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1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 14TH DECEMBER
2 1999, AT 10.30AM:

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4 CONTINUATION OF EXAMINATION OF MR. ROGER COPSEY BY
5 MR. O' NEILL:.

6 .

7 MR. O'NEILL: Good morning, Mr. Copsey. If I could just
8 recap on the evidence given yesterday by reference to the
9 last extracts in the transcript, just to bring us into --

10 A. Sorry, could I collect my transcript? My apologies.

11 1 Q. Of course. At the close yesterday. We were dealing with
12 the meeting which had taken place on the 6th July of 1988
13 and in the course of that, we were dealing with the
14 question of unsubstantiated cash payments to staff and the
15 company's policy in relation to that and I'll just read to
16 you the sequence from the transcript dealing with that.
17 It reads "The question of unsubstantiated cash payments to
18 staff was discussed. Various matters were discussed and
19 it was not clear to the board whether irregular payments
20 had been made to members of staff. It was decided that
21 the board should formally record the company policy which
22 was that payments should only be made against properly
23 vouched expenditure and that if payments were made in
24 circumstances where such vouchers were not available, the
25 amount concerned would be grossed up so that tax was paid
26 on the amount concerned. Marcus Sweeney and Roger Copsey
27 were asked to report to the next board meeting in relation
28 to the matter."
29 .
30 The transcript reads "Can you recollect whether that was a
31 concern which was raised by Mr. Gogarty?
32 Answer: Yes, it was.

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1 Question: And was this particularly in the context of
2 Mr. Sweeney that he was raising this matter?

3 Answer: I think it was particularly in context of anybody
4 who Jim Gogarty had an axe to grind against.

5 Question: And what was his angst or his axe to grind in
6 these instances?

7 Answer: I think those people, a number of people had
8 belittled him and -- simple as that.

9 Question: So is it the case that he was suggesting that
10 these people had in fact been receiving unsubstantiated
11 cash payments and this a matter which had to be resolved
12 and the company policy had to be stated just so that there
13 wouldn't be any repetition of that?

14 Answer: Well there were two factors here. Number one, he
15 had made the allegation but at no time had been able to
16 give any proof of any description of any amount whether it
17 be £5 or £5,000, so therefore it was complete hearsay,
18 hence it records here that the board was -- it was not
19 clear to the board whether irregular payments had been
20 made. There was no proof of it but just as a policy, we
21 wanted absolutely stated but there should be proper vouched
22 expenditure.

23 Question: I take it that the net result of this was that
24 from an accounting point of view, certainly from that date
25 on, from the 2nd August 1988 there was to be detailed
26 accounts of all cash payments made by the company.

27 Answer: That is correct."

28 .

29 That I think is where we finished the evidence yesterday.

30 A. Yes.

31 2 Q. And I think from that exchange, Mr. Copsey, it appears that
32 you believe that Mr. Gogarty was perhaps manufacturing

1 allegations of cash payments to staff merely because he had
2 an axe to grind with them and that they were
3 unsubstantiated allegations, is that so?

4 A. In the context that he had never been able to show me any
5 proof, that was the conclusion which I had to come to.

6 3 Q. Well, did you believe therefore that when he was making
7 these complaints, and I take it he was making them against
8 a number of the former members of the board, including
9 Mr. Sweeney who was to remain on the board, that these
10 were, as far as you were concerned, unsubstantiated
11 payments in respect of all those individuals, is that so?

12 A. That was correct, and I made it clear to Jim Gogarty that
13 if he could give me proof, then they could be investigated
14 either by me or the auditors.

15 4 Q. Well did you believe that he was genuine in this belief or
16 was he merely trouble-making in making these allegations?

17 A. No, I think that Jim is a rather complex person as most of
18 us are, and I think he had two motives. Undoubtedly he
19 was loyal to the company, but I think that he was also
20 misguided because of this overriding consideration to do
21 with his pension and the fact at that particular point of
22 time, that he felt that people had slighted him. So it
23 was a mixture of two.

24 5 Q. But in relation to whether or not he was genuine in his
25 belief or his complaint that monies were being received by
26 members of staff which were being unaccounted for, can you
27 say whether or not that was a genuine belief or whether he
28 manufactured it merely to cause trouble?

29 A. No, I think that if you are emotionally involved, you can
30 genuinely believe whatever you want to.

31 6 Q. This meeting on the 6th July had been preceded by a letter
32 which you had written to Mr. Murphy Snr on the

1 29th -- sorry, there was a subsequent letter on the 29th
2 July to Mr. Murphy Snr dealing with the relationship
3 between Mr. Marcus Sweeney and Mr. Gogarty and that
4 document is page 86 in the booklet of documents which was
5 handed to you yesterday.

6 A. I have it, yes.

7 7 Q. That's the yellow book before you, Sir. Do you have that
8 booklet, Mr. Copsey?

9 A. I do, yes.

10 8 Q. And in that letter I think you were setting out your views
11 on the viability of maintaining Mr. Sweeney in his position
12 as managing director and the position that Mr. Gogarty
13 would adopt in that circumstance, isn't that right?

14 A. That was correct.

15 9 Q. And I will read that letter into the record.

16 It's a letter of the 29th July 1988 and it's addressed to
17 Mr. Joe Murphy, at Wilton Lodge, Wilton Terrace, Dublin
18 2. Re: Marcus Sweeney/Jim Gogarty.

19 .

20 "Dear Joe, I am of opinion that it is necessary to address
21 the question of the relationship between Marcus Sweeney and
22 Jim Gogarty at this stage. I have already spoken to Jim
23 and he is aware that I will be discussing the matter with
24 you. A fundamental question must first be addressed, is
25 it desirable to keep Marcus Sweeney for, say, longer than
26 three months? If so, the question of the relationship
27 between he and Jim must, in my opinion, be dealt with at
28 this point in time.

29 .

30 "If the intention is to keep Marcus only for a short time,
31 the situation alters. Jim has fulfilled his promise not
32 to confront Marcus. He has done this in a manner which I

1 personally did not think in practice he could. There have
2 been no confrontations between the two people and Jim has
3 contributed to this state of affairs considerably by his
4 attitude. Nevertheless Jim has not forgiven Marcus and
5 feels a deep personal hurt nor does he trust him and
6 believes he is continuing to lie.

7 .

8 "Jim's interpretation of both past facts and present facts
9 is very much coloured by this view and I think it is
10 correct to say that Jim will not feel happy unless and
11 until Marcus is dismissed.

12

13 "In the meanwhile, whilst Jim is restraining himself, his
14 genuine beliefs in respect of Marcus are influencing his
15 judgement in matters concerning the company. I would like
16 to say that I am in no way inferring that Jim's judgement
17 concerning Marcus is not correct but the attitude which he
18 has with regard to his beliefs will seriously affect Marcus
19 Sweeney's ability to fulfill his duties as managing
20 director and may force him to leave. Therefore if it is
21 considered vital to keep Marcus Sweeney, Jim would, in my
22 opinion, have to act in a non-executive capacity.

23 .

24 "Jim has stated that he would be happy for that to happen
25 but will then not be happy to sit on the board of JMSE as
26 he would then feel he would be less than honest with
27 himself concerning certain matters. If that was the case,
28 then Jim's undoubted expertise will be sadly missed by the
29 company. It might be possible to overcome this by Jim
30 acting as a consultant on specific points. If there were
31 the route which you considered appropriate, it will of
32 course be necessary to strictly control Marcus, especially

1 in respect of those items which Jim quite rightly pointed

2 out have been incorrect in the past.

3 .

4 "You have and are appointing people who are loyal to you

5 and this will of itself exercise a control on him.

6 Furthermore, the following control should be implemented.

7 .

8 1: Board policy should be laid down in respect of

9 expenses, salaries etc.

10 2: The accounting system should ensure that accurate and

11 meaningful financial reports are presented to the board.

12 3: Chris Snelling's suggestion of a structural steel

13 person on the board should be pursued.

14 .

15 "To summarise, I do not think that the present position can

16 pertain for any length of time without harming the company

17 and both probable individuals concerned.

18 .

19 Sincerely, Roger Copsey."

20 .

21 That was your view at that particular time of, firstly,

22 Mr. Gogarty's role in the new structure of the company

23 where Mr. Conroy had ceased to be chief executive. His

24 nominees on the board had effectively been removed with the

25 exception of Mr. Sweeney and Mr. Sweeney was there under

26 supervision by yourself, by Mr. Gogarty and by

27 Mr. Murphy Snr, isn't that so?

28 A. That is correct.

29 10 Q. And in that letter, it would appear to suggest that

30 certainly there was some aspects where you agreed that Jim

31 had quite rightly pointed out that Marcus Sweeney required

32 control because of incorrect activities on his part

1 beforehand, isn't that so?

2 A. I am just looking for the word incorrect.

3 11 Q. It's on page 2 in the second paragraph, "If this was the
4 route which you considered appropriate, it will of course
5 be necessarily to strictly control Marcus especially in
6 respect of those items which Jim quite rightly pointed out
7 had been incorrect in the past."

8 A. Okay. Yes.

9 12 Q. What were those matters which were incorrect in the past
10 which had been brought to your attention by Mr. Gogarty?

11 A. I think that Marcus Sweeney's style of management was very,
12 very different from Jim's and was a particular style. It
13 was less systems orientated than he might have been, and he
14 was more of a let's get the job done attitude rather than
15 doing everything entirely by the book and I don't mean by
16 the book illegally. It was a style of management and I
17 use the word "incorrect" really in deference to Jim and
18 also to convey that it's a method of, and a style of
19 management which I wouldn't necessarily entirely approve of
20 myself.

21 13 Q. Well, did that style of management include perhaps the
22 weaknesses which you sought to address in the three
23 paragraphs beneath that and that is, firstly, that board
24 policy should be laid down in respect of expense and
25 salary, etc? Was that an area in which Mr. Sweeney had
26 not properly accounted?

27 A. Yes. In so much that you can be criticised for not having
28 done something unless you have a board policy laid down.
29 If you have an ad hoc way of managing, then I don't think
30 it's as desirable as a method of managing which is by a set
31 of rules.

32 14 Q. So had you yourself made any inquiries to see if you could

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1 substantiate the allegations which Mr. Gogarty was making
2 about executives having received cash benefit to their own
3 advantage whilst the company was being run by Mr. Sweeney
4 under the general direction of the chief executive,
5 Mr. Conroy?

6 A. Yes, I did.

7 15 Q. Did you interview, for example, members of the board?

8 A. I did. I spoke to Marcus Sweeney himself. I spoke to
9 Gerry Downes. And I also spoke to the auditor, John
10 Bates.

11 16 Q. In relation to Mr. Sweeney, did he indicate to you that he
12 had been in receipt of any cash benefits which were
13 unaccounted for from the company or any financial
14 impropriety on his part?

15 A. No. He said that he didn't.

16 17 Q. And did he indicate whether he was aware of any other
17 member of the board being in receipt of payments which were
18 either irregular in the sense of not being accounted for or
19 came in the form of cash or --

20 A. No. He denied --

21 18 Q. He denied knowledge of the existence of such payments?

22 A. That's correct.

23 19 Q. Mr. Gerry Downes then was the accountant in the company and
24 also an a member of the board, isn't that right?

25 A. That's correct.

26 20 Q. And did you ask similar questions of him?

27 A. I did. And he gave me a few papers relating to some
28 payments to the benefit of Liam Conroy which were very
29 insignificant. From memory, they were a few pounds, maybe
30 £30 a week to do with the cleaning of a premise which he
31 had for his use when he came across to Dublin.

32 21 Q. Where did that meeting take place?

1 A. In Santry.

2 22 Q. I see. And you asked Mr. Downes about cash payments to
3 executives, is that right?

4 A. I did.

5 23 Q. And he intimated to you that there were cash payments and
6 he had kept a record of them, is that so?

7 A. No. He didn't indicate that there were cash payments per
8 se. I have to be careful with the term 'cash payment'.

9 He said that certain expenses had been paid in cash.

10 24 Q. And you say you received from him some written record of
11 this, is that right?

12 A. I did.

13 25 Q. Your best recollection at this point in time that it was
14 something in the region of £30 a week?

15 A. It could have been less. Yes, it was an insignificant sum
16 in the context of what was being spoken about in terms of
17 slush funds and whole sale cash payments.

18 26 Q. Could it have been as much as 50 or perhaps £60 a week or
19 perhaps that sort of money?

20 A. It could have been.

21 27 Q. And was there also reference to invoices being raised to
22 generate cash which would be sent abroad?

23 A. No.

24 28 Q. Did you learn of an entity called Pro Eng?

25 A. Yes.

26 29 Q. And did you receive documents indicating that that was a
27 company which received regular sums of cash up to perhaps
28 20-£30,000 a year?

29 A. I don't think that it ever received cash. And again one
30 has to be careful when you are speaking of these things.
31 Cash indicates physical pound notes. I think payments
32 were made to Pro Eng.

1 30 Q. And did Mr. Downes indicate to you that this again was a
2 payment that he felt he should bring to your attention
3 because of the nature of these payments?

4 A. No. He brought it to my attention because it was a
5 particular payment which he dealt with, but he in no way
6 indicated to me that it was improper.

7 31 Q. Well I take it that as the accountant of the company, he
8 would in fact be responsible for very many of the payments
9 that were being made through the accounts of the company,
10 isn't that so?

11 A. As financial director or financial controller, you have
12 ultimate responsibility for all payments, but most of the
13 payments would have been made by people with the title of
14 wages clerk, sales ledger clerk or purchase ledger clerk.
15 Certain particular, maybe private payments, for instance
16 directors' salaries etc, would normally be made personally
17 by the finance controller or finance director and I think
18 in this particular case, that is why Gerry Downes dealt
19 with those payments.

20 32 Q. I see. On their face, were these payments being made to a
21 company which was an offshore company based in the Channel
22 Islands?

23 A. Yes.

24 33 Q. On foot of invoices that were generated for services?

25 A. That is correct, yeah.

26 34 Q. But the accounts of the company wouldn't appear to show a
27 corresponding service provided, is that so?

28 A. No, I don't think that's correct at all.

29 35 Q. Did the accounts record the Pro Eng payments as far as you
30 were concerned?

31 A. As far as I and the auditors were concerned, yes.

32 36 Q. Was there anything to indicate that they were in fact

1 payments being made for the benefit of the chief executive
2 of the company?

3 A. They were definitely in return for services rendered by the
4 chief executive, yes.

5 37 Q. But there was nothing to indicate on the face of these
6 payments that that was where the payments were going?

7 A. No. The explanation given to me was quite clearly that
8 the chief executive gave certain services to JMSE and
9 AGSE. It was obviously from talking to people that he had
10 given services and that as far as I was informed, and I
11 found out later for this to be true, that he had a contract
12 whereby his services would be paid on foot of an invoice
13 from Pro-Engineering.

14 38 Q. Had he received that payment by way of salary that would be
15 subject to deduction of tax and PAYE and all those matters,
16 isn't that right?

17 A. Well that's something which I didn't deal with at all.
18 That ceased on the day that I arrived. So we are talking
19 historically, the responsibility of the previous directors
20 and auditors, all of whom seem satisfied with the type of
21 payment and when I reviewed it at the time, I was equally
22 satisfied.

23 39 Q. But clearly Mr. Gogarty was not satisfied with it and
24 indeed did he indicate to you that he was unaware of this
25 method of payment of Mr. Conroy which effectively was an
26 offshore payment without deduction of tax?

27 A. Yes, he did.

28 40 Q. He did express his unhappiness or --

29 A. Yes.

30 41 Q. -- about it. But did you ever tell him that in fact your
31 investigation established that this was by arrangement with
32 Mr. Murphy and that it was part of a contract which had

1 been agreed between them and therefore he need not concern
2 himself about it because it was in fact a legitimate
3 payment as far as the company was concerned?

4 A. Yes.

5 42 Q. You did tell him that?

6 A. Yes.

7 43 Q. When did you tell him that?

8 A. In or about the current time of that, when I discovered it
9 myself.

10 44 Q. I see. Well was this accounting procedure that you
11 envisaged in your letter to Mr. Murphy set up to ensure
12 that there would be transparency in relation to any
13 payments made to directors or members of the board of the
14 company?

15 A. That -- yes, in line with normal accounting procedures.

16 45 Q. Right. And to provide that if there were such payments as
17 had been paid in previous times to Mr. Conroy, that they
18 would now be grossed up in accordance with the company
19 policy, tax would be paid on them?

20 A. No, not at all.

21 46 Q. Is that not what the particular statement of company policy
22 addresses?

23 A. No.

24 47 Q. It was decided that the board should formally record the
25 company policy that was payments should only be made
26 against properly vouched expenditure and that if payments
27 were made in circumstances where such vouchers were not
28 available, the amount concerned should be grossed up so
29 that tax was paid on the amount concerned?

30 A. That's correct, but they are two entirely different
31 things.

32 48 Q. I see.

1 A. One is referring to a payment which isn't backed up. We
2 are talking about Pro-Engineering or whatever it's
3 called. There was a contract and a voucher. There was
4 absolutely no reason to deduct tax. It was quite a proper
5 payment.

6 49 Q. So that any one of the directors of the new board, for
7 example, could enter into an arrangement whereby it would
8 provide -- he would provide his services to the company by
9 an offshore company, produce an invoice and effectively get
10 paid his salary free of deduction of tax and without
11 question by the accounting system of the company?

12 A. No. That's not what I am saying at all. I mean each of
13 these things -- I mean we can get into a discussion on the
14 finer points of tax, but each tax point has to be taken in
15 its precise context. What we are talking about here was a
16 guy who didn't live in Ireland. Yours was a very broad
17 question. Any director, for instance myself, I couldn't
18 have received any monies which weren't properly taxed.
19 People like Jim Gogarty would have to deal with the Irish
20 tax authorities. So I mean, your assumption was much too
21 wide, but sorry I don't want to get into a big discussion
22 on tax which happens to be a speciality of mine, so I could
23 waffle for days.

24 50 Q. These were matters which were specifically dealt with at
25 the meeting in July -- in August, 1988, I suggest, so as to
26 ensure that good accounting practices were maintained?

27 A. This was -- this was a statement from the new board coming
28 in, that we wanted things done properly. It was also a
29 statement for the benefit of Jim Gogarty as well, who felt
30 that not all of his complaints were being taken seriously.

31 51 Q. Well, do you accept that he did have some complaint
32 therefore in relation to Mr. Conroy, albeit that it might

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1 have been only for 40 or 50 or £60 a week being paid to him

2 in cash?

3 A. Yes. I in no way at no time dismissed as irrelevant what

4 Jim Gogarty said and I think that my correspondence sets

5 out that as a fact.

6 52 Q. In your evidence yesterday, you were specific in saying

7 that Mr. Gogarty was unable to give you proof of any

8 description of any amount whether it be of £5 or £5,000?

9 A. That's absolutely correct.

10 53 Q. But you did in fact have proof of £60 a week which would be

11 about £3,000 a year?

12 A. But Jim Gogarty didn't give it to me which is what I said.

13 54 Q. I see. But it is nonetheless, it established, to your

14 satisfaction, that there was such a payment, that Jim

15 Gogarty was right to a certain extent and perhaps in that

16 instance, it wasn't because he had an axe to grind that

17 this statement was being made but rather it was based on

18 fact?

19 A. No, you are taking it out of context. Jim Gogarty wasn't

20 talking about a little bit of petty cash. He was making

21 wild and, I thought in other correspondence, allegations

22 which I think could have led the company and he into a lot

23 of trouble. He was telling people that they had committed

24 fraud, had slush funds etc, and that was entirely incorrect

25 on the basis of the information which he was able to show

26 me or anybody else was able to show me.

27 55 Q. Well did he define what a slush fund was or was it defined

28 by somebody else? How did the term slush funds come into

29 your discussion with him?

30 A. It was a term which he used and is obviously a term which

31 all of us have heard and I think that we all understand

32 that slush fund is not a couple of pounds here and a couple

1 of pounds there. It isn't paying your cleaning lady
2 without tax. I mean this is a major, a major allegation
3 to make.

4 56 Q. And what specific allegations did he make to you and can
5 you recollect, having recorded these specific details in
6 any of your notes or --

7 A. I recorded them in correspondence and at board meetings
8 which is what we have just read out.

9 57 Q. Well, where is the record of the nature of the slush fund
10 that he is referring you to as recorded by you?

11 A. I can't look through all the correspondence. I am quite
12 sure that the word slush fund has come up.

13 58 Q. Yes.

14 A. And that would have recorded it. I mean, the guy simply
15 used the word slush fund to indicate that there was major
16 fraud without backing it up. It's like me accusing you of
17 something without any proof whatsoever. That's what he
18 was doing and I felt it was very bad for the company. And
19 what I advised him was unless and until he could come up
20 with proper evidence, there was nothing that I could do and
21 that's recorded -- I can't refer to which letter -- but you
22 will find it going through my correspondence that that was
23 recorded.

24 59 Q. Yes. What I am trying to establish from you is whether or
25 not he ever gave you a definition of what he considered a
26 slush fund.

27 A. No.

28 60 Q. He didn't?

29 A. No.

30 61 Q. So you assumed that it must relate to major impropriety
31 rather than him telling you that it was of major
32 impropriety?

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1 A. Correct.

2 62 Q. And did he tell you whether it related to offshore payments
3 or did he mention offshore payments in any context to you?

4 A. The question of the Pro-Engineering invoices did come up,
5 yes.

6 63 Q. And did he believe at that point in time that they were in
7 fact illegitimate payments insofar as he was unable to tell
8 you that Pro Eng had provided any service to the company as
9 far as he knew as chairman of the company?

10 A. He made the assumption that that was an improper payment.
11 When I discussed it with the auditors of the company and
12 when I looked at the documentation myself, we reached the
13 opinion with full information in front of us that it wasn't
14 an improper payment.

15 64 Q. But he had not had that full information when he made the
16 allegation to you that monies were being paid offshore to
17 directors?

18 A. That's correct and that is why of course that I cautioned
19 him in making wild allegations without having all the
20 facts.

21 65 Q. Wild in the sense that he was not to know or did not know
22 at that time that there, in fact, had been an agreed
23 between Mr. Murphy Snr and Mr. Conroy whereby Mr. Conroy
24 was to receive payment through an intermediary which was an
25 offshore company in Guernsey?

26 A. That is correct.

27 66 Q. I see. Pro Eng?

28 A. Pro Eng.

29 67 Q. If we can turn now, Mr. Copsy, to the documentation that
30 you were provided with today, so that you are not unduly
31 burdened with documents from yesterday. There is now a
32 black folder of documents coming to you. (Documents

1 handed to witness.)

2 Now, you had indicated yesterday that you were appointed as
3 a director to all of these companies of which we mentioned
4 yesterday at various meetings which took place in June and
5 July. That was on the basis of your belief that it was
6 appropriate that you would be appointed as a director
7 because of your financial expertise and knowledge and the
8 assistance that this would give to the company in its
9 dealings with financial institutions who were owed money by
10 the companies and would be concerned at the fact that the
11 board had been substantially replaced, isn't that so?

12 A. That's correct.

13 68 Q. Whilst that consideration might well have concerned the
14 financial institutions dealing with JMSE, which was the
15 trading company, was there any necessity for you to have
16 been appointed as a director of what had been called the
17 land-owning companies, most of which, it would appear, were
18 not carrying on a trade as such, but merely owned lands and
19 received small amounts of rent in respect of those lands
20 from tenants who occupied the lands on a conacre or eleven
21 month basis?

22 A. Well, there are two separate points as to why my client
23 felt it was necessary for me to be a director of those
24 companies as well. The first one is there were cross
25 guarantees to the bank so that the lands were used as
26 security for the trading companies so there was a direct
27 banking connection there. And then the other fact was
28 that at that point of time, all Irish companies needed two
29 directors for signature and Jim Gogarty was one director
30 and they needed another director in situ rather than, let
31 us say, Joseph Murphy Jnr who spent very little of his time
32 in Ireland, so they were the two reasons.

1 69 Q. But to that point in time, can you say whether there were
2 any board meetings of any of those companies which would
3 have required the physical presence of directors in Ireland
4 in certain matters?

5 A. I think there are some board meetings of them. The other
6 point that I would make is that Brendan Devine who was also
7 an accountant had previously been a director of those land
8 companies and I assume the same reasoning applied to him as
9 applied to me.

10 70 Q. So when you became the director of these particular
11 companies, I think you had various dealings in relation to
12 the affairs of those companies over the period of years
13 when you were a director?

14 A. I am sorry, I missed that.

15 71 Q. Having been appointed a director of the company, you then
16 engaged in dealings on behalf of those companies which were
17 not necessarily limited to keeping the accounts of the
18 companies, isn't that so?

19 A. That is correct.

20 72 Q. And if we turn to tab number 2 of the booklet of documents
21 which are now before you, there are indications in that of
22 the level to which you were involved in particular
23 buildings and properties that were owned by the companies,
24 isn't that right? The first of the documents there is one
25 where you were writing to the company to formally provide
26 security indicating that the cancellation of the alarm
27 maintenance contract should take place as and from January
28 1990, isn't that so?

29 A. Well, I mean I didn't personally get involved in that level
30 of detail. You will note that that is not signed by me.
31 That is a person who worked in the firm of Copsey Murray &
32 Co.

1 73 Q. I see. But presumably was directed by you to do this?

2 A. Oh yes, I would have allocated that work to him.

3 74 Q. Right. Mr. Gogarty at this time was also a director of

4 this company, is that right?

5 A. That's correct.

6 75 Q. And had been for some considerable period of time before

7 your appointment?

8 A. Correct.

9 76 Q. And could equally have dealt with it insofar as he had the

10 status to deal with it, isn't that right?

11 A. Oh yes. I mean there was no difference between us on that

12 at all.

13 77 Q. On the following document then, it's a document to the ICC,

14 who apparently held the title deeds in relation to the

15 property at 23 Lower Baggot Street, isn't that so?

16 A. Yes.

17 78 Q. And you were writing to that firm, I think that's your

18 signature on the letter there?

19 A. It is.

20 79 Q. Indicating that the title deeds should be provided to the

21 company's solicitor, Mr. McArdle, isn't that right?

22 A. Correct.

23 80 Q. Again in the following document, you are writing to

24 Mr. Murphy, this time at 44 Bedford Court Mansions in

25 London on the 1st August 1989 in which you indicate that

26 the property is going to become vacant and you then state

27 as follows: "Jim has suggested that Tony Early should

28 caretake and I think this is sensible. However the

29 property ought to be put on the market and, subject to your

30 agreement, I will make contact with an estate agent and

31 arrange for an auction. It may be best for an auction to

32 be held during September as August is a very quiet month

1 with holidays. I will be guided by an estate agent in
2 this respect. Please contact me on this matter." Is that
3 so?

4 A. Yes.

5 81 Q. And clearly that is not an accountancy function that you
6 are providing but you were offering advices to Mr. Murphy
7 about one aspect of the property portfolio of the Murphy
8 land-owning companies and suggesting, presumably as
9 director of the company, that it would be appropriate to
10 sell the property and to do so by auction, isn't that so?

11 A. Yes, but I think it needs a little explanation. I have
12 never put myself forward as a pure accountant. I was
13 giving management functions and I am much more of a
14 management accountant than I am what is known as a ticker
15 and a blotter. Now that's the first thing. The second
16 thing is in particular with the premise at 23 Lower Baggot
17 Street, that that was previously used by the Gaiety School
18 of Acting which was connected with the Gaiety Theatre. I
19 was actually chairman of the Gaiety Theatre and had a lot
20 to do with the running of the Gaiety Theatre with obviously
21 immense assistance from theatrical professionals in it but
22 I had very much a hands-on role in that respect. So this
23 property was peculiar in that respect.

24 82 Q. Is it indicative of the fact that you were acting as a full
25 director of Wexburn and doing all the functions that a
26 company director would be expected to perform, including a
27 review of the property portfolio and advising the company?

28 A. I mean, you are saying a property portfolio. There was
29 one property which has now fallen vacant and which the
30 company no longer needed and I discussed that with Jim, we
31 both agreed it was no longer needed. I wrote to Joe. As
32 it happened, as you will see later on, that Jim handled the

00021

1 sale, but yes, it was something which occurred in my duties
2 as a director but in that particular case, it was more a
3 responsibility of mine probably than Jim's because of its
4 connection with the Gaiety Theatre.

5 83 Q. Fine. So it is not a case that Mr. Gogarty had the
6 exclusive control of this company, isn't that so?

7 A. Of Wexburn?

8 84 Q. Of Wexburn.

9 A. No.

10 85 Q. The following document I think then just deals with the
11 loan accounts in relation to Wexburn and the direction in
12 May 1990, that's the authorised signatories. You have been
13 headed as an authorised signatory, isn't that right?

14 A. Correct.

15 86 Q. The next document then is a document where Mr. McArdle, the
16 solicitor who had carriage of sale of this property, was
17 writing to Mr. O' Keefe, isn't that right?

18 A. That is correct.

19 87 Q. And what role had Mr. O' Keefe in Copsey Murray in 1989?

20 A. He was a trainee accountant due to sit his final exams I
21 believe.

22 88 Q. Now, he -- this document, the conveyance was sent to him
23 for the purpose of having the company seal of Wexburn
24 affixed to it. I take it that that company seal was
25 probably held by Copsey Secretarial Services?

26 A. Correct.

27 89 Q. And it was then to be signed by a director and a secretary,
28 isn't that right?

29 A. Correct.

30 90 Q. And that document was in fact signed by yourself as
31 director, isn't that so?

32 A. I would think very likely, yes.

1 91 Q. We will get to it a little later, yes. Equally I think
2 you were communicating with Mr. McArdle regarding the
3 telephone lines which were in that building. The
4 following letter on the 23rd November you state that there
5 are three lines in operation, you give the numbers and you
6 note that ..."the internal telephone system is on a lease
7 agreement. If the purchasers wish to continue with the
8 lease, the necessary transfer can be arranged.
9 Alternatively, we will pay the lessee and take possession
10 of the system." Isn't that right?

11 A. Correct.

12 92 Q. Again, the fine detail of this transaction was all been
13 dealt with by the solicitors with yourselves and they were
14 receiving instructions from you, isn't that right?

15 A. Yes.

16 93 Q. It was necessary for a Family Home Protection Act
17 Declaration and for a certificate under the Companies Act
18 to be completed in relation to the property, isn't that
19 right?

20 A. Correct.

21 94 Q. And I think that if we turn to pages 24 and 25, you will
22 see where the company seal of Wexburn was affixed and where
23 Copsy Murray signed as secretary and where you signed as a
24 director of the company, isn't that right?

25 A. That's correct.

26 95 Q. The document at page 23 then is a reference, I think, to a
27 meeting being arranged with counsel by a solicitor so that
28 you and he could meet with counsel on tax matters, isn't
29 that right?

30 A. That's correct.

31 96 Q. And was that so that you could liaise regarding the tax
32 liabilities of the various companies in relation to

1 property disposition?

2 A. Well a query had been raised by Jim Gogarty and I believe
3 Denis McArdle that they felt that this was a capital gains
4 tax transaction. I in fact didn't agree with them and I
5 couldn't particularly convince them of the correctness of
6 my view so I knew Tommy McCann so we arranged a meeting
7 with him and he gave an opinion.

8 97 Q. And did this deal with companies other than Wexburn? In
9 other words, was it an opinion sought in relation to the
10 land-owning companies and the tax --

11 A. I actually can't remember. I mean it must be on the
12 correspondence file somewhere.

13 98 Q. Right. I think it is accurate to say that it dealt with
14 the sale of the north Dublin lands --

15 A. Did it? Okay.

16 99 Q. Yes. And the division of the consideration between
17 various companies, whether they were trading in lands or
18 otherwise.

19 A. Okay. I mean I know the tax point involved but I couldn't
20 remember which it related to.

2 100 Q. But it would appear from this letter that certainly
22 Mr. Gogarty, the other director, was not involved in this
23 particular meeting. It was yourself, counsel and the
24 solicitor, isn't that right?

25 A. I can't actually remember whether Jim was there, but you
26 are possibly correct.

2 101 Q. Now the dealings with the particular lands at Baggot Street
28 concluded with the sale of that property, the completion of
29 the conveyance by the execution of the necessary documents
30 by yourself as director and your firm as secretary to the
31 company without an apparent involvement of Mr. Gogarty in
32 that transaction other than the reference to him suggesting

1 that a certain individual should go in as caretaker, isn't

2 that right?

3 A. Well, as you say, that's apparent, yes, but it's not

4 correct.

102 Q. Well in what sense do you say that Mr. Gogarty played a

6 role in the disposition of these lands and by that I mean

7 either indirectly advising Mr. Murphy as to what should

8 take place in relation to the lands or in contacting the

9 solicitor with regard to assembling title documents of the

10 lands or in connection with the financial relationship with

11 the mortgagees or the execution of a conveyance or any

12 other aspect of this, where do you say Mr. Gogarty was

13 involved?

14 A. Well he arranged the sale.

1 103 Q. By that, do you mean that he contacted the auctioneer who

16 would have conduct of the sale?

17 A. And negotiated the price and I did the paperwork. So we

18 had two quite different roles to play.

1 104 Q. Do you say that the price was fixed by Mr. Gogarty or by

20 Mr. Murphy? It was an auction as I understand it. There

21 was a reserve price fixed, is that right?

22 A. My understanding of it, but I wasn't directly involved in

23 deciding the price, was that Jim Gogarty and if he was

24 being advised by an estate agent, would have in turn

25 advised Joe Murphy of what the price of the property should

26 be. And that was the reserve price. I mean to my

27 knowledge, Joe Murphy wouldn't have known the price of

28 properties in Dublin.

2 105 Q. And why do you say that?

30 A. Well from talking to him. Now, my own firm were

31 interested -- we were interested in the possibility of

32 buying this building so I went and had a look at it and

1 took a value on it myself and I know in conversations with
2 Joe, he had literally no idea of how much it was worth.

106 Q. But he had at that time surely received a valuation of the
4 property from the estate agent?

5 A. At the time I was talking to him, no, and so I had a word
6 with Jim who I think got advised on it and the price was
7 too much, although nowadays it seems very cheap.

107 Q. And the property didn't apparently sell at auction, but was
9 sold subsequently, is that right?

10 A. Apparently.

1 108 Q. The documentation then in the next folder deals with the
12 Forest Road lands. I think you are familiar with the fact
13 that the company owned lands in Swords at Forest Road.
14 They had been lands which had been discussed as early as
15 1978 when you attended at the O' Shea & Shanahan meetings,
16 isn't that right?

17 A. Yes, but I certainly wouldn't have known them as the Forest
18 Road lands.

1 109 Q. You didn't understand them to be that?

20 A. No. I wouldn't have remembered them.

2 110 Q. You wouldn't have remembered. In any event, the first of
22 the documents in this part of the documentation is a
23 handwritten attendance which was prepared by Mr. McArdle
24 who was a solicitor acting in the sale of this particular
25 property and in August of 1988 he records under R. Copsey,
26 "£20,000 difference, what is material? Difference between
27 phased and up front. Client happier if not phased.
28 Moral-legal commitment to phased purchaser. Phased
29 purchaser introduced by somebody who is useful to Jim.
30 1.4-1.42 net. Bias to Bailey." Your involvement in this
31 obviously was that you had discussed with the conveyancing
32 solicitor the question of there being a difference between

1 1.4 and 1.42 net, is that right?

2 A. That seems the basis of that.

111 Q. There seems to be a £20,000 difference which was deemed
4 immaterial or recorded as being immaterial in any event?

5 A. No. I think it says what is material.

112 Q. What is material -- do you remember anything about your
7 involvement in this particular conversation with
8 Mr. McArdle at that time?

9 A. Yes. If we could go back one stage further. Mr. Murphy
10 asked me to attend on auctioneers who had a client for
11 these particular premise and there was a dispute as to
12 whether or not the auctioneers had carriage of the sale and
13 I met with them. There was correspondence then from
14 Mr. McArdle to them. This discussion which I then had
15 with Denis McArdle was in the context of bringing together
16 all of the points arising out of my meetings with the
17 estate agents, his correspondence with them and then Jim's
18 client, which was the pros and cons of which sale could be
19 recommended.

2 113 Q. The auctioneers in question I think were Hamilton Osborne
21 King, is that correct?

22 A. That is correct.

2 114 Q. They had a number of purchasers who might have been
24 interested in acquiring this land, is that right?

25 A. Yes, I believe there was one in particular they mentioned.

2 115 Q. And they felt that they had an exclusive agency dating back
27 to Mr. Conroy's involvement, is that right?

28 A. That's what he explained to me, yes.

2 116 Q. Whereas Mr. McArdle indicated to them that the property had
30 been owned I think for about 22 years by the company and it
31 could well retain them if it wished for another 22 years
32 rather than sell, isn't that right?

1 A. Yes.

117 Q. This came up I think in the context of an offer having been
3 made by Mr. Bailey to buy the property, is that right?

4 A. Yes, yes, I mean, who was the person that Jim was dealing
5 with.

118 Q. And were you, as a director of the company, involved in
7 deciding to whom the property should be sold?

8 A. No. I was asked to become involved by Mr. Murphy Snr to
9 get the facts of the situation and I just laid the facts
10 down and I think that Jim Gogarty and Joe Murphy between
11 them made the decision, hence the wording is, "There is a
12 £20,000 difference, is it material?" I mean it wasn't up
13 to me to say whether it was material or not.

1 119 Q. But in any event, as far as you were concerned,
15 Mr. Murphy Snr had made the request of you to inquire into
16 this matter. You had made your inquiries and presumably,
17 having made them, you indicated your view to him?

18 A. I indicated the facts. I didn't have a view.

1 120 Q. Very good. You indicated the facts to him so as to allow
20 him make a decision as to what course to follow and he
21 elected to follow a particular course and sell to
22 Mr. Bailey, is that right?

23 A. Together with Jim. I am not quite sure how or what
24 discussions he had in detail with Jim Gogarty. Jim
25 Gogarty was keen that this should be sold to Bailey. I
26 think I was putting here that there was a £20,000
27 difference, i.e. Bailey was offering £20,000 less and
28 certain other factors, but it was then up to Mr. Gogarty
29 and Mr. Murphy between themselves to decide which and to
30 whom they wanted to sell.

3 121 Q. Well, can you remember after your review of these facts
32 whether the position was presented to Mr. Murphy that there

1 were two offers, one of 1.42, which was not Mr. Bailey's,
2 one of 1.4 which was Mr. Bailey's, and that there was a
3 bias to selling to Mr. Bailey?

4 A. I think that that's what was conveyed to him, that there
5 was a bias by Jim to sell to Bailey for proper commercial
6 reasons.

122 Q. On its face, one would generally sell to the highest bidder
8 but there may be other commercial considerations which
9 would ensure that --

10 A. Absolutely, and I think that's why this £20,000 is
11 immaterial in the context of other matters. That's why it
12 said "Is it there a moral commitment, or a legal
13 commitment?" It could well be on a sale of this size that
14 if you had a moral commitment, and maybe not a legal
15 commitment to somebody, that you should sell to the person
16 to whom you have the moral commitment.

1 123 Q. And did you understand the position to be that a commitment
18 had been given by Jim Gogarty to sell to Bailey to the
19 extent that certainly there was a moral commitment, though
20 perhaps not a legal commitment?

21 A. I think that was Mr. McArdle's view that there wasn't a
22 legal commitment, but we both knew that Jim felt a moral
23 commitment.

2 124 Q. Well was that because his negotiations had got to a point
25 where he felt that he had committed himself to accepting
26 the £1.4 million?

27 A. Yes, there is a lot of correspondence on that which we both
28 know about, but yes, I think that Jim felt, correctly or
29 incorrectly, that there was a legal commitment. I think
30 he was incorrect because Denis McArdle was quite emphatic
31 that there wasn't.

3 125 Q. The communication you had with Mr. Murphy on this issue,

1 were they by telephone or fax or by letter?

2 A. By telephone I believe.

126 Q. I take it that you discussed the difference between the
4 Hamilton Osborne King client's offer and the other offer,
5 the Bailey offer?

6 A. Yes.

127 Q. And in the course of that, I take it or is it the case that
8 you would have identified who the rival competing bids
9 were? On the one hand, I think it was Orlynn Homes was
10 one of the bidders and on the other, Mr. Bailey?

11 A. I actually I would have been given the name of Orlynn Homes
12 which would have meant nothing to me whatsoever. I don't
13 even know whether I was aware that Bailey was the purchaser
14 on the other side. If I was, I would have communicated but
15 I can't say whether I knew at that particular point of
16 time.

1 128 Q. Well there had to be some way in which you could
18 distinguish between the two?

19 A. Well Jim's purchaser and the estate agent's purchaser would
20 be an easy way of identifying them.

2 129 Q. But he certainly was named in the solicitor's attendance
22 and presumably was discussed by that name with you and the
23 solicitor, isn't that right?

24 A. Yes, apparently so, I mean, but the solicitor would have to
25 know the name of the purchaser, whereas I wasn't dealing
26 with the purchase or -- sorry, the sale.

2 130 Q. But since you were the person who had been sent in by
28 Mr. Murphy to establish what the factual position is, could
29 I suggest to you that the first fact you would establish is
30 just who the purchaser Mr. Gogarty had in mind was so that
31 Mr. Murphy would be fully acquainted with who that person
32 was?

1 A. I am not trying to be awkward. I actually just wouldn't
2 work that way. I have the most awful memory ever given on
3 names, so I very rarely use names, so as it happens, in all
4 probability, I wouldn't have used names. I am sorry,
5 that's just the way I am. I can't remember names.

131 Q. Well, you would have remembered the name on the day that it
7 was discussed with the solicitor surely?

8 A. I am sure he used the name, yes.

132 Q. And if you were ringing Mr. Murphy after that, it's likely
10 you would have used that name?

11 A. Oh actually, I think -- sorry, the confusion here is I
12 think that this letter -- sorry, this attendance was after
13 I had spoken to Mr. Gogarty -- to Mr. Murphy and this was
14 then me just discussing with the solicitor.

1 133 Q. I see. So you had already conveyed your views to
16 Mr. Murphy. You were now -- he presumably had
17 communicated his views to you?

18 A. Yes.

1 134 Q. And you were now telling the solicitor what the position
20 was --

21 A. Hence it says "Client happier if not phased."

2 135 Q. Now, this sale went on to be completed. I think that the
23 ultimate sale price was £1,450,000 and not either of the
24 two figures that were mentioned in this attendance, isn't
25 that right?

26 A. Yes.

2 136 Q. And in the course of that in January 1989, you were written
28 to by Mr. McArdle and he advised you of the position in
29 relation to a financial contribution of £122,460 which had
30 been paid to Dublin County Council to secure the services
31 on this particular plot of land, isn't that right?

32 A. That is correct.

137 Q. And you were being asked to provide a letter which

2 obviously was going to be furnished to the purchasers of

3 the land, assigning the benefit of that particular

4 transaction to the purchaser, isn't that right?

5 A. Correct.

138 Q. And wearing your accountant's hat, that £122,460 would

7 ultimately have to find itself accounted for in the

8 accounts of JMSE who apparently had paid the monies out,

9 isn't that right?

10 A. Yes. I mean that would have been shown as an intercompany

11 account. It wouldn't have been charged to JMSE.

1 139 Q. The next letter then confirms the fact that the sale had

13 been closed in March 1989 and you were being asked by

14 Mr. McArdle how the funds should be apportioned. You say

15 "Reliable was one of the companies involved. Grafton,

16 the other" and there was a division here as between

17 £950,000 being attributable to Grafton -- sorry, to

18 Reliable and £377,500 to Grafton." Isn't that right?

19 A. Correct.

2 140 Q. The question as to how the monies were to be paid between

21 the companies then is dealt with again by Mr. McArdle at

22 the end of that letter and in your letter you write to him

23 in March stating that "I am presently making the necessary

24 arrangements for the monies to be paid out but in the

25 meantime, it would be correct for you to pay £80,258 to

26 JMSE. This represents the amount originally funded to

27 Grafton and Reliable by way of financial contribution under

28 the planning permission less the surplus from the £400,000

29 paid to AIB under the financial restructuring of the Group

30 and I would be obliged if you would action this as JMSE

31 needs the funds at present.

32 .

00032

1 "Please copy the JMSE letter so that I can be informed of
2 the timing." Isn't that right?

3 A. Correct.

141 Q. So you were acting here both as presumably a director of
5 the company but also as the accountant to the company, is
6 that right?

7 A. You are differentiating between director and accountant.

8 I don't think there is any differential at all. A
9 director has certain probabilities and I don't see the
10 difference. The one thing, I wasn't a financial
11 controller or bookkeeper in the context of any of these
12 companies at all. Sorry, it's just that you are saying as
13 if there are two different functions. The functions are
14 the same. If you are financial director, you are carrying
15 out financial which includes accounting functions, but at a
16 particular level.

1 142 Q. And in contradistinction to other directors who would not
18 be providing that function as such, isn't that right?

19 A. Yes, but again, the world isn't made up of a person who
20 just does this and just does that under a demarcation
21 line. I mean there are crossovers all of the time.

2 143 Q. I take it you'd agree that the financial director of a
23 company is likely to have more specific knowledge of the
24 individual financial transactions than another one of the
25 directors would have, isn't that right?

26 A. More. I would agree entirely, that's the word, more.

2 144 Q. To be in a position, to report to the board and tell them
28 exactly what the position is if other directors raise
29 queries as to the finances, isn't that right?

30 A. That is correct.

31 .

32 CHAIRMAN: At this point, could we just break for ten or

00033

1 fifteen minutes.

2 .

3 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

4 AS FOLLOWS:

5 .

6 MR. O'NEILL: Mr. Copsey, on the 16th March you were

7 writing to the conveyancing solicitor for Grafton

8 Construction/Reliable Construction relating to monies to be

9 paid out to JMSE, isn't that right?

10 A. That's correct.

1 145 Q. And JMSE apparently had paid out the £122,460 to Dublin

12 County Council in respect of the services, isn't that so?

13 A. Yes.

1 146 Q. Now the following letter then on the 3rd May 1989 was a

15 letter to Mr. Joseph Murphy in 44A Bedford Court Mansions,

16 London, and I take it that was to Mr. Murphy Snr, isn't

17 that right?

18 A. Yes.

1 147 Q. And in this letter, you were setting out what had happened

20 to the funds which had been realised upon the sale of the

21 Forest Road lands, isn't that right?

22 A. Correct.

2 148 Q. So that the money had come into two particular companies,

24 that is Grafton and Reliable, approximately £1.45 million

25 and it then had to be accounted for and you were accounting

26 to Mr. Murphy directly as to how it had been apportioned

27 between the various companies, isn't that so?

28 A. That is correct.

2 149 Q. You indicate that "£99,896 received by JMSE relates to

30 portion of the amounts paid to the County Council...

31 relating to the planning permission on the lands." This

32 again is the £122,460 that we are talking about earlier,

1 isn't that right?

2 A. I believe so.

150 Q. Then another £122,564 is due to JMSE in connection with the

4 same and it will be paid out of the over provision on the

5 landscaping, the estimated actual cost of landscaping will

6 be about £10,000 leaving £47,600 over provided" isn't that

7 so?

8 A. Correct.

151 Q. So your knowledge of the disposition of these funds of

10 precise. You knew exactly what was going where, isn't

11 that right?

12 A. Yes.

1 152 Q. At this point in time. You go on then to discuss the

14 transfer of £280,362 to the AIB and that was to pay off

15 certain overdrafts in a number of accounts for Reliable

16 Construction, Grafton Construction, Gaiety Theatre Dublin

17 Limited, Lajos Holdings Limited, isn't that right?

18 A. Correct.

1 153 Q. So the funds in effect from Forest Road were going to be

20 applied to the benefit of the Murphy group of land

21 companies, isn't that right? They weren't exclusively

22 going to remain in Grafton and Reliable, isn't that so?

23 A. Yes. They were just used to finance the rest of the Lajos

24 Group.

2 154 Q. But these of course would be separate legal entities and

26 therefore arrangements would have to be made between the

27 companies and their accountants to explain these

28 transactions, isn't that right?

29 A. That is correct.

3 155 Q. The following page then outlines for Mr. Murphy the manner

31 in which the overdrafts had been incurred and reviews the

32 position back until the 1988 or thereabouts, setting out

1 what the status of the accounts of these various companies,
2 who were the beneficiaries of these funds were, isn't that
3 right?

4 A. That is correct. I mean the reason for the quite immense
5 amount of detail here was that this was bringing Joe Murphy
6 up to date as to how these overdrafts had been incurred in
7 the past. He was very concerned that the funds of
8 different companies had been mixed up previously before we
9 took back control and so this was untangling some of things
10 that had been done. Nothing improper, but just untangling
11 so that they were in a more logical form.

1 156 Q. So this letter effectively identified the overdraft
13 responsibilities of each of the companies and then referred
14 to the Forest Road lands and the amount of monies that were
15 going to be taken from Forest Road to meet these particular
16 liabilities of these companies, isn't that right?

17 A. Yes. And how the history of how the present position had
18 arisen.

1 157 Q. Yes. The document then on page 40 is a journal entry, is
20 that right, for JMSE flow of cash from disposal -- do you
21 see that document?

22 A. Yes.

2 158 Q. Do you know if that was prepared by Copsey Murray?

24 A. Yes, it would have been. I am just actually hesitating as
25 to whether it was an actual journal entry. It looks as if
26 it's a cashflow statement of where exactly they went.

2 159 Q. And what it indicates is the proceeds from the disposal and
28 though it doesn't refer to Forest Road specifically, that
29 is the disposal of the Forest Road lands by
30 Grafton/Reliable?

31 A. Correct.

3 160 Q. And this is accounting for those sums from a JMSE

1 perspective, isn't that right?

2 A. That's what it's headed, yes, I am just looking at it.

161 Q. It shows the proceeds at £1.45 million less the cost of
4 planning permission which is £122,460, (refunded to
5 JMSE). So that portion only of what JMSE had incurred was
6 refunded and that amount was £99,896, isn't that right?

7 A. That's correct. Sorry, just reverting back to my previous
8 point. The heading here, whilst it says JMSE, it's not
9 exclusively JMSE by any means, that's why I hesitated
10 earlier. This shows the amounts which were repayable to
11 Lajos, amounts repayable to General Agencies. This is a
12 general cashflow statement which includes JMSE, but it is
13 by no means exclusive to JMSE.

1 162 Q. Yes, nor is it limited to Grafton or Reliable?

15 A. Absolutely not. It's wherever the amounts fall and
16 whichever company they fall in or affect.

1 163 Q. Okay. So you differentiate then in the top column between
18 Reliable and Grafton, isn't that right?

19 A. That is correct.

2 164 Q. And as one works down through the figures, you see that the
21 consideration is divided between the two of them, £972,564
22 for Reliable and £377,540 for Grafton. That was the
23 proportions in which they received the funds, isn't that
24 right?

25 A. That's correct.

2 165 Q. The tax deductions and then there are the transfer to the
27 AIB which is explained in your letter, the £380,362 which
28 went to pay off the various overdrafts and liabilities is
29 referred to here and is divided as between the two
30 companies I take it in the same proportion as the
31 consideration was received by them, is that so?

32 A. It actually doesn't look like that, no. Sorry, I am only

1 looking at the same figures as you are, but if you take the
2 972 and the 377, that's slightly under a third, isn't it?
3 And maybe it is -- you'd almost need a calculator.

166 Q. I see. In any event, this document was prepared
5 presumably for the purpose of identifying exactly what this
6 money went for, isn't that right?

7 A. That is correct.

167 Q. And as you have indicated, the Irish -- these Irish
9 properties ultimately were owned by an Isle of Man company
10 called General Agencies, isn't that right?

11 A. Yes. Certainly Grafton was and I assume Reliable was as
12 well.

1 168 Q. Right. And the next document then on page 41 is a
14 communication from yourself to Mr. Wadley, isn't that
15 right?

16 A. It's actually a communication from one of my partners, but
17 from my company.

1 169 Q. From your company. And it conveys a query raised by you,
19 "Roger has asked me to arrange transfer of surplus funds
20 from Grafton Construction to General Agencies. Can you
21 advise name and address of GA bank? If none, then name
22 and bank of another overseas company who will accept funds
23 on General Agencies' behalf."

24 A. Yes.

2 170 Q. This was completing the chain of events, the money having
26 come into Grafton, having been applied as you described to
27 various accounts and liabilities which had been incurred by
28 these companies over the years and then the surplus was to
29 go to General Agencies, isn't that right?

30 A. Correct.

3 171 Q. And did you ever account to General Agencies for the
32 disbursements which had been made out of the £1.45 million

1 received on the sale of the Forest Road lands?
2 A. No. I don't believe I did. In normal accounting terms
3 you wouldn't do. I'd actually have to look at other
4 correspondence, if it's here, but I would have imagined
5 that the amount payable to General Agencies there, which
6 was £84,000, was probably a repayment of loans which
7 General Agencies had in the past made to the Irish group of
8 companies, so the only thing that would concern General
9 Agencies is the repayments of their loans. They actually
10 wouldn't be concerned with the particular transactions
11 within the lower companies and therefore you wouldn't
12 account. You'd only account on the basis of an
13 intercompany account transaction.

1 172 Q. But they would have to know, ultimately they would be to be
15 satisfied with the fact that the disposition of one of
16 their subsidiary company's assets had been properly
17 accounted for along the way, isn't that right?

18 A. That's if they did group accounts and the group auditor's
19 responsibility there, but generally it would only be on the
20 basis of intercompany transaction.

2 173 Q. So are you saying that, as far as you are concerned,
22 General Agencies would merely have received a certain cash
23 amount without explanation as to how that had been broken
24 down from the initial consideration received on the sale of
25 the lands?

26 A. In this particular instance, yes. I think as a general
27 clearing-up operation every now and, again, that Edgar
28 Wadley, who would have dealt with the overseas companies,
29 did request copies of correspondence, etc.

3 174 Q. Mr. Wadley I think dealt not only with the English
31 companies but also dealt with you in relation to the Irish
32 companies, isn't that right?

1 A. Yes, on certain matters, yes.

175 Q. The next document, if we move to tab 4, deals essentially
3 with an estate which had been built called Martello
4 Towers. I think it was built by O' Shea & Shanahan on the
5 arrangement that they had with the Murphys and ground rents
6 in those days were chargeable in respect of that estate and
7 this correspondence starts with a letter to Copsey Murray
8 from Kent Carty & Company, solicitors, who had acted for
9 the Murphy Group I understand when the land portfolio or
10 the ground rents portfolio was being managed by them. And
11 they enclosed a letter where a certain individual who had
12 purchased the fee simple interest in one of these
13 properties in 1978 had mislaid the consent form completed
14 at that time by Grafton Construction and they wanted to
15 obtain a duplicate of that particular form.
16 That was a matter which came to you presumably because you
17 were a director of the company, the secretary of the
18 company and you dealt with this particular request, isn't
19 that right?

20 A. I think it originally went to Jim and Jim would have just
21 given it to me. I think there was nothing more or less
22 than the fact that I had administrative and secretarial
23 backup and Jim found it convenient and quite correctly to
24 give it to me so that I could have somebody in my office
25 deal with it.

2 176 Q. Well I think if we go through the correspondence, it would
27 appear to be the other way round, in other words, Kent
28 Carty contacted you on the 16th -- if you look at
29 page -- it's page with 869 on it?

30 A. Okay. My apologies.

3 177 Q. You were contacted on the 16th. You then wrote to
32 Mr. Gogarty on the 20th saying "Dear Jim, I enclose

1 correspondence from the Kent Carty. I'd be obliged for
2 your advice in the matter."

3 A. Okay.

178 Q. You then wrote to Mr. Brendan Devine on the 27th and you
5 explained the position to him on page 45 saying that you
6 had received correspondence indicating that the fee simple
7 interest had been purchased and the person had mislaid the
8 consent form and Kent Carty had checked their files,
9 confirmed that the purchase price was paid and you asked
10 him to check his file and confirm the consent was signed on
11 behalf of Grafton, so you dealt with that aspect as well
12 though it was a relatively minor matter, it was a matter
13 dealt with by you, isn't that right?

14 A. Yes.

1 179 Q. Now, under tab 5 then, there is an amount of correspondence
16 which deals with the north Dublin lands specifically. The
17 first of these documents is an attendance and perhaps can
18 you identify the handwriting there? Is it yours or Mr.
19 O' Keefe's?

20 A. I don't think anybody wants to claim this handwriting. It
21 is Mr. O' Keefe's, yes.

2 180 Q. Mr. O' Keefe's, very well. And it records a phone call
23 "Re: Jim Gogarty. Lands in Grafton" and it then goes on
24 to deal with the Scotts Farm, the acreage, 255 acres, no
25 land registry folio for certain amount of acreage there.
26 Lands at Poppintree etc. It lists various lands and it
27 also records the fact that "Joe wishes to sell for
28 agricultural value 20k-25k. Then purge him -- Gogarty.
29 All lands bought with the intention of reselling them and
30 realising a gain."

31 A. Correct.

3 181 Q. From an accountant's point of view, it was important to

1 identify the purpose for which this land had been bought
2 and held so as to account presumably for any tax on sale of
3 the property, is that right?

4 A. That's the point I alluded to earlier in fact, that I think
5 this is Jim was saying that he felt that they were to
6 realise again, well again in capital terms means tax under
7 capital gains tax which would have been a lower rate than
8 income tax, hence we got the counsel's opinion.

182 Q. Would it appear then from this letter that certainly Cospey
10 Murray was aware of the fact that the north Dublin lands
11 were intended to be sold?

12 A. Oh yes.

1 183 Q. And in relation to the Abbeycarton, Longford lands that
14 they were to be sold for agricultural value, 20-25k and
15 this was the wish of Mr. Murphy Snr?

16 A. Yes.

1 184 Q. In relation to the north Dublin lands, I think you then set
18 about endeavouring to locate the deeds which would be
19 necessary for sale of the property, isn't that right? You
20 wrote in the next document, on page 47, to Mr. Brendan
21 Devine who had formerly been a director I think of those
22 companies and had dealt with those companies indicating "We
23 are currently trying to locate various deeds of land owned
24 by Lajos and/or General Agencies or its subsidiaries. Can
25 you please confirm that you have any title deeds or have
26 any knowledge as to where title deeds to various lands may
27 be other than those with the AIB or Denis McArdle." Isn't
28 that right?

29 A. Yes. I mean this wouldn't have been exclusively for any
30 sale. This would have been just good housekeeping. You
31 need to know where your title documents are.

3 185 Q. True, but in the context of this letter, can you recollect

1 whether or not it was for the purpose of assembling title
2 documents for the sale of the lands?

3 A. I think it was for both purposes. Certainly at that time
4 the thought of selling the lands was a current thought but
5 also the preparation of the accounts to the 31st March 1989
6 would have also been another factor. So it just would
7 have been a general housekeeping for any purpose, including
8 the sale or the audit.

186 Q. Well surely the audit would merely have to record perhaps
10 what the initial base cost of the lands was, but it
11 certainly wouldn't require the title deeds. They wouldn't
12 assist from an accountant's point of view, would they?

13 A. Auditing isn't my strong point, as we discussed yesterday,
14 but with auditing, you do have to confirm that the company
15 still owns the land. The fact they purchased them maybe
16 ten years previous doesn't mean they presently own them and
17 the only way of knowing that they own them would be to
18 either check the title deeds or check with the people who
19 have the title deeds. So that's how you would confirm
20 from an audit point of view.

2 187 Q. But as a director of the companies, you would have known
22 presumably that no charge had been registered or no
23 dealings had taken place with these lands during the
24 currency of your directorship, isn't that right?

25 A. Absolutely. But to be totally certain, we'd have to know
26 where the deeds were.

2 188 Q. Right. And you communicated directly with Mr. Murphy Snr
28 in London enclosing a copy of the letter in relation to
29 these deeds. I think that at that time the possibility of
30 Ernst & Whinney claiming a lien over the title deeds was
31 considered, because they were claiming fees for work which
32 they had done whilst the auditors of those companies, isn't

1 that right?

2 A. That's correct. That was all sorted out in the end.

189 Q. You communicated with the company's solicitors on that
4 issue and you also dealt with Mr. Devine to outline your
5 views on whether or not a lien could justifiably be claimed
6 in respect of those deeds, isn't that right?

7 A. That's correct. Brendan and I knew one another and we
8 were trying to sort the matter out amicably, despite our
9 clients.

1 190 Q. At page 50 you drew his attention to the Institute's
11 guidelines and I think in compliance with that, he provided
12 you with the deeds and you confirm that to Mr. Murphy on
13 the 10th May.

14 A. That's correct, yes.

1 191 Q. Or subsequent to the 10th May.

16 A. Yes.

1 192 Q. The deeds apparently went to Mr. McArdle direct, is that
18 right?

19 A. Yes, it would be the normal place to keep deeds which were
20 not subject to a bank charge with the company solicitor.

2 193 Q. Now, again that next document has already been referred to
22 and then there are some financial workings which complete
23 that. If you turn to document 59. This seems to relate
24 to the acquisition of lands, the companies in general were
25 disposing of lands at that time, but in fact they had also
26 acquired, for completeness, adjoining lands in Poppintree
27 for a consideration of £65,000, isn't that right?

28 A. Yes, it must be, yes.

2 194 Q. If you just read through that. Under the heading
30 Gogarty -- firstly, it's dated the 17th April of 1989
31 heading "Gogarty. Joe says go ahead with O and S deal.
32 £65,000. Closing two to three months' time. Pay the

1 deposit. Meet them on the ground rents." Then under the
2 heading "Copsey" with the same date "Go ahead. Same
3 conversation with Joe last Friday. Intended ringing me."

4 A. Yes.

195 Q. So you were in touch with Mr. Murphy Snr about this
6 particular acquisition or certainly in the course of
7 contact with him, he brought up the question that one
8 should go ahead and acquire these lands, is that right?

9 A. Yes. I mean he would have told me that Jim had negotiated
10 with O' Shea & Shanahan and just would have informed me
11 that the deal was going to go ahead.

1 196 Q. This was a decision which had been made by him, though the
13 acquisition was to be made through the company of which you
14 were a director, is that right?

15 A. That is correct. I think what actually happened was that
16 normally with these lands, that Jim did all of the
17 negotiation and the work, brought it to Joe and Joe would
18 have the final yea or nay on the purchase or sale.

1 197 Q. Now if we could just revert, Mr. Copsey, to the question of
20 Mr. Gogarty's pension and your role in that. We know that
21 Mr. Gogarty had been the chairman of the company for a
22 period of years after his cessation as managing director,
23 isn't that right?

24 A. Yes.

2 198 Q. And essentially that was a non-executive position?

26 A. That was my understanding. I wasn't present during those
27 years, but yes, that is my understanding.

2 199 Q. Though perhaps the board at the time felt that he was
29 somewhat overactive as a chairman and interfering with
30 their affairs as far as they were concerned?

31 A. I think that was their view, yes.

3 200 Q. Did you know whether or not during that period or towards

1 the latter end of that period, he was communicating his
2 concerns about the company to Mr. Murphy and that he had
3 attended in Guernsey with Mr. Murphy and discussed the
4 matter in some depth with him in 1987?

5 A. I was informed and given that background in or about May
6 1988.

201 Q. Right. So when the, what I would call, the coup took
8 place and Mr. Conroy was removed, Mr. Sweeney remained on
9 in a function as managing director but under fairly tight
10 supervision, Mr. Downes was removed as accountant and in
11 effect a new board with the exception of Mr. Gogarty was
12 appointed, isn't that right?

13 A. That's right.

1 202 Q. And at that point in time, what was Mr. Gogarty's function
15 in the company as you understood it? What was he
16 practically doing?

17 A. Which point in time are we talking about now?

1 203 Q. Let's say from June 1988 until the retirement of or
19 removal, whichever it was, of Mr. Sweeney which I
20 understand took place in March of the following year, 1989,
21 isn't that so?

22 A. Yes.

2 204 Q. During that period of time, obviously the managing director
24 was Mr. Marcus Sweeney. He was being monitored in his
25 financial affairs by yourself and in his contracting
26 matters by Mr. Gogarty and by Mr. Murphy Snr, isn't that
27 right?

28 A. That's correct. In practice more by Jim Gogarty, because
29 Mr. Murphy's expertise was not in structural steel. He
30 actually knew very little about structural steel as such.
31 Jim Gogarty would have been the expert in that.
32 Mr. Murphy's expertise was in cable laying, I believe,

1 which is quite a different branch of industry. To get
2 back to Mr. Gogarty's role, it varied during that period.
3 To begin with, with an amount of persuasion from me, he did
4 not interfere with Marcus Sweeney at all which was what was
5 arranged, but as my correspondence which we read out
6 earlier today indicated, that the situation started to
7 deteriorate and Jim found himself interfering more with the
8 day to day management in the running of the company than he
9 did to begin with, hence my letter to say that we have to
10 do something about the present situation.

1 205 Q. Well, I do not interpret your letter as saying that the
12 position was stable when you wrote that letter but that you
13 had a fear that perhaps in the future it might not remain
14 so and that Mr. Murphy should consider whether he wished to
15 keep Mr. Marcus Sweeney on in the long-term in which case
16 Mr. Gogarty in turn would have to be removed from an
17 executive position and in those circumstances, Mr. Gogarty
18 had indicated to you that he would not be prepared to sit
19 on the board because he would not be responsible for the
20 activities of Mr. Sweeney, isn't that what you identified
21 at that time --

22 A. Yes, but the reason I wrote the letter because the cracks
23 were just beginning to show, and that's why I said that
24 during that period, Mr. Gogarty's role did alter so to
25 repeat what I think I said previously, that to begin with,
26 he did keep out of Marcus Sweeney's way and didn't
27 interfere and then gradually as time went on, he started to
28 interfere more and eventually it came to pass what I said
29 would happen, that there was an unhappy situation.

3 206 Q. But are you saying that Mr. Marcus Sweeney then was removed
31 from the company because of the unhappiness with
32 Mr. Gogarty or was it for entirely separate reasons?

1 A. No. It was directly because of the unhappiness with

2 Mr. Gogarty.

207 Q. But in March 1989 when Mr. Sweeney left the firm, it was

4 clear that Mr. Gogarty also was leaving because he had been

5 in negotiation about his pension and obviously there was no

6 intention on his part to remain any longer than he had to,

7 provided he received a suitable pension, isn't that right?

8 A. Well, his position was anomalous right from the beginning

9 because right from the beginning, he expressed the wish to

10 retire but didn't do so until June 1989 --

11 .

12 CHAIRMAN: I wonder might I intervene, when you use -- from

13 the beginning, do I understand you correctly to be talking

14 about 1982?

15 A. Oh no. My apologies, my beginning, which was in May/June

16 1988.

17 .

18 CHAIRMAN: Oh I beg your pardon. I thought it was from

19 the point which Mr. Gogarty ceased to be managing

20 director.

21 A. No.

22 .

23 CHAIRMAN: I just want to follow the matter correctly.

24 .

2 208 Q. MR. O'NEILL: Certainly from the time of your involvement

26 initially in JMSE on your return in 1988, it was clear to

27 you that Mr. Gogarty had an intention to retire, isn't that

28 right?

29 A. That was his wish, yes.

3 209 Q. And do you know that that had been communicated to the

31 previous chief executive, Mr. Conroy, and that he had made

32 some offers which were not suitable or not satisfactory

1 from Mr. Gogarty's point of view?

2 A. I understood that, yes. Yes.

210 Q. So that in 1988, once Mr. Murphy Snr had effectively
4 regained the control of the reins of the Murphy group of
5 companies, it remained the situation that Mr. Gogarty
6 wanted to retire from the company, isn't that correct?

7 A. That is correct.

211 Q. And the position of appointing a chief executive in England
9 had been resolved by the appointment of Mr. Parker towards
10 late '88, isn't that right?

11 A. Yes, he was supposed to be chief executive of not just AGSE
12 but also JMSE.

1 212 Q. Did he, in fact, perform any function in that regard?

14 A. In practice, he was prevented from carrying out that role
15 mainly by Mr. Gogarty. I sound as if everything I say is
16 anti-Mr. Gogarty. At some stage I will have an
17 opportunity to say that it isn't all anti-Mr. Gogarty but
18 there was a running sore with Mr. Gogarty from May/June
19 1988 when he wanted to retire with a pension which he felt
20 was adequate until he did retire in June and during that
21 time he interfered in things which he should not have
22 interfered in, made decisions he should not have made and
23 did things in order to exert pressure in order to obtain a
24 pension.

2 213 Q. Now, did you see any reason for him to do that or did you
26 understand that it had been the intention of the Murphy
27 companies to provide him with a pension which was adequate?

28 A. I think you will see from my notes, which are quite
29 comprehensive at the time, both the facts of the situation
30 as seen by Joe Murphy Snr and Jim Gogarty and my own
31 opinion on the matter.

3 214 Q. I was endeavouring to establish just precisely what role

1 Mr. Gogarty was actually playing at particular times
2 between 1988 in June, when he came under the wing of the
3 new direction of the company and his resignation which was
4 in July of the following year. In that 13-month period,
5 in the first section of it, there was an actual managing
6 director of the company until March of 1989 and that was
7 Mr. Sweeney under supervision, wasn't that right?

8 A. That is correct.

215 Q. Up to that time, a number of other persons had been either
10 promoted or brought into the company to deal with the
11 practical aspects of the building and construction of
12 steel, in particular Mr. Reynolds had been appointed a
13 director of the company in December of 1988, isn't that so?

14 A. Correct. I mean we took -- when I say we, everybody who
15 was involved took steps to try to strengthen the companies,
16 not only because of the change over which had happened, but
17 because the amount of work which the companies, both AGSE
18 and JMSE, were undertaking was rising steeply, mainly to do
19 with the Sizewell contract which was peaking in volume.

2 216 Q. In addition to Mr. Reynolds' promotion to director,
21 Mr. Grehan was brought in and he also was appointed a
22 director of the company, isn't that right?

23 A. That is correct.

2 217 Q. So that did that dilute the functions that Mr. Gogarty
25 might have had to perform in the company given that he was
26 now a managing director, Mr. Sweeney -- there were two
27 other directors who were there on a day to day basis,
28 Mr. Grehan and Mr. Reynolds and of course there was
29 yourself, isn't that so?

30 A. I believe that Mr. Gogarty used both Mr. Reynolds and
31 Mr. Grehan to undermine Mr. Sweeney's position and
32 strengthen his own in terms of negotiating his contract.

218 Q. Well, was there any particular reason for him to do that

2 that you could see?

3 A. Yes. He was squeezing very hard for more money and he was

4 successful.

219 Q. Well, no doubt Mr. Grehan and Mr. Reynolds acted in a

6 fashion which they thought was in the best interests of the

7 company, isn't that so?

8 A. Yes, and I also think that they were very highly influenced

9 by Mr. Gogarty in forming whatever opinions they formed.

1 220 Q. I see. When Mr. Sweeney retired in March 1989, was there

11 any other managing director appointed by the board in his

12 place at that time?

13 A. I don't think there was a formal position managing director

14 that I can remember, no. Frank Reynolds eventually

15 succeeded to that position, but I don't think at that time

16 he was appointed managing director. There was of course a

17 chief executive in Tim Parker.

1 221 Q. Who, as you tell us, played a relatively limited role for

19 whatever reason it might be --

20 A. That's correct.

2 222 Q. -- but he was not managing the company from March onward,

22 isn't that so?

23 A. That is correct.

2 223 Q. And as I understand it, Mr. Frank Reynolds was appointed

25 managing director in May 1990, having first been appointed

26 to the board in December 1988?

27 A. Yes, I am sure you are correct, yes.

2 224 Q. So he says in his statement?

29 A. No, I have no reason to not believe that.

3 225 Q. So from March onward until Mr. Gogarty's retirement in July

31 1989, there was, in effect, no managing director dedicated

32 as such, isn't that so?

1 A. That is correct.

226 Q. And there was a clear intention expressed as far as you
3 know, prior to your coming into the company and certainly
4 throughout the period of your being in the company of
5 Mr. Gogarty wishing to retire, isn't that right?

6 A. That is correct.

227 Q. He was never, in effect, as far as you are concerned, going
8 to be a long-term employee of the company or a director of
9 the company given a number of factors, his wish to retire,
10 his age and the fact that the company had its new board of
11 younger persons who were performing the functions of a
12 board of directors, is that the position?

13 A. That is correct.

1 228 Q. Now, I think that your first direct involvement, certainly
15 the first recorded direct involvement in the documents
16 provided to the Tribunal was the minutes of a meeting which
17 was held with Mr. Jim Gogarty on the 7th February of 1989
18 and if you turn to tab number 1, you will see that at page
19 1, it's the first document there.

20 A. Yes, I have it.

2 229 Q. Since it is somewhat lengthy, I think it's best if I just
22 read it and it will probably take us up to lunch time and I
23 will question you this afternoon about it.

24 A meeting between RJ Copsey and J. Gogarty.

25 .

26 "The purpose was to try to negotiate a settlement of the
27 amounts which JG felt was due from JM and all his
28 companies. It had been decided that I should act as an
29 intermediary in the matter as JG had become emotional at an
30 earlier meeting. The meeting in question was conducted
31 without rancour between myself and/or JG but having said
32 that, he did leave the meeting before it was finished

1 because he felt the gap between us was too great and he was
2 becoming emotional.

3 .

4 The following arose:

5 .

6 1. JG stated he was entitled to the following.

7 .

8 A: A salary of £35,000 per annum indexed for inflation
9 for the next five years. This amount is to be paid
10 whether or not he could work through illness or in the
11 enter of his death during the period to his wife Anna.

12 .

13 B: Anna should receive a sum of £250,000 abroad which she
14 would invest as a pension for herself.

15 .

16 C: A car on current terms for the next five years.

17 .

18 D: All legitimate expenses.

19 .

20 E. Full telephone paid.

21 .

22 F: Compensation for the Sutton site. £22,500.

23 .

24 G: A bonus of a minimum of £50,000 in respect of his help
25 in getting back the Murphy companies.

26 .

27 2: A bonus of £20,000 taxable had already been agreed
28 between JG and JM as compensation for previous bonuses not
29 paid by Liam Conroy.

30 .

31 3: In respect of the items under paragraph 1 above, it is
32 clear that the salary is taxable and cash of £250,000

1 should not bear a tax deduction but it was not made clear
2 whether the amount payable for the Sutton site and the
3 bonus were thought to be liable to deduction of tax or
4 not. The Revenue will expect tax to be deducted from the
5 bonus and at best JG would be personally liable to tax on
6 the monies for the site. When I started to try to relate
7 the amounts to the question of tax. He stated he did not
8 want to talk about the matter as we were talking of matters
9 of principle which went back to relationships which lasted
10 50 years and promises which had been made.

11 .

12 4: The total cost of the above package is £515,000,
13 ignoring the inflation factors on salary which may be
14 £7,000-£10,000.

15 .

16 5: I stated that JM was willing to offer;

17 .

18 A: A salary of £20,000 for the next five years.

19 B: The sum payable abroad of 200,000 Irish pounds and I
20 stated that I would be willing to recommend an extra
21 £50,000.

22 .

23 6: The total of the above is £300,000.

24 .

25 Comments by JG:

26 JG made the following comments, sometimes at random.

27 .

28 A: JM had stated that an amount of £70,000 had been paid
29 in settlement of the pension. This was untrue.

30 .

31 B: JM had promised a bonus if he obtained back control of
32 his companies.

1 .

2 C: JM had stated I am only sorry that I did not sell the
3 company to TMG all those years ago and given Jimmy his
4 £500,000."

5 .

6 D: JG felt he should not have to negotiate for the
7 money. It should not be given grudgingly but should be a
8 recognition of all the work that he had done and the very
9 considerable monies that he had made for JM. Furthermore,
10 he had, for the sake of JM, subrogated his own interests,
11 especially over the last year.

12 .

13 E: JG had not received a salary increase over the last
14 five years and he had been told by Liam Conroy that this
15 was because no one else had received any increases.
16 However, the other people concerned had received theirs
17 through a slush fund.

18 .

19 F: He had discussed the matter with his wife and they had
20 both agreed that if he can not receive what is an
21 honourable settlement, he would rather take nothing and
22 spend his last penny in making sure he obtained what was
23 due to him and his family.

24 .

25 G: He expects the pension to be guaranteed by the overseas
26 holding company.

27 .

28 Considerations:

29 10: JM has been directly responsible for the sale of the
30 land and 1.4 -- sorry, I think firstly the JM should be JG
31 though it appears as JM.

32 A. Yes.

230 Q. I will refer it as JG. "JG has been directly responsible
2 for negotiating the sale of the land and £1.4 million
3 without the use of an auctioneer which is probably itself
4 worth £26,000. Furthermore he has introduced Tim Parker
5 in circumstances where headhunters, who will probably
6 charge £20,000 sterling, have failed to find a suitable
7 person.

8 .
9 11: There is an undoubted history of Jim having worked for
10 the Murphy Group for numerous years and having been
11 chairman of JMSE for 20 years. This service at a high
12 level would normally have resulted in a two thirds pension
13 based on most recent salary.

14 .
15 11: JG has undoubtedly been instrumental in identifying
16 the problems in culminating in the take back by JM.
17 Furthermore he has shown the utmost loyalty to the Murphy
18 family over numerous years.

19 .
20 12. In my opinion, he now sees other people being paid
21 sums of money and being given pensions and being given
22 larger salaries than he has. In the background is the
23 possibility of Marcus Sweeney receiving a settlement of
24 between £50,000-£100,000 in circumstances where he has
25 shown no loyalty to the Murphy family and in JG's view is
26 out to ruin the company.

27 .
28 13: He may attempt to sabotage the present rescue
29 operation on JMSE on the basis of emotion, if not fact.

30 .
31 Conclusions:

32 14: The gap between the two amounts of £300,000 and

1 £515,000 are too large to bridge as it seems to me neither
2 party would be willing to meet the other in the middle.
3 .

4 15: The Murphy Group could increase its payments if it
5 could be given in a tax deductible form for one of the
6 Murphy companies. For instance, Grafton Construction
7 Company will very soon have to bear a tax charge of
8 £200,000 and if JG will pay it out of this company, the
9 amount would be tax deductible at 43 percent. However to
10 achieve this it would be taxable in JG's hands."

11 I think that JG should also be JM, is that right?

12 .

13 "16: It would be difficult to justify guaranteeing the
14 pension outside of JMSE/AGSE.

15 .

16 Recommendation:

17 17: The sum of £250,000 should be paid out of the proceeds
18 of the sale of the land after JG has resigned as a director
19 of Grafton and Reliable.

20 .

21 18: The salary of £20,000 per annum can be paid for a
22 period of five years as there will be work on the lands for
23 some years, even if JMSE fails.

24 .

25 19: A bonus could be worked out based on JMSE/AGSE results
26 and the sale price of the lands."

27 .

28 That I think was the memorandum that you prepared following
29 the meeting which you had with Mr. Gogarty in February of
30 1989, isn't that right?

31 A. That's correct.

3 231 Q. It might be convenient to break now, Sir.

00057

1 .

2 CHAIRMAN: A quarter past two.

3 .

4 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2.15PM:

2 .

3 CONTINUATION OF EXAMINATION OF ROGER COPSEY BY MR. O'NEILL:

4 .

232 Q. MR. O'NEILL: Good afternoon, Mr. Copsey. Before lunch I

6 read to you the minutes of the meeting which you had

7 prepared after your meeting with Mr. Gogarty on the 7th

8 February 1989 and I think this was your first involvement

9 in direct negotiation with Mr. Gogarty about his pension,

10 isn't that so?

11 A. That's correct.

1 233 Q. You obviously however had familiarised yourself with

13 negotiations that had taken place prior to your

14 involvement?

15 A. Yes, I actually spoke to Joseph Murphy who asked me to

16 negotiate with Jim and Jim was agreeable to negotiate with

17 me.

1 234 Q. Right. Reference is made at the beginning of your

19 memorandum of there having been an earlier meeting at which

20 JG had become emotional and I am wondering if you can date

21 that earlier meeting for us or indicate where it took place

22 and who the parties to that meeting were.

23 A. I actually don't know where it took place. It was

24 probably at, is it Wilton House or Wilton Place?

2 235 Q. Wilton Lodge?

26 A. Yes, it was probably there and as far as I know, it was

27 just Joe and Jim but I wasn't present. That would be my

28 recollection what I was told.

2 236 Q. You had been given some history of the failed negotiations

30 at that point in any event.

31 A. Oh yes, I had, yes.

3 237 Q. And I take it equally that you had spoken with Mr. Murphy

1 as to what he would have been prepared to do to
2 successfully conclude negotiations, isn't that right?

3 A. That's correct, yes.

238 Q. If it had been the position that you could have concluded a
5 deal on that day, you had sufficient instructions to do so
6 provided it was within the parameters of your authority, is
7 that right?

8 A. That's correct.

239 Q. Right. So you record the wishes of Mr. Gogarty in the
10 first instance and you then quantify the package which he
11 was looking for in a total sum of £515,000 to the company
12 as you saw it, isn't that right?

13 A. That's correct.

1 240 Q. Equally you then indicated that the wishes of Mr. Murphy
15 were that you could make a certain offer and you express
16 that offer to Mr. Gogarty, is that right?

17 A. I think, plus the fact that I would recommend an increase.

1 241 Q. Yes. I think we see that at Item 5 in your memorandum
19 where you say, "I stated that JM was willing to offer (a) a
20 salary of £20,000 for the next five years and (b) a sum
21 payable abroad of IR£200,000 and I stated that I would be
22 willing to recommend an extra 50."

23 A. Yes, you will see later of course that I didn't recommend
24 it should be payable abroad because there were tax
25 complications in that but I did say that I would recommend
26 an extra £50,000.

2 242 Q. Certainly one gets the flavour to that point in your minute
28 that there was a fixing of positions by the parties, is
29 that right?

30 A. Yes.

3 243 Q. And not any real negotiation in the sense that Mr. Gogarty
32 apparently took the view that it was a matter of principle

1 rather than a matter of negotiating the fine detail and he
2 felt he shouldn't have to negotiate, that it should be his
3 right to get what he was looking for, isn't that right?

4 A. I always find when you are negotiating for money, there is
5 no such thing as an absolute principle.

244 Q. Yes. He certainly took the matter very personally, isn't
7 that right?

8 A. Absolutely, yes.

245 Q. To the point that the meeting didn't in fact conclude or be
10 completed but he left before the end of the meeting rather
11 than become emotional?

12 A. No, he became emotional, then left the meeting.

1 246 Q. So to that extent, you were not able to conclude anything
14 with him but you were in a position to make recommendations
15 to Mr. Murphy and I take it you passed on this minute to
16 him, is that right?

17 A. Yes.

1 247 Q. And did you discuss this with him after that or did he ask
19 you to elaborate further on it, further steps being taken
20 by him?

21 A. I must have done. I don't specifically remember but it's
22 quite obvious that I must have done.

2 248 Q. You may be aware of the fact that there were further
24 direct -- there was a direct contact between Mr. Gogarty
25 and Mr. Murphy or vice versa whilst they were in London?

26 A. The Bonnington Hotel, something like that, yes.

2 249 Q. Do I take it you had no involvement with Mr. Gogarty after
28 this meeting in February until Mr. Murphy had his meeting
29 with Mr. Gogarty in May?

30 A. The question of Mr. Gogarty's pension came up quite
31 regularly but I had no specific negotiations within that.

3 250 Q. And do I take it you didn't record any further demand made

1 by Mr. Gogarty or any other qualification to this
2 memorandum for Mr. Murphy?
3 A. Only indirectly I think I referred to Mr. Gogarty being
4 awkward on certain occasions relating to his pension, in
5 particular, a meeting I had with Barclays Bank. It
6 occurred and erupted every now and again.

251 Q. Yes. Certainly in the statement you provided to the
8 Tribunal, you indicate the circumstances of this meeting at
9 the premises in Fleetwood, isn't that right?

10 A. That's correct, yes.

1 252 Q. Was there any memorandum of that or any reprimand in
12 writing or comment by you in writing to Mr. Gogarty about
13 that?

14 A. No. I would have reported Mr. Gogarty's general demeanour
15 and actions to Joseph Murphy Snr but he was determined that
16 Jim was useful to him and actually wanted him to stop on in
17 some capacity. He also wanted to settle a pension with
18 him and he would later become a consultant. That was his
19 aim. But at no point of time was I given the authority to
20 deal with the matter as I might have dealt with it
21 otherwise.

2 253 Q. Your communication with Mr. Murphy following the event you
23 described in Fleetwood, I take it, was by telephone rather
24 than writing. No record of that has been discovered.

25 A. Yes, I had numerous telephone calls with him.

2 254 Q. On the 22nd May, there was a meeting in London in the
27 Bonnington Hotel. Do you recollect being consulted by Mr.
28 Murphy and advised that such a meeting was to take place
29 and asked what your views were on it or anything of that
30 nature?

31 A. The first I recall of that and I actually don't know
32 whether it was before or after the meeting, Joe telephoned

1 me and asked me what I thought of the idea of offering Jim
2 Gogarty a commission on the amount that he was, that he
3 might obtain from the ESB on a settlement and I gave him my
4 views on that matter. I don't know whether that was
5 before or after his meeting.

255 Q. So do you know whether there was in fact any communication
7 between yourself and Mr. Murphy immediately prior to the
8 22nd May when this meeting took place in London?

9 A. No. I just said I actually don't know. I certainly met
10 with Mr. Murphy immediately after that meeting. On the
11 law of probability, I think that Joe would have telephoned
12 me in or about the time of that meeting regarding that
13 proposal.

1 256 Q. And was your meeting in London or was it in Dublin with Mr.
15 Murphy after the 22nd May?

16 A. I think I actually -- I think actually it was in London.
17 In my travel through my papers, I saw this note of a
18 meeting once and I have only ever been able to find it the
19 once. I'd just like to tell you about my own papers. I
20 didn't have them for ten years or eight years, they were
21 given back to the Murphys. I have actually only got the
22 papers in bits and pieces since then so I am not sure that
23 I have ever seen a complete set of my papers at any one
24 point of time. Sometime I saw a note of a meeting that I
25 had which I believe was in London with Joe and Edgar Wadley
26 concerning the terms discussed at the Bonnington Hotel
27 meeting.

2 257 Q. Your best recollection is there was such a memorandum and
29 it was included in the papers that you furnished to your
30 clients, the Murphys, is that right?

31 A. Well I put -- yes, but I put it the other way around, they
32 furnished back around to me, it may be just indexing, I am

1 sure I saw this memorandum somewhere and have never been
2 able to find it since. I have actually got a handwritten
3 note when I went through the papers and I was silly enough
4 not to put a reference on it. Yes, I had notes of what in
5 fact Joseph Murphy said he had agreed at the Bonnington
6 Hotel meeting.

258 Q. When did you last see that document?

8 A. A couple of months ago.

259 Q. So was it prior to or after you had sworn an affidavit of
10 discovery disclosing the documents?

11 A. Oh, after.

1 260 Q. After that.

13 A. Yes. When I swore the affidavit, I had not seen any
14 papers of any description as far as I know for eight or ten
15 years. They were never in my possession.

1 261 Q. Well did you seek to recover them from the Murphys for the
17 purpose of --

18 A. Yes, but by that time, they had been furnished to the
19 Tribunal and split up into all sorts of different sections
20 and whatever, so -- and of course in the intervening period
21 during that eight or ten years, I didn't have control of
22 them so I would really have no idea whether all the
23 original papers I gave in were still in existence.

2 262 Q. Do you know that the Tribunal returned all the original
25 papers which it received having made copies of what was
26 provided?

27 A. Yes.

2 263 Q. And there is certainly, as far as the Tribunal is
29 concerned, would not appear to be a handwritten record from
30 you recording the details of the meeting with Mr. Wadley
31 and Mr. Murphy which considered the pension discussions
32 with Mr. Gogarty in London?

1 A. But maybe the thing is that if I talked to my legal people
2 later this evening -- I don't normally get those sort of
3 things wrong.

264 Q. Yes. So you think you saw this document in the past
5 couple of months and presumably you will try and obtain it
6 at this point?

7 A. I mean, I have to say, it's not earth shattering.

265 Q. No, no, but the fact it's not with the Tribunal is of
9 course relevant. This meeting in London, did you
10 understand from your contact with Mr. Murphy immediately
11 after it that there had been a conclusion to the pension
12 that Mr. Gogarty was seeking to get from the Murphys that
13 was mutually acceptable to both, subject to perhaps
14 taxation advises or qualifications of that nature?

15 A. My understanding was that Joe had suggested something to
16 Jim and it was agreed that Jim would consult with his legal
17 people and that myself and Chris Oakley would get together
18 to conclude an agreement. Without getting into too many
19 technicalities on what forms a contract, it was my
20 understanding there was not a contract, be it a verbal
21 contract, concluded at the meeting at the Bonnington Hotel.

2 266 Q. Did you understand that the headings of agreement had been
23 set out between the parties, that in principle they were in
24 agreement and it was really as regards implementation that
25 matters were being referred to experts or otherwise?

26 A. No, there was some significant differences between the
27 eventual agreement and the notes which I took as between
28 the two parties.

2 267 Q. I see. These notes, are they the same notes that you have
30 referred to earlier?

31 A. Yes.

3 268 Q. Being the papers you saw some months ago?

1 A. Yes, and also the notes which the solicitor, Mr. Sheedy,
2 gave were not in agreement with what I had been told in
3 some important matters but they were sorted out eventually,
4 some more easily than others but they were sorted out.

269 Q. Well, if we could turn to the next document, page 5 of tab

6 1. That is a document that was addressed to Mr. Oakley
7 and it's a letter from Mr. Sheedy, solicitor for Mr.
8 Gogarty, dated 26th May, some four days after the
9 Bonnington meeting and setting out the position as seen by
10 him. And I will just read the letter into the record.
11 It's re Joseph Murphy and James Gogarty.

12 .

13 "Dear Mr. Oakley

14 I understand that Mr. Murphy and Mr. Gogarty had an
15 amicable and constructive discussion in London on Monday
16 last which resulted in the resolution of a number of issues
17 between them and agreement being reached that other matters
18 would be discussed further at a later date.

19 .

20 The effect of the meeting has been to bring about a
21 significant improvement in the relationship between Mr.
22 Murphy and Mr. Gogarty. Hopefully this will lead to the
23 restoration of the mutual trust and understanding which had
24 existed for many years.

25 .

26 In order to avoid any possible misunderstandings, and in an
27 endeavour to build on the successful outcome of the meeting
28 between our respective clients, perhaps you would have your
29 client confirm the following heads of agreement:

30 .

31 1. A sum of 300,000 punts would be made available by JMSE
32 for the purchase of a pension in Ireland for Mr. Gogarty

1 and his wife.

2 .

3 2. Mr. Gogarty will retire as director from his executive
4 positions with JMSE Limited and AGSE Limited. Mr. Gogarty
5 will be retained as a consultant by each of these companies
6 for a period of five years at his current salary and on
7 terms which will include the provision of a company car and
8 payment of Mr. Gogarty's telephone charges and vouched
9 expenses.

10 .

11 3. Mr. Gogarty will negotiate on behalf of Mr. JMSE
12 Limited with the Electricity Supply Board (ESB) for the
13 payment by the ESB of monies due to JMSE in connection with
14 goods and services supplied in relation to the Moneypoint
15 Generating Station project. By way of commission, 50
16 percent of the amounts recovered from the ESB by Mr.
17 Gogarty will be paid to him. Any expenses incurred by Mr.
18 Gogarty in this connection will be undertaken by JMSE
19 Limited.

20 .

21 4. A sum of £70,000 will be paid to Mr. Gogarty. This
22 sum represents undrawn bonuses and salary increases due to
23 Mr. Gogarty and a sum for compensation in relation to the
24 Sutton site.

25 .

26 I am sure you will agree with me that the present spirit of
27 good will and cooperation which our clients' meeting has
28 engendered should be consolidated as quickly as possible by
29 way of confirmation of these Heads of Agreement.

30 .

31 Accordingly I look forward to hearing from you when you
32 receive your client's instructions and if possible by the

1 end of next week. Due to the postal difficulties we are
2 experiencing in Dublin, I suggest that correspondence
3 between us should be communicated by fax.

4 .

5 Yours sincerely,
6 Gerard B Sheedy,
7 McCann Fitzgerald."

8 .

9 You, I think, were to learn of this letter at a later
10 stage, isn't that right?

11 A. Yes.

1 270 Q. And if we could just go down through it firstly. What the
13 writer of the letter stated was that it was his
14 understanding that there had been amicable and constructive
15 discussion in London. Is that as you understood the
16 meeting by comparison perhaps with your own meeting which
17 was described as emotional and the previous meeting which
18 is the same terms?

19 A. Yes, I believe it was amicable.

2 271 Q. And the writer here gives his understanding that this
21 resulted in the resolution of a number of issues between
22 them and agreement being reached that other matters would
23 be discussed at a later stage. It appears to have been
24 some level of agreement on specifics and then an agreement
25 to refer matters to discussion at a later stage. Did you
26 understand it was that type of a meeting?

27 A. I don't know what the matters were at a later stage, I have
28 no point to make on that.

2 272 Q. Fine. The writer believed that the effect of the meeting
30 had been to bring about a significant improvement in the
31 relationship between Mr. Murphy and Mr. Gogarty. As far
32 as you know from Mr. Murphy's side or do you know, whether

1 it did in fact clear the air between the two gentlemen to
2 some extent at that time?

3 A. Certainly its intention was to do so, yes. I know that
4 Mr. Murphy was very keen, as I was, that the situation of
5 Mr. Gogarty's pension should be cleared and it gave an
6 opportunity, that is the negotiation of the ESB settlement,
7 gave him means to give extra money to him without really
8 costing the company itself a lot of money. So in that
9 context, yes, it was meant to be a constructive and
10 amicable meeting and resolution.

1 273 Q. I see. The writer then sought confirmation of the
12 following Heads of Agreement and distinguishing them from
13 the matters to be discussed at a later stage. They seem to
14 have been firstly that a sum of £300,000 would be made
15 available by JMSE for the purpose of the purchase of a
16 pension in Ireland for Mr. Gogarty and his wife. Did you
17 understand that to have been agreed in principle?

18 A. Yes.

1 274 Q. And secondly, that there would be retirement on Mr.
20 Gogarty's part from his executive positions with JMSE and
21 AGSE but that he would be a consultant for a five year
22 period at his current salary and those terms would include
23 the provision of a company car and payment of his telephone
24 charges and vouched expenses.

25 A. If I remember correctly I don't think that Mr. Murphy
26 agreed that they had gone into the level of detail of the
27 company car. I think that was an assumption by Jim that
28 that should follow the salary.

2 275 Q. And thirdly, that this negotiation position as regards the
30 ESB contract would be entered into with a division in the
31 50/50 proportion of such amounts as might be recovered from
32 that. That seems to have, that third aspect seems to have

1 been a matter which didn't arise in your initial
2 discussions with Mr. Gogarty in February, isn't that right?

3 A. No, that issue hadn't arisen at all. I think the fact of
4 the claim with ESB had not been particularly highlighted so
5 this, in the context with the pension, was a new issue.

276 Q. And you identify this as a possible means of bridging the
7 apparent gap which there was between the asking price of
8 £515,000 when you last dealt with the matter and the offer
9 or bid price of about £300,000?

10 A. Well, I think to be exact, it was Jim Gogarty who came up
11 with that idea but if you notice on my notes, was it the
12 10th January, whenever we were reading, February, sorry,
13 7th February meeting there in my conclusions at the end, I
14 thought that the gap might be bridged and that bonus could
15 be worked out based on JMSE/AGSE results. OK. I looked
16 towards finding a bonus means of bridging the gap. I
17 think it was Jim who specifically came up with the
18 bonus/commission or whatever you want to call it on the
19 extra claim.

2 277 Q. And you offered some advice as to that though you cannot
21 say whether it was before the meeting or after the meeting?

22 A. I was actually asked what I thought about that suggestion
23 and I felt that if Joe was satisfied that there was no
24 other way of obtaining the money, that it was a win-win
25 situation for both parties.

2 278 Q. I see. Now the next document I want to refer you to is
27 attendance of Mr. Sheedy, page 8 of the booklet of
28 documents before you there.
29 Attendance dated 26th May 1989 re Jim Gogarty. It records
30 a telephone conversation.
31 " Mr. Oakley telephoned me in response to my fax. He has
32 discussed the contents of my letter with Mr. Murphy and

1 points 1, 2 and 3 are agreed.

2 .

3 With regard to point 2, the salary agreed at £23,000 per
4 annum and then Mr. Murphy was annoyed with point 4."

5 Point 4 being the £70,000 to be paid representing undrawn
6 bonuses, salary increases and a sum for compensation in
7 relation to the Sutton site. And here it's recorded that

8 "Point 4: Mr. Murphy is annoyed with Point 4 because this
9 point was not even discussed with Mr. Gogarty. The

10 financial package which is offered in Points 1, 2 and 3 is

11 the final offer from Mr. Murphy and there are no other

12 financial rewards to pass on to Mr. Gogarty. He asked me

13 to obtain Mr. Gogarty's instructions and telephone him

14 before he writes to me to confirm our agreement."

15 .

16 So that it certainly would appear by the time Mr. Sheedy

17 got back to Mr. Oakley on the 26th, the company car did not

18 present a problem to Mr. Murphy, isn't that right?

19 A. No, I think that that had been ironed out as far as the

20 negotiation but as far as I was aware, that it hadn't been

21 originally discussed but when it was raised, it was then

22 sorted out as a given point.

2 279 Q. Yes. There then is the next document at page 9, another

24 attendance of Mr. Sheedy's but on this occasion it records

25 both Mr. Oakley's conversation and also the response of Mr.

26 Gogarty and he says, "I telephoned Mr. Gogarty who said

27 that his salary was £23,500 per annum. He was annoyed at

28 the provision about the car and I pointed out to him --

29 A. Sorry I was coughing whilst you were -- can you give me the

30 reference again?

3 280 Q. It's on page 9 about halfway down the page.

32 A. Yes, I am sorry, I am with you.

281 Q. This indicates the writer telephoned Mr. Gogarty and said,
2 "His salary was £23,500 per annum. He was annoyed about
3 the provision of the car." Obviously there was some
4 dispute about the car, "and I pointed out to him petrol
5 costs could be included under vouched expenses and he
6 accepted the provisions about the car.
7 .
8 He mentioned that the consultancy is to be with Lajos
9 Holdings Limited and not with JMSE or AGSE.
10 .
11 He insisted paragraph number 4 was discussed but I
12 persuaded him there was no point in falling out over that
13 point.
14 .
15 After some discussion he agreed the terms with the
16 intention of negotiating further with Mr. Murphy when these
17 terms had been incorporated into a signed agreement.
18 .
19 I telephoned Mr. Oakley and said that he will take
20 instructions concerning the consultancy with Lajos Holdings
21 Limited but did not expect any difficulty. I told him Mr.
22 Gogarty insisted that point number 4 had been discussed
23 with Mr. Murphy and agreed with him but we were not
24 insisting on this being included in the agreement".
25 .
26 I think you then were contacted at some stage by fax and
27 telephone by Mr. Oakley and as a result of that, he wrote a
28 letter on the 6th June 1989 to Mr. Murphy at 44A Bedford
29 Court Mansions and that's on page 10 in the booklet of
30 documents before you and in that letter you said,
31 "Dear Joe, I have been in fax and telephone correspondence
32 with Chris Oakley concerning the offer which you made to

1 Jim Gogarty.

2 .

3 My understanding is that Jim's solicitor has stated that

4 the agreement is as follows:

5 .

6 1. That an amount of £300,000 punts should be paid from
7 JMSE to Jim Gogarty so that he can purchase a pension for
8 himself and his wife.

9 2. A consultancy fee of £23,500 will be paid for a period
10 of five years and this amount will be payable from Lajos
11 Limited.

12 3. Jim's present car will be given to him and thereafter
13 maintained at his expense. Chris has asked me to look at
14 the tax consequences of the above."

15 .

16 This recital of the headings of agreement doesn't deal
17 specifically or refer to the ESB arrangement at all, isn't
18 that right?

19 A. That's correct.

2 282 Q. Yes. But you go on then to analyse, I think from a tax
21 point of view and a financial point of view, the effects of
22 implementing the agreement as set out in 1 to 3 if there
23 was such an agreement, is that right?

24 A. That's correct.

2 283 Q. And you highlight some of the difficulties that might arise
26 and I don't intend to read the entire thing to you but if
27 we could move to the summary on page 12, you set out the
28 points there as follows:

29 "Summary.

30 A. Jim's suggestion that he should be given an amount of
31 £300,000 with which to purchase a pension is only
32 acceptable if tax is deducted at source leaving Jim with an

1 amount of approximately £150,000.
2 .
3 B. If, as is likely, Jim will not accept an amount of
4 approximately £150,000 in his hand, then JMSE must purchase
5 a pension for Jim Gogarty and his wife for £216,000.
6 Jim's salary for the current year should be increased to
7 maximise the tax-free sum available to him.
8 .
9 C. The tax-free sum given to be given to JG must be
10 applied by him to purchase a supplementary pension.
11 .
12 D. JMSE will only get the benefit of low rate of tax
13 deduction and that amount will be spread over a maximum of
14 10 years.
15 .
16 E. He should not agree to consultancy payment having to
17 come from Lajos but a guarantee from Lajos could be
18 given.
19 .
20 F. Jim Gogarty will have to take care of his own tax
21 consequence of receiving a valuable car for no
22 consideration.
23 .
24 As some of these points raised are matters of principle I
25 think they ought to be agreed by all parties to whom this
26 letter has been sent before they are passed on to JG or his
27 solicitor."
28 .
29 You copied that letter both to Mr. Edgar Wadley and Mr.
30 Chris Oakley.
31 A. That's correct.
3 284 Q. So that this was a matter which essentially is a discussion

1 document with a view to resolving an ongoing matter with

2 Mr. Gogarty, isn't that right?

3 A. That's correct.

285 Q. But as of the date of writing of that letter, it certainly

5 would seem that both Mr. Gogarty and Mr. Murphy in

6 principle were agreeable to reaching, entering into

7 agreement which would embody the terms which are set out

8 under those headings, isn't that right?

9 A. Yes, they were certainly seeking to incorporate this into a

10 binding agreement, yes.

1 286 Q. As you say, that had the effect possibly of improving

12 relationships between the parties, isn't that right?

13 A. Which was the objective.

1 287 Q. Did that position extend until certainly the 27th June 1989

15 when you see at document 13 a letter written by Mr. Sheedy

16 to Mr. Oakley and this letter follows upon a meeting which

17 had taken place between yourself and Mr. Gogarty on the

18 26th June. The letter reads; "Dear Mr. Oakley, Mr.

19 Gogarty met with Mr. Copsey yesterday. In the course of

20 their discussions Mr. Copsey stated that he had responded

21 to all of your inquiries. Mr. Gogarty is now becoming

22 uneasy with the delay in finalising his agreement with Mr.

23 Murphy. I think it is in the best interests for both of

24 our clients to have this agreement finalised without

25 further delay and I suggest that we aim to have exchanged

26 letters confirming our respective clients' agreement by the

27 end of this week.

28 Yours sincerely,

29 Gerald B Sheedy."

30 .

31 And that letter went by fax to Mr. Oakley. Can you

32 recollect whether there was such a meeting on the 26th June

1 on which you had indicated to Mr. Gogarty that you had
2 responded as requested to Mr. Murphy dealing with the
3 matters which had to be dealt with from your point of view?

4 A. I certainly met with Mr. Gogarty on a number of occasions
5 and I have no doubt that I did but I can't specifically
6 remember the meeting. I have no reason to disbelieve it.

288 Q. It would seem to follow that a little over a month after
8 the initial meeting in the Bonnington hotel, matters were
9 still unconcluded in the sense that no formal agreement had
10 been signed by the parties and possibly the fact that you
11 were looking into the tax implications had been initially
12 raised as reason for not concluding matters at that
13 point. Would that be fair?

14 A. Yes, yes.

1 289 Q. In fact, having written the letter of the 6th June in which
16 you had set out your views, can you recollect having
17 further discussions or meetings with Mr. Wadley and Mr.
18 Murphy to bring to a conclusion the pension arrangements?

19 A. I actually don't believe that I met with either Mr. Wadley
20 or Mr. Murphy on the matter of concluding the agreement.
21 I don't think I met with them, no.

2 290 Q. You don't think you met with him?

23 A. No, I don't think I did.

2 291 Q. The memorandum that you refer to that you saw sometime ago,
25 the handwritten memo recording that had taken place, is
26 that likely to have been prepared --

27 A. That was more or less immediately after the Bonnington
28 Hotel meeting.

2 292 Q. So that before you wrote the letter of the 6th June, you
30 had already discussed the detail of the Bonnington meeting
31 Mr. Wadley and Mr. Murphy, is that right?

32 A. Yes.

293 Q. So does it follow from that that you weren't relying solely
2 on what was in the fax and telephone conversation with Mr.
3 Oakley to know what the agreement was but from your own
4 meetings with Mr. Wadley and Mr. Murphy, you had some
5 knowledge of it?

6 A. Yes.

294 Q. It appears, certainly from this letter of the 27th June,
8 whilst Mr. Gogarty is expressing a concern insofar as he is
9 now becoming uneasy about the arrangement, matters had not
10 broken down to the extent that they were to at some later
11 stage, is that right?

12 A. That's right.

1 295 Q. This presumably was the first time this unease had been
14 expressed since the 22nd May when in principle there was
15 the basis of an agreement reached, is that right?

16 A. Yes.

1 296 Q. I think you were aware from events which have transpired
18 subsequently and presumably from covering the events of
19 this Tribunal, that the payment to Mr. Burke by Mr. Gogarty
20 took place prior to the 27th June of 1989?

21 A. Yes.

2 297 Q. And at that time, as far as you are concerned, was there
23 any demonstrable ill will or lack of trust apparent between
24 Mr. Murphy and Mr. Gogarty or vice versa?

25 A. No.

2 298 Q. Now. The next document is at page 14 and it's expressed
27 to be notes of a meeting of directors of Joseph Murphy
28 Structural Engineers at Santry on the 3rd July of 1989 and
29 the attendance there was Mr. Murphy Snr, Mr. James Gogarty,
30 Mr. Gay Grehan and yourself. Isn't that right?

31 A. Correct.

3 299 Q. And the business of that meeting is set out under five

1 headings. Firstly the signing of the accounts to the year
2 31st May 1988. The costing system, production at
3 Fleetwood, cashflow, and the pension scheme for Mr.
4 Gogarty, isn't that right?

5 A. Correct.

300 Q. In relation to the signing of the accounts under the
7 paragraph 'Signing of Accounts' it states as follows:
8 "Mr. Gogarty stated that he was not satisfied with the
9 1987 accounts and had been surprised that these had been
10 signed by other directors of the company. He felt that a
11 meeting of the directors had not been duly convened to sign
12 these accounts and indeed he had been deliberately excluded
13 from the signing thereof. He stated that he was not
14 satisfied and the accounts of the company properly
15 reflected stock and other transactions."

16 A. It should be "that the" accounts.

1 301 Q. "Mr. Gogarty indicated that he was not satisfied with the
18 investigation carried out by Ernst & Whinney in respect of
19 the figures concerned on the basis that they had a conflict
20 of interest. Mr. Copsey stated that in view of the
21 uncertainty and in respect of the contracts and certain
22 other payments, a provision of £200,000 had been made in
23 the accounts for the year ending May 1988. Mr. Gogarty
24 was not satisfied with this provision and it was agreed
25 that he would meet with the company's auditor John Bates in
26 order to arrive at a figure, at a provision which he could
27 recommend to the board."

28 .

29 Costing system:

30 .

31 Mr. Copsey stated that the hardware and software for the
32 costing system had been identified. These packages were

1 to be integrated with other accounting packages. The wages
2 package is being tested at present.

3 .

4 Production at Fleetwood.

5 .

6 It was noted that the production at Fleetwood was so low as
7 to produce" -- I suppose it should be "to be producing a
8 loss in the company. It was further noted that the
9 problems in Fleetwood would not be solved merely by
10 introducing new machinery and even with the present
11 facilities, production should be 50 tonnes per week on
12 average.

13 .

14 Cashflow.

15 .

16 Mr. Copsey noted that a cashflow was being prepared which
17 showed an unsatisfactory trend and that certain vital
18 pieces of information were not available and it was agreed
19 Martin Green and Tim O'Keefe would meet to obtain that
20 information so that a proper report could be made to the
21 board in respect of the cashflow situation.

22 .

23 Pension scheme.

24 .

25 The pension scheme to Mr. Gogarty was discussed without
26 reference to specific figures. It was noted that to Mr.
27 Copsey's knowledge, all matters had been agreed between the
28 solicitors acting for JMSE and for Mr. Gogarty but that
29 fact would have to be checked. The matter of the
30 availability of cash and profits to meet the pension was
31 raised and Mr. Copsey stated that even if a group company
32 lent the money to JMSE, the impact of a payment of £300,000

1 on the results of the company could be damaging. It was
2 agreed that the matter would be reviewed when Mr. Gogarty
3 reported to the board regarding the provisions necessary
4 against any stock adjustments and any other adjustments if
5 any."

6 .
7 That was the minutes of that particular meeting as recorded
8 by you, isn't that right?

9 A. Correct.

1 302 Q. And from that point, would it be fair to say that there was
11 dispute between Mr. Gogarty and yourself and indeed Mr.
12 Murphy as to the implementation or the final agreement of a
13 pension? It was not concluded for quite some months after
14 that, isn't that right?

15 A. Yes, I am not quite sure what exact date the dispute raised
16 its head but it may have by the 3rd July.

1 303 Q. Well certainly there was a number of matters here which
18 could well lead to dispute. There was the fact that you
19 indicated here that even if a group company did lend the
20 money to Lajos -- to JMSE, that the results of payment out
21 of that sum to Mr. Gogarty could be damaging for the
22 company, isn't that right?

23 A. Well that shouldn't be a matter of dispute. That's just a
24 matter -- as long as Mr. Gogarty got his pension in a tax
25 effective fashion, it really shouldn't make any difference
26 which company pays it. They were points for negotiation,
27 not necessarily for dispute.

2 304 Q. "It was agreed that the matter would be reviewed when Mr.
29 Gogarty reported to the board regarding the provisions
30 necessary against any stock adjustments and any adjustments
31 if any." So there was to be a resolution really of the
32 outstanding 1988 accounts before one proceeded further, is

1 that --

2 A. In respect of the pensions, no. The two were not
3 necessarily connected at all.

305 Q. Did Mr. Gogarty feel that as far as you were concerned,
5 that there was a connection being made between these two
6 separate items, in other words, that he was being required
7 to sign off on the accounts as a condition of the pension
8 being concluded?

9 A. I think in evidence that Mr. Gogarty has said that, as far
10 as I am aware, that he didn't express that at the
11 particular point of time. I might not be correct on that
12 but I am not aware that he did. It was not an issue which
13 came up that I have seen that he felt that he wasn't going
14 to get his pension unless he was forced to sign the
15 accounts. I am a great believer that the proof of the
16 pudding is in the eating and it turned out that he resigned
17 with our agreement and got his pension and didn't sign the
18 1988 accounts so I think it was more of a perception than
19 reality.

2 306 Q. He, I think, tendered his resignation on the 6th, with
21 effect from the 10th July that year and the accounts and
22 signing of the accounts then was a matter for those
23 directors who had remained, isn't that right?

24 A. That's correct.

2 307 Q. I want to deal, if I may, with the relationship of
26 yourself, Mr. Wadley and Mr. Murphy in the overall running
27 of the Irish companies and the documentation which is
28 available to the Tribunal in that regard, which is at tab
29 6. At page 60, we see a letter to Mr. David Naylor of
30 Sovereign Management in the Channel Islands and this was
31 one of the trustees, isn't that right, of the Murphy trust?

32 A. That's correct.

308 Q. So that your function at this point was not only to deal

2 with the Irish companies, but also to report when necessary

3 and if necessary to the trustees in relation to the Irish

4 investments, isn't that so?

5 A. That was correct and in this instance, David Naylor had

6 only just been appointed. He knew nothing about the group

7 as such and it was obviously timely in November when I

8 gained information on the group to give him a report, to

9 give him a fundamental knowledge of one of the investments

10 which the trust had.

1 309 Q. So in this letter you had a number of enclosures, a company

12 profile, the draft accounts of AGSE to the 31st May 1988,

13 the draft accounts of JMSE for the year ending 31st May

14 1988, you mention that you had not received draft accounts

15 from Lajos from the auditor but they would be forwarded in

16 due course. A report on the recent cashflow to the group

17 to Joseph Murphy - you were preparing a new cash which you

18 would forward in due course, details of the sale of

19 property at Swords by Grafton Construction and Reliable

20 Construction for £1.45 million which was expected to be

21 completed in January of 1989, isn't that so?

22 A. Yes, correct.

2 310 Q. That was the position as of the 13th November 1988 was

24 being advised to the trustees as of that date, isn't that

25 so?

26 A. Correct.

27 .

28 CHAIRMAN: I think we might break for a short break. Five

29 or so minutes.

30 .

31 .

32 .

1 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED
2 AS FOLLOWS:

3 .

4 CHAIRMAN: Mr. O'Neill, I won't be able to sit beyond four
5 o'clock.

6 .

7 MR. O'NEILL: Very well, Sir.

311 Q. Mr. Copsey, the next document I will refer you to is page
9 61 and this again is communication by you in letter form to
10 Mr. Wadley at an address in Weighbridge in which you were
11 enclosing a cheque payment to Helmdale and with a receipt
12 which was self-explanatory and does not appear with these
13 documents and you asked him to arrange for the banking of
14 that to the relevant account so that Mr. Wadley also dealt
15 with the banking affairs for Helmdale in England when
16 necessary, is that right?

17 A. Yes. Helmdale was an offshore company and I think where
18 necessary he dealt with the banking arrangements of the
19 offshore companies.

2 312 Q. It owned property in Ireland, is that right?

21 A. It did, yes.

2 313 Q. The next document then is page 63 is a fax document from
23 Mr. Wadley to yourself and I think that most of your
24 communications received from Mr. Wadley were in this form,
25 handwritten by Mr. Wadley addressed to you and in rather
26 cryptic terms generally. He is not a man to have written
27 at length, is that right?

28 A. Absolutely. Short and to the point.

2 314 Q. Yes. This was dated the 11th December 1988 and in this he
30 refers to JM. I think it's the case that in all his
31 communications, Mr. Wadley always referred to Joseph Murphy
32 as JM, is that so?

1 A. Yes.

315 Q. Do you know why he did that, not as Mr. Joseph Murphy or
3 anything else?

4 A. It was shorter than Joseph Murphy.

316 Q. I see. He records here that he "was seeing JM at 9am on
6 the 13th December and herewith notes with JM and JG," JG
7 being Mr. Gogarty...

8 A. Correct.

317 Q. He asks "could you please update me on the 12th," that is
10 the following date, "on a number of matters..." and they
11 are set out alphabetically.

12 .

13 "A. MS's later position and copy of offer."

14 The MS there I think is Marcus Sweeney, is that right?

15 A. Correct.

1 318 Q. "B. Lajos transfer residence," that's Lajos Holdings
17 Limited, that point on Irish registered company, is that
18 right?

19 A. That's correct.

2 319 Q. "C. AGSE firm up UK residence.

21 D. "Lane," I think that's Mr. John Lane, is that right?

22 A. Correct.

2 320 Q. And he had formerly been the company secretary and a
24 director but had retired in July, is that so?

25 A. Yes.

2 321 Q. To be replaced by yourself as company secretary.

27 A. Yes.

2 322 Q. And you were added as director to some of the land owning
29 companies when he retired, is that right?

30 A. Yes, I am not sure if the two are interconnected but yes.

3 323 Q. They may have been contemporaneously but not linked?

32 A. Correct.

324 Q. He reported to holding companies and "F. Lloyds

2 guarantee.

3 .

4 With regard to JMSE I think a dividend declaration to wipe

5 out the £125,000 due from Grafton as well as to leave £1

6 million would be suggested. This you say would be done.

7 .

8 "4. You suggest check Sizewell contract, ascertain no

9 problems with sale.

10 5. In case SA comes through, suggest you keep discussion

11 subject to contract basis with MS but so as not to lose his

12 offer."

13 .

14 The SA offer was the South African offer, isn't that right?

15 A. Correct.

1 325 Q. And is it the position, as we will see a little later in

17 this document, that as of that date in December of 1988,

18 consideration is being given to sale of JMSE and AGSE by

19 Mr. Murphy to a number of individual suitors?

20 A. Correct.

2 326 Q. And do you know why it was that Mr. Murphy, at that point

22 in time, is seeking to realise the asset value of this

23 company and translate it into cash by sale?

24 A. Yes, Mr. Murphy was not very well at the time. I believe

25 his wife Una had just been diagnosed with cancer. He had

26 just come out of retirement in order to take a more active

27 role in the companies which he didn't wish to do, and there

28 are a lot of complications to do with the contracting side

29 of JMSE and AGSE. There were problems with Jim Gogarty,

30 there were problems with recruiting staff. In fact, there

31 were problems. It wasn't an area in which he had

32 particular expertise himself and so as part of problem

1 solving, Edgar Wadley and myself spoke to him and said one
2 of the obvious things to do is to sell which then just
3 simply gets rid of the problems.

327 Q. I think that similar considerations were being applied to
5 the sale of JMCC through Mr. Oakley responding to
6 advertisements in relation to that, is that so?

7 A. That actually was a different case, that an approach had
8 been made to Joseph Murphy by Bovis or one of the big
9 contractors so therefore that was considered on the merits
10 but it arose from a different situation and was immediately
11 dismissed, very serious consideration was not given to the
12 AGSE/JMSE sale so they are different.

1 328 Q. I see. Do you know whether the intended purchaser in the
14 JMCC sale pulled out or whether it was JMCC who decided not
15 to proceed?

16 A. I really don't know but I do know serious consideration was
17 not given to it.

1 329 Q. In relation to the Irish companies however, active
19 consideration was being given to sale of the companies on
20 the basis that Mr. Murphy was a man certainly of advanced
21 years. At that point in time I think he was 71 or 72.

22 A. Yes, it was very sensible. Who needs the problems?

2 330 Q. In the course of this fax, Mr. Wadley went on to an
24 overview of certain matters, including Mr. Gogarty's
25 position and this appears at page 65 under the heading
26 'JG'. Here he says under paragraph 1, "Originally JG
27 sought to trade offers from LC/MS from similar offers to...
28 free to choose but if he chose the LC/MS/BD offers, they
29 might be challenged later.

30 C. Whilst the attempt to remove JG was a useful occasion
31 to demonstrate an intention to fight, it was not all that
32 relevant.

1 4. The real breakthrough was the willingness of the Sark
2 directors to act and DB's efforts to get them to Guernsey."
3 I think DB is David Barry, one of the Sovereign Management
4 personnel, is that right?

5 A. Probably, I could only guess.

331 Q. "5. Thereafter the breakthroughs have come from (A) a
7 tough approach in Dublin/Guernsey/London assisted by
8 attempts to remove JG." I think those were the attempts by
9 Conroy's faction to remove Mr. Gogarty from his position as
10 Chairman and this was part of the litigation, isn't that
11 right?

12 A. Yes, that was used very much as a linchpin of the --

1 332 Q. "B. Speed, so the other parties had no time to think.

14 C. Taking advantage of every available small print in the
15 Isle of Man company and trust law.

16 D. The Earl of Turkelson," who I think was the sole
17 surviving member of the Trust Council from 1968, isn't that
18 right?

19 A. That's what I read last night.

2 333 Q. "6. JG has in the event been loyal but it must also be
21 considered that;

22 A. He has had 7" -- I think that deals with the pension
23 situation which appears in paragraph 7 somewhat later,
24 which we will turn to.

25 "B. The original position was as in paragraphs 1 and 2."
26 That refers back to the suggestion that there had been some
27 negotiations with Liam Conroy and others as against Mr.
28 Murphy.

29 "C. He has not cooperated after the changes in Dublin but
30 has since been intent on reserve only" and then in
31 brackets, maybe understandably." Do you know what that
32 refers to? Is that in relation to his dealings with Mr.

1 Sweeney and the unhappiness that existed with him?

2 A. I think it's Mr. Sweeney, Mr. Conroy, Mr. Downes et al.

334 Q. Suggesting that Mr. Gogarty's focus was really on revenge

4 on them rather than on the best interests of the company as

5 he, Mr. Wadley, saw it, is that right?

6 A. And as I saw it as well, yes.

335 Q. You shared that view.

8 A. Yes.

336 Q. "D. He has made a number of threats in respect of his

10 present demands." Do you know what those threats were?

11 A. I think to disrupt the running of the company.

1 337 Q. And were they threats he made directly to Mr. Wadley or do

13 you know if there was any direct communication between Mr.

14 Wadley and Mr. Gogarty or was this something Mr. Wadley

15 picked up from others?

16 A. I think it more likely it's something he picked up from

17 probably myself or Joe.

1 338 Q. So the reporting or communication with Mr. Wadley was

19 essentially confined to yourself and Mr. Murphy Snr

20 communicating with Mr. Wadley and vice versa, is that

21 right?

22 A. Generally, yes.

2 339 Q. At 7 then on the next page, it deals with the

24 pension -- sorry, deal with 6 firstly.

25 "E. A pension for his widow for life at the same rate is

26 not reasonable." That was Mr. Wadley's view of his

27 position as regards Mrs. Gogarty getting the pension for

28 her life and his belief that that was unreasonable, is that

29 right?

30 A. I think this whole letter, presumably it was addressed to

31 me --

3 340 Q. It was, yes. If you revert back to the first page of it,

1 you will see that that is at page 63.

2 A. OK, it's all part of the same.

341 Q. It's all part of the same, dealing with the various

4 headings.

5 A. OK, great. I would have assumed that this memo was after

6 Joe and Jim had met to discuss the pension. The

7 negotiations had broken down before I met with Jim and this

8 was a summary of what he thought.

342 Q. This was dated 11th December of '88. Your meeting was to

10 take place three months later in the February of the

11 following year?

12 A. Well two months. Sorry, two months, yes. OK.

1 343 Q. At 7 then there is reference as follows: "It is now

14 understood that RJC will negotiate with JG and it seems a

15 settlement around £250,000 may be possible perhaps down to

16 £200,000."

17 A. That's correct.

1 344 Q. Yes. The next item that was dealt with then was in

19 relation to the JMSE/AGSE position and I think that the

20 first steps there set out what was to be done in an effort

21 to bring the company into the best state to sell it from

22 the point of view of the Murphy trust, isn't that right?

23 A. I would think so, yes.

2 345 Q. The steps were;

25 "A. To declare the highest dividend.

26 B. Lend back on an interest basis.

27 C. Set off the inter-company loans.

28 D. Secure the loan in B and guarantee.

29 E. Replace guarantee with purchase bonds."

30 This was a method of ensuring that the company could be

31 sold on for the best format, isn't that right?

32 A. I think it was -- yes, it was that and also if the sale

1 wasn't successful, it was also to restructure the group so
2 that it was most financially sound.

346 Q. Yes. And that it wouldn't be a liability to other
4 companies in the group?

5 A. That, and that it would be financially sound in its own
6 right.

347 Q. "2. The above should be done in any event now as there is
8 no certainty in other steps."

9 The next steps then recites the available possibilities
10 which were to continue with MS, that was Marcus Sweeney,
11 presumably in his capacity as managing director?

12 A. Correct.

1 348 Q. "B. To continue with a new manager.

14 C. To continue under A or B but discontinue Sizewell after
15 six months.

16 D. Sell to MS.

17 E. Sell to JG.

18 F. Sell to South African.

19 E. Buy in.

20 H. Sell through advertising.

21 I. Sell through agency."

22 So these were all methods of disposing of the company if

23 seen fit to do so and the snags then in each of these

24 particular options are dealt with using the same

25 designation - snags.

26 3A to D are:

27 "A. The worry to JM.

28 B. The risk of a problem in Sizewell.

29 C. Quality control and

30 D. The retention of MS.

31 However it appears that MS will stay to assist a new

32 manager who has been located. There can be no certainty

1 of results. The problem with engaging a new manager is
2 that it would not seem right if the business was then to be
3 sold unless he could be transferred elsewhere in the
4 group."

5 The problems then in 3 D to I are analysed as finding a
6 buyer at a fair price and then there are a number of
7 financial details here where the respective bids which had
8 been made for the company were analysed.

9 .
10 At 9 it indicates that you had gone along with the proposal
11 that there should be two and a half million pounds cash as
12 the sale price for the company?

13 A. Yes, I went back to negotiate with Marcus Sweeney.

1 349 Q. James Gogarty had some way offered something in the region
15 of £750,000 for it?

16 A. Correct.

1 350 Q. And an offer from South Africa may or may not come and
18 other inquiries had to be made. The conclusions which are
19 on the following page is that anything over £2 million in
20 cash plus a release of the bond would be a fair price and
21 that something under 2 million could be fair in the context
22 of the cost of a bond or guarantee backing or further
23 cash. So that conclusions were that "even if it is MS,
24 sell," is that right?

25 A. Correct.

2 351 Q. Or "B. Fit a new manager into the UK," so that at this
27 point in time, there was serious consideration being given
28 to disposition of these companies on the basis that it
29 would be in Mr. Murphy's best interests perhaps to realise
30 these funds and rid himself of the potential worries that
31 could stem from them, is that right?

32 A. That's exactly correct and also consideration, as you can

1 see here, was given, if it wasn't sold, what would you do

2 then?

352 Q. So from the JMSE/AGSE position, there was certainly some

4 uncertainty as to whether this would continue in the future

5 to be part of the Murphy Group?

6 A. At that point in time.

353 Q. Yes. The next correspondence goes on to deal with the

8 status of Mr. Garner who had been I think appointed a

9 director of the companies at the time of the coup, is that

10 right?

11 A. That's correct.

1 354 Q. And Mr. Wadley was seeking to find out in December of 1988

13 whether he was a director of any of the above companies and

14 you furnished him with details of this by fax on the 21st

15 December 1988 saying that "Mr. Garner was still a director

16 of Lajos, Grafton, Finglas Industrial Estates, Reliable

17 Gaiety, AGSE.

18 Please also note Mr. Garner is acting as temporary

19 secretary to AGSE to facilitate the filling of forms in the

20 Companies Office in England."

21 That's because AGSE was in fact an English company.

22 A. That's correct.

2 355 Q. The inquiries of Mr. Wadley as to the companies continued

24 in March 1989 where he communicated by fax to

25 Caroline -- who is your secretary -- is that correct?

26 A. That's correct.

2 356 Q. And he was seeking details of the registered office of

28 Lajos Limited, company numbers of Lajos Holdings Limited,

29 Joseph Murphy Structural Engineers Limited, Archbell

30 Greenwood and confirmation that Lajos Holdings Limited owns

31 shares in Archbell Greenwood and that ordinary shares in

32 JMSE comprised 151,000 and there were 60,000 preference

1 shares, isn't that right?

2 A. Correct.

357 Q. There was, I think at that point in time, consideration

4 being given to hiving off AGSE from JMSE as such, is that

5 right?

6 A. I think that was actually completed.

358 Q. It had been completed?

8 A. Sorry, consideration was being given, it was later

9 completed.

1 359 Q. Yes. The next document I will refer you to then is page

11 94, again a fax from Mr. Wadley to both Mr. Peter Garner

12 and yourself. Where was Mr. Garner located at that point

13 in time, do you know?

14 A. Page 94? Is it.

1 360 Q. Page 94.

16 A. He was always in the UK. He was always Joseph Murphy's UK

17 auditor, if not accountant -- he was certainly with a firm

18 of chartered accountants in London.

1 361 Q. And this information was being shared between yourself and

20 himself and if you read through it, it attaches summary of

21 the UK results for 1984 to 1987 said by Mr. Conroy to have

22 been prepared by Newton and Garner and I think this

23 document was prepared in the context of there being

24 litigation between Mr. Conroy and the Murphy group of

25 companies in the UK at this time and an affidavit had been

26 filed to demonstrate Mr. Conroy's good management of the UK

27 companies.

28 A. I believe so, yes.

2 362 Q. And you and Mr. Garner were being consulted on this matter

30 to review the affidavit and to prepare your own response to

31 it and to consider the financial affairs of the companies,

32 isn't that right?

1 A. Yes, it was to present it in a more standard form as one
2 normally would, showing exceptional items etc.

363 Q. At page 96 you were specifically being asked two questions
4 by Mr. Wadley, isn't that right? If you look at the PS
5 there, "Please advise whether exchange controls still
6 operates in Ireland and (B) if not, has the Exchange
7 Control Act itself been removed from the statute book?"
8 Isn't that right?

9 A. The answer to that was it was still in operation.

1 364 Q. Yes. And do you know specifically why that query was
11 raised of you in that context?

12 A. I would guess at this point in time, I would guess it's
13 because there was some suggestion about amounts of monies
14 being transferred without permissions.

1 365 Q. Yes. The next document then at page 97 is again Mr.
16 Wadley seeking from you some specific advice in relation to
17 the Irish companies and the necessity for notice as regards
18 directors' meetings, shareholders' meetings, etc, isn't
19 that right?

20 A. Yes.

2 366 Q. Yes. I think this was in the context of Mr. Gogarty had
22 stated that he had not been informed and had not received
23 notice of a directors' meeting which was called on the
24 7/6/88?

25 A. I believe that's correct, yes.

2 367 Q. At page 99, Mr. Copsey, he is again writing to you on the
27 19th April 1999 indicating that he is having a meeting with
28 Mr. Joseph Murphy and Mr. Joseph Murphy Jnr, Mr.
29 Christopher Oakley on the 20th to finalise affidavits for
30 the Isle of Man court action and he is looking for
31 responses to your faxes. I think those are the ones
32 seeking advice about auditors requiring notice of meetings,

1 etc, is that right?

2 A. Yes, he was like everyone else, wanting things

3 immediately.

368 Q. You advised him on the 19th April 1989 by fax of what you

5 understood the position to be as regards notice

6 requirements under Irish law.

7 A. Correct.

369 Q. And you confirm to him the fact that exchange control still

9 applied in Ireland, isn't that right?

10 A. Correct. That's not actually my handwriting. Somebody

11 wrote it on my behalf.

1 370 Q. Do you know who wrote that? Is that Mr. O'Keefe's

13 writing?

14 A. It's too neat for Mr. O'Keefe, you can read it.

1 371 Q. There also was enclosed that some information about the

16 turnover of the Irish companies over the years, isn't that

17 right, between 1984 and 1988?

18 A. Well that was in answer to his question where he said he

19 wanted it reformatted to show taxation, extraordinary

20 items, etc. etc.

2 372 Q. Right. If we move to October in document number 107, you

22 are here informing Mr. Wadley of what your dealings with

23 Barclays Bank had been, isn't that right?

24 A. Yes.

2 373 Q. And you set out that you met Mr. Waddilove out of Barclays

26 Bank and you discussed the past year's results and you

27 looked at next year's projections. You say that "the bank

28 will want to know the ultimate owner of the Isle of Man

29 company and it is my opinion this company must be the

30 holding company for the "UK" group. The name of the Isle

31 of Man company we received from Mark Winter" and there's a

32 blank at that point and then "Mr. Oakley has been

1 instructed to transfer ownership of the land at Fleetwood
2 to the new offshore company."

3 You were in the position to offer advices then, not only in
4 relation to the Irish affairs of JMSE but also the English
5 affairs of JMSE and its relationships with its bankers, is
6 that right?

7 A. Yes.

374 Q. And at this point in time, this company would have been
9 separated, is that right, from JMSE and this information
10 would not necessarily be exchanged with the JMSE directors?

11 A. That's quite correct, yes.

1 375 Q. You then go on to indicate that you were reorganising the
13 Lajos Group. Lajos was the holding company for a number
14 of Irish companies, isn't that right?

15 A. That's correct.

1 376 Q. Which in turn was owned by General Agencies and you
17 identify here the companies involved in the reorganisation
18 as being Grafton Construction Company, Joseph Murphy
19 Structural Engineers Limited, Gaiety Theatre Dublin
20 Limited, Gaiety Stage Productions Limited, Reliable
21 Construction Company Limited, Gaiety School of Acting
22 Limited and you then go on to state that it's your
23 intention to make Wexburn Limited, which is an investment
24 company, the holding company of the other companies listed
25 above. Lajos will still be the holding company of
26 Wexburn, nominal stamp duty is payable on a share for share
27 swap.

28 B. Pay dividends in the group companies to Wexburn free of
29 any ACT due to group relief." Is ACT, CAT?

30 A. No. Advanced Corporation Tax.

3 377 Q. "... due to group relief.

32 D. After payment of this dividend from Wexburn to Lajos,

1 Lajos Limited will become a nonresident company. This can
2 be achieved by the appointment of non resident directors,
3 the holding of meetings abroad and the maintenance of only
4 a foreign bank account.

5 E. Lajos will then be free to pay dividends without
6 reference to Irish Corporation Tax or ACT.

7 .

8 Funds from the sale of the Gaiety are presently being held
9 on agreement between the solicitors pending the clearance
10 of the old mortgage of the company. This is expected
11 immediately.

12 .

13 The sale of 23 Lower Baggot Street which is owned by
14 Wexburn Limited is being auctioned next week.

15 .

16 Steps A to D should commence after the funds for the Gaiety
17 and Wexburn are received.

18 .

19 3. Irish properties outside the Lajos Group.

20 .

21 I have sought counsel's opinion as to whether certain
22 disposals of these properties will constitute a capital
23 gain or a trading profit. Until counsel's opinion is
24 received, the most tax effective manner of disposal of
25 these cannot be determined."

26 .

27 2 dealt with the disposition of the other companies set out
28 therein in a manner which was most tax efficient and to
29 ensure if possible the dividends could be paid free of
30 Irish tax, isn't that right?

31 A. That's correct, that's correct, in a legal fashion I might
32 add.

378 Q. Yes. The next document then is at page 109 and this was
2 seeking, it was a fax to Edgar Wadley from Mr. O'Keefe in
3 relation to the JM companies and it was awaiting the name
4 of an Isle of Man company from Mark Winter who in turn was
5 waiting for you. I think this was the company which
6 was --

7 A. There was a blank -- I didn't.

379 Q. There was a blank in the previous letter.

9 A. We were obviously hoping -- by having drafted the letter,
10 we were hoping for the name to go through. We were
11 letting the letter go and we filled in the blank later.
12 Yes.

1 380 Q. In document 112, moving to December of 1989, this is a fax
14 again to Mr. Wadley from yourself, I am not sure if this
15 is --

16 A. This is my handwriting, yes.

1 381 Q. It says, "There is a net inter-group balance due to JMSE of
18 approximately £150,000 punts, I will have accurate figures
19 later today. This amount arises as JMSE has been used as
20 a bank account for a number of years for other Irish group
21 companies. I see no reason why this should not be repaid
22 as companies need the money and there is money available
23 from the sale of the Gaiety."

24 A. Yes, that was just JMSE owed money, they needed it for
25 trading purposes so I said pay off the inter-company debt.

2 382 Q. Right. I think this document records what was the fact
27 and that was that whilst there were any number of companies
28 involved, they did not have their own bank accounts, isn't
29 that right? The only company that was operating a bank
30 account, was being used as a bank account was the JMSE
31 account?

32 A. That's correct.

383 Q. And consequently when the Forest Road lands were sold and
2 when the sum of £1.45 million was received, that did not go
3 into a Grafton or Reliable bank account as such but was
4 retained by the conveyancing solicitor who opened a client
5 account with ACC for his clients Grafton and Reliable and
6 lodged the monies to that account?

7 A. That's correct, yes.

384 Q. So that of course was a fund which, if necessary, could be
9 availed of by other Murphy companies subject to informing
10 the solicitor of the requirement and arranging with him how
11 it was to be achieved, isn't that right?

12 A. That's correct.

1 385 Q. In January 1990, you set out the position in relation to a
14 number of matters in response to a request by Mr. Wadley
15 and unfortunately we don't seem to have that request made
16 of you but it deals with firstly the noting of some
17 statement of fact obviously. Secondly, the schedule of
18 cash transfers attached and that may be the next document
19 which is 114.

20 A. I would have thought so.

2 386 Q. Yes. We will get to that in a moment.

22 "B. The position has been agreed with the Irish directors
23 of JMSE to give a guarantee of £600,000.

24 C. Schedule of new contracts of tonnages attached.

25 D. Copy of letter from Barclays Bank which appears to me
26 to be in order. The reference to Lajos is 243,000 which is
27 long term finance.

28 .

29 I will be seeing Tim Parker on Wednesday to discuss the up
30 to date position on contracts and the difficulties with
31 production in Dublin, tonnage is down to 100 tonnes per
32 month. Irish directors state this is now due to lack of

1 information on drawings which could be the subject of a
2 claim.

3 .

4 I attach cashflows for the two companies which show
5 sufficient facilities. I may need to dip into the backup
6 of £300,000 temporarily but only as a last resort. I met
7 with Chris in Dublin "-- I think that's Chris Oakley the
8 solicitor?

9 A. That's correct.

1 387 Q. "... in Dublin re JG. It has been agreed to resist his writ
11 to obtain the £560,000 on the grounds that the writ is not
12 valid and the fact that Revenue clearance per the contract
13 has not yet been given."

14 .

15 I think at this point in time the ESB monies had translated
16 into monies being paid and these were being withheld by Mr.
17 Gogarty, is that right?

18 A. Mr. Gogarty's solicitor.

1 388 Q. "It has now come to light that JG had agreed 560,000
20 with ESB before the contract with Lajos was concluded.
21 Chris feels this invalidates the commission of £215,000.
22 The plan is to force JG to accept a variation to save the
23 group £70,000 in tax which he is currently refusing out of
24 pique and pay him a sum to the commission equivalent.
25 These are JM's wishes."

26 .

27 Firstly I take it that it appears from that that Mr. Murphy
28 Snr had discussed with you or the detail of what had taken
29 place following the retention of these monies by Mr.
30 Gogarty's solicitor, is that right?

31 A. I think it's a matter of fact he discussed it with Mr.
32 Chris Oakley who then conveyed it to me.

389 Q. Right. And what was his plan? Can you explain what the
2 tax implications were of the plan to force JG to accept a
3 variation to save the group £70,000 in tax which he is
4 currently refusing out of pique and to pay him a sum of the
5 commission equivalent." Do you recollect that?

6 A. I am not exactly clear on that looking at the
7 correspondence but if I remember correctly should the
8 amount be paid from I think Grafton and Reliable, we could
9 take it as a tax deduction and if we paid it from another
10 company which was JMSE, then the tax deduction would only
11 be at 15 percent rather than 45 percent or whatever.

1 390 Q. And was that on the basis that one might have been a
13 manufacturing company?

14 A. Yes, manufacturing company. I mean Jim Gogarty had done
15 work for all the companies. He was instrumental in
16 selling the lands so it was perfectly acceptable to pay him
17 a salary from that company for the work that he had done
18 but Jim was being awkward for the sake of being awkward, in
19 my opinion.

2 391 Q. I think this was a dispute which is ultimately to lead to
21 litigation in relation to the P60s on the basis that he
22 indicated that he was not a PAYE employee of those
23 companies and consequently did not feel that he was
24 eligible to receive the monies from those companies but
25 that the money should have been received from JMSE?

26 A. The reasoning -- his reasoning I don't know because that
27 was dealt with after my time.

2 392 Q. Right.

29 A. I am quite certain it was possible to pay him.

3 393 Q. OK. At this point in time, in any event, it had been
31 identified that it would have been financially beneficial
32 to structure matters so that certain of the Murphy

1 companies paid Mr. Gogarty rather than others, isn't that
2 so?

3 A. That's correct, it was tax efficient from the Lajos Group
4 point of view and did not harm Mr. Gogarty.

394 Q. The document which follows which you believe to have been
6 the enclosure with this is described as a Schedule of Funds
7 Available for Transfer to Sovereign Management. As we
8 know, Sovereign Management was the company which was
9 administering the trust out of Guernsey and the Isle of
10 Man, is that right?

11 A. That's correct.

1 395 Q. In this you set out a schedule including the disposal of
13 the lands held by Turvey Estates, Barrett Developments,
14 Finglas Industrial Estates and Grafton Construction. Now
15 the closing date on that is the 30th April of 1990 by Lajos
16 and the 30th April 1990 by Helmdale, isn't that right?

17 A. That's correct.

1 396 Q. And the total consideration for that sale is £2.3 million,
19 isn't that correct, being comprised of 2 million and
20 £30,000 for the lands owned by the first four companies and
21 £270,000 being the value of the lands owned by Helmdale?

22 A. That's correct.

2 397 Q. They, in fact, were two separate contracts but they were
24 with the same purchaser, Mr. Bailey or his nominee, isn't
25 that right?

26 A. That's correct.

2 398 Q. And is shown here that this was to take place on the 30th
28 April and the consideration which was going to go to
29 Sovereign Management was £2.3 million as a result of those
30 two contracts, isn't that right?

31 A. And we had obtained Revenue clearance but of course as we
32 all know, it didn't happen.

399 Q. The other items then dealt with the Gaiety Theatre where

2 £1,192,000 was going to be realised and its remit to C

3 Bank.

4 A. Central Bank.

400 Q. Central Bank clearance was expected within two weeks of

6 this?

7 A. That's correct.

401 Q. The Abbeycarton lands are earmarked for JMSE, £34,000 and

9 again ear marked for JMSE/Grafton/Reliable Construction,

10 £256,000 and then remit to Wexburn, £166,287. Total

11 amounts, £3.948 million. Wexburn was the Baggot Street

12 premises.

13 A. That's correct.

1 402 Q. Now you noted at the end of this that Lajos has been made

15 nonresident for tax purposes; is that correct?

16 A. For tax purposes, yes.

1 403 Q. And "2. The funds from the loans due on the 30th April

18 1990 are available to be paid to Lajos as a non resident.

19 We have obtained Revenue clearance and

20 3. We have agreed the steps with Sovereign," isn't that

21 right?

22 A. That's correct.

2 404 Q. In fact for reasons of fire at that place at Poppintree,

24 neither of these contracts was completed for quite

25 sometime?

26 A. That's correct.

2 405 Q. Now, Mr. Wadley was keeping himself apprised of the

28 negotiations with a view to resolving Mr. Gogarty's ongoing

29 dispute on the ESB monies and his pension, is that right?

30 A. Yes, he was putting forward his suggestions.

3 406 Q. Right and the next document at page 79 is a fax which he

32 received, sent on the 15/9/1990, is that correct?

1 A. Yes.

407 Q. And his views were being sought on the JM/JG matter.

3 A. It must be '89 -- no, my apologies, it is 1990, my

4 apologies, yes.

408 Q. The 15th January 1990?

6 A. Yes, it must be.

409 Q. "JM/JG re J. Gogarty. Putting aside feelings of aggression

8 my view is

9 A. Try to deal with allocation of commission quantum

10 through Lajos and not JG," there's a bracket then, JMSE --

11 A. That's my writing, I think he was incorrect there.

1 410 Q. "B. Complete liquidations this week and assign assets in

13 spelle - however check that this will not upset tax

14 clearance.

15 C. Give notice of assignments.

16 D. Declare Lajos dividend this week and give notice of

17 assignments.

18 .

19 2. We are then left with the lawyers holding (a)

20 commission money and (b) pension money.

21 .

22 In respect of 17B, JG may be too late to obtain an order

23 freezing Lajos funds. Even if he does, it does not give

24 him the money." There was a threat that Lajos funds might

25 be frozen by way of injunction, is that right?

26 A. Yes.

2 411 Q. "19, I think that apart from JG's approach, JM was happy

28 with the deal on electricity and I am of the view that it

29 is probably better to pay up and save

30 (a) costs,

31 (b) publicity,

32 (c) possible effects of B on other matters,

1 (d) the weakness arising from our legal advice and

2 (e) JM as a witness.

3 .

4 20. If I am correct in paragraph 19, I think the best way
5 to settle without appearing to give way but I fear that we
6 may have gone..." -- If we turn to the next page -- it's
7 out of sequence --

8 .

9 MR. CUSH: I think, Mr. Chairman, I think Mr. O'Neill's
10 documents are not in sequence.

11 .

12 MR. O'NEILL: That is unfortunately right, I think we will
13 have to put these particular pages in sequence and it may
14 be a good time to rise.

15 .

16 CHAIRMAN: Put them in sequence overnight. Tomorrow
17 morning, half past ten.

18 .

19 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
20 WEDNESDAY, 15TH DECEMBER 1999 AT 10.30AM.

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