

1 PLANNING TRIBUNAL - DAY 302

2 .

3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 5TH OF OCTOBER,

4 2001, AT 10:30 A.M.:

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Good morning, Sir.

9 .

10 CHAIRMAN: I want to correct an error that I made

11 yesterday afternoon.

12 .

13 I referred to Section 4 of the Tribunal of Inquiry

14 (Evidence) Amendment Act of 1979. It should have, in

15 fact, been Section 3 and Section 5, I think. Section 3

16 and Section 5. I was in error to that extent. My

17 apologies.

18 .

19 MR. HUSSEY: I had, in fact, been alerted to that, and

20 I explained that to my client. So there was no

21 misunderstanding.

22 .

23 CHAIRMAN: Thank you.

24 .

25 MR. HANRATTY: Mr. Finnegan, please.

26 .

27 MR. HUSSEY: Sorry, Sir, just before you proceed this

28 morning, Sir.

29 .

30 I have just, this minute, been circularised with

1 additional papers. As I understand it, the other  
2 parties to the Tribunal have also been circularised  
3 with the full accounts which Mr. Finnegan produced two  
4 weeks ago, the Foxtown accounts, which had been found  
5 in his records.

6 .

7 When these were produced, I had included in the - the  
8 letter, or in the Affidavit of Discovery, discovering  
9 these documents, that the - any entries in these  
10 accounts, other than the particular entries that are  
11 relevant to the inquiries, not be disclosed to any  
12 other party. In other words, that the relevant section  
13 be segregated. And I left it to the Tribunal to  
14 indicate what was - what would be relevant and what  
15 would not be relevant, we ourselves having indicated  
16 particular entries, but not in any way to prohibit the  
17 Tribunal from checking if there was any other entries  
18 relevant. But I had asked that any other entries in  
19 the accounts not be disclosed, if they were irrelevant  
20 to the Terms of Reference, or indeed irrelevant to the  
21 other parties' involvement.

22 .

23 Now, I think these accounts have only been distributed,  
24 literally, this morning to the tables.

25 I have asked my party at the next table not to open the  
26 envelope of the account, just for the moment. I have  
27 obviously no difficulty with the accounts being edited  
28 so that the relevant entries be published to My  
29 Friends. I am just a bit concerned, in the light of  
30 the re Haughey situation, where there should be a

1 segregation of relevant entries in the accounts.  
2 Entries that are relevant to the Terms of Reference,  
3 yes, of course, they are to be published, and  
4 disclosed, but obviously private entries are of no  
5 concern to any - to anybody else, and form no part of  
6 this inquiry.

7 .

8 As I say, just because the public might be interested,  
9 it's not in the public interest to disclose these  
10 matters. And I'd ask that that precaution be taken.

11 .

12 It's something that has just been sprung on me now,  
13 because I have literally just been handed these  
14 documents. And I had included in the Discovery a  
15 request that irrelevant entries, as I say - I left it  
16 to the Tribunal to decide what was relevant or not.

17 Thank you, Sir.

18 .

19 MR. HANRATTY: The difficulty, Sir, is that you are  
20 aware, first of all, of the circumstances in which  
21 these documents were produced. We have no idea what,  
22 if any, transactions in these accounts are relevant.

23 .

24 It has been indicated to us, on behalf of Mr. Finnegan,  
25 that certain identified transactions on the account are  
26 relevant, as I understand it, broadly speaking in  
27 support of an assertion that he did, in fact, make  
28 investments of money in a number of these land  
29 transactions, contrary to the evidence given by Mr.  
30 Brennan and Mr. McGowan.

1 .  
2 As I understand it as well, the only other party to  
3 whom these accounts have been circulated so far are Mr.  
4 Brennan's and Mr. McGowan's solicitor. And they have,  
5 of course, been circulated on the usual basis, in that  
6 they are strictly private and confidential and can be  
7 used for no purpose other than the purpose of this  
8 inquiry.

9 .  
10 I would have thought that it might be useful, from the  
11 Tribunal's point of view, that Messrs. Brennan and  
12 McGowan have an opportunity to peruse those accounts,  
13 in case they might be in a position to make a  
14 connection with some other transactions, perhaps other  
15 than those identified by Mr. Finnegan.

16 .  
17 Brennan and McGowan's accounts of various kinds have  
18 been circulated, also on a confidential basis, to other  
19 parties, including Mr. Finnegan.

20 .  
21 I can see the force of My Friend's argument, perhaps in  
22 connection with Mr. Burke, because he has no  
23 involvement, really at all, other than as recipient of  
24 the specific payments which he received, but this is  
25 more to do with transactions as between Mr. Finnegan -  
26 sorry, this aspect of the inquiry to which these  
27 documents relate have more to do with the interface  
28 between Mr. Finnegan and Messrs. Brennan and McGowan.  
29 And I wonder, would it satisfy Mr. Hussey if the  
30 documents rested on the basis that they be circulated

1 only to the solicitors for Brennan and McGowan, on the  
2 strict understanding that all matters in them, other  
3 than matters which they have specifically been  
4 instructed are relevant, are strictly private and  
5 confidential. And that, perhaps, hopefully with the  
6 agreement of Mr. Burke's counsel when he comes, there  
7 would be no necessity to circulate them to him at all.

8 .

9 CHAIRMAN: That sounds like a common sense approach.

10 Can I have that undertaking from Messrs. Brennan and  
11 McGowan?

12 .

13 MR. WALSH: Certainly, Sir.

14 .

15 CHAIRMAN: It's purely an understanding as to  
16 confidentiality. You are entitled to inspect and to  
17 talk to your clients, but they must not disclose  
18 anything to anybody whatsoever.

19 .

20 MR. HUSSEY: I am sorry, Sir, that doesn't quite meet  
21 the requirement.

22 .

23 CHAIRMAN: As far as you are concerned, if you had  
24 furnished the documents with the proper Affidavit of  
25 Discovery and claimed privilege or whatever, it would  
26 be appropriate - the problem wouldn't have arisen.

27 I have very little sympathy, but I am trying to  
28 facilitate you.

29 .

30 MR. HUSSEY: I beg your pardon, I think the Affidavit

1 of Discovery did request that the - that any entry,  
2 other than what was relevant - as I understand  
3 Discovery, Sir, Discovery is a process whereby parties,  
4 or a Tribunal is entitled to every document that is  
5 relevant to its inquiry. Obviously, these records are  
6 relevant to your inquiry, because they contain entries  
7 relevant to the inquiry. But if they contain entries  
8 which are not relevant to the inquiry, the party who  
9 furnished this document is entitled to have the  
10 confidentiality - the privacy, basic privacy of his  
11 affairs maintained. He does not wish to have --

12 .

13 CHAIRMAN: Mr. Hussey, I have every wish to assist you,  
14 but I also require people to assist the Tribunal.

15 .

16 Now, the arrangement that has been made would appear,  
17 to me, to meet all requirements. All documents that do  
18 get circulated, and we can't actually segregate all  
19 documents from the relevant and irrelevant, they are  
20 circulated on a confidential basis to whoever gets  
21 them. And they may not be used for any purpose, save  
22 for the purposes of the Tribunal, even if they are  
23 interesting documents. And that's the beginning and  
24 end of that.

25 .

26 Now, I will - the documents will not be used in this  
27 Tribunal before lunchtime, so that an opportunity may  
28 be given to you to say: "That, that and that are  
29 irrelevant, and they amount to 'X'", whatever 'X' may  
30 be. So that you indicate clearly to the Tribunal what

1 the document is.

2 .

3 MR. HUSSEY: I'm sorry, Sir, I have indicated already

4 the relevant entries. No other entry was put to Mr.

5 McGowan, who was the witness in the witness-box after

6 these documents had been discovered. So I take it that

7 the Tribunal doesn't consider any other entries

8 relevant to their inquiries?

9 .

10 As I say, I left it to the Tribunal. I didn't say,

11 "You must confine yourself to these entries and only

12 give them those entries", because I knew that wouldn't

13 be an acceptable course to adopt. But I do think that

14 --

15 .

16 CHAIRMAN: Well, the only alternative that I have is

17 this: That the documents have been furnished to the

18 Tribunal. If a particular document, and I don't know

19 which particular document is involved, is being

20 presented to the Tribunal as having appropriate

21 relevance, and you find it hasn't, or say it hasn't,

22 then you may object to its use, and if necessary, we

23 will find out, in private if necessary, as to whether

24 or not it is relevant. That's all I can do.

25 .

26 I have every wish to protect your privacy, but I must

27 get the documents relevant to the Tribunal on the

28 record of the Tribunal. And I'll do my best --

29 .

30 MR. HUSSEY: Of course. And we have done our best to

1 help in that regard. The only point I am making is  
2 that disputes have arisen between Mr. Finnegan and  
3 Messrs. Brennan and McGowan. His private affairs are  
4 of no concern and should not be - should not have been  
5 given by this Tribunal to Messrs. Brennan and McGowan.

6 .  
7 To ask Messrs. Brennan and McGowan to honour the  
8 privacy or confidentiality of the thing does not even  
9 come close to protecting my client as far as the  
10 irrelevant entries in these accounts are concerned.

11 .  
12 I would ask that the documents be withdrawn from  
13 Messrs. Brennan and McGowan. They were only handed  
14 here this morning. They can be drawn immediately.  
15 They haven't obviously been - and to have entries other  
16 than the relevant entries either tippexed out - there  
17 is absolutely - there is no reason for Brennan and  
18 McGowan to have these accounts - the full indexation of  
19 the entries on these accounts.

20 .  
21 I am flabbergasted by the fact that this Tribunal  
22 didn't honour that basic little privacy requirement.  
23 In re Haughey, Mr. Justice O'Dalaigh stated that - at  
24 page 257 of the Irish Reports of 1971, he says:  
25  
26 "If, however, monies issued from subhead J of Vote 16  
27 were lodged in a bank account, and Irish Red Cross  
28 Society monies were transferred to that account,  
29 forming a mixed fund, then for the purpose of  
30 segregating the funds, the expenditure of the monies of



1 the Irish Red Cross Society might incidentally be  
2 disclosed, but upon monies being duly segregated, any  
3 further examination into the expenditure of the Irish  
4 Red Cross Society's monies would be outside the  
5 functions of the committee of public accounts."

6 .

7 This is what is - what is done in this case.

8 .

9 MR. HANRATTY: I think the stenographer is having  
10 difficulty.

11 .

12 MR. HUSSEY: I beg your pardon. Will I read that quote  
13 again in full?

14 .

15 "If, however, monies issued from subhead J of Vote 16  
16 were lodged in a bank account, and the Irish Red Cross  
17 Society were transferred to that account, forming a  
18 mixed fund, then for the purpose of segregating the  
19 funds, the expenditure of the monies of the Irish Red  
20 Cross Society might incidentally be disclosed, but upon  
21 monies being duly segregated, any further examination  
22 into the expenditure of the Irish Red Cross Society's  
23 monies would be outside the functions of the  
24 committee."

25 .

26 In the same way that it is outside the functions of  
27 this Tribunal.

28 .

29 Really, that is the only point. And I am saying it is  
30 a very sensitive matter, as between Mr. Finnegan and

1 Messrs. Brennan and McGowan, and it's - I suggest that  
2 it's not good enough simply to ask Messrs. Brennan and  
3 McGowan to honour the confidentiality, because that is  
4 not the point. The point is that there are issues  
5 between Messrs. - Mr. Finnegan and Messrs. Brennan and  
6 McGowan, and these accounts should not be disclosed.  
7 And this Tribunal has an opportunity to minimise the  
8 exposure by simply asking for the documents back and  
9 editing the accounts. I don't think that's too big a  
10 logistical exercise for the Tribunal to honour at this  
11 stage.

12 .

13 MR. HANRATTY: Well, I have to say that I am totally  
14 surprised by My Friend's attitude. It is utterly and  
15 totally unhelpful to the Tribunal.

16 .

17 My Friend knows very well that if you look at a  
18 transaction on a blank page, out of its context, it is  
19 meaningless, and it is of no use to anybody in trying  
20 to determine whether or not they agree with the  
21 proposition in support of which the entry - the sole  
22 entry on the page is being adduced. And if I could  
23 remind you, for example, of the first day when  
24 Mr. Frank Dunlop produced a document, which was an  
25 extract from a bank statement, and there was one entry  
26 on the page with everything else excluded. And it was  
27 completely meaningless. But when we got the page,  
28 after insisting upon it, it suddenly, in its context  
29 became apparent what it meant and what significance it  
30 had.

1 .  
2 Now, the people who know better than anybody about  
3 their relations with Mr. Finnegan, and who have given  
4 testimony that Mr. Finnegan did not, in fact, make  
5 financial contributions are Mr. Brennan and Mr.  
6 McGowan. They are the ones best placed, if provided  
7 with the information in support of Mr. Finnegan's  
8 assertion, to point out to the Tribunal whether there  
9 is or is not any validity in that assertion.

10 .  
11 Undoubtedly, these documents are private documents, but  
12 with respect to Mr. Hussey, the great majority, if not  
13 all of the documents which have been canvassed before  
14 this Tribunal, are private to somebody. And the use of  
15 these documents for the Tribunal's purposes is, to a  
16 greater or lesser extent, an intrusion into somebody's  
17 privacy.

18 .  
19 The great majority of parties with whom the Tribunal  
20 has had dealings have consented to their documents  
21 being used in whatever way the Tribunal, in its  
22 discretion, has decided was appropriate.

23 .  
24 They have requested, as Mr. Hussey's client has  
25 requested, that the matter be treated as private and  
26 confidential. All parties have been told, and in this  
27 case the only party that is concerned is the solicitor  
28 for Messrs. Brennan and McGowan, that the documents are  
29 furnished on a strictly private and confidential basis,  
30 and on the basis that they can be used for no purpose

1 other than the Tribunal.

2 .

3 And it seems to me that the attempt by Mr. Hussey to  
4 restrict the circulation to Brennan and McGowan, of the  
5 bare transactions which his client has identified as  
6 relevant, is, in effect, an attempt to blinker the  
7 ability of Brennan and McGowan to make any sense out of  
8 the documents concerned.

9 .

10 Now, given that Mr. Hussey has adopted this unhelpful  
11 position, might I respectfully suggest that we withdraw  
12 the documents, and that the Tribunal team will go  
13 through them with a fine comb to see if they can,  
14 notwithstanding Mr. Hussey's instructions, exclude  
15 documents which are definitely irrelevant. Although,  
16 at the moment I fail to see how we are going to do  
17 that, but at least we can try. And if we can identify  
18 documents which are undoubtedly irrelevant, then we  
19 will exclude those from the circulation. And we can  
20 then look at the transactions, which Mr. Hussey is  
21 telling us, and expecting us, apparently, to accept are  
22 relevant, and see whether they can be looked at or  
23 dealt with out of their context.

24 .

25 So, in the circumstances, and having regard to the  
26 attitude adopted by Mr. Hussey, presumably on the  
27 instructions of his client, I would respectfully ask  
28 your permission to withdraw the limited circulation of  
29 those documents from the solicitors for Brennan and  
30 McGowan, and we will engage in that exercise, or at

1 least attempt to engage in that exercise, and revisit  
2 the matter, then, when we have done that, probably  
3 tomorrow.

4 .

5 CHAIRMAN: On Tuesday.

6 .

7 I would accede to your application in an effort to  
8 ensure fairness, but I make it quite clear that the  
9 documents, as presented, if, in the opinion of Counsel  
10 for the Tribunal are relevant, they will be furnished  
11 to the Tribunal and circulated. And if anybody wants  
12 to make an argument that they are irrelevant, it can be  
13 done when we are attempting to put them in evidence,  
14 and not before.

15 .

16 That's my ruling and it's final.

17 .

18 MR. HUSSEY: I appreciate that, Sir. That was the  
19 basis on which the documents were presented.

20 .

21 CHAIRMAN: It's now over. If somebody would please  
22 return the documents to the Solicitor for the Tribunal.

23 .

24 MR. WALSH: Certainly, Sir.

25 .

26 MR. HANRATTY: Can I ask for one qualification.

27 .

28 It may arrive at a situation where, having considered  
29 each transaction on each page, it is impossible for the  
30 Tribunal team to say whether they are, in fact,

1 relevant. They may be in a position of being of the  
2 view, simply, that they may be relevant. And,  
3 obviously, they would have to - they are not in a  
4 position to say, "Perhaps what Messrs. Brennan and  
5 McGowan" - that kind of middle area may arise. I don't  
6 know whether it will or not.

7 .

8 CHAIRMAN: We'll deal with that middle area when it  
9 arises. And it's a matter for Mr. Finnegan's counsel  
10 to cooperate, and to assist and identify the  
11 transactions in such a manner as to convince, or to  
12 manifestly establish that they are not relevant.

13 .

14 MR. HANRATTY: Thank you, Sir.

15 .

16 CHAIRMAN: They are the people who have the  
17 information, and they must cooperate.

18 .

19 MR. HUSSEY: Thank you, Sir.

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .

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2 .  
3 .  
4 .  
5 .

6 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND  
7 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

8 .

9 1 Q. MR. HANRATTY: Mr. Finnegan, we were dealing yesterday  
10 with this letter of the 19th of December of 1990. It's  
11 page 1412. And this is a letter from your solicitors,  
12 Messrs. Kennedy McGonagle Ballagh, to Mr. Naylor of  
13 Sovereign Management Limited. And the most significant  
14 feature of this letter, I suggest to you, is that on  
15 the basis of the assertion that you are making to this  
16 Tribunal, namely, that you cannot get documentation  
17 from the trustees, this document is the wrong way  
18 around, because this is not the trustees who own, or at  
19 least we are told own Foxtown Investments Limited,  
20 informing you or your solicitor that they have sold the  
21 property, that they have agreed a price, that they will  
22 negotiate an extended period of time; this is you  
23 telling the trustees that you have done it.

24 A. Mm-hmm.

25 2 Q. And that, I suggest to you, clearly establishes that  
26 you were, in fact, in control of this company and of  
27 this trust?

28 A. Well, could I, Sir - I hear what you say. I must say  
29 that for a considerable time that the trustees have -  
30 will I go on to say - to tell you about the situation

1 of me trying to get the information?

2 3 Q. Let's just look at that.

3 A. Yes.

4 4 Q. This is the letter that your solicitor sent to the  
5 Tribunal. It's a letter which he wrote to the  
6 Secretary of Credit Suisse on the 10th of September,  
7 2001. It's page 361. And it's entitled, "Re our  
8 client - John Finnegan, Foxtown Investments Limited."

9 A. Yeah.

10 5 Q. And he says:

11 .

12 "Dear Sir, we understand that the trustees of the trust  
13 established by our client have refused to provide trust  
14 accounts and other information requested by our  
15 client."

16 .

17 Now, I gather from that, therefore, that you had, in  
18 fact, made previous requests from the trustees?

19 A. Yes, I had.

20 6 Q. Which they had refused?

21 A. Shall I run you briefly down through what I have done?

22 7 Q. Yes, please.

23 A. When the information was requested by the Tribunal, I  
24 was very anxious to see what information we could get.  
25 Now, I must say that Credit Suisse had been very  
26 cooperative in the past. I was quite surprised when I  
27 did ask them, could I have the information, and they  
28 said, "We would have to take instructions inside." And  
29 I said, "All right. I'll await to hear from you."  
30 They went on, I came back to them, and they said that



1 --

2 8 Q. Could I just ask you, with whom were you dealing with  
3 in Credit Suisse?

4 A. I was dealing with - Noel Ducqueman.

5 9 Q. Can you spell his surname, please?

6 A. D-U-C-Q-U-E-M-A-N, and a Mark Winter.

7 10 Q. Are these - am I correct in thinking these are two  
8 shareholders of the company, in fact?

9 A. I think they are executives of Credit Suisse. And I  
10 think that Mark Winter would be senior to Noel  
11 Ducqueman. So I asked him, why were they not  
12 cooperating, to let us have the information. And he  
13 said - and I told him that I was under severe pressure  
14 here, and I wished to help the Tribunal. And they  
15 said, "We are aware of what is going on in Ireland. We  
16 are monitoring the situation of what is going on in the  
17 various tribunals and inquiries, and we are up-to-date  
18 with what is going on." I said, "Good. Well, you  
19 understand, then, where I am coming from?" And they  
20 said, "Yes." I said, "Well, can I get the  
21 information?" "Well, we are making inquiries within  
22 Credit Suisse to see if we can give it." So this went  
23 on.

24 .

25 More phone calls, what is happening? Well, now what -  
26 they then said, "We are making inquiries with our  
27 in-house lawyers, to see what we can do."

28 .

29 So we took it, all right, that - so we'll wait to hear.

30 11 Q. When was this?

1 A. This would be back sort of April/May.

2 12 Q. And did you write to them?

3 A. Yes - not at that time, Sir. I wrote to them - the  
4 letter --

5 13 Q. Mr. O'Shea's letter. Is this the only correspondence  
6 with them?

7 A. But we had a lot of phone calls with them. Will I go  
8 on?

9 14 Q. Carry on a little bit more. You were talking about a  
10 telephone call in May?

11 A. Then we go on and they say, well, they are looking into  
12 it and see what they can do. They then came back to us  
13 and said, "No, it's not - the trustees feel that it is  
14 not appropriate to give the information."

15 15 Q. What information?

16 A. The information on the accounts for which we sought.  
17 And so I queried this and said to them, "Why isn't it?  
18 And, you know, you have been very helpful in the past  
19 and why is this happening?" And they said, "I think  
20 what we might say is that the goal posts are changing."  
21 .  
22 Now, I think what - within Credit Suisse. Now, by the  
23 way, I did mention to them that other people had that  
24 information, and I did say that information had come  
25 from Guernsey. And they said they were surprised about  
26 that. And then we went on to tell them who it was, and  
27 they said, "They were a firm of lawyers and weren't a  
28 bank." And they were quite surprised.

29 .

30 And we went on, then, to say, "Well, would you write to

1 us and tell us, then, it's not the policy, or what your  
2 policy decision is." And they said, "No, we won't.  
3 It's not our - within our - we won't, or we don't think  
4 we should." Then this went on again. And I said,  
5 "Well, you know, I am under real pressure here and I  
6 want to see it." They said, "We probably will do it.  
7 We have spoken to our in-house lawyers, but we are  
8 going to consult with our legal, outside legal  
9 advisers."

10 .

11 I must say that then we felt that, perhaps now we might  
12 be getting somewhere, that we might get a little bit of  
13 reasoning coming into it, because we did wish seriously  
14 to try and get the information, because it would take a  
15 lot of pressure off me to be able to let you have it.

16 .

17 So they went, then, to their - I can't remember the  
18 name of the lawyers there.

19 16 Q. Ozannes?

20 A. Ozannes, yes. Oh, by I way, we said to them that,  
21 "We are going to write to you." And we did write, I  
22 told Ducqueman and Winter we were writing, which - we  
23 then did send that stern letter to them, explaining  
24 fully where we were coming from, and that we wanted the  
25 information.

26 17 Q. Is this the first letter that was sent to them?

27 A. I think it was, yes.

28 18 Q. That's on the 10th of September?

29 A. Yeah. But --

30 19 Q. You've been trying to get this information since

1 March/April?

2 A. Yes. And I have been in touch with them.

3 20 Q. How many times?

4 A. Quite a few, Sir.

5 21 Q. With Mr. Ducqueman?

6 A. Ducqueman and Winter.

7 22 Q. Yeah. And what reason have they given for declining to  
8 provide you with your documents?

9 A. The reason that they said, it was within the interest  
10 of the trust. And I queried that and they said,  
11 "We have made a ruling that is not within the interest  
12 of the trust."

13 .

14 And what I gather, Sir, is this: That this has been a  
15 policy decision within Credit Suisse, to not give  
16 information - and I think it's because - they  
17 mentioned, "There are a lot of things happening over in  
18 Ireland, and we are paying attention to it and we are  
19 taking our advices." And I feel that maybe it is - it  
20 is that they have either pressure on them - they did  
21 say they had been contacted by all of the inspectors  
22 and by various people, and they have had this response  
23 - and they haven't given any information to anybody.

24 23 Q. But, Mr. Finnegan, the interest of the trust is the  
25 interest of the beneficiaries, and you are one of the  
26 beneficiaries?

27 A. I agree. I agree, that it is in my interest to get  
28 this information. So I was quite taken aback when we  
29 got the response from their lawyers.

30 .

1 Now, I have taken a further step. I then thought that  
2 what we would do is that we would talk to Crills, whom  
3 we had spoken to before, but the only thing is, that  
4 Crills are outside this jurisdiction between Guernsey  
5 and - whatever. What's the other one?

6 24 Q. Jersey?

7 A. There is a difference, apparently. Anyway, Crills  
8 couldn't act. So I have consulted with another firm of  
9 lawyers, because we had - I'll get this sent over, if  
10 it's all right, but let's call them Olsen Ferbrache and  
11 Morgan.

12 25 Q. What are they going to do?

13 A. I had asked them - I had explained the position to  
14 them. I had asked them, would they act for me, with a  
15 view to putting pressure on Credit Suisse to release  
16 the information which we have sought. And they said -  
17 by the way, I have spoken to this guy, a Paul Buckle -  
18 B-U-C-K-L-E, myself. And I explained to him this  
19 situation. And he said that he had some - he went on  
20 and said, "yes". I gave him a spiel of what the  
21 situation is. And at the present time he is now  
22 seeking to see what - I asked him, would he act for me.  
23 .  
24 They have taken preliminary instructions, and now have  
25 asked for - would you believe it - they want a list of  
26 information, in case there would be a conflict of  
27 interest, for the names of all the parties who are  
28 involved in --

29 26 Q. Have they written to Sovereign Trustees Limited saying,

30 "We demand that you at once provide to my client what

1 they are entitled to, namely everything he asked for."

2 A. This is what I am coming to, Sir. I am awaiting now

3 getting - they said they have to get this information

4 first before they will say they will act.

5 27 Q. How long is all this going to take?

6 A. Well, exactly. Well, I don't think it should take too

7 long, Sir, because we are - we are very anxious to

8 bring this thing forward as fast as possible.

9 28 Q. Did you write letters to Sovereign Trustees Limited or

10 Mr. - what was the name, Winter, and the other

11 gentleman? You spoke to them on the phone?

12 A. I spoke to Winter, yeah.

13 29 Q. Are you sure you didn't write letters to them?

14 A. As far as I know, I didn't.

15 30 Q. Well, your solicitor says you did, because if you look

16 at the letter on screen, he says, "Our client has

17 requested this information from you in letters and

18 phone calls over a period of months."

19 .

20 So, do you have copies of those letters?

21 A. Sorry, Sir. I haven't - with any conversations - of

22 course any conversations - well, I have spoken to them

23 - maybe --

24 31 Q. Mr. Finnegan --

25 A. If we have - now, I don't remember writing to them.

26 32 Q. Presumably, he said that to you on your instructions?

27 Presumably, you told him that you had written letters,

28 and that that is, therefore, why he put it in this

29 letter, either that, or he made it up.

30 A. Well, I tell you, if there are any letters, I will --

1 33 Q. Well, are they?

2 A. Not that I know of offhand. I don't now wish to be  
3 vague on this. I will clear this up very quickly -

4 34 Q. You are, with respect, Mr. Finnegan, being vague. This  
5 isn't the recent past. We are talking about something,  
6 if it happened, between March, April of this year, and  
7 the present time. Now, did you or did you not write  
8 letters to Credit Suisse or anybody in it between  
9 March/April of this year and the present time?

10 A. I don't think we have.

11 35 Q. Well, why did your solicitor say you did --

12 A. I am sorry if that is misleading. And I agree with  
13 you, that's not - if that is not correct - that could  
14 be misleading. I can stand and vouch that I have made  
15 all these calls, but I will have that - I will have  
16 that checked, Sir. I'll have that checked very, very  
17 quickly. But for the moment, from my point of view, I  
18 don't recollect that they had written. But, to be  
19 absolutely sure, I'll --

20 36 Q. And you've told us that they haven't written to you  
21 because they have a policy of not writing about these  
22 things, is that it?

23 A. When - yes, this was a strange thing. When I said to  
24 them, "Would you write and explain, then at least give  
25 me the information in writing. Why you can't do this?"

26 37 Q. Does this strike you as a rather odd situation?

27 A. It does.

28 38 Q. But you, as the person who was the settlor of this  
29 trust and also the principal beneficiary of the trust  
30 is being defied by the trustees?

1 A. I agree with you.?

2 39 Q. You have pumped hundreds of thousands of pounds into  
3 this trust?

4 A. Whatever. But I do agree with you that it is - that it  
5 is very odd that they wouldn't. And I do intend, by  
6 the way, and I want you to know, Sir, that I will make  
7 every effort. And also it is - because I wondered why  
8 they had changed. And I did say to, I think it was  
9 Ducqueman, "What's going on?" And he said, "Well, I  
10 think what I can say to you is this, the goal posts  
11 have changed."

12 .

13 CHAIRMAN: I am not interested whether the goal posts  
14 have changed or not. This Tribunal has made an Order I  
15 require to be obeyed completely, by Mr. Ducqueman or  
16 whoever hell else is involved.

17 A. Yes.

18 .

19 CHAIRMAN: And I want it done forthwith.

20 A. Well, Sir, I have - Mr. Chairman, I have instructed  
21 Olsen Ferbrache to take it, and any suggestions that  
22 the Tribunal have that I can incorporate in this, I  
23 will gladly do so.

24 .

25 MR. HANRATTY: I am afraid, Mr. Finnegan, that's really  
26 not good enough. You see, we do know that there is a  
27 trust.

28 A. Yes.

29 40 Q. There may be more, but certainly there is a trust?

30 A. Right, Sir.



1 41 Q. There is a trust which owns Foxtown Investments  
2 Limited, or so we've been told by your solicitor.

3 A. Yes.

4 42 Q. And we know that through the medium of Foxtown  
5 Investments Limited you have invested several hundred  
6 thousand pounds, and we know that the value of this  
7 trust could potentially count in millions of pounds,  
8 which was put in, essentially, we presume, by you. And  
9 you are now asking this Tribunal to believe that the  
10 persons in charge of your money will not even give you  
11 accounts to show you what the state of the account is.

12 A. Mm-hmm.

13 43 Q. That's essentially what it comes down to.

14 A. Well, I can understand your - Sir, I can understand  
15 your frustration, and I take it that I am making every  
16 effort, and will keep you informed on all documentation  
17 otherwise that I am - have with Olsen. And I will  
18 bring you up to speed as to what the situation is.

19 .

20 By the way, when I spoke to this guy, Buckle, he  
21 sounded quite a go-ahead --

22 44 Q. If he was a go-ahead guy, why didn't you instruct him  
23 to forthwith apply for a mandatory injunction directing  
24 the trustee to provide you with the information to  
25 which you are legally entitled?

26 A. Well, I have asked him to take - to advise me on  
27 whatever steps should be taken to get what you have  
28 requested. And I was a little bit - we'll get over  
29 this fairly quickly, but we just have to supply this  
30 information to him - on which we are trying to maybe

1 actually - perhaps you might be able to assist us on  
2 some of it, just the names of the people who were  
3 involved, which I thought a bit strange, to see if  
4 there was any conflict of interest. But that's all -  
5 but they are looking at it. He cleared one, they have  
6 a company in Guernsey, but I think that does not affect  
7 them --

8 45 Q. Credit Suisse is a bank, and this particular company,  
9 Sovereign Trustees Limited, is a subsidiary of Credit  
10 Suisse which provides trust and administration services  
11 to clients of the bank and others?

12 A. Yes.

13 46 Q. And they do it on a fee basis. They don't do it out of  
14 any altruism. They do it for fees.

15 A. Mm-hmm.

16 47 Q. Isn't that right?

17 A. Yes, they do.

18 48 Q. We know, and I suggest to you it has been established  
19 beyond the possibility of argument, that up to some  
20 point in time, which appears to be very recent, any  
21 time you made any request of the trustees of this  
22 trust, it was complied with. Any time you gave any  
23 directions to the trustees of this trust, they were  
24 complied with. Any time you instructed your solicitor  
25 to deal in the property which apparently was owned by  
26 this trust, Foxtown Investments Limited, he dealt with  
27 it. And, in fact, your solicitor has given  
28 instructions to the trustees on your behalf.

29 A. Yes.

30 49 Q. And they have complied with them. So what has changed?

1 A. What has changed, exactly. Well, that is what we are  
2 about to hear very, very quickly, because I do feel - I  
3 understand where you are coming from, that you haven't  
4 been able to get the information, and you can take it  
5 that I am following this --

6 50 Q. Is there any reason why you shouldn't move to have  
7 these trustees removed? They are not doing their job.  
8 They are not complying with their duties to you as  
9 beneficiary of this trust.

10 A. All right.

11 51 Q. They are defying you, a man who has pumped enormous  
12 sums of money into this trust, who has had this trust  
13 established, in accordance with his own wishes and for  
14 his own purposes, essentially a family trust, and now  
15 finds himself in the situation that having pumped in  
16 God knows how much money, he's been told by the people  
17 in charge of that money that he can't even have basic  
18 information as to what the state of this account is.

19 A. Yeah. Yes, I hear what you say. And whether or not it  
20 is that they have, for some reason or another, either  
21 have pressure from other parties or whatever, or what's  
22 going on in Ireland, as I said, they are keeping a very  
23 close touch on things.

24 .

25 CHAIRMAN: Just a moment. Once upon a time overnight  
26 mail was known as the fastest means of communication  
27 known to man. That situation has changed, e-mail,  
28 telex and the like are available to you and to them.  
29 Now, it's about time somebody got down to using all  
30 these facilities to get the information which you

1 require, and could convey your requirements to them.

2 .

3 This thing is intolerable. You are being asked as far

4 back as April. You apparently knew as far back as

5 April and did sweet nothing.

6 A. By the way --

7 .

8 CHAIRMAN: I am now getting nothing but a load of

9 rubbish. Now, I want some action, and some very

10 specific action to be taken to get this information,

11 and to get it to this Tribunal forthwith.

12 A. Yes, Sir. Well, I must say to you that I did - what I

13 have said to the Tribunal earlier there, that I did

14 make the efforts, and have been - and - but seriously,

15 I have, and was taken aback that they didn't supply it.

16 And I will - I've heard what you have had to say, and I

17 will have the new lawyers move in haste now. And at

18 the lunchtime break I will check and see what the

19 up-to-date situation is.

20 52 Q. Well, is there anything to stop you from phoning them

21 now and instructing them to take an application in the

22 High Court in Jersey for a mandatory injunction to

23 direct the trustees to provide you with information to

24 which you are entitled?

25 A. I wouldn't imagine there is anything to stop - I have

26 to get the clearance, by the way, first of all, which

27 we are expecting, and I think this is a lot of trifle

28 myself, to try and see if there is any conflict of

29 interest. But, no, there should be no reason why I

30 shouldn't be able to do what you have suggested. I've

1 asked --

2 .

3 CHAIRMAN: I will rise for twenty minutes to enable you  
4 to get in touch with your solicitors, wherever they  
5 are, in Dublin or Guernsey or elsewhere, and to get  
6 something operational.

7 .

8 I am not going to tolerate this nonsense. Twenty  
9 minutes is your time. Get with it.

10 .

11 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
12 RESUMED AGAIN AS FOLLOWS:

13 .

14 MR. HANRATTY: I understand Mr. Hussey, or perhaps his  
15 client, is going to indicate what the position is.

16 .

17 CHAIRMAN: Very good.

18 .

19 53 Q. MR. HANRATTY: Mr. Finnegan?

20 A. Shall I explain?

21 54 Q. Yes, please.

22 A. I apologise for the delay.

23 .

24 I have made contact with Olsen Ferbrache and Morgan,  
25 and looked for Paul Buckle, whom I was talking to. He,  
26 unfortunately, is visiting the doctor at the moment.  
27 But I did get another partner, Alison Olsen. And I  
28 have informed her of my position, on what is required,  
29 that I would - I want them to take all steps necessary  
30 in haste to take proceedings against the Credit Suisse

1 for - to obtain the documentation.  
2 .  
3 She is going to make sure she gets in touch with the  
4 partner, one way or another, as fast as possible.  
5 They have undertaken yesterday - they said they weren't  
6 just clear on the - they were making sure they had all  
7 the things, the clearances, that they can go. They  
8 will move on it now, immediately, Sir.  
9 .  
10 So I have done that. And hopefully we'll get them to  
11 fax it. I asked them if they could fax me to tell me  
12 what course of action were open to me, and what I could  
13 do. Hopefully, I will get that from them.  
14 .  
15 I also, by the way, spoke to Mark Winter in Credit  
16 Suisse, and I told him of my predicament, and how  
17 concerned I was. And he said he was sorry for that.  
18 But I said to him - but he said, "But there is nothing  
19 we can do for you."  
20 .  
21 I did tell him we were taking all necessary steps,  
22 legal steps, to get whatever information we wanted.  
23 And that's over --  
24 .  
25 CHAIRMAN: First of all, thank you for that. And  
26 secondly, I would require copies of all documents,  
27 proceedings and the nature to be on my desk, at the  
28 latest, at ten o'clock on Tuesday morning.  
29 A. Yes, Sir.  
30 .

1 CHAIRMAN: Indicating what steps have been taken, on  
2 the basis they have been taken. If it's a Grounding  
3 Affidavit, I would like to see the Grounding Affidavit.  
4 Obviously, I have no function in it in that sense, but  
5 I do want to understand the basis on which it is being  
6 promoted, and be in a position to understand the  
7 progress of the matter properly.

8 .  
9 With that, I think we should proceed with the  
10 proceedings as they are today, so far as we can.

11 .  
12 55 Q. MR. HANRATTY: I would propose, Sir, to continue my  
13 examination of the witness in relation to documents,  
14 the two categories, these documents and the other  
15 documents, which would be - what I would generically  
16 describe as Mr. Finnegan's "personal" or his "own"  
17 documents, because there is a bit of ground to cover,  
18 and we might as well get it covered, and it's relevant  
19 to this matter, in any event.

20 .  
21 So, with your permission, I will proceed with that.  
22 .  
23 I'll resume the letter that we were discussing a moment  
24 ago, and the letter from the solicitors.

25 .  
26 But, before I do that, Mr. Finnegan, I just want to try  
27 and get our bearings here a little bit.

28 A. Yes.

29 56 Q. As I understand it, the trust, which is a trust with  
30 John J Finnegan, yourself, as settlor, and Jersey trust

1 - sorry, Guinness & Mahon (Jersey) Trust Limited as  
2 trustees. That was set up in 1973.

3 .

4 Now, as I understand it, that was based in Jersey at  
5 that time, is that correct, or was it Guernsey?

6 A. I think it was Guernsey, Sir.

7 57 Q. It was in Guernsey from the start?

8 A. Yes.

9 58 Q. I see.

10 A. Yes, as far as I am aware. Now, to the best of my  
11 knowledge I believe it was.

12 59 Q. Yes. And we do know that the bank account in which  
13 Foxtown Investments Limited has its account, or has had  
14 its account, was in Guinness & Mahon (Guernsey)  
15 Limited, the bank known as Guinness & Mahon (Guernsey)  
16 Limited. That's right, isn't it?

17 A. I think so, Sir, yes.

18 60 Q. Now, Foxtown Investments Limited is owned, if I can  
19 just put it up on the screen, the Companies Office  
20 search that the Tribunal has conducted, page 2026.

21 .

22 This is a Companies Office search in the Channel  
23 Islands in relation to Foxtown Investments Limited.  
24 And we can see that the registered number of the  
25 company is 5858. We can see that it was registered on  
26 the 20th of September of 1972. It's registered office  
27 is in Jersey. And it's share capital.

28 .

29 Now, when this trust was set up, presumably you were  
30 told by your advisers that the trust was going to set



1 up a company in Jersey?

2 A. Guernsey or Jersey?

3 61 Q. Jersey. The registered office is 7211 Britannia Place,

4 Bath Street, St. Helier, Jersey. It doesn't

5 necessarily mean that the trust isn't based in

6 Guernsey, albeit - the trustees of the trust is called

7 Guinness & Mahon, or the original trustees I should say

8 were Guinness & Mahon (Jersey) Trust Limited?

9 A. Right.

10 62 Q. But the company, which we have been told is owned by

11 the trust, is registered in Jersey. This is Foxtown

12 Investments Limited.

13 .

14 Now, were you told when the trust was being established

15 that this company was going to be formed for the

16 purposes of the trust?

17 A. As far as - it's a long time ago, but I assume for the

18 purpose of the - assume for the purpose of the

19 conversation it must have been.

20 63 Q. Was it explained to you what the purpose of the company

21 was?

22 A. Well, I think - well, suppose looking in hindsight and

23 going back on it for the purpose of investment.

24 64 Q. Of the trust funds?

25 A. Funds, yes.

26 65 Q. And this was the vehicle through which you put money

27 into the trust; for example in the case of the

28 Sandyford land deal, you actually had this company

29 registered as the owner of the one-third share?

30 A. Yes.

1 66 Q. And in the case of the other land deals, you directed  
2 that the monies, to which you were entitled, were sent  
3 over to the account of Foxtown Investments Limited in  
4 Guernsey?

5 A. Yes, Sir.

6 67 Q. And they were, in fact?

7 A. They were.

8 68 Q. So, apart altogether from a company involved in  
9 investments for the purposes of the trust, it was also  
10 used by you as a vehicle or method by which you  
11 channelled money into the trust?

12 A. Well, we did make - yes, I think that's the situation.

13 69 Q. Now, again looking at this page on screen, you will see  
14 under the heading "Principal Shareholders", that the  
15 three registered shareholders of this company are the  
16 two gentlemen that you mentioned, that you had been in  
17 contact with, Mr. Mark Winter and Mr. Noel Ducqueman?

18 A. Ducqueman.

19 70 Q. And a third shareholder is Biscay Limited. Now,  
20 Mr. Winter and Mr. Ducqueman hold three shares each,  
21 but the great majority of the share capital in this  
22 company is held by a company called Biscay Limited.

23 .

24 Do you have any idea who Biscay Limited is?

25 A. I think it's one of - I think that's one of my  
26 associated companies, the trust associated companies.

27 71 Q. Is it?

28 A. Yes, Sir. I think so.

29 72 Q. Well, we've done a search on this company, and it  
30 appears to be some kind of a boat company, primarily

1 owned by a gentleman in Beverly Hills in California?

2 A. Sorry. I'm sorry. Yes, I think - sorry, just when I  
3 saw it down there, I thought that it must have been one  
4 of mine.

5 73 Q. You think it's not one of yours?

6 A. No.

7 74 Q. Right. Well, perhaps if we could have a look at that  
8 Biscay search.

9 .

10 The name of the company, as you see, is Biscay Limited.

11 It has its number there. Registered on the 27th of  
12 February, 2001. I think that must be in error, because  
13 it is listed as a shareholder of a company which was  
14 registered long before then.

15 .

16 And this is in St. Peter Port, Guernsey?

17 A. Right.

18 75 Q. And as you can see, the shareholders of this company  
19 are a company called Anka Limited, registered offices  
20 in La Plaiderie House, St. Peter Port, Guernsey.  
21 Topaz Investments Limited, which is the same registered  
22 office. And a gentleman called Bennie Allagem, with an  
23 address at 709 North Maple Drive, Beverly Hills,  
24 California. And Mr. Allagem appears to own the  
25 majority of capital, he owns 4,498 shares in the  
26 company, whereas Anka and Topaz own respectively one  
27 share each. You see that?

28 A. Mm-hmm.

29 .

30 MR. HUSSEY: I wonder, Sir, in this regard, are we

1 talking about the same company? This is a company that  
2 - well, the information on this page suggests that this  
3 company was registered in - this year, 27th of 2001.

4 And I am just wondering, is it fair to draw the  
5 conclusion that this is the same company that was a  
6 shareholder in the first - if this was registered only  
7 in 2001, it couldn't possibly, I would suggest, be the  
8 same company as the one mentioned.

9 .

10 I just merely point that out, that it's not safe to  
11 draw conclusions.

12 .

13 This is the first time I have seen this document, but  
14 it seems the date of registration is earlier this year,  
15 which couldn't possibly be the same.

16 .

17 MR. HANRATTY: Well, it's possible that that's correct.

18 I just don't know. But if I can just refer you to page  
19 2038.

20 .

21 This is a letter from Sovereign Management Limited to  
22 Mr. O'Shea, Mr. Finnegan's solicitor, in which - this  
23 is dated the 6th of October, 1989, as you can see. And  
24 it is stated that Biscay Limited owns 94 shares.  
25 Mr. DJ Naylor owns three shares. And Mr. SA Laine owns  
26 three shares. And that exactly mirrors the search that  
27 we have done on Foxtown Investments Limited, where,  
28 albeit that the two individuals who own three shares  
29 each are now changed, in the sense that they are now  
30 Mr. Winter and Mr. Ducqueman. Biscay Limited is still

1 the third shareholder owning the 94 shares.

2 .

3 So that, I suggest, couldn't be a coincidence, and

4 would strongly imply that it is, in fact, the same

5 company.

6 .

7 MR. HUSSEY: Sorry, in fact, I am suggesting the direct

8 opposite, because the Biscay company that we've seen

9 the registration particulars of, as registered in 2001,

10 it couldn't possibly be the same company.

11 .

12 This is only something I have been alerted to. I

13 hadn't seen any reason to disbelieve this particular

14 one --

15 .

16 76 Q. MR. HANRATTY: Perhaps the way we should deal with it

17 is to have a search done to see is there any other

18 Biscay Limited, and we'll put that in hand to have it,

19 perhaps, on Tuesday.

20 .

21 In the meantime, I take it from your answer, Mr.

22 Finnegan, you are not in a position to throw any light

23 on who Biscay Limited is?

24 A. No, I am sorry -

25 77 Q. Well, is it possible, perhaps, that this Biscay Limited

26 boat company is, in fact, an entirely different

27 company, but that you do have another company called

28 Biscay Limited?

29 A. Not that I am aware of. But I'll check and see how

30 Biscay has come up on this.

1 78 Q. How will you do that?

2 A. With Kennedy McGonagle.

3 79 Q. Yes. But they were just told this information by  
4 Sovereign Management Limited.

5 A. Sorry - and this is recently, isn't it?

6 80 Q. Well, the letter I put to you was dated the 6th of  
7 October, 1989. That's when Sovereign Management  
8 Limited said that Biscay Limited had 94 shares, and  
9 that the other two gentlemen had three each.

10 .

11 There is a more recent document, in fact. Put up page  
12 2047. It's the 20th of March, 1981.

13 .

14 This is a letter from Michael O'Shea to Des Traynor, in  
15 which he - in reference in paragraph 2 to Foxtown  
16 Investments Limited he says the same thing, that Biscay  
17 Limited owned 94 shares and Mr. Naylor and Laine. That  
18 may well be him passing on the information which he had  
19 previously received in that letter I have just shown  
20 you from Sovereign Management Limited.

21 .

22 So --

23 A. I'll clear that up. What I will do is - the best thing  
24 to do is that I will talk to Sovereign --

25 81 Q. But Sovereign won't tell you anything, so - maybe they  
26 will? Is it possible that Sovereign will tell you  
27 something?

28 A. Well, I can always try. I must say, I will check - if  
29 this is showing up and this is something that has been  
30 going on, if it is there, I'll try to find out some way

1 or another.

2 82 Q. Mr. O'Shea --

3 A. I agree with you, we want to get that cleared up.

4 83 Q. Well, Mr. O'Shea did say, just to give you the complete

5 picture, at some place, if I can just find it, he did

6 make a statement to the effect that the shares in

7 Foxtown Investments Limited held by Biscay Limited and

8 Mr. Naylor and Mr. Laine were held as nominees of

9 Sovereign Trustees Limited, and it is on that basis,

10 and that basis alone, that we have been informed that

11 Foxtown Investments Limited is, in fact, owned by this

12 trust.

13 .

14 Do you follow me?

15 A. Right.

16 84 Q. Is it your understanding that Foxtown Investments

17 Limited is owned by the trust, by whatever convoluted

18 means it has been achieved?

19 A. Yes, it is, yes.

20 85 Q. Yes. So that ultimately the beneficial ownership in

21 Foxtown Investments Limited is vested in the trustees

22 of this trust?

23 A. Well - of Biscay?

24 86 Q. No, in the trustees of your trust?

25 A. Yes.

26 87 Q. Now, there has been reference in Mr. O'Shea's

27 correspondence - just bear with me.

28 .

29 Sorry, it's the document on screen. It says:

30 "All of these shareholders hold their shares as

1 nominees for Sovereign Trustees Limited." That's what  
2 he says in that document?

3 A. All right.

4 88 Q. Now, and that, of course means, if it's correct, that  
5 Foxtown Investments Limited - the beneficial ownership  
6 of Foxtown Investments Limited is vested in the  
7 trustees of this trust?

8 A. Right.

9 89 Q. Now, just going back to the trust for a moment. The  
10 trust that we have been speaking about has John J  
11 Finnegan as settlor and Guinness & Mahon (Jersey) Trust  
12 Limited as trustees. And we have presumed that they  
13 were the predecessors on title, as it were, to College  
14 Trustees Limited, and subsequently Sovereign Trustees  
15 Limited. Now, is that correct, or is there another  
16 trust?

17 A. I don't know of another trust, Sir.

18 90 Q. In Jersey or Guernsey?

19 A. No.

20 91 Q. Right. Well, are you absolutely clear about that, that  
21 we can presume that there is no other trust that you  
22 have any interest in, in Jersey or Guernsey, of which  
23 College Trustees Limited, or indeed Guinness & Mahon  
24 (Jersey) Trust Limited were or still are trustees?

25 A. Sorry, the Guinness & Mahon --

26 92 Q. What I am trying to establish is, is there any other  
27 trust in which you have an interest in Jersey or  
28 Guernsey?

29 A. Not that I am aware of. And if this is what it is  
30 about Foxtown - the name Biscay, I can certainly, I can



1 check with the lawyers on that, because I see it

2 showing up, the majority of it --

3 93 Q. What lawyers are going to give you any information?

4 Mr. O'Shea got his information from Sovereign

5 Management Limited?

6 A. All I can do is this: I'll see what light I can throw

7 on that. It would appear to me, unless there are two -

8 that Biscay is somewhere under the trusts which I have

9 --

10 94 Q. So it might be a different Biscay?

11 A. It might be a different Biscay.

12 95 Q. Well, we'll certainly look into the Biscay thing. But

13 you'll also recall, from the documentation, that

14 reference is made to the Amber Trust?

15 A. Yes.

16 96 Q. What is the Amber Trust?

17 A. The Amber Trust is - the Amber Trust is associated - I

18 am associated in some way through the - I think there

19 is a loop there somewhere with - what was the other --

20 97 Q. My question was: What is the Amber Trust?

21 A. I think that's - let me just look at this. I think

22 that's a trust connected with me, Sir.

23 98 Q. Is it a different trust?

24 A. To which?

25 99 Q. To the one that we've been talking about, the Guinness

26 & Mahon (Jersey) Trust Limited trust, or is it the same

27 thing?

28 A. I think it's the same thing.

29 100 Q. Well, is there some doubt in your mind about that?

30 A. Sorry that I'm being a bit - I know the name Amber

1 Trust. I think it's the same. I think it's the same  
2 thing.

3 101 Q. Well, the trust to which I referred you to yesterday,  
4 if I can just get the date of it again, I have it here,  
5 is a trust dated the 18th of September, 1973. So I  
6 suppose we'll call it the September '73 trust, just to  
7 avoid confusion.

8 A. Yes.

9 102 Q. Is that the Amber Trust? That's a trust in which you  
10 were named as settlor, and Guinness & Mahon (Jersey)  
11 Limited is named as the trustees?

12 A. The one on my screen here?

13 103 Q. No, I'll put it up, it's 4774.

14 .

15 And as you can see, in the covering sheet on it, it has  
16 the words "Discretionary Settlement" typed on it, and  
17 you're named as settlor, and then Guinness & Mahon.

18 .

19 If we look at the first page of it, 4775. It's  
20 between John J Finnegan, Seapoint House, as settlor,  
21 and Guinness & Mahon (Jersey) Trust Limited, which  
22 incidentally gives an address there in Jersey, not in  
23 Guernsey, are the trustees.

24 .

25 So that trust, certainly at its commencement, was based  
26 in Jersey. Now, is there a different trust in  
27 Guernsey?

28 A. Not that I am aware of. This would just be the address  
29 of - it would be just registered there.

30 104 Q. It's the registered office of the company, but the

1 company, in its corporate manifestation, is the trustee  
2 of the trust, so therefore the trust is based in  
3 Jersey. And in fact, if I am not mistaken, the proper  
4 law of the trust is Jersey, albeit that the trustees do  
5 have a discretion to change the proper law of the  
6 trust. So this would appear to be, subject to any  
7 correction you might wish to make on checking, a  
8 Jersey-based trust, or at least so it was at the time  
9 it was set up?

10 A. Well, I can certainly - I can't be emphatic about the  
11 basis or otherwise, but I can say to you that I will -  
12 I'll see if I can check up and report to you.

13 105 Q. Very good. Are you in a position, at this point, to  
14 say, and if you are not you can check this as well; is  
15 this the trust which has been referred to as the 'Amber  
16 Trust', or is it possible that that might be a  
17 reference to some other trust?

18 .  
19 Can I tell you, from my reading of it, there is no  
20 reference within the document, or at least I have found  
21 no reference, and I have read it, to the word "Amber."  
22 Do you have any idea why the word "Amber" was used in  
23 connection with the trust? It seems to be like a  
24 nickname or a label put on the trust.

25 A. Yeah. No, but I must say that I have heard of Amber,  
26 but I am not sure in what connection.

27 106 Q. This trust would normally be called the John J Finnegan  
28 Jersey Trust, is that right?

29 A. I don't - well, this is my name that's on it. Well, I  
30 wouldn't know - I wouldn't be referring to it just like

1 that, but it is --

2 107 Q. They are all just labels of convenience, to save you

3 reciting every time you refer to it the entire name of

4 the settlor and trustees and the date of it and so on?

5 A. Yes.

6 108 Q. You just put a label on it to identify it.

7 .

8 I've suggested, for the present purposes, to call this

9 the September 1973 Trust, but, as I understand your

10 last answer, you are not in a position to say whether

11 this is, in fact, the trust which has been referred to

12 as the Amber Trust. Is that so?

13 A. I will certainly find out. But I do know the name

14 Amber. And I would think --

15 109 Q. Are you in a position to say that this is the trust,

16 this September 1973 trust is the trust which owns

17 Foxtown Investments Limited?

18 A. No, but I - I'm sorry I am being a bit vague on that.

19 But I will ask - I'll see if I can check in some way

20 about that.

21 110 Q. Foxtown Investments Limited, we know, had a bank

22 account in Guinness & Mahon (Guernsey) Limited, this

23 being the account into which all these various monies

24 were sent?

25 A. Yes.

26 111 Q. Did the trust, either the September 1973 trust, or if

27 it's different, the Amber Trust, have a separate bank

28 account?

29 A. Not that I am aware of. I mightn't have been involved

30 in the detail, but not that I am aware of.

1 112 Q. Mr. Finnegan, this trust, you've told us, is a family  
2 trust, and so it will appear from the terms of the  
3 trust, albeit that there is express reference to  
4 charities and charitable purposes, but it's primarily -  
5 primarily it would appear it's a family trust which you  
6 established for the benefit of yourself and,  
7 principally, your family?

8 A. Mm-hmm.

9 113 Q. And it's quite clear that if we are talking about the  
10 correct trust, in other words if this is the trust that  
11 owned Foxtown Investments Limited, you pumped very  
12 substantial, enormous sums of money into it over a  
13 period of time. So I take it that you will have a  
14 good, to say the least, general knowledge of the  
15 structure of the trust, where the bank account of the  
16 trust was in which, essentially, your money resided,  
17 and the manner in which the trustees invested the  
18 monies that were put into the trust?

19 A. Well, the trusts are run by Credit Suisse, and I would  
20 imagine that any bank accounts are with Credit Suisse.

21 114 Q. Well, do you not know?

22 A. I can't say to you now - no, I can't say to you  
23 definitely, but I think they are.

24 115 Q. Well, for example, we know that Foxtown Investments  
25 Limited was dissolved in 1998. Why was it dissolved in  
26 1998?

27 A. I think that was on the advice of the trustees.

28 116 Q. And where was all the money that it had put --

29 A. I can try and find where that might be.

30 117 Q. You see, normally, Mr. Finnegan, as I take it you know,

1 when you establish a family settlement, you give  
2 discretion to the trustees, albeit I have been  
3 suggesting to you, through the correspondence we've had  
4 yesterday and more of which we'll have in a moment,  
5 that, in fact, you were the person making the  
6 decisions, but leaving that aside --

7 A. Yes.

8 118 Q. -- you put money in, the trustees become the legal  
9 owners of the money, and they apply the monies in  
10 accordance with the terms of the trust which you have  
11 established, or which the settlor has established. And  
12 primarily what they do is they invest the money to get  
13 the best return on it. That's their duty. So the  
14 first thing is they have to tell you where they invest  
15 the money, isn't that so?

16 A. Mm-hmm.

17 119 Q. And they produce accounts from time to time to show how  
18 the investments have done and how they have  
19 accumulated, and they have to, on an on-going basis,  
20 come up with other investments or better investments or  
21 changed investments. It's a changing situation over  
22 time, and it always is, isn't that right?

23 A. Mm-hmm.

24 120 Q. Now, we know that this trust, the September 1973 trust,  
25 was set up. We know that the trustees were Guinness &  
26 Mahon (Jersey) Trust Limited, and therefore we know  
27 that it was a Jersey based trust.

28 A. Yes.

29 121 Q. We know that you were associated with some trust,  
30 whether it be this or not, which owned a company called

1 Fometown Investments Limited.

2 A. Yes.

3 122 Q. And we know that Fometown Investments Limited had a bank  
4 account in a bank called Guinness & Mahon (Guernsey)  
5 Limited. We also know that it was into that bank  
6 account that all of the sums of money paid to you by  
7 Brennan and McGowan in these six land transactions that  
8 we have been looking at, and in the case of Canio, the  
9 proceeds of the sale of the one-third share of Fometown  
10 Investments Limited, in the sum of ú500,000, and  
11 subsequently a further ú100,000, were paid into that  
12 account.

13 A. Mm-hmm.

14 123 Q. So we know all of that?

15 A. Yes.

16 124 Q. Now, are you aware of any other trust that could own  
17 Fometown Investments Limited?

18 A. No.

19 125 Q. Well, may I take it, then, that the trust which owns  
20 Fometown Investments Limited is the September 1973  
21 trust?

22 A. I would - yes, I think that would be a fair assumption.

23 126 Q. Right. That, therefore, means that Biscay Limited and,  
24 originally Mr. Naylor and Mr. Laine, and now  
25 Mr. Ducqueman and Mr. Walker, is it - Winter?

26 A. Winter, yeah.

27 127 Q. Are the nominees of the trustees of the September 1973  
28 trust. That follows. And am I also right in thinking,  
29 therefore, that College Trustees Limited are the  
30 successors in title to Guinness & Mahon (Jersey) Trust

1 Limited?

2 A. Yes, but I don't think they are around now, are they,

3 Sir?

4 128 Q. No, but they were trustees of something, because we've

5 seen correspondence from Mr. Naylor and Mr. Barry on

6 headed notepaper of College Trustees Limited.

7 A. Yes.

8 129 Q. And we know that College Trustees Limited, therefore,

9 was a trustee at some point in time of trusts of which

10 you were the beneficial owner, or beneficiary, or

11 something?

12 A. Mm-hmm.

13 130 Q. So College Trustees Limited came into the picture

14 somewhere, and appeared to have gone out of the picture

15 somewhere. And we now know that a company called

16 Sovereign Trustees Limited, which appears to be a

17 subsidiary company of Credit Suisse Limited and Credit

18 Suisse Trust Services Limited, or something, is now a

19 trustee of a trust in which you have an interest,

20 clearly?

21 A. Yes.

22 131 Q. And these are the people, you are now telling us, who

23 will not give you information about your money?

24 A. Yes.

25 132 Q. Do you remember when the change of trustees occurred,

26 in which Guinness & Mahon (Jersey) Trust Limited was

27 replaced by College Trustees Limited, and why that

28 happened?

29 A. When about was that? Was that a while ago?

30 133 Q. Well, if you'll just bear with me, I'll tell you when



1 College Trustees Limited was formed. It was registered  
2 on the 6th of March, 1975. And I've indicated to you,  
3 yesterday, that the two original directors of it were  
4 Mr. Des Traynor and Mr. John Collins.

5 .  
6 So it could not have been before 1975. The September  
7 1973 trust was established in 1973. The trustees were  
8 Guinness & Mahon (Jersey) Limited. But in 1975  
9 Guinness & Mahon procured the establishment of another  
10 Guinness & Mahon company called College Trustees  
11 Limited.

12 .  
13 Now, it would appear that that trust company was a  
14 trustee of some trust in which you had an interest, and  
15 that the trust, of which it was a trustee, and in which  
16 you had an interest, was the one that owned Foxtown  
17 Investments Limited, because the College Trustees  
18 Limited correspondence is about that company. Do you  
19 follow me?

20 A. Yeah, I am getting there.

21 134 Q. So we know, therefore, that at some point in time,  
22 presumably after 1975, College Trustees Limited became  
23 the legal beneficial owner of Foxtown Investments  
24 Limited.

25 .  
26 Now, was Foxtown Investments Limited the main vehicle,  
27 or the only vehicle through which the assets of this  
28 trust were invested, or were there other companies as  
29 well?

30 A. As far as I am aware, I think Foxtown was the main.

1 135 Q. I don't particularly want to know much about them, but  
2 were there, in fact, other companies through which  
3 investments were made, as well as Foxtown Investments  
4 Limited?

5 A. Not that I am aware of.

6 136 Q. Right. But, in any event, you are clear - you appear  
7 to be clear that Foxtown Investments Limited would have  
8 been the principal investment vehicle for the trust?

9 A. Yes.

10 137 Q. And you believe for the September 1973 trust. Is that  
11 right?

12 A. Yes, I do.

13 138 Q. Well, then, you must have been told, in 1975 or  
14 whenever it occurred, that there was going to be a  
15 change of trustee?

16 A. Well, really, it's a long, long time ago, Sir. And it  
17 mightn't have been a very kind of important thing to  
18 stand out in my mind. But it's a long time ago. I  
19 just can't recollect.

20 139 Q. Do you not remember being told why the trustees of your  
21 family settlement were being changed?

22 A. I really don't. The only thing I can say is, I think  
23 that the ownership - I think College Trustees sort of  
24 sold - somewhere down the line I think those companies  
25 were passed on.

26 140 Q. To?

27 A. I think College Trustees had a successor. I don't know  
28 if that was - did it end up being Sovereign?

29 141 Q. We presume so, because Sovereign Trustees Limited now  
30 appear to be the trustees of some trust of which you

1           were - in which you have an interest. And we don't  
2           know whether it's the September 1973 trust or not until  
3           you check out the position about the Amber Trust.

4    A.   Right. Well, that should - I think, for the purpose of  
5           - from what you are saying, that's what appears on all  
6           your documentation, that it is a '73 trust, isn't it?

7 142 Q.   No. The only trust document we have been provided with  
8           is a trust which was established in September 1973?

9    A.   Yeah.

10 143 Q.   And I have asked you whether there was some other  
11          trust, perhaps called the Amber Trust, or whether this  
12          is, in fact, the Amber Trust. And you said you are  
13          going to check that.

14   A.   I am going to check that for you, yes.

15 144 Q.   Right. But whichever trust is the owner of Foxtown  
16          Investments Limited, and we now know that the trustees  
17          of the trust which own Foxtown Investments Limited, or  
18          do we know, is Sovereign Trustees Limited, the trustee  
19          of the trust which owns Foxtown? In other words, is  
20          Foxtown being run by Sovereign?

21   A.   I think that it was.

22 145 Q.   We do know that when College Trustees Limited were the  
23          trustees of a trust which owned Foxtown Investments  
24          Limited, certain administration services were provided  
25          to that company, that is College Trustees Limited, by a  
26          company called Sovereign Management Limited, which is a  
27          different company to Sovereign Trustees Limited, which  
28          is now the trustee of the trust which owns Foxtown, or  
29          as I am putting to you, does it? Who owns Foxtown now?

30   A.   Well, certainly that - I think that I was the owner of

1 - one of my companies of the trusts were the owner --

2 146 Q. One of your trusts is the owner of Foxtown?

3 A. Foxtown.

4 147 Q. Which one?

5 A. I can't tell you just at the moment.

6 148 Q. That means there is more than one?

7 A. Yeah. I think maybe, then, that's the Amber

8 connection. Can I check that for you?

9 149 Q. All right. Well, we'll leave that over. We'll revisit

10 that.

11 .

12 Let's just go back to this letter we were talking about

13 this morning.

14 A. Yes.

15 150 Q. This is the letter, page 361, of the 10th of September,

16 2001, from your solicitor, Mr. Michael O'Shea of

17 Kennedy McGonagle to the Secretary of Credit Suisse in

18 Guernsey.

19 A. Yes.

20 151 Q. And perhaps in the course of your checking in relation

21 to the Amber Trust, would you ascertain whether the

22 seat of the September 1973 Trust changed from Jersey to

23 Guernsey, or whether, in fact, this is a different

24 trust. Because, as you can see, Credit Suisse is

25 Guernsey.

26 A. Is Guernsey.

27 152 Q. Now, "We understand that the trustees of the trust

28 established by our client have refused to provide trust

29 accounts and other information requested by our client.

30 Our client has requested this information from you in

1 letters and" - which you say you do not believe were  
2 written - "and phone calls over a period of months, and  
3 we are advised that you communicated the decision of  
4 the trustees yesterday in the course of a telephone  
5 call."

6 .  
7 Now, the letter, having been written on the 10th of  
8 September, 2001 - that would appear to suggest that a  
9 decision was made by the trustees of the trust which  
10 owns Foxtown Investments Limited on the 9th of  
11 September, 2001. What was the decision of the trustees  
12 made on the 9th of September, 2001?

13 A. The 9th of September. When was this letter?

14 153 Q. The 10th of September, and it's referring to a decision

15 --

16 A. They weren't going to give the information --

17 154 Q. And what reason was given to you on the telephone for  
18 them not giving the information?

19 A. The reason that it was not - that it was not in the  
20 interest of the - it was not in the interest of the  
21 trustees to provide the information requested.

22 155 Q. The interest of the trustees?

23 A. I think that's the way it was put.

24 156 Q. I see. He goes on to say:

25 .  
26 "Our client is arguably obliged to provide the  
27 information requested pursuant to an Order for  
28 Discovery made in the High Court in Dublin in favour of  
29 the Flood Tribunal, and his failure to provide the  
30 information is likely to be viewed very seriously by

1 the Court."

2 .

3 There hasn't, in fact, been any Order by the High Court

4 in respect of yourself, isn't that right, so far?

5 A. No.

6 157 Q. "You should be aware that the Court, at the request of

7 the Flood Tribunal, has already jailed for seven days

8 one of the witnesses before the Tribunal, and that same

9 witness may be ordered to serve the balance of the

10 three months sentence unless he persuades the Court

11 that he has complied with the Order for Discovery.

12 There is, therefore, a genuine fear that our client may

13 lose his liberty for failure to comply with the Order

14 of the Court.

15 .

16 Given the extremely serious situation for our client,

17 we write to request that the trustees reconsider their

18 decision. And we would ask that they bear in mind not

19 only the risk to our client's liberty, but to the

20 irreparable damage that will be caused to his business

21 by any criticism or Order made against him by the High

22 Court in Dublin.

23 .

24 As you are probably aware, the Flood Tribunal has been

25 established to investigate payments to politicians in

26 planning matters, and the irony that is while our

27 client has made no such payments we have been unable to

28 convince the Tribunal and believe that we will not be

29 able to do so in the absence of the accounts of the

30 trust.

1 .  
2 The Tribunal are aware that the proceeds of a property  
3 transaction in Dublin was lodged with the trust, and  
4 are not unreasonably demanding proof that no payment  
5 was made from the trust to a politician, particularly  
6 where they have established that a payment was made to  
7 a politician directly or indirectly from a trust of a  
8 third party.

9 .  
10 Our client's position is not helped by other witnesses  
11 who, once pressure is applied by the Tribunal, have  
12 succeeded in providing records from abroad, including  
13 in one instance trust records from the trust we believe  
14 that was established in Liechtenstein.

15 .  
16 If the trustees are not prepared to provide the  
17 information required, we must ask they provide their  
18 detailed reasons for refusing. We believe our client  
19 may require advice on the correctness or otherwise on  
20 the ground of re" - sorry - "the grounds relied upon by  
21 the trustees."

22 .  
23 Now, if we could just go back up the page a bit, page  
24 two, where it says, "We believe that we will not be  
25 able to do so in the absence of the accounts of the  
26 trust. The Tribunal are aware that the proceeds of a  
27 property transaction in Dublin was lodged with the  
28 trust."

29 .  
30 Which property transaction is being referred to there?

1 The reason I ask, Mr. Finnegan, if it may assist you,  
2 is that, as you are aware, the proceeds of a number of  
3 property transactions were lodged with this trust, or  
4 at least were lodged in Foxtown Investments Limited?

5 A. Right.

6 158 Q. Are you aware of which one he is referring to?

7 A. Unless that was the funds from the - I am not sure now,  
8 but certainly I can check that one. But I thought it  
9 might have been from the sale of the shares in Canio.

10 159 Q. The heading of this letter is, "Our client - John  
11 Finnegan, Foxtown Investments Limited."

12 A. Yes.

13 160 Q. Now, we do know that Foxtown Investments Limited is not  
14 a trust company itself, it's an investment company  
15 owned by a trust company. And the request to which  
16 reference is made in the first sentence, is:

17 .

18 "We understand that the trustees of the trust  
19 established by our client have refused to provide the  
20 trust accounts and other information requested by our  
21 client."

22 .

23 What, precisely, was the information that you requested  
24 from the gentleman to whom you spoke?

25 A. That we wanted the accounts of Foxtown.

26 161 Q. The bank accounts or the audited accounts?

27 A. The bank accounts.

28 162 Q. Yes. Did you ask him for the audited accounts?

29 A. No, I don't think I did so.

30 163 Q. Well, the audited accounts would have been covered by



1 the Order for the Discovery and the Production of  
2 Documents.

3 A. Hum.

4 164 Q. In any event --

5 A. Well, I can --

6 165 Q. What was requested and what is referred to here was the  
7 bank accounts?

8 A. Yes.

9 166 Q. We have been provided with a letter from Ozannes  
10 Solicitors, page 360, dated the 19th of September,  
11 2001, which I take to be the response, and I infer the  
12 only response, received to Mr. O'Shea's letter. Am I  
13 right about that?

14 A. Yes, I think that's the --

15 167 Q. And it's signed by a person called EAG Prentice. It's  
16 dated the 19th of September. It's on Ozannes headed  
17 notepaper, of P.O. Box 186, Merchant Street, St. Peter  
18 Port, Guernsey.

19 .  
20 It's for the attention of Mr. Michael O'Shea, Messrs.  
21 Kennedy McGonagle Ballagh.

22 .  
23 "Dear Sir, I have been asked by Credit Suisse Trust  
24 Limited to write to you to confirm that we have advised  
25 Credit Suisse that they should not disclose the  
26 documents requested."

27 .  
28 So may I take it that the documents requested are what  
29 you say was what you asked for, namely, the bank  
30 accounts of Foxtown Investments Limited?

1 A. Yes. Yes, Sir.

2 168 Q. "The legal position with regard to confidential  
3 information, as you will know, is that the documents  
4 may not be disclosed on your client's authority, but by  
5 Order of the Court."

6 .

7 Now, I've drawn your attention yesterday to the fact  
8 that beneficiaries of a trust usually are entitled to  
9 information and documents in relation to their affairs?

10 A. Yes.

11 169 Q. And to that extent, such documents and such information  
12 is not confidential to the beneficiary?

13 A. Mm-hmm.

14 170 Q. And yet, here we have a solicitor suggesting that it  
15 is. He expressly refers to the documentation requested  
16 as "confidential". So whose confidence is being  
17 protected here?

18 .

19 MR. HUSSEY: I am sorry, that's the letter from a - the  
20 bank's solicitor from Jersey. I don't know that this  
21 witness can answer that question.

22 .

23 171 Q. MR. HANRATTY: Has anybody ever suggested to you,  
24 previously, that any of the information concerning your  
25 affairs of this trust were confidential, and you can't  
26 have it?

27 A. I must say that I hadn't had that experience, because  
28 they were quite good at liaison --

29 172 Q. To put it simplistically: If I open a bank account in  
30 a bank, I expect the bank to treat the information in

1 my account as confidential, but I do expect them to  
2 give me the information. But yet here we have the  
3 solicitor for Sovereign Trustees Limited saying that  
4 you can't have this information, even though you are  
5 the beneficiary of the trust. Isn't that rather an  
6 absurd situation?

7 A. Well, Credit Suisse is a very substantial firm. I have  
8 made every effort, and I really did try, and I did  
9 pressurise them to try and get the information. I do  
10 wish to help the Tribunal, and I think that - and I see  
11 that it is necessary to get this information.

12 .

13 I must say, that I didn't think that Credit Suisse  
14 would have clamped down and not given me the  
15 information I sought.

16 173 Q. Well, they have effectively pulled down the shutters  
17 on the very person that is entitled to the information,  
18 and asserted that it's confidential even to him, even  
19 to you. Isn't that right?

20 A. Yes. Well, this is now what we are taking - this is  
21 what we are now going to take up with Olsen - well,  
22 Olsen we will call them.

23 174 Q. If you required information about the trust, perhaps  
24 disbursements that the trust may have made to you in  
25 the past, and perhaps whether or not disbursements had  
26 been made to a proper beneficiary, or if you were  
27 concerned that the trust funds were not being properly  
28 applied, and you phone up the trustees and say - and  
29 they say, "I'm sorry, I am not going to tell you that",  
30 where does that leave you?

1 A. I hope to say, and --

2 175 Q. If you required information in relation to  
3 disbursements from yourself for Revenue purposes, so  
4 that you could do your tax returns, for example, and  
5 the trustees say to you, "I'm sorry, you can't have  
6 it." Where would that leave you?

7 A. Well, I must say that I think that the - what I did say  
8 earlier to you, Sir - I put ferocious pressure on them  
9 all along, and finishing with Kennedy McGonagle  
10 Ballagh's letter to them stating the hard facts. And  
11 by the way, during all that period as well, when I was  
12 talking to them, they were saying, "We are talking to  
13 our in-house lawyers." I said, "Well, can you not make  
14 a decision?" "We are talking to them." And then they  
15 came along and said that they had to - they were going  
16 to ask their firm, their outside lawyers, they were  
17 seeking their advice.

18 176 Q. For all you know, somebody could have run off with your  
19 money?

20 A. Of course.

21 177 Q. The only way a beneficiary can keep track of what's  
22 happened to his money is by getting information on  
23 accounts from the trustees with whom the money is  
24 vested.

25 A. Well, we have - I must say that it is tough that they  
26 haven't come forward with this, but I think we can - I  
27 did take the opportunity during that twenty minute or  
28 half hour break to put the pressure on Olsen, and I  
29 have - by the way, I have spoken to Alison Olsen,  
30 because --

1 178 Q. You have explained that.

2 A. Sorry.

3 179 Q. Just to finish off this letter for the record, the last

4 paragraph of it says:

5 .

6 "Credit Suisse are not compelled by a Guernsey Court

7 Order to disclose any information, and they do not have

8 any authority to release any information or

9 documentation. And accordingly, they are unable to

10 furnish any material requested."

11 .

12 Now, what do you think they mean that they don't have

13 any authority? Who is the person who can give them

14 authority, if not yourself?

15 A. Well, I am not that well up on all the trust laws or

16 otherwise. But they have the hard facts - it was put

17 to them very firmly from Kennedy McGonagle Ballagh to

18 pass over the information, and they have responded like

19 they have. And I have again reiterated to them the

20 position within the time break there, and --

21 180 Q. What this paragraph appears to suggest is that Credit

22 Suisse will not give information to the beneficiaries

23 of the trust of which it is trustee without a Court

24 Order. Have you ever heard of that before?

25 A. No. But I wouldn't be involved in that.

26 .

27 CHAIRMAN: I wonder if I might intervene here. This

28 trust, apparently, was set up in 1975.

29 .

30 MR. HANRATTY: '73.

1 .

2 CHAIRMAN: '73. Have you never in the years that have

3 elapsed since then, 25, 27 years, 28 years, received a

4 statement of account, the balances, the credits, the

5 investments, whatever may be the status of the fund?

6 A. I must say, Sir, that from time to time we did get - I

7 did get information. And that's what surprised me,

8 that we haven't been able to get the information.

9 .

10 CHAIRMAN: Well, did you ever put those in a file or

11 anything like that?

12 A. No. I think that when - none of the information on

13 that - I didn't file, Sir. Any time I got any of that,

14 I didn't file it here.

15 .

16 CHAIRMAN: Tell me, why didn't you file it?

17 A. It's private.

18 .

19 CHAIRMAN: Why?

20 A. Well, any of the information that we would have had

21 very often came through the lawyers, and they would

22 have copies of anything we had.

23 .

24 CHAIRMAN: What I want to find out from you; the

25 ordinary bank account that you have, and that I have,

26 and everybody else has, from time to time issues a bank

27 statement, and you know whether you have a credit or an

28 overdraft.

29 A. Mm-hmm.

30 .

1 CHAIRMAN: What I want to know from you, in 25 years  
2 what has been your knowledge of the progress to credit  
3 or to debit, as the case may be, in your affairs in  
4 this trust?

5 A. Yes, we did get information over the period.

6 .

7 CHAIRMAN: And if you got information, you must have  
8 got it from someone. So even if you didn't keep it,  
9 you could go back and say, "Could we have a copy?" Why  
10 not?

11 A. Say that again to me, please?

12 .

13 CHAIRMAN: If you get a bank statement from the Bank of  
14 Ireland, and per chance you put it in the waste paper  
15 basket accidentally, you can ring them up and say,  
16 "Can you send me another copy."

17 .

18 So you know where you got the statements from, and you  
19 should know where you got these statements from.

20 .

21 Why haven't you gone back and said, "Can I have copies  
22 of the statements, through the years, 25 years of the  
23 operation of this account?"

24 .

25 What's the reason why you can't get copies of what you  
26 say you already got from time to time?

27 A. I may have got some parts of it from time to time.

28 Well, I don't know, Sir, why we are not getting it.

29 And that's why we are taking the steps which we are  
30 taking now.

1

CHAIRMAN: May I just pursue the matter a little bit  
further?

4 A. Yes.

5

CHAIRMAN: I would assume that you intend the fund to  
grow and to be well invested, and to be an appropriate  
fund for your beneficiaries, whoever they may be.  
Would it not be an ordinary prudent thing, you as a  
businessman, to observe what investments were carrying  
on, and how they were going up or down through 25  
years?

13 A. Yes, it would.

14

CHAIRMAN: Tell me, do you know?

16 A. I haven't had, for some considerable time, from them --

17

CHAIRMAN: Why not?

19 A. I don't know whether it was sought.

20

CHAIRMAN: But in the past, when you wanted it - you  
got it, for some reason, in response to a letter, or  
there was some reason to check, or you wanted to decide  
what your wealth or otherwise stood as. It may be a  
perfectly human reason.

26 A. Mm-hmm.

27

CHAIRMAN: Why has it suddenly become impossible today?

29 A. Well, this is what I am about to find out, Sir, because

30 I really don't know why they have taken such a very



1 firm line on this. And we will - I will report to you.  
2 And I would hope that we will be able to get the  
3 information. These are quite a good firm of lawyers we  
4 are talking about, and I did do what you requested me  
5 to do in the time --

6 .  
7 CHAIRMAN: We'll rise for lunch. And a quarter past  
8 two. Thank you.

9 .  
10 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

11 .  
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1 THE TRIBUNAL THEN RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND

4 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

5 .

6 181 Q. MR. HANRATTY: Good afternoon, Mr. Finnegan.

7 A. Good afternoon to you.

8 182 Q. Have you found out anything yet about the Amber Trust?

9 A. No, but just going over - as far as just having a,

10 trying to recollect, I think the Amber - no, the Amber

11 Trust is the trust that --

12 183 Q. Is the September 1973 Trust?

13 A. That is, as far as I can see, that is - they call it -

14 they wouldn't refer to it all the time as that, but it

15 is as far as I am aware.

16 184 Q. Why is it called the Amber Trust?

17 A. Sorry?

18 185 Q. Who designated it "The Amber Trust" or applied that

19 label to it?

20 A. I think it was a long, long time ago. I think that

21 goes back to the Des Traynor - to Des Traynor's time.

22 186 Q. Yes. Just referring you to the trust document which

23 we had briefly yesterday, and again on screen this

24 morning. If I can just refer you to the first page of

25 it again. It is page 4774. And this is the document

26 with the words "Discretionary settlement between John J

27 Finnegan and Guinness & Mahon Jersey Trust Limited" on

28 the front of it. If one scrolls up to the top of that

29 document, you will see the words "Exhibit 11" written?

30 A. Yes.

1 187 Q. Now, I understand that the provenance of this document  
2 is that it was furnished to the Tribunal by your  
3 solicitor, Mr. O'Shea, of Kennedy McGonagle. He having  
4 obtained it from the Ansbacher Inspector, among a  
5 number of documents which have been numbered from 1 to  
6 11, or possibly more, and of which this is No. 11.

7 .

8 Did you know that?

9 A. No, I didn't actually.

10 188 Q. Which effectively means that this Tribunal has not  
11 received, either from you or your solicitor, any trust  
12 document, from your own sources, as it were, either the  
13 Trust Deed itself --

14 .

15 MR. HUSSEY: Sorry, that isn't an accurate  
16 representation of what happened.

17 .

18 CHAIRMAN: Permit the representation to be made, and  
19 let's deal with it, by all means. Let's find out what  
20 counsel is saying. By all means, then, make your  
21 objection, and I will listen to it.

22 .

23 189 Q. MR. HANRATTY: Put it another way. The only Trust Deed  
24 that we have is a Trust Deed which came through your  
25 solicitor from the Ansbacher Inspector?

26 A. Well, I wasn't aware of that, Sir.

27 190 Q. Well, could I have your copy of the Trust Deed?

28 A. We will get our copy of the Trust Deed to you.

29 .

30 MR. HUSSEY: I beg your pardon.

1 .  
2 My solicitor informs me that this document came to Mr.  
3 O'Shea from Mr. Finnegan sent to the Ansbacher  
4 Inspector, and another copy of it was given to this  
5 Tribunal from my solicitor, but through Mr. Finnegan in  
6 the first instance, not from any other source.

7 .  
8 191 Q. MR. HANRATTY: Well, perhaps Mr. Finnegan can tell us  
9 about that.

10 .  
11 Is this your document?

12 A. To the best of - Mmm. To the best of my knowledge and  
13 belief, now that I hear that, it is. I am sorry if it  
14 came around the other way, but this --

15 192 Q. And does it appear in your Discovery?

16 A. I am sure it does, in my Discovery. I don't know, Sir,  
17 but I --

18 193 Q. It doesn't appear to be in your Discovery, it came from  
19 your solicitor, but --

20 .  
21 MR. HUSSEY: I am sorry --

22 A. So it came from my solicitor.

23 194 Q. MR. HANRATTY: Yes, there was correspondence between  
24 Miss Howard, solicitor to the Tribunal --

25 A. Yes.

26 195 Q. -- and Mr. O'Shea in relation to a range of issues,  
27 including trust documents specifically, and in the  
28 course of that correspondence this document was  
29 received?

30 A. I remember something about this now, Sir. I remember

1           when - that there was a question of - we offered to  
2           produce a trust document, and I think to Mr. Hussey - I  
3           think we were told that --

4 196 Q.   Is this as a result of a conversation between Mr.  
5           Hussey and Ms. Dillon?

6           A.   Yes.

7           .

8           MR. HUSSEY: No, I am not.

9           .

10          MR. HANRATTY: No, I am sorry it was as a result of a  
11          conversation with Mr. O'Shea.

12          .

13          MR. HANRATTY: With respect, I think the witness should  
14          be allowed to give the evidence, not Mr. Hussey. The  
15          witness has said he produced a trust document in a  
16          particular context, and in that particular situation I  
17          think he should be allowed to say it. And then if Mr.  
18          Hussey believes he is mistaken, indicate in what way.

19          .

20          CHAIRMAN: Let's just hear the witness's version first  
21          of all, and then - Mr. Hussey, if you disagree with it,  
22          please let it known to me, and we will see what the  
23          situation is.

24          .

25          MR. HUSSEY: The point is, and again I don't wish to  
26          interrupt unnecessarily. This witness was not present  
27          at the time, and I think - maybe that is the first  
28          thing to establish. All he could say, therefore, would  
29          be hearsay of what happened. I think maybe that should  
30          be established first, then see what he can say, or what

1 light he can shed on the subject.

2 A. I wasn't there, no.

3 197 Q. MR. HANRATTY: Yes, you weren't there. What is your

4 understanding then, of the context or circumstances in

5 which this document came to be provided or produced to

6 the Tribunal?

7 A. We were asked for it.

8 198 Q. Yes?

9 A. And that it was sent from Kennedy McGonagle --

10 199 Q. Well, did they have it in their files?

11 A. I really don't know, Sir, but I --

12 200 Q. Well, did you give it to them?

13 A. I don't think - no, I don't remember giving it to them.

14 I think they must have had it themselves.

15 201 Q. All right. Well, then, could we have your copy of the

16 trust document.

17 A. Yes. Yes, I will let you have whatever I have.

18 202 Q. Yes. And what do you have?

19 A. I don't know if I have it, Sir, but I will have a look.

20 203 Q. It would be unusual, would you not agree, for a person

21 who sets up a family trust not to have a copy of the

22 trust?

23 A. Yes, or it could be in the lawyer's office, so can I

24 --

25 204 Q. Which lawyer?

26 A. Kennedy McGonagle.

27 205 Q. And what about the Letter of Wishes?

28 A. Well, I think anything like that would be in Guernsey.

29 206 Q. Oh, dear. That means we can't have it, is that right?

30 A. Well, as far as - as far as I am aware, these documents

1 are in Guernsey.

2 207 Q. Yes. And a Letter of Wishes is a letter which is  
3 given by a settlor, making a settlement, to the  
4 trustees to indicate to them his wishes, which are not  
5 binding in relation to the disposition by them of trust  
6 assets, and generally in relation to the management of  
7 the trust. So this is your own document, your  
8 instructions, non-binding to the trustees. Is this a  
9 document that we are not going to be able to get?

10 A. Hopefully we will be able to get - whether the  
11 documents are available.

12 208 Q. Can you think of any reason why Sovereign Trustees  
13 Limited would not let you have a copy of your own  
14 Letter of Wishes?

15 A. No, I wouldn't.

16 209 Q. Have you asked them for it?

17 A. By the way, I must say that I asked the - I wish to say  
18 that when we asked them for information, I didn't just  
19 ask them, I asked them for everything that you  
20 required, Sir.

21 210 Q. Yes. Well, I think everything that was required by  
22 the Tribunal is, in fact, itemised in correspondence  
23 from the Tribunal.

24 A. That is what we did ask them for --

25 211 Q. And was not by any means confined to the bank accounts  
26 of Foxtown?

27 A. Yes, that was my mistake, we asked them for everything.

28 212 Q. Just going back, though, to the Letter of Wishes. Did  
29 you ask Sovereign Trustees at any time for your Letter  
30 of Wishes?

1 A. No, I haven't.

2 213 Q. Why haven't you? This was, as you know, the subject of  
3 correspondence. And if I could just refer you to --

4 A. Sorry - this morning when I said, whatever the list we  
5 - we sent them the list of whatever - the entire list  
6 that you sought. We did ask for all of that.

7 214 Q. Yes. Well, there Michael O'Shea, certainly on the  
8 26th of June, appeared to have been of the view that he  
9 would be in a position to acquire it. I don't know if  
10 this letter is on the scanner. We will put it in so  
11 that you can see it.

12 A. Yes.

13 215 Q. It is a letter from Mr. O'Shea to the Tribunal to Miss  
14 Howard. It is "re our client John Finnegan."

15 .  
16 He says:

17 .  
18 "Dear Miss Howard, when we spoke yesterday afternoon we  
19 discussed among other things the Trust Deed. Until  
20 reminded by Dominick Hussey, I had forgotten that we  
21 had earlier obtained a copy of the Trust Deed from  
22 Credit Suisse."

23 .  
24 So it would appear that is, in fact, the provenance  
25 and, in fact, the Exhibit 11.

26 .  
27 "And that we had furnished a copy of this deed to the  
28 inspectors appointed by the High Court to investigate  
29 Ansbacher (Cayman) Limited. I enclose a copy of this  
30 Trust Deed herewith. I do not have a copy of the



1 Letter of Wishes, but I believe that this can also be  
2 obtained and will be furnished as soon as it is to  
3 hand.

4 .  
5 Counsel has asked me to remind the Tribunal that in my  
6 evidence I said that it should be possible to obtain  
7 the Trust Deed, but this offer was not accepted by the  
8 Tribunal."

9 .  
10 So, it does appear that this deed was, in fact,  
11 acquired from the trustees?

12 A. It appears so, yes.

13 216 Q. So on the 26th of June there didn't appear to be any  
14 difficulty in getting at least this document out of  
15 them?

16 A. Well, all I will say is that if Michael O'Shea got it  
17 --

18 217 Q. Mr. Finnegan, is it your evidence to this Tribunal that  
19 apart from this document that Mr. O'Shea got, do you  
20 not have in your own possession any document at all  
21 about your trust?

22 A. Well, all documents that - regarding the trust were  
23 kept in Guernsey, and that was, I think, a direction or  
24 a wish that was set up years ago.

25 218 Q. Do you have an office in Guernsey?

26 A. No, I don't.

27 219 Q. Or Jersey?

28 A. No, I don't.

29 220 Q. Well, we know that Credit Suisse is a, shall we say, a  
30 professional trust service provider?

1 A. Yes.

2 221 Q. And a fairly large trust service provider?

3 A. Yes.

4 222 Q. Not only in Guernsey and in Jersey, but around the

5 world. And we infer that they conduct their business

6 in a professional way?

7 A. Mm-hmm.

8 223 Q. Would you agree with that?

9 A. Yes, I would.

10 224 Q. And one would expect that a professional trust provider

11 that is providing services on a fee paying basis, would

12 in the normal course of events regularly and

13 periodically send out to the beneficiaries of the trust

14 statements of account, reports and all kinds of

15 information relating to their stewardship of the funds

16 to which the beneficiaries are entitled. And I suggest

17 to you that they have, in fact, been doing that, as

18 they have, one presumes, been doing with all of their

19 clients in a similar situation as yourself, and that

20 you were in receipt, in fact, of substantial

21 documentation over the years, from the trustees of this

22 trust?

23 A. What, in fact - now, I am just trying to remember his

24 name, who was - well, Ducqueman, the man before Mr.

25 Ducqueman who was appointed to the directors of the

26 company. I am trying to remember his name.

27 .

28 What happened: That they used to pay visits to Dublin

29 and come over, and a lot was handled on the - phone

30 calls. And they would come over and have a talk about

1 the situation, but didn't leave - documents were not  
2 left in Dublin.

3 225 Q. Are you saying they never sent you accounts?

4 A. We got accounts from years ago.

5 226 Q. Do you not still get accounts?

6 A. No, they would arrive and discuss it with you.

7 227 Q. So your evidence is --

8 A. And if there was anything left, we usually - we weren't  
9 supposed to - I think keeping anything, anything that  
10 was kept should be kept in Guernsey, and not in  
11 Ireland.

12 228 Q. Is there something wrong with this trust?

13 A. No.

14 229 Q. Is there any reason why it wouldn't be conducted in the  
15 way one would expect in the normal course of events  
16 such business to be conducted, namely, by periodic  
17 statements of account or statements of accounts being  
18 sent out to the persons interested in the trust, by a  
19 professional trust company?

20 A. Mm-hmm.

21 230 Q. I mean, as I understand your evidence, you are saying  
22 that this doesn't happen in the case of this trust, is  
23 that correct?

24 A. We got - Ducqueman used to come over and have a chat  
25 about it, but he doesn't come over now.

26 231 Q. And he doesn't send you any information or  
27 documentation about the trust?

28 A. I could have a telephone conversation with him.

29 232 Q. I see. So he doesn't send you any statements of  
30 account on a monthly basis or a six monthly, or even on

1 an annual basis, does he not?

2 A. No, I haven't had them - I think we used to get them  
3 some time ago, but we haven't had them in recent years.  
4 Then we always just either shredded them, or that was  
5 it.

6 233 Q. Shredded?

7 A. Yes.

8 234 Q. Why would you shred it?

9 A. Well, it was a trust that - the business was done in  
10 another country.

11 235 Q. Mr. Finnegan, we are talking here about very, very  
12 substantial sums of money.

13 A. Yes.

14 236 Q. We are talking about the stewardship of that money, the  
15 investment of that money, the earning of returns on  
16 that money, and the investment of the earnings on the  
17 returns.

18 A. Mm-hmm.

19 237 Q. And so on. We are talking about management decisions  
20 with regard to investments being made from time to time  
21 by trustees, we are talking about trusts which, we  
22 presume, keep annual accounts and have their accounts  
23 audited.

24 .

25 Are you suggesting to this Tribunal that you were not  
26 in receipt of substantial documentation of that kind  
27 from the trustees of this trust from the time it  
28 started?

29 A. No. In the days of when Mr. Traynor was alive, he used  
30 either to ask one to come around, and he would go down

1 through it with one, and he was the one who handled  
2 everything at that particular time. And then it was  
3 handed over to, when he died, it was the other people -  
4 anyway, the people in Guernsey.

5 238 Q. Credit Suisse?

6 A. Credit Suisse.

7 239 Q. Yes. And do Credit Suisse conduct their operation in  
8 a professional way?

9 A. Yes, they do.

10 240 Q. They are providing professional services?

11 A. Yes.

12 241 Q. Through a professional company called Sovereign  
13 Trustees Limited?

14 A. Yes.

15 242 Q. Does that professional company not send out statements  
16 of account periodically to the numerous beneficiaries  
17 of the numerous trusts which they manage?

18 A. I can't talk for others, Sir, but they don't send out  
19 accounts, but I could talk to Ducqueman and discuss  
20 them.

21 243 Q. Did they ever send you a letter?

22 A. I think some time ago we did get --

23 244 Q. As matters stand at present, this Tribunal has not  
24 received from you, subject to being corrected if I am  
25 incorrect, one single document of your own in relation  
26 to your own affairs in relation to this trust?

27 A. That's correct.

28 245 Q. Other than the bank statements which were produced last  
29 week of Foxtown Investments Limited?

30 A. Hum hum.

1 246 Q. No correspondence from the trustees to you. No  
2 correspondence from you to the trustees. No statements  
3 of account. No report on the investments that were  
4 made with the capital contained in this trust, or of  
5 the income that was earned in this trust. No audited  
6 accounts of any kind. No management accounts of any  
7 kind. No information sent to you by the trustees about  
8 anything. Is that right?

9 A. Well, when Ducqueman would come over, he doesn't come  
10 over now, but he used to just run down through things  
11 with me.

12 247 Q. Do you not keep any records of your affairs?

13 A. No, I don't, Sir.

14 248 Q. Mr. Finnegan, you have a reputation in this town of  
15 being an astute and successful businessman, and are you  
16 asking this Tribunal to believe that you do not have a  
17 single record in connection with this extraordinarily  
18 substantial trust in Guernsey?

19 A. Well, as I say, the only thing that we had - I think  
20 years ago there was, but I think then what happened,  
21 that - Barry, it was Mr. Barry, I couldn't remember his  
22 name, when he used to come over he would have them, but  
23 they always took them back with them.

24 249 Q. How do you get money out of the trust?

25 A. If - I would discuss it on a phone call to - if I were  
26 to get some out, would be to Ducqueman, and he would  
27 ask the --

28 250 Q. And if you made such a request, how would he implement  
29 it?

30 A. He would go to the trustees, and then he would either

1 - he would then let one have it.

2 251 Q. Presumably, the trustees from time to time, in their  
3 capacity as trustees of this trust, and of course they  
4 are being a professional trust company, we presume  
5 trustees of many trusts, maybe hundreds, maybe  
6 thousands, we don't know, but in their capacity as  
7 trustees of this trust, presumably, would have to meet  
8 from time to time to make decisions in connection with  
9 the trust?

10 A. Mm-hmm.

11 252 Q. And presumably, there are, therefore, minutes of these  
12 meetings?

13 A. Well, I haven't got any, Sir.

14 253 Q. You have never been sent minutes of the meetings of the  
15 trustees?

16 A. Of the trust meetings, no.

17 254 Q. Have you ever been informed of the decision of the  
18 trustees?

19 A. No, they are professional managers. They have  
20 discretion.

21 255 Q. Have you ever been informed of their decision?

22 A. Except on the phone. If there is the question of,  
23 perhaps, selling stock.

24 256 Q. What is in your Letter of Wishes to the trustees?

25 A. I can't give you exactly what it is, but I think in the  
26 event of anything, where - it is a long time ago.

27 257 Q. Well, what is the gist of it?

28 A. I think the gist of it is, I think, that family members  
29 would get whatever, whatever different things.

30 258 Q. And would you expect, in the normal course of events,

1           that they would comply with any wishes you expressed to  
2           them subsequent to your Letter of Wishes?

3       A.    I would.

4 259 Q.    Going back to the question of when you would require to  
5           get money out. Physically, how would Mr. Ducqueman get  
6           this to you? Would he send you a cheque?

7       A.    Well, I haven't done it for quite a while, Sir, but -  
8           Mmm - I think some time ago, I think, we - I might have  
9           got a cheque, yes, Sir.

10 260 Q.    Presumably, that would be a Sterling cheque?

11      A.    I can't remember when. Now, it is a long time. I  
12           haven't drawn out anything from it.

13 261 Q.    Would it have been a Foxtown Investments trust or a  
14           trust cheque, or indeed a Sovereign Trustees cheque?

15      A.    I am not quite sure, actually, what --

16 262 Q.    Do you know where the fundings, the subject of this  
17           trust, are now invested?

18      A.    As far as I know and believe, that they are in  
19           Guernsey.

20 263 Q.    But do you know in what they are invested?

21      A.    Well, they are invested --

22 264 Q.    I am just asking you, do you know --

23      A.    I have a good idea, yes, Sir.

24 265 Q.    And do these investments change from time to time?

25      A.    Well, a lot of them are equities and haven't changed in  
26           quite a long time, but they are in sort of leading  
27           long-term companies.

28 266 Q.    There are extensive provisions, as is normally the  
29           case, in this document for situations dealing with  
30           children or minors, and the duties of trustees in those



1 circumstances. Your own children, of course, are  
2 named, among others, as a category of beneficiaries in  
3 the trust, isn't that right?

4 A. Mm-hmm.

5 267 Q. And I take it that the trustees have conducted the  
6 trust in accordance with your Letter of Wishes and for  
7 the benefit of the various beneficiaries, including  
8 your children? And I take it, that in that context,  
9 and without wishing to get into the detail of it, would  
10 have been involved in making disbursements at various  
11 times for trust purposes, for family trust purposes?

12 A. Yes.

13 268 Q. In doing so, what mechanism do they use? Do they send  
14 you a cheque? Have they got an account in Dublin? Do  
15 they do money transfers, or what way do they do it?

16 A. Well, when they were making a sum for the children -  
17 years ago my daughters were living in London, and when  
18 they were being helped out, at certain times they were  
19 done by transfer.

20 269 Q. Yes.

21 A. As far as I recollect.

22 270 Q. We know that, from the correspondence we had yesterday,  
23 that it appeared that you were very much the  
24 decision-making authority in respect of this trust,  
25 isn't that right?

26 A. I did make quite a few decisions, yes, Sir.

27 271 Q. And any time your decisions were communicated to the  
28 trustees, usually through Kennedy McGonagle, they were  
29 implemented?

30 A. They were.

1 272 Q. To that extent, the trustees weren't exercising their  
2 own discretion; they were implementing your  
3 instructions?

4 A. Yes, you could say that, Sir.

5 273 Q. You will recall the letter we started with this  
6 morning, which was the letter informing the trustees of  
7 what had been done about the sale of the Foxtown  
8 one-third interest in Ardcarn?

9 A. Yeah.

10 274 Q. And the reference to the price of ú700,000, and the  
11 installments in which it would be paid, and the hope to  
12 renegotiate the period over which the ú700,000 would be  
13 paid and so on. All of that information was contained  
14 in this letter and conveyed by your solicitor to the  
15 trustees, isn't that right?

16 A. Was that --

17 275 Q. At page 1412, it is a letter from Mr. O'Shea to  
18 Sovereign Management Limited. It is dated the 19th of  
19 December, 1990?

20 A. Yes.

21 276 Q. We did read the whole letter. Perhaps I will read it  
22 on to record, and that will give you an opportunity to  
23 consider it as well. Then we'll come back on it.

24 .

25 "Dear David," that is David Naylor.

26 .

27 "I refer to our telephone conversation earlier today,  
28 and confirm that agreement has been reached in  
29 principle for the sale by John of his interest in  
30 Ardcarn. The consideration agreed is ú700,000 as to

1        ú500,000 and the balance over a period of years. The  
2        original proposal was that the balance be paid over a  
3        period of four years, but John is hoping to negotiate a  
4        shorter period, i.e. two years. The consideration is  
5        to be paid in Irish Government securities, and on the  
6        completion of the transaction, which is scheduled to  
7        take place in Jersey on Thursday or Friday at the  
8        latest, a contract note for the purchase of the  
9        securities will be furnished. I will have established  
10       that the full purchase price and the commission payable  
11       for the purchase of the government stock has been paid  
12       in full.  
13       .  
14       The completion of the agreement will be conditional on  
15       the completion of an agreement for the sale of part of  
16       the property in Sandyford in Dublin to Manor Park Homes  
17       and also conditional on agreement with Allied Irish  
18       Finance and George Russell solicitor. I understand  
19       that all of these matters are agreed in principle, but  
20       there could, of course, be last minute difficulties. A  
21       transfer in respect of the Ardcarne shares should be  
22       handed over on completion together with:  
23       .  
24       A. A letter of resignation from you resigning as a  
25       director of Ardcarne and Canio. I enclose suggested  
26       draft letter herewith.  
27       .  
28       B. A letter from Foxtown confirming that it has no  
29       claims whatsoever against Ardcarne. Again I enclose  
30       suggested draft of this letter herewith.

1 .  
2 C. A letter from Sovereign Trustees confirming also  
3 that they have no claims, and again a suggested draft  
4 of this letter is sent herewith.

5 .  
6 In addition to evidence of the purchase of the  
7 government stock, you should also receive, on  
8 completion, a letter from Ardcarl waiving or forgiving  
9 Foxtown the Sterling ú6,426 due by Foxtown to Ardcarl.

10 .  
11 I shall be in touch with you later on today as soon as  
12 I have settled the terms of the agreement. I will, of  
13 course, fax a copy of the agreement to you which is to  
14 be executed by Foxtown at completion. I shall also ask  
15 John to confirm the above."

16 .  
17 So here we had Mr. O'Shea providing detailed  
18 information to the trustees, the people who owned  
19 Foxtown Limited. He was telling them, your solicitor  
20 was telling them, the arrangements that he had made in  
21 respect of the sale of Foxtown's share in Ardcarl. He  
22 was drafting the agreement, and he was enclosing a copy  
23 of the draft of the agreement. He drafted a letter of  
24 resignation, and he enclosed a copy of the draft letter  
25 of resignation. He drafted a letter from Foxtown  
26 confirming that it had no claims against Ardcarl. And  
27 he drafted that and sent it over to them.

28 .  
29 He decided that Sovereign Trustees Limited would have  
30 to confirm that they had no claims and, again, he

1 drafted the document to that effect and sent it over to  
2 them.

3 .

4 He made the decision as to the ú6,426 indebtedness  
5 should be disposed of.

6 .

7 So your solicitor was giving all of this information  
8 and all of these instructions to the trustees of the  
9 trust that owned Foxtown Investments Limited. Isn't  
10 that right?

11 A. That's right.

12 277 Q. And I suggest to you that that clearly establishes,  
13 beyond the possibility of argument, that you were the  
14 one that was calling the shots?

15 A. Yes, Sir.

16 278 Q. And, in fact, in a subsequent document, in fact as  
17 recently as the 2nd of December, 1996, page 1553, where  
18 he is writing to Eric Wallace, of KPMG chartered  
19 accountants, 1 Stokes Place, St. Stephen's Green,  
20 Dublin 2.

21 .

22 "Dear Eric, I refer to my telephone conversation with  
23 you recently in connection with the CGT problem for our  
24 client, Foxtown Investments Limited. This is a company  
25 I incorporated in the Channel Islands and controlled by  
26 John Finnegan."

27 .

28 Again, that is very clear that you were the man calling  
29 the shots, and you were the man making the decisions,  
30 isn't that right?

1 A. Yes, Sir.

2 279 Q. And I suggest to you that in those circumstances, and  
3 having regard to that overwhelming evidence, which you  
4 admit establishes that you were in control and calling  
5 the shots, that the proposition that Sovereign Trustees  
6 Limited is withholding from you something which you  
7 genuinely want, is preposterous and utterly  
8 unsustainable?

9 A. As I said to you this morning, Sir, and explained, we  
10 did have a very good - I do agree with you, that it  
11 sounds unreasonable that they wouldn't cooperate. And  
12 I think that they should be made - and I am going to  
13 make - I am doing what I promised I will do, to force  
14 them in to doing it. I don't know what the situation  
15 is, why they have adopted this attitude.

16 280 Q. I have to, I regret, Mr. Finnegan, put it to you, that  
17 what is going on here is, in fact, a charade, a  
18 pretence. The documents which are always in the normal  
19 course of events available to a beneficiary, are not  
20 available in this particular case, that this is a  
21 pretence orchestrated by somebody to enable you to  
22 avoid the production of these documents, and that it is  
23 a charade which flies in the face of overwhelming  
24 evidence, that at any time you ever wanted anything  
25 from these trustees, all you had to do was pick up the  
26 phone and ask?

27 A. Well, I want to say to you, Sir, that it is not a  
28 charade. I have made every effort to try and get them,  
29 and I will keep the Tribunal informed of all - on all  
30 documentation and all our efforts that we will be

1 making to have this information extracted from Credit  
2 Suisse.

3 281 Q. I am going to leave that aspect of it now, Mr.

4 Finnegan. As you are aware, the Sole Member has  
5 indicated this morning that he wishes to be informed of  
6 what progress has been made --

7 A. Yes, Sir.

8 282 Q. -- in relation to these documents on Tuesday morning.

9 .  
10 Now, dealing with some other aspects of the production  
11 of documents. Apart altogether from the category of  
12 documents which are within the grant and in the  
13 possession, certainly, of the trustees of your trust,  
14 there is the question of your own personal files. We  
15 know from Discovery we have received from other  
16 parties, that there was correspondence between you and  
17 a variety of other parties, including your own  
18 solicitor, Mr. O'Shea. We know from the Discovery,  
19 which you have made that the letters which were sent to  
20 you by these various parties are not included in your  
21 Discovery. And the letters which you wrote to them, or  
22 copies of the letters which you wrote to them are not  
23 included in your Discovery. Can you explain why that  
24 is?

25 A. I think, Sir, these are some letters from some time  
26 ago.

27 283 Q. Over a period of time, and we will go through each  
28 category in turn. I am just putting the general  
29 proposition to you now, to appraise you of --

30 A. There wasn't much of - actually, there wasn't much

1 communication between the parties. There may have been  
2 the odd letter, but not much. Anything that we had  
3 from Kennedy McGonagle, we - there will be a copy of it  
4 on Kennedy McGonagle's files.

5 284 Q. I am talking about your documents.

6 A. Yes.

7 285 Q. I am talking about correspondence which you sent to  
8 Kennedy McGonagle, and correspondence which they sent  
9 to you, your files?

10 A. Mm-hmm.

11 286 Q. None of these documents appear in your Discovery?

12 A. Well, there hasn't been very much. Anything that was  
13 taking place was back in 1992, was it - around about  
14 '90.

15 287 Q. When your solicitor writes a letter to you, what do you  
16 do with it about your personal affairs?

17 A. What I usually do is I - when I get it, I would have it  
18 and leave it in the office.

19 288 Q. Yes. And therefore there is a file into which it is  
20 put, presumably?

21 A. Mm-hmm.

22 289 Q. Where is the file? Where is the file of correspondence  
23 between yourself and your solicitor, regarding your own  
24 personal affairs?

25 A. Well, I don't think we keep files very long. I think I  
26 told you before, I don't know if these are the ones  
27 that go back some time ago. We haven't - I haven't  
28 personal files to do with this business, because there  
29 was very, very little generated, by the way.

30 290 Q. Well, let's just take it in stages, Mr. Finnegan.



1 .  
2 You have told us that if you received a letter from  
3 your solicitor, you would bring it into the office, on  
4 the assumption that the letter relates not to a  
5 Finnegan Menton matter, but to a John Finnegan personal  
6 matter. Presumably, it would go on to a John Finnegan  
7 personal file and not some Finnegan Menton file. Is  
8 that true, or am I incorrect about that?

9 A. I would imagine so. Yes, Sir.

10 291 Q. So there was a Finnegan Menton - sorry, there was a  
11 John Finnegan file in relation to his correspondence,  
12 with his solicitor, kept in the office, is that right?

13 A. Well, are we talking broadly about a span of years?

14 292 Q. Yes.

15 A. Well, only - we wouldn't have kept any files in the  
16 office. There would have been a general clearance on  
17 files done every six or eight years.

18 293 Q. You have bank accounts and you get bank statements.  
19 Where do you put them?

20 A. Unless - yes, they would probably be kept with the --

21 294 Q. Mr. Finnegan, please.

22 A. They would be kept in the office.

23 295 Q. Mr. Finnegan, everybody gets bank statements?

24 A. Yes, that's right.

25 296 Q. And when they get bank statements, they put them  
26 somewhere. They put them in a shoe box, they put them  
27 on a shelf, they put them in a file, but they put them  
28 somewhere, and they need to refer to them when they are  
29 doing all kinds of things. When they are trying to  
30 find a cheque, do their tax returns.

1 .

2 Where do you put your tax returns? Do you put them on  
3 the file?

4 A. They are put on a file.

5 297 Q. Where is the file kept? Is it kept in your office or  
6 in your home?

7 A. It is kept in the office.

8 298 Q. I take it your solicitor's correspondence file is kept  
9 in your office as well?

10 A. I understood that anything that we should have - did we  
11 not produce anything that we --

12 299 Q. No.

13 A. No?

14 300 Q. Well, let's be a little bit more specific. Let's take,  
15 for example - could we have Document 17. Sorry, it is  
16 not page 17.

17 .

18 We have looked at your Discovery, for example.

19 A. Yes.

20 301 Q. And we have looked at the Discovery of Mr. O'Shea. Mr.  
21 O'Shea has discovered 17 documents in your Discovery,  
22 and I will call out the numbers of them so that your  
23 lawyers can identify them.

24 .

25 Sorry, in Kennedy McGonagle's Discovery, which you  
26 wrote to them. Number 17, 65, 85, 117, 154, 162, 220,  
27 272, 290, 291, 292, 296, 297, 298, 300, 328, 331.

28 .

29 There is 17 documents in that bunch. Those are  
30 documents which we know you wrote to Kennedy McGonagle,

1 because the originals of those letters appear on  
2 Kennedy McGonagle files, but not one of which appears  
3 in any of your Discovery?

4 A. In relation to years, Sir?

5 302 Q. They would be over a period of years.

6 A. Well, I think that - I said to you that a lot of  
7 Finnegan Menton files would be discarded after a period  
8 of maybe six, eight, nine years, and the correspondence  
9 that we would have, that we had - I think the last  
10 transactions we had were to do with Canio, and things  
11 like that. So that was quite a while ago. What was  
12 the last --

13 303 Q. We will get you some dates in a moment.

14 A. That is all right.

15 304 Q. Also on Kennedy McGonagle files are letters which they  
16 sent to you, and we have taken 23 of those, and again I  
17 am going to call the numbers on to the transcript, and  
18 for the benefit of your own lawyers.

19 A. Yes.

20 305 Q. These numbers, incidentally, are the numbers in your  
21 schedule of documents. Number 34, 79, 82, 133, 151,  
22 155, 164, 173, 184, 210, 237, 238, 266, 274, 279, 281,  
23 293, 295, 301, 305, 320, 321, 330, 354. In fact, I  
24 think there were 24 documents in that batch, as it  
25 were. Those are letters which your solicitor sent to  
26 you, which we presume were kept on file, you tell us,  
27 in your office, if anywhere?

28 A. Yes, Sir, if anywhere, it would be the office.

29 306 Q. Sorry, Mr. Finnegan, you know whether you kept a file  
30 of correspondence with your solicitor or not. Did you

1 or did you not keep a file of correspondence with your  
2 own solicitor?

3 A. I don't do the details myself, Sir.

4 307 Q. I am not asking you about detail, I am asking you about  
5 the existence or non-existence of a file.

6 .

7 When you received correspondence from your solicitor,  
8 was it filed?

9 A. Well, I would have thought that it was.

10 308 Q. Yes. So where is the file?

11 A. I don't know. I don't know.

12 309 Q. Because --

13 A. Did I - sorry --

14 310 Q. Because if it existed, but no longer exists, it has not  
15 been so categorised in your affidavit?

16 A. Well, are the replies from me on the - on McGonagle's  
17 files?

18 311 Q. Yes. These are precisely the documents we are speaking  
19 about, correspondence from you to your solicitor and  
20 correspondence from your solicitor to you, which we  
21 know for a certain fact was exchanged, and not one  
22 sheet of it appears anywhere in your Discovery?

23 A. We musn't have it.

24 312 Q. And even if one were to give you the benefit of the  
25 assumption, that every piece of correspondence that you  
26 had with your solicitor was destroyed, it has not  
27 appeared in the schedule, in your Affidavit of  
28 Discovery of documents which you previously had, but  
29 which you no longer have, for whatever reason may be  
30 stated?

1 A. Well, I am sorry about that, Sir.

2 313 Q. The Orders which were made by the Tribunal for the  
3 production and discovery of documents, as you are  
4 aware, and I am sure your solicitor has explained to  
5 you, were legally binding, and have serious legal  
6 consequences if they are not complied with?

7 A. Yeah.

8 314 Q. Yet, the Discovery which this Tribunal has received  
9 from you contains virtually no personal files of yours  
10 of any kind, whatsoever, concerning correspondence with  
11 your solicitor in relation to the matter, the subject  
12 matter of the attention of this Tribunal, concerning  
13 your affairs and dealings with Sovereign Trustees  
14 Limited and this family settlement which you have in  
15 Guernsey, and concerning your dealings with Brennan and  
16 McGowan. It is, I suggest to you, Mr. Finnegan,  
17 incredible to suggest that there are no such files in  
18 existence.

19 .  
20 Or are you suggesting that?

21 A. No, I am not, Sir.

22 315 Q. Well, where are they?

23 A. Well, I don't know where they are. I would say, if we  
24 had them, we would have complied with your requests.

25 316 Q. You have had extensive commercial dealings with Brennan  
26 and McGowan since the mid-1970s?

27 A. Mm-hmm.

28 317 Q. Isn't that right?

29 A. Yes.

30 318 Q. Involving complex transactions which involve various

1 types of investment, but usually investments in real  
2 property, isn't that so?

3 A. Mm-hmm.

4 319 Q. In which you had various entitlements to share in  
5 various sums of money, in various types of arrangement,  
6 some of them involving Jersey offshore companies, isn't  
7 that right?

8 A. Mm-hmm.

9 320 Q. You must have had files and records to keep track of  
10 this?

11 A. Well, one thing I can say to you is this: Those  
12 transactions - believe it or not, I am not one who  
13 writes an awful lot of letters, although I might be  
14 doing a lot of business. That on these, these  
15 transactions - Brennan and McGowan themselves were not  
16 people who generated a lot of postage or letters. You  
17 see, a lot of this was done through the professionals,  
18 and it was administered - they didn't administer, nor  
19 did I, any of these transactions. It would - the main  
20 files and anything like that would all have been set up  
21 by Owens Murray.

22 321 Q. Are we to take it, then, that what you are saying, and  
23 please correct me if I am wrong, that you have no  
24 records of any kind whatsoever about your dealings with  
25 Brennan and McGowan and never had? Is that what you  
26 are trying to say, or is that overstating the position?

27 A. No, I don't think it is overstating. If they were - if  
28 we had any, and if they were the old ones, they would  
29 have gone in the general clearance, so I might very  
30 well have had years ago.

1 322 Q. Let's take it in stages. Did you have any files or  
2 records of any kind at all concerning your dealings  
3 with Messrs. Brennan and McGowan?

4 A. I may very well have had way back, but we did clear out  
5 and we do clear out in the office, so anything that was  
6 back 20 odd years or 15 years ago, we wouldn't have  
7 them.

8 323 Q. You did have files?

9 A. I am saying we must have had.

10 324 Q. Well, what files did you have?

11 A. Sorry?

12 325 Q. What kind of files did you have?

13 A. I can't tell you, Sir, because I am not a man of - I  
14 wouldn't have knowledge, but anything that we would  
15 have - if we did have anything, it would have been  
16 cleared. We wouldn't have held them all those years,  
17 Sir.

18 326 Q. Who did your filing?

19 A. It would be my secretaries at the time.

20 327 Q. Who was, say, in 1970s and 1980's --

21 A. Yes, they would be the girls in the office who would  
22 --

23 328 Q. Did you have a personal secretary?

24 A. Yes, I did. Yes.

25 329 Q. Who was your personal secretary in the 1970s and the  
26 1980's?

27 A. Well, in the first instance it was a girl called Breda  
28 Carroll, and then after that there was a number of  
29 girls in the office, and then from time to time I would  
30 have had assistance from Sandra O'Neill.

1 330 Q. Is she your personal assistant?

2 A. Yes, now.

3 331 Q. And for how long?

4 A. Well, for quite a few years.

5 332 Q. Approximately how many?

6 A. I would say about - for the last personal assistant,

7 about at least ten years.

8 333 Q. And did she work in the firm before that?

9 A. She did, yes.

10 334 Q. For how long before that?

11 A. I would say for another seven or eight years.

12 335 Q. Yes. And in her capacity as your personal assistant

13 and in her previous capacity, which would have been

14 what, presumably a secretary?

15 A. Yes.

16 336 Q. She would have been familiar with the filing

17 arrangements in the office?

18 A. Yes, she would have.

19 337 Q. Yes. Presumably, there were filing cabinets in the

20 office?

21 A. Mm-hmm.

22 338 Q. And presumably most of those filing cabinets would have

23 related to the business and affairs of Finnegan Menton?

24 A. Yes, they would.

25 339 Q. But presumably one, at least, of them contained files

26 which related to you personally, which were kept

27 separately from the Finnegan Menton files?

28 A. Yes, they would.

29 340 Q. And which filing cabinet was that?

30 A. I couldn't say to you, Sir.



1 341 Q. If you wanted to look at your bank statements, which  
2 filing cabinet would you go to get it out?

3 A. Well, I would ask somebody to get them.

4 342 Q. You didn't know which filing cabinet contained your own  
5 bank statements?

6 A. Well, it may seem extraordinary, but I am not a man  
7 that would have things at my fingertips like that, but  
8 I would be able to get them.

9 343 Q. And is it the position that any files, then, that you  
10 would have had, personal files, would have been  
11 contained in that filing cabinet, wherever it was, the  
12 one that contained your bank statements?

13 A. I suppose so, yes, Sir.

14 344 Q. Mr. Finnegan, this is somewhat unpleasant. Really, we  
15 are being faced with, I think you understand where we  
16 are coming from, rather an extraordinary proposition,  
17 that you have no personal files at all?

18 A. I think what - I haven't got my - when - what - in a  
19 response I think we gave you anything we had, didn't  
20 we?

21 345 Q. For example, on page 2 of 2 of your Affidavit of  
22 Discovery, in Section 1, you say - Section 1 deals  
23 with documents 1 to 15 - I beg your pardon. Sorry.  
24 Section 1 of your affidavit contains a file in relation  
25 to the sale of the Ardcaru shares, your file, not  
26 Kennedy McGonagle's file, your file in relation to the  
27 sale of the Ardcaru shares. Obviously, you kept files.  
28 And I think this file was furnished to the Tribunal  
29 originally on the 1st of May, 2000, as file JF1. And  
30 it commences on the 26th of February, 1979.

1 .

2 So clearly you had files in your possession, or at  
3 least a file in your possession going back to 1979?

4 A. Mm-hmm.

5 346 Q. That is only one of the transactions in which you were  
6 involved with Brennan and McGowan?

7 A. Yeah.

8 347 Q. That was the sale of the Foxtown one-third share?

9 A. All right.

10 348 Q. To their Rush Cliff company?

11 A. Yes.

12 349 Q. But you had extensively dealings with Brennan and  
13 McGowan, both before and after 1979?

14 A. Mm-hmm.

15 350 Q. And after that particular transaction which took place  
16 later, isn't that right, the sale of the shares, for  
17 example, in 1990?

18 A. 1990, yes.

19 351 Q. But you had - you had a file relating to Ardcar  
20 stretching back to 1979?

21 A. Yeah.

22 352 Q. You had dealings with Brennan and McGowan both before  
23 and after 1979?

24 A. Yes, I had.

25 353 Q. You had complicated dealings with Brennan and McGowan  
26 both before and after 1979?

27 A. Mm-hmm.

28 354 Q. Involving a series of land transactions, each of which  
29 have different features and different characteristics,  
30 each of which involved different companies, both in

1 Ireland and in Jersey, and each of which involved the  
2 payment of different sums of money to you on some  
3 basis, isn't that so?

4 A. Mm-hmm.

5 355 Q. I suggest to you that it is virtually inconceivable  
6 that you did not have files and records in relation to  
7 those dealings, if only to keep track of what was going  
8 on?

9 A. Well, they were all quite a considerable time ago.

10 356 Q. Yes?

11 A. And I would have thought, whatever we did have, would  
12 have been cleared out at a period - the on-going - the  
13 on-going, the survival, I suppose, of the Canio lands,  
14 that is all I can say to you, that if that file  
15 survived, because it must have been active.

16 357 Q. Mr. Finnegan, are you saying that you did have such  
17 records, but that they have been destroyed?

18 A. Well, I can't swear to this, but if we had anything, it  
19 is a long time ago when we were doing those, and we did  
20 have a policy within the office to clear out filing in  
21 whatever periods, they were either six, seven, eight  
22 years.

23 358 Q. What was the policy? What was the policy in the  
24 office?

25 A. Well, I think we cleared after seven or eight years.

26 359 Q. Was this Finnegan Menton files?

27 A. Yes.

28 360 Q. What about John Finnegan personal files, that's your  
29 own policy. What was your policy about your own  
30 personal --

1 A. I wouldn't have kept --

2 361 Q. -- about your own files?

3 A. I would say that they would have gone on a clean-out in  
4 Finnegan Menton. Mine would have been cleaned out as  
5 well.

6 362 Q. Are you suggesting that someone in Finnegan Menton  
7 would go into your personal filing cabinet and throw  
8 out your personal files without referring to you?

9 A. It would be a long time ago. I wouldn't have had any  
10 reason to keep any of those old files.

11 363 Q. One's personal files consist of all kinds of things,  
12 bills, gas bills, electricity bills, bank statements,  
13 correspondence with one's solicitor, correspondence  
14 with all kinds of people, personal correspondence,  
15 pension correspondence, insurance policies, all the  
16 kinds of things that anybody has in a filing cabinet,  
17 whether it is in box or in a file?

18 A. Yes.

19 364 Q. You had those in your office?

20 A. Yes.

21 365 Q. And such files as you did have, or such records as you  
22 did have, were kept in your office?

23 A. Yes.

24 366 Q. You are now saying that you did have files, or am I  
25 understanding you correctly that you did have files in  
26 connection with your dealings with Brennan and McGowan?

27 A. In hindsight, I am looking back - now, when I am  
28 reminded of something, but we are looking at 20 or 25  
29 years ago, and a lot of it --

30 367 Q. Yes?

1 A. -- we probably had at the time something coming from

2 --

3 368 Q. Do you not remember that you had --

4 A. No, I am involved in an awful lot of transactions, and

5 really --

6 369 Q. And do you keep records about the transactions that you

7 are involved in, or do you carry it all around in your

8 head?

9 A. On a professional basis and otherwise I am involved in

10 an awful lot of transactions.

11 370 Q. That is why you keep files, so you could keep track of

12 all these things?

13 A. After a date I wouldn't be holding old files.

14 371 Q. So the position is that you had, or did you have a

15 policy to clear out your files every year or every

16 couple of years?

17 A. Well, I think that, you know, in most offices, most

18 people in business, after a period of time would get

19 rid of old files, I think any of the files you are

20 talking about. You mentioned one there, that is Canio.

21 Well, I think it was in 1990, that finished in 1990

22 something.

23 372 Q. Well, the one I mentioned was a file in relation to the

24 Ardcarl shares, and the file commences on the 26th of

25 February of 1979. This was a file which you did, in

26 fact, discover to the Tribunal.

27 .

28 The documents on it range from the 26th of February,

29 1979, until the 8th of April of 1997?

30 A. Well, '97 --

1 373 Q. You see, a particular matter will have correspondence,  
2 perhaps, ranging over a period of time?

3 A. Yes.

4 374 Q. Some transactions will range over a relatively short  
5 period and vice-versa. A number of these transactions  
6 ranged over a relatively short, a number of them did  
7 not; they ranged over a relatively long period of time.  
8 Canio is one in point, for example, that ranged from  
9 1979 up until 1990?

10 A. Yes.

11 375 Q. And in some of your dealings with Brennan and McGowan,  
12 they were contemporaneous or simultaneous, or certainly  
13 overlapped each other in time, isn't that right?

14 A. Sorry --

15 376 Q. Well, there was a close proximity in time, for example,  
16 the Tritonville Avenue deal and the St. Stephen's Green  
17 deal?

18 A. Well, that is a long time ago, Sir.

19 377 Q. I understand that. What I am trying to understand is  
20 are you saying that you did have files in relation to  
21 these matters, but that they have been destroyed?

22 A. I would think that that is - I must have had files on  
23 them at the time.

24 378 Q. Mr. Finnegan, I suggest to you that if you did, you  
25 would know?

26 A. Well, probably if you knew me a bit better, I am not  
27 one that goes into, I would not have that detail, but  
28 for the purpose of our conversation you can take it  
29 that --

30 379 Q. You do know that the nature of the dealings - you

1 certainly know now given what has been canvassed in  
2 this Tribunal, the nature of the dealings that you had  
3 with Messrs. Brennan and McGowan, the nature of the  
4 payments which were made to you by Brennan and McGowan  
5 or Jersey companies, in which they were involved. And  
6 I suggest to you, with that knowledge, you must know  
7 what, if any, records you kept, not in terms of  
8 remembering every single document, but the kind of  
9 record you kept, whether it was a piece of paper in a  
10 file in which you scribbled down, what was agreed,  
11 whether it was a computer record, whether it was  
12 correspondence, whether it was a written agreement,  
13 whether it was documents you may have received from  
14 Messrs. Wheeler or Mr. Owens, or anything of that  
15 nature. You would know in a general way the kind of  
16 records, if any, you kept.

17 A. I would say to you, Sir, it is a long, long time ago,  
18 and I would have been involved in a lot of things, so I  
19 wouldn't necessarily have - and they wouldn't be  
20 standing out in my mind, and I wouldn't have kept them.  
21 So if I did have them at the time, they didn't last.  
22 As I say, the one that was live was kept, that was  
23 Canio.

24 380 Q. Yes. Are you saying that you do not remember the kind  
25 of records you kept in relation to your dealings with  
26 Brennan and McGowan?

27 A. Yes, I am. I don't remember, Sir.

28 381 Q. Are you saying you do not remember whether you kept any  
29 records in relation to your dealings with Brennan and  
30 McGowan?

1 A. No, I would say that - we had - well, I must have been  
2 kept informed at the time.

3 382 Q. I am talking about records only. I am not talking  
4 about conversations with people or being kept informed.  
5 I am simply talking about your records.

6 A. Well, I might have had at the time - I am now only  
7 reflecting back. I can't remember, Sir, if we had, and  
8 what we had. I can't.

9 383 Q. Do you remember whether you kept any records in  
10 relation to your dealings with Brennan and McGowan?

11 A. There might have been short-term records of something  
12 --

13 384 Q. Mr. Finnegan, could I ask you --

14 A. Yes.

15 385 Q. If I may, and I don't mean to be rude. I want to  
16 insist on the specific question I asked you.

17 .

18 Do you remember whether you kept any records at all in  
19 relation to your dealings with Brennan and McGowan?

20 The question is: Do you remember?

21 A. First of all, do I remember? I don't.

22 386 Q. No, you don't remember whether you kept records, or you  
23 don't remember the records?

24 A. I don't know whether I kept --

25 387 Q. Right. That is the answer to the question, you don't  
26 remember whether you kept any records in relation to  
27 your dealings with Brennan and McGowan. That's as I  
28 understand your answer?

29 A. Yes.

30 .



1 CHAIRMAN: Would you like a short break at this point?

2 .

3 MR. HANRATTY: Yes, thank you, Sir.

4 .

5 CHAIRMAN: For five minutes.

6 .

7 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

8 RESUMED AGAIN AS FOLLOWS:

9 .

10 388 Q. MR. HANRATTY: Mr. Finnegan, we have established that

11 you do not recall whether or not you maintained any

12 files in connection with your own dealings with Brennan

13 and McGowan, isn't that so?

14 A. Yes. If I did, it is a hell of a long time ago and I

15 can't remember.

16 389 Q. You can't remember.

17 .

18 Now, you did swear an Affidavit of Documents on behalf

19 Finnegan Menton?

20 A. Yes.

21 390 Q. Finnegan Menton, you will recall, were requested by the

22 Tribunal to provide an affidavit of documents and

23 produce documents in relation to any files they had in

24 connection with a number of land transactions with

25 which the Tribunal was concerned. Isn't that so?

26 A. Yes.

27 391 Q. And in that affidavit filed on behalf of Finnegan

28 Menton - well, first of all, the affidavit was sworn by

29 you on behalf of Finnegan Menton?

30 A. Yes.

1 392 Q. And under the heading in the second schedule of the  
2 affidavit, it is the 19th of September affidavit, under  
3 the heading "Four Properties" you referred to  
4 Newtownpark Avenue, Carrickbrennan, 6/7 St. Stephen's  
5 Green, Sandyford, Herbert Street Plantation and Cramer  
6 Lane.

7 .  
8 And in respect of those you say the following:

9 .  
10 "At one time the firm did have documents within the  
11 scope of the Discovery orders, although I believe not  
12 within the Terms of Reference of the Tribunal. The  
13 firm does not have them any longer. In the absence of  
14 any opportunity to examine those documents which it no  
15 longer has, I am unable to specify the documents  
16 referred to. These documents were last in the  
17 possession of the firm on the date that they were  
18 destroyed in the manner set out in the affidavit."

19 .  
20 So it would appear from this, that you were in a  
21 position to recall that in respect of those six  
22 mentioned properties, the firm did have documents, but  
23 that it no longer had them?

24 A. Yes.

25 393 Q. So why is it that you can recall that the firm did have  
26 documents in relation to these transactions in its  
27 capacity as a firm that provided services to them, but  
28 that you couldn't remember whether you yourself had any  
29 documents in relation to your own quite separate  
30 personal dealings with Brennan and McGowan in relation

1 to the very same lands?

2 A. Well, I would say that - my first reaction to that is  
3 that the handling of the transactions might have  
4 generated more - if we were handling the properties we  
5 would have had files on them, and whatever files we had  
6 on them, were held for a particular length of time, and  
7 then they were destroyed.

8 394 Q. Yes. If I could refer you to document 1498. This is  
9 a document which we have already had in some context, I  
10 think, with Mr. O'Shea possibly.

11 .

12 This document, it is Document 263 in your own  
13 Discovery, although we've obtained it through Brennan  
14 and McGowan as well, but in any event. It is a  
15 document from Mr. Des Traynor to Michael O'Shea, your  
16 solicitor, containing some advice about Foxtown. But  
17 the point which I wish to make in connection with this  
18 document, if we can scroll down to the end of it,  
19 please, is, as you can see, it is copied to yourself?

20 A. Yeah. Yes, Sir.

21 395 Q. This was discovered in your Discovery on the basis of a  
22 document which was on Kennedy McGonagle Ballagh's file,  
23 but it was not discovered among your own documents?

24 A. Right.

25 396 Q. May I take it that there would have been a file in 1992  
26 where this document would have been put, when you  
27 received it?

28 A. This is --

29 397 Q. It is in connection with certain advices being sought  
30 by Mr. O'Shea --

1 A. Yes.

2 398 Q. -- from Mr. Traynor, in relation to Foxtown?

3 A. Well --

4 399 Q. And it occurred at a point in time after the  
5 shareholding in Foxtown had been disposed of, after the  
6 first payment of ú500,000 had been received, and I  
7 believe, after the second payment of ú100,000 had been  
8 received. Perhaps I am not correct about that, but it  
9 refers to promissory notes which relate to the  
10 outstanding monies due?

11 A. Yes.

12 400 Q. And it may be one or two promissory notes, depending  
13 whether the first ú100,000 had been paid. The point  
14 about it is, it is an important document, in that  
15 advices were sought from Mr. Traynor in relation to  
16 this company, and there was correspondence between Mr.  
17 O'Shea and Mr. Traynor in relation to it, and this  
18 particular piece of that correspondence was copied to  
19 you, as appears from the bottom of the letter?

20 A. Yes.

21 401 Q. So where is your file which would have contained this  
22 document?

23 A. I don't know, Sir.

24 402 Q. Well, do you say that such a file did exist, but no  
25 longer exists?

26 A. I am not aware of a file to do with the promissory  
27 notes.

28 403 Q. Would you agree with me, Mr. Finnegan, that this is not  
29 the kind of a letter that you would throw out?

30 A. Well --

1 404 Q. Certainly not when you received it, whatever about  
2 clearing out your files later?

3 A. Well, I don't have it - apparently I don't have it at  
4 the moment, and I didn't have it when I, when we were  
5 doing our searches.

6 405 Q. But do you say that you had a file where this document  
7 would have been filed, perhaps a Des Traynor file?

8 A. No --

9 406 Q. Or perhaps in the Kennedy McGonagle Ballagh file, but  
10 that you no longer have it because it has been  
11 destroyed?

12 A. Well, I couldn't say under what that would have been  
13 filed.

14 407 Q. Well, would you have had a tax file, for example,  
15 because this was - it is not really tax advice, but it  
16 was advice in relation to an investment?

17 A. Yes.

18 408 Q. In this case Foxtown?

19 A. Well, I have lots of other personal files, of course I  
20 have.

21 409 Q. Well, I mean, presumably, when you receive  
22 correspondence in the normal way, as most people do,  
23 they put the letter into the appropriate file?

24 A. Well, all I can say to you is this: We did look, when  
25 requested, to see what files we had got. I can't  
26 remember - I couldn't - only you have shown me this  
27 letter, I wouldn't have necessarily - I don't remember  
28 way back. I wouldn't remember what happened to it.

29 410 Q. Mr. Finnegan, I don't expect you to remember what  
30 happened to this document, but I do expect you to

1 understand the document. I do expect you to understand  
2 the general way you did your business at the time you  
3 received this document, and the general way in which  
4 you managed your files. I am suggesting to you, that  
5 you would have filed this document in an appropriate  
6 file in the normal way when you received it. That is  
7 all I am suggesting to you.

8 A. Well, if it was done, I don't know where --

9 411 Q. Are you agreeing with me that you would have filed it  
10 in the normal way?

11 A. I won't agree to something that I cannot remember.

12 412 Q. Right. Well, were you in the habit of throwing out  
13 correspondence when you received it?

14 A. I don't know what happened to this, but - this letter,  
15 whether I would have - I could - I don't know. There  
16 is no point in speculating.

17 413 Q. Let's forget about this. Were you in the habit of  
18 throwing out correspondence when you received it?

19 A. I am --

20 414 Q. And I am not talking about junk mail. I am talking  
21 about correspondence concerning your own personal  
22 affairs.

23 A. I might have kept it for a while, and I might have then  
24 --

25 415 Q. Mr. Finnegan, the question is quite specific: Were you  
26 in the habit of throwing out correspondence concerning  
27 your own personal affairs when you received it?

28 A. No, I wouldn't say I was in the habit of --

29 416 Q. Well, if you didn't throw it out, were you in the habit  
30 of filing it?

1 A. Well, first of all, I never did any filing in my life,

2 so if it was filed, it was file by somebody else.

3 417 Q. Yes. Well, was it your understanding that when you

4 received correspondence, that you decided not to throw

5 out, that your personal assistant or your secretary, or

6 some girl in the office would file it, or would they

7 put it in a shoe box?

8 A. I don't - to be straight with you, Sir, I don't know

9 what happened to this.

10 418 Q. We are not talking about this particular document or

11 any particular document now, Mr. Finnegan, we are just

12 trying to get a handle on what your normal arrangements

13 were.

14 .

15 You have told us that you were not in the habit of

16 throwing out correspondence, your own personal

17 correspondence from your professional advisors. If you

18 didn't throw them out, I would like to know what

19 happened to them. Were they filed?

20 A. Did I say that? No. I think what I said was that when

21 we were handling the sale of a property, that it could

22 have been filed under "FM", that would have been held

23 for a length of time.

24 419 Q. We will wind it back, Mr. Finnegan.

25 A. Yes.

26 420 Q. When you received correspondence concerning your

27 personal affairs from your professional advisors.

28 A. Yes.

29 421 Q. Were you in the habit of throwing it out?

30 A. No, I wouldn't say I was in the habit of throwing it

1 out.

2 422 Q. What did you do with it?

3 A. Well, we are talking about a specific --

4 423 Q. No, I am not talking about any specific document. I am

5 talking about just generally documents you received in

6 relation to your personal affairs, as opposed to the

7 Finnegan Menton affairs from your professional

8 advisors, one of whom was Mr. Michael O'Shea, and one

9 of whom was Mr. Desmond Traynor?

10 A. I would have had a good few personal files, but I

11 didn't - in searching, I didn't have any in connection

12 with what you are talking about.

13 424 Q. And would you have kept correspondence concerning your

14 personal affairs on your personal files?

15 A. Yes, I would. Or they would have been kept for me.

16 425 Q. And is it reasonable to suppose that this letter, being

17 a matter concerning your personal affairs, would have

18 been placed on one or other of those personal files?

19 A. I really don't know, Sir, where it is. That is 1992,

20 isn't it?

21 426 Q. Yes?

22 A. Well, it is ten years ago.

23 427 Q. Well, I am simply asking you, would it be reasonable to

24 expect that that letter, if it didn't find its way

25 immediately to the dustbin, would have found its way on

26 to one or other of your personal files?

27 A. In going down this line, I would only be guessing about

28 what might have happened. I can't --

29 428 Q. Well, make an educated guess, Mr. Finnegan. I mean, we

30 are talking about your own affairs.



1 A. Yes.

2 429 Q. We are talking about your own correspondence. And  
3 while nobody would remember what they did with a  
4 particular letter in 1992, everybody, I suggest to you,  
5 would remember in general what they did with their  
6 correspondence, particularly important correspondence  
7 containing advice or seeking advice about an important  
8 investment matter.

9 A. Well, if it did go on a file, I haven't got it, and I  
10 can't remember, and I wouldn't have placed it on a file  
11 myself.

12 430 Q. You have already told us that you haven't got it  
13 several times, Mr. Finnegan. You have already told us  
14 that you weren't in the habit of putting correspondence  
15 in relation to your personal affairs from your  
16 professional advisors in the dustbin?

17 A. Mm-hmm.

18 431 Q. Which presumably means that they went somewhere else  
19 other than the dustbin. Did you have any system for  
20 retaining documents of a personal nature in your  
21 office, other than filing?

22 A. Not that I --

23 432 Q. Doesn't it seem probable, therefore, and likely, that  
24 what happened to this letter upon receipt of it, and  
25 having been read by you, is that it was filed in a  
26 file?

27 A. It is possible, Sir.

28 433 Q. You haven't discovered any of your personal files,  
29 apart from the Ardcarne file to which I have just  
30 referred, including the file, if any, which would have

1 contained this document?

2 A. Well, the Ardcar, as I said to you, the Ardcar was a  
3 relatively late - there was an on-going --

4 434 Q. Is it the position that there was a file containing  
5 this document which has since been destroyed?

6 A. Well, it may be - it may be that we have had one and in  
7 a general clearance it went out.

8 435 Q. Did you have a file in relation to Foxtown Investments  
9 Limited?

10 A. I kept very little regarding Foxtown.

11 436 Q. Did you have a file in relation to Foxtown Investments  
12 Limited?

13 A. That was a private matter. I don't remember having a  
14 file on Foxtown.

15 437 Q. You don't remember?

16 A. No.

17 438 Q. Are you saying that you did not have a file in relation  
18 to Foxtown Investments Limited?

19 A. If there was one, it was a long time ago.

20 439 Q. Well, Foxtown Investments Limited was only dissolved in  
21 1998?

22 A. Yes.

23 440 Q. So, did you have a file in relation to Foxtown  
24 Investments Limited until 1998?

25 A. I can't recollect, Sir.

26 441 Q. I suggest to you, Mr. Finnegan, that you did, and that  
27 it is on that file that this letter would have been  
28 contained, because it is about Foxtown Investments  
29 Limited?

30 A. Well, I would only be going around in circles, Sir,

1 telling you otherwise. I don't remember. I don't  
2 remember where this would have gone, or would it have  
3 been filed, but in our search we certainly didn't have  
4 it. We didn't have --

5 442 Q. I suggest to you that you still have a file about  
6 Foxtown Investments Limited.

7 A. I haven't, Sir.

8 443 Q. Could I refer you to Document 1556.

9 .  
10 This is a letter dated the 8th of April, 1997, from  
11 your solicitor to yourself about Foxtown Investments  
12 Limited. And it says:  
13 .  
14 "As you know, when Foxtown sold its share in Ardcar in  
15 December 1990, it did so by taking payment in  
16 Government Stock which avoided any retention under the  
17 Capital Gains Tax legislation.

18 .  
19 In 1990 two contracts were entered into, the first of  
20 was completed in full with the payment of ú500,000 in  
21 Government Stock, and the second contract for a  
22 consideration of ú200,000 has not been honoured in  
23 full, indeed ú100,000 in cash was paid only a year or  
24 so ago on account.

25 .  
26 The purchaser, who is now in a approximation to pay the  
27 balance due (and interest or a penalty) is advised that  
28 he can only make such payment against the usual capital  
29 Gains Tax Clearance certificate, failing which he will  
30 have to deduct 15 percent of the consideration and pay

1 it to the Revenue. Needless to say, this probably  
2 would not have arisen if the purchaser had completed on  
3 time."

4 .

5 Then he goes on to talk about some advice that he had  
6 received and other matters relating to Foxtown.

7 .

8 That, I suggest to you, is also a letter which would  
9 have either been on a file that you kept in relation to  
10 correspondence with Kennedy McGonagle Ballagh, or on a  
11 Foxtown Investments Limited file, and that letter, as  
12 you can see, was written in 1997?

13 A. Mm-hmm.

14 444 Q. Where is that letter?

15 A. I don't know, Sir.

16 445 Q. Are your 1997 files destroyed?

17 A. No.

18 446 Q. Well, where is this letter, then?

19 A. I don't know where it is, if it didn't turn up when we  
20 did the trawl in the office.

21 447 Q. Do you think you might have thrown it in the bin, a  
22 letter from your solicitor about an outstanding balance  
23 of ú100,000, for your shareholding or for Foxtown's  
24 shareholding in Ardcarne?

25 A. Well, we did look when we - I don't know where it went.  
26 I know it is only 1997, but I don't - it is four or  
27 five years ago.

28 448 Q. Well, where do you think it might have went?

29 A. Well, I don't know.

30 449 Q. Did you have a fire or a flood?

1 A. No.

2 450 Q. Mr. Finnegan, how long do we have to go on with this?

3 A. I haven't got a file. I haven't got a file. It was  
4 searched - I searched and the staff searched, and I  
5 didn't have it. And I think, no matter how long I go  
6 on, I haven't. And that now, you are showing this to  
7 me now, and I remember now, looking at the letter, but  
8 where it went, I don't know.

9 451 Q. It is a letter that deals with a very serious matter?

10 A. It does.

11 452 Q. How do you think such a letter could be, could have got  
12 lost?

13 A. I don't really know.

14 .

15 MR. HUSSEY: I am sorry, Sir, I don't wish to  
16 interrupt, and I haven't interrupted. I am not  
17 interrupting now in aid of the witness. I am just - I  
18 would just make one observation of this letter. If you  
19 could scroll down on this letter, please. This seems  
20 to be a letter, an original letter. The letter, it is  
21 not the carbon copy. I just make that observation,  
22 that it is the letter that was actually written to Mr.  
23 Finnegan. It is not the solicitor's copy of the  
24 letter.

25 .

26 I just wish to make that observation at this point. I  
27 can't explain why this would be on the Michael O'Shea  
28 part of the Discovery, or Mr. Finnegan's, or whether  
29 Mr. Finnegan would have kept, retained the original in  
30 his office. I am just making this submission at this

1 point.

2 .

3 MR. HANRATTY: Where are we going with this? I mean,

4 what is Mr. Hussey suggesting as a possibility here?

5 Is there a file?

6 .

7 MR. HUSSEY: I am sorry. It seems that this letter was

8 discovered by Michael O'Shea in the Michael - in the -

9 Mr. Finnegan's solicitor's Discovery, or discovered by

10 Mr. Finnegan through his - this was the solicitor's

11 file that Mr. Finnegan has discovered.

12 .

13 This letter is the original letter written to Mr.

14 Finnegan. It is not the solicitor's copy of the

15 letter. I am just making that observation. Sorry. It

16 seems to suggest, but I didn't want to say it, because

17 I don't want to be - I was careful not to interrupt in

18 aid of the witness. If Mr. Hanratty wishes me to say

19 it, but I will say what may be the case.

20 .

21 MR. HANRATTY: Yes, I would like to hear it.

22 .

23 CHAIRMAN: What do you say happened?

24 .

25 MR. HUSSEY: It may be the case that the original

26 letter, the original letter was retained, or at least

27 replaced by Mr. Finnegan in Mr. O'Shea's possession on

28 Mr. O'Shea's file. I am merely stating that. I can't

29 explain why Mr. O'Shea would still have the actual

30 original letter with his letterheading sent out.

1

2 MR. HANRATTY: Well, as Mr. Hussey has pointed out,  
3 this letter came from Mr. O'Shea's file, and the  
4 explanation for it is - it is Document 320 in Mr.  
5 Finnegan's Discovery, where it is described by him as a  
6 "faxed letter to Finnegan Menton from Kennedy McGonagle  
7 Ballagh."

8

9 MR. HUSSEY: Well, that explains it. As I say, I was  
10 only making an observation, I wasn't suggesting  
11 anything else.

12

13 CHAIRMAN: Well, can I --

14

15 MR. HANRATTY: Sorry?

16

17 CHAIRMAN: I am curious. I see it. It was never  
18 scalled fully down to know, what did he do about it?  
19 Did he get paid his ú100,000?

20

21 MR. HANRATTY: Well, I was actually going to diverge.  
22 Seeing as your curiosity has been raised, just by way  
23 of divergence, it was a matter that we were going to  
24 have to deal with it, in any event. It is matter that  
25 is dealt with both in that letter and the previous  
26 letter that I mentioned to you.

27

28 The price for the Foxtown shares was ú700,000?

29 A. Yes.

30 453 Q. It was to be paid by Rush Cliff Investments Limited,

- 1           which is a Brennan and McGowan company?
- 2    A.   Yes.
- 3 454   Q.   Which was taking the transfer of these shares?
- 4    A.   Yes.
- 5 455   Q.   As far as we can ascertain, first of all no transfer of
- 6           the shares has ever actually been executed. Am I right
- 7           about that?
- 8    A.   I don't know, Sir. I thought there was.
- 9 456   Q.   All right.
- 10   A.   Michael O'Shea would have been dealing with that. I
- 11           thought there was.
- 12 457   Q.   I see. The second thing is, that we know that ú500,000
- 13           was paid, and we will deal with that separately in due
- 14           course. We also know that subsequently ú100,000 was
- 15           paid. But we also know that the second hundred
- 16           thousand pounds, the last ú100,000 was not paid ?
- 17   A.   No, indeed.
- 18 458   Q.   Why is that?
- 19   A.   Well, that went on and on, and on. I tried - I was
- 20           promised and promised and promised on so many occasions
- 21           that I was going to be paid this money. There was
- 22           always, "Yes, you will get it. You will get it. You
- 23           will get it", and I never did. I have had - there were
- 24           dates given to me when I was going to receive it, and I
- 25           --
- 26 459   Q.   There is not very much correspondence from Mr. O'Shea
- 27           about it, pursuing --
- 28   A.   We had, we had a lot of meetings about it with Kennedy,
- 29           - no, I had a lot of discussions with Brennan and
- 30           McGowan, and they were always going to do it.



1 460 Q. But why didn't your solicitor sue them?

2 A. Well, we were going to. I don't know, for one reason  
3 or another we put off, we put off suing. I was glad to  
4 hear, actually, that he reported here that he was going  
5 to pay it.

6 461 Q. Well, are you still pursuing it?

7 A. Yes, I will. I must say that --

8 462 Q. Is there some other possibility? That you've maybe  
9 done some other deal with them in relation to the  
10 €100,000?

11 A. No, I haven't.

12 463 Q. And is it your position that you intend to pursue  
13 payment of this remaining €100,000?

14 A. Yes, and interest.

15 464 Q. Yes. Is it not, is there not a little difficulty about  
16 that?

17 A. Why?

18 465 Q. Because the money is owed to Foxtown Investments  
19 Limited, and Foxtown Investments Limited was dissolved  
20 in 1998.

21 A. Well, we were - well, they said they were going to pay  
22 it.

23 466 Q. To who?

24 A. No, sorry, they said openly here in the Court that they  
25 were going to pay it. They had promised to pay it and  
26 pay it.

27 467 Q. Why did you dissolve a company in 1998 that was owed  
28 €100,000 by Brennan and McGowan?

29 A. Well, I think did Foxtown - first of all, there was not  
30 any - I did not do any other deal with Brennan and

1 McGowan regarding that €100,000.

2 .

3 I think that Foxtown, that was a management thing

4 within Credit Suisse. I think we probably were dealing

5 with --

6 468 Q. Sorry, Mr. Finnegan, Foxtown was the owner of the  
7 shares.

8 A. That's right.

9 469 Q. Foxtown was the company that had to be paid the price  
10 for the shares. Foxtown was the company that was, in  
11 fact, paid the first €500,000 and the second €500,000?

12 A. Yes.

13 470 Q. €100,000?

14 A. Yes.

15 471 Q. But Foxtown is the company that was not paid the second  
16 hundred thousand pounds, and Foxtown is the company  
17 that holds the promissory notes referred to in Mr.  
18 Traynor's letter.

19 .

20 Foxtown Investments Limited no longer exists, because  
21 it was dissolved in 1990, therefore there is nobody  
22 with an entitlement to sue Brennan and McGowan since  
23 1998 for the outstanding €100,000 owed to Foxtown?

24 A. When you say "sue", we didn't sue. I suppose, when you  
25 look at it, I was always very, very hopeful that I was  
26 going to get the money. And there was a promise. I  
27 think when it came up here - there was a promise, and  
28 they did say they were going to pay me.

29 .

30 Now, the question of Foxtown, by the way, I don't think

1           that that came into the situation. I don't think  
2           everyone would have known, anyway, that Foxtown was not  
3           there.

4 472 Q.   But it has gone?

5    A.   Yeah.

6 473 Q.   So is your hundred thousand?

7    A.   So it has been an expensive afternoon.

8           .

9           CHAIRMAN: On that happy note we will just adjourn  
10          until Tuesday morning.

11          .

12          MR. HANRATTY: Right, Sir.

13          .

14          THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, THE 9TH OF  
15          OCTOBER, 2001, AT 10:30 A.M.

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