

1 **THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 27TH JANUARY**

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

3
4 CHAIRMAN: Good morning, Mr. O'Neill.

5
6 MR. O'NEILL: Good morning, Chairman, Members of the Tribunal. Mr. Luke
7 Mooney, please, could you return to the witness box?

8
9 MR. FLYNN: Excuse me, Your Honour. Before you start with Mr. Mooney. Is it
10 possible for me to raise an issue?

11
12 CHAIRMAN: Yes.

13
14 MR. FLYNN: Now, I know it's not your job to deal with newspapers. But the
15 Irish Times this morning had a very selective and damaging report in relation
16 to what transpired yesterday in the Tribunal, and there are quite a number of
17 inaccuracies in it, I know it's not our job --

18
19 CHAIRMAN: This has arisen before where people, from time to time, complained
20 about a particular report in a newspaper. We're not in a position to do
21 anything. Obviously, you are free to take the matter up with the newspaper.
22 But we don't deal with issues like that because people would have different
23 views about different articles. So we can't do anything in relation to that.

24
25 MR. FLYNN: Okay. Forgetting about what my view of being as selective and
26 damaging. They've mixed up Tiernan and Mooney in the article.

27
28 CHAIRMAN: I'm sure, I mean, if there are mistakes in the article, I'm sure
29 the newspaper will do the right thing and correct them.

30

1 MR. FLYNN: Yes.

2

3 CHAIRMAN: It's a matter between yourselves and the newspapers I'm afraid.

4

5 MR. FLYNN: Thank you.

6

7 **CONTINUATION OF QUESTIONING OF MR. LUKE MOONEY BY MR. O'NEILL**

8 **AS FOLLOWS:**

9

10 MR. O'NEILL: Good morning, Mr. Mooney. Yesterday we were examining the
11 contents of a file of documents which I'll refer to as the Amorys file. I
12 think you are familiar with that file of documents. It is the one that was
13 provided to you by the Tribunal on the 12th of January of this year and it
14 reflected the file which was prepared by a firm of solicitors, who were
15 representing the interests of Mr. Robin Rennicks arising out of the transaction
16 in which he had funded the Finnstown acquisition and also dealt with the Mount
17 Argus Project, which was one which had been organised through CFI; isn't that
18 so?

19 A. Yes.

20 Q. 1 And in the body of that file, as with any solicitor's file prepared for the
21 purpose of pursuing a claim for a client, the documentation can be divided into
22 a number of specific categories. Firstly, the documentation contains the
23 historical documentation generated prior to the solicitor coming on board to
24 act. It then contained the letters effectively of his instruction from his
25 client as to what the client believed the issue to be and it then moved forward
26 to the correspondence which passed between that solicitor and yourself and
27 ultimately the firm of solicitors who came to represent your interests and the
28 documentation then culminates in the agreement which was reached which resolved
29 the difficulty which had given rise to the involvement of the solicitor in the
30 first instance. And that is a summary of the four categories of documents

1 which exist in relation to it.

2
3 And obviously whilst any, at all, of that documentation which was generated,
4 any of it which had come into your possession or was in your power or
5 procurement through your solicitor, was documentation which fell within the
6 order for discovery, which was made on the 6th of October of 2004.

7
8 I want to deal in relation to the documentation in this file which probably was
9 seen by or generated by or was available to you in relation to Finnstown and if
10 I could start possibly with what I'd call the historical documentation, that is
11 the background documentation provided to the solicitor about the transaction
12 between Mr. Rennicks, yourself and Mr. Tiernan.

13
14 It appears that there are probably ten individual documents or related
15 documents which deal with that issue. I'll just run through them by way of
16 heading and we can look at them in the file subsequently.

17
18 The first was the project document and we saw that yesterday, the single page
19 document which is on file and deals with the proposal which was being advanced,
20 dated the 23rd of November of 1989. There then is the confirmation of letter,
21 if I can call it that, which came from Mr. Tiernan to you on the 28th of
22 November 1989, confirming the shareholding which would exist in the company
23 which was to be formed and to be the owner of the lands once the acquisition
24 was complete.

25
26 There then is a document which was the notice complete, between Southfield and
27 Tiernan contract, which was dated the 2nd of August of 1991, that was a
28 document in which the purchaser's solicitors were advised by the vendor's
29 solicitors that the contract would have to be completed within 28 days.

30

1 There then was a letter from Binchy solicitors confirming that the contract was
2 rescinded and no longer effective, dated the 27th of September of 1991.

3
4 There then were the minutes of the Tiernan Homesteads board meeting of the 1st
5 of September 1992, which we touched on briefly yesterday.

6
7 There then was the meeting, the minutes rather, of the meeting which took place
8 between James Kennedy and Joe Tiernan on the 19th of October 1992, containing
9 the agreed terms for the purchase of Finnstown in October 1992, which was faxed
10 to you.

11
12 There then was a copy of a fax from Joe Tiernan to you, which was confirming
13 the rezoning of certain lands on the 20th of May 1993, which was sent by Brian
14 Phelan of CFI to Robin Rennicks on the 21st of May of 1993. I think that dealt
15 with the Balheary/Swords lands which Mr. Tiernan was seeking to have rezoned at
16 that time and which formed part of the guarantee document which you have
17 referred to yesterday in your discovery.

18
19 There then was a faxed letter from Brian Phelan to David Byrne, who is an
20 accountant acting on behalf of Mr. Robin Rennicks on the 25th of November 1993,
21 which enclosed the accounts of Tiernan Homesteads in relation to the Mount
22 Argus Project, for the year ending October 1993.

23
24 Similarly, a subsequent fax of the 30th of November 1993, dealing with the
25 accounts to the year ending 1992.

26
27 So that was the original or what I'd call the historical documentation which
28 was available to the solicitor prior to his commencement of communications with
29 his, initially with you and subsequently with his opposite number, Mr. Jack
30 Kerwin solicitor of Beauchamps, solicitors at the time.

1
2 In relation to those documents which I've mentioned to you, I think it's
3 apparent even from the content of the document that a number of them were in
4 your possession at a point in time.and we just run through the list of
5 documents again.

6
7 The second document I mentioned, the confirmation letter, was obviously in your
8 possession because it was addressed to you by Mr. Tiernan, isn't that right?

9 A. That's correct, yeah.

10 Q. 2 The next document is the notice to complete, the Southfield/Tiernan contract,
11 dated the 2nd of August 1991. Is that a document that you remember being in
12 your possession at any time?

13 A. No.

14 Q. 3 The next document is the Binchys letter rescinding the contract of the 27th of
15 September 1991. Is that a document which was in your possession at any time?

16 A. No, I think I indicated yesterday that I hadn't been appraised of that.

17 Q. 4 Yes. In relation to your evidence that those documents were not in your
18 possession at any time. Can I address the question of your instruction to Mr.
19 Kerwin in relation to defending the claim which was being brought against you
20 by Mr. Rennicks?

21 A. Yeah.

22 Q. 5 We'll see that it was in December of 1993 that the initiating letter of claim
23 was sent. And subsequently, on the 16th of December 1993 there was a response,
24 detailed response, from your solicitor to the solicitor acting on behalf of the
25 intended plaintiff, Mr. Rennicks.

26
27 Am I correct in saying that as of December of 1993, you were the only person
28 who was instructing Mr. Kerwin in relation to the details of the claim being
29 brought against you and also, at a later stage, nominated as being a claim
30 against Mr. Tiernan?

1 A. I met Jack Kerwin the first day. To my recollection, now, and obviously
2 because Tiernan was the principal player, he joined the meeting, not that
3 meeting but pretty soon after. Now, I can't say whether I had one or two
4 meetings, but it was practical that he act for both of us since we were both
5 being threatened with proceedings. That's my recollection.

6 Q. 6 You see, the initial claim that was made and the initial letter which was
7 written on behalf of the respondent, the person who was being sought to be
8 charged with the duty of resolving the problem by the intended plaintiff was
9 yourself and CFI rather than Mr. Tiernan; isn't that right?

10 A. I think the issue of proceedings or the threat, or whatever.

11 Q. 7 Um, um.

12 A. Was issued contemporaneously, maybe, I can't recall but it's possible that
13 Rennicks wrote to me through Amorys first, it's possible. It may be a fact.

14 Q. 8 It is a fact. We'll look at it in the documentation.

15 A. Yeah.

16 Q. 9 What I have to suggest to you is that the documentation, the two items of
17 documentation that I've just mentioned; that is the notice letter to complete
18 and the letter indicating that the contract was terminated, were both documents
19 which were given to Mr. Kerwin at that time, and I suggest that it appears from
20 the file that you were probably the person who gave it to him, because there is
21 no indication at that point in time that Mr. Kerwin is acting for anybody other
22 than you. You don't agree with that I take it?

23 A. I don't know to be honest with you. I recall the necessity at the time to
24 bring Joe Tiernan into the equation as quickly as I could. (A) Because he was
25 the, if you like, promoter of the deal and (B) because if the process got nasty
26 and involved subsequent court cases. He would have the means to fund it and he
27 would also obviously have a major interest in protecting his position. So I
28 can't answer your question. I could have contacted Joe Tiernan and asked him
29 to know would he give the information to me to give, or else Joe Tiernan could
30 have produced it independently of me at the next meeting. I don't know is the

1 answer, I don't recall --

2 Q. 10 Do you think your first meeting was a meeting which took place shortly before
3 the 16th of December of 1993 and if so, have you a recollection of that meeting
4 whether Mr. Tiernan was present and produced these documents?

5 A. No, I was at the first meeting with Jack Kerwin on my own, to my certain
6 knowledge because I went in and explained the position to him. And Joe Tiernan
7 obviously came to all the other meetings that I was at and then he
8 subsequently, as I said in my statement, took up the running in dealing with
9 the Rennicks problem and that's my recollection

10 Q. 11 If we look to page 3035 on screen. This is the document which initiated the
11 contact arising out of Mr. Rennicks' dissatisfaction with the manner in which
12 his investment was being treated, and you'll see that it is addressed to you at
13 CFI Limited, firstly, and it refers to "our client Robin Rennicks re lands at
14 Finnstown, Lucan" and the Finnstown lands are the Coolamber lands as we know
15 them, "we have been instructed by Robin Rennicks in connection with the above
16 lands.

17
18 We are instructed that our client was invited by you to invest in these lands.
19 And as a consequence pay the sum of 110,000 pounds, representing a
20 non-refundable deposit. This investment was to result in our client having 50%
21 of the issued share capital of the company, in whose name the land was to be
22 purchased.

23
24 Our client has now become extremely concerned about a number of aspects of this
25 transaction, most particularly the complete lack of any documentation or
26 information of any kind. Through his accountant David Byrne, our client sought
27 certain information and to date the only documentation furnished is a copy
28 letter dated the 28th of November 1989, addressed to you from Tiernan Property
29 Group Limited. This letter in itself raises a very serious issue, namely, the
30 amount of our client's shareholding. As far as our client is concerned he paid

1 the said deposit of 110,000 pounds following representations by you, that this
2 would entitled him to 50% of the relevant company. The said letter of the 28th
3 of November suggests that his entitlement is only 25% and possibly as little as
4 20%.

5
6 In the circumstances our client has requested us to fully investigate this
7 matter on his behalf. And we would ask you to please let us have the following
8 within 7 days:

- 9
10 1. The name of the company involved in the purchase of these lands. We
11 understand that despite repeated requests by David Byrne accountant you have
12 not furnished him with the name.
- 13
14 2. Evidence of our client's shareholding in this company, either by way of
15 share certificate or an extract from the share register.
- 16
17 3. A full and complete copy of the contract for sale in relation to the lands.
- 18
19 4. A note of the revised closing date. We see from the letter of the 28th of
20 November 1989, that the closing date at that time was the 24th of July 1991 and
21 we presume that this has been extended.
- 22
23 5. A note of all other shareholders and Directors of this company.
- 24
25 6. Copies of all minutes of meeting of directors/shareholders.
- 26
27 7. Copy of any other documents or agreements which are relevant to the company
28 and its shareholders and also any other information which would obviously be of
29 relevance and assistance to our client.
- 30

1 We look forward to receiving the above information and documentation from you."

2
3 Now, I take it you recall receiving such a letter. It's the initiating process
4 which led to you instructing your own solicitors; isn't that right?

5 A. That's correct, yeah.

6 Q. 12 And we see in the context of discovery here that the Rennicks side, if I might
7 describe them as that, say that they do have the letter of the 28th of November
8 1989, that's the second in the list of historical documents that I mentioned a
9 little earlier?

10 A. Yeah.

11 Q. 13 So the explanation for that document being in their possession is obviously
12 that it came from you to David Byrne; isn't that right?

13 A. Yeah, that would be right.

14 Q. 14 Through David Byrne and that is the position?

15 A. Well I'm presuming that's the position because I dealt only with himself and
16 Robin Rennicks.

17 Q. 15 In that circumstance it follows, I take it, that what you would have given
18 David Byrne was a copy of a letter which was in your possession in 1993, you
19 wouldn't have given him the original?

20 A. Well the fact that I couldn't find it might suggest that that's where it ended
21 up. Because I was a bit, like, in the context of -- in the context of
22 explaining or grounding for the second statement, the Rennicks involvement and
23 my involvement, I needed that and I wrote and asked for it. They're the pages
24 we referred to yesterday, which weren't included in the affidavit, because I
25 didn't have a copy of it obviously.

26 Q. 16 Well you didn't have a copy of it at the time of addressing the question of
27 your discovery obligations on a date after the 6th of October of last year, but
28 I'm suggesting to you that it is unlikely, that in 1993, that you would have
29 given away to somebody who was pressing you for information, the sole copy of
30 the document and could I suggest the fact that it is referred to here that it

1 is a copy of the letter of the 28th of November 1989 is confirmatory of the
2 fact that they did not receive the original. The original is not on the file.
3 What they have is a copy of the original and you, presumably, retained the
4 original; is that the probable sequence of events?

5 A. That could well be the case, yeah. I think I referred yesterday, by the way.

6 Q. 17 Yes?

7 A. To my thinking that I had it in the back of a diary.

8 Q. 18 Well I didn't hear that evidence. You think you kept this documentation in a
9 diary?

10 A. I thought it was a one page when I got it I put it where I had it -- sorry, I
11 put it into the diary. That's my recollection. I've searched high up and low
12 down for it and that's why I wrote to Tiernan looking for a copy of it.

13 Q. 19 We see that the chain of correspondence which started with this letter of the
14 6th of December, was being duplicated in relation to the Mount Argus Project,
15 in other words, the solicitor was directing his correspondence to you on the
16 same date, but writing separately in respect of each transaction; isn't that
17 so?

18 A. Yes.

19 Q. 20 There is a letter of the same date, at page 3037.

20

21 Again, written to "Luke Mooney, CFI Limited regarding our client Robin Rennicks
22 re Tiernan Homestead Limited, the company."

23

24 So certainly from Mr. Rennicks' point of view he did not distinguish in writing
25 to you between the role you may have played in the Tiernan Homesteads project,
26 which you say is a CFI project, and the role which you played in the Finntown
27 project, which you say was an independent and distinct matter, separate from
28 CFI; isn't that so?

29 A. Yes.

30 Q. 21 The next letter which is relevant to the Finntown issue is a letter from

1 Amorys of the 13th of December of 1993, which we see at page 3047, and in this
2 letter you are being written to by Amorys as follows, "We refer to our letter
3 of the 6th to which we have not received any reply. Please note that our
4 client shall now be obliged to make application to the High Court to compel you
5 to furnish the information sought, so that he can protect his interests fully
6 in this matter. In this connection our letter of the 6th and this letter will
7 be used and exhibited."

8
9 And I think that is confirmatory of the fact that there wasn't a reply for that
10 period of a week; is that so?

11 A. It would suggest that, yes.

12 Q. 22 Again, the only person who is being written to, in this context, in relation to
13 the land it seems is yourself; isn't that right?

14 A. Uh-huh.

15 Q. 23 Not Mr. Tiernan and not CFI separately from yourself. We see that Mr. Kerwin
16 becomes involved by the following day, because at page 3048, there is a letter
17 to Amory Solicitors. "Your client Robin Rennicks, lands at Finnstown. We have
18 been instructed by Luke Mooney in connection with your letters of the 6th and
19 13th. We will be responding very shortly."

20
21 Obviously, to that point, Mr. Tiernan had not come into the picture and the
22 representation which Beauchamps had was solely for you, Luke Mooney; isn't that
23 so?

24 A. That's correct.

25 Q. 24 Separately, on the 14th of December, a letter issued in relation to the Tiernan
26 Homesteads' aspect of the claim which was being advanced and in that there is a
27 more detailed letter. We see at page 3049 on screen.

28
29 "We refer to your letters of the 6th and 13th to our clients. Would you kindly
30 note that we are acting in the matter.

1
2 We received certain instructions which indicate that the allegation that the
3 powers of the directors of the company are being exercised in a manner
4 oppressive to your client's interest is entirely without foundation. We will
5 be writing to you fully in the next 24 hours. We can assure you that any
6 proceedings that may be issued will be strenuously resisted.

7
8 We respectfully suggest that you should defer taking any further steps until
9 you hear further from us within the next 24 hours."

10
11 In so far as there appears, in other words, to have been instruction given to
12 Beauchamps at this point in time, the instructions were certainly more specific
13 as regards the Mount Argus project rather than the Finnstown project to which
14 there was merely a letter saying that there would be a response shortly; isn't
15 that right?

16 A. It would appear so.

17 Q. 25 I take it that at this point in time then, the 14th of December, you had met
18 with and discussed the matter with Mr. Kerwin, so as to allow him to write
19 these letters; isn't that right?

20 A. That's correct.

21 Q. 26 And on the next day, your letters are acknowledged, rather Beauchamps letters
22 are acknowledged, we see at page 3051 in connection with the Tiernan Homesteads
23 project, that's Mount Argus, a letter is written saying "We thank you for your
24 letter of the 14th. We note you are acting in this matter and presume that you
25 are acting on behalf of both Tiernan Homesteads Limited and CFI Limited.

26
27 In view of your assurance that we will be hearing from you fully in writing
28 today and also our arranged meeting for tomorrow, we confirm that we shall
29 defer taking any further action in this matter on behalf of our client pending
30 hearing from you and meeting with you."

1
2 Equally, there is a letter -- well firstly, before we leave that. Obviously,
3 it had been indicated in some telephone conversation of the 14th, that there
4 would be a meeting on the 16th between the respective solicitors to address the
5 issues; isn't that right?

6 A. Yes.

7 Q. 27 And again, since this is acknowledged on the 15th, it is apparent that the
8 discussion probably took place either on the 14th or early on the 15th that
9 there would be such a meeting; isn't that right?

10 A. Yes. That's a fair inference, yeah.

11 Q. 28 And Mr. Kerwin obviously put himself in a position to be able to address the
12 issues at that meeting and we'll deal with that meeting shortly.

13
14 But on the 16th there is a letter, obviously in advance of the meeting, sent to
15 Mr. Kerwin, at page 3052. Where it is stated as follows "We refer to your fax
16 of the 14th indicating that we would hear from you fully in writing within 24
17 hours.

18
19 It is regrettable that we have received no such letter from you. This
20 unfortunately is consistent with many unfulfilled assurances given by Luke
21 Mooney to our client's accountant, David Byrne, that information would be
22 forthcoming."

23
24 And on the same date, there is a response by Beauchamps sent by fax at 13:10 on
25 that day at page 3054. This is obviously in advance of the meeting which was
26 to take place and it expresses surprise at the suggestion that your client has
27 not been kept informed.

28
29 It goes into detail then as to what Mr. Kerwin's understanding was of the
30 documentation which had been provided over time to Mr. Rennicks. He says "We

1 understand that your client was supplied with audited accounts from time to
2 time. Your client was invited to attend meetings on several occasions but may
3 not have attended. Your client was furnished with a set of management accounts
4 to the end of October 1993 and furthermore, your client was in regular contact,
5 not only with Luke Mooney but also with Joe Tiernan, and is fully aware of the
6 situation in relation to the company and to the Mount Argus development.
7 Furthermore, if your client had telephoned Michael Buckley, the secretary of
8 Tiernan Homesteads, he could have obtained the necessary information from him."

9
10 Now, that reference to the accounts to the end of October 1993, is the second
11 reference that's relevant to the discovery process, because the documentation
12 on file, which I have earlier described as the historical documentation,
13 included the audited accounts of the company to October 1993. So that, again,
14 the source of that documentation on the file is probably the fact that those
15 documents were in fact provided by Mr. Michael -- sorry, by Mr. Brian Phelan of
16 CFI to Mr. Rennicks and in turn they came on to the file in that manner.

17
18 Now, you will see that there then is a meeting which took place on the 16th and
19 that is recorded by the solicitor acting on behalf of Mr. Rennicks. At page
20 3057.

21
22 And here we see the document has Jack Tiernan/either WP or LP, but it's
23 Mr. Parker, who was the solicitor acting on behalf of Mr. Rennicks. It's dated
24 the "16th of the 12th," same day as the correspondence which we've just read.
25 "1 Fitzwilliam Square" is Amorys address and it deals with the Finnstown
26 project.

27
28 "Finnstown November 1989, JT and LM went to see RR. 200,000 or 100,000 pounds
29 for 25%. RR said he would only go for 100,000. 110,000 pounds deposit RR.
30 JK" -- I think Jack Kerwin -- "doesn't have a copy of the contract. Tiernan

1 Home Builders Limited got planning permission after a Section 4 in 1990/1991.
2 Ray Jackson of SKC objected and appealed. Lost before An Bord Pleanala and a
3 High Court action. 28 day notice from Binchys, 2nd of August 1991. Letter
4 from Binchys 27th of September 1991 and deposit forfeited."

5
6 Now, that's the reference to the two other historical documents that I referred
7 to you earlier and I suggest that it's clear from this memorandum that these
8 two documents were produced by Mr. Kerwin at the meeting to Mr. Parker and if
9 so, I suggest to you, you were the only person who had been involved with
10 Mr. Kiernan to that point in time in this claim and therefore, that those
11 documents came into Mr. Kerwin's possession because you gave them to him?

12 A. Or they could have been sent directly by Joe Tiernan.

13 Q. 29 Yes. Mr. Tiernan has not indicated that he discovered this documentation to
14 Mr. Kerwin at any point in time. I mean, do you suggest that that is how it
15 happened or are you merely saying that it may have been the case, but you
16 personally do not have a recollection?

17 A. I don't actually recollect the meeting. I remember Jack Kerwin setting up the
18 meeting to go to see Liam Parker, I don't actually recollect being at the
19 meeting.

20 Q. 30 I'm not suggesting that you were attending this meeting. This was a solicitor
21 to solicitor meeting on the 16th and not one that you attended, but your
22 solicitor, who was acting at that point in time for you, attended at that
23 meeting with these two documents and I suggest to you that the inference from
24 the chronology of events that we looked at, is that the documentation came from
25 you. But in any event, you say that that isn't the case?

26 A. I'm saying that I don't recall and secondly, that the documents could have come
27 from Joe Tiernan directly.

28 Q. 31 Right.

29 A. They're not documents that would I would normally have and as I said yesterday,
30 the amount of documentation that I had in relation to this was very slim, very,

1 very little.

2 Q. 32 Well I suggest to you that the documentation which is available in this file
3 indicates that you were being kept aware of the progress of the transaction by
4 Mr. Tiernan after the contract had been signed in November of 1989, and indeed
5 it would be very surprising if you weren't because you were a shareholder in
6 the company and the company was a company which had been intended to purchase
7 the lands in 1991 for 2.2 million pounds. In 1991, as we know, it was unable
8 to do so because of the two events which are recorded here, the loss of the
9 planning permission before An Bord Pleanala and the reversal of council Section
10 4 decision by the High Court. It would have been extraordinary, I suggest Mr.
11 Mooney, if Mr. Tiernan had not kept you apprised of those facts. And if he
12 had, could I suggest to you, it would be likely that he would send you a copy
13 both of the 28 day notice and also of the letter bringing matters to finality
14 in September 1991?

15 A. Well you will recall yesterday that I said that Joe Tiernan didn't tell me,
16 that in fact the situation had terminated. It only became known to me some
17 time after that.

18 Q. 33 I see.

19 A. And you will recall yesterday that we even took a commitment for him, I think,
20 at a point in time where you said that his grasp on the Lucan lands was, he
21 didn't have it, he had no hope.

22 Q. 34 Yes, that is so.

23 A. I have to tell you, like, I wasn't aware that his ownership or claim or option
24 or whatever had expired.

25 Q. 35 But, I mean, it was clear to you from the letter in November 1989, which
26 indicated what your shareholding would be, that the intended closing was the
27 24th of July 1991. As shareholder in that enterprise, surely, as that period
28 approached, as that deadline approached you would have picked up the phone to
29 Mr. Tiernan if you had to, but I know that you were a director with him of his
30 other company and you probably met him at board meetings, so you had regular

1 meetings with him and it was probably unnecessary to phone him specifically on
2 this. But there was an ongoing relationship at which surely you would have
3 asked him "what's going to happen on the 24th of July, Joe, in relation to this
4 contract to purchase the Finnstown lands which we're both involved in."?

5 A. Well again if I can go back to what I said in my statement and what I confirmed
6 yesterday. I did not ask for any remuneration from Joe Tiernan, okay? That's
7 why, when you asked me subsequently, did I regard myself as acting for him,
8 that it was a difficult question for me to answer because he gifted me that.
9 He told me to go to Rennicks and get 5% from Rennicks so that I would end up
10 with 10% and I said Joe, I won't do that and then when it appeared in the
11 letter, subsequently, I was unhappy with that because I had never discussed
12 with it with Rennicks and never would have asked Rennicks for it because I was
13 friendly with him and if Tiernan wanted to give me 5% that was fine. I didn't
14 ask for it and that letter in that context is, was not correct.

15 Q. 36 Yes.

16 A. And caused me embarrassment actually.

17 Q. 37 Sure. On that point as to remuneration or otherwise from Mr. Rennicks, I think
18 you'd accept that Mr. Rennicks always believed that he would be indebted to you
19 for the services that you had provided in introducing him to the scheme. He
20 didn't believe that you were doing it free gratis and for nothing; isn't that
21 so?

22 A. Well I don't know what he believed.

23 Q. 38 Well --

24 A. To be perfectly honest with you, because I never raised the issue with him and
25 as you can see from the correspondence here, when his solicitors get their
26 teeth around this particular bone, they claim 50%, which I have to say was
27 erroneous because I know what was put on offer to him. I had to stick by that,
28 even though it cost me, and in the letter they refer to the fact that the
29 shareholding could be as low as 20 and possibly 25 or as low as 20 is what the
30 letter states. So it's pretty clear that, like, I didn't attach much value to

1 that 10% I have to say because it had, the project it had come in to us, we
2 decided corporately not to do it and then subsequently I had done what I did
3 and I appraised my partners of that at the time, obviously, and it took on a
4 life of its own from there.

5 Q. 39 The figures that --

6 A. I found it difficult to sort of convince you yesterday that I didn't have an
7 active role in it. My knowledge of what was going on would have been gleaned
8 from Joe Tiernan when I would meet him.

9 Q. 40 Yes and I'm suggesting to you that because the Mount Argus project was one
10 which was a difficult one for all of the shareholders involved, including
11 yourself, that there were regular meetings between yourself and Mr. Tiernan
12 during this period and by that I mean the period from 1989 to 1991 when the
13 Finnstown contract was intended to be completed, which would have allowed you
14 the opportunity of addressing, had you chosen to do so, the question of how the
15 Finnstown lands were progressing, because that was an independent transaction?

16 A. I would have discussed with him how the Finnstown lands were progressing, yes.

17 Q. 41 And you say that he did not tell you that the deadline, which was the 24th of
18 July 1991, had expired or did he tell you something about it which was untrue?

19 A. No, he told me subsequently --

20 Q. 42 I'm talking about 1991 now. So we're approaching the deadline, this is a land
21 transaction which was presented to you and to Mr. Rennicks, ultimately, as
22 being one which would put a value on the lands as between 5 and 6 million
23 pounds if it was successful. It was dependent solely upon the successful
24 rezoning of the lands. The rezoning of the lands had been successful in 1990,
25 but it was subject to an appeal and that appeal was not determined until two
26 weeks before the closing date of the contract in July of 1991. So that coming
27 up to the closing date, as late as June 1991, there was a reasonable or could
28 be a reasonable expectation on the part of the investors in this firm, that it
29 would translate into a bonanza for the original investors, one of which
30 Mr. Tiernan had indicated was you, to the extent of 10%. So that you were

1 looking at a potential increase in value of your shareholding or a
2 capitalisation of your shareholding in 1991 at 600,000 pounds. I'm asking you
3 whether or not it is the case, Mr. Mooney, that you simply did not address the
4 closing date with Mr. Tiernan coming up to July 1991 or not?

5 A. I would have addressed it with him in the normal course and I think the
6 discussion I had with him centred around getting an extension of the contract.

7 Q. 43 Right.

8 A. Beyond that, I can't recollect.

9 Q. 44 Well in that discussion, isn't it perfectly logical that he would give you a
10 copy of the 28 day notice, which indicated that he had been unsuccessful to
11 that point in getting the extension which he had sought and wouldn't it be
12 equally logical that he'd give you a copy of the letter from Binchys which
13 effectively said all bets are off in September?

14 A. Yes, it would. But what I said to you yesterday is my recollection of what
15 happened and I believe it to be what happened and that was that, for whatever
16 reason, he didn't tell me. As I said to you there, I suspect a number of
17 reasons but he didn't tell me and he told me afterwards, some time afterwards,
18 that he didn't want to put me under pressure. I had been seriously ill, as you
19 know and he didn't want to put me under pressure and so didn't tell me that he
20 in fact, that there was an interregnum period between his losing control and
21 regaining it.

22 Q. 45 Fine. If we just revert now, if we may, to the attendance which was being
23 taken by Mr. Parker in his meeting with Mr. Kerwin.

24

25 The second page of that document is at page 3058, where here Mr. Parker records
26 the following "Luke Mooney has told David Byrne and Robin Rennicks that one
27 year later Joe Tiernan found that the property had been sold to a third party
28 and Joe Tiernan negotiated to buy a piece of the land."

29

30 Now, that was a synopsis of the position given, as it would appear, by Mr.

1 Kerwin to Mr. Parker to advise him of what the position was in relation to the
2 land. Because as we see from the earlier correspondence, the request that is
3 being made of you is a request for information. It is indicated that the name
4 of the company isn't known by Mr. Rennicks, he doesn't know the shareholding,
5 he doesn't know anything about it, so this is an information gathering exercise
6 which took place between the two solicitors.

7 A. The background to that was, that for one reason or another Rennicks appeared to
8 be getting agitated, I should say Mr. Rennicks appeared to be getting agitated
9 and I don't know what or who the source of the agitation was, but David Byrne
10 came to see me, I have a vague recollection of that from what was discovered
11 here in the papers. I have a recollection that he came to see me in my office
12 and wanted to know what was happening, and all of that kind of stuff.

13 Q. 46 Yes.

14 A. As regards where it was in the cycle of Joe Tiernan owning it and subsequently
15 losing it and regaining it, I can't tell you. I don't know. What I am saying
16 to you under oath is the truth and that is that Joe Tiernan did not tell me at
17 the point in time when he lost it, that he had lost it, and I think the reason
18 for it, on reflection, is probably that he was having some consideration for
19 me, because, as I said, I had, you know, serious illness and was not in action
20 for about three or four months and he probably spared me the, you know, the
21 worry of that.

22 Q. 47 Sure. As you can imagine is likely, Mr. Parker, having taken this information
23 went on to discuss the matter with his client. He was now being appraised in
24 effect of what the other side of the story was through this document and we'll
25 see his response on the 22nd of December 1993, at page 3063.

26
27 Where he writes to Mr. Kerwin as follows "We refer to our letter of the 6th of
28 December" -- we've already seen that -- "addressed to Luke Mooney and our
29 subsequent meeting last week.

30

1 At that meeting you handed us a copy of the 28 day notice pursuant to contract
2 of sale dated the 24th of November 1989, and a letter from Binchy and Partners
3 dated the 27th of September of 1991." So that establishes how the file has
4 this historic documentation on it, as I say it came through Mr. Kerwin
5 "addressed to Finbar Cahill indicating that the said contract was rescinded by
6 reason of the fact that the purchaser had failed to complete. At our meeting
7 you confirmed that the contract had in fact been rescinded and the deposit of
8 110,000 pounds forfeited. This sum of 110,000 pounds of course represented our
9 clients investment in these lands.

10
11 Our client was absolutely shocked at the above revelations. They came as a
12 complete surprise. And he finds the situation quite incredible in view of the
13 fact that:

14
15 1. Within the last three weeks he received an assurance directly from Luke
16 Mooney that his investment in these lands was secure and was now probably worth
17 in the region of 800,000 pounds for a 25% interest.

18
19 2. Within the last few weeks Luke Mooney gave a separate but similar assurance
20 and representation to David Byrne, our client's accountant, namely that our
21 client's investment was secure and was now worth in the region of 800,000
22 pounds or more for a 25% interest.

23
24 3. Since 1989, our client was never given any indication whatsoever that there
25 was any threat to his investment of 110,000 pounds and specifically was never
26 informed that the contract had been rescinded or deposit forfeited. Neither
27 was our client approached about completing the purchase rather than losing the
28 deposit.

29
30 We now note, from our meeting, that Mr. Joseph Tiernan, has apparently

1 renegotiated the purchase of substantially the same lands. However, maintains
2 that our client has no involvement or interest in this new transaction. We
3 also note the proposition that our client may receive some recompense for his
4 investment at the discretion of Joseph Tiernan in the event that our client
5 takes no further action in this matter. Please specifically note that our
6 client regards himself as still entitled to a 50% interest in the lands at
7 Finnstown, which based upon representations by Luke Mooney, has a minimum value
8 of 800,000 pounds for a 25% interest. We require the following by return:

9
10 A. Copy of contract of sale dated the 24th of November 1989 which has been
11 rescinded.

12
13 B. Copy of the further contract for sale which Joseph Tiernan, his agents or
14 nominees, have obviously entered into in relation to substantially the same
15 lands.

16
17 C. The name of the limited liability company who is the proposed purchaser
18 pursuant to the above contract.

19
20 D. An unqualified acknowledgement that our client is entitled to a 50%
21 interest in the contract and/or the lands at Finnstown.

22
23 Please further specifically note that if the above requests are not forthcoming
24 by return, we have definite instructions from our client to take all steps
25 necessary to protect his interest in this matter and it is absolutely clear at
26 this stage that his interest requires immediate protection in view of the
27 undoubted misrepresentation, misinformation and deceit which has taken place.

28
29 As far as we are concerned we have adequate grounds, at this stage, for making
30 an immediate application to the High Court to ensure that our client's interest

1 is not in any way further threatened. However, we will accord your clients an
2 opportunity to furnish the documentation as requested above and give an
3 unconditional confirmation that our client's interest is as described by us
4 above. In the absence of such confirmation this letter will be used in any
5 application that may be considered necessary to the High Court."

6
7 And in that matter, I think it sets out, firstly, the position which was now
8 going to be adopted, not only in relation to the persons who had been written
9 to initially in this claim, that is yourself, at CFI, but rather Mr. Joe
10 Tiernan, because Mr. Joe Tiernan is here effectively being accused of
11 misrepresenting the position by entering into a new contract without reference
12 to your initial client, Mr. Rennicks; isn't that so? Be it right or wrong,
13 that's the basis of what they're alleged here; isn't that right, Mr. Mooney?

14 A. Yes.

15 Q. 48 And it's as a result of that that, I suggest that, Mr. Tiernan becomes involved
16 in the issues, that is on a date after the 22nd of December, and that up to
17 that point in time it was you exclusively dealing with the matter.

18
19 You'll see that at page 3077, the title of the issue changes from the Rennicks
20 point of view to there being three persons named as the client in Binchys, that
21 is Joe Tiernan, Luke Mooney and CFI Limited in relation to Finnstown.

22
23 That letter says "We refer to our letter of the 22nd of December. We note that
24 we have not received a reply in relation to the above matter.

25
26 We await, by return, a copy of the original contract of sale and the current
27 contract in respect of the above lands. If you consider that you are not in a
28 position to furnish these documents or will not do so please let us know and we
29 will advise our clients accordingly."

30

1 Now, the exchange then between the parties seems to have gone off
2 correspondence from that date onward by agreement between Mr. Kerwin and
3 Mr. Parker. We see reference to that in the next letter on the file, which is
4 on the 27th of --

5 A. Can I just stop you there?

6 Q. 49 Yes.

7 A. The reference to CFI there is erroneous. Robin Rennicks would relate me to
8 CFI. When I introduced this particular deal to Robin Rennicks, I would have
9 made it clear to him that CFI were not becoming involved in it. So I just
10 want to make that point clear. He would regard me as synonymous with CFI and
11 I understand that.

12 Q. 50 But equally, can I say that if you wish to make that distinction, as you do now
13 to the Tribunal, Mr. Mooney, it was not a distinction which you made in the
14 correspondence or indeed through the negotiations which were conducted on your
15 behalf by Mr. Kerwin. When he asked as to whether or not you were acting for,
16 they were acting for CFI and Mr. Tiernan also, that matter was simply not
17 addressed. But specifically, nobody wrote back to Amorys at any point to say
18 "CFI has nothing to do with this transaction. We act on behalf of Mr. Luke
19 Mooney on a personal capacity only"; isn't that so?

20 A. So I could possibly offer one explanation for it and that is if Mr. Rennicks
21 were seeking to depart from Coolamber and Finnstown, which is what ultimately
22 happened, that could be a reason for having CFI in there. Because CFI --
23 sorry, did I say Coolamber? I meant Mount Argus. If he were contemplating
24 that, which is ultimately what happened, that could be a reason for having CFI
25 in there at that point, because, like, you asked me there. You were about to
26 ask me I think.

27 Q. 51 Yes?

28 A. At what point did Tiernan seem to take over the running for this? My
29 recollection is that Tiernan took the running over very, very quickly.
30 Because he was the guy with all the, if you like, the day-to-day activity in

1 it. I had none. I was being pursued by Mr. Rennicks because he felt that he
2 was being done down and I'm not too sure, I had a telephone call from
3 Mr. Rennicks going into town, I think it was one Thursday or Friday evening
4 when he gave me an ear full over what he regarded as the fact that he was
5 being, how will I say, I suppose being cheated out of a 25% ownership in the
6 land. He always believed that he had a 50% ownership in it and I had to tell
7 him on the phone that look, I explained to him the circumstances of the day
8 because I remembered them vividly and he did not accept that and that is the
9 reason why -- that's another reason why I wouldn't have, you know, looked for
10 money from him, looked for a percentage from him because his percentage was
11 small.

12 Q. 52 I was suggesting to you, Mr. Mooney, that the correspondence between the
13 solicitors here proceeds on the basis that yourself and CFI were the parties
14 involved in this transaction and that at no point in that correspondence, at
15 any time to its conclusion, is there any letter indicating that CFI did not
16 have a role in the transaction. Indeed, when there is a final settlement on
17 this issue, CFI is listed as one of the parties who would get a copy of that
18 settlement document; isn't that right?

19 A. I would suggest because of the Mount Argus issue. That's all that I can
20 adduce.

21 Q. 53 Well could I suggest that Mount Argus was being dealt with by an entirely
22 separate stream of correspondence which carefully mirrored the correspondence
23 going on in the Finntown issue but didn't confuse the two of them?

24 A. Well maybe that will prove my point for me.

25 Q. 54 The letter of the 10th of January, which was indicating that they had not
26 received a reply to the letter of the 22nd of December, I suggest, indicated
27 that from that point on, since there isn't a reply to the letter of the 10th of
28 January, matters went, in effect, off the record and the solicitors discussed
29 the matter with a view to resolving the issue if they could by negotiation;
30 isn't that so?

1 A. That's fair, yeah.

2 Q. 55 And we'll see reference to that on page 3086, where on the 27th of January
3 1994, in relation to the Finnstown lands and on this occasion we'll see that
4 Mr. Kerwin refers to his client solely here as Luke Mooney. Doesn't include
5 Mr. Tiernan. He says "We have your letter of the 24th of January. We are
6 surprised to receive your letter in view of the negotiations that have taken
7 place and in particular the understanding reached between the negotiators that
8 there would be no correspondence passing between your firm and our's in
9 relation to this matter while negotiations were taking place." That I think
10 reflects the position.

11
12 Why do you understand that the parties had decided to go off paper and
13 negotiate directly in this matter with a view to resolving it?

14 A. Because I feel at that stage Rennicks, Mr. Rennicks rather, had decided that he
15 was going to exit and at that stage it was a question, I do believe, of
16 engineering or crafting a solution to the problem that then obtained.

17 Q. 56 Now, from that time forward, until the ultimate conclusion of the resolution of
18 the dispute which was, as we know, the repayment to Mr. Tiernan of a sum of
19 110,000 pounds --

20 A. Mr. Rennicks.

21 Q. 57 I beg your pardon, to Mr. Rennicks of 110,000 pounds in July of 1994; isn't
22 that right?

23 A. That's right.

24 Q. 58 Those funds were to be raised, in effect, by Mr. Tiernan through borrowing the
25 money from Lombard and Ulster, who were financing the acquisition of the 2.7
26 million pound contract; isn't that right?

27 A. Well you'll recall yesterday that I, in terms of defining whether we were
28 acting for him or not, in Finnstown, I don't know the answer to that. We
29 didn't act for him. I have no idea. I presume that's the case.

30 Q. 59 Well your solicitors, in effect, were being asked to guarantee the transaction.

1 Because the negotiations for its resolution were taking place in January,
2 February and March. But the funds weren't intended to be paid until the
3 acquisition of the lands in July; isn't that so?

4 A. Well, all I can say to you is I had, you know, I was not directly involved in
5 that, as you said, just about two or three minutes ago. It went off record
6 and my recollection is that the various parties sat down and tried to tease out
7 a compromise. And that teasing out process took -- it was extended and there
8 was a fair amount of brinkmanship, as you will see in the papers, where, as I
9 confirmed to you yesterday, Mr. Tiernan said, you know, he wasn't actually --
10 he has said this to me on occasion when I was having my rows with him. He
11 said to me that he wasn't actually legally bound to pay Rennicks anything
12 because the Rennicks investment was in the first company, which had lost the
13 contract.

14 Q. 60 Yes.

15 A. So there was a negotiation process entered into and finally concluded. That's
16 my recollection.

17 Q. 61 Right. Now, in the course of the documentation then that was generated in
18 that, we also see that the file of Amorys contains documentation which was the
19 prospectus for the Mount Argus project.

20 A. Yes.

21 Q. 62 And when I talked earlier of the historical documentation, that was
22 documentation equally that was provided to the accountant, Mr. David Byrne,
23 when he was carrying out his researches into the transaction on behalf of his
24 client; isn't that right?

25 A. I'm not -- I can't.

26 Q. 63 You're not aware of that?

27 A. No. I know it's in the Amorys document here.

28 Q. 64 Sure. Perhaps it might be appropriate to look then to see what it was that
29 the claim -- what the basis of Mr. Rennicks' claim was against you and how it
30 was expressed by him and the documentation which was generated in support of

1 that claim and which led to the engagement of the solicitors in the first
2 instance. You might remember from the file, that is the Amorys file, the
3 document which we'll see at page 3169.

4
5 Which is a manuscript document and it's quite illegible I'm afraid. So I have
6 prepared a typed copy of it, which I believe to be accurate. If we could put
7 it up at page 3253 on screen, beside if possible the manuscript document, if
8 that is feasible?

9
10 Perhaps if we read it in its typed format first, Mr. Mooney, and then we can
11 have a look at it in its manuscript format, there is one word which is, I'm
12 afraid, still undecipherable. But it reads as follows:

13

14 "I telephoned Luke Mooney."

15 A. I don't have it.

16 Q. 65 Sorry. If you would put on screen please No. 3252. I can hand you also a
17 typed copy of it.

18

19 This document reads "I telephoned Luke Mooney on the 15th of October 1993 and
20 informed him that I had required --

21 A. What's the date of this document?

22 Q. 66 It's undated, but we can place it in time because it is -- it refers to two
23 dates. The 6th of December 1993 and the 15th of October 1993. So it was
24 generated certainly probably between those dates and possibly on the 6th of
25 December 1993.

26

27 "I telephoned Luke Mooney" -- and it's David Byrne, the accountant, to
28 Mr. Rennicks, who is writing this document.

29

30 "I telephoned Luke Mooney on the 15th of October 1993 and informed him that I

1 required documentation regarding Finnstown. After three weeks of continued
2 phone pressure he agreed to meet me in CFI in early November. He again said
3 that Robin only had 25% of the deal Finnstown. I said Robin was adamant that
4 it was 50%. I then asked for documentation regarding shareholding, company
5 name, directors etc. He immediately left his office and I thought he was gone
6 to obtain documents. He arrived back in the office putting an envelope in his
7 inside pocket, which I understood was the documentation. He then wrote down
8 what he projected would be Robin's return on his investment and this ranged
9 from 800,000 pounds to 1.2 million pounds for his 25%. I then said it's twice
10 that Luke. We then went to lunch. Nothing further was discussed until we
11 were leaving the Goat when he said he would be very disappointed if Robin
12 thought that he was not up front. I said that this was not the case and he
13 said he would send me the documentation. I kept ringing and eventually
14 received, after another two weeks, a letter dated November 1989." If I can
15 stop at that point there. I suggest that that is the letter of November 1989,
16 which is the second of the historical documents on the file of Amorys.

17
18 "I was then told there would be a meeting to discuss both companies" and by
19 that I interpret this as referring both to the Mount Argus project and also
20 Finnstown. "This meeting was never called. I then informed him that it was
21 in his interest to sort everything out, as my client was becoming very irate.
22 His answer to this was "If he wants to start acting the blank he will start
23 acting the blank". At this stage I did not have the name of the company for
24 Finnstown and I decided to examine Joe Tiernan's other companies in the
25 companies office. I rang Brian Phelan to obtain the up to date accounts and I
26 asked him when the meeting -- when was the meeting arranged for Tiernan. He
27 knew nothing about the meeting. I also rang Michael Semple to ask him about
28 the prospectus for TH" -- which we interpret to be Tiernan Home Builders
29 Limited, "the Mount Argus project, which he gave me. He said in the course of
30 conversation that there was a debate as to Robin Rennicks' shareholding in

1 Finnstown. I said there was no debate but there was a dispute. We still had
2 not been given any information on the Finnstown company and in desperation" --
3 that word is undecipherable but it seems to be "desperation", hence the
4 question mark after it -- "we had handed it Robin Rennicks' lawyers on the 6th
5 of December 1993."

6
7 So that seems to be a document which led to the correspondence of the 6th of
8 December 1993, which was the initiating letter sent by Amorys to yourself.

9
10 You'll see in the body of that, that an account of the concerns of Mr. Rennicks
11 is expressed here and the dispute as to whether or not there is a 50% or a 25%
12 shareholding and from the point of view of discovery, it would indicate the
13 source of the documentation. That is the November 1989 letter and as again, I
14 referred to earlier, it indicates that certainly, as of 1993, you had that
15 documentation in your possession, power or procurement; isn't that right?
16 There is also reference to the provision of the up-to-date accounts which were
17 provided by Brian Phelan and they equally are on file, this file, as the
18 historic documents and that would indicate that CFI did have the Mount Argus
19 documentation as of that date and presumably therefore, it also had the meeting
20 notes of the 1st of September 1992, at which time the guarantee which
21 Mr. Tiernan had given to satisfy the shareholders of Mount Argus, which
22 included Mr. Rennicks, out of the proceeds of the lands at Swords and/or Lucan
23 was mentioned; isn't that so?

24 A. Um, on the face of it.

25 Q. 67 Yes?

26 A. Yeah.

27 Q. 68 Is it in any sense an aid memoire to you to fix your mind as to what your
28 knowledge of events was in 1993 and the detail of what the Coolamber
29 contractual status was as between Mr. Tiernan's company, which we know to be
30 Kylesmore, which by this stage, in December of the previous year, had entered

1 into a legally binding agreement to buy these lands for 2.7 million for
2 completion in July of 1994?

3 A. Can I --

4 Q. 69 Of course you may.

5 A. Can I just deal with this. I can recall and I don't want you to stand up and
6 start berating me for not including this in my statement but I can recall,
7 having read this, the visit of David Byrne -- I think this followed on from the
8 telephone call that I had with Robin Rennicks, obviously, prior to the 15th of
9 October, wherein he claimed 50% shareholding and he obviously asked David Byrne
10 to sort it out and I explained to David Byrne the background, as I've explained
11 to you the background, the entire background to it and I have to say that, you
12 know, I understand why Robin Rennicks was annoyed. But at the same time, I
13 understood the proposition that was put to him on day one and the fact that he
14 decided to accept half the proposition, which meant that he was entitled to a
15 25% interest. In relation to the accounts of Mount Argus, certainly they
16 would have been there at or about that time and obviously they were handed
17 over. So, like, that's all I can comment on that. That's all, I mean, do
18 you want to ask me any other question on it?

19 Q. 70 No. I'm putting it to you as being probably an accurate reflection of the
20 circumstances which existed as between yourself and Mr. David Byrne at this
21 time, which led to, as we see in the final line, the conclusion that the matter
22 had to go to the lawyers for resolution because he was getting nowhere; isn't
23 that so?

24 A. He was, yeah. Well sometimes that happens.

25 Q. 71 Sure. That's why we're in business I suppose.

26 A. (laughter).

27 Q. 72 The documentation on this file also allows you, Mr. Mooney, to have
28 consideration for what Mr. Rennicks' appreciation was of his initial
29 involvement and his knowledge of subsequent events, by reference to the
30 statement that he recorded for his solicitors on this issue, which we see at

1 page 3163 of the brief and it's another manuscript document, mercifully more
2 legible in this instance, which is contained within the Amorys file.

3
4 And again undated, but it starts at the top of page 3163, it reads as follows
5 "1989, asked by LM, which I take it was Luke Mooney/JT to invest" and then that
6 is struck out, next line. "Was asked in 1988/1989 to invest in Mount Argus by
7 Luke Mooney of CFI. To invest in 10% of Mount Argus for 250,000 pounds, which
8 I agreed to take up. In November 1989, I was approached by Luke Mooney and
9 Joe Tiernan at my home to invest 110,000 pounds for an option of 50% on lands
10 at Finnstown, Lucan. The option was at 2.2 million with a 5% deposit. Joe
11 Tiernan 5% to be used for expenses. Some time later I got bills from CFI for
12 work done by Luke Mooney on a joint venture with a Japanese company, Sebulite,
13 these bills were excessive and led to a dispute with Luke Mooney and Michael
14 Semple which was resolved and paid. This led to a real anxiety" -- sorry --
15 "real worry" -- I should say -- "of what fees would be charged by Luke Mooney
16 on Finnstown and Tiernan Homes and I met with Joe Tiernan to express my worry.
17 He told me that he had dealt with CFI before and that there was no problem. In
18 any case his affairs were being dealt with by Michael Semple. 1989 to date.
19 Joe Tiernan and Luke Mooney valued the land at 5 to 6 million pounds. Had
20 possibly two to three discussions a year with Luke Mooney/Joe Tiernan.
21 Finnstown had ups and downs. The option expired in 1991, and when I asked I
22 was told that there was no problem as Lawlor the TD, who was involved in the
23 deal, could not become involved." This sorry is 3165, the next page. "as
24 Lawlor the TD, who was involved in the deal could not become involved and was
25 happy to leave with it Joe Tiernan. This remained the situation until 1992
26 when I was told that the option had increased to 2.7 million pounds. Later I
27 was told that full planning had been received and that could be no further
28 appeal against planning. Regarding Tiernan Homes,. I never attended or was
29 invited to any meeting of shareholders since my investment in 1988/89. I had
30 accounts for the year ended 1991, which were disastrous. But I was told sales

1 had improved and the final position would be a break even or a small profit.
2 Luke Mooney, in or about four months ago, told me I would get my money back
3 with interest and that Finnstown was finalised. Luke Mooney asked me several
4 times to invest in Cityjet in early October. He asked me to do a presentation
5 to Frank Keane, Motor Imports and myself. I said before I would look that I
6 wanted the documents relating to Finnstown/Tiernan Homes with the accounts and
7 something for -- I then left for Japan and I asked David Byrne to follow-up."

8
9 So that that was the account which, at that point in 1993, apparently in
10 advance of the communications which were sent to you on the 6th of December,
11 Mr. Rennicks was setting out his position.

12
13 Do you have a recollection of the discussions which took place between yourself
14 and Mr. Rennicks over the years relating to Finnstown? Because he indicates in
15 this as you have read, that he met with yourself and Mr. Tiernan, perhaps two
16 or three times a year where the Finnstown project would be discussed and
17 certainly he seems to have been au fait with an amount of the ups and downs
18 which had taken place in relation to that contract.

19
20 He says that the option ended in 1991 and when he asked, he was told that there
21 was no problem as Lawlor the TD who was involved in the deal could not become
22 involved and was happy to leave it with Joe Tiernan.

23
24 How would you interpret that reference? Have you a recollection of raising,
25 with Mr. Rennicks, the fact that Mr. Lawlor, because of his position as a TD
26 would not or could not become involved in the transaction? Does involved here
27 mean publicly involved in the transaction? Because the reference indicates
28 that he was involved. But that he could not be involved. They are
29 contradictory statements; aren't they?

30 A. On the face of it, yes.

1 Q. 73 Yes. I suggest to you that the statement would of course make sense if it was
2 to be read as follows. That is that I was told that there was no problem as
3 Lawlor the TD who was involved in the deal could not become and I'm inserting
4 the word publicly here, would not become publicly involved. That would give
5 rise to what is otherwise a self contradictory statement; isn't that so?

6 A. Well, I don't know what he means by that. I really don't know what he means
7 by that because can I just --

8 Q. 74 Yes.

9 A. -- give you some background. When the proposition was put to us, I was aware
10 that, from Joe, that John Caldwell was involved and James Kennedy was involved.
11 I was aware that James Kennedy and Liam Lawlor were very friendly. There was
12 a lot of talk at the time. They were, you know, partners together in
13 dealings. When Joe came in to propose to us that we do Coolamber. He
14 indicated that it was a project being headed up by John Caldwell and Kennedy.
15 So there was no doubt about that. I asked or would have asked Joe, I'm
16 surmising now, but I would have asked him was Liam Lawlor involved and, like,
17 his reaction to that was no but Kennedy's involved type of thing, right? So
18 that and a number of other issues decided CFI corporately. Although it was on
19 the face of it a very attractive proposition, not to get involved and I don't
20 know what Robin Rennicks is referring to there. I don't know.

21 Q. 75 He's referring, as we can see, specifically to that interregnum position in the
22 contracts where the 1991 contract had expired. There was no extension of that
23 contract and there was no new contract until 1992. We're talking about a
24 period between the expiry in July of 1991.

25 A. Uh-huh.

26 Q. 76 And the new contract, which is referred to in the next sentence in 1992. The
27 situation -- has remained the situation until 1992.

28 A. What was the date of this document?

29 Q. 77 This is undated. But it is a document which led to the letter of the 6th of
30 December 1993 being sent to you. We may take it that it's the instruction to

1 the solicitor setting out the background of the documentation or the
2 involvement of Mr. Rennicks in the transaction. It is further elaborated upon
3 by his accountant's details, which we've just read a little earlier.

4 A. Yeah.

5 Q. 78 So these two documents here represented the instruction which Mr. Parker was
6 given in 1993, to pursue the claim and to do that he'd have to have some
7 knowledge of what was going on and Mr. Rennicks set out here his history of
8 events and I'm focussing at the moment between the period between the two
9 contracts. That is between the expiry of the 1989 contract, in July 1991, and
10 the commencement of the 1992 contract, and it's in that regard that
11 Mr. Rennicks speaks of the involvement of Mr. Lawlor, the TD, saying that he
12 was involved in the deal but that he could not become involved in the deal; do
13 you understand? That's what it said.

14
15 CHAIRMAN: Could we see page 3163? Which I think is the previous page, with
16 that.

17
18 MR. O'NEILL: If two can be put together please on screen. 3163 at the end
19 of the page and 3165, which is the next document in sequence and the sentence
20 reads "The option expired in 1991 and when I asked, I was told that there was
21 no problem as Lawlor the TD, who was involved in the deal, could not become
22 involved and was happy to leave it with Joe Tiernan. This remained the
23 situation until 1992 when I was told that the option had increased to 2.7
24 million pounds."

25 A. Well my recollection is that, as I said to you, I was not told that the
26 option -- or sorry, I was not told that because it wasn't an option it was a
27 quasi option, in the sense that it was a 5% deposit which would have to be
28 followed up, as I explained yesterday, which in the event that planning
29 permission were not to be obtained, would be with a company that would not be
30 able to follow through and so in that sense Joe Tiernan always regarded it as

1 an option and you know, I agree with that. That that's effectively what it
2 was. As regards Rennicks state of knowledge, his state of knowledge would
3 have been the same as my state of knowledge. In the sense that he and I had
4 worked extensively together in Japan and the Far East and in the States in
5 relation to something large that we were attempting to do at the time and like,
6 during the course of our work together, I would have appraised him of what was
7 going on and he would have been aware that Mount Argus was causing us great
8 difficulty in the sense that sales there were, you know, inexplicably slow for
9 an inner city site and that there would have been potential for loss and we in
10 CFI were very keen to ensure that the people who had put up their money in good
11 faith would be returned their money. So what I'm saying to you is that, like,
12 what Rennicks, Robin Rennicks writes is a matter for Robin Rennicks and his
13 recollection. My recollection is that, as I've explained to you, I asked to
14 know whether Liam Lawlor was involved. Was told Kennedy was involved. I
15 could link the two together, obviously, but I had no evidence that Liam Lawlor
16 was involved. I had no evidence other than Joe telling me at the time that it
17 was a Caldwell/Kennedy ownership that he was getting involved with and that,
18 that was it. I wasn't aware of anybody else, Southfield or any of these.

19 Q. 79 I take it, you can accept Mr. Mooney looking at this document, that
20 Mr. Rennicks himself attributes the source of his knowledge to the discussions
21 which he's had over the years, and in particular in relation to this issue,
22 with yourself and Mr. Tiernan; isn't that right? He says I was told this in
23 the context of the Liam -- sorry Luke Mooney/Joe Tiernan discussions. He's
24 not attributing his knowledge to a source other than yourself and Mr. Tiernan;
25 isn't that right?

26 A. Not in that document.

27 Q. 80 Not in this document. Do you think he is wrong in what he says here? Or is
28 it the case that you may well have or Mr. Tiernan may well have indicated to
29 him that this was the case because he certainly records it here; isn't that
30 right?

1 A. Well I would have told him, up front, that if Kennedy was around that the
2 prospect was that Liam Lawlor was around as well because I knew they were
3 associates.

4 Q. 81 Yes.

5 A. How did I know that? I knew it from talking to Joe over the years. So, I
6 mean, just park that there. When we decided not to do it in CFI and Robin
7 decided that he would do it, I probably would have told him that the likelihood
8 was that Liam Lawlor was involved somewhere in it, but that I had no evidence
9 of it and I don't think there was any evidence and I don't think I could have
10 had or found evidence.

11 Q. 82 Yes.

12 A. If I decided to look for it.

13 Q. 83 Do I gather when you're talking about evidence here you're talking about
14 written documentation?

15 A. Ah yeah.

16 Q. 84 Or share certificates?

17 A. Or a name on a contract or something like that.

18 Q. 85 Sure. But leaving that aside, was it your belief that since Mr. Kennedy was
19 involved in it, that Mr. Lawlor was also involved in it? Was that your belief?
20 I'm not asking you about evidence.

21 A. Well I don't know. I always regard Liam Lawlor as a sort of a character from
22 Damon Runyon's novel "Horse Thief" and that is not that he ever stole a horse
23 but that if he ever got the chance he would and it was called "Horse Thief" for
24 that reason and I guess the fact that he was hanging around with James Kennedy
25 probably meant that, you know, that they were associated. But I have to tell
26 you that I have no evidence of it.

27

28 CHAIRMAN: Right. It's twelve o'clock so we'll rise for ten minutes.

29

30 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED**

1 **AS FOLLOWS:**

2

3 MR. O'NEILL: Mr. Mooney, please?

4

5 Mr. Mooney, moving from 1991 to 1992. I think you agree that in 1992,
6 certainly, you were aware of the renegotiation position or the repositioning
7 perhaps of the parties seeking to acquire the Coolamber lands, the earlier
8 contract having expired; isn't that so?

9 A. I would have been aware that they had taken, because I wasn't told, you see.

10 Q. 86 Uh-huh. I want to refer to the final document in the -- or the almost final
11 document in the discovery issue and that is the document we'll see at page 3008
12 on screen. Which is a fax from Tiernan Home Builders and it's in the top
13 corner marked "Luke personal." It comes by fax from Mr. Tiernan and it sets
14 out the minutes of a meeting held at 4 p.m. on Monday the 19th of October 1992,
15 between Mr. Jim Kennedy and Mr. Joe Tiernan and there are ten bullet points set
16 out there and if we go through them we'll see that, firstly, "The following was
17 agreed. Price 2.7 million. Area of land to be the same as before." That
18 reference obviously going back to the 1999 contract. "Less one acre
19 surrounding retained land for proposed filling station at crossroads. Sale to
20 close 6 months after formal adoption of development land by Dublin County
21 Council. Contract to be for a period of three years from signing the
22 contract" -- and then deals with foul pipes and their sizes, "surface water
23 pipes. Joe Tiernan's personal guarantee in relation to items 5 and 6." That
24 is the obligation which he assumed under the contract to build the
25 infrastructure beneath Coolamber. "Gives an undertaking of personal guarantee
26 for 200,000. The purchaser shall be entitled to connect to the sewers for the
27 purpose of serving the sold land and any other lands acquired by him east of
28 the Newcastle Road. In all other circumstances the vendor to have ownership
29 and so right to connect."

1 This appeared to address the possibility that Mr. Tiernan would buy further
2 lands which would be on the eastern side, that is on the Coolamber side of the
3 Newcastle Road.

4 A. Yeah.

5 Q. 87 Whereas the land to the west was always intended to be for others.

6 "8. It was further agreed, with no undertaking sought by the vendor or given
7 by the purchaser that on receipt of planning permission for 4 and 5, that every
8 effort would be made by the purchaser to have the foul pipe size increased to
9 450 mill to Hayden's Lane, 375 millimeters thereafter to a point on Newcastle
10 Road.

11
12 It was agreed that we wee meet on the 21st inst at 4 p.m. for the purpose of
13 formalising the agreement.

14 10. 100,000 pounds refund from JC. Method to be agreed before I sign.
15 Joe Tiernan."

16
17 So that's a document certainly on its face, Mr. Mooney, would appear to have
18 been faxed by Mr. Tiernan to you in and around the 19th of October 1992, and
19 I'm wondering whether or not that assists you in determining whether or not it
20 was the case that Mr. Tiernan was keeping you advised, in 1992, of his position
21 vis-a-vis the finalisation of the acquisition of Finnstown, otherwise
22 Coolamber?

23 A. He was. He was, yes. Yes.

24 Q. 88 Right and we see that in this memorandum here, that there's the reference to
25 Mr. Kennedy and Mr. Tiernan as being the two negotiating parties were there.

26 A. Uh-huh.

27 Q. 89 Does that in any way assist you or confirm your belief, if you have it, that
28 the same parties were really negotiating a new deal, but it was the same
29 parties who had been involved in 1989 in that contract?

30 A. Yeah.

- 1 Q. 90 Right. At any time, for example, did Mr. Tiernan indicate to you that
2 Mr. Kennedy had informed him that John Caldwell was no longer involved in the
3 deal?
- 4 A. I can't remember.
- 5 Q. 91 No. Could I suggest that if he had done so, it is something that would have
6 impressed itself on you because it would indicate some friction in the camp, if
7 it had been?
- 8 A. Well, like, I know John Caldwell for many years, in fact over 25 years I guess,
9 and I know him to be, you know, a very commercial solicitor in the sense that
10 he acted with lots of builders down through the years and, like, that wouldn't
11 have -- like, if he were -- like, himself and Kennedy were close and were known
12 to be close but it wouldn't have suggested that to me that they had fallen out,
13 no.
- 14 Q. 92 I'm not suggesting that they did fall out, because the evidence certainly that
15 has been tendered to the Tribunal by Mr. Caldwell, by means of a statement
16 through his solicitor, is that he acknowledges that he was a 50% owner of the
17 Coolamber lands as of a date in December of 1992 when the company, Vino
18 Properties Limited, became contracted to acquire the lands?
- 19 A. Yes.
- 20 Q. 93 You understand. So from that date forward there isn't a dispute on his part
21 as to his ownership. So you think that this documentation, this --
- 22 A. I probably would have received it, yeah.
- 23 Q. 94 Probably would have been received.
- 24 A. Yeah.
- 25 Q. 95 Now, obviously to that point in time you were aware that the only financial
26 expenditure that had been incurred by investors was Mr. Rennicks' money; isn't
27 that right?
- 28 A. That I knew of, yeah.
- 29 Q. 96 That you knew of.
- 30 A. Yeah.

1 Q. 97 And you see that point 10 then --

2 A. Although that is not correct because after the Goodman International got into
3 difficulty and there was an attempt to recover investments that he had. My
4 brother had this meeting so I would have known that he, the Goodman Group would
5 have had an investment in it as well, by way of a guarantee or whatever. So I
6 would have known that from my brother at some stage. Now, I don't know what
7 that knowledge is, but I would have known that.

8 Q. 98 Well it may assist you to know that a year earlier than this particular
9 attendance here, which is in October of 1992, and we can't date the meeting
10 precisely. But your brother, I think, has given us an indication that it took
11 place in the autumn of 1991 and from the sequence of documents around that
12 time, it seems likely that it was in and around the 25th of October of 1991.
13 When yourself and Mr. Tiernan and Mr. Lawlor and Sean Mooney met and discussed
14 the matter at that stage.

15 A. Yeah.

16 Q. 99 Now, obviously in that discussion, could I suggest, it would have been centred
17 really on Mr. Goodman's position rather than acquisition; isn't that right?

18 A. I believe so, yeah.

19 Q. 100 But that wouldn't necessarily mean that Mr. Tiernan had made any further
20 investment. The fact, in other words, that there was money owed to
21 Mr. Goodman didn't follow that there would have been a further investment to
22 satisfy that money; isn't that right?

23 A. No.

24 Q. 101 So as far as you knew then a year later, and we will deal a little later with
25 Mr. Goodman's involvement, the only involvement that your client,
26 Mr. Rennicks, had was to pay the 110,000. The 110 had gone by way of the
27 deposit and now we see a reference to 100,000 pounds to be refunded by Mr. John
28 Caldwell, that is JC, at the end of this document, to Mr. Tiernan, before
29 Mr. Tiernan would sign up to the other 9 points in the agreement; you see that
30 in the agreement?

1 A. Uh-huh.

2 Q. 102 Could I suggest, firstly, that it suggests that Mr. Caldwell is in fact
3 involved at this particular time, as you believed he was initially. But also
4 that there was to be a quid pro quo for Mr. Tiernan signing this, and that was
5 he was to get 100,000 back. The method by which he was to get it back was to
6 be agreed before he signed off on it. I'm wondering if you have any
7 recollection of discussing that detail with Mr. Tiernan at any point?

8 A. I have a recollection of that 100,000 being an issue. I don't know whether he
9 got it or not. I can't tell you. I know at the time that he mentioned it
10 because he was, just from my recollection, trying to get, I guess, the deposit
11 back.

12 Q. 103 Right.

13 A. That had been paid earlier. I think that was the intention behind that.

14 Q. 104 We know, of course, that the deposit was 110 and not 100.

15 A. I know but that's my, if you like, recollection of that issue. I mean, I
16 haven't seen it until now.

17 Q. 105 Right. The -- if we could turn back now to deal with your general statement
18 in relation to the events which you provided to the Tribunal on the 8th of July
19 of 2004, and we see that at page 2665 on screen. It's your -- the nine points
20 that you dealt with specifically and you explained to us the circumstances in
21 which the omissions from that of other issues arise. I just want to deal for
22 a moment with what we see here on this page.

23
24 If we take the first two paragraphs together. It indicates that you had this
25 approach in late 1989. We know that we can date the earliest correspondence
26 made available to the Tribunal from the promoters of the scheme, as being the
27 project document of the 23rd of November, that is at 2999 on screen. Whereas
28 we see what was being proposed was the 50% investment in the company for
29 200,000 pounds, which would translate into a 10 fold profit in the event of the
30 matter coming to fruition, these figures being calculated by reference to the

1 lands worth of approximately six and a half million pounds at the end of the
2 day, if planning is granted; isn't that so?

3 A. Yes.

4 Q. 106 So it was a modification of that proposal I think which led to a 25% interest
5 being acquired rather than the 50%; isn't that right?

6 A. Yes.

7 Q. 107 As far as you know --

8 A. Yeah.

9 Q. 108 -- nobody took up the other 25% that would have been on offer?

10 A. Joe Tiernan did.

11 Q. 109 Well he had 70.

12 A. Um, yes but I'm dealing with it in the context of what Robin Rennicks believed
13 he had.

14 Q. 110 Sure.

15 A. So if he believed Tiernan had 50 and he had 50, well if Rennicks put up
16 110,000, the inference was that he was taking half of what had been on offer to
17 him.

18 Q. 111 That's what half of what was being on offer to him was itself half.

19 A. Yes.

20 Q. 112 So what was being offered to him, what was being acquired by him, as far as
21 you, Mr. Tiernan --

22 A. Yeah.

23 Q. 113 -- and the documentation would suggest --

24 A. Yeah.

25 Q. 114 -- was 25%.

26 A. Yeah.

27 Q. 115 But when the promoter of the scheme, Mr. Tiernan, went out to raise funds, his
28 expectation was to raise 200,000 pounds from other investors, other than
29 himself; is that right?

30 A. Yes.

1 Q. 116 In effect what he got was a little over half that. But he only gave half of
2 what was originally intended, in order to get that money?

3 A. Yes.

4 Q. 117 Right. So he didn't find another investor for another 25% --

5 A. No, as far as he was concerned, the top slice, 50%, was his and the bottom
6 slice was what he was putting out in the market.

7 Q. 118 Right.

8 A. And he -- the other -- the investment by Robin Rennicks of 110,000 was for half
9 of what he'd put on offer to Rennicks and I'm very clear about that. Because
10 both of them were friends of mine, business friends and at the end of the day I
11 had to make a call as to whether Robin Rennicks' view of the world was correct
12 and to I had to tell him that it was incorrect and I had to recall for him that
13 what was put on offer to him was 50%. Because he was offered the full amount
14 for 220,000 and himself and his wife spoke about it and he said that he would
15 put up half of it. So therefore, he got half of what was offered.

16 Q. 119 Sure. But the confusion, if it is confusion, that arose in his mind is
17 probably explainable by the fact that he didn't receive any documentation which
18 recorded the receipt by Mr. Tiernan of his funds, nor indeed did he receive any
19 share certificate indicating that he had a given percentage in the shares of
20 any one company; isn't that so?

21 A. So that's correct, but he was relying on me to make sure his --

22 Q. 120 He was relying on you and you were able to show him, not only the letter of
23 1989, which clearly indicated the 25% was what he had got; isn't that right?

24 A. Yes.

25 Q. 121 But also, if we see the documentation from Amorys, the document on screen here
26 was never offering more than effectively 25%, if one was only going to pay 100;
27 isn't that so?

28 A. That was my view of it.

29 Q. 122 That was your view and at the end of the day, he ended up taking that view
30 himself and taking 110,000 pounds out of the deal; isn't that right?

1 A. Yeah, that's correct.

2 Q. 123 But when this deal was being proposed in this format that we see in the project
3 document, the question of the planning was addressed there; isn't that right?

4 A. Yeah, oh, very much so, yeah.

5 Q. 124 Although there's no reference in this document to any named individual, either
6 Mr. Tiernan, Mr. Kennedy, Mr. Caldwell, Mr. Lawlor, or anybody else in relation
7 to the transaction; isn't that right?

8 A. That's correct.

9 Q. 125 But over and above the type of information which was contained in that
10 document, you had personal knowledge which allowed you to tell Mr. Rennicks
11 what the position was vis-a-vis the deal itself; isn't that right?

12 A. You're not going to come back at me and say now I didn't disclose that.

13 Q. 126 I'm not saying what I will or won't do, Mr. Mooney.

14 A. The answer to your question is yes, and I said that before the break.

15 Q. 127 And what you indicated to him was that you knew of Mr. Kennedy and you knew of
16 Mr. Caldwell; is that right?

17 A. Yeah, I would have told him that.

18 Q. 128 Right and that gave you confidence in the likely success of the project; is
19 that fair to say?

20 A. No, John Caldwell was, you know, a well established solicitor in Dublin. As I
21 said earlier on, I had dealt with him, you know, down through the years and,
22 like, he was somebody that I would regard as a person I could rely on and, you
23 know, if he was involved in it, he could be relied on to deliver what he said
24 he would do. He was an honourable person in my experience.

25 Q. 129 Yes and what in effect was required to be delivered in this situation, was the
26 rezoning of the lands; isn't it?

27 A. Well no, the ownership of the company --

28 Q. 130 Right.

29 A. -- was to be delivered to Joe Tiernan or his designated corporate entity, are
30 or whatever way he was going to set it up and Joe Tiernan paid an entry fee, so

1 to speak, of 100 and whatever it is.

2 Q. 131 110.

3 A. He paid 110,000. I guess you might say for the right to go off and see if he
4 could secure planning permission, which he ultimately did.

5 Q. 132 Right. But do I understand from your earlier reference to the involvement of
6 Mr. Caldwell, that you expected that for Mr. Rennicks' payment of 110,000, you
7 expected his, Mr. Rennicks' interest, to be reflected in the ownership, and
8 that that would be done by Mr. Caldwell?

9 A. No, that would be done by Joe Tiernan.

10 Q. 133 And how would Mr. Tiernan do it?

11 A. Well he gave me the letter.

12 Q. 134 I see.

13 A. And that letter was wrong, as I said a couple of times, because he included me
14 for 10% of it, which was incorrect.

15 Q. 135 Well my initial questioning really had been in relation to the involvement of
16 Mr. Kennedy and Mr. Caldwell. Firstly, you told us, just before the break,
17 that you were told that Mr. Caldwell and Mr. Kennedy were the owners of the
18 property.

19 A. That's correct.

20 Q. 136 You were told that in 1989 --

21 A. Well maybe they were behind the project or words that that effect. Like, I
22 can't recall now the exact blurb he used on the day. But I was certainly
23 aware that both of those gentlemen were involved in it.

24 Q. 137 Well by what do you understand involvement to be? Because involvement can be
25 anything from acting as a solicitor to acting as an intermediary or as a
26 financier?

27 A. As principals. As owners.

28 Q. 138 As principals, exactly. So as far as you were concerned, you were in a
29 position to tell Mr. Rennicks, at the time that he was evaluating the project,
30 that the owners of the property, the substantial owners who were inviting a new

1 party in.

2 A. Uh-huh.

3 Q. 139 Were Mr. Caldwell and Mr. Kennedy, persons who you knew, by repute, in the case
4 of Mr. Kennedy, I take it, and by your actual knowledge of Mr. Caldwell for a
5 long time before this.

6 A. Yes.

7 Q. 140 And obviously, any investor would like to know how successful or what the
8 chances of success of the project are, particularly where they are a 10 fold
9 increase in the value of the lands is the project that's envisaged; isn't that
10 right?

11 A. It's a ten to one shot.

12 Q. 141 But you'd certainly like the odds to be as narrow as they could and you'd
13 investigate the running history of the horse and were you able to assure
14 Mr. Tiernan that these two individuals were persons who would be likely to
15 successfully achieve their intention?

16 A. No, the individual who would be likely to achieve the intention would be Joe
17 Tiernan.

18 Q. 142 Right and is that why Mr. Tiernan was being brought into or being offered the
19 opportunity of acquiring these lands on the basis that he would be likely to be
20 a person who might be successful?

21 A. I would imagine that's the case, yeah. I don't know, is the answer, but I
22 would imagine that's the case.

23 Q. 143 And you indicated at that point in time it was your belief, although you didn't
24 have evidence of it, that Mr. Lawlor was involved in this project.

25 A. Well, look, himself and Liam Lawlor and James Kennedy were, you know, they were
26 friends as I knew it, and James Kennedy and Liam Lawlor had euphemistically
27 gone back a long way together, now whatever that means.

28 Q. 144 Well one can be friends without being involved in any business association or
29 partnership or joint venture or what have you, and you make an assumption, I
30 think here, and I'm wondering on what basis you assume that Mr. Lawlor was

1 involved in the sense of principal in this project?

2 A. I couldn't state that, but all I knew and know now is that that's his bailie
3 wick and as you know, his home which is across the road from it.

4 Q. 145 Yes.

5 A. Had come up for planning permission and I think, you know, then the land was
6 withdrawn and the planning permission was subsequently withdrawn. So, like,
7 Liam Lawlor was a well known public representative in the area and he was also
8 a guy with some business nous as I have found out subsequently, and what I'm
9 expressing to you is not something that I have opened up and I've seen the
10 evidence of it. It's just life and the way it was lived.

11 Q. 146 Yes, and it's probably what you would have indicated to Mr. Rennicks.

12 A. Absolutely, absolutely, absolutely.

13 Q. 147 Now, in the statement that you furnished to the Tribunal you indicate that it
14 was matter that was put to CFI and declined by them.

15 A. Yes.

16 Q. 148 For the reasons you set out here.

17 A. Yes.

18 Q. 149 Firstly, because of the business risk. Now, there's a risk in every business
19 venture. Can I understand from your previous answers that you believed
20 yourself that this was likely to be a pretty good deal?

21 A. The location was excellent. It was a good deal if the price were right. But
22 it didn't have planning permission and that's what, you know, divided it
23 between, you know, on the one hand being a pretty good deal and on the other
24 hand a really excellent deal.

25 Q. 150 Yes, and the more chances there were or the higher the likelihood of a
26 successful rezoning application by the applicant involved, the more likely it
27 was that it would translate into a bonanza as envisaged; isn't that right?

28 A. Absolutely.

29 Q. 151 And you say that within CFI, your partners declined to involve themselves in
30 seeking finance from their own sources and it effectively then is a matter

1 which was left to you and this arose in the context of visits which were made
2 to you by Mr. Tiernan promoting the project and asking you to find somebody who
3 was interested; is that right?

4 A. Yes. Specifically the 110,000. Because it couldn't get off the ground
5 unless that were made available.

6 Q. 152 Right. Now, in relation to the 110,000. Certainly the documentation
7 available to the Tribunal which emanated from yourself, in the course of your
8 dispute, in which you set out the events of the modus operandi which was being
9 used to achieve planning permission, as we see at page 2305, indicated --
10 sorry, I beg your pardon, it's 2805, I think.

11
12 In this document on screen, Mr. Mooney, just to place it in context. It's
13 dated the 27th of May 1997, but it dealt with the dispute as to your
14 entitlement and the extent of your entitlement arising from this successful
15 development by this point in time; isn't that right?

16 A. Yes.

17 Q. 153 And in that you review the history of events with Mr. Tiernan in support of
18 your application for more than he was prepared to offer. You see in the third
19 paragraph down of that, if we just highlight that bit. You indicate that "in
20 February of 1989 you came to me in the aftermath of the debacle of the Revenue
21 driven break up of the Woods Group, although a successful builder you were
22 largely unbankable at this time and could not, for tax and other reasons, get
23 restarted. I, principally and my partners, obtained from you, the necessary
24 seed capital and that." This is in relation the other venture, isn't that
25 right?

26 A. Mount Argus.

27 Q. 154 The Mount Argus project. But in indicating here the tax and other reasons he
28 could not get restarted. I think you might be aware of the evidence of
29 Mr. Tiernan on this issue, that he had made a settlement with the Revenue that
30 it was in the course of perhaps a Revenue amnesty or immediately preceding that

1 and that one of the consequences of that was, I suggest, was that he could not
2 be seen to have ready cash available to him for investment purposes; isn't that
3 so?

4 A. That's correct.

5 Q. 155 And that I think is a matter which also is specifically referred to in another
6 document which is within the Amorys file of documents, and that's at 3133.
7 3133. Now, where the promoter, who is Mr. Tiernan, of that project and we're
8 talking here of the Mount Argus project. It reads that "The promoter is one
9 of the most successful house builders in Ireland in recent years, having
10 constructed 4,000 houses in a variety of types spread throughout the Dublin
11 suburbs. He has recently settled his substantial revenue liabilities under the
12 amnesty and under its terms cannot be seen to be in a position to have the
13 capital to start again."

14
15 Now, I take it you were aware, Mr. Mooney, that in fact he did have assets of
16 his own but he couldn't be seen to put those assets up; isn't that right?

17 A. Generally, yes.

18 Q. 156 I think that probably explains, if we can revert back to page 2805, the final
19 sentence on that page where you say "Rennicks' involvement was very critical,
20 since although you had paid money to Kennedy, the vendor. His, Rennicks,
21 110,000 was from a source readily identifiable." This, could I suggest --

22 A. Yes.

23 Q. 157 -- is really the *raison d'etre*, in a way, of the involvement of Mr. Rennicks in
24 this transaction is that, his money could be readily identifiable as being the
25 proceeds of the sale of his company to Fitzwilton which he would have to
26 reinvest in other ventures and that in the event of there being any Revenue
27 inquiry into Mr. Tiernan's acquisition of the Coolamber lands, one could simply
28 point to this money as being the money which funded the project and therefore,
29 cease any further Revenue inquiry into it; isn't that right?

30 A. Well Robin Rennicks' money was, as the document says, was from a source that

1 was readily identifiable.

2 Q. 158 Yes. But the need to have money readily identifiable in this context, could I
3 suggest to you, was because of a correspond corresponding need on the part of
4 Mr. Tiernan to have a readily identifiable source other than himself of the
5 project?

6 A. Inter alia.

7 Q. 159 And the requirement for that was because I suggest he had other funds, his own
8 funds as he told us, offshore, but he did not want to be seen to invest those
9 funds in this project for obvious reasons, having made a substantial Revenue
10 settlement; isn't that so?

11 A. Again, inter alia.

12 Q. 160 Yes. Without going into the details of precisely what the amounts were. You
13 were aware of these facts; isn't that right, Mr. Mooney? At the time?

14 A. Yeah, of course I was, yeah.

15 Q. 161 Yeah.

16 A. We had stated his position fairly clearly in the prospectus for Mount Argus.

17 Q. 162 Yes. That is the document that we read, which showed him as the promoter in
18 relation to that.

19 A. Uh-huh.

20 Q. 163 Now, so that the financial aspects of this involved the, Mr. Rennicks coming
21 in, inter alia you say because he had, he was an identifiable source of money
22 which was --

23 A. Well he was also a member who would carry half the risk and while nobody would
24 like to lose that amount of money, he could suffer the loss of that without too
25 much difficulty.

26 Q. 164 Yes.

27 A. And it was, remember, as I said yesterday, it was a race course investment in
28 many respects because, as you know, he lost it and subsequently regained it and
29 it took, I think, about four years or five years from the day he put it up
30 until the day he got it back and the large amount of money that Mr. Justice

1 Keys referred to yesterday, I think, that I got. I didn't get that until
2 seven or eight years, seven or eight or eight or nine years after I had
3 performed my introduction. So it's important to put the perspective on this
4 as well.

5 Q. 165 Sure. Could I suggest that in that perspective Mr. Rennicks' money, 110,000
6 which is invested in 1989, is returned to him five years later in exactly the
7 same amount and he doesn't benefit either to the extent of even getting deposit
8 interest at this stage; isn't that right?

9 A. That was at his specific request.

10 Q. 166 Right.

11 A. And I think it would be fair to say on his, my observation of it was that he
12 was disgusted and just wanted out immediately and that was it.

13 Q. 167 Right and part of that was, I take it, because he was informed that there were
14 two separate companies between the first and the second contract and that he
15 had no legal entitlement in relation to the second company and therefore, he
16 was bound to take whatever was offered to him?

17 A. Well that was Joe's negotiating position with him.

18 Q. 168 Sure.

19 A. I had nothing to do with that.

20 Q. 169 Now, in relation to the manner in which the rezoning of these lands, which was
21 the essential element of the project was concerned, that aspect of the project
22 was such that it was deemed by you and your partners, to be a project with
23 which you would not be publicly identified; is that right?

24 A. Uh-huh.

25 Q. 170 Can you just outline what your disquiet was about the proposal that led to that
26 decision being taken in what was otherwise a relatively attractive proposition,
27 I'd suggest?

28 A. When he came to see us, Joe Tiernan told us, there were three of us at the
29 meeting, that that obtaining planning permission on this very desirable site,
30 near the city, although it was very approximate to the city, I don't know what

1 the term was, it wasn't in the County Development Plan zoned for residential
2 and it would require a Section 4 motion. This is from memory now and that he
3 would probably be one of the best, if you like, qualified, best equipped guys
4 in terms of his experience in the building industry over a lengthy period of
5 time to make this happen and one of my partners asked him the direct question,
6 which was, you know, would it involve the sort of activities you're referring
7 to here today and he said that it would require that they would have to be
8 fairly heavily lobbied.

9 Q. 171 Right. I think there is an American expression known as "incentivisation"
10 that comes to mind.

11 A. If you read another document you'll see that too.

12 Q. 172 What did you understand heavy lobbying to be? I mean, lobbying obviously is an
13 exercise which is carried out by any number of bodies from charities to anybody
14 else. The term heavy lobbying that you chose to use in your statement to the
15 Tribunal. What implication, what inference or what is the meaning of that?

16 A. Well the inference we drew was that incentivisation would have to be a feature
17 of it and we didn't want to be part of it and we didn't want to have any of our
18 investors or shall I say, the people that would invest in projects that we
19 would introduce them, we didn't want to have them in that situation and
20 ironically here I am today.

21 Q. 173 Yes. Well apparently Mr. Rennicks seems to have been happy to proceed
22 notwithstanding that type of reservation.

23 A. Ah look --

24 Q. 174 Do you know that he --

25 A. I would have told Mr. Rennicks when I met him that -- I wouldn't have held
26 anything back from him.

27 Q. 175 Yes.

28 A. Remember, Joe Tiernan lives about 150 yards around the corner from where I
29 live. We go to the same church, our kids go to the same schools or did go
30 when they were small and he actually believes, I understand, that it was I who

1 precipitated this whole business. I understand that, certainly that has been
2 sort of difficult for me. But he -- in other words he was, as I say, well
3 known. He would have had to incentivise these people. The degree of
4 incentivisation I don't know. As I mentioned in another place, I would have
5 dealt with him in the past in terms of political subscriptions from himself and
6 the Woods Group because I was a trustee of the late Jim Mitchell and at
7 election times we would collect money, this is in the pre controlled days, now,
8 to try and fund election campaigns. And Joe and his group would, you know,
9 contribute. Obviously, at that time they would have had a lot of hands out
10 for money from politicians from all hues and we would get, what I would say,
11 even at this juncture, a subscription that would be, you know, in proportion
12 and not outrageous. So, it could have been simply more of that or it could
13 have been something else. I'm not sure.

14 Q. 176 But --

15 A. But one way or the other, I suppose we were prescient at the time. I remember
16 this was 1989 and we were sort of, of the view as a practice, that what came to
17 be known as the Tribunals, might at some stage just see the light of day and we
18 weren't interested in becoming involved in, you know, those type of activities
19 or having our clients involved.

20 Q. 177 I think that --

21 A. That is not to say, and I said this before in another place. I did not see
22 Joe Tiernan pay anybody. I'm not aware that he paid anybody.

23 Q. 178 You --

24 A. That's important I should say.

25 Q. 179 Yes. I know that you deal further in your statement with the ongoing
26 communications which you had with Mr. Tiernan in connection with his
27 applications for planning permission and -- or for rezoning I should say, and
28 in the body of paragraph 6 of the document, that is at page 2665, your
29 statement to the Tribunal. You indicate that "Mr. Tiernan told you that one
30 councillor had made a large financial demand to facilitate the process to which

1 he was not disposed to accede." You see that in your statement there?

2 A. I do.

3 Q. 180 I can confirm to you that the Tribunal has not and does not know the identity
4 of that particular individual. You haven't named that person in any
5 documentation or meeting that you might have had with the Tribunal. But I
6 will be asking you now just to note for the purpose of the Registrar, who will
7 give you a piece of paper, the name of that person if that was given to you by
8 Mr. Tiernan at the time?

9 A. Can I speak off record?

10 Q. 181 Sorry?

11 A. Can I speak off record?

12 Q. 182 We can't unfortunately, because your evidence has to be taken on oath on this
13 issue, other than one proceeds through a particular process which has not been
14 operational to date. So that you are now on oath on the issue, Mr. Mooney, I
15 will be asking you to note, for the Tribunal, the name of the individual who is
16 named here.

17 A. I have done that already.

18
19 CHAIRMAN: Well would you just write down the name on a piece of paper, Mr.
20 Mooney? And if you know the amount of the contribution asked you might put
21 that down as well.

22
23 JUDGE FAHERTY: And the date.

24
25 CHAIRMAN: And if you were given a date, an approximate date when that request
26 was made.

27
28 CHAIRMAN: All right. It's one o'clock. So we will rise until two o'clock.

29

30 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

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

2

3 **CONTINUATION OF QUESTIONING OF MR. LUKE MOONEY BY MR. O'NEILL**

4 **AS FOLLOWS:**

5

6 MR. O'NEILL: Mr. Mooney, please?

7

8 Mr. Mooney, we touched earlier on the involvement of Mr. Lawlor in the

9 Coolamber land transaction and I think if we look to the involvement of

10 yourself and your brother, Mr. Sean Mooney, in November or possibly October of

11 1991, we'll see what was being discussed at a meeting which was attended by

12 both of you and Mr. Lawlor and Mr. Tiernan. It's at page 1851 on screen.

13 It's a handwritten memorandum which was prepared by your brother. It's on the

14 headed notepaper of Stokes Kennedy Crowley Peat Marwick. And it records, at

15 the very top of it there, the attendees at the meeting, the four of you,

16 Mr. Liam Lawlor, Mr. Joe Tiernan, Mr. Luke Mooney and Mr. Sean Mooney. Just as

17 regards the persons whom you were representing at that meeting. I take it

18 that your representation was solely that on behalf of Mr. Joe Tiernan; is that

19 right?

20 A. That's right, I believe there is a view otherwise abroad, but that is --

21 Q. 183 I'm just asking you what your evidence is on the issue?

22 A. Yes.

23 Q. 184 At this point you weren't acting for or representing any individual interest of

24 Mr. Lawlor's; is that right?

25 A. Yes.

26 Q. 185 We understand from your brother, Mr. Sean Mooney, that he was representing the

27 interests of Mr. Goodman at the meeting; isn't that so?

28 A. Yes.

29 Q. 186 Specifically, have you a recollection of what role Mr. Lawlor was playing at

30 this meeting, which as we will see, is directed towards financing the take out

1 of Mr. Goodman's indebtedness which was created because of his involvement in
2 the Coolamber project?

3 A. No, I told you before that I don't -- that I didn't have and really don't have
4 a recollection of that meeting. I mentioned earlier to you that I was
5 recovering from a fairly serious illness at the time. I spoke to my brother
6 about it, he confirmed that I was at the meeting and he convened the meeting to
7 appraise Joe Tiernan that, you know, Mr. Goodman had an interest in getting his
8 money back or getting his liabilities cancelled or whatever, and that was the
9 purpose of the meeting. I presume Mr. Lawlor -- I'm only presuming because I
10 don't know. I can't remember. But his involvement there I guess would have
11 been to protect whatever interest he may have thought he had in it.

12 Q. 187 Fine. You have already indicated this morning that you believe that there was
13 an interest of Mr. Lawlor's in this transaction by reason of his association
14 with Mr. Jim Kennedy, which you understood to have been one going back for many
15 years and you understood to be a commercially based relationship, although they
16 were friends?

17 A. All I can say to you is there was talk. Again, like lots of things, I have
18 seen no manifest evidence of this.

19 Q. 188 Sure. But could I suggest it's significant that at this meeting, other than
20 Mr. Lawlor there is no other representative on behalf of the parties who were
21 the legal owners of the land, in other words, there's no attendance here by
22 either Mr. John Caldwell or by Mr. Jim Kennedy. There is, however, an
23 attendance by Mr. Lawlor; isn't that so?

24 A. There is, yeah.

25 Q. 189 And the resolution of this dispute would, I suggest, perhaps it wasn't a
26 dispute at this point in time, but the resolution of the refunding of monies
27 to Mr. Goodman would necessarily involve the then owners of the land who were,
28 as of this date, Southfield, that is the company which had contracted initially
29 with Mr. Tiernan?

30 A. Yeah. I'll tell you one other thing that has occurred to me since this

1 process started over the last couple of days. Immediately prior to the sale
2 of the land to the Tiernan company, Mr. Goodman rang me and I recall that
3 telephone conversation. He rang me, he had worked with me in Cityjet, in
4 helping to establish Cityjet, and he rang me and he would know me reasonably
5 well anyway being Sean's brother, who was his principal advisor, professional
6 advisor, and he asked me to let him know when the closing was going to take
7 place. That's all I can add in relation to that, that's of relevance.

8 Q. 190 Right. Just dating that, if we way, Mr. Mooney.

9 A. That would be very approximate to the date upon which it closed.

10 Q. 191 Yes.

11 A. I asked at the time that Joe would tell me, because I would have told Joe that
12 Larry Goodman had been on to me. I'm just giving you my sense of what
13 probably happened.

14 Q. 192 Yes.

15 A. And that I really needed to know because he had asked me to let him know. Now,
16 Joe didn't so let me know. The closing took place. As I understand it the
17 money disappeared and Mr. Goodman was very upset over that, and it was
18 something obviously that I regret, but I had no control over it, I didn't know
19 when the closing was taking place.

20 Q. 193 If we take that just in stages. The first contract, as we know, was one that
21 was entered into in November of 1989. It expired in July 1991.

22 A. Uh-huh.

23 Q. 194 It was brought to a formal conclusion in September of 1991, by the letter of
24 the 27th of September, which we saw on screen this morning where Binchy and
25 Partners wrote to Cahill & Co, solicitors for Mr. Tiernan, saying in effect we
26 are considering that all bets are off, we can sell to somebody else. As of
27 that point in September of 1991, negotiations between Mr. Tiernan and
28 representatives of the vendors, in this instance Mr. Caldwell --

29 A. Uh-huh.

30 Q. 195 -- had been continuing from a date in the 15th of July of 1991.

1 A. Uh-huh.

2 Q. 196 Now, those negotiations were ultimately concluded by the document we also saw
3 this morning, on the 19th of November 1992, one year later.

4 A. Uh-huh.

5 Q. 197 When you were advised of the ten points of agreement which were reached between
6 Mr. Kennedy on the one hand and Mr. Tiernan on the other.

7 A. Uh-huh.

8 Q. 198 Now, it wasn't until the 16th of December of 1992 that the contract was signed
9 under which the lands were now to be acquired for 2.7 million, as opposed to
10 2.2 million, the earlier contract.

11 A. Uh-huh.

12 Q. 199 Now, was it in connection with that second signing --

13 A. The second closing.

14 Q. 200 The closing of that contract didn't take place until July -- sorry, June of
15 1994.

16 A. Well whenever. The closing was approximate because he would have been keeping
17 an eye on it, obviously, I guess through my brother and he did telephone me, I
18 recall that.

19 Q. 201 But is that in 1994 or 1992?

20 A. Oh, yeah, immediately before the closing when the money was handed over by Joe
21 Tiernan and for whatever reason, best known to himself, Joe Tiernan did not
22 tell me when the closing was going to be. Because if that were the case I
23 would have, you know, advised Mr. Goodman.

24 Q. 202 Well the closing was with a company called Vino Properties Limited, which is a
25 British Virgin Islands company.

26 A. Uh-huh.

27 Q. 203 And the monies left by the next post after closing to the Channel Islands so
28 that they weren't attached. In any event, you're not clear at this point in
29 time, in the autumn of 1991, as to what exact role Mr. Lawlor played. But he
30 did attend at this meeting at which the proposals, which are set out here, were

1 discussed and that, firstly, indicated that it was intended that there would be
2 a take out in June 1992 for 700,000. That was to be in relief of
3 Mr. Goodman's indebtedness because he was to get his money apparently out of
4 that fund.

5 A. Uh-huh.

6 Q. 204 Secondly, the company would resist attempts to sell the property. Because
7 selling would scuttle the deal. I suggest that the deal that would take place
8 if Mr. Tiernan was --

9 A. Mr. Tiernan was very, he was very, how would I say, concerned that he would
10 lose that deal.

11 Q. 205 Yes.

12 A. Very concerned that he would lose it and I can recall him being nervous about
13 losing it.

14 Q. 206 We'll see, Mr. Mooney, that the resolution or lack of resolution of
15 Mr. Goodman's claim to be reimbursed his monies through a company called
16 Elangrove --

17 A. Uh-huh.

18 Q. 207 -- continued for some years after this and was the subject of communications
19 between Mr. Lawlor on the one hand, Mr. Noel Smyth, solicitor, who was acting
20 for the parties seeking to recover the funds --

21 A. Uh-huh.

22 Q. 208 -- and your brother, Mr. Sean Mooney.

23 A. Yeah.

24 Q. 209 Particularly in 1995. Just to date the role that you had in 1995 in relation
25 to Mr. Lawlor. Is it the case that Mr. Lawlor had sought your assistance,
26 advices and professional skills in negotiating his indebtedness with a number
27 of banking institutions at that time in 1995?

28 A. That is correct.

29 Q. 210 Right.

30 A. A date I can't be precise about.

1 Q. 211 Right.

2 A. But it was in 1995. I'm perfectly certain.

3 Q. 212 And in general terms, is it correct to say that what was being proposed by
4 Mr. Lawlor through you to the banking institutions, was that the net proceeds
5 of sale of the 23 acres of land which surrounded his 6 acre holding upon which
6 the house Somerton lies, was to be sold and that the proceeds of sale were to
7 be distributed as between the banking institutions to whom he was indebted?

8 A. Well the issue there was, again as I recall it, that he owed in excess of a
9 million pounds and that his assets at the time were his home and the acreage
10 and when he came to me to ask me to act for him. I asked him straight out if
11 he had other assets because that was important to me in the context of going to
12 people I knew in the financial institutions that he owed money to, and he
13 assured me that other than some revenue he was expecting to get from Prague,
14 together with his Dail salary and obviously the sale of the 23, I would have
15 the 23 acres, that I would have to do the best I could with that. So I went
16 and saw the institutions and I arranged settlements with, I think, four
17 institutions and they were ultimately paid off and we managed to retain his
18 home and five acres, which is Somerton, and I think that was funded by the
19 Irish Nationwide Building Society.

20 Q. 213 Is it the case, that in those settlements, the amounts which the banks received
21 were in varying degrees. But between 35 and 44 percent of their entitlement?

22 A. Sorry, of that order.

23 Q. 214 Yes, and the precise figures are --

24 A. Of that order.

25 Q. 215 But obviously in order to succeed in convincing the banks to take that amount
26 in full satisfaction of their indebtedness you had to have a detailed
27 discussion or examination of Mr. Lawlor as to both his assets and his
28 liabilities; isn't that right?

29 A. Well the liabilities, correct.

30 Q. 216 Yes. Now, we know the banking liabilities. They are the ones that were

1 satisfied out of the net sale proceeds.

2 A. Yeah.

3 Q. 217 But apparently there were other liabilities of which your brother was aware,
4 because he was pursuing them on behalf of Mr. Smyth or Mr. Smyth was pursuing
5 them on behalf of your brother through Elangrove; isn't that right?

6 A. I'm not familiar with that now. I know there was some work done by Noel Smyth
7 to recover monies that Liam Lawlor had --

8 Q. 218 Fine. We'll see in the brief of documents that is served, that on page 2453,
9 there is a document which was generated by Mr. Liam Lawlor in connection with
10 the ongoing indebtedness which existed in respect of the Coolamber lands and
11 that is May the 31st 1995. Which is in and around half way through your
12 negotiations with the banking institutions and in this Mr. Lawlor says that, in
13 the last two paragraphs of that page, "If the package Luke Mooney is
14 negotiating is not accepted by the banks, the alternative is the forced sale of
15 total holding of the 23 acres and my home. Obviously this is a disastrous
16 option from my point of view.

17
18 I had reported to Luke Mooney, your proposal to finalise matters for a payment
19 of 100,000 pounds and he was looking at how we could endeavour to achieve that
20 payment and settle with the banks."

21
22 Now, what's envisaged there in that arrangement, Mr. Mooney, was that
23 Mr. Lawlor would pay 100,000 pounds to settle the Elangrove/Goodman claim and
24 that in addition he would settle with the banks and that he had discussed this
25 matter with you. Now, if that is so, it would appear to indicate that
26 Mr. Lawlor had indicated to you that he had assets which might satisfy that
27 100,000 pound payment, independent of the proceeds of sale; do you understand?

28 A. Independent of the proceeds of the sale of?

29 Q. 219 Of the land surrounding Somerton?

30 A. Yeah, you're right there. Because the ACC Bank had a charge on the entire of

1 Somerton.

2 Q. 220 Yes.

3 A. I think.

4 Q. 221 That's, yes, correct.

5 A. And the issue was that what I was seeking to do was to get them to settle a
6 very substantial debt for the net proceeds of sale of 23 acres. And we
7 achieved that. The property went to auction and there was a bid up to 420, I
8 can't recall the precise figure but it was in I think the 400,000 pound range.

9 Q. 222 410.

10 A. 410. So they took all that, as far as my recollection is. In addition to
11 that, I had to deal with Allied Irish Banks, Woodchester, I think the Bank of
12 Ireland were owed some money as well and he gave me the money, which he
13 indicated had come from work he was doing, I think, overseas or of that nature,
14 to and also I think he got some borrowings from Irish Nationwide. I think
15 that made up, I didn't really mind, once he was in a position to honour the
16 commitments that I had made with the banks. What I did was I went around to
17 the banks and did the negotiations with them. It wasn't easy, I hasten to
18 add, and I settled on a figure and then told him what I wanted and invariably I
19 was able to payoff, you know, a proportion of the debts that was owed to the
20 banks.

21 Q. 223 I had understood, Mr. Mooney, perhaps incorrectly from earlier responses, that
22 the intention was to satisfy the indebtedness out of the proceeds of sale of
23 the Somerton lands, the 23 acres and that that sum produced 410,000 pounds.

24 A. Yeah it did, yeah. But the ACC, I think, took that, from memory. I know
25 there was other money needed to deal with the settlements with the other banks.

26 Q. 224 Right.

27 A. Of maybe, I don't know, I can't recall. Maybe, I thought the total amount was
28 of the order of 80 or 90,000. I can remember AIB getting 23. Woodchester
29 settling for a third of what they were owed.

30 Q. 225 Right.

- 1 A. And, you know, I wasn't anticipating being asked that question.
- 2 Q. 226 Sure. I'm not asking really the specifics of it, but to just generally of it
3 insofar as it relates to the proceeds of sale of the Coolamber lands and
4 connections with the Coolamber lands through Mr. Lawlor.
- 5 A. Uh-huh.
- 6 Q. 227 One of the negotiating stances, I believe, that took place in the course of
7 your efforts to have the banks accept the net proceeds of Coolamber, of the
8 Somerton lands, I should say, rather than Coolamber lands, in satisfaction was
9 that you were endeavouring to raise funds from a number of individuals who were
10 connected with Mr. Lawlor and who would make-up the shortfall or a proportion
11 of the shortfall of funds from their own funds provided Mr. Lawlor was allowed
12 to remain on in his own home.
- 13 A. Yeah.
- 14 Q. 228 And secure a new mortgage over Somerton and the five acres; is that so?
- 15 A. Yes.
- 16 Q. 229 And the persons who were involved or who were envisaged as being the
17 contributors to the fund that would be so used, who were they?
- 18 A. They were -- there was no -- sorry. When I was saying that to the banks, I
19 was under scoring the fact that apart from what he told me he said he would be
20 able to procure to settle the debt that, you know, if they were going to be
21 going harder on me, that is what I was going to be forced to do, so to speak.
22 It's a tactic if you like and that I didn't want that happening and he didn't
23 want it happening. But if they were going to be insisting upon it, now,
24 that's my recollection now because I've done that for other people as well who
25 were in difficulties, that their friends would bail them out, not for huge
26 amounts but for nominal to, significant enough amounts.
- 27 Q. 230 Did you receive any assurance from these individuals that they would fund a
28 particular amount to --
- 29 A. No.
- 30 Q. 231 You didn't. I see. So that as far as you were --

- 1 A. I did speak to Mr. Mulryan, I just see his name here at the bottom of it.
- 2 Q. 232 I think you did ultimately, as you know, conclude the resolution of the matter
3 with the banks I believe by October of 1995?
- 4 A. Um.
- 5 Q. 233 You're not quite sure of the date.
- 6 A. No.
- 7 Q. 234 Fine. Did you know whether at that point in time Mr. Lawlor had received the
8 sum of 825,000 deutsche marks which he had lodged to a bank account of the
9 Landesbank in Liechtenstein on the 14th of September of 1995?
- 10 A. No.
- 11 Q. 235 And obviously had you been aware that his assets extended to that amount they
12 probably we have met his legal liabilities under the loans to the banks; is
13 that so?
- 14 A. Well I put it to you this way. I was burning up some personal capital in
15 dealing with the banks, in the sense that I was asking banks to take a bit of a
16 write-off obviously, and one doesn't do that lightly and I asked him straight
17 out, you know, I said I don't want to look like a fool if you produce a million
18 pounds or two million pounds out of a hat, you know, the week after this is
19 done. Because excluding my lack of discovery yesterday, I would have a
20 reasonably good representation around town and I didn't want it tarnished and I
21 had helped other people in the past, you know, and I still continue to do that
22 work and I didn't want to, you know, leave myself a busted flush in that area.
23 So I asked him to his face, if he had any assets other than his home and he
24 informed me that he hadn't.
- 25 Q. 236 Right. You were obviously then unaware of the fact that he had indicated to
26 Mr. Noel Smyth and to Mr. Sean Mooney, your brother, that he was owed a sum by
27 John Caldwell of some 375,000 pounds in relation to his share of the profits
28 arising from the sale of the Coolamber lands and that Mr. Caldwell was refusing
29 to release that money to him until such time as he, Mr. Lawlor, was able to
30 procure a letter from Noel Smyth & Co. to Binchys retracting any claim that

1 Mr. Goodman had against Mr. Caldwell?

2 A. No, my evidence is to the extent of what I knew.

3 Q. 237 Very good.

4 A. Because clearly, if I had known that I wouldn't have become involved.

5 Remember, at this stage he was on the point of being put out of business by one
6 of the banks.

7 Q. 238 Yes. But through your efforts managed to achieve a position where he paid off
8 his banks, less than 50% of the liability.

9 A. That's correct.

10 Q. 239 Based upon information that you provided to the banks, albeit unknowingly,
11 about his financial status, without being aware of the fact that he A, had a
12 claim against Mr. Caldwell at the time or B, that that claim was settled in
13 September, or appears to have been settled in September 1995 by the payment of
14 825,000 deutsche marks?

15 A. That's correct.

16 Q. 240 Thanks, Mr. Mooney.

17

18 CHAIRMAN: Mr. Miley, do you want to ask a question?

19

20 MR. MILEY: I have no questions, thank you Judge.

21

22 MR. WHITE: Chairman, I have some short questions.

23

24 CHAIRMAN: Sorry, you don't want to ask this witness?

25

26 MR. O'MOORE: Absolutely not.

27

28 **MR. LUKE MOONEY WAS QUESTIONED BY MR. WHITE AS FOLLOWS:**

29

30 MR. WHITE: Obligated to the Tribunal. Mr. Mooney, you have now been giving

1 evidence, I think, for over a day and a half and you are doubtless quite tired,
2 but I have two or three questions to assist the Tribunal.

3
4 Firstly, Mr. Mooney, would you agree with me that the oral evidence that you've
5 given under oath to the Tribunal has been full and frank and honest?

6 A. I would.

7 Q. 241 And that, would you agree that no criticism has been made of you or could
8 indeed be made of you as regards the co-operation that you've given to the
9 Tribunal as regards the oral evidence that you've given to the Tribunal?

10 A. I would hope not.

11 Q. 242 Thank you. Now, perhaps the oral evidence that you've given, Mr. Mooney, can
12 be contrasted with what I suppose could be called your procedural or technical
13 co-operation or compliance that you gave in the run up to your oral evidence.
14 I'm thinking in particular of the alleged or omissions from your statement and
15 secondly, what have been termed deficiencies in your affidavit.

16
17 Dealing firstly, with the criticisms or what more properly would be termed
18 observations that were made on your statement. I think perhaps the most
19 significant omission that was identified from your first statement, although it
20 was fully dealt with in your supplemental statement, was as regards the
21 settlement that Mr. Tiernan made with you.

22
23 And I was just wondering if you could explain the circumstances surrounding the
24 preparation of your first statement and perhaps the reasons why it didn't
25 contain the information which Counsel for the Tribunal suggested it should have
26 contained?

27 A. I had an interview with the Tribunal's representatives and we discussed very
28 focused specific things in the general sense. I was asked specific questions
29 about particular events and items in the course of my discussion and I was told
30 that subsequently, if the Tribunal's Sole Member believed that my evidence

1 could be of further assistance to him, that I would be possibly called back for
2 a second interview, or alternatively asked to prepare a statement, obviously,
3 in accordance with what -- or what I assumed was to be in accordance with what
4 I had said at that meeting. So the document that I sent in, the one page
5 document, which has been criticised and I guess in the context of what has been
6 explained to me here in terms of my obligation to provide a fuller account, did
7 not occur to me in the way that it should have, and for that, Your Honour, I
8 apologise. But it was, obviously, on my part, an attempt to focus in on a
9 bullet point way on the issues that I thought would be relevant to my
10 participation in the Coolamber lands. Not Larry Goodman's, not my brother's,
11 not anybody else's. Clearly, the scope of the Tribunal's work had, this is
12 four and a half years ago, this interview took place in November or October
13 2000. In the interim obviously the scope of the Tribunal's work had widened
14 and resulted in the sort of aura that Judge Mary Faherty made for me to
15 disclose documents and I misread, obviously, in the light of my first
16 interview, the scope and extent of which I was obliged or obligated to acquire
17 other data and I apologise for that again. So that's the background to that.

18 Q. 243 Thank you Mr. Mooney. So you've explained that when you prepared your first
19 statement you thought that you were preparing a statement providing all the
20 information that was being sought from you and that there was no deliberate
21 omissions as it were?

22 A. Absolutely not.

23 Q. 244 Thank you. Now, perhaps the most substantial omission from the first
24 statement, which was dealt with fully and I think this must be accepted in the
25 supplemental narrative, is your settlement with Mr. Tiernan. I think and I
26 know the Tribunal has indicated its view on this, I think the Irish Times has
27 said that it reported that accountant apologises over money undisclosed and
28 indeed it was disclosed in your supplemental narrative. But can you just
29 explain to the Tribunal was this money, this settlement, was it disclosed to
30 the Revenue for example?

1 A. Yeah, that's what upset me a lot about the today's Irish Times. That's not
2 the first time that I had a problem with that newspaper. I received the money
3 in two moieties. I didn't in fact negotiate the settlement with Mr. Tiernan
4 myself. It was negotiated by a friend of mine so that I wouldn't be in
5 confrontation with Mr. Tiernan and I received that money in two moieties. In
6 1997, in 1998, in two different tax years. I accounted for it fully to the
7 Revenue, paid normal income tax on it and I accounted for the full VAT on it.
8 Correspondence from the Tribunal to me suggests that my accounting to the
9 Revenue, in other words, the amount of money I paid in VAT did not accord with,
10 I think, what Mr. Tiernan I guess would have claimed in his input and, you
11 know, that may well be the case. But I accounted for it and actually visited
12 the Revenue when I was making that return because it was a sizeable VAT bill.
13 So I just want to make that point.

14 Q. 245 Thank you, Mr. Mooney. The second document that perhaps, again criticisms or
15 what more properly might be termed observations were made yesterday, was your
16 affidavit of discovery and in particular the deficiencies and I think I've
17 identified the four deficiencies that were identified and they are, perhaps if
18 we could deal with them individually.

19
20 Firstly, was before swearing your affidavit of discovery, I think one week
21 before, you or persons on your behalf had sent two letters out and these didn't
22 appear in your affidavit of discovery. It subsequently transpired that you
23 had in fact sent these two letters to the Tribunal. So there was no question
24 of the Tribunal not having these letters or being aware of them.

25 A. No.

26 Q. 246 Was that a deliberate omission from your affidavit of discovery?

27 A. No, it was purely accidental omission. I actually sent a copy of my end of
28 the correspondence to the Tribunal to advise them that I was seeking what I
29 thought was the principal document relating to my input and involvement in
30 Coolamber, which was the letter of 1989 which we discussed yesterday and today.

1 Q. 247 So I think that can fairly then be described as a technical non-compliance.
2 There was no suggestion that the Tribunal wasn't aware of these letters or
3 wasn't provided with them.

4 A. Absolutely, no, there was no offence meant.

5 Q. 248 The second deficiency of the affidavit of discovery that was observed, was the
6 absence of the inclusion of the brochure in relation to the development that
7 subsequently took place on the Finnstown land. I think, just reading from the
8 transcript, I think you were first reminded of the brochure under examination
9 from Mr. O'Neill. He asks a question, 170. He's wondering about documents
10 that might have been included in the affidavit of discovery and says "That
11 would mean, for example, you had never seen a brochure or a promotion" and he
12 continues and your answer is that you remember the brochure.

13
14 When you prepared your affidavit of discovery, were you aware that there was a
15 brochure and that you were deliberately omitting the inclusion of this brochure
16 from your affidavit of discovery?

17 A. No, I wasn't.

18 Q. 249 Mr. Mooney, if you do have this brochure will you make attempts to provide it
19 to the Tribunal to assist them in every way possible?

20 A. I don't have a copy of the brochure and I'd have to see what I can do about it.
21 I think there might have been a possibility that Mr. O'Neill and I may have
22 been at cross purposes. Because I think he also put up an offer that
23 obviously was Joe Tiernan's offer relating to the 2.2 million, if you recall
24 that document?

25
26 MR. O'NEILL: That's the proposal of the 23rd of November. It's not what I
27 was addressing.

28 A. Pardon me? We weren't confusing.

29
30 MR. WHITE: I think the third criticism that was made of you, Mr. Mooney, as

1 regards your affidavit of discovery was your failure to make requests of other
2 persons who are also going to be giving evidence to the Tribunal in this
3 module. I'm wondering if they had relevant documentation. I think you were
4 asked why you hadn't written to the various parties, including Mr. Tiernan,
5 asking him if he had documentation. When you prepared your affidavit of
6 discovery were you aware that this is something that you should have been
7 doing?

8 A. Yes, I am. From what has transpired here over the past couple of days. At
9 that point I was not.

10 Q. 250 You are you were not aware?

11 A. No, I was concentrating, in a very narrow way, on my involvement and the
12 important parts of my involvement. Mr. O'Neill has subsequently corrected me
13 on that and so has the Chairman, that all documents were required. Not what I
14 thought was important. So I accept that.

15 Q. 251 Thank you, Mr. Mooney. I think, as I have identified it, the final criticism
16 was made as regards what's been called the Beauchamps file. Now, again, I
17 think this related to the settlement with -- perhaps you could explain what the
18 Beauchamps file is and explain why that didn't appear in in your affidavit of
19 discovery? Did you think, for example, that it was relevant to the Tribunal's
20 inquiry?

21 A. Well obviously not. If I had done I would have put it in, if I could have
22 retrieved it. There was always the issue for me, which was the integrity of
23 evidence which was to be free from duress and I didn't want to be looking for
24 information in quarters where conversations could take place that could be
25 unhelpful to this process and for that reason, obviously, I didn't want to make
26 contact with some people. In relation to the Tiernan file, as I said in my
27 letter to the Tribunal, it didn't occur to me and it was an oversight and
28 again, I apologise.

29 Q. 252 But there was nothing deliberate?

30 A. Not at all, no.

1 Q. 253 Thank you Mr. Mooney. I think finally, if I can just put something to you,
2 Mr. Mooney. This was under examination from Mr. O'Neill yesterday and I think
3 this perhaps puts the whole purported or technical non-compliance in context.
4 There's been an exchange between you and the Chairman where you've queried the
5 relevance of certain questions and so on and Mr. O'Neill says to you at
6 question 225. "Mr. Mooney, the question of relevance is not a question for you
7 to determine. The question of relevance is that of the Tribunal." And your
8 answer, Mr. Mooney is "The question of relevance is for me to understand." And
9 Mr. O'Neill replies "You don't have to understand, other than to produce
10 documents which are relevant, which are in your possession."

11
12 I think that's more properly the way to see this. It was a misunderstanding.
13 You had understood your involvement --

14 A. Yeah, I guess I misunderstood.

15 Q. 254 Thank you very much.

16

17 CHAIRMAN: Thank you, Mr. Mooney.

18

19 JUDGE FAHERTY: Just one or two matters, Mr. Mooney. And towards the end of
20 your direct examination by Mr. O'Neill. When you were -- this morning you
21 told the Tribunal, you told us that you'd known that Mr. Kennedy and
22 Mr. Caldwell were the owners of the lands.

23 A. Uh-huh.

24

25 JUDGE FAHERTY: That were being sold to Mr. Tiernan. But you suspected that
26 Mr. Lawlor might have an involvement.

27 A. Uh-huh.

28

29 JUDGE FAHERTY: And I think you premise that on the fact that you knew
30 Mr. Kennedy and Mr. Lawlor to be friends and to have involvements with one

1 another; is that correct?

2 A. I knew them to be friends and I think I went on to say that, you know, there
3 was a fair amount of talk at the time.

4

5 JUDGE FAHERTY: Yes.

6 A. About Liam Lawlor's, shall we say, for want of a better phrase, commercial
7 involvement in property around, you know, the Dublin areas, some of which was
8 publicised.

9

10 JUDGE FAHERTY: I think you gave an example this morning in that context, that
11 you knew Mr. Lawlor lived across the road from the lands purchased.

12 A. Mr. Kennedy's first family lives across the road from me where I live today.

13

14 JUDGE FAHERTY: Yes. Now, when you were negotiating on behalf of Mr. Lawlor
15 with the various banks --

16 A. Uh-huh.

17

18 JUDGE FAHERTY: -- in 1995 and you were trying to ascertain from Mr. Lawlor the
19 extent of his assets and liabilities.

20 A. Uh-huh.

21

22 JUDGE FAHERTY: Did you ask Mr. Lawlor whether or not he had any business
23 interests or land interests with Mr. Kennedy, for example?

24 A. No, I asked him -- I asked him what was the extent of his assets. Because
25 clearly that was what was of interest to me and particularly cash. I wanted to
26 know if he had cash, because there was no point in going around talking to the
27 banks unless it were possible subsequently, you know, to honour the commitments
28 that I would have been making. So I asked him to know what his assets were
29 and he told me that his assets were, where he lived and what his salary was and
30 some work he had been doing in Prague for which he was owed some money. I've

1 recalling that from this time.

2
3 JUDGE FAHERTY: I'm asking you this in the context of what you said earlier.
4 That you suspected that Mr. Lawlor had connections or involvement with
5 Mr. Kennedy and you've also said to Mr. O'Neill that you were very concerned in
6 1995, given your reputation as, obviously, a financier, even though you may not
7 like that word or whatever. That you wanted to protect your reputation
8 obviously with the banks and all of Mr. Lawlor's creditors. Were you familiar
9 with -- given that you got a blank or a global answer from Mr. Lawlor, I'm
10 surprised that you didn't particularise your queries to ask, by asking him
11 directly if he had any interests held, for example, offshore or in any other
12 manner apart from interests held in his own name?

13 A. You can take it that what I said to him was, "I don't want to be embarrassed if
14 tomorrow you produce a million pounds or whatever from somewhere. I don't want
15 that to happen, so I want to know what the position is." And he told me
16 clearly at the time that his position would -- sorry, he told me that he would
17 not have allowed himself to get into the position he was in. Because you may
18 not recall it but he was -- there were quite a number of judgements registered
19 against him at the time and they were publicised in the paper and like, that's
20 for a public representative that's --

21
22 JUDGE FAHERTY: So I take it that you didn't ever ask him a direct question
23 about any involvement he might have with Mr. Kennedy or Mr. Caldwell in land
24 ownership?

25 A. I don't know, to be truthful about this now. I would have asked him was there
26 any money due to him from his lands deals and he would have said to me that he
27 wasn't.

28
29 JUDGE FAHERTY: What lands deals would you have had in mind?

30 A. The sort of vapour stuff that we had heard about in, you know, in the

1 newspapers and, you know, that's what I meant by that. You know, did he have
2 anything of a tangible nature that would either contribute to or impair what I
3 was doing.

4
5 JUDGE FAHERTY: I see and just can I just clarify something with you, Mr.
6 Mooney. Mr. O'Neill went through a lot of questions with you this morning on
7 the Amorys file, which was, Amorys were Mr. Rennicks' solicitors and yesterday
8 I got the impression that you had spoken to Mr. Kerwin, I think, a retired
9 solicitor.

10 A. Yeah, I spoke to Jack.

11
12 JUDGE FAHERTY: Who is your solicitor as I understand it.

13 A. And he acted for Tiernan.

14
15 JUDGE FAHERTY: And is there a Beauchamps/Kerwin file regarding your affairs?

16 A. No. You see, Mr. O'Neill was talking this morning about the fact that I
17 appeared to be the only guy on the file and then all of sudden then Jack Kerwin
18 was acting for the two. I said to him this morning that I had either one or
19 two meetings. I think I really only had one meeting, because there was no
20 real sense in attempting to pursue a defence to what Mr. Rennicks was trying to
21 do unless I had somebody to pay the bills. That was the practical reason why
22 I would have involved Mr. Tiernan very quickly in what was going on. Now, I
23 don't know what he said about that. But that's my recollection of it.

24
25 JUDGE FAHERTY: Have you asked Mr. Kerwin whether or not there was a file
26 retained? You said that you spoke to him.

27 A. Yes, I asked him in relation to the Rennicks issue. Had he, were there files
28 and he said no, there are no files.

29
30 JUDGE FAHERTY: And because we've seen that even when it went off the files or

1 off the correspondence trail, that Mr. Parker, I think it is from Amorys, kept
2 a note of his meetings when the solicitors were negotiating on a
3 person-to-person basis. Have you asked Mr. Kerwin directly whether or not
4 there are such, whether he has any?

5 A. I haven't spoken to Jack Kerwin for maybe five or six years and I spoke
6 to him yesterday morning before I came in here and he confirmed for me. I
7 said "Amorys have produced a discovery" and he said that he made the inquiry
8 and that Beauchamps don't have any file on that particular project.

9

10 JUDGE FAHERTY: Okay.

11 A. Because, if you think about it. Like, it was the resolution of a dispute and
12 it took place over a period of three or four months maybe it would have been
13 and that was the end of it. It wouldn't have been anything that led to
14 greater things in that firm for Mr. Tiernan.

15

16 JUDGE FAHERTY: That would go also for Mr. Rennicks obviously because he got
17 his 110, I think, sometime in 1997. But a file was retained. But you say
18 that there is no file vis-a-vis your negotiations or your dispute with either
19 Mr. Rennicks or ultimately your negotiations with Mr. Tiernan on the payment of
20 the monies to you?

21 A. Other than what you've seen here discovered.

22

23 JUDGE FAHERTY: Have you written formally to Beauchamps on the matter or have
24 you instructed your solicitor to do so?

25 A. No. I asked. My brother is the financial controller there and Jack Kerwin
26 is a friend of mine for many years.

27

28 JUDGE FAHERTY: I see. Just one other final matter, Mr. Mooney. I think it
29 was yesterday or this morning, I will just find the note. Yes. When you
30 were explaining that CF Ireland Limited weren't prepared to get involved in

1 financing Mr. Tiernan's project, you answered Mr. O'Neill as follows; you would
2 have known, you'd have asked Joe Tiernan if Mr. Lawlor was involved. Joe
3 Tiernan would have said no but Jim Kennedy was involved.

4 A. Uh-huh.

5
6 JUDGE FAHERTY: And then your next reply was, I think these are the words now
7 and I won't hold you to those words because it's just my note, that decided the
8 non-involvement of CF Ireland Limited and we've already heard from you that
9 your statement that they declined to get involved because of the risk.

10 A. Uh-huh.

11
12 JUDGE FAHERTY: Was there discussion between yourself and CF Ireland, your
13 partners, about the extent to which Mr. Lawlor and Mr. Kennedy were involved
14 through the, by way of vendors in this project?

15 A. Well it may be very unfair to Mr. Kennedy and indeed to Mr. Lawlor. But as I
16 mentioned at the time, you know, there were, they were involved in or reputed
17 to be involved together in deals and that may or may not be correct, you know.
18 I haven't seen anything in writing that would suggest to me, you know, that
19 what I'm saying is, you know, other than correct. But there was, at that
20 time, in the paper, discussion and debate about the topic that you're presiding
21 over here.

22
23 JUDGE FAHERTY: Yes. You said that.

24 A. That, as far as we were concerned, was a red light. In the sense that this
25 was an agricultural, agriculturally zoned land which would be subject of the a
26 Section 4. Which was, as everybody knows, a red rag to a bull in the planning
27 process in Dublin at that time, and indeed before. That there were abuses and
28 that kind of thing.

29
30 JUDGE FAHERTY: Thank you.

1 A. So that's the reason.

2

3 JUDGE FAHERTY: Thank you, Mr. Mooney.

4

5 CHAIRMAN: Sorry, Mr. Mooney, there's one thing that I wanted to raise with
6 you which probably is along the same lines as Judge Faherty has just been
7 talking about. This term heavy lobbying which was discussed this morning.
8 This was something that you understood to be the case or that might be
9 necessary in relation to these particular lands.

10 A. Uh-huh.

11

12 CHAIRMAN: And the term incentivisation or incentives arose.

13 A. Uh-huh.

14

15 CHAIRMAN: Now, do you mean by incentives, the payment of money? Or do you
16 mean anything else? You've given evidence in the form of a written detail of a
17 very substantial sum being requested by a named councillor.

18 A. Uh-huh.

19

20 CHAIRMAN: But this is something that you were told.

21 A. By Mr. Tiernan.

22

23 CHAIRMAN: Yes, it's not something that you had direct knowledge of
24 yourself --

25 A. Absolutely, no, no, no.

26

27 CHAIRMAN: But when you used the word incentive and words of that nature, do
28 you mean the payment of money in the planning process?

29 A. In a word; yes.

30

1 CHAIRMAN: All right. Now, I mean --

2 A. I also then went on to clarify that from my experience of Mr. Tiernan over the
3 years. I described him in another place as somebody who didn't flash it
4 around, so to speak, that I was aware of. Because I had known him since 1973,
5 that was the first time I met him and I also went on to say that at election
6 time, when I was in the process of fundraising, that I took my place in the
7 queue and that he would be known to be generous to persons like the one I
8 represented and one or two others that I would be aware of. But I also went
9 on to say that his donations were in proportion. I also want to say that I
10 never saw him actually hand money over to anybody. I just want to make this
11 absolutely clear and that CFI's decision not to become involved in the
12 Coolamber lands was based on the premise that at some stage or another the
13 whole Section 4 rezoning business was going to explode. Now, that was a great
14 prescience on the part of my partners. And, you know, it, as I mentioned
15 earlier, ironically, my introducing two people has involved me in it, when we
16 distinctly didn't want to get involved in it.

17
18 CHAIRMAN: When you say explode. Do you mean it would become an issue of
19 controversy?

20 A. Yes.

21
22 CHAIRMAN: And the -- and possibly an investigation?

23 A. Yeah and people that we represent, people who would support ventures that we'd
24 become involved in, aren't people that want to have their name up in lights in
25 most part or have their heads above the parapet. They are quiet investors who
26 like to invest and get their returns and go on to the next one.

27
28 JUDGE KEYS: Could I just ask in relation to -- do I take it then that the
29 company didn't entertain the project because of the risk, that if they took it
30 on they would be introducing investors, who may be approached, to give

1 incentives to the public representatives?

2 A. No, no, no. We didn't want to involve investors in a project that subsequently
3 that can could involve it or could become very controversial.

4
5 JUDGE KEYS: That suggests that you must have known there was a possibility
6 that that could have happened, especially if it was a controversial planning
7 matter such as a Section 4?

8 A. That's correct, I said that all right.

9
10 JUDGE KEYS: Or a rezoning matter?

11 A. Yeah.

12
13 JUDGE KEYS: Which could also be very --

14 A. Yeah.

15
16 JUDGE KEYS: Thank you.

17
18 CHAIRMAN: Do you want to ask?

19
20 MR. O'NEILL: I have no further questions. Thank you.

21
22 **THE WITNESS THEN WITHDREW.**

23
24 CHAIRMAN: You may step down. There is something. The Tribunal wants to
25 say -- you can step down, Mr. Mooney. In relation to discovery generally and
26 Mr. Flynn.

27
28 The power to order discovery of documents provides the Tribunal with its most
29 effective means to investigate the various issues which it is required to
30 investigate, in the course of its work. Providing inadequate or incomplete

1 discovery is probably the greatest cause of time wasting in the Tribunal's
2 work. In terms of seriousness, it ranks close to lying or misleading the
3 Tribunal and on occasion it can amount to the same thing. Inadequate or
4 incomplete discovery may arise for different reasons, including ignorance of
5 the true meaning of the orders of discovery or the procedures relating to them,
6 carelessness or more seriously, because of the intention of a party to withhold
7 relevant documentation from the Tribunal in order to tort its inquiries.

8
9 Whatever the reason is for failure to comply with the discovery and the
10 Tribunal has noted the explanation given by Mr. Mooney in his evidence. The
11 effect, in any event, is the same insofar as the work of the Tribunal is
12 concerned.

13
14 The Tribunal is particularly concerned that a number of parties in recent times
15 have quite clearly failed to make full discovery. Mr. Mooney's discovery is
16 very significantly incomplete and it is quite clear that a number of important
17 documents were not discovered by him when they ought to have been. Many of
18 these have been highlighted by Mr. O'Neill and put to Mr. Mooney. Only
19 because they came to the Tribunal from other sources. It may well be the case
20 that there are more documents of relevance to the Tribunal's inquiries and
21 which remain unknown to the Tribunal.

22
23 The Tribunal will consider in due course whether one or more of these parties
24 should be referred to the High Court for their failure to make full discovery.

25
26 In Mr. Mooney's case, consideration as to whether such a referral is
27 appropriate will be deferred for two weeks in order to provide him, with the
28 assistance of solicitor and counsel, an opportunity to furnish to the Tribunal
29 a proper and comprehensive affidavit of discovery and subject to him doing so,
30 he may be, it may be necessary for the Tribunal to recall him to the witness

1 box. All right?

2

3 MR. WHITE: I'm grateful to the Tribunal.

4 A. Thank you.

5

6 MR. O'NEILL: The next witness to be heard is Mr. Gerry Gannon. Mr. Gannon,
7 could you come to the witness box, please?

8

9 **MR. GERRY GANNON, HAVING BEEN SWORN, WAS QUESTIONED**

10 **AS FOLLOWS BY MR. O'NEILL:**

11

12 CHAIRMAN: Good afternoon, Mr. Gannon.

13

14 MR. O'NEILL: Good afternoon, Mr. Gannon. You are a builder by occupation;
15 isn't that so?

16 A. A builder and developer.

17 Q. 255 And I think that you commenced your activities as an independent builder and
18 developer in the 1980s; is that so?

19 A. 1980s, that would be correct.

20 Q. 256 And as you know, the Tribunal is currently engaged in an inquiry which concerns
21 the lands at Coolamber in Lucan, which are otherwise known as the Finnstown
22 lands and they lie on the eastern side of the Newcastle Road in Lucan or if you
23 were heading down the Newcastle Road from Lucan, the left-hand side of the
24 roadway. They comprise some 55 acres or so, which surround the original
25 Coolamber House and the lands, the amenity lands around it. You are aware of
26 that, I think, from the information that's been provided to you by the Tribunal
27 and from perhaps other sources; isn't that right?

28 A. Yeah.

29 Q. 257 And I think you are aware that your involvement here in this particular inquiry
30 of the Tribunal, arises from the fact that references to you were made in the

1 course of documentation which was discovered by the Bank of Nova Scotia in
2 relation to its handling of a loan which was granted to a company called
3 Southfield Limited in 1987 and which was a loan which was unpaid, as regards
4 its capital, until a date in 1992. You're aware of that; isn't that so?

5 A. Yes.

6 Q. 258 And I think that as a result of that connection, the Tribunal has been in
7 written communication with you and with your solicitors and has outlined the
8 relevant documentation and has sought your assistance and co-operation in
9 resolving an impasse which there appears to be, as to whether or not you were
10 or were not involved in any way with a proposal to acquire the interest of the
11 then borrowers in the Coolamber lands, by means of the take out of loans which
12 were due to the Bank of Nova Scotia in the sum of 350,000 pounds and by the
13 taking out of an indebtedness which existed from Southfield's promoters to
14 Mr. Larry Goodman, who was a person who had funded the interest repayments on
15 the loans which were taken out in 1987, from that date until 1990, and who had
16 paid Mr. Liam Lawlor a sum of some 50,000 pounds in February of 1988, which was
17 not repaid by Mr. Lawlor; isn't that so? I'm just giving you a general
18 background.

19 A. That's my understanding of it.

20 Q. 259 That's your understanding of it, yes. I'd just like to take you through, if I
21 may, the correspondence which has passed between us -- rather the Tribunal and
22 your solicitors which has, which centers the issue and we can then examine the
23 detail of it in the hope that we can resolve this issue.

24
25 Sorry. I wonder if we might have just five minutes just to circulate the
26 documentation on this issue?

27

28 CHAIRMAN: Very good. Five minutes.

29

30

1 **THE TRIBUNAL THEN ADJOURNED FOR A VERY SHORT BREAK**

2 **AND RESUMED AS FOLLOWS:**

3
4 MR. O'NEILL: Mr. Gannon, I think I have furnished you now a copy of the -- a
5 hard copy, I should say, of the documentation which passed by way of
6 correspondence between the Tribunal, yourself and your solicitor in the initial
7 stages of this inquiry insofar as it involves you; isn't that right?

8 A. That's correct.

9 Q. 260 And we see that it commences with correspondence on the 2nd of September which
10 was directed to your former business address at 41/43 Shelbourne Road,
11 Ballsbridge in Dublin 4. But in fact you'd moved to Northumberland Road
12 shortly before that period and you were in Northumberland Road as of the 2nd of
13 September; is that right?

14 A. That's right.

15 Q. 261 And whilst we see that there is a letter both of the 2nd of September and
16 subsequently, one of the 7th of September, they didn't in fact reach you until
17 the 8th of September and you promptly responded to them; is that the position?

18 A. That's the position.

19 Q. 262 In relation to the first letter. It indicated to you that the Tribunal had a
20 number of inquiries under way. That it organised its public hearings in phases
21 or modules, each of which relates to a specific matter under investigation and
22 one such module is entitled Carrickmines 2 and Related Issues Module. "It
23 commenced on the 20th of January 2004 and has been adjourned while the Tribunal
24 has heard evidence in another module. The Carrickmines 2 and Related Issues
25 Module is an investigation into the lands in Carrickmines, County Dublin
26 registered in the name of Jackson Way Properties Limited and other parcels of
27 land in County Dublin, including lands the Coolamber, Finnstown, Lucan,
28 otherwise the Coolamber lands." It then gave a history of those lands. "The
29 Coolamber lands were purchased from the Tyrell family in 1987 by an Isle of Man
30 company called Navona Limited. It stated that it held the lands in trust for

1 an Irish company Southfield Property Company Limited otherwise Southfield.
2 Part of the Tribunal's investigations involve the ownership of Navona Limited
3 and Southfield.

4
5 Southfield obtained a loan from Bank of Nova Scotia, which was secured by
6 Mr. Laurence Goodman. It appears then that in late 1991 you were involved in
7 discussions and negotiations concerning your possible acquisition of the
8 Coolamber lands and/or the debt owed to Mr. Goodman by Southfield. It appears
9 that you were represented at that time by Mr. Noel Smyth, solicitor. As part
10 of its investigations the Tribunal would like to obtain from you a written
11 narrative statement in which you set out details of your involvement in the
12 Coolamber lands in 1991 and at any other time, please provide as much detail as
13 possible of events in which you were involved and events of which you had or
14 have or now have knowledge. Then if you require any assistance with this
15 request please do not hesitate to contact me. If I'm not in the office please
16 ask to speak to another member of the Tribunal legal team. Mr. Desmond O'Neill
17 SC or Miss Mairead Coghlan BL are familiar with this investigation and will
18 assist you in my absence." And then on the 7th again, I qualify that by saying
19 that this wasn't received by you until the 8th at your other address. There
20 was a letter which said "Further to my letter of the 2nd of September, I
21 enclose a copy of the opening statement of counsel to the Tribunal, dated the
22 20th of January 2004, which explains in detail the nature and scope of the
23 investigations in the Carrickmines 2 and Related Issues Module and contains a
24 section specifically relating to the Coolamber lands. It is requested that
25 your narrative statement be received no later than close of business on the
26 30th of September 2004. The Tribunal considers that you and/or companies
27 owned or controlled by you may have in your possession, power or procurement
28 documents and records relating to the Coolamber lands. It appears that in
29 1991, you paid off a loan and put in place a formal arrangement for the
30 assignment to you, of part of the indebtedness resulting from the advancement

1 of a loan by Bank of Nova Scotia at the time of the acquisition of the lands
2 from the Tyrell family by Navona Limited in 1987. This suggests that there
3 are legal, financial and banking records in existence which are relevant to the
4 Tribunal, as well as your own records such as letters, notes, memoranda,
5 telephone records, diary entries and other routine communication records.
6 Therefore, on the 21st of September 2004, the Tribunal will consider whether or
7 not to make an order requiring you to make discovery on oath of and to produce
8 to the Tribunal, all documents and records in your possession, power or
9 control, whether directly or through a company or other entity controlled or
10 owned by you, either directly or indirectly, relating to the Coolamber lands as
11 defined in my letter, dated the 2nd of September 2004, and the opening
12 statement of counsel to the Tribunal dated the 20th of January 2004.

13
14 I have written separately today to Mr. Smyth, in relation to documents and
15 records generated by him on your behalf and I attach a copy of my letter to
16 Mr. Smyth. You are entitled to make submissions in relation to the proposed
17 order against Mr. Smyth in due course, the Tribunal will communicate with the
18 bank or banks involved on your behalf and your financial and accounting
19 advisors. Should you wish to make any submission to the Tribunal in relation
20 to the proposed orders please furnish such submissions in writing no later than
21 close of business on the 20th of September 2004.

22
23 Yours sincerely Maire Ann Howard, solicitor to the Tribunal."
24

25 The next letter confirms that as of the 8th of September, the Tribunal was
26 informed that you had moved to Northumberland Road from Shelbourne Road and
27 that accordingly you may not have received the enclosed letter of the 2nd and
28 it also records the fact that you, the Tribunal, understood that you had now
29 received the letter of yesterday, redirected to your new address by our
30 courier. I think following upon those documents, Mr. Gannon, you made a

1 telephone call to the Tribunal and you spoke to the solicitor who was named in
2 the documentation as your correspondent; isn't that right?

3 A. That's right.

4 Q. 263 And I just put to you the basis or the content of that discussion and if there
5 are any issues with which you have as to the accuracy of that, you might just
6 stop me and tell me that you wish to elaborate or qualify what I'm saying. I
7 intend to read the content of the memorandum which was prepared by the
8 solicitor following upon the discussion with you.

9
10 The telephone attendance was taken on the 8th of September 2004 by Maire Ann
11 Howard, solicitor to the Tribunal. It reads as follows "I received a message
12 to call back Gerry Gannon" -- and gives your telephone number. "He said he'd
13 received the correspondence today. I apologised for our having sent it to the
14 wrong address, our not having been aware of the change of address. Mr. Gannon
15 said that he was not involved in any lands in Lucan, apart from the Airlie Stud
16 lands which were owned by a Colonel or somebody. Captain Rogers, I asked, and
17 he confirmed this."

18
19 MR. O'MOORE: Sorry to interrupt Mr. O'Neill, this is a document that we've
20 never seen before and I don't think is in the clip of documents given to us
21 just now. It's a document we looked for and we were refused it on the
22 understandable grounds that the Tribunal doesn't disclose internal memoranda
23 and it is a document Mr. Gannon has never seen before in his life. I wonder
24 if we could just have a copy of it now. I'm quite happy for Mr. O'Neill to
25 proceed as he is doing, but it just seems a bit unfortunate that we don't have
26 a copy even now having been told that we would not be given it.

27
28 MR. O'NEILL: Firstly, sir, of course the reason why the memorandum was not
29 circulated and we'll see in a subsequent letter that it was requested. The
30 contents of it were detailed by way of letter to Mr. O'Moore's solicitor

1 setting out the entire content of the memorandum.

2
3 CHAIRMAN: Well is there -- is the entire of the content of that memorandum.
4 Mr. O'Moore, you have the content of the memorandum apparently in a subsequent
5 letter.

6
7 MR. O'MOORE: There is certainly a reference in a subsequent letter to the
8 memorandum, it's a letter of the 15th of September 2004. But the detail, for
9 example, the reference to Captain Rogers or whatever it was, if I understood it
10 correctly, doesn't appear to be in that letter. So, I just wonder, if as
11 Mr. O'Neill suggests, the entirety of the memorandum has been parroted or
12 repeated in the letter in the 15th of September or if there's a difference
13 between the two, if there is a difference between the two, even if it's a
14 difference of detail, I would certainly like to see the memorandum. If the
15 two are word for word the same clearly then it's a slightly pointless exercise.

16
17 MR. O'NEILL: They can't be word for word or they're not word for word. I
18 don't think anything turns on it save the principle as to whether or not the
19 circulation of the memoranda from the Tribunal's solicitor should pass and it
20 was for the that principal reason that it was not passed. I don't think that
21 I have any objection to its contents --

22
23 CHAIRMAN: Well perhaps if he was given a loan of it for the duration.

24
25 MR. O'MOORE: Yes. If Mr. O'Neill is going to read it into the record of the
26 Tribunal. That's fine. I understand that there was a reluctance, which we
27 appreciate, to give it to us in earlier correspondence. But if I could have --

28
29 CHAIRMAN: On the basis that it's going to be read we'll give him a copy.

30

1 MR. O'NEILL: Sure. While I'm waiting to give a copy to your counsel
2 Mr. Gannon, I will just continue reading it. I have I left off at the point
3 "Captain Rogers. I asked and he confirmed this. He said that Liam McGonigal,
4 solicitor, now deceased, had brought these lands to him. He said he did his
5 own negotiations, he was never represented by Noel Smyth. Michael Foy of
6 Smith Foy was always his solicitor. He is now represented by James Foy. He
7 could not have bought any lands in 1991 because he did not have any money. He
8 only took options at that time. His only involvement with Noel Smyth was in a
9 joint venture and he was involved with him in Airfield. That might have been
10 in the early 1990s. He said he had no dealings with the Bank of Nova Scotia
11 and never heard of them until he got our correspondence. He never spoke to
12 them nor met them. I explained to him the background to our inquiries. I
13 explained to him where the lands were. He never heard of the Tyrells. I
14 confirmed to him that they were 55 acres and that they were situate on the left
15 of the Newcastle Road as one drove down from the Lucan end. They were
16 developed around 1994 by Joe Tiernan of Tiernan Homes. He did not know where
17 this development was and I asked him if he knew where the home of Mr. Liam
18 Lawlor was. He did. I said the lands were almost directly opposite that.
19 I said the lands were formed by -- farmed by the Tyrells until 1987, when they
20 were sold to an Isle of Man company. They became registered in the name of an
21 Irish company. A loan on which Mr. Goodman was guarantor had been provided by
22 Bank of Nova Scotia and was secured on the lands. The Goodman Group got into
23 difficulty around 1990. There was a proposal to take out the Bank of Nova
24 Scotia loan. The information we have, is that one proposal was that
25 Mr. Gannon would do this with funds totalling, approximately, a half a million
26 pounds. There seemed to be two separate amounts. 150,000 pounds
27 approximately and 350,000 pounds approximately.
28
29 He said that never happened. He had no money at that time, much less 500,000
30 pounds. I said it is likely the way this matter will proceed, is that he will

1 be asked to attend a private interview at the offices of the Tribunal. He may
2 wish to talk to his solicitor. He said he would contact James Foy. I said
3 Smith Foy would be familiar with the procedures of the Tribunal. He said he
4 would have no objection to an order against Noel Smyth for any documents he
5 would have, but emphasised that Noel Smyth never represented him and he had no
6 involvement in these lands.

7
8 I stressed the confidentiality of these inquiries at this time and he confirmed
9 that he would retain the matter in confidence.

10
11 In the course of the conversation he said, if he was becoming involved in this
12 proposal he would have contacted his bank and arranged a facility. He would
13 remember something like that. I said that the Tribunal had formed the view
14 that it was likely that an arrangement would have been made by him with a bank
15 if he was involved in such a proposal and he would have noted in our letter
16 concerning discovery that his bank was one of the sources of documents we
17 identified.

18
19 He said he had no documents, no papers about any proposal of this kind. I
20 said that he might let Mr. James Foy know that I believed that a request would
21 be made for Mr. Gannon to attend a private interview at the Tribunal office.
22 In the course of discussing a private interview with him, I explained that the
23 Tribunal conducts such interviews in order to investigate matters coming to its
24 attention in private in the first instance and to confirm what information is
25 available that would be relevant to the public inquiry.

26
27 If there is relevant information, the interviewee may be called to give
28 evidence in public." And that is signed off by the solicitor.

29
30 Is there anything in that that concerns you as to its accuracy or otherwise?

1 A. No.

2 Q. 264 We'll see then following upon that, that there was a fax on the following day
3 from Smith Foy & Partners from Mr. James Foy of that firm, to Miss Howard, the
4 solicitor to the Tribunal.

5
6 And in that document it reads as follows "Our client Gerry Gannon, Gannon
7 Homes, the Coolamber lands.

8
9 Dear madam. We have to hand your letters of the 2nd and 7th inst, addressed
10 to our client and we are instructed by him to furnish you with his following
11 comments on the matters therein.

12

13 1. Re letter dated the 2nd of September 2004.

14 A. He was not involved in discussion and negotiations concerning the possible
15 acquisition of the Coolamber lands and/or of any debt owed to Mr. Goodman by
16 Southfield as referred to in your letter. In late 1991 or at any other time.

17

18 B. He was not at any time represented by Mr. Noel Smyth, solicitor, in
19 relation to the Coolamber lands.

20

21 C. He has had no involvement in the Coolamber lands in 1991 or at any other
22 time.

23

24 D. He was not involved in any events nor does he have any knowledge of any
25 events concerning the Coolamber lands.

26

27 2. Re letter dated the 7th of September 2004.

28 A. He and/or companies owned or controlled by him does not have in his, their
29 possession, power or procurement documents and records relating to the
30 Coolamber lands.

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B. He did not, in 1991, or at any other time payoff a loan and put in place a formal arrangement for the assignment to him, of part of the indebtedness resulting from the advancement of a loan by Bank of Nova Scotia at the time of the acquisition of the Coolamber lands from the Tyrell family by Navona Limited in 1987 as referred to in your letter. Our client has no knowledge of the matters to which you refer.

C. He does not have any legal, financial or banking records which are relevant to the Coolamber lands or any letters, notes, memoranda, telephone records, diary entries and other routine communication records.

D. He had no involvement whatsoever with the Coolamber lands. Nor was he represented by Mr. Noel Smyth in relation to the Coolamber lands. He fails to see the purpose of making an order against Mr. Smyth in relation to an alleged involvement by him regarding the Coolamber lands.

We note that the Tribunal will consider on the 21st inst, as to whether or not to make an order requiring our client to make discovery on oath and to produce to the Tribunal all documents and records in his possession, power or control, whether directly or through a company or other entity, controlled or owned by him, either directly or indirectly, relating to the Coolamber lands.

This is obviously a matter for the Tribunal, but we would respectfully submit that the making of such an order is pointless in the circumstances, as our client has no such documents or records either in his possession, power or control. If you require the above information to be set out in a written statement from Mr. Gannon please revert to us."

I think that's acknowledged the following day by the Tribunal, which wrote to

1 you -- which wrote to Mr. Foy now, who was on record for you in this matter.

2
3 "Dear Sir. Thank you for your letter of the 9th of September 2004 concerning
4 the above matter.

5
6 I refer to paragraph 2D thereof" -- that is the paragraph which dealt with the
7 question of your giving consent to the making of an order by Mr. Smyth to make
8 documents available. That's the point here. "When I spoke to your client
9 yesterday he said that he had no objection whatsoever to the making of an order
10 against Mr. Smyth in relation to the alleged involvement of your client in the
11 Coolamber lands. Whilst it is stated in your letter that your client fails to
12 see the purpose of make making such an order, please confirm that it remains
13 his position that he has no objection thereto. It would assist the Tribunal
14 if you were to furnish the information contained in your letter in the form of
15 a narrative statement signed by Mr. Gannon. I look forward to hearing from
16 you."

17
18 And that is responded to four days later by Mr. Foy in a letter of the 14th of
19 September 2004 where he says "Dear madam. We acknowledge receipt of your
20 letter of the 10th inst, in connection with the above. To enable us to take
21 instructions from our client. Please furnish us with a note of your telephone
22 conversation with our client, so that we may ascertain precisely the issues
23 that you discussed with him. Our client did inform us that you indicated to
24 him that there were rumours regarding his alleged involvement in the Coolamber
25 land and in your response perhaps you could identify the nature of such rumours
26 and the source thereof. On receipt of the above we will be in a position to
27 take further instructions from our client and revert to you."

28
29 That letter was responded to on the following day by Miss Howard as follows to
30 your solicitor.

1
2 "Dear Sirs, I refer to your letter of the 14th of September 2004. It is not
3 the practice of the Tribunal to disclose internal memoranda. Therefore, I
4 have set out below details of my conversation with Mr. Gannon.

5
6 I was returning Mr. Gannon's call. He had called as a result of receiving our
7 redirected letters of the 2nd and 7th of September 2004, of which I understand
8 you have copies.

9
10 At the outset Mr. Gannon said that he had not bought or been interested in
11 buying any lands in Lucan at any time, apart from the lands at Airlie Stud.
12 He did not know anything of the matters set out in my letters.

13
14 Mr. Gannon asked me where the lands were and I explained that they were on the
15 left-hand side of the Newcastle Road heading south from the Lucan end and that
16 they were the lands that were developed by Tiernan Homes from 1994.

17
18 He was not sure where that development" I assume "was, until I explained it by
19 reference to Mr. Liam Lawlor's home. I outlined the history of the changes of
20 ownership since 1987, when the lands were sold by the Tyrell family to Navona
21 Limited, an Isle of Man company in trust for Southfield Property Company
22 Limited, Southfield.

23
24 A loan was taken by Southfield from Bank of Nova Scotia and was charged upon
25 the lands. It is suggested to the Tribunal that in 1991, Mr. Gannon was
26 interested in acquiring the lands or at least in taking over the Bank of Nova
27 Scotia debt. The lands were agricultural lands throughout this time.

28 Mr. Gannon said he did not have the funds to do any such thing in 1991, and
29 that he was doing -- all he was doing at that time was taking options on lands.
30 When I explained that it is suggested that Mr. Gannon was willing to put up

1 funds amounting to approximately 500,000 pounds, that is 150,000 pounds to
2 cover interest and other items and 350,000 pounds to cover the capital sum owed
3 to the bank, he said that he never -- he said that that never happened.

4
5 He said he had no money of his own at that time and did not have negotiations
6 with any bank to acquire such a sum of money. I said that he would have noted
7 from the correspondence that the Tribunal had thought that if Mr. Gannon was
8 going to put up those funds there would have been a bank involved for him and
9 the Tribunal was seeking the documentation of that bank.

10
11 Mr. Gannon said he was never represented by Mr. Noel Smyth, that Mr. Michael
12 Foy of your office had acted for him until his retirement. James Foy of your
13 office now acts for Mr. Gannon. As far as he could recall, his only
14 involvement with Noel Smyth was in relation to a joint venture at Airfield.
15 That could have been in the 1990s. Mr. Gannon said Mr. Smyth never negotiated
16 for him. He always did his own negotiating.

17
18 In terms of the procedures of the Tribunal, I explained to Mr. Gannon that the
19 Tribunal was involved in preliminary private investigations at this stage.
20 The purpose for such investigations is to gather relevant information for the
21 forthcoming public inquiry into the Coolamber lands. In order to follow
22 through that part of the private investigation which relates to Mr. Gannon, it
23 may be necessary to request that he attend at a private interview in the
24 offices of the Tribunal. I explained the nature of a private interview and
25 its role in the context of the preliminary investigative work. I suggested
26 that he may wish to discuss the matter with his solicitor and he explained that
27 would be James Foy of your office. Mr. Gannon said he had no difficulty in
28 attending a private interview at Dublin Castle. When I referred him to the
29 proposal to make an order against Mr. Noel Smyth and to Mr. Gannon's
30 entitlement to make submissions on it, he said he would have no objection to

1 that.

2
3 Your client said he never had any dealings with the Tyrell family and never
4 bought any lands from them. I explained that it is not alleged that your
5 client was involved at the time of the acquisition of the lands from the Tyrell
6 family, which was in 1987, but rather at a time in 1991, when there were
7 difficulties in relation to the Bank of Nova Scotia loan arising possibly from
8 difficulties in the Goodman Group which led to the appointment of an examiner
9 over the companies.

10
11 I attach a copy of documentation from the files of Scotia Bank Ireland Limited
12 which took over the business of Bank of Nova Scotia. You will note the
13 documentation is dated November and December 1991. You see it contains
14 various references to the matters in respect of which we have communicated with
15 your client.

16
17 The information contained in this letter and the enclosed documentation is
18 confidential to the Tribunal. It is extremely important that the
19 confidentiality of the information of the Tribunal be protected. You may not,
20 without the prior written consent of the Tribunal, disclose this information to
21 any person save your client and counsel, if any, instructed on behalf of your
22 client in relation to the Tribunal's investigations. Should you have any
23 queries please do not hesitate to contact me. Yours faithfully."

24
25 There are two drafts, I should say, to the memorandum which was prepared by
26 Miss Howard which are at slight variance in the last paragraph. I just want
27 to provide a copy of it to Mr. O'Moore. The following addendum is in another
28 draft which says "When he said once or twice that he never bought any lands
29 from Tyrells, I said I perhaps had not explained matters clearly. That it was
30 not in 1987, when they sold that Mr. Gannon is said to have been involved but

1 in 1991 when there were problems arising from the loan to Southfield from BNS.
2 I said that Mr. Gannon came along at that time with the proposal that he would
3 take over from BNS. He said that never happened."
4

5 MR. O'MOORE: And in fairness, I suppose it should be put to Mr. Gannon as to
6 whether he has any difficulty with the account that he said that.
7

8 MR. O'NEILL: Of course.

9 A. No. Sorry. Could you just tell me who is BNS?

10 Q. 265 It's Bank of Nova Scotia. It's their own form of communication and we adopted
11 it in memoranda form rather than writing it all out.

12 A. Right.

13 Q. 266 The letter that I've just read, which is the letter to your solicitor, as you
14 see, enclosed the four documents which recorded, purported to record an
15 involvement of you and we'll go through those in greater detail. But I'll
16 just refer to them in the sequence in which they were appendages or attachments
17 to the letter that went to your solicitor, without reading their full content
18 at this point and we'll analyse them a little later in more detail.
19

20 The first of the documents which accompanied the letter which I have just read,
21 was the call report of the bank prepared by Mr. Peter McCabe, the Senior Credit
22 Manager, in which he records a meeting at which the contact parties at the
23 meeting were said to be Noel Smyth solicitor, Gerry Gannon builder and the
24 officers of the bank were said to be Peter McCabe Senior Manager Credit, Alan
25 Perry, Credit Officer and the date of that attendance or call report, as it's
26 called within the bank, was the 15th of November 1991.
27

28 The next document then that accompanied the letter was a letter or rather copy
29 of a letter from Noel Smyth and Partner solicitors, which was dated the 19th of
30 December 1991 and was addressed to Mr. Peter A McCabe, Senior Manager Credit at

1 Bank of Nova Scotia and it was signed by Mr. Noel Smyth.

2
3 The third document was again a letter, on this occasion from Bank of Nova
4 Scotia, to Mr. John Caldwell solicitor of Binchys solicitors at 38/39
5 Fitzwilliam Square of the 26th of November 1991.

6
7 And the next document was a letter from Mr. Rory L Egan solicitor, in Rory L
8 Egan & Co. solicitors to Mr. Peter McCabe of the 26th of November of 1991.

9
10 So those documents accompanied the account of the exchange which had taken
11 place by telephone which was recorded in Miss Howard's letter to your solicitor
12 and it's followed then by a letter of the 28th of September 2004 from Smith Foy
13 to the Tribunal. It reads as follows "We acknowledge receipt of your letter
14 of the 15th inst in connection with the above and apologise for the delay in
15 reverting to you. We now respond to your letters as follows.

16
17 1. We do not propose responding in detail to your note of the details of your
18 conversation with Mr. Gannon and reserve our position in relation to whether or
19 not your letter accurately reflects the contents of the said conversation.

20
21 We would point out, however, that the suggestion in your letter that Mr. Gannon
22 was in a position to identify the Coolamber lands by reference to Mr. Liam
23 Lawlor's home is denied. Mr. Lawlor -- Mr. Gannon was not aware of the
24 location of Mr. Lawlor's home and we are surprised at this inaccuracy in your
25 note of the conversation." I don't know if you want to develop that point or
26 otherwise, Mr. Gannon?

27 A. I was never in Mr. Lawlor's home.

28 Q. 267 I appreciate that you may not ever have been in it. But it was used as a
29 reference point, apparently, in the conversation which took place between Miss
30 Howard and yourself when she indicated to you that it was the Coolamber lands

1 were located by reference to being almost opposite Mr. Lawlor's home?

2 A. Yes, I accept that but it was a telephone conversation I was having with
3 somebody and I said okay, fine. I was never actually physically in
4 Mr. Lawlor's house.

5 Q. 268 Sure and to be accurate, equally, it was not put to you by Miss Howard, in the
6 telephone call, that you would recall it because you had been in the house,
7 that wasn't put to you either; isn't that right?

8 A. No.

9 Q. 269 The letter goes on to say "Our client has no knowledge whatsoever of the
10 matters to which you refer concerning the Goodman Group, the Bank of Nova
11 Scotia or Scotia Bank Ireland Limited. Neither has our client any
12 recollection whatsoever of attending a meeting in November 1991 with Mr. Noel
13 Smyth in the Bank of Nova Scotia.

14
15 Mr. Gannon, at no point in his career, paid off any loans owed by Goodman
16 International or any Goodman company and neither did he have any discussions
17 with the Bank of Nova Scotia in relation to the taking of an assignment of
18 loans or security.

19
20 Mr. Gannon has no knowledge or recollection of any of the issues referred to in
21 the correspondence enclosed with your letter.

22

23 Yours faithfully."

24

25 The Tribunal responded to that on the 6th of October by letter to your
26 solicitors as follows "Dear Sirs,. I acknowledge your letter of the 28th of
27 September 2004.

28

29 You inquired on the 9th of September 2004, whether the Tribunal required a
30 statement from Mr. Gannon. I confirmed on the 10th of September 2004, that it

1 did. I await hearing from you in that regard.

2
3 It has been decided to call Mr. Gannon to give evidence in the public inquiry
4 into the Coolamber lands which will commence in or around the 9th of November
5 2004.

6
7 The brief of documents for that inquiry will be circulated this week and the
8 witness statements will be circulated next week. It is the preferred option
9 and general practice of the Tribunal to include a signed narrative statement of
10 a witness rather than an exchange of correspondence with the solicitors for the
11 witness. I should be obliged if you would telephone or fax me to confirm
12 whether or not the Tribunal will receive a signed statement of Mr. Gannon as
13 requested.

14
15 At your request I furnished to you details of my conversation with Mr. Gannon.
16 I am satisfied that my note is accurate. With regard to the location of the
17 Coolamber lands. It appear that is Mr. Gannon is now aware of their location.

18
19 I attach a copy of the map to which reference is made in the opening statement
20 delivered by counsel to the Tribunal on Day 439, on which the Coolamber lands
21 are coloured green. It is important that Mr. Gannon satisfy himself that he
22 can identify the Coolamber lands before giving evidence and it is hoped before
23 furnishing a written narrative statement.

24
25 Yours faithfully."

26
27 Just to focus on the date of that for a moment, Mr. Gannon. That letter was
28 written on the 6th of October 2004 and obviously the intended order for
29 discovery which had been notified to you in the earlier correspondence of the
30 7th of September did not translate into there being any order for discovery

1 made against you in view of the very positive indications given by your
2 solicitor to that point, and indeed from your telephone conversation that you
3 simply had no knowledge and had no dealings whatsoever with the lands; isn't
4 that so?

5 A. That's so.

6 Q. 270 Yeah and to date there hasn't been any order for discovery made against you on
7 the basis of what you've indicated to the Tribunal; isn't that right?

8 A. That's correct.

9 Q. 271 The next letter I refer you to then, is a letter of the 15th of October 2004.
10 To your solicitor it reads as follows "Dear Mr. Foy. I refer to previous
11 correspondence concerning the Tribunal's investigations of the Coolamber lands.
12 It has been decided that public hearings will commence on Tuesday the 9th of
13 November 2004 unless the evidence in the inquiry currently at hearing takes
14 longer than expected.

15
16 You will be informed closing oar to the commencement date of the day on which
17 your client is likely to be giving evidence. In the next few days you will
18 receive a copy of the documentation relevant to your client's involvement in
19 the public inquiry and a copy of the narrative statements of the witnesses who
20 will give evidence, including your client.

21
22 I attach a brief explanatory memorandum outlining the procedures applicable to
23 a public hearing of the Tribunal. If you have any queries, please do not
24 hesitate to contact me or in my absence another member of the Tribunal legal
25 team at the above telephone number."

26
27 There then was an outline of Tribunal public procedures and I take it your
28 solicitor, if necessary, would have brought these to your attention; isn't that
29 so?

30 A. Sorry?

1 Q. 272 Attached to the letter was a two-page outline in standard form of the
2 procedures?

3 A. Oh, yes, yes.

4 Q. 273 Adopted in a public hearing and if necessary I take it that your solicitor
5 would have outlined those to you and I don't intend to read them in detail.

6
7 On the 18th of October then of 2004, the documentation which had previously
8 been referred to three days earlier and a little earlier then than that again,
9 was furnished to you as we see -- rather to your solicitors I should say.

10
11 "Dear Mr. Foy. I am directed to furnish to you the enclosed folder of witness
12 statements relating to the upcoming module to commence on Tuesday the 9th of
13 November 2004, known as Coolamber module and also enclosed is documentation
14 extracted from the Coolamber brief which are relevant to your client.

15
16 The enclosed documents remain the property of the Tribunal and the information
17 contained therein is confidential to the Tribunal and may not be disclosed to
18 any person other than your client and counsel, who are likewise restrained from
19 disclosing the contents thereof. You must retain the original documentation in
20 your possession. If it is your intention to copy any of the enclosed
21 documents, you must seek the consent in writing of the Tribunal prior to doing
22 so. Copies may be made for counsel without first seeking the Tribunal's
23 consent to the making of such copies, but these should be clearly marked by
24 you so as to ensure security. Yours sincerely."

25
26 Following receipt then of the witnesses statements in the Tribunal's Coolamber
27 phase, you provided, through your solicitor, a statement which is first
28 referred to on the 20th of October in a letter where your solicitor
29 acknowledges receipts of the letters of the 6th, 15th and 18th of October and
30 says "We are currently finalising a statement to be signed by our client and we

1 will let you have the same under separate cover."

2
3 On the following day then, the confidentiality of the -- sorry. In the
4 following letter which was the following day, yes. The confidentiality of
5 this documentation of the Tribunal is again reinforced to you.

6 "Dear Mr. Foy, further our telephone conversation. I confirm the Tribunal
7 consents to your furnishing to your client a copy of the documentation
8 furnished to you in this matter. The attention of your client should be drawn
9 to the fact that documents are confidential documents of the Tribunal. They
10 have been circulated to you in confidence and are being circulated to him in
11 confidence also. He may not disclose the documents or their contents to any
12 person. He may not make copies of the documents. If you have any queries
13 please do not hesitate to contact me."

14
15 So, at that point you physically had the documents yourself, in addition to
16 them being in the possession of your solicitor or shortly thereafter; isn't
17 that right?

18 A. Yes.

19 Q. 274 Your solicitor, on the same date, furnished to the Tribunal a statement from
20 you and it says as follows "Further to our previous correspondence in
21 connection with the above matter. We now enclose original statement of our
22 client for your attention. As you are aware, we requested your consent on the
23 20th inst, authorising us to furnish copies of documentation.

24
25 Perhaps you would let us have that written consent without delay."

26
27 Your statement then is the formal statement which you make to the Tribunal and
28 it's included in the brief and circulated to other parties.

29
30 It reads "Statement of Gerard Gannon, re lands at Coolamber, Finnstown, Lucan,

1 the Coolamber lands. I, Gerrard Gannon, of 52 Northumberland Road,
2 Ballsbridge, Dublin 4. Hereby make the following statement in relation to the
3 Coolamber lands as requested by the solicitor acting for the Tribunal of
4 Inquiry into Certain Planning Matters and Payments.

5
6 1. I say that I was not involved, at any time, in discussions or negotiations
7 concerning the possible purchase of the Coolamber lands or of any debt owed to
8 Mr. Goodman by Southfield, as referred to in the letter dated the 2nd of
9 September 2004, from the solicitor for the Tribunal in late 1991 or at any
10 other time.

11
12 2. I have not had any involvement in the Coolamber lands at any time.

13
14 3. I further say that no company or companies owned or controlled by me were
15 involved in any discussion or negotiations concerning the possible acquisition
16 of the Coolamber lands.

17
18 4. I have no recollection of attending a meeting in the Bank of Nova Scotia
19 on the 15th of November 1991, as suggested by the call report furnished to me
20 by the solicitor for the Tribunal.

21
22 I have no knowledge or recollection of the various matters referred to in this
23 call report. I say that I did not, as suggested by the call report, payoff a
24 Goodman International loan nor was I ever owed the sum of 167,000 pounds by
25 Southfield as suggested by this document. I have no knowledge of or did I
26 ever I agree or discuss the taking of an assignment of any loan or security
27 from the Bank of Nova Scotia concerning Southfield. I did not at any stage
28 instruct Mr. Noel Smyth solicitor, to seek advice from John P Traynor,
29 Barrister at Law, concerning any matter and I have no knowledge, recollection
30 or understanding of any of the matters referred to in Mr. Traynor's letter to

1 Mr. Noel Smyth dated the 2nd of June 1994, as furnished to my solicitors by the
2 solicitor for the Tribunal.

3
4 Dated the 21st of October 2004 and signed Gerrard Gannon." That is your
5 statement; isn't that right?

6 A. Yes.

7 Q. 275 The Tribunal then on the 13th of January, that is this year, made further
8 communication with your solicitor as follows "Dear Mr. Foy, on further
9 consideration of the information furnished to the Tribunal to date, concerning
10 inter alia.

11 A. The meeting at Bank of Nova Scotia on the 15th of November 1991.

12

13 B. Mr. Gannon's alleged involvement.

14

15 C. Mobberley Limited.

16

17 D. Payment on the 23rd of December 1991 of 158,560 pounds to Goodman
18 International from funds sourced through Rea Brothers, Isle of Man, otherwise
19 Close Bank, Isle of Man and related transactions.

20

21 E. Payment also on the 23rd of December 1991 to Gannon Homes Limited of
22 70,000 pounds.

23

24 F. Dealings of Noel Smyth & Partners with Rea Brothers, Isle of Man, in
25 December 1991/January 1992 including receipt of a sum of around 74,000 pounds.

26

27 The Tribunal will consider tomorrow whether or not to make an order requiring
28 Mr. Noel Smyth and/or another member of Noel Smyth and Partners to make
29 discovery on oath of and to produce to the Tribunal all documents and records
30 in the possession, power or control of the person or persons to whom the order

1 is directed, relating to any dealings whatsoever, involving Mr. Gerry Gannon
2 and his companies and relating to the period the 1st of January 1991 to the
3 31st of December 1992.

4
5 Should you wish to make any submissions in relation to the proposed order,
6 please furnish such submissions no later than 12 noon tomorrow. If you
7 require a short time further please contact me as soon as possible. It is
8 hoped, however, that your client will not object to the making of the order.
9 Any records received on foot of such order, which are not relevant to the
10 public inquiry into the Coolamber lands will remain confidential and will not
11 be disclosed by the Tribunal. Yours sincerely."

12
13 I think that that didn't cause you difficulties and those submissions were made
14 in relation to that proposed order which was directed to Mr. Smyth and to the
15 firm Noel Smyth & Partners, is that right?

16 A. None whatsoever.

17 Q. 276 And on the 14th of January, a letter was written to Mr. Foy as follows "Dear
18 Mr. Foy. Further to your conversation yesterday evening with Miss Coghlan, I
19 attach a schedule of the Coolamber brief pages relevant to the Rea Brothers and
20 Mobberley issue and a copy of each document."

21
22 I think those documents concerned a company called Mobberley, of which you had
23 no connection as far as you're concerned; isn't that so?

24 A. No, none whatsoever.

25 Q. 277 And equally, did you believe that you had no connection of Rea Brothers?

26 A. Never heard of them until the Tribunal brought it up to me.

27 Q. 278 We'll see then that on the 14th of January, there's a fax from your solicitors
28 to the Tribunal which reads as follows "Dear Madam, we acknowledge receipt of
29 your fax of the 13th inst in connection with the above. As you will
30 appreciate, the time limits as set out in your letter give us very little

1 opportunity to consider the Tribunal's request. We are particularly disturbed
2 at the reference to documents D and E in your letter and in particular the
3 document referred to at paragraph E thereof. We feel it is unsatisfactory for
4 you to suggest, in correspondence, as if it were a fact that the existence of
5 these documents were known to us or provided to us by the Tribunal. As you
6 will appreciate, we were not made aware of the existence of these documents.
7 We therefore are request that you immediately furnish us with two copies of the
8 CDROM containing all documentation which is currently being considered by the
9 Tribunal.

10
11 Despite the very short time scale we hope to be in a position to obtain our
12 client's instructions in relation to your request later on today. But at the
13 latest by 12 noon on Monday. It would obviously assist us greatly if you
14 would furnish with us details of the matters being considered by the Tribunal
15 relating our client and furnish us with the relevant documentation in this
16 regard. We would repeat our earlier concern at the failure to furnish with us
17 documentation, which the Tribunal considers relevant to our client, despite
18 having requested our client to attend as a witness before the Tribunal.

19
20 As indicated above, we would hope to take instructions from our client later on
21 today or by 12 noon on Monday, but we do not anticipate that Mr. Gannon will
22 have any difficulty consenting to the order for discovery as suggested in your
23 letter as he is anxious to assist the Tribunal and to cooperate with it as
24 expeditiously as possible."

25
26 That letter passed with a letter that was sent by the Tribunal on the same date
27 to your solicitors. As follows "Dear Mr. Foy, I refer to your letter dated
28 today.

29
30 You will by now have received a copy of all documentation from the full

1 Coolamber brief referring to Rea Brothers, Isle of Man, otherwise Close Bank
2 and Mobberley Limited, including the page from the ledger of Noel Smyth &
3 Partners showing the 70,000 pounds payment to Gannon Homes Limited on the 23rd
4 of December 1991. I had understood you had received such information
5 previously.

6
7 You now have all the documentation available to the Tribunal in respect of the
8 matters described in my notice letter dated the 13th of January. Such
9 information, as you are aware, includes the evidence in public since the
10 commencement of the Coolamber phase of this module. The Tribunal considers it
11 necessary to examine, in its preliminary investigations in private, the records
12 of Noel Smyth & Partners with regard to the dealings of that firm with Rea
13 Brothers Isle of Man, Mobberley Limited and your client respectively,
14 contemporaneous with the events of 1991 and 1992 on their inquiry, to ascertain
15 whether there is information relevant to those events and the order will be
16 considered at or after 12 noon on Monday next."

17
18 That was responded to the Tribunal by your solicitor on the same date, 14th of
19 January, 2005. "Dear Madam. We refer to our earlier fax to you of the 14th
20 inst in response to your fax to us of the 13th inst. We have since discussed
21 your request with our client and despite the concerns as outlined in our
22 earlier letter to you, our client confirms that he has no difficulty with you
23 seeking the discovery indicated in your letter of the 13th inst from Mr. Noel
24 Smyth."

25
26 That's followed by a letter, a week later, from Smith Foy and Partners. Which
27 reads as follows "I refer to previous correspondence. In connection with the
28 above matter. On the assumption that the Tribunal has made an order for
29 discovery against Mr. Smyth as per recent correspondence. Please furnish us
30 with a copy of the of same as it is obviously relevant to our client.

1
2 Please also confirm if it is the intention of the Tribunal to postpone the
3 appearance of Mr. Smyth and our client, Mr. Gannon, and any other relevant
4 witness, until Mr. Smyth has made discovery in accordance with the order of the
5 Tribunal and such discovery documentation has been distributed appropriately to
6 the relevant parties, which would obviously include our client.

7
8 In this regard, we would point out that our client will be out of the
9 jurisdiction between the following dates" -- and you give those dates -- "which
10 commence on the 12th of February next."

11
12 That letter was responded to on the 21st of January 2005. "Dear Mr. Foy.
13 Thank you for your letter of the 21st of January 2005. I attach a copy of the
14 order of the Tribunal against Mr. Smyth concerning your client and another
15 matter dated the 17th of January 2005. At present it is proposed to call
16 Mr. Smyth and Mr. Gannon on the dates appearing on the witness schedule of
17 yesterday. Any documents obtained from any source which, upon review, are
18 deemed relevant to the public hearings will be furnished to all affected
19 persons in advance of any public disclosure of the documents. The dates of
20 Mr. Gannon's proposed absences are noted."

21
22 I think that was the correspondence until the 21st of January of this year and
23 since that time, I think, you've received further documentation as recently as
24 today, which was furnished to the Tribunal in turn by Mr. Smyth on Monday of
25 this week.

26
27 CHAIRMAN: It's past four o'clock. It might be an appropriate time to rise.
28 We will sit tomorrow at half ten. All right?

29 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
30 **FRIDAY, 28TH JANUARY 2005, AT 10:30 A.M.**