed.

3. In October 1990, the Receivers' claim and Mr De Lorean's counter-claim were settled by agreement. Under the terms of the settlement, Mr De Lorean was to pay a sum of US $3 million in April 1991 and a further US $4 million in January 1992.

4. Mr De Lorean defaulted on the first payment of this settlement and was therefore additionally liable for the payment of interest and penalties. He finally settled in August 1992, paying the Receivers a total sum of **US $9.5 million**.

Main Stages of the Department's Litigation Against Arthur Andersen

Appendix 4 (paragraph 4.40)

The following is a summary of details provided by the Department, on the main stages of its litigation against Arthur Andersen. The Department has explained that the case was exceptionally complex because of its transnational and international character and that Andersen took an extremely aggressive and combative approach in presenting its factual and legal arguments, making a series of procedural motions designed to avoid a hearing on the merits of the case. In addition to the main action, there was also a great deal of collateral and related litigation, both in the United Kingdom and the United States. Obtaining, analysing and authenticating the large amount of evidence was complicated and time-consuming. The Department also commented that there was a "vast amount" of day-to-day correspondence among lawyers, with the officials involved in monitoring the litigation, with testifying experts and consultants, with potential witnesses and with the Courts, all of which took a great deal of time and expense.

The Complaint and Initial Investigation

February 1985	The action against Arthur Andersen was commenced on 15 February 1985 by the filing of a detailed Complaint (Statement of Claim) in the US District Court in New York. The Complaint, alleging negligence and fraudulent concealment, breach of contract, common law fraud, aiding and abetting common law fraud, fraud in connection with the sale of securities, aiding and abetting securities fraud and violation of the 'Racketeer Influenced and Corrupt Organisations Act' (RICO), was served on Andersen in New York, Chicago, Dublin and London. Prior to bringing the litigation, the Department's US lawyers prepared an extensive memorandum analysing the potential claims against Andersen and the arguments for and against bringing the action in the New York jurisdiction.

Andersen's Motion to Dismiss and Related Matters

April 1985	Following the filing of the Complaint, the Department's lawyers served initial 'discovery' (examination of relevant documentation) requests on Andersen. In April 1985, Andersen's lawyers made written application to the Court for a 'stay' of discovery, pending determination of a motion that Andersen intended to make to dismiss the Department's action on jurisdictional grounds. This was opposed by the Department's lawyers.
May 1985	In May 1985, Andersen's lawyers brought a motion to dismiss the Department's Complaint on several grounds, including jurisdiction – it argued that New York was not a convenient forum for the trial or, in the alternative, that the action should be stayed in favour of the action brought by the Department in Northern Ireland, pursuant to a writ dated January 1985. The motion to dismiss was extensively briefed by both sides.
March 1988	In March 1988, Judge Stewart denied Andersen's motion to dismiss in all key respects.

Issuance of Protective Writs and Stay of the UK Proceedings

January 1985	In January 1985, writs were issued against Andersen in the London Commercial Court and the Northern Ireland High Court. The writs were protective in nature, to guard against a situation in which the Department's action in New York would be dismissed on jurisdictional or forum grounds.
March 1986	In March 1986, the Treasury Solicitor's Office filed a Claim against Andersen in the London Commercial Court, on behalf of the Attorney General.
October 1987	In 1987, the Attorney General applied for a stay of the Commercial Court proceedings, pending pursuance of the case in the United States. This was granted in October 1987. Andersen's appeal against the judgement, to stay the proceedings, was dismissed in March 1988.

Document Production by Andersen, HMG and Non-Parties

August 1988	In August 1988, Andersen provided its responses to the Department's initial discovery requests. The review and production of documents, particularly Government documents, was an enormous and complex undertaking. During the course of the litigation, Andersen produced tens of thousands of pages of audit and accounting work, in papers which were inspected and reviewed by the Department's US lawyers in the United States and United Kingdom.
September 1988	In September 1988, Andersen served its first set of discovery requests, which sought sweeping discovery of documents relating to the De Lorean project held by various Government departments and others, including - the Department of Economic Development, Department of Commerce, Northern Ireland Development Agency, Industrial Development Board for Northern Ireland, Northern Ireland Office, Northern Ireland Audit Office, Northern Ireland Civil Service, Civil Service Commission for Northern Ireland, Crown Solicitor's Office for Northern Ireland, Office of the Northern Ireland Commissioner for Complaints, Office of the Northern Ireland Parliamentary Commissioner for Administration, Department of Finance and Personnel, Department of Finance Solicitor's Office, Crown Solicitor's Office, Department of Employment, National Investment and Loans Office, National Debt Office, Public Works Loan Board, Treasury, Treasury Solicitor's Office, Office of the Secretary of State for Northern Ireland, Board of Trade, Export Credits Guarantee Department, Department of Trade and Industry, Office of the Minister for the Civil Service, Crown Prosecution Service, Law Officers' Department (offices of the Attorney General and Solicitor General), Police Authority for Northern Ireland, Department of Public Prosecutions for Northern Ireland, Royal Ulster Constabulary,

	Board of Inland Revenue and any of their predecessors, successors, current or former secretaries, ministers, officials, directors, officers, agents, employees, servants, accountants, auditors, lawyers, representatives, parents, subsidiaries, affiliates and anyone else acting on their behalf.
December 1988	In December 1988, the respective counsel negotiated a confidentiality agreement with respect to the documents to be produced in the litigation.
February to August 1989	The production of documents to Andersen commenced in February 1989. Government produced approximately 200,000 pages of documents relating to the project. First, it was necessary to determine which departments and agencies held relevant files and then permission to inspect the documents and produce them to Andersen's lawyers had to be obtained. All of the documents had to be reviewed by the Department's US lawyers with respect to 'privilege' and those documents deemed to be privileged segregated from the non-privileged documents, or the privileged portions redacted. Under Court rules, all of the thousands of documents for which privilege was claimed were required to be listed by date, author, recipient and subject matter, which required the creation of separate departmental privilege lists. Documents were produced from various Government departments. Other documents from non-parties, including Dutch and Swiss bank records, were also obtained and reviewed. In addition, large quantities of DMC and DMCL company records were inspected.

Andersen's Third-Party Complaint and Motion to Dismiss

November 1988	In November 1988, Andersen filed a 'Third-Party Complaint' alleging claims against certain individuals – the 'Nominee Directors' - who had been nominated by the Northern Ireland Development Agency to serve on the De Lorean Board. This required the retention of separate legal counsel to represent the Nominee Directors in the New York litigation.
April 1989	In April 1989, the lawyers representing the Nominee Directors moved to dismiss Andersen's Third-Party Complaint. This motion was extensively briefed and the Department's lawyers were heavily involved in preparing the briefing.
January 1990	In January 1990, the motion to dismiss was granted in most respects. Andersen served an amended Complaint and this too was fully briefed. In May 1990, the court denied Andersen's motion.

Assertion of Privilege Claims and Andersen's Motion to Compel Production of Documents

May to August 1990	In connection with the production of documents, the decision was taken to assert executive privilege on behalf of the Department and other Government departments. All of the documents in the possession of the various departments were reviewed for 'executive privilege' (similar to public interest immunity) as well as for 'lawyer-client privilege' and 'work product' protection (which are similar to legal professional privilege). To assert the claim of executive privilege, it was necessary to obtain from the senior civil servant in each department claiming privilege, an affidavit describing each of the documents for which privilege was claimed. The policy grounds for protecting Cabinet minutes, Cabinet papers and Cabinet Committee/ Sub-committee papers from disclosure also had to be framed. Between May and August 1990, affidavits were prepared and executed. Of 435 documents for which executive privilege was claimed, 313 were submitted to the Judge for 'in camera' inspection - 110 were determined to be Cabinet or Cabinet Committee papers and were not submitted for review. Andersen's lawyers pursued discovery of the documents for which privilege was claimed, particularly the Cabinet minutes and Cabinet papers.
July 1990 to November 1991	In July 1990, Andersen moved to compel production of all documents which had been withheld on grounds of privilege. The motion to compel was the subject of lengthy briefing by both sides. In October 1991, Andersen's motion was granted and most of the documents were provided to Andersen at that point. The Department's lawyers moved for reconsideration with respect to a subset of some 600 documents for which lawyer-client privilege or work product had been claimed and sought leave to submit the Cabinet papers for in camera inspection. This motion was also fully briefed. The motion was denied in November 1991 and the decision was then reached to produce the Cabinet papers.

Andersen's Motion to Dismiss the Securities Claim

August 1991 to April 1992	In August 1991, Andersen moved to dismiss the Department's federal securities law claim on statute of limitations grounds. After the motion was fully briefed, the US Congress enacted a law which modified the application of statute of limitations. The Department's US lawyers subsequently submitted additional briefs addressing this issue. In April 1992, Judge Stewart decided that the Department's claims were timely and denied Andersen's motion to dismiss the federal securities law claim.

Taking and Defending Depositions and Additional Discovery

Late 1991 to 1993	The taking of depositions, which is the method for obtaining testimony before trial in the United States, was the most demanding, intensive and time consuming aspect of the litigation. In total, there were 72 depositions taken in several different jurisdictions. Most of the depositions from fact witnesses were taken during the period from late 1991 to 1993. The Department's lawyers took the depositions of many representatives of Andersen who had worked on the audits of DMC, DMCL, De Lorean Research Limited Partnership and related De Lorean entities in the US, UK and Ireland and of several senior executives of DMC and DMCL. Depositions were also taken of persons involved in the GPD transaction. Andersen took the depositions of numerous Government officials and former Ministers, including Lady Thatcher and successive Secretaries of State for Northern Ireland, and also each of the Nominee Directors. Each of the depositions required considerable preparation by the Department's US lawyers and the depositions had to be co-ordinated with the lawyers representing the DMC Trustee, as these were taken for use in both cases. Almost all depositions were videotaped, with transcripts downloaded to a computer database. In addition to taking and defending depositions, the Department's lawyers also interviewed current and former officials who had been consulted about the De Lorean project and former officers of DMC and DMCL who were potential witnesses in the litigation.

Andersen's Motion for Summary Judgement

January 1994 to July 1994	In January 1994, the Department's and DMC Trustee's cases were re-assigned to Judge Mukasey, following the retirement of Judge Stewart. In April 1994, the deadline to complete pre-trial discovery was fixed for 30 June 1994. In May 1994, the Department's lawyers filed a lengthy 'Second Amended Complaint'. In late July 1994, Andersen moved for a summary judgement in the Department's and the Trustee's cases. The briefing of the motion was voluminous (the Department's US lawyers submitting a 500-page memorandum in opposition) because of the magnitude and complexity of the records of evidence.
April 1996	In April 1996, Judge Mukasey denied summary judgement with respect to the Department's claims for fraud, aiding and abetting fraud, negligence and breach of contract and found that a trial was required. He also denied summary judgement with respect to the federal securities fraud claim. However, Judge Mukasey did grant summary judgement on the RICO claims and also dismissed the Department's claim for aiding and abetting RICO violations.

Expert Discovery

Early 1995 to August 1996	Expert discovery was a substantial phase of the litigation against Andersen. Much of this took place in 1995, during the period of consideration of the summary judgement motion. Andersen retained three testifying experts and the Department retained five. The Department's US lawyers were also involved in the selection of an expert witness on behalf of the Nominee Directors. Each expert was required to submit a detailed report setting out their opinions and the basis and reasons for those opinions. The Department's US lawyers worked extensively with the expert witnesses throughout this process. Following the exchange of their reports, most of the experts were deposed over the period May to August 1996.

Evidentiary Hearing on Federal Securities Law Claim and Commencement of the New York State Court Actions

August to October 1996	In August 1996, Judge Mukasey requested a hearing regarding the Department's claim under the federal securities law. The Judge requested both parties to provide expert testimony on this issue. At the evidentiary hearing in October 1996, Judge Mukasey requested additional briefing from both sides on specific issues.
February to March 1997	In February 1997, Judge Mukasey granted summary judgement with respect to the federal securities fraud claim. He refused to exercise jurisdiction over the common law claims (for fraud, aiding and abetting fraud, negligence and breach of contract) which remained in the case and directed that both the Department's and the DMC Trustee's actions be re-filed in the New York State Court. The Department decided against an appeal, in view of the time and expense involved and because the viability of the common law claims and potential recovery was unaffected by the dismissal of the securities claim. In March 1997, the Department and the DMC Trustee filed Complaints in the New York State Supreme Court. Both cases were assigned to Justice Friedman.

Andersen's Motions to Dismiss the New York State Court Actions and its Commencement of Litigation in London Seeking to Block the New York Proceedings

February to June 1997 - London	In February 1997, Andersen commenced an action against HMG in the Commercial Court in London. Andersen were seeking a declaration that the Commercial Court was the "natural forum" for the Department's claims against them, effectively preventing Government from pursuing its claims in New York. Also, in March 1997, Andersen issued a summons in the action commenced by Government in 1985 and which had lain dormant for ten years, seeking to lift the stay of that action.

	Andersen served lengthy affidavits in support of its declarations with the Department's lawyers serving rebuttal affidavits. Reply affidavits and further rebuttals were served over May and June 1997.
May to December 1997 - New York	In May 1997, Andersen moved to dismiss the New York State Court action on the grounds of forum or, in the alternative, to stay the action pending the proceedings it had initiated in London. They also argued that they needed more discovery. Andersen's motion was fully briefed by the Department's US lawyers. In September 1997, Andersen's attempts to delay the New York proceedings were rejected by Justice Friedman. Andersen appealed and also sought a stay of all proceedings in the Department's and DMC Trustee's cases pending determination of its appeal. The stay motions were fully briefed by the Department's lawyers. In December 1997, Andersen's motion for a stay was denied in the Appeal Court.

Mediation in London and Settlement of the Department's Action

September 1997	In September 1997, Mr Justice Colman held a conference on the London proceedings. Andersen's counsel pressed its application for a declaration that the Department's case should be tried in England, notwithstanding the decision of Justice Friedman in New York. Mr Justice Colman was also advised that, since June 1997, there had been settlement discussions between Andersen's solicitor and the Treasury Solicitor. Mr Justice Colman indicated that he would prepare a judgement on Andersen's application but, in the meantime, he ordered the parties to attempt to agree on a mediator and to achieve Alternative Dispute Resolution by 31 October or as soon thereafter as possible. The Department's US lawyers were heavily involved in both the mediation process and in the preparation for the impending jury trial in New York. The latter included designation of deposition testimony, a process requiring the review and editing of hundreds of hours of video-taped deposition testimony for use at trial.
October to November 1997	On 28 October 1997, mediation began between the Department and Andersen. Following a series of negotiations, Lord Griffiths, the agreed mediator, recommended a settlement amount of $35 million. Government indicated acceptance of this settlement, subject to Andersen dropping the demand that the offer was contingent on reaching a settlement with the DMC Trustee. The Department's settlement agreement with Arthur Andersen was finalised on 12 November 1997.

List of NIAO Reports

Title	NIA/HC No.	Date Published
2002		
Northern Ireland Tourist Board Accounts 2000/01	}	
Travelling People: Monagh Wood Scheme	}NIA45/01	26 February 2002
Indicators of Educational Performance and Provision	NIA48/01	21 February 2002
NIHE Housing the Homeless	NIA55/01	21 March 2002
Repayment of Community Regeneration Loans	NIA59/01	28 March 2002
Investing in Partnership - Government Grants to Voluntary Bodies	NIA78/01	16 May 2002
Northern Ireland Tourist Board: Grant to the Malone Lodge Hotel	NIA83/01	20 May 2002
LEDU: The Export Start Scheme	NIA105/01	2 July 2002
Compensation Payments for Clinical Negligence	NIA112/01	5 July 2002
Re-Roofing of the Agriculture and Food Science Centre at Newforge	NIA24/02	17 October 2002
The Management of Substitution Cover for Teachers	NIA53/02	12 December 2002
2003		
The Sheep Annual Premium Scheme	NIA75/02	6 February 2003
The PFI Contract for the Education and Library Board's New Computerised Accounting System	NIA99/02	20 March 2003
Areas of Special Scientific Interest	NIA103/02	27 March 2003
Financial Auditing and Reporting: 2001/02	NIA107/02	2 April 2003
The Use of Operating Theatres in the Northern Health and Personal Social Services	NIA111/02	10 April 2003
Investigation of Suspected Fraud in the Water Service	HC735	26 June 2003
Management of Industrial Sickness Absense	HC736	1 July 2003
Encouraging Take-up of Benefits by Pensioners	HC737	3 July 2003
2004		
Navan Centre	HC204	29 January 2004
The Private Finance Initiative: A Review of the Funding and Management of Three Projects in in the Health Sector	HC205	5 February 2004

Printed in the UK by The Stationery Office Limited on behalf of the controller of
Her Majesty's Stationery Office
Dd 1078 C6 01/04

Published by **TSO Ireland** and available from:

The Stationery Office
(mail, telephone and fax orders only)
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries 0870 6005522
Fax orders: 0870 6005533

You can now order books online at **www.tso.co.uk**

The Stationery Office Bookshops
123 Kingsway, London WC2B 6PQ
020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
0121 236 9696 Fax 0121 236 9699
9-21 Princess Street, Manchester M60 8AS
0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop
18-19 High Street, Cardiff CF10 1PT
029 2039 5548 Fax 029 2038 4347
71 Lothian Road, Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 6065588

The Stationery Office's Accredited Agents
(See Yellow Pages)

and through good booksellers

Printed in Northern Ireland by The Stationery Office Limited

ISBN 0-10-292524-0

9 780102 925241

www.tso.co.uk