

10:26:06 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 16TH**

2 **FEBRUARY 2005, AT 10:30 A.M.:**

3

4 **CONTINUATION OF QUESTIONING OF MR. JOHN CALDWELL**

10:29:47 5 **AS FOLLOWS BY MR. O'NEILL:**

6

7 MR. O'NEILL: Good morning, Mr. Chairman. Very briefly, Mr. Chairman, whilst

8 I thought I had completed my examination of Mr. Caldwell yesterday. There

9 were two documents which I intended to refer to and I'm afraid I omitted to do

10 so, in the expectation of completing the evidence yesterday.

11

12 They are documents which were furnished to Mr. Caldwell yesterday afternoon,

13 having been provided to the Tribunal on foot of the discovery, which is being

14 made by Bedell & Cristin in relation to the affairs of Mr. Joe Tiernan in

15 Jersey.

16

17 And good morning, Mr. Caldwell.

18 A. Good morning, Mr. O'Neill.

19 Q. 1 If we could put the document No. 3493, please.

10:30:38 20 This document that you see on screen, Mr. Caldwell, a letter which is, I should

21 say an invoice probably addressed to you at Binchy & Partners. It is dated

22 the 2nd of December 1986. And it covers a period from the 3rd of October 1985

23 until the 30th of June 1986?

24 A. Yes, I see that.

10:31:08 25 Q. 2 And you'll see that it is a standard form invoice for professional services

26 rendered in relation to the maintaining of a Jersey company and registered

27 office with Jersey directors and Sark directors?

28 A. Yes, I see that.

29 Q. 3 And the next document I'd ask you to look at is at page 3494. And this is a

10:31:33 30 letter which was issued on the 13th of December 1988 addressed to yourself at

10:31:40 1 Binchys and it is in respect of a company called Mountrichard Holdings Limited.
2 The letter is from Mr. Bell of the company management department of Bedell &
3 Cristin to you; isn't that right?
4 A. Yes, that's correct.

10:32:00 5 Q. 4 I think in the course of my examination of you some days ago I was questioning
6 you as to whether or not you had a recollection of having set up for Mr. Joe
7 Tiernan, either an introduction to Bedell & Cristin or a direct contact with
8 Mr. Laurence Wheeler of that firm in connection an offshore structure for
9 Mr. Tiernan; isn't that so?
10 A. Yes, that's correct.

10:32:25 11 Q. 5 I think your recollection at that stage was, I don't have a recollection of
12 advising him in relation to an offshore structure. I take it that this
13 correspondence here is correspondence which was generated by the Jersey firm of
14 advocates and notary publics in connection with Mountrichard Holdings Limited
15 which we now know to be Mr. Tiernan's company; isn't that so?
16 A. Well I assume as Mr. Tiernan's company, yes, in the context of which it has
17 arisen. I have still no recollection of it, no recollection of being involved
18 in the creation of it.

10:33:10 19 Q. 6 Right. From your understanding of the role of Bedell & Cristin in
20 representing the interests of Irish individuals who set up companies within
21 Jersey, is it the position that in general and as a matter of course, they
22 nominate somebody like yourself to be their correspondent in Ireland rather
23 than to have direct communications between them and Bedell & Cristin?
24 A. No, not necessarily. What may have happened with these is that the people
10:33:39 25 issuing the bills in administration sometimes would send the bills to myself
26 just as part of their internal procedures.

27 Q. 7 Right.
28 A. But it wouldn't necessarily -- it isn't necessarily the case that everything
29 was, in terms of instructions to and from the company would all come through
10:34:04 30 me. In quite a number of instances people would deal directly with Bedell &

- 10:34:09 1 Cristin themselves.
- 2 Q. 8 Sure. This would all be a matter of agreement as between the Jersey lawyers
- 3 and the client as to with a level of interface there would be between the
- 4 client and Bedell & Cristin and in particular whether it should be routed
- 10:34:25 5 through intermediaries, such as yourself?
- 6 A. Yes, that's correct --
- 7 Q. 9 Can we take it from the existence of this documentation, certainly within
- 8 Bedell & Cristin there was an association of Mountrichard Holdings Limited and
- 9 yourself otherwise you would not have received this document?
- 10:34:43 10 A. Yes, there must have been some association between myself and this company, but
- 11 as I say, I have no recollection of it.
- 12 Q. 10 Fine. Could I suggest that that connection could only be made if you were the
- 13 introducing party to the, to Bedell & Cristin for Mr. Tiernan, or alternatively
- 14 that Mr. Tiernan nominated you to be representing his interests in relation to
- 10:35:08 15 Bedell & Cristin?
- 16 A. It may have been either of those. It also may have been that they knew that I
- 17 did work for Mr. Tiernan and associated me with it. But I have no
- 18 recollection as to how I came into the picture in relation to Mr. Tiernan and
- 19 Bedell and Cristen.
- 10:35:27 20 Q. 11 Sure. Could I suggest that it would be unlikely that they would make a direct
- 21 communication with you in relation to the affairs of another person, even
- 22 though that person may well have been at some point a client of your's without
- 23 first clearing that with their own client?
- 24 A. They may well have done that, Mr. O'Neill, I just don't know.
- 10:35:47 25 Q. 12 And finally, might I suggest that these two documents we see here are merely
- 26 illustrative of a series of correspondence in the sense of bills and other
- 27 documentation which was generated during the currency of the relationship
- 28 between Bedell & Cristin which commenced on the 3rd of October 1985 and ended
- 29 sometime in 1990?
- 10:36:11 30 A. I see.

10:36:12 1 Q. 13 But that type of documentation would have been copied to you as a matter of
2 course or certainly to your firm.

3 A. Yes it would have come in possibly to the firm, yes.

4 Q. 14 Right. You don't remember the name Mountrichard Holdings Limited in any
10:36:27 5 event?

6 A. I don't, I don't.

7 Q. 15 And can we take it from that, that is not the entity to which you sent the
8 100,000 pounds that we spoke of yesterday?

9 A. It doesn't ring a bell in that context.

10:36:43 10 Q. 16 Thank you.

11

12 CHAIRMAN: Mr. Russell, do you want to question?

13

14 MR. RUSSELL: Good morning, Chairman. I understand the application has been
10:36:47 15 made that I would have limited representation to put some points of Mr. Lawlor
16 to Mr. Caldwell. It's on that basis that I'm appearing this morning.

17

18 CHAIRMAN: Sure.

19

10:36:57 20 **THE WITNESS WAS QUESTIONED BY MR. RUSSELL AS FOLLOWS:**

21

22 Q. 17 MR. RUSSELL: Mr. Caldwell, I understand from your evidence that in relation
23 to Coolamber the first contact that you had with Mr. Lawlor was on the 21st of
24 July 1987; is that correct?

10:37:07 25 A. Is that the -- that's the date of the memo Mr. Russell?

26 Q. 18 Well it's the day before the tender was submitted?

27 A. I think the evidence I gave was that I recollect meeting him in the context of
28 that, the making of the tender. I have the recollection or I must have met
29 him before that, just I have no recollection of it as such. But it seems from
10:37:40 30 the notes that are there in relation to Mr. Britton and so on, there may well

- 10:37:46 1 have been a conversation between myself and himself prior to that particular
2 meeting.
- 3 Q. 19 But he retained you as Binchy & Partners as a solicitor; isn't that correct?
4 A. At that time, yes.
- 10:37:57 5 Q. 20 And I take it there was no instructions agreed or any formality to those
6 instructions.
7 A. No.
- 8 Q. 21 None at all?
9 A. No, in the sense of written instructions?
- 10:38:09 10 Q. 22 Written instructions, yes.
11 A. No, there was no formality, yes.
- 12 Q. 23 And there was no client agreement as such?
13 A. No, there wasn't.
- 14 Q. 24 Would that have been typical of the way you would have carried on business with
10:38:21 15 clients at that time?
16 A. At that time it would have been typical not only of myself but of most
17 solicitors. The use of client contracts as such is something of more recent
18 vintage.
- 19 Q. 25 And at that time did you use engagement letters?
10:38:33 20 A. No.
- 21 Q. 26 Was there any agreement at that stage on fees?
22 A. Um, not that I can recollect.
- 23 Q. 27 Was there any discussion of your participation as an equity partner?
24 A. No there, wasn't.
- 10:38:48 25 Q. 28 So you were purely appointed as his solicitor?
26 A. Yes.
- 27 Q. 29 Okay. Now, the next issue I want to come along to is the issue of Navona.
28 Now, I understand you have told the Tribunal that this was at Mr. Lawlor's
29 instruction; is that correct?
10:39:05 30 A. Yes, that structure was established.

10:39:09 1 Q. 30 And who requested the structure?
2 A. Well it was in the context of the acquisition of the property on the tender.
3 The structure that was put in place at that point in time was Navona as the
4 party making the tender.

10:39:28 5 Q. 31 And did the tender go in in Navona's name?
6 A. Yes, it did.

7 Q. 32 Mr. Lawlor approached you, who was your client, was it Mr. Lawlor, was it
8 Advanced Proteins, was it Mr. Goodman?
9 A. At the time that I was approaching Mr. Lawlor, it wasn't Advanced Proteins and
10:39:45 10 it wasn't Mr. Goodman, it would have been Mr. Lawlor.

11 Q. 33 In a personal capacity?
12 A. In a personal capacity.

13 Q. 34 And did you advise him that Navona was the correct structure to make the tender
14 in?
10:39:57 15 A. Yes, I would have discussed that -- I have no recollection of the content of
16 the conversation with him, but I would have discussed with him the use of an
17 Isle of Man company and he would be, he must have agreed. He did agree to
18 that because the tender went in in that company's name the following day.

19 Q. 35 So it was your suggestion that he use an offshore company?
10:40:20 20 A. Well I would have discussed it with him. At the end of the day, he made the
21 decision in relation to it in the sense of giving instructions to proceed on
22 that basis. But certainly the thought of using an offshore company would, for
23 this purpose, would have been something that came from myself I would expect
24 although I don't specifically have a recollection of that as opposed to
10:40:47 25 Mr. Lawlor suggesting it.

26 Q. 36 But you would say now that it was your idea; is that correct?
27 A. As I say, I don't have a specific recollection of Mr. Lawlor coming and saying
28 I want to have an offshore company. Equally, I don't have a specific
29 recollection of me suggesting that it was there. But in terms of the
10:41:08 30 probability of the two events, I would have thought that it was more likely to

- 10:41:12 1 be myself having discussed it with him suggesting the use of an offshore
2 company.
- 3 Q. 37 And why, what benefit would there be for him in using an offshore company?
4 A. Well in terms of what we were looking at at that stage was questions of asset
10:41:29 5 protection and questions of tax planning going forward.
- 6 Q. 38 But surely, his asset would have been protected in an Irish company just see
7 easily as an Isle of Man company?
8 A. Well in terms of the shares in relation to the ownership of it, it's a much
9 more vulnerable situation than it would be in an overseas structure.
- 10:41:49 10 Q. 39 The company Navona was incorporate in the May 1987; isn't that correct?
11 A. I don't recollect the date specifically but I presume that's what the
12 certificates says.
- 13 Q. 40 And that's some three months before you met Mr. Lawlor regarding the Coolamber
14 deal.
- 10:42:07 15 A. Yes. If the dates correct, yes.
- 16 Q. 41 And who set up Navona originally?
17 A. Well, again, without looking at the papers and seeing whose on the
18 incorporation papers in relation to it, I assume it was set up by the company
19 registration agents in the Isle of Man.
- 10:42:29 20 Q. 42 On whose instructions?
21 A. Well they would have established the company themselves. What's quite common
22 in these situations is that people establish companies and leave the companies
23 on the shelf until someone comes along and take it is for a specific purpose.
24 So I imagine what happened in this instance is that the company registration
10:42:50 25 people had it established and it was there until it was requested in this
26 context.
- 27 Q. 43 And when did you call that company off the shelf, so to speak?
28 A. Again, precise dates, I would have thought it was in or around the time of the
29 meeting with him and the utilisation of the company for purposes of the tender.
- 10:43:15 30 Q. 44 Was that before or after the tender was submitted?

- 10:43:18 1 A. Well the company was on the tender and the tender was made by a director on
2 behalf of the company. So it must have been before the tender and presumably
3 within the 24 hours of the meeting with him and the actual submission of the
4 tender.
- 10:43:39 5 Q. 45 Would you have had a standing arrangement with the formation agents to call
6 companies like this at short notice?
- 7 A. Well it's a relatively easy thing for people to do. So with these particular
8 formation agents and I don't recollect who they are without seeing the
9 paperwork. What I would have done in terms of getting the company is I would
10 have spoken to Mr. Bullock, who is a director of the company or who became a
11 director of the company and he would have got a company fairly quickly. He's
12 based in the Isle of Man
- 13 Q. 46 Was Mr. Bullock a person you had an ongoing relationship with?
- 14 A. I've known him for some years before this and i have known him since, yes.
- 10:44:24 15 Q. 47 Would it be fair to say that Mr. Lawlor had no hand, act or part in the
16 formation or incorporation of Navona Limited.
- 17 A. Well certainly in terms of the formation and incorporation of it he wouldn't,
18 because that is something that would have predated the application, the use of
19 the company for the purposes of the tender.
- 10:44:45 20 Q. 48 And can I take it that that company wasn't used for anything between the 19th
21 of May and the tender date?
- 22 A. Well between the 19th of May and the tender date I wouldn't know. But the
23 normal practice with those sort of companies is that people incorporate them.
24 They leave them on their stocks and they -- whenever the company is drawn down,
10:45:10 25 that's the first time it becomes active. So the practice these days as
26 opposed to those days. The practice these days is to get a certificate
27 confirm that go it hasn't done anything in those days that didn't occur.
- 28 Q. 49 The company itself, there was nominee directors; is that correct?
- 29 A. Yes, it's the usual practice.
- 10:45:36 30 Q. 50 And when you drew the company down, would that have changed?

- 10:45:40 1 A. Well you had the original directors who were the directors at the time of
2 formation.
- 3 Q. 51 Yeah.
- 4 A. And then you usually have a change of directors in or around the time the
10:45:54 5 company becomes active.
- 6 Q. 52 And who were the directors when this company was drawn down or became active?
- 7 A. Well Mr. Bullock was one of the directors on the active side of it. In terms
8 of the directors prior to that, I could probably dig that out.
- 9 Q. 53 That's okay. I just want it know when it became active. Mr. Bullock was.
- 10:46:15 10 A. Mr. Bullock was, yes.
- 11 Q. 54 And who would have proposed Mr. Bullock?
- 12 A. I would have. The contact was between myself and Mr. Bullock.
- 13 Q. 55 Now, the shares in the company. What sort of shares were in that company?
- 14 A. I just think they were normal shares.
- 10:46:32 15 Q. 56 Just normal shares, no trusts or blind trusts or?
- 16 A. Well what I mean by that is I think they were normal shares in the sense that
17 they weren't bearer shares. In terms of the ownership of the shares, the
18 shares again were held in the situations ultimately for the benefit of
19 Mr. Lawlor.
- 10:46:57 20 Q. 57 Well that's what you say.
- 21 A. I say at that time, yes.
- 22 Q. 58 And what -- just before we get back to the shares. Who would Mr. Bullock have
23 been responsible to? Who would his duty of care have been to?
- 24 A. Sorry, I missed that.
- 10:47:11 25 Q. 59 Who would Mr. Bullock's duty of care have been to as a company director of
26 Navona?
- 27 A. Well as a director his obligations were obligations to the company. As a
28 director he's no obligations per se to the shareholders. He would have
29 liaised with me in terms of being the person who dealt with him and instructed
10:47:38 30 him in relation to the company.

- 10:47:40 1 Q. 60 And would it be fair to say he took his instructions exclusively from you?
- 2 A. Oh, yes he wouldn't have taken instructions from anyone else.
- 3 Q. 61 Was there any direct communication between him and Mr. Lawlor?
- 4 A. No, I wouldn't expect there'd be any communication at all between the two of
- 10:47:56 5 them.
- 6 Q. 62 So he took absolute instructions from you?
- 7 A. He would have dealt with me.
- 8 Q. 63 Without question?
- 9 A. Well, yes, without question.
- 10:48:03 10 Q. 64 Within the confines of his duty to the company?
- 11 A. Yes, that's correct.
- 12 Q. 65 Now, the shares -- just to get back to the shares. You say they were for the
- 13 benefit of Mr. Lawlor; is that correct?
- 14 A. Yes, held in the limbo status effectively for him so ultimately he would be --
- 10:48:21 15 that he effectively would be --
- 16 Q. 66 What's a limbo status?
- 17 A. In the sense that there's no formal trust or blind trust or those sort of
- 18 arrangements in relation to it. That it was held ultimately for his economic
- 19 benefit is probably the way that we
- 10:48:43 20 Q. 67 And how was he secured?
- 21 A. In terms of security, he wasn't secured in the sense of having any paperwork
- 22 which showed him to have an interest in the company.
- 23 Q. 68 So let me get this right, Mr. Lawlor has organised 208,000 plus costs and
- 24 expenses to buy a potentially valuable piece of land. He puts it into Navona
- 10:49:10 25 and he has no security, is that what you're saying?
- 26 A. Well he has no security in the sense of having ownership of the shares in a
- 27 formal sense, that's correct.
- 28 Q. 69 So if there was a problem how could he secure his position?
- 29 A. He had difficulties in that context then, but that's the position that he goes
- 10:49:31 30 into in the context of these sorts of structures.

- 10:49:34 1 Q. 70 Sure wouldn't that be absolute Lunacy.
- 2 A. No, I don't -- it's a matter of judgement for the individual himself. In some
- 3 cases people take the view that they have to have all sorts of paper in terms
- 4 of declarations of trusts and stock transfer forms and ownership of the shares.
- 10:49:55 5 In other instances they take the position that they don't have those bits of
- 6 paper. It's a weighting of risk between the financial requirements and
- 7 objectives that they have.
- 8 Q. 71 What objective could be served by having no control over your interest?
- 9 A. Well he has a situation in which he has -- well he has control over the
- 10:50:29 10 interest insofar as he talks to me about it and I talk to Mr. Bullock about it.
- 11 And in those circumstances his wishes are transmitted through me to
- 12 Mr. Bullock.
- 13 Q. 72 If you told Mr. Bullock to sell the lands for 50 pounds he could have done it;
- 14 isn't that correct?
- 10:50:41 15 A. He could have done it, yes.
- 16 Q. 73 And Mr. Lawlor couldn't have stopped him.
- 17 A. No, he couldn't have.
- 18 Q. 74 Sure that's not logical?
- 19 A. Well it's the situation that was there in relation to it.
- 10:50:49 20 Q. 75 And you were a solicitor in at that time?
- 21 A. Yes, I am -- I was at that stage, yes.
- 22 Q. 76 And you advised him to do this?
- 23 A. Yes, in discussions. That's the structure that emerged from it, yes.
- 24 Q. 77 But sure there's no structure, he has no security?
- 10:51:03 25 A. Well as I say, there's a structure in that there isn't -- there is a structure
- 26 in that Mr. Bullock is the owner of the shares or whatever the company was or
- 27 the entity was.
- 28 Q. 78 Mr. Bullock is the owner of the shares?
- 29 A. Whatever the entity is that's there that owns the shares. In the normal
- 10:51:24 30 course of events say it's Mr. Bullock.

- 10:51:27 1
2 Mr. Bullock would own those shares. The benefit of the structure in this type
3 of a structure is that the person doesn't have any ownership in relation to it.
4 They are, therefore, in a position where they can take the position that they
10:51:41 5 don't have ownership in relation to it. It means in terms of creditors they
6 have no issues insofar as that's concerned. It leaves them in with this risk
7 element that you're describing in terms of someone turning around and selling
8 the property for 50 pounds. But otherwise it's from a personal protection
9 point of view in terms of creditors coming after property, it's in a strong
10:52:10 10 position.
- 11 Q. 79 It's in a strong position with creditors but it's in a zero position for the
12 beneficial owner?
- 13 A. That's the weighting that happens if these sort of things, if they play out to
14 a conclusion without difficulties arising in relation to it, then the company
10:52:32 15 would finish up with whatever the asset is or the realisation of that asset.
16 It's then a question that the point in time as to how the economic benefit that
17 has accrued is distributed or made available to the person whose to be the
18 economic beneficiary of it. In those circumstances it's a question at that
19 stage of placing those -- that benefit into a new structure or into loans or
10:53:09 20 into investments or whatever.
- 21 Q. 80 Mr. Caldwell, with respect, I put it to you that that's absolute nonsense. I
22 mean, you're talking about economic benefit. The man, according to your
23 version, has just put himself in a position where he potentially has no
24 economic benefit. In fact it's worse than that, he could have lost the money
10:53:29 25 that he put in.
- 26 A. Well that's -- in terms of a Navona situation or in terms of any of these
27 situations that risk is there. I mean, as I say, you're weighing the
28 benefits, you're weighing the risks in relation to it, it's a choice people
29 make. If they choose to do that, that's the way it's done.
- 10:53:49 30 Q. 81 Did you advise him to do that?

10:53:51 1 A. It's a matter for the person themselves to take their views in relation to it.

2 Q. 82 You would have discussed the pros and cons with Mr. Lawlor, did you?

3 A. Well he would have known, yes. That --

4 Q. 83 Did you discuss them with him?

10:54:02 5 A. I have no recollection of that I'm sure I would have.

6 Q. 84 But surely as a lawyer.

7 A. I'm sure I would have at the time.

8 Q. 85 What was in it for Mr. Lawlor doing this?

9 A. Anonymity.

10:54:12 10 Q. 86 Anonymity? Okay. And why would he want anonymity?

11 A. That's a matter for Mr. Lawlor.

12 Q. 87 But is it anonymity in terms of the tax authorities or the planning

13 authorities? Who?

14 A. Well he's not, as I say, he's not a shareholder, he's not a director, he's not

10:54:37 15 an owner through it. So he has an anonymity in terms of all of those

16 situations.

17 Q. 88 That's not correct, Mr. Caldwell; is it? He provided the money.

18 A. Yes, he did he provided --

19 Q. 89 He wasn't anonymous in terms of the money?

10:54:59 20 A. Yes he is. If we're talking about the Navona situation here.

21 Q. 90 Yes.

22 A. So in terms of the structure that there was in relation to that as this thing

23 started. In terms of that, it left him in anonymity as far as the ownership

24 of it was concerned. That's the consequence of it. In terms of advancing

10:55:17 25 the funds in relation to it, yes, there's an advance of funds from a company to

26 the entity buying this. Now, that changed over time because of circumstances

27 into an Irish company from an Isle of Man company.

28 Q. 91 Let's just stick with Navona for a minute. Isn't it true that there's a clear

29 paper trail for the money? The money came from AIBP to Advanced Proteins

10:55:43 30 account in Lucan, controlled by Mr. Lawlor, who then put the money in your

- 10:55:47 1 client account; isn't that correct?
- 2 A. In terms of the -- well in terms of the initial money that was paid on the
- 3 tender, there's no clear paper trail into relation to that, that I can see from
- 4 the papers. In relation to the funds that went into Southfield, which were
- 10:56:09 5 used to pay the balance of the tender money and the completion, yes, those came
- 6 from APL.
- 7 Q. 92 But the money didn't go into Southfield it went into your client account;
- 8 didn't it?
- 9 A. Yes, they went into Binchy & Partners client account and was applied for the
- 10:56:32 10 benefit of Southfield Property Company Limited in the acquisition, in the
- 11 completion of the transaction. The transaction completed into the name of
- 12 Navona Limited and there was a declaration of trust back in favour of
- 13 Southfield Property Company Limited.
- 14 Q. 93 But you described Mr. Lawlor's supposed motives in going this Navona route as
- 10:56:56 15 anonymity. Yet you just conceded that there's a very clear paper trail, money
- 16 from a substantial company to Mr. Lawlor's company, from Mr. Lawlor's company
- 17 to your client account. And that anybody looking at that transaction,
- 18 anonymity goes out the window.
- 19 A. Well in terms of the source of the money to pay for it, that's pay for the
- 10:57:18 20 property, that's a loan situation in relation to it. In terms of the
- 21 ownership of the company, the person who is the ultimate economic beneficiary
- 22 of it, there is anonymity in relation to that. They are two distinct things.
- 23 Q. 94 Well I suggest they're not. I mean, the anonymity that you refer to falls
- 24 down immediately, you trace it back to Mr. Lawlor's account, his Advanced
- 10:57:46 25 Proteins account. Anyone that would look at this transaction can just follow
- 26 the money back.
- 27 A. Well the follow of the money back follows it back into Mr. Lawlor's account,
- 28 into the APL account.
- 29 Q. 95 There goes your anonymity.
- 10:57:59 30 A. It means he's associated it with it in context of the advance of the funds.

- 10:58:05 1 Q. 96 He's not just associated with it he paid for it.
- 2 A. He is associated with it in the context of advancing the funds or -- the
- 3 company advancing the funds to acquire the property. In terms of the ownership
- 4 of the company, he's in a position to say that he doesn't own it and he's in a
- 10:58:19 5 position to say that on a bona fide basis that he doesn't own it because he
- 6 doesn't.
- 7 Q. 97 Well I put it to you on behalf of Mr. Lawlor that he absolutely denies that
- 8 Navona was his company or that he had any involvement in it.
- 9 A. Well I note what you say in relation to it. But the situation is as I have
- 10:58:46 10 given it in evidence in relation to it. In terms of the ownership of Navona,
- 11 technically he's correct when he says that because he's not the legal and
- 12 beneficial owner of it --
- 13 Q. 98 No, no, let's be clear --
- 14 A. So in technical terms I don't disagree with him in terms of saying that but in
- 10:59:12 15 terms of the person who was ultimately to get the economic benefit at the time
- 16 that this commenced, he was the person in that category. Now, that's not a
- 17 legal status. It's not something which is built on the legal relationship.
- 18 So he is correct when he says that he
- 19 Q. 99 Well let me help you. Because Mr. Lawlor goes further. He says that not
- 10:59:36 20 that he didn't technically own it or instruct that it be formed. But in
- 21 absolute terms he didn't own it or instruct that it be formed, that that was
- 22 your decision.
- 23 A. In terms of instructing that it be formed, the company was formed months
- 24 before. In terms of the use of the company, he would have several months
- 11:00:00 25 after its incorporation he would have instructed in relation to that. He was
- 26 the person I met and dealt with in relation to that. In terms of the
- 27 ownership of that company, as things were structured he didn't own it and he's
- 28 correct in that. In a legal sense.
- 29 Q. 100 Well do you have any note, memorandum, attendance to confirm any of this?
- 11:00:20 30 A. No, I have no paper in relation to it.

- 11:00:30 1 Q. 101 Isn't that extraordinary for a lawyer to put in place this risky structure and
2 not have any note or memorandum on it?
3 A. I have no paper relation to it. That's the way it was done.
- 4 Q. 102 I put it to you again that that's absolutely extraordinary.
11:00:40 5 A. In terms of this sort of arrangement I personally don't find that
6 extraordinary. I mean, that's a personal, it's a matter of opinion.
7 Q. 103 Well we'll leave the Tribunal to make a valued judgement on that.
8
9 Can I move on. The purchase -- you were instructed by Mr. Brian Britton, I
11:01:06 10 understand, from Goodmans, that they did not want an offshore vehicle; is that
11 correct?
12 A. The person who introduced the notion of an offshore vehicle, my recollection of
13 that was Mr. Mooney, Mr. Sean Mooney who was an advisor to the Goodman Group.
14 Q. 104 An accountant.
11:01:24 15 A. He's an accountant, yes.
16 Q. 105 And when did he advise you of that?
17 A. Sometime -- I can't be precise about the date. Again, if we look at the
18 papers you'll probably work-out roughly when it was. There's some
19 correspondence with the vendor's solicitors where I was seeking to change the
11:01:45 20 name of the company to Southfield and it was in or around that time.
21 Q. 106 And when was Southfield formed?
22 A. I don't know when it was incorporated.
23 Q. 107 But presumably it was formed before the closing of the purchase of Coolamber?
24 A. Southfield would have been in existence at the time we made the request to
11:02:12 25 McCanns to have the name of the company, the purchaser changed. So it would
26 have been incorporated -- it would have been in existence at that point in
27 time. When it actually incorporated I can't actually recollect.
28 Q. 108 Who incorporated that company?
29 A. I'm not sure.
11:02:30 30 Q. 109 Did you?

- 11:02:32 1 A. I don't know without looking at the paper. I can't recollect who incorporated
2 it.
- 3 Q. 110 And who were the shareholders in Southfield?
- 4 A. The shareholders who were the registered shareholders were myself and
11:02:47 5 Castleroyal Nominees Limited, which was a nominee company.
- 6 Q. 111 And who was Castleroyal acting for?
- 7 A. Well Castleroyal -- the two shares were held -- well actually as it transpired
8 there were twelve shares, there was six shares each, were held as a nominee
9 capacity. Again, with no paperwork in relation to the ownership of those
11:03:17 10 shares.
- 11 Q. 112 So are you saying that both yourself and Castleroyal were only nominee
12 shareholders?
- 13 A. In, yes, that's correct.
- 14 Q. 113 And who was the beneficial owner?
- 11:03:28 15 A. The beneficial owner depending on, I can't recollect when Mr. Kennedy became
16 involved in it, it would have been Mr. Lawlor and/or Mr. Kennedy.
- 17 Q. 114 And what about Mr. Goodman?
- 18 A. Well Mr. Goodman at the time that this occurred, when we were talking about
19 making the application to change the name in relation to it, didn't figure as a
11:03:57 20 beneficiary, as a beneficial owner of the shares in Southfield Property
21 Company. It was never the intention at any time that Mr. Goodman would be a
22 beneficial owner of the shares.
- 23 Q. 115 It was never intended that Mr. Goodman?
- 24 A. That's correct.
- 11:04:11 25 Q. 116 Are you sure about that?
- 26 A. Yes, that's my recollection of it.
- 27 Q. 117 Well could I go to the letter of offer from the bank of -- Scotiabank or the
28 Bank of Nova Scotia, which I think is document 409 on the Coolamber brief. If
29 that could be brought up, please.
- 11:04:31 30

11:04:31 1 You see that there on your screen, Mr. Caldwell?

2 A. 409?

3 Q. 118 409, yeah. Now, this loan I understand was basically to redeem the money that

4 had been put in through Advanced Proteins by Mr. Goodman; isn't that correct?

11:04:58 5 A. That's effectively what happened in relation to it. Originally the notion

6 going back for several months before this occurred was that the funds would be

7 drawn down to enable the company to complete the acquisition of the Coolamber

8 lands.

9 Q. 119 Uh-huh.

11:05:16 10 A. As it happened, things didn't move on with the bank in terms of getting to the

11 position that the funds could be drawn down to achieve that.

12 Q. 120 But it is correct that this loan from Scotiabank effectively consolidated the

13 monies advanced by Mr. Goodman/AIBP into this Coolamber deal; isn't that

14 correct?

11:05:42 15 A. Well I don't know what you mean by consolidated.

16 Q. 121 Well isn't it basically repaying Mr. Goodman the money he put up, the company

17 is repaying him by borrowing the money from Scotiabank?

18 A. Yeah well what happened to it was that the funds were drawn down from

19 Scotiabank and the funds were taken into one of the Goodman companies.

11:06:09 20

21 The Southfield Property Company effectively had been advanced the purchase

22 price and some stamp duty. So leaving a difference between the money that had

23 actually got and expended on the acquisition of the property and the amount

24 that it drew down on the loan of about 123,000. That 123,000 was credited

11:06:37 25 to -- was taken by the Goodman organisation or one of the Goodman companies.

26 So that left, as far as Southfield was concerned, a debtor on its books for

27 that 123,000.

28 Q. 122 But what we have hereafter this drawdown is we have a balance sheet simply of

29 Southfield Property Company owing the bank 350,000 punts and on the other side

11:07:04 30 it had the benefit of this trust that it got from Navona?

- 11:07:10 1 A. Well, yes. What happened on the balance sheet was a debt, as you say, for
2 350,000. You would have an asset on the balance sheet of the cost of the land
3 which would be roughly 225,000, 227,000. And you would have a debtor on the
4 balance sheet for 123,000.
- 11:07:34 5 Q. 123 But you could also have a re valuation reserve on the basis that the land was
6 worth more now than when it was bought?
7 A. Well
- 8 Q. 124 That's matter of opinion between you and me. That's not where I'm going.
9 Just on this loan from the Scotiabank. Who acted as solicitor for Southfield
11:07:52 10 Property Company?
11 A. Binchy & Partners acted in the security aspects of it, the property security
12 aspects of it.
13 Q. 125 Did you?
14 A. Most of the actual toing and froing by the bank was dealt with Brian Delahunt
11:08:10 15 in Binchy & Partners, I would have been involved --
16 Q. 126 Who would have given Brian Delahunt instructions?
17 A. I would have been involved in terms of various bits and pieces that he needed.
18 He would also talk to people on the lending side and people on the property
19 side --
- 11:08:27 20 Q. 127 Would you have talked to them?
21 A. Sorry?
22 Q. 128 Would you have talked to them?
23 A. To?
24 Q. 129 The people in Bank of Nova Scotia?
11:08:33 25 A. In terms of the drawdown of this loan, no, I wasn't involved in any
26 conversations with the bank. I wasn't -- I had no recollection at all. And I
27 think Mr. Perry said in his evidence said I wasn't at any meetings that he was
28 at in relation to the funding. And the negotiations of this prior to the
29 drawdown.
- 11:08:55 30 Q. 130 But the normal undertakings and paperwork that would be filed with a bank on

- 11:09:01 1 the loan drawdown would have been provided by Binchy & Partners; is that
2 correct?
- 3 A. Well, yes, in terms of dealing with the solicitors, the solicitors would deal
4 with the mortgage documentation and the various bits and pieces that the bank
11:09:15 5 was looking for.
- 6 Q. 131 So can I draw your attention to the security section of that letter of offer
7 which is actually on the second page?
- 8 A. Yes.
- 9 Q. 132 And security section 2. It says "letter of comfort in a format acceptable to
11:09:30 10 the bank from Mr. L J Goodman. The letter of comfort shall include inter alia
11 a provision that Mr. Goodman shall not relinquish 100% beneficial ownership of
12 the borrower so long as any amounts remain out standing under this facility."
13 Were you aware of that?
- 14 A. I was aware of it on the day that I signed this document, which was the day
11:09:55 15 that Mr. Lawlor brought it in to me on the 30th of December, which was during
16 the Christmas holidays.
- 17 Q. 133 And did you sign it on the day he presented it to you?
- 18 A. I hadn't seen it before that, yes.
- 19 Q. 134 And what investigations did you carry out into its providences, negotiability,
11:10:11 20 its terms, its conditions?
- 21 A. Mr. Lawlor was the client. Mr. Lawlor was producing this letter to me for
22 execution in my capacity as a nominee director of his company. In terms of
23 the providence of the letter, that was a matter that I would have assumed that
24 he knew of, he was bringing it in and saying I want it signed.
- 11:10:43 25 Q. 135 You are a lawyer, Mr. Caldwell, did you not look into all of this?
- 26 A. My recollection of this is that he arrived in in great haste wanting this dealt
27 with. My recollection that I was very unhappy about signing this letter. I
28 have already been through this with the Tribunal in relation to it. I did
29 sign it. I did and he took it away and presumably provided it -- did
11:11:07 30 obviously provide it.

- 11:11:08 1 Q. 136 Why did you not ask for time to consider your position?
2 A. A, as the client was the person pushing to have it signed and I obliged him by
3 doing that.
- 4 Q. 137 But you would have had legal responsibility for signing it. You're the
11:11:26 5 director.
- 6 A. As the director of the company I take on the obligation of -- I don't take on
7 the personal obligation in relation to it, but I commit the company to dealing
8 with the terms that are contained in the facility letter.
- 9 Q. 138 You have a fiduciary care don't you?
11:11:44 10 A. I have a duty to the company, yes. In terms of the view that I would have in
11 relation to that, it is that the -- that a facility letter is not the
12 definitive be all and end all in relation to the matters that are contained
13 within its terms and it's not a representation or warranty of the matters
14 contained in it. The various items of security that are contain in the it are
11:12:10 15 all matters that can and often are negotiated, the detail of them negotiated
16 between the parties before the matter comes to a conclusion.
- 17 Q. 139 A few moments ago you told us that the nominee shareholders were yourself and
18 Castleroyal. And you indicated that those shares were held as nominees and
19 that they were on behalf of Mr. Lawlor and you sort of indicated maybe
11:12:35 20 Mr. Kennedy?
- 21 A. Yes, that's correct.
- 22 Q. 140 But this letter clearly states that the 100% beneficial owner is Mr. Goodman.
23 A. The letter clearly states that the bank required, in terms of providing the
24 funding, that they weren't going to provide the funding subject to any
11:12:57 25 negotiation that took place over the actual terms. In the absence of
26 Mr. Goodman being 100% beneficial owner of it.
- 27 Q. 141 That's not exactly what it says, Mr. Caldwell?
28 A. That's the effect of it.
- 29 Q. 142 Let's look at what it says "Mr. Goodman shall not relinquish" and I draw your
11:13:17 30 attention particularly to the word "relinquish".

- 11:13:24 1 A. Yes there.
- 2 Q. 143 That's totally at variance with what you just told the Tribunal?
- 3 A. It's not at variance with it. This is the bank's wish in relation to it.
- 4 That he won't relinquish it.
- 11:13:37 5 Q. 144 So were the bank wrong?
- 6 A. May it I finish? That works on the proposition that he actually has the 100%
- 7 beneficial ownership to start with.
- 8 Q. 145 And did he?
- 9 A. My position in relation to that, and I would have said this to Mr. Lawlor, is
- 11:13:53 10 that was not the position in relation to it. It was never intended to be the
- 11 position. Mr. Lawlor knew it wasn't the position in relation to it. But
- 12 it -- in terms of this company it was never intended that he, that Mr. Goodman
- 13 would be the beneficial owner in relation to it. My attitude towards a clause
- 14 like that and to deal with the bank in relation to it, is that it would have
- 11:14:16 15 been something to be negotiated out subsequently.
- 16
- 17 As it transpired, all of that was taken out of my hands because a letter had
- 18 already been done which wasn't furnished to me or provided to me. A draft of
- 19 that letter had been from what I say in the brief had been in circulation for
- 11:14:34 20 some months before, but no one had the, had thought to bring it near the
- 21 lawyers involved here to look at it in the context of what they are trying to
- 22 achieve. So driven by their own commercial requirements, they were out to
- 23 satisfy those commercial requirements and this left the lawyers in a situation
- 24 where they created the difficulty for themselves
- 11:15:03 25 Q. 146 Mr. Caldwell, you are abdicating your responsibility here. On the day you
- 26 signed this, the 30th of December 1987, you were a director of Southfield
- 27 Property Company. You were a nominee shareholder. You signed it on what was
- 28 in front of you. You are a trained lawyer. You have a certain amount of
- 29 expertise in property and tax and banking affairs. You signed something that
- 11:15:28 30 was patently wrong, according to your own evidence.

- 11:15:32 1 A. My evidence is absolutely clear and it doesn't change in any way. Is that
2 Mr. Goodman was not, was never intended to be --
- 3 Q. 147 Why did you do this?
- 4 A. In relation to this -- all that this is is a facility letter. This is not
11:15:49 5 warranty in relation to it, it's not a representation in relation to it. It's
6 a facility letter. A facility letter in terms of what it is, is a contract
7 when it's accepted. In terms of the implementation of the contract and the
8 documentation which is necessary to implement it. That's a matter which
9 invariably in these situations is something which is negotiated up to the time
11:16:21 10 you complete and drawdown the funds. But the parties did in this without my
11 authority is that they drew the funds down from the bank and applied those
12 funds for their own purposes.
- 13 Q. 148 Mr. Caldwell, on the 30th of December you accepted this loan offer for and on
14 behalf of Southfield Property Company. On a basis you are now telling the
11:16:38 15 Tribunal was totally spurious. You can't have it both ways Mr. Caldwell?
- 16 A. Well I'm not having it both ways. I'm being very clear as to what I did in
17 relation it and why I did it and the context it was done in and the
18 circumstances that applied in relation to it. And there's nothing spurious in
19 relation to it. I mean, it's what happened is clear. Why it happened is
11:17:02 20 clear. What I signed is clear. And the consequences that flowed from that
21 were not, if matters had been allowed to be left with the lawyers in relation
22 to it going forward as opposed to parties going interdicting themselves and
23 taking the funds would have been the situation that could have been dealt with
24 through any number of ways to satisfy the bank.
- 11:17:25 25
- 26 At the end of the day, whether Mr. Goodman was the beneficial owner or not in
27 relation to Southfield Property Company doesn't go to the quality of the bank's
28 security. At the end of the day, the only thing that matters is the bank's
29 security. When this letter issues --
- 11:17:40 30 Q. 149 Could I just interrupt you there. You've just made a very serious statement.

- 11:17:46 1 You say this issue of Mr. Goodman's beneficial ownership does not go to the
2 heart -- to the heart of this offer; is that what you said?
- 3 A. It doesn't go to the quality of the security that the bank had.
- 4 Q. 150 Okay. The quality of security. Could I draw your attention to the next
11:18:05 5 page, events of default?
- 6 A. Yes.
- 7 Q. 151 And just on to the next page at H, at page 412. Which is actually page 4 of
8 the letter of comfort.
- 9
- 11:18:20 10 At H it says "If there shall occur any change in the control and beneficial
11 ownership of the borrower".
- 12
- 13 Now, what that means is that would be an event of default. If there's a
14 change in the beneficial ownership the company is in default of its loan.
- 11:18:39 15 Now, how more serious an issue could there be for the company than to be in
16 default of its loan?
- 17 A. That's a matter which is different from the question of the quality of
18 security. In terms of quality of security. Quality of security is something
19 which doesn't -- isn't in the default provisions. It's something which is in
11:19:02 20 the bank's perception and the bank's ability to realise. What the bank had
21 here was a relationship which they had with Mr. Goodman and wanted to maintain
22 with Mr. Goodman. What they wanted from Mr. Goodman was a letter which
23 effectively said that he would look after the bank in the event of this
24 property acquisition going wrong. They wanted no more than that in relation
11:19:28 25 to it. And they would look to rely on that comfort that he gave them. Whether
26 or not he was a shareholder or not in relation to it is irrelevant to the
27 quality of that representation by him to them.
- 28 Q. 152 I put it to you that's nonsense --
- 29 A. With respect it's not a nonsense it's --
- 11:19:51 30 Q. 153 Let me just tell you why --

11:19:53 1 A. There's a clear --

2 Q. 154 Let me tell you why if you just give me a chance. In the event that Mr.

3 Goodman is not a beneficial owner -- not that he withdraws his letter of

4 comfort and not that he does anything else. In the event that he is not the

11:20:03 5 beneficial owner, the company is in default of its loan and the security can be

6 called in?

7 A. That's a different issue, with respect. It's --

8 Q. 155 Is that not a serious issue for the company?

9 A. It's a different issue from the question of the quality of the bank's security.

11:20:20 10 The quality of the bank's security is the primary issue for the bank when it

11 enters into, when it advances the funds. The quality of that security being

12 the comfort of knowing that Mr. Goodman would see the bank right, is not

13 affected it one jot by whether he's a shareholder or not.

14

11:20:50 15 CHAIRMAN: Sorry, Mr. Caldwell. If it happened subsequently to you signing

16 this, the bank discovered that in fact Mr. Goodman was not as the document

17 suggests he was.

18 A. Uh-huh.

19

11:21:04 20 CHAIRMAN: The 100% beneficial owner. What do you understand would have been

21 their entitlement? This is the bank's entitlement. What do you think they

22 could have done, no one knows what they would have done because it didn't

23 arise. But what could they have done or what do you understand they could

24 have done?

11:21:24 25 Put it another way. If Mr. Lawlor had said to you look, what happens if they

26 discover that Mr. Goodman is not the beneficial owner and asked you for advice

27 as to what entitlement the bank would then have had in terms of its security or

28 it's its loan, what advice would you have given him?

29 A. Well it's a question of being asked in terms what have would be the

11:21:52 30 consequences of a change in ownership. Then one would have said to him that

11:21:57 1 that was an event of default under the terms of this letter.

2

3 CHAIRMAN: We're not talking about change of ownership. The bank would have
4 taken this on to their file and it would appear on the face of it that

11:22:08 5 Mr. Goodman was the beneficial owner of the company. Now, if they discovered
6 subsequently that in fact at the time this document was signed that Mr. Goodman
7 was not the beneficial owner, what do you understand would have been their
8 entitlement or what could they have done

9 A. Well at that stage they could have called on the default provision under the

11:22:40 10 letter and have called in the loan at that stage because of a subsequent
11 change. But as I say, that doesn't affect the quality of it in terms of, they
12 would make a commercial decision at that point in time as to whether or not
13 this was an issue which was of sufficient importance to them that it justified
14 them --

11:23:13 15
16 CHAIRMAN: But it was potentially serious for the company had the bank ...

17 A. Yes, potentially serious in the sense that the bank could have potentially take

18 the attitude that well the fact that he's not the beneficial owner of it means
19 that we will trigger the loan. But trigger the loan repayment. But the
11:23:36 20 essence of, I believe that the bank's position in relation to it was that they
21 were looking to the comfort of Mr. Goodman's association or the comfort of
22 this, the statement from Mr. Goodman that he would effectively see them right
23 in relation to it. And that terms in terms of this, that's still there
24 irrespective of whether he's the owner or he's not the owner in relation to it.

11:24:08 25
26 Q. 156 MR. RUSSELL: Mr. Caldwell, I put it to you that on the day you accepted this
27 letter of offer, if we believe your other evidence, the company was in default
28 on the day you accepted the offer?

29 A. Well, no. It's only in default if the letter of comfort in the form

11:24:28 30 acceptable has been provided to the bank. On the day that this is signed, on

11:24:35 1 the 30th, I'm not provided with any letter or the content of any letter or the
2 draft of any letter at that point in time. I know from reading this what the
3 bank would like to see in that letter. But until that letter comes into
4 existence it's not in default. The fact is that, as I now know --

11:24:57 5 Q. 157 Mr. Caldwell, that's irrelevant --

6 A. Mr. Goodman had signed the letter on the 29th in a form which incorporated in
7 he --

8 Q. 158 You're avoiding the subject. The subject is the ownership. The default
9 provision is not about the letter it's about the ownership. And you say in
11:25:14 10 your evidence that on the day that you accepted this letter of offer
11 Mr. Goodman was not the beneficial owner. So you signed this letter knowing
12 ad idem that the company would be in default.

13 A. Not at all. No. There's -- what we have is a facility letter. It's a
14 facility letter which has got two conditions in it. One condition is the
11:25:38 15 provision of a mortgage. It was three or four months or possibly longer
16 before that mortgage was provided. Its second element of it is a letter of
17 comfort in relation to it in a form acceptable to the bank. That pre supposes
18 it's a form that had to be accepted by the bank.

19 Q. 159 Don't mind the letter of comfort. I'm not asking you about that. I'm asking
11:25:55 20 you about the ownership provision. And I take it that they were never
21 withdrawn before the money was drawn down from the bank?

22 A. The money was drawn down the next day by --

23 Q. 160 So --

24 A. By the Anglo Meat Packing people.

11:26:12 25 Q. 161 You, as director and nominee shareholder, signed a letter accepting a loan for
26 the company to whom you owed a duty of care, knowing that what you had signed,
27 according to your own evidence, was blatantly untrue?

28 A. That's not correct in relation to it. I signed a facility letter in relation
29 to this. I didn't sign a letter of comfort to the bank. I signed a
11:26:34 30 facility --

- 11:26:35 1 Q. 162 Forget --
- 2 A. With respect, you cannot forget the letter of comfort. The letter of comfort
- 3 is the security the bank gets. I signed a facility letter. A facility
- 4 letter is a contractual document. It required a number of things to be done,
- 11:26:51 5 one of those was a letter of comfort. I did not sign the letter of comfort
- 6 which made the representation to the bank and the bank relied on in relation to
- 7 it. That was a letter which was prepared between the bank and Mr. Goodman's
- 8 people and was signed by Mr. Goodman in relation to it. That letter was never
- 9 put to me for comment in relation to it, it was never presented it to me for
- 11:27:14 10 comment in the context of the structure that was there. Because these people
- 11 didn't care about the structure.
- 12 Q. 163 Mr. Caldwell, you signed the letter. You're a trained lawyer. You knew the
- 13 import of this letter and you signed it.
- 14 A. I can put it no further than I put it in relation to it, I mean badgering me is
- 11:27:31 15 going to make no difference. I signed the letter in the context of a facility
- 16 letter. You have a letter of comfort which is, as with the mortgage, as with
- 17 the documentation which is there, are all future events, future events.
- 18
- 19 I was making no representation to the bank at that point in time in relation to
- 11:27:50 20 it. The bank released the money because they got a facility letter that no
- 21 one gave me or asked me to have any input into. If that had occurred in
- 22 relation to it, then the form of the letter of comfort would have been
- 23 negotiated into a different form from the form that actually went to the bank
- 24 and in this condition would have been negotiated. If Mr. Britton came to me
- 11:28:14 25 about this condition or Mr. Lawlor had come to me about this condition, in the
- 26 months that was available to them, as I've seen from the documentation here,
- 27 then the difficulty which transpired as a result of Mr. Goodman signing this
- 28 wouldn't have emerged.
- 29 Q. 164 Mr. Caldwell, the bank received an acceptance of the offer they made, signed by
- 11:28:35 30 you in your capacity as a director of Southfield.

- 11:28:40 1 A. On the instructions of my client, Mr.--
- 2 Q. 165 Well who was your duty of care to, your client or the company?
- 3 A. Unfortunately in these circumstances I have two duties. I have a duty to the
- 4 client and I have a duty as a director to the company.
- 11:28:56 5 Q. 166 Which has primacy?
- 6 A. It's the wisdom of Solomon.
- 7 Q. 167 No, it's not. It's statute.
- 8 A. Well --
- 9
- 11:29:08 10 MR. FINLAY: Chairman.
- 11
- 12 CHAIRMAN: I didn't get that last point. You said it's statute.
- 13
- 14 Q. 168 MR. RUSSELL: Under company law, a director's primary responsibility is to
- 11:29:17 15 the company.
- 16 A. Yes. But I'm there in two capacities.
- 17
- 18 Q. 169 MR. RUSSELL: You signed as a director
- 19 A. Absolutely. I mean, I have explained the context. I've explained the
- 11:29:28 20 background. I've explained my understanding of this. I've explained the
- 21 circumstances applicable to it. I've explained the background to the party
- 22 presenting it to me. What I had and what I didn't have. What I knew and
- 23 what I didn't know. I can put it no further in relation to it.
- 24 Q. 170 As a director it was a reckless act to sign that letter of acceptance.
- 11:29:50 25 A. Please, come on. That's not the case at all in relation to it. The facility
- 26 letters are letters, I mean one can blind oneself if one wants. Facility
- 27 letters are subject to negotiation over months in terms of implementation of
- 28 the terms of them. Anyone who is familiar in the least with dealing with
- 29 banks is aware of that.
- 11:30:17 30 Q. 171 But you were the person here with the most experience. Why didn't you just

- 11:30:22 1 say stop on the 30th of December and say no, I want time to reflect on this, to
2 consider impact, the import for the company?
- 3 A. But it has -- what import does it have for the company.
- 4 Q. 172 The company signed --
- 11:30:35 5 A. In terms of the import for the company. The import for the company is that
6 the company is entering into a contract with the bank under which the bank
7 agrees that it will advance funds on certain conditions. If those conditions
8 were fulfilled they advance the funds. You can negotiate those conditions,
9 you can vary the conditions, you can add an addendum to the contract. There's
11:31:02 10 no disadvantage to the company by signing this.
- 11 Q. 173 If we accept your other evidence there is. If you are saying that the
12 shareholding reflected in the letter of offer it was void ad idem the letter
13 you signed?
- 14 A. It's a question in terms of the default provisions that are there, the default
11:31:21 15 provisions are only relevant when you get to the points that the funds have
16 actually been drawn down. At the time that this is signed the funds are not
17 drawn down. The default provision becomes relevant after that event. The
18 parties themselves without authority drew the funds down. And left and created
19 a letter before I was asked to sign this letter which dealt with this issue.
- 11:31:47 20 Q. 174 But the monies were drawn down the following day you just said?
- 21 A. The monies were drawn down on the 31st.
- 22 Q. 175 On the 31st, the day they drew the money down the company was already in
23 default?
- 24 A. Yes, it was, as a result of Mr. Goodman's action in signing this and he made
11:32:05 25 the representation to it and did that in at the behest of his financial
26 director.
- 27 Q. 176 Can I put another proposition to you, Mr. Caldwell. That what's reflected in
28 the letter of offer is the true situation and that the untrue situation is the
29 other version you've given whereby you say that Mr. Lawlor and Mr. Kennedy are
11:32:24 30 the beneficiaries. That's the one that's wrong.

11:32:27 1 A. No. I mean, it was never the case that Mr. Goodman was to be the beneficial
2 owner of this. I mean, it's -- it just was never the case --

3 Q. 177 Do we have any --

4 A. Mr. Goodman's role in relation to this transaction was as a facilitator of
11:32:47 5 Mr. Lawlor in providing finance. From looking at the paperwork that's there
6 in the months leading up to this, which I didn't know anything about until I
7 got the bundles from the Tribunal and read it. It seems quite clear to me
8 that what happened in relation to it, is that Mr. Britton you had his meeting
9 with bank, the bank wanted a letter of comfort. There was no requirement in
11:33:11 10 the context of the notes that are there that Mr. Goodman be a beneficial owner.
11
12 When it was passed on to another person in the bank for the purposes of
13 generating the letter this provision went into it. Mr. Britton wasn't
14 watching the game. And this continued on and they found themselves with 48
11:33:29 15 hours to go with some mad rush to get the funds down, completed documentation
16 on the 29th, got Mr. Goodman to complete documentation on the 29th, which
17 shouldn't have been completed and was never intended to be completed, and got
18 me to complete this the next day and the funds were drawn down subsequently.

19 Q. 178 Well where's the paperwork to show the alternative scenario, the supposed
11:34:01 20 beneficial ownership of Mr. Kennedy and Mr. Lawlor?

21 A. Well there is no paperwork which cover its that situation.

22 Q. 179 Isn't that a terrible coincidence.

23 A. There is also no paperwork which covers Mr. Goodman's beneficial ownership.

24 Q. 180 There is. There's a letter of offer from the bank signed by you.

11:34:16 25 A. With respect, I can put it no further.

26 Q. 181 That's the only document we have. Unless you can point me to something else
27 that shows an alternative scenario?

28 A. All I can do is give you my recollection and understanding of what the
29 situation was at that time and I believe my recollection and understanding
11:34:33 30 accords with Mr. Goodman's as well.

- 11:34:35 1 Q. 182 Okay. Let's move on.
2
3 When did you change from being the solicitor to this transaction to being a
4 director?
11:34:45 5 A. In terms of this acquisition?
6 Q. 183 Yeah. When you became a nominee director and shareholder of Southfield.
7 A. I became a director of Southfield at quite an early stage in it. I don't know
8 off the top of my head what date that was.
9 Q. 184 And did you formally remove yourself as solicitor to the company at that stage?
11:35:08 10 A. I largely stepped back from it and left a lot of the stuff to be done by other
11 people in the office.
12 Q. 185 Mr. Delahunt?
13 A. Mr. Delahunt and Oliver Burke, who is an assistant to me. I would have got
14 involved in some of the legal stuff and certainly signed some of the letters
11:35:27 15 that were going out. So it wasn't a complete severance of the two
16 relationships.
17 Q. 186 And were there any formalities completed to set up this Chinese wall?
18 A. No. I mean, it's not a situation in which one sets up Chinese walls.
19 Q. 187 Did that not leave you in a potential conflict of interest?
11:35:48 20 A. The conflict of interest was demonstrated on the day that we've just gone
21 through, the 30th, in terms of being a director of the company and having
22 responsibilities to the company. After all, in my view of this, this was
23 effectively Mr. Lawlor's company, not Mr. Goodman's company.
24 Q. 188 Why did you put yourself in that position?
11:36:14 25 A. Because I was obliging Mr. Lawlor.
26 Q. 189 And putting your own professional practice at risk?
27 A. I didn't believe at the time I was putting my professional practice at risk in
28 relation to it.
29 Q. 190 But surely this would be abnormal in terms of the practice of solicitors to
11:36:30 30 become solicitor, then director, then nominee shareholder. Surely that's not

- 11:36:36 1 normal?
- 2 A. No, not uncommon thing at all.
- 3 Q. 191 Not uncommon.
- 4 A. Not uncommon. Less so now. Considerably less so now because the
- 11:36:46 5 responsibilities and duties are so vast at this stage that very few people want
- 6 to become directors even of their own companies let alone nominees of other
- 7 peoples companies. At that stage in the '80s the duties and responsibilities
- 8 were largely the company law, common law duties that we're familiar with. So
- 9 it wasn't unusual to be directors of companies for clients or to be, to hold
- 11:37:19 10 shares as the nominee capacity.
- 11 Q. 192 Did you seek instructions from Mr. Lawlor or Mr. Goodman or Mr. Kennedy as to
- 12 your position, your roles and responsibilities, I mean at the time of the
- 13 change now?
- 14 A. No, I had no communication with Mr. Goodman in relation to it at all.
- 11:37:40 15 Q. 193 Any of his representatives?
- 16 A. Sorry?
- 17 Q. 194 Any of his representatives?
- 18 A. I had very limited communication with Mr. Britton. Very, very limited
- 19 communication with him. The communication that occurred in relation to this
- 11:37:56 20 was principally with Mr. Lawlor.
- 21 Q. 195 But did you not seek any document to cover yourself, any indemnity as to where
- 22 your position was going?
- 23 A. No, I didn't seek an indemnity from Mr. Lawlor in relation to acting as a
- 24 nominee director of the company. As a matter of practice, I just didn't do
- 11:38:19 25 that.
- 26 Q. 196 Did you agree a remuneration package with him?
- 27 A. For acting as a director?
- 28 Q. 197 Uh-huh.
- 29 A. No, I didn't.
- 11:38:27 30 Q. 198 Why not?

11:38:27 1 A. I didn't. I just didn't charge for that. I mean, I don't recollect doing
2 that in any instance.

3 Q. 199 You didn't charge?

4 A. I didn't charge for being a director, no.

11:38:41 5 Q. 200 Surely this would have been above and beyond the normal call of duty as a
6 solicitor?

7 A. As I say, I obliged Mr. Lawlor in doing it.

8 Q. 201 Why?

9 A. Sorry?

11:38:52 10 Q. 202 Why did you oblige him?

11 A. Because he asked me if I would be a director of it so I stood in that position.

12 Q. 203 Did you negotiate any shareholding for yourself?

13 A. No, I did not.

14 Q. 204 And did you do it in anticipation of becoming a shareholder?

11:39:05 15 A. No, I did not.

16 Q. 205 Very good. We'll just move on to another document I'd like to call up. It's
17 page No. 620 in the Coolamber brief. This is an form 11, Elan registry form.
18 Which basically converted possessory title in the register of property to be
19 converted into absolute title.

11:39:28 20 A. Sorry, page 620? I see that yes.

21 Q. 206 This was signed the 15th day of September 1988 by you.

22 A. I see that, yes.

23 Q. 207 Yeah. What capacity are you signing there?

24 A. It says "I John Caldwell 38/39, Fitzwilliam Square, Dublin 2, director of
11:40:04 25 Southfield Property Company."

26 Q. 208 So you are signing as a director?

27 A. A director yeah.

28 Q. 209 Could I draw your attention to paragraph 3:
29

11:40:08 30 "Southfield Property Company Limited is absolutely entitled to the property and

- 11:40:11 1 there is not to my knowledge any mortgage, charge, lease, agreement,
2 encumbrance, restrictive covenants or trust affecting the property or any part
3 of it created before the 14th day of September 1988".
- 4 A. I see that, yes.
- 11:40:27 5 Q. 210 Is that correct?
- 6 A. Well I assume it's correct, yes.
- 7 Q. 211 What about the money that Mr. Goodman put in? Where is that reflected in that?
- 8 A. Mr. Goodman didn't advance any monies into the company on foot of any trust.
- 9 Q. 212 Which --
- 11:40:45 10 A. Which is the only possibility within that range of --
- 11 Q. 213 What about agreement? Surely he advanced this money by some form of agreement?
- 12 A. But it's -- in the context of this, it's a mortgage, charge, lease a,
13 agreement, encumbrance, or any part of it the advance of monies by way of a
14 loan which is not tied to the property, doesn't affect the property or any part
11:41:20 15 of it.
- 16 Q. 214 And surely --
- 17 A. When I say tied to it, I mean in the sense of taking a mortgage of charge.
- 18 Q. 215 And go down to paragraph there.
19
- 11:41:35 20 It says, about half way down. "I have no knowledge of any deed, will,
21 settlement or any other document affecting the property or any part of it or of
22 anything prior to the 14th day of September 1988 whereby the title of
23 Southfield Property Company Limited to it may be affected or called into
24 question in any manner whatsoever".
- 11:41:58 25 Do you stand by that?
- 26 A. Well again in terms of agreements in relation to the property. The property
27 was owned by Southfield Property Company. So I can't think of any agreement
28 which in any way affects the property or any part of it in the sense that it's
29 in this land registry form.
- 11:42:20 30 Q. 216 What about the option agreement with Navona?

11:42:24 1 A. That doesn't -- well one, I don't know if it's before this date or after this
2 date in terms of that. Do you have the document?
3 Q. 217 I only have this document here. I don't have any document from Navona. But
4 you've given in evidence that there was an option?
11:42:40 5 A. There was an option, yes, indeed.
6 Q. 218 And that's not reflected there; is it?
7 A. Well if it predates this it's not reflected.
8
9 JUDGE FAHERTY: I think it's No. 493.
11:42:53 10
11 MR. RUSSELL: Maybe we could call it up.
12
13 JUDGE FAHERTY: Southfield to Navona option. Is that it? I'm not sure if
14 that's the one.
11:43:09 15
16 MR. RUSSELL: Sorry, I can't read the day date on that there. I don't know
17 whether you can assist me. Could we perhaps see the next page, please. If
18 it's possible to see the last page where it's signed, please.
19
11:43:35 20 MR. O'NEILL: I believe it to be the 18th of May of 1988. And the date stamp
21 1st of July '88 may assist to some degree in fixing that.
22
23 MR. RUSSELL: So we're saying May '88? That document obviously predates this
24 land registry document.
11:43:54 25 A. Yes, it does predates it.
26 Q. 219 So therefore, this certificate signed by you to the Land Registry is incorrect?
27 A. I don't believe that it is. I mean, I don't believe that the document is a
28 document which affects the title of Southfield Property Company Limited to the
29 property. What we're talking about is affecting title of it, not effecting
11:44:16 30 the future transmission of it. And this document does not affect title.

- 11:44:22 1 Q. 220 Does it not say "I have no knowledge of any deed, will, settlement or any other
2 documents affecting the property"?
- 3 A. Whereby the title of Southfield Property Company Limited to it may be affected
4 or called in question. This document does not affect the title. The
11:44:40 5 derogates and derives through a different --
- 6 Q. 221 Should the option not have been registered on the title?
- 7 A. Well that's a matter of practice as to whether you registered it or you don't
8 register it.
- 9 Q. 222 Would it not have been good practice for you acting in the interest of your
11:44:59 10 client to register it.
- 11 A. It doesn't have to be registered, there is no requirement --
- 12 Q. 223 It doesn't have to be. Wouldn't it be good practice given the discussion
13 we've had this morning?
- 14 A. Whether or not you register something or not is a matter of choice in relation
11:45:11 15 to these things. A lot of these things are not registered on title because if
16 you register them on title then you create a chain of documents which you have
17 to deal with in terms of carrying that forward with a property transaction for
18 the next twenty years to show and satisfy everyone that it's gone off title.
19 And in a lot of instances the land registry rules and the land registry
11:45:36 20 practice that you don't register things on title, for example, trusts.
- 21 Q. 224 Just stick with this option agreement since we have it here. The calculation
22 for Navona was a figure of 660,000 pounds; is that correct?
- 23 A. Yeah, the note I have on my copy here is 662,000, yes.
- 24 Q. 225 Well 662, yes. Well who calculated that figure?
- 11:46:02 25 A. Um, it would have been derived from the deal that was there with Mr. Goodman.
26 It would have been, it would have come effectively from Mr. Lawlor.
- 27 Q. 226 Mr. Lawlor. And do you have a note of that?
- 28 A. I don't recollect a note in relation to it. Other than the initial note
29 that's there in July where we have, there's some figures written out on that
11:46:34 30 which I thought -- again, I have difficulty in recollecting relating back to

- 11:46:42 1 that.
- 2 Q. 227 I understand what you're saying is this was the vehicle for Mr. Lawlor to get
- 3 his share out; is that correct?
- 4 A. Sorry I --
- 11:46:50 5 Q. 228 To get his share of the profit out?
- 6 A. It was the vehicle for taking the profit -- well it varied over time as things
- 7 changed over time. It was a vehicle for initially as you can see for taking
- 8 the property and therefore all of the gain in it, subject to whatever's going
- 9 to be put in place for Mr. Goodman. That subsequently changed because of
- 11:47:16 10 Mr. Goodman's advisors. And the Southfield came into the picture with an
- 11 option back to Navona.
- 12
- 13 And the intention in that was to leave funds in Southfield for purposes of
- 14 dealing with Mr. Goodman. And then, therefore, everything over and above that
- 11:47:41 15 would fall into Navona when the property moved to Navona. Subsequently that
- 16 changed again. But ...
- 17 Q. 229 And what exactly did Navona provide to get the option?
- 18 A. Well Navona was the original party to the tender document. The introduction
- 19 of Southfield into it was a mechanism to deal with Mr. Goodman's situation and
- 11:48:11 20 subsequently became more than that.
- 21 Q. 230 Well was there any formal agreement between Southfield and Navona as to all of
- 22 this?
- 23 A. The only document -- the documents between Southfield and Navona were the
- 24 documents where there was an assignment original of the contract which had
- 11:48:32 25 arisen after the tender was accepted. There was a declaration of trust by
- 26 Navona in favour of Southfield and there was then the formal transfer of the
- 27 title from Navona to Southfield.
- 28 Q. 231 And who gave the instructions for this structure, this creation?
- 29 A. In terms of dealing with, trying to put something in, I said something as far
- 11:49:04 30 as Mr. Goodman was concerned that would have emerged out of whatever

11:49:09 1 conversations I had with Mr. Lawlor in relation to it, I don't specifically
2 have a recollection.

3 Q. 232 Somebody would have to instruct you you're only the lawyer?
4 A. Precisely, yeah.

11:49:18 5 Q. 233 Who instructed you?
6 A. It would have to have been Mr. Lawlor. I don't have a recollection of it.
7 But it would have to be because he was the one who was running the Goodman side
8 of things.

9 Q. 234 Mr. Lawlor is quite clear in his recollection and he will say he didn't
11:49:30 10 instruct you to do this.
11 A. Well I wasn't setting up companies and making tender offers and dealing with
12 land and creating these situations of my own volition. It was against the
13 background of Mr. Goodman and Mr. Lawlor and the funds being advanced. So
14 it -- if it wasn't Mr. Lawlor giving me instructions I fail to see who was
11:50:00 15 giving me instructions in relation to it in the context of this.
16 Q. 235 Well we'll come back to that. Just to move on to November of 1989 and the Joe
17 Tiernan deal.
18 Who dealt with Joe Tiernan?
19 A. You mean on the negotiation?

11:50:19 20 Q. 236 On the table, yeah.
21 A. On the negotiations of that contract. Effectively Mr. Synnott dealt with him
22 in relation to negotiating the terms.

23 Q. 237 And who instructed Mr. Synnott?
24 A. I would have instructed Mr. Synnott as being the director of Southfield and I
11:50:36 25 would have taken my instructions in relation to that from Mr. Kennedy and/or
26 Mr. Lawlor.

27 Q. 238 Well Mr. Lawlor now will deny that.
28 A. Well certainly in terms of the instructions that I got, largely I would have
29 dealt with Mr. Kennedy in relation to it. I don't have any specific
11:50:56 30 recollections of any specific means.

11:50:59 1 Q. 239 Do you have a note or memorandum for instructions in relation to this deal?
2 A. No, I don't.
3 Q. 240 Is that not extraordinary again that we have a deal hereof 2.2 million punts in
4 1989 and you have no written instructions?
11:51:12 5 A. It's the way they did business.
6 Q. 241 It's the way you did business.
7 A. Well, indeed. In terms of the transaction and passing records backwards and
8 forwards Mr. Synnott, there's the paperwork between Mr. Synnott and the company
9 in relation to it and myself, some faxes and whatever else in relation to that.
11:51:33 10 But in terms of contact and notes in relation to Mr. Lawlor, Mr. Kennedy, there
11 aren't any.
12 Q. 242 That's convenient; isn't it?
13 A. Sorry?
14 Q. 243 It's convenient, it's your version of events?
11:51:47 15 A. Well, I mean, I didn't find this -- I didn't get this or anything. This was
16 brought in to me by clients in the office, it was brought to me by Mr. Lawlor
17 in the office. I'm sure Mr. Lawlor is not suggesting that I'm the person who
18 went to Larry Goodman and negotiated the provision of funds.
19 Q. 244 No, quite the opposite.
11:52:08 20 A. And that I'm the person that identified the land and so on.
21 Q. 245 No. What Mr. Lawlor will suggest is that he was the man who found the land.
22 He was the man who sourced the money. But at the end of the day Mr. Caldwell,
23 you are a man who made a significant amount of money out of this.
24 A. I certainly made money at the end of the day in terms of being the structures
11:52:28 25 that I had did. Mr. Lawlor also received substantial monies out of the
26 transaction after the disagreement that there was between us in relation to it,
27 yes.
28 Q. 246 But, I mean, while Mr. Lawlor will disagree with the machinations that went on
29 between the beginning and the end, there's no doubt that you starting as
11:52:48 30 solicitor, ended up as the major player this whole thing?

- 11:52:53 1 A. Well not the major player in relation to it, Mr. Kennedy is the major player in
2 relation to it. Certainly I gained significantly in relation to it, in
3 financial terms --
- 4 Q. 247 Aren't you the common denominator all along the route in relation to this deal?
- 11:53:11 5 A. I'm common denominator in the sense that I'm solicitor instructed, I'm there as
6 a director in relation to it, I'm there subsequently as a participant through
7 the structures. I don't know that that makes me a common denominator. My
8 name is there and there in differing capacities. The -- Yes, as I say, I
9 don't accept that makes me a common denominator.
- 11:53:47 10 Q. 248 Let's get back to this Tiernan deal. At this stage who are our shareholders
11 in Southfield?
- 12 A. At the time of the Tiernan deal that would have been Mr. Lawlor and
13 Mr. Kennedy.
- 14 Q. 249 You are still saying they are 50% each?
- 11:53:59 15 A. Yes, that's correct.
- 16 Q. 250 And what were the formalities of these shareholders agreement? Do you have any
17 shareholders agreement?
- 18 A. No, there's no shareholders agreement in a formal sense between them. No
19 written shareholders agreement.
- 11:54:15 20 Q. 251 And the two shareholders are still John Caldwell, the two nominee shareholders
21 are still John Caldwell and Castleroyal?
- 22 A. Yes, that's correct.
- 23 Q. 252 Okay. Six shares each on behalf of Mr. Kennedy and Mr. Lawlor?
- 24 A. Effectively, yes. As I say, there's no formal documentation in relation to
11:54:34 25 that. It's kept in the state that we discussed at the start of your
26 examination.
- 27 Q. 253 Sorry, who were Castleroyal Nominees, who exactly is behind that?
- 28 A. Castleroyal Nominees is a nominee company that Binchy & Partners had for
29 holding shares in various companies.
- 11:54:52 30 Q. 254 So that's you again; is it?

- 11:54:54 1 A. It's the firm's company effectively. They had a company of companies.
- 2 Q. 255 So we have John Caldwell the individual and we have Binchy & Partners the firm?
- 3 A. Well we have John Caldwell the individual private citizen, we have John
- 4 Caldwell solicitor, we have John Caldwell director, we have John Caldwell
- 11:55:15 5 partner in Binchy & Partners.
- 6 Q. 256 So who were we dealing with here?
- 7 A. In what context?
- 8 Q. 257 In Castleroyal Nominees?
- 9 A. In Castleroyal Nominees I'm a director of Castleroyal Nominees. It's a
- 11:55:29 10 company owned by the firm. And, as I say, acts as a nominee shareholder for
- 11 various companies. What it was used for quite often was a subscriber on some
- 12 companies that were incorporated and then would hold shares.
- 13 Q. 258 And why did you not just have all of the twelve shares held by Castleroyal?
- 14 A. What tends to happen on these when companies are being transferred is you
- 11:55:58 15 transfer the shares over to two parties. You need to have two shareholders,
- 16 so normally what happens is the subscriber shares are transferred across to two
- 17 transferees and when the subscribers shares were transferred here they were
- 18 transferred across to myself and Castleroyal Nominees.
- 19 Q. 259 And were you acting on behalf of Castleroyal? Did you have the controlling say
- 11:56:25 20 there?
- 21 A. Well I was a director of Castleroyal Nominees. And obviously the company took
- 22 the shares and held the shares on the transfer.
- 23 Q. 260 But who was the worker in Castleroyal? Was that you?
- 24 A. In the sense of a worker, the company was a company which was used in the firm
- 11:56:54 25 as many firms have them, where they hold shares in various companies for
- 26 various clients. At any time anyone whose a director of that company and I
- 27 can't remember who the directors were at the time, there possibly were several
- 28 partners were directors of the company.
- 29 Q. 261 Did you operate a de facto control?
- 11:57:20 30 A. It was a firm's company.

11:57:21 1 Q. 262 Yeah but who acted on behalf of the firm? Who in the firm actually managed
2 these shares?
3 A. I'm not clear as to the question.
4 Q. 263 Who exercised the control for --
11:57:35 5
6 CHAIRMAN: Sorry. Mr. Caldwell, in relation to the transaction we're
7 concerned with here, I think Mr. Russell wants to know who was in effect
8 controlling the Castleroyal shares. It was yourself, I presume
9 A. Well I was a director of Castleroyal, yes.
11:57:51 10
11 CHAIRMAN: Yeah but your other partners weren't involved other than as named
12 directors?
13 A. No, not in a sense of this, no.
14
11:57:59 15 CHAIRMAN: So in effect it was you exercising control of that company in
16 relation to this particular transaction?
17 A. Yeah. It would have happened on the transfer of the shares from the
18 subscribers it would have just been nominated as the company to take the
19 transfer.
11:58:16 20
21 Q. 264 MR. RUSSELL: And was there an agreement between Castleroyal and its client as
22 to what role it would carry out as a nominee
23 A. No, there was no written agreement.
24 Q. 265 No fee agreement?
11:58:28 25 A. No fee agreement, no.
26
27 JUDGE FAHERTY: Remind me again, Mr. Caldwell. Was Castleroyal -- There was
28 six shares?
29 A. Twelve shares in issue.
11:58:40 30

11:58:40 1 JUDGE FAHERTY: Six each. And were you holding your shareholding as nominee?
2 Who did you see your client was or when you were holding them as nominee?
3 A. Well I would have seen myself as in the early stages holding them as nominee
4 for Mr. Kennedy and Mr. Lawlor.

11:58:59 5
6 JUDGE FAHERTY: Well did you -- that's why I want to ask you. Did you hold
7 your six shares as nominee for both Mr. Kennedy and Mr. Lawlor and do you say
8 Castleroyal did the same? Or did you hold it for one party and Castleroyal for
9 the other?

11:59:15 10 A. I don't recollect differentiating it in my mind in a sense as I was holding six
11 for Mr. Kennedy and Castleroyal was holding six for Mr. Lawlor. It was more
12 in the sense that the twelve shares were being held for both of them.
13
14 CHAIRMAN: All right. I'm going to break for ten minutes.

11:59:31 15
16 MR. FINLAY: Chairman, just before you rise if I may, it might be useful to
17 mention it before the break rather than after the break.
18
19 I have been reluctant to at any stage interrupt so far this morning. But I am
11:59:45 20 very conscious of the fact that Mr. Lawlor's barrister and Mr. Lawlor himself
21 have not been here at any stage of Mr. Caldwell's evidence. And I have noted
22 that the bulk of this morning so far, has been taken up with questions and
23 answers, all of which in fact have been covered before. Questions from
24 Mr. O'Neill and questions from the Members of the Tribunal and comprehensive
12:00:11 25 answers given to those by Mr. Caldwell.
26
27 Now, as I say, I am conscious of the fact that there was nobody here to be
28 aware of that at the time. But I am very concerned, Chairman, about the
29 timing of matters given our discussion last Friday and the pace at which
12:00:26 30 matters are moving against the background I have just described.

12:00:29 1
2 CHAIRMAN: It's early days yet. In fairness to Mr. Russell, he is entitled
3 to revisit some matters which are of particular concern to his client, and it
4 may be to approach it with a different emphasis in mind.

12:00:43 5
6 MR. FINLAY: I am conscious of that, Chairman.

7
8 CHAIRMAN: I think it's -- well I can ask Mr. Russell, can you indicate
9 approximately how long you

12:00:54 10
11 MR. RUSSELL: I can, Chairman. I don't expect to be any more than another
12 half an hour. I am restricting myself to the areas that directly affect my
13 client. Notwithstanding that some answers may be repetitious, I still have to
14 put Mr. Caldwell what will Mr. Lawlor will be denying. I am trying to box off
12:01:15 15 each section by put that go to Mr. Caldwell.

16
17 JUDGE KEYS: That's appreciated.

18
19 CHAIRMAN: We'll rise for about ten minutes.

12:01:20 20

21 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**

22 **AND RESUMED AS FOLLOWS:**

23
24 Q. 266 MR. RUSSELL: Just before the break, Mr. Caldwell, I was talking to you about
12:18:09 25 the Tiernan deal to Mr. Joe Tiernan.

26 A. Yes.

27 Q. 267 And I think you told us at that stage as far as you were concerned the
28 shareholders were Mr. Kennedy, Mr. A Lawlor 50/50 at that stage?

29 A. Yes.

12:18:22 30 Q. 268 Now, at that stage Mr. Goodman or the Bank of Nova Scotia I should say, were

12:18:27 1 still owed money by Southfield; is that correct?

2 A. Yes, that would be correct, yes.

3 Q. 269 And there was a deal negotiated, as you said, by Mr. Synnott, with Mr. Tiernan

4 for approximately 2.2 million punt; is that correct?

12:18:43 5 A. Yes, it was against the background of him obtaining planning permission.

6 Q. 270 It was subject to conditions.

7 A. Subject to conditions, yeah.

8 Q. 271 And I understand there was a deposit of 110,000 punt received.

9 A. Yes, that's correct.

12:19:00 10 Q. 272 And that was what we call a release deposit.

11 A. Yes, it was.

12 Q. 273 And if the deal didn't conclude it was forfeited.

13 A. Well it was released at the start of the deal as opposed to being held on the

14 solicitor's client account.

12:19:14 15 Q. 274 And what happened to that money?

16 A. Well two things. I think from again from memory what's happened here over the

17 last several days 46,000 pounds of it went to Navona, the balance of the money

18 remained in the company and was disbursed by the companies as I recollect.

19 Q. 275 And the company was under your control as nominee?

12:19:48 20 A. Yes, I was the director of it.

21 Q. 276 Should the 110 not have gone to the Bank of Nova Scotia to reduce the debt?

22 A. That was not the instructions to me.

23 Q. 277 In the normal course of events would not that not be correct?

24 A. No, it's an agreement by the bank. If the agreement with the bank was that

12:20:06 25 they were to receive the, to release deposits, yes, then it would go to the

26 bank. But there was no such agreement or requirement with the bank.

27 Q. 278 Were the bank informed of the receipt of the deposit?

28 A. I think that the -- I'm not quite sure this is one of the instances where the

29 bank were written to and requested to confirm their agreement to the contract

12:20:32 30 so if it is in one of those instances and I think it probably isn't the bank

12:20:38 1 would have been aware of the contract, yes.

2 Q. 279 And they didn't ask for it to reduce the facility?

3 A. No, they didn't.

4 Q. 280 Because it would have been a significant reduction of facility; wouldn't it?

12:20:50 5 A. Yes it would indeed, absolutely.

6 Q. 281 Why did 60,000 go to Navona?

7 A. Originally 60,000 was to.

8 Q. 282 Well 46,000, sorry?

9 A. 46,000 was the figure. Again, as I think I said to Mr. O'Neill in evidence.

12:21:03 10 I don't recollect what those funds were utilised for when they got to Navona.

11 They were transferred there and would have been transferred there on

12 instructions.

13 Q. 283 They would have been your instructions; is that correct?

14 A. Well instructions to me.

12:21:19 15 Q. 284 From who?

16 A. Well presumably from Mr. Lawlor and Mr. Kennedy in relation to it as I say, I

17 don't have a recollection.

18 Q. 285 Well Mr. Lawlor is adamant that he didn't instruct you to send any money to

19 Navona.

12:21:31 20 A. Well, as I say, I don't have any recollection in relation to it. The only two

21 people that were giving my instructions from Mr. Kennedy and Mr. Lawlor.

22 Q. 286 Mr. Lawlor has a clear recollection that he didn't instruct you to send the

23 money to Navona.

24 A. I can't comment on that beyond what I've said.

12:21:47 25 Q. 287 Do you know what happened to the money that went to Navona, that 46,000?

26 A. I don't recollect what happened to it.

27 Q. 288 Nothing could have happened to it without your instructions; isn't that

28 correct?

29 A. That's correct, yes.

12:21:57 30 Q. 289 So Mr. Lawlor couldn't have done anything to it?

- 12:21:59 1 A. No, but again, the funds would have been utilised on the basis of instructions
2 I received. So it's a question of what those instructions were, and as I said
3 in earlier evidence, I have no recollection of that.
- 4 Q. 290 No recollection of what happened to it?
- 12:22:13 5 A. No recollection of that.
- 6 Q. 291 Did you give any of it to Mr. Lawlor?
- 7 A. I have no recollection.
- 8 Q. 292 Mr. Lawlor will say he never received any money from those funds.
- 9 A. Again, I can't comment on that.
- 12:22:24 10 Q. 293 And again there's no paper trail for us to have a look at.
- 11 A. No, there's nothing in relation to that.
- 12 Q. 294 Nothing?
- 13 A. No.
- 14 Q. 295 Is that unusual?
- 12:22:32 15 A. I think just the Navona file isn't available.
- 16 Q. 296 Okay. Let's move on to the ultimate successful sale of the property, which
17 was to Vino; is that correct?
- 18 A. Yes, the property was sold to Vino.
- 19 Q. 297 And what was the contract price there?
- 12:22:51 20 A. 400,000.
- 21 Q. 298 That's a hell of a drop down from the figure of 2.2 that you were talking to
22 Tiernans about?
- 23 A. Yes, the figure in relation to the contract with Joe Tiernan's was a subject to
24 planning permission contract. So it was a conditional contract. Effectively
12:23:12 25 it was the form of an option in contractual form.
- 26 Q. 299 And you had discussed with Mr. Bailey on a similar figure I understand, around
27 2.2 million?
- 28 A. Yes, that's right.
- 29 Q. 300 So what caused the drop in value of the company's only asset from 2.2 million
12:23:28 30 down to 400,000?

12:23:29 1 A. Well the land wasn't worth 2.2 million. It was only worth 2.2 million in the
2 circumstances in which planning permission was obtained for it, which was a
3 future event if that didn't happen it wasn't worth that. If it did happen it
4 was probably going to be worth in excess of 2.2 million. But the -- so you're
12:23:52 5 looking at two different things.

6
7 One, you're looking at the current value of the land in terms of its market
8 value being sold in its entirety as it warts and all. And the other situation
9 it's comparing it against a future prospective value based on a change in the
12:24:16 10 zoning and planning position of the land, which is a materially different
11 situation.

12 Q. 301 And who gave you instructions to sell it to Vino for 400,000 punts?

13 A. In terms of selling to Vino, I dealt with that myself. In terms of selling
14 it, I as a director exercised my discretions. I went and obtained valuations
12:24:38 15 in relation to it and sold it.

16 Q. 302 So when you did this solely in your capacity as a director with no instruction?

17 A. I did it in my capacity as a director.

18 Q. 303 And did you consult the beneficiaries?

19 A. In relation to both the parties involved, I don't have a recollection of having
12:24:58 20 a discussion with Mr. Lawlor in relation to it. But I certainly would have
21 had the discussion with him telling him that the property was being sold. He
22 was well aware of the background and circumstances that existed in relation to
23 it. And the pressure from the bank etc. and the requirements of Mr. Goodman
24 that existed at that time.

12:25:19 25 Q. 304 So was it a fire sell?

26 A. It was a sale that was required by the circumstances that existed, the value
27 that was got from it for the property in terms of from the company's
28 perspectives with, in my view, the fair market value in relation to it.
29 Valuers were instructed and were given the relevant information and they
12:25:43 30 provided the valuations.

- 12:25:45 1 Q. 305 And you're clear at this time, your evidence is that the two beneficial owners
2 were Mr. Lawlor Mr. Kennedy?
3 A. Yes.
4 Q. 306 And I put it to you that Mr. Lawlor absolutely denies that.
12:25:57 5 A. Well that's my understanding of the situation at that stage.
6 Q. 307 Okay. And have you any memorandum of the conversations you had with these two
7 people as to the reasons for selling?
8 A. No, I have no memoranda in relation to that. But Mr. Lawlor was well aware of
9 what the circumstances were in relation to it. He was attending meetings in
10 relation to it and he was in communication with me in relation to it over
11 several months leading up to the sale. So he was in no doubt as to the
12 circumstances.
13 Q. 308 And was there a board resolution passed to sell the property?
14 A. My recollection is yes, there was a board resolution passed.
12:26:39 15 Q. 309 And who attended that board meeting?
16 A. It would have been the other director of the company, who was an employee of
17 Binchys, and myself.
18 Q. 310 And was there minutes kept at that meeting?
19 A. Well there's a minute in the brief in relation to the situation.
12:26:57 20 Q. 311 Now, Vino is the purchaser. And this is you again; isn't it?
21 A. Well at that point in time it's not me. But I do come into it subsequent to
22 that as I recollect things. The sale was a sale into Vino. Vino being a
23 company that had been acquired for the purposes of purchasing the property and
24 was being financed with the assistance of Mr. Kennedy.
12:27:29 25 Q. 312 So at the time of the purchase who was Vino, who was behind Vino?
26 A. At the time of Mr. The purchase Mr. Kennedy.
27 Q. 313 Solely?
28 A. Solely.
29 Q. 314 And when did you come into it?
12:27:41 30 A. Some stage after that. I can't put a precise after it.

- 12:27:44 1 Q. 315 A month, six months, a year?
- 2 A. I'd only be speculating in relation to it.
- 3 Q. 316 Can you not give us any indication?
- 4 A. Um, I just can't put a fix on it, Mr. Russell.
- 12:27:55 5 Q. 317 So at this stage when the purchase is completed what happens to Mr. Lawlor's
6 interest? Where's that?
- 7 A. Well the property has been sold out of Southfield Property Company at that
8 stage for its full market value. His relationship has ended at that stage, as
9 has Mr. Kennedy's relationship in that company, not that the relationships
10 ended but that company as a company that might make a profit in the future is
11 gone because of the circumstances, as I've explained in the evidence I've
12 given. And so at that point in time the company is valueless.
- 13 Q. 318 So what we have now is that the deal that Mr. Lawlor brought to you is now the
14 property of Vino. Mr. Lawlor ends up with nothing; is that correct?
- 12:28:54 15 A. Yes, in terms of the structuring of the -- in terms of the acquisition of the
16 property, Mr. Lawlor had arranged the financing in relation to that. The
17 transaction had been structured around him initially and structured around
18 Mr. Kennedy. The commercial situation was that it had run into serious
19 commercial difficulties. Those commercial difficulties are resolved by the
12:29:21 20 selling of the property and by the circumstances that surrounded it in terms of
21 the activities of or potential activities of Mr. Smyth. And from that point in
22 time he was finished with the Coolamber lands.
- 23 Q. 319 And what about this option agreement that the offshore company had?
- 24 A. The option agreement was expired effectively and
- 12:29:49 25 Q. 320 So that was valueless as well; was it?
- 26 A. That was valueless, yes.
- 27 Q. 321 So we start off with Mr. Lawlor who brings this to you and he ends up with
28 nothing. And the first company, Navona, ends up with an option that's
29 worthless, that's where we end up?
- 12:30:05 30 A. That's where we end up. That's the financial reality of the situation that

12:30:11 1 existed that the time. The financial reality of the situation was that the
2 company was in default of its interest payments, there was no capacity to deal
3 with that in terms of the funding there. The situation was one of the
4 potential of liquidator receiver being put into place. The property had to be
12:30:34 5 disposed of. It was disposed of at correct market value in relation to it.
6 And the net result of that was that the bank was paid off and the company had
7 largely a zero situation at the end of it.

8 Q. 322 Was the property put up for sale on the open market?
9 A. It wasn't. The time in terms of the sale was one of a very poor market. The
12:31:04 10 sites were not selling well that the point in time. They didn't sell well in
11 fact for many years afterwards. In fact, the land in the adjoining field,
12 which was 21 acres, was sold in 1994 for 96,000 pounds, that's some two years
13 after this.

14 Q. 323 Why did you not test the market?
12:31:21 15 A. The brokers, the agents were spoken to in relation to it, they are the people
16 who know what the market's like. They know the conditions that are out there.
17 The commercial pressures that existed in relation to it were such that it
18 wasn't a situation where you could put the property out into the marketplace
19 and the view that they expressed in relation to it was that the top value on a
12:31:51 20 fully marketed basis was 425,000. And on a distress basis was around 300,325.

21 Q. 324 Did you offer an option to Mr. Lawlor?
22 A. No. There was no offer made to Mr. Lawlor in relation to it.

23 Q. 325 Why not?
24 A. There was no possibility of Mr. Lawlor solving the problem with the bank. If
12:32:13 25 he had have been able to solve the problem with the bank he would have done
26 that at that point before that.

27 Q. 326 Well surely the same could be said of Mr. Kennedy?
28 A. Mr. Kennedy had the capacity to solve the problem with the bank and did so.

29 Q. 327 Well why -- you say he did so. How did he do so?
12:32:28 30 A. Well in that the he, through whatever mechanism or method he used, arranged the

- 12:32:35 1 funding to buy the property out of the company and that occurred over, you
2 know, the contract was signed and then subsequently completed.
- 3 Q. 328 So he didn't solve the problem in Southfield, he solved it for himself in Vino?
4 A. He took the property in to Vino, yes, that's right. In to Vino as it was
12:33:01 5 structured. The situation was against a break background where he believed
6 that Mr. Lawlor was moving against his interests. And he acted to protect
7 those interests.
- 8 Q. 329 And what evidence do you have of that?
9 A. I just have -- what Mr. Kennedy's view was in relation to it.
- 12:33:20 10 Q. 330 And have you any note or correspondence to that effect?
11 A. No, there's no note or correspondence relation to that.
- 12 Q. 331 So Vino then becomes the owner of the lands Mr. Lawlor is gone; isn't that
13 correct?
14 A. Mr. Lawlor has gone, yes.
- 12:33:38 15 Q. 332 And then at some stage, which you can't remember, you become a shareholder?
16 A. Yes, that's correct.
- 17 Q. 333 50%?
18 A. Well I don't become a shareholder in relation to it. Again a structure
19 becomes a shareholder. But ultimately in economic terms in, benefit terms,
12:33:54 20 I'm the person who is economically benefited to it.
- 21 Q. 334 To the tune of 50% of the profit; is that correct?
22 A. If they arise.
- 23 Q. 335 Does that not give you a conflict as a role with your director of Southfield?
24 A. No, in terms of Southfield disposing of the property. Southfield disposed the
12:34:13 25 property at the proper market value. Realised full value for it. The
26 property was worth no more than was paid for it. It may even have been worth
27 less than was paid for it. The bank in terms of their position in the various
28 negotiations that had taken place prior to that, the 350,000 pounds loan, was
29 looking for additional security of 350,000 effectively to shore up the
12:34:41 30 valuation in relation to it against the background of the that Mr. Goodman

- 12:34:43 1 wasn't there. So they clearly didn't have a view that it was worth 400,000
2 pounds. Mr. Lawlor and Mr. Kennedy when they were in meetings, in the notes
3 of the meetings that were there thought it may have been 350,000. The
4 property as it was -- wasn't worth any more than was paid for it. If
12:35:06 5 anything, it was possibly worth less.
- 6 Q. 336 It was worth Mr. Bailey and Mr. Tiernans with planning a figure in excess of 2
7 million. Could the company not have restructured in a manner and pursue the
8 planning themselves?
- 9 A. No, in the circumstances that arose. And so much of it happens as a result of
12:35:26 10 the circumstances that arise. The circumstances that arose that wasn't an
11 option.
- 12 Q. 337 But Vino got planning eventually; isn't that correct?
- 13 A. No, Mr. Tiernan ultimately got planning. What happened subsequently was that
14 Vino entered into a contract with Mr. Tiernan, largely similar type of contract
12:35:47 15 in terms of the general thrust of it to -- he went and ultimately obtained
16 planning permission.
- 17 Q. 338 Why didn't Southfield do that with Mr. Tiernan?
- 18 A. Again, coming back to the point that Southfield. Southfield wasn't in a
19 position to do that. There was -- Mr. Kennedy was of the view that Mr. Lawlor
12:36:09 20 had moved against his interests and the company didn't have the funding --
- 21 Q. 339 Well that's what you say Mr. Kennedy said.
- 22 A. That's what I say, yes.
- 23 Q. 340 I will put it to you that Mr. Lawlor will adamantly deny that.
- 24 A. That's fine. I mean -- I appreciate my position in relation to it.
- 12:36:29 25 Q. 341 How much did Vino eventually get for this land?
- 26 A. Somewhere in the 2.5 million.
- 27 Q. 342 So Vino made a profit in excess of 2.1 million?
- 28 A. It -- in gross terms, yes, somewhere around the 2 million mark.
- 29 Q. 343 Of which you benefited to the tune of 50%; is that correct?
- 12:36:48 30 A. Yes. Well after fees and expenses and the finance fee and so on, it came down

12:36:55 1 to somewhere in the order of 800,000 odd.

2 Q. 344 Now, subsequent to all of this Mr. Lawlor made a claim against you to say that

3 he was entitled to some profit from Coolamber; is that correct?

4 A. Yes, that's correct.

12:37:08 5 Q. 345 And he made I think various legal threats and threatened to report you to the

6 Law Society; isn't that correct?

7 A. Yes, he did.

8 Q. 346 And you paid him money; isn't that correct?

9 A. Yes, I settled the claims with him at that stage.

12:37:22 10 Q. 347 How much did you give him?

11 A. His account was credited with 825,000 deutsche marks, about 350,000 pounds.

12 Q. 348 350,000 pounds, being approximately 35% of the profit that you made?

13 A. No. The figure that I -- that was credited in terms of my structure was

14 around the 2 million deutsche marks. So Mr. Lawlor got 825,000 out of that.

12:37:56 15 So whatever percentage that works out at.

16 Q. 349 Okay. Well that would be nearer 40%.

17 A. Yeah, over 40%.

18 Q. 350 But the money to settle Mr. Lawlor's claim came from you?

19 A. The money to settle it came from the -- from me in the economic sense but in

12:38:14 20 the legal sense came from the structure that held the funds.

21 Q. 351 But it was your share of the benefit.

22 A. It was, yeah, in the economic terms, yeah.

23 Q. 352 Why did you give Mr. Lawlor that money?

24 A. I did it in the face of the threats that he was making at that stage, in

12:38:35 25 relation to the claims he was making. I decided that rather than be involved

26 in publicity in relation to it, that I would settle those claims with him. And

27 also settle them on the basis with him that he would give up any rights or

28 interests that he would have or had in the other land projects that he was

29 involved in. Those land projects we can do documentation in relation to

12:39:07 30 those.

- 12:39:07 1
2 In terms of it also involved him giving an interest in one of the companies
3 and, which is Pentagon Property Services, which is a pipe company.
- 4 Q. 353 But isn't it the case that you wouldn't have paid Mr. Lawlor unless there was
12:39:27 5 some merit in his complaints?
- 6 A. No, the situation was one where I didn't want to be involved in a public brawl
7 with him in relation to it. Rather than have a public brawl with him in
8 relation to it with him I settled the claims. I didn't believe that he had
9 any entitlement to it. It's like a lot of one does you take a decision.
- 12:39:47 10 Q. 354 I put it to you, Mr. Caldwell. We had a situation here where Mr. Lawlor
11 approached you to be his solicitor, interregnum you end up buying the property
12 at a low value, which I think you would accept, and you end up a millionaire
13 out of the whole thing; isn't that correct?
- 14 A. Well I don't accept that the property was bought at low value.
- 12:40:12 15 Q. 355 In your own evidence, it was a low point in the market?
- 16 A. Well the low point in the market lasted for many years. That's just the way it
17 was. The property was bought at its correct value, the company was paid for
18 that. The full value was given to the company and those funds were used to
19 deal with the bank. So I have no question in my mind in relation to the
12:40:42 20 propriety of that transaction. That transaction was perfectly proper.
- 21 Q. 356 Well let me contrast your situation with Mr. Lawlor's. Mr. Lawlor finds the
22 property, Mr. Lawlor arranges the initial funding, Mr. Lawlor brings it to you.
23 And then at the end you start off as the solicitor, you have no interest in it.
24 You then become a nominee director and shareholder where you don't even get
12:41:06 25 paid. And when the music stops you're left with a clear profit of about a
26 million punts?
- 27 A. Well in your language the music stopped twice. It stopped once --
- 28 Q. 357 But you were still dancing.
- 29 A. When the financial crisis arose and the bank were pressing in terms of dealing
12:41:28 30 with the debt and the possibility of receivers and liquidators and all of that

- 12:41:34 1 occurred in relation to it. At that point in times matters ended insofar as
2 Mr. Lawlor was concerned for the reasons I've given. Subsequent to that the
3 property -- and I mean it may not have happened but it did happen that
4 Mr. Tiernan was successful in obtaining the planning permission, if he hadn't
12:41:54 5 been successful in obtaining the planning permission the land would have been
6 worth no more than was paid for it or even less at that point in time.
- 7 Q. 358 But you put no money into this at any stage; did you?
8 A. No, I didn't invest anything.
- 9 Q. 359 Sow made a million clear; is that correct?
12:42:09 10 A. Yeah, the structures made a million, yes.
- 11 Q. 360 But you were the beneficiary of the structure?
12 A. Yes, but, I mean, in terms of coming back to Mr. Lawlor in relation to it.
13 Mr. Lawlor in terms of putting money into it, didn't put money into Southfield
14 either, I mean, Mr. Goodman put the money into Southfield.
- 12:42:28 15 Q. 361 On the advice of Mr. Lawlor?
16 A. Yes, at the request of Mr. Lawlor and to facilitate him.
- 17 Q. 362 And on the good offices of Mr. Lawlor?
18 A. It was through his connections between the two of them.
- 19 Q. 363 Mr. Goodman wasn't going to give you the money?
12:42:43 20 A. Well part of the problem that was here in relation to this and went to the
21 route of the personal issues that arose on it was that Mr. Lawlor, Mr. Goodman
22 advanced the order of over 350,000 pounds. The company itself only received
23 225, 227,000.
- 24 Q. 364 We'll let Mr. Lawlor break that down when he gives his evidence?
12:43:07 25 A. The difference in relation to that were funds that Mr. Lawlor had the benefit
26 of, not the company. Yet the account was being held responsible for it and
27 Mr. Lawlor was aiding and abetting in that approach.
- 28 Q. 365 We'll let Mr. Lawlor deal with that. Just to finalise my questions. I'm not
29 going to get into the machinations of what went on between the commercial
12:43:33 30 versions of what happened between you and Mr. Lawlor. There's a couple of

- 12:43:38 1 specific points that I want to put to you on behalf of Mr. Lawlor.
2
3 The first thing is he is adamant and absolutely denies that he commissioned,
4 instructed or requested you to form an offshore company. What do you say to
12:43:53 5 that?
- 6 A. As I say, the offshore company, I don't have a specific recollection of the
7 detail of the conversation, but the existence of the offshore company came out
8 of the discussions that I had with him. In relation to how that was. So in
9 terms of the discussion about it, certainly I accept that in all probability I
12:44:20 10 was the one who suggested an offshore company.
- 11 Q. 366 No, no, I'm clearer than that, Mr. Caldwell, Mr. Lawlor's recollection is
12 crystal clear. He did not instruct you to form an offshore company for or on
13 behalf of his interest and he had no beneficial interest in any offshore
14 company. Mr. Lawlor has put that on a sworn affidavit before the High Court.
12:44:43 15 And he is insistent that that was not the case.
- 16 A. Well it -- I mean, if that's his evidence that's his evidence in relation to
17 it. I can't say anything in relation to that other than what my understanding
18 of the position was in relation to it what I understood happened in relation to
19 it. And I say that, when one looks at the documentation that's there in terms
12:45:05 20 of Mr. Britton and the meetings that he had with Mr. Lawlor and so on, that has
21 to be read ultimately by the Tribunal, it's not a matter for me.
- 22 Q. 367 Mr. Caldwell, I put it to you that your evidence as constructed is self-serving
23 in that it tries to explain your conflicting position in several ways at the
24 expense of Mr. Lawlor.
- 12:45:29 25 A. I don't accept the evidence is self-serving. The evidence that's given is the
26 evidence of the events as I understood them to be and as I recollect them to
27 be. They are what I recollect happened. It may not suit Mr. Lawlor that
28 that's the situation but that's my evidence.
- 29 Q. 368 I further put it to you that your allocation in your evidence of Mr. Kennedy
12:45:57 30 owning 50% of the beneficial interest in Southfield is totally incorrect.

- 12:46:02 1 A. No, it's not incorrect.
- 2 Q. 369 I put it to you that Mr. Kennedy's first appearance in this deal was with you
- 3 in Vino.
- 4 A. No, I mean that's just not correct.
- 12:46:15 5 Q. 370 I put it to you, Mr. Caldwell, that your construction of Mr. Kennedy being a
- 6 shareholder in Southfield, for which you have no documentation, no memorandums,
- 7 no attendances is purely self-serving to justify the fact that you ended up
- 8 with the property through Vino.
- 9 A. No, I disagree with that.
- 12:46:38 10 Q. 371 And finally, Mr. Caldwell, I put it to you that you've constructed your
- 11 evidence in such a way, knowing Mr. Lawlor's position on offshore companies.
- 12 That you've done it in such a manner as to give the impression that you had no
- 13 conflict, you had acted totally in a professional manner and that you had
- 14 nothing to hide in all of this, which is not in accordance with the facts.
- 12:47:06 15 A. Well I believe I dealt with everything in a proper and professional fashion and
- 16 I've dealt openly with the Tribunal in relation to my knowledge of the events
- 17 and circumstances. And I believe I dealt truthfully with those matters.
- 18 Q. 372 I have no further questions, Chairman, at this stage.
- 19
- 12:47:24 20 CHAIRMAN: Thank you, Mr. Russell. Just before Mr. Finlay starts.
- 21 It arises from something Mr. Russell asked you about. You said when you were
- 22 explaining the circumstances where Vino arrives on the scene and you've said
- 23 that Mr. Kennedy was in a position to solve the bank problem.
- 24 A. Yes.
- 12:47:50 25
- 26 CHAIRMAN: And you said that Mr. Lawlor wasn't in a position to. And that's
- 27 one, as I understand your evidence, that's one of the reasons why Mr. Lawlor
- 28 disappears at that stage.
- 29 A. Yes.
- 12:48:02 30

12:48:02 1 CHAIRMAN: According to your evidence.

2 A. Yes.

3
4 CHAIRMAN: But you weren't -- well you may have been. But you didn't have to
12:48:09 5 solve the problem with the bank either. I can understand why you say
6 Mr. Kennedy, who apparently arranged the loan or some sort of a loan, through
7 Barclays I think.

8 A. Yes, that's correct.

9
12:48:23 10 CHAIRMAN: You say Mr. Lawlor couldn't, wasn't in a position to provide any
11 finance. But you didn't have to provide finance and yet you in effect step
12 into the shoes of Mr. Lawlor.

13 A. Yes. I didn't provide any finance into this situation.

14
12:48:42 15 CHAIRMAN: So you were effectively in the same boat that Mr. Lawlor was?

16 A. That's correct. Except, I mean, my role up until post this sale side was one
17 of, I wasn't a participant in relation to it. I only became that
18 subsequently. I only became that as a result of Mr. Kennedy. Mr. Kennedy
19 gave the opportunity to me to become involved in it. But that was against the
12:49:09 20 background of the relationship that I had where I suspect in terms of his own
21 mind because it was he that did it, where I had arranged the finance in
22 relation to another property matter that the two of us were involved in and
23 that may well have been one of the factors in his mind in involving me in it.

24
12:49:34 25 CHAIRMAN: But just in relation to that. You remember when Mr. Kennedy
26 offered you a 50% share in or 50% economic beneficial share in Vino? Because
27 it must have been a great opportunity for you because you were being offered
28 this share with huge potential and it wasn't going to cost you any money. And
29 so can you recall the circumstances when Mr.-- did he come and see you, did you
12:50:13 30 go out to dinner and discuss it, was it on the phone or. And can you remember

12:50:18 1 how he put it to you and what discussion you had with him?

2 A. I can't remember the detail or the background and circumstances to it. The

3 conversations with him tended to be fairly something like that, he would just

4 have said it. I don't have any particular recollection of it.

12:50:39 5

6 CHAIRMAN: But, I mean, it had huge potential for you. It wasn't something

7 that somebody, I suggest to you, would say to you in passing.

8 A. Well it --

9

12:50:52 10 CHAIRMAN: It would be something that would be almost certain to stand out in

11 your memory how he came or the circumstances when this fantastic opportunity

12 was presented to you.

13 A. Well it doesn't. No more than -- in the business dealings with him I don't

14 have a clear recollection. I don't have a recollection really of when the

12:51:19 15 Carrickmines thing happened either in relation to it. The 85 developments

16 Portrane matter I can have a recollection of that, because that was the first

17 time that I became involved with him in business and that was one where, see I

18 say I organised the funding in relation to it. But there's nothing to, no, I

19 can't picture it in any particular place or any particular time or set of

12:51:47 20 circumstances.

21

22 CHAIRMAN: And can you recall if you told Mr. Lawlor that you were becoming in

23 effect a 50% owner?

24 A. I believe I told him that. Again, I don't have a recollection of telling him

12:51:59 25 that. I believe I told him that.

26

27 CHAIRMAN: And can you remember his reaction was?

28 A. I can't remember a negative reaction. I don't remember him threatening it.

29

12:52:09 30 CHAIRMAN: It can hardly have been a positive reaction.

12:52:12 1 A. Well I don't recollect a negative reaction. I don't recollect that from him.

2

3 JUDGE FAHERTY: There's just something I wanted to raise with you

4 Mr. Caldwell. Again, it's in the context of a reply that you gave to

12:52:28 5 Mr. Russell.

6 A. Yes.

7

8 JUDGE FAHERTY: You said that you had made the decision to sell the land out

9 of Southfield into Vino.

12:52:33 10 A. Yes.

11

12 JUDGE FAHERTY: You were exercising your discretion as director of the

13 company.

14 A. Yes.

12:52:39 15

16 JUDGE FAHERTY: When Southfield, when you were equally exercising at the

17 discretion to sell Southfield to Mr. Tiernan in November '89, the contracts

18 were signed and I think the agreement that was drawn up prior reserved the

19 infrastructure in the pipes to Mr. Tiernan.

12:52:59 20 A. Yes.

21

22 JUDGE FAHERTY: And presumably when Mr. Tiernan went looking to buy the land

23 he wouldn't have expected this. He expected in the ordinary way you buy the

24 land, pay your money and buy the land.

12:53:11 25 A. Yes.

26

27 JUDGE FAHERTY: And obviously we have been through this with Mr. O'Neill.

28 The reservation into then, the '89, and the ownership of Southfield of the

29 infrastructure and the underground pipes were something that Southfield saw as

12:53:26 30 a benefit to itself.

- 12:53:27 1 A. As a potential, yes.
- 2
- 3 JUDGE FAHERTY: A potential obviously, it would depend on certain things.
- 4 But when Southfield sold to Vino, and when you were exercising your discretion
- 12:53:40 5 to sell into Vino, did you consider the reserving the infrastructure of the
- 6 pipes to Southfield as a benefit?
- 7 A. As a benefit, I have no recollection of doing that.
- 8
- 9 JUDGE FAHERTY: And why not?
- 12:53:51 10 A. It was a sale. It wasn't a sale in the context of a sale as the sale was to
- 11 Mr. Tiernan where it was to a developer and if he got planning permission he
- 12 was going to build these services. So in terms of the sale, I have no
- 13 recollection of it occurring to me.
- 14
- 12:54:08 15 JUDGE FAHERTY: Yes.
- 16 A. The land was sold as it was with the benefit of what it had.
- 17
- 18 JUDGE FAHERTY: Could I suggest to you that at the first juncture that you
- 19 could, when a decision was made to sell, when you'd be -- and you found a
- 12:54:22 20 buyer, Vino, as we know, that you could have put it up to Vino to say well this
- 21 is the price, 400,000, but we're reserving the pipes. There was no
- 22 negotiation -- did you negotiate at all with Vino on this as a director of
- 23 Southfield to whom you would have had no duty to Mr. Kennedy in your capacity
- 24 as a director.
- 12:54:45 25 A. No.
- 26
- 27 JUDGE FAHERTY: Your duty I think as you agreed would be to the company
- 28 Southfield.
- 29 A. Yes, that's correct.
- 12:54:51 30

12:54:51 1 JUDGE FAHERTY: To try and get whatever benefit you could for the company.
2 I'm just wondering why this didn't feature at all. Maybe you could have been
3 beaten down by Vino in relation to this. But there doesn't seem to be have
4 been any negotiation whatsoever.

12:55:07 5 A. In relation to the negotiations of the services side of it, in relation to the
6 negotiation to the price, this in terms of the price, the price that
7 Mr. Kennedy was willing does pay was less than the 400,000 for it. I wanted
8 that price for it and eventually he paid that.

12:55:22 10 JUDGE FAHERTY: But we have no correspondence between you and Mr. Kennedy as
11 the purchaser under the guise of Vino?

12 A. No, none whatsoever, Judge. In relation to the sale of it with those sort of
13 services reserved out of it. It would devalue the land substantially putting
14 that sort of an obligation on it. So if someone was buying it in the market
12:55:45 15 that was and the value of around 400,000. They wouldn't pay 400,000 in those
16 circumstances.

17
18 JUDGE FAHERTY: We know now that yourself and Mr. Kennedy, as you say, when
19 you sold, when Vino sold on to Mr. Tiernan, again as I understand, the pipes
12:56:05 20 were reserved.

21 A. Yes, they were.

22
23 JUDGE FAHERTY: Ultimately Valley Holdings.

24 A. Ultimately Valley Holdings.

12:56:13 25
26 JUDGE FAHERTY: Which is still extant.

27 A. Yes, which is still extant.

28
29 JUDGE FAHERTY: And obviously Vino saw a benefit in the reservation of the
12:56:21 30 pipe infrastructure in its ultimate sale to Mr. Tiernan in the mid '90s.

12:56:25 1 A. Yes, there was the hope that by reserving that it would be of future benefit.

2

3 JUDGE FAHERTY: But you didn't have that hope or try and negotiate that on
4 behalf of Southfield in 1992 when it was sold to Vino?

12:56:42 5 A. I don't recollect addressing it in my mind in terms of it. As I say, it would
6 have had an impact on value at that stage because there was a negative impact
7 on putting value down, by putting that condition on it.

8

9 JUDGE FAHERTY: But that would depend on how much obviously Vino wanted the
10 property. But we don't they that because you had no negotiations ultimately.

12:56:56

11 A.

All right.

12

13 JUDGE FAHERTY: That explains it.

14

12:57:02 15 CHAIRMAN: All right. It's now one o'clock. We'll rise. We'll sit at ten
16 past two if that's all right.

17

18 MR. FINLAY: That's fine, Chairman.

19

12:57:11 20 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2:10 P.M.:

12:57:54 1
2
3 A. Good afternoon.
4

14:12:51 5 CHAIRMAN: Now, Mr. Finlay, do you want to examine your client?
6

7 MR. FINLAY: Thank you, Chairman.
8

9 **THE WITNESS WAS QUESTIONED BY MR. FINLAY AS FOLLOWS:**

14:12:58 10
11 Q. 373 MR. FINLAY: Mr. Caldwell, when you were giving your evidence you mentioned the
12 valuation which you'd received from Mr. John Morley in December 1991?

13 A. Yes, I did.

14 Q. 374 In the context of the sale of the lands by Southfield to Vino, you recollect
15 that?
16

16 A. Yes.

17 Q. 375 And when you were discussing the written valuation, the contents of that
18 valuation with Mr. O'Neill, you indicated to the Tribunal that your
19 recollection was that in addition there was a memorandum, a note of earlier
20 written -- oral advices given to you by Mr. Morley you thought on the 3rd of
21 December, you recollect giving that evidence?

22 A. Yes, that's correct.

23 Q. 376 And I think that memorandum which you recollected has now been located. When
24 I say located, Chairman, it was in our discovery to the Tribunal. But the
25 Tribunal has now located it. It had been omitted from the brief that was
26 circulated. So it's been located by the lawyers for the Tribunal. And it's
27 at page, I understand, at page 3497.
28

29 You may not have a hard copy with you, Mr. Caldwell. But I think it's a
14:15:08 30 single page document, being handed to you.

- 14:15:13 1 A. Yes, I have it.
- 2 Q. 377 And it's in the follow terms: Memorandum date the 3rd of December 1991. Per
3 John Caldwell. Re telephone attendance John Morley. It's quite short.
4 I'll read it I may:
- 14:15:31 5
- 6 "Mr. Morley said that assuming that one had time to go about selling the land
7 and marketing it and assuming that you patch up some sort of an option for a
8 wayleave paying maybe 15,000 or 20,000 for the option to have a wayleave that
9 would run for about three years, he thought that the land value would be around
10 400,000 to 450,000, say 425,000. He said it was very difficult. He had
11 taken soundings at a local level. He had taken soundings from planners and
12 others.
13 He said that a wayleave, if obtained itself, might cost between 50,000 and
14 100,000.
- 14:16:10 15 He said there was a risk that the rezoning would not be obtained.
16 He said that if the rezoning was not obtained, then the land would be worth
17 around 250,000.
18 If it were a distress sale, he said that the price would be somewhere around
19 300,000 to 350,000.
- 14:16:36 20 I asked him to prepare his valuation and submit it."
21
- 22 I just want to confirm for the record, Mr. Caldwell, because you've already
23 mentioned its existence, is that the memorandum, your contemporaneous
24 memorandum of your conversation with Mr. Morley on that day?
- 14:16:58 25 A. Yes, it is.
- 26 Q. 378 And does that memorandum record the advices given to you by Mr. Morley orally
27 on the 3rd of December?
- 28 A. It sets out what he would have said to me. I don't have a recollection of all
29 of the detail.
- 14:17:16 30 Q. 379 Yes. And I do understand that those advices given to you by Mr. Morley were

- 14:17:27 1 given to you before the sale was agreed between Southfield and Vino?
- 2 A. Yes, that's correct.
- 3 Q. 380 I'm not going to ask you about the subsequent written confirmation of that
- 4 valuation which was some days later I think because you've already dealt with
- 14:17:47 5 that in detail.
- 6 A. Yes.
- 7 Q. 381 When you were being examined by Mr. O'Neill. You're aware I think,
- 8 Mr. Caldwell, that Mr. Britton in his evidence -- I beg your pardon --
- 9 suggested that you had been present at a bank meeting, that's the Bank of Nova
- 14:18:24 10 Scotia of course, at a meeting in the Bank of Nova Scotia on the 8th of October
- 11 1997; you recollect Mr. Britton giving that account?
- 12 A. Yes, 1987, yes.
- 13 Q. 382 1987, I'm sorry. And I think your evidence has been that you have no
- 14 recollection of that meeting; isn't that correct?
- 14:18:57 15 A. That's correct, I have no recollection of being at any meeting with the bank in
- 16 1987.
- 17 Q. 383 And apart from having no recollection of that meeting or any such meeting,
- 18 what's your belief as to whether or not you might have been at such a meeting?
- 19 A. I believe I wasn't at any such meeting. The person at that meeting was
- 14:19:25 20 Mr. Brian Perry and he has stated that he never met me and it's my belief that
- 21 I never met him.
- 22 Q. 384 Yes. Just for the record, I think Mr. Perry on the 12th of January, at page 3
- 23 of the transcript question 15 was asked about that meeting and he gave evidence
- 24 that you were definitely not at that meeting and that he had never met you.
- 14:19:58 25 A. Yes.
- 26 Q. 385 Apart from his evidence about that meeting, which concurs with your own, what
- 27 is your evidence in relation to ever having met Mr. Perry; do you agree or
- 28 disagree with him?
- 29 A. I have no recollection of ever meeting Mr. Brian Perry.
- 14:20:20 30 Q. 386 Before lunch, Mr. Caldwell, you were asked about the circumstances in which you

14:20:41 1 came to have a 50% interest. I use that term in the sense that we've used it
2 over the last few days.

3 A. Yes.

4 Q. 387 A 50% interest in Vino Properties.

14:20:56 5 A. Yes.

6 Q. 388 And you described how that was something which was offered to you by
7 Mr. Kennedy; isn't that correct?

8 A. Yes, that's correct.

9 Q. 389 And it, I think was suggested to you before lunch, possibly by the Chairman,
10 that event, the making of that offer to you, was or might have been a memorable
11 event.

12 A. Yes.

13 Q. 390 An event which you might remember, although we've heard that you don't have a
14 particular recollection of it. If I could ask you to go back in time to the
15 circumstances that existed after the acquisition by Vino of the lands. How,
16 looking back, how would you have seen that offer or invitation at that time in
17 those circumstances? How would you have viewed it?

18 A. As I said earlier, I don't have a recollection of the event.

19 Q. 391 Yes.

14:22:24 20 A. But at that time the background was one where the property was valued at its
21 and sold at its maximum value, it had no value over and above the price that
22 had been placed on it, it may even have been worth less than that.
23

24 There was no prospect at that point in time of it being changed, that was all a
14:22:52 25 future event. So I would just -- I suspect I would have looked at it almost
26 like a lottery ticket, a long outside possibility of being successful and not
27 something to get overly excited about.

28 Q. 392 And in terms of the -- its value as being the then value of the land, assuming
29 that you then had half an interest or a half interest in that. How did that
14:23:27 30 characterise itself in terms of any commitments which Vino had?

- 14:23:34 1 A. Well the half interest as such would have been given the value of the land and
2 the commitments that the company had would have been valueless. So ...
- 3 Q. 393 Is that in the context of the evidence that you've given as to the funding
4 arrangements which Mr. Kennedy had put in place to enable the acquisition to
14:23:58 5 occur?
- 6 A. Yes. I mean, the funding background was that 400,000 had been advanced and
7 all interest and a fee was going to be charged in relation to that. So the
8 land would have had to increase substantially in value to get any, add any
9 value. So at the time it occurred it had no value, as it transpired events
14:24:23 10 turned in its favour in the future. At that point in time it wasn't a
11 valuable transaction.
- 12 Q. 394 You were questioned this morning by a barrister on behalf of Mr. Lawlor. And I
13 think you were questioned about issues of value. Do you recollect seeing a
14 memorandum of a meeting attended by Mr. Lawlor and Mr. Sean Mooney, I think the
14:24:55 15 memorandum may be Mr. Mooney's?
- 16 A. I have seen a memorandum in the brief, yes.
- 17 Q. 395 And can you recollect what that memorandum indicated in terms of Mr. Lawlor's
18 then view of the value of these lands?
- 19 A. Well I think it makes reference to the, probably not being worth more than
14:25:14 20 250,000 pounds.
- 21 Q. 396 Yes. And I think that's preceded by the comment "not worth 500".
- 22 A. Not worth 500,000, yes.
- 23 Q. 397 If I could just ask you some further questions about Mr. Lawlor specifically
24 and his role as far as you were concerned in Coolamber. What I'm going to ask
14:26:03 25 you to do is to consider his role and then to say how his role in Coolamber
26 related to events elsewhere. First of all, is it correct that in Coolamber
27 Mr. Lawlor instructed you to act for him initially in the acquisition?
- 28 A. Yes, he did.
- 29 Q. 398 In Carrickmines did Mr. Lawlor ever instruct you to act on his behalf in
14:26:38 30 relation to the acquisition or otherwise?

- 14:26:40 1 A. No, he did not.
- 2 Q. 399 At the time of the initial acquisition of the lands in Coolamber your evidence
3 has been that Mr. Lawlor was the sole economic beneficiary, I'm using the
4 language we've been using for the last few days. The sole economic
14:27:13 5 beneficiary of the tendering and acquiring company; isn't that correct?
- 6 A. Yes, that's correct.
- 7 Q. 400 Was Mr. Lawlor ever an economic beneficiary of the acquiring company in
8 Carrickmines?
- 9 A. He never was.
- 14:27:35 10 Q. 401 In Coolamber, as I understand both your evidence and the evidence of others,
11 Mr. Lawlor procured the acquisition finance; isn't that correct?
- 12 A. Yes, he did.
- 13 Q. 402 In Carrickmines, did Mr. Lawlor have any role in relation to the procuring in
14 the acquisition of the finance?
- 14:28:12 15 A. He did not.
- 16 Q. 403 In Coolamber, as I understand it, Mr. Caldwell, Mr. Lawlor made a claim to be
17 entitled to a share of the profits resulting from the disposal of the Coolamber
18 lands; isn't that correct?
- 19 A. Yes, he did.
- 14:28:44 20 Q. 404 And he made that claim against you.
- 21 A. Yes, he did.
- 22 Q. 405 Since the acquisition of the lands in Carrickmines has Mr. Lawlor ever made any
23 claim either against you or to your knowledge as against anyone else in
24 relation to those lands?
- 14:29:17 25 A. He has not.
- 26 Q. 406 We've heard, Mr. Caldwell, that consequent upon the claim made against you by
27 Mr. Lawlor, both directly to you and through solicitors retained for that
28 purpose by him, you entered into a settlement with Mr. Lawlor; isn't that
29 correct?
- 14:29:52 30 A. Yes, I did.

14:29:58 1 Q. 407 Could I ask you, what was your objective in seeking to reach that settlement
2 with Mr. Lawlor?

3 A. My objective was to deal with all the interests that we had and to settle the
4 position as between us in relation to all those interests.

14:30:37 5 Q. 408 If at the time of that settlement you had believed that Mr. Lawlor had any
6 economic interest in the Carrickmines lands, how would that have affected your
7 approach to the settlement which you made with him?

8 A. If I thought he had an economic interest in it, I would have dealt with that at
9 the time, I would have included it as one of the matters to be dealt with, as I
10 dealt with Baldoyle and Coolamber and Pentagon. But it didn't -- I didn't
11 deal with it because it didn't arise because he had no interest and no claim to
12 any interest or no grounds for any interest.

13 Q. 409 Thank you, Mr. Caldwell.
14

14:31:25 15 JUDGE KEYS: Mr. Caldwell, I just want to ask you. During the course of your
16 evidence, and you can correct me if I'm wrong on this, you indicated that
17 Mr. Kennedy was of the view that Mr. Lawlor had become disloyal in some way; is
18 that correct?

19 A. Yes, that's correct.
20

14:31:47 21 JUDGE KEYS: Did you inform Mr. Kennedy what your perception was, which was
22 simply at this stage that when you heard that Mr. Smyth and Mr. Gannon and
23 perhaps Mr. Lawlor were moving to take over the debt of the Nova Scotia debt
24 with a view to taking over the lands, you were informed; isn't that correct, of
14:32:12 25 that?

26 A. Yes.
27

28 JUDGE KEYS: Did you then tell Mr. Kennedy and it's from that that Mr. Kennedy
29 then became aware of it and came to the conclusion that Mr. Lawlor was now
14:32:25 30 being disloyal?

14:32:27 1 A. I certainly would have told Mr. Kennedy once I was told by --

2

3 JUDGE KEYS: Once you were told that.

4 A. Once I was told that, yes.

14:32:35 5

6 JUDGE KEYS: Is that the no the first time Mr. Kennedy in reality came to the
7 conclusion that Mr. Lawlor was being disloyal towards him, it must have?

8 A. It may have been as a result of that. I don't know whether it was immediately
9 or within days of that. But certainly that was the notification that

14:32:54 10

11

12 JUDGE KEYS: Well did yourself and Mr. Kennedy then at that stage decide to
13 move against Mr. Lawlor and remove him from the old transaction by Mr. Kennedy
14 through other resources buying out the lands?

14:33:13 15 A. Mr. Kennedy was of the view as I said --

16

17 JUDGE KEYS: He had to go?

18 A. He had to go.

19

14:33:19 20 JUDGE KEYS: Because of his disloyalty?

21 A. Yes.

22

23 JUDGE KEYS: And you joined in with that.

24 A. As I said in evidence I supported Mr. Kennedy.

14:33:27 25

26 JUDGE KEYS: What did Mr. Lawlor do to lose his 50% share of potential
27 profits?

28 A. Well in terms of this, the view that was taken by Mr. Kennedy was that he had,
29 he had behaved in a disloyal fashion. That the problem that was there in terms

14:33:43 30 of money was that part of the problem the company had was that the money that

14:33:50 1 should have gone to the company was taken by Mr. Lawlor. And he was very
2 unhappy with him. And the -- he moved in this fashion to remove ...
3
4 JUDGE KEYS: The company was saddled with a debt, that part of the debt was
14:34:06 5 saddled on the company which were monies that he had used for his own purpose?
6 A. Yes, that's right.
7
8 JUDGE KEYS: Was he ever, was he confronted on that? I mean --
9 A. Mr. Lawlor --
14:34:17 10
11 JUDGE KEYS: Do you know did Mr. Kennedy and Mr. Lawlor sit around a table and
12 say listen, there's 400,000, or whatever the debt was, of which it should only
13 be about 205 or 208 by right, you have pocketed that money and consequently, as
14 far as I'm concerned you have no further right to any interest in the --
14:34:44 15 A. Sorry, Judge, I'm sure that they had their conversations in relation to it.
16
17 JUDGE KEYS: How do you then end up with 50%? That's what I can't understand.
18 What did you do to merit 50% interest in the proceeds of the sale?
19 A. Subsequently Mr. Kennedy gave me the 50%. As I say it was valueless. I had a
14:35:06 20 business relationship with him that, as I said, it started from the Portrane
21 situation where my actions at that time in funding the transaction that he was
22 unable to complete, had assisted him in maintaining this land he was trying to
23 get. And it formed the basis of a strong relationship with him. And I think
24 one relationship where he felt in some way that he should reward me for having
14:35:39 25 helped him in that fashion. And it probably underlines the relationship that I
26 had with him.
27
28 JUDGE KEYS: In other words, you got 50% interest in the proceeds of profit
29 from, potential proceeds of profit at that stage, on the basis that you had
14:36:08 30 done him a good turn in the past in another transaction. Isn't that it?

14:36:08 1 A. I think that's the genesis of it, where it comes from. But in terms of this.
2 I mean, at the time that he did it, it was valueless. I mean, it was
3 something that I had gone into a transaction with him in terms of the Portrane
4 and provided the funding and so on on that, again through the structures.
14:36:23 5 Again, it was a lottery situation where it might or might not become of value
6 in the future. This situation was a similar one in that he had put up funding
7 here and it might or might not become something in the future.
8
9 JUDGE KEYS: Surely there was very little risk in these lands. Mr. Kennedy
14:36:45 10 obviously had a lot of knowledge about the planning in that area; isn't that
11 correct? And that as it transpires as I understand you entered into the
12 intentions even at that stage by the consort to rezone the lands.
13 A. Well the -- I think they were on the Development Plan at that stage having been
14 rezoned.
14:37:05 15
16 JUDGE KEYS: Yes.
17 A. The rezoning having happened before and been carried forward into it. I think
18 the planners actually weren't supporting that subsequently and the reports and
19 so on that were filed were not in favour of it. So the prospect of getting it
14:37:23 20 rezoned was one which was not a certainty by any means at the time. And you
21 had a situation where you had a very difficult neighbour who had brought
22 Mr. Tiernan to heel through judicial review and through appeals through the
23 appeal process. So he was there and he hadn't gone away. So whatever
24 happened in relation to it, he, at that time, you were looking at him as
14:37:47 25 continuing to be a difficulty for anything happening.
26
27 JUDGE KEYS: I mean, the picture painted by Mr. Kennedy was he was a tough
28 negotiator, that's my understanding; is that true?
29 A. Mr. Kennedy is a tough negotiator, yes.
14:38:02 30

14:38:02 1 JUDGE KEYS: That's why I'm somewhat surprised, maybe that's not the correct
2 description, but somewhat surprised I have to say that he would hand over
3 potential, you know, 50% interest in proceeds from the profit of land which
4 eventually ended up netting you I think 850,000. It seems contrary to his
14:38:19 5 nature to do something like that from the evidence we have heard.

6
7 Now, I appreciate he's not here and in the absence of that it's very hard to
8 know what sort of character he is. But what everybody has said so far, he's a
9 tough negotiator, he doesn't give anything away for nothing and he would always
14:38:39 10 want something in return. That's why I'm probing you with questions relating
11 to what you did to get 50% share which ended up in an 850,000 pounds profit?

12 A. That it ended up in that was luck at the end of the day that that happened. At
13 the time that he did it, it didn't carry that sort of value in relation to it
14 and it was a function of the relationship that I had with him.

14:39:00 15
16 JUDGE KEYS: And to Mr. Lawlor's detriment as it transpires.

17 A. Yes.

18
19 JUDGE KEYS: Subsequently transpired.

14:39:05 20 A. Thank you very much.

21
22 JUDGE KEYS: Thank you.

23
24 JUDGE FAHERTY: Just on that question of the luck that you say that you had,
14:39:11 25 Mr. Caldwell. Just coming to '95 when Mr. Lawlor came to your office I think
26 and demanded a share.

27 A. Yes.

28
29 JUDGE FAHERTY: In the proceeds of sale and later then through Mr. Smyth
14:39:27 30 joined in with the Elangrove, if you like, in pursuing what he claimed was a

14:39:32 1 share; isn't that correct?

2 A. Yes, that's correct.

3

4 JUDGE FAHERTY: It seemed back luck for you that Mr. Lawlor seems to be only

14:39:40 5 pursuing a claim against you, Mr. Caldwell, in 1995; isn't that correct?

6 A. Um, well he took his claim against me in relation to it.

7

8 JUDGE FAHERTY: And why do you think he didn't pursue any claim against

9 Mr. Kennedy?

14:39:53 10 A. Well I think that came down to his acceptance that Mr. Kennedy had a 50%

11 interest in the project with him when he was involved in it and subsequently

12 that 50% interest was still there and that the person who was benefiting was

13 myself. Mr. Kennedy was in the same position as he had been at both ends.

14

14:40:13 15 JUDGE FAHERTY: But Mr.-- there was nothing to stop Mr. Lawlor, presumably,

16 from writing a similar letter to Mr. Kennedy?

17 A. No. Well --

18

19 JUDGE FAHERTY: You don't -- certainly there's no documents to suggest that he

14:40:29 20 ever approached Mr. Kennedy.

21 A. No, he wasn't -- I think it came down to, as I say, presumably his commercial

22 view that Mr. Kennedy already had 50% of it. He still maintained that 50%

23 afterwards so in terms of his relationship, the relationship Mr. Lawlor claim

24 the, Mr. Kennedy was in the same position that he had always been vis-a-vis

14:40:54 25 him. So Mr. Kennedy was gaining nothing by it. So the person who had gained

26 something was myself, and therefore, he directed his attention to me as opposed

27 to Mr. Kennedy.

28

29 JUDGE FAHERTY: Yes. But on your assessment of that, given that you had

14:41:08 30 gained and you had, you were really standing in the shoes now of Mr. Lawlor

14:41:14 1 after the Southfield to Vino sale in effect?

2 A. In effect, that's correct, yes.

3

4 JUDGE FAHERTY: But as I understand it from your evidence the other day, that

14:41:21 5 Mr. Lawlor was only claiming 25% when he came through to your office was it a

6 25% interest in Coolamber?

7 A. Yes, that's what he came looking for was a 25% interest in relation to it.

8

9 JUDGE FAHERTY: And why do you think he diluted his claim?

14:41:41 10 A. I don't know. It was the position he took in relation to it. He didn't take

11 a position of claiming everything. He took his position -- possibly on the

12 basis of trying to start with a compromise position on it that I would find one

13 that was satisfactory.

14

14:41:57 15 JUDGE FAHERTY: You don't know whether or not Mr. Lawlor made any -- you have

16 no knowledge of any other claim Mr. Lawlor might have made to any other party

17 except yourself; is that what you're telling us?

18 A. I have never -- I never heard of him having made a claim against Mr. Kennedy in

19 relation to this transaction.

14:42:16 20

21 JUDGE FAHERTY: You don't know whether or not any agreement could have been

22 entered into at any point, save the agreement that you entered into with

23 Mr. Lawlor ultimately in 1995?

24 A. The only agreement that I'm aware of with Mr. Lawlor is the one that I made

14:42:30 25 with Mr. Lawlor in '95. I'm not aware of Mr. Kennedy making any agreement.

26 I'm not aware of Mr. Lawlor making any claims against Mr. Kennedy.

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28 JUDGE FAHERTY: I see.

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14:42:40 30 CHAIRMAN: Do you have any questions?

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MR. O'NEILL: I have no questions to ask Mr. Caldwell.

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CHAIRMAN: All right. That concludes your evidence, Mr. Caldwell. Except to

14:42:47 5

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say that the Tribunal is still very concerned about the extent of your

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discovery and it will consider its adequacy in the coming weeks. There may

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therefore be some contact between the Tribunal and your solicitor on the

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A. I see, Chairman, yes.

14:43:12 10

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CHAIRMAN: In relation to tomorrow I think we're not sitting until twelve

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o'clock p.m.

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MR. O'NEILL: Yes. There is a difficulty with regard to one of the witnesses

14:43:20 15

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who apparently has a commitment that can't be broken. And therefore rather

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than breaking the sessions in the middle perhaps it would be appropriate to sit

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at twelve. At which case the first witness would be Mr. Kevin Smith and he

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would be followed in the afternoon by Mr. Noel Smyth. Thank you,

14:43:36 20

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CHAIRMAN: Thank you.

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THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

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THURSDAY, 17TH FEBRUARY 2005, AT 12:00 P.M.

14:44:09 25

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