

1 THE HEARING RESUMED ON THE 26TH JANUARY, 1999, AS FOLLOWS:

2 .

3 MR. GOGARTY CONTINUES IN DIRECT EXAMINATION BY MR.

4 GALLAGHER AS FOLLOWS:

5 .

6 1 Q. MR. GALLAGHER: Good morning, Mr. Gogarty?

7 A. Morning.

8 2 Q. On Thursday last I was taking you through the

9 correspondence and documents relating to the events of

10 summer of 1989 leading up to October of 1989, and indeed

11 subsequent events, and my recollection is that the last

12 letter we referred you to and you gave evidence about was a

13 letter of the 13th of December, of 1989, which was a letter

14 from Mr. Sheedy to Mr. Oakley in which Mr. Sheedy confirmed

15 having discussed the contents of Mr. Oakley's letter of the

16 7th of December with you, set out details of the

17 consideration and other matters. That in turn was replied

18 to by Mr. Oakley by letter of the 15th of December, of

19 1989, which appears to have been received by McCann

20 Fitzgerald on the 26th of December, of 1989; that's the

21 date stamp on it. I am referring to page 1014 -- sorry,

22 1018 in Book 4.

23 A. Yes.

24 3 Q. That's a letter from Mr. Oakley addressed to Mr. Sheedy in

25 the following terms; "Thank you for your letter of the 13th

26 of December and the contents of which are noted. I

27 enclose herewith an engrossed copy of the settlement

28 agreement for execution by your client. With regard to

29 the affidavit you will appreciate that this was a matter

30 which I first discussed with Mr. Gogarty direct in the

31 course of which I explained to him both its contents and

32 its necessity. I also explained to him the requirements

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

3 .

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

12 .

13 Mr. Gogarty, the affidavit that has been referred to there
14 is the affidavit I think that you were asked to swear in
15 reply to the affidavit of Liam Conroy and the affidavit of
16 Brendan Devine; is that correct?

17 A. That's correct.

18 4 Q. And the settlement agreement which was enclosed with that
19 document was one which was finally signed, I think by you,
20 and by Mr. Copsey, in the presence of Mr. Oakley and in the
21 presence of Mr. Sheedy, on the 3rd of October, of 1989?

22 A. That's correct.

23 5 Q. I will come to that document in a moment. It is page
24 1047.

25 .

26 The next document I want you to refer to, I want to refer
27 you to is the letter of the 25th of the December, of 1989,
28 page 1023, from Mr. Sheedy to Mr. Oakley. Mr. Sheedy is
29 referring to his letter of the 13th of December and he
30 says:-

31 .

32 "Please let me know when you expect to have the agreements

1 prepared for completion by the representative parties. As
2 we agreed previously this matter should be cleared up with
3 the greatest possible speed."

4 .

5 Was Mr. Sheedy at that time or were you anxious about
6 getting the agreements which actually only arrived the day
7 following the sending of this letter?

8 A. Yes, very.

9 6 Q. And the next page I want to refer you to is 1024, that
10 appears to be a letter from the Inspector of Taxes to
11 Copsey Murray in connection with your payments and the
12 requirements in relation to the deduction of PAYE and
13 PRSI. I don't want to go into that in detail at the
14 moment, but there certainly was some correspondence between
15 the Revenue Commissioners and Copsey Murray in relation to
16 the proposed settlement at that time and subsequent?

17 A. There certainly was.

18 7 Q. We will come to it in due course. Now, the following
19 letter on page 1025, it is a letter from Mr. Sheedy and it
20 is to Mr. Oakley. It apparently was written immediately
21 following receipt of Mr. Oakley's letter of the 15th of
22 December, enclosing the settlement, the engrossed copy of
23 the settlement agreement. It is in the following terms:-

24 .

25 "I have just now received your letter of the 15th of
26 December with one copy of the engrossed agreement. I am
27 surprised that the agreement does not contain any of the
28 amendments in respect of which we exchanged correspondence
29 ending with my letter of 13th of September. The document
30 which you have presented does not represent the agreement
31 which has been reached between your client and Mr.
32 Gogarty.

1 .

2 1. Mr. Gogarty is not to be referred to as "the
3 Director". The consideration for the provision of
4 benefits to him, including a pension is his resignation as
5 an employee from the company and its subsidiaries . The
6 relevant forms recording his resignation as a Director of
7 the company have been prepared by Mr. Copsey for submission
8 to the Companies Office. Those forms record Gogarty's
9 resignation as a Director with effect from the 6th of July,
10 of 1989. It would therefore be contradictory to now refer
11 to him as "the Director".

12 .

13 2. Paragraph No. 1 should be expanded to provide that if
14 the entire sum of £300,000 is not used by the company for
15 the provision of a pension for Mr. Gogarty and his wife,
16 the balance will be paid to him in cash.

17 .

18 3. Paragraph number 2 should be amended to read that the
19 employee will resign from his employment with the
20 company.

21 .

22 4. I think that the word "vouchered" on the last line of
23 page two should read "vouched".

24 .

25 5. Sub paragraph (vi) (a) should be amended to include the
26 words "During normal business hours" after the word
27 "devote" on the first line. In the absence of such an
28 amendment the demands which might be made on Mr. Gogarty's
29 time could be unreasonable.

30 .

31 Please let me have an amended agreement in duplicate for
32 completion by Mr. Gogarty and Lajos Holdings Limited."

1 .
2 The next document is a copy affidavit fax, it is on page
3 1029, and it is dated the 29th of December, of 1989. It is
4 sent at 10:15 and it is for the attention of Mr. Oakley
5 from Mr. Sheedy. It reads as follows; "I am unable to
6 contact you either by telephone or facsimile, please
7 contact me as a matter of extreme urgency, regards" .

8 .
9 Now, Mr. Gogarty, I want to move on to the next document,
10 which is a document 1030, and it is a letter signed by you
11 addressed to the Electricity Supply Board for the attention
12 of Maurice O'Sullivan, civil engineer.

13 .
14 It is a letter of the 29th of December, of 1989, and I will
15 read it, if I may, and you can -- we will come back to it
16 then.

17 .
18 "Re: Moneypoint Generation Station. Structural steel
19 work fabrication and supply contracts, engine room and
20 bunker bay units one, two and three.

21 .
22 Dear Sirs, I refer to our recent meetings and discussions
23 with you in connection with the above final account.

24 .
25 I now confirm this company's agreement to an overall final
26 account figure for the work of £10,769,547.51, exclusive of
27 VAT, in full and final settlement of all matters arising
28 from and under the above contracts.

29 .
30 Based on this final account figure the amount outstanding
31 to this company is £560,000, exclusive of VAT, composed as
32 follows:

1 .
2 Agreed total final account: £10,769,547.51.
3 Less deduction for raw steel: £2,788,758.77.
4 Balance; £7,980,788.74.
5 Less payments to date: £7,420,788.74.
6 Amount now due exclusive of VAT: £560,000
7 VAT: £140,000.
8 Total: £700,000.

9 .
10 We would be pleased to receive your Board's formal
11 agreement to the above figures.

12 .
13 Yours faithfully for Joseph Murphy Structural Engineers
14 Limited. J Gogarty".

15 .
16 And the reference on that letter is JG/OR; is that right,
17 on the top left-hand corner? Is that right?

18 A. Yes.

19 8 Q. Can you explain the circumstances in which that letter came
20 to be written, Mr. Gogarty, please?

21 A. Well, the circumstances were that, as I told you before, I
22 was negotiating with the ESB and I had a team, including
23 Jim Vesey and Brendan Murray, and I was liaising regularly
24 with Frank and Gay at times, but Frank Reynolds
25 particularly, and that was because I was also liaising with
26 Senior and keeping up to date, and when I had this
27 indication from the Board that we were reaching an
28 agreement I spoke to the Senior about it and I asked him
29 would it be necessary to get a, call the full forward or
30 would I get in touch with Copsey, and he said "Don't bother
31 with that, yourself and Frank can do it, and Gay", so I
32 went in then and I talked to Frank about it. As a result

1 of those discussions we felt we had reached an agreement
2 with the Board and we organised this document, this VAT
3 invoice because the ESB were saying if the Board agrees it,
4 if Murphy's Board agrees to it, to form the VAT invoice,
5 and it will be put in touch with the Board of the ESB, I
6 think it was on the 10th of October, if I am not
7 mistaken. So we did that and I, on account of that the
8 situation I was in, I asked Frank and Frank initialed that
9 letter to show that he was well aware of what was going
10 out.

11 9 Q. Where is the initial to be seen on that letter?

12 A. You see it, do you see where my name is, and to the right
13 of that you have, you see Froriep Renggli, that's Frank
14 Reynolds, that's Frank Reynolds, that liaised with me all
15 through until he got power.

16 10 Q. All right. Mr. Gogarty, are you saying that before this
17 letter of the 29th of December, of 1989, was sent to the
18 Electricity Supply Board that you discussed its contents
19 with Mr. Frank Reynolds?

20 A. Fully.

21 11 Q. Are you saying that he saw that letter and that he
22 initialed it?

23 A. He initialed it, yeah.

24 12 Q. And are you saying that you discussed if not the contents
25 of the letter, the stage at which the negotiations with the
26 ESB had reached and you discussed this with Mr. Joseph
27 Murphy?

28 A. Yes, oh yeah, and the record will show that I spoke to
29 him. I also phoned him the previous day, on the 28th as
30 well.

31 13 Q. What did you tell Mr. Joseph Murphy about the negotiations,
32 and what did you tell him about what was on offer subject

1 to the Board's approval from the ESB?
2 A. I told him everything that was in that letter, and he was
3 delighted with it, and that I didn't need to call Copsey,
4 that to deal with it myself and Frank and Gay if it was
5 necessary, and he would be satisfied, quite happy.

6 14 Q. Is it your evidence then that, Joseph Senior knew before
7 this letter was written that the ESB was --

8 .

9 MR. COONEY: With respect, Mr. Chairman, this is an issue
10 which will touch very closely on the credibility of the
11 witness, so I don't think there should be any more leading
12 questions. May I also ask that Mr. Gallagher should ask
13 Mr. Gogarty to say what record he has referred to a moment
14 ago. He said, he used the words "The record will show".
15 What form is that record?

16 .

17 CHAIRMAN: First of all, Mr. Gallagher, would you just be
18 careful about leading the witness, it is a material point,
19 and you also, if you can identify the word "record".

20 .

21 15 Q. MR. GALLAGHER: Well, Sir, I am asking Mr. Gogarty,
22 following the discussion with Mr. Murphy, what he told Mr.
23 Murphy during that discussion and what so far as he was
24 concerned Mr. Murphy knew or did not know following that
25 discussion.

26 .

27 MR. COONEY: Just before he answers that question, could
28 Mr. Gallagher ask Mr. Gogarty to identify what record he
29 was referring to when he used the words "The record will
30 show"

31 .

32 MR. GALLAGHER: I will do that in due course.

1 .

2 MR. COONEY: Very well. May it please.

3 .

4 16 Q. MR. GALLAGHER: Mr. Gogarty, you said you had a discussion
5 with Mr. Joseph Murphy?

6 A. Senior.

7 17 Q. Senior. Prior to the preparation of that letter?

8 A. Yes.

9 18 Q. What did you tell him, or what was said by him in the
10 course of that conversation, that telephone conversation?

11 A. I told him what was in this letter, that we had reached
12 agreement subject to the Board of Murphy's acknowledging
13 that and telling the ESB that they had reached agreement,
14 that they were satisfied with that. I told him the amount
15 and he was delighted with it.

16 19 Q. What amount did you tell him?

17 A. I told him they were getting £700,000 including the VAT,
18 and that the decision had to be made soon, because I said
19 that he was aware too, but I said that the situation in the
20 Board was that Mr., the chief civil engineer, Mr. Maurice
21 O'Sullivan, was resigning or retiring very shortly at that
22 stage and he was anxious to clear up this matter before he
23 left. I asked Mr. Murphy would I call, would he call a
24 Board meeting, would I acquaint Roger Copsey of this, so
25 that he was aware of it. He said there was no necessity
26 to talk to Copsey, that myself and Frank Reynolds could do
27 it with Gay Brennan, that's all.

28 20 Q. Are you saying that you told him there was £700,000 on
29 offer at that time?

30 A. Yeah, and it appeared to me it was the final offer in the
31 circumstances.

32 21 Q. And was that offer subject to any conditions?

1 A. The condition was that Murphy's would arrange it, that it
2 was to pass from the Board, the Murphy Board accepted that.

3 22 Q. Yes.

4 A. That they accepted that and advised the ESB that they were
5 accepting that as a final offer. So that the ESB, the
6 chief civil engineer could put it to his Board and also
7 approve it.

8 23 Q. Sorry, did that mean that as of the end of December, the
9 29th of December, this offer was subject to two matters;
10 (1) approval by the Murphy Board and (B) approval by the
11 ESB Board?

12 A. That's right, that's right.

13 24 Q. And you say that Mr. Reynolds initialed this letter which
14 was to be sent to the ESB confirming that Murphy's were
15 satisfied with what was on offer and were prepared to
16 settle for a total of £700,000 including VAT?

17 A. Including VAT, yes

18 .

19 MR. COONEY: With respect, I am sorry for interrupting
20 again. Mr. Gallagher is asking a series of leading
21 questions. He changed the emphasis originally when he was
22 referring, Mr. Gogarty said Mr. Reynolds initials were put
23 on a letter as a result of conversations he had with Mr.
24 Reynolds. It now seems Mr. Gallagher is suggesting Mr.
25 Reynolds put his initialling on as a result of a meeting
26 with the Board of JMSE.

27 .

28 MR. GALLAGHER: I didn't say that.

29 .

30 MR. COONEY: He asked if there was a board meeting.

31 .

32 MR. GALLAGHER: I did not ask.

1 .

2 MR. COONEY: He asked if there was Board approval.

3 .

4 CHAIRMAN: What he said was subject to condition, one that

5 it was approved by the ESB Board and that it was approved

6 by Murphy's Board, that's what he said. That's what the

7 witness acknowledged.

8 .

9 25 Q. MR. GALLAGHER: Mr. Gogarty, you mentioned a record that

10 Mr. Cooney has since referred to on a number of occasions,

11 can you say what that record is, what record were you

12 referring to?

13 A. It is said here, the record that, the ESB, the company was

14 accepting this and we were sending it onto the Board.

15 26 Q. Are you, when you refer to the record, are you referring to

16 the letter of the 29th of December, is that what you are

17 saying?

18 A. That's right, yeah. And more importantly Frank Reynolds

19 initials, that he initialed it, so that he was fully aware

20 of that and in fact advised me what to do, advised me.

21 27 Q. What advice did he give you?

22 A. Well, he said that he was talking to Mr. Murphy too about

23 it, the sum of money. And while Mr. Murphy was delighted

24 with the sum of money he didn't think that I would have got

25 that kind of money out of it, that he thought I would get

26 about £10,000, indicating that he was concerned that Mr.

27 Murphy begrudged me that money or didn't want to give me

28 the full amount of it. That's why, that's why I wanted him

29 to get that, he tipped me off. In a friendly way, in a

30 friendly way, because we were working very closely together

31 all over these years and up to that time, in a friendly

32 way. So, sorry, go on.

1 28 Q. You say he tipped you off, and as a result of being tipped
2 off did you do anything?

3 A. Well you see, then there was some other documentation
4 coming later on, we were getting, asking, sending it onto
5 the ESB and getting it, getting the Board to approve it and
6 pay us. And as a result of what Frank Reynolds said to me
7 I told my solicitor that I was anxious that I mightn't get
8 all my money that I worked hard for. And he advised me to
9 give him the invoice and he sent it onto the Board.

10 29 Q. I see.

11 A. That's how that happened. He can talk for himself up here
12 too.

13 30 Q. Pardon, who gave you that advise?

14 A. Mr. Sheedy, Mr. Sheedy.

15 31 Q. I see.

16 A. Mr. Sheedy.

17 32 Q. And the next document I want to take you to, Mr. Gogarty,
18 is the letter on page 1031 of the 29th of December, of
19 1988. It is the same date, sorry -- it is dated the 29th
20 of December, of 1988. On my copy the last date is crossed
21 out and "9" put in instead. Can you say when that letter
22 was written? It was the 29th of December, of 1989? 1989?

23 A. Yes.

24 33 Q. Was that a letter from you to-- who was the Joe?

25 A. To Senior.

26 34 Q. I see.

27 A. I had talked to him previously you see, will I read it
28 out? Will I read it?

29 35 Q. Yes, if you would?

30 A. "Dear Joe, further to our telephone conversation on Tuesday
31 last, the 26th inst., I confirm as follows:-

32 1. Baggot Street auction is fixed for the 20th October

1 next with a reserve of £350,000. There are so far 19
2 inquiries, but no firm bids, apart from the one for
3 £300,000 which I advised you of before you decided to go to
4 auction.

5 .

6 2. Duffy had an offer of £2,300,000 for all the lands
7 excluding Abbeycartron, and if he gets a quick deposit he
8 should sell.

9 .

10 3. You have to contact Mr. McDowell to see if he is
11 interested in Abbeycartron and you will let me know how you
12 get on.

13 .

14 Regards, Jim".

15 .

16 And I copied that to Duffy Mangan Butler, auctioneers.

17 36 Q. Do you say that you sent this or gave that to Mr. Joseph
18 Murphy Senior?

19 A. Yes.

20 37 Q. Did you post it to him or hand it to him, can you recall?

21 A. Post it to him.

22 38 Q. Where?

23 A. To Guernsey.

24 39 Q. Guernsey. The next document is a document of some six or
25 seven pages, and it appears to be handwritten notes. Can
26 you identify those, Mr. Gogarty, for me, Document 1032 and
27 following?

28 A. They are my writing anyway.

29 40 Q. They are in your writing?

30 A. Yes.

31 41 Q. Can you say when and in what circumstances you wrote those?

32 A. Well, I would say that they are contemporaneous notes that

1 I would write down that day or the next day or maybe the
2 day before, do you know, things I had to do or would have
3 done, like that. I gave all that stuff that I had,
4 everything I had I gave to the Tribunal and my solicitor,
5 so they appear to be copies of them notes, do you know?

6 42 Q. All right. We will come back to that. But in the
7 meantime perhaps you can go on with those pages that are
8 here. Would you read those notes for me, Mr. Gogarty, if
9 you are able please. They are in your handwriting; is that
10 correct?

11 A. Yeah, will I start off with Document 324?

12 43 Q. That's page 1032?

13 A. It says "2. Ring Gerry Sheedy Re: missing minutes for the
14 Board meetings, JMSE and AGSE at Santry on the 21st of
15 October, of 1989, and also for 4th of May, '88, in
16 Fleetwood and of 12th of May in Santry and others on file
17 between 18th of January, the 7th of June, 1988. Should I
18 phone Roger Copsey, Murphy.

19 .

20 3. Ask him any reply from Oakley and if he --

21 44 Q. Sorry, can I just, can you just confirm that last line --
22 phone-- "Should I phone Roger Copsey?". What's the next
23 word there?

24 A. "Murphy" I think it is, is it? "Myself", either "Murphy"
25 or "myself".

26 45 Q. Either "Murphy" or "myself"?

27 A. I just can't make it out.

28 46 Q. All right.

29 A. "Ask him any reply from Oakley and if not should he have
30 early meeting to discuss it. 27th of December, 1989, Re:
31 Maurice O'Sullivan, three stars. Does he want to meet me
32 as I want to be on hand?"

1 .

2 (B) Does he want to meet Brendan Barry? No.

3 (C) Is he retiring on Friday?

4 (D) Has he reached a final decision on the 560 K? The

5 answer is yes, would recommend as final? Call Santry Re:

6 Frank and boots and rain gear.

7 (B) Foolscap notebooks and jotters.

8 .

9 Chase S". I don't know what that is -- chase.

10 47 Q. Just to take you back to "B", Mr. Gogarty, "B" seems to me

11 to read "Does he want to meet B Murray and then there is a

12 -- and the word "no" ?

13 A. Well, that would appear to me to indicate I wanted to know

14 would Mr. O'Sullivan want to meet Mr. Barry who was my main

15 negotiator with the ESB, he was the chartered surveyor that

16 I employed.

17 48 Q. Yes, but he didn't read the Board's no, you inadvertently

18 omitted that I am sure?

19 A. Did I?

20 49 Q. Now, the next page is on 1033. Your number 6262. Can you

21 read the rest of it?

22 A. Yeah, he says; "Re: Insurance, Alexander Stone House,

23 contact ... 6058888, 4 stars, 2 stars and Gerry Watkins --

24 I think that was, you see I was going to get the Scorpio,

25 that's the car, and I was anxious to see that it was

26 properly insured, transference of the insurance.

27 .

28 "The next is Glennons re: Somebody -- something about

29 £2,400. / MM Re: ESB offer 566 K, final --

30 50 Q. Is that--

31 A. I can't make out my own writing, I don't know. Sorry?

32 51 Q. Is it JM?

1 A. JM, yes, "Re: ESB offer", yes.

2 52 Q. The ESB offer, 560 K?

3 A. Yeah, final.

4 53 Q. What's the next line?

5 A. Final. Tune -- is it tune? Sorry, "Time running out.

6 MOS leaving". Sorry, "Time running out, Maurice O'Sullivan

7 leaving".

8 54 Q. All right.

9 A. "Thursday the 28th of the 9th, '89, ring Brendan Merry,

10 ring T Irvine, ring R Bland, ring Duffy Mangan, Michael

11 Bailey, M Bailey, my expenses Santry. Open grid shells.

12 Seamus Harvey Re: -- something --

13 55 Q. Agreements?

14 A. Agreement is it?

15 56 Q. Is it?

16 A. "(B) Phonecall Re: Callan -- that was a company, Senior's

17 company, that would be Joe Murphy.

18 57 Q. There is one before that, it looks--

19 A. Gaiety.

20 58 Q. Gaiety. Close and D McArdle.

21 59 Q. Yes, and "B".

22 A. I think that was the closing of the Gaiety sale.

23 60 Q. What's "B"?

24 A. "(B) Joe's phonecall -- Joe's phonecall NB Callan".

25 Callan was his own company, his own private company as

26 distinct from being in the trust, in the Group, you know?

27 CD Kempton-- he was a man that was, he was a supplier of

28 drafting for structural contracts in Fleetwood --

29 .

30 "Go ahead" -- something to go ahead. "Don't

31 something".

32 .

1 "Oakley and Sheedy" --

2 61 Q. Before you leave that now. There is ESB --

3 A. 560 K.

4 62 Q. Yes -- what is after that, the next line? "Go ahead"?

5 A. Yes. Don't --

6 63 Q. "Don't" something, "RJC"?

7 A. Yes, it must be "Don't phone RJC". That's what I am

8 trying to get out, that Murphy says not to bother with

9 Copsey, to go ahead with Frankie.

10 64 Q. What was the next line?

11 A. "D Oakley and G Sheedy". Well, we are talking about that

12 all the time.

13 65 Q. Yes.

14 A. "(E) ESB 560 K cheque etc.. (F) -- something -- MOS",

15 that's Maurice O'Sullivan, he would be gone at the end of

16 the month. "9. My expenses, open grid etc.-- and then--

17 they are private things, polyurethane and dye thinners.

18 66 Q. What relevance did they have?

19 A. Well, I would be mixing them up with my own private

20 business, I would do a bit of work at home and I would be

21 making a note of what I wanted to get. If I was doing a

22 bit of painting, you know, on hard wood, polyurethane is a

23 finishing varnish, kind of varnish. It is just a note that

24 I wanted to get polyurethane and thinners, dye thinners.

25 67 Q. And what's the last word, polycleanser, is it?

26 A. Polycleanser, to clean paintbrushes.

27 68 Q. Now, on the side of that page there is something written,

28 the first word seems to be "Call" ?

29 A. Sorry "Call Santry re: (A) expenses and (B) Board meeting

30 minutes".

31 69 Q. Can you recall what the reference to M Bailey was at No. 5

32 or why you put it in on that occasion?

1 A. Well, there was so many things. He would be ringing me,
2 you know, all the time, so I probably put it down, it was
3 either he was ringing me or rang me or something happened,
4 you know?

5 70 Q. The next page is 1034?

6 A. Yes "Four and a half acres-- I think that must be, that
7 must be O'Shea and Shanahan's lands.

8 71 Q. The next line is something "Access for" ?

9 A. For something from septic tanks, that is seven houses.

10 72 Q. The next, can you go on and finish that?

11 A. "Subject only to market entitlement, vacant possession, or
12 existing 11 month lettings --

13 73 Q. Deposit?

14 A. "Deposit 240 K, closure four months".

15 74 Q. Can you explain what all of that is about?

16 A. I can't, I can't at the moment now. I can't explain what
17 it is. It is something, if it is the four acres in
18 Poppintree, Poppintree -- access for -- access for drains I
19 think from septic tanks, that's seven houses, subject only
20 to market value, title and vacant possession and existing
21 11 months lettings -- it would be something to do with
22 Murphy's lands. I just can't, you know? Whatever was
23 happening, there was lettings in operation at the time, so
24 vacant possession would come into it as well-- I can't say
25 any more than that.

26 75 Q. All right. We will come back to that. The next item is?

27 A. "Leave out Abbeycartron for a moment, McDowell". I think I
28 referred to that letter because Joe hadn't given a decision
29 on Abbeycartron and was told to come back to me because he
30 knew this man McDowell. I think that was the explanation
31 there.

32 76 Q. There is another item, the next item appears to have been

1 crossed out by somebody, three matters can you read those
2 please--

3 .

4 MR. ALLEN: With respect, Mr. Chairman, if I might. Mr.
5 Gallagher is, of course, correct when he says the next item
6 appears to have been crossed out -- but with respect, I
7 think that isn't simply sufficient, it isn't simply
8 sufficient.

9 .

10 CHAIRMAN: What Mr. Gallagher said, the next matter has
11 been crossed out by someone, that's what he actually said,
12 by someone.

13 .

14 MR. ALLEN: I see, Sir, I didn't hear him say "someone".

15 .

16 CHAIRMAN: It was presumably interrogatively by someone.

17 .

18 MR. ALLEN: I accept that, Sir, but if I am correct Mr.
19 Gallagher is asked to read it out, now I think he should,
20 with respect, subject to your own view, Sir, ask him if he
21 knows who crossed it out. These are Mr. Gogarty's notes,
22 he discovered them, as I understand it, they form part of
23 his Discovery, only part, of course, as we know there are
24 many, many pages of notes, including the notes of his, the
25 notes which he took of his meetings with your legal team,
26 in respect of which he doesn't claim privilege, which we
27 still have to see, but in respect of this document, which I
28 understand to be a document which emanated from Mr. Gogarty
29 I would ask, Sir, that you --

30 .

31 CHAIRMAN: All right. Well, clear it up, Mr. Gallagher.

32 Could you clear up does he know who crossed it out.

1 .

2 MR. GALLAGHER: Sir, I intended asking. I am grateful for
3 the assistance but I would have asked the question if I had
4 been allowed continue.

5 .

6 CHAIRMAN: All right.

7 .

8 77 Q. MR. GALLAGHER: Mr. Gogarty, there are three matters
9 listed one, two and three. I said they had been crossed
10 out by somebody. Now, I will read them first and then
11 perhaps find out if you know who crossed out these lines.
12 Would you read them please first.

13 A. I will read them. "M Bailey re: Lands. (1) You may leave
14 out Longford. ND -- well, Longford was the lands that --

15 78 Q. These are the Abbeycarton lands?

16 A. Yes, the Senior and I was dealing with them direct with
17 Quinn.

18 79 Q. With Quinn Auctioneers?

19 A. Yes "NB Joe and McDowell-- may be-- I get it and do deal.
20 Duffy has bid of 2.3 million for all lands, including
21 O'Shea and Shanahan's four acres, will pay booking deposit
22 of 50 K subject to exchange of contracts" .

23 80 Q. Now, can you say what all that was about?

24 A. Well, it is to do with the lands, all Murphy's lands except
25 Longford, I would say that. And subject that there was a
26 bid of 2.3 million.

27 81 Q. And who was making that bid of 2.3 million?

28 A. That would be Mr. Bailey.

29 82 Q. And are you saying that this was recording some form of
30 conversation or discussion you had with Mr. Bailey?

31 A. Either with him or with Mr. Duffy, the auctioneer, who was
32 also involved, you know. There were on-going discussions

1 because Senior had gone from middle of the road roundabout,
2 the two alternative ways of disposing the land. He was
3 back to an outright sale, you see, this follows-- I think
4 there must have been a letter on the file from Bailey
5 offering 2.3 million as well.

6 83 Q. But can you say who crossed out that entry?

7 A. I couldn't say, I couldn't be a hundred percent. It could
8 be me, and if it was I accept responsibility for it, but it
9 was crossed out whether it was by me or not, that was dealt
10 with by Senior.

11 84 Q. Can you say whether that was, that entry was written as a
12 result of a telephone conversation or otherwise, do you
13 know?

14 A. I couldn't swear to it, I couldn't swear to it.

15 85 Q. Now, the next entry is dated the 29th of the 9th, 1989.

16 A. Yeah "Morning Santry, Frank Reynolds. Re: Draft
17 acceptance to the ESB". This is what we did, you know?

18 86 Q. Is this the letter of the 29th of December?

19 A. I am dealing with that letter.

20 87 Q. A letter of the same day, all right?

21 A. Yes. "Discuss settlement offer and Joe's telephone call
22 and instructions. Don't bother with RC -- well that's
23 what I said earlier on, it has to be Roger Copsey.

24 88 Q. There is a word and then it looks like "5630 K"; is that
25 correct?

26 A. I beg your pardon? After RC there is a thing there.

27 .

28 CHAIRMAN: A figure?

29 A. I don't know.

30 89 Q. MR. GALLAGHER: Is it "figure", the word "figure"?
31 F-I-G-U-R-E?

32 A. Yeah.

1 90 Q. 560 K?

2 A. Yes, 560 K. That would be, again, the final offer. 560
3 K, it is cropping up again. "Board meeting-- that would
4 be the Board meeting on the 10th of the 10th '89, that I
5 told you about, and that MOS is Maurice O'Sullivan, and he
6 is to recommend acceptance and will phone me the 10th after
7 meeting to advise. "Will also need VAT invoice, also open
8 grid shelving and rain gear".

9 91 Q. What's the open grid --

10 A. It is a personal thing you see. Sorry, it was about, my
11 deal was about to finish on the 3rd of October, you see, a
12 couple of days afterwards. Frank gave him his due, he
13 knew that I was, if when I was in good form I liked to go
14 fishing and he was going to give me a bit of rain gear and
15 rubber boots.

16 92 Q. What this rain gear and rubber boots that was available to
17 him in the JMSE premises or --

18 A. He would have authority to do it, you know, on behalf of
19 the company.

20 93 Q. And was this part of the JMSE stock or was it --

21 A. No, I would say it was, it was a gift from --

22 94 Q. I see.

23 A. From Frankie on behalf of the company, you know?

24 95 Q. Now, what's the next line, Mr. Gogarty?

25 A. That I could go off and enjoy myself then. It didn't work
26 out so, but anyway.

27 96 Q. The next line?

28 A. "NB: Security Poppintree OS&S. Fill Frankie in on --
29 that's Frank Reynolds again. I was closely liaising with
30 Frank. He will probably come in and tell you about this
31 too. If there is any discrepancy he will fill you in on
32 it, you know. "And problem with Joe in agreement".

1 97 Q. What was that about, what's the problem with Joe?

2 A. Well, I think the problem was that he was marking my cards,
3 that the risk I had of getting anything more than about
4 £10,000, you know, out of the ESB money, you know?

5 98 Q. And what was the next line?

6 A. "NB: Called Donabate, Balgriffin and Finglas". Well, I
7 used to go down and have a look at the land, you know?

8 99 Q. What does that suggest to you, that entry?

9 A. What?

1 100 Q. "NB: Called Donabate, Balgriffin and Finglas"?

11 A. Joe always liked me to keep informed of how the lands were
12 going, because these lands were let, do you know? And I
13 was interested to see that there was nothing wrong out
14 there, because I tell you what, over the years, you see
15 these were let and we tried as far as possible, I think I
16 said it earlier on, to make the tenant on the 11 months
17 system responsible for fencing and all that class of
18 thing. But still there would be dumping by other parties.

1 101 Q. All right. Does that entry suggest to you that, or does
20 it mean that you visited the lands on that date?

21 A. That would suggest, which I often did, yeah, regularly did,
22 just to keep Senior informed.

2 102 Q. Now, the next page we have is 1035?

24 A. Yes, "Duffy and Bailey". Well, Duffy is the auctioneer.
25 "Re: Purchase price 2.4 million. 100 K deposit to
26 auctioneer. Three months closing date from date of
27 exchange of contracts. Duffy would give me 10 K
28 commission". Do you want me to explain that?

2 103 Q. No, just on go on and finish the entry. We will come back
30 to all of this.

31 A. Yeah. "Memo offering 2.3 million".

3 104 Q. Something "of agent" -- "chance of agent"?

1 A. "Name of agent" or something.

105 Q. "Name of agent offering 2.3 million"?

3 A. Yeah.

106 Q. All right?

5 A. "Question mark 10 i.e. the principle, any bank reference,

6 arrangement, sale immediately. My pension is 300 K --

7 something -- and is endorsed" .

107 Q. "Comes through"?

9 A. "Comes through", is it? Yeah.

1 108 Q. "And is endorsed". Now, can you tell us what that entry

11 relates to?

12 A. Mostly the £300,000 I would be getting to buy the pension,

13 do you know? It was agreed.

1 109 Q. Would you take it from the top, Duffy and Bailey, you --

15 what does that -- first of all what does this entry relate

16 to?

17 A. It relates to all the lands that Duffy was selling, the

18 auctioneer was selling and that Bailey was chasing.

1 110 Q. But does it relate to a conversation you had or information

20 that was conveyed to you or what does it relate to?

21 A. Well, it would be either that, make a note that something

22 happened, and either I was told or heard by either of them

23 that there was an offer of 2.4 million, agreed purchase

24 price of 2.4 million, a hundred thousand pounds deposit.

2 111 Q. Yes. Three months closing date from date of exchange of

26 contracts?

27 A. Of exchanges of contracts.

2 112 Q. "4. Duffy, would he give me 10 K commission?" What does

29 that mean?

30 A. Well, Duffy did suggest that he could share the commission

31 with me for selling the lands.

3 113 Q. Where did he do that?

1 A. Well, I think he was pleased that he was back in the
2 running for the lands and the sale nearly ready to go
3 through. And he said that he could share the commission
4 with me, £10,000. I said there was no necessity for that,
5 that I didn't want that kind of thing.

114 Q. The commission, in effect on 2.3 million would have been
7 something in the order of 2 percent, would have been
8 £46,000, would it not?

9 A. Something like that, yeah.

1 115 Q. And you say that this entry refers to an offer by Mr. Fred
11 Duffy, is it?

12 A. Fred Duffy, yes.

1 116 Q. That he would give you £10,000 as part of his commission?

14 A. Yeah, part of his commission.

1 117 Q. Did you ask for that?

16 A. No.

1 118 Q. What was your response when it was offered to you?

18 A. My response was that I was thanking him for the offer but I
19 felt I couldn't accept it because there would be a conflict
20 of interest. He said he couldn't see any conflict because
21 it would be no skin off Murphy's nose, and I said if I
22 couldn't get the agreement of the company I couldn't see it
23 coming through, so I never pursued it, and I think the
24 evidence will be that I never pursued it. But it was a
25 decent offer, and I would consider it, I am not denying
26 that, that if it was proper and correct and I could see no
27 difficulty in it, I wouldn't deny that I would consider it.

2 119 Q. Did you take any money from Mr. Duffy in relation to this?

29 A. No, never in my life, never in my life.

3 120 Q. Did you take any money from him in relation to this sale?

31 A. No, definitely not. I think Mr. Duffy would give
32 evidence, you know?

121 Q. And you are saying positively and unequivocally, are you,

2 that you never received --

3 .

4 MR. COONEY: Mr. Chairman --

5 .

6 CHAIRMAN: That's confirming a perfectly acceptable

7 answer. Mr. Gallagher, even from your point of view, I

8 think we should avoid that sort of question.

9 .

10 MR. COONEY: It's more than that. The entry is not in the

11 form of a statement that Duffy would give him the entry.

12 It's in the form of a question -- Duffy, would he give you

13 10 K commission?

14 .

15 CHAIRMAN: That's a matter for me to decide. It is the

16 way the entry is there and I read it, it is not necessary

17 to explain it to me one way or the other. I am going to

18 have to make my mind up about it.

19 .

20 MR. COONEY: It is a matter which we might raise in

21 cross-examining.

22 .

23 CHAIRMAN: It might well.

24 .

2 122 Q. MR. GALLAGHER: Mr. Gogarty, can you explain to the

26 Tribunal why it is worded in the manner in which it is

27 worded "Duffy, would he give me 10 K commission?"

28 A. Well, I have tried to explain it as best I can, that I am

29 not denying it, he offered it to today me. He said there

30 was no reason why you should be worried about it, that I am

31 sharing a commission with you, and he was appreciative of

32 what I did for him. I didn't do anything over and above or

1 anything wrong in giving the lands. It was Joe Murphy who
2 agreed to give him the retainership on the lands.

123 Q. The next item is No. 5 that you have already referred to,
4 and there seems to be some confusion about the first word,
5 but there is certainly something of "Act of offering 2.3
6 million? 10 --

7 A. Yes, 10. The principle, any bank -- I don't know whether
8 that's 10 or not. Well, it would be talking about the
9 deposits and where they would be coming from and going to I
10 suppose, arrange sale immediately, and then I go on, "My
11 pension 300 comes through and is endorsed".

12 .

13 MR. COONEY: Would you forgive me interrupting once
14 again. Where is the original?

15 .

16 MR. GALLAGHER: If Mr. Cooney will allow me to deal with
17 the witness, he will have ample opportunity to deal with
18 this. I will deal with it in my own way.

19 .

20 MR. COONEY: It seems to me the original would be more
21 easily read by the man who wrote it, that's the only
22 point.

23 .

24 MR. GALLAGHER: That will arise in due course.

25 .

26 MR. COONEY: I say with respect this is due course.

27 .

28 CHAIRMAN: Well function as we are for the moment.

29 .

3 124 Q. MR. GALLAGHER: Mr. Gogarty, the next document is --
31 sorry, before I leave that particular entry at number five,
32 the word, the first word, is it possible that that word is

1 "Chance" ?

2 A. I think it is more like "Name" name of agent.

125 Q. All right, name of agent?

4 A. Name of agent offering 2.3 million.

5

6 CHAIRMAN: May I just clarify something? That note as I

7 understand it, the evidence to date is that Mr. Bailey made

8 an offer of 2.4, the agreed purchase price of 2.4; Duffy

9 and Bailey in closing and all that -- was there an offer of

10 2.3 by -- when I use the phrase "a third party", another

11 party; is that correct or was it this man, was it Bailey

12 who made the offer of 2.3.

1 126 Q. Indeed the lands were eventually sold and the contract

14 indicates they were sold for 2.3 million. That

15 confirmation came in November of 1989, that's some seven

16 weeks after this, after the date of this.

17

18 CHAIRMAN: That's what I thought. Thank you.

1 127 Q. Now, I want to go onto the next entry which is under the

20 2nd of October 1989; would you read that Mr. Gogarty,

21 please?

22 A. No. 1 "Call MOS and give him the letter. Also ask

23 mechanics that is (A) Board approval 10th October. (B) Do

24 we need to give them further documentation. (C) How do I

25 arrange to collect cheque from whom? " .

2 128 Q. "And from whom" is it?

27 A. "And from whom" . That's the cheque the £700,000. "And

28 from whom" . "(2) Ring Rory Bland. (3) Ring Denis

29 McArdle: Re, (A) Gaiety closing. (B) Baggot Street, (C)

30 Sale of lands and offer 2.3 million. Wait for it --

31 something-- Joe agrees -- something else -- ring Joe, ring

32 McDowell. Also Baggot Street and report on ESB.

1 Duffy, re, offer 2.3 million, did he get it in writing" .

129 Q. Can I go back to 3C, "sales of lands", offer of 2.3

3 million?

4 A. Yeah, 3C is it.

130 Q. Yes?

6 A. That's the lower half is it.

131 Q. Yes indeed. Is it?

8 A. C "Sale of lands offer of 2.3 million" .

132 Q. Yes, waiting--

10 A. For it -- and something "Joe agrees".

1 133 Q. Can you elaborate on that and tell us what that relates to?

12 A. Well, I can't elaborate and I don't want to be unfair, but

13 there was negotiations; Duffy Mangan and Butler were the

14 auctioneers. Mike Bailey was anxious to try and deal

15 direct with Joe or through me, rather than through the

16 auctioneers. I would be speculating but I don't want to

17 be speculating.

1 134 Q. Well, don't speculate for the moment?

19 A. I would be speculating.

2 135 Q. Can you recall what the--

21 A. Except to say that there could be a certain amount of

22 gazumping, if that's the word.

2 136 Q. Can you go on to number 5, what's that?

24 A. Down at the bottom is it.

2 137 Q. The very bottom?

26 A. "Duffy will offer 2.3 million, did he get it in writing" .

2 138 Q. Can you recall what that related to?

28 A. That's relating to all the lands, the sale of all the

29 lands, you know.

3 139 Q. Why did you write that down in that form, can you

31 remember?

32 A. I can't, at the moment. There is nothing unusual in it,

1 you know.

140 Q. Do you say that this was a question that you wanted to ask

3 Mr. Duffy or was it an aid memoire for yourself or why did

4 you put it down?

5 A. Well, as I say, up at the top of the page there is a

6 mention of 2.4 which may be that Duffy was hoping to get,

7 do you know, and now we had 2.3 which seemed to be the

8 final offer, you know, and did he get it right.

141 Q. Now, what's the next page, it is 10:36?

10 A. "Friday, the 3rd of the 10th, 1989 --

1 142 Q. Sorry, is it Tuesday or Thursday?

12 A. Sorry, Tuesday. Sorry. "1 (A) Particulars of trust. (B)

13 Authorise S Howley. 2. Guarantee bank draft named fixed

14 due, day and date. (A) To whom payable, for example,

15 trust, is this the best way? (C) Or to my salary -- I

16 don't know.

1 143 Q. Would it be SOL?

18 A. SOL, is it?

1 144 Q. Well, I asked you, Mr. Gogarty?

20 A. It could be solicitor, yeah, could be. "(D) Draft or

21 Doyle, Bank of Ireland, Isle of Man. 3. Signed

22 agreements Sheedy's office" .

2 145 Q. Can you say what those entries referred to?

24 A. They refer to the trust in the Isle of Man. The trust in

25 Guernsey and the money in the Isle of Man.

2 146 Q. Were they the trusts that had been set up on your behalf?

27 A. Yeah, by Senior, the monies in that trust.

2 147 Q. And who is Mr. Howley?

29 A. He was my accountant and tax consultant for years, you

30 know.

3 148 Q. What's the next item, No. 3?

32 A. "Signed agreement Sheedy's office". That's my retirement

1 package.

149 Q. Right. We will come to that agreement.

3 .

4 CHAIRMAN: If you are going on to that, we have been
5 working for and about an hour and twenty minutes. If it is
6 convenient to break now, it is a matter for you?

7 A. I could do with a break.

8 .

9 CHAIRMAN: Well, say a quarter of an hour. Thank you.

10 .

11 THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

12 FOLLOWS:

13 .

1 150 Q. MR. GALLAGHER: Mr. Gogarty, before the break we were

15 dealing with entries dated the 3rd of the 10th, 1989. Item

16 No. 3 was "Signed agreements Sheedy's office". Can you

17 tell me what the next entry is?

18 A. Well, the next is "FOR to invoice Moneypoint".

1 151 Q. What do the initials "FOR" stand for?

20 A. FOR, I am not sure at the moment now. You see, we had

21 surveyors you know, FOR. Anyway, that invoice was

22 prepared in Santry, but FOR -- I would have to think about

23 that now. FOR -- I can't just say at the moment.

2 152 Q. Now, perhaps we will come back to that. Would you go on

25 then and read the rest of that entry.

26 A. "Ring Denis McArdle for appointment Re: Lands. Also ask

27 about Gaiety and Baggot Street". Then there is something

28 there about times, I don't know.

2 153 Q. Something, is the name Copsey?

30 A. I beg your pardon?

3 154 Q. Is the name Copsey there at the bottom of that document?

32 A. It could be. 12 p.m., is it?

155 Q. Then there is a date the 5th of the 10th; is that correct,

2 '89?

3 A. It looks to be that.

156 Q. What's the entry under that?

5 A. Under that, sorry?

157 Q. Yes, under that?

7 A. My expenses.

158 Q. Yes.

9 A. And then "Frank and bushes on Hole in the Wall Road".

1 159 Q. What's that about?

11 A. Well, you see, the Hole in the Wall Road, there was lands

12 on each side of the Hole in the Wall Road, that was owned

13 by Grafton, Scott's Farms, and that was let in tillage or

14 some of it in grass, you know?

1 160 Q. Did it relate to something that was happening on the lands

16 or something?

17 A. Well, I think it is, there was, on the hole in the wall

18 road there comes to a point in the road where there is a

19 bit of a, an offset on the road and there is a gate into

20 the lands, and I think there must have been bushes on it,

21 and I wanted to get them cleared and I told Frank.

2 161 Q. All right. What is the next entry, is it Seamus?

23 A. "Seamus, what risk am I on in respect of the sale of the

24 lands? Do I still start drawing my pension, etc."

2 162 Q. "When do I start"?

26 A. "When do I start drawing my --

2 163 Q. "My pension, etc.". Now, what's the query, Seamus, what

28 risk am I on in respect of the sale of the lands?" What

29 risk were you querying or identifying that you saw at that

30 stage?

31 A. I couldn't say now at the moment. Seamus would help us out

32 on that.

1 .

2 CHAIRMAN: Sorry, who is Seamus.

3 .

164 Q. MR. GALLAGHER: Is that Mr. Seamus Howley?

5 A. Yeah, my accountant.

165 Q. What's the next entry then towards the bottom of the page?

7 A. I beg your pardon?

166 Q. "When do I start acting as consultant?"; is that correct?

9 A. Yeah, and how do I get directions and shouldn't it be in

10 writing by Secretary to Director or Board resolution, Board

11 resolutions.

1 167 Q. Did this relate to the --

13 A. The consultancy.

1 168 Q. The proposal that you would act as consultant after you

15 retired?

16 A. Yeah, for five years.

1 169 Q. At the top of the next page, 1037, what does that say?

18 A. "Hopefully by the Tuesday the 10th I would have ESB Board

19 agreement, and Gerard Sheedy would have JMSE final account

20 invoice". I have already told you about that, that Gerry

21 Sheedy was going to send on the invoice.

2 170 Q. Now, you have another entry there for the 5th of October?

23 A. "The 5th of October, Gerry Lynch with Frank Reynolds". I

24 think that would be -- "Fred Duffy next week" --

2 171 Q. What's that about?

26 A. Well, something in connection with the lands, you know?

2 172 Q. Yes.

28 A. "Gerry Watson of Reed Delahunt, I think that's insurance,

29 it could be on the car. "My expenses due in July. Call

30 Santry. 6. R Bland, 7. M Bailey. 8. Frank Reynolds on

31 open grid and maple".

3 173 Q. What's the reference to R Bland, do you know?

1 A. Yes, well McArdle will tell you about that. He was acting
2 for an auctioneer called Farrell and Cleere, I think that's
3 the name. Copsey brought him in to value the Gaiety
4 before they sold it. Farrell and Cleere were to give a
5 valuation and Copsey told me that I would get a call from
6 Bland to show him over the Gaiety Theatre, which I did. I
7 don't know what report he gave on it, but I spoke to him
8 and he was interested in, I think he is the man on behalf
9 of Farrell and Cleere that bid on Baggot Street, I think he
10 bid on Baggot Street.

1 174 Q. Can you explain the reference to M Bailey at 7?

12 A. Well, it would be an on-going situation where there was
13 communication between us either at personal or telephone
14 level.

1 175 Q. And the next reference is to D McA?

16 A. To what?

1 176 Q. D McA.

18 A. No, open grid and the maple or something.

1 177 Q. Yes, what is that about?

20 A. Well, I had a bit of open grid or was getting a bit of open
21 grid from Frankie.

2 178 Q. All right.

23 A. "D McArdle, Gaiety, 6th of the 10th, '89. 2. Liam
24 Conroy. 3. Baggot Street. 4. My consultancy five for
25 five years--

2 179 Q. Consultancy?

27 A. Yeah, for five years. "Lands and folios Balgriffin.
28 Abbeycartron. McDowell. Final measurement ESB.
29 .

30 F Martin Green -- Martin Green was an estimator.

3 180 Q. Who was he employed by?

32 A. Murphy's, Frank Reynolds was the boss there.

181 Q. Can you explain what that reference is?

2 A. It would be in connection maybe with a contract, do you
3 see? They would ask me my advice on tenders and claims and
4 things like that, you know, it could be several things, but
5 Martin Green was an estimator, who would be bidding on
6 contracts and furnishing interim claims, you know, things
7 like that.

182 Q. Why was there a final measurement in relation to the ESB on
9 the 5th of October if you had already agreed to the final
10 account?

11 A. Well, I think I would be repeating myself, you know. I
12 used to keep these copious notes for my own recollection,
13 remind me of things, you know. You see, that's before the
14 10th.

1 183 Q. Yes.

16 A. I think the invoice would have gone in then by that time or
17 very near it.

1 184 Q. The next item is No. 8; "Frank and ESB files etc.". What
19 does that refer to?

20 A. Frank and what?

2 185 Q. ESB files, etc.

22 A. That would be, you see I was finishing with the ESB, I had
23 all the files at home, you know, for a long time. I would
24 say that was, he was collecting them, bringing them all
25 back, although it was alleged that I kept some of them.

2 186 Q. What's the next entry, Mr. Gogarty?

27 A. Felix or --

2 187 Q. Future?

29 A. "Future Re: Isle of Man and also the Gaiety".

3 188 Q. That's No. 10?

31 A. Well, "Ring Quinn Re: Abbeycarton. That's the lands at
32 Abbeycarton and at 11. I don't know what 11 is.

189 Q. What's the next heading, the next page is 1038.

2 A. I am going back to the open grid, 6 foot by 3 feet

3 galvanized open grid.

190 Q. What's the next matter?

5 A. The next is "Ryans Hotel brochure". I used to go to the

6 Ryan Hotel.

191 Q. What's the next entry?

8 A. "Ring Bailey".

192 Q. Why were you going to ring Bailey?

10 A. I don't know, something about the lands I suppose.

11 Between us we talk about the lands.

1 193 Q. The next is "Ring Kent Carthy", is it?

13 A. Yeah. Kent Carthy were solicitors for Murphy's. I don't

14 know whether you say they were for Murphy, but it was a

15 firm of solicitors, and Senior started in Ireland,

16 investing in Ireland. He had a one man outfit, a solicitor

17 called James Marshal, and he did a lot of Murphy's work for

18 years and years. I don't want to go into too much detail,

19 but he died.

2 194 Q. The firm was taken over by Kent Carthy; is that correct?

21 A. Yeah, they were taken over by Kent Carthy.

2 195 Q. What's the next entry, Mr. Gogarty?

23 A. "Re: VAT invoice, Moneypoint".

2 196 Q. Just before that there is a line above that?

25 A. "Ring Kent Carthy" .

2 197 Q. Yes, just immediately below that is there a line?

27 A. Well, there is two dashes.

2 198 Q. Yes, 6th?

29 A. "6th of the 10th, '89. Froriep Renggli and Martin Green,

30 Martin Green".

3 199 Q. And then the next line?

32 A. "Draft" .

200 Q. Sorry, just above the word "draft"?

2 A. This is "Re: VAT invoice Moneypoint".

201 Q. Can you say what that was all about?

4 A. I say it was the final VAT invoice for Moneypoint, you
5 know.

202 Q. And then the word "drafts"; do you know what that's about?

7 A. Not at this time, no.

203 Q. What's the next entry?

9 A. "Duffy Baggot Street office. Gaiety closed. Copy letter
10 to Joe. Lands and any written offer. Balgriffin deed", I
11 think, "deeds".

1 204 Q. Yes, the next heading?

13 A. "Johnstown little folios". They are dealing with the lands
14 again, folios.

1 205 Q. Then there is some reference to timber or something else,
16 two pieces and dimensions split diagonally; is that
17 correct?

18 A. Two pieces 20 inches by inch and a half and inch and a
19 half, and if possible planed all over, something I wanted
20 for myself, a bit of timber, you know?

2 206 Q. What's the next entry then?

22 A. "M Bailey meet in -- Saturday, the 14th of October, 1989".

2 207 Q. Why was, what was that meeting about? What was that entry?

24 A. I couldn't say, something about the lands, something about
25 the lands.

2 208 Q. Do you remember meeting Mr. Bailey in the Harp Inn?

27 A. I don't remember to tell you the truth. If I met him I met
28 him, but I don't believe I met him in it, maybe I am
29 wrong. He would probably have some notes on this too as
30 well.

3 209 Q. Mr. Gogarty, where did these documents come from?

32 A. For me, I used to keep small notebooks, you know, about

1 three inches by two inches, and you could get refills for
2 them, you know? And I used to always keep notes in them.
3 I would write them up maybe every night or every couple of
4 nights, and they include every personal thing I would be
5 going to do. I write a lot from that, and even when I
6 would be continuing I would, could repeat them several
7 times if I hadn't dealt with them, you know, things like
8 that. Where they came from? I gave everything, warts and
9 all, to the Tribunal and my solicitors when I became
10 involved in this whole saga.

1 210 Q. Mr. Gogarty --

12 A. I don't know, where did you get them?

1 211 Q. These documents were furnished by your solicitors to the
14 Tribunal, but the Tribunal has not seen the originals of
15 these documents.

16 A. I don't know why.

1 212 Q. I don't know where they are.

18 .

19 MR. COONEY: It was -- we actually drew the attention of
20 the Tribunal to these following the search.

21 .

22 CHAIRMAN: Mr. Cooney, we are always very grateful for
23 your assistance.

24 .

25 MR. COONEY: We were wondering if there are any more of
26 them, Mr. Chairman, because these are original documents?

27 .

28 CHAIRMAN: Hope grows eternal.

29 .

3 213 Q. MR. GALLAGHER: These were documents supplied by your
31 solicitors to the Tribunal, Mr. Gogarty, but they have not
32 furnished the originals of those document. Do you know

1 where the originals are?

2 A. I don't, I haven't got them anyway. In fact it is a pity I

3 haven't, there was a lot more over the years. I could

4 write a book if I had them all.

214 Q. Do you know where and in what circumstances they came to be

6 photocopied?

7 A. No, I can't tell you that, honest to God.

215 Q. It may be that Mr. Sheedy can assist us in this in due

9 course?

10 A. Yeah.

1 216 Q. You say that you don't have the originals of those books to

12 the best of your knowledge, is that what you say?

13 A. I am satisfied I haven't the originals. Everything I had

14 in the place, Sir, I gave them to either you or Mr. Sheedy.

1 217 Q. Yes.

16 .

17 MR. COONEY: What documents did he give to Mr. Gallagher?

18 .

19 MR. GALLAGHER: The documents Mr. Gallagher gave back to

20 Mr. Sheedy when Mr. Sheedy came back on record.

21 .

22 CHAIRMAN: Gentlemen, I think we can sort this out

23 afterwards, there is no point in wasting time. The

24 documents certainly are copies of an original coming from

25 somewhere. If there is any doubt about that, I have no

26 doubt Mr. Sheedy may throw light on it, but we will do that

27 in due course.

28 .

2 218 Q. MR. GALLAGHER: Mr. Gogarty, I now want to turn to the

30 agreement. It is on page 1047.

31 .

32 CHAIRMAN: Sorry, my attention just wandered there for a

1 moment. What page are you on now? 47; is that right?

2 .

3 MR. GALLAGHER: Sir, Mr. Cooney has referred me to a

4 document which is not in Book 4, it is, in fact, Book 10,

5 and he wishes me to put it to the witness at this stage,

6 but I will do so after I have put to him this agreement,

7 the document is being photocopied and I will put it to him

8 in due course.

9 .

10 CHAIRMAN: Very good.

11 .

1 219 Q. MR. GALLAGHER: Mr. Gogarty, can I refer you to the

13 agreement, this is the document on 1047?

14 A. Yes.

1 220 Q. First of all, will you identify your signature please at

16 the bottom of page four, it is on page 1050?

17 A. Yes, that's my signature.

1 221 Q. Can you identify any other signatures on it?

19 A. Well, Gerard B Sheedy of 30 Upper Pembroke Street, Dublin.

2 222 Q. Yes. Did Mr. Copsey also sign that on behalf of Lajos

21 Holdings, and did Mr. Oakley sign it?

22 A. Yes, well he is there.

2 223 Q. As a witness. Do you remember that document being

24 executed in the offices of McCann Fitzgerald, solicitors?

25 A. On the 3rd of October, 1989, yes.

2 224 Q. Perhaps I will read the agreement for the record, if I may,

27 and we can then deal with anything that arises from it

28 afterwards.

29 A. Well, you can if you want to take up the time, but I accept

30 that agreement and it was negotiated with Mr. Sheedy.

3 225 Q. All right. It is an agreement of the 3rd of October, of

32 1989. It provides a number of things, including the

1 payment of 50 percent of the net sum received by way of
2 settlement of the ESB claim, and noting that the current
3 offer and set element was £130,000.

4 .

5 CHAIRMAN: Well, perhaps Mr.-- would you be kind enough to
6 identify the paragraph so that the record, so that if I am
7 reading the transcript or whoever is reading the transcript
8 can refer back to it.

9 .

1 226 Q. MR. GALLAGHER: Yes, it is on page 1047. Mr. Cooney
11 suggested that I might read the document and I think
12 perhaps for the record, Sir, I should do so and I will do
13 so as quickly as I can.

14 .

15 "This agreement is made on the 3rd day of October, 1989,
16 between James Gogarty of Renvyle, Shielmartin, Sutton, Co.
17 Dublin. (Hereinafter called "the Director"). And Lajos
18 Holdings Limited whose registered office is situated at 23
19 Lower Baggot Street, Dublin 2, Republic of Ireland,
20 (Hereinafter called "the Company").

21 .

22 1. In this agreement the following expressions shall
23 unless the context otherwise requires have the following
24 meanings". Then there are a number of different
25 definitions set out which I don't think it is necessary to
26 read --

27 A. Well, I accept, Sir, I am not a lawyer but that subsidiary
28 and associated companies caused an awful lot of problems
29 before and after.

3 227 Q. All right. We will read that definition and then perhaps
31 pass on. "Subsidiary holding company means a company which
32 is a subsidiary company or a holding company as defined in

1 Section 155 of the Companies Act 1963".

2 .

3 It goes on to recite as follows:-

4 .

5 "Whereas the Director -- you are the Director referred to

6 in this document-- has agreed to resign as an Executive

7 Director of the company and there --

8 A. I wasn't a Director of the company at that time.

228 Q. I appreciate that. I am just reading what the document

10 says, Mr. Gogarty, for the record at this stage.

11 A. Sorry.

1 229 Q. "Whereas the Director has agreed to resign as an Executive

13 Director of the company and thereby terminating his

14 employment with the company and any other employment with

15 the company and or group companies in particular with JMSE

16 Limited and AGSE Limited and the company have agreed to

17 provide a pension for the Director and utilise his services

18 as a consultant now this deed witnesseth as follows:

19

20 1. The company will make available and guarantee the sum

21 of £300,000 to be provided through JMSE Limited and or any

22 other group company for the purpose of purchasing a pension

23 in Ireland for the Director and his wife. The company

24 shall use it's best endeavours to give effect to the policy

25 preferences of the Director subject always to the policy

26 being approved for tax purposes in Ireland.

27 2. The Director will resign as a director from his

28 executive positions with the company and/or group companies

29 and in particular with JMSE Limited and AGSE Limited.

30 3. (i) The Director will act as a consultant to the

31 company and to JMSE Limited and AGSE Limited or any other

32 group company at his current salary of £23,500 for a

1 period of five years from the date of his resignation as a
2 Director as referred to in paragraph 2 above.

3 (ii) The company shall transfer to the Director his
4 existing company car a Granada Scorpio for nil
5 consideration, the Director will thereafter pay all the
6 expenses in connection with the use and maintenance of the
7 car.

8
9 (iii) The company shall repay to the Director all
10 telephone charges and all out of pocket vouchered expenses
11 properly incurred by the Director in his performance of his
12 services as a consultant to the company and/or group
13 companies in particular JMSE Limited and AGSE Limited.

14
15 (iv) In particular the Director shall act as a consultant
16 to JMSE Limited and will, negotiate on behalf of JMSE
17 Limited with the ESB for the payment by the ESB of monies
18 due to JMSE Limited in connection with goods and services
19 supplied in relation to the Moneypoint Generation Station
20 Project.

21 The Director shall have sole rights of negotiation in this
22 respect, but shall be subject to direction by the board of
23 directors from time to time. The company shall be
24 responsible for all reasonable day to day expenses incurred
25 in connection with the negotiation of the claim.

26
27 (v) The company shall pay to the director a commission
28 equivalent to the sum of 50% of the net sum received of
29 settlement of the claim but only in respect of such sum as
30 is over and above the current offer in settlement made by
31 ESB. The current offer in settlement is £130,000. For
32 the purposes of this clause the day to day expenses refer

1 to clause (iv) above shall not be taken into account in
2 deriving the net sum received by way of settlement.

3

4 (vi) As a consultant to the company and to JMSE Limited
5 and AGSE Limited and or any other group company the
6 director shall;

7 (a) Unless prevented by ill health devote such of his time
8 attention and abilities to the business of the company JMSE
9 Limited, AGSE Limited and/or any such other group company
10 as the board of directors of any such above mentioned
11 company may decide.

12

13 (b) Shall comply with the reasonable directions of the
14 board and use his best endeavours to promote the interests
15 of the company, JMSE Limited, AGSE Limited and/or any other
16 group company.

17

18 (c) Shall act under the sole directions of the board of
19 directors of the company, JMSE Limited, AGSE Limited and/or
20 any other group company.

21

22 (d) In pursuance of his duties as a consultant to perform
23 such services for group companies of the company and
24 (without further remuneration unless otherwise agreed)
25 accept such offices and such group companies as the board
26 may from time to time reasonably require.

27

28 4. The director accepts these terms in full and final
29 settlement of all claims what so ever which the Director
30 has against the company, and/or any group companies arising
31 out of the Director's employment with and by the company
32 and/or any group companies or the termination thereof.

1

2 5. This agreement shall be governed and construed in
3 accordance with the Laws of Ireland and any dispute arising
4 hereunder shall be subject to the non exclusive
5 jurisdiction of the Irish courts".

6 .

7 That's signed by you and witnessed by Gerry Sheedy, signed
8 by Mr. Copey and witnessed by Mr. Vesey; is that correct?

9 A. That's correct.

1 230 Q. Now, can you recall anything that was said or discussed or

11 transpired on that day, or immediately following the

12 signing of that agreement?

13 A. Not so well, but if there is any point you want help, I

14 don't know --

15 .

16 CHAIRMAN: Sorry, I didn't hear the answer.

17 .

18 MR. GALLAGHER: Not so well Mr. Gogarty said.

19 .

20 CHAIRMAN: He doesn't remember it so well.

21 .

2 231 Q. MR. GALLAGHER: Yes. Do you remember everything, was

23 everybody happy with that agreement at that time?

24 A. Well, when you talk about happy, my happiness would be in

25 the next world.

2 232 Q. I understand that.

27 A. I was reasonably satisfied.

2 233 Q. Was Mr. Copey reasonably satisfied?

29 A. He appeared to be, but he had concerns that he was always

30 bringing in, Junior would be the ultimate man, Senior would

31 be the ultimate man.

3 234 Q. What do you mean he would be "the ultimate man"?

1 A. Well, any commitment Copsey might give to Gerry Sheedy or
2 me, it was on the proviso that Murphy would have already or
3 would have to clear it, Senior.

235 Q. And was that mentioned on that occasion?

5 A. I nearly believe it was, but I wouldn't be a hundred
6 percent sure.

236 Q. Now, Mr. Gogarty, there is a minute of a document, a
8 memorandum which is an attendance, dated the 29th of
9 December, of 1989, Document No. 3214, and it is an extract
10 from the documents discovered by you and your solicitors.

11 This is a memorandum prepared by Mr. Sheedy.

12 .

13 "Jim Gogarty telephoned to say that he has now reached
14 agreement with Mr. O'Sullivan of the ESB, and the ESB will
15 pay £560,000 in final settlement of the account between it
16 and JMSE. He asked me to ensure that the agreement with
17 Lajos is now completed without delay.

18 .

19 I telephoned Chris Oakley when we discussed the following:-

20 .

21 1. The reference to Jim Gogarty as a Director and to his
22 resignation as a Director . Mr. Oakley accepted that Mr.
23 Gogarty had resigned as a director with effect from last
24 July. However, the company's accountants had advised that
25 the tax effectiveness of the pension scheme for Mr. Gogarty
26 would be greatly enhanced if the consideration for the
27 payment of the pension to him were his resignation as an
28 Executive Director rather than merely as an employee. I
29 checked this with Seamus Howley who agreed that it would
30 have a marginal affect on the situation. I then agreed with
31 Mr. Oakley that the wording of the agreement could remain
32 unchanged but only on the acceptance by him that Mr.

1 Gogarty had resigned as a director on the 6th of July. He
2 agreed with this.

3 .

4 2. He will write me a separate letter confirming that the
5 balance of the £300,000 will be paid in the event that the
6 pension payments will not exhaust that sum.

7 3. The words "during normal business hours" should be
8 handwritten into the agreement in sub paragraph (vi) (a).

9 He had sent the other copy of the agreement to Roger
10 Copsy, and I should contact with him with a view to having
11 the documents completed and exchange. GBS."

12 .

13 Can you confirm whether or not you did, in fact, telephone

14 Mr. Sheedy on that occasion on the 29th of December, of
15 1989?

16 A. I accept that I did.

1 237 Q. Sorry, I may have said -- the 29th of December, of 1989. I
18 may have given a different date Mr.--

19 A. I beg your pardon?

2 238 Q. I may have mentioned inadvertently another date. The date
21 of that memorandum is the 29th of December, of 1989?

22 A. Sure we can all make mistakes.

2 239 Q. Indeed. But do you accept --

24 .

25 CHAIRMAN: There is nothing like a little bit of
26 graciousness.

27 .

2 240 Q. MR. GOGARTY: Do you accept, Mr. Gogarty, that you did, in
29 fact, telephone Mr. Sheedy on that date?

30 A. I do accept that, yes.

3 241 Q. Thank you.

32 .

1 The next document is 1057. It is a letter headed "Joseph
2 Murphy Structural Engineers Limited". It is addressed to
3 you and it is undated, although the date the 3rd of
4 October, 1989, appears on the bottom of it.
5 .
6 "Dear Mr. Gogarty -- it is signed by Mr. Copsey for and on
7 behalf of Murphy Structural Engineers.
8 .
9 "Dear, Mr. Gogarty, it was decided that when you retire
10 you would be provided with a pension of £18,091 per annum,
11 payable by monthly installments of £1,507.58 for the
12 remainder of your life time. The first installment will
13 become payable on 1st of April, 1990.
14 .
15 If you predeceases your wife, Mrs. Anne Gogarty, a pension
16 of £12,063 per annum will be paid for the remainder of her
17 life time. This would be payable in monthly installments
18 commencing on the first day of the month following your
19 death.
20 .
21 Both annuities will be increased at the rate of five
22 percent compound each year from the date the first annuity
23 commences. The pension will be secured by annuity bonds
24 purchased from the Norwich Union Life Assurance Company.
25 Both pensions would be non-commutable and non-assignable,
26 and the annuity bonds carry endorsements to this effect.
27 The annuity bonds will be issued in the names of yourself
28 and your wife, and we confirm that we shall hold no rights
29 whatsoever in the annuities of control over the annuities."
30 Signed by Mr. Copsey. And you say "I agree to these terms,
31 3rd of October, 1989, James Gogarty and Ann Gogarty". Did
32 you sign that on the same occasion as you signed the

1 agreement?

2 A. Yes, it has a date on it. I accept that.

242 Q. That's the date on it?

4 A. I accept that.

243 Q. And there is another letter from Mr. Sheedy on page 1058 to

6 Mr. Copsey "Re, Lajos Holdings and James Gogarty.

7 .

8 Dear Mr. Copsey, Further to the completion of the agreement

9 between our respective clients today, there are some

10 outstanding matters which remain to be dealt with,

11 including:

12 1. The purchase of a pension by Mr. Gogarty. We agreed

13 that you would communicate with Seamus Howley of Bates

14 Butler & Company, with a view to discussing with him the

15 manner in which the sum of £300,000 may be invested in the

16 purchase of a pension for Mr. Gogarty in the most tax

17 effective manner, and, possibly with reference to the

18 consultancy fee to be paid to Mr. Gogarty for the next five

19 years.

20 . 2. The transfer to Mr. Gogarty of the ownership of the

21 car. Please confirm that you will now arrange for the

22 necessary transfer form to be completed both on behalf of

23 the company and by Mr. Gogarty and lodged in the Motor

24 Registration Office, together with the registration book.

25 Please also confirm that the insurance cover on the car

26 will be maintained by the company until the documentation

27 for the transfer of ownership has been completed and that

28 you will let me have not less than 24 hours notice before

29 cancelling the company's insurance.

30 .

31 3. Please confirm that the consultancy fee will be paid by

32 the company by cheque each month to Mr. Gogarty, using the

1 same procedure which applied to the payment of his salary
2 other than the deduction of income tax."

3 .

4 That was replied to on the same date by Mr. Oakley;

5 Document 1060, 3rd of October, 1989.

6 .

7 "Dear Mr. Sheedy, we refer to the settlement agreement of
8 even date herewith..

9 On behalf of our client we confirm that in the event that
10 the full sum of £300,0 00 can not be expended on a pension
11 for your client, the balance, less any taxes that may be
12 payable will be paid to your client."

13 .

14 Then there is a document at page 1061 prepared by Quinn

15 Kenyon, addressed to McCann Fitzgerald and it seeks to

16 relate to a consultancy agreement, and it reads as

17 follows:-

18 .

19 "We refer to the Settlement Agreement of even date

20 herewith by virtue of which your client will act as a

21 consultant to GMSE/AGSE or other companies in the Murphy

22 Group of companies in Ireland..

23 For the avoidance of doubt the following additional terms

24 will apply to the consultancy arrangement as set out

25 therein.

26 .

27 1. As an independent consultant, Mr. Gogarty will be

28 expected to work such hours as are reasonable and necessary

29 in order to perform the service, project or matter

30 requested of him.

31 .

32 2. Mr. Gogarty may decline to carry out any service,

1 project or matter save that he shall not be able to refuse
2 to supply such service or undertake such project or matter
3 once commenced. Where Mr. Gogarty refuses to provide any
4 such service or to undertake any such project or matter,
5 which results in a reduction in the number of hours devoted
6 to the company, a pro rate reduction in his retainer as
7 consultant shall be made by the company pro rata in
8 accordance with the amount of time that would have been
9 spent upon the service, project or matter.

10 .

11 3. Mr. Gogarty shall be permitted to provide consultancy
12 services to any other client or company.

13 .

14 4. Mr. Gogarty shall be liable for his actions in respect
15 of the services provided as consultant.

16 .

17 5. In carrying out his duty as consultant, Mr. Gogarty
18 shall be permitted to engage any third party to assist him
19 in such services. The service of any such third party shall
20 be a disbursement incurred by Mr. Gogarty which will be
21 reimbursed by the company in addition to his consultancy
22 fee.

23 .

24 6. Mr. Gogarty would not be required to provide any
25 consultancy services from the offices of JMSE/AGSE or any
26 other company in the Murphy Group of companies.

27 .

28 7. The company do not undertake to provide any equipment,
29 office accommodation, secretarial or other assistance to
30 Mr. Gogarty during the course of the consultancy agreement.

31 .

32 If your client is in agreement with the above, we would be

1 grateful if you would arrange for him to sign the attached
2 copy letter and return it to us in due course."

3 Then, "I agree to the above terms" -- can you say whether
4 or not you signed that, do you remember?

5 A. I couldn't remember, but if I did sure I did. Did I sign
6 it?

244 Q. Following that there is a letter of the 4th of October, of
8 1989, from Copsey & Company to the Inspector of Taxes.

9 .

10 "We refer to your letter of the 26th of September of 1989,
11 and our recent telephone conversation with your Mr. Victor
12 Mullen regarding the provision of consultancy services by
13 Mr. James Gogarty to JMSE.

14 .

15 We enclose herewith a copy of the consultancy agreement
16 between Mr. James Gogarty and JMSE and have set out further
17 details hereunder in respect of the services provided, as
18 discussed with Mr. Mullen.

19 .

20 1. Consultancy Services- We would advise that Mr. Gogarty
21 has the right to refuse to carry out consultancy services
22 as requested by JMSE. In addition Mr. Gogarty will carry
23 out services for other companies within the Lajos group of
24 companies, of which JMSE is a member. Furthermore, Mr.
25 Gogarty, having registered for VAT purposes as a consulting
26 engineer, will not be precluded from performing consultancy
27 services to companies unrelated to JMSE provided a conflict
28 of interest does not arise.

29 .

30 2. Litigation- Mr. Gogarty will be held responsible for
31 litigation arising out of matters on which he was
32 individually at fault.

1 .

2 3. Provision of services by third parties- Mr. Gogarty
3 may engage third parties to assist him in the provision of
4 consultancy services to JMSE. It is intended that the fees
5 of third parties engaged by Mr. Gogarty shall be disbursed
6 to JMSE.

7 .

8 4. Benefits- No benefits will be provided to Mr. Gogarty
9 by JMSE in respect of the consultancy services. We would
10 advise that Mr. Gogarty in receipt of a pension arising
11 from his former employment with JMSE.

12 .

13 5. Place of provision of services- Mr. Gogarty is not
14 required to carry out the consultancy services at the
15 premises of JMSE. No office is to be provided to Mr.
16 Gogarty.

17 .

18 6. Equipment provided- Because of the nature o the
19 services to be provided by Mr. Gogarty, no equipment will
20 be used save for that equipment necessary to carry out
21 administrative details, ie typing, photocopying etc.

22 .

23 We shall be obliged if you will confirm that it is in order
24 to pay the consultancy fees, inclusive of VAT, without the
25 deduction of PAYE/PRSI" .

26 .

27 Mr. Gogarty, there are two further attendances --

28 A. Could I say something about that letter?

2 245 Q. Yes, if you would, if you wish at the moment, if it is
30 relevant?

31 A. Well, I consider Copsey was writing to the Revenue.

3 246 Q. Yes.

1 A. If he was writing to the Revenue on my behalf he had no
2 authority to do so. I want to make that plain. I had no
3 knowledge of that at the time. I don't know what he was
4 communicating, but he had no authority to write to the
5 Revenue on my business.

247 Q. Well, the letter is, in fact, headed "Joseph Murphy
7 Structural Engineers Limited", and he appears to be
8 looking, although he included a copy of the consultancy
9 services agreement, he appears to have been providing
10 information as to the type of consultancy and services you
11 would be providing?

12 A. For what purpose?

1 248 Q. I don't know what purpose, Mr. Gogarty. I am simply
14 pointing out what the letter seems to indicate.

15 .

16 There are two further memoranda, Mr. Gogarty, I want to put
17 to you in connection with the conclusion of the ESB
18 agreement. The first is page 3217. It is a memorandum or
19 attendance of the 6th of October, of 1989, by Mr. Sheedy.

20 It is in the book entitled "Extracts from J Gogarty.

21 Discovery books No. 1, 2, 36 and 10", and it is in the

22 following form:-

23 .

24 "Re: Jim Gogarty. Jim Gogarty telephoned to say that
25 Maurice O'Sullivan will receive a response from ESB Board
26 on Tuesday next, October 10th. Jim has an invoice typed up
27 dated 11th of October which he is sending in to me. When
28 he hears from Mr. O'Sullivan he will let me know and I will
29 then write to Mr. O'Sullivan enclosing the invoice and
30 asking for the cheque to be paid to me." Do you remember
31 that conversation?

32 A. I do, that is arising from what Frank Reynolds tipped me

1 off. Gerry Sheedy advised me to give it to him and he
2 would look after it.

249 Q. Is that something that you discussed with Mr. Sheedy in the
4 course of that or other telephone calls?

5 A. Others, yeah.

250 Q. Now, the next letter is a letter of the 9th of October, of
7 1989, from Copsey Murray & Company to Mr. Sheedy?

8 A. You handed me the 10th.

251 Q. Sorry, I am trying to keep them in datal order, if I may.

10 The number of this is 1065. It is in Book 4.

11 .

12 "Re, Lajos Holding Limited and James Gogarty.

13 .

14 Dear, Mr. Sheedy I refer to your letter of 3rd October as

15 follows:

16

17 1. I have today written to Seamus Howley to arrange a

18 meeting with him.

19

20 2. I have arranged with Mr. Frank Reynolds, who is known

21 to Mr. Gogarty, that the car be transferred and appropriate

22 arrangements be made on the insurance.

23 .

24 We have not yet received permission from the Revenue to pay

25 the consultancy fee without deduction of PAYE however I

26 have written to the Inspector answering his queries and I

27 would expect an answer in our favour prior to the first

28 consultancy payment at the end of October, yours sincerely

29 Roger Copsey." Copy to Mr. Chris Oakley.

30 .

31 The next document I want to put to you, Mr. Gogarty, is the

32 document bearing the number 3218. It is a memorandum of

1 the attendance of the 10th of October, of 1989, prepared by
2 Mr. Sheedy, and it is "Re: Jim Gogarty". It is in the
3 following terms:-
4 .
5 "Jim telephoned to say that the ESB have now approved the
6 payment of £560,000 to JMSE Limited and I should issue the
7 invoice to Maurice O'Sullivan. He also said that his
8 affidavit is now approximately 250 pages long and said he
9 would send it to me. I explained to him that I had
10 previously informed him and Mr. Oakley that I was not going
11 to discuss his affidavit with him in view of the fact that
12 Mr. Oakley will not pay our fees. He said that if we
13 examined the affidavit then Mr. Oakley will have to pay the
14 fees and I explained that this was not the case, the only
15 way to bring pressure on Mr. Oakley is for me to refuse to
16 examine it. Jim appears to be insisting on my examining the
17 affidavit even though this will mean he will have to pay
18 the fees himself." Do you remember that discussion?

19 A. I accept that.

2 252 Q. Do you accept that is a fair account of the discussion you
21 had?

22 A. Yes, yeah.

2 253 Q. How did you know that the ESB had approved for the payment
24 of £560,000?

25 A. Mr. Sullivan rang me as he had promised.

2 254 Q. I see. On the 11th of October Mr. Sheedy sent an invoice
27 to Mr. Maurice O'Sullivan in the following terms:-
28 .
29 "On the instructions of Mr. Gogarty of Joseph Murphy
30 Structural Engineers Limited I enclose an invoice dated
31 11th of October in respect of the agreed final payment
32 relating to the companies work for ESB at Moneypoint.

1 I look forward to receiving your cheque in settlement of
2 this account at your earliest convenience."

3 .

4 The invoice then is an invoice which bears the number on
5 the top right-hand corner. Our numbering is 1067 for the
6 purpose of the Tribunal. The number of the invoice is
7 12412. It is dated the 11th of October, of 1989. The
8 reference is JG/OR. It is JG; is that your reference?

9 A. That's right.

1 255 Q. Who is OR?

11 A. She would be the typist I suppose.

1 256 Q. The typist employed where?

13 A. Murphy's.

1 257 Q. In where, Santry?

15 A. Santry.

1 258 Q. The job number, S 1501 and S 1558, and it is addressed to
17 the ESB Civil Works Department, Moneypoint. And it sets
18 out the figures which I think are identical with the
19 figures I read out earlier from the letter dated the 29th
20 of December, of 1989?

21 A. Yes.

2 259 Q. Now, can you say what happened after that?

23 A. Well, I think that the cheque came into Mr. Sheedy.

2 260 Q. Yes, and what happened?

25 A. Well, Mr. Sheedy dealt with the cheque.

2 261 Q. Can you say how it was dealt with generally --

27 .

28 MR. COONEY: I assume, Mr. Chairman, we have no statement
29 of evidence from Mr. Sheedy that he dealt with this cheque
30 which was the property of my client. I assume he will be
31 called to give evidence?

32 .

1 CHAIRMAN: I understand Mr. Sheedy will be called. My
2 apologies, it was an oversight. We may have been --

3 .

4 MR. GALLAGHER: No, Mr. Sheedy's statement will be
5 circulated within the next few days.

6

7 CHAIRMAN: I have seen a copy, it will be circulated.

8 .

262 Q. MR. GALLAGHER: Now, can you say, Mr. Gogarty, what
10 happened after that, to the best of your recollection?

11 A. Well, to the best of my recollection Mr. Sheedy got the
12 cheque, and he lodged it to the account of McCann
13 Fitzgerald on behalf of JMSE.

1 263 Q. I think on the 19th of October, sorry on the 17th of
15 October a document, 1076, Mr. Sheedy wrote to Mr. Copsey in
16 the following terms:-

17 .

18 "At our meeting on the 3rd of October Mr. Oakley, you
19 mentioned that arrangements would be made within the coming
20 week to ten days for the purchase of the pension of Mr.
21 Gogarty which is provided in the agreement between him and
22 Lajos Holdings Limited. Please let me have your
23 confirmation that these arrangements have now been made and
24 that the funds are available for the immediate purchases of
25 the pension. I would be grateful if you would confirm this
26 to me by return of post."

27 .

28 And there is another letter of the 18th of October, of
29 1989, from Mr. Sheedy to Mr. Oakley and he says;

30 .

31 "I enclose a copy of your letter of the 3rd of October,
32 duly signed by Mr. Gogarty.

1 .
2 I have written to Mr. Copsey requesting for him to arrange
3 for the immediate purchase of the pension for Mr. Gogarty
4 and his wife in accordance with the agreement which was
5 completed by both parties October. In view of the manner
6 in which the financial markets are at present it is vital
7 that Mr. Gogarty's pension be purchased at the earliest
8 possible date."

9 .
10 And on the 19th of October Mr. Copsey wrote to Mr. Sheedy,
11 this is Document 1080 in Book 4.

12 .
13 "Dear Mr. Sheedy, I refer to your letter of the 17th of
14 October 1989. As you will recall at our meeting Chris
15 Oakley was to consult with Joe Murphy and obtain his
16 authority to pay the sum of £300,000 in respect of Jim
17 Gogarty's pension. To date I have not received any
18 authority. I will be in contact with you as soon as I have
19 instructions."

20 .
21 Now, what was your reaction to that? First of all did you
22 learn that that letter had been written and what was your
23 reaction to it?

24 A. I know that letter was written.

2 264 Q. Yes, what was your reaction to that letter in the light of
26 the agreement of the 3rd of October, of '89, that I have
27 read out?

28 A. Well, they were playing a game anyway, whether it was
29 football or hurling or what I don't know, but they were
30 playing a game, passing the buck back one to the other.
31 It was the company that had agreed to pay my pension.

3 265 Q. There is a reply of the 20th of October, of 1989, Document

1 1081, from Mr. Sheedy to Mr. Copsey.
2 .
3 "I refer to my letter to you of the 17th of October.
4 .
5 I understand the discussions between you and Seamus Howley
6 of Bates Butler and Co. have resulted in agreement being
7 reached with regard to Mr. Gogarty's final year salary and
8 which will enable £300,000 to be invested in the purchase
9 of a pension for Mr. Gogarty and his wife. Mr. Gogarty is
10 now most anxious that these arrangements be implemented
11 immediately.
12
13 Mr. Gogarty is now a creditor of Lajos Holdings Limited, we
14 understand that a restructuring of some or all of the
15 companies within the Lajos group or a sale of some or all
16 of the assets of those companies may have recently taken
17 place or may be in the course of taking place. I would
18 like your confirmation that if any such restructuring or
19 sale has or is in the course of taking place, Mr. Gogarty's
20 position will not be adversely effected and that Lajos
21 Holdings Limited is and will continue to be in a position
22 to honour it's obligations to Mr. Gogarty on foot of the
23 agreement which was signed on 3rd October.
24
25 For the purposes of clarification, I should mention that
26 this inquiry is addressed to you as a director of Lajos
27 Holdings Limited. Yours sincerely."
28 .
29 The next document is a document dated the 23rd of October,
30 of 1989. The value is stated to be £780,000. Description
31 is ESB payment to account Joseph Murphy Structural
32 Engineers, Shannowen Wood, Dublin 9. The number of 1082.

1 .
2 Then there is a cheque for a deposit slip of the same
3 date. On the 23rd of October then Mr. Gogarty, Mr. Sheedy
4 wrote to Mr. Copey in the following terms, Document 1086.
5 .
6 "Dear Mr. Copey, thank you for your letter of the 19th
7 October.
8
9 Mr. Murphy is not a party to the agreement which was signed
10 on the 3rd of October. If the management require
11 proceedings within Lajos Holdings Limited require Mr.
12 Murphy's approval before the pension can be purchased for
13 Mr. Gogarty and his wife, this is not something which is
14 relevant to Mr. Gogarty. At our meeting I made a careful
15 note of your comment concerning Mr. Murphy's approval when
16 you stated your conviction that the purchase of the pension
17 for Mr. And Mrs. Gogarty will be made within a week or 10
18 days from that date.
19
20 Some delay was anticipated in the purchase of the pension
21 for Mr. And Mrs. Gogarty arising from the need to quantify
22 the precise sum which the Revenue Commissioners would
23 approve for the investment in such a pension. The
24 following agreement between you and Seamus Howley with
25 regard to Mr. Gogarty's final year salary which had the
26 effect of enabling full sum of £300,000 to be invested in
27 the purchase of the pension, there is no valid reason why
28 the pension should not now be purchased. Your comment
29 concerning Mr. Murphy's authority is a cause of concern and
30 it is unacceptable to Mr. Gogarty that the implementation
31 of the agreement which he made with Lajos Holdings Limited
32 should be delayed by any internal procedures within that

1 company.

2

3 In order that I may advise Mr. Gogarty on his position,
4 please let me have your confirmation that Lajos Holdings
5 Limited will now invest the sum of £300,000 in the purchase
6 of the pension, whether or not Mr. Murphy's approval has
7 been obtained. Please also let me have a reply to my letter
8 of the 20th of October."

9 .

10 That letter appears to have been written on the same date
11 as the cheque for £700,000, which appears to have been
12 deposited in Bank National de Paris and was received.

13 .

14 Can you say what your position was, Mr. Gogarty, in
15 relation to your pension at that stage, in particular were
16 you satisfied with the way things were moving along, with
17 the speed with which things were moving along or did you
18 have a concern, and if so what concern did you have?

19 A. Well, I had a concern and I still had some, my concern was
20 that they were hedging on finalising the payment plan. I
21 believed I should have got my pension at the end of the
22 October, early November of 1989. That's what I believed,
23 but it wasn't done, it wasn't done. That was my
24 concern. My relief was that maybe for the first time I
25 had something, I had something. We had a cheque for
26 £700,000, I had something after all the years of anxiety.

2 266 Q. Are you saying that you considered that that money was
28 yours or that you were entitled to treat it as yours?

29 A. Well, if you look at it this way; with my hard efforts I
30 had got £700,000 from the ESB by hard negotiations, based
31 on contractual terms, and this was in favour of Joe
32 Murray's, who didn't record it as a debt even and who can't

1 deny that the ESB civil engineer, chief civil engineer had
2 identified under his contractual conditions that there was
3 only 40,000. They broke my heart and forced me to go up to
4 £130,000.

5 .

6 When you look at it, as far as I am concerned that £560,000
7 was money for Murphy, but it -- my pension, my car, my
8 consultancy, the whole bloody lot didn't cost Murphy's a
9 penny, it was my hard earned effort, the £560,000, and I
10 defy contradiction, and to begrudge me and allege that I
11 defrauded them out of it.

1 267 Q. If it was alleged that you defrauded them what do you say?

13 A. It will turn up eventually where the fraud was.

1 268 Q. Mr. Gogarty, did you consider that you were entitled to
15 retain the entire of the £700,000 or any part of it?

16 .

17 MR. COONEY: Surely there is a matter for you, Mr.
18 Chairman.

19 .

20 CHAIRMAN: That is exactly what I was going to say. The
21 facts are now the situation was finally lodged to the
22 credit of JMSE in a bank account, and the property of that
23 money is a matter for me to decide and nobody else.

24 A. If I may interrupt here?

25 .

26 MR. COONEY: Here we go again.

27 .

28 CHAIRMAN: Please.

29 A. If I may interrupt. The Lord have mercy on him, Justice
30 Blayney, do you know what he said? It could be in no
31 better hands than McCann Fitzgerald.

32

1 CHAIRMAN: We will leave that. Well, just please let us
2 keep to the evidence, not the conclusions.

3 .

4 MR. COONEY: I won't interrupt if Mr. Gallagher wants to
5 ask these questions --

6

7 CHAIRMAN: That's comment, thank you very much. I will
8 deal with the comment please.

9 .

10 MR. COONEY: Why should he ask these questions and not ask
11 Mr. Gogarty how did he sign an agreement five days after
12 agreements --

13 .

14 CHAIRMAN: Mr. Cooney, this is a matter of argument at
15 some stage. We are now taking evidence from this witness.
16 You will have an opportunity of cross-examining and making
17 your point, no doubt with equal force. We are not going to
18 go into it at the moment.

19 .

20 MR. COONEY: Very well.

21 .

2 269 Q. MR. GALLAGHER: Mr. Gogarty, the next letter I want to put
23 to you is a letter of the 24th of October, of 1989,
24 reference 1094. "Re: Lajos Holdings and James Gogarty". It
25 is Mr. Copsey.

26 .

27 "I refer to your letter of the 23rd of October.

28 .

29 I'm afraid the payment of a sum of £300,000 needs the
30 authority of more than Lajos Holdings Limited. This may be
31 mere procedure but never the less is a fact, and the amount
32 can not be paid without that authority.

1 I believe the notes that you made concerning my meeting
2 with you were inaccurate. Whilst I might have said that I
3 expected the monies for the pension to be paid within a
4 week or 10 days it was made absolutely clear at the meeting
5 the Chris Oakley would obtain Mr. Murphy's approval and
6 authority in the matter, I stated without that approval and
7 authority the money would not be paid.

8 .

9 You will receive a reply to your letter of 20th of October
10 but I will not agree to conduct correspondence by return."

11 .

12 If you cast your mind back to the meeting of the 3rd of
13 October, do you recall a conversation, Mr. Gogarty, that is
14 referred to here by Mr. Copsey?

15 A. I don't recall it, but I have my own feelings on it.

1 270 Q. All right. We will pass from there, perhaps Mr. Sheedy
17 may be able to assist us. On the following day Mr. Sheedy
18 wrote to Mr. Copsey, reference 1095. This is a letter of
19 the 25th of October, of 1989.

20 .

21 "Dear Mr. Copsey, thank you for your letter of the 24th of
22 October.

23 .

24 Lajos Holdings Limited, by virtue of the agreement which
25 was completed by it on 3rd of October last, has contracted
26 to purchase a pension for Mr. Gogarty and his wife. It can
27 not validly avoid or delay its obligations on foot of that
28 agreement by reason of inability to obtain the necessary
29 authority of the directors of the company in order to
30 implement in the terms of the agreement..

31 It should not require a great deal of consideration on your
32 part to be able to let me have the confirmation which I

1 requested in my letter of 20th October. It is a matter
2 for Mr. Gogarty to consider the implications of such
3 confirmation not being forthcoming. It may well be that,
4 in order to protect Mr. Gogarty's position, an immediate
5 application should be made to the court for an injunction
6 restraining Lajos Holdings Limited from undertaking any
7 course of action which would prejudice Mr. Gogarty's
8 position as a creditor of the company. Mr. Gogarty is most
9 anxious to have the agreement with Lajos Holdings Limited
10 implemented amicably and expeditiously. However, he is now
11 becoming increasingly concerned because of the delay on the
12 part of the company in implementing that part of the
13 agreement relating to the purchase of the pension for him
14 and his wife. In the regard, the initiative with regard to
15 the implementation of the agreement rests entirely with
16 Lajos Holdings Limited. In the absence of any evidence
17 that the company is taking any action to honour its
18 obligations, Mr. Gogarty may have to take the initiative to
19 secure his position with the assistance of the court."

20 .

21 The next letter is a letter then from the Revenue
22 Commissioners to Mr. Copsey Murray in connection "Re: James
23 Gogarty" and your consultancy agreement. Were you
24 consulted by Mr. Copsey in connection with those
25 discussions and negotiations which were going on at that
26 time?

27 A. With the Revenue?

2 271 Q. With the Revenue, yes?

29 A. Not at all, not at all, the blackguard.

3 272 Q. Now, the next letter I want to refer you to, Mr. Gogarty,
31 is one of the 31st of October from Mr. Sheedy to Mr.
32 Oakley. It is document 1104.

1 .
2 "Dear Mr. Oakley, you may be aware that I have exchanged
3 correspondence with Roger Copsey in connection with the
4 implementation of the agreement which was signed at our
5 meeting on 3rd October. Mr. Copsey has stated that the
6 purchase of a pension for Mr. And Mrs. Gogarty can not be
7 effected until Mr. Murphy has given his approval and
8 authority for that payment. I have pointed out to Mr.
9 Copsey that the agreement is not conditional upon Mr.
10 Murphy's approval or authority; that, at our meeting on 3rd
11 October, you did mention that you would be seeking Mr.
12 Murphy's approval and that you expected that approval to be
13 received within a week to ten days from that date. A delay
14 of four weeks is unacceptable to Mr. Gogarty and, as I have
15 advised Mr. Copsey, Mr. Gogarty may wish to protect his
16 position by seeking the assistance of the court.

17 .
18 The ESB have sent to us a cheque for £700,000 in respect of
19 the balance due on foot of the Moneypoint contract. We
20 have placed that sum on deposit." Yours sincerely Gerard
21 Sheedy."

22 .
23 The next letter is a letter of the 3rd of November from Mr.
24 Oakley to Mr. Sheedy. "Thank you for your letter of the
25 31st of October, the contents of which are noted. I am
26 lead to belief that Mr. Murphy has now approved the terms
27 of the settlement so there no further delay in implementing
28 this matter..

29 I know that you have received a cheque from the ESB for
30 £700,000. Obviously this sum is due to the company, not
31 least because it includes a sum in respect of VAT. Indeed
32 I find it difficult to understand how the ESB could pay any

1 cheque to your client or to your firm bearing in mind that
2 the sum was due to my client. Will you please arrange for
3 this cheque to be transferred to Mr. Copsey as soon as
4 possible.

5

6 .

7 By my calculation your client is entitled to £215,000 under
8 the terms of the agreement. I have asked Mr. Copsey to make
9 the necessary arrangements for the sum of £300,000 to be
10 transferred to the pension fund of your client's choice,
11 without delay. Obviously this payment must be made direct
12 by the company to the pension fund concern.

13 .

14 With regard to the sum of £215,000 to be paid to your
15 client, I enclose a copy of a letter which Mr. Copsey has
16 received from the Revenue Service. You will see that they
17 take the view that Mr. Gogarty is an employee. In the
18 circumstances, my clients will have to deduct tax under the
19 PAYE system in respect of the current payment of both
20 commission and consultancy fees.

21 .

22 In the circumstances I believe that Mr. Copsey has done all
23 that is possible to persuade the Revenue Service that your
24 clients' services are being provided on a genuine
25 consultancy basis. No doubt, should your client wish to
26 take the matter further, he will make arrangements to
27 contact the Revenue Service direct."

28 .

29 The next is a letter from Mr. Copsey to Mr. Sheedy. It is
30 a letter of 6th of November, 1108.

31 .

32 "Dear Mr. Sheedy, I refer to Chris Oakley's fax to you of

1 3rd November, concerning the sum of £700,000 which was paid
2 by the ESB to your firm. I have been unable to reach you
3 by telephone today but I will make arrangements for my
4 bookkeeper to pick up a cheque for £700,000 from your
5 office tomorrow morning.

6 .

7 This cheque can be made payable to either my client account
8 or JMSE, as you wish." Signed R J Copsey on behalf of
9 Copsey Murray & Company.

10 .

11 Now, on the 6th of November you wrote to Duffy Mangan
12 Butler, page 1110, "Re: Land of Lajos Holding Limited".

13 .

14 "Dear Kevin, in reference to our meeting this morning I
15 confirm
16 instructions on the advice of Mr. Denis McArdle, solicitor
17 for the vendor that you suspend all negotiations and
18 dealings in connection with the sale of the above lands
19 until further notice."

20 .

21 Mr. Gogarty, can you outline briefly the circumstances in
22 which you wrote that letter and on whose instructions?

23 A. Well, my recollection of it was that Denis McArdle rang me
24 up and told him that Senior had told him to hold on the
25 sale because there was some problem. I have an idea what
26 the problem was, you know, but --

2 273 Q. Mr. McArdle told you to, that you shouldn't, Mr. Duffy
28 shouldn't do anything for it? I see, all right.

29 A. That's right.

3 274 Q. The next letter is a letter of the 8th of November, of
31 1989. The reference is 1111. It is a letter from Mr.
32 Sheedy to Mr. Copsey.

1 .
2 "Mr. Oakley has informed me that Mr. Murphy has now
3 approved of the payment of the sum of £300,000 for the
4 purchase of a pension for Mr. Gogarty and his wife. Please
5 let me know if that term of the agreement between Mr.
6 Gogarty and Lajos Holdings has now been implemented."

7 .
8 That was replied to on the 9th of November, of 1989, by Mr.
9 Copsey. Mr. Copsey wrote to Mr. Sheedy and says:-

10 .
11 "I confirm that Mr. Murphy has approved the payment of the
12 sum of £300,000 pension for Mr. Gogarty and his wife. That
13 term of the agreement between Mr. Gogarty and Lajos
14 Holdings has not yet been implemented. The sum will,
15 however, be paid immediately out of funds due to JMSE in
16 respect of the settlement with the ESB.

17 .
18 In this respect I believe that Chris Oakley has already
19 been in
20 contact with you by fax." And on the previous day Mr.
21 Oakley had written to Mr. Sheedy, reference 1113. This is
22 on the 8th of November, of 1989.

23 .
24 "I refer to my letter of the 3rd November concerning the
25 above. I understand from Mr. Copsey that despite the
26 request made in the third paragraph of my letter and
27 despite numerous telephone calls to you only the sum of
28 £100,000 has been forwarded to my clients.

29 .
30 You will no doubt appreciate that the sum of £700,000
31 negotiated by your client is due from the ESB to JMSE
32 Limited. The sum of £700,000, or the balance thereof, now

1 held in your client account is due and owing to JMSE
2 Limited notwithstanding that your client may have an
3 entitlement under the settlement agreement to a commission
4 in respect thereof.

5 .
6 Accordingly, unless the balance of the £700,000 is paid to
7 JMSE before close of banking business today, I am
8 instructed to commence proceedings against your firm for
9 the recovery of the same without further warning.

10 .
11 I am sure that above reflection you will recognise that the
12 beneficial of the ownership of the funds held in your
13 client account is that of my clients who were the
14 contracting party with the ESB. Whatever arrangements had
15 been agreed with your client in respect of the settlement
16 agreement, does not affect the beneficial ownership of the
17 funds in your client account. I therefore assume that upon
18 reflection you will understand that it is your professional
19 duty to transfer the funds as requested above in accordance
20 with the terms of this letter. Yours sincerely Mr.

21 Oakley." As I say, that was sent to Mr. Sheedy.

22 .
23 And on the 9th of November, Mr. Gogarty, Mr. Sheedy wrote
24 on your behalf, page 1116 to Mr. Oakley in the following
25 terms:-

26
27 "I am in receipt of your letter of the 8th of November.

28 .
29 The Inspector of Taxes wrote to Copsey and Murray and Co.
30 on the 26th October stating that all emoluments paid to Mr.
31 Gogarty on foot of the consultancy agreement will be
32 subject to PAYE/PRSI deductions. Arising from that, we

1 have been awaiting Mr. Copsey's calculation of the
2 deductions which should be made from the sum due to Mr.
3 Gogarty by way of commission from the payment which has
4 been received from the ESB. Perhaps you would request Mr.
5 Copsey to advise us of the amount to be deducted from the
6 commission due to Mr. Gogarty so that that part of the
7 agreement between Mr. Gogarty and Lajos Holdings may now be
8 implemented.

9
10 Mr. Gogarty is most unhappy with the continuing delay on
11 the part of the officers of Lajos Holdings limited in
12 implementing the terms of the agreement of 3rd October
13 between Mr. Gogarty and the company. In our letter of the
14 31st October, we advised you that Mr. Gogarty may wish to
15 protect his position by seeking the assistance of the
16 court. As we have previously stated, Mr. Gogarty is most
17 anxious to avoid any further acrimony between himself and
18 the officers/shareholders of Lajos Holdings Limited and its
19 subsidiaries. However, in the event that it should become
20 necessary, Mr. Gogarty will, with reluctance, institute
21 legal proceedings to protect his position arising from his
22 written agreement with Lajos Holdings Limited and his
23 previous oral agreement with Mr. Murphy. Mr. Gogarty is
24 confident that he can establish to the satisfaction of the
25 court that the terms of these agreements have not been
26 implemented by Lajos Holdings Limited and Mr. Murphy; that
27 the failure to implement those agreements has arisen solely
28 because of the inactivity and apparent lack of intent on
29 the part of your clients, and that he, Mr. Gogarty, has
30 taken every reasonable step to implement his part of those
31 agreements.

32

1 How these issues are resolved is now a matter entirely for
2 your clients; either by the purchase of the pension for Mr.
3 And Mrs. Gogarty and the calculation of the deductions to
4 be made from the commission due to Mr. Gogarty, or
5 alternatively, by bringing the long unhappy saga before the
6 court for adjudication by it.

7

8 Please let me hear from you on how your clients wish to
9 proceed from here."

10 .

11 There is a letter of the 10th of November -- do you want a
12 break?

13 .

14 CHAIRMAN: Well, as a matter of fact it is virtually one
15 o'clock, I was watching the correspondence, I don't want to
16 break your line of thought. I think we could adjourn it to
17 tomorrow morning, tomorrow morning at ten o'clock.

18 .

19 We are not in a position to sit after lunch.

20 .

21 MR. CALLANAN: I take it, it is proposed to resume Mr.
22 Gogarty's evidence at ten or some time?

23 .

24 CHAIRMAN: Well, if we get around to doing the judgement,
25 I am not certain -- we will see the situation. Some time
26 shortly after ten. We will adjourn until the morning.

27 .

28 THE HEARING THEN ADJOURNED UNTIL THE 27TH JANUARY, 1999, AT
29 10 A.M..

30

31

32