

1 Q: And you really empathized with many of  
2 these borrowers?

3 A: Oh yes.

4 Q: But you continued to sell out their  
5 property?

6 A: If the circumstances dictate and there  
7 were no other options, somebody would do  
8 it.

9 Q: That is your option, no other option.  
10 You said also in the last sentence of  
11 paragraph 106, it is the borrower's  
12 failure to repay, among other reasons,  
13 which puts depositors in jeopardy. The  
14 borrower's failure to repay, you think  
15 any of those borrowers failed to repay,  
16 because their interests rate was  
17 escalated way beyond what they could  
18 afford.

19 A: May very well be the case, yes.

20 Q: You know of any circumstances that it  
21 was?

22 A: I made the point that some borrowers  
23 fell in that category, but it doesn't

24 change, this is a fact, whether it is  
25 high interest rate, whatever,

1                   irrespective of the reason it is a fact  
2                   that there is an expectation that  
3                   repayment is the source to repay the  
4                   depositors.

5           Q:           So the high interest rate threatened the  
6                   depositors?

7           A:           Sorry?

8           Q:           The high interest rate charged by the  
9                   failed financial institutions threatened  
10                  the interest of the depositors?

11          A:           In some instances that may be the case,  
12                  yes.

13          Q:           No, let us be realistic Mr. Hylton and  
14                  answer this question. Interest rates  
15                  are increased, extremely high, debtors  
16                  cannot repay, was that a threat to the  
17                  continued existence of a good loan?

18          A:           Oh yes and I said so.

19          Q:           It was a threat?

20          A:           Yes.

21          Q:           And I am asking the question, so high  
22                  interest rates threatened depositors?

23          A:           And I said yes.

24          Q:           It's not just the inability of the  
25                  customers to pay because they did not

1 want to pay?

2 A: No, no, the inability to repay may have been

3 caused by other factors.

4 Q: What was the major factor?

5 A: You and I are going to disagree on that Mr.

6 Levy.

7 Q: Well go ahead.

8 A: I have told you that it was a mixture of

9 different circumstances.

10 Q: Specify?

11 A: If I can find the paragraph...

12 Q: Just tell us, you don't have to find it. I

13 A: am saying there were some loans that quite

14 frankly were bad from initiation.

15 Q: That is a minority?

16 A: I don't know; there were some where

17 circumstances changed in terms of general

18 circumstances, business circumstances,

19 economic circumstances; there were some

20 where people failed to respond or manage

21 their business properly and there were

22 some when the interest rate regime changed

23 on them they couldn't handle it.

24 In all of the instances, the interest

25 Q

1 rate regime changed on them?

2 A: Some borrowed in the high interest rate  
3 regime, borrowed at the high interest  
4 rate on the basis that the business plan  
5 or the project or the undertaking they  
6 were entering into, they could afford  
7 and manage.

8 Q: But the fact that institutions failed  
9 leaving some of their customers floating  
10 outside in the harbour without a paddle,  
11 didn't matter like in the instance with  
12 DEBTOR2, his institution failed, he  
13 did not fail but because his institution  
14 failed and the lack of cooperation by  
15 FINSAC, he was put out of business and  
16 his property sold?

17 A: You are making that assertion, I have  
18 nothing to support that.

19 Q: You have anything to oppose?

20 A: I don't know the details of  
21 DEBTOR2's case.

22 Q: The Commission knows the details and  
23 that is what is important.

24 A: And that is good.

25 Q: It's amazing Mr. Hylton how major cases

1 that have come to this Commission, none  
2 of them you know the details of.

3 MR. GARCIA: I am going to object, I don't know if a  
4 question would be coming.

5 MR. LEVY: Let me finish my question.

6 COMM. BOGLE: Mr. Levy do you have a question that is  
7 coming forward?

8 8-9-10, I have counted to ten to get my  
9 blood pressure down.

10 COMM. BOGLE: Mr. Levy just continue please asking  
11 questions.

12 MR. LEVY: Are you aware of any specific loans  
13 where the high interest rates caused the  
14 default, the increase in interest rate  
15 caused the default?

16 A: I can't tell you about a specific loan  
17 today where the high interest rate  
18 caused the default.

19 Q: It's amazing Mr. Hylton that you -- can  
20 I ask you a question, do you know the  
21 details of any of the loans of FINSAC?

22 A: I already made that point. I said we set  
23 up a Non-Performing Loan Unit, we had  
24 senior managers there, they reported to  
25 the General Manager who ultimately

1 reported to me and I told you I have  
2 never managed a single loan. What I was  
3 responsible for, to put it in framework  
4 in terms of policies, processes, in  
5 terms of procedures, in terms of  
6 approval authority and in terms of the  
7 process by which to ensure that it was  
8 fair, it was transparent and that it was  
9 consistent with good principles as to  
10 how these types of businesses are run.

11 Q: Could you read paragraph 111 of your  
12 statement Mr. Hylton.

13 A: FIS as well as FINSAC at the same time  
14 through Recon Trust Limited and Refin  
15 Trust Limited had to be careful that it  
16 did not fall into the same or similar  
17 difficulties as Foboproa in the Mexico  
18 which had to be disbanded as, among  
19 other things, they engaged in  
20 significant write-offs for persons who  
21 had non-performing loans only to see  
22 them shortly after engaged in the lavish  
23 lifestyles.

24 Q: Did you see any person with  
25 non-performing loans engaging in lavish

1 lifestyle?

2 A: I have never really checked, you know,  
3 because the truth is, as I said to you I  
4 made the point, persons have come to me,  
5 for example, even the person this  
6 morning who sent me the e-mail and the  
7 person I saw on Sunday.

8 Q: That is not in evidence, let's deal with  
9 the question.

10 A: I am telling you the person who told me  
11 on Sunday thanks for giving me a break,  
12 I said I didn't realize you were a  
13 FINSAC debtor even though they said I  
14 met with them.

15 Q: Their gratitude was ill-founded.

16 A: They were the ones who expressed it.

17 Q: It was ill-founded.

18 A: I said I don't recall meeting with them,  
19 they were saying they got a break and I  
20 said well I am glad to hear that.

21 Q: Paragraph 114?

22 A: I am going to send them to you Mr. Levy.

23 Q: There were loans that went bad prior to  
24 the period of high interest rates and  
25 were being constantly restructured by



1 the banks over several years. How many  
2 of these loans fit into that category?

3 A: I can't tell you a specific number of  
4 loans but I got the impression that it  
5 was quite a few and some significant  
6 ones as well.

7 Q: So that is pure speculation?

8 A: It's not speculation, it's based on  
9 information that I got from the people  
10 who managed the loans.

11 Q: You said some significant loans as well?

12 A: Yes, that is what they told me.

13 Q: Can you name one?

14 A: I can't tell you one Mr. Levy, that's  
15 fourteen years ago.

16 Q: Paragraph 114. There were also  
17 borrowers who took out their loans at  
18 low interest rates and saw those rates  
19 increased on them, you are aware of what  
20 percentage of the borrowers were those?

21 A: No, sir.

22 Q: In some of those cases they tried to  
23 cope with the situation by paying down  
24 their facility but some also borrowed  
25 more at the new higher rates for new

1 ventures that at times were  
2 unsuccessful. Do you know how many of  
3 these?

4 A: No.

5 Q: So this is pure speculation?

6 A: Not speculation, it's factual, I can't  
7 tell you how many but I know there were  
8 some who fell in both categories.

9 Q: But you don't know of any specific one.

10 A: I can't tell you out of thirty or forty  
11 thousand different accounts which one.

12 Q: This statement in your evidence means  
13 absolutely nothing because you knew  
14 absolutely nothing about anything?

15 A: That may be your interpretation but then  
16 it is not your call.

17 Q: In the case of DEBTOR1COMPANY,  
18 which was handled by FINSAC,  
19 was there any political intervention or  
20 involvement?

21 A: Not that I am aware of.

22 Q: Nothing by the Minister of Finance?

23 A: In DEBTOR1COMPANY? I don't remember  
24 the Minister being involved in  
25 DEBTOR1COMPANY, possibly but I don't

---

1 remember.

2 Q: Were you instructed on occasions to hold  
3 off on the sale, so instructed by  
4 Mr. Downer?

5 A: Hold off on the sale?

6 Q: Sale of assets?

7 A: Instructed by who?

8 Q: Minister of Finance?

9 A: I don't remember the Minister asking me  
10 to hold off on the sale.

11 Q: We will get back to that after lunch  
12 when I put something else to you.

13 A: I don't remember that particularly now.

14 Q: Were you aware that the Ministry of  
15 Finance had a special interest in the  
16 sales of the DEBTOR1COMPANY assets  
17 going to National Investment Bank of  
18 Jamaica Limited?

19 A: No, sir.

20 Q: Was National Investment Bank of Jamaica  
21 Limited an associated company with  
22 FINSAC and FINSAC companies?

23 A: No, sir.

24 Q: Were there?

25 A: It is possible but I don't know who the

---

1 directors of NIBJ were, I couldn't say  
2 offhand.

3 Q: I think you said this morning Mr. David  
4 Coore was a director.

5 A: Of FINSAC at some stage, yes.

6 Q: You were not aware that he was a  
7 Director of NIBJ, Chairman?

8 A: He may very well have been, I don't  
9 remember that specific detail now.

10 Q: Did he disclose at any of your directors  
11 meetings a conflict of interest in dealing  
12 with DEBRTOR1COMPANY where he was talking  
13 about selling by FINSAC to NIBJ?

14 I would expect if that...

15 A: Did he or did he not?

16 Q: I can't tell you.

17 A: You were not at any of those meetings? I  
18 Q: can't remember that.

19 A: Let's get on down the list. Were you aware  
20 Q: that Shirley Tyndall was also a Director  
21 of NIBJ?

22 May or may have been, I don't remember, I  
23 A: am not going to deny that she was, if you  
24 are asserting it, I can't say.  
25

1 Q: You can't recall her disclosing her  
2 conflict of interest at the Board  
3 meetings whereby the sale of Refin  
4 Limited to NIBJ was being discussed?

5 A: I don't know, she may very well have, if  
6 she was.

7 Q: She may very well have but you don't  
8 know?

9 A: I don't know.

10 Q: You were not at those meetings?

11 A: I may have been there, I don't remember  
12 if she was a director, I hear what you  
13 are saying, and if in the circumstances  
14 she was a director I would have expected  
15 a declaration in the scheme of things  
16 and I am not saying she did, I can't  
17 say, I don't remember which board  
18 meeting DEBTOR1COMPANY was discussed,  
19 we discussed thousands of loans at  
20 various meetings.

21 Q: Mr. Hylton you are an experienced  
22 director having been a director of so  
23 many hundreds of companies, are you  
24 aware of the obligation of directors for  
25 disclosure where there is a conflict of

1 interest?

2 A: Absolutely, that is why I said I would  
3 expect, if she was a director, she would  
4 have so disclosed.

5 Q: But you have a very poor memory, is that  
6 correct?

7 A: Poor memory? I think my memory is  
8 reasonable Mr. Levy but I can't remember  
9 tens of thousands of details, that I  
10 find challenging.

11 Q: Mr. Hylton after lunch I will show you  
12 some minutes of meetings of FINSAC and  
13 ask you to accept them or deny them?

14 A: Okay.

15 Q: Paragraph 124 of your statement.

16 A: Yes.

17 Q: Read it for us Mr. Hylton.

18 A: **Finsac's arduous task was now to**  
19 **maximise on the recovery of these loans,**  
20 **to minimize the cost of the intervention**  
21 **and provide urgently needed liquidity**  
22 **for its own operations internally as**  
23 **well as those of the financial**  
24 **institutions it had intervened. The**  
25 **difficulties in such an undertaking by**



1 I could do that.

2 Q: Paragraph 125. **Notwithstanding the**  
3 **challenges as I have outlined, Finsac**  
4 **assisted many persons and businesses in**  
5 **sorting out their financial challenges**  
6 **and getting a new start.**

7 A: Yes, sir.

8 Q: How did you assist?

9 A: Well, by working with the persons,  
10 reaching reasonable compromises on the  
11 debts and the persons were able to  
12 settle those indebtedness according to  
13 the arrangements that were reached. Some  
14 of them never even completed the  
15 settlement while at Finsac or JRF.

16 Q: You say there were many persons?

17 A: Oh, yes.

18 Q: Can you name one?

19 A: I am not going to name any, sir.

20 Q: So your statement is a general one?

21 A: I won't because I believe it is their  
22 private business. If they want to have  
23 their situation before the Commission,  
24 then they can make a statement and come  
25 here.



1 Q: Mr. Hylton, this is a public Commission  
2 of Enquiry and the operations of FINSAC  
3 are no longer private.

4 A: But the business operations of  
5 individual persons...

6 Q: ...who dealt with FINSAC are no longer  
7 private.

8 A: I don't know.

9 Q: FINSAC wasn't a bank.

10 A: Well, there are different  
11 interpretations on that. I have seen  
12 various opinions on that issue, and  
13 there are many opinions that indicate  
14 that FINSAC was so constraint.

15 Q: Opinions by whom, be specific?

16 A: By lawyers, lawyers representing FINSAC  
17 and lawyers representing other  
18 institutions with which FINSAC may have  
19 had a relationship.

20 Q: But FINSAC was legally restraint?

21 A: Yes, that's what we were advised.

22 Q: What is the basis of that restraint?

23 A: The basis is that the confidentiality  
24 which applies in the Banking Act would  
25 go by extension to institutions which

1                   took over loans and so on from the...

2           Q:           What section of the Banking Act says

3                   that?

4           A:           I don't have a section right now and so

5                   I can't give a legal opinion to say that

6                   was the case. I even quoted a

7                   particular English case of this failed

8                   bank in which PricewaterhouseCoopers

9                   were appointed as receivers. I am

10                  trying to remember the name of the

11                  failed bank now, it was global failure

12                  and we had an operations here

13                  incidentally to I think where the court

14                  upheld that Pricewaterhouse was so

15                  constraint.

16   COMM. BOGLE:    BCCI?

17           A:           BCCI, yes.

18   MR. LEVY:        Pricewaterhouse...

19           A:           As Receivers...

20           Q:           The receiver.

21           A:           ...working in the liquidation...

22           Q:           Pricewaterhouse was never a receiver of

23                   anything.

24           A:           Whether they were liquidator, receiver,

25                   whatever you call it.

1 Q: Not Pricewaterhouse, sir, it has to be  
2 an individual.

3 A: Well, I don't know that anything turns  
4 on that point.

5 COMM. BOGLE: The point is whether or not it was  
6 Pricewaterhouse.

7 A: Whether it was Partner or  
8 Pricewaterhouse or whatever I know it  
9 turns on the fact that they were  
10 constraint and they were not a bank.

11 MR. LEVY: How dear you with that constraint filed  
12 a suit and disclosed people's business  
13 in public.

14 A: Because a suit, the law makes an  
15 exception for law suits, the same  
16 legislation.

17 MRS. PHILLIPS: Schedule 4, Section 45 of the Banking  
18 Act.

19 MR. LEVY: Which deals with banks, not FINSAC. The  
20 Banking Act, Mr. Chairman, deals with  
21 banks not with FINSAC. FINSAC was not  
22 and has never been a bank. Banking Act  
23 does not apply to FINSAC.

24 A: Mr. Chairman, unlike Mr. Levy I don't  
25 advise myself on legal matters, I take

1 the advice that I am given.

2 Q: Maybe you need to get competent legal  
3 advice, Mr. Hylton.

4 A: I am very happy with the legal advice  
5 that I am getting.

6 Q: The debtors are not.

7 COMM. BOGLE: Can we get back to questions and answers  
8 please.

9 MR. LEVY: Could you tell us, Mr. Hylton, back to  
10 section 125, how did FINSAC assist these  
11 many persons and businesses in sorting  
12 out their financial challenges and  
13 getting a new start, you lent them  
14 money?

15 A: No, sir, we never lent anybody money.

16 Q: Oh, you never lent anybody money?

17 A: No, sir. FINSAC never lent anybody  
18 money.

19 Q: Because you were broke, you had no  
20 money. How did you assist them in  
21 sorting out their financial challenges?

22 A: By sitting down with them, agreeing,  
23 compromises around the debts, giving them an  
24 opportunity by restructuring the debt to  
-- repay the debt.

1 Q: What you mean by restructuring the debt?

2 A: Meaning extended payment terms, changing  
3 maybe sometime on moratorium, on  
4 interest, maybe three months, six  
5 months, seven months to get something in  
6 order. Those types of arrangements.

7 Q: And did you do that with DEBTOR1COMPANY?

8 A: DEBTOR1COMPANY was in receivership.

9 Q: Did you do that with the Receiver of  
10 DEBTOR1COMPANY?

11 A: With the receiver?

12 Q: Yes.

13 A: I didn't know that was an option that  
14 the receiver presented, a viable option  
15 to restructure the debt.

16 Q: Can I assist Mr. Hylton in showing the  
17 distinction between a liquidator and a  
18 receiver, because he seems to be  
19 confused?

20 COMM. BOGLE: The question is, would FINSAC have  
21 called in the receiver and offered him  
22 or it should be the receiver that should  
23 take the case to FINSAC?

24 MR. LEVY: Thank you, sir.

25 COMM BOGLE: I think that is the case. The receiver

1                   would have taken their matter to FINSAC  
2                   and not FINSAC calling them in.

3   MR. LEVY:           Mr. Hylton, what are the rights and  
4                   obligations of a receiver and manager of  
5                   a company, what its obligations?

6   MR. GARCIA:         Commissioner, I am a little bit  
7                   concerned because there have now been a  
8                   number of questions in which Mr. Levy  
9                   has asked Mr. Hylton something which I  
10                  think is a matter of law. On the  
11                  previous occasion what it has then led  
12                  to, it is an argument between the  
13                  attorney and the witness on the question  
14                  of law which I submit is not  
15                  appropriate.

16   COMM. BOGLE:        I think that is a reasonable objection.

17   MR. LEVY:           I will rephrase the question, Mr.  
18                   Chairman.

19    COMM. BOGLE:        Mr. Hylton has not come here as an  
20                   attorney.

21   MR. LEVY:           I will rephrase the question. Because  
22                   FINSAC had many receivers in their  
23                   portfolio, in FINSAC's portfolio receivers  
24                   have been appointed by FINSAC or by the  
--                   legacy banks and Mr. Hylton

1 had to deal with them.

2 COMM. BOGLE: You may rephrase the question bearing in  
3 mind that Mr. Hylton is not an attorney.

4 MR. LEVY: Mr. Hylton, whilst I know you are not an  
5 attorney, what is your understanding of  
6 what a receiver should do, you  
7 appointing him?

8 A: The receiver is appointed as the agent  
9 of the company, he receives the property  
10 of the company and then goes out to try  
11 and settle its obligations. I mean, I  
12 don't know if I can put it more succinct  
13 than that.

14 Q: If I told you you are wrong, you  
15 wouldn't accept it because I am not your  
16 attorney and I wouldn't expect you to?

17 A: Right.

18 Q: What's your understanding of the  
19 difference between a receiver and a  
20 liquidator?

21 A: Again, that's a technical legal question in  
22 my view, sir, and I don't know if I am  
23 competent to elaborate on those  
24 distinctions.

25 Q: The question is what is your

1                   understanding, not whether you are  
2                   competent to give a legal opinion. You  
3                   were instructing receivers, you were  
4                   instructing Mr. Downer, you were giving  
5                   instructions to Mr. Downer, which he  
6                   accepted.

7           A:           I just told you what I thought the  
8                   responsibilities of a receiver was and  
9                   the liquidator is to liquidate. In  
10                  other words, to settle off and so on so  
11                  as to wind up the operations of the  
12                  business.

13          Q:           You say your understanding of a receiver  
14                   was to pay off creditors?

15          A:           Sorry, I said he was appointed as an  
16                   agent of the company, to receive the  
17                   properties of the company and to manage  
18                   its affairs so as to discharge its  
19                   obligations or to assist in returning  
20                   debtors of a growing concern if that is  
21                   a potential course open to him or her.

22          Q:           What obligation does the receiver have  
23                   to the unsecured creditors?

24          A:           Unsecured creditors?

25          Q:           Yes?





1 receiver, my lawyer is going to be in  
2 the room with me or a liquidator or any  
3 of those special appointments.

4 Q: So every time you write a letter to the  
5 receiver it is passed through your  
6 lawyer?

7 A: Oh, yes.

8 Q: Did you at any time give instructions to  
9 Mr. Richard Downer, Receiver and Manager  
10 of DEBTOR1COMPANY who was appointed  
11 under your hand?

12 A: I recall meeting with Mr. Downer, I may  
13 have asked Mr. Downer - to be honest  
14 with you, I can't give you a specific  
15 detail on the instructions. I mean  
16 generally I have indicated to Mr. Downer  
17 that we would want to get the best deal,  
18 that is what I would do with any  
19 receiver.

20 Q: Let me move on to something else and I  
21 will come back to this at a later stage.  
22 On the Finsac'd companies in relation to  
23 mortgages, did they have any legal  
24 obligations, to your knowledge, to the  
25 mortgagors, persons whose properties



1                   they would bring it to me to sign off  
2                   on.

3           Q:           This is what you used to sign off on?

4           A:           No, first of all they would go through  
5                   an auction and if they are unsuccessful  
6                   by auction, based on the reserved price,  
7                   then it goes through a process of  
8                   marketing through agencies and so on to  
9                   try and get the best price.

10          Q:           And how was the reserved price set by  
11                   FINSAC?

12          A:           I think in most instances, if my memory  
13                   serves me right, the reserved price  
14                   would have been the forced sale price,  
15                   in most instances.

16          Q:           Who determined the forced sale price?

17          A:           The valuers.

18          Q:           And when that valuation would have been  
19                   made?

20          A:           We generally have a policy to require  
21                   the valuation to be within a certain  
22                   timeframe. If my memory serves me right  
23                   it is probably within a year or so.

24                   And was this a standard requirement?

25          A:           Yes, that's what I am saying, generally

1 we have that as a requirement.

2 Q: Generally it is a kind of...

3 A: No, no, the reason why I say generally,  
4 because some of these things came into  
5 being - remember there was a period when  
6 the loans were being handled by the  
7 legacy banks and then there was a period  
8 during which they were being  
9 transitioned to FINSAC and I am saying  
10 within the transition process to FINSAC  
11 and subsequent to that, this is how they  
12 would have been handled. So I just want  
13 to be careful Mr. Levy, because I never  
14 wanted you to pull the beating wife  
15 trick on me again.

16 Q: Would you say it would be correct,  
17 Mr. Hylton, for FINSAC or one of its  
18 subsidiaries to sell a property for \$43  
19 Million which was valued at \$183  
20 Million, that would have been within the  
21 policy?

22 A: I don't think the policy sets out how  
23 much you sold a property for; the policy  
24 sets out a process which is consistent  
25 with the law.

1 Q: You said consistent with the law?

2 A: Yes.

3 Q: That law, as you referred to, requires a  
4 valuation?

5 MR. GARCIA: Objection. Again, the witness is being  
6 asked about what the law requires.

7 COMM. BOGLE: I think as well, Mr. Levy, the witness  
8 did say with all sales, valuation is  
9 required.

10 MR. LEVY: Was a valuation obtained by FINSAC of  
11 the properties of DEBTOR1COMPANY  
12 within one year before sale by  
13 REFIN Trust Limited to a connected  
14 associated Company, National Investment  
15 Bank of Jamaica Limited, was it obtained  
16 within a year?

17 A: I didn't know that FINSAC sold the  
18 property of DEBTOR1COMPANY, sir.

19 Q: Well, FINSAC including REFIN Trust  
20 Limited. Take my word for that.

21 A: I thought it was the receiver who did.

22 Q: Mr. Chairman, after the lunch break I  
23 will show him the documents.

24 COMM. BOGLE: Well, at this point therefore, we will  
25 take lunch.

1 MR. LEVY: I have a far way to go, Mr. Hylton, I am  
2 not finished.

3 COMM. BOGLE: We will reconvene at 2:00 p.m. Thank you  
4 ladies and gentlemen.

5

6

LUNCHEON BREAK

7

ON RESUMPTION

8 COMM. BOGLE: Ladies and gentlemen, this Enquiry is  
9 now reconvened. And Mr. Hylton, the  
10 usual reminder that you are still under  
11 oath. Mr. Levy?

12 MR. LEVY: Mr. Hylton, you were trying to explain  
13 what your understanding of the duties  
14 and obligations of a receiver were. You  
15 had a number of receivers appointed by  
16 FINSAC, didn't you?

17 A: Yes sir, that is correct.

18 Q: And you give many of these receivers  
19 instructions as to how to proceed?

20 A: We appointed the receivers and asked  
21 them to, well, to take over the  
22 operations pursuant to our debenture so  
23 as to enable us to realize the maximum  
24 that we could from the obligations that  
25 were dear to us.

1 Q: Was there any political involvement in  
2 the operations of FINSAC?

3 A: No, sir.

4 Q: None whatsoever?

5 A: No, sir.

6 Q: Never received instructions from the  
7 political directorate?

8 A: Well the political directorate would set  
9 the policy agenda and the political  
10 directorate from time as you saw even  
11 letter the letter to CERTAIN DEBTOR  
12 would have made suggestions or even sent  
13 what I would call their views as to what  
14 should be done, but in terms he will  
15 what eventually got executed was what  
16 FINSAC felt was the proper thing to do  
17 in the circumstances.

18 Q: And that was so in the case of  
19 DEBTOR1COMPANY?

20 A: Yes sir.

21 COMM. BOGLE: Just a minute, please.

22 COMM. ROSS: Mr. Hylton, you mentioned earlier that  
23 there was a hierarchy of approvals that  
24 related to the loans that were  
25 processed?





1 contained there, that document sets out what  
2 the decisions, authorities are in the  
3 different levels, for the Board, the Credit  
4 Committee, the Unit Heads, Teams and Team  
5 Managers.

6

7 COMM. ROSS: Thank you very much.

8 COMM. BOGLE: Go ahead, Mr. Levy.

9 MR. LEVY: Were you influenced in your decision as  
10 a board in any matter relating to  
11 DEBTOR1COMPANY?

12 A: Influenced by whom, sir?

13 Q: By anyone, other than the Board, outside  
14 the Board?

15 A: No, just what the management would have  
16 brought to the Board as their  
17 perspective of the issue.

18 Q: And whenever you signed any document  
19 dealing with debts you had your lawyers  
20 advising you?

21 A: Invariably. I would say most of the  
22 times, almost all the times.

23 Q: Mr. Hylton, I am going to show you a  
24 document which was exhibited before as  
25 DEBTOR1COMPANY.41-11.

1 I made a few copies for the members of  
2 the panel so they don't have to get them  
3 out of their bundles.

4 This is a letter signed by Audrey B  
5 Robinson, General Manager of FINSAC  
6 addressed to Dennis Joslin Ja. Inc,  
7 dated May 17, 2002. Copies were  
8 distributed to the lawyers present at  
9 the time. Would you read the letter?

10 A: It is dated May 17, 2002 to Dennis

11 Joslin Ja. Inc.

12 Mutual Life Centre.

13 2 Oxford Road.

14 Kingston 5.

15 **Attention: Mr. Dennis Joslin.**

16 **Dear Sirs:**

17 **Re: DEBTOR1COMPANY.**

18 **We refer to your proposal sent to us on**

19 **May 16, 2002 in respect of**

20 **DEBTOR1COMPANY.**

21 **Please be advised that the proposal is**  
22 **approved.**

23 **Yours sincerely.**

24 **Audrey B Robinson (Mrs.) audiocassette**  
25 **General Manager.**

1 Copied to Mr. Patrick Hylton, Mr. Errol  
2 Campbell, Mr. Jim Welsh and Mrs. Dianna  
3 Davis-Smith.

4 Q: Can you recall what proposal was she  
5 speaking about?

6 A: No, sir.

7 Q: I am going to let you have a look at  
8 Exhibit DEBTOR1COMPANY.40/11. This is a  
9 letter from Richard Downer, Receiver /  
10 Manager DEBTOR1COMPANY addressed  
11 to you. **RE: DEBTOR1COMPANY SALE OF**  
12 **BUSINESS.**

13 A: Yes sir.

14 Q: Would you read the letter to us, Mr.  
15 Hylton?

16 A: April 9, 2002. It's addressed to me at  
17 FINSAC Limited.

18 **Mr. Patrick Hylton.**

19 **FINSAC Limited**

20 **76 Knutsford Boulevard.**

21 **Kingston 5.**

22 **Dear Patrick**

23 **Re: DEBTOR1COMPANY SALE OF BUSINESS.**

24 **I refer to previous correspondence in**  
25 **this had matter. By your letter dated**

1 February 5, 2002 to my attorneys FINSAC  
2 indicated that pursuant to the recent  
3 loan sale, the matter would be handled by  
4 Joslin Jamaica Limited. By letter dated  
5 February 12, 2002 Joslin indicated to my  
6 attorneys that they had been appointed to  
7 service the debts and obligations which had  
8 been acquired from Refin Trust Limited. We  
9 were also advised that the relevant  
10 Discharges, titles and Memorandum of  
11 Complete Satisfaction (the satisfaction  
12 documents) were ready and available for  
13 completion. A copy of this letter is  
14 enclosed for your information.

15 A lot of effort has been made to take this  
16 matter to completion to obtain the payment  
17 by the purchaser National Investment Bank  
18 of Jamaica (NIBJ) of the balance purchase  
19 price. Joslin has now taken the position  
20 that they will not complete this sale. I  
21 enclose a copy of letter dated March 28,  
22 2002 from Joslin to me which indicates that  
23 they will not complete "until they are  
24 satisfied". In

1 light of the great disparity between the  
2 estimated final outcome of \$73 million  
3 stated in the Accounts provided to FINSAC on  
4 June 20, 2001 and the \$25 million to \$30  
5 million" (it was actually \$25 to 40 million  
6 that I stated in that meeting) advice to  
7 Joslin at a meeting held March 18, 2002. In  
8 order to be "satisfied" they asked for five  
9 items of information, all of which were  
10 supplied promptly and in great detail.  
11 I feel I have made every effort to  
12 accommodate their requests. To my  
13 surprise, in a telephone conversation with  
14 Mr. Joslin on Friday, it was indicated that  
15 they would only release the satisfaction  
16 documents in exchange for a payment of \$56  
17 million. The sum of \$55 million is the  
18 approximate sum due from NIBJ to complete  
19 the matter. I have indicated to them that  
20 think could not agree to pay them that I  
21 could not agree to pay them this sum in  
22 light of my closing estimate and  
23 commitments which I must satisfy in my  
24 capacity as

Receiver.

1  
2 During that telephone conversation I  
3 explained that: (i) apart from \$10 of  
4 liabilities plus unquantified legal fees  
5 arising after 13 December 2001 which have not  
6 yet been billed, there were no other known  
7 liabilities to be paid out of the \$55 million  
8 (ii) we have claimed a substantial refund in  
9 respect of transfer tax and (iii) there is  
10 pending litigation against DEBTOR1 (iv) I  
11 would have to hold back some funds to pursue  
12 the claim against DEBTOR1. So if there is for  
13 the 45 million from the NIBJ payment after  
14 payment of the liabilities, and if I hold a  
15 further \$10 million for contingencies, this  
16 would leave 35 million for the interim  
17 distribution at closing. Despite this Mr.  
18 Joslin indicated that he is firm in the  
19 position that he will not release the  
20 documents unless he receives \$56 million at  
21 the time of closing. It appears to me that the  
22 position taken by Joslin is based on a  
23 misunderstanding  
24  
25

1 in relation to two issues namely:

2 1. Their belief that you were to  
3 receive \$73 million

4 2. A misunderstanding in relation to my  
5 role and obligation as receiver. I'll  
6 address both issues below.

**SUM DUE TO REFIN TRUST LIMITED.**

7  
8 You will recall that in our meeting on  
9 December 19, 2001 we had discussed the  
10 issue of the sum which I had initially  
11 indicated to you would be due to you on  
12 completion and my subsequent estimate. I  
13 left that meeting on the understanding  
14 that the satisfaction documents would be  
15 delivered to my attorneys in exchange for  
16 a cheque in your favour in the sum of \$35  
17 million. For ease of reference I enclose a  
18 copy of letter dated December 21, 2001 from  
19 you to my attorneys which confirms this  
20 agreement.

21 It appears that Joslin has not been  
22 advised of this. I ask that you as a matter  
23 of urgency advise them of this so that we may  
24 proceed. Nearly four months (4) have passed  
25 since my agreement to pay



1 the sum of \$35 million. Each day which  
2 passes without the completion of the sale  
3 leads to the need to incur additional costs  
4 for the receivership and a further reduction  
5 of the sum to be paid to the secured  
6 creditors. In my view it is therefore in the  
7 interest of all the parties which are  
8 affected to have the sale completed as a  
9 matter of urgency.

10 MY ROLE AS RECEIVER.

11 As you know I was appointed Receiver and  
12 Manager from the company by national  
13 Commercial Bank Limited and your subsidiary,  
14 Recon Trust Limited in 1998, In light of the  
15 filing of a petition to wind up the company  
16 in 1998, I agreed to continue to trade on the  
17 understanding that I was now your agent and  
18 not the agent of the company and on the basis  
19 that you would issue to me a further indemnity  
20 to address this issue. As you know, this  
21 indemnity was given. Joslin has effectively  
22 stepped into your shoes and I therefore now  
23 represent

1 their interest in the company.

2 Great effort was made to locate a purchaser  
3 of the company without success and finally,  
4 after lengthy negotiations, in 2001, with  
5 your blessing, I entered into an agreement  
6 with NIBJ for the sale of the assets of the  
7 various companies. As you know most of the  
8 assets are subject to charges in favour of  
9 entities, which were under the control of  
10 FINSAC. In light of FINSAC's control over  
11 these entities, we had proceeded on the basis  
12 that in addition to your capacity as  
13 debenture holder, I would make an interim  
14 payment of \$35 million to you in exchange for  
15 the satisfaction documents from these  
16 entities at the time of the closing,  
17 obviously without prejudice to the right to  
18 receive  
19 further interim payments as funds become  
20 available (e.g. from a refund of  
21 transfer tax). I believe Joslin now holds  
22 these satisfaction documents. I was  
23 therefore only left with the responsibility  
24 of securing the remaining

1 Memoranda of Satisfaction from those  
2 entities which were not under FINSAC's  
3 control. This I have done.

4 As you know, as Receiver, I am required to  
5 satisfy certain preferential obligations  
6 and therefore I do not have total  
7 discretion in how the funds from the sales  
8 should be disbursed. I have tried  
9 unsuccessfully to explain this to Joslin's  
10 representatives. NIBJ has already served  
11 a Notice to Complete and Making Time of the  
12 Essence and it is only a matter of time  
13 before they become so frustrated with the  
14 delays in the completion of the sale and  
15 seek to take proceedings in court for a  
16 resolution. If I were sued, I would rely  
17 on my indemnity. In my view, it is in no  
18 one's interest for this matter to result  
19 in litigation. I therefore ask for your  
20 assistance in clarifying to Joslin the  
21 state of affairs to  
22 facilitate the completion of the sale. If  
23 you think a meeting will assist in  
24 resolving these issues, I am available  
25

1 to meet at your earliest convenience. I  
2 looked forward to hearing from you as  
3 soon as possible.

4 Yours faithfully.

5 Richard Downer.

6 Receiver & Manager.

7 DEBTOR1COMPANY.

8 **MR. LEVY:** In the last paragraph on the second page,  
9 'My role as Receiver' Mr. Downer stated,  
10 among other things; "I agreed to continue  
11 to trade on the understanding that I was  
12 now your agent on not the agent of the  
13 company and on the basis that you would  
14 issue to me a further indemnity to address  
15 this issue. As you know this indemnity was  
16 given Joslin has effectively step into  
17 your shoes..." You are familiar with that  
18 indemnity?

19 A: I don't recall that indemnity,  
20 I can't say I am familiar with it at  
21 all. It may very well have been given.  
22 He is asserting it and I can't either  
23 confirm or deny it.

24 Q: Do you understand that Mr. Downer was  
25 the agent of Refin at this time?



1                   **Limited and myself concerning his**  
2                   **company's continued interest in**  
3                   **DEBTOR1COMPANY.**

4                   **I would appreciate being brought up to**  
5                   **date on the state of affairs, as well as**  
6                   **precisely what ABC Limited is offering.**

7                   You recall that letter?

8           A:           Not particularly, sir, but I assume I  
9                   would have gotten it because I see where  
10                  I wrote on it; **Audrey, could you have**  
11                  **someone draft a response for me.**

12                  **Thanks.**

13          4:           But Mr. Omar Davies was not involved in  
14                  DEBTOR1COMPANY?

15          A:           It wouldn't be unusual for the Minister  
16                  to ask, based on whether he had received  
17                  a complaint or he has received some  
18                  information, to be updated on something.

19          Q:           This was one of several, Mr. Hylton? I  
20                  am presenting a letter dated 6th  
21                  September, 2000 from Portia Nicholson  
22                  Clarke, Director Portfolio Management  
23                  Unit, National Investment Bank of  
24                  Jamaica Limited addressed to Receiver  
25                  and Manager DEBTOR1COMPANY.

1

.

2

**Attention Mr. Dave Morrison.**

3

**Re: DEBTOR1COMPANY (In**

4

**Receivership) DEBTOR1COMPANY****(Jamaica)**

5

**Acquisition 1998 Limited. DEBTOR1-**

6

**COMPANY2 (In Receivership), DEF**

7

**Limited.**

8

Could you read the letter.

9

A:

Okay. It says:

10

Dear sirs - as you say it is to Dave

11

Morrison, Receiver and Manager

12

DEBTOR1COMPANY Acquisition 1998 Ltd

13

Attention Mr. Dave Morrison.

14

**Dear Sirs.**

15

**Re DEBTOR1COMPANY (In**

16

**Receivership)**

17

**Re. DEBTOR1COMPANY Acquisition 1998 Ltd**

18

.

19

**DEBTOR1COMPANY2 (In Receivership)**

20

**DEBTOR1COMPANY3**

21

**Those are the captions.**

22

**Reference is made to letter dated 24**

23

**August 2000 (attached), and subsequent**

24

**telephone conversation (Morrison/Blake)**

25

**on 1 September 2000 regarding the**

1 captioned.

2 As you are aware, the National  
3 Investment Bank of Jamaica Limited  
4 (NIBJ) has been granted 30 days to  
5 conduct its due diligence on the subject  
6 assets and to submit a firm offer for  
7 purchase. The information requested  
8 from you on 24 August 2000 has not been  
9 forthcoming thereby hindering our  
10 ability to perform an analysis of the  
11 operations of the companies.

12 You are therefore requested to submit no  
13 later than Friday, 8 September 2000, the  
14 requested information to facilitate our  
15 deadline for the submission of an offer  
16 to purchase the assets.

17 Yours sincerely.

18 Portia Nicholson Clarke.

19 Director, Portfolio Management Unit.

20 Q: If you look at the foot of letter, who  
21 is the chairman shown there?

22 A: Hon. David Coore, O.J, Q.C.

23 Q: Was he a director of FINSAC?

24 A: At the time, yes, I would think so. I  
25 would think so.





1 that's what I remember, and I think into  
2 a company with a different name. I don't  
3 know if the debenture itself would  
4 extend to that company as a matter of  
5 course.

6 Q: Read the second paragraph.

7 A: **Please be advised that NIBJ is formally**  
8 **requesting exclusivity in its**  
9 **negotiations to purchase the subject**  
10 **assets. Therefore, during the period of**  
11 **NIBJ's due diligence,**  
12 **PricewaterhouseCoopers is not expected**  
13 **to enter into any discussions with third**  
14 **parties for the sale of the above**  
15 **assets.**

16 **Yours sincerely.**

17 **Portia Nicholson Clarke.**

18 **Director, Portfolio Management Unit.**

19 Q: Were you aware that NIBJ requesting  
20 exclusivity as opposed to any other  
21 member of the public who wished to make  
22 an offer?

23 A: I may or may not have been aware, sir. I  
24 don't remember.

25 Q: This Mr. Hylton, is a letter from a

1 politician who was not involved in this  
2 matter at all to:

3 **Mr. Kumst, Managing Director of ABC**  
4 **Limited.**

5 **Dear Mr. Kumst.**

6 **DEBTOR1COMPANY**

7 **I acknowledge receipt of your letter**  
8 **dated June 21, 2001 indicating the**  
9 **continued interest of your company in**  
10 **being involved in the resuscitation of**  
11 **DEBTOR1COMPANY.**

12 **I have passed on your communication to**  
13 **Mr. Rex James, the President of NIBJ as**  
14 **well as Mr. Patrick Hylton, the Managing**  
15 **Director of FINSAC.**

16 You recall this letter?

17 A: Not particularly, no sir, but I assume I  
18 would have received it if he said he had  
19 passed it on to me.

20 Q: Who was the letter from, sir?

21 A: The letter was from Omar Davies,  
22 Minister of Finance and Planning.

23 Q: Was he the minister in charge of your  
24 organization?

25 A: Yes, he had portfolio responsibility.



1 A: 28 July, 2000.

2 Q: Was this request to Mr. Richard Downer  
3 complied with?

4 A: I don't know sir, maybe. I can't tell  
5 you. I mean I don't know. I know that  
6 eventually a sale took place to NIBJ. I  
7 don't know if it is in relation to this  
8 specific request or it is at a later  
9 date.

10 Q This sale took place in 2002?

11 A: Oh yes, 2002.

12 4: They bought lock, stock and barrel, real  
13 estate, tools for \$205M?

14 A: Okay.

15 Q: Now in your letter of July 28th, 2000  
16 you expressed extreme anxiety for  
17 bringing this matter to a closure?

18 A: Oh, yes.

19 Q: Now, this was not originated by Mr.  
20 Richard Downer, was it?

21 A: You mean if you are comparing the time  
22 that had passed between the two?

23 Q: Yes, sir.

24 A: For the period?

25 Q: Yes.



1                   they had no funds. So we wanted to get  
2                   out of that situation.

3           Q:           You appointed Mr. Downer?

4           A:           Among others, yes, ourselves and NCB at  
5                   the time.

6           Q:           Wasn't DEBTOR1COMPANY making money  
7                   during the time when Mr. Downer in his  
8                   receivership was collecting major fees?

9           A:           I can't answer that question sir, I  
10                   would have to have the benefit of the  
11                   reports so I could see what transpired.

12          Q:           You have been speculating from time to  
13                   time if you were giving guaranteed loans  
14                   from the banks, do you think they were  
15                   making money.

16          A:           Well, that's clear they had a liquidity  
17                   problem.

18          Q:           So that obviously they were not  
19                   producing revenues to take care of their  
20                   obligations?

21          A:           It would not appear so, not on a timely  
22                   basis anyway.

23          Q:           I am going to present you with the  
24                   letter dated the 26th July 2000, which  
25                   is Exhibit DEBTOR1COMPANY.34/11, it is the  
letter

1 dated 26th of July, from Rex James,  
2 President of NIBJ to Patrick Hylton,  
3 Managing Director of FINSAC.

4 **Re: DEBTOR1COMPANY. We refer to recent**  
5 **telephone**  
6 **conversation James/Hylton.**

7 **That's Mr. James and you I am assuming.**

8 **Regarding the acquisition of the captioned**  
9 **company by NIBJ. We now propose the**  
10 **following:**

11 **NIBJ will through a subsidiary, acquire all**  
12 **of the assets of DEBTOR1COMPANY, DEBTOR1-**  
13 **COMPANY2, and DEBTOR1COMPANY3 for \$200M.**

14 **A deposit of \$20M will be made upon the**  
15 **acceptance of this offer \$80M on**  
16 **completion/possession and the balance**  
17 **provided by Promissory Note payable in**  
18 **installments over a period of two (2) years**  
19 **at 12% per annum.**

20 **The offer of \$200M is based on our**  
21 **preliminary assessment given the available**  
22 **information. It is subject to satisfactory**  
23 **completion of our due diligence and to**  
24 **formal contract being**



1                   executed. A period of thirty (30) days is  
2                   required for proper due diligence to be done.  
3                   kindly provide us with any current financial  
4                   information you may have to facilitate the  
5                   process.

6                   This offer remains open for acceptance  
7                   until 28th of August, 2000.

8                   PS.

9                   Signed by Rex James.

10                  President of NIBJ.

11                  For your information we mention that it  
12                  is our intention to offer DEBTOR1  
13                  family the right to purchase 20% of the  
14                  shares of the new company which will be  
15                  used to acquire the above-mentioned  
16                  assets.

17                  This was an offer by the company, do you  
18                  know?

19           A:           Yes. Well, it was to acquire assets of  
20                        the company.

21           Q:           Well, it says to acquire the acquisition  
22                        of captioned company.

23           A:           Yes.

24           Q:           That means to acquire the company?

25           A:           "NIBJ will, through a subsidiary,

1                   **acquire all the assets".**

2                   So what I did which I thought was  
3                   appropriate it seemed from the trail  
4                   here sir, was to send it to Mr. Downer,  
5                   who was receiving offers for  
6                   DEBTOR1COMPANY and its assets and.

7           O:           And you did so?

8           A:           Yes, sir. Well this is what my  
9                   correspondence is saying, I received an  
10                  offer from NIBJ so a part of the offer  
11                  was to treat with.

12          Q:           And this was in July 2000?

13          A:           Yes, sir.

14          Q:           And this was a company which from time  
15                  to time had increased guarantees to the  
16                  bank to have provided additional  
17                  facilities to the receiver?

18          A:           I don't know if their guarantees  
19                  increased from time to time but I know  
20                  that we guaranteed some facilities.

21          Q:           I don't know how this got out of place,  
22                  this letter presented the 22nd of June  
23                  which precedes the one that you got  
24                  there. The letter from Rex James.

25          A:           Yes.

1 Q: To you.

2 A: Yes.

3 Q: **Re: DEBTOR1COMPANY.**

4 **We understand the Receiver is still in**

5 **negotiations with DEF LIMITED. Please**

6 **let us know the up-to-date position, as,**

7 **should the sale not materialize, NIBJ**

8 **would have an interest in putting a new**

9 **proposal for the acquisition of the**

10 **assets of the company.**

11 **Signed by Rex James.**

12 And it's copied to who, Mr. Hylton?

13 A: It is copied to the Right Honourable PJ

14 Patterson, QC, MP, Prime Minister and

15 Dr. the Honourable Omar Davies, Minister

16 of Finance.

17 Q: Just to see who it was circulated to,

18 who was involved.

19 A: Sorry?

20 Q: Just to see who it was circulated to,

21 who was involved.

22 A: Oh, I see.

23 Q: No politician was involved in any way.

24 A: This is not my letter.

25 Q: I know that sir, but I just wanted to

1 remind you of who was involved in  
2 receiving correspondence concerning  
3 this.

4 A: Okay.

5 Q: I want to present you a letter signed by  
6 a by Dianna Davis, Unit Head of NPL of  
7 FINSAC Limited to;

8 **Mr. Richard Downer, the**  
9 **Receiver/Manager,**  
10 **PriceWaterhouseCoopers.**

11 **Re: Receiverships of DEBTOR1COMPANY**  
12 **and DEBTOR1COMPANY2.**

13 **We note that the last written report was**  
14 **received in February 2000 and hereby**  
15 **request that you provide an update of**  
16 **the issues and events that have occurred**  
17 **since.**

18 **Further having agreed that expressions**  
19 **of interest to purchase the companies**  
20 **will not be entertained beyond**  
21 **February 29, 2000, we must now establish**  
22 **a practical timetable for termination.**

23 **In light of the above, kindly submit an**  
24 **exit timetable for consideration.**

25 A: Yes.

1 Q: Now, Dianna Davis sir, what was her  
2 position? Other than the name she  
3 doesn't tell us anything?

4 A: She was the Head of the Non-performing  
5 Loan Unit.

6 Q: So at this time under the Receivership,  
7 DEBTOR1COMPANY' loan was classified as  
8 non-performing loan?

9 A: Yes, it would have been non-performing.

10 Q: I notice on this letter that Dr. Kenneth  
11 Rattray was the Chairman and Shirley  
12 Tyndall was the Vice Chairman?

13 A: Yes.

14 Q: Of the Company you were Managing  
15 Director for?

16 A: Yes.  
17 And that Mr. David Coore...

18 A: Yes.

19 Q: I see they say Honourable David Coore,  
20 O.J, Q.C. was a Director?

21 A: Yes.

22 Q: Did Mr. David Coore **disclosed** to the  
23 Board that at some meeting of FINSAC and  
24 DEBTOR1COMPANY it was being **discussed**  
25 that he was a Director of NIBJ which was

1 the party it obviously was intended to  
2 sell the assets to?

3 A: As I answered in the first instance that  
4 he may very well did in the first  
5 meeting, I just don't remember, sir.

6 Q: I am going to present you now with a  
7 letter dated 17th of November 1999 from  
8 Richard Downer, Receiver and Manager  
9 DEBTOR1COMPANY, (in  
10 Receivership) and DEBTOR1COMPANY2. The  
11 letter is addressed to you in your  
12 capacity as Financial Sector Adjustment  
13 Company Limited.

14 **Re: Receiverships of DEBTOR1COMPANY**  
15 **and DEBTOR1COMPANY2.**

16 And here Mr. Downer is saying:

17 **In response to our invitation to**  
18 **purchase the business and assets of the**  
19 **captioned companies, we received the**  
20 **following responses at the expiry date**  
21 **29th October 1999.**

22 **1. A cash offer of \$275 million from a**  
23 **consortium of local and overseas**  
24 **investors.**

25 **2. An offer from National Investment**

1 Bank of Jamaica ("NIBJ") of  
2 \$XXX MILLION.  
3 So in 1999 -- let me finish the letter.  
4 Both letters indicate that the offers  
5 are for the assets and businesses of the  
6 companies but NIBJ's letters did not  
7 state whether their offer is for cash.  
8 Subsequent discussions with Dr. Cheng's  
9 offer indicate that NIBJ's offer should  
10 have been for the debt and not for the  
11 assets. If NIBJ's offer is to acquire  
12 FINSAC's debt then NIBJ should now  
13 address their offer to FINSAC.  
14 Because of course Mr. Downer couldn't  
15 sell the debt?  
16 A: Couldn't sell the debt, yes.  
17 Q: In my interim report to you dated  
18 November 1999...  
19 Which is a week before the letter.  
20 ...5 briefly examined both offers and  
21 showed the likely result of either  
22 option to FINSAC. The conclusion was  
23 that the revised NIBJ offer (if for  
24 cash) is superior to the consortium's  
25 from the point of view of FINSAC.





1 the superior offer to my mind, would be  
2 the purchaser of the debt because it now  
3 becomes NIBJ's problem to deal with.

4 Q: Why did this not take place?

5 A: I don't know, sir, because a lot of  
6 these things are just reminders to me as  
7 to what transpired in relation to this  
8 particular situation.

9 Q: This particular situation was not one of  
10 the 20,000 small debts, it was one of  
11 the hundreds of large debts that were  
12 there in terms of your classification?

13 A: No, there were hundreds of other assets,  
14 probably more than five hundred if my  
15 memory serves me well.

16 Q: What do you classify as a large debt?

17 A: Principal balance would be at least 15  
18 million and then interest would be  
19 whatever.

20 Q: And here you are talking about an offer  
21 of 20 million debt?

22 A: Yes.

23 Q: This is not something that would have  
24 received your attention as Managing  
25 Director of FINSAC?



1 1998 Ltd.  
2 Receiver and Manager, DEBTOR1COMPANY2. (in  
3 Receivership)  
4 P.O. Box 680.  
5 Spanish Town.  
6 Dear Mr. Downer:  
7 Re: DEBTOR1COMPANY (in  
8 Receivership) & DEBTOR1COMPANY2 in  
9 Receivership)  
10 Reference is made to our letter to you  
11 dated January 13, 1999 requesting that  
12 you extend your decision, to dispose of  
13 these assets, to February 1999.  
14 We have been advised that the  
15 prospective purchasers of our loan are  
16 not able to complete the purchase and as  
17 such, we ask that you continue your  
18 disposal strategy.  
19 A: Yes.  
20 Q: Was it in your letter of January 13,  
21 1999 you asked them to extend your  
22 decision to dispose of these assets?  
23 A: Yes.  
24 What do you understand that to mean,  
*"Extend your decision?"*







1           A:                                 Yes.

2           Q:                                 And as such are requesting to extend the

3   facility?

4           A:                                 Yes.

5           Q:                                 So you were in negotiations?

6           A:                                 No. Basically the receiver is acting and you

7   will observe that every time we got an offer

8   it was sent to the receiver. Even the

9   receiver had to say to me: "**An offer of a debt**

10    **is not properly for my consideration, it is**

11    **really for you**". But here you are asking for

12          Q:                                 an extension of facilities and agreeing to

13   pay interest, et cetera, for the bank to

14   extend these facilities because you were in

15   negotiations for the disposal of the

16   facilities.

17   Because the receiver would have asked for

18          A:                                 the facilities.

19   The receiver?

20          Q:                                 Yes.

21          A:                                 As whose agent?

22          Q:                                 The agent of the company.

23          A:                                 If he was the agent of the company why did

24          Q:                                 you give him a second indemnity?

25





1 Q: If that were not the case Mr. Hylton,  
2 why would you have given him a second  
3 indemnity when the first indemnity in  
4 1995, his actions when he was  
5 receiver...

6 A: And I am saying I don't know if they  
7 gave him a second indemnity, I am saying  
8 they may very well have, I don't know.

9 Q: I am going to provide you with a letter  
10 which is Exhibit TP 27/11, the letter  
11 addressed to you as:

12 **Managing Director of FINSAC.**

13 **From Mr. Richard Downer.**

14 **Receiver and Manager.**

15 **DEBTOR1COMPANY.**

16 **Dated the 10th June 1999.**

17 **Re: DEBTOR1COMPANY and DEBTOR1COMPANY2**

18

19 **Dear Mr. Hylton.**

20 **On 3 March 1999 I was instructed to**  
21 **pursue the sale of the business and**  
22 **assets of the captioned companies to**  
23 **certain prospective purchasers. This was**  
24 **done to allow FINSAC to review an offer**  
25 **from National Investment Bank of Jamaica**

1 Limited("NIBJ") to purchase the former  
2 NCB indebtedness in the companies. Since  
3 that date I have not been advised on the  
4 progress of the negotiations with NIBJ  
5 or instructed as to whether I should  
6 recommenced negotiations with Messrs.  
7 Bergemeier and Murray, the prospective  
8 purchasers of DEBTOR1COMPANY and DEBTOR1-  
9 COMPANY2.

10 Please instruct me on whether I should  
11 now resume negotiations with the  
12 prospective purchasers of the companies.  
13 If I do not receive a written response  
14 on this matter within 14 days I will  
15 assume that I may proceed with the  
16 negotiations.

17 In the **first** sentence he said, "**I was**  
18 **instructed to suspend the sale of the**  
19 **businesses and assets of the captioned**  
20 **companies to certain prospective**  
21 **purchasers to allow FINSAC to review an**  
22 **offer".**

23 **A:** Yes.

24 **Q:** Did FINSAC give him those instructions?

25 **A:** FINSAC may have said to him he should do

1                   that because we thought it was a better  
2                   offer. If he in his own wisdom thought  
3                   he should proceed he should proceed.

4           Q:           You are never responsible for anything,  
5                   Mr. Hylton?

6           A:           No, I am just telling you....

7           Q:           You are totally irresponsible?

8           A:           No sir, I am telling you that I am  
9                   responsible for trying to get the best  
10                  returns for FINSAC in the circumstances  
11                  and that's what I was pursuing.

12          Q:           I thought you had more responsibilities.

13          A:           You are mistaken.

14          Q:           I thought you had to...

15          A:           I will tell you.  
16                   I am not going to take you on now,  
17                   later.

18          A:           But I will take you on anytime.

19   MR. GARCIA:       I am becoming a little bit concerned as  
20                   we approach here because Mr. Hylton was  
21                   of course, scheduled to be before this  
22                   Commission for two days and at the rate  
23                   at which we are going, I am not sure  
24                   where my friend has reached. But I am  
25                   concerned about whether or not it is



1 accommodated down here. So we will be  
2 going longer than 3:00. As a matter of  
3 fact 3:00 o'clock could be the time when  
4 we will take a ten-minute break from  
5 under the heat that we are suffering  
6 from here now.

7 In connection with the completion, if we  
8 do not complete we might have to look to  
9 continue another day. The Commissioners  
10 and the Secretariat will have to look to  
11 see, along with the attorneys and  
12 Mr. Hylton to see what date or time in  
13 the future that continuation may be  
14 obtained. So at this time that is  
15 basically the situation, Mr. Garcia.

16 MR. GARCIA: Thank you, sir.

17 COMM BOGLE: And so at this time we will have a ten-  
18 minute break.

19  
20

B R E A K

21 Okay. Mr. Hylton, just the usual  
22 reminder that you are still under oath.

23 MS. CLARKE: I crave your indulgence. Good afternoon.  
24 I came in the afternoon session, I was a  
25 little late. I would just like to

1 introduce myself for the purposes of  
2 these proceedings today.

3 My name is Judith Clarke, appearing on  
4 behalf of the Commission.

5 MR. LEVY: I have another letter that I do not have  
6 copies of, sir. I'll put it in, read it  
7 and I will present it to Mr. Hylton for  
8 his comments.

9 COMM. BOGLE: Did you hear what you said?

10 MR. HYLTON: No, sir.

11 COMM. BOGLE: Can you repeat what you said.

12 MR. LEVY: I have a copy of a letter written by  
13 Mr. Hylton which he won't remember but  
14 it has a signature on it. I don't have  
15 copies of it but I'll read it and I will  
16 put it in and I am going to ask that it  
17 be accepted.

18 This is a copy of a letter purportedly  
19 written by Patrick Hylton, Manager  
20 Director of FINSAC limited and copied to  
21 the Honourable Omar Davies, Minister of  
22 Finance and Planning. Copied to  
23 Mr. Gavin Chen, President of NIBJ and  
24 Mr. Nathan Richards, President of NDB,  
25 which I assume is actually is National

1 Development Bank, October 5, 1998.  
2 Doctor the Honourable Omar Davies, today  
3 Minister of Finance and Planning  
4 Ministry of Finance and Planning in it  
5 30 National Heroes Circle.  
6 Kingston 4.  
7 Dear Dr. Davies,  
8 As I have advised Mr. Chen, I am not in  
9 agreement with his suggestion to remove  
10 the Receiver as this could facilitate a  
11 de-munition of the assets of the  
12 company.  
13 If the expenses of the Receiver are too  
14 high, we can either (a) change his Terms  
15 of Reference; or (b) replace him as a  
16 Receiver with a cheaper Receiver.  
17 We however at this point - which is  
18 October 5, 1998 - require the presence  
19 of a Receiver and the legal protection  
20 given to such an office until we are  
21 able to determine the viability of the  
22 company.  
23 You remember that letter Mr. Hylton?  
24 A: Not particularly but I'll accept it as  
25 mine.

1 Q: Does that look like your signature at  
2 the bottom?

3 A: Yes.

4 Q: Was there any talk, discussion, report,  
5 any conversation about the cost which  
6 this Receiver was inflicting on your  
7 security?

8 A: There would have been it would appear  
9 from this letter, yes.

10 Q: Did you consider appointing a new,  
11 cheaper Receiver?

12 A: As I say, I don't remember if that came  
13 up for consideration. This seems to be  
14 responding to a suggestion that the  
15 Receiver should be removed and I was  
16 saying I didn't concur with it.

17 Q: So you were quite happy with the  
18 Receiver at that stage?

19 A; I am not going to say I am happy with  
20 the Receiver but one of the things I  
21 find with receivers generally is that  
22 sometimes, like you say the receiver is  
23 the agent of the company and you are the  
24 debenture holder having appointed them,  
25 sometime you might not necessarily be



1 always aligned in terms of where you  
2 want to go. So I won't say I am happy  
3 with the receiver but what I would say  
4 is that I obviously wanted to have a  
5 receivership in place because we thought  
6 it was important in the circumstances.

7 Q: Did you ever become unhappy with this  
8 receiver, Richard Downer?

9 A: Personally I am speaking I can't recall  
10 being unhappy with Richard as a  
11 receiver. There may have been things  
12 that we may not necessarily have agreed  
13 on or seen eye to eye on. I don't know  
14 if I would say I was unhappy with  
15 Richard. I don't remember a particular  
16 context in which I would say I was  
17 unhappy with Richard's performance as a  
18 receiver.

19 Q: I should hardly think that you would be  
20 since he carried out your instructions  
21 on again, off again sale of a business  
22 he was carrying out your instructions  
23 like a duly appointed agent.

24 A: Your view, sir.

25 Q: The document supports that, Mr. Hylton.



1 observed.

2 MR. LEVY: With good reason.

3 COMM. BOGLE: You may proceed, Mr. Levy.

4 MR. LEVY: After the convention is satisfied and my  
5 good friend has had a look at something  
6 that is already in evidence.

7 MR. GARCIA: Thank you finally, Mr. Levy.

8 MR. LEVY: Mr. Hylton, this is a copy of the  
9 transfer under the Registration of  
10 Titles Act #1202250 dated some time in  
11 2002, between Refin Trust Limited on the  
12 one part; TPL Limited of the other part.  
13 Is that a copy of what you have?

14 A: No, I don't see TPL.

15 Q: Can I borrow it back? I thought they  
16 were copies of the same but they are two  
17 separate copies. Yes I only have one  
18 copy so I'll have to deal with it and  
19 pass it up to you. It is already in  
20 evidence.

21 COMM. BOGLE: In evidence as?

22 MR. LEVY: I don't have the reference.

23 COMM. BOGLE: But it is in evidence already?

24 MR. LEVY: I assure you that is the case.  
25 Instead of going through the whole

1 document, Mr. Hylton, this is an  
2 instrument of transfer under the  
3 Registration of Titles Act from Refin Trust  
4 Limited, TPL Limited, a company duly  
5 incorporated under the Laws of Jamaica with  
6 registered offices at Ground Floor, 11  
7 Oxford Road, Kingston 5 in the parish of St.  
8 Andrew which states that the transferor,  
9 which is Refin Trust Limited, is the  
10 registered proprietor of a mortgage #994521,  
11 registered on the 28th of November 1997 from  
12 DEBTOR1COMPANY, the land described in Item  
13 4 of the Schedule hereto: Free from all  
14 encumbrances other than restrictive  
15 covenants and easements if any, endorsed on  
16 the Title, has agreed to sell the land to the  
17 transferee for the price set forth in Item  
18 3 of the Schedule. In consideration of the  
19 payment by the transferee to the transferor  
20 the sale price, the receipt of which sum the  
21 transferor hereby acknowledges, the  
22 transferor hereby transfers all the  
23  
24  
25

1 estate and interest which the transferor  
2 is able to transfer in the said land to the  
3 transferee in fee simple.

4 The transferor is shown on this schedule as  
5 Refin Trust Limited. The transferee is shown  
6 as TPL Limited a company duly incorporated  
7 under the laws of Jamaica with offices at  
8 Ground Floor, 11 Oxford Road, Kingston 5; the  
9 sale price is \$X MILLION allocated by size  
10 of land. The said land, land at St.

11 Catherine, registered at Volume / Folio  
12 (PROPERTY1) in the Register Book of Titles  
13 and the transfer is dated the 17th of July,  
14 2002.

15 The transfer purports to be signed under the  
16 seal of Refin Trust Limited. Signed by  
17 Patrick Hylton, Director, and Judith  
18 Thompson, Secretary. And the common seal of  
19 TPL was affixed by Portia Nicholson Clarke,  
20 a Director and Rex James, Director's  
21 Secretary in the presence of an  
22 Attorney-at-Law.

23 Please show this to Mr. Hylton.

24 (Document shown to witness)  
25

1                   That's your signature Mr. Hylton?

2           A:           Yes, this is my signature.

3           Q:           Tell us about this document you have

4                   there?

5           A:           I can only tell you that it is a

6                   transfer under the Registration of

7                   Titles Act as you mentioned between

8                   Refin Trust and TPL and it describes the

9                   transferor as the registered proprietor

10                  for mortgage #994521, registered on the

11                  28th day of November, 1997 from

12                  DEBTOR1COMPANY.

13                  In the land described at Item 4 of this

14                  schedule hereto: free of all

15                  encumbrances other than restrictive

16                  covenants and easements endorsed on the

17                  Certificate of Title thereof and has

18                  agreed to sell the land to the

19                  transferee for the price set out in

20                  Schedule 3.

21           Q:           Which is?

22           A:           Which is \$X MILLION.

23           Q:           You know which property this is for, Mr.

24                   Hylton?

25           A:           Some property in St. Catherine, sir,

1 as is described here (PROPERTY1).

2 Q: I take it since Refin Trust was signing  
3 as transferor under the powers of sale  
4 of the mortgage that Refin Trust would  
5 have had a valuation, relatively recent  
6 valuation of this property before making  
7 such a sale?

8 A: Would have had some indication of the  
9 value of the assets, yes, including the  
10 lands, yes, I would expect that.

11 Q: You would expect that they would have  
12 had a valuation of that property?

13 A: Well of all the assets including this  
14 property.

15 Q: I am going to show you a similar  
16 transfer, Mr. Hylton. I'll take that  
17 back so I can compare them. They are  
18 similar in words. This is a transfer  
19 dated the 17th of July, 2002 between  
20 Refin Trust Limited and I think it's  
21 ABC LIMITED. Can you help us there?

22 A: Yes, this was ABC LIMITED.

23 COMM. BOGLE: And you have said this other document is  
24 in evidence?

25 MR. LEVY: Yes, sir, this is also one of the

1 exhibits in the evidence of DEBTOR1.

2 COMM. BOGLE: We haven't got that number.

3 MR. LEVY: I don't have the number on this, sir,

4 nor that, I apologize. I might not have

5 got to this today but for the spill.

6 Yes, Mr. Hylton the who is the

7 transferee in that one?

8 A: The transferee is ABC LIMITED.

9

10 Q: Did we just see the name in a letter

11 from Minister of Finance?

12 A: Yes.

13 Q: And what is the description of that

14 property? Second page.

15 A: All those parcels of land part of

16 St. Catherine

17 namely lots one, two and three

18 on plan of St. Catherine. Of course

19 they are registered at Volume/Folio

20 (PROPERTY2) in the Register Book of Titles.

21 Q: And what is the sale price?

22 A: \$XX MILLION.

23 Q: And the volume and Folio again,

24 Mr. Hylton?

25 A: Volume/Folio. You wanted this back?



1

2

Q: I am going to ask you to make some comparisons.

3

4

I assure you, Mr. Chairman, these documents are already exhibited by DEBTOR1.

5

6

7

The next document I am going to let you have Mr. Hylton, this is as transfer tax certificate issued by the Taxpayer Audit and Assessment Department, the receipt for transfer tax on a property, lots one two and three, part of

8

9

10

11

12

13

St. Catherine, Volume/Folio (PROPERTY2) which is the same Volume and Folio of the document that you just saw.

14

15

16

A copy is attached to it, sir, I am presenting it to you.

17

18

A: Okay.

19

Q: And it shows consideration, \$XXX

20

million. Mr. Hylton, will you compare that on the first page. The Volume and

21

22

Folio is shown by the Stamp Collector as Volume/Folio.

23

24

A: On the first page?

25

Yes.

1           A:           I am not seeing that sir, not on the  
2                        first page anyway.

3           Q:           I'll highlight it for you.

4           A:           Okay.

5           Q:           The highlight is just below.

6           A:           Okay.

7                        Volume/Folio?

8           A:           Or Folio?

9           Q:           It is Folio.

10          A:           It is not clear.

11          Q:           And if you look over the page there is a  
12                        transfer. The second page of the  
13                        transfer under paragraph four of the  
14                        said land, what is the number of the  
15                        Volume and Folio on the second to last  
16                        line? Volume, Folio?

17          A:           Yes.

18          Q:           And the sale price shown there, sir?

19          A:           \$XX MILLION.

20          Q:           And on the Transfer Tax Certificate what  
21                        is shown?

22          A:           The consideration of \$XXX million on  
23                        transfer.

24          Q:           Something seems to be wrong.

25          A:           On the face of it.

1 Q: Consideration on the transfer is shown  
2 as XX million.

3 A: Yes.

4 Q: But the Stamp Commissioner's stamped  
5 receipt shows that stamp duty was paid  
6 on XXX?

7 A: Yes.

8 Q: Was that a mistake?

9 A: Possibly sir, I don't know. This is a  
10 document from, it appears, the Stamp  
11 Commissioner to NIBJ. I am not sure. I  
12 don't know what would account for this.

13 Q: You are not familiar with that form of  
14 document?

15 A: No.

16 Q: Never seen a receipt from the Stamp  
17 Commissioner for Transfer Tax and Stamp  
18 Duty?

19 A: I may have on one or two occasions. It  
20 is not something which I would have  
21 frequently come across.

22 Q: Maybe I can assist you but I know I am going  
23 to be stopped by your lawyer then I am going  
24 to ask him to give you the assistance.

1 I'll proceed, Mr. Chairman. The Stamp  
2 Commissioner assessed the value of that  
3 property which Refin Trust transferred  
4 for \$XX million at \$XXX million. Could  
5 there be a mistake?

6 A: I don't know, sir. you are making the  
7 assertion. I don't know.

8 Q: The assertion I am making, I am going to  
9 ask you, was the consideration shown on  
10 the transfer a gross undervalue if the  
11 Stamp Commissioner valued the property  
12 for \$XXX million?

13 A: If that is the case then the Stamp  
14 Commissioner would have had to have a  
15 basis for doing that. I don't if that is  
16 the case. That's the first thing.  
17 And secondly, as I made the point  
18 earlier on and today, there are  
19 circumstances where you might have a  
20 particular valuation but you don't  
21 realize that in terms of the process of  
22 sale.

23 Q: You don't what?

24 A: You don't get that; nobody is willing to  
25 pay that for it. I don't know what is

1 the set of circumstances there, I could  
2 only speculate, which I don't want to.

3 Q: A valuation, a market valuation which is  
4 what the Stamp Commissioner would have  
5 to use is what in the opinion of the  
6 valuer, a reasonable buyer will pay a  
7 reasonable seller on reasonable terms at  
8 the time of sale. So the stamp  
9 Commissioner as I assure you, made a  
10 valuation of that property for \$XXX  
11 million which subsidiary of FINSAC,  
12 Refin Trust Limited was transferring to  
13 an associated company for \$XX million.

14 A: To an associated company?

15 Q: NIBJ?

16 A: Yes.

17 Q: It is not an associated company?

18 A: I would not describe it as that and as I  
19 said before, you are making the  
20 assertion about relative values. I have  
21 no knowledge or context to support that  
22 assertion.

23 Q: Maybe I am using the wrong terminology  
24 and you don't understand it. How would  
25 you consider or classify the

1 relationship between two companies, both  
2 of which are wholly owned by the  
3 Government of Jamaica? Would they be  
4 connected, associated, affiliated?  
5 What's the word you would use?

6 A: I would call it two companies owned by  
7 the Government of Jamaica.

8 Q: You took dancing classes in your youth  
9 sir, because you are dancing. You know  
10 how to do the Reggae or the waltz?  
11 That's the question.

12 A: As long as you recognize the difference.

13 Q: You don't know the difference between a  
14 waltz and a Reggae?

15 A: I am talking about you.

16 Q: I know how to and I am very good at both  
17 of them, good on my feet; lots of things  
18 I can do.

19 A: You still need to learn a few tricks  
20 then.  
21 You wanted back this copy?

22 Q: Yes, please. Those are similar  
23 Mr. Hylton, except the substance is  
24 different.  
25 The second document, the back of that

1 one is one you saw before?

2 A: Yes.

3 Q: The transfer from Refin Trust to TPL  
4 Limited?

5 A: Yes.

6 Q: You are familiar with the name TPL  
7 Limited?

8 A: Not particularly. I heard you mention  
9 it today.

10 Q: You have heard it mentioned in another  
11 context where Mr. James - anyway.

12 A: Perhaps, sir.

13 Q: Let me tell you. TPL is a subsidiary of  
14 the National Investment Bank of Jamaica.

15 A: Okay.

16 Q: And that one the sale price on the  
17 transfer is shown as?

18 A: I don't have the transfer here.

19 Q: You have it. That's it.

20 A: No, these are letters.

21 Q: Can I see what you have?

22 A: Sure.

23 Q: That's a transfer from National  
24 Investment Bank of Jamaica Limited?

25 A: Yes.

1 Q: I am sorry, Refin Trust Limited?

2 A: Yes.

3 Q: To whom?

4 A: TPL Limited.

5 Signed by whom on behalf of TPL?

6 A: Portia Nicholson Clarke and Rex James.

7 Q: And on behalf of TPL Limited?

8 A: That's TPL.

9 Q: Okay. And on behalf of Refin Trust?

10 A: Myself and Juliette Thompson.

11 Q: So that purports to be a transfer of

12 land described as a certain Volume and

13 Folio to TPL Limited?

14 A: Yes.

15 Q: From FINSAC Limited - from Refin Trust

16 Limited signed by you to TPL Limited

17 whose signing officers included Rex

18 James?

19 A: Yes.

20 Q: What was Rex James' substantive title?

21 A: At the time?

22 Q: At the time. Not at the time. What was

23 his substantive title?

24 A: He was President of NIBJ.

25 Q: So that is a connection?



1           A:           Yes. You said it already and I said I  
2                        accepted that. You said that TPL was a  
3                        subsidiary.

4           Q:           Now let's look at the Stamp  
5                        Commissioner's receipt on the front  
6                        page?

7           A:           I don't have the Stamp Commissioner's  
8                        receipt, sir.

9           Q:           That receipt sir, what volume and folio  
10                      does it relate to?

11          A:           Volume/Folio (PROPERTY1).

12          Q:           And the transfer relates to?

13          A:           The transfer, DEBTOR1COMPANY  
14                      to NIBJ, National Investment  
15                      Bank of Jamaica.

16          Q:           The transfer document.

17          A:           Oh the transfer document. I thought you  
18                      were talking on this Tax Certificate.  
19                      Refin Trust to TPL.

20          Q:           Volume what?

21          A:           Volume/Folio (PROPERTY1).

22          Q:           Is that the same as on the receipt?

23          A:           Yes.

24          Q:           Sale price in the transfer was how much?

25          A:           \$X MILLION.

1 Q: And what's shown on the Stamp  
2 Commissioner's receipt?

3 A: Consideration of XX million.

4 Q: Was there a mistake there too?

5 A: Quite possibly, I don't know sir.

6 Q: But you don't know whose mistake it was?

7 A: No, I don't know.

8 Q: I put it to you it is a mistake made by  
9 Refin Trust transferring a property  
10 which the Stamp Commissioner valued at  
11 \$XX million for \$X million; a gross  
12 undervalue.

13 A: And I don't accept that assertion, sir,  
14 without more.

15 Q: Would Refin Trust have had a valuation  
16 of that property, a recent valuation  
17 within the last twelve months at the  
18 time of that transfer?

19 A: Quite likely, I can't say for sure.

20 Q: And if Mr. Campbell cannot produce it,  
21 what would you say.

22 A: It seems there are a lot of things  
23 Mr. Campbell has not been able to  
24 produce and for good reason.

25 Q: Thank you Mr. Astore, Fred.



1 plus one percent (1%).

2 A: That is what it says.

3 Q: You recall receiving this letter?

4 A: Not particularly, sir, but I'll take it  
5 that it was sent and that I received it.

6 Q: You notice it also appears to have been  
7 faxed to you?

8 A: Yes.

9 Q: Was this offer accepted?

10 A: I don't think so because I think from  
11 what you were showing me, the land and  
12 so on, the assets were sold and not the  
13 debt.

14 Q: But you have said that selling the debts  
15 would have been a better deal than  
16 selling the assets?

17 A: Absolutely, in my view.

18 Q: So the Receiver wasn't carrying out your  
19 instructions?

20 A: Well, I don't know why the debt wasn't  
21 sold.

22 Q: This is an offer to you to purchase the  
23 debt.

24 A: Yes. And I think the Treasury Bill plus  
25 one would have come, I remember - there

1 is a figure that you see appearing from  
2 time to time because essentially we are  
3 saying to people that if we finance you  
4 at a different rate and FINSAC's notes  
5 are accruing rates at Treasury Bill plus  
6 one, then our net present value  
7 circumstance is going to diminish and  
8 basically we want to maintain that  
9 current circumstance.

10 Q: So the offer was not accepted?

11 A: It may have been accepted and maybe  
12 there wasn't performance; it may not  
13 have been accepted, I don't know.

14 Q: NIBJ didn't perform on a contract?

15 A: Why I say didn't perform, they may have  
16 changed their approach.

17 Q: Pardon me.

18 A: They may have decided to do something  
19 else, I don't know. This is a  
20 negotiation with Mr. Chen and I notice  
21 that, I think later - Mr. Chen was  
22 before Mr. James?

23 Q: Yes, and he was the President of NIBJ?

24 A: Yes, and Mr. James was the subsequent  
25 President, I think.

1 Q: Yes.

2 A: So in other words, clearly something  
3 went wrong with this in the sense that  
4 there were subsequent - at a later date  
5 there was correspondence with Mr. James.

6 Q: Okay, Mr. Hylton, let's look at an  
7 overview.  
8 On April 8 - the company was put into  
9 receivership on the 9th of March, 1998  
10 ate?

11 A: Right.

12 Q: Just over a year later you had an offer  
13 to receive a total of \$XXX MILLION for  
14 the debt?

15 A: Yes.

16 Q: It was sold in 2002 for a gross sale  
17 price after Mr. Richard Downer had  
18 extracted or excised from the company  
19 \$XXX MILLION in receivership fees it was  
20 sold for \$205 million. You got from the  
21 correspondence you read earlier  
22 somewhere in the vicinity of \$50  
23 million. By that time it had gone to  
24 JRF?

25 A: Correct.

1 Q: Wouldn't you have been better off  
2 selling the debt?

3 A: At this price? At this offer?

4 Q: In April, 1999.

5 A: I said yes.

6 Q: The receiver didn't do a very good job  
7 did he?

8 A: Like I said, I don't know why the debt  
9 wasn't sold.

10 Q: Well you would be the one who made the  
11 decision whether to sell or not to sell.  
12 You were the Managing Director of  
13 FINSAC.

14 A: Yes, but I don't have the context. I am  
15 saying I can't remember twelve years ago  
16 in relation to one specific debt, why it  
17 wasn't sold.

18 Q: Mr. Hylton, look at the second paragraph  
19 in this letter again and read it to the  
20 Commission.

21 A: I have seen it. It says:  
22 **NIBJ's new offer to reflect your concern**  
23 **is for a total of \$XXX MILLION for 7**  
24 **years at the current Treasury Bill rate**  
25 **plus one percent (1%).**

- 1 But I don't see a response to this.
- 2 Q: Obviously, since it wasn't bought, you
- 3 didn't accept the offer?
- 4 A: No, we didn't have to accept the offer.
- 5 Q: This is a very open offer, not even
- 6 condition attached if you buy the debt
- 7 for \$220M. If a letter was sent with
- 8 this would it be a binding contract on
- 9 NIBJ?
- 10 A: You said so sir, I don't know and I
- 11 don't know what transpired subsequent to
- 12 this, that is what I am saying. I am
- 13 just being honest.
- 14 Q: And forgettable. What I have shown you
- 15 Mr. Hylton, was Exhibit DEBTOR1COMPANY.
- 16 24/11 and it's a memo purporting to be from
- 17 Patrick Hylton to Honourable Shirley
- 18 Tyndall, Financial Secretary.
- 19 A: Yes.
- 20 Q: So you reported to the Financial
- 21 Secretary?
- 22 A: Yes. And I said so.
- 23 Q: Just wanted to reaffirm.
- 24 A: Sure.
- 25 Q: 13 it signed by you?
-



1 A: Yes, it is my signature.

2 Q: It is your signature.

3 **The captioned companies were placed in**

4 **receivership on March 9, 1998. As at**

5 **March 19, 1999 the outstanding**

6 **liabilities stood as follows:**

7 **Principal: \$XXX MILLION.**

8 **Interest: \$XX MILLION totaling \$XXX,**

9 **MILLION.**

10 Now, that is DEBTOR1COMPANY. Again,

11 DEBTOR1COMPANY2: \$XX MILLION, a total

12 of \$XXX MILLION and a Grand Total

13 indebtedness of \$XXX MILLION. Just

14 pause here, Mr. Hylton and refresh your

15 memory. A year before this in April 1999

16 -. no, no, in April 1999, it was the same

17 year, you had an offer to sell this \$350

18 million for \$XXX MILLION?

19 A: Yes.

20 Q: Obviously that still did not take place,

21 a further offer to National Investment

22 Bank of Jamaica with financial capabilities

23 in carrying out this offer. Was that a right

24 decision based on what you got over two years

--

1 later after all the FINSAC Paper had run up  
2 to 30% interest. Was that a mistake in not  
3 accepting the XXX MILLION from...

4 A: I am going to repeat the same answer  
5 sir, I can't say that without  
6 understanding whether or not the offer  
7 was or was not accepted and why or why  
8 not; just as simple as that.

9 Q: If it had been accepted...

10 A: And it had been profound.

11 Q: ....would it have been a good decision?

12 A: If it had been accepted and if it had  
13 been profound FINSAC would have ended up  
14 with more from the sale, yes.

15 Q: Yes, I put it to you sir, bearing in  
16 mind who was making the offer.

17 A: Yes.

18 Q: The President of the National Investment  
19 Bank of Jamaica making an unconditional  
20 offer, a letter from you accepting that  
21 offer you would have made a binding  
22 contract on a government owned financial  
23 institution, National Investment Bank of

24

Jamaica Limited and as you said, you

25

would have done better off,

1 substantially better off than getting  
2 \$55 million at the end of the day.

3 A: Yes.

4 Q: Do you think that that was a mistake?

5 A: No, I am going to repeat the same thing,  
6 Mr. Levy. I am saying I need to  
7 understand what happened between this  
8 offer and its non-performance to make a  
9 conclusion. I can't make a conclusion  
10 based solely on this and the assertion  
11 that you are making.

12 Q: The Commission will make its own  
13 conclusion so we will move on. And those  
14 who are hearing can make the same  
15 conclusions too.

16 A: Just as we can both make ours.

17 Q: Continue on over page:

18 **Interest continues to accrue daily on**  
19 **the outstanding liabilities of**

20 **DEBTOR1COMPANY and DEBTOR1COMPANY2 as**

21 **follows: DEBTOR1COMPANY daily:**

22 **JA\$63,861.25 and US\$908.23.**

23 And bear in mind this is your memorandum

24 to your Boss, Shirley Tyndall. One of  
25 your Bosses.

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The Receiver has made a very concerted and sustained attempt to sell both companies as a going concern without any success. To date, the best offer he has received is JA\$XXX million from a company named ABC LIMITED, which is a competitor.

The Receiver had initially given ABC LIMITED until the end of January 1999 to produce a letter of undertaking from a bank indicating their ability to fund the purchase. This they were unable to do within that time frame even though they were negotiating with Bank of Nova Scotia.

Subsequent to that we received an offer from NIBJ to purchase the debt of both companies for \$XXX MILLION. NIBJ has offered to pay this amount over seven years at an interest rate of 5%.

We indicated to them verbally that 5% would not be acceptable as we have funded a purchase with notes attracting T Bill rate plus one percent.

Let me read that again.

1 A: Yes.

2 Q: **We had indicated to them...**

3 I take that to mean NIBJ?

9 A: Yes.

5 Q: **...verbally that the rate of 5% would**  
6 **not be acceptable as we have funded the**  
7 **purchase with notes attracting T Bill**  
8 **rate plus one percent. They have**  
9 **offered to increase the rate on the \$220**  
10 **million to match the T Bill plus one?**

11 A: Yes.

12 Q: So what you are saying in this paragraph  
13 is that you had funded the purchase of  
14 DEBTOR1COMPANY's debt at a rate of  
15 T Bill rate plus one percent?

16 A: That's correct.

17 Q: And NIBJ offered to purchase it for \$220  
18 million to match the T Bill rate plus  
19 one?

20 A: Yes.

21 Q: So you are getting \$XXX MILLION which  
22 should have paid off whatever you paid  
23 for the debt in April 1999. Now, does





1 Q: The undersigned has recently spoken with  
2 the Receiver who stated that ABC LIMITED  
3 claims to have an arrangement with Citibank  
4 to finance the purchase. ABC LIMITED has  
5 however not provided a letter of  
6 undertaking, which they state is due to the  
7 fact that they would be required to pay a  
8 fairly substantial commitment fee to get  
9 it from the bank.  
10 This they are reluctant to pay and  
11 having regard to the fact that they are  
12 aware of negotiations to between FINSAC  
13 an inform and NIBJ.  
14 But the ABC LIMITED offer was to buy the  
15 assets?  
16 A: Yes.  
17 Q: And it was less than \$XXX MILLION?  
18 A: Yes.  
19 Q: Was that a mistake not to accept the  
20 offer?  
21 A: You keep making the point...  
22 Q: I am asking you that question in the  
23 context of what we just read. Was that a

24

good decision not to accept the offer in

25

1999?



24                                   him setting out the essential facts of  
25                                   an offer.

1 MR. GARCIA: And in the entire file there are  
2 documents that you chose to put into  
3 evidence through your witness. At the  
4 time they are not an entire file. In  
5 respect if I may add, of a matter which  
6 is before the Supreme Court where it is  
7 to be fully ventilated.

8 MR. LEVY: Irrelevant.

9 CHAIRMAN: Mr. Garcia, I am going to allow the  
10 questioning.

11 Continue, Mr. Levy.

12 MR. LEVY: Mr. Hylton, a slightly different way,  
13 your documents signed by you, prepared  
14 by you...

15 A: Yes.

16 Q: In the second one which is before us, in  
17 the first one, there is an offer to buy  
18 the debt of DEBTOR1COMPANY to Refin for  
19 \$XXX MILLION for seven years at Treasury  
20 Bill rate plus one percent.

21 In the second memo to Shirley Tyndall,  
22 your former Boss, from you, signed by  
23 you, you outlined the debt with interest

24 of \$XXX million for a total indebtedness  
25 of \$XXX million. You then go on to say

1 that interest was accruing at JA\$XX,000  
2 per day and US\$000 per day. You said  
3 that ABC LIMITED that you had paid for the  
4 debt using T Bill plus one percent?

5 A: Yes.

6 Q: Is that correct?

7 A: That's what I said? Yes.

8 Q: So we assume that since you said it then  
9 it was right before you and you were  
10 aware of it?

11 A: Yes.

12 Q: You accept that as a fact?

13 A: I accept all that is written here. I  
14 signed it.

15 Q: Do you now in retrospect looking at  
16 facts, the evidence, not just facts  
17 which you created, accept that it was a  
18 mistake not to accept the offer of NIBJ?

19 A: But you keep saying the same thing Mr.  
20 Levy, and I am telling you that I don't  
21 know that offer had -- first of all, I  
22 don't know that it was not accepted. And  
23 in any event -- and let me help you a

24

little bit. In any event, the decision

25

to accept that offer is not one I could



1 make unilaterally, it would have to be  
2 made by the FINSAC Board. So clearly  
3 there would have to be an approval  
4 process. And having said that I am  
5 saying to you that I don't have the  
6 present context about what transpired  
7 between when this letter was received  
8 and the lack of performance of this  
9 arrangement to say what caused it.

10 Q: Let's put it back in context  
11 Mr. Chairman.

12 Mr. Hylton, the memo is of March 1999,  
13 the letter from Gavin Chen is repeating  
14 an offer where obviously at this time,  
15 two days after you obviously got a  
16 verbal offer.

17 A: It was verbal, yes.

18 Q: On the 30th when you wrote Miss Tyndall,  
19 was she on the Board of FINSAC at that  
20 time?

21 A: Yes, she was on the Board.

22 Q: And you were reporting to her?

23 A: Yes. She was the Financial Secretary.



1                   You go on to explain about ABC LIMITED,  
2                   irrelevant.

3           A:           Yes, but giving a total picture.

4           Q:           Well this picture that you created are  
5                   the facts that existed in relation to  
6                   the offer and debt situation that  
7                   existed at that time?

8           A:           Yes.

9           Q:           Since you don't make any mistake do you  
10                   think the Board made a mistake in not  
11                   accepting this offer?

12          A:           I don't know if the Board didn't accept  
13                   the offer that's the point I am making  
14                   to you, Mr. Levy. I mean, haven't seen  
15                   where this matter was considered by the  
16                   Board -- I don't have in front of me  
17                   what the Board deliberated on and what  
18                   conclusion it came to and why. So I  
19                   can't make that assertion, I am not in a  
20                   position to do it.

21   COMM BOGLE:       Mr. Levy, I think that particular  
22                   question you have asked a number of  
23                   times and I think we have been getting

24 the same answer and on that basis and so  
25 that we can regroup another day we will

1 have the adjournment at this time.

2 MR. LEVY: I trust that Mr. Hylton's memory will  
3 improve by that time.

4 COMM ROSS: Mr. Levy, I would just suggest that  
5 maybe you ask FINSAC information in  
6 relation to that because that must be in  
7 their records, it should have been  
8 instead of the Board.

9 MR LEVY: Mr. Campbell is not here, his attorney  
10 is here. Can I make the request, sir?

11 COMM ROSS: Yes.

12 MR. LEVY: The documents concerning this or the  
13 Board papers concerning this  
14 application, this evidence be produced  
15 as soon as possible to the Commission  
16 and that I be copied.

17 COMM BOGLE: All right, the Commission endorses that  
18 request and on that note we will take  
19 our adjournment. I do not see  
20 Mr. Deperalto, I know we will be meeting  
21 tomorrow morning and we are scheduled to  
22 have Mr. Campbell tomorrow morning at  
23 9:30. I do not think that that has

24 changed so we will have Mr. Campbell  
25 tomorrow morning at 9:30.

1 Mr. Hylton, I am sure you recognise that  
2 we will be asking you to return and  
3 therefore the Secretariat will be  
4 speaking to your attorney.

5 A: Sure.

6 COMM. BOGLE: And the other attorneys involved in this  
7 matter and a suitable date and time will  
8 be agreed upon.

9 A: Okay.

10 COMM BOGLE: Thank you for your attendance at this  
11 Commission at this time.

12 MR. LEVY: Mr. Chairman, I have explained to the  
13 Secretary, Mr. DePeralto, that I have  
14 certain difficulties in the morning, the  
15 first part of the day. He has assured me  
16 that time will be used with Mr. Campbell  
17 adequately by other persons and I am  
18 just expressing my apologies for not  
19 being able to come until in the  
20 afternoon.

21 COMM BOGLE: Thank you ladies and gentlemen, and good  
22 afternoon. And again our apologies for  
23 the beautiful accommodation that we have

24 had today.

25 A: Thank you very much, sir.



**2**

**ADJOURNMENT TAKEN AT 4:00 P.M. 3**

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