

numerous meetings with your client and yourself to come to an amicable solution."

Line 82. Some time in 2002, Trevand

informing it that its account had been sold to Dennis Joslin Jamaica Inc. I cannot recall whether or not I received + a similar letter in respect of DEBTOR 6 Company.

A: That is correct..

Q: I tender as an exhibit a copy of a letter dated March 19 2002 from Joslin Jamaica Limited addressed to T&L Farms Export, one of my enterprises.

A: That is correct.

MR. WONG KEN: That can be found at page 54 of the bundle of exhibits.

Letter from Joslin Jamaica Limited, dated March 19, 2002 addressed to T&L Farms Export, 35 Barbican Road, Kingston 6.

Re Notice of Sale and Transfer of Servicing Rights FINSAC relationship Name. T&L Farms.

This letter serves to give you notice that your debts or other obligations previously owing to Worker's Savings and Loans Bank, FIS and/or Refin Trust Limited (a wholly owned subsidiary of FINSAC Limited) have been acquired by Jamaican Redevelopment Foundation, Inc. with effect from 01 February 2002.

For our purpose sir, it is not necessary to go through the rest of the letter.

COMM BOGLE: Who is T&L Farms.?

MR. WONG KEN: I am going to deal with that right now at line 84.

That letter claimed that T&L Farms Export's indebtedness to Worker's Savings and Loans Bank had been acquired by Jamaican Redevelopment Foundation Inc. To my certain knowledge T&L Farms Export has never borrowed any money from Workers Savings and Loans Bank.

COMM BOGLE: Yes, Mr. DEBTOR 6 ?

A: That is correct, sir.

MR. WONG KEN: At line 83 Commissioner Bogle, Mr. DEBTOR 6 acknowledged that T&L Farm Export is one of his enterprises.

Line 85.

1 COMM BOGLE: Just a second, please. The TD13, I know
2 you mentioned that the first paragraph
3 is the more important paragraph, and I
4 note that under paragraph 84 you are
5 saying that there was no loan or
6 anything like that with Worker's
7 Savings and Loans Bank or anything like.
8 that. Was any reply sent to Dennis
9 Joslin regarding this matter?
10 A: That was represented to them on many
11 occasions, Commissioner.
12 COMM BOGLE.; Anything in writing?
13 A: I would want to say yes but I am not a
14 hundred percent sure.
15 COMM BOGLE.: It would be good if you could do a
16 little research on that for us. If you
17 find anything you can pass it through
18 Mr. Wong Ken.
19 A: Certainly, sir.
20 COMM ROSS: The letter does state Workers Bank, FIS
21 and/or Refin Trust, so I don't think the
22 allegation -- it does not suggest to me
23 that it is saying the loan was
24 specifically made by Worker's Savings
25 and Loans.

1 MR. WONG KEN: T&L Farms Export, were they indebted to
2 any of those entities?
3 A: At one point we got facility through
4 Horizon to access funds from the Exim
5 Bank for our export end of the business..
6 All those debts were completely paid
7 out. There was no loan balance on the
8 T&L Farms.
9 COMM BOGLE: That was through Horizon?
10 A: Horizon Merchant Bank.
11 COMM BOGLE: Mr. Wong Ken, can you say whether those
12 loans were paid out?
13 A: I would have to go back and research.
14 Not from memory.
15 MR. WONG KEN: Thank you commissioner.
16 Line 85: I tender as an exhibit a copy
17 of a letter dated March 27 2002 from
18 Refin Trust Limited to T&L Farms Export
19 & Co, informing me that the company's
20 indebtedness had been sold to Jamaica
21 Redevelopment Foundation Inc.
22 That can be found at page 55.
23 COMM BOGLE: TD 14.
24 MR. WONG KEN: The date sequence seems to be out of
25 order. It would suggest that the Refin

1 letter would have preceded the Joslin
letter.

To my certain knowledge that company had no indebtedness nor had
signed as any guarantor for anyone or any
entity? That is correct.

3 Q: Line 88.

4 I tender as exhibits copies of letters
dated October 2, 2002 from Dennis Joslin
Jamaica Inc as follows:

5 a)DEBTOR 6 Company 2Manufacturing Company
6 A: Limited claiming a total of \$000000

accruing interest at \$000000 per day.

7 14 I believe that the loan
numbered

15 000000 for 000000 is in

relation

9 16 to the alledged Century loan
that

10 17 DEBTOR 6 Company 2knows nothing
about. (TD 15a);

11 18 COMM BOGLE: That letter, the number that
you

12 19 referred to seems to be on the
second to

13 20 last line.

21 MR. WONG KEN: In fact yes, Commissioner.

22 COMM BOGLE: Which we can't read on our copy. Could
23 he read the details.

24 MR. WONG KEN: Firstly, Mr. DEBTOR 6 , the blackened
line

25 at the bottom of the page was that line

1 made by you or your staff?
2 A: Yes.
3 Q: And it reads Loans- \$000000; under
4 the line Principal -\$000000; under
5 the line Interest - \$000000; under
6 the line Total -- \$000000; under
7 the line Daily Accrual --\$000000.
8 That letter can be found at pages 56 and
9 57 of the bundle of exhibits.
10 Could that be marked as TD15A, please.
11 COMM BOGLE: So marked.
12 MR. WONG KEN: B)DEBTOR 6 Company
13 claiming a total of \$000000
14 accruing interest at \$000000 per day..
15 (TD 15 b);
16 COMM BOGLE: Sorry are you going to take us briefly
17 through this exhibit?
18 MR. WONG KEN: If you wish, Commissioner. I thought
19 that it was not necessary but it's on
20 the letterhead of Dennis Joslin Inc.,
21 October 2, 2002, to Trevand
22 Manufacturing Company Limited.
23 Re: Your indebtedness to Horizon
24 Merchant Bank.
25 I write on behalf of Dennis Joslin

Jamaica Inc.

Dennis Joslin Jamaica Inc, has been appointed by Jamaican Redevelopment Foundation, Inc., to service the debts and obligations it acquired from Refin Trust Limited, a wholly-owned subsidiary of FINSAC Limited, which includes the captioned account. As at today's date your indebtedness amounts to 000000 with interest accruing at the rate of thirty (30) percent per annum, as set but hereunder and then the schedule that follows..

On page two. I hereby make Formal Demand upon you for the payment of all sums owing within 14 days of the date hereof.

In the event of your failure to comply, we shall have no alternative but to refer the matter to our Attorneys-at-Law for recovery of the debt without further reference to you.

Yours truly,

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1 Dennis Joslin Jamaica Inc.
2 It appears to be signed by Mr. Deryck
3 Rose, Credit Manager.
4 MR. DEBTOR 6 : If I may interrupt at this point. This
type of accounting is consistent to what we have been receiving
that just gives you a loan number, principal amount, interest,
total and daily accrual. There is nothing there that clearly states
the arrival at these figures and that is
5 very consistent in the 12 accounting that
we have been getting.
6 13 COMM BOGLE: Yes, Mr. Wong
Ken?
7 14 MR. WONG KEN: b)DEBTOR 6
Company
8 15 claiming a total
of \$000000
16 accruing interest
10 at \$000000 per day....
17 Could that letter
be entered as Exhibit
18 TD15b? That one could be found at page
119 58.
20 COMM BOGLE: So entered.
21 MR. WONG KEN: Thank you, Commissioner. Would it be
22 your wish for me to read it through?
23 COMM BOGLE: As you did with the previous one.
24 MR. WONG KEN: Thank you, Commissioner.
25 It is on the letterhead of Dennis Joslin

Jamaica Inc. October 2, 2002, addressed to DEBTOR 6 Company; Re: Your indebtedness to Horizon Merchant Bank.

I write on behalf of Dennis Joslin Jamaica Inc.

Dennis Joslin Jamaica Inc., has been appointed by Jamaican Redevelopment Foundation, Inc., to service the debts and obligations it acquired from Refin Trust Limited, a wholly-owned subsidiary of FINSAC Limited, which includes the captioned account. As at today's date your indebtedness amounts to 000000 with.. interest accruing at the. rate of thirty..' (30) % per annum, as set out hereunder. The loans that are set out: Loan 000000; Principal amount 000000 interest- 000000; Total -- 000000; Daily Accrual\$000000. Loan - 000000; Principal amount-

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\$000000; Interest -000000; Total 000000; Daily Accrual ---
\$25, 603.25;

Loan 000000; Principal 000000; Interest \$000000; Total \$000000;
Daily Accrual-
\$000000

1 Total: On the principal- \$000000; on the
2 Interest: \$000000; Total \$000000and on
Daily Accrual \$000000.

3 I hereby make Formal Demand upon you for
4 the payment of all sums owing within 14
days of the date hereof.

5 In the event of your failure to comply,
we shall have no alternative but to
17 refer the matter

to our Attorneys-at-Law:
18 for recovery of
7 the debt without further.

19 reference to you.
8 20 Has that been
entered at Exhibit TD15b?

9 21 COMM BOGLE: Yes.

10 22 MR. WONG KEN: Thank you, sir.

23 COMM ROSS: Mr. Wong Ken, I
just wanted to enquire

11 24 whether there was
any other evidence of

12 25 debt or of the
debts that are claimed

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here other than this letter. Would
Dennis Joslin have had to establish to a
court or to some authority, that these
debts actually existed and were correct
before they exercised their powers of
sale.

MR. WONG KEN: Is that a question to me as an attorney
or is it to the witness?

COMM ROSS: I guess to both.

MR. DEBTOR 6 : That, I think should be directed at me
Commissioner. That is our issue from
the inception of FINSAC. It is for us
to establish the debt, the truthful
debt; what was there. I mean, you know,
we started out with Horizon Merchant
Bank and ended up in two other entities.
How we ended up there I have no idea and
we ended up there as a bad debtor which
in our books we were operating. The
detail of the loan was never ever given
to us. From the day Deryck Rose walked
into Horizon Merchant Bank and relieved
-- this is just my word - relieved Elon
Beckford who was the Chairman of the
Bank, no, the President of the Bank and

Ewart Scott was the President; from they left, there was. no accounting, nothing that would give us any indication of

4 what our real debt is in relation to
5 what funds they. received and what our
6 actual balances
were.

2 7 COMM ROSS: I am particularly
confused by the
8 differences between the numbers. We
9 have an earlier letter with a debt of
10 about 000000 dollars. These
11 two letters seem to be claiming
12 somewhere about 000000 as the
13 principal. It. is just. a little
114 confusing for us to understand exactly
15 what the position was.

16 A: We have been living with that confusion,
17 Commissioner. You have just experienced
18 it for a short while, we have been
19 living with it for ten years.

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21 Continued

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1 think we have most of our drawdown
2 cheques and where we signed the...
3 COMM BOGLE: Yes, but this Commitment letter, there
4 should be other documents to support
5 that.
6 A: Like the Mortgage documents?
7 COMM BOGLE: Mortgage documents, Demand, Debentures,
8 whatever it is, do you have those?
9 A: Yes, Commissioner.
10 COMM BOGLE: Because it is important for us to see
11 the terms of the loans. We note the
12 Commitment but in terms of the actual
13 Mortgage documents and the Debenture
14 documents and things like that, do you
15 have any of those?
16 A: I think I will be able to put my hand on
17 it.
18 COMM BOGLE: As soon as you can, you can pass it
19 through your attorney.
20 A: I will certainly do that, Commissioner.
21 MR. WONG KEN: Commissioner, would you require the
22 security documents supporting all the
23 loans or just the two at the end?
24 COMM BOGLE: All the loans.
25 MR. WONG KEN: Okay.

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COMM BOGLE:
MR. WONG KEN:

1996.
I am going to tender as exhibit TD15ct1), that last letter sir. Would you prefer if I went through TD15c first?
Yes, take it in order.
All right sir. TD15c on the letterhead of Dennis Joslin Jamaica inc. dated October 2, 2002 addressed to Roofing Ceiling & Floors Limited, 15 Tangerine Place, Kingston 10.
Re: Your indebtedness to Horizon Merchant Bank and National Commercial Bank.
I write on behalf of Dennis Joslin Jamaica Inc.
Dennis Joslin Jamaica inc. has been appointed by Jamaican Redevelopment Foundation Inc. to service the debts and obligations it acquired from Refin Trust Limited, a wholly-owned subsidiary of FINSAC Limited, which includes the captioned account. As at today's date your indebtedness amounts to \$000000 with interest accruing at

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the rate of Thirty (30%) per annum as
set out hereunder. The schedule that is
set out hereunder: the first account
000000principal \$000000 Interest
\$000000.
Total \$8000000
Daily accrual \$1000000
Loan 000000.
Principal \$000000
Interest \$000000
Total \$000000
There isn't a daily accrual of
interest there.
Loan 000000, Principal \$000000
Interest \$000000
Total \$000000.
The total on the principal is
\$000000
Interest \$000000
Total \$000000
I hereby make Formal Demand
upon you for the payment of
all sums owing within 14 days
of the date hereof.
In the event of your failure to comply,
we shall have no alternative but to

1756/30.8X

1 refer the matter to our attorneys-at-Law
2 for recovery of the debt without further
3 reference to you. ..
4 Signed Deryck Rose, Credit Manager.
5 COMM BOGLE: Go ahead, Mr. Wong Ken.
6 MR. WONG KEN: Thank you, sir. I am at line 88c(i) I

7 tender as exhibit TD15c(i) a. copy of **a**
8 letter from Horizon dated
9 February 26,1998 addressed to Roofing,
10 Ceiling & Floors Limited. Could that
11 be entered as Exhibit TD15c(i) please.
12 COMM BOGLE: So done.
13 MR. WONG KEN: This letter on the letterhead of Horizon.
14 Merchant Bank Limited dated February 26.
15 addressed to Roofing Ceiling & Floors.
16 Attention: DEBTOR 6 SPOUSE..
17 Re: Demand Loan Roofing Ceiling &
18 Floors.
19 We are pleased to acknowledge receipt of
20 cheque in the amount of \$000000
21 from DEBTOR 6 Company.
22 This has been used to liquidate your
23 indebtedness as follows:
24 Principal \$000000
25 Interest \$000000

1 Late fees \$000000
2 A total of \$000000.
3 We now enclose statement of Account for
4 Roofing Ceiling & Floors.
5 Yours truly.
6 Barrington Watson.
7 Credit Manager.
8 Mr. DEBTOR 6 , you see the handwriting on
9 this document other than the TD15c(i)?
10 A: Yes, sir.
11 Q: Can you say who made those writings?
12 A: My wife DEBTOR 6 SPOUSE .
13 COMM BOGLE: This letter, Mr. DEBTOR 6 , is from
14 Horizon Merchant Bank stating that your
15 indebtedness to them, that is Roofing
16 Ceiling & Flooring indebtedness to them
17 has been liquidated. In the letter of
18 October 2 Dennis Joslin Jamaica, Inc.
1.9 states 'Re: your indebtedness to Horizon._
20 Merchant Bank and National Commercial
21 Bank', did you have a loan with National:
22 Commercial Bank?
23 A: We borrowed from National Commercial
24 Bank but we are unable to say what loan
25 those figures represent.

1 COMM BOGLE: So therefore, the point is, since you
2 borrowed from National Commercial Bank,
3 is it possible that there was a balance
4 at National Commercial Bank that went
5 over to FINSAC under Roofing Ceiling &
6 Floors account?
7 A: Not to my recollection, Commissioner.
8 COMM BOGLE: Is it to your recollection that you have
9 paid off that loan?
10 A: Yes.
11 COMM BOGLE: Have you got any records that can
12 indicate you have paid off that loan?
13 A: I will make checks to verify that,
14 Commissioner.
15 COMM BOGLE: Please do. Because you see this one is
16 saying, yes the'.. indebtedness to Horizon
17 was liquidated, but we want to see the
18 other side in terms of National
19 Commercial Bank. to see whether that is
20 the amount that was outstanding which
2.1 went over to Joslin.
22 A: But the numbers do not correspond where
23 you can use the numbers to identify a
24 particular loan.
25 COMM BOGLE: I understand that. But if you can - I

1 mean, as in this. case where Horizon is
2 saying that the debt was cleared and if.
3 we can find any communication either
4 from you to NCB or from them to you
5 indicating that.: the account was cleared
6 it would assist us. If you would make a
7 search.
8 A: I will certainly do, sir.
9 MR. GOFFE: Commissioner, if I could just point out
10 in relation to this letter, you are
11 referring to the letter TD15c(1)?
12 COMM BOGLE: Right.
13 MR. GOFFE: I am not certain that this letter
14 actually says that all debts owed by
15 Roofing Ceiling .& Floors have been
16 cleared. It makes specific reference to
17 a Demand Loan.
18 COMM BOGLE: Yes.
19 MR. GOFFE: And then it says at the end, the last
20 paragraph "we now enclose statement of
21 account for Roofing, Ceiling & Floors",
22 which statement isn't attached to this
23 letter. I am saying I wouldn't assume
24 that this letter indicates that all
25 debts have been retired.

1 COMM BOGLE: The question then Mr. DEBTOR 6 , do you
2 have, from your memory, any documents
3 that Roofing Ceiling & Floors have any
4 other loans or any other indebtedness
5 that you can remember with Horizon
6 Merchant Bank apart from the Demand
7 Loan?
8 A: No, sir, this loan is the only loan that
9 we have with Horizon. And the
10 statements here as it was with other
11 loans, at any time when they send you
12 something like this they would send you
13 a statement outlining all these various.
14 amounts so you could make your own --
15 well, especially your auditors and
16 accountants can be able to tally back
17 and make sure that all these numbers are
18 in fact...
19 COMM BOGLE: Would you be able to locate that
20 statement?
21 A: We will try, but we have had movements
22 of offices, you know, but we will
23 definitely look to see what is available
24 on our records.
25 COMM BOGLE: Okay, thank you. Mr. Wong Ken.

1 MR. WONG KEN: Thank you, sir.
2 I am at line 88d. Mr. DEBTOR 6 and
3 Mrs. DEBTOR 6 WIFE as guarantors for
4 DEBTOR 6 Company claiming a total of
5 \$000000. This was the first
6 time a demand was made on us as
7 guarantors in respect of DEBTOR 6
Company's
8 debt.
9 A: That's is correct.
10 Q: That can be found at page 62. And could
11 that be marked as TD15d please.
12 COMM BOGLE: So indicated.
13 MR. WONG KEN: On the letterhead of Dennis Joslin,
14 Jamaica Inc. dated October 2, 2002
15 addressed to Mr. DEBTOR 6 and Mrs.
16 DEBTOR 6 WIFE .
17 Re: indebtedness of DEBTOR 6 Company
18 Company Limited.
19 I act for and on behalf of Dennis
20 Joslin, Jamaica Inc.
21 Dennis Joslin Jamaica Inc. has been
22 appointed by Jamaican Redevelopment
23 Foundation Inc. as servicer of loan
24 accounts acquired from Refin Trust
25 Limited, a wholly owned subsidiary of

FINSAC Limited which includes the captioned account. Be advised as follows:

1. As at October 2, 2002 DEBTOR 6 Company was indebted to Refin Trust Limited in the sum of \$116,432,843.12) with interest at the rate of 30% per annum/or daily accrual of \$44,419.90.

2. You have guaranteed the liability of the said DEBTOR 6 Company under and by virtue of an instrument of Guarantee. dated September 30, 1997.

3. DEBTOR 6 Company is in default of its obligation.

We hereby make Formal Demand upon you for payment of the sums of \$116,432,843.12) in accordance with the said instrument of Guarantee within fourteen (14) days of the date hereof. In the event of your failure to comply, we shall have no alternative but to commence legal proceedings to recover the debt without further reference to

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1 you.
2 This is signed for Dennis Joslin,
3 Jamaica Inc. by Deryck Rose, Credit
4 Manager.
5 88e. Mr. DEBTOR 6 and Mrs. DEBTOR 6
6 WIFE as guarantors for DEBTOR 6 Company
7 claiming a total of \$116,432,843.12.
8 This was the first time a demand was made
9 on us as Guarantors in respect of
10 Trevand's debt... Could that be entered
11 as TD15e?
12 COMM. ROSS: It seems as if we have. the.. names of the
13 companies interchanged \$306. Million I
14 think is in relation to DEBTOR 6 Company
15 and \$116 Million is in relation to
DEBTOR 6 Company.
16 MR. WONG KEN: May I continue, sir?
17 COMM. ROSS: In the witness statement, it is the
18 wrong way around.
19 MR. WONG KEN: Thank you, Commissioner. Could that
20 correction be reflected in the notes
21 please?
22 COMM BOGLE: In other words, under (d) where we have
23 \$306,116,067.07 it should really be
24 \$116,432,843.12 and under (e) where we
25 have \$116,432,843.12 that should read

1 306,116,067.07?
2 MR. WONG KEN: That is correct, Commissioner.
3 COMM BOGLE: Go ahead, Mr. Wong Ken.
4 MR. WONG KEN: This was the first time a demand was
5 made on us as Guarantors in respect of
6 Trevand's debt. Mr. DEBTOR 6 ?
7 A: Yes, that is correct, sir.
8 Q: And would that be entered. as Exhibit
9 TD15(e) please.
10 COMM BOGLE: Yes.
11 MR. WONG KEN: On the letterhead of Dennis Joslin
12 Jamaica, Inc, October 2, 2002 addressed
13 to Mr. DEBTOR 6 and Mrs.
14 DEBTOR 6 SPOUSE.
15 Re: Indebtedness of Trevand
16 Manufacturing Company Limited.
17 I act for and on behalf of Dennis Joslin
18 Jamaica, Inc.
19 Dennis Joslin Jamaica. Inc. has been
20 appointed by Jamaican Redevelopment
21 Foundation, Inc. as servicer of loan
22 accounts acquired from Refin Trust
23 Limited, a wholly owned subsidiary of
24 FINSAC Limited which includes the
25 captioned account. Be advised as

follows:

As at October 2, 2002 DEBTOR 6 Company
2Manufacturing Company Limited was
indebted to Refin Trust Limited in the
sum of \$306,116,067.07) with interest at
the rate of 30% per annum/or daily
accrual of \$47,996.09).

2. You have guaranteed the liability of
the said DEBTOR 6 Company 2Manufacturing
Company Limited, under and by virtue of
an Instrument of Guarantee dated May 6,
1994.

3. DEBTOR 6 Company 2Manufacturing
Company Limited is in default of its
obligation. We hereby make formal demand
upon you for payment in the sum of
\$306,116,067.07 in accordance with the
said instrument of Guarantee within
Fourteen (14) days of the date hereof.
In the event of your failure to comply,
we shall have no alternative but to
commence legal proceedings to recover
the debt without further reference to
you.

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1 COMM BOGLE: Just a minute. Mr. DEBTOR 6 , these two
2 letters regarding the personal guarantee
3 of yourself and Mrs. DEBTOR 6 , did you
4 receive - had there been any action
5 taken against both of you further to
6 these?
7 A: No Commissioner.
8 COMM BOGLE: Okay.
9 MR. WONG KEN: 88(f) Roofing Ceiling & Floors Limited
10 claiming a total of US\$10,082.15. Could
11 that be marked as TD15f please. And
12 that can be found at page 64 of the
13 bundle of documents.
14 COMM BOGLE: All right, let. us see if we can get our
15 numbering more organized. TD15e is the
16 letter dated October 2?
17 MR. WONG KEN: That is correct, sir.
18 COMM BOGLE: And then you have another letter dated
19 October 2 TD15e, we have two 15(e).
20 MR. WONG KEN: In fact, you are correct, sir. TD15(e)
21 really should comprise of 63 and 64.
22 am so sorry.
23 COMM BOGLE: Since they are two separate letters,
24 could we deal with TD15e(i).
25 MR. WONG KEN: Certainly Commissioner.

1 COMM BOGLE: If you look at TD15g, TD15g seems to be
2 saying the same as TD15e, the second
3 15e, do we need TD15g?

4 MR. WONG KEN: No, sir, we don't.

5 COMM BOGLE: A suggestion is being made that possibly
6 what we could do is, TD15e being the
7 first letter dated October 2 and the
8 TD15g being the second letter dated
9 October 2, so we would only have one
10 15(e) and a 15g.

11 MR. WONG KEN: Thank you, sir.. So the letter addressed
12 to DEBTOR 6 alone would be TD15g?.

13 COMM BOGLE: Yes. Okay, you can continue now,
14 Mr. Wong Ken.

15 MR. WONG KEN: (f) has been entered Commissioner?

16 COMM BOGLE: No. Could you read. (f) again for me
17 please. 88(f), just read it again.

18 A: Oh the paragraph?

19 COMM BOGLE: Yes. .

20 MR. WONG KEN: Roofing Ceiling & Floors Limited
21 claiming a total of [7S\$10,082.15 and
22 that certainly can be found at page 65.

23 COMM BOGLE: And that is TD15f?

24 MR. WONG KEN: Correct, sir.

25 COMM BOGLE: So entered.

1 A: On the letterhead of Dennis Joslin
2 Jamaica Inc. October 2, 2002 addressed
3 to Roofing Ceiling & Floors Limited.
4 Re: Your indebtedness to National
5 Commercial Bank.
6 I write on behalf of Dennis Joslin
7 Jamaica Inc.
8 Dennis Joslin Jamaica Inc. has been
9 appointed by Jamaican Redevelopment
10 Foundation Inc. to service the debts and
11 obligations it acquired from Refin Trust
12 Limited, a wholly-owned subsidiary of
FINSAC Limited. which includes the captioned account. As at
today's date your indebtedness (US\$10,082.15) as set out
hereunder:
Principal US\$5,114.17.
Interest US\$4,967.98.
I hereby make Formal Demand upon you for the payment of all sums
owing within 14 days of date hereof.
In the event of your failure to comply, we shall have no
alternative but to refer the matter to our attorneys-at-Law for
recovery of the debt without further

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1 reference to you.
2 Yours truly.
3 Dennis Joslin Jamaica Inc.
4 Signed by Deryck Rose, Credit Manager.
5 COMM BOGLE: Mr. DEBTOR 6 , this would appear that
6 there is - this is therefore saying that
7 you had a US currency loan, an
8 indebtedness at. National Commercial
9 Bank, do you recall that?
10 A: I have never had a US loan at National
11 Commercial Bank as far as I can
12 remember, Commissioner.
13 COMM BOGLE: Okay.
14 MR. WONG KEN: Thank you, sir...
15 88g. Mr. DEBTOR 6 claiming a
16 total of \$17,610,147.79 accruing
17 interest at \$4,931.51 per day. That is
18 the one, sir, that we are entering as
19 TD15g that we spoke about earlier.
20 Remember we took out one of the 15(e's)
21 and we are now relying on this letter as
22 the only copy of the this letter.
23 COMM BOGLE: Okay.
24 MR. WONG KEN: And that, sir, can be found at page 66
25 of the exhibit bundle.

hereby make Formal Demand upon you for_ the payment of all sums owing within 14 days of the date hereof.

In the event of your failure to comply, we shall have no alternative but to

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refer the matter to our Attorneys-at-Law.. for recovery of the debt without further reference to you.

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1 MR. WONG KEN: And then finally in this series of
2 exhibits, sir, line 88(h) Mrs.
3 DEBTOR 6 WIFE claiming a total of
4 \$000000 accruing interest at
5 \$000000 per day. Could that be
6 entered...
7 COMM. BOGLE: That exhibit we do not have. I have not
8 got it here, I have not got that letter.
9 A: Page 67 of the exhibit list.
10 COMM. BOGLE: What we have as page 67 is the
11 Relationship "Roll up Sheet", so we do
12 not have TD15, which would be the letter
13 to Mrs. DEBTOR 6 .
14 MR. WONG KEN: Commissioner, I am going to volunteer my
15 copy here, it is exactly on the same
16 terms as 15(g) except it's addressed to
17 Mrs. DEBTOR 6 , DEBTOR 6 SPOUSE.
18 MRS. PHILLIPS: I don't have a copy of it either.
19 MR. WONG KEN: My apology to everyone. In the meantime
20 then Commissioner, could I go on.
21 COMM. BOGLE: You can read it, you have your copy.
22 MR. WONG KEN: Just gave it away.
23 COMM. BOGLE: Move on then.
24 MR. WONG KEN: I am at line 89...
25 COMM. BOGLE: You are saying that the only difference

1 between that exhibit and Exhibit 15(g)
2 is that 15 (g) is addressed to
3 Mr. DEBTOR 6 while the other one
4 is addressed to Mrs. DEBTOR 6 SPOUSE?
5 MR. WONG KEN: That is correct.
6 COMM. BOGLE: And that is the only difference?
7 MR. WONG KEN: And if you wish we could enter it
8 provisionally and when it is returned we
9 confirm.
10 COMM. BOGLE: We can accept that but as soon as it
11 comes...
12 MR. WONG KEN: Thank you, sir. That would then be 15H,
13 TD15H. At line 89:
14 On or about March 2009 I had met with
15 representative of Dennis Joslin at which
16 time I was given a document entitled
17 Relationship "Roll up Sheet" that
18 purported to convert the Jamaican
19 indebtedness to United States currency.
20 The document set out meaningless
21 numbers. I was asked to agree to the
22 indebtedness but I refused.
23 Mr. DEBTOR 6 ?
24 A: That is correct.
25 MR. WONG KEN: I tender the "Roll Up Sheet" as Exhibit

1 TD16. Does the Commissioner have
that?

2 COMM. BOGLE: Yes. This will be TD16.

3 MR. WONG KEN: Yes, sir.

4 MRS. PHILLIPS: Do you have all 14 pages or do you just
5 have....

6 COMM. BOGLE: Just one page I have.

7 A: I see a note at the bottom of mine that
8 says settlement discussions only,
9 fourteen pages.

10 COMM. BOGLE: I see that here but what we have in
11 front of us is just one page.

12 MRS. PHILLIPS: That is the one I have too.

13 COMM. BOGLE: MR. DEBTOR 6

14 A: That was how we received this with no
15 heading or anything showing who it's
16 coming from, whatever, this is exactly
17 what we got.

18 COMM. BOGLE: Who wrote at the bottom 'March 13, 2002,
19 fourteen pages'?

20 A: I have no idea, Commissioner.

21 COMM. BOGLE: You got this document?

22 A: With that at the bottom of it.

23 COMM. BOGLE: Okay.

24 MR. WONG KEN: Would the Commissioner like me to go
25 through the number or would you like me

1 to read it?
2 COMM. BOGLE: Just tell us about it.
3 MR. WONG KEN: Can't tell you anything more than what it
says. It's entitled 'Relationship "Roll up Sheet" In US Dollars'.
Several columns, the first column Debtor. DEBTOR 6 Company, under
'Ln#' 000000, 'J or US', the designation
is 'J', Principal \$000000; Interest
4 \$000000. There is no figure under the
column Fee or Fees, no number under the
5 column 'Others'. Under the column 'Payoff'
\$000000.
6 14 COMM. BOGLE: Just a minute.
Okay, the third column
7 15 says 'J or US',
which all the lines have
16 'J' so we assume
9 that that is Jamaican
17 dollars and
therefore, are we to assume
10 18 therefore that
11 the principal and
19 interest here
12 are Jamaican dollars?
20 MR. WONG KEN: I think that
would be a fair assumption,
21 sir, but then it is nothing more than
22 that.
23 COMM. BOGLE: But at the top it says 'In US dollars'.
24 MR. WONG KEN: Correct.
25 COMM. BOGLE: So I am not really sure whether or not

1 they are dealing with US dollars or
2 Jamaican dollars.

3 MR. WONG KEN: Well, this is why I said I can't comment on the
 document other than what it says. Will the
 Commissioner wish for me to read through all
the figures or is that not necessary?

4 COMM. BOGLE: You can possibly tell us the total
just for the record, the total.

5 10 MR. WONG KEN: The total numbers under the column
Principal \$000000; under the column Interest \$000000; under the
column Payoff, \$000000.

6 14 For clarity sake Mr...DEBTOR 6 , there is a line drawn
under the figure \$000000 and it goes right across with some
7 asterisks and then a notation 'Check this Century

18 Bank, never borrowed from them', can
19 you say who made that notation?

9 20 A: My wife made that indication there.
21 That is a loan that. has been. appearing
22 on documents like this with a Century

23 National Bank
11 loan that we have never
24 had any dealings
12 or any borrowing
25 arrangement with
13 a Century National

15

16

1 Bank.
2 MR. WONG KEN: Thank you Mr. DEBTOR 6 .
3 COMM. BOGLE: Mr. DEBTOR 6 , you said when you met with
4 Dennis Joslin they presented you with
5 this for signature?
6 A: No, sir, when I met with Dennis Joslin
7 at the Mutual Life Building, he
8 presented me with a document that I do
9 not have a copy of, he did not give me a
10 copy of the document but it was
11 suggesting that, if I would sign a debt
12 of 000000 as a total pay-out and
13 indebtedness to. his organization as a
14 transfer of debt to him, and I refused,
15 again on the ground that we have no way.
16 of identifying the figures as true and
17 accurate.
18 COMM. BOGLE: So this document here then, what was
19 this document presented to you as, what
20 was the object of it?
21 A: We received, as I said again, we
22 received these documents as loan
23 balances, they are as meaningless to me
24 as they were when we got them.
25 COMM. BOGLE: What I am trying to find out is this,

1 when you were handed this, or when you
2 got this, what it meant, what were you
3 supposed to do based on this document?
4 A: This was just indicating to us what were
5 our balances at the particular time when
6 we got it. Unfortunately there was no
7 -- it just says here, March 13, 2002, as
8 to whether that was the date when we got
9 it, I am not one hundred percent sure,
10 but I know this is the only page we got
11 It says here fourteen pages, something
12 was there before and somebody struck it
13 and put a four over it but we had no
14 indication as to. what.
1.5 COMM. BOGLE: It says, 'March 13 2002, for settlement
16 discussions only', this is what I am
17 trying to find out whether or not you
18 met and this was given to you for
19 discussion, at that time did they say
20 here are your balances and this is what
21 we want to settle at or something, I am
22 trying to figure out what was the object
23 of it. -
24 A: That maybe a possibility Commissioner,
25 but I can't say with any credibility

1 DEVELOPMENT.
2 Q: Okay, can you explain to me, your
3 sentence in Paragraph 18, or line 18
4 seems to suggest, in keeping with what
5 Mr. Scott was saying, that interest
6 rates were climbing to 60% in 1995
7 whereas it seems from this document that
8 whereas it was 65% in 1995, they would
9 have been declining, 60% in 1995, they
10 would have declined some five points
11 from the preceding year?
12 A: But I think what he is doing is
13 talking...
14 Q: I am talking about your statement, not
15 Mr. Scott's?
16 A.: Well, like I said, you know, it has been
17 a while, and there are points where we
18 would have...
19 Q: Could you tell us if this facility was
20 paid out within the eight month period,
21 the one referred to in TD1?
22 A: I would have to go back and check.
23 Q: Would you accept that if this facility
24 was paid out in eight months, then the
25 subsequent commitment letters which say

1 that this supercede all previous
2 commitment letters, that they wouldn't
3 be referring to a commitment letter
4 which had already been fully disbursed
5 and paid, it would be a different
6 facility entirely?
7 COMM. BOGLE: Just a minute though, TD2 seems to have
8 superseded TD1 and as such the new
9 facility would have paid out those
10 facilities. So the facility under TD1
11 would be paid out via TD2 because it's a
12 new facility which then pays out the
13 first one and so on, so in May 1994, the
14 first one and then in May, one year
15 after, in 1995, whatever would have been
16 left would have been cleared via demand
17 loan of 1995.
18 MR. GOFFE: I am not sure if that is what Mr.
19 DEBTOR 6 is saying.
20 A: That is exactly what I am saying.
2.1 COMM. BOGLE: I think he has.. said so.
22 MR. GOFFE: I don't think in this document dated
23 1995 where the funds are going to be
24 used to pay out any previous facilities,
25 and the simple statement that this

1 letter supercedes the previous
2 commitment letters, which we all know
3 this is the standard construction in
4 every commitment letter basically, just
5 to make sure, you have gone through a
6 series of negotiations and perhaps even
7 drafts, I am not certain we can assume
8 that this previous commitment letter
9 refers to a letter more than a year old
10 for a facility which should have only
11 been eight months long. So the issue is
12 this, either the loan was not paid
13 according to its terms and as such in
14 May 1995 it's being re-financed or it
15 was paid according to its terms and in
16 which case it wouldn't have been paid
17 out from this facility and that is
18 really the issue I am trying to
19 identify.
20 A: But if you look at TD2 where it says
21 'Purpose --W- to complete the construction
of Development' as it was stated in the first commitment where
part of the loan was for the same DEVELOPMENT, so I can only say
that payments

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1 would, pay-out would be made only from
2 the sale proceeds of the development.
3 Now it is clear that on this second
4 commitment letter, we were still under
5 construction or selling the units, so we
6 would not have paid out that loan.
7 Q: The one referred to in TD1?
8 A: Right, it was paid out by this
9 commitment.
10 Q: Would you accept then that if that is
11 the case, this original commitment was
12 not paid in accordance with this term?
13 A: I could not agree with you totally, I
14 don't exactly know what you are trying
15 to achieve or say.
16 Q: I don't know the answer so I am asking
17 the question?
18 A: What is the question?
19 Q: The question is, if a facility was to
20 have been repaid in eight months and a
21 year later its being re-financed, then
22 that would suggest that the original
23 facility for eight months was not paid
24 out within that time?
25 A: And again I am going to say that the

1 pay-out would come from proceeds of sale.
2 and if that wasn't achieved, then you
3 might have an overrun or whatever was
4 the situation but it went from one to
5 another. I mean this is back in 1995, we
6 are in 2010, and I have had several
7 mental blocks, if I didn't block a lot
8 of these out of my head I would be a
9 madman now, you wouldn't be able to
10 question me now at this point in time.
11 Q: Mr. DEBTOR 6 you said that DEBTOR 6
Company 2was
12 not in default in 1997. To the best of
13 your recollection when did DEBTOR 6
Company 2first
14 default on its obligation?
15 A: To my recollection DEBTOR 6 Company 2has
never
16 defaulted on its obligation.
17 Q: Then you are saying that DEBTOR 6 Company
2doesn't
18 owe any money?
19 A: I think we are using the term 'default'
20 in a different way.
21 Q: Let me use a different word. When was
22 the first time that DEBTOR 6 Company
2failed to
23 make a payment in accordance with the
24 loan agreement or any other type of
25 financing?

1 A: To my recollection, again DEBTOR 6 Company
2has
2 never failed to make a payment. Our
3 commitment clearly states, we are not
4 salary people where deduction is made
5 from our salary, it states clearly that
6 payments would be, interest payment
7 would be made from draw downs because as
8 a construction and development company,
9 there is no inflow at the early stage.
10 We have had problems before where we
11 normally would presell the units but in
12 an environment where there is a high
13 escalation, at the time of closing we
14 normally find that -- I can remember one.
15 project, one hundred percent of the
16 purchaser could not complete the
17 purchase when we gave them the
18 escalation amount, s.o. what we do we tend
19 not to presell the units in the early
20 stage, hence we wouldn't end up in that
21 problem so we try to avoid, you know,
22 early sales that would present us with
23 an escalation so the payments would have
24 been made from proceeds of sale.
25 Q: So what I understand you to be saying,

1 if there was a default, it wasn't your
2 fault, it was because something else had
3 occurred which affected your ability to
4 make the payment?
5 A: And again, I am going to say that at the
6 time of Horizon collapse, we were still
7 in the sale mode so there could not have
8 been a default because enough money was
9 there from the sale proceeds to pay out
10 the debt and if there was not enough
11 fund there to pay out the debt at that
12 particular time, we had projects that we
13 had rolling into each other, so if there
14 was any residual amount -- for argument
15 sake, DEVELOPMENT 3
16 Q: Before we get to DEVELOPMENT 3...
17 A: I am answering the question.
18 Q: I don't think you actually understood
19 the question, perhaps I could rephrase
20 it. The question I am asking is really
21 quite a different one. You said there
22 were loan agreements which were
23 executed, so there would have promissory
24 notes, mortgages, debentures, other such
25 types of documentation. Now under those

1 documents there would have been a
2 payment schedule so that whether it's
3 monthly or quarterly, whether there is a
4 moratorium for a period, there would
5 have to be payments made under these
6 loan agreements, and I am grouping them
7 all together and calling them loan
8 agreement. The question I am really
9 asking is, if DEBTOR 6 Company 2 ever
missed a
10 payment, I am not trying to say the
11 reasons why it might have missed it or
12 not, it's just a question, bare on its
13 face, was a payment ever missed?
14 COMM. BOGLE: The question though, I think what could
15 possibly assist us is the actual loan
16 document because you are assuming that
17 there was a payment schedule, we don't
18 know if there was a payment schedule, we.
19 know payments should be made from
20 proceeds of sale.
21 Q: There are several commitment letters
22 which state when payments ought to be
23 made, some of them say monthly and it
24 wouldn't say monthly out of sale
25 proceeds, some of them do say that

1 payments should be made on a monthly
2 basis.
3 A: The payment schedule stated in the
4 commitment letter states that the bank
5 will make payments to itself from draw-
6 down funds and there is provision made
7 in that for interest. You must
8 understand that a construction loan
9 there is no income until at the back-end
10 when you start selling, so there could
11 not have been,.. we wouldn't have been in
12 a position to earn money at that point
13 in time, we would be drawing down money
14 to facilitate the construction.
15 Q: You are looking at one commitment
16 letter, look at the one that is marked 17
18 19 20 21 22 23 24
25 says firstly that the term of that loan

TD4, September 30, 1997, and look at
page 2 of that letter?

A: TD4.

Q: Page 21 of the. bundle, sorry?

A: Yes, page 21.

Q: Are you with me?

A: Just one minute, sir. Go ahead.

Q: Page 21 where it says 'Repayment' -- it

1 is thirty-six months and it says
2 'Repayment -- interest is to be paid
3 monthly'.
4 A: What page?
5 Q: Page 21?
6 A: I am at page 21, I was just looking for
7 something else but go ahead
8 Q: It has a term of thirty-six months and
9 it also says 'Repayment -- interest is
10 to be paid monthly' and it says
11 'Principal to be paid in full within a
12 period not exceeding thirty-six months'.
13 It says 'Principal to be repaid from
14 sale of remaining four units at Palermo'
15 and it says 'Lump sum payments are to be
16 made from time to time to be applied to
17 principal reduction'. Where it says
18 interest is to be paid monthly, the
19 question that I have is, were interest
20 payments made on a monthly basis under
21 this facility?
22 A: Well, if that wasn't paid it wouldn't be
23 my fault, it would be the fault of the
24 bank because their term to me was that
25 they would draw interest from the

1 current loan facility, because again
2 there was no income to the company other
3 than the sale when those sales
4 materialise.
5 Q: You would agree with me it doesn't say
6 that in this document?
7 A: Beg your pardon?
8 Q: It doesn't say that in this document
9 which you say supersede all previous
10 ones. Would you accept that it doesn't
11 say that in this document?
12 A: Yes.
13 continued....
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2 MR. GOFFE: You look at page 23 for me, please, under
3 the heading, '**Defaults**'. You see where it
4 says, '**...that notwithstanding... anything**
5 **contained in this agreement, the**
6 **Consortium Lenders shall have the right**
7 **(exercisable in writing) to require the**
8 **Borrower forthwith to discharge in full**
9 **or in part, its liabilities to the**
10 **Consortium Lenders under this agreement,**
11 **upon the happening of any of the**
12 **following events:** and it says:
13 **a)The Borrower defaults in. making any**
14 **payment.**
15 Was your understanding, Mr. DEBTOR 6 ,
16 when you signed this document that you
17 would actually have no obligation to
18 make any payment - 'you', meaning,
19
20 DEBTOR 6 Company 2- other than from the
21 sale of units? Let me make that clear.
22 A: That is generally what a construction
23 loan is all about.
24 Q: But you would accept that this is
25 actually a loan used to consolidate

1 existing debts?
2 A: But it is still part of...
3 Q: You had said at one point that even in a
4 high interest rate environment you were
5 still performing and making money. My
6 question to you is, based on your
7 analysis of the projects and their
8 value, what was the maximum interest
9 rate that you thought that the project
10 or projects would absorb?
11 A: Well, as I said before, that in a
12 housing development, how I calculate my
13 risk is that if the project is to be
14 completed in eighteen months, for
15 argument sake, the bulk of the drawdown
16 would be at the back end because in the
17 land preparation, foundation, rough
18 blocking up, whatever, . it is a lot of
19 time consuming things, but the cost is
20 minimal there. So you. would not put a
21 heavy amount of funds on that particular
22 area. So, if you are borrowing money at
23 100%, for argument sake, and when you
24 look at the entire drawdown, 75% of that
25 money is for six months, 25% of that

1 money or 30% of that money is for a
2 year, then I would calculate that I am
3 only paying 30% of that. I do not know
4 if you are following me.
5 Q: I must confess that I am not entirely
6 following you, but if I could remind you
7 though, the question I am really asking
8 you about, is confined to your
9 circumstances where you have as timeline
10 for your project, and I am asking you
11 with reference to that timeline, what do
12 you think was the maximum rate of
13 interest that you think the project could
14 absorb. Because I am thinking here that
15 65% was not it. because at 65% you were
16 still making money.
17 A: What I am saying is that we were able to
18 perform. at 65%, primarily because we are
19 not going into the bank from day one and
20 drawing down 1.000. of that loan. So, it
21 is not that we are absorbing 65% on the
22 entire loan. from day one. I am saying
23 that we are taking the money in
24 increments at the back end when it is
25 almost near to start selling and some

1 times we even start selling before we
2 are completed. Even though we might
3 have a sales agreement signed and
4 deposits made, we would not be able to
5 access the full payment until
6 completion, when you get a Q. S. or an
7 architect giving you a letter of
8 completion to say, yes, the unit is
9 completed and you can send that to the
10 mortgage company or to your attorney to
11 pass on to the mortgage company to say,
12 yes, the unit is completed, we are ready
13 to close.

14 Q: I understand that those are all the
15 factors which you would take into
16 account in determining what is the
17 maximum rate but what I am trying to
18 figure out -- let me rephrase it then.
19 Would you agree to 110% interest rate?

20 A: Depending again on what I can afford to
21 complete a unit at, what my cost...

22 Q: Is it possible that you would agree to
23 1100?

24 A: I don't know because I have never been
25 faced with that situation.

1 Q: And so then, the interest rates were
2 really what was your bone of contention
3 because based on the building factors
4 you believe that you could have still
5 made money even.. in a high interest rate
6 regime? That is only summarizing what I
7 think that you have said.

8 A: Yes, I think that -- my beef is not with
9 a high interest. rate, as it is. I mean
10 the high interest rate ended up to be
11 part of the problem but, for instance,
12 Crotona, when we started borrowing from
13 Crotona we had gone half way into the
14 project already. So, we did not borrow
15 this money for Crotona to start
16 construction. We started construction of
17 DEBTOR 6 DEVELOPMENT on our.. own cash
flow.

18 Q: Moving on a little bit into another
19 area. I saw in correspondence, I think,,
20 a letter you wrote to Dr. Davies or it
21 could have been Mr. Scott's letter...

22 A: No, my letter that I wrote to Dr.
23 Davies. If there is a letter to Dr.
24 Davies, I wrote that letter.

25 Q: It appeared to me that you were saying

1 that you reached a cross road, you were
2 half way through the project and
3 interest rates were rising and you had
4 two choices, on the one hand, you could,
5 have taken the risk in relation to the
6 interest rates and continued with the
7 project, and on the other hand, you
8 could have abandoned the project, the
9 consequence of that would have been --
10 it would have sollied your reputation
11 and your good name. You remember that
12 statement?
13 A: Yes.
14 Q: And when you reached that cross road you
15 decided to take the risk that the
16 interest rates would not adversely
17 affect your project too much and that
18 you would still be able to make money.
19 A: No, that is taking it out of context.
20 MR. WONG KEN: Mr. Goffe, would you direct me to the
21 letter please?
22 MR. GOFFE: Just to be fair to the witness, z am
23 referring to a letter you wrote - the
24 Commissioners already have a copy -
25 dated the 6th of May, 1999.

1 MRS. PHILLIPS: It is part of the group of documents
2 sent to us on the 23rd of November,
3 2010.

4 A: I am familiar with the letter but I
5 cannot tell the contents of it.

6 Q: Let me assist with that. The sentence I
7 am reading is, let me read the sentence
8 I am actually referring to. It says: "By
9 about half way...".

10 COMM BOGLE: I am sorry Mr.Goffe. Just help me here.
11 Did I understand that the bundle was set
12 out in November of 2010?
uvr-- To us.

I am afraid I did not receive a bundle.

15 MR. PERALTO: It was the office's attention that Mr.
16 DEBTOR 6 would have delivered the bundle
17 to you because I got that bundle from
18 him.

19 MR. WONG KEN: I understand that. I represent the
20 Association, Mr. DEBTOR 6 is a member of
21 the Association, and I did not get a
22 copy of the bundle.

23 MR. PERALTO: All right, I am sorry about that, but
24 Mr. DEBTOR 6 did take a

13 MR. GOFFE: 24

14 CHAIRMAN: 25 copy from the office or rather we took a
copy from Mr.

1 DEBTOR 6 .

2 MR. GOFFE: The sentence I am reading says: "Within
the first six months of the

3 construction, interest rate started a
rapidly upward movement. By about half
4 way through the project we were at a high
of 68%. By then we as developers and
contractors were at the cross road, we
could have abandoned the project or
continue with the exorbitant interest
rate, since we have never failed on any
of our previous projects we choose the
latter to save our good name". You

7 14 remember saying
that?

15 A: Yes.

9 16 Q: You remember
also saying...

10 17 A: But then, if
I may, you are talking

11 18 about an
interest of...

12 19 Q: It says 68%
here.

10 20 A: One second there
please.. Interest at 65%

21 but we are looking at a loan amount of
22 \$000000. At that point in time you
23 are talking about 000000
24 Dollars which is a big
25 difference in terms of amount. Interest

1 payment at 65% on \$000000doing a
2 project that would yield, I don't
3 remember what the total sum is of that,
4 is a little different than interest rate
5 of a 000000
6 Dollars.

7 Q: Which is why I was asking you, which is
8 the highest rate you would have paid?
9 A: But then you are asking me in a context
10 that is meaningless because telling me
11 what I would pay interest on at a
12 particular time, it would have to be in
13 relation to all the circumstances and
14 all the variables at that point in time.

15 Q: Let's get back to this. You are saying
16 there that you are at the cross road and
17 you decided to continue with the
18 exorbitant interest rate because it
19 would save your good name. Now, you
20 moved on to say...

21 A: It will save my good name...
22 Q: I have not asked the question yet. I do
23 not want us to. get side tracked on your
24 own statement. Let me ask the question
25 first. The letter goes on to say that:

1 do differently.
2 A: If all the variables remain the same and
3 everything remain the same I would have
4 to do the exact thing. If I started out
5 with a different situation and ended up
6 there, maybe I would have made a
7 different choice or decision.
8 Q: I want to take you to the NDE Commitment
9 Letter, the one dated the 12th of May,
10 1998, page 29 and if you could turn to
11 page 38, still-in that letter where it
12 says: "Accepted.by", and there is no
13 signature there. Could you confirm for
14 me that was the space for you to sign in
15 acceptance of the Commitment?
16 A: Yes.
17 Q: Do you have a signed copy with you?
18 A: I should have.
19 Q: So your evidence is that you did accept
20 this Commitment?
21 A: Yes, I did.
22 Q: You remember what the conditions for
23 accepting the Commitment were?
24 A: But it says it in the Commitment Letter.
25 It is on page 35. It says: "this

1 Commitment will expire unless accepted
2 by you and returned along with the
3 applicable fees to reach the offices of
4 NDB on or before June 15, 1998". So,
5 your evidence is that you signed this
6 letter and sent in the Commitment Fees
7 before June 15, 1998?
8 A: No, no, I am sorry, no, and again this
9 is all based on - I could not have
10 accepted because at that point in time
11 we were still having meetings and trying
12 to get Horizon which was then under the
13 control of FINSAC or whatever, to agree
14 to -- not to agree, but to honour the
15 Commitment previously made by Horizon of.
16 parting with collaterals that they had
17 to facilitate, to get this loan to
18 transfer those. collaterals over to NDB
19 so that they could get the funds to
20 offset the \$45,000,000, plus working
21 capital that we. would have...
22 Q: So you are saying that you did not
23 accept this Commitment?
24 A: We could not. If we had paid the fees
25 without, at that point, getting Horizon

1 to send over those documents, we would
2 have thrown away those fees.
3 Q: Okay. So it is. not a situation in which Horizon
allowed the Commitment to expire, it is a.
situation where you choose not to accept the
Commitment because it could have resulted in you
losing the Commitment Fees?
4 A: I think that you kind of
twisting things a little bit.
5 11 Q: Well, you accept though that
if you had paid the Commitment Fees and returned the
6 letter, it would not have expired?
7 14 A: It would have expired because
until the
15 loan is perfected by the
collaterals it
16 would not have been perfected, so
9 the
17 loan would possibly be canceled
just the...
18 same.
19 Q: No, I am referring
12 to the Commitment
20 itself. The
Commitment must be accepted..
21 first before the loan can be disbursed.._
22 I agree with you that the loan might not
23 be disbursed if you do not have the
24 security, but in relation to the
25 statement that you allowed it to expire,

1 I am just trying to make sure that we are
 clear as to that. It was a decision you took, perhaps a correct
 one, but nonetheless it was a decision you took that you were not
 going to accept the commitment because you were not certain that
 you could follow through and you would not lose your commitment
 fee. It is not that I could follow through. I did not have any
 control over the performance of the bank.

12 Q: Okay. Could I
 5 ask you, what was the
 13 consideration
 6 given to Horizon for it to
 14 part with its
 7 securities and give it to.
 15 another lender?
 16 A: Okay. One, it
 would reduce the debt, the
 17 \$000000
 9 A: debt.
 10 Q: I agree with
 11 you. I asked, what would
 :19 you give Horizon
 for them to part with
 20 their securities because they issued
 21 those debt certificates at Horizon. I am
 22 trying to understand, what would you
 23 give them for them to send over the
 24 title to NDB?
 25 A: For them to facilitate DEBTOR 6 Company

1 as new company, DEBTOR 6 Company 2
2 gave those additional collaterals to
3 cover that bridge finance for DEBTOR 6
Company,
4 so that part of the collaterals that
5 were being held by Horizon for DEBTOR 6
Company 2
6 was really part of the security for
7 DEBTOR 6 Company bridge finance, so they
would
8 not actually lose anything because they
9 would be gaining. There would be pay out
10 of the \$000000 and they would part
11 with a couple of the collaterals that
12 they were holding.
13 Q: .. I am not understanding you. Was it that
14 you were going. to be giving them,
15 substituting the securities that they
16 had with another set of securities that.
17 they did not already have?
18 A: No, sir. Excuse me. I think that in
19 commercial, regular commercial
20 operations, what NDB would do is to give
21 the commercial bank a Commitment Letter,..
22 that on the receipt of the collateral
23 they would pay over the funds to them
24 and so, I would expect that NDB would
25 then give Horizon a commitment stating

1 that as soon as you send us the
2 collateral we will send you \$000000
3 or \$000000. That is my
4 understanding.
5 MR. GOFFE: I thought so too, but I am always
6 confused by it.
7 In which case if is as Commissioner
8 Bogle says, then it would not be
9 Horizon's fault: because all they would
10 need is the Commitment Letter from NDB
11 to pay them the amounts they were owed
12 and then they would send over the titles
13 to NDB.
14 A: But then my recollection is that we
15 could not get Horizon under FINSAC to
16 pledge those collaterals that they were
17 holding.
18 Q: But why would they be pledging it, why
19 would Horizon be pledging it. Horizon is
20 being paid out.
21 A: But then that is the point. They would
22 be getting part of the collaterals in
23 exchange for the payout.
24 Q: Sorry, who is the 'they' who would be
25 getting it, who is the 'they'?

1 A: Horizon would get a pay-out, as
2 Commissioner said, for exchange for the...
3 collaterals.
4 Q: So then it would be NDB's fault for not
5 sending the Commitment on which Horizon
6 could send over the Title?
7 A: I do not know what you are trying to so,.
8 sir, but I think that you are twisting
9 and we are really going up a tree that-
10 we are really not going anywhere with
11 this. We are going around in circles
12 and we are not achieving anything. I
13 cannot understand what you are saying.
14 COMM BOGLE: Try and understand.
15 MR. GOFFE: The allegations you have made is that it
-16 was Horizon that had prevented you from
17 getting the NDB financing. You went as
18 far as to say, they were the ones who
19 allowed the commitment to expire. What I
20 am trying to understand is, what did
21 they not do and if it is that NDB send
22 over the commitment to Horizon and
23 Horizon refused to accept it then that
24 would be one thing, if NDB did not send
25 over the commitment, I am trying to

1 understand on what basis then would
2 Horizon be expected to part with its
3 securities. So, I am simply trying to
4 understand why blame Horizon in all of
5 this. Isn't it true that you really are
6 not aware of what took place between NDB
7 and Horizon why the security documents
8 were not sent over? Is that correct?
9 A: No. The reason is that the person that
10 I was dealing with in Horizon, at the
11 time, was Deryck Rose, which under
12 normal circumstances if we were dealing
13 with the principal of the bank as it was
14 in operation we would be able to do
15 business a little different because
16 Horizon, at the time, with Deryck Rose
17 was not really - in my opinion now, the
18 bank ceased to operate as a bank at that
19 time.
20 Q: It was a situation where you assumed
21 then because they were not so operating,
22 that Horizon would not send over the
23 security documents?
24 A: No, because we had asked for that to be
25 done in writing and that was never done.

1 Q: You have any of those letters?
2 A: I would have to. go and check, but I know
3 that we had discussions.
4 Q: Did Horizon respond to you?
5 A: We had discussions with Deryck Rose on
6 several occasions to that effect.
7 Q: Could I ask you to look at page 49 of
8 your bundle?
9 A: Yes, I have it..
10 Q: Is it not true,, would you agree with me,.
11 that no Commitment Letter would have
12 been issued, sorry, no -- yes, no
13 Commitment Letter would have been issued
14 by NDB to Horizon unless the Commitment
15 Letter which N.DB sent to you was first
16 signed and returned along with the
17 Commitment Fee? Let me ask it again. Do.
18 you accept that until you have accepted
19 the Commitment Letter from NDB there
20 would be no basis on which NDB would be
21 giving any undertaking to any other
22 financial institution in respect of the
23 securities that it held?
24

1 MR. DEBTOR 6 : And I am going to tell you that we have
2 had several meetings on this same
3 Commitment Letter where Horizon had
4 refused to send over any commitment, any
5 collateral in exchange for the pay out.
6 Until Horizon had agreed to send over
7 those collaterals, as I say, we could
8 not accept the NDB. I fought for this
9 NDB loan, I went through a lot of
10 headache. We spent a lot of money doing
11 surveys showing that there was need for
12 DEBTOR 6 Company.

13 COMM ROSS: I just want to ask Mr. DEBTOR 6 if any
14 reasons were advanced by Mr. Rose or
15 FINSAC as to why they wouldn't agree to
16 the exchange of collateral with the NDB.

17 A Just based on memory, Deryck Rose from
18 time to time would say, 'remember we are
19 not a bank anymore'. So I don't know if
20 that was part of the reason they were
21 not able to function. I have no idea.

22 COMM ROSS: Another question in my mind would be why
23 would NDB make this offer in May, 1998.
24 Was it on the basis of the initial
25 approach in November of 1997 before

1 FINSAC or was it as a result of some
2 discussion that took place subsequently?
3 A The NDB loan started out through Horizon
4 but at a point I had to go to NDB direct
5 because at the time Horizon was then
6 faced with a situation of a liquidity
7 problem so they were not able to
8 continue because they would not be able
9 to access the NDB facility because after
10 that liquidity problem hence we went
11 direct. If Horizon was operating as it
12 were as a bank without that liquidity
13 problem, then there would be no problem
14 in that exchange and we going forward.
15 COMM ROSS: So what I am understanding then is that
16 the NDB commitment came as a result of
17 your direct approach to them but that
18 the fulfillment of that commitment
19 required documentation or securities to
20 pass from Horizon to NDB and that is
21 where the process broke down.
22 MR. GOFFE: And those documents would pass before
23 you signed the commitment letter?
24 A Well, at the point where I realized that
25 they would not have made, honoured those

1 commitments in terms of passing those
2 securities over, it would be pointless
3 paying the commitment fee and doing all
4 the things that I needed to do because
5 it would be done in vain.

6 Q: Which then means that you expected that
7 the commitment would be signed first and
8 then the documents would be passed over,
9 but that you didn't think that the
10 documents would in fact be passed over?

11 A It is not a matter of thinking.

12 Q: I want to know which comes first; the
13 signing of the commitment letter by you
14 or the passing of the documents from
15 Horizon, which comes first?

16 A Under normal circumstances, you would
17 sign the commitment letter and then...

18 Q: Thank you.

19 A But this wasn't normal circumstances.

20 Q: Now in your discussions with FINSAC,
21 they provided you a figure of \$000000
22 . That sum represented...

23 A Where is . t .

24 Q: Let me give you the document.

25 COMM BOGLE: While we search, I think this may be a

good time to have our adjournment for today. It will at least
give us time to get all our documents together. We will

4 reconvene in January, the 11th of
5 January.

6 MRS. PHILLIPS: Commissioner, I just wanted, since we
7 are taking the

2 long break now, I just

8 wanted to know
- what happens when we are

9 sent documents which the Commission has
10 been sent? I mean what is the status of
11 those documents where the witness then
12 comes and puts in a different set of
13 documents and doesn't make reference to
14 those documents which are already with
15 the Commission. I need some certainty
16 as to whether then, is it that we can
17 comment on those documents. The
18 Commission is free to look at those
19 documents, I would think, because they
20 have certainly been submitted to the
21 Commission but I am a little uncertain.

22 COMM BOGLE: I think by and large all documents that
23 are to be taken in, are to be presented
24 in the Commission. Even if we get a
25 bundle, as with this case here, and we

1 have some documents, ...if the witness does.
2 not present it but you have it, you can
3 present it. In other words, if he sent
something but today he comes and
5 presents something, what he presents is
6 what is in witness. Now if you have
7 additional information you can present
8 that.

9 MRS. PHILLIPS: Yes, but I am speaking about where the
10 witness has himself submitted documents
11 to the Commission and the witness gives .
12 evidence but some of those documents
13 which he has submitted are not tendered..
14 in evidence, what is the status of those
15 documents already submitted to the
16 Commission? Certainly it cannot be, with.,
17 respect, that it is only for the
18 cross-examining counsel to then put into
19 evidence those documents which have
20 already been submitted to the
21 Commission. Suppose a witness is not
22 cross-examined, it can't be that the
23 Commission is not free to look at
24 documents submitted to it by the
25 witness.

1 every document which is not adduced in
2 evidence, although it is in the
3 possession of the Commission, has to
4 then be adduced in evidence and that can
5 be a little bit complicated.

6 COMM BOGLE: The advice just given, which is roughly
7 what is happening, is that whatever we
8 receive you would receive a copy of it,
9 so that whatever we use you would be
10 also privy to. Whatever documents we
11 would use based on their submission,
12 whether orally. or to the Commission then
13 you would also be privy to it. Suppose
14 for instance the documents which you
15 received which' might not have been
16 entered in today by the witness then
17 those can still form part of the
18 consideration of the Commission as you
19 also may use it.

20 MRS. PHILLIPS: I am grateful for that. I just wanted
21 to be clear in my mind.

22 MR. WONG KEN: Commissioner, I think the point is very
23 valid because it still leaves me
24 wondering what are the limits of
25 cross-examination. Because the evidence-

1 in-chief contemplates a certain set of
2 documents, is it then that the
3 cross-examination is constrained or is
4 it that the cross-examiner now has to
5 tender the documents.

6 COMM BOGLE: Well the thing is that once the document
- the documents come into the Commission, the Commission will
distribute them to the relevant
counsel. Now that document therefore can form part of their cross-
examination because we would have gotten that information from the
witness and so the witness should be privy to it as are we., and
therefore the counsel can
16 cross-examine on
7 that.

17 MR. WONG KEN: Very well, sir.

8 18 MR. GARCIA: Yes,
Commissioner, what I wanted also to
9 appreciate,. is what will obtain when.. it
comes to the point when we are to make
10 submissions because I understand that an
opportunity is to. be provided to counsel.
11 And I want also to be clear in my
12 understanding that in making submissions
counsel will be free to

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1 refer to documents that we have received
2 from the Commission, presumably from
3 witnesses or otherwise, I suppose it
4 could be, but that we would be free to
5 refer to such documents whether they
6 have been formally put to the witnesses.
7 in evidence or not.
8 COMM BOGLE: Once the Commission receives documents
9 from a witness the Commission. will
10 disseminate and therefore those
11 documents can be used by the
12 cross-examiner and in any way
13 appropriate regarding...
14 MR. GARCIA: Cross-eximination and submission?
15 COMM BOGLE: Right, sure you can.
16 MR. GARCIA: If I may, I don't know if there are any.
17 other comments or questions in relation
18 to that point. I wanted to raise another..
19 and it is in relation to the start on the
11th of January and wonder whether, and if so how soon, we will be
able to obtain a schedule of the sittings beginning on January 11
and also a schedule of the witnesses who are to be called .

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1 COMM BOGLE: We will try to ensure that over the next
2 week, by the end of next week we will be
3 able to provide you with the schedule of.
4 persons who will be called in front of
5 this Commission and the days and at the
6 same time we hope that we really can
7 improve our circulation of information
8 prior to sittings. Once we get it
9 within time we will ensure that counsel:
10 get copies of these before the sitting
11 day.
12 MR. GARCIA: Very much appreciated.
13 COMM BOGLE: Thank you very much.
14 MR. GOFFE: Before you adjourn...
15 MRS. PHILLIPS: The resumption.. date of the 11th which we
16 are just hearing for the first time
17 unfortunately, we have prior commitment
18 for a trial on that date. and we are in
19 the middle of cross-examining this
witness. So am wondering whether instead of starting on the 11th we
could start on the 12th instead.
That is fine. So we will start on the 12th of January. Mr.
DEBTOR 6 . you are being asked to return on the 12th of

20

21

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23 COMM BOGLE:

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25

1 January and hopefully we will begin at
2 9:30.
3 MR. DEBTOR 6 : Thank you very much, sir.
4 COMM BOGLE.: Thank you. Have a good afternoon and a
5 pleasant and peaceful Christmas.
6 ATTENDEES: Thank you.
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8 Adjournment -- 3:40 p.m.
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