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1 THE TRIBUNAL RESUMED ON THE 5TH APRIL, 2006 AS FOLLOWS:

CONTINUATION OF EXAMINATION OF AIDAN NOLAN

BY MS. O'BRIEN:

MS. O'BRIEN: Morning, Mr. Nolan.

I think last evening, Mr. Nolan, the last thing we looked at was the meeting which you had with Mr. O'Connor and Mr. O'Hanlon on the 5th April of 2003; isn't that right?

A. Yes.

Q. And I think at that stage you were still in the process of discussing the small number of issues that had arisen between you regarding the income figures which would then give you ultimately a tax base on which to compute the taxation; isn't that right?

A. That is correct, yes.

Q. And I think the next meeting was on the 27th February there may have been a short meeting between the 5th and the 27th, but the next one I want to refer to you, if you wouldn't mind, was on the 27th February, and you'll find that behind Divider 18 of the Tribunal book.

A. Yes, I have it.

Q. I'm not going to open the entire of this minute; there are just one or two matters that I want to refer you to.

You'll see I think it should be on the screen now and it's the meeting of the 27th February, and you and

Mr. Liston and Mr. Faughnan were in attendance on behalf of Revenue Commissioners, and Mr. O'Connor and Mr. O'Hanlon on

behalf of Mr. Lowry and Garuda.

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And I think the note of the meeting records that Mr. O'Connor gave you a draft Statement of Affairs for Mr. Lowry as at the 31/12/02 and a copy of draft accounts and balance sheet for Garuda Limited for the year end 31/12/302.

If we go down to the third paragraph below that I think it records that Mr. Liston said that "We would need" I think by that he means the Revenue Commissioners "would need a certificate of full disclosure which would cover all property deals" that is Cheadle, etc. "to accompany any offer in settlement. Denis O'Connor said that there would be no problem with this, but the main problem is that Michael Lowry and Garuda will have difficulty raising monies to pay liabilities. He mentioned the following issues which he thought might reduce the tax and interest as calculated to date."

That's echoing what he had already brought to your attention at the earlier meeting in February; isn't that right?

A. That is correct, yes.

Q. And then he referred again to the voluntary disclosure and interest issues, and I think again he had previously raised those with you, and then I think just a technical matter in relation to "PREM". Now, could you just explain to me what "PREM" means?

A. PREM is basically the PAYE that an employer is obliged to deduct and its remittance to Revenue. It's a 03

colloquialism.

Q. I see. Does it include PRSI? I presume it does.

A. It does indeed.

Q. I think that's just a technical point that he was raising there as to whether that should be computed on the figures net of VAT?

A. Correct.

Q. And am I right in thinking that ultimately that was agreed?

A. Ultimately we accepted that, yes.

Q. Then it goes on to record that "Denis O'Connor went on to discuss the difficulty in raising the money to pay liabilities if the full penal interest rate of 2%, and full penalties are applied. He said that there was no hope of Michael Lowry or Garuda being able to pay."

And then if we go over the page, and the very bottom of the page, it records that "Aidan Nolan asked Denis O'Connor if they had approached financial institutions? And what was the response. Denis O'Connor said they looked for  $\frac{1}{2}$ 800,000 but were refused. The company is showing a loss for last year, and Michael Lowry's future is uncertain."

So at that stage you were discussing perhaps what might be raised by Mr. Lowry and Garuda in order to meet the ultimate tax liability?

A. That is correct, yes.

Q. Now, I think with that at that meeting, Mr. O'Connor furnished you with I think a balance sheet for Garuda as of the 31st December, 2002, and some other financial documentation, including a trial balance. That would be in 04

relation to a profit and loss account for Garuda for those same two years; isn't that right?

A. It is indeed, yes.

Q. I'm just going to refer briefly to one or two of the entries in those documents, if that's agreeable to you. So if we just turn over the balance sheet for Garuda Limited. I think would I be correct in thinking that Mr. O'Connor was furnishing you this information so as to support his contention that neither Garuda nor Mr. Lowry would be in a position to pay the entire of the tax interest and penalties in respect of all of the liabilities; is that the

A. That is correct. What I would say is the balance sheet that he sent us in had not taken account of any amount we had discussed. So the position would be worse than it appears in this.

Q. I understand the point you are making. That it hadn't included even any contingent liability for exposure to tax?

A. Yes.

Q. If we just briefly look at the balance sheet for Garuda. We have it up there. We are just going to draw your attention to the following. It shows the figures for the

31st December, 2002, which would have been the then previous year just finished. And the year prior to that, 31 December, 2001, which is on the right-hand side of the page?

A. Yes.

Q. And then under the heading "Fixed Assets" it deals with tangible assets, which really hadn't varied between the two

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years?

A. No, the basic difference would have been the depreciation.

Q. That would have been

A. Yes, a normal accounting entry.

Q. Then under the heading "Current Stocks", again the stocks hasn't changed much over the two years, but the debtors we see there for 31st December 2001 were i½1,250,259, and they had fallen, for 2002, to i½799,671?

A. Yeah.

Q. And that would reflect the sales that had been generated in those two years; isn't that right?

A. That is correct, yes.

Q. And then below that just the amounts for cash at the bank and in hand, and again those figures had also reduced?

A. Yes.

Q. So the total of fixed assets and current assets had fallen from roughly 1.9 million to 1.4 million, and that appears in the accounts to have been largely attributed to the fall-off in sales between the two years?

A. That is correct.

Q. And then if we just go to "Net Assets", which is the I suppose two-thirds down those figures you can see that they have also fallen off from 516,000 to 1/2 373,190?

A. Yes.

Q. If we just turn, then, to the formatted trial balance for Garuda Limited for the year end 31 December, 2002. And then again that shows the current figures for the December 2002 year end, and the figures for the previous year, December 2001. And it also, in a third column, shows the variation?

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A. That is correct, yes.

Q. And I think the first category of figures is in respect of the profit and loss account, and that shows the value of sales for the two years; isn't that right?

A. Yes. Sorry, my page is in a slightly different order.

Q. It's on the screen beside that, to make sure we are looking at the same document. You can see there that the total value of sales had fallen from 4.4 million to 2.6 million?

A. Yes.

Q. Then the gross profit figure, below that again, had also fallen, from 1/2 742,000 to 1/2 423,000?

A. That is correct, yes.

Q. I think on that document the various administrative expenses are listed. And if you go to the bottom line, which is over the page, which gives the figure for profit

or loss, you see that in December, 2001, the figures that you were being furnished with indicated that there had been a net profit of \$86,768 and this had fallen in December 2002; it had not only fallen, but the profit had been converted into a loss of \$143,529?

A. Yes, that is correct.

Q. And these were the accounts and the financial information with which you were furnished in respect of Garuda?

A. Yes.

Q. And I think it was at that meeting of the 27th February?

A. That is correct, yes.

Q. As you pointed out, that didn't make any provision for the liabilities or even contingent liabilities of Garuda to tax, interest and penalties?

A. Correct.

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Q. Now, I think following on from that meeting, you received the draft 2 letter which we referred to in yesterday's Opening Statement, I think under cover of an e-mail of the 31st March, 2003; isn't that right?

A. That is correct, yes.

Q. I think you'll find that behind Divider 20.

A. Yes, I have.

Q. I'm not going to open this in its entirety, again, Mr. Nolan, unless you want me to or unless there is anything else you want to direct me to, but I'm just going to refer you to the salient or significant portions of it.

A. No, there is nothing in it that personally I want to open.

Q. Right. Well, I'll just refer you to one or two matters.

I think on the first page Mr. O'Connor had set out the background, and he had referred to the Ernst & Young submission and so forth. And he listed there, at the bottom of the first page of the letter, the four payments on account that had been made by Mr. Lowry by reference to the Ernst & Young submission?

A. Yes.

Q. And they amounted, I think, to  $\text{€}342,000$ , the euro equivalent being  $\text{€}434,000$ ?

A. That is correct, yes.

Q. And I think, then, over the page, he referred to the cooperation and the criminal investigation and how that might have impacted on the ability of Mr. Lowry, Garuda and their agents to deal with the Revenue and deal with the queries raised by the Revenue; isn't that right?

A. That is correct.

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Q. And then there is a number of appendices attached to the letter which I don't propose opening; that shows the various computations and so forth, which Mr. O'Connor had undertaken on his client's behalf. Isn't that right?

A. Yes, that is correct.

Q. He does, however, at the bottom of the page, under the heading "Notes to Computations", he states the following:

"1: The taxpayers are entitled to voluntary disclosure as

set out in the Code of Practice for Revenue Audits 1998.

Voluntary disclosure has the following effects:

mitigation of penalties, that is 95% reduction on penalties.

no publication in respect of the taxpayers.

no recommendation for prosecution in respect of the taxpayers.

"2: VAT exclusive emoluments are used in PAYE estimates in line with normal Revenue practice."

And that's the matter that you discussed at the previous meeting and that you accepted was the usual practice?

A. That is correct, yes.

Q. Then at "3: Interest is being calculated to 31 March 1998, when it is assumed that any case would have been settled on the same terms as this proposal as far back as 4 November, 1997 if Revenue had not cancelled the settlement meeting".

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So that's again the point that he was making on behalf of his client, that his client should not be obliged to pay interest beyond the 31 March 1998, and we have seen him raise that point with you at earlier meetings?

A. Yes.

Q. And then finally, "The renovations to the house as per the report of Olaf F. Maxwell & Associates, Chartered Quantity Surveyors. That is, that renovations to the house at Glenreigh did not exceed  $\frac{1}{2}$ 243,644."

Again, he is making the same point on his client's behalf

as he had made at previous meetings with you?

A. That is correct, yes.

Q. They were really his four assumptions in computing what he contended was the tax liability of Mr. Lowry and of Garuda, and in effect making this offer, albeit a conditional offer, to the Revenue?

A. Correct, yes.

Q. And the total figure that he was proposing was  
i;½1,096,184.24.

A. Sorry, I haven't got the actual one open here

Q. If we just go to the bottom of it?

A. Yes, that is correct.

Q. I think that was what he was offering?

A. Yes.

Q. That would of course would have been less the amounts that had already been paid on account?

A. That is correct, yes.

Q. So what he was offering to pay at that time was an  
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additional i;½661,000-odd?

A. Yes.

Q. And then just over the page again, he refers to the ability-to-pay point. He said that "Despite the onerous requirement of organising payment, our client is willing to discharge any alleged liability referred to in his correspondence which is the basis of settlement within six weeks."

A. Yes.

Q. Now, you received that draft letter from Mr. O'Connor, and presumably you considered its contents, and you would have discussed it with Mr. Liston?

A. With Mr. Liston and Mr. Faughnan, who was working the case with us, yes.

Q. Would you have discussed what was in that letter with Mr. Donnelly?

A. No.

Q. Would you have kept him apprised of that?

A. No. At that time we were looking at it between the three of us.

Q. So you wouldn't have been discussing that level of detail with Mr. O'Donnelly in the course of the negotiation?

A. Oh, no. It's only when we're at the final stage that we would bring it to Mr. Donnelly's attention. We may tell him that we have had another meeting, and things were advancing or we have hit a problem, whatever the scenario was at that time.

Q. Right. Now, you then met with Mr. O'Connor again on the 4th April, and that the note of that meeting is actually behind the same divider, Divider 20, and I think it's the

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last document in the documents behind that divider. Do you have that?

A. 4th April, yes.

Q. You see that there?

A. Yes, I do.

Q. You'll see it there on the screen.

A. Yes.

Q. I'm not going to read out the entire of the note of that meeting because there are some matters in it that don't actually pertain directly to the Tribunal's inquiries. So I'll just read out certain portions of it to you, and we can discuss it a bit further.

"Denis O'Connor called as arranged at 14.30 approximately and was met by Paddy Faughnan and Adrian Nolan.

"I advised that we did not accept the contention in the draft letter and spreadsheet emailed to me. Denis handed in a further draft letter and explained that if Revenue sought to recover the 1.5 million in the spreadsheets of 24th March 2003, they would initially argue the case from the basis of their own spreadsheet of 31 March, 2003.

Negotiations would then follow. His main point was that Garuda Limited and Michael Lowry were not in a position to make a payment of this magnitude.

"The accounts of Garuda Limited for year ended 31 December, 2002, have not been signed off yet pending agreement of the outstanding liability. If no agreement is reached, Garuda Limited is insolvent and would have to be liquidated. If

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agreement is reached, a contingent liability will be shown in the balance sheet and a note attached to the effect that subsequent to the balance sheet date, the liability had

been paid."

If we then go to the very bottom of the note, it records:

"It was suggested to Denis O'Connor that he set out the maximum amount that Michael Lowry and Garuda Limited could pay and the matter will be examined. Denis hopes to have this done by Friday, 11th April."

A. Yes.

Q. Now, I am correct in thinking, am I not, that all of these notes of meetings were agreed between you and Mr. O'Connor after the meetings?

A. No, they were not. The only one that was agreed was the initial meeting.

Q. The initial meeting of the 19th September?

A. Indeed, yes.

Q. All right. Well, do I take it that what you were making clear to Mr. O'Connor at that meeting is that you were rejecting the offer that had been made in the earlier draft letter?

A. Yes, I was basically saying to him that I did not accept his contention in that matter.

Q. Right. So you didn't accept that there had been a voluntary disclosure?

A. No.

Q. So you didn't accept that penalties should be mitigated by 95%?

A. No.

Q. And you didn't accept that interest should be computed to March of 1998 only?

A. No, did I not.

Q. And finally you didn't accept the valuation that was being put on the work to Glenreigh by Mr. O'Connor?

A. No. I disputed the four points made by Mr. O'Connor.

Q. Yes. Now, it appears that the I suppose the conclusion of that meeting or the upshot of that meeting was what you said to Mr. O'Connor was, "Look, go off and tell us what Mr. Lowry can raise"?

A. Yes. What Mr. Lowry and the company between them can raise.

Q. Can I take it, therefore, that the figures that we had on the overhead projector yesterday, which were your computations of tax liability, interest and penalty liable for both Mr. Lowry and Garuda, were on the table at that stage?

A. There was a computation at that time, yes.

Q. We'll just put it on the screen again, so that we know what was happening: It's that table there that was in your statement?

A. Yes.

Q. Your first statement that you furnished the Tribunal?

A. Yes.

Q. So those figures would have been on the table at that stage?

A. Those figures were available at that time to us. We would

have we may not have given them in that precise format.

Q. I accept that.

A. But, like, the 1.708 million would be the maximum that

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Garuda would be liable for.

Q. So Mr. O'Connor and Mr. O'Hanlon would have known at that

time what the Revenue were saying is, "Look, Michael Lowry

owes  $\frac{1}{2}$  173,000 and Garuda owes 1.708 million."

A. That would be correct, yes.

Q. Okay. Now, Mr. O'Connor came back to you, I think, on the

17th April 2003 to indicate what Mr. Lowry could raise;

isn't that right?

A. That is correct, yes.

Q. And then there is a note of that meeting behind Divider 22

in the book, and we'll put a small portion of that note on

the overhead screen. Again, there were matters referred to

it that are not material to the Tribunal's inquiries.

A. Indeed.

Q. And it says: "Note of without prejudice meeting on

Thursday 17th April 2003. Present: Denis O'Connor

Brophy Butler Thornton. Liam Liston, Adrian Nolan, Paddy

Faughnan Revenue Commissioners.

"The meeting took place in Liam Liston's office and lasted

from 11.10 to 12.30." You then went on to discuss, as I

said, certain aspects of the financing of the monies that

Mr. Lowry would be in a position to offer; isn't that

right?

A. Correct.

Q. And then, under the heading "Possible Sources to Fund an Offer", I think Mr. O'Connor outlined the possible sources of money to Mr. Lowry. And there were, I think, seven sources which he identified?

A. Correct.

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Q. And meeting records that "Mr. O'Connor informed you that the total amount from the above 7 sources is  $\dot{\iota}_{\dot{\iota}}\frac{1}{2}$ 900,000. A sum of  $\dot{\iota}_{\dot{\iota}}\frac{1}{2}$ 434,000, approximately, has already been paid, giving a total offer of 1.334 million, approximately.

"In an inability-to-pay situation, if the penalty were reduced to 15%, we would have difficulty in recommending an offer of less than 1.714 million. Denis O'Connor does not see any way in which this sum can be raised. He agreed to put the figures to Michael Lowry, and he may consider proposing an offer, which might include a down payment of most of the money with a deferral of the balance.

"We agreed to meet again on Tuesday, 29 April, 2003, when final proposals can be discussed. Denis O'Connor will have clarified details regarding the value of a particular asset by next week, and he agreed to contact in this regard by Wednesday, 23 April, 2003.

"He gave us a copy of a draft letter during the meeting. The letter sets out the possible sources of funds as outlined above."

A. Yes, that is correct.

Q. So it seems that I am correct in that, that Mr. O'Connor was increasing his offer at that meeting to  $\frac{1}{2}$ 1.334 million

A. That was, I believe, what or sorry, what he thought was the maximum that Mr. Lowry would be able to raise.

Q. I know he thought it was the maximum he'd be able to raise, but it appears that he was indicating that having raised that, that Mr. Lowry would be prepared to pay it?

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A. Oh, indeed, yes.

Q. So, in effect, he was saying to you, "Look, we'll go up to 1.334 million"?

A. Yes. We were basically into the barter system.

Q. Yes.

A. Sorry, I said "barter"; I meant "bargaining".

Q. You meant "bargaining"; that's fair enough.

So you weren't accepting that, but you said to him to come back to you with final proposals?

A. Yes.

Q. And he did; isn't that right?

A. He did indeed, yes.

Q. And I think that was on the 30 June; that appears to have been the position, from the documents?

A. Yes. He mentioned it to us at the 30th June meeting, yes.

Q. I think there is a note of that meeting behind Divider 23 in the books.

A. That is correct, yes.

Q. We can put that on the screen.

"Meeting 30th June 2003.

"Present: Agent: Denis O'Connor and Neale O'Hanlon.

Inspectors: Adrian Nolan and Paddy Faughnan, Revenue.

"The meeting took place in Liam Liston's office.

"Agents said that they had gone back to Michael Lowry, and the most that he can raise from all sources is an

17 additional  $\frac{1}{2}$ €1,000,000 and that even this sum will not be easily raised. We pointed out that whatever sum was offered, it would be put before the Chairman, who will decide if it is to be accepted.

"Other issues have yet to be agreed. I.e.

"1. The format of the wording of the offer.

"2. Publication we pointed out that publication will apply and it will include a brief description of what gave rise to the settlement.

"3. Prosecution and how it will be affected by the offer (tied in with wording of offer above.)

"4. Estimates and assessments currently under appeal on both Garuda Limited and Michael Lowry.

"5. Michael Lowry's VAT registration.

"We also told the agents that the offer would have to be accompanied by a Statement of Affairs for M. Lowry and Garuda Limited, together with an analysis of how the offer was funded.

"Discussion took place regarding the payment of tax to stop the interest clock running (payment on account). Draft

calculations to date were on the basis of first offsetting

the payments already made against the oldest liability (be

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it company or personal) with a view to minimizing interest.

"Agents were given copies of computations dated 30 April

2003."

A. Yes, that is correct.

Q. So Mr. O'Connor indicated on that date that the very most

Mr. Lowry could raise was  $\frac{1}{2}$ 1,000,000?

A. Correct.

Q. In addition to what had already been paid?

A. Yes.

Q. Just there in relation to publication, obviously that was a

matter which had been of concern to Mr. Lowry and Garuda,

but it certainly appears from that note that you were

informing Mr. O'Connor and Mr. O'Hanlon that publication

would follow?

A. Oh, indeed, yes, it was our view that Mr. Lowry and Garuda

Limited would be included in the quarterly publication

lists that are issued by Revenue.

Q. Can I just ask you, does that continue to be the position?

A. Oh, yes. We are still of the same opinion.

Q. Now, we know that ultimately that offer, it wasn't accepted

by the Revenue Commissioners, but it was a figure which you

were prepared to recommend to the Revenue Commissioners in

order to settle the assessments; isn't that correct?

A. That is correct, yes.

Q. I think you believe, although it's not entirely apparent from the note of the meeting, you believe that you would have communicated that to Mr. O'Connor at the meeting on the 29th August; is that right?

A. Correct.

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Q. And we can just have a look at the portions of the note of that meeting. It's behind Divider 25.

It records: "Meeting 29th August 2003.

"Present: Agent, Denis O'Connor and Neale O'Hanlon.

Inspectors, Liam Liston, Adrian Nolan, Paddy Faughnan,

Revenue.

"Meeting took place in Liam Liston's office. It commenced at 10.20 and finished at mid-day.

It records that "Denis O'Connor said that it is hoped that the sum of  $\text{€}150,000$  will be payable in 2-3 weeks". It

refers to matters that are that are referable to the

Tribunal of Inquiry.

It then records that "The balance of  $\text{€}650,000$  will follow."

Isn't that right?

A. That is correct, yes.

Q. Just to confirm, I think in the interim a further payment of  $\text{€}200,000$  had been made at the end of July; isn't that

right?

A. That is correct.

Q. So between the 200,000, the 150,000 referred to there as being payable in two to three weeks and the balance of

650,000 that Mr. O'Connor was indicating, I think, would follow, I think it's clear there that Mr. O'Connor was under the impression that the figure that had been arrived at was  $\frac{1}{2}$ 1,000,000?

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A. Yes.

Q. And that that's what he was intending would be paid?

A. Correct.

Q. And then further down, it records: "Liam Liston handed Denis O'Connor forms SA 1 for Michael Lowry for the dates 5/4/88, 5/4/95 and 5/4/2003. He also gave him blank certificates of full disclosure for Michael Lowry and Garuda Limited and a draft letter of offer for both Michael Lowry and Garuda Limited. He asked Denis O'Connor for management accounts for Garuda Limited for each of the three-month periods ended 30/3/03 and 30/6/03.

"Neale O'Hanlon will include references to RCT problem in the covering letter at the time of offer.

"A further meeting was arranged for Tuesday, 7 October 2003 (Liam Liston and Aidan Nolan are on leave over the next few weeks.) It was agreed that any draft proposals would be discussed with any of the parties on both sides between now and the 7th October, 2003."

A. That is correct.

Q. So you were now getting to the stage where you needed to go finalise the terms of offer that were being made?

A. Correct, yes.

Q. Can I just ask you there, in relation to the Statement of Affairs, it records that Liam Liston furnished Mr. O'Connor with forms SA 1. Am I correct in thinking that they were statutory form of Statement of Affairs provided for under the Taxes Consolidation Act?

A. They are indeed, yes.

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Q. And ultimately I think they have to be sworn by a taxpayer before a Commissioner?

A. We can insist on them having them sworn, but initially they can be signed by the person.

Q. I see. So if they are furnished in a form that's signed, in the first instance, that would be a sufficient compliance; and then it's a matter for the Revenue Commissioners, if they elect, to insist that the Statements of Affairs be sworn before a Commissioner of Oaths; is that correct?

A. Yes, that is correct.

Q. You had asked them for three separate dates: 5 April 1988, the 5th April 1995 and the 5th April 2003. Could you just tell me, what was the significance in your mind of those three dates?

A. No particular significance. Normally we would request Statements of Affairs over a couple of with a gap of a couple of years between each one, so to enable us look at the increase in wealth and had that been accounted through the tax computations that had come in to us.

Q. I see. Would that have had any bearing on the issue of inability to pay?

A. Not really, because well, the Statements of Affairs at April, 2003 and the management accounts would be an indicator to us if Mr. Lowry had sufficient funds to meet the full liability.

Q. I see.

A. We would look to get that.

Q. I see. If you had decided at that stage and I suppose, to an extent, the offer that was made was partially

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performed, because  $\frac{1}{2}$ 200,000 had already been paid at the end of July; if he had formed the view at that stage, or indeed at any subsequent stage, that Mr. Lowry would have had the wherewithal to raise or to pay the  $\frac{1}{2}$ 434,000 in addition which was due under the computations we had on the screen, what course would have been open to you?

A. It basically would have been through negotiation with the accountants. I presume you are talking about a legal remedy available to us?

Q. Yes. I am just wondering what powers would be available to the Revenue Commissioners to recover those additional amounts.

A. We would we didn't really have taxation powers; we would have had probably had to, again, get all the assessments quantified, seek to recover the tax, the interest and then take action through the courts to recover the penalties.

So, again, it would have been a very long, drawn-out matter.

Q. Now, you met again on the 4th November, 2003, and that's behind Divider 27. And, again, I think the same people were present on behalf of both parties.

A. That is correct.

Q. It records that "the meeting took place at the offices of Brophy Butler Thornton at the Gables, Foxrock, Dublin 18 and lasted from 11.40 to 15.30. Denis O'Connor said at the outset that he will have a cheque for €135,000 from Garuda Limited by Monday, 17th November, 2003, and that the balance of monies agreed will be paid by mid-December, 2003. Lengthy discussions took place regarding the nature of the wording that Michael Lowry's legal advisers would

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allow him to put into any letter of offer. BBT" Brophy Butler Thornton "proposed to submit a letter enclosing:

"1. Computations of liabilities to the Revenue Commissioners.

"2. Certificates of full disclosure for Michael Lowry and Garuda Limited.

"3. Statements of Affairs for Michael Lowry as at the 5/4/88, 5/4/95 and 31/12/2002." I think they were the dates that you had requested.

"4. Management accounts for Garuda Limited for March, June and September, 2003.

"5. Accounts for another company including a narrative on

its current value.

"6. Cheques to settle.

"7. Details of the source of funds used to settle.

"8. Formal letters of offer from Garuda and Michael Lowry."

And they were, I suppose, the final formalities that were required in order to convert this formula into an offer?

A. Indeed, yes, into a formal offer, yes.

Q. "It was confirmed that Michael Lowry's income tax returns  
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are submitted to date (last return is 2002). Garuda

Limited have sent in final accounts to John Hussey in

Thurles for 31/12/01 and the draft accounts for 31/12/02.

Denis O'Connor gave Austin copy of the Notice of Assessment received by Michael Lowry for 2002.

"Denis O'Connor gave Austin copy of a cheque from Frost Impex dated 14th May, 1992. The copy cheque is made out to cash for i<sub>2</sub>½10,000."

I think that was the payment of which this Tribunal had heard evidence

A. That is correct.

Q. and which was included in the income figures which gave rise to the tax base on which you made your computations?

A. That is correct, yes.

Q. It records: "Neale O'Hanlon said he would in due course have to make a report to ODCE in respect of Garuda. Denis O'Connor is considering approaching the Moriarty Tribunal

if the offer was accepted."

Now, I think I don't think we have the draft letter of offer here, but I think I am correct in thinking that there was some difficulties on the part of Mr. Lowry and his advisers regarding the terms of the draft offer letter of offer that had been proposed by Mr. Liston; isn't that right?

A. That is correct, yes.

Q. I think there was a concern that by virtue of its terms, Mr. Lowry might be incriminating himself or exposing

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himself in terms of the criminal matter which was still live at that time?

A. That is correct.

Q. Now, we know that the further  $\frac{1}{2}$  135,000 referred to by Mr. O'Connor at that meeting on the 4th November, 2003, was actually paid; isn't that right?

A. Yes.

Q. And it was received by the Revenue. So as of November, 2003, I think all of the actual tax component of the liability had been paid?

A. It had indeed, yes. And the interest there was no further interest.

Q. Yes, that would have stopped the accrual of any further interest; isn't that right?

A. Correct.

Q. Am I also correct in thinking this would have stopped any

further penalties attaching?

A. Oh, yes. It wouldn't have affected the penalty, in that the penalty is geared back to the tax.

Q. Yes, of course, of course. So by making those payments, that really froze and fixed the liability; isn't that right?

A. Yes, it did.

Q. And what was outstanding then was the interest and penalties of £664,000 that had been agreed by you in respect of Garuda?

A. Sorry, the figure of the 665,000 was the the company had had a shortfall an inability to pay the full debt, and we had discussed the £1,000,000 had been discussed with the agent as the maximum that could be raised. Whilst

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there was no formal agreement, on the basis of our discussions at that time I was prepared to recommend to the Revenue Commissioners, when a formal offer came in, that we accept that amount.

Q. And in fact, after that payment was made, judging from the file and from the information contained in your statement, there don't appear to have been any further contacts between you or Mr. O'Connor until sometime after March of 2005; is that right?

A. There was telephone conversations to see how things were progressing.

Q. And arising what was your understanding of matters

arising from those telephone conversations that you had with Mr. O'Connor?

A. That the in 2003, Garuda Limited had lost its main customer sorry, had reduced the amount of trading that it was doing with Dunnes Stores, and it was subsequently attempting to get other customers. And what I was interested in was seeing if the company was in a position in any way to make an additional payment to Revenue.

Q. I appreciate that, but from at this meeting here in November, effectively Mr. O'Connor was saying to you that the 135,000 would be paid, and presumably you were then expecting the further 1/2664,000 to be paid also, were you?

A. I was indeed, yes.

Q. And you were also expecting either some discussion on or the receipt of a formal letter of offer?

A. Yes, but I had discussions with Mr. O'Connor. I had mentioned to him that in view of the inquiry being carried on by the Tribunal here into the Doncaster Rovers problem

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or, sorry, your inquiry into that particular transaction, I had a doubt that the Revenue Commissioners would be prepared to accept any offer until that was clarified.

Q. Right. So you said until this Tribunal had reported, that you felt it unlikely that the Revenue Commissioners could approve and sign off on the settlement; is that right?

A. Indeed, yes.

Q. And it was your understanding that that was why you hadn't received a formal offer? Or was there some other reason that was proffered to you?

A. There was also the question of the referral of the papers to the Director of Public Prosecutions.

Q. I see. So it was the terms of the offer that were causing a problem for Mr. Lowry and Garuda?

A. Basically to both sides they were creating problems, yes.

Q. Did Mr. O'Connor explain to you anything about why the further  $\text{€}1,266,000$  had not been paid in the interim, or had not been paid shortly after that final meeting you had in November?

A. No. That Mr. Lowry was attempting to get the funds together.

Q. I see. Now, I think you received a letter from Susanne Kelly, a tax practitioner, dated the 22nd March, 2005; isn't that right?

A. That is correct, yes.

Q. And I think we'll just refer to that it's addressed to you and to Mr. Liston. It's re Mr. Lowry. It says:

"Dear sir,

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"I refer to your recent discussions with Mr. Denis O'Connor concerning a financial settlement in respect of the above mentioned. I note in a quick review of the case that there have been numerous attempts on the part of both Garuda Limited and Mr. Michael Lowry to financially settle both

cases. There appears to have been some difficulty arising from the fact that the officers investigating the case with a view to prosecution may be also be part of the team conducting negotiations with a view to financial settlement. As a result, financial offers to settle the matter have fallen on deaf ears in the absence of the taxpayers providing confessions of guilt for possible use in criminal proceedings.

"I understand from Mr. Denis O'Connor that there was an agreed figure of €993,315 to meet all outstanding tax liabilities on both the part of Mr. Michael Lowry and Garuda, trading as Streamline Enterprises, for all years up to and including 2003, and further that some of these monies have been paid over and a balance of €664,000 (€522,942) remains due. Whilst the settlement proffered by the client appears to be generous, it is nevertheless accepted that this was the basis of an agreed settlement between BBT and your office.

"Mr. Lowry is organising the resources to finance the payment of €664,000 to the Revenue as of the date of writing with the object of letting you have same in full and final settlement of all tax liabilities due by Mr. Michael Lowry and/or Garuda Limited trading as

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Streamline Enterprises.

"Naturally the offer to make a financial settlement is on a without-prejudice basis to the issue of voluntary

disclosure when voluntary disclosure impacts upon selection for prosecution and any publication."

A. Yes.

Q. Now, can I ask you, had you had any previous dealings with Susanne Kelly?

A. No.

Q. Were you aware that she was representing Mr. Lowry or Garuda?

A. It had been mentioned to me that Ms. Kelly was involved as one of the legal representatives or sorry, the legal advisers of Mr. Lowry.

Q. I see. And did this letter come to you out of the blue, or had you any indication or had there been any indication from Mr. O'Connor that you might receive a letter in those terms on behalf of Mr. Lowry?

A. There was no indication. As you say, it came out of the blue.

Q. I see. And I think it's quite clear from your response that you didn't agree with the contents of that letter; is that right?

A. No, I did not agree with them.

Q. In fairness you responded on the 6 April, 2005. And I think we can put that on the screen, and that's just behind the letter that I have just opened behind the same divider, Divider 28.

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6th April, 2005. It's to Ms. Susanne Kelly. It's re

Michael Lowry.

"Dear Ms. Kelly.

"I refer to your letter of 22nd March.

"I agree that there have been attempts to financially settle the cases. However, before the Revenue Commissioners can approve any settlement, it is necessary that a letter of offer and payment of the outstanding liability be submitted. Whilst the quantum of liability was agreed in August 2003, payment of the balance of the tax outstanding for the company was only made in November 2003. No letter of offer was received.

"I disagree that there was an agreed figure of  $\text{€}993,315$  to meet all outstanding tax liabilities. The negotiations in 2003 were conducted on the basis of the inability of Garuda Limited to pay its full debt to Revenue. If the company wishes to make an offer in settlement, it should do so now. Our negotiations in 2003 were on the basis that the company would be making payment within a short period. However, a period of approximately 18 months has elapsed without your client making an offer in settlement. Should your client wish to proceed, please note that the question of your client's ability or inability to meet the full debt will now have to be examined.

"I am not prepared to accept the proposed payment of

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$\text{€}664,000$  in full and final settlement of the debt due in this case. Should your client submit a payment in this

format it will be returned, and I reserve the right to take

alternative action to recover the full debt due.

"I note your without prejudice basis comment. However, I do not accept that there was a voluntary disclosure in the cases."

A. That is correct, yes.

Q. And that was your response to approximate Susanne Kelly's letter to you?

A. Yes.

Q. You say that there was no binding agreement; that there had been a formula reached, but that the payments on foot of that formula had not been received and a formal letter in offer had not been received?

A. Yes.

Q. Now, I think that exchange of correspondence between you and Ms. Kelly gave rise to dealings and reopened dealings between you and Mr. O'Connor; isn't that right?

A. It had an effect on the position, yes. There was contact between myself and Mr. O'Connor then.

Q. Right. And I think on either following that contact or following your letter to Ms. Kelly, you sent an e-mail to Mr. O'Connor explaining precisely what your position was regarding these negotiations; isn't that right?

A. Yes.

Q. And I think that's your e-mail of the 5th May, 2005?

A. Correct.

Q. And I think that's the document which in fact, of all the

documents produced to the Tribunal, actually sets out the formula that had been arrived at in the previous August of 2003; isn't that right?

A. That is correct, yes.

Q. Well, if we just look at that e-mail. It's the 5th May, 2005. We should be able to put that on the screen.

It says it's from you to Mr. O'Connor. It says "Denis, as you are aware, Garuda's liability, based on discussed figures at the end of August 2003, was" and you set out then the details of VAT, PAYE, interest and penalties amounting to  $\pounds 1,708,620$ .

You then say: "Payments to that date amounted to  $\pounds 570,808$ , leaving a balance tax due of  $\pounds 135,804$ . This amount was finally paid in November 2003. There is still the matter of interest and penalties on this debt. I am aware of the company's inability claim to pay this debt in full. I am not prepared to accept the proposed payment of  $\pounds 664,000$  as representing a 'full and final settlement in respect of Garuda Limited.' I would be prepared to accept the payment as a further payment on account, and should nothing further untoward arise from the Moriarty Tribunal, I would then be prepared, as discussed, to recommend to the Revenue Commissioners acceptance of a formal offer of  $\pounds 1,262,250$  as the maximum sum Garuda Limited could now raise. This would be without prejudice to the outcome of the criminal investigation and will of course be conditional on receipt

of:

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"A) Present day value Statement of Affairs for Michael

Lowry

"B) Latest draft accounts of Garuda Limited

"C) Further information if we deem it necessary.

"Subject to the above and pending receipt of an offer in settlement acceptable to the Revenue Commissioners, I regard the assessments as still under appeal."

These were the assessments that had been raised on Garuda and on Mr. Lowry back in 2002?

A. Correct, yes.

Q. "At present, the status of the SIPO certificate is proper to the Collector General. This can be discussed further at our next meeting.

"If it is the intention of Michael Lowry to issue a public statement, Revenue will have no input into the text of the statement.

"Following my conversation with Neale O'Hanlon, the meeting has been arranged for next Monday, the 9th May, in my office."

A. Yes.

Q. Certainly the contents of that e-mail would suggest that you had had some discussions with Mr. O'Connor or with Mr. O'Hanlon as to how you could move matters forward at that stage.

A. Oh, yes, we were attempting always to look after the

Revenue interest in recovering funds due to Revenue.

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Q. I see. And if you go on to the minute, then, or the note of the meeting of the 9th May. This is the meeting that you arranged following the e-mail that you forwarded on the 5th May. Again, we won't open the entire of it because it does contain some material which is not directly relevant to the Tribunal's inquiries.

But it records: "Denis O'Connor said that he dictated his e-mail of the 3th May from abroad, and one that reached us had a typo in it. The words 'full and final settlement' should have read 'full and financial settlement'. He says he has the original handwritten transcript in his office.

"Denis O'Connor gave us a cheque for £1,664,000 and a document updating us on the financial capabilities of Garuda Limited and Michael Lowry."

I think the balance of what's in that paragraph related to inquiries that you were making as to the source of the funding that had been used to cover that payment of £1,664,000?

A. Correct.

Q. And I think you were satisfied with the information that you were provided on that date and on subsequent dates by Mr. Lowry regarding the source of that funding; isn't that right?

A. That is correct, yes.

Q. It then goes on to record: "Denis O'Connor asked if it

could be said that the tax affairs of Michael Lowry and Garuda were now up to date, and you replied, "No".

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"He also asked if the SIPO could now be given to Michael Lowry and the C2 to Garuda Limited.

"BBT has no record of receiving the receipts for the monies already paid. We undertook to check this and to consider the SIPO and the C2 position."

A. That is correct, yes.

Q. Can you just explain to me what the SIPO and the C2 position relates to?

A. The SIPO is Mr. Lowry's application for a tax clearance. As a member of the Dail, it was an obligation on him to have such clearance.

Q. Right. And the C2?

A. C2 was an there had been an application by Garuda for a C2, a constructor's certificate. With the change in the work they were doing, where they used to work for Dunnes Stores, they did not need a C2; but if they got work with a developer of a shopping centre and they were installing cold display cabinets, the principal contractor could look for a Form C2.

Q. Is a C2 like a tax clearance certificate?

A. It is, yes.

Q. And can you tell the Tribunal at all, do you know whether those matters were resolved, the SIPO and the C2 certificates?

A. My understanding is they have not yet been resolved.

Q. I see. Now, I think with that at that meeting

Mr. O'Connor gave you a document headed "Financial  
Capability of Garuda Limited and Mr. Lowry"; isn't that

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right?

A. That is correct, yes.

Q. And this was presumably directed to the inability to pay?

A. Yes.

Q. Which you had effectively accepted?

A. Well, I had accepted that in 2003, there was an inability  
to pay.

Q. Right. But did you now consider that that whole issue of  
inability to pay had been reopened in 2005?

A. Until the formal offer comes in to me, I have to see if at  
a later stage the inability is gone.

Q. I see. As far as you were concerned, that's because this  
matter has not yet gone to the Revenue Commissioners, that  
that is something that you can review at a later stage?

A. Oh, indeed, I would have to review it. Our discussions in  
2003 were to it was a snapshot at that date. The  
company had an inability to pay. Maybe it had changed, and  
if and when the final letter of offer comes in, there will  
be more discussions.

Now, it could end up that there will be no more money being  
paid over. But that's only a scenario that can be looked  
at on the particular day.

Q. But in fairness to Mr. Lowry, Mr. Nolan, he went off and he raised a lot of money through borrowings. I don't know whether it was the entire or part of it, but he borrowed a lot of money in 2005 in order to pay the  $\frac{1}{2}$ 664,000. Isn't it quite likely that he would strenuously object if the Revenue turned around next year or the year after and said, "Yes, I know we were prepared to agree that with you in

37 principle then, I know you went off and you borrowed all that money, but we are going to re-open all of this and look at it". Is there any reality in that at all?

A. It has happened, yes. Like, I'll put it this way: You would have a case where inability to pay is under discussion, and Revenue would not accept that the inability as contended is as great as the adviser would lead us to believe.

Now, I'm not saying in this case that applies, but it has happened in other ones, and there would be negotiations and eventually we would arrive at a more acceptable figure to Revenue.

Q. I can fully understand that, Mr. Nolan, in the course of negotiations, and there is no doubt here in the course of negotiations you were focusing on the whole issue of inability to pay, and you were looking for accounts and so forth in relation to Garuda. But in reality, aren't your negotiations now complete?

A. No. I wouldn't regard them as complete. If if you

refer back to my e-mail of the 5th May, I said I was prepared to recommend the 1.24 million settlement on condition of receipt of present day value Statements of Affairs and the latest draft accounts of Garuda. Now, if they show me that the position is still as existed in 2003 when we were negotiating, I will recommend it.

Q. But in 2005, didn't you get financial information regarding Garuda shortly after that, or indeed at the meeting we were just looking at, the meeting of the 9th May?

A. Yes.

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Q. So you had an opportunity to reassess the ability to pay issue again in 2005; isn't that right?

A. I would have reassessed that matter, yes.

Q. And if you weren't satisfied that there was a genuine inability to pay in 2005, isn't it the case that at that stage you'd have said to Mr. O'Connor, "Take your cheque for  $\frac{1}{2}$ 664,000; I'm not prepared to recommend a settlement on that basis now because things have changed in the financial life of Garuda." Isn't that right?

A. That is correct, yes.

Q. But you accepted the cheque of 664,000 in 2005?

A. Sorry, I have also said in my e-mail, I believe, that I would accept it as a further payment on account.

Q. I accept that I accept that you said that in the e-mail, Mr. Nolan; but isn't the reality now that as far as your recommendation to the Revenue Commissioners is concerned,

that you have arrived at terms with Mr. Lowry and Garuda?

A. I have not arrived at a final figure. When I send it up to the Revenue Commissioners for their approval or rejection, I will have to be able to say to them, as of Day X, "I believe that is all that could have been collected." If it transpires on that particular day that there is more funds available, I will have to go after it.

Q. I see. Now, tell me this: Did you inform Mr. Donnelly that this money had all come in? I presume you did.

A. He was told the amount of cash that had come in, yes.

Q. And we understand that Mr. Donnelly would have kept the Chairman informed?

A. I cannot confirm or deny that.

Q. Right. Now

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CHAIRMAN: Sorry, Ms. O'Brien.

Was it an element in your thinking, Mr. Nolan, that you were a little unhappy that you thought Mr. Lowry may have availed of the stopping of the clock 18 months previously, when you had been led to believe that the substantial last payment might have come in just before Christmas 2003?

A. I thought it may have come in a bit earlier, Judge, but the stopping of the clock is only in respect of the interest.

My intention was to get as much funds in as possible in as short a period as possible.

MS. O'BRIEN: If you had decided that you weren't going to accept this inability to pay claim, and I know that you

looked at it very closely and you felt that it was a genuine claim at the time, but if you felt that you weren't going to accept it, and you were there with your figures and computations finalised in August of 2003 at 1.7-odd million, what course could you have taken, what powers would have been available to the Revenue Commissioners to recover that amount at that time?

A. At that time we would now, on the basis that the assessments had been quantified and were legally due, they were under appeal at the time, so we would have had to go through the appeal procedure, then we would have had to go through the normal collection procedure, and that would have taken time, and there would also be the question that we would have to take action to recover our penalties, the full amount.

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Q. And that assessment would have proceeded on Garuda, not on Mr. Lowry?

A. Oh, indeed, yes.

Q. Right. As you say, your view of it is that this you haven't reached a settlement with Mr. Lowry and Garuda. That they have paid you 1.434 million, but that ultimately when a formal letter of offer comes in and you look at the inability to pay situation again, you may or may not recommend it to Chairman and the Board of the Revenue Commissioners; isn't that right?

A. That is correct, yes.

Q. Well, can you tell me, then, from Mr. Lowry's point of view and Garuda's point of view, what was the point of the negotiation from their point of view and payment that they made?

A. I think it was a recognition that there was a liability to Revenue. Now, again, I could be putting words into Mr. Lowry's mouth or whatever. Perhaps it had something to do with the criminal investigation, in that it is a matter, when cases come before the courts, the judges ask, "What was the final liability, and has restitution been made?" It could be that. I can't be sure.

Q. It would be fair to say, though, wouldn't it, that Mr. O'Connor, Mr. O'Hanlon and presumably Mr. Lowry believed that they effectively have a settlement, and that they can rely on you to recommend that and to bring it forward to the Board of the Revenue Commissioners?

A. Oh, indeed. They may feel that, yes.

Q. Including the effectively the forgiving of the  $\text{€}434,000$ ?

A. Well, it will always be up to the Board of the Revenue

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Commissioners to approve or reject that proposal.

Q. I see. Thank you, Mr. Nolan.

A. Thank you.

THE WITNESS WAS EXAMINED BY MR. O'DONNELL AS FOLLOWS:

MR. O'DONNELL: Mr. Nolan, I appear on behalf of Mr. Lowry, and I want to ask you a few brief questions. You are a Principal Officer in the Revenue and an Inspector of Taxes

yourself?

A. That is correct, yes.

Q. And I think from your evidence you have been the man most directly involved, as it were, at the coal face, in dealing with this matter; would that be correct?

A. With the civil side the civil settlement side, yes.

Q. And I think you said you, yourself, I think became involved with Mr. Liston in I think around March 1997; would that be right?

A. That is correct, yes.

Q. But I think you have also said that the, as it were, matter came to Revenue attention sometime towards the end of November 1996, beginning December 1996?

A. Correct.

Q. And that was in relation to the what is known as the PriceWaterhouse report; is that

A. At the moment I prefer not to

Q. Oh, certainly, I don't want to go that's why I am referring to it in sort of general terms.

A. Very well. For the purpose here, I'll call it the PriceWaterhouse report as well.

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Q. And that was a report that had been prepared as part of the litigation within the Dunnes Group and listed a number of payments made by that were on Mr. Dunne's instructions and was part of the dispute that led to the breakup of that group, or certainly the termination of

Mr. Dunne's interest in it?

A. We saw sorry, personally, I have not seen a copy of the report. I am aware that

Q. In general terms. I don't think anything turns on this, Mr. Nolan. But that's and that, as we know, became a matter of considerable public controversy round about the same time; I'm not asking you for precise dates. End of November, early December?

A. I am aware it came into the public domain, yes.

Q. Just at that time when it came into the public domain, Mr. Lowry was a Government Minister?

A. Correct.

Q. But very shortly thereafter, in early December, 1996, he resigned?

A. Correct.

Q. And for almost the entire duration of the investigation, and certainly for the entirety of your involvement with it, Mr. Lowry has been has not been a Government Minister; he has been an ordinary independent TD?

A. Yes, that is correct.

Q. And almost from the outset of this matter, it was a matter which attracted considerable public attention at its very outset, obviously?

A. It has yes.

Q. And the fact that there are a number of ramifications to

adverted to almost immediately in public commentary and scrutiny?

A. Correct.

Q. And so from the very outset, it is a matter Mr. Lowry's, as it were, his tax affairs and his obligation to try and deal with the Revenue Commissioners in relation to it, was a matter that was public knowledge?

A. Sorry?

Q. It was a matter that was within the public domain, the fact that Mr. Lowry had tax difficulties, to put it in that way?

A. Oh, yes.

Q. And that they would have to be resolved with the Revenue Commissioners. So from the minute you became involved, this was a matter that was, as it were, was publicly known about and was subject to public scrutiny?

A. Yes, but what I would have to say is that my initial involvement was not on the civil side.

Q. I'm coming to that, Mr. Nolan.

A. Sorry.

Q. And I think almost immediately there were a series of inquiries, Judge Buchanan, Judge McCracken's inquiry and now this Tribunal, which was set up in September 1997?

A. Correct.

Q. And as we know, this Tribunal has a specific term of reference requiring it to investigate and consider the manner in which the Revenue deal with, in very broad terms, the tax liabilities of both Mr. Haughey and Mr. Lowry?

A. Yes.

Q. So not only was this a matter that was the subject of

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public scrutiny from the very outset and was going to be subject to public scrutiny, but it was going to end up here with the very evidence you are giving today, the Revenue explaining itself in relation to its dealings with

Mr. Lowry?

A. Yes, that is correct.

Q. And so you knew, as being the man at the coal face and human nature being what it was, that what you did was going to be subject to considerable scrutiny by your superiors, who would have to answer for it, and that in due course, you would find yourself where you are today, the first witness in this area?

A. Yes. Well, I didn't know I was going to be the first witness, but I had suspected I would have to appear here.

Q. And that you would have to, as it were, answer for what you did in relation to this investigation, both within the Revenue and externally, as it were, in this Tribunal?

A. Yes, that would have happened, yes.

Q. And would it be fair to say that, again, human nature being what it was, or being what it is, that it was clear that from your perspective and Revenue's perspective that it was something that was going to be done by the book?

A. Yes, we would have looked at doing it, as you say, by the book.

Q. And I am sure Revenue and you, Mr. Nolan, are always scrupulous and meticulous in the way you deal with taxpayers' affairs, but this was something you were going to have to look at, check and recheck?

A. Yes.

Q. And everything that has happened, as it were, has happened

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under public gaze and under the very direct scrutiny of this Tribunal?

A. Yes, that is correct.

Q. Now, I think the first, as you said yourself, the first way

in which you became involved in this was on the what might be described as the criminal side?

A. Yes.

Q. And the first thing, as it were, the Revenue did was to go

to its criminal enforcement powers, caution Mr. Lowry; isn't that right?

A. That is correct, yes.

Q. And in terms of the Revenue's response to tax

investigations, particularly in 1996/1997, that could certainly not be described as the most lenient response to a taxpayer's problems being the subject of investigation; would that be fair?

A. That would be a fair comment, yes. It was a new procedure for us.

Q. Exactly. At that time it was not usual to start with, as

it were, the threat of criminal prosecution. I'm not

saying that that's there is anything wrong with that,  
but it was certainly a robust approach on the part of  
Revenue to this matter?

A. No. Our investigation started in a civil manner, and when  
the information started coming to or came to our notice  
that there may have been criminal offences, we then moved  
into a criminal mode.

Q. And the caution was given?

A. The caution was given.

Q. But in terms other investigations, other citizens who may

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have had a situation like this, a limited company and a  
private tax affairs, many of those might have been resolved  
without it wasn't a normal step that cautions would be  
administered and the criminal powers would be obviously  
secured or used, back in 1996/1997?

A. Well, what I have to say is that we had only commenced  
carrying out criminal investigations around that time.

Q. And these things came together, as it were?

A. Yes.

Q. I suppose the point, Mr. Nolan, is I suppose a subtext  
behind the Terms of Reference might be a concern that  
Mr. Lowry in this case, or anyone else, was treated  
leniently in some respect, in respect of his tax affairs by  
the Revenue Commissioners by virtue of his position.

Certainly as far as when one looks at the invocation of the  
criminal powers, there is no question it was being

suggested that Revenue were pulling their punches in respect of Mr. Lowry; the reverse would be the case?

A. No, but in relation to the civil side of it, Mr. Lowry and his company will be treated no different by Revenue than any other taxpayer.

Q. Absolutely. In relation to the civil side?

A. Yes.

Q. And that's how most other taxpayers would be dealt with in this type of situation?

A. Yes.

Q. And the fact again, I'm not for a moment criticising you in relation to this but the fact that you had gone the criminal route when I say "you", Revenue had gone the criminal route by invoking those powers and that caution,

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caused certain difficulties for the resolution of the civil side?

A. Yes.

Q. It made it more complex?

A. They made it more complex.

Q. From your side you didn't want you had to be careful as to what you might discuss or concede. And obviously, from the taxpayer's point of view, he had to be particularly careful as to what he said or didn't say in an attempt to go resolve the matter?

A. Yes, I would agree with you on that.

Q. There was also the aspect which I don't think this Tribunal

need engage in, there was the position that the taxpayer was very keen to maintain in relation to voluntary disclosure; the Revenue was not accepting that, but that was obviously also highly relevant to the criminal issues as well?

A. Yes, it would have been relevant to the criminal issue.

Q. And I am simply identifying difficulties in resolving the civil side. There was a problem from both sides of engagement because of the possibility of either side compromising what they might wish to say in any criminal proceedings?

A. That is correct. Mr. Lowry had been cautioned, and as you say, he had a right to remain silent, and he exercised it, which was his right.

Q. And at the same time, you would have been careful to make sure you didn't do anything to compromise your capacity to pursue the criminal matter?

A. That is correct, yes.

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Q. And yet you managed and if I may say so, it seems in a fairly proactive and progressive way to, as it were, park those difficulties and make progress with the almost a shadow civil negotiation between yourselves and Mr. Lowry's representatives?

A. Well, what I can say is that the meeting in September '02 was arranged at the request of Mr. Lowry's advisers.

Q. And

A. The approach came from them. We did not initiate.

Q. And that was that seems to have been a fairly constructive engagement between both you and Mr. Lowry's advisers?

A. Oh, indeed. On the civil side, as has been said already, we were acquiring information which was not available to us.

Q. And it was a fairly constructive approach on behalf of Mr. Lowry's advisers, because the alternative, as you have indicated to Ms. O'Brien, was the route of, as it were, going the hard route of assessments, appeals, challenges, no engagement, as it were, on the civil side?

A. Yes, that is correct.

Q. And the result was that by that process of discussion and considerable meetings and negotiation and information being provided and tested by you, you arrived at the position where the Revenue has been paid  $\text{€}1.434$  million?

A. Yes, that is correct.

Q. And indeed at the very outset Mr. Lowry had himself paid, on account, effectively I think  $\text{€}434,000$ ?

A. Yes, effectively, yes.

Q. Without it ever being determined what that related to, who

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was going to have to pay it, it was a payment on account to set the ball rolling, as it were?

A. Well, in the discussions with Mr. Lowry's accountants and tax agents, it was agreed between us whichever way the

liability fell, that is where the tax would be set off. As is normal in this type of inquiry.

Q. In terms of dealing with taxpayers with difficulties, that was again a fairly constructive approach on Mr. Lowry's part, to pay the money and argue about to what liability it should be attributed later?

A. Yes, that is correct.

Q. And when you come to the question in relation to which you have given evidence as to how ultimately the taxes due should be apportioned or should be attributed between Mr. Lowry and Garuda, I think Ms. O'Brien suggested to you that that ultimately was what you described as a technical rule of the Tax Code. And to the layman, Mr. Nolan, it might be said that the Tax Code is made up of technical words, and in a sense, do I understand it from your point of view, you had to come to a conclusion as to what you believed to be the correct legal analysis of the transaction, having regard to the provisions of the Tax Code?

A. Yes, like, for example, the information that came to our attention was that in respect of now, leaving out the deposit interest arising on the bank accounts, the money that originated in those accounts in the main arose from payments being made by companies to Streamline Enterprises, and that was the trade name of Garuda. And we have to follow the paper. If it shows Garuda was due to receive

this money, they would be the assessable entity.

Q. And in a sense, it's part and parcel of your business to look to the heart of any transaction, not necessarily accept what any taxpayer says to you as to how they would like to characterise a transaction and consider how it is to be correctly understood, characterised as a matter of law?

A. Yes, that is correct.

Q. That's

A. That's it.

Q. And in this case the ultimate division of the tax liability was not something pressed upon you by Mr. Lowry or his tax advisers. It was a conclusion that you yourself when I say "you yourself", I mean "Revenue" had come to?

A. Oh, yes, we had, as I said a few minutes ago, the our information was that Garuda was the entity entitled to the funds, had issued invoices. They were taxable on that under whatever case, whatever tax was due on that, and Mr. Lowry was taxable in his own right on the income specifically arising to him.

Q. And that was something that you had, I think, arrived at as a result of your own investigations initially. You had gone and looked at this by reference to what Dunnes Stores documentation, the information you could obtain from that quarter as well as the information you had from the taxpayer, as it were?

A. That is correct, yes.

Q. And it was a view Revenue came to, as it were, independently without it being advanced for any reason by Mr. Lowry or his advisers?

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A. It was not advanced by Mr. Lowry's advisers. In fact, their initial impression seemed to be, as Mr. Lowry had said, it was Mr. Lowry's money.

Q. Yes, there was

A. And we disputed that with him and showed him

Q. And there was no sense in which they were trying to say to you, to persuade you that Garuda should be the principal to bear the principal tax liability in this regard; if anything, the reverse?

A. If anything, as you say, the reverse of that.

Q. And when you came to look at that, the position is that the entirety of the liability that you have identified as being attributed to Mr. Lowry in terms of tax, penalties and interest, has all been paid?

A. It has been paid, but I would have to say, as I have said earlier in my evidence, there is the question of a potential or a possible involvement in Doncaster Rovers, which is being inquired into by the Tribunal here.

Q. That's the caveat. But as far as these transactions are concerned, as far as the dealings with Dunnes Stores are concerned, as far as the payments identified or any other payments that have been identified or income that has been identified on the part of Mr. Lowry insomuch as the Revenue

have identified any liability, that has been discharged?

A. That liability has been discharged, yes.

Q. And in relation to Garuda, you say you obviously had to have regard to the inability to pay issue?

A. Yes, that is correct.

Q. And you investigated that very thoroughly; is that correct, Mr. Nolan?

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A. Well, I think I did, yes.

Q. And that did not simply extend to Garuda's ability to pay; it also extended to the ability of Mr. Lowry, as the shareholder, to be able to introduce funds that might permit Garuda to pay?

A. That is correct.

Q. Because that's what occurred here?

A. Yes.

Q. The vast bulk of the money that you got, that was paid to you in respect of Garuda's liabilities, comes from Mr. Lowry and Mr. Lowry's own personal borrowings, indeed?

A. Indeed, yes. Garuda, in its own right, would not have been able to make an offer or to make a payment of the amounts that have been paid. So it is normal, in a civil settlement involving a company, to see where what sources of funds can be obtained, and in that you would look at the director/shareholder as well.

Q. You looked at the director/shareholder, and you knew also that it wasn't a case that this was free assets available

to him to introduce into the company; that he had to in fact borrow monies from a number of sources, including the mortgaging of his house?

A. That is correct, yes.

Q. So you were reasonably satisfied you had got to the end of the line there in getting money that required personal borrowing from Mr. Lowry to pay, to discharge Garuda's liability?

A. Yes.

Q. And you were setting that against, I suppose, what was the alternative in respect of Garuda, and you have satisfied

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yourself that at least as at the end of 2002, the available funds in Garuda were no more than  $\frac{1}{2}$ 373,000?

A. Yes.

Q. And with Revenue's experience, they would know that it would be a very unusual liquidation route that would produce  $\frac{1}{2}$ 370,000?

A. In the particular circumstances of Garuda Limited, I did not believe that a liquidation of Garuda at that time would have recovered sufficient funds for us.

Q. Not just sufficient funds. Anything like

A. Well, approximate probably not anything like, as you say.

Q. Unless there was unless you could go back and say there was more in Garuda that appeared in the audited accounts and there is no indication of that you were going to

have to pay the cost of liquidation, the stamp duties involved, the cost of the liquidator, and you were then going to have to try and realise the fixed assets in circumstances where it was, in effect, a forced sale by a liquidator?

A. Indeed, and as you say, we may have got less money.

Q. You were starting at a figure of roughly 3.3 thousand. It was only downwards from there in terms of recovery?

A. The recovery, more than likely, would have been downwards.

Q. So the result has been, as it were, tentatively achieved here whereby the Revenue have undoubtedly received well in excess of  $\frac{1}{2}$ 1,000,000 from Garuda, is a substantial result as far as Revenue would be concerned in this type of case?

A. I would say that the recovery in the case has been good, yes.

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Q. And I don't want to pry into anyone else's affairs, but you are in the position to give some sense of where this lies in relation to the dealings of some other similar taxpayers; it would appear, would it not, that this would represent a fairly substantial recovery, in comparative terms, as far as Revenue is concerned?

A. Well, the particular area I am in at the moment, and the particular work, I would say that I have to be very careful here what I say but in the main, I would agree with you. But there will obviously be there are cases where there has been higher recoveries.

Q. But in the main?

A. In the main I would agree with you.

Q. There must, Mr. Nolan, be plenty of files where more obdurate taxpayers have either paid the amount that was due themselves and left the company to just be liquidated and the Revenue to whistle for the liabilities owed by the company?

A. Oh, that has happened, yes.

Q. And one other point, Mr. Nolan, which I think Ms. O'Brien explored with you very properly, all the other alternatives, and one alternative, if it was treated as if this had been treated as PAYE, would be that the employer would have to make good the tax deficiency?

A. That is correct, yes.

Q. And if this had been treated, as the McCracken Report had said, if Garuda had been treated as nothing more than a part of the Dunnes Stores business, it would be that business which would have had that liability. I appreciate that's an "if" and an "if".

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A. It's a very big "if".

Q. But it is the case, isn't it, Mr. Nolan, that I think this Tribunal has heard this before, that there were very many people listed in the PriceWaterhouse report as people as having received payments in circumstances which might be thought to be irregular from a tax point of view, to put it in that perhaps euphemistic way. Mr. Lowry wasn't the only

person identified in the PriceWaterhouse

A. Sorry, all I can say, I haven't seen the report, and the only knowledge I have would be what appeared in newspapers on that matter.

Q. I think this Tribunal has heard this before. Are you aware or can you confirm or can you contradict the fact that in respect of everyone involved in the PriceWaterhouse report, there was a global settlement with Dunnes Stores of their liabilities?

MR. CONNOLLY: It's not for me to speak on behalf of Dunnes Stores. If there was someone here, they might be very concerned about maintaining confidentiality in relation to their tax affairs. We are straying into the tax affairs of Dunnes Stores, and I am very anxious that question might not be pursued.

CHAIRMAN: I think I have to be cautious on this, Mr. O'Donnell. There has already been concern expressed in correspondence by the solicitors to Dunnes Stores as to any disadvantageous involvement in their absence.

MR. O'DONNELL: May it please you, sir.

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CHAIRMAN: I think I can possibly take some degree of notice of the point you are exploring in general terms.

MR. O'DONNELL: I think perhaps we can resolve it to this.

Q. Mr. Nolan, it's self-evident that nobody else who may have been referred to in the PriceWaterhouse report finds themselves in this situation, having their tax affairs

being scrutinised in this degree of detail in public.

A. In this degree of detail, yes.

Q. And in public?

A. And in public, but the terms under which under which the Tribunal was set up

Q. That's what has to be done, but in terms of comparing Mr. Lowry with any other person, and in terms of dealing with any allegation or perception that he received favourable treatment, certainly he is the only person who is having his affairs other than Mr. Haughey having his affairs opened and scrutinised in this detail in public?

A. In this Tribunal, yes.

Q. Thank you, Mr. Nolan.

THE WITNESS WAS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just a few matters, Mr. Nolan.

First of all, would you agree with me that the function of the Revenue is in relation to how they deal with payments made to, we'll say, Mr. Lowry and to Garuda, is to identify

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the appropriate taxpayer and the appropriate tax category applicable, and then assess the appropriate tax, as the case may be, in relation to the payments?

A. That is correct, yes.

Q. The function of the Revenue isn't to organise or characterise the payments in a particular way to maximise the amount of tax recoverable from particular taxpayers;

isn't that right?

A. That is correct. We cannot decide who the taxpayer is of our own volition. It depends on the information that comes into our possession.

Q. Or indeed the type of tax applicable?

A. Or indeed the type of tax, yes.

Q. And in relation to how you characterised payments received as being payments received by Garuda as opposed to Mr. Lowry, there was never a question of organising matters to favour either Mr. Lowry or Garuda, or in turn, the Revenue; you were dealing with it as you saw was the correct way to deal with it?

A. Yes, we were dealing it on the factual basis as we saw it.

Q. Now, it may be that looking at it through a less strict view than is looked at by than is applied by the Revenue under the Tax Code, it may well be that the McCracken Tribunal identified certain payments as having been made to Mr. Lowry, just as this Tribunal or indeed the public might say those are payments made to Mr. Lowry.

Now, the stance taken by the Revenue doesn't necessarily mean that the McCracken Tribunal or this Tribunal or the public are all wrong. It simply means that you were

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looking at it precisely and purely through the view of the Revenue Commissioners applying the technicalities of the Tax Code; isn't that correct?

A. That is correct, yes.

Q. Now, as far as the description of what has taken place between yourself and Mr. O'Connor and other agents of Mr. Lowry as amounting to a settlement. It would be wrong for the public to regard this as being a settlement in all but name simply to be rubber-stamped by the Revenue Commissioners, because there are a number of formal steps that have to be taken before a settlement is finalised; isn't that correct?

A. That is correct.

Q. And the tax agents were under no illusions otherwise. And the e-mail which has been read out and put on the screen earlier by Ms. O'Brien this is the e-mail of the 5th May, 2005 that made the position very clear that you would be prepared to accept the payment as a further payment of the nominated sum of money as a further payment on account; and should nothing further untoward arise from the Moriarty Tribunal, you would then be prepared, as discussed, to recommend to the Revenue Commissioners acceptance of a formal offer of  $\text{€}1,261,250$  as the maximum sum Garuda could now raise. And you made it clear that this would be without prejudice to the outcome of any criminal investigation and would be conditional upon "receipt of present day value Statement of Affairs for Michael Lowry.

2. Latest drafts accounts of Garuda Limited," and then further information was necessary. Isn't that correct?

A. Yes.

Q. So that the situation as it stands at the moment is a Statement of Affairs from Mr. Lowry would have to be obtained that's up-to-date?

A. Yes.

Q. And secondly, you'd have to look at the accounts of Garuda to see that nothing had changed since 2005; isn't that correct?

A. Since 2003.

Q. 2003. That's what I was going to deal with. In the letter which you sent, of the 6th April 2005, to the letter of the 22nd March 2005, which you received from Ms. Susanne Kelly, which I think you said came out of the blue, so to speak, you wrote on strict terms, and the recipient would have been under no illusion that there was nothing settled until further steps had been taken, and the figures that were being discussed in 2003 were in a specific context of payments being made fairly shortly after those discussions in 2003; isn't that correct?

A. That is correct. And it was also on the basis of what I perceived to be the ability or inability of Garuda and Mr. Lowry to make a settlement at that time. As I said, it was a snapshot at the time.

Q. Well, now, assuming that no other payment to Mr. Lowry is unearthed in the course of the deliberations of this Tribunal, or any other way, and assuming that the accounts of Garuda Limited which you looked at for 2003 indicate

much the same level of inability to pay, if not worse, then on those terms, if you get then the appropriate Statement of Affairs I think you call it the SA 1 if you get

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all of that, then on those terms there would be a recommendation that everything goes up the line to the Board of the Revenue Commissioners, because nothing has changed. Is that a correct way of characterising what the present state of play is?

A. Yes, that would be the interpretation to put.

Q. Thank you.

CHAIRMAN: Anything you want?

Just in conclusion, Mr. Nolan, the matter arose in your discussions with Mr. O'Connor that he expressed some concern from his client's standpoint that the criminal investigation had slowed matters and that it would have been possible without that, perhaps, to have settled the matter for obviously lower terms back in the 1990s?

A. It would have been possible probably possible, yes.

CHAIRMAN: And I think your substantial response, whilst conceding that that was so, was to say that a larger payment on account would have partially stopped the clock because interest the additional liabilities could only have been coupled with the remaining balance of tax?

A. That is correct. The sooner the tax was paid, the sooner the interest stopped accruing.

CHAIRMAN: Yes. I am aware that it's Revenue practice not

to care to combine different taxpayers in Mr. Lowry and Garuda, but I think in very rough or ready terms, if you total up the assessed liabilities of both Garuda and

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Mr. Lowry and then work out what you have recovered to date, it comes to roughly three-quarters, fairly close to 75%?

A. Not far off it, Judge, yes.

CHAIRMAN: In discounting the amount of money that you did, would it be a fair summary you have given detailed evidence to say that you had considerable regard to the legal position that you would have to face in assessing the taxpayer, and that given your own inquiries, the documentation produced by Garuda, the findings of Judge McCracken, and your interview with Mr. Ben Dunne, it seemed like the preponderant taxpayer was going to be Garuda, rather than Mr. Lowry personally?

A. That is correct, Judge, yes.

CHAIRMAN: And you dealt in detail yesterday with the down side, and Mr. O'Donnell has mentioned it, of seeking to liquidate the company?

A. Yes, that is correct.

CHAIRMAN: Yes. So it can, as I think you have fairly stated, be said in favour of Mr. Lowry that he didn't in any sense attempt, either personally or through his advisers, to saddle you with what might have been a rather hollow target in the company?

A. No, they did not.

CHAIRMAN: Very good. Thanks very much for your assistance over the couple of days, Mr. Nolan.

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I think Mr. Liston is the next witness. There is probably not a great deal of point in starting at ten to one, and we'll perhaps start promptly at two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: Mr. Liam Liston, please.

LIAM LISTON, PREVIOUSLY SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Liston. You are sworn from quite some time ago. Thank you very much.

Q. MR. HEALY: Thanks, Mr. Liston.

Do you have a copy of your Memorandum of Proposed Evidence?

It's at Leaf 2 of Book 73.

A. Yes, I do.

Q. And I think you were present during most of the evidence of Mr. Nolan?

A. I was present for all of it, yes.

Q. Am I right in thinking that he has covered an awful lot of the ground dealing with matters in which you were chairing meetings or sitting in on meetings? Is that correct?

A. Correct.

Q. I hope that I won't have to detain you too long, then.

I'll just go through your memorandum of proposed evidence.

You have been through this procedure before, when you gave evidence before?

A. Yes.

Q. You say you are a Principal Officer and an Officer of Revenue Commissioners. You are duly authorised to make you call it "this affidavit"; what you mean is to give

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evidence here on behalf of the Revenue Commissioners.

You say you are based in the Revenue Commissioners Investigations and Prosecutions Division, 4th Floor, Block 2, Ashdown House, Ashdown Gate, Dublin 15. You were appointed an Inspector of Taxes in accordance with Section 852, Taxes Consolidation Act 1997, and you have held this appointment since 23rd November 1978. I think you are emphasising your appointment under that provision of the 1997 Act is because an Inspector of Taxes has certain powers reposed on him as a statutorily appointed Inspector of Taxes; is that right?

A. Correct.

Q. In December of 1996 you were requested to examine and inquire into the tax affairs of Michael Lowry and Garuda Limited trading as Streamline Enterprises. The examination was to establish whether Michael Lowry and Garuda Limited had made a full return of their income/profit/gains for tax purposes. The period covered by your examination started at the commencement of trading of Streamline Enterprises in

1987 up until the 31st December, 1996, inclusive. On the 26th November, 1996, the Revenue Commissioners received certain information concerning Michael Lowry's affairs, and an investigation commenced. Shortly afterwards, further disclosures were made in the press concerning Michael Lowry's affairs. The information and disclosures referred to were carried out on Michael Lowry's Glenreigh residence in Thurles County, Tipperary, but was described in documents as work carried out on the Ilac Centre, Dublin.

On the 22nd December sorry, on the 2nd December, 1996,

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the Revenue Commissioners received a letter dated 2nd December, 1996, from Mr. Lowry's then tax agents, Messrs Oliver Freaney & Co, stating errors or omissions may have arisen in Michael Lowry's returns of income to include all taxes under various heads, both on Michael Lowry's part and on the part of the company, Garuda Limited, with which he was associated.

From then on, the focus of your examination has been the gathering of material and documentation which includes matters as identified in Chapter 5 of the Report of the Tribunal of Inquiry, Dunnes Payments, and other payments of which this Tribunal has heard evidence. The focus of your investigation was initially to deal with the case of Garuda Limited, which trades as Streamline Enterprises, and the case of Michael Lowry as back-duty cases on a civil basis.

But when it became apparent that tax offences may have been

committed, your focus was to deal with the criminal aspect of each of these cases and to report your findings to the Director of Public Prosecutions.

Your colleague, Mr. Adrian Nolan, Principal Officer, and you were involved in the criminal and civil tax aspects of this investigation from December 1996 until March 2003.

From March 2003, your role has been to deal with the criminal aspect of the investigation, while Mr. Adrian Nolan's role has been to deal with the civil tax aspect of Garuda Limited and Michael Lowry, which means the quantifying and collection of the appropriate amount of tax

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and interest and penalties due to the Revenue Commissioners in each case.

During the course of your investigation you interviewed a number of parties and gathered material and documentation in connection with the refurbishment of Michael Lowry's Glenreigh residence and other matters. This necessitated meeting with personnel which included Peter Stephens, the architect; the builder's personnel in Faxhill Homes Limited; Eugene Beglin, the quantity surveyor; and Dunnes Stores personnel. You also visited the premises of Garuda Limited at Abbey Road, Thurles, for the purpose of removing their records.

The outcome of these interviews was that the statements and supporting documents you received from those parties formed part of your submissions to the Director of Public

Prosecutions. You are unable to comment further on these matters as you are awaiting directions from the Director of Public Prosecutions. In addition, the statements and supporting documents, together with Michael Lowry's and Garuda Limited's records, facilitated establishing the tax irregularities, and also when, where and to whom the tax exposure and tax liabilities applied.

On the 24th February 1998, you interviewed Michael Lowry under caution, as you had determined that the question of criminal prosecution had reached the point where Michael Lowry could be affected by any admissions he would make.

From late 2002 onwards, you also participated at various

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meetings with your colleagues Mr. Nolan and Mr. Faughnan which your colleagues Mr. Nolan and Mr. Patrick Faughnan held with the agents for Garuda Limited and Michael Lowry.

The principal purpose of your participation at these meetings with the tax agents for Michael Lowry and Garuda Limited was to ensure the criminal aspect of the investigation was not compromised. To this end, you chaired the meetings in question. At the outset of each of the meetings, you advised the tax agents that the caution in relation to Michael Lowry applied to any matters dealt with at the meetings, and these conditions were accepted by the tax agents.

Now, in regard to liability, you say that while you participated in the discussions on tax liability, ability

to pay and sourcing of funds to pay to Revenue, your colleague Aidan Nolan dealt with the computational aspect of the tax liability of Michael Lowry and Garuda Limited.

You also participated in negotiations of the proposed formal offer for resolving the civil monetary aspect of this investigation, which was to be without prejudice to Revenue taking proceedings via the courts in respect of the criminal aspect of this investigation. However, no formal offer has yet been submitted to Revenue, and therefore no submission has been made to the Board of the Revenue Commissioners for their decision.

In relation to tax collection, you say the outcome of the tax collection from the various meetings which you participated in resulted in the payment of €173,074 in 68

respect of Michael Lowry and €1,261,250 in respect of Garuda Limited. In the case of Mr. Lowry, this represents the full tax and interest and the relevant penalty. In the discussions, reasons were put forward for the payment of less than the full statutory interest and penalties by Garuda Limited, and this was because of its "inability to pay" situation. The trading results and net worth situation of Garuda Limited in recent years were not promising, but the Revenue approach was to insist on payment and funds which were injected into the company to enable it to increase the payments originally proposed.

The company has paid €1,261,250, and at the time, this was

the maximum amount that could be collected in respect of Garuda. However, no formal offer in final settlement has yet been submitted to Revenue, and the matter remains open; and with the lapse of time and the changing trading and net worth situation at Garuda, this will need to be reviewed.

Does that mean that Garuda may yet have to pay further monies? Is that right?

A. Depending on the circumstances of Garuda's net worth.

Q. The total overall amount received to date is as follows we have the figures for Garuda and Michael Lowry, and the total is €1,434,324, and we have already heard the detailed computations of all of this in the evidence of Mr. Nolan.

A. Correct.

Q. You have had ongoing consultations with the Revenue Solicitor and counsel for the Revenue Commissioners regarding issues arising in respect of Garuda Limited and Michael Lowry.

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On the 29th April 2004, you submitted your file to the Revenue Solicitor for submission to the DPP, which was followed by a number of consultations.

On the 31st March, 2005, your file was referred to the DPP, and you are awaiting directions.

A. Correct.

Q. Essentially, that's the status of, if you like, your work with regard to what in your case was essentially the criminal aspect of this matter, or the criminal liability

potential criminal liability aspect of this matter;

isn't that right?

A. Correct.

Q. Thanks, Mr. Liston.

CHAIRMAN: Mr. Fanning?

THE WITNESS WAS EXAMINED BY MR. FANNING AS FOLLOWS.

Q. MR. FANNING: Very briefly, Mr. Liston, I appear for

Mr. Lowry.

Can I just ask you, as a matter of curiosity, who was the first person in the Revenue Commissioners who commenced the investigation into Mr. Lowry's tax affairs?

A. The first person that got the information was Mr. Sean Leak, and he forwarded then to Paddy Donnelly, who was Assistant Secretary, and he then sent it to Tom, Mr. Tom Tuite, who was at that time Principal Officer. I was then 70

called in a few days later and asked to investigate this case, to take over the investigation of it. They had already commenced looking at some of the papers.

Q. I see. And that's in December '96; is that correct?

A. Correct no, November.

Q. And your involvement began in December 1996?

A. 26th November was the first instance, and I commenced on the 2nd or the 4th December.

Q. Very good. Now, Mr. Liston, can I just ask you, on what date was Mr. Lowry cautioned?

A. It was in 1998; just a moment 24th February, 1998.

Q. And you are involved, I take it from the evidence that you have given, in relation to criminal prosecutions and potential criminal prosecutions that the Revenue are working on from time to time. Apart from Mr. Lowry's case, it's an area that you traverse all the time in your work with the Revenue?

A. Correct.

Q. Is a caution administered as a matter of regular procedure at the outset of every Revenue investigation?

A. At the outset? This wasn't quite at the outset. It's standard that it would be issued to the suspect in any case that we are investigating with a view to submitting a paper to the DPP, the Director of Public Prosecutions.

Q. I see. Just to explain it to a layman like myself, when one reads the quarterly list of tax defaulters who have reached settlements with the Revenue and it's published in the national newspapers, I think, every quarter; isn't that correct?

A. That's correct.

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Q. When one reads the names of those individuals, all of whom have come under, I suppose, the unfavourable attention of the Revenue Commissioners by virtue of their status in that list, would it be normal procedure for all of them to have received a caution at a stage in that investigation?

A. No. There is only a very select few that are picked for prosecutions. And they go through the Admissions

Committee, and it depends on a number of categories and circumstances of each case as to whether or not these cases are selected for investigation with a view to sending the file in due course to the Director of Public Prosecutions.

Q. I see. And do I take it, then, correctly from that answer that in the great majority of cases, individuals who the Revenue have identified as having potentially defaulted on tax payments are not in fact cautioned and are not looked at as people who are potentially likely to be the subject of a prosecution?

A. Correct.

Q. I see. So, I suppose going back to a couple of questions my colleague Mr. O'Donnell posed to your colleague Mr. Nolan this morning, is that indicative that the treatment of Mr. Lowry in this matter was very much by the book?

A. It was, yes.

Q. And it would be difficult to extrapolate, from the evidence that Mr. Nolan has given and the brief evidence that you have given this afternoon, that there was any evidence of a lenient approach offered to Mr. Lowry; in fact, quite the contrary: A robust approach was adopted by the Revenue from Day 1?

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A. I wouldn't say entirely a robust. It was no more robust than it would apply to anybody else who would be selected for investigation for prosecution purposes.

Q. Yes, but you'd agree, presumably, with Mr. Nolan, when he replied to Mr. O'Donnell earlier on, that the Revenue were conscious at all stages that there would be a scrutiny adopted of the approach that was taken by the Revenue in this particular case, having regard to the high-profile circumstances of Mr. Lowry's resignation from Ministerial office at the outset of the Revenue's investigation?

A. It had nothing to do with his resignation.

Q. I didn't suggest that it did.

A. You mentioned his resignation.

Q. I am merely suggesting to you that the Revenue would have been conscious and I think your colleague Mr. Nolan agreed with this this morning; I don't know if you want to disagree with his evidence the Revenue would have been conscious that this was something that was very much going to be in the public light and something that might well be scrutinised in this Tribunal, and I suppose in the eyes of the public and the media?

A. That's correct.

Q. You don't disagree with any of that?

A. No.

Q. I take it, then, that you also agree with your colleague Mr. Nolan that Mr. Lowry has been treated no differently to any other taxpayer in relation to his treatment by the Revenue?

A. No different, particularly in relation to cases that were selected for prosecution investigations.

Q. And there is no sense, insofar as Paragraph (j) of the Tribunal's Terms of Reference raises a potential question as to whether there was favourable treatment given to Mr. Lowry or the other named individual in those Terms of Reference, there is no question at all in your mind that the Revenue have adopted any attitude of favouritism towards Mr. Lowry as a result of his government office and his high profile?

A. No.

Q. And lest the impression be created and I suppose this is more a matter for Mr. Nolan, but I'll just clarify it with you also: Lest the impression be created that the tentative settlement, if I can use that term, that has been reached between Mr. Lowry, Garuda Limited and the Revenue Commissioners be an unusual one, can you comment as to whether or not it would be a favourable settlement from the perspective of the Revenue Commissioners?

A. At this stage, and particularly looking at the position of Garuda Limited, I think it would be as favourable as we can possibly get; and in relation to Mr. Lowry, he has paid his full tax, his appropriate interest and penalties.

Q. Yes. Thank you.

MR. CONNOLLY: I have no questions, sir.

CHAIRMAN: Very good.

Thank you very much indeed, Mr. Liston.

THE WITNESS THEN WITHDREW

MS. O'BRIEN: Mr. Paddy Donnelly, please.

PADDY DONNELLY, PREVIOUSLY SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

CHAIRMAN: Thanks very much again, Mr. Donnelly. Of course, again, you are already sworn.

A. Yes, Your Honour.

Q. MS. O'BRIEN: Thank you, Mr. Donnelly.

Mr. Donnelly, you have given evidence here before, so I think you know the approach the Tribunal adopts. I wonder, do you have a copy of the witness statement with which you provided the Tribunal with you in the witness box? I can arrange to have one handed up. It's dated the 3rd April, 2006.

A. I have one now.

Q. There is just what I intend to do, Mr. Donnelly, is you can read it out, and you can confirm it; there may be just one or two matters as we go through it that I'll ask to you clarify, and then just a couple of issues that I may wish to raise with you when your statement is completed.

You statement that you are an Assistant Secretary in the Office of the Revenue Commissioners and have responsibility for the Investigations and Prosecutions Division since its establishment in March 2002. You were previously responsible for the Customs and Excise Enforcement

Division, and before that, you were a Principal Inspector

in the former Office of the Chief Inspector of Taxes; is that right?

A. That's correct, yeah.

Q. You have informed the Tribunal that the Investigations and Prosecutions Division took over, inter alia, responsibility for the ongoing criminal investigation work of the Investigation Branch in the former Office of the Chief Inspector of Taxes in March, 2002. This work included the investigations being conducted into the cases of Michael Lowry and Garuda Limited?

A. Correct.

Q. You informed the Tribunal that in the normal course, you would not be aware of the day-to-day operational issues, discussions and negotiations in the cases which are being investigated by officers within the Division. These are handled by very experienced officers, well versed in investigations work, and they make relevant operational decisions. Where there is a policy matter to be determined, you become directly involved in the decision making. You receive general briefings from time to time from individual Division managers as to the progress of the investigations in certain cases. The cases of Mr. Lowry and Garuda are two such cases?

A. Correct. The Division that I have responsibility for has several hundred cases under investigation at any point in time, so in case you are wondering why I'm distant, or a little distance from the day-to-day aspects, is because of

volume of matters, okay?

Q. Yes.

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You say that you were made aware during briefings by the officers over the past three years of the fact that although the negotiations being conducted in the cases were difficult, alternative approaches to the recovery of liabilities would be problematic; that there was a tension between the conduct of the criminal investigation and the conduct of the civil one; that while agreement had been reached with the tax agents as to the tax liability, they had raised issues about the company's ability to pay the sums being sought from it by Revenue when interest and penalties were added; that although periodic payments had been made, there was still a shortfall in relation to interest and penalties, and that a formal offer by the company, when it came, would reflect this position; that there appeared to be no shortfall in the amounts paid by Mr. Michael Lowry, but there are some matters which require to be finalised. You state that to date, no formal offer has been made by either Mr. Lowry or by Garuda?

A. That's correct. That's the position as it was certainly in over the past number of years.

Q. Very good.

You informed the Tribunal that if and when formal offers are made and they are passed up to you for consideration, you will, in advance of passing them to the Chairman,

consider them on their merits and make a recommendation accordingly. It would not be appropriate to speculate at this stage as to what the outcome will be; is that correct?

A. That's my position, yeah.

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Q. And finally, you have informed the Tribunal that you have provided short verbal briefings from time to time to the Chairman on the progress of certain cases which are the subject of investigation of the Investigations and Prosecutions Division. The cases of Mr. Lowry and Garuda Limited are two of those?

A. That's correct, yeah.

Q. And that completes your statement?

A. Sure.

Q. Just, in the course of the investigation, we know it commenced, I think Mr. Liston was saying there in November of 1996, and really it was ongoing until March of 2005. Were you, effectively, Mr. Liston and Mr. Nolan's superior during the entire of the period of the investigation?

A. No. Since March of 2002 I have been. Prior to that I would have had some involvement, but my role changed and I moved over to the Customs and Excise side around 2001. Prior to that I had involvement in relation to prosecution activity, but not, as you heard from Mr. Liston, not in relation to the well, sorry, not in relation to operational activity. In fact he was reporting to

different Principal Inspector than myself. I was certainly familiar with the case from its outset, as again you heard.

Q. You were the Chief Inspector's office as well as

A. Precisely, yes. Just to put it I was the principal Inspector in that office. I had responsibility at the time for prosecution policy, but the operational work, they reported to a different person in relation to operations at that time.

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Q. I see.

A. Since we restructured, we set up a new division in 2002. I took over responsibility for that work, and along with a lot of other work, you know, projects, the big investigations projects and various other things of that sort. But part of what it was sorry, part of what I got responsibility for at that stage was the prosecution work that was formerly carried on in the Chief Inspector's Office.

Q. I see. So from 2002 you would have been their immediate superior, and they would have kept you briefed?

A. Sure.

Q. Up to 2001, you would have been within the Chief Inspector's Office, within that division?

A. Sorry, up to '01, yes.

Q. You would have been aware what was going on, but in your capacity as an Inspector of Taxes?

A. Up to a point.

Q. The briefings you received, were they from Mr. Nolan or from Mr. Liston, or from both of them?

A. Generally from both. I would have had a number of meetings with them from time to time on discussing progress in cases, and these would be the two cases that you would have wanted to know what progress had been made. Were we getting near finality, and so on.

Q. How often would you have had those briefing meetings? Would they have been once monthly?

A. No, no. It might have been once every three, four, five months. I haven't got a record of it with me, but it would be often enough to keep me informed as to what progress was  
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being made.

Q. They would be infrequent?

A. Infrequent, but I also got a report from Mr. Liston in relation to the progress of the prosecution investigation. That was a more frequent matter.

Q. I see. And would you have received briefings in relation to all of the cases that Mr. Liston and Mr. Nolan were handling, or was it just the more significant cases?

A. The more significant ones.

Q. And I suppose this would have been a significant case?

A. This was one, yes. Not just from them, by the way; I have other divisional managers who report to me in relation to significant investigations cases that they carry out as well, so these are just two of the cases that I would get

reasonably frequent briefings on.

Q. I suppose this would have been significant because of the quantum of the tax involved, because of the fact that there was also a criminal investigation running in tandem with it, and I suppose also because the matter had had such a high profile in the media and was subject to inquiries of the Tribunal?

A. The high-profile aspect probably was the main point there. The amount of money, there would be other cases that would be with similar amounts of money that I wouldn't require to be briefed on.

Q. I see. Now, I think you indicated generally the matters on which you were briefed, but you would have had a reasonably clear view as to how Mr. Nolan and Mr. Liston were progressing in the negotiation, would you?

A. Yeah, in a general sense, yeah. I mean, I wouldn't have  
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been delving into the facts and figures.

Q. Of course not. They are very complicated; of course not.

A. Quite.

Q. So, you would have been aware of the fact that Mr. Nolan and Mr. Liston had arrived at a figure which they considered to be the correct tax liability, that they had agreement in principle on that with Mr. O'Connor and Mr. O'Hanlon, and that that involved a full payment of tax, interest and penalties by Mr. Lowry that was proposed on the basis of an inability to pay, that there be some

amelioration on the penalties and interest side for Garuda?

A. Yes.

Q. I take it that if you felt that they were proceeding in any inappropriate way as regards those negotiations, you would have called a halt to them?

A. Certainly, yeah.

Q. So you would consider that the way in which they proceeded and the way in which they approached this was perfectly acceptable from the point of view of the Revenue Commissioners?

A. In terms of them being experienced investigators and conducting an investigation as they were, that as far as I could judge from the briefings I got, they were certainly on top of the business, yeah.

Q. Now, short of there being any significant occurrence such as something untoward arising out of this Tribunal, I think Mr. Nolan has indicated that again, subject to a Statement of Affairs being furnished and a formal offer being made in settlement, unless there is some significant or some alteration in the financial position of Garuda, he would be

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recommending these proposals to you and then asking you in turn to recommend them to the Chairman of the Revenue Commissioners and the Board of the Revenue Commissioners.

And can we take it that excluding something untoward arising or any significant alteration in the finances of Garuda, that the probability is that these settlement

proposals will ultimately be approved?

A. I wouldn't like to go that far. I mean, I think we are conducting discussions and negotiations with Mr. Lowry's advisers, and have been, and I don't think I want to sit here and continue them in public session, if you like. I think what I would say is that, again as Mr. Nolan said this morning, at a particular point in time he was prepared to make a recommendation, but that was subject to certain items.

Q. Right.

A. Those items could have a bearing on what the ultimate outcome may be. We do want to see more up-to-date figures. And so, I don't want to sit here and say, yes, no or otherwise to that.

Q. I can understand that. Let me put it to you this way, and I suppose it's echoing what you said to me a moment ago. On the basis of the information that was brought to you as to what was happening, you weren't saying that Mr. Nolan should call a halt to his negotiations?

A. No, but no, absolutely not. But what I was saying, we needed to be fully familiar with what the financial picture was before I was prepared to move to the next stage.

Q. You also brought this information to the attention of the Chairman of the Revenue Commissioners; is that right?

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A. Well, not in quite maybe the detail that it was brought to me. In other words, I certainly would have apprised the

Chairman of the fact that there was negotiations proceeding; that there were payment issues arising. I wouldn't have gone into the detail in terms of how much and so on. He would have been aware that these negotiations were proceeding cautiously, and that we were trying to extract, obviously, the full payment, but that we weren't meeting with success in terms of that.

Q. And would he have been made aware that a payment of 1.434 million had been made? There or thereabouts, not the precise figure, obviously, but there or thereabouts?

A. He would have been aware of a figure, certainly, that had one a seven-figure sum that had a one in front of it. Whether I could say it was 434 with any confidence was in front of it

Q. Certainly, I wouldn't expect that.

A. But certainly he would have known that there was more than a million involved.

Q. Would he have been made aware of the fact that included in that, if you like, at that time, was an acceptance in principle by the Revenue Officials who were dealing with it that that might involve a mitigation of the penalties and interest due by Garuda?

A. Certainly, that the ability to pay issue revolved around not perhaps being able to collect the full level of interest and penalties that we were seeking.

Q. Thank you, Mr. Donnelly.

THE WITNESS WAS EXAMINED BY MR. FANNING AS FOLLOWS:

Q. MR. FANNING: Mr. Donnelly, you have clarified in response to Ms. O'Brien's question that at any given time I think you'd have several hundred cases under investigation which you'd have overall responsibility for. I think it's implicit from your evidence that you in fact have a familiarity with this file that's really out of the ordinary, having regard to the quantum of the case; is that so?

A. Sorry? No, not by reference to the quantum. We deal

Q. Perhaps I'll repeat the question; it might be clearer.

You have a familiarity with this file that is, in effect, out of the ordinary, having regard to the quantum of the case?

A. Oh, sorry, no, no. I have familiarity with the file because it's a file with a profile. If that's another way of answering your question.

Q. It is, in effect, the same thing. Can I come at it this way: The quantum of the case isn't very large in Celtic Tiger Ireland. It's not the sort of matter that an Assistant Secretary would be receiving three-monthly briefings on in a period of years, in the ordinary course?

A. It's not the biggest case around, yeah, absolutely.

Q. And your evidence is that you did receive regular briefings, every three or four months or thereabouts; you are not pinning dates.

A. Yeah.

Q. And in fact, in turn, you provided regular briefings to the Chairman of the Revenue Commissioners in relation to the

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file?

A. Yeah. Well, less frequent, but anyway.

Q. And again, that would be somewhat out of the ordinary, having regard to the value of the case?

A. Well, as I said to you, there were particular cases that you would have been keeping him advised on. Cases with profiles generally involving some you know, a significant amount of money. Some perhaps because of the amount of money involved, because they were very, very large cases; others because of the particular profile.

Q. And this fell in the latter category?

A. Yeah, absolutely.

Q. So your evidence really, in short, if I could summarise it, is that there has been scrutiny and attention at a very senior level afforded to Mr. Lowry's tax affairs on account of his high profile?

A. Well, I wouldn't sorry, when you say "scrutiny", you mean scrutiny by Mr. Liston and Mr. Nolan.

Q. In effect

A. I haven't scrutinised the case.

Q. In effect, in receiving briefings from Mr. Nolan and from Mr. Liston, there has been a level of oversight that perhaps wouldn't exist were Mr. Lowry not as high profile as he is; is that not the position?

A. Correct.

Q. And that's perhaps because the Revenue are conscious that they themselves are being open to scrutiny in the public arena, and indeed at this Tribunal, in relation to their handling of this particular file; isn't that the position?

A. Certainly partly, yeah.

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Q. The Revenue therefore would have been anxious, and I am sure you join with your colleagues to ensure that this investigation has been conducted by the book at all stages?

A. Yeah.

Q. Not that you wouldn't be anxious in every case.

A. Quite so, yeah. We try to ensure that when we are investigating cases, that we end up with the right result.

That we are not imposing tax where we shouldn't, and that we do impose tax where we should. That's the essence of what we are about. And we try to ensure that that's the case. And of course we are kept on the straight and narrow by the advisers generally to the taxpayers we deal with.

So...

Q. Yes. And doubtless it follows that you have full confidence in the investigation that Mr. Liston and Mr. Nolan have conducted and their efforts in relation to this matter generally?

A. Absolutely, yeah.

Q. And that they have conducted an appropriate investigation at all stages?

A. Yeah.

Q. Thank you.

MR. CONNOLLY: I have no questions, sir.

MS. O'BRIEN: Just one matter, sir, that I wanted to clarify with Mr. Donnelly.

THE WITNESS WAS FURTHER EXAMINED BY MS. O'BRIEN AS FOLLOWS:

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Q. MS. O'BRIEN: Mr. Donnelly, I accept that  $\text{€}1.434$  million may not seem to be very much in terms of unpaid tax, interest and penalties in Celtic Tiger Ireland, but would you agree with me that unpaid tax of a half a million prior to 1993, by a company which must have had a turnover of less than  $\text{€}3,000,000$ , would have been a very substantial tax bill by the standards of those days?

A. Sorry, unpaid tax of

Q. A half a million?

A. Wait now, are you talking about the tax liability here of

Q. Of Garuda.

A. Sorry, absolutely, I agree totally with you. That the amount of tax involved here in that context was very substantial.

Q. That was a very substantial amount of unpaid tax in the years prior to 1993?

A. Absolutely, yeah.

Q. Thank you very much.

CHAIRMAN: Do I take it in your discussions with your

colleagues you'd have searched fairly carefully about their  
into the "inability to pay" aspect because that was pretty  
crucial?

A. We would have certainly discussed it, but I mean, they were  
dealing with the detail of that, and I certainly was  
anxious that we would pursue that, and if there was an  
inability to pay, that it was something that we pursued in  
some detail. Now, I left it to them, obviously, to pursue  
the detail, as they do. I mean, this isn't the first or

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only time we have ever come upon this sort of issue. So  
it's something that's you know, we do, we have to do.

We have to face up to it when the time comes, and we have  
to make sure that we have explored all the ins and outs.  
And if a recommendation is going to come forward, that that  
recommendation is a sound one.

CHAIRMAN: The form has been, I think we heard yesterday  
from Mr. Nolan, that officers have discretion to say,  
settle cases up to a certain limited level, 50, 100,000,  
and thereafter it goes to the Board; but obviously the  
Board can't be spending all their time inquiring minutely  
into that.

A. Indeed. Neither myself nor the Board would in general  
scrutinise cases in terms of the quantum of the tax being  
sought. We would take it that the investigation has  
proceeded and has quantified the tax. We'd be more  
concerned with the overview, what picture is emerging from

this, and are the fundamentals of it if there is an "inability to pay" scenario, for example, have they been scrutinised closely and can we rely ultimately on the figures that we see in front of us in that context. There are other matters of that sort which would cause myself or the Board to query, if you like, settlements that are recommended to us, but generally not the tax issues themselves.

CHAIRMAN: If it's conveyed to the Board by you that your line officers have diligently investigated the case, it would be improbable that a recommendation would not be

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acceded to?

A. Well, let me put it this way: I'm aware of cases that haven't that have had to be sent back, and a second or third look indeed has had to be had at them for a variety of different reasons. It wouldn't happen very often, but it does happen.

CHAIRMAN: Yes. And I appreciate you have to be careful about this aspect of it, Mr. Donnelly, but at the particular point in time when of late 2003, the snapshot that was referred to by the earlier witness, assuming the finances of both Mr. Lowry and Garuda had proved as represented by his agents and that nothing adverse emerged in this Tribunal, the likelihood is that the matter may then have gone through. Things have been complicated a little by the passage of time, but the similar

considerations still largely

A. Certainly, as Mr. Nolan said this morning, he was prepared to recommend that upwards. Now, obviously I would have had a close look at the issues in terms of the ability to pay.

I wouldn't like to sit here and say I would definitely have said yes; equally, I wouldn't like to say I would have definitely said no. Because I didn't scrutinise the thing in any detail at the time, because it wasn't coming forward as a case, as you are aware. So

CHAIRMAN: I think as your colleague said to Mr. O'Donnell, if matters were heading towards a negative, very obviously they'd hardly have continued on the negotiated basis

A. No, indeed. They were in negotiation, and money was being

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paid, and a significant amount of money, obviously. But the issue was, was it as much as was there in the pot to collect? Now I would obviously have to take a view on that when got the full facts and figures in terms of what what was in the pot; and I don't know, as I said to you, whether in 2003 I would have said, "Yes, we'll go with this" or not. Because it didn't actually come to me in that sense in 2003.

CHAIRMAN: Right. That's fair enough. Thank you very much, Mr. Donnelly.

That's all today, Ms. O'Brien?

MS. O'BRIEN: That's all the witnesses for today. Tomorrow there are two further witnesses.

CHAIRMAN: 11 o'clock. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 6TH APRIL, 2005.