

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 14TH JANUARY, 1999 AT
10 AM:

MR. GALLAGHER: Mr. Gogarty, please.

CONTINUATION OF DIRECT EXAMINATION OF MR. JAMES GOGARTY BY
MR. GALLAGHER:

1 Q. MR. GALLAGHER: Good morning, Mr. Gogarty. Mr. Gogarty -- good morning. You are still sworn, Mr. Gogarty, you understand that?

A. Yes, I do.

2 Q. Mr. Gogarty, on the evening before yesterday evening, you were giving evidence and I asked you some questions in relation to events in 1984 in relation to the refurbishment of the Gaiety Theatre and events after that. Can you tell the Tribunal how matters evolved in the succeeding years and what your relationship with the Murphy group of companies were, was, in the succeeding years, in the mid-1980s, in other words?

A. Yeah. After the -- after the refurbishment of the Gaiety Theatre, it opened I think it was the first week of November, 1994 --

3 Q. Nineteen --

A. 1984, 1984. November, 1984, would that be right? Now, it didn't finish my connection with the Gaiety as regards work because, you know, there is always an ongoing thing with snag lists and things to be done but basically the theatre was refurbished and opened and Mr. Conroy had bought a house in Anglesea Road, I forget the company, but he wanted it refurbished and he asked me again, and I was hoping I could get out of the whole thing, but he asked me to take charge of the refurbishing of the house and I think there may have been -- well, Conroy Manahan were the architects. Jack Manahan was the immediate architect on

it and Liam Conroy was the principal of the architectural firm but he was also the chief executive of the Murphy group.

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So that took some time and when that was finished, he -- I had an option on a site in Sutton to build a house, and from a friend, an old friend of mine, Jack Gill, and he offered me the site. It was worth a lot of money at the time. It could be worth up to £40,000 at the time. He offered me it for £10,000, in recognition for work I had done from years ago, you know. He was a decent man but anyway, he was interested but I was anxious that what I would do with it if I got it, you see the point, and because I was still involved in Murphys, you know, and I spoke to Liam Conroy about it and I said that there is three options, I says, here, I says, I could take this site and I could build a house for one of the family or something, you know, or I could build it for sale. But I want to be -- don't want to be seen to be involved in both, working on my own interests, and you know, the company, but if you wanted to do something with it, you could have it. Do you know, put it through the company, if you wanted to. So he agreed with me that one of his companies would buy that site and that he would compensate me later on, you know, to the value of about £30,000, you know --

4 Q. Who agreed to that with you?

A. Mr. Conroy. So that was after the -- when we finished Anglesea Road, we did that job. That took us in the sixties you know --

5 Q. Into when --

A. Into 1986, you know -- 1986.

6 Q. Yes. Now did your relationship then with the Murphy companies and with Mr. Conroy develop after that?

A. As I say, I was removed from the day-to-day workings of the company but I was in touch, because I would be called upon to look at tenders and vet tenders and look at the contract conditions,

things like that, which I thought I had some expertise in, and I would also look at the contract before they took them on and give my opinion on them, and I'd also visit -- go over to -- back to Fleetwood where I had been for a few years. What would happen would be that -- there were management meetings roughly every month and these meetings were management meetings to deal with Joseph Murphy Structural Engineers Limited and Archbel Greenwood Structural Engineers Limited but they were both held on the one day and there was very little difference, distinctions made in the relationship between them because the activities were similar and there was a very close interaction between them relating to materials and fabrication and shipment back and forwards, all that type of thing.

7 Q. When you talk about an interaction between them, are you talking about an interaction between the two companies, the Irish company and the English company?

A. They were associated companies. They were both in the group.

8 Q. But are they the companies you are referring to?

A. They are the companies I am referring to, you know. Now --

9 Q. Did you attend those management or --

A. I'd attend, invariably I'd attended these management meetings, you see, and there was always an ongoing, what would I call it, a bit of contention between who was chairman, you know, whether it was me, but invariably it was Mr. Conroy would chair the meeting because he considered that I had no executive function in the matter, you know, and we deferred to that, you see, so that carried on for, into the sixties, late sixties, you know.

10 Q. When you say the late sixties --

A. When I say sixties, 1986, 1986, and then on till 1987.

11 Q. Did you visit Mr. Murphy or meet Mr. Murphy during this period in 1986/1987?

A. I would. I'd have met him in -- he'd rung in and he'd ask you to

go over to Wilton Lodge, you know, where he lived in Wilton Lodge off the canal there, Wilton Lodge -- Wilton Terrace, 1A Wilton Terrace, you know, and -- but I invariably, he wasn't anxious at that time to discuss the day-to-day running of Conroys because, of course, he used to feel I had a chip on my shoulder you know, I think he felt that I had a personal relationship with Conroy, that I was always kept at a formal distance. But we'd mostly chat about old times you know, and he was always -- I used to enjoy it at times because -- well I wouldn't drink but he'd drink. It was no bother to him to go through a bottle of brandy, you know, we'd chat about old times --

12 Q. When -- did you visit him in Guernsey at any stage?

A. Oh, I did. But only on his invitation or on Mrs. Murphy's invitation, you know. I would have gone to Guernsey maybe about three or four times in all, over a number of years you know. But they were at his request. I remember that -- well I am jumping a bit now, that a particular meeting where he rang me on Christmas Day, 1987, and urgently requested that I would go straight across to him on St. Stephen's Day -- am I jumping too much now?

13 Q. No, go ahead.

A. I'd go to Guernsey to meet him there and he told me to buy my own ticket and not tell anybody else that I was going and I'd go there, but this -- it was because certain things had happened in the previous six months you know.

14 Q. What kind of things?

A. Well, I will tell you what was happening.

15 Q. Were these things that were happening within the Murphy companies?

A. Oh yes, yes, yes, yes, yes, yes. You see, up to -- well I am only surmising it from what my external observations were and what I could hear was that up till 1987 anyway, at the latest, he thought the sun, moon and stars shone out of Liam Conroy and he wasn't interested in what other people say, even in what his wife

would say, because she had an anxiety. I think I mentioned that earlier on. But in 1986 when I was, it was coming near the time that the house in Sutton was nearly finished and that kind of thing and I had very little contact going into Murphys, but there was a very close contact between me and Frank Reynolds, who is the present managing director. At that time he was the construction manager and the plant manager but he also had full responsibility for the security of property and transport and all that type of thing, you see the point.

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Now he, like myself and Murphy, he came up from the scratch and proceeded, he is now top dog in Murphy's, you know. That's another day's work. But we had a very good relationship because he was one of the old Murphy crowd, you know what I mean, as distinct from the new Conroy structure that was operating from about 1982 officially and before that.

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I wasn't too interested, but he pressed me to meet him and he'd come out to the house or he'd ring me to meet him in the Airport Hotel --

16 Q. When you are talking about he, who are you referring to?

A. Frank Reynolds. And the main topics of discussion was the conduct of the management that was going on at the time and his own anxieties and he says he had talked to Joe about them but he didn't get very far with Joe, but Joe told him to keep at it and get all the information he could out of it, you know, but he was telling me and pressing me that he made observations to me and he provided documentation to me which to me appeared that, well for want of a legal term, that there was prima facie evidence of questionable conduct in the management of the company at that time over this period, you know. And in fact, he was so outright and forthright in what he was saying is that his anxieties was that

the Murphys were being ripped off, that the company was being run for their own mutual benefit and that they were spending money like --

17 Q. For their own benefit, by whom?

A. I beg your pardon? By Liam Conroy and Marcus Sweeney and Gerry Downes. Liam Conroy was the chief executive both in Ireland and England. Marcus Sweeney was managing director of Joseph Murphy Structural Engineers and AGSE and he was director of a few other companies and Gerry Downes was the chief accountant, although still Mr. Murphy had also a very good accountant. There was an accountant over the years, the man, a fine man, Brendan Devine, of whom I had a great respect. But Frank Reynolds had, as a result of his function in the company, having control of property and security, he had access to the premises in Santry at all times, day and night, and he even, I think he will admit it, that he carried out what maybe I would call a covert operation where he would get documentation inside and he'd photostat it and he'd give me copies of it and he did this over a period of about, I'd say a couple of years you know. And all this documentation was, to me, supporting his observations and his anxieties about the improprieties that he felt were happening in the companies. And in a way, looking back, I'd be better off being a hundred miles away from it. He was only walking myself into more trouble, you know, and God, I regret it, that I got so involved and listened to him so much and then took a part. But I accept I did. And I was equally convinced from what he was saying that Murphys were being ripped off and it got to the stage where he had evidence that not alone were they being ripped off, but that Conroy had got complete control of the trusts, of the trusts, both the Irish and English trust. And not alone that, but he went further and got himself nominated to the trusts as both himself and his wife, because he was recently married, and his future progeny would be

beneficiaries under the trusts.

Now, I am not a legal man, but this meant that according to what I was told, that the trusts were not discretionary and having got onto the trusts as a trustee counsellor as well as a beneficiary, he in effect with the trustees and the trustees, that he had control over it legally and this developed a bit of a concern then eventually when Mr. Murphy was starting to realise this, that he was losing control completely and he was being told not to interfere in the day-to-day running of the trusts.

18 Q. Who was being told not to interfere?

A. Senior.

19 Q. And who was he being told by?

A. By Conroy and Conroy got to the stage where he was threatening him with injunctions if he interfered with the running, that he had no legal entitlement to and then between Frank Reynolds and Senior and my involvement, this developed into where Murphy then, out of the blue in 1987, for the first time officially in five years, attended a board meeting in Fleetwood or Manchester of the AGSE and JMSE because I was finding out as he later told me that Conroy was ripping him off and he was a Jekyll and Hyde character and he attended this meeting and I, as a rule, would have gone to that meeting, you see, but for some reason when Gerry Downes told me that the meeting was on, I arranged my ticket because I used to go a day or two beforehand and have a run around the sites and go into the factory and talk to the lads there, check up, so that I'd familiarize myself so when we'd be talking at the meetings, but I arranged the ticket inside in Santry and the next thing was Gerry Downes rang me to say that I wasn't to go, that the meeting wouldn't be held. It was around about October, the weather was bad and they were saying that the weather was too bad to travel. I cancelled the ticket, you see, but then Gerry -- then my

recollection is that Gerry told me that he was still going and of course he was entitled to go without me but I felt that for some reason I was being encouraged not to go, but I reinstated my ticket, you see, to go, and the next thing was Liam Conroy rang me and told me there was no meeting, that I shouldn't go and I didn't go to that and I reckon that was a fateful meeting, because out of the blue a few days afterwards, Senior rang me up and he says "Why didn't you come to this meeting?" I says, "I didn't think it was on." He says, "Who told you that?" I says "Liam Conroy." "Oh Jaysus", he says, "you should have been there." "Well" I says, "That's the situation." "Well" he says, "things are very serious", he says, but he says, "Tell Frank and you to keep going and keep up your investigations and your covert investigations and get all the information you can because I am very concerned and very worried." And he told me that he was having a word with a mutual friend of ours, he was an ex-chief superintendent, Tony McMahon, and he had told me Tony McMahon would be in touch with me to help me out and help Frank out in our operations, in our investigations.

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And Tony did ring me and we met. I met him with Frank a couple of times, and is it relevant what I say here?

20 Q. Sorry, you met Mr. McMahon a few times.

A. Yes.

21 Q. He was an ex-chief superintendent?

A. He was now a director of Securicor, do you know, who would -- where private investigators, you know, Tony was a very nice man, oh a decent man, Lord have mercy on him. But anyway, he advised us what to do to try and gather more information --

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MR. COONEY: Mr. Chairman --

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CHAIRMAN: Mr. Gallagher, I think we are going outside the bounds of relevance as to what Mr. Tony --

MR. GALLAGHER: Was this relationship with the Chief Superintendent McMahon one that was known to Mr. Murphy, Mr. Gogarty?

A. I beg your pardon?

CHAIRMAN: I will rise for ten minutes.

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

MR. GALLAGHER: Mr. Gogarty, are you all right?

A. Yes.

22 Q. Mr. Gogarty, at the end of -- sorry, not at the end, but at sometime in 1988, did you write to Mr. Joseph Murphy, Senior, in particular, did you write to him on the 10th May of 1988?

A. Yes, following those events I did, yes.

23 Q. Can I hand you a letter now which has been circulated, at least a copy of a letter which has been circulated?

A. I beg your pardon?

24 Q. I am going to hand you a copy of a letter -- (Document handed to witness.)

CHAIRMAN: Mr. Gallagher, would you be kind enough to give us the date of the letter.

MR. GALLAGHER: I am referring to the reference documents which have been circulated by the Tribunal in Book 1 and it's at page number 2. They were circulated on the 7th January and it's at page number 2. It's a letter of the 10th May of 1988.

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CHAIRMAN: I am getting it out. Carry on. I know the letter
you are talking about.

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25 Q. MR. GALLAGHER: You have that letter, Mr. Gogarty. Do you
recognise it?

A. I do.

26 Q. Why do you recognise it?

A. Because that's the letter I wrote to Joseph Murphy, Senior.

27 Q. What date did you write that letter?

A. Well it's dated the 10th May, 1988 and I will accept that.

28 Q. And would you read that letter please.

A. Well I head it "Strictly Private and Confidential". And I said
"Dear Mr. Murphy, --

29 Q. Perhaps I will read it for you, Mr. Gogarty.

A. I will read it. I will read it --

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"I am enclosing for your confidential and urgent attention
ammunition to assist you in your present difficulties. There is
a very strong case indicating that your businesses at best are
being conducted in such a careless, negligent and reckless manner
as to indicate that in a very short time, the entire organisation
will come crashing down.

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I feel the evidence of this is such that it would be very
difficult to prove that fraud has not taken place. As you know,
it is the duty of the trustees to totally protect your interests
and in this regard, it is very difficult to prove that they are
not acting in consort with the management or that they are acting
in your interests or that they are not aware of what's going on.

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I understand that guarantees have been given by the trusts

(secured by trust assets) and that mortgages have been given on many properties. You will appreciate that if the overall organisation collapses for any reason, the trusts will also collapse by virtue of the guarantees which it has given.

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As your loyal servant -- and taking into account both my age and your age -- I strongly recommend, I strongly and completely believe that together we can not only rescue the situation, but can return the organisation to profitability once again. All this would be challenging, it would also be exciting to both of us and we could aim to take the entire organisation onto the stock market as part of the exercise. I envisage the overall timing to be not more than two years.

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I would very much like to meet you on this matter so that we could take the first steps together.

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Yours sincerely, Jim Gogarty."

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And there was enclosures with that.

30 Q. Can you recall to what address you sent that letter and the enclosures?

A. Oh, to Guernsey.

31 Q. To whom in Guernsey?

A. Senior.

32 Q. Mr. Joseph Murphy, Senior?

A. Yes.

33 Q. That was written in 1988?

A. '88.

34 Q. At that stage you would have been about 71 years of age?

A. 71. Yes, 71.

35 Q. Now following the sending of that letter, can you recall what

happened?

A. Well things were developing very, very quickly.

36 Q. Sorry -- can I just --

A. You see -- sorry.

37 Q. Sorry, Mr. Gogarty, can you just indicate what enclosures, can you remember, were enclosed with that?

A. Oh yes, I enclosed a lot of reports on contracts and on payments being made to various people, business people and outside people on invoices that, to me, were not properly cleared or identified as being satisfactory explanations of what was being invoiced. I felt that there was invoices that --

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MR. O'DONOGHUE: I wish to intervene at this stage on behalf of Mr. Sweeney. This witness is not entitled to give secondary evidence of other documents which have not been produced by him or by the Tribunal or the parties who were affected by it. We have in the course of a letter he has just read to the Tribunal of the 10th May 1988 referring to enclosures. Now, we have today or we are in the course of writing to the Tribunal looking for copies of those enclosures but in the interim, until we have them, this witness is not entitled to give secondary evidence of the contents. If I may finish the submission -- these appear to be documents. It is perfectly clear that the -- in relation to documentary evidence, the best evidence rule always applies. It is not permissible for a witness to say what the contents of those documents were and it is unfair to my client, in particular, perhaps to the other parties as well, to have reference made to them in the absence of the furnishing of, or sight of those documents to us.

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MR. GALLAGHER: Sir, can I say that I asked Mr. Gogarty what documents were enclosed with the letter on the express request of

counsel for one of the other parties. I don't wish to go into that document at the moment. If it becomes relevant or necessary to do so, we will do so and we will certainly -- I simply wanted to identify the document.

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CHAIRMAN: You think you are perfectly entitled to identify the document. I don't think there is anything wrong with that.

Secondly, if you are going to move on and don't require to go into it, that solves the matter, but finally, I point out that in essence, that I am taking this evidence de benne esse and you may be rest assured that will be carefully looked at as to whether or not in my view it has any relevance or not dependent upon my assessment of the (A) transcript and (B) any documentary evidence referred to therein and any submissions of course by any appropriate counsel or any appropriate party, more accurately, in due course. That is the only way I can deal with this matter, as I understand the overall situation. My apologies for this rather hoarse voice but I can do nothing about that. Thank you.

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MR. GALLAGHER: Mr. Gogarty. Can you tell the Tribunal what happened, if anything, as a result of sending that letter to Mr. Murphy, Senior? Did you get a response or did he communicate with you after it?

A. Well he didn't respond on that, no.

38 Q. Can you say what happened after that, after the 10th May 1988?

A. A lot of things happened.

39 Q. Perhaps you will put the microphone a little closer to Mr. Gogarty please. What happened in relation to the companies, in particular? Were there any changes?

A. Oh yes. Well I will tell you what, do you see, I think I mentioned that relationships were dreadful between Mr. Conroy and Mr. Murphy and me, because there was a complete resistance to Mr.

Murphy and I interfering in any way with the management or getting information. He felt that Mr. Murphy was being threatened with injunctions --

40 Q. Who is 'he'?

A. Mr. Conroy. And he threatened me with injunctions as well too and eventually did, but anyway, Mr. Murphy was then told me that he was trying to appraise the situation to see how he could overcome his difficulties vis-a-vis himself and Mr. Conroy, who had taken control over all his businesses, you see. And I think I mentioned to you that earlier on, that there was a firm of accountants in London, Midgey Snelling, who were involved in the IFTC affair and after that, you see, Mr. Murphy had recovered most of his money through their professional indemnity, but they were out completely for years.

In May then, you see, I was anxious to get out and as a result of a telephone call, as I say, Conroy was trying to -- I was trying to get -- I couldn't get into Santry. I was being blocked out of Santry but anyway I got a phone call from Mr. Murphy around about that time, at about five o'clock in the evening and he says "Jim, I have a problem." I says, "What's your problem?" He says, "I am afraid I have to ask you to resign your directorships." And I says, "In the name of God, why should I do that without any security or pension or where would my wife go?" And he says, "Oh, I'll look after you", but he says, "I am afraid you will have to consider your resignation." But I says, "Give me a reason for it. What I have I done wrong?" He surprised me because he says, "Jim, I am here with my back to the wall, my hands over my head and a gun to my head." And I said to him, "Well", I says, "If that's the case, you are not a free agent and you have no control over this and I am not going to resign." Well he says, "You will have to take it up with Liam Conroy." I says, "That

man is avoiding me and stopping me from acting as a director."

But he says "You will have to take it up yourself." And an interesting thing was that a few days afterwards, I got a telephone call from Conroy's secretary saying that he wanted to meet me, you see.

41 Q. That who wanted to meet you?

A. That Conroy wanted to meet me. And I was anxious about this and I had a chat with Tony McMahan about it.

42 Q. Did you meet Mr. Conroy?

A. I did. But I must say this, because Tony was very helpful, he told me that -- you might consider wanting legal advice.

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CHAIRMAN: Pardon me, Mr. Gogarty, please be kind enough to deal with what you know yourself and not conversations with Mr. Tony McMahan, because (A) it's possibly hearsay, and secondly, Mr. McMahan is, as far as I know, dead for a number of years.

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MR. COONEY: So is Mr. Conroy, as a matter of fact.

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CHAIRMAN: Well that's only been recently --

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MR. COONEY: I thought that point would have been brought to your attention, Mr. Chairman. We have no objection to his evidence about Mr. Conroy. But I think just for the record it should be noted that Mr. Conroy died last summer.

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CHAIRMAN: That is correct. I recall that. In London, I think I recall.

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43 Q. MR. GALLAGHER: Mr. Gogarty, did you meet Mr. Conroy after that telephone call?

A. On advice I did, yes. Yes.

44 Q. Who did you get advice from?

A. From Tony McMahon's daughter, she was a solicitor but that was on a friendly basis. She wasn't charging me for it. Her father was a friend of mine and she advised me to go to along.

45 Q. You went along and you met Mr. Conroy, did you?

A. I met him in his office in Baggot Street.

46 Q. What happened?

A. Well the first thing he did was he put 14 documents or 12 or 14 documents on the table and he says, "I want you to sign them." And I says, "Can I read them?" He says, "Yes, you can." I read one and they were all the same and they were resignation documents, if I signed them I was resigning my directorships of all the companies. I says to him, "Why should I do that?" He said, "You resigned. You told Murphy you'd resign." I said "I did not." I says "That man was under undue pressure." I said "I didn't." "Well" he says, "I am requesting you to resign now because" he says "if you don't resign", he says, "Sweeney and Downes have indicated that they, if they haven't already resigned, won't be there next Monday or Tuesday", you see. I says "That's remarkable. Why should I do that?" and I says "Why should I resign when I have no security for my wife and family, after all those years?" He says, "I will look after that." I says, "Will you put something in writing to me that I have some sense of security? I will resign but I want some sense of security that I am entitled, that both you and Murphy have promised me over the years." He then says, "I will talk to the trustee" and he says, "We will be in touch with you for another meeting." So I left the meeting at that time and I came home and I met Ms. McMahon and discussed it with her and she said to write and I rang Joe Murphy to tell him what happened and he says, "Good for you". He says, "Keep that up", he says, "don't sign anything", he says, "because" he says, "I am getting my forces organised and I hope

to succeed and I want you to delay and reject any offers they make and when I get back my companies, I will look after you and Anna and I can assure you I will give you a better offer." And he says, "Keep me informed." I says I would.

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So a few days afterwards, I got a phone call I think from his secretary, Helen Russell, that he wanted to meet me again.

47 Q. Who wanted to meet you?

A. Mr. Conroy, her boss. And she mentioned a time of day and I says "I will come back to you on that" and I then went back to my adviser, Ms. McMahan, and she says not to meet him on that time but to meet him, arrange for a later meeting a day or two afterwards you see, which I did. And he said that he could give me, he put an offer to me and I says, "What is it?" So when he says, "I will be putting it in writing to you and I'd like to you consider it because this is very urgent because I was talking to the trustees and if you don't resign, we are all gone over the weekend and the companies will have no management." I says "Surely, as professional men, they should have a transition period and let us consider this." So, I think that's nearly all that happened that day and I came away and the next day Ms. Russell rang me to say she had a letter and did I want to collect it and I said I'd collect it and I think I went in that afternoon and I collected the letter. I think it's with the Tribunal as well too, an offer -- it's not signed but it was an offer.

48 Q. An offer in relation to your pension and retirement?

A. Yes. He offered me to pay me -- do you want me to go into it?

49 Q. We will perhaps come back to it at a later stage, Mr. Gogarty.

A. So I rang Joe and I read it to him. Well he said, "Reject that, Jim, I am making good progress and I think we can be successful." I rejected that offer and my recollection is this then, that I told Ms. McMahan and she says "Okay." So the next thing was I got

a call from Brendan Devine's secretary, he was Mr. Murphy's adviser and I had a great respect for him and a fairly close relationship with him over the years and he wanted me to meet him with Mr. Conroy in furtherance of my negotiations for the pension and again I checked with Ms. McMahon and I went along to that meeting and as a result of that, they made me an improved offer and I said I wanted time to consider it and I came back and I rang Joe Murphy and I filled him in and he said "Look, reject it again." The same thing again. "I will look after you and Anna and I can assure you I will better that offer." So that went on. I think we had another meeting with Brendan Devine.

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Well this thing, I think a problem was happening then with Ms. McMahon, I am not sure was it this particular time, but she worked for --

50 Q. Well, don't -- there was a problem about Ms. McMahon and her employment. She changed employment I think, is that right?

A. She changed employment, yes.

51 Q. Well now, can you say what happened after that in relation to --

A. Well after that, but before she changed employment, after that then, Mr. Murphy came back to me and he says, "You will have a phone call from Roger Copey, but this is confidential" he says. I says, "From who?" "From Roger Copey", he says. And I was shocked because here now, after six or seven years, this man, who was involved in the, how would I say, losing of millions now surfaces on the scene but he says, "I will have to put up with it, Jim, but he will be in touch with you for a meeting and he will hopefully sort out something with Brendan Devine" I think it was, you know. "But don't tell anybody about this." So, some days afterwards I got a telephone call from Mr. Copey and I met him in his office in, just off Baggot Street.

52 Q. Is it in Pembroke Row?

A. Pembroke Row, Pembroke Row, and having the normal reservations that I had with him over the years, I conducted in what I considered a normal stance, you know, it was a business, so although he expressed interest in helping me out and doing what Joe wanted to do, to see could he make some arrangement, you see.

53 Q. Arrangement for what?

A. For my pension, which was being discussed, you see the point? So it got a bit confused then because he started then to negotiate with Conroy and Brendan Devine, do you know? And he set up a meeting with some solicitor who had acted for me. You see, Ms. McMahon was only acting informally, and I forget the name of the solicitor but he did organise a meeting and we went to the solicitor's office with him and we discussed the situation, you see, and I remember the solicitor said, "I am afraid" he says, "I can't act for you in this respect because" he says, "there is a double problem here. There is your own problem with the companies and also your problems with Joseph Murphy. So there is a conflict" and he ruled that out. So that was that. I had no solicitor now. So --

54 Q. Then coming up to June of 1988 --

A. Sorry, well a little bit before that then, as a result of I rejecting Conroy's offers, you see, they seemingly decided then that they would force me to resign, that they called -- they were calling a, an extraordinary shareholders' meeting for the 8th June, 1988 and I got those in the post from Gerry Downes, notifying me of this shareholders' meeting and the purpose of the meeting was to remove me as a director from all those companies. I told Joe Murphy about this and he says "I know it, but we will have to tackle that" and he says, "I have arrangements made to combat that", you know. But I says, "I feel I should have independent legal advice, you know" and he says, "Well" he says, "I can't stop you from it but" he says, "I will act for you, I

will fight for you."

.
So he then says at some stage around about that time that he was in touch with another -- you see when Midgely Snelling in London -- IFTC affair, I am sorry I have to go back to it, both Copsy and Wadley, the principal characters in that debacle, you see, they had left the firm and Chris Snelling, a decent man, he was a very upright, his father had set up the firm, continued at a lower level because the firm had lost money over the professional indemnity and he had to build it up again but they were fairly big but Joe brought him in as well and I had a fair relationship with him, you see, and he came across -- there was several meetings and he was going through accounts and all that type of thing, you know, but the nub of it all was that this meeting took place on -- it was the day after the bank holiday in June, I remember it well because --

55 Q. Why do you remember it well?

A. Why do I remember it well? The previous Saturday, one of my daughters had got married and instead of properly celebrating the event, I was caught up in -- and I had lost weight and I was down to about ten stone in weight but anyway I was fighting my corner, but I should mention that shortly before that, around about the same time as Ms. McMahon, when I was telling Joe that I felt I should have separate advice, you know, I was introduced to an accountant called John Lane, who again, when he researched some of my information that I had -- in fact, I should mention to you, to tell you the truth, that he in fact practically drafted that letter that I wrote on the 10th May 1988 to Joe Murphy, because he was examining information that I had given as well too, you know, but I am only just fitting you into the context you know.

56 Q. Now, can you come just to the meeting that was on the Tuesday after the June bank holiday.

A. No, I came back from the wedding in Athlone, you see, on Saturday or Sunday or something like that. Joe rang me and he told me that the meeting -- he knew the meeting was on for ten o'clock in Ernst & Whinney's office in Stephen's Court and that's where Brendan Devine, my friend, worked as well. But he says, that's ten o'clock, but he says, we are having a meeting, he says, in my house in Wilton Road, at I think it was six o'clock that morning and I want you and I want John Lane to come along and bring any documentation you have with you. And I went along. We went to Wilton House at that time of the morning. Una Murphy was there, the Lord have mercy on her, Junior was there, Senior was there, Roger Copsey was there. John Lane was there, there was a chap from England, an accountant from England called Peter Garner, you know, a lot of people present. And Wadley was in his shirt sleeves and he controlled the discussions and what he says was, "Jim", he says, "We are here", he says, "first of all, we are here, we are calling meetings of each individual company in the group because of the fact that Mr. Conroy and Mr. Sweeney and Mr. Downes resigned verbally about a month previously" and our duty was then to appoint replacement directors and accept their resignation formally. And we went through that procedure, each company and I was nominated, I think, as chairman, I think, and we dealt with each company formally, that's Mr. Conroy, Mr. Sweeney, Mr. Downes had resigned and I was appointed chairman. John Lane was appointed director and financial controller. Una Murphy was appointed director, Junior was appointed a director, Peter Garner was appointed a director. It's all there, you know. It's all there, they were appointed as directors and that took some time. And we -- like, it was mentioned in other places, we had tea and sandwiches, you know, but time went by, it was extensive discussions and lengthy time and it came to the time then, I am getting a bit worked up --

57 Q. Would you like to take a break?

A. I'd like to take a break, yes.

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CHAIRMAN: All right, Mr. Gogarty. I will break for twenty minutes to enable you to rest.

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

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MR. GALLAGHER: Mr. Gogarty, before the break you had been telling us about the meeting in Wilton Lodge shortly after, well indeed the Tuesday after the bank holiday weekend in June of 1988; is that right?

A. That's right.

58 Q. Now, you had told us about the meeting that took place there.

What happened after that?

A. Well, the meeting was aborted, it didn't proceed to sack me.

59 Q. You were in Wilton Lodge, what happened when you left Wilton Lodge?

A. Well, when we left Wilton Lodge, my recollection is we came back to Joe Murphy Senior's house.

60 Q. I understood Wilton Lodge is Joe Murphy's house?

A. But the meeting was --

61 Q. You hadn't got to that meeting. We hadn't got as far as that meeting.

A. Had we not? Sorry, I thought we had. Oh well you see, that meeting in the house went on from six o'clock in the morning until, I suppose, nine or half nine and we had something to eat, you know, and it was decided then to go to the meeting in Ernst Whinney and they had lined up Mr. Wadley had lined up his, how they were approaching it. Now, we had solicitors -- I think I should have mentioned I think at the meeting in Joe Murphy's

house, there was also a Mr. Oakley, now, I'd swear there was a Mr. Oakley, he was a solicitor from England for Joe Murphy, I am sure it was Oakley, yes -- because, sorry, well basically we reconstructed all the companies with directors; I was Chairman, Senior was confirmed, Una was appointed a director, Junior was appointed a director, John Lane a director and financial controller, accountant, Peter Garner, I don't know whether there was anybody else but we went to the meeting. I know they were represented by A & L Goodbody, that's my recollection.

62 Q. Who is "they" ?

A. The outgoing, the Murphy's crowd -- sorry Conroy's crowd, that would be Conroy, Marcus Sweeney and Gerry Downes, the management that had resigned.

63 Q. Did you go to a meeting in the offices of Ernst & Whinney?

A. Yes.

64 Q. And what happened on that occasion or at that time?

A. Yes. Well, at that time, there was to-ing and fro-ings, I don't know much about what went on there but the meeting then took place and there was a lot of discussions between the respective solicitors about the legality of it, the shareholders and proxies, all that type of thing, which was a bit above me, I left it with them and one crowd was questioning that the meeting shouldn't take place at all and then the argument arose whether it should be described as an adjournment or a postponement, so there was technical discussions about how they would arrive at deferring the meeting or not holding it and it was either deferred or postponed or adjourned, some of those technical words, for I think 21 days but we had established, as far as I was concerned, our situation that we had all each company now had a new board and a new board and new directors.

65 Q. And what was your relationship with Joseph Murphy Senior at that time?

A. Oh it was very good, he was fighting me tooth and nail and trying to get a fair -- it was what he was trying to do if there was any sense or recognition on the other side that there could have been a compromise where I would have resigned in honourable circumstances with a reasonable pension for me and my wife and family. That's all I was interested in.

66 Q. Now following that meeting, were there court proceedings?

A. There were, there were.

67 Q. Can you tell the Tribunal what those proceedings related to or who took the proceedings?

A. The proceedings were taken by, well principally by Marcus Sweeney, he took an injunction against us or sought an injunction, sought a kind of interlocutory injunction or whatever you call it, to prevent me and Una Murphy and Junior and John Lane and Peter Garner from acting as directors, acting as directors and they got a temporary -- now unfortunately, looking back, from my side, I wasn't legally represented. Senior, Murphy's legal people were looking after me, you know?

68 Q. Yes.

A. In those proceedings.

69 Q. Did Marcus Sweeney swear the grounding affidavit in those proceedings?

A. He swore -- oh God the blackguard.

70 Q. Were those proceedings commenced in June of 1988?

A. I beg your pardon?

71 Q. Were those proceedings commenced in June of 1988?

A. Yes, I think it was on the 10th June, it appeared in the Irish Times.

72 Q. Yes. Was that the first you knew about it?

A. Well, there was correspondence delivered to my house by courier, all that type of thing, there was all that stuff, this is on the file, you know, A & L Goodbody were fighting us tooth and nail for

the outgoing crowd and there was to-ing and fro-ing, you know,
between the people --

73 Q. Well eventually, were those proceedings settled?

A. Well, they were withdrawn.

74 Q. Withdrawn.

A. They were withdrawn. There were a lot of meetings. I don't know what you would call them but there was confrontational meetings between our side, let's put it that way, that's Murphy's side and their side, they were still proposing to carry on as directors and they called me, notified me and I was advised legally to attend those meetings but just to give a statement to the meeting and have it being recorded that I didn't consider it a valid meeting. I was registering the group company's attitude to what they were doing but they were then calling meetings and they were passing resolutions supporting the outgoing management and standing over the injunction proceedings and all that type of thing but while that's going on, as I say, there were a lot of meetings. I know Mr. Oakley took a very prominent part and played a good part in it and of course the principal man involved was Edgar Wadley because he was very astute, I must hand it to him. But unfortunately, I had to be distancing myself from him because of my reservations but anyway, he proved an important part in regaining control of the structures and in ousting the, finalising the departure of Conroy, Sweeney and Downes although they resisted it but unfortunately a thing arose which annoyed me a bit at the time because I wasn't au fait with all the side issues that were being discussed with people, you know, although I did attend a meeting with Joe and Wadley when we questioned Downes on his own and also Sweeney, you know, to see what they were doing and they were pleading that as far as they were concerned, their loyalty was to Conroy as being the overall chief executive who as far as they were concerned, had control of the trust, was a trust

counsellor and as far as they were concerned, legally, Joe Murphy Senior had no entitlement whatsoever to interfere with the running of the trust and while they granted that I was a director, they were holding the situation that I was going outside the Terms of Reference and trying to act as an executive director. All that type of thing was going on, you see.

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So --

75 Q. Did you attend meetings of the board of JMSE and other companies in or about that time?

A. Oh I did, yes. Yes.

76 Q. And who else attended those meetings with you?

A. Well, it's on the record there, there's a report -- the meetings were called and I think Joe Murphy chaired some of them and I chaired others and you see, we allowed, seemingly we allowed Sweeney to attend, although he was registering himself as objecting to the meetings because he considered it was an improper board but it was done in such a way that eventually, where the board were forced, whether it's right or wrong but they were forced into acknowledging that they had resigned or should resign and get out because there was -- there was enough information to justify that they were no longer considered to be proper people to be running the companies and they hadn't the beneficiaries who were the Murphy family, who have built-up the companies and made them profitable and they were being put aside and by a crowd, as far as I was concerned, of chancers.

77 Q. Please. In any event, did the situation arrive when Mr. Conroy, Mr. Sweeney and Mr. Downes left the companies?

A. Well, yes, but they didn't go easy. You see, there was side negotiations, I wouldn't be au fait with, to try and compromise the issue and to have what we may call a purportedly amicable departure and Conroy did accept that under different, company

regulations, he had resigned. Downes was the same but they were trying to organise a package with Downes.

78 Q. And did that happen? Was a package organised?

A. Well, I tell you, I didn't know much about how they finished up with Conroy because I think he met them at meetings in London Airport. I think that's recorded but Marcus Sweeney was, to me, was a problem to me because it was a situation developing where they weren't sacking him and I wanted him sacked.

79 Q. All right.

A. Sorry, but they were holding on to him for a temporary period and going to reinstate him as managing director. Downes, all Downes wanted was a financial settlement.

80 Q. I think Mr. Downes left sometime about the end of August of 1988?

A. I suppose something about that time, finalised, you know.

81 Q. And did Mr. Sweeney also leave?

A. Well -- no. He left -- physically he left but nominally he was retained for a period on probation as a managing director and he was supposed to be dividing the responsibility with me but this created, not a problem for me, because I had complete reservations of working with the man.

82 Q. All right. In any event, did Mr. Sweeney eventually leave the company?

A. He did but I would say it was early the next year, 1989.

83 Q. Now, during the latter part of 1988, what role, if any, was Mr. Murphy Senior playing in the operations of the company?

A. Well, to me, he was playing an important role but then he had good men to front for him, if that's the proper word. He had Mr. Wadley, he had Mr. Oakley and he -- I should mention that what frightened me as well too was that when the injunction was withdrawn in around about the end of June, you know, I was going to say something there, it's important -- oh yes, what annoyed me very much was, you see, that having got rid of him, we had

meetings to discuss what was the proper thing to do, what was the proper thing to do and John Lane was there, John Lane was the financial controller at that time and I was Chairman and we put this proposal to them. Now, you see, it's very hard to know when you can formally say a meeting was a board meeting or it wasn't a board meeting, especially with private companies anyway but there were meetings anyway and out of the blue, sorry not out of the blue but before that, what happened was that John Lane and I put suggestions to the companies that they do two things now that they had got rid of the old management, that they would bring in a top class firm of accountants to assess the financial structures of the companies in the aftermath of what happened and to take over from them, you know, and bring them up to date. And we also suggested that the companies should consider taking advantage of the amnesty which was October 1988 because here was a situation where a new management was taking over recovering from an older management where we admitted that there was failings and that that situation should be regularised but Mr. Copey and Mr. Murphy, on the advice of Mr. Copey I think, said that wasn't a priority, immediate priority. The immediate priority was to get new life into the companies and to get back on to an even keel.

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But what happened out of the blue then, what upset me then was that they, in effect, got John Lane to resign because I feel in retrospect and I am nearly a hundred percent satisfied his approach to it wasn't the same as they would have wished and I was annoyed over that but I was locked into a difficult situation.

Again I was fighting for my pension and all those kind of things and I was forced to take a stand and not seriously object to John Lane resigning which I felt was wrong but that's beside the point.

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Then in turn for that then, they appointed Roger Copsey now a director and financial controller.

84 Q. When did that happen, approximately?

A. That was in July, 1988.

85 Q. I see.

A. No, very quickly, you see. That's the point. And to make matters worse then, you see, I was back now on my own, hopefully relying on the loyalty of Mr. Murphy to honour his promises that he had done prior to that fateful meeting on the bank holiday and I was hoping, looking forward to retirement and enjoying myself with my family.

86 Q. Did Mr. Copsey play an important role or did he have a minor role in the company after that?

A. Oh sure he was acting chief executive, group chief executive for a long time but that's not the point I was annoyed about.

87 Q. All right.

A. No. No sooner had John Lane gone that Roger Copsey's side kick, Tim O'Keefe, at the end of July 1988, came into the office this day and handed me an open envelope.

88 Q. Sorry, could you come closer to the microphone, Mr. Gogarty?

A. Sorry. Tim O'Keefe, he handed me an open envelope and says Roger Copsey told him to give it to me and wanted me to sign the forms that were inside it and I opened the envelope, I took the forms out of the envelope and they were another -- type of in the same form, another set of the documents that Conroy put to me earlier on to get my resignation and this was a document that Copsey wanted me to sign and resign my directorships. Again, I had no pension. The situation I was caught in, inextricably locked in a situation where again I was kicked in the teeth, kicked in the teeth by the people I fought to recover although Senior denied that he was behind it but that was it, I refused, I says, "Why should I resign? I will do it as soon as I see that I have a fair

chance that I can go home to my wife and family and say, 'well if I am dead in the morning, you would have something to live for'".

89 Q. What happened after that?

A. Well, what happened after that --

90 Q. Sorry, would you mind leaning forward if you don't mind.

A. There's a stream of correspondence to show that Copsey, while recognising the situation, was still exerting influence overall because he was the group chief executive and I think there's documentation on the file that what I challenged him on wouldn't resign, you see, that he then took up the issue with Senior and this is reflected in correspondence where he pointed out to Senior that Senior would have to make a decision between me and Marcus Sweeney, that either of us could go, would have to go.

91 Q. Can you say what position Mr. Copsey had in the companies at that time?

A. He was the financial controller and group, acting group chief executive. He had taken control of all the affairs.

92 Q. Can you then --

A. And his company were, you know, were assigned as giving services, you know what I mean.

93 Q. Secretarial services?

A. Yes.

94 Q. And to whom or to what companies were the secretarial services being given?

A. To the Murphy group of companies.

95 Q. I see.

A. Murphy group of companies.

96 Q. Now can you move on then and tell us generally what happened towards the end of 1988, the latter part of 1988.

A. Well, I would say then, you see, they acknowledged, give him his dues, sorry, Frank Reynolds had been a very loyal Murphy man all

through this and that was acknowledged in or around October, 1988 when Joe told him that he was making him an executive director of the companies and that was formally confirmed at a board meeting in December, 1988 so Frank now was an executive director and manager. He was the main man there in Murphys. He had a good partner as director who was brought back on my recommendation and a decent man, a good man, a good surveyor, who was brought back on my recommendations in about August, 1988 and that was a man by the name of Gay Grehan who had been sacked some years previously by the Conroy crowd but who had worked with me and Frank Reynolds for years beforehand and we brought him back and Joe Murphy made him also an executive director and I must say he was entitled to every bit of it for what his work was. So they were running the companies then, you see, and they had a good relationship with me at this time as well, they were following it up because, I may be jumping a bit, do you know, because the issue then, you see, of the 1988 accounts were cropping up, you know.

97 Q. In what way were they cropping up?

A. Well, seemingly the banks were after them for up to date accounts. They knew who was -- there was some trouble, you know, and they were anxious to have audited accounts to satisfy themselves in the ongoing situation so there was a question about who was going to audit, sign these audited accounts. You see, these were accounts that Joe Murphy and I had taken very strong exception to early on. You see, on account of what was happening, the '77 accounts were signed.

98 Q. You said what year?

A. The '77 accounts I found out had been signed to which I had seriously objected earlier on, they had been signed in my absence and against my recommendation and Joe's recommendation at the time because we wanted them properly investigated, you know.

99 Q. You said the 1977 accounts?

A. 1987 accounts, the position, '87 accounts and then when we found out that they had been signed, audited and signed by Sweeney and somebody else, I don't know, that then it automatically jumped to the '88 accounts you see and the '88 accounts then became the big issue because they were based on the '87 accounts.

100 Q. And in what way did it become an issue for you?

A. Well, they wanted me to sign them.

101 Q. Who wanted you to sign them?

A. Well, Copsey, John Base, the auditor, and Senior and others later on, do you know, I will come to them later on. I may be jumping a bit but you see that was a saga that then developed right into '89, do you know? It was into '89 because there was correspondence on it but worse still, that they were making it a condition that I sign the accounts on or my retirement package was gone to the wall.

102 Q. Who was making it a condition?

A. Senior, Junior, Copsey, and I believe Oakley.

103 Q. Did you sign those accounts at any time?

A. No, no, no.

104 Q. When did you eventually resign as a director of the company?

A. I resigned as a director of the company on the, formally on the 10th July, 1989 but I had indicated it on the 6th. There was a board meeting on the 3rd.

105 Q. All right. I just want to get the dates for the moment. We will come back to that. So, you say you resigned on the 10th July; is that correct?

A. Formally.

106 Q. '89?

A. Actually the 6th July but then I went and told Mr. Sheedy to confirm it.

107 Q. Up to that time, had you signed the 1988 accounts?

A. Oh, no, no, no.

108 Q. Up to that time had the 1988 accounts been signed by anybody, to your knowledge?

A. No, but what causes concern was that there was a set of these accounts floating around and giving the impression, maybe I am wrong but giving the impression that they were audited and my name was attached to them, even though they were draft accounts which might imply that I was signing them but that was upsetting.

109 Q. When you say your name was attached to them, what do you mean?

A. That I might have signed them or would sign them, that they had my approval.

110 Q. Do you mean that your name was typed on them?

A. Yes, typed on the bottom of them, yes.

111 Q. Was there any other name typed on the bottom of them?

A. I think it was, I think it was Copsey, I wouldn't be sure but they are there to be got, you know.

112 Q. Now, did Mr. Copsey have any role in the day-to-day running of JMSE in the latter part of 1988 or early 1989?

A. Oh yes, yes.

113 Q. What role did he have?

A. Well, he was a director now, financial director and his company were give giving financial services into it. His side kick, nice chap, Tim O'Keefe, was, I believe, regularly in Murphy's office and in the Fleetwood office attending to accounting matters, you know, all that type of thing.

114 Q. And how often would you be in the offices of JMSE?

A. Very little, because you see Frank Reynolds now and Gay Grehan were running the practical operations, day-to-day operations, you see. I would go in but what happened was other demands put on me and one of the principal demands was, you see, am I jumping the gun now? First of all, then in '88 I was in very bad health at that time and I was in hospital in December for a while, in December, I had several complaints at that time, you know, and I

didn't recover until early in the new year and a lot of things happened. Maybe, you see it's so complex.

115 Q. I understand that.

A. Behind the scenes, we understood from Frank Reynolds that when I had got rid, when we got rid of Marcus Sweeney, that they were talking to him with a view to him buying the company, you see? And Frank was terribly concerned and so was Gay Grehan and they said that no way that could happen or be allowed to happen and they sought my support and I agreed, in fact, I was the front runner to initiate negotiation with Senior to buy the company on his management buy-out, you know, in return for the lads that were there, Frank Reynolds --

116 Q. And as you understood it, participate in this management buy-out?

A. Well, the arrangement was between myself and Frank Reynolds and Gay Grehan and they would organise the finance and part of it would be, I would be prepared to put up some of my settlements now because I think I should refer to now that there was money due to me, promised me, you know, and that we could put together some package. It finished up it was only a charade.

117 Q. All right. Well perhaps we'll come back to that. You said that Mr. Copsy had an active role to play in the company, as I understood you, in the latter part of 1988?

A. He was tidying up different accounts with different companies and he wanted me to sign some accounts too, they were questionable and things arose --

118 Q. All right. Well did Mr. O'Keefe attend on a regular basis, to your knowledge, at the offices of JMSE?

A. Well, I couldn't swear how much attending he gave but I believe, I think he said it himself that he was in daily running --

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MR. COONEY: Mr. Chairman, with respect, how can this witness know what Mr. O'Keefe has said? Is he reporting a conversation

which he had with Mr. O'Keefe?

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CHAIRMAN: Perhaps you could clear that up first of all before any ruling is made on it.

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MR. GALLAGHER: I am just trying to establish if this witness knew whether Mr. O'Keefe was attending the office on a regular basis or not. That's all I am --

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MR. COONEY: I know that's the question which he asked him. Mr. Gallagher knows I am not asking for any information in relation to his question, I am asking for information in relation to the witness's answer. In the course of which he said Mr. O'Keefe has said, when did Mr. O'Keefe say it and in what circumstances?

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CHAIRMAN: Would you endeavour to clear that up?

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MR. GALLAGHER: I will endeavour to find that out. Mr. Gogarty, do you know of your own knowledge whether and if so, to what extent, Mr. O'Keefe attended at the offices or participated in the operations of JMSE?

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MR. COONEY: Sorry that's not the point of explanation I was looking for. The point relates specifically to Mr. Gogarty saying that Mr. O'Keefe said he was then going to put -- I am asking, Mr. Chairman, the occasion, to identify the occasion Mr. O'Keefe spoke or communicated with him.

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MR. GALLAGHER: I will come to that in a moment.

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CHAIRMAN: I think it must be done now for the simple reason, I think it is relevant that that should be established. If you look

back to your transcript, you asked him -- could you bring the transcript back about four or five lines, come back about four or five lines, I have only got back as far as Mr. Cooney's objection.

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MS. COUGHLAN: The question: "All right, well did Mr. O'Keefe attend on a regular basis, to your knowledge, at the offices of JMSE? Answer: Well, I couldn't swear how much attending he gave but I believe I think he said it himself that he was in daily running..."

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CHAIRMAN: Yes, that's the point, Mr. Cooney wants to know what circumstances you became aware from Mr. O'Keefe of that fact.

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119 Q. MR. GALLAGHER: Mr. Gogarty, did you become aware of whether, from Mr. O'Keefe that he was or was not working in the offices or attending at the offices of JMSE on a regular basis?

A. Well, I believe he was because I didn't attend the offices much because I can explain why but any time I did attend during that period and my contact with Mr. O'Keefe was in relation to a specific investigation and I referred him to the 1988 accounts in which he and I were interested. He was interested because of his boss wanting to clear the accounts and have them signed. I was interested because I was being forced or trying to get made sign them. I am satisfied that Senior and Mr. Copsy and others were fully aware that there was a big question mark over those accounts and I had discussions with Tim O'Keefe on them and I can tell you what the discussions were.

120 Q. When did you have those discussions with Mr. O'Keefe?

A. In '89. In June, July, '89.

121 Q. All right. I just want to go back for a moment to the 1988 period and to the early part of 1989. What role, if any, were

you playing in relation to the management and the letting, the collecting of rents of the various lands that were owned by the Murphy group, Murphy organisation, the companies in it?

- A. Very little. I am not playing them down but my role in relation to that at all times was fairly mundane. I was -- and Joe -- you know, Joe was a funny character, he was terrific about detail, day-to-day things. You see, practically all the lands were agricultural, a big lot of the lands were agricultural, 700 acres, and they had to be, show some income or some income had to be derived from them and this was done by letting them on the eleven month system and there was an old firm of Duffy Mangan and Butler before even I went into Murphy's, that they worked on those lands, letting them on the eleven month system, preparing the leasing agreement and I continued that. I had discussions with them at the end of the year about the following year's arrangements, which lands were going to be let in tillage and which was going to be let in grass and what likely business we had for them and I would have to tell that to Joe on the phone. We would talk on the phone and I would have to tell him how much an acre we were getting and he said if he thought if it was right or wrong and also the auctioneer was insisting there was always a clause there where the tenant was liable for fencing and repairs, all that type of thing, mundane stuff. And that was done by JMSE. JMSE were the active company, they did all the work for the other companies and at the end of the year there would be inter-company adjustment in the accounts to cover all that type of thing, you know. I was never paid by any of these companies but anyway, that was my situation and you see after the lands had been let, all you would be doing would be looking for the cheques to come in, two cheques in the year, interim payments and they come in an envelope from Duffy Mangan and Butler and prior to the Conroy structure, I would just get them, put them into an envelope and get them inside in Santry

to post them over to Brendan Devine and he took over and when Conroy took over, Gerry Downes would do it. It was quite mundane.

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The only physical thing involved was you had to be careful because a lot of the time -- Brendan Devine and he'd get a letter in from the County Council saying oh there's refuse dumped in the gateway of such a property there and if you don't clear it, it will be fined and I would have to get Frank Reynolds, some of the lads to clear the rubbish away and clear it up, maybe if there was trees fallen, you would clear it up. It was all that type of stuff, mundane stuff because architectural and business operations were carried out by Conroy and O'Shea and Shanahan.

122 Q. Can you remember in 1989 making contact with Duffy Mangan and Butler in relation to a valuation and report on the lands?

A. Well, you see, what happened when I resumed work in early 1988, I wasn't too well but I kept going and things had been developing, I wasn't fully aware of them. I was still anxious to try and get my pension but it happened that Conroy took an action against Murphy in the Isle of Mann for wrongful dismissal.

123 Q. When was that?

A. Well, I think it was early 1989, I think it was -- yes, it would be early or maybe at the end of '88 for all I know because he made a sworn affidavit and I think that was dated March, 1989.

124 Q. In any --

A. He swore an affidavit in the Isle of Mann courts and he accused Murphy of --

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MR. COONEY: Mr. Chairman, this is not admissible.

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CHAIRMAN: Sorry, I understand this witness now is going to refer to sworn affidavits made by somebody who is now dead and it's a

matter which is nothing to do with these --

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CHAIRMAN: Mr. Cooney, I think you and I are aware of the contents of that affidavit, you got a copy of it and it is, in my opinion, relevant in relation to the whole aspect of the beginning of the sale of lands and why the sale arises, at least on one construction, I don't want to indicate I have decided this. One has to read documents and come to a conclusion, a view, not a conclusion. My view on the matter is that that affidavit is germane to this matter and you have it, the affidavit speaks for itself, which is a relevant document as I see it at the moment now. Again, I am not finalising my view in that regard --

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MR. COONEY: With respect, Mr. Chairman, that can't be evidence.

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CHAIRMAN: I beg your pardon?

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MR. COONEY: That cannot be evidence before this Tribunal. Documents can only be introduced in one way. The evidence of a document, a document sworn in another proceedings in another jurisdiction cannot be admitted as evidence in these proceedings. The fact that we have it in our possession doesn't make it admissible evidence, Mr. Chairman.

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CHAIRMAN: Mr. Cooney, that may well be true in litigation but the rules of this Tribunal or some of them are more -- if a matter has a probative quality in relation to a matter, some probative quality and you may well address me in due course as to what probative quality, if any, it has, it is, and I stand subject to correction... I don't know your... It does start a process of when the lands came up for a question of selling the lands, the

first thing you get is the valuation and the clear object of the valuation was to find the value of the lands by Duffy Mangan.

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MR. COONEY: Mr. Gallagher was asking the witness about a valuation of these lands and we know that a valuation of these lands were conducted in March of 1989 by Duffy Mangan and Butler. I have no objection whatsoever to a witness from that firm giving evidence as to the valuations made at that stage.

None in the world. What I do object to, Mr. Chairman, is an attempt to introduce or rely in some way on an affidavit made by a person who is dead and who made that affidavit in proceedings in another jurisdiction. By no stretch of the imagination, may I say with respect, could such a document be admitted in evidence or a matter you could consider when reaching your conclusions. I don't know if Mr. Gallagher is attempting to introduce that matter now. If he is, I made my objection but on the other hand, Mr. Chairman, if you intend to look at this document sometime later on in proceedings perhaps in the course of your deliberations, then perhaps I could make a submission at that stage.

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CHAIRMAN: That might be the more desirable situation because at least at that stage I would have heard your client's evidence and I would have a balanced view as to whether it had the true relevance which it may or may not have at the moment. As I understand it, your client was a party to those proceedings and is conversant and was conversant at the time with the allegations which were made and it may be, may I put it in that form, that it had an influence on the future elements of what took place. Now, I don't know because I haven't heard your client, I am only aware of the existence of the affidavit and aware of its broad contents.

MR. COONEY: Well, in that respect, Mr. Chairman, can we determine one thing now, is it Mr. Gallagher's intention to attempt to introduce that affidavit now through the evidence of Mr. Gogarty?

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MR. GALLAGHER: I had no intention of introducing this affidavit at this time.

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MR. COONEY: All right.

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CHAIRMAN: The matter rests.

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MR. COONEY: It should not, its contents then should not be referred to by this witness, with respect.

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CHAIRMAN: Now, I want to make it quite clear that that affidavit may become relevant when a certain witness is in the box, not this witness. The affidavit is not being formally ruled out. It's ruled out in the case of this witness.

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MR. COONEY: I understand that, Mr. Chairman.

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CHAIRMAN: Sorry --

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MR. COONEY: Can I take it, Mr. Chairman --

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CHAIRMAN: It's not going to go in at the moment.

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MR. COONEY: May I be more specific, Mr. Chairman, can I take it that this witness is not at liberty to refer to the contents of that affidavit or any other affidavits which were used in those proceedings.

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MR. GALLAGHER: Sir, would you hear me for one minute. I have said at this stage that it is not my intention at this stage to

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MR. CALLANAN: I would like to be heard on this in relation to Mr. Gogarty's testimony. What Mr. Cooney's objection overlooks is the fact that this is an affidavit which was given to Mr. Gogarty by Mr. Cooney's clients or for the purpose of eliciting a reply from Mr. Gogarty. Now that has not been mentioned by Mr. Cooney but is clearly a salient circumstance and it's a germane document and all I am saying at this stage is that I am seriously going to be reserving my position in relation to it.

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MR. GALLAGHER: I just want to say, Sir, what whilst I indicated to you that I have no intention of introducing this document at this stage, it does not mean that I may not seek to introduce this document at a later stage. I am simply not introducing it now, I am trying to put matters in context, in their historical context.

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CHAIRMAN: I am only dealing with the current situation. When another situation arises, I will have to rule on it but I am now ruling it should not be put in at this stage. That is a ruling, Mr. Allen.

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MR. ALLEN: But, Chairman, if you would simply listen to me, you will know I am not rising to query you, I just wanted to clarify a matter. Having regard, Sir, to what you have said in relation to the document and its possession and I accept that it's only a question of potential significance, I simply wanted to, as being, as it were, the commencement process in the sale of the lands,

having regard to the fact that it was my clients who purchased the lands, we have not been provided with a copy of the affidavit and that is all I wanted to say to you and I have no difficulty with any ruling that you are making at the moment but I do want a copy of the affidavit.

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CHAIRMAN: First of all, Mr. Cooney, have you any objection to a copy of the affidavit being furnished to your colleague.

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MR. COONEY: No, I don't. Mr. Chairman, from the very beginning I wanted openness about the furnishing of documents between the parties. This is an inquiry, all the cards on the table.

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CHAIRMAN: I am extremely delighted to hear that statement. Mr. Gallagher, have you any objection to the document being afforded to Mr. Allen and his client?

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MR. GALLAGHER: I would -- I can't think of one at the moment but I would like to reserve my position. I would like to reserve my position on that because perhaps Mr. Allen and I can discuss it after -- I am not saying no but it can be raised again if we can't reach agreement on it. Can I just say that --

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MR. ALLEN: Sorry, Mr. Gallagher, with respect, Mr. Chairman, it seems to me to be somewhat unusual, to put it no further than that, that Mr. Gallagher is in the position to say he can't think of a reason why I shouldn't have the document. I want to make it clear, not only should I have the document, I should have been furnished with the document. Oh yes.

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CHAIRMAN: I do not at this moment in time see how it concerns you as the ultimate person, you purchase the lands on foot of a

contract by which you negotiated. I doubt if you were under my influence of what I might call the Murphy rationale.

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MR. ALLEN: The circumstances which the lands came for sale are the land, I should say, are particularly germane and have been made germane. However -- you take your own course, Chairman, I have already indicated my position.

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CHAIRMAN: Mr. Allen, I always take my own course. Thank you.

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MR. ALLEN: I accept that, Chairman, yes.

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MR. GALLAGHER: However, if I might resume with the witness to use words that are frequently used by a colleague, for the avoidance of doubt, I want to make it clear that I may want to bring this witness back to that affidavit at a future time. If I do, that would be signalled. I am simply trying to establish the time scale and the sequence of events and for the moment, Mr. Gogarty, I would ask you that you wouldn't refer to the contents of that affidavit, simply that an affidavit existed. Do you understand?

A. An affidavit existed and it was very relevant.

125 Q. All right. To whom -- who swore that affidavit?

A. Sorry, have I no interest in this at all? They are laughing at me and they are getting 13,000 or 1,350 a day for laughing at me. I came here to the Tribunal to get the truth, warts and all, and if I did wrong I am ready to take my place in the queue to pay for it. I am here warts and all. That's all I want.

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MR. GALLAGHER: Mr. Gogarty, I am just trying to establish --

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MR. CALLANAN: It does occur to me, Mr. Chairman, it's now a

quarter to one.

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CHAIRMAN: Yes, it's been a long morning for, I think, all of us. I think it might be an appropriate moment to break this session. Now, as you are aware, it is intended to work in private tomorrow and you will be back on Monday morning at ten o'clock, now, at which point I trust I presume my tenor voice comes up from being a bass. Thank you very much.

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THE TRIBUNAL THEN ADJOURNED UNTIL MONDAY, 18TH JANUARY, 1999 AT 10AM.