

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

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

ON
TUESDAY, JULY 5, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto
MARSHALLING EVIDENCE FOR THE COMMISSION

Ms. Judith Clarke – Attorney –at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

Mr. Gavin Goffe– Attorney-at-Law

REPRESENTING MR PATRICK HYLTON

Mr. Dave Garcia – Attorney-at-Law

REPRESENTING FINSAC LIMITED

Mr. Brian Moodie – Attorney-at-Law
Ms. Danielle Chai

**REPRESENTING , DOVONAN CRAWFORD, CLAUDINE CRAWFORD,
THERMO-PLASTICS, JEAN MARIE DESULME**

Mr. Anthony Levy – Attorney-at-Law

GIVING EVIDENCE

Mr. Patrick Hylton

1 **TUESDAY, 5TH JULY, 2011**

2

3 COMM. BOGLE: Ladies and gentlemen, good afternoon.
4 This Enquiry is now convened. And for
5 the record may I have the names of the
6 attorneys present.

7 MR. LEVY: G. Anthony Levy, instructed by G.
8 Anthony Levy and Company, representing
9 Donovan Crawford, Alma Crawford,
10 Claudine Crawford, Thermo-Plastics,
11 Jamaican Redevelopment Foundation and
12 Jean Marie Desulme.

13 COMM. BOGLE: Other attorneys.

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

16 MISS CLARKE: Judith Clarke, appearing on behalf of
17 the Commission.

18 MR. GARCIA: While the other attorneys settle
19 themselves, sir, I am not sure if I
20 heard correctly and I just wanted to -
21 perhaps Mr. Levy could clarify, but I
22 thought he said that he is representing
23 Jamaican Redevelopment Foundation.

24 MR. LEVY: No, no.

25 COMM. BOGLE: No.

1 MR. GARCIA: We both heard that.

2 MR. LEVY: Thermo-Plastics Jamaica Limited. I do
3 not represent any of the image of the
4 office.

5 COMM. BOGLE: Other attorneys present, your names
6 please.

7 MISS CHAI: Brian Moodie and Danielle Chai,
8 appearing on behalf of FINSAC.

9 MR. GOFFE: Gavin Goffe, instructed by Myers
10 Fletcher and Gordon and I appear for
11 Jamaican Redevelopment Foundation.

12 COMM. BOGLE: Okay, this afternoon we have Mr. Patrick
13 Hylton, who is the former Managing
14 Director of FINSAC and the
15 cross-examination of Mr. Hylton should
16 be continuing.

17 I have just received a document here
18 which represents further statements by
19 Mr. Patrick Hylton and this is in
20 addition to the previous statement that
21 Mr. Hylton has delivered to the
22 Commission. It was just recently
23 received in the office and I know that
24 the attorneys here present have not
25 received copies. I think they were just

1 despatched this afternoon. Am I right?

2 MR. DEPERALTO: Yes.

3 MR. LEVY: Mr. Chairman, if a copy were provided to

4 me now I have no problem with Mr. Hylton

5 going through his statement.

6 COMM. BOGLE: Okay.

7 MR. MOODIE: I got it by e-mail.

8 COMM. BOGLE: You got it by e-mail?

9 MR. MOODIE: Yes, sir.

10 COMM. BOGLE: I know it went out by e-mail but it was

11 delivered this afternoon. What I would

12 like is to have Mr. Hylton present that

13 statement then after we will continue

14 the examination. And in view of the

15 fact that Mr. Hylton will be continuing

16 tomorrow then to the extent that any

17 further overnight work needs to be done

18 by the attorneys they would have the

19 opportunity overnight to do the

20 additional work.

21 MR. LEVY: Mr. Chairman, I do not believe that I

22 need to see a statement from Mr. Hylton.

23 If Mr. Hylton is giving evidence he is

24 going to be giving evidence from that

25 statement. If a copy of the statement

1 is provided to us within the next
2 fifteen minutes I have no problem with
3 Mr. Hylton giving the evidence so that
4 he can be properly examined on his
5 entire evidence, not piecemeal or put
6 off until tomorrow.

7 COMM. BOGLE: Well, this is what I am saying that we
8 will admit them for the time being, we
9 will have Mr. Hylton presenting the
10 statement. We will endeavour to have
11 your copy as soon as possible. But I
12 don't think that we should hold up the
13 proceedings for that.

14 MR. LEVY: How long is this statement, sir, and how
15 long is as soon as possible?

16 COMM. BOGLE: The statement has 16 pages.

17 MR. LEVY: I now have a copy.

18 COMM. BOGLE: You do have a copy. Okay, can we have
19 Mr. Hylton sworn in please.

20 **MR. PATRICK HYLTON SWORN.**

21 Thank you, Mr. Hylton.

22 Mr. Garcia, I will turn over to you.

23 MR. GARCIA: Thank you, sir. And as we did on the
24 previous occasion, sir, I am going to
25 ask Mr. Hylton to speak to his

1 statement, hopefully with minimum
2 questions from me. Before he does so, I
3 simply want to indicate that one of the
4 reasons why the statement was so late in
5 coming was that Mr. Hylton was awaiting
6 the files in respect of Thermo-Plastics'
7 matter and those were not received until
8 last week and it was a box, so it took
9 some time during the course of last week
10 and over the weekend and early this week
11 to complete his review of them in order
12 to complete the statement.

13 MR. MOODIE: Our apologies Counsel, and to the bench.

14 MR. GARCIA: I am hearing an apology from my friend,
15 but I have been here and I heard the
16 difficulties that he articulated in
17 getting copies of the documents in the
18 first place.

19 So I will turn over then, sir, to Mr.
20 Hylton to take us through the statement.

21 MR. HYLTON: Continuing with my further statement,
22 sir, in the first paragraph:

23 My name is Patrick Hylton and I am a
24 banker and my address is care of "The
25 Atrium", 32 Trafalgar Road, Kingston 10,

1 St. Andrew.

2 The facts stated in this statement are
3 true to the best of my knowledge,
4 information, belief and recollection. I
5 have prepared the statement
6 substantially from my personal
7 recollection of events that took place
8 several years ago. Along with my
9 previous statement to the Commission, I
10 had submitted as an Appendix a chart
11 showing over 200 companies in which
12 FINSAC had a controlling or significant
13 interest. I had also made the point
14 that the dominant characteristic of
15 these companies was that they were
16 insolvent or exhibiting significant
17 financial distress.

18 We had to develop and implement a
19 framework for carving out the core
20 financial sector businesses and
21 activities which would be managed by the
22 surviving banks and insurance companies
23 while separating the non-core aspects
24 for resolution of any issues associated
25 with them and their divestment.

1 Consequently a significant amount of my
2 time was focused on issues such as the
3 merger and rationalization of five banks
4 and their subsidiaries and affiliates to
5 create Union Bank. Simultaneously, we
6 were involved in combining the
7 portfolios of four insurance companies
8 as a precursor to their divestment as a
9 portfolio of business.
10 We at the same time had to implement
11 arrangements to deal with the assets and
12 activities of the residue from the
13 merged banks and insurance companies
14 that would not be part of the merged
15 entities' operations. For example, we
16 entered into arrangements with the Bank
17 of Nova Scotia to take over the
18 bancassurance type portfolios, that is,
19 the portfolio of investment products
20 with a comparatively high investment
21 component, of the merged insurance
22 entities and put in place a process to
23 wind down and run off pension and
24 insurance portfolios that would not be
25 part of the merger going forward.

1 MR. GARCIA: If I could interrupt you, the word in
2 brackets, I think 'investment' is
3 repeated there and I am not certain that
4 I am understanding from that the
5 definition of bancassurance type
6 portfolios.

7 A: Essentially, these are products that
8 had a very small insurance component and
9 a significant investment or savings
10 component.

11 Q: So the word in brackets, first
12 'investment' should be 'insurance'?

13 A: Insurance products, yes.

14 Q: So the definition is the portfolio of
15 insurance products...

16 A: Right with a comparatively high
17 investment component. That is correct,
18 thanks.

19 In relation to NCB, we worked closely
20 with that organization on its
21 rehabilitation plan and its eventual
22 re-organization, pursuant to a Scheme of
23 Arrangement to remove certain non-core
24 assets and return its focus to core
25 financial services.

1 As was mentioned also in my previous
2 statement we had to be managing
3 significant liquidity challenges at the
4 same time.

5 While all of this was going on we also
6 had taken on the very significant Y2K
7 challenge facing all the institutions
8 under our control.

9 We also had within our portfolio
10 significant ownership stakes and/or
11 control of about 15 significant hotel
12 properties. The majority of these hotel
13 assets, which represented significant
14 investments of the intervened financial
15 institutions, were either not performing
16 or under-performing and in some
17 instances were the subject of
18 complicated lease or ownership
19 arrangements, which needed to be
20 unraveled or resolved as a precursor to
21 their divestment. This was another
22 major activity which took a great deal
23 of my time personally.

24 The sale of these assets represented a
25 significant source of liquidity for

1 Finsac.

2 I was also involved in setting up an
3 asset management and policy framework
4 for dealing with the non-core assets,
5 such as the hundreds of properties -
6 both commercial and residential - which
7 Finsac ended up controlling along with
8 shares in diverse business undertakings.
9 I would lead and/or participate in
10 developing disposal strategies as well
11 as by way of approval of sales as
12 authorized by the board.

13 In relation to non-performing loans I
14 was involved in establishing and
15 operating a policy framework for the
16 management and workout of those loans.
17 I also participated as Chairman at the
18 Non-Performing Loans (NPL) Committee,
19 though time did not permit my regular
20 attention and the function soon had to
21 be delegated. I was also involved, at
22 the Board, in making decision on the
23 workout of those loans when presented.
24 My direct involvement would include
25 meeting from time to time with the

1 principals of these debtors, on an
2 exceptional basis, and responding to
3 their correspondence either directly or
4 by referring it to an appropriate person
5 working on that aspect of the operation
6 for their response.

7 In preparation for any meetings agreed
8 with these debtors, I would be briefed
9 by the relevant persons on that side of
10 the operation. Someone, or most times
11 more than one person, from the NPL Unit
12 would attend any such meetings with me.
13 Similarly, they would prepare for my
14 signature, responses to letters I
15 received from customers unless it was
16 delegated to them for response under
17 their signature.

18 There were many other activities in
19 which I was involved but I believe the
20 foregoing gives some insight into the
21 major activities which occupied my time.
22 Since giving testimony I have heard the
23 question asked, "Why did Finsac include,
24 as apart of the amount it was entitled
25 to, recovery of interest that the legacy

1 institution had accrued prior to sale to
2 Finsac, given that Finsac only paid for
3 the principal"?

4 The reasons for this are the same as I
5 had indicated as a justification for
6 Finsac continuing to charge interest on
7 non-performing loans generally. There
8 are additional reasons for seeking to
9 collect the suspended interest, not paid
10 for by Finsac.

11 Firstly, Finsac was legally entitled to
12 collect such interest where it could, as
13 Finsac was purchasing a contract which
14 included in its terms and conditions the
15 collection of such interest. The fact
16 that Finsac paid only the principal
17 reflects a discount on the value of the
18 purchase price of the contract but in no
19 way affects the entitlement under that
20 agreement. As an analogy I would use
21 the example of someone who purchases a
22 bond in the market at a discount. Does
23 that make him or her ineligible to
24 collect the full value of the bond at
25 its maturity or disposal? This is true

1 even when the bond may have previously
2 been deemed to be impaired. It was also
3 recognized that for some debts, we would
4 have had difficulty collecting the
5 entire principal, whereas for others, we
6 would have been able to collect the
7 principal and interest. This is always
8 the case with a NPL portfolio. Indeed,
9 the argument is the same in relation to
10 Jamaican Redevelopment Foundation, Inc.
11 The purchase prices does not determine
12 what the buyer of a debt can and should
13 collect.

14 Secondly, from a moral perspective,
15 Finsac had an obligation to seek to
16 collect such interest where it could.
17 My rationale for this is that in no case
18 was the purchase of these loans at
19 principal value by itself sufficient to
20 cure the financial distress being
21 experienced by the institutions. Finsac
22 in addition had to make contributions by
23 way of additional equity and provide
24 liquidity support to the banks from
25 which it purchased these loans. A major

1 part of the reason for this additional
2 equity and liquidity support requirement
3 was those institutions' inability to
4 collect the interest on these loans
5 while having to pay their own creditors.
6 Thirdly, to have waived that interest
7 would have created the moral hazard
8 problem to which I previously referred,
9 in that it would have been unfair to
10 persons in the same or other banks'
11 portfolios who had paid, or were paying,
12 their interest - in many instances at
13 some sacrifice - to see it being waived
14 automatically for those who had not
15 paid. Worse yet, this would be in
16 circumstances where they, as taxpayers,
17 were also being asked to make an
18 additional contribution to the
19 rehabilitation of the same institution
20 whose impaired condition resulted at
21 least partially from the non-payment of
22 that interest.
23 Fourthly, to waive such interest would
24 serve as an incentive for persons in the
25 performing portfolio of the same banks

1 to stop paying interest for several
2 months in order to have their loans
3 purchased by Finsac and in so doing
4 obtain a discount on their repayment
5 obligation. This would certainly be
6 inappropriate.

7 As was mentioned previously by myself
8 and Mr. Errol Campbell, the charging of
9 such interest did not create a
10 constraint on Finsac's ability to
11 negotiate a settlement which included
12 the waiving of such interest where
13 appropriate or as dictated by the
14 circumstances. There were however
15 occasions where Finsac could and did
16 collect at least some of this interest.
17 As I mentioned previously, some persons
18 had not paid, sometimes any principal or
19 interest, simply because either no
20 pressure or insufficient pressure had
21 been put on them to repay.

22 Another question I have heard asked is,
23 "How could Finsac rely on the accuracy
24 of the calculations for loan amounts
25 outstanding which it received from the

1 banks it intervened when Finsac itself
2 had highlighted that a feature of the
3 operations of these institutions was
4 poor documentation"?

5 Finsac's assertion of poor documentation
6 did not refer only to non-performing
7 loans but also to several areas of their
8 operations including loan documentation.
9 It is correct in relation to loan files,
10 in that it primarily describes the way
11 files were maintained in terms of:

12 1. Having the correct documentation in
13 the right file. There were occasions
14 where security documents would be on
15 administrative files instead of the
16 security file which had better custody.

17 2. There were many instances in which
18 documentation while sufficient to
19 evidence a loan was not properly
20 completed thereby requiring additional
21 steps to perfect security.

22 3. There were cases where some of the
23 security documentation was either not
24 executed or missing thereby compromising
25 the collectability of the loan.

1 4. In other instances, there was missing
2 correspondence or missing files, which
3 created difficulties in immediately
4 appreciating the full picture, even if
5 it did not ultimately prevent the debt
6 from being collected.

7 Finsac's reliance on the balances given
8 by the intervened institutions would
9 have been governed by several
10 considerations which I will outline:

11 a) These balances represented the
12 amounts those institutions' banking
13 systems showed as being due from their
14 customers. The banking information
15 systems used by the institutions were in
16 most, if not all instances reputable
17 banking systems that had been developed
18 by established and capable vendors in
19 the business. They were therefore
20 expected to calculate and report
21 balances in accordance with the rate of
22 interest that was inputted and debits
23 and credits for payments and charges as
24 and when these occurred.

25 b) On an annual basis the external

1 auditors of these banks would conduct
2 tests on the accuracy and reliability of
3 these loan systems and could not have
4 signed off on their accounts if such
5 systems were fundamentally flawed.

6 c) We found no evidence that the
7 transaction histories were generally
8 unreliable, though there were cases in
9 which there were legitimate disputes
10 surrounding some transactions, which
11 occurs from time to time in performing
12 financial institutions. The major
13 complaint by persons disputing their
14 balances was around the applicable or
15 agreed rate of interest and whether or
16 not they had been informed of changes in
17 the rate of interest being applied by
18 the banks. In instances where we found
19 evidence that the rate of interest that
20 had been applied had been communicated
21 to them, or where required agreed by
22 them, that would quickly settle the
23 issue.

24 As Mr. Campbell asserted, in most
25 instances and in the absence of

1 information to the contrary being
2 available, the loan balances were
3 re-worked on the basis of what the
4 customer said they understood to be the
5 applicable rate.

6 While some persons settled or agreed new
7 repayment terms on the basis of the
8 recalculated amounts, others failed to
9 pay or to agree new repayment terms.

10 In relation to Thermo-Plastics, I have
11 perused some documentation that was
12 provided to me by Finsac last week, as I
13 did not have any detailed recollection
14 of the events which transpired in
15 relation to that account which was one
16 of thousands. My involvement was
17 primarily at a high level in dealing
18 with the receiver from time to time -
19 usually at his insistence, the senior
20 executive at NIBJ who was bidding to
21 purchase the debt, and the Financial
22 Secretary or the Minister of Finance in
23 responding to their various requests.
24 My primary interest consistent with all
25 the other receiverships we had engaged

1 was in maximizing recovery to Finsac.
2 In the case of Thermo-Plastics, there
3 were few offers for the company's assets
4 as well as offers made by NIBJ. At
5 times, the communications with NIBJ
6 related to a possible sale of the debt,
7 while at other times, a sale of the
8 assets was discussed. The offers for
9 the sale of the assets came through the
10 receiver, while the offers for the sale
11 of the debt would have come directly to
12 Finsac. We were generally eager to have
13 a sale completed as soon as possible,
14 but we also wished to maximize recovery
15 and so at times, we were unable to take
16 a final position on one offer while
17 awaiting details of another. In
18 particular, there were occasions when we
19 could not confirm to Mr. Downer that we
20 were in agreement with a sale of the
21 assets when it appeared that a proposal
22 for selling the debt could come to
23 fruition and involve a higher level of
24 recovery of the amounts outstanding.
25 Thermo-Plastics like any other account

1 would have been assigned to a unit and a
2 specific workout officer for management.
3 That person would have been under the
4 supervision of a team manager and the
5 unit head who was then supervised by the
6 General Manager for Asset Management and
7 Divestment, Audrey Robinson. I had also
8 established a Receivership Management
9 Committee comprising the General Manager
10 - Asset Management and Divestment, our
11 most senior legal counsel and the NPL
12 unit head (among others) to receive on a
13 regular basis receivership reports,
14 review them, meet with receivers as
15 required to resolve issues and to ensure
16 they were aligned with our objective of
17 maximizing value from receiverships.
18 Attached is a copy of the following
19 documents I have obtained from the files
20 I recently received, along with brief
21 comments on each:

22 a) Letter dated March 16, 1999 from NIBJ
23 to me, in which they set out an offer to
24 purchase the debt for \$220 Million, to
25 be paid over a term of 7 years at a rate

1 of 5% per annum and that is marked as
2 Hylton 6.

3 MR. GARCIA: And if I could ask Mr. Hylton to turn to
4 that letter and I think it is attached
5 to the statement.

6 A: Yes.

7 Q: Have you located that letter, sir?

8 A: Yes.

9 Q: And do you recall seeing it before?

10 A: Yes, I think I saw it when I was here
11 the first time.

12 Q: I am going to ask, it may have been in
13 evidence before, since it is attached to
14 the statement I am going to ask that it
15 be entered into evidence now as - the
16 numbering we have here says Hylton 6 but
17 when Mr. Hylton had given evidence there
18 is a PH 6 and a PH7 so this if admitted
19 into evidence as requested would be PH8.
20 My friend actually tells me that there
21 is a PH 8, I believe, so PH 9, sir, and
22 I would ask that I be provided with a
23 copy of it. Mr. Hylton, since it is a
24 short letter, could you read it.

25 A: It is coming from National Investment

1 Bank of Jamaica Limited. It is dated
2 16th March, 1999, addressed to Mr.
3 Patrick Hylton, Managing Director,
4 Finsac, 76 Knutsford Boulevard, Kingston
5 5.

6 Dear Mr. Hylton,

7 Re Thermo-Plastics Jamaica Limited

8 As you may recall, the National
9 Investment Bank of Jamaica submitted a
10 bid of \$220,000,000.00 to purchase the
11 debt of Thermo-Plastics held by your
12 organization, Finsac.

13 The particulars of the offer are as
14 follows:

15 Amount \$220 Million

16 Terms 7 years

17 Rate 5%

18 I hope this is acceptable to you.

19 Sincerely

20 Gavin M. Chen

21 Q: Thank you, sir. Can you go back to your
22 statement, you were at 32, you had
23 finished (a), you were moving on to (b).

24 A: 32(b). Letter dated April 1, 1999 from
25 NIBJ to me, in which they revised the

1 offer to reflect a rate of Treasury Bill
2 rate plus 1% and this is marked Hylton
3 7, but I guess it would be PH10.

4 Q: I would be asking for that to be
5 admitted as PH10 and you could read the
6 second paragraph of that letter. And
7 again it is from Mr. Chen to you?

8 A: Right.

9 Q: You could read the second paragraph of
10 that letter. And again it is from Mr.
11 Chen to you?

12 A: **Right.**

13 Q: Read the second paragraph please.

14 A: **NIBJ's new offer to reflect your concern**
15 **is for a total of \$220 Million for seven**
16 **years at the current Treasury Bill rate**
17 **plus one percent.**

18 Q: It is the same offer but with a change
19 in the rate?

20 A: That is correct.

21 Q: Returning to the statement, sir, 32(c)

22 A: 32(c). **April 1999 Submission to the**
23 **Board of Finsac Limited describing**
24 **offers received and requesting**
25 **consideration of NIBJ's Offer.**

1 Q: And that is "Hylton 8"?

2 A: That is correct.

3 Q: And could I ask you to turn to that
4 document PH 8.

5 A: Yes.

6 Q: Is this the usual form in which
7 submissions were made at the time to
8 FINSAC's Board?

9 A: That is correct.

10 Q: You recall seeing it before, this
11 document?

12 A: Yes, I think so.

13 Q: I am going to ask that it be entered as
14 PH 11. And I am going to ask you
15 Mr. Hylton, if you can read some of this
16 Board Submission for us beginning
17 perhaps with, well after the Grand Total
18 of the indebtedness listed there,
19 \$350,376,735. Perhaps you could read
20 the paragraphs that follow.

21 A: Interest continues to accrue daily on
22 the outstanding liabilities of the
23 companies.

24 At the beginning of the Receivership,
25 the strategy was to dispose of the

1 businesses as going concerns. The
2 Receiver has since hived down the
3 operations and assets to a subsidiary,
4 which began trading on December 1,1998.
5 Several creditors have approached the
6 Receiver regarding the amounts due to
7 them. CIBC and International Trust and
8 Merchant Bank have placed other
9 properties that are being held as
10 security for the Thermo Plastics loans,
11 up for auction. One such property is the
12 Eaton Hall Hotel.

13 Geon Company of Delaware, following a
14 judgment in the courts in their favour
15 against Thermo-Plastics for US\$242,000,
16 has petitioned the Supreme Court for a
17 winding up order. The petition was
18 granted in December 1998, hence the
19 hiving down of operations, which took
20 place at that time.

21 Investor Interest

22 The receiver has made concerted and
23 sustained attempts to sell the assets of
24 both companies as going concerns without
25 any success. In response to an

1 Invitation to Treat, ten (10) formal
2 requests from interested parties for an
3 information document was received. All
4 ten (10) eventually declined to bid.
5 At that time the Receiver was faced with
6 the prospect of liquidating the assets
7 piecemeal instead of selling as a going
8 concern, or making an arrangement more
9 beneficial to the creditors through
10 NIBJ.
11 Since then, offers have been received
12 from the following:
13 OMNI a competitor of Thermo-Plastics -
14 to purchase a part of the
15 Thermo-Plastic's operation, including
16 land, building and related equipment for
17 \$70 Million.
18 NIBJ offered to purchase the debt of
19 both companies for \$220 Million in a
20 letter dated March 2, 1999. NIBJ has
21 offered to pay this amount over seven
22 years at an interest rate of 5%.
23 The Receiver received a new offer, also
24 on March 2, 1999, of \$120 Million from
25 OMNI to be paid in cash, but he

1 initially indicated that he was not sure
2 of their ability to pay.

3 The Receiver had given OMNI until the
4 end of January 1999 to produce a letter
5 of undertaking from a bank indicating
6 their ability to fund the purchase.

7 This they were unable to do within that
8 timeframe.

9 The Managing Director of FINSAC recently
10 spoke with the Receiver who stated that
11 OMNI claims to have an arrangement with
12 Citibank to finance the purchase.

13 However, OMNI has not provided a letter
14 of undertaking, which they stated is due
15 to the fact that they would be required
16 to pay a fairly substantial commitment
17 fee to get it from the bank. This they
18 are reluctant to pay, as they are aware
19 of discussions with NIBJ.

20 We have indicated to NIBJ that the rate
21 of 5% would not be acceptable as we have
22 funded the purchase with notes
23 attracting the Treasury Bill rate plus
24 one percent.

25 The National Investment Bank of Jamaica

1 has since updated their offer in a
2 letter dated April 1, 1999 for a total
3 of \$220 Million for seven years at the
4 current Treasury Bill rate plus one
5 percent.

6 REQUEST

7 The Board is being asked to consider the
8 final offer made by NIBJ for the amount
9 of \$220 Million for seven years at the
10 Treasury Bill rate plus one percent.

11 Payment will be made by way of a
12 promissory note from NIBJ with interest
13 payable on a quarterly basis and
14 principal at the expiration of the term.

15 Q: And have you seen the minutes of that
16 April Board meeting at which this
17 submission was considered?

18 A: Well, I saw a copy of the minutes of the
19 May meeting where it was considered.

20 Q: And we will come to that I think in due
21 course.

22 A: Yes.

23 Q: Returning to the statement, sir. You
24 were at paragraph 32(d).

25 A: Yes. Third written Report of Richard

1 Downer as Receiver and Manager, dated
2 April 29, 1999 "Hylton 9".

3 Q: And could you turn to that document
4 "Hylton 9".

5 A: Yes.

6 Q: Do you recall seeing it before?

7 A: I recall seeing it last week, since last
8 week; I can't say definitively that I
9 have seen it before or read it before.

10 Q: Well, you saw it in the files that you
11 received?

12 A: Yes.

13 Q: From FINSAC?

14 A: That is correct.

15 Q: I am going to ask that this be entered
16 into exhibit as exhibit "PH 12". It is
17 a fairly lengthy document, I am only
18 going to ask Mr. Hylton to take us
19 through the section that is headed Sale
20 of the Businesses.

21 A: Sale of the Businesses. Okay, that's on
22 the front page?

23 Q: Yes.

24 A: The document is a report of the Receiver
25 Re: Thermo Plastics and

PricewaterhouseCoopers.

Sale of the businesses.

In my last report, I indicated that a major competitor of Thermo-Plastics had expressed an interest in purchasing a part of the business of the company for \$70 Million. During subsequent negotiations, the offer was increased to \$120 Million for the whole plant. We also received a bid of \$17 Million from another party for the purchase of Plas Pak real estate and business operations. However, the ability of the bidders to complete seemed to depend on the sale of other property and the granting of a vendor's mortgage. To facilitate the process, I attempted to solicit a financing package from Bank of Nova Scotia Jamaica Limited (BNS) that would be offered to all potential purchasers so as to encourage more bids. The bank turned down this arrangement and hence the existing bidders were asked to make alternative arrangements that did not require a vendor's mortgage.

1 Since events connected with this have
2 been subject of media reports, I shall
3 deal with the sequence in some detail.
4 On 12 January, 1999 I met with you, as
5 the designated new owner of the National
6 Commercial Bank (NCB) debentures, to
7 explain the receivership strategy and
8 the deadline of 15 January, 1999 that I
9 had imposed on bidders to make their
10 best and final offers. Representatives
11 from the National Investment Bank of
12 Jamaica (NIBJ) also attended that
13 meeting.

14 Shortly after the meeting I was
15 requested to defer the selection
16 decision to 28th February, 1999. This
17 was not inconvenient because I had
18 planned to request of the bidders the
19 bankers' undertaking that the funds to
20 complete the offers were in place which
21 would also avoid the premature
22 incurrence of costs to prepare legal
23 documents. I was also aware that the
24 bidders would need more time to obtain
25 these confirmations. Accordingly, I

1 advised the parties that they had until
2 3rd March 1999 to submit final bids with
3 such bankers' assurances.
4 On 22nd February, 1999 one of the
5 bidders informed me that in order to
6 obtain a banker's undertaking, he would
7 be required to pay a commitment fee, and
8 therefore, he wished comfort as to the
9 transparency of the process before
10 outlaying such funds. I informed him
11 that the only criterion I would apply in
12 making a recommendation to the debenture
13 holder would be the present value
14 (discounted cash flow value) of the
15 offers received for the businesses. On
16 24th February 1991 I was asked to attend
17 a meeting at NIBJ which was attended by
18 a representative from FINSAC. I was
19 informed by NIBJ's President that NIBJ
20 intended to make an offer to FINSAC for
21 the purchase of the debenture under
22 which I was appointed. NIBJ would have
23 as its objective the payment of all
24 indebtedness, secured or unsecured,
25 after purchasing the instrument. I

1 pointed out that there was a deadline
2 for the submission of bids by 3 March,
3 1999 and if these were accompanied by
4 bankers' assurances I would have to
5 treat with these parties in the absence
6 of instructions to the contrary.
7 On 26 February the private sector bidder
8 for Thermo-Plastics informed me that the
9 banker's commitment might be "one or two
10 days" late and on 1st March BNS advised
11 me that a further 10 to 14 days would be
12 needed because approval from their
13 Toronto head office would be required. I
14 did not extend the deadline as the
15 bidders had from 12 January 1999 to
16 start the process but clearly had only
17 latterly actually started.
18 In the afternoon of 3 March 1999 I was
19 informed by means of a letter copied to
20 me by NIBJ that you received an offer to
21 purchase the former NCB indebtedness of
22 the companies and that NIBJ wished all
23 negotiations for the sale of the
24 business and its assets to be curtailed.
25 Accordingly, I immediately informed the

1 bidders that an offer had been received
2 for the debenture and that I would have
3 to determine the strategy of the new
4 debenture-holder before further
5 consideration could be given to the bids
6 that might be forthcoming, in order to
7 save them from incurring what could be
8 unnecessary expenditure on commitment
9 fees.

10 Q: That is the end of that section of the
11 report, sir?

12 A: Yes.

13 Q: Returning to the statement you are at
14 32(e).

15 A: Yes and that is Internal Memorandum from
16 Valerie Alexander to Audrey Robinson
17 dated May 27, 1999 advising that some
18 new issues had arisen with respect to
19 the matter affecting the proposed sale
20 to NIBJ. And that is marked "Hylton
21 10".

22 Q: And could you turn to that document.

23 A: Yes.

24 Q: Have you found it?

25 A: Yes, I have.

1 Q: And it was also among the documents that
2 you saw on the file you received?

3 A: That is correct.

4 Q: I ask that it be entered as Exhibit PH
5 13. The Memorandum from Valerie
6 Alexander, a copy of it.

7 A: Yes.

8 Q: Could you read that Memorandum for us
9 please.

10 A: **FINSAC Limited, Legal Department,**
11 **Interoffice Memorandum. It is from**
12 **Valerie Alexander, Legal Counsel, to**
13 **Mrs. Audrey Robinson, General**
14 **Manager-Asset Management and Divestment**
15 **and it is dated the 27 of May, 1999.**
16 **Re: Thermo Plastics Limited.**

17 Please be advised that in telephone
18 conversation of May 21, 1999 with
19 Ms Jennifer Simpson-James,
20 Attorney-at-Law for NIBJ, I have been
21 informed that new issues have arisen
22 with regard to this matter.
23 Consequently the NIBJ had further or
24 other requirements pertaining to this
25 transaction. A letter under the

1 signature of Mr. Gavin Chen had been
2 sent to this effect, according to Ms.
3 Simpson-James, and accordingly further
4 instructions would have to be awaited on
5 both sides.

6 I have had no further word since and ask
7 that you appraise me as soon as you are
8 aware of further developments.

9 Original signed by Valerie Alexander.

10 Q: Thank you. Am I correct in saying this
11 is speaking to a delay coming from
12 NIBJ's side?

13 A: Yes, it would appear so.

14 Q: Returning to paragraph 32(f).

15 A: This is a Status Report from Richard
16 Downer to FINSAC's Non Performing Loans
17 Unit, dated April 11, 2000 reporting on
18 the sale of the businesses and offers
19 that had been received. "Hylton 11".

20 Q: And can you look at that document sir.

21 A: Yes, sir.

22 Q: Yes, it's addressed for whose attention?

23 A: It is addressed to the attention of Ms.
24 Diana Davis.

25 Q: Who was an officer of FINSAC?

1 A: That is correct. She was the head of
2 the Non-Performing Loans Unit.

3 Q: And was this document also among those
4 on the file that you received?

5 A: Yes, it was.

6 Q: May I ask that it be entered as PH 14.
7 And this document also contains an
8 update on the sale of the businesses?

9 A: Yes, its does.

10 Q: Could you read that update for us
11 please, Mr. Hylton.

12 A: It's after the Dear Sirs: under the Sale
13 of businesses.

14 Mr. Tomlinson, the local representative
15 of the overseas consortium had
16 reconfirmed the consortium's previous
17 bid for the companies of J\$275 Million.
18 We also received a bid for US\$8 Million,
19 dated 28 February 2000 from Ebenezer
20 International Development Organization,
21 Inc. operating out of Florida, USA.
22 Consortiums headed by David Panton Plas
23 Pak only) and Courtney Jackson also
24 expressed interest in the entities and
25 were provided with Information

1 Memorandums. However, we have not
2 received any responses from either
3 group.

4 Based on the responses from Ebenezer and
5 Mr. Tomlinson's consortium, Ebenezer was
6 chosen to continue further negotiation
7 with a Memorandum of Understanding (MOU)
8 as shown in Appendix 1, between the
9 companies and Ebenezer was signed on the
10 6th of April, 2000 and US\$8,000.00
11 received from Ebenezer as a "good faith
12 payment" (see page 4 of MOU) which
13 entitles the potential purchaser to
14 exclusivity during the 30 day due
15 diligence period.

16 The MOU details, the framework and
17 timetable for the completion of the
18 sale. It provides for a formal agreement
19 to be signed and 10% deposit made after
20 the due diligence period.

21 In addition it stipulates that the sale
22 should be completed within sixty days of
23 the signing of the formal agreement.

24 Q: Sorry sir, I was just observing that the
25 "good faith" payment was \$8,000.00 on an

1 \$8 Million, bid. Is one of those
2 figures an error or both those are
3 correct?

4 A: I don't think it is an error. I don't
5 know for sure, but I don't think it is
6 an error.

7 Q: Returning sir, to the statement and I
8 think we are at paragraph 32(g).

9 A: Letter from Audrey Robinson to Richard
10 Downer, dated May 30 2001, requesting a
11 receiver's report and a copy of the Sale
12 Offer from NIBJ. That is "Hylton 12".

13 Q: Could we look at "Hylton 12". And this
14 letter was also among those on the file
15 that you recently received?

16 A: That is correct.

17 Q: I am going to ask that it be entered as
18 Exhibit PH 15. The letter is signed by
19 Mrs. Robinson?

20 A: Yes, that's correct.

21 Q: Does that appear to be her signature?

22 A: It does.

23 Q: I am going to ask you to read this
24 letter as well, sir.

25 A: **It is dated May 30, 2001**

1 PricewaterhouseCoopers, Scotia Bank
2 Centre, Duke Street.

3 Attention Mr. Richard Downer

4 Dear sirs:

5 Re: Thermo Plastics (Jamaica) Limited
6 and Plas Pak.

7 We are in receipt of a letter from
8 Myers, Fletcher and Gordon along with a
9 draft Sale Agreement in respect of
10 Thermo-Plastics and Plas Pak.

11 We are however, not in receipt of a
12 Receiver's Report together with the sale
13 offer from the National Investment Bank
14 of Jamaica (NIBJ) with the attendant
15 conditions to be submitted to the Board
16 for approval.

17 We wish to place on record that the Non-
18 Performing Loans Unit has asked
19 repeatedly for monthly Receiver's
20 Reports on the management of this asset
21 so that we could properly advise our
22 management and Board of the status. We
23 however have not received these.

24 Please be advised that we are not able
25 to treat with the Agreement until we

1 have received the offer from NIBJ, with
2 the attendant conditions, from
3 PricewaterhouseCoopers. As soon as we
4 have received same we will pass them to
5 our Board for its consideration of the
6 terms and ask for its guidance in the
7 matter.

8 Kindly therefore let us hear from you
9 soon in this matter.

10 Yours truly.

11 FINSAC LIMITED.

12 Audrey B. Robinson (Mrs)

13 General Manager.

14 Asset Management & Divestment.

15 Cc. Patrick Hylton, Diana Davis,

16 Suzette Campbell and Paul Chin.

17 Q: And all of those persons copied to were
18 officers at FINSAC, is that correct?

19 A: Yes, that is correct.

20 MR. LEVY: Mr. Chairman, Paul Chin was at FINSAC?

21 A: He was at the time.

22 MR. GARCIA: And at this stage do you recall whether
23 what was being contemplated was a sale
24 of the debt or a sale of the assets?

25 A: I think it was a sale of the assets.

1 This would have been a sale of the
2 assets.

3 Q: And am I correct in understanding that
4 that is why the communications would
5 then have been coming through the
6 Receiver?

7 A: That is correct.

8 Q: Returning to paragraph 32(h).

9 A: That is a further letter from Audrey
10 Robinson to Richard Downer, dated
11 July 16, 2001, requesting a Receiver's
12 Report and a copy of the Sale Offer from
13 NIBJ. That's "Hylton 13".

14 Q: And could you turn to "Hylton 13".

15 A: Yes, sir.

16 Q: Was that letter, dated July 16, 2001,
17 also among those that were in the file
18 that you received?

19 A: That is correct.

20 Q: And it was written by the same
21 Mrs. Robinson, and again is that her
22 signature?

23 A: Yes, it is.

24 Q: And it is addressed to the same person
25 and copied to the same persons as the

1 May 30, 2001 letter?

2 A: That is correct.

3 Q: Am I correct that this letter is

4 essentially a follow-up to the previous

5 one?

6 A: Yes, it is.

7 Q: So it is making the same requests?

8 A: Yes.

9 Q: Next paragraph?

10 COMM. BOGLE: PH 16.

11 MR. GARCIA: Oh, I am sorry, PH 16.

12 MR. LEVY: What about the contents of the letter,

13 Mr. Chairman?

14 COMM. BOGLE: Since we have entered it, I mean we

15 should have the reading of the letter in

16 evidence.

17 MR. GARCIA: Very well, sir.

18 COMM. BOGLE: Even parts of it.

19 MR. GARCIA: It is not that long, Mr. Hylton.

20 A: **It is dated July 16,2001**

21 **PricewaterhouseCoopers.**

22 **Scotia Bank Centre**

23 **Duke Street.**

24 **Attention: Mr. Richard Downer**

25 **Dear Sirs:**

1 Re: Thermo-Plastics (Jamaica) Limited
2 and Plas Pak

3 Reference is made to our numerous
4 letters and verbal requests to you to
5 provide us with a Receiver's Report for
6 the captioned companies, the last being
7 on May 30, 2001 (copy attached for ease
8 of reference).

9 In our May 30 letter, we also advised
10 that along with a Receiver's Report we
11 also require a copy of the Sale Offer
12 from the National Investment Bank of
13 Jamaica (NIBJ) with its attendant
14 conditions to be submitted to the Board
15 for approval.

16 To date we have not received either. We
17 were therefore very surprised to see the
18 report in the Jamaica Observer of
19 Friday, July 13, 2001 advising of the
20 sale of these assets when we have not
21 yet received the information requested
22 nor have any knowledge of under what
23 terms the property was sold.

24 We once again urgently request a
25 Receiver's Report and a copy of the

1 offer from NIBJ along with the attendant
2 terms and conditions so that we can
3 present this to our Board of Directors
4 for its consideration.
5 Yours truly.
6 FINSAC
7 Audrey Robinson (Mrs.)
8 General Manager
9 Asset Management & Divestment.
10 Cc. Patrick Hylton, Diane Davis, Suzette
11 Campbell, Paul Chin.
12 Q: Thank you. Paragraph 32(j)
13 COMM. BOGLE: No, (i).
14 MR. GARCIA: I am sorry, paragraph 32(i).
15 A: Letter from Richard Downer to Audrey
16 Robinson, dated July 17, 2001 in which
17 Mr. Downer indicated (among other
18 things) that the report had been
19 submitted and that he had been
20 authorized to proceed with the sale of
21 assets as he had proposed. That's
22 "Hylton 14".
23 Q: Could you turn to "Hylton 14" please
24 sir.
25 A: Sure.

1 Q: And that's the letter dated July 17,
2 2001 from Mr. Downer to Mrs. Robinson?

3 A: That's correct.

4 Q: Was this also among the documents in the
5 file that you recently received from
6 FINSAC?

7 A: Yes, that is correct.

8 Q: I am going to ask that it be entered
9 into evidence as Exhibit PH 17. And I
10 am going to ask Mr. Hylton to read the
11 letter.

12 A: **It is from.**
13 PricewaterhouseCoopers
14 **Scotiabank Centre**
15 **Duke Street**
16 To:
17 **Mrs. Audrey Robinson**
18 **General Manager**
19 **Asset Management & Divestment**
20 **Financial Sector Adjustment Company**
21 **Limited**
22 **76 Knutsford Boulevard**
23 **Kingston 5**
24 **17 July, 2001**
25 **Thermo-Plastics (Jamaica) Limited and**

1 Plas Pak

2 Dear Mrs. Robinson,

3 I was very surprised to receive your
4 letter 16th July, 2001.

5 In response to FINSAC's request we both
6 faxed and hand delivered the attached
7 document in time for your Board Meeting.

8 Following that meeting I spoke to

9 Mr. Hylton to enquire whether the sale
10 had been approved and he responded that
11 he had been asked to make a final

12 attempt to have NIBJ purchase the debt
13 instead. I called Mr. Hylton again

14 following his discussion with NIBJ and
15 was informed that I was authorized to
16 proceed with the sale of assets as
17 proposed by me.

18 The terms of the sale were summarized in
19 the attached report and the full
20 agreement is attached also.

21 yours very truly

22 Richard L. Downer

23 Cc. Mr. Patrick Hylton.

24 Q: Thank you sir.

25 MR. LEVY: Mr. Chairman, is this letter complete

1 without the attachment?

2 MR. GARCIA: That's a difficult question I think for
3 either me or the witness to answer,
4 because again, it has to be borne in
5 mind that what the witness is here doing
6 is speaking to documents that he found
7 on some files. So what the witness is
8 doing is speaking to the document that
9 he found on some file. I don't know if
10 Mr. Hylton can comment on whether he saw
11 the attachment or not.

12 I can't, I don't know. I mean there are
13 a lot of files and I didn't see the
14 attachment appended to this particular
15 document but it may very well have been
16 in one of the files. I can't say for
17 sure, sir.

18 MR. LEVY: I repeat the question, Mr. Chairman, is
19 this an incomplete document being
20 tendered without the attachment to which
21 it refers and which is an integral part
22 of the document?

23 COMM. BOGLE: Well, I think that this letter is simply
24 responding to the request by Miss Audrey
25 Robinson and it refers to an attachment

1 of the report which Miss Audrey Robinson
2 had been requesting and so what we have
3 not got, we haven't got the report.

4 MR. LEVY: The letter was also copied to Mr. Hylton
5 at that time, sir?

6 COMM. BOGLE: Yes.

7 MR. LEVY: I am just saying that the integral
8 information proposed in this letter is
9 an attachment in this matter here.

10 COMM. BOGLE: Which we haven't got. Just following on
11 that question, still with that question,
12 your next exhibit what is that, what
13 does that represent?

14 MR. HYLTON: It's a Board paper, sir.

15 COMM. BOGLE: It is not part of that?

16 A: No, sir. I can't say whether or not that
17 document is there in the file, sir.

18 COMM. BOGLE: What we can do, therefore, while we will
19 accept this as exhibit PH17 we will
20 still ask that if it is possible to do a
21 search to see if we get the attachment.

22 A: Okay.

23 MR. LEVY: With the assistance of his former
24 colleague Mr. Campbell, I am sure he
25 will find both, sir.

1 COMM BOGLE: I would believe so. You may proceed
2 Mr. Garcia.
3 MR. GARCIA: Thank you, sir.
4 Paragraph 32j, you just indicated in
5 response to a question from the Chairman
6 that, that was a Board paper.
7 A: Yes sir. That is correct.
8 Q: It is Hylton 15?
9 A: That is correct.
10 Q: Can I ask you to turn to that document,
11 sir?
12 A: I have it.
13 Q: Was this also among those on the files
14 that you received from FINSAC?
15 A: Yes, it was.
16 Q: I am going to ask you to read the
17 background which starts on the first
18 page.
19 A: The background, okay.
20 Q: Before you do so, perhaps we could start
21 instead if I may, Mr. Hylton, with you
22 indicating what was the issue that was
23 to be considered by the Board?
24 MR. LEVY: Before Mr. Hylton goes on, these
25 documents do not indicate who prepared

1 them, can he give us some assistance who
2 prepared them.

3 MR. GARCIA: I think that's a fair question.

4 Mr. Hylton, do you know who prepared
5 this document?

6 A: I can't say for sure, it would have come
7 from either, based on my recollection,
8 from either Mrs. Robinson or Dianna
9 Davis-Smith. They would have been the
10 persons perhaps assisted by someone from
11 legal, but usually documents relating to
12 non-performing loans would come from
13 that side of the business to the Board.
14 What I suspect is happening here,
15 Chairman, is that these are copy
16 documents, I am not sure, hence why it
17 is not indicated.

18 You have said you want me to start?

19 MR. GARCIA: With the issue.

20 MR. HYLTON: Okay. So it is:

21 FINSAC LIMITED.

22 Matter for the Board

23 **ISSUE:**

24 Ratification is being sought to accept
25 NIBJ's offer of \$205,000,000 for the

1 assets of Thermo-Plastics (Jamaica)
2 Limited (In Receivership), Plas-Pak
3 Limited (In Receivership), Caribbean
4 Tooling Limited and Thermo-Plastics
5 (Jamaica) Acquisition 1998 Limited,
6 based on the fact that both parties have
7 signed an agreement.

8 **Liabilities as at July 26, 2001.**

9 **Thermo-Plastics Limited.**

10 Total Principal - 240,271,170

11 Total Interest - 173,572,843

12 Total - 413,844,013

13 **Plas-Pak Limited.**

14 Total Principal - 86,594,194.

15 Total Interest - 62,717,047.

16 TOTAL - 149,311,241.

17
18 Security as per the attached listing.

19
20 **BACKGROUND.**

21 On 5th December 2000, the Receiver of
22 Thermo-Plastics, Mr. Richard Downer
23 advised by way of his Receiver's Report,
24 that there were three (3) offers for the
25 purchase of the assets of that company.

1 Ebenezer Kingdom Industries had been in
2 negotiations with the Receiver for some
3 time; this offer eventually fell
4 through.

5 Q: If I can stop you there, Mr. Hylton, do
6 you know why that offer fell through?

7 A: I just don't think they ever performed.
8 I am speculating, but I don't think they
9 have ever performed, if my memory serves
10 me well, under the terms of their
11 agreement or the terms of their offer.

12 Q: These were the same individuals who had
13 made an offer of US\$8 million and had
14 made a goodwill payment of point one
15 percent?

16 A: Of eight thousand dollars.

17 Q: You can continue sir.

18 A: National Investment Bank of Jamaica
19 (NIBJ) which had made an offer in August
20 2000, and has since improved that offer.
21 OMNI Industries which had made an offer
22 on August 2000, sent in a new offer
23 which still ranked below the NIBJ offer.
24 We were advised of the details of these
25 offers except for that from Ebenezer,

1 which fell through by January 2001.
2 We wrote to Mr. Downer on December 15,
3 2002 requesting details of the offers
4 from OMNI and NIBJ. In spite of numerous
5 subsequent requests both by telephone
6 and in writing for information and
7 reports, we did not receive these.
8 On 22 May 2001 our in-house Legal
9 Counsel, Mrs. Valrie Alexander forwarded
10 a memorandum attaching letter received
11 from Myers Fletcher and Gordon outlining
12 proposed Agreement for sale between
13 Thermo-Plastics and NIBJ. We were
14 advised by said memorandum that the
15 Agreement contemplates an arrangement
16 with the purchaser for a period of two
17 (2) years to liquidate the purchase
18 price subject to interest of (12%)
19 Having not been in receipt of the often-
20 requested Receiver's Report, as at the
21 date of Ms. Alexander's memorandum we
22 were not privy to the details of any
23 negotiations.
24 Another letter was written to Mr. Downer
25 on 30th May 2001, requesting Receiver's

1 Report and NIBJ's offer to purchase in
2 order to facilitate submission to the
3 Board for approval. We were advised by
4 Mr. Downer that we were not able to
5 treat....

6 Q: We were advised or we advised?

7 A: Sorry. We advised Mr. Downer that we
8 were not able to treat with the
9 Agreement for sale until we received
10 this offer along with the attendant
11 conditions from PricewaterhouseCoopers.
12 Since receiving the aforementioned
13 letter, the Receiver called our offices
14 twice requesting that he be permitted to
15 make a personal presentation to the
16 Board instead of preparing a report.
17 On Wednesday 20th June 2001 Mr. Carl
18 Johnson of PricewaterhouseCoopers called
19 on behalf of the Receiver, to advise
20 that Mr. Downer was unable to make it to
21 the Board meeting. He further advised
22 that the information to be presented to
23 the Board would be forwarded via
24 facsimile and bearer before the end of
25 the day.

1 Mr. Downer's presentation was submitted
2 to the Board which then instructed that
3 Mr. Hylton make contact with Mr. Rex
4 James of NIBJ and request that the debts
5 be purchased instead of the assets. NIBJ
6 was not in agreement with this
7 proposal, and Mr. Downer was advised to
8 continue his negotiations with NIBJ, and
9 apprised of the proposal in order for a
10 submission to be made to the Board for
11 its approval. Mr. Downer has only just
12 submitted the signed agreement.

13 PROPOSAL

14 NIBJ has agreed to purchase the assets
15 of Thermo-Plastics (Jamaica) Limited (In
16 Receivership) Plas Pak Limited (In
17 Receivership), Caribbean Tooling Limited
18 and Thermo-Plastics (Jamaica)
19 Acquisition 1998 Limited for \$205M (60
20 days) by way of the following:
21 One Hundred and Ten Million Dollars
22 (\$110,000,000) on 9th July 2001. being
23 ten percent (10%) deposit of \$20,500,000
24 - along with a further payment of
25 \$89,500,000.

1 Forty Million Dollars (\$40,000,000)
2 payable on the taking of possession by
3 the purchaser (July 16,2001).

4 Fifty-five Million Dollars (\$55,000,000)
5 payable on Completion date.

6 **Conditions of sale.**

7 The Receiver must settle from the
8 interim payment, any redundancy payments
9 due to employees and former employees in
10 accordance with the Employment Act, and
11 to return any contributions or other
12 vested interest in a Pension Fund due to
13 employees in accordance with the Income
14 Tax Act. This is estimated to be
15 \$60.78M.

16 An amount of \$32,268,000 be paid to NIBJ
17 in respect of a guarantee facility
18 provided by Thermo-Plastics prior to the
19 Receivership, secured by future
20 receivables.

21 *See Agreements for sale of assets*
22 *attached.*

23 **Payments to FINSAC.**

24 We are expected to receive \$73.7 million
25 form the sale. However, the Receiver has

1 advised a further \$18M is obtainable,
2 assuming the success of pending matters
3 being:

- 4 1. Sale of Caribbean Tooling (\$6M)
5 2. Realizations in respect of the
6 Judgement received against J. Desulme
7 (\$12M).

8 Q: Thank you sir. I don't think the
9 attached security schedule - I am
10 thinking that you would not need to read
11 that.

12 Paragraph 32(k) of the statement.

13 A: Letter from Richard Downer to Valrie
14 Alexander, dated December 6, 2001,
15 regarding completion of the sale and the
16 role of the Receiver at the
17 time. ("HYLTON 16)

18 Q: Can you turn to that document 'Hylton
19 16'.

20 A: I am not seeing it.

21 Q: It is there. It should be after the
22 Security Schedule.

23 A: It is here, it is just that I am not
24 seeing 'Hylton 16' on it.

25 Q: I don't think we are looking at the same

1 exhibit, Mr. Hylton. I am looking for a
2 letter on the letterhead of
3 Thermo-Plastics (Jamaica) Limited dated
4 6th December, 2001.

5 A: It is missing from mine.

6 (Document handed to Mr. Hylton)

7 Q: So you have 'Hylton 16' now, sir?

8 A: Yes, I do.

9 Q: And that's a letter on the letterhead of
10 Thermo-Plastics (Jamaica) Limited (In
11 Receivership)?

12 A: That is correct, sir.

13 Q: Written by Mr. Richard Downer to Ms.
14 Valrie Alexander?

15 A: Yes.

16 Q: Do you recall seeing this letter before?

17 A: I can't say, I can't say I have seen it
18 before now.

19 Q: But it was in the - a copy was among the
20 files that you received from FINSAC
21 recently?

22 A: Yes.

23 MR. GARCIA: I ask that it be entered as exhibit PH
24 19.

25 COMM. BOGLE: 19.

1 MR. GARCIA: I am going to ask Mr. Hylton to read the
2 letter.

3 A: It is as you said from Thermo-Plastics
4 (Jamaica) Limited (In Receivership) and
5 it is to:

6 **Ms Valrie Alexander.**

7 **Attorney at Law.**

8 **FINSAC.**

9 **4th Floor, North Tower.**

10 **Mutual Life Building**

11 **2-6 Oxford Road.**

12 **Kingston 10**

13 **6th December, 2001.**

14 **Dear Mrs. Alexander.**

15 **RE: THERMOPLASTICS RECEIVERSHIP.**

16 I have been shown a letter from you
17 dated 3 December 2001 written to my
18 attorney, Hilary Reid at Myers Fletcher
19 & Gordon.

20 I think that there is a misunderstanding
21 as to what this aspect of a Receivership
22 entails, though after three attempts at
23 explaining it orally (once to you days
24 after your first letter requesting an
25 undertaking, once to Patrick Hylton and

1 once to Audrey Robinson) and one
2 letter(sent from my attorneys to you) we
3 are no further ahead. Hopefully this
4 last attempt will put it in some sort of
5 different way so it can be understood.
6 If this does not resolve it we will live
7 in a perpetual stalemate during which
8 only FINSAC will be the victim, as I
9 will have done all I can.

10 A Receiver receives funds in relation to
11 the receivership, whether from
12 operations or the proceeds of asset
13 sales, and then passes on to the secured
14 creditor the amount remaining after all
15 obligations of the receivership have
16 been discharged. Sometimes interim
17 payments are made before the outcome of
18 the receivership is known with absolute
19 certainty, but this is risky for the
20 Receiver. The Receiver stands in the
21 shoes of the debenture holder and
22 receives funds on behalf of the
23 creditors. In other words the Receiver
24 and the debenture holder are on the same
25 side of the table.

1 Normally in a receivership the Receiver
2 transfers the security without the need
3 for the involvement of the debenture
4 holder. In this unusual situation,
5 occasioned by the fact that the original
6 security documents persaunt to which I
7 had been appointed could not be located
8 by FINSAC, the debenture holder had to
9 be involved.

10 In this particular transaction, the only
11 thing that is certain is the amount that
12 the purchaser (NIBJ) is required to pay
13 the Receiver on your behalf, and there
14 would be no difficulty in making that a
15 condition precedent before the titles
16 are transferred, with the obligation on
17 NIBJ. In practice we will simply
18 receive their payment at the time of the
19 transfer.

20 From time to time a Receiver will
21 provide the debenture holder with an
22 EFO, or an Estimated Final Outcome
23 Statement. These, as the title implies,
24 involve estimates and not certainty. To
25 illustrate the difficulty that a

1 Receiver would have in giving an
2 undertaking for a specific amount, is
3 that it is already likely that the funds
4 expected under the last EFO submitted to
5 FINSAC will not be on hand at the time
6 of the transaction, or perhaps ever, for
7 two main reasons:

8 (i) the transfer tax assessed was \$10
9 million higher than anticipated.

10 (ii) the collection of receivable has
11 so far been \$10 ten million less than
12 anticipated.

13 However, that is not to say that the EFO
14 necessarily needs to be revised
15 downwards, because under the Transfer
16 Tax Act there is a possibility that the
17 tax may be refunded at least to some
18 unknown extent and we might have more
19 success in collecting the receivables as
20 time goes by.

21 My attorneys have already made
22 application to the Stamp Office for the
23 Transfer Tax relief, but that does not
24 mean we will get it. I am still waiting
25 for a refund re the Henderson Group

1 receivership which was claimed some ten
2 years ago.

3 It is my intention to make an interim
4 distribution to FINSAC following
5 completion of the transaction.

6 Obviously, in the meantime, funds in the
7 possession of the Receiver are invested
8 at interest to the benefit of the
9 secured creditor. I will not commit to
10 a figure for the interim distribution in
11 a formal way, but I expect that it will
12 be of the order of \$35 million.

13 I would like to clarify one more thing.

14 The approval of the debenture holder of
15 the sale to NIBJ for \$205 million (which
16 included \$6 million for Caribbean
17 Tooling) was not likely to have been
18 grounded on the information contained in
19 the EFO presented at the time. If
20 anything it would have been grounded by
21 the fact that this was by far the best
22 offer on the table and the knowledge
23 that the better the offer, the better
24 would be the EFO. The EFO was submitted
25 to show how the proceeds were expected

1 to be applied based on available
2 information at the time, that is all.
3 The agreement with NIBJ in relation to
4 the final payment on completion is such
5 that it is very doubtful that we shall
6 be able to successfully claim interest
7 from the scheduled date of completion
8 until actual completion, since the delay
9 in completion is not their fault. I
10 urge you to try to understand that your
11 request for an undertaking from a
12 Receiver or his attorneys is simply not
13 appropriate or practical in such cases,
14 and it cannot be given. The delay which
15 is not my fault either, is costing the
16 debenture holder dearly, as has been
17 pointed out already.

18 I have to be off the island for the
19 whole of next week, unfortunately. I
20 hope by the time I return this will have
21 been sorted out.

22 Sincerely.

23 Richard Downer.

24 Receiver/Manager

25 MR. GARCIA: And there is a response to that letter

1 among the attachments as well, sir?

2 A: Yes, that is 32(i)

3 Q: 32(i) or 32(1)?

4 A: (1) I am sorry.

5 Q: That is the letter dated December 7,

6 2001 from Valrie Alexander to Richard

7 Downer?

8 A: That's correct.

9 Q: Hylton 17?

10 A: Hylton 17.

11 Q: This letter, the copy of it attached to

12 your statement indicates that it was

13 copied to, I believe that's your name

14 and Mrs. Audrey Robinson, is that

15 correct?

16 A: Yes.

17 Q: Do you recall seeing that letter before?

18 A: No, but I saw it in the file and I

19 expect I would have received it if it

20 was copied to me.

21 MR. GARCIA: I am going to ask that this be admitted

22 as Exhibit 20 and that Mr. Hylton reads

23 the exhibit.

24 A: In fact I see where I made a notation on

25 it "**Valrie/Audrey let's discuss**".

1 Q: And that's your initial?

2 A: Yes, it is.

3 December 07, 2001.

4 Mr. Richard Downer.

5 Receiver/Manager.

6 Thermo-Plastics (Jamaica) Limited.

7 Industrial Estate, Twickenham Park.

8 P.O. Box 660, Spanish Town.

9 St. Catherine.

10 Dear Mr. Downer:

11 Re:Sale of property by Refin Trust

12 Limited.

13 I refer to your letter dated December 6

14 and received by fax today.

15 Firstly I would like to clarify any

16 misunderstanding as to the parties to

17 whom you have apparently so

18 painstakingly 'explained this aspect of

19 receiverships as, outside of a meeting

20 some years ago this is my first contact

21 with you, and my letter of December 03

22 to your Attorneys my first on the matter

23 of undertaking. Thank you nevertheless

24 for your elucidation on this topic.

25 As your Attorneys will advise you, you

1 are the agent of the company for which
2 you are the Receiver/Manager. Refin
3 Trust Limited (Refin) is the vendor of
4 the property and the first in line to
5 face the issues of accounting,
6 accountability and liabilities of any
7 kind in respect of this sale, regardless
8 of the reasons bringing about the
9 circumstance of this sale. As the vendor
10 under a power of sale Refin has
11 inescapable obligations to the
12 proprietor which are quite different
13 from that of Receiver, one of which is
14 to maximize the yield from the property.
15 As a mortgagee Refin ought not only to
16 have control of the sale proceeds but
17 must also be concerned with all
18 deductions from the sale proceeds.
19 Again its legal obligations in this
20 context are not the same as yours and
21 the question of net proceeds realizable,
22 as opposed to actualized, must be
23 contemplated.
24 Having regard to its own
25 responsibilities Refin's Board of

1 Directors contemplated the information
2 made available to it, and as those in
3 its meeting may confirm, were guided by
4 it and grounded its decisions thereby.
5 The proceeds identified were accepted by
6 the members as mortgagee.
7 Given that the information provided as
8 designated "EFO", and that the net
9 proceeds realizable from the exercise of
10 its power of sale absolutely uncertain,
11 the issue will, as I have already
12 apprised your Attorneys, be referred for
13 further instructions and your Attorneys
14 will be advised accordingly. I now await
15 those instructions.

16 Q: Thank you, Mr. Hylton. Am I correct in
17 understanding from these letters that
18 FINSAC was being asked to execute
19 documentation in the exercise of a
20 power of sale?

21 A: It would appear so.

22 Q: And am I also correct in understanding
23 from these documents that there was a
24 dispute between FINSAC and the Receiver
25 concerning an undertaking that FINSAC

1 was requesting?

2 A: That is correct, yes.

3 Q: I am going to ask you to return to the
4 statement sir, paragraph 33 I believe is
5 next.

6 A: Paragraph 33.

7 As some of the correspondence indicate,
8 the working relationship between
9 Mr. Downer on the one hand and members
10 of the management team at FINSAC with
11 direct responsibility for the
12 Thermo-Plastics matter on the other
13 hand, was very difficult. They had
14 difficulty having dialogue with each
15 other, and this in part necessitated my
16 involvement. It should also be noted
17 that where it became necessary to
18 provide any instructions to the
19 Receiver, the usual course was for them
20 to be either communicated or
21 subsequently confirmed in writing -
22 either by him or by FINSAC. It should
23 be noted that I do not recall ever
24 instructing Mr. Downer not to entertain
25 any offers for the purchase of the

1 assets, and I also do not recall ever
2 authorizing anyone to so instruct him.

3

4 34. The issue of how to proceed in
5 relation to Thermo-Plastics was also the
6 subject of numerous discussions at the
7 Board of FINSAC. In that regard, I
8 attach a copy of an extract from the
9 minutes of each of the following Board
10 meetings:

11 A. Meeting held on March 4, 1999; (HYLTON
12 18") and.

13 B. Meeting held on May 5, 1999 ("HYLTON
14 19").

15 Q: Can I ask you sir, to turn to the
16 document labeled - and I am going to ask
17 you first to turn to the document that
18 is actually labeled Hylton 19, the
19 second one because I think they were
20 incorrectly labeled.

21 A: Yes, sir.

22 Q: So although the statement says Hylton 18
23 is the Minutes of the meeting held on
24 March 4 1999, the document actually
25 bears the label Hylton 19; March 4 1999

1 according to the statement that is
2 Hylton 18 but the document itself says
3 Hylton 19; right?

4 A: That is correct, yes.

5 Q: Now that is an extract, it's not the
6 entire minutes of the meeting held on
7 that day, is it?

8 A: No, it isn't, it is an extract.

9 Q: I see that among the attendees you are
10 listed. You were present at that
11 meeting?

12 A: Yes, I was.

13 Q: Am I correct that this document was
14 among those that you received from
15 FINSAC?

16 A: Yes, today.

17 Q: Oh, you received these today?

18 A: Yes.

19 Q: But other documents to which reference
20 was previously being made were received
21 before today?

22 A: Yes.

23 Q: Those were received last week?

24 A: Yes.

25 MR. GARCIA: I am going to ask that this be entered

1 into evidence as PH 21.

2 COMM. BOGLE: 21.

3 MR. GARCIA: The reference to Thermo-Plastics Limited

4 is on page 2 under Matters Arising; is

5 that right?

6 A: That's correct.

7 Q: Can I ask you to read that section of

8 the Minutes?

9 A: Sure. Matters Arising.

10 MR. GARCIA: My friend would like Mr. Hylton to read

11 who was present at the meeting.

12 A: Present were:

13 Hon. Shirley Tyndall -Vice Chairman

14 Mr. Patrick Hylton - Managing Director

15 Mr. Wilberne Persaud - Director

16 Mr. Lascelles Perry - Director

17 Hon. David Coore - Director

18 Mr. David Wan - Director

19 Ambassador Frank Pringle - Director

20 Miss Hope Markes - Director

21 Mrs. Kemorine Miller - Director

22 Mrs. Lisa Shields - Corporate Secretary

23 Mr. Patrick McDonald - By Invitation.

24 Mrs. Celia Brown-Blake - By Invitation

25 Q: Thank you. And absent were?

1 A: Dr. the Hon. Kenneth Rattray - Chairman
2 Dr. Gladstone Bonnick - Director

3 Q: Thank you. Matters Arising.

4 Matters arising

5 Thermo-Plastics/ Plas-Pak (in
6 receivership).

7 Mr. Hylton informed the meeting that he
8 had received an offer from NIBJ to
9 purchase the debts of both companies for
10 \$220 million. A Cabinet submission on
11 the proposed sale is to be prepared.

12 A prospective purchaser has made an
13 offer to purchase, which is less than
14 that being offered by NIBJ, but
15 Mr. Richard Downer, the Receiver, was of
16 the view that they had indicated their
17 inability to confirm the source of
18 funding, and as such he did not consider
19 the offer to be a serious one

20 MR. GARCIA: Do you know which offer that was that is
21 referred to in that second paragraph?

22 A: Not really, I am a bit confused by the
23 time line.

24 Q: And, then I am going to ask you, sir, to
25 look at the document referred to in the

1 statement as Hylton 19, that's the
2 extract from the minutes of the 5th of
3 May 1999?

4 COMM. BOGLE: 18.

5 Q: The statement says Hylton 19 but the
6 document itself bears the label Hylton
7 18. So Hylton 18 and 19 were mixed up.
8 Those are Minutes of a Board meeting of
9 FINSAC Limited held on Wednesday, 5th
10 March 1999, the first page of those
11 minutes?

12 A: 5th May 1999.

13 Q: I am sorry, 5th May 1999, the first
14 page?

15 A: You are correct.

16 Q: You were present at that meeting?

17 A: Yes, I was.

18 Q: And?

19 A: And so too, I can just name them,
20 Shirley Tyndall, David Coore, Lascelles
21 Perry, Wilberne Persaud, David Wan,
22 Frank Pringle, Hope Markes, Kemorine
23 Miller, Celia Brown-Blake, Patrick
24 McDonald, absent were Kenneth Rattray
25 and Gladstone Bonnick.

1 the proposed arrangement OMNI will buy
2 the assets of the company from FINSAC.

3 Q: Thank you, sir. And so, I think earlier
4 you had made references to Minutes of a
5 meeting held in May 1999 which were the
6 next Minutes that you had seen after the
7 April 1999 submission to the Board.

8 A: Yes.

9 Q: So these would be those Minutes to which
10 you earlier made reference?

11 A: That is correct.

12 Q: And just for reference, that April 1999
13 submission to the Board was Exhibit PH
14 11.

15 Now Mr. Hylton, are you able to confirm,
16 whether the April 1999 submission was
17 made at the May Board Meeting or was it
18 made at the April Board Meeting?

19 A: I have not been able to get any Minutes
20 for April Board Meeting, but it appears
21 it was made at the May Board Meeting and
22 there is a reference to it being
23 round-robin before in any event.

24 Q: How often did the board of FINSAC meet
25 at that time?

1 receivership), in claim Number 2004 HCV
2 0486 ("Hylton 20). I understand that the
3 current status of this claim is that it
4 is awaiting the hearing of an
5 application to strike out the claim.

6 Q: And could you turn to that document,
7 sir, Hylton 20.

8 A: Something seems to be amiss here -- oh
9 some things are upside down. Yes, yes I
10 have Hylton 20 now.

11 Q: And can you tell me, sir, where is it
12 that you received a copy of this, where
13 and when is it that you received a copy
14 of this document?

15 A: This document was in the box with the
16 files that came from FINSAC last week.

17 MR. GARCIA: Thank you, sir.

18 I am going to ask that it be entered
19 into evidence as Exhibit PH 23. It's
20 quite lengthy, sir, I am not going to
21 ask Mr. Hylton to read this document,
22 but perhaps he could indicate who are
23 the parties to this claim as indicated
24 by the further amended Particulars of
25 Claim?

1 A: Okay, and it's between Thermo-Plastics
2 Jamaica Limited (in receivership) and
3 Plas-Pak Limited and National Commercial
4 Bank.

5 Q: Sorry sir, and those first two are the
6 claimants?

7 A: Yes, that is correct. National
8 Commercial Bank Jamaica Limited, Recon
9 Trust Limited, Richard L. Downer,
10 PricewaterhouseCoopers, a firm,
11 PricewaterhouseCoopers Limited, Yvan
12 Desulme, Thermo-Plastics (Jamaica
13 acquisition 1998) Limited, National
14 Investment Bank of Jamaica Limited and
15 TPL Limited, the ninth defendant.

16 Q: And those parties that you listed
17 beginning with National Commercial Bank
18 Jamaica Limited and ending with TPL,
19 were all defendants to the case?

20 A: These were all defendants, the first to
21 the ninth defendant.

22 Q: You said you received this document
23 among the files that came from FINSAC
24 last week, is it also from those files
25 that you gained your understanding of

1 the current status of the claim?

2 A: That is correct.

3 Q: Thank you. And I am going to then ask

4 you to turn to the document marked

5 'Hylton 21'.

6 A: Yes, sir.

7 Q: It's headed : **"Further amended**

8 **Particulars of Claim, in the Supreme**

9 **Court of Judicature of Jamaica, Claim**

10 **No. 2004 HCV 0486"**?

11 A: Yes, that is correct, Hylton 21.

12 Q: And the claimant is identified as

13 Thermo-Plastics (Jamaica) Limited, yes?

14 A: Yes.

15 Q: And the defendant Refin Trust Limited

16 and TPL Limited?

17 A: That is correct, first and second

18 defendants.

19 Q: I am going to ask that this be entered

20 into evidence as exhibit - I am sorry I

21 ask another question, how did you come

22 in possession of this document?

23 A: These were also in the box of files

24 received from FINSAC. And as I

25 understand, the current status of the

1 claim is, it's awaiting trial.

2 Q: Thank you sir. And I am going to ask
3 that, that be entered into evidence as
4 Exhibit PH 24.

5 And does your awareness of the status of
6 that claim also come from the files that
7 you received from FINSAC?

8 A: Yes, it does.

9 Q: Paragraph 36, sir?

10 A: Okay. As I mentioned in my previous
11 statement, FINSAC's operations and
12 strategies were reviewed several times
13 during my tenure by staff from the IADB.
14 the World Bank and the IMF under its
15 Staff Monitoring Programme and
16 consistently received high marks from
17 these three agencies for the way in
18 which we conducted our affairs.

19 I myself participated in several of
20 these meetings where we outlined our
21 thinking and provided hard evidence to
22 support our positions. (Mr. Levy claps)

23 A: Thank you Mr. Levy.

24 What is unfortunate about this Enquiry
25 is that it started as much as 16 years

1 years after FINSAC began. I know the
2 problem, I see why I am having a problem
3 with the statement, I picked up the
4 previous one to the last one.

5 Q: Previous draft?

6 A: Previous draft yes. What is unfortunate
7 about this Enquiry is that started as
8 much as 16 years after FINSAC began
9 taking into account FIS. There was a
10 major wind down of FINSAC's activities
11 in June 2002 with the majority of staff,
12 including me, being made redundant.
13 Those persons are now involved in
14 various professional pursuits all over
15 the world, whereas if this Enquiry had
16 been held several years ago they would
17 have been willing and available to
18 assist with the search for truth, not
19 only with their files but also with the
20 benefit of their personal involvement in
21 the details of various issues and
22 transactions. This notwithstanding, I
23 expect that many of them could still be
24 located and asked to give evidence on
25 any issues that might remain outstanding

1 or in need of further information or
2 clarity.

3 Subsequent to June 2002, a decision was
4 made in view of the significantly
5 reduced operations and the cost of
6 rental and maintenance of real estate
7 occupied, particularly the building at
8 76 Knutsford Boulevard, to consolidate
9 all the documents from FINSAC's
10 operations in a warehouse on Osborne
11 Road.

12 My understanding is that this warehouse
13 today contains most of the files from
14 FINSAC's operations at 76 Knutsford
15 Boulevard, 9 Trinidad Terrace, Dumfries
16 Road as well as those not handed over to
17 JRF coming from the operations at the
18 Towers on Oxford Road.

19 As I understand it the warehouse today
20 contains over eleven thousand boxes of
21 files with each box having about ten
22 files. Logistically, retrieving
23 information has proven challenging. But
24 this is not the whole story because in
25 addition to those, FINSAC also

1 transferred to JRF loan and securities
2 documents and files contained, I
3 believe, in over 100 four-drawer filing
4 cabinets, and transferred as FINSAC was
5 obliged to do pursuant to the terms of
6 sale of the loan portfolio.

7 I make these points simply to
8 demonstrate that given the sequence of
9 events, as I have just outlined and the
10 enormity of the FINSAC undertaking and
11 the passage of time it is not entirely
12 surprising that finding some of the
13 information requested has been at times
14 challenging.

15 The preceding paragraphs describe only
16 the work that was done in FINSAC
17 domiciled offices. FINSAC also did a
18 significant amount of work at, and
19 through the hundreds of institutions it
20 intervened. Many of those files
21 remained with those institutions.

22 Signed Patrick Hylton, dated 4th July,
23 2011.

24 MR. GARCIA: Thank you Mr. Hylton.

25 And Commissioners, I think on the last

1 occasion, if not the last, the second to
2 last occasion on which Mr. Hylton was
3 before you, there were some questions
4 that were asked in relation to the
5 assessment of the value of the real
6 properties that have been sold by the
7 receiver, by the Commissioner of Stamp
8 Duty and Transfer Tax and I think there
9 it is relevant to point out that, that
10 issue is addressed to some extent by Mr.
11 Downer in the letter of December 6, 2001
12 to Miss Valerie Alexander and Mr. Hylton
13 read it and that letter on the second
14 page indicated what it is that
15 Mr. Downer had in mind, which was an
16 application to the Stamp Office for
17 Transfer Tax relief and which he pointed
18 out, obviously that the fact that the
19 application was made does not mean that
20 he would get it and also in those two
21 claims that are attached to Mr. Hylton's
22 statement, one will see that the claims,
23 the first one filed by Mr. Levy on
24 behalf of Thermo-Plastics Jamaica
25 Limited (in receivership) and Plas-Pak

1 Limited (in receivership) also
2 complained about that very issue and
3 that complaint is, is noted at
4 paragraphs 51, pages 13 to 14 of that
5 document and that's exhibits PH 23. And
6 then also in the claim filed by....

7 COMM. BOGLE: Sorry, the paragraph you mentioned
8 earlier ...

9 MR. GARCIA: It's paragraphs 51, pages 13 to 14 of
10 the claim filed by G Anthony Levy and
11 Company on behalf of Thermo-Plastics
12 Jamaica Limited (in receivership) and
13 Plas-Pak Limited. And then also that
14 issue is raised in the claim PH 24 filed
15 by G Anthony Levy and Company on behalf
16 of Thermo-Plastics Jamaica Limited and
17 there one might refer to page 4,
18 paragraph 15. And so of course that
19 complaint that those entities are
20 maintaining before this Commission is
21 also before the court in at least two
22 matters, these two matters of which
23 Mr. Hylton is aware, one of which is
24 awaiting the hearing of an application
25 to strike out and the other which is

1 awaiting trial.

2 COMM. BOGLE: That completes.

3 MR. GARCIA: I suppose we could call it a further
4 examination-in-chief.

5 COMM. BOGLE: Okay, at this time I know Mr. Levy is
6 rearing to go, but Mr. Levy you will
7 have to put on your shoes for tomorrow
8 morning, so we will take the adjournment
9 at this time and we will reconvene
10 tomorrow morning at 9:30 and Mr. Hylton
11 you are required to be back with us
12 tomorrow at 9:30.

13 A: I plan to, sir.

14 COMM. BOGLE: Okay thank you, ladies and gentlemen.

15

16 A D J O U R N M E N T

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