

1 THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 18TH JANUARY 1999 AT
2 10AM:

3 .

4 CHAIRMAN: Good morning everyone. Before Mr. Gogarty starts
5 giving evidence, due to the fact that as you will appreciate, I
6 was fairly indisposed on Thursday and Friday and indeed not a
7 great deal better on Saturday. The ruling which I intended to
8 give this morning is therefore not ready but it will be ready
9 tomorrow morning. I regret the fact that it just wasn't
10 possible. Thank you very much.

11 .

12 MR. GALLAGHER: Mr. Gogarty.

13 .

14 CONTINUATION OF DIRECT EXAMINATION OF MR. GOGARTY BY
15 MR. GALLAGHER:

16 .

17 1 Q. MR. GALLAGHER: Good morning, Mr. Gogarty. You understand that
18 you are still sworn. Mr. Gogarty, on last Thursday, we had
19 reached the beginning of 1989 and your account of your involvement
20 with the Murphy companies. Do you remember that?

21 A. That's right.

22 2 Q. And I asked you had you been in communication with Duffy Mangan
23 and Butler in relation to the lands owned by the various companies
24 and the Murphy group early in 1989?

25 A. I would have been, yes.

26 3 Q. You remember that?

27 A. Yes.

28 4 Q. Do you remember seeking a valuation from Duffy Mangan and Butler
29 early in 1989?

30 A. Yes. I discussed with Fred Duffy, the senior man that time.

31 5 Q. Yes.

32 A. And I told him the circumstances that Senior wanted the lands

1 valued in case of a projected sale and I gave instructions and
2 that I gave him an understanding that he would be retained, do you
3 know?

4 6 Q. In what event would he be retained?

5 A. If there was a sale.

6 7 Q. I see. Can you remember what lands you asked him to value?

7 A. Oh it was the lands all in the schedule, I had a schedule at the
8 time. It was the lands that -- the lands were belonging to
9 Grafton Construction Company, Finglas Industrial
10 Developments/Finglas Industrial Estates, Turvey Estates, Barrett,
11 Beverton, I think that would be them all. You see, Grafton owned
12 several of those plots. Turvey Estates was a holding in Donabate
13 just off Turvey Avenue and there was 155 acres in that and then
14 adjoining that, there was a property of 70 acres, 70 odd acres
15 that was owned by Helmdale, which was an off shore company and
16 then Grafton Construction had lands in Jamestown Road and about 14
17 acres there and then they had about 100 acres straddling a road
18 there in Ballymun, about 40 of it was in the Dublin Corporation
19 area and it would be just going on towards the airport and...,
20 that was another company -- there was Ballygaurin, that was on
21 Baleskin in Swords, or Finglas, around that area. That was a
22 split-up of what they called lands belonging to an old farmer,
23 McKenna, and they were split into two between, I think there was
24 about 83 acres owned by Finglas Industrial Estates or
25 Developments, do you know, there was two companies there and the
26 other maybe roughly 50 acres was owned by Barrett Developments, so
27 they were all, roughly they came to 700 odd acres, 700 odd
28 acres.

29 8 Q. Did you prepare a handwritten memorandum to assist Mr. Duffy at
30 that time?

31 A. A schedule?

32 9 Q. Yes.

1 A. Yes.

2 10 Q. I wonder can I show you a schedule of documents, schedule of

3 lands, it's to be found at page 48 to 51 of the reference

4 documents of the 7th January, 1999. (Document handed to

5 witness.)

6 A. That's all my handwriting.

7 11 Q. That's the four page document; is that right?

8 A. One, two -- that's a four page document.

9 12 Q. In whose handwriting is that document?

10 A. That's all my handwriting.

11 13 Q. Can you recall when you wrote that document, approximately?

12 A. Well, it was in the early '88 or maybe before because, you see,

13 Brendan Devine, you see, who was the secretary of all those

14 companies, you see, he always wanted updated information too for

15 the annual accounts to show that the values of these properties,

16 you know, in their accounts.

17 14 Q. Yes.

18 A. But I gave that to Fred Duffy, initial valuation, and that would

19 be around about April '89, roughly about that time.

20 15 Q. If you just look at the fourth page of that document?

21 A. I beg your pardon?

22 16 Q. Look at the fourth page, the last page.

23 A. Yes.

24 17 Q. I think you summarized the acreages there?

25 A. Yes, Jamestown Road, I gave the folio. There was a couple of

26 folios.

27 18 Q. Three folios?

28 A. 15.47 acres, that added a bit of mystery to it as well.

29 19 Q. Yes. The next land was Poppintree and you gave the folio number

30 and that was 82.692 acres?

31 A. Yes, 692 acres.

32 20 Q. The next was OSS, is that O'Shea and Shanahan lands?

1 A. That's O'Shea and Shanahan lands, yes.

2 21 Q. Where were they situate?

3 A. They were four acres but they weren't owned by Murphys at that
4 time.

5 22 Q. I see.

6 A. In the middle of it, they were the Corporation area and they were
7 adjoining the Ballymun flats and then to the south and to the west
8 would be the 40 acres on that road, I forget the name of the road
9 and on the other side of the road then there was two plots
10 comprising that 82.692 acres.

11 23 Q. Then the next lands are Finglas Industrial and the folio number is
12 given and 18.750?

13 A. You see there was two companies there, I am not sure which was,
14 you know, the real land owning company. There was Finglas
15 Industrial Developments and Finglas Industrial Estates but
16 whichever of them it was, they had 80.75 acres.

17 24 Q. Right. Then the next one?

18 A. Then you have Barrett, Barrett Developments would have been part
19 of the McKenna lands in Baleskin and they were 37.39 acres.

20 25 Q. Then the next one?

21 A. Then the Helmdale, that's the offshore company, Helmdale, they
22 were lands in Donabate, Turvey Avenue, adjoining the Turvey
23 Estates and there was a house on that one, there was an a
24 caretaker, a Murphy man living in it, there was good buildings on
25 that.

26 26 Q. And that was 70.65 acres?

27 A. And then you have Balgriffin. Now the 255 acres at Balgriffin,
28 again, a portion of that, roughly half I suppose, I don't know, it
29 would be in the Corporation area and the other half would be in
30 the county area and it was just north of, north of developments
31 that was expanding out from town, do you know.

32 27 Q. The next lands then were St. Helen's lands, they are at

1 Portmarnock?

2 A. St. Helen's land was nine acres in Portmarnock, that was just
3 fronting on to the church at that time and it was open space
4 amenity land, open space amenity land and we used to let that to a
5 small local group of croppers, do a bit of vegetables, stuff like
6 that, you know, that was the nine acres.

7 28 Q. And then the next item was lands owned by Turvey Estates?

8 A. Yes. I mentioned there, they are the lands in Turvey Avenue, it's
9 now a golf club, I believe, or something.

10 29 Q. That's 15 acres and the total comes to approximately 710 acres?

11 A. Yes.

12 30 Q. And then you have Abbeycartron lands in Longford?

13 A. Well, the Abbeycartron lands, I hadn't much to do with them but
14 they were owned by Grafton and they were just outside Longford and
15 Joe Senior used to deal mostly with them himself but they weren't
16 part of the Duffy Mangan and Butler brief because they were, when
17 Senior told me to sell them, he told me about an auctioneer in
18 Longford by the name of Quinn and he told me about a man that he
19 knew well, a man I think it was the name McGeraghty or something
20 that could have an interest in them, had an interest in them
21 previously and I think I gave that name to Mr. Quinn.

22 31 Q. Right.

23 A. So they were the whole lot of them.

24 32 Q. Now, as a result of giving those instructions, did Duffy Mangan
25 Butler carry out a valuation of the lands in question?

26 A. They did, they did, they did.

27 33 Q. I am now referring to page 9 of the summary of documents.

28 (Document handed to witness.)

29 A. Yes, this is March, yes, I probably talked to him early March.

30 34 Q. March, 1989?

31 A. Sorry?

32 35 Q. March of 1989, is it?

1 A. That's '89, yes, things were happening all over the place at that
2 time, you know.

3 36 Q. All right. Now, perhaps I will read that letter, you might just
4 confirm its contents. It's a letter of the 28th March, 1989 from
5 Duffy Mangan and Butler Limited, 34 North Frederick Street, Dublin
6 1, and it's addressed to Mr. J Gogarty.

7 A. I beg your pardon?

8 37 Q. Sorry, it's a letter from Duffy Mangan and Butler Limited,
9 auctioneers, valuers and livestock salesmen, 34 North Frederick
10 Street, Dublin 1, it's dated the 28th March, 1989 and it's
11 addressed to Mr. J Gogarty, care of Joseph Murphy Structural
12 Engineers, Shanowen Road, Santry, Dublin 11.

13 A. That's right.

14 38 Q. It's in the following terms: "Dear Sir, we enclose herewith four
15 copies of our report of the various properties as per your
16 instructions. It was difficult to obtain precise local
17 Government information as to the effects the proposed Northern
18 Ring Road, Balgriffin bypass and the present gas mains will have
19 on the future developments of some of the properties. We
20 understand, however, that new development plans will be available
21 to us at the end of the year, therefore it may be necessary to
22 update sections of our report. If you have any questions, please
23 do not hesitate to contact us. Yours faithfully, Kevin P Duffy.
24 Duffy Mangan and Butler Limited."

25 A. Yes.

26 39 Q. Attached to that letter was a report and valuation concerning
27 lands and buildings owned by the following companies: Grafton
28 Construction Company Limited, Finglas Industrial Estates, Barrett
29 Developments Limited, Turvey Estates Limited and Helmdale Limited
30 and the next page on that report is a list of contents and it
31 starts off with summary and dealings with lands at Scotts Farm.
32 Poppintree; Jamestown; lands at Forest Road; St. Helen's,

1 Portmarnock; Rockmount, Finglas; Charlestown, Finglas; Turvey
2 Avenue, Donabate and Beverton, Donabate and a summary then,
3 perhaps I will read it for you in the following terms: "As
4 instructed by Grafton Construction Company, we have inspected the
5 various properties with the object of reporting generally and
6 estimating their current open market values. It is our
7 considered opinion that the current open market values of these
8 properties is as follows: 1 Scotts Farm, Balgriffin, County
9 Dublin, £1,250,000.
10 .
11 2. Lands at Poppintree and Jamestown Road (A) 413,000 pounds, (B)
12 £65,000.
13 .
14 3. Lands at Forest Road, Swords, County Dublin, £14,000.
15 .
16 4. Lands --
17 A. Sorry, I just want to familiarize myself with, Forest Road, oh
18 yes.
19 40 Q. Forest Road, £14,000 pounds. Well, we will come perhaps to the
20 explanation later on. If you have any comment, you can deal with
21 it at that stage.
22 .
23 4. Lands at St. Helen's.
24 A. Sorry, I think that the lands at Forest Road, that was what was
25 considered open space amenity land, the Swords River Valley.
26 41 Q. That appears to be so and we will see that later in the report.
27 A. He valued that at 14,000.
28 42 Q. We will come to that later.
29 5. Lands at Rockmount.
30 Just to go back, no. 4, lands at St. Helen's, Portmarnock,
31 £35,000.
32 A. It's spelt wrong there, it's St. Helen's.

1 43 Q. There's a typographical error, it's St. Helen's, it clearly should
2 be St. Helen's.

3 5. Lands at Rockmount, Finglas, £332,000.

4 6. Lands at Charlestown, Finglas, £273,000 pounds --

5 A. Them two blocks, 5 and 6, they were the original farm at McKennas,
6 what I call Baleskin.

7 44 Q. "7. Lands at Turvey Avenue, Donabate, County Dublin, £325,000.

8 .

9 8. Lands at Beverton, Donabate, £270,000.

10 .

11 Note: In accordance with our standard procedure, we will state
12 that this report is solely for the use of the party to whom it is
13 addressed and that no responsibility can be accepted to a third
14 party for the whole or part its contents."

15 .

16 The next page, Mr. Gogarty, under the heading 'Valuation', "In our
17 opinion, the current open market value of the above property is
18 £1,275,000 pounds."

19 A. Which property is that now?

20 45 Q. That's the entire of the properties as I understand it -- I beg
21 your pardon, I am sorry, my apologies. I am sorry, the first
22 page deals, although it isn't headed, it deals with Scotts Farm.

23 A. Scotts Farm.

24 46 Q. Do you see that? The next page you have there, it's page 13 on
25 the bottom right-hand corner.

26 A. Yes.

27 47 Q. That clearly is dealing with Scotts Farm and it's not the
28 aggregate of the figures that I gave you earlier.

29 A. No.

30 48 Q. The valuation in relation to Scotts Farm, "In our opinion the
31 current value is £1,275,000.

32 .

1 Note: Scotts Farm may be affected by the proposed Balgriffin
2 bypass which in essence could segregate the property.

3 .

4 Comments: We feel that the circa 152 acres located in the Dublin
5 County Council area has little or no development potential for the
6 foreseeable future. We therefore recommend disposal of this
7 portion of Scotts Farm by public auction or tender based on
8 agricultural value. We recommend no decision be taken at this
9 time on the balance of the property, i.e. circa 103 acres located
10 in the Dublin Corporation area until the completion of the
11 proposed Balgriffin bypass and the effects this could have in
12 relation to zoning etc.."

13 .

14 Now the next document is one which appears to relate to the lands
15 at Poppintree and Jamestown Road. It is not headed but the
16 following appears on page 14, which is the third page of the
17 document before you.

18 "Tenancies: The properties are let at 95 pounds per acre, per
19 Irish acre.

20 .

21 Services: Mains water system is connected to the property.

22 .

23 Planning: There have been no planning applications on the
24 properties. Some of the properties will however be affected by
25 the new road proposed for the area.

26 .

27 Zoning: Properties A and B lying in the area zoned for
28 agricultural and recreational amenity use.

29 Property C lies in area zoned for agricultural use.

30 .

31 Valuation: In our opinion, the current open market value of
32 properties A and B is £413,000 and property C is £65,000.

1 .

2 Comment: A, the portion of the holding under the Dublin County
3 Council authority in our opinion will remain agricultural zoned
4 due to adverse, due to the adverse effect the Dublin Ring Road
5 development will have traversing the lands. Accordingly we
6 recommend disposal of this portion by public tender.

7 .

8 B: The portion of the holding under the Dublin Corporation
9 authority, in our opinion, has good development potential,
10 certainly for industrial development or perhaps housing. We
11 appreciate there is a gas mains running through the property.
12 Accordingly, this would influence any development due to location
13 of roads, etc..

14 .

15 There are approximately four acres, house and yard which adjoins
16 this portion of the lands. We understand this property is at
17 present under a different ownership but we will stress that this
18 approximately four acres would have an important role to play in
19 any rezoning applications that might take place for the entire
20 holding due to the fact that this acreage has had light industrial
21 zoning in the past.

22 .

23 The latest information we have obtained in the case of the local
24 authority in question may be --

25 A. You are going a bit fast for me now.

26 49 Q. Sorry, I will go slower. "The latest information we have
27 obtained..."

28 A. Sorry, where are you now?

29 50 Q. Page 15, if you look at the bottom. The top of page 15 reads as
30 follows: "That this might take place for the entire holding due
31 to the fact this acreage has had light industrial zoning in the
32 past. The latest information we have obtained indicates that the

1 local authority in question may be in the process of issuing a CPO
2 on the four acres to build a seven-house itinerant settlement
3 site."

4 A. That's right.

5 51 Q. "If this were to happen, it would raise the question of services
6 to this area and subsequently may influence any rezoning
7 applications. Accordingly, we feel it would be prudent not to
8 dispose of this property at the present time.

9 .

10 C: Due to the close proximity of established industrial areas, we
11 feel that this property circa 13 acres would have immense
12 potential if rezoned for industrial usage. "

13 A. That's Jamestown Road.

14 52 Q. "This may happen within the next two years approximately. Under
15 these circumstances, we do not recommend disposal of this holding
16 at this time."

17 The next lands then are indicated at number 3. "Lands at Forest
18 Road, Swords, County Dublin," and I am reading from page 16.
19 "Land at Forest Road, Swords, County Dublin.

20 .

21 Owner: Grafton Construction Company Limited.

22 .

23 Location: The property is located within the Ward River Valley,
24 Swords, County Dublin between Forest Road and Brackenstown Road,
25 is approximately half a mile from Swords town. The local
26 authority for the area is Dublin County Council. For
27 identification purpose see attached location with the property
28 outlined in red.

29 .

30 Description: The property comprises approximately eight acres of
31 lands along the river bank and forms part of a 30-acre site with
32 planning approval for housing development. We would like to add

1 that this portion of land has very little development potential
2 due mainly to its topography and is therefore only useful for its
3 amenity value.

4 .

5 Zoning: This property lies in an area zoned for residential
6 development.

7 .

8 Title: We are informed that the property is held freehold.

9 .

10 Valuation: In our opinion, the current open market value of the
11 above property is £14,000.

12 .

13 Comment: The sale of this property is recommended due to the
14 location at present to zoning. It has no development potential
15 and it is highly unlikely this situation will alter."

16 .

17 Now, the next document is a location map showing the open space
18 with the name 'Grafton Construction Company Limited' immediately
19 under the words 'open space'. Do you see that?

20 A. That's right.

21 53 Q. The next page then is page 18. Mr. Gogarty, there are some pages
22 missing from a document that you have before you, I am going to
23 get the entire document photocopied and we will come to it in just
24 a few moments. Now, do you remember getting, receiving that
25 report from Duffy Mangan and Butler?

26 A. I have a recollection, yes.

27 54 Q. And can you recall what you did as a result of that?

28 A. Well, I would have given it to Senior and probably to some other
29 directors, you know, and companies. That's my recollection
30 because I think there's a subsequent letter or something from them
31 to revalue it or something. I think there's a letter or
32 something that would -- to Duffy Mangan and Butler after I talked

1 to Senior that they should revalue and maybe discount any
2 potential value.

3 55 Q. Yes. Did you in fact write to Mr. Murphy and enclose that
4 document?

5 A. I could have, I am not sure now but I didn't, I gave it to a
6 person but I could have because we were talking that time.

7 56 Q. Now, following the receipt of that, we come to the letters that
8 were written in a moment, can you cast your mind back to the time
9 after this report was received?

10 A. Yes.

11 57 Q. The report recommended that you should sell some properties and
12 that you should retain other properties because they were likely
13 to have an enhanced value at a later stage; is that right?

14 A. That's right.

15 58 Q. Can you remember what you, what happened in the Murphy company at
16 that time?

17 A. Well, there was a lot of things happening in the Murphy company at
18 that time but basically Joe was very concerned at that time about
19 disposing of the properties and we had discussions, but it goes
20 back -- do you see I don't want to refer to that on account of us
21 honouring the Conroy affidavit, I don't want to refer to that.

22 59 Q. Well, you can just refer to Conroy, parts of the Conroy affidavit
23 without telling us what was in it. What happened or how did Mr.
24 Murphy feel?

25 A. My understanding at the time was that the affidavit motivated Mr.
26 Murphy to dispose of all his lands in Ireland.

27 60 Q. Yes.

28 A. And to realise the assets and get them out of the country and even
29 to the extent that Duffy Mangan and Butler would revalue them and
30 discount them so that there wouldn't be any great big problem in
31 selling them and realising their value.

32 61 Q. All right. Now, can you recall any discussions you had with Mr.

1 Joseph Murphy Senior about that time and about his decision, as
2 you say, to realise his assets and move them?

3 A. Yes.

4 62 Q. Will you tell the Tribunal about those discussions?

5 A. A few discussions around about March, April and May, 1989 and most
6 of them took place in London and there was one critical meeting in
7 London, I was pressing for my pension for previous years and I was
8 hoping to try and get agreement with him and I was pressing him
9 for a meeting and he agreed to have a meeting with me in London
10 and I went across and we had a meeting with him in a hotel, I
11 couldn't be sure of the hotel but I think it was the Clifton Court
12 Hotel. We had a long meeting there and the main discussion in
13 that was my pension, I was trying to pin him on it, you know, and
14 we were reaching agreement. You see there were other things I am
15 going to say because the, they had the previous change in
16 management, you know, and he was very anxious that I would pursue
17 debtors that were, that had surfaced that he felt should have been
18 tackled earlier on. I am digressing now a bit but it fits into
19 the context and one major one was that in following his
20 instructions, I was looking at all the contracts in Murphys as
21 well, you see the point, and one looked to me to be, hadn't been,
22 hadn't got the attention it deserved because I discovered that in
23 around about I think it was October 1988, there was a letter on
24 the file from the ESB on the Moneypoint project and it said, in
25 effect, it said -- I think it's on the file -- but, in effect it
26 says, it refers to the lack of action by Murphys in finalising the
27 account but the engineer, the chief engineer, I think his name was
28 Mr. Brennan at the time, he had issued a final certificate on the
29 contract, one of the contracts at Moneypoint and the -- it
30 provided an outstanding sum to Murphy of £42,000-odd and Murphys
31 submitted a VAT invoice for that. He organised the payment of
32 that money and he was waiting for a reply, I think that was around

1 about October 1988, and it was later on that I, once I found that
2 letter and it hadn't been replied to, that's my recollection and
3 Joe was very annoyed over that and he says, "Will you chase that?"
4 and for the record, my recollection is that in April 1989, I wrote
5 to the ESB, I think it was for the attention of the chief civil
6 engineer of the ESB, Mr. Brennan --

7 .

8 MR. COONEY: Excuse me for a moment, I wonder, Mr. Chairman, do
9 we have these letters? We know that Mr. Gogarty has voluminous
10 files. Perhaps we could have copies of letters he is referring to
11 because this is a very important issue between us.

12 .

13 MR. GALLAGHER: These letters may very well be available but if
14 they are, no doubt they will have been seen by Mr. Cooney's
15 solicitor arising from the arrangement he has with Mr. Gogarty's
16 solicitors.

17 .

18 CHAIRMAN: We will try and resolve this matter. You say you
19 wanted to see his correspondence.

20 .

21 MR. COONEY: I want to see any correspondence being referred to
22 by Mr. Gogarty in his evidence.

23 .

24 CHAIRMAN: Now --

25 .

26 MR. GALLAGHER: We will endeavour to find that in due course and
27 we will give that to Mr. Cooney before he starts his
28 cross-examination.

29 .

30 MR. COONEY: Well, I don't think he can refer to the contents of
31 the letter unless he has a copy of the letter in front of him, Mr.
32 Chairman. Otherwise he is relying on recollection.

1 .

2 MR. GALLAGHER: That is a fact and if his recollection is at
3 fault, Mr. Cooney will draw his attention to that fact --

4 .

5 CHAIRMAN: First of all, first and foremost, I can understand
6 that a particular block of correspondence may not be immediately
7 available but we must certainly make every endeavour indeed very
8 soon to find that and to give it to Mr. Cooney. He is perfectly
9 entitled to require that. In the interim, unless you can, I
10 don't know who is in charge of that section of correspondence, if
11 it can be identified.

12 .

13 MR. GALLAGHER: You are aware, Sir, that there has been
14 inspection of correspondence by the respective parties pursuant to
15 arrangement reached with them. Whether or not that
16 correspondence is in the documents, the files they have looked at,
17 I cannot be certain. If such documents are there and they are
18 referred to by Mr. Gogarty, then certainly they will be produced
19 in due course. I don't have them in front of me at the moment, I
20 am not aware of the details of the documents to which Mr. Gogarty
21 refers. My understanding is he is referring to matters that
22 events that occurred and he is referring, by the way, as it were,
23 to documents that he says exist. Whether they exist or not, I
24 don't know. If they exist, they will be produced.

25 .

26 MR. COONEY: If they don't exist, they should not be referred
27 to. If they do exist, we should be furnished with a copy.
28 After a struggle, Mr. Chairman, we did get inspection of documents
29 which had not been previously furnished to us. We know that
30 these documents are set out by category and by date and there
31 should be no difficulty in identifying this letter of April, 1989
32 if it exists, Mr. Chairman.

1 .

2 CHAIRMAN: Mr. Cooney, these documents apparently deal with the
3 affairs of the Murphy, when I use the phrase JMSE, encapsulating
4 all the companies and I would have thought the first place you
5 would be looking for these documents is in your own records.

6 .

7 MR. COONEY: How can we? We don't have this letter, Mr.
8 Chairman.

9 .

10 CHAIRMAN: Well sorry, if that's your situation, you say you have
11 checked your records and you don't have it.

12 .

13 MR. COONEY: We don't have such a letter. Now we do know and
14 this is I think an agreed fact, that when Mr. Gogarty left our
15 employment, he took a considerable amount of documentation, which
16 is our property, some of it has already been discovered, we have
17 seen it last Thursday and Friday. If there is such a letter of
18 April of 1989, it should be in his possession, it should have been
19 made available by him to the Tribunal and this is an important
20 topic which will be dealt with later on, Mr. Gogarty's dealings
21 with the ESB and the settlement which he negotiated with them.

22 .

23 MR. GALLAGHER: Mr. Gogarty, would you just continue with your
24 narrative comment. Don't worry about documents for the moment.
25 We can check on the documents at a later stage.

26 A. Well, it helps in my train of thought as you can appreciate
27 because it is a very significant letter. I wrote it to the chief
28 engineer and I referred to the changes in the management
29 structures in the group of companies and JMSE and I said that this
30 would have caused the delay in replying to that letter and that I
31 had come into an executive position to deal with this and I
32 referred to the fact that I personally, in my capacity as an

1 executive of Murphys, that I was requesting validity of the final
2 certificate that the engineer had issued and I was anxious I would
3 get an opportunity to discuss the matter with the chief civil
4 engineer or his officers. That's for the record, and I signed
5 that Jim Gogarty or James Gogarty, executive chairman, and that's
6 early April, 1989. I'd nearly say it was about the 6th April,
7 from my recollection.

8 63 Q. Do you have a copy of that letter yourself, Mr. Gogarty?

9 A. I haven't, sure I have nothing, I have no copies of anything.

10 64 Q. We will come back to that.

11 A. I have seen it over time, do you know?

12 65 Q. We will come back to it in due course. Now, can you continue.

13 What happened after that?

14 A. Well, that set that in train and he was very anxious over that,
15 that if there was any outstanding debt, that I could, and I said I
16 would do it and then we went on to discuss the pension. We
17 agreed on practically all the problems that I had in trying to
18 identify and agree a retirement package and I thought we had
19 reached agreement, nearly about 90 percent of it, you see, and it
20 was coming near lunch time and he then says that he had to rush, I
21 thought we might have lunch together but he wasn't able and I said
22 I didn't like to go back to Dublin until we had reached maybe
23 finality and he says that, "Well", he says, "I have a meeting, an
24 appointment," he says, "with my solicitor in Pall Mall in London
25 this afternoon and if you wanted to come across, we could probably
26 have a chat later on" and he gave me the address and the name of
27 the solicitors was Pickering Kenny and Associates in London.

28 .

29 And I went across after we had lunch to that office and I was
30 ushered upstairs into a conference room and Senior was there and I
31 was surprised because there was a man there, I think I heard from
32 him earlier on, a man Edgar Wadley of Midgely Snelling and

1 Associates whom they had fallen out with but had brought back.
2 He was there in his shirt sleeves and Mr. Oakley of Pickering
3 Kenny and Associates was there as well and they welcomed me to the
4 meeting and I sat down and Wadley did all the talking. And he
5 said, "It's very fortunate that you happen to be here because you
6 could be a great help to us."

7 .

8 MR. COONEY: Sorry for interrupting again, Mr. Chairman, there's
9 nothing about this in the affidavit which Mr. Gogarty has --

10 .

11 MR. ALLEN: There is.

12 .

13 MR. COONEY: Sorry, I beg your pardon, I am wrong.

14 .

15 MR. GALLAGHER: Would you go ahead, Mr. Gogarty.

16 A. I beg your pardon?

17 66 Q. Would you carry on please.

18 A. Yes. And I says, "Fair enough, what is it?" And he says, "We are
19 discussing a case that Mr. Conroy has brought against Senior and
20 the Murphy companies for wrongful dismissal in the previous year
21 and he has issued proceedings in the Isle of Man and we are
22 discussing a sworn affidavit that he made, has made, and also an
23 affidavit in support of him by Brendan Devine." I mentioned his
24 name earlier on. He was secretary of all these companies, you
25 know, but anyway.

26 67 Q. Had Mr. Devine sworn an affidavit at that stage?

27 A. He had, a supporting affidavit.

28 68 Q. Supporting whom?

29 A. Supporting Conroy and they were anxious that I could be of great
30 help in making a replying affidavit in support of Senior and I
31 says, "Well, I said, "I would help out as far as I can, but" I
32 says, "I would have to refer to the documents that I have at home

1 in Dublin and it would take a bit of time" and I said, "If you
2 could give me a copy of these affidavits so I could relate them to
3 what I find on my files, I would have a look at it," you know, and
4 they agreed to do that and Mr. Oakley said he would follow it up
5 by coming across to Dublin to talk to me sometime later on and in
6 the course of the meeting then it arose that they discussed the
7 problems arising from this affidavit, that Mr. Murphy was very
8 worried because if it came into the public domain that --

9 69 Q. He was very worried that it would come into the public domain?

10 A. Yes.

11 70 Q. Now, because of that worry, did he make any decision or did he say
12 anything to you or say anything in your presence?

13 A. Yes.

14 71 Q. What did he say?

15 A. That he wanted to dispose of all the lands and remove the assets
16 outside the jurisdiction because of the implications in that
17 affidavit, that if the Revenue were after him, they --

18 72 Q. Well, leave it at that. Doing the best you can, can you recall
19 when that meeting took place, approximately?

20 A. I would say April.

21 73 Q. Of?

22 A. 1989.

23 74 Q. All right. What happened after that? Did anything else of
24 importance happen at that meeting?

25 A. Well, I said that he told me to organise the sale of lands and I
26 says I would prefer, I says, if you would put it through the
27 auctioneers that we had been dealing with for years, Duffy Mangan
28 and Butler and he said that he didn't want public auctions, he
29 didn't want anything like that and I said to him, "Well" says I,
30 "It can be done by them," I had a reason for that as well too
31 which I can go into later on, but anyway he did agree that it
32 could go to Duffy Mangan and Butler to organise this and liaise

1 with me and it was as a result of that that I took it up with Fred
2 Duffy and verbally I told him that he would have the retainership
3 of selling these lands.

4 75 Q. Right.

5 A. Once Joe had made his final decision and my recollection at that
6 time is I had mentioned to him about a revaluation and we agreed
7 that if it came off that he would get 2 percent auctioneer's
8 fees. Now that was verbal, of course, but it was confirmed later
9 on in writing but that was verbal at that time and that's what
10 initiated the disposal of the properties.

11 76 Q. Well now, what were the next steps that were taken and what next
12 occurred in relation to the disposal of the properties that you
13 remember?

14 A. There was so many things happening. At that time, you see, Mr.
15 Murphy -- sorry, they had sold Forest Road the previous year.

16 77 Q. Yes.

17 A. Early on, to -- well I thought it was Bovale but it was Princes
18 Homes.

19 78 Q. We will come back and deal with that sale at a later stage.

20 A. And the man that was involved in that was Mr. Bailey. I
21 mentioned his name, he was the man -- well I think he brought them
22 that time.

23 79 Q. Did you have some dealings with Mr. Bailey in relation to the
24 Forest Road lands?

25 A. I had.

26 80 Q. That was in 1988?

27 A. That was '88 you see.

28 81 Q. Who finally agreed the sale of the lands to Mr. Bailey or to
29 Princes Homes?

30 A. It's a bit of mystery to a certain extent because you see, you
31 know, Senior wouldn't, you know, he wouldn't let, you know, his
32 right hand know what his left hand was doing but anyway you see

1 myself and Denis McArdle understood it from Senior that we had
2 authority to sell the lands, to sell Forest Road and as I said,
3 that time he had mentioned Mr. Bailey in that context and Mr.
4 Bailey did negotiate with me and McArdle and we thought we had
5 sold the lands to Bovale.

6 82 Q. Where did that sale take place so far as you were concerned?

7 A. I tell you I don't know because I tell you what happened was that
8 Dennis McArdle got to the stage where he seemingly could exchange
9 contracts.

10 83 Q. With whom?

11 A. With Bovale and he organised it with Bovale solicitors, Smith Foy
12 and Partners, who weren't far away from him in Merrion Square or
13 Fitzwilliam Square, one of those squares there and he rang me up,
14 he organised a meeting in Smith Foy and Partners' offices to
15 exchange contracts and he asked me to go along and I went along,
16 the two of us went along and he brought maps and contract
17 documents and all that and we met with, well I am not sure of his
18 name in Smith Foy and Partners but Michael Bailey was there and
19 they did all the talking and there was contracts exchanged and
20 there was hands were shaken on the deal and we came away and went
21 back to Mr. McArdle's office and I said to him, "Well you should
22 ring Roger Copsey to tell him what happened because he was the
23 financial controller" and he rang Copsey and Jesus, Copsey went
24 for him. He said, "You had no authority to sell them lands at
25 all." He said, "I am dealing with them." And McArdle was
26 shocked. Copsey said to him that he was dealing with them and
27 that he had, he mentioned a name of an auctioneer, I gave the
28 wrong name to somebody, you know, whatever struck me, I mentioned
29 the name Derek Dugould or something like that, funny name, but it
30 wasn't, it was Derek Mulligan, but anyway, McArdle left down the
31 phone and said, "Jim, we are in trouble. We are shaken on the
32 contract" and I said, "Well, fuck Copsey and," I said "Well, I am

1 finished with that." I didn't know any more about that then and
2 McArdle was very embarrassed but anyway sometime later, whether I
3 was in the office with him or what, but he told me, he said, "An
4 interesting thing has happened, that Copsey has sold the lands,"
5 he says, "to a different firm, Princes Homes" and I said, I just
6 can't follow it too much but Mr. Bailey, that's my recollection,
7 Mr. Bailey is a director of Princes Homes, but he has no equity in
8 it but Princes Homes were the purchaser on Grafton.

9 .

10 Now I don't know, Copsey will explain that to you when he is
11 talking to you and fill you in on it and Mr. McArdle of course.

12 So Bailey then was very interested, as I say, whatever
13 relationship he had with Princes Homes, and we had meetings
14 because I think that deal was completed sometime in the end of '88
15 and I know there was a bit of a problem on it because there was a
16 problem giving proper title to the access going into the lands at
17 Forest Road because seemingly over the years a bungalow had been
18 built adjoining the entrance to it and they were disputing the
19 boundaries which were very critical and that was dealt with.

20 .

21 I attended at the setting out. Frank Reynolds came along and had
22 instruments there, pegs and that class of thing and there was a
23 man there, Jack Manahan and he had his theodolite and things like
24 that and the other side had things there and they tried to reach
25 agreement and I believe they did reach agreement but some money
26 was passed over but I don't know what the details were. Frank
27 might help you with that there. But that's how Mr. Bailey became
28 involved after that and that was at the time, I mention in the
29 affidavit, about he introducing me -- with Mr. Redmond.

30 84 Q. All right. Well we will come back to that in due course. I

31 want you to come on --

32 A. I am going from year to year.

1 85 Q. I understand that.

2 A. Could I take a break? I am sorry.

3 .

4 CHAIRMAN: Certainly, we will break for a quarter of an hour.

5 .

6 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

7 FOLLOWS:

8 .

9 CHAIRMAN: Mr. Gogarty, before we go on to deal with the lands in

10 question and your further involvement with Mr. Bailey, I want you

11 to identify, if you would, please, a copy of a letter that's going

12 to be handed to you now. It's a letter dated 6th April, 1989,

13 it's addressed to the Chief Civil Engineer, ESB, Stephen's Court,

14 18/21 St. Stephen's Green, Dublin 2. It has a reference,

15 JMG-SMcS; is that correct?

16 A. That's correct.

17 86 Q. Can you identify that letter -- have you seen that letter before?

18 A. Oh yes, I referred to it before the break, the recess.

19 87 Q. Is that the letter that you sent to the chief civil engineer of

20 the Electricity Supply Board?

21 A. That's right.

22 88 Q. If I read this letter, perhaps you will follow it and confirm its

23 contents.

24 A. I will read it, will I?

25 89 Q. I will read it or if --

26 A. I will read it. "Dear Sir, we refer --

27 90 Q. Would you read the heading on it first?

28 A. Sorry, heading is "To the Chief Civil Engineer of the Electricity

29 Supply Board, Stephen's Court, 18-21 St. Stephen's Green, Dublin

30 2, reference, JMG/SMcS. Re: Moneypoint Generating Station -

31 Structural Steelwork Units 1, 2 and 3. Engine room and bunker

32 bay.

1 Dear Sir, we refer to your divisional engineering manager's letter
2 of the 13th October 1988, and to our Mr. Sweeney's further and
3 subsequent meetings which regrettably have not progressed to
4 agreement on final account of the above contract.

5 .

6 You will be aware that Mr. Sweeney is no longer with our company
7 and in the circumstances, we are appraising the position and
8 expect to be shortly in a position to propose an early meeting
9 with a view to discussing and resolving outstanding matters.

10 .

11 We note your comments and in particular, that the claims elements
12 were submitted subsequent to the issue of the Minister's
13 certificate and have as a result been deemed for the most part and
14 been rejected by letter dated 18th December, 1986."

15 .

16 Going on for a long time, wasn't it?

17 .

18 "We respectfully submit, however, that despite the confusion
19 concerning the date of issue etc. of the Maintenance Certificate
20 (or even if a memorandum constitutes a maintenance certificate)
21 there would appear to be a clear obligation to agree a final
22 account. The variation/claims items are based on the major
23 changes and complexity of fabrication etc. from that shown on the
24 tender documents and clearly entitle the contractor to have their
25 rates/prices carried accordingly.

26 .

27 The fact that unit 3 was negotiated allegedly separately at a
28 later stage does not dilute this fact. Had we, for example,
29 applied higher rates to unit 3, we would still have been entitled
30 to a variation in the rates/prices on the grounds as stated.

31 .

32 We expect to be in a more informed position to develop our

1 submissions at our next meeting and feel confident of a reasonable
2 and positive response to bring this contract to a mutually
3 satisfactory conclusion.

4 .

5 Yours faithfully, for Joseph Murphy Structural Engineers Limited,
6 JM Gogarty, Executive Chairman."

7 91 Q. Following the sending of that letter to the ESB, what happened?

8 A. Well, what happened was that they agreed to discuss my submission,
9 following up this letter, you see. And Senior told me to push it
10 very hard. I told him it was a bit complex and it was agreed
11 that the -- that I'd get assistance from either in-house surveyors
12 or outside surveyors, that I'd be entitled to employ consultants
13 and I thought it was useful to get top surveyors to assist me in
14 processing the claims. But there was a lot of tedious detailed
15 work to be done in response to my directions and there was a
16 surveyor in Murphys for some years, a very good lad, and I think
17 he was let go, you see, in the restructuring in '88, Jim Vesey,
18 and it was agreed that he would assist me in pursuing this claim
19 and it was also agreed that I could employ even further, so I
20 thought about it and I engaged the professional service of Brendan
21 Merry, who was a past president of the Institute of Chartered
22 Surveyors in Ireland, and I agreed with him to work for me with
23 Murphy's approval in dealing directly with the ESB from our
24 submissions and if any, if it was necessary, I would go along, if
25 there was some things, he told me, within my competence to
26 discuss.

27 .

28 And I agreed a fee of 100 pounds an hour with that man, at
29 Murphy's agreement, do you see. And --

30 92 Q. When you say that man, do you mean Mr. Merry?

31 A. Mr. Merry, yes, and it was decided that, you see, I was -- I
32 wasn't involved too much in the day-to-day running in Murphys but

1 I decided that I could work from home with Jim Vesey and Frank
2 Reynolds organised that all the files, the contract files, the
3 relevant files would be brought out to my house. In fact I think
4 that Mr. Cooney mentioned that I took documents out of Murphys.
5 I never did or I never retained documents out of Murphys. The
6 files, the contract files were brought out by Frank Reynolds and
7 Jim Vesey in my house and Vesey worked on those files under my
8 instructions for several months.

9 .

10 Finally, when they were finished they went back to Santry intact
11 and I never took any documents or held on to any documents from
12 Murphys. If anybody says that -- but anyway, in the course of
13 that, do you see, and following the developments from Conroy's
14 affidavit which I have to refer to just in passing, and in
15 relation to negotiations for the pension, Senior came up with a
16 proposal. At that time -- I don't want to go into the headings
17 that I had agreed with him -- but one of them was he would buy me
18 a pension for approximately £300,000 to buy the pension for me, I
19 want to say this personally, because the media have been
20 investigating this and saying that I got this, that and the
21 other. That pension -- that £300,000 bought a pension of £18,000
22 a year. A lousy £18,000 a year. That's what I got at the
23 time. When you compare it with what the other blackguard had
24 offered, Conroy had offered me £24,000 a year for the rest of my
25 life. But anyway, that's beside the point. But anyway, he came
26 up with this proposition, I think in discussion with some people
27 over in England, that I -- in my negotiation with the ESB, that
28 whatever final account was agreed between the board and the ESB,
29 because I had to keep the board informed --

30 93 Q. You mean the board of JMSE?

31 A. Murphy's board informed, that anything over £42,000 as referred to
32 by the mentioned ESB engineer, that I would get 50 percent of

1 that, all after expenses, of £42,000. And I accepted that, but
2 let's put it in the light of day. That was a risk I was
3 taking. Murphys didn't show even £42,000 in the accounts as a
4 debtor or a reserve against it, because they weren't sure of
5 anything. So I was on a risk, if I couldn't agree any more than
6 £40,000, I'd get feck all and if I agreed more, I'd get 50 percent
7 of it. That's a fact of life. So we are talking about the
8 media publishing about getting all this bloody thing --

9 94 Q. These negotiations --

10 A. But anyway, these negotiations took up to the following September.

11 95 Q. All right.

12 A. And I liaised closely with Frank Reynolds who was a very, to me,
13 was a very confident partner with me and close confidant. But
14 anyway, that was one of the headings of the agreement for the
15 retirement package and that went on. So what do you want me --

16 96 Q. All right, we will come back to that now. We have established
17 when the letter was --

18 A. I am sorry, I will finish this little bit about the ESB about how
19 we finished up.

20 97 Q. We will come to that. That's at a later stage, Mr. Gogarty.

21 .

22 MR. COONEY: Why not finish now, Mr. Chairman?

23 .

24 MR. GALLAGHER: Mr. Cooney would prefer me to finish it now. We
25 will deal with that. Go ahead and finish and deal with how it
26 finished up.

27 A. Deal with what?

28 98 Q. Deal with how the ESB finished up, what happened?

29 A. I kept in close contact with Frank Reynolds how we were getting
30 on. We had a time restraint on it because, in the meantime, Mr.
31 Brennan, the chief engineer, had retired and he was replaced by
32 Mr. Maurice O'Sullivan of the ESB and I knew him personally over

1 the years, but that didn't affect the negotiations. He took a
2 stance on it and we were progressing. Mr. Merry was holding
3 meetings with his people and I was with Jim Vesey, submitting
4 backup documentation, justifying the claims over because it
5 related to the business of quantity fees. We had to go into
6 detail, price variation, the whole lot. But we were moving
7 up -- I should say that what the time restraint was that Mr. O'
8 Sullivan was retiring from -- he had recently -- he was retiring
9 from his position as chief civil engineer in around about October
10 of that year and he was anxious to finalize the matter and of
11 course I was anxious to finalise the matter. Anyway, we reached
12 a tentative agreement, not formalised, towards the end of
13 September, 1989 and I discussed this with Frank Reynolds and I
14 thought we were doing very well and Frank thought we were doing
15 very well and I spoke to Joe about it a few times as well too.

16 .

17 But the figure we came up with then, that the board says, on our
18 submissions, that they were prepared to pay, finalise the account
19 for good at £560,000 plus VAT. Now, this had gone from £42,000
20 to £560,000 plus VAT. I have to refer to another thing that
21 happened in the meantime which upset me a bit.

22 .

23 There was a struggle going on between the outgoing management of
24 Conroy Sweeney and Downes, with the Murphys. You see the point,
25 and I felt that Copsey, in his own nefarious way, was using them
26 against me in my fight, justifiable fight if you call it, for my
27 pension. But they reneged on the question of 50 percent of
28 anything over £42,000 odd and they said that Sweeney had -- in
29 effect, said that he could get £130,000.

30 99 Q. From who?

31 A. Instead of the 42.

3 100 Q. Yes.

1 A. I was very annoyed over that. Because that's what I called
2 wheeling and dealing. There was never anything formal about
3 it. That man had spent two or three years without paying proper
4 attention to the bloody job. They could have been settled two or
5 three years before that. But anyway, on advice and on a timescale
6 to get finished with the bloody thing, while we rejected their
7 outright scandalous allegation, we said okay, to hell, we will
8 divide what's over £130,000 and that was incorporated into the
9 agreement.

1 101 Q. From whom --

11 A. I was eating humble pie to try and get out and finish.

1 102 Q. Who did you get this advice from?

13 A. What?

1 103 Q. Who gave you this advice to increase the figure or to agree --

15 A. To agree. My solicitors and my accountant because they were
16 anxious on account of the ongoing problems that it was causing us,
17 to get the basic, to get a basic pension for my wife and family,
18 that we could stand over and don't be looking behind over our
19 shoulder, that we would get it up front and get finished the
20 bloody thing.

2 104 Q. Doing the best you can, can you indicate to the Tribunal when you
22 agreed the heads of agreement with Mr. Murphy?

23 A. Well, I phoned him, I phoned Senior and told him about the stage
24 we were at and they were expecting that the board would tell us,
25 that they were satisfied with the figure of £700,000 including VAT
26 and Frank Reynolds was fully aware of that and Frank was very
27 helpful. But anyway, as a result of that, talking to Joe and
28 Frank, I asked him did he want a board meeting with Copsey and he
29 says, "Don't bother with Copsey at all, yourself and Frank and Gay
30 can deal with this". They were the three directors, do you
31 know. So what happened was then, I went into Santry then, by
32 arrangement with Frankie --

105 Q. Who is Frankie?

2 A. Frank Reynolds and we finalised a letter to the ESB indicating to
3 them that we accepted the figure of £700,000 including VAT in full
4 and final settlement and that letter of drafted, I think it's
5 dated 29th September, 1989, and I signed that letter Jim Gogarty,
6 Executive because I wasn't chairman, you know, I had resigned my
7 directorship in July. So I signed it just Executive. As an
8 employee, supposed to be senior employee but anyway, to be on the
9 safe side, Frankie Reynolds initialled that letter which is very
10 important. No matter what he says now, he initialled that letter
11 and that letter went out to the board.

1 106 Q. Went out to which board?

13 A. The ESB, the Electricity Supply Board. It's on the records.
14 It's all there. And then either in correspondence or in
15 telephone with Mr. O'Sullivan, he said that his board was meeting
16 late another October and that if they had a VAT invoice from
17 Murphys with a covering letter accepting that settlement, that
18 he'd be putting it to the board and that finally finish it and I
19 discussed this again with Frankie and I went into Santry and we
20 got the surveyor there to prepare the invoice, the VAT invoice.
21 It's on the letter there. And I discussed it with Frankie and
22 Frankie says, "Joe is delighted with it, I was talking to him but
23 he says he thought you'd only get about 10,000 out of it and you'd
24 want to be watching yourself." And in fact, that's what made me
25 get him to initial that. But anyway -- watch myself -- I have to
26 say this, that I was on risk that even if I -- if ESB paid over
27 the money, that I might never get the bloody thing.

28 .

29 MR. COONEY: Mr. Chairman, sorry for interrupting again but at
30 this stage, I think that Mr. Gallagher should put three documents
31 to the witness, A, a memorandum of the 27th September of 1989, the
32 letter of the 29th September, '89 and most importantly of all, the

1 retirement agreement signed by Mr. Gogarty a week or two later on
2 the 3rd October and then the letter sending the invoice which was
3 written, not by JMSE, but by Mr. Gogarty's solicitor. Those
4 documents I think should now be introduced into evidence.
5 .

6 MR. GALLAGHER: I will introduce those documents into evidence in
7 a few moments. Insofar as I have them, perhaps we will deal with
8 Mr. Gogarty's first letter. I think, Sir, the documents that's
9 mentioned by Mr. Cooney is not in the book of documents circulated
10 by the Tribunal on the 7th of this month. And it will be
11 necessary to go to some of the discovered documents which are
12 voluminous, as you are aware, and which are in the offices of the
13 Tribunal rather than here in the room and it may be necessary to
14 come back to put those to Mr. Gogarty at a later stage.
15 .

16 MR. COONEY: I think this is the time to do it, Mr. Chairman,
17 because this is a very important issue as to credibility and it
18 should be dealt with fully now, Mr. Chairman, and if necessary,
19 these documents can be readily identified, we have discovered them
20 to the Tribunal and they must be indexed, I think it would be a
21 matter for a few moments to get a copy.
22 .

23 CHAIRMAN: Mr. Cooney, I see the force of what you are saying.
24 Now, we have to be pragmatic. There must be an interval allowed
25 to enable -- if you can identify where the documents are, we will
26 get them. Because we must be pragmatic and -- I agree with you
27 that it should be resolved now. If you can do that and you
28 can -- if you want five minutes or ten minutes to do it.
29 .

30 MR. COONEY: I think it is important and I'd like to take the
31 five minutes, Mr. Chairman. But --
32 .

1 CHAIRMAN: Very good. It should only take five minutes.

2 .

3 MR. COONEY: We can iron it out.

4 .

5 MR. GALLAGHER: There may be other documents that I want to put
6 to the witnesses arising from those documents.

7 .

8 MR. COONEY: Mr. Chairman, just to correct something which I
9 said. These documents were actually discovered by Mr. Gogarty,
10 not by us, I should say.

11 .

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

14 .

15 CHAIRMAN: Mr. Callanan, I wonder, Mr. Callanan, could you take
16 instructions? We have lost a certain amount of time today, a
17 very considerable amount of time today. I want to make some
18 effort, if it is within the capacity of your client to survive
19 from now until say half past one or a quarter to two, half past
20 one at least, would you be kind enough to take instruction? I
21 don't want to in any way make life difficult for him but,
22 nonetheless, he hasn't been actually, as it were, in the firing
23 line. Perhaps you'd be kind enough to make an inquiry for the
24 Tribunal?

25 .

26 MR. CALLANAN: Yes. Mr. Sheedy --

27 .

28 CHAIRMAN: Okay. We will do it -- it's now twenty five minutes
29 to one. We will break at one for five minutes and we will
30 continue then to sometime after half past, is that all right?

31 .

32 MR. CALLANAN: Yes, there may be an issue in relation to one of

1 the documents to which Mr. Cooney has referred, but we can deal
2 with that when it arises.

3 .

4 CHAIRMAN: Very good. Mr. Gallagher, when you are ready.

5 .

107 Q. MR. GALLAGHER: Mr. Gogarty, I am going to put to you a number of

7 documents which Mr. Cooney and your client, or your counsel have

8 asked should be introduced to the Tribunal. The first document

9 that has been asked for is one which is a letter of the 26th May,

10 1989, and -- I will give it to you, Mr. Gogarty, because there is

11 a page missing and we have just retrieved it. (Documents handed

12 to witness.) This is a letter of the 26th May 1989, from Mr.

13 Gerard B. Sheedy of McCann Fitzgerald, solicitor, to Christopher

14 Oakley of Pickering and Kenyon, solicitors, in London and it's re:

15 Joseph Murphy -- "Dear Mr. Oakley, I understand that Mr. Murphy

16 and Mr. Gogarty had an amicable and constructive discussion in

17 London on Monday last which resulted in the resolution of a number

18 of issues between them and agreement being reached that other

19 matters would be discussed further at a later date.

20 .

21 The effect of the meeting has been to bring about a significant

22 improvement in the relationship between Mr. Murphy and Mr.

23 Gogarty. Hopefully this will lead to the restoration of the

24 mutual trust and understanding which had existed for many years.

25 .

26 In order to avoid any possible misunderstandings and in an

27 endeavour to building on the successful outcome of the meeting

28 between our respective clients, perhaps you will have your client

29 confirm the following heads of agreement:

30 .

31 1: A sum of £300,000 will be made available by JMSE Limited for

32 the purchase of a pension in Ireland for Mr. Gogarty and his

1 wife.

2 .

3 2: Mr. Gogarty will retire as a director from his executive

4 positions with JMSE Limited and AGSE Limited.

5 .

6 3: Mr. Gogarty will be retained as a consultant by each of these

7 companies for a period of five years at his current salary and on

8 terms which will include the provision of a company car and

9 payment of Mr. Gogarty's telephone charges and vouched expenses.

10 .

11 3: Mr. Gogarty will negotiate on behalf of JMSE with the

12 Electricity Supply Board (ESB) for the payment by the ESB of

13 monies due to JMSE in connection with goods and services supplied

14 in relation to the Moneypoint generating station project. By way

15 of commission, 50 percent of the amounts recovered from the ESB by

16 Mr. Gogarty will be paid to him. Any expenses incurred by Mr.

17 Gogarty in this connection will be undertaken by JMSE Limited.

18 .

19 4: A sum of £70,000 will be paid to Mr. Gogarty. This sum

20 represents undrawn bonuses and salary increases due to Mr. Gogarty

21 and a sum for compensation in relation to the Sutton site.

22 .

23 I am sure you will agree with me that the present spirit of

24 goodwill and cooperation which our clients' meeting has engendered

25 should be consolidated as quickly as possible by way of

26 confirmation of these heads of agreement.

27 .

28 Accordingly, I look forward to hearing from you when you have

29 received your client's instructions and, if possible, by the end

30 of next week. Due to postal difficulties which we are

31 experiencing in Dublin, I suggest that correspondence between us

32 should be communicated by fax. Yours, Gerard B. Sheedy, McCann

1 Fitzgerald."

2 .

3 Do you remember that letter being sent?

4 A. Yes.

108 Q. The next letter is a letter of the 29th June from Pickering Kenyon

6 addressed to Messrs McCann Fitzgerald for the attention of Mr.

7 Sheedy. It's "Re: Joseph Murphy and James Gogarty".

8 A. Is this it here?

109 Q. This is the second letter, it's a letter of the 29th June of

10 1989.

11 A. Oh yes.

1 110 Q. From Pickering -- from Pickering Kenyon.

13 "Dear Mr. Sheedy, Re: Joseph Murphy and James Gogarty.

14 I refer to your letter of the 26th May and our subsequent

15 telephone conversations. I now have express instructions from

16 Mr. Murphy in connection with the matters raised in your letter of

17 the 26th May upon which I will comment as follows in respect of

18 the numbered paragraphs of your letter.

19 .

20 1 A: The maximum sum of £300,000 will be provided to JMSE for that

21 company to purchase a pension for Mr. Gogarty and his wife. The

22 actual amount of the pension will be equal to the maximum

23 allowable for tax purpose which, as I understand it, is a product

24 of the number of years' service and his salary. The arrangements

25 for the pension will be agreed with Mr. Gogarty's pension

26 advisers. However, it should be recorded that the amount of the

27 pension is recognised by the company and I understand your client

28 to be potentially less than £300,000.

29 .

30 1 B: The balance of the £300,000 will be paid to Mr. Gogarty in

31 the most tax efficient manner. This will be done in liaison with

32 Mr. Gogarty's advisers. One possible solution actively being

1 considered at present is to make the whole of the balance tax

2 efficient as possible:

3 .

4 (A) Increase Mr. Gogarty's salary for the last year of

5 employment.

6 .

7 (B) Pay a tax free lump sum upon retirement relating to his last

8 year's salary.

9 .

10 1 C: The increase in Mr. Gogarty's salary for the year of

11 retirement will be compensated for by decreasing the amount of his

12 consultancy payment for the ensuing year as referred to below.

13 .

14 2 A: Mr. Gogarty will be retained as a consultant to any company

15 within the Lajos Group at his current salary of £23,500 for a

16 period of five years. His existing company car will be

17 transferred to him at no cost and he will thereafter become

18 responsible for all expenses in connection therewith. His

19 telephone charges and vouched expenses will be paid for by the

20 companies.

21 .

22 2 B: In order to achieve tax efficiency, it may be necessary for

23 Mr. Gogarty to resign as a director from any of the companies

24 within the Lajos Group. I understand this is acceptable to Mr.

25 Gogarty.

26 .

27 2 C: The consultancy payments will be guaranteed by Lajos Holdings

28 Limited but may be paid by any company within the Lajos Group.

29 .

30 3: Mr. Gogarty will have sole rights of negotiation of the claim

31 in respect of the Electricity Supply Board contract. He will be

32 paid a commission of 50 percent of the net amount recovered in

1 respect of the claim but his commission shall only be payable in
2 respect of any net offer in settlement made in excess of that
3 already offered by the Electricity Supply Board. I am instructed
4 that the contents of this paragraph were not discussed or agreed
5 between Mr. Gogarty and Mr. Murphy and do not form part of any
6 settlement.

7 .

8 The above represents the complete agreement on all matters between
9 our respective clients. Upon confirmation on behalf of your
10 client that the above heads of agreement are approved, I will
11 arrange for the necessary documentation, including a consultancy
12 agreement, to be drafted and forwarded to you for approval.

13 Yours sincerely, C.R. Oakley.

14 .

15 The next letter is a letter of the 29th June 1989 from Mr. Sheedy
16 to Mr. Oakley. Re: Joseph Murphy and James Gogarty.

17 .

18 "Dear Mr. Oakley, thank you for your letter of the 29th
19 June -- that's the same date of Mr. Oakley's letter
20 apparently -- "I confirm all of the details of your letter
21 subject to paragraph number 3 which deals with the Electricity
22 Supply Board (ESB) contract. Mr. Gogarty is adamant that the
23 arrangement whereby he will negotiate with the ESB will form part
24 of his settlement.

25 .

26 He also assures me that he did discuss and agree these details
27 with Mr. Murphy. There are two points in your paragraph number 3
28 which require clarification.

29 .

30 Firstly, the phrase "Net amount recovered" is not clear. What is
31 meant by the word "net"? Mr. Gogarty will be negotiating on
32 behalf of the company and will expect that all costs arising in

1 connection with those negotiations should be borne by the company
2 as a normal trading expense.

3 .

4 Secondly, the amount already offered by the ESB is £40,000 and
5 should be specifically mentioned in your letter. I await hearing
6 from you in relation to the ESB contract and hopefully, you will
7 be able to take your client's instructions and let me have an
8 amended letter before close of business tomorrow evening."

9 .

10 The next letter to which I have been asked to draw attention is a
11 letter of the 15th October, 1989, from -- sorry, 15th September,
12 1989 from Mr. Oakley to McCann Fitzgerald. It's in the following
13 terms:

14 "Dear Mr. Sheedy, Re: Joseph Murphy and James Gogarty.

15 Thank you for your letter of the 13th September, the contents of
16 which are noted. I enclose herewith an engrossed copy of the
17 settlement agreement for execution by your client.

18 .

19 With regard to the affidavit, you will appreciate that this was a
20 matter which I first discussed with Mr. Gogarty directly, in the
21 course of which I explained to him both its content and its
22 necessity. I also explained to him the requirements as to its
23 accuracy. It was at his request this any draft affidavit should be
24 forwarded to yourself.

25 .

26 As the affidavit relates to matters of fact which are within the
27 knowledge of your client, I cannot see that he had any necessity
28 to consult you on any substantive matter relating to it. In the
29 light of the circumstances outlined above, my clients feel that
30 Mr. Gogarty must be responsible for any fees incurred in
31 consulting you in relation to the contents of an affidavit, the
32 facts of which are uniquely within his own knowledge."

1 .

2 Mr. Gogarty, can you say what affidavit was being referred to in
3 that letter? What did you understand it to mean?

4 A. Well there is other letters in between there that are missing.

111 Q. All right.

6 A. A very important letter --

7 .

8 MR. CALLANAN: There is a letter of the 13th September, to which
9 that makes reference. That letter of the 15th is a response to a
10 letter of McCann Fitzgerald of the 13th September.

11 .

12 MR. GALLAGHER: That is so. It is referred to as a response,
13 but I was not asked to open that letter to the Tribunal. Perhaps
14 if Mr. Callanan wishes me to do so, if he refers me to the copy --

15 .

16 MR. CALLANAN: I wish that that was done. I am sorry, I don't
17 have a copy of that -- yes, I think the solicitor --

18 .

19 MR. GALLAGHER: I will arrange for a copy of this to be
20 circulated immediately after I have read it.

21 It's a letter of the 13th September, 1989. It's a letter from

22 Mr. Sheedy to Mr. Oakley. It's re: Joseph Murphy and James
23 Gogarty.

24 "Dear Mr. Oakley, thank you for your letter of the 7th

25 September. I have discussed the contents of your letter with Mr.

26 Gogarty. On the subject of the claim against the ESB, Mr.

27 Gogarty --

28 A. I beg your pardon, sorry, I can't hear you --

2 112 Q. I am sorry, Mr. Gogarty, I will speak in the microphone. "Dear

30 Mr. Oakley, thank you for your letter of the 7th September, I have

31 discussed the contents of your letter with Mr. Gogarty. On the

32 subject of the claim against the ESB, Mr. Gogarty has instructed

1 me to object in the strongest possible manner to any suggestion or
2 implication of any nondisclosure by him to his fellow directors of
3 any relevant information concerning his negotiations with the
4 ESB.

5 .

6 However, as stated in my letter of the 15th August, Mr. Gogarty
7 was aware that Mr. Sweeney had mentioned a figure of £130,000 as
8 being the amount which the ESB was likely to pay. If in fact Mr.
9 Sweeney's comments arose from discussions between Mr. Sweeney and
10 an official of the ESB and if that sum had been discussed between
11 Mr. Sweeney and an official of the ESB, Mr. Gogarty is prepared to
12 accept that figure as the base from which he will now negotiate
13 and the inclusion of that figure in the agreement with Lagos
14 Holdings Limited.

15 .

16 The consideration for the provision of £300,000 by the company for
17 the purchase of the pension on Mr. Gogarty's behalf is Mr.
18 Gogarty's resignation as an employee of all the companies in the
19 group. I do not understand your comment to the effect that Mr.
20 Gogarty has not had any executive responsibilities within the
21 company for many years. He has been an executive director and
22 has continued his activities as an executive following his
23 resignation as a director.

24 .

25 I have amended the agreement to include the relevant references
26 under Irish legislation. .

27 .

28 With regard to the sum of £300,000, we are in agreement that all
29 or the greater part of this sum should be used by the company to
30 purchase a pension for Mr. Gogarty and his wife in a most tax
31 efficient way for the company. The point which I made in my
32 previous letter and which reflects the agreement which we made

1 previously is merely that in the event that the company cannot
2 expend the entire £300,000 on the purchase of a pension for Mr.
3 Gogarty and his wife, the unexpended portion will be paid to him
4 in cash.

5 .

6 Mr. Gogarty accepts the company's decision with regard to the car
7 which would transfer to him at no cost. I understand your
8 client's position with regard to Mr. Gogarty's authority to
9 complete an agreement with the ESB.

10 .

11 This is unlikely to cause any difficulties as both Mr. Gogarty and
12 the directors of the company had a common objective in obtaining
13 the maximum amount of compensation from the ESB.

14 .

15 There is no question of Mr. Gogarty engaging any third party to
16 carry out negotiations with the ESB on his behalf. However, from
17 time to time, he may require professional advice on specific
18 points to assist him in his negotiations with the ESB and any fees
19 arising from such consultations will be part of the general and
20 reasonable expenses incurred by him in the course of his
21 negotiations.

22 .

23 Perhaps the form of consultancy agreement which I drafted is too
24 elaborate for our respective requirements. I am prepared to
25 accept terms relating to Mr. Gogarty's consultancy in the terms
26 contained in your draft agreement. Mr. Gogarty accepts that, by
27 and large, your draft affidavit is in order. However, although
28 Mr. Gogarty is conscious of the urgency in relation to the
29 affidavit, there are some inaccuracies which he is in the course
30 of correcting and I will write to you again on the subject in due
31 course.

32 .

1 Mr. Gogarty requires confirmation from your clients that they will
2 undertake responsibility for the discharge of the fees which will
3 become due to this firm by Mr. Gogarty for advice given to him
4 relating to the affidavit and its contents.

5 .

6 The draft agreement should be amended by including the definition
7 of a "subsidiary company on holding company" -- that surely should
8 be "or" holding company -- "as means a company which is a
9 subsidiary company or a holding company as defined in Section 155
10 of the Companies' Act 1963. I enclose a copy of that section.

11 .

12 Associated companies may be given the definition which you drafted
13 merely replacing the word "England" with "Ireland". Please now
14 prepare the engrossments of the agreement.

15 .

16 Presumably you will forward these to Mr. Copsey so that Mr.
17 Gogarty and he can meet to complete and exchange signed copies.
18 Yours sincerely, Gerard B Sheedy."

19 .

20 Now, just lest there be any misunderstanding, I will read out the
21 reply. I have already read it but I will read it fairly quickly
22 again to maintain the sequence insofar as I can. It's a letter
23 from Mr. Oakley to Mr. Sheedy, "Thank you for your letter of the
24 13th September, the contents of which are noted.

25 I enclose herewith -- you have a copy of this letter, Mr.

26 Gogarty? It's a letter of the 15th September.

27 A. Oh yes, I have it.

2 113 Q. "I enclose an engrossed copy of the settlement agreement for
29 execution by your client with regard to the affidavit. You will
30 appreciate that this was a matter which I first discussed with Mr.
31 Gogarty direct in the course of which I explained to him both its
32 contents and its necessity. I also explained to him the

1 requirements as to its accuracy. It was at his request that any
2 draft affidavit should be forwarded to yourself.

3 .

4 As the affidavit relates to matters of fact which are within the
5 knowledge of your client, I cannot see that he had any necessity
6 to consult you on any substantive matter relating to it. In the
7 light of the circumstances outlined above, my clients feel that
8 Mr. Gogarty must be responsible for any fees incurred in
9 consulting you in relation to contents of the affidavit, the facts
10 of which are uniquely within his own knowledge."

11 .

12 Now Mr. Gogarty, can you tell the Tribunal what affidavit was
13 being referred to in that letter and in the earlier letter?

14 A. It's very important. I will tell you why: There were other
15 letters before that. What happened was, you see, at the time I
16 was recently meeting with Senior and that meeting in London or in
17 London, you know, when they were talking about disposing of the
18 lands and all that type of thing, you see the point and about the
19 replying affidavit, that's the affidavit they are talking about,
20 the replying affidavit.

21 .

22 Now, I came home from that meeting you see, and shortly after
23 that, you know, ten days, fortnight, three weeks after that, I got
24 a phone call when I was at home and it was from Mr. Oakley who was
25 in Dublin and he asked me would I meet him -- he was staying in
26 the Fitzpatrick Hotel in Killiney, and I would meet him there to
27 talk about the affidavit, following our London meeting. And I
28 went to meet him and he took me up to a room, his bedroom and he
29 opened his case and he took out the draft affidavit and gave it to
30 me to read and I read it and I wasn't happy with it fully you
31 see. And I said to him, "I'd like to get independent legal
32 advice on it." "Oh" he says, "Sure I am advising you. Joe Murphy

1 told me I am acting for you in this." "Well" I said, "You are
2 acting for senior" and I says, "I'd like to discuss it with an
3 independent solicitor." "Well" he says, "Two things I must point
4 out to you if you do that, and the first is this, that you will
5 bear all your own costs." I says, "That's funny, because", I
6 says, "Senior told me, he promised me he'd pay all my costs."
7 "And" he says, "The second thing is this, that if you don't swear
8 that affidavit, if you don't swear that affidavit, your pension is
9 deferred, won't be resolved." That's what that man said to me, a
10 solicitor, and that worried me very much. Up to then, I had no
11 solicitor, since I had Ms. McMahon had pulled out and Seamus
12 Hourigan (?) -- My consultant advised me to get a solicitor and he
13 recommended Gerry Sheedy and I discussed it with Gerry Sheedy and
14 he says not to sign anything until I referred it to him.

15 .

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

26 .

27 MR. GALLAGHER: We will get that letter, Mr. Gogarty. Now, can
28 you explain, was it in those circumstances that you --

29 A. Sorry...

3 114 Q. Was it following that meeting in Fitzpatrick's Hotel that you
31 instructed Mr. Sheedy?

32 A. Yes, that's right.

115 Q. And the correspondence that I have referred to then passed between

2 Mr. Sheedy and Mr. Oakley?

3 A. Yes, that's right, that's right. Can you get that letter?

4 That's important for the Tribunal. I am talking from my -- in

5 the name of God -- where do I go from here, do you know?

116 Q. Bear with me just one moment and I will see.

7 .

8 Sir, there are a significant number of letters between June and

9 the end of September, Mr. Sheedy and Ms. Cummins have been unable

10 to identify the letter that's been referred to. I wonder as it's

11 now one o'clock, you might consider rising and perhaps in the

12 intervening period we can get the documentation sorted out.

13 .

14 CHAIRMAN: I think that the situation now is that it's unlikely

15 that you are going to get any serious amount of work done between

16 now and half past one. I trust that by tomorrow morning we will

17 have a block of correspondence which will be continuous and

18 appropriate to our requirements. So I will adjourn the Tribunal

19 now until ten o'clock tomorrow morning. Thank you.

20 .

21 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, TUESDAY 19TH

22 JANUARY 1999, AT 10AM: