

THE HEARING RESUMED ON THE 12TH OF OCTOBER, 1999, AS

FOLLOWS:

CHAIRMAN: Good morning everyone. Mr. Coughlan?

MR. COUGHLAN: May it please you sir. Mr. Brian Dennis,  
please.

BRIAN DENNIS HAVING BEEN SWORN WAS EXAMINED BY MR. COUGHLAN  
AS FOLLOWS:

CHAIRMAN: Thank you Mr. Dennis, please sit down.

Q. MR. COUGHLAN: Thank you Mr. Dennis. I think, Mr. Dennis,  
you very helpfully provided a memorandum of your proposed  
evidence for the assistance of the Tribunal; isn't that  
correct?

A. I did.

Q. And do you have that with you?

A. I do, yes.

Q. And you can refer to it in the witness-box. And I think  
you say that the memorandum consists of your responses,  
through your solicitors, to queries from the Tribunal;  
isn't that correct?

A. That's correct.

Q. Yes; and I think that the, what I would intend doing Mr.  
Dennis, if it meets with your approval, is to go through  
the memorandum and then maybe ask a few questions to  
clarify some matters?

A. Very well.

Q. And I think the first query that was raised was that you were asked the date on which you were appointed as a Director to the VHI and the period covered in your period as Director?

A. February 1967 until December '92.

Q. And I think .

A. Sorry?

Q. Just in fairness to you .

A. I beg your pardon.

Q. It is November '67?

A. November '67, February '92. I beg your pardon.

Q. Yes. Yes, I think you were Chairman of the Board for a period as well; is that correct?

A. '82 to '87.

Q. '82 to '87. I think you were then asked the first occasion on which you became aware that the late Mr. Lenihan wished to receive treatment at the Mayo Clinic and intended to make an application to the Board for a payment, and you were also asked the identity of the person by whom and the circumstances in which you were so informed; isn't that correct?

A. Correct.

Q. And I think your response to that was that in the first instance that you were aware, from media reports prior to the treatment; is that correct?

A. That's correct.

Q. And that whilst you would have presumed a claim would

follow, no approach to you was ever made, that is to you personally I think; is that correct?

A. That is correct.

Q. I think the next query that was raised was to ask your knowledge of the contents of the special claims appeal made by or on behalf of the late Mr. Lenihan and referred to in paragraph 3.4 of the minutes, that's the minutes of the Board, isn't that correct?

A. That is correct, yes.

Q. That is correct?

A. Yes.

Q. We will just put up that portion. Obviously the minutes of the board would contain much more, which we have excluded. We will go to the previous page and just see the members of the board who were present. I think that is, there is a monitor just closer to you Mr. Dennis, it may be easier to read?

A. I beg your pardon?

Q. I think this is the minute which was brought to your attention and the queries raised by the Tribunal and I think that it was a minute of the 854th minute of the Board held on Thursday the 18th of May, 1989 at 4 p.m, and the members of the board present were Mr. D Cashell, he was then the Chairman of the board; isn't that correct?

A. That's correct.

Q. Dr. Alton, I think, you yourself, Mr. Noel Fox, and Mr. Brendan Hayes, is that correct. Those were the board

members present?

A. Correct.

Q. And in attendance were Mr. Ryan of course, who would always be in attendance at board meetings and Mr. Mitchell; is that correct?

A. Correct.

Q. Now, if we go then to the paragraph 3.4 of the minute. And we can see the following special claims appeals were agreed and there were a series of special claims, isn't that correct?

A. That's correct.

Q. And I think these would have to come to the board; isn't that correct, these special claims, that was your experience?

A. Oh, that was the procedure, yes.

Q. The procedure?

A. Yes.

Q. Yes; and I think if we, it was in the course, it was in the category of special claims that the matter first came to your attention at a board meeting; is that correct?

A. Correct.

Q. And I think that that minute was subsequently signed by the Chairman on the 28th of July of 1989, that would be the following board meeting?

A. That is correct.

Q. I take it.

A. That's correct.

Q. Now, if we could just go to the next page, to show yes, which we had up originally. And it reads: "Mr. B Lenihan, membership number is given, taking into account the circumstances of the case and the previous grants to other subscribers in similar circumstances, it was agreed in principle that the significant contribution should be made". I wonder if we could make that clearer? And is that your recollection?

A. That is my recollection, yes.

Q. Of what was, what happened at the board meeting?

A. What happened.

Q. And it is an adequate and fair record of what happened at the meeting?

A. Correct.

Q. Now, I think that the next query which was raised, giving rise to your memorandum of proposed evidence, was you were asked for your knowledge of the discussions of the board on the 18th of May of 1989 and your knowledge of previous grants to other subscribers in similar circumstances referred to in the board's minute; isn't that correct, that was the query raised?

A. Correct.

Q. And your response through your solicitor was your recollection of discussions on the 18th of May, 1989 are vague. Special claims appeals arose at nearly every board meeting. The board tended to be sympathetic to special claims by leading politicians, political figures of any

party, and then you go on to say that you think that the late - and you refer to a politician at the moment - and I don't wish to mention any names at this stage, if you wouldn't mind Mr. Dennis - had a claim endorsed; but you can confirm that another leading politician had a special claim endorsed at some stage; is that correct?

A. Correct. I was asked was there anyone else and he, his name came to mind.

Q. Yes. Yes, now you say that the board tended to be sympathetic to special claims by leading political figures?

A. Well, as a semi state body it was quite common to have politicians on to us about the claims by their constituents.

Q. Yes?

A. And arising from a shortfall, the fact that they hadn't paid their subscription or had not re insured, in other words might be three months out of cover, and they wanted to be reinstated, so we did have political figures on to us all the time on behalf of constituents.

Q. Making a submission on behalf of a constituent?

A. Exactly.

Q. Or a request on behalf of a constituent?

A. Correct. As it was a semi state body, naturally enough one would expect that.

Q. Yes; and can I take it that you are not drawing particular distinction that the board would be sympathetic to politicians and not sympathetic to other members making

special claims?

A. No. All the claims would be received, would receive the same consideration, but obviously if they, a minister or a political figure got on to us, you tended to treat it with priority.

Q. You listened?

A. To give it attention.

Q. Now, the next query that was raised with you was your knowledge of board discussion and/or approval of the actual quantum of the payment, the amount that would be approved in respect of the late Mr. Lenihan for his treatment; and I think your response to that is that you would be certain that the quantum of the payment was discussed at the board, rather than approval given to management to decide a figure, but you cannot recall the amount itself; is that correct?

A. That would be correct. I don't recall the amount that was sanctioned, but I would be certain that we would not have given the discretion to the management to decide on that amount. So it could have been a tolerance of a small amount, awaiting perhaps additional invoices or something of that nature.

Q. Yes, because it is noticeable in the minutes that on that particular day when other special claims had been dealt with, the actual amount is approved; isn't that correct?

A. That's correct.

Q. And in respect of this particular claim, whilst there is

the minute it seems to indicate approval in principle, it doesn't actually deal with the minute, the minute doesn't record the actual amount; isn't that correct?

A. No.

Q. I think we will hear evidence later from Mr. Ryan about that particular matter.

A. I can understand why the exact figure wasn't agreed, because as I said there could have been additional invoices still to come.

Q. Yes.

A. The exchange rate, for instance, with dollars might have been a factor so we couldn't itemise the actual amount.

Q. Can I take it that this wasn't just a meeting of the board where a decision in principle was taken to give, to be given effect by management, that there would have been discussion in broad terms of the amount that was involved, would that be correct?

A. That is correct, that is correct.

Q. Now, I think the next query that was raised with you was whether the quantum of the payment was discussed by you with any one or other of the other directors or officials of the board on any other occasion; and if so, the date and the names of the person with whom it was discussed and the nature of the discussion; and your response to that is that you would have discussed with the board members and management who were present; that is, do I take it, present at that meeting?



A. At that time.

Q. Yes. The quantum of payment at the meeting only and nowhere else?

A. Yes. Correct.

Q. I think you were then asked if the quantum of the payment was not discussed or authorised by the board, your knowledge of the circumstances in which the payment was made and the first occasion on which you became aware that such payment was made, and you refer to the previous response you furnished, that this was discussed at that board meeting. Can I take it that once that discussion had taken place it was not a matter which you have any recollection of coming back to the board again?

A. I don't recall it coming back to the board again.

Q. So can we take it that whilst the quantum would have been discussed in broad terms, but with I suppose, some degree of certainty of the area in which it would be in at the board meeting, that a discretion might have been allowed with a slight tolerance one way or the other?

A. It is a slight contradiction in terms, a specific amount would have been agreed by the board, within as I said a tolerance, which is why the exact amount wasn't minuted.

Q. Yes.

A. I mean, for instance, I would be quite certain it wasn't 20 or £30,000 either way. I mean it was within a few pounds of what we discussed.

Q. Or perhaps a few hundred pounds, depending?

A. Exactly.

Q. Depending on invoices, further invoices being received or the exchange rate at a given time?

A. That is it.

Q. That would be your understanding?

A. Absolutely.

Q. I think the next query which was raised was whether you discussed the funding of the late Mr. Lenihan's treatment, the claim made by or on behalf of the late Mr. Lenihan to the VHI, the decision of the board in relation to that claim, or the payment made by the VHI to the Mayo Clinic, with Mr. Charles Haughey or with any person on his behalf, or with the late Mr. Lenihan, with any member of the Fianna Fail Party or with any person other than a director or official of the VHI; and if so the name of such person, the date or approximate date of the discussion and the precise matters discussed. I think that was the query raised with you. And I think your response to that is that all VHI subscriber records are confidential and you have never discussed them outside the VHI offices and specifically, you did not discuss them with any of the parties mentioned in the query raised above?

A. That is correct.

Q. That the only people with whom you may have discussed this matter were the other members of the board and the senior officials of the VHI itself?

A. Correct.

Q. Now, I think the next query which was raised with you was your knowledge of whether a file was kept by the VHI in relation to the late Mr. Lenihan's claim and if so whether your client has any knowledge, that is - sorry - this is directed to your solicitors of course, whether you have any knowledge as to where or by whom or how the file was retained and as to why the file no longer appears to be available? And I think your response to that is you are positive that a claim file would have existed and it would be normal to bring same to the board meeting for the special claim consideration, but that you have no idea why it is not available?

A. That is correct.

Q. We can take it, I suppose, from your long period of serving on the board and your period as Chairman, that you would be confident and happy that a claim, any claim being processed within the VHI, would have a file?

A. That is correct.

Q. And that if a special claim was being made, which had to come to the board for its consideration that the appropriate documentation would have always been brought to the board?

A. The procedure would be that Mr. Ryan would bring the claim, we introduce the claim and then he would give the details, outline the details of it and why the consideration should be given to it.

Q. Yes. Yes?

A. And the file would be available.

Q. Yes. So that Mr. Ryan, as the Chief Executive Officer in the board would make the presentation in the normal course of the board's business?

A. Yes.

Q. And the board would then consider the matter and approve it if appropriate?

A. Correct.

Q. But the file, or Mr. Ryan or one of his staff would always have the file present if any further queries were made by the board on the matter?

A. That would be right.

Q. Now, I just wonder do you know anything about the destruction policy of the Board of documents, obviously all large organisations cannot keep paper forever. Are you yourself familiar?

A. I would be, I would recall when the microfiche system was introduced.

Q. Yes?

A. I can't say when, 15, 20 years back, but the problem was that the amount of documentation which was on files which had to be kept was getting out of all proportion, obviously there was some system had to be used, microfiche system was coming in, so that as a proposal was brought to the board, that we would microfiche either subscriber records or in the case of the membership, or in the case of the claims; but we would have decided how long the, what I would call

the physical claims would have been kept, but I don't recall what the period was.

Q. Yes, but obviously it is a matter which the board had to give consideration to at some stage?

A. Oh, absolutely.

Q. You would be weighed down with paper otherwise?

A. Yes, absolutely.

Q. MR. COUGHLAN: Thank you Mr. Dennis.

A. Thank you.

CHAIRMAN: Does anybody have anything to raise? Mr. Dennis, would the two earlier blacked out applications reflect the general practice of board meetings, that an amount and specific reference to the special claim would be put in so that there would be certainty and so that even if the amount involved was quite small, there was a structure in giving, exercising a special discretion in favour of the subscriber?

A. That would be correct, yes.

CHAIRMAN: And would the general practice be as Mr. Coughlan said, that Mr. Ryan as Chief Executive, would make a presentation and perhaps make a recommendation, and in the majority of cases that would carry great weight with the board?

A. Oh, it would. It would.

CHAIRMAN: Thank you very much indeed for your

assistance.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Des Cashell.

HENRY DESMOND CASHELL HAVING BEEN SWORN WAS EXAMINED BY MR.

HEALY AS FOLLOWS:

CHAIRMAN: Mr. Cashell, please sit down.

Q. MR. HEALY: Thank you Mr. Cashell. Like the last witness,

Mr. Cashell, you have provided a memorandum of intended

evidence to the Tribunal and this memorandum consists of

your responses to a number of queries addressed to you by

the Tribunal and perhaps some additional remarks of your

own and what I propose to do is to take you through the

queries and your responses and if necessary, we can go back

over them to amplify any matters that require any

elucidation, if you are happy with that?

A. Fine.

Q. Firstly, you were asked the dates, from the dates of your

membership of the board of the VHI and your response is:

"I was non-executive Chairman of VHI from the 14th of

February of 1987 to the 14th of February of 1992". And you

say that you have no connection with the VHI except as a

subscriber since 1992. So you joined as a non-executive

Chairman; is that right?

A. Yes.

Q. And you retained that position throughout your association

with the board?

A. For five years, yes.

Q. You were then asked when you first became aware of the late, that the late Mr. Lenihan wished to receive treatment at Mayo Clinic and intended to make an application to the board for a payment and the identity of the person by whom and the circumstances in which you were so informed; and you say: "I was informed of the Lenihan claim by Mr. Tom Ryan, the then General Manager of the VHI prior to the May, 1989 board meeting". You then were asked about your knowledge of the contents of the special claims procedure made by or on behalf of Mr. Lenihan and you were referred to the minutes. The minutes that were put on the projector a moment ago showing a reference to the special claims procedure?

A. Yes.

Q. And your response was: "Special claims appeals refer to cases which involve an element of ex gratia payment and therefore have to receive board approval. In Mr. Lenihan's case the ex gratia element was caused by the fact that the operation was taking place outside Ireland and the appeal was to meet the costs of his treatment in the Mayo Clinic". That is correct, isn't it?

A. Yes. Could I just take you back to the first question for a moment?

Q. I am going to go back to all of them later.

A. Are you? Because I want to explain exactly how I learned

from Mr. Ryan.

Q. Yes?

A. Of this special claim.

Q. I will give you an opportunity to go over those in a moment. We will just get, as it were, the discrete responses out of the way.

A. Sorry.

Q. There is no problem. You were asked then for your knowledge of the discussions of the board on the 18th of May and your knowledge of previous grants to other subscribers in similar circumstances, that is a reference to the board minutes and it is likely that we will have to come back to that. You were also asked of your knowledge of the board discussion and/or approval of the actual quantum of payment, and your response was: "My memory of the Lenihan appeal is I feel accurate. The board had a short discussion and agreed that as the treatment was not available in Ireland, the cost of the actual operation at the clinic would be borne by the VHI. We were advised that this would be, that this would be in the region of €50,000".

So far as grants to other subscribers in similar circumstances are concerned these occasionally happened, in fact in the minutes which you enclosed in your referring to the letter from the Tribunal's solicitors and the case of; I won't give the person's name because it is just the name of an individual to whom a special claims grant was made;



and you cite that as an example. The fact that in the Lenihan case no actual figure was stated was to preserve confidentiality in view of the high profile of the Claimant.

The next query was whether the quantum was discussed by you with any one or more of the other directors of the board or officials of the board on any other occasion and if so the date, the names of the persons with whom it was discussed and the nature of the discussion, and your response is in the negative. You say: "No, I had no other discussions outside the boardroom on any occasion or on any occasion except the board meeting of the 18th of May". You were then asked whether if the quantum was not discussed it was authorised and of course this is repeating an answer you have already given, you say the quantum of the payment was authorised by the board.

You were then asked the question, a long question which Mr. Coughlan read out a moment ago and which I will read quickly, whether you discussed the funding of the late Mr. Lenihan's treatment, the claim made by or on behalf of the late Mr. Lenihan to the VHI, the decision of the board in relation to that claim, or the payment made by the VHI to the Mayo Clinic with Mr. Charles Haughey, with any other person on his behalf, with the late Mr. Lenihan, with any member of the Fianna Fail Party, or with any person other than a Director or official of the VHI and if so give the

name of such person, the date or the approximate date of the discussion and the precise matters discussed.

I think your response is that you can state categorically that you had no other discussion with any of the persons or categories of persons listed. You say: "I was approached by no person regarding Mr. Lenihan's claim".

You were then asked about the file, specifically whether a file was kept by the VHI in relation to the late Mr. Lenihan's claim and if so whether you have any knowledge as to where, by whom and how the file was retained, and as to why the file no longer appears to be available. And your response is: "All special claims appeals have to be supported by the relevant papers and a file would certainly have been on the table at our board meeting of the 18th of May. I have no personal knowledge of what happened to the file afterwards, I understand, however, that all claim files in the VHI are destroyed after seven years".

Now, before I ask you any questions Mr. Cashell I think you wanted to take me back in the first instance to one of your responses; is that right?

A. Yes, I wanted to refer to when I first heard about Mr. Brian Lenihan's claim. It was my custom, and I am sure it happened down through the years in the VHI, that I would have a briefing with the General Manager prior to each board meeting and this would take several hours prior to the board meeting, and I have a clear recollection of Mr.

Ryan taking me through the special claim which would be put to the board on the after, that afternoon for that May of 1989 meeting. During the course of that conversation Mr. Ryan mentioned to me that he had, had had a brief meeting with Mr. Charles Haughey who had had a chat with him about the matter and who expressed the hope that the board would look favourably on Mr. Lenihan's claim. That was the only reference made to any conversations with any politician in my, to my knowledge, but it was in after that we took the matter through in our general discussions, and when I presented Mr. Brian Lenihan's, when Mr. Ryan told us about the board that afternoon about Mr. Lenihan's case, there was a unanimous approval from the board, that we should meet the cost of his operation in the Mayo Clinic. This was for very many reasons.

I agree with Mr. Dennis's evidence that we got a lot of pressure from politicians from time to time, but on behalf of their constituents, in my instance, in my five years as Chairman Mr. Lenihan and one other case actually referred to treatment for the politicians or their families themselves, there were two cases of which this is one.

When you put those into context you must realise that there were several hundred special claims appeals dealt with during my five years as Chairman.

Q. I see. In the ordinary way, if you were considering a special claim and we know from the minutes that there were

two other special claims considered on the day on which Mr. Lenihan's claim was considered, one was for €442.86 we can put it on the overhead projector, you will see it on the monitor to the right.

A. Yes.

Q. And the other was a claim, was a claim for €10,000. In the ordinary way if you were considering a special claim, can you give me an indication of what sort of factors you take into account, and what documentation you would have in enabling you to make a judgement on the claim?

A. Yes; and again I refer to those five years, special claims are those which for any one of a variety of reasons don't fall specifically within the policy wording of the contract which that person had with the VHI.

Q. Maybe I can assist you at this point. I am not sure, since your association with the board ceased in 1992, I have had an opportunity of examining the Board's rules which you may not be as au fait with as I had an opportunity of familiarising myself with them, and they do provide that the board have got a discretion to waive compliance with the rules and essentially isn't that what the special claims procedure is? You are deciding, notwithstanding our rules, we are going to make a special exception?

A. That is true.

Q. And we have the power to do that?

A. That is true. I think it is also correct to say that in the five years period, any special claim presented by

management to the board, in one or two cases we put it back for further query, but we never ever considered it to be unwarranted. So in other words all the, all the background work on the special claims had been done by management before they were presented to the board.

Q. Do I take it that by the time the special claim comes to you, it effectively comes with a recommendation or backing of management?

A. Absolutely.

Q. And do I correctly understand you then to be saying that there are some special claims which might be regarded as unmeritorious or not warranting a departure from the rules and they are, in your experience, they never actually got as far as the board. They have been, if you like, screened out or filtered out before they got to the board?

A. Absolutely. The claims management had a discretion, quite a modest discretion, monetary limit to the discretion they could use, but every month we were told it could be two or three hundred, it could be 50, it could be 20 cases of that lower level which had been dealt with by management and only the ones which were larger came to the although, if you look at those two cases you referred to, the œ442 doesn't seem very much but we were paying that for year after year after year, because it involved 24-hour nursing for two unfortunate children.

Q. It says "continue the present arrangement of 442 per month"?

A. I can't recall how many years that was paid for, it was many years outside the terms of the policy on a sympathetic basis.

Q. You are simply seeking to indicate that the threshold wasn't 400 or lower, it was much higher than that, it was some thousands I take it?

A. Well, in fact it wasn't. The claims management only had discretion up to four or €500 on individual claims.

Q. I see. And therefore in the ordinary way special claims would come through the claims management, somebody would apply to the VHI for treatment, they would be told that their claim did not come within the rules, and the management would either filter out the claim on the basis that it didn't warrant a special claim in their view or they would pay it if they did or if it was above their threshold they would put it on the board agenda with the documentation, and effectively a recommendation, in your experience?

A. Yes.

Q. Now, in this case am I right in thinking, and to some extent I am anticipating what I know to be the statement of Mr. Ryan who is going to give evidence, and I am sure you are familiar with his statement; am I right in thinking that there was no straightforward claims appeal in this case coming through the claims management, that the appeal in this case came from Mr. Ryan and that it came to Mr. Ryan via Mr. Haughey?

A. Well, Mr. Ryan will obviously be better qualified to speak about the actual details of the chain of events, but Mr. Ryan had a file on the Haughey claim, or the Lenihan claim, the Lenihan family were long time subscribers to the VHI.

Q. Yes?

A. He had a claim file and I assumed that it was coming through in the normal way like the other claims that day.

Q. I see.

A. Mr. Ryan can give further detail on that.

Q. I don't want to be unfair to Mr. Ryan but I think that this proposal was one that was actually initiated by Mr. Haughey, you weren't aware of that, were you?

A. No, I certainly wasn't. I I mean like everyone in Ireland, I realised that Brian Lenihan was very ill.

Q. Of course?

A. And I assumed that in the normal way he would be presenting a claim to us.

Q. I see?

A. I would have regarded, the comment about the ten minute conversation that Mr. Ryan had with Mr. Haughey as just incidental to that, I didn't realise, I don't believe it was the first notification we had. But Mr. Ryan can explain.

Q. I am sure it reflects very well on Mr. Ryan that you weren't aware, I am sure he will agree with that. If it did in fact come, I think Mr. Ryan will say through Mr. Haughey, it reflects well on him that he didn't let you

know that. Now, you say that you refer to an earlier case because you were asked whether there were any similar cases, and you have explained how that case came about. You heard the evidence of Mr. Dennis a moment ago, that appeals were promoted, if I can use that word, by political figures, by "promoted" I mean a politician would make a representation in the ordinary way on behalf of constituent saying "please give this constituent a sympathetic hearing" or whatever. And Mr. Dennis said that the board would be sympathetic to such requests in the ordinary way. I am not saying that, I am not sure that I would be right in saying that his evidence was to the effect that if a politician supported it, it would be granted, but that there were, they were sympathetic to requests for special exceptions promoted by or can I say supported by, political figures?

A. Well, could I my experience was that lots and lots of letters and phone calls came in from politicians, they came to me as Chairman of the board, they came to the other directors, I am sure, they came through the management of the VHI. But I can never recall a special claim getting through to the boardroom table because of the fact that it was specifically recommended by a political figure. I can never recall that happening.

Q. I see. And when you were deciding on this claim as far as you were concerned it was an ordinary claim, though it was one in respect of which Mr. Haughey had had a chat with Mr. Ryan, that was your understanding of the political



involvement, if you were aware of it and no more?

A. Absolutely.

Q. And you didn't think that there was any other involvement?

A. No, I didn't, I was not conscious of any political pressure.

Q. Or support?

A. No.

Q. I see. Now, you mentioned that in the Lenihan case no actual figure was stated to preserve confidentiality in view of the high profile of the Claimant. Can I just ask you two things or ask you questions under two headings as it were about that, Mr. Cashell; what, if we can go onto the next page, what the minute said was "taking into account the circumstances of the case and previous grants to other subscribers in similar circumstances it was agreed in principle that a significant contribution should be made". Now, do you agree with the evidence of Mr. Dennis, that the board agreed to pay €50,000?

A. Yes, the figure of €50,000 was the approximate liability the board was agreeing to meet on that occasion.

Q. And that as long as that was the figure that was paid it had board approval?

A. Yes, as long as a figure of approximately, approximating to that it would have board approval. Now, I am totally satisfied that there was no significant reason for not putting a figure opposite that board minute, there was the question of confidentiality, because of the high profile

and there was also the question as Mr. Dennis explained, that we couldn't, we only had an approximate figure, but apart from those two reasons, I just have no reason to offer as to why an actual figure was not inserted in the board minute. I suppose if I had known at the time that I would be sitting here today I would have insisted on there being a figure.

Q. Of course. And perhaps we should approach it on those two basis, and give you the benefit of commenting on it with hindsight as well as commenting on what you actually remembered at the time. It is just that in your statement you say that the fact that the Lenihan case, the fact that in the Lenihan case no actual figure was stated was to preserve confidentiality. Is that an accurate indication of what you think?

A. Could I just explain that? I reacted to that memorandum when I received it from the Tribunal literally within 12 hours.

Q. I am aware of that.

A. Because I was leaving the country on holiday.

Q. I am grateful.

A. I had been thinking since that happened, but I did my best in the very short-term

Q. If you want to amplify that in any or in anyway clarify it Mr. Cashell, please feel free?

A. I will just add the point that Mr. Dennis made, that we didn't know the actual figure.

Q. What I am trying to get at are two things. There are two things I am interested in, when the actual figure would have been communicated to anyone else and as to how the auditors of the board would have ascertained that the actual figure had been approved by the board?

A. Well, I have a clear recollection on this as well.

Subsequently to that board meeting, probably three months later, I think it was August, I saw a claims requisition form, which means in fact that over a certain figure in the VHI a Director had to authorise the payment, I can't recall what that figure was now, it might be €25,000.

Q. I can give you the full figure so that you won't be in any difficulty answering the question?

A. I can recall, I can recall the figure being in the sum of 81,000 American dollars which translated down to 50 something thousand Irish pounds.

Q. Yes?

A. I actually can't recall whether I signed a cheque or whether some other director signed a cheque, but I was advised of the amount when I inquired and I therefore knew the final liability which the board had in the matter.

Q. I think it was 57,000?

A. 57,000. Yes.

Q. And did you feel at that stage that that was within, as it were, the ambit of the agreement or the approval in principle that had been recorded at the board meeting?

A. I did, because we had been given an approximate figure of

€50,000. We had agreed in principle to meet the costs of the operation at the Mayo Clinic and that is what we paid.

Q. MR. HEALY: Thank you very much.

CHAIRMAN: Thank you very much for your assistance, Mr. Cashell.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Ryan.

THOMAS RYAN HAVING BEEN SWORN WAS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thank you Mr. Ryan.

Q. MR. COUGHLAN: Mr. Ryan, thank you. I think you helpfully provided a memorandum of proposed evidence for the assistance of the Tribunal, and do you have that with you in the witness-box?

A. Yes, indeed.

Q. If necessary, you may refer to it. I think you say in your memorandum in answer to the questions posed in the Tribunal letter on the 3rd of September of 1999 to Mr. Joseph May, the following is your recollection of the case of the late Mr. Lenihan.

You say that on some date between the 853rd and the 854th meeting of the board of the VHI, you were requested to come to the office of Mr. Haughey at short notice. The meeting lasted approximately ten minutes; is that correct?

A. That is correct.

Q. I think you have informed the Tribunal that Mr. Haughey referred to Mr. Lenihan's illness and to his proposed treatment in the USA; is that correct?

A. Yes.

Q. "He had with him what I took to be a number of accounts or estimates for his treatment"; is that correct?

A. Yes, I have a clear recollection that he had some papers in his possession.

Q. So that if we could just go back over that for a moment now, I take it you were sitting in your office one day and you received a phone call; is that correct?

A. That is correct.

Q. And can we say that the phone call came from Mr. Haughey's office as far as you can recollect?

A. Yes. Certainly from his office, but I can't remember from the precise individual.

Q. From whom?

A. Yes.

Q. And the nature of the request was for you to the Taoiseach wanted to see you, is that what it was?

A. Yes.

Q. And whilst you didn't report directly to the Taoiseach, can we take it that living in the real world, once you received such a request, you made it your business to go and see the Taoiseach; is that right?

A. Absolutely.

Q. And did you see him on that day, can you remember?

A. My recollection is that it was at quite short notice, that you know, I was to see him within a couple of hours, but then I couldn't be absolutely certain about that. I do notice that strange enough, I had retained the old diary, I had a habit of retaining them because they contained quite useful business dates, I still have one from that period and there is no note of the period, so it enforces my view that it was very short notice.

Q. A very short notice meeting?

A. Yes.

Q. And you went to his office?

A. Yes.

Q. Did you know what the meeting was to be about?

A. No, I didn't.

Q. You didn't know. You were just being summoned to the Taoiseach's office for any purpose at that stage?

A. Precisely.

Q. But when you got there you say the meeting lasted about ten minutes and the issue of Mr. Lenihan's proposed treatment in the United States was raised with you; is that correct?

A. Yes indeed.

Q. And you have a recollection of Mr. Haughey having documentation of some sort?

A. Yes, it is quite a clear recollection.

Q. Yes?

A. It was I suppose yes, I can almost see it in my mind's

eye. I can see papers in his hand, at one stage, sort of tossing them on the desk.

Q. Yes; and do you have a recollection, in general terms, of what those papers might have been?

A. My best recall of that is that there was relevant papers, they were probably an estimate of Mr. Lenihan's likely costs. This was in advance of the treatment actually taking place.

Q. Yes; of course?

A. And I do feel there was some other actual bills as well, and you know, subsequently I was able to establish that there was an earlier period of treatment, the investigations and work up to the treatment took place at an earlier date, he possibly had those in his possession as well.

Q. Yes. Now, I think you have informed the Tribunal that he, Mr. Haughey, obviously knew that Mr. Lenihan was a subscriber to the VHI; is that correct?

A. Yes.

Q. And I think that he asked you if the board would be prepared to pay a portion of the charges; is that correct?

A. That is correct.

Q. Can you remember how that was formulated or

A. My best recollection of it is that he mentioned costs, I think some costs which had been incurred and the anticipated costs.

Q. Yes?

A. In other words, I knew from my own experience that it was quite usual to get an estimate of costs from a US hospital.

Q. It was usual?

A. It was quite usual. Yes, yes.

Q. Yes?

A. And my memory is that he mentioned the likely total cost and the likely cost of the hospital bill.

Q. Yes. That would be the actual operation or the treatment bill; is that correct?

A. Well, I think logically it must have embraced all of the likely accounts, hospitalisation is only one aspect of the professional accounts as well. My best memory of it is that he outlined from the estimates that he had, what the likely total cost would be and what the likely hospital cost would be and he asked if the board would pay a portion of it, and he mentioned specifically perhaps the hospital bill.

Q. Right. And I think you have informed the Tribunal that your recollection is that Mr. Haughey proposed that the VHI should pay the hospital account alone, and you have informed the Tribunal which was estimated at \$80,000. Now, is that your recollection of what you were informed of on that occasion or are you relying on what you subsequently became aware of, of the actual cost?

A. My recollection of it is that it was approximately €50,000, it subsequently translated into dollars in a very rough way in the statement. My recollection was something of the



order of €50,000 and that that represented somewhere between a third and a half of the total cost, the total estimate of cost.

Q. Yes; and as a result of this request made to you by Mr. Haughey to put the matter to the board and ask that it be accepted favourably, did you undertake the proposal before the board?

A. I did; and as I mentioned in the statement, I gave him some outline of what the board's attitude is to cases of this nature.

Q. Yes; and what was that or what was your briefing to him on that?

A. Well, that I suppose there were two aspects, that one was if treatment took place outside the State it was not included in the VHI contract, except in respect of an illness occurring fortuitously when you were abroad; on that account Mr. Lenihan's claim would be technically outside the scope of his cover. And the second aspect was that because it was taking place in a country where the cost of medical treatment was very high compared to ours, that it would be most unlikely that the standard VHI benefits would meet most of the costs in phases like that, where the treatment is essential and is a scientifically approved treatment, the board is prepared to consider ex gratia top-up amounts.

Q. Yes. Now I think you have informed the Tribunal that you can't recall whether Mr. Haughey gave you any of the

accounts or estimates which he may have had at the time?

A. No, I cannot recall that.

Q. Now, you have just explained there, Mr. Ryan, that and Mr. Healy previously referred Mr. Cashell to the rules of the VHI, and that where somebody doesn't come within the rules one moves on to the special claims aspect; isn't that correct?

A. Yes. Yes.

Q. And a special claim outside the discretion which is given to the Claims Department or the Claims Manager has to go to the board for approval; is that correct?

A. That is true.

Q. Now, in the first instance when Mr. Haughey, sorry when you went to see Mr. Haughey having been, he having requested you to come and see him; did he ask you to put the matter to the board or was it as a result of you explaining the VHI's rules and procedures to him that you were asked to put it to the board?

A. It is very difficult to recall the sequence. I think the most likely one was that he simply asked me to put it to the board. He was obviously aware that Mr. Lenihan was a member, and a member of the VHI, I am sure he would have known that the costs were over and above what the VHI would normally be in Ireland. I think he simply said "look, here is somebody facing significant extra costs outside the jurisdiction and would you put it to the board to consider it". I outlined to him what the circumstances normally

are, as I explained a moment ago.

Q. Yes?

A. And there we left it.

Q. Yes, but what I am attempting to ascertain for the assistance of the Tribunal, Mr. Ryan, is this; that in the normal course of events, a member of the VHI might apply to the board for cover; isn't that correct? If they were going to receive treatment or in the process of receiving treatment, in the normal course of events?

A. Yes.

Q. And without consulting the rules or being aware of the procedures, one might not know that special claims have to go through the board. What I am attempting to ascertain is how were you asked that the matter should go to the board?

A. Well, if you mean the precise form of words, I am not sure that I could recall them. It was simply well, it seems to me that he must have had a knowledge of that.

Q. Yes?

A. That the cover would not be sufficient.

Q. That is what I am trying to ascertain?

A. Yes, how he acquired the knowledge I have no idea, but I think it would be a very common sense thing for somebody to know that the VHI would not normally cover treatment in the USA.

Q. Yes?

A. I might add that I know that there was subsequently a book written on this topic, and I think Mrs. Lenihan did say

that she did ask somebody in the VHI about the state of benefit. I have no idea who that was, it could have been a person in the customer service, you know on the telephone line or whatever; so it is possible that she imparted this limitation to Mr. Haughey, but that would be just speculating, I have no idea.

Q. Can I take it that the first, well could we first of all ascertain this; I take it that like most people in Ireland, you would have had general knowledge from media reports that Mr. Lenihan was unwell at that time; is that correct?

A. Oh, yes of course.

Q. But apart from that, can we take it that the first time you knew that an approach was being made to the board, or to the Voluntary Health Insurance Board, was when Mr. Haughey made the approach to you?

A. I think that is, that is probably the fact of the matter, that the first I knew of this claim for the USA was when Mr. Haughey asked me to call on him.

Q. Yes?

A. Now, I do know that Mr. Lenihan had been ill for some time and that he had treatment in Dublin.

Q. Yes?

A. And I might or might not have been aware of that claim. I just couldn't say at this remove. I can't even remember the amount of claim or whether it would have come to my attention, most claims didn't.

Q. Well, I take it that like any member of the VHI who was

having normal approved treatment in an Irish hospital, they would be processed in the normal way?

A. It would be a routine matter.

Q. But before Mr. Haughey made this request of you to attend him at Government Buildings, no claim had been brought to your attention on behalf of the late Mr. Lenihan through the normal claims process of the VHI; would that be fair to say?

A. Not to my knowledge, that would be correct.

Q. And if one had been processed and hadn't come to your attention; I am not suggesting that this happened in this case, but in the normal course of events; if a claim in, a claim which departed from the strict rules of the VHI, if it didn't come to your attention and didn't fall within the discretion of the Claims Manager, it would have been filtered out in the normal course of the VHI business; would that be correct, any claim?

A. I am not sure would you mind repeating that in case I am missing your point?

Q. Yes indeed. If a claim doesn't come within the rules?

A. Yes.

Q. First of all, let's establish if a claim comes within the rules it is dealt with just in the normal course of events; isn't that correct? The bills are got in, the cheque is made payable and it goes out?

A. Yes.

Q. If a claim falls outside the rules, in the first instance

the Claims Manager has a discretion to some particular level; isn't that correct?

A. Yes.

Q. And would be dealt with there and then, if a claim comes outside the rules and the Claim Manager is not exercising his discretion to view it favourably, or if it is in excess of the Claims Manager's discretion?

A. Yes.

Q. It would have to come to you; isn't that correct, to go to the board?

A. Yes, it would. I can't recall ever a case where, where a case of this nature, a claim, in other words a special payment, came to the board without coming through me, that would be the normal course of events.

Q. Would that be fair to say?

A. Yes. Absolutely.

Q. Now, you were not aware, prior to Mr. Haughey's involvement, of this particular matter coming to the attention of the VHI; I am talking about the cost of treatment in the United States?

A. No, that was my first, the first occasion on which I became aware.

Q. And you have made reference to something you have read in a book subsequently?

A. Quite recently, yes.

Q. Quite recently. Where there may have been some approach made to the VHI, but you have no knowledge of that?

A. Absolutely none.

Q. And again because I think the file is not available, isn't that correct?

A. That is correct.

Q. In this case, in this particular case, what I am trying to find out for the Tribunal is this; that would you have expected that if inquiries had been made in the normal course through the VHI, for cover in respect of this treatment, that it is a matter which would have been brought to your attention within the VHI?

A. Yes, I am sure I would have regarded it as not unlikely that somebody made an inquiry about the case before, it was, this was the first I heard of it. I should explain what frequently and what the most usual course of events in relation to an ex gratia payment is, that the claim is actually dealt with; for example most of them probably involved treatment for this country, for some reason or another the coverage was inadequate, and the coverage has been developed over the years to the point that it was as comprehensive as it is. In a case like that the claim would be made, where the appeal dealt some special circumstances, that appeal might come from any, well from a wide variety of sources; people, family members, politicians, priest, friend, they came from all sources; and we simply dealt with them as if they were coming from the subscriber. Of course we always dealt subsequently with the subscriber, we exercised a sense of

reasonableness. In the normal course of the business of the VHI, such claims would be dealt with sympathetically, but they would be dealt with in the normal course of business. They would come through a claims process, they may be in excess, a person may have been out of cover for a month or matters of that nature.

Q. Yes. And some representation would be made by themselves or on their behalf and the board would look at it, sorry, I don't mean the board, I mean the VHI would look at it in its normal business?

A. Yes. I think you have to remember it was designed as a "not for profit" corporation. It was purely for service. That was the ethos of the service that we went through from the very beginning. It was actually a self help organisation in essence, that was the way the board viewed it and indeed the executive.

Q. And the ethos of this was to try to help people if you can, not to obstruct them?

A. Absolutely.

Q. But I think that is absolutely so, but what I am trying to ascertain here is whether this claim ever came through the normal process of the VHI?

A. I don't think so. As Mrs. Lenihan herself says in her book, that she did make an approach, I don't know to what level that was, it could have been to an official in the Claims Department or as I said, a member of the service help line or whatever, but it never came to me through that



route. The first I heard of it was at the meeting with Mr. Haughey.

Q. Yes; and what I am really trying to get at, so that, bearing in mind that the cost of such treatment in the Mayo Clinic, which is something which you would have had some familiarity with, the cost of treatment in the United States?

A. Yes.

Q. Tends to be on the higher side, that it is something which you would have expected, if an approach had been made in the normal course of the business, would have been brought to your attention, because it is something which would have had to go to the board?

A. I would expect so, and even in cases where a Claims Manager or claims additional might see very little merit, they still frequently came to me because somebody thought they should appeal to a higher court, so-to-speak, and look at it again quite objectively. So it would have come through that route.

Q. Now, I think you go on to state in your memorandum that as the minute of the 854th minute indicates, that is the minute of the board meeting on the 18th of May, 1989?

A. Yes.

Q. If we could just try and fix the time when you had your conversation with Mr. Haughey with some reference to the 18th of May of 1989; can you be of assistance to the Tribunal?

A. As I mentioned to you earlier, I have no diary note of the meeting, probably because it was more or less immediate, and I suppose I am making a judgement that it must have been at some stage between the 853rd and the 854th meeting. So I doubt very much if I would have delayed it over one meeting.

Q. Yes?

A. In view of where the request was coming from and indeed the urgency of the treatment.

Q. Yes?

A. So my feeling at this stage, and it is the best I can recall it, is that it was rather closer

Q. To the 18th of May?

A. to the 854th meeting on the 18th of May, the earlier meeting was in fact, I since established between the 20th of April.

Q. Yes?

A. Between the 20th of April and the 18th of May. My feeling is much closer to the 18th of May.

Q. I think you informed the Tribunal that you put the proposal forward and as far as you recall the board agreed at that meeting to meet the hospital bill; is that correct?

A. Yes.

Q. Now, Mr. Cashell and I think Mr. Dennis, Mr. Cashell in particular, Mr. Dennis perhaps, said that when a special claim was being dealt with at the board meeting that it was usual and this is the only way it could be done, that you

as General Manager would make a presentation; that would be the normal way?

A. Yes.

Q. And I think prior to the meeting or prior to board meetings you would have briefed the Chairman of the board; is that correct?

A. That is correct.

Q. Of matters which were arising on the agenda?

A. That is correct.

Q. And I think that you have been able to ascertain that you have a note written on your agenda for the meeting saying that the amount was expected to be about €50,000; is that correct?

A. That is correct.

Q. Yes. I don't think we need to put that up at the moment, but it was the agenda you would have had when you were briefing Mr. Cashell about the meeting?

A. Yes.

Q. And I think that the two directors who have already given evidence were of the view that the figure was in or around that figure, so the sum must have been discussed at the board meeting?

A. Yes, I suppose the request was couched in two ways; one was "would you deal with the hospital bill", and it is expected to be in the order of €50,000 and it was a request to deal with something of the order of €50,000; but also perhaps to deal with the hospital bill element of the claim

as a distinction from the professional fees or any other works that might have been done, either pre operatively, that is at an earlier admission or any subsequent admission for check-up or whatever.

Q. Yes. Now Mr. Cashell has told us that when you briefed him for the board meeting, you informed him of the approach which had been made by Mr. Haughey?

A. Yes.

Q. Were the other members of the board informed of this at the board meeting?

A. At the board meeting?

Q. Yes; at the board meeting?

A. Yes.

Q. They were, and can we take it that you would have had Mr. Lenihan's file at the board meeting?

A. Yes, I can only assume so because that would have been the norm.

Q. Yes?

A. It would be unusual not to. The only file which might have existed at the time might have been the file for the treatment in the Mater Private Hospital.

Q. Yes. Yes.

A. From which I gather he was transferred to the rest so we probably worked from that file.

Q. And of course it would have been your view at that time, as it still appears to be your view, that this claim had not come in the normal way of business of the VHI, but that the

first approach had been made by Mr. Haughey?

A. Yes.

Q. And can we take it that the board would also have been aware of that; would you have briefed them so?

A. Oh, certainly I would, yes. It would have been most unusual not to.

Q. Now, I think you go on to say in your statement that a substantial element of the payment would have equated to the benefit to which Mr. Lenihan would have been entitled if the treatment had been available in Ireland, "but I cannot quantify the amount at this remove". If he could have had that operation in Ireland it would have been expensive in any event; isn't that correct?

A. It would.

Q. And I think that is the point you are getting across in that particular sentence; is that correct?

A. Yes.

Q. And would that have been discussed at the board, can you remember?

A. I can't recall, but I am sure it must have been.

Q. And I think you go on to say in your statement that in all cases concerning special claims, the board is appraised of all circumstances, including the total cost of the treatment and that the amount granted by the board is normally minuted and minutes are formally adopted at the next meeting; is that correct?

A. That is correct.

Q. But that you are not sure why the board decided not to minute the amount in this case. "It may have been because the exact amount would remain uncertain until the treatment had been given or because of sensitivity to Mr. Lenihan's public position and the need for confidentiality, or a combination of these things". Well can we exclude the latter caveat, there doesn't seem to be any question of breach of confidentiality from the VHI or its board?

A. No, I think that that would be most unlikely.

Q. And can we then take it that the exact amount may not have been known at that time, until the final bill came in?

A. Yes, I think so. That was the 18th of May as I recall, and Mr. Lenihan didn't actually have the surgery until the, I think it was the 23rd, so there was no way that one could have known what the final outcome was until it came in. I am just reminded by my earlier comment that a request came in, in a sense, in the two pronged way; "would you deal with the hospital bill?", or "Would you deal with €50,000?"; the hospital bill which is expected to be of the order of €50,000? There was, the amount could not have been the precise amount, could not have been known at the time.

Q. The precise amount, but the general, the general nature of the amount was determinable and was capable of being discussed by the board?

A. That is my clear recollection and it does appear to be borne out by the note which I penciled on the agenda of my

briefing with Mr. Cashell.

Q. Yes. Now, I think you have informed the Tribunal that you do not recall anything in relation to the claim between the time of your initial interview with Mr. Haughey and the board meeting or following the board meeting?

A. Yes.

Q. I think you have also informed the Tribunal that you were sure that "the decision of the board would have been communicated to Mr. Haughey or Mr. Lenihan or someone on their behalf but I do not remember doing so". If I might just pause there and ask you how decisions of the board in relation to special claims would normally have been communicated to the claimer?

A. They would normally be communicated by a letter to the insured member, generally enclosing a cheque for whatever the ex gratia amount which was agreed.

Q. Yes?

A. That was if the claim was complete at that point.

Q. And even where representations were made in the normal course of the VHI's business by members of the Oireachtas, or clergy men or school teachers or members of family, can we take it that it is always to the Claimant that the special claim would be notified rather than the person making representation on their behalf?

A. I don't say that I can say that that was the invariable practice, I thought you asked me if it was the usual practice, and the usual thing would be always to

communicate with the person with whom we had a contract.

But there were lots of situations where that wouldn't have been practical.

Q. Yes?

A. For example if the person was too ill or perhaps demented or incapacitated in some way or perhaps abroad.

Q. It mightn't have been practical in this particular instance in that Mr. Lenihan was already in the Mayo Clinic; isn't that correct, I think?

A. He was either

Q. In or on his way?

A. either in or just about to.

Q. As you say his treatment was some days subsequent?

A. Yes. It is possible that the thing was simply decided upon and left in abeyance until the actual treatment took place and the bills become available, and there was some communication either through the Lenihan family or otherwise at a later stage which I think was either August or September when the thing was actually paid, but I can't be, I have no memory of any of that.

Q. Because you go on to say, or you have informed the Tribunal that it seems that you do not remember communicating it in any event either to Mr. Haughey or to Mr. Lenihan or a member of the Lenihan family?

A. No. I am quite sure that I had no further involvement in the case after that.

Q. Well, in the sequence of events as you remember them, you



were asked by Mr. Haughey to come and see him?

A. Yes.

Q. And you were asked to put a certain matter to the board and to seek the board's approval?

A. Yes.

Q. One might expect, following normal procedures and normal courtesies, that you might pick up the phone and respond to Mr. Haughey and say that that had met with the board's approval?

A. I appreciate what you are saying, but I have absolutely no recall of having any follow-up on that case.

Q. Did any member of the board say at the board meeting that they might pass on the information; can you remember?

A. Not to my knowledge. I simply can't remember that.

Q. Yes?

A. It may be that as I said, that it was because the treatment at that point had not yet taken place and that the, if you like the decision would be communicated later when the actual payment was made, but that's not a memory. I am just saying what might have happened.

Q. Yes. I think you go on to say that you have informed the Tribunal that it seems that the payment of the final bill which you understand was for a total of \$81,602 or approximately €57,000 was made by a US dollar bank draft in August of 1989; is that correct?

A. Well I have established that with the VHI in recent weeks, I have no recall.

Q. Yes, of course. This is what you can now say, and that you understand that the total bill payable to the Mayo Clinic for Mr. Lenihan's treatment amounted to about €160,000?

A. That again is due to recent inquiries.

Q. Due to recent inquiries?

A. I suppose it is broadly in line with my earlier memory that we were being asked to cover about a third or a half of the bill.

Q. Yes. I think you go on to inform the Tribunal that the payment by VHI was made from VHI No. 1 Account rather than from the ordinary Claims Account, and you have informed the Tribunal that a number of claims generally had to be paid in this way because of restraints in the computer programmes which operated the ordinary claims account; and that you believe, for example, that it would only produce Irish pound cheques payable to the subscribers personally; and that that was not what was required here. The two accounts would have been reconciled on a monthly basis because of the amount. The direction for payment given to the bank would have required the signature of a board member as well as that of yourself or another senior executive of VHI; so the situation here is that the computer programmes for normal claims only generated Irish pound cheques and made payable to subscribers, or has that that changed subsequently I think, didn't it? That they paid directly to hospitals and doctors, but that is neither here nor there I suppose?

A. Yes. Well I think it was a little bit more complex than that, it was not simply that the output could only be Irish pound cheques made to the subscriber, it was also that the computer system actually calculated and generated the payment against the inputs which were in fact the amounts of hospital bills plus certain coded instructions and so on.

Q. Like the allowances?

A. None of this would have fitted in this case, they wouldn't have been able to generate an amount.

Q. Yes. I think what you are saying was there was nothing sinister about the fact that it was drawn on this particular account?

A. It was something done routinely in certain payments, I can't recall precisely but I have a feeling *ex gratia* payments generally didn't work very well through the system. Also I think there were certain payments to hospitals which were made as a result of agreements which were made to limit for efficiency reasons or whatever, paid off and reintegrated into the payments account again each month. There was a number of reasons but I couldn't detail them.

Q. Now, I think you are now aware as a result of evidence which was given at the Tribunal last week, that the invoice on which the VHI paid out \$81,602 seems to have come from the Mayo Clinic to the embassy in Washington and from there was sent to the Secretary of the Department of Foreign

Affairs office in Dublin and from there it seems to have found its way to the Taoiseach's Office, isn't that correct?

A. Well, I believe so from what

Q. From the evidence, from the evidence that has been given?

A. Yes. Yes.

Q. And we can take it, that to enable the board to pay out on this particular sum, that there would have been sight of the invoice from the Mayo Clinic?

A. Yes.

Q. So we can take it that that invoice, whatever route it took, had to end up at the VHI?

A. Yes, that is absolutely the norm.

Q. Yes?

A. Expenditure has to be vouched.

Q. In other words nobody would have allowed a cheque to be drawn in that sum of money without some documentation?

A. Not to my knowledge. Over a very long period of time. It would be totally contrary to the way business is done.

Q. It is for the precise amount anyway?

A. Yes.

Q. As Secretary General MacKernan has given evidence about the invoice which he sent, he was then the Ambassador in Washington. And can we take it that, or do you have any knowledge as to whether it was sent to the VHI by letter or whether it was hand-delivered or whether it was given to a senior executive or to you or to a board member, or

anything of that nature?

A. The only thing I can say to you with certainty in that case is that I have no recollection of having any, anything further to do with the case after the time of the board meeting and that would be usual. I presume that after the board meeting somewhere on that file I would have noted what the board's decision was and passed it back to the people that kept the files, namely the Claims Department and that when the bills became available they actually that is just a presumption on my part, I have no recollection of it, and it would be most unusual for me to be involved in the actual drawing of a cheque, you know? Once the proper approvals are in place, the case would go through the normal channels.

In this case the claims people or the finance people would know that a decision was made and there was simply a reference to a minute and then the cheque would be drawn and then the only matter would be who should sign it, and it is quite possible that I signed the cheque, countersigned by a board member because of its amount, it would have required board signature. It might not have been signed by me, sorry I don't the requisition cheque, requisition cheque or the dollar draft, that would have required the signature of a senior executive plus board member, that is what must have been the case, but I have no recollection.

Q. This didn't go through the normal channels, Mr. Ryan, when

you think about it, that there is a board minute, without the amount mentioned; isn't that correct?

A. Yes.

Q. So anybody in the finance section would hardly take a risk of drawing a cheque in any sum without an actual authorisation or an approval to do it; isn't that correct?

A. Yes.

Q. Like, one might understand somebody in the financial section having discretion or using their own head in ordinary situations, a couple of hundred pounds or where they might know the costs applicable to a certain procedure or treatment, but here was a cheque which was going to be drawn for \$81,602, the minute is silent as to the amount; how would the actual amount have been communicated to whoever drew the cheque?

A. Well, I can simply say to you that I have no recollection of that. I understand what would have happened was that the bill became available, somebody drew a requisition for that dollar draft in the knowledge that it would be signed by either me or another senior executive plus a board member, all of whom would have been au fait with the decision made.

Q. Yes, I understand. The only people who were au fait with the decision were the board members and you, isn't that correct?

A. Quite frankly, I mean I don't know if it helps you. If in fact I had a note in my agenda saying that there was an

approval for what, well I have actually written the figure  
€50,000, or "considered €50,000" or something like that.

If it came to 57 I don't know if, I would have referred it  
to a board member anyhow, because I wouldn't have the  
discretion to pay the extra seven. I just can't tell you  
what, who actually did it.

Q. As you can understand this is an inquiry, the Tribunal is  
trying to get at the facts and information at this stage.

First of all, you have, you were the one who was approached  
by Mr. Haughey to put the matter before the board. As far  
as you can recollect that was the first approach on this  
particular claim; isn't that correct?

A. Yes.

Q. You briefed your Chairman, put the matter before the board,  
and we see the minute of the decision taken by the board;  
isn't that correct, and you then have no recollection of  
communicating that board decision to anybody?

A. No.

Q. What I am trying to, what I am trying to get at is this;  
there are two matters that I am trying to get your  
assistance on. The first one is, how we know from the  
evidence of how the invoice came back to Ireland. We know  
that the VHI paid that exact amount by a dollar draft or  
cheque in August of 1989, isn't that correct? So we can  
take it that the invoice must have got to the VHI. So, the  
first question, if you can assist the Tribunal on; is how  
did the person who sent the invoice to the VHI know that

the board had approved of the matter? You certainly have no recollection of bringing that matter to the attention of Mr. Haughey; is that correct?

A. That is correct.

Q. Now the only ones who knew were those in attendance at the board meeting. The minutes of the board, you yourself as the General Manager, and one other executive; is that correct and that would be the normal way a board would meet at the VHI; is that correct?

A. Yes.

Q. And can we take it as Mr. Dennis has given evidence and Mr. Cashell and you yourself, that confidentiality was a matter which would be very much to the fore of the mind of people in the VHI?

A. Yes.

Q. You are dealing with the health and health needs of the citizens; isn't that correct? Can I take it that you would view yourself as being virtually in the same position as medical attenders, that you would consider the information that you have as being so confidential that it would not be breached?

A. Absolutely.

Q. And this wasn't just a normal business situation, can we take it that if there was a breach of confidentiality it was a matter that you, as General Manager, would have taken steps in relation to any junior member working in the organisation?



A. Yes.

Q. Yes?

A. Yes indeed.

Q. But we do know that the information must have got to the Taoiseach's Office in some form or other, because we do know that the invoice eventually came to the VHI; isn't that correct?

A. Yes.

Q. And you didn't convey that information to the Taoiseach's Office or to Mr. Haughey?

A. I am quite certain that I did not convey, have any further contact with his office.

Q. Yes. Sorry?

A. That is my memory or my absence of memory. I do not recall going back to the Taoiseach.

Q. You certainly remember the Taoiseach phoning you and asking, or his office phoning you and asking you to come and see him, and as you say living in the real world you certainly went to see the Taoiseach when you were asked to see him?

A. Yes indeed.

Q. We also know that you very properly briefed your Chairman and briefed the board and briefed them as fully as you could at the time of the board meeting, that there might be a cost of approximately €50,000. You briefed your board of that. And approval was obtained in principle, but the figure was not. The actual figure was not approved at that

board meeting; isn't that correct?

A. The actual figure was not minuted.

Q. Well, can we take it that the actual figure wasn't known?

A. Yes, it was not known with precision.

Q. With precision?

A. But was estimated to be.

Q. In the €50,000 division?

A. Yes.

Q. In the normal course of events one might think that is in the ballpark and that there is then a general discretion to the General Manager, or some senior executive. When the bill came to be paid it, in fact it was for \$81,602, that equated to €57,000; is that correct?

A. Yes.

Q. Without board approval would there have been discretion vested in you to make that extra payment of €7,000, is what I am asking?

A. No.

Q. Right. Having looked at the minutes there does not appear, the minutes subsequent to the 854th meeting, which the VHI have given full assistance to the Tribunal, there does not appear to be any reference to an approval for an actual amount or for any top-up or increased amount; isn't that correct?

A. Sorry, your question is "there is no record"?

Q. There is no record in the minutes?

A. If there were a record it might be helpful with some of the

chain of events that took place.

Q. Yes?

A. To be as helpful as I can

Q. Yes?

A. it is quite possible that when bills became available that they were sent to me, or that they were sent to the VHI generally and came to me, and it is possible that I consulted with a board member or whatever about them. But I have absolutely no recollection.

Q. Yes?

A. If I had a file I am sure it might help, but unfortunately I haven't.

Q. Well, all special claims outside the discretion of the Claims Manager had to go to the board for their approval; isn't that correct?

A. Yes.

Q. And as you say, this was not a profit making organisation and the board would, the board and the organisation in general would look favourably on matters coming to it. You were there to try and help members and not to obstruct them; isn't that correct?

A. That is true, provided the approach was prudent and reasonable.

Q. Yes. Yes, and an approved form of treatment not quackery or something like that?

A. Yes.

Q. If the bill was œ7,000 over and above the type of figure

which the board had given approval to on the 18th of May of 1989, but which was not recorded in the minute, there would be the necessity for further board approval for a payment of another €7,000 on top, wouldn't there?

A. Yes.

Q. Did that ever happen?

A. Not to my knowledge.

Q. And have you any knowledge as to how the actual final payment for €57,000, or as it was, \$81,602 actually came to take place?

A. No, I have, as I said I have no recollection of dealing with the case other than at that board meeting. I suppose it was something which, it was unusual for a case to be brought forward by the Taoiseach of the day, and I probably remember it for that reason, because I actually met him, but I have no recollection of the actual mechanics of the payment.

Q. But that is why I was asking you if you could assist the Tribunal as to how the decision of the board was communicated back to the Taoiseach, if it was communicated back to the Taoiseach, because as you say you can readily recollect a request from the Taoiseach to come and see him; as I suppose anyone would; and can I take it that would you readily recollect communicating information back to the Taoiseach?

A. Well, if I had communicated back to him, I might recollect it, but then I don't actually recollect going back.

Q. That is precisely the point I am trying to get at Mr. Ryan?

A. I understand, unfortunately I can only remember what I remember.

Q. Absolutely; and as you have just said, if you had communicated back to him, you would recollect it?

A. I think I would. I think I would.

Q. Well, that is what I am asking you; did anyone at the board meeting say "I'll communicate it"?

A. I don't think so. Certainly not to my recollection. I mentioned to you earlier in answer to one your earlier questions, it is possible that everyone is saying "you took the view that there was no further action in this case for a while until the treatment and the bills were unveiled and contact would take place at that point"; and I suppose this is subsequently what happened if the bills came to the VHI via the Taoiseach's Office, I presume there was some communication back saying the draft has been, or has been paid or whatever and that was the, that may have been the sole communication.

Q. I am not trying to make a big issue out of the fact at all?

A. I am simply trying to help you.

Q. I am not

A. My factual memory

Q. Could it have been the situation that once the decision in principle was taken, that whilst there may have been a certain laxity, it met with or it was within the boundaries of the board decision of the 18th of May, 1989, that this

would be paid?

A. I think that's a reasonable comment, and bearing in mind the way that the thing was minuted and bearing in mind that the request was to deal with the hospital account, and also bearing in mind it was going to come under the review of the members of the board at the point of payment, I think that is quite a reasonable course of attitude.

Q. But there had to be a director's signature on the cheque?

A. Yes; and the limitation on my right to sign a cheque was, I think, €25,000.

Q. Yes?

A. And subject to having another senior executive sign it as well.

Q. I think in your memorandum you go on to inform the Tribunal that apart from the agenda upon which you have written the note, the minute of the board meeting and the copy of the bill actually paid and accounting information about its payment; "there do not seem to be any surviving records relating to this specific claim". Now, I think you inform the Tribunal: "Generally speaking VHI policy has been to destroy files of this kind after seven years"; is that correct?

A. Yes.

Q. That was the general destruction policy. That the VHI had a policy of making microfiche copies of at least some of the contents of the claims files, and the VHI have produced to you material relating to other claims made in respect of

treatment claimed for or on behalf of the late Mr. Lenihan in this period and subsequently, but it contains no reference to the claim we are concerned with here. And you informed the Tribunal that you are reasonably certain that you had papers in relation to the claim at the board meeting, and the payment itself was obviously made on foot of a bill from the Mayo Clinic of which a copy is available.

You have also informed the Tribunal that there would also have had to be authority directed to VHI's bank because of the amount involved would have been signed by a member of the board as well as yourself or another senior executive; is that correct?

A. That is correct.

Q. And in a sense this claim was not originally routed through VHI's Claim Department, however it might not have been, it might not have been established as a separate file but might have been attached to another current paying file relating to Mr. Lenihan, although no relevant material is among the microfiches, or to what would have been Mr. Lenihan's membership file or to a payment file in the VHI's Finance Department. Different categories of files, of file of this age would, you believe, have been destroyed at different times following your retirement from VHI in 1994; is that correct?

A. Yes.

Q. I suppose that raises the question, Mr. Ryan, if there were microfiche records available of certain aspects of the late Mr. Lenihan's file, relating to treatment, I take it that is relating to treatment here in Ireland?

A. Yes.

Q. Is that correct?

A. Yes.

Q. There are no microfiche records of the treatment in the Mayo Clinic; is that correct?

A. To the best of my knowledge it is correct, I can only tell you it is correct because I have made inquiries of the VHI

Q. I beg your pardon, you were asked or you were furnished with information to assist you to assisting the Tribunal?

A. I asked for all information that could be traced so I wouldn't have to rely only on memory.

Q. Yes. I think the file and the information furnished to you by VHI in relation to the actual payment in August of 1989 only records the date of a drawdown of that amount, isn't that correct?

A. I don't think I have actually seen that document. I was requesting the VHI to produce files in relation to claims which Mr. Lenihan made, mainly I think in relation to the Mater Hospital. In the hope that some documentation might still be available on those files, but despite the best efforts nothing exists.

Q. Nothing exists or hasn't turned up yet in any event?



A. Certainly not.

Q. Can we take it so, that you haven't actually seen any document such as an invoice or a requisition for a cheque or anything of that nature on the microfiche records?

A. No.

Q. And before you furnished your helpful memorandum to the Tribunal and giving your evidence, you haven't seen any other document or no other document has been made available to you by the VHI concerning the actual payment itself; is that correct?

A. The only document I have seen in relation to the payment I think is a letter, or perhaps two letters from Allied Irish Banks confirming that this draft for 81,000 and so on dollars was made on behalf of the VHI on a certain date, I think, but .

Q. Did those letters appear to be of recent origin by way of query being raised with the bank by VHI?

A. I think they were.

Q. Yes. So as far as you know, and this is, it may not be the total picture, as far as you know, no documents exist in the VHI concerning this actual payment; is that correct?

A. That is absolutely right, as far as I know, yes.

Q. And from your experience, particularly I suppose the accounts of the VHI are audited in the normal way, that as this payment did take place, that there should have been documents or microfiches of these documents in the records of the VHI?

A. Yes. There would have been an accounting trail, that is something we paid very great attention to. They would have existed for at least the statutory period, I think it was six years.

Q. Six years?

A. But it was generally extended by about a year or sometimes longer if space was available. As VHI extended and the VHI membership grew the paper burden grew, and as far as I am aware the policy is seven years at the moment and has been for some time, they certainly would have been there at the time of audit.

Q. And apart from the payment side of matters, again and as far as you know, the only information which could, which was supplied to you about the late Mr. Lenihan from the VHI at this stage relates to treatment here in Ireland; is that correct?

A. Yes; with the exception of that letter from the bank.

Q. With the exception of the letter from the bank?

A. Yes.

Q. And that information was available as far as you know, from microfiche records; is that correct?

A. Yes.

Q. And in the normal course of events would you have expected, bearing in mind the destruction policy of the VHI, that there would have been microfiche records relating to the claim for treatment in the United States of America?

A. It is difficult for me to be precise about that because I

do have a recollection at some stage going back 10, 12, 15 years of establishing a small group within the organisation to more or less film the files and remove what was not and film the documents that would be regarded as significant. And that went on for some time, I can't remember for how long because the cost of micro filming is quite high.

Q. It is perfectly understandable?

A. And generally 99% of it was wasted. That was the process.

I understand at the moment that what is retained is, not much of anything is retained on the paper, plain side after that seven years, but even on a policy file, very little other than the initial application form is retained. The policy changed over time. I presume these files would be destroyed sometime after I retired. I retired in '94, seven years from this time would have brought it to '96, so I haven't raised that query with VHI personally, I think you will have to ask them that directly.

Q. In the normal course of events the destruction policy would have been to 1996 would have been the appropriate time to destroy files?

A. To the best of my knowledge. I think VHI can give you a more concise answer than that point I am making.

Q. What is the policy or what was the policy in your time concerning microfiche?

A. I think it was falling into disuse in relation to claims because claims were essentially a computerised process and

there was electronic record of the inputs to the claim and the outputs.

Q. This wasn't so on this particular case though, as you have explained it couldn't have, it couldn't have formed part of the normal computerised process of the board?

A. Yes. I was coming on to say that to you. Unfortunately that was not so in this case, because it was an ex gratia payment which didn't fit into the system in its state of sophistication at the time or relative unsophistication, but if the claim had been dealt with for example on the latest current file which was the Mater Private Hospital file where was immediately; I think it was as far as I was recall, it was more or less a continuous period to the Mater and America and back. The only possibilities would be that it would appear on the electronic record, which it didn't because of the method of payment, or it would have appeared in microfiche documents, which would have been a photocopy of what I would have presented to the board or whatever on the paper file, as I understand it neither of these exists; one because it was never created electronically or because microfiche system files were destroyed. Unfortunately, I am relying very much on memory and very much sort of, the view of these pieces of information.

Q. Of course. Thank you very much.

CHAIRMAN: Thank you very much for your assistance.

MR. CLARKE: There is just one small question if I could, forgive me?

CHAIRMAN: Well, Mr. Clarke, I am conscious that you have given assistance. Perhaps, I do not want to make what may be a superfluous order by way of limited representation to you, if you feel without my establishing the precedent. It is, so-to-speak, a one-off question, I don't inhibit you.

MR. CLARKE: I have to, unfortunately, ask Mr. Ryan to come back up again.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CLARKE:

Q. MR. CLARKE: It is really just a once off question. Mr. Ryan, you are still sworn I think. Mr. Ryan, just one small point. During the course of the earlier part of your examination when you were explaining to Mr. Coughlan and to the Tribunal what it was that you were asked by Mr. Haughey to agree to do, and then subsequently as to what you proposed to the board that it should do, I understood you to be explaining that there were in fact two determinants really that they were to deal with. One was that they were being asked to pay the hospital bill, and secondly, that the hospital bill was expected to be about €50,000; is that fair?

A. Yes, that is my recollection.

Q. So when indeed ultimately an invoice apparently arrived

from the Mayo Clinic by whatever route it came, we needn't go back into that again, that did appear to be, I think, an invoice for the hospital bill, it was the hospital bill; isn't that right?

A. Yes.

Q. Yes. So if we treat the authority which you sought from the board in the terms in which I have described it there earlier, it would in fact possibly, quite properly, have been within the authority of whoever was appropriately arranging for the payment of that amount to pay it on the basis that what the board had intended to do was to authorise the payment of the hospital bill provided it didn't, presumably broadly or madly exceed the œ50,000 approximate figure which had been given previously?

A. Yes. I think that is, I think that is a reasonable interpretation of the situation, yes.

Q. That is all I wish to ask.

A. Thank you.

Q. MR. CLARKE: Thank you.

CHAIRMAN: Thank you very much Mr. Ryan.

THE WITNESS WAS RE EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. Just arising from that and I am not trying to engage in huge controversy, just to clarify that you say that is a reasonable interpretation, that is not your view, is it Mr. Ryan?

A. Pardon?

Q. That is not your view, though?

A. I am not sure that I can say that. It was certainly put to me as; would your board consider paying the hospital bill? Now, I can't remember whether Mr. Haughey said precisely "would your board consider paying €50,000 or would you consider paying the bills of the order of €50,000?".

Q. I don't think that is the issue. I think the issue, Mr. Ryan, is you were firmly of the view when you gave your evidence that to authorise a further €7,000 payment, that that would need authorisation; isn't that correct?

A. Well, perhaps it is a matter in the way the question was put to me. If it was a matter of the additional €7,000 I would not have had authority.

Q. That is not point?

A. Unfortunately I have no note at this stage of what instruction I passed down or how the actual minute was interpreted, or whether it simply went back to the board member for signature or whether there was a phone call to a board member or Chairman to say "this is of the order of much more than what we had in mind. Is it all right to go and write a cheque?" Clearly it was going to be signed by a member of the board.

Q. Well, I think I don't want to go over the evidence again, it is there. I asked you previously if the bill was €7,000 over would that require board approval, you said "yes" and I asked you did that ever happen, you said "no, it didn't". Not to your knowledge, not to your knowledge. I

beg your pardon?

A. Well, perhaps I didn't appreciate the precision of your question. My best recollection is that the board understood that they were going to be dealing with a hospital bill and that it was a sum of œ50,000. The only evidence I can find of a precise figure of œ50,000 was what I had penciled on the memorandum.

Q. Yes?

A. The day before or two days before when I met the Chairman. And in fact, I don't think it does say, now that you ask me, I don't think it does say "œ50,000", I think it says "consider œ50,000" or something like that.

Q. "Consider œ50,000".

A. There is another word, but I can't remember what it was. You do have the document, I think, or we can get it.

Q. I think the word is "mentioned œ50,000"; is that correct?

A. It could be.

Q. Thank you.

CHAIRMAN: Thank you very much.

MR. CLARKE: I don't want to prolong the matter, I don't have any other questions for Mr. Ryan. I am quite happy to rest on the record of the evidence when it is available, but I would, if it were necessary to do, wish to challenge Mr. Coughlan's interpretation of that later on. It is not necessary for me to argue the matter now.



CHAIRMAN: As of now, I feel it is an aspect that is unlikely to present one of the more major controversies I have to deal with. If it is necessary to return to it I will of course see that everybody material is put on notice.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Well, we are rather close to half past. In the circumstances, we will resume at a quarter to two. Thank you.

THE HEARING WAS THEN ADJOURNED FOR LUNCH

THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

CHAIRPERSON: Good afternoon.

MR. HEALY: Mr. Mitchell.

TONY MITCHELL, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

A. Tony Mitchell

CHAIRPERSON: Thank you Mr. Mitchell, please sit down.

Q. MR. HEALY: Thank you Mr. Mitchell. Your, you provided a memorandum of intended evidence to the Tribunal, in response to some queries from the Tribunal and some requests for assistance, and the memorandum relates to the time when you were Company Secretary and Assistant General Manager of Services in the VHI?

A. Correct.

Q. Are you still associated with the VHI?

A. No.

Q. You have left that company?

A. Since 1991.

Q. I see. And I think you made a sort of few general remarks, as follows: You say you attended and minuted the board meeting of the 18th of May of 1989, that's the board meeting that we have been speaking about this morning, and I am sure you will recognise the minutes on the overhead projector?

A. Yes.

Q. You recall first hearing about this matter when it was raised by the board Chairman, Mr. Des Cashell, at the meeting of the 18th of May, and a general discussion took place among board members regarding Mr. Lenihan's financial and medical condition. It was agreed by the meeting that a contribution should be made towards Mr. Lenihan's expenses. "After this meeting I had no other involvement concerning the matter".

Then you deal with a number of queries concerning the existence of a file. And the first query you are addressing is with reference to the board's letter, of the 26th of August of 1999, that's a letter to Mr. Davis, solicitor to the Tribunal, and the statement that "Mr. Mitchell and Mr. Ryan have no recollection of the existence

of any file relating to this payment". You were asked to indicate whether it was being suggested that there never was a file in relation to Mr. Lenihan's claim or whether it was being stated, was that "a file had been created but neither Mr. Mitchell or Mr. Ryan had any recollection whether it was kept separately by either of them".

You say: "I assume there would have been a file, but I have no recollection of seeing a file relating to this payment, and if there were such a file, it was not in my possession. I would not have had responsibility for the keeping of files dealing with claims or special payments".

You were then asked about the board's destruction policy and you said: "My recollection is that it was normal to destroy files by shredding either on-site or by external contractors. In the normal course of business ordinary claim files would have been microfilmed prior to destruction. Computer records of claims going through the ordinary claim system would also have been kept".

Now, could I just pause there for a minute and ask you, whether as Company Secretary, you would agree that you were the person with, as it were, the tichler responsibility for all the company's documents, even if you didn't physically have them under your day-to-day general responsibility?

A. That's probably correct, yes.

Q. And do you know whether the company ever adopted any policy

in relation to the retention or the storage of documents?

A. We at the time had a policy whereby after, I think it was seven years, we microfilmed all our paper documentation in relation to claims, and then had the paper documentation destroyed.

Q. So that you would know what you destroyed because you have a microfilm of it?

A. Yes.

Q. And you have a continuing record on microfilm of the actual shredded documents?

A. Yes.

Q. Now I think when describing the shredding policy or destruction policy, you say that in the normal course of business ordinary claim files would have been microfilmed prior to destruction. Do I take it that, or am I right in inferring that you are distinguishing between ordinary claim filings and special claim files and other files?

A. I am distinguishing between files that went through the normal claim process, and all of those files routinely after seven years would have been microfilmed and then shredded.

Q. Right. Would you describe this as a claim that went through the ordinary claims process?

A. No.

Q. You wouldn't?

A. I don't think so, no.

Q. So if it wasn't a file that went through the ordinary

claims process, it wouldn't have come up for destruction as part of the ordinary destruction policy?

A. As part of the ordinary normal destruction policy, no.

Q. Well then, was there any other procedure adopted in relation to the destruction of files which did not come through the mechanism of the ordinary claims files?

A. Not that I am aware of, but I would have assumed that at some stage they would also have been destroyed, but having first been microfilmed.

Q. You would assume that if they were destroyed, once again the same procedure would be applied, in that those files, as in the case of the other files, they would be microfilmed?

A. Yes, yeah.

Q. And I understand that, there are no records of this particular file; isn't that right?

A. So I understand.

Q. And that would be out of the ordinary having regard to what you believe should have or would have occurred in relation to files in the ordinary way?

A. I would think so, yes.

Q. And wouldn't I be right in thinking therefore, that this file, either didn't go through the destruction microfilming process and was therefore kept somewhere else, or if it did go through that process it should be on microfilm, and if it wasn't on microfilm somebody had to decide not to microfilm it?

A. Again I would have assumed it would have at some stage gone through that process.

Q. But not having gone through it, it means it hasn't been microfilmed because somebody decided not to?

A. If there is no microfilm record obviously it didn't go through for whatever reason.

Q. But if it was destroyed and not microfilmed, that required a decision, somebody had to decide the file will be destroyed and we will not microfilm it?

A. Yes, I think so.

Q. And that's not something you would have approved of in any case, you weren't involved, I am not suggesting for a moment, but that's not a procedure you would approve of?

A. No.

Q. Would I be right in thinking, and I am saying this not just with the benefit of hindsight, but clearly with the benefit of hindsight it is easier to reach the conclusions that I am suggesting to you now, but would you agree with me that it is more important perhaps to keep a record of a special claims appeal file than of an ordinary file?

A. Yeah.

Q. And indeed, where the amount of money involved is substantial perhaps even more important again?

A. Yeah.

Q. In this particular case, the documents that we now know to exist or to have existed include your minute, and your minute clearly accords with what people recall having

occurred at the meeting which you describe in the minute, i.e. that Mr. Lenihan's case was mentioned, but the amount was not mentioned?

A. I don't

Q. I beg your pardon, that the amount was not minuted?

A. That's correct. I don't

Q. The amount was mentioned?

A. I don't actually remember the amount was mentioned, but that doesn't mean it was mentioned.

Q. I see. If it was mentioned and not minuted does that mean somebody would have asked you not to minute it?

A. That's possible. But it is probably more likely that the amount, I don't think the amount was actually known, the final amount was known at the time.

Q. But if the amount of 50,000 had been mentioned as a figure, and it seems that that amount must have been mentioned as a figure to judge from what the other witnesses have told us, then whether that would have been included in the minute or not was a decision which would have rested with you; isn't that right?

A. In the first instance, unless the meeting decided that it shouldn't be recorded as such.

Q. Yes; if the meeting decided that it shouldn't be recorded, should that decision of the meeting have been recorded?

A. No, it wasn't uncommon that the meeting might make a decision to minute in such-and-such a way, and I would just do so.

Q. What you say in your statement, and this is the next part of your statement, and I want to read that out so that you wouldn't be at a disadvantage, you say: "It was normal practice to inform the board of the amount of any special exgratia payments. I do not recall why the amount was not recorded in the minutes of the 18th of May of 1989, but it was probably because the total amount may not have been known at the time".

Now, do I take it from that that you could not see confidentiality as a factor in keeping it off the minute?

A. Not really, no, because board minutes are fairly confidential by their nature.

Q. In any case they are confidential to the board?

A. In any case, yeah.

Q. If somebody wished to examine the record of what had happened in this case at any time afterwards, the board minutes wouldn't have provided them with the information in relation to the claim that would have been available in relation to every other special claim; isn't that right, i.e. the amount?

A. The amount, yes.

Q. And the larger the amount the more critical it is that there shouldn't be an absence of that kind?

A. Yes.

Q. At the time that this matter came to the board, you say that your recollection is that it was raised by the



Chairman, Mr. Des Cashell?

A. I think it was, but I may be incorrect in that. I know the Chairman would have led the discussion about the matter.

Q. Do you recall Mr. Haughey's name being mentioned at all at the meeting?

A. No.

Q. Am I right in thinking if his name had been mentioned, having regard to the fact that he was the Taoiseach, you would have remembered that?

A. Yes.

Q. Would you have put that in the notes, in the minutes?

A. I don't know, I think I I don't know, I possibly would have, his name wasn't mentioned to my recollection at all at the meeting.

Q. You have heard the evidence of the fairly important role Mr. Haughey played in causing this matter to be proposed at the meeting, you have heard the evidence this morning?

A. Yes, yes.

Q. And indeed judging from the evidence we have heard it would seem that Mr. Haughey was effectively the applicant, standing in the shoes of the applicant to promote this application; isn't that right?

A. He certainly

Q. On the evidence?

A. He made representation on behalf of the Lenihan family.

Q. Well, I think the evidence goes further than that, Mr.

Mitchell, you can certainly disagree with me if you like, but as the evidence, so far as the evidence goes, I don't think that when the matter came before the board there was anything other than the file that had come into existence following Mr. Ryan's meeting with Mr. Haughey, or Mr. Lenihan's previous medical claims but they weren't this file?

A. Yeah.

Q. And what I am saying is that on the basis of the evidence we have heard, it was as a result of a meeting set up between Mr. Haughey and Mr. Ryan that this matter came to the board, and that the figure of €50,000 came to the board, and I am just asking you whether you are now surprised that this is presumably the first time you ever heard of this?

A. Mr., of Mr. Haughey's involvement?

Q. Yes; not just his involvement but his fairly pivotal involvement?

A. Yeah.

Q. And are you surprised that you weren't informed of it at the time?

A. Probably but not, not very seriously surprised, no, it wouldn't necessarily be the norm that I be informed.

Q. So it is not until the evidence to be given at this Tribunal of which you have been given notice, was brought to your attention, that you learned that Mr. Ryan had been called down at short notice to Mr. Haughey's office, to the

Taoiseach's office, to the most powerful man in the country just before this application?

A. Correct.

Q. You weren't aware of that?

A. I was not aware of it.

Q. And that in fact but for that meeting there wouldn't, it doesn't seem that anything would have come before the board?

A. I don't know. Somebody else might have made representation.

Q. On the basis of the evidence it seems, well let me put it this way; if that were the only matter, if the Sole Member were ultimately to conclude that were the matter that brought it before the board, would you be surprised that you hadn't been informed of it until now?

A. Yes, I probably would be surprised.

Q. If you link that with the fact that this file appears to have disappeared, and the payment records in relation to it, are you surprised at the fact that not only is there very little documentation available at this stage to enable the Tribunal to examine the matter, but that the available information in relation to this matter seems to have been confined to a small number of people, not including you as Assistant General Manager and Company Secretary?

A. Um hum, I am surprised.

Q. Yes. Are you surprised or disappointed in anyway that these important facts coupled with the fact that other

information seems to have disappeared in a puff of smoke?

A. I am slightly surprised.

Q. Would you be disappointed?

A. I am not so much disappointed, no.

Q. This was a file concerning an application which was, as far as we know, either one which was promoted or initiated by the senior, the most senior politician in the country, or if not initiated by him, was being strongly promoted by him. It involved another senior politician and it involved a deviation from the rules, and I hasten to add, a deviation from the rules is permissible under the constitution of the company, but nevertheless, with the benefit of hindsight, I am now speaking to you or asking you to address this with the benefit of hindsight, would you agree with me that far from excluding information from the file, it is more important in that type of case, to have all the information on the file, and instead of keeping the file specially confidential to preserve it specially?

A. With the benefit of hindsight, yes.

Q. And that where a file does not go through the normal process for reasons which are not entirely clear, but which seem to involve connection with very senior politicians, it is equally important that such a file should be given a high priority for preservation as opposed to the opposite?

A. That makes sense.

Q. Yes. In your time as secretary, do you ever remember

anyone ever suggesting to you that a file should be obscured from view, from the view of other members of the board, other senior executives, other scrutineers such as auditors or anyone like that?

A. No.

Q. Sorry, just one or two other matters not related to the files, Mr. Mitchell. This claim came through the normal process, you as secretary of the board would have kept a note of the effect of the discussions that were conducted at the board meeting; isn't that right?

A. Yes.

Q. Did you have any role in participating in those discussions?

A. No, not as company secretary.

Q. Or as Assistant General Manager?

A. Only if the item was within my area.

Q. I see, of responsibility?

A. Yeah.

Q. And you had no role in discussing this?

A. No. In my at the meeting?

Q. At the meeting did you hear any mention at all of any fundraising drive to collect funds to defray the late Mr.

Lenihan's medical expenses?

A. I don't think so no, obviously since then I heard about it, that's why I am not too sure if I heard about it at the time or not, I don't think so, at the meeting.

Q. If you had heard about it would you have included it in the

minute of the meeting?

A. No, I don't think so. It is, it would have been a general thing that was mentioned.

Q. If the board were deciding how they should approach a decision whether to assist a member in an exceptional case outside the rules, obviously whether there was a fundraising drive on or not shouldn't affect the decision to assist, but do you think it should affect the decision as to the amount of assistance they should provide?

A. You are asking for an opinion?

Q. Yes.

MR. CLARKE: Sir, is Mr. Mitchell competent to offer an opinion on that matter?

CHAIRMAN: I will allow the question, Mr. Healy, but I don't think I can propose to curtail it.

Q. MR. HEALY: Yes, I am only asking the question, sir, because we have got no information. It appears there is no information as to what the board knew when they ultimately signed the cheque, which would have been some considerable time after the bills came in. You are aware of that evidence this morning?

A. Yes, I heard it this morning.

Q. Indeed there would have been a question at that point of approval for an additional 7,000 over and above the 50,000?

A. So it would appear.

Q. Yes?

A. I don't remember a, fundraising being mentioned at that meeting, if it was, and I am not too sure it was at all.

Q. It may be that it was relevant?

A. It possibly wasn't because of what happened afterwards.

My opinion would be that the board probably wouldn't have taken it too seriously, they would have looked at the medical situation and other relevant aspects of the case and made the decision on that. MR. HEALY: Thank you very much.

THE WITNESS WAS EXAMINED BY MR. CLARKE AS FOLLOWS:

Q. MR. CLARKE: I don't really have any questions, sir.

Mr. Mitchell, just to clarify a point I was left a little unclear on earlier. You mentioned in relation to the microfiching of files prior to their destruction, that you believed that the claims file, as they have been described, were microfiched, and I wasn't clear from your answer then as to whether you actually knew as to whether other files were microfiched or not. Do you in fact know whether they were or not?

A. I don't know.

Q. No. Thank you. Secondly, I think you left the board, isn't that right, in about 1991?

A. June 1991.

Q. And can I take it that you don't know anything about either the policy of the board in relation to destruction of documents after that time or how they reached such policy?

A. After that time I have no knowledge.

MR. CLARKE: Thank you.

CHAIRPERSON: Thank you very much, Mr. Mitchell.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Mr. Noel Fox.

NOEL FOX, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY Mr. COUGHLAN:

CHAIRMAN: Thank you very much, Mr. Fox. Like this afternoon's two remaining witnesses you have already testified and are accordingly sworn.

Q. MR. COUGHLAN: Thank you, Mr. Fox. I think you have furnished a statement, a Memorandum of Evidence as a member of the board of the VHI at the time that the special claim of Mr. Lenihan's was dealt with; isn't that correct?

A. That's correct.

Q. I think you understand the procedure, that I take you through the memorandum or statement of evidence, which you can have before you, and we may return to ask one or two questions of clarification, if that's all right with you?

A. Fine.

Q. I think you have informed the Tribunal that you were appointed a director of the VHI on the 30th of December of 1988, and you ceased to be a director on the 26th of October of 1993; is that correct?



A. That's correct.

Q. I think you have informed the Tribunal that you became aware of Mr. Brian Lenihan's request for support from the VHI when the matter was raised at the board meeting in the VHI under the special claims appeal; is that correct?

A. That's correct, yes.

Q. The special claims appeal process was a usual and regular process adopted in the VHI, and the claims under the process were regularly reported by management at board meetings; is that correct?

A. Correct.

Q. The board would then consider the recommendations of management in respect of each such appeal put before it and the board's decision was minuted accordingly?

A. Yes.

Q. Can we take it that if Mr. Ryan has already told us that this board or the VHI in general went out of its way to help its members or people making claims rather than obstruct them, that would be so?

A. Yes, correct.

Q. And I think you have informed the Tribunal that you have no specific recollection of the details of the appeal made under the special claims appeal process on behalf of Mr. Lenihan other than it was unanimous, it had unanimous support in respect of the appeal made; is that correct?

A. That's correct, yes.

Q. And I think you informed the Tribunal that you were

certainly aware, as was the rest of the Irish public, of Mr. Lenihan's illness, as was widely reported in the newspapers, I think that's correct; isn't it?

A. Yes.

Q. You do not recollect detailed discussion regarding the matter at the board meeting on the 18th of May, if there are any other relevant board meetings or other documents relating to the matter that might jog your memory you would certainly consider them but you do not believe this claim was afforded any unusual consideration by the board?

A. Correct.

Q. I think you have informed the Tribunal that you have a vague recollection that a figure of €50,000 was mentioned at a board meeting, and certainly in your experience special claims would not be approved by the board without discussing the quantum?

A. Yes.

Q. You cannot recollect having any discussions regarding the payment to be made on behalf of Mr. Lenihan outside the board meeting?

A. Correct.

Q. Would that be for reasons of confidentiality obviously, you would can we take it that like other board members who have given evidence, that you would only have discussed the affairs of a member of the VHI with other board members or officials of the VHI?

A. That's correct, yes.

Q. I think you have informed the Tribunal that you do recall at a golf outing in July 1992 Mr. Lenihan approached you and told you how much he appreciated the support he had received from the VHI, this was after Mr. Lenihan's operation?

A. That is right, yes.

Q. I think you informed the Tribunal that you never had any file in respect of Mr. Lenihan or any other person considered under the special claims appeal process, and you understand that all such files are maintained by the executive management of the VHI?

A. That's correct.

Q. That would be normal, wouldn't it, that board members wouldn't have, whilst they might have access to file at board meetings they wouldn't have files?

A. They wouldn't have files in their possession, no.

Q. No. I think you informed the Tribunal that you have no knowledge whatsoever of whether or not Mr. Bernard Dunne made any contribution to a fund established to defray the medical expenses of the late Mr. Lenihan?

A. No, I have no knowledge whatsoever.

Q. And you have informed the Tribunal that no, certainly no request was made for a contribution from Mr. Ben Dunne through you?

A. No.

Q. For Mr. Lenihan's expenses?

A. No, no.

Q. And you have informed the Tribunal that you never played any role in raising funds for the purposes of defraying the medical expenses of the late Mr. Lenihan, and indeed never made any contribution to such a fund yourself; is that correct?

A. That is right, yes.

Q. I think the final matter we dealt with there, does not relate to the VHI at all; isn't that correct, queries were being raised with you as to whether contributions were made to a fund?

A. Yes, yes.

Q. Yes. Could I just ask you, Mr. Fox, you have heard the evidence of the last witness and of Mr. Ryan previously, I think; isn't that correct?

A. Yes.

Q. And I know you only have a vague recollection of the matter of Mr. Lenihan being raised at the board meeting and perhaps not receiving as far as you can remember, a lengthy debate; is that correct?

A. I don't believe there was a lengthy debate about it. I cannot recollect the compact formula of words or the preamble used.

Q. Yes?

A. But I do believe we were all unanimous in supporting.

Q. Yes. I don't think there is any dispute or doubt about that. But, do you remember if the manner of the special claim coming before the board was made known to the board?

A. I would think it was, yes.

Q. That it was Mr. Haughey who had

A. Yes, I would think so.

Q. Yes, had contacted Mr. Ryan?

A. Yes, I accept what Mr. Ryan said and Mr. Cashell, yes.

Q. So would it be your understanding that the board would have been aware that this wasn't coming through the normal claims process and then being translated into a special claim, but that it was as a result of Mr. Haughey's initial involvement with Mr. Ryan?

A. Yes.

Q. The board would have been aware of that?

A. That is right, yes.

Q. Now as regards the actual quantum, I think the Tribunal knows from looking at the minute and from perhaps other minutes, and it would be your experience that it was usual or it was invariably the practice that the sum being approved by the board was noted; isn't that correct?

A. I have no doubt at all, a sum would have been agreed.

Q. Yes, that's what I want to

A. Because I don't think we would have passed an open ended resolution on a blank cheque, I don't think so.

Q. No, and that's what I want to come to and clear up any misunderstanding or contradictions that might exist at the moment. In all other special claims, the actual amount seems to be recorded on the minute; isn't that correct?

A. That's correct.

Q. There is a specific approval being given by the board.

Now, Mr. Ryan has told us that a figure of  $\text{€}50,000$ , in the region of  $\text{€}50,000$  was the figure which was mentioned and that's what he briefed Mr. Cashell about prior to the board meeting?

A. Yes.

Q. Would that be your understanding also?

A. I would think so, yes, it may have been what was said was that an indicative, an indicative bill was \$80,000, and that if one calculated that, say, a dollar was say 60 cents in the pound, that was 48,000, and if it was 70 cents in the pound it was 56,000, so it was

Q. Yes, yes, that's really what I am trying to get at, there wasn't, there wasn't just a motion passed in principle that the bill would be paid?

A. No, I think that the word "in principle", probably means that circa 50,000, but depending on the rate of exchange but we were quantifying the amount.

Q. Yes, yes. You would have a fair amount of experience of looking at board minutes of board meetings I take it, Mr. Fox?

A. Yes, bad ones and good ones.

Q. Yes, but the minute is fairly specific there, that what was agreed in principle, but you think that it is your recollection that a figure was mentioned, it might not have been possible to be exact about it?

A. I have no doubt at all a figure was mentioned. That would

be my nature, what's this costing?

Q. Yes, yes exactly. And Mr. Ryan then has no recollection himself of conveying the decision of the board back to Mr. Haughey, I take it you don't know anything about how the information may have got back either?

A. No, I certainly didn't convey it to

Q. But the one thing we do know is, from evidence that has been given, the route of the invoice from the Mayo Clinic in exactly the same sum \$80,602 ultimately paid by the VHI in August of 1989?

A. Um hum.

Q. So, it seems clear, that the invoice did get through to the VHI by whatever means and the VHI paid out that money?

A. Yes, I wouldn't think the Americans would be too generous on credit.

Q. Yes, they would want payment fast, yes, and just on this question of a figure being mentioned at the board, and we have heard the sum of €50,000 being mentioned, you think that was just illustrative and may have been dependant on the exchange rate at the given time?

A. Yes, it is pretty close to the medical bill.

Q. It is indeed?

A. And that's what was passed.

Q. I am just asking you this in the context of Mr. Ryan's view about his own authority when the bill actually came to be paid, if he was one of the signatories, it was for €57,000 Irish?

A. Whether he had authority to go an extra 7,000?

Q. Yes, yes?

A. There was every confidence in Mr. Ryan, he was highly thought of by the board. I would have thought that he was being given approval to have the medical bill paid in the order of €50,000.

Q. Yes, and of course

A. And I don't think

Q. a cheque of that size had to be signed by a director anyway?

A. Whatever, I think he outlined I can't recall whether it was two executives or an executive.

Q. I think it was an executive and a director, but in any event?

A. Obviously one of us would have signed the cheque with him.

Q. But, and we now have the actual, the agenda, this is Mr. Ryan's own agenda which he had when he briefed Mr. Cashell before the meeting as Chairman, and if you can see down there, Special Claim D, I think, "Brian Lenihan - €50,000", that's his own note?

A. Yes.

Q. And this is at the time of his briefing of the Chairman prior to the meeting. So that seems to be consistent with your recollection, that the figure in that region was mentioned at the meeting; is that correct?

A. Yes.

Q. But in any event, can I take it that you don't see anything



inconsistent with the actual cheque which was ultimately drawn and the decision of the board at the meeting of the 18th of May?

A. No, no.

Q. When you say that you believe that you knew that the initial approach or, sorry, that on the evidence the initial approach in respect of this claim seems to have come from Mr. Haughey, can you say whether that, you obtained that information at the board at the board meeting or whether you recollect receiving that information at the board meeting, or is it as a result of any documentation which you would have received around now from the Tribunal?

A. No I think, I was, when I got this query first I was struggling as to what the connection was.

Q. Yes.

A. And then when I saw the statement of, I think it was Mr. Ryan and the Chairman, then I saw the connection. I have no doubt that the connection would have been explained to us by Mr. Cashell or Mr. Ryan, I have no doubt about that.

Q. Well, do you have any actual recollection yourself?

A. No, not the exact words used, I really haven't.

Q. Just in fairness to the secretary who was keeping the minute of the meeting, he doesn't seem to have any recollection of it being mentioned?

A. Well I have no doubt, I would have certainly queried I mean I would have an inquisitive mind, I would have said

"look, where has this come from? Has it come from the Lenihan's? Where has it come from?"

Q. Yes, yes, but just putting it now, and in the context of a former board member, and it would appear that the actual records relating to this particular aspect of Mr. Lenihan's claim do not appear to exist now, does that strike you as being unusual as a former board member?

A. Well, I have been listening to that debate here, and at what stage in a company's life does one destroy files? For how long does one keep them? In the case of PLCs I think it is a statutory six years, in the case of an undertaking like the VHI I think they had a policy of seven years.

Q. Yes?

A. I don't think you can actually say that you have to keep a file for ever and ever.

Q. No and

A. Mr. Lenihan is long dead now.

Q. I don't think that's the nature of the query that's been raised, I think it is perfectly understandable that an organisation couldn't carry around paper for ever, the world would collapse, but bearing in mind that portions of Mr. Lenihan's file were microfilmed when the normal process of destruction took place, do you consider it unusual that there are no microfilm records about this aspect of the claim in existence now?

A. Or no microfilm of the entire file perhaps.

Q. No, no, that isn't the evidence. Mr. Ryan when he asked

for information from the VHI, did receive the ordinary aspect of Mr. Lenihan's claim, that is matters dealing with the Irish end of his treatment, which seem to have been retrieved from the microfiched or microfilmed records?

A. In other words records relating to Irish hospital treatment?

Q. Yes.

A. Yes, is that there?

Q. That appears on Mr. Ryan's evidence, that appears to have been information which the VHI were in a position to furnish him with, but that there is well he hasn't been furnished?

A. It is the American side that's missing.

Q. Yes, the Irish aspect of the American side, if I can put it that way, matters relating to the payment, the receipt of the invoice, matters of that nature?

A. What are you asking me?

Q. I am asking you in your experience as a former member of the board, as an experienced board member in general

A. Yes.

Q. as a chartered accountant

A. Yeah.

Q. would you think that's unusual?

A. I would expect it should still be there.

Q. That's all I am asking you?

A. Okay.

MR. COUGHLAN: Thank you Mr. Fox

CHAIRMAN: Just a small point arises in relation to board practice that you might be able to help me on, Mr. Fox. I think Mr. Cashell told us that usually completely unmeritorious or dud special applications were filleted out by administration without going to the board. Then Mr. Ryan told us none the less a subscriber would have the right to his or her case heard by the board; was it your experience in your five years on the board that in general terms the applications that you heard were meritorious and reasonably impressive ones, you didn't get as I say, absolutely far fetched applications for Californian cosmetic surgery or the like?

A. Absolutely meritorious, and an awful lot of them were heart breaking.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW

MS. O'BRIEN: Mr. Paul Carty please.

PAUL CARTY, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

MR. ALLEN: Chairman, I appear on behalf of Deloitte and Touche.

CHAIRMAN: Thank you again Mr. Carty.

Q. MS. O'BRIEN: Thank you, Mr. Carty. Mr. Carty, you are

the managing partner of Deloitte and Touche, Chartered Accountants, and you have given evidence to the Tribunal I think on three previous occasions?

A. That's correct.

Q. I think at that time you gave evidence to the Tribunal that Deloitte and Touche is a large firm of chartered accountants and includes an amalgamation of a number of small firms, that includes the firm that was normally known as Haughey Boland & Company; isn't that correct?

A. That's correct.

Q. I think you also gave evidence of the bill paying service that was provided by Haughey Boland & Company for Mr. Charles Haughey up to I think February of 1991?

A. January of '91.

Q. January 1991. I think that in the course of that evidence you indicated that payments on behalf of Mr. Haughey were paid out of a Haughey Boland No. 3 Account, and that was an account which was maintained in Allied Irish Banks at Dame Street, Dublin 2?

A. That's correct.

Q. And I think that was the client account of Haughey Boland & Company?

A. That's correct.

Q. And I think also in your evidence you mentioned the fact that payments that were made on behalf of Mr. Haughey were made out of a separate cheque book that were kept solely in relation to his outgoings; is that right?

A. That's correct.

Q. And I think also you gave evidence that monies were received as required on a periodic basis from Mr. Haughey or from other persons on his behalf, to ensure that there were at all times funds in the No. 3 Account to meet the outgoings as and when they arose?

A. That's correct.

Q. On the last occasion you gave evidence, last July, Mr. Carty, you referred to a series of what appear to be corresponding debits and credits as between accounts in Guinness and Mahon and the No. 3 Haughey Boland account?

A. That's correct.

Q. I think on this occasion the Tribunal has asked you to give similar evidence in relation to, I think five separate transactions on the No. 3 Account, all of which date from 1986?

A. That's correct.

Q. I think you have provided the Tribunal with a memorandum of the evidence that you are in a position to give, and what I suggest is we briefly go through and review that memorandum and then we can consider each of the documents in turn?

A. Yes.

Q. And I think the copy of that memorandum should be before you, and it is at Divider 23, sir. I think you state that this memorandum of evidence was provided pursuant to letters dated the 27th of September of 1999, and the 5th October and 7th October, 1999, respectively from the

Tribunal of Inquiry to Mason, Hayes and Curran, Solicitors, and relates to credit to Haughey Boland No. 3 Account, and debits to various accounts as specified and referred to therein?

A. That's correct.

Q. You go on to say that you have compared the debits to the various accounts highlighted by the Tribunal in their letters with the dates of the credits to Haughey Boland No. 3 Account?

A. That's correct.

Q. You go on to state that there would appear to be lodgements to the Haughey Boland No. 3 Account in, and amounts which appear to correspond but not exactly in every instance with the amounts of the debits to the various accounts on dates which either correspond with the dates of those debits or within a few days of such dates?

A. That's correct.

Q. I think to deal then with each of the transactions in turn, the Tribunal has prepared in the first instance just a schedule of these transactions, if we can put on the overhead monitor, I think we can hand you up a copy of that also, Mr. Carty, a hard copy, I think it will be easier for you to follow it. (Handed to witness). I think we also have copies of the numbered documents which correspond to entries on that table which we can also let you have in hard copy form. (Handed to witness)?

A. Thank you.

Q. Now, you see the first transaction the table reads crossways, on the left-hand side details of the transactions on the No. 3 Account. And on the right-hand side are details of the debits to the account in the name of Mr. Haughey, Mr. Ahern and McSharry at the Baggot Street branch of Allied Irish Banks, to which they appear to correspond. And if you take the first one there, the date of the credit to the No. 3 Account was the 21st of April of 1986 and that was in an amount of €10,000, and I think if we put Document No. 1 up on the overhead projector now. You can see there the entry on your account, that's the Haughey Boland No. 3 Account statement showing the credit on the 21st of April of 1986 in an amount of €10,000 described as a lodgement; isn't that correct?

A. That's correct.

Q. And if we go back to the table then and see on the right-hand side that the transaction on the Leader's Allowance Account at Baggot Street, which the Tribunal brought to your attention, is a debit on the 23rd of April of 1986 in the same amount of €10,000, and that's shown on Document 1A, and I think you have a hard copy of that before you, and we can put that up on the screen. That's in fact a page, page number 41 from the statements of the Leader's Allowance Account and three, the second transaction on that account statement shows a debit on the 23rd of April of 1986 of €10,000. And I think that's two days after the credit shown on your No. 3 Account; isn't



that correct?

A. I was confused, this is the first time I have seen this hard copy statement. The statement that I am reading from had a lot of figures blocked out.

Q. I see, we have shown you the full statement now?

A. The 23rd of April are we looking at 000612?

Q. That's right, 000612, which is a reference to a cheque drawn on the account. You will see the date on which that cheque appears to have been paid out of the account is the 23rd of April of 1986?

A. That's correct.

Q. And that appears to correspond to the credit to the No. 3 Haughey Boland account which was posted to that account on the 21st of April of 1986 which was two days earlier; is that correct?

A. That's correct.

Q. Now I think I have indicated to you before that the Tribunal as of now, is not in a position to produce to you a copy of these cheques, so that the evidence you are in a position to give as regards the correspondence of the debits to credits is purely from an visual inspection of the accounts; isn't that correct?

A. I accept that.

Q. Then the second transaction, if we just go back to the summary table on the left-hand side, the 25th of April of 1986, was a credit of €10,000 to the Haughey Boland No. 3 Account. If we then just turn to Document No. 2, we will

see that credit. Document No. 2 is a copy of the Haughey Boland No. 3 Account statement from which I think all other transactions have been masked. That shows a lodgement on the 25th of April of 1986 of €10,000?

A. Yes.

Q. If we go back to the table we will see that your evidence is that this appears to correspond with a debit of €10,000 to the Leader's Allowance Account on the 29th of April of 1986. I think we can go then to Document 2A, we can see that on the Leader's Allowance Account

A. Yes.

Q. on the 29th of April of 1986, we can see that appears to be in relation to a cheque, with a cheque number 000614 and the amount of the debit is €10,000?

A. Yes.

Q. I think in fact that particular transaction was already mentioned in the evidence that you gave last July?

A. That's correct.

Q. I think the next, the third of the five transactions across this account which you are referred to, Mr. Carty, is there on the table, the 20th of May of 1986, there appears to have been a credit to the Haughey Boland No. 3 Account of €23,940.25 and that's shown on Document No. 3, and if we have that on the overhead projector we can see there the lodgement, the date is slightly obscured, but I think it is correct to say that it was the 20th of May 1986 and the lodgement was €23,940.25?

A. Yeah, which exceed the amount.

Q. Which does exceed by €3,940.25 the amount which appears to have been debited from the Leader's Allowance Account which was on the 21st of May, 1986, in the sum of €20,000, that was the day following the day to which the credit was posted to the Haughey Boland No. 3 Account, and I think that is shown in Document No. 3A.

If we go to Document No. 3A, which is page 43 of the statements of the Leader's Allowance Account, and you can see there in slightly faint on the overhead projector but it is the second transaction posted to the account on the page of that account statement, and it shows a debit on the 21st of May of €20,000, which again appears to be in respect of a cheque payment, with a cheque number 000652, and that's shown as a debit on the 21st of May?

A. That's correct.

Q. And I think as you did indicate, that does not correspond exactly to the value of the credit to your No. 3 Account, but it may well be that it is comprised none the less in that credit?

A. It is possible.

Q. The fourth of the transactions dated the 1986 which appear to correspond as between the two accounts, is the 31st of July of 1986 when there was a credit to the Haughey Boland No. 3 Account of €10,000 and I think that's shown on Document No. 4?

A. Yes.

Q. I think Document No. 4, we can have it there on the overhead projector, is another extract from the Haughey Boland No. 3 Account, and again the date is slightly obscured, but I think it is the case that that credit was on the 31st of July of 1986?

A. That's correct.

Q. It is shown as a lodgement and the amount is €10,000?

A. That's correct, yes.

Q. And I think if we go back to the table, you have indicated to the Tribunal that this appears to correspond to a debit on the 5th of August to the Leader's Allowance Account of €10,000. And that's shown on Document No. 4A in the documents. And again Document 4A is a page of the statement of account of the Leader's Allowance Account which is page 46 of the statement, and about ten transactions down from the top you can see a debit for the 5th of August in the sum of €10,000, which also I think appears to relate to a cheque payment with a cheque number 000752 and showing the debit of €10,000?

A. That's correct.

Q. And then I think returning, if we may, to the table of transactions, the final transaction dating from 1986 which the Tribunal has brought to your attention is a credit to the Haughey Boland No. 3 Account on the 28th of October of 1986, and that's in the sum of €25,000, and again I think that in your evidence last July you have already referred

to this transaction?

A. I did.

Q. But I think just to ensure that all relevant corresponding transactions across those two accounts for 1986 are dealt with in the one time, you have also been asked to deal with it on this occasion?

A. I understand, yes.

Q. That shows there, we can again just show the account statement of the Haughey Boland No. 3 Account showing the lodgement on the 28th of October of €25,000, and we can go straight to Document 5A as you have already dealt with this in evidence, which shows the debit of €25,000 to the Leader's Allowance Account on the 29th of October of 1986, being the day following the day on which the credit was posted to the No. 3 Account? Yes?

A. Yes, that's correct.

Q. And I think if all of those five transactions are taken together, I think they amount to €75,000, which appears to correspond as between debits and credits to the account between April of 1986 and October of 1986; is that correct?

A. Yes, they correspond, yes.

MS. O'BRIEN: Thank you Mr. Carty.

THE WITNESS WAS THEN CROSS-EXAMINED BY MR. QUINN AS FOLLOWS:

Q. MR. QUINN: Just one or two questions, Mr. Carty, on behalf of Revenue Commissioners. Can I just ask you, I

understand that you no longer have any records in relation to this account, in the operation of this account; is that right?

A. That's correct, yes.

Q. In relation to the records that did exist in 1986 can I ask you were there records other than bank statements in relation to receipts into this account?

A. Yes, there would have been, yes.

Q. Would those records disclose the source of the receipts?

A. When you say "the source", the original source?

Q. Yes?

A. I wouldn't think so.

Q. But what would have been recorded in those records in relation to receipts other than the receipts themselves, the amounts?

A. If you are asking me would I have identified from the Leader's Allowance Account, the answer would be no.

Q. Yes, that's what I am actually asking how, how exactly would that money have been recorded?

A. From recollection, I wasn't involved day-to-day, I imagine it would be just put in and a cash receipt relating to the client account of C. J. Haughey.

Q. You had that in the bank statements in any event; isn't that right?

A. Yes, of course.

Q. Are you saying that you would have no other records to show from whence the monies came?

A. No.

Q. Was it the practice of Haughey Boland at that time to retain copies of the cheques enclosed received?

A. No.

Q. So the only records you say that were available at the time other than the bank statement would have been a simple record to corroborate what is contained in the bank statement, namely a receipt from an undisclosed source?

A. Well when you say "undisclosed source", the source was always through, as I can recall, through Mr. Traynor.

Q. Through Mr. Traynor?

A. Yes.

Q. So you had no record, you say, of where the monies came from?

A. No, I think if I can recall the evidence I have given in the past to McCracken and to the Chairman here, Mr. Moriarty, it was always the recollection that funds came from Guinness and Mahon through Mr. Traynor.

Q. So really what you did was you wrote up the bank statements; is that correct?

A. The firm firm, I didn't write up, the firm wrote up.

MR. QUINN: Thank you.

CHAIRMAN: Thank you, Mr. Carty.

A. Thank you.

THE WITNESS THEN WITHDREW

MR. HEALY: Mr. Kavanagh please.

PAUL KAVANAGH, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

A. Paul Kavanagh.

Q. MR. HEALY: Thank you, Mr. Kavanagh.

Mr. Kavanagh, you provided the Tribunal with a statement of your involvement in relation to the raising of funds to help with the expenses incurred for the treatment of the late Mr. Brian Lenihan. I think you provided that statement at least partly in response to a request for assistance from Mr. Davis the solicitor to the Tribunal; isn't that right?

A. That's correct.

Q. Partly as a result of a meeting with Mr. Davis and other members of the Tribunal team?

A. Two meetings.

Q. Two meetings. You responded to ten individual queries, and I propose to go through each one of them in turn. The first query was your role in relation to the collection of the funds. And you say; "I was asked as an extension of my role as national fundraiser for Fianna Fail, meaning Fianna Fail, I take it, to endeavor to collect donations to help cover the costs".

Can you tell the Tribunal by whom you were asked to collect these donations?



A. By Mr. Haughey.

Q. Can you remember when he asked you to make this collection?

A. I made the assumption, and I think it appears on one of the later questions, that it was probably about a week before the first cheque was, the dates on the first cheque.

Q. I think the next question is, you were asked what you knew about the date on which it was decided that Mr. Lenihan would attend the Mayo Clinic and that funds would be collected to defray the expenses, the person who made that decision and the circumstances in which it was conveyed to you. Your answer is: "From the dates on the cheque it would appear that early June 1989 was the likely time when the then Taoiseach asked me to be involved"?

A. That's correct.

Q. When you talk about cheques, are you referring to cheques brought to your attention by the Tribunal or cheques that you have seen otherwise?

A. Cheques that were lodged to the account, or the dates that they were lodged to the account, I worked back from that.

Q. What cheques are they?

A. Well the date that I am not sure where I got that from, but I got a date of around about the time and I worked back from that.

Q. I just want to be clear about it, the you are saying the dates on the cheques, are you talking about cheques that you have had access to independently or what the Tribunal has brought to your attention or cheques that you have been

shown by the Tribunal?

A. Cheques I have been shown by the Tribunal.

Q. And only those cheques?

A. Yes.

Q. Have you ever had access to, since these matters were collected, to any other cheques?

A. No.

Q. So the cheques that were mentioned in the course of the evidence in any case were two cheques dated I think June of 1989, and if my recollection serves me correctly the earliest of these cheques were written on the 7th of June of 1989. That was the cheque written by Mr., by Dr.

Edmund Farrell on the account of the Irish Permanent Building Society, you weren't involved in procuring that donation; isn't that right?

A. I am not sure whether I was or not, because at the time

Q. I see.

A. After Mr. Haughey asked me to see if it were possible to raise donations for the late Mr. Lenihan, myself and Peter Hanley who was on the fundraising committee and who was a very good friend of Brian Lenihan and the Lenihan family, we decided on I think about 10 or 15 names, and together we decided who would ring who and, in relation to try and get some donations. I am not sure whether I rang Dr. Edmund Farrell or not, but I believe from other evidence that has been said that Mr. Haughey himself rang him. You must recall, or you probably recall that at the same time that

this was going on there was an election going on and that's where, it is very difficult to try and remember who we rang for what.

Q. Well, we may come back to it in, at a later point when it overlaps your response to another query. Before we finally leave query No. 1, you say that you were asked by Mr. Haughey, and assuming that it was sometime in advance of the earliest of the cheques, that we know to exist in any case, it was either in June or May; isn't that right?

A. But I do recall that it was during the election or very, just before the election campaign.

Q. Of course the election campaign would have occurred in June?

A. Yes.

Q. The end of May, the beginning of June?

A. That's the time frame, because I remember trying to do the two at once.

Q. Yes; and do you know whether Mr. Lenihan was in hospital at the time that you commenced the campaign or rather the collection?

A. I don't think he was, in fact I am fairly certain he wasn't from my recollection of my discussion with Mr. Haughey, and at the time I met him he told me that Brian was in serious trouble and we needed to do something to try and help to get him to the Mayo Clinic for treatment. So that would, that I do remember, so from that I would assume that he hadn't at that stage gone to the Mayo Clinic.

Q. From that I think one would have to assume he hadn't gone to the Mayo Clinic?

A. True.

Q. I think we know that he went to the Mayo Clinic at least sometime prior to the 3rd of May of 1989, since that is the date in respect of which the first invoice was sent to the Department of Foreign Affairs for his treatment, and that would seem to indicate that that would seem to indicate that Mr. Haughey contacted you before that. I will try to put this on the overhead projector so you will see it.

From the evidence given on Friday, Attachment B of the evidence of Mr. Pdraig MacKernan.

This is a document that was prepared by the Department of Foreign Affairs in connection with the evidence being given by Mr. MacKernan, so it was a document prepared for the purposes of that evidence. Would you prefer a hard copy, Mr. Kavanagh, would you?

A. Yes, no doubt. (Handed to witness).

Q. Now, this is sort of a spreadsheet analysis of the dates of invoices, details of invoices, method of transmission of invoices, the amounts, the dates of and method of payment and so on. I am not hugely interested at this point in the details, but if you look at this first invoice, that's dated the 23rd of May, you see that, the top left-hand corner, invoice No. 1?

A. Yes.

Q. And the legend in the next column is, this is in respect of

expenses for the 3rd to the 17th of May?

A. Yes.

Q. And that would suggest therefore that the late Mr. Lenihan fetched up in the Mayo Clinic sometime prior to the 3rd of May?

A. Yeah.

Q. And from that it probably follows that Mr. Haughey probably had some discussion with you just prior to that or weeks, days or whatever prior to that?

A. Very likely, yes.

Q. And that you started your campaign after that point?

A. And what was the first date of the cheques that we have, the Irish Permanent cheque.

Q. That's the 7th of June?

A. The 7th of June, almost a month later.

Q. Yes.

A. Okay.

Q. And can you remember whom the first person you approached was? I hasten to add at this point, I don't want to mention any names other than those who have been mentioned already, so anybody, other people who haven't been mentioned can be approached independently in your head in the middle of giving evidence?

A. The only two names I recall in the public domain are Irish Permanent and Goodman, other than that I don't think any of the other names that we have spoken about

Q. Yes.

A. Well, in the case of what was the question again?

Q. What I was asking you was do you remember the first person that you approached for money and was it either of those people? You didn't actually, it seems in any case that you probably didn't make the approach to Dr. Farrell. Do you remember who was the first person you approached, was it somebody else?

A. Very likely, and also I would think if we drew up a list I probably, the part of the list I agreed to follow-up I would follow-up on the same, within a day or two.

Q. Sat down in front of a phone and started right away?

A. Yes.

Q. Okay. And then that I am suggesting occurred sometime, certainly prior to the 7th of June and probably prior to when Mr. Lenihan went to hospital?

A. Very likely.

Q. So as to enable Mr. Haughey to say to you "we must do something to get him to the hospital". Now, as you went on with your fundraising, and when I speak of fundraising, I mean fundraising for the late Mr. Lenihan, we leave the political fundraising that you were also involved, out of the account at the moment; did you liaise with Mr. Haughey and say "look, we are doing well" or "we are not doing well" or whatever?

A. Mr. Haughey always did everything in a sort of structured way in terms of go and do your best to raise money and if you, whatever money you raise bring it into Eileen Foy, and

the agreement I remember at the time was she would acknowledge receipt of any cheques she got, and she was the person to which the cheques were sent, in fact I often dropped into the office and handed them to her.

Q. Right, but do you ever remember saying to her "we now have 20,000, 30,000", whatever?

A. No, I think I would have discussed it once or twice with Peter Hanley. We were having difficulties at the time because of the election and how to try and work the two of them.

Q. At any point did you know what your target should be?

A. We had a figure in mind at the time of trying to raise about 150,000, but my recollection is we fell short of it.

Q. Yes, but that was the target you had?

A. That was the sort of figure we had.

Q. Was that a target you arrived at yourself or with discussions with Mr. Haughey?

A. I think I asked him what sort of money are we talking about, what is this sort of thing going to cost, and from recollection he, a figure of a total figure of €200,000 seemed to be the figure that was going to cost, the Mayo Clinic.

Q. Um hum.

A. And I am not sure remembering back, whether I made a provision for the fact that we would probably get money from the VHI or not, and probably not at the time, but the figure we had in mind was around 150,000 was our aim.

Q. Let's try and get this in chronological order. Originally Mr. Haughey would have said "look, we need about €200,000 or €100,000 here"?

A. He didn't say that, I said "What sort of figure is this likely to cost?". He said, from memory, "Somewhere around 150 or €200,000".

Q. I see. You went off and did your best?

A. Yes.

Q. Yourself and the late Mr. Hanley?

A. Yes.

Q. Just to digress for a minute, this is overlapping your answer to a question, did Mr. Hanley ever come to you with money?

A. Yes.

Q. And you bring it on?

A. I brought it in to Eileen Foy.

Q. So would you have known at all times how much you and Mr. Hanley were collecting?

A. Yeah, I think I probably did, but I honestly can't remember.

Q. I am not asking you to remember the amounts, and I am not trying to get at what the amounts were, you have told me in your statement you can't remember the amounts, what I am trying to get at is who would have known what the total amount was? You would have known what you and Mr. Hanley collected, Ms. Foy would have known what you and Mr. Hanley collected, and if Mr. Haughey gave her what he collected



then she and perhaps she and Mr. Haughey would have known what all four of you had pulled together, isn't that right, she wasn't collecting but holding?

A. That was the assumption, that Mr. Haughey and Eileen Foy spoke about it, I don't know if they did or not.

Q. If they did?

A. I stated to one of the later questions, I later met Brian Lenihan and gave him a list of all the donations.

Q. Which Ms. Foy had given you?

A. She gave to me.

Q. So it would seem that Ms. Foy would have known?

A. She was keeping a record.

Q. And she wrote back thanking people and acknowledging the receipt of their cheques, that's your understanding?

A. My understanding of what would happen.

Q. So she would have known on the basis of what you understood was being put in place as a system in any case, she would have known who had collected and what they had given, and from your subsequent contact with her when she gave you a list you believe that she followed that system?

A. Exactly.

Q. Now, you were asked whether you knew about the role of the VHI, and you said you had no role or any dealings with the VHI in connection with Mr. Lenihan?

A. I had not at the time.

Q. You had no contact with them?

A. None whatsoever.

Q. Can I take it that you had no knowledge that any attempt was being made to raise funds by way of a special claims appeal to the VHI?

A. I didn't know anything at the time to that, subsequently.

Q. Subsequently?

A. Sometime after that I heard through the grapevine or wherever else, that there was a possibility that some money could be got from the VHI.

Q. When was that roughly?

A. Ten years ago.

Q. Yes; but what I mean was did you hear it before Brian Lenihan came back from the Mayo Clinic or did you hear it much, much later?

A. Very likely before he came back.

Q. Before he came back?

A. Yes.

Q. Did you hear it before you finished collecting?

A. No, no, yes, no before I met him for lunch I heard it all right.

Q. Do you think it was before you finished getting in your collections?

A. I don't think so, no.

Q. You think it was after you finished?

A. Yes.

Q. Yes, so you kept collecting?

A. Up to around about the time of the end of the election campaign I think.

Q. Sometime at the end of June whatever?

A. June, yeah, yeah.

Q. You stopped the collecting then?

A. Yes.

Q. I think, you think?

A. Yes, mind you we had concentrated the effort of collecting on fairly few people, and that was part of the plan, that we didn't want everybody around Dublin or newspapers knowing what we were doing at the time.

Q. Of course. So you started your campaign sometime prior to Mr. Lenihan's departure, you continued it while he was aware, you continued up to the end of campaign, the election was the 15th of June I think?

A. We are making that assumption based on what I said earlier, that I assumed I started about a week before the first cheque or whatever came in.

Q. Okay. I want to clarify that. I think what you are saying is you assumed you started, assumed you started sometime before Mr. Lenihan went, because you had a conversation with Mr. Haughey in which he said "We must do something to get Mr. Lenihan to the Mayo Clinic"?

A. I can remember the exact words Mr. Haughey said at the time, and it wasn't exactly that, he said "Brian Lenihan is" and "we need to do something fairly quick".

Q. "Brian Lenihan is, in a bad way", to phrase it that way, "and we need to do something fairly quick to get him to the Mayo Clinic", that's what I understood to you say a

moment ago?

A. The words "get him in", it must have happened, I am not certain to be quite honest whether it happened, I put a question when I put the date down there, and it was based on, I would have assumed I started about a week before the first cheque came in and that's, and when I had the conversation with Haughey well it was, and I know this is difficult, but I don't know whether it was in early June or early May.

Q. Well let's take it either way. If it was early May then you would have started soon afterwards and you would have finished I understand around the end of the election campaign?

A. That's seems less likely.

Q. Let's take one at a time so we won't get confused. If it was early May you would have started Mr. Lenihan went out in early May, he went out on the 3rd of May to the Mayo Clinic, he was out there for some considerable time. If he was collecting during May and during the early part of June, then the collecting would have ended sometime around the date of the election, slightly before or slightly after, whatever, so that would have been sometime around the middle of June? The election was the 15th of June?

A. Yes.

Q. And that was the end of it as far as you were concerned, you had done your bit?

A. Until I got a phone call.

Q. That was the end of the collecting anyway?

A. The collecting, yes.

Q. And during that time, you had no dealings with Mr. Haughey and in the course of which he would have told you we have collected so much?

A. No, no.

Q. And nobody told you that the VHI were prepared to put up 50,000?

A. No, no, and I did have dealings with Mr. Haughey on many other matters, every couple of days I would see him about something but not on this issue.

Q. Would you have been dealing with him in connection with ordinary fundraising?

A. Ordinary fundraising, I was also on the strategy committee at the time, I was also on the election committee which met every day and also on three or four State boards, he put me on one or two to report back to him on certain companies having difficulty at the time.

Q. And you never discussed this during all that time that you can recall?

A. If we did it was in passing, there was no great emphasis on it.

Q. If he had said to you "Look, we are after getting €50,000 or €57,000 from the VHI", you would have remembered that?

A. Yeah.

Q. It would have been larger than any contribution?

A. I can tell you he never mentioned VHI to me, it was through

someone else I heard the possibility of money from the VHI.

Q. To go on to your third answer. And you have already alluded to it, you were asked about the manner in which the fundraising was organised, including the name and the roles of the people involved, and you said; "The Taoiseach asked that it should be conducted in a discrete a way as possible, and to focus on as few people as possible". You have already mentioned that.

What I want to ask you is, how did you decide either alone or if so, with whomsoever else, did you decide what type of people you would target?

A. I think myself and Peter Hanley sat down and we, we had been continually fundraising for about eight years, you build up a certain relationship with some people that you trust, and also know there would be support for something like that, they are the type of people who

Q. They were the people that you would they weren't all of the people I suppose, they were some of the people that you would normally have gone to for support for the party?

A. In fact we probably went for support for both the parties and Lenihan thing at the time.

Q. Of course, in the case of Dr. Farrell we know that he subscribed to both causes, as it were?

A. Yes.

Q. You were asked about other people who helped, I think, and you mentioned Mr. Peter Hanley, you have already mentioned

him.

A. I also told other members of the fundraising committee in order that they would understand in case, in order that they would understand that we were fundraising for Brian Lenihan in case they came across somebody that might mention it to them.

Q. I see. So there would be no crossing of wires as it were?

A. Well or any suspicion of anything going on that was irregular.

Q. As far as you were concerned all of the money that you were collecting was for Brian Lenihan, and I mean the non political fundraising, that was for Brian Lenihan?

A. No, there was one other around the same time too. There was some reference in the paper on Sunday to it. There was a disabled gentleman, that an awkward situation arose about three or four weeks before the election, that it would appear that on a technicality he couldn't get something that anybody would reasonably expect that he was entitled to, and I was asked to, I was asked to see if I could source some funding too.

Q. For that as well?

A. Yes, and that also went in to Eileen Foy at the same time.

Q. So would you have had one cheque for Mr. Lenihan and one cheque for this other appeal?

A. In that particular case I think I needed two cheques to make up the one for the disabled

Q. We will talk about the second appeal then. You had two

cheques for that particular appeal?

A. Yes.

Q. And you gave those to Ms. Foy?

A. I am only, this is memory now, you know, I think from memory, that and I can't even remember what the full amount was, it was either 12, is what appeared in the paper, my recollection was it was either 14 or 17,000, but I can't remember for sure.

Q. In two cheques?

A. That's, I think that's true, yes.

Q. And you would have given those separately to Ms. Foy, you would have said they are for that particular appeal, not for Mr. Lenihan?

A. Yes.

Q. Let's just take this slowly then. Apart from those two cheques, or at least from that amount, whatever it was, 12, 14 or 17, the rest of the money was for Brian Lenihan's treatment?

A. Yes.

Q. And that particular amount was, if I can put it this way, was specially appropriated to have you got a glass there?

A. I have, yes.

Q. Was specially appropriated to, for the other fund of the disabled driver?

A. I think all went into the same account.

Q. How do you know what account any of it went into?



A. I don't, but I just I don't is the answer, I don't.

Q. At the time had you any idea what account any of it was going into?

A. No, none whatsoever.

Q. I take it you would have assumed that the Brian Lenihan fund was going into an account for that purpose?

A. Or that it was going into another account and it was, there was a record being kept of it.

Q. You have mentioned yourself a moment ago how sensitive it can be on any fundraising campaign, whether it is an admirer accordion campaign or a political campaign, there can be suspicions, it is very important all of money contributed should go to the home it was intended for?

A. Yes.

Q. And I take it as an experienced fundraiser you had no reason to believe but that the money you were collecting would go into a designated place, let's put it as simple as that, for Mr. Lenihan and that the disabled driver would go into another designated place?

A. Yes.

Q. Yes. Did you ever give the, are you aware that the same procedure was adopted in relation to those people who contributed to the fund for the disabled driver as applied in the fund for Mr. Lenihan, whether in other words they too got acknowledgments of their contributions?

A. I think so, yes.

Q. And those acknowledgments would have been given to them by Ms.

Foy?

A. Yes.

Q. And needless to say somebody had to give the money to the driver in question?

A. Yeah.

Q. Now, you were asked about, if you like, to speculate or to assist in some way with the names of the people you approached, and you have fairly indicated that you may be speculating as to who those names were, and efforts have been made to follow those up, so I don't want to mention that at the moment.

You were also asked about the name of the person you transmitted the fund, as you indicated that's Ms. Eileen Foy.

You were asked the method of bookkeeping, and you said you were not aware of the method of bookkeeping or the manner which the Party Leader's Fund was administered.

You were then asked about the provision of a list, and you have mentioned you received a phone call, you met Mr. Lenihan, you had lunch with him and you gave him an A4 page which you had obtained from Ms. Eileen Foy which had a complete list of all of the funds received.

That list, therefore, I take it contained the names and the amounts contributed by the individual contributors?

A. Yes.

Q. And you gave that to Mr. Lenihan?

A. It didn't have a total, because I think I would have remembered what the total was, there wasn't a total on it.

Q. I see.

A. There were one or two small'ish amounts on it, they were anonymous, they were people that did not want Brian Lenihan to know that they had contributed.

Q. And you, when you say you got that fund from Ms. Eileen Foy, did you I beg your pardon, you got that page, that A4 page from Ms. Eileen Foy, I take it you met her to get it from her?

A. Yes, I can remember well I was over in England at the time, I got a phone call from Brian Lenihan and somebody in England came and said "The Minister for Defence is looking for you", and I don't think, at the time I didn't think of Brian Lenihan, I thought there was some problem over in England, and it was Brian Lenihan, and he had been in with Haughey that morning and Haughey told him that if he wanted details of who contributed to contact me. I told him I would meet him, I think the following day for lunch, I rang Eileen Foy and said "Would you get a list out for me of the list of contributors?".

Q. Did she make it out in front of you?

A. No, she had it there.

Q. She it made out?

A. Yes.

Q. Was it handwritten or typed?

A. Typed, it was fairly roughly done.

Q. But it was typed?

A. It was typed, yes.

Q. Were the amounts typed as well as the names?

A. Yes.

Q. After you had finished, did Mr. Haughey ever say to you, you collected enough money and we didn't, we don't need any more or, what you had was more than we needed?

A. No.

Q. Did you ever receive any progress report from him as to the ultimate result of the collection?

A. No.

Q. Thanks very much.

A. Okay.

CHAIRPERSON: Thank you very much, Mr. Carty.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Mr. Deasy please.

MR. DEASY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

CHAIRMAN: Back again, Mr. Deasy. Please sit down.

Q. MR. COUGHLAN: Thank you, Mr. Deasy. I think you prepared a Memorandum of Evidence for the assistance of the Tribunal; isn't that correct?

A. That's correct.

Q. And I think in that you state who you are and that you are a partner in the firm of Deloitte and Touche the firm; isn't that correct?

A. That's correct.

Q. And that you were a partner in the firm, in its predecessors since January of 1984; isn't that correct?

A. That's correct.

Q. And I think you have informed the Tribunal as there has been evidence before, that the firm had been the auditor of Celtic Helicopters Limited since its incorporation; isn't that correct?

A. That's correct.

Q. And that since 1981 you have audited, you had been the audit partner dealing with the company?

A. 1991.

Q. 1991, I beg your pardon, of course?

A. Correct, yes.

Q. And then you refer to a letter dated 20th of September of this year which the Tribunal sent to your firm's solicitors; isn't that correct?

A. That's correct.

Q. And there is, there are transactions referred to in the numbered paragraph one of that letter which occurred during the month of June of 1989 which would have been dealt with during the audit for the year of the 31st of March of 1990, whilst the firm does not have any working paper files in relation to that year; is that correct?

A. That's correct.

Q. And you have informed the Tribunal that in preparing the company's accounts for the period to the 31st of March of 1991, "which period encompasses the transaction the subject matter of number paragraph 2 of the above letter, the audit senior would have examined inter alia the company cheque payments and cash records, together with some of the bank statements for the period"; is that correct?

A. That's correct.

Q. I think you also informed the Tribunal that the firm, your firm's work papers files show that the company's cash receipt record for October 1990 recorded a sundry receipt of £10,000; is that correct?

A. That's correct.

Q. And an extract from the work paper files on which the relevant item is highlighted is set out on page 3, and I think you and I think we can show the highlighted, it doesn't really show well on the photocopier, on the overhead monitor, perhaps you can just read out, if you can, from your own copy, it doesn't read on ours?

A. Sorry, to read which part? Read what it says?

Q. Yes.

A. The highlighted said: "Year end 31st, 3, 1991. (Second 6 months). Sundry Lodgements Analysis". And then the fourth column from the left is headed up "Contra". The first entry in the first column on the left under the heading "Month" is October, and the highlighted figure is £10,000.

Q. Yes. What does "contra" mean? I know we have been over this before, but in the context of this, tell us what it means?

A. Contra means that the item involved would be offset against a, an item of similar amount, that's either a debit or a credit; in other words the opposite of the item in question, the receipt of £10,000 would be a credit, so it would mean there was a corresponding debit against which it would be offset.

Q. It is not in respect of any specific matter; is that correct?

A. No, this no, the work paper doesn't record it as being in respect of any specific matter.

Q. And what would your understanding of the reference to contra there be? Just an in-out or a canceling of a transaction?

A. It is an in and an out, there is a corresponding debit, and either the company's cash receipts record indicates that this receipt was a contra or alternatively that explanation.

Q. That was the explanation afforded to a member of your staff?

A. Correct.

Q. In fact, if we just put up perhaps the bank statements in which, in respect of that, shows the lodgement or the credit; isn't that correct?

A. That's correct.

Q. And then you can, if we can just bring that down and show that's the, can we move it up now please? That's the corresponding debit and that's the contra that's indicated on the working paper; is that correct?

A. That's correct.

Q. Now, I think then you have that your firm's work papers file show that the company's cheque payment records for November 1990 recorded a sundry cheque payment of œ10,000, and an extract from the work paper files on which the relevant item is highlighted is set out, as you say on page four and we will put that up. The payment was described by the audit senior as contra?

A. That's right.

Q. Again it doesn't show on the copy we have or on the screen, is that what your highlighted papers show?

A. That's correct, yes. Would you like me to go through

Q. Yes please?

A. Yes, the top heading on the schedule is "Year Ended 31st, 3, 1991. Sundry Cheque Payments Analysis". And the fourth column in from the left is headed up "Contra", and the amount in that column is œ10,000, and the month is given as November and the first column on the left under the heading month.

Q. And can we take it that in the description that appears on your working papers, that that is either what has been seen by whoever is working on the papers or it is the explanation which has been afforded to whoever is working



on the papers resulting from a query raised by them with the company?

A. That would be correct.

Q. Because in respect of both, the first one we looked at which was the first contra, it is described, it is recorded as a sundry receipt of £10,000. The evidence and explanation which has been given, that this must have been, not that it was, but the only explanation which is logical and plausible is this was a payment, a prepayment for flying hours, and then the other is a cancellation in respect of flying hours. Would you have expected that type of detail to have been recorded or that type of explanation to have been afforded to whoever raised the query with the company?

A. Yes, I would have, though I must say my recollection from the evidence of last, was that that was an explanation in relation to an earlier transaction, it wasn't necessarily

Q. It is the same for this?

A. It could well be the same, yes.

Q. It was the same, Mr. Deasy?

A. I see, it was the same.

Q. It was the same?

A. I see. That would be the treatment accorded to the transactions you have just described.

Q. Yes; but that's what I am just asking that, is that, is that in accordance with proper procedures, that where such

a transaction, where there has been a prepayment and cancellation it would appear as a sundry receipt?

A. I am not aware as to whether at the time they were aware that explanation was given or not, I would have thought the receipt for flying hours would have been recorded in flying hour receipts not necessarily in sundry receipts.

Q. Yes, yes, I am just asking for your opinion in respect of this, in the first instance?

A. That would be

Q. That you would have expect it to appear as a receipt for flying hours; isn't that right?

A. Correct, correct.

Q. And then if there was a cancellation

A. A refund, cheque.

Q. a refund cheque?

A. Yes.

Q. And would you in those circumstances expect it to be treated as a contra?

A. Yes, I would expect it to be treated as a contra, that would be the appropriate treatment in those circumstances.

Q. But I am, pardon my ignorance in this matter, Mr. Deasy, but, I thought you had explained that the contra was the appropriate designation here or description, in light of the fact that it was sundry receipts?

A. Not the description "contra" would be applied to any offsetting debit and credit, it doesn't necessarily have to be a sundry receipt or sundry payment.

Q. But the underlying basis should be shown somewhere else, should it, of what the transaction is?

A. You would expect to, you would expect to see if I can put it this way; a common form of contra would be if a person was a supplier and a customer, i.e. a company owed them money on the one side as a supplier and they owed the company money on the other side as a customer, they might agree to have a contra, so you have transactions from one account to another, it is a global term referring to offset debits and credits and could apply in many sets of circumstances. The type of transaction outlined I would certainly have referred to as a contra.

Q. In this particular case in analysing the receipts and payments, the receipt of 10,000 and the payment of 10,000 are just described as contras with no further detail as to what they might have been, yes?

A. Stated to be as it were.

Q. Stated to be as what?

A. It is a small description in the papers, other than that they were a contra, i.e. set off against each other.

Q. Yes. Well, just if I go over it with you again, a sundry receipt is not the way you would have expected a prepayment for flying hours would be recorded in the records?

A. Correct.

Q. Yes, or a cancellation to be described as it was or appears to have been in the records?

A. Well, I can't say if that was what these were, but I would

expect that.

Q. If they were, if they were?

A. If they were, I would have expected the receipt to come in and receipt and cheque as being a refund cheque.

Q. Yes, I think you continue in your memorandum to say that the description of the items as contra would have been used either based on the description in the cheque payments and cash receipts record or as a result of an explanation given by the company directors; is that correct?

A. That's correct.

Q. And I think you have informed the Tribunal that the firm's work paper files show the two items in question as having been posted to the same nominal ledger accounts and thereby set off against each other, an extract from the work paper files showing the posting of the receipt with the relevant items highlighted is set out on page five, and again we can't read your highlighted do you have your own hard copies there, can you read them?

A. Yes, the item that, the item that's highlighted is the item that one can see on the screen, which says "Bank of Ireland", with "Code 3" and an amount "€10,000".

Q. Yes.

A. And that document is the posting of it to the ledger, and you can see there that there are, the two outer right-hand columns are headed up "debit" and "credit", and one shows the debit side of the entry, would be in the second inner column and the credit in the outer column, and that 10,000

is in the credit column.

Q. Yes.

A. It is "DR" and "CR" actually, sorry, for shorthand. It is "DR" for debit and "CR" for credit, obviously.

Q. I see. I see it is. What is Code 3?

A. Code 3 is a nominal ledger account number.

Q. What does that mean?

A. The nominal ledger is a form of ledger that accumulates the detailed transactions and into various accounts, for instance the sales account, purchases account, light and heat, fixed assets, there is an account for each heading that you might find in the financial statements, the transactions are accumulated in the nominal ledger, and out of that the accounts are prepared. So the transactions get from the basic books to the accounts via the nominal ledger. These sheets are prepared to post the individual transactions into nominal ledger accounts. So in for instance, the sales nominal ledger account you would have credits for all sales invoices, debits for credit notes and the different, the balance would go into the accounts as sales. So for instance Account No. 3 is a nominal ledger account for the Bank of Ireland current account.

Q. Right.

A. And that document represents the crediting of the sundry receipt to that account.

Q. Yes; and then where is the that's credited to the account, and then whereas you have furnished another

document showing it being debited; is that correct?

A. That's correct, yes, that's that particular page that's on the screen now. And again it is an, one can see the outer right-hand column, one headed up "DR" for debit, one headed up "CR" for credit and highlighted exactly, that's the credit column, the inner one is the debit column, and the particular entry on that is the posting of the cheque payment, and one can see the posting again to Account No. 3 in the amount of œ10,000, and it is a debit this time.

The previous payment was a credit, this is the corresponding debit, they both go into nominal ledger account three, so they effectively cancel each other out, which is the nature of a contra, by their nature they don't affect a profit and loss account or balance sheet.

Q. Can we take it the description of contra you consider appropriate, but if these payments were in respect of prepayment for flying hours and subsequent cancellation, the description of sundry receipts would be something that you would consider an inappropriate designation?

A. I didn't say I would consider it inappropriate, I said I wouldn't expect to see it in those columns, I would expect to see it in the normal columns, the normal flying hours receipts columns.

Q. Why wouldn't that be inappropriate?

A. I beg your pardon?

Q. Would wouldn't that be inappropriate?

A. Somebody could have put it into that.

Q. By mistake?

A. For instance, yes I don't know.

Q. It would be inappropriate in the sense it wouldn't be the appropriate column to have it in, isn't that right? It would be in the wrong column?

A. It would be, the column determines where it ends up being posted, so long as it gets posted to the right column.

Q. But the column is identifying what it is; isn't that, or is it not?

A. Not necessarily everything one sees in a column, if the column is headed up, let's say "salaries and wages", one would expect everything in that column to relate to salaries and wages, but there could be something in the sundry or miscellaneous column that likewise should go into a salary and wages account which is why sundries is taken and analysed out for the purposes of posting.

Q. But, Mr. Deasy, let's just be simple about this; if this was for prepayment for flying hours there was a column which showed receipt, receipts for flying hours; isn't that right?

A. Yes.

Q. It couldn't be in any other column other than that, isn't that right, if it was to be appropriately recorded?

A. When you use the word "appropriate" you are implying that it might be inappropriate in terms of not being

Q. Instead of not being what?

A. Inappropriate meaning it was recorded as something else.

Q. Yes, of course it is recorded as something else or is it not?

A. When you asked me the question about flying hours and I responded that I would expect to see them in the flying hours column.

Q. All I am asking you, Mr. Deasy, the appropriate column, if this was prepayment for flying hours, if it was, and that is the explanation, that's the only thing; is there any reason why it shouldn't be, why it shouldn't be recorded in the column under receipts in respect of flying hours?

A. No, no.

Q. And that was the appropriate column for it to be in; isn't that correct?

A. That's the appropriate column, yes.

Q. And you see lots of receipts for flying hours in that column; isn't that right?

A. I would imagine so.

Q. Appropriately recorded; isn't that so?

A. Yes.

Q. Now, it wasn't, if it was a prepayment it wasn't a sundry receipt; isn't that correct?

A. No.

Q. So it was in the inappropriate column; isn't that correct?

A. If it was a receipt, you asked me if it was a receipt for flying hours it was in an inappropriate column, that's correct.

Q. So by reason of it being in sundry receipts and ultimately



the contra, the æ10,000 going out in both circumstances, there would have to be, if it was in the sundry receipts, an explanation would have to be sought, wouldn't it?

A. Correct, yes.

Q. So an explanation had to be given?

A. Correct.

Q. And I understand when you say that the appropriate designation is contra because it doesn't affect the bottom line as far as the company is concerned, and is that the only basis on which an explanation would be sought?

A. No, by their nature one would expect that items in the sundry column don't easily fall into any of the other columns.

Q. Yes, æ10,000 in this case?

A. And therefore, in establishing where they should be posted, first of all either would refer to the cheque payment book, maybe it is a cheque or accounts receipts book, if there was no guidance there we would have to make an inquiry.

Q. Why, why is the inquiry made?

A. So as to know how to treat the item.

Q. To what end?

A. In terms of where it should be, to what account it should be posted to in the nominal ledger.

Q. That's the only purpose?

A. Yes.

Q. The only purpose that the inquiry is made?

A. Yes.

Q. I see. And is the explanation offered just accepted on its face?

A. At that point in preparing the accounts that would be correct.

Q. What happens after the account is prepared, does anyone else ask any questions about it?

A. It would depend on in the course of any audit work that was being done, whether that item was an item requiring further work in an audit context.

Q. How would that arise?

A. In, generally in examining detailed transactions.

Q. Yes.

A. A sample of transactions would be selected or audited, if an item goes in that sample, it would be looked at in more detail.

Q. For what purpose?

A. For the purpose of verifying its, for the purpose of verifying what it was and had it been correctly accounted for.

Q. You see, what explanation could possibly have been offered in respect of this, do you think? What explanation could possibly have been offered that there was €10,000 coming and €10,000 going out of them? What explanation do you think could possibly have been offered?

A. I don't know what explanation was offered.

Q. I am not asking you that. I am asking you now, what explanation you, as an experienced and senior person, what

explanation would you find acceptable?

A. I can't really say that without, you are asking me to speculate on, you know, what totally in the abstract.

Q. Well, let's take it step-by-step so, Mr. Deasy. If you were told that "Look, that must have been a prepayment", if you were told that must have been a prepayment for flying hours and that was cancelled and it was paid back, that's a reasonable and plausible explanation?

A. Yes.

Q. And you might say, "Look, I think you should put that into the other columns", you might say that, you might or you mightn't, whatever?

A. You might.

Q. That's an explanation. æ10,000 goes into a company and æ10,000 comes out, what other explanation could be offered, a mistake?

A. Yes, that could be offered as an explanation.

Q. But you would want to know about that mistake, wouldn't you?

A. It would sound unusual to say lodged by mistake.

Q. Unusual. So tell us what other explanation from your experience, and you must have broad experience, I take it?

A. Yes.

Q. What other type of explanation could be offered that wouldn't sound unusual to you?

A. Answering that in the general way you have put it to me, an invoice could have been paid twice.

Q. Yes, okay?

A. It could have been refunded.

Q. Perfectly understandable, yes?

A. A purchasing invoice purchasing lots of arise if a cheque had been received and had been dishonoured by the bank and it had been relogged, then there would be a straight debit and credit that, that one would have two lodgements and a debit, there would be a contra between those two items, that would be another possible explanation.

Obviously the one you have mentioned of a sale, which turned out not to be a sale.

Q. Yes.

A. That would be a plausible explanation.

Q. That would be a purchase and cancellation?

A. Yes, the same thing.

Q. So, from your broad experience one can perfectly understand that something was purchased and then cancelled, that could give rise to such, and that would be in respect of services as well as goods, so that could apply here, and that is what the company I think must have happened in the situation. You can think of other situations whereby a cheque might have been dishonoured and you have a credit and debit, that an explanation would have to be afforded to or

A. A sale.

Q. A sale?

A. The type of one you mentioned, a sale that was made and then cancelled.

Q. Yes. And it is hard to think of any other type of situations; isn't it?

A. Well, none occur to me at the minute.

Q. And you are a man of broad experience, and you did say that the thought that somebody mistakenly lodged money to the account is one which you would consider most unusual, as an explanation?

A. In that context, yes.

MR. COUGHLAN: Thanks Mr. Deasy.

THE WITNESS WAS THEN CROSS-EXAMINED BY MR. QUINN AS FOLLOWS:

Q. MR. QUINN: Just one question, Mr. Deasy, arising out of that. When you referred to a selection of invoices being, or being taken by the auditors for audit, I take it that you are referring to a selection by your company as auditors to this company for further audit; isn't that right?

A. For particular audit tests.

Q. Tests your company would have made up from these books, from the records provided to you by the company, and then somebody within your firm would have perhaps selected from time to time different transactions for further investigation and audit?

A. No, no. The company here maintained its own records, the

accounts themselves, profit and loss and balance sheet were prepared and audited by us, but the books were kept by the company and their own bookkeeper.

Q. They would have been audited to the extent they would have been furnished to the Revenue carrying a certificate that they would have been audited by your firm; isn't that correct?

A. Correct.

Q. A report. Just in relation to the suggestion that money might have been paid for flying hours, I take it this is a company that was registered for Value Added Tax; is that correct?

A. That's correct, yes.

Q. As a consequence monies paid in respect of flying hours would be monies together with Value Added Tax being paid?

A. Not necessarily no, because certain of their clients who are flying are exempt from VAT and certain are not.

Q. Would the flying activity on behalf of an Irish individual be exempt?

A. As far as I know that's not a deciding criteria, the residence of the customer.

Q. A private individual resident in Ireland, services provided to him, would they have been exempt?

A. As I understand it, and I have to check this, the type of journey and the destination of the passenger and whether it is a continuation of a flight, an inbound flight is the determining factor in whether it is subject to VAT or not.

I don't think it has to do with the residence of the customer.

Q. Assuming for the moment we are dealing with an Irish resident, individual who is booking or pre booking flights in the normal course of events, one would expect that that would be a Vatable item; isn't that right?

A. Not necessarily, the VAT arises at the point of the supply of the service, in other words when an invoice is raised, it is either a Vatable flight or it is not. If it is a Vatable flight the VAT would be added to the invoice and the amount of that invoice would be deducted from

Q. The prepayment?

A. the booking amount.

Q. In other words what would the position be in relation to a prepayment for flying hours?

A. Those type of prepaid bookings, you have to check the company's own records, but to my recollection they are generally round sums, so it would be, if you like, a deposit against sales to take place in the future.

Q. So the credit would arise at some stage in the future?

A. When, yes it would be reduced by the amount of flights.

Q. But presumably very detailed records must then exist in relation to the type of flying that takes place on behalf of an individual so that the correct rate or any rate of VAT is applied?

A. That's right.

THE WITNESS WAS EXAMINED BY MR. ALLEN AS FOLLOWS:

MR. ALLEN: Just a few questions, sir, if I may.

Q. Mr. Deasy, we have established that you are an auditor of experience and a partner of long standing in the firm now Deloitte & Touche and its predeceasing firms. May I ask you one or two questions. Firstly, what is the purpose of an audit, the principle purpose from an auditor's point of view?

A. The principle purpose is to enable the auditor to report to the shareholders as to the truth and fairness of the accounts and to do that, to give reasonable assurance to the shareholders that the accounts is not materially misstated.

Q. That is the concept of a true and accurate view?

A. True a fair view.

Q. I beg your pardon, true and fair view of the accounts; isn't that correct?

A. That's correct.

Q. And isn't that the principle objective of any audit?

A. Correct.

Q. Now, you have attended here today for the purpose of elaborating on the statement of evidence which you furnished to the Tribunal for this portion of your evidence, and it relates to the queries which were set out in correspondence, which Mr. Coughlan has dealt with; isn't that correct?



A. That's correct.

Q. They relate to payments, to two payments of €10,000; isn't that correct, sorry two credits of

A. Two entries.

Q. Yes, two entries, my apologies?

A. Yes.

Q. Isn't that correct? Now, may I ask you, in order to deal with that, what source material did you have available to you?

A. Sorry?

Q. In order to deal with the queries?

A. From the Tribunal?

Q. Yes.

A. We would have had the work paper files, the audit work papers filings for the year to March 1991.

Q. Yes, and it was from those papers that you extracted the documentation which Mr. Coughlan has taken you through; isn't that correct?

A. That's correct.

Q. Yes, with the various entries?

A. That's correct.

Q. Isn't that correct? Could you explain the extent of your own involvement in this particular audit?

A. I would have reviewed the financial statements and reviewed certain of the schedules in the audit file.

Q. Yes, I presume, am I correct in assuming that the work would have been carried out by an audit senior?

A. Correct.

Q. Is that the correct designation?

A. The detail work would have been done by an audit senior.

Q. You have already told the Tribunal that, you have already told the Tribunal that the company kept its own books; isn't that correct?

A. That's correct, yes.

Q. And that what was furnished to you were those books which were audited to the extent of their being tested, etc.

A. That's right.

Q. Is that testing on a random

A. Yes.

Q. a random sample basis?

A. Yes.

Q. Now, in relation to this concept of the contra, and relating it directly to the two entries which the Tribunal is concerned, does their description in the accounts, does the method in which they are treated in the accounts in anyway affect the position of the company, visa in the context of the concept of a true and fair view of the state

A. No, they have no affect, contra by their nature have no affect in the profit and loss account or the balance sheet.

Q. Yes. Now another matter that you might just help me with, is this; as I understand it, and correct me if I am wrong, in the first document which was put up, we have an analysis of the sundry of the lodgements under the rubric of sundry;

isn't that correct?

A. Yes.

Q. And am I correct in thinking that in the norm the figures end up in the sundry account for a variety of different reasons, because of a lack of certainty as to how they should be properly characterised or whatever, is that the position?

A. Partly and partly perhaps that there isn't an appropriate column into which they can conveniently fall.

Q. Very good. So are you saying that it is 50/50 or is it something which is capable of being divided in that way?

A. No, the company's cash receipts book would consist of a column for the date of the transaction, a column for the other party involved, a total column and then maybe ten columns with various headings, the most commonly used heading into which receipts fall, and anything that doesn't conveniently fall into those gets put into the last column which is the sundry column in essence.

Q. That was my understanding. But it is also my understanding, correct me if I am wrong, that because that is so, when one comes to the, when one comes to complete the audit, there has to be an analysis of that sundry account; isn't that correct?

A. That's correct, yes.

Q. And was that carried out in this instance?

A. Yes.

Q. And when you say it was carried out, it wasn't carried out

by you; isn't that correct?

A. No.

Q. It was carried out by, am I correct in thinking it was carried out by a member of your firm?

A. The audit senior would have been there at the time.

Q. Yes. May I take it that you, insofar as the answers you have given, you are assuming that the documentation which was generated by such inquiries as he carried out was generated by the answers which he was given, he or she?

A. Yes, yes.

MR. ALLEN: Yes. Thank you.

CHAIRPERSON: Is it a fair summary, Mr. Deasy, that as regards a substantive record of the accounting situation, the papers did set forth that the two transactions were mutually set off, and accordingly there were no repercussions on the profit and loss situation?

A. That's exactly right.

CHAIRMAN: But were it the case with hindsight you may have been investigating or examining the company books yourself and had seen these two apparently closely related transactions, you would have been inclined to seek more chapter and verse?

A. No, I don't think so, that's necessarily true in the sense that the two transactions were recorded in the work papers as contras and were posted as contras, and that would have been an end to it if you like.

CHAIRMAN: Would it overall be preferable if the account of the payment and subsequent cancellation had specifically been set forth rather than a sundry payment?

A. It would have been, it would have recorded the explanation if that had been written, if that was the explanation given.

CHAIRPERSON: Thank you Mr. Deasy.

THE WITNESS THEN WITHDREW

MS. O'BRIEN: Mr. Phillip Dalton please.

PHILIP DALTON, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Dalton. Thank you, Mr. Dalton. I think you are authorised officer of the Central bank of Ireland. You have previously given evidence in the course of the public sittings of the Tribunal in relation to the application of the exchange control code to various international transactions?

A. That's correct.

Q. I think on this occasion the Tribunal have asked you to comment on a number of foreign currency drafts or cheques that were issued by Allied Irish Banks, Baggot Street?

A. That's correct.

Q. And I think in fact on a previous occasion both you and a colleague of yours, Mr. O'Byrne, have given detailed

evidence in relation to what the code was and how it applied to various matters?

A. That's right.

Q. If I could just take you briefly through the cheques on which the Tribunal has asked you to comment. The first of them is dated the 22nd of June of 1989 in the amount of \$7,840.80. The second was a cheque dated the 27th of July, 1989, in an amount of US dollars \$65,923.29, also payable to the Mayo Clinic. The third was 21st of September, 1989, in an amount of \$1,409.60, also payable to the Mayo Clinic. The fourth was a cheque dated the 7th of December, 1989, in an amount of US dollars \$324.02 payable to the Mayo Clinic. The fifth was a cheque dated 7th of March, 1990, in an amount of US dollars \$6,810 payable to the Mayo Clinic. The sixth was also dated 7th of March of 1990 in an amount of \$1,885.60 payable to Calor Hotel. The seventh was also a cheque dated 7th of March of 1990, in an amount of \$235.75 payable to Gold Crown Limousine Services, and 8th was the final US dollar cheque dated the 29th of June of 1990 in an amount of \$79, also payable to the Mayo Clinic. And then the two final instruments on which the Tribunal requested you to comment were two French Franc international drafts also drawn on AIB Baggot Street. The first of them dated 4th of February, 1991, in an amount of 61,605 French Francs, payable to Charvet, and the second being a cheque dated the 18th of September, 1991, in an amount of 63,000 French Francs, also payable to Charvet.

Now, you have in fact prepared a detailed statement for the Tribunal, but I think we can skip over the general exchange control requirements with regard to instruments, as that evidence has already been given by you, and we can proceed directly to the part of your statement which deals with the application of rules of the foreign exchanges rules to these cheques. I will take you through that. You state as follows:

"The following comments are based on information regarding cheques given to the Central Bank from the solicitor to the Tribunal as outlined above. This assumes the actual or average rate of exchanges for the day or month on which the payment was made between the Irish pound and the US dollar or French Franc would necessitate the submission of a Form E 4"?

A. Correct.

Q. Now, you state firstly that the cheques numbered 1, 3, 5, 6, 9 and 10 were for amounts greater than  $\text{€}250$  but less than  $\text{€}10,000$ . Now they were cheques that were the US dollars cheques that were payable to the Mayo Clinic. And I think the last two were payable to Charvet. And you say that Allied Irish Banks would have been obliged to cite documentary evidence such as the invoice, and to stamp the relevant documentary evidence produced in order that the international cheques could be issued?

A. That's correct.

Q. I think what you are saying there is that in order to fund the purchase of those cheques, in order to be entitled to obtain those French Franc or US dollar cheques, the person seeking to obtain them would have to produce an invoice or perhaps a statement of account from the payee of the cheque or person to who the cheque is to be paid, and that would have had to be stamped?

A. That's correct.

Q. So that in the case of the Mayo Clinic cheques, what would have been required was an invoice issued by the Mayo Clinic?

A. Yes.

Q. Presumably to the person seeking to issue the cheque in question?

A. Yes.

Q. And in the case of the cheques payable to Charvet, what would have been required was an invoice or a statement issued by Charvet to the person who was seeking to obtain the international cheque payable to Charvet?

A. That's correct.

Q. Then you say secondly, the Cheque No. 2, which was the cheque for \$65,923.29 payable to the Mayo Clinic, was for an amount in excess of €10,000, so Allied Irish Banks would have been obliged to cite supporting documentary evidence, e.g. an invoice and to stamp the relevant documentary evidence produced in order that the international cheque could be issued and to arrange for the completion of an E4



Form, and to submit this to the Central Bank.

So that in the case of that international cheque for 65,000 odd dollars, in fact €66,000 odd dollars, again Allied Irish Banks would have been required to cite an invoice or a statement to stamp that, and in addition to that, as a further requirement to completing the E4 Form and return that to the Central Bank?

A. That's correct.

Q. And then finally you state that the cheques numbered 4, 7 and 8 were for amounts of less than €250, and they could have been issued without requiring Allied Irish Banks to accept any documentary evidence, e.g. Invoices or to stamp or submit any document to the Central Bank, provided the payments did not relate to prohibiting capital transaction or form part of a larger transaction or series of transaction.

"None of the cheques referred to at A or C would have required a Form E4 to be submitted to the Central Bank for record purpose as the individual amounts were less than €10,000".

You also state that, as previously advised to the Tribunal the Central Bank has not retained copies of the forms E4 in respect of any period earlier than 1992?

A. That's right.

MS. O'BRIEN: Thank you very much Mr. Dalton.

CHAIRMAN: Thank you.

MR. HEALY: That's the last witness today, sir.

CHAIRMAN: Thank you for your assistance today again, Mr. Dalton.

MR. HEALY: In view of some, I won't say difficulty, in which the Tribunal has encountered in accumulating information, we will not be sitting again until Friday, and sitting for the week commencing Friday morning, subject to any views you have concerning the matter, sir.

CHAIRMAN: I am aware of the difficulties that have been on-going in relation to obtaining certain statements and fulfilling the notice requirements as incumbent upon us. In these circumstances, and noting the degree of progress that has been made in recent days, I accept it is no major disadvantage to have to wave tomorrow's sitting. We will resume the day after tomorrow at half past ten, sorry Friday, yes. Thank you.

THE HEARING WAS THEN ADJOURNED TO FRIDAY THE 15TH OF OCTOBER, 1999, AT 10:30AM AM: