

1 **THE TRIBUNAL RESUMED ON TUESDAY 15th FEBRUARY 2005**

2 **AT 10.30 A.M. AS FOLLOWS:**

3  
4 CHAIRMAN: We regret the delay in starting. It was due to some technical  
5 hitch.

6  
7 **CONTINUATION OF QUESTIONING OF MR. JOHN CALDWELL AS FOLLOWS**

8 **BY MR. O'NEILL:**

9 A. Good morning.

10 Q. 1 MR. O'NEILL: Good morning, Mr. Caldwell. In the course of your evidence on  
11 Friday last, you indicated that as part of the negotiating position that was  
12 adopted by Mr. Tiernan he required that there would be a refund to him in the  
13 sum of 100,000 pounds and that that would take place before the signing; isn't  
14 that so?

15 A. There would be a refund of a 100,000 pounds and that would be from my  
16 recollection take place after completion.

17 Q. 2 Yes. More accurately, I think what he was looking for before signing was that  
18 the method of it being repaid to him would be agreed before the signing?

19 A. That's what the note says, yes.

20 Q. 3 Does that accord with your recollection?

21 A. I don't actually have a recollection of that but it's probably what he required  
22 in relation to it.

23 Q. 4 Fine. Where he see that at page 3008 on screen. This is something which you  
24 agreed with him. I think you were distinguishing between the negotiating that  
25 took place between Mr. Kennedy and Mr. Tiernan and your own perhaps subsequent  
26 negotiations; isn't that right?

27 A. That's correct, yes.

28 Q. 5 So it's likely that this agreement which we see pencilled in or written in at  
29 the bottom of the note of the 19th of October 1992, just wait until that comes  
30 on screen. Perhaps for the moment we'll work off your hard copy.

11:04:27 1 A. I have a hard copy, yes.

2 Q. 6 What it reads is: "100,000 pounds refund, John Caldwell, method to be agreed

3 before I sign" and this was point 10 in manuscript at the base of the nine

4 point typed memorandum, which is dated, which is undated but records what took

11:04:45 5 place at a meeting on the 19th of October 1992; isn't that right?

6 A. I see that, yes.

7 Q. 7 Point 10 please at the bottom of the page, if we may.

8

9 Now, do I understand that that sum was to be repaid after closing. Isn't that

11:05:06 10 right?

11 A. Yes, that's correct.

12 Q. 8 So this is a sum that would have been paid on a date after the, I think it was

13 the 16th of June of 1994; is that right?

14 A. Yes, it would have been paid after that.

11:05:19 15 Q. 9 And I required inquired from you how it was paid. You indicated that it was

16 paid by cheque as far as you know.

17 A. I can't remember the method of payment in relation to it. I recollect that he

18 was paid all right. I mean, I had completely forgotten about this until I

19 read the transcript in your examination of him. I can't remember what the

11:05:45 20 method of payment was. It would have been left to I suspect Mr. Bullock to

21 deal with.

22 Q. 10 Well I think that you indicated that it would have been paid into an account of

23 Mr. Tiernan's firstly.

24 A. Yes, that's correct, yes. That may have been by a transfer, it may have been

11:06:06 25 by a cheque.

26 Q. 11 And you indicated that that was to an offshore company of Mr. Tiernan's.

27 A. Yes, I think that's correct.

28 Q. 12 Right. And we have heard from Mr. Tiernan that he had accounts, both in Jersey

29 and also in the Isle of Man. And can you indicate to which jurisdiction you

11:06:27 30 believe it was that this payment was made?

- 11:06:30 1 A. I'm not sure which of the two jurisdictions. I don't have a recollection of  
2 Jersey, so it may well have been an Isle of Man account.
- 3 Q. 13 Right. And of course that expenditure, you say, was expenditure through an  
4 account from funds available to you rather than funds available to Mr. Kennedy?
- 11:06:53 5 A. Yes, that's correct.
- 6 Q. 14 And obviously those funds or that payment rather would have to be taken into  
7 account in determining the appropriate division of the net assets which would  
8 be made at closing; isn't that right?
- 9 A. No. This was something that I would have agreed with Mr. Tiernan myself as a  
11:07:22 10 deal that I had with him in relation to him signing the contract. Mr. Kennedy  
11 wouldn't have been a party to that. And I don't believe that Mr. Kennedy,  
12 that this sum was taken into account in any division between myself and  
13 Mr. Kennedy under the structures.
- 14 Q. 15 In either event, it was an enrichment to the extent of 100,000 pounds to  
11:07:50 15 Mr. Tiernan and a consequent depletion of your available funds by that  
16 equivalent sum; isn't that right?
- 17 A. Yes, that's correct.
- 18 Q. 16 Could I suggest to you that that would have to be something that would be  
19 recorded in some tangible form. Firstly, I suggest by the person to whom you  
11:08:07 20 had given the instruction recording it. Secondly, that person, if that wasn't  
21 a direct contact with a bank official, that person would have to contact a bank  
22 where the funds were and in turn that bank would have to effect the transaction  
23 out of that bank to Mr. Tiernan's bank; isn't that so?
- 24 A. I don't recollect how it occurred. I don't recollect there being anything in  
11:08:34 25 writing from me to anyone in relation to it. Certainly the normal way I would  
26 deal with something is just to make a phone call in relation to it.
- 27 Q. 17 Well could I suggest to you that if Mr. Bullock was the vehicle through which  
28 this was achieved that Mr. Bullock would have to record your instruction in  
29 some way or transmit your instruction to whichever bank it was, be it in the  
11:09:09 30 Isle of Man or elsewhere?

- 11:09:11 1 A. Yes, if it were Mr. Bullock he would give an instruction to the bank.
- 2 Q. 18 Sure. This is as a matter, as you will appreciate, Mr. Caldwell, which is  
3 omitted from the ten page statement which was furnished to the Tribunal on your  
4 behalf on the 27th of February 2003; isn't that right?
- 11:09:28 5 A. Yes. I make no reference to this. As I say, I didn't recollect this until I  
6 was looking at the transcript and reading your examination of Mr. Tiernan.
- 7 Q. 19 Yes.
- 8 A. When I read the examination of Mr. Tiernan I recollected what this referred to.
- 9 Q. 20 Yes. Equally, because you didn't refer to it in your statement, it again is a  
11:09:55 10 matter which wasn't the subject of your affidavit of discovery which was  
11 prepared following the order of the Tribunal; isn't that so?
- 12 A. As I say, I had no recollection of this payment. So in terms of addressing my  
13 mind to the affidavit of discovery, I addressed it without reference to this.
- 14 Q. 21 Sure. And when it came back to your recollection after hearing the evidence of  
11:10:27 15 Mr. Tiernan, did you then set about endeavouring to see whether or not there  
16 was documentation in existence which would reflect this transaction and which  
17 would allow you to complete by way of supplemental affidavit your discovery  
18 obligation?
- 19 A. Well I haven't done that in terms of it. I just have -- I had no time to  
11:10:55 20 address anything like that. My time has been totally absorbed in dealing with  
21 the Tribunal and giving evidence and keeping up-to-date with all that's  
22 happening in relation to it. I'm -- I don't know, as I sit here, whether or  
23 not it falls under the order or not in relation to it. I mean, as I say, I  
24 can make inquiries in relation to it but in terms of myself, I have no  
11:11:22 25 recollection of any documentation from myself.
- 26 Q. 22 Well could I suggest to you that it would obviously be relevant to the  
27 Coolamber transaction insofar as it relates to a Coolamber transaction. There  
28 would not have been a sale apparently to Mr. Tiernan unless this particular  
29 clause was agreed. And therefore, the relativity of the payment to the  
11:11:45 30 transaction is obvious to you; isn't it?

11:11:50 1 A. In those terms, yes. I mean, but as I say, I had no recollection of this at  
2 the time that I completed the affidavit.

3 Q. 23 Though it was the only actual payment that you made insofar as you made a  
4 financial contribution to the acquisition, it was through this means of  
11:12:09 5 resolving the impasse between Mr. Kennedy and Mr. Tiernan by a personal payment  
6 of your's of 100,000 pounds?  
7 A. It resolved the impasse, yes, it did.

8 Q. 24 But it is a very significant sum of money even now 100,000 pounds. It's very  
9 hard to forget that sum if it is representing the only payment that you made  
11:12:31 10 for the transaction?  
11 A. It's what happened in relation to it. I mean, if I remembered it, as I quite  
12 openly said to you here in evidence, I have no difficulty in saying that the  
13 payment was made. If I'd remembered it in relation to it, it would have been  
14 something that I would have addressed my mind to but I didn't.

11:12:54 15 Q. 25 Sure. And the position as of this moment is that you haven't contacted either  
16 Mr. Bullock or possibly Mr. Morgan to establish whether it was through their  
17 offices you effected this financial transaction; isn't that the position?  
18 A. No, I have not.

19 Q. 26 Fine. The relationship which you had with Mr. Tiernan you have told us is one  
11:13:19 20 which extended back many years because he had been a client of your's and a  
21 client of the firm of Fitzpatrick and subsequently Binchy & Partners. But can  
22 you recollect whether or not in the course of this particular transaction, that  
23 is the acquisition of Coolamber by Mr. Tiernan, whether you advised Mr.  
24 Tiernan, either formally or informally, as a lawyer in relation to the  
11:13:55 25 transaction itself or aspects of the transaction?  
26 A. I have no recollection of doing that, Mr. O'Neill. I saw again in the  
27 evidence reference to this priority search that was put in. I recollect you  
28 saying in that it was something that seemed to be a speciality of mine. I  
29 have absolutely no recollection of having a discussion with him about that.  
11:14:11 30 And I can't, because I thought about it afterwards, after reading the evidence,

11:14:19 1 I've tried to think of what the context might have been which might have  
2 provoked that but I can't think of any context that it would have arisen out of  
3 to have that discussion with him.

4 Q. 27 Prior to his signing this contract which took place on the 17th of December  
11:14:40 5 1992. Mr. Tiernan wrote to his solicitor on the 9th of December, eight days  
6 beforehand. We see it at page 1892.  
7  
8 This was a letter in which Mr. Tiernan was directing his then solicitor,  
9 Mr. Madden in relation to the finer points of the contractual clauses which  
11:15:06 10 appeared in the draft contract which had been forwarded to him. And  
11 Mr. Tiernan reflects that there should be three minor changes to the contract  
12 as it had been drafted and furnished to him. It's page 1892  
13 A. 1892?  
14 Q. 28 1892. Yeah.  
11:15:31 15 A. Yes, I see it.  
16 Q. 29 "Dear Andy, I refer to our recent discussions and your letter together with the  
17 contract. Of today's date I requested to make three minor exchanges as  
18 follows:  
19  
11:15:42 20 Page 5. 4 C should be map number 1 and not number 2 as shown.  
21  
22 Page 7. Condition 7.1 should have the word "financial" and it will then read  
23 as follows "a discharge in respect of all financial charges which affect the  
24 lands in sale will be furnished on completion".  
11:16:00 25  
26 Page 9. A the at the end of the condition 8.2 and the following: "and if it  
27 does so the purchaser may reduce the purchase price by the amount of the  
28 vouched extra cost".  
29  
11:16:10 30 When you have had those changes made on the above three pages I require you to

- 11:16:14 1 fax the three pages amended as soon as possible to me.  
2  
3 I request you to forward two copies of the completed contract as amended to  
4 Miley & Miley Solicitors acting for the vendor, emphasising to them that the  
11:16:25 5 previous contract were drafts and that this is the final contracts and no  
6 further amendments will be accepted.  
7  
8 With your covering letter emphasised to them the urgency of having the  
9 contracts executed immediately."
- 11:16:41 10  
11 Now, Mr. Madden in the course of his evidence you might recall said that this  
12 was not a letter in the language of his client or one which he would have  
13 expected to receive in those terms.
- 14 A. Yes, I saw that, yes.
- 11:16:53 15 Q. 30 And I put it to him that it seemed to be to an extent couched in legal  
16 phraseology in so far as references made to executing the contract for example  
17 rather than signing the contract and matters of that nature.
- 18 A. Yes.
- 19 Q. 31 Is it possible that you advised Mr. Tiernan at this point in time as to the  
11:17:09 20 detail of the contract which he was about to sign?
- 21 A. No, I didn't. I wasn't involved in that sort of detail with him.
- 22 Q. 32 Right. The contracts were, as it appears, amended to reflect these changes.  
23 And we see that the next involvement of Mr. Madden is on the 14th of September  
24 1993. That's the next involvement I'd like to draw your attention to rather  
11:17:39 25 than his closing of the contract which of course had to follow. We'll see at  
26 page 2042 the letter which you referred to just a little earlier, which was the  
27 letter giving directions to Mr. Madden to pursue the course of lodging priority  
28 searches in the Land Registry.
- 29 A. Yes.
- 11:17:57 30 Q. 33 And as we know from the statement of Mr. Tracey and his evidence that is the

- 11:18:05 1 Deputy Registrar. This was a procedure which was followed for a period of  
2 some eight months or so between the 28th of September 1993 and the 27th of May  
3 1994.
- 4 A. Yes.
- 11:18:20 5 Q. 34 Which was shortly before the closing date. Then there was a more specific  
6 search put in, which was the search that a perspective purchaser puts in rather  
7 than the priority search.
- 8 A. Yes.
- 9 Q. 35 Which was of a more general nature. Certainly based on a different premise.  
11:18:37 10 And you heard the evidence of Mr. Madden that he did not believe that this had  
11 any particular benefit from the point of view of protecting the interests of  
12 Mr. Tiernan. It was not his concept to do so, or to consider such a process  
13 as being effective. But he did so on the express instruction of his client.  
14 And it required him, as you probably know, every two weeks to go down and to  
11:19:08 15 file a fresh application in advance of the expiry of the two week period which  
16 had been fixed by the initial query.
- 17 A. Yes.
- 18 Q. 36 And this involved him in quite an amount of time and effort.  
19 Now, he says that he wasn't aware and he wasn't informed by his client as to  
11:19:26 20 who it was who had directed that this took place. But his client,  
21 Mr. Tiernan, says that it was as a result of what you indicated to him that he  
22 followed this particular course. You say that you do not have a recollection  
23 of giving Mr. Tiernan this advice. Isn't that so?
- 24 A. That's correct, yes.
- 11:19:43 25 Q. 37 I think you'd accept, however, that it's such an unusual feature that it is  
26 unlikely that a lay client of your's or of any other solicitor would take it  
27 upon himself to advise this procedure to his solicitor; isn't that right?
- 28 A. Oh, I think it's most unlikely.
- 29 Q. 38 Yes.
- 11:20:03 30 A. Mr. Tiernan would have dreamt this up of his own accord or looked it up of his

- 11:20:10 1 own accord.
- 2 Q. 39 Sure. Have you any reason to believe or to know why it is that Mr. Tiernan  
3 would attribute this to you if it wasn't in fact the case? Do you have any  
4 other alternative motive or purpose he might have in telling the Tribunal that  
11:20:24 5 you told him that this was to happen if it's not the case?
- 6 A. I have no reason to cast any doubt on his views in relation to it, I just have  
7 absolutely no recollection of it as I say, I thought about it to try and see  
8 what the background might have been.
- 9 Q. 40 Sure.
- 11:20:43 10 A. But I can't think of anything that would have triggered it.
- 11 Q. 41 Did you address the question that perhaps Mr. Smyth's unresolved attempt to  
12 take over the property might manifest itself in some way where he would  
13 endeavour to launch proceedings in some way or to seek to register some form of  
14 an inhibition on the folio based upon a claim that his client had an interest  
11:21:09 15 in the property and that by registering these priority searches, it would  
16 effectively take the file out of circulation and prevent that happening?
- 17 A. Well certainly that would be the effect of doing that. I can't recollect  
18 having that thought process at that time.
- 19 Q. 42 Uh-huh.
- 11:21:29 20 A. And I did consider that when I was looking at, thinking about what might have  
21 been the reason for this. But I can't think of anything occurring around this  
22 time that would have triggered it as a thought process for me.
- 23 Q. 43 We know that there was nothing to indicate that Mr. Smyth had simply gone away;  
24 isn't that right?
- 11:21:49 25 A. No, there's nothing to indicate that he had simply gone away. I don't think  
26 there was anything to recollect at that stage that he had reappeared again or  
27 might reappear.
- 28 Q. 44 Yes. Until such time as Mr. Tiernan's interest was registered as the owner of  
29 the land. The registered owner was Vino Properties; isn't that right?
- 11:22:10 30 A. Yes, that's right.

- 11:22:11 1 Q. 45 And that was an entity which was out of this jurisdiction and not immediately  
2 amenable to a writ unless the defendant had nominated a solicitor within the  
3 jurisdiction to accept service; isn't that right?
- 4 A. Yes, there's some service.
- 11:22:28 5 Q. 46 All right. So that as soon as Mr. Tiernan's Irish company registered its  
6 interest it might trigger litigation and freezing orders and matters of that  
7 nature if Mr. Smyth was pursuing actively a claim; isn't that so?
- 8 A. Well if he was pursuing actively a claim I don't know that the registration of  
9 Mr. Tiernan's interest would make any difference, other than the transaction  
10 would have completed at that point in time. This is quite some time before  
11 the completion so --
- 12 Q. 47 Well what the folio would show, I take it, as of that time, was, firstly, it  
13 would identify Mr. Miley's office with Vino publicly; isn't that right?
- 14 A. Yes.
- 11:23:21 15 Q. 48 A matter which otherwise --
- 16 A. For the registration details.
- 17 Q. 49 Yes. So that that would make Mr. Miley's office a likely, perhaps, or an  
18 identifiable venue for service of proceedings if proceedings were to be  
19 launched; isn't that correct?
- 11:23:36 20 A. Yes it could identify it, yes.
- 21 Q. 50 And clearly if Mr. Miley was in funds, to the extent of any substantial deposit  
22 or anything of that nature, it might be possible to attach those funds in court  
23 proceedings in some way; isn't that right?
- 24 A. Yes, after completion.
- 11:23:59 25 Q. 51 Do you remember when it came to the closing of the contract whether or not you  
26 had addressed your mind specifically to the threat that perhaps Mr. Smyth might  
27 be waiting in the wings to seize in some way if he could the funds which were  
28 being transferred from Vino to -- sorry, from the purchaser to Vino? From  
29 Tiernan to Vino?
- 11:24:43 30 A. I don't have an express recollection of it. But I'm sure I would have been

11:24:43 1 conscious of the possibility that something might happen.

2 Q. 52 Yes. I mean, I take it in the normal course of events where one has an arm's  
3 length transaction and there is a vendor and a purchaser, a closing date is  
4 fixed at which the vendor's solicitors, the purchaser's solicitors meet  
11:24:58 5 together and they exchange the documentation between them. The vendor parts  
6 with the title documents. The purchaser parts with the money. But neither  
7 of them does one in advance of the other doing it; isn't that so?

8 A. No, that is usually the two things happen contemporaneously, yeah.

9 Q. 53 Because --

11:25:18 10 A. It would be unusual -- it wouldn't be that unusual for the documents to be  
11 exchanged before the money is passed. It certainly would be unusual for the  
12 money to be passed before the documents are. Quite often you complete and  
13 provide the documents. They are held in escrow prior subject to the funds  
14 being advanced.

11:25:42 15 Q. 54 We'll see that there seems to be a variation, certainly a deviation perhaps  
16 from that pattern in this particular instance. We see at page 2288 that on  
17 the 10th of June 1994, which was the intended closing date for the 1992  
18 contract between Kylewood and Vino, a letter was sent from Channel Islands and  
19 International Law Trust Company Limited, that's Mr. Morgan, to the manager of  
11:26:17 20 the Allied Irish Bank in Dublin.

21

22 In which he states: "We anticipate that substantial funds, 1.8 to 2 million  
23 pounds, will be received into the above account on or about Monday the 13th of  
24 June 1994 either by telegraphic transfer from Finbar Cahill & Co. Solicitors or  
11:26:44 25 Kylewood Construction Limited or Tiernan Home Builders Limited, or will be paid  
26 in personally by Mr. Nicholas St. Clair Morgan, a representative of the  
27 company.

28

29 We should be grateful if on receipt of the above funds you would arrange to  
11:26:59 30 urgently clear the funds and then immediately telegraphically transfer the

11:27:04 1 entire balance standing to Barclays Bank Plc, 6-8 High Street, Saint Peter  
2 Port, Guernsey to the account 207238 by one Vino Properties Limited, sort code  
3 etc.  
4

11:27:16 5 Once the account balance has been transferred please arrange to close the above  
6 account and forward us closing bank statements."  
7  
8 So this envisaged a situation where the funds coming into Vino would not be  
9 coming in through their own solicitors, Miley & Miley; isn't that so?

11:27:38 10 A. Yes, that's correct.

11 Q. 55 And the consequence of that being, obviously, that Mr. Miley would not receive  
12 the funds from Finbar Cahill & Co, the purchaser's solicitors, but that the  
13 purchaser's solicitors would pay the money in directly, that was one option, or  
14 Mr. Morgan would pay it in directly, or it would be paid in by Mr. Tiernan or  
15 his companies; isn't that so?

11:28:01 16 A. I see the letter. I mean, I wasn't involved in this letter to Mr. Morgan,  
17 generating this letter to deal with these various possibilities.

18 Q. 56 Sure. Could I suggest that he wouldn't have taken it upon himself to deviate  
19 from what the normal practice of closing contracts in Ireland would have been,  
20 particularly when there was an Irish solicitor on record Mr. Miley and Miley,  
21 unless he had received the specific instruction from the ultimate owners or  
22 ultimate economic owners, whichever you want to call them, that this course  
23 should be followed and if that is so, I suggest that that instruction would  
24 have come from you?

11:28:37 25 A. I know that the intention at completion was that Mr. Miley wouldn't receive  
26 funds. I think that originally came from Mr. Miley in terms of this being an  
27 overseas company and not wanting to receive the funds and being in an agency  
28 position vis-a-vis the Revenue as far as his funds were concerned. So he  
29 would have moved on from that to Mr. Morgan. I can't recollect having a  
30 conversation with Mr. Morgan about it. But if it followed from that position

11:29:13 1 that Mr. Morgan would set out the various choices.

2 Q. 57 But equally, this could only be done with the consent of the purchaser's as

3 well, Mr. Cahill would have to be involved or Mr. Madden more particularly of

4 that office.

11:29:27 5 A. It would be a question presumably on completion, I've seen happen in quite a

6 number of completions even where there aren't offshore companies involved where

7 the funds are transferred directly from the purchasing solicitor to the vendor

8 company. What you have in those circumstances is that everyone is satisfied

9 at completion that all of the documentation has been provided and that's one of

11:29:53 10 the instructions. It's given then to the purchaser's solicitors.

11 Q. 58 We see at page 2368 that Mr. Morgan wrote, again on the 17th, to the bank as

12 follows:

13

14 "With reference to the receipt of funds into the above account, the funds are

11:30:14 15 expected to be credited to the account today either by telegraphic transfer

16 from Tiernan's or their bankers Lombard or it will be brought in by bankers

17 draft as per my letter to you dated the 10th.

18

19 Once the funds have been received it would be appreciated if you would fax

11:30:31 20 Stephen Miley of Miley & Miley to advise him that the funds have been received.

21 It would be appreciated if you would send a copy of the fax that you sent to

22 Stephen Miley to us.

23

24 Please ensure that the telegraphic transfer to Barclays Bank in Guernsey is

11:30:49 25 carried out as soon as possible."

26

27 Again, Mr. Miley then was going to learn of the fact that the monies had been

28 paid by means of this direct communication from the bank to him; isn't that so?

29 A. Yes. But he would presumably know that that was in train as a result of

11:31:08 30 having attended the completion.

- 11:31:09 1 Q. 59 And there was this urgency, apparently, to ensure that as soon as the money  
2 landed in the bank it would leave immediately for Guernsey; isn't that so?
- 3 A. Well the letters are certainly expressed in those terms. It may well be just  
4 Mr. Morgan's style to hurry the thing on. I don't remember -- I don't  
11:31:33 5 recollect a particular, you know, instant urgency to do it. Obviously, the  
6 background that was there of the difficulties that the threat that there might  
7 have been something, that may well have been a factor. But I don't  
8 specifically recollect it.
- 9 Q. 60 Do you remember at any point in time between 1991 in November when Mr. Smyth  
11:32:00 10 went into the bank and this date in June of 1994, that Mr. Lawlor came to you  
11 looking for money and saying that he wanted his share of the transaction or was  
12 it only after this closing now that we see at this date?
- 13 A. I don't recollect him coming beforehand, Mr. O'Neill. My recollection that he  
14 came after the closing.
- 11:32:24 15 Q. 61 Right. We learn that he came to Mr. Miley in his office on occasion and asked  
16 for his share and he was informed by Mr. Miley that Mr. Miley was dealing for  
17 the company, that he was not aware of any interests.
- 18 A. Yes.
- 19 Q. 62 Of Mr. Lawlor's. Was that followed up in any way by any direct contact in  
11:32:48 20 1994 between Mr. Lawlor and yourself looking for his share?
- 21 A. I think that it was, yes. That he either tried to contact me or actually did  
22 contact me in relation to it. I can't recollect whether he succeeded in  
23 having a face-to-face conversation with me about it. That he was looking for  
24 a share afterwards I was certainly aware of before any letters appeared.
- 11:33:26 25 Q. 63 Right.
- 26 A. In relation to it.
- 27 Q. 64 And in making that approach to you did he look for a specific amount or for a  
28 percentage or what was?
- 29 A. I don't recollect in terms of meeting with him what he was looking for at that  
11:33:43 30 stage. The figure that was subsequently looked for was 25%. Now, whether he

11:33:51 1 said that to me in the telephone call or a face-to-face meeting before that  
2 sort of emerged, is there later on, I can't recollect.

3 Q. 65 I see. We'll just move through the finances.

4  
11:34:08 5 We'll see that at page 2370 the bank informed the representatives of Mr. Morgan  
6 on the 17th of June "that they had received cheques totalling 2,537,290 pounds  
7 Irish. These are now being cleared. Regarding your letter. Do you want us  
8 to transfer Irish pounds or the sterling equivalent to you at Barclays Bank at  
9 High Street?"

11:34:36 10  
11 At page 2373 on the 20th of June there's a response. There's a further letter  
12 to Miss Waller, the director of Vino Properties from Mr. Kearns:  
13 "I refer to your letter of the 10th under the above caption. I confirm that  
14 we have received 2,537,290 pounds on the 17th of June. These funds have now  
11:35:03 15 been cleared. As instructed we are transferring them together with the  
16 existing balance and interest accrued standing to the credit of Vino Properties  
17 Limited to Barclays Bank in Guernsey. These funds have been converted to  
18 sterling as confirmed by Julie Rio of your office. The sterling equivalent of  
19 2,483,810.22, less bank charges of 40 converted at a rate of. 797892.

11:35:34 20  
21 A closing statement will be forwarded to you over the next couple of days."

22  
23 So if we look to page 2385 we'll see what the closing statement of the bank was  
24 in relation to the funds of Vino Properties.

11:35:53 25  
26 In February 1994 you'll see that there was 105,419 pounds as a balance to that  
27 account. And I think that that is represented by the net monies from the  
28 Ricciland contract; isn't that so?

29 A. Okay.

11:36:14 30 Q. 66 And of that apparently on the 10th there was a transfer of 30,040 pounds,

11:36:22 1 leaving a balance of 75,000. Have you any recollection of where that money  
2 went in February?

3 A. No, I haven't. I mean, I have no recollection of that at all.

4 Q. 67 And we'll see that in April, whatever account the 75 was in, came out and it  
11:36:42 5 went to Shelves, I'm not sure if it went to a draft or whatever? But it left  
6 the account in April; you don't know where that went, do you?

7 A. I don't.

8 Q. 68 So that as of the 20th we see that the lodgement in of 2,537,290. And the  
9 withdrawal then to Guernsey of 2,537,334, which may account for some interest  
11:37:10 10 which is there, I'm into the sure.

11 A. Yes.

12 Q. 69 But that is the sum that left Ireland and represented, from an Irish  
13 perspective certainly, the proceeds of the sale of the Coolamber lands; isn't  
14 that so?

11:37:23 15 A. Yes.

16 Q. 70 And from that date, the 20th of June, they would have found themselves in an  
17 account which had been nominated by the economic owners of the property,  
18 presumably yourself and Mr. Kennedy. And they would have been in that account;  
19 isn't that right?

11:37:44 20 A. Well they would have -- again, I don't recollect nominating an account in a  
21 formal sense. But the funds went into the control of David Morgan's  
22 organisation.

23 Q. 71 Yeah. We take it that that account in Barclays Bank in Guernsey was a client  
24 account of David Morgan's rather than an account of Vino's specifically opened  
11:38:08 25 by Vino to receive these funds?

26 A. I just don't know. I just don't have the know. I mean, I don't remember  
27 ever seeing any paperwork in relation to whether it was a client account or a  
28 company account.

29 Q. 72 And did you have any discussion at all with Mr. Morgan then as to what was to  
11:38:25 30 happen to these funds when they left Ireland? Did he give you a programme as

11:38:33 1 to where the funds would go, what he intended to do with them on your behalf or  
2 on behalf of yourself and Mr. Kennedy?

3 A. I don't recollect having a discussion with him about that. I expect that he  
4 would simply have taken the funds, put them on some form of deposit on some  
11:38:52 5 client account pending the disbursement of the funds.

6 Q. 73 Yes. But I would expect that in order to do that he'd have to know whether you  
7 had immediate plans for the funds yourselves, whether you wanted them to be  
8 invested in shares or otherwise, whether you wanted them to go on long-term  
9 deposit, whether you had another contract which you wanted to complete using  
11:39:17 10 those funds. You would have to communicate I suggest with the ultimate  
11 beneficiaries of the funds?

12 A. I don't recollect any discussions about the use of the funds. Again, my  
13 surmise in relation to it, is that he would have been looking just at the  
14 division of the funds into the structures. And the division of the funds  
11:39:43 15 between the structures and paying off Barclays Bank and paying his own fees.

16 Q. 74 In relation to the Barclays Bank monies, I think you are somewhat unclear as to  
17 exactly what the nature of that transaction was. Whilst it would appear to be  
18 registered as a charge on the folio. The underlying structure or purpose of  
19 that is something which you are not clear on; is that right?

11:40:12 20 A. Yes. I mean, I wasn't privy to the Barclays transaction.

21 Q. 75 Yes. It was as far as you understand something which was structured by  
22 Mr. Morgan; isn't that so?

23 A. Yes, he -- yes.

24 Q. 76 He arranged it with Barclays as far as you're aware?

11:40:31 25 A. As far as I'm aware, yes.

26 Q. 77 But you're not sure why he arranged it in that particular way or whether it was  
27 to achieve a particular purpose that he did so?

28 A. As I say, I wasn't involved in it. And so I'm not sure whether the money was  
29 borrowed from Barclays and security given to them. I just don't know the  
11:40:54 30 arrangements.

- 11:40:54 1 Q. 78 Right. I mean, we'll see that Mr. Morgan is capable of generating documents  
2 which translate assets as liabilities in the hands of certain individuals;  
3 isn't that right? The loan documentation for example that we see generated  
4 between himself and Mr. Lawlor, for example, appears to show a liability on the  
11:41:16 5 lands of Mr. Lawlor, which is in fact an asset of his; isn't that so?
- 6 A. Well I would take issue in relation to that. I don't know what the Lawlor  
7 situation is in relation to it. But certainly in terms of funds going out as  
8 loans, they are loans.  
9 The person has the use of the funds or the entity has the use of the funds.  
11:41:39 10 So that's a positive side of receiving them. But it doesn't change the nature  
11 of the advance.
- 12 Q. 79 One can call it a legal loan, in other words. But what the reality of that is  
13 depends upon the intentions of the parties ever to repay it, amongst other  
14 matters.
- 11:41:58 15 A. It was clearly if the loan is given with no intention of ever repaying it, then  
16 it's something other than a loan.
- 17 Q. 80 Yes. Now, the documentation obviously indicates that the monies left Ireland  
18 but the next documentation which we can see, which has been discovered by you,  
19 is a document six months later which is a document which emanates not from  
11:42:31 20 Barclays Bank in Guernsey, but rather from a bank in Liechtenstein; isn't that  
21 so?
- 22 A. Yes.
- 23 Q. 81 And in that six-month period obviously the monies, the 2.483 million pounds  
24 sterling, is effectively economically owned by yourself and Mr. Kennedy; isn't  
11:42:52 25 that right?
- 26 A. In economic terms, yes. In legal beneficial terms, no.
- 27 Q. 82 And do you know where that money was in that six-month period?
- 28 A. No, I do not.
- 29 Q. 83 And have you ever asked Mr. Morgan as to where and what he did with your money  
11:43:10 30 in that period?

- 11:43:13 1 A. No, I have no recollection of asking him about that. As I say, I just assumed  
2 that the funds were placed in a client account for the trusts and were held  
3 under those trust structures during that time period.
- 4 Q. 84 Well, I mean, when you were the subject of an order of discovery which was made  
11:43:42 5 against you in relation to the Coolamber land transaction and in the knowledge  
6 that the funds had left and had gone to this account, is there any reason why  
7 you didn't specifically follow this up with Mr. Morgan to establish where  
8 exactly the funds and to what purpose they were used and what disbursements  
9 were made from those funds and at whose request and to whom they were paid?
- 11:44:11 10 A. Well I believe I complied with the order that was directed to me. As I said  
11 the other day, I took advice in relation to the extent of the order and scope.  
12 I wrote to Mr. Morgan in terms of the content of the order. Remember that  
13 this thing is all under a trust structure. And I was informed by him that I  
14 had no right to documentation. That's the legal position in relation to it.
- 11:44:57 15 So documentation that I had, as I say, I have discovered the documentation that  
16 I had in relation to it where I have no legal right to obtain documentation,  
17 it's not part of the order.
- 18 Q. 85 The documentation you have discovered doesn't include any letter from you to  
19 Mr. Morgan asking him to provide you with these details. I think you're aware  
11:45:19 20 of that.
- 21 A. No. The discovery I don't think does include such a letter, yes.
- 22 Q. 86 Right. Now, nor does it contain any response from Mr. Morgan in writing to  
23 your request though you tell us that you wrote to him and do I understand it  
24 correctly that he replied to you in writing?
- 11:45:40 25 A. Yes, he did.
- 26 Q. 87 And you have termed that this is not matter which should be discovered to the  
27 Tribunal. Isn't that so?
- 28 A. In terms of those letters.
- 29 Q. 88 Yes.
- 11:45:49 30 A. Those, again, I believe again on advice that those letters are not letters that

- 11:45:55 1 fall within the discovery order.
- 2 Q. 89 Well is that on the basis, Mr. Caldwell, of relevance, or on the basis they're
- 3 not relevant or is it on the basis of privilege in some way, or on what basis
- 4 do you say that your request to him for this information and his rejoinder to
- 11:46:18 5 that request, that they are not discoverable. On what basis do you say that
- 6 that is so?
- 7 A. As I say, I took advice in relation to the -- those letters and that exchange
- 8 of correspondence, including I think other correspondence with other parties
- 9 and the information gathering exercise for purposes of complying with an order
- 11:46:43 10 for discovery, it's my understanding that that doesn't fall within the order
- 11 for discovery itself. The order is directed at the topic its directed at.
- 12 Q. 90 Yes.
- 13 A. But you're -- under the process that you undergo to gather documents it doesn't
- 14 fall within the order itself.
- 11:47:09 15 Q. 91 But what is the basis of that? I mean, is this -- I mean, you're a lawyer.
- 16 Is it a legal principle that was propounded that because documentation is
- 17 generated in relation to a matter in which ultimately the party who you are
- 18 seeking information from feels that they are not under an obligation to provide
- 19 you with information, that that letter seeking that information and the letter
- 11:47:36 20 in response are in some way not to be discovered?
- 21 I fail to understand the principle upon which. I understand of course that
- 22 you can make the point that if the individual to whom you write indicates to
- 23 you that the documentation which you are seeking is documentation which you
- 24 don't have the power to get, that stands, that speaks for itself?
- 11:48:01 25 A. Yes.
- 26 Q. 92 One then challenges that decision or otherwise. But to decline to discover
- 27 your initial request and its response, I'm just wondering what the basis of
- 28 that non-disclosure of that documentation?
- 29 A. Well, again, I would have thought that that's based on the inquiry itself is
- 11:48:25 30 not an inquiry which relates to the land. I mean -- It relates to what you're

- 11:48:32 1 inquiring of the individual is.
- 2 Q. 93 Yes.
- 3 A. This is the order. And do you have -- am I entitled to documentation arising,
- 4 that falls within this order. Are you in possession of documentation that
- 11:48:50 5 falls within this order.
- 6 Q. 94 Yes.
- 7 A. And am I a part -- are the various definitions that are contained within the
- 8 order definition that are applicable to the circumstances that you know. And
- 9 the response to that dealt with the various questions that arose. It doesn't,
- 11:49:11 10 to me, seem to be a document that falls within the order itself. I mean, it's
- 11 a peripheral document. It's the same as we writing to Jim Synnott asking him
- 12 for his file in relation to the discovery process. It's a mechanistic letter,
- 13 as opposed to a letter which goes to the substantive letter.
- 14 Q. 95 But the substance of the order would require you to disclose all documentation
- 11:49:45 15 generated in relation to the land transaction. That would, obviously, include
- 16 not only the funds which were used to acquire the land but also the funds that
- 17 were realised upon its disposition and how those funds were applied, I suggest.
- 18 I mean, we're not making a materiality point here are we?
- 19 A. Well I mean -- dealing with this order of discovery was a complex issue. And
- 11:50:14 20 we spent a lot of time in terms of looking at what the order covered and in
- 21 trying to comply with the Order. Where the line is drawn and interpret the
- 22 order may be something that we may disagree about in relation to it. But we
- 23 interpret -- it was interpreted in a particular way based on our understanding
- 24 of the language in the order.
- 11:50:51 25 Without sitting down with the order, with the affidavit, with all of the
- 26 documents that were dealt with in relation to it, it's difficult to deal with
- 27 it in the abstract.
- 28 Q. 96 Well can I look at it from this perspective, firstly. Is it the case that
- 29 Mr. Morgan has refused to give you this documentation or is it the case that
- 11:51:17 30 Mr. Morgan has advised you that he is under no obligation to provide it to you

11:51:25 1 and therefore leave it at your election as to whether you are going to pursue  
2 your claim to receive this information from him. Do you understand the  
3 distinction I'm making?  
4 A. If you could make it again. You had some noise in the background.

11:51:41 5 Q. 97 I'm asking you whether or not it's the case that Mr. Morgan has refused to  
6 provide you with this information that you requested. Or whether it is the  
7 case that Mr. Morgan has informed you that as far as he's concerned, he did  
8 does not have a legal obligation to provide it to you. And therefore, he will  
9 await your response to that information?

11:52:04 10 A. I think what he said in it is that I wasn't entitled to receive documentation.

11 Q. 98 Yes. Does that mean that you weren't entitled to compel him to provide it?  
12 A. Yes.

13 Q. 99 But did you ask him whether he would voluntarily provide it?  
14 A. I don't believe that I have any legal right to compel him to provide  
11:52:28 15 documentation.

16 Q. 100 Irrespective of whether it is there is a legal obligation upon him to do it,  
17 you believe that you shouldn't articulate a wish for him to provide this  
18 documentation in the absence of there being a corresponding legal obligation on  
19 him to provide it; is that the position?

11:52:53 20 A. I wrote to him in terms of seeking his assistance. I wrote to him in terms of  
21 him and providing documentation to me. When I've had conversations with him,  
22 the conversations have been in the context of seeking documentation from him to  
23 be of assistance to the Tribunal. He responded against that background. And  
24 I took his response against that background.

11:53:25 25 Q. 101 Well is the response to say that the documentation is not documentation which  
26 he is going to provide to you because you don't have a legal right to have the  
27 document; is that the response?  
28 A. He's saying that I'm not entitled to the documentation.

29 Q. 102 Right. But as we'll see, Mr. Caldwell, he has provided you with  
11:53:48 30 documentation; isn't that so?

- 11:53:51 1 A. Well -- what documentation, sorry.
- 2 Q. 103 If we look to page 2422. This is a document which was generated in a bank  
3 called Verwaltungs Und Privat Bank. Mercifully, it's also called VP Bank and  
4 we'll refer to it as VP Bank. And there's a VP Bank statement of the 20th of  
11:54:16 5 December 1994 on screen. You see that. And the client there is Longwater  
6 Investments Limited, Bahamas International Trust Building, Bank Lane, PO Box  
7 N8188, Nassau, in the Bahamas; isn't that so?
- 8 A. Yes. That's right.
- 9
- 11:54:36 10 CHAIRMAN: We haven't got it on screen.
- 11
- 12 Q. 104 MR. O'NEILL: This is a document which is a debit advice on that account on  
13 that particular date. And it shows in the denominations of deutsche marks  
14 2,17,000 deutsche marks as being debited to a current account in that name on  
11:55:08 15 that date; isn't that so?
- 16 A. I see that, yes.
- 17 Q. 105 Did you get this document from Mr. Morgan?
- 18 A. I don't believe so, no.
- 19 Q. 106 We'll see Mr. Morgan's signature down there as the withdrawer's signature.  
11:55:24 20 He's a distinctive signature there.
- 21 A. I see it there.
- 22 Q. 107 And M St. Clair Morgan beside it. How did you get it if it wasn't from that  
23 source?
- 24 A. I think it came from Mr. Frank Scott.
- 11:55:38 25 Q. 108 From Mr. Frank Scott?
- 26 A. Yes.
- 27 Q. 109 And how did Mr. Scott get it?
- 28 A. It was in the papers that he had. I presume that he got it from Mr. Morgan at  
29 some stage in the past.
- 11:55:52 30 Q. 110 And why would Mr. Morgan be giving the documents of Longwater Investments

- 11:55:57 1 Limited to your knowledge, if you do know, to Mr. Frank Scott?
- 2 A. I don't know.
- 3 Q. 111 This document you believe comes from Mr. Frank Scott's file then; does it?
- 4 A. I think so, yes.
- 11:56:14 5 Q. 112 If we run just through the figures first and we can come back to the status and  
6 origin and relationship of yourself and Mr. Scott at the conclusion. We trace  
7 the payment here.  
8 You will know I think from following the Tribunal's affairs and perhaps from  
9 other sources that Longwater Investments Limited is the company which is  
11:56:39 10 indicated as being the lender of funds to Mr. Liam Lawlor; isn't that right?
- 11 A. Yes, it was.
- 12 Q. 113 And on foot of those loan agreements Mr. Lawlor indicated to the Tribunal and  
13 indeed it was indicated to him and to his solicitors by Mr. Morgan's associated  
14 law firm in Gibraltar, Andrew J Haynes, that Mr. Lawlor was indebted to  
11:57:08 15 Longwater Investments Limited for over 1.1 million pounds sterling; isn't that  
16 right?
- 17 A. I saw that, yes.
- 18 Q. 114 And firstly, if we look at this document. What it tells us is that there is a  
19 current at in Liechtenstein in VP Bank which had a sum in that current account  
11:57:25 20 which was in excess of or at least equalled 2,17,000 deutsche marks as of that  
21 date, the 20th of December 1994?
- 22 A. Yes.
- 23 Q. 115 Isn't that right? That sum equates to 834,574 pounds Irish and it equates to  
24 approximately 825,000 pounds sterling.
- 11:57:54 25 A. I see, yes.
- 26 Q. 116 Do you understand that these funds represented part of the proceeds of the  
27 balance of monies which had left the Allied Irish Banks and had gone to  
28 Barclays Bank in Guernsey six months previously?
- 29 A. Yes, I do, yes.
- 11:58:20 30 Q. 117 And do you believe that this fund represented part of your 50% of the net

11:58:27 1 proceeds or part of Mr. Kennedy's 50% or anybody else's 50%?

2 A. Well I'd have thought part of -- not part of but my economic 50%, yes.

3 Q. 118 Right. And why would you have thought that, Mr. Caldwell, as opposed to it

4 being any other source?

11:58:57 5 A. Well when it's in Longwater.

6 Q. 119 Right.

7 A. And I know from conversations I had that Longwater was the company through

8 which the Morgans placed the funds that came in, went into Vino, find their way

9 into Longwater.

11:59:10 10 Q. 120 And how did they place the funds in there, do you know?

11 A. I don't know. In terms of again of being involved in the documentation that's

12 on this, I wasn't involved in that. That was all being done under the trust

13 by the trustees.

14 Q. 121 But who created Longwater Investments Limited to your knowledge?

11:59:31 15 A. I have no idea.

16 Q. 122 Well is it intended to reflect your 50% interest is to go into that company?

17 A. It's, yes, the funds went into that company.

18 Q. 123 Right.

19 A. As I understand it. I don't -- in terms of the ownership of Longwater, I

11:59:49 20 don't know who the owners of Longwater are.

21 Q. 124 But --

22 A. Although I suspect that it's a David Morgan Whitehead company, family company.

23 Q. 125 But, I mean, it has been the subject of discussion between yourself and

24 Mr. Morgan over time, and particularly could I suggest that it was raised at

12:00:07 25 the meeting which you had in London with him; isn't that right?

26 A. Yes, it was.

27 Q. 126 So insofar as there was any possible ambiguity, and I'm not suggesting there

28 was. I suggest that it is clear to you what role Longwater Investments

29 Limited plays and how that is connected with your share of the Coolamber lands;

12:00:30 30 isn't that so?

- 12:00:31 1 A. It's part of that structure that they had between the trust, Vino and  
2 Longwater.
- 3 Q. 127 Are you saying that you don't know exactly what that structure is? If I'm  
4 wrong in that could you just explain to me what you understand the structure to  
12:00:52 5 be from the point, let's say, of Vino Properties Limited is the owner of the  
6 lands; isn't that so? Registered owner of the lands?
- 7 A. Yes, that's right.
- 8 Q. 128 You and Mr. Kennedy, you say, are the economic beneficiaries of their ownership  
9 through a structure which was set up, you believe, by Mr. Nicholas Morgan at  
10 your behest; isn't that right?
- 11 A. Well the structure was set up as a David Morgan family trust. My  
12 understanding is that the David Morgan family trust owned insofar as I was  
13 concerned 50% of Vino. That the transaction -- Vino owned the land. The  
14 transaction occurred, the funds were remitted either to Vino or to a client  
12:01:12 15 account for Vino. A loan was advanced to Longwater. Longwater is somewhere  
16 in the David Morgan staple. I think it may be under the David Morgan Trust,  
17 I'm not sure of that. The funds were then paid out from Longwater into  
18 Drebbin. There was a liquidation of either before or after that, I'm --  
19 again, I don't have any recollection of a date. Vino was liquidated and the  
12:02:31 20 benefit of the loan was transferred to another David Morgan Trust. That's my  
21 summary of the situation.
- 22 Q. 129 I see. So that this debit from VP Bank represents a portion only of the  
23 Longwater funds; isn't that right? Insofar as you would understand it.  
24 Because -- or maybe it's the total, I'm not sure?
- 12:03:06 25 A. On the calculation done of 800,000 odd, it's not the total of the Vino's money,  
26 so it's a portion of it.
- 27 Q. 130 And how much of the balance was left do you know in this account or do you know  
28 whether it was divided amongst other Liechtenstein accounts?
- 29 A. I'm not clear as to whether the rest of the funds went into Longwater or not or  
12:03:35 30 went somewhere else. The only thing that I'm aware of is the part that went

- 12:03:46 1 through Longwater, which is this figure here.
- 2 Q. 131 Okay. So this sum here you believe doesn't represent the entire 50% interest
- 3 that you would be of economically interested in, but it represents a
- 4 substantial part of it and it was in the Longwater Investments account?
- 12:04:05 5 A. Well I think it represents the 50% when it's netted down. There was a payment
- 6 to, in terms of the financing of this, there were fees disbursed as well. And
- 7 the net amount was in the order of 800,000 pounds.
- 8 Q. 132 So it it possible that this sum which was 834,574 Irish that that represents
- 9 the net sum do you think?
- 12:04:34 10 A. Yes, I do.
- 11 Q. 133 Right. Which if one is taking it out of the VP Bank would effectively close
- 12 that account; is that right?
- 13 A. Taking it out of it, yes, yeah.
- 14 Q. 134 Do you know of any reason why it would be taken out of that account and
- 12:04:52 15 transferred to another Liechtenstein account?
- 16 A. From Longwater's account?
- 17 Q. 135 Yes.
- 18 A. I'm not aware of it, I can't think of the reason. Are you saying there's
- 19 another account other than this one?
- 12:05:07 20 Q. 136 Well the Landesbank account into which these proceeds go is another
- 21 Liechtenstein account?
- 22 A. Is that in the name of Longwater or in the name of Drebbin.
- 23 Q. 137 It's in the name of Drebbin. I think you've indicated that it went to
- 24 Longwater account in Landesbank. I don't see that account. I'm just
- 12:05:25 25 wondering why there would be a third account.
- 26 A. If I indicated in that I'm not sure that I would be correct in that. They may
- 27 have gone directly from this account into the Drebbin account.
- 28 Q. 138 That's what i would have thought. But just to refresh your memory on your
- 29 account to the Tribunal. It's at page 2630.
- 12:05:44 30

12:05:44 1 JUDGE KEYS: Mr. O'Neill, just before we go away from that document. Could  
2 you just leave it on screen for a moment  
3  
4 MR. O'NEILL: Yes.

12:05:53 5  
6 JUDGE KEYS: Mr. Caldwell, are you saying that if you had asked Mr. Morgan for  
7 that document, that legally he was entitled to refuse to give that document to  
8 you?  
9 A. Yes, Judge, he is.

12:06:00 10  
11 JUDGE KEYS: On what basis? It's your money gone into another account. You  
12 are the economic beneficiary. The hold it in trust. Surely they are  
13 accountable. You are entitled to say to anybody where your money goes to  
14 legally ask them to account to where the money went to, where is the  
12:06:20 15 documentation vouching for where it is?  
16 A. Well on the basis that it's a trust.  
17  
18 JUDGE KEYS: Yes.  
19 A. And the trust is holding -- has an investment in a company and so on. I have  
12:06:34 20 no -- even though I may have been the person who was the cause of the trust  
21 being established.  
22  
23 JUDGE KEYS: Or the economic beneficiary of the monies which has gone into the  
24 trust.  
12:06:44 25 A. I have no right to require the trustees to provide documentation to me.  
26  
27 JUDGE KEYS: Does anybody have a right to ask for this documentation referring  
28 that sum of money if that's the case?  
29 A. No one that I'm aware of in relation to it. I mean, the trustees are --  
12:07:03 30

12:07:03 1 JUDGE KEYS: That's ludicrous. You are saying that you can generate monies  
2 were you are the economic beneficial owner. That it goes to trustees and  
3 there's nobody in the wide world, nobody, can compel those trustees to account  
4 by documentation where the monies are. Is that what you're telling this

12:07:21 5 Tribunal?

6 A. The trustees are governed by the trustees.

7

8 JUDGE KEYS: Yes.

9 A. And they are governed by the rules that apply to trustees applying there.

12:07:35 10

11 JUDGE KEYS: But they are subject to law as well.

12 A. They are.

13

14 JUDGE KEYS: What is the law in Jersey relating to that? Are you saying that

12:07:40 15 the law in Jersey allows money to go into a trust and nobody in the wide world  
16 has any right to any documentation to establish where the monies are gone to or  
17 what they have been doing, let's say if they were left in the trust for the  
18 last year?

19 A. If you put it funds into a discretionary trust and you put funds into the  
12:08:02 20 discretionary trust, you, as the person who instigated that, had no rights to  
21 require the handing over of any documentation.

22

23 JUDGE KEYS: Does anybody have any right to seek documentation to as to what  
24 happens to these monies when they go into a trust?

12:08:21 25 A. The only person that may possibly have a right, and then it's qualified in  
26 circumstances, is a person who is named as a beneficiary of the trust. And  
27 they may have some rights to require some documentation.

28

29 JUDGE KEYS: Are you saying because nobody has been named as the beneficiary  
12:08:43 30 nobody -- sorry. When you say that if nobody is named I should say, as a

12:08:50 1 beneficiary, that means nobody has a right to the documentation; is that  
2 correct?

3 A. That's my understanding of it, yes.

4

12:08:56 5 JUDGE KEYS: But surely all funds are assets, whether personal or realty at  
6 all times during the course of its existence must have a beneficial owner. It  
7 has to.

8 A. No, Judge. Sorry.

9

12:09:10 10 JUDGE KEYS: You say with the exception of a discretionary trust.

11 A. The assets will be held effectively in limbo.

12

13 JUDGE KEYS: I see. Can you explain to me then, do you know what happens to  
14 your monies when they go into these trusts as to whether they just sit in a  
12:09:27 15 bank account for the benefit of somebody else or are there -- or are they  
16 invested, let's say, to your benefit in the sense that they are either put into  
17 stocks or shares or whatever happens to it. In other words, they are not  
18 sitting in an account and not earning interests?

19 A. The trustees have their obligations to you and to manage the assets of the  
12:09:50 20 trust in a prudent and reasonable fashion. So in terms of access to the use  
21 of the funds, they would leave them on deposit and do whatever they do with  
22 them, invest them in shares possibly.

23

24 JUDGE KEYS: Are you ever concerned with that, what's happening to your money  
12:10:07 25 or what's being done with it or whether it's actually generating money for you?  
26 Especially when you're talking about millions of deutsche marks?

27 A. Well in an instance, as I say in, an instance like this where you've placed the  
28 money in the trust, you've placed it in their trust.

29

12:10:24 30 JUDGE KEYS: Yes.

- 12:10:25 1 A. And they would behave responsibly with it. What happened in this instance is  
2 that they advanced those funds through loans to Longwater and ultimately  
3 through to Drebbin. And in those circumstances the funds then were onward  
4 invested again or used again. So there was a period in time when, as in all  
12:10:51 5 of these situations, where they are, as I say, under the control of the  
6 trustees and the trustees are the ones who have the knowledge in relation to  
7 it. I have no recollection of ever asking him during this time period, I mean,  
8 what do you do with the funds, where are the funds. I would have just left  
9 matters under the care of the trustees.
- 12:11:12 10  
11 JUDGE KEYS: Why do you think he refused to give the you the documentation?  
12 Leaving aside the legal side of it. Maybe he may be entitled to law as you say  
13 not to give the documentation. What was he to lose if had decided to  
14 cooperate with you, so that you could cooperate with the Tribunal by handing  
12:11:28 15 over this documentation. What damage does this cause anybody by having this  
16 documentation here before the Tribunal?  
17 A. In terms of this documentation it doesn't cause any damage to anyone, Judge.  
18 The bank statement is there. It's discovered.  
19
- 12:11:43 20 JUDGE KEYS: How come you didn't get that document from Mr. Morgan then?  
21 A. As I say, I wrote to him in relation to it.  
22
- 23 JUDGE KEYS: Yes but did you go into his office and say I am in difficulties  
24 here. I have a Tribunal over in the republic of Ireland looking into certain  
12:12:00 25 matters. And I have undertaken to cooperate fully. I cannot cooperate fully  
26 in their eyes without co-operation from you. Now, you have documentation  
27 relating to monies of mine in this trust. It's not damaging if it's released  
28 to me in any way. So would you please release it and let me bring it over to  
29 this country. Did you go in and say that to them Mr. Morgan?
- 12:12:24 30 A. I didn't say it in those words.

12:12:26 1

2 JUDGE KEYS: Isn't that the way to have done it? You see, I get the

3 impression that you are relying, and correct me if I'm wrong on this, entirely

4 on the law. So therefore, if Mr. Morgan can justifiably say to you within law

12:12:39 5 I'm not compelled to hand this documentation over, you're not going to ask him

6 to make an exception?

7 A. Well I've asked him to help in terms of providing documentation.

8

9 JUDGE KEYS: Did you ask him to make an exception?

12:12:52 10 A. He's taken the view he's had a taken in relation to it.

11

12 JUDGE KEYS: Did you ask him to make an exception?

13 A. No, I didn't.

14

12:13:00 15 JUDGE KEYS: No, I'm not surprised by that reply. Certainly I get the

16 impression, I don't want to be unfair to you Mr. Caldwell. I certainly get

17 the impression that you're dragging your feet in relation to this. That you

18 will rely on every legal loop hole if you want to call it that, to avoid having

19 to produce documentation. And your justification of doing that is the person

12:13:21 20 I'm looking for in law is not compelled to hand it over. You call that

21 co-operation?

22 A. Judge, I don't think that's fair to me.

23

24 JUDGE KEYS: Well then you correct me, point out to me where I have been

12:13:33 25 unfair?

26 A. I have gone to enormous lengths to get documentation to the Tribunal.

27

28 JUDGE KEYS: I have no doubt you have done that.

29 A. I have provided thousands and thousands of pages of documents and spent hours

12:13:43 30 and days and weeks in getting the documentation.

12:13:47 1  
2 JUDGE KEYS: What about the important documentation, where the monies are,  
3 paper trail is, where it all goes to. Where is all of that documentation?  
4 There's plenty of other documentation. What I can't understand is that the  
12:13:57 5 vital documentation which leads to the paper trail just doesn't exist. Or if  
6 it does exist, if it does exist, it's in the possession of somebody in another  
7 jurisdiction who says in law I'm not compelled to hand it over. You have  
8 failed to ask them to please make an exception because it doesn't damage my  
9 reputation, it doesn't damage my financial situation in any way.

12:14:21 10 A. The vital documentation I believe is here in any event, despite his actions in  
11 relation to it. The existence this Longwater document that we're looking at  
12 is a vital piece of paper is there. The Drebbin documentation is vital  
13 documentation for the Tribunal to have to understand what happened in relation  
14 to it. That's there in relation to it.

12:14:42 15  
16 The piece of documentation which isn't there is the piece of documentation  
17 between the transfer of the funds into the Vino account and these funds going  
18 in here. But in terms of the paper trail that the Tribunal is interested in  
19 in relation to it, in terms of tracking the funds that passed through me to  
12:15:09 20 Mr. Lawlor and those, all of that documentation is here. So as to -- and the  
21 Tribunal can follow that documentation quite clearly from what's in the brief.  
22  
23 MR. O'NEILL: Could I suggest --  
24

12:15:29 25 JUDGE KEYS: I still have to be convinced. I'm sorry, Mr. Caldwell.  
26  
27 MR. O'NEILL: On that point, could I suggest to you that there isn't a single  
28 document in your discovery which indicates ownership of the assets. As much  
29 as there is, is the existence of various corporate entities, such as this one  
12:15:47 30 we see here, Longwater Investments Limited. Which are thrown up without

12:15:53 1 explanation. There is no -- all of this has been conceived as a master plan.  
2 But there's no key to the master plan though that is undoubtedly in the  
3 possession of Mr. Morgan who, with yourself or at your instruction, set up the  
4 various corporate entities in the various jurisdictions for specific purposes.  
12:16:12 5 But there is no indication behind any of this documentation as to whether you  
6 personally own 1% of the entity, whether Mr. Kennedy appears owner of anything  
7 at all, whether Mr. Lawlor appears as the owner of anything and if so to what  
8 extent. None of that documentation is available. What the Tribunal has been  
9 provided with is over 2,500 pages of documentation in relation to Coolamber  
12:16:39 10 from which it is not apparent that any one of the three of you, as individuals  
11 have any ownership interest at all in the lands. And if you do, the extent to  
12 which you own them and if you do own them in concert the terms upon which you  
13 own them and what your respective rights and duties are; do you understand what  
14 I'm putting to you?

12:17:02 15 A. Yes, I do.

16 Q. 139 Firstly, would you agree with me that that is the case?

17 A. Well in terms of Mr. Kennedy and Mr. Lawlor, that's not something that I have  
18 documentation or had documentation or can deal with other than to give the  
19 Tribunal my evidence in relation to what my understanding of the position is  
12:17:21 20 for those people in this transaction at the various times that it it occurred.

21  
22 In relation to myself, I've explained to the Tribunal that the ownership in  
23 terms of the economic ownership is one where I believe that I've economically a  
24 50% interest in relation to it. In relation to the structure that's there,  
12:17:50 25 structure that in this instance is a structure which was a trust and underlying  
26 companies under that -- I've explained that to the Tribunal as well. In terms  
27 of those documents, I have -- I'm not the legal -- I'm not the person entitled  
28 to have those documents. I requested the documents and the documents weren't  
29 provide --

12:18:18 30

12:18:18 1 JUDGE FAHERTY: Mr. Caldwell. I beg your pardon. Just on that on your  
2 point on your request.  
3 On the 16th of January 2002 whether Mr. Lawlor met Mr. Nicholas Morgan in  
4 London. And we have what I think is Mr. Nicholas Morgan's note of what  
12:18:34 5 transpired at that meeting. At some paragraph in that he states that he then  
6 eventually agreed with Mr. Lawlor that the funds that were attributed to a  
7 Longwater loan after a perusal of documentation that he, Nicholas Morgan, could  
8 find no evidence of a loan. And that he agreed with Mr. Lawlor that in fact  
9 the funds were those of Mr. Lawlor and Miss Hazel Lawlor. You may have read  
10 that document?  
11 A. Yes.  
12  
13 JUDGE FAHERTY: Now, you have said that the funds in this account, which is in  
14 front of us, may represent what you think is your 50% economic benefit.  
12:19:26 15 A. Yes.  
16  
17 JUDGE FAHERTY: You attribute that deutsche mark to something like 800  
18 sterling or 834 Irish.  
19 A. Yes.  
12:19:26 20  
21 JUDGE FAHERTY: Yes. Now, it seems to me that if Mr. Lawlor could secure  
22 that concession from Mr. Nicholas Morgan in 2002 that it's equally open to you  
23 to secure that concession from Mr. Nicholas Morgan. And that if the funds in  
24 this account, as you say, are believed to be your 50% economic benefit and  
12:19:51 25 Mr. Morgan were to concede that that's in fact your asset, that you could, you  
26 are entirely then at liberty to trace back from the moment those funds were  
27 created. Do you see where I'm coming from?  
28 A. I do, Judge. Whatever Mr. Lawlor's structural arrangements were with  
29 Mr. Morgan that enabled him to get access to information, the structural --  
12:20:16 30 that I had with Mr. Morgan was as I have described it. And --

12:20:23 1  
2 JUDGE FAHERTY: Well I have read Mr. Nicholas Morgan's document. And he  
3 appeared to start from a premise and which in fact now I'm subject to  
4 correction from Mr. O'Neill and possibly yourself, Mr. Caldwell, on this.  
12:20:36 5 That he, Mr. Nicholas Morgan would appear to have started from the premise that  
6 in fact the monies that Mr. Lawlor were entitled to was in fact a loan given to  
7 Mr. Lawlor and so Mr. Morgan believed initially.  
8 A. Sorry.  
9  
12:20:49 10 JUDGE FAHERTY: That Mr. Morgan believed initially that it was loan monies  
11 that Mr. Lawlor got.  
12 A. Yes.  
13  
14 JUDGE FAHERTY: So it seems to me no different his understanding of  
12:20:58 15 Mr. Lawlor's relationship, if you like, was no different from what you describe  
16 as you and Mr. Nicholas Morgan's relationship. And I'm simply putting it to  
17 you that if Mr. Lawlor seemed to get a concession in January 2002 that  
18 ultimately the funds that he was deemed to be -- owed to Longwater were in fact  
19 his own monies. That you equally, if you were to sit down with Mr. Morgan,  
12:21:27 20 could get the same concession and we could all then trace exactly right back to  
21 the date in June when the monies were handed over from Finbar Cahill to,  
22 wherever they went, to the AIB to be transmitted to Guernsey and ultimately  
23 down to Longwater investments. Then we could actually get a good trail on the  
24 monies.  
12:21:50 25  
26 And it seems to me, and I would agree with Judge Keys, that perhaps if you were  
27 to ask Mr. Morgan to grant you the same concession, that he seemed to grant to  
28 Mr. Lawlor, on what appears certainly on paper and what you say, a very similar  
29 factual evidence.  
12:22:10 30 A. Well I don't know what Mr. Lawlor's structure arrangements or relationship was

12:22:16 1 in relation to Mr. Morgan. But the structure that was there in relation to  
2 myself was the one at the discretion re trust in relation to it. So the legal  
3 right to get this documentation does not exist, Judge.

4  
12:22:32 5 JUDGE FAHERTY: But you would agree, Mr. Caldwell, I have to put it to you  
6 that Mr. Nicholas Morgan started off in the same premise vis-a-vis Mr. Lawlor  
7 as far as I can recollect from the document that Mr. Morgan produced to the  
8 Tribunal.

9 A. Well it would be a matter for Mr. Morgan to decide on a grace and favour basis  
12:22:52 10 whether or not he would give any documentation which he wasn't legally obliged  
11 to give.

12  
13 JUDGE FAHERTY: Well are you prepared write to Mr. Morgan to ask him to review  
14 his files?

12:23:01 15 A. I could ask. I could write to him in those terms and see.

16  
17 JUDGE FAHERTY: As a matter of urgency I think, I believe that has to be done.

18 A. And see whether or not he'll step outside the legal constraints.

19  
12:23:14 20 JUDGE FAHERTY: Sorry to have interrupted you.

21  
22 CHAIRMAN: Just on that. One thing. Surely, you have been friendly with  
23 Mr. Morgan for years.

24 A. Yes. Well I've known him for quite a few years, yes.

12:23:29 25  
26 CHAIRMAN: And he has been looking after your affairs involving very  
27 substantial funds for you for years.

28 A. Yes, in this context, yes.

29  
12:23:36 30 CHAIRMAN: So you would have complete trust in him.

12:23:39 1 A. Yes, I have complete trust in him.

2

3 CHAIRMAN: Have you ever asked him to sit down and give you a detailed written

4 account showing what happened to these various funds from the day the sale

12:23:52 5 closed until the present day, indicating into what account the money went and

6 how it was dealt with on an item by item basis?

7 A. I have never done that. I suspect --

8

9 CHAIRMAN: Would he, while he may take this sort of close to confrontational

12:24:20 10 stance as to standing behind the legality of refusing to produce documentation

11 to you. Do you think he would accede to a request, as well as the request

12 suggested by Judge Faherty that he provides you with documentation or

13 reconsider his stance in relation to that, would he provide you with this

14 detailed account showing exactly what happened to the money, where it went, the

12:24:50 15 names of the accounts, right down to the present day?

16 A. I can ask him and see whether he would do that, Judge, in relation to it?

17

18 CHAIRMAN: But isn't that something that you would be entitled to?

19 A. I don't believe I am entitled to it. I don't believe I am. I'm not in the

12:25:08 20 situation of being --

21

22 CHAIRMAN: Are you saying that if Mr. Morgan took the money or mishandled the

23 money, that you couldn't go to -- under Jersey law that you couldn't force him

24 to at least give you a detailed breakdown as to what had happened to the money

12:25:31 25 from the time it is transferred from AIB to Barclays and comes into his

26 possession? Are you saying that legally you would not be entitled to have that

27 information. Forget about documentation for the moment. But that you would

28 not be entitled to that documentation because if that is the position, it's

29 extraordinary. It's like giving money to a complete stranger.

12:25:56 30 A. Well it's the situation that emerges and comes out of being in these trust

12:26:01 1 situations. If you don't have locus standi vis-a-vis the trustees in some  
2 shape or fashion that's legally based you can't, you just can't get access to  
3 the information and you can't demand it in a legal sense. And that's the  
4 situation that --

12:26:21 5  
6 CHAIRMAN: So are you saying then that if you -- I presume that you've  
7 considered this from time to time having regard to the fact that he has  
8 possession of very substantial funds directly or indirectly which you own or  
9 are entitled to own. So I presume you've considered as a solicitor  
12:26:41 10 particularly as a lawyer, you know, what sort of rights you would have in  
11 relation to information and so on.

12  
13 And are you saying it's your belief that if you were to go into a court in  
14 Jersey and say that I want to know exactly the money trails in relation to very  
12:27:05 15 substantial funds in relation to these lands and other transactions. Are you  
16 saying that it's your belief that a court would say to you, sorry, we can't  
17 help you? We gave it to this man and it's -- we can't force him to give you  
18 this information?

19 A. I believe that would be the situation. I don't have the status, the legal  
12:27:29 20 status, for the court to recognise me. I don't think the situation would be  
21 any different in an Irish court, Chairman. If it's a discretionary trust and  
22 there are trustees there, the fact that I was the person who was the instigator  
23 of that trust being established. In the absence of express rights --

24  
12:27:52 25 CHAIRMAN: You maintain that you are not a beneficiary of the Morgan family  
26 trust. And I don't know for certain but I would be amazed if the legal  
27 position in this country was that you couldn't go into a court here if it was  
28 an Irish trust, you can't go into a court here and say look, I gave me money  
29 into this trust. I believe I am not a beneficiary and I want an account of  
12:28:17 30 it. I can't accept that an Irish court would say to you well too bad we can't

12:28:25 1 help you.

2 A. I would think, Chairman, the Irish court would be entitled to say to you we  
3 can't help you. You are not a beneficiary and you have no status to require  
4 the trustees to account for those funds.

12:28:37 5

6 CHAIRMAN: And equally, the trustees have no authority to deal with the funds  
7 or to treat you as a beneficiary of the funds.

8 A. They have no -- correct.

9

12:28:52 10 CHAIRMAN: If you're not a beneficiary.

11 A. If you're not a beneficiary, yes.

12

13 CHAIRMAN: So, would you have known that when you allowed the money to go into  
14 the Morgan family trust that you are not a beneficiary?

12:29:10 15 A. Yes. I would never -- when these structures are establish I wouldn't be in as  
16 a beneficiary of --

17

18 CHAIRMAN: Do you believe that the legal position is that if -- that you were  
19 not entitled to recoup those monies or seek any account for once you gave the  
20 money to this Morgan family trust?

12:29:28 21 A. Well I think that's right in relation to it. I have no legal entitlement  
22 to --

23

24 CHAIRMAN: Is that something that you've researched as a lawyer before you  
12:29:39 25 gave the money or before providing funds into this trust? Is it your evidence  
26 that you have, to some extent researched the legal position or taken advice and  
27 it is to the effect that once you hand this money into this trust, you have no  
28 legal entitlement ever to recover it or you have no legal entitlement ever to  
29 get an account for it. No matter how much difficulty or trouble you might in  
12:30:10 30 be in in a particular jurisdiction. And no matter how much you might need the

12:30:19 1 money or might need to know how it was dealt with?

2 A. Yes, in terms of a discretionary trust. Once the assets are in the

3 discretionary trust, then the assets are not your assets. And you have -- as

4 my understanding of the law on that is that you have no rights to --

12:30:39 5

6 CHAIRMAN: But this is a trust which you say you were not entitled to benefit

7 from.

8 A. I'm not a beneficiary of it. In terms of the -- therefore I'm not entitled to

9 have an appointment made out of the trust to me, because I'm not a named

12:31:00 10 beneficiary in relation to it.

11

12 CHAIRMAN: And you say that once the money goes into this trust of which you

13 are not a beneficiary, you have no further legal entitlement to it and you have

14 no entitlement to have an account of it?

12:31:16 15 A. That's correct, yes. That's my understanding.

16

17 CHAIRMAN: Well why would anyone in their right mind, there was all sorts of

18 trusts that can be created to benefit you personally or to benefit your family,

19 why would anyone in their right mind allow substantial funds, nearly a million

12:31:36 20 pounds, ten or eleven years ago, and other presumably funds from other

21 transactions as well, why would they allow that go into -- it seems an

22 absolutely crazy thing to do?

23 A. Well there are tens of thousands of people who do it. Hundreds of thousands

24 of people who do it who set up discretionary trusts.

12:32:00 25

26 CHAIRMAN: Why is it done?

27 A. It's done for two reasons principally. For asset protection and tax purposes.

28

29 CHAIRMAN: There's no asset protection in it.

12:32:09 30 A. There is, Judge.

12:32:11 1  
2 CHAIRMAN: What you're dealing with the funds in a way where you cannot  
3 protect your owns assets. You can stop other people getting at them but, I  
4 mean, equally if you have 100 pounds and you leave it on the street it'll  
12:32:30 5 disappear, it will stop other people who might be after you getting it, but it  
6 means that you can't ever get it back.  
7 A. Well in terms of other people coming after it, it's protected from that, that's  
8 the asset protection in relation to it. In terms of the wrongful action of  
9 the trustees in relation to it, there's a risk in relation to that. That they  
12:32:54 10 do something wrong. But usually these trust documents are drawn up to prevent  
11 them from being able to appoint assets to themselves and members of their own  
12 family.  
13  
14 CHAIRMAN: You don't have access to any of these documents. You say that you  
12:33:09 15 have been told in clear terms by Mr. Morgan that you've no legal entitlement to  
16 them  
17 A. Yes.  
18  
19 CHAIRMAN: That's what we find particularly strange.  
12:33:19 20 A. That you would give over such substantial funds, leave yourself in a  
21 position to effectively never be able to legally recover them.  
22 And B, and perhaps even more of a puzzle, the fact that you have no entitlement  
23 to see any document relating to the structures into which this money  
24 disappears.  
12:33:46 25 A. Those are consequences of this type of structure. And it is the same  
26 consequence that I think anyone faces who sets up these discretionary trust  
27 structures.  
28  
29 CHAIRMAN: When you say -- when you refer to asset protection, you're talking  
12:34:05 30 about third party claims against you?

12:34:08 1 A. Yes, that's correct.

2

3 CHAIRMAN: And on the basis that -- well presumably if you have sued for a  
4 debt of 200,000 pounds and you were in court and you were asked by a court to

12:34:26 5 disclose your means, you would have to disclose the fact that you had this  
6 money and that it was hidden away in a trust in Jersey or wherever?

7 A. Well I don't believe you would, Chairman. Because if you've applied the  
8 principles to it, it's not you're funds, they're not your funds, they're the  
9 funds of the trusts and you have no legal entitlement to those funds. That's  
10 why, as I say, there are tens of thousands of these trusts set up by doctors  
11 and lawyers and all sorts of professionals as asset protection against --

12

13 CHAIRMAN: You know that you have an entitlement to recoup money out of these  
14 various trusts because you say that you have that degree of trust in

12:35:23 15 Mr. Morgan. So if you were in court dealing with a claim against you,  
16 presumably you would have to say, well I have access to whatever millions of  
17 pounds, it's in various trusts. I don't know precisely why it is but I can,  
18 given a bit of time I can access X millions and pay the plaintiff. The  
19 alternative is to go into court and deny that you have any money on the basis  
12:35:49 20 that you would be pretty certain that the courts would never be able to  
21 identify the money.

22 A. Well legally that's the situation you are in. Legally you're in the situation  
23 that they are not your assets.

24

12:36:02 25 CHAIRMAN: Yes. But you couldn't, I suggest to you, if you were being up  
26 front and honest in a court. You couldn't say that I can't meet this  
27 particular debt because I have no access to money. Because the truth is that  
28 you have access to monies. Now, there may be some cloud over whether or not  
29 you can legally recover the money. But the fact is that in practical terms  
12:36:29 30 that you have access to this money.

12:36:31 1 A. In practical terms you might have access to the direction of which the funds  
2 should be used or applied. In terms of investment or whatever but from,  
3 strictly from the legal point of view, you have no access to those funds.  
4 They are not your funds. And the trustee is placed in the a very difficult  
12:36:53 5 position. If you go to the trustee and you say to the trustee, I have a  
6 financial problem, I need 200,000 or I need 300,000 pounds, he's there not only  
7 as a trustee. But there's there as a trustee for a potential class of  
8 beneficiaries. That potential class of beneficiaries includes children,  
9 spouses --

12:37:15 10  
11 CHAIRMAN: But in this case --

12 A. If he --

13  
14 CHAIRMAN: In this case if you rang up Mr. Morgan and said I need 200,000  
12:37:24 15 pounds, as we understand your evidence, you had such a degree of trust in him  
16 that you could be pretty certain that a cheque would arrive within days for the  
17 money. You mightn't know what account or what structure it comes out of.  
18 That's your evidence as we understand it. So there's no reality to the  
19 suggestion that you can't access the money, if your back is against the wall?

12:37:52 20 A. Well thankfully I've never been put in a situation.

21  
22 CHAIRMAN: Isn't that the truth oof the situation because you wouldn't be  
23 saying in the circumstances that I've set out in relation to the court  
24 situation, you wouldn't be saying to a court, look, I did invest substantial  
12:38:11 25 sums of money into these structures by I can't get the money. I mean, you  
26 would have to, if you were being truthful, you would have to say well I can get  
27 the money. I mightn't be able to legally enforce its payment but I know the  
28 practicalities are or the reality is, once that I make the request I'll get the  
29 money. That's the extent of the trust which you operated with Mr. Morgan.

12:38:36 30 A. You could turn to Mr. Morgan, Chairman and say I had been given the

12:38:39 1 circumstances that exist and say to him, can you do something to assist me in  
2 relation to this. It's his decision as to whether or not he does or he  
3 doesn't. In making that decision he has to take into account not just the  
4 fact that I was the creator of the situation but also the responsibilities that  
12:38:56 5 he has to the other potential beneficiaries and the risks that he runs of being  
6 sued by them in due course if he passes out assets that were potentially  
7 theirs.

8  
9 CHAIRMAN: But in December 1994 if you had contacted Mr. Morgan and said I  
10 want to take out all of this money and transfer it into my account in Dublin.  
11 I take it that he would have, subject to whatever steps he needed to undertake  
12 in relation to banks and so on. But I presume he would have been in a  
13 position and would have transferred the money into your name?

14 A. In December 1994, if I had asked him to become a beneficiary of the trust and  
12:39:44 15 to transfer the funds, I would have expected he would do that. But after  
16 considering, as I say, the exercise of discretion in relation to it. but it's  
17 not what you do when you set these things up. You don't set them up just to  
18 sort of put the funds in and just pay them out --

19  
12:40:07 20 CHAIRMAN: They're set up with a view to you or to your family benefiting to  
21 the extent that we see in the limited amount of documentation we have. It's  
22 assumed by everybody that down the road this 2 million deutsche marks would be  
23 would be effectively to your order or to that of your family?

24 A. Well what the investment advice in relation to it and the use of the funds,  
12:40:42 25 that he would --

26  
27 CHAIRMAN: Well subject to whatever happens to it on investment. There are  
28 risks associated with it with that. But assuming that it's and earns interest  
29 and so on or dividends. The assumption on your part is that down the road  
12:40:58 30 either you or your family will eventually get the money.

12:41:03 1 A. In personal terms when I look at these things, it's in terms of the family  
2 getting it.  
3  
4 CHAIRMAN: Well whatever. I can accept that. But that's the assumption on  
12:41:12 5 which you -- it's never assumed by you that some day when you go to Mr. Morgan  
6 and ask him for money because you have a difficulty or a requirement for money,  
7 it's not a I assumed by you that he would say to you I'm not giving it to you  
8 because I want to do something else with it.  
9 A. Well --  
12:41:32 10  
11 CHAIRMAN: Has that ever happened?  
12 A. In terms of him saying no?  
13  
14 CHAIRMAN: Yes.  
12:41:38 15 A. No, I haven't gone to him asking him to pay it in the sense of paying it out to  
16 me or to a beneficiary. In terms of him in the roles he's in and the choices  
17 he has to make. He has to make those choices wearing a trustee hat. And he  
18 has to make those choices against the potential beneficiaries out there. If I  
19 were to go to him and say I want you to pay a million pounds, put it on the  
12:42:06 20 first horse in the second race in Hong Kong. He just wouldn't go and do  
21 something irresponsible like that in relation to it. So he's in a situation  
22 where he has to make choices, he has to exercise a discretion. And he  
23 exercises that -- that's a guiding principle that has to apply to what he does.  
24  
12:42:31 25 JUDGE KEYS: Mr. Caldwell. Just before you go on. The 100,000 pounds which  
26 went to Mr. Tiernan?  
27 A. Gentlemen yes, Judge.  
28  
29 JUDGE KEYS: Did that not come from one of these trusts?  
12:42:43 30 A. I don't recollect where it came from.

12:42:45 1  
2 JUDGE KEYS: Is it likely that it came from one of these trusts?  
3 A. It's likely that -- it either came from funds that Mr. Bullock had or possibly  
4 came out of these funds after they were moved. I just don't recollect.

12:43:07 5  
6 JUDGE KEYS: Well can you confirm that if you're given some time to fine find  
7 out where exactly that 100,000 came from and in what structure it was in before  
8 it was extracted. Because if it was a trust it just confirms what Judge Mahon  
9 was saying to you, all you have to do is to ring up Mr. Morgan and say transfer  
12:43:29 10 X and Y over to whatever account and it's done. And are you able to trigger  
11 off what you call the beneficial interest and therefore the money comes out of  
12 the trust?  
13 A. Well if it were out of this trust situation, it --  
14

12:43:43 15 JUDGE KEYS: It means he did what you wanted him to do.  
16 A. Yes. Because of a function of the --  
17

18 JUDGE KEYS: Control over it.  
19 A. In terms of the trust realising what it realised in relation to it from the  
12:43:55 20 commercial point of view. The creation of the transaction to enable that to  
21 happen was this agreement with Mr. Tiernan. So it would be in order for the  
22 trust to make that payment. Because that in effect is a payment which helped  
23 to generate this gain before the trust.  
24

12:44:16 25 JUDGE KEYS: Do you believe there's any law of the land that governs the  
26 trustees and how they behave?  
27 A. Sorry?  
28

29 JUDGE KEYS: If the trustees for example were to get a big bag and put all of  
12:44:28 30 your money into it and leave Jersey, are you saying they wouldn't be

- 12:44:33 1 accountable to anybody?
- 2 A. That would be a breach of the trust. Besides the fact that it would be
- 3 criminal and be a police matter. They would be accountable in those
- 4 circumstances.
- 12:44:44 5
- 6 JUDGE KEYS: But if nobody can claim the beneficial interest in the monies?
- 7 A. Someone would have to --
- 8
- 9 JUDGE KEYS: Who are they taking the monies from?
- 12:44:53 10 A. Somebody would have to make an application to the court in Jersey who are the
- 11 potential beneficiaries and --
- 12
- 13 JUDGE KEYS: So that's your protection if it happens?
- 14 A. The protection of the family in essence.
- 12:45:05 15
- 16 JUDGE KEYS: Thank you.
- 17
- 18 Q. 140 MR. O'NEILL: Do I understand from that, Mr. Caldwell, that you see the
- 19 position as being that of a discretionary trust in that Mr. Morgan, whether
- 12:45:17 20 it's wearing the hat as the Longwater Investments Limited, a limited liability
- 21 company, which may itself be a trustee company; is that right?
- 22 A. I'm not sure whether Longwater is a trustee or not.
- 23 Q. 141 Limited companies can be trustees; can't they?
- 24 A. Yes.
- 12:45:35 25 Q. 142 So, I mean, it doesn't require the word trust in its title to make it a trustee
- 26 company?
- 27 A. That's correct.
- 28 Q. 143 Longwater Investments Limited could be itself a trustee or it could be with
- 29 another company a trustee of funds; isn't that right?
- 12:45:50 30 A. It's possible, yes.

- 12:45:51 1 Q. 144 Yes. Indeed, there are a whole series of companies here. Drebbin for  
2 example, could well be a trustee of the interests of some person; isn't that  
3 right?
- 4 A. It could be a trustee, yes.
- 12:46:03 5 Q. 145 In the sense that the asset that is there is not its own asset to deal with  
6 without restraint. It could only deal with it within the terms of a binding  
7 agreement called a trust, that may give it discretion as to what it does. But  
8 it doesn't have an unfettered discretion as regards the use of the fund; isn't  
9 that right?
- 12:46:27 10 A. Well a discretionary trust leaves by, usually leaves the trustees with a very,  
11 very wide discretion.
- 12 Q. 146 But not unqualified in the sense that they have a discretion as between persons  
13 who fall within the category of beneficiaries for example?
- 14 A. Yes, they do. They discriminate between the various potential beneficiaries.
- 12:46:56 15 Q. 147 They couldn't give the money World Wildlife Fund unless it was one of the named  
16 beneficiaries; isn't that so?
- 17 A. Yes. They can only get the funds --
- 18 Q. 148 So to that extent, it's the owner of property but its constrained in its  
19 ability to use that property by the terms of the trust deed; isn't that right?
- 12:47:13 20 A. Yes.
- 21 Q. 149 Now, you see the situation of the Morgans here as being that of a discretionary  
22 trust; is that right?
- 23 A. Yes, that's my understanding, yes.
- 24 Q. 150 And you say that you are not within the range of beneficiaries of that  
12:47:26 25 discretionary trust?
- 26 A. That's my understanding, yes.
- 27 Q. 151 And you say that because you're in that position you are not entitled to  
28 enforce any inquiry of the trustees because you don't have the status to do so;  
29 isn't that right?
- 12:47:41 30 A. Yes.

- 12:47:42 1 Q. 152 But you are, nonetheless, a person who is entitled or was originally entitled,  
2 could I suggest, to the asset which is now within the trust, to the extent of  
3 50%?
- 4 A. No, I never transferred an asset into the trust.
- 12:47:57 5 Q. 153 Well how did it get into the trust? I mean, there are two aspects I think of  
6 every trust. There is the settlor, the person who chooses the trustee and  
7 says here is my asset, I want to vest myself of it. I am giving it to you but  
8 I'm giving it to you on terms that you can only apply it within the terms of  
9 the trustees, that's the settlor?
- 12:48:19 10 A. Yes.
- 11 Q. 154 And then there's the beneficiary who may well in some circumstances be both the  
12 settlor and the beneficiary can be persons who will benefit under the trust.  
13 A settlor can in certain circumstances be in the ranks of beneficiaries; isn't  
14 that so?
- 12:48:37 15 A. Yeah.
- 16 Q. 155 So through that mechanism I give my own property to the Members of the  
17 Tribunal, for example, they agree to take it as trustees for me. And the deed  
18 under which they receive it confines their ability to deal with the property,  
19 so that they can apply it to one of five people. It's at their discretion as  
12:49:01 20 to whether each of the five gets an equal proportion or one gets all or two get  
21 all or whatever it might be. To that extent it's discretionary; isn't that  
22 right?
- 23 A. Or who gets added to the class of beneficiary as well.
- 24 Q. 156 But in those circumstances I as the settlor, and even if I'm not a beneficiary,  
12:49:22 25 I can call upon the trustees to account for the manner in which they have dealt  
26 with matters. I don't cease to have status merely because I've passed over  
27 the asset; isn't that right?
- 28 A. Well it depends. I mean, there is another situation which existed in this  
29 area. And that's a situation where you're not the settlor of the trust and  
12:49:47 30 the -- in this instance that's the situation that applied. The trust was

12:49:53 1 established as a David Morgan family settlement. The deed was established by  
2 the Morgans, I didn't place any asset into the trust. I didn't transfer any  
3 shares into the trust, I didn't have any shares to transfer into the trust.  
4 The trust is established by them. The trust takes the shareholding in in  
12:50:23 5 Vino.

6 Q. 157 How --  
7 A. If there's a transfer that occurs, it's a transfer that occurs between  
8 Mr. Kennedy in that trust or his structure in that and that trust to move the  
9 50% interest.

12:50:39 10 Q. 158 Well that's only his 50%.  
11 A. No, no.

12 Q. 159 How does your -- you're the person who is the person who has got the economic  
13 interest in these lands. How did that economic interest find itself in the  
14 maw of something called the Morgan Family Trust who have paid nothing for it,  
12:50:59 15 have no contribution to make to it and whose only role in relation it, is to  
16 apply it towards a discretionary trust to a number of beneficiaries; isn't that  
17 right?  
18 A. It finds it's way into that trust structure was my understanding of what  
19 happened in relation to it, is that Mr. Kennedy when he invited me to  
12:51:24 20 participate in this, the way in which that occurred was that the interest, 50%  
21 of the interest in Vino was placed in the name of the David Morgan -- of this  
22 trust. At no stage in my understanding of what occurred here, at no stage was  
23 50% of Vino in my name and transferred into this trust.

24 Q. 160 But leaving names out of it, Mr. Caldwell, because any name can be chosen for  
12:52:00 25 any purpose. The fact of the matter is that you had a 50% interest, you say,  
26 in these lands which found itself within a trust. Now, it had been your's  
27 before it went in. Could I suggest that once it went in, that meant that you  
28 were effectively the settlor. The de facto settlor of that trust?  
29 A. I had the opportunity of taking 50% interest in it, Mr. O'Neill. I wouldn't  
12:52:29 30 place it any higher than that. I didn't have a 50% interest in terms of this.

12:52:39 1 So the trust was established by the Morgans, by someone else.

2 Q. 161 Right.

3 A. And insofar as I had a role in relation to it, it was a role in terms of saying

4 that I would like to have a structure established. And the structure that was

12:53:00 5 established was this discretionary structure. I wouldn't -- I wouldn't see

6 myself as the settlor. I'm not the settlor of it in any legal sense.

7 Q. 162 Well who is? Who was the settlor?

8 A. Well it's the David Morgan family trust.

9 Q. 163 But they settled it among themselves then?

12:53:20 10 A. Created a discretionary trust by settling whatever the settlement funds were.

11 Q. 164 Right.

12 A. On the trustee.

13 Q. 165 But the settlement funds had to come into them. They had to acquire an

14 ownership in interest in those lands?

12:53:35 15 A. No, they wouldn't have been -- in sequential terms, I didn't involve myself in

16 the paperwork of this. But I would expect in sequential terms what happens is

17 that using their own funds, whether it's 20 pounds or 50 pounds or whatever

18 else, the settlement is established.

19 Q. 166 Yes.

12:53:58 20 A. By David Morgan settling that on whoever the trustee is. The subsequent to

21 that the entitlement to the shares is vested in that settlement.

22 Q. 167 Yes.

23 A. In being vested in that settlement, given where we were in terms of the

24 ownership and Mr. Kennedy being through his structure being 100%. I would

12:54:30 25 have thought that that was a transfer between that structure and the David

26 Morgan structure. As I say, I wasn't -- I didn't involve myself in that

27 aspect of it. I just left it then to do the structuring of it.

28

29 CHAIRMAN: Sorry. Mr. Caldwell, your evidence to us has been that you were

12:54:52 30 in effect directly or indirectly an owner of 50% of Vino?

12:55:00 1 A. Yes.

2

3 CHAIRMAN: All right. So we know that possibly because of arrangements made

4 by Mr. Kennedy, we know that your half share, your net half share ends up in

12:55:15 5 the structures via the Morgan family trust. So either that happened because

6 you instructed that it should happen or else you, by implication in the sense

7 that you didn't counter any instruction from any other quarter, that's where

8 your half share ends up. Now, Mr. O'Neill is suggesting to you that you're

9 either -- that you're in effect, you are the settlor as far as the trust is

12:55:47 10 concerned. It doesn't necessarily mean that you physically told somebody to

11 do it, but you went along with the operation. So in effect you are either

12 expressly or by implication you are one of the settlors of the fund that find

13 their way into the Morgan family trust?

14 A. I'm the person, Chairman, who said that I wanted the opportunity to be held in

12:56:23 15 a settlement.

16

17 CHAIRMAN: Yeah. So even if you just take that. I mean, you are the person

18 who said that you wanted the opportunity to hold these funds or to be part of

19 this particular trust structure; isn't that right?

12:56:40 20 A. Yes, that's the structure.

21

22 CHAIRMAN: So to that extent you are the settlor of the funds. I mean, the

23 term settlor may have a specific legal meaning which we are we're not

24 immediately aware of. But in practical terms, the ordinary use of the English

12:57:02 25 language, you are the person who directed or who consented to the direction

26 that these funds would go into this particular trust structure.

27 A. In practical terms, yes.

28

29 CHAIRMAN: Yes.

12:57:15 30 A. And again, it's a distinction between the practicality and the legal position

12:57:22 1 in relation to it. In the practical sense, yes, as I said.

2

3 CHAIRMAN: But on this occasion it's the same thing. In the sense that and

4 had you taken a different line and wanted the funds to go elsewhere, subject to

12:57:38 5 undertaking whatever was needed to be undertaken in terms of practical

6 procedures and giving directions and so on. You could have directed them into

7 a different trust.

8 A. Well, Chairman, in terms of the setup of this. What I was saying at that time

9 was that the opportunity was 50% interest was to be taken into a structure that

12:58:07 10 they would set up, they would advise.

11

12 CHAIRMAN: That was your decision.

13 A. That was my decision. And to a large extent, there my decision ends in

14 relation to it. Because my input ends that the point in time --

12:58:19 15

16 CHAIRMAN: All right. But this is all, Mr. O'Neill, as I understand it.

17 The actual decision to own this particular trust that's your decision?

18 A. Yes, it is.

19

12:58:29 20 JUDGE FAHERTY: On the 10th of June for example in the AIB there were tangible

21 funds 8.1 million; isn't that correct?

22 A. Yes.

23

24 JUDGE FAHERTY: And we know that they then went to Guernsey and henceforth

12:58:41 25 somewhere else.

26 A. Yes.

27

28 JUDGE FAHERTY: But surely, Mr. Caldwell, the reality was as of the 10th of

29 June when the sale was completed, given that you and Mr. Kennedy, according to

12:58:51 30 you on your evidence, was in the scheme to profit from the lands together.

12:58:55 1 You could have called upon, at that stage, a division of the proceeds.

2 A. The --

3

4 JUDGE FAHERTY: You didn't make that decision. You made a different decision

12:59:07 5 as you have already responded to the Chairman, i.e, that it go into some sort

6 of trust.

7 A. Well that it would be continue to be held in the trust. The trust was

8 established for the purposes of holding the shares in Vino. And therefore,

9 when the land proceeds came through a couple of years later those funds were

12:59:25 10 held under that structure.

11

12 CHAIRMAN: It's one o'clock. Is that all right? We'll rise until two.

13

14 MR. FINLAY: You're rising are you?

12:59:51 15

16 CHAIRMAN: Yes. It's one o'clock.

17

18 MR. FINLAY: Very good.

19

12:59:59 20 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

21

22

23

24

25

26

27

28

29

30

**THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:**

- 13:00:06 1
- 2
- 3 Q. 168 MR. O'NEILL: Good afternoon, Mr. Caldwell.
- 4 A. Good afternoon, Mr. O'Neill.
- 14:04:00 5 Q. 169 This morning we were examining a money trail which commenced with the V P Bank.
- 6 And you might remember, I was enquiring from you as to where the funds had come
- 7 from that bank. And we saw at page 2422 the withdrawal of a sum of 2,017,000
- 8 deutsche marks from that account?
- 9 A. Yes, I see that, yes.
- 14:04:23 10 Q. 170 And in the statement that you furnished through Mr. Miley, which is at page
- 11 2630 on screen, you say at paragraph No. 1:
- 12
- 13 "The account of Longwater in VP Bank was debited by that amount", I think there
- 14 is an error in the to the there. We can ignore that and then in paragraph 2
- 14:04:49 15 you say: "The funds were credited to a Longwater deutsche mark account at
- 16 Liechtenstein, Landesbank and 50,000 deutsche marks was deducted. Our client
- 17 believes this was for fees and 1,967,000 was credited to the account of Drebbin
- 18 Limited at Landesbank and a commission was deducted leaving a balance of
- 19 1,963,066 to that account ".
- 14:05:17 20
- 21 That's at page 2630.
- 22 A. Yes, I see that.
- 23 Q. 171 Now, the conclusion that you'd drawn that there was a Longwater investment's
- 24 bank account at Landesbank. You recollect now how you came to that
- 14:05:39 25 conclusion, it may well be right. Because as we'll see, there is a lodgement
- 26 to a Drebbin account in Landesbank which is 50,000 deutsche marks less than the
- 27 sum which was withdrawn from VP Bank at Landesbank in Liechtensteinische
- 28 A. Is there a 50,000 deduction in that --
- 29 Q. 172 No. That document is not available to us. So your conclusion appears to
- 14:06:06 30 have been at No. 2 there, that the funds were credited to a long water D M

14:06:14 1 account at Landesbank and 50,000 was deducted and the balance then was credited  
2 to the account of Drebbin; you see that?

3 A. Yes, I see that, yes.

4 Q. 173 So if we look to the document at page 3476 we will see the back up for the  
14:06:33 5 lodgement to the account of Drebbin.

6 A. 3476?

7 Q. 174 3476.

8 A. Oh, sorry. I'm looking at the wrong one.

9 Q. 175 That sum that you see there at 1,967,000 is exactly 50,000 deutsche marks short  
14:07:22 10 of the sum which came out of the VP Bank, which was 2,017,000; you see that?

11 A. Yes.

12 Q. 176 So that 50,000 deutsche marks translates into 20,688 pounds at the time?

13 A. Yes, I assume that's right, yes.

14 Q. 177 Which is a pretty large amount. You, in seeking to explain that, indicate  
14:07:49 15 that you believe it was for fees. Do you mean bank charges or do you mean  
16 professional charges due to some agent? Because they certainly seem to be  
17 greater than one would possibly expect in a banking transaction; isn't that  
18 right?

19 A. Yes. Certainly in terms of banking transaction would be a large fee of  
14:08:12 20 significant amount of money. At the time that I did the statement I must have  
21 been of the belief that it was a fee. But I just can't recollect what sort of  
22 a fee it was, Mr. O'Neill.

23 Q. 178 We see that the fund has now made the jump from VP Bank and into Landesbank and  
24 it appears, as you see, in the account of Drebbin Limited.

14:08:41 25 A. Yes, I see that.

26 Q. 179 And when we turn to page 3480 we'll see that this is the current account of  
27 Drebbin.

28 A. Yes.

29 Q. 180 And it would appear from all of the bank documentation here that the practice  
14:08:59 30 with regard to transfers of funds in Liechtenstein is that funds are

- 14:09:05 1 transferred out of current accounts and into current accounts, other than where  
2 the account is held by the same account holder, in which case one can transfer  
3 from one deposit to one's current.
- 4 A. I see, yes.
- 14:09:19 5 Q. 181 There doesn't seem to be a facility, in other words, to transfer from a deposit  
6 account to any other account. It must go into a current account and then  
7 leaves that account.
- 8 A. Okay.
- 9 Q. 182 So we'll see some duplication of funds here. The document at 3480 shows that  
14:09:39 10 the opening balance in the current account for Drebbin was lodged on the 23rd  
11 of December in the sum of 1,963.66, that's 1,963.66 deutsche marks?
- 12 A. Yes, I see that there.
- 13 Q. 183 That sum is the sum which was reflected in the 1967 less bank charges?
- 14 A. Yes, I see that.
- 14:10:06 15 Q. 184 Now, we'll see that immediately beneath the reference Saldo, which is meant to  
16 be the balance of the account at any one time, that's in the very right hand  
17 corner.
- 18 A. Yes.
- 19 Q. 185 One starts with a zero balance. You then have the lodgement which came out of  
14:10:29 20 VP Bank effectively though it stopped somewhere in the middle at the 50,000 was  
21 taken out?
- 22 A. Yes.
- 23 Q. 186 1,412,934 deutsche marks. You'll notice that there's a minus beside that?
- 24 A. Just on the right-hand side of it?
- 14:10:46 25 Q. 187 Yes.
- 26 A. I see that it's not very clear.
- 27 Q. 188 And it would appear that that minus reflects an error in the bank. In that if  
28 you move to the second column over to the left, that's Zu-Ihren-Gunsten?
- 29 A. Yes.
- 14:11:08 30 Q. 189 That shows a sum of 3,376,000 deutsche mark.

14:11:15 1 A. I see that, Yes.

2 Q. 190 That's the total of the 1963 plus the 1412.

3 A. Yes.

4 Q. 191 And that sum represented a transfer to the deposit account of Drebbin, which is

14:11:31 5 called Callgeld on the side there?

6 A. Yes, I see that, yes.

7 Q. 192 As you move down in the column now between the two of those you'll see that the

8 1413 is shown as Zu Ihren Gunsten and that effectively is cancelling out that

9 sum of money because it was in error?

14:11:59 10 A. Yes.

11 Q. 193 And that is then reflected we'll see in the deposit account?

12 A. Okay.

13 Q. 194 At page 3481 this is the opening balance in the deposit account. It's zero.

14 And then it shows 3,376,000.

14:12:21 15 A. Yes.

16 Q. 195 And then it shows in the third column in, the 1413 coming out again on the

17 23rd.

18 A. I see that.

19 Q. 196 So that it then reflects back on the next entry in the column to the right

14:12:36 20 under Saldo as 1963. And that is the sum that is the correct figure.

21 A. I see that, yes.

22 Q. 197 So effectively to this point in time the fund has remained intact with the

23 exception of the 50,000 pounds, which is currently unaccounted for.

24 A. Yes.

14:13:01 25 Q. 198 We'll see that this figure is then the subject of a withdrawal. And that is

26 the first of two withdrawals which are going to be made out of this account.

27 The first withdrawal is a withdrawal on the 17th of January 1995. And that

28 will be for 461,153 Irish pounds. And the second will be for 350,062 pounds,

29 and it was made in September.

14:13:36 30

14:13:36 1 The first of those withdrawals was made to an account in the Isle of Man bank.  
2 And the second of those withdrawals is made to a numbered account in  
3 Liechtenstein in the Landesbank, which is in the name of Mr. Liam Lawlor?  
4 A. Yes.

14:13:56 5 Q. 199 So if we look to the first of those withdrawals, we'll see that at page 3275 a  
6 letter is written by Mr. Frank Scott to Gerhard Meier at a firm called Thony  
7 Treuhan, which I understand to be a trust company in Liechtenstein. And it is  
8 putting Mr. Meier on notice of the fact that there will be a withdrawal of  
9 457,000 pounds sterling from the account of Drebbin at Landesbank to the Isle  
14:14:33 10 of Man Bank Limited and that the amount is being remitted in deutsche marks;  
11 you see that?  
12 A. Yes, I see that.

13 Q. 200 And that instruction is then translated at page 3488 to a bank statement in  
14 Landesbank in the name of Drebbin and this is the deposit account of Drebbin.  
14:14:57 15 And it shows 1,097 -- sorry. 1,097,000 deutsche marks coming out of that  
16 account on the 17th of January; you see that?  
17 A. Yes, I see that.

18 Q. 201 And the account number that is beside it, 17051994, is the current account of  
19 Drebbin. So this reflects that transfer into the current account.

14:15:29 20 A. Yes.

21 Q. 202 And at page 3487 we see the current account. And it shows the lodgement on the  
22 one hand of the 1,097,000 deutsche marks. And then a withdrawal of 1,097,592.  
23 30 deutsche marks.  
24 A. I see that.

14:15:56 25 Q. 203 Now, that withdrawal removes from the Landesbank account of Drebbin Limited --  
26 sorry -- 57,000 pounds sterling?  
27 A. Yes.

28 Q. 204 Left in the account at that point then is -- we have to go back to the deposit  
29 account because as much as was transferred there was transferred out of the  
14:16:28 30 current account.

- 14:16:28 1 A. Yes.
- 2 Q. 205 Which had been funded for the purpose of the transfer. And if we look to page
- 3 2478.
- 4 A. Yes.
- 14:16:41 5 Q. 206 We'll see that there is 884,000 deutsche marks on deposit on the 1st of July;
- 6 you see that?
- 7 A. I see that, yes.
- 8 Q. 207 And then on the 14th of September there is a withdrawal of 825,000 deutsche
- 9 marks.
- 14:17:00 10 A. Yes, I see that.
- 11 Q. 208 Again, it's coming out of the deposit account. And we'll see it lodged to the
- 12 current account at page 2479.
- 13 A. Yes.
- 14 Q. 209 It is lodged on the 14th and it is taken out on the 14th.
- 14:17:19 15 A. Yes.
- 16 Q. 210 In the amount of 825,412.05 deutsche mark.
- 17 A. Yes.
- 18 Q. 211 That sum represents the equivalent of 350,000 Irish as of that date.
- 19 A. Yes.
- 14:17:36 20 Q. 212 And we will see that there is a reference to "Bezug okay" and then "CH" beside
- 21 that particular withdrawal. I'm looking now to Drebbin's document at 2479 on
- 22 the 14th, the third item down on the left hand column.
- 23 A. Oh yes, I see that.
- 24 Q. 213 "Bezug okay CH".
- 14:18:05 25 A. Yes, I see that.
- 26 Q. 214 It doesn't give an account number. So that it is transferring these funds
- 27 from this account to the account of another holder and it's not an inter
- 28 customer transfer. Inter same customer I should say as it stays within the
- 29 same bank?
- 14:18:29 30 A. Yes.

- 14:18:29 1 Q. 215 If we move now to page 3491.
- 2 A. Yes.
- 3 Q. 216 This is an account and it doesn't have a name it has a number. It's NRKTO
- 4 followed by the number 844124.
- 14:18:56 5 A. I see that.
- 6 Q. 217 And this has been established earlier as being the numbered account of Mr. Liam
- 7 Lawlor at the same bank, Landesbank.
- 8 A. Yes.
- 9 Q. 218 And on the day that the money was withdrawn from the Drebbin account, that is
- 14:19:12 10 the Drebbin current account, it finds itself lodged to this account, that is on
- 11 the 14th of September?
- 12 A. Yes.
- 13 Q. 219 Where a value is given as of the 15th of September for 825,000 deutsche mark?
- 14 A. Yes.
- 14:19:31 15 Q. 220 That is a current account. And we see that it moved from the current account
- 16 to a deposit account at page 3492.
- 17 A. Yes.
- 18 Q. 221 And on the 18th of September the amount is shown as value to that account. And
- 19 it is withdrawn then over a period of -- well 369,000 is withdrawn I should say
- 14:20:05 20 on the 22nd of September.
- 21 A. Yes.
- 22 Q. 222 Now, the withdrawal of those two amounts effectively exhausted the Drebbin
- 23 account.
- 24 A. Yes.
- 14:20:25 25 Q. 223 There was a small sum left there which stayed for quite some time I think.
- 26 A. Yes.
- 27 Q. 224 But was not a very significant sum. And it would appear that the last
- 28 withdrawal, that is the 825,000 deutsche mark withdrawal followed again upon a
- 29 notification being given. But on this occasion Frank Scott did so as Frank
- 14:20:57 30 Scott Consultancy Limited. We see that at page 3277.

- 14:21:11 1 A. Yes, I see that.
- 2 Q. 225 Frank Scott Consultancy Limited again notified Mr. Meier of the intention to  
3 remove these funds from the Drebbin account, which is named here.
- 4 A. Yes.
- 14:21:27 5 Q. 226 Now, Drebbin we'll see is an entity which was formed in the Isle of Man and  
6 incorporated on the 13th of April of 1984. We see that at page 3298. Its  
7 date of incorporation is the 13th of April 1994.
- 8 A. Yes.
- 9 Q. 227 And its shareholders were Cameo Trust Corporation and Cameo Secretariat  
14:22:14 10 Limited, each of whom held one share in the company. And we'll see at page  
11 3301 that Cameo Trust Corporation has as its registered office 80 Broad Street,  
12 Monrovia, Liberia. And Cameo Secretariat Limited is at Cameo House, 18 Hope  
13 Street, Douglas, in the Isle of Man.
- 14 A. Yes.
- 14:22:38 15 Q. 228 I think that's where Frank Scott held his offices; isn't that right?
- 16 A. Yes, he did.
- 17 Q. 229 And the trust corporation referred to above we can assume mis an associated  
18 firm of his with its registered office in 80 Broad Street, Monrovia; isn't that  
19 right?
- 14:22:58 20 A. I would assume it's associated, yes.
- 21 Q. 230 I would think that's an address which is, could I suggest, a letter box only,  
22 because it's virtually all of the companies that operate out of Liberia seem to  
23 operate out of 80 Broad Street?
- 24 A. It's not a jurisdiction that I'm particularly familiar with but --
- 14:23:17 25 Q. 231 In any event, that company, Drebbin was owned by these two entities through  
26 these two shareholders.
- 27 A. Yes.
- 28 Q. 232 Who one can assume were nominee shareholders, given that they both appear to be  
29 trust corporations and signatories rather than beneficial owners; isn't that  
14:23:34 30 right?

- 14:23:34 1 A. Yes.
- 2 Q. 233 And we'll see that the shareholding in that company changed from those two  
3 registered owners on the 17th of November 1998. And that is at page 3304 where  
4 we will see that Barrule Trust Corporation Limited of the same address, 80  
14:23:59 5 Broad Street, Monrovia, Liberia, and Barrule Trust Corporation Limited?  
6 A. Sorry, I missed the page number.
- 7 Q. 234 3304. Of 80 Broad Street, Monrovia and Barrule Trust Corporation and Francis  
8 Thomas Scott with an address in the Isle of Man, between them they seem to own  
9 one share, either they jointly own that share or what have you. But in any  
14:24:40 10 event, do you know of anything about the necessity for this transfer? It seems  
11 to be essentially the same entities unless Barrule is --?  
12 A. Yes. I think possibly it arose out of some reorganization of Mr. Scott's  
13 affairs, he became ill.
- 14 Q. 235 I see. In any event, this company, Drebbin, is struck off on the 21st of  
14:25:09 15 March 2001 for having failed to make its returns. The last return was made on  
16 the 13th of April of 1999. So it had an effective existence of about five  
17 years apparently.
- 18 A. Yes.
- 19 Q. 236 This is Drebbin.
- 14:25:24 20 A. Yes.
- 21 Q. 237 Now, Drebbin's dealings with the account from which the funds came to be paid  
22 to Mr. Lawlor stem from the fact that Drebbin opened an account in the  
23 Landesbank in Liechtenstein. And we'll see at page 3274 an account opening  
24 document, which shows that Mr. Bates and Mr. Burtram and Mr. Scott are the  
14:26:08 25 signatories to the account of Drebbin?  
26 A. I see that, yes.
- 27 Q. 238 They in turn appoint Mr. Gerhard Meier and Mr. Scott with power of attorney, so  
28 that they can operate the account.
- 29 A. I see that, yes.
- 14:26:26 30 Q. 239 And it's therefore not necessary for them to revert to either of those

14:26:30 1 gentlemen in order to operate the account. And we've seen that Mr. Gerhard  
2 Meier there is a representative of a Liechtenstein trust administration firm,  
3 which is known as Thony Treuhan AG?  
4 A. Yes.

14:26:49 5 Q. 240 I think it may be the case that in opening a bank account within Liechtenstein  
6 there must be some Liechtenstein connection to it?  
7 A. I'm not sure, that may well be the case, yes.

8 Q. 241 We'll see that Mr. Nicholas Morgan apparently is the party behind this  
9 enterprise because at page 2369 there is a mandate agreement which is completed  
10 by Nicholas Morgan with Thony Treuhan AG being the mandatory.  
11 A. Yes.

12 Q. 242 On this document the mandator instructs "Tony Treuhan to form, administer and  
13 exercise all rights in trust for the mandator and to safekeep all records  
14 documenting these rights of Drebbin Limited hereinafter called the company".  
15 And following that instruction the mandatory then will make available the  
16 following persons as signatories hereinafter called the administrators. And  
17 that is Gerhard Meier; you see that?  
18 A. Where is that?  
19 Q. 243 It's immediately beneath the pencilled reference to Drebbin.

14:28:02 20 A. Yes.

21 Q. 244 So we can establish that the role here of Mr. Meier is that he performs the  
22 function of being an administrator within Liechtenstein of the account of  
23 Drebbin Limited at the bank of the Landesbank.  
24 A. Yes.

14:28:16 25 Q. 245 And that probably accounts then for the fact that he is notified by Mr. Scott  
26 whenever withdrawals are made from the account?  
27 A. Yes.

28 Q. 246 Mr. Scott then has a role as you'll see from the last page of this document,  
29 page 3273. Where it is noted that all instructions from the mandator will be  
14:28:45 30 given to the mandatory by Mr. Frank Scott as per the details provided

14:28:52 1 Mr. Scott's signature is as follows. Francis G Scott and you'll see  
2 Mr. Nicholas Morgan's signature both beside Mr. Scott's and above as mandatory;  
3 you see that?  
4 A. I see that, yes.

14:29:08 5 Q. 247 So that the effect of all of this is that while Mr. Nicholas Morgan has a role  
6 as the mandator, that is controlling Drebbin Limited, it's not necessary for  
7 him to be seen or to be identified in any way with the transactions because the  
8 transactions can be conducted by Frank Scott as his -- as the person instructed  
9 by him?

14:29:38 10 A. Yes.

11 Q. 248 So the form of submandate, in other words.  
12 A. Yes, that's right.

13 Q. 249 Now, we know that at the end of the day these funds are not from Morgan's  
14 personal funds; isn't that right?

14:29:53 15 A. They're not his personal funds, no. They are the funds that are in the trust  
16 structure.

17 Q. 250 Right. So what then is your relationship with Drebbin, the company that we  
18 see here? I know that you've given a precis of it in the meeting that you had  
19 with Mr. Morgan in London on the 16th of January. Perhaps if we saw that  
14:30:20 20 first it might be a starting point. Page 2599.  
21  
22 You say that at paragraph K of this letter: "In or about December of 1994  
23 John Caldwell recalls that he instructed Frank Scott in the Isle of Man to  
24 liaise with Nicholas Morgan and David Morgan in relation to the formation of  
14:30:45 25 Drebbin Limited, an Isle of Man company.  
26  
27 Through West Away's professional advisors in Liechtenstein a bank account was  
28 opened for Drebbin. And the Longwater loan monies were paid into the account.  
29 Frank Scott administered the company in order to monitor Mr. Caldwell's  
14:31:03 30 interests. Nicholas Morgan was named as beneficial owner of the company."

14:31:11 1  
2 So does that does that reflect what the position was? In effect Drebbin came  
3 into existence as a result of a wish of your's that such an entity would be  
4 formed?

14:31:24 5 A. Yes, it did. It was formed as the entity to receive funds. So those funds  
6 could be placed for onward use.

7 Q. 251 Right. And you, in the hierarchy of things, expressed your wish to Frank Scott  
8 that he would liaise with Nicholas Morgan with the intention that both of them  
9 would get together with the view to presumably administering this company;  
10 isn't that right?

11 A. Yes.

12 Q. 252 Well, firstly, forming it.

13 A. Exactly. I was going to say to setting it up and then to administering the  
14 company thereafter.

14:32:01 15 Q. 253 Right. Now, the company obviously must have been a shelf company then because  
16 it was incorporated in April and the monies, as we know, that came in from the  
17 sale of Coolamber didn't hit Jersey until the 20th of June of that year.

18 A. Yes.

19 Q. 254 So the company wasn't formed but rather it was probably taken off the shelf.

14:32:29 20 A. I would have thought that's what happened, yes.

21 Q. 255 Right. Would you consider then that this company, Drebbin, is a company which  
22 was effectively under your control, that is unless it is some form of a trust  
23 in itself?

24 A. Not so much under my control. As I recollect it, the company was in this  
14:32:57 25 structure here with Mr. Morgan as the beneficiary of it. The Meiers,  
26 Mr. Meier's is related to the Morgan West Away things. I think I may have met  
27 him once possibly but no relationship there as such. And he would have been  
28 there to receive all of these things that Mr. Scott was doing so that  
29 Mr. Morgan was appraised of what was happening. The -- in terms of the use of  
14:33:37 30 the funds that were there in the company, I would have given directions to

- 14:33:42 1 Mr. Scott in relation to that.
- 2 Q. 256 Right. So if Mr. Scott make as withdrawal you say he's doing so on foot of  
3 your instruction?
- 4 A. Yes.
- 14:33:54 5 Q. 257 And that hadn't gone through Nicholas Morgan?
- 6 A. Well I was just going to add. It may have gone through Nicholas Morgan as  
7 well, I may have had discussions with Nicholas Morgan and he then speak to  
8 Mr. Scott about it or I may have spoken directly to him about it or spoken to  
9 both of them in fact about it, certainly in the context of the payment to  
14:34:18 10 Mr. Lawlor, I would have expected I spoke to both of them.
- 11 Q. 258 Certainly it would appear that Mr. Scott when he receives an instruction in  
12 relation to Drebbin reduces it to writing insofar as he is liaising with  
13 Dr. Meier in Liechtenstein and he does so in writing; isn't that so?
- 14 A. The file shows he sends him instruction, yes.
- 14:34:48 15 Q. 259 Did he ever require written confirmation from you as to your instruction  
16 through Mr. Morgan that he should do so. That he should carry out these  
17 withdrawals in this manner?
- 18 A. No.
- 19 Q. 260 Do you have an instruction of giving an instruction to Mr. Scott, firstly in,  
14:35:07 20 relation to the first withdrawal which took place shortly after his letter of  
21 the 11th of January 1995. The withdrawal took place on the 17th?
- 22 A. This is the 450?
- 23 Q. 261 This is the 457,000.
- 24 A. I don't have a specific recollection of it but I'm sure I would have spoken to  
14:35:25 25 him about it, yes.
- 26 Q. 262 Do you know whether Drebbin maintained a bank account in the Isle of Man?
- 27 A. I would say, yes, that it did. The funds were transferred to Isle of Man  
28 Bank. Now, I can't tell from this whether that was Isle of Man bank in  
29 Drebbin's name or Isle of Man bank in Frank Scott's company name.
- 14:35:58 30 Q. 263 It could have been anybody's account really?

- 14:36:04 1 A. It could have been, yes, yes.
- 2 Q. 264 You believe from your letter to the Tribunal, through Mr. Miley, that this fund  
3 in due course was translated into loans which in turn acquired investments in  
4 tech stocks; is that right?
- 14:36:29 5 A. Yes, that's my recollection of it.
- 6 Q. 265 In that scenario, do you envisage that Drebbin would have been the lender?
- 7 A. Drebbin would have advanced funds, yes.
- 8 Q. 266 And who were the borrowers?
- 9 A. It would have been probably one of Martin Bullock's companies if it didn't go  
14:36:47 10 directly into the entity itself or went to someone else to acquire shares. I  
11 don't recollect the detail of that aspect of it.
- 12 Q. 267 The information would be, I take it available to Mr. Scott. Is he still with  
13 us or has he passed away?
- 14 A. He's still alive. He's not a particularly a well individual, he suffers from  
14:37:24 15 a liver problem.
- 16 Q. 268 In the course of your discovery process, did you consider contacting Mr. Scott  
17 with a view to establishing whether these funds, that is the 457,000, which you  
18 believed to be the proceeds of Coolamber, whether these funds were identifiable  
19 in the hands of any other recipient or in any other account that was set up to  
14:37:51 20 reflect this?
- 21 A. What I did with Mr. Scott, I approached him to get whatever papers he had in  
22 relation to Drebbin and he provided me with whatever he had. And I provided it  
23 had to the Tribunal. I didn't --
- 24 Q. 269 Well --
- 14:38:14 25 A. I didn't discuss -- I didn't discuss with him the utilisation of the 457,000.
- 26 Q. 270 But how do you know where the funds went? I mean, it's not apparent from this  
27 document and certainly as much as this document would tell you is that the  
28 funds went to an account at the Isle of Man Bank Limited. Now, one would have  
29 expected that if Mr. Francis Scott was administering this account for you or  
14:38:47 30 for Mr. Morgan, on your behalf, that there would be some record available to

14:38:53 1 Mr. Scott as to where he placed these funds and what became of them?

2 A. There may be a record available to him. In terms of the records that he had

3 and handed over to me, he didn't give me anything that related to those. It

4 may be that he has as a signatory on an account the right to write to a bank

14:39:22 5 and to obtain information in relation to where those funds were placed and what

6 occurred in relation to the funds.

7 Q. 271 And your belief is that Mr. Bullock may have in some way been the recipient of

8 the funds and invested in them. What's the basis for that?

9 A. It's just a recollection, Mr. O'Neill, in relation to it.

14:39:45 10 Q. 272 Presumably then there would have to be a transfer then between those two

11 gentlemen of the 457,000?

12 A. Yes, or some part of it if it didn't all go in one payment it may have gone in

13 several payments.

14 Q. 273 Sure. And presumably loan documentation, since you have a memory, of these

14:40:06 15 being the subject of loans. Somebody would have had to draft them. And

16 would have to be exchanges, correspondence, people would have to sign them?

17 A. There may well have been correspondence on that between them. Again, I

18 haven't seen any documentation, I haven't had any of that documentation.

19 Q. 274 Is Drebbin -- I do understand Drebbin correctly to be a form of trust in the

14:40:33 20 sense that Drebbin itself isn't the ultimate economic beneficial owner of the

21 monies in question. They are being held ultimately for your ultimate benefit

22 or for your nominee, whatever it might be. The role of Drebbin is to

23 administer and to hold the funds to the instructions of others; isn't that so?

24 A. Well the role of it was to receive an advance from Longwater. The beneficiary

14:41:05 25 being, as I say, Mr. Morgan. In terms of the company itself, I mean, I would

26 have seen it. I mean, I've not really thought about it. But I would see

27 that as a receipt in terms of the company receiving as a loan and then onward

28 advancing those funds either as loans or investments. Again, I haven't -- I

29 haven't seen paperwork in relation to that and I haven't looked at that in this

14:41:35 30 context.

- 14:41:35 1 Q. 275 Am I right in thinking it isn't intended that these would be the payments we're  
2 looking at so far, that they would be dispositions to third parties in the  
3 sense of a reduction in the balance of funds that you yourself had? This is  
4 just another company which is holding it on ultimately for your benefit?
- 14:41:57 5 A. Well it's a company holding it back in to Mr. Morgan and back in to the Morgan  
6 structure.
- 7 Q. 276 Sure. But the Morgan structures aren't themselves going to benefit from it.  
8 I mean, it's, at the end of the day, it's going to be you or your nominees who  
9 benefit from it?
- 14:42:17 10 A. At the end of the day I would have hoped, and these investments may not all  
11 have turned out to be that good. In terms of the funds that had come from  
12 those investments, that they would come back into the trust and then for  
13 whoever is the beneficiaries at some date in time in relation to that.
- 14 Q. 277 Right. So in effect it is another trust structure; isn't that right?
- 14:42:43 15 A. It's another leg in the trust structure, yes.
- 16 Q. 278 Right. Longwater Investments Limited is probably a trust structure itself?
- 17 A. That isn't my recollection in relation to it. And I didn't bother myself  
18 particularly about how it was done. But I don't recollect that Longwater is a  
19 trust in itself. I thought that it again is a company associated with the  
20 Morgans.
- 14:43:24 21 Q. 279 But in the association, could I say that that association is a trust type  
22 association where perhaps the beneficial shareholding in Longwater is probably  
23 held by nominees for a Morgan Trust. That type of structure?
- 24 A. It may well be. I just don't know in relation to it. I never inquired.
- 14:43:41 25 Q. 280 Mr. Lawlor certainly in evidence on occasion has indicated that the monies  
26 which he borrowed, he borrowed from a Nicholas Morgan or a David Morgan family  
27 trust. We can see that the monies were borrowed from Longwater Investments  
28 Limited. So insofar as that can be taken as having any weight, it would  
29 indicate that Longwater Investments Limited was a David Morgan family trust?
- 14:44:08 30 A. Or part of some David Morgan family trust structure, yes.

14:44:12 1 Q. 281 Well what are the essential components of these structures then? We know that  
2 there will be a settlor at the beginning, there will be a beneficiary at the  
3 end of the day. Normally one can possibly say that the trusts purposes can be  
4 achieved by having a single trust company, that receives its funds, holds it  
14:44:35 5 for the beneficiaries and distributes it?

6 A. Yes.

7 Q. 282 In these situations there seems invariably a number of independent companies  
8 between the trust, between the settlor, the trust company and the  
9 beneficiaries; isn't that right?

14:44:51 10 A. Yes.

11 Q. 283 What purpose is achieved by those intermediate trusts, if I could describe them  
12 as that?

13 A. Well not so much that they are intermediate trusts. What you tend to have in  
14 these structures is you have the trust itself. And the trust itself owning a  
14:45:08 15 company. And that company then possibly owning another company or investing  
16 directly in the property. The reason for having the company there as opposed  
17 to the trust and the trustees as the parties who do the transaction is twofold.

18  
19 It's the one of mitigating the commercial risk to the trustees themselves by  
14:45:34 20 having a limited liability company interposed between them and the other assets  
21 that they have and the particular transaction. And secondly, from a tax point  
22 of view in relation to it. In terms of how the tax code historically, it  
23 always changes, but is historically treated, gains arising to trustees. So  
24 there -- in terms of structuring it from a tax point of view, you usually put a  
14:46:05 25 company underneath the trust.

26 Q. 284 Leaving the profit in the company?

27 A. Leaving the profit in the company.

28 Q. 285 And therefore not being taxed in the hands of the trust?

29 A. Yes, leaving the profit in the company so that the company is the entity that's  
14:46:20 30 liable for the tax in relation to it. Depending on what's happened and

- 14:46:25 1 therefore leaving the trustees with no tax exposure in relation to the  
2 transaction.
- 3 Q. 286 So one can envisage in a situation where the Morgans are professional trustees  
4 that they would have an essentially a Morgan trust, be it CI Law Trust or  
14:46:42 5 whatever it might be or a group of trusts, let's call it one trust. But it  
6 would be a global trust in which perhaps thousands of people have settled  
7 their assets into that trust and that trust then acquires a specific company to  
8 deal with the assets of that individual settlor's fund; is that right? Is that  
9 how it would work?
- 14:47:10 10 A. No. Sometimes -- two scenarios in relation to it. One is the situation  
11 where the trust is established, either by a settlor or the person directs that  
12 one be established or they already have one established.
- 13 Q. 287 Yes.
- 14 A. That settlement then acquires a company and that company then carries out a  
14:47:40 15 transaction. So that it stays in that one box. And they would have hundreds  
16 of those sorts of structures, where the common trustee would be CI Law Trustees  
17 or West Away Trustees or Peat and Marshal Trustees or whoever. And they would  
18 be the trustees who administer those trusts, all separate trusts.  
19
- 14:48:02 20 Then there's the other situation which is like the one you've described, where  
21 they have a trustee to a sort of a master trust, and that master trust does a  
22 number of different investments in different companies, effectively for a range  
23 of different people, many of whom are unassociated with each other. That's --  
24 more often it's the former rather than the latter.
- 14:48:35 25 Q. 288 Yes. Because combined funds, there would be different calls made on them and  
26 they might have be to be liquidated?
- 27 A. Yes, that's right. You could have situations where something goes wrong in one  
28 commercial venture and it spills over into the funds or the investments that  
29 are held for other "subtrusts" effectively I suppose.
- 14:48:59 30 Q. 289 Insofar as these are standardised trusts within the Morgan enterprise, have you

- 14:49:06 1 ever seen the trust deed that covers the latter form of trust that you were  
2 mentioning there?
- 3 A. No, I can't recollect seeing that.
- 4 Q. 290 So insofar as there was ever any discretionary trust terms there, they weren't  
14:49:24 5 the terms known to you; is that the position?
- 6 A. Yes. But a lot of what's in these discretionary trusts, I mean, you pick up  
7 one from Peat Marbrick and it's 80/90% the same as one from someone else.  
8 They are very, very similar documents.
- 9 Q. 291 So is it the position at present that you don't know where the monies  
14:49:49 10 specifically went after they had gone to the Isle of Man Bank, in that you  
11 can't say on what date any part of that fund of 457,000 went elsewhere?
- 12 A. I can't say that.
- 13 Q. 292 Or to whom though you believe that they weren't dispositions to third parties  
14 that they stayed within the fund; is that right?
- 14:50:11 15 A. Well I -- my recollection is that they were used for investments in basically  
16 in computer software ventures. So they would have stayed in the sense that  
17 they went in for shares in a particular company.
- 18 Q. 293 We know that of the 1.9 million deutsche marks approximately that was there,  
19 approximately 1,100 went for this purpose and the balance went to Mr. Lawlor?
- 14:50:40 20 A. Yes, that's correct.
- 21 Q. 294 Is there any possibility that part of these funds, that is the 457,000, upon  
22 being sent to the Isle of Man, found themselves with Mr. Lawlor?
- 23 A. No, there's no possibility of that. The entire settlement with Mr. Lawlor was  
24 encapsulated within the 825,000 deutsche marks.
- 14:51:03 25 Q. 295 Right. The 2 million deutsche marks that would have been in VP Bank equates  
26 to 33% of the total sum of money that was moved out of Ireland and over to  
27 Guernsey on the 20th of June of 1994.
- 28 A. Yes.
- 29 Q. 296 I appreciate that you say that there was a liability to discharge an  
14:51:34 30 indebtedness of circa 350,000 sterling and the interest that was payable on

14:51:40 1 that.

2 A. Yes.

3 Q. 297 And that all that had to come off the various sums so as to reduce the amount

4 ultimately payable to yourself to a figure of in and around the figure that was

14:51:52 5 in the VP Bank, which is 834,500 Irish pounds?

6 A. Uh-huh.

7 Q. 298 Is it possible that this sum, that is the money in the VP Bank, represented

8 one-third of the funds generated out of that transaction on the basis that some

9 other person who is unconnected with the subsequent division of the two and a

14:52:23 10 half million pounds had put up the 400,000 pounds to acquire the lands and

11 there was no obligation on those sharing in the net proceeds to pay back that

12 loan?

13 A. No. Certainly my understanding of it was that the advance had to be repaid

14 with a finance fee associated with it, plus the interest. And that the net

14:52:49 15 figure that was then divided after fees, 50/50 into the two structures.

16 There's no understanding of it in the terms that you are putting it.

17 Q. 299 The sum of 835,000 Irish or 825,000 English, would result in a sum of some

18 1,650,000 pounds being available for distribution if one considers that the VP

19 Bank amount was half of what was there.

14:53:35 20 A. Uh-huh.

21 Q. 300 Do you understand? And the amount that went over in sterling was 2,483,000

22 pounds, which certainly by my calculation would mean that there was 833,000 of

23 expenses deducted?

24 A. Yes, whatever that sum was is what was deducted from it. It wasn't absolutely

14:54:07 25 no question in my mind that this was -- you are suggesting it was paid to

26 Mr. Tiernan or involved Mr. Tiernan in some shape or fashion, that's something

27 that I just don't believe happened in relation to this. The funding -- the

28 big payment that came out of that was the finance side of it and, as I say,

29 the -- there was something I think added to it in terms of an agency fee that

14:54:37 30 Mr. Kennedy felt should be deducted from it and there were then other fees and

14:54:43 1 interest.

2 Q. 301 We'll see then that the second withdrawal again was one that was called up by

3 Mr. Scott on the 14th of September of 1995. And this is a sum which you relate

4 to a demand which was made of you by Mr. Liam Lawlor; isn't that right?

14:55:06 5 A. Yes, that's correct.

6 Q. 302 Right. And in your dealings with Mr. Morgan in London on the 16th of January

7 you set out and precis what was involved in that payment, at page 2599.

8 Paragraph 3 of that -- sorry, it's paragraph J I should say:

9

14:55:32 10 "Mr. Caldwell recalled that in 1994 for the first time after the

11 Southfield/Vino sale he was contacted by Mr. Lawlor who demanded a share in the

12 profit arising from the transaction. He had waited in the long grass to

13 invent a claim. A letter was received from Noel Smyth acting for Mr. Lawlor

14 which made threats to Mr. Caldwell and his firm. Mr. Caldwell recollected

14:55:56 15 writing to Mr. Smyth denying any liability to Mr. Lawlor.

16

17 Vino prior to liquidation made loans to two entities, one of them Longwater

18 Investments Limited, which was then owned by the original David Morgan Trust.

19 On the liquidation of Vino the benefit of the loans were distributed in specie

14:56:18 20 to the trust. The trust assigned the shares in Longwater in the benefit of

21 the loan to Longwater to David Morgan's new offshore trust established in or

22 about 1995."

23

24 Does that assist us in any way in identifying the name of that trust or any of

14:56:34 25 the other entities we've mentioned so far as being that trust?

26 A. No, Longwater would be identified to my mind in relation to this as the

27 corporate side, it would have been under the trust in the sense that we spoke

28 about earlier.

29 Q. 303 Uh-huh.

14:56:55 30 A. Or in some way associated with the trust. Outside of that there's no names of

14:57:04 1 trustees as such just descriptions of the trusts here.

2 Q. 304 "Drebbin lent a substantial part of the money by way of promissory notes to

3 structure which then substantially invested the same in technology company

4 shared.

14:57:20 5

6 M. To avoid publicity in or about July of 1995 Mr. Caldwell capitulated to

7 the demands Mr. Lawlor and his solicitor and the threats that were made. Mr.

8 Caldwell agreed to pay over a sum of 350,000 pounds to Mr. Lawlor, which was

9 paid in deutsche marks.

14:57:38 10

11 The terms were that 350,000 Irish pounds would be paid and Mr. Lawlor would

12 share equally any interest in Pentagon he might be entitled to and give up any

13 other interests he claimed. Mr. Caldwell instructed Frank Scott to pay over

14 the sum of approximately 350,000 pounds to Mr. Lawlor, which was paid in

14:57:57 15 deutsche mark.

16

17 In this connection, Mr. Caldwell recalls that he contacted David Morgan and

18 asked him to attend to the necessary structuring of the payment, relevant

19 structuring was to be put in place that would preserve the original tax

14:58:14 20 planning and would also provide a measure of asset protection planning. Mr.

21 Caldwell does not know if David Morgan met with Mr. Lawlor. The structure

22 effectively subdivided the original Longwater loan with 350,000 pounds being

23 credited to Mr. Lawlor

24

14:58:26 25 Mr. Caldwell never had sight of documentation and left it to the lawyers to

26 structure/implement the arrangement."

27

28 Now, that reference it the 350,000 pounds I think you can confirm,

29 Mr. Caldwell, is reflected in the transfer that is we've seen of the 825,000

14:58:47 30 deutsche mark which came from Drebbin and into the account in RKTO account;

- 14:58:58 1 isn't that right?
- 2 A. Yes, that's correct.
- 3 Q. 305 Now, on that basis and from what we see in this short note contained in
- 4 Mr. Morgan's recollection of events after the meeting in London, which I think
- 14:59:13 5 you agreed with. It would appear that you effectively were asking Mr. Scott
- 6 to transfer monies to Mr. Lawlor which really were not legitimately
- 7 Mr. Lawlor's; isn't that right?
- 8 A. Well it's -- I was settling the dispute with him in relation to entitlement to
- 9 these funds. He was claiming to be entitled to his share in the proceeds that
- 14:59:49 10 had arisen. And I settled that situation with him on the basis of him being
- 11 paid the 350,000 out of those funds. And the other severance of relationships
- 12 that occurred as part of the overall ending of the relationship with him.
- 13 Q. 306 This appears to have started as a result of an oral contact between Mr. Lawlor
- 14 and yourself; isn't that right?
- 15:00:24 15 A. Yes, I think we must have spoken on the phone or met.
- 16 Q. 307 And insofar as there was any written claim made against you at this time, in
- 17 1994/95, it was not a claim which was being made by Mr. Lawlor against you for
- 18 any share in Coolamber; isn't that right?
- 19 A. Um --
- 15:00:45 20 Q. 308 I'm talking now of Mr. Noel Smyth's letter, which was the letter which was
- 21 written on the 18th of July 1994 and was claiming monies for Elangrove, Cork
- 22 Company, etc.
- 23 A. Yes, that was one letter that was received, yes.
- 24 Q. 309 We'll just look at that letter. It's at page 2387. It's the letter written
- 15:01:08 25 by Noel Smyth & Partners in which he writes a long letter essentially saying
- 26 that Elangrove Properties have taken an assignment of the debt and interest
- 27 which was the loan of 158,560 pounds to Cork Company.
- 28 A. Yes.
- 29 Q. 310 It's not a claim made by Mr. Lawlor for a share in Coolamber, indeed, it
- 15:01:33 30 doesn't mention Mr. Lawlor at all; isn't that right?

- 15:01:36 1 A. No, this particular letter relates to the Elangrove claim, yes.
- 2 Q. 311 And the Elangrove claim, as we know, at a later stage involves Mr. Lawlor
- 3 apparently with Mr. Smyth and Mr. Mooney combining together in December of the
- 4 same year to say that since they have essentially the same claim against you,
- 15:02:04 5 that they will combine their efforts against you; isn't that right?
- 6 A. Yes, I saw that memo, yes.
- 7 Q. 312 But there doesn't seem to be any letter, even at that point in time, from
- 8 Mr. Lawlor to you claiming an interest in Coolamber; isn't that right?
- 9 A. I don't see one among the papers and I don't recollect one, yes.
- 15:02:25 10 Q. 313 No, no. Do you ever recollect starting communication in writing with
- 11 Mr. Lawlor where he was claiming an interest in Coolamber?
- 12 A. No. I think with Mr. Lawlor. I don't recollect exchanging letters with him
- 13 in relation to this claim. I think anything that happened, happened orally.
- 14 I recollect having a meeting with Mr. Smyth where he laid claims on behalf of
- 15:02:53 15 Elangrove and on behalf of Mr. Lawlor. I met him in his office.
- 16 Q. 314 Can you recollect when that was and what claim Mr. Smyth was making on behalf
- 17 of Mr. Lawlor at that point?
- 18 A. I can't recollect the date of the meeting. But I recollect that the claims
- 19 that -- and whether it was at this meeting or from conversations from
- 15:03:25 20 Mr. Lawlor before it I'm not sure. I recollect that he was, Mr. Lawlor's
- 21 claim was in respect of, as I say, a 25% interest in the Southfield, in the
- 22 Coolamber lands rather than the Southfield. He was looking for a 25% share of
- 23 the profits that had arisen on the transaction.
- 24 Q. 315 Did he know what the consideration had been for the sale of the property? Did
- 15:03:56 25 he ever have sight of documents which showed that 2.985 million pounds was
- 26 involved in the transaction?
- 27 A. I provided him with no documents in relation to it. I had produced no
- 28 documents in relation to the sale or the amount of the sale. My recollection
- 29 is that he was looking for a figure of around the 400,000 mark as the 25%
- 15:04:26 30 share.

- 15:04:27 1 Q. 316 Right. In fact, that probably would have been considerably less than the  
2 actual profit generated; do you agree or not?
- 3 A. Well in terms of the net that was available to me, that was 800,000 odd  
4 something, half of that was around the 400.
- 15:04:54 5 Q. 317 Uh-huh. It appears that the letter which we see on screen here was drafted in  
6 and around the 18th of July 1994. And I think that the only recorded reply of  
7 your's to the claim which was being brought on the Elangrove Properties matter  
8 was one which was dated the 6th of January 1995. You'll see that at page  
9 2424.
- 15:05:30 10 A. Yes, I see that.
- 11 Q. 318 It was written from 43 Fitzwilliam Place. I'm not sure what address that is.
- 12 A. We had moved offices there.
- 13 Q. 319 I see. This document appears to be possibly in the nature of a draft. It's  
14 received in the Goodman discovery rather than a document which you were able to  
15 produce; isn't that right?
- 15:05:56 16 A. Yes, that's correct, yes.
- 17 Q. 320 So it's not written on Binchys headed notepaper for example?
- 18 A. No, it's a letter from me personally.
- 19 Q. 321 Right.
- 15:06:07 20 A. To Noel Smyth & Partners.
- 21 Q. 322 And it seems that it's a document that was part of a series of correspondence  
22 which had passed between your solicitors and Mr. Smyth, certainly one letter.
- 23 A. Yes, that's, yes.
- 24 Q. 323 "I refer to my letter of the 19th of December 1994 which has been forwarded to  
15:06:32 25 you by my solicitors".
- 26 A. Yes.
- 27 Q. 324 And those were your solicitors McMahon and Tweedy, was it, at that point in  
28 time?
- 29 A. That's correct, yes, at that point in time, yes.
- 15:06:44 30 Q. 325 And on that issue I take it that obviously you'd consulted with them. They

- 15:06:50 1 had prepare add file of documentation. You had your own file of  
2 documentation. But unfortunately all of that documentation has now gone, it's  
3 been lost as far as you're aware?
- 4 A. That's right, yes.
- 15:07:04 5 Q. 326 You refer to it in your affidavit of discovery at item 31 as being "a file of  
6 correspondence of McMahon and Tweedy solicitors together with this deponents  
7 file including the signed settlement documents relating to the dispute between  
8 this deponent and Mr. Liam Lawlor" as being a document which is no longer  
9 documents which are no longer available to you?
- 15:07:28 10 A. Yes, unfortunately, that's right. Only one of the signed documents that's  
11 available is a Pentagon Property one, a copy of which was on the Nick Morgan --  
12 in the Pentagon Property discovery and there's a document there signed by  
13 Mr. Lawlor in relation to that aspect.
- 14 Q. 327 Right. But in relation to the McMahon & Tweedy's file. Have you endeavoured  
15 to seek by direct contact with them whether or not they have contact of the  
16 file or how is it you've concluded that there isn't a file available? There  
17 doesn't appear to be discovered again any documentation from you to them or any  
18 response from them to you?
- 19 A. All of that documentation was put together for safekeeping with Mr. Bullock and  
15:08:20 20 was lost unfortunately by him. And there's no copy of it available.
- 21 Q. 328 I mean, is this the documents that I've just last referred to where you were  
22 writing to McMahon & Tweedy in the context of the discovery order and their  
23 response rather than the original?
- 24 A. Oh, sorry I can't actually remember what happened in relation to McMahon &  
15:08:50 25 Tweedy, whether I wrote to them or not. I probably did but I have no  
26 recollection of that.
- 27 Q. 329 Certainly there isn't any written response to them in the documents that I've  
28 seen.
- 29 A. No, it would fall into the same category as before in terms of looking for  
15:09:06 30 documents. As I say, I can't remember whether or not --

15:09:09 1 Q. 330 Well could I say in this particular instance where Mr. Lawlor is bringing a  
2 claim against you personally and you were seeking the advices of a solicitor  
3 who was maintaining a file for you personally, there are no constraints of any  
4 trust nature that prevent you from producing that documentation.

15:09:27 5 A. I have no no difficulty producing the documentation if I had it.

6 Q. 331 Yes.

7 A. But I just don't have it. My recollection in relation to it, as I said in my  
8 affidavit, was with Mr. Bullock for safekeeping and the file was lost. I  
9 mean, I would certainly want to have that file available if it were there.

15:09:51 10 Q. 332 I think you're aware, Mr. Caldwell, from the brief documentation that  
11 Mr. Lawlor, upon combining with Mr. Smyth and Mr. Goodman's interests, or  
12 Elangrove's interests certainly, produced a number of documents which he called  
13 meeting notes.

14 A. Yes.

15:10:11 15 Q. 333 And those documents which we have seen on screen on a number of prior  
16 occasions. I don't intend to go through them in their entirety save to look  
17 at two documents in particular. The first is at page 2417 where there's  
18 reference to the third meeting. And a shareholding division?

19 A. Yes.

15:10:34 20 Q. 334 Where he says that there was a shareholding of the following beneficial  
21 shareholdings Liam Lawlor 41.3, Jim Kennedy 41.3 and John Caldwell 17.3 making  
22 100 on that tot. Effectively you say that that never happened. That this is  
23 a false document insofar as it purports to claim that from the very beginning  
24 of the Coolamber acquisition you, Mr. Kennedy and Mr. Lawlor were acting  
15:11:05 25 together in these proportions. You reject that; isn't that so?

26 A. I do.

27 Q. 335 It doesn't happen in these proportions or otherwise. Because you say the  
28 relationship initially was that you were the solicitor, legal advisor and  
29 director of Southfield but you were doing so in that capacity on behalf of the  
15:11:25 30 other two, who were the 50/50 shareholders as far as you knew?

- 15:11:30 1 A. Well as far as I was concerned in relation to it, that's the position I was in  
2 up until the Vino chain.
- 3 Q. 336 And again if we look to page 2420, we'll see that at the sixth meeting, as  
4 stated by Mr. Lawlor, you now have a redivision of the proceeds so that  
15:11:50 5 Mr. Kennedy has 50%, Mr. Caldwell has 50% and Mr. Lawlor has 50% described as  
6 "held by JC?"
- 7 A. Yes.
- 8 Q. 337 Insofar as there would have been documentation, I suppose he's intending to  
9 convey here that where as he would appear to be a 50% holder, 25% is in fact  
15:12:10 10 held by you for him?
- 11 A. That's what he's saying.
- 12 Q. 338 And again you say that is utterly untrue as well?
- 13 A. That's correct, yes.
- 14 Q. 339 These documents apparently were sufficient to allow for there to be a  
15:12:24 15 combination of interest between Elangrove and Mr. Lawlor which endeavoured to  
16 pursue you in respect of the 158,560 which we see referred in correspondence.  
17 And also in respect of the 25% claim which is not articulated in any document;  
18 isn't that right?
- 19 A. Yes.
- 15:12:45 20 Q. 340 And in the course of the discussion on that issue, you say you've a  
21 recollection of meeting with Mr. Noel Smyth in his office on one occasion when  
22 he articulated the claim, both for Elangrove and for Mr. Lawlor; isn't that  
23 right?
- 24 A. I certainly recollect meeting him in his office. I would expect, I mean, I  
15:13:12 25 don't have a recollection per se in relation to it, but I would expect that the  
26 discussion was to deal with the Coolamber situation and that he was raising  
27 with me both the issues of Elangrove and Mr. Lawlor.
- 28 Q. 341 Mm-hmm. Mr. Lawlor, doesn't seem in any of the correspondence that he  
29 generated with Mr. Goodman or with Mr. Smyth, to refer to specific negotiations  
15:13:44 30 with you alone. But I take it that he must have met with you to find himself

15:13:50 1 in a position where he could say to Mr. Smyth and Mr. Goodman that if the claim  
2 against you was withdrawn, that he would deal with you -- he would deal with  
3 Mr. Goodman separately. Do you remember him discussing with you abandoning  
4 the claim against you, on terms?

15:14:09 5 A. Well the object of the discussions with him was, as far as I was concerned, was  
6 to get to a point that his claims would be abandoned and that the -- as I say,  
7 these other matters in terms of his interests in his other companies would be  
8 dealt with at the same time.

9 Q. 342 We know that on a date, on the 4th of August 1995, Mr. Smyth drafted a letter  
10 which he sent to Mr. Sean Mooney for approval. It's at page 2473. And it  
11 came by fax to Mr. Mooney. But the document itself appears to be one which  
12 was intended to be sent out by Mr. Noel Smyth to you at Binchys; you see that  
13 on the 4th of August? "we refer to the above-mentioned matters and we are  
14 instructed by our clients that they have reached agreement with your clients  
15 and your firm.

16  
17 As a result of such agreement, we are now instructed to unconditionally  
18 withdraw all claims and allegations made against you and your partners. This  
19 we now do."

15:15:29 20 A. Yes, I see that.

21 Q. 343 Mr. Smyth didn't negotiate any agreement on these terms with you; isn't that  
22 right?

23 A. No, he did not.

24 Q. 344 Does it follow that it was Mr. Lawlor who did?

15:15:42 25 A. I dealt with Mr. Liam Lawlor face-to-face in relation to it, yes.

26 Q. 345 And were you aware that as far as Mr. Smyth was concerned that this was an  
27 agreement which involved Mr. Lawlor taking on board the liability to pay  
28 100,000 pounds to Mr. Smyth's client account?

29 A. No, I was not.

15:16:04 30 Q. 346 As part of that?

- 15:16:06 1 A. No, I wasn't. It was simply the payment of 350,000, the receiving of the  
2 unequivocal withdrawal of claims and the completion of the transfers or giving  
3 up various interests in the various companies I was involved in. But I wasn't  
4 aware of any background deals that were going on between himself and  
15:16:32 5 Mr. Goodman, or requirements to pay 100,000 into Mr. Smyth's client account.
- 6 Q. 347 Were you aware of any understanding or belief on the part of Mr. Goodman that  
7 if the letter withdrawing the claim against you and your firm was delivered,  
8 that Mr. Lawlor in turn was to have released to him a sufficient sum of money  
9 that would allow him to pay the money to Mr. Goodman in satisfaction of  
15:17:01 10 Mr. Goodman's losses arising from the Elangrove/Cork Company advance?
- 11 A. I wasn't, no. If I had have been I would never have had the funds released  
12 directly to Mr. Lawlor. If I had been aware of that, this requirement for the  
13 100,000, I would have ensured that that went directly into Mr. Smyth's account.
- 14 Q. 348 The claim apparently was settled then in the early part of August; isn't that  
15:17:33 15 right?
- 16 A. Yes, yes.
- 17 Q. 349 Although we'll see that the money which was transferred wasn't transferred  
18 until the 14th of September of the same year?
- 19 A. Of the same year, yes.
- 15:17:49 20 Q. 350 A minimum of a month later. Can you explain how it was that Mr.-- that the  
21 claim was withdrawn against you yet the money wasn't paid over for this period?
- 22 A. I don't know what date is on the Pentagon document, which is one of the  
23 documents associated with the settlement.
- 24 Q. 351 Well I'll find out for you.
- 15:18:14 25 A. I don't know whether this letter actually issued on the 4th or was handed over  
26 later.
- 27 Q. 352 In any event, by 1995 when this settlement took, place the earliest possible  
28 date that it could have taken place was upon the receipt of this letter which  
29 had been sent to Mr. Sean Mooney for his approval before going to you; isn't  
15:18:38 30 that right?

- 15:18:38 1 A. Yes, yes. I assume so. If it's going out for approval. This is the signed  
2 version of it here of the 4th of August.
- 3 Q. 353 It is. Though there is some confusion as to whether or not you received that  
4 on the 18th of August or on the 4th of August. I say this because in a letter  
15:18:56 5 in 1997 Mr. Smyth refers to a letter of the 18th of August of settling the  
6 action rather than a letter of the 4th of August?
- 7 A. I see.
- 8 Q. 354 In either event, could I suggest it wasn't before this date?
- 9 A. No, it wasn't.
- 15:19:11 10 Q. 355 And do you think that the matter was settled immediately just shortly before  
11 this letter was written?
- 12 A. Mmm, I would have thought so. I mean, I would have thought -- I have no  
13 recollection of that. But I would have thought that I agreed the basis of the  
14 settlement and he went off to get the appropriate letter. So it may have been  
15:19:45 15 that the basis of a settlement was some week or ten days before this letter of  
16 the 4th, I'm not sure.
- 17 Q. 356 Well --
- 18 A. It would have taken time for them to agree to it.
- 19 Q. 357 Well insofar as there was a settlement of this, it was one negotiated by you  
15:20:01 20 and Mr. Lawlor; is that right?
- 21 A. Yes, I dealt directly with Mr. Lawlor.
- 22 Q. 358 I know that you indicate that you structured the settlement through your Jersey  
23 lawyers. But --
- 24 A. In terms of the implementation of the settlement, yes.
- 15:20:14 25 Q. 359 So it was they that implemented it. This is via the Frank Scott direction.  
26 Isn't that right?
- 27 A. Yes, I settled it in the same sense, just across the table, sort the matter out  
28 as to what terms are going to be, agree those terms and leave it to other  
29 people to implement those terms, with the exception that I drafted the  
15:20:41 30 settlement, the individual settlement letters on Sabre and Pentagon which he

- 15:20:48 1 signed.
- 2 Q. 360 Yes. And were they to define a previously undefined interest in those  
3 companies or was it to release a specific shareholding which had previously  
4 been allocated to Mr. Lawlor through some structure or mechanism?
- 15:21:14 5 A. In relation to Sabre, it was to end his economic interest in the Baldoyle  
6 lands. In relation to Pentagon, it was to give me, through a structure, an  
7 interest in Pentagon, which I didn't have before that.
- 8 Q. 361 There are two Baldoyle interests, there's Cara and Sabre?
- 9 A. Yes, yes. It would have encompassed both of those. But again the document  
15:21:48 10 is on that file. But it would have been similar to the Pentagon document in  
11 terms of how it was structured.
- 12 Q. 362 And what was Mr. Lawlor's interest, economic interest, in Baldoyle  
13 proportionate to your own and to Mr. Kennedy's prior to the redistribution or  
14 restructuring of that interest?
- 15:22:11 15 A. The 25%. Mr. Kennedy had 50, Mr. Lawlor 25 and myself 25.
- 16 Q. 363 And was that a relationship which had been extant from the commencement in  
17 November of 1989 of the contractual relationship with Hayesbury, or had it gone  
18 back to the time when you had negotiated the acquisition from Endcamp of the  
19 option through Bauval?
- 15:22:43 20 A. Just I can't recollect at this stage when along that time line that it was.
- 21 Q. 364 Well were there any circumstances which had caused there to be a restructuring  
22 earlier than this one which took place in 1994?
- 23 A. Mmm --
- 24 Q. 365 Of the Sabre Cara relationship specifically?
- 15:23:02 25 A. I just can't recollect, Mr. O'Neill.
- 26 Q. 366 Well if we look to a document at page 2462. You may be familiar with this  
27 document from the brief. It is a document which purports to be a loan  
28 agreement between Longwater Investment Limited. It's dated the 5th of July  
29 1995, isn't that right?
- 15:23:26 30 A. Yes, I see it.

- 15:23:26 1 Q. 367 Now, this document is dated at least one month before you concluded any  
2 settlement with Mr. Lawlor, which was going to translate into a payment to him  
3 of 350,000 pounds; isn't that right?
- 4 A. Yes. I mean, the settlement may have occurred sometime before the 4th of  
15:23:46 5 August but I mean, I can't put a date on it. I can't say whether it was a  
6 month before or not, but --
- 7 Q. 368 Could I suggest --
- 8 A. -- it's unlikely to have been a month beforehand.
- 9 Q. 369 You wouldn't have left the matter extant and he certainly wouldn't have waited  
15:24:05 10 for another two months and one week after this date to receive his 350,000  
11 pounds?
- 12 A. It would seem to be a long wait yes, in the circumstances.
- 13 Q. 370 What this document purports to do is to be a loan agreement between Mr. Lawlor  
14 and Longwater Investments under which the lender would extend a facility of up  
15:24:28 15 to 500,000 pounds sterling to Mr. Lawlor which might be drawn down by him over  
16 time; isn't that right?
- 17 A. I haven't actually read this document. I just flicked through it.
- 18 Q. 371 Fine. "It is here by agreed as follows:
- 19 A. Longwater agrees to make available a facility of up to a maximum of 500,  
15:24:48 20 000 pounds sterling. The facility which is hence forth to be available to the  
21 borrower.
- 22
- 23 The purpose of the facility is to facilitate the repayment of personal and  
24 business liabilities of the borrower and to facilitate the borrower in  
15:25:02 25 obtaining planning permission for land in Ireland, and acquiring additional  
26 property and rights to property in the Czech Republic".
- 27 A. Yes.
- 28 Q. 372 Now, insofar as you had agreed this settlement of the claim with Mr. Lawlor in  
29 respect of Coolamber. Did you make it contingent upon any one of these  
15:25:24 30 arrangements being brought into being, namely, that there would be a loan of

- 15:25:29 1 500,000 pounds sterling to Mr. Lawlor from Longwater and that it would be made  
2 available for the purpose of financing property acquisitions etc.?
- 3 A. No. I mean, my situation with him was straightforward. It was the 350,000  
4 pounds. And sever these various relationships and take an interest in  
15:25:55 5 Pentagon.
- 6 Q. 373 Sure. It had going to do with this. And insofar as money was advanced on  
7 this basis, equally, it makes no reference, you may take it, in the body of  
8 this document, to you being either a party to the agreement or to it being done  
9 in consideration of the resolution of any dispute between you?
- 15:26:14 10 A. Right. I see that. I haven't read the document.
- 11 Q. 374 We see at page 2467 the signatures of Mr. Nicholas Morgan, as a director of  
12 Longwater Investments appending his name to this document. And we also see  
13 Mr. Liam Lawlor appending his name to the document?
- 14 A. Yes, I see that.
- 15:26:38 15 Q. 375 Now, I think you know that the 350,000 pounds or 825,000 deutsche marks that  
16 was paid to Mr. Lawlor was paid, as we see, through Mr. Frank Scott upon an  
17 instruction, apparently given by you to Mr. Nicholas Morgan to effect that;  
18 isn't that so?
- 19 A. Yes.
- 15:27:04 20 Q. 376 So Mr. Morgan must have known that the 350,000 pounds which was paid to  
21 Mr. Lawlor was not paid on foot of this loan but it was paid on foot of the  
22 settlement of his claim against you; isn't that right?
- 23 A. Well he would know that it was paid through Longwater. But I can't speak for  
24 Mr. Morgan in relation to it. I'm not familiar with this document or its  
15:27:31 25 genesis.
- 26 Q. 377 It is a matter which was discussed at the meeting in London; isn't that right?
- 27 A. Yeah, he raised the question of the loans.
- 28 Q. 378 And he indicated to you that it might be necessary to review the transaction  
29 from the point of view of the parties who were parties to it; isn't that right?
- 15:27:53 30 A. That was matter for himself, Mr. O'Neill.

15:27:56 1 Q. 379 Yes. We'll see that on the 30th of October of the year 2000, at page 2559  
2 Andrew J Haynes, barrister of law, at Horse Barrack Lane, Gibraltar, wrote to  
3 Mr. Lawlor regarding a loan repayment indicating "We act for the directors of  
4 Longwater Investments Limited company and we are instructed that the date for  
15:28:25 5 repayment of the loan" --  
6

7 CHAIRMAN: Sorry, Mr. O'Neill?

8 Q. 380 It's page 2559.  
9  
15:28:31 10 "Dear Mr. Lawlor. We act for the directors of Longwater Investments Limited  
11 the company. We are instructed that the date for repayment of the loan to you  
12 from the company is now passed. We are further instructed that the balance of  
13 capital and interest repayable as of the date of payment being 30th of  
14 September 2000 amounts to 1,111,23.81 sterling as per the attached statement  
15:28:59 15 and that interest continues to accrue at the rate of 456.59 pound per day.  
16

17 Please arrange for the payment of the overdue amount together with interest  
18 thereon to be made forthwith to Barclays Bank Plc to the account of Andrew  
19 Haynes client account No. 7135488."

15:29:24 20  
21 If we turn to page 2560 we will see how the loan is made up. If we could turn  
22 that page, please. 17th of August 1995. 370,000 pounds sterling and if we  
23 move across to capital advances we'll see 370,000 pounds sterling or 3 25,000  
24 deutsche marks.

15:29:57 25 A. I see that, yeah. Or 825.

26 Q. 381 I beg your pardon. Of course it is. That I have to say is a miscalculation  
27 of the rate of exchange at the time.

28 A. Uh-huh.

29 Q. 382 It is obviously something which has been calculated years after the event, the  
15:30:14 30 rate of exchange has changed. It translates as 370,000 pounds sterling

- 15:30:23 1            whereas in fact as of the date that it was done it should have been in the  
2            region of 340,000 pounds sterling.
- 3            A.            Okay.
- 4            Q. 383        But you didn't advance your monies on the 17th of August 1995. We know that  
15:30:39 5            the money went in on the 17th of September. So there was no capital advance  
6            on your funds know the 17th of August?
- 7            A.            No, we've gone through the bank statements.
- 8            Q. 384        Yes, yes. Nor did you intend your money to be a loan to Mr. Lawlor which was  
9            repayable by him with interest, because I assume that that would not have  
15:31:04 10           constituted a settlement of the demand he was making of you merely to receive  
11           the money on loan and payable at 11 and a half percent interest payable as of  
12           that date; isn't that right?
- 13           A.            Well as far as I was concerned the monies go into his account was full and  
14           final settlement. I wasn't looking for any loans or interest in relation to  
15:31:27 15           it. The Longwater people may have thought of it in terms of advancing it as a  
16           loan to him. But, I mean, that was beyond where I was. My relationship  
17           ended, as you say, I didn't advance the monies for loan purposes or with an  
18           interest group associated with it.
- 19           Q. 385        Certainly it would appear that for the purposes of correspondence with  
15:31:58 20           Mr. Lawlor at this time on the 30th of October, the monies that you had  
21           advanced in settlement of the claim were misdescribed as being a loan to him  
22           which was repayable with interest as of that date; isn't that so?
- 23           A.            Well I can't really say in relation to it because I don't know how the funds  
24           were advanced to him. Other than in terms of he actually got his hands on the  
15:32:28 25           funds. As far as I'm concerned based on what we have here the funds were paid  
26           from a Drebbin account straight into his, into this numbered account. So --
- 27           Q. 386        They were paid on the 14th of September 1995. They did not come as a result  
28           of an advance on a loan from Longwater. They came from Drebbin.
- 29           A.            Oh, yes, that's correct, that's correct.
- 15:32:52 30           Q. 387        As you can see. And in doing so, I have to suggest to you that the same

- 15:32:57 1 parties were involved in giving effect to your instruction, as were involved in  
2 generating this document here. Because we're told that Andrew J Haynes is an  
3 associate of the practice of Mr. Nicholas Morgan, and represents its Gibraltar  
4 arm.
- 15:33:17 5 A. Uh-huh.
- 6 Q. 388 Were you aware of that?
- 7 A. Yes, I'm aware of that, yes. Recently aware of that. It's not a historic  
8 matter.
- 9 Q. 389 Well I have to suggest to you that the only explanation for that is that they  
15:33:29 10 have decided knowingly to write a letter which is this letter of the 30th of  
11 October which was to be produced to the Tribunal by Mr. Lawlor to explain how  
12 it was that he had monies coming to him from the Landesbank which to that point  
13 in time he was claiming were not his own funds but were merely funds which he  
14 had the entitlement to drawdown on the basis of a loan from the account in  
15:33:56 15 Liechtenstein on the instruction of the David Morgan Trust.  
16  
17 Now, insofar as you know anything about this, it is because your funds are the  
18 self same funds that are referred to here in the body of the document as the  
19 loan; isn't that right?
- 15:34:21 20 A. Well I know nothing about this in terms of these structures. My passage of  
21 the funds was strictly into the numbered bank account.
- 22 Q. 390 Mr. Lawlor, as you may also be aware, has offered evidence from time to time  
23 that he has never obtained from you an acknowledgement that you will not call  
24 upon him at some date through Longwater investments to repay to him -- sorry,  
15:34:43 25 to you -- the funds that were advanced on this particular loan. I take it  
26 that you were never approached by Mr. Lawlor in relation to any suggested  
27 repayment of any of these funds by way of loan or otherwise to you?
- 28 A. I would have no call to call back these monies. The money was a full and  
29 final settlement.
- 15:35:13 30 Q. 391 The balance of the funds that we see here by way of capital advance come from a

15:35:19 1 payment which was made, as we see at page 2563. On the 30th of September a  
2 sum of 300,000 pounds in sterling.

3 A. I see that.

4 Q. 392 Is reflected as being 333,325 pounds in Irish money; isn't that so?

15:35:45 5 A. Yes.

6 Q. 393 Those funds, again, I have to suggest to you, are funds that were lodged to the  
7 Landesbank account and I suggest are not the proceeds of any loan but rather  
8 the proceeds of the realisation of the assets of a company called Trenergy  
9 Limited, Trenergy?

15:36:27 10 A. Trenergy, yes.

11 Q. 394 Trenergy came into substantial funds in 1998; isn't that so?

12 A. Yes, that's correct.

13 Q. 395 And again those funds were about 2 million pounds. Isn't that right?

14 A. I can't recollect but it was substantial sum of money, yes.

15:36:48 15 Q. 396 And Mr. Lawlor, I understand, through Rylton Foundation, had a share in the  
16 Trenergy company; isn't that right?

17 A. Yes.

18 Q. 397 25 shares in total.

19 A. Yeah, as a result of coming back again in 1997 after I had my stroke, he was  
15:37:10 20 put back in place with a 25% interest in the part of the Baldoyle lands. And  
21 this, these funds were represented I assume that 25% interest.

22 Q. 398 Yes. And again, these sums form part of what is said to be a loan. You'll  
23 see at page 2461 a document prepared in CI Law Trust, David Morgan Whitehead &  
24 Co. This is an internal attendance note which notably doesn't distinguish  
15:37:52 25 between the firm of solicitors and the Law Trust itself.

26 A. Uh-huh, I see that.

27 Q. 399 And it contains information suggesting, firstly, that on the 1st of July 1995  
28 there was a facility, Longwater to Lawlor 500,000 pounds. That again seems to  
29 be at odds with what has been reflect in the earlier document, suggesting that  
15:38:20 30 it might have been on the 5th of July that the facility was extended, and

15:38:26 1 indeed at odds with the document which suggests that the money was paid in  
2 September as we see from the next item down, where it's suggested that on the  
3 17th of August 1995 the first tranche of 825,000 deutsche marks was lent --  
4 sorry perhaps interest, at 11 and a half percent; isn't that so?

15:38:47 5 A. I see that.

6 Q. 400 That didn't happen until certainly no financial transaction took place until a  
7 month later; isn't that so?

8 A. Yes, the transfer from the bank statements was much later.

9 Q. 401 And again the next item is described as the second tranche, presumably of the  
10 loan or the loan facility, this time at 15% interest and it's 333,325 Irish.  
11 And again, that appears to be in error insofar as the monies came into the  
12 account on the 23rd of October of 1998 and not earlier.

13  
14 Do you know how it can be, Mr. Caldwell, how this type of information is  
15 recorded in documents generated by Mr. Morgan where the essential underlying  
16 transactions are not those which are reflected here, but are in the first  
17 instance the settlement of your claim with your money, 350,000 pounds, which  
18 was to be paid to Mr. Lawlor to effectively get him off your back. And the  
19 second which is a distribution of a fund which was generated upon the  
15:40:07 20 realisation of you and Mr. Lawlor and Mr. Kennedy's interest in a particular  
21 part of the Baldoyle lands.

22  
23 Can you explain how it is that they come to be reflected in a manner which does  
24 not appear to be accurate and that that work seems to be done within the firm  
15:40:24 25 who actually was acting for you, both in the Treney investment realisation and  
26 also in the structuring of the settlement with Mr. Lawlor?

27 A. Um, I can't, Mr. O'Neill.

28 Q. 402 We know that in 1997, despite the initial payment of monies by you to  
29 Mr. Lawlor, there is a further claim made of you by Mr. Noel Smyth. And we'll  
15:41:14 30 see a document at page 2521, which carries the date the 3rd of March 1997.

- 15:41:22 1 A. Yes.
- 2 Q. 403 Now, this is an unsigned document. And you may have noted from the brief of  
3 documents furnished to you that Mr. Smyth who prepared it is uncertain as to  
4 whether or not the document was ever sent or whether it was merely used by  
15:41:40 5 Mr. Lawlor to be produced to you to indicate a course of action that he might  
6 take in the event that you did not accede to his requests. Are you in a  
7 position to say whether or not A, you did ever receive this letter or one like  
8 it, and if so when it was that might have been received, if it was received?
- 9 A. I can't recollect -- I mean, I have certainly seen this letter before. And I  
15:42:14 10 can't remember whether I received it in the post or Mr. Lawlor produced it to  
11 me. But I'm certainly aware of its contents, yes.
- 12 Q. 404 It is a document which I think contained very serious allegations against you.  
13 It was treated very seriously by you.
- 14 A. Yes.
- 15:42:35 15 Q. 405 And it resulted in you entering into arrangements which had significant  
16 financial consequences for you; isn't that right?
- 17 A. Yes, that's correct.
- 18 Q. 406 Yet apparently it's a document which was not retained by you. Or if it was it  
19 was lost.
- 15:42:51 20 A. Again it would be if it was the document it would be with those Lawlor files.  
21 That's the Lawlor/McMahon Tweedy paperwork. But those documents just, as I  
22 say, were lost and so --
- 23 Q. 407 I referred to the fact that in Mr. Smyth letter he referred to the date of his  
24 settlement letter originally as being the 18th of August. And we'll see that  
15:43:23 25 in the first line of the document here.
- 26 A. I see that, yes.
- 27 Q. 408 We had looked at a document which was faxed to Mr. Mooney on the 14th -- sorry,  
28 on the 4th. So it may have been that he held it for some time before it was  
29 actually acted upon or implemented. But what this document endeavours to do  
15:43:44 30 is to undo the settlement which had been structured effectively through the use

- 15:43:50 1 of Mr. Morgan in Jersey; isn't that right?
- 2 A. Yes, it was. Mr. Lawlor going back on what had been agreed in 1995.
- 3 Q. 409 Sure. And irrespective of the merits or otherwise of the claim that he was
- 4 bringing against you. It must have been immediately apparent to you that you
- 15:44:09 5 would have to look to your earlier documentation in order to establish that he
- 6 did not in fact have any claim against you; isn't that right?
- 7 A. Um, I would have known that from, myself, anyway. I mean, at this stage in
- 8 '97 the other thing was still a raw wound. I would have known that the
- 9 documents that I drafted, I would have known the terms of --
- 15:44:37 10 Q. 410 Well would those documents have contained acknowledgments and disclaimers and
- 11 receipts of the funds and acceptances that they represented the entire of his
- 12 interest and matters of that nature?
- 13 A. Yes. If we had that Pentagon document it might be helpful.
- 14 Q. 411 Yes, I have it now. It was the 21st of August of 1995. I'll just scan it
- 15:45:04 15 in. So this is a document of the 21st of August 1995. I take it that all of
- 16 the -- certainly the signature is that of Mr. Lawlor; isn't that right. Yes,
- 17 that's correct. There's a reference a little further up, paragraph 2.1 to
- 18 Timspring Limited.
- 19 A. Yes.
- 15:46:35 20 Q. 412 Is that a trust company of your's?
- 21 A. That was a company that was proposed to take the shares in Pentagon.
- 22 Q. 413 For you?
- 23 A. Yes, as part of the infrastructure, yes.
- 24 Q. 414 So does this document assist you in establishing when it was that you actually
- 15:46:55 25 determined the issues between yourself and Mr. Lawlor?
- 26 A. This would have been -- the 21st of August '95 would have been the day we
- 27 signed off on the issues.
- 28 Q. 415 Right.
- 29 A. Some days prior to that we would have finalised the terms with them and then I
- 15:47:15 30 would have prepared this, and the other documents I would have prepared.

- 15:47:21 1 Q. 416 Now, Mr. Lawlor this document is acknowledging that he was the beneficial owner  
2 of 25% of the issued share capital of Pentagon Property Services. But did he  
3 produce any documentation or did you have any share certificates or other legal  
4 documentation which established that that was the case?
- 15:47:39 5 A. No, I didn't.
- 6 Q. 417 No. And --
- 7 A. That was based on my understanding of the position that existed between himself  
8 and Mr. Dobson, and taking into account the fact that, while Mr. Riordan had  
9 said to me that he had a claim in relation to it, Mr. Riordan was of the view  
10 that he would never see it.
- 11 Q. 418 So was he ceding it back then to Mr. Lawlor?
- 12 A. It was left hanging, I mean, it wasn't something that was discussed too much  
13 with him really.
- 14 Q. 419 Right. So do you think that there were equal documents reflecting the  
15 transfers of the interests in Sabre and in Cara Sports and some other  
16 documentation to deal with Coolamber specifically?
- 17 A. I think there was, yes. Yes, it would have been in relation to each of those  
18 matters I would have prepared a document which dealt with the respective  
19 issues.
- 15:48:28 20 Q. 420 Right. And can you say whether or not they were in your possession at the time  
21 this next claim was made against you, which is March 1997. It's only, it's  
22 less than two years later you are now faced with another claim; isn't that  
23 right?
- 24 A. Mmm, I would have thought that they probably were. Sorry, in my possession or  
15:49:25 25 in Mr. Bullock's possession?
- 26 Q. 421 No in, your possession?
- 27 A. Or Mr. Bullock's. I'm not sure. I just can't recollect, Mr. O'Neill.
- 28 Q. 422 I don't know if the fax track at the top of the document assists you at all in  
29 establishing who it was faxed to. But you'll see that it was faxed on either  
15:49:50 30 the 4th of the 10th or the 10th of the 4th, depending on whether one is using

15:49:55 1 an American machine or otherwise?

2 A. Yes.

3 Q. 423 Of 1996; isn't that right?

4 A. Yes. I assume again that if we look to the Pentagon file we'll know. That's

15:50:12 5 a fax of the document either to or from Nick Morgan's office.

6 Q. 424 That was because at this time Mr. Morgan was acting to implement that transfer

7 as part of the resolution of what had been a relatively long going, ongoing

8 dispute between various parties as to the ownership of the Pentagon pipeline?

9 A. Yes, that's correct, yes. He was trying to pull together the documentation

15:50:42 10 and to sort out the position.

11 Q. 425 We can tell you, of course, that from the reference of it to, Binchys, that it

12 was a document within the Binchys offices at the time?

13 A. SFI.

14 Q. 426 At that point in time. So certainly it survived the letter of the 3rd of March

15:51:07 15 1997 and for a number of years thereafter, this document?

16 A. Well this document was on the Pentagon file that I had got from Mr. Morgan, I

17 think you mentioned it before. And I got that some short time before this

18 event. So that was at the stage where I was gathering information together

19 for the purposes of doing the various narratives to the Tribunal.

15:51:40 20 Q. 427 When you were faced with this claim which was being brought against you and

21 armed with the documents which you have had both in relation to the Pentagon

22 arrangement and to the other companies. Is there any reason why you

23 entertained this subsequent application of Mr. Lawlor's to receive further

24 monies from you?

15:52:04 25 A. Yeah. I was faced with a choice of squaring up to him and getting into

26 litigation with him based on these. I had had a stroke in '96, which is why I

27 don't have any hearing on my left side. I have been told by the doctors to

28 avoid stress. I wound down my time in the practice dramatically. I was

29 winding myself out of the stressful way of the world; back in it with a

15:52:36 30 vengeance! But I just didn't want the fight, and I didn't fight him at that

15:52:44 1 stage. I should have fought him at that stage. The paperwork was clear, but  
2 I didn't.

3 Q. 428 And the consequence of that, I take it, is that you again entered into an  
4 arrangement with him to furnish him with an interest in properties that he had  
15:53:05 5 ceded already; is that right?

6 A. Yes, I did, that's right.

7 Q. 429 And those were interests, both in the Pentagon pipeline?

8 A. Yes, I conceded back two and a half percent of the Pentagon pipeline ownership  
9 to him and ceded 25% of the Valley pipeline to him.

15:53:32 10 Q. 430 Yes. And Sabre and Cara Sports?

11 A. Yes, that's right.

12 Q. 431 Yes?

13 A. Yes.

14 Q. 432 Did you reinstate him to the position which he had been?

15:53:52 15 A. I just told Nicholas Morgan to sort it out. I didn't involve myself in  
16 relation to it. I was just completely and absolutely disgusted with the  
17 situation, so I just left it to him to do what he had to do, to do the  
18 transfers.

19 Q. 433 Well the transfers being the transfer back to the antecedent position status  
15:54:12 20 quo that had prevailed until you had received these signed documents from him;  
21 is that right?

22 A. Yes, transfer back. In relation to Baldoyle, he didn't get a transfer back of  
23 all of it. He got a transfer back of part of it, a substantial part of it.  
24 In relation to Pentagon, he got two and a half percent of it back. In  
15:54:34 25 relation to Valley, he got something which he didn't have before, in that he  
26 got the 25% shareholding in Valley.

27 Q. 434 Why would he not have had the interest in the Valley pipe beforehand because it  
28 seems to have flowed from the consequence of the very initial contract of the  
29 sale of the lands to Mr. Tiernan that the vendor company would retain the  
15:55:01 30 infrastructure?

- 15:55:02 1 A. Yes, that's right. When the Vino situation came into being all of the prior  
2 situation ended with him. I was there on the 50/50 situation Mr. Kennedy.  
3 That was 50/50 in relation to the land and the pipes. Mr. Lawlor made his  
4 claim. He made a claim in relation to 25 % of the proceeds but in terms of  
15:55:29 5 settling things with him and being finished with him, I dealt with all of the  
6 things that were there. I dealt with the Valley pipes and the Pentagon pipes  
7 and the Sabre lands.
- 8 Q. 435 Those relationships, could I suggest, Mr. Caldwell, that existed between  
9 yourself and Mr. Lawlor were marked by a number of serious disputes between  
15:56:13 10 you. But notwithstanding those, they have continued, albeit through the  
11 umbrella of Mr. Morgan's organisation; isn't that right? You are still in  
12 shared relationships, if I could put it that way, with Mr. Lawlor; isn't that  
13 so?
- 14 A. Yes, and he's in these situations with these percentages. I don't speak to  
15:56:38 15 him about it. I never speak to him about it. I haven't had a social or a  
16 business contact with him for I'd say upwards of ten years at this stage.  
17 Other than bumping in to him at the airport on some occasion and also at the  
18 behest of Mr. Kennedy I went to some meeting with Mr. Smithwick to try and sort  
19 out the pipe situation. But anything that happens in relation to these  
15:57:05 20 things, I just don't communicate with him.
- 21 Q. 436 And whilst you don't communicate with him, he is nonetheless somebody who is  
22 formally established within the structures that hold these particular  
23 interests, including Pentagon and the Baldoyle lands?
- 24 A. Yes, I assume that's all being done, yes, yes.
- 15:57:28 25 Q. 437 And therefore, his interests have to be reflected by those who are managing  
26 that enterprise. I take it that, that is Mr. Nicholas Morgan who is doing so?
- 27 A. Yes, it is, Mr. Morgan, yes.
- 28 Q. 438 So that whilst the individuals concerned in the enterprises may well not be  
29 speaking and haven't done so for years, the overall ultimate decision making  
15:57:55 30 power is in some way vested in Mr. Morgan in some way that allows him to

- 15:58:04 1 conduct the affairs of those corporate structures or entities in the best  
2 interests of all of the shareholders; is that how it works?
- 3 A. Well effectively he would consult with each party, although I haven't had much  
4 compensation when I think back on it. Yes, in general terms, yes, he runs it  
15:58:29 5 in the best interests of the collectivity, yes.
- 6 Q. 439 And how are those interests now held? I mean, we have he seen a number of the  
7 share certificates, for example, of the British Virgin Island companies. They  
8 are standard bearer share certificates; isn't that right?
- 9 A. Yes.
- 15:58:53 10 Q. 440 Do you hold such documents?
- 11 A. No.
- 12 Q. 441 Do you think that the others hold similar documents?
- 13 A. No, I don't hold such documents. If there are bearer shares issued they would  
14 be held by Mr. Morgan.
- 15:59:06 15 Q. 442 If we look, for example, to page 2542. We'll see the Valley Holdings document  
16 here.
- 17 A. Yes, I see that.
- 18 Q. 443 Page 2542. If we could just turn that document, please. Here we see that as  
19 of this date, on the 4th of March, 1998. The company was in existence for  
16:00:33 20 quite some time before that; isn't that right?
- 21 A. Yes.
- 22 Q. 444 It was a company which stepped into the shoes really of Vino Properties Limited  
23 as the owner of the infrastructure; isn't that right?
- 24 A. Yes, that's correct.
- 16:00:39 25 Q. 445 And in so doing, I suppose it broke the chain between Vino and the property  
26 itself as regards any claim that people might have that Vino acted in a way  
27 which was contrary to the interests of either Mr. Goodman or Mr. Lawlor or  
28 anybody like that?
- 29 A. Yes, Vino was liquidated so --
- 16:01:01 30 Q. 446 Right. And this was left, which had no apparent connection with Ireland other

- 16:01:05 1 than it took an assignment of Vino's interests of the infrastructure; isn't  
2 that right?
- 3 A. Yes, I can't recollect whether or not it was named in the document in  
4 completion in terms of taking a lease or anything, I can't remember.
- 16:01:23 5 Q. 447 And this document here we'll see is joined in an ownership context by a  
6 document at page 2541, which again is prepared by Mr. Nicholas Morgan who signs  
7 both. In the first instance he's signing as director. And at 2541 we see CI  
8 Law Nominees "hereby acknowledge and declare that we are holding the bearer  
9 share certificate in respect of the shares and the schedule as nominee in trust  
10 for Rylton Foundation of Liechtenstein."
- 11 A. Yes.
- 12 Q. 448 So that as regards Mr. Lawlor's ownership structure of the interests beneath  
13 the Coolamber lands, he holds it by -- through Rylton Foundation, which was the  
14 foundation which has since been disbanded. He has mentioned to the Tribunal  
15 that it's now held by a Lawlor trust, to this point we don't know what exactly  
16 that this. But as of this date in 1998 it was held through the Rylton  
17 Foundation. And do you know how the interests of the other shareholders were  
18 held because if 25 shares represents 25%?
- 19 A. Uh-huh.
- 16:02:46 20 Q. 449 Then you own another 25%, Mr. Kennedy should only 50 shares I should say and  
21 you own 25 shares. And how are they reflected in ownership? Is it through  
22 bearer share certificates?
- 23 A. If they issued one bearer share I would say the rest of the shares are bearer  
24 share see as well.
- 16:03:12 25 Q. 450 This is bearer share certificate No. 4. If there are three of you involved?
- 26 A. Uh-huh.
- 27 Q. 451 You'd expect that there were three certificates?
- 28 A. Yes, unless there was one certificate issued on incorporation or something.  
29 And should be three. And should be three share certificates extant for the  
16:03:36 30 25, 25 and 50. Mr. Kennedy's again from something that's in the brief there

- 16:03:43 1 seems to be held for Zico Trust. And in terms of my 25% of it using that in a  
2 non-legal sense it's held for the trust.
- 3 Q. 452 But it would appear, Mr. Caldwell, to be the position that certainly in  
4 relation to these Coolamber lands, and this is the only remaining part of the  
16:04:19 5 Coolamber lands that was not disposed of to Mr. Tiernan, that there is this  
6 ongoing relationship, albeit now restructured through Valley Holdings and  
7 through formal shareholding arrangements of share certificates. Whereas no  
8 such certificates or deeds of trust or declaration as far as you know existed  
9 when the property was owned by either Southfield or by Vino; is that the  
16:04:49 10 position?
- 11 A. Yes, this is a function of the disagreement that we talked about, that can  
12 arise. The fall out of that is that the various parties wanted to paper their  
13 positions. Mr. Lawlor wanted to do that and I assume that that's the same  
14 documentation exists back into Mr. Kennedy's structures.
- 16:05:17 15 Q. 453 But there would have to have been some restructuring, could I suggest, of what  
16 the original arrangement was so as to result in this new arrangement here.  
17 Because the interests in Sabre and the interests in Cara Sports Limited predate  
18 the 1998 -- sorry 1997 and 1988 settlements between yourself and Mr. Smyth  
19 and/or --
- 16:05:50 20 A. I'm not following you on that.
- 21 Q. 454 Sorry. These certificates were generated in the 1998 we see.
- 22 A. I see that, yes.
- 23 Q. 455 Similar certificates generated in respect of Trenery in 1998.
- 24 A. Uh-huh.
- 16:06:05 25 Q. 456 They represented the new way of dealing with matters, as of the settlement  
26 ultimately of the affairs of yourself and Mr. Lawlor which followed upon the  
27 second attempt to take money or assets from you.
- 28 A. Yes.
- 29 Q. 457 In 1997.
- 16:06:25 30 A. Yes.

- 16:06:25 1 Q. 458 But the underlying assets there had been owned by you in combination going back  
2 to 1988/87/88 and therefore, they weren't reflected in this type of arrange at  
3 that point in time?
- 4 A. No, not back then they weren't, no.
- 16:06:40 5 Q. 459 So there had to be a mechanism of altering the existing mechanism so as to  
6 bring it up to this type of formalised shareholding arrangement in 1997; isn't  
7 that so?
- 8 A. Well what happened in relation to the lands is they were sold out of the  
9 existing companies or the benefit of contracts or litigation was sold out into  
16:07:09 10 Trenerly. So that would have ended the previous position. The new company,  
11 Trenerly, would have bought those for whatever, I can't remember what it paid  
12 for them.
- 13 Q. 460 60,000 I think.
- 14 A. Something like that, yes. And Trenerly then would have its structural, its own  
16:07:32 15 structural arrangements.
- 16 Q. 461 So the way it was done was that there was a sale of the original company's  
17 assets or the original company perhaps or its rights.
- 18 A. Yes.
- 19 Q. 462 I think is more accurate. To a new entity. And it was in the structure of  
16:07:49 20 the new entity that the formal shareholding arrangement was devised to  
21 represent the interests of the parties?
- 22 A. Yes, that's correct.
- 23 Q. 463 But in essence, the parties who sold out of the original company were again the  
24 same parties effectively, economically anyway, who took through the new  
16:08:09 25 company; isn't that so?
- 26 A. Yes, ignoring the sort of the two year period when Mr. Lawlor stepped out.
- 27 Q. 464 Yes.
- 28 A. And also ignoring it was only part of it that he came back into, so yes is the  
29 answer.
- 16:08:24 30 Q. 465 All right.

16:08:47 1  
2 MR. O'NEILL: I think we'll leave it at that.  
3  
4 CHAIRMAN: Mr. Finlay, I understand that Mr. Lawlor's counsel wants to  
16:08:54 5 cross-examine Mr. Caldwell tomorrow. So it might be as well then if you were  
6 to leave over -- I understand you won't be too long with Mr. Caldwell.  
7  
8 MR. FINLAY: I'm so sorry, Chairman. Because the microphone was only just  
9 switching on. Did I understand you to say that the Tribunal is now aware that  
16:09:16 10 there may be cross-examination by another party of Mr. Caldwell?  
11  
12 CHAIRMAN: We only became aware of that I think this afternoon.  
13  
14 MR. FINLAY: I fully appreciate that. Obviously it's the first I heard of it.  
16:09:28 15  
16 CHAIRMAN: That wasn't something we understood was going to happen. But  
17 clearly Mr. Lawlor's entitled to. So I understand that will take place  
18 tomorrow morning.  
19  
20 MR. FINLAY: Might I ask, Chairman. Obviously one can never be certain, have  
21 you had any intimation of how long that event is anticipated to last?  
22  
23 CHAIRMAN: We don't know.  
24  
25 MR. FINLAY: I see.  
26  
27 CHAIRMAN: But is Mr. O'Neill, are you finished examining?  
28  
29 MR. O'NEILL: Yes.  
16:09:59 30

16:09:59 1 CHAIRMAN: So we'll just sit at half ten tomorrow and hopefully it won't take  
2 too long to conclude Mr. Caldwell's evidence.

3

4

MR. FINLAY: Very good, Chairman.

16:10:09 5

6

CHAIRMAN: All right?

7

8

MR. FINLAY: Thank you, Chairman.

9

16:10:33 10

**THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

11

**WEDNESDAY, 16TH FEBRUARY 2005, AT 10:30 A.M..**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30