

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 6TH
DECEMBER 2000, AT 10.30AM:

MS. O'BRIEN: Mr. Thomas Barry please.

THOMAS BARRY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Barry. Mr. Barry, you are
the former chief manager of Allied Irish Banks Capital
Markets, is that correct?

A. That's correct.

Q. The Tribunal raised a number of queries with Allied
Irish Banks relating to the structure and operation of
US dollar loans advanced to Dr. Garret Fitzgerald and
also in relation to the terms on which Dr. Fitzgerald's
liabilities with Allied Irish Banks were settled and
the Tribunal was provided with a single memorandum
covering all of the queries that were raised and
relating both to your evidence that you are giving
today and also to evidence given yesterday to the
Tribunal by Mr. Nugent.

A. Yes.

Q. And Mr. Nugent was former head of retail banking, and I
think he was in a position to cover much of the
information which the Tribunal had requested in the
course of his evidence yesterday. The matter which he
was not in a position to deal with was the negotiations
between Allied Irish Banks and Mr. Dowling, Mr. Patrick

Dowling, on, behalf of Dr. Garret Fitzgerald, which negotiations I think took place in or about late 1993.

A. Yeah.

Q. And I think you, as former head of Allied Irish Banks Capital Markets, entered into those negotiations with Mr. Dowling on behalf of the bank, is that correct?

A. That's correct.

Q. And I don't intend to go through all of the evidence already given by given by Mr. Nugent, but just to recap on the loans that were in existence at that time.

Mr. Nugent had informed the Tribunal that in 1988 there was a US dollar loan of 322,000 provided by the Grafton Street branch to Dr. Fitzgerald and that that loan was what's known as a recourse loan which means that Dr. Fitzgerald was liable for the entire of the capital that was outstanding on the loan?

A. Yeah, the entire of the capital and the interest.

Q. And Mr. Nugent also referred to a loan which was advanced a year later by AIB Capital Markets which was for approximately \$188,000 US dollars and that that loan was advanced as part of a Guinness Peat Aviation scheme which was introduced to finance the acquisition of shares by employees and officers of the company and that that loan, unlike the 1988 loan, was not recourse as to capital and that the only recourse available to the bank was to the shares which were the security for the loan?

A. Yeah. You are correct in terms of the status of the loan, but in terms of the purpose of the loan, 82,000 of it was used to part repay the 1988 loan. And the balance of 106,000 was used to purchase new shares.

Q. And then both of those loans, I think, were restructured in 1992 at branch level into a single loan for 248,000-odd dollars and that loan was fully a full recourse loan both as regards interest and capital.

A. That's correct.

Q. And that's how matters stood in 1993 when an approach was received from Mr. Dowling on behalf of Dr. Fitzgerald, is that correct?

A. That's correct. The interest had been paid by Dr. Fitzgerald in the meantime.

Q. The interest had been serviced, yes. The matter of the negotiations was dealt with, I think, the 7th of the queries raised by the Tribunal; and if I could refer you to the memorandum that was furnished by Allied Irish Bank in relation and in response to those queries, and I think that's dealt with on the third page of the memorandum.

A. Yes.

Q. And that memorandum stated that: "Mr. Paddy Dowling, who was assisting Dr. Fitzgerald in restructuring his financial obligations following the collapse of Guinness Peat Aviation, telephoned you to outlined

Dr. Fitzgerald's financial problems to seek to come to a mutually acceptable settlement." Is that correct?

A. That's correct.

Q. I think Mr. Dowling outlined that to you and I take it that was at a meeting, was it?

A. No, I believe it was in a telephone conversation.

Q. He outlined to you that the following was the position:

He stated that "Dr. Fitzgerald is an absolutely honourable man and will do all in his power to effect maximum repayment of his AIB loan."

A. That's correct.

Q. He stated that, "However, Dr. Fitzgerald had very limited income, only income from writing and limited assets."

A. That's correct.

Q. He stated that Dr. Fitzgerald had a part interest in his dwelling house which he had disposed of for $\frac{1}{2}$ 30,000?

A. Yes.

Q. He stated that Dr. Fitzgerald was concerned that the life policy he had given to the bank as security could leave his wife in a position of not being financially secure.

A. Yes.

Q. And that in addition to the Allied Irish Bank Retail Bank loan of \$248,000, he also had a loan to another bank. And that he was unsure as to how he would go

about settling that loan.

A. That's correct.

Q. And that in light of those matters, Mr. Dowling offered Allied Irish Bank $\frac{1}{2}$ 30,000 in settlement of the US dollar loan for \$248,000?

A. Yes.

Q. You stated that "We," presumably meaning Allied Irish Bank, "concluded that in view of the very limited assets and income of Dr. Fitzgerald and in view of the other loan which Dr. Fitzgerald owed, that commercially Allied Irish Bank would be better off in accepting a cash settlement, even one of the modest size of, sir, say 20% of the loan balance rather than taking legal action against Dr. Fitzgerald in which scenario most, if not all, of the assets of Dr. Fitzgerald could be used up in legal costs leaving him with little or nothing to pay Allied Irish Bank."

A. That's correct.

Q. And in addition, I think a matter which you considered was AIB would also have to pay their own legal costs.

A. Yes.

Q. You stated: "As a result, Allied Irish Bank responded to Mr. Dowling and sought a settlement of $\frac{1}{2}$ 40,000 which Mr. Dowling agreed to on behalf of Dr. Fitzgerald."

A. Yes.

Q. So that the $\frac{1}{2}$ 30,000 was offered and Allied Irish Bank went back and said that they were prepared to settle

for $\text{€}40,000$.

A. That's correct.

Q. Taking into account all of the considerations that were mentioned in the memorandum.

A. Yes.

Q. You say that the basis of the amount sought was that $\text{€}30,000$ had been offered and you felt that if you sought a modest additional amount of $\text{€}10,000$, that Dr. Fitzgerald would be in a position to arrange it in order to settle his large loan obligation.

A. Yeah, well, I think the words, "We felt he may be in a position," and I think he was in a position.

Q. He was in a position to do so.

And I think then a formal settlement agreement was drawn up of the 17th November of 1993 and that settlement agreement was executed by both parties.

A. Correct.

Q. I think you can confirm that on the basis of the information provided to you, there was no doubt that full disclosure was made that the only assets that Dr. Fitzgerald owned when he came to make these proposals to the bank was his interest in a family home at Palmerstown Road and the GPA shares which were also already lodged with the bank as security for the loan.

A. Yeah, that was the position. Our client told us and as we assumed, as Dr. Fitzgerald was a man of integrity and we certainly know Paddy Dowling as a man of

integrity, we accepted that that was the actual situation.

Q. And after this settlement had been executed, it would be correct to say that Dr. Fitzgerald had divested himself of his interest in his family home; what he was left with was some form of right of residence in the upper floor apartment and that he had also assigned to the bank his Guinness Peat Aviation shares?

A. We weren't aware of the detail of what the arrangements were in relation to the leasing of the accommodation in the house at the time. But yes, it was our understanding that most of the capital came from his disposal of his interest in the house to his son.

Q. And then he had also assigned his GPA shares to Allied Irish Bank as part of the settlement.

A. Yes, the ones that we had security over we retained.

Q. I see. Thank you very much, Mr. Barry.

CHAIRMAN: Thank you, Mr. Barry.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Dr. Fitzgerald.

DR. GARRETT FITZGERALD, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Dr. Fitzgerald, I think for the assistance of the Tribunal you have furnished a

memorandum of your proposed evidence, isn't that correct?

A. Yes.

Q. And do you have a copy of that with you?

A. I have, yes.

Q. And what I would intend doing, Dr. Fitzgerald, is taking you through the memorandum of proposed evidence and then maybe asking a few questions to clarify any matters which might arise in the course of it; if that's all right.

A. Yes.

Q. Before I do that, I think you are aware that evidence was given yesterday by Mr. Nugent from Allied Irish Banks and he outlined the various loans and the securities which the bank held in respect of those loans which were granted to you, isn't that correct?

A. Yes.

Q. And I think that you accept that evidence as being correct: The three loans, first of all, the 1988 loan, the 1989 loan and the conversion of those two previous loans into one loan in 1992.

A. Yes, that's right.

Q. Now, I think also, Dr. Fitzgerald, that how you come to give evidence before the Tribunal is as follows: In the course of the Tribunal's business and dealing with evidence relating to Allied Irish Banks, I think a matter came into the public domain relating to your

finances and your relationship with Allied Irish Banks,
isn't that correct?

A. Yes. That came into the public forum by means I am
unaware of. I was somewhat surprised, but it did and
the Tribunal took note of it.

Q. And I think I have to ask you the question just to
get you didn't bring the matter yourself into the
public domain at that time?

A. I did not.

Q. But as a result of the matter coming into the public
domain, I think the Tribunal made contact with you,
isn't that correct?

A. Yes.

Q. And I think you immediately made available to the
Tribunal all information and all documents at your
disposal and you authorised the Tribunal to make
contact with Allied Irish Banks to seek any information
relating to your finances in respect of these loans?

A. Yes, of course.

Q. And I think you also authorised the Tribunal to make
contact and to discuss freely with Mr. Dowling who
carried out negotiations on your behalf with Allied
Irish Banks in respect of a compromise of your
indebtedness?

A. Yes.

Q. And I think in your Memorandum of Evidence, you have
informed the Tribunal that you have been asked by the

Tribunal to give evidence in connection with an indebtedness of yours to Allied Irish Banks which was incurred arising from the acquisition of shares in Guinness Peat Aviation and in connection with the ultimate settlement of that indebtedness in November of 1993. Is that correct?

A. Yes.

Q. I think you have informed the Tribunal that shortly after your resignation as Taoiseach and also as leader of Fine Gael in March of 1987

A. 1997.

Q. I beg your pardon, 19

A. Sorry, you are right.

Q. 1987. You were approached by Mr. Maurice Foley of GPA with an offer to join the company's Board, is that correct?

A. Yes.

Q. And as a member of the Board you would be entitled to buy 200 A preference shares.

A. Yes.

Q. These shares carried special dividend rights and were convertible to 6,000 GPA ordinary shares. I think you accepted this offer. You joined the Board and you purchased the shares, is that correct?

A. Yes.

Q. I think you have also informed the Tribunal that as confidence in GPA increased, you subsequently borrowed

further sums totalling \$281,259 dollars from AIB to enable you to purchase 20,000 ordinary GPA shares making the total borrowed from Allied Irish Banks \$313,250.

A. Yes, I think the 259 should read 250, it's a typing error.

Q. I see. I think you have informed the Tribunal that the last 5,000 of these shares were acquired in order to establish a family trust in favour of your six grandchildren and a life trust in favour of a family friend. That was your reason?

A. That's right, yes.

Q. Now, I think you have informed the Tribunal that your pension and earnings from lecturing, journalism and consultancy, plus the dividends from the A preference shares, enabled you over five and a half years to pay off an overdraft of £80,000 which you had incurred before or while you were in office as well as \$65,000 of the 313,259 total loans you had.

A. Yes. The 80,000 was, in fact, converted to dollars and put into the original loan at 112,000 I think.

Q. And I think in addition, you paid all interest as it became due?

A. Yes.

Q. Now, I think evidence was given by Mr. Nugent yesterday of the two initial loans and the state of those when they were converted into the third loan and he gave

evidence about both capital and interest being serviced in respect of those loans. I think that accords with your own recollection of events.

A. Yes.

Q. I think you have informed the Tribunal that as a result, the total borrowings still outstanding in 1993 from these Allied Irish Bank loans was \$248,000.

A. Right, yes.

Q. I think you have recently learned something that because of unfamiliarity with the technical language of the agreement with the bank, you failed to appreciate at the time namely that this sum over half namely \$188,250 borrowed in 1989 was non-resource.

A. I think that 207,000 I think I misunderstood which was non-recourse, the actual figure of 207.

Q. In fact, it was approximately \$188,000 approximately. I will deal with that in a moment with you.

A. Okay.

Q. I think you have informed the Tribunal, that is to say, that your \$188,250 liability in respect of this sum was, in fact, limited to payment of interest, thus the assignment of the shares to the bank without recourse to any other assets of yours.

A. I think there is some confusion

Q. Perhaps I'll deal with it and I'll ask you if you agree with the evidence that was given yesterday by Mr. Peter Nugent.

A. Yes, I do. The non-recourse loan I think was 106,250 of the total sum.

Q. The first loan which you took out was from retail bank, the confusion arises because of the different sides of the bank seemingly. The first loan in 1988 was from the retail bank and that was with full recourse both to interest and capital.

A. Yes.

Q. The second loan in 1989 was part of a scheme which the Merchant Banking side of Allied Irish Banks had with Guinness Peat Aviation executives and employees and that was non-recourse other than as to the shares as regards capital and it was with full recourse as to interest.

A. But the sum involved there was, I think, 106,250, the non-recourse part. There had been confusion about this between which was non-recourse and which was recourse. I think I now understand it was 106,250.

And the recourse figure would then have been 141,750 I presume.

Q. Very good. In any event

A. I hope I got that right.

Q. In any event, circumstances overtook all of that anyway, because of the next loan, isn't that correct?

A. Yes.

Q. I think if I move to Paragraph 7 so and I go to the second sentence, you say: Had you known in 1992 about

the non-recourse nature of the 1988 loan or the '89 loan you certainly would not have proposed then that it and the 1988 loan be replaced by a single new recourse loan with a different repayment date as a result of which you lost, at that stage, the non-recourse character of half your outstanding borrowings.

I think Mr. Nugent gave evidence yesterday that in 1992 you wanted to simplify matters and convert everything into one loan, isn't that correct?

A. Yes.

Q. And in doing that you paid off out of the new loan the two previous loans but that the 1992 loan was with full recourse and you unwittingly lost the non-recourse benefit in relation to 1989

A. I am afraid I hadn't read the small print of the '89 loan, yes.

Q. And I think you go on to say of course that you should perhaps add that, of course, you accept the good faith of Allied Irish Bank in not preserving at the time the non-recourse character of the 1989 part of the loan.

There was confusion because the two loans being merged had been arranged by two different sections of the bank at the time of the settlement in 1993. This was effectively rectified as far as you were concerned.

A. The details of the actual settlement, I didn't have. Mr. Dowling will give evidence on that. It appeared to me that, effectively, the non-recourse character

part of the loan was taken into account and then we had to pay the residue. But Mr. Dowling

Q. I think Mr. Dowling can give evidence about that

A. I can't go into detail that was involved.

Q. And I think you say that with the collapse of GPA in the second half of 1992, you were faced with the problem of these debts. I think that is correct?

A. Yes.

Q. And the only significant asset with any equity that your wife, your late wife Joan and you possessed was equity in your home at 30 Palmerstown Road on which there was a mortgage, isn't that correct?

A. Yes.

Q. When it became evident that efforts to restore the GPA situation were fading, you took the following steps:

A. Although having health problems for which you were briefly hospitalised in 1992, you sought and undertook lectures in the US, Germany and Britain and undertook consultancy work in Russia.

A. Yes.

Q. B. You entered into an agreement with your son Mark under which he and his wife agreed to sell their own family home in Belgrave Place, Rathmines and to purchase, with an independent valuation, your house at 30 Palmerstown Road. Certain works, the bulk of the cost which was, in fact, borne by your son, had to be carried out to make the house habitable for two

families, with your wife and you occupying an apartment on the top floor at a rent of $\text{€}6,000$ a year for six years until you would be 73 years of age and rent free thereafter. Isn't that correct?

A. That's right, yes.

Q. And I think you have informed the Tribunal that after the completion of the necessary works on the house and the repayment of your mortgage and your liabilities, this left a net residue of about $\text{€}30,000$ from the sale of the house and apart from a small surplus on current account after providing for income tax due on receipts, this was the only asset with equity that you possessed other than the GPA shares which were pledged to the bank and the few hundred unpledged GPA shares arising from a rights issue and a small shareholding in a closed company which could not be alienated?

A. Could I explain this point. All of today's papers report that I sold the house for $\text{€}30,000$ which, of course, I did not say. It is not the case. The valuation on the house, an independent valuing was it was worth $\text{€}200,000$ with vacant possession, but with us occupying the top flat in those terms, it would be $\text{€}150,000$. In fact, a house was sold shortly afterwards, about five months later, number 22 Palmerstown Road sold for 160,000 with more of a back garden than we had been left with and then from that

150,000 I had to pay the mortgage. I had to retain some money to pay outstanding income tax, which is a requirement and finally, put some money towards the reconstruction of the house which required to become

Q. It had to be converted into two apartments. I think your son Mark and his wife had small children as well?

A. Yes. And I think they bore the bulk of the cost but I put something towards that to the work for upstairs.

What was then left was $\frac{1}{2}$ 30,000 after that. But I would be glad if that's clarified because I don't know whether Mr. Nugent said that or not, but the papers all report it as having been said and to suggest that you sell a house for $\frac{1}{2}$ 30,000 without vacant possession on Palmerstown Road in 1993 could even be described as defamatory.

Q. Let's take it very slowly so.

A. All right.

Q. I think Mr. Dowling arranged for, notwithstanding that your son Mark was in the business of property himself, Mr. Dowling arranged for an independent valuation of the property?

A. No. We arranged I think before Mr. Dowling was involved, we arranged that. I got an independent valuation.

Q. And the independent valuation was that with vacant possession, it could possibly achieve $\frac{1}{2}$ 200,000?

A. That's right, yes.

Q. With you and your late wife as sitting tenants, effectively, the independent valuation was that the house was about $\text{€}150,000$?

A. That is what my son paid me.

Q. That's what your son paid for it and some short time after that, a house on Palmerstown Road with vacant possession went for around $\text{€}160,000$?

A. Yes.

Q. From the proceeds of the sale, you had to discharge the mortgage on the property in the first instance?

A. Yes.

Q. Which was sizable at that time?

A. Indeed.

Q. You had to pay some income tax, isn't that correct?

A. I had to provide for a liability of tax on income I had earned at that stage in the year.

Q. And you had then to make a contribution to the conversion of the house into two apartments effectively.

A. Yes.

Q. And what was left over was $\text{€}30,000$ which you made available for Allied Irish Banks?

A. Yes.

Q. So having disposed of your asset, that was the residue after all liabilities were discharged?

A. Yeah.

Q. I think you say that around this time, with a view to

negotiating a settlement with Allied Irish Banks on a commercial arm's length basis, you secured the services of Mr. Brian Evans of PriceWaterhouse and Mr. Patrick Dowling, a retired senior banker, who formerly worked with that bank. You had understood that Mr. Dowling met with Mr. Peter Nugent of Allied Irish Banks and explained your financial position to him.

A. Yes.

Q. And I think that ultimately on the 17th November 1993, a settlement agreement was reached which involved the payment by you to Allied Irish Banks of $\frac{1}{2}$ £40,000 which was the equivalent at the time of about \$56,000 US dollars, together with the assignment to Allied Irish Banks of some 21,000 shares in GPA, now Airfile, is that right?

A. That's right, yes.

Q. I think you then say that the company has recently been subject to an acquisition at a price per share of \$3.90 so the current value of the shares you then assigned to Allied Irish Banks is about, in present day terms, about \$82,000. You do not, of course know whether AIB retained the shares but if they did so, then taken together with your 1993 payment to the bank, this would amount to a total figure of about 138.

A. Yes.

Q. And excluding the 1989 non-recourse loan which was merged into a new loan in 1992, your liability to the

bank in 1993 would have been \$123,000 in real terms?

A. I think that would be about 145 because of my earlier error in the non-recourse, so it would be 145,000 and the total amount of valued shares of what I paid

CHAIRMAN: Just to clarify that, Mr. Coughlan, because it looks a little strange in the transcript

MR. COUGHLAN: I intend going through it slowly.

A. I am sorry about that. It's my fault.

Q. MR. COUGHLAN: I think you then said that this is your evidence which you hope clarifies you are dealing with Allied Irish Banks on this matter but you are happy to answer any further questions which the Tribunal may have.

A. Yes.

Q. Just a few matters, if I may, Dr. Fitzgerald.

I think when you retained the services of Mr. Brian Evans of PriceWaterhouse, and Mr. Patrick Dowling who was a retired senior banker who had formerly worked for Allied Irish Banks, I think you did not yourself know Mr. Dowling personally, isn't that correct?

A. No.

Q. I think that it was your son Mark who had business communications or a relationship over the years with Mr. Dowling, advised on the retaining of Mr. Dowling?

A. He suggested his name to me, yes. I was anxious that

negotiations should be at arms length and commercial negotiations.

Q. And then in relation to the ultimate compromise of the indebtedness with Allied Irish Banks, I think it was Mr. Dowling who negotiated the minutiae of the agreement, isn't that right?

A. Yes.

Q. And in that regard you offered the $\text{€}30,000$ which was the residue after the disposal of your one significant asset, the family home. And Allied Irish Banks requested a further payment of $\text{€}10,000$ which was, in fact, paid by you also?

A. I think I must have earned more money in between to be able to pay the 40,000.

Q. They came back in the process of negotiation and another $\text{€}10,000$ was paid. You also assigned the shares in GPA to Allied Irish Banks and whilst they may have had relatively little value at that time, the point you wish to make is that if they held, continued to hold those shares, that as of today's date or around today's date, those shares had a potential value of around \$3.90 per share.

A. Yes.

Q. And that would give the current value to those shares of approximately \$82,000.

A. Yes, that's right.

Q. And converting your $\text{€}40,000$ payment to Allied Irish

Banks to US dollars at that time, that amounted to about \$56,000?

A. That's right, yes. I had, of course, already paid off the overdraft, 80,000, which was in dollar terms 112,000. I paid 65,000 off the original loans and then I paid another \$56,000 in the form of $\frac{1}{2}$ 40,000 at that stage.

MR. COUGHLAN: Yes. Thank you very much, Dr. Fitzgerald.

MR. SHERIDAN: I have no questions for Dr. Fitzgerald except that I might make one point of clarification upon which Mr. Barry kind of necessarily gave evidence. Just for perhaps clarification.

I have taken instructions and I am instructed that as would be normal with security, the shares in question would have been realised at the time and would have been realised at a considerably less value than what they might now be worth

A. I feared that might be the case.

CHAIRMAN: It was only a hypothetical matter that was placed in any attempt to set all dealings in context, Mr. Sheridan.

Thank you very much for your cooperation and attendance, Dr. Fitzgerald. I am sure the aspect which caused you some concern in yesterday's reporting will

be duly noted. Thank you.

A. Thank you.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Patrick Dowling please.

PATRICK DOWLING, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Dowling, you just heard evidence that
it was both from Dr. Fitzgerald and Mr. Barry that it
was you, as Dr. Fitzgerald's adviser, who negotiated
the details of the settlement with Allied Irish Bank on
his behalf?

A. That's correct.

Q. And I think the Tribunal contacted you on foot of an
authority received from Dr. Fitzgerald whereby he
authorised the Tribunal to contact you for you to
discuss all matters with the Tribunal freely?

A. That is correct.

Q. And on foot of that request and contact, you provided
the Tribunal with a memorandum of the evidence which
you are in a position to give regarding your
involvement with the settlement of Dr. Fitzgerald's
indebtedness?

A. Yes.

Q. And I wonder if you have a copy of that with you,
Mr. Dowling?

A. I have it in front of me.

Q. What I suggest is I'll take you through that memorandum, and if needs be I may have one or two questions that I may wish to raise with you on completion of memorandum.

In the memorandum you state that you are a retired banker. Prior to your retirement in September 1992 you were director and deputy Chief Executive of Allied Irish Banks?

A. That's correct.

Q. You state that you had been asked by the Tribunal to give evidence in relation to your role in the settlement of November 1993 of the indebtedness of Dr. Garrett Fitzgerald to Allied Irish Banks?

A. Correct.

Q. You state that prior to your involvement in this matter, you had no personal or professional relationship with Dr. Fitzgerald?

A. True.

Q. And I think Dr. Fitzgerald has also confirmed that in his evidence. You state that you knew Dr. Fitzgerald's son, Mr. Mark Fitzgerald, from dealings with him in the course of your banking career.

A. Yes.

Q. You state that early in 1993, Mr. Mark Fitzgerald telephoned you and asked you if you would advise the

family, and in particular his father, on how they might work through the financial issues that had arisen following the recent failure of the initial public offering of Guinness Peat Aviation shares and the subsequent collapse of the share price. Is that correct?

A. Yes.

Q. You state that you were happy to provide any assistance that you could. You subsequently met with

Dr. Fitzgerald and you had a full discussion regarding

Dr. Fitzgerald's indebtedness to Allied Irish Banks:

His level of income, his expenses and his assets.

A. True.

Q. You state that the matter of greatest concern to

Dr. Fitzgerald was a US dollar loan of around \$250,000

US dollars advanced to him by the bank to finance the purchase of GPA shares.

A. Yes.

Q. Dr. Fitzgerald, on his retirement, had been appointed

both a director and a consultant to GPA and over the

years he had purchased tranches of shares in the company.

A. Yes.

Q. Dr. Fitzgerald's expectation and perhaps also the expectation of Allied Irish Banks was that the value of

the shares would appreciate, would be readily

marketable following the envisaged IPO of the shares

and the loan would be repaid in due course from the proceeds of the share disposals. Dr. Fitzgerald's loan of around $\frac{1}{2}$ 250,000 was record in a formal loan agreement dated July of 1992.

A. Yes.

Q. And that, of course, was the loan agreement which would have been available when you were consulted in the matter?

A. Yes, that was the only documentation I had, in fact.

Q. I think you now know, in fact, that the July of 1992 loan agreement was a restructuring at branch level of two earlier loans, one dating from 1988 and another dating from 1989.

A. Yes, having read the other documentation now available, I misread the purpose of the loan as written. It didn't change the fact that the same amount of money of due.

Q. Exactly. You state that the loan was secured by letters of pledge over the GPA shares held by Dr. Fitzgerald and by a guarantee of Dr. Fitzgerald's late wife. This guarantee was supported by an assignment of a policy of insurance on Dr. Fitzgerald's life on which his wife was the beneficiary?

A. Yes.

Q. You state that under the terms of the said loan agreement, interest was to be paid quarterly and repayment of capital was deferred until 1996?

A. Yes.

Q. You state that Dr. Fitzgerald had at all times serviced the interest requirements of his loan and over the years had made substantial capital reductions.

A. Yes.

Q. And we have heard of those capital reductions both from Dr. Fitzgerald in the course of his evidence and indeed yesterday from Mr. Nugent in the course of his evidence.

A. Yeah.

Q. You state the difficulties he was now confronting had arisen from the failure of the GPA share flotation, the consequent collapse in the shares of GPA shares, the considerable reduction in his personal income due to the loss of GPA dividends, GPA director's and consultancy fees and consultancy fees from another source.

A. Yes.

Q. You state that in addition, any one of these events could trigger the default clause in his loan agreement requiring the full amount of the US dollar loan to become immediately repayable?

A. Yes.

Q. So there was an acceleration provision in the terms under the terms of the loan agreement which could render the entire of the principal sum advanced immediately repayable?

A. That is right, and those events would trigger them, had triggered them, in fact.

Q. So that at any time the bank would have been perfectly entitled to make full demand for the entire of the principal and interest then outstanding on the loan?

A. True.

Q. You state that Dr. Fitzgerald's sole tangible asset, his family home in Palmerstown Road in Dublin, and it was subject to a sizable mortgage?

A. Yes.

Q. You state that his personal expenses were modest but that his family outgoings were quite high due to the cost associated with his late wife's medical condition?

A. Yes.

Q. You state that at the time Dr. Fitzgerald felt that he would be able to repay the bank through further income which he hoped to generate and he was also optimistic about the prospects for a recovery of the GPA share price.

A. Yes.

Q. You state that you reviewed all of these matters and at a second meeting you strongly recommended to Dr. Fitzgerald to accept that he would not have the capacity to repay the US dollar loan from income.

A. True.

Q. So the position, therefore, was that Dr. Fitzgerald himself was anxious to repay the entire loan and felt

optimistic that he could do so out of future earnings and also a possible recovery of the share price, but that having reviewed these matters, it was your recommendation to him in the light of his reduced income, that he would not be in a position to do so?

A. That is true. He was still retaining confidence that one way or another he would work his way out of it, but I didn't see that as feasible.

Q. You state that you argued also that the GPA shares would continue to decline to numetary values.

A. That's right.

Q. You recommended that Dr. Fitzgerald should authorise you to enter into negotiations with Allied Irish Banks on his behalf.

A. Yes.

Q. And you state that ultimately and with great reluctance, Dr. Fitzgerald agreed that you should make an approach to the bank.

A. Yes.

Q. You state that you were aware at the time that Allied Irish Bank and other banks had made non-recourse loans to GPA directors and other personnel to finance the acquisition of GPA shares?

A. Yes.

Q. You state that in the case of Dr. Fitzgerald's indebtedness, about $\frac{1}{2}$ 130,000 of the total owed had been on a non-recourse basis until the loan was, in fact,

restructured in July of 1992.

A. Yeah, that was my understanding at the time.

Q. That was your understanding at the time.

A. Yes.

Q. And that that would have arisen from the 1989 non-recourse loan which was advanced by the Merchant Banking side of Allied Irish Banks?

A. Yes.

Q. You state that moreover, the sale structure for the loan was a pledge of GPA shares, some short term policies of insurance and a guarantee from Dr. Fitzgerald's late wife.

A. Yes.

Q. You state that for yourself, therefore, a reasonable debating point in any dialogue with Allied Irish Bank was that the source of repayment of a loan seemed to have been accepted by all parties as being from the sale of GPA shares.

A. Yes.

Q. And that was on the footing that the 1989 loan was non-recourse.

A. It was just a general perception from the loan agreement. Loan agreements are legal documents and they're heavily languaged, but often there is more lawyer in them than banking, and I would have held the view that a good loan, no matter how long the document is, that the good loan agreement should capture the

answer to three simple questions: What is the loan for? How is the loan going to be paid back? And what should happen to pay it back if your idea, your project, your concept, your plan doesn't come off? And this particular loan agreement was clear on what the loan was for. It was clear on when it was to be repaid. But the only source of repayment within the document appeared to be the GPA shares.

Q. And it was that which led to your perception?

A. That's what led to my perception.

Q. You state that Mr. Mark Fitzgerald was privy sorry, state that Mr. Mark Fitzgerald was privy to all of your discussions with his father and that you were authorised to discuss all matters with him?

A. That's right.

Q. You state that prior to approaching the bank, you mentioned to Mr. Mark Fitzgerald that you would expect the professional bankers in Allied Irish Banks to be understanding of the difficulty to foresee circumstances that gave rise to the events of default.

A. Yes.

Q. However, a positive response to a request for a full write-off of the US dollar loan would fail unless they were convinced that every source of repayment that reasonably could be poured upon was on offer?

A. Yes.

Q. This brought Dr. Fitzgerald's family home into the

discussions, and if you could just indicate what happened at that stage.

A. Well, at that point my recollection was that the Fitzgerald family had a discussion. The decision was that Mark would sell his own home, that he would move himself and his family to live with his father. Some costs would be spent to convert the home into two apartments and that when everything was done, that at least $\frac{1}{2}$ 30,000 would be thrown up and that that would be offered to the bank if they were to agree to write-off the indebtedness. We were tracking down the value of the sole asset that Dr. Fitzgerald had.

Q. Which was the house in Palmerstown Road?

A. His interest in the house in Palmerstown Road.

Q. It was Mr. Mark Fitzgerald who offered to sell his own family home to enable this transaction to be put into place?

A. Absolutely.

Q. And as a banker, what was your view of the action that Mr. Mark Fitzgerald had taken?

A. Oh, I would have rated that one of the great acts of family selfless family solidarity I had personally experienced up to that time. I thought it was admirable behaviour. It's not I don't know if anybody has experience about living with your in-laws, but it isn't something you voluntarily take on if you can afford it, and he had a young family at the time

and he had his own life to live and but he chose to do that.

Q. He chose to do that. He, of course, and his wife?

A. He and his wife.

Q. And it was in those circumstances that after the payment of all income tax and charges and mortgages on the house that a sum of $\text{€}1,230,000$ was yielded and was available for you to offer to the bank?

A. Well, I had the commitment to deliver $\text{€}1,230,000$. In the event $\text{€}1,240,000$ was made available, in preparing my statement I wasn't at all clear where the extra 10 came from, but I understood it from this morning's evidence.

Q. Now, you say that at paragraph 9 of your memorandum, you say that in your negotiations with Allied Irish Bank, your first contact was with Mr. Aidan McKeon who was then head of lending control in the bank?

A. That's correct. Just for the record, I don't recall meeting Mr. Nugent.

Q. I don't think Mr. Nugent suggested that you did meet him. I don't think there was any question of that because Mr. Nugent was in the retail banking section and, in fact, he refrained from giving any direct evidence yesterday as to the negotiations between you and Allied Irish Bank so I don't think there was any question

CHAIRMAN: I think there was one reference in evidence that may have been mistaken, Ms. O'Brien, but the

general thrust is clear.

MS. O'BRIEN: Yes.

Q. You state that you explained Dr. Fitzgerald's financial position to Mr. McKeon and you pointed out the futility of any aggressive debt collection actions given the fact that everything honourable that could be done would be done.

A. That's correct.

Q. You say that at some later time, your discussions moved to Mr. Tom Barry, then chief manager of the banking division in Allied Irish Bank Capital Markets.

A. True.

Q. You state that the Tribunal has provided you with a copy of a memorandum written by Mr. Barry on the 27th July 1993, that the memorandum accurately captures the issues that were discussed and that Mr. Barry agreed to progress the matter.

A. That's true.

Q. And memorandum I think effectively sets out the various points that you made to Mr. Barry and that Mr. Barry record in the course of his evidence this morning.

A. That's true.

Q. You state that in due course the bank confirmed that it was agreeable to settle Dr. Fitzgerald's indebtedness on the terms offered?

A. That's right.

Q. In fact, it appears that while you had offered i;½30,000, what the bank was prepared to do was to settle it but for an extra i;½10,000 making i;½40,000?

A. I don't remember the detail of that, but the probability I was asked was could we get it up somewhat higher, up to 40, and I would have taken that back and the extra 10 was produced. I don't remember the detail of that.

Q. That's perfectly understandable, that you wouldn't at this remove. You state that the terms of the settlement were recorded in a formal settlement agreement which was dated 17th November of 1993.

A. Yes.

Q. And that agreement was executed by both of the parties?

A. Yes.

Q. And of course in addition to the i;½40,000 paid, the GPA shares were assigned to Allied Irish Banks?

A. I understand so, yes.

Q. You state that it is appropriate that you should comment on two matters in Mr. Barry's memorandum of the 27th July 1993, this is the memorandum of the meeting that you had with him.

A. Yes.

Q. You state that, firstly, you did not at any time discuss Dr. Fitzgerald's affairs with Mr. T P Mulcahy?

A. That's true.

Q. I think there is a reference in the memorandum or some

suggestion to that effect. You state that following your discussion with Mr. Mark Fitzgerald and your agreement to meet his father and give any advice that you could, you telephoned Mr. Mulcahy to inform him as a matter of courtesy, that you had taken on the assignment.

A. That is true.

Q. You state that you had no further conversation with him on this matter.

A. Yes.

Q. So your contact with Mr. Mulcahy was purely as a matter of courtesy to advise him that you were taking on this assignment on behalf of the Fitzgerald family?

A. Absolutely.

Q. You state secondly, the decision to seek the release of the two policies of insurance held by Allied Irish Bank, one as security and the other in their custody awaiting assignment, was entirely yours and done without the prior knowledge of any of the Fitzgerald family.

A. That's true?

Q. I think that's two policies of the insurance, life insurance that may have been part of the security for the 1992 loan.

A. Yes, they were kind of contingents given.

Q. You state it is correct to record that Dr. Fitzgerald was troubled and indeed hugely embarrassed by the

totality of his circumstances?

A. Yes.

Q. You state that due to exogenous events he had no assets and his income position required him to take on additional work to meet normal expenses?

A. Yes.

Q. You state that all of this was happening at a time when he had been told he had a worrying heart condition and his wife was quite ill?

A. Yes.

Q. You state that Dr. Fitzgerald had expressed concern many times on the implications for his family, should he predecease his wife?

A. Yes.

Q. And that in these circumstances, an in deference to the honourable family approach that you had witnessed towards the subject obligations, you unilaterally sought and got release of the policies of insurance on Dr. Fitzgerald's life and a cancellation of the guarantee of his late wife?

A. Yes.

Q. Thank you very much, Mr. Dowling.

CHAIRMAN: You felt overall, Mr. Dowling, that you got as realistic a compromise of a difficult situation as appeared feasible?

A. Absolutely.

CHAIRMAN: And it's stating the obvious, I suppose, but since you would have been a very senior banker in AIB at the time of the initial loans being made, it's right to recapitulate that this would not have seemed at all a speculative or risky venture but would have been seen in the context of GPA's intended flotation almost a probable fiasco as Rolls-Royce.

A. Absolutely.

CHAIRMAN: Thank you very much for your attendance and assistance.

MR. COUGHLAN: Those are the available witnesses today, Sir. The Tribunal will sit at 10.30 in the morning to deal with a matter which was indicated by you last Monday, Sir, dealing with the statement you intend making about how the Tribunal intends proceeding in relation to Mr. Haughey.

CHAIRMAN: Yes. I think, because of availability of witnesses on differing days, it's been necessary to have some rather abridged sittings, and indeed I think the one remaining witness in this phase of evidence is unavailable due to business reasons this week. And accordingly that evidence will have to be taken in early course.

I will, as you remind me, sit to deal with the aspect of Mr. Haughey's health situation tomorrow. In view of

it being a short sitting, perhaps I'll make it eleven o'clock rather than half past ten and in the course of that, some indication will be given about further sittings as obviously I am anxious to move matters on as far as possible before the Christmas recess.

Eleven o'clock tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 7TH DECEMBER 2000, AT 11AM.