

THE HEARING RESUMED ON THE 20TH OF JANUARY, 2000 AS  
FOLLOWS:

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CHAIRMAN: Good morning everyone.

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CHRISTOPHER OAKLEY RETURNS TO THE WITNESS-BOX AND CONTINUES  
TO BE EXAMINED BY MR. O'NEILL AS FOLLOWS:

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1 Q. MR. O'NEILL: Mr. Oakley please. Good morning Mr. Oakley?

A. Good morning.

2 Q. Prior to the conclusion of the affairs of the Tribunal  
yesterday, I was asking questions in relation to the  
document which is described as the comments on the  
affidavit of Mr. Conroy, which was a document prepared by  
you, dealing with the contentions which had been set out in  
Mr. Liam Conroy's affidavit of the 13th of March of 1990;  
isn't that so?

A. That's right. I had actually asked you to read paragraph  
79 and 80 and I was about to make a point in relation to  
those when we adjourned, so I still have a point to make on  
those two paragraphs, if I may, at some stage?

3 Q. Of course you may.

A. Is it convenient to do it now rather than before you move  
on?

4 Q. I would prefer to move on to deal with the matters that I  
had in mind, but if it is going to be brief, of course, I  
don't want to cut you short on it. You have a point to  
make, you say, in relation to paragraphs 80; 79 and 80?

A. Well --

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CHAIRMAN: Pardon me for interrupting for a moment. Would  
you mind telling me precisely what page it was? What was

it?

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MR. O'NEILL: 79 and 80, Sir, are on JMSE 29.5.2 at page 30.

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CHAIRMAN: Thank you. In tab F of, Tab 3(F)? Yes, I have that, thank you very much.

5 Q. MR. O'NEILL: Yes. Page 30 was read out yesterday, Mr. Oakley, and you wish to make a comment or add to that; is that so?

A. Yes. The point is that I asked you to read those two paragraphs, because they are the most contemporaneous note of the attitude of Mr. Murphy Snr. towards the lands in 1988 and in 1989.

6 Q. Yes?

A. They were notes that I prepared from the information that he gave to me, and far from being in anyway concerned or panicked by the allegations made by Mr. Conroy in his Isle of Man affidavit, which was the basis of Mr. Gogarty's complaint, as I understand it; his only concern was that this was being used by Mr. Conroy in respect of a mareva application, and in reply to that mareva application Mr. Murphy gave me a full explanation as to the decisions that were made in 1988 and 1989 in relation to the sale and disposal of those lands upon advice that he had received, or professional advice. I say professional advice, detailed advice from received from Mr. Gogarty.

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So I think it is clear from that that there is a contemporaneous record that demonstrates that this was not an issue that concerned Mr. Murphy at the time, in anyway causing him to panic; and I think that is borne out by the

fact that of course the affidavit that is complained of is one that is filed in the Isle of Man, and the Isle of Man, of course, is an offshore jurisdiction. It regards his confidentiality very highly. And it would be virtually impossible for any member of the public or any revenue authority, given its status as an offshore tax haven, to obtain a copy of Mr. Conroy's affidavit.

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And in those circumstances, the allegation that it was the Isle of Man affidavit that panicked Mr. Murphy Snr. into selling the lands, doesn't lie well with the fact that it is an affidavit that is filed in that jurisdiction. Nor does it lie well with the fact that in, I think November 1989, it is actually Mr. Murphy and the Murphy Group of companies and the trusts, that commenced proceedings in London against Mr. Conroy. And none of that would happen if indeed Mr. Murphy had these serious concerns or was in anyway panicking. The last thing he would do would be to commence proceedings which were going to engender from --

7 Q. Whilst your comment may be of interest you are not here --

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CHAIRMAN: It is not evidence.

8 Q. MR. O'NEILL: You are not here to comment, Sir, but rather to answer specific question?

A. I am drawing attention --

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CHAIRMAN: No, you are commenting.

A. I am drawing attention --

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CHAIRMAN: Mr. Oakley, I am ruling that that is not evidence, that is a submission or a comment and essentially it is invading on what might be described as my province to

decide whether or not in all the circumstances that I express and all views; I express no view, I want to make that clear, as to whether or not it was a factor that provoked or in anyway affected Mr. --.

A. Mr. Chairman, I am actually drawing attention to the fact that the situation --

CHAIRMAN: Mr. Oakley, I have ruled that what you have just said and what you are just doing is commenting, not giving evidence?

A. Mr. Chairman, I was trying to draw attention to the fact that the evidence as put in this bundle of the affidavits and the exhibits, sorry without the exhibits, is that after the Isle of Man affidavit, the Murphy Group of companies and Mr. Murphy commenced proceedings in London at a time when otherwise there would have been the ideal opportunity in that jurisdiction for Mr. Conroy to make the self same allegations, as indeed he did from the affidavits that are within the bundle.

9 Q. MR. O'NEILL: If I can return Mr. Oakley, to deal with the affidavits which are before the Tribunal and which you have read yesterday. Firstly, can I correct you on a point of detail and say that the comments which you were recording here in relation to the affidavit, were in relation to an affidavit not sworn in the Isle of Man, but an affidavit sworn in the High Court in London; isn't that so?

A. Yes, in respect of which yesterday you put to me that these similar allegations were made in the Isle of Man.

10 Q. Yes?

A. In an earlier affidavit by Mr. Conroy, which was as I understand it, the basis upon which it is alleged Mr. Murphy panicked.

11 Q. The fact of the matter is that your comments were addressing an affidavit sworn in London; isn't that correct?

A. Yes.

12 Q. Whilst you have indicated a distinction between the Isle of Man jurisdiction and the English jurisdiction, whereby the Isle of Man jurisdiction will not in any circumstances release an affidavit sworn in its jurisdiction, the same principle does not necessarily apply in the United Kingdom; isn't that so?

A. It didn't apply at that time certainly.

13 Q. Fine. That is as much as I need to know for the purposes of my answer. So that --

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MR. HERBERT: Mr. Chairman now that is not fair, because Mr. O'Neill is aware that the specific allegation here is that Mr. Murphy Snr. panicked on the 3rd of July of 1989 as a result of the then Mr. Conroy's affidavits; and as far as I am aware, at that stage there were only two Conroy affidavits, at that stage.

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One was certainly the one in, on the 20th of the 3rd 1989 and the other was sometime in May of 1989 in the Kallon action. But and that is the specific matter we have to deal with. I understood you yesterday to rule that the other affidavits are relevant only to credibility of Mr. Murphy but not necessarily to this allegation of Mr. Gogarty that he, Mr. Murphy Snr. panicked on the 3rd of July of 1989.

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MR. O'NEILL: With respect Sir, Mr. Murphy could only have panicked if he did panic, on the basis that the information

which Mr. Conroy was broadcasting about him in this particular format in the Isle of Man, was one which he believed could be of concern to him.

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He could only have formed that belief because he was the person who knows exactly what his residency status was, what his financial affairs were, how he conducted himself over the particular years; and these particular affidavits which I am opening now, indicate the response of Mr. Murphy to the allegations which were made.

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That response whilst it crystallises with the affidavits being sworn on these particular dates in 1990, merely is secondary evidence of what his frame of mind is. I say that frame of mind is one which would have been formed from the facts known to him and those were facts which were known to him back into the seventies and thereafter and this is merely evidence of his frame of mind. It is not conclusive proof of what the situation was, but it is a matter which you can consider in determining whether or not on a particular day his state of knowledge was such that if these allegations were being broadcast about him, he had a concern. I say on that basis it is relevant.

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MR. HERBERT: But Mr. Chairman the date, the date Mr. Chairman.

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CHAIRMAN: Gentlemen, gentlemen, may I point this out to you, what Mr. O'Neill is saying is absolutely accurate, but added to that is the fact that Mr. Gogarty's source of knowledge was a copy of the Isle of Man affidavit which was furnished to him by, in fact, that witness there. As far

as I recall. I may be wrong in that particular fact, but certainly it was either he or his principal furnished the copy for the purpose of drafting a reply or for the purpose of considering a draft reply, that is my recollection of the evidence.

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MR. HERBERT: What we are talking about is an affidavit of the 20th of March of 1989 and possibly though it wasn't produced by Mr. Gogarty, an affidavit of May 1989, not affidavits in 1990 because affidavits in 1990 are ex post facto. They couldn't have produced a reaction in July of 1989 when they didn't exist. I mean that is a logical impossibility.

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CHAIRMAN: I don't want to continue this debate. It is correct to say that it is illustrative of his potential state of mind in 1989.

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MR. HERBERT: It couldn't be Sir. Sir, I - very well Sir, there is no use in arguing these matters. I want to put it on the record that I totally object to that ruling. I think that it is incorrect, it couldn't be, it is a year later.

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CHAIRMAN: Just a moment. That is not a ruling. It is merely a statement that I believe to be correct. I am not ruling it in any sense of the word. As I understand it, a state of affairs had arisen in the course of 1989, in which an allegation was being now made.

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Now the truth or otherwise I am not concerned with because I couldn't adjudicate on the truth because (A) an affidavit

which has never been tested, that is in the litigation sense, an allegation was current, to put it that way, that a potential problem could arise from comments made by Mr. Conroy in the affidavit. It goes no further than that at any stage and all the affidavits after it may illustrate the potential, or a greater or lesser potential for that situation to arise. It doesn't, they don't prove in themselves, anything.

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MR. HERBERT: But I mean, even insofar as it relates to the question of whether the existence of an allegation in 1989 produced a reaction in 1989, what happened in 1990 couldn't be relevant to that issue.

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CHAIRMAN: In the light of the fact that --

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MR. HERBERT: I mean it defeats all logic, Sir, to explain how it could be.

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CHAIRMAN: In the light of the fact that this witness and his principal considered it worthwhile to invite Mr. Gogarty to make a comment or to make a reply, it had some effect. What the effect is I don't purport to say at this moment.

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MR. HERBERT: As regards 1989 affidavits, Sir, yes. As regards affidavits in 1990, no. And I understood from yesterday that you and I had agreed that what Mr. Murphy may have said in affidavits in 1990 could only go to his credibility and nothing else. May be I mistook that, but I can't see, Sir, how Mr. O'Neill can advance affidavits sworn in 1990 to illustrate a man's frame of mind in 1989.



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MR. O'NEILL: They are dealing, Sir, with exactly the self same facts which were dealt with in the affidavit in 1989. They are a further elaboration on it and what is most important is that the documentation emanating from Mr. Murphy shows what Mr. Murphy was prepared to swear in relation to those allegations at that particular time, and that is an issue which is before the Tribunal, as to whether or not it is accurate or otherwise; and I think we have debated the matter, with respect, long enough.

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The conclusions essentially are those which I think you have already drawn yesterday as to relevance of these affidavits and the context in which they are relevant. You have pronounced already that they were so relevant and as I understood My Friend yesterday, he accepted that if you were addressing it in that manner, they were relevant and I intend to proceed to deal with it.

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MR. HERBERT: Insofar as the Chairman indicated that they might be relevant to credibility. That is a matter for the Chairman to rule.

14 Q. MR. O'NEILL: Mr. Oakley, just to put the comments firstly in context. The comments were your comments taken in the form of an attendance for a specific purpose, and that was to take your client's instructions on the matters of fact which were alleged in the affidavit; is that so?

A. Yes.

15 Q. And that was for the purpose of contesting, where it was possible to do so, the allegations which were made, and preparing a replying affidavit; and a replying affidavit was in fact prepared and sworn by Mr. Murphy Snr. on the

20th of April of 1990 and you have a copy of that before you; isn't that correct?

A. I do. I would actually like to say though, that I find it somewhat surprising, if I may say so, and somewhat discourteous to me, as a person who is not compelled to appear before this Tribunal, that yesterday I should go through the questions that you put to me in relation to Mr. Conroy's affidavits and I actually made the point to you that it was not, it would not be possible to actually deal with those fully without seeing the intervening affidavit from Mr. Murphy Snr. And at the same time I pointed out to you that the next best thing was my notes which were deliberately, specifically, taken for the purposes of preparing the replying affidavit of Mr. Murphy, and at that stage you did not indicate that you had Mr. Murphy's actual affidavit.

16 Q. Fine.

A. You did not produce it to me at all.

17 Q. I note your comment.

A. Although I raised the issue. No, please let me finish, because I am also a lawyer. I am also a professional person, and I think that is insulting to me when you had, at all material times, the actual affidavit which you could have put to me at that point.

18 Q. Fine. You have --.

A. I note --.

19 Q. -- you have now seen the affidavit, is there any single matter that you wish to raise as a result of seeing that which was not comprehensively dealt with in your own attendance, which is what you were being examined about?

A. What I wish to draw attention to is the fact that you had this affidavit on the same date.

20 Q. You have done that?

A. No, I haven't finished.

21 Q. You have done that Mr. Oakley.

A. Please don't stop me. I have looked at the affidavit and find that you had this affidavit on exactly the same date that you had the two affidavits from Mr. Conroy.

22 Q. Yes. Now, I again asked you, having considered it as a lawyer, is there anything in it that was in anyway kept from you?

A. I haven't checked it to that degree of extent.

23 Q. I see. If you are making a complaint about not having it, do you not think that you would read it and see whether in anyway you have been prejudiced or affected at all?

A. Mr. O'Neill, I find it surprising that in circumstances where I am here voluntarily in respect of an independent examination in, concerning evidence that is in some state uniquely within my knowledge that you did not immediately produce an affidavit that you had in your possession and ask me questions about it.

24 Q. Fine.

A. When I raised the issue with you that I found it surprising that you hadn't got them at the same time as the Conroy affidavit.

25 Q. I note your criticism and I suggest that it is irrelevant.

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MR. HERBERT: Mr. Chairman, I want to make a relevant criticism here, I am in your hands to a certain extent. I looked last night at the Guernsey transcript, such as I have of it, and I can find no, that this matter was not put to Mr. Murphy Snr., though these two affidavits between which it is sandwiched, appears to have been.

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Now, whatever Mr. O'Neill's explanation in relation to not furnishing the matter to this particular witness is concerned, I don't know, because he is not my witness, but insofar as that this matter was not put either to Mr. Murphy Snr., though the two Conroy affidavits appear to have been. Now, I would ask you to check that Mr. Chairman because I wasn't present and I can't say of my own knowledge.

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CHAIRMAN: Just let counsel explain.

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MR. O'NEILL: The explanation for that Sir, is that despite orders having been made by you to the Murphy interests to produce these affidavits, they were never produced. The Tribunal, itself endeavoring to obtain these affidavits from London, and actually in the course of the examination of Mr. Murphy in Guernsey, faxed communications came from the High Court office in London of these two affidavits. There was a file available in London.

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It was not possible for them to dispatch the entire of that file by fax, but since it was crucial to put certain matters to Mr. Murphy, they were asked if there were any affidavits on file that corresponded with the orders that had been made by you. Your orders were orders directed to the disclosure of particular affidavits which were set out in the document of settlement between the parties, and the Tribunal was therefore aware of the existence of those particular documents. It asked the London High Court Office whether there were affidavits sworn by Mr. Conroy on those particular dates, it was confirmed that there were, and they were faxed over. The other documents came at a

later stage. That is my recollection of events. And I would have to review the file to see if it was on that basis that the matter was not dealt with. I am anxious Sir, to proceed to deal with --

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MR. HERBERT: No, no, no, no, no, Mr. Chairman, Mr. O'Neill cannot now be anxious to proceed on this matter. This is a matter of, fundamentally affecting my client. It is wrong to say an order was made by you and through circumstances of which you are probably aware the order was, it never reached us, although I personally on the day in question waited around for your order. It was tax faxed to my solicitor's office and went astray and was sent to Guernsey rather than the English High Court. As I understand it, this document was sent by the English High Court to the Tribunal team on the same day as every other document was sent. I don't understand why it wasn't. I mean, the Tribunal's team, while they conduct their business in their own way, must at the same time do so fairly and in accord with principles of natural justice; and to have a document like this available to them and not produce it to Mr. Murphy Snr. is a very serious matter, very serious.

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Now, I was hoping this mightn't arise until Mr. Cooney was here because he was in Guernsey and I was not, but it seems to me that to not have made this document available to us either in Guernsey and only to produce it last evening, so late, that it doesn't even appear in yesterday's transcript, is not fair procedures at all. And I think whatever about Mr. Oakley's objections in respect of himself, and his position, as a lawyer and a voluntary

witness here, from the point of view of my client, Mr.

Murphy, it certainly smacks of a very great unfairness.

Now, you may want to investigate this Mr. Chairman and take it up again when Mr. Cooney is here, as hopefully he will be at a later stage today.

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MR. O'NEILL: The document of which My Friend is complaining is his own client's affidavit sworn in proceedings in the United Kingdom presumably of which his client has full knowledge of each of the details and in respect of which this witness can confirm as the party who drafted the affidavit, presumably or furnished it to counsel to draft, that it was accurate at the time and represented the factual position. That being so I cannot see that any element of surprise that might in anyway constitute unfairness or anything else can arise at this junction.

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MR. HERBERT: This affidavit was sworn in 1990. You are hearing evidence at the end of 1999. Is Mr. O'Neill seriously suggesting that Mr. Murphy could remember the details of affidavits he swore that far back?

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CHAIRMAN: The one thing that is clear, is that your client has absolute access to the English High Court and to obtain a copy if they didn't have one.

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MR. HERBERT: We didn't. Mr. Oakley attempted to obtain and was rebuffed by the English High Court.

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CHAIRMAN: The situation is quite simple, a client as I understand it, sorry I beg your pardon; a party to

proceedings is always entitled to obtain from the records of the High Court copies, documents relevant to his interest in those proceedings.

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MR. HERBERT: Mr. Chairman --

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CHAIRMAN: I have no doubt about that.

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MR. HERBERT: Mr. Chairman, are you ruling that Mr. Oakley was in some way telling lies when he wrote a letter to us saying he applied to the High Court and was told "no"? Is that what you are saying Mr. Chairman?

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CHAIRMAN: I don't know, because all I know is that when we applied we got it forthwith.

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MR. HERBERT: Mr. Chairman, you are a High Court judge sitting as a Sole Member of a statutory Tribunal.

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CHAIRMAN: Yes.

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MR. HERBERT: I take it that the comity of the court and judges might procure that. But I want to know, Mr. Chairman, are you saying that it is your knowledge that somebody of Mr. Oakley's standing could, and did, apply and could have got the documents? Because I say Mr. Oakley did apply and didn't get them.

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CHAIRMAN: I have no doubt Mr. Oakley applied. He did not get the documents because he was not purporting to act as solicitor for your clients, as I understand it, that is the problem of the High Court. We applied and we got it and I

accept that as far as I know it did not reach Guernsey in time. Now, again that is a matter which can be checked.

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MR. HERBERT: He was acting, Sir --

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CHAIRMAN: Just a moment. Just a moment. The individual who would have been dealing with that is not in this Tribunal at the moment. We will make an inquiry from her when it is available to us, when the opportunity is - and we will deal with the matter. But at this moment in time there is no problem. You have the affidavit, you have been given a copy of it. You didn't get it yesterday, if you didn't get it yesterday it was purely an accident. You have now got it, you have had an opportunity overnight to read it.

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MR. HERBERT: No.

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CHAIRMAN: Your witness has had an opportunity to read it overnight and if you want to read it now, or you want to read it, I will certainly rise for half an hour to enable you to do so.

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MR. HERBERT: Yes, he does. He is not my witness by the way, Sir, he is not my witness. He is not any of my team, I don't represent him. This is one of my problems, this is why I can't object --

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CHAIRMAN: If he says that he is in some way embarrassed by not having that document or not having read it last night when he had an opportunity to do so, I will certainly give him an opportunity here and now.



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MR. HERBERT: Mr. Oakley, do you wish to have this opportunity?

A. I do.

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CHAIRMAN: Sorry?

A. I do.

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MR. HERBERT: How long, Sir, do you think you would like?

A. I think half an hour would be reasonable. Perhaps I could say if I haven't managed to compare the two, I am asked to compare --

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MR. HERBERT: All right, Mr. Oakley, we will give you half an hour.

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CHAIRMAN: This is not a triangular debate.

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MR. HERBERT: I want to come back to this later, particularly when my colleague is here, who was in Guernsey.

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MR. O'NEILL: For completeness I should say, that there has been considerable uncertainty as to what inquiries were made of the High Court in London by Mr. Murphy or by his solicitors or by their town agents in relation to obtaining the documents which were sought.

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I indicated to Mr. Herbert this morning that I would be asking this witness about the content of a letter which was received from the court service, Supreme Court Group in the United Kingdom in response to a query which was raised by

your Registrar of that body, as to whether or not any requests had been made from the 24th of September, 1999 until the 15th of October 1999, for copies of the relevant documents. And a letter of the 15th of October, 1999, was received by the Tribunal, which indicated that in relation to the particular proceedings in which these affidavits were sworn, that a search had been conducted of the office to establish whether there were any office copy requests dating from the 24th of September to date, and the Head Clerk could find no trace of any request for office copies of documents relating to the above action. So in that period of time it would appear that the English High Court office is saying that no such request was made.

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MR. HERBERT: I would like My Friend, if he would be so kind, Mr. Chairman, to put these; he very kindly did mention this matter to me this morning, which came as tremendous shock to me, but and I made Mr. Oakley aware of what My Friend had said. With My Friend's permission I would be very grateful if he would put these matters to Mr. Oakley because I don't think, I think there is a serious misunderstanding here somewhere. And it is not from our side.

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CHAIRMAN: First of all I have absolutely no difficulty in the matters being put to Mr. Oakley. My approach to this matter is that if a hiatus for want of a better word occurred that it was an unintentional hiatus. The matter is capable of being clarified and resolved by the witness reading the affidavit now, and to such an extent as it may be necessary, refreshing his memory of the facts which he was dealing with in this memorandum. I have no reason to

in anyway embarrass the witness or in anyway cause him upset or difficulty in him giving his evidence.

Nonetheless, I do not want to spend time on a quite irrelevant debate at the end of the day which can now be resolved.

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MR. HERBERT: The only thing is that when Mr. Oakley took the trouble to do this, it comes seriously amiss that some bureaucrat in London should inform you that nobody made an inquiry.

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CHAIRMAN: Now, I am not adjudicating on the bureaucrats in London or otherwise. I am simply trying to resolve a situation with a common sense result. I am now going to rise for half an hour, sorry you better put the letter formally, put it to the witness as to whether or not it is consistent with what his knowledge of the matters are.

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MR. O'NEILL: Yes, Sir. I will do that Sir, and I am handing a copy of the letter to My Friends also.

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MR. HERBERT: Thanks very much, Mr. O'Neill.

(Document handed to Mr. Herbert and the witness)

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26 Q. MR. O'NEILL: Mr. Oakley, I take it you have had an opportunity of reading this letter and the assumption that it is an accurate facsimile, you mightn't have the original before you, an accurate copy of the original. It would appear to be a letter written by the Head Clerk of the Court Service in the Strand in London; isn't that correct?

A. Yes, it is.

27 Q. And it is addressed to the Registrar of the Tribunal and it

is in reference to proceedings "re JMCC Holdings Limited and others verses Liam Anthony Conroy and Others" case number 1989 J8637. I think you might confirm that that is the action in which the affidavits in question were sworn?

A. Absolutely.

28 Q. Yes; and the Head Clerk goes on to state: "Dear Peter, further to our telephone conversation of the 14th of October, 1999, I have conducted a search of office copies dating from the 24th of September 1999 to date and I can find no trace of any request for office copies of documents relating to the above action. Yours sincerely, Sheila Morrisson, Head Clerk".

I take it that you are familiar with the procedure in the United Kingdom, that if one wants to make a request for a document, one makes that request to the office?

A. Yes.

29 Q. And presumably it would have to be in writing so that the status of the Applicant can be established as to their entitlement to obtain a copy; isn't that correct?

A. Yes.

30 Q. And this letter, on its face, appears to suggest that the clerk carried out a search of such requests during the period in question and could not find a request in relation to this particular action; isn't that what it says on its face?

A. Yes.

31 Q. Now, you have indicated yesterday in your evidence that you through your town agents endeavored to obtain this information. Can you indicate to the Tribunal when it was that your town agents endeavored to make this request, and presumably they would have made it to this department in

the Strand?

A. Yes. I can only indicate at the moment by virtue by reference to a letter that I wrote to Fitzsimons Redmond on the 18th of October.

32 Q. Yes?

A. I had received a telephone conversation, I had a telephone call, the date of which I can't recall specifically at the moment, asking me to make an application to obtain the documents. I am not located in London, as you know. I practice in the Isle of Man. I instructed Vizards, Staples and Bannister who are my London agents to make that application, having given them the full details of both the case, the case headings and the court serial number; which are the matters that are required for the purposes of establishing, firstly the file, and secondly, as I recall now, that I will obtain as soon as I possibly can, I gave them written instructions on the basis upon which I was now instructed in turn to instruct them as my agents to obtain those documents.

33 Q. Yes?

A. And I had a reply from my town agents and as a result of that reply, I wrote a letter to Mr. Michael Fitzsimons on, as I say, the 18th of October.

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MR. HERBERT: Do you have a copy of that letter, Mr. Chairman?

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CHAIRMAN: I do, yes.

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MR. HERBERT: By the way, Sir, for your calendar, the 18th was a Monday.

A. Do you wish me to read the letter in?

34 Q. MR. O'NEILL: Not unless you particularly want to Mr. Oakley, I don't think it deals specifically with the matter that I am about to ask you, and that is whether or not the letter from the Supreme Court Group that I have opened to you, is as far as you are aware, accurate?

A. No, in the light, in the light of the first sub numbered paragraphs of 1, 2 and 3.

35 Q. Does it follow, therefore, that there has as far as you are concerned, there is an office copy request on file in the Action Department of the Royal Courts of Justice which indicates that between the dates in question, that is the 24th of September, 1999 to the 14th of October, 1999, that there should be a request for this information?

A. Yes. There should be a request that my agents put on my behalf.

36 Q. Yes?

A. And I think may be it actually demonstrates - the confusion is actually demonstrated by paragraphs 1, 2 and 3 of my letter of the 18th of October because at that stage my London agents are being told there isn't a computer record for the action and having checked, a physical search has established that the file of not in storage.

37 Q. Yes?

A. Now, that can't be the case because roughly around the same period the file is very clearly out of storage and you are obtaining copies of not only Mr. Conroy's affidavits but Mr. Murphy's affidavits. So there is clearly a confusion

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CHAIRMAN: May I just interpose here? I am going to rise for half an hour to enable you to solve any problems that flow from this unhappy sequence of culmination of

circumstances which unfortunately meant that you did not get a copy of the affidavit.

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Now, at this moment in time let's resolve the situation.

You are now in full possession of the facts, you will read this affidavit, as you would have been back then. Now, can we get on with business which is more important than trying to pass the buck as to who was responsible?

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

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MR. O'NEILL: Sir, before resuming the evidence of Mr. Oakley, I wish to deal with the question of the affidavit of the 15th; sorry, the affidavit of Mr. Joseph Murphy Snr. which bears the date stamp of having been faxed from the High Court office in England on the 15th of October of last year.

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You will recollect Sir, that on that date you were sitting in Guernsey as a Commissioner to receive the evidence of Mr. Murphy Snr. The evidence of Mr. Murphy Snr. concluded that morning and the Commission was wound up and the parties left for the airport at about lunchtime.

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Remaining in the offices of the Tribunal, or the office of the Commission in Guernsey at that time was your Registrar, Mr. Peter Kavanagh. Mr. Peter Kavanagh had been in contact with the High Court Office in London over a number of days seeking to obtain relevant affidavits in these proceedings. He had received the two Liam Conroy affidavits on the 12th of October and was pursuing his

request to obtain the affidavit of Mr. Murphy throughout the period. However, the affidavit was not forthcoming during the currency of the Commission.

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Whilst the affidavit bears the stamp of having been issued from the High Court office in London on the 15th, it was not received by the Commission Registrar at that time.

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The Commission Registrar prepared a memorandum dated the 18th of October, which was the following Monday, in which he records his having contacted the Chief Clerk in London to inquire as to what had become of the affidavit which was intended to be sent. He was informed at that time that the affidavit had in fact been faxed to the Tribunal at the office given in Guernsey.

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Upon receiving that information the Registrar contacted the manager of the Conference Centre in Guernsey and was informed by him that after the conclusion of the Tribunal and after Mr. Kavanagh had left at 1:30 on that afternoon, a fax had been found on the fax machine which was dedicated for use by the Commission during the currency of the Commission, and that that fax was being retained by the manager pending further instructions from the Tribunal.

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As a result of a request made to him the manager thereupon faxed the affidavit to Dublin to the offices of the Tribunal on Monday, and sent the original copy or - sorry, the original fax which had been received in Guernsey to the Tribunal and that is the document which has been circulated.

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It follows from that Sir, that it is clear that the affidavit of Mr. Murphy Snr. was not available to counsel at the time that Mr. Murphy Snr. was giving evidence, and there was no opportunity of putting that affidavit to him, whilst a witness before the Commission at that time.

I brought these facts to the attention of My Friends, both Mr. Herbert and Mr. O'Moore and I have shown them the appropriate contemporaneous records of the Registrar which records these facts, Sir. Thank you.

MR. HERBERT: I thank Mr. O'Neill for that statement Sir and I don't require Mr. Kavanagh to give any evidence in respect of this matter.

Sir, the only thing that I think needs further clarification for the sake of the record is that the copy I have of a foreign process fax of the 15th of the 10th, 1999, purports to be dated 9:06 hours on that morning, and clearly from what Mr. O'Neill is saying, that time mark seems to be in error. I am sure Mr. O'Neill will deal with that.

MR. O'NEILL: I have, Sir, spoken to Mr. Herbert about this before I made my statement and I indicated to him an attendance of the Registrar in respect of other faxed affidavits received from the High Court in London from which it is clear that the time-stamp on the fax machine in the London High Court office was in error by approximately six hours, and that documentation again was available to My Friend.

MR. HERBERT: Mr. Chairman, again I thank Mr. O'Neill for what he says, and I don't require Mr. Kavanagh or any other member of the Tribunal team to give evidence in relation to these matters. It seems to have been a lamentable category of errors emanating from the Court's Service in London and we have all been victims of this. Thank you for the time you have given Mr. Oakley. As I said, he is not my witness, but I want to thank you for that. He has made his comparisons and I think he is ready to resume his evidence. It is a pity we have all been the victims of this bureaucratic bungling, but there it is Sir.

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CHAIRMAN: Let us not be pejorative of anyone.

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MR. O'NEILL: I have to say, Sir --

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CHAIRMAN: No, I am not going to appear to be pejorative of any service over which I have no knowledge or no control.

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MR. O'NEILL: I have to say, Sir, that the information which was sought from London was received as soon as the Tribunal considers was reasonable in the circumstances. There was a file that required to be considered at very short notice by the staff in London and they were of great assistance to the Tribunal. I do not believe that the sequence of the facts as outlined to you Sir, indicates in anyway any bungling, or bungling on the part of the High Court Office in London.

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MR. HERBERT: Certainly I am not prepared to --

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CHAIRMAN: I want to make it quite clear that --

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MR. HERBERT: I am not prepared to endorse that. My client has suffered a disadvantage as a result of what happened on the day you specifically took all the trouble to go and sit as a Commissioner in Guernsey. You were there on the 15th and this document should have reached you either the 12th, 13th, 14th and 15th. It did not. I am not prepared to make any endorsements in favour of any people in London as a result of that.

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38 Q. MR. O'NEILL: If I might resume, Sir, the examination of Mr. Oakley at this point in time?

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Mr. Oakley, you have had the opportunity now of considering the affidavit which was sworn by Joseph Murphy Snr. on the 20th of April of 1990, and you might confirm if it is the case that that affidavit was drafted either by yourself or by counsel upon your instructions; is that so?

A. Yes, as I said yesterday, my recollection is that my notes were prepared for instructions to counsel and that the resulting affidavit was, I think, probably a combined effort between a first draft from me and a tidying up from counsel because that was the usual format.

39 Q. Right. I was asking you yesterday, in relation to the notes which you had taken which formed your comment on the affidavit, and in particular in relation to the comments for paragraphs 72 onward of Mr. Conroy's affidavit, which commenced at page 22 of the internal pagination of your notes; isn't that so?

A. Yes, you were.

40 Q. And I think that we find those notes transposed into

affidavit form and ultimately sworn by Mr. Murphy in his affidavit commencing at reference JMSE 40.3/24. It is paragraph 61 of the paragraphs of the affidavit itself. Do you see that? You do agree with that, I take it?

A. I see that, from in fact from paragraph 59 onwards he is actually starting to deal with the specific points raised in Mr. Conroy's affidavit.

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CHAIRMAN: Mr. O'Neill, I wonder could you tell me in the documents that we are operating from, where that occurs?

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MR. O'NEILL: The Tribunal reference Sir, is JMSE 40.3/24 and in the documentation before you it is behind Tab 3(F).

Sorry, do you have the affidavit, Sir, of Mr. Murphy?

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CHAIRMAN: I don't actually, no.

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MR. O'NEILL: I see. Well, I will arrange for a copy.

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CHAIRMAN: It is the commentary that is behind Tab F.

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MR. O'NEILL: Exactly. The affidavit which emanated as a result of the attendance recorded at that tab is the next document to which the witness has been referred.

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CHAIRMAN: I have found it. Thank you very much.

41 Q. MR. O'NEILL: Yes. You have had the opportunity of considering both your comments/attendance document and the affidavit which was subsequently drafted; isn't that so?

A. Yes.

42 Q. And they are essentially in conformity; isn't that correct?

A. They substantially follow, yes.

43 Q. There are no surprises, if I might put it that way, that come to you from having read your attendance and reading the subsequent affidavit, which would indicate that there had been any change in your instructions; isn't that correct?

A. No. It is substantially, in some cases, the notes that I prepared are mirrored in the actual affidavit itself.

44 Q. Right. And without going through the individual complaints again, because we have listed them, I think probably ad nauseum at this point in time; the Deponent in the affidavit to which you were making your comments, that is Mr. Conroy, was going on to make the same complaint but perhaps in somewhat greater detail; isn't that correct?

A. Yes.

45 Q. And --.

A. Sorry, the same complaint as what?

46 Q. The same complaint regarding Mr. Murphy's conduct of his tax affairs, as regard to his residency, the transfer of money out of jurisdictions, and if you wish I will go through them?

A. No. He made the same complaints as what though?

47 Q. Exactly.

A. No, sorry Mr. O'Neill, I think we are at cross-purposes. I recognise that he made those complaints that you have highlighted, what you put to me is that he has made "the same complaints". Now I assume you are referring to the Guernsey affidavit.

48 Q. The Jersey, sorry, the Isle of Man affidavit?

A. I beg your pardon, the Isle of Man affidavit. Yes, that's correct, yes. It is virtually a repetition of what he complained of in the Isle of Man.

49 Q. Exactly. And to those allegations we have already dealt

yesterday with Mr. Murphy's draft affidavit which we believe may have been adopted by him at a later stage, a copy of a sworn affidavit is not available; isn't that correct? That was his initial rejection of the contentions advanced by Mr. Conroy; isn't that correct?

A. In the Isle of Man proceedings.

50 Q. In the Isle of Man proceedings. Then we move to this document which is his effective rejection of the allegations in the High Court proceedings in London; isn't that so?

A. Yes.

51 Q. And if we move then to the next of Mr. Conroy's affidavits, that was in response to Mr. Murphy's affidavit; isn't that correct?

A. Yes.

52 Q. And we dealt with that again yesterday, where he on this occasion exhibited a number of documents in support of his allegations; isn't that correct?

A. Yes.

53 Q. And we established yesterday that the originals of those affidavits, exhibits, would have been retained by solicitors acting on behalf of Mr. Conroy; isn't that so?

A. Yes.

54 Q. But that copies of each of these exhibits would have been furnished with the affidavit that was served upon the solicitor representing the Murphy interest, namely yourself?

A. Yes.

55 Q. And that they would, in the normal course, have been circulated or copies thereof to counsel, who were representing the Murphy interests, and there would be file copies in the office of Pickering Kenyon, the solicitors

acting; isn't that so?

A. Yes.

56 Q. We established that Pickering Kenyon has since been dissolved and that the records, insofar as they exist in that company, are under the control of an administrator; isn't that correct?

A. If they still exist, yes.

57 Q. Assuming that they still existed that is where they would be found; isn't that correct?

A. Yes.

58 Q. And it has not been possible, apparently, to get copies of these exhibits; isn't that so?

A. As I understand it, yes.

59 Q. So one is left, in essence, with the description of the exhibits as it appears in the affidavit itself, and your recollection of what those exhibits were; isn't that so?

A. Yes.

60 Q. Now, those exhibits apparently were written communications or records prepared by parties other than the Deponent himself; isn't that so?

A. I think that's correct in the main, from the description given in the body of the affidavit.

61 Q. Yes. If we could turn to the affidavit in question, at Tab 2. The affidavit C? Affidavit C behind Tab 2 (C)

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At page JMSE 40.2/26 there is a reference to an exhibit known as a bundle of documents marked LAC 12. Do you see that at the top of the page there?

A. Yes.

62 Q. And the Deponent there is producing and showing what he describes as a bundle of documents relating to the Jola Foundation; isn't that so?

A. That is what is stated there, yes.

63 Q. Yes. Can you remember what those documents were?

A. You asked me this yesterday and I can't add anything to what I said yesterday.

64 Q. Fine. But again there is there is another bundle of documents known as LAC 13 which is referred to on the following page, page 27?

A. Sorry, on page?

65 Q. Page 27. Details of assets of companies, matters of that nature.

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CHAIRMAN: Paragraph?

66 Q. MR. O'NEILL: JMSE 40.2/27 talks of there being "another bundle of documents", LAC 13.

A. I am sorry, can you just direct my attention?

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CHAIRMAN: Paragraph 80.

67 Q. MR. O'NEILL: In paragraph 80?

A. Thank you very much. Let me just read it. Yes, he refers to LAC 13.

68 Q. So, the Deponent felt that he could advance his position by referring to documents which were in his possession; isn't that correct?

A. Yes.

69 Q. Obviously. And these were documents which presumably were the property of his employers or certainly were concerned intimately with the business affairs of the Murphy interests which he had retained, presumably having accumulated them in his capacity either as Chief Executive or as a friend of Mr. Murphy Snr; isn't that correct?

A. I have no idea of what documents they were other than from the description that is here, and I think perhaps what you



are putting is a little speculative. There are obviously documents that he had accumulated from one source or another.

70 Q. Right?

A. But I can't say whether it is from the companies or whatever.

71 Q. Well, do you remember taking Mr. Murphy's specific instructions on the various exhibits which were there? Have you a recollection of sitting down with him and showing him the affidavit and showing him the exhibits and saying "in support of the contentions he makes, he, Mr. Conroy, produces these documents, shall we analyse them and see whether they do"?

A. I certainly recall sitting with Mr. Murphy and producing the notes that we referred to yesterday. And that would of course, include not only the affidavit but whatever exhibits were served with it.

72 Q. Well, the notes we were discussing yesterday and indeed earlier this morning, were the comments on the affidavit of the 13th of March of 1990; isn't that correct?

A. Yes.

73 Q. But this was an affidavit which was sworn by Mr. Conroy subsequent to that date and in response to Mr. Murphy's affidavit which had been sworn on the 20th of April; isn't that correct?

A. Yes.

74 Q. This was five days later, on the 25th of April, Mr. Conroy delivered yet another affidavit, with I suggest, some documentary support for his contentions contained within it; isn't that so?

A. Yes, he did.

75 Q. Right.

A. But what I am saying is whilst with the first affidavit I clearly sat down with Mr. Murphy, I clearly went through the affidavit of Mr. Conroy that was then current together with the affidavit, I have no recollection of doing the same in respect of the affidavit of reply in anything like the same detail, or indeed at all.

76 Q. I see. Now, after the last of these affidavits were received, I take it that that was within days of the 25th of April when it was sworn by Mr. Conroy?

A. I would imagine so.

77 Q. Yes. You think in probability you would have met with Mr. Murphy and discussed the matter with him, but you are not quite sure of the detail?

A. I think more likely I would have met with counsel and made a tactical decision as to whether, in the light of the affidavit and the exhibits, it was necessary for any further reply. There as I am sure you appreciate and we all know, there becomes a tendency in interlocutory applications based upon affidavit evidence for there to be a reply to a reply to a reply and the matter goes on ad nauseum. I would have clearly taken the advice of counsel in relation to whether it was necessary to do any further reply to the last and then current affidavit of Mr. Conroy with all its exhibits.

78 Q. Right. Can you recollect at that point in time what the state of any settlement negotiations were as between the Murphy interests and the Conroy interests? Fixing this now on a date immediately after the 25th of April, 1990, which is the date when Mr. Conroy filed what was to be his last affidavit and its exhibits? At that point can you say whether or not there were any settlement negotiations current between the parties?

A. Without refreshing my memory, I can't.

79 Q. I see.

A. Not at this distance of time.

80 Q. Fine.

A. That, of course, does not mean that there weren't some.

81 Q. Well, insofar as you can, can you tell us whether there were or were not settlement negotiations to that point.

You've given evidence yesterday that a Mr. Shorthall spoke with you in the Isle of Man proceedings sometime in the year before, in the June or July after the decision had been given by the Deemster Corrin and had raised the question of settlement; isn't that correct?

A. It wasn't in the Isle of Man, it was after the decision of Deemster Corrin the meeting actually took place in London.

82 Q. I see.

A. But yes.

83 Q. It followed upon the Isle of Man initial decision in May, June of 1988?

A. It followed on because, yes, from the decision of Deemster Corrin on the preliminary point, you are quite right.

84 Q. You have already told us that Mr. Murphy Senior's reaction to that was to tell him to take a hike or to go forth and multiply, as he expressed; isn't that correct?

A. That is quite right.

85 Q. So we can take it that effectively those settlement proposals came to naught at that time?

A. Certainly the settlement proposals on any basis that was pursued by reason of the allegations of tax irregularity for want of a better word, didn't, weren't pursued at that stage and didn't get anywhere. That is not to say at some stage that they weren't renewed by Mr. Conroy or by any one of his solicitors acting for him, whether it was Isidore

Goldman or Merriman White, I simply can't recall.

86 Q. I see. Do you know that the question of settlement of the issues between Mr. Murphy and Mr. Conroy and vice versa, took place shortly after the receipt of the last of the affidavits from Mr. Conroy; isn't that so?

A. If you give me the date, I will.

87 Q. If I can refer you to Tab G in Section 3 of the documentation before you? You will see at page JMSE 29.5.1/233 a fax communication from yourself, I take it of Pickering Kenyon to I assume, Counsel Julian Walker and Mr. Cowen. Do you see that page?

A. Yes, I do.

88 Q. And it is in, it is from yourself I think, CRO, and it is a Murphy matter and it is on the 8th of May of 1990?

A. It is indeed.

89 Q. At that time you forwarded to counsel a note to counsel; isn't that so? And if we look to document JMSE 2951 at 235, you will see that this is, in essence, an instruction to counsel to draft the terms of settlement following discussions which had taken place with the defendant's solicitors, establishing the following terms to have been agreed in principle; isn't that so?

A. That's correct.

90 Q. Can you recollect who instigated that contact with the defendant's solicitors at that time?

A. I do not recall the contact at that time being instigated by me. I recall there being almost on an ongoing basis, discussions as one tends to get in actions of this nature by way of sometimes flippant remarks. Sometimes, you know, are you going to settle? Are we always going to go on fighting etc. etc.? And I cannot specifically recall whether out of one of those discussions something more

concrete came on this occasion. I remember that I, the person involved at Isidore Goldman that was dealing with the litigation was actually a colleague well-known to me in London, Danny Schaeffer and we are all sparring partners, so it is quite likely that we would have had a sort of fairly routine, almost bar room banter in relation to settlement.

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At some stage that moved forward from being a banter and became more serious and that is clearly around the date of my note to counsel of the 8th of May.

91 Q. And did the fact of the affidavit being sworn by Mr.

Conroy, or the exhibits that accompanied it, form the trigger for contact with a view to settlement of the action?

A. No.

92 Q. Yes?

A. No, there was never ever, as I said yesterday, I actually reached a stage where on one hand I could see a physical effect on Mr. Murphy Snr., and indeed particularly on Mrs. Murphy, who of course was also looking after him, and who was indeed very unwell herself.

93 Q. Right?

A. At the same time my discussions, which were based on - my discussions, which were based on information, were based on advice given to me by counsel, were also with the rest of the family and indeed with the Trustees at this point. Because this was a trustee action at the end of the day in relation to assets of the trust. And there were a number of factors which I gave you yesterday, that were considered at this time as being relevant.

94 Q. And amongst the factors that were considered were factors

that were personal to Mr. Murphy as opposed to what the trust considered and were of concern?

A. I was actually asked the question by the Trustees, how much do we take account of the physical frailty of Mr. Murphy? How much is our obligation to actually take that into account, as a factor? And I very distinctly recall the discussion that we had in relation to the strain and stress of the litigation on all parties, which I think we all know litigation is stressful, and the extent to which that could be taken into account. And I recall that it actually arose out of me sitting with Mr. Murphy, and telling him that really we had achieved as much as we really were ever going to achieve in relation to Mr. Conroy by reversing the arrangements for him to acquire an interest in Greenane and General Agencies, and for him to cease to be a beneficiary of the trust, and the time had come to take a commercial view as to freeing up Mr. Murphy to deal with issues that really were of importance to him at this stage, and indeed much earlier, to him at this stage, which was primarily the Sizewell B contract.

95 Q. In addition to being concerned about his physical welfare and the status or the progress of contracts entered into by his companies, was there also a concern regarding the fact of there having been allegations of the nature made by Mr. Conroy, extant, and in on the record, if I might described it as that, describe it as that?

A. No, not in that context, because it became very clear as you will see from the remainder of the affidavit, and other aspects in which Mr. Murphy replies, that Mr. Conroy himself was very seriously deficient in terms of his own tax position, with the UK revenue. And Mr. Conroy himself had on just about every other piece of intelligence and

information that we had managed to glean, none of the resources of the Murphy family to deal with any tax inquiry. So I think the view was taken that at this stage there was no necessity to concern ourselves with Mr. Conroy's allegation.

96 Q. I see. Can I ask you to consider the second page of your note to counsel, which is at JMSE 2951 at 236 and I will read it into the record, if I may.

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"The discussions to date have established that both sides will give mutual waivers and releases. Conroy will return all documents in his possession, custody or power, and warrant that no copies have been, had been retained or given to third parties. It has also been agreed that there will be the widest possible Confidentiality Clause.

.  
JM has asked that Conroy should also withdraw the allegation made in respect of him personally in the affidavit evidence in all proceedings. The reason is obvious. Although your instructing solicitors doubt whether given the fact that the affidavits will remain upon the court file, it is likely to be effective in any event. It is also likely to result in a similar request from Conroy.

.  
Your instructing solicitors are particularly concerned that whatever warranties or confidentiality agreements are entered into by Conroy, will, at the he end of the day, be largely ineffective in ensuring that no problems are created by Conroy with the initial capitals", I think is a direction to your typist which found itself in here, "with initial capitals Inland Revenue in respect of JM.

.  
It certainly appears to your instructing solicitors that the arrangements for the payment of compensation to Lithe Investments for determination of the service agreements creates a tax problem for Conroy which is unlikely to be disclosed by him in any event. The continuation of the Lithe Trust also appears to your instructing solicitors to create a potential loophole for the future in this regard, it seems to your instructing solicitors that in order to provide further protection, the appointment of an additional beneficiary should be considered at this stage prior to settlement, which if the need arose would enable further claims to be brought against Conroy and the Lithe Trust, in the event of any "difficulties". Counsel is asked to settle a draft Settlement Agreement".

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Now, in that document you, Mr. Oakley, were indicating to counsel a general synopsis of the facts and of the agreement in principle to resolution, and in the sections that I have read out, you have dealt particularly with Mr. Joseph Murphy's interests as opposed to necessarily, a trust concern; isn't that so?

A. Yes.

97 Q. And is the concern that Mr. Murphy had that which is expressed in the second paragraph of what I read? Namely that Mr. Murphy asked that Conroy should withdraw all of the allegations which had been made against him personally in the affidavit evidence in all the proceedings, and by that I take it that it was meant the Isle of Man proceedings, the proceedings in the High Court in London etc.

A. Yes. It was intended at this stage that the settlement



should be in effect a clean break, a divorce if you like,  
in respect of all proceedings.

98 Q. Right?

A. But it was a, this is a settlement of litigation as I have  
said, that primarily, I think with one exception, only  
involves the trusts and the underlying companies.

99 Q. You were - sorry, I didn't mean to interrupt you.

A. That is quite all right. And the point that was made by  
Mr. Murphy was "I want the lies dealt with as well".

100 Q. Right. So that at this point in time Mr. Murphy had a  
concern about the fact that these allegations were extant;  
is that fair enough?

A. I don't think that it is anymore than what we described  
yesterday, that nobody wants the possibility of a revenue  
inquiry if one can avoid it.

101 Q. Right?

A. And as Mr. Conroy was acknowledging, as I said yesterday,  
that there was no, according to him, basis for these  
allegations, that they were frivolous and vexatious and he  
was prepared quite happily to, as it were certify the same  
in settlement, it was a matter that was agreed and  
incorporated in this way.

102 Q. Do you understand that that concern expressed here or  
recorded here in this document of the 8th of May, 1990, was  
any different from the concern which had existed in Mr.  
Murphy's mind from the time of the first allegations being  
made in 1989 by affidavit in the Isle of Man proceedings?

A. Well, as I said yesterday, Mr. Murphy never expressed to me  
any concern at the allegations made by Mr. Conroy in the  
Isle of Man affidavit.

103 Q. I see.

A. He never excepted, as I have said this morning, that that

affidavit would ever become public. It is lodged in the Isle of Man. It is an offshore jurisdiction. It does have a high degree of confidentiality. It really was a somewhat idle threat if Mr. Conroy thought he was ever going to end up causing Mr. Murphy any difficulties.

104 Q. So as between yourself and Mr. Murphy, do you say that this was the first occasion upon which Mr. Murphy expressed to you his concern about the allegations which were made?

A. It wasn't so much his concern, it was "if you are going to do it, tidy it up".

105 Q. So this was a tidying operation, is what you understood it to be?

A. He was angry and had been angry, as I have explained to you, with Conroy. I had quite a degree of difficulty in persuading him to actually agree a settlement. Despite the fact that other members of the family could see the logic and the sense of the settlement proposals that were being put forward as indeed could counsel at that particular stage. And I have to say there was a degree of vacillation on the part of Mr. Murphy in wanting a settlement and not wanting a settlement and wanting to go on and so on and so forth, and the key at the end of the discussions in persuading him was to identify for him that by concentrating his efforts on the business and dealing with his particular concern or his particular interest, shall we say, at that time which was the Sizewell B Contract, he would actually be capable of earning considerably more funds for the company and the trusts ultimately than by worrying about Mr. Conroy. His answer was "fine, go ahead and do it. But I want his lies withdrawn".

106 Q. You go on to state in the immediately following sentence in paragraph two: "The reason is obvious, although your

instructing solicitors doubt whether given the fact that the affidavit also remains on the court file it is likely to be effective in any event".

.  
Does that sentence indicate that Mr. Murphy had a particular reason for following the course which he outlined or you outlined in the previous letter, namely the withdrawal, but that you, for your part, doubted whether or not his aspiration could be fulfilled merely by the withdrawal of these allegations?

- A. It was that he regarded Mr. Conroy as a maverick and that whatever was agreed with him was always potentially open to Mr. Conroy coming back at some stage or trying in another way to achieve either a greater settlement or whatever. He had this fear, fear is the wrong word, he had this concern that throughout his experience of Mr. Conroy had been of a maverick nature, both in terms of his experience, his qualifications, his abilities; if there was to be a divorce it was a divorce that stood the test of time without Conroy being able to reactivate anything at some stage in the future. And that is the very reason why at the very end I was conscious of the fact that this was a settlement that would be endorsed by the beneficiaries to the litigation at that time. And that's why I suggested at the end that there should perhaps be an appointment of an additional beneficiary who would not be bound by the Settlement Agreement, just in case.

- 107 Q. What is envisaged in that sentence is that the fact that information might come from the court file, would pose a possible threat and inconvenience, hindrance or upset or risk to Mr. Murphy; isn't that so? The source from which the information might emanate is the court file; isn't that

correct?

A. Well, the court file was going to contain the affidavits and they were not going to be withdrawn. My concern at this stage in my discussions with counsel was that even with a confidentiality agreement, Mr. Conroy was perfectly capable of quietly and unintrusively and anonymously doing damage at that stage, if he was so minded, and as I say, Mr. Murphy Senior was very clearly of the view that Mr. Conroy was a maverick and it was for that reason that it was dealt with on the basis that the allegations would be determined as being vexatious and frivolous. That didn't matter then whether the affidavit remained on the file.

108 Q. Was this not a concern which was exercised by you here because of third parties possibly viewing this file and reaching a conclusion that a revenue investigation, for example, might follow. Was that not your actual concern?

A. No, my actual concern was in the light of the fact that throughout Mr. Murphy Snr. had told me there was no substance in the allegations, that I did not want him personally to have to be concerned whether or not there was a complete answer to any allegations that may be made, arising out of Mr. Conroy's, what he regarded and indeed so did counsel and I, as being Mr. Conroy's lies. And the way to achieve that was by Mr. Conroy acknowledging that the allegations made by him were vexatious and frivolous. And I have to say that was, that was volunteered by Ray Murphy of Merriman White. It was never an issue that that was indeed truly the case. He tried it on and it didn't work.

109 Q. If that was not your concern, why did you write the following "your instructing solicitors are particularly concerned that whatever warranties or confidential agreements are entered into by Conroy will at the end of

the day, be largely ineffective in ensuring that no problems are created by Conroy with the Inland Revenue"?

A. Because as I have just explained, because he could always do so on the basis of an anonymous reference to the Inland Revenue if he was so minded.

110 Q. So is it not the case that Mr. Murphy was hopeful of achieving a particular result and that was of wiping the record clean as regards there being any documentation in existence which would contain adverse comment about him, that was his aspiration but you did not share, or could not confirm that that aspiration could be brought to fruition because these were matters of record that would be on court files and simply could not be disposed of?

A. I don't recall that being an aspiration of Mr. Murphy at the time. And I do recall explaining that the court record would remain as the court record.

111 Q. Yes?

A. And that as a result the only manner in which the settlement acknowledging the untruthfulness of the allegations made by Mr. Conroy could be achieved, was by the very method that we chose on the basis of, if you like his admission to me in the course of settlement negotiations, via his English solicitor.

112 Q. Was it possible in the Isle of Man proceedings to actually withdraw the documents?

A. I think the Isle of Man proceedings were somewhat different and it was possible in those proceedings to do so, but I can't at this distance of time recall what specifically occurred.

113 Q. I see.

A. I don't think it actually happened. Once we had, once he had reached the stage of Mr. Conroy acknowledging that his

allegations against Mr. Murphy personally were vexatious and frivolous it didn't much matter what was there on the record.

114 Q. If I can just touch briefly upon the question of contacts being made with the various court bodies with a view to obtaining the documentation in question? We dealt this morning, briefly, with that issue and you have furnished the Tribunal with a copy of the letter which you furnished to Fitzsimons Redmond dealing with your attempts through your town agents to secure the documentation; isn't that correct?

A. I did, yes.

115 Q. And are you in a position, and you may not be in a position here and now in the witness-box to do so, to produce the correspondence which you received from your town agents or indeed your communication with your town agents; and if you do not have possession of that documentation at present, are you in a position to undertake to furnish that?

A. I can certainly ask for it, yes, as I said this morning. I gave written instructions to, I think telephone instructions first of all and then written instructions confirming my oral instructions, to Vizards, Staples and Bannisters who are a very substantial firm in London, and they reported to me the circumstances, which I have in turn reported to Fitzsimons Redmond, but I think the answer to your, to your problem really is given in the second and third paragraphs of that letter.

116 Q. Yes?

A. I think the issue was resolved, the confusion occurred because you had the file. It wasn't there.

117 Q. I have to indicate to you that the file in fact was not received at the, the original file was never sent to the

Tribunal?

A. No, I am not suggesting so.

118 Q. Only a copy of that file?

A. If you look at my letter it records two things; firstly, there is no computer record, and secondly, the file is not in storage.

119 Q. Yes?

A. And it was upon that basis that I was, I came back to Mr. Fitzsimons and sought his instructions as to what he wished me to do in those circumstances; and it seems to me that the confusion that has arisen has, if you look at the timing and coincidence of that timing, it occurred because the file had been removed from storage as a result of the request for documents from this Tribunal. The two coincided, you are getting documentation as I understand it around the 12th of October through to the 15th, I am making an inquiry sometime prior to the 18th of October and that would account for the file not being available.

120 Q. Do you know when you were first asked to obtain this documentation from Mr. Fitzsimons?

A. I don't without checking --

121 Q. I don't want to tie you to dates without your file being there. I would appreciate if you could send this documentation?

A. I will certainly do as much as I can.

122 Q. Thank you very much.

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Now, following upon the instructions which you gave to counsel as regards drafting a proposed settlement, there was in fact a settlement reached by the parties and one of the terms of that was firstly a very broad Confidentiality Clause and secondly, a withdrawal by Mr. Conroy of each of

the specific allegations which he made which were adverse to the interests of Mr. Murphy personally; isn't that so?

A. Yes, that is correct.

123 Q. And reference was made in that settlement to the various affidavits which had been filed and a specific retraction was sought of each of the numbered paragraphs of the affidavits wherein there was adverse comment or averment against Mr. Murphy personally; isn't that so?

A. That's right.

124 Q. And on that basis the parties proceeded to implement the settlement, including the payment over of the consideration which is set forth in the agreement?

A. That's correct.

125 Q. Isn't that correct?

A. Yes.

126 Q. And that was to take place in staged payments over a period of three years in total with a substantial initial payment and then two subsequent equal payments to complete; isn't that the position?

A. Yes, that's correct.

127 Q. Yes; and as far as your concerned, that resolved the issue between Mr. Conroy and Mr. Murphy and there is nothing to indicate that Mr. Conroy went behind that agreement in anyway; isn't that correct?

A. I am certainly not aware that he did.

128 Q. Yes. We know that he subsequently passed away, you may not?

A. I have certainly heard that he passed away. I didn't know that before this Tribunal.

129 Q. Right. Now, if you, I might deal with the question of your contacts with Messrs. McCann Fitzgerald, the solicitors who are acting on behalf of Mr. Conroy in, of course, Mr. Gogarty, in the course of the negotiations for Mr.



Gogarty's severance package. The documentation, or some of the relevant documentation, I take it that it is all that is relevant to my queries of you, is contained at Tab 4 in the booklet of documents before you?

You will see, Mr. Oakley, that in February of 1989, Mr. Copsy had a meeting with Mr. Gogarty in an effort to resolve an ongoing issue, namely the severance package to which the parties apparently were agreed in principle should take place. In other words, it was not envisaged that Mr. Gogarty would remain indefinitely as an employee of JMSE, presumably because of his age and other matters and that he had provided very long service to the company and had an obvious entitlement to a package, whatever the precise terms of that were; isn't that so?

A. Certainly my recollection is that he had, Mr. Gogarty had a concept of a package to which he believed he was entitled.

130 Q. Yes; and Mr. Copsy's involvement here is to try and see if a via media could be reached between the Murphy interests and Mr. Gogarty regarding the extent and size of that package?

A. Yes. It says so in the second paragraph, sorry the second sentence.

131 Q. I don't think it is necessary to detail the respective positions which the parties took, because Mr. Copsy has dealt with that in his evidence and has gone through this particular memorandum in detail. I merely refer you to it to establish that it was in and around February of 1989, possibly you had been involved for about a year or thereabouts in Mr. Murphy's affairs by that time; isn't that correct? You had come in, in the early part of May?

A. May '88 or something like that.

132 Q. May?

A. I say, I think, in my statement, the early part of '88, it was around May, June, something like that.

133 Q. Right. You knew, I take it, from your dealings with Mr. Murphy, that the question of resignation, or perhaps removal of Mr. Gogarty in 1988, had been a factor upon which the parties to the subsequent coupe if I might call it that, used as a positioning situation; isn't that correct?

A. I was aware that Mr. Devine had insisted upon Mr. Gogarty's resignation and, as we discussed yesterday, Mr. Murphy firstly agreed to that because he was told that the remaining director's were resigning, and subsequently after discussing it further with Mr. Gogarty changed his mind and decided that Mr. Gogarty should remain.

134 Q. It was one of the battle fields upon which the parties --

A. It was one of the issues of the battle field with Mr. Conroy at this stage.

135 Q. Oh, I appreciate that. But after that had been resolved Mr. Gogarty remained on in a capacity where he was effectively monitoring the activities of Mr. Sweeney who was a pro temp Managing Director of the company; isn't that so?

A. I think "monitoring" is a very neutral way of putting it.

136 Q. He was there specifically to ensure that Mr. Sweeney would have to report to him and deal with him on contracting matters and he would have to deal with Mr. Copsy on financial matters. Whilst he was the Managing Director his obligations imposed upon him as a term of his retaining the position were that he had these restraints placed on him; isn't that a factor?

A. Quite honestly I wasn't involved in that great a detail in

the Irish companies. As I am sure you appreciate at this stage I am pretty heavily engaged in litigation elsewhere.

My understanding was that there was a degree of concern, maybe lack of trust as to the position of Mr. Sweeney, and that in some shape or form Mr. Gogarty and Mr. Copsey were watching him like a hawk.

137 Q. Right?

A. I think that would be a fair summary.

138 Q. And as regards the hierarchy of managing the affairs of the Murphy interests at that time, I think that Mr. Murphy Snr. was in de facto control and he had advisors comprising Mr. Copsey, Mr. Wadley, and yourself, as a body which met on a fairly regular basis to review the position; isn't that correct?

A. I don't think Mr. Murphy was in de facto control, but on the removal and retirement of Mr. Conroy, there were undoubtedly a large number of problems facing the company, identified by both Mr. Murphy and indeed, for that matter, Mr. Gogarty, that needed to be dealt with and indeed identified by Mr. Copsey as well. And Mr. Murphy certainly was very material in those problems being resolved.

139 Q. Now, you answered the last question dealing with the removal of Mr. Conroy and I just want to check whether that is accurate or whether you were dealing with Mr. Gogarty's retirement in that?

A. No, we were talking about the immediate changes to the Board back in June of 1988.

140 Q. Fine?

A. And you put to me that Mr. Murphy was in de facto control as a result. Now there were a lot of problems. There were undoubtedly a lot of problems in the company that needed to be resolved and it is perfectly accurate to suggest that

Mr. Murphy came back in to assist a team of people to resolve those.

141 Q. Um. But that hierarchy, I suggest, at its peak had Mr.

Murphy then yourselves as his advisors and then it worked down the line to the various practical managers or director's of the operating companies; isn't that correct?

A. Yes; and Mr. Murphy's invariable "technique" is the wrong word, but his modus operandi always, as I observed, with telephone contact with people, people within virtually any material level in the companies. It was the way he not only got loyalty from the various employees and various managers throughout various levels through the company, but it was the way he liked to keep himself informed. He was a great telephone man, to find out what was happening, say in the Sizewell B contract. "I want to know where they have got to". It was that sort of operation.

142 Q. The question of Mr. Gogarty's retirement package was a question which had been considered by yourself in conjunction with Mr. Murphy and Mr. Copey and Mr. Wadley as that strategic sort of planning entity in the Murphy companies; isn't that correct?

A. I don't recall specifically being part of the strategic consideration of Mr. Gogarty's retirement. I do recall being involved in its implementation. I do recall being involved in the early, in the early state of the litigation in seeking affidavit evidence from Mr. Gogarty, and discussing that with him in the course of which his retirement package was an issue that he raised with me.

143 Q. All right. That was an issue which was discussed with him in the Killiney Court Hotel towards the end of April of 1989 as you told us yesterday; isn't that correct?

A. Yes.

144 Q. And by May of 1989, can you recollect that there had been a meeting at the Bonnington Hotel in London, which was attended by Mr. Murphy Snr., Mr. Gogarty, Mr. Copsey, and possibly Mr. Wadley, where the question of a retirement package was discussed and agreed in principle; do you remember?

A. Sorry, can you just refresh my memory? The meeting with Mr. Gogarty in the Killiney Court Hotel.

145 Q. I think the 26th of April of 1989, and it may assist you if you turn to the next document in the booklet of documents at Tab 4 which was Mr. Gerrard Sheedy's letter to you of the 26th of May of 1989 which is referring to the amicable and constructive discussion in London on Monday last which was the 22nd of May, and I am just asking you whether you can recall that to be the meeting which took place at the Bonnington Hotel in London attended by Mr. Murphy and Mr. Gogarty?

A. I can certainly recall the meeting of the 26th of April at the hotel. I do recall that on that occasion over a long period of time Mr. Gogarty discussed with me, not just the affidavit, but interspersed from time to time his desire to have his promised pension package. I don't believe I was involved in this meeting on the 26th of May at all.

146 Q. I am not suggesting that you were.

A. I am sorry, I am trying to think as I am talking to you. Forgive me if I am going back, it is to get my thoughts in order. But I do recall the letter being written to me, fairly obviously and I think that was the start of my direct involvement in Mr. Gogarty and his pension arrangements.

147 Q. Right. And if you have a look at the letter which, a copy letter which is before you there which is the letter from

Mr. Sheedy to you, dated the 26th of May, addressed to you at Pickering Kenyon, it seems to indicate that there had been a meeting in London. It had resulted in the resolution of a number of issues between the parties, and agreement being reached on other matters that would be discussed at a later date; isn't that so?

A. Well, that is what it says.

148 Q. It goes on to state that: "The effect of the meeting is to bring about a significant improvement in the relationship between Mr. Murphy and Mr. Gogarty and hopefully this will lead to the restoration of the mutual trust and understanding which had existed for many years" That was the statement which Mr. Sheedy made in his letter to you?

A. And I think that was probably a fair comment at that stage because I very clearly got the impression from Mr. Gogarty at the meeting that I had with him, on the 26th of April, when I came over to see him, that it was a very burning issue with him.

149 Q. Right. Mr. Murphy Snr. had effectively regained control of his companies in June of 1988, but Mr. Gogarty was still an employee in 1989 and wanted to get out; isn't that correct?

A. I won't go so far as to say he wanted to get out, but he certainly wanted his pension arrangements agreed.

150 Q. Right.

A. There were occasions when I got the distinct impression that Mr. Gogarty too vacillated between wanting to manage the companies together with Mr. Murphy because they were old friends and had the ability, despite their age, but with their experience to turn the companies round.

151 Q. Right.

A. There is no doubt in my mind that at the first meeting or at the meeting, I don't think it was necessarily the first

meeting, at the meeting on the 26th of April Mr. Gogarty was very seriously concerned about his pension.

152 Q. Thank you. We may resume, I think Sir, at two o'clock?

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CHAIRMAN: A quarter past two, no?

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MR. O'NEILL: A quarter past two.

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THE HEARING THEN ADJOURNED FOR LUNCH:

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THE HEARING THEN RESUMED AFTER LUNCH AS FOLLOWS:

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CHRISTOPHER OAKLEY CONTINUES TO BE EXAMINED BY MR. O'NEILL  
AS FOLLOWS:

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153 Q. MR. O'NEILL: Good afternoon. Mr. Oakley, before lunch we were dealing with the communication which had passed from Mr. Sheedy to you on the 26th of May, 1989, and its referenced to there having been a meeting attended by Mr. Gogarty and Mr. Murphy, and the fact that there had been an agreement in principle reached between the parties, subject to being refined and what have you; isn't that right?

A. Well they had, what it says is they had an amicable discussion, and there had been a resolution of issue, and the only agreement referred to is some other matter should be discussed at a future date. They clearly made a lot of progress in finalising, sorting out Mr. Gogarty's pension.

154 Q. Right. And in the documents that follow immediately after that, we will see that there was firstly an attendance by Mr. Sheedy in which he records his communication with you by telephone when you responded to a fax, the 26th of May, and he outlined there that you had discussed the contents of your letter with Mr. Murphy: "Points 1, 2 and 3 are agreed. In regard to Point 2, the salary was agreed at £23,000", and other details, I don't think we have to dwell in absolute detail with any of these?

A. No, the point is that there had been, if you like, a discussion that had resulted in something being put forward, it was now between Mr. Sheedy and myself to negotiate in detail.

155 Q. Yes.



A. And to finalise the agreement between the parties.

156 Q. Yes. And if we move to the 15th of June of 1989, you will see a letter there that - the pagination on it is Document 233 at 866.

A. Yes.

157 Q. We are dealing there with the proposed tax implications, and Mr. Sheedy is asking to have the information you require, and if so to confirm it, and you then respond to him on the 19th of June saying that you are awaiting confirmation on a number of points, not solely relating to the tax implications of Mr. Copsey; is that right?

A. Yes.

158 Q. And matters progressed then where for the first time since the initial letter of the 26th of May to you, on the 27th of June, 1989, was a fax from Mr. Sheedy in which he states that he had met, "That Mr. Gogarty met with Mr. Copsey yesterday, and in the course of their discussion Mr. Copsey had stated that he had responded to all of your inquiries, and Mr. Gogarty is now becoming unhappy with the delay in finalising his agreement with Mr. Murphy".

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I think that is the first occasion on which there is some concern expressed about the, the fact that matters had taken a month to get to that point.

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I think then on the 29th of June, you respond to the letter of the 26th of May and to the subsequent, referred to the letter of the 26th of May and the subsequent telephone conversations, and you set out in accordance with the original numerical sequence, what you understood had been agreed to that point; isn't that right?

A. Yes, or otherwise what has been, what is being proposed in

relation to each of those points.

159 Q. Right. So that this, I think, is an on-going process and it continues through a number of letters of yours running into early July 1989. And I think by, if you come to the letter of the 5th of July, 1989, it seems that the only matter that's left out is, of agreement, is the question of legal costs and whether or not the professional fees of Mr. Gogarty are going to be met or otherwise; isn't that right?

A. Well, I think it is a little bit more than that. If I could just now, turning onto the correspondence. I think it is a little more detailed, because as the matter was progressing, there were a number of matters that were quite important that had to be resolved. The salary that Mr. Gogarty had was fairly easily resolved fairly early on. The difficult area became that which is probably the most contentious, and that was the offer on the table at the material time in respect of the ESB negotiations, and my understanding at the time was that the principle, if that's the right word, discussed between Mr. Murphy and Mr. Gogarty was that Mr. Gogarty was going to get half of the fruits of his labours, if I can put it like that, that whatever he got by taking over the negotiations, I think from Mr. Sweeney, would be the sum that he would retain under whatever deal was done.

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One of the difficulties that both Mr. Copey and I faced was the fact that Mr. Gogarty by this stage had taken the entirety of the files relating to the Moneypoint contract, so we had no direct access to what was the current position. And one of the, as you see from the correspondence, one of the things that I was concerned about was to find the benchmark, the bottom line if you

like, as to where the negotiations had reached, or the stage at which the negotiations had reached with the ESB at the time when Mr. Gogarty was to take over and conclude those negotiations.

160 Q. Well, if we perhaps start on the 3rd of July, 1989, then, you wrote to Mr. Sheedy --

A. No, it is actually the 29th of June.

161 Q. Yes.

A. And I asked him the question previously, and he replies to me on the 29th, and he says in the penultimate paragraph: "Secondly, the amount already offered by ESB is 40,000 and should be specifically mentioned in the letter". The point I want to emphasise, we are ad idem that there is to be a benchmark based upon the offer, as it were, already made by the ESB, and it is only above that offer that Mr. Gogarty is to receive a commission.

162 Q. Yes. Could I suggest to you that we have had considerable evidence on this issue, and I am quite sure that others will ask you specific detail about it, but what I want to perhaps establish through you, is that in the month of July, in the month of June certainly, relations were cordial as between the parties insofar as there had been an agreement in principle, it required to be implemented, refined, perhaps not every detail had been agreed but the parties were moving in the same direction with a view to resolution; isn't that right?

A. I think that's a fair summary with one caveat. My initial discussions with Mr. Murphy going back to the 26th of April, were that whilst he anticipated that at some stage there would be agreement with Mr. Gogarty and he would pursue that matter, I was to take care in my dealings with him in respect of the affidavit and in respect of the way

in which he might use that affidavit for the purposes of negotiating his pension.

That was a theme that was recurrent throughout my reporting back to Mr. Murphy in relation to this correspondence.

"Watch him. Watch him".

163 Q. Well, you had or there existed between the parties what were called "Heads of Agreement"; isn't that right?

A. We were putting together the Heads of Agreement.

164 Q. Yes. If you look to your letter of the 5th of July of 1989, it is Document 258 I think or 253 I think, it is - 253 is probably the correct reference. It is marked in heavy marker there, do you see it? It concludes: "As indicated in previous correspondence, your client's confirmation that the Heads of Agreement are acceptable to him. I will arrange for the necessary documentation to be drafted"?

A. Yes.

165 Q. "As a result of the substantial, as a result substantial costs will fall upon the company in any event". And that then is responded to on the 6th of July by Mr. Sheedy who acknowledges and thanks you for your letter and confirms his client's acceptance of your client's offer as set out in Heads of Agreement, do you see that?

A. Yes.

166 Q. Right. And as a result of that expressed agreement there, he goes on to say: "Mr. Gogarty is now prepared to implement his part of the agreement and has instructed me to tender his resignation as a director of all of the companies within the Lajos Group. Please now let me have the draft documentation for approval". Isn't that so?

A. Yes.

167 Q. So to that point it would appear that everything was amicable, it had resulted in your making an offer under Heads of Agreement and his accepting it, and there was hoped everybody would progress on at that time; isn't that right?

A. Absolutely.

168 Q. Now, what you were not to know at that particular time and what we know now, is that in the period between the 24th of May of 1989 and this agreement on the 6th of July of 1989 marking Mr. Gogarty's retirement, he had in fact been involved in a transaction whereby he handed over a sum of £30,000 to a leading politician of the time. That is within this period in the first two weeks of June?

A. About which I know nothing.

169 Q. Yes. Now, can I ask you whether or not at that particular point in time there was anything to indicate that there was any enmity, ill-will, malice, spite or anything else on the part of Mr. Gogarty towards Mr. Murphy as far as you were concerned?

A. Only, as I say, that which arose out of the first discussion, I am sorry to keep going back to it, but out of the first discussion I had with him on the 26th of April. If I can put the matter in context, the first issue, the thing that arose most, as being in terms of priority most important was to deal with the issue of the affidavit which, as you said to me this morning, arose out of the Conroy affidavit being supplied to Mr. Gogarty. Mr. Gogarty agreeing that he had the ability to deal with the points that arose as to the veracity of Mr. Conroy, the bragging, the Walter Mitty character and so on and so forth, and those were clearly issues that were important in a time frame that was dictated by the courts, as I am sure

you appreciate, in terms of the normal court orders for filing affidavit evidence.

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What did become clear to me was that Mr. Gogarty was not so much interested in assisting the Murphys in relation to providing affidavit evidence, or maybe more particularly saw that as an opportunity to pursue his negotiations for his pension, and that certainly by this stage, I had reported back to Mr. Murphy. I had reported on that original discussion with Mr. Gogarty and what had occurred during that three-hour period.

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So to say by the beginning of July matters were amicable, I am not wholly convinced that that would be the case.

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The comments made to me by Mr. Murphy were along the lines of "He is doing it again. He agrees something, proposes something, adopts an attitude of cooperation and then goes off and does something completely different".

170 Q. Well, certainly there was no manifestation of that in the correspondence, certainly before the 6th of July, when he had tendered his resignation from all the companies and agreed to accept the proposition which was emanating from the Murphys through you; isn't that so?

A. Yes. He wanted his pension and he wanted it quickly.

171 Q. Right. And he was prepared to accept the Heads of Agreement which had been fixed by you in consultation with your client, the parties were ad idem?

A. The terms were those that were going to be put into a written agreement between the parties, yes.

172 Q. So in the light of that, can you agree or do you disagree with the contention that as of the period of time that I

have mentioned, from the 22nd of May or 24th of May of 1989 until the 6th of July, 1989, there was no on-going malice, ill-will, enmity, animosity, emanating from Mr. Gogarty towards Mr. Murphy, quite the contrary in fact, they had agreed to resolve the only matter which was ever in dispute between them?

A. I think you are putting on too high a level, if you forgive me for saying so. Because it comes back to my comments, comment from Mr. Murphy to me after my meeting on the 26th of April.

173 Q. If we move on then to August, you will see that there is a letter from Mr. Sheedy of the 2nd of August, 1989, expressing Mr. Gogarty's concern that he hadn't received the draft documentation from you, "Almost four weeks has now elapsed since the client's offer was accepted by us on Mr. Gogarty's behalf". And reference is made in that to the question of there being a dispute regarding the signing of accounts, but I don't know that it necessarily concerns us at this point in time.

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That letter was sent to you by fax, and I think you responded on the 7th of August of 1989 also by fax. You acknowledge the letter of the 2nd and you say: "I apologise for the delay producing settlement agreement, a copy of which is now enclosed, the agreement substantially follows the Heads of Agreement provided earlier, with one exception in relation to a particular clause. It has been our understanding that the only offer made by the ESB in respect of the claim was in the sum of approximately £45,000. However, we understand that further discussions have, in fact, taken place with the ESB as a result of which an oral agreement was made in the sum of £130,000,

this however was not disclosed by your client in the course of earlier negotiations with Mr. Murphy. In view of the generous arrangements that have been offered in respect of your client's pension, we feel sure that your client will wish for this commission, for his commission rather to be based upon the actual offer made by the ESB, even though this offer concerned is not in writing. We therefore look forward to your client's approval of the settlement agreement. At the same time we would ask you to confirm that your client approves the draft affidavit forwarded to you some weeks ago, and will swear the approved affidavit on or before the completion of the settlement agreement" .

I think the affidavit we are referring to there is the draft affidavit that you prepared following your discussions with Mr. Gogarty by telephone and perhaps further in the Killiney Court Hotel in April, which had not been signed by him and some outstanding matters; isn't that right?

A. Yes. The affidavit - I went to the meeting with a draft affidavit prepared from my telephone discussions with Mr. Gogarty, I left him with a copy. I recall that he asked me to forward a copy to Mr. Sheedy of McCann Fitzgerald, which I did, and for some reason I remember that got lost in the post.

174 Q. Is that the affidavit we are referring to here in this letter of the 7th of August?

A. Yes.

175 Q. You bring up that issue, that that is an affidavit --

A. It is an issue that's been outstanding the other way around since April.



176 Q. Exactly. Now, matters progress then where a different slant, if I might put it, is put on the question of their being £130,000 offered by the ESB by Mr. Gogarty, isn't that right, in the letter of the 15th of August from his solicitor? But the conclusion of it was that they accepted the amendment that £130,000 should be the baseline over which the commission would be shared; isn't that right?

A. Yes. As you can see, if you put together the figures that come out of the correspondence, at the beginning Mr. Sheedy is confirming to me that the offer on the table is 40,000, I write back and say I think it is actually £45,000, he comes back in this letter and says it was actually 43,000, but yes, we are now prepared to accept it is in fact 130. Quite a significant difference.

177 Q. Okay. And what I have been describing as this toing and froing over the ESB issue goes on for some time and represents in effect, the reason why there is not a concluded agreement signed by the parties until the 3rd of October?

A. Yes.

178 Q. Isn't that right?

A. Yes.

179 Q. And, of course, litigation was ultimately to flow as a result of the receipt of monies which were paid by the ESB, and those proceedings were ultimately compromised by the parties; isn't that so?

A. Sorry, proceedings where?

180 Q. Proceedings in Ireland in respect of the some of the £560,000 which was the ESB money, plus the VAT of £140,000, that led to a separate set of proceedings which were ultimately compromised?

A. I think it is fair to say it had led to a great deal of

annoyance and anchor on my part at what I saw to be, I will choose the word carefully, a misrepresentation to put it at its lowest, and a deliberate deception on the part of Mr. Gogarty to put it at its highest, on which apparently he was aided by Mr. Sheedy. It wasn't just that it ended up in litigation, it ended up in a formal complaint to the Law Society. It was taken as a very, very serious matter, at least by me.

181 Q. And that animosity can be dated, on your part, or concern or upset, anxiety, annoyance, stems from the revelations which came out after the money was paid over by the ESB?

A. It wasn't just in terms of the misrepresentation. It was actually the formula, the format in which that money was paid over.

182 Q. I am trying to fix it in time as to when it was?

A. I beg your pardon?

183 Q. You might just confirm that that was not until after the signing of the agreement on the 3rd of October of 1989; isn't that so?

A. From recollection the invoice was submitted in September, submitted in September prior to the signing of the agreement. The money came in after the agreement was signed and was placed by McCann's Fitzgerald in a client account, even though it clearly, the company were clearly not the client of that firm.

184 Q. I am trying to establish, Mr. Oakley, when it was that you became annoyed, and presumably your client became annoyed, about the way in which the transaction had been conducted, rather than the sequence itself which is not material, necessarily to my question?

A. Well, I think that's fairly --

185 Q. Was it in early October?

A. I think, as I recall it resulted in a letter being sent, so let's identify from the letter because it would be at or around the time of my letter being sent to Mr. Sheedy. I don't think you actually have it in the bundle, but there is, as I recall, a letter sent by me to Mr. Sheedy upon the day that I find out, almost certainly on the same day that I find out, that I and my client have been deceived.

186 Q. Yes. I accept of course that that was your letter, and I think you will probably see from the sequence of correspondence here, that in all probability it was after the 3rd of October, that is a point --

A. I imagine it would be after the 3rd of October because that's the date of the agreement.

187 Q. So --

A. I don't think I would have had much complaint if indeed the £560,000 plus VAT had been revealed to me prior to the agreement.

188 Q. Can you agree with me, Mr. Oakley, that in fact you had no complaint whatsoever as of the 3rd of October, you were to formulate a complaint at a later stage, but as of that date?

A. Yes, I certainly believed that as at the 3rd of October in relation to an agreement that was signed by Mr. Copsey on the one hand and Mr. Gogarty on the other hand, witnessed by myself, and as I recall Mr. Sheedy, that there had been full disclosure, they were being straight and honest with us and I had nothing to fear and nothing to worry about, certainly there was nothing on that occasion that I was annoyed about.

189 Q. So that the goodwill which had emanated from the successful meeting at the Bonnington Hotel in London on the 24th of May of 1989 continued until the ultimate signature of this

document in October of the same year; is that so?

A. Such goodwill as there was, yes, but it seems to me to be a remarkably strange thing to write saying, "Hey, we are all being good friends again" and to find that some time immediately prior to such agreement there has been such a degree of deception, that is inconsistent with the sentiments expressed in that original letter.

190 Q. Yes. You might just confirm to me that, in fact, it was the agreement of the parties, and certainly it was to the knowledge of Mr. Murphy, that Mr. Gogarty had embarked upon his negotiations with the ESB after the initial agreement in principle in London, and that he had been in continuous negotiation with the ESB over the period when the draft documentation was being prepared?

A. No. It was neither my knowledge nor, as I recall, Mr. Copsey's knowledge, otherwise I don't think we would have ever signed the agreement, and it certainly from my conversation was not Mr. Murphy's knowledge either.

191 Q. I am not suggesting, Mr. Oakley, that there necessarily was a concluded agreement between Mr., or that Mr. Murphy was aware of there having been a concluded agreement between Mr. Gogarty and the ESB, but rather that he was aware that Mr. Gogarty was in negotiation with the ESB, that he had employed the services of Mr. Merry, a quantity surveyor for the purpose of quantifying the claim, and that he, in fact, was spending a considerable period of time in his home preparing this documentation and negotiating with the ESB, notwithstanding that no formal agreement had been signed as between himself and Mr. Murphy?

A. No, I can only repeat the answer I gave. From my discussions with Mr. Murphy at the time there was no knowledge on the part of any of us that Mr. Gogarty was in

some way negotiating already, and indeed there was no anticipation that he was negotiating already because he hadn't signed an agreement which actually starts - this agreement is made whatever date it was, 3rd of October. So none of us expected that he was going to be negotiating until that agreement was signed.

192 Q. I see. Thank you.

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THE WITNESS WAS CROSS-EXAMINED BY MR. O'MOORE AS FOLLOWS:

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193 Q. MR. O'MOORE: I think I am probably next, Sir.

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Mr. Oakley, I act on behalf of Mr. Gogarty, and can I deal with the last question you have given on oath to Mr. O'Neill. You say prior to the signature of the agreement of the 3rd of October of 1989 you had no knowledge at all that Mr. Gogarty had been negotiating beforehand; is that right?

A. I had no personal knowledge. I don't believe Mr. Copsy had any personal knowledge, and from my discussions with Mr. Murphy Snr. I don't think he had any knowledge either.

194 Q. Very good. Mr. Oakley, you are sure about that?

A. I am sure about that.

195 Q. Would you look at Document 296 in the bundle before you, at Tab 4 of that bundle. It is a letter from Mr. Sheedy to you of the 15th of August of 1989. When you have located it will you let me know?

A. 15th of?

196 Q. August, 1989.

A. Can you give me a page reference please?

197 Q. I will do better, I will actually give you a copy of the document?

A. No, it is okay.

198 Q. Please let me help you. It is a document, Sir, which has number 968 in hand in the top right-hand corner, Document 296 of Mr. Gogarty's discovery. And it is in the booklet of documents prepared by the Tribunal for yesterday. I think you have a copy now, Mr. Oakley. Without further ado could you read the last paragraph on that page, beginning with the words "Mr. Gogarty has"?

A. Yes.

199 Q. Will you read it out please?

A. "Mr. Gogarty has been negotiating with the ESB since March last and should any settlement figure in excess of 43,000 be agreed with the ESB that would arise solely from the efforts of Mr. Gogarty".

200 Q. Let's deal with the first clause. Would you like to revise your last answer?

A. No.

201 Q. I see. So I have understood, I think you told Mr. O'Neill and you told me that you weren't aware that there had been any negotiating with the ESB prior to the October of '89. Here is Mr. Sheedy telling you personally that that had been taking place since March of that year. Could you explain to me, if you could, how those two answers can be reconciled?

A. Yes, it wasn't Mr. Gogarty who was negotiating it was Mr. Sweeney.

202 Q. No, what Mr. Sheedy has said to you is that Mr. Gogarty was negotiating?

A. Yes, he said that but it wasn't true.

203 Q. Yes. When did Mr. Sweeney leave the company, Mr. Oakley?

A. I don't recall when Mr. Sweeney left the company.

204 Q. And the situation I think is that Mr. Sweeney stopped

negotiating in February of 1989 and Mr. Gogarty took up the cudgels and began negotiating the following month?

A. I don't think that's actually correct.

205 Q. State your means of knowledge, Mr. Oakley, with regard to that? What makes you think that?

A. My belief is from the investigation that was carried out at the time, that Mr. Gogarty had not in fact been involved in the negotiations in respect of this contract at the time that he was claiming from this letter.

206 Q. So the situation then is that you were told by Mr. Sheedy in an open letter, and can you point to anywhere in the correspondence where you deny that was so, where you said "No, Mr. Sheedy, you are quite wrong"?

A. If you recall I actually said that Mr. Gogarty had the entirety of the files, so it was not a matter that could be verified from the documentation. But equally, I have never seen any documentation from Mr. Gogarty as to what he allegedly prepared for his negotiations with the ESB in relation to this contract.

207 Q. Well, when --

A. Which please let me finish, which actually resulted in the sum of £560,000 being paid.

208 Q. Well now, Mr. Oakley, when did you discover that the contents of Mr. Sheedy's letter of the 15th of August of 1989 were incorrect in this regard?

A. When did I discover?

209 Q. Yes?

A. I can't say for certain now at this distance in time.

210 Q. Was it in 1989?

A. Well, it certainly was not in recent months or in recent years.

211 Q. Yes, so was it in 1989 or 1990?

A. I assume it was around the time that I eventually wrote to Mr. Sheedy suggesting that this had actually been a negotiation - sorry, that there had been a deception on the part of Mr. Gogarty in relation to the negotiations in this context.

212 Q. Very good. Did, when you wrote that letter, which was clearly a fairly assertive letter, did you say "incidentally, you also lied about the period of time over which" --

A. I didn't accuse anybody of lying.

213 Q. They misrepresented the situation, did you say that?

A. I don't recall the - the letter isn't here, if you like to produce the letter I am sure we can answer the point?

214 Q. The letter is here, Mr. Oakley. Would you like a look at it now?

A. I would.

215 Q. It is a letter of the 10th of January of 1990. My solicitor will hand you up a copy?

A. Thank you so much. (Document handed to witness).

216 Q. Now, Mr. Oakley, would you like to read that letter and tell me whether or not it includes any assertion that Mr. Sheedy or Mr. Gogarty were incorrect in saying that Mr. Gogarty had been negotiating since March of 1989? I will just give the Registrar a bundle of the correspondence I intend to use and he can flash them up on the screen. (Documents handed to Registrar). Would you let me know, Mr. Oakley, when you have finished reading the letter?

A. I certainly will. No, it does not raise that point at all.

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CHAIRMAN: Would you just hold on a moment because we have to take the clip out of the correspondence before it can go



on the screen, because I don't have a copy of it, so I am depending on the screen also.

MR. O'MOORE: In fact I will just distribute copies of the bundle of documents I intend to use, not just to you but also to Mr. O'Neill and Mr. Herbert, that might be expeditious. I'm afraid they are not paginated, but they are capable of identification.

CHAIRMAN: Don't worry. (Documents handed to counsel).

A. May I have a bundle too?

217 Q. MR. O'MOORE: No. Now, Mr. Oakley, the position is this, that in your letter of the 10th of January of 1990 you made no reference whatsoever to the suggestion that you had been misled by Mr. Sheedy in his letter of the 15th of August; isn't that right?

A. I made no reference to anything arising out of previous correspondence, no.

218 Q. Yes. And to put it to you that throughout the correspondence, you can correct me if I am wrong about this, there is in fact no reference whatsoever by you to this alleged misrepresentation by Mr. Gogarty or his solicitor as to when he began negotiating the ESB contract; isn't that right?

A. Could you repeat the question?

219 Q. That throughout your correspondence there is no reference whatsoever?

A. Which correspondence are we talking about?

220 Q. Your correspondence with Mr. Sheedy?

A. Would you identify the correspondence and give me a bundle so I can review it?

221 Q. Can we be clear about this, I think you said in your

statement that you had reviewed your correspondence with Mr. Sheedy for the purpose of giving evidence to this Tribunal today; is that right?

A. In making a statement I think back in October last year.

222 Q. Yes. You said "I have re-read that correspondence for the purpose of making this statement and I believe the correspondence speaks largely for itself"?

A. I asked you if you would provide me a bundle of the correspondence that you are referring so I can follow exactly the points that you are making. I don't think that's an unreasonable request.

223 Q. I think you are quite capable of following the point, you are an experienced solicitor.

A. Could I repeat my request, could you give me the bundle of the correspondence to which you are referring?

224 Q. No, I have said I won't, Mr. Oakley.

A. Mr. Chairman, could I have a ruling on this please, because I have no representation here. Counsel around the room have a copy of the bundle of correspondence. There is little point in asking me questions about correspondence which I dealt within a statement last October and which I haven't reviewed since, there is no harm in giving me the bundle of correspondence as I have requested?

225 Q. Very good, I will allow a bundle to go to the witness and I will withdraw the question. Now, Mr. Oakley, can I ask you this; in relation to your dealings with Mr. Sheedy and Mr. Gogarty, you are well aware that during the course of those negotiations one of the terms inserted into the agreement between the parties was that the - no ESB offer made to Mr. Gogarty could be accepted without board approval; isn't that so?

A. I recall that the, that Mr. Gogarty's authority was limited

to negotiations, yes.

226 Q. Yes. And therefore the board must approve any offer which was made before it was binding; isn't that right?

A. Yes.

227 Q. And you are aware, I think, that you were notified by Mr. Sheedy on the 31st of October of 1989, I will direct you to the letter, that in fact £700,000 had arrived from the ESB in settlement of the Moneypoint claim; isn't that so?

A. Exactly, yes.

228 Q. And I think your response to that was a letter of the 3rd of November of 1989, in which you find in the bundle that you have?

A. I think it is the 8th of November of '89, isn't it?

229 Q. No, I don't think so. It is - you may well be right.

A. It looks both from the, if it is the second document in, Document 367, 1003 both from the fax markings and from the date appears to be 8th of November of 1989. Am I correct?

230 Q. No, in fact there is a letter of the 3rd of October of 1989 which you actually did refer, you did acknowledge receipt of Mr. Sheedy's letter of the 31st of October, in any event, either on the 3rd of November of 1989 or the 8th of November of 1989. Did you at any stage query whether or not board approval had been secured for the ESB Moneypoint claim?

A. Did I query whether board approval had been?

231 Q. Approved, had been secured?

A. No.

232 Q. Now, you are well aware --

A. In relation to this correspondence?

233 Q. Well at all?

A. No, not in relation to this correspondence, no.

234 Q. Well, you were well aware of the terms of the agreement;

isn't that correct, Mr. Oakley?

A. I was aware of the terms of agreement that Mr. Gogarty's authority was limited to negotiation.

235 Q. Yes. And here is Mr. Sheedy writing to you on the 31st of October saying that not only has an agreement been reached with the ESB but the money in fact has arrived in, £700,000 has arrived in and that he has it; isn't that so?

A. Well, he says he placed it on deposit.

236 Q. Yes. And did it ever occur to you at that time that one of the preconditions of the settlement with the ESB was that the board, including your client, Mr. Murphy, would have approved that settlement with that company?

A. The issue that I was concerned with at the time was how Mr. Sheedy had received a sum of £700,000, it was clearly due to my client's.

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CHAIRMAN: Mr. Oakley, that is not an answer to the question you were asked. "Did it ever occur to you at that time that one of the preconditions to the settlement of the ESB was the board, including your client, Mr. Murphy, would have approved the settlement with that company?" That is the question you were asked and that is the question I want an answer to.

A. And the answer is, Sir, no, I was much more concerned with how Mr. Sheedy had managed to obtain the sum of £700,000 and paid it into a deposit account when he clearly did not act for the proper recipient of that money.

237 Q. MR. O'MOORE: Yes. So it never occurred to you at all at that time; is that right?

A. I was much more concerned --

238 Q. Mr. Oakley, please answer the question and then expand on it. Yes or no, did it occur to you at that time?

A. No, I was much more concerned with the fact that the money clearly due to my client had been received by another firm of solicitors and more particularly placed in their, on deposit.

239 Q. Now, could you look at your letter of the 8th of November of --

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MR. HERBERT: Mr. Chairman, whereas this witness, I do not represent this witness, in all fairness, I think this witness should be furnished with a copy of the agreement of the 3rd of October and given an opportunity of reading Clause 4 of the agreement before he is asked to make any further comments.

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MR. O'MOORE: I have finished this line of questioning entirely.

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MR. HERBERT: Mr. Chairman, I am concerned here about fairness and nobody else is. There is a written document which speaks for itself, and the witness should be given this document and whatever his answer is, he should be entitled to see it and to comment on it. This is unfair procedure, it is fundamentally flawed, it is wrong in every possible way, and I am surprised he is asking you to stand over this sort of behaviour. The witness must be shown the document and allowed to comment, the full document, and he should not be asked what's in a particular clause or particular agreement unless he has it in front of him to look at. It is there for us all to see, there is no secret about this, it is before the Tribunal. Why shouldn't he have it?

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CHAIRMAN: Well, Mr. O'Moore, could you provide the witness with a copy of the agreement? The agreement of the 15th of September was it? 15th of November, sorry.

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MR. O'MOORE: You mean the 3rd of October, is that it, Sir?

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CHAIRMAN: I beg your pardon.

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MR. HERBERT: Sir, in the book furnished my solicitor points out it is 1052 in the block document furnished by Mr. O'Neill.

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CHAIRMAN: 1052?

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MR. HERBERT: Tab 4, Sir. 1052. I think the relevant page would be page nine, 1055.

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CHAIRMAN: That is correct.

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MR. O'MOORE: Yes, I just don't see the point Mr. Herbert is making. The witness has accepted when this line of questioning was current, that Mr. Gogarty was subject to board approval.

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MR. HERBERT: It doesn't say that, Mr. Chairman.

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MR. O'MOORE: Mr. Herbert will have to finally restrain himself. It states at paragraph, Roman numeral 4, "In particular the director shall act as a consultant to JMSE Limited and will negotiate on behalf of JMSE Limited with the ESB for the payment by the ESB of monies due to JMSE

Limited in connection with goods and services supplied in relation to the Moneypoint Generating Station Project.

The director shall have the sole rights of negotiation in this respect but shall be subject to direction by the Board of Directors from time to time. The company shall be responsible for all reasonable day-to-day expenses incurred in connection with the" --

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MR. HERBERT: Where is the word "approval" that My Friend has been citing to you, Mr. Chairman?

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MR. O'MOORE: And that the witness has agreed with.

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MR. HERBERT: But where --

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CHAIRMAN: First of all, just a moment please. "The director accepts" --

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MR. HERBERT: Mr. Chairman, it is very simple; where is the word "approval" in Clause 4? It doesn't exist. My Friend has misinterpreted the clause deliberately.

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Sorry, Mr. Chairman, I beg your pardon, I am very sorry for barracking.

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MR. O'MOORE: It won't just be your --

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CHAIRMAN: Now please, let us not have interparty discourse on this matter. "In particular the director will act as consultant", "Shall be subject to the direction by the Board of Directors from time to time". I would have thought "from time to time" includes up to and including

the conclusion of the agreement.

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MR. HERBERT: I am asking where the word "approval", it says "subject to the approval of the board"?

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MR. O'MOORE: If Mr. Herbert looks at the booklet of correspondence handed up on the 7th of September of 1989, a letter from Mr. Oakley. Do you have that, Mr. Herbert?

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MR. HERBERT: Mr. Chairman, I won't be dissuaded from my criticism. Where is the word "approval"?

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CHAIRMAN: Mr. Herbert, could we just get the document that's being referred to? Let's not have any more inter counsel fighting. What is the number of the document that you are referring to?

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MR. O'MOORE: It is the letter from Mr. Oakley of the 7th of September of 1989.

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CHAIRMAN: I haven't got it at the moment. Can somebody give me a reference please?

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MR. O'MOORE: You will find it is Document 308 and --

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MR. O'NEILL: I think Document 307, 1003. It is at Tab 4.

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MR. O'MOORE: And you will see, Sir, at the bottom of the second page of that letter under the heading "paragraph 3", Roman numeral 4: "It is agreed that Mr. Gogarty is to be given exclusive negotiation rights with the ESB", that is



indeed reflected in the clause opened by Mr. Herbert.

"However, as he has no authority to bind the company any settlement must be approved by the Board of Directors. He can not, therefore, have exclusive authority to conclude an agreement with the ESB".

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CHAIRMAN: That seems to be an answer to your question, Mr. Herbert.

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MR. HERBERT: Sir, it is not --

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CHAIRMAN: That is the answer and that is my ruling on that.

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MR. HERBERT: Mr. Chairman, that is not the answer, that is a letter written by Mr. Oakley on the 7th of September of 1989. The agreement between the parties is dated the 3rd of October of 1989. The expressed provision is in Clause 4, and I would ask, Sir, that the stenographer read it back and identify what the question put to this witness was by Mr. O'Moore.

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MR. O'MOORE: Well, the line is questioning is finished, we should be able to pass on. The witness agreed with my proposition. The witness' own letter of the 7th of September of 1989 supports my proposition. If Mr. Herbert wants to split hairs he can do so at a later stage, Sir.

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CHAIRMAN: I agree.

A. But clearly the agreement does not contain the provision you put to me.

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240 Q. MR. O'MOORE: Very good. You want to change your evidence on that, do you?

A. No, I want to look at the agreement now and draw your attention to the fact that the Clause Roman 4 does not require the approval of the board, and whatever may have been in correspondence earlier did not actually ultimately end up in the written agreement between the parties.

241 Q. Yes. Mr. Oakley, you agreed with me some ten minutes ago that it was subject to board approval; is that so?

A. I was wrong on the basis that you didn't provide me with a copy of the agreement, equally so were you wrong in suggesting it was part of the agreement, we both made a mutual mistake, did we not?

242 Q. Now, Mr. Oakley, could you look at the letter of the 8th of November of 1989 that you have before you, and that's the letter that deals with your unhappiness about the fact that Mr. Sheedy's firm had maintained the sum of £700,000 in a bank account; isn't that right?

A. Yes.

243 Q. Now, I think the third paragraph of that letter reads as follows: "Accordingly, unless the balance of the £700,000 is paid to JMSE before close of banking business today, I am instructed to commence proceedings against your firm for the recovery of same without further warning". Do you see that?

A. Yes, I do.

244 Q. What changed those instructions, Mr. Oakley? What caused them to change?

A. I am not aware that they were actually changed. If you draw my attention to something that changed them, please do.

245 Q. Mr. Oakley, did you institute proceedings immediately after

the 8th of November of 1989?

A. I think there were practical limitations in getting them immediately issued by Brian Strahan of Gerrard Scallan O'Brien. Certainly my instructions were to that firm to issue them as quickly as they possibly could.

246 Q. Yes. They were, in fact, issued on the 18th of December of 1989; isn't that right?

A. If you draw my attention to the proceedings I will confirm whether that is the case or not.

247 Q. I think the writ is actually in the bundle, it is a summary summons issued by JMSE and by Lajos against McCann Fitzgerald and against Mr. Gogarty?

A. 18th of December, you are right.

248 Q. Yes. Now, what practical difficulties lead to a delay of about five weeks or more in the issuing of these proceedings?

A. I do not know.

249 Q. But clearly this was a matter which you described in very strong terms, you have said not just your client, but you, yourself, were unhappy about the way Mr. Sheedy behaved and the way Mr. Gogarty had behaved?

A. I was very unhappy with both of them.

250 Q. Weren't you pressing Gerrard Scallan and O'Brien to sue them?

A. Yes.

251 Q. Why didn't they until five weeks afterwards?

A. I don't know, I can't remember at 11 years distance.

252 Q. Yes. You see what I am putting to you, Mr. Oakley, is that the significant delay in this context in issuing these proceedings gives the lie to the suggestion that you were, in fact, that outraged by what had happened, and if you had been you would have made sure the proceedings got out on

time and not after a considerable lapse of time?

A. No.

253 Q. Well, could you look then at your letter of the 10th of January of 1990. This is the letter which you say you wrote as soon as you became aware of what you described as the misrepresentations of Mr. Gogarty aided and abetted by Mr. Sheedy. Do you have that letter?

A. If you can tell me the number and where it is in the bundle I will turn to it.

254 Q. It should be towards the end of the bundle.

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CHAIRMAN: It is actually on your screen at the moment.

255 Q. MR. O'MOORE: Yes. Now, that in fact refers to the writ that was issued, the writ of the 18th of December. It encloses a courtesy copy of that writ, and it requires McCann Fitzgerald to step aside because they are allegedly conflicted. I will read the last full paragraph in the letter. It says: "We have read with interest the exhibit to the affidavit of Mr. Gogarty lettered G, and in particular the invoice dated the 11th of October submitted by you on the instructions of Mr. Gogarty on behalf of our clients JMSE to the ESB. We note with particular interest that Mr. Gogarty had, in fact, concluded a settlement of the claim against the ESB arising out of the Moneypoint Project and had received an agreed final offer from them on the 29th of September, 1989, prior to the execution of the settlement agreement of the 3rd of October, 1989. By reason of Mr. Gogarty's breach of duty and or misrepresentation and or fraud in failing to disclose prior to the execution of that agreement, that he had already concluded a settlement with the ESB, we have instructed our client's, Dublin lawyers, to issue further proceedings

against Mr. Gogarty in this regard". What happened to those proceedings, Mr. Oakley?

A. I don't recall.

256 Q. Well, they were never issued; isn't that right?

A. That may be the case, I can't recall.

257 Q. I can't show you a document that doesn't exist. I am putting to you that no writ was ever issued from your clients in accordance with the instructions you claim to have on the 10th of January of 1990?

A. That may be so.

258 Q. And I am putting to you again that that was because you knew quite well that, or rather your clients knew well that the original arrangement with the ESB had, in fact, been notified to and sanctioned by Mr. Reynolds and Mr. Murphy prior to the 3rd of October?

A. Wholly and completely and utterly untrue.

259 Q. How can you speak for Mr. Reynolds, Mr. Oakley?

A. From my knowledge at the time no one was aware that this deal had been concluded.

260 Q. All right. Well --

A. Not Mr. Murphy, because he was outraged when he found out what had happened, and as far as I recall from discussions around that time, no one else in the company was aware.

261 Q. Very good, Mr. Oakley.

A. But I will, of course, quite properly leave Mr. Reynolds to answer for himself.

262 Q. Mr. Oakley, if I am wrong in what I put to you as Mr. Gogarty's reason perhaps you will volunteer to the Tribunal the reason why you believe they never issued?

A. I said at this distance in time I can't recall.

263 Q. You have no idea whatsoever?

A. I have no idea what in the circumstances may or may not

have changed at around January of that year.

264 Q. Of course proceedings which Mr. Gogarty took were eventually compromised some five months later in the middle of June of 1990. You are aware of --

A. I was not aware of that, no. I wasn't involved at that stage.

265 Q. I think the last bundle of documents that, the last document on the bundle is the Notice of Discontinuance of Mr. Gogarty's action?

A. Yes, but I had no part in that.

266 Q. Yes, but on the face of it, it suggests that Mr. Gogarty's proceeding were not discontinued until June of 1900; isn't that what it says?

A. Yes, but I had no - it appears to be that, but I have no knowledge of it myself personally.

267 Q. Yes. So clearly it wasn't want of time for the issuing of those proceedings that, you said you had instructions to issue on the 10th of January of 1990?

A. I couldn't say.

268 Q. Yes. Now, Mr. Oakley, I want to deal with the question of the actual commercial deal, to put it that way, made between the parties. I think you said in answer to Mr. O'Neill that the arrangement was that Mr. Gogarty would enjoy half of the fruits of his labours; is that correct?

A. That was certainly my understanding at the time, yes.

269 Q. Yes. And that was expressed, I think quite candidly in the correspondence moving between yourself and Mr. Sheedy?

A. Yes.

270 Q. And it is obvious I think from what we know even now, that the very height of the Murphy case, so to speak, with regard to what offer was available or on the table, is that Mr. Sweeney said he had either got an offer of £130,000 or

could get one; isn't that so?

A. Certainly the information given to me was a little bit more than that, that there had been specific discussions that would result in an offer of 130,000.

271 Q. Yes. Well, there is a difference between us, Mr. Oakley. There is no point in ventilating it now. Let's say for arguments sake that you are correct and there was an offer of £130,000, though of course Mr. Gogarty says that's not so?

A. He accepted it, he didn't dispute it and he was happy to amend the Heads of Agreement, and indeed insert into the written agreement the figure of 130,000. May I say having met Mr. Gogarty, I don't believe he would have given up a penny of what he regarded as his pension entitlement, unless he was on pretty weak ground.

272 Q. Well, Mr. Oakley, whatever about your suppositions, he was not happy to accept it, he was prepared to accept the variation in the agreement, but what I am putting to you is a very different question, there is no suggestion, is there from your knowledge, that over £130,000 was on offer from the ESB before Mr. Gogarty set to negotiations with them; isn't that right?

A. Could you repeat the question?

273 Q. Are you aware of any higher offer from the ESB above the sum of £130,000 before Mr. Gogarty began his negotiations?

A. I am not aware of any higher offer over and above £130,000 until I became aware of the 560,000 settlement.

274 Q. Yes. And Mr. Murphy in fact was happy with the amount that Mr. Gogarty had negotiated with the ESB; isn't that right?

A. I am sure he was happy with the overall conclusion of the settlement of the claim, but he was certainly not happy

with the fact that he believed he had been deceived, had the wool pulled over his eyes, whatever way you like to describe it, by Mr. Gogarty, in relation to the benchmark figure that was disclosed by him.

275 Q. But can you say, even with the benefit of hindsight, Mr. Oakley, as to whether or not there was any reason to believe by you or anybody else, that more than £130,000 was on offer from the ESB before Mr. Gogarty went to work?

A. I am not aware that there were any other figures that were offered by the ESB other than the 560,000, that is not to say that there may not have been other figures proposed. I didn't see the files, Mr. Gogarty had them, I moved from 130,000 to 560,000 which is the figure that Mr. Gogarty had actually agreed prior to the agreement of the 3rd of October.

276 Q. So do you have any reason at all to suggest to the Tribunal that, in fact leaving aside what was said or not said, in fact the deal between the parties was in fact the deal that was delivered, namely that Mr. Gogarty got the fruits of his labours, in that he got half of the difference between the offer standing for the ESB before he began to work and the eventual settlement figure?

A. No.

277 Q. You have no reason to disagree that --

A. No, sorry, I am saying no, I disagree with that.

278 Q. Tell me why?

A. I disagree with it because it is clear that as an employee of the company Mr. Gogarty having complete control of the files had a duty of disclosure in this manner to tell his employer, to tell the company, to tell me, to tell Mr. Copsy, of what ever figure he had by reason of his negotiations. It was clear as anything, that Mr. Gogarty



owed us that duty of disclosure. And I actually notice with interest, whilst you are on the point, I have read some of the transcripts, and I actually read the disclosure, sorry the evidence given by Mr. Conroy. I found it very interesting that Mr. Gogarty actually says in relation to this incident that "he pulled the wool over the eyes of my client" or words to that effect.

279 Q. Well, Mr.--

A. So if he is admitting it why is there such a difficulty?

280 Q. Mr. Oakley, Mr. Conroy didn't give evidence at all, is it Mr. Gogarty's transcript?

A. It comes up somewhere in relation, I have read that he says "he pulled the wool over our eyes", that is the truth of the matter, he did.

281 Q. You said you read that in the transcript of Mr. Conroy, that can't be right, whatever else is right?

A. I have seen it somewhere, I am sure we can identify it.

282 Q. Now, can I ask you this, Mr. Oakley, you say the only reason the deal wasn't effectively deferred on between the parties was because he didn't disclose fully to Mr. Copsey or to yourself or to Mr. Murphy the dealings with the ESB; is that right?

A. It is because he did not disclose the fact that there was an offer on the table that exceeded that which he was disclosing.

283 Q. Yeah, what offer was that?

A. He had the draft agreement, already prepared an invoice that showed that there was an offer on the table of 560,000 plus VAT.

284 Q. That's not what we are discussing, I think we agreed that there was an operative date, isn't that so, after which Mr. Gogarty would go to work and negotiate with the ESB and

anything that, any increase on the offer after that time,  
half of it would go to him; isn't that so?

A. That's the 3rd of October the day we signed the agreement,  
that's what it says, you can't escape from the wording.  
What he says on that occasion is "This agreement is made  
the 3rd of October", we made the agreement that day. I  
don't think there is any doubt from the correspondence put  
in the context of the first letter from Mr. Sheedy to me,  
that we were actually trying to deal with matters on an  
amicable basis, that Mr. Gogarty should have disclosed  
exactly the figure that he was aware of was already  
offered.

285 Q. Now, was that effectively the deal that was reached between  
you in June and July on the exchanges of correspondence  
that Mr. O'Neill has put to you?

A. No, because otherwise why did we have an agreement that  
said "This agreement is made the 3rd of October"? We would  
have had something else that says "This agreement merely  
records in writing an oral agreement made way back in  
March, April", whenever it was. It did not. It said  
"This agreement is made the 3rd of October". And that  
was the basis upon which I, Mr. Copsy, and I believe  
genuinely Mr. Sheedy and Mr. Gogarty were concluding that  
agreement against the background of the first letter that I  
had received from Mr. Sheedy.

286 Q. Yes. But in fact you know that Mr. Sheedy has given  
evidence, and Mr. Gogarty has given evidence, that the deal  
effectively was done and concluded between you much earlier  
than that?

A. I am aware that they have put that forward as a  
proposition, just as I am sure you appreciate I have a  
written agreement that says "This agreement is made the 3rd

of October, 19", whatever it is, 1989.

287 Q. Yes. Now, in relation to that, there was no effort made to set aside the agreement at any time; isn't that so?

A. How do you mean "set aside the agreement"?

288 Q. No effort made to set aside the agreement on the basis that there had been misrepresentation or fraud on the part of Mr. Gogarty?

A. What were the proceedings that were issued?

289 Q. The proceedings you issued. Mr. Oakley, you are a solicitor, you should know a summary summons seeking repayment of debt?

A. A summary summons seeking repayment of the money to us, yes.

290 Q. There was no effort made to set aside the agreement, you understand the distinction?

A. Yes, I understand the distinction.

291 Q. Will you answer the question?

A. I don't recall any issue being taken on setting aside the agreement, no.

292 Q. So of course if you are right, and if, in fact, the agreement was wrong or rather was voidable by reason of some misrepresentation of a fundamental nature by Mr. Gogarty, and if Mr. Murphy was as mad as you say he was, can you explain why those proceedings were never taken?

A. I don't think I described Mr. Murphy as being mad.

293 Q. Annoyed?

A. Sorry, he was annoyed, and I think the reason that those proceedings were not taken was the degree of importance that Mr. Murphy believed Mr. Gogarty had to his organisation in relation to one particular contract other than the Moneypoint contract.

294 Q. Yes.

A. And of course I am referring to the Sizewell B contract.

295 Q. Now, Mr. Oakley, the position I think is that you have been in touch with the Murphys about the evidence you are giving here today; isn't that right?

A. I was asked to prepare a statement, which I did.

296 Q. Well, when were they first in touch with you, Mr. Oakley?

A. I can't recall to be perfectly honest. I was asked to prepare a statement, I think it may have been probably March of 1989, sometime around that time.

297 Q. 1989?

A. I beg your pardon, 1999. I think I was approached and asked if I could recall various incidents in relation to Mr. Gogarty, if I could, this particular incident, the incidents in relation to his affidavit, and if in due course I could prepare a statement.

298 Q. And you, did you tell them what you remembered about it at that stage, Mr. Oakley?

A. I told, I recounted what I have recounted in my statement.

299 Q. Yes, and when did you do that?

A. The statement was prepared shortly before October, the date when I signed it.

300 Q. When did you first give them, give Mr. Michael Fitzsimmons or anyone on behalf of the Murphy interests --

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MR. HERBERT: That's privileged information. I know I don't represent Mr. Oakley as such, but I do represent Mr. Fitzsimmons, and that question should not be asked. I am instructed by him, that is seeking my instructions and what my instructions were. It is enough to say he was asked to give the statement. He said when he gave it, that's it.

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MR. O'MOORE: No, it is not. This gentleman isn't

represented by Mr. Fitzsimons at all. He is a witness.

And Mr. Herbert has said time and again it is not his witness. All I am asking is when he communicated, the date or approximately the date when he communicated this information to Mr. Fitzsimons.

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MR. HERBERT: Any communications with my solicitor are privileged.

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MR. O'MOORE: Even by a witness.

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MR. O'NEILL: Only, Sir, for the purposes of offering legal advice and not otherwise, not in the capacity --

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CHAIRMAN: Certainly not in regard to giving him the date of the statement, whatever else may be.

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MR. HERBERT: He has given the date of the statement.

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CHAIRMAN: I want to know, is there any reason why he shouldn't give it on oath?

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MR. HERBERT: He has just done so.

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MR. O'MOORE: Mr. Herbert knows quite well that's not the question, the question is when did he give Mr. Fitzsimons the information contained in the statement.

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MR. HERBERT: What relevance is that to Mr. O'Moore? That's exactly the same question as asking to inquire behind when you took statements or investigating from people. The statement was asked for, the statement was

given, it is no concern of Mr. O'Moore's apart from that, unless he is going to say that there was some impropriety involved. If so, let's hear what it is before he asks any more questions.

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CHAIRMAN: In my opinion there is no privilege attaching to the information, there is no legal advice being sought by this witness from the solicitor concerned, and he wasn't the solicitor's client. That is my view of the matter, and I accordingly allow the question and require it to be answered.

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301 Q. MR. O'MOORE: Would you like to answer the question?

A. Would you repeat the question?

302 Q. When did you first transmit to Mr. Fitzsimons or anybody on behalf of the Murphy interest the information contained in your statement?

A. I can't specifically recall. As I say I think it was earlier in 1999 that I was contacted and I, I recall trying to put together various drafts of the statement as I attempted to recall matters over a preceding 11 years. But I can't give you an exact date when I gave the information. I prepared a draft, the draft is my own and I think that was sometime in September.

303 Q. Did you give the information orally to Mr. Fitzsimons or anybody on behalf of the Murphy interest prior to September?

A. We had a brief discussion when he highlighted the points he wished me to cover in the statement, and I prepared a statement which I gave to him in draft sometime I think in September, as a result of which I then prepared the final version with very little alteration, which I signed in

October, yes.

304 Q. When did you have, did you have a consultation with Mr. Fitzsimons during the course of last year?

A. No, not in the legal sense of the word, I had a telephone conversation with him.

305 Q. Did you meet him?

A. I met him in Dublin, in March I think it was.

306 Q. In March, yes. Now, that goes far beyond a telephone conversation, Mr. Oakley, you met with Mr. Fitzsimons in March of last year here. I take it this was the only purpose of your trip?

A. No, it wasn't.

307 Q. I see. So it was adjectival to some other reason for visiting Dublin?

A. I happened to be in Dublin and I had never met Mr. Fitzsimons before, so I made a courtesy call and met him for the first occasion.

308 Q. Yes. Did you talk about --

A. I talked about what it was, the issues, and tried to remember some of the events that had occurred 11 years earlier.

309 Q. Well now, what about your meeting with Mr. Gogarty on the 26th of April, 1989, you remember that meeting well, don't you, Mr. Oakley?

A. I remember the meeting well in this sense, that I know that it took a long period of time, I remember it because of the football match, as I have identified, and I remember that he wasn't particularly interested in the affidavit, even though the information I put in the draft affidavit had come from the telephone conversation with him.

310 Q. Well, you remember the meeting well, Mr. Oakley, that is what you say in your statement?

A. Well, I remember it because of particular things that occurred that stem in, that jog my memory in relation to it.

311 Q. Yes, you remember the meeting well?

A. I remember the meeting reasonably well with Mr. Gogarty, yes.

312 Q. Yes. There is no trick, you say it yourself in your statement, Mr. Oakley?

A. Yes, for the reasons I have identified.

313 Q. And did you discuss that with Mr. Fitzsimons last March?

A. I discussed - yes, I discussed with Mr. Fitzsimons the meeting that I had had and my recollection of it.

314 Q. Now, one of the most striking things about that meeting, as you describe it, is your statement to Mr. Gogarty that "I do not buy evidence". Did you mention that to Mr. Fitzsimons?

A. Yes, I did. Yes, I recall mentioning that to him.

315 Q. You see, Mr. Oakley, what's strange about that is that during the course of his evidence, Mr. Gogarty has given evidence about that meeting with you, you are aware of that?

A. Yes, I am aware that he has given evidence in relation to that meeting.

316 Q. Yes. And that evidence is quite different to your account of that meeting. That evidence is to the effect that he met you in Killiney and that you specifically said that if he didn't swear the affidavit his pension would not be resolved and it would be deferred.

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MR. COONEY: I wonder just a matter, would Mr. O'Moore identify which volume of the transcript?

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317 Q. MR. O'MOORE: I will, Volume 4, pages 44 and 45.

A. And that is untrue.

318 Q. Well, we will come to that now, Mr. Oakley, in due course.

I will just hand you up a little bundle of the relevant transcripts. (Documents handed to witness and to counsel).

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MR. COONEY: Would Mr. O'Moore identify those, please?

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CHAIRMAN: Presumably the bundles of transcripts will identify themselves, I hope.

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319 Q. MR. O'MOORE: I will tell you what they are, two experts

from Day 4, pages 18 to 21 inclusive, and the second is the one I identified, that's pages 44 and 45.

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Could you look at page 44, it is the second last --

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MR. COONEY: Just to help the witness, would Mr. O'Moore also tell us what date that evidence was given on, Day 4?

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MR. O'MOORE: Yes, of course. That was on the 14th of January last year.

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CHAIRMAN: Sorry, just a moment. 18 to 21. Yes.

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MR. O'MOORE: No, if you look first, Chairman, at page 44.

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CHAIRMAN: 44 and 45, right.

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320 Q. MR. O'MOORE: Yes. Mr. Oakley, you see page 44?

A. I see page 44.

321 Q. Do you see the last four paragraphs of that page, beginning now "I came home from that meeting", do you see that?

A. Yes, I do.

322 Q. I will read it out to you. "Now, I came home from that meeting, you see, and shortly after that, you know, ten days, fortnight, three weeks after that, I got a phone call when I was at home and it was from Mr. Oakley who was in Dublin and he asked me would I meet him - he was staying in the Fitzpatrick Hotel in Killiney, and would I meet him there to talk about the affidavit following our London meeting and I went to meet him and he took me up to a room, his bedroom and he opened his case and he took out of the draft affidavit and gave it to me to read and I read it. I wasn't happy with it fully, you see. And I said to him I would like to get independent legal advice on it." "Oh", he says, "sure I'm advising you. Joe Murphy told me I am acting for you in this". "Well", I said "You are acting for Senior", and I said "I would like to discuss it with an independent solicitor". "Well", he says, "two things I must point out to you if do you that, and the first is this, that you will bear all your own costs". I says "That's funny because", I says, "Senior told me, he promised me he would pay all my costs". And he says, "The second thing is this, that if you don't swear the affidavit, if you don't swear that affidavit your pension is deferred, won't be resolved", that is that man said to me, a solicitor, and that worried me very much. Up to then I had no solicitor since I had, Ms. McMahon had pulled out and Seamus Hourigan - my consultant advised me to get a solicitor and he recommended Gerry Sheedy. I discussed it with Gerry Sheedy and he said not to sign anything until I

referred it to him.

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Now, my difficulty at that time was that, what I am saying to you is a serious thing to make that statement about a solicitor, but the fact is - and worse still, because it was his word against my word, do you see my point? But there is a letter missing on that file where he wrote to Gerry Sheedy, making, confirming that threat, that the affidavit must be sworn and furnished before my retirement package was finalised, that's a letter on file. I am asking you, please in the name of God produce all of the facts, warts and all as I says, that's all I am saying, that's all I am saying. That letter has to be dug up".

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Now, the sense of that description of the meeting is very clear, that you were the person who raised with Mr. Gogarty in no uncertain terms the linking of the swearing of the affidavit with the payment of his pension; isn't that right?

A. That's the essence of the transcript, but it is untrue.

It is not a reflection of the meeting I had with Mr. Gogarty. Mr. Gogarty in the course of the meeting, let me put this in context, there are a number --

323 Q. Mr. Oakley, if you wait for the question you can answer and put it in context?

A. Can I answer? I would like to put it in the context of the way in which the meeting actually took place. Firstly, I didn't telephone him when I was in Dublin or in Killiney, I actually had telephoned him prior to the meeting, and I had telephoned him. To my recollection, although I am subject to correction, on more than one occasion, I think two occasions. The first occasion was shortly after he had

collected the affidavit whilst he was in London, and I telephoned him to ask him to go through particular allegations in relation to Mr. Conroy. From the discussion that I had on the telephone I prepared a draft affidavit. I then telephoned him to tell him that I was coming to Dublin and I would like to meet him, and I may have telephoned him when I got to Dublin to tell him which hotel I was in, but I certainly had a prearranged meeting with him in Dublin, I didn't just arrive here and catch him on the hop, as it were. And I came with a draft affidavit.

And for three-hours or thereabouts in the discussions that I had in my room with Mr. Gogarty, he went through, in what I can only describe as prevarication in raising various issues on the affidavit, which I would emphasise I had substantially drafted from the information he gave me on the telephone. And interspersed with what I regarded as prevarication were the comments like "I wish I could get my pension sorted out with Mr. Murphy. Of course I really do need to get my pension sorted out with Mr. Murphy. Of course Mr. Murphy promised me my pension", and so on, so on and so on. So I do have a very clear recollection that not only do I not mention his pension, almost in exasperation towards the end of this meeting I actually said to him "I am not here to deal with your pension, I am here to deal with the affidavit evidence that you actually agreed to give and I don't buy evidence".

324 Q. Are you finished now, Mr. Oakley?

A. Do you mind me giving the full explanation?

325 Q. I want to know are you finished?

A. That's kind of you to ask.

326 Q. You are?

A. I have finished.

327 Q. What surprised me about this account. If you told Mr. Fitzsimons about it in March of last year. As you say you did, that it was never put to Mr. Gogarty by Mr. Cooney in two successive cross-examinations of him over a period of time, that Mr. Gogarty's account is incorrect. Have you any explanation for that, Mr. Oakley?

A. I can't --

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MR. COONEY: Chairman, I don't think I was cross-examining Mr. Gogarty in March, except on the re-examination, if you remember I was clearly restricted on the subjects which I could raise in re-examination, but I think, again I have to check this, my principle cross-examination of Mr. Gogarty was completed before March, or at least very shortly into March.

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MR. O'MOORE: Well, in fact, Mr. Gogarty's examination or cross-examination by Mr. Cooney finished on the 5th of March, and he then sought to re-examine him, and at no stage did Mr. Cooney say that fresh information had come to hand that would suggest he may cross-examine on a different topic. That's not for this witness, I asked this witness a question and he has answered.

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MR. COONEY: With respect, Mr. Chairman, I have heard some bad points made at this Tribunal, this must be the worst.

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CHAIRMAN: Let's have a response and not the comments.

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MR. COONEY: My cross-examination of Mr. Gogarty had

finished on the 5th of March, and you will recall, Mr. Chairman, as we all will, that it was an interrupted cross-examination, shall we say. I don't refer to that matter any more, it would have ended earlier had that interruption not occurred. I then did recross-examine Mr. Gogarty I think sometime later in March, and that was subject to your expressed permission, and you granted your expressed permission only in the basis that we notified you specifically of the topics which we wanted to raise.

Now, in view of that, Mr. Chairman, I think that the point that Mr. O'Moore is making is an extremely bad point.

328 Q. MR. O'MOORE: Now, to pass on, to continue to examine the witness, and we can have this debate at a later stage.

Mr. Oakley, can I ask you to look at a letter of the 7th of August of 1989 which appears in the black bundle put together by Mr. O'Neill for you. It is at Tab 4, Document 287

MR. COONEY: Mr. Chairman, could I ask for a ruling on this? Is it in order for counsel to refer to one extract from a series of letters comprising of correspondence without referring to the remainder of correspondence which may change the sense of the extract --

CHAIRMAN: Mr. Cooney, as far as I know the entire of this correspondence has just been gone through in your absence yesterday and the day before.

MR. COONEY: No, with respect it wasn't.

CHAIRMAN: This book was gone through virtually page by page, am I not right?

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MR. COONEY: I have read the transcript, this correspondence was not gone through with this witness page by page.

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MR. HERBERT: Sir, you are thinking of an earlier period.

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MR. O'NEILL: The documentation, Sir, which deals with the question of pension was dealt with only today and after lunch and dealing with specific --

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CHAIRMAN: I beg your pardon.

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MR. O'NEILL: Events rather than the fine print of it. However, if the witness has a particular difficulty obviously in relation to a document which is put to him, or if he indicates that the content of that is either amplified or clarified in either earlier or later correspondence, of course such documentation will be produced. I merely indicate that this is an extract from voluminous correspondence, as you appreciate, and of course if the witness has any difficulty in answering a question or requiring a particular document it will be made available to him for the purpose of his response.

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MR. COONEY: Sorry, for interrupting again, Mr. Chairman. My point is this; obviously at some stage Mr. O'Neill intended to deal with this, otherwise he wouldn't have included this correspondence or part of it in the black

book for his own good reason, perhaps to save time he decided not to do it, and obviously Mr. O'Moore has taken up the point. Since Mr. O'Moore started his cross-examination of this witness, Mr. Chairman, he has referred to correspondence but not in sequence with any portion of letter. We know, Mr. Chairman, this correspondence was opened before, the letters qualify one another, they are letters from one party to another in expressing a point of view, and a subsequent letter may qualify or oppose that point of view. It is, in my respectful submission, somewhat misleading to the witness to refer merely to one portion of one letter which forms part of a scheme of correspondence, I may be wrong, but I respectfully submit in fairness to the witness all of the correspondence should be put to him for his comment.

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CHAIRMAN: My opinion of this matter is a very simple one. Counsel is entitled in a cross-examination to choose the documents which he is going to cross-examine about. I see nothing wrong with that. This witness will be examined by Mr. Cooney or Mr., his colleague, and the situation is capable of being remedied if any unfairness has occurred by simply saying "did you not", "is that letter not to be read in the context of one three days before, five days subsequent", otherwise it amounts to one or other party being able to dictate how the other party is going to deal with their case, and it also involves me involving, directing how somebody is going to conduct their case, which I certainly won't take part in.

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I see no good reason why it can't be sorted out by yourself or your colleague in due course, that you feel there is an



ambiguity arising from the manner in which some part of correspondence or alternatively, provided it is done without interruption of counsel on his feet, invite the letter of the 8th of 10th or 12th to be also put. But I certainly am not going to take over the running of Mr. O'Moore's cross-examination.

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MR. COONEY: I take your point, Mr. Chairman.

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CHAIRMAN: I see your point, it is desirable but I don't want either you or I directing Mr. O'Moore as to how he is going to do his business.

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MR. COONEY: I take your point, Mr. Chairman. As you know, of course Mr. Oakley has no legal representation at this --

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CHAIRMAN: He doesn't have legal representation.

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MR. COONEY: Please allow me to finish. Time and again this Tribunal has said all witnesses are its witness, and it will call the witnesses and deduce the necessary evidence, including evidence based on correspondence, it seems - and that they will do so impartially and fairly to everybody else. It seems rather odd in this case that Mr. O'Neill came to this portion of the Tribunal prepared to deal with this, we gather that from the documents contained in the book of documents, he decides not to do it, Mr. O'Moore then starts his cross-examination and uses that correspondence in a way which, in my view, is rather partial and a bit misleading to the witness. That's the only point I wish to make.

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MR. O'NEILL: The documentation, Sir, was referred to by me.

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MR. COONEY: It wasn't opened.

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MR. O'NEILL: Every line of the documentation wasn't read, it is not my intention to sit here for the afternoon, reading through correspondence which has already been dealt with by some witnesses earlier. One obviously must select the issues which arise in the correspondence. I introduced this documentation to establish the sequence of events which passed between the May of 1989 and a date in October 1989, to establish if it was the case that cordial relationships existed between Mr. Gogarty and Mr. Murphy during the period when the money was paid over to Mr. Burke.

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That I, that is the purpose for which this documentation was introduced. In the event that counsel representing another party reads that documentation and finds in that documentation a point or an issue to take up with the witness, that counsel is perfectly free to do so, but the documentation has served the purposes for which it was required. It is available to all parties to comment on. The witness is the person who wrote the correspondence and is the only person who can interpret his own letters written to Mr. Sheedy, and I see no suggestion of unfairness, partiality or anything else as inferred or suggested by Mr. Cooney in this.

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MR. COONEY: Just, I will confine myself to this last

remark: I will ask you, Mr. Chairman, to bear in mind what Mr. O'Neill has just said, and at the same time bear in mind that not once, not twice but three times he has availed of the opportunity to put in detail on the record of this Tribunal and before the public, the damaging; untruthful but damaging allegations contained in Mr. Conroy's affidavit.

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CHAIRPERSON: Where did that comment come from in this debate? However, let's proceed on the matter in hand.

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329 Q. MR. O'MOORE: There is a letter of the 7th of August, 1989, sent by you, Mr. Oakley, to Mr. Sheedy. I think during the time Mr. Cooney has been on his feet you would have had a chance to read it; would that be correct?

A. I have, yes.

330 Q. You see the relevant portion in my submission is the second last paragraph of the statement, and it reads as follows:  
"At the same time we would ask you to confirm that your client approves the draft affidavit forwarded to you some weeks ago and will swear the approved affidavit on or before completion of the settlement agreement"?

A. Yes.

331 Q. Now, why was it put in that particular way, Mr. Oakley? Why did you need to have the sworn affidavit on or before completion of the settlement agreement?

A. I didn't.

332 Q. Why did you --

A. In fact I didn't need the affidavit at all as it turned out at that stage.

333 Q. Why did you say you did?

A. To test --

334 Q. To test what?

A. To test whether indeed Mr. Gogarty was going to use the provision of the affidavit in the way that I had got the impression he was intending to do in the discussion I had on the 26th of April, but as you know from the subsequent correspondence I was pulled up on the point by Mr. Sheedy, and I acknowledged that the two events were wholly unrelated, which of course was quite true.

335 Q. So there was a trap laid by you to see whether Mr. Gogarty would blunder into it and say "yes, the swearing of the affidavit is conditional on the pension arrangements being put in place"; is that your serious evidence, Mr. Oakley?

A. Mr. O'Moore, in the discussions that I had with Mr. Gogarty he had made it subtly very clear that he was not going to give an affidavit unless he got his way in relation to his pension and that those pension arrangements were made.

I have no doubt that he thought that he had a particular hold in that regard, as far as Mr. Murphy was concerned because of course he was aware of Mr. Conroy's affidavit, he was aware of the allegations contained in that affidavit and he was aware that Mr. Murphy had asked him if indeed he would respond to that affidavit. But in the interim period of course, as we now know, the affidavit evidence, whilst there may have been an outstanding directions order for - filing had been superseded by the fact that an application was made in the Isle of Man for a preliminary point to be taken whereby no affidavit evidence was required at all.

336 Q. So the ordinary reading of this letter which suggests that the affidavit must be sworn and made available to you by Mr. Gogarty on or before the completion of the settlement

agreement is in fact incorrect? That reading of that letter in that way would be wrong, would it?

A. No. It was, I was asking for the thing to be completed by that stage and as I said, it was something that Mr. Gogarty had very subtly made clear was going to be, that I wasn't going to get the affidavit prior to his pension being agreed. I am putting the two events together, Mr. Sheedy pulled me up on it. I answered the point eventually in correspondence, which I can't immediately find, but I recall saying to him "you are quite right. The two events are not connected".

337 Q. We will in fact come to that letter in just a moment, Mr. Oakley. Just to stay on this letter, this letter saying that you want the affidavit sworn by the time the settlement agreement is completed. Doesn't that suggest, I will just ask the question, Mr. Oakley, before you purport to answer it?

A. Sorry.

338 Q. Doesn't that suggest that the two events were linked and were being linked at your insistence?

A. No.

339 Q. I see. And instead it was a test to see whether or not Mr. Gogarty would in fact link the two; is that right?

A. Well, he had already.

340 Q. But that was the purpose of having it in this letter, regardless of what he had or hadn't done before, it was a test to see whether or not he would link the two in open correspondence?

A. It was that and going back to how long had been out, the matter had been outstanding. I had given him the affidavit on the 26th of April, 1989, nothing had, I had heard nothing in relation to that affidavit after that date from

Mr. Gogarty, as you see from the correspondence it seemed that Mr. Sheedy didn't obtain the copy or didn't receive the copy that I sent to him. It was not a particularly difficult affidavit, it was purely factual and the delay, the prevarication, whatever you like to call it seemed to me to be consistent with what, with the attitude Mr. Gogarty was adopting at the meeting that we had on the 26th of April.

341 Q. No, but you don't say "Look, can we have it in a week or two weeks", you expressedly link the delivery of the affidavit, don't you, with the completion of the pension --

A. But in factual terms, "Can I pick up the affidavit when I come over to sign the agreement".

342 Q. You don't say that either, you say "The two, one will be done or else the other won't be done"?

A. Before completion, yes, of the agreement.

343 Q. Now, there is a letter of the 7th of September of 1989 which should be in your black booklet, as well at Document 307, page 1003.

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MR. COONEY: There are other letters.

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MR. O'MOORE: There are plenty of other letters, Mr. Chairman, between those, surely they should be --

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344 Q. MR. O'MOORE: Now, Mr. Oakley, have you found that letter?

A. I have, yes.

345 Q. I understand from your statement that you can, before we deal with this letter that you continued to give the impression to Mr. Sheedy and Mr. Gogarty that the affidavit was required, that's quite clear from your letter of August; isn't that right?

A. That's quite right. There was a direction in the Isle of Man that affidavit evidence had to be filed by a particular date.

346 Q. When was that?

A. I don't recall at this distance in time, but that was the urgency, that was the reason for wanting the affidavit evidence in. But that is not, but by that stage the decision had been made to pursue the matter by way of the preliminary point, which of course was hoped to be successful.

347 Q. Well, it had been successful at that point, hadn't it, Mr. Oakley, the 28th of June of 1989? Wasn't that when the Deemster gave his decision?

A. Yes, he did, you are quite right.

348 Q. And Mr. Cooney I think said, much earlier in this Tribunal, that decision had effectively stopped the Isle of Man proceedings in their tracks. Would you agree with him on that?

A. Yes they had, yes.

349 Q. So did you need the affidavit from Mr. Gogarty at all?

A. There was some reason why at that stage we needed it, there was, I think even up to November there were matters going on in the Isle of Man in relation to these proceedings, so it wasn't completely dead, but it probably was a matter of getting, making sure I had completed the task of getting all of the available affidavit evidence, as indeed Mr. Gogarty had promised. I didn't actually think there was going to be a dispute between us as to the provision of the affidavit.

350 Q. But the securing of an affidavit from Mr. Gogarty was of little enough significance at that time; isn't that so?

A. Probably in practical terms was - the case, maybe it is me

dotting the i's and crossing the t's. I like to make sure, in case something happens, all of the evidence that is necessary and is available is prepared and there ready to go if it becomes necessary.

351 Q. Yes. Well, we have seen you look for it in August, on the 7th of September you said at the fourth paragraph of the first page of that letter, Mr. Oakley?

A. Yes.

352 Q. And the last sentence, "Unfortunately the need of" - I beg your pardon, I should read the entirety of that paragraph. "With regard to the affidavit, I met Mr. Gogarty in Dublin on the 26th of April of 1989 when I took detailed notes from him with the expressed purpose of preparing an affidavit for use in the Isle of Man proceedings. This was, of course, prior to any discussions between our clients in May of 1989. As such both the requirement for the affidavit and the detailed discussions leading up to the drafting of the same predate any discussions between our respective clients in connection with the proposed settlement. For the avoidance of doubt, the two issues are entirely unrelated". That, I think, was said after Mr. Sheedy pulled you up, to use your phrase?

A. Yes, that is right.

353 Q. "Unfortunately the need for the affidavit in relation to the Isle of Man proceedings was urgent". Was that so at the time?

A. In the sense, there was another hearing scheduled for November as I recall, certainly after the date of this letter that may have required the affidavit evidence dealing with Mr. Conroy, yes, you know, that my state of knowledge at that time was that there was still matters that needed to be resolved in relation to the Isle of Man



proceedings, although it is quite correct that the judgement given by Deemster Corrin was regarded as the knockout blow as far as Mr. Conroy was concerned.

354 Q. Yes, but in any event the correspondence, both letters in August and September are correspondence, both about the delivery of the affidavit and the conclusion of the pension arrangement; isn't that right?

A. That's quite right. As you rightly point out in the letter when I was pulled up by Mr. Sheedy, an admonishment I readily accept, I also readily accepted that the two events were wholly unrelated and acknowledged that in writing.

355 Q. Now, was there a meeting at offices in London in April of 1989 before you met Mr. Gogarty in Killiney or any time around that time which Mr. Gogarty attended?

A. With whom?

356 Q. With Mr. Murphy, Mr. Wadley, yourself and Mr. Gogarty?

A. It would help me if you could identify either the date or the subject matter of the meeting, because I can't at this distance in time specifically recall a meeting in April.

357 Q. Well, the subject matter of the meeting was, in fact, the question of the delivery of an affidavit by Mr. Gogarty?

A. To be honest I can't recall specifically meeting Mr. Gogarty in London. Let me just think for a minute. I recall Mr. Gogarty being in London but not me meeting him personally.

358 Q. Yes.

A. And I recall, I think, him collecting from my office or somebody collecting from my office a copy of Mr. Conroy's affidavit.

359 Q. Yes, because --

A. I don't recall, I have no recollection of actually meeting Mr. Gogarty around that time.

360 Q. Well, Mr. Gogarty has given evidence that he went along to a meeting, which in fact had been prearranged between yourself, Mr. Wadley and Mr. Murphy. He wasn't supposed to attend but he had a meeting with Mr. Murphy earlier in the day. He called around to the office and the question of him making an affidavit was discussed at that time. Is he wrong in that?

A. I couldn't say he was wrong, but I don't have any expressed recollection of it.

361 Q. Yes. Now, the final thing I want to touch upon with you is this; the proceedings taken in the Isle of Man, as I understand it predated the proceedings taken in England; is that so?

A. Yes.

362 Q. And there were comments I think made by either the Master of the English High Court or judge of the High Court in England which were derogatory of Mr. Conroy during the course of the English proceedings; isn't that right?

A. I think Master Gowers in the course of proceedings in the Kallon case, not in the main action in the UK, found that Mr. Conroy's two affidavits filed in those proceedings had a number of inconsistencies, and my recollection is that he described them in the course of his judgement, which was in favour of Kallon, as being either untruthful or unreliable, words to that effect.

363 Q. Yes. And that's the, they are the comments you were mentioning yesterday during the course of your evidence at the end of the day; isn't that right?

A. Those are the comments that I said had been made in respect of Mr. Conroy in the proceedings in the Kallon case, yes.

364 Q. And they weren't initiated until when, was it the second half of 1989 or late 1989?

A. No, I can't - I think it was early in 1989, but I can't recall the expressed date of these proceedings.

365 Q. Was it by the time of the Deemster's decision on the 28th of June of 1989?

A. I can't recall the sequence, the interplay of the two.

366 Q. Fine, that's something to be verified another way.

A. If you give me a date, it helps.

367 Q. Can you tell me in relation to the Isle of Man proceedings, prior to the Deemster's decision on the 28th of June had any effort been made to settle those proceedings?

A. Not that I can ever recall, no.

368 Q. Well, can I try to put a distinction between any efforts made to settle them prior to the 28th of June, if indeed such efforts took place, and the meeting that you had with Mr. Murphy and Mr. Shorthall at the time of the Deemster's decision at the end of June or start of July of 1989. You remember those discussions, don't you?

A. I remember the discussions with Paddy Shorthall, yes.

369 Q. And I think your evidence yesterday, you were quite blunt about the sort of discussions they were. I think if I refer to the transcript it may be more precise way of doing it, Mr. Oakley. You said at page 127 of yesterday's transcript, I will read it out to you: "It may do, except I can only come back to the reality as opposed to speculation. Let's come back to the reality of what happened in this case. As I said, Paddy Shorthall came after the judgement was given, after the preliminary point in the Isle of Man, to meet with both myself and Mr. Murphy Senior in London as an emissary on behalf of Mr. Conroy to attempt to negotiate a settlement. Those negotiations are almost exclusively on the bases of 'You are going to face difficulty with the Revenue because Mr. Conroy will

eventually go to them', because they clearly quasi blackmail point, if I can put it that way, and Mr. Murphy's response was 'Go away and do your worst', but not in quite such simple language". That's the end of your answer to Question 349.

A. Yes.

370 Q. Am I right in understanding, it is clear from that what Mr. Shorthall was saying during this attempt to settle the case, was that Mr. Conroy would himself, go to the Revenue and say to them what he had said on affidavit in the Isle of Man proceedings or something to that effect?

A. Well, the clear implication that Mr., was that Mr. Conroy would in some way attempt to harm Mr. Murphy with the Revenue. It wasn't specific, but it was a clear indication that Mr. Conroy would stop at nothing to get his money. Well, it was a quasi blackmail payment. I put it as a quasi blackmail, "If you don't settle you are going to get this".

371 Q. With regard to that, Mr. Oakley, that of course had never been said before the Deemster's decision on the 28th of June; isn't that so?

A. My recollection is that it came after the decision and before the November hearing, after the decision and I think before the November hearing.

372 Q. What you said at page 115 of yesterday's transcript was, and I quote again: "I mentioned Paddy Shorthall coming over to talk to myself and Mr. Murphy on behalf of Mr. Conroy at the time of the judgement in the Isle of Man". Is that right?

A. Yes, it was around the time of the judgement.

373 Q. Yes.

A. But it was after, my recollection is it was after the

actual judgement was given, and the judgement in a sense was the impetuous for the discussion.

374 Q. So what happened, if I understood you correctly is this; prior to the judgement of the 28th of June of 1989 there was no suggestion that Mr. Conroy himself would go to the Revenue; isn't that right?

A. There was no suggestion other than what was contained in his affidavit in the Isle of Man proceedings.

375 Q. Yes. So the sequence is this; an affidavit was filed in the Isle of Man, the proceedings, which as you have said were such that the affidavit would not be removed from the file or read on the file, it would be kept secret on the file; isn't that right?

A. That it was very unlikely that it would actually become public, yes.

376 Q. Yes. On the 28th of June we have the Deemster's decision; isn't that so?

A. That's correct.

377 Q. And at that time for the first time ever Mr. Conroy communicates to you and Mr. Murphy through Mr. Shorthall, that Mr. Conroy will go to the Revenue regardless of what happens in court; isn't that right?

A. Yes, the implication of the discussion was that he was going, he was not going to give up, and unless he got a settlement he would cause damage by going to the Revenue or, you know, shopping Mr. Murphy to the Revenue, words to that effect.

378 Q. Yes. So that was the development at the end of June or the start of July 1989, isn't that so? That Mr. Conroy was now threatening to go to the Revenue directly?

A. It wasn't exactly a development because it was ignored or rejected by Mr. Murphy.

379 Q. Well, it was the first time that that had been put in those terms; isn't that so?

A. I think from the moment that Mr. Conroy filed his affidavit in the Isle of Man proceedings Mr. Murphy, along with his professional advisors, was well aware where Mr. Conroy was going to eventually be coming from.

380 Q. Yes, but it was the first time it was communicated?

A. It was the first time it was made expressly, I accept that.

381 Q. As a threat?

A. As a threat, yes.

382 Q. One final thing, you mentioned in your statement that, at the very last paragraph, between 1988 and 1990 Mr. Murphy's intention was to rid himself of Mr. Conroy and Mr. Gogarty; isn't that right?

A. Yes.

383 Q. When did he first express to you the intention of getting rid of Mr. Gogarty?

A. Around the time of, the first occasion was around the time of the negotiations in relation to the ESB contract, as far as I can recall, I am trying to think as you are asking me the question, but I recall him saying to me that he had reached the stage where he wished for Mr. Gogarty to be out of his business affairs, he wished his pension to be negotiated and finalised and for him to get on and run his companies effectively. So I would date that around the time of these incidents, these events.

384 Q. Can you put a month or an approximate sequence on it?

A. I can't, because to be perfectly honest in this period there were a number of occasions where that view would prevail one week, one month and would change the next. I mean, for example, the clear intention was to negotiate

with Mr. Conroy, sorry Mr. Gogarty to agree his pension arrangements for him to leave the company, do whatever work was necessary as a consultant, which Mr. Murphy had identified as being particularly in relation to the Sizewell B contract, which was the thing that in the whole of this period concerned him more than anything else, certainly much more than the lands, and then be rid of both Conroy and Mr. Gogarty for good.

385 Q. Well, the short answer to that question is that you can't remember precisely when it happened?

A. No, what I am saying is it vacillated over a period of time, as indeed various other events occurred. I am giving the example, although Mr. Murphy was annoyed at what he saw was the deception or misrepresentation of Mr. Gogarty of the 3rd of November agreement, he overlooked it because he regarded Mr. Gogarty as being still, at that stage, essential to his business requirements, solely I think at that stage, in connection with the Sizewell B contract. The Sizewell B contract was a 20 plus million contract, that he regarded as being substantially, Murphy putting the, the limit of their technical expertise in relation to steel fabrication for a nuclear power station, and it really depended what was happening in relation to that contract as though whether he wished Mr. Gogarty to remain or go.

386 Q. So the short answer is you can't tell me?

A. I can't give you a specific date. What I am saying is it did actually vacillate over a period of time.

387 Q. Thanks.

A. You are welcome.

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MR. HERBERT: Mr. Chairman, I will be a little while, and

with your consent I won't start this afternoon. I think the witness has had a trying enough day. I wonder, Mr. Chairman, before tomorrow could you ask the Tribunal team if such are available, I can't be a hundred percent certain they are, I am working purely on a very vague recollection, if there are any documents in possession of the Tribunal team in relation to the Isle of Man proceedings, that's the Armoy proceedings, subsequent to the date of Deemster Corrin's written judgement on the 28th of June or indeed his indicated judgement in May of 1998.

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I have a recollection that there were some documents, but it is a very vague recollection, from the time that we were assembling this documentation, to be brought down to the Tribunal, some time in the, earlier on in the public sittings. I think there may be a number of documents which postdate Deemster Corrin's judgement in written judgement in June, the 28th, 1998, and I will be very obliged if the team could investigate that and if there are such, perhaps they might let me have copies of them in the morning?

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MR. O'NEILL: Yes.

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MR. HERBERT: I don't need them until the morning.

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MR. O'NEILL: It is my recollection, Sir, that there are at least two further orders of the Deemster Corrin upon the matter being relisted before him, I think on two occasions ultimately in November and I will --

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MR. HERBERT: I think there may be some filed notes and



correspondence as well, Mr. Chairman. As I said, I am totally reliant on my memory on this.

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MR. O'NEILL: It was opened, Sir, hoped, Sir, I appreciate we didn't reach it today to deal with three Local Authority witnesses who will be quite short, and they have been before the Tribunal awaiting an opportunity to give their evidence, obviously we will resume tomorrow and deal with them at the conclusion of Mr. Herbert's examination of Mr. Oakley. It would be of considerable assistance if you could estimate even --

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MR. HERBERT: I am sure, Mr. Chairman, we wouldn't even object if you felt there was a necessity to call them first, that's in your hands. I would have thought, Mr. Chairman, maybe an hour. I will try and keep matters very net and not to go over matters very much.

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MR. O'NEILL: Perhaps we might say not before 12 in respect --

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CHAIRMAN: For the Local Authority witnesses. Yes.

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MR. O'NEILL: I am grateful.

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CHAIRPERSON: 10:30 am tomorrow morning.

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THE HEARING THEN ADJOURNED TO FRIDAY, THE 21ST OF JANUARY, 2000.