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TRANSCRIPT OF PROCEEDINGS

OWEN J

DAY TWENTY: MONDAY, 11 FEBRUARY 2002

HIH ROYAL COMMISSION

THE COMMISSIONER: Before we commence, as a health and safety measure, I have been prevailed upon to extend the luncheon break which was from 1 pm to 2 pm to 12.45 pm to 2.15. So the sitting hours will accommodate that and 12.45 to 2.15 will be the luncheon break. We have an application, I think.

MR BURCHETT: My name is Simon Burchett. I am counsel instructed by Ebsworth on behalf of the State of California Department of Insurance. The State of California Department of Insurance seeks leave to appear in respect of the inquiry into the Hannover Re transactions that I believe you will be commencing to inquire into shortly today. The interest of the State of California I think has been advised previously, but, effectively, we are the liquidator of the HIH companies in the United States and a party to the agreements that were entered into with Hannover Re and provided substantial funds in relation to those transactions, and there are some real questions about compliance with regulations in the United States concerning that transaction.

THE COMMISSIONER: All right, yes. Thank you, Mr Burchett.

MR WHITE: Your Honour, we don't oppose the application. We assume that if the application is acceded to, leave will be given on the usual terms. The extent of the participation will therefore be a matter for your Honour to decide.

THE COMMISSIONER: Mr Burchett, leave is granted on the standard terms and conditions. The standard terms and conditions are attached to the orders made on 19 September. At the outset, leave will be restricted to matters relating to the Hannover transaction, but if at any stage you wish to advance matters on any other issue then you could make an application.

MR BURCHETT: Would access be granted to my client to documents relating to that transaction?

THE COMMISSIONER: There is a mechanism for applying for log-on access to courtbook. I suggest that you take that

up with the solicitors who are assisting me.

MR BURCHETT: Thank you.

MR BEECH-JONES: If we could just resume with Mr Self.

<JOHN LINDSAY LOMAS SELF, ON FORMER OATH
<CROSS-EXAMINATION BY MR BEECH-JONES

THE COMMISSIONER: Thank you, Mr Self.

WITNESS: Good morning, your Honour.

MR BEECH-JONES: Q. Just one matter. You recall that on Friday you gave evidence of a discussion or a meeting at which you were present on or around 23 or 25 April 1998, as well as Mr Ellingsen, Mr Byatt, Mr Smith and Mr Barnum, whereby Mr Ellingsen outlined the need for the so-called gap in the aggregate excess of loss contract to be made up by additional contracts?

A. The meeting only included Mr Tore Ellingsen, myself. I can't remember whether Mr Andrew Smith was there, and on the other side was Daniel Wilkie and Tim Mainprize.

Q. I may have confused you. I think you also referred to an internal GCR meeting that preceded that meeting between yourself, Mr Barnum, Mr Byatt, Mr Smith and Mr Ellingsen. Do you recall giving that evidence?

A. We had many meetings of that sort and they were the people that were normally present, yes, particularly - everyone was present after about the end of March, I think it was.

Q. You in fact gave evidence, and this was at page 1291 of the transcript, of a specific meeting which occurred before you and Mr Ellingsen went up to see Mr Mainprize and Mr Wilkie?

A. That's correct.

Q. Just to pick up one point, you gave evidence that Mr Ellingsen explained that the worldwide solutions group wanted an additional agreement to go along with the agreement that had been discussed, being the aggregate excess of loss agreement. Do you recall giving that answer?

A. Yes, the agreement being the six - or what eventuated to be the six contracts.

Q. When you were explaining that Mr Ellingsen had indicated that the worldwide global solutions group had wanted that additional agreement, you added, , "I took that to be the chief underwriter over there", that is what you said in your answer. Could I just ask you who was the chief underwriter as at that time for the worldwide global solutions group?

A. That was John Houldsworth.

THE COMMISSIONER: Sorry, Mr Beech-Jones, can we just

make sure that I am understanding the terminology. You were referring there to "global solutions". There is something called "alternative solutions" and there is something also called "the business unit".

Q. Can you just explain to me - are they all one of the same thing?

A. I can qualify that, your Honour. Within our company we had truncated global business units. There was the aviation business unit, there was the bonds surety business unit and there was this, the financial services product business unit. This business unit was called global - at that stage I think, in the early stages it was financial services. It turned out later to be global alternative solutions business unit.

Q. So we are talking about one and the same thing?

A. We are talking about the same body, your Honour.

MR BEECH-JONES: Q. Mr Self, you also recall in the evidence you gave on Friday you made reference to your file, that is you took some notes of various things and you put them on your file?

A. That's true.

Q. When you mean your file, can you just describe it?

A. My file commenced at the first time I got involved in it. It started off as being one blue manila folder, which is just one of those wrap-around ones, and it split over into another one, and I kept them on the side of my desk on one of those side returns.

Q. I see.

A. They were about three inches thick, each of them, I think, at the end of it.

Q. So by the end of the GCR transaction, and by, say, later in the year you had two or three manila folders?

A. I had two.

Q. And do they have markings on the outside?

A. I think on the tab on the side that sticks out I would have had whatever recorded there, FAI financial whatever. I can't remember what I had written there.

Q. Did you see those blue manila folders last Tuesday when you again inspected documents of GCR?

A. No, I did not.

Q. Do you recall that you gave evidence on Friday that the meeting that occurred with Mr Ellingsen, Mr Byatt, Mr Barnum and Mr Smith, that is the internal GCR meeting, occurred prior to you going up to FAI some time between 23 April and 25 April, I think you said you would have taken notes at that meeting?

A. I did, yes.

Q. Did you see those notes last Tuesday?

A. I did not, no. To clarify the meeting, the meeting would have been before we spoke to FAI when Tore and I went up there, so it would have been before the meeting on the 24th. I think that was the date we determined the meeting was.

Q. On Friday you were asked questions about when you attended at FAI on 6 May to actually sign up the contract; do you recall that?

A. Sorry?

Q. When you attended on FAI on 6 May to sign up the contract, you gave evidence about that on Friday?

A. Sorry, I don't understand the question.

Q. Do you recall on Friday that I asked you various questions about what happened when you attended at FAI on 6 May to sign up the aggregate excess of loss contract?

A. Yes.

Q. Did you take notes of what occurred on that day?

A. Well, to me, it was only the signing of the agreement. I don't think I did on that occasion, because it was only just going up there and signing the agreement.

Q. I think you also indicated that you had taken notes of the meeting you attended on 18 March 1998 with Mr Ellingsen and Mr Wilkie which Mr Mainprize later joined you for lunch. Do you recall me asking you some questions about that?

A. Yes, I think - I was asked to obtain information and forward it over to John Houldsworth. I think, following that, I did take some notes because then I had to arrange for this information to go to John Houldsworth and whatever else happened at that stage I can't totally. I think we did cover it during our earlier discussion.

Q. Did you see notes of that meeting when you reviewed documents last Tuesday?

A. No, I did not.

Q. Similarly, you have given evidence about a meeting on 26 March with yourself, Mr Smith and Mr Mainprize. I think you said you took notes at that meeting?

A. I think I took notes prior to that meeting. I can't remember - because what we were doing was going up and explaining, I think it was the first draft, of the contract to Mr Mainprize. Andrew explained it and wrote on a whiteboard and to me I didn't - I know I had copies of notes when I was trying to understand the contract prior to us going up there.

Q. I see. Did you see those notes last Tuesday?

A. No, I did not.

Q. Do I take it it is your evidence that you are not sure whether you in fact took notes of the actual meeting with Mr Mainprize on the 26th?

A. I'm not sure. I'm regarded as a fairly good - I take a lot of notes. I may have and I may have not.

Q. I see. Just a couple of further things about 6 May, that is when you went up to the FAI and the aggregate excess of loss contract was signed. Do I take it you and Mr Smith took more than one copy of the contract to that meeting?

A. Yes, we took two copies, or two originals - two draft originals, both for signature, and they kept one and we brought one back to the office.

Q. Do you recall if any other documents were taken up there?

A. I don't think so, no. I only think we went up with that particular document.

Q. Out of yourself and Mr Smith, who took GCR's copy of the original signed contract back to the office?

A. Mr Smith.

Q. Do you know where that was placed within the office?

A. Within his files, I would have expected.

Q. You recall that after that meeting you sent Mr Wilkie a letter which referred to that if something that occurred with the aggregate excess of loss contract, it was rendered illegal or void, et cetera, the premium under the six contracts would be refunded. Do you recall that letter?

A. Yes, we spoke about it.

Q. Do you know where that letter was stored within the GCR records or files?

A. Yes, I can't recall that we are actually asked to provide that letter at the meeting, but I mean after meetings I had some phone calls with Daniel so that could have taken place. I know that I went in and discussed the drafting of that letter with Andrew Smith, and I forwarded a copy - well, that letter, to Daniel Wilkie and gave a copy to Andrew Smith for his files. He had the main files, and I also think I may have kept a copy with my note, if I had notes, on my file.

Q. After that meeting did you tell anyone within GCR that the aggregate excess of loss contract had been backdated to 16 March?

A. No, because that was the information for the alternative solutions group. I didn't talk to anybody outside the group of people that we'd originally arranged about that back dating.

Q. Do I take it you told Mr Barnum?

A. Quite honestly, I don't think I told anybody because it was requested of me by both Andrew and Tore - it happened. I gave them the contract. As far as I'm concerned, that was the end of my involvement. I think I further qualified the previous contract back to that

contract at the request of Daniel Wilkie.

Q. I understand that, Mr Self. I'm just asking you, when you went back to GCR, whether you told Mr Barnum that the contract had been backdated to 16 March?

A. No, I can't remember. I don't think I did.

Q. Mr Byatt?

A. Definitely not. Mr Byatt was involved in the meetings but the main contact with Mr Byatt was along what was required on an accounting basis.

Q. Did you tell anybody within the alternative solutions unit overseas that the contract had been backdated?

A. No, I think Andrew - that was Andrew's position as the representative of that unit.

Q. When you attended to review those documents last Tuesday, that is the GCR documents, did you enquire of anyone where your files were?

A. When I originally looked at the information before I put together my statement --

Q. That's your first statement?

A. That was my first statement - I basically went through the letters I had been involved in and they showed me those copies. Then on the weekend after that I thought, well, I didn't know enough about the - trying to pin together a sequence of what happened, because when you are away from it for four years it is very hard to do that. That's why I asked for them. I went through them on the Tuesday and my barrister indicated I should have read them again on the Wednesday and I did that. During those two meetings I was able to put together the sequence of meetings. I don't know if that answers your question, sorry.

Q. Just focus on my question, which was when you attended there, you noticed your files were not there?

A. I couldn't see my files. I saw the note about the six contracts, 12.5 million. I saw notes about my involvement in the due diligence and copies of the correspondence that I had written - and some of the internal e-mails where I had been named.

Q. But you didn't see all of the notes that you prepared at various meetings?

A. No, I didn't see my handwritten notes.

Q. All I am just asking you is whether you queried with anyone where those notes were?

A. No, I haven't.

Q. Mr Self, as you are aware, the deal between FAI and GCR that was negotiated and then documented in early May 1998 was then renegotiated towards the end of June 1998?

A. That's true.

Q. You know that in fact what happened was there came into force a new aggregate excess of loss contract that had the date 26 June 1998?

A. That's true. It had some extensions to the other contract.

Q. And that contract involved various changes to the types and range of cover?

A. I don't know whether it changed the types and range of cover of the initial contract. I think it extended the contract and I think it also named the six contracts, which if you can refer to as a side agreement or whatever, within that contract.

Q. Perhaps if you just check the agreement then. It is at document 164 in the folder in front of you.

A. Sorry, that is volume?

Q. Volume 2.

A. 104?

Q. 164.

A. I have that document.

Q. Could you just read that to yourself briefly, Mr Self. In fact, take as long as you need.

THE COMMISSIONER: While there is a silence, can you just mention the code number of the document?

MR BEECH-JONES: GCRC.004.004.

THE COMMISSIONER: Thank you.

MR BEECH-JONES: Q. Mr Self, have you had the opportunity to read that or are you still going?

A. I am still going. I am just trying to work out the sections 4, 5 and 6 actually. If I can just leave the terms of the document - it is too exhaustive to go through and I wasn't extremely heavily involved in that area. Yes, I have read it.

Q. Do you agree there is no reference to the GCR 6 contracts, is there?

A. Not as such, but section 6 indicates amounts paid and outstanding on or after 1 July in respect of Australian general and product liability policies and professional - including directors' office - that's true. I undertook that to relate to that area but - the position being on and after 1 June, I thought the contracts commenced after 1 May.

Q. Is it fair to say you didn't have a detailed understanding of what risks were covered by those six contracts?

A. I hadn't seen the slips on them so the answer to that is no, but I had seen a list from Stephen Burroughs of what the six subjects were. They were principally - and

I would have thought the money principally would have come from the general liability and indemnity area because prior to 30 April 1998 we were involved in contracts on an annual basis for those classes and that was where the majority of the money was received. They were traditional risk-bearing covers.

Q. Perhaps I will then ask you to look at document 116, Mr Self. That is the 1 May 1998 side letter where there is a brief description of the type of cover, we can go to the slips if you need to. It is HI.0014.0001.0175 in the index.

A. That is the number down the bottom of the page?

Q. Yes.

A. Yes.

Q. You see there the risk under the six contracts is briefly described. Do you see that?

A. Yes.

Q. The first three pick up aspects of professional indemnity?

A. Yes.

Q. The last three don't?

A. That's true.

Q. If you can then just go back to 164, GCRC.004.004.

A. Right. That's true, they don't align.

Q. Thank you. Just stay with that document 164, that is GCRC.004.004. Do you agree that the overall aggregate limit under the policy was \$87 million, that's page 2 of the document?

A. Yes, the combination of the 65 million for various classes and the 22 million for other classes - or other items.

Q. And then over the page, you will see the premium payable and you will see there that there is, for sections 1 to 5, \$75 million premium; do you see that?

A. Sorry, 75 million?

Q. That for sections 1 to 5, the total of those payments?

A. That's right.

Q. And then there is a further \$450,000 payable in installments per annum for section 6?

A. Yes, that totals 2.25 million.

Q. Leaving aside perhaps interest questions, a total premium of 77.25?

A. That's true.

Q. Thus on its face there was \$77.25 million premium for only \$7 million worth of cover?

A. On the face of this contract, yes.

Q. But again you understood that it was supplementary or replaced part of the 1 May deal so that there was a further \$12.5 million payable under the GCR 6?

A. That's true. This contract was redrafted to more clearly express the position of the first contract, and the same situation occurred.

Q. So, again, leaving aside some questions of interest on payment of money, all up there was \$89.75 million of premium for \$75 million worth of copy?

A. When you say 89, you are adding together?

Q. The 12.5 to the 77.25?

A. Yes, that's true.

Q. There are just a couple of other differences. You will note in the premium section underneath there is the heading "Premium deposit", and it says:

"100 per cent of premium payments ...(reading)... by the reinsured."

Do you see that?

A. No, sorry, can you direct me to that?

Q. That is on page 3 of the document, GCRC.004.006.

A. Yes.

Q. Do you see the section headed, "Premium deposit"?

A. Yes.

Q. Do you see there it has:

"100 per cent of premium payments for sections 1 to 5 for 1999 to 2002 will be held on deposit ..."

A. Yes, that excludes the premium for sections 1 to 5 for 1998.

Q. Do you see that?

A. Yes.

Q. So you might recall that the aggregate excess of loss policy that was signed on 6 May 1998, all the premium was to be held on deposit by the reinsured. Under this agreement the first year's premium for sections 1 to 5 is in fact to be paid?

A. It is getting too technical for me.

Q. I will start that again. Do you recall that under the contract signed on 6 May 1998 all of the premium was to be held on deposit by the reinsured; that is, not to be paid over?

A. That's true.

Q. And under this contract, I suggest, the first year's premium for sections 1 to 5 is now payable; that is, it is

to be paid in cash?

A. The only - I can't remember that detail, but I can remember when we left the meeting - when we signed the contract in June that Andrew asked for premium to be paid in accordance with the contract.

Q. I see. So do you accept that that is a difference but say that was not a difference you were aware of at the time?

A. I didn't get to that detail. I mean, I understood the overall aspect of what we were doing, but not the complete detail of the contract.

Q. With section 6, you see there it has payable of an amount of \$450,000 per annum over the life of the contract?

A. Yes.

Q. And you understood that there was another so-called side letter for section 6 providing for no claims under that section of the policy?

A. Yes.

Q. In fact, \$450,000 was a fee, in effect, payable by FAI for the renegotiation of the deal?

A. When you say for number 6, we just determined, I think, that number 6 read slightly differently. But my understanding was, yes, the six contracts related to this contract and --

Q. Sorry, I may be confusing you. Leaving aside the six contracts, do you see section 6 in the cover provided under the contract?

A. Yes.

Q. You see section 6, you recall that there was a letter signed on or about 26 June bearing Mr Wilkie and Mr Mainprize's signature under which they agreed not to make claims under section 6 of this policy?

A. You showed me that letter, yes.

Q. And that the premium payable for section 6 of \$450,000 per annum was, in effect, a fee for the renegotiation of the deal?

A. I understand that was the case, yes.

Q. It was described as the premium but it was really a fee?

A. Yes.

Q. Again, do I take it you accept that there was no risk of any loss to GCR on this transaction given that, together with those six 1 May contracts, it was receiving more premium than the aggregate cover that it was providing?

A. I think the premium to the losses over five years was zero. I think the additional premium was the charge for the global unit providing that cover.

Q. I see. But overall you understood that under the transaction, there was no risk of GCR suffering any loss because it was always going to receive more premium or fees than it was going to pay out in recoveries?

MR GEE: Your Honour, I have been letting this go but isn't this having the witness accept conclusions that spring from documents, if they do, and does it really help that he be pressed on his obviously imperfect understanding of the transaction detail?

THE COMMISSIONER: Is it the case whether or not, to the witness's knowledge, that was the intention?

MR BEECH-JONES: Yes, your Honour.

THE COMMISSIONER: Ask the question again.

MR BEECH-JONES: Q. Mr Self, you understood that under the transaction there was no risk of GCR suffering any loss because it was always going to receive more premium and fees than it was going to pay out on recoveries?
A. I understood that the additional six contracts were not to have claims drawn against them. In total, that would have been a result. When I originally looked at this overall contract, to me, as an underwriter, how did it make sense, I thought that on this class - very heavy class, I mean you couldn't get a heavier class or group of class of business, that a one in five year pay back is what I would have thought would have taken place. That was my way of sort of analysing it.

Q. Just coming back to my question before what you just said, do I take it when you take into account the payment of the \$12.5 million under those six 1 May contracts which you understood there were to be no claims, that overall there was no risk to GCR of incurring any loss because it was always going to receive more premium and fees than it could pay out in recoveries?
A. During the course of the contract I think they would have had risk but at the end of the contract, on 1 January I think it was 2003, that would have been the case.

Q. Just dealing with that, no matter what had happened in the interim, no matter what permutation of facts has happened in the interim?
A. Permutations were talks about during the negotiations by Tore. He indicated that things - they could claim earlier or later, depending on what happened in their books. So, yes, but the final result is that that was the case.

Q. When you said during the course of the contract there could be risk, did you mean by that that, look, there was a possibility that maybe at year 2 recoveries owing to that point would exceed premiums payable to that point?
A. That was the case, yes.

Q. You understood that claims payments were not to be made until 1 January 2003?

A. Yes, within the contract there was a debit and credit schedule, and I am only talking about the outcome that appeared on that schedule, not on the actual finalisation of the contract.

Q. Thank you. Earlier I think you used phrases - I think you said to me, "As an underwriter I thought on this class that it was a very heavy class, you couldn't get a heavier class or a group of five year business, that a one in five year pay back is what I would have thought would have taken place." Firstly, what did you mean by a "heavy class" business?

A. Well the big 6, as you call them, and the claims arising out of them, under the normal treaties that we wrote the professional indemnity in the market - and we were the larger underwriter of professional indemnity reinsurance - we had certain classifications of risk that we tried to exclude from those contracts because they were just too hazardous to write with in those contracts.

Q. So I take it that the big 6 was a type of risk that you wouldn't normally have looked at as an underwriter if it involved risk transfer?

A. That's true, and actually for FAI we did not write the big 6 through contracts prior to 1 May 1998.

Q. I think you also used the phrase "one in five year pay back". What did you mean by that?

A. When we wrote business or we looked at underwriting different classes of business, we talk about - we had a lot of models that used to model what we expected as the premium for a period, but as an underwriter you would say, "I want a one in five year pay back", one in six, one in ten, and that was just the experience coming out of how the account would run.

Q. I think you may be assuming that I have more knowledge than I actually do, but the actual phrase, "one in five year pay back", what is being paid back over five years?

A. You collect the claim after five years and at the end of the five years you expect to have had those claims totalling the premium.

Q. I see.

A. And also including costs, by the way. It is not just premium.

Q. You mean, commercially, when planning the underwriting of such a risk, you hope to recover what might be paid out in claims at least over five years?

A. That's true.

Q. Of course, in the ordinary course there are never any guarantees one way or the other, are there?

A. That's true also.

Q. In terms of how this agreement came about, you recall that there were various meetings on or about 23 June 1998 where a request by FAI for increased cover was discussed?
A. Sorry, what date was that?

Q. 23 June.
A. I'm a bit fuzzy on how this came up, but they did request the extensions, yes.

Q. Perhaps we might focus more on the time and the date. If the operator could bring up the following page, GCRC.013.079, which is an extract from Mr Self's diary. The diary commences at GCRC.013.072. It is not in that bundle in front of you, Mr Self, but it will come up on the screen. Can you see your diary or do you have to look over your shoulder?
A. I will do both.

Q. Just look firstly at your diary --
A. This is my computer diary.

Q. This is your computer diary. Did you have some other form of diary?
A. Yes, I had a diary - I usually used a handwritten diary as well as this because I came from the old times.

Q. Indeed. Do you know what happened to your handwritten diary?
A. It was my common practice to keep the diaries for a couple of years and then throw them out. I didn't keep diaries dating back many years.

Q. We will have to do the best with your electronic diary. If you see on 17 June there is an entry there where you have - it has "FAI - lunch, DW/TM/LJS/TE". Do you see that?
A. Yes.

Q. Do I take it that is a reference to a lunch engagement with Mr Wilkie, Mr Mainprize, yourself and Mr Ellingsen?
A. That's true, yes.

Q. If you go down to 23 June you will see three consecutive entries, one more for what would appear to be 10 o'clock, "Daniel Wilkie - FAI - discussion our office"?
A. Yes.

Q. And then another one appears to be for 5 o'clock, "DW re ART deal"?
A. Yes.

Q. And then another one for 9 o'clock, "TE re FAI"?
A. That's 9 o'clock at night?

Q. It would appear to be, yes. It might be consistent with calling Mr Ellingsen overseas, would it not?
A. No, all the negotiations on these contracts actually

were handled, as far as I knew, by Mr Ellingsen. So being that I have said we are going to have lunch earlier on, I would have expected Mr Ellingsen still to be here.

Q. Just before we come to the substance of those discussions, if you also just look at document 162 in the bundle in front of you, that is still in the second volume, and that is GCRC.004.014.

A. Yes, I have that.

Q. You see that is a letter you wrote to Mr Wilkie, signed by yourself and Mr Smith on 26 June?

A. Yes.

Q. We will come to this because, as I understand it, that was handed over at the time of signing the contracts on 26 June; is that right?

A. Yes. I think we called it a letter of intent or something.

Q. You described it as a letter of intent; is that right?

A. I think so, yes.

Q. You will just see in the first paragraph you recite:

"During our meeting in your office ...(reading)... prior to 1 June 1998 for a total value of \$40 million."

Do you see that?

A. Yes.

Q. It refers to covering claims amounts paid and outstanding on or after 1 June 1997. Do you see that?

A. Yes.

Q. Do you agree the letter suggests that you met with Mr Wilkie on 23 June?

A. Can I have that date up because I am trying to understand --

Q. Firstly, you agree the letter, which is in front of you, suggests that you met Mr Wilkie in his office on 23 June?

A. Yes.

Q. And he asked for further reinsurance protection for various things for a total value of \$40 million?

A. That was asked of us. I don't know if he asked me then. I mean, Tore would have been involved in that discussion because that was more in line with the way the transaction took place.

Q. I will just take you then back to your diary, and that is GCRC.013.072, at 079. You will see those three consecutive entries down there?

A. Yes.

Q. Would you agree that the terms of the letter and those

diary entries would suggest you did have a meeting - perhaps other people were there, but you at least attended a meeting with Mr Wilkie?

A. Definitely. I was the client liaison person. I would definitely be there, I think.

Q. It would suggest that he requested a further extension of cover up to the sum of \$40 million?

A. That's true. The initial request was greater than what we actually provided, and it was 40 million, to my knowledge, yes.

Q. Did Mr Wilkie say why he was requesting that much?

A. I think it was involved in - well, there is two stages to that. Tore was always asking to see if we could increase the contract to cover other issues that they may have. That was his sales sort of pitch, if I can put that sort of slant on it. This year, it looks as though this year - I would say that this was put in because that year of account is starting to run bad. So utilise the contract for that purpose.

Q. Did he mention anything about further deterioration in the under-reserving for those MIPI accounts?

A. I quite honestly don't know whether it was the MIPI account. It would have been for a further deterioration in an account, but I can't remember the exact reason for it.

Q. If you just note, I think I asked you to look earlier at the entry for 17 June where you have lunch with Mr Wilkie and Mr Mainprize and Mr Ellingsen. Do you remember if this topic, that is of a possible need for further protection, arose then?

A. I can't honestly say. But these were continuing discussions, so that could be the case.

Q. Can I just ask you this: was there some system for placing entries on your electronic diary? Would you do it or your secretary or someone else?

A. Could be a combination of both. I could do it if I had the time. My secretary used to come in and pick up my other diary and used to go in and make sure that it was included from time to time.

Q. Was there some common system within GCR whereby if, say, Mr Barnum or someone wanted to convene a meeting he would make sure that entries were placed on everyone's electronic diary?

A. That was normally the case, yes, we would arrange meetings by the diary, yes.

Q. If you just look down the entries for the 24th and 25th, you see for the 24th it has 24 June, apparently at midday, FAI, Daniel Wilkie and yourself and Mr Ellingsen?

A. Sorry, 24th - yes, yes.

Q. Would that suggest to you you had another meeting with

Mr Wilkie?

A. Yes, and it could have also been a lunch.

Q. I see. And the entry below that?

A. The entry below that is 4.30, is a further meeting involving Jeff Barnum and Tore and myself with Daniel Wilkie. That would have been further discussions.

Q. Is that entry "DW plus" signifying a meeting or a telephone conversation or could it be either?

A. No, to my knowledge - I very rarely put telephone conversations in my diary. It would have been meetings with the people.

Q. I see. In my questions I have been assuming that the third column from the left is time. Is that, in fact, correct?

A. I thought it was money actually, but, no, I don't know.

Q. And the column next to it that has the figures next to it, the 120, 30 --

A. Sorry, you are talking about the third column, that is time.

Q. And the column next to it?

A. I thought it was money. I don't know.

Q. I think you recall there was a number of drafts of the revised aggregate excess of loss contract circulating in that period between 23 and 26 June; do you recall? I will take you to some of them shortly.

A. No, I think - when we signed the original contract, I think that was the end of draft two, to my knowledge. I think there were three or four other drafts after that, yes.

Q. You agree that GCR worked with considerable speed between 23 June and 26 June to reach this revised deal?

A. Yes, that was the case.

Q. Was there any urgency or any reason for that urgency that you can recall?

A. Basically, I think the client requiring the contract to be finalised and --

Q. And they indicated they wanted it finalised by the end of the financial year?

A. I think both of us would have wanted the contract finalised by the end of the financial year, but we were being pushed by the client to have it finalised early, yes.

Q. You would want it finalised so that whatever the premium and fees recorded can be recorded in the year end accounts?

A. I didn't recognise that as a reason but I recognise it as - because the contract had been going on so long, we didn't want to carry it on too far.

Q. You understood that FAI wanted it finalised so whatever they were proposing to do under the contract could be recorded in their year end accounts?

A. I would have expected that that would have been for their year end accounts prior to 30 June, yes.

Q. I will just show you some of the drafts that resulted from those discussions leading up to the final version of the contract. Could you just look at document 139, which is GCRC.001.141?

A. Yes.

Q. You don't appear to have been copied in on that e-mail from Mr Smith, but you see that as the attachment, document 140, GCRC.001.142, he appears to have made a first stab at a redraft of the agreement?

A. When you say he agreed --

Q. Mr Smith appears to have.

A. I think that would have been Mr Smith and in accordance with discussions between those people, yes.

Q. You see Mr Smith's e-mail, which is 139, GCRC.001.141?

A. Yes.

Q. There is a reference to the pricing being \$450,000 per annum?

A. Yes.

Q. Did you understand, at this stage, leaving aside whatever other charges were in place, GCR would be charging a fee of \$450,000 per annum for the renegotiation of this deal?

A. For the final contract I knew they wanted that in as a component, yes.

Q. Not they; GCR were charging that to FAI?

A. GCR, alternative solutions, yes, that was their requirement.

Q. If you just look at Mr Smith's draft which is 140, GCRC.001.142, if you look at the premium section on page 3 --

A. Sorry, this is?

Q. Document 140.

A. Right, yes.

Q. If you look at the premium section on page 3, GCRC.001.144, you will see a premiums schedule.

A. Yes.

Q. In contrast to the final version, you don't have that specific fee payable for section 6 of \$450,000?

A. That's true.

Q. Because if you go back to 139, GCRC.001.141, Mr Smith

was suggesting that that would be arranged via a separate contract. Do you see that?

A. Yes, that's true. But I understand that that 450,000 was the requirement by the global alternative solutions group.

Q. Whatever happened, the alternative solutions group wanted a fee of \$450,000?

A. That's true.

Q. It wasn't going to be a premium for any extra cover, was it, it was just the fee?

A. It was to be included in the premium. The outcome eventually was that that was the fee that they wanted to put this transaction forward. When I say "transaction", this overall agreement forward.

Q. Could you then go to document 153, which is GCRC.001.048?

A. Yes, I have that.

Q. If you look in the bottom half of that page, you will see an e-mail to yourself and Mr Ellingsen from Mr Byatt, received by you on or about 25 June at 12:32:24. Do you see that?

A. Right.

Q. There had been various drafts, at least one other draft between Mr Smith's and Mr Byrne's, but at this stage Mr Byatt stepped in and he has apparently copied it to you. Do you see that?

A. Yes.

Q. We are again at the mercy of e-mail attachments, but it seems that Mr Byatt's version of the agreement is 154, GCRC.001.051?

A. It is much the same as the other one.

Q. Just a couple of changes. Firstly, if you look at page 2 of that version, GCRC.001.052 --

A. Yes.

Q. -- do you see there it has a section 6, "To be agreed", which is the cover?

A. Yes.

Q. Then if one goes over to premium, page 3 --

A. Yes.

Q. -- again, there's no separate premium there yet for section 6, but there is the \$75 million premium payable for the entirety of the contract. Do you see that?

A. That's true.

Q. If you just go then back to Mr Byatt's e-mail, 153?

A. Yes.

Q. If you then go to the second page, GCRC.001.049, you

will see an e-mail from Mr Byrne to Mr Smith, which is what Mr Byatt appears to be responding to.

A. Right.

Q. You weren't copied into that e-mail but you were copied into Mr Byatt's e-mail. Do you see that?

A. Yes, I think what happened, I think Andrew was ill with the flu and was at home and I know he had his portable computer with him because I was trying to talk to him on the phone and through the computer about what we had received.

Q. Do I take it that when you received Mr Byatt's e-mail on 25 June, which is on the first page, GCRC.001.048, you would have also picked up, as it were, Mr Byrne's e-mail?

A. Yes, I think I would have read it, yes.

Q. If you look at the bottom of the second page, which is Mr Byrne's e-mail, GCRC.001.049 --

A. Yes.

Q. -- you will see in point 4 he notes this, he is talking about a particular draft:

" ... will introduce a section 6, a cat layer ..."

You understand that to be catastrophe?

A. Yes, low risk, long term pay back.

Q." ... with an A\$18 million limit which will not pay until ... (reads)... that they are under-reserved elsewhere."

Do you see that?

A. I see that.

Q. At the time, I think you realised that whatever section 6 was going to be in the versions of this agreement, it was not anticipated that it would be paid out of?

A. That was my understanding over the overall agreement, yes.

Q. I think you also knew that there were to be, at some point, discussions between FAI and its auditors concerning the audit treatment of the agreement?

A. I didn't know that that was going to take place. I did know that Daniel Wilkie or Tim Mainprize, I can't remember, at the meetings with Tore, but they asked if we could at any time in the future - have you discussed this contract with our auditors to make it clear, would you do so, and I remember Tore saying that we would be willing to do so.

Q. Was that discussion at the meeting in April or the meeting in June?

A. It was when we signed the first contract. Sorry, it was earlier than that. I think it was when we negotiated

the first contract on the date - April, 24 April.

Q. That was the one I think you said in your statement occurred some time between the 23th and the 25th, and then, based on Mr Wilkie's diary, accepted that it was probably on the 24th?

A. That's true.

Q. Was anything else said about the auditors at that time?

A. Not to my knowledge, no. I think the letter - I think we sent a letter after that date following a phone call from Daniel on that, that this contract should, as you said, meet the requirements of the regulators and could we give them the contract in that regard and if it didn't then it would be wound down. But, no, we didn't talk about it.

Q. Just going back to the e-mails in front of you, and in particular you see Mr Byatt's e-mail, GCRC.001.048, in the middle of the page, document 153, that was sent to you on or about 25 June in the middle of the day?

A. Right.

Q. If you could then go to 142 in the bundle --

MR GEE: Is that date right, Mr Beech-Jones? I think you just put the 25th to the witness.

THE COMMISSIONER: It is the one at the bottom of the page, I think, Mr Gee.

MR GEE: I do apologise.

WITNESS: Sorry, that tab number was?

MR BEECH-JONES: Q. 142. GCRC.001.129. Do you see that's an e-mail you sent, it would appear after Mr Byatt's e-mail, to Mr Byrne, who is part of the alternative solutions group?

A. That's true.

Q. You see that you have referred to the fact that Mr Smith is away ill and that you have redrafted the document?

A. Yes, I did that in consultation with Andrew on the phone, and I sent that - whatever the document was I sent it off, yes. Sorry, what was that point again, just so I can read it? I just explained that without reading the point.

Q. Would you like that question repeated?

A. I just want to know which point we are referring to within this e-mail of 25 June.

Q. I haven't got to any point yet.

A. Okay, right.

Q. If you go to point 1, you will see it says you've

drafted the amended wording to include, "our fee of AU\$450,000 per year as agreed with FAI today"; do you see that?

A. Yes. I included it after talking to Andrew.

Q. To your knowledge, with whom at FAI had the agreement been reached?

A. That would have been one of the earlier discussions we would have had on the way through, I would have thought. It would have been one of the discussions with, from my diary notes, Daniel Wilkie, if that was in the course of that period.

Q. Do I take it that you don't have any specific recollection of speaking to someone at FAI about that?

A. No, I don't. That was - I think that was following discussions as they progressed which Tore was involved in. It was just - this was the way in which we were following the draft after those discussions.

Q. I see. I take it when you prepared this e-mail in conjunction with Mr Smith, you understood all the changes that were being made, didn't you?

A. I think back there I had a better understanding of it, yes.

Q. You agree that the e-mail you've sent reveals that you had a pretty specific and detailed knowledge of what the state of negotiations were?

A. Yes. I mean, I would have had to clarify this with Andrew because he had by far a better understanding of it, but, yes, I would have been getting closer to it.

Q. You see there point 1 it says, "our fee of AU\$450,000 per year"?

A. Yes.

Q. That is consistent with the earlier e-mails I took you to that the fee for the renegotiation was that sum payable per annum?

A. Yes.

Q. If you then go to the document that is attached, which is 144 - now, Mr Self, I should say this --

A. Sorry, which document?

Q. 144. GCRC.001.131. I should just say this: this is the form in which the material has been provided to the Royal Commission and --

A. Sorry - okay, I have it now, yes.

Q. Whether this is precisely the exact attachment to your e-mail is not something that we can readily determine, but as far as we are aware it is. If you then go to --

A. This is tab number 144?

Q. Yes. GCRC.001.131.

A. Right. Yes.

Q. If you go to the second page, GCRC.001.132?

A. Yes.

Q. You will see that section 6 has now been defined?

A. Yes.

Q. You recall that was the section that was being proposed was not intending to be paid out?

A. Yes.

Q. And you recall that is the section where there was eventually a 26 June side letter to the effect that unless otherwise agreed there would be no claims on that section?

A. Yes, but I wouldn't have drafted that section, I would have been told what to put in there.

Q. I understand that, but you recall that was what it comprised?

A. Yes, I recall.

Q. If you turn over the page you will see now the premium section on page 3, GCRC.001.133?

A. Yes.

Q. Do you see there in the heading, "Premium section 6", the \$450,000 is provided for?

A. Yes.

Q. You recall I took you to Mr Smith's e-mail where he proposed the payment of the \$450,000 under a separate contract?

A. Yes.

Q. Do you see that, by now, by your e-mail, it appears it has now been included in fact as premium payable for section 6?

A. Yes.

Q. A premium, that is, for a section of cover that was never to be paid out on?

A. That's what it shows, yes.

Q. In fact what has been introduced is a fee disguised as a premium, leaving aside whose idea it is, I suggest.

A. It was a premium, and the addition of those premiums to 2.25 was the fee for the global alternative solution business unit, yes.

Q. I mean, you only really paid a premium to get cover, didn't you?

A. That is my understanding of it.

Q. What was not being obtained was any cover, was it?

A. It doesn't state that.

Q. Yes, but that was what the --

A. I am saying it doesn't state that the cover was there.

No, I agree with you.

Q. Thank you. Was that your idea or Mr Smith's idea or both or somebody else's idea?

A. I'm afraid I didn't have the responsibility to make any decisions in regard to alternative solutions' contract, anything of a nature of drafting this agreement. This would have come from the alternative solutions business unit overseas in Dublin.

Q. Just going back to the e-mail at 142, GCRC.001.129 --

A. Yes.

Q. -- you see isn't the e-mail --

A. Sorry, that number is GCRC.009.010?

Q. No, GCRC.001.129, document 142. Sorry, I know it is confusing but if, for present purposes, you could ignore the bar code that has just "GCR"?

A. Sorry, I was in the wrong tab.

Q. If you just read the e-mail, this proposal of putting \$450,000 in the contract and describing it as premium is being sent to the alternative solutions people, not by them, is it?

A. Andrew Smith was the representative of the global alternative solutions business unit. I was not involved in that unit, and any instruction on the design of the product had to come from overseas. We did not have that responsibility.

Q. Are you saying it was Mr Smith's idea?

A. Well, Mr Smith put it forward, I think, initially. I don't know why, but I know there was discussion on that \$450,000 and, to me, discussion always embraced the people overseas, John Byrne, Houldsworth and Tore Ellingsen.

Q. Could I just then take you to document 149, which is GCRC.001.077. It is an e-mail to yourself from Mr Byrne.

A. Yes.

Q. Do you have that?

A. Yes. 077.

Q. Yes. Just to complete the confusion on dates and times, you will see that at the top it has from John Byrne at 4.22 am?

A. Yes.

Q. Do you see that is presumably the local time in Sydney that the e-mail is received?

A. Yes, I agree.

Q. If you just turn over the page to 078?

A. Yes.

Q. He appears to be responding to your e-mail?

A. Yes.

Q. We will just note the time on your e-mail is said to be 08:54:14.

A. Yes, on the 25th, right.

Q. The other version of the e-mail I showed you had the time 5:54:14. My point is would that suggest that that time is the time Mr Byrne received it overseas?

A. If that works with the time zones, yes, I think so.

Q. And Mr Byrne is in Dublin, is that right?

A. Dublin, yes.

Q. Going back to your e-mail after GCRC.001.077, if you could just read that briefly to your Honour, Mr Self, and I will ask you a couple of questions about it.

A. Okay. Right.

Q. You see, Mr Byrne is debating the various accounting treatments of what appears to be a couple of different versions of the agreement that are flying around?

A. Yes, and pretty late in the day, too.

Q. If you just go to the fourth paragraph, you see there the sentence reads:

"If FAI's accounting objectives are to get income statement relief of \$9.75 million this year..."

Do you see that?

A. Yes.

Q. By "income statement relief" you understood that to mean profit on the transaction at least?

A. I'm not sure. I couldn't quite honestly answer that. That could be the result but I'm not clear on it.

Q. I think you just said it was a bit late in the day because you recall it was on 26 June that you went to FAI and signed on the agreement?

A. It was late in the day because, basically, I think most of the heavy drafting negotiations were with Andrew and overseas, and I was brought in on a more detailed basis because Andrew was away ill.

Q. But you did go down to FAI some time on 26 June?

A. I think that's the date we signed the contract, yes.

Q. Just to pin that time down, if you can go to document 153, GCRC.001.048?

A. Sorry, that item number again was?

Q. 153.

A. Right.

Q. I took you to that earlier but if you now look at the top e-mail you will see the time. It is an e-mail from Mr Byatt to Mr Byrne copied to yourself at one second

before midday?

A. Right.

Q. He picks up on Mr Byrne's debate about the two versions and then you will see in the second paragraph he says:

"I have just spoken to Tim Mainprize (the finance director) ...(reading)... accounting/tax neutrality in our books."

Then the last part of the e-mail:

"In summary, we have gone with version 4. Andrew, I assume you will do a wrap up with John."

Do you see that?

A. That's true.

Q. Do you agree that the e-mail seems to pre-date the signing of the agreement?

A. Yes.

Q. Suggesting that you went down on the afternoon of 26 June?

A. That's true.

Q. Did you ever have a discussion with Mr Byatt about his discussions with Mr Mainprize that he has referred to in the second paragraph?

A. Not to my knowledge, no.

Q. When you spoke to Mr Mainprize, did he ever mention anything about "the discussions we would need to have with his auditors", FAI's auditors?

A. No, the only discussion involving the auditors I mentioned was that they wanted to know if we would talk to the auditors if they needed to clarify the contract.

Q. Which was the discussion you referred to earlier?

A. And they did bring up with Tore during negotiations throughout the contract that the financial contract should perform that position; in other words, it should meet regulator's requirements and the auditing requirements.

Q. Was that conversation directed to the contract itself, that is the aggregate excess of loss contract?

A. I'm not quite sure. I always took it to be the overall arrangement, but that could have been the situation.

Q. Mr Self, you'd agree it is hard to believe that the overall arrangement would pass approval with the regulators, wouldn't you?

MR GEE: I object to that.

MR BEECH-JONES: I will withdraw it.

Q. Mr Self, you didn't think that the overall transaction

would pass the approval of the regulators, did you?

A. I didn't at that stage know what the regulators really required. I put that into the hands of the alternative solutions people.

Q. Mr Self, you couldn't have believed that regulators would approve an arrangement where, overall, FAI would pay more premium fees than they could get in possible recoveries?

A. What I didn't agree at the time was that the six contracts should not be in a position where they shouldn't pay claims and I approached Tore about that. In the overall - as I say, I go back to the position that it was an extremely heavy class of business, although it was claims coming through from prior years I would have expected that contract to burn itself out and the contract to pay back the total amount of cover that was rendered. So I didn't really have an understanding of the requirements of the regulators at that stage. This was the first time, as I mentioned, that I have been involved in this sort of contract and this complexity.

Q. I think you say you approached Tore about that, that is some concern you had about the six contracts not paying claims. Is that the discussion you told us about on Friday where he effectively placated your concerns and said it is really a matter for the alternative solutions group?

A. I took it that - he said, "Don't worry about it", so I took it to the extent that they knew what they were doing.

Q. In terms of the documenting of the agreement on 26 June, can I just take you to 158 of the bundle in front of you, that is GCRC.004.015?

A. Yes.

Q. You will see there that that's a facsimile you sent to Mr Wilkie on that day, 26 June 1998, enclosing the draft of a letter for signing by himself and Mr Mainprize; do you see that?

A. Yes.

Q. Hopefully, the draft of the letter is attached to your facsimile?

A. It is.

Q. Do I understand that the effect of your amended statement is that that letter was drafted by Mr Smith?

A. The draft that was supplied there to me was provided to me by the alternative solutions people, and Mr Smith was the local person there at the time, yes.

Q. In terms of the actual bit of paper, do you say it was Mr Smith who gave you the paper?

A. To my knowledge, yes, that was the case.

Q. Do you recall that was one of the changes between your first statement and your second statement?

A. I don't understand.

Q. Perhaps I will take you to your statements.

If we can call up Mr Self's second statement, which I understand is WITS.0016.0025.

Do you have your statements in front of you?

A. Yes.

Q. Could you go to the second statement, the smaller one, paragraph 6?

A. That's the supplementary statement?

Q. Yes.

A. Yes.

Q. You will see in paragraph 6 of your second statement that the third statement from the end formerly read:

"I cannot recall whether I ...(reading)... alternative solutions colleagues."

That was my original sentence that I put in my statement, yes.

Q. That has been crossed out and you now state:

"The letter format of the ...(reading)... given to me by Andrew Smith."

A. That's true.

Q. What was it that prompted you having that recollection, that is you were not sure to you were sure that it was given to you by Mr Smith?

A. Again, when I was looking through the notes or the records that were provided to me on the Tuesday and the Wednesday. Prior to, they couldn't actually work out a trail of how things operated. I was trying to remember back that far without good records is very hard, but I was able to document down each memo or e-mail or conversation that I had been shown or I saw on these records, and I was able to come up with a better understanding and think it through and gain memory better.

Q. Was there any specific document or documents that prompted that recollection?

A. No, not really.

Q. The meeting of 6 May --

A. Sorry, the meeting of 24 April didn't come up until I had gone through that trail and I didn't see anything that would lead me to that meeting, but I did recollect that we spoke between that period of the 23rd to the 25th and from there I started to remember what happened.

Q. Again, I'm not suggesting there is anything improper in

this, but was your recollection partly prompted by reading the transcript of Mr Smith's evidence where he discussed these side letters?

A. No, not at that stage. I had read the transcript later, my wife had read the - I think the second day of his transcript, I didn't read all of it and she showed me a couple of things. That didn't come out of why I did it. I did it because really - I could see the trail coming out and being able to remember along that trail what happened.

Q. You went to this meeting with Mr Smith to see Mr Wilkie and I think Mr Mainprize?

A. Sorry, this is the meeting of?

Q. 26 June to sign up the second version of the agreement?

A. Mr Wilkie was there and Mr Mainprize was there, yes.

Q. At that meeting you took, again, two copies of the aggregate excess of loss reinsurance contract for signing?

A. To my knowledge, yes.

Q. You obtained a signed copy of the letter concerning no recoveries under section 6?

A. I think we did. I'm not sure but I think we did. I know that that letter was sent by me on the previous - it was a fax or a - a fax, I think it was. I don't know if we received that that day, but we did receive it.

Q. You handed over the letter of intent that I took you to earlier?

A. Yes.

Q. Were there any other documents handed up?

A. No, not at all.

Q. If you just look at document 161 in the folder in front of you, which is volume 2. That's GCRC.004.018.

A. Right.

Q. Was that letter handed over at that time, or did you provide it later?

A. I think that was the letter that was handed over.

Q. Sorry. That is 161?

A. Sorry, I am on 162. No, this letter was sent to them after we met them, or when we got back to the office we put it together. That was at the request of Daniel Wilkie, that he wanted a letter tying the second contract that they signed to the first contract that they signed. Because of the differences in the wording, he felt that he would be safer having some sort of link there.

Q. Again, without wishing to labour the point, you'd agree that this letter is also untrue insofar as it refers to the previous contract being signed on 16 March 1998?

A. Well, the reason we mentioned the 16 March there was the only way in which we could tie in the contract. There

was no other expression or number, it didn't have a treaty number at that stage which it was known by then, and it was the only way we could refer to it. The date of 16 March, as we said before, was a pre-date and it was incorrect.

Q. So I take it you'd accept to the extent the letter says that it is untrue?

A. I don't think this letter is untrue, I think the signing of the previous contract on the 16th - when we were there on 6 May was untrue.

Q. After it in your statement you refer to going to meet Mr Adler outside his office.

A. Yes, when we completed signing the contract, the second contract on 24 June, Daniel Wilkie said, "Mr Rodney Adler would like to talk to you", and both Andrew and I were taken upstairs. Rodney was in a meeting, we waited for about five minutes or so and he came out of the meeting and Daniel indicated that we had completed signing the contract and he basically said words to the effect of what I have said in the statement, that it was done quickly and professionally and he wanted to thank us for our efforts.

Q. After you'd signed up, had all four of you gone up to Mr Adler's office?

A. No, only Daniel, Andrew and myself.

Q. Mr Smith had your copy of the aggregate excess of loss contract, that is GCR's copy?

A. Yes, he did.

Q. And a copy about the side letter about no section 6 recoveries?

A. Again, I don't know - I can't quite be confident that that was there at the time, but that was signed. But he had whatever we had.

Q. And on the FAI side, did Mr Wilkie handle those documents?

A. I don't think he took them up. I think he left them with Mr Mainprize. I can't remember him having them there at the time.

Q. That is outside Mr Adler's document?

A. That's true.

Q. It is your understanding that Mr Mainprize may have taken those documents?

A. Or Mr Wilkie may have dropped them off on the way up. I know when we were there he didn't have the documents.

Q. When you say when you were there, when you were outside Mr Adler's office?

A. When we were outside Mr Adler's office.

MR BEECH-JONES: Is that a suitable time?

THE COMMISSIONER: Yes. 11.15.

SHORT ADJOURNMENT

UPON RESUMPTION

MR BEECH-JONES: Q. Mr Self, after the signing of the second aggregate excess of loss contract on 26 June, I understand your evidence is that it was Mr Smith who had custody of the GCR copies of the relevant documents?
A. Yes. I mean, he was responsible for them. He carried them, yes.

Q. To your knowledge, you didn't have any further involvement with where they were filed or to whom they were shown after that time?

A. Not to my knowledge. The main file for this contract, which embodied the aggregate excess of loss and the side contracts, they were all kept by Mr Smith. Andrew Smith, that is.

Q. I may have asked you this earlier, but you recall that meeting on 23 June 1998 where Mr Wilkie asked for the \$40 million that I asked you about before the morning tea adjournment?

A. Yes, as well as I can.

Q. Did you take notes of that meeting?

A. I can't remember, but I would have thought so because, as I mentioned before, I always documented down telephone calls and points like that on my records.

Q. Did you see any notes of any such meeting when you inspected documents last week?

A. No, none at all.

Q. Mr Self, did you ever have a conversation with Mr Barnum about any meeting he was going to have with the auditors of FAI?

A. No, I didn't.

Q. Were you aware that Mr Barnum met with the auditors of FAI?

A. I was aware after it had taken place. I don't know how I heard about it, but I was aware that it did take place, yes.

Q. Do you know how long after that meeting you were told about it?

A. I think - well, it wasn't anywhere around June/July, I think it was later in the year, and I don't know, you know it may have been weeks - I can't recall.

Q. Other than the fact that you were told that such a meeting had taken place, were you told anything else about the meeting?

A. Actually I tried to inquire and I couldn't learn anything about it.

Q. Who did you inquire of?

A. I think it was Andrew Smith.

Q. What did you ask him?

A. Just what happened.

Q. Do you recall what his precise response was?

A. Very vague and didn't - I know I just didn't follow it up. He didn't indicate to me how it went or went into any detailed involvement on it.

Q. Were you ever contacted by Mr Adler or anyone else about arrangements for someone from GCR to go and speak to the auditors?

A. No, I have never been involved with the auditors.

Q. Did you have any involvement in the preparation of GCRA's accounts concerning this transaction?

A. No, the only - I think at times during our meetings there was some discussions on accounts, but when I found out how the accounts were going to be handled, I got a call from Chris Byatt, and this, I think, was after discussions with Andrew and Tore and Chris, and they said that the six side contracts or the premium, the \$12.5 million you were talking about, was to be put through the treaty departments, this is the property and casualty treaty department's register, and that that would be retroceded to Cologne Re.

Q. When were you told that?

A. I think very late in the piece, but I can't recall.

Q. When you say "late in the piece", do you mean while --

A. I think it was before the end of June.

Q. 1998?

A. 1998, yes.

Q. What did you say when you were told that?

A. I just took it as a way that they would process it. To me, the decision of how the money flowed through to the global business unit and within the group was totally the responsibility of Chris Byatt and the others that he had spoken to.

Q. Was it Mr Byatt who actually told you that that's how those six contracts would be dealt with?

A. That is true.

Q. Did you ever hear anything further about how those contracts, all the aggregate excess of loss contracts, were to be dealt with?

A. Not to my knowledge, no.

Q. If I could ask you to look at document 209 in volume 3. GCRC.001.006, which is in volume 3 that you have in front of you?

A. Sorry, that was 2?

Q. 209?

A. My volume 3 starts off at 219.

Q. It could have been volume 2 then.

A. Yes, right, I have it.

Q. You will see just down the bottom of the page there is an e-mail from Mr Vukelic to yourself and others at GCR where Mr Vukelic inquires:

"Do we have any idea as to whether HIH is aware of our 'relationship' with FAI, in particular the likely economics of the deals done this year?"

Do you see that?

A. Yes.

Q. Can you take it from me that on 23 September 1998 HIH's takeover of FAI was announced?

A. Yes, I will take that.

Q. That would be consistent with Mr Vukelic's e-mail, I take it?

A. I would have thought so, yes.

Q. What you understood by the reference to the "likely economics of the deals done this year", was the fact that there had been an agreement entered into, or a transaction effected which, overall, meant that FAI paid more premium and fees than possible recoveries?

A. Well, I wouldn't have thought about it that way. I would have thought about it that we had an arrangement with FAI which we've discussed is the aggregate excess of loss and the side agreements, that they were keen to - and I can recall they were keen to see if this agreement would continue with HIH.

Q. Then if you look at the response from Mr Ellingsen at the top?

A. Yes.

Q. Again which is copied to you and says:

"I don't know [that is, whether HIH is aware] but before we close the second deal we expressed that HIH would have to inform any merging partner of the deals, as part of the merging process."

Do you see that?

A. Yes.

Q. He said:

"Daniel confirmed that this would be a natural thing to do."

A. Yes.

Q. Firstly, the reference to HIH is probably a mistake, isn't it, it is probably meant to be FAI; at least that is how you read it?

A. That is what I would have thought, yes.

Q. And the second deal is a reference to the 26 June aggregate excess of loss contract?

A. Yes, that's true.

Q. Were you present when there was a discussion between Mr Ellingsen and Mr Wilkie, or anyone else from GCR I should add, where there was a discussion about the disclosure of the terms of the deal to any merging partner?

A. I can't remember that conversation, but I would have thought, as with any treaty, that if the equity of the company was embraced with some other ownership that that would be the likely outturn, but I cannot remember that discussion, no.

Q. If you continue down the e-mail it says:

"However, in terms of our existing deals, I'm convinced that if the takeover will be completed, HIH will need to stay with the deal. Otherwise the hit to their balance sheet would be too volatile."

A. That is what he said, yes.

Q. What you understood by that was that if HIH didn't stay with the deal, that is they unwound it in some way, they would have to write down previous profits?

A. I quite honestly didn't draw any conclusion on that. The only thing that I knew was that Tore was very eager to have the deal continue.

Q. You know what a balance sheet of a company is?

A. I know what the balance sheet of the company is, yes.

Q. And a hit to the balance sheet would obviously be something that affects the balance sheet?

A. That's true, but as I mentioned I - I would have read it. It didn't strike me, it didn't hit me. I knew that Tore was very, very keen for it to continue and that was the sort of thought process I would have had at the time, I would have thought.

Q. Didn't you know that the deal that had been done by FAI was something that was overall not in its commercial interests?

A. As I said, we were pretty novice at this at this stage. It didn't spring to mind, no.

Q. Mr Self, how could you have thought that a deal whereby FAI paid more premiums and fees than possible recoveries could be in its best interest?

A. As I mentioned, the classes of business that were written here, I would have thought - I took it that the second deal, which is the six contracts, where it worried me that there was no recoveries under those contracts, I did have that concern and that was qualified by Tore. I was just of the mind that, as an underwriter, I would not have entered into a deal on this type of business unless within a five year period I would have got my money back. I suppose that's naive but that is the way I thought about it.

Q. Do I take it that with the benefit of hindsight you concede that this overall deal was overall detrimental to FAI?

MR GEE: I object to that. That has so much wrapped up with it. "Detrimental" is a very loose word.

THE COMMISSIONER: I think that is right. I am not sure that the witness's previous evidence would form the basis for that.

MR BEECH-JONES: I will withdraw the question.

Q. Mr Self, just bear with me. A minute ago I think you referred to yourself as being "naive"?

A. When I say "naive", I am saying in the beginning, knowing about financial treaties, I had very little understanding of their complexity. The people in alternative business units had many years' experience in this area. This was the first one that I had come across. So I am naive in having full knowledge of what is needed for financial treaties, yes.

Q. Didn't you at least suspect that this transaction was not of any true commercial advantage to FAI?

MR GEE: I object to that.

MR BEECH-JONES: Your Honour, I press the question.

THE COMMISSIONER: I think this time, Mr Gee, he has asked "Did you suspect". That's a question that the witness can answer.

MR GEE: I suppose, your Honour, I can't, with respect, quarrel with that. I must say, just how this can advance your understanding that this man, who's clearly on the periphery, had a suspicion leaves me a bit bewildered, I must say.

MR BEECH-JONES: Could I just address that because it is a matter of some significance. Lest there be no misunderstanding, those assisting you seek to avoid any possible need to re-call witnesses. Should at the end of the day, either those assisting your Honour or the other legal representatives here, seek to make submissions that your Honour should make some particular adverse finding,

no one wants to be confronted with a proposition that the terms of that finding or the consequences were not fairly and squarely put to the witnesses, so that they at least had the opportunity to answer.

THE COMMISSIONER: And that is why I am happy with the way you phrased the question, the second way, because it goes directly to this witness's state of mind.

MR BEECH-JONES: Q. Mr Self, didn't you at least suspect that this transaction was not of any true commercial advantage to FAI?

A. Not at all. I would not have replied in the letters I did where I indicated that as far as I was concerned the regulators would be happy with it, because I didn't have the knowledge to understand that in detail. So I didn't have that suspicion, no.

Q. Had you ever previously been involved in any transaction where policies had been written and then a separate letter had been obtained in which the reinsured had said that unless otherwise agreed they would not make any recoveries?

A. No, I had never been in that position.

Q. That at least caused you some concern, didn't it?

A. It did.

Q. Didn't you suspect that by documenting the transaction so that its entire operation was not contained in one document, but was set out in a number of different documents, there was the potential for either the auditors of FAI or the regulators to be misled as to what was the true commercial transaction between FAI and GCR?

A. No, I didn't understand. I took it that this was one deal. The way they eventually wanted to handle it was the way they handled it. I didn't think of this as two separate deals.

Q. You understood this all as one deal?

A. Up until we approached Daniel Wilkie and Tim Mainprize, I think we agreed it was 24 April, I am sure that Daniel Wilkie and Tim Mainprize did not know of the six contracts because they were somewhat set back by it, and up until that stage it was only the one contract. After that I understood it to be a combination of what turned out to be the six contracts and the fact that they couldn't claim under those contracts as being part of the aggregate excess of loss product that was being put forward by the global business unit.

Q. After that conversation, you knew that the aggregate excess of loss contract did not reveal the entirety of the commercial transaction entered into between FAI and GCR?

A. Yes.

Q. And you knew that it was contained in a number of documents of which that contract was only one?

A. I didn't know at the stage there was none. That was eventually worked out between Andrew and Stephen Burroughs where they came up with that list of documents, the six contracts.

Q. I am not suggesting you worked it out. By the time of 6 May, you knew that the aggregate excess of loss contract was only one document of a number that explained the transaction entered into between FAI and GCR?

A. I knew that - yes, I knew that Stephen Burroughs - I knew that there were other contracts which would - where the \$12.5 million would be collectable, and those covers would not embrace claims.

Q. So there was the aggregate excess of loss contract, there were the six contracts, there was the letter where they agreed not to make recoveries unless otherwise agreed?

A. That's true.

Q. And there was your letter saying that you would hand back the premium under the six contracts should there be one of the enumerated problems with the aggregated excess of loss contract?

A. That's true.

Q. Did it not occur to you that the transaction had been documented in that way so that, for example, the aggregate excess of loss contract could be shown by itself to either the auditors or the regulator?

A. No, not at all.

Q. Why did you think that it had been documented in the way it was?

A. Because that was the way they were collecting the \$12.5 million separately. I mean, if you take the conclusion of putting the \$12.5 million through as the six contracts being risk taking contracts, then those contracts would have had to have been put through by Andrew Smith. We had an underwriting practice we followed that there must be a second underwriter, and usually the underwriter who was in charge of that business would need to sign off on it. So, if, for example, some of those contracts embraced liability classes, then they would have to approach Andrew Allison, who was the treaty manager for casualty, and he would have to agree on those contracts. Prior to 1 May 1998 we had business from FAI on an annual basis which were all risk taking contracts, so there was a method there that would have to be followed.

That was our standard practice and it would not have been altered because we are not allowed to do that. It was laid down that we did that. So I can't see how that side of it would have eventuated because Andrew would have definitely come to me on that basis. The only three people that could actually underwrite liability business was Andrew Smith, to a limited form --

MR BEECH-JONES: I think we have let him answer the

proposition but we are getting --

WITNESS: I am trying to explain. We have very complex matrix responsibilities and underwriting responsibilities so I am just trying to indicate how it would have happened.

MR BEECH-JONES: Q. Mr Self, do you tell his Honour that your suspicions were not aroused when FAI asked you to backdate the aggregate excess of loss contract?

A. No, not at all. I thought at that period they were requesting the date to go back to when they first commenced the discussions. I didn't really think anything too greatly about it. I was worried about the request and I can remember talking to Andrew and asking his opinion of it because he was the person in charge of alternative business in Australia, and he replied as I have stated in my statement.

Q. Didn't you suspect that what they were trying to do was to put some distance between the 6 May contract, that is the one signed on that day, and that is the other six contracts so that no one would draw any conclusion that they were linked?

A. Not at all. As far as I was aware, they were going to collect \$12.5 million from the six contracts, and it really didn't matter when they collected it, but they would be collecting it. The other thing on that is that we were going to actually have a treaty agreement we were going to follow, so that would have been the - it was general practice that the treaty agreements were the main contract which we honoured any future claims or involvement in that way.

Q. I think you said something about the 16th, that you thought the contract was backdated to the date when they first commenced discussions. You said that a minute ago.

A. Well, on or about that time, yes.

Q. There was no discussion on 16 March, was there?

A. No, but I mean we spoke about that it was pick-a-date and that was the date that was chosen.

Q. Do you tell his Honour that you never, throughout this entire period, sat back and thought to yourself, why is it that FAI are prepared to pay more in premium and fees than possible recoveries under this transaction?

A. I never thought that, no, because, I mean, if you look at the - again, I say look at the hazard of what we are talking about. I would have expected this cover over five years to have burnt completely.

Q. When you say this "hazard", I mean it wouldn't matter what the hazard was. Mr Self, could you explain to his Honour why that would matter if what is being paid is more premium and fees than possible recoveries?

A. Well, I think the fees, given the right - there is a cost to provide that cover. Underwriting-wise, I would

have expected, as a traditional underwriter, over five years for that to happen with this class. We excluded, among others the Big 6 that we were talking about, the MIPI-type risks, out of our traditional covers that we operated with FAI prior to 1 May 1998. I would not have written this business on a risk program because we excluded it. We didn't like it.

Q. Precisely. But I asked you why did you think FAI would be prepared to pay more premium and fees than possible recovery. Isn't that just giving company money away?

A. Not if at the end of five years they expect to pay the claim - they expect to pay 65 million or 87 or whatever we are talking about. I expected over five years for that to take place.

Q. But you knew that FAI would be paying more than \$87 million in total premium and fees?

A. I expected that was the charge that the global alternative solutions people wanted to provide that contract, and that is what was stated by Tore to Daniel Wilkie and Tim Mainprize during that meeting on 24 April.

Q. Mr Self, I am not suggesting you are the architect of this, I am just asking --

A. I am not trying to take that responsibility. I am also trying to indicate to you that it didn't worry me. It was the decision of how this came together was all complex and it was driven by the alternative solution people who have far more knowledge of how this happened than I did, or what was involved than I did.

Q. Would you at least accept that by paying more premiums and fees than possible recoveries, FAI was simply giving company money away?

A. No, because I think initially they would have a situation where they would have had more claims to the debit and credit account than they would have had premium.

Q. Can I suggest that you, at the very least, suspected that the request to backdate the aggregate excess of loss contract on 6 May was made so that FAI could, if it chose, only show the contract and not the side letters and the other contracts to its auditors or to its regulators, or to any other person who wanted to deal with it?

A. Not at all.

Q. Were you, during the period May or June, aware of any rumour or suggestion that FAI might be the subject of a merger or a takeover?

A. No, I wasn't. Other than that which you showed me came from Milan Vukelic and that was in September, I think, that he mentioned that.

Q. Just a couple of further things. The document I have been calling the 1 May side letter, that is the one that was signed firstly by Mr Wilkie and then another version by Mr Wilkie and Mr Mainprize?

A. Yes.

Q. Was there ever any pressure on you from Mr Byatt to obtain those?

A. Not at all. The reason being is that I wrote the letter to Daniel Wilkie on 1 May, I think it was, back at that stage following a request from Andrew Smith and Tore Ellingsen that they hadn't received a letter stating that there would be no claims under that agreement. I rang Daniel, Daniel indicated to me that the only way he would send us a letter is if he got a request in writing. I then went back and spoke to Tore and Andrew in the room and they said could you write the letter and I wrote the letter and as far as I know I received another letter from Daniel to myself saying that that was okay. Those letters that you are talking about I can't remember them. If I would have seen them and they would have been handed to me, I am sure I would have written on "Received" so and so and squiggled my name, because I never let a letter go past that didn't have a date sign on it.

Q. Just to come back to my question, was there ever any pressure on you from Mr Byatt to obtain a letter to that effect?

A. No, not at all. I didn't think that Mr Byatt came into that equation at all.

Q. The letter that you wrote to Mr Wilkie asking for the letter stating there would be no recoveries, did you see that when you attended to inspect GCR's material last week?

A. I thought I saw something like that but I can't - I am aware that I sent the letter, I know that.

Q. I am only asking did you see it last Tuesday?

A. I can't recall. No, I can't recall, sorry. With honesty, I can't.

Q. Just finally, if you just go back to your second statement, WITS.0016.0025?

A. Yes.

Q. Just go to paragraph 3 of the amended statement.

A. Right.

Q. What you do in paragraph 3 is amend paragraph 15 of your earlier statement; do you see that?

A. That's true.

Q. In the fifth line you substitute the words, "aggregate excess of loss contract" for "transaction"; do you see that?

A. That's true.

Q. What were you intending to convey by that change?

A. Well, I just didn't like the word "transaction", to tell you the truth. I thought the statement was more in line with the aggregate excess of loss agreement. The

transaction really doesn't hold - didn't hold any appeal for me, but that's the only reason that I changed it.

Q. Did you have any understanding that there was some difference between the phrases "transaction" and "aggregate excess of loss contract" in that context?

A. Not really. Well, I mean the transaction to me and the excess of loss agreement is probably one and the same, but that is what we were doing, we were talking about the financial contract through the alternative solutions group, and at that stage I would have thought we would have been only talking about the aggregate excess of loss agreement, that is why I put it in. It was only after we had completed the due diligence and further work was done on the due diligence that the overseas company requested the 12.5 million side agreement to be arranged.

Q. Could you then go to your first statement, WITS.0016.001, paragraph 19?

A. Right.

Q. Just read the whole paragraph to yourself.

A. Right.

Q. In the first two sentences you refer to a meeting you attended with Mr Ellingsen, Mr Smith, Mr Byatt and Mr Barnum to discuss FAI's request; do you see that?

A. Yes.

Q. In fact, you would accept that you were present at the meeting where Mr Wilkie requested the extension?

A. Yes, I mean at that stage I was, as I said, a little bit more vague about it, but, yes. The meeting did take place and I was there.

Q. Then in the fourth sentence you say:

"My only role [this is in relation to the renegotiation, I take it] was to send a letter ...(reading)... marked G."

Do you see that?

A. Yes, I will just turn up G to make sure what I am sending.

Q. That is at WITS.0016.013?

A. That is correct. That is my recollection at the time.

Q. Do you accept that your role was more substantial than that?

A. Yes, after going through this, I do.

Q. Finally when you prepared your statement, that is your first statement, and it wasn't picked up on in your second statement, you made no reference at all to the 1 May 1998 side letter in relation to the GCR six. There doesn't appear to be any discussion?

A. That's true. As a matter of fact, in looking through the annexures, afterwards I also haven't seen a copy of

the letter to Daniel Wilkie, which I send - which brought that forward. I agree.

Q. Was there any particular reason you didn't address that topic in your statement?

A. It didn't really come to mind. I was asked to do it and I was the client contact person at that stage. I went and did it, I went and gave them a copy of the letter that I sent. To me it was just a function that I performed so it didn't readily come to mind. It is an important part.

MR BEECH-JONES: Yes, I have no further question, your Honour.

THE COMMISSIONER: Thank you, Mr Beech-Jones.

Q. Mr Self, before I call on other counsel, and I am sorry to take you over old ground, but I do want to understand your evidence on one particular issue, and that is the overall effect of this transaction. Mr Beech-Jones has put the questions to you, and I am not quite sure that I fully understand your answers so I am going to ask you these things again perhaps in a slightly different way.

A. Mm-hmm.

Q. You have agreed, I think, that you understood that there were to be no claims under what we are calling the GCR six, that is not section 6 of the excess of loss contract, that is the six placement slips?

A. That is true, your Honour.

Q. Put that to one side. Did you consider the transaction in this way, as to its overall effect, and for its overall effect you would have to have a look at the various side letters to which reference has been made, the six placement slips, and the excess of loss contract as varied and extended by 26 June arrangements. Isn't this one way of looking at it, and I am going to ask you whether you agree if this is one way of looking at it and then ask you whether you considered this: that so far as FAI is concerned, they pay out in cash a total of 21.75 in premium; that is, \$7 million under the 26 June excess of loss cover contract, which is the premium that is due 1 January 1998 and 30 June 1998?

A. Sorry, that's on the six contracts?

Q. Perhaps we should bring up GCRC.004.004 and go to the third page.

MR BEECH-JONES: That is 164, your Honour.

THE COMMISSIONER: Q. It is tab 164, apparently in your bundle. The third page of that agreement.

A. Right.

Q. You see there that GCR were to receive \$7 million, the first two items in the premium?

A. Right.

Q. Over the life of that contract, they would receive a further 2.25 as the premiums, which was in fact a fee - it was said to be a premium but in fact a fee for section 6?
A. Right.

Q. There is 9.25. If you then add \$12.5 million, which is the premium due under the six placement slips, that adds up to 21.75?
A. Right.

Q. So that is what FAI were paying out. If you then take the deposit arrangement, and let's assume as you say the cover was totally burnt by the end of its period, at the end of the period when you get the offsets - we have now gone forward I think to 1 January 2003 - the most that FAI could receive from GCR would be the total cover, \$87 million, less the \$68 million, which is the balance of the premiums payable for sections 1 to 5; is that right?
A. Less the 60?

Q. 68 - 20, 20, 14, and 14 that is being held on deposit?
A. I am following what you are saying.

Q. So that is \$19 million. The most that FAI could have received on 1 January 2003 under that arrangement is \$19 million, is that not right?
A. I never thought about it that way, your Honour, but I am following what you are saying.

Q. The first part of my question is is this one interpretation of the arrangement; that is, that FAI, over the period, were paying out 21.75 and the most they could possibly have received at the end of it was \$19 million?
A. I never thought about it that way. I was really relying on the interpretations of the global business unit.

Q. You have answered my question. You say that that never occurred to you?
A. No, it did not.

Q. And it never occurred to you that the fact that it was being documented in a way that you had not struck before, which I think is your evidence?
A. That's true.

Q. And which included the backdating of certain instruments didn't arouse any suspicion in your mind that this contract may require some further consideration?
A. No, it didn't.

Q. Thank you.

THE COMMISSIONER: Now, Mr Stevenson.

<CROSS-EXAMINATION BY MR STEVENSON

MR STEVENSON: Q. Mr Self, my name is Stevenson.
I appear for the Australian Prudential Regulation
Authority, the regulator.
A. Right.

Q. Can I ask you some questions about some evidence you
gave on Friday. Could we have on the screen, please,
page 1293 of the transcript. Can you go to line 27.
I just want to remind you of some evidence you gave on
Friday. In answer to a question from Mr Beech-Jones you
added this at line 27:

"I also note that I questioned Mr Ellingsen on the actual
fact that there would be no claims attached to this
business."

Do you remember you made that comment in the context of
being asked questions about the proposal that there be a
side letter to the effect that there would be no claims
under the six?

A. No claims under the side letter, yes. That was
following our meeting in our office, yes.

Q. My question to you is what did you actually say to
Mr Ellingsen? Can you recall? What was the nature of
your questioning of him?

A. Something in the order of why are there no claims -
I am worried that there are no claims under this side
letter.

Q. Did you tell him what the nature of your worries were?

A. No, I just - he gave me the answer not to worry about
it, that was what they did, and I just left it at that.

Q. You asked the question because it was a matter of
concern to you?

A. It was a matter of concern to me that we could have a
contract that we didn't pay claims on because anything
I have ever done on the traditional side of the business
we have always had claims resulting against those
contracts.

Q. Normally, if you receive a premium you expect you might
have to make a payment?

A. I would expect to pay a claim.

Q. That is the usual thing, isn't it?

A. Yes.

Q. Was your concern that it appeared that what was in
contemplation was that FAI and your employer would become
parties to a contract which neither party intended would
operate according to its terms?

A. Yes, in the case that the six contracts, which ended up
to be the six contracts - because at that stage we didn't
know how it was going to happen - but there would be a
collection of \$12.5 million in premium, and there would be
no claims made against them.

Q. Dropping down to line 39 on the same page, you see Mr Beech-Jones asked you whether you were concerned and you said, "Yes". You said:

"Overall, I think I had a different conclusion."

Can I ask you what you meant by that. What was the conclusion you had and how was it, to your mind, different?

A. Well, again, these contracts were all heavy contracts and - the thing that I was worried about was that there wasn't any claims about them. We had had - I mean, I didn't know at that time how they were going to be constructed. I can just say that I was worried that there would not be any claims back against the 12.5 million. In the overall context of the arrangement, being the excess of loss arrangement plus the six - eventually ended up to be the six contract, there would have been premium associated with - and I am taking out the fees here - that would be zero at the end of five years.

Looking at it as an underwriter on this heavy class of business, I would have expected to be paid back in five years. I wouldn't even have contemplated having another million or anything above that cover because as far as I was concerned it was going to burn.

Q. Thank you for that. I was rather wondering what you meant when you said you had a different conclusion.

A. That is what I meant. The conclusion, as an underwriter looking at two contracts together, I would have expected that the 12.5 million in there and the other premium in there, for the zero effect to be effected at the end of it, so it didn't worry me further from that aspect.

Q. You in 1998 understood, didn't you, that FAI was obliged to regularly report to the then regulator, the ISC, as to its reinsurance position?

A. Yes, as we all had to.

Q. As you point out, just as Cologne Re no doubt did, you understood that FAI would be obliged to annually submit reinsurance returns to the regulator?

A. Yes, because at General Cologne Re I was involved in putting down our retrocessions and our arrangements which I had a responsibility for on the forms to go to the Commissioner. So I was aware of that.

Q. You were quite familiar with the process then, I take it?

A. I was familiar with what I needed to provide to our accounts department, yes, for that return to go in.

Q. Tell me if you need to see this document again to recall yourself, but you recall on 9 April 1998 you sent to Mr Smith a document Mr Burroughs had given you, where

Mr Burroughs had said that one of the things that the proposed cover needed to do was to allow for sufficient risk transfer to meet with auditor and regulatory approval. Do you want to see that document?

A. I would have to go back and look at it but that was always a statement --

Q. I will remind you. The document I have is WITS.0016.012. It is annexure C to your first statement.

A. Yes, it is one of the allowed - cover needs to be designed to requirements, yes.

Q. You have been asked a lot of questions about what transfer of risk there was here and I will not go over that again, but you understood, didn't you, that FAI would submit, amongst other contracts of reinsurance, the arrangements that you have been discussing with Mr Beech-Jones over the last few days to the regulator as reinsurance?

A. I would have thought they would have had to, yes, disclose everything, yes.

Q. I will come back to that in a moment. You knew that if given the opportunity to do so, the regulator would be assessing the information given to it to investigate, amongst other things, whether there was a sufficient risk transfer to warrant the contracts being given the characterisation "reinsurance"?

A. Yes.

Q. I think you said before that you assumed that FAI would disclose to the regulator everything, would you say?

A. I would have thought that all the agreements that we were involved in would have been disclosed to the regulator, yes.

Q. It didn't occur to you in your wildest dreams that FAI would disclose to the regulator the side letter?

A. I would have thought they would have needed to disclose the side letters. That was part of the overall agreement.

Q. Can I just test you on that a little.

Could Mr Self be shown page 1314 from last Friday's transcript.

If we can scroll down to line 42, you will see that you were then asked a question:

"You understood that the existence of the side letter and the agreement to pay the \$1.5 million premium under those six contracts was a matter that FAI would be extremely anxious not to disclose either to the market or to anybody else?

Answer: I couldn't see how it could be disclosed to the market."

Wasn't it obvious to you that these arrangements are also

ones that FAI would be anxious not to disclose to anyone, including the regulator?

A. I didn't think of it that way. I mean, I wouldn't have given out a letter saying that these things - these documents would have met with regulator's requirements unless I was convinced that they would be disclosing them to the regulator. That is the arena within which we operate.

Q. I want to ask you about what you just said. Is there a letter in existence, do you say, that you have written where you have said that these arrangements would comply with the regulator's requirement?

A. No. The only letter that I wrote following the first meeting, that I recall that Daniel Wilkie rang up and wanted a letter, was the letter that I wrote on 6 May. I said I think that outlines that I thought the regulators should be fully aware of the situation.

Q. You are referring to the document which is annexure F to your statement, WITS.0016.029?

A. That's correct.

Q. Do you see that letter as being an assurance by Cologne Re of the likelihood of regulatory approval?

A. Not an assurance, but an agreement that if it didn't meet regulator's requirements then it could be unwound.

Q. Do you say that in writing that letter you assumed that FAI would make a full and complete disclosure to the regulator of all of the arrangements between it and Cologne Re?

A. Sure. That would have been my understanding, yes.

THE COMMISSIONER: Can we just identify that document?

MR STEVENSON: The copy I have, there are others of course, is WITS.0016.029. It is annexure F to Mr Self's statement.

Q. You see in that letter you refer to the aggregate excess of loss contract and to the six 1 May 1998 slips, but not to the side letter?

MR GEE: I object to that. In fact, that letter does the exact reverse of what my learned friend is putting.

MR STEVENSON: I accept the criticism.

WITNESS: That letter was drafted by --

MR GEE: Just a moment, Mr Self. There is no question on the table.

MR STEVENSON: No, I withdraw that.

Q. Could we have a look at today's transcript, page 1342. Can we scroll down, please. I think the

question and answer I am referring to is the one at 42.
In your answer you said:

"And they did bring up with Tore during negotiations throughout the contract that the financial contract should perform that position; in other words, it should meet regulator's requirements ..."

Who was it who brought those matters up, do you recall, who was it from FAI?

A. I think it was Daniel Wilkie. I can recall Daniel making that comment to Tore during our negotiations - during the negotiations that Tore had with them, yes, when I was present.

Q. Do you recall Mr Wilkie bringing up those matters after the time when the proposal and then the actual side letter was on the table?

A. Well, I can remember - I think the answer to that is, "Yes", because it was also brought up at the time when we also signed the agreement. I thought Tore was asked at our meeting on 24 April - I have to get these meeting dates right, but that was the meeting at which he indicated that the 12.5 million extra premium was necessary with no claims to be made against them, as part of the contract of the excess of loss.

At this stage Daniel asked Tore that if - I think that is the timing of it - that if this contract didn't meet with regulatory requirements could it be unwound, and he said, yes, we are quite willing to meet with people - I think he was talking about the auditors at that stage, but I know regulators were included within the same context. And Tore said, yes, we are quite willing to meet with them and explain it.

Q. Did you have any discussions with Mr Wilkie or anybody else from FAI about precisely what disclosure they proposed, that is to say FAI, proposed to make?

A. No, never.

Q. In particular, did you have any discussion with anyone from FAI in which the question of whether or not the 1 May 1998 side letter would be disclosed by FAI to the regulator?

A. No, not at all. I mean, I thought it was pretty clear they knew about it because I wrote to them and they replied.

Q. So you say pretty clear they knew about it?

A. Yes, when I write to Daniel Wilkie and request a letter that has been requested of me from Tore and Andrew, and he, without any hesitation said, "If they write to me I will give it to you", and that's what I stated to them; he needs something in writing, and they said send something in writing, so I sent something in writing and he replied back. I took it as quite a straightforward request from him that he wanted it in writing, I thought it was quite a

straightforward reply following on from the negotiations that Tore had had him - and I was present at those negotiations, but following on from negotiations that Tore had with Daniel and Tim Mainprize.

Q. What is your point, that this all made it clear to you that FAI knew about the side letter?

A. Oh, sure. They could not other than know about it because we had correspondence about it.

Q. Well, they had signed it?

A. Yes, that's true.

MR STEVENSON: Thank you, Mr Self.

THE COMMISSIONER: Thank you, Mr Stevenson.
Mr Newlinds.

<CROSS-EXAMINATION BY MR NEWLINDS

MR NEWLINDS: Q. Mr Self, my name is Newlinds.
I represent Arthur Andersen.

A. Yes. Who are you representing other than Arthur Andersen?

Q. Just Arthur Andersen.

A. Sorry, Arthur Andersen is?

Q. They were the external auditors of FAI in 1998. Do you agree that the product that was the subject of the marketing drive that is referred to in your 30 January statement was intended to have a positive effect on FAI's accounts?

A. I really didn't think of it that way, no.

Q. The product that was being marketed was not what you describe as a traditional reinsurance, was it?

A. No, that's true.

Q. It is what you describe as financial reinsurance?

A. That's true.

Q. And the way that financial reinsurance is marketed to a client is that it is suggested to the client that potentially this product may have an advantageous effect on their balance sheet and other accounts; correct?

A. When you say "on their balance sheet", that's the confusing part. It was marketed to them to meet a requirement that they had of under-reserving, and embracing some other risk that was brought into it.

Q. It wasn't --

A. The outcome of that would have been to affect their balance sheet, but I didn't follow that through.

Q. It wasn't marketed to them upon the basis that it involved them obtaining coverage for any particular risk, was it?

A. In the initial stages of the contract up until - when we met on 24 April for the final discussion, there was only consideration on the aggregate excess of loss cover. It was at that time that Tore introduced the requirement by the global business unit for the \$12.5 million of extra premium to be collected and for that premium not be subject to claims.

Q. I think you have agreed that for the product to have the effect on the balance sheet that was required, there needed to be identified a transfer of risk from FAI to GCR?

MR GEE: I object to that. He has agreed to no such thing.

THE COMMISSIONER: Try again, then Mr Newlinds.

MR NEWLINDS: Q. Can I suggest to you that you full well understood in 1998, when these negotiations were taking place, that for the product to have the effect on the balance sheet that was desired, there would need to be identified a transfer of risk from FAI to GCR?

A. I knew that at the end of the five year period the contract at that stage would be premium and claim neutral. On the first year's contract, or the way in which the contract ran over the initial periods, I expected the claims to exceed the premium.

Q. Would you please answer my question?

A. Sorry, can you repeat your question again? I thought I was trying to answer it.

Q. You full well knew at the time the negotiations were taking place in May 1998 --

A. Sorry, when in 1998?

Q. I will just have the question brought up and read it to you.

THE COMMISSIONER: Line 55, I think.

MR NEWLINDS: We might move on, your Honour, we have having a technology glitch here.

Q. Can I ask you another question, Mr Self?

A. Certainly.

Q. At the time of the marketing drive that you describe in paragraph 7 of your first statement, you understood that for the product that was being marketed to have the desired effect on FAI's balance sheet there would need to be identified by someone a transfer of risk from FAI to GCR?

A. The answer to that on a yearly basis, yes.

Q. And you agreed that people external to FAI would need to be satisfied that there was such a transfer of risk as

at the signing of FAI's books for the year ended June 1998?

MR GEE: I object to that. He has not agreed to that.

MR NEWLINDS: Q. Can I withdraw that question and put this proposition to you. You understood in May 1998, during the marketing campaign that's described in paragraph 7 of your statement, and during the negotiations that ensued, that people external to FAI would need to be satisfied that there was a transfer of risk by virtue of the transaction from FAI to GCR and they would need to be satisfied of that fact at least at the time of signing off FAI's books for the year ended 30 June 1998?

MR GEE: I object to that. Which question does he want the witness to answer?

THE COMMISSIONER: Can you split it up, Mr Newlinds?

MR NEWLINDS: I can.

Q. You understood that people external to FAI would consider the transaction, didn't you?

A. When you say "would consider", I didn't know - I knew that the transaction that we did would be subject to regulated and associated approval, yes.

Q. Is there some problem with my question?

A. Yes, because I thought it was very vague, "other people". I mean "other people" is quite a broad spectrum of people and I don't know.

Q. I am coming to that --

MR GEE: The witness can't know that, Mr Newlinds.

THE COMMISSIONER: Just continue, Mr Newlinds.

MR NEWLINDS: Q. You understood that people external to FAI would consider the transaction, didn't you?

A. Which people?

Q. Any people.

A. No, I didn't.

Q. Then what did you mean by your last answer when you referred to regulatory and auditor approval of the transaction?

A. Because that's what is required in the business that we do, and that is what FAI required of us during this negotiation and hence my replies and the letters that I sent out to Daniel Wilkie's request and - as far as I was concerned, that was the consideration all the way through. That is what we needed to do.

Q. You understood that in the process of approval that you yourself have identified, the people doing the approving

would consider the transaction, didn't you?

A. People doing the approving? I don't - can you explain what you mean by "people doing the approving"?

Q. Let's just focus on the auditors. You understood that the auditors would have to approve the transaction. You said that yourself?

A. I understood - yes, I understood that the auditors, if they had sighted it, would need to approve it.

Q. They would need to approve it, wouldn't they?

A. That's what they would need to do and that is what we agreed to assist FAI in doing by Tore agreeing to assist if they needed an explanation of the contracts.

Q. Of course they would sight the transaction because the transaction would be recorded in the books of FAI.

A. I would expect so, yes.

Q. That was the whole point of the transaction, wasn't it?

A. Sorry, I don't reach that conclusion at all.

Q. What do you say the whole point of this transaction was?

A. It was - as initially put forward by Daniel Wilkie to us, it was to provide a financial agreement for an under-reserving problem they had on MIPI which grew to bring into another area of ALAS which also grew forward in the structure of this treaty, or this arrangement, other areas as such as Y2K and the other extensions that were being asked all the way up to the second 2 contract, or the second contract, and really that again --

Q. I really wasn't asking --

A. I am trying to answer the question.

THE COMMISSIONER: Q. Mr Self, I thought it was a reasonably simple question and I think - I may be wrong - I don't like to intervene - but I think the question is to you: did you expect anything other than that the effect of the transaction would be reflected in FAI's accounts?

A. I thought it would have been eventually effected in the FAI's accounts. I'm not an accountant to know how that would have happened, but, yes, I did expect it to go through to the accounts.

MR NEWLINDS: Q. The question I asked you was not directed to what was originally proposed or discussed, it was directed to the original transaction that was done. I asked you what you thought the point of that transaction was?

A. It was to originally cover --

Q. Please.

A. I mean I can't answer that correctly because I didn't have the expertise at the time.

Q. I am just asking your opinion. What did you understand

the point of that transaction was?

A. The point of the overall transaction was to cover the under-reserving of the MIPI scheme, the ALAS scheme and the other areas that they brought into the contract by using the aggregate excess of loss agreement and the side letter agreement.

Q. I don't want to go over old ground, but FAI could never receive more money under this transaction than it paid out, could it?

A. At the end of the day, at the year 1/1/2003, the claims and the premium would be neutral and there would have been a fee paid out for this arrangement above that.

Q. So it didn't provide any cover at all, did it?

MR GEE: I object. It doesn't follow and it is unfair to the witness to put it that way.

THE COMMISSIONER: I think that is the ultimate conclusion.

MR NEWLINDS: Q. Can I float this idea with you, Mr Self. The very essence of a side letter is that it is secret, isn't it?

A. I don't draw that conclusion.

Q. Let's just take it step-by-step. To have a side letter, it needs to be beside something else, doesn't it?

A. That is a conclusion. That is reasonable, yes.

Q. And in the context we are discussing, it is a contract between a insurer and a reinsurer; correct?

A. That's true.

Q. And that contract, for all intents and purposes to anyone who read it, would appear to be a stand-alone arrangement; correct?

A. If you isolated each component, the answer to that would be "Yes".

Q. Let's look at the aggregate excess of loss policy dated 16 March 1998. On its face it would appear to record a whole transaction between the parties to it, doesn't it?

A. If it stands alone from the side agreements the answer is "Yes".

Q. If you just read it on its face, it doesn't give you any hint that there is any other part of a deal, does it?

A. It didn't, no. We tried - I can't comment. That was --

Q. It is obvious, isn't it?

A. It is obvious, and that was the way it was drafted as far as I can see, yes.

Q. If we add to that piece of paper the six slips that were signed on 1 May and put them together with the

aggregate excess of loss policy, they might be, in the trade, described as parallel arrangements, mightn't they?
A. They weren't put through the department to do that as far as I was aware because Andrew Allison didn't sign off on it, but if you took away the side letter the effect would be that, yes.

Q. The whole point of the six arrangements entered into in May was to ensure that the potential \$10 million shortfall to GCR under the aggregate excess of loss policy was made up by premiums that exceeded that amount; correct?
A. The six side contracts, being that they were for \$12.5 million and that Tore requested of FAI that will be no claims made against it, the answer to that would be "Yes".

Q. I haven't got --
A. In conjunction with the aggregate excess of loss.

Q. Next to the six slips was the side letter; right?
A. Well, I don't think the side letter, as far as I was concerned, was next to it. It was part of it.

Q. That's really my point. I think we all understand that that was part of the arrangement. It would have been perfectly possible, would it not, to include that part of the arrangement in the six slips?
A. That could have been done but I wouldn't have expected it to have been done because of the way it was negotiated.

Q. Can I suggest to you why you wouldn't expect that to be done?
A. Well, because when --

Q. Let me have a go.
A. Why?

Q. You wouldn't expect the six slips to, in essence, say FAI agrees to pay GCR premium for reinsurance cover as clause 1, and clause 2 to be, by the way, FAI hereby promises never to make a claim under this particular insurance cover. You wouldn't expect the document to say those things because, self-evidently, it would demonstrate to any third party who didn't understand the full ramifications of the transaction that in fact it was providing no cover whatsoever. What do you say about that?
A. I never really analysed it in that way.

Q. Just think about it now. It would be preposterous, wouldn't it?
A. Sorry, I was back then analysing it. I am not sitting here now analysing something I did so long ago.

Q. You spent, what, the best part of four decades in the insurance industry?
A. On traditional business, yes.

Q. Most of it in reinsurance?

A. The majority of it in reinsurance, yes.

Q. Traditional reinsurance?

A. Traditional reinsurance, yes.

Q. And part of your job over those four decades was to document insurance and reinsurance transactions?

A. That's true.

Q. The outline of the document that I have just put to you strikes you as ridiculous, doesn't it?

A. I mentioned that before, yes. I didn't think that insurance contracts could - should not be claimed against and that is why I spoke to Tore about it.

Q. It is ridiculous to have an insurance contract that in one breath says there will be claims and payments, and in the other breath says that there will not be any claims and therefore no payment?

A. I agree with that, and that is why I asked the question.

Q. And it would be stupid to record that arrangement in one document, wouldn't it?

A. Well, it would be, but --

Q. But then when you think about it, it wouldn't be stupid at all as between the parties to the transaction because they understood that that was the arrangement; correct?

MR GEE: I object to that.

WITNESS: I don't agree with that.

MR GEE: I object, with great respect. Of course, technically, these questions are capable of being asked, I am not shrinking from that, but what my friend is doing is getting a peripheral witness to give him some material which you will have ultimately served up to you in supposed support of some submission for the auditors. Does that help the process, with respect, your Honour?

THE COMMISSIONER: I think, Mr Newlinds, I understand that proposition that is being put and again I am wondering whether the witness can give me much more help than he has.

MR BEECH-JONES: Can I just raise one matter in that context? The description of Mr Self as a peripheral witness is perhaps a matter for submission.

THE COMMISSIONER: Don't worry about that sort of thing.

MR BEECH-JONES: Could I just ask perhaps if Mr Gee could take instructions to see if there is any further development to the position of Mr Ellingsen, because there is no doubt that Mr Self's evidence suggested that

Mr Ellingsen had a principal role in this transaction and we are still unclear as to whether we will have the benefit of Mr Ellingsen. So perhaps if Mr Gee could take that on notice.

THE COMMISSIONER: No doubt that is a question that will be raised. Yes, Mr Newlinds.

MR NEWLINDS: Q. Can I just cut through this. You only have a side deal because you don't want third parties looking at the arrangement to understand the full ramifications of the arrangement. Is that right or not?
A. That wasn't my understanding at the time. We had a - that was --

Q. What was your understanding at the time?
A. My understanding at the time was that we had an agreement --

Q. Please.
A. I am trying to make the point.

Q. I am focusing on the side letter here. Why did you think there was a side letter at the time?
A. Because they didn't want the \$12.5 million to be addressed by claims against it.

Q. I think we all understand that, Mr Self, but why in a side letter? Why in a side letter? Why not in the document itself?
A. If I was a capable and experienced financial product underwriter at the time, I would have been able to answer that question but I'm afraid I wasn't.

Q. It was because it was meant to be kept secret from people like the auditors, wasn't it?
A. That was not my conclusion.

Q. You now that now and you knew that then, don't you?
A. I don't know it as you are stating. I think it is a risk that is associated with it, yes. I would expect the auditors to receive everything.

Q. Including the side letter?
A. Including the side letter.

Q. And you knew that there was a possibility that - indeed a possibility that came to pass - FAI might need GCR's assistance in speaking to the auditors to explain the transaction?
A. Well, yes, I was aware that they asked that of Tore Ellingsen and Tore agreed that they could assist when the time arose.

Q. Indeed, I think you have a recollection that Mr Smith reported to you that he and Mr Barnum, I think, was it, had a meeting?
A. I heard that they had had a meeting. He didn't report

it to me, and that was some time - months later from when we signed the second agreement and I didn't hear anything out - when I asked about it, I didn't hear any reply about what had taken place during that discussion.

Q. Such a meeting was consistent with the service that you understand GCR was providing to FAI?

A. I would have seen no reason why it would not talk to a product which we had given a client.

Q. And the reason that the auditors would be interested in the product was so that they could be satisfied that it could be treated in the accounts of FAI in the way FAI was suggesting?

A. That there was a proper document to cover, yes, all the regulatory requirements and whatever requirements were necessary for it to be a proper transaction, yes.

Q. Do you sit there today on your oath and seriously suggest that at such a meeting the side letter would have been discussed?

MR GEE: I object. This is, in this context, so far beyond anything that can reasonably be asked that it needs consideration.

MR NEWLINDS: He has already said that he thought all the documents would be disclosed.

THE COMMISSIONER: He has said that, and that is the reason why I will allow you to pose the question.

MR NEWLINDS: Q. Do you really suggest that you thought that all of the documents would be disclosed to the auditors?

A. Well, yes.

Q. Including the side letter?

A. Everything.

MR NEWLINDS: Nothing further, thank you.

THE COMMISSIONER: Mr Hammerschlag.

<CROSS-EXAMINATION BY MR HAMMERSCHLAG

MR HAMMERSCHLAG: Q. Mr Self, my name is Hammerschlag. I appear for Mr Rodney Adler. In 1998, at the time of the events with which you have been detained for the last few days, the company that you worked for was an amalgamation of General Re and Cologne Re; is that right?

A. That is true. There was a takeover by General Re, said to be a reverse takeover at the time, of General Re on to Cologne Re.

Q. General Re is and was a large United States corporation; is that right?

A. Yes, it was the largest reinsurance company in the

United States.

Q. And the Cologne Re --

A. Sorry, I think it was number 3 or thereabouts in the world.

Q. And the Cologne Reinsurance Company was an old Prussian company that had been founded in the mid-19th century?

A. I think it was said to be the oldest reinsurance company, yes. And it was number 4, I think, in the world.

Q. So by 1998 you were working for an entity that comprised two of the largest reinsurers in the world?

A. Yes, they came together effectively in the books I think from about June 1996, but we were actually sitting together combining these two companies from about 1995, beginning of 1995.

Q. And this amalgam of these two ancient and respectable companies, compared to FAI, they were giants and FAI was a small entity?

A. If you are talking about size monetarily the answer would be "Yes", but in our own market FAI was an extremely sizable and considerable company also.

Q. And an important client to you, as you have said in your statement?

A. Yes.

Q. Now, this amalgam of General Re and Cologne Re, it was divided from an operational point of view into business service units as you understood it?

A. Very definitely. Quite a matrix of services, yes.

Q. And those included regional business units for a start, for example, a business unit for North America and one for Germany, one for Europe, one for Latin America, one for South East Asia and one for the Far East?

A. Yes, we did have - I think it was four and it was made into five regional areas, yes.

Q. And then, in addition to that, there were a number of global business units, and those included aviation and the enterprise that we have been talking about before his Honour called alternative solutions?

A. The full list of global operations was casualty facultative, casually proportional, marine, aviation, bonds surety and financial products. They were all global units with global underwriters.

Q. These were, in other words, endeavours and enterprises that were of international and global character?

A. Yes, very definitely. Actually the reporting lines for underwriters on these were truncated through these global underwriting units.

Q. And these gentlemen that we have heard of, Mr Vukelic and Mr Tore Ellingsen, they were attached to this global

business unit called alternative solutions?

A. Yes. The global alternative solution business unit was formed in 1997/1998 with Milan joining us or being hired, and the first I heard about it was in 1997 at an underwriting conference. At that stage they indicated that this financial business unit would be in the international environment. They had a similar financial business unit for North America with General Re.

Q. And of these gentlemen, Mr Vukelic and Mr Ellingsen, as you understood it, who was the most senior?

A. Milan Vukelic was in charge and set up the alternative solutions business unit for Peter Gerhardt - or for the company, rather, and he reported to Peter Gerhardt. Tore Ellingsen was, I think, hired in early 1998 and was given the areas of Australia and New Zealand, amongst others, as being responsible for within that department. That's basically a marketing person because he had to refer back to other people for underwriting decisions.

Q. These gentlemen, then, as you have told his Honour, came to this country on a marketing push in 1998 and you introduced them to Mr Wilkie of FAI?

A. That is true.

Q. Before doing that, Mr Wilkie had raised with you the possibility that he might need to talk to you about some reinsurance business because the business he was doing with another reinsurer was taking too long?

A. That is true.

Q. What that was about, as you understood it, was that there had been a potential under-reserving and FAI wished to take steps to protect itself against that eventuality?

A. I don't link - linking the two, I was told at a later meeting when Milan and Tore were present that that was the under-reserving position they wished to discuss.

Q. Then what happened was there was embarked upon something which is described as a due diligence operation?

A. Yes, it was asked by the global business unit that we complete a due diligence, yes.

Q. Why does one have a due diligence, as you understood it, Mr Self?

A. To find out more information.

Q. Is that to find out information from a point of view of assessing the risk involved?

A. I think given information on under-reserving and they wanted to try to find out to what extent the under-reserving was and they were comparing it against their own operation on the MIPI account through Cologne Re, and other information received from other people.

Q. Why, as you understood it, did they want to know what the extent of the under-reserving was? In other words, why was that relevant to them?

A. I can't answer that question. That's what they wanted to test.

Q. In order to find out, would we have to ask Mr Ellingsen and Mr Vukelic?

A. I would suggest they are the better people to ask, yes.

Q. Because one undertakes a due diligence, as you understand it, because you want to assess the risk involved in a transaction you are about to enter into; is that right?

A. Wanted to extend the extent of the risk, not the risk itself, because I would have understood the MIPI scheme to have been quite risky anyway.

Q. Is this right, that relations between insurers and reinsurers often depend on a degree of cooperation and trust?

A. I suspect they get better the closer they get and do business together, yes.

Q. And you, for your part, had been doing business with the FAI group from the early 1970s?

A. I think it was the late 1970s, but somewhere around then.

Q. And you had started the relationship on the General Re side with Mr Larry Adler, the late father of my client, Mr Rodney Adler?

A. That is true. That is when I was in the facultative department before 1983.

Q. Around by 1998, you had a good relationship and you were prepared, as you did in an e-mail that you sent to Mr Houldsworth and others on 19 March 1998, to say, amongst others, that so far as you were concerned in general terms, FAI, Mr Rodney Adler had been managing the company out of the situation of his father's historical management very well?

A. Yes. The company prior to Rodney being involved had a far different structure and Rodney was imposing greater skills at the management level of the company in order to do the business better.

Q. Thank you. It is not uncommon, I think it has been put to you by previous questioners, for matters between an insurer and its reinsurer to be left over for later agreement?

A. I don't know what you are getting at.

Q. Somebody might issue, for example, a cover note and leave the full terms of the policy to be renegotiated later?

A. Of a policy or of a slip or of a --

Q. Yes. A policy or a slip?

A. In the signing of these documents that didn't take place.

Q. I understand that, but I am suggesting to you that it is not uncommon for that to happen?

A. I don't think I have ever come across it.

Q. Okay. One area where it might happen, for example, is where - let me withdraw that. I will put it a bit better. For example, when one does business as a reinsurer it involves generally, and certainly in the case of FAI, an assessment of the relationship between premium income and claims over a long period of time?

A. The answer to that is "Yes", we had been operating with FAI over a period of time and there were definitely times there where the account was very profitable to us. Also, as you indicated, Cologne Re, because both of us had a very strong position with FAI given our separate involvements.

Q. This is the position, is it not, that it was made clear to you, both from the side of your employers and FAI, that the arrangements that Daniel Wilkie had in mind were required to be put in place with some degree of urgency?

A. That's right. We were pressured during that period to complete the contracts.

Q. What happened was the negotiations started in March of 1998 and were fairly well advanced by 22 to 24 April 1998?

A. Definitely, because 24 April 1998 was when Tore and I went and saw Daniel and gave the final terms of the aggregate excess of loss and the six side agreements and the position of having no claims under the six side agreements.

Q. Until you heard about the six agreements, as they have been described, your involvement was in effect restricted to the excess of loss insurance contract?

A. That's true. I only heard of the requirement for the 12.5 million - which turned out to be under the six agreements - in the latter part of April, which would have been prior to us going up to see them.

Q. Would this be a fair description then of what happened?

Mr Gee is concerned about the time, your Honour.

THE COMMISSIONER: Is it a convenient time?

MR HAMMERSCHLAG: Yes, your Honour. I am in your Honour's hands. I think I will be at least 15 minutes.

THE COMMISSIONER: 2.15. Mr Gee, when we come back I will ask you to respond to the question that Mr Beech-Jones raised about the availability of the other witnesses.

LUNCHEON ADJOURNMENT

UPON RESUMPTION

THE COMMISSIONER: Mr Gee, was there any advance on your former instructions?

MR GEE: At the moment, your Honour, I can add nothing to what I said on Friday. However, as the matter has been raised again it is the intention of my instructing solicitors to contact our American corporate client to see whether there is any further information available about the processes that I think your Honour knows are under way.

THE COMMISSIONER: All right.

MR GEE: If we can say anything helpful tomorrow we will. Everyone will of course be conscious of the big time difference and the day difference. So could I just leave it there at the moment.

THE COMMISSIONER: Thank you, Mr Gee. Now, Mr Hammerschlag.

MR HAMMERSCHLAG: Q. Mr Self, would this be a fair description of what happened, that up until the time that you attended the meeting with Mr Wilkie, Mr Mainprize and Mr Ellingsen, you had no idea about the fact that the six insurance slips were going to be introduced by Mr Ellingsen as a requirement?

A. No, Mr Ellingsen didn't introduce the six slips, he introduced at that meeting the situation of something to be a vehicle for the 12.5 million.

Q. Right.

A. I knew about that at a meeting the day before.

Q. It was clear to you that at the time he introduced it to Mr Wilkie and Mr Mainprize, they hadn't known anything about it before?

A. They were surprised and they didn't know anything about it.

Q. Did they express their surprise?

A. Yes.

Q. What did they say?

A. I think they just reeled back a bit. I think it was more of a body language surprise rather than a voiced surprise. I know they indicated that they couldn't- they had to consider it and come back to us.

Q. This requirement that was communicated to them by Mr Ellingsen, can you tell his Honour, so far as you can recall, how Mr Ellingsen put it?

A. Look, I can't really because Mr Ellingsen, being a marketer, sales sort of person, put it in a better way than I could ever explain it, I'm afraid. But the end result was what I'd stated.

Q. Did he say, "You are going to have to pay us some premium on some other insurance and you can't claim on that insurance"?

A. That was the gist of what he said, yes.

Q. Or did he say, "We are going to write some policies and without further agreement you won't be able to claim"?

A. No, it was the former.

Q. You've seen the terms of the side letters?

A. I haven't seen the - I hadn't seen, and I haven't read the slips in total.

Q. I am talking about the side letter --

A. The side letter that - I wrote the side letter, or I wrote a letter to Daniel requesting him for a reply on the - that no claims would be forthcoming under that agreement. At that stage it was - under that \$12.5 million.

Q. Before this Commission, you have seen the side letter that ultimately emanated from FAI in relation to the six policies, or haven't you even seen that?

A. I saw two of them but they showed me one without a date stamp, one with, and one with two signatures and one with one.

Q. You have read that each of those letters makes provision for there to be no claim unless the two parties mutually or otherwise agree?

A. Those letters don't. But I think a letter I wrote to them later did, or earlier did - sorry - after we signed the first contract I sent a letter to that effect on the request of Daniel Wilkie.

Q. Can you shed any light on how the side letter of 1 May from FAI came to include the words "unless mutually agreed by both parties"?

A. Which one are you referring to?

Q. The side letter of 1 May 1998 from FAI to the managing director of General and Cologne?

THE COMMISSIONER: I wonder if we could identify the letter, Mr Hammerschlag.

MR HAMMERSCHLAG: It is WITS.0017.275.

WITNESS: I have nothing coming up on my screen.

MR BEECH-JONES: Perhaps there is another copy of 116 of the GCR index, HI.0014.0001.0175.

MR GEE: Could I just add that I happen to be able to see the witness's screen. I think it may be requiring some technical assistance.

THE COMMISSIONER: I don't think anything is coming up, Mr Gee.

WITNESS: Right, that is a letter from Daniel Wilkie to our managing director, yes.

MR HAMMERSCHLAG: Q. Can I just remind you, you will see in the preamble to the letter it says "unless mutually agreed by both parties"?

A. Yes.

Q. There was another side letter executed by Mr Wilkie and Mr Mainprize on 26 June in relation to section 6 of the aggregate excess of loss reinsurance contract. Do you remember that side letter?

A. Yes. This one doesn't have the stamp on it that I saw before, but, yes.

Q. And the other letter --

A. Is that GCRC.004.002?

Q. I can't answer that.

MR BEECH-JONES: It is GCRC.004.003, 163, I think, your Honour.

WITNESS: That one is dated 28 June, is correct.

MR HAMMERSCHLAG: Q. 26 June?

A. Sorry, 26 June.

Q. It also has the words "unless mutually agreed by both parties"?

A. It does.

Q. I would just like to get from you - do you have any knowledge as to how those words came to be inserted in either of those letters?

A. No, I cannot remember us on the first one asking for those words to be included. I don't believe that to be our drafted letter - we didn't draft - I can't remember that being drafted anyway. I cannot remember seeing that letter, actually. I thought I had received another reply that --

Q. You can't shed any light on how it came to be that both letters contained a provision for mutual agreement otherwise?

A. Not at all. I cannot.

Q. As you have told his Honour, as I understand you, Mr Ellingsen put it in unqualified terms that there was going to be a solution whereby there was going to be premium raised through other insurances and those insurances were going to be free from loss recoveries, full stop?

A. That was my understanding, yes.

Q. So would I be right in saying that on your understanding of matters, the insertion in the side letters of the words "unless mutually agreed by both parties" is inconsistent with what you say Mr Ellingsen proposed?

A. Well, Mr Ellingsen, I think, put it to Daniel Wilkie and Tim Mainprize that General Re alternative solutions would not provide them with the cover unless they had the \$12.5 million unencumbered.

Q. Is that how he put it?

A. It was put in the terms that no claims would be recovered against that 12.5 million. At that stage there was no talk about how that 12.5 million was going to be addressed with the six classes, that was done at a later date in discussions between Andrew Smith and Stephen Burroughs, so it was just \$12.5 million worth of premium that was not going to be recovered against.

Q. You have told us that there was a degree of urgency, and at the meeting which occurred when Mr Ellingsen notified this requirement, that, as you understood it, was a requirement being imposed on FAI by Mr Ellingsen somewhat late in the piece?

A. That is true.

Q. You also knew, did you not, from what Mr Wilkie had told you that negotiations with some other reinsurer had been unsuccessful or had caused dissatisfaction with him because they hadn't been finalised in time?

A. At the time I only knew that they hadn't reached a conclusion and he was upset that it hadn't been concluded.

Q. When Mr Ellingsen in your presence sought to impose this requirement, did you gain any understanding from how Mr Wilkie or Mr Mainprize reacted that they thought Mr Ellingsen was imposing a requirement which was outside the realms of their expectations as they then were?

A. It was outside their realms of the expectation of what they knew prior to this meeting, but they indicated, after they heard this information and Tore had talked to the position, that they would consider it and come back to us.

Q. Did Mr Ellingsen make it quite clear that absent an arrangement which would ensure \$12.5 million unencumbered to his employers, that the main cover, if I can call it that, would not be provided by them?

A. My understanding was that it was an all-in-one offer.

Q. In other words, was it your understanding that Mr Ellingsen at this point in time made it clear that it was a take it or leave it proposition on the part of FAI?

A. That was the conclusion that I thought, yes.

Q. You say Mr Ellingsen is a marketing person?

A. Mr Ellingsen's role in the global alternative solutions division is to travel the world for the areas that he is responsible for and to develop business out of those areas

for financial products.

Q. You say that he put this request or ultimatum in a way that you couldn't properly now describe?

A. Yes, it was long-winded. It took I don't know how long, but it was not a straightforward offer. It was spoken to at some length.

Q. Did anybody in that meeting raise the necessity or requirement of side letters?

A. No, that wasn't raised at that stage at all. I can't - I don't know. It wasn't raised at that stage at all.

Q. Had you at that point in time ever heard of such a thing as a policy with no loss recovery?

A. I hadn't, no, and I hadn't done that in the areas for which I was responsible.

Q. Wilkie and Mainprize indicated at that meeting that they couldn't agree to the imposition of this requirement then and there; is that right?

A. No, that's not right. They listened and they said they would think about it and come back to us.

Q. Did they come back to you?

A. I was shown something during this Commission that said there was a contact between Tim Mainprize and myself. My understanding is that there was another contact that agreed that FAI would go forward, but that's what I can remember.

Q. But so far as the further communications as to how this imposed requirement would be worked out was something that was done without you being directly involved; is that what you say?

A. That's true, I think that was done with Tore Ellingsen and Andrew Smith, as to my knowledge.

Q. One way or other, as you sit now in the witness box, giving your assistance to his Honour, you have no recollection of participating in that process?

A. I participated at various times, but I did not have an involvement other than to try and chase up the contracts, at one stage I think with Stephen Burroughs, but basically Andrew Smith was the one who obtained the information on the contracts and had asked me to write a letter to Daniel Wilkie requesting him for a letter indicating that no recoveries would be sought under those six contracts.

Q. Is this right, that the idea of the side letter wasn't yours?

A. It definitely wasn't.

Q. Can you tell us from things that you know directly whose idea it was?

A. From my understanding, it came from the global alternative solutions group and I would have suspected that that would have been from overseas.

MR HAMMERSCHLAG: I am indebted to your Honour.

THE COMMISSIONER: Thank you, Mr Hammerschlag.
Mr Rares.

<CROSS-EXAMINATION BY MR RARES

MR RARES: Q. Mr Self, my name is Rares and I represent Mr Tim Mainprize. I think you have told his Honour that at the time the negotiations took place between March and June 1998, you had lacked any experience or understanding of how, on a practical level, these financial reinsurance products that Mr Ellingsen and others were explaining worked; is that right?

A. When I went into being involved in this financial contract, I had had no experience of this sort of contract at all. Naturally, as you go forward you learn as you travel, but I didn't know the consequences of financial concept - I didn't know the full boundaries of financial contracts.

Q. You took it that Mr Ellingsen and those with whom he worked in the global alternative solutions branch of GCR were expert in their fields in constructing these products; is that right?

A. Very definitely, because Mr Ellingsen had been with Hoechst the chemical company in Switzerland and had arranged these types of transactions for this company. Mr Byrne had been involved in financial products as an accountant internationally for some time prior. Mr Milan Vukelic was out of Citicorp London and they had been involved in these sorts of transactions in the past, and so was John Houldsworth. All of them had vast experience in financial products.

Q. I think it is your evidence - and please tell me if this is wrong - that it was Mr Ellingsen or someone on the global alternative solutions side of GCR who suggested that, first of all, there be the payment of \$12.5 million premium against which no loss recoveries would come; is that right?

A. Mr Ellingsen was the one that brought it to the meeting. My understanding was that he was instructed by the global alternative solutions business unit out of Dublin.

Q. It certainly wasn't something the FAI people thought up, was it?

A. No, definitely wasn't. We announced it at that meeting on 24 April.

Q. Again, the idea of having the side letters was something that came from the global alternative solutions side of GCR; is that right?

A. That was requested of me to contact Daniel for that information, or for that letter.

Q. Somebody from the global alternative solutions --

A. It was both Tore Ellingsen and Andrew Smith in the office had asked me to do that, yes.

Q. And it was also somebody from the global alternative solutions who put forward the requirement that there be payments of the separate premiums of \$450,000 over a number of years for section 6 of the final aggregate excess of loss policy that was signed on 26 June; is that right?

A. I know that Andrew put forward a suggestion. I mean many people were putting forward suggestions on how the contracts could be constructed, but whoever suggested it, it was definitely agreed from the global unit that that was part of the contract going forward, yes.

Q. At all times may we take it that in any meeting you were in with anyone from FAI, you perceived that what was being put forward by the global alternative solutions people to FAI as the proposed arrangements would be a genuine transaction providing for reinsurance for FAI?

A. My understanding that the product that was being put forward by the alternative solutions was a good product, or a proper product, yes.

Q. At no time did anyone at any of these meetings with people from FAI when these reinsurance contracts were discussed between March and June 1998 suggest that there was no genuine transfer of risk that would take place so as to make any of these contracts separately or taken together as not giving effect to a real reinsurance transaction; is that correct?

A. That's correct, except - I think it was known at the end of the contract that the contract would fulfil its purpose of claims eventually coming to zero to premium.

Q. I think you told us a little bit earlier in your evidence that in relation to, for example, the MIPI business, if you were going to write a genuine normal reinsurance policy for that business, you would expect to receive back over five years in premium the total amount you were covering in claims provisions under that policy; is that right?

A. There's two things to that. One under the traditional professional indemnity insurance contracts prior to 1 May 1998 which we had with FAI. MIPI was not to be ceded to those contracted so there was that point. Yes, it is true, if I was to write a MIPI-type program I would want my money back in five years.

Q. And you wouldn't regard doing that as being anything other than a genuine reinsurance arrangement, would you?

A. I would say that - I can't say that is the case.

I would prefer not to have written the business at all, but on a genuine risk transfer traditional basis because I didn't like the business, but I would expect - I would have expected, if I would have written it, to get the full cover back in five years.

Q. Generally, when reinsurers set premiums on risks they like to make sure that they are covered if things go wrong on business that looks like the MIPI-type claims which looked like bad business; is that right?

A. I would think that you get to the extent - out of a one to ten sort of risk factor, the closer you are getting to ten to be the worst, the more reliability you would want on having your money back, yes.

Q. The higher the premium you charge for the greater risk?

A. Yes, very definitely.

Q. And the MIPI claims were well known in the industry for the years 1988 to 1992 to be ones to likely result in higher and higher claims being payable as the book developed?

A. I think throughout - sorry, I think you said 1988 to 1992?

Q. Yes.

A. Well, very definitely for that period. Even prior to that period I would have been worried about it because I did research of the professional indemnity market before the end of it, in mid - I think it was about 1984, something of that era, and definitely it came to my attention that you couldn't write the business, including the large six accounts or the MIPI-type business as well as other hazardous classes.

Q. You have been asked a number of questions about the due diligence exercise that was undertaken in about April 1998. Can I ask you this: from your observation and any reports that came back to you, is it the case that FAI people appeared to give completely full and frank access to the GCR global solutions people who were trying to investigate and work out what was going on?

A. I can only talk from the time when I was there, which is I think one day when the due diligence started off, we had all the assistance that we required.

Q. Can I ask you to look at the document that is I think about tab 6 in your bundle, which is GCRC.004.051, being the policy that bears the date "16 March 1998".

A. Yes.

Q. You will see on that document somebody has struck it through on the front page and written "superseded by new slip, June 16", I think?

A. It seems to be the wrong date. I don't know who put that on.

Q. Could I ask you to turn to the signature page on that document, which is GCRC.004.056.

A. Right.

Q. First of all, the signature above group secretary, can I suggest to you, is that of Mr Baulderstone, who was the

group secretary of FAI. That could be?

A. That could be the case. I was asked about this. I can't remember Tim Mainprize leaving the room. He may have. I can't remember him having a stamp there either, so he may have left for that reason. I just can't remember that part of it.

Q. Do you accept that the signature above the stamp "Group Secretary" is not that of Mr Mainprize, but is of Mr Baulderstone?

A. I notice it is different to the letters that Tim Mainprize signed to Geoff Barnum. I must say, it looks as though it is not.

Q. Of course, you remember that Mr Mainprize signed on 26 June the final version of the aggregate excess of loss policy?

A. That's true.

Q. Can I suggest to you that you may be confusing the occasion on which he signed that policy with the occasion on which the policy which bears the date "16 March" was signed, so I want to suggest that Mr Mainprize was not present on the day the document dated "16 March" was signed. Is that a possibility?

A. No, he was definitely there at the both meetings.

Q. There would be no reason for him not to have signed the one dated 16 March, if he were there, would there?

A. That's true, but he was one of the four of us and I recollect that he was there.

Q. But you don't recollect anyone leaving the room in between this document being signed or not?

A. That's true.

Q. You don't recollect Mr Baulderstone coming into the room or putting his signature on?

A. I can't remember us talking to Mr Baulderstone in a group, in the room. I can remember us talking to Tim Mainprize and Daniel Wilkie on both occasions being there. How this eventuated I can't remember.

Q. Can I suggest to you that it is possible you are mistaken about this particular occasion?

A. Yes, you can suggest that, but I'm afraid I must indicate that, to my recollection, Mr Mainprize was present.

Q. Do you remember giving this evidence at page 1312 of the transcript. You were asked:

"Do you recognise that to be Mr Mainprize's signature or someone else's signature?"

- pointing to the one that I have drawn your attention to above "Group Secretary" and your answer was:

"It is Tim Mainprize's signature because he was the only one of the four of us in the room and we all signed it, the four people in the room signed it."

Do you remember giving that evidence?

A. I do.

Q. That was true?

A. Well, it is what I recollected there, but I have seen Mr Mainprize's since on another letter so I would put that up to - I mean, not being privy to seeing Tim Mainprize sign numerous numbers of letters, so I can only say that I can recall that he was definitely in the room. Whether he left the room and he had the group secretary sign it, I can't remember.

Q. If he had done that, that would have been something quite out of the ordinary as far as you are concerned, which you would have remembered, isn't that so?

A. I don't think so.

Q. This was a very brief meeting, as you have told his Honour, wasn't it?

A. It was.

Q. There was nothing particularly memorable about who was there, may I suggest?

A. Particularly memorable?

Q. Yes. You had no reason to remember that Mr Mainprize was there, as opposed to the person whose name or signature appears above the name "Group Secretary", do you?

A. Well, I think I would because I knew Tim Mainprize. I mean, I didn't know the other chap that you are talking about closely. I can't remember if I have met him and how many times I have met him, but I do know Tim Mainprize very well.

Q. But you can't give his Honour any explanation about how, at this meeting, the signature appearing above "Group Secretary" came to be put on that document, can you?

A. That's true. Mr Smith may be able to shed more light on it but I'm afraid, as I remember it, Tim Mainprize was at that meeting.

Q. You have no note that Tim Mainprize was at that meeting, do you?

A. No, I think there is evidence that I don't have notes to that effect.

Q. Given that you are not able to offer his Honour any explanation about how the signature appearing above the stamp "Group Secretary" came to be affixed to this document, would you concede that it is possible you are mistaken about your recollection that Mr Mainprize was present at this meeting?

MR BEECH-JONES: I object to that, not because of the point being made but it is not fair to say there was not any explanation about how the signature appearing above the stamp came to be affixed. He did give explanation. Whether it is ultimately accepted by his Honour is, of course, a different thing.

THE COMMISSIONER: I think the witness has indicated that he does not know how the signature got there.

MR RARES: That is why I put to him he was not able to give an explanation as to that, therefore would he concede that he could be mistaken about the meeting, because he has conceded he is not able to explain it.

THE COMMISSIONER: He has indicated frequently that he is not mistaken about that particular fact. He has conceded that he may be mistaken about the identity of the signature, but he has answered, I think in fairly unequivocal terms, that he is not mistaken about the other issue. But you can put it to him again but perhaps for the last time.

MR RARES: Q. Mr Self, you accept that you are not able to tell his Honour how the signature appearing above the stamp "Group Secretary" came to be put on that document; is that right?

A. That is true.

Q. Given that you are giving a recollection of a very short meeting at which two copies of this policy were signed and one left with the people from FAI who were at the meeting and one taken back by you, would you agree that it is possible that you have made a mistake in your recollection that Mr Mainprize was at this meeting rather than the person whose name appears above "Group Secretary"?

A. No, definitely not. Tim Mainprize was at that meeting.

Q. You agree that you were mistaken, do you, in your earlier evidence on the screen next to you, between lines 50 and 54 of transcript 1312 in asserting that only four of you were in the room "and we all signed it"?

A. That's my qualification, that the four of us were in the room and therefore my conclusion to that was that was Tim Mainprize's signature. But if Tim Mainprize did leave the room and have it signed and brought it back, I cannot remember that, but I do equivocally remember Tim Mainprize was in that room and was one of the four of us there.

Q. Mr Hammerschlag asked you about the provenance of the words "mutually agreed" in the side letters. Can I ask you to look at the document which is GCRC.004.015. I will try and find the tab for you. Can you see that on the screen? There is a draft letter that you sent to Mr Wilkie on 26 June to be typed up. I think it is in your volume behind tab 158.

A. Right, I have that document. That's GCRC.004.015.

Q. That's right. You will see what you are writing to Mr Wilkie on that occasion is a letter attaching a draft letter, and if you go to the next tab, which is GCRC.004.016, that's the draft letter you wanted Mr Wilkie to have typed up on FAI letterhead and he and Mr Mainprize sign?

A. That was our request, yes.

Q. If you look at the wording in the second paragraph, it uses the expression "unless mutually agreed by both parties"?

A. That's true.

Q. Is that wording that clearly you now recall emanated from the GCR or the global alternative solutions people?

A. This letter was provided to me to send. Who originally drafted it I cannot recall, but it was provided to me. I mean, it may have been drafted by Andrew, it may have been drafted by other people and given to Andrew. I can't comment on that.

MR RARES: I have no further questions, thank you, your Honour.

THE COMMISSIONER: Thank you, Mr Rares. Are there other applications for leave to cross-examine?

MR STEVENSON: I have an application to make. There is a proposition that I wish to put to this witness that I should have put before. I seek your Honour's leave to ask some short series of questions to do that now.

THE COMMISSIONER: Will it be short?

MR STEVENSON: It will be short.

THE COMMISSIONER: Yes, you may do so.

<FURTHER CROSS-EXAMINATION BY MR STEVENSON

MR STEVENSON: Q. Sorry to trouble you again. Could --

A. Sorry, you are?

Q. Stevenson for APRA.

A. Thank you.

Q. Could Mr Self be shown the letter GCRC.004.013.

A. Is there a tab number for this?

Q. There may be, I don't have it with me. It is your letter of 6 May 1998 to FAI that we discussed briefly this morning. If we can scroll down to the text of it, do you recall that letter?

A. Yes.

Q. Can I remind you of some evidence that you gave earlier

today. At transcript 1377 you said that you sent a letter to FAI saying that - and these were your words :

"This contract should meet the requirements of the regulator."

Later at transcript 1352 you said that you had indicated at some point that as far as you were concerned, the regulator would be happy with the arrangements between FAI and General Cologne. Do you recall giving that evidence? A. The second one I think - I was always happy that - if you put it that way, that what they were doing should meet regulator requirements.

Q. We will do it step-by-step. When you said you sent a letter saying that this contract should meet the requirements of the regulator, did you have in mind the letter that is on the screen at the moment?

A. That's right. That is the only letter that I sent.

Q. When you said that you had indicated that as far as you were concerned, the regulator would be happy with the arrangements, did you again have in mind this letter?

A. That's true. And also the knowledge that the people that I was working with, that was their job to make sure that that happened. When I'm saying me, I have to talk about the broader context of it because I, on my own, didn't have that knowledge.

Q. I am just looking at the evidence you gave which was that you sent a letter and that you had given an indication. My question is were you talking about --

A. Yes, but you must understand also in my evidence I indicated that I didn't draft that letter. That letter was a joint draft letter with Andrew Smith and the people - yes, Andrew Smith.

Q. I want to suggest this to you: that letter does not say that the arrangements between FAI and General Cologne Re would meet the requirements of the regulator?

A. No, that says if it doesn't then it can be unwound.

Q. It says not quite that, though, does it? It says if one element of it, namely, the aggregate excess of loss reinsurance contract was rendered inoperable or was prohibited, then other matters might follow?

A. Yes, but I think when we are talking about the overall contract, I would have been talking about the agreement.

Q. It refers to the aggregate --

A. You are right in the way that it is constructed. Really in my note that was the whole lot. From my point of view, it was always one deal.

Q. When you say in your note, what are you referring to?

A. Sorry, in my understanding, after this was introduced on 24 April, to me it was one deal. You had to have all the components together, otherwise it didn't work.

Q. I want to suggest to you that nothing in that letter suggests that the regulator would be happy with any aspect of this transaction.

A. I'm afraid if I was as wise to what you said back then I wouldn't be sitting here. I didn't understand that.

Q. There is no suggestion in that letter that the 1 May 1998 side letter would be disclosed to the regulator, is there?

A. No, that is not spelt out.

Q. Not said at all, is it?

A. That's true.

Q. What I want to suggest to you is that that letter, which you have signed, has nothing at all to say about whether the regulator would or would not, in your opinion, or the opinion of the author of that letter, be satisfied with these arrangements?

A. I couldn't comment on that because I was trying to actually give Daniel Wilkie something he required and asked for, and that is what we sent. That was in joint draft, so if that was the case then I didn't understand that at the time.

MR STEVENSON: Thank you, Mr Self.

<FURTHER CROSS-EXAMINATION BY MR BEECH-JONES

MR BEECH-JONES: Q. Just a couple of questions, Mr Self. Prior to 1 January 1998, it is correct, isn't it, that you had underwritten on a reinsurance basis the professional indemnity portfolio of various insurance companies?

A. Yes, we were - I would say that we were the largest reinsurer since about 1990 - the late 1980s involved in writing professional indemnity reinsurance in Australia.

Q. Leaving aside this transaction, had you ever underwritten any insurance company who was exposed to the MIPI scheme?

A. No, the MIPI scheme tended to be a scheme that was written out of London. It was people who had offices in London that usually wrote the MIPI scheme, and the MIPI scheme did not find its way back to Australia.

Q. Do I take it that, again leaving aside this transaction, you never underwrote any treaty for any insurance company whereby they would come to you and say, "We are under reserved for some particular figure, can you please write us a policy to cover it"?

A. I'd never written that sort of contract before, I'm sorry.

Q. It is almost the equivalent of a car owner coming into an insurance company and saying, "I had a car accident yesterday and can I have a policy that covers me for the

accident from yesterday?"

MR GEE: I object to that. It is ingenious but it is so removed from this class of business that the analogy breaks down at the first hurdle.

MR BEECH-JONES: With respect, your Honour, surely Mr Self is the person who can answer, not Mr Gee.

THE COMMISSIONER: I am not sure that I would be assisted by the analogy. I understand what you are getting at, Mr Beech-Jones, but I don't think the analogy really helps.

MR BEECH-JONES: Q. In your experience, were there occasions whereby you would underwrite, say, a particularly risky area business for a client at a particular level of premium in the expectation that you may get other work for a better level of premium and a lower level of risk?

A. I think that happened generally in the reinsurance company and when anybody hooks up with a product that has more hazard to it, they tend to look for an overall relationship where they tend to get a better balance of business, yes.

Q. In those circumstances, of course there are no guarantees that you won't, at the end of the day, be exposed to potential loss?

A. In the business that I was responsible for, in property and casualty traditional treaty area, yes, I was always subject to loss.

<RE-EXAMINATION BY MR GEE

MR GEE: Q. The rules are that I ask you some questions, Mr Self, but could I just preface them by saying that because I don't give evidence quite as well as some of my colleagues, I would like you to tell the story when I ask you a question, not me.

Could you just stick with the letter that is on the screen at the moment, which, for the record, is GCRC.004.013. Could I ask you a couple of questions that come at it from a different perspective. Do you see that the opening words of it are:

"Following our discussions in your offices and by phone ..."

- et cetera?

A. Yes.

Q. First of all, were you personally involved in any discussions with Mr Wilkie which - and I will put it in the shorthand form at the moment - ultimately led to the production of this letter?

A. Not with Mr Wilkie on his own, no.

Q. With Mr Wilkie and anybody else?

A. This letter, and I am referring to the previous discussions, were discussions with Tore Ellingsen and Tore and myself talking to Daniel Wilkie and Tim Mainprize on 24 April.

Q. It is difficult, Mr Self, but it might be better if, having listened to my question you, tell his Honour rather than me, if you don't mind. It is his Honour who has to receive your evidence. What I am driving at is do you now recall, as you sit there, any discussions either by phone or face to face, which resulted in this letter; that is, dealing with the problem of some part of the deal being rendered inoperable?

MR BEECH-JONES: I object, in the sense that Mr Self has already given evidence in answer to my friend's question and I raise it in this sense as to whether we are leading to an area of re-examination or to some form of cross-examination.

THE COMMISSIONER: I would have thought we have spent quite some time on the provenance or the history of the discussions that led to the 6 May meetings.

MR GEE: I appreciate that and I am just going to take your Honour's ruling obviously, but can I just make the observation that the evidence hitherto has tended to focus on what this witness said happened on 24 April when a new element was introduced into the equation. This is yet a further element and I am not sure that the evidence yet has looked at Mr Self's recollection of the discussions anterior to this.

MR BEECH-JONES: With respect, your Honour, he did. 1311. He gives exact evidence as to how this letter came about.

MR GEE: All right.

Q. You've already said that the letter in terms of draftsmanship, the wording adopted, was not your work; is that so?

A. This letter was requested by Daniel Wilkie on and after the signing of the contract. We went back to the office and Andrew Smith and I drafted this letter. At some time I was requested to put down what I thought should be put down on a piece of paper and then we would talk about it and Andrew would change it, or we would both change it, but the end result is that that letter is a letter that we both put forward to be sent to Daniel Wilkie.

Q. That wording was therefore put together in order to provide Mr Wilkie with something he wanted; is that the burden of what you are saying?

A. Yes. Mr Wilkie wanted a letter to state that if the contract - contract or contracts, I took it as the whole

contract, was not acceptable under the regulations, that that contract or the whole arrangement could be wound down.

Q. The first way this letter dealt with that was, first of all, to assume, as the first step, that the excess of loss contract was for some reason prohibited or inoperable. That is the first part of the letter, is it not?

A. That is as it appears now. When I was thinking about then, and we were doing it, I was thinking about the overall arrangement, the whole arrangement.

Q. That is what I am just trying to elicit in a step-by-step way. The first thing that you addressed yourself to in this draft was the possibility that the excess of loss contract might be, in these words, prohibited or rendered inoperable. That's step one?

A. It wasn't a possibility from our end. It was given to us that Mr Wilkie wanted something to say that if this arrangement was not acceptable by the regulators, that it could be wound down, and that was the letter we replied with.

Q. And you referred in this wording here that is on screen to your letter of 1 May 1998 in which the six contracts were listed; correct?

A. That's correct. We had a letter from Mr Burroughs that set out those six contracts.

Q. That brings me to a related point, and I will come back to this. Could you first be shown HI.0014.001.0175.

A. I think - in addition to that I thought I had a reply from Daniel Wilkie setting out those - that was a letter from Daniel Wilkie to myself indicating what had been set out in the other letters that I hadn't received but were addressed to the managing director.

Q. Just have a look at what is on your screen, if you would, please. It is 116 in your tabbed bundle, if you want to look at the hard copy. You have been asked some questions about this, Mr Self. I think there may still be some lack of clarity and I just want to deal with it. Are you looking at tab 116?

A. Yes.

Q. Do you see that the form of document in front of you is a letter of 1 May signed by Mr Wilkie only?

A. Yes.

Q. Do you see that it lists the six pieces of business that were the subject of the six slips?

A. Yes.

Q. Could the witness be shown, please, GCRC.004.002 which, Mr Self, is behind 117.

A. Yes.

Q. Are you looking at the same form of letter?

A. Yes.

Q. The difference being that there has now been added a signature over the words "Finance Director"?

A. Yes.

Q. I would like to think that it is uncontroversial as to whose signature appears over the words "Financial Director"; whose signature do you believe it to be?

A. Well, the finance director was Tim Mainprize so I would expect that to be his signature. It was similar to what was on the final document.

Q. Again, it is a document dated 1 May?

A. It is.

Q. And again it lists the same six pieces of business?

A. It does. But both those documents, by the way, are not date-stamped and that is a concern.

Q. What I wanted to ask you was, first of all, did you have any part to play at all, in your recollection, in bringing about the addition of the signature and the handwritten words "Finance Director"?

A. Not to my knowledge, no. I had not seen these documents. I was reliant on a document - on a letter that Daniel Wilkie replied to me, which was my letter to him asking for the information that no claims payable under the six contracts. Mine was totally different and did not refer to those six contracts at all.

Q. So returning now to the --

A. That's those six contracts as set out in the letter.

Q. Could we go back to GCRC.004.013. It is 124 in the bundle.

A. Yes.

Q. This is the one we were with a few minutes ago.

A. Right.

Q. You will see that it talks about:

"From the cover provided under those contracts set out in your letter dated 1 May 1998..."

Do you see that?

A. I see that.

Q. Are you able to tell his Honour anything about whether, in drafting up the words that we see on the screen in front of us, and in particular the reference to a letter of 1 May 1998, you were referring to one version or another of the letters I showed you a moment ago?

A. I can't remember that. The only thing I can remember is the contracts that were advised to me by - that may have been at a later date. So ...

Q. So --

A. I think I would have been reliant on Andrew for this, too. No, I cannot remember seeing those other two letters that we have just seen, so I can't reply.

Q. All right. However, are you aware of any other letter which is dated 1 May and which lists contracts as referred to in this letter that is on screen?

A. I've referred to the letter that Daniel Wilkie, I think, forwarded back to me in reply to my letter. They may have been listed in that letter.

Q. All right. But you don't know the date of that letter?

A. No, but I did - we did send him that letter on 1 May, so if he acted quick enough we could have had a reply on that date.

Q. The letter that's presently on screen plainly enough refers, in so many words, to a letter dated 1 May, does it not?

A. It does.

Q. It is said in the letter that's on screen in front of you that that letter lists or refers to some contracts, does it not?

A. It does. But, I mean, this is where Andrew was working on those contracts, so I would have to rely heavily on his involvement, too. So it is - I can't really bring it the attention that I was absolutely 100 per cent involved in knowing those contracts.

Q. I don't think my question asked you anything about them as such, Mr Self. If you could just concentrate on my questions, if you would be so kind. Was it your belief, when this letter of 6 May was created, that it would be a document that was not a secret document?

A. Which document?

Q. The one on screen in front of you now. Did you believe at the time that it was or was intended to be by anybody a secret document?

A. No. It was a reply to Daniel Wilkie following discussions that we had had with him and that the document would be circulated within the people that we'd agreed on his side and on our side.

Q. You were asked questions about whether other people such as auditors or regulators might see it. Did you have any belief at that time as to whether those people might one day see this letter?

A. I would have thought that auditors would have been shown any correspondence that would have been involved on any matter with either company.

Q. So --

A. I did not think about that. It wasn't part of my thought process at all.

Q. This letter of 6 May that is in front of you at the moment, if anyone read it, it would invite attention, wouldn't it, to another letter dated 1 May; correct?

A. It does indicate the letter of 1 May does exist, yes.

Q. If it was intended that the letter of 1 May should be a secret to be concealed from people, this was a very odd way of keeping a secret, wasn't it?

A. I'm afraid it wasn't considered to be a secret. It was considered to be a reply to Daniel Wilkie, which letter would be available to the senior management of both companies involved in the contracts for the alternative solutions or finance agreement.

Q. Any of whom might have asked for the first agreement that is referred to?

A. They could do that, yes. As a matter of fact, the letters that I wrote, copies were given to Andrew Smith and should have been on this main file.

Q. Could I change to a different topic, please, Mr Self. Do you remember being asked some questions about the fact that the first excess of loss agreement was in fact signed on 6 May 1998 but an earlier date was inserted; do you recall that line of questioning?

A. Yes, there was a pre-dated date on the first slip of "16 March".

Q. Yes, that's right. When you put your signature on that document on 6 May, did you have any intention to deceive anybody at FAI about the date on which it had been signed?

A. No, we were agreeing with the people at FAI's request to a pre-signed date.

Q. Did you have any intention to deceive, then or later, anybody else about the date of signature?

A. No, that wasn't a thought pattern at all. It was a request of a client and upon asking Andrew if we could do it, he gave me an explanation which we went ahead and signed that contract.

Q. Did you have any intention when you signed the document deliberately to deceive anyone --

A. Not at all.

Q. -- either at FAI or otherwise?

A. Not at all.

Q. Could I then turn to another subject, please, Mr Self. You were asked some questions a few minutes ago by Mr Beech-Jones about a possible run of business between a cedent and a reinsurer, where a reinsurer might be prepared to write what he perceives to be riskier business on the basis that he will cover himself with some better business?

A. Yes, that's a common practice within the industry with all clients. They do have good and bad business.

Q. This sounds like a silly question, Mr Self, perhaps it is, but I take it that it is the object of a reinsurer to make a profit rather than a loss?

A. Yes, it is. We do like making profits.

Q. Does that mean that over time a reinsurer seeks to receive in ceded premiums - plans, I should have said, over time and over a number of classes of business, a reinsurer seeks to receive in ceded premiums more than he has to pay out?

A. Well, yes. He has to cover his own costs. He has to show a profit. All those overheads need to be addressed so he will definitely be looking to obtain more premium than actually the pay out of the claims, otherwise he wouldn't be in business.

Q. It does seem elementary, I must say. Mr Self, could you just put aside for a moment the precise issues in this case with all of the encrustations of side letters and unwinding deals and so forth, and I just want to ask you some questions directed to helping his Honour in relation to your many years of knowledge about traditional reinsurance. Are you with me?

A. Yes.

Q. Just forget this current deal for a moment. You said I think more than once in your evidence that if you were to write a class of business, such as professional indemnity or perhaps some other class that you perceived to offer a worse risk, you would want to, to use your phrase, get your money back over time. Can you just enlarge to his Honour what you meant to convey in the wider context by that notion?

A. Well, the whole basis of reinsurance and insurance - or reinsurance in particular, because we are talking about, in the treaty area, portfolios of business, that we could write some very heavy risk areas whereby over a period of time, being one to three, one to five, whatever we thought the years to be, we would require that premium to cover claims which could be held over that period, and on top of that we would need to make some form of profit and cover our costs.

Q. Is that - sorry, I've interrupted you. Go on.

A. It then goes out to the other extreme where we are talking about covering business where there is far less risk involved and where we would be seeking pay back periods of - they could be hundreds of years. In the case of General Re, we were not allowed to contemplate risk greater than 100 years, anything that we thought at a price greater than 100 years we would tend to get into a minimum premium situation because they didn't think we should be covering areas - other than cat areas, high level cat areas.

Q. In giving that longish answer, were you referring to what you would regard as being normal traditional reinsurance processes in the industry?

A. I would have thought with underwriters that they would look at that - that's probably an old style - well, I wouldn't call it an old style. It is not supported by the models and very hardly supported by the models because of lack of current information, but other than to say it is extremely hazardous and would you write it, would it be part of your overall portfolio. Your portfolio might have a hazard risk of between 4 and 5. Why would you then write --

Q. I hate to interrupt you but I was just asking you a straightforward question: were you referring to normal, traditional reinsurance processes when you gave his Honour that answer?

A. Yes, that's the normal thinking behind reinsurance.

Q. Is this an accurate summation of what you have just said, and I want you to correct me if I am putting it in error, but as a traditional reinsurance underwriter, over time you are in fact looking to write cover which produces more premium at the end of the day than paid claim?

A. That is definitely true, otherwise we would - as I said, we wouldn't be in business.

Q. That's the very crime of which you have been accused --

MR BEECH-JONES: I object. One, no reference to crime; two, that is not what is being put to him at any stage.

THE COMMISSIONER: I don't recall it being put in that form, Mr Gee.

MR GEE: I allowed myself to stray into a little hyperbole, I will withdraw that.

Q. Do you remember saying, Mr Self, that since some time in the late 1980s, in August, in professional indemnity reinsurance underwriting, GCRA had been, if not the biggest, then one of the biggest Australian reinsurers? Do you recall giving that evidence?

A. That's true.

Q. I take it that in that class of business you had at least some personal involvement in writing treaties?

A. Yes, I actually was the founder of us going into the professional indemnity class back in the mid-1980s.

Q. Could you give his Honour a feel for how things developed in writing PI insurance cover in Australia from the time you recall going into it in the latter 1980s, for - well, let's throw ourselves forward, say, a five year period from then on. How did that business develop in general terms; was it good business, bad business, what happened?

A. The earlier business when we started to write it, with both - well, there were a number of companies, for one, and different companies had different books, but if they

were involved with a cross-section of the industry, the first couple of years up until 1988 were profitable. The years from 1988 onwards were not because of the downturn in the economy and the effects of companies going insolvent and associated practices in that area.

Q. Was it your recollection that there were any other forces at work that caused PI pay outs for insurers and reinsurers to be greater than had been originally contemplated?

A. Yes, I can remember value being one area of concern, although it was an area that I - in the studies that I did in the mid-1980s I was trying to exclude them. It was found to be very hard to convince underwriters to move quickly out of that area. There were underwriters over time that were burnt in that area and that they did actually decide not to write pure valuation-type risks, but there was also valuations attached to real estate and type risks that companies continued on with.

Q. Do you recall, throwing your mind back to those years, whether, say, from the late 1980s, five or seven years or so, any other factors coming into play, not just for a particular class of business, that caused pay outs to be greater than had been originally anticipated?

A. I think there were a number of cases where there were fraudulent actions that caused eventual - although the ones I am thinking about, the claims didn't eventuate at the end of the day, but usually they were associated at that stage with actions that firms took in handling - and arising out of the downturn in the economy. There may be other things but I can't remember at the moment. I know later on there was another influx of claims that came from merger and acquisition-type losses.

MR GEE: That is all I want to ask the witness.

THE COMMISSIONER: I wonder if the operator could bring up transcript page 1397. Could you scroll down, please.

Q. My recollection may be faulty, but I am looking at the exchange that starts at line 25, if we can just have a look at that. My recollection may be faulty but I don't recall you having indicated earlier that Smith gave you an explanation. What was the explanation that Smith gave you?

A. It is set out in my statement, your Honour. I think we are talking about the explanation for signing the first contract, backdating it to 16 March.

Q. Is that a reference to what you said in the statement?

A. That was a reference to that signing, yes.

Q. In your statement at paragraph 17 you indicate:

"I said to Andrew Smith words to the following effect:
'Can we do this?'"

A. That's true.

Q. Is there anything other than what is in paragraph 17 that you can now tell me about any explanation that Andrew, who I take to be Andrew Smith, would have given you about the question of whether or not the date "16 March" could be inserted on that day, which was 6 May?

A. At that stage we hadn't decided on 16 March. I think they referred it to mid-March, but I asked him could we do this and he then said, well, it contractually commences on 1 January 1998 and he reasoned that out and I accepted that reasoning and then we went ahead and signed the contract. The date of "16 March" was then set following a quick discussion with the other two gentlemen.

THE COMMISSIONER: Thank you. Mr Self, thank you very much for your assistance. It has been of use. I can't release you formally from the effect of the summons at this stage because other witnesses have to give evidence that may be relevant to what you have told me, but you will be advised as soon as that position changes. Thank you very much, you are free to go.

WITNESS: Thank you, your Honour.

<THE WITNESS WITHDREW (3.32)

MR GEE: I am working on the assumption that there is now to be an interposition of non-GCR witnesses.

THE COMMISSIONER: That is so, Mr Gee.

MR WHITE: The two gentlemen, we propose to call Mr Ludolphs and Mr Graeber from Hannover, and it will be following their evidence that we propose to resume with Mr Byatt of GCR.

THE COMMISSIONER: Can we go straight on to Mr Ludolphs, then.

MR WHITE: Yes, your Honour. I call Mr Ludolphs.

<HENNING LUDOLPHS, AFFIRMED (3.35 pm)

<CROSS-EXAMINATION BY MR WHITE

MR WHITE: Q. Mr Ludolphs, I think it is the case that you are not represented by a lawyer here today; is that right?

A. Yes.

Q. But Mr Littlewood, who is an accountant in Australia and agent for Hannover Re, has been liaising with officers of the Commission; is that right?

A. Yes.

Q. And Mr Graeber is also here?

A. Yes.

MR WHITE: In those circumstances, it might be appropriate if either or both of those gentlemen, if they wish to do so, would like to take a front seat, but I am in your Honour's hands, of course.

THE COMMISSIONER: Yes, they may take a front seat. I think we may need to revisit it if it is a question of asking questions later on.

MR WHITE: I don't at the moment anticipate that that should be a problem.

THE COMMISSIONER: Mr Littlewood and Mr Graeber.

MR WHITE: Q. Mr Ludolphs, while that is being done, can I explain the set up. My name is Richard White and I am counsel assisting the Commissioner and beside me and behind me are lawyers who have also been assisting the Commission. Otherwise scattered around the room are mostly lawyers who are representing other people who are interested in the transaction.

THE COMMISSIONER: Sorry, is Mr Littlewood present?

WITNESS: I think both of them should be in the other room. I expect both of them to come in a minute. They are on the way.

MR WHITE: Q. While they are on the way I will deal with a couple of small matters. First of all, could you tell his Honour your usual business address?

A. The business address?

Q. Yes. Your usual business address?

A. It is in Germany in Hannover. Karl-Wiechert-Allee 50. I do not know the postal code. I have to say in Hannover Germany. I could look it up. The postal code is 30625 in Hannover Germany.

Q. By which company are you employed?

A. Hannover Reinsurance.

Q. Is that a company which is domiciled in Germany but has branches around the world, including a branch in Australia?

A. Yes.

Q. In 1999 were you employed in a division of that company called Advance Solutions?

A. Yes.

Q. Mr Ludolphs, I understand that you are aware that the Commission is investigating, amongst other things, issues concerning two contracts which are called reinsurance binders, which were made between something called HIH Insurance Group and, first of all, Hannover Reinsurance Ireland Ltd and E&S Reinsurance Ireland Ltd, that is on

the one hand?

A. Yes.

Q. And another contract made between Hannover Reinsurance, the German company, and HIH Insurance Group?

A. Yes.

Q. And also certain associated agreements. If I could give you a folder of documents. Your Honour, this, I understand, coincides with a folder which has the first half of the documents in the Hannover Reinsurance index. If you just turn to the documents behind tabs 185 and 187, first of all.

A. I have 185.

Q. You will see 185 should be a slip which is called a reinsurer binder and has a heading "Combined loss portfolio transfer and accident year protection"?

A. Yes.

Q. And it has the code HANR.0002.306. If you go to the last page of that tab at 309, you will see that is the contract signed by the two Irish companies?

A. Yes.

Q. Both of those companies are subsidiaries of Hannover Reinsurance, the German company, are they not?

A. The Hannover Reinsurance Ireland is a subsidiary company of Hannover Re Germany, and E&S Reinsurance Ireland is a subsidiary of E&S Reinsurance which again is majority owned company by Hannover Re. So all belong to the same group.

Q. If you can then turn to tab 187, you will see the other slip called a reinsurance binder?

A. Yes.

Q. Signed for HIH Insurance and also for Hannover Reinsurance, the German company?

A. Yes.

Q. Then please if you turn to tab 198, which has the code HANR.0002.329 at the top. You will see that is a document called the LOC agreement?

A. Yes.

Q. Which has been signed by HIH Underwriting and Agency Services Ltd by Mr Williams and Mr Fodera?

A. Yes.

Q. If you could go to the next tab, 199, you will see the LOC authority agreement?

A. Yes.

Q. And 200 and 201, two agreements re a trust arrangement?

A. Yes.

Q. You are familiar with all of those?

A. Yes.

MR WHITE: Your Honour, there has been no statement in relation to this matter. I thought, subject to any direction which your Honour might give, that if there was anything which Mr Ludolphs wanted to say for himself rather than in response to any particular question, in relation to the negotiation of these agreements, then he should be offered the opportunity to do so. Then I, of course, will ask him particular questions.

THE COMMISSIONER: Yes, I think that would be appropriate. I think you should, if it hasn't already been down, perhaps outline to Mr Ludolphs the areas that you regard as being significant.

MR WHITE: Q. Mr Ludolphs, do you recall that Mr Littlewood received a letter from the Royal Commission on or shortly after 11 January this year; are you aware of that?

A. I'm sure I have seen it, although I have to say I don't have it in front of my eyes, so to speak.

Q. The letter advised the issues which the Commission proposed to investigate in relation to agreements which include the two reinsurance contracts that I took you to. They include the negotiations of the agreements and any related agreements or arrangements; the identification and likely operation of their terms; the reasons for entry into the transactions and whether the transactions were in the interests of the HIH companies; the extent to which, if at all, the transactions involved a transfer of risk; the accounting treatment for the transactions by HIH and the impact of the transaction on the accounts of those companies; the appropriateness of the accounting treatment for the transactions. Would you like a copy of that letter?

A. If I need it to go through, yes, please.

Q. It is a matter for you, but by reference to that letter if there was anything you wanted to tell his Honour about the documents, do so now. I didn't give a complete listing of the points. You might just like to read them.

A. I just try to think how to go about this.

Q. You don't have to. You can just respond to the question.

A. I could properly talk through, more or less out of memory, through the various points, because I did not prepare something specifically to address now these items.

THE COMMISSIONER: Q. Mr Ludolphs, it is entirely up to you. You can make a statement of that sort now if you wish, or, alternatively, you could answer Mr White's specific questions that he puts to you and then later on make a statement covering matters that you think haven't been properly raised or which, if you feel they require clarification. It is entirely up to you.

A. I would almost propose then why would you not ask the questions and I will tell you something.

MR WHITE: I am perfectly happy to do that, Mr Ludolphs.

Q. Mr Ludolphs, the advance solutions department of Hannover was, in 1998, a department which offered tailor-made products for the protection of key balance sheet ratios for insurance companies; is that fair?

A. Yes.

Q. Those products, or at least some of them, are known as alternative risk transfer products; is that right?

A. Yes.

Q. Is the function of such alternative risk transfer products to permit an insurer to obtain a smoothing or continuity in key balance sheet ratios over a period of time?

A. That would be one of the functions. There are many books of what is really to understand, and about IRT, it seems to be that everybody has their own definition and different categorisations, so it is very difficult to say this is really the understanding of IRT, or non-traditional reinsurance or financial reinsurance, or how you want to call it.

Q. Can I interrupt you just for a moment. Everything you are saying is being taken down by the reporter who is sitting on your left. I wonder if you could just moderate your pace a little so she can keep up?

A. Yes. The key words, I think, would be capital costs management and stabilisation.

Q. The way in which capital cost is managed, and ratios are stabilised, is through products which are called reinsurance products; is that right?

A. Yes.

Q. The way in which such stabilisation operates in practice from the point of view of the seeding insurance company is by the insurance company bringing to account recoveries under its policies of reinsurance in times when claims are high at an amount which is greater than the premium expense for that year under that contract; is that right?

A. And to have other years where the losses are lower than the premium, so both have to balance themselves out.

Q. Yes, I was coming to that. It is expected under such contracts that in better years the premium expense would be greater than the claims recoveries and therefore over time the results would even themselves out?

A. Yes.

Q. Now, over the whole period of the contract, though, the seeding insurance company could expect to pay a fee for obtaining this balance sheet smoothing via the reinsurance

contract?

A. Yes.

Q. So that over the life of the contract in the usual way the premium expense would be higher than the anticipated claims recoveries?

A. That is definitely the expectation, statistically speaking, from the reinsurer, but depending on the amount of risk transfer included in the treaty, the treaty may end up with a loss to the reinsurer which means amount of loss payments overall are higher than the premiums plus may be investment income-generated.

Q. Quite. That's because these products, being products of reinsurance, are products which must involve a significant transfer of risk from the ceding insurer to the reinsurer?

A. Yes.

Q. Because the usefulness of the product to the ceding insurer depends upon the acceptance of the contract as a reinsurance contract for local accounting purposes, is that right?

A. They are some of the benefits but there are other benefits or may be other benefits depending on local regulations, even if it is not accounted for as reinsurance.

Q. But the effect of providing balance sheet smoothing, which you describe, would depend upon the contract being accepted as one of reinsurance, would it not?

A. If it has to go through the technical accounting, yes.

Q. Did you understand in 1998/1999 that in Australia the local accounting requirements required consideration to be given to the substance of the transaction, rather than to the form of a particular contract?

A. I do not - I cannot link those two in particular to 1998 and 1999, but I know that this was the general approach.

Q. And that was something you have always understood to be the position?

A. Yes.

Q. Just so it is clear, have you also always understood it to be the position that for Australian accounting purposes, for the contract to be treated as one of reinsurance it has to involve a significant transfer of risk from the ceding insurer to the reinsurer?

A. Yes.

Q. If you could turn, please, to the documents in front of you, if you could first of all please go to tabs 185 and 187, the documents which are HANR.0002.306 and HANR.0002.311?

A. 185 and 186?

Q. 185 and 187.

A. Yes.

Q. The two slips or reinsurance binders, as they are called?

A. Mm-hmm.

Q. These documents were signed in Dublin on 19 August 1999, in the case of the first, and signed by Mr Littlewood on 20 August 1999 on behalf of Hannover Re in the case of the second?

A. Yes.

Q. Is it your understanding that they were delivered to HIH on 25 August 1999?

A. I think that was the date, a few days after.

Q. Yes. Was it your understanding that upon the delivery of the reinsurance contracts to HIH, HIH would account in its 1999 financial year for these contracts as reinsurance contracts?

A. No.

Q. No. Was it your understanding that they would account for these contracts as reinsurance contracts in the 30 June 2000 financial year?

A. No.

Q. At any time was it your understanding that they would account for these contracts as reinsurance contracts?

A. My expectation was that they would not be booked as a reinsurance.

Q. Is that because you understood that they didn't involve any significant transfer of risk?

A. Because there is this letter of credit arrangement as additional part of these treaties, so altogether, in my view, it would not transfer sufficient risk. These two transactions on its own may also not transfer sufficient risk, but that is not the question, of course.

Q. Clearly enough, once one takes into account the LOC agreement, then any risk which Hannover has is minimal, or remote?

A. Minimum.

Q. Could you go, please, to the document which you will find first of all behind tab 7. It has the reference HANR.0002.001.

A. Yes.

Q. You will see it is a facsimile from you to Mr Fodera which is dated 8 February 1999?

A. Yes.

Q. May his Honour take it that it was sent to Mr Fodera at that time?

A. Yes.

Q. You refer to two matters, the first of which is called volatility in asset evaluation?

A. Yes.

Q. Had there been discussion was Mr Fodera prior to 8 February 1999 in which he said he was looking for a product under which Hannover would guarantee an investment performance over a period of years?

A. I do not recall whether there were before that date discussions. Could well be together with SECV issue.

Q. Could you just tell his Honour what was the SECV issue? Did it involve HIH?

A. Yes, it involved HIH. It was a client of HIH in Victoria. It was a company - I should remember the name, I don't know what type of corporation "SECV" stands for, a client of HIH --

Q. Yes.

A. -- who had asbestos run of claims and HIH wanted to manage this and has asked us whether we could support on the run off, and on the investment handling. This in broad terms, as far as I recall it.

Q. You deal with a request for information and whether you could provide support on smoothing the investment results in the first paragraph?

A. Yes.

Q. The second, in fact. You also describe a product called loss ratio stabilisation cover, do you see that, at the foot of the page?

A. Yes.

Q. If you could turn over, please, to the document at tab 9 and tab 10. 9 is HANR.0002.004, and 10 is HANR.0002.005. You will see in those two documents you sent Mr Fodera a sample slip for a product called loss ratio stabilisation aggregate excess of loss cover?

A. Yes.

Q. Which was very different in form from the two reinsurance contracts which were ultimately entered into, would you agree?

A. Definitely.

Q. If you could go back to the document at 7, you will see under the first paragraph, dealing with volatility in asset valuation, that you reported on a meeting with APRA in relation to such a product and reported that APRA had advised that although such a treaty would be acceptable, it would be a financial treaty and not a reinsurance treaty. Do you see that?

A. I just need to read this.

Q. Take your time. It may be on your screen in bigger type than it is in the document, with any luck.

A. I have read it.

Q. You did understand that if an alternative risk transfer product was not treated as a reinsurance contract but it involved the payment of money by the ceding insurer to the reinsurer, ultimately to be applied towards the payment of claims that, in those circumstances, that is where the contract isn't classified as reinsurance, the payment over would be treated for accounting purposes as the payment of a deposit to the reinsurer. Did you understand that?

A. In general, I understand this. The reference in this fax was meant to be different.

Q. All right. Let me stay with the general for the moment, if I may. In those circumstances, the payment of a sum, albeit called premium, would be treated in the accounts for the ceding insurer as another form of asset; that is to say, money on deposit invested with the reinsurer?

A. Deposit accounting.

Q. Correct. The premium could not be deducted as an expense in those circumstances; correct?

A. Correct.

Q. Nor could the ceding insurer book a recovery as an asset; is that correct?

A. Yes.

Q. You said that you were referring to something different from that in the particular matter you were referring to under volatility in asset evaluation. Would you explain that?

A. There we were talking to other clients in Australia about a concept where we would not just cover losses from the technical side, but also cover the volatility on the asset side, I think it was basically an adjustment in interest rates, or even going further, covering the return on equity on a financially orientated basis.

This treaty which we had been discussing in those days had actually enough risk in, which was also discussed with APRA in those days. However, it could not have been booked as a reinsurance because a major risk transfer part was not a reinsurance, so a technical part, wasn't non-technical side, was basically a hedge on the interest volatility, as far as I remember, and the company we were talking to wanted to book this as a reinsurance, but APRA said, no, you would have to distinguish between the two parts, the one is a financial risk cover and the other one a reinsurance.

Q. In the case you have just been referring to, the contract did, I think you said, provide for significant risk transfer on what you called the technical side. In that respect, if it were separated from the asset side part of the transaction, it would have been able to be treated as a reinsurance contract for accounting purposes?

A. Yes, I think both parts - and I don't recall all the detail - were more or less coming out and the combination of those had enough reinsurance - had enough risks, so where it only treated as reinsurance, it would have been a reinsurance treaty.

Q. When you talk about the technical side, you mean insurance side?

A. Reinsurance side.

Q. Thank you. Could I ask you then, please, to turn to a document which is number 13 in that bundle, HANR.0002.013.

A. Yes.

Q. Do you recognise the handwriting?

A. You said 00013?

Q. You will see it has a code on the top, HANR.0002.013.

A. That is number 13?

Q. 13, correct.

A. Okay, yes.

Q. Is that your writing?

A. Yes.

Q. Could you tell his Honour what the first line says?

A. "A move by Dominic Fodera." So telephone call was by Dominic Fodera on 7 July 1999.

Q. You then go on to list a number of points raised in that telephone call. Do you remember you told his Honour a short while ago that the loss ratio stabilisation cover referred to in February was a very different product from the one which was ultimately entered into?

A. Yes.

Q. Was this telephone call on 7 July 1999 the first contact you had with HIH which ultimately led up to the agreements signed in August?

A. Let me just look at this.

Q. Certainly. There are a number of later changes. I am not suggesting otherwise.

A. I could be. It sounds like that this goes to the direction and it is in line with the timeframe which we had, but I could not definitely say this was really the first one. I wouldn't know whether there were other phone calls before.

Q. Is it your recollection that the discussions which led up to the two reinsurance binders which we have looked at didn't start until some time in July of 1999?

A. Yes.

Q. So all these discussions post-dated 30 June?

A. Then yes.

Q. If you look at that same sheet, there's an arrow and is that "Idea/transaction"?

A. Yes.

Q. To what does that refer?

A. If I recall correctly, it was more a kind of "I have an idea I would like to achieve something from Mr Fodera".

Q. That is what he said?

A. Yes, and the question was do we have ideas.

Q. Do you have ideas?

A. Or can we develop commonly ideas.

Q. If you look at the next line, it says "Reinsurer to guarantee 8 per cent return", if I read it correctly; is that right?

A. Yes.

Q. What did Mr Fodera say about that?

A. He wanted to achieve the following on his long tail liability reserves, he has to allocate assets. He wanted to invest these assets with a higher risk profile in order to achieve over a number of years a higher return.

Q. If I can interrupt there, when you say invest them with a higher risk profile, you mean with a higher risk profile than would be achieved by investing the assets in risk-free, fixed interest securities such as government bonds?

A. Yes, was not going too far to invest it in something extremely fancy or junk bonds, but Mr Fodera outlined that his overall investment portfolio, he could do better if he had less volatility on his performance on the asset side. So he had the idea to look for a product to reduce the volatility on the asset side on those assets which he'd basically allocates through its long term liability reserves.

Q. How was this to be effected through a reinsurer, did he say?

A. I do not remember what we actually exactly said in this telephone call, but at the end it turned out that he could cede reserves to the reinsurer. He would pay a substantial amount of existing reserves to the reinsurer. The reinsurer would invest the money made from the investment managing agreement with HIH, and after ten years or so, or 15 years, depending on the pay out of the losses, the reinsurer would pay the losses. That means the volatility of the asset performance would be transferred to the reinsurer.

Q. That is on the basis of two things, may his Honour take it: one is that the reinsurer would have to pay the amount of the losses at the end of the term of the investment irrespective of the fund's performance?

A. Yes.

Q. And the second thing which that would involve would be the reinsurer being responsible for the investment of the fund, if he were the one to be guaranteeing the return?

A. The reinsurer would not have to do the investments himself. He could outsource this again, for example, back to HIH.

Q. Yes, I see. Then the reinsurer would be guaranteeing the return if it had agreed to pay a fixed amount of loss irrespective of the performance of the fund; is that the idea?

A. Yes, that would be the basic idea.

Q. The next line, what does that say?

A. "No AA - market to be found".

Q. Tell his Honour what that means.

A. I think he was looking, in the first place, for somebody guaranteeing an 8 per cent investment return, and he wanted to have it with a company with a Standard & Poors AA rating.

Q. What did he say about his ability to do that?

A. He did not find a market which he would have liked to have.

Q. The next line seems to say: "Smooth by 200 million/lent 400 million".

A. Yes.

Q. If we can read a few of these lines. Does the next say "Pension funds, put..." - perhaps you could read that?

A. "Pension funds, put this into US equity". Doesn't seem to be a correct English sentence.

Q. Then the next one:

"Put 200 million in equity in US. Not touch until grown to 400 million."

A. Yes.

Q. "Not the intent to look at interim profits"?

A. Yes.

Q. The next one, is that "3.5 billion net reserves"?

A. Yes.

Q. "400 million in excess of 3.5 billion".

A. Yes.

Q. "Dominic accepts timing risk". Then something "June figures", what is that word?

A. "Those" or "close June figures".

Q. First of all, in relation to that figure of \$3.5 billion net reserves, what did Mr Fodera say about

that?

A. I do not recollect precisely. I could only guess at this point in time.

Q. Would you agree that he appears to have told you that the net reserves of HIH, including its subsidiaries at June 2000, were \$3.5 billion, or expected to be \$3.5 billion?

A. That would be an explanation which I have when I see these numbers, but I can't remember these details on the phone, and this number is different to other numbers which I have in mind, so I do not know, but this would be my guess.

Q. That might, of course be an undiscounted figure; that is to say, undiscounted reserves but net of reinsurance?

A. I would not know.

Q. In relation to the point "smooth by 200 million, lent 400 million", and so forth, having looked at this note what do you recall Mr Fodera having said about that?

A. To work out a reinsurance transaction where we - or where the reinsurer would take over up to 400 million in reserves and at the same time HIH would pay 200 million out of the existing reserves or pay a lump sum to the reinsurer of 200 million. And the 200 million will grow, in his expectation, up to 400 million in ten, or something like that, years' time. If he were to do it himself and he were to invest the 200 million aggressively, he has a higher volatility on the 200 million and he wants to reduce it.

Q. By having the reinsurer to agree to pay 400 million at a particular time yet to be defined?

A. If there would be losses up to 400 million, yes.

Q. Did he say whether the \$400 million in reserves, to be so reinsured, were \$400 million of known reserves; that is to say, provisions which were made as at 30 June 1999?

A. I do not remember this and from the notes it could be either way.

Q. The note "Not the intent to look at interim profits", do you remember Mr Fodera saying anything about that?

A. That it was not his intent to have some kind of short-term profits. He wanted to have these funds for a longer period of time with the reinsurer, in order to assure over a longer period of time to have a stable investment return, but he was not looking for something short-term or to get something short-term back. It was a long-term approach he has taken.

Q. Do you remember whether there was any discussion on 7 July about whether such an arrangement would be accounted for as a deposit or as a reinsurance contract?

A. I do not remember that telephone call per se, I only can draw conclusion from what I see here.

Q. Having now had the opportunity to look at this note again, is there anything further that you can recall about that telephone conversation than that which you have already described in evidence?

A. I actually cannot fully remember that call, I only can draw from the notes I have made that this call was there, but I do not remember that call.

Q. Do you remember whether Mr Fodera rang you unannounced, or were you expecting his call? Had it been arranged beforehand?

A. I don't remember that.

Q. If you would then turn, please, to tab 15, which is HANR.0002.017, number 15 in the index, you will see it is an e-mail --

A. Number?

Q. 15. 0002.017 in the top right-hand corner?

A. Yes.

Q. Between two employees of HIH, it would appear, with a handwritten note on it, however, addressed to you and to Mr Graeber saying:

"Gentlemen, as discussed a brief paper on our thoughts to date. Will follow up tomorrow with a more detailed summary."

Do you see that?

A. Yes.

Q. Then if you can go to the next tab, which is number 16, and that is HANR.0002.018?

A. Yes.

Q. I am afraid the fax date has been cut off our copies of the document at the top. Take as much time as you need to read it, but can you identify that as being a document which you received from Mr Fodera shortly after 7 July, or even on that day setting out what HIH was then proposing for a reinsurance arrangement with Hannover?

A. Yes.

Q. It was?

A. Yes, I have to say I do not know whether I got this from Mr Fodera, but this was a fax from HIH.

Q. Which you received at about that time, about 7 July, or some time shortly thereafter?

A. I assume.

Q. Could I invite your attention to the paragraph that starts:

"The first contract would be as follows ..."

The first dot point:

"Aggregate stop loss on 31 December ...(reading)... at December 1998."

A. Yes.

Q. Did you understand that HIH was advising that its net booked undiscounted loss provision, or claims provisions, as at 31 December 1998 were \$3,069 million?

A. Where do you see 3,069?

Q. The trigger point being 200 million less the booked reserves, the trigger point is \$2,869 million?

A. Yes.

Q. So that you understood that you were being advised that the booked reserves for the group, that is FAI and its subsidiaries and HIH and its subsidiaries, at 31 December 1998 was \$3,069 million?

A. Yes.

Q. That is net of reinsurance but undiscounted?

A. Yes.

Q. Did that indicate to you that the undiscounted reserves had deteriorated from 31 December 1998 to 30 June 1999 by some \$431 million?

A. This fax did not indicate this to me.

Q. Not that alone, that together with --

Would your Honour just excuse me for a moment?

THE COMMISSIONER: Yes.

MR WHITE: Your Honour, I don't want this to be taken the wrong way by Mr Ludolphs or Mr Graeber, but it would be helpful, as Mr Graeber is sitting at the table, if he could confine his body language so that he sits perfectly still, rather than him shaking his head or nodding.

Q. I didn't suggest that conclusion, that the reserves appear to have deteriorated by \$431 million came just from this document, but this document when taken with your note of telephone conversation on 7 July would suggest, wouldn't it, that you had been told that the reserves had deteriorated by \$431 million in those six months?

A. It could be a conclusion. All I have to say, that during all discussions, my picture was that the reserves actually were around the 3,069 million, even in June.

Q. But you see the contract that Hannover and its subsidiaries made with HIH in August, was for the deterioration of the undiscounted reserves of HIH from 31 December 1998 --

A. Yes.

Q. -- principally, wasn't it?

A. Yes.

Q. And there must have been a reason for choosing the date of 31 December 1998 as the date from which the deterioration of reserves would be reinsured, rather than 30 June 1999, must there not?

A. Not that I know. Could be the date in mind. Could also have been 30 June. I do not know why HIH has asked or proposed to take this day.

Q. Didn't you ask Mr Fodera?

A. I do not remember that.

Q. If you had been told that the net undiscounted reserves at 30 June 1999 were thought to be in the order of \$3.5 billion, that would indicate, would it not, that HIH contemplated that they would be making a claim to obtain full recovery under those two contracts which are described on this sheet?

A. Not necessarily, because over the six months new reserves could have come, so the number of reserves at 30 June could have been different.

Q. True, but probably --

A. I never had this number of 3.5 million for our treaty in mind.

Q. Billion, I think?

A. Billion, so I can't bring this in line despite the fact that I have written it down following this one telephone conversation.

Q. Staying with this document, under this proposal HIH was stating an expectation that the fund, which would comprise \$150 million under the first contract, would grow by an amount of 8 per cent per year or more compounded?

A. Yes.

Q. It was also proposing for there to be a second contract under which a further \$100 million could be recoverable under section 2?

A. Yes.

Q. Which would be a section which would take precedence over section 1?

A. Yes.

Q. And it was proposing, as you understood it, that the premium under the second contract, which would be \$50 million in total over five years, would also be invested?

A. Yes.

Q. And if it grew at a rate of 8 per cent or more, would provide a fund from which \$100 million could be paid when claims became payable ultimately?

A. This is one way. On the other side, the way that was presented to us was also that money could be available to

pay the Y2K losses.

Q. Was it your understanding that the HIH was proposing that the money to pay the Y2K losses would be from the premiums to be paid over the first five years?

A. Yes.

Q. The proposal is for two separate contracts which under this proposal would provide, first of all, cover of \$300 million in excess of \$2,869 million; secondly, from some Y2K cover and; thirdly, for another layer of cover of 100 million in excess of \$3,169 million?

A. Yes.

Q. Did Mr Fodera tell you why there was proposed to be two contracts, rather than one?

A. No.

Q. Did the proposal for two contracts rather than one come from Hannover or Mr Fodera?

A. It came through this fax.

Q. Through this fax. Did you ever ask Mr Fodera why he asked there to be two contracts rather than one?

A. Not that I recall.

Q. Did you ever wonder why he was proposing two contracts rather than one?

A. I guess, that was sufficient for me.

Q. This was a guess you made at the time?

A. Yes.

Q. What did you guess at the time?

A. That he wanted to have a separate - or HIH wanted to have a separate treaty focusing on the Y2K and not to have everything bundled together.

Q. But why?

A. Y2K was exposure which was quite highly discussed and companies liked to take some precautions for Year 2K.

Q. That is a good reason for having a section of cover in a reinsurance contract for Y2K claims, but is it a reason why the contracts would be split into two?

A. It has not to be, but it was also no reason not to do so, so I did not inquire of this further, as far as I recall.

Q. But you didn't wonder why he was asking for two contracts?

A. I had my guess and I was - we were satisfied with that, and also we thought the client is HIH and if they asked for certain structure we tried to work with that.

Q. The proposal in this sheet, although it doesn't say anything about the reinsurer guaranteeing a return of 8 per cent or higher, might have the effect, might it not,

that the reinsurer would effectively have to guarantee the return of the fund because it would - or might - have to pay claims totalling \$400 million at a particular time in the future; do you agree?

A. I did not get - can you repeat this?

Q. It wasn't a good question. Your previous file note of the conversation with Mr Fodera had talked about the reinsurer guaranteeing an 8 per cent return.

A. Yes.

Q. You'd agree that those words, as such, aren't used on this slip?

A. Yes.

Q. But what is proposed under this slip is that, under the first contract, claims of up to \$300 million might have to be paid by 31 December 2009; correct?

A. Yes.

Q. And if that had to be done, then on the face of this document if the fund hadn't grown by a rate which would produce a pool of \$300 million by 31 December 2009, the reinsurer would be out of pocket?

A. Yes.

Q. So in substance, the reinsurer would be guaranteeing the performance of that fund?

A. Yes.

Q. Similarly, in relation to the second contract?

A. Yes.

Q. Did you discuss this proposal with Mr Fodera soon after it was sent to you?

A. I would not know to whom I spoke, the days or the one or two weeks after receipt of this. We definitely had then communication, correspondence with HIH based on what has been sent here, but I could not recall the specific days, two days later or one day later.

Q. If you could turn to --

I am in your Honour's hands. I notice the time. I was about to go to another document but I know we started very late, Mr Ludolphs, for which I apologise for the time it has taken for you to start your evidence?

THE COMMISSIONER: Mr Ludolphs, what is your position about the length of time you can remain with us?

WITNESS: Well, I can go to the dentist.

LITTLEWOOD: Do you mean for the whole week, or just today?

THE COMMISSIONER: For the week.

LITTLEWOOD: They are booked to go on Thursday.

MR WHITE: You have an appointment?

A. Yes. Can we push it out a bit?

THE COMMISSIONER: We will adjourn until 9.30 tomorrow morning.

FURTHER HEARING ADJOURNED UNTIL TUESDAY, 12 FEBRUARY 2002