

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 199xs

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

ON
WEDNESDAY, FEBRUARY 9, 2x11

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr, Fernando DePeralto

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

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

REPRESENTING MR. PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

REPRESENTING PRICEWATERHOUSE AND JOHN DOE Mr.

Stephen Shelton - Attorney-at-Law

REPRESENTING DEBTOR 18 Mr. Anthony Levy - Attorney -at-Law

GIVING EVIDENCE

Debtor 18

1 COMM BOGLE: Good morning ladies and gentlemen. This
2 Enquiry is now in session. For the
3 record could we have the names of the
4 attorneys present.

5 MR. LEVY: My name is Anthony Levy, I am
6 representing Debtor 18.

7 MR. SHELTON: I am Stephen Shelton and I am
8 representing two interested parties,
9 Pricewaterhouse and John Doe.

1x MRS. PHILLIPS: Sandra Minott-Phillips and Mr. Gavin
11 Goffe will be joining me later,
12 instructed by Myers Fletcher & Gordon
13 for Jamaican Redevelopment Foundation
14 Inc.

15 MR. GARCIA: Dave Garcia, representing Patrick
16 Hylton.

17 COMM BOGLE: Thank you very much.
18 Mr. Levy, could you please call the
19 witness.

2x MR. SHELTON: One second, sir. Just a matter of
21 detail. The matter is being set for this
22 morning?

23 COMM BOGLE: Yes, morning.

24 MR. SHELTON: Only morning?

25 COMM BOGLE: Only morning.

1 Debtor 18 CALLED AND SWORN

2 MR. LEVY: Debtor 18, good morning.

3 Debtor 18: For the purpose of this Enquiry is to
4 unearth truth and so I am glad that the
5 oath provides for that. Many people do
6 not like the truth to surface, but that
7 is not our objective today.

8 Your name is Debtor 18?

9 A: My name of Debtor 18.

10 Q: For the purpose of the recorder,
11 Debtor 18
12 And your position with Debtor Corporation?

13 A: The managing director of
14 Debtor 18.

15 Q: You remember when you were appointed
16 managing director?

17 A: I was appointed managing director in
18 1989.

19 Q: So at the time of the appointment of the
20 receiver you were managing director of
21 Debtor Corporation?

22 A: That is right.

23 Q: You have told the Commission before that
24 on March 9, 1998 you were invited to a
25 meeting at NCB?

1 A: That is right.

2 Q: And you only learned at the end of the
3 meeting that Mr. John Doe, when
4 you returned to the factory Mr. Richard
5 Downer had been appointed receiver that
6 day?

7 A: That was what I learned and when I
8 reached the gate I was barred from
9 coming in on the company. Mr. Richard
1x Downer was not there and when he
11 appeared he appeared with his gun at his
12 side and the two security guards with
13 their hands on the weapon.

14 Q: With what?

15 A: With their hands on the weapon.

16 Q: Weapon?

17 A: That's right, two of them.

18 Q: Cowboy style?

19 A: I beg you pardon?

2x Q: Cowboy style?

21 A: Yes.

22 MR. LEVY: I want to address certain issues in
23 different orders. First, I would like to
24 put into evidence and to provide to
25 Debtor 18 a written statement from

1 which he can recall his memory.

2 (Document passed to Debtor 18)

3 MR. SHELTON: Sorry, could I enquire what document

4 that is, sir?

5 MR. LEVY: The witness statement of Deceased

6 .

7 A: This is the witness statement of

8 Deceased. It was submitted in

9 the Supreme Court on the 18th of

1x January, 2xx5.

11 MR. SHELTON: Witness statement of who?

12 COMM BOGLE: Witness statement of Deceased

13 .

14 MR. SHELTON: I am objecting to that document being

15 brought into these proceedings; a

16 written statement of Deceased.

17 COMM BOGLE: Mr. Levy, we have here witness statement

18 of Deceased and also a statement

19 of John Doe.

2x MR. LEVY: That one should not have been included

21 at this point. I am sure my friend will

22 object to that one at the appropriate

23 time also.

24 COMM BOGLE: Mr. Levy, on what basis are you putting

25 this?

1 MR. LEVY: A number of facts concerning the
2 receivership of Debtor Corporation are
3 outlined in that written statement and I
4 am going to use it solely for the
5 purpose of Debtor 18 refreshing his
6 memory.

7 MRS. PHILLIPS: He cannot refresh his memory from
8 somebody else's statement.

9 MR. SHELTON: What sort of proceedings that would be?

1x MRS. PHILLIPS: Commissioners, I still don't know what
11 the subject or discussion is about
12 because I am not being afforded the
13 courtesy of being provided with a copy
14 of what the Commission has in its hand.

15 COMM BOGLE: Mr. Levy, the fact that Deceased
16 will not be called I do not think it is
17 right for us to be accepting this
18 statement of Deceased at this
19 time.

2x MR. LEVY: Deceased can't be called because he
21 was murdered.

22 COMM BOGLE: Right. But I would imagine that
23 Debtor 18 would have had his own
24 witness statement in the matter and
25 therefore the jogging of memory should

1 be from his own witness statement rather
2 than from somebody else's witness
3 statement. So I would not really accept

5 MR. LEVY: Okay, sir, I will continue.

6 COMM BOGLE: Okay.

7 MR. LEVY: Could you take it back please.

8 Mr Debtor 18, after Mr.
9 Downer was

10 appointed receiver/manager of Debtor
11 Corporation

12 A: Debtor Corporation Limited.

13 Q: Of which you were also managing
14 director?

15 A: Yes, I am also managing director.

16 Q: Incorporated in another company?

17 A: Incorporated in another company called
18 X Corporation 1998.

19 Q: And what was the purpose of that company
20 as far as you were aware?

21 A: It was okay to hive down - what is
22 accounting term. I am not an accountant
23 but it was to hive down assets of
24 Corporation

25 to Debtor Corporation 1998?

26 COMM. ROSS: Sorry I didn't get who formed the
27 company you say?

1 A: The company was formed by Richard
2 Downer.

3 COMM. ROSS: Debtor Corporation 1998 was formed by?

4 A: John Doe.

5 MR. LEVY: And it was a subsidiary of Debtor
6 Corporation?

7 A: Yes, it was a subsidiary of Debtor
8 Corporation.

9 Q: And so for the hiving down situation
1x this company was operated?

11 A: It was actually okay for certain bank
12 accounts, receivables from Debtor
13 Corporation, the principal would go into
14 Debtor Corporation 1998.

15 Q: From the evidence you have seen
16 Debtor 18, Mr. Downer employed certain
17 individuals for the purpose of providing
18 services to Debtor Corporation?

19 A: Yes.

2x Q: Did these include John Doe?

21 A: Yes, John Doe.

22 Q: John Doe 2?

23 A: Yes.

24 Q: Are you aware of the salaries that these
25 people were paid?

1 2

treated fairly and equally.

3 4

To review the probity and propriety in

5 6

FINSAC's management sale and/or disposal of

7 8

assets relating to delinquent borrowers;

9

To review the terms and conditions of sale

1x

of non-performing loans to the JRF; To review

11

the practices of the Jamaican Redevelopment

12

Foundation in the treatment of delinquent

13

borrowers and, in particular, the

14

management, sale and/or disposal of their

15

assets.

16

With the greatest of respect I don't see how

17

any of this evidence, and let me say very

18

openly that this evidence is involved in a

19

case which is presently before the Supreme

2x

Court. All of what is being led here is being

21

fully canvassed in those proceedings or will

22

be fully canvassed in those proceedings, and

23

therefore it is my submission that this is

24

an inappropriate venue and inappropriate

25

Commission to hear this evidence because it

has nothing to do with the Terms of

Reference, it has to

1 do with a personal dispute between
2 Debtor 18 representing Debtor
3 Corporation , Pricewaterhouse and John
4 John , which is for a different forum.
5 Those are the bases of my objection.

6 COMM. BOGLE: Mr. Levy?

7 MR. LEVY: X was an agent of FINSAC and
8 its subsidiaries and when I referred to
9 FINSAC this morning I referred to FINSAC
1x and its subsidiaries, Recon and REFIN
11 Trust Limited and X clearly was
12 acting as an agent for these people. So
13 obviously xxxx's activities were
14 directly related to the activities of
15 FINSAC. He took instructions from them,
16 he acted on their instructions. That's
17 not how it should have been. A receiver
18 and manager is supposed to be
19 independent of thought and is supposed
2x to be acting as an agent of the company.
21 However, we will deal with that shortly.
22 At this time I will change the terms of
23 my question and I put to the
24 Commissioners statement of Richard
25 Downer.

1 FINSAC instructed me on several widely
2 separated occasions to facilitate the
3 various efforts of National Investment
4 Bank (NIBJ) to buy the debenture or the
5 business, and also not to entertain
6 other bids at various times that were
7 coincident with these efforts, which
8 required me to continue the receivership
9 instead of selling the business as I
1x could have at various times to Omni
11 Industries. When the several takeover
12 offers on the table by NIBJ were to be
13 realised by way of the purchase of the
14 debenture I was not involved in those
15 protracted and unfruitful negotiations
16 because in the case of that mechanism,
17 it was a matter solely between FINSAC
18 and NIBJ, as the debenture holder and
19 the potential purchaser of the debenture
2x respectively.

21 This is one of them, sir.
22 MR SHELTON: If I may Mr. Chairman and fellow

23 Commissioners, if you pick through a
24 witness statement at varying paragraphs
25 you will see varying types of

1 references. What you would not know is
2 who appointed Debtor 18 and at what
3 stage FINSAC became the debenture
4 holder. You wouldn't know that unless
5 the evidence was laid in respect of
6 that. So when you are hearing evidence
7 at a point in time you will not know who
8 the debenture holder is at that time.
9 And that's the point I am making to say
1x that he was the debenture holder's agent
11 in respect of the particular evidence he
12 is seeking to lead at this point in
13 time, I am objecting to it.

14 COMM. BOGLE: The two matters that you mentioned
15 Mr. Shelton, the first one is the matter
16 of hearsay. The nature of this
17 Commission is one to try and glean and
18 get all the information surrounding the
19 matters as you read and therefore,
2x hearsay will be allowed. It is for the
21 Commission, the Commissioners to decide
22 and attach whatever weight they wish in
23 conjunction with documents et cetera,
24 that the Commissioners will be
25 receiving.

1 On the matter of Debtor 18, surely we
2 believe that based on the statement that
3 was read by Mr. Levy that there is
4 sufficient indication that xxxxxx
5 acted on behalf of FINSAC or was
6 instructed by FINSAC and I think in
7 which case that does fall under the
8 purview of this Commission.

9 MR. SHELTON: As you please, sir. Can I just say one
1x thing. I understand your ruling in
11 relation to hearsay and I am not here to
12 in any way challenge that ruling
13 because that's not unusual in
14 Commissions of Enquiry. However, having
15 refused to admit the statement of the
16 Deceased I would submit that for
17 evidence to be given from that statement
18 it will be very unfortunate, having
19 ruled that that statement could not
2x be used in a particular way, and that
21 all of this information which he is
22 going to be apparently led here now is
23 in relation to what Deceased said,
24 because Debtor 18 knows nothing about
25 it personally.

1 MR. LEVY: Mr. Chairman, is my friend suggesting
2 that anything...

3 COMM BOGLE: It is okay, Mr. Levy, the ruling has
4 been made, we will move ahead.

5 MR. LEVY: Debtor 18, I refer you to paragraph
6 number 9 on page 5 of this witness
7 statement of John Doe. Would you
8 read it for us, Debtor 18.

9 A: Which paragraph is it, sir?

1x Q: Paragraph 9 on page 5.

11 MR. GARCIA: Commissioners, I am afraid I am somewhat
12 at a loss. I will have a difficulty
13 because I do not have a copy of the
14 statement to which statement is made.

15 MRS. PHILLIPS: Ditto.

16 COMM BOGLE: Have you got any more copies?

17 MR. LEVY: I don't.

18 COMM. BOGLE: Mr. Levy do you have any other exhibits
19 that you are going to be submitting that
2x you require copies of so that we can
21 just get all the copies at once?

22 MR. LEVY: Yes, sir.

23 COMM BOGLE: Okay, in the interest of time, while the
24 copies are being made we will proceed.

25 MRS. PHILLIPS: Mr. Chairman, that would be unfair.

1 COMM BOGLE: Would you like my copy?

2 MR. LEVY: Mr. Chairman, while we are waiting on
3 this I can go on and deal with something
4 else.

5 COMM BOGLE: All right, you can continue with this.

6 MRS. PHILLIPS: Did he say he was going to deal with
7 something else in the meantime?

8 COMM BOGLE: Yes.

9 MR. LEVY: Mr. Chairman, I believe the Secretary
1x has provided you with a copy of the
11 Judgment of the Supreme Court in the
12 case of Debtor 18 Vs Richard
13 Downer, Everton McDonald and Frederick
14 Taffe. Suit No. 2xx4HCV 1445.
15 COMM BOGLE: I don't have that.

16 MR. LEVY: Sir, the Secretary of the Commission has
17 informed me that he has provided you
18 with copies of this. It looks like this,
19 sir. (Indicating)

2x It may be on the Secretary's desk if he
21 didn't provide it.

22 COMM BOGLE: Okay I get it.

23 COMM. ROSS: Debtor 18, you have a copy?
24 Debtor 18: No, but I can go from memory.

25 COMM. ROSS: Here is a copy.

1 A: Thank you very much, I have a copy now.

2 MR. LEVY: You are familiar with this case,

3 Debtor 18?

4 A: Yes.

5 MR. LEVY: Very well. When the Secretary returns I

6 guess you have a number for this one?

7 COMM BOGLE: Yes.

8 MR. LEVY: When Debtor 18 was appointed receiver

9 and took over the affairs of Debtor

1x Corporation and Debtor Corporation 2, did

you do

11 anything in relation to the pension

12 fund, contributory pension fund of which

13 you have been a member?

14 A: He appointed himself as a trustee and he

15 proceeded to steal my money; he stole my

16 saving that I made on my pension, that's

17 what Mr. John Doe did. He stole

18 more than \$x Million that I had in my

19 pension saving fund.

2x Q: What did he do with it, to the best of

21 your knowledge?

22 A: He commingled all the funds which his

23 lawyer Mr. Derek Jones advised him not

24 to do and he proceeded in doing it.

25

Q:

And this advice is referred to in this

1 judgment?

2 A: That is right.

3 Q: Could you locate it for us.

4 COMM BOGLE: Mr. Levy, do you know exactly where so

5 that you can direct him?

6 MR. LEVY: Can you read paragraph 1 of the
7 judgment, Debtor 18?

8 A: Paragraph 1:

9 **The high drama that played out at the**
10 **entrance to Debtor Corporation (Jamaica)**
11 **Limited on March 9, 1998 when the**
12 **company was placed in receivership was**
13 **riveting in its own terms. In a curious**
14 **act of discourtesy, the newly appointed**
15 **receiver/manager John Doe refused**
16 **permission for the existing managing**
17 **director, Debtor 18, to enter**
18 **the premises. When the dust settled Debtor.**
19 **18 was relieved of his**
20 **responsibility for the management of the**
21 **company and as a trustee for the**
22 **contributory pension scheme established**
23 **by the company for the benefit of its**
24 **employees.**

25 Q: Read the second paragraph because that

1 will lead us exactly where we are.

2 A: On or about April 27, 1998, Richard
3 Downer appointed himself, Everton
4 McDonald, and Frederick Taffe as
5 trustees of the employees pension fund.
6 The investment manager, Jamaica Mutual
7 life Assurance Society, was subsequently
8 advised of the changes. On May 13, **1998**
9 Debtor Corporation (Jamaica) Limited (in
1x receivership) wrote to the investment
11 manager, advising that Debtor 18
12 together with five other employees were
13 no longer employed to the company and
14 were entitled to a pension refund. On
15 June 22, 1998 Jamaica Mutual Life
16 Assurance Society as investment manager
17 forwarded a cheque made payable to
18 Debtor Corporation (Jamaica) Limited for
19 \$x,xxx,xxx.xx being refund of pension
2x contributions for three persons
21 including **\$x,xxx,xxx.xx** for Debtor 18.
22 This cheque was deposited into the
23 account of Debtor Corporation (Jamaica)
24 Limited (In Receivership) at the
25 National Commercial Bank Jamaica Limited

1 on June 3, 1998, There is no dispute
2 that the two other employees entitled to
3 pension refunds were paid. The amount
4 of \$xxxx,xxx due to Debtor 18 was
5 not paid to him.

6 The reason for the refusal to give
7 Debtor 18 his pension refund was never
8 made clear to him. Debtor 18 would
9 have had reason to be both cross and
1x anxious.

11 MR. LEVY: You can stop there Debtor 18. I have
12 now located about the legal advice?

13 A: Yes.

14 Q: Go to paragraph 12, page 8.

15 A: The impact of the defendants' admission
16 of commingling pension refunds with the
17 moneys in the receivership account
18 cannot be underestimated. There is
19 evidence that John Doe solicited
2x from Derek Jones, his attorney, advice
21 on how to manage the pension funds that
22 he was about to take over. He was
23 specifically advised by Derek Jones,
24 that the duties as receiver/manager of
25 Debtor Corporation (Jamaica) Limited were

1 **separate and distinct from his duties as**
2 **trustee of the pension fund. He was**
3 **also specifically advised by Mr. Jones**
4 **not to commingle the funds, or merge the**
5 **functions of the two trusts.**

6 MR. LEVY: What do you understand by commingle?

7 What I understand - well, English is not
8 my mother tongue really but I can try to
9 the best of my ability.

1x Q: We figure that one out, Debtor 18.

11 A: Well, commingle is if you have money
12 here and you have some money there you
13 should not try to put them together.
14 That is what I understand it to be.

15 Q: Read paragraph 13.

16 A: **Accordingly, this court accepts that it**
17 **was the responsibility of the trustees**
18 **on receiving Debtor 18's pension**
19 **refund in June 1998, to pay the money to**
2x **him. So then, on the basis of the**
21 **defendants' defence, this court is lured**
22 **irresistibly to the conclusion that the**
23 **defendants have no real defence for not**
24 **paying over the pension refund to**
25 **Debtor 18.**

1

2 Q: Now, those statements are related to
3 your personal contributions to the
4 pension fund which were invested?

5 A: That is right.

6 Q: This judgment arose on an application
7 for summary judgment?

8 A: That is right.

9 Q: Could you read paragraph 23 on page 12.

1x A: **For this and all the above reasons,**
11 **there shall be summary judgment on the**
12 **claimant's claim for \$x,xxx,xxx.xx being**
13 **the pension refund due to Debtor 18**
14 **together with the following orders:**
15 **A) Interest on the sum of \$x,xxx,xxx.xx**
16 **at the rate of 16% per annum to be**
17 **compounded quarterly from June 23, 1998**
18 **to be the payment.**
19 **B) the court dismisses Debtor 18's**
2x **summary judgment application relating to**
21 **his claim for \$x,xxx,xxx.xx being the**
22 **employer's contribution to the pension**
23 **fund.**
24 **C) The claim against the defendants for**
25 **the employer's contribution of**

1 **\$x,xxx,xxx.xx is adjourned for a case**
2 **management conference. The date for the**
3 **adjourned case management conference to be**
4 **set in consultation with the**
5 **Registrar of the Supreme Court.**

6

7 Q: So the judgment was given in respect of
8 the moneys - your contributions to the
9 pension fund which Debtor 18 had
1x received from Jamaica Mutual Life?

11 A: Yes, sir.

12 Q: Misappropriate it?

13 A: That is right.

14 Q: And the court awarded compound interest
15 on that?

16 A: That's right.

17 Q: We will not deal at this time with the
18 remainder, the other side of the claim,
19 but just to say, Debtor 18, what
2x happened to the employer's
21 contributions, did that go to court or
22 was it settled?

23 A: It was settled.

24 Q: You received a cheque?

25 A: Yes.

1 Q: Based on the amount and interest?

2 A: Yes that is right

3

4 Continued...

5

6

7

8

9

1x

11

12

13

14

15

16

17

18

19

2x

21

22

23

24

25

1

2 MR.LEVY:

Could we go back to Debtor 18's

3

statement, John Doe at Paragraph 9

4

on page 5.

5Debtor 18:

When I started these receiverships, as

6

in the case of other receiverships, I

7

had no certain knowledge of what I would

8

find or how long the receivership would

9

take. My objective was to find a buyer

10x

as soon as possible. Our incentive to

11

do this is partly for reputational

12

purposes of the firm and myself and

13

partly because long receiverships bring

14

about vastly more risks than short ones.

15

Q:

Stop there. So what do you understand

16

Debtor 18's statement to mean, that

17

section, his objective to mean?

18

A:

His objective was to try to, one, to try

19

to find out what was involved in the

20x

company and also try to give a report so

21

he can have the sale of the company.

22

Q:

Let's go to paragraph 13 of Debtor 18's

23

statement. Mr. Chairman, it might

24

assist the stenographer if I read it.

25

COMM. BOGLE:

Fine, you may go ahead.

1 Q: There was a long history of dealings
2 between NCB, PwC and myself from which
3 there was a familiarity with the rates
4 structure of the firm. The history of
5 dealings included prior receiverships,
6 external audits of NCB, consultancy
7 services, and tax advice for NCB. PW/PwC
8 has conducted the audits of NCB for over
9 2x years with the fees being negotiated
1x annually, and the firm conducted
11 valuation assignments for which I
12 personally have been responsible,
13 information technology, consultancy, and
14 change in management services. Messrs
15 Meikle, Creary and Francis were all
16 engaged by me at points in the
17 receivership to assist with the
18 production side, and records of their
19 time spent on the receivership were
2x available to the debenture holder upon
21 request and in fact were readily and
22 voluntarily provided to the new
23 debenture holder prior to any claim
24 being made in respect of the conduct of
25 the receivership.

1 Mr. Chairman, has the Secretary provided
2 you with the exhibit headed **Termination**
3 **of Appointment of the Receiver?**

4 COMM. BOGLE: No, he has not returned with the copies,
5 we have not got them. Let's see what
6 you have there so we can move ahead.

7 MR. SHELTON: I have none and I am directly involved.
8 Thank you.

9 Q: Debtor 18 what is this statement,
10 Termination of Appointment of Receiver?

11 A: Termination of Appointment of Receiver,
12 Mr. John Doe, Receiver of
13 Debtor Corporation Limited...

14 Q: You don't have to read the whole thing.
15 This is when xxxxx's position as
16 receiver was terminated on the 7th of
17 June, 2xx2, by Jamaican Redevelopment
18 Foundation which was at that time the
19 debenture holder. Attached to that is
20 the correspondence. Firstly the letter
21 dated 13th of August, 2xx1, signed by
22 John Doe addressed to Desmond
23 Creary.

24 A: Yes, the letter reads like this.
25 **Vacation Leave and Redundancy Payment,**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dear xxxxx

**I was very surprised to receive your
letter of yesterday's date.**

Your claim cannot be enterained.

**You were paid by me, the Receiver,
solely on the basis of hours worked with
the express understanding that whenever
the receivership ended the assignment
would be over....**

MRS. PHILLIPS:

Objection. Commissioners, I have here
what is stabled together as one document
several pieces of paper. I am not sure
if there is any connection between what
the witness is reading and the top
document as I thought that this related
to the top document. The second one, on
the face of it, and I am just seeing it
for the first time, appears to have any
reference to the top document but I
could be wrong and certainly would
appreciate some clarification or is it
that several pieces of paper are being
put in as one exhibit on a request that
the top piece be an exhibit. I just
need to understand because each exhibit

1 would have to be dealt with on its own
2 merit.

3 MR. LEVY: We can have each of them as a separate
4 exhibit?

5 COMM. BOGLE: Are you, therefore, Mr. Levy saying that
6 each one is a separate exhibit?

7 MR. LEVY: If that's what the Commission orders I
8 will...

9 COMM. BOGLE: You are the one submitting this Mr. Levy
1x so you advise me whether or not you are
11 submitting it as one.

12 MR. LEVY: Each one is a separate exhibit.

13 COMM. BOGLE: Each one is a separate exhibit.

14 MR. LEVY: Yes.

15 MRS. PHILLIPS: Don't they each have to go through the
16 witness as we have been doing with
17 previous witnesses and the relevance
18 established or we just chuck in a whole
19 thing and say here is an exhibit and
2x this is now evidence.

21 COMM. BOGLE: I will take it that Mr. Levy I am sure
22 will be explaining the significance of
23 each one of them.

24 MRS. PHILLIPS: Before they are admitted.

25 COMM. BOGLE: Yes, we have not admitted any yet, he

1 simply placed them in front of us, he is
2 to go through and then explain the
3 significance of each one.

4 MR. SHELTON: Since there **is**, Mr. Chairman, since
5 there is a lull in the proceedings, I
6 just figure I would ask for
7 clarification. In these proceedings
8 sir, I think I was informed that
9 statements from persons who intend to
1x give evidence to the Commission were
11 taken and I should prepare a statement
12 for the person I represent and I took it
13 that that statement would guide all
14 other parties interested as to the
15 evidence that a person intended to lead
16 to the Commission. And the reason I am
17 raising it, sir, is a matter of
18 procedure and a matter of convenience
19 because I have seen a statement by
2x Debtor 18 which has been submitted in
21 these proceedings; as a consequence of
22 which I prepared a statement from
23 Debtor 18 which addressed the issues in
24 that statement. Today, nearly all the
25 evidence that's being led about pension

1 and everything else and about
2 termination, are brand new, I have never
3 seen before. The point I am making, Mr.
4 Downer is due here tomorrow and I am
5 putting the Commission on notice, that
6 we would be unable to one, give a
7 statement to properly address the myriad
8 of issues that I am confronted with this
9 morning and secondly -- I will leave it
10 at that.

1x

11 MR. LEVY:

Mr. Chairman...

12 MRS. PHILLIPS:

13 Just before you continue, I too was
14 given a written statement by Debtor 18
15 when he adduced evidence, as was the
16 Commission and I wouldn't have thought
17 that that was to inform my client of the
18 matters that Debtor 18 intended to
19 raise at the Commission, none of which
20 covers what is being led here this
21 morning and there hasn't even been an
22 acknowledgement that Debtor 18 is
23 continuing his evidence from the first
24 time, it is as if he is giving evidence
25 for the first time when in fact he was
really almost at the end of his

1 evidence, if my memory serves me
2 correct.

3 COMM. BOGLE: Well, as far as I know this is supposed
4 to be a continuation, Debtor 18 had
5 not completed his evidence.

6 MRS. PHILLIPS: Can I refer to the part of the witness
7 statement that addresses this?

8 MR. SHELTON: And the pension fund issue, we are
9 hearing all of this this morning.

1x COMM. BOGLE: At this time, in the interest of time we
11 are going to proceed, there will be time
12 for cross question and the cross
13 question that Mr. Shelton says that his
14 client would require additional time, at
15 that time he would make his submission
16 regarding that. At this time I think we
17 are going to continue with the witness
18 statement which will be, the persons
19 here, will be able to get all the
2x documents and cross-examination can be
21 at another date and another time.

22 MR. LEVY: Mr. Chairman, could you clarify
23 something for me? Was Debtor 18
24 subpoenaed to give evidence before this
25 Commission or requested?

1 and the witness statement we saw
2 peripheral references to Debtor 18 in
3 there and we addressed those particular
4 issues which were raised in the witness
5 statement in a statement as I was told
6 Debtor 18 had to submit one. So that
7 was done, I have that statement with me.
8 What I am saying this morning it's a
9 totally different ball game, it's
10 outside of the scope of the witness
11 statement, and although we are not in
12 court, you will be bound by the witness
13 statement in court in his evidence in
14 chief, I know we are not in court but at
15 the same time the proceedings, with
16 respect sir, have to have some element
17 of order, because we need to be informed
18 of the direction so we can prepare
19 ourselves to cross-examine, to know the
20 case we are meeting, it can't be at
21 large with the greatest of respect.

22 MR. LEVY: It's not a case to be met, sir, it's
23 evidence to give the truth, the whole
24 truth and nothing but the truth.

25 MR. SHELTON: In an effort to give the truth you have

1 to meet the allegations being made by
2 the other side, that is what this whole
3 thing is about.

9 MR. LEVY: It's not, it is to give the truth of
5 what happened during the receivership
6 under the auspices of FINSAC and its
7 associated companies, it is not a case
8 in court.

9 MR. SHELTON: And it is at large.

1x MR. LEVY: It is a large.

11 MR. SHELTON: It can't be at large, it would be a
12 circus.

13 MR. LEVY: I know that people have tried to stop
14 this Commission from hearing but I will
15 continue to pursue the truth,
16 Mr. Chairman.

17 COMM. BOGLE: Okay, the situation is that the
18 Commission's main interest is to get all
19 the information relative to our Terms of
2x Reference and to try to be able to get
21 at the truth of all the matters
22 surrounding the Terms of Reference. Now,
23 as I said before we will continue, the
24 the persons interested, the attorneys,
25 will have the opportunity down the road

1 to cross question the witness and if
2 there are time constraints, if there are
3 scheduling problems, then the Secretary
4 of the Commission will be willing to sit
5 with the various attorneys to have the
6 matter rescheduled but this Commission
7 will continue and we will continue to
8 receive the information or the evidence
9 that is being placed in front of this
1x Commission.

11 MR. LEVY: Debtor 18, we are back to this
12 document, go to the back of the
13 document.

14 COMM. BOGLE: Which document is that.

15 MR. LEVY: I am just helping him to locate the
16 document which we are going to put in
17 evidence, the document headed, stabled
18 together, Termination of Appointment of
19 Receiver if you go to the back and skip
2x two pages and we start with the first
21 letter, and invoice, 25th of April 1999.

22 COMM. BOGLE: Invoice dated 25th of April, 1999, that
23 one.

24 MR. LEVY: Yes. You have found it Debtor 18.

25 A: Not yet. Can I get a copy of it, can 1

1 look at it and see the one.

2 MR. LEVY: Five pages from the back?

3 A: I have an invoice here but I don't see

4 any date on it.

5 MR. LEVY: Can I give you another copy?

6 A: Please.

7 (Document handed to witness)

8 A: Yes okay, thank you very much.

9 Q: This is an invoice from Xxxxxx

10 to John Doe?

11 A: Yes.

12 Q: Dated 25th of April, 1999?

13 A: Yes.

14 Q: Would you read the services provided as

15 agreed?

16 A: **To services as agreed, April 12th to**

17 **April 23rd, 1999 and sixty-nine and a**

18 **half hours at \$xx.xx per hour; total**

19 **\$xxx,xxx.xx.**

20 Q: Stop there, we won't bother with the

21 travel expenses; that's a period of

22 approximately two weeks, xxx,xxx.xx?

23 A: That is right.

24 Q: Mr. Chairman, the Secretary might note

25 the pages for exhibit because they are

1 separate exhibits as requested by my
2 friend?

3 MR. SHELTON: Are we numbering them?

4 COMM. BOGLE: I think we should. The first document
5 that was mentioned, the matter of the
6 Supreme Court Judgment, are you putting
7 that in evidence?

8 MR. LEVY: Yes.

9 COMM. BOGLE: We are going to put Debtor Corporation 1
1x and today's date, TP1/11. The other
11 document now Mr. Levy, the first page of
12 this group, **Termination of Appointment**
13 **of Receiver**, are you putting that in?

14 MR. LEVY: Yes, sir.

15 COMM. BOGLE: It would be TP2/11.

16 MR. LEVY: To save time tomorrow, it would save
17 time tomorrow.

18 COMM. BOGLE: TP2/11.

19 Q: And now, which one you are now putting
2x in, are you now putting in the invoice
21 as the third?

22 MR. LEVY: Yes, Mr. Chairman.

23 COMM. BOGLE: TP3/11.

24 MR. LEVY: And also we are going to go to the other
25 one dated 28th of February 1999.

1 COMM. BOGLE: Which one is that Mr. Levy?

2 MR. LEVY: Invoice dated 28th of February 1999.

3 MR. SHELTON: Just before that there is also a

4 reference to Debtor 18's witness

5 statement, full reference was made to

6 it, shouldn't that also be in evidence,

7 just trying to get it in sequence.

8 COMM. BOGLE: Mr. Levy, the witness statement of

9 John Doe.

1x MR. LEVY: Being put in also.

11 COMM. BOGLE: Can we put this in as -- I think it

12 might be better if we re-number and put

13 this one as TP2; John Doe's

14 statement we put as TP2, we are re-

15 numbering, TP2/11 and therefore, the

16 Termination of Appointment of Receiver

17 will be TP3, the invoice dated the 25th

18 of April will now be TP4/11.

19 MR. LEVY: And the invoice of 28th of February

2x Mr. Chairman that would be TP5/11.

21 COMM. BOGLE: Yes, the invoice of 28th of February,

22 TP5/11.

23 MR. LEVY: Debtor 18 you have that one before

24 you?

25 A: Yes.

1 Q: Is this another invoice from xxxxx
2 xxxxx?

3 A: Another invoice from Xxxxxx
4 dated 28th of February 1999 to Richard
5 Downer at Pricewaterhouse, Duke Street,
6 Kingston. **To services provided as**
7 **agreed; February 15th to February 26th**
8 **1999, eighty-four hours at \$25xx per**
9 **hour, total \$21x,xxx.xx.**

1x Q: And the period 15th February to 26th
11 February is eleven days?

12 A: Eleven days, that is correct.

13 Q: And the amount paid for that eleven
14 days?

15 A: \$xxx,xxx.xx.

16 Q: The next letter before you Debtor 18,
17 is on Pricewaterhouse's letter head?

18 COMM. BOGLE: Which letter is that Mr. Levy?

19 MR. LEVY: It's a letter on Pricewaterhouse's
2x letter head dated October 19, 2xxx.

21 HER LADYSHIP: You are entering as TP6.

22 A: October 19, 2xxx, yes.

23 Q: You found it Debtor 18?

24 A: Yes, I get it.

25 Q: That is TP6/11 Mr. Chairman. Could you

1 read that for me.

2 A: Okay, this is a letter from Richard
3 Downer to a Mr. Xxxxxx.

4 Q: No, no, read from the top, above that.

5 A: **Bank of America, West Hollywood Banking**
6 **Centre, 2655 North Sixieth Avenue,**
7 **Hollywood, Florida 33x21.**

8 Q: What does the letter say?

9 A: **Dear sir,**

1x **This serves to confirm that Mr. xxxx**
11 **xxx is contracted to Mr. Richard L**
12 **Downer, senior partner of**
13 **PricewaterhouseCoopers and**
14 **receiver/manager of Debtor Corporation**
15 **(Jamaica) Limited (in Receivership) and**
16 **Corporation Limited (in Receivership) as a**
17 **management consultant and receiver's**
18 **agent, for this particular assignment.**
19 **His gross remuneration for the calendar**
2x **year 1999 and year to date 2xxx are as**
21 **follows:**

22 **1999 J\$x,xxx,xxx.xx**

23 **2xxx J\$x,xxx,xxx.xx.**

24 **Signed**

25 **Yours truly**

1 to third Defendants.

2 Q: To the best of your knowledge, who are
3 the attorneys for John Doe?

4 A: Myers, Fletcher & Gordon.

5 Q: Let's go back to your witness statement.

6 Q: Debtor 18, go to page 17 of Richard
7 Downer's statement, paragraph 26?

8 A: I am to read that for you?

9 Q: Read paragraph 26.

1x A: **In August 1999, months after the need
11 for the facilities had been reported and
12 the request made, I was notified by NCB
13 that our request to have the facilities
14 extended was declined because NCB was
15 not given the FINSAC guarantees. The
16 inordinate delay in reaching this
17 decision proved very costly since I was
18 unable to source raw materials on a
19 timely basis from overseas suppliers who
2x required either an advance payment or a
21 bank guarantee which resulted in
22 stop/start, production and, as a result
23 of the uncertainty as to whether I would
24 have the finance to source sufficient
25 raw materials, I was unable to service**

1 or commit to several large contracts which
2 resulted in their loss. It so happens that
3 this notification coincided with an
4 instruction to me from FINSAC that I should
5 resume my disposal strategy (which was to sell
6 the business as a going-concern) as stated
7 below which had followed an instruction in
8 March 1999 that I should curtail selling
9 efforts whilst FINSAC and NIBJ tried to reach
10 an accommodation. It was in this very period
11 of negotiation between those entities that
12 my struggle to obtain the financing facility
13 was taking place with the delay being
14 attributed to the Bank of Jamaica.
15 continued

18

16 1

17 9

2x

21

22

23

24

25

1 MR. LEVY: Okay. Mr. Debtor 18. 7th line or rather
2 five lines down. I will read it.
3 It so happens that this notification
4 coincided with an instruction to me from
5 FINSAC that I should resume my disposal
6 strategy (which was to sell the business
7 as a going-concern) as stated below
8 which had followed an instruction in
9 March 1999 that I should curtail selling
10 efforts whilst FINSAC and NIBJ tried to
11 reach an accommodation.
12 You understand this to mean that Mr.
13 Downer had received instructions from
14 FINSAC, firstly, to stop the disposal
15 and secondly to dispose?
16 Debtor 18: Yes, sir, that was my understanding.

17 MR. LEVY: And it was as a result of this taking
18 of instructions which affected the
19 course of the receivership?

20 A: That is right, sir.

21 Q: Go to Paragraph 29 now, Debtor 18. It
22 might be of assistance if I read this,
23 the staff might prefer that.
24 **29. The length of the Receivership**
25 **during which the NCB overdraft interest**

1 and our fees (including those applicable
2 to Mr. xxxxx) continued to be incurred
3 was due to the fact the debenture
4 holder, FINSAC, instructed me, on
5 several widely separated occasions, to
6 facilitate the various efforts of
7 National Investment Bank (NIBJ) to buy
8 the debenture or the business, and also
9 not to entertain other bids at various
1x times that were coincident with these
11 efforts, which required me to continue
12 the receivership instead of selling the
13 business as I could have at various
14 times to Omni Industries.
15 When the several takeover offers on the
16 table by NIBJ were to be by way of the
17 purchase of the debenture. I was not
18 involved in those protracted and
19 unfruitful negotiations because, in the
2x case of that mechanism, it was a matter
21 solely between FINSAC and NIBJ.

22 Again we have xxxxxx stating that he
23 was involved and he was taking
24 instructions from FINSAC?

25 **A:** That's right.

1 Q: Yourself and a non-Government company?

2 A: That's right.

3 Q: Mr. Chairman, evidence has been led that
4 NIBJ and FINSAC was fully owned by the
5 Government.

6 Let's go to paragraph 32.

7 **On January 12, 1999 I was called to a**
8 **meeting at the Prime Minister's office**
9 **which was attended by Mr. Patrick Hylton**
10 **of FINSAC, Ministers Paul Robertson and**
11 **Horace Clarke, Mr. Nathan Richards, Mr.**
12 **Dennis Morrison and Mr. Sanderson of the**
13 **National Workers' Union. I informed the**
14 **meeting that there was deadline of**
15 **January 15,1999 for the submission of**
16 **bids to purchase the enterprises and we**
17 **had not heard whether NIBJ was going to**
18 **purchase the debenture from FINSAC.**

19 I will go on to paragraph 33.

20 **33. On January 13, 1999 Mr. Patrick**
21 **Hylton write to me requesting that "the**
22 **deadline for the decision to dispose"**
23 **should be extended to February 28, 1999,**
24 **which was a Saturday.**

25 You understand these extensions of these

1 instructions to be an interference by
2 other parties, not FINSAC, in the
3 operation of the receivership by **Mr.**
4 Downer?

5 **A:** Yes.

6 **Q:** **I will** go to paragraph 34.
7 **34. At a meeting held at NIBJ on**
8 **February 24, 1999 in response to my**
9 **request for an update on the state of**
10 **negotiations between NIBJ and FINSAC**
11 **since I was in the final stages of**
12 **negotiation with another bidder, I was**
13 **informed by Mr. Gavin Chen that NIBJ**
14 **still wished to purchase the debenture.**
15 **I pointed out that there was now a**
16 **deadline of March 3, 1999 for the**
17 **submission of bids. I selected that**
18 **date following Mr. Hylton's**
19 **instructions of January 13, 1999 that**
20 **the date should be extended to February**
21 **28, 1999 because on February 22, 1999 I**
22 **had a meeting at Corporation (a**
23 **bidder) with Mr. xxxxx who told me**
24 **that he was getting a letter of comfort**
25 **from his bank and needed a week for**

1 **this, so I allowed a few extra days to**
2 **set the new deadline.**

3 So again the deadline was extended by
4 Debtor 18 to March 3, 1999.

5 A: That is right.

6 Q: Paragraph 36. **On March 3, 1999 I was**
7 **instructed by Mr. Patrick Hylton of**
8 **FINSAC on the telephone to suspend the**
9 **sale of the businesses to allow FINSAC**
1x **the opportunity to review an offer from**
11 **NIBJ to purchase the debenture.**

12 Does this sound right, Debtor 18 was
13 acting as an independent Receiver?

14 A: He was under instructions.

15 MR. SHELTON: With respect, sir, that is not the
16 evidence that Debtor 18 is qualified
17 to give.

18 MR. LEVY: He gives his opinion.

19 MR. SHELTON: I am objecting to it, sir. He is not

2x here to give opinions; he is here to
21 give evidence in relation to the truth
22 and nothing but the truth. I am
23 objecting, sir and I ask that it be
24 noted please.

25 COMM. BOGLE: Yes, the objection is noted.

1 MR. LEVY: Paragraph 37 of the Witness Statement. In a
2 letter dated June 1x, 1999 I wrote Mr. Hylton
3 requesting instructions as to whether I could
4 resume negotiations with prospective
5 purchasers, having had no further news
6 regarding the negotiations between FINSAC and
7 NIBJ regarding the purchase of the debenture.
8 There was no reply.

9 Paragraph 38. On August 13, 1999 I received
10 a letter from FINSAC referring to their letter
11 of January 13, 1999 and asking me to continue
12 my disposal strategy. I went back to the
13 market and on September 17, 1999, the
14 companies in receivership were advertised in
15 the newspapers, though I feared that the
16 response would be poor as the bidding process
17 had been discredited and the businesses were
18 now 'damaged goods'. I will leave it at that.

19 Paragraph 39. On October 8, 1999 I received
20 an offer for the purchase of the assets by
21 NIBJ. This was the first time that NIBJ was
22 offering to buy the
23
24
25

1 assets as opposed to the debenture. The
2 **same** day an assistant of mine wrote to NIBJ
3 on my instructions asking for
4 clarification (so we could determine
5 that this was truly an offer for assets and
6 not the debenture) and informing them
7 that the current round of bidding would
8 not be closed until October 29, **1999**.

9 We will go on to paragraph 41, page 25. On
10 **November** 17, 1999 I wrote to Mr. **Patrick**
11 **Hylton** informing him **that** NIBJ had revised
12 its offer whereby it was once **again** for the
13 debenture and not the assets and the offer
14 should therefore have been addressed to
15 FINSAC and not the Receiver.

16 I will go to paragraph 46. On July 28, 2xxx
17 Mr. **Patrick Hylton** wrote **requesting** me to
18 **facilitate** a new NIBJ due
19 diligence team in respect of an offer to
20 purchase the assets and also
21 instructing that he had written to NIBJ
22 urging them to complete the contract as
23 soon as possible. On August 3, 2xxx I
24
25

1 wrote to Mr. Patrick Hylton indicating my
2 willingness to cooperate with NIBJ but
3 pointed out that two other offers were now
4 on the table. These offers were
5 unsolicited. NIBJ wrote to me by letter
6 dated August 4, 2xxx **making** an offer for the
7 assets and informing that it was their
8 intention that the Debtor 18 family would
9 be offered the right to purchase shares in
10 the new company that would be used to
11 acquire the assets. This information did
12 not influence my effort to carry through the
13 bidding process and I did not consider it
14 to be my business what action NIBJ might
15 **take** following its proposed acquisition.
16 Paragraph 47. On September 6, 2xxx NIBJ
17 wrote requesting exclusivity in the
18 negotiations.

19 Paragraph 48. On September 7, 2xxx I
20 replied to NIBJ declining exclusivity
21 because other negotiations were in
22 progress.

23 Paragraph 51. On November 28, 2xxx NIBJ
24 wrote to me revising their offer and
25

1 again requesting exclusivity.

2 Paragraph 52. On December 15, 2xxx I

3 received a letter from Refin requesting

4 details of the Corporations and NIBJ offers.

5 Paragraph 53. In February 2xx1 I was in

6 correspondence with NIBJ as regards

7 aspects of the draft agreement in

8 particular the issue of the redundancy

9 payments.

1x Paragraph 54. On March 22, 2xx1 I wrote

11 to FINSAC seeking their instructions on

12 an aspect of the draft agreement with

13 NIBJ.

14 Debtor 18, what was he seeking?

15 A: He was seeking a structure.

16 Q: From FINSAC?

17 A: That is right.

18 Q: Paragraph 58. Between December 2xxx and

19 July 2xx1 generally I was in

2x negotiations with NIBJ to purchase the

21 assets of the company, which offer I

22 considered better than the October offer

23 from Corporation because the present day

value

24 of the NIBJ offer was superior than that

of the Omni offer.

1 Paragraph 59. **The Agreement with NIBJ**
2 **was entered July 16, 2xx1 and NIBJ**
3 **thereby took possession of the**
4 **operations. After that point I had**
5 **nothing to report as regards the**
6 **operations of the business, as this had**
7 **been taken over.**

8 COMM. BOGLE: At this point may we have a ten minute
9 break, please, coffee break.

10 (Coffee Break)

11 (ON RESUMPTION)

12 This Enquiry is now back in session.

13 Debtor 18 remember that you are still
14 on oath.

15 MR. LEVY: Debtor 18, on behalf of Debtor -
16 Corporation, a suit was filed with
17 Debtor Corporation and Corporation Limited
as

18 the claimants against Mr. John Doe
19 for damages done during the period of
20 receivership?

21 A: That's right.

22 Q: And what else?

23 A: Well, the law suit that was filed was
24 mainly for the overbilling which he had

25

done especially when we got to xxxx

1 xxxxx, Xxxxx and xxxx

2 .

3 Q: When you say overbilling, what do you
4 mean?

5 A: 'Well, I think -- okay, by using the
6 word, 'overbilling' I think that they
7 were unreasonable. I can give you one
8 example, where Mr. John Doe put on
9 one of his company's invoices where Mr.
10 xxxx worked for twenty-four
11 hours, for seven days, for one month. I
12 would have to say that this man was
13 superman, he worked twenty-four hours,
14 seven days for one month.

15 Q: What rate was the company billed at?

16 A: He was billing the company and he was
17 paying Mr. xxxxxx \$x,xxx.xx
18 Jamaican an hour and he was billing the
19 company \$x,xxx.xx. He was making a
20 profit of \$x,xxx.xx Jamaican per hour
21 and on top of that, to put that the man
22 worked twenty-four hours for thirty
23 days, this is an incredible man. Where
24 do you see that? This is what the man
25 has done. Because when you look at it,

1 he was paying them that or more. I as
2 the Managing Director of Debtor Corporation
3 was collecting \$xxx,xxx.xx Jamaican per
4 month. He paid his consultants, Mr.
5 xxxxx, and Mr. xxxxx for forty
6 hours, *he paid* them the total of

7 \$xxx,xxx.xx *per week*. That is what he
8 paid them.

9 Q: That is not what he billed the company
1x for?

11 A: No, No. He billed the company for that
12 amount \$xxxx.xx per hour and he was
13 paying them \$x,xxx.xx an hour, he was
14 making a profit on the company of
15 \$x,xxx.xx Jamaican per hour. Not only
16 was he satisfied with that, but he put
17 *on* their invoice that they *were* working
18 twenty-four hours...

19 Q: Was Mr. xxxxx a sleeping wallsman?

2x A: Well, according to this, you never know. 21
22 (continued...)

23

24

25

1 MR. LEVY: Was there at any time any negotiations
2 between PriceWaterhouse and the
3 debenture holder, to your knowledge, for
4 the settlement of that?

5 MR. SHELTON: I am objecting.

6 COMM. BOGLE: What is the justification for that
7 question, Mr. Levy?

8 MR. LEVY: Debtor 18 recognised that he had done
9 something wrong and tried to settle with
1x him. I will ask Debtor 18 when he
11 comes.

1.2 COMM. BOGLE: We will strike that one.

13 MR. SHELTON: Debtor 18 was not involved in any
14 negotiation that you may ask that
15 question.

16 MR. LEVY: Debtor 18 was not involved, his
17 attorneys were involved.

18 COMM. BOGLE: Go ahead.

19 MR. SHELTON: A very careless statement.

2x MR. LEVY: You are aware that - after Debtor 18's
21 appointment was terminated by Jamaican
22 Redevelopment Foundation, who was
23 appointed receiver?

24 Debtor 18: Mr. Deceased.

25

1 Q: Mr. Deceased is an accountant?

2 A: Mr. Deceased not only was an
3 accountant, he was a forensic
4 accountant.

5 Q: You mean forensic audit?

6 A: That's right.

7 Q: Are you aware whether or not
8 Deceased did a forensic audit on the
9 receivership?

1x A: Yes, I am aware of that.

11 Q: You are aware of the findings?

12 A: Yes, I am aware of the findings.

13 Q: Generally what were the findings?

14 A: Well the finding was merely centered on
15 the abuse done by Mr. John Doe
16 while he was Receiver/Manager of Debtor -
17 Corporation.

18 As I mentioned this portion of
19 overbilling did not only it was for
2x the duration of the receivership.

21 Meanwhile Mr. John Doe is sucking
22 money out of the company, he is going to
23 the bank asking the bank to give him
24 overdraft, to increase his overdraft so
25 he can suck more money, more money.

1

2 MR. SHELTON: I am objecting to all of this. This
3 witness has no knowledge which is
4 personal to him about any of this. He
5 was not a part of the company, he was
6 not a part of any audit; he was not a
7 part of anything other than he was a
8 previous Managing Director. This
9 information is not information that he
1x has. He is giving evidence which we
11 can't challenge him on because he really
12 knows nothing about it and the person
13 who is able to give the primary evidence
14 is not coming here, cannot come here so
15 I don't know how this evidence can be
16 given by him, in all the circumstances.
17 We can't challenge him on anything that
18 he is saying.

19 COMM. BOGLE: Debtor 18, did you see a report from
2x Deceased?

21 A: Yes.

22 COMM. BOGLE: You saw a copy of the report?

23 A: Yes.

24 COMM. BOGLE: Do you have it with you or is it
25 available that we can get it?

1 report back in evidence. Now that we
2 have seen -- at the time when we refused
3 to accept the report we were not aware
4 of the information that was going to be
5 used from the report, therefore we
6 believe that we can accept the report
7 and as such the witness can be cross
8 questioned when the time comes regarding
9 the information that he is putting
1x forward.

11 MR. LEVY: Thank you, Mr. Chairman.
12 Just for the purpose of the records you
13 do have the power to admit the witness
14 statement which was given under oath of
15 a person who is dead. It is a right
16 which you have, it is a discretion you
17 have and if you want to get the truth
18 then you have the witness statement of
19 the Deceased.

2x MR. GARCIA: I wonder, Commissioner, if I may get a
21 copy of this statement.

22 MR. LEVY: (Documents handed to attorneys)

23 COMM. BOGLE: Can you please share. We are sharing.

24 MRS. PHILLIPS: But we'll get one eventually.

25

1 COMM. BOGLE: Yes.

2 MR. LEVY: I would like to say, Mr. Chairman, the
3 firm of Myers, Fletcher and Gordon has
4 had a copy of this witness statement for
5 a couple years.

6 MR. SHELTON: And I would say, Mr. Chairman, I didn't
7 know the case was being tried here,
8 hence I didn't bring it.

9 COMM. BOGLE: While we are waiting on the document can
1x we move right along.

11 MR. LEVY: The case is not being tried here, my
12 friends. This is a public investigation
13 of how xxxxxxxxx mismanaged on the
14 instructions of FINSAC the receivership
15 of Debtor Corporation.
16 Debtor 18, paragraph 1x -- under
17 WITNESS STATEMENT OF DECEASED
18 Look at where it says 'I
19 the deceased, being duly sworn....

2x A: Yes.

21 Q: Turn the page and look at paragraph 1x.

22 A: That is right.

23 COMM. BOGLE: Are you now putting this in?

24 MR. LEVY: Yes, Mr. Chairman. I think it is TP7.

25

1 MRS. PHILLIPS: Could my friend just show me where it is
2 signed by Deceased; the actual
3 statement itself.

4 COMM. BOGLE: This document has a Supreme Court stamp
5 which means that this document was
6 accepted.

7 MRS. PHILLIPS: No, no, no. Commissioner, sorry. The
8 stamp of the Supreme Court only means
9 that it was filed in court. It doesn't
10 mean that it has been accepted anywhere;
11 it means that it was filed. That's all
12 the stamp means. You can file anything.
13 If you put it through the Registry
14 window it is going to get a stamp. I am
15 not saying it is not signed, I just
16 would like to know where. I gather an
17 exhibit is signed but not the statement
18 itself.

19 MR. LEVY: Mr. Chairman, the Secretary gets copies
20 of the whole witness statement or the
21 relevant parts?

22 MRS. PHILLIPS: Oh, you were putting it in pieces?
23 (Document shown to Commissioners)

24 MR. LEVY: That is Deceased' signature on the
25 witness statement.

1 COMM. BOGLE: The relevant page will be copied.

2 MRS. PHILLIPS: Can we defer admitting it in evidence
3 until we get the signed copies?

4 COMM. BOGLE: Yes.

5 MRS. PHILLIPS: Appreciated.

6 MR. LEVY: I did not hear what Mrs. Phillips said.

7 COMM. BOGLE: This is therefore now being marked for
8 identity as TP7/11 until we get the
9 other page.

1x MRS. PHILLIPS: Could you just mark it 'A' for identity
11 and then put the number when it is
12 admitted.

13 COMM. BOGLE: Fine, Mrs. Phillips.

14 MR. LEVY: Chairman, this witness statement is in
15 respect of three suits which were
16 consolidated into one. The witness
17 statement itself is divided by me to
18 deal with the aspects of the case in all
19 three suits.

2x In those suits the Claimants were, one,
21 Debtor Corporation Limited and Corporation
22 Limited in receivership. The second one
23 is Corporation Limited and Debtor
Corporation

24 Jamaica Limited, Acquisition 1998.

25 MRS. PHILLIPS: Objection. Commissioners, are we giving

1 evidence in relation to this thing which
2 is not yet in evidence or do we move
3 along to something else and when the
4 information that it is really a signed
5 statement of Deceased is produced we
6 then admit it as a signed statement?

7 COMM. BOGLE: We have seen the signed statement, we
8 are saying that it is has been accepted
9 and noted, and this document may be used
1x until the page arrives.

11 MRS. PHILLIPS: In the way that an exhibit would be used
12 without it being an exhibit?

13 COMM. BOGLE: It will be used...

14 MRS. PHILLIPS: I would like my objection to be
15 recorded.

16 COMM. BOGLE: Duly noted.
17 MRS. PHILLIPS: Where is the shorthand writer?

18 Over there. I just want to make sure.

19 COMM. BOGLE: Mr. Levy?

2x MR. LEVY: Debtor 18, about three or four pages
21 into the document at the heading **Suit**
22 **No. CL 2xx2/T-x92**; you have that?

23 A: Yes, sir.

24 Q: Now in all these suits, Debtor 18,
25 Richard Downner is named as the

1 Defendant?

2 **A:** That's right.

3 **Q:** The particulars of the claim are that he
4 facilitated fraud?

5 **A:** That's right.

6 **Q:** **John Doe was the Receiver and**
7 **Manager of TPL and PPL - meaning**
8 **Corporation Limited - and acted as agent of**
9 **TPL and PPL, and not as agent of the**
10 **debenture holder.**

11 **In his capacity, John Doe owed a**
12 **fiduciary duty to the Claimants, as**
13 **their agent, to act honestly; not to**
14 **enter into contracts and/or arrangements**
15 **which were not in the best interest of**
16 **the Claimants; not receive and/or retain**
17 **a secret profit or commission in respect**
18 **to his appointment, whether paid by**
19 **third party or otherwise for which he**
20 **did not account to the Claimants; nor to**
21 **not misapply or retain funds of the**
22 **Claimants.**

23

24 **(3) In addition, on the formation of**
25 **TPL1998, John Doe acted in the**

1 happening here today, is that
2 Debtor 18, who can speak to none of this
3 through his mouth is seeking to get
4 these allegations into the public
5 domain, and I say into the public domain
6 because I made a special request,
7 because I expected this type of
8 behaviour, that the proceedings in
9 relation to Debtor 18, who is a
1x professional in this country and lives
11 by his reputation, that those
12 proceedings would be held privately.

13 MR. LEVY: In secret.

14 MR. SHELTON: Privately. That request was granted.
15 Now sir, I am asking for it to be noted,
16 since the Commissioners in their wisdom
17 have chosen to admit this witness
18 statement; not a report of an auditor, a
19 witness statement of a deceased person
2x which we cannot challenge; I am just
21 asking for it to be noted that I object
22 to it being evidence -- evidence of it
23 being given through anybody in these
24 proceedings. And I wish sir, that if it
25 is that the Commission intends to

1 proceed, that I be given time to take my
2 client's instructions as to what course
3 I should adopt.

4 COMM. BOGLE: Your objection is duly noted, Counsel,
5 and we will proceed.

6 MR. SHELTON: And my request for time to take
7 instruction will not be granted?

8 COMM. BOGLE: Regarding tomorrow there is a schedule
9 for your witness to be here, your client
10 to be here tomorrow and we expect that,
11 that will go ahead. To the extent that
12 the information given today may be
13 information that you will require
14 additional time to discuss with your
15 client, then that can be done after
16 tomorrow because you yourself said that
17 you had prepared the statement regarding
18 the previous submissions of the witness.

19 MR. SHELTON: You know, sir, with the greatest of
20 respect, I have never ever, in my life,
21 been able to - it is thirty-six years I
22 have been at the Bar - produced a
23 disjointed submission or evidence which
24 makes real sense when all the things are
25 intertwined. I based it on this

1 document, which I was entitled to do,
2 and at liberty to do, and was bound to
3 do. What's happening today is that I am
4 seeing a whole new approach which led me
5 into a sense of false security and
6 consequently I have not addressed
7 anything. What I have said there is of
8 no use to the Commission in light of the
9 present direction being taken by my
1x learned friend.

11 COMM. BOGLE: I still maintain that you can have your
12 submission that you wish to make
13 tomorrow and to the extent that
14 additional time is required to consider
15 new information or information that is
16 coming to you today, then the Commission
17 will so grant you.

18 MR. SHELTON: But sir, with the greatest of respect he
19 is entitled to hear, as my friend said,
2x all the evidence which has been led
21 against him, which seems to be quite
22 substantial now, before he gives any
23 statement. It is his right; his
24 constitutional right. He needs to hear
25 what is the evidence against him so that

1 he can respond. He can't respond piece
2 meal, a piece here and a piece there.

3 COMM. BOGLE: As I said, sir, we will proceed as we
4 had planned. We will have the hearing
5 tomorrow at which time we expect that
6 Debtor 18 will be present and as I
7 said, you yourself said, you have
8 prepared a brief regarding the
9 information that you received previously
10 so we will be here to hear that tomorrow
11 morning and to the extent that
12 additional information has come to your
13 attention today that you wish additional
14 time, that will be granted and that is
15 the ruling at this time.

16 MR. SHELTON: As you please.

17 MR. GARCIA: Commissioner Bogle, I wonder if I could
18 be provided with a copy of Debtor 18's
19 statement.

20 COMM. BOGLE: Sure.

21 MR. LEVY: Mr. Chairman in my 48 years of practice--
22 he says he has had 36 years of
23 practice-- I have never had a
24 Commission which was taken before a
25 court, wrongly stopped, in my opinion,

1 and I am seeing every effort to obstruct the
2 evidence coming before this Commission,
3 continuing in the same practice from my
4 friends on the right. That has been their
5 practice from the very beginning. I guess
6 that's personal and I'll move on.

7 Debtor 18, paragraph 12:

8 **(1) xxxxxx was engaged by**

9 **John Doe on 1988 December 7 to act as**

10 **Production Manager for**

11 **Debtor Corporation (Jamaica) Acquisition**

12 **1998 Limited. xxxxxx's service was engaged**

13 **for the period 1988 December 7 to 2xx1 June**

14 **13.**

15 **(2) During his tenor, xxxxxx was paid at a**

16 **rate of \$x,xxxx per hour.**

17 **And there are some invoices which have been**

18 **attached, some of which have been admitted**

19 **to evidence, which establishes the rate at**

20 **which he was employed.**

21 **xxxxxxx charged a total of x,xxx.xx hours**

22 **for services rendered to**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 John Doe while working on the
2 receiverships. (Exhibit A33).

3 Attached is a copy of

4 PricewaterhouseCoopers (PWC) "Detailed
5 Trial Balance" for 1999, xxxx and 2xx1"
6 (Exhibit A34) and PWC "Hours/Rate Activity
7 report" for the period 1998 March to xxxx
8 March (Exhibit A36)

9 Per the attached PWC "Hours/Rate
10 Activity report" it is seen that John Doe
11 charged the Claimants \$7,xxx per hour for the
12 services of Xxxxxx (Exhibit A35).

13 Thus John Doe fraudulently charged
14 \$xx,xxx,xxx.xx to the Claimants -meaning
15 Debtor Corporation - for the services of
16 Xxxxxx".

17 And the caculation is there.

18 Overleaf.

19 As such the total amount fraudulently
20 charged to the Claimants is \$xx,xxx,xxx
21 which is broken down as follows:

22 And it is a breakdown showing how the xx
23 million dollars were split between the
24 charges for Xxxxxx, xxxx

xxxx and xxxxx.

1

Overleaf; paragraph 13 (3)

2

The actual hours charged on PWC "Hours/Rate Activity report" for the services of xxxx

3

xxxx is as follows. And it gives some

4

descriptions of the months and the number of hours; the number of hours charged for the month and the average hours worked per day. This totals 1,456 hours charged.

5

6

7

8

9

1x

Continued.....

11

12 13

1

4 15

16

17

18

19

2x

21

22

23

24

25

1

2 MR. LEVY: But I take you back up to August 1998
3 528 hours were charged, average hours
4 worked per day was xx.xx hours per day.
5 (Laughter)

6 COMM. BOGLE: Can we please have some silence.

7 MR. LEVY: 1998 September 277 hours charged,
8 average hours worked per day 13.9 hours
9 per day. So in September I guess he was
1x tired from overworking in August so he
11 didn't work a full 24-hour day in
12 September. In my 48 years of practice I
13 have never seen anything like this.

14 Paragraph 4:

15 Based on an average 24 day
16 working week, the above time
17 recorded...

18 COMM. BOGLE: Based on the average xx day working
19 week.

2x MR. LEVY: Based on an average xx day working week,
21 the above time recorded by PWC suggests
22 that xxxxxxxx worked, 9.1 hours per
23 working day in 1998 July, 26.4 hours per
24 working day in August 1998 and the note
25 says, please note that 1998 August had

1 two public holidays which fell on
2 weekdays) That was when he charged
3 double time. And 13.9 hours per working
4 day in 1998.

5 An examination of Invoice dated 1998
6 September from xxxxxx for the
7 period 1998 September 1 to 15 clearly
8 shows that the maximum hours worked on
9 any one day during this period was nine.

1x MR. GARCIA: Commissioners, I wonder if I could have some
11 assistance. I have just received a copy of
12 what I understand to be the signature page
13 to the statement and it is a single page which
14 indicates, I believe, that the facts stated
15 in the witness statement are true to the best
16 of my knowledge, the information I believe.
17 I believe it is not clear to me where in the
18 statement it is to be inserted and that is
19 the clarification that I would seek.
2x I also note with some interest that although
21 the statement says on the second page "I
22 Deceased being duly sworn make oath and say
23 as follows:
24

1 that the page actually includes no jurat
2 indicating that a Justice of the Peace
3 or similar officer has administered the
4 oath,

5 COMM. BOGLE: You have the complete document there?

6 MR. LEVY: Maybe my friend would like to look at
7 the document, it is the document with
8 all the exhibits. It is at the top of
9 the page, paragraph 6.

1x A Which page?

11 Q It is not numbered, you just have to
12 look for it. It is paragraph 6 at the
13 top of the page starting with "Thus
14 John Doe".

15 A Can you show it straight to me so that I
16 can see it.

17 Q Do you find it?

18 A Not yet.

19 Q Paragraph 6 at the top of the page
2x starting with "Thus John Doe".

21 A Yes, sir. I have it.

22 Q Would you read that paragraph.

23 A **Thus John Doe fraudulently charged**

24 **\$x,xxx,xxx to the Claimants for the**
25 **services of Mr. xxxxx. This is**

1 I have been supplied as the witness statement
2 of Deceased is not complete. My friend has
3 supplied me with a copy of the full statement
4 including the exhibits, but it is not even
5 the entire statement itself that I have
6 received. Consequently I am seeing at least
7 ten pages that are missing from the copy that
8 I have received. I do not know what is in the
9 copy that the Commission has received. The
10 pages of course are not numbered and all the
11 paragraphs are not numbered which leaves me
12 in a position where I don't think I even can
13 follow the evidence which is being led at
14 this point.

15 Mr. Chairman, I think it is a convenient time
16 for us to consider getting out. It is nearly
17 MR. LEVY: 12:xx o'clock and there are some other things
18 that I want to address

19
20
21 you on concerning tomorrow's hearing. I
22 think we can continue with Debtor 18
23 at a later date.

24 COMM. BOGLE: The matter that Mr. Garcia mentioned
25 awhile ago, do you have a comment on?

1 MR. LEVY: I will provide him with the one that I
2 am working on in due course.

3 COMM. BOGLE: Is that the full thing?

4 MR. LEVY: I might say, Mr. Chairman, the firm of
5 Myers Fletcher and Gordon has within its
6 offices copies of these statements.

7 MR. GARCIA: I am not a member of Myers Fletcher and
8 Gordon.

9 MR. LEVY: Which brings us to another point, Mr.
10 Chairman. We are told that tomorrow's
11 hearing will be in camera, in private
12 and only the persons connected to
13 John Doe and the allegations by
14 Debtor 18, Debtor Corporation against Mr.
15 John Doe will be allowed to be
16 present. How many lawyers are going to
17 be permitted to be here? If the Press
18 is not going to be committed to be here,
19 who is going to be committed to be here?

20 COMM. BOGLE: As far as the Commission is concerned
21 any lawyer whose client is affected by
22 the whole Debtor Corporation' matter is
23 allowed to be here.

24 MR. LEVY: With due respect Mr. Chairman, I don't
25 know who my friend, Mr. Garcia, is

1 representing.

2 COMM. BOGLE: He represents Patrick Hylton.

3 MR. LEVY: Who sir?

4 COMM. BOGLE: Patrick Hylton who was the head of
5 Finsac during the period.

6 MR. LEVY: And how can Mr. John Doe's
7 evidence help Mr. Patrick Hylton?

8 COMM. BOGLE: Mr. Garcia may respond to that.

9 MR. GARCIA: My friend did in the course of the
10 examination today take the witness to
11 certain paragraphs which had several
12 references to conversation between
13 Debtor 18 and Mr. Hylton. So I am
14 rather surprised that my friend is
15 making this query at this time in light
16 of the questions asked by him earlier.

17 MR. LEVY: In those circumstances I won't object to
18 Mr. Garcia being present.

19 COMM. BOGLE: Right.

20 MR. LEVY: Who else is going to be allowed to be
21 present and who are they representing?

22 COMM. BOGLE: Well, as I said, any counsel who
23 represents a client that has been
24 mentioned or is affected by this
25 particular witness statement.

1 MR. LEVY: And Mrs. Phillips is representing whom?

2 COMM. BOGLE: Mrs. Phillips is representing Jamaican
3 Redevelopment Foundation.

4 MR. LEVY: I am sorry I didn't hear you.

5 COMM. BOGLE: She is representing Jamaican
6 Redevelopment Foundation.

7 MR. LEVY: Okay, I have no problem. But I do have a
8 problem, sir, with the fact that the
9 Press and the public will not be
10 permitted to be here. I made that
11 statement to you before and I am making
12 it again. This is a public enquiry and
13 there is no reason why the Commission
14 should grant a private hearing to
15 Mr. John Doe.

16 COMM. BOGLE: I note your objection which you may
17 raise again if you wish when Debtor 18
18 is giving evidence, okay.

19 MR. LEVY: Because Mr. Chairman, people sitting at
20 the back of this room have been affected
21 by Finsac and they ought to be allowed
22 to be here.

23 COMM. BOGLE: As I said, you are duly noted. You may
24 bring up the matter when Debtor 18 is
25 being present at which time Debtor 18's

1 attorney may respond to you at that
2 point.

3 MR. LEVY: I make one other request to the
4 Commission since Debtor 18 is here on a
5 voluntary basis that he be subpoenaed to
6 attend for future proceedings, since he
7 decides not to voluntarily come to
8 answer the questions.

9 COMM. BOGLE: That is a matter that is left up to the
10 Commission as the Commission sees fit.

11 MR. LEVY: I appreciate that, sir. I am just making
12 a public request that Debtor 18 be
13 subpoenaed to attend future hearings and
14 his presence here will allow you to
15 serve him with it.

16 COMM. BOGLE: As I said before, Debtor 18 to my
17 knowledge has not refused to come to
18 this Commission and therefore, I see no
19 reason for that statement.

20 2x MR. LEVY: Very well.

21 COMM. BOGLE: Thank you very much. At this time we
22 will adjourn until tomorrow morning at
23 9:30 a.m. Thank you.

24 ADJOURNMENT

25