

Wednesday 27th April, 2011

COMM. BOGLE: Good morning ladies and gentlemen. This Enquiry is now in session. Our apologies for the late start. For the records may I have the names of the attorneys present, please.

MISS CLARKE: Morning Mr. Chairman and members of the Commission. My name is Judith Clarke, appearing on behalf of the Commission.

MR. GARCIA: Dave Garcia, appearing on behalf of Patrick Hylton.

MRS. PHILLIPS: Sandra Minott-Phillips and Gavin Goffe, instructed by Myers Fletcher and Gordon appearing on behalf of Jamaican Redevelopment Foundation Inc.

COMM. BOGLE: Thank you very much. This morning we will be hearing from Debtor 5. Debtor 5, can you please come forward.

DEBTOR 5 CALLED & SWORN.

COMM. BOGLE: Thank you very much. Miss Clarke?

MISS CLARKE: Morning Debtor 5.

DEBTOR 5: Good morning, ma'am.

Conditional page break: 2

Q: Could you for the records give your full name, address and occupation please.

A: My name is [REDACTED]. For the time being I am at [REDACTED]
[REDACTED].

Q: Your occupation?

A: I am a businessman.

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

A: Yes, ma'am.

Q: May the witness statement be shown to him.

A: I could find a copy if I try.

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

(Witness statement shown to Debtor 5)

A: Yes.

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

A: Yes, ma'am, it is.

COMM. BOGLE: Excuse me. I noticed that the copy that we have is undated.

MISS CLARKE: I didn't check to see if mine is dated. Mine is also undated, Mr. Chairman, but that could be dealt with in very short order.

Debtor 5, could you give us some idea of the date when you executed this statement?

A: My best recollection is about last week Wednesday.

Q: About last week Wednesday?

A: Yes.

Q: That is the witness' recollection. Last week Wednesday would have been the 20th of April and so the record would reflect that prior to coming to this hearing, perhaps a week prior, he executed the statement.

COMM. BOGLE: Yes.

MISS CLARKE: Now, before you give us your account there are just a few questions that I would like to ask you as a matter of perspective. Your approach to this Commission this morning, as I understand it, Debtor 5, had its genesis in your dealings with two financial institutions, is that so?

A: Two defunct financial institutions, yes.

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

A: That is correct, yes ma'am.

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

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

Q: The other entities within the groups became involved?

A: Involved in one way or the other.

Q: And you at the time of your dealings with these institutions the companies or your business entities that would have been affected are [REDACTED], [REDACTED], [REDACTED], Stationary Manufacturers Limited.

A: Yes, some are involved with direct transactions, others were guarantors and have been in the case of Eagle have been sued as guarantors.

Q: But have I gotten the names of all of the business concerns in respect of...

A: Yes, there was another company, [REDACTED].

Q: Now, I am going to ask you to give your account, recount, if you will, your dealings as it relates to [REDACTED] and [REDACTED]. First of all, sorry Debtor 5, these entities and yourself would have dealt with Century National Bank?

A: Yes.

Q: Or the Century Group?

A: Yes, [REDACTED] and [REDACTED].

Now, I don't know if you want me to go through the statement here.

Q: If you prefer to give your account you know, from memory in a coherent and chronological way.

A: Yes.

COMM. BOGLE: I think it might aid the progress of the Commission if he goes through the statement, his witness statement as he has it here. If he has an additional comment on any point that he has made here, then he may do so, but it is easier for us to follow if he goes along this line. Any point, if he has additional information on that statement, he may so give.

MISS CLARKE: Very well, Mr. Chairman.

A: And this is more or less in chronological order. You have my name or you want to lead?

COMM. BOGLE: You may read from your statement and at any point in that statement if you have something that you would like to add verbally, in other words, in addition to what you have there, you may so do, but you can read from your witness statement.

MISS CLARKE: Perhaps Debtor 5, you can start at paragraph 2?

A: Paragraph 2, yes. [REDACTED]

[REDACTED] Limited were sister companies under my common management. Myself and these two companies began doing business with Century National (CNB) Bank around January 1988.

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

Demand loan.

Overdraft facilities.

Banker's guarantees and performance bonds.

Promissory Notes.

Cash deposits or CDs.

Mortgage on real estate.

Around September 1988 [REDACTED] obtained credit facilities as follows:

Demand Loan account - and it is important that we set out the account that we had,

Demand Loan account [REDACTED] for \$ [REDACTED].

Overdraft facilities account [REDACTED] for \$ [REDACTED].

Total of the initial credit facilities \$1,085,000.00.

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

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

Q: Very well. Continue please.

A: [REDACTED] and I guaranteed the aforementioned facilities for sister company [REDACTED]. In addition [REDACTED] mortgaged its premises at [REDACTED] [REDACTED] respectively.

COMM. BOGLE: 557.

A: 557. I am sorry. Sometime in October 1990, CNB wrote to [REDACTED] [REDACTED] stating that the overdraft facility had been exceeded by approximately \$ [REDACTED] and that the principal of the demand loan had not been reduced since the inception of that facility.

Debtor 5 Company Career Fashions Limited applied for an extension of the overdraft limit in the sum of \$ [REDACTED] in addition to the \$ [REDACTED] already used over the authorized limit and around December, 1990 CNB on the authorization of [REDACTED] [REDACTED] Limited unstamped the mortgage endorsed on the titles by \$ [REDACTED]

At the end of December therefore, 1990 [REDACTED] title was used to cover facilities totaling \$ [REDACTED], being \$ [REDACTED] for the demand loan and

\$[REDACTED] for the overdraft facilities. This sum is reflected in the mortgage numbered [REDACTED].

MISS CLARKE: Hold on for me please. Are you now in a position to produce for this Commission copies of the relevant titles?

A: Yes.

COMM. BOGLE: I don't know if this is a correction, but at point 8, the last paragraph you read you said, "the title was used to cover facilities totaling \$[REDACTED] [REDACTED] and the demand loan \$[REDACTED], my addition would tell me that it should be a little more than the \$[REDACTED].

A: It is \$[REDACTED]. It is the 1,085 plus \$[REDACTED].

COMM. BOGLE: So therefore the total facilities at this time then is not the \$[REDACTED]?

A: No, it is \$[REDACTED].

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

A: I am making a correction to the statement, yes. And that \$[REDACTED] is made up of \$[REDACTED] for the demand loan and \$[REDACTED] for the overdraft facilities.

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

A: I have a lot of these things, I don't know in what order they would be recorded in. Now, I have some of these but they are bounded.

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

Mr. Chairman, my friend has graciously ask to make some copies of the titles mentioned at paragraph 7 I believe of the witness' statement [REDACTED], [REDACTED], that is at paragraph 5, I am sorry, of the statement and [REDACTED].

COMM. BOGLE: The first one is [REDACTED]?

MISS CLARKE: [REDACTED] Folio [REDACTED].

COMM. BOGLE: Those are not in the witness statement?

MISS CLARKE: They are not in the witness statement.

COMM. BOGLE: Can we have those copied then?

MRS. PHILLIPS: There are sufficient copies.

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

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

(Documents shown)

A: Yes, these are the copies.

Q: Now, in relation to [REDACTED] could you look at that one please, [REDACTED]

A: Yes, I am looking at that one.

Q: And that is the title to [REDACTED]?

A: Yes, it is.

Q: Could you identify by number or numbers the mortgages to which you have referred to so far in your witness statement?

A: If you look at the last page on the top left hand corner you would see mortgage [REDACTED] 30th of November, 1988 was the date of registration and the amount covers [REDACTED], an amendment there, it is \$ [REDACTED] with interest. And you see the cross reference there, the other title there.

Q: And then further down there is a miscellaneous item just below that, could you just indicate whether the sum referred to there is referable to the \$ [REDACTED] that you have referred to in your witness statement?

A: Yes, ma'am. You see there the above mentioned mortgage number 486452 has been up-stamped to cover a further indebtedness of \$ [REDACTED], 6th of December 1990.

Q: And that would account for your total sum of \$ [REDACTED]?

A: That would account for the \$ [REDACTED].

Q: Thank you Debtor 5.

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

COMM. BOGLE: No, what I suggest we do is in view of the fact that the exhibits are attached to the witness statement, they have already been numbered from one that we will call [REDACTED].

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

COMM. BOGLE: 1(a) is [REDACTED].

MISS CLARKE: I am very much obliged to you, sir. Debtor 5, could you just now continue from paragraph 9 of your statement.

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

MISS CLARKE: Both titles?

A: At least the [REDACTED] you have a miscellaneous.

Q: 1049 822?

A: Yes. It says miscellaneous number [REDACTED] the above mentioned mortgage number [REDACTED] has been up-stamped to cover a further indebtedness of \$ [REDACTED]. That was entered in 1993.

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

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

Q: Continue please. Paragraph 9.

A: Towards the end of [REDACTED] Limited held hypothecated certificates of deposit (CDs) with Century National Bank with face values of \$ [REDACTED]. These CDs also covered overdraft facilities and other facilities offered as follows:

Bank to Bank Guarantee to BNS - US\$ [REDACTED] or J\$ [REDACTED].

Performance Bond to Jamaica Telephone Company Limited, now LIME J\$ [REDACTED].

Guarantees for these facilities were given by myself and [REDACTED] and the servicing of all the facilities was transferred to [REDACTED].

It was agreed in September 1990 that [REDACTED] would accelerate pay down of the demand loan account then renumbered - and make note of this number [REDACTED] such that the title to the properties [REDACTED]

[REDACTED] would be freed so that this company could obtain its own mortgage to finance its manufacturing operations.

Between September 1990 and June [REDACTED], [REDACTED] Limited and CNB initiated payments pursuant to the rapid pay down of the demand loan.

In March 1992 CNB claimed that the demand loan was not fully paid off and gave [REDACTED] seven days to clear the alleged balance outstanding.

In the absence of up to date accounts at the time, agreements were reached with another sister company, [REDACTED] to pay out the alleged amount outstanding.

Inadvertently payment of approximately \$ [REDACTED], not so much.

Q: \$ [REDACTED]?

A: Yes, were made payable to [REDACTED] instead of being made payable to CNB for the account number [REDACTED]. With these payments and the accelerated payments, the demand loan was overpaid by \$ [REDACTED] by June 1993.

COMM. BOGLE: Just a minute. Debtor 5, the account number 2601002542, are we referring to the same account that you referred to at 11, paragraph 11 or this is another account?

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

COMM. BOGLE: Because the numbering is different.

A: The 01 is a typographical error.

Q: It should be 00?

A: No, it should be 01, the one at the top should be 01.

COMM. BOGLE: At paragraph 11 that number is incorrect?

A: Yes, there is a typographical error there.

COMM. BOGLE: Okay.

A: Thank you, Mr. Chairman because that is so important that we keep tag of these accounts and the payments against them.

MRS. PHILLIPS: Sorry, what was the typographical error?

COMM. BOGLE: At paragraph 11 that account number does not have a '1' in it as paragraph 15. The paragraph 15 number is the correct one, therefore paragraph 11 should be adjusted to read [REDACTED].

MRS. PHILLIPS: Obligated.

COMM. BOGLE: Go ahead.

A: I will repeat. With these payments and the accelerated payments the demand loan was overpaid by \$ [REDACTED] by June 1993.

Around the same time March 1992, [REDACTED] Limited instructed CNB to encash CDs to clear the overdraft incurred up to that date. CNB requested and was given Promissory Note for [REDACTED] [REDACTED] and identically supporting Promissory Note from the Guarantors, that's me and [REDACTED] Limited, to cover the following:

Net overdraft as at (March 27 1992) \$ [REDACTED].

Performance Bond \$ [REDACTED].

Bank to Bank Guarantee to (BNS) \$ [REDACTED].

Total Promissory Note (27/3/1992) \$ [REDACTED].

At the end of March 1992 the overdraft facility was cleared using encashed CDs leaving a credit balance on current account number [REDACTED] from March 1992 to 31st May 1995 when the group ceased banking relations with CNB this account maintained credit balances and at the latter date the credit balance in this account had the amount of \$ [REDACTED].

COMM. BOGLE: Just before you move. This account number at 16 is now a different account? We were dealing with the overdraft account of [REDACTED] and then at paragraph 16 we are now dealing with an account of [REDACTED], so we are dealing with a different account now?

A: It is the identical account, the one for which we obtained - if you look at the overdraft facility in paragraph 4 \$ [REDACTED] it was for account [REDACTED] which at paragraph 16 that I just read is [REDACTED] which is supposed to be the same account.

COMM. BOGLE: So the demand loan which is the [REDACTED] 2, that account you are saying was overpaid by \$ [REDACTED]?

A: Yes, sir.

COMM. BOGLE: And then the overdraft facilities which is account number [REDACTED] you are now saying that also has a credit balance of \$ [REDACTED]?

A: Yes, sir.

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

A: Are now in credit, yes, sir.

COMM. BOGLE: Okay.

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

COMM. BOGLE: Go ahead.

A: So the point you just made, Mr. Chairman, is that 17, with the overpayment of the demand loan of \$ [REDACTED] and the credit balance in the current account \$ [REDACTED] CNB was indebted to the Guarantors in the total sum of \$ [REDACTED] with interest.

In June 2007, a special investigative audit was carried out by a fellow of the Institute of Chartered Accountants, Neville Robinson & Associates, no Limited please, that is an error, the 'Limited'. The report is attached with supporting evidence as per the list of exhibits.

Around December 1991 [REDACTED] applied to Century National Merchant Bank and Trust Company for a mortgage in the sum of \$ [REDACTED] to finance its expanding operations. Although approved in principle, [REDACTED] did not take up this mortgage.

Due diligence information provided pursuant to the mortgage application were used by CNB to amend the mortgage previously registered as per CNB's letter dated June 1992 (Exhibit 1) to the Registrar of Titles. The mortgage application letter dated December 4, 1991 CNMBTC's response, and the response dated January 28, 1992 and application to up-stamp bearing miscellaneous that I have mentioned previously [REDACTED] are exhibited herewith as Exhibit 2, "Debtor 5 4".

MISS CLARKE: [REDACTED], could you pause there to go through the exhibits.

A: Yes, ma'am.

Q: Those would be attached to your statement though?

A: Yes, ma'am.

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

A: Page 11?

Q: It is not paginated, it comes after page 13 just after your witness statement just after the list of exhibits.

A: Oh that is the list of exhibits.

Q: And there is a letter there that we call AS1 or [REDACTED] 1, dated June 9, 1992.

A: 1992.

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

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

Registration of Second Mortgage over Certificate of Title registered at Volume 1046 Folio [REDACTED] Debtor 5 Company Limited.

Mortgage documents in relation to the subject matter were submitted to your office on April 7, 1992 but were subsequently returned on April 14, 1992 with the notation that caveat # [REDACTED] is outstanding".

We are now withdrawing our Second Mortgage and substituting it by up-stamping our First Legal Mortgage # [REDACTED]. Kindly therefore transfer the registration fee of \$1,903.00 which was paid on April 7, 1992 to our up-stamping document. (attached is your official receipt # [REDACTED] which is the miscellaneous number.

Enclosed are the following:

Certificate of Title registered at Volume [REDACTED] and Volume [REDACTED] which are the titles I just read to you.

Up-stamping document.

Photocopy of the mortgage document which was previously submitted (for ease of reference).

In acknowledgement of receipt of the enclosures, kindly sign and return the attached copy letter.

Q: Debtor 5, just pause there for a moment please. You state further at paragraph - before we look at the other exhibits that the mortgage endorsed on Debtor 5 Company title was up-stamped for the amount of \$ [REDACTED] in June 1993?

A: Yes.

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

A: Precisely, ma'am. That is the letter that represents the up-stamping of \$ [REDACTED]

Q: And you had intimated earlier that this was done without the permission of any of the entities under your management Debtor 5 Company Debtor 5 Other Company, Debtor 5 Company Limited or any of the concerns?

A: That is precisely so. It was done on the powers in the mortgage agreement, mortgage instruments giving the bank the power to up-stamp without notification and it was utilized in that manner.

Q: Could you just clarify for the purposes of the hearing, if it was done under the powers granted in the mortgage document, why do you say that it was done without permission?

A: Without permission relating to this transaction that when there is a blanket permission you give when you sign the mortgage document that the mortgagee can

up-stamp without reference to you as to what is being up-stamped. They do it without your permission.

Q: How would you have benefited from that up-stamping, from that \$ [REDACTED] was there a draw down on your part of your company in respect to that \$ [REDACTED]?

A: There was none. And not only that, I have evidence if I am permitted to show it where that time 1992, between January 1992 and February 1994 Century National Bank communicated to us that because of their monetary policy and restrictions on National Century Bank they were not able to allow even a \$ [REDACTED] overdraft nonetheless to advance \$ [REDACTED].

Q: So on your understanding, what would this [REDACTED] have represented?

A: This \$ [REDACTED] will be made clearer when we go and look at their demand for payment. What they did is that the Promissory Note given for the Performance Bond \$ [REDACTED] and the Bank To Bank Guarantee to Scotia Bank \$ [REDACTED] was registered, was re-entered. I am not quite sure what is the legal term, but substitute it, if you like, for the \$ [REDACTED] which we agreed on the other side, and I will show evidence that it has been fully paid, but they take this contingent liability \$1.4 million. I will tell you that we had discussions with the Chairman of Century National Bank where they admitted that it was an error and there are letters there where they wrote threatening lawsuit and I went in and discussed it and it was only after FINSAC took over that they decided, ten years after, to enforce this, what is a false claim.

Q: For the \$ [REDACTED]?

A: \$ [REDACTED] plus the \$ [REDACTED] which was paid off. It is part of this up-stamping here, because what they are really trying to make up is the full Promissory

Note which is \$ [REDACTED] which we mentioned there. They are using that to bring the Promissory Note as a demand loan.

Q: Let me just get you clearly. Are you saying Debtor 5, that there is no facility that was available or accessed by you that can be supported by the endorsement of that \$ [REDACTED] on your title, are you asserting that?

A: Yes, I am asserting that.

Q: All right, could we look at the other document just after AS1, AS2 to AS4. We will just go through them. This is a letter to Debtor 5 from Century National Merchant Bank and Trust Company Limited (CNMBTC), dated January 28, 1992.

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

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

A: AS2 is a letter written by me.

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

A: Basically in this letter I was applying pursuant to the rapid pay down and that the debt was now fully paid but Century National Bank's lending powers were curtailed because of the difficulties we were having and I was making this application to the Merchant Bank of the Century Group, and this was a loan application made.

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

A: Yes, sir.

Dear Sirs:

We hereby apply for a mortgage of [REDACTED]
[REDACTED], using our real estate [REDACTED] as security.

The Valuation Report prepared by Orville Gray & Associates, is with the securities section of your Bank. It shows a value of [REDACTED] on completion.

The purpose of the mortgage is as follows:

(A) Pay out to Century National Bank - Debtor 5 Company Debtor 5 Other Company Demand loan and overdraft, totaling approximately One Point [REDACTED]

(B) Put in toilet fixtures, and windows, and paints already bought for the premises -- \$[REDACTED].

(C) To add to the above premises by building at [REDACTED], 3850 square feet of space so that the three (3) companies (Stationery Manufacturers Limited, Caribbean Chalks Limited and Debtor 5 Company Limited) can be accommodated at one location.

Please note that we are under pressure from the landlord at stationery Manufacturers Limited, [REDACTED], to vacate the premises. For ease of management and the reduction of overheads by over \$[REDACTED] monthly, we would very much like to fulfill our long held ambition to rationalize our operations at one location.

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

Both [REDACTED] Limited and [REDACTED] Limited have material for the next eight (8) or nine (9) months, and Debtor 5 Company Limited have contracts under negotiation to self- finance for the next few months.

We look forward to your usual prompt response.

MISS CLARKE: Thank you Debtor 5.

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

COMM. BOGLE: Right, the first one was AS1. After AS1A and 1B and we will accept them as we go along unless there is any objection or the number needs changing.

MISS CLARKE: Thank you very much.

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

A: Yes, the letter I just read.

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

COMM. BOGLE: Sure.

MISS CLARKE: It is addressed to Debtor 5 , Managing Director, Debtor 5 Company Limited, [REDACTED], Kingston.

Dear Debtor 5

Re: Your Loan Application -- \$ [REDACTED].

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

We are very surprised that you feel disappointed that your loan application has not yet been formally approved. This delay is no fault of Century Bank Merchant Bank &

Trust Company Limited since the supporting documents and data upon which our decision would rest was not fully provided.

The circumstances surrounding your application are as follows:-

1. Your letter dated 4/12/91 for a mortgage came to our hand on December 18, 1992.

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

COMM. BOGLE: While you mention that, this reply is referring to a letter dated January while the previous letter AS2 is December 4, so it seems like the reply here is to a different letter, not to the letter dated December 4, so we are really reading a letter that is referring to a letter that is not in front of us, because this letter as I said the date, and also the fact that they say we are very surprised that you feel disappointed but the letter of December 4, 1991 does not state any disappointment.

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

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

A: No, we don't have that but the reference to that was only that I was disappointed, but this response is to the same mortgage application that I just read; that letter would only be relevant in terms of how I expressed myself to him why he was responding, but this is still a response to the loan application.

COMM. BOGLE: Go ahead.

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

- i) Your letter dated 4/12/91 for a mortgage came to our hand on December 18 1992.
- ii) The writer made an appointment for 23/12/92 with your good self to attend our offices for us to complete some supporting documents and to obtain any pertinent information that was needed. Again the date would admit to some error, Mr. Chairman.
- iii) You did not keep that appointment, while at the same time you were in discussion with our [REDACTED], Senior Assistant General Manager of Century National Bank.
- iv) I enquired of you whether you intended proceeding with this proposal with Century National Merchant Bank or Century National Bank. By that time the Christmas holidays came and we agreed to meet first week of January 1992 to discuss your needs to form the basis for packaging your proposal.
- v) We met on January 13, 1992, however, based on information I could extract from your file and/or from [REDACTED], I prepared the loan forms while we awaited the supporting documents/information.
- vi) You are aware that the valuation and estimate came to hand on January 24, 1992, and the life insurance policies earlier in the same week.
- vii) We agreed that in order to expedite you would bring us the last twelve months Current Account statements since you advised that you could not provide us with audited financial data. I am on page 2 now.
- viii) In an effort to speed up the process, the writer approached the Credit Committee and advised of your needs and what was the situation at that time. Subsequently, you were advised of the Committee's decision and that you need to advise us about your loan facilities at Eagle Commercial Bank and Scotia Bank Centre. Since then, you

said you could not no longer provide the statements, we advised that we would then proceed to extract what information we can from the copy statements here.

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

The foregoing details will reveal that had the bank got all that was requested from the first week of January a decision would have been taken at least two weeks ago.

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

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

Yours truly

[REDACTED]

General Manager.

AS3 Mr. Chairman. AS4 which is referred to in the same paragraph is an application to up-stamp bearing miscellaneous number [REDACTED], that is in pen or inked in pen at the top.

A: If I may, that is an attachment to the letter, the first letter AS1, those two would have gone together, it wasn't a part of what was sent to the Titles Office, that is AS4, those two pages, AS 4 and AS1 all form part of the document that was sent to Titles Office and you will see, if I may, you will see at the second page of AS2 that it refers to the date of the mortgage that they are up-stamping and it is September 22, 1988, mortgage number is [REDACTED] and the same volume numbers, same mortgagor, original mortgage for stamp \$[REDACTED]; present amount with stamp duty

paid they have that and then additional amount on which stamp duty is to be paid \$ [REDACTED], so in effect the \$ [REDACTED] that was already paid and we have all the paid cheques endorsed by the bank to show that, that \$ [REDACTED] plus \$ [REDACTED] are now being registered to give effect to an ongoing mortgage or a new mortgage so to speak and if you will permit me, you go to page AS7 and you will see that the same mortgage number in the middle of the page there, [REDACTED] and [REDACTED], those are the mortgage numbers or reference numbers that they are claiming in a notice requiring payment of mortgage, AS7, and the amount being claimed is \$ [REDACTED].

Q: As principal?

A: Yes, as principal, and then you have the interest of \$ [REDACTED] with charges. So the debt that has been paid with evidence of its payment is now repackaged by first the up-stamping and the registration of the mortgage, and this includes the overdraft facility of \$ [REDACTED]. When you look at the bank statements you will see that the current account is in credit of over \$ [REDACTED], but the entire \$ [REDACTED] which was in the original mortgage is being claimed again, plus an addition of \$ [REDACTED] up-stamp to arrive at a debt for the promissory note and there was a notice requiring payments of mortgage that was sent to us and we can go through the detail of that. After that I went to Mr. Crawford who was the Chairman, a friendly and helpful banker, pointed out the problems to him and in his charming way he assured me that everything would have been all right, only that, that error resurfaced a decade later under the new FINSAC regime.

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

A: Yes ma'am, which is a bit of what I just said. By letter dated October 9, 1992, referred to Debtor 5 5, CNB claimed inter alia that amounts were outstanding against

a fictitious demand loan bearing account number [REDACTED] with a net balance of \$[REDACTED]. Investigations later showed that CNB had converted the promissory note to a demand loan and the approximately \$[REDACTED] paid between January, 1992 and March, 1993 which payment was later acknowledged by FINSAC in letter dated November 23, 1999, referenced here Debtor 5 6 was used to reduce the \$[REDACTED] to the \$[REDACTED] being claimed above.

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

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

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

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

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

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

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

A: Yes.

Q: Five comes after AS4.

A: Usually.

Notice Requiring Repayment of Mortgage.

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

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

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

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

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

A: I will start at the beginning.

Debtor 5 , [REDACTED], Kingston.

Dear sir,

1. Current account [REDACTED] in the name of Aubrey Smith and they are combining my account with Debtor 5 Company account overdrawn \$ [REDACTED].

2. demand loan [REDACTED] in the name of Debtor 5 Company Limited. Principal \$ [REDACTED] with overcharge and you will notice that \$ [REDACTED] plus twenty add up to \$ [REDACTED] which is a little, you know...

We write again in reference to the liabilities at caption. You will agree that we have gone beyond the normal call of duty to facilitate you and it is with deep regret that we advise that we must now move to protect our interest in this matter.

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

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

And this is by [REDACTED], Assistant General Manager, Credit.

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

A: Oh I see.

MISS CLARKE: I just want you to refer back to the account number itemized at number two of the caption?

A: Yes.

Q: And this is the same account number referred by you in paragraph 22 as a fictitious demand loan bearing account # [REDACTED], is that correct?

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

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

A: Because there was no such demand loan. That number is the number of the promissory note that was signed to cover the overdraft facility and to cover the \$ [REDACTED] bank to bank guarantee from Scotia and the \$ [REDACTED] performance bond to Jamaica Telephone Company.

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

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

Q: 1992?

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

never came up as being outstanding. Jamaica Telephone Company at no time said that we are calling on the performance bond because Debtor 5 Company Limited and Debtor 5 Company Career Fashions have not performed on the contract or Bank of Nova Scotia say that the bank to bank lines of credit in US dollars that were given to Debtor 5 Company were not settled, no such thing.

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

COMM. BOGLE: Just a minute.

COMM. ROSS: Just to ask, Debtor 5, can you explain the total at the top of the letter in AS5, somehow those numbers don't seem to add up to \$[REDACTED].

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

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

A: It does not add up, but the whole thing is irrelevant because this is a fictitious claim, but it does not add up. There was a time, as you recall, when at least the bank figures would have added up.

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

A: Yes, that they were claiming, they were actually claiming the \$[REDACTED].

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

A: Yes.

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

A: I wouldn't say disregarded, but the question was not just what the figure is saying, the question was whether there was a claim of a debt at all or whether there was no debt, so the detail of the figures was not really an issue, I mean it's not, I would deceive you if I try to recall the exact details of the discussion, it was largely the principle of us having settled our debt and having a claim substantially more than the original debt.

MISS CLARKE: Debtor 5, I hope I am not over-reaching the query that Commissioner Ross has made, but I believe what the Commission would want to establish for its benefit, if you look at AS7, there is that same account number to which you referred to as a fictitious account, that number is mentioned in that letter dated October 9 1992. Did you -- firstly, in your discussion with CNB, did you bring to their attention your concerns relative to this fictitious account and let me ask you the second question and you can answer them one after the other, did you in your discussion with CNB alert them as to any of the discrepancies in the figures as was pointed out to you by Commissioner Ross in terms of the addition, the computation so that the sums, when taken together in AS5, do not amount to \$ [REDACTED], did you in your discussion bring this to the attention of Century National Bank at the time, your concerns about this fictitious account number and the discrepancies in the figures?

A: No. My recollection is merely that I know that on the receipt of the letter threatening lawsuit that I had discussion with Mr. Crawford, but the details of what the figures were and all of that, you will notice that this is 1992, which in another year or so would be twenty years. I have a good memory but I wouldn't be able to recall

the details of those discussions, but the general thrust of my meeting was that we have no debt, we prided ourselves in that we had cleaned off our debt. It was the time when interest rates were beginning to climb and those who were looking ahead, there was nothing we could do legally to pay the type of interest rate that was being charged.

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

COMM. BOGLE: Just a minute.

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

A: Yes.

COMM. ROSS: That was entered into?

A: Yes.

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

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

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

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

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

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

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

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

A: What?

COMM. ROSS: This document is suggesting that it was a loan, with interest rate of sixty-nine percent, \$[REDACTED].

A: No, if you look further up, you see a seventy percent and this is a fall-back figure. At the date of this note the market rate of Century Bank was sixty- nine but the commission rate was seventy percent.

COMM. ROSS: Over and above the Century National Bank market rate for lending, at the date of this note the market rate was [REDACTED].

A: But if you look also, there are two promissory notes, one is [REDACTED] at the end and the other one is [REDACTED]. One is signed by Debtor 5 Company Career Fashions which is the original one and the other one is the guarantee by Debtor 5 Company Limited, but if you go back to the document that we went through you will see that they are saying, and later on you will see affidavit by FINSAC which says that this promissory note represents the accumulation of the debt at the end of March 1992. And that is one of the reasons why I was at pains that you follow the account numbers of the bank that the facilities, demand loan and all of that, that we have the numbers to show that there is no way that they could have been up-stamping for an overdraft because the bank account at that time had credit. I show you the bank statement, at the beginning of April 1992, the bank account had \$[REDACTED] in credit and I hope we can go through the cheque payments to show that the demand loan was paid off and more.

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

A: The Promissory Note as we were told by Century, that we had CDs, and the CDs were going to be encashed to pay off the overdraft facilities, we had an overdraft facility up to nearing the end of March 1992. And also, that you had some contingent liabilities that were outstanding, and it was represented to us that these promissory notes, one the original promissory note and the guarantor's promissory note, that the CDs were hypothecated to Century National Bank and that they were going to cash it to pay off the overdraft facility and that at that time it might have been that the bank to bank guarantee and the performance bond, although there was no liability outstanding, that they were not discharged.

COMM. BOGLE: The bank statements and other things that you referred to, are they here?

A: Yes, I have copies.

COMM. BOGLE: Are they attached to your witness statement?

A: No, sir.

COMM. BOGLE: Because those are very important for us to understand what you are saying.

A: I have bank statements with an audit report from a Fellow from the Institute of Chartered Accountants.

COMM. BOGLE: Will you be referring to those further in your witness statement?

MISS CLARKE: There is an exhibit, I don't know to what this Commission actually is referring to now but there is...

COMM. BOGLE: He keeps mentioning bank statements to prove that at the time the overdraft on the demand loans were cleared and as a matter of fact they were in credit,

and I am asking him whether or not those bank statements he is referring to if they are exhibits attached to the witness statement which he has said so far no, but he had them. So we will have our usual ten minute break and I will ask you Debtor 5 during the break, if possible, just to locate those so that we can have copies of those when we resume. So we will take a ten minute break at that time.

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

COMM. BOGLE: Okay.

B R E A K

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

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

A: Yes.

Q: Could we now just look at that letter with a view to your explaining or pointing out just exactly what aspect of it actually acknowledged the payment of the sum, AS6 or Debtor 56?

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

Q: It is in your witness statement. If you go from the end of the list of exhibits, it's actually conspicuously marked AS6. This letter dated November 23, 1999 purports to give, and I quote, the history of Debtor 5 Company Limited from March 27 1992 to May 29 1998 spanning a six year period. Could you Debtor 5...

COMM. BOGLE: Just before you go Miss Clarke, can we hear who is Mr. Randolph Williams, because this letter is addressed to Mr. Randolph Williams, I don't know if we have a copy of that letter and we need to identify who is Mr. Randolph Williams before we look into the body of the letter.

A: Professor Randolph Williams who among other things was my attorney-at-law at the time.

COMM. BOGLE: He sent a letter, apparently he sent a letter to FINSAC dated July 21 1999.

A: Yes.

MISS CLARKE: Have we got a copy of that letter?

A: No, we don't have a copy of that letter at hand.

COMM. BOGLE: But he represented you, he was your attorney?

A: Yes.

COMM. BOGLE: Is he still your attorney?

A: No.

COMM. BOGLE: Go ahead.

MISS CLARKE: Yes Debtor 5, you were going to indicate to us based on this letter where or in what aspect it acknowledged your payment of the sums referred to in paragraph 22 of your written statement?

A: Yes ma'am. You will see in the middle of the thing, they have some figures, it has opening balance as at 27/3/92, \$ [REDACTED] and you will note that it is the exact, to the cent amount of the promissory note and then now they have payments and there are four payments which I referred to, only one is the exact amount that was paid and we have some of the paid cheques to show, the one for 12-1-93, for example, \$ [REDACTED] was paid.

Q: The one for what figure?

A: \$ [REDACTED], we have a copy of the cheque, when those documents come we will show you a copy of the cheque, that, that was a payment for \$ [REDACTED], and the \$ [REDACTED] and the \$ [REDACTED] roughly adds up to \$ [REDACTED], so there were three payments of \$ [REDACTED] and one payment of \$ [REDACTED] and these are in approximation acknowledged by this letter from FINSAC.

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

A: The amount, it is not exactly the \$ [REDACTED], but the date of the payment, if you add the addition, the \$ [REDACTED] and \$ [REDACTED] plus the \$ [REDACTED] down there add up to \$ [REDACTED] paid the 13/5/92 and the \$ [REDACTED], after they take out whatever charges, is \$200,000 and I have a copy of the paid cheque for that one and the \$ [REDACTED] was really a payment of \$ [REDACTED] and the \$ [REDACTED] is correct, payment of \$ [REDACTED] and what they are doing here is that they take the amount of the promissory note and show it as a debt and when we go to their defence, we took an action in court and they have a defence and when we go through that they will show what they are doing and what they are doing will show.

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

A: Yes.

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

A: We go back to my statements here where you have the -- I corrected the [REDACTED]

COMM. BOGLE: Six hundred and eighty.

A: Look at paragraph 22.

COMM. BOGLE: Yes.

A: By letter dated October 9, 1992 which letter we read, Century National Bank claimed inter alia that amounts were outstanding against the fictitious demand loan bearing the account that, that is the same number as the promissory note.

COMM. BOGLE: Yes.

A: An investigation further shows that, that money that we paid, that was when we were told further up that the loan that we thought was paid off in June which was in fact paid off in June but they said it wasn't paid off, we went a second time and paid it. It says, in March 1992, paragraph 13, CNB claimed that the demand loan was not fully paid off and gave Debtor 5 Company Limited seven days to clear the alleged balance outstanding. In the absence of up-to-date account, agreements were reached with another sister company, Caribbean Trust to pay up the alleged amount outstanding. Inadvertently payments of approximately \$[REDACTED] was paid and with the account having been, the demand loan, having been paid off we went and paid this

money when they said it wasn't paid so we now had \$ [REDACTED] overpaid on the account because the amount they claim was not paid was in fact paid and when we get the document we will show the evidence of the paid cheques and debit advices that it was paid but we went and paid that because we were preparing and applying for a mortgage with the Trust Company and so we paid it and that we would sort it out later on. And so that is the money that we are looking at now, that FINSAC acknowledged that they did, although they didn't record the exact amount paid but FINSAC, the 13/5/92, the 12/1/93, the 1/2/93, 9/3/93, those amounts were in fact paid.

COMM. BOGLE: So you are saying these amounts represented a double payment against the demand loan?

A: Yes, sir.

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

A: Exactly, sir.

MISS CLARKE: And they have used these credit and applied them to the promissory notes that you are refuting?

A: The promissory note was never a demand loan, it was a promissory note.

COMM. BOGLE: And just to remind me, the promissory note represented what?

A: The promissory note represented the overdraft facility ...

MRS. PHILIPS: Sorry, objection. Mr. Chairman I think what a promissory note is a matter of law under the Bills of Exchange Act, so we could give you some assistance in that regard. A promissory note is what the law says it is and that is defined under the Bills of Exchange Act.

COMM. BOGLE: I was trying to find out exactly....

MISS CLARKE: Mr. Chairman, as representative of the Commissioner, the objection as is directed at the chair, if I may say it, is at best out of place, and I believe what the witness was being asked is what to him the document represented, not what it means in law or in the dictionary.

COMM. BOGLE: I am asking him, based on what he said before, what the \$ [REDACTED] represent, how was that arrived at?

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

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

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

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

A: Yes.

COMM. BOGLE: Okay, we will move ahead.

MISS CLARKE: So, in terms of exhibit AS6, you are saying that those itemized payments under the opening balance as at 27/3/92 would have, in substance, represented the settlement of the \$ [REDACTED]?

A: The payment of \$ [REDACTED] which we decided to pay in protest, although we had paid off the debt and we will show you that we paid off the debt from June 1991,

we paid the \$ [REDACTED], they gave us seven days to pay it. It wasn't the days when you go to your computer and your whole account come up before you, it takes you a year before your auditor comes back with your account and all of that, so we paid that so that we could move on with the mortgage application and other finances, arrangements that were made and if you look on that same letter, first of all it shows that the amount being claimed as outstanding, started off on the 27/3/92 as \$ [REDACTED] and bearing in mind that, that is the exact to the cent amount of the promissory note. This was taken from it and you will see that the closing balance that they have been claiming both in the demand letter and in other correspondence is the \$ [REDACTED] and that is the amount that is being claimed on this so called demand loan [REDACTED], that is what they are claiming, and you will see as we go along, if you give me permission, I will show you where the amounts were paid and acknowledged as paid, but the penultimate paragraph of that letter that we are reading, we apologize sincerely that we are unable to provide you with information from December 1991 as requested in your letter, you will find out that what they are saying is that, that \$ [REDACTED] is a promissory note, as additional security for moneys owed before this period, that is from December 1991 and beyond and they are saying that this promissory note was given for accumulated facilities, credit, debt going back before March 31/29/1992.

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

A: But they are saying here that they are unable to provide the data to support that claim. Now we will go to show from their own document that - well, I will wait until we reach that stage but I am anxious to get to their documents.

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

MISS CLARKE: If I may at this point seek to introduce some documents in respect of which the queries were paid just prior to the adjournment. I believe the witness had referred in his witness statement and in his evidence, oral evidence just now to some promissory notes and Commissioner Ross had asked whether he has them at hand. The witness has produced two documents which have been copied and I would like to just now put them in his hand just to ascertain that they are in fact the promissory notes to which he has been referring with a view to entering them into evidence.

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

A: Yes.

Q: Inadvertently payments of approximately \$[REDACTED] were made payable to Debtor 5 Company instead of being made payable to CNB for the account number [REDACTED]. With these payments and the accelerated payments the demand loan was overpaid by \$[REDACTED] by June, 1993.

Around the same time, March 1992, Debtor 5 Company Debtor 5 Other Company instructed CNB to encash CDs to clear the overdraft incurred up to that date. CNB requested and was given promissory note for Debtor 5 Company Debtor 5 Other Company and identically supporting promissory notes from guarantors to cover the following.

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

A: Yes ma'am. You have the two promissory notes, [REDACTED], the end numbers executed by Debtor 5 Company Debtor 5 Other Company to cover these facilities that you have just read.

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

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

Q: That is [REDACTED].

A: [REDACTED], yes.

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

A: The other one is [REDACTED].

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

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

COMM. BOGLE: The same number [REDACTED].

A: No, it's not.

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

A: If you look at the stamp, the [REDACTED] has an embossed stamp that stamped it and this other one is a rubber stamp that stamped it.

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

A: Yes.

COMM. BOGLE: So it is the same promissory note, both notes are for the same amount, one executed by the company and the other executed by the guarantor, it's the same note, it is not two different notes, not dealing with two different account numbers.

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

MISS CLARKE: And not the account number?

A: Yes.

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

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

COMM. BOGLE: Yes.

A: So that is the distinction.

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

COMM. BOGLE: Yes, we are up to 6, we are up to Exhibit 6.

MISS CLARKE: But we would have to backtrack with the number, in terms of an exhibit that is not incorporated in the witness statement, this one will actually in light of the fact that it is mentioned at paragraph 15?

COMM. BOGLE: Okay, we go with 1C being the one executed by the company.

MISS CLARKE: With the stamp?

COMM. BOGLE: The seal.

MRS. PHILIPS: Mr. Chairman, if you could just note my reservation, because I don't think I can - well, these documents appeared to me to be the same document, they are both executed by the company; the reason why this is shaded is because it is an

embossed stamp so we had to shade it in with a pencil or lead to bring up the receipt, it would not appear on the photocopy or the carbon copy of the document which is below. If you look at every item on it, it's identical in every single respect even up to the point where the X to sign the signatures is on the line. So I object to this being marked as two distinct documents executed by two different people. There was only one personal guarantor and it was Debtor 5 , so a personal guarantee would not bear the signature of anyone other than Aubrey Smith. This is a document exhibited by the company, executed by the company, one which is a carbon copy of the other, if you even look at how the stamp is imprinted on it with the stamp duty, it is exactly the same.

MISS CLARKE: My only difficulty with the reservation and I fully appreciate it, given the fact that just looking at the document itself, I believe to the extent that the witness has given certain evidence, it is now for the Commissioners to assess, but as the witness presents them, the data and the records ought properly to so reflect because it is this witness' evidence that they represent two different documents. At some point it may be established that they don't, but in terms of the way he gives his evidence...

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

A: If you permit me Mr. Chairman, I don't know the expertise that the counsel has in identifying documents, but we had a retired Senior Superintendent of Police who is a Document Specialist who gave a report which is available, it was not a part of this which says -- that confirmed using the stamp of two respective companies,

Debtor 5 Company Limited and Debtor 5 Company Debtor 5 Other Company and that these were executed by each of the company and not by one company.

COMM. BOGLE: Okay. As I said we have accepted them as 1C and 1D and so we will proceed.

Okay, we will, as I have said accept them as 1(b) and 1(c), so we will proceed.

MISS CLARKE: Mr. Chairman I am seeking liberties to retract somewhat or to retrace my steps somewhat to introduce certain documents because certain direct questions came from the Chair and I am seeking to introduce data which may not be found to assist relative to those questions.

Could you go back to Paragraph 18 of your Witness Statement, please.

DEBTOR 5: Yes, ma'am.

Q: You say at Paragraph 18:

"In June 2007 a special investigative audit was carried out by a Fellow of the Institute of Chartered Accountants, Neville Robinson & Associates Limited."

A: Not limited.

Q: Well, I am reading it. "... Neville Robinson and Associates.

The report is attached with supporting evidence as per the list of exhibits." Apparently you omitted to attach the report, so I am now going to now ask you to look at this document just for the purpose of identify whether in fact it is the document to which you refer.

(Document shown to witness)

A: Yes, ma'am.

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

A: The report and attached exhibits.

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

A: Yes,ma'am.

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

COMM. BOGLE: That's from the Summary of Financial Information through the report, and all of the exhibits attached thereto. You are saying 1(E) covers the Summary of Financial Information which is the first sheet and the report through all of the attachments to the report?

MISS CLARKE: I believe that is so.

A: Yes,sir.

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

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

COMM. BOGLE: Yes, on the basis that it is thirty-six pages.

MISS CLARKE: Debtor 5, you were explaining earlier that certain bank statements and canceled cheques and other documents attached to this report including the substance of the report, would confirm your assertion that some aspects of your indebtedness were settled, could you just indicate from your understanding of the statements, where we could look for this kind of support of your assertion?

A: Yes, but with respect, I would like to say, that not some aspects, it was totally repaid.

Q: I am sorry Mr. Smith.

A: Well, the report by the Chartered Accountant speaks for itself. It has First Schedule 1 which shows the dates, particulars, which are the references, principal payment, interest payment, loan balance and the remarks which include what is the total of the respective cheques that are allocated over the year. And there are some footnotes which show the rate at which the interest is calculated, the period over which it is calculated and the methodology which is; if two payments are made within the month and you will recall that we made accelerated payments, we were paying from one of the two companies and Century was also initiating debit advices and if more than one payment is made within the month, you only take interest from one payment.

COMM. BOGLE: The assumptions, interest is calculated at [REDACTED] per annum, how was this, where was this assertion?

A: The rate was arrived at - if you look on the letter the 21st of January, 1991, first of all, that will tell you that the minimum principal repayment is [REDACTED].

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

A: Yes.

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

A: Yes, I know.

COMM. BOGLE: Right, so I am trying to establish how we arrived at the [REDACTED] because that is what was used in this statement so we want to know whether that is what the bank was using at the time. So far, on the Promissory Note, we were seeing

■ plus ■.

A: The Promissory Note was a couple years after this.

COMM. BOGLE: Which is why I am asking how was the ■ arrived at?

A: I am trying to find out. For example, you will see that there are some of these cases where the bank did the calculation, did the debit advice. If you go around, for example, you will see that January 21 - no.

COMM. BOGLE: Question. Do you know how they arrived at the ■

A: Yes. It is arrived in two ways. There is somewhere in the document, which I will come to, when it said the interest rate was ■ but as they proceeded the calculation done by the bank, when the bank initiated the transaction, they were using ■ If you look at the paid cheques and there are some debit advices where the bank does the break-down between interest and principal. Just flip through the paid cheques and go to the payment on the 20th of March 1991, just flip through the paid cheques and go to...

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

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

Q: You said 27th of January?

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

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

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

COMM. BOGLE: The [REDACTED] is his calculation?

A: Is his calculation based on the extrapolation from what the bank was calculating.

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

A: Yes.

Conditional page break: 2

Conditional page break: 2

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

A: Yes, we are using the Schedule here and it shows on the far side, far right-hand side of the Schedule the cheques or the payments and the [REDACTED] is the opening amount which you will find on the letter dated the 10th of October, 1990. It says: Overdraft, [REDACTED] which is approximately 115,000 over the limit of 545 as I have said previously. And the Demand Loan - and I ask you to watch the number because for that month at that opening stage, the demand loan # [REDACTED], and then the letter behind that on the 21st of March is where I put in my statement that the demand loan was now transferred to Account # [REDACTED]; Beaufit Debtor 5 Other Company.

MISS CLARKE: Let us go back to the actual?

A: Payments?

Q: The report, Neville Robinson and Associates, that page after the Summary of Financial Information.

A: Yes.

Q: Reading at the bottom, that last paragraph, Schedule 3.

Schedule 3 represents the make-up of Promissory Notes # [REDACTED].. " That is the one that was just entered into evidence?

A: Yes.

Q: "...executed by Debtor 5 Company Debtor 5 Other Company on March 27, 1992 for the purpose of giving CNB authority to encash hypothecated Certificate of deposit in order to pay out current account owing BCF to CNB.

A: Yes.

Q: It was represented to us that Debtor 5 Company Limited gave its guarantee to CNB by signing note # [REDACTED] with identical details as the note signed by Debtor 5 Company Career Fashion Limited. We examined copies of both notes.

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

A: Yes, ma'am.

Q: Schedule 4 represents information received with respect to the establishment and disposal hypothecated Certificate of Deposits. The source of CDs was validated in the sum of \$ [REDACTED] at face value. Between March 23, and March 31, 1992 CDs totaling \$ [REDACTED] at face value and interest of \$ [REDACTED], a total of \$ [REDACTED] was credited to the current account of Debtor 5 Company Career Fashion Limited. Schedule 5 is in fact the fact sheet on registered charges on the titles of the Debtor 5 Company Limited. The entry in November 9, 1998 represented security pledged by Debtor 5 Company Limited to cover demand loan of \$ [REDACTED] and overdraft facilities of \$ [REDACTED] for Debtor 5 Company Debtor 5 Other Company.

Based on the information presented to us..." I pause here to ask you. The information presented was presented by you, Debtor 5?

A: Yes, ma'am.

Q: And provided to the author of this report documentary data; documents, canceled cheques, statements?

A: Yes, ma'am.

Q: Based on the information presented to us at March 1993, the demand loan account # [REDACTED] which....

A: Five-two it should have been.

Q: I beg you pardon, sir.

A: I am sorry, [REDACTED].

COMM. BOGLE: [REDACTED] I have.

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

A: That's a typo.

Q: I am just reading it, but the record will so reflect, sir.

COMM. BOGLE: Yes.

MISS CLARKE: Based on the information presented to us at March 1993 the demand loan account # [REDACTED] which stood at \$ [REDACTED] as of October 5, 1990, was overpaid by \$ [REDACTED] and the current account # [REDACTED] balance at May 31, 1995 was \$ [REDACTED] in credit. On the basis of the information examined, at May 31, 1995 Century National Bank Limited (CNB) was indebted to Debtor 5 Company [REDACTED] as follows:

Current account balance May 31, 1995, \$ [REDACTED]. Over-payment on Demand Loan March 9, 1993, \$ [REDACTED] Total \$ [REDACTED].

These amounts do not include interest and a feature of the current account credit balance. We are of the opinion that the performance bond provided to the then Jamaica Telephone Company, now Cable and Wireless Jamaica Limited, and guarantee given the Bank of Nova Scotia Jamaica Limited (BNS) and the overdraft have been satisfied by Debtor 5 Company Career Fashion Limited.

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

That in substance is the report, [REDACTED], on which you rely to cement your assertion that your indebtedness was fully satisfied by 1993?

A: Was more than satisfied, and that we have the document referred to in that report, the letter which says what the balance of the Demand Loan was at the end of September, was \$ [REDACTED].

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

A: Immediately after Schedule 1. That is Century dated ...

Q: Dated October 10, 1990?

A: 1990.

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

"Further to your discussions with our Mr. Lumsden --

It is actually a letter addressed to Debtor 5 Company Limited for the attention of Debtor 5 and it refers to the overdraft facility bearing account # [REDACTED] for \$ [REDACTED] and the Demand Loan account # [REDACTED] for \$ [REDACTED].

Further to our discussions with our Mr. Lumsden, we have observed that the overdraft has exceeded the authorized limit of \$ [REDACTED] and the Demand Loan has not be reduced.

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

The Current Account was debited on/or about October 3, 1990, for approximately \$ [REDACTED] which was applied in reduction of interest.

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

Mr. Smith, you said this letter was was proof was proof was proof of what?

A: What the balance was at the end of September or the beginning of October 1990 and which forms the opening balance on the Schedule 1 of [REDACTED].

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

A: It says October 10, 1990 and that the Demand Loan [REDACTED] is \$ [REDACTED] and that has not been...

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

A: Yes.

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

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

Q: Okay.

A: And also made reference to that but there is a letter immediately behind that which - and as I indicated in my statement, that the Demand Loan account now, [REDACTED]

Q: 2 you say.

A: 2, same [REDACTED], and they have there, which is interest and principal payment and that was outstanding.

Q: So that account number, Demand Loan # [REDACTED] was renumbered 26-0...

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

Q: Okay.

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

A: ...of 540?

COMM. BOGLE: 540, and interest [REDACTED].

A: Yes.

COMM. BOGLE: I note on the Statement's Schedule prepared by Mr. Robinson that yes, at January 21, 1991 there was the interest of the [REDACTED] - there is the amount of

████ but the principal balance was now at 388 but by the letter from Century, the principal balance was still █████.

A: Precisely. That is part of the pattern of error that existed there by their own letter and then we can show on the Schedule the cheques, and we will later come on to show you the cheque payments and some of those weren't not just cheques from us, some of those were debit advice originated from Century Bank. So at that time there was a lot of errors, I put it at best, that they were errors, that were coming through, and all of it is shown here.

If you permit, Mr. Chairman, in making the point that the debt was paid, and we are just following in sequence of this report, and the exhibits which he referred to, and you will see one here which is a debit advice from Century Bank which shows, using the bottom one first, that interest was being taken out by Century Bank straight from the account, not even that we were paying it by cheque, they were going to the account and taking out the payment. And on the 13th of March, 1990 of March, 1990 they took out from the account, and you can see in the reason box there, the number █████ and the current account number in the box there, and took \$████. And then on the 25th of September, 1990 - and they referred to that in this letter that we just read there - they took out a █████. So the account was being serviced not just by us drawing cheques and send to the account, but Century was in fact actively debiting the account to cover the debt.

COMM. BOGLE: These two large payments on interest here would have been prior to the start point of your statement?

A: Precisely, sir.

COMM. BOGLE: Right?

A: Yes, sir.

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

A: Yes.

COMM. BOGLE: ...and they deducted the interest from your Current Account and paid the interest but not the principal, and so at October, the principal was still outstanding?

A: Precisely.

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

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

I would like to tie up the point Mr. Chairman, that if you go from that sheet to the next sheet now, which has two debit advices on it, one on the 4/12/90, and the other on the 30/1/91, you will see that the overdraft facility was being up-stamped and these are the commission and the charges to up-stamp the overdraft facility. And in the box it says [REDACTED] commitment fee on increase in over-draft [REDACTED]. And you will go back to the letter of the 10th of October and you will see that it was [REDACTED] approximately, overdrawn. And so that [REDACTED] and [REDACTED] made up the [REDACTED] which moved the overdraft facility from [REDACTED]. And of facility outstanding to Century National Bank at that time [REDACTED] was in respect of overdraft facility.

Skip forward and you will see - and I have the original, but this is the best photocopy we got - and you see the bank statements, as of May 31, 1995 we had a credit in the Current Account \$ [REDACTED]. So in terms of our obligation to the bank at that time, they had credit for us of [REDACTED].

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

A: The bank statement, yes. The final bank statement; we will go into others before that. They owed us [REDACTED] for that. The up-stamping of [REDACTED] out of the [REDACTED] was overdraft facility which, at the end of doing business with them and them and they don't them, and they don't dispute it, on the 31st of May, 1995, the account had in [REDACTED] in credit.

Q: And you will be saying to this Commission that, that is supportive of your assertion that at the time when you stopped doing business with Century National Bank you had a credit balance?

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

Q: In the Current account.

A: And you will see acknowledged by FINSAC later on, that when we were asked that the Demand Loan Account wasn't settled, we made payment of [REDACTED] which they break it up into late fees and all sorts of things, but approximately the [REDACTED] was paid.

Q: Okay.

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

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

A: The thing that I gave you, the backs, with the endorsement on back as the accounts being paid, et cetera, and I have the original cheques with that. They are in a vault.

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

A: Those that you returned and circulated?

Q: Yes, those you gave me.

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

Q: It is what you gave us.

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

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

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

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

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

COMM. ROSS: We have a statement, copy of a statement dated the November 29, 1991, showing a balance of [REDACTED]. I don't know if that is a debit balance or...

A: The [REDACTED]?

COMM. ROSS: No. There is a statement dated November 29, 1991, it is actually December 31, 1991.

A: That's a bank statement?

COMM. ROSS: Bank statement Debtor 5 Company Career Fashion Limited with the balance of [REDACTED]....

A: Oh, yes. I will go to that, sir.

COMM. ROSS: I am not sure Whether this is an overdraft balance.

A: You can tell by following the arithmetic that the opening balance is [REDACTED] -- you are looking at April 3?

COMM. ROSS: November 29, 1991 is the start opening balance. Statement date December 31, 1991.

A: I wonder where is that?

COMM. ROSS: That comes right after the copies of the debit advices.

A: Those banks statements, those were overdrafts. Those bank statements were showing you that the account was charged to set up the CDs. Those are not for showing you bank balances. We are showing the bank balance at the end of the period which is bank statement December 1991, April '92,'94 and '95, right to the end of doing business.

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

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

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

A: We ceased having a credit facility with them at the end of March 1992, but the close of business came about in May 1995 because there were some outstanding CDs that were not brought to the - if you look at the bank statement for May 31, 1995 you will see \$[REDACTED].

COMM. BOGLE: That would be encashment for the previous...

A: The final CDs. The previous ones were encashed and that was the final encashment, and that is the final bank statement that we had from them.

COMM. BOGLE: And this \$[REDACTED] represented there at May 31, 1995 did you retrieve this money?

A: No, we have not, because by that time they were making claim rather than admitting being liable to us for that money. That money still rests with them.

COMM. BOGLE: Miss Clarke, can we proceed.

MISS CLARKE: Debtor 5, I just wanting to make sure that you have said what you have to say in relation to this report and the attachment, because you have been indicating that you wanted to go through the cheques, but you know, if the cheques are attached to the report perhaps it may be a good time to say whatever you wanted to say about the individual cancelled cheques.

A: Yes, thank you. They are behind Schedule 1 and...

COMM. BOGLE: Unless there is anything, Miss Clarke, specific because it is part of the report and we will go through it, unless there is any specific point that he wishes to make regarding any of the documents, otherwise it is all here which we will go through.

A: Yes.

COMM. BOGLE: But just to repeat what is on the document I don't think at this point it is necessary, unless if there are any particular documents here that he would like to highlight.

A: Yes Mr. Chairman, if it pleases you, there are several points to be elucidated. The first one that is part of the Auditor's Report is that the \$ [REDACTED] was in fact up-stamping of the overdraft facility. Later on you will see...

MISS CLARKE: You are referring to a particular cheque, returned cheque?

A: It is a Debit Advice here, it is behind the...

Q: What is the date of it?

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

Conditional page break: 2

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

A: That it shows - it reads, two percent commitment fee on increasing overdraft of \$ [REDACTED]. Later on you will see where FINSAC is saying - I don't know what they call themselves, Redevelopment Foundation is saying that the \$ [REDACTED] was additional loan granted and was outstanding when the Promissory Note was done, and the Promissory Note was in respect of us giving additional security for the unpaid debt. But the point that has to be emphasized is that there is evidence from Century Bank that the 315,000 was up-stamping of the overdraft facilities.

MISS CLARKE: So the \$ [REDACTED] represented what in itself?

A: The overdraft facility was \$ [REDACTED].

Q: And it was increased by \$ [REDACTED]?

A: By \$[REDACTED]00. And so we were authorized at that time to use overdraft facility up to the extent of \$[REDACTED].

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

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

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

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

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

COMM. BOGLE: No, but at the same time, Debtor 5, you mentioned earlier that there was debit overdraft and there were two interest payments that were charged to the overdraft that assisted in bringing the overdraft to [REDACTED], you remember you said that?

A: Yes.

COMM. BOGLE: So the fact that the interest was charged to the overdraft to pay the interest on the loan that is the reason why they are now up-stamping the document to secure this new level, would you say I am right?

A: No, no. At one stage in October when they wrote to me they are saying that you have exceeded the authorized limit and we have to approve new limits to conform with our arrangement. We applied for and this is evidence that we did get that new limit. We authorised them through Debtor 5 Company to up-stamp the title to reflect that the overdraft was \$[REDACTED] and this was secured by mortgage.

COMM. BOGLE: And so is that the reason why the up-stamping of [REDACTED] [REDACTED]?

A: The up-stamping of [REDACTED] came long after you know, that came in June 1992 after the overdraft had already been paid off. If you look at the bank statements, the set of bank statements that we present there as part of the Audit Report...

COMM. BOGLE: So the debit advice 4th of December 1990 regarding up-stamping, which up-stamping is that dealing with?

A: It is up-stamping on the title, the authorized limit which was at the time.

COMM. BOGLE: Was it the \$ [REDACTED]?

A: The [REDACTED]00 to be added to the \$ [REDACTED].

COMM. BOGLE: This is what I am saying.

A: Yes. That is not a complaint, that is what the facts are.

COMM. BOGLE: Okay, we agree that is so.

MISS CLARKE: In relation to - you said you had some other cheques and debit advice that you needed to make some specific comments on?

A: Yes. We have the cheques here which you can get the photocopy that if you look at Schedule 1 you will see the cheques that are paid down and the cheques are supported behind, which reduces the \$ [REDACTED] and then if you come down to June...

MISS CLARKE: June of what year?

A: June of 1991. We are on the Schedule and we are coming down the line and the date is to the extreme left hand side and when you come down you will see that

because of what was happening before when you come down to June that the debt was already settled. There was \$ [REDACTED] outstanding at the end of June and when you pay \$ [REDACTED] - we went and paid \$ [REDACTED], as a matter of fact we went and paid \$ [REDACTED] and that puts it into credit. It is important to note that when you come to June neither from Century National Bank nor from us there were any payment until December that Century showed on their bank statement that they were deducting another \$ [REDACTED] and it was after that they come now to say that the debt was not paid in June as you have said, and we did not have these cheques and these payments to show that it was paid and so we decided to proceed with our credit facilities and all of that we would pay the \$ [REDACTED]00 and that was paid. And if you look behind you will see at least two of the cheques, one for \$ [REDACTED], the 12th of January 1993 for \$ [REDACTED] acknowledged and shown receipt by FINSAC as \$ [REDACTED] and 8th of March which is it final payment out of the \$ [REDACTED], the 8th of March 1993 for \$ [REDACTED]. And those are on the FINSAC's statements. And that shows with documentary evidence that the demand loan using their information was paid and overpaid by \$ [REDACTED]. And then you go to the overdraft facility which those were the two items of credit for which the mortgage was given and that if you look at Schedule 2 from the Audit Report it would show that as at the 31st of December 1991 there was an overdraft amount of \$ [REDACTED] and you have the statement there.

COMM. BOGLE: All right, can we have our break for lunch at this time. It is overdue, this is not our usual time and we will return at 2:00 o'clock.

Debtor 5, you are required to be back here at 2:00 o'clock.

A: Okay sir.

LUNCHEON BREAK.

ON RESUMPTION At 2:00 P.M.

COMM. BOGLE: Good afternoon. The Enquiry is now back in session. Debtor 5, just to remind you that you are still under oath.

A: Yes, sir.

COMM. BOGLE: Miss Clarke?

MISS CLARKE: Thank you, Mr. Chairman.

Debtor 5, before the break you had introduced an exhibit at paragraph 18 and you have gone through it, but prior to that we had read from paragraph 22, that is where we had gone up to of your witness statement. Now, I believe, assuming that you have completed your evidence and explanation relative to [REDACTED] report, am I correct in saying that we can now move to paragraph 23 of your witness statement?

A: I am sorry I am going to crave the indulgence of the Commission to spend a little more time explaining [REDACTED] statement because...

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

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

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

COMM. BOGLE: Yes, 1(e).

A: The bone of the whole contention here is the Promissory Note and I am afraid I have not yet given you the answer that I am satisfied you need as to what it is about

and what I fear is that I leave the witness stand and some other introduction comes with a legal ease of what is a Promissory Note without seeing the context of the Promissory Note in what I am presenting.

COMM. BOGLE: And that was a question I asked you earlier when I asked you what do you consider to constitute this Promissory Note, what makes it up, what is it, that was a question I had asked you, but you went on and on around and you still have not answered and now you are recognising that you have not answered.

A: I will quickly answer that.

COMM. BOGLE: If you would answer that question now then that information can be given and we will move on.

A: I will do it by explaining from the document rather than just give my own explanation. There is a letter that is a part of the evidence from Dennis Joslin Jamaica Limited dated October 6, 2003.

MISS CLARKE: What is it marked in your witness statement?

A: (No answer)

Q: I don't believe that exhibit is itemized in the list of exhibits.

A: There are a number of documents that I have here and how they fit in to this, and these are documents from FINSAC and other parties and where it defines what is the debt that we are supposed to have outstanding. And we can tie it from - FINSAC's letter dated 1999 showing \$[REDACTED].

COMM. BOGLE: Just a minute, Debtor 5. In the summary information that we got from [REDACTED], Schedule 3, would that Schedule 3 explain, do you agree with

that Schedule 3? Do you agree with that Schedule 3, because that Schedule 3 would seem to explain the Promissory Note. Look at Schedule 3.

A: Yes, sir.

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

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

COMM. BOGLE: Right.

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

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

A: All right.

COMM. BOGLE: Because you can't give us from another person's point of view, it is from your point of view. And what Mr. Robinson here is saying is that, and you are agreeing with it, that this constitutes the make-up of the Promissory Note.

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

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

A: As long as you are...

COMM. BOGLE: Oh yes.

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

COMM. BOGLE: Yes, we are satisfied with it. Because we referred to the BNS \$100,000.00 before, we referred to the JTCO before, the facilities before, so I think all of this we have referred to before.

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

COMM. BOGLE: Yes.

A: I want to point out that is part of Mr. Robinson's thing and in the penultimate paragraph:

It is understood that the company's security.

MISS CLARKE: What's the date of that letter?

A: The date of this is April, it is down to the bottom where the signature is, 17th April 1991.

COMM. BOGLE: Down to the bottom of the signature where, which letter are you reading?

A: I am reading the agreement; it is after the Promissory Note.

MISS CLARKE: Like three pages from the back of that document.

COMM. BOGLE: It is addressed from who to who?

A: Century to us and we signed it. This is an agreement, the Guarantee Agreement from Scotia Bank that Century did for us. And it says, Re: Importation of...

COMM. BOGLE: Okay, that's the one, we have found it.

A: And next to the last paragraph, It is understood that the Company's securities hypothecated to the bank means also be held as security for the liability. And if you go to Schedule 4 you will see at the top part Establishment of CDs and we have five CDs and as I mentioned in my witness statement, the face value of that is \$ [REDACTED] and those were encashed Round about March, just around the time when the

Promissory Note was executed with a total of \$ [REDACTED] reaped from that encashment and then a further \$ [REDACTED] which you see on the last statement which is the rest of the Promissory Note; and that amount went to the Current Account and if you look at Schedule 2 you will see that the 30th of March, 1992 the balance as per bank statement is \$ [REDACTED] in the credit, in the black.

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

A: Next to the last line in the Schedule just above the total, the 30th of March, 1992 the bank statement was in credit \$ [REDACTED]. And you can look at April's bank statement, we could not put all the bank statements, but look at April's bank statement which is here on the next page and you will see that the opening balance from March 31st is \$ [REDACTED] and that is the credit; and if you go through the rest of the bank statements to the end of the time of doing business with Century, we have not gone into the red but in fact have had positive balances in our Current Account. So where the Promissory Note is made up of \$ [REDACTED] that it was at that time, and since that there was no overdraft owing, and the bank statements showed that up to the 31st of May, 1995, the year before Century went under.

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

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

Q: Not exist?

A: Yes.

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

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

A: Yes. You will see the letter of Guarantee from Scotia Bank for the \$ [REDACTED].

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

A: Yes.

COMM. ROSS: And those Guarantees were never called?

A: Were never called.

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

A: Signed any Promissory Note.

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

A: Yes, sir.

COMM. ROSS: With regard to the overdraft, is it your contention that, that balance was settled by you, because there is a \$ [REDACTED]?

A: Yes.

COMM. ROSS: Which is part of that \$ [REDACTED].

A: Yes.

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

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

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

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

COMM. ROSS: So these amounts were...

A: And that was what brought the current account out of overdraft.

COMM. ROSS: There was an encashment though?

A: Yes, sir.

COMM. ROSS: Do you have any documents to substantiate that?

A: We have the bank statements which were in overdraft constantly and the Promissory Note was part of giving the bank permission to encash hypothecated, and you have bank statements that if you look at previous bank statements you will see that we were carrying overdraft, up to the beginning of March we were carrying overdraft of over a [REDACTED].

MISS CLARKE: Debtor 5, could you point to the particular bank statements which would show where upon the CDs being credited to the account.

A: Yes, ma'am. If you look at April 30, 1992 that bank statement at that date...

MISS CLARKE: It comes right after Schedule 2.

A: It comes right after Schedule 2. And it shows that at the 31st of March 1992 there was a balance brought forward in the credit of \$ [REDACTED] prior to that and as you see in my statement there that the overdraft just before that was \$ [REDACTED]. And having done those....

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

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

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

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

COMM. BOGLE: That is why it is important for us, Miss Clarke, if we could have seen the March 1992 bank statement where the \$ [REDACTED] would have been reflected and the subsequent reduction.

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

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

A: Yes.

COMM. ROSS: And so what we are saying if we had the March 1992 statement, then we would be able to see based on Schedule 2 the \$1,046,042.29 and the credits going to it to bring that down to \$[REDACTED].

A: \$[REDACTED].

COMM. BOGLE: \$[REDACTED] at the beginning. So You don't have that statement with you?

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

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

A: We don't have that.

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

A: Yes.

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

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

A: Precisely.

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

Conditional page break: 2to.paragraphTwenty-three of your written statement - FRPBLGS and it would

COMM. BOGLE: Go ahead.

A: If you go to the thing you will see the encashment, the amount that was encashed of the CDs and I can show you the statement which shows the establishment of the CDs.

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

MISS CLARKE: Paragraph 23, Debtor 5.

A: 23.

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

A: Yes.

Q: So I will just read it.

"Around June 1993, a Notice requiring repayment of mortgage - "Debtor 5 7" was received from the attorneys for CNB. Among other things this Notice claimed that \$ [REDACTED] was due against mortgage numbers, [REDACTED] and Miscellaneous # [REDACTED]. That is the mortgage and the up-stamped amount?

A: Yes.

Q: In December 1993, I received a demand letter dated December 23, 1993 - "Debtor 5 8" (sent to me in my capacity as guarantor), claiming the said amount plus costs.

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

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

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

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

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

COMM. ROSS: Yes.

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

COMM. BOGLE: I don't think we had actually received AS 7 although we referred to so we will just record AS7 and then you can move to AS 8.

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

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

A: It is in the statement.

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

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

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

We act for Century National Bank Limited.

Debtor 5 Company Limited is indebted to our client in the sum of \$ [REDACTED].

Interest continues to accrue from May 11, 1993 until payment.

You have guaranteed payment to our client. Kindly let us have all sums due to our client forthwith.

Yours faithfully,

Signed, Ransford Braham

And I believe that Commissioner Ross had pointed out that the sum when tallied did not appear - certainly mathematically, would not be correct with which the witness agreed.

A: This was the one?

Q: AS7.

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

Conditional page break: 2

BY COMM. BOGLE: AS5 is the one that did not tally.

MISS CLARKE: Okay. So paragraph 24 now, Debtor 5.

Could you just read for us Paragraph 24.

A: 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 over by Financial Industries Services Limited. (FIS)

Q: Continue please.

A: During 1999 several discussions took place...

COMM. ROSS: Sorry, before we get there, Mr. Smith, did you have anything in writing from Century National regarding these two notices?

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

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

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

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

A: No.

COMM. ROSS: Go ahead.

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

MISS CLARKE: You were reading at Paragraph 25.

A: During 1999 several discussions took place and correspondence was exchanged between FINSAC and myself and the error was pointed out by me. However, FINSAC persisted in its claim against Debtor 5 Company Career Fashions and me. See letter dated January 12, 1999 from FINSAC Limited to Debtor 5 Company Debtor 5 Other Company:- "DEBTOR 5 9", letter dated January 19, 2000 from FINSAC Limited to Gabriel Edwards & Co - "[REDACTED] 10, " Letter dated February 23, 2000 from Gabriel Edwards & Co. to FINSAC Limited.

MISS CLARKE: Can we just pause to look at those letters.

Mr. Chairman, AS 9 is a letter from FINSAC Limited addressed to Debtor 5 Company Debtor 5 Other Company for the attention of "[REDACTED]". It's in the nature of a demand letter which reads as follows:

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

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

Principal \$ [REDACTED].

Interest \$ [REDACTED] 8

Total \$ [REDACTED] Please note that interest accrues at a daily rate of \$ [REDACTED] until varied.

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

Kindly treat this matter as urgent.

Yours faithfully

Sgd. by Marcia Grayson and Suzette Campbell in their capacities of Credit Officer and Credit Manager.

Perhaps the witness would want the Commission to note that this demand was in relation to the Demand Loan Facility. I am not sure how the Tribunal will look at this in light of the prior evidence, assertion relative to the overdraft facility and his sustained assertion that it was non-existent; the overdraft on the account was not in existence as of 1993 March. This letter speaks to the Demand Loan Facility. Exhibit AS 10. I probably for the benefit of the Commission could just ask the witness to identify Gabriel Edwards and Company. What were your dealings with Gabriel Edwards Company?

A: Gabriel Edwards was my attorney at the time who is deceased.

MISS CLARKE: This letter is being written on your behalf by your attorney Mr. Gabriel Edwards?

A: Yes.

MISS CLARKE: Mr. Chairman, it reads as follows:

19th January, 2000

Attention: Mr. Gabriel Edwards Dear Sirs:

I am sorry, the letter is written to Mr. Gabriel Edwards from FINSAC -AS10.

A: There is mix-up in mine with 10 and 11.

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

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

Q: And the caption reads as follows:

Re: Debtor 5 Company Limited/Debtor 5 Company Debtor 5 Other Company/Century National Bank Limited.

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

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

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

COMM. BOGLE: [REDACTED]?

A: Yes, sir.

MISS CLARKE: Would you have a copy of the letter which Gabriel Edwards wrote to FINSAC?

A: No, I have a letter that he wrote but not that letter.

COMM. BOGLE: All, right, go ahead.

MISS CLARKE: And then there is AS 11...

MRS. PHILLIPS: What is the date of that letter?

COMM. BOGLE: Which one, the one missing?

MRS. PHILLIPS: The one you were just asking about.

COMM. BOGLE: 17th of December, 1999, which was apparently written by Gabriel Edwards to FINSAC.

MRS. PHILLIPS: I have a copy of that letter. You wanted to see a copy of it?

COMM. BOGLE: Yes, it would be helpful if we could see the contents of that letter since FINSAC is now responding to it.

MRS. PHILLIPS: It referenced a letter dated January 21, 1991 which it said was attached. It was not attached, but I did find that letter and attached it.

(Document passed to Miss Clarke)

You want me to give him a copy?

COMM. BOGLE: Yes, yes, thank you.

(Copies distributed)

COMM. BOGLE: Miss Clarke...?

MISS CLARKE: Yes, Mr. Chairman?

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

MISS CLARKE: As it pleases you, sir.

Are we going to mark it?

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

MISS CLARKE: [REDACTED], would you like to read this letter that Gabriel Edwards wrote to FINSAC dated 17th December, 1999?

A: Yes, I'll read it.

Re: Debtor 5 Company Limited/Debtor 5 Company Debtor 5 Other Company - Century National Bank

I am instructed by [REDACTED], Managing Director of the two first named Companies in the caption above; and respond to your letter to [REDACTED] of November 23, 1999; who is off the island.

The facts of the matter are as under:-

(1) Debtor 5 Company [REDACTED] incorporated in 1986 as the retail and marketing arm of Debtor 5 Company Ltd and its operation was established in the Kingston Mall. Debtor 5 Company [REDACTED] canvased the business, negotiated the Contracts and Debtor 5 Company Limited contracted with Debtor 5 Company [REDACTED] to do the manufacturing and charge Debtor 5 Company [REDACTED] for the services.

At the time of the draconian consumption taxes, most companies in Jamaica were advised by their auditors to employ this method of transfer pricing.

(2) Debtor 5 Company [REDACTED] collected deposits on contracts as well as interim or final payments in its own name.

(3) Debtor 5 Company [REDACTED] Ltd had two types of credit arrangements with Century National Bank, namely:

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

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

(4) The Banker's guarantees and/ or letters of credit were secured by cash deposits or commitments from customers of Debtor 5 Company [REDACTED] to pay proceeds directly to Century National Bank. Debtor 5 Company [REDACTED] always signed "Demand Notes" to Century National Bank to cover letters of credit and/or Banker guarantees.

(5) Bank of Nova Scotia, Telephone Company of Jamaica (now C&W) and N.C.B. were the main customers with whom such arrangements were made between 1987 to 1992.

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

(7) Century National Bank has passed onto you outstanding "Demand Note" for \$[REDACTED], signed by us on March 27, 1992; copy attached.

(8) We categorically deny that Debtor 5 Company [REDACTED] had any outstanding debt with Century National Bank.

(9) Debtor 5 Company Limited had a Demand Loan account with Century National Bank dating back to 1988. The confirmed and agreed balance by way of letter dated January 21, 1991 (copy attached as follows):-

Demand Loan \$ [REDACTED] Interest Outstanding \$ [REDACTED]

(10) The arrangement was that \$ [REDACTED] be paid monthly starting February 21, 1991. That would be a total payment of \$ [REDACTED] to December, 1991. FINSAC has not acknowledged these payments up to that period. FINSAC has acknowledged payment of \$ [REDACTED] against Debtor 5 Company Limited up to May 1993.

(11) At interest rate of [REDACTED] these payments acknowledged would satisfy the amount outstanding January 20, 1991 for Debtor 5 Company Limited if they were properly applied to that account.

(12) Century National Bank sent the title for Debtor 5 Company Limited. to Eagle Merchant Bank for Eagle Merchant Bank to register a second mortgage as Debtor 5 Company Limited guarantee for loan from Eagle Merchant Bank to Caribbean Chalks.

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

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

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

(a) The claim that Debtor 5 Company Career Fashions is indebted to Century National Bank is incorrect.

(b) You have acknowledged payment in respect of Debtor 5 Company Limited which was erroneously applied to interest payment against Debtor 5 Company Debtor 5 Other Company instead of to liquidate the debt owed by Debtor 5 Company Limited.

(c) Both Century National Bank and Eagle Merchant Bank have therefore wrongfully maintained charges against the Title of Debtor 5 Company Limited for the property at

[REDACTED]

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

MISS CLARKE: Thank you, [REDACTED].

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

Now, [REDACTED], are you able to say, to the best of your knowledge, and your recollection whether or not there was any written response to Gabriel Edwards, to yourself or to any attorney on your behalf to this letter?

COMM. BOGLE: To which letter?

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

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

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

A: This again was to:

The President, Attention Mr. Alfred McPherson because he had mentioned....

Q: Letter to FINSAC Limited from Gabriel Edwards.

A: Yes and it says:

"One full month has passed since your letter of January 19, 2000, and two months have passed since my letter to you of December 19, 1999, to which your letter above referred, but to date, I have not received the detailed response promised in respect to the evidence sent to you in good faith.

Please note that in addition to the damage done to my clients' reputation, credit worthiness and the immobilization of principal asset by the two financial institutions under your control; you do further damage by circulating adverse credit information and continue to maintain such adverse information in the public domain in spite of the evidence you have been provided with.

I can no longer persuade my clients to exercise patience."

MISS CLARKE: AS 11, Mr. Chairman.

COMM. BOGLE: Yes.

MISS CLARKE: Perhaps I will ask the question again. To the best of your knowledge and recollection was there ever a response from FINSAC to the detailed items that your attorney referred to or the detailed concerns that were raised in the letter dated December 17, 1999?

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

If I may, you notice that every time you write to them, rather than referring you to somebody who is in the accounts to do reconciliation, they refer you to a lawyer and

they also send us to the lawyer of Eagle Merchant Bank and so it is always an approach of ignoring the facts that you sent to them and that you discuss with them but sticking to a legal tactic in dealing with the matter at all times.

MISS CLARKE: I do not think I may be correct, but that attachment to that letter dated January 21, 1991, Mr. Chairman, does it appear as the letter attached to Mr. Robinson's report as well?

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

MISS CLARKE: Okay.

Paragraph 26, Debtor 5, of your written statement.

Conditional page break: 2

A: Should I...

Q: Read Paragraph 26.

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

Up until recently, JRF has been vigorously advertising Debtor 5 Company Limited's properties sale under the powers of sale contained in the mortgage.

27. Attempts by Debtor 5 Company Limited to free its properties and to prevent the sale by way of court proceedings have not been successful. Copies of court documents namely Fixed Date Claim Form, Affidavit in Support, Defence of 2nd and 3rd Defendants, amended Defence 2nd and 3rd Defendants, Affidavit of Errol Campbell and affidavit of Raymond McBride are attached."

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

A: "28. I am contending before this Commission that Debtor 5 Company Limited, Debtor 5 Company Debtor 5 Other Company and myself are not indebted to FINSAC and were not indebted to CNB at the time of its take over by FINSAC. In fact, all liabilities incurred have been fully satisfied "and more" in that there was overpayment in respect of the demand loan a/c# [REDACTED] and there was a credit balance in excess of \$ [REDACTED] in current account at the time of the take over."

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

A: Yes, thank you, ma'am.

Q: That amended defence - that claim form, Mr. Chairman, for the purposes of the record Debtor 5 Company Limited filed a claim in 2003 against Financial Institutions,4 Services Limited; Jamaican Redevelopment Foundation Inc. and Dennis Joslin Jamaica Inc., and the claim substantially seeks what are in the nature of declarations and orders. The first set of claims actually is in the nature of a declaration, is seeking for the Court to declare that the claimant, that is, Debtor 5 Company Limited is not indebted to the first and/or the second defendant. And then it speaks at paragraph 2 by way of an order:

That the First Defendant, that is, Financial Institutions Services Limited, or in the alternative, the second defendant, JRF, execute a memorandum discharging the mortgage over the lands of the claimant registered at Volume 1049 Folio 822 and Volume [REDACTED] of the Register Book of Titles; those are the titles that are in fact in evidence.

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

There is an affidavit by Debtor 5 basically grounding that claim in fact, but there is a defence, I believe an amended defence of second and third - there is a defence of second and third defendant filed, that would be JRF and Dennis Joslin's Defence, and basically, these Defendants -- there is an amended defence filed which basically sets up the second and third defendants owner appreciation of the chronology and I just want to read quickly to the extent, as [REDACTED] has said the defendant's appreciation of the fact may in fact assist the Commission in shedding certain light.

Paragraph 1. I will read as quickly as I can.

These defendants - and these defendants, just so that we are constantly reminded are: Jamaica Redevelopment Foundation Inc. and Dennis Joslin Jamaica Inc. These Defendants admit that the Claimant executed an Instrument of Mortgage (the said mortgage) dated September 22, 1988, as security for a loan given by Century National Bank ("the Bank") in the sum of \$[REDACTED], with interest thereon at the rate of [REDACTED] per annum calculated as a compound interest with monthly rests. The lands referred to in paragraph 1 of the Particulars of Claim filed herein were used by the Claimant as security for the said mortgage and the Certificates of Title therefor endorsed with Mortgage No [REDACTED], registered November 30, 1988.

By the terms of Clause 1(a)(i) of the said Mortgage the Claimant covenanted with the Bank to pay to the Bank on demand, "all such sums of money as are now or shall from time to time hereafter become owing to the Bank from the Mortgagor whether in respect of overdraft, moneys advanced or paid to or for the use of the mortgagor or

charges incurred on his account or in respect of promissory notes and other negotiable instruments drawn, accepted or endorsed by or on behalf of the mortgagor."

Paragraph 4:

Clause 2(b) of the said mortgage stipulated that "this security shall be a continuing security and shall avail the Bank in respect of all present and future indebtedness of the mortgagor on any account whatever and is in addition to any security which would be implied or arise in the ordinary course from the business relations between the mortgagor and the Bank and shall be deemed to continue notwithstanding any payments from time to time made by the mortgagor or any settlement of account or other claim whatsoever. These defendants will rely on the said mortgage at the trial hereof for its full terms and effect.

Paragraph 5:

These Defendants further admit that the said mortgage was up-stamped in the first instance on December 6, 1990 to cover a further indebtedness of the Claimant to the Bank in the sum of \$[REDACTED] and thereafter on June 1, 1993 to cover a further sum of \$[REDACTED].

It is admitted that the first 1st Defendant is a new company duly incorporated under the laws of Jamaica and that the said mortgage was vested in the 1st Defendant by virtue of an Order of the Supreme Court of Judicature of Jamaica made in Suit No.M121 of 1997 and dated the 21st day of October, 1997. It is not admitted however, that the 1st Defendant is the assignee of all claims and rights of the Bank to recover debts, damages and other compensation from all persons, as is alleged in paragraph 3 of the Particulars of Claim or at all, these Defendants are not privy to all

arrangements made by the 1st Defendant with the Bank in respect of the Bank's rights against Third Parties.

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

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

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

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

MISS CLARKE: Perhaps Debtor 5 will come to that soon, but I thought perhaps in terms of how these institutions who were not the first-hand negotiators with Debtor 5 came into the portfolio and appreciated it, the basis upon which they took it upon themselves and asserted their rights, in point of chronology it may be important to how they would have appreciated the indebtedness as it came to them, because Debtor 5 has been asserting that these sums weren't owed, but what JRF and Dennis Joslin are basically saying - and I am paraphrasing here now, if I were allowed to summarize, but I don't think Debtor 5 would forgive me -- is that, as the documentation has come to them, this is what they have in terms of evidence as to the state of the indebtedness at the time when the debt came to them. So whereas this witness is asserting that, well, look, these sums were paid, the mortgages should have

been discharged I believe that JR and Dennis Joslin are saying, basically what we have is a document evidencing a mortgage, a loan agreement with a certain amount of money undischarged -- data indicated undischarged debts. So one just wants to read the chronology because I believe it would explain these certain defendants posture in terms of...

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

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

COMM. BOGLE: My point is that Debtor 5, has quite ably put across his position. He is saying, and he has brought information to back up what he is saying, that he did not owe Century National Bank in any way at the time when Century National Bank was taken over by FIS. So that is his contention, that is what he has put forward.

Now, he has taken the matter to Court and the defendants have put their point of there, their view of the matter on the table and therefore, that is why I am saying he has put forward his case to this Commission, he has put forward his position, he is saying that I do not owe, here are the documents to prove that I did not owe. And I think it is fair that JRF and/or FINSAC, it is for them to come and say well, we disagree with his

view or try to prove that he is wrong or something and I do not see really that much will be served in your putting forward this at this time on behalf of Debtor 5.

MISS CLARKE: I appreciate that, Mr. Chairman, and more so having regard to the concern for economy relative to time, but what I ask is whether [REDACTED] may now be allowed to indicate from the amended defence what he had been intimating earlier would be the matter of some meat that would arise on the face of the amended Defence.

A: Thank you, Mr. Chairman.

If you go from 11, Paragraph 11 of the Defence, you will see the falsification of information which leads to their claim. The first part is, yes, there was the amount of \$ [REDACTED] (look at (b) \$ [REDACTED] that was the subject of the first mortgage.

MISS CLARKE: Debtor 5, don't so much indicate what portions are not in contention, indicate based on that document, the segment that you take issue with in terms of how it is put. Because I believe we have gone through the evidence \$ [REDACTED] your own appreciation relative to the \$ [REDACTED], so we are not going to be asking you to repeat that.

A: No, sorry.

Q: We know that \$ [REDACTED] is not in contention.

A: It is in contention in a way, is that they have \$ [REDACTED] which is of two parts, one part is a Demand Loan and the other part is Overdraft Facility. They treated this as a disbursement, so the Overdraft Facility which was later settled is being carried as...

COMM. BOGLE: Debtor 5, that is what I was saying, that your contention is that when CNB, when Century National Bank was taken over by FIS you owed no money.

A: Yes, sir.

COMM. BOGLE: So whether the [REDACTED]
you owed no money at that time.

A: Yes, sir.

COMM. BOGLE: So what I am saying is that, we have been [REDACTED],
we have through the [REDACTED], we have been through the [REDACTED]
[REDACTED]. All of those you have refuted, because
you have said that whatever loans or overdrafts that you were given at CNB you had
cleared up all of those before CNB was taken over from FIS.

A: Very well, sir.

COMM. BOGLE: So that is why I am saying all of that here that they are stating, you
have already given us your views on it and that is, you do not, or at the time did not
owe. And so this is why I am saying that if there is something in this document that is
new, in other words, that we have not yet gone through, then fine, by all means
highlight it, but we have, I think, at length, gone through the [REDACTED], the
three-fifteen, the nine-fifty and the promissory note, total of \$[REDACTED].

A: Yes. Very well, sir. The only think to note is that what Counsel was trying to
get across I think, is that they are regurgitating what Century was saying as if they
have not had the opportunity to have discussions with me, to have extended letters
from me, and documentation showing me that, that was wrong. So this is a deliberate
falsification.

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

A: Yes, sir.

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

A: Yes, sir.

COMM. BOGLE: Right?

A: Very well, sir?

COMM. BOGLE: That is basically what I am trying to avoid us going over because you cannot articulate fully the Defendants' point of view, let the Defendants articulate that themselves. Fair enough, sir?

A: Yes. I wasn't articulating their point of view, I was destroying it.
(LAUGHTER)

COMM. BOGLE: Can we move on then?

MISS CLARKE: Debtor 5, down to Paragraph 28 where I just read, you are contending before this Commission that Debtor 5 Company Limited and Debtor 5 Company Debtor 5 Other Company were not indebted to FINSAC and were not indebted to CNB and that would be your contention relative to the companies' dealings with Century National and its affiliates?

A: Yes, ma'am.

Q: But there is another company, Caribbean Chalks Limited that had dealing with the Eagle Group?

COMM. BOGLE: Just a second.

COMM. ROSS: Could I just ask Debtor 5, were you ever able to recover the balance in that Current Account?

A: No, sir, not until this day.

COMM. ROSS: Why is that?

A: Because by the time it came about -- this was 1995 -- Century Bank was in the throes of being taken over by and by that time they were taken over in 1996, a year after or a little less than a year after, for a period, up to 1999 there was nobody to talk to and by the time FINSAC took over, they took over, really, as collectors and not as people willing to sit down and reconcile the thing.

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

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

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

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

COMM. ROSS: Why not?

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

COMM. ROSS: It should have been set off against it. I mean, the money was his, either he should be paid off or should be set off against his debtors.

COMM. BOGLE: He didn't know.

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

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

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

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

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

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

COMM. BOGLE: No, no.

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

COMM. BOGLE: Current Account, as far as I know, was dealt with on the basis that these accounts, especially in view of the fact that he had an overdraft facility, and so what you would find, is that the classification there would be a credit on this list and not be a part of the deposit.

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

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

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

DEBTOR 5: There were pre-conditions for being paid-out if you had balance with them, and part of that, you would have been written to and asked to confirm what that

balance is and that you would take it to National Commercial Bank, I think, but where this is part of a whole credit facility that they are claiming that is unsettled...

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

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

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

COMM. BOGLE: As far as I am concerned, I have an overdraft for [REDACTED] and that does not feature in there.

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

A: Until this day.

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

MISS CLARKE: You were about to tell us about your sojourn with Eagle Merchant Bank to Caribbean Chalks and Art Products Limited, and I believe that account starts at Paragraph 29 of the Witness Statement, could you just read for us, [REDACTED] th?

A: This is [REDACTED] Limited. The name says what we did.

This company was incorporated in about 1987. At that time in Jamaica there was a government sponsored slogan "Export or die". As a member of the business

community I joined the drive of the Jamaican business community to get into the export market and to earn and save foreign exchange.

In our quest to achieve this, we made contact and developed relationships with the international agencies and consultancies, mainly working through JAMPRO, The Jamaica Manufacturers Association(JMA) and Caribbean Association Industry and Commerce - (CAIC). The objectives were to expand the productive capacity and production methods of my companies and to attain quality standards all of which would equip us to enter the export market.

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

We identified a company in England that would supply the required machinery and raw material and would give technical support in transferring the world's standard technology manufacturing capability to Jamaica.

We obtained the services of a consulting company based in England to prepare a business development plan. Working along with me, the international consultant developed a comprehensive business plan for chalk and crayon operation.

As group managing director, I approached Eagle Merchant Bank Limited (EMB) to obtain funding for [REDACTED] Limited(CCIAP).

At the time Eagle Merchant Bank had two funding programmes for those in the manufacturing sector who had potential for export manufacturing and earning foreign exchange. These were the International Finance Corporation Export Support Programme(EMBIC) and the United States Agency for International Development(EMB/USAID).

On November 9, 1989 I signed an EMB/IFC agreement for EMB to on lend to CCAIP the sum of approximately US\$ [REDACTED].

1. The importation of machinery and equipment in the sum of one hundred and twelve thousand, five hundred and thirty pounds which converted at the time to J\$ [REDACTED] converted at a rate of J\$ [REDACTED] to US\$ [REDACTED] or J\$ [REDACTED] to [REDACTED] [REDACTED].

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

A: Yes.

MISS CLARKE: AS 13.

A: Oh, yes. Thirteen is the agreement.

When you go back you will see...

MISS CLARKE: Sorry. Mr. Chairman, we are just pausing to mark that Exhibit. It is a document and a loan agreement dated 9th of November, 1989.

COMM. BOGLE: AS 13, is that one?

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

COMM. BOGLE: Is it eighteen?

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

COMM. BOGLE: I think the end of the document seems to come where there are signatories with a [REDACTED]...

A: Yes, that doesn't belong there.

MISS CLARKE: No, it doesn't.

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

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

COMM. BOGLE: Okay.

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

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

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

DEBTOR 5: And the other one is the letter of Commitment.

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

A: I doubt it.

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

A: Yes, at some date.

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

A: We went to 38?

Q: Yes.

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

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

A) assistance in completing the purchase of real estate for \$[REDACTED]. The assistance is more than \$[REDACTED], the real estate is more than that, and

B.) Payment of duty on imported capital goods in (1) above, that is \$[REDACTED] for the importation of machinery.

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

A: That is immediately behind...

Q: ...is the letter of Commitment from Eagle Merchant Bank that is also signed by you on behalf of Caribbean Chalk Limited. I don't know if you want to perhaps explain a little bit.

Loan amount \$[REDACTED].

EMBG term loan - \$[REDACTED].

Could you just explain for the benefit of us what the \$[REDACTED] represented and then \$[REDACTED], Debtor 5?

A: Yes, the \$[REDACTED] was in fact in two parts and each part was broken down into two sub parts. The first part is a foreign exchange loan by the IFC which provided for the importation of machinery in the value of US\$[REDACTED] 'P', converted at a rate of US\$[REDACTED] to J\$[REDACTED] and the balance in the agreement is J\$[REDACTED]. And the second part was a revolving demand loan.

Q: Raw material loan?

A: For raw material and the total for that is, the upper limit for that was US\$[REDACTED] converted at six point five which is \$[REDACTED].

MISS CLARKE: Okay and then the Letter of Commitment now incorporated that and another facility in the nature of the line of credit for \$[REDACTED]?

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

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

A: Yes, the original one and this facility.

Q: And paragraph 39 as you have just said the grand total of the IFC facility was \$ [REDACTED]. Could you read from paragraph 40 now please.

A: On the 17th of November 1989 CCIAP applied to EMB to obtain letters of credit in the name of [REDACTED] Limited in Southampton UK in the United Kingdom for:

1. Sterling [REDACTED] for the importation of chalk and crayon machines.
2. Sterling [REDACTED] for the purchase of chemicals which are raw material for the manufacture of crayons.

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

Up to the time I did the pre-shipment inspection in March 1990 the letter of credit for the chemicals was not established and only after I returned and made several urgings on EMB and Eagle Trade Services (ETS) foreign exchange agent for EMB was the letter of credit established in May 1990. However, because of errors made by Eagle Trade Services the final letter of credit to allow for the shipment was not perfected until July 1990.

The chemical arrived in Jamaica in November 1990.

This was at the end of the school season and EMB was fully aware that those material were required for sales in the peak period of back to school between July and October. Despite efforts on our part, EMB did not disburse the rest of the raw material loan (approximately US\$ [REDACTED]). As a result the projected sales for the period was not met.

By the time the machinery arrived in April 1990 we had established duty free status as manufacturers under the modernization of the industry programme. So we were never required the portion of the loan of \$ [REDACTED].

Q: You never required it?

A: No, we didn't require the portion of the loan \$ [REDACTED] which was to be allocated to the payment of import duties.

A condition for disbursement of the amount of \$ [REDACTED] was that the interest - interest meaning the notification of their right - EMB be registered against the title to the property being purchased. That is [REDACTED].

A mortgage in the amount of \$ [REDACTED] was secured.

By letter dated September 7, 1990 "Debtor 5 15" EMB wrote to CCIAP to say that the sum of \$ [REDACTED] plus interest of over \$ [REDACTED] was outstanding. A meeting was sought with me with a view to settling the outstanding amount and to work out future settlement of the account.

Q: If we could just pause just to identify the exhibit, Mr. Chairman. It is a letter from Eagle Merchant Bank to Debtor 5 in his capacity of Managing Director of Caribbean Chalk & Instrument and Art Products Limited, dated September 7, 1990, a formal demand letter with respect to demand loan #8556 and...

A: [REDACTED].

Q: The principal amount is \$[REDACTED].

Interest \$[REDACTED].

Total \$[REDACTED]. And the addressee of the letter is being asked to contact immediately with the officials at the bank upon receipt of this letter with your cheque in the amount of \$[REDACTED] representing arrears of interest and your proposals for monthly payment. "AS 15" Mr. Chairman.

COMM. BOGLE: Yes.

MISS CLARKE: Paragraph 50 now, Debtor 5.

A: I went in sometime in September 1990 and made arrangement to pay up the amount being claimed and also made arrangements with respect to payment for the ensuing period. At that meeting we confirmed that the interest rates on the EMB portion of the loan had been changed from [REDACTED] add on over five years (as per the letter of commitment) to [REDACTED] on the reducing balance. And note in bracket that (the agreement allowed for the variation of interest on the EMB portion of the loan. But on the IFC portion interest had to be computed according with a formula, which you will see in the agreement that we just read there.

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

COMM. BOGLE: Right, there is no Schedule.

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

COMM. BOGLE: I agree and I note that Miss Smith had asked the witness to try to locate the agreement with the complete Schedule so that this can be forwarded to us because that is very important, especially regarding the interest rate and so on.

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

COMM. BOGLE: Pardon me.

MRS. PHILLIPS: I would think it would be likely to be attached to the rest of the document that were copied.

MISS CLARKE: I don't know to what document my friend...

MRS. PHILLIPS: The Schedule is likely to be attached to the principal document.

MISS CLARKE: The situation is that we don't have that portion at hand now. That would have been on the date when it was executed or sometime.

COMM. BOGLE: Do you have a copy with the Schedule attached, Debtor 5?

A: Yes, Mr. Chairman.

COMM. BOGLE: You do.

A: I don't have it with me. But the agreement is covered by the Letter of Commitment which has the details. So this Letter of Commitment which follows the agreement gives you the details of the interest to be charged; and the body of the agreement also has it in it, it is not just limited to the Schedule.

COMM. BOGLE: It would be nice if you have the Schedule.

A: Yes, sir, we have it, sir. We have information here which is part of the official document.

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

COMM. BOGLE: Yes.

MISS CLARKE: The schedule is not at hand.

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

A: Very good, Mr. Chairman.

COMM. BOGLE: Okay, we were looking at?

MISS CLARKE: Paragraph 51. I believe you were at paragraph 51, Debtor 5.

A: At the same time we had notification from EMB through its auditors Peat Marwick "Debtor 5 16" which indicated that the applicable interest rates on the IFC portion of the facility was [REDACTED] percent not accorded with the IFC agreement.

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

COMM. BOGLE: It is a letter from Eagle Merchant Bank asking that Caribbean Chalk confirmed whether or not the information at the bottom is correct. That is really a letter from the Eagle Merchant Bank to the customer of the bank asking them to

confirm to their auditors Peat Marwick as to whether or not the amounts and all the information stated at the bottom is correct. They are not stating that, that is correct, they are asking you if that is correct. That is technically what this document is doing.

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

COMM. BOGLE: Unusual or not there could be errors therefore, the question is whether or not you agree that this was the situation at the time.

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

COMM. BOGLE: The question really is, the bank is asking you to confirm this to Peat Marwick whether or not this is correct. Now, I am simply asking you whether or not this is correct because you referred to it, so I am asking if the information stated here as shown by Eagle Merchant Bank's records if is this information is correct.

A: The interest rate is correct.

COMM. BOGLE: You are saying the interest rate is correct, but the principal amount owing is not correct?

A: The interest computed to that date is correct.

Q: So the \$ [REDACTED] is correct?

A: Yes.

COMM. BOGLE: What about the principal?

A: The principal is incorrect, it is over stated. And you can tell that by the agreement what the loan sum was, it was \$ [REDACTED] and the rate of exchange was clearly stated as part of the contract. For them to reach this figure it meant that they applied -- the inference has to be that they applied the foreign exchange...

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

MRS. PHILLIPS: Mr. Chairman, since you have asked him those two questions, through you, perhaps you could just ask him whether he agreed that the amount paid for the year July 1, 1989 to June 30, 1990 was due?

A: That is correct.

COMM. BOGLE: It was zero?

MRS. PHILLIPS: Thank you.

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

MISS CLARKE: While examination in chief is proceeding and we are seeking to establish the portions of the documents that are in contention, Debtor 5, could you confirm or indicate or explain the difference in the demand loan account number on Exhibit "AS 15" that letter of demand from Eagle dated September 7, 1990 and the demand loan account number in that "AS 16".

A: Some of those demand loans - the [REDACTED] is identified as the machinery, the capital importation account and [REDACTED] while the demand loan which is the local portion of the loan is account over 15 which is [REDACTED], 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.

Principal and interest were paid up to July 1991 for the demand loan that is loan [REDACTED] in the sum of \$[REDACTED]. It must be recalled that we did not draw down on the \$200,000 for import duties. Although it was being claimed in that letter for \$[REDACTED], we did not draw down that \$[REDACTED] on account of having the status of modernization of industry from JAMPRO and we have letter from JAMPRO to indicate that.

MISS CLARKE: 54.

A: In about February 1991 we had notification directly from EMB of interest rate changes on the IFC portion of the loan indicating that the rate was changed from [REDACTED] [REDACTED]. In December 1990 and as of the date of the letter of notification the rate was changed to [REDACTED].

Q: "Debtor 5 17". We could just look at that very quickly. Letter dated February 15, 1991 Eagle Merchant Bank Caribbean Chalk Re: EMB/IFC Credit Facility number [REDACTED].

We wish to advise you that the variable interest rate on the captioned loan facility, sourced from the International Finance Corporation has been further increased to [REDACTED] [REDACTED] as of February 1, 1991. This interest rate was previously adjusted to [REDACTED] per annum on December 1, 1990. "AS 17, Mr. Chairman.

Signed William Eaton.

COMM. BOGLE: Okay.

MISS CLARKE: Paragraph 55.

A: Based on the creeping escalation of interest costs CCIAP and its guarantors resolved to pay out the revolving raw material facility in the same way it had arranged to pay out the demand loan. Around February 26 1991, Debtor 5 Company Limited made further arrangements with CNB to pay out the amount drawn down to that date on the revolving raw material facility. That amount being \$ [REDACTED] Pounds sterling at J\$ [REDACTED] to sterling \$ [REDACTED] - the sterling and five there is incorrect - or the sum of \$ [REDACTED] for a total of \$ [REDACTED]. The transmittal letter accompanying the managers cheque from CNB was sent to EMB. (See "Debtor 5 18".)

MISS CLARKE: Now, that letter is a letter...

A: Dated February 26 1991.

Q: Signed by you Debtor 5?

A: Yes, ma'am.

Q: Enclosed please find managers cheque from Century National Bank in the sum of \$568,361.81. This sum is to be used to pay out EMB/IFC loan in the amount of \$539,500.00 and our computation of interest to date on that account of \$ [REDACTED]. The escalation of interest rate on the IFC account as indicated in your letter of February 12, 1991, is very troubling to us and if we cannot put a halt to it we would have to seek ways of paying of the fixed asset account as well.

We must again point out that we have not received any statement on our account with you.

Yours faithfully,

[REDACTED]

signed by [REDACTED]

Chairman. "AS 18"

COMM. BOGLE: Yes.

57 Debtor 5.

A: Yes. ma'am. In October 1991 Stationery Manufacturers Limited paid to EMB the sum of \$100,000.00 to bring interest payments on the capital facility up to date.

I should point out that, that cheque was acknowledged in court.

On or about December 16, 1991 SML remitted to EMB the sum of \$ [REDACTED] to pay out the...

Q: \$ [REDACTED].

A: \$ [REDACTED] to pay out the facility as follows:

A) cheque in the sum of \$ [REDACTED].

B) instruction to EMB to use funds held by ECB from part proceeds from the sale of assets of SML.

On receipt of the letter and - before we go to that, if you would allow me sir ...

COMM. BOGLE: Yes, go ahead.

A: Is that this \$ [REDACTED] and the letter was also admitted in court by FINSAC.

On receipt of the letter and payments mentioned above the Chairman of EMB initiated discussions with me. Mr. O.C. Wilson, a consultant and former Chief Accountant at EMB led EMB investigations and presented financial projections to support a proposal for EMB to refinance CCIAP "Debtor 5 19".

The original business plan...

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

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

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

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

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

A: If I may, Mr. Chairman, point out that the letter read transmitted the money the \$ [REDACTED] has a complement which is the letter of transmittal and the bank statement showing the amount paid.

COMM. BOGLE: Repeat that.

A: Paragraph 56 that the \$ [REDACTED] has with it Exhibit "AS 18 which is the letter of transmittal and the bank statement showing a debit advice taking out the money for the managers cheque.

COMM. BOGLE: You got the debit advice?

A: Yes, I have it.

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

A: I have it in...

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

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

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

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

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

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

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

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

COMM. BOGLE: She marshals the evidence.

MRS. PHILLIPS: Then that is how she should introduce herself.

MISS CLARKE: You know Mr. Chairman, perhaps I should say it, but certainly it is not the forum for it, but as it relates to my capacity as of now, Mr. Chairman, I believe in my own estimation you are perfectly correct, but in terms of the ambit of my appearance here perhaps Counsel should probably seek to establish that not with any particular witness in this instance.

COMM. BOGLE: It is a point of clarification.

MISS CLARKE: It is relevant now.

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

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

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

MRS. PHILLIPS: I am grateful Mr. Chairman.

COMM. BOGLE: Yes, Mrs. Phillips.

A: I have the letter.

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

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

COMM. BOGLE: Go ahead Debtor 5. I made a statement, I wasn't really asking you a question on that. I simply made a statement because it is not the first that you said you have the information, you referred to it but you haven't found it.

A: It got in the cross....

COMM. BOGLE: Okay, Debtor 5, see if you can locate it.

A: I have the letter of transmittal and a copy of the bank statement showing the debit memo for the amount.

COMM. BOGLE: Can you give it to Mr. DePeralto and he will try to get copies for us. Okay, can we move on.

MISS CLARKE: So we are at paragraph 60 I believe.

A: 60?

Q: Yes. The Financial Projection "AS 19" and you are now reading paragraph 60.

A: In January 1992 EMB unilaterally withdrew from SML's account with EMB a sum in the excess of \$ [REDACTED] purporting to be paying debt owed by EMB. See letter dated January 22, 1992 from EMB to ECB, that is Eagle Commercial Bank "Debtor 5 20".

DEBTOR 5: We are we at Paragraph 60.

In January, 1992 EMB unilaterally withdrew from SML's account with EMB A sum in excess of \$ [REDACTED] purporting to be paying debt owed by EMB.

See letter dated January 22, 1992 from EMB to ECB -"DEBTOR 5 20" with related Customer Advice Slip - "DEBTOR 5 21. The amount thus paid largely used up funds that were intended to pay out the IFC capital facility.

MISS CLARKE: Let us look at those exhibits.

Exhibit AS 20 is a letter from Eagle Commercial Bank Jamaica Limited to Eagle Commercial Bank Limited it is dated the January 22, 1992 and said

Re: Stationery Manufacturers Limited today's date, enclosed is Cheque No. [REDACTED] in the amount of \$ [REDACTED] which is to be deposited to the account of Stationery Manufacturers Limited.

The funds are to be used to purchase US\$ [REDACTED] for transmittal to [REDACTED] in discharge of the Commercial Bank's liability to that company.

Yours truly,

Signed EAGLE MERCHANT BANK OF JA. LTD.

BARRINGTON WHYTE

Manager - Corporate Loans

And there is the note indicating the payment amount attached.

Now, [REDACTED], I would like for you to explain, if you will, this transaction vis-a-vis the facilities you had with Eagle Merchant Bank and Eagle Commercial Bank, the ISC Loan and the other facilities, could you just explain how this letter would have figured?

A: This letter shows Eagle Merchant Bank going into the account...

Q: Hold on a minute please.

COMM. BOGLE: Yes, go ahead.

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

A: That account that this money was taken from, was part of a deposit of a million dollars that the proceeds of the sale of plant and machinery, and was intended as shown in the previous letter written by me, saying, take this [REDACTED]00 and [REDACTED] from that account and settle the plant and machinery account, we are paying it out at this time. [REDACTED]00 plus [REDACTED], [REDACTED] and we instructed them to take it from this account.

COMM. BOGLE: [REDACTED].

A: [REDACTED] I am very sorry. And so we consider that account was paid out but subsequently going through the records we found that a substantial part of the money that should have made up the [REDACTED] was used to pay Eagle Merchant Bank debt.

MISS CLARKE: So this payment had nothing to do with your debt, the [REDACTED]?

A: Nothing to do with our debt.

COMM. BOGLE: So therefore, you are saying that this amount of [REDACTED] US to Domtar was not a debt of your company at all?

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

COMM. BOGLE: So you didn't owe Dumtar International any money?

A: We had transaction with [REDACTED], but that was the time when payments were made, foreign payments were made to the Bank of Jamaica awaiting auction when you would get paid and we have - I don't know if I gave it to Miss Clarke. I hope Miss Clarke doesn't get blame for things, but we have mountains of record and information and she had to choose sometimes and some of them got to her late and all of that. But, we have letter from Domtar, we have letter from the Eagle Trade Services that did their foreign payment to show that we had money on auction awaiting allocation of foreign exchange to make the payment whether to Domtar or the other. So they had no obligation to take money from our account.

COMM. BOGLE: So was there any time that Eagle Commercial Bank had guaranteed or set up a letter of credit or anything like that to Domtar?

A: No.

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

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

COMM. BOGLE: No. What I am saying is that Eagle Commercial Bank must have had some invoice or communication from Domtar saying that you owe Domtar and it is on the strength of that, that Eagle Commercial Bank is saying to the Merchant Bank, that look, we need some money in order to liquidate this debt for this customer, so I am asking if you know anything at all about that?

A: No, sir, nothing like that.

MISS CLARKE: I suddenly feel the need to enter the fray in some a personal way in that my capacities and my functions have been so brought to the fore, but you know, perhaps, [REDACTED], I don't know what the source of his data is, but would want to recall that, certainly as it relates to the preparation of his data, if he would have brought certain data and related them to certain specific paragraphs as it relates to yours truly, so the documents were actually supplied specifically by Debtor 5 with specific instructions as to how to use them.

COMM. BOGLE: I have no doubt.

Okay, Debtor 5, you said that the Stationery Manufacturers, as far as you know, had no relationship with Eagle Commercial Bank regarding this payment of \$ [REDACTED] to Domtar?

A: No, sir.

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

COMM. BOGLE: Paragraph?

MISS CLARKE: 61.

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

\$ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Total \$ [REDACTED]

MISS CLARKE: Continue please.

A: And we have acknowledgement of these payments.

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

A: We have acknowledgement [REDACTED] and we have a witness statement that has \$ [REDACTED] and \$ [REDACTED] to another account but those amounts were acknowledged as having been received.

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

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

A: The witness statement of Martin Gooden has in the \$ [REDACTED] and the [REDACTED].

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

A: Yes, ma'am.

Q: And it is a witness statement you say of [REDACTED]?

A: Yes.

(Documents distributed)

COMM. BOGLE: This was really the statement that was not attached to the letter. The letter we have already, this the statement. I think we will have to number this, not AS 19, but more AS 18A. So it is just the statement that was referred to.

MISS CLARKE: 18 what?

COMM. BOGLE: 18 A.

MISS CLARKE: That would be the statement?

COMM. BOGLE: The statement because the letter was already admitted.

MISS CLARKE: AS 19.

COMM. BOGLE: I think AS 18.

MISS CLARKE: Oh, yes.

COMM. BOGLE: Its just the statement that we are really dealing with now.

MISS CLARKE: Yes.

You were intimating, Debtor 5, that some of these payments that you referred to at Paragraph 61 of your witness statement....

MRS. PHILLIPS: I am just trying to understand what is the name of this account?

MISS CLARKE: We are talking....

MRS. PHILLIPS: Whose statement is 18 A?

COMM. BOGLE: It would be Debtor 5 Company Debtor 5 Other Company.

A: The bank statement.

MRS. PHILLIPS: And that is the statement of Debtor 5 Company Debtor 5 Other Company that is attached by the letter of Caribbean Chalks, that is what your saying?

COMM. BOGLE: Yes, because I think they are a guarantor. 18 A.

This was really just to indicate where the [REDACTED] was from and so the statement was indicating that there was the amount here of [REDACTED], a debit memo. So that's really all that this statement is for.

This matter went to Court and it was decided? Have we got the Judgement?

A: Yes, a copy of the Judgement.

MISS CLARKE: Written Judgement?

A: Yes, written Judgement and there is also a copy of the Notice and Grounds of Appeal.

COMM. BOGLE: Because it would be very important...

MRS. PHILLIPS: Which of the matters are you talking about, because I have seen Judgements in relation to...

A: Eagle.

MRS. PHILLIPS: You have a Judgement in relation to Eagle? Can we see it?

COMM. BOGLE: This is what I am trying to say, if there is a written....

MISS CLARKE: A written Judgment, Debtor 5, from the judge.

A: Yes.

COMM. BOGLE: That is very important for our benefit.

MISS CLARKE: Are there other written Judgements you want to disclose?

COMM. BOGLE: Is there any other case that you had that has come up here that you have had written Judgement?

A: No, we have not had a trial in the other case but we have had interim interlocutory matters which have been decided.

COMM. BOGLE: Decided by the Court?

A: Yes.

COMM. BOGLE: All those are very important to the Enquiry to see what the Court has ruled, see what opinion the Court has given.

A: I agree with you.

COMM. BOGLE: You agree with me but you did not forward those to us at all. I take it that you are withholding information from the Enquiry whether intentionally or not.

A: No, sir. In fact, I got the impression that I was deluging the Enquiry with information to the extent that it had to be....

COMM. BOGLE: But you see, there is quite a bit of information that you have. If you refer to it in your witness statement, it is important that we have it, and further, since the matter has gone to Court and the Judgement, written Judgement handed down, then that is very, very important to the Enquiry because this provides us with the considered opinion of the Court.

A: Yes.

COMM. BOGLE: So that is very important that you should have provided us with copies of those.

A: I have all of those.

MISS CLARKE: Mr. Chairman, I, myself would certainly benefit from having a look at that Judgement.

COMM. BOGLE: Yes.

MRS. PHILLIPS: Mr. Chairman, I certainly can provide you copies of the Interlocutory Judgements in the two matters that were transferred to my client, that is Century National Bank. I wasn't aware of Eagle Merchant Bank's Judgment nor have I either had the benefit...

MISS CLARKE: Could we have a look at what Debtor 5 has?

COMM. BOGLE: Yes, you may have a look at it Miss Clarke.

A: I also have information on the amounts of Eagle Trade Services and letter from JAMPRO.

COMM. BOGLE: How many cases do you have or had in the Court?

A: With respect to FINSAC, two.

COMM. BOGLE: Two cases.

A: Yes. One where we were sued as guarantors, myself, and other three other companies were sued as guarantors.

COMM. BOGLE: Right.

A: And the other one, where Debtor 5 Company and Debtor 5 Company [REDACTED] [REDACTED] were pursued for debt, supposed debt owed prior to FINSAC taking over.

COMM. BOGLE: But you and your companies also took action?

A: Yes. In that, Century didn't. We were the ones that filed an action to have a Court Order declaration that we were not indebted and to free our titles.

HER LADYSHIP: And that judgment was handed down?

A: That one only went through the interlocutory exercise, and Judgment was handed down, we got information that we believe that the matter should have been reopened. They appealed against that and went to the Appeal Court and the Appeal Court said that, ruled in their favour.

(Copies circulated)

COMM. BOGLE: All right, let us just see if we can go through this.

MISS CLARKE: Mr. Chairman, there is in fact what looks, just at cursory reading, like a Final Judgment in a matter, certainly the matter that he has referred to between Eagle Merchant Bank Limited and the various business concerns of his. I personally have my own, certainly not self-imposed, deficiencies relative to this particular matter and would want an opportunity to look at that document, because as you have rightly indicated, Mr. Chairman, I am sure that the process would benefit from decision based on, you know, considered assessment and appreciation of the evidence. So a document such as that, I would really want to take some pause to look at, certainly for my own benefit in terms of my function as articulated just now.

COMM. BOGLE: I am inclined to adjourn for the day. He has two Interlocutory Judgements.

MRS. PHILLIPS: I just wanted to point out, Mr. Chairman, there are two Interlocutory Judgements in the case brought by Debtor 5 Company against FIS, JRF and Dennis Joslin. One is by the Honourable Mrs. Justice Sinclair-Haynes and in

addition to the written Judgement of the Judge I have also attached the Notice of Appeal, the formal Order of the Judge and the decision of the Court of Appeal. In this particular case, the Court of Appeal allowed the appeal.

In the other Interlocutory Judgement which is of Miss Justice Mangatal, the Court of Appeal dismissed this Appeal.

MISS CLARKE: In terms of the one that was just passed up though, you know, it relates to entirely different matter. This is the matter that we are now on to with Caribbean Chalks, it is an entirely - and I think my friend has indicated that she was not aware of it, so that is the matter. I have not seen the others either but this is the one we were at now and I would certainly want, for where we have reached now, to be able to look at the data that was supplied, certainly to advise myself.

COMM. BOGLE: Okay, what we will do now, we will receive these in the records and also he is to provide another one.

MR. DePERALTO: Well, we have one here; which is the Eagle.

MISS CLARKE: He has provided that.

MRS. PHILLIPS: I don't have a copy of that.

COMM. BOGLE: What we are going to do for the records, we are just going to record them and attach an exhibit number to them and they will be copied and copies furnished to all concerned so that when we reconvene we will have the information.

MRS. PHILLIPS: I have sufficient copies of mine, so you need only copy the one that the witness handed to you.

MISS CLARKE: The Century National ones those are relative to interlocutory matters. I am sure that the Commission will want to bear in mind relevant to the

matters where Debtor 5 Company brought the claim that, to the extent that it will become important, these may not touch and concern the substantive issues because these are decisions from interlocutory matters. For example, I am just at glance looking at one and it is an application for an interim injunction in one case.

COMM. BOGLE: As I said, what we will do, this afternoon is simply receive them and attach an exhibit number to them so that persons involved may read and when we re-convene we will be able to deal with them.

So the first one which is the matter of dated the 10th -- okay, we are going to take this one which you do not have a copy of. This is the one between Eagle Merchant Bank Claimant against Intercorp First Defendant, Debtor 5 Company Second Defendant, Stationery Manufacturers Third Defendant, and [REDACTED] Fourth Defendant and its Claim No.CLE073 of 1993. So that one, this is the only copy and the office will copy it and before you leave I am going to ask you to collect a copy at the office. And so this one will be AS 20. We will just call it 21 A. It might not directly relate to it but we will call it AS20....

MISS CLARKE: That would be EMB, where Eagle is the claimant?

COMM. BOGLE: Right, Eagle being the claimant. The Claim No. CLE073 of 1993. So please collect a copy from the office.

MISS CLARKE: I believe the others we would want to mark appropriately in terms of where they would fall because I think this would probably have to do with the first segment of the witness' complaints.

COMM. BOGLE: Which one you are talking?

MISS CLARKE: Debtor 5 Company Limited against FIS, JRF and Dennis Joslin where Debtor 5 Company is actually the claimant. The 2003 Suit brought by Debtor

5 Company was relative to the first segment of its claim in terms of its concerns with Century National Bank and its affiliates. So we probably want to go back and mark these.

MRS. PHILLIPS: Sorry. Who is my friend referring to as an affiliate of CNB?

MISS CLARKE: Let me assist my friend because, you know, I cannot, with the greatest of effort promise that I will undertake to be very forensic in my choice of words. I was referring to His relations with the Century Group. So I am saying that in terms of the complaint insofar as it had its genesis in his relationship with Century National Bank, Century Merchant Bank and Trust Company Limited, the Century Group, this is the Judgement, these Judgements would relate to that segment of his complainant. If my friend is thinking that I am referring to JRF as an affiliate of Century, just to make it clear to her, I am not. I am actually referring - there are two Century entities mentioned here, Century National Bank and Century National (CNMBTC) In his statement, there are two of them mentioned.

COMM. BOGLE: Can we have them in just about at the last AS12 A and 12 B.

A: Debtor 5.

MRS. PHILLIPS: Which one is 12 A, that will be the Judgement of Mrs. Justice Sinclair- Haynes?

COMM. BOGLE: Yes.

MRS. PHILLIPS: With the attendant document Notice of Appeal and everything?

COMM. BOGLE: Right the complete document.

MRS. PHILLIPS: And the other one which is the Judgement of the Honourable Miss Justice Mangatal that will be 12B?

COMM. BOGLE: 12 B, yes.

MRS. PHILLIPS: With all the attendant documents including the decision of the Court of Appeal.

COMM. BOGLE: Yes.

MRS. PHILLIPS: One more Court document here, Commissioner, which is a Cost Order.

COMM. BOGLE: That has to do with which of the cases?

MRS. PHILLIPS: The first of the two.

COMM. BOGLE: Mangatal?

MRS. PHILLIPS: Well, it has to do with the Suit brought by Debtor 5 Company against FIS, Jamaican Redevelopment.

COMM. BOGLE: That is [REDACTED]?

MISS CLARKE: I am sorry. Are we at this point introducing all the Court documents? Because I am not really seeing the relevance of putting this one in at this time, because Counsel will have her opportunity, and she has had, to put her documents in at the point when she is cross-examining the witness. We were at a place where Judgments of the Court were referred to....

MRS. PHILLIPS: Commissioner, I was trying to be helpful but if you want me to wait and put it in later I will happily wait.

COMM. BOGLE: We will.

MISS CLARKE: It is the Court Orders.

COMM. BOGLE: We will wait since that is desired but I think that in fairness, Mrs. Minott-Phillips was assisting in view of the fact that certain matters came up that we had no information on and so at this time, therefore, we will...

DEBTOR 5: Mr. Chairman, since you have the Judgment, we also have the Notice and Grounds of Appeal which should go along with it.

MISS CLARKE: Yes, certainly.

MRS. PHILLIPS: Yes, I think it should. Do you have that too?

DEBTOR 5: Yes.

MRS. PHILLIPS: Give that to the Secretary let them copy it.

MISS CLARKE: I think since we are now going to be adjourning now these documents could be forthcoming.

COMM. BOGLE: I think we really will take our adjournment at this time.

Please provide the Secretary with that document so that it can be copied and circulated.

DEBTOR 5: Yes, sir.

COMM. BOGLE: And until we re-convene or until you return, if go through and find any other document that you think might be useful, please provide the Office with it.

DEBTOR 5: Yes, sir.

COMM. BOGLE: Thank you very much.

Ladies and gentlemen, this Enquiry is now adjourned until Tuesday of next week.

██████████, I do not believe that you will be returning Tuesday of next week but the Secretariat will have to schedule a time when you will return and that time, you will be notified of that time.

DEBTOR 5: Yes, sir.

COMM. BOGLE: I think next week Tuesday we should have - you will be all advised who will be here next week Tuesday but definitely we will be here next week Tuesday at 9:30. If you are not informed by some time tomorrow, could you please get in touch with the Secretariat and they will inform you, but I am sure, outside of that, they will communicate with you all indicating who will be here next week Tuesday.

Thank you, have a good afternoon.

MISS CLARKE: My friend is pointing out to me that we were at a point where the witness was about to refer to something in a witness statement by Martin Gooden. I would wish to re-visit that on the next occasion.

COMM. BOGLE: Yes.

MISS CLARKE: Thanks much.

A D J O U R N M E N T

