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1 THE HEARING RESUMED AS FOLLOWS ON THE 19TH JANUARY, 2000:

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3 CHAIRMAN: When you are ready.

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5 MR. O'NEILL: Good morning Sir.

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7 CHAIRMAN: Morning.

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9 MR. O'NEILL: Mr. Christopher Oakley please.

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2 CHRISTOPHER OAKLEY, HAVING BEEN SWORN, WAS EXAMINED AS  
3 FOLLOWS BY MR. O'NEILL:

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5 1 Q. MR. O'NEILL: Morning Mr. Oakley, if you would like to sit  
6 down please?

7 A. Thank you.

8 2 Q. You are, Mr. Oakley, by profession, a solicitor?

9 A. I am an English solicitor, yes.

10 3 Q. You are an English solicitor. And you acted in that  
11 capacity for Mr. Joseph Murphy Snr. in the year 1988; isn't  
12 that correct?

13 A. I acted for a number of parties in 1988, one of which  
14 included Mr. Joseph Murphy Snr., yes.

15 4 Q. Now, you have provided to the Tribunal, a statement which  
16 was received on the 2nd of November of 1999, and I am going  
17 to hand to you a booklet of documentation which includes  
18 that statement. (Documents handed to witness).

19 .

20 The last page of the statement, Mr. Oakley, contains the  
21 date upon which you signed it, which is the 5th of October  
22 of 1999; isn't that so?

23 A. Yes, that's correct.

24 5 Q. And you do confirm your signature immediately beneath that;  
25 isn't that correct?

26 A. I do.

27 6 Q. Now, I shall read for the record your statement, and if you  
28 wouldn't mind following in your copy, if it in anyway  
29 deviates from what I am saying perhaps you will stop me and  
30 I will correct it?

31 A. Certainly.

32 7 Q. It is the statement of Christopher Richard Oakley.

1 .

2 "Introduction:

3 1. I am a solicitor in the Supreme Court of England and  
4 Wales and a registered legal practitioner in the Isle of  
5 Man. I was admitted as a solicitor in April 1994 prior to

6 --

7 A. '74.

8 8 Q. I beg your pardon. "In April 1974. Prior to setting up my  
9 own practice in the Isle of Man I was partner with the firm  
10 of Pickering Kenyon of Great James' Street, London, WC1.  
11 That firm was dissolved in or about the month of August  
12 1996, after which I moved to the Isle of Man.

13 .

14 For the 15 years prior to the dissolution of Pickering  
15 Kenyon my practice in the firm was a specialised one. I  
16 was involved in the international recovery of assets. By  
17 this I mean that I was involved in the recovery of assets  
18 improperly taken from trusts, bank accounts or companies.  
19 As part of that specialisation, I became involved in  
20 proceedings in jurisdictions as diverse as Liechtenstein  
21 through to the Caribbean. In the context of this  
22 specialisation that I was first consulted by Joseph Murphy  
23 Snr..

24 .

25 The Murphy Trusts:

26 In the early part of 1988 I was consulted by Mr. Murphy in  
27 relation to the management of a trust which was then  
28 controlled by Ernst and Whinney, later to become Ernst and  
29 Young. I understood the trust to be of the usual  
30 discretionary nature, coupled with a letter of wishes by  
31 virtue of which the wishes of the settlor, Mr. Murphy Snr.,  
32 would be taken into account. It was my understanding that

1 not only had Mr. Murphy been informed that his wishes would  
2 no longer prevail in relation to the operation of the  
3 trust, but that there was evidence that the direction of  
4 the trust was being influenced by one Liam Conroy to his  
5 benefit and advantage. Indeed, as it turned out it was  
6 discovered that Mr. Conroy had persuaded the trustees to  
7 create a sub trust in favour of himself and his children  
8 out of the original Murphy settlement on the false  
9 representation that such an arrangement had been approved  
10 by Mr. Murphy Snr..

11 .

12 It was necessary to employ three different approaches so as  
13 to restore the balance of influence in the Murphy trusts to  
14 the members of the family who were the discretionary  
15 beneficiaries thereunder. Firstly Ernst and Whinney were  
16 asked to resign as trustee in favour of Sovereign  
17 Management Limited, a Guernsey trust company, each of the  
18 discretionary beneficiaries requested the resignation in  
19 writing on the basis that their ability to manage the  
20 assets of the trust in accordance with the wishes of the  
21 settlor and those resignations were forth coming.

22 .

23 Secondly, it was necessary to regain control of the  
24 underlying companies legally owned by the trusts.  
25 Arrangements were made for additional directors, comprising  
26 members of the Murphy family, to be appointed to the Board  
27 of Directors of each of the underlined companies, including  
28 JMSE.

29 .

30 Thirdly, it was necessary to constitute proceedings in the  
31 Isle of Man attacking the validity of the sub trust created  
32 out of the original Murphy settlement in favour of Mr.

1 Conroy and his children.  
2 .  
3 The Isle of Man proceedings:  
4 The Isle of Man proceedings were initiated on behalf of Mr.  
5 Murphy against Mr. Conroy. In the proceedings a  
6 declaration was sought that the sub trust known as the Life  
7 Trust, created in favour of Mr. Conroy was invalid.  
8 Initially the basis of this claim was that the sub trust  
9 had been created by the trustees without any authority,  
10 without any reference to the discretionary beneficiaries of  
11 the original trusts and in collusion with Mr. Conroy as a  
12 fraud in the legal sense, on each of the two trusts known  
13 as the Armoy and Ashdale Trusts. Extensive affidavit  
14 evidence was filed in these proceedings, both by Mr. Murphy  
15 and by Mr. Conroy. In the initial stages it was envisaged  
16 that the proceedings in the Isle of Man would be a full  
17 substantive hearing in which it would be necessary for both  
18 Mr. Conroy and Mr. Murphy to give evidence as to the  
19 precise arrangements agreed between them. Much of Mr.  
20 Conroy's evidence in affidavit did not deal with the  
21 material points but rather sought to cast serious  
22 aspersions on the character of Mr. Murphy.  
23 .  
24 I was instructed by Mr. Murphy to seek the assistance of  
25 Mr. Gogarty in relation to the affidavit filed by Mr.  
26 Conroy in the Isle of Man proceedings. In particular, I  
27 was asked to seek his assistance in relation to matters  
28 that might support the contention that Mr. Conroy acted in  
29 his own best interests and to the expense of the Murphy  
30 Group. Mr. Murphy instructed me that Mr. Gogarty had no  
31 time for Mr. Conroy, and that he ought to be able to assist  
32 in this regard. He did, however, warn me that simply

1 because Mr. Gogarty disliked Mr. Conroy, it did not follow  
2 that he, Mr. Gogarty, was a friend of the Murphys.

3 .

4 On receiving these instructions I spoke to Mr. Gogarty on  
5 the telephone in relation to matters which related directly  
6 to Mr. Conroy, my recollection is that I had one, or  
7 possibly two, such telephone conversations with Mr.  
8 Gogarty, and that in the course of those telephone  
9 conversations I received from him detailed information in  
10 relation to Mr. Conroy. Based upon these discussions I  
11 prepared a draft affidavit for Mr. Gogarty to sign. The  
12 draft was based entirely upon the information that he had  
13 given to me in the course of the telephone conversations.  
14 I should say, that in the course of those telephone  
15 conversations Mr. Gogarty did make a number of references  
16 to his desire to sort out his financial arrangements with  
17 Mr. Murphy. In the last of these telephone conversations  
18 I made arrangements with Mr. Gogarty to meet with him on my  
19 next visit to Dublin for the purpose of having him sign the  
20 affidavit that I would prepare for him. I recall well my  
21 meeting with Mr. Gogarty, which was for the purpose of him  
22 considering the draft affidavit which I had prepared. I  
23 was unable to secure a hotel in Dublin and accordingly  
24 stayed in the Killiney Castle Hotel. I recall telling Mr.  
25 Gogarty of my arrangements and he, not I, suggesting that  
26 we should meet at my hotel. I remember the meeting well  
27 because it was on the day of a major football match  
28 involving Ireland. The hotel, and in particular the bar,  
29 was very full. From later correspondence it was evident  
30 that this meeting took place on the 26th of April.

31 .

32 I recall that when Mr. Gogarty arrived at the hotel we went

1 to my room and sat either side of a table. I gave Mr.  
2 Gogarty a copy of the pre-prepared statement or affidavit,  
3 the draft was not particularly long and did not deal with  
4 particularly complex issues, notwithstanding that fact my  
5 meeting with Mr. Gogarty lasted approximately  
6 three-hours.

7 .

8 As we went through each item in the draft Mr. Gogarty would  
9 not give me a specific reason for either approving or  
10 disapproving of a particular item, but would merely comment  
11 that he was not entirely satisfied. He regularly broke  
12 off from reading the draft to state in some detail that he  
13 had not been fairly treated by Mr. Murphy Snr. and that his  
14 overriding objective was to finalise his pension  
15 arrangements with Mr. Murphy. I repeatedly told him it  
16 was not my purpose to negotiate his pension entitlements  
17 but rather to obtain from him a statement relating to  
18 information he had described to me in our previous  
19 telephone conversations. Mr. Gogarty's evasiveness in  
20 relation to the affidavit and his emphasis on his pension  
21 entitlements eventually prompted me to say to him that "I  
22 do not buy evidence". I also recall informing him that as  
23 an employee of JMSE he had a duty to assist the company  
24 insofar as he could. These were strong remarks for me to  
25 make to a man I hardly knew and I would not be given to  
26 making such remarks lightly. I felt, however, that they  
27 were justified having regard to Mr. Gogarty's behaviour,  
28 over a period of several hours at that meeting. I am  
29 aware that Mr. Gogarty has made allegations to this  
30 Tribunal that I sought to make his pension arrangements  
31 conditional upon his swearing of an affidavit. So far as  
32 I am concerned that allegation is completely untrue. My

1 clear impression from my meeting with Mr. Gogarty was that  
2 it was he and not the Murphy Group, who was seeking to make  
3 one conditional upon the other.

4 .

5 At the conclusion of the meeting Mr. Gogarty asked me to  
6 forward a copy of the draft to his solicitor. I recall  
7 saying to him that I would do so, although I could not  
8 understand why that was necessary, the contents of the  
9 statement were purely factual and were no more than what  
10 Mr. Gogarty had told me in our previous telephone  
11 conversations. Mr. Gogarty gave me a copy of Mr. Gerrard  
12 Sheedy's business card. On my return to the UK I made  
13 arrangements to forward a copy of the draft to Mr.  
14 Sheedy. It later transpired that he did not receive that  
15 copy of the draft and some considerable time later I sent  
16 him another copy.

17 .

18 Very shortly after my meeting with Mr. Gogarty certain  
19 events occurred which meant that the securing of an  
20 affidavit from Mr. Gogarty was of little enough  
21 significance, although I continued to leave him with the  
22 impression that it remained urgent.

23 .

24 I had for some time been researching legal issues in  
25 relation to the trust proceedings in the Isle of Man. In  
26 so doing I discovered that quite apart from the substantive  
27 issue in the proceedings, that the settlement established  
28 in favour of Mr. Conroy had, in fact, breached the Isle of  
29 Man perpetuity period. This was a highly significant  
30 point because it allowed me to take a preliminary point in  
31 the proceedings which would obviate the necessity to  
32 consider much of the substantive issues in the



1 proceedings. From the moment I discovered this legal  
2 point I was convinced it was a good point and that it would  
3 succeed. I cannot recall exactly when I initiated the  
4 preliminary hearing before the court, but I believe it  
5 would have been some time in early May 1989. My  
6 recollection is that the hearing before the court lasted  
7 for approximately two days, again some time in May 1989 but  
8 later in the month. Judgement was reserved and ultimately  
9 delivered on the 28th of June, 1989. A copy of that  
10 judgement is appended to this statement. As appears  
11 therefrom, the preliminary point was indeed successful and  
12 dealt a massive blow to Mr. Conroy in his attempts to stand  
13 over the validity of the life settlement.

14 .

15 I have been informed that Mr. Gogarty has given evidence to  
16 this Tribunal to the effect that on the 3rd of July, 1989,  
17 Mr. Murphy resolved to sell the lands the subject of the  
18 Tribunal's inquiry for agricultural value, notwithstanding  
19 the fact, as alleged by Mr. Gogarty, that he had some weeks  
20 earlier authorised the bribing of a politician with a view  
21 to securing a rezoning of the lands. I am further given  
22 to understand that Mr. Gogarty explains this change of  
23 heart on the 3rd of July, 1989, by reference to Mr.  
24 Murphy's panic in the face of the Isle of Man proceedings  
25 involving Mr. Conroy. That suggestion is totally  
26 inconsistent with my knowledge of the Isle of Man  
27 proceedings. The judgement of the 28th of the June of 1989  
28 hugely strengthened Mr. Murphy's position in the Isle of  
29 Man proceedings and left him in a position where he was  
30 able to negotiate a settlement with Mr. Conroy upon terms  
31 far less onerous than would have been available to him  
32 prior to the 28th of June.

1 .  
2 I can recall Mr. Murphy being delighted with the judgement  
3 delivered on the 28th of June of 1989, and whilst his  
4 health was poor at that time he most certainly was not in a  
5 state of panic in the face of the proceedings involving Mr.  
6 Conroy. Ultimately his settlement with Mr. Conroy was  
7 negotiated, and to the best of my recollection that  
8 settlement was finalised in September of 1989.

9 .  
10 Mr. Gogarty's Severance Package:

11 As the correspondence indicates, I became involved in the  
12 negotiations which culminated in the agreement of the 3rd  
13 of October of 1989 detailing Mr. Gogarty's severance  
14 arrangement. I have re-read the correspondence for the  
15 purpose of making this statement and I believe that the  
16 correspondence speaks largely for itself.

17 .  
18 From my knowledge of the negotiations reflected in that  
19 correspondence, I would make the following observations:-

20 .  
21 (A) It was Mr. Gogarty who first raised the idea of having  
22 part of the severance package dependent upon the outcome of  
23 negotiations with the ESB in relation to Moneypoint. Mr.  
24 Murphy was initially resistant to the idea, because he  
25 believed that it was something that Mr. Gogarty should  
26 already have accomplished in the ordinary course of his  
27 employment, particularly in the light of the financial  
28 difficulties of the Group at the time. However, Mr.  
29 Murphy did ultimately agree that the ESB monies could form  
30 part of the agreement with Mr. Gogarty, and it was on that  
31 basis that I wrote to Mr. Sheedy my letter of the 29th of  
32 June, 1989.

1 .  
2 (B) When writing my letter of the 29th of June of 1989 I  
3 had no knowledge of the sum already on offer from the ESB  
4 in respect of the Moneypoint contract. My offer to Mr.  
5 Gogarty was that he should receive 50 percent of whatever  
6 sum was received from the ESB, net of the then existing  
7 offer, but I did not know the existing offer.

8 .  
9 (C.) Mr. Sheedy's letter of the 29th of June, 1989, was the  
10 first indication I had of the then existing offer, which he  
11 indicated was in the sum of £40,000. Naturally I wished to  
12 obtain independent verification that this was so, but I  
13 found it extremely difficult to do so. It was later  
14 discovered that the figure on offer was £130,000. It was  
15 certainly my impression at that time and the belief of my  
16 client that Mr. Gogarty was reluctant to disclose to his  
17 employers the true position in relation to the ESB  
18 negotiations.

19 .  
20 (D) I witnessed the agreement on the 3rd of October of  
21 1989, which records that the current offer of settlement  
22 from the ESB was in the sum of £130,000, in doing so I had  
23 absolutely no information whatsoever to indicate that an  
24 agreement had already been reached with the ESB in the sum  
25 of £560,000 together with VAT. Certainly neither Mr.  
26 Gogarty nor Mr. Sheedy informed me of that fact, and  
27 similarly nobody on behalf of the Murphy Group of  
28 companies, including in particular Mr. Murphy Snr. informed  
29 me of that fact.

30 .  
31 (E) During the entire of this period I worked very closely  
32 with Mr. Murphy Snr., Mr. Roger Copsey and Mr. Edgar

1 Wadley, and English accountant". It, should read "an  
2 English accountant", "working on Mr. Murphy's behalf. The  
3 financial difficulties of JMSE were a constant topic of our  
4 conversation. We discussed a number of proposals to  
5 inject additional capital from the trust into JMSE.

6 .

7 (F) I understand that Mr. Gogarty has given evidence to  
8 this Tribunal to the effect that some days prior to the 3rd  
9 of October of 1989 he informed Mr. Murphy Snr. that an  
10 agreement had been reached with the ESB in the sum of  
11 £560,000 together with VAT and that Mr. Murphy Snr.  
12 instructed him not to bother telling Mr. Copsey of this  
13 fact. Having regard to the regularity of dealings with  
14 Mr. Murphy, Mr. Copsey and myself at that time, having  
15 regard to the fact that Mr. Copsey was the Financial  
16 Director of the company and having regard to the fact that  
17 the financial difficulties of the Group were such a source  
18 of concern to us at that time I find Mr. Gogarty's evidence  
19 surprising.

20 .

21 (G) When it became apparent in or about Christmas 1989 that  
22 Mr. Gogarty had, in fact, reached an agreement with the ESB  
23 prior to the signing of the agreement of the 3rd of October  
24 of 1989, Mr. Murphy expressed to me in no uncertain terms  
25 his outrage of Mr. Gogarty's behaviour, and it was on that  
26 basis that I wrote my letter of the 10th of January of  
27 1990.

28 .

29 Mr. Murphy's Overall Objectives:

30 14. In my dealings with Mr. Murphy from 1988 to 1990, Mr.  
31 Murphy made it absolutely clear that his overall objective  
32 was to rid the Group of both Mr. Conroy and Mr. Gogarty,

1 restore some financial well-being to the Group and hand  
2 over the Group to his son, Mr. Murphy Jr., clear of the  
3 difficulties which had dogged the Group for the previous  
4 years. He made it absolutely clear to me he wanted no  
5 more litigation with either Mr. Gogarty or Mr. Conroy and  
6 that he would pay substantial sums to achieve their  
7 departure. This is what he did.

8 .

9 Dated 5th day of October 1999. Signed Christopher R  
10 Oakley".

11 .

12 That, Mr. Oakley, I think is the statement you have  
13 furnished to the Tribunal; isn't that correct?

14 A. That's correct.

15 9 Q. If we could revert in a general way to the difficulties  
16 which you saw facing Mr. Murphy when he came to you  
17 initially in 1988. I think the position was that there  
18 had been a trust in existence since 1968 known as the Armo  
19 Trust?

20 A. That's correct.

21 10 Q. And out of that trust there had been an appointment known  
22 as the Ashdale Trust in 1972?

23 A. That's correct.

24 11 Q. And a subsequent appointment, the Lithe Trust, in 1986 I  
25 think?

26 A. I can't remember the date of the Lithe Trust, but there  
27 certainly had been a sub appointment out.

28 12 Q. Right. And the trustees of the trust had changed over a  
29 period of time, but were professional trustees throughout;  
30 isn't that so?

31 A. That's my understanding. Certainly at the time I was  
32 involved the professional trustees came from Ernst and

1 Whinney.

2 13 Q. Yes. Now, these were two partners in the firm of Ernst  
3 and Whinney in Jersey; isn't that so?

4 A. That's correct.

5 14 Q. Yes. And in addition you learned that the companies were  
6 de facto being controlled by Mr. Liam Conroy who was the  
7 Chief Executive of the companies at that time; isn't that  
8 so?

9 A. I learned from Mr. Murphy Snr. that Mr. Conroy had been  
10 appointed as Chief Executive, had a great deal of influence  
11 over the companies in that role and had a great deal of  
12 influence over the trustees, both in that role and in other  
13 roles that he played in relation to the trusts.

14 15 Q. Yes. His function, insofar as he had an official  
15 function, was that he was the Chief Executive of the  
16 companies, and in the normal course would be entitled to  
17 make all the decisions that are open to a Chief Executive  
18 of a company; isn't that so?

19 A. One would assume so, yes.

20 16 Q. Right. And in addition to that, did you know of their  
21 being a Trust Council in existence?

22 A. I learned of the Trust Council sometime later, I believe.  
23 I certainly knew about it by the middle of September, sorry  
24 middle of June, I beg your pardon. My recollection as far  
25 as the Trust Council is concerned is that, I think we  
26 discovered that there was a Trust Council in existence by  
27 way of documents.

28 17 Q. Yes.

29 A. The precise composition of the Trust Council at that stage  
30 I don't recall, save that two members of it comprised Mr.  
31 Devine and Mr. Conroy himself.

32 18 Q. And the third member was a Dr. Hinteregger who was a Swiss

1 banker?

2 A. That's right. He was a banker at Bank Invest in Zurich.

3 19 Q. Right. And the position of Mr. Murphy in relation to these

4 entities was that he had been the original settlor of a

5 trust which was now in existence for over 25 years or so,

6 or 20-years or so at that time; isn't that right?

7 A. Yes, Mr. Murphy had created the trust in 1968, when, of

8 course, he divested himself entirely of the assets, gave

9 them to the trustees who managed them in accordance with

10 the trust deed and who held, under Isle of Man law

11 certainly, the legal estate in those assets.

12 20 Q. Yes, and therefore I take it, it would have appeared to you

13 at that time that there would be a considerable hurdle to

14 overcome in order to set aside the trustees, to set aside

15 an existing Trust Council, all at the wishes of a settlor

16 who in law had effectively disposed of his interest many,

17 many years before; isn't that so?

18 A. It would have been so if it was purely on the basis of the

19 wishes of the settlor, yes, I agree with you. But it

20 wasn't, because throughout, almost from the outset I met

21 with not only the settlor, Mr. Murphy Snr., but also his

22 wife and his children who, of course, were beneficiaries or

23 intended beneficiaries under the trusts, and the approach

24 that was taken was on their behalf, because of course they

25 did have a legal interest in the settlement.

26 21 Q. Did, in fact, Mrs. Murphy have any entitlement to succeed

27 as far as you know?

28 A. My understanding was that it had always been the intended,

29 intention that as one of the class of beneficiaries, she

30 would be at some stage placed as a beneficiary on the

31 trust. There were certain named individuals, I recall,

32 under the original 1968 trust, they were members of the

1 extended Murphy family, as I recall, and indeed one of the  
2 complaints that Mr. Murphy made to me was he had always  
3 asked the trustees to make Mrs. Murphy and the children  
4 beneficiaries of the trusts and they hadn't actually done  
5 so specifically.

6 22 Q. Yes. So that the position when you looked at it was that  
7 there were these professional trustees and there had been  
8 in effect, a falling out as between the settlor and the  
9 trustees as regards the trust assets and the manner in  
10 which the trust was to be administered; isn't that right?

11 A. I think it was a little more specific than that. I think  
12 it was that there were a number of concerns that Mr. Murphy  
13 had in relation to the companies which he had attempted to  
14 express to the trustees.

15 23 Q. Yes.

16 A. Had attempted to persuade them to follow his wishes in that  
17 regard, and those wishes had been ignored.

18 24 Q. Right. Had that taken place before your involvement or  
19 were you involved, were you involved during the period when  
20 these contacts between Mr. Murphy and the trustees and the  
21 Trust Council were taking place?

22 A. My first involvement, as I have said, was in the early part  
23 of 1988, and I cannot now recall specifically when that  
24 occurred. I have a vague recollection that it was before,  
25 just before any discussions that Mr. Murphy had with the  
26 trustees.

27 25 Q. I see. Mr. Murphy, I think has told us, that he went to  
28 Jersey to meet with the trustees, that is Mr. Moore  
29 O'Farrell and Mr. Goff, having first discussed matters with  
30 his advisers, whom I presume included yourself and Mr.  
31 Wadley, and that he attended at a meeting then in Jersey?

32 A. Certainly Mr. Wadley was involved before I was, because it



1 was in fact Mr. Wadley who contacted me in the first

2 instance --

3 26 Q. Yes.

4 A. -- and asked me to become involved. Thereafter I met with

5 Mr. Murphy in Jersey and we spent something in the region

6 of two or three days going through everything. Now, what

7 I can't say for certain is whether the meeting that he had

8 with the trustees was one that was instigated by Mr. Wadley

9 and myself, suggesting that he had a face-to-face meeting

10 with him expressly asking him to adhere to his wishes,

11 which is what I understand the meeting actually occurred,

12 what occurred at that meeting, or whether I became involved

13 as a result of the failure of that meeting, if I can put it

14 like that. But it certainly was around at that time.

15 27 Q. Very good. In either event you are aware that the meeting

16 did take place, face-to-face between Mr. Murphy Snr. and

17 the trustees, in which Mr. Murphy sought to convince them

18 of the merit of his concern, and they having listened to it

19 and having conducted their own inquiry apparently,

20 determined that the best interests of the trust would be

21 represented by allowing the existing management to continue

22 to operate the companies as heretofore, is that an accurate

23 or summary of events?

24 A. I think the trust determined, sorry the trustees determined

25 that Mr. Murphy should no longer interfere. The bit I do

26 remember was Mr. Murphy telling me that he had been told to

27 go back to Guernsey and walk his dog, because he was quite

28 angry about that, and that the conclusion of the meeting

29 was a generalised support for Mr. Conroy and his style of

30 management, rather than any of the suggestions put forward

31 by the settlor.

32 28 Q. Yes. So that the position had polarised, if I might put

1 it into a situation where the trustees were happy that they  
2 were running the trust as they should, in the interests of  
3 the potential beneficiaries, and that Mr. Murphy's  
4 involvement would not be in the interests of the  
5 beneficiaries; isn't that right?

6 A. That's right.

7 29 Q. And I think you are aware that at that time there was a  
8 move afoot to remove Mr. James Gogarty from involvement in  
9 the affairs of JMSE and that was being prompted by Mr.  
10 Conroy; isn't that right?

11 A. I was aware from the initial discussions over the first two  
12 or three days that I described earlier, that one of the  
13 moves about which Mr. Murphy was unhappy was an attempt by  
14 Mr. Conroy to remove Mr. Gogarty as a director.

15 30 Q. Yes.

16 A. I was aware that as a result of, I was aware from Mr.  
17 Murphy that the two of them were at loggerheads.

18 31 Q. The two of whom?

19 A. Mr. Conroy and Mr. Gogarty were at loggerheads in relation  
20 to the management of JMSE, and certainly at that stage Mr.  
21 Murphy supported Mr. Gogarty and opposed his removal as a  
22 director, or so he told me.

23 32 Q. Right. And do you know that Mr. Murphy, for a  
24 considerable period of time extending back as far as 1966,  
25 had a relationship with Mr. Brendan Devine who was an  
26 accountant in Dublin, who is representing his interests,  
27 that is his, Mr. Murphy's personal interests?

28 A. I am aware that he had a professional relationship with Mr.  
29 Devine, yes.

30 33 Q. And Mr. Devine was one of the Trust Council; isn't that so?

31 A. Mr. Devine was one of what I have to call a "purported  
32 Trust Council".

1 34 Q. Yes. Insofar as there appeared to be at the time of your  
2 initial instructions a Trust Council, it comprised Mr.  
3 Devine, Mr. Conroy and Dr. Hinteregger?

4 A. That's correct.

5 35 Q. Subsequent events were to establish that there had been an  
6 original Trust Council which had not been dissolved?

7 A. Exactly.

8 36 Q. But in relation to Mr. Devine, did you also establish that  
9 Mr. Murphy had sought to convince Mr. Devine that it was in  
10 the best interests of the trust and of the Murphy interest  
11 generally, that Mr. Gogarty would remain with the company  
12 and not as Mr. Conroy sought to have him removed?

13 A. Certainly. As I recall from my early discussions with Mr.  
14 Murphy Snr., he had attempted to convince all in sundry, if  
15 I can put it like that, that Mr. Gogarty should remain,  
16 including Mr. Devine certainly.

17 37 Q. Right. And I think you became aware that Mr. Devine,  
18 having consulted with the existing management, was in a  
19 position to inform Mr. Murphy that unless Mr. Gogarty was  
20 removed, the existing management of the companies would  
21 resign their positions; isn't that so?

22 A. I think during this period there were a number of positions  
23 taken, I won't call them threats, but I think a number of  
24 matters were suggested; one that, yes the entirety of the  
25 management of JMSE would resign if Mr. Gogarty wasn't  
26 removed. I think the intention of that as I understood,  
27 was to pressurise Mr. Murphy Snr. to agree to Mr. Gogarty's  
28 removal. As I say that is something he would not condone.

29 38 Q. Right. Apparently he did initially agree to that course  
30 but subsequently resiled from it, I am talking now about  
31 Mr. Murphy?

32 A. That may well be, I don't have any recollection of that

1 specifically.

2 39 Q. Can you recall that the threat which was made to resign by  
3 the existing management was subsequently relied upon as  
4 being a de facto resignation of those directors when it  
5 came to appointing new directors at a meeting which took  
6 place in Dublin in June of 1988?

7 A. I recall that there was a specific meeting set for a  
8 shareholders meeting, I think to remove Mr. Gogarty, and I  
9 recall that as part of the planning, if I can put it like  
10 that, in parenthesis, that Mr. Wadley and I undertook, we  
11 used the situation, although I wasn't physically present,  
12 but in terms of the drafting work and groundwork and the  
13 tactical work, we had put together a package that would  
14 attempt to change the directors of the company, and as I  
15 recall, now you mention it, yes, that did include utilising  
16 the fact that they had resigned or threatened to resign  
17 previously.

18 40 Q. I think it was suggested that there had been a de facto  
19 resignation by these directors because there had not been a  
20 compliance with their request to remove Mr. Gogarty and  
21 therefore that had triggered, in effect, their resignation,  
22 that was the approach, I am not saying it was a correct one  
23 or not. Is it your recollection that that is the approach  
24 which was adopted by the new board of these companies?

25 A. I can't honestly answer. I can't recall that  
26 specifically.

27 41 Q. Right. In any event, the position was that there was an  
28 uphill battle to be fought in order to regain control of  
29 the trusts, to regain control of the companies and to  
30 disassemble, if I might call it that way, the Lithe Trust,  
31 which was the one which effectively introduced Mr. Conroy  
32 and members of his family to the range of potential

1 beneficiaries under the discretionary trust; isn't that so?

2 A. There is certainly a lot of work involved in - "control" is  
3 not quite the right word, but certainly changing the  
4 trustees to those who were, in whom greater trust could be  
5 had for the beneficiaries and of course by the settlor.  
6 It wasn't an exercise in obtaining control, it was an  
7 exercise in reducing or changing the attitudes that had  
8 been adopted by the present trustees in their support,  
9 almost unquestioning support of Mr. Conroy and to put in  
10 place trustees who at least would listen to the wishes of  
11 the settlor, and more particularly and most importantly, to  
12 those who were the intended beneficiaries of the trust.

13 42 Q. Mr. Murphy himself, I think expressed to you the view that  
14 when he had appointed the Ernst and Whinney trustees in  
15 Jersey in the first instance, they had led him to believe  
16 that his wishes would be paramount, and I am quoting now  
17 the words that he attributed to them, that his wishes  
18 "would be paramount"?

19 A. I think he certainly had that impression. I can tell you,  
20 because my own involvement, as you appreciate from my  
21 location, is in offshore trusts, and in circumstances such  
22 as this where you have a self made multi millionaire  
23 setting up a trust to hold his assets, there is a great  
24 tendency on the part of new trustees to say of course, "but  
25 of course although you are giving up the legal interest in  
26 all of this, we will always attend to your wishes so you  
27 are in effect really not giving up anything at all". Of  
28 course the practice is different to the actual law in this  
29 regard. I am not surprised that Mr. Murphy came away with  
30 the impression that his wishes would be followed, there  
31 were circumstances I am quite certain, where that wouldn't  
32 be possible without infringing the integrity of the trust.

1 43 Q. Exactly. On the first occasion upon which there was an  
2 apparent conflict between his wishes and those of the  
3 trustees, this resulted in him seeking legal advice with a  
4 view to altering the composition of the trustees; isn't  
5 that so?

6 A. I am not sure whether that was the first occasion. I  
7 think it was the first serious occasion, where having  
8 produced a reasonable argument with reasonable and serious  
9 grounds for concern the trustees had, as I understood it  
10 from him, determined to follow Mr. Conroy almost  
11 unquestioningly, I think this was the attitude that annoyed  
12 him, against the background that he had heard that Conroy  
13 had been made a beneficiary of his family trust.

14 44 Q. Yes. Did you also establish from Mr. Murphy, that in fact  
15 the trustees though in position since 1968 in various  
16 forms, had not played any de facto role in the business of  
17 the companies which were on a day-to-day basis being run by  
18 Mr. Murphy and subsequently by Mr. Conroy as his part-time  
19 Chief Executive and after that again as Chief Executive?

20 A. I was not aware either from Mr. Murphy or from any contact  
21 that I had with the trustees that they were not involved in  
22 the day-to-day management of the companies. Indeed, I got  
23 the distinct impression from this particular incident that  
24 they were involved quite extensively in day-to-day matters  
25 such as the continuation of Mr. Gogarty as a director, the  
26 management of JMSE, and the support that they gave to Mr.  
27 Conroy.

28 45 Q. Well, whilst of course they would have to deal with that,  
29 it was an apparent and obvious conflict between the settlor  
30 and the existing management of the company. Could I  
31 suggest to you that before that conflict arose, there were,  
32 for instance, no meetings attended by the parties, there

1 were no directives given by trustees in the many, many  
2 years which had passed since the inception of the trust  
3 itself?

4 A. I can't say that that is correct.

5 46 Q. I see. Did you find anything in the course of your review  
6 of the documentation available to you which would have  
7 suggested that that had been the case?

8 A. I didn't, but then I didn't get a lot of documentation from  
9 Ernst and Whinney when they retired as trustees.

10 47 Q. You knew that Mr. Edgar Wadley had been involved as a  
11 principal partner in the firm called Midgely Snelling  
12 Accountants which had set up the trust in the first  
13 instance?

14 A. Yes, I did.

15 48 Q. Were you aware of the circumstances in which Mr. Wadley  
16 came to leave that firm and the circumstances in which  
17 Midgely Snelling ceased to act on behalf of Mr. Murphy?

18 A. I was aware that Mr. Wadley had retired as senior partner,  
19 I think he was of Midgely Snelling, and I was certainly  
20 aware that, I think it had been prompted by a collapse of a  
21 bank in the Isle of Man. At the time I worked extensively,  
22 I have worked extensively in the Isle of Man without  
23 actually living there, so I was aware of various  
24 undercurrents in relation to the financial sector in the  
25 Isle of Man at the time.

26 49 Q. The collapse of the IFTC which was the bank in question was  
27 a matter which received considerable publicity in the Isle  
28 of Man; isn't that right?

29 A. It did.

30 50 Q. And equally I take it, that you would be aware of the  
31 community of financial advisers that would be operating  
32 within that jurisdiction and their respective status; isn't

1 that so?

2 A. Well, I can say that the collapse of the IFTC caused a very  
3 fundamental change in the way which banks were allowed to  
4 operate in the Isle of Man, and it was the cause of the  
5 setting up of the first Financial Services Commission to  
6 regulate not only banks but a number of other financial  
7 service providers.

8 51 Q. Right. You indicated that you were aware that Mr. Wadley  
9 had retired from being a managing partner or certainly  
10 senior partner in Midgely Snelling, were you also aware of  
11 the fact that he had resigned from the Institute of  
12 Chartered Accountants in England and Wales because of an  
13 impending inquiry into his conduct?

14 A. I was aware that he had resigned as a member of the  
15 Institute of Chartered Accountants of England and Wales but  
16 not of the circumstances.

17 52 Q. I see. Certainly whilst he might have continued to act as  
18 a financial advisor, he could not call himself a chartered  
19 accountant as he formally had been; isn't that right?

20 A. That's a matter of the regulations of the institute.

21 53 Q. Do you know that as a lawyer practicing in the Isle of Man?

22 A. I would accept from you that that is probably the case,  
23 yes.

24 54 Q. So that Mr. Wadley had been involved from the inception of  
25 the trusts, in fact his firm had set up the initial trusts  
26 and members of his firm were the initial trustees, were you  
27 aware of that?

28 A. Yes, I was.

29 55 Q. Yes. So that you were in a position to know, if you had  
30 asked him, to what extent the trustees had been involved in  
31 the operations of any of the companies or the decisions of  
32 the trust from the time of inception of the trust until



1 such time as the Midgely Snelling trustees resigned, which  
2 was after the collapse of the IFTC bank; isn't that so?

3 A. I could have asked him, yes.

4 56 Q. In any event, you didn't consider it to be a matter of  
5 concern to you in the task which was facing you at that  
6 time; is that right?

7 A. No, I didn't.

8 57 Q. Right. You were successful in a practical way, by "you" I  
9 mean you having given the advice to Mr. Murphy, Mr. Murphy  
10 succeeded in the objectives which you had identified as  
11 being necessary to secure control of the companies again;  
12 isn't that so?

13 A. In the advice that I had given, yes, the Murphy family were  
14 successful in having directors appointed to the underlying  
15 companies and ultimately to obtain a change of trustee.

16 58 Q. If we deal with the companies first. By June of 1988 Mr.  
17 Conroy and Mr. Conroy's associated directors of the company  
18 had been replaced by Murphy nominees or members of the  
19 Murphy family; isn't that right?

20 A. That's right.

21 59 Q. And in relation to the trustees, upon request Ernst and  
22 Whinney, as professional trustees had in fact resigned as  
23 trustees in favour of other nominees advanced by Mr. Murphy  
24 or Mr. Murphy's interest; isn't that right?

25 A. Yes. As I recall, towards the middle or end of June, and I  
26 think through the Trust Council, I think what actually  
27 occurred was Mr. Devine and Mr. Conroy at a meeting  
28 together, were asked to remove Ernst and Whinney as, or the  
29 two individuals from Ernst and Whinney as trustees, and my  
30 recollection is that for some reason they refused, and I  
31 think it had something to do with Dr. Hinteregger, possibly  
32 because he wasn't present. But that they resigned from

1 the Trust Council and appointed Mr. Wadley and Mr. Copsey  
2 in their place. And that they in turn, as members of that  
3 Trust Council, determined to remove Ernst and Whinney as  
4 trustee.

5 60 Q. Yes. And the existing trustees, Ernst and Whinney,  
6 accepted that situation, certainly didn't litigate the  
7 question of their removal; isn't that right?

8 A. They didn't litigate it, but I think the impression you  
9 might have been giving was they went willingly, they didn't  
10 resign when they were asked to resign, because I actually  
11 attended a meeting in Jersey with Ernst and Whinney and  
12 asked them on behalf of the beneficiary, I explained to  
13 them that the beneficiaries had lost faith in them, as  
14 indeed had the settlor, and that they wished them to  
15 resign.

16 61 Q. Yes. I think their response to you was that whilst a  
17 certain section of the beneficiaries, potential  
18 beneficiaries required the removal of them as trustees,  
19 they were not the only beneficiaries under the trusts as  
20 then constituted because Mr. Conroy was also at that time a  
21 beneficiary and it would involve them preferring one range  
22 of potential beneficiaries over another, isn't that what  
23 they said to you?

24 A. You are quite right actually. Indeed as I recall it now,  
25 it was the first time there was any expressed confirmation  
26 that Conroy had been appointed as a beneficiary.

27 62 Q. Yes, so they were, could I suggest, stuck with the position  
28 that they couldn't be seen to agree with the request of one  
29 set of beneficiaries over another because it would be  
30 preferring one over the other; isn't that right?

31 A. They were stuck also with the consequences of their act of  
32 appointing Mr. Conroy as a beneficiary in the first place,

1     yes.

2 63 Q. Depending whether or not that was a valid or invalid  
3     appointment; isn't that right?

4 A. Yes, but it is, I have to say it is a rather unusual  
5     situation in terms of a family trust for a non family  
6     member to be appointed without the express agreement of the  
7     settlor, and certainly in my own experience, of all of the  
8     beneficiaries of that family trust.

9 64 Q. And there was an issue, of course, as to whether or not Mr.  
10    Murphy had given that consent or not; the Conroy interest  
11    claiming that he had and he claiming that he hadn't; isn't  
12    that right?

13 A. Yes, Mr. Murphy was very emphatic that this was a family  
14    trust to which he would never have contemplated putting in  
15    a non family member.

16 65 Q. True. And equally emphatically the case was being made in  
17    the pleadings, which we will shortly get to, that Mr.  
18    Conroy would not have provided his services, in effect  
19    running the Murphy empire, had he not been granted the  
20    reward which he wanted, and that it was being structured in  
21    the most tax efficient way, by having him appointed to the  
22    range, or the class of beneficiaries entitled to proceed?

23 A. I think there are two issues there which, as you say, may  
24    become clear from the pleadings, but the two issues were  
25    whether or not indeed Mr. Conroy needed to become a  
26    beneficiary even to have the degree of benefit that he  
27    claimed he was entitled to under the service contract.

28 66 Q. These, of course, were going to be matters which were  
29    subsequently going to have to require resolution, either in  
30    the proceedings which were instituted between the parties  
31    or by a settlement, subsequently; isn't that right?

32 A. They had to be resolved, yes.

1 67 Q. They were identifiable issues, but as regards 1988 and in  
2 particular the month of June of 1988 from a practical point  
3 of view, Mr. Murphy and the Murphy interest had regained  
4 control of the day-to-day operations of their companies  
5 firstly; isn't that right?

6 A. They were, the Murphys were - the Murphy family had the  
7 trusts and the conditions under the control of friendly  
8 faces, if you can put it like that, yes.

9 68 Q. Right. And whilst Mr. Conroy had gone along with the  
10 resolutions which were passed by the companies which  
11 ensured his resignation from various positions both as  
12 trustees and as director of companies, he was to  
13 subsequently institute proceedings against the Murphy  
14 interests; isn't that so?

15 A. Yes, there followed a considerable number of proceedings in  
16 many different jurisdictions.

17 69 Q. Right. And the Murphy interests in turn, and by "Murphy  
18 interests" I include the various trusts involved,  
19 instituted their own proceedings with a view to rendering  
20 asunder the Lithe Trust under which Mr. Conroy and his  
21 family could potentially benefit from what the Murphys  
22 considered to be their own family trust; isn't that so?

23 A. That's correct.

24 70 Q. And I think it is the case that in a number of  
25 jurisdictions proceedings were instituted, both actions, by  
26 the Murphys against Conroys, actions by Conroys against  
27 Murphys and those jurisdictions included Jersey, Ireland,  
28 England and the Isle of Man, isn't that so, and Guernsey  
29 also?

30 A. I recall there being proceedings in Jersey, in which his  
31 trust company, or the trustee of his trust which I think  
32 was Perunico trustees sought relief. As I recall those

1 proceedings were stayed as a result of the action taken in  
2 the Isle of Man seeking a declaration as to the validity of  
3 the Lithe Trust. I recall proceedings in London that  
4 related to a number of matters, there was the Kallon  
5 proceedings in respect of the bridging loan that Mr. Conroy  
6 had had in relation to his flat. There were proceedings  
7 brought in relation to wrongful dismissal. There were  
8 Industrial Tribunal proceedings in respect of unfair  
9 dismissal. I recall mentioning the Isle of Man  
10 proceedings which were a declaration, seeking a declaration  
11 as to the validity of the Lithe Trust, that became the  
12 focus of those proceedings, and I recall proceedings in  
13 respect of, I think it was Tower House.

14 71 Q. Were there also Mareava proceedings whereby Mr. Conroy was  
15 seeking to freeze the assets of the Murphy companies in  
16 England on the basis that there was an ongoing dispersal of  
17 assets within the jurisdiction, which he claimed was  
18 engineered to possibly deny him his opportunity of  
19 executing any judgement he might receive in these  
20 proceedings?

21 A. I certainly recall, I certainly recall Mareava proceedings  
22 being contemplated.

23 72 Q. So there was considerable litigation between the parties,  
24 and could I suggest to you that extended from the period  
25 1988 until ultimate resolution in 1990, by settlement?

26 A. There was very extensive litigation, yes, during that  
27 period. Most of which, as I say, involved Mr. Conroy or  
28 his companies on the one hand, but not expressedly Mr.  
29 Murphy by that stage. I think it is an important point,  
30 that although my initial instructions and initial  
31 involvement had been, as it were, instigated by Mr. Murphy  
32 Snr. and the, wife and children as the potential

1 beneficiaries, it had changed after the June change in the  
2 directors of the company and change in trustees.

3 73 Q. Yes.

4 A. And the litigation itself was actually, as I recall, on  
5 behalf of the trustees and on behalf of the beneficiaries.

6 74 Q. Whilst the trustees and the beneficiaries were the  
7 Plaintiffs in their actions, Mr. Conroy was seeking to  
8 involve Mr. Murphy personally as Defendant in his actions,  
9 and I think that attempts were made to bring an application  
10 to remove Mr. Murphy as a Defendant to proceedings grounded  
11 on affidavits suggesting that he acted only in the capacity  
12 as a director of a company and therefore, since the company  
13 was already a Defendant it was inappropriate to sue him  
14 personally?

15 A. I think that's right. I certainly recall that in relation  
16 to the Perunico Trust action in Jersey. And certainly I  
17 recall those proceedings were stayed, I think my  
18 recollection is correct. They were stayed to follow-on  
19 from the decision in respect of the trust in the Isle of  
20 Man.

21 75 Q. Yes. But, the intention certainly on behalf of Mr. Murphy  
22 Snr. was to distance himself or to endeavor to distance  
23 himself personally from the litigation which was pending;  
24 isn't that so?

25 A. I don't think it is correct to say it was his intention to  
26 distance himself. The plain fact was that the locus  
27 standi of Mr. Murphy was somewhat limited in relation to  
28 the issues that were being determined by each court.  
29 There were matters, again it comes back to the  
30 understanding of what had occurred in 1968 when the trust  
31 was set up. As I said Mr. Murphy had divested himself of  
32 the assets. The assets were legally held by the

1 trustees. It was the trustees who, for instance entered  
2 into a service contract through one of the underlying  
3 companies. It may have been a decision by the directors  
4 of that company, but the contract was not when this case  
5 was, Conroy's contract was not a contract between Mr.  
6 Murphy in his personal capacity, but between the company.

7 76 Q. Right. Certainly that was a fairly major issue between  
8 the parties, because Mr. Conroy was alleging that Mr.  
9 Murphy personally was estopped by his conduct as the person  
10 who negotiated the service agreements personally with him,  
11 from distancing himself or from resiling from what had been  
12 agreed; isn't that right?

13 A. I remember that being put forward as an argument in the  
14 Isle of Man proceedings, but I don't recall it being  
15 particularly successful.

16 77 Q. Yes, I am not concerned at the moment with the success or  
17 otherwise of it, but merely trying to identify the issues  
18 that existed between the parties, and particularly the  
19 issues which existed which might affect Mr. Murphy  
20 personally; and would you agree with me that in the event  
21 that matters had gone Mr. Conroy's way, there would have  
22 been, if he was successful, a liability personally imposed  
23 on Mr. Murphy?

24 A. No.

25 78 Q. No?

26 A. I don't think that at the end of the day on the basis as I  
27 recall the litigation, there would have ever been a  
28 liability, personal liability on Mr. Murphy Snr..

29 79 Q. That would involve his defence to the claim against him  
30 succeeding, of course?

31 A. It would of course, but it was based, it was founded on  
32 very sound principles of trust and corporate law.

1 80 Q. I accept that that is your view and may well have been  
2 legal opinion that was canvassed at the time, but I am  
3 merely putting to you that as an issue it was a live issue;  
4 isn't that so?

5 A. It was certainly an issue that Mr. Conroy pursued with  
6 great vigor in both the pleadings and indeed the affidavit  
7 evidence that he filed, but then he put in an awful lot of  
8 matters that may not have been totally at all fours with  
9 the actual, either the pleaded case or indeed the factual  
10 circumstances.

11 81 Q. Yes. That issue, potential liability of their being a  
12 finding against Mr. Murphy personally, is a matter which  
13 remained live until the parties entered into a settlement  
14 on the 14th of May, 1990, when whereby a sum of £625,000  
15 was paid to the Conroy interest by the Murphy interests to  
16 resolve matters; isn't that so?

17 A. I can't recall that Mr. Murphy remained a party. If you -  
18 I mean I haven't seen these pleadings for several years  
19 now, so I can't say that he remained a party. Certainly  
20 even after the judgement in the Isle of Man on the  
21 preliminary point there were other issues that Mr. Conroy  
22 was still pursuing, but as I say, neither I nor the counsel  
23 that I had instructed in relation to the totality of this  
24 litigation, gave much credence to the point that Mr. Conroy  
25 was raising.

26 82 Q. Now, you have mentioned that whilst there were more legal  
27 issues identified between the parties which would require  
28 resolution, that Mr. Conroy had also included in the  
29 documentation filed in the proceedings, reference to  
30 extraneous matters, as far as you were concerned as a  
31 lawyer, matters dealing with alleged personal wrongdoing on  
32 the part of Mr. Murphy, in particular in relation to his



1 tax affairs in various jurisdictions; isn't that so?

2 A. Yes.

3 83 Q. And --

4 A. I would say that Mr. Conroy put in everything, including  
5 the kitchen sink.

6 84 Q. Yes.

7 A. In order to look to, to bolster a case that on the face of  
8 it was almost unanswerable.

9 85 Q. Yes.

10 A. And that is the point that was raised as a preliminary  
11 point in the Isle of Man proceedings, namely that the Lithe  
12 Trust actually breached the Isle of Man perpetuity period  
13 and was therefore an invalid appointment.

14 86 Q. And I think just, so we can dispose of the Lithe Trust  
15 possibly in a very short period; the contention advanced  
16 was that the draft of that document had erred in breaching  
17 the rule against perpetuity; isn't that right?

18 A. That's right. It had breached it by the birth of Prince  
19 William I think it was.

20 87 Q. Yes.

21 A. And that the effect of creating a sub trust out of the  
22 original sub trust without an identical perpetuity period  
23 meant that the sub trust could have continued beyond the  
24 lives in being or 80 years plus lives in being, that was  
25 ordained under the original '68 settlement. And under the  
26 Isle of Man law he was not able to take advantage of the  
27 wait and see provisions which would have allowed him to say  
28 "well, it may be potentially invalid, but let's wait and  
29 see what happens".

30 88 Q. And exactly the same infirmity applied to the Ashdale  
31 Trust, what was the earlier appointment out of it?

32 A. Absolutely. That's quite right. So in effect the, in

1 the entirety of the assets the two sub trusts, that is the  
2 Ashdale Trust and Lithe Trust, were both invalid and the  
3 entirety of the assets reverted to the original Armoy  
4 settlement.

5 89 Q. Yes. The draftsman apparently of the Lithe Trust had  
6 merely assumed that the Ashdale Trust was a valid recital,  
7 and had in effect copied that in preparing the Lithe Trust?

8 A. It would, I can't say, but he had followed also the recital  
9 of the perpetuity period from the Armoy Trust without  
10 taking into account the fact that there had been a further  
11 member of the Royal family born in the meantime.

12 90 Q. Right. So it wasn't particularly a matter that rested  
13 solely with the lawyers who had acted for Mr. Conroy, but  
14 it was an initial defect which was there and affected each  
15 of the trusts?

16 A. It was a fundamental defect in the validity of the Lithe  
17 Trust, and it was a defect that was actually pointed out  
18 both in correspondence and in meetings with Perunico  
19 trustees in an attempt to avoid the necessity for the Isle  
20 of Man proceedings.

21 91 Q. Yes. And whilst that legal defence to the existence of  
22 the Lithe Trust existed, it probably was not going to  
23 resolve the issues between the parties, merely to have had  
24 a pronouncement upon that; isn't that so?

25 A. You mean the preliminary point was going to --

26 92 Q. It wasn't going to finalise litigation in any sense between  
27 the parties, save it might have resolved the issue as to  
28 whether Mr. Conroy's entitlement could come through the  
29 Lithe Trust or through some other legal mechanism, be it  
30 estoppel or a claim for breach of contract or whatever;  
31 isn't that so?

32 A. I don't agree with that, I think it was much, much more

1 fundamental than that, because it opened the grounds for  
2 being able to say that the entirety of the proposal made by  
3 and proposed by Ernst and Whinney, that Mr. Conroy should  
4 obtain a benefit by the transfer of shares in the trust  
5 holding companies, which as I recall were a Greenane and  
6 General Agencies Limited, would fall also.

7 93 Q. Yes.

8 A. It would be very difficult for a trustee to say "I  
9 contemplated entering into this arrangement with somebody  
10 who was not a beneficiary of the trust. I put him in as a  
11 beneficiary of the trust but that trust is invalid", but  
12 the mechanism which was adopted by Mr. Conroy and he would  
13 say, with the consent of Mr. Murphy, was merely to  
14 implement an agreement which had been reached between them  
15 as individuals, in other words it was to provide a  
16 mechanism whereby he would be rewarded for his services.

17 94 Q. If that mechanism was found to be a mechanism which because  
18 of some unknown legal deficiency to the parties could not  
19 be implemented he would seek his relief in another way,  
20 isn't that so, and that was recognised by the Deemster  
21 Corrin, in his determination, where he indicated that the  
22 parties should institute proceedings either for breach of  
23 contract or for estoppel, and that he was prepared to  
24 determine that issue if the parties gave him jurisdiction  
25 to do so?

26 A. That's absolutely correct. That certainly formed part of  
27 his findings, but it wasn't an issue you have to remember,  
28 that was actually before him by way of evidence.

29 95 Q. I accept that.

30 A. And Deemster Corrin was a very kindly judge, a very able  
31 judge who always liked to encourage people to try and  
32 settle, and quite frequently incorporated in his judgements

1 comments of this nature, but I don't think in reality it  
2 actually changed the position as far as Mr. Conroy was  
3 concerned. The position as far as Mr. Conroy was, as far  
4 as Mr. Murphy was concerned rather, and the Murphy trusts  
5 were concerned. What had happened as a result of this  
6 judgement was that the Lithe Trust had been declared  
7 invalid and was out of the picture. What had also been  
8 accumulated over the same period of time of course, was the  
9 evidence that Mr. Conroy was himself not only substantially  
10 incompetent in relation to the matters that he undertook on  
11 behalf of the company, but pretty substantial evidence  
12 uncovered by the Murphy family and indeed by Mr. Gogarty  
13 that he hadn't even told the truth on his CV to get the job  
14 in the first place. So I think you have to take into  
15 account that at this stage it isn't just that the trust had  
16 gone. It isn't just that he is left with having to argue  
17 estoppel in relation to claiming the shares, but there is  
18 now a very great weight of evidence against him being the  
19 right person for that job in the first instance, and one  
20 could almost say, that he almost got the job under false  
21 pretences on the basis of qualifications that he didn't  
22 actually have. So far as Mr. Murphy was concerned, I have  
23 no doubt that he was overjoyed at the decision that was  
24 given by Deemster Corrin, regarded it, as indeed did I and  
25 counsel, as a milestone and if not the effective end of the  
26 proceedings, certainly the beginning of the end.

27 96 Q. Beginning of the end. Well, could I suggest that the  
28 effect of the judgement of Deemster Corrin was that parties  
29 undertook to commence proceedings in the United Kingdom,  
30 that was one of the findings or one of the suggestions made  
31 to the court in November of 1988?

32 A. I think that comes after the judgement.

1 97 Q. It was. The judgement was not a final judgement, the  
2 matter was adjourned sine die to allow matters to advance,  
3 if they could. It was re-entered in November and the  
4 parties undertook to commence proceedings in the UK to  
5 resolve the issue between them. Does that accord with your  
6 memory of events?

7 A. I recall something occurring in the Isle of Man  
8 proceedings, but I couldn't say that that exactly, if you  
9 can show me the document that says that that is the case I  
10 can help you?

11 98 Q. Can I suggest to you that the stage moved from the Isle of  
12 Man to the High Court in London where proceedings were  
13 instituted and various affidavits were filed by the  
14 parties?

15 A. There certainly were proceedings in the UK.

16 99 Q. Right. Now, whilst you considered it to be a milestone  
17 for the Deemster Corrin to have delivered himself of his  
18 preliminary findings, in May of 1988, I think you accept  
19 that the proceedings in fact continued on, albeit in other  
20 jurisdictions, until the resolution in 1990 of all matters  
21 between the parties, as I have mentioned in, on a written  
22 agreement where consideration was paid; isn't that so?

23 A. The proceedings certainly continued, yes, it wasn't the end  
24 of the battle, although as I say it was a milestone as far  
25 as the Murphys were concerned, and I believe as far as Mr.  
26 Conroy was concerned, because of the approaches that he  
27 made immediately after that judgement.

2 100 Q. Right. Now, in the booklet of documentation, I think you  
29 may have a booklet before you?

30 A. I have.

3 101 Q. At Tab 2.

32 .

1 MR. HERBERT: I wonder, Mr. Chairman, might this be an  
2 appropriate time to give the witness a rest? I know I  
3 don't represent him, as such.

4 .

5 CHAIRMAN: I think you are quite right, it has been a long  
6 and arduous morning. Shall we take 20 minutes? A quarter  
7 of an hour to 20 minutes.

8 .

9 MR. HERBERT: Thank you, Mr. Chairman. Thank you Mr.  
10 O'Neill.

11 .

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

14 .

15 CHAIRMAN: Now, Mr. O'Neill, back refreshed and  
16 rejuvenated.

17 .

1 102 Q. MR. O'NEILL: Mr. Oakley, before the break we were about  
19 to turn to some of the documents which are contained within  
20 the folder that you have in your possession. At Tab No.  
21 2, you will see that there are four affidavits, A, B, C, D  
22 and E. Sorry, A, B, C and D. If I could turn firstly to  
23 the first of those affidavits, you will see it was an  
24 affidavit sworn by Liam Anthony Conroy in the Isle of Man  
25 Chancery Division on the 20th of March of 1989, and you  
26 were mentioning a little earlier that Mr. Conroy had raised  
27 a number of what you called "extraneous matters" or  
28 "irrelevant matters" from a legal point of view, in his  
29 affidavits, and in effect he was trying to include or throw  
30 in the kitchen sink; isn't that it?

31 A. That's correct.

3 103 Q. If we could turn perhaps to paragraph six of that first

1 affidavit, and at the reference JMSE 21, sorry 28.1 at 176,  
2 you will see the numbering is in the top right hand corner  
3 of each page?

4 A. Paragraph six.

104 Q. Yes. You will find it at page JMSE 28.1 --

6 A. It starts over the page on 175.

105 Q. I don't think we need involve ourselves in the content on  
8 what is on 175, but if we move about halfway down 176, the  
9 deponent in that affidavit was there saying that Mr. Murphy  
10 had demanded total secrecy about his affairs,  
11 consequentially he could not use secretarial services of  
12 any kind or permit anything to writing, and the reason for  
13 this secrecy was Mr. Murphy's potential tax problems.

14 .

15 "Mr. Murphy informed me that he had evaded UK tax and  
16 exchange control in the early 70s and that he had deposited  
17 large sums of money in Switzerland in the name of two  
18 Liberian companies Bremen Inc. and Hammer and Spring Inc.  
19 he had also evaded Guernsey tax by having bank accounts in  
20 Eire in his name and UK accommodation addresses such as  
21 Goulton Road, Clapton, London and Dolphin Square, London.  
22 That he failed to declare his income from these sources.  
23 His residency in Eire and London was, he informed me, in  
24 breach of his residency status and one consequence of this  
25 was that there should be no communication between myself  
26 and Mr. Murphy, other than verbal. The ultimate source of  
27 this undisclosed income were his trusts, and as the terms  
28 of the trusts specifically excluded him from being a  
29 beneficiary he was concerned that should the Revenue become  
30 aware of his actions they would seek to take action against  
31 him and the trust".

32 .

1 In 7 then, the paragraph beneath that, he alleged that "Mr.  
2 Murphy, on a regular basis breached Irish exchange control  
3 laws by exporting monies from the Republic of Ireland  
4 without authorisation", and in paragraph 8 he goes on to  
5 deal with the Liberian companies which have already been  
6 named, and he says that the monies were moved and invested  
7 elsewhere without Mr. Murphy's knowledge and that he, Mr.  
8 Conroy, had appointed a firm of solicitors to act on his  
9 behalf and that he was in complete control of his financial  
10 affairs and was acknowledged as such by the accountants.

11 .

12 Now, you have indicated that these are matters strictly  
13 speaking which were not dealt with and not germane to the  
14 issues as pleaded; isn't that so?

15 A. Yes.

1 106 Q. But none the less, they were matters of considerable  
17 significance to Mr. Murphy, if it transpired that this  
18 information found itself in the hands of parties other than  
19 the parties to the litigation; isn't that so?

20 A. Concerning in what way? Sorry, I don't quite understand  
21 the question.

2 107 Q. If I can put it another way: If true, if any individual  
23 allegation here were true, it could have very serious  
24 consequences for Mr. Murphy from a Revenue point of view;  
25 isn't that so?

26 A. If any of these were not only true, but substantiated, then  
27 any individual could have a problem with the Revenue, if  
28 indeed that information came to the attention of the  
29 Revenue, but that was not the case in this instance.

3 108 Q. Yes.

31 A. It was not the case as far as Mr. Murphy is concerned.

32 And I think you have to look at the source of this



1 information, because here is Mr. Conroy, who even Mr.  
2 Gogarty has said and indeed was saying at the time, is not  
3 a truthful person, he has exaggerated, to put it at its  
4 most neutral, his qualifications, his experience. He  
5 lives in a fantasy world of being a British Airways pilot,  
6 living in a fantasy world of flying money in bags all over  
7 the world, which was a conclusion not only Mr. Murphy Snr.  
8 but also Mr. Gogarty came to, and if you are asking me the  
9 question, was Mr. Murphy concerned at the time of this  
10 particular affidavit? The answer is no, and it is no for a  
11 number of very specific reasons.

12 .  
13 No. 1, the Kallon proceedings had resulted in a summary  
14 judgement against Mr. Conroy in London. In the course of  
15 those proceedings Mr. Conroy had filed two inconsistent  
16 affidavits. The judgement was granted against Mr. Conroy  
17 on the basis of a comment from the judge to the effect that  
18 his evidence was unreliable. This was an extraneous  
19 matter in this, after that really had no relevance to the  
20 proceedings from a man for whom there was beginning to be,  
21 shall we say an accumulation of evidence from a number of  
22 sources, including Mr. Gogarty, that he was untruthful,  
23 that he exaggerated, that he lived in a Walter Mitty world,  
24 that he was delusional, and here also was a judgement by  
25 the court in London saying he is untruthful.

26 .  
27 So that at the time this came in, other than the ordinary  
28 perfectly natural concern that any individual would have  
29 to, say anybody reporting these sort of facts to the  
30 Revenue is likely to instigate or may instigate an inquiry  
31 which I wouldn't particularly want because it is irksome,  
32 it is irritating from the way Revenue authorities operate

1 around the world, but he wasn't concerned about it because  
2 he was quite clear to me that there wasn't a jap of truth  
3 in any of them.

109 Q. Right. I take it you would agree with me, that if any of  
5 the matters which are set out in those paragraphs were in  
6 fact true, it would present a serious or could present a  
7 serious Revenue problem for Mr. Murphy, isn't that so, if  
8 true? I am premising my question by specifically asking  
9 whether or not as a lawyer you would agree that if the  
10 allegations which were made here are true, or any of them  
11 are true, that they will or could present a serious Revenue  
12 problem?

13 A. Undoubtedly. They could present a problem with the  
14 Revenue if indeed they were true. But apart from the fact  
15 that Mr. Conroy himself had already been established as a  
16 man who was unreliable, there wasn't a shred of evidence  
17 other than his word. If you look at the affidavit, the  
18 suggestion that any of these were indeed true, and they  
19 certainly were hotly disputed by Mr. Murphy at the time as  
20 being in any way, shape or form, true at all.

2 110 Q. Right. So --

22 .

23 CHAIRMAN: The question you are being asked is, if they  
24 are independently capable of being established to be true,  
25 not through Mr. Murphy, not through Mr. Gogarty or anything  
26 like that, but independently, that they would constitute a  
27 problem, they would constitute a cause of inquiry by the  
28 Revenue? Do you accept that as a proposition?

29 A. They may well do.

30 .

31 CHAIRMAN: I am premising it, like counsel, on the  
32 premises that independently, they can be established, one

1 or more or all of them can be established, it doesn't  
2 matter how many?  
3 A. Sorry, I don't think counsel put it to me if they were  
4 independently verified. What he put to me was assume that  
5 what Mr. Conroy put in his affidavit were true, would cause  
6 a problem, and the answer to that is yes, it could cause a  
7 problem, but that Mr. Murphy very expressedly --  
8 .

9 CHAIRMAN: I follow that, but you are accepting --  
10 A. I don't think it was suggested that you were talking in  
11 terms of any independent evidence for this.  
12 .

1 111 Q. MR. O'NEILL: The question, Mr. Oakley, was put to you on  
14 the basis that, the premise was that they were true and if  
15 they were true, would consequences follow that would be  
16 adverse to Mr. Murphy's interests and his relationship with  
17 the Revenue in any of the jurisdictions concerned here?

18 A. They could well be, but of course you cannot divorce the  
19 fact that the allegations are made by Mr. Conroy, and the  
20 circumstances of Mr. Conroy himself.

2 112 Q. Yes. But I don't think that's germane to the particular  
22 question that you were asked, but we needn't dwell on it  
23 for the moment?

24 A. Okay.

2 113 Q. You received this affidavit, I take it, in your capacity as  
26 a solicitor to Mr. Murphy, and having considered it, you  
27 then took instructions from Mr. Murphy in relation to the  
28 specific allegations which were contained within it; isn't  
29 that so?

30 A. I think so, yes.

3 114 Q. So as to allow you to address the issues which are here and  
32 to explore, if necessary, the veracity or otherwise of what

1 was being alleged against your client; isn't that right?

2 A. Yes.

115 Q. And I take it that having looked at paragraphs six to ten  
4 inclusive, it involved you sitting down with Mr. Murphy and  
5 saying "Look, this is what's being alleged against you. As  
6 a lawyer I will say to you that it is not strictly germane  
7 to the issues in the pleadings, but none the less I should  
8 advise you in relation to these allegations, because they  
9 are current and they may well have adverse implications if  
10 they are true". Isn't that right?

11 A. There was a more extensive process than that. Once the  
12 affidavit was in, you will recall that I had already  
13 instructed counsel at this stage, Laurence Cowen QC and  
14 Julian Walker who was his Junior, and the affidavit was  
15 discussed as to not only were these issues germane, but how  
16 they should be handled, and yes, in effect I proofed Mr.  
17 Murphy, to obtain a reply from him.

1 116 Q. Yes. And did you obtain a reply from him and was that a  
19 written reply or was it by means of an interview conducted  
20 by yourself with him on a face-to-face business basis or  
21 how was it done?

22 A. I can't recall. I certainly recall discussing it with Mr.  
23 Murphy following the discussion with counsel, almost  
24 certainly I think it would have been face-to-face, probably  
25 in Guernsey, and I think I may have even drafted an  
26 affidavit for him to approve himself, which of course would  
27 be subject to the final approval of counsel.

2 117 Q. Yes. So can we take it, and it would appear to follow  
29 from what you say, that you would have gone through this  
30 affidavit with him either by sending him a copy and asking  
31 specific questions in your letter to him, or by meeting him  
32 face-to-face and going through the affidavit and asking,

1 you would have dealt with each of the issues?

2 A. I would have dealt with the issues, but in the context that  
3 I have described to you.

118 Q. Yes.

5 A. Mr. Conroy had already established a reputation with both  
6 Mr. Murphy Snr. and indeed with Mr. Gogarty, of not being  
7 truthful, of not being reliable and that fact had actually  
8 come out in the Kallon proceedings, which I think actually  
9 predate this, I may be wrong, but certainly came out at,  
10 all around the same time.

1 119 Q. The issues are clearly identified there, the specific  
12 allegations, if we could deal with them as they appear in  
13 the paragraph six there. Firstly, he said that Mr. Murphy  
14 had evaded UK income tax and exchange control in the early  
15 70s. Now, presumably Mr. Murphy told you that that was  
16 untrue, that he hadn't evaded exchange control or income  
17 tax in the early 70s; is that right?

18 A. Yes.

1 120 Q. And had deposited large sums of money in Switzerland. Did  
20 you establish whether in fact he had deposited large sums  
21 of money in Switzerland?

22 A. I established that Mr. Conroy had deposited sums of money  
23 from the trusts in Switzerland with no reference to Mr.  
24 Murphy whatsoever. In fact part of the task that I had  
25 was to recover monies from Switzerland from the Jola  
26 Foundation.

2 121 Q. The reference here seems to be dealing with the early 70s?

28 A. I established nothing in relation to the early 70s at  
29 all. The only fund that was found in Switzerland was  
30 actually done by Mr. Conroy.

3 122 Q. Right. So there were, you established, sums of money in  
32 Switzerland. Did you establish whether they had been in

1 the name of two Liberian registered companies Bremen

2 Incorporated and Hammer and Spring Incorporated?

3 A. I can't recall now whether they were in the names of those

4 particular companies, what I can recall is they were in the

5 name of the Jola Foundation, held by Dr. Hinteregger at

6 Bank Invest and Dr. Hinteregger refunded them upon my

7 request.

123 Q. This was a specific allegation, and I take it, it would

9 advance the matter considerably to be able to establish

10 that each of these allegations was untrue, and as a lawyer

11 and discussing the matter with your client you would have

12 specifically asked him, "Do you know of Bremen Inc.? Do

13 you know of Hammer and Spring Incorporated? Tell me about

14 them". Isn't that so?

15 A. I can't recall whether I asked him expressedly, I asked him

16 to deal with the issues in each of the paragraphs of the

17 affidavit.

1 124 Q. Well, why would you have not asked him to be specific about

19 the detail of whether or not he had deposited large sums of

20 money in Switzerland in the name of two Liberian registered

21 companies, Bremen Incorporated and Hammer and Spring

22 Incorporated, because if he positively stated that that was

23 not the case it would have considerably advanced your

24 ability to contest the allegation here; isn't that right?

25 A. I don't think it particularly advanced my ability to

26 contest the allegation. The allegations were denied

27 emphatically by Mr. Murphy from the beginning to the end.

2 125 Q. Well, in the course of your inquiry you told us that you

29 established that at a later stage, presumably some time

30 after the collapse of IFTC, the Jola Foundation was set up

31 by Mr. Conroy and Dr. Hinteregger and Mr. Devine; isn't

32 that so?

1 A. I established that the Jola Foundation was set up on, by  
2 Mr. Conroy.

126 Q. Yes.

4 A. Ostensibly so he claimed for the benefit of himself and Mr.  
5 Murphy Snr.

127 Q. Do you know what year that was?

7 A. I can't recall the year.

128 Q. You do know that Mr. Conroy did not become financially  
9 involved, if I might put it that way, with Mr. Murphy until  
10 1982; isn't that right?

11 A. I can't recall the expressed year that he became Chief  
12 Executive.

1 129 Q. He was a part-time executive from 1982 until 1986 when he  
14 became Chief Executive, and the service agreement was  
15 re-negotiated at that time?

16 A. That's as far as executive responsibilities for the company  
17 is concerned, but I seem to recall, and you may correct me  
18 if I am wrong, that he did have some involvement with Mr.  
19 Murphy in relation to the aftermath of the collapse of  
20 IFTC.

2 130 Q. Yes, and I think we know that the IFTC collapse was in 1981  
22 and the, when the settlement monies were paid?

23 A. The collapse I think was 1978 as I recall.

2 131 Q. I will give you the date after lunch if I may, I don't want  
25 to mislead you on it, but it was not until 1981 or '82 that  
26 the professional negligence indemnifiers for Midgely  
27 Snelling paid a sum of money to Mr. Murphy, which in turn,  
28 according to Mr. Conroy, was invested on his behalf in the  
29 Jola Foundation. Does that accord with your recollection  
30 of events?

31 A. You may be correct, but I can't say for certain.

3 132 Q. I see. Well, can you assist as to whether or not Bremen

1 Incorporated was an investor in IFTC Bank before the  
2 collapse?

3 A. No, I can't.

133 Q. No. Or when it was that Bremen Inc. was incorporated?

5 A. No, I can't.

134 Q. Or when Hammer and Spring was incorporated?

7 A. No, I can't.

135 Q. Can you recollect that those firms, those companies had  
9 been involved in a Spanish land investment undertaking when  
10 Mr. Murphy --.

11 A. No, I can't.

1 136 Q. So as of the date of your taking instructions from Mr.  
13 Murphy, following upon this affidavit having been sworn on  
14 the 20th of March of 1989, you received a blanket denial  
15 from Mr. Murphy that there was any truth in the suggestion  
16 that he had taken money out of the UK in the 70s, that he  
17 had deposited it in Switzerland in these two Liberian  
18 registered companies; isn't that the position?

19 A. There certainly was a blanket denial. I am saying to you I  
20 can't recall the detail of what he told me at that time in  
21 relation to these particular companies. I certainly don't  
22 recall him being involved in any of those transactions that  
23 you have highlighted.

2 137 Q. Yes. I will return to this, Mr. Oakley, when I am dealing  
25 with your own notes in relation to a subsequent affidavit  
26 which was prepared, but they weren't in relation to this  
27 affidavit, though essentially the same allegation was being  
28 made in that affidavit.

29 .

30 If I can move then to the next allegation, and that was  
31 that he had evaded Guernsey tax by having bank accounts in  
32 Eire in his name and UK accommodation addresses. Now, I



1 take it that from your knowledge of offshore banking and  
2 Revenue matters, that if one is a resident in Guernsey and  
3 one has deposit income accruing in another jurisdiction one  
4 is liable to pay Guernsey tax in --

5 A. If the tax regime of that country requires you to pay  
6 deposits on it. Yes.

138 Q. Do you know what the position is in Guernsey?

8 A. I have no knowledge of Guernsey tax whatsoever.

139 Q. Right. But there was a specific allegation being made in  
10 that affidavit that there was an evasion of Guernsey tax by  
11 the mechanism of having funds on deposit in another  
12 jurisdiction and not declaring. I take it that you looked  
13 into that with Mr. Murphy and you established firstly,  
14 whether or not if there had been offshore monies I think  
15 they would have attracted a tax liability in Guernsey and  
16 secondly, whether there was in fact money in Eire on  
17 deposit?

18 A. As I recall, Mr. Murphy said that the allegation was  
19 untrue.

2 140 Q. It would seem to follow from that, that Mr. Murphy having  
21 told you that his residence was in Guernsey from 1976  
22 onwards, was in effect telling you that he did not have  
23 large deposits earning interest in Ireland from that date  
24 onwards which had not been declared to the Guernsey  
25 residence?

26 A. That isn't the only conclusion that can be drawn from his  
27 statement.

2 141 Q. Yes. Well, I take it that the purposes of your  
29 questioning him was to establish whether or not there was  
30 any truth in these particular allegations, and you would  
31 have asked whatever range of questions it was which would  
32 allow you to conclude that this was a baseless allegation;

1 isn't that so?

2 A. That's correct.

142 Q. And you were satisfied having gone through that process of

4 questioning, whether it be writing or orally, that that was

5 the position, that this was a baseless allegation?

6 A. The point you are putting to me was that Mr. Murphy must be

7 implicit in Mr. Murphy's response that he didn't have

8 substantial sums in the Republic.

143 Q. On deposit?

10 A. On deposit in banks in the republic. It could be just as

11 well that he did in fact disclose them to the Guernsey

12 authorities and pay tax on them. I don't know because Mr.

13 Murphy's answer to me was there was no substance in the

14 allegation.

1 144 Q. Would you have considered that to be an adequate response

16 to the allegation which was that he evaded Guernsey tax by

17 having bank accounts in Eire in his own name with

18 accommodation addresses in the UK?

19 A. Yes, in the circumstances of the proceedings we are dealing

20 with and the issues that are relevant on those pleadings.

2 145 Q. Well, we have already, I think, agreed that these were not

22 relevant matters?

23 A. That's right.

2 146 Q. But they were none the less contained within the affidavits

25 filed, and attempts to remove them had been unsuccessful;

26 isn't that right?

27 A. I don't recall that, but if you point me to the document I

28 will look at it and help.

2 147 Q. In any event, the relevance or otherwise to an issue in

30 pleadings was not the issue as to whether or not you had to

31 take instructions to deal with these matters, because these

32 were extraneous to the issues in the proceedings but could

1 have very significant consequences if true for your client;

2 isn't that right?

3 A. The issue really was one of the fact that they were  
4 extraneous to the issues that really needed to be dealt  
5 with, and I gave them the appropriate attention, given that  
6 they were extraneous. All I needed at this stage, rather  
7 than end - what I didn't want to do, neither did counsel,  
8 was to end up in a slanging match of saying "I can explain  
9 all of these extraneous issues in an affidavit".

10 Counsel's advice was "Cut it short, cut it dead. It is  
11 untrue and it is irrelevant. That's a submission to be  
12 made in the hearings, but it is irrelevant, ignore it".

1 148 Q. But your obligation, I suggest, to your client, went beyond  
14 merely advising him as to what defences he should raise in  
15 pleadings, you also were advising him on the totality of  
16 any liabilities that he may have stemming as a consequence  
17 of these proceedings; isn't that so?

18 A. No, not in relation to these proceedings, because you have  
19 to remember I am not acting for Mr. Murphy in these  
20 proceedings, I am not advising Mr. Murphy. I am seeking  
21 his cooperation as a witness.

2 149 Q. Does it follow from that, that you are saying that you did  
23 not address as a concern, the liability or potential  
24 liability which Mr. Murphy may have to the Inland Revenue  
25 at any stage?

26 A. No, it is not correct to say that, but it is correct to say  
27 that others more well versed in tax matters than I am  
28 actually considered these in detail with him at that time.

2 150 Q. But their consideration of it is a consideration of his  
30 tax, potential tax liability; isn't that right?

31 A. The consideration of, on the basis of Mr. Murphy's reply to  
32 the issues raised by Mr. Conroy in his affidavit, and the

1 effect that it would have upon him personally, that's  
2 number one, and any effect that there may be as a result of  
3 Mr. Murphy's personal position on the trusts, which was a  
4 very important consideration. Now, I am concerned with  
5 the trusts. These proceedings are in the Isle of Man,  
6 they are in relation to declarations being sought by the  
7 trustees. That was the founding petition, as you see from  
8 the very last matter in the heading, and my concern was  
9 merely to establish any effect that Mr. Murphy's personal  
10 tax position could have upon the trusts themselves, and  
11 there was none. There was no effect because Mr. Murphy  
12 divested himself of these assets in 1968, from then on they  
13 had been run by trustees, competent or incompetent  
14 according to the evidence and your point of view, and any  
15 of these allegations made, may have been made and may have  
16 affected Mr. Murphy personally, if indeed they were true,  
17 but they had no effect upon either the trusts or the  
18 underlying companies of the trusts in any decisions that  
19 they made.

2 151 Q. Well, in the light of that, if we move on to consider the  
21 other allegations which were made against him. Firstly,  
22 that his residence in Eire and London was in breach of his  
23 residency status firstly. Secondly, that the ultimate  
24 source of his undisclosed income were his trusts, and as  
25 the terms of the trusts specifically excluded him from  
26 being a beneficiary he was concerned that should a Revenue  
27 become aware of his actions they would seek to take action  
28 against him and the trusts.

29 .

30 Now, it is the case, is it not, Mr. Oakley, that if the  
31 trusts were viewed by the Revenue to be a sham, to be in  
32 effect, a device whereby the nominal ownership and benefits

1 of the property would be vested in trustees, but where the  
2 actual benefit and income for example, was being received  
3 by him personally and undeclared, that would in fact sunder  
4 or render apart the trusts from a Revenue point of view,  
5 isn't that so, if that conclusion was reached?

6 A. It is always possible for the Revenue to, in the UK, to  
7 attack the validity of the trust on the bases that it is a  
8 sham, if there is evidence to that effect.

152 Q. Yes. Now, so that if these contentions were correct it  
10 affected not only Mr. Murphy but also the trusts, isn't  
11 that right? And the contentions that I am referring to  
12 specifically are firstly the breach of residence, because  
13 if it was the case that he was a UK resident in 1968, at  
14 the time of the disposition of his assets to the trust,  
15 that is a matter which would have Revenue implications in  
16 the UK; isn't that so?

17 A. I don't think so, no.

1 153 Q. You don't think that his disposition in 1968 --

19 A. No, there are a great number of residents in the UK who  
20 create Isle of Man trusts and perfectly validly so.

2 154 Q. Yes. Can you explain whether there was a change in the  
22 law in 1965 in the UK which had the effect of rendering a  
23 tax liability on a disposition after that date by a UK  
24 resident?

25 A. No, I am not aware of that at all.

2 155 Q. I see. Do you know of any reason why it was that Mr.  
27 Murphy gave an address care of a hotel in the, in Bermuda  
28 as his address when he set up this trust?

29 A. No, because I wasn't involved in the setting up of the  
30 trust.

3 156 Q. Right. But in principle, could I suggest to you that  
32 Revenue implications can follow from a disposition of

1 capital from an individual to a trust; isn't that right?

2 A. Can you repeat the question?

157 Q. Revenue implications, the imposition of tax can arise in  
4 the event that an individual is disposing his assets to a  
5 trust, whether be capital acquisition tax, gift tax,  
6 whatever it might be; isn't that right?

7 A. Not of necessity no, because there are provisions relating  
8 to the seven year rule for instance, that I don't think  
9 would give rise to any Revenue consequences of disposition.

1 158 Q. Well, in relation to the liability to pay income tax,  
11 obviously residency is a crucial issue in that regard?

12 A. For Mr. Murphy?

1 159 Q. For Mr. Murphy?

14 A. But not for the trusts.

1 160 Q. If we deal with Mr. Murphy's potential liability here on a  
16 residency issue, Mr. Murphy was entitled not to make a  
17 return of income in jurisdictions in which he was not  
18 resident; isn't that so? That's a basic rule.

19 A. As a basic rule, yes I would accept that.

2 161 Q. And correspondingly, if he was resident in a particular  
21 jurisdiction within its definitions, and if he was in  
22 receipt of income, he was obliged to make a return to the  
23 Revenue authorities?

24 A. The corollary must be the case.

2 162 Q. Yes. And we know that Mr. Murphy tells us that he did not  
26 make returns from certainly 1970 onwards on the basis that  
27 he was not resident in either Ireland or England; isn't  
28 that so?

29 A. Well, I don't think, I don't know what Mr. Murphy has told  
30 you.

3 163 Q. He hasn't acquainted you with that since the evidence that  
32 was given by him in Guernsey to the Tribunal?

1 A. I haven't spoken to Mr. Murphy since he first contacted me  
2 and asked me to contact the solicitors involved on his  
3 behalf in this Tribunal.

164 Q. And you haven't read the transcript then of what his  
5 evidence is?

6 A. I have skimmed through the transcript, but I haven't read  
7 it in any detail.

165 Q. Well, by that do you mean you were furnished with a copy of  
9 the transcript but that you cannot remember the specific  
10 detail?

11 A. I looked through the transcript, basically to look for  
12 references under your wonderful index system for myself,  
13 that's all I looked up.

1 166 Q. On the assumption that Mr. Murphy Snr. has not made returns  
15 of income in either Ireland or England since 1970, it  
16 follows that if he is, was found to be resident in either  
17 jurisdiction it could expose him to financial consequences  
18 from the Revenue; isn't that so?

19 A. I would expect that to be the case.

2 167 Q. And since that specific allegation is being made against  
21 him in this first affidavit, it was a matter which you  
22 would have addressed with him at the time, to establish  
23 precisely what his resident status was; isn't that right?

24 A. I established with him at the time that he didn't infringe  
25 the residency status of being resident in Guernsey by any  
26 trips that he made either to the UK or to Ireland.

2 168 Q. But his residency in Guernsey commenced in 1976?

28 A. As far as I am aware, yes.

2 169 Q. Yes. And did you establish where he had been resident  
30 from the time of the setting up of the trusts in 1968?

31 A. I was aware that he had spent some time abroad, I think in  
32 the Caribbean and that he had also spent some time, I think

00056

1 also in Bermuda I seem to recall, that he had been away  
2 from the UK and Ireland for a considerable period of time,  
3 before taking up residency in Guernsey.

170 Q. Well --

5 A. But as I say, these were not - I wasn't interested in Mr.  
6 Murphy's personal tax position. It had no relevance in  
7 relation to a trust that was created in 1968 in respect of  
8 which I had no involvement. And in terms of this  
9 particular allegation, it is not specific, you know, he  
10 informed his residency in Ireland - he informed me his  
11 residency in Eire and London was in breach of his residency  
12 status, what does that mean? It is a very non-specific  
13 allegation, and in those circumstances against the  
14 background of what was known about Mr. Conroy, I was  
15 satisfied with Mr. Murphy's response. I take great care to  
16 make sure I don't breach the conditions, that I'm allowed  
17 to travel to either Ireland or the UK.

1 171 Q. Well, I take it, Mr. Oakley, as a solicitor, your own  
19 client's case is one, of course, that you must accept, but  
20 you must be prudent to carry out checks to validate it,  
21 where possible. You would be failing in your duty if you  
22 were merely to accept at face value your own client's case  
23 as opposed to the opposition case merely because it was  
24 your client who was telling you one thing and therefore you  
25 must disbelieve the other client, isn't that, the other  
26 party; isn't that right?

27 A. This was not my client telling me.

2 172 Q. This was Mr. Murphy telling you that he was not in breach  
29 of the residency requirement; isn't that right?

30 A. Which affects him personally in respect of his tax  
31 position.

3 173 Q. Yes.



1 A. But doesn't affect the trusts, so it is not my duty to  
2 continue to inquire against the background of a very vague  
3 allegation which is, his residency in Eire and in London  
4 was, he informed me, in breach of his residency status, no  
5 expressed description of why or how or in what  
6 circumstances.

174 Q. Well, could I suggest that as somebody who is expert in  
8 offshore and tax matters, you know exactly what the  
9 residency requirements applicable in 1970 onward were.  
10 Could I suggest to you that a person who was resident for  
11 income tax purposes in either Ireland or England at that  
12 time, if they had available to them a place of abode and if  
13 they stayed there, albeit for a night, isn't that the test  
14 at the time?

15 A. I can't remember to be perfectly honest. I remember that  
16 vaguely, but I couldn't be certain as to the dates, but  
17 again that doesn't affect the trusts. You have to  
18 remember my client in this instance is the trust, the  
19 trustees and the trust company striker, and what I am  
20 concerned with is dealing with not extraneous kitchen sink  
21 allegations that have no bearing on the relevance of the  
22 proceedings as they are pleaded but on those germane  
23 issues. The germane issue is, is the Lithe Trust invalid?

2 175 Q. The ultimate reality here, surely, Mr. Oakley; that you had  
25 a multi millionaire client, Mr. Murphy, who had set up  
26 trusts whilst there were legal entities that were distinct  
27 from him, namely the trust and various companies, he was  
28 the principal behind all this who would be your  
29 dissatisfied client, I suggest, if you had served the  
30 interests of all the companies and the trusts but had left  
31 him exposed to a Revenue inquiry; isn't that the reality?

32 A. The reality is rather similar to what occurred in relation

1 to Ernst and Whinney. No one would ever ignore a settlor,  
2 provided his wishes do not infringe any of the legal  
3 requirements for setting up the trust in the first place,  
4 and that includes the very point that you made about  
5 influence and degree of control which could push it to be a  
6 sham, the very point you made to me.

7 .

8 But there is a dividing line between acting responsibly on  
9 behalf of a client, as in this case being the trustee,  
10 with, as I saw my position on this occasion, the support of  
11 beneficiaries and acting on behalf of Mr. Murphy in a  
12 personal capacity in relation to his tax matters, I didn't  
13 deal with those. They were not germane to the case that I  
14 had to present on behalf of the trustees.

1 176 Q. Well, are you saying then that you didn't really turn your  
16 mind to establishing whether or not these particular  
17 allegations could factually be refuted, you merely noted  
18 Mr. Murphy's rejection of them without further inquiry?

19 A. No. As I explained to you, tactically as a result of  
20 advice with counsel, I assume, Mr. Chairman, I am entitled  
21 to talk about matters that are in effect privileged?

22 .

23 CHAIRMAN: I would have thought so. You can clarify the  
24 situation to make clear your point, I see no reason why  
25 not.

26 A. Basically, in relation to these allegations it was  
27 counsel's advice not to get into a slanging match with Mr.  
28 Conroy in relation to issues that were extraneous; deal  
29 with them shortly and succinctly by way of denial, that's  
30 the line I adopted in the light of counsel's advice. I  
31 did not go into extensive discussions to prove every  
32 conceivable point that Mr. Murphy, who was not my client,

1 was actually putting forward.

177 Q. Having said that, you equally I take it, satisfied

3 yourself, that you made appropriate inquiry and you were

4 satisfied from the response that you received from Mr.

5 Murphy that they were baseless and groundless allegations;

6 isn't that right?

7 A. Mr. Murphy told me that they were baseless and without

8 foundation, even on the somewhat vague allegations that are

9 made, particularly in relation to residency and so on and

10 so forth, by a man who had already been identified by Mr.

11 Murphy Snr. and Mr. Gogarty as being unreliable and

12 untrustworthy and delusional, and who had been identified

13 by the court in London as being untruthful.

14 .

15 Now, against that background I didn't waste an awful lot of

16 time in going through these sort of allegations when it was

17 not germane to the issue that I really had to deal with,

18 which was much more importantly the validity of the Lithe

19 Trust.

2 178 Q. Yes. Could I put it to you then, that it follows from

21 your instruction from Mr. Murphy, whether it be in his

22 capacity as the settlor or otherwise, that you were

23 satisfied that there had been no removal of funds out of

24 the UK in the early 70s by him?

25 A. I was satisfied with the answers that I was given by Mr.

26 Murphy in relation to these issues in the context in which

27 I have described to you.

2 179 Q. Yes. Well, I am asking you now specifically whether you

29 were satisfied from the responses that you had been given

30 that he had not taken money out of the UK in the 1970s?

31 A. I have given you the response. I didn't check

32 specifically to establish whether there was documentary

1 evidence to show one way or the other whether he had done  
2 this. I was satisfied on the explanation that he gave and  
3 left the fine detail of examining whether Mr., any of these  
4 allegations had any impact on Mr. Murphy personally to  
5 others.

180 Q. And I am not asking you, Mr. Oakley, whether or not you  
7 conducted a search to establish if there was documentary  
8 evidence to substantiate the allegation or to refute it? I  
9 merely want you to indicate to the Tribunal whether you  
10 were satisfied having spoken to your client whether it was  
11 in the capacity as the settlor or any other capacity, that  
12 there had been, as far as you were concerned, no transfer  
13 of funds out of the UK in the 1970s to Switzerland?

14 A. I put each of the allegations that you have described in  
15 this affidavit to Mr. Murphy, who gave me a denial that any  
16 of them had any substance or proof in them.

1 181 Q. Now, this affidavit was filed in March of 1989 in the Isle  
18 of Man proceedings, which were current, as we know, in May  
19 when the Deemster made his initial response. Subsequently  
20 I think he delivered the reasons for his judgement in June  
21 and the matter was re-entered in November for mention, and  
22 in November it was reference to their being proceedings  
23 commenced in the High Court in the UK, and matters  
24 effectively did not progress much further in the Isle of  
25 Man proceedings; isn't that right?

26 A. No, they didn't proceed. As I said, the judgement in my  
27 view, given by Deemster Corrin, in - did you say "June"? I  
28 think it was June of 1998, was a very serious blow to Mr.  
29 Conroy. It was a serious blow, because at the time he was  
30 accumulating judgements that were not helpful to him.  
31 They weren't helpful both in the fact that they dealt with  
32 his veracity, they dealt with issues in relation to the

1 validity of the trust, and whilst he may have all sorts of  
2 arguments, I took the view, as indeed did counsel, that  
3 once we had the succession of judgements, that is the  
4 preliminary point in the Isle of Man and the Kallon  
5 judgement in the UK, I think it was the UK proceedings,  
6 that really Mr. Conroy had a great deal of difficulty in  
7 pursuing any further matters by way of litigation and being  
8 believed in them.

182 Q. Just for completeness, Mr. Oakley, at Tab 1, which contains  
10 your statement you will see that at the conclusion of your  
11 statement, the next document in sequence is the reasons for  
12 the judgement which were delivered by the Deemster Corrin,  
13 do you see that?

14 A. Yes.

1 183 Q. And it is an extensive judgement, and I don't believe that  
16 it is necessary to go through it, and accept it in its  
17 entirety, but if you move to the last page of it, at JMSE  
18 28.1.250, you will see what effectively took place at that  
19 point and I quote: "During the hearing of this petition,  
20 counsel agreed that the Court should on this occasion limit  
21 itself to ruling upon the validity or otherwise of the  
22 Ashdale and Lithe Trusts. The Court therefore rules both  
23 trusts to be void. There is, however, a further plea by  
24 Mr. Corlette in this matter, which is set out in paragraph  
25 6 of the answer of the Conroy notice parties, dated 20th of  
26 January, 1989; namely that the petitioners are estopped by  
27 their conduct and representation of themselves and others  
28 from denying the validity of the Ashdale and Lithe Trusts  
29 for the reasons set out in paragraphs 8 to 32 thereof.  
30 Mr. Wright indicates that there was a motion before the  
31 Court to strike out the plea of estoppel as being untenable  
32 in law, and consequentially this petition of the Armo

1 trustees for various directions and declarations will,  
2 apart from the declarations already made in this judgement,  
3 be adjourned sine die pending the judgement of Mr. Wright's  
4 motion"?

5 A. That's right. What effectively was being argued, even  
6 though it was invalid and the courts ruled "you are  
7 estopped from denying its invalidity", which is a problem  
8 of significance that - I don't know, in law, from all my  
9 years of experience.

1 184 Q. Certainly I think you will probably agree with me, that  
11 that judgement on its face did not indicate that matters  
12 had been brought to finality, though as you say it was a  
13 significant step forward from your point of view; isn't  
14 that so?

15 A. It wasn't just a significant step forward, it was a  
16 significant step forward both in relation to the trusts and  
17 in relation to Mr. Conroy --

1 185 Q. Yes.

19 A. -- when taken in conjunction with what happened in the  
20 Kallon case. I think that was recognised by the fact that  
21 not too long afterwards Mr. Conroy's reaction was to try  
22 and negotiate a settlement through intermediaries.

2 186 Q. And I take it that that is something which you are well  
24 experienced, in questioning parties seeking to resolve  
25 their conflict by settlement rather than trust, perhaps  
26 what they see to be the vagaries of the legal system to  
27 deliver justice to them, nothing unusual about the question  
28 of settlement of the matter, is there?

29 A. There is nothing unusual about it. And whilst we as  
30 lawyers make an awful lot of money out of litigation, and  
31 it is horrendously expensive in virtually any civilized  
32 jurisdiction in the world, I have always taken a pragmatic

1 approach with clients, and I have always wherever possible,  
2 reviewed the possibility of settlement with clients.

187 Q. So I mean as regards the suggestion that merely because  
4 somebody indicated the potential of their being a  
5 settlement as being indicative of weakness, could I suggest  
6 that that doesn't necessarily follow, but indicates a  
7 certain pragmatism on the part of those wishing to resolve  
8 their differences?

9 A. I think actually it was the timing and the content that was  
10 significantly important. It was the timing, the timing  
11 was that it came after this judgement and after the Kallon  
12 judgement. It was the fact that he utilised an  
13 intermediary not involved in any of the proceedings at all,  
14 and that the primary argument that he put forward was the  
15 threats contained in his affidavit.

1 188 Q. Yes. But in fact there wasn't a settlement of the matter  
17 until almost a year later?

18 A. No, because Mr. Murphy's attitude when I reported to him  
19 that this approach had been made was somewhat brusque, "I  
20 am not going to be threatened by Conroy, I am not  
21 interested in a settlement at this stage, I have him on the  
22 run".

2 189 Q. He did, in fact, achieve a settlement at the end of the  
24 day, in a substantial sum; isn't that right?

25 A. He did, absolutely, but for very specific circumstances.

2 190 Q. Yes.

27 A. And very specific circumstances that related to the  
28 position of the family, of the litigation and of the  
29 company and the trusts many years, many months on, because  
30 the settlement I think was not until the following year.  
31 It followed various pieces of litigation that were pursued  
32 in the meantime and there were a number of very sound

1 reasons that resulted in that settlement; and they were  
2 that firstly Mr. Conroy by then was clearly a man of straw,  
3 we were aware that at the time he had got into a number of  
4 financial difficulties with an investment he had made in a  
5 commercial radio station in Dublin, he had the Kallon  
6 judgement against him, in which he had to pay something in  
7 the region of £100,000. I was aware that he had very  
8 significant, very substantial legal fees outstanding, he  
9 effectively had reached the position where even if the  
10 trustees had pursued their litigation against him, they  
11 were going to tie themselves up in litigation for many,  
12 many years with very little chance of recovering very  
13 substantial costs that had been accumulated on both  
14 sides.

15 .

16 I don't think it would be a wild exaggeration to say Mr.  
17 Conroy's costs at this stage must have been around  
18 £200,000, and that's based upon the fact that the trusts  
19 were very similar and the settlement came about largely  
20 because the trusts had achieved the main objectives.

21 .

22 The main objectives were to make absolutely certain that  
23 the Conroy family were outside of the trusts in their  
24 entirety, and that no part of the trust assets would be  
25 dissolved down to Mr. Conroy through the 2 percent share  
26 interest that Ernst and Whinney had granted him.

27 .

28 And the final matters, which strictly speaking was not an  
29 issue as far as the trustees necessarily were concerned,  
30 but it just shows a sort of humanitarian approach, was the  
31 fact that both Mr. Murphy, and indeed Mrs. Murphy, who was  
32 actually ill at this time, were very, very tired of the



1 litigation. They had reached a stage where they were  
2 simply fed up with going on and on and on in multi  
3 jurisdictional litigation.

191 Q. Was one of the other concerns exercised at that time the  
5 fact that there were these allegations extant about Mr.  
6 Murphy's alleged breaches of the Revenue, and that this was  
7 a matter which should be resolved in the settlement  
8 specifically?

9 A. No, not in - it was not a concern that engendered the  
10 settlement, because Mr. Murphy didn't actually want to have  
11 a settlement.

1 192 Q. Right.

13 A. Mr. Murphy was actually quite adamant that he wanted  
14 revenge against Mr. Conroy for the way he had behaved, and  
15 the allegations that had been made, and it took quite a  
16 degree of persuasion on my part to persuade him that there  
17 was a commercial view to be taken, particularly having  
18 regard to what had been achieved by the litigation in  
19 recovering trust assets which would otherwise have been  
20 under the control of Mr. Conroy. I have to say there were  
21 a number of times when we vacillated between "go away and  
22 negotiate" and "no, I don't want you to negotiate".

23 MR. O'NEILL: It is just one o'clock, Sir. I think we  
24 should --.

25 CHAIRMAN: Certainly. We will resume at a quarter past  
26 two or two o'clock on the basis that this is a witness from  
27 London.

28 .

29 MR. O'NEILL: It is suggested 2.15, My Lord.

30 .

31 CHAIRMAN: Certainly, I wanted to assist the witness if he  
32 could get back this evening, I don't know whether he can or

1 not.

2 THE HEARING THEN ADJOURNED FOR LUNCH.

3 .

4 .

5 THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

6 .

7 CHRISTOPHER OAKLEY RETURNS TO THE WITNESS-BOX AND CONTINUES

8 TO BE EXAMINED BY MR. O'NEILL AS FOLLOWS:

9 .

1 193 Q. MR. O'NEILL: Mr. Oakley, may I now refer you to the

11 second document at tab number 2, that is Tab 2B; it is an

12 affidavit in proceedings entitled "Kallon Limited verses

13 Liam Anthony Conroy" you should find that at tab 2B?

14 A. I have it.

1 194 Q. Yes. The pagination for that document is at the top

16 right-hand corner and it starts at JMSE 30/1. Now, in

17 relation to the Kallon proceedings, these are proceedings,

18 obviously, where Mr. Conroy was a Defendant. The plaintiff

19 company was a company called Kallon which was a company

20 within the Murphy Group of companies; isn't that right?

21 A. Yes, I recall, yes.

2 195 Q. Yes; and this was a claim being brought by the company for

23 summary judgement in respect of a loan which had been made

24 by Kallon to Mr. Conroy in the sum of £100,000; isn't that

25 so?

26 A. That's correct.

2 196 Q. And that, I believe, was a loan which was granted to enable

28 Mr. Conroy to acquire a flat in London which he was using

29 whilst he was a director, a Chief Executive of the Murphy

30 Group of companies; isn't that so?

31 A. I think it was actually to acquire his Bedford Mansions

32 flat.

197 Q. Yes; but he had been, prior to moving to England, he had  
2 been based in Ireland until such time as he was appointed  
3 to the position of part-time Chief Executive of the Murphy  
4 Group of companies and that involved him moving to England  
5 to perform that function; isn't that right?

6 A. I can't recall whether he was in England or where he was at  
7 the time that he took up his post, I am afraid.

198 Q. Right. I think we will see from the body of the affidavit,  
9 he says that the reason he moved to England was to fulfill  
10 the obligations that he had assumed as executive.

11 .

12 In any event the issue in those proceedings, as I  
13 understand, was not that Mr. Conroy was disputing that he  
14 owed the sum of £100,000 to Kallon, but the terms upon  
15 which the loan had been advanced and in particular the  
16 contention that the money was payable on demand; isn't that  
17 so?

18 A. I haven't, obviously, had a chance to read through the  
19 affidavit, but my recollection is that it was the fact that  
20 the loan had been made as a bridging loan. Mr. Conroy, as  
21 I recall, had made an application to a bank for loan  
22 finance to acquire his own property and that this loan was  
23 purely for the purposes of bridging between the completion  
24 date for the purchase and the availability of his actual  
25 mortgage from, I think it was Barclays Bank; you can  
26 correct me if I am wrong, and that the issue was that he  
27 had got a loan from Barclay's Bank, it had been paid and he  
28 hadn't discharged the bridging loan. Now as I say, I  
29 haven't read the affidavit but that is my recollection of  
30 what was involved.

3 199 Q. Fine. In any event the point which I want to address with  
32 you, is in relation to the content of the affidavit at

1 pages JMSE 30/2 to JMSE 30/3. At paragraph 4 of the  
2 affidavit, the Deponent says:  
3 .  
4 "From 1981 I spent much of my time assisting Mr. Murphy,  
5 Joseph Murphy with his business affairs. In 1983 this  
6 relationship was based on a more formal footing at with  
7 Murphy's request when I agreed to become Chief Executive of  
8 his trading companies. I was based in Ireland at this time  
9 but in 1985 Mr. Murphy asked me to move to London. It was  
10 orally agreed that I would keep my flat in Dublin since I  
11 still needed to devote about a 5th of my time to his  
12 business in Ireland and he would provide a flat for my use  
13 in London. The flat which he provided was Flat 15, 60  
14 Great Russell Street, London WC1.  
15 .  
16 Paragraph 5: This arrangement proved to be fraught with  
17 problems. The flat was beneficially owned by Mr. Murphy  
18 but in order not to compromise his status as a non-resident  
19 for tax purposes, the title was registered in the name of  
20 Casson. A further reason for using a pseudonym was that  
21 the running costs of the flat borne by a trust company, for  
22 which Mr. Murphy for tax reasons not to allowed to benefit,  
23 accordingly he demanded complete secrecy as to his  
24 ownership use and flat. He identified himself to all  
25 callers as Casson and my wife and myself had to identify  
26 ourselves as friends of Casson. He also told us that we  
27 were not to receive visitors or to give the telephone  
28 number to friends.  
29 .  
30 6: My wife and I found these conditions impossible. I  
31 used to speak by telephone with Mr. Murphy almost everyday  
32 day. In the course of our conversations it was agreed that

1 I would buy a flat in London and since I had moved at his  
2 request he would lend me £100,000 out of one of his  
3 companies towards the purchase. I knew that Kallon had  
4 cash reserves in the bank. And so I said that I could  
5 borrow the money from Kallon and pay interest at the same  
6 rate as the bank would have paid to Kallon. As far as I  
7 can recall the bank in question was the National  
8 Westminster Bank. I am certain that there was no  
9 discussion about security and no agreement to provide  
10 security. I am also certain that the loan was not agreed  
11 to be payable for demand no date for payment was fixed or  
12 even discussed at that time. Although in my own mind I  
13 expected to repay the loan after about four or five years  
14 principally out of consultancy fees of £22,000 a year of  
15 which I was receiving from one of the trusts set up for and  
16 on behalf of Mr. Murphy".

17 .

18 Now in relation to that Mr. Oakley, firstly does it bring  
19 back to mind the fact that this was a contention being made  
20 by Mr. Conroy at the time of the swearing of this  
21 affidavit, which was in May of 1989?

22 A. Sorry, Mr. Murphy -- Mr. Conroy is clearly making a  
23 contention in an affidavit because the affidavit is his.

2 200 Q. Yes; and you were the solicitor on record for Kallon in  
25 those proceedings; isn't that right?

26 A. Absolutely, yes.

2 201 Q. Therefore I am asking you whether or not, having read this  
28 extract of the affidavit whether it brings back to your  
29 mind the fact that this was a contention being advanced by  
30 Mr. Conroy at that time?

31 A. Well, it is contained in an affidavit that was sworn at  
32 that time. Yes, of course I accept that it was a

1 contention that he put forward.

202 Q. Right?

3 A. As I say --.

203 Q. I am not asking you now whether or not you accept it as  
5 being accurate?

6 A. I understand that.

204 Q. For the purpose of my question I merely wish to establish  
8 firstly you were aware of this affidavit and its contents?

9 A. I am aware of this affidavit, if you let me finish, I am  
10 also aware that he swore a second affidavit in the same  
11 proceedings which was inconsistent with this. This I take  
12 to be the first affidavit. It is not referred to anything  
13 other than the first affidavit. And there is a second  
14 affidavit which gives an inconsistent version of the events  
15 with this affidavit, and I think there is one in between  
16 that may be sworn either by myself or by Mr. Murphy.

1 205 Q. Whilst that may well certainly be the case Mr. Oakley, the  
18 Tribunal does not have possession of these documents. It  
19 has asked for all relevant documents, it has not received  
20 them. I understand that the reason for that is that your  
21 firm Pickering Kenyon has been dissolved and the  
22 documentation which accompanied this particular affidavit  
23 is no longer available to you, so I do not intend to dwell  
24 on affidavits which are not before us but rather to deal  
25 with matters which we can deal with on the basis of  
26 documentation which has been supplied?

27 A. But I think it is important to recognise that there are two  
28 affidavits and I go back to what I said this morning, there  
29 were two affidavits filed by Mr. Conroy before the courts  
30 and there was an answer by or on behalf of the Murphy  
31 parties.

3 206 Q. Yes?

1 A. As a result there was a judgement and the judgement was  
2 that Mr. Conroy's affidavit was inconsistent and unreliable  
3 or untruthful, I can't remember the exact word that was  
4 used, and judgement was given in favour of Kallon.

207 Q. Right. I am asking you now Mr. Oakley about whether or not  
6 you brought the content of this affidavit to the attention  
7 of Mr. Murphy and whether or not he took issue, as far as  
8 you know, with the contention here that the flat at 15 -  
9 Flat 1560 Great Russell Street was beneficially owned by  
10 Mr. Murphy?

11 A. I don't recall specifically raising that as an issue with  
12 Mr. Murphy. I recall not in relation to this affidavit, I  
13 recall at some stage there being a discussion in relation  
14 to the flat, which from the name Casson I believe is  
15 actually owned by his sister-in-law, a relative anyway who  
16 acquired the right to buy it and did actually buy it with  
17 some financial assistance from Mr. Murphy.

1 208 Q. Yes; and what is being contended for here is that it was a  
19 device to disguise the fact that Mr. Murphy had in fact a  
20 place of abode in the United Kingdom during a crucial  
21 period when to do so would have compromised his tax  
22 status. So that clearly the content and the import of this  
23 particular averment in the affidavit of Mr. Conroy, whether  
24 it be true or otherwise; do you agree that was what was  
25 being contended for?

26 A. I don't notice that he refers to there being the particular  
27 point that you make as to his tax status.

2 209 Q. Well, could you --.

29 A. Yes; yes, the first paragraph compromised his status as a  
30 non-resident for tax purposes.

3 210 Q. The flat was beneficially owned by Mr. Murphy, but in order  
32 not to compromise his status as a non-resident for tax

1 purposes, title was registered in the name of Casson; isn't  
2 that right?

3 A. It was not, as far as I was aware from the explanation that  
4 at some stage was given to me by Mr. Murphy.

211 Q. Right. I just want to establish that he gave you an  
6 explanation which was that this was untrue; is that right?

7 A. This particular point was untrue. And yet again, typical  
8 of Mr. Conroy, of no relevance to the issue which was pure  
9 and simple. Was there a bridging loan? Was it repayable  
10 on demand? Have you out stayed your welcome in not  
11 repaying it? To which the judge replied "yes, yes, yes"  
12 judgement for Kallon on the basis that Mr. Conroy's  
13 evidence was, as I say, either unreliable or untruthful. I  
14 can't remember the exact words used.

1 212 Q. Yes?

16 A. That I think is very significant.

1 213 Q. For the purpose of the inquiry that is being conducted at  
18 the present. You will appreciate that the issues are not  
19 identical Mr. Oakley, to those which would have been  
20 considered in an action for debt based upon the loans?

21 A. Oh, I don't know Mr. O'Neill. If you get to the stage in  
22 any proceedings where someone starts being untruthful, I  
23 think it is a little difficult to start believing them in  
24 other proceedings.

2 214 Q. Yes?

26 A. And I come back to the point, all the way through, Mr.  
27 Gogarty was of the view that Mr. Conroy was unreliable. He  
28 was unreliable both in the business sense and actually I  
29 can't remember the word I think he used the word "devious"  
30 or "dishonest" or words to that effect, so it wasn't a  
31 finding that Mr. Murphy had come to, or conclusion Mr.  
32 Murphy come to, it was one that Mr. Gogarty shared with



1 him.

215 Q. Yes. Now, the next affidavit that I will refer you to is

3 at Tab 3, sorry tab C, that is 2C and it is the very next

4 document, you see that?

5 A. Yes.

216 Q. Again that is an affidavit which was sworn by Mr. Conroy.

7 On this occasion it was an affidavit of the 13th of March

8 of 1990.

9 A. Sorry at tab C, behind tab C.

1 217 Q. Behind tab C?

11 A. I have got an affidavit "received Guernsey 12/10/99" is

12 that the one? Because I haven't got a front page, it is

13 halfway down starts "paragraph 6: Helmdale Limited".

1 218 Q. Yes, exactly the reference to "receive Guernsey 12/10/99"

15 is to the fact that this document was received from the

16 High Court office in London by the Tribunal by fax on that

17 date?

18 A. All right.

1 219 Q. You will see that on page reference JMSE.40/29 the date

20 upon which that affidavit was sworn and it is given as the

21 13th of March 1990?

22 A. Yes.

2 220 Q. You see that?

24 A. I can see that.

2 221 Q. Now, this was an affidavit sworn by Mr. Conroy in

26 proceedings in which he is, in effect, the of or one of the

27 Plaintiffs in the proceedings, I don't think it is material

28 that he necessarily is a plaintiff as opposed to a

29 defendant, but it is merely to indicate that there were

30 proceedings in which he was a plaintiff. There were other

31 proceedings in which he was a Defendant, and in this one as

32 you will see from the recital of the Defendants on the

1 front of the page there, the Defendants were Helmdale,  
2 Armoy, Ashdale, David Jeremiah Barry Naylor and Striker  
3 Limited, although there isn't a reference to the  
4 Plaintiffs?

5 A. We are missing the front page.

222 Q. We are, yes, this is as it was received from the High Court  
7 office in London?

8 A. And it is clear that that is by way of counterclaim so you  
9 have got a list of parties who are plaintiffs and  
10 Defendants to the claim.

1 223 Q. Exactly?

12 A. And there has been a pleading which has been filed by way  
13 of counterclaim.

1 224 Q. Exactly. Now, could I refer you to in that affidavit to  
15 paragraphs 72 onward. They appear at JMSE 40.2/25 is the  
16 page number?

17 A. Paragraph?

1 225 Q. It is paragraph 72, but I think perhaps for completeness if  
19 you go back to 71 which is on 40.2/24; do you see that?

20 Under the headings "Mareva relief"?

21 A. Yes.

2 226 Q. Here the Deponent is saying as follows: "As evident from  
23 the matters set up above, I believe that I and the other  
24 Plaintiffs to the counterclaim have very substantial claims  
25 against the Defendants to the counterclaim, not the least  
26 of these are claims for 10% of the shares of Greenane and  
27 General Agencies. As I have already explained these are  
28 the holding companies for the various UK and Irish  
29 subsidiary companies within the Murphy Group. I believe  
30 that the companies are in the de facto control of Mr.  
31 Murphy. I am concerned that once Mr. Murphy has notice of  
32 this claim he will take steps to transfer the assets of

1 these companies into other companies not falling within the  
2 Army or Ashdale Trusts or otherwise, to take steps to  
3 reduce the assets held by these companies thereby reducing  
4 the value of the shares which are sought therein".

5 .

6 The nature of his contention and claim on the mareva side  
7 is set out in that paragraph; isn't that right?

8 A. Yes. He makes two points, that he has a substantial claim  
9 to 10%.

1 227 Q. Yes?

11 A. And that for reasons which I assume he is now going to  
12 expand, that he believes there is some likelihood that  
13 those assets will be moved out of the trust by Mr. Murphy.

1 228 Q. Yes. He goes on then in 72 to say:

15 .

16 "That this belief on my part is held to some degree as a  
17 result of the attempts made by Mr. Murphy through his  
18 companies at some considerable effort and expense to  
19 prevent my claims being enforced by, amongst other things,  
20 by putting up groundless complaints against me. Another  
21 significant reason for my holding this belief arises from  
22 my knowledge that Mr. Murphy has previously engaged in  
23 conduct which is both deceitful and unlawful in order to  
24 evade payment of tax and I would refer to the following  
25 matters".

26 .

27 Then in 73 he says: "I have mentioned that Mr. Murphy  
28 became resident in Guernsey in 1976 and indeed he still  
29 resides there. He has always demanded from me total  
30 secrecy concerning his affairs because of his tax  
31 problems. As a result I was not able to use secretarial  
32 services of any kind and could not commit anything to

1 writing. In 1981 Mr. Murphy told me and I believe, that he  
2 had evaded UK income tax and breached exchange control  
3 regulations in the early seventies by depositing large sums  
4 of money, being undeclared money, in bank accounts in  
5 Switzerland in the names of two Liberian registered  
6 companies, namely Bremen Incorporated and Hammer and Spring  
7 Incorporated.

8 .  
9 74: When Mr. Murphy moved to Guernsey he avoided tax in  
10 Guernsey by the use of bank accounts in Ireland and further  
11 by use of accommodation addresses in England. This  
12 accommodation was situated at 15 Goulton Road, Clapton,  
13 London. He also used an accommodation address at Dolphin  
14 Square, London. Mr. Murphy also had residences in both  
15 Ireland and London this breached his residency status. In  
16 order that the Inland Revenue should not discover this  
17 breach of status, Mr. Murphy asked that my communications  
18 with him should be verbal and not written.

19 .  
20 75: Other means of tax evasion devised by Mr. Murphy  
21 included (1) the setting up of Lichtenstein Foundation in  
22 Vaduz, known as the Jola Foundation administered in  
23 Zurich. The funds in this foundation were transferred on  
24 Mr. Murphy's instruction from the account of the 9th  
25 plaintiff in the United Kingdom. Substantial income  
26 accrued to Mr. Murphy from this foundation and to my  
27 knowledge has not been declared to the relevant revenue  
28 authorities. There is no produced and shown to me marked  
29 LAC 12 a bundle of documents relating to this foundation.  
30 The references to John Murphy in the documents are  
31 references to the First Named Defendant of the  
32 counterclaim.

1 .  
2 (2) Arranging from time to time for large sums of cash to  
3 be withdrawn from the account of Murphy Limited to be taken  
4 over to Dublin and then deposited in accounts in his and  
5 his wife's name, in two banks in Dublin. One being with  
6 Allied Irish Finances and the other being the Commercial  
7 Bank. I am aware of these transactions since I assisted in  
8 the transfers of at least ten occasions. The amounts  
9 removed on any one occasion could be as much as £30,000.

10 .  
11 76: I would add that on a number of occasions between 1979  
12 and 1983 Mr. Murphy caused money to be transferred from  
13 Ireland to other jurisdictions in breach of Irish exchange  
14 control laws. He not only transferred cash himself but  
15 instructed the secretary of JMSE, Mr. Gerard Downes, to  
16 produce false invoices to conceal the movement of funds to  
17 Mr. Murphy's relatives in breach of exchange control"

18 .  
19 Now again he is reiterating I suppose, what was said in  
20 perhaps less detail in the Isle of Man proceedings and  
21 giving more detail or fleshing out those allegations in  
22 this particular affidavit; isn't that so?

23 A. Well the allegations certainly mirror that which he  
24 referred to me. First that you referred to me first this  
25 morning I don't know to what extent they flesh it out,  
26 perhaps could you draw my attention to where there is a  
27 difference or where it is fleshed out? It seems to me to  
28 be a mirror repeat of the allegations again.

2 229 Q. First he refers to a bundle of documents as LAC 12 which  
30 are documents which he says substantiate what he is  
31 saying.

32 A. They refer to John Murphy.

230 Q. They say that the John Murphy in the documents are  
2 references to the first Defendant in the counter claim, who  
3 I take it is Mr. Murphy. Joseph Murphy?

4 A. But he has a brother called John Murphy.

231 Q. But he wasn't a party to these proceedings?

6 A. No, but I don't know what documents he is referring to.

232 Q. Just to clear up the last point you made. The reference to  
8 John Murphy in the documents are references to the first  
9 Defendant in the counter claim?

10 A. Yes, he says that.

1 233 Q. That is what he says?

12 A. That is what he says, but without the documents no one can  
13 be sure that that is indeed accurate against the background  
14 where Mr. Murphy does have a brother called John.

1 234 Q. Fine. You however, uniquely in the room here, are a person  
16 who saw those documents, had possession of those documents  
17 at a point in time?

18 A. I saw the exhibits to the affidavit, yes.

1 235 Q. Yes; and when did you last see them and can you indicate to  
20 the Tribunal where they are and if they can be made  
21 available?

22 A. Well, the exhibits should be, if you obtained this from the  
23 Court as I understand it, is that right.

2 236 Q. That is so?

25 A. Well, that is where they should be because the affidavit  
26 and the exhibits are filed at the court and the last time  
27 to answer your question, the last time I saw these was  
28 probably at or around the time that the affidavit was  
29 delivered at or around the time I instructed counsel to  
30 answer the same, or whatever I did at that time.

3 237 Q. The High Court office in London has indicated to the  
32 Tribunal that the practice is that whilst affidavits are

1 retained on file, exhibits are returned to the solicitors  
2 in question, that is the inevitable practice on the  
3 Chancery side, and is in fact mirrored by our practice in  
4 Ireland?

5 A. It may well be. It may well be.

238 Q. In any event, again in this affidavit the essential  
7 complaint or allegation which had been made in the 1989  
8 affidavit in the Isle of Man is now being made in the  
9 proceedings in the High Court in London in 1990; isn't that  
10 so?

11 A. Yes.

1 239 Q. Right.

13 A. Substantially the same allegation from the same person with  
14 the same judgements.

1 240 Q. Yes; again presumably a matter upon which you took your  
16 client's instructions and by your client, I include Mr.  
17 Joseph Murphy Snr. as well as any other party?

18 A. Yes. In fact you have my notes I notice from reading  
19 through at lunchtime.

2 241 Q. Yes?

21 A. You have, you have at paragraph F I think it is.

2 242 Q. Tab 3?

23 A. Yes, Tab 3 is it? I have got -- yes, okay.

2 243 Q. We will move to that. I just want to deal firstly with the  
25 allegations as they were framed in the various documents  
26 and we will then deal with the response of Mr. Murphy  
27 through yourself and your own analysis of circumstances  
28 which is contained at Tab3.

29 .

30 The next affidavit I would refer you to is at Tab 2 and it  
31 is behind the Tab D, and that again is an affidavit of Mr.  
32 Liam Conroy and this affidavit is sworn on the 25th of

1 April of 1990.

2 A. That's right. It is in reply to three affidavits that have  
3 been filed.

244 Q. Yes?

5 A. One sworn by Mr. Murphy on the 20th of April, 1990. And  
6 two draft affidavits of Mr. James, sorry a draft affidavits  
7 of Mr. James, just Mr. James, it actually doesn't quite  
8 read like that.

245 Q. Um. Now, at paragraph 14, which is at page JMSE 40.4.

10 .

11 MR. HERBERT: I wonder, Mr. Chairman, would My Friend  
12 permit me, I am little lost as regards these documents. As  
13 I understood it, Mr. Chairman, that the allegation that you  
14 wished to investigate arising from the Liam Conroy  
15 affidavits and the reason why you permitted them to be  
16 introduced into evidence before this Tribunal, was to deal  
17 with an allegation by Mr. James Martin Gogarty, that on the  
18 3rd of July of 1989, Mr. Murphy Snr. panicked and altered a  
19 state of affairs which had been arranged up to then; namely  
20 a joint venture, and had directed a sale on that date  
21 because of the issues arising in Liam Conroy affidavits.

22 .

23 The dates of these two documents sir, which appear to have  
24 been introduced in Guernsey are both dated in March of 1990  
25 and in April of 1990, and of course at that stage sir, you  
26 will also remember that indeed the contract for sale had  
27 been signed for the North Dublin lands.

28 .

29 Now where I do not in anyway want to shorten anything Mr.  
30 O'Neill may want to produce to you, or indeed I don't want  
31 to truncate his examination in anyway, or to interfere in  
32 anyway with his own conduct of his examination, I am just



1 wondering, to what assistance, on the basis upon which the  
2 Conroy affidavit was admitted; of what assistance these two  
3 particular affidavits may be to us? Whatever about the  
4 affidavit in May of 1989, and the other affidavit which has  
5 been opened to you? That is just the point I want to make,  
6 Mr. Chairman. I am at a loss to know how they help you  
7 having regard to the basis upon which the Liam Conroy  
8 affidavit was introduced. I hope I am not being difficult  
9 or obstructive, but I am just a little puzzled.

10 .

11 MR. O'NEILL: I hope to be able to explain the matter to  
12 My Friend. You will recollect, Sir, that in the  
13 cross-examination of Mr. Gogarty it was put to Mr. Gogarty  
14 that there had been a substantial victory achieved by the  
15 Murphy interests in the Isle of Man proceedings, on a date  
16 in May of 1989, the effect of that being that it was  
17 suggested that Mr. Murphy could not have had any concerns  
18 after that date which might have motivated him into taking  
19 any particular step for any particular reason.

20 .

21 This documentation which is being referred to now is part  
22 of a series of affidavits from which it appears clear that  
23 there was an ongoing level of complaint or allegation being  
24 made against Mr. Murphy by Mr. Conroy, notwithstanding the  
25 Deemster Corrin's decision in May 1989, and that it was a  
26 matter which was being seriously considered, and was of  
27 concern to Mr. Murphy as late as and possibly after the  
28 settlement of the issue with Mr. Conroy in May of 1990.

29 .

30 In other words, that this was an ongoing concern that it  
31 extended throughout the period which is of particular  
32 concern to the Tribunal, and that is the events in early

1 June 1989.  
2 .  
3 There is then a collateral issue as to credibility which  
4 arises from this, because not only is Gogarty's credibility  
5 being questioned in the Tribunal by those who are, who have  
6 who have cross-examined him, but also the credibility of  
7 Mr. Murphy himself has been questioned, and that  
8 credibility could be influenced and certainly a  
9 consideration of his credit can be considered in the light  
10 of the averments which were made against him by Mr. Conroy  
11 and the responses which he made to those averments. For  
12 example, if it is established that in furnishing replying  
13 affidavits to the matters which are contained here, he is  
14 demonstrably wrong in what he has said, it certainly brings  
15 his credibility into issue; and it is on that basis that  
16 these affidavits are being opened and I take it My Friend  
17 accepts in those circumstances that it is appropriate and  
18 material that they be opened to you and that the witness be  
19 questioned on their content?

20 .  
21 MR. HERBERT: Thanks Mr. O'Neill. Sir, on the question of  
22 credibility, I leave that entirely to your ruling as to  
23 whether you think it is relevant. I can totally see an  
24 argument can be properly addressed to you that it is  
25 relevant and if you consider it, I am not going to make any  
26 argument on that.

27 .  
28 But on the question Sir, of the decision to sell the lands,  
29 Mr. Gogarty was most specific as to the day and the date  
30 when that happened, and you will see in the transcript that  
31 it is given as the 3rd of July of 1989 and these affidavits  
32 are subsequent to that date, and indeed are subsequent to

1 the actual contracts themselves. But as regards the  
2 question of Mr. Murphy's credibility, Sir, I couldn't argue  
3 that you may consider them relevant and if you so rule I  
4 don't make any objection.

5 .

6 CHAIRMAN: On my view they are relevant to the credibility  
7 issue. They may be peripherally relevant to the other  
8 matter, although in fact I have very considerable doubt as  
9 to whether there is any issue as to whether or not the  
10 sale, I am talking about the sale of the lands --

11 .

12 MR. HERBERT: Yes, Sir.

13 .

14 CHAIRMAN: Was not an authorised act.

15 .

16 MR. HERBERT: Yes.

17 .

18 CHAIRMAN: I just have very little doubt about that. It  
19 is a different aspect of that which is the issue, in fact,  
20 is whether or not Mr. Gogarty was authorised, actually made  
21 a payment; whether it was an authorised payment, and the  
22 motivation, those to me appear to be the net, the real  
23 kernel issues. Obviously the question of whether or not it  
24 was an authorised sale is, I suppose, fundamental to the  
25 whole thing, but I think the situation is fairly clear in  
26 that regard.

27 .

28 MR. HERBERT: It was Mr. Gogarty's explanation sir, to the  
29 "qui bono" point when we made the point of how could we  
30 have possibly hoped to benefit by paying money or  
31 authorising --

32 .

1 CHAIRMAN: I am not going into that now. That is an issue  
2 to be considered.

3 .

4 MR. HERBERT: Yes, if I may, Sir?

5 .

6 CHAIRMAN: That is the central issue in my opinion. .

7 .

8 MR. HERBERT: If you rule sir, it will help you on the  
9 question of credit so-be-it, I accept your ruling.

10 .

11 CHAIRMAN: Thank you.

1 246 Q. MR. O'NEILL: The last of these affidavits, that are in  
13 Tab 2 is the affidavit at Tab D that I am referring you to,  
14 which is the affidavit of the 25th of April of 1990, and  
15 again it is an affidavit which was sworn in the High Court  
16 proceedings in the United Kingdom; isn't that right?

17 A. Yes.

1 247 Q. And we will see from reference JMSE.4.1, that it also is a  
19 document which was received in Guernsey on the 12th of the  
20 10th 1999 from the High Court office in London. You see  
21 that on the top corner there?

22 A. Yes, but as I say it is in reply to an affidavit sworn by  
23 Mr. Murphy on the 20th of April which I don't find here.  
24 Am I missing something? Because it seems to me that if you  
25 are going to make sense of these affidavits you start with  
26 what Mr. Conroy alleged. You then have an affidavit in  
27 between which is the reply from Mr. Murphy, sworn on the  
28 20th of April, 1990, and a draft affidavit from Mr. Ronald  
29 Barry James and then you have Mr. Murphy, Mr. Conroy's  
30 reply to that affidavit. We are missing something to put  
31 the complete picture I think.

32 .

1 MR. HERBERT: Again Sir, if My Friend, if you would permit  
2 me? If My Friend would permit me? I think Mr. Oakley may  
3 be able to help you on this but we asked Mr. Oakley; at the  
4 time you yourself wished these documents to be obtained  
5 from the Chancery Division in England, we asked Mr. Oakley  
6 could he obtain them for us as being the former solicitor  
7 involved in these proceedings and my understanding and, no  
8 doubt Mr. Oakley will tell you now under oath, was that  
9 they declined to make them available to him. I may be  
10 wrong in this, but perhaps Mr. Oakley can clarify this.

11 .

1 248 Q. MR. O'NEILL: Well yes, just on that last point Mr.  
13 Oakley, is it the case that you ever made a formal  
14 application to the High Court in London for these  
15 documents?

16 A. Yes.

1 249 Q. Can you indicate to the Tribunal when it is that that was  
18 made and in what format because certainly --

19 A. It was made by the ordinary bespeak form for the file to be  
20 produced, and there were two aspects that occurred as a  
21 result of that request. I made the request as a former  
22 partner in the firm of Pickering Kenyon as the solicitors  
23 on record, and my request was denied because I could not  
24 demonstrate any current involvement with the parties. I  
25 was no longer currently instructed by the parties in this  
26 litigation, that was the first point.

27 .

28 And secondly, the response to my London agents was that  
29 they, the file had been deleted. Now, that is something of  
30 a curiosity because it seems to me that firstly you managed  
31 to obtain copies of these documents without ever being a  
32 party to the litigation at all. And my certain

1 understanding from the way the High Court in London  
2 operates is that these are no longer regarded as public  
3 record documents to be handed out to anybody. You have to  
4 demonstrate an involvement.

250 Q. Mr. Chairman --

6 .

7 MR. HERBERT: Mr. Chairman, could I beg liberty of you and  
8 My Friend to enable with Mr. Fitzsimons permission and Mr.  
9 Oakley's permission, to enable you to perhaps to hear the  
10 text of a letter written by Mr. Oakley to Mr. Fitzsimons,  
11 dated the 18th of October of 1999 in relation to his  
12 attempts to obtain these documents from the Court in London  
13 and how little success he enjoyed?

14 .

15 CHAIRMAN: Frankly whatever, what success he enjoyed or  
16 didn't enjoy, may or might have a relevance, at this moment  
17 in time I have a document here which is from a perfectly  
18 valid source; the registry of the documents in London, and  
19 frankly that is good enough for me, that it is a genuine  
20 document.

21 .

22 MR. HERBERT: Oh, yes Sir, only in so as the point arises

23 --

24 .

25 CHAIRMAN: We are only interested in the status of the  
26 possible potential reaction to the reader of the  
27 documents. Under no circumstances has it a validity in  
28 terms of whether it is true or untrue. I do not know or I  
29 do not intend, attempt to decide that under any  
30 circumstances. I simply look at it and say "well if a  
31 person knew about this and they were in the Revenue or  
32 brought to the notice of the Revenue what would be the

1 result"? Or what is the likely reaction to the named  
2 party, Mr. Murphy? That is really all I am interested in.  
3 .

4 MR. HERBERT: I only make this point arising out of the  
5 fact, Sir, that it is a replying affidavit to an affidavit  
6 that we don't have and can't get.  
7 .

8 CHAIRMAN: It has a limited value to the statement to this  
9 effect, it was made on oath. Many statements are made on  
10 oath but they are not necessarily true.

11 A. I think that would be particularly apposite as far as Mr.  
12 Conroy is concerned.  
13 .

14 CHAIRMAN: I am not going that far, I am just saying as a  
15 barrister of a great number of years, of some number of  
16 years I have met that situation.

17 A. I am sure you will take into account the findings of the  
18 High Court judge, or the judge in London in relation to the  
19 Kallon proceedings.  
20 .

21 CHAIRMAN: I am not talking about that. I am just looking  
22 at what the document is. Mr. O'Neill carry on.  
23 .

2 251 Q. MR. O'NEILL: Having identified the document for you Mr.  
25 Oakley, obviously having looked at the document and you  
26 being the solicitor on record for the party involved it is  
27 apparent that you must have received a copy of this  
28 document, and equally as with the other documents it is a  
29 matter which you would have brought to the attention of  
30 your client and would you have sought his instructions on  
31 the matter and dealt with the issues as outlined therein?

32 A. Yes.

252 Q. That would be your inevitable practice. Now, if I could

2 --.

3 A. It certainly was my practice on this occasion because you  
4 have my note that I prepared for counsel, within the bundle  
5 as annexed to one document, I think.

253 Q. It certainly is the minimum that one would do having  
7 received a sworn affidavit from a deposing party, would you  
8 take full and detailed instructions from your own client to  
9 deal with any specific issues of fact which were deposed to  
10 in that affidavit with a view to establishing whether they  
11 were true or otherwise, or whether there were avenues which  
12 would allow you to directly contradict what was there and  
13 offer alternative evidence. That is the general principle  
14 that you approach the matter on; isn't that right?

15 A. The approach that I adopted on this occasion, which I think  
16 as you will find in, at Tab 3 is a detailed commentary that  
17 I prepared on the first of those affidavits, paragraph by  
18 paragraph.

1 254 Q. Yes?

20 A. So the answer to your question is, yes, at this stage I did  
21 prepare a detailed response.

2 255 Q. Right. And are you saying that in respect of the other  
23 affidavits you hadn't prepared a like document? I should  
24 say that this document has come to us in a limited amount  
25 of documentation which has apparently emanated through the  
26 administrator of the firm of Pickering Kenyon and doesn't,  
27 as I understand it, purport to be a complete file which has  
28 not been made available to the Tribunal. Do you know  
29 whether you prepared like documents in --

30 .

31 MR. HERBERT: Sir, that is not altogether fair. I know

32 Mr. O'Neill doesn't mean to be unfair. It is not



1 altogether fair. You seem to have power, Sir, to get what  
2 we can't get. If Mr. O'Neill wants to get the complete  
3 file I am sure, using your authority, your name, and your  
4 status as a High Court judge they can be got in the  
5 Chancery Division from London. We simply can't get them.  
6 We would love to have them but I can't impose on you to get  
7 them for me if you don't wish to, but it is not really fair  
8 to suggest even accidentally that we are in some way wanting  
9 to keep away documents from you, we are not. We would love  
10 to have these documents.

11 .

12 MR. O'NEILL: The documents in question Sir, would never  
13 have found themselves in the High Court in London. This is  
14 the solicitor's own file. The only parties who are  
15 entitled to get that are My Friends clients who have an  
16 unfettered right, subject to having paid the legal fees  
17 that were incurred in the work being carried out on their  
18 behalf, to sight of the documents and there has been no  
19 provision of these documents.

20 .

21 When I say "these documents" I mean the complete file to  
22 date and as far as I have understood from Mr. Herbert to  
23 date, that stems from the fact that difficulties arise with  
24 an administrator who has been appointed to the affairs of  
25 Pickering Kenyon and who has been paid a sum of money and  
26 who has released what appears to be a limited amount rather  
27 than a complete file of documentation.

28 .

29 That is as I understand it, -- certainly Sir, you have no  
30 power to make an order which would have effect in England  
31 of requiring an administrator to produce documents in  
32 Ireland. So the Tribunal has exhausted every possible

1 remedy in having these documents produced, an order was  
2 made specifically directing Mr. Murphy to provide these  
3 affidavits. He did not do so, Sir. They came to you  
4 through the offices of the High Court in London and that  
5 does not purport to be a complete record of the documents,  
6 in particular it does not include any of the exhibits which  
7 accompanied the affidavits and upon which the deponent  
8 sought to rely in support of the allegations which are  
9 contained within it.

10 .

11 So, the Tribunal can do no more sir, than to question this  
12 witness who was the solicitor on record at the time in the  
13 hope and expectation that he will remember, having read  
14 these affidavits, what the contents of those exhibits were  
15 and what has become of them and how and when they can be  
16 made available.

17 .

18 May I also say sir, that if Mr. Oakley had difficulty in  
19 obtaining documents in England on the basis that he was no  
20 longer a solicitor acting on behalf of Mr. Murphy, or the  
21 Murphy Group, I would have thought that a specific  
22 authority could have been given to him by Mr. Murphy's  
23 existing solicitors appointing him as solicitor for the  
24 purpose of obtaining the necessary records from the  
25 office. But as matters stand we have a limited amount of  
26 documentation, and it is not limited by reason of any lack  
27 of effort on the part of the Tribunal.

28 .

29 CHAIRMAN: I note the position. Thank you.

3 256 Q. MR. O'NEILL: The last affidavit which I have referred you  
31 to, Mr. Oakley, at page JMSE 40.4/5 is dealing with matters  
32 under the heading of "risk of dissipation of assets" and in

1 that the deponent goes on to give details as far as he is  
2 concerned, to elaborate upon the allegations which had been  
3 made in earlier affidavits. Have you got paragraph 14  
4 before you?

5 A. I have.

257 Q. It says: "In paragraph 61 of his affidavit Mr. Murphy  
7 denies that he told me that he had evaded UK income tax and  
8 breaches of exchange control regulations in the early  
9 1970's. I would reiterate that Mr. Murphy did give me this  
10 information. He even told me the method he adopted. He  
11 said that the method had been suggested by two individuals,  
12 Fred Duchamp and Doug Chick and arrangements had been made  
13 in Switzerland by Edgar Wadley. It involved money being  
14 taken out in cash from the account of the 9th plaintiff in  
15 the original action and other Murphy companies and handed  
16 to an Arab courier the courier deposited the money in the  
17 Cambio Und Valloren Bank in Zurich. The money was then  
18 transferred through the hands of an investment management  
19 firm called Schaeffer Lemeno, an associate of Midgely  
20 Snelling, to Bremen Incorporated and Hammer and Spring  
21 Incorporated.

22 .

23 15: Mr. Murphy seeks to distance his involvement with  
24 Bremen Incorporated and deny that he received any income  
25 therefrom. I believe however that Bremen was incorporated  
26 in the late sixties as a vehicle for Mr. Murphy and  
27 essentially held money on his behalf. This is made clear  
28 from the contents of a letter from solicitors acting for  
29 Mr. Murphy to Mr. Devine, a copy of this letter is now  
30 produced and shown to me at pages 1 and 2 of a bundle which  
31 is marked LAC 17.

32 .

1 16: In paragraph 61 of his affidavit Mr. Murphy also seeks  
2 to contend that in relation to the breaches of exchange  
3 control that funds were transferred improperly by Mr.  
4 Devine and myself to the Jola Foundation. Since the breach  
5 of exchange controls to which I referred in paragraph 73 of  
6 my first affidavit, took place in the early 1970's not  
7 working for Mr. Murphy, this statement is demonstrably  
8 false. Further and in any event this statement is  
9 contradicted by paragraph 64 of Mr. Murphy's affidavit  
10 where he accepts that the monies were transferred to the  
11 Jola Foundation on his instructions.

12 .

13 17: Mr. Murphy denies in paragraph 62 that he avoided tax  
14 in Guernsey by the use of bank accounts in Ireland and the  
15 use of accommodation addresses in England. The accounts in  
16 question were with the Commercial Bank in Dublin of which I  
17 was, at one time, a director. Monies were deposited in  
18 these accounts in the manner set out in paragraph 75(2) of  
19 my first affidavit. By using the accommodation addresses  
20 in England the deposits accrued interest without deduction  
21 of tax. There is at pages 3 and 4 of LAC 17 notes and  
22 manuscript prepared in 1983 by staff at the Commercial Bank  
23 showing that the sums then standing to the credit of Mr.  
24 and Mrs. Murphy's accounts as well as the accounts of Mr.  
25 Murphy's brother.

26 .

27 18: In relation to the allegations that I gave tax  
28 advice. I simply state that I did not. I did not give any  
29 tax advice and was not capable of doing so.

30 .

31 19: Mr. Murphy denies in paragraph 62 that he owned  
32 property in Dublin and claims not to understand how he

1 breached his residency status. The Dublin residence was a  
2 four-bedroom mews house known as Wilton Lodge. This  
3 property was I believe, owned certainly in 1982 and  
4 probably until at least 1988 by Mr. Murphy. The ownership  
5 of this house used by him when in Ireland was sufficient to  
6 constitute him as an Irish resident. Mr. Murphy's  
7 ownership of the house and residency status was raised in a  
8 letter dated 16th of February, 1982, from Griffin Lynch and  
9 Company, chartered accountants to Mr. Murphy. A copy of  
10 this letter is found at pages 5 to 7 of LAC 17. I am  
11 advised that similar difficulties concerning Mr. Murphy's  
12 residency status arise from his use of accommodation in  
13 England.

14 .

15 20: Mr. Murphy refers to the premises in Great Russell  
16 Street and correctly states that the Kallon proceedings, I  
17 alleged that he was the beneficial owner of the premises  
18 and sought to hide his ownership of the premises. He  
19 contends that these allegations were answered in affidavits  
20 sworn by him and his son in those proceedings, however  
21 neither of these affidavits deny these particular  
22 allegations.

23 .

24 21: The premises in Great Russell Street were registered  
25 in the name of Mrs. Casson, Mr. Murphy's sister-in-law.  
26 Mrs. Casson who lives in the North of England did not live  
27 in the premises, despite this the premises rented in her  
28 name from the London Borough of Camden, were purchased in  
29 the name of Mrs. Casson under the "tenants right to buy"  
30 legislation under false representation that the premises  
31 were her main residence. Mr. Murphy and his wife advanced  
32 the sums needed to enable the purchase to take place. The

1 fact that the premises were used by Mr. Murphy and their  
2 wife when they are in England supported by the affidavit of  
3 Stephen George Turner, sworn herein on the 20th of March  
4 1990.

5 .

6 22: The accommodation address in Dolphin Square which is  
7 referred to in paragraph 74 of my first affidavit was, I  
8 believe, leased by Mr. Murphy. This is evident from a  
9 letter dated the 1st of July 1987, from Dolphin Square  
10 Limited. A copy of which is found at page 8 of LAC 17.

11 .

12 23: I accept that the Jola Foundation was set up on the  
13 advice of Mr. Devine and myself as is evident from the  
14 documentation. Mr. Murphy has control of the monies in the  
15 foundation and during his lifetime was entitled to the  
16 benefits of the money. I note that Mr. Murphy has not  
17 sought to deny the allegation that he did not declare the  
18 income accruing to him under the foundation. Some further  
19 documentation relating to the foundation is now produced  
20 and shown to me at LAC 18."

21 .

22 He then goes on 24 to state: "In relation to the activities  
23 described in paragraph 76 of my first affidavit I would by  
24 way of example refer to two such transfers from Ireland to  
25 other jurisdictions which I am advised by Gerard Downes, a  
26 former officer of JMSE, were undertaken. Namely a transfer  
27 of £200,000 for Bridget Flynn, Mr. Murphy's sister in law  
28 and her son, Denis Flynn, and a transfer of £30,000 for Mr.  
29 Gogarty. In each case Archbel Greenwood Structural  
30 Engineers Limited, AGSE in England issued a false invoice  
31 for work done in the amount to be transferred. The invoice  
32 was issued to JMSE in Dublin which then produced the

1 invoice to its bank in Dublin. The bank duly authorised  
2 the transfer of the amount on the invoice to AGSE's account  
3 in Fleetwood. From there the monies were then transferred  
4 to Guernsey where the funds were handled by Sovereign  
5 Management Limited"

6 .

7 Now, those details set out in that affidavit Mr. Oakley  
8 were apparently accompanied by documentation which had not  
9 been generated by Mr. Conroy himself, but on their face and  
10 from the description given of them in the affidavit were  
11 documents prepared either by bank officials or by third  
12 parties, property owners and others, in relation to the  
13 averments that were contained in the affidavits; isn't that  
14 so?

15 A. So he says but obviously without actually seeing the  
16 exhibits concerned it is hard to tell whether his averment  
17 is correct.

1 258 Q. Of course it is. But you had the benefit of seeing all  
19 those exhibits and you had the benefit of considering those  
20 exhibits in the context of the allegations that were made  
21 in which those exhibits were referred to; isn't that right?

22 A. Well, I had the opportunity, unlike this Tribunal, of  
23 considering the entirety of the evidence.

2 259 Q. Yes?

25 A. Including the replying affidavit from Mr. Murphy that was  
26 already in place and was already filed with the Court. And  
27 just to deal with that particular point, I am most  
28 surprised that the Tribunal if it was able to get two  
29 affidavits by Mr. Conroy, was not able to get Mr. Murphy's  
30 affidavit, which must remain on file. I find that very  
31 very surprising indeed. You may be totally correct that,  
32 and I would agree with you that exhibits are no longer

1 retained on the court file, they are too bulky in most  
2 cases, but the affidavit would be there and I am sure that  
3 for the sake of consistency and completeness, that  
4 affidavit could have been obtained. It doesn't make much  
5 sense, you see, because I don't know what is in paragraph  
6 61 of Mr. Murphy's affidavit now.

260 Q. We may take it, I think, as conclusive that Mr. Murphy was  
8 rejecting the contentions which were contained in the  
9 original affidavit, and this affidavit seemingly has given  
10 greater detail and has referred to items of correspondence  
11 from others in support of the contention that was being  
12 advanced in the first affidavit and being rejected by Mr.  
13 Murphy. That would appear to follow?  
14 A. That would appear to follow.

1 261 Q. Fine.

16 A. But the important point is, you cannot see exactly in what  
17 terms Mr. Murphy has rejected, in the first affidavit, the  
18 essential issues raised by Mr. Conroy in his first of  
19 affidavits.

2 262 Q. That is why I am asking you, as the solicitor to Mr. Murphy  
21 at the crucial period, the questions which I am asking you;  
22 and that is, having looked at the affidavit, it was  
23 accompanied by exhibits, the exhibits are claimed to  
24 support the contention that is advanced in the allegation,  
25 and I am asking you, firstly whether or not you did see  
26 documentation from the Commercial Bank in Dublin in 1983  
27 that showed that there were sums being dealt with by that  
28 bank in Dublin on behalf of Mr. Murphy and his wife and  
29 incidentally on behalf of his brother also. Was that  
30 documentation exhibited?

31 A. I simply cannot recall whether it was or it wasn't or what  
32 indeed was the content of it. But I can probably help you



1 with that because we are now talking about a memory of  
2 events that occurred several years ago and as I say, what  
3 you have in Section 3 is my analysis of the original  
4 affidavit and the allegations that were made then, which is  
5 clearly a fairly current document, concurrent with the  
6 affidavit of the 13th of March at the very least. And  
7 that, I am sure, goes through, I haven't gone through each  
8 and every paragraph of it, but appears to me to be my notes  
9 prepared by me in my office for the purposes of giving  
10 instructions to counsel.

1 263 Q. Right?

12 A. To settle affidavit evidence in reply.

1 264 Q. That --.

14 A. So I can do better than what I can actually recall. There  
15 appears to be almost an attendance note or an analysis of  
16 Conroy's affidavit which will help.

1 265 Q. We will move to that, Mr. Oakley. I might just point out  
18 that the attendance or memorandum that you prepared was in  
19 response to the first affidavit?

20 A. Yes.

2 266 Q. That is of the 13th of March, 1990, and was not dealing  
22 with the affidavit that you are now dealing with. That is  
23 that of the 25th of April, 1990 which contained greater  
24 detail and apparently third party documentation which  
25 supported the contentions?

26 A. Well as I say, I only have Mr. Conroy's word for it that  
27 the documentation that he exhibited did in fact support his  
28 contentions.

2 267 Q. Yes?

30 A. And as I say, I simply can't recall whether those express  
31 exhibits were there at that time.

3 268 Q. Do you know what became of the exhibits? Obviously we

1 have, I think, acknowledged and it is common case now, that  
2 the exhibits would have been returned by the High Court to  
3 the solicitor who had tendered the documents; isn't that  
4 right?

5 A. Yes.

269 Q. That would be the practice?

7 A. Yes.

270 Q. And ultimately I take it, that you would have copies of the  
9 exhibits which would have been served once the original  
10 affidavit was served on you?

11 A. The practicalities are that the exhibit, I believe, would  
12 have been served to Mr. Conroy's lawyer, Mr. Gouldman,  
13 because they prepared it in the first place. Almost  
14 certainly my files, if they still existed, would have  
15 copies and counsel files would have been had copies.

1 271 Q. Exactly. So there is no reason why those should not be in  
17 the possession of the current administrator of Pickering  
18 Kenyon; isn't that right?

19 A. I think that all of the files that still exist are already  
20 disclosed, as far as I am aware there is nothing left as  
21 far as Pickering Kenyon is concerned.

2 272 Q. Um?

23 A. My understanding is that what was left was in the boxes  
24 that you obtained.

2 273 Q. I see. So that for some reason the complete files were not  
26 maintained and a limited amount of documentation was  
27 retained?

28 A. I can't answer your question, to be perfectly honest,  
29 because fairly obviously whatever occurred at the time that  
30 the case was concluded, and the files were either put into  
31 storage; over the period of time that has elapsed, since I  
32 am almost certain that the files would have, post, six

1 years on, would have been destroyed because they are  
2 outside the limitation period. As far as the files that  
3 were retained, as I understand it, those were the papers  
4 that counsel had. Which came in and were stored separately  
5 at a different time.

274 Q. I see. But even counsel's papers should perhaps --

7 A. Counsel papers should have the entirety of the exhibits.

275 Q. Yes?

9 A. Yes. It would be somewhat surprising that they weren't  
10 there.

1 276 Q. Um hum. Turning to Tab 3 --

12 .

13 MR. HERBERT: Before we leave that, Mr. Chairman, there is  
14 one matter that might help you, but certainly possibly help  
15 me and indeed would possibly help Mr. O'Neill in  
16 ascertaining the true facts of this case. There is a  
17 reference to Mr. Gerry Downes and money being paid for  
18 Flynn's.

19 .

20 Now, Mr. Downes has given evidence to you in private and he  
21 has given evidence to you in public. At that time I think  
22 he gave, certainly his evidence in public, neither the  
23 Tribunal's counsel nor ourselves were aware of these  
24 affidavits and their contents. I am sure if Mr. Downes was  
25 invited to reappear before you and to deal with the  
26 allegation, that is one allegation that we can test from  
27 its alleged original source, as to whether it is true or  
28 false. And I certainly would invite you and Mr. O'Neill,  
29 and again I am only inviting, I have no authority  
30 whatsoever, nor would I presume to make any suggestion to,  
31 other than to say that there is a possible way of checking  
32 one particular allegation in that document, because we have

1 the alleged source available to us, Mr. Downes himself.

2 .

3 MR. O'NEILL: I should say in relation to that, Sir, that

4 Mr. Downes was circularised with this documentation and it

5 has not elicited any response from him by way of denial or

6 otherwise.

7 .

8 That took place after the evidence was taken in Guernsey

9 and read on to the transcript here as it would appear to be

10 a matter which could have affected him, Sir.

11 .

12 CHAIRMAN: I will leave the situation there. I don't see

13 any real point in going further. It is worth what it is

14 worth and no more.

1 277 Q. MR. O'NEILL: Tab No. 3 of the documentation before you,

16 Mr. Oakley, commences with an unsworn, or certainly a copy

17 of an unsworn affidavit of Mr. Joseph Murphy Snr. and this

18 was an affidavit which was sworn by him in the Isle of Man

19 proceedings in the Chancery Division as opposed to a

20 document being sworn in the High Court in London. You will

21 see that from the first page JMSE 40.1/1?

22 A. I have that at Tab E, am I in the wrong place? I have

23 found it.

2 278 Q. Sorry?

25 A. Tab3 I have got.

2 279 Q. It is a subdivision of Tab 3?

27 A. Oh, right. Okay.

2 280 Q. Because there are a number of documents in Tab 3 which are

29 categorised in subject matter for the response of Mr.

30 Murphy and yourself to the earlier affidavits which are in

31 Tab 2. So you are correct that at sub tab E, JMSE 40.1/1

32 is what appears to be an unsworn affidavit prepared in the

1 proceedings in the Isle of Man Chancery Division. Do you  
2 see that?

3 A. Yes.

281 Q. Can you recollect, at this point in time, whether or not  
5 that affidavit was ever sworn by Mr. Murphy?

6 A. To be honest, I can't. What actually happened in relation  
7 to the Isle of Man proceedings; there were, as I recall,  
8 certain deadlines for the filing of affidavit evidence in  
9 the ordinary course of directions. The Isle of Man, like  
10 the UK High Court accepts the filing of approved draft  
11 affidavits, and I think there was a time factor of getting  
12 it in before that deadline. Even though we knew that in  
13 fact the preliminary point was going to be taken, and in  
14 reality the affidavit evidence would not be reviewed, and I  
15 think that accounts for the fact that it hasn't been  
16 proved. Nothing sinister, I think it is purely the fact  
17 that there was a deadline. It was put in as an approved  
18 draft and never actually sworn because the case in the Isle  
19 of Man really didn't progress any further.

2 282 Q. As an approved draft it follows that it was approved by the  
21 intended deponent though he hasn't, in fact, sworn it and  
22 he adopted everything that was in this intended affidavit,  
23 and presumably at some stage, in compliance with the  
24 undertaking given to the court, he would have in fact sworn  
25 it, though it might not have been filed in court after  
26 being sworn?

27 A. Yes. My recollection is that there was a direction that  
28 affidavit evidence had to be filed by a particular date,  
29 but of course, as the proceedings in the Isle of Man  
30 developed and were actually determined, none of the  
31 affidavit was actually required or actually looked at.

3 283 Q. Fine?

1 A. So it probably was just overlooked in terms of complying  
2 with the usual undertaking to have it sworn on the file.

284 Q. We may take it that since the only affidavit that was sworn  
4 by Mr. Conroy apparently in the Isle of Man proceedings is  
5 the affidavit of the 20th of March, 1989, that is at Tab  
6 2(A), that this affidavit at Tab 3(E) was an intended  
7 response to that document and it so states?

8 A. It is actually paragraph 2 it says it is an application to  
9 strike out part of the affidavit sworn on the 20th of March  
10 from Mr. Conroy.

1 285 Q. Yes, exactly. So insofar as there is a joinder of issues  
12 in affidavits sworn between the two parties, it is  
13 represented by this affidavit on behalf, this intended  
14 affidavit on behalf of Mr. Murphy; isn't that right?

15 A. I don't think it is necessarily complete. It was actually  
16 as you say, I said in paragraph two, there is an - it was  
17 an affidavit in support to strike out certain paragraphs.  
18 It wouldn't be a complete joinder of issues, merely a  
19 striking out in support of a striking out application for  
20 particular scandalous or vexatious paragraphs.

2 286 Q. It seems to have dealt with 94, sorry 99 paragraphs in all  
22 and it certainly extended beyond the simple issue of trying  
23 to set aside a portion of Mr. Murphy's affidavit.

24 .  
25 In any event on a more general point before we get into the  
26 specifics, Mr. Oakley, I take it that since this is the  
27 first affidavit that Mr. Murphy had sworn, as far as we  
28 know, you impressed on him the import of his preparing an  
29 affidavit to be sworn. In other words, that it was the  
30 equivalent of his giving evidence on oath before a court;  
31 isn't that so?

32 A. I can't remember specifically doing that. I am sure I

1 emphasised to him the importance of accuracy, yes.

287 Q. Yes, but not only accuracy but truthfulness. The  
3 obligation, in other words, to tell the truth, the whole  
4 truth and nothing but the truth, rather than to provide  
5 limited information?

6 A. As I say, I recall, I can't specifically recall in what  
7 terms I advised Mr. Murphy as to the content of his  
8 affidavit, but almost certainly I would have advised him  
9 that it needed to be accurate and truthful.

1 288 Q. Yes; and presumably would you have cautioned him against  
11 putting in anything which was either ambiguous or  
12 untruthful?

13 A. I don't think I would have expressly cautioned him in the  
14 way that, it sounds a bit like the police caution, I  
15 certainly don't think I would have ever gone that far, but  
16 I certainly did spend a great deal of time with him going  
17 into various matters raised, both in this affidavit, in my  
18 note that is at tab whatever it is, dealing with the  
19 various issues that had been raised by Mr. Conroy.

20 .  
21 One of the difficulties with Mr. Murphy, I think it is a  
22 fair point, you will have seen him yourself, I saw him ten  
23 years ago, he wasn't particularly well at that time and he  
24 didn't always necessarily have the greatest memory recall,  
25 sometimes it was necessary to go over matters to try and  
26 establish even relatively straightforward issues. But we  
27 did go over them, we did go over them to get the best  
28 possible affidavit in reply.

2 289 Q. Now, could I ask you to turn to page JMSE 40.1/6 at  
30 paragraph 10 of the affidavit?

31 A. Paragraph 10 in reply to paragraph 11?

3 290 Q. Exactly.

1 A. Right.

291 Q. Here Mr. Murphy was intending to say or to adopt the  
3 following words: "I did agree to obtain the resignation of  
4 Mr. Gogarty, even though he was a friend and a long  
5 standing colleague because of the comments made to me by  
6 Mr. Devine. I did, therefore, speak to Mr. Gogarty, who  
7 after much persuasion agreed to provide a resignation.  
8 Subsequently Mr. Gogarty spoke to me about his serious  
9 misgivings in resigning. He told me that he was seriously  
10 concerned at the behavior of some of the executives in the  
11 company and the overall way in which the company was being  
12 run. From my discussions with Mr. Gogarty I became more  
13 convinced that it was not in the best interest of the  
14 companies for him to resign and that it was essential for  
15 an independent investigation to be carried out into his  
16 allegations".

17 .

18 Now, does that fairly and accurately state the position and  
19 relationship which existed between Mr. Gogarty and Mr.  
20 Murphy? Namely that at the time of the intended swearing  
21 of this affidavit he considered Mr. Gogarty to be a friend  
22 and a long standing colleague, if not?

23 A. Now, I have to think about that because of course the date  
24 of the swearing, or the intended swearing of the affidavit  
25 is not the same date as the comment that is being made,  
26 because he is recording an event that took place quite a  
27 considerable time earlier.

2 292 Q. Um hum.

29 A. It is certainly my recollection from my discussions with  
30 Joseph Murphy Snr., that he was initially persuaded by Mr.  
31 Devine that Gogarty had to go. We mentioned that this  
32 morning, the various threats that he would lose the



1 entirety of the executives in the company; and he prevailed  
2 upon Mr. Gogarty as an old friend to do the decent thing  
3 and resign so that he didn't cause problems.

4 .

5 That clearly was changed because I know that Mr. Gogarty  
6 stayed on. And I certainly believe that in the period that  
7 this relates to, which must be the June period, May or June  
8 of 1988, they were firm friends, yes.

293 Q. Yes?

10 A. I think that would be a fair description. Let's put it  
11 like this, Mr. Gogarty was a supporter of Mr. Murphy at  
12 that time.

1 294 Q. Yes?

14 A. And had been through the board meeting reshuffles and  
15 whatever.

1 295 Q. Right. I ask you that because of your own statement  
17 furnished to the Tribunal where you make reference to Mr.  
18 Murphy indicating that whilst you should contact Mr.  
19 Gogarty because Mr. Gogarty would have helpful information  
20 to you concerning Mr. Conroy, that it does not necessarily  
21 follow that he was a friend of his?

22 A. Well, I think that the friendship in the sense that he  
23 certainly made every appearance on the face of it to be in  
24 support of the Murphy Group.

2 296 Q. Right?

26 A. He had, after all, been very vociferous in his criticisms  
27 of Conroy. He had been very helpful in providing that  
28 information to Mr. Murphy. Mr. Murphy had reacted  
29 accordingly in trying to raise those issues with the  
30 Trustees. But I think it was a friendship that was - I  
31 want to chose my words carefully, I think it had  
32 limitations to it and I don't think that in any way, shape

1 or form at this stage, certainly by the time that we were  
2 considering this affidavit that Mr. Murphy was under any  
3 illusions that Mr. Gogarty was just purely a friend. The  
4 reason for saying that is that it was becoming clear that  
5 Mr. Gogarty had an agenda of his own in relation to all of  
6 these matters.

297 Q. Yes?

8 A. He could be counted on at this stage that we are talking  
9 about as a supporter of Mr. Murphy.

1 298 Q. Fine. Could I now refer you to the same document, page 15,  
11 where at paragraph 38 Mr. Murphy was to deal with the  
12 question of his alleged secrecy and related matters. This  
13 document, I take it, whilst it is expressed to be an  
14 affidavit, is the culmination of your questioning of Mr.  
15 Murphy and the preparation in affidavit form of what he  
16 said to you. In other words, you reduced it to a legal  
17 format which of course he would have to reply to, but you  
18 were presumably, either yourself or counsel drafted the  
19 actual affidavit itself?

20 A. I think actually my general habit was to produce the notes  
21 that follow, notes of that nature, go through paragraph by  
22 paragraph, making notes of what is given to me in reply;  
23 and that either depending on time or complexity, I would  
24 produce a first draft of the affidavit, send it to counsel  
25 for him to select those issues that he believed should be  
26 replied to or should be left out and so on and so forth,  
27 just as I imagine you do here.

2 299 Q. Yes, absolutely. I just want to clarify with you that this  
29 is not a verbatim narrative account of the deponent but  
30 rather his narrative account which has been translated by a  
31 lawyer into?

32 A. Legalese.

300 Q. Into legalese in effect; isn't that so?

2 A. I think so, yes.

301 Q. It starts at 38 by stating: "The statements made by Mr.

4 Conroy as to the reasons for my alleged secrecy and the

5 statements attributed to myself are wholly false". That

6 isn't the language of Mr. Joseph Murphy Snr. as we know

7 him; isn't that right?

8 A. His language would be much more blunt.

302 Q. But having said that, the drafter of this particular

10 document and I assume it to have been either yourself or

11 counsel, would have been very careful to ensure that every

12 factual detail that is set out in this affidavit had a

13 basis which emanated from what was said by the Deponent or

14 the intended Deponent, and not their own spin, if I might

15 put it like that, on it; isn't that so?

16 A. Yes. It would have been substantiated.

1 303 Q. Yes. So that where details are given here, that is the

18 detail as it came from Mr. Murphy Snr.; isn't that so?

19 A. In paragraph 38.

2 304 Q. Yes. Now, paragraph 38: He says "the statements made by

21 Mr. Conroy as to the reasons for my alleged secrecy and

22 statements attributed to myself are wholly false. I have

23 throughout my life sought privacy but have not conducted my

24 affairs in secrecy. Wherever I have been resident I have

25 filed the appropriate tax returns to the relevant

26 authorities and made full declarations of tax purposes in

27 accordance to professional advice given to me. I have not

28 evaded UK tax in the early 1970's nor have I made such

29 statements to Mr. Conroy. Indeed Mr. Conroy must know that

30 his statement is false by reason of the contents at

31 paragraph 4 of the affidavit. I became non-resident in the

32 UK in 1970 and therefore I have no obligation to pay UK

1 income tax thereafter. As recorded in paragraph 4 I  
2 thereafter lived abroad in Bermuda and Bahamas, finally in  
3 1976 I moved to Guernsey where I am now resident, a fact  
4 that Mr. Conroy confirms. I have not breached exchange  
5 control regulations, which in any event does not now exist  
6 in the United Kingdom having been repealed in its entirety  
7 I am advised by Section 68 of the Finance Act 1986.

8 .

9 39: I have not failed to disclose all income tax that is  
10 properly attributable to me for the purpose of the Guernsey  
11 tax authorities. Indeed the alleged large deposit of money  
12 in Switzerland was arranged by Mr. Devine with the  
13 assistance of Mr. Conroy representing the trust assets,  
14 improperly removed by them from the former trustee and  
15 deposited in the Jola Foundation upon terms which made it  
16 clear that in the event of my demise Mr. Conroy rather than  
17 my children would have substantial benefit personally.  
18 Upon discovering this my professional advisors upon my  
19 instructions took all necessary steps to return the assets  
20 to the rightful owner and to unscramble the difficulties  
21 created by Mr. Devine and Mr. Conroy by the improper  
22 removal of the assets in the first instance.

23 .

24 40: I have not breached Irish exchange control laws to the  
25 best of my knowledge, information and belief and all  
26 transfers had been dealt with through the banking system  
27 such that the bank themselves ensure the appropriate  
28 specific or general consents to the transfers are held".

29 .

30 Now, that was his response in essence to the allegations of  
31 wrongdoing which were contained in the first of the  
32 affidavits which was sworn by Mr. Conroy in the Isle of Man

1 in March, 1989, and presumably since you tell us there was  
2 a time limit on the delivery of this document, that it  
3 certainly would have been prepared in April-ish, maybe May,  
4 of 1989; is that so?

5 A. It would be around that time. If you just help me with the  
6 date of the actual hearing of the application.

305 Q. I believe it was the 28th of May?

8 A. Well, I can say for certain it was before that, before that  
9 hearing.

1 306 Q. Yes?

11 A. Because I am certain that the affidavit evidence had to be  
12 filed prior to the preliminary point being taken.

1 307 Q. Yes. So certainly it was, from the point of view of the  
14 Tribunal, it was before any June disposition of monies by  
15 Mr. Gogarty to Mr. Burke, which is a disposition of funds  
16 of some £30,000, which took place on a date not earlier  
17 than the 8th of June of 1989, nor later than the 15th of  
18 June of the same year?

19 A. That is like likely to be correct, yes. As far as I can  
20 tell from what papers are here, Mr. Conroy's affidavit and  
21 the proposed draft reply denying the allegations from Mr.  
22 Murphy were in place before the hearing in the Isle of Man,  
23 which as you tell me from the judgement and I can see for  
24 myself, is at the end of May.

2 308 Q. Yes. So that as far as Mr. Murphy was concerned, issues  
26 had been joined, though it might not be an issue, a court  
27 would be required to pronounce upon in those proceedings.  
28 Issues had been joined between them as to whether or not  
29 there were the breaches outlined. He, Mr. Murphy, had  
30 stated what his position was in response to what Mr. Conroy  
31 had stated his position to be; isn't that so?

32 A. I think the position is that against the general

1 allegations made by Mr. Conroy in his first affidavit in  
2 the Isle of Man proceedings, Mr. Murphy had given a very  
3 emphatic denial in relation to those allegations in what  
4 one might loosely call "tax irregularity".

309 Q. While one might loosely call them that, the significance of  
6 any one of those matters being proven to be true could have  
7 catastrophic consequences financially, given that we are  
8 talking about a trust period going back 20 years or so from  
9 that date; isn't that so?

10 A. Who for?

1 310 Q. For instance the trustee, sorry, the beneficiaries of the  
12 trust number one, and the trust as a whole on the basis  
13 that I think you have agreed with me this morning, that the  
14 Revenue took upon itself to investigate the trust, and  
15 concluded that it was a sham, it would effectively set it  
16 aside from its initial date; isn't that so?

17 A. It could do, if there was any evidence that in the  
18 allegations that Mr. Conroy put forward, that the trust was  
19 a sham, but that wasn't what he was suggesting. What he  
20 was suggesting was that there had been irregularities on  
21 the part of Mr. Murphy, personally, in his residence and  
22 his use of residence an the use of accounts and the use of  
23 filing tax returns. That is a personal liability on the  
24 part of Mr. Murphy. I am not sure that he ever alleged at  
25 any stage that any of the underlying trust companies for  
26 instance, owning the land or trading in either Ireland or  
27 in the UK, had ever done anything other than file the tax  
28 returns.

2 311 Q. He alleged specifically, Mr. Oakley, as you know from the  
30 first of the affidavits sworn by Mr. Conroy, that the true  
31 beneficiary of the funds of the trust was Mr. Murphy  
32 personally. He stated that the source of Mr. Murphy's

1 undisclosed income was the produce of the trusts?

2 A. He certainly made that as an allegation without  
3 substantiating it.

312 Q. Substantiation is a separate issue, the question of whether  
5 or not that allegation was true or not, it had been  
6 resolved in favour of Mr. Conroy would have rendered the  
7 trusts asunder; isn't that so?

8 A. No, not of necessity.

313 Q. As a matter of probability, if the Revenue, if the Revenue  
10 authorities were satisfied that Mr. Murphy was quietly  
11 accumulating the proceeds of the earnings of the various  
12 companies which were being remitted in pyramid fashion to  
13 the trusts and from the trusts to him personally. I am  
14 suggesting to you there is no question but that they would  
15 then determine that he, personally, as the beneficiary, was  
16 liable for income tax or Corporation or whatever other  
17 taxes might have accrued in the acquisition of those funds;  
18 isn't that right?

19 A. He might have had a personal liability, but the point that  
20 you were putting to me is that this would have affected the  
21 valid treaty of the trusts, that is where I am disagreeing  
22 with you. It might have resulted, from my own experience,  
23 in a personal liability to Mr. Murphy of funds that  
24 hypothetically he had received, according to the unfounded  
25 allegations of Mr. Conroy to give the, you know, the  
26 pedigree of the entirety of the allegation, but that would  
27 not, of necessity, have resulted in the trusts being  
28 declared an entire sham.

2 314 Q. Well, as a matter of probability, if the Revenue  
30 authorities concluded that Mr. Murphy was in fact the  
31 beneficiary, that would have fundamentally breached the  
32 whole concept of trust; isn't that right? Because the

1 trust involved a bona fide disposition by the settlor of  
2 any interest in the property; isn't that fundamental?

3 A. That is fundamental in giving the property to the Trustees,  
4 but it is not unknown in some jurisdictions for the settlor  
5 to actually be a beneficiary as well. There are  
6 circumstances in which that is permitted.

315 Q. True?

8 A. And the point I am making to you is this; you are making a  
9 quantum leap from saying Mr. Conroy's allegations to the  
10 effect that Mr. Murphy personally had some tax  
11 difficulties, as a result of various allegations that he  
12 identifies in his affidavit, would have resulted, in all  
13 probability, with an effect on the trusts and the validity  
14 of the trusts and the answer to that is "no" I don't accept  
15 your premises.

1 316 Q. You don't accept my premises in respect of four of the  
17 contentions, that is the personal involvement of Mr. Murphy  
18 in the removal of funds out of the jurisdiction, in breach  
19 of exchange control regulations, the failure to comply with  
20 residency requirements as an individual, the failure to  
21 make income tax returns and perhaps the maintaining of  
22 accounts in one jurisdiction which are earning interest  
23 attributable to an accommodation address elsewhere.

24 .  
25 I accept that all of those matters are personal to him and  
26 would not effect the trust. However, there is a 5th matter  
27 which I was discussing with you a moment ago and it is the  
28 fundamental question as to whether or not he, Mr. Murphy,  
29 had bona fide disposed himself or disposed any interest he  
30 had in the property to a separate entity, namely the trust;  
31 isn't that right?

32 A. No. What I understood the allegation from Mr. Conroy to



1 be, was that Mr. Murphy had derived income from the trust  
2 which he had failed to disclose. And what I am saying to  
3 you and I will repeat again, is that Mr. Murphy by doing  
4 that, all of which is highly speculative, based upon the  
5 evidence of Mr. Conroy, who as I have said before was  
6 discredited in the London High Court; all of that is on the  
7 premises that as a result, the trust itself would be  
8 declared a sham.

9 .  
10 Now, I am saying to you, I think that is not probable. I  
11 think it is actually highly unlikely. I think the effect  
12 of the Revenue would be to tax Mr. Murphy on the degree of  
13 benefit that he derived, rather than declare the trust  
14 invalid, and effect the remaining beneficiaries, who are  
15 innocent, in the entirety of the scheme.

1 317 Q. The only way --.

17 A. That is where I think we have a dispute.

1 318 Q. The only way in which they could assess his liability is to  
19 determine the extent to which he was actually in control or  
20 benefitting from or exercising ownership over the trust and  
21 its assets; isn't that right?

22 A. The only way --.

2 319 Q. The only way in which they could have assessed, quantified  
24 or determined what liability Mr. Murphy would have in the  
25 event that he had been in receipt of trust funds when he  
26 ought not, it ought not to have been given to him, would be  
27 to ascertain how much he received, how it was received and  
28 what his interest in it was; isn't that right?

29 A. It could well be. I have no idea what in fact on such a  
30 speculative matter the Revenue's action would be in those  
31 particular matters of detail. What I am certain in my own  
32 mind is that the general premises that these trusts would

1 have been at risk by virtue of the allegations made by Mr.

2 Conroy is not one that I subscribe to.

320 Q. Fine?

4 A. Those are allegations that come from a pedigree that is

5 highly suspect in any event, and that is why I give no

6 credence to the general proposition that I heard enumerated

7 earlier, that in some way Mr. Murphy was panicked by the

8 allegations made by Mr. Conroy.

321 Q. Right?

10 A. He simply wasn't. He met them head on from the affidavit

11 evidence that was originally filed by Mr. Conroy in the

12 Isle of Man, and drafted with my assistance and with

13 Counsel's assistance drafted an affidavit of reply.

1 322 Q. Fine. Does it follow that that as far as you are

15 concerned, you believe that Mr. Murphy had no concern

16 regarding these allegations? In other words, that they

17 were a matter of no import or effect from his point of

18 view, they were demonstrably false, they were matters about

19 which he was concerned not a whit?

20 A. Well, let me put this in this way, I don't think anybody in

21 their right mind, however legitimate and honest they have

22 been, would be unconcerned by a Revenue inquiry. I think

23 all of us in a purely practical way would like to avoid

24 that at all costs. The Revenue operates I think as you

25 probably know in the UK and indeed in Guernsey and indeed

26 in the Isle of Man, on the basis of raising an assessment

27 first and you argue the contrary.

28 .

29 Nobody would like to have to go through a Revenue

30 assessment and to that extent I think it would be a fair

31 answer to say Mr. Murphy didn't particularly want to go

32 through that. I am equally and absolutely certain that he

1 had no fear as a result of the allegations made by Mr.  
2 Conroy, that either that would be an end result or that if  
3 he did have to go through it, that he wouldn't come out at  
4 the end without any problems.

323 Q. So it would be correct to say that whilst it was a matter  
6 of concern to him, he was not concerned or worried about  
7 it; is that the situation?

8 A. I think I can answer your question with a specific  
9 example. I mentioned Paddy Shorthall coming over to talk  
10 to myself and Mr. Murphy on behalf of Mr. Conroy at the  
11 time of the judgement in the Isle of Man. Almost the only  
12 argument that was put forward on behalf of Mr. Conroy on  
13 that occasion were the tax allegations that you have  
14 enumerated today, put forward by Mr. Conroy. The immediate  
15 response at the end of that by Mr. Murphy without any  
16 interruption by myself was, in effect, go forth and  
17 multiply. I am not settling if somebody tries to threaten  
18 me that way, that was a very clear indication to me, in  
19 what was a settlement discussion, that he wasn't in the  
20 slightest bit worried in that sense by the allegations made  
21 by Conroy.

2 324 Q. Okay. Can I turn now to the next document at Tab 3 and  
23 that is Tab 3(F) which is at JMSE 29.5.2/6. In answer to  
24 My Friend's query whether it is a new topic, essentially it  
25 is not. If he requires -- .

26 .  
27 The document in question Sir, deals with Mr. Oakley's  
28 analysis or comments on the affidavit of Mr. Conroy and is  
29 in essence the same nature of a document as the affidavit  
30 of Mr. Murphy, in that it is a joinder of issues, in a way,  
31 on the allegations which were made.

32 .

1 CHAIRMAN: In other words, it is notes made by this  
2 witness, having read the other document?

3 .

4 MR. O'NEILL: Exactly.

5 .

6 CHAIRMAN: And one's ordinary reaction to jot down  
7 inconsistencies, otherwise, as you read through.

8 .

9 MR. O'NEILL: Exactly. It is headed; well, firstly you  
10 recognise the document I take it, Mr. Oakley. It is  
11 "comments on the affidavit of Mr. Conroy sworn on the 13th  
12 of March, 1990". And it then goes down on a paragraph by  
13 paragraph basis, presumably referable to the affidavit of  
14 the 13th of March, 1990.

15 .

16 MR. HERBERT: Sir, could I with some impertinence offer  
17 that this is a very important document, needless to say  
18 from my point of view, it is a contemporaneous note taken  
19 by this witness at the time and it is not in anyway  
20 suffering from any impediments of distance in time from the  
21 events. It is something I would ask Mr. O'Neill to deal  
22 with in extenso, if not I would have to do so. I would  
23 prefer not, I would prefer it comes from Mr. O'Neill rather  
24 than from me.

25 .

26 It is late-in-the-day Sir, we have had a long day, I would  
27 prefer Sir, that it is not dealt with unduly rapidly and at  
28 the end of the day. And perhaps you might indulge me in  
29 this, but again Sir, I am only offering this in the hope  
30 you will agree with me, but I of course I am not trying to  
31 impose upon you in anyway as to how you conduct your  
32 Tribunal.

1

.  
CHAIRMAN: No, I perfectly understand the sacrificial lamb  
approach. I think that we might bow to the request, Mr.  
O'Neill, or do you feel you can do this in the next half  
hour?

6

.  
MR. O'NEILL: I think what My Friend is urging on you,  
Sir, is that I should go through each response which the  
witness made to the individual matters dealt with in Mr.  
Conroy's affidavit. Now, matters have progressed on the  
basis that the only issues which have been raised out of  
those affidavits are the allegations of wrongdoing on the  
part of Mr. Murphy.

14

.  
The affidavits themselves deal with matters which are  
entirely peripheral to that issue, they don't touch upon  
the issue of wrongdoing of Mr. Murphy. They explain in  
some detail the operation of the trust and various other  
matters which I respectfully submit are entirely  
irrelevant. I was hoping to confine the witness to  
relevant material and that in particular would be the  
limited references which there were to the, I think five  
paragraphs, five paragraphs of Mr. Conroy's affidavit as  
opposed to the 99 paragraphs of the affidavit which, with  
respect, would take us forever, and is not going to advance  
matters at all, Sir.

27

.  
CHAIRMAN: Well, Mr. O'Neill, you take what course you  
wish to present your aspects of this matter. I certainly  
won't interfere in anyway, because your knowledge of this  
matter is much more detailed than mine at the moment.  
While I would like to accommodate your colleague, you are

1 the person that must make the decision as to what you are  
2 going to do and how you are going to do it. I will leave  
3 it entirely in your hands. If you think that between now  
4 and half past four we can achieve a reasonable result, I  
5 would be delighted.

6 .  
7 MR. O'NEILL: I think that we would probably complete this  
8 document until half past four. We will break for five  
9 minutes just for this moment in time.

10 .  
11 325 Q. MR. O'NEILL: In ease of the witness Sir, if I can just  
12 tell him that we will be commencing at page 22. He may  
13 wish to read it from that point on?

14 A. Can I actually say something, Mr. Chairman? It does seem  
15 to me that you have putting to me, material documents  
16 obtained from the London court file, I have already drawn  
17 attention to the fact that you don't have an intervening  
18 affidavit of Mr. Conroy. Now, what is very clear is that  
19 this it a note that was prepared, sorry, Mr. Murphy; I beg  
20 your pardon, an affidavit of Mr. Murphy, you don't have  
21 that before you.

22 .  
23 This note is the note that I prepared for the purposes of  
24 preparing that affidavit. And whilst I wouldn't go so far  
25 as to suggest it, the eventual affidavit followed it  
26 verbatim, I think it would be a very important point for me  
27 to make, that this is almost like my attendance note of the  
28 discussions I had with Mr. Murphy at that time for the  
29 preparation of his affidavit, which was filed and then  
30 sandwiched between the two affidavits you quoted from quite  
31 extensively.

32 .

1 Now, I personally because it is my note, it is also a  
2 document that I prepared for counsel, would like the  
3 entirety of the document to go in, not just selected parts  
4 of it, because you have asked me very detailed questions  
5 about Mr. Conroy's affidavit and specific paragraphs of  
6 those affidavits and I think that as this actually, in  
7 effect, is what would have been Mr. Murphy's affidavit, the  
8 entirety of the document should go in.

9 .

10 CHAIRMAN: Well as far as I am concerned, while Mr.  
11 O'Neill you are the person who determines how and in what  
12 manner you present this case, and nobody else,

13 .

14 MR. O'NEILL: Certainly Sir, I don't want to appear that  
15 in anyway I am closing My Friend from asking questions  
16 which might be relevant or germane arising from any other  
17 aspect or any other paragraph, but I am merely saying that  
18 having read the document and having looked at the issues  
19 which are currently being dealt with by this witness, I  
20 will put to him everything that is relevant to those  
21 issues. The rest are peripheral matters, and if My Friend  
22 feels that he can satisfy you Sir, that opening any one of  
23 them is germane to the issue, of course I will bow to that,  
24 but for the present, I intend to limit my questions to the  
25 matters which commence at page 22 and are the detailed  
26 responses of Mr. Oakley to the allegations of wrongdoing on  
27 the part of Mr. Murphy.

28 .

29 CHAIRMAN: All right. We will resume in five minutes upon  
30 that basis.

31 .

32 THE HEARING THEN ADJOURNED FOR A SHORT PERIOD AND RESUMED

1 AGAIN AS FOLLOWS:

2 .

326 Q. MR. O'NEILL: Mr. Oakley, your document has its own  
4 internal pagination, which is at the centre of the bottom  
5 there, you see that? If you turn to page 22, you will see  
6 that at page 22 under the reference "70" it deals with  
7 paragraph 73 of the affidavit of Mr. Conroy upon which you  
8 were preparing these notes and it sets out as follows:

9 "Mr. Murphy is a very private man and not for the reason  
10 given by Mr. Conroy, but because he values his privacy"?

11 A. Sorry, did you say paragraph 70.

1 327 Q. Yes 70, in the margin?

13 A. Because paragraph 70 says something completely different.

1 328 Q. You see the JMSE reference, Tribunal reference is JMSE  
15 295/27 in the top corner?

16 A. My paragraph 70 says "see please attendance notes -- in  
17 this context please see private investigators report by  
18 Five Star". I am in the wrong place?

1 329 Q. I think you must be, do you see page --.

20 A. You are talking about 70 in the margin, not paragraph 70 of  
21 Mr. Conroy's affidavit.

2 330 Q. 70 in the margin?

23 A. I am with you. I beg your pardon.

2 331 Q. Not at all. It is 70 in your pagination, referring to 73  
25 in his affidavit. At page 22: "Mr. Murphy is a very  
26 private man, not for the reasons given by Mr. Conroy but  
27 because he values his privacy. He not only lives quietly  
28 but fights shy of publicity. Certainly in my experience  
29 with him he does prefer his business affairs to be  
30 conducted in secret.

31 .

32 71: JM" I think that is Joseph Murphy Snr.; is that



1 correct?

2 A. That's correct.

332 Q. "Has made no such admission to Mr. Conroy either in 1981 or

4 at any other date. Following his residency in Guernsey,

5 Mr. Murphy made an investment in land in Spain. Which upon

6 resale produced a substantial profit. The investment was

7 in the name of Hammer and Spring Incorporated, which in

8 turn is owned by Bremen Incorporated; both of which are

9 Liberian companies.

10 .

11 There was as a result no breach of UK exchange control

12 regulations nor was there any avoidance of UK tax. Bremen

13 Incorporated became a shareholder in IFTC the Isle of Man

14 Bank, which failed. The money was for a time deposited in

15 a bank in Switzerland up to and until the investment in the

16 IFTC bank was made by Bremen Incorporated"?

17 A. There is the answer to the point you raised earlier to me

18 in respect of Hammer and Spring.

1 333 Q. Yes. "In fact JM has not been resident in the UK since the

20 5th of April 1968". Now, before moving to dealing with

21 what is alleged in paragraph 74, it would appear from your

22 attendance or your notes there, that entities known as

23 Hammer and Spring and Bremen Incorporated existed?

24 A. Yes.

2 334 Q. That they were Liberian companies; isn't that so?

26 A. Well, it would appear so from my note.

2 335 Q. Yes; and that they had an involvement, or Mr. Murphy or the

28 Murphy trusts had an involvement with these companies;

29 isn't that so?

30 A. Yes.

3 336 Q. And that those companies, either together or individually

32 had invested monies out of the UK; sorry out of the British

1 Isles and by that I include the Channel Islands, in Spain,  
2 where they had been invested in property; isn't that so?  
3 That seems to be what it says?

4 A. Yes. But the specific allegation I think you were  
5 referring to goes back to paragraph 73 of Mr. Conroy's  
6 affidavit.

337 Q. Yes?

8 A. Which if you look at that, was that he had, Mr. Murphy had  
9 breached exchange control regulations.

1 338 Q. Exactly?

11 A. By making this investment.

1 339 Q. The distinction being that whilst Mr. Conroy was alleging  
13 that the monies had been taken out of the UK and that would  
14 have involved, I take it, a breach of exchange control  
15 regulations, your attendance indicates that it was  
16 following his residency in Guernsey that Mr. Murphy made  
17 the investment, and if so he would not have been subject to  
18 UK exchange control regulations; isn't that right?

19 A. That's right.

2 340 Q. Right. So there was an issue there where it would appear  
21 if Mr. Murphy's accounts of events was correct, Mr. Conroy  
22 had gone to some elaborate detail to construct a lie which  
23 involved a series of half truths. Namely that there was a  
24 company called Hammer and Spring, there was a company  
25 called Bremen, they were both Liberian companies, they both  
26 were involved in investment in Europe; be it Switzerland or  
27 Spain or whatever it might be; and that those funds were in  
28 fact offshore funds. All of that was true, but to that he  
29 apparently appended the suggestion that the monies that had  
30 come out in the 1970's when at the time when Mr. Murphy was  
31 resident in the UK and therefore there was firstly a breach  
32 of exchange control regulations, but secondly that the

1 monies were also monies from the Murphy companies, not Mr.

2 Murphy personally; isn't that so?

3 A. Well, I think it is part of a pattern of the allegations

4 that Mr. Conroy makes that he tries to pick some element of

5 factual content and to elaborate or detract from it to suit

6 his purpose, because he does the same with the Jola

7 Foundation.

341 Q. Yes?

9 A. He attempts to, he attempts even though he subsequently

10 later admits that was set up by himself and Mr. Devine, to

11 use it in a way that is anti Mr. Murphy, regardless of

12 whether the facts on full examination actually fit the bill

13 in that case.

1 342 Q. Yes?

15 A. And you know, one of the incidents of allegation that Mr.

16 Conroy makes is in relation to the Jola Foundation that

17 this was money that Mr. Murphy was taking from himself and

18 as Mr. Murphy points out, as is clear as I recall from the

19 documentation, the beneficiaries of that trust was Mr.

20 Conroy and his children not the Murphy children in the

21 event of the demise plaintiff Murphy Snr.

2 343 Q. Sort of. The demise of Mr. Murphy, the beneficiary was Mr.

23 Murphy; isn't that so?

24 A. Mr. Murphy and Mr. Conroy.

2 344 Q. Yes; and was this some form of a discretionary

26 arrangement. Were there Trustees? It is described as a

27 foundation, but it is the creation of some Lichtenstein

28 lawyers for the benefit of named individuals?

29 A. It was a creature created by Devine and Conroy.

3 345 Q. Yes?

31 A. But the plain fact is that the beneficiaries of this

32 foundation that Mr. Conroy alleges serious wrong doing on

1 the part of Mr. Murphy were actually Mr. Conroy's own  
2 family and not the Murphy family.

3 .

4 I think the interesting point as you go through this, it  
5 was quite fortuitous that I got the actual paragraphs  
6 wrong, but go back to paragraph 70 of his affidavit, and I  
7 think you have got to start by looking at exactly where Mr.  
8 Conroy was coming from in relation to his allegations.

9 .

10 Now, there are serious comments as I do recall, made by  
11 Master Gowers as I said in the High Court in London as to  
12 Conroy's veracity. I don't think it is much good simply  
13 picking up paragraphs and saying "but if this is correct  
14 this would have been the effect", the plain fact is Mr.  
15 Conroy was not a reliable person, and Mr. Gogarty was of  
16 the same view, both in terms of his business ability and in  
17 terms of his delusional character, for want of a better  
18 word. I am trying to be as neutral as possible, the  
19 fantasy world in which he lived. If you are looking to try  
20 and judge whether any of these allegations were true or  
21 whether they have any substance, it is an important factor  
22 to take into account, very important fact to take into  
23 account.

24 .

25 CHAIRMAN: May I intervene here for just one moment? Mr.  
26 Oakley, isn't the situation this; that if, that first of  
27 all these statements were made in a public document, i.e.  
28 an affidavit that is going to be used in court?

29 A. Yes.

30 .

31 CHAIRMAN: If those statements, now let's leave out the  
32 veracity of them or otherwise, get to the knowledge or get

1 within the ambit of reporting to the Revenue, whether  
2 English or Irish or where; it is almost certainly going to  
3 produce a Revenue audit or a Revenue investigation. They  
4 are not going to take a look at whether they are right or  
5 wrong, here is a statement on affidavit?

6 A. No, I disagree with you, Chairman.

7 .

8 CHAIRMAN: And they are going to look into it, so whether  
9 Mr. Murphy comes out of it absolutely totally white, he is  
10 going to be the subject matter of a Revenue audit.

11 A. Mr. Chairman --

12 .

13 CHAIRMAN: Is it not a matter of concern to him that this  
14 should be said. If for instance there were one, just take  
15 one, just assume he had one transaction which was not  
16 squeaky clean, he would bring the house down, as you said  
17 yourself earlier in the day, the Revenue would simply say  
18 "all right, we will assess you and you now, proceed to  
19 tell us why you shouldn't pay the assessment". Isn't that  
20 the reality of it?

21 .

22 Isn't this why Mr. Murphy may, I am not saying did, may or  
23 could conceivably be unhappy about these statements? Isn't  
24 that the reality of it?

25 A. No, I don't think it is. And it is for the following  
26 reasons; in the first place the Revenue, certainly in the  
27 UK, do not react just on the basis of unsubstantiated  
28 information given to them by persons involved in  
29 litigation, whether it appears in an affidavit or not. The  
30 Revenue don't just go chasing funds around the world for  
31 the sake of it. They actually test the veracity of what  
32 information they are being given, particularly and

1 particularly carefully where that information is given in  
2 the course of contentious litigation, where one party is  
3 claiming against the other, for the simple reason, and I  
4 imagine the Revenue is the same in Ireland as it is in the  
5 UK, they don't want to be a party, nor do they wish to be  
6 used as the recovery vehicle or a vehicle, pressure point  
7 vehicle in the course of litigation that doesn't otherwise  
8 concern them.

9 .  
10 So, whilst I said to Mr. O'Neill that the reaction of the  
11 Revenue, if indeed they are satisfied, is to raise an  
12 assessment that is technically correct. If you are asking  
13 me if this case - was that almost an automatic reference to  
14 the reference by the Revenue in the UK? The answer is most  
15 definitely they would sit and look very carefully where  
16 this information was coming from, the truthfulness of the  
17 Deponent and exactly why it was being given to them in this  
18 form.

1 346 Q. MR. O'NEILL: And presumably, Mr. Oakley, firstly they  
20 would require to know about it before they would carry out  
21 any investigation?

22 A. Of course.

2 347 Q. Yes, isn't that right?

24 A. Yes.

2 348 Q. And the less they know the greater the chances that there  
26 will be an investigation; isn't that right?

27 A. That's quite right.

2 349 Q. And if there is a sworn affidavit and if there are exhibits  
29 to that affidavit and if the exhibits contain documents  
30 from third parties which appear, not necessarily  
31 conclusively prove, but which appear to suggest that what  
32 the deponent is stating is true, that increases the odds of

1 their being an investigation; isn't that so?

2 A. It may do. Except I can only come back to the reality as  
3 opposed to speculation, let's come back to the reality of  
4 what happened in this case. As I said, Paddy Shorthall  
5 came after the judgement was given after the preliminary  
6 point in the Isle of Man, to meet with both myself and Mr.  
7 Murphy Snr. in London as an emissary on behalf of Mr.  
8 Conroy to attempt to negotiate a settlement. Those  
9 negotiations were almost exclusively opened on the basis of  
10 "you are going to face difficulties with the Revenue  
11 because Mr. Conroy will eventually go to them" because they  
12 clearly, quasi blackmail point, if I can put it in that  
13 way, and Mr. Murphy's response was "go away and do your  
14 worst" but not in quite such simple language.

1 350 Q. Yes?

16 A. So the answer to your point in a purely practical way, is  
17 Mr. Murphy challenged Mr. Shorthall, the representative or  
18 emissary of Mr. Conroy to do his worst and go away and do  
19 it and he never did.

2 351 Q. Um. And equally he, Mr. Murphy, did not tell them at the  
21 end of the day to go forth and multiply, but rather he paid  
22 them £625,000?

23 A. No, the trust paid them.

2 352 Q. Be it the trust; one of the consequences of the settlement  
25 was an express requirement that the documents in the  
26 possession of Mr. Conroy would be surrendered to the  
27 solicitors, yourselves?

28 A. Absolutely, yes.

2 353 Q. Yes?

30 A. Because in the course of those settlement discussions Mr.  
31 Conroy acknowledged that they were vexatious and they are  
32 frivolous and there wasn't an ounce of truth in them.

354 Q. Yes. Where it was indicated that he acknowledged there  
2 wasn't an ounce of truth in them?

3 A. In the course of the settlement discussions that resulted  
4 in the settlement that paid him the sum of whatever it was,  
5 600 and --

355 Q. Right. Of course he acknowledged that at any point in time  
7 there would have been no obligation to pay him the monies;  
8 isn't that so?

9 A. No, I don't think there would be, as I said this morning,  
10 there were a very large number of factors that were taken  
11 into account.

1 356 Q. Right?

13 A. For the purposes of deciding or the Trustees deciding that  
14 a settlement was the appropriate course.

1 357 Q. Right.

16 A. And that was not least of the fact, not least of all in  
17 relation to that was the fact, that substantially all of  
18 the assets that had otherwise, that would have otherwise  
19 have gone to Conroy had been returned or would be returned  
20 or would otherwise not go out under the 10% share  
21 arrangement. That was a very substantial sum of money.  
22 Not only, sorry --.

2 358 Q. No, I didn't mean to cut you short.

24 A. Thank you. Not only was that a factor, but also the fact  
25 that Conroy was a man of straw.

2 359 Q. Right?

27 A. The costs were horrendous. I gave you an estimate of 200  
28 or thereabouts which I recall as being the costs of the  
29 trusts at the time. Conroy himself was in financial  
30 difficulties. We know that he was not only in financial  
31 difficulties with his own investments, he was in  
32 difficulties with Conroy Manahan his architectural practice



1 where he left his partner with very substantial debts. It  
2 wasn't just these factors, but at the end of the day the  
3 Trustees looked at the overall effect, the continuous  
4 litigation was likely to have both in terms of the trust  
5 assets, what would be recovered, and how it would be, how  
6 the costs would be paid at the end of the day, and as I  
7 said, last but by no means least the most significant human  
8 factor was the effect on Mr. Murphy and his wife, Una, who  
9 at that stage was seriously ill.

1 360 Q. Um?

11 A. The way it was actually put to Mr. Murphy at the time that  
12 I finally managed to persuade him to agree to a settlement  
13 was "how long, Joe, will it take you to go out properly  
14 managing the companies, diverting your attention from the  
15 litigation that is likely to take six weeks to resolve, and  
16 actually spending that six weeks in managing the companies  
17 effectively" and the answer was "I could actually recover  
18 it over that period of time and more".

1 361 Q. Um. Can we revert to the document that I am asking you  
20 about and that is your own note in relation to the  
21 allegations which were contained in Mr. Conroy's various  
22 affidavits? I have dealt with the question of the Bremen  
23 Incorporated and Hammer and Spring issues and I think you  
24 have identified that that was a legitimate transaction on  
25 the basis of the instructions you had been given that the  
26 money was transferred out of Guernsey and not out of the  
27 UK. That was a matter that was clearly capable of proof by  
28 production of documents; isn't that right?  
29 .  
30 One could have exhibited, for instance, the certificate of  
31 incorporation of Bremen to show that it was not a company  
32 in existence in the early 1970's and therefore could not

1 have been involved in the opening of bank accounts in  
2 Lichtenstein at that time, or one could have dealt with the  
3 specific allegation that he, the money came from Guernsey  
4 by indicating exactly what bank transferred the money from  
5 Guernsey to Bremen or to Hammer and Spring, all these are  
6 matters which were capable of positive proof by the  
7 production of documents?

8 A. Should that be necessary.

362 Q. Should it be necessary. Did you ever see documentation  
10 yourself which established the truth of these facts or did  
11 you accept what was indicated to you by Mr. Murphy as being  
12 correct? I am asking you now, specifically about whether  
13 you ever saw documentation which indicated that monies were  
14 transferred from Guernsey to an account in Switzerland on  
15 behalf of Bremen's account or Hammer and Spring  
16 Incorporated, at a date subsequent to 1976?

17 A. I had documentation relating to the Jola Foundation, of  
18 that I am certain because I was aware of this point in  
19 relation to Mr. Conroy being the ultimate, or his family  
20 being the ultimate beneficiary in the event of the demise  
21 plaintiff Murphy. The answer is "I can't, at this distance  
22 of time, recall".

2 363 Q. The Jola - just to help you, the Jola Foundation, it is  
24 common case on these affidavits, was opened by Mr. Devine  
25 and Mr. Conroy themselves and was not an account opened in  
26 the early seventies. This was a foundation --

27 A. A foundation is like a trust.

2 364 Q. Exactly?

29 A. It was a foundation that was created on the advice, even I  
30 think Mr. Conroy accepts, of Mr. Devine and Mr. Conroy  
31 himself.

3 365 Q. After the collapse of the IFTC Bank which was in 1981, but

1 we are dealing now with the allegation that was being made  
2 by Mr. Conroy, that it was in the early seventies that  
3 Bremen was the vehicle through which monies were invested  
4 in Switzerland. So that the Jola Foundation will not  
5 assist in establishing whether or not there is  
6 documentation which shows that Bremen was set up at a date  
7 subsequent to 1976 when Mr. Murphy went to Guernsey?

8 A. That could be so.

366 Q. Um.

10 A. But as I say, I can't recall seeing specific documentation  
11 in relation to, let me just think actually. I had  
12 documentation relating to the collapse of IFTC, and of  
13 which Mr. Shorthall was the liquidator. But even in that  
14 context, Bremen was a shareholder in that bank, but I can't  
15 recall seeing the documentation relating to the formation  
16 of that company at that time.

1 367 Q. Right. So that you were relying on what had been indicated  
18 to you by Mr. Murphy; namely that there was no transfer of  
19 money in the early 1970's that it only took place after he  
20 had moved to Guernsey in 1976?

21 A. I think it was one instance where Mr. Murphy wasn't the  
22 person I solely relied upon because I also had the services  
23 of Mr. Wadley who was aware of what had occurred at the  
24 time of the collapse of IFTC.

2 368 Q. Was Mr. Wadley also involved, as is suggested by Mr.  
26 Conroy, in the transfers of monies to Zurich through the  
27 bank named there, the Cambio Und Valloren Bank in Vaduz.  
28 The detail of all that is given in the later affidavits?

29 A. Yes. I can't answer your question because I don't know  
30 what involvement Mr. Wadley had in relation to those  
31 particular aspects. What I am saying to you is I didn't  
32 just have, for the explanations that I have here, and

1 particularly in relation to the Hammer and Spring episode,  
2 the Jola Foundation etc., I didn't just have Mr. Murphy's  
3 recollection, I also had Mr. Wadley's recollection because  
4 he was involved in the IFTC collapse. But I come back to  
5 the point, I do not recall seeing the formation documents  
6 of either company.

369 Q. Right. The next matter that was dealt with in your note is  
8 at internal pagination 23, paragraph 72, dealing with Mr.  
9 Conroy's affidavit at paragraph 74. "JM has made a full,  
10 has made full and proper disclosure to the Guernsey tax  
11 authorities".  
12 .  
13 "As Conroy himself confirms in his affidavit that he,  
14 himself, has given tax advice to JM. It is not known  
15 whether the advice is proper or professional. It is  
16 correct that JM is now resident in Guernsey accepted by the  
17 Guernsey authorities as resident there. He is employed by  
18 a Guernsey company from which he derives his main source of  
19 income. He occasionally comes to England and has available  
20 by way of accommodation a flat owned by his sister-in-law.  
21 He has similar accommodation to him available in Dublin  
22 owned by another relative of the Murphy family. He does  
23 not infringe the 90-day residency requirement".  
24 ,  
25 Now on reflection on that, is it the case that the  
26 apartment that is being referred to in London there was the  
27 flat at 1560 Great Russell Street and the property in  
28 Dublin, Wilton Lodge; is that what you understood those two  
29 properties to be when you were taking this attendance?

30 A. Yes.

3 370 Q. And it is suggested in your attendance that he has similar  
32 accommodation available to him in Dublin owned by another

1 relative of the Murphy family. Do you know in fact that  
2 Mr. Murphy Snr. was the owner of this property, Wilton  
3 Lodge, personally?

4 A. I can't say. I mean this could either be an error on my  
5 part or what he told me at the time and he is mistaken, but  
6 I doubt if he is going to be mistaken about the ownership  
7 of Wilton Lodge.

371 Q. Right?

9 A. I can't help you anymore than I wrote this at the time on  
10 the basis of information I heard at that time.

1 372 Q. And then paragraph 73 deals with the formation of the Jola  
12 Foundation. And you record that the: "The formation of  
13 the Jola Foundation is entirely the creature of and based  
14 on the advice of Devine and Conroy arises out of the  
15 collapse of the IFTC. In effect what happened was that  
16 Devine and Conroy between them removed the assets of Bremen  
17 Incorporated, the shareholder in IFTC and placed them in a  
18 new foundation called the Jola Foundation. None of the  
19 funds came from the 9th plaintiff. The funds were in fact  
20 the proceeds of the sale of the Spanish property referred  
21 to in paragraph 71. That is paragraph 73 above. Certainly  
22 the instructions to do so came from JM on the clear advice  
23 from Devine and Conroy.

24 .

25 74: I have reviewed the documentation and have obtained  
26 control of Bremen Incorporated. The Jola Foundation has  
27 been liquidated, the funds returned to Bremen Incorporated  
28 from which they came. Sorry, whence they came. None of  
29 the funds have been under the control of JM or otherwise  
30 paid to him. There are no Guernsey tax implications for JM  
31 in respect of the Jola Foundation which in any event no  
32 longer exists. It is correct that no income from the

1 foundation has been declared to Guernsey tax authorities  
2 for the simple reason none of it has accrued to Mr.  
3 Murphy".

4 .  
5 Then 75 deals with paragraph 76 too "it is simply untrue".  
6 Paragraph 76 goes on to say: "All transfers between the,  
7 between Ireland to other jurisdictions have been through  
8 the banking system and in strict compliance with the  
9 exchange control regulations".

10 .  
11 I think that deals then with the matters that were  
12 allegations of wrongdoing on Mr. Murphy's part and it was  
13 subsequent to that that an affidavit was in fact sworn by  
14 Mr. Murphy and I didn't put it to you, it is my error I am  
15 afraid, but we have a copy of it. I will give it to you so  
16 you can consider it overnight. I think it merely  
17 implements the findings that you have already referred to  
18 in this document and puts it into a format which was  
19 subsequently adopted and sworn by Mr. Murphy, and I think  
20 perhaps --.

21 A. Could I just ask, before you leave that, because I take it  
22 this is the end of this document; would you go on to  
23 paragraph 79 and 80.

2 373 Q. Yes?

25 A. Because I think it is probably the most relevant part.

2 374 Q. Are these your 79 and 80?

27 A. 79 in the margin and my 80 in the margin. Would you like  
28 to read both of those paragraphs?

2 375 Q. Paragraph 79: "There have been sales of land in Ireland.  
30 In the summer of 1988, a report was commissioned by the  
31 Trustees as to the viability of the land holdings in  
32 Dublin. Some of these did not have planning permissions

1 and appear to have little prospect of proper development.

2 A copy of the report by Mr. Gogarty is enclosed", and we  
3 don't have a copy of that report.

4 .

5 80: "Whilst Mr. Conroy may not have been aware of the  
6 contents of the report produced by Mr. Gogarty, he was  
7 aware from discussions that took place prior to June 1988  
8 that because of the unsatisfactory nature of the land  
9 holdings and in particular the inability to obtain planning  
10 permissions, JM wished them to be disposed of. Most of the  
11 acquisitions have been made on the advice of Mr. Conroy  
12 which had proved to be wholly inadequate. The decision to  
13 sell the lands was made at or about Christmas 1988  
14 following the report by Mr. Gogarty. At that stage no  
15 proceedings have been commenced by Mr. Conroy and  
16 accordingly the sale of the land has no relevance to his  
17 claim, nor is it an attempt to defeat his claim. The  
18 decision to sell the lands in Dublin comes from a proper  
19 consideration by the companies and the Trustees of their  
20 commercial value and development potential".

21 .

22 Now that is the two references that you asked me to read  
23 Mr. Oakley and you may, overnight, consider the contents of  
24 the Guernsey transcript where Mr. Murphy was questioned  
25 about this, and his response to the suggestion that the  
26 Trustees had made decisions as opposed to himself. I am  
27 not going to alert you as to exactly what the response  
28 because, I don't have it before me at the moment, but I  
29 think it explains what the position was in relation to that  
30 query?

31 A. I was more interested in the background as to how the  
32 decision was made for the sale of the lands at the time

1 that I am making this a contemporaneous note, not 11 years  
2 afterwards or whatever it is we are into, and the fact that  
3 it was a clear discussion that was based upon a report  
4 obtained from Mr. Gogarty against the background of the  
5 lack of planning permission and the lack of prospects of  
6 development; and nothing in this paragraph has anything to  
7 do with Mr. Conroy's allegations or Mr. Murphy's alleged  
8 concerns in respect of them.

376 Q. It is not been possible, Mr. Oakley, for the Tribunal to  
10 obtain a copy of what is referred to here as a report by  
11 Mr. Gogarty and Mr. Gogarty on being examined in the  
12 Tribunal did not make any reference to a report having been  
13 prepared by him for the Trustees. The Trustees being Mr.  
14 Moore O'Farrell and Mr. Goff in the United Kingdom. He did  
15 in fact prepare a schedule of the lands which merely  
16 records such matters as acreage, the price paid for them,  
17 and in some instances the planning status of those lands,  
18 but there is as far as the Tribunal is aware and certainly  
19 as regards the cross-examination of Mr. Gogarty, no  
20 specific reports such as is referred to here as forming the  
21 basis of a decision by Trustees or companies, which ever  
22 was considered, and I think that you will see that Mr.  
23 Murphy says that the decision to sell was a decision made  
24 by him, not on the basis of a report prepared by Mr.  
25 Gogarty, but as a result of incessant treatise made to him  
26 by Mr. Gogarty to sell?

27 A. Yes.

2 377 Q. We can deal with that tomorrow perhaps

29 .

30 CHAIRMAN: Half past ten tomorrow morning? Thank you

31 all.

32 .



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1 THE HEARING WAS THEN ADJOURNED UNTIL THE 20TH JANUARY,

2 2000.

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