

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 1990s

HELD AT
THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON
THURSDAY APRIL 27, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

ATTORNEY MARSHALING EVIDENCE FOR THE COMMISSION

Miss Judith Clarke- Attorney-at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips - Attorney-at-Law
Mr. Gavin Golfe- Attorney-at-Law

REPRESENTING MR PATRICK HYLTON

Mr Dave Garcia - Attorney-at-Law

GIVING EVIDENCE

Debtor 5

1 A: My name is Debtor 5. For
2 the time being I am at Address
3 , Kingston 6.

4 Q: Your occupation?

5 A: I am a businessman.

6 Q: Now, Debtor 5, did you sign a
7 statement, a witness statement relative
8 to your appearance before this
9 Commission?

10 A: Yes, ma'am.

11 Q: May the witness statement be shown to
12 him.

13 A: I could find a copy if I try.

14 Q: Debtor 5, just identify the one at hand
15 for the time being.

16 (Witness statement shown to Debtor 5)

17 A: Yes.

18 Q: Could you just confirm as to whether the
19 document you are now holding in your
20 hand is the statement which you signed.
21 Is that the statement you signed,
22 Debtor 5?

23 A: Yes, ma'am, it is.
24 COMM. BOGLE: Excuse me. I noticed that the copy that
25 we have is undated.

J institutions, is that so?

2 A: Two defunct financial institutions, yes.

3 Q: And those would be the Century Group and
4 the Eagle Group?

5 A: That is correct, yes ma'am.

6 Q: So you would have dealt with more than
7 one of the institutions or the entities
8 within the Century Group and more than
9 one of the entities within the Eagle
10 Group?

11 A: I was directly with Eagle Merchant Bank
12 and Century National Bank, but you will
13 find in the evidence I present that
14 there were instances where we crossed
15 dealings.

16 Q: The other entities within the groups
17 became involved?

18 A: Involved in one way or the other.

19 Q: And you at the time of your dealings
20 with these institutions the companies or
21 your business entities that would have
22 been affected are Debtor 5 Company
Limited,
23 Debtor 5 other Company Limited
24 Debtor 5 3rd Company Limited, Stationary

Debtor 5 4th Company Limited.

1 sister companies under my common
 2 management. Myself and these two
 3 companies began doing business with
 4 Century National (CNB) Bank around
 5 January 1988.

6 Over the period up to May 31, 1995 when
 7 we ceased doing business with Century
 8 National Bank (CNB) there were several
 9 types of banking products dealt with
 10 including the following:

- 11 Demand loan.
- 12 Overdraft facilities.
- 13 Banker's guarantees and performance
- 14 bonds.
- 15 Promissory Notes.
- 16 Cash deposits or CDs.
- 17 Mortgage on real estate.

18 Around September 1988 Debtor 5 other
 19 Company obtained credit facilities as
 20 follows:

- 21 Demand Loan account - and it is
- 22 important that we set out the account
- 23 that we had, Demand Loan account 000000
- 24 for \$000,000.00.
- 25 Overdraft facilities account #0000000

1 for \$000,000,00.

2 Total of the initial credit facilities
3 \$0,000,000.00.

4 MISS CLARKE: Hold on please, Debtor 5. I noticed
5 you said it is important that we set out
6 the account we are dealing with, are
7 intimating that the account numbers
8 would bear some particular significance
9 to your complaint?

10 A: Yes, because the claim they made is
11 against these accounts and we are going
12 to need to note the account and also
13 when we come to payments we note the
14 payments against the account.

15 Q: Very well. Continue please.

16 A: Debtor 5 Company and I guaranteed the
17 aforementioned facilities for sister
18 company
19 Limited. In addition Company Limited
20 mortgaged its premises at Address
21 registered
22 at Volume 0000 Folio 000 and Volume 0000
23 Folio 000 respectively.

24 COMM. BOGLE: 000.

25 A: 000. I am sorry. Sometime in

1 copies of the relevant titles?

2 A: Yes.

3 COMM. BOGLE: I don't know if this is a correction,
4 but at point 8, the last paragraph you
5 read you said, "the title was used to
6 cover facilities totaling \$0,000 Million
7 being \$000,000.00 and the demand loan
8 \$000,000.00, my addition would tell me
9 that it should be a little more than the
10 \$0,000,000.00.

11 A: It is \$0.0 Million. It is the 0,000 plus
12 \$000,000.00.

13 COMM. BOGLE: So therefore the total facilities at
14 this time then is not the \$0,000?

15 A: No, it is \$0,000,000.00.

16 COMM. BOGLE: All right, so you are making a
17 correction to the statement?

18 A: I am making a correction to the
19 statement, yes. And that \$0,000,000.00
20 is made up of \$000,000 for the demand
21 loan and \$000,000.00 for the overdraft
22 facilities.

23 COMM. BOGLE: Okay, thank you. You can go ahead.

24 A: I have a lot of these things, I don't
25 know in what order they would be

1 recorded in. Now, I have some of these
2 but they are bounded.

3 MISS CLARKE: We are looking for the copies of the
4 titles.

5 Mr. Chairman, my friend has graciously
6 ask to make some copies of the titles
7 mentioned at paragraph 7 I believe of the
8 witness' statement Volume 0000, folio
9 000, that is at paragraph 5, I am sorry,
10 of the statement and volume 000. The
11 COMM. BOGLE: first one is 0000 or 0000?

12 MISS CLARKE: 0000 Folio 000 and 0000 Folio 000. Those

13 COMM. BOGLE: are not in the witness statement? They

14 MISS CLARKE: are not in the witness statement. Can we

15 COMM. BOGLE: have those copied then?

16 MRS. PHILLIPS: There are sufficient copies.

17 A: You have copies, because I was relying
18 on what was in the witness statement.

19 MISS CLARKE: Mr. DePeralto, could you show him the
20 copies so that he can identify the
21 mortgage.

22 (Documents shown)

23 A: Yes, these are the copies.

24 Q: Now, in relation to 0000 Folio 000 could
25 you look at that one please, Debtor 5.

1 A: Yes, I am looking at that one.

2 Q: And that is the title to Address

3 ?

4 A: Yes, it is.

5 Q: Could you identify by number or numbers

6 the mortgages to which you have referred

7 to so far in your witness statement?

8 A: If you look at the last page on the top

9 left hand corner you would see mortgage

10 000000 30th of November, 1988 was the

11 date of registration and the amount

12 covers 0 Million, an amendment there,

13 it is \$0,000,000,00 with interest. And

14 you see the cross reference there, the

15 other title there.

16 Q: And then further down there is a

17 miscellaneous item just below that,

18 could you just indicate whether the sum

19 referred to there is referable to the

20 \$000,000.00 that you have referred to in

21 your witness statement?

22 A: Yes, ma'am. You see there the above

23 mentioned mortgage number 00000 has

24 been up-stamped to cover a further

25 indebtedness of \$000,00.00, 6th of

1 December 1990.

2 Q: And that would account for your total
3 sum of \$0,000,000.00?

4 A: That would account for the
5 \$0,000,000.00.

6 Q: Thank you Debtor 5.

7 Mr. Chairman, I must first express my
8 gratitude to my friend and then ask that
9 these two titles be admitted perhaps as
10 one exhibit.

11 COMM. BOGLE: No, what I suggest we do is in view of
12 the fact that the exhibits are attached
13 to the witness statement, they have
14 already been numbered from one that we
15 will call 0000 000 1(a) and 0000 000(1)
16 (b).

17 MISS CLARKE: Which one is 1(a), I am sorry?

18 COMM. BOGLE: 1(a) is 0000 000.

19 MISS CLARKE: I am very much obliged to you, sir.

20 Debtor 5, could you just now continue
21 from paragraph 9 of your statement.

22 A: Yes, ma'am. But Mr. Chairman, while we
23 have the titles in front of us there is
24 another item stamped on it with respect
25 to this same...

1 MISS CLARKE: Both titles?

2 A: At least the 0000 you have a
3 miscellaneous.

4 Q: 0000 000?

5 A: Yes. It says **miscellaneous number 00000**
6 **the above mentioned mortgage number**
7 **00000 has been up-stamped to cover a**
8 **further indebtedness of \$000,000.00.**

9 That was entered in 1993.

10 Q: Do you have a comment with respect to
11 that entry?

12 A: While we were on the title I thought I
13 would make note, but when we go further
14 in the statement the relevance will come
15 up. This was up-stamped without
16 permission.

17 Q: Continue please. Paragraph 9.

18 A: Towards the end of 1990 Debtor 5
19 Debtor 5 Company Limited held

hypothecated

20 certificates of deposit (CDs) with
21 Century National Bank with face values
22 of \$0,000,000.00. These CDs also
23 covered overdraft facilities and other
24 facilities offered as follows:
25 Bank to Bank Guarantee to BNS -

1 US\$000,000.00 or J\$000,000.

2 Performance Bond to Company Limited, now
3 LIME J\$000,000.00. Guarantees for these
4 facilities were given by myself and
5 Debtor 5 Company and the servicing of
6 all the facilities was transferred to
7 Debtor 5 other Company.

8 It was agreed in September 1990 that
9 Debtor 5 other Company would accelerate
10 pay down of the demand loan account then
11 renumbered - and make note of this number
12 0000000 such that the title to the
13 properties of Debtor 5 Company would be
14 freed so that this company could obtain
15 its own mortgage to finance its
16 manufacturing operations. Between
17 September 1990 and June 1991 Company
18 Limited, Debtor 5 other Company and CNB
19 initiated payments pursuant to the rapid
20 pay down of the demand loan.

21 In March 1992 CNB claimed that the
22 demand loan was not fully paid off and
23 gave Debtor 5 Company seven days to
24

1 clear the alleged balance outstanding.
2 In the absence of up to date accounts at
3 the time, agreements were reached with
4 another sister company, Debtor 5 other
5 Limited (XXXXX) to pay
6 out the alleged amount outstanding.
7 Inadvertently payment of approximately
8 \$000,000.00, not so much.

9 Q: \$000,000?

10 A: Yes, were made payable to Company
11 Limited instead of being made payable to
12 CNB for the account number 0000000.
13 With these payments and the accelerated
14 payments, the demand loan was overpaid
15 by \$000,000.00 by June 1993.

16 COMM. BOGLE: Just a minute. Debtor 5, the account
17 number 00000000, are we referring to
18 the same account that you referred to at
19 11, paragraph 11 or this is another
20 account?

21 A: This is supposed to be the same account,
22 yes.

23 COMM. BOGLE: Because the numbering is different.

24 A: The 01 is a typographical error.

25 Q: It should be 00?

1 the overdraft incurred up to that date.
2 CNB requested and was given Promissory
3 Note for Company
4 Limited and identically supporting
5 Promissory Note from the Guarantors,
6 that's me and Company Limited, to
7 cover the following:
8 Net overdraft as at (March 27 1992)
9 \$0,000,000.40.
10 Performance Bond \$000,000.00.
11 Bank to Bank Guarantee to (BNS)
12 \$000,000.00.
13 Total Promissory Note (27/3/1992)
14 \$0,000, 000.00.
15 At the end of March 1992 the overdraft
16 facility was cleared using encashed CDs
17 leaving a credit balance on current
18 account number 0000000 from
19 March 1992 to 31st May 1995 when the
20 group ceased banking relations with CNB
21 this account maintained credit balances
22 and at the latter date the credit
23 balance in this account had the amount
24 of \$000,000.00.
25 COMM. BOGLE: Just before you move. This account

1 number at 16 is now a different account?
2 We were dealing with the overdraft
3 account of 0000000 and then at
4 paragraph 16 we are now dealing with an
5 account of 0000000, so we are dealing
6 with a different account now?

7 A: It is the identical account, the one for
8 which we obtained - if you look at the
9 overdraft facility in paragraph 4
10 \$000,000.00 it was for account 0000000
11 which at paragraph 16 that I just read
12 is 00000000 which is supposed to be the
13 same account.

14 COMM. BOGLE: So the demand loan which is the
15 0000000, that account you are saying
16 was overpaid by \$000,000.00?

17 A: Yes, sir.

18 COMM. BOGLE: And then the overdraft facilities which
19 is account number 0000000 you are now
20 saying that also has a credit balance of
21 \$000,000.00?

22 A: Yes, sir.

23 COMM. BOGLE: So both accounts are now in credit?

24 A: Are now in credit, yes, sir.

25 COMM. BOGLE: Okay.

1 A: And we have the bank statements when the
2 time comes to present it.

3 COMM. BOGLE: Go ahead.

4 A: So the point you just made, Mr.
5 Chairman, is that 17, with the
6 overpayment of the demand loan of
7 \$000,000.00 and the credit balance in
8 the current account \$000,000.00 CNB was
9 indebted to the Guarantors in the total
10 sum of \$0,000,000.00 with interest.
11 In June 2007, a special investigative
12 audit was carried out by a fellow of the
13 Institute of Chartered Accountants,
14 Neville Robinson & Associates, no
15 Limited please, that is an error, the
16 'Limited'. The report is attached with
17 supporting evidence as per the list of
18 exhibits.
19 Around December 1991 Company Limited
20 applied to Century National Merchant
21 Bank and Trust Company for a mortgage in
22 the sum of \$2,520,000.00 to finance its
23 expanding operations. Although approved
24 in principle, Debtor 5 Company did not
25 take up this mortgage.

1 Due diligence information provided
2 pursuant to the mortgage application
3 were used by CNB to amend the mortgage
4 previously registered as per CNB's
5 letter dated June 1992 (Exhibit 1) to
6 the Registrar of Titles. The mortgage
7 application letter dated December 4,
8 1991 CNMBTC's response, and the response
9 dated January 28, 1992 and application
10 to up-stamp bearing miscellaneous that I
11 have mentioned previously 710093 are
12 exhibited herewith as Exhibit 2, "
13 Debtor 5 4".
14 MISS CLARKE: Debtor 5, could you pause there to go

15 through the exhibits.

16 A: Yes, ma'am.

17 Q: Those would be attached to your
18 statement though?

19 A: Yes, ma'am.

20 Q: That first letter June 9, 1992, "A.
21 Smith 1" would come just at the end of
22 your witness statement. "Debtor 5 1".

23 A: Page 11?

24 Q: it is not paginated, it comes after page
25 13 just after your witness statement

1 just after the list of exhibits.

2 A: Oh that is the list of exhibits.

3 Q: And there is a letter there that we call
4 AS1 or Debtor 5 h 1, dated June 9, 1992.

5 A: 1992.

6 Q: Could you just kindly read it for the
7 Commission please.

8 A: This is a letter from Century National
9 Bank to the Registrar of Titles and it
10 reads:

11 **Registration of Second Mortgage over**
12 **Certificate of Title registered at**
13 **Volume 000 Folio 000 and volume 0000**
14 **Folio 000 Company Limited.**

15 **Mortgage documents in relation to the**
16 **subject matter were submitted to your**
17 **office on April 7, 1992 but were**
18 **subsequently returned on April 14, 1992**
19 **with the notation that caveat #00000 is**
20 **outstanding".**

21 **We are now withdrawing our Second**
22 **Mortgage and substituting it by**
23 **up-stamping our First Legal Mortgage**
24 **#00000. Kindly therefore transfer the**
25 **registration fee of \$0,000.00 which was**

1 paid on April 7, 1992 to our up-stamping
2 document. (attached is your official
3 receipt #00000 which is the
4 miscellaneous number.

5 **Enclosed are the following:**

6 **Certificate of Title registered at**
7 **Volume 0000 Folio 0000 and Volume 000**
8 **Folio 000 which are the titles I just**
9 **read to you.**

10 Up-stamping document.

11 **Photocopy of the mortgage document which**
12 **was previously submitted (for ease of**
13 **reference).**

14 **In acknowledgement of receipt of the**
15 **enclosures, kindly sign and return the**
16 **attached copy letter.**

17 Q: Debtor 5, just pause there for a moment
18 please. You state further at paragraph -
19 before we look at the other exhibits
20 that the mortgage endorsed on Company
21 Limited was up-stamped for the amount of
22 \$000,000.00 in June 1993?

23 A: Yes.

24 Q: Is this the letter representing that
25 up-stamping?

1 without your permission.

2 Q: How would you have benefited from that
3 up-stamping, from that \$000,000.00 was
4 there a draw down on your part of your
5 company in respect to that \$000,000.00?

6 A: There was none. And not only that, I
7 have evidence if I am permitted to show
8 it where that time 1992, between January
9 1992 and February 1994 Century National
10 Bank communicated to us that because of
11 their monetary policy and restrictions
12 on National Century Bank they were not
13 able to allow even a \$000,000.00
14 overdraft nonetheless to advance
15 \$000,000.00.

16 Q: So on your understanding, what would
17 this 000,000.00 have represented?

18 A: This \$000,000 will be made clearer when
19 we go and look at their demand for
20 payment. What they did is that the
21 Promissory Note given for the
22 Performance Bond \$000,000 and the Bank
23 To Bank Guarantee to Scotia Bank
24 \$000,000.00 was registered, was
25 re-entered. I am not quite sure what is

1 the legal term, but substitute it, if
2 you like, for the \$0.0 Million which we
3 agreed on the other side, and I will
4 show evidence that it has been fully
5 paid, but they take this contingent
6 liability \$0.0 million. I will tell you
7 that we had discussions with the
8 Chairman of Century National Bank where
9 they admitted that it was an error and
10 there are letters there where they wrote
11 threatening lawsuit and I went in and
12 discussed it and it was only after
13 FINSAC took over that they decided, ten
14 years after, to enforce this, what is a
15 false claim.

16 Q: For the \$000,000?

17 A: \$000,00000 plus the \$0.0 Million which
18 was paid off. It is part of this
19 up-stamping here, because what they are
20 really trying to make up is the full
21 Promissory Note which is \$0,000,000.00
22 which we mentioned there. They are using
23 that to bring the Promissory Note as a
24 demand loan.

25 Q: Let me just get you clearly. Are you

1 saying Debtor 5, that there is no
2 facility that was available or accessed
3 by you that can be supported by the
4 endorsement of that \$000,000 on your
5 title, are you asserting that?

6 A: Yes, I am asserting that.

7 Q: All right, could we look at the other
8 document just after AS1, AS2 to AS4. We
9 will just go through them. This is a
10 letter to Mr. Aubrey Smith from Century
11 National Merchant Bank and Trust Company
12 Limited (CNMBTC), dated January 28,
13 1992.

14 COMM. BOGLE: That I do not have as AS2.

15 MISS CLARKE: Oh, I am sorry, I am actually looking at
16 the wrong document.

17 A: AS2 is a letter written by me.

18 MISS CLARKE: Dated December 4, 1991. That was my
19 error.

20 A: Basically in this letter I was applying
21 pursuant to the rapid pay down and that
22 the debt was now fully paid but Century
23 National Bank's lending powers were
24 curtailed because of the difficulties we
25 were having and I was making this

1 application to the Merchant Bank of the
2 Century Group, and this was a loan
3 application made.

4 COMM. BOGLE: Would you like to read the letter,
5 Debtor 5.

6 A: Yes, sir.

7 **Dear Sirs:**

8 **We hereby apply for a mortgage of Two**
9 **Million Five Hundred and Twenty Thousand**
10 **Dollars (\$0,000,000.00), using our real**
11 **estate at Address as security.**

12 **The Valuation Report prepared by Orville**
13 **Gray & Associates, is with the**
14 **securities section of your Bank. It**
15 **shows a value of Three million Six**
16 **Hundred Thousand on \$0,000,000.00) on**
17 **completion.**

18 **The purpose of the mortgage is as**
19 **follows:**

20 **(A) Pay out to Century National Bank --**

21 **Company Limited Demand**

22 **loan and overdraft, totaling**

23 **approximately One Point Million**

24 **Dollars (\$0.0M)**

25 **(B) Put in toilet fixtures, and windows,**

1 and paints already bought for the
2 premises -- \$000,000.00.

3 (C) To add to the above premises by
4 building at Address, 3850 square feet of
5 space so that the three (3) companies
6 (Companies Limited) can be accommodated
7 at one location.

8 Please note that we are under pressure
9 from the landlord at Company Limited, 4
10 Bell Road, Kingston 11, to vacate the
11 premises.

12 For ease of management and the reduction
13 of overheads by over \$000,000.00 monthly,
14 we would very much like to fulfill our
15 long held ambition to rationalize our
16 operations at one location.

17 We enclose Group Cash Flow Summary as
18 well as individual Cash Flow Statement
19 which indicates that combined or
20 individually we would be able to service
21 the mortgage.

22 Both Company Limited and
23
24
25

1 **Stationery Manufacturers Limited have**
2 **material for the next eight (8) or nine**
3 **(9) months, and Debtor 5 Company have**
4 **contracts under negotiation to self-**
5 **finance for the next few months.**
6 **We look forward to your usual prompt**
7 **response.**

8 MISS CLARKE: Thank you Debtor 5.

9 Mr. Chairman I have not been making the
10 formal requests for the entry of the
11 exhibits. I anticipate that they are
12 without objection in light of the fact
13 that there has been no objection that
14 they are being marked as itemized and
15 this is exhibit AS2?

16 COMM. BOGLE: Right, the first one was AS1. After ASIA
17 and 1B and we will accept them as we go
18 along unless there is any objection or
19 the number needs changing.

20 MISS CLARKE: Thank you very much.

21 Debtor 5 AS 3 now would have, I am
22 asking a question, would have
23 represented a response to this
24 application?

25 A: Yes, the letter I just read.

1 Q: That Mr. Chairman is a letter from
2 Century National Merchant Bank and Trust
3 Company Limited dated January 28, 1992
4 and if I may, sir, I would like to read
5 that letter.

6 COMM. BOGLE: Sure.

7 MISS CLARKE: It is addressed to Debtor 5,
8 Managing Director, Company Limited,
9 Address, Kingston.

10 Dear Debtor 5

11 Re: Your Loan Application -- \$0,000,000.

12 We acknowledge receipt of your letter of
13 January 23, 1992 which came to hand on
14 January 24, 1992.

15 We are very surprised that you feel
16 disappointed that your loan application
17 has not yet been formally approved.

18 This delay is no fault of Century Bank
19 Merchant Bank & Trust Company Limited
20 since the supporting documents and data
21 upon which our decision would rest was
22 not fully provided.

23 The circumstances surrounding your
24 application are as follows:-

25 1. Your letter dated 4/12/91 for a

1 mortgage came to our hand on December
2 18, 1992.

3 I pause here because the letter is dated
4 January 1992 so Commissioners will no
5 doubt take note of that, at best it
6 probably represents a typographical
7 error.

8 COMM. BOGLE: While you mention that, this reply is
9 referring to a letter dated January
10 while the previous letter AS2 is
11 December 4, so it seems like the reply
12 here is to a different letter, not to
13 the letter dated December 4, so we are
14 really reading a letter that is
15 referring to a letter that is not in
16 front of us, because this letter as I
17 said the date, and also the fact that
18 they say **we are very surprised that you**
19 **feel disappointed** but the letter of
20 December 4, 1991 does not state any dis-
21 appointment.

22 A: You are correct Mr. Chairman, I beg your
23 pardon, because it's after the
24 application and then the prompt action
25 wasn't taken, then the letter expressing

1 disappointment was written.

2 COMM. BOGLE: Do we have a copy of the letter of
3 January 23?

4 A: No, we don't have that but the reference
5 to that was only that I was dis-
6 appointed, but this response is to the
7 same mortgage application that I just
8 read; that letter would only be relevant
9 in terms of how I expressed myself to
10 him why he was responding, but this is
11 still a response to the loan
12 application.

13 COMM. BOGLE: Go ahead.

14 MISS CLARKE: The circumstances of your application
15 are as follows.

16 i) Your letter dated 4/12/91 for a
17 mortgage came to our hand on December 18
18 1992.

19 ii) The writer made an appointment for
20 23/12/92 with your good self to attend
21 our offices for us to complete some
22 supporting documents and to obtain any
23 pertinent information that was needed.

24 Again the date would admit to some
25 error, Mr. Chairman.

1 iii) You did not keep that appointment,
2 while at the same time you were in
3 discussion with our Miss Lorna Crawford,
4 Senior Assistant General Manager of
5 Century National Bank.

6 iv) I enquired of you whether you
7 intended proceeding with this proposal
8 with Century National Merchant Bank or
9 Century National Bank. By that time the
10 Christmas holidays came and we agreed to
11 meet first week of January 1992 to
12 discuss your needs to form the basis for
13 packaging your proposal.

14 v) We met on January 13, 1992,
15 however, based on information I could
16 extract from your file and/or from Miss
17 Lorna Crawford, I prepared the loan
18 forms while we awaited the supporting
19 documents/information.

20 vi) You are aware that the valuation and
21 estimate came to hand on January 24,
22 1992, and the life insurance policies
23 earlier in the same week.

24 vii) We agreed that in order to
25 expedite you would bring us the last

1 twelve months Current Account statements
2 since you advised that you could not
3 provide us with audited financial data. I
4 am on page 2 now.

5 viii) In an effort to speed up the
6 process, the writer approached the Credit
7 Committee and advised of your needs and
8 what was the situation at that time.
9 Subsequently, you were advised of the
10 Committee's decision and that you need to
11 advise us about your loan facilities at
12 Eagle Commercial Bank and Scotia Bank
13 Centre. Since then, you said you could
14 not no longer provide the statements, we
15 advised that we would then proceed to
16 extract what information we can from the
17 copy statements here.

18 ix) Your loan proposal was typed
19 from January 6, 1992, and held pending
20 the calling of supporting data which
21 was requested of you.

22 The foregoing details will reveal that
23 had the bank got all that was requested
24 from the first week of January a decision
would have been taken at least

1 two weeks ago.

2 x) While you have not addressed our
3 queries about the loan facilities at
4 Eagle Commercial and Scotia Bank Centre,
5 we will formally present and represent
6 the application while we await your
7 response.

8 You may diarize your files to have a
9 response from us by Friday, January 31
10 1992.

11 Yours truly

12 XXXxxxX

13 General Manager,

14 AS3 Mr. Chairman. AS4 which is referred
15 to in the same paragraph is an
16 application to up-stamp bearing
17 miscellaneous number 00000, that is in
18 pen or inked in pen at the top.

19 A: If I may, that is an attachment to the
20 letter, the first letter AS1, those two
21 would have gone together, it wasn't a
22 part of what was sent to the Titles
23 Office, that is AS4, those two pages, AS
24 4 and AS1 all form part of the document
25 that was sent to Titles Office and you

1 will see, if I may, you will see at the
2 second page of AS2 that it refers to the
3 date of the mortgage that they are up-
4 stamping and it is September 22, 1988,
5 mortgage number is 00000 and the same
6 volume numbers, same mortgagor, original
7 mortgage for stamp \$0,000,000; present
8 amount with stamp duty paid they have that
9 and then additional amount on which stamp
10 duty is to be paid \$000,000, so in effect
11 the \$0.0 million that was already paid
12 and we have all the paid cheques endorsed
13 by the bank to show that, that \$1.0
14 million plus \$000,000 are now being
15 registered to give effect to an ongoing
16 mortgage or a new mortgage so to speak and
17 if you will permit me, you go to page AS7
18 and you will see that the same mortgage
19 number in the middle of the page there,
20 00000 and 00000, those are the mortgage
21 numbers or reference numbers that they are
22 claiming in a notice requiring payment of
23 mortgage, AS7, and the amount being
24 claimed is \$0,000,000.00.

1 Q: As principal?

2 A: Yes, as principal, and then you have the
3 interest of \$0 with charges. So
4 the debt that has been paid with
5 evidence of its payment is now
6 repackaged by first the up-stamping and
7 the registration of the mortgage, and
8 this includes the overdraft facility of
9 \$000,000. When you look at the bank
10 statements you will see that the current
11 account is in credit of over \$000,000,
12 but the entire \$000,000 which was in the
13 original mortgage is being claimed
14 again, plus an addition of \$000,000
15 up-stamp to arrive at a debt for the
16 promissory note and there was a notice
17 requiring payments of mortgage that was
18 sent to us and we can go through the
19 detail of that. After that I went to Mr.
20 Crawford who was the Chairman, a friendly
21 and helpful banker, pointed out the
22 problems to him and in his charming way
23 he assured me that everything would have
24 been all right, only that, that error
 resurfaced a decade later under

1 the new FINSAC regime.

2 Q: Would you like to continue your witness
3 statement from paragraph 22?

4 A: Yes ma'am, which is a bit of what I just
5 said. By letter dated October 9, 1992,
6 referred to A. Smith 5, CNB claimed
7 inter alia that amounts were outstanding
8 against a fictitious demand loan bearing
9 account number 0000000 with a net
10 balance of \$0,000,000.00.

11 Investigations later showed that CNB had
12 converted the promissory note to a
13 demand loan and the approximately
14 \$000,000.00 paid between January, 1992
15 and March, 1993 which payment was later
16 acknowledged by FINSAC in letter dated
17 November 23, 1999, referenced here A
18 Smith 6 was used to reduce the
19 \$0,000,000.00 to the \$0,000,000.00
20 being claimed above.

21 Q: Okay, pause there so we could just
22 examine the exhibits. The one you read
23 as AS5 that letter dated October 9,
24 1992?

25 A: Yes, that is the one I read earlier.

1 Q: Could you just read that letter for us
2 Debtor 5?

3 A: The one that I read October 9, 1992.

4 Q: You didn't read it, you referred to it,
5 you read from a notice AS7 but we are
6 now asking you to read AS5.

7 A: I think it's a little out of order in my
8 setting here.

9 Q: Are you looking at your actual witness
10 statement that you signed?

11 A: Yes.

12 Q: Five comes after AS4.

13 A: Usually.
14 Notice Requiring Repayment of Mortgage.

15 Q: No, no, it's a letter that you just
16 referred to in paragraph 22, a letter
17 dated October 9, 1992 from Century Bank
18 Limited to Debtor 5.

19 A: Oh yes. The letter is dated October 9,
20 1992.

21 Q: Paragraph 22, you said by that letter
22 Century National Bank was claiming that
23 certain amounts were outstanding, I am
24 just asking if you could read the full
25 text of that letter.

1 A: We write again in reference to the
2 liabilities at caption. You will agree
3 that we have gone beyond ..

4 Q: Sorry, could you just read what
5 liabilities are at caption please.

6 A: I will start at the beginning.

7 Debtor 5 , Address

8 , Kingston.

9 Dear sir,

10 1. Current account 000000000 in the

11 name of Debtor 5 and they are

12 combining my account with Company Ltd

13 account overdrawn \$00,000.10.

14 2. demand loan 000000000 in the name of

15 Company Limited. Principal

16 \$0 with overcharge and you

17 will notice that \$0 plus twenty

18 add up to \$0 million which is a little,

19 you know...

20 **We write again in reference to the**

21 **liabilities at caption. You will agree**

22 **that we have gone beyond the normal call**

23 **of duty to facilitate you and it is with**

24 **deep regret that we advise that we must**

25 **now move to protect our interest in this**

1 matter.

2 Accordingly we have forwarded the
3 account to our Legal Counsel for the
4 appropriate action to be taken.

5 In consideration of the good
6 relationship which we have enjoyed with
7 you over the period we trust that good
8 sense will prevail and you will take
9 steps to settle the account
10 expeditiously without us having to
11 resort to the only option you have left
12 us, that is, taking legal action to
13 recover the debt.

14 And this is by Jane Doe,
15 Assistant General Manager, Credit.

16 COMM. BOGLE: Just a minute, can you pull the mike
17 just a bit down to you because when you
18 are reading you get low.

19 A: Oh I see.

20 MISS CLARKE: I just want you to refer back to the

21 account number itemized at number two of
22 the caption?

23 A: Yes.

24 Q: And this is the same account number
25 referred by you in paragraph 22 as a

1 fictitious demand loan bearing account
2 #0000000, is that correct?

3 A: Yes ma'am, that is the same account.

4 Q: Could you elaborate for us as to why you
5 refer to this as a fictitious demand
6 loan account?

7 A: Because there was no such demand loan.
8 That number is the number of the
9 promissory note that was signed to cover
10 the overdraft facility and to cover the
11 \$000,000 bank to bank guarantee from
12 Scotia and the \$000,000 performance bond
13 to Company Ltd.

14 Q: And as of October 9, 1992, what would
15 have been the status of those facilities
16 in terms of payment?

17 A: Well, the overdraft was covered by the
18 end of March.

19 Q: 1992?

20 A: 1992, and the performance bond and bank
21 to bank guarantee, they would have been
22 in effect if they were not discharged
23 but the funds to cover them as we will
24 see were in the CD Account to cover all
25 of those, so those were contingent

1 liabilities that never came up as being
2 outstanding. Jamaica Telephone Company
3 at no time said that we are calling on
4 the performance bond because Company
5 Limited and Company Ltd.
6 have not performed on the contract or
7 Bank of Nova Scotia say that the bank to
8 bank lines of credit in US dollars that
9 were given to Company Ltd were not
10 settled, no such thing.

11 Q: You say at the same paragraph 22 that
12 FINSAC later acknowledged certain
13 things.

14 COMM. BOGLE: Just a minute.

15 COMM. ROSS: Just to ask, Debtor 5, can you explain
16 the total at the top of the letter in
17 AS5, somehow those numbers don't seem to
18 add up to \$0 million.

19 A: They don't but those are part of the
20 hazards of doing business with banks at
21 that time.

22 COMM. ROSS: Did you raise that issue at the time?

23 A: It does not add up, but the whole thing
24 is irrelevant because this is a
25 fictitious claim, but it does not add

1 up. There was a time, as you recall,
2 when at least the bank figures would
3 have added up.

4 COMM. BOGLE: Are you saying that in view of the fact
5 that when you went in to discuss, you
6 went in and discussed with the Chairman
7 of the Century National Bank, the matter
8 of their claiming this amount?

9 A: Yes, that they were claiming, they were
10 actually claiming the \$0,000,000.00.

11 COMM. BOGLE: So in actual fact when you went in to
12 discuss with them, you discussed AS7 and
13 not AS5?

14 A: Yes.

15 COMM. BOGLE: Because AS7, the figures are different,
16 the total is different, so you discussed
17 AS7, but you disregarded AS5?

18 A: I wouldn't say disregarded, but the
19 question was not just what the figure is
20 saying, the question was whether there
21 was a claim of a debt at all or whether
22 there was no debt, so the detail of the
23 figures was not really an issue, I mean
24 it's not, I would deceive you if I try
25 to recall the exact details of the

1 discussion, it was largely the principle
2 of us having settled our debt and having
3 a claim substantially more than the
4 original debt.
5 MISS CLARKE: Debtor 5, I hope I am not over-reaching
6 the query that Commissioner Ross has
7 made, but I believe what the Commission
8 would want to establish for its benefit,
9 if you look at AS7, there is that same
10 account number to which you referred to
11 as a fictitious account, that number is
12 mentioned in that letter dated October 9
13 1992. Did you -- firstly, in your
14 discussion with CNB, did you bring to
15 their attention your concerns relative
16 to this fictitious account and let me
17 ask you the second question and you can
18 answer them one after the other, did you
19 in your discussion with CNB alert them
20 as to any of the discrepancies in the
21 figures as was pointed out to you by
22 Commissioner Ross in terms of the
23 addition, the computation so that the
24 sums, when taken together in AS5, do not
25 amount to \$000.00, did you in your

1 discussion bring this to the attention
2 of Century National Bank at the time,
3 your concerns about this fictitious
4 account number and the discrepancies in
5 the figures?

6 A; No. My recollection is merely that I
7 know that on the receipt of the letter
8 threatening lawsuit that I had
9 discussion with Mr. Crawford, but the
10 details of what the figures were and all
11 of that, you will notice that this is
12 1992, which in another year or so would
13 be twenty years. I have a good memory but
14 I wouldn't be able to recall the details
15 of those discussions, but the general
16 thrust of my meeting was that we have no
17 debt, we prided ourselves in
18 that we had cleaned oft our debt. It
19 was the time when interest rates were
20 beginning to climb and those who were
21 looking ahead, there was nothing we
22 could do legally to pay the type of
23 interest rate that was being charged.

24 Q: At the same paragraph 22, you said that
25 FINSAC....

1 COMM. BOGLE: Just a minute.

2 COMM. ROSS: Just a question. Debtor 5, do you have
3 any documentation on the promissory
4 note?

5 A: Yes.

6 COMM. ROSS: That was entered into?

7 A: Yes.

8 COMM. BOGLE: Is that a part of your submission?

9 A: I am not sure, if it is not it is an
10 omission.

11 MRS. PHILIPS: About half way through the bundle of
12 exhibits, right after the affidavit of
13 Raymond...

14 COMM. BOGLE: What number is it, do you have a number?

15 A: Oh yes, there is a copy here, but 1
16 would like to have it where there is
17 more than one promissory note.

18 MRS. PHILIPS: It's AS12 but it's way down in that
19 exhibit. In fact it's just two pages
20 above AS13, if you find AS13 and go two
21 pages back.

22 A: I have that as a separate cover, copies
23 of the promissory notes.

24 COMM. ROSS: This instrument seems to be a loan.

25 A: What?

1 March 1992. And that is one of the
2 reasons why I was at pains that you
3 follow the account numbers of the bank
4 that the facilities, demand loan and all
5 of that, that we have the numbers to
6 show that there is no way that they
7 could have been up-stamping for an
8 overdraft because the bank account at
9 that time had credit. I show you the
10 bank statement, at the beginning of
11 April 1992, the bank account had
12 \$000,000 in credit and I hope we can go
13 through the cheque payments to show that
14 the demand loan was paid off and more.

15 COMM. ROSS: That would be very helpful Debtor 5,
16 because it really is puzzling that there
17 is this promissory note which seems to
18 suggest a debt, and at the same time you
19 are saying that the loans were paid off.

20 A: The Promissory Note as we were told by
21 Century, that we had CDs, and the CDs
22 were going to be encashed to pay off the
23 overdraft facilities, we had an
24 overdraft facility up to nearing the end
25 of March 1992. And also, that you had

1 COMM. BOGLE: Will you be referring to those further
2
3 MISS CLARKE: There is an exhibit, I don't know to
4 what this Commission actually is
5 referring to now but there is...

6 COMM. BOGLE: He keeps mentioning bank statements to
7 prove that at the time the overdraft on
8 the demand loans were cleared and as a
9 matter of fact they were in credit, and
10 I am asking him whether or not those
11 bank statements he is referring to if
12 they are exhibits attached to the
13 witness statement which he has said so
14 far no, but he had them. So we will have
15 our usual ten minute break and I will
16 ask you Debtor 5 during the break, if
17 possible, just to locate those so that
18 we can have copies of those when we
19 resume. So we will take a ten minute
20 break at that time.

21 MISS CLARKE: And I am sure that the witness will also
22 be putting in the two promissory notes
23 standing by themselves.

24 COMM. BOGLE: Okay.
25 B R E A K

1 This enquiry is now reconvened. We are
2 awaiting copies of the documents
3 requested just before the break, these
4 are being photo copied, however in the
5 interest of time we will proceed and as
6 soon as the copies come to hand we will
7 go back to that, therefore, Miss Clarke.

8 MISS CLARKS: Thank you Mr. Chairman. Debtor 5, just
9 prior to your going into some detail
10 about the demand loan and the proof of
11 the settlement of the debt, you were
12 reading at paragraph 22 and I was about
13 to ask you relative to AS6, at the end
14 of that paragraph, you said that certain
15 payments were acknowledged by FINSAC in
16 a letter dated November 23, 1999?

17 A: Yes.

18 Q: Could we now just look at that letter
19 with a view to your explaining or
20 pointing out just exactly what aspect of
21 it actually acknowledged the payment of
22 the sum, AS6 or A Debtor 5 6?

23 A: I am just checking to see if that
24 letter...

25 Q: It is in your witness statement. If you

1 go from the end of the list of exhibits,
2 it's actually conspicuously marked AS6.
3 This letter dated November 23, 1999
4 purports to give, and I quote, the
5 history of Debtor 5 Company from
6 March 27 1992 to May 29 1998 spanning a
7 six year period. Could you Debtor 5...
8 COMM. BOGLE: Just before you go Miss Clarke, can we
9 hear who is Mr. John Doe,
10 because this letter is addressed to
11 Mr. John Doe, I don't know if
12 we have a copy of that letter and we
13 need to identify who is Mr. John
14 Doe before we look into the body of
15 the letter.
16 A: Professor Randolph Williams who among
17 other things was my attorney-at-law at
18 the time.
19 COMM. BOGLE: He sent a letter, apparently he sent a
20 letter to FINSAC dated July 21 1999.
21 A: Yes.
22 MISS CLARKE: Have we got a copy of that letter?
23 A: No, we don't have a copy of that letter
24 at hand.
25 COMM. BOGLE: But he represented you, he was your

1 attorney?

2 A: Yes.

3 COMM. BOGLE: Is he still your attorney?

4 A: No.

5 COMM. BOGLE: Go ahead.

6 MISS CLARKE: Yes Debtor 5, you were going to

7 indicate to us based on this letter

8 where or in what aspect it acknowledged

9 your payment of the sums referred to in

10 paragraph 22 of your written statement?

11 A: Yes ma'am. You will see in the middle of

12 the thing, they have some figures, it

13 has opening balance as at 27/3/92,

14 \$0,000,000.00 and you will note that it

15 is the exact, to the cent amount of the

16 promissory note and then now they have

17 payments and there are four payments

18 which I referred to, only one is the

19 exact amount that was paid and we have

20 some of the paid cheques to show, the

21 one for 12-1-93, for example, \$000,000

22 was paid.

23 Q: The one for what figure?

24 A: \$000,000.00, we have a copy of the

25 cheque, when those documents come we

1 will show you a copy of the cheque,
2 that, that was a payment for \$000,000,
3 and the \$0 and the \$0
4 roughly adds up to \$000, so there
5 were three payments of \$000 and one
6 payment of \$000,000 and these are in
7 approximation acknowledged by this
8 letter from FINSAC.

9 Q: I beg your pardon, when you say they are
10 in approximation acknowledged, what you
11 mean?

12 A: The amount, it is not exactly the
13 \$000,000, but the date of the payment,
14 if you add the addition, the \$000.0
15 and \$000.00 plus the \$00 down
16 there add up to \$0,000 paid the
17 13/5/92 and the \$,000, after they
18 take out whatever charges, is \$00,000
19 and I have a copy of the paid cheque for
20 that one and the \$000 was really a
21 payment of \$0,000 and the \$00,000 is
22 correct, payment of \$00,000 and what
23 they are doing here is that they take
24 the amount of the promissory note and
25 show it as a debt and when we go to

1 their defence, we took an action in
2 court and they have a defence and when
3 we go through that they will show what
4 they are doing and what they are doing
5 will show.

6 COMM. BOGLE: Just before -- sorry Miss Clarke, the
7 payments here are being applied against
8 the promissory note, the interest and
9 principal of the promissory note?

10 A: Yes.

11 COMM. BOGLE: Are you therefore saying that you
12 actually made payments against the
13 promissory notes or these payments were
14 for something else?

15 A: We go back to my statements here where
16 you have the -- I corrected the seven
17 hundred and eighty to.

18 COMM. BOGLE: Six hundred and eighty.

19 A: Look at paragraph 22.

20 COMM. BOGLE: Yes.

21 A: By letter dated October 9, 1992 which
22 letter we read, Century National Bank
23 claimed inter alia that amounts were
24 outstanding against the fictitious
25 demand loan bearing the account that,

1 that is the same number as the
2 promissory note.
3 COMM. BOGLE: Yes.

4 A: An investigation further shows that,
5 that money that we paid, that was when
6 we were told further up that the loan
7 that we thought was paid off in June
8 which was in fact paid off in June but
9 they said it wasn't paid off, we went a
10 second time and paid it. It says, in
11 March 1992, paragraph 13, CNB claimed
12 that the demand loan was not fully paid
13 off and gave Debtor 5 Company seven days
14 to clear the alleged balance outstanding.
15 In the absence of up-to-date account,
16 agreements were reached with another
17 sister company, Caribbean Trust to pay up
18 the alleged amount outstanding.
19 Inadvertently payments of approximately
20 \$0,000 was paid and with the account
21 having been, the demand loan, having been
22 paid off we went and paid this money when
23 they said it wasn't paid so we now had
24 \$000 overpaid on the account because the
 amount they

1 claim was not paid was in fact paid and
2 when we get the document we will show
3 the evidence of the paid cheques and
4 debit advices that it was paid but we
5 went and paid that because we were
6 preparing and applying for a mortgage
7 with the Trust Company and so we paid it
8 and that we would sort it out later on.
9 And so that is the money that we are
10 looking at now, that FINSAC acknowledged
11 that they did, although they didn't
12 record the exact amount paid but FINSAC,
13 the 13/5/92, the 12/1/93, the 1/2/93,
14 9/3/93, those amounts were in fact paid.
15 COMM. BOGLE: So you are saying these amounts

16 represented a double payment against the
17 demand loan?

18 A: Yes, sir.

19 COMM. BOGLE: And so these amounts represented the
20 credit you said that should stand
21 against the demand loan?

22 A: Exactly, sir.

23 MISS CLARKE: And they have used these credit and

24 applied them to the promissory notes
25 that you are refuting?

1 A: In the Amended Defence of Second and
2 Third Defendants they explained how they
3 arrived at that figure and that document
4 is right behind, is in the witness
5 statement, that is the amended defence
6 of Second and Third Defendants and that
7 would explain exactly what took place.

8 MISS CLARKE: You were referring to a particular
9 exhibit ahead of time?

10 A: Well, I was saying that, that would have
11 explained it because what it represents
12 to me is different from what it is
13 representing to them but they have
14 explained how they arrived at it in the
15 defence.

16 COMM. BOGLE: You could refer to that later on in your
17 witness statement.

18 A: Yes.

19 COMM. BOGLE: Okay, we will move ahead.

20 MISS CLARKE: So, in terms of exhibit AS6, you are
21 saying that those itemized payments
22 under the opening balance as at 27/3/92
23 would have, in substance, represented
24 the settlement of the \$000,000?

25 A: The payment of \$000,000 which we decided

1 to pay in protest, although we had paid
2 off the debt and we will show you that we
3 paid off the debt from June 1991, we paid
4 the \$000,000, they gave us seven days to
5 pay it. It wasn't the days when you go to
6 your computer and your whole account come
7 up before you, it takes you a year before
8 your auditor comes back with your account
9 and all of that, so we paid that so that
10 we could move on with the mortgage
11 application and other finances,
12 arrangements that were made and if you
13 look on that same letter, first of all it
14 shows that the amount being claimed as
15 outstanding, started off on the 27/3/92
16 as \$0 and bearing in mind that, that is
17 the exact to the cent amount of the
18 promissory note. This was taken from it
19 and you will see that the closing balance
20 that they have been claiming both in the
21 demand letter and in other
22 correspondence is the \$0 and that is the
23 amount that is being claimed on this so
24 called demand loan

1 000000, that is what they are
2 claiming, and you will see as we go
3 along, if you give me permission, I will
4 show you where the amounts were paid and
5 acknowledged as paid, but the
6 penultimate paragraph of that letter
7 that we are reading, **we apologize**
8 **sincerely that we are unable to provide**
9 **you with information from December 1991**
10 **as requested in your letter,** you will
11 find out that what they are saying is
12 that, that \$0 is a promissory
13 note, as additional security for moneys
14 owed before this period, that is from
15 December 1991 and beyond and they are
16 saying that this promissory note was
17 given for accumulated facilities,
18 credit, debt going back before March
19 31/29/1992.

20 Q: But, you are saying they were unable to
21 provide the data?

22 A: But they are saying here that they are
23 unable to provide the data to support
24 that claim. Now we will go to show from
25 their own document that - well, I will

1 wait until we reach that stage but I am
2 anxious to get to their documents.

3 COMM. BOGLE: All right. Let's proceed and see when
4 we get there.

5 MISS CLARKE: If I may at this point seek to introduce

6 some documents in respect of which the
7 queries were paid just prior to the
8 adjournment. I believe the witness had
9 referred in his witness statement and in
10 his evidence, oral evidence just now to
11 some promissory notes and Commissioner
12 Ross had asked whether he has them at
13 hand. The witness has produced two
14 documents which have been copied and I
15 would like to just now put them in his

16 hand just to ascertain that they are in
17 fact the promissory notes to which he
18 has been referring with a view to
19 entering them into evidence.

20 All right, Debtor 5, could you look
21 back at paragraph 15 of your witness
22 statement please?

23 A: Yes.

24 Q: **Inadvertently payments of approximately**
25 **\$680,000 were made payable to Company**
Ltd.

1 instead of being made payable to CNB for
2 the account number 0000000. With these
3 payments and the accelerated payments the
4 demand loan was overpaid by \$0 by June,
5 1993.

6 Around the same time, March 1992, Debtor
7 other Company instructed CNB to
8 encash CDs to clear the overdraft
9 incurred up to that date. CNB requested
10 and was given promissory note for Debtor
11 other Company and identically
12 supporting promissory notes from
13 guarantors to cover the following.

14 I am just asking, the document that you
15 have in hand, are those the promissory
16 notes to which you referred in paragraph

18 15?

19 A: Yes ma'am. You

have the two promissory

20 notes, 5534, the end numbers executed by
21 Company Limited to
22 cover these facilities that you have
23 just read.

24 Q: Which one do you have in your hand
25 representing that, both of them?

1 A: This one, the one that you don't see the
2 imprint of the stamp on it, because that
3 was..

4 Q: That is 00000.

5 A: 00, yes.

6 Q: And what is the number on the other one?

7 A: The other one is 0000000.

8 COMM. BOGLE: You know, I think this is 55 but the
9 second five is written in such a
10 fashion, as you notice, but I think it
11 is the same number.

12 A: It would appear so but if you notice...

13 COMM. BOGLE: The same number 000.

14 A: No, its not.

15 MISS CLARKE: The witness is asserting it is not, he
16 will probably elaborate.

17 A: If you look at the stamp, the 0000 has
18 an embossed stamp that stamped it and
19 this other one is a rubber stamp that
20 stamped it.

21 COMM. BOGLE: Repeat that? This to me represents two
22 promissory notes, one by the guarantor
23 and one by the company.

24 A: Yes.

25 COMM. BOGLE: So it is the same promissory note, both

1 notes are for the same amount, one
2 executed by the company and the other
3 executed by the guarantor, it's the same
4 note, it is not two different notes, not
5 dealing with two different account
6 numbers.

7 A: No, no, it is dealing with the same
8 amount, but I am saying, who executes is
9 the difference.

10 MISS CLARKE: And not the account number?

11 A: Yes.

12 COMM. BOGLE: We agree with that, that one the company
13 executed.

14 A: One the borrower or the company liable
15 execute and the other one the
16 guaranteeing company execute, the
17 guarantor.

18 COMM. BOGLE: Yes.

19 A: So that is the distinction.

20 MISS CLARKE: Mr. Chairman, may these documents be
21 marked, I believe they would have to be
22 1C and 1D because up to this point we
23 have not started to identify any
24 exhibits in terms of his written witness
25 statement.

1 point where the X to sign the signatures
2 is on the line. So I object to this
3 being marked as two distinct documents
4 executed by two different people. There
5 was only one personal guarantor and it
6 was Debtor 5, so a personal
7 guarantee would not bear the signature
8 of anyone other than Debtor 5. This
9 is a document exhibited by the company,
10 executed by the company, one which is a
11 carbon copy of the other, if you even
12 look at how the stamp is imprinted on it
13 with the stamp duty, it is exactly the
14 same.

15 MISS CLARKE: My only difficulty with the reservation
16 and I fully appreciate it, given the
17 fact that just looking at the document
18 itself, I believe to the extent that the
19 witness has given certain evidence, it
20 is now for the Commissioners to assess,
21 but as the witness presents them, the
22 data and the records ought properly to
23 so reflect because it is this witness'
24 evidence that they represent two
25 different documents. At some point it

1 may be established that they don't, but
2 in terms of the way he gives his
3 evidence...

4 COMM. BOGLE: The commission will accept them as two
5 documents 1C and 1D and the Commission
6 will make the notes as it sees fit based
7 on the submission and based on the
8 statements coming out of this enquiry.

9 A: If you permit me Mr. Chairman, I don't
10 know the expertise that the counsel has
11 in identifying documents, but we had a
12 retired Senior Superintendent of Police
13 who is a Document Specialist who gave a
14 report which is available, it was not a
15 part of this which says -- that
16 confirmed using the stamp of two
17 respective companies, Company Limited
18 and Debtor 5 other Company
19 and that these were executed by each of
20 the company and not by one company.

21 COMM. BOGLE: Okay. As I said we have accepted them
22 as 1C and 1D and so we will proceed.
23 Okay, we will, as I have said accept
24 them as 1(b) and 1(c), so we will
25 proceed.

1 MISS CLARKE: Mr. Chairman I am seeking liberties to
2 retract somewhat or to retrace my steps
3 somewhat to introduce certain documents
4 because certain direct questions came
5 from the Chair and I am seeking to
6 introduce data which may not be found to
7 assist relative to those questions.
8 Could you go back to Paragraph 18 of
9 your Witness Statement, please.

10 DEBTOR 5: Yes, ma'am.

11 Q: You say at Paragraph 18:
12 **"In June 2007 a special**
13 **investigative audit was carried**
14 **out by a Fellow of the Institute**
15 **of Chartered Accountants,**
16 **Neville Robinson & Associates**
17 **Limited."**

18 A: Not limited.

19 Q: Well, I am reading it. **"... Neville**
20 **Robinson and Associates.**
21 **The report is attached with supporting**
22 **evidence as per the list of exhibits."**
23 Apparently you omitted to attach the
24 report, so I am now going to now ask you
25 to look at this document just for the

1 purpose of identify whether in fact it
2 is the document to which you refer.
3 (Document shown to witness)

4 A: Yes, ma'am.

5 Q: That is the statement, the report, I am
6 sorry.

7 A: The report and attached exhibits.

8 Q: That's the one I referred to at
9 Paragraph 18.

10 A: Yes, ma'am.

11 MISS CLARKE: Mr. Chairman, Exhibit 1(E) AS1(E).

12 COMM. BOGLE: That's from the Summary of Financial
13 Information through the report, and all
14 of the exhibits attached thereto. You
15 are saying 1(E) covers the Summary of
16 Financial Information which is the first
17 sheet and the report through all of the
18 attachments to the report?
19 MISS CLARKS: I believe that is so.

20 A: Yes, sir.

21 MISS CLARKE: Perhaps we could itemize or indicate the
22 number of pages inclusive of
23 attachments. (Checking documents)

24 My count is thirty-six pages. Can we
25 confirm thirty-six pages?

1 show the rate at which the interest is
2 calculated, the period over which it is
3 calculated and the methodology which is;
4 if two payments are made within the
5 month and you will recall that we made
6 accelerated payments, we were paying
7 from one of the two companies and
8 Century was also initiating debit
9 advices and if more than one payment is
10 made within the month, you only take
11 interest from one payment.

12 COMM. BOGLE: The assumptions, interest is calculated
13 at 0% per annum, how was this, where
14 was this assertion?

15 A: The rate was arrived at - if you look on
16 the letter the 21st of January, 1991,
17 first of all, that will tell you that
18 the minimum principal repayment is
19 \$0000.

20 COMM. BOGLE: I am still trying to establish the
21 statement that you have here was
22 prepared by Mr. Robinson?

23 A: Yes.

24 COMM. BOGLE: And this statement is his preparation
25 and not the bank's preparation?

1 bank initiated the transaction, they were
2 using 0%. If you look at the paid cheques
3 and there are some debit advices where the
bank does the break-down

5 between interest and principal. Just
6 flip through the paid cheques and go to
7 the payment on the 20th of March 1991,
8 just flip through the paid cheques and
9 go to...

10 MISS CLARKE: You have a canceled cheque dated the
11 27th of March?

12 A: No, these are debt advice where the bank
13 initiated the payment to service the
14 account.

15 Q: You said 27th of January?

16 A: No, 20th of March 1991, and you have
17 another the 11th of April, 1991 where
18 they break out the difference between
19 the principal and interest.

20 COMM. BOGLE: I see that, but I am just simply asking.

21 A: That is the way that is derived, that is
22 one of the ways.

23 COMM. BOGLE: The 0% is his calculation?

24 A: Is his calculation based on the
25 extrapolation from what the bank was

1 calculating.

2 COMM. BOGLE: You have answered the question; his
3 calculation.

4 A: Yes.

5 MISS CLARKE: Yes, Debtor 5, you were trying to
6 enlighten us as to in what aspects,
7 apart from what -- you said the report
8 speaks for itself and we will go back to
9 that soon, but apart from that, are you
10 able to say?

11 A: Yes, we are using the Schedule here and
12 it shows on the far side, far right-hand
13 side of the Schedule the cheques or the
14 payments and the 000,000 is the opening
15 amount which you will find on the letter
16 dated the 10th of October, 1990. It
17 says: Overdraft, 000,000.00 which is
18 approximately 000,000 over the limit of
19 000 as I have said previously. And the
20 Demand Loan - and I ask you to watch the
21 number because for that month at that
22 opening stage, the demand loan
23 #0000000, and then the letter behind
24 that on the 21st of March is where I put
25 in my statement that the demand loan was

1 now transferred to Account #0000000;
2 Company Limited.

3 MISS CLARKE: Let us go back to the actual?
4 A: Payments?
5 Q: The report, Neville Robinson and
6 Associates, that page after the Summary
7 of Financial Information.
8 A: Yes.
9 Q: Reading at the bottom, that last
10 paragraph, Schedule 3.
11 Schedule 3 represents the make-up of
12 Promissory Notes #000000.."
13 That is the one that was just entered
14 into evidence?
15 A: Yes.
16 Q: "...executed by Company
17 Limited on March 27, 1992 for
18 the purpose of giving CNB authority to
19 encash hypothecated Certificate of
20 deposit in order to pay out current
21 account owing BCF to CNB.
22 A: Yes.
23 Q: It was represented to us that Company
24 Limited gave its guarantee to CNB by
25 signing note #00000 with identical

1 details as the note signed by Company
2 Limited. We examined
3 copies of both notes.

4 I am just asking, the notes that were
5 tendered just now, are those the same
6 notes that were made available?

7 A: Yes, ma'am.

8 Q: Schedule 4 represents information
9 received with respect to the
10 establishment and disposal hypothecated
11 Certificate of Deposits. The source of
12 CDs was validated in the sum of
13 \$0000.00 at face value. Between
14 March 23, and March 31, 1992 CDs totaling
15 \$000 at face value and interest of
16 \$0000, a total of \$00000 was
17 credited to the current account of
18 Company Limited.

19 Schedule 5 is in fact the fact sheet on
20 registered charges on the titles of the
21 Company Limited. The entry in November
22 9, 1998 represented security pledged by
23 Debtor 5 Company to cover demand loan
24 of \$000 and overdraft facilities of
25 \$000 for Company Ltd.

1 Limited.

2 Based on the information

3 presented to us..." I pause here

4 to ask you. The information

5 presented was presented by you,

6 Debtor 5?

7 A: Yes, ma'am.

8 Q: And provided to the author of this

9 report documentary data; documents,

10 canceled cheques, statements?

11 A: Yes, ma'am.

12 Q: Based on the information presented to us

13 at March 1993, the demand loan account

14 0000000 which....

15 A: Five-two it should have been.

16 Q: I beg you pardon, sir.

17 A: I am sorry,000.

18 COMM. BOGLE: 2542 I have.

19 MISS CLARKE: Oh,that 7 should be a 2?

20 A: That's a typo.

21 Q: I am just reading it,but the record will

22 so reflect,sir.

23 COMM. BOGLE: Yes.

24 MISS CLARKE: Based on the information presented to us

25 at March 1993 the demand loan account

1 000000 which stood at \$000,000 as of
2 October 5, 1990, was overpaid by \$0000.00
3 and the current account 0001302924
4 balance at May 31, 1995 was \$0000.00 in
5 credit. On the basis of the information
6 examined, at May 31, 1995 Century National
7 Bank Limited (CNB) was indebted to
8 Company Limited as follows:

9 Current account balance May 31,
10 1995, \$0000.

11 Over-payment on Demand Loan
12 March 9, 1993, \$000 Total
13 \$0000.

14 These amounts do not include
15 interest and a feature of the
16 current account credit balance.

17 We are of the opinion that the
18 performance bond provided to the
19 then Jamaica Telephone Company,
20 now Cable and Wireless Jamaica
21 Limited, and guarantee given the
22 Bank of Nova Scotia Jamaica
23 Limited(BNS) and the overdraft
24 have been satisfied by
25

1 Company Limited.

2 We conclude from our examination
3 that the registered charges in
4 notes (1) (2) and (3) of
5 Schedule 5 were satisfied and we
6 further conclude that the up-
7 stamping of \$00,000 on June 1
8 1993 was authorized on November
9 11, 1990 more than two years
10 before the reported date of the
11 up-stamping and prior to the 2nd
12 mortgage registered by Eagle
13 Merchant Bank. There was no
14 indication that any disbursement
15 was made or any other obligation
16 owing for this sum. We did not
17 see any reason for the
18 registered charge #0000 on
19 March 14, 2002.

20 That in substance is the report,
21 Debtor 5, on which you rely to cement
22 your assertion that your indebtedness
23 was fully satisfied by 1993?

24 A: Was more than satisfied, and that we
25 have the document referred to in that

1 report, the letter which says what the
2 balance of the Demand Loan was at the
3 end of September, was \$000,000.00.

4 Q: Which letter was that, could you just
5 point us to it?

6 A: Immediately after Schedule I. That is
7 Century dated ..

8 Q: Dated October 10, 1990?

9 A: 1990.

10 Q: I will read that letter, sir, if I am
11 permitted to do so.

12 "Further to your discussions
13 with our Mr. Lumsden -It is
14 actually a letter addressed to
15 Debtor 5 Company for the
16 attention of Debtor 5 and it
17 refers to the overdraft facility
18 bearing account #00000 for
19 \$000.00 and the Demand Loan
20 account 00000 for \$000,000.00.

21 Further to our discussions with
22 our Mr. Lumsden, we have observed
23 that the overdraft has

24

1 exceeded the authorized limit of
2 \$000,000.00 and the Demand Loan
3 has not be reduced.

4 We know that the security held
5 is adequate but we should point
6 out that the principal sum has
7 not been reduced since
8 inception, that is, from 1988.

9 The Current Account was debited
10 on/or about October 3, 1990, for
11 approximately \$000,000.00 which
12 was applied in reduction of
13 interest.

14 Kindly contact this office to
15 discuss a repayment programme
16 for this loan supported by the
17 necessary cash-flow
18 information."

19 Debtor 5, you said this letter
20 was was proof was proof
21 proof of what?

22 A: What the balance was at the end of
23 September or the beginning of October
24 1990 and which forms the opening balance
25 on the Schedule 1 of 0000,000.00.

1 Q: Could you, for my benefit, if for no
2 other, just indicate the portion of the
3 letter, which indicates what the balance
4 at the end of September?

5 A: It says October 10, 1990 and that the
6 Demand Loan 0000 is \$000,000.00
7 and that has not been...

8 Q: And you are saying that, that is indeed
9 indicative what the balance was as of
10 that date?

11 A: Yes.

12 Q: What the Demand Loan was - the
13 principal amount of the Demand Loan was?

14 A: This is notification of what the account
15 was at that time of writing.

16 Q: Okay.

17 A: And also made reference to that but
18 there is a letter immediately behind
19 that which - and as I indicated in my
20 statement, that the Demand Loan account
21 now, 000000 .

22 Q: 2 you say.

23 A: 2, same 000,000.00, and they have
24 there, which is interest and principal
25 payment and that was outstanding.

1 Q: So that account number, Demand Loan
2 #0000 was renumbered 000...

3 A: Yes. That was and renumbered too, as I
4 set out in my statement.

5 Q: Okay.

6 COMM. BOGLE: That letter there, January 21, 1991, the
7 first Demand Loan balance...

8 A: ...of 000?

9 COMM. BOGLE: 00, and interest 000000.

10 A: Yes.

11 COMM. BOGLE: I note on the Statement's Schedule
12 prepared by Mr. Robinson that yes, at
13 January 21, 1991 there was the interest
14 of the 00,000 - there is the amount of
15 000000 but the principal balance was now
16 at 00 but by the letter from Century,
17 the principal balance was still 000.

18 A: Precisely. That is part of the pattern
19 of error that existed there by their own
20 letter and then we can show on the
21 Schedule the cheques, and we will later
22 come on to show you the cheque payments
23 and some of those weren't not just
24 cheques from us, some of those were
25 debit advice originated from Century

1 Bank. So at that time there was a lot
2 of errors, I put it at best, that they
3 were errors, that were coming
4 through, and all of it is shown here. if
5 you permit, Mr. Chairman, in making the
6 point that the debt was paid, and we
7 are just following in sequence of this
8 report, and the exhibits which he
9 referred to, and you will see one here
10 which is a debit advice from Century
11 Bank which shows, using the bottom one
12 first, that interest was being taken
13 out by Century Bank straight from the
14 account, not even that we were paying
15 it by cheque, they were going to the
16 account and taking out the payment. And
17 on the 13th of March, 1990 of March,
18 1990 they took out from the account,
19 and you can see in the reason box
20 there, the number
21 00000 and the current account
22 number in the box there,

23

24

25

1 and took \$0000. And then
2 on the 25th of September, 1990 -
3 and they referred to that in
4 this letter that we just read
5 there -they took out a
6 000000 So the account was
7 being serviced not just by us
8 drawing cheques and send to the
9 account, but Century was in fact
10 actively debiting the account to
11 cover the debt.

12 COMM. BOGLE: These two large payments on interest

13 here would have been prior to the start
14 point of your statement?

15 A: Precisely, sir.

16 COMM. BOGLE: Right?

17 A: Yes, sir.

18 COMM. BOGLE: Up to that point, what this is saying is
19 that the payments were not being made...
20 and they deducted the interest...

21 A: Yes.

22 COMM. BOGLE: ...and they deducted the interest from
23 your Current Account and paid the
24 interest but not the principal, and so
25 at October, the principal was still

1 outstanding?

2 A: Precisely.

3 COMM. BOGLE: But the interest was possibly
4 up-to-date?

5 A: Was being serviced. With their
6 calculation, not ours, to say that we
7 short-paid.

8 I would like to tie up the point Mr.
9 Chairman, that if you go from that sheet
10 to the next sheet now, which has two
11 debit advices on it, one on the 4/12/90,
12 and the other on the 30/1/91, you will
13 see that the overdraft facility was
14 being up-stamped and these are the
15 commission and the charges to up-stamp
16 the overdraft facility. And in the box
17 it says 0% commitment fee on increase in
18 over-draft 000,000.00. And you will go
19 back to the letter of the 10th of
20 October and you will see that it was
21 000,000.00 approximately, overdrawn.
22 And so that 000,000.00 and 00,000.00
23 made up the 00,000.00 which moved the
24 overdraft facility from 00,000.00 to
25 000,000.00. And of facility outstanding

1 to Century National Bank at that time
2 000,000.00 was in respect of overdraft
3 facility.

4 Skip forward and you will see - and I
5 have the original, but this is the best
6 photocopy we got - and you see the bank
7 statements, as of May 31, 1995 we had a
8 credit in the Current Account
9 \$00000. So in terms of our
10 obligation to the bank at that time,
11 they had credit for us of 000,000.00.

12 MISS CLARKE: You are referring to the bank statement
13 now, sir?

14 A: The bank statement, yes. The final bank
15 statement; we will go into others before
16 that. They owed us 000,000 for that. The
17 up-stamping of 000,000 out of the
18 00000 was overdraft facility
19 which, at the end of doing business with
20 them and them and they don't them, and
21 they don't dispute it, on the 31st of
22 May, 1995, the account had in 000,000.00
23 in credit.

24 Q: And you will be saying to this
25 Commission that, that is supportive of

1 your assertion that at the time when you
2 stopped doing business with Century
3 National Bank you had a credit balance?

4 A: We had a credit balance in the Current
5 Account.

6 Q: In the Current account.

7 A: And you will see acknowledged by FINSAC
8 later on, that when we were asked that
9 the Demand Loan Account wasn't settled,
10 we made payment of 00,000.00 which they
11 break it up into late fees and all sorts
12 of things, but approximately the
13 000,000.00 was paid.

14 Q: Okay.

15 A: But when you go now to the Schedule, and
16 we can go to the individual cheques to
17 check on them. This one, you didn't
18 copy the back of it. I have those that
19 the back is copied, where the indication
20 of what the payments were for; the backs
21 were...

22 MISS CLARKE: Do you have the backs available to us?

23 A: The thing that I gave you, the backs,
24 with the endorsement on back as the
25 accounts being paid, et cetera, and I

1 have the original cheques with that.
2 They are in a vault.

3 Q: Do you have before you, the document
4 which ought to have been copied with the
5 back on it that you are referring to? I
6 think the copies that you made
7 available...

8 A: Those that you returned and circulated?

9 Q: Yes, those you gave me.

10 A: It seems as if it is what you gave me
11 back....

12 Q: It is what you gave us.

13 A: a copy of what I gave you rather
14 than the original which has on the back
15 of it....

16 Q: What is the last document of the report
17 for the Commission has?

18 COMM. BOGLE: The last document is the certificate of
19 deposit.

20 MISS CLARKE: That is what is reflected on mine. If
21 somebody has a copy of something
22 additional then probably...

23 A: I have some of them, extra copies with
24 the backs endorsed.

25 COMM. ROSS: We have a statement, copy of a statement

1 to set up the CDs. Those are not for
2 showing you bank balances. We are
3 showing the bank balance at the end of
4 the period which is bank statement
5 December 1991, April '92, '94 and '95,
6 right to the end of doing business.

7 DEBTOR 5: We are showing you bank balance at the
8 end of the period which is bank
9 statement December 1991, April 1992,
10 1994 and 1995 right to the end of doing
11 business.

12 COMM. ROSS: Where is that Schedule? There is a
13 Schedule that I have here with the bank
14 statements with the last exhibit that
15 was given to you. That is Schedule 2 of
16 the Auditor's Report supported by the
17 bank statements behind.

18 COMM. BOGLE: When did you cease operations with
19 Century?

20 A: We ceased having a credit facility with
21 them at the end of March 1992, but the
22 close of business came about in May 1995
23 because there were some outstanding CDs
24 that were not brought to the - if you
25 look at the bank statement for May 31,

1 the...

2 Q: What is the date of it?

3 A: It's 4.12.90 and 30.1.91, there are two,
4 one to the Titles Office and the other
5 one is a Debit Advice.

6 Q: Yes, I am seeing it. What your comment
7 relative to these Debtor 5?

8 A: That it shows - it reads, **two percent**
9 **commitment fee on increasing overdraft**
10 **of \$000,000.00.** Later on you will see
11 where FINSAC is saying - I don't know
12 what they call themselves, Redevelopment
13 Foundation is saying that the
14 \$00,000.00 was additional loan granted
15 and was outstanding when the Promissory
16 Note was done, and the Promissory Note
17 was in respect of us giving additional
18 security for the unpaid debt. But the
19 point that has to be emphasized is that
20 there is evidence from Century Bank that
21 the 000,000 was up-stamping of the
22 overdraft facilities.

23 MISS CLARKE: So the \$000,000.00 represented what in
24 itself?

25 A: The overdraft facility was \$000,000.

1 Q: And it was increased by \$315,000?

2 A: By \$000,000 to \$000,000. And so we were
3 authorized at that time to use overdraft
4 facility up to the extent of
5 \$000,000.00.

6 Q: So you are saying it didn't represent a
7 loan, it was just a facility that was
8 available to you?

9 A: Yes. So the up-stamping on the mortgage
10 was that you are authorized to use...

11 Q: But did you actually use it, Debtor 5?

12 A: The fact is that I just go through the
13 statement to show you that at the end of
14 the period we were in credit, so the
15 overdraft facility, you were using the
16 overdraft facility, but what is the
17 status at a particular time.

18 Q: You didn't draw down on any additional
19 fund?

20 COMM. BOGLE: No, but at the same time, Debtor 5, you

21 mentioned earlier that there was debit

22 overdraft and there were two interest

23 payments that were charged to the

24 overdraft that assisted in bringing the

25 overdraft to 0 Hundred and odd

came in June 1992 after the overdraft

1 had already been paid off. If you look
2 at the bank statements, the set of bank
3 statements that we present there as part
4 of the Audit Report...
5 COMM. BOGLE: So the debit advice 4th of December 1990
6 regarding up-stamping, which up-stamping
7 is that dealing with?
8 A: It is up-stamping on the title, the
9 authorized limit which was at the time.
10 COMM. BOGLE: Was it the \$000?
11 A: The 000 to be added to the \$000.
12 COMM. BOGLE: This is what I am saying.
13 A: Yes. That is not a complaint, that is
14 what the facts are.
15 COMM. BOGLE: Okay, we agree that is so.
16 MISS CLARKE: In relation to - you said you had some
17 other cheques and debit advice that you
18 needed to make some specific comments
19 on?
20 A: Yes. We have the cheques here which you
21 can get the photocopy that if you look
22 at Schedule 1 you will see the cheques
23 that are paid down and the cheques are
24 supported behind, which reduces the
25 \$000.00 and then if you come down to

1 June...

2 MISS CLARKE: June of what year?

3 A: June of 1991. We are on the Schedule and
4 we are coming down the line and the date
5 is to the extreme left hand side and
6 when you come down you will see that
7 because of what was happening before
8 when you come down to June that the debt
9 was already settled. There was
10 \$000.00 outstanding at the end of
11 June and when you pay \$000.00 - we
12 went and paid \$000.00, as a matter of
13 fact we went and paid \$00 and
14 that puts it into credit. It is
15 important to note that when you come to
16 June neither from Century National Bank
17 nor from us there were any payment until
18 December that Century showed on their
19 bank statement that they were deducting
20 another \$000.00 and it was after that
21 they come now to say that the debt was
22 not paid in June as you have said, and
23 we did not have these cheques and these
24 payments to show that it was paid and so
25 we decided to proceed with our credit

1 facilities and all of that we would pay
2 the \$000.00 and that was paid. And
3 if you look behind you will see at least
4 two of the cheques, one for \$00,000.00,
5 the 12th of January 1993 for \$00,000.00
6 acknowledged and shown receipt by FINSAC
7 as \$000.00 and 8th of March which is
8 it final payment out of the \$0,000.00,
9 the 8th of March 1993 for \$0,000.00.
10 And those are on the FINSAC's
11 statements. And that shows with
12 documentary evidence that the demand
13 loan using their information was paid
14 and overpaid by \$00,000.00. And then
15 you go to the overdraft facility which
16 those were the two items of credit for
17 which the mortgage was given and that if
18 you look at Schedule 2 from the Audit
19 Report it would show that as at the 31st
20 of December 1991 there was an overdraft
21 amount of \$0 and you have the
22 statement there.

23 COMM. BOGLE: All right, can we have our break for
24 lunch at this time. It is over due, this
25 is not our usual time and we will return

1 at 2:00 o'clock.

2 Debtor 5, you are required to be back

3 here at 2:00 o'clock.

4 A: Okay sir.

5

6 LUNCHEON BREAK.

7 ON RESUMPTION At 2:00 P.M.

8 COMM. BOGLE: Good afternoon. The Enquiry is now back

9 in session. Debtor 5, just to remind

10 you that you are still under oath.

11 A: Yes, sir.

12 COMM. BOGLE: Miss Clarke?

13 MISS CLARKE: Thank you, Mr. Chairman.

14 Debtor 5, before the break you had

15 introduced an exhibit at paragraph 18

16 and you have gone through it, but prior

17 to that we had read from paragraph 22,

18 that is where we had gone up to of your

19 witness statement. Now, I believe,

20 assuming that you have completed your

21 evidence and explanation relative to

22 Mr. Robinson's report, am I correct in

23 saying that we can now move to paragraph

24 23 of your witness statement?

25 A: I am sorry I am going to crave the

1 indulgence of the Commission to spend a
2 little more time explaining
3 Mr. Robinson's statement because...

4 Q: Just a minute. Mr. Chairman, could he
5 be allowed to...

6 COMM. BOGLE: Just a few more minutes. Because we
7 have the information here and I think
8 that the Commission will be able to
9 understand what is here, but we will
10 allow you a few more minutes on this. We
11 have to move on because there are a lots
12 of ground to cover based on your witness
13 statement.

14 MRS. PHILLIPS: Mr. Chairman, was it given a number?

15 COMM. BOGLE: Yes, 1(e).

16 A: The bone of the whole contention here is
17 the Promissory Note and I am afraid I
18 have not yet given you the answer that I
19 am satisfied you need as to what it is
20 about and what I fear is that I leave
21 the witness stand and some other
22 introduction comes with a legal ease of
23 what is a Promissory Note without seeing
24 the context of the Promissory Note in
25 what I am presenting.

1 other parties and where it defines what
2 is the debt that we are supposed to have
3 outstanding. And we can tie it from -
4 FINSAC's letter dated 1999 showing
5 \$00.

6 COMM. BOGLE: Just a minute, Debtor 5. In the
7 summary information that we got from
8 Mr. Robinson, Schedule 3, would that
9 Schedule 3 explain, do you agree with
10 that Schedule 3? Do you agree with that
11 Schedule 3, because that Schedule 3
12 would seem to explain the Promissory
13 Note. Look at Schedule 3.

14 A: Yes, sir.

15 COMM. BOGLE: Would that Schedule 3 explain, do you
16 agree with that Schedule 3?

17 A: Yes, that Schedule 3 I agree with that.

18 COMM. BOGLE: Right.

19 A: And that explains it from our point of
20 view.

21 COMM. BOGLE: But that is what I want, your point of
22 view.

23 A: All right.

24 COMM. BOGLE: Because you can't give us from another
25 person's point of view, it is from your

1 point of view. And what Mr. Robinson
2 here is saying is that, and you are
3 agreeing with it, that this constitutes
4 the make-up of the Promissory Note.

5 A: Yes, but I need to demonstrate that by
6 evidence rather than for you to just
7 take what he said as....

8 COMM. BOGLE: No, the evidence of this is here backing
9 it up.

10 A: As long as you are...

11 COMM. BOGLE: Oh yes.

12 A: Very well, sir, you find it acceptable?

13 COMM. BOGLE: Yes, we are satisfied with it. Because
14 we referred to the BNS \$00,000.00
15 before, we referred to the JTCO before,
16 the facilities before, so I think all of
17 this we have referred to before.

18 A: Yes. And there is an agreement there
19 from the Managing Director of Century,
20 it's a Scotia Guarantee.

21 COMM. BOGLE: Yes.

22 A: I want to point out that is part of
23 Mr. Robinson's thing and in the
24 penultimate paragraph:
25 **It is understood that the company's**

1 that is \$00 and those were
2 encashed Round about March, just around
3 the time when the Promissory Note was
4 executed with a total of \$1.5 Million
5 reaped from that encashment and then a
6 further \$000,000.00 which you see on the
7 last statement which is the rest of the
8 Promissory Note; and that amount went to
9 the Current Account and if you look at
10 Schedule 2 you will see that the 30th of
11 March, 1992 the balance as per bank
12 statement is \$000 in the credit,
13 in the black.

14 COMM. BOGLE: Schedule 2, repeat the figures for me?

15 A: Next to the last line in the Schedule
16 just above the total, the 30th of March,
17 1992 the bank statement was in credit
18 \$0000. And you can look at
19 April's bank statement, we could not put
20 all the bank statements, but look at
21 April's bank statement which is here on
22 the next page and you will see that the
23 opening balance from March 31st is
24 \$0000 and that is the credit; and
25 if you go through the rest of the bank

1 statements to the end of the time of
2 doing business with Century, we have not
3 gone into the red but in fact have had
4 positive balances in our Current
5 Account. So where the Promissory Note is
6 made up of \$000 that it was at
7 that time, and since that there was no
8 overdraft owing, and the bank statements
9 showed that up to the 31st of May, 1995,
10 the year before Century went under.

11 MISS CLARKE: Debtor 5, if you will allow me to
12 attempt to summarize what you are trying
13 to say by the explanation that you are
14 now giving. Tell me if I am correct.
15 Are you saying that those Promissory
16 Notes, regardless of what they reflect
17 on the face of them do not admit to any
18 liability on your part at the time when
19 they were executed?

20 A: I will say that and I will say more that
21 the Promissory Notes were settled
22 liabilities, contingent liabilities
23 which do not exist.

24 Q: Not exist?

25 A: Yes.

1 Q: So we can safely move on to paragraph 23
2 now, Debtor 5?

3 COMM. ROSS: There is a slight difference between a
4 contingent liability and a settled
5 liability. I don't know exactly what you
6 mean, Debtor 5, could you explain for
7 us please.

8 A: Yes. You will see the letter of
9 Guarantee from Scotia Bank for the
10 \$000,000.00.

11 COMM. ROSS: Yes, we understand that there were two
12 Guarantees?

13 A: Yes.

14 COMM. ROSS: And those Guarantees were never called?

15 A: Were never called.

16 COMM. ROSS: Apart from your present fees you would
17 not have had to borrow or pay out any
18 money for...

19 A: Signed any Promissory Note.

20 COMM. ROSS: Let me finish. You would not have to
21 borrow or pay out any money for those
22 items?

23 A: Yes, sir.

24 COMM. ROSS: With regard to the overdraft, is it your
25 contention that, that balance was

settled by you, because there is a \$000?

A: Yes.

COMM. ROSS: Which is part of that \$000.

A: Yes.

Q: Is it your contention that, that liability was liquidated by you?

9 A: Yes, sir. It shows there that the bank
10 statements subsequent to that overdraft
11 in existence the bank statements
12 subsequently show that we have had no
13 overdraft. And the whole contention is
14 that so long as that Promissory Note,
15 demand loan with that number came about
16 from those Guarantees and those bank
17 overdraft facility, then the claim is a
false claim.

18 COMM. ROSS: I just want to ask you one other thing.
19 Going back to Schedule 4 where it says
20 Disposal of CDs, how exactly were those
21 CDs disposed of?

22 A: Well, they were hypothecated to the bank
23 as indicated there and the bank credited
24 the CDs to the Current Account.

25 COMM. ROSS: So these amounts were...

1 there was a balance brought forward in
2 the credit of \$0000 prior to that
3 and as you see in my statement there
4 that the overdraft just before that was
5 \$000.00. And having done
6 those....

7 MISS CLARKE: Is there any statement showing where
8 these sums which were deposited on CDs
9 were actually applied to the current
10 account? Is that reflected in any of
11 the statement here so we could actually
12 see a deposit?

13 A: These were initiated by the bank you
14 know. The bank had the hypothecated...

15 Q: It would have reflected as a deposit in
16 your account anyway?

17 A: We would need March statement, and we do
18 not have March statement here. But the
19 opening statement for April, and what we
20 need to establish is whether there is
21 and overdraft existing in respect of the
22 portion of the Promissory Note that was
23 in respect of overdraft.

24 COMM. BOGLE: That is why it is important for us, Miss
25 Clarke, if we could have seen the

1 March 1992 bank statement where the
2 \$0000 would have been reflected and
3 the subsequent reduction.

4 A: Well, I don't know if they would deny
5 that there was an overdraft. The fact
6 that it does not exist...

7 COMM. BOGLE: No, no, we are not really trying to
8 figure out whether they will deny or
9 not, we are simply trying to understand
10 and get the facts at this Enquiry, so we
11 are not concerned about what they will
12 think or they do not think.

13 A: Yes.

14 COMM. ROSS: And so what we are saying if we had the
15 March 1992 statement, then we would be
16 able to see based on Schedule 2 the
17 \$0000 and the credits going to
18 it to bring that down to \$000.00.

19 A: \$000.00.

20 COMM. BOGLE: \$000.00 at the beginning. So You
21 don't have that statement with you?

22 A: I don't have the statement with me. I am
23 sure we could find it, but I don't have
24 it with me. The facts is that these are
25 the bank statements and what we call the

1 bank statements it speaks for
2 themselves.

3 COMM. BOGLE: Debtor 5, we are not saying the bank
4 statements will not, We were hoping to
5 get March bank statement so that March
6 bank statement could speak to us.

7 A: We don't have that.

8 COMM. BOGLE: Right now we have the April statement
9 speaking to us.

10 A: Yes.

11 COMM. BOGLE: So what we would love to have is the
12 March statement to do just that. We
13 don't have it and so we have the other
14 statements.

15 MISS CLARKE: And you are saying, Debtor 5, suffice
16 it to say that your April statement
17 would reflect a credit balance on the
18 account?

19 A: Precisely.

20 Q: Are we ready to move to paragraph 23 of
21 your witness statement?

22 COMM. BOGLE: Go ahead.

23 A: If you go to the thing you will see the
24 encashment, the amount that was encashed
25 of the CDs and I can show you the

1 statement which shows the
establishment

2 of the CDs.

3 COMM. BOGLE: We are satisfied where the CD was
4 established, we are not querying that.
5 Miss Clarke, can we move on.

6 MISS CLARKE: Paragraph 23, Debtor 5.

7 A: 23.

8 Q: Yes. I think I could probably just read
9 it because I think the exhibit that is
10 referred to there you have in fact gone
11 through it already.

12 A: Yes.

13 Q: So I will just read it.

14 **"Around June 1993, a Notice requiring**
15 **repayment of mortgage - "Debtor 5 7" was**
16 **received from the attorneys for CNB.**

17 **Among other things this Notice claimed**
18 **that \$00000 was due against**

19 **mortgage numbers, 0000 and**

20 **Miscellaneous #0000. That is the**

21 mortgage and the up-stamped amount?

22 A: Yes.

23 Q: **In December 1993, I received a demand**

24 **letter dated December 23, 1993 - " Debtor**

5

25

" (sent to me in my capacity as

1 **guarantor), claiming the said amount**
2 **plus costs.**

3 If we could just look very quickly at
4 AS8, Mr. Chairman.

5 COMM. BOGLE: I don't think we had actually received
6 AS7, although we referred to it and so
7 we will just record AS7 and then we can
8 move to AS8.

9 MISS CLARKE: I am just proceeding on the basis
10 that...

11 COMM. BOGLE: That's what I am saying that we have not
12 recorded AS7 and so we are just
13 recording that and then move to AS8
14 because we did refer to AS7 before.

15 MISS CLARKE: In fact Debtor 5, had actually analyzed
16 it in some detail.

17 COMM. ROSS: Yes.

18 MISS CLARKE: So AS8 now would be that letter dated
19 December 23,1993 from Livingston
20 Alexander Levy, addressed to Debtor 5

21 .
22 COMM. BOGLE: I don't think we had actually received

23 AS 7 although we referred to so we will
24 just record AS7 and then you can move to
25 AS 8.

1 MISS CLARKE: I am just proceeding on the basis
2 that...

3 COMM. BOGLE: Yes, I know, that's am just recording
4 what I am saying that we had not
5 recorded the AS 7 so we are just
6 recording that and then move to AS 8
7 because we did refer to 7.

8 A: It is in the statement.

9 MISS CLARKE: And in fact Debtor 5 had actually
10 analyzed it in some details in his
11 evidence.

12 So AS8 now would be that letter dated
13 December 23, 1993 from Livingston
14 Alexander & Levy addressed to Debtor 5
15 :

16 Re: Indebtedness due from
17 Debtor 5 Company to Century
18 National Bank Limited.

19 We act for Century National Bank
20 Limited.

21 Debtor 5 Company is indebted to
22 our client in the sum of
23 \$000000. Interest continues
24 to accrue from May 11, 1993
25 until payment.

1 You have guaranteed payment to
2 our client. Kindly let us have
3 all sums due to our client
4 forthwith.
5 Yours faithfully,
6 Signed, Ransford Braham
7 And I believe that Commissioner
8 Ross had pointed out that the
9 sum when tallied did not appear
10 certainly mathematically,

11 25

12
13 A:

14 Q:

15
16

17

18 BY COMM. BOGLE:

19 MISS CLARKE:

20

21 A:

22

23

24

25

would not be
correct with which
the witness agreed.
This was the one?
AS7.

AS7 agrees,
tallies. It is
the other one
that didn't
tally; AS 5.

AS5 **is** the one that
did not tally.

Okay. So paragraph
24 now, Debtor 5.

Could you just read
for us Paragraph

24. **Discussions**
were held with the
Chairman of CNB and
after agreement
that there was an
error, to the best
of my recollection
no further claim
was made by CNB and

the court action was not taken as
threatened until CNB was taken

1 **over by Financial Industries Services**
2 **Limited. (FIS)**

3 Q: Continue please.

4 A: **During 1999 several discussions took**
5 **place...**

6 COMM. ROSS: Sorry, before we get there, Debtor 5,
7 did you have anything in writing from
8 Century National regarding these two
9 notices?

10 A: Unfortunately, we didn't have anything
11 in writing.

12 COMM. ROSS: And did you write them in response to
13 the letters?

14 A: Well, sir, the discussions that we had,
15 in my mind, I spoke directly with the
16 Chairman and the matter was resolved.

17 COMM. ROSS: So you didn't write objecting to either
18 of these notices?

19 A: No.

20 COMM. ROSS: Go ahead.

21 A: But I would say it wouldn't have been
22 necessary.

23 MISS CLARKE: You were reading at Paragraph 25.

24 A: During 1999 several discussions took
25 place and correspondence was exchanged

1 between FINSAC and myself and the error
2 was pointed out by me. However, FINSAC
3 persisted in its claim against Company
4 Ltd. and me. See letter dated
5 January 12, 1999 from FINSAC Limited to
6 Company Limited:- "A.
7 SMITH 9", letter dated January 19, 2000
8 from FINSAC Limited to Gabriel Edwards &
9 Co - "Debtor 5 10, " Letter dated
10 February 23, 2000 from Gabriel Edwards &
11 Co. to FINSAC Limited.

12 MISS CLARKE:

13 Can we just pause to look at those
14 letters.

15 Mr. Chairman, AS 9 is a letter from
16 FINSAC Limited addressed to Company
17 Limited for the
18 attention of Debtor 5. It's in
19 the nature of a demand letter which
20 reads as follows:

21 Re: DEMAND LOAN FACILITY: That's the
22 caption.

23 We hereby make formal demand for full
24 payment of your debt which is currently
25 non-performing. The balance as at
January 12, 1999 is detailed below:

1 Principal \$0.

2 Interest \$0

3 Total \$0

4 Please note that interest
5 accrues at a daily rate of
6 \$0 until varied.

7 Kindly let us have the above
8 payment in full within
9 twenty-one (21) days to the date
10 of this letter. Failure to do so
11 will result in the sale of the
12 Bank's collateral and legal
13 action if necessary.

14 Kindly treat this matter as
15 urgent.

16 Yours faithfully

17 Sgd. by Marcia Grayson and
18 Suzette Campbell in their
19 capacities of Credit Officer and
20 Credit Manager.

21 Perhaps the witness would want the
22 Commission to note that this demand was
23 in relation to the Demand Loan Facility. I
24 am not sure how the Tribunal will look at
25 this in light of the prior evidence,

1 Q: It's not marked 10, 19th January, 2000?

2 A: Yes, that is the one. I am sorry about
3 that.

4 Q: And the caption reads as follows:

5 Re: Companies Limited

6 /Century National Bank

7 Limited.

8 We have for acknowledgment yours dated
9 17th December, 1999. We take this
10 opportunity to advise that this matter
11 has been passed to the undersigned for
12 future attention and request that all
13 correspondence be directed accordingly.

14 Several issues have been raised
15 in yours to us above mentioned
16 and therefore this writer will
17 require further instructions
18 before responding in a cohesive
19 manner.

20 As the required instructions and
21 accompanying documentation are
22 expected shortly, we anticipate
23 being in a position to respond
24 to you within the next (7) days.

25 COMM. BOGLE: Debtor 5?

1 A: Yes, sir.
2 MISS CLARKE: Would you have a copy of the letter
3 which Gabriel Edwards wrote to FINSAC?
4 A: No, I have a letter that he wrote but
5 not that letter.
6 COMM. BOGLE: All, right, go ahead.
7 MISS CLARKE: And then there is AS 11...
8 MRS. PHILLIPS: What is the date of that letter?
9 COMM. BOGLE: Which one, the one missing?
10 MRS. PHILLIPS: The one you were just asking about. 17th
11 COMM. BOGLE: of December, 1999, which was apparently
12 written by Gabriel Edwards to FINSAC.
13 I have a copy of that letter. You
14 MRS. PHILLIPS: wanted to see a copy of it?
15 Yes, it would be helpful if we could see
16 COMM. BOGLE: the contents of that letter since FINSAC
17 is now responding to it.
18 It referenced a letter dated January 21,
19 MRS. PHILLIPS: 1991 which it said was attached. It was
20 not attached, but I did find that letter
21 and attached it.
22 (Document passed to Miss Clarke)
23 You want me to give him a copy?
24 Yes, yes, thank you.
25 COMM. BOGLE:

1 (Copies distributed)

2 COMM. BOGLE: Miss Clarke...?

3 MISS CLARKE: Yes, Mr. Chairman?

4 COMM. BOGLE: ...may I suggest that this letter be
5 read in before we go on to AS 11.

6 MISS CLARKE: As it pleases you, sir.
7 Are we going to mark it?

8 COMM. BOGLE: Yes, we mark this 10(A).

9 MISS CLARKE: Debtor 5, would you like to read this
10 letter that Gabriel Edwards wrote to
11 FINSAC dated 17th December, 1999?

12 A: Yes, I'll read it.

13 Re: Companies
14 \ Limited -
15 Century National Bank

16 I am instructed by Debtor 5,
17 Managing Director of the two first named
18 Companies in the caption above; and
19 respond to your letter to Mr. Randolph
20 Williams of November 23, 1999; who is
21 off the island.

22 The facts of the matter are as
23 under:-

24 (1) Company
25 Ltd incorporated in 1986 as the

1 retail and marketing arm of
2 Company Ltd. and its operation
3 was established in the Kingston.
4 Company Ltd. canvassed the
5 business, negotiated the
6 Contracts and Debtor 5 Company
7 ontracted with Company Ltd to do
8 the manufacturing and charge
9 Company Ltd. for the services.
10 At the time of the draconian
11 consumption taxes, most
12 companies in Jamaica were
13 advised by their auditors to
14 employ this method of transfer
15 pricing.
16 (2) Company Ltd. collected
17 deposits on contracts as well as
18 interim or final payments in its
19 own name. (3) Company Ltd had two
20 types of credit arrangements with
21 Century National Bank, namely:

22

23

24

25

1 (a) A Current Account with revolving
2 overdraft facilities; and

3 (b) Line of Credit where
4 customers required Bankers'
5 Guarantees to secure these
6 deposits or to cover letters of
7 credit for raw materials they
8 imported.

9 (4) The Banker's guarantees and/
10 or letters of credit were
11 secured by cash deposits or
12 commitments from customers of
13 Company Ltd to pay proceeds
14 directly to Century National
15 Bank. Company Ltd always signed
16 "Demand Notes" to Century
17 National Bank to cover letters
18 of credit and/or Banker
19 guarantees.

20 (5) Bank of Nova Scotia, Telephone
21 Company of Jamaica (now C&W) and N.C.B.
22 were the main customers with whom such
23 arrangements were made between 1987 to
24

1 1992.

2 (6) To our certain knowledge,
3 none of these companies reneged
4 on payments to Century National
5 Bank.

6 (7) Century National Bank has
7 passed onto you outstanding
8 "Demand Note" for \$0, signed by
9 us on March 27, 1992; copy
10 attached.

11 (8) rule categorically deny
12 that Company Ltd had any
13 outstanding debt with Century
14 National Bank.

15 (9) Debtor 5 Company had a Demand
16 Loan account with Century National
17 Bank dating back to 1988. The
18 confirmed and agreed balance by
19 way of letter dated January 21,
20 1991 (copy attached as follows)
21 Demand Loan \$000.00

22 Interest Outstanding \$00.00

23 (10) The arrangement was that
24 \$00.00 be paid monthly

25

1 starting February 21, 1991.
2 That would be a total payment of
3 \$0000 to December, 1991. FINSAC
4 has not acknowledged these
5 payments up to that period.

6 FINSAC has acknowledged payment
7 of \$0000 against Debtor 5
8 Company up to May 1993.

9 (11)At interest rate of 38%,
10 these payments acknowledged
11 would satisfy the amount
12 outstanding January 20,1991 for
13 Debtor 5 Company if they were
14 properly applied to that
15 account.

16 (12) Century National Bank sent
17 the title for Company Limited. to
18 Eagle Merchant Bank for Eagle
19 Merchant Bank to register a
20 second mortgage as Debtor 5
21 Company guarantee for loan from
22 Eagle Merchant Bank to Caribbean
23 Chalks.

24 Debtor 5 Company instructed
25

1 Century National Bank not to send
2 the title to Eagle Merchant Bank
3 and did so in breach of its
4 fiduciary responsibility to
5 Company Limited. (See copy
6 letter attached).

7 (12) Although Caribbean Chalks
8 has settled its debts with Eagle
9 Merchant Bank, to this date (see
10 Memorandum of Complete
11 Satisfaction attached) Eagle
12 Merchant Bank has not discharged
13 the mortgage.

14 Given the facts as stated above,
15 it should be clear to you that:

16 (a) The claim that Company
17 Limited is indebted to Century
18 National Bank is incorrect.

19 (b) You have acknowledged
20 payment in respect of Debtor 5
21 Company which was erroneously
22 applied to interest payment
23 against Debtor 5 other Company
24 instead of to

1 liquidate the debt owed by
2 Company Limited.

3 (c) Both Century National Bank
4 and Eagle Merchant Bank have
5 therefore wrongfully maintained
6 charges against the Title of
7 Debtor 5 Company for the
8 property at Address.

9 We are requesting that you
10 within fourteen days acknowledge
11 the facts as presented
12 indicating the steps to be taken
13 to remove the cloud over our
14 integrity and credit worthiness
15 and to free our Title."

16 MISS CLARKE: Thank you, Debtor 5.

17 Now, this letter based on what was read,
18 Mr. Chairman, was the letter to which
19 FINSAC referred to as AS 10, and in
20 respect of which they had said they
21 would need seven days to respond.

22 Now, Debtor 5, are you able to say, to
23 the best of your knowledge, and your
24 recollection whether or not there was
25 any written response to Gabriel Edwards,

1 to yourself or to any attorney on your
2 behalf to this letter?

3 COMM. BOGLE: To which letter?

4 MISS CLARKE: The letter that was just read dated
5 December 17,1999, a response to the
6 matters raised in it.

7 COMM. BOGLE: Possibly, we could move to AS 11. AS 10
8 responded to 17 but I think AS 11 is a
9 follow-up which we might look at.

10 MISS CLARKE: Could you read AS 11, Debtor 5?

11 A: This again was to:
12 The President, Attention Mr.
13 Alfred McPherson because he had
14 mentioned....

15 Q: Letter to FINSAC Limited from Gabriel
16 Edwards.

17 A: Yes and it says:
18 "One full month has passed since
19 your letter of January 19,
20 2000,and two months have passed
21 since my letter to you of
22 December 19, 1999,to which your
23 letter above referred, but to
24 date, I have not received the
25 detailed response promised in

1 respect to the evidence sent to
2 you in good faith.

3 Please note that in addition to
4 the damage done to my clients'
5 reputation, credit worthiness
6 and the immobilization of
7 principal asset by the two
8 financial institutions under
9 your control; you do further
10 damage by circulating adverse
11 credit information and continue
12 to maintain such adverse
13 information in the public domain
14 in spite of the evidence you
15 have been provided with.

16 I can no longer persuade my
17 clients to exercise patience."
18 MISS CLARKE: AS 11, Mr. Chairman.

19 COMM. BOGLE: Yes.

20 MISS CLARKE: Perhaps I will ask the question again.

21 To the best of your knowledge and
22 recollection was there ever a response
23 from EINSAC to the detailed items that
24 your attorney referred to or the
25 detailed concerns that were raised in

1 the letter dated December 17, 1999?

2 A: No, ma'am, we have not had any response
3 from them up to the last business date
4 last week.

5 If I may, you notice that every
6 time you write to them, rather
7 than referring you to somebody
8 who is in the accounts to do
9 reconciliation, they refer you
10 to a lawyer and they also send
11 us to the lawyer of Eagle
12 Merchant Bank and so it is
13 always an approach of ignoring
14 the facts that you sent to them
15 and that you discuss with them
16 but sticking to a legal tactic
17 in dealing with the matter at
18 all times.

19 MISS CLARKE: I do not think I may be correct, but
20 that attachment to that letter dated
21 January 21, 1991, Mr. Chairman, does it
22 appear as the letter attached to Mr.

23 Robinson's report as well?

24 COMM. BOGLE: Yes, I think that letter is already
25 here.

1 MISS CLARKE: Okay.

2 Paragraph 26, Debtor 5, of your written
3 statement.

4 A: Should I...

5 Q: Read Paragraph 26.

6 A: In 2003, we were served with
7 notification that FINSAC had sold the
8 alleged debt to Jamaica Redevelopment
9 Foundation Inc. (JRF).

10 Up until recently, JRF has been
11 vigorously advertising Company
12 Limited's properties sale under the
13 powers of sale contained in the
14 mortgage.

15 27. Attempts by Company
16 Limited to free its properties
17 and to prevent the sale by way
18 of court proceedings have not
19 been successful. Copies of court
20 documents namely Fixed Date
21 Claim Form, Affidavit in
22 Support, Defence of 2nd and 3rd
23 Defendants, amended Defence 2nd
24 and 3rd Defendants, Affidavit of
25 Errol Campbell and affidavit of

1 Raymond McBride are attached."

2 Q: Continue. We'll get back to the
3 document, just finish that portion.

4 A: "28. I am contending before this
5 Commission that B Company Limited,
6 Company Limited and
7 myself are not indebted to FINSAC and
8 were not indebted to CNB at the time of
9 its take over by FINSAC. In fact, all
10 liabilities incurred have been fully
11 satisfied "and more" in that there was
12 overpayment in respect of the demand
13 loan a/c#00000 and there was a credit
14 balance in excess of \$00,000.00 in
15 current account at the time of the take
16 over."

17 Q: Could we just look at the Court
18 documents which you have libeled here
19 12? I believe you were saying earlier
20 that there is a matter that would become
21 apparent on the face of your amended
22 defence that you would have wanted to
23 explain?

24 A: Yes, thank you, ma'am.

25 Q: That amended defence - that claim form,

1 Mr. Chairman, for the purposes of the
2 record Debtor 5 Company filed a claim in
3 2003 against Financial Institutions,⁴
4 Services Limited; Jamaican Redevelopment
5 Foundation Inc. and Dennis Joslin Jamaica
6 Inc., and the claim
7 substantially seeks what are in the
8 nature of declarations and orders. The
9 first set of claims actually is in the
10 nature of a declaration, is seeking for
11 the Court to declare that the claimant,
12 that is, Debtor 5 Company is not indebted
13 to the first and/or the second defendant.
14 And then it speaks at paragraph 2 by way
15 of an order:

16 That the First Defendant, that
17 is, Financial Institutions
18 Services Limited, or in the
19 alternative, the second
20 defendant, JRF, execute a
21 memorandum discharging the
22 mortgage over the lands of the
23 claimant registered at Volume
24 000 Folio 000 and Volume 000
25 Folio 000 of the Register Book

1 of Titles; those are the titles
2 that are in fact in evidence.

3 Third it speaks: that the First,
4 Second and Third Defendants
5 whether by themselves, their
6 servants and/or agents be
7 restrained from selling the
8 lands of the claimant registered
9 as indicated earlier, and it
10 seeks damages.

11 There is an affidavit by M Debtor 5
12 basically grounding that claim in fact,
13 but there is a defence, I believe an
14 amended defence of second and third -
15 there is a defence of second and third
16 defendant filed, that would be JRF and
17 Dennis Joslin's Defence, and basically,
18 these Defendants -- there is an amended
19 defence filed which basically sets up the
20 second and third defendants owner
21 appreciation of the chronology and I just
22 want to read quickly to the extent, as
23 Debtor 5 has said the defendant's
24 appreciation of the fact may in fact
25 assist the Commission in shedding

1 certain light.
2 Paragraph 1. I will read as
3 quickly as I can.
4 These defendants -- and these
5 defendants, just so that we are
6 constantly reminded are: Jamaica
7 Redevelopment Foundation Inc. and
8 Dennis Joslin Jamaica Inc. These
9 Defendants admit that the
10 Claimant executed an Instrument
11 of Mortgage (the said mortgage)
12 dated September 22, 1988, as
13 security for a loan given by
14 Century National Bank ("the
15 Bank") in the sum of \$000,000.00,
16 with interest thereon at the rate
17 of 0% per annum calculated as a
18 compound interest with monthly
19 rests. The lands referred to in
20 paragraph 1 of the Particulars of
21 Claim filed herein were used by
22 the Claimant as security for the
23 said mortgage and the
24 Certificates of Title therefor

1 endorsed with Mortgage No. 0000,
2 registered November 30, 1988.
3 By the terms of Clause 1(a)(i) of
4 the said Mortgage the Claimant
5 covenanted with the Bank to pay
6 to the Bank on demand, "all such
7 sums of money as are now or shall
8 from time to time hereafter
9 become owing to the Bank from the
10 Mortgagor whether in respect of
11 overdraft, moneys advanced or
12 paid to or for the use of the
13 mortgagor or charges incurred on
14 his account or in respect of
15 promissory notes and other
16 negotiable instruments drawn,
17 accepted or endorsed by or on
18 behalf of the mortgagor."

19 Paragraph 4:

20 Clause 2(b) of the said mortgage
21 stipulated that "this security
22 shall be a continuing security
23 and shall avail the Bank in
24
25

1 respect of all present and future
2 indebtedness of the mortgagor on
3 any account whatever and is in
4 addition to any security which
5 would be implied or arise in the
6 ordinary course from the business
7 relations between the mortgagor
8 and the Bank and shall be deemed
9 to continue notwithstanding any
10 payments from time to time made
11 by the mortgagor or any
12 settlement of account or other
13 claim whatsoever. These
14 defendants will rely on the said
15 mortgage at the trial hereof for
16 its full terms and effect.

17 Paragraph 5:

18 These Defendants further admit
19 that the said mortgage was up-
20 stamped in the first instance on
21 December 6, 1990 to cover a
22 further indebtedness of the
23 Claimant to the Bank in the sum
24 of \$000,000.00 and thereafter on

1 June 1, 1993 to cover a further
2 sum of \$000,000.00.
3 It is admitted that the first 1st
4 Defendant is a new company duly
5 incorporated under the laws of
6 Jamaica and that the said
7 mortgage was vested in the 1st
8 Defendant by virtue of an Order
9 of the Supreme Court of
10 Judicature of Jamaica made in
11 Suit No.M121 of 1997 and dated
12 the 21st day of October, 1997. It
13 is not admitted however, that the
14 1st Defendant is the assignee of
15 all claims and rights of the Bank
16 to recover debts, damages and
17 other compensation from all
18 persons, as is alleged in
19 paragraph 3 of the Particulars of
20 Claim or at all, these Defendants
21 are not privy to all arrangements
22 made by the 1st Defendant with
23 the Bank in respect of the Bank's
24 rights against Third Parties.

1 In response to paragraphs 4 and
2 5 of the Particulars of Claim,
3 these Defendants say that the
4 2nd and 3rd Defendants were duly
5 incorporated in the United
6 States of America and were
7 subsequently registered as
8 Overseas Companies with the
9 office of the Registrar of
10 Companies pursuant to the
11 provisions of Section 346 of the
12 Companies Act.

13 COMM. BOGLE: Miss Clarke, are you going to go through
14 the whole document?

15 MISS CLARKE: I am trying just to read as quickly as I
16 can, because what I am not wanting is
17 for it to be disjointed in terms of its
18 flow.

19 COMM. BOGLE: I was just wondering if there were
20 particular points raised in the document
21 that you might want to highlight rather
22 than going through the full document.

23 MISS CLARKE: Perhaps Debtor 5 will come to that
24 soon, but I thought perhaps in terms of
25 how these institutions who were not the

1 first-hand negotiators with Debtor 5
2 came into the portfolio and appreciated
3 it, the basis upon which they took it
4 upon themselves and asserted their
5 rights, in point of chronology it may be
6 important to how they would have
7 appreciated the indebtedness as it came
8 to them, because Debtor 5 has been
9 asserting that these sums weren't owed,
10 but what JRF and Dennis Joslin are
11 basically saying - and I am
12 paraphrasing here now, if I were allowed
13 to summarize, but I don't think Debtor 5
14 would forgive me -- is that, as the
15 documentation has come to them, this is
16 what they have in terms of evidence as to
17 the state of the indebtedness at the time
18 when the debt came to them. So
19 whereas this witness is asserting that,
20 well, look, these sums were paid, the
21 mortgages should have been discharged I
22 believe that JR and Dennis Joslin are
23 saying, basically what we have is a
24 document evidencing a mortgage, a loan
25 agreement with a certain amount of

1 money undischarged -- data indicated
2 undischarged debts. So one just wants to
3 read the chronology because I believe it
4 would explain these certain defendants
5 posture in terms of...

6 COMM. BOGLE: I wonder if we should allow the JRF
7 representatives to put that posture in
8 cross-examination.

9 MISS CLARKE: It is not that I am going to be putting
10 any position on behalf of JRF, you know,
11 if that is what Mr. Chairman is
12 implying. What is actually of some
13 concern, having regard to the evidence
14 that has gone forth so far, is that it
15 would appear, particularly in terms of
16 how we ended at Paragraph 28 relative to
17 that portion of the Witness Statement,
18 that the assertion that he did not owe,
19 when so ignored that these Defendants
20 now at hand would carry forward based
21 only upon the fact there were certain
22 documentary data which in and of
23 themselves without more, would have put
24 him in a precarious position.

25 COMM. BOGLE: My point is that Debtor 5, has quite

1 ably put across his position. He is
2 saying, and he has brought information
3 to back up what he is saying, that he
4 did not owe Century National Bank in any
5 way at the time when Century National
6 Bank was taken over by FIS. So that is
7 his contention, that is what he has put
8 forward.

9 Now, he has taken the matter to Court
10 and the defendants have put their point
11 of there, their view of the matter on
12 the table and therefore, that is why I
13 am saying he has put forward his case to
14 this Commission, he has put forward his
15 position, he is saying that I do not
16 owe, here are the documents to prove
17 that I did not owe. And I think it is
18 fair that JRF and/or FINSAC, it is for
19 them to come and say well, we disagree
20 with his view or try to prove that he is
21 wrong or something and I do not see
22 really that much will be served in your
23 putting forward this at this time on
24 behalf of Debtor 5.

25 MISS CLARKE: I appreciate that, Mr. Chairman, and

1 more so having regard to the concern for
2 economy relative to time, but what I ask
3 is whether Debtor 5 may now be allowed
4 to indicate from the amended defence
5 what he had been intimating earlier
6 would be the matter of some meat that
7 would arise on the face of the amended
8 Defence.

9 A: Thank you, Mr. Chairman.
10 If you go from 11, Paragraph 11 of the
11 Defence, you will see the falsification
12 of information which leads to their
13 claim. The first part is, yes, there was
14 the amount of \$000,000.00 (look at (b)
15 \$000,000.00 that was the subject of
16 the first mortgage.

17 MISS CLARKE: Debtor 5, don't so much indicate what
18 portions are not in contention, indicate
19 based on that document, the segment that
20 you take issue with in terms of how it
21 is put. Because I believe we have gone
22 through the evidence \$000,000.00 your
23 own appreciation relative to the
24 \$000,000.00, so we are not going to be
25 asking you to repeat that.

1 refuted, because you have said that
2 whatever loans or overdrafts that you
3 were given at CNB you had cleared up all
4 of those before CNB was taken over from
5 EIS.

6 A: Very well, sir.
7 COMM. BOCLE: So that is why I am saying all of that

8 here that they are stating, you have
9 already given us your views on it and
10 that is, you do not, or at the time did
11 not owe. And so this is why I am saying
12 that if there is something in this
13 document that is new, in other words,
14 that we have not yet gone through, then
15 fine, by all means highlight it, but we
16 have, I think, at length, gone through
17 the ten-eighty-five, the three-fifteen,
18 the nine-fifty and the promissory note,
19 total of \$00000.00.

20 A: Yes. Very well, sir. The only think to
21 note is that what Counsel was trying to
22 get across I think, is that they are
23 regurgitating what Century was saying as
24 if they have not had the opportunity to
25 have discussions with me, to have

1 extended letters from me, and
2 documentation showing me that, that was
3 wrong. So this is a deliberate
4 falsification.

5 COMM. BOGLE: And so this is my point now on that
6 note, and I accept what you are putting
7 forward. As I have said, you have so
8 far, morning to now, brought documents
9 to prove....

10 A: Yes, sir.

11 COMM. BOGLE:your point that, or to substantiate
12 what you are putting forward that you
13 did not owe. This document here is what
14 the Defendants - and what I am saying,
15 allow the Defendants or the persons
16 named here to come to argue against, or
17 to oppose or to try to prove what you
18 have said wrong.

19 A: Yes, sir.

20 COMM. BOGLE: Right?

21 A: Very well, sir?

22 COMM. BOGLE: That is basically what I am trying to
23 avoid us going over because you cannot
24 articulate fully the Defendants' point
25 of view, let the Defendants articulate

1 throes of being taken over by and by
2 that time they were taken over in
3 1996, a year after or a little less than
4 a year after, for a period, up to 1999
5 there was nobody to talk to and by the
6 time FINSAC took over, they took over,
7 really, as collectors and not as people
8 willing to sit down and reconcile the
9 thing.

10 COMM. ROSS: But there was a pay-out to Century
11 National's depositors, I am sure.

12 A: Yes, there was a pay-out to those people
13 who were written to saying that they
14 could collect the money. We couldn't
15 go and collect any money because we
16 didn't have any arrangement with them.

17 COMM. ROSS: But he had money in a Current Account,
18 he would be a depositor.

19 COMM. BOGLE: No, they wouldn't term it a deposit, he
20 wouldn't fall under the depositors.

21 COMM. ROSS: Why not?

22 DEBTOR 5: It was a part of a guarantee of the
23 credit facility.

24 COMM. ROSS: It should have been set off against it.
25 I mean, the money was his, either he

1 should be paid off or should be set off
2 against his debtors.

3 COMM. BOGLE: He didn't know.

4 COMM. ROSS: But if he didn't know, he should be
5 paid.

6 COMM. BOGLE: You see, when they got the list of
7 deposits held, this would not appear,
8 this would appear under loans but as a
9 credit balance under loans, and
10 therefore, the lists of depositors, his
11 name would not be appear there.

12 COMM. ROSS: But it is not shown anywhere here in
13 this computations.

14 MISS CLARKE: That's what he is contending, that it's
15 not accounted for.

16 COMM. BOGLE: You see, depositors in the bank were
17 people who originally put money on
18 deposits, savings account or CDs or
19 anything like that.

20 COMM. ROSS: Current Account was a deposit as well.

21 COMM. BOGLE: No, no.

22 COMM. ROSS: I am quite sure Current Account was
23 recovered.

24 COMM. BOGLE: Current Account, as far as I know, was
25 dealt with on the basis that these

1 accounts, especially in view of the
2 fact that he had an overdraft facility,
3 and so what you would find, is that the
4 classification there would be a credit
5 on this list and not be a part of the
6 deposit.

7 COMM. ROSS: I am just saying that as somebody with a
8 Current Account balance he would have
9 been due a pay-out....

10 COMM. BOGLE: Oh, I would agree with you that he would
11 be due but he wasn't.

12 COMM. ROSS: ...just like anybody else. So my
13 question to him is, why didn't he
14 exercise his rights like many other
15 people did to be paid his outstanding
16 balance or some portion of it, and if he
17 didn't receive it, why wasn't it set off
18 against say, debts that he had allegedly
19 owed to the Institution?

20 DEBTOR 5: There were pre-conditions for being
21 paid-out if you had balance with them,
22 and part of that, you would have been
23 written to and asked to confirm what
24 that balance is and that you would take
25 it to National Commercial Bank, I think,

1 but where this is part of a whole credit
2 facility that they are claiming that is
3 unsettled...

4 COMM. ROSS: Where is the set out, Debtor 5, where is
5 that reflected? Where is that balance
6 reflected saying FINSAC's statement to
7 you, I don't see it reflected anywhere
8 there.

9 A: I am hoping, sir, that part of the work
10 the Commission will do is to look into
11 those matters.

12 MISS CLARKE: I think his answer is that, based on his
13 assessment it's not reflected any where
14 on FINSAC's records or Century's records
15 in terms of it having been set up or his
16 loans.

17 COMM. BOGLE: As far as I am concerned, I have an
18 overdraft for 000,000.00 and that does
19 not feature in there.

20 MISS CLARKE: The sum was never taken account of on
21 the Credit balance.

22 A: Until this day.

23 COMM. BOGLE: Okay. We move ahead. Continue
24 Miss Clarke.

25 MISS CLARKE: You were about to tell us about your

1 sojourn with Eagle Merchant Bank to
2 Company
3 Limited, and I believe that account
4 starts at Paragraph 29 of the Witness
5 Statement, could you just read for us,
6 Debtor 5?

7 A: This is Company and
8 Limited. The name says
9 what we did.
10 This company was incorporated in
11 about 1987. At that time in
12 Jamaica there was a government
13 sponsored slogan "Export or
14 die". As a member of the
15 business community I joined the
16 drive of the Jamaican business
17 community to get into the export
18 market and to earn and save
19 foreign exchange.
20 In our quest to achieve this, we
21 made contact and developed
22 relationships with the
23 international agencies and
24 consultancies, mainly working
25 through JAMPRO, The Jamaica

1 Manufacturers Association (JMA)
2 and Caribbean Association
3 Industry and Commerce - (CAIC).

4 The objectives were to expand
5 the productive capacity and
6 production methods of my
7 companies and to attain quality
8 standards all of which would
9 equip us to enter the export
10 market.

11 Through Commonwealth Fund for
12 Technical Co-operation (CFTC) and
13 later the Centre for Development
14 of Industry (CDI) which is part of
15 EEC, we obtained a short list of
16 entities that would collaborate
17 with us in meeting our stated
18 objectives.

19 We identified a company in
20 England that would supply the
21 required machinery and raw
22 material and would give
23 technical support in
24 transferring the world's
25 standard technology

1 manufacturing capability to
2 Jamaica.

3 We obtained the services of a
4 consulting company based in
5 England to prepare a business
6 development plan. Working along
7 with me, the international
8 consultant developed a
9 comprehensive business plan for
10 chalk and crayon operation. As
11 group managing director, I
12 approached Eagle Merchant Bank
13 Limited (EMB) to obtain funding
14 for Company
15 Limited(CCIAP).

16 At the time Eagle Merchant Bank
17 had two funding programmes for
18 those in the manufacturing sector
19 who had potential for export
20 manufacturing and earning foreign
21 exchange. These were the
22 International Finance Corporation
23 Export Support Programme(EMBIC)
24 and the United

1 States Agency for International
2 Development (EMB/USAID) .

3 On November 9, 1989 I signed an
4 EMB/IFC agreement for EMB to on
5 lend to CCAIP the sum of
6 approximately US\$000,000.00.

7 1. The importation of machinery
8 and equipment in the sum of one
9 hundred and twelve thousand,
10 five hundred and thirty pounds
11 which converted at the time to
12 J\$000,000.00 converted at a
13 rate of J\$000 to US\$0.00 or
14 J\$000 to one pound sterling.

15 MISS CLARKE: Can we just pause to look at the
16 exhibit, Debtor 5?

17 A: Yes.

18 MISS CLARKE: AS 13.

19 A: Oh, yes. Thirteen is the agreement.

20 When you go back you will see...
21 MISS CLARKE: Sorry. Mr. Chairman, we are just

22 pausing to mark that Exhibit. It is a
23 document and a loan agreement dated 9th
24 of November, 1989.

25 COMM. BOGLE: AS 13, is that one?

1 MISS CLARKE: Yes. It has eighteen pages. It has
2 seventeen pages.

3 COMM. BOGLE: Is it eighteen?

4 MISS CLARKE: I am having a little difficulty
5 appreciating where the end of the
6 document comes.

7 COMM. BOGLE: I think the end of the document seems to
8 come where there are signatories with a
9 John Doe...

10 A: Yes, that doesn't belong there.

11 MISS CLARKE: No, it doesn't.

12 A: It ends right before that, the extract
13 before that.

14 MISS CLARKE: The document doesn't read as if it
15 belongs there.

16 COMM. BOGLE: Okay.

17 A: It end just before that, so the
18 signatures and the items and schedules
19 are not here.

20 COMM. BOGLE: I see. The top of this marked 'B', it is
21 from 'B'. 17. The top of that document
22 that is marked 'B', right.

23 MISS CLARKE: Yes sir, 17, that is what we have before
24 us.

25 MR. SMITH: And the other one is the letter of

1 Commitment.

2 MISS CLARKE: Debtor 5, do you happen to have the
3 Schedule among your things?

4 A: I doubt it.

5 Q: If you could make it available to us at
6 some date?

7 A: Yes, at some date.

8 Q: Okay, so we could just go back now to
9 continue reading, that having been
10 marked and the record may probably
11 reflect that the document goes up to
12 page 17 and it is incomplete. So we were
13 reading paragraph 38 now.

14 A: We went to 38?

15 Q: Yes.

16 A: I think you will also note the
17 conversion rate which is a part of the
18 Agreement.

19 On the 15th day of November, 1989 CCIAP
20 signed a letter of Commitment " Debtor 5
21 14" which included the terms and
22 conditions of the IFC line of credit and
23 a demand loan in Jamaican dollars broken
24 down in two parts.

25 A) assistance in completing the purchase

1 of real estate for \$000.00. The assistance
2 is more than \$00,000.00, the real estate
3 is more than that, and B.) Payment of
4 duty on imported capital goods in (1)
5 above, that is \$000,000.00 for the
importation of machinery.

7 MISS CLARKE: Pause there, Debtor 5. "AS 14"....

8 A: That is immediately behind...

9 Q: ...is the letter of Commitment from
10 Eagle Merchant Bank that is also signed
11 by you on behalf of Caribbean Chalk
12 Limited. I don't know if you want to

13 perhaps explain a little bit.

14 Loan amount \$000.000.

15 EMBG term loan - \$000,000.

16 Could you just explain for the benefit
17 of us what the \$0000,000represented and
18 then \$000.00, Debtor 5?

19 A: Yes, the \$000,000.00 was in fact in
20 two parts and each part was **broken down**
21 into two sub parts. The first part is a
22 foreign exchange loan by the IFC which
23 provided for the importation of
24 machinery in the value of US\$\$000.00
25 'P', converted at a rate of US\$1 to

1 J\$6.5 and the balance in the agreement
2 is J\$000,000.00. And the second part
3 was a revolving demand loan.

4 Q: Raw material loan?

5 A: For raw material and the total for that
6 is, the upper limit for that was
7 US\$0000.00 converted at six point
8 five which is \$000,000.00.

9 MISS CLARKE: Okay and then the Letter of Commitment
10 now incorporated that and another
11 facility in the nature of the line of
12 credit for \$000,000.00?

13 A: A demand loan now for the local currency
14 for plan for duty for the importation of
15 material, if you go to the other page
16 and you will see the breakdown of that.

17 Q: Yes. So I am saying that Letter of
18 Commitment incorporated both facilities?

19 A: Yes, the original one and this facility.

20 Q: And paragraph 39 as you have just said
21 the grand total of the IFC facility was
22 \$000,000.00. Could you read from
23 paragraph 40 now please.

24 A: On the 17th of November 1989 CCIAP
25 applied to EMS to obtain letters of

1 credit in the name of Company Limited
2 in Southampton UK in the United Kingdom
3 for:

4 1. Sterling 0000 for the importation of
5 chalk and crayon machines.

6 2. Sterling 0000.00 for the purchase of
7 chemicals which are raw material for the
8 manufacture of crayons.

9 The letter of credit for the machinery
10 was established according to
11 instructions and the machinery was
12 shipped and arrived in Jamaica towards
13 the end of April, 1990 after
14 pre-shipment inspection was done by me
15 in Southampton in early March.

16 Up to the time I did the pre-shipment
17 inspection in March 1990 the letter of
18 credit for the chemicals was not
19 established and only after I returned and
20 made several urgings on EMB and Eagle
21 Trade Services (ETS) foreign exchange
22 agent for EMB was the letter of credit
23 established in May 1990. However, because
24 of errors made by Eagle Trade Services
25 the final letter of credit to

1 allow for the shipment was not perfected
2 until July 1990.

3 The chemical arrived in Jamaica in
4 November 1990.

5 This was at the end of the school season
6 and EMB was fully aware that those
7 material were required for sales in the
8 peak period of back to school between
9 July and October.

10 Despite efforts on our part, EMB did not
11 disburse the rest of the raw material
12 loan (approximately US\$00,000.00.) As a
13 result the projected sales for the
14 period was not met.

15 By the time the machinery arrived in
16 April 1990 we had established duty free
17 status as manufacturers under the
18 modernization of the industry programme.
19 So we were never required the portion of
20 the loan of \$000,000.00.

21 Q: You never required it?

22 A: No, we didn't require the portion of the
23 loan \$000,000.00 which was to be
24 allocated to the payment of import
25 duties.

1 A condition for disbursement of the
2 amount of \$000,000.00 was that the
3 interest - interest meaning the
4 notification of their right - EMB be
5 registered against the title to the
6 property being purchased. That is
7 Address.

8 A mortgage in the amount of \$000,000.00
9 was secured.

10 By letter dated September 7, 1990 "A
11 Smith 15" EMB wrote to CCIAP to say that
12 the sum of \$000,000.00 plus interest of
13 over \$000,000 was outstanding. A meeting
14 was sought with me with a view to
15 settling the outstanding amount and to
16 work out future settlement of the
17 account.

18 Q: If we could just pause just to identify
19 the exhibit, Mr. Chairman. It is a
20 letter from Eagle Merchant Bank to
21 Debtor 5 in his capacity of
22 Managing Director of
23 Company Limited,
24 dated September 7, 1990, a formal demand
25 letter with respect to demand loan #0000

1 and...

2 A:

o e e e e

3 Q:

The principal amount is \$0000.

4

Interest \$000.

5

6

Total \$000,000.00. And the addressee of

7

the letter is being asked to contact

8

immediately with the officials at the

9

bank upon receipt of this letter with

10

your cheque in the amount of \$000

11

representing arrears of interest and

12

your proposals for monthly payment. "AS

13

15" Mr. Chairman.

14 COMM. BOGLE:

Yes.

15 MISS CLARKE:

Paragraph 50 now, Debtor 5.

16 A:

I went in sometime in September 1990 and

17

made arrangement to pay up the amount

18

being claimed and also made arrangements

19

with respect to payment for the ensuing

20

period. At that meeting we confirmed

21

that the interest rates on the EMB

22

portion of the loan had been changed

23

from 18% add on over five years (as per

24

the letter of commitment) to 0% on the

25

reducing balance. And note in bracket

that (the agreement allowed for the

1 variation of interest on the EMB portion
2 of the loan. But on the IFC portion
3 interest had to be computed according
4 with a formula, which you will see in
5 the agreement that we just read there.

6 MRS. PHILLIPS: I think the witness pointed it out
7 already. I don't see a Schedule to that
8 agreement.

9 COMM. BOGLE: Right, there is no Schedule.

10 MRS. PHILLIPS: And the agreement itself is referring to
11 the Schedule in relation to the
12 interest. So unless we can see the
13 Schedule we are at a lost.

14 COMM. BOGLE: I agree and I note that Debtor 5 had
15 asked the witness to try to locate the
16 agreement with the complete Schedule so
17 that this can be forwarded to us because
18 that is very important, especially
19 regarding the interest rate and so on.

20 MRS. PHILLIPS: I would think it would be likely to be
21 attached to the rest of the document
22 that was copied.

23 COMM. BOGLE: Pardon me.

24 MRS. PHILLIPS: I would think it would be likely to be
25 attached to the rest of the document

1 official document.

2 MRS. PHILLIPS: Mr. Chairman, I believe the Commitment
3 Letter reference is due back to the
4 agreement in relation to the IFC aspect
5 of the loan in relation to the interest
6 charged. That is clearly to be seen
7 from Clause 4 (a) and (b). In fact, it
8 is specifically referring to Clause 5 of
9 the IFC loan agreement. And when you
10 look at Clause 5 of the IFC loan
11 agreement it refers you to the Schedule.

12 COMM. BOGLE: Yes.

13 MISS CLARKE: The schedule is not at hand.

14 COMM. BOGLE: I do agree that it is important for us
15 to fully understand. But the witness
16 has untaken to provide it and based on
17 our time of day, I am sure that the
18 witness will have to be back here and
19 therefore, I will ask that he ensure to
20 provide the office with a copy of the
21 Schedule so that it can be circulated
22 prior to.

23 A: Very good, Mr. Chairman.

24 COMM. BOGLE: Okay, we were looking at?

25 MISS CLARKE: Paragraph 51. I believe you were at

1 paragraph 51, Debtor 5.

2 A: At the same time we had notification
3 from EMB through its auditors Peat
4 Marwick "Debtor 5 16" which indicated
5 that the applicable interest rates on
6 the IFC portion of the facility was 0%
7 percent not accorded with the IFC
8 agreement.

9 MISS CLARKE: "AS 16", could be identified and marked.
10 That document as far as I can see it
11 actually bears a date when it was
12 generated, but there is in fact a stamp
13 received November 12, 1990.

14 COMM. BOGLE: It is a letter from Eagle Merchant Bank
15 asking that Company Ltd. confirmed
16 whether or not the information at the
17 bottom is correct. That is really a
18 letter from the Eagle Merchant Bank to
19 the customer of the bank asking them to
20 confirm to their auditors Peat Marwick
21 as to whether or not the amounts and all
22 the information stated at the bottom is
23 correct. They are not stating that,
24 that is correct, they are asking you if
25 that is correct. That is technically

1 what this document is doing.

2 A: Technically Mr. Chairman, but it would
3 be unusual for them to send something
4 not ascertained by them and correct to
5 have somebody else to say whether it is
6 correct.

7 COMM. BOGLE: Unusual or not there could be errors

8 therefore, the question is whether or
9 not you agree that this was the
10 situation at the time.

11 A: I disagree that it was the correct
12 situation. There are a number of things
13 here which include interest rate.

14 COMM. BOGLE: The question really is, the bank is
15 asking you to confirm this to Peat
16 Marwick whether or not this is correct.
17 Now, I am simply asking you whether or

18 not this is correct because you referred
19 to it, so I am asking if the information
20 stated here as shown by Eagle Merchant
21 Bank's records if is this information is
22 correct.

23 A: The interest rate is correct.

24 COMM. BOGLE: You are saying the interest rate is
25 correct, but the principal amount owing

1 is not correct?

2 A: The interest computed to that date is
3 correct.

4 Q: So the \$0.00 is correct?

5 A: Yes.

6 COMM. BOGLE: What about the principal?

7 A: The principal is incorrect, it is over
8 stated. And you can tell that by the
9 agreement what the loan sum was, it was
10 \$000.00 and the rate of exchange
11 was clearly stated as part of the
12 contract. For them to reach this figure
13 it meant that they applied -- the
14 inference has to be that they applied
15 the foreign exchange...

16 COMM. BOGLE: We really don't know, so you are simply
17 saying that you disagree with that and
18 you are saying the interest rate and the
19 amount of interest calculated you agree
20 with that, but you disagree with the
21 principal.

22 MRS. PHILLIPS: Mr. Chairman, since you have asked him
23 those two questions, through you,
24 perhaps you could just ask him whether
25 he agreed that the amount paid for the

1 year July 1, 1989 to June 30, 1990 was
2 due?

3 A: That is correct.

4 COMM. BOGLE: It was zero?

5 MRS. PHILLIPS: Thank you.

6 COMM. BOGLE: That is the most we can go.

7 MISS CLARKE: While examination in chief is proceeding

8 and we are seeking to establish the
9 portions of the documents that are in
10 contention, Debtor 5, could you confirm
11 or indicate or explain the difference in
12 the demand loan account number on
13 Exhibit "AS 15" that letter of demand
14 from Eagle dated September 7, 1990 and
15 the demand loan account number in that
16 "AS 16".

17 A: Some of those demand loans - the 9267 is
18 identified as the machinery, the capital
19 importation account and 0000 while the
20 demand loan which is the local portion
21 of the loan is account over 15 which is
000, they are correctly identified.

MISS CLARKE: Okay. Paragraph 52 you were at.

A: Between September 1990 and July 1991
payments were made to accelerate the pay

down of the loan.

1 Principal and interest were paid up to
2 July 1991 for the demand loan that is
3 loan 0000 in the sum of \$000,000.00. It
4 must be recalled that we did not draw
5 down on the \$00,000 for import duties.
6 Although it was being claimed in that
7 letter for \$000.00, we did not draw down
8 that \$00,000.00 on account of having the
9 status of modernization of industry from
10 JAMPRO and we have letter from JAMPRO to
11 indicate that.

13 MISS CLARKE: 54.

14 A: In about February 1991 we had
15 notification directly from EMB of

16 interest rate changes on the IFC portion
17 of the loan indicating that the rate was
18 changed from 0% to 0%. In
19 December 1990 and as of the date of the
20 letter of notification the rate was
21 changed to 0 percent.

22 Q: "Debtor 5 17". We could just look at
23 that very quickly. Letter dated
24 February 15, 1991 Eagle Merchant Bank
25 Caribbean Chalk Re: EMB/IFC Credit

1 Facility number.

2 We wish to advise you that the variable
3 interest rate on the captioned loan
4 facility, sourced from the International
5 Finance Corporation has been further
6 increased to 34 percent per annum as of
7 February 1, 1991. This interest rate was
8 previously adjusted to 0 percent per
9 annum on December 1, 1990. "AS 17, Mr.
10 Chairman.

11 Signed John Doe.

12 COMM. BOGLE: Okay.

13 MISS CLARKE: Paragraph 55.

14 A: Based on the creeping escalation of
15 interest costs CCIAP and its guarantors
16 resolved to pay out the revolving raw
17 material facility in the same way it had
18 arranged to pay out the demand loan.
19 Around February 26 1991, Company
20 Limited made further arrangements with
21 CNB to pay out the amount drawn down to
22 that date on the revolving raw material
23 facility. That amount being
24 \$000.00 Pounds sterling at J\$000 to
25 sterling \$0 - the sterling and five

1 there is incorrect -- or the sum of
2 \$00000.00 at 0% for a total of
3 \$000.00. The transmittal letter
4 accompanying the managers cheque from
5 CNB was sent to EMB. (See "Debtor 5 18".)

6 MISS CLARKE: Now, that letter is a letter...
7 A: Dated February 26 1991.

8 Q: Signed by you ?
9 A: Debtor 5
Yes, ma'am.

10 Q: **Enclosed please find managers cheque**
11 **from Century National Bank in the sum of**
12 **\$0000.00. This sum is to be used to**
13 **pay out EMB/IFC loan in the amount of**
14 **\$00 00.00 and our computation of**
15 **interest to date on that account of**
16 **\$000.00. The escalation of interest**
17 **rate on the IFC account as indicated in**
18 **your letter of February 12, 1991, is**
19 **very troubling to us and if we cannot**
20 **put a halt to it we would have to seek**
21 **ways of paying of the fixed asset**
22 **account as well.**
23 **We must again point out that we have not**
24 **received any statement on our account**
25 **with you.**

1 ...

2 COMM. BOGLE: Yes, go ahead.

3 A: Is that this 000,000.00 and the letter
4 was also admitted in court by FINSAC.
5 On receipt of the letter and payments
6 mentioned above the Chairman of EMB
7 initiated discussions with me. Mr. O.C.
8 Wilson, a consultant and former Chief
9 Accountant at EMB led EMB investigations
10 and presented financial projections to
11 support a proposal for EMB to refinance
12 CCIAP "A. Smith 19".
13 The original business plan...

14 MISS CLARKE: Sorry that's somewhat lengthy document
15 Financial Projections for Caribbean
16 Chalks and Instruments and Art
17 Production Limited.

18 A: Plus the other document that goes with
19 it which is the business plan on which
20 the loan was approved.

21 Q: That would be "AS 19". Just for the
22 purpose of identifying because I am not
23 seeing the document.

24 COMM. BOGLE: We will call it "AS 19" Financial
25 Projections for Caribbean Chalks

1 Instrument.

2 MISS CLARKE: Yes, sir. Paragraph 60, Debtor 5.

3 A: If I may, Mr. Chairman, point out that
4 the letter read transmitted the money
5 the \$000.00 has a complement which
6 is the letter of transmittal and the
7 bank statement showing the amount paid.

8 COMM. BOGLE: Repeat that.

9 A: Paragraph 56 that the \$0000.00 has
10 with it Exhibit "AS 18 which is the
11 letter of transmittal and the bank
12 statement showing a debit advice taking
13 out the money for the managers cheque.

14 COMM. BOGLE: You got the debit advice?

15 A: Yes, I have it.

16 COMM. BOGLE: What I have here doesn't have it.

17 A: I have it in...

18 COMM. BOGLE: Debtor 5, you have a lot of information
19 but you have not provided your attorney
20 with the information; you have kept a
21 lot of it to yourself.

22 MRS. PHILLIPS: You said attorney, Mr. Chairman.

23 COMM. BOGLE: Sorry, you have not provided the office
24 with the information. I corrected what
25 I was saying.

1 MRS. PHILLIPS: I was going to ask you to clarify what
2 my friend introduced herself as this
3 morning.

4 COMM. BOGLE: He has not provided the office with the
5 information.

6 MRS. PHILLIPS: She is confusing her title with that of
7 the gentleman there to your right.

8 MISS CLARKE: Is Counsel expecting a comment from me,
9 I do apologize.

10 MRS. PHILLIPS: I heard my friend introduced herself as
11 the Commission's Counsel and my
12 understanding from what I have been told
13 by you and what I have been reading in
14 the papers is that the gentleman on your
15 right is the Commission's Counsel. So I
16 am at a loss as to clarification of my
17 friend's capacity.

18 COMM. BOGLE: She marshals the evidence.
19 MRS. PHILLIPS: Then that is how she should introduce
20 herself.

21 MISS CLARKE: You know Mr. Chairman, perhaps I should
22 say it, but certainly it is not the
23 forum for it, but as it relates to my
24 capacity as of now, Mr. Chairman, I
25 believe in my own estimation you are

1 perfectly correct, but in terms of the
2 ambit of my appearance here perhaps
3 Counsel should probably seek to
4 establish that not with any particular
5 witness in this instance.

6 COMM. BOGLE: It is a point of clarification.

7 MISS CLARKE: It is relevant now.

8 MRS. PHILLIPS: She has done it all the time.

9 MISS CLARKE: Mr. Chairman did in fact probably
10 slipped into Counsel's hand when he said
11 your attorney, apparently there is an
12 outstanding ground which I believe you
13 know must be addressed in its time.

14 COMM. BOGLE: All right, may I say that whatever
15 misunderstanding there might have been
16 has just been clarified that you marshal
17 evidence on behalf of the Commission and
18 so we can move on.

19 MRS. PHILLIPS: I am grateful Mr. Chairman.

20 COMM. BOGLE: Yes, Mrs. Phillips.

21 A: I have the letter.

22 COMM. BOGLE: You have a lot of information but you
23 seem not to have sent the information to
24 the Commission's office.

25 A: As we just heard contending, sir....

1 Commercial Bank "Debtor 5 20".

2 DEBTOR 5: We are we at Paragraph 60.

3 In January, 1992 EMB

4 unilaterally withdrew from

5 SML's account with EMB A sum in

6 excess of \$000,000 purporting to

7 be paying debt owed by EMB.

8 See letter dated January 22,

9 1992 from EMB to ECB -"Debtor 5

10 20" with related Customer Advice

11 Slip -- "Debtor 5 21. The amount

12 thus paid largely used up funds

13 that were intended to pay out

14 the IFC capital facility.

15 MISS CLARKE: Let us look at those exhibits.

16 Exhibit AS 20 is a letter from

17 Eagle Commercial Bank Jamaica

18 Limited to Eagle Commercial Bank

19 Limited it is dated the January

20 22, 1992 and said

21 Re: Stationery Manufacturers

22 Limited today's date, enclosed

23 is Cheque No. 00000 in the

24 amount of \$000000 which is

25 to be deposited to the account

1 of Company

2 Limited.

3 The funds are to be used to

4 purchase US\$000000 for

5 transmittal to Company X

6 International in discharge of

7 the Commercial Bank's liability

8 to that company.

9 Yours truly,

10 Signed EAGLE MERCHANT BANK OF

11 JA. LTD.

12 John Doe

13 Manager - Corporate Loans

14 And there is the note indicating

15 the payment amount attached.

16 Now, Debtor 5, I would like

17 for you to explain, if you will,

18 this transaction vis-a-vis the

19 facilities you had with Eagle

20 Merchant Bank and Eagle

21 Commercial Bank, the ISC Loan

22 and the other facilities, could

23 you just explain how this letter

24 would have figured?

25 A: This letter shows Eagle Merchant Bank

1 going into the account...

2 Q: Hold on a minute please.

3 COMM. BOGLE: Yes, go ahead.

4 MISS CLARKE: You were explaining how this letter
5 would figure in terms of your facilities
6 and the transaction with the Eagle
7 Group.

8 A: That account that this money was taken
9 from, was part of a deposit of a million
10 dollars that the proceeds of the sale of
11 plant and machinery, and was intended
12 as shown in the previous letter written
13 by me, saying, take this 000,000.00 and
14 000,000.00 from that account and settle
15 the plant and machinery account, we are
16 paying it out at this time. 000,000.00
17 plus 000,000.00, 0,000,000.00 and we
18 instructed them to take it from this
19 account.
20 COMM. BOGLE: 000,000.00.

21 A: 0,000,000.00. I am very sorry. And so
22 we consider that account was paid out
23 but subsequently going through the
24 records we found that a substantial part
25 of the money that should have made up

1 the 683,000.00 was used to pay Eagle
2 Merchant Bank debt.

3 MISS CLARKE: So this payment had nothing to do with
4 your debt, the 000,000?

5 A: Nothing to do with our debt.

6 COMM. BOGLE: So therefore, you are saying that this
7 amount of 00,000 US to Domtar was not a
8 debt of your company at all?

9 A: Was not our debt, it was stolen from our
10 account.

11 COMM. BOGLE: So you didn't owe Company X
12 any money?

13 A: We had transaction with Company
14 X, but that was
15 the time when payments were made,
16 foreign payments were made to the Bank
17 of Jamaica awaiting auction when you
18 would get paid and we have - I don't
19 know if I gave it to Miss Clarke. I
20 hope Miss Clarke doesn't get blame for
21 things, but we have mountains of record
22 and information and she had to choose
23 sometimes and some of them got to her
24 late and all of that. But, we have
25 letter from Domtar, we have letter from

1 the Eagle Trade Services that did their
2 foreign payment to show that we had
3 money on auction awaiting allocation of
4 foreign exchange to make the payment
5 whether to Company X or the other. So

they

6 had no obligation to take money from our
7 account.

8 COMM. BOGLE: So was there any time that Eagle
9 Commercial Bank had guaranteed or set up
10 a letter of credit or anything like that
11 to Company X?

12 A: No.

13 COMM. BOGLE: How did they get that invoice? Did you
14 present Eagle Commercial Bank with an
15 invoice for this amount so that they...

16 A: This is not an invoice, this is just the
17 letter showing that the....

18 COMM. BOGLE: No. What I am saying is that Eagle
19 Commercial Bank must have had some
20 invoice or communication from Company X
21 saying that you owe Domtar and it is on
22 the strength of that, that Eagle
23 Commercial Bank is saying to the
24 Merchant Bank, that look, we need some

25

money inn order to liquidate this debt

1 for this customer, so I am asking if you
2 know anything at all about that?

3 A: No, sir, nothing like that.

4 MISS CLARKE: I suddenly feel the need to enter the
5 fray in some a personal way in that my
6 capacities and my functions have been so
7 brought to the fore, but you know,
8 perhaps, Debtor 5, I don't know what
9 the source of his data is, but would
10 want to recall that, certainly as it
11 relates to the preparation of his data,
12 if he would have brought certain data
13 and related them to certain specific
14 paragraphs as it relates to yours truly,
15 so the documents were actually supplied
16 specifically by Debtor 5 with specific
17 instructions as to how to use them.
18 COMM. BOGLE: I have no doubt.

19 Okay, Debtor 5, you said that
20 the Company X, as
21 far as you know, had no
22 relationship with Eagle
23 Commercial Bank regarding this
24 payment of \$00000 to Company X?

25 A: No, sir.

1 MISS CLARKE: That is Paragraph 61, I believe we are
2 at now.

3 COMM. BOGLE: Paragraph?
4 MISS CLARKE: 61.

5 A: In February, 1992 EMB wrote to CCIAP to
6 say that principal borrower was in
7 default of its debts. While negotiations
8 were taking place SML made further
9 payments under protest as follows:

- 10 \$000.00
- 11 \$00,000.00
- 12 \$00,000.00
- 13 \$00,000.00
- 14 \$00,000.00
- 15 Total \$000,000.00

16 MISS CLARKE: Continue please.

17 A: And we have acknowledgement of these
18 payments.

19 COMM. BOGLE: Just a minute. As per usual I will ask
20 if you do have in your - if you have the
21 acknowledgement of these payments?

22 A: We have acknowledgement of 000,000.00,
23 000,000.00 and we have a witness
24 statement that has \$00,000.00 and
25 \$00,000.00 to another account but those

1 amounts were acknowledged as having been
2 received.

3 COMM. BOGLE: Where would we have those
4 acknowledgements in your witness
5 documents?

6 MISS CLARKE: What witness statement are you referring
7 to, Debtor 5?

8 A: The witness statement of Martin Gooden
9 has in the \$00,000.00 and the 00,000.00.

10 Q: That would be a witness statement in a
11 suit brought against you by Eagle
12 Merchant Bank Limited?

13 A: Yes, ma'am.

14 Q: And it is a witness statement you say of
15 Martin Gooden?

16 A: Yes.

17 (Documents distributed)

18 COMM. BOGLE: This was really the statement that was
19 not attached to the letter. The letter
20 we have already, this the statement. I
21 think we will have to number this, not
22 AS 19, but more AS 18A. So it is just
23 the statement that was referred to.

24 MISS CLARKE: 18 what?

25 COMM. BOGLE: 18 A.

1 MISS CLARKE: That would be the statement?

2 COMM. BOGLE: The statement because the letter was
3 already admitted.

4 MISS CLARKE: AS 19.

5 COMM. BOGLE: I think AS 18.

6 MISS CLARKE: Oh, yes.

7 COMM. BOGLE: Its just the statement that we are
8 really dealing with now.

9 MISS CLARKE: Yes.

10 You were intimating, Debtor 5, that
11 some of these payments that you referred
12 to at Paragraph 61 of your witness
13 statement....

14 MRS. PHILLIPS: I am just trying to understand what is
15 the name of this account?

16 MISS CLARKE: We are talking....

17 MRS. PHILLIPS: Whose statement is 18 A?

18 COMM. BOGLE: It would be Company
19 Limited.

20 A: The bank statement.

21 MRS. PHILLIPS: And that is the statement of Company
22 Limited that is attached
23 by the letter of Company, that
24 is what your saying?

25 COMM. BOGLE: Yes, because I think they are a

1 guarantor. 18 A.
2 This was really just to indicate where
3 the 0000.00 was from and so the
4 statement was indicating that there was
5 the amount here of 00000, a debit
6 memo. So that's really all that this
7 statement is for.
8 This matter went to Court and it
9 was decided? Have we got the
10 Judgement?
11 A: Yes, a copy of the Judgement.
12 MISS CLARKE: Written Judgement?
13 A: Yes, written Judgement and there is also
14 a copy of the Notice and Grounds of
15 Appeal.
16 COMM. BOGLE: Because it would be very important...
17 MRS. PHILLIPS: Which of the matters are you talking
18 about, because I have seen Judgements in
19 relation to...
20 A: Eagle.
21 MRS. PHILLIPS: You have a Judgement in relation to
22 Eagle? Can we see it?
23 COMM. BOGLE: This is what I am trying to say, if
24 there is a written....
25 MISS CLARKE: A written Judgment, Debtor 5, from the

1 judge.

2 A: Yes.

3 COMM. BOGLE: That is very important for our benefit.

4 MISS CLARKE: Are there other written Judgements you
5 want to disclose?

6 COMM. BOGLE: Is there any other case that you had
7 that has come up here that you have had
8 written Judgement?

9 A: No, we have not had a trial in the other
10 case but we have had interim
11 interlocutory matters which have been
12 decided.

13 COMM. BOGLE: Decided by the Court?

14 A: Yes.

15 COMM. BOGLE: All those are very important to the
16 Enquiry to see what the Court has
17 ruled, see what opinion the Court has
18 given.

19 A: I agree with you.

20 COMM. BOGLE: You agree with me but you did not
21 forward those to us at all. I take it
22 that you are withholding information
23 from the Enquiry whether intentionally
24 or not.

25 A: No, sir. In fact, I got the impression

1 transferred to my client, that is
2 Century National Bank. I wasn't aware of
3 Eagle Merchant Bank's Judgment nor have
4 I either had the benefit...

5 MISS CLARKE: Could we have a look at what Debtor 5
6 has?

7 COMM. BOGLE: Yes, you may have a look at it Miss
8 Clarke.

9 A: I also have information on the amounts
10 of Eagle Trade Services and letter from
11 JAMPRO.

12 COMM. BOGLE: How many cases do you have or had in the
13 Court?

14 A: With respect to FINSAC, two.

15 COMM. BOGLE: Two cases.

16 A: Yes. One where we were sued as
17 guarantors, myself, and other three
18 other companies were sued as guarantors.

19 COMM. BOGLE: Right.

20 A: And the other one, where Company and
21 Company were pursued
22 for debt, supposed debt owed prior to
23 FINSAC taking over.

24 COMM. BOGLE: But you and your companies also took
25 action?

1 opportunity to look at that document,
2 because as you have rightly indicated,
3 Mr. Chairman, I am sure that the process
4 would benefit from decision based on,
5 you know, considered assessment and
6 appreciation of the evidence. So a
7 document such as that, I would really
8 want to take some pause to look at,
9 certainly for my own benefit in terms of
10 my function as articulated just now.

11 COMM. BOGLE: I am inclined to adjourn for the day.
12 He has two Interlocutory Judgements.

13 MRS. PHILLIPS: I just wanted to point out, Mr.
14 Chairman, there are two Interlocutory
15 Judgements in the case brought by
16 Company Ltd. against FIS, JRF and Dennis
17 Joslin. One is by the Honourable
18 Mrs. Justice Sinclair-Haynes and in
19 addition to the written Judgement of the
20 Judge I have also attached the Notice of
21 Appeal, the formal Order of the Judge
22 and the decision of the Court of Appeal.
23 In this particular case, the Court of
24 Appeal allowed the appeal.
25 In the other Interlocutory

1 Judgement which is of
2 Miss Justice Mangatal, the Court
3 of Appeal dismissed this Appeal.

4 MISS CLARKE: In terms of the one that was just passed
5 up though, you know, it relates to
6 entirely different matter. This is the
7 matter that we are now on to with
8 Caribbean Chalks, it is an entirely -
9 and I think my friend has indicated
10 that she was not aware of it, so that is
11 the matter. I have not seen the others
12 either but this is the one we where were
13 at now and I would certainly want, for
14 where we have reached now, to be able to
15 look at the data that was supplied,
16 certainly to advise myself.

17 COMM. BOGLE: Okay, what we will do now, we will
18 receive these in the records and also he
19 is to provide another one.

20 MR. DePERALTO: Well, we have one here; which is the
21 Eagle.
22 MISS CLARKE: He has provided that.

23 MRS. PHILLIPS: I don't have a copy of that.

24 COMM. BOGLE: What we are going to do for the records,
25 we are just going to record them and

re-convene we will be able to deal with

1 they would fall because I think this
2 would probably have to do with the first
3 segment of the witness' complaints.

4 COMM. BOGLE: Which one you are talking?

5 MISS CLARKE: Debtor 5 Company against FIS, JRF and
6 Dennis Joslin where Company Ltd. is
7 actually the claimant. The 2003 Suit
8 brought by Company Ltd. was relative to
the
9 first segment of its claim in terms of
10 its concerns with Century National Bank
11 and its affiliates. So we probably want
12 to go back and mark these.

13 MRS. PHILLIPS: Sorry. Who is my friend referring to as
14 an affiliate of CNB?

15 MISS CLARKE: Let me assist my friend because, you
16 know, I cannot, with the greatest of
17 effort promise that I will undertake to
18 be very forensic in my choice of words.
19 I was referring to His relations with
20 the Century Group. So I am saying that
21 in terms of the complaint insofar as it
22 had its genesis in his relationship with
23 Century National Bank, Century Merchant
24 Bank and Trust Company Limited, the

Century Group, this is the Judgement,

1 these Judgements would relate to that
2 segment of his complainant. If my friend
3 is thinking that I am referring to JRF
4 as an affiliate of Century, just to
5 make it clear to her, I am not. I am
6 actually referring - there are two
7 Century entities mentioned here, Century
8 National Bank and Century National
9 (CNMBTC) In his statement, there are
10 two of them mentioned.

11 COMM. BOGLE: Can we have them in just about at the
12 last AS12 A and 12 B.

13 A: Debtor 5.

14 MRS. PHILLIPS: Which one is 12 A, that will be the
15 Judgement of Mrs. Justice Sinclair-
16 Haynes?

17 COMM. BOGLE: Yes.

18 MRS. PHILLIPS: With the attendant document Notice of
19 Appeal and everything?

20 COMM. BOGLE: Right the complete document.

21 MRS. PHILLIPS: And the other one which is the Judgement
22 of the Honourable Miss Justice Mangatal
23 that will be 12B?

24 COMM. BOGLE: 12 B, yes.

25 MRS. PHILLIPS: With all the attendant documents

1 including the decision of the Court of
2 Appeal.

3 COMM. BOGLE: Yes.

4 MRS. PHILLIPS: One more Court document here,
5 Commissioner, which is a Cost Order.

6 COMM. BOGLE: That has to do with which of the cases?
7 MRS. PHILLIPS: The first of the two.

8 COMM. BOGLE: Mangatal?

9 MRS. PHILLIPS: Well, it has to do with the Suit brought
10 by Company Ltd. against FIS, Jamaican
11 Redevelopment.

12 COMM. BOGLE: That is 2209/2003?

13 MISS CLARKE: I am sorry. Are we at this point
14 introducing all the Court documents?
15 Because I am not really seeing the
16 relevance of putting this one in at this
17 time, because Counsel will have her
18 opportunity, and she has had, to put her
19 documents in at the point when she is
20 cross-examining the witness. We were at
21 a place where Judgments of the Court
22 were referred to....

23 MRS. PHILLIPS: Commissioner, I was trying to be helpful
24 but if you want me to wait and put it in
25 later I will happily wait.

1 can be copied and circulated.

2 DEBTOR 5: Yes, sir.

3 COMM. BOGLE: And until we reconvene or until you
4 return, if go through and find any other
5 document that you think might be useful,
6 please provide the Office with it.

7 DEBTOR 5: Yes, sir.

8 COMM. BOGLE: Thank you very much.

9 Ladies and gentlemen, this
10 Enquiry is now adjourned until
11 Tuesday of next week.

12 Debtor 5, I do not believe
13 that you will be returning
14 Tuesday of next week but the
15 Secretariat will have to
16 schedule a time when you will
17 return and that time. you will
18 be notified of that time.

19 DEBTOR 5: Yes, sir.

20 COMM. BOGLE: I think next week Tuesday we should have
21 - you will be all advised who will be
22 here next week Tuesday but definitely we
23 will be here next week Tuesday at 9:30.
24 If you are not informed by some time
25 tomorrow, could you please get in touch

1 with the Secretariat and they will
2 inform you, but I am sure, outside of
3 that, they will communicate with you all
4 indicating who will be here next week
5 Tuesday.

6 Thank you, have a good
7 afternoon.

8 MISS CLARKE: My friend is pointing out to me that we
9 were at a point where the witness was
10 about to refer to something in a witness
11 statement by Martin Gooden. I would wish
12 to re-visit that on the next occasion.

13 COMM. BOGLE: Yes.

14 MISS CLARKE: Thanks much.

15

16

A D J O U R N M E N T