

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

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

ON  
TUESDAY , MARCH 1, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross  
Mr. Worrick Bogle

**COUNSEL FOR THE COMMISSION**

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

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

REPRESENTING \_\_\_\_\_ MR. PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

REPRESENTING XXXXXXXXXXXX AND PRICE WATERHOUSECOOPERS

Mr. Stephen Shelton

REPRESENTING DEBTOR 18 CORPORATION &  
MR. JEAN DESULME

Mr. Anthony Levy  
Ms. Elaine Roache

GIVING EVIDENCE

Debtor 18

1 Tuesday March 1, 2011

2 This Commission of Enquiry is now in  
3 session.

4 Just before you call your witness, could  
5 we have the names of the attorneys  
6 present.

7 MR. LEVY: Anthony Levy for Debtor 18 of  
8 Debtor 18 Corporation and my assistant.

9 COMM. BOGLE: Can we have her name?

10 MR. LEVY: Elaine Roache.

11 MRS. PHILLIPS: Sandra Minott-Phillips instructed by  
12 Myers, Fletcher and Gordon for Jamaican  
13 Redevelopment Foundation Inc.

14 MR. SHELTON: Stephen Shelton and I appear for two  
15 interested parties,  
16 PricewaterhouseCoopers and Richard  
17 Downer.

18 COMM. BOGLE: Thank. you very much.

19 Mr. Levy, can you please.

20 MR. LEVY: Mr. Chairman, yesterday I delivered to  
21 the office of the Commission Notice of  
22 Intention to Tender in Evidence Witness  
23 Statement of the deceased.

24 Along with the Witness Statement,  
25 Statutory Declaration of xxxxxx

1 an exhibit in which she states that she  
2 was the deceased's partner and she  
3 exhibits a copy of the death certificate  
4 of the deceased who was murdered  
5 on the 27th of June, 2008.

6 I also produce a copy of the Witness  
7 Statement, a full copy of the Witness  
8 Statement of the deceased which was  
9 already partially accepted as TP7/11,  
10 extracts of which were produced by my  
11 friend Mr. Shelton. I am requesting  
12 that at this stage we produce the whole  
13 Witness Statement, by way of not just as  
14 a cluster of exhibits. I want it  
15 tendered in evidence pursuant to Section  
16 31D of the Evidence Act, a copy of which  
17 was also delivered to your office.

18 I ask that the Witness Statement of  
19 the deceased be accepted in  
20 evidence.

21 COMM. BOGLE: We had previously numbered extracts of  
22 that under TP7/11 and as such I remember  
23 the request was for the complete  
24 statement and so I think at this time we  
25 would accept the complete statement

1 under the same exhibit TP7/11.

2 MR. SHELTON: With the greatest of respect, that's  
3 your ruling again and you haven't heard  
4 from me as to my position on the matter.  
5 I would expect and hope that I would  
6 have the right to make a presentation to  
7 you.

8 MR. LEVY: Could Mr. Shelton speak in the mike, sir.

9 MR. SHELTON: I am objecting to this statement on  
10 grounds that if it is being adduced by  
11 virtue of the Evidence Act, then there  
12 are certain rights which other parties  
13 have and it is that if evidence is  
14 sought to be adduced for someone who is  
15 either off the island or deceased then  
16 another party has the right to raise an  
17 objection in the same way that my  
18 learned friend has made the application  
19 with a statutory declaration setting out  
20 the bases for the objection.  
21 Now, I wasn't given that opportunity and  
22 so I am caught quite by surprise this  
23 morning for a formal application to have  
24 been made under the Evidence Act but  
25 I'll say this, throughout the entire

1 hearing last week, we were told that a  
2 forensic audit report; forensic audit was  
3 done and a forensic audit report was prepared  
4 by the deceased and on another occasion I  
5 heard the Commission referring to the fact  
6 of a report. It turns out that there is no  
7 audit report but a Witness Statement from  
8 the deceased who in essence was a litigant  
9 in the proceedings of Debtor 18 Corporation  
10 and Debtor 18 other corporation versus  
11 XXXXXXXXXXXXX, PricewaterhouseCoopers for  
12 Debtor 18 corporation acquisition 1998  
13 Limited.

14 I would humbly submit that a witness  
15 statement has a totally different character  
16 to the expert report which was prepared based  
17 upon a professional audit.

18 Now, this does not say anything about a  
19 professional audit, it does not say anything  
20 about the fact that this is an audit report.  
21 What it states is that as a witness in a case  
22 these were things that he saw and that he was  
23 making a

24

25

1 statement on behalf of the claimants.

2 Now, those statements, because of the

3 unfortunate situation of the deceased's

4 death, cannot be tested.

5 MR. LEVY: Mr. Chairman, may I ask that he speaks

6 into the microphone.

7 MR. SHELTON: I think everybody else is hearing me.

8 I understand why he may not be and I'll

9 try and speak a little more loudly, but

10 I am speaking into the microphone.

11 Now sir, this Witness Statement has

12 certain strange aspects to it. It

13 speaks about it being a sworn statement;

14 it is not so sworn. It has attachments

15 to it, some of which are not certified.

16 It is a huge document as we see here and

17 I would respectfully submit sir, that I

18 would need some time to review this

19 document and make a formal counter

20 application based on Affidavit evidence

21 since the approach has been to do it by

22 virtue of the Evidence Act. Those are

23 my submissions.

24 MRS. PHILLIPS: Mr. Chairman and Commissioners, if you

25 look at the extract of that part of the

1 2 Evidence Act which is in the bundle that has  
3 4 been handed up to you, you will see actually  
5 6 if you read the section that there are at  
7 8 least six subsections to it but here we have  
9 subsections one through five which is  
10 characteristic of this complainant. We don't  
11 have the whole section. But let us even look  
12 at that part of the section that we have.  
13 I draw your attention to subsection 2, to  
14 subsection 6, which is missing. **The party**  
15 **intending to tender such statement in**  
16 **evidence shall at least twenty-one days**  
17 **before the hearing at which the statement**  
18 **is to be tendered, notify every other party**  
19 **to the proceedings as to the statements to**  
20 **be tendered and as to the person who made**  
21 **the statements.**  
22 Not one day before or not even on the same  
23 day but twenty-one days before. That is what  
24 the law requires. Subsection 6 which my  
25 friend has not given you, I think, if my  
memory serves me correctly, contains a  
discretion for



1 a court or a tribunal, in this case, to  
2 shorten that time. But it is one thing to  
3 shorten it, it is another thing to eliminate  
4 it entirely, eliminate all notice entirely.  
5 Now, if you look at the Witness Statement  
6 itself, just for a moment looking at the  
7 heading. You are looking at Claim 2002/T-092  
8 consolidated with Suit number, 2002/T-097;  
9 further consolidated with Suits C.L.  
10 2002/T-093. My client, Jamaican  
11 Redevelopment Foundation Inc., is not a  
12 party to any of those actions and therefore  
13 would not have had this statement because it  
14 is not a party to any of those actions. I am  
15 seeing this for the first time today. I don't  
16 know if the pages are numbered because I  
17 haven't had a chance to look yet, but it  
18 seems, just a rough assessment, to be  
19 something comprising definitely over a  
20 hundred pages. I have not had a chance even  
21 to look at it, and the law requires that if  
22 it is to be used in this way and to be tendered

23

24

25

1 under the Section 31E, that I should  
2 have at least twenty-one days before it  
3 is put in.

4 It may be that when I have had a chance  
5 to look at it and to discuss it with my  
6 client that I have no difficulty with it  
7 going in, but I need that opportunity at  
8 least.

9 COMM. BOGLE: Mr. Levy?

10 MR. LEVY: Mr. Chairman, a number of issues. What  
11 Mrs. Phillips is talking about and  
12 Mr. Shelton is civil proceedings. This  
13 is not civil proceedings. This talks  
14 civil proceedings before the court and  
15 it establishes the basis that where a  
16 person is dead and he has given a sworn  
17 statement it can be accepted in  
18 evidence.

19 The proposals about periods of notice  
20 and so on are not applicable to this  
21 Commission and in any event, Mr.  
22 Shelton, Myers, Fletcher and Gordon who  
23 instructs Mrs. Phillips and Mr. Shelton  
24 have a copy which was served on them in  
25 court. Mr. Shelton seems to have it

1                   there in person, so for Mrs. Phillips to  
2                   say she has not had a chance to see  
3                   it...

4   MRS. PHILLIPS:       My client is not a party to that  
5                   litigation.

6   MR. LEVY:            For Mrs. Phillips to say she has not had  
7                   access...

8   MRS. PHILLIPS:       I am here solely in the capacity as the  
9                   representative of Jamaican Redevelopment  
10                   Foundation Inc., not in a separate  
11                   capacity as a partner of Myers, Fletcher  
12                   and Gordon.

13   COMM. BOGLE:        Mrs. Phillips...

14   MRS. PHILLIPS:       I just wish to make that clear.

15   COMM, BOGLE:        We are going to try and have order in  
16                   here. When you were talking you were  
17                   allowed to talk, now, will you please  
18                   allow Mr. Levy to speak.

19                   Mr. Levy?

20   MR. LEVY:            Thank you, sir. In fact when we last met  
21                   here and Debtor 18's issue was being  
22                   discussed, I gave notice at that point that  
23                   we were going to tender this in evidence and  
24                   at no time, just to correct Mr. Shelton's  
                 misunderstanding,

1 did I talk about forensic audit report.  
2 Debtor 18 said Mr. Chambers did a  
3 forensic audit from which the evidence,  
4 information he had was obtained. And I  
5 submit that this proceeding has no  
6 requirement for twenty-one days notice.  
7 The Evidence Act says it can be accepted  
8 in evidence because he is dead. It is a  
9 sworn statement and I am submitting that  
10 it ought to be so accepted in evidence.  
11 COMM. BOGLE: These hearings are inquisitorial.  
12 Proceedings of this nature and this  
13 Commission, we have certain  
14 discretionary powers and we believe that  
15 all the evidence that we can get or the  
16 information that we can get in order to  
17 enhance the reporting of this  
18 Commission, that we should have that in  
19 our possession. And as such this  
20 Commission is going to exercise its  
21 discretion on this matter and admit this  
22 document as I said before, and in terms  
23 of cross-examination, I am sure down the  
24 road there will be cross-examination by  
25 the parties involved, but at this time

1 we will be ruling on the acceptance of  
2 this document.

3 MR. LEVY: Thank you, Mr. Chairman.  
4 COMM. BOGLE: Mr. Levy, can you proceed.

5 MR. LEVY: Thank you Mr. Chairman.

6 COMM. BOGLE: Just before, I think we have an attorney  
7 joining us.

8 MR. GARCIA: Dave Garcia representing Patrick Hylton.  
9 May I have a copy of the document.

10 MR. LEVY: May I ask that Debtor 18 take the  
11 stand.

12

13 (Debtor 18 sworn)

14

15 Debtor 18, I would like to go back to  
16 the days just prior to the appointment  
17 of XXXXXXXXXXXXX as a Receiver by Recon  
18 Trust and National Commercial Bank and a  
19 Receiver of Debtor 18 corporation and  
PlasPak

20 Limited and I would like to refer you to  
21 a letter dated January 16, 1998.  
22 Mr. Chairman, could that be given a  
23 number.

24 COMM. BOGLE: This would be...

25 MRS. PHILLIPS: Could you assist me with the number of

1  
2       COMM. BOGLE:           the document that is being referenced.  
3       MRS. PHILLIPS:         That is what we are trying to do.  
4       COMM. BOGLE:           This is a new document?  
5       MRS. PHILLIPS:         Yes.  
6       COMM. BOGLE:           Where is it to be found?  
7       MRS. PHILLIPS: 8       We are about to reference this document.  
9                                Where am I to get it from? That's what I am  
                              trying to find out.

10                           (Document handed to Mrs. Phillips)

11  
12       COMM. BOGLE:           This would be TP8/11.  
13       MR. SHELTON:           Could I have a copy of that too? Mr.  
14                               Chairman, I haven't seen the document and  
15                               I have a particular interest in it as well.  
16                               Could Mr. Shelton share it with his  
17       MR. LEVY:              partner sir, for the time being. TP8/11.  
18

19       COMM. BOGLE:

20

21

22

Continued .....

23

24

25

1

2 MR. SHELTON: Chairman I have not seen the document  
3 and I have a particular interest.

4 MR. LEVY: Could Mr. Shelton share it with his  
5 partner for the time being.

6 A: JD18/11.

7 MR. LEVY: Debtor 18, this letter dated January  
8 the 6th, 1998 is written by Mrs. Valda  
9 Facey, Assistant General Manager of  
10 National Commercial Bank to you. Could  
11 you read the letter sir?

12 **Dear Debtor 18, --**

13 GUARANTEE BY NATIONAL INVESTMENT BANK  
14 OF JAMAICA LIMITED (NIBJ) TO EXIM BANK  
15 **FOR US\$00,000 - J\$0m**

16 **Our letter of December 18, 1997 and**  
17 **subsequent discussions/correspondence**  
18 **ending with yours of January 5, 1998**  
19 **refer.**

20 **We confirm agreement for the remittance**  
21 **of receivables to us by NIBJ on the**  
22 **basis outlined in their letter dated**  
23 **December 15, 1997.**

24 **We have provided NIBJ with the release**  
25 **of the relevant receivables from our**



1 debenture and now await the anticipated  
2 inflows in accordance with arrangements.

3 Yours sincerely,

4 Valda Facey.

5 Assistant General Manager.

6 MR. LEVY: Do you understand this letter to be a  
7 cordial letter written by Mrs. Valda  
8 Facey with anticipated inflows in in  
9 accordance with the arrangements?

10 A: Yes.

11 Q: That is as usual?

12 A: Yes.

13 COMM. BOGLE: Could you assist me Mr. Commissioner?

14 MR. LEVY: The copies are stabled together, Mr.  
15 Deperalto.

16 COMM. BOGLE: Is the letter dated the 15th of  
17 December, 1997 in evidence?

18 MR. LEVY: Not that I know of.

19 COMM. BOGLE: Thank you.

20 MR. LEVY: The letter dated January, 15, 1998. Do  
21 you have it Mr. Chairman?

22 COMM. BOGLE: Mr. Levy do you have any other document  
23 that you want to be circulated?

24 MR. LEVY: I instructed the Secretary to make six.

25 COMM. BOGLE: Can we have them so that we can make

1 copies of them?

2 MR. LEVY: They are in a particular order.

3 COMM. BOGLE: They can be copied in the same order.

4 Mr. Levy, can we break for ten minutes

5 and get all the copies, so that we can

6 proceed smoothly. We will have a ten

7 minute recess so that we can have all

8 the copies.

9 Ladies and gentlemen, I think we should

10 use this opportunity for the coffee

11 break because we will not be breaking

12 for coffee.

13 COFFEE BREAK

14 (ON RESUMPTION)

15 This Commission is now back in session.

16 Mr. Levy.

17 MR. LEVY: Mr. Chairman, I am prepared to present

18 to Debtor 18 a letter dated January

19 15, which he wrote to Mrs. Valda Facey,

20 Assistant General Manager, National

21 Commercial Bank. You are going to

22 number that?

23 COMM. BOGLE: TP9/11.

24 MR. LEVY: Debtor 18, could you read this letter?

25 A: This letter is dated:

1                   January 15, 1998.

2                   Mrs. Valda Facey

3                   Assistant General Manager

4                   National Commercial Bank Limited

5                   Corporate Division, "The Atrium" 32

6                   Trafalgar Road

7                   Kingston.

8                   Dear Mrs. Facey:

9                   Subject: Guarantee of National Bank of  
10                  Jamaica for UD\$00,000 (\$00.0M) We have  
11                  now satisfied all the preconditions to  
12                  NIBJ's insurance of their guarantee to the  
13                  **Ex-Im** Bank, with the exception of Ex-im  
14                  Bank's requirement for payment of an  
15                  outstanding sum of approximately  
16                  US\$55,000 plus accrued interest. This  
17                  sum is the result of exchange rate  
18                  *movement on* facilities paid out by NCB  
19                  towards the end of 1997. Ex-im Bank has  
20                  agreed for the  
21                  outstanding sum to be paid by January 31,  
22                  1998, but require that the payment be made  
23                  from contract proceeds before the funds  
24                  reach us. We asked the NIBJ to make the  
25                  deductions from the

1 contracts pledged and remit the funds to the  
2 Ex-im Bank, however, having  
3 committed to NCB that the only deductions,  
4 prior to remitting the funds to NCB, would be  
5 the amounts required to liquidate facilities  
6 booked under the Guarantee, NIBJ is not able  
7 to  
8 facilitate this request.

9 Could you kindly agree to deduct the Jamaican  
10 dollar equivalent of approximately US\$00,000  
11 plus interest (to be supported by a statement  
12 from Ex-im Bank), on receipt of funds from  
13 NIBJ and remit same to the Ex-im Bank by  
14 January 31, 1998. A copy of Ex-im Bank's  
15 facsimile and the cashflow in which provision  
16 was made for the payment of US\$00,000 during  
17 January 1998 are attached.

18 Yours truly.

19 J.M.Desume

20 President

21 23

24 MR. LEVY:

Debtor 18, you got

a reply to that

25 letter dated January 19, from Mrs. Valda

1 Facey, Assistant General Manager?

2 A: Yes.

3 Q: There is a letter dated January 19, 1998  
4 from Valda Facey, Assistant General  
5 Manager of NCB to the National  
6 Investment Bank of Jamaica Limited and  
7 it was copied to you. Could you read it  
8 to us.

9 A: **January 19, 1998**  
10 **National Investment Bank of Jamaica**  
11 **Limited**

12 **11 Oxford Road**  
13 **Kingston 5**

14 **ATTENTION: MISS TINA BECKFORD**

15 **Dear Sirs,**

16 **GUARANTEE TO EXIM BANK FOR US\$000,000-**  
17 **J00.0M ON BEHALF OF THERMO-PLASTIC**  
18 **(JAMAICA} LIMITED**

19 **Our letter dated December 11, 1997 and**  
20 **subsequent correspondence ending with**  
21 **letter of January 15, 1998 from**  
22 **Debtor 18 corporation (Jamaica) Limited**

**refer.**

23 **We confirm that prior to remitting to us**  
24 **all funds received in excess of amounts**

required to reduce your existing and

1 proposed exposure of \$0.0M plus interest  
2 and \$18.6M respectively, you may also deduct  
3 the Jamaican Dollar equivalent of the  
4 US\$55,000 plus interest which is due to Exim  
5 Bank Limited.

6 All other terms and conditions of the  
7 arrangement remain unchanged.

8 Yours faithfully,

9 Valda Facey (Mrs . )

10 Assistant General Manager

11 Copied:

12 Mr. Debtor 18

13 Debtor 18 corporation (Jamaica) Ltd.

14 Mrs. Pamela McLean

15 National Export-Import Bank of Jamaica  
16 Ltd.

17 Mr. Oliver Holmes

18 Capital Options Limited

19  
20 MR. LEVY: Debtor 18, is just setting the stage. You  
21 were going to receive U.S. 0 Million  
22 Dollars for the purpose of clearing 12  
23 forty-foot containers of raw materials from  
24 the wharf to produce goods?







1                   inside my attache case, the men did not  
2                   allow me to go in.

3           Q:           This is what Justice Jones referred to  
4                   as, in a curious act of discourtesy, the  
5                   newly appointed Receiver Manager,  
6                   XXXXXXXXXXXX, refused permission to  
7                   the existing Managing Director, xxxx  
8                   xxx. That is in the judgement.  
9                   That has been already distributed to the  
10                  court.

11                 Debtor 18, let us get out of that line  
12                  of questioning and deal with some  
13                  matters that are relevant to the  
14                  appointment of the Receiver.  
15                  Your father in his lifetime, was he any  
16                  supporter of any political party?

17           A:           Yes, my father was a staunch supporter  
18                   and backer of the People's National  
19                   Party.

20           Q:           And who were the main people who he  
21                   dealt with in his...

22           A:           My father in those days dealt with Mr.  
23                   Michael Manley and then Mr. P.J.  
24                   Patterson.

25           Q:           And would you say that he was a

1 financial supporter of the party?

2 A: Yes.

3 Q: Quietly. Who were the members of the  
4 Executive of the party who received  
5 moneys from him or given by him to use  
6 for the PNP?

7 A: Okay, at the time when I was the  
8 President my father was retired from the  
9 company. I dealt directly with all  
10 political contributions. The two  
11 Secretary Generals which I had to deal  
12 with was Mr. xxxxxx and Mr.  
13 xxxxxx. These are the two  
14 people I dealt with directly to make  
15 political finance contribution to the  
16 People's National Party.

17 Q: And did you hand cash to these  
18 gentlemen?

19 A: Yes.

20 Q: For the party? Your brother  
21 , spelt xxxxx, was he involved  
22 in the politics with the party and the  
23 company?

24 A: He was a very close friend of the then  
25 Prime Minister, Mr. Patterson.

1 Q: Was he described in the press, as the  
2 travelling companion of the Prime  
3 Minister?  
4 A: Yes, sir.  
5 Q: After the Receiver was appointed, did you  
6 have a meeting with Mr. Dunbar  
7 McFarlane, he was then Chairman or  
8 Vice-Chairman of NCB Group?  
9 A: Yes.  
10 Q: What was the position, sir?  
11 A: Mr. Dunbar McFarlane was Managing  
12 Director and Deputy Chairman of the  
13 National Commercial Bank...  
14 Q: Tell us about that subsequent meeting  
15 you had with Mr. Dunbar McFarlane?  
16 A: Mr. Dunbar McFarlane was somebody that 1  
17 had done business with prior to  
18 Debtor 18 corporation because I was a  
customer  
19 of NCB because if you can remember,  
20 Debtor 18 corporation was actually a client  
of  
21 Mutual Security Bank and when NCB  
22 acquired MSB and that is how  
23 Debtor 18 corporation became a client of NCB.

24

After about four weeks of the

25

receivership and I more or less, feel



1 be frank with you. Debtor 18 corporation  
2 don't have neither a financial or  
3 commercial problem; Debtor 18 corporation  
has  
4 a political problem. That is your  
5 problem. I said, "What you mean by  
6 that?" He said, "Let me tell you. Last  
7 week I was invited, I was called to a  
8 meeting at night, I presume it was some  
9 high meeting, political, and in that  
10 meeting the political directorate of  
11 this country don't want you to control  
12 Debtor 18 corporation. It is your brother  
they  
13 want to control Debtor 18 corporation".

14 Q: Which brother you are talking about?

15 A: xxxx. And he proceeded to tell me that  
16 it is not your ability, it is not your  
17 father's wish, but it is the political  
18 directorate. Right now we are  
19 controlled by FINSAC, so this is their  
20 instructions. Ane he proceeded to tell  
21 me, "I was called in a meeting, Debtor 18 and  
22 at that meeting your brother was present  
23 and in this meeting I presume it was

24

either the xxxxxx or the

25

xxxxxx who proceeded to ask



1                   xxxx, "what you want us to do with  
2                   Debtor 18 corporation". xxx replied, "I want  
3                   you to put the Receiver in  
4                   Debtor 18 corporation". And Mr.xxxxxx  
5                   xxxxxx said the political directorate  
6                   said you will get what you want. Mr.  
7                   xxxxxxxxxxx told me.

8           Q:           Thank you, Debtor 18. Let us move on.  
9                   Let us get to the witness statement of  
10                  XXXXXXXXXXXX. Can you look at the  
11                  witness statement, the first page of the  
12                  witness statement, next following the  
13                  heading "For those various payments and  
14                  counter payments" and so on -- sorry  
15                  the deceased. And I go to Clause 3.  
16                  Mr. Chairman with your permission and to  
17                  assist the stenographers I will try to  
18                  read it in English what is before us.  
19                  It is more difficult when Debtor 18  
20                  does it.

21                  Clause 3 says:

22           A:           **I am a fellow member of The Chartered**  
23                   **Association of Certified Accountants of**  
24                   **the United Kingdom and a fellow member**  
25                   **of The Institute of Chartered**

1 Accountants of Jamaica and a member of the  
2 Public Accountancy Board of Jamaica. I am  
3 also an associate member of the Association  
4 of Certified Fraud Examiners of the United  
5 States.

6 In Clause 4 he says that he has extensive  
7 experience and in Clause 5: **As a Receiver and**  
8 **Manager, I am well aware of the duties and**  
9 **responsibilities that attend that position.**

10 **Particularly, the Receiver, in relation to**  
11 **his remuneration, is usually entitled to**  
12 **recover from the company over whose assets**  
13 **he is appointed, rather than the debenture**  
14 **holder. That is the situation with the**  
15 **provisions in the debentures in this case.**

16 Clause 6. **The Receiver and Manager, apart**  
17 **from his fees, is entitled to recover out**  
18 **of the funds collected or realized by him,**  
19 **his costs, charges and expenses properly**  
20 **incurred, meaning actual expenses.**

21 Clause 7. **I have since the 7th day of June**  
22 **2002 had access to some of the**

23  
24  
25

1 books and records of the Claimants and  
2 have carried out various investigations in  
3 the affairs of the Claimants. The facts  
4 and matters stated in this witness  
5 statement and the documents referred to  
6 herein and identified in exhibit "A" to  
7 this statement were obtained as a result of  
8 my review and investigation of documents  
9 received directly *from Myers, Fletcher and*  
10 *Gordon* (Attorneys for 1st, 2nd and 3rd  
11 Defendants)

12 It continues in paragraph 8. The 1st  
13 Defendant, *Xxxxxxxxxxxxxx*, is a  
14 Chartered Accountant and a Senior  
15 Partner of the accountant firm,  
16 PricewaterhouseCoopers. The 1st  
17 defendant was appointed by RECON TRUST  
18 LIMITED and NATIONAL COMMERCIAL BANK  
19 JAMAICA LIMITED, to be the Receiver and  
20 Manager of the 1st and 2nd Claimants on 1998  
21 March 9 and held these  
22 appointments until 2002 June 7 when he was  
23 replaced by me. I refer to copies of the said  
24 appointment (Exhibit A1 and A2) and  
25 termination notices (exhibit A3 and

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**A4) .**

(continued...)

1 MR. LEVY: Recon Trust Limited and National  
2 Commercial Bank Jamaica Limited sold the  
3 4 Debentures and all rights therein to  
5 6 Jamaican Redevelopment Foundation, Inc. He  
7 8 refers to copies of letters dated February  
9 12 and March 21, 2002, He wanted to set the  
10 picture:  
11 By way of "Hive-down" Agreement" dated 1998  
12 November 30, the assets of Debtor 18  
13 Corporation (Jamaica) Limited (In  
14 Receivership) Debtor 18 Corporation Limited  
15 and the assets of Debtor 18 other corporation  
16 (In Receivership) {Debtor 18 Corporation  
17 Limited} were transferred to Debtor 18  
18 Corporation (Jamaica) Acquisition 1998  
19 Limited {TPL} 1998} All the liabilities of  
20 TPL and PPL remained in the respective  
21 companies and were not transferred to TPL  
22 1998. TPL 1998 is a subsidiary of TPL and  
23 continued all the trading activities of TPL  
24 and PPL. I refer to 'hive down' agreement  
25 dated 1998 November 30 which is Exhibit A61.

The statement continues:

1                   **PARTICULARS THAT CLAIMANTS FACILITATED**  
2                   **FRAUD.**

3                   The claimants here are Debtor 18  
4                   Corporation Limited (In Receivership) and  
5                   Debtor 18 other corporation.

6  
7                   **Xxxxxxxxxxxxxx** was the Receiver and Manager of  
8                   **Debtor 18 Corporation Limited** and **Debtor 18**  
9                   **other corporation** and acted as an Agent of  
10                  **Debtor 18 Corporation Limited** and not as an  
11                  Agent for the debenture holder.

12                  In his capacity **Xxxxxxxxxxxxxx** owed a  
13                  fiduciary duty to the Claimants as their  
14                  Agent, to act honestly; not enter into  
15                  contracts and/or arrangements which were not  
16                  in the best interest of the Claimants; not  
17                  receive and/or retain a secret profit or  
18                  commission in respect of his appointment  
19                  whether paid by a third party or otherwise  
20                  for which he did not account to the  
21                  Claimants; not to misapply and/or retain  
22                  funds of the Claimants.

23                  In addition, on the formation of **Debtor 18**  
24                  **Corporation Limited 1998**, **Xxxxxxxxxxxxxx**

25

1 acted in the capacity of Chief Executive  
2 Officer of TPL 1998.

3 Per Letter of Indemnity for  
4 XXXXXXXXXXXXX for TPL and PPL, they do  
5 not cover the incidents of fraud (Exhibits  
6 A5 and A6.

7  
8 PARTICULARS OF FRAUD.

9 XXXXXXXXXXXXX was engaged by XXXXXXXXXXXXX  
10 on 1998 December 7 to act as Production  
11 Manager for Debtor 18 corporation  
12 (Jamaica) Acquisition 1998 Limited.

13 XXXXXXXXXXXXX's service was engaged for the  
14 period 1998 December 7 to 2001 June 13.

15 During his tenor, XXXXXXXXXXXXX was paid  
16 at a rate of \$000 per hour. Attached are  
17 copy invoices (Exhibits A18 to A27) dated  
18 28th February, 1999, and 15th July 2001  
19 from XXXXXXXXXXXXX to XXXXXXXXXXXXX. Said  
20 invoices state:

21 To services provided as agreed and  
22 states the actual hours at the rate of  
23 \$0000000 per hour.

24 XXXXXXXXXXXXX charged a total of  
25

1 00000 hours for services rendered to  
 2 **Xxxxxxxxxxxxxx** while working on the  
 3 **receiverships.**

4

5

Going down to paragraph 4.

6

7

Per the attached PWC "Hours/Rate Activity  
 8 report" it is seen that **xxxxxx** charged the  
 9 **Claimants, that is Debtor 18 corporation**  
 10 **Limited and Debtor 18 other**  
 11 **corporation\$0,000 per hour for the services**  
 12 **of Xxxxxxxxxxxxxx.**

10

11

12

13

Thus **xxxxxx xxxxxx** charged \$00,0000.00 to the  
 14 **Claimants for the services of Xxxxxxxxxxxxxx.**

15

16

And he gives the basis of his calculation,

17

\$7,000 - \$2,500x 4,677.50 hours} =

18

\$21,048,750.

19

2

Debtor 18, I attempted to ask you if you  
 20 understand that to mean that **Xxxxxxxxxxxxxx**  
 21 overcharged the **xxxxxx** \$00.00?

21

22

Yes.

23

24

25 MR. DESOLME:



1 MR. LEVY: Prior to engaging the services of  
2 **Xxxxxxxxxxxxxx, Xxxxxxxxxxxxxx** engaged the  
3 services of **xxxxx** (for the period 1998 March  
4 9 to 1998 December 31) and **xxxxx xxxxxx** (for  
5 the period 1998 September to 1998 October)  
6 both of whom acted in the position of  
7 Production Manager. Per the attached  
8 "Hours/Rate Activity report" it is seen that  
9 **xxxxx** and **xxxxxx** charged the receiverships  
10 1,456 hours and 286 hours respectively for  
11 time worked and **Xxxxxxxxxxxxxx** charged the  
12 Claimants for their services as follows:  
13 **xxxxxx**, at a rate of \$0,000 per hour for the  
14 months of 1998 July and 1998 August and a  
15 rate of \$0,000 per hour for the months of  
16 1998 September to December and **xxxxx** at the  
17 rate of \$0,000 per hour for the period 1998  
18 September and October. And he attached  
19 invoices from **xxxxxx** dated 16th September,  
20 1998, which all show that **xxxxx** charged  
21 **Xxxxxxxxxxxxxx** at the rate of \$00000 per hour.

22

23

24

25

1 When you read this for the first time,

2 Debtor 18, what was your reaction?

3 A: Well, my reaction was when I see - in  
4 other words, like the guy definitely had  
5 one intention, sinking Debtor 18

Corporation.

6 1 as Managing Director myself who run  
7 the plant was only collected \$100,000.00  
8 Jamaican per month. That's what 1  
9 collected as my salary.

10 Q: And you are an Engineer as well as  
11 experienced in running the business?

12 A: That's right. I am an Engineer, I have  
13 been working in that field for more than  
14 20 years.

15 Q: And based on the evidence you gave,  
16 Dunbar McFarlane's evidence is that the  
17 company was not in default and was being  
18 properly managed?

19 A: That is right.

20 Q: Would that surprise you?

21 A: Definitely not. Not only that but the  
22 company had its auditor Halstead Young  
23 which is an accounting firm who kept the  
24 company. There were no financial  
25 liabilities against the company, the

1 company kept all its bank accounts  
2 intact. Debtor 18 Corporation, a plastic  
3 company is a capital intensive  
4 operation. Debtor 18 Corporation was not  
5 built over night, it takes thirty years  
6 to reach where it has reached.

7 Q: Okay, Debtor 18, let's continue.

8 Paragraph 7:

9 **Per XXXXXXXXXXXXX's 1st Interim Report**  
10 **Exhibit A54 of the witness statement,**  
11 **1st Interim report to the Debenture**  
12 **holders dated 1998 April 23, he stated**  
13 **on Page 7 paragraph 3, "I therefore**  
14 **engaged XXXXXXXXXXXXX to act as plant**  
15 **manager and in his absence during the**  
16 **month of May I have obtained a**  
17 **commitment from Bevon Francis to act in**  
18 **that capacity". However, the preceding**  
19 **statement by XXXXXXXXXXXXX is**  
20 **questionable as it appears that Vernon**  
21 **Meikle worked for the entire period of**  
22 **1998 July to December and Bevon Francis**  
23 **worked for the period 1998 September and**  
24 **October. This means that XXXXXXXXXXXXX**  
25 **could not have substituted for XXXXXXXXXXXXX**

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xxxxxx in 1998 May nor did he (xxxxxx) substitute for him (xxxxxx) in 1998 September and October as both men were charging time to the Claimants during that period. (See Exhibit A58).

Xxxxxxxxxxxxxx eventually replaced both xxxxxx and Bxxxxxxxxx as the Production Manager.

Based on my investigations, I have been reliably informed and do verily believe that the actual rate paid by Xxxxxxxxxxxxxx to xxxxxx for their services was \$00000 per hour.

Thus Xxxxxxxxxxxxxx xxxxxx charged \$0 to the Claimants for the services of xxxxxxxx.

And he gives the calculation as to how that was arrived at. Paragraph 10:

23

24  
xxxxxxx charged

Thus Xxxxxxxxxxxxxx

\$,000 to the Claimants for services

1

of xxxxx.

2

3

He gives the calculation for that.

4

5

As such the total amount fraudulently

6

charged to the Claimants is \$00 which is

7

broken down as follows:

8

He gives the breakdown of the overcharges,

9

fraudulent charges for the services of

10

XXXXXXXXXXXXX, xxxxxx and xxxxx, totalling

11

\$000.

12

13

Then Mr. Chambers goes on to deal with the

14

Particulars of xxxxxxxx. And bear in mind

15

that The deceased has in his introduction

16

said that he is an Associate Member of the

17

Association of Certified Fraud Examiners of

18

the United States. So he is actually an

19

expert in this kind of investigation, this

20

kind of field.

21

22

PARTICULARS OF XXXXXXXXXXXX XXXXXXXX WAS

23

contracted by xxxxxxxxxxxx

24

25

1 xxxxxx to act as the Production Manager  
2 for the Claimants (from the start of the  
3 receiverships) for the period 1998 March 9,  
4 to 1998 December 31. His contract  
5 precedes that of xxxxxxxx and  
6 xxxxxxxxxxxx.

7 Time worked on the Claimants by  
8 xxxxxxxxxxxx up to and including 1998 June  
9 was not recorded by PWC,  
10 PricewaterhouseCoopers, on their  
11 "Hours/Rate Activity Report" which is the  
12 summary of time charged and correspondent  
13 charge out rate (summary of billing cost)  
14 of all persons who worked on the  
15 claimants. See copy of "**Hours/Rate**  
16 **Activity** report" (Exhibit A34).

17  
18 The actual hours charged on PWC  
19 "Hours/Rate Activity report" for the  
20 services of xxxxxxxxxxxx is as follows: And  
21 he lists the four of them totalling 1,456.0  
22 hours and in that list he shows in July 1998  
23 181.5 hours which is 9.1 hours per day and  
24 for August 1998 528  
25

1 hours which is 26.4 hours per day.

2 September 277 hours which was 000 hours per  
3 day.

4  
5 I hope XXXXXXXXXXXXX will be able to  
6 explain those charges. Continuing on  
7 paragraph 5.

8 (a) For the months of March 1998 and June  
9 1998 XXXXXXXXXXXXX was being paid for his  
10 services at a rate of \$00 per hour.

11 XXXXXXXXXXXXX in turn was recovering from the  
12 claimants this exact amount as a recoverable  
13 expense.

14  
15 I bring this to your attention during the  
16 first period he was recovering from Debtor  
17 Corporation and Debtor 18 other  
18 corporation\$2,500 an hour, which was the  
19 actual amount. Nothing wrong with that.

20  
21 (b) In 1998 July, XXXXXXXXXXXXX recognized  
22 that he could make a secret profit from the  
23 Claimants and as such he made PWC pay for the  
24 services of XXXXXXXXXXXXX at the rate of  
25 \$2,500 per hour

1 and in turn caused PWC to *charge* the  
2 Claimants...  
3

4 5 In other words, he took XXXXXXXXXXXXX off the  
6 7 payroll of the company and put him on the  
8 9 payroll of the Pricewaterhouse so he could  
10 charge the Claimants for the same services  
of XXXXXXXXXXXXX at the rate of \$7,800 and  
\$7,000 per hour.

11

12 (c) When XXXXXXXXXXXXX submitted his  
13 original bills to XXXXXXXXXXXXX for the months  
14 of 1998 March to June the bills would have  
15 detailed the actual amount of hours worked,  
16 the days on which the hours were worked and  
17 the agreed rate per hour. (Similarly to how  
18 bills were submitted by XXXXXXXXXXXXX) to  
19 arrive at a total cost for his services.

20 (d) XXXXXXXXXXXXX then instructed  
21 (whether directly or indirectly) the  
22 relevant department with PWC to use  
23 these bills which were previously  
24  
25



1 submitted by XXXXXXXXXXXXX for hours worked  
2 by XXXXXXXXXXXXX during the months of 1998  
3 March to June to update the PWC "Hours/Rate  
4 Activity Report' ". The process of updating  
5 the PWC "Hours/Rate Activity Report" was  
6 done during the period 1998 July to 1998  
7 September.

8  
9 This was to ensure that the cumulative  
10 hours recorded on the PWC "Hours/Rate  
11 Activity Report" for the seven months ended  
12 1998 September agrees with the actual  
13 amount of hours that Mr. XXXXXXXXXXXXX billed  
14 the claimants for at the rates of \$00000 and  
15 \$7,000 per hour.  
16

17 Continuing in paragraph 6.  
18

19 Thus XXXXXXXXXXXXX fraudulently charged \$00  
20 to the Claimants for the services of Mr.  
21 XXXXXXXXXXXXX.  
22

23 And he gives the calculation of that and  
24  
25 again showing the actual rate charged by

1 the employee to the rate PWC charged  
2 times a number of hours.

3  
4 **The scheme of making a secret profit off the**  
5 **services of XXXXXXXXXXXXX was extended to the**  
6 **services of XXXXX (copy of letter dated 1998**  
7 **November 16 enclosed (Exhibit A37) and**  
8 **XXXXXXXXXXXXX which amounts to \$0000,000 and**  
9 **\$00000 were respectively fraudulently**  
10 **recovered by XXXXXXXXXXXXX from the**  
11 **Claimants.**

12  
13

14 **Mr. Chambers continues.**

15  
16 **PARTICULARS OF PROOF OF FRAUD.**

17 **XXXXXXXXXXXXX was engaged by XXXXXXXXXXXXX to**  
18 **act as his agent during the receiverships**  
19 **from 1998 December 7, 2001 June 13 when the**  
20 **agency arrangement was terminated.**

21  
22 **Subsequent to his services being**  
23 **terminated, XXXXXXXXXXXXX made a claim**  
24 **against XXXXXXXXXXXXX for outstanding**

25

1 vacation leave and redundancy payment for  
2 the period he worked on the receivership as  
3 XXXXXXXXXXXXX's agent. During the period 2001  
4 August 12 to 2001 November 13, xxxxxx has a  
5 number of correspondence with different  
6 persons with respect to his claims.

7  
8 And these are (Exhibits A10 to A16). He  
9 eventually wrote the deceased on 2002 July  
10 12 (Exhibit A9)

11  
12 Per letter dated 2001 August 13 (Exhibit A11)  
13 from XXXXXXXXXXXXX to XXXXXXXXXXXXX,  
14 XXXXXXXXXXXXX confirms the fact that  
15 XXXXXXXXXXXXX was not an employee (of the  
16 claimants), meaning Debtor 18 Corporation  
17 and as such he would not entertain any claims  
18 for vacation leave or redundancy payment.  
19 XXXXXXXXXXXXX continues by saying "You were  
20 paid by me, the receiver, solely on the basis  
21 of hours worked with the express  
22 understanding that whenever the  
23 receivership ended the assignment would  
24  
25

1                   **be over whether in weeks months or**  
2                   **years.**

3

4                   Paragraph 4.

5

6   MR. SHELTON:           Mr. Chairman, I was trying to understand  
7                   the process. Debtor 18 is giving  
8                   evidence, but we are reading into the  
9                   record by Mr. Levy, hardly any questions  
10                  can be asked. I cannot ask Debtor 18  
11                  any questions, I can't ask him any  
12                  questions about the matter and I can't  
13                  ask the deceased either. Where there are  
14                  allegations and significant allegations  
15                  against a citizen of this country in  
16                  relation to xxxxx, allegations xxxxxx,  
17                  where there is a case before the court,  
18                  this matter has not yet been tried, this  
19                  evidence has not yet been given. In  
20                  circumstances where the Press couldn't  
21                  publish this at this stage of the game  
22                  because they would run the risk of being  
23                  open to a claim for defamation, but it  
24                  is being put forward in the public  
25                  domain, in a Commission of Enquiry in

1 circumstances where there is nothing,  
2 nobody, I can ask about this in protection  
3 of XXXXXXXXXXXXX and for the television and  
4 the Press to have all of these allegations  
5 being put forward as evidence in relation to  
6 the character of a citizen of this country.

7  
8 Now, with the greatest of respect, I must  
9 tell you that the ruling was made for exactly  
10 this reason that you would like to get the  
11 information and as I said, you are entitled  
12 to whatever information you could get  
13 through normal channels, but that it was  
14 firstly ruled upon, that in circumstances  
15 where the allegations are, as they are in  
16 this case, and they are in a case not yet  
17 tried, it would be held in camera, that  
18 ruling was changed.

19 I am raising the issue again sir, that in  
20 light of what is now coming out as the  
21 witness statement is read by xxxxxx to which  
22 Debtor 18 openly said, **"When I read the**  
23 **statement for the**

24  
25

**first time I dune to certain views".**

1  
2 Debtor 18 can't give evidence of this, he  
3 knows nothing about any of this and these are  
4 allegations by a litigant and they are being  
5 put forward to the public of Jamaica as if  
6 they are approved facts, in circumstances  
7 where there is nobody I can cross-examine  
8 about this, nobody, to protect XXXXXXXXXXXXX  
9 and XXXXXXXXXXXXX; people and institutions of  
10 some credibility in this country. And T  
11 submit, sir, that if this continues I would  
12 have to seek the court's intervention to  
13 protect a citizen of this country. Because  
14 you ruled for the very reason that it would  
15 be in camera and in one slip of the pen you  
16 ruled that it would be heard publicly. Now,  
17 the reasons I think are clear why I had  
18 requested as a matter of this nature because  
19 you need the information, you need the  
20 information, not for people to be slandered  
21 and defamed for purposes of a Commission of  
22 Enquiry, you need the information. As I  
23  
24  
25

1                   said, I have no difficulty in the  
2                   Commissioners having the information, what  
3                   I have difficulty with is the circumstances  
4                   of the public hearing in a matter of this  
5                   nature which is a matter before the court  
6                   which has been through numerous issues. Part  
7                   of it is presently in the Court of Appeal and  
8                   will possibly go to the Privy Council and in  
9                   the face of that this evidence is being given  
10                  to the public as if it is proved evidence.  
11                  I just ask that my entire statement be noted.  
12                  Mr. Chairman, I refer my friend to the  
13                  Evidence Act and in fact, say this is  
14   MR.   LEVY:       evidence, this is not hearsay, this is  
15                  evidence pursuant to the provisions of the  
16                  Evidence Act. It is a sworn

17

18

19                               statement by a man who was murdered, he  
20                               is dead, XXXXXXXXXXXXX can come and defend  
21                               it and refute it if he wishes. But I  
22                               think the Commission and the public are  
23                               entitled to have this.

24

(Commissioners consult)

25

COMM. BOGLE:       The Commission will have a five-minute

1 recess as we discuss this matter.

2 (five minutes break)

3 The Enquiry is back in session.

4 Mr Levy, the decision of the

5 Commissioners is that we have heard

6 enough of this line of presentation and

7 at this time we would require no further

8 information on this matter regarding

9 xxxxxxxx' Witness Statement. We

10 have the document and therefore, we

11 would ask you to desist from further

12 information on this document and move to

13 another line of questioning.

14 MR. LEVY: If the Commissioners so wish. I just

15 ask for the assurance that the

16 Commissioners will read the Witness'

17 Statement.

18 COMM. BOGLE: Well, the Commissioners have a lot to

19 read and the Commissioners will read.

20 MR. LEVY: I know, but do not be scared of it.

21 There are some exhibits which you

22 probably would...

23 COMM. BOGLE: We will read the document.

24 MR. LEVY: Debtor 18, you were just telling me

25 about a conversation you had with the



1 Honourable Omar Davies.

2 A: Yes.

3 Q: At this location?

4 A: Yes.

5 Q: In this hotel?

6 A: At this hotel.

7 Q: When he was giving evidence in this

8 Commission.

9 A: That's right.

10 Q: Could you tell the Commission about the

11 conversation.

12 A: When Mr. Davies was here giving evidence

13 it was some time in November 2009 and it

14 was allowed for the public to ask

15 questions. I went up and I asked --

16 Mr. Omar Davies made the statement that

17 NCB was too big to fail, that was his

18 statement so I remember that statement

19 quite well. So I went up and I asked

20 him, I said, "Mr. Omar Davies, when you

21 speak about NCB was too big to fail and

22 look what has happened to Debtor 18

Corporation

23 ." Mr. Omar Davies replied to

24 me, "Debtor 18, the problem with

Debtor 18 Corporation is your xxxxxxxx." That

1 was the statement he said which  
2 correlates exactly with this statement  
3 that xxxxxxxx told me. That  
4 was what he was saying.  
5 MR. LEVY: So what you are saying politics was the  
6 whole thing?  
7 A: Yes.  
8 Q: That is one of the things that this  
9 Commission is charged to enquire into.  
10 I am so glad you brought that to my  
11 attention.  
12 MRS. PHILLIPS: Commissioners, may I?  
13 COMM. BOGLE: Yes.  
14 MRS. PHILLIPS: One of the reasons that this Commission  
1.5 has invoked the practice of having a  
16 witness statement circulated before hand  
17 is so that the persons about whom  
18 statements are made can have an  
19 opportunity to know in advance that this  
20 is the testimony that is coming and if  
21 they wish to ensure that they are  
22 represented here and to be able to  
23 challenge it.  
24  
25 The evidence that this witness has just

1 given touches and concerns someone who  
2 has been previously represented before this  
3 Commission and probably may have been  
4 entitled to be present to challenge had he  
5 known that there were going to be statements  
6 made touching and concerning him. It cannot  
7 be fair, it cannot  
8 be fair for this kind of manner of  
9 proceedings where evidence is being led  
10 completely outside of the Witness Statement  
11 that was circulated. In circumstances where  
12 this witness is scheduled to go on for what,  
13 two days, Debtor 18 Corporation?

14 Continued...

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2 MRS. PHILLIPS: From the start of the proceedings this  
3 morning we have heard names being called  
4 in circumstances where there is nothing  
5 that we have that supports that, nor do  
6 we see the relevance of it to the terms  
7 of reference of this Commission.

8 MR. LEVY: Mr. Chairman, I think the terms of the  
9 reference in a nutshell are to un-earth  
10 the truth of the activities of what  
11 happened to the public of Jamaica  
12 because of the FINSAC problems. It is  
13 opened to the public including witnesses  
14 who are involved and have been involved  
15 whether they have been here before or  
16 not, to be here or to be represented.  
17 Mr. Omar Davies, Miss Shirley Tyndale  
18 are people who are very involved in this  
19 FINSAC operation and they have have  
20 every right to be here if they wish but  
21 the evidence being given should not be  
22 thwarted by the fact that they are not.  
23 The evidence is to unearth the truth of  
24 what happened during FINSAC *and how it*  
25 operated outside of the law.



1 it is in the transcript, I don't see the  
2 necessity for us to really go over that.

3 MR. LEVY: I don't recall that but I accept your  
4 words.

5 MRS. PHILLIPS: I am guided by your ruling but that was  
6 not the point I was making. The point I  
7 was making is not that they can choose  
8 whether or not to be here, the point I  
9 was making that the witness statement  
10 that was circulated, when you read it,  
11 it has no such allegation in it so a  
12 person reading *it is not going to* think  
13 *that* there is any need for them to come  
14 here because this witness is not saying  
15 anything about them, there is nothing  
16 there about xxxxxx, there is  
17 nothing there about xxxxxx, I mean  
18 a person reading the statement would not  
19 think, and several other names that have  
20 been called, just come in here and say  
21 anything without warning.

22 COMM. BOGLE: On that note, Mrs. Phillips, I will ask  
23 Mr. Levy to try to follow your witness  
24 statement, the witness statement that  
25 has been produced, we understand that





25

their activities, and their involvement

1 in this receivership, this liquidation  
2 by XXXXXXXXXXXXX who was not acting in a  
3 professional capacity but as a  
4 liquidator.

5 COMM. BOGLE: Mr. Levy please try to restrain yourself  
6 and let us stick to what I ruled awhile  
7 ago and that is, that we try to stick to  
8 and conform to your witness statement.  
9 As I said if there are areas that you  
10 plan to go outside of that then we ask  
11 that you provide us with the  
12 information, if possible, before so that  
13 we can alert the persons involved  
14 because in fairness, the persons  
15 involved may very well want to be  
16 represented here at such time.

17 MR. LEVY: I see that Mr. Patrick Hylton is  
18 represented here, maybe Mr. Omar Davies  
19 should be advised that he ought to be  
20 represented here.

21 COMM. BOGLE: So we will go by the ruling I made.

22 MR. LEVY: Yes, I have no choice. Reluctantly I

23 comply. And it maybe, sir, that I have  
24 to file supplemental witness statement  
25 but the truth is going to come out





1 that the future is as good.

2 I have reprinted my opinion letter to  
3 accord with the amendments made  
4 yesterday and send same to you herewith.

5 I would be grateful if you can let me  
6 have copies of the appointments and of  
7 the indemnities when you get them.

8 I have reserved two  
9 manufacturing/distribution shelf  
10 companies so that in the event that the  
11 hiving down is to proceed, we will have  
12 vehicles immediately available.

13 Yours sincerely

14 Derek Jones.

15 MR. LEVY: May I ask that this be tendered as an  
16 exhibit?

17 COMM. BOGLE: This letter TP12/11.

18 MR. LEVY: So from the very beginning of this  
19 receivership, in fact from before  
20 XXXXXXXXXXXXX was receiving legal advice  
21 from Myers Fletcher and Gordon and from  
22 Derek Jones in particular as to what  
23 should happen during the receivership?

24 A: That is right.

25 COMM. BOGLE: The attachments to that letter, are

1                                   those part of the exhibit too, they have  
2                                   two other letters.  
3   MR. LEVY:                   Just the question of receiving legal  
4                                   advice as to how to proceed, it's  
5                                   incorporated by reference.  
6   COMM. BOGLE:               Yes, one letter actually.  
7   MR. LEVY:                   I will read it in the record trying to  
8                                   save the Commission time  
9   COMM. BOGLE:               It's one attachment, one letter, I think  
10                                  it was copied twice.  
11   MR. LEVY:                   Mr. Chairman in the interest of time let  
12                                  me destroy the attachment.  
13   COMM. BOGLE:               So you are removing the attachment. So  
14                                  the letter stands alone.  
15               Q:               The letter stands alone in the interest  
16                                  of time.  
17                                  Debtor 18, this is a letter dated 30th  
18                                  of August 1998 from Mr. XXXXXXXXXXXXX,  
19                                  Receiver and Manager of Debtor 18  
corporation  
20                                  Limited under Debtor 18 corporation  
21                                  Receivership letter head to Lloyd  
22                                  Pinnock, Vice President -- Finance,  
23                                  National Investment Bank of Jamaica  
24                                  Limited.



1 receivership) and Debtor 18 other  
corporation (in

2 receivership). Could you read the body  
3 of the letter?

4 **A:** This **is** addressed to **Mr.** Lloyd Pinnock.

5 **Dear Mr. Pinnock.**

6 **Debtor 18 corporation (Jamaica) Limited and**  
7 **Debtor 18 other corporation (in**  
**receivership)**

8 **As you know, the businesses of the above**  
9 **two companies were advertised for sale**  
10 **and information packages were provided**  
11 **to prospective investors who wished to**  
12 **take part in the competitive tender**  
13 **procedures that were a condition of the**  
14 **provision of the information. NIBJ had**  
15 **expressed an interest in having an**  
16 **investment role but did not participate**  
17 **in the above process. Earlier, I had**  
18 **informed NIBJ that the only basis to**  
19 **deal with NIBJ other than in a**  
20 **competitive bidding process was if NIBJ**  
21 **agreed to settle the claims of all**  
22 **creditors in full. Now, that the**  
23 **competitive process is complete, I am in**



24

a position to treat with NIBJ.

25

**Q:**

Can I interrupt you to ask you a

1 question. This says, 'earlier, I had  
2 informed NIBJ that the only basis to  
3 deal with NIBJ other than in a  
4 competitive bidding process was if NIBJ  
5 agreed to settle the claims of all  
6 creditors in full'. Is NIBJ being given,  
7 in your view here, special position as  
8 opposed to competitive bidders?

9COMM. BOGLE: The thing is Mr. Levy, I don't think  
10 that it is important for Debtor 18 to  
11 give his opinion, we will have to  
12 interpret it for ourselves.

13 Q: Continue reading.

14 A: Several potential bidders of quality  
15 withdrew and the remaining interest is  
16 not likely to provide meaningful  
17 recovery by the secured creditor. I am  
18 therefore faced with the prospect of  
19 liquidating the assets piecemeal instead  
20 of selling as a going concern, or making  
21 an arrangement more beneficial to the  
22 creditors through NIBJ.

23 The operation was kept open from the  
24 start of the receivership despite the  
25 fact that marginal losses were being

1 made (excluding debt service), on the  
2 basis that it would be more attractive to  
3 purchasers if open and functioning.

4 However, that reasoning is no longer  
5 relevant and this is why, absent from any  
6 alternative presented by NIBJ, I **shall**  
7 **have to close** Debtor 18 corporation at an  
8 early date. I believe that the Government  
9 wishes the facilities to stay open in the  
10 national interest and is prepared to make  
11 a proposal that would be in the better  
12 interest of the creditors. As a first  
13 step, therefore, I enclose a copy of the  
14 information package sent to the potential  
15 bidders. Additional information will be  
16 supplied on request. To protect the  
17 operation from attacks by unsecured  
18 creditors, I intend to "hive--down" Debtor  
19 18 Corporation' operations to a new  
20 subsidiary in the near future and this  
21 would provide an investment vehicle that  
22 could be used by NIBJ.

23 Through it seems clear that I shall have to  
24 close Debtor 18 corporation if there is no  
25

1 NIBJ solution, Debtor 18 other corporation  
makes marginal  
2 profits before debt service and can be  
3 kept operating so long as the  
4 Debtor 18 corporation workers adjacent to  
the  
5 Debtor 18 other corporation plant do not  
interfere in  
6 Debtor 18 other corporation's operations.  
Since I will be  
7 unable to pay the Debtor 18 corporation  
8 workers any termination benefits, it is  
9 quite likely that there would be  
10 disturbances affecting Plas-Pak that  
11 could force it too to close.  
12 Please contact me for any further  
13 information or clarification of the  
14 above.

15 Yours sincerely

16 XXXXXXXXXXXXXXX

17 Q: I ask that that be tendered and the  
18 number will be TP13/11 I believe?  
19 COMM. BOGLE: Yes TP13.

20 Q: The next letter Mr. Chair is a letter  
21 dated January 12, 1999 from Jeffrey C.

22 Cobham, Managing Director of National  
23 Commercial Bank, Jamaica Limited to  
24 Patrick Hylton, Managing Director of  
25 FINSAC Limited. Debtor 18 could you

1 read.

2 A: This is a letter on the letter head of  
3 National Commercial Bank dated January  
4 12 1999, addressed to Mr. Patrick  
5 Hylton, Managing Director of FINSAC  
6 Limited.

7 **Dear Mr. Hylton.**

8 **Overdraft Facility for Debtor 18 corporation**  
9 **(Jamaica) Limited (in**  
10 **receivership/Debtor 18 other corporation**  
11 **(in**  
12 **receivership)**

13 Further to our letter dated December 14,  
14 1998 in reply to yours of December 9,  
15 1998, we have now received a formal  
16 request from the Receiver/Manager for  
17 the following facilities:-

18 **Debtor 18 corporation (Jamaica) Limited (In**  
19 **Receivership)**  
20 **Overdraft -- \$0M (an increase of \$0M)**  
21 **to expire 31/3/99**  
22 **Guarantee -- US\$200,000 (continuation of**  
23 **existing guarantee) to expire 31/3/99**  
**Debtor 18 other corporation (in**  
**Receivership)**

24

Overdraft -- \$ 6M (an increase of \$ 0M) to

25

**expire 31.3.99**

1 Guarantee -- US\$100, 00 (continuation of  
2 existing facility) to expire 31/3/99 In  
3 order for us to give this request  
4 consideration, we require from FINSAC,  
5 security in the form of Guarantee or  
6 FINSAC liquid bonds. The Receiver/Manager  
7 is unable to provide security.

8 Although the facility is requested to expire  
9 31st March, 1999, the projections show that  
10 at that date the liabilities will still  
11 outstanding. The matter of payout of the  
12 liabilities should therefore be fully  
13 addressed in your communication to us.

14 As stated in the letter of request from the  
15 Receiver/Manager (copy attached), the  
16 funds are needed immediately, hence the  
17 need for your prompt response. At 8th  
18 January 1999, the liabilities were as  
19 follows:-

20 Debtor 18 corporation (Ja) Limited  
21 (in receivership)

22 Overdraft - **\$xM**

23 Guarantee - **US\$x**

24

25



1 Debtor 18 other corporation (in  
Receivership)

2 Overdraft - \$xM  
3 Guarantee - US\$x  
4 Yours sincerely  
5 Jeffrey Cobham  
6 Managing Director.

7 Q: Mr. Chairman, I ask that we enter this  
8 as Exhibit TP14/11?

9 COMM. BOGLE: Yes.

10 MR. LEVY: XXXXXXXXXXXXXXX...

11 A: xxxxxxxx.

12 Q: I apologize.

13 COMM. BOGLE: I know you are a man full of integrity.  
14 Mr. Levy, please do not •- be careful of  
15 the side remarks in referring to anyone.

16 MR. LEVY: There is a latin phrase that says res  
17 ipa loquitor.

18 COMM. BOGLE: We have to retain some level of, should  
19 I say, decorum in what we say.

20 MR. LEVY: What you have before you Debtor 18 is  
21 a letter dated January 13, 1999, signed  
22 by Patrick Hylton as Managing Director  
23 of Financial Sector Adjustment Company  
24 Limited and Audrey Robinson, General

