

**SELECT COMMITTEE INTO THE  
FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
THURSDAY, 28 SEPTEMBER, 2000**

**SESSION 1 OF 2**

**Members**

**Hon Ken Travers (Chairman)**

**Hon G.T. Giffard**

**Hon Ray Halligan**

**Hon Greg Smith**

**Hon Norm Kelly**

**Committee met at 10.10 am**

**HERBERT, MR JEFFREY**

**Partner, PPB Ashton Read,  
5 Mill Street, Perth, examined:**

**READ, MR SIMON,**

**Liquidator, Global Finance Group Pty Ltd,  
PPB Ashton Read,  
5 Mill Street, Perth, examined:**

**The CHAIRMAN:** Good morning, and welcome to this meeting. You have both signed a document entitled Information for Witnesses. Have you read and did you understand that document?

**The Witnesses:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. To assist the committee and Hansard, could you please quote the full title of any document to which you refer during the course of this hearing. A transcript of your evidence will be provided to you. I remind you that your transcript will become a matter of public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before speaking about the matter. Further, the committee may of its own motion resolve to take evidence in closed session. The taking of evidence in closed session may be relevant when, for example, the committee believes that the evidence may breach term of reference (3) of its inquiry, which states -

The committee in its proceedings avoid interfering with or obstructing any inquiry being conducted into related matters and in particular inquiries by -

- (a) the police;
- (b) any liquidator or supervisor of any company;
- (c) the Gunning inquiry;
- (d) the Australian Securities and Investments Commission; or
- (e) any prosecution.

However, even if evidence is given to the committee in closed session, that evidence will become public when the committee reports on the items of business to the Legislative Council unless the Legislative Council grants an ongoing suppression order at the time the committee tables its report.

Obviously, the committee is well aware that you are dealing with a range of matters that you may wish to keep private. The committee has asked me to tell you that if we ask questions that you would like to answer in private, could you indicate that to us and we will then go through those matters at the end of the hearing; or if you wish to raise issues with us in private, could you indicate that and we will have a private session at the end of the public hearing. I also remind people in the public gallery that only accredited media can take any notes of the proceedings.

Do either of you wish to make any opening comments to the committee about how things are going or about things that you think might be of interest to us?

**Mr Herbert:** Thank you very much. Firstly, the report that I sent to the committee electronically yesterday, which is titled "Report by J L Herbert, Supervisor in connection with an Application for Directions", will give you a detailed and clear impression of how the functions of the supervisor have progressed. That is a detailed document.

**The CHAIRMAN:** We do not have that document.

**Mr Herbert:** I have a copy with me that could be manually copied.

**The CHAIRMAN:** That is probably the quickest way to deal with it.

**Mr Herbert:** We received a letter which said that if material were to be presented, it should preferably be sent electronically, and we did that.

**The CHAIRMAN:** I appreciate that. Obviously we will try to read it as we go through. Is there anything in that document that you want to be kept private?

**Mr Herbert:** No, it is a document that has been submitted in connection with court proceedings that are taking place at the moment. However, it is a comprehensive review of everything that has happened in Global and the background to it.

**The CHAIRMAN:** We will wait until we get that document.

**Mr Herbert:** I have additional material that may be relevant today and have taken several copies of that, as requested.

**Hon G.T. GIFFARD:** Is this one document or a set of documents?

**Mr Herbert:** It is a set of documents. Firstly, it comprises a general note concerning the effect of mixing of moneys, which is a matter I understand the committee wanted to discuss today, in particular the retention from settlement proceeds of money to cover the effect of mixing. Secondly, a schedule shows how much money was retained in a trust account from the proceeds of settlements, both of properties in which GMI mortgage interests are involved and other properties about which we can talk in detail. Thirdly, a four-page schedule sets out an estimate of the losses incurred by investors in Global of both principal and interest. Those totals are on page 4 and I can take you through them in due course. Lastly, a document that was presented to the Gunning inquiry sets out our recommendations about measures that might be taken to avoid in future the sorts of problems encountered with Grubb and Global. Some of those matters were taken up in the Gunning inquiry's recommendations and some were not.

**The CHAIRMAN:** While we are waiting for the other document to come back, is there a discrete matter that you can take us through?

**Mr Herbert:** Perhaps the place to start is the question of mixing, which has caused a lot of distress and confusion to some investors. It is a highly complex matter and is at the nub of a lot of matters that we deal with on a day-to-day basis. As the committee knows from the last meeting we had, one of the major problems faced by us in Global is the fact that there were unauthorised transfers of funds from project accounts which were set up for particular syndicates of investors to other project accounts within what we term in the report "borrower groups". A detailed account of that appears in the report, which the committee can read if it really wants to get into it in detail. A particular syndicate, for example, might put \$1.2m into a particular project, say the Casella group, and would believe, of course properly, that the \$1.2m would be used for the purposes of the development that it had funded. However, unbeknown to the syndicate, in many cases some part of the moneys put up were transferred into another project account in the Casella group, possibly in a separate company under

Casella's umbrella, and used for various purposes, mainly for the payment of interest to investors in that other syndicate.

Eventually when the balloon went up and the people in the first syndicate received a copy of their records they found to their dismay that the moneys they believed were in the project account to complete the construction of the property - if that was what was involved in the project - were not there and some of the moneys had been transferred to people in another project. In some cases the amounts transferred were substantial so that the people in the first project - referred to as the transferor project - were in an extremely prejudiced position. The effect was that there might not have been sufficient funds for them to complete the project and the value of the security for which they held the mortgage might have been materially impaired. One of the issues that we attempted to deal with as supervisor was the type of protection that should be given to people who were involved in a project from which moneys were transferred at various points in time. The crucial point was the moment the property of the transferee project was sold. The question then was whether the people in the first project had any claim against the proceeds of the sale of the properties in the second project. Am I losing you with these terms?

**The CHAIRMAN:** No.

**Mr Herbert:** It gets more complicated. We were appointed as liquidators of Global in February 1999. We sought a ruling from the courts on the question of whether mortgagees on a title had an indefeasible interest, and, therefore, whether we had any right, duty or obligation to deduct moneys from the proceeds of sale to protect the position of people whose moneys had been mixed across in the way that I have described. The particular case that went before the courts was Adine Holdings. Justice McKechnie heard that case and he found that in the circumstance that pertained to liquidation, where there was an absence of fraud, people on the title had an indefeasible interest. As a result of that decision, we allowed moneys from the sale of properties to go through to the mortgagees. In cases where there had been mixing of moneys, we released titles for the purpose of settlement. That position stood until we were appointed supervisor. Upon becoming supervisor, we sought further advice about whether the Adine Holdings decision applied to us as supervisor as it had applied to us as liquidator. In our capacity as liquidator, we had sought direction from the court using the Adine Holdings case.

**Hon GREG SMITH:** Has the sorting out of what to do with those funds held up the speed with which you have been able to carry out your services as supervisor in recovering funds?

**Mr Herbert:** Yes. It is one of a number of complicated legal questions on which we are seeking answers from the court. I will talk about a number of other things in a moment. Legal advice to us pointed out that our position as supervisor is different from our position as liquidator, in that a supervisor is not a mere trustee but has a range of powers that distinguishes that position from that of a liquidator. We were advised that as supervisor, we might have a duty to deduct from the proceeds of settlement of properties and from moneys which had been mixed in from other projects, where the people selling the property had received a benefit from the mixing in of the moneys. Global dealt with a number of major players, one of whom was Casella. About 40 per cent of Global's deals were through a number of Casella's companies. The transfer of money between projects in the Casella group was commonplace and extremely complicated. It is a nightmare. Transfers go from A to B, from B to C and from C to A, and almost all combinations and permutations that you can think of have applied. Originally, I think Margaria allowed these transactions to take place at a time when Margaria had genuine surpluses from the sale of properties. The transfers went from a holding account, in which the surpluses were kept, into other project accounts where

there might have been insufficient funds to pay interest and to pay out investors and so on. Over time, however, that discipline slipped away, and in the end transfers were being made from projects which had funds, to projects which did not have funds, wholesale. That is an issue that has greatly complicated all of this. Our legal advice is that we must protect the position of investors in projects where moneys are being transferred out. We should do that by deducting enough money from the proceeds of the sale of properties to cover those claims.

Only time will tell whether the court will finally decide that those people should be protected, or whether it will decide that the position of supervisor is similar to, or the same as, the position of liquidator, and that people on titles do have indefeasible title and that money should be distributed to them. A number of views on this issue have been put forward by different lawyers. One of them is Doug Solomon, who has argued vociferously for certain outcomes. Our strong legal advice is that we need to take a very conservative position and protect the position of people whose moneys have been transferred out in this way, and that is what we have done.

**Hon GREG SMITH:** In plain terms, I imagine you are being criticised by the people who have their names on the title of properties for looking after the interests of people who do not have their names on the title.

**Mr Herbert:** Exactly.

**Hon GREG SMITH:** You are trying to average it all up so everyone will get something.

**Mr Herbert:** Absolutely right. We are trying to have money that may be the subject of a claim put into a trust account until the court decides which way it will go. Once we have a decision, we can follow up and distribute the money according to the court's directions. We recommended to the court that the distribution should proceed for people whose names are on titles. We think that is how the court will direct.

**The CHAIRMAN:** Is that for cases where someone has an interest in a property and should have been named on the title but is not?

**Mr Herbert:** That is a separate issue, and I will talk that about later. I am talking about a situation where a property is being settled and there are a number of investors in a syndicate and the proceeds of the settlement are requisitioned by us and put into a trust account until we know whether the claims of other investors from other projects should be recovered. It is a question of deciding which of a number of investors in Global Finance are entitled to the money. It is a very complicated and vexed question.

**Hon GREG SMITH:** What sort of reaction are you getting from aggrieved investors? I expect there are two different sorts of reactions: One from registered mortgage title holders and the other from unregistered title holders.

**Mr Herbert:** Precisely. We are getting different reactions from different groups. People whose money has been misappropriated in the way that I have described are grateful that their position has been protected. On the other hand, people who are registered on titles but have the money held on trust are extremely upset.

**The CHAIRMAN:** That is reasonable, because they obviously believe they have an interest that is secure.

**Mr Herbert:** Precisely. Some of them believe the Adine Holdings decision should apply equally to the supervisor and that we are just being obstinate and difficult. The position can be more complicated in cases of subdivision or multi unit developments. I will give an example of an extreme case of investor frustration. Project A was set up and some of its proceeds went to project B, which consists of a subdivision of eight units. Let us imagine that prior to the appointment of a supervisor, six of the eight units were sold so that at the time of

our appointment we were holding onto two certificates of title. Let us assume that \$150 000 was transferred to project B without the authorisation of the investors in project A. Our advice is that the \$150 000 should be recovered from the proceeds of the sale of the remaining properties in project B. Furthermore, the investors in project B are jointly and separately liable for the moneys that were paid for the benefit of all the investors in project B, scattered over the eight units; six of which have been sold.

**The CHAIRMAN:** When you say “our advice”, whose advice is that?

**Mr Herbert:** Michael Hawkins, who is a barrister, and Professor Jim O’Donovan.

**The CHAIRMAN:** Are they independent advisers to you as the supervisor?

**Mr Herbert:** They are really acting for the ministry, but they are also providing advice to us. They are highly eminent people who now have a detailed understanding of all the facts.

We then have a very difficult situation for the people who are registered on the title of those two of the eight units from project B, because 100 per cent of the proceeds of sale may go to a trust account. We are getting heated responses from the people in that position when we tell them that we need to put \$150 000 in a trust account to cover the position of the investors in project A.

**The CHAIRMAN:** Is that money that in some cases they have already received? Are you asking them to return money?

**Mr Herbert:** These are the proceeds of sale from the properties over which the people in project B had mortgages. They expect to recover that money against their investments. We have had to intercede and tell them that money must be placed in trust until the courts decide whether the money from project A - which was paid without authorisation to the benefit of the people in project B - should be recovered.

**The CHAIRMAN:** That is awaiting the court’s determination?

**Mr Herbert:** Indeed.

**Hon GREG SMITH:** I imagine different cases present different scenarios.

**Mr Herbert:** Absolutely. It is before Justice Owen of the Supreme Court. He has been involved in the proceedings from the beginning.

Some time ago we came up with what we thought was an equitable means of settling most of the questions about Global Finance Pty Ltd. Global Finance is in a very different position from Grubb Finance in that Global Finance’s records are relatively well kept. With very few exceptions, all of the transactions are recorded. The incidence of arithmetic error is low. Numerous transactions took place which were unauthorised, but they were recorded. Our proposition is that the records provide a reliable basis for the distribution of moneys back to people. We have formulated a scheme that we hope will cut across a lot of the complexities and will allow distribution of money and titles back to investors. In the cases where people are not registered on titles but have equitable interests, our recommendation is that where it can be seen that the money has gone to a borrower, they should receive a transfer of the mortgage interest.

**Hon GREG SMITH:** It is almost a retrospective registration of the mortgages.

**Mr Herbert:** Yes. It is designed to follow through on the transfers of mortgage interest to people that were in progress at the time the balloon went up for Global Finance. The key criterion is that one should be able to identify money coming in from investors and going out to borrowers. As there have been timing delays, we believe that people should not be prejudiced if they had not received their money at the time the supervisor was appointed.

**Hon GREG SMITH:** Are we talking about the payment of mortgage interest or about getting as much capital back as possible?

**Mr Herbert:** The interest on the mortgage. By making an investment people acquire an interest in a mortgage. Under the mortgage they have an entitlement to the repayment of their principal and the repayment of interest.

**The CHAIRMAN:** That is only your view. There is still a lot of legal argument about whether a mortgagee has a defensible title or an equity interest along with every other creditor.

**Mr Herbert:** The fundamental difference between our approach and that of Doug Solomon is that Doug Solomon contends that there has been an inexplicable mixing of moneys in the trust account such that the records have become unusable. He believes one needs to put everything in one pool, add up everybody's claims, and then make a pro rata distribution of moneys to all claimants, irrespective of their position at the time Global Finance went into supervision. Doug Solomon believes that no distinction should be made between people with money in the money market account - that is, people who had put money on deposit with Global Finance - and people who were involved in some of the Casella syndicates and who had put up money for specific investments that were in progress at the time the company went into supervision.

Solomon's basic argument is predicated on the claim that some of the accounts in Global Finance went into overdraft, and once one account goes into overdraft, every account in the trust account is forever mixed in a way that makes it impossible to unravel; therefore, everybody should be put in the same boat and a pro rata distribution made. We believe that is highly inequitable to certain groups of people. We believe our approach is more equitable for more people and deals fairly with people connected with the Casella accounts and the other accounts where mixing has taken place.

**The CHAIRMAN:** There are effectively three different views: Doug Solomon's; yours; and that of the people whose names are on titles who believe they should sell the properties and if they get back 80 per cent or 100 per cent they should keep it all and tough luck for the others not on a title or covered in some other way.

**Mr Herbert:** There are multiple issues from Grubb Finance and Global Finance and there are a number of different views on each of those issues.

**The CHAIRMAN:** I am trying to summarise the situation into three opinions.

**Mr Herbert:** There are two camps in relation to the fundamental question of whether the records can be used as a means of deciding the distribution of money: Our approach and Doug Solomon's approach. We believe that the people whose names are on a title have an indefeasible interest. That position was agreed to by Justice McKechnie in the Adine Holdings case. We are not clear about whether that position applies to a supervisor in circumstances where there has been a mixing of moneys. It is an extremely complex question.

**The CHAIRMAN:** Ultimately it will need to be decided in the courts. How long will that take?

**Mr Herbert:** It is difficult to know. We had hoped to get it into the courts at the end of last year. That was based on our meetings with Jim O'Donovan and Michael Hawkins. Since then it has been slowed down by argument and submissions from other people who have taken opposing views on a number of aspects.

**Hon GREG SMITH:** Are you saying that Doug Solomon's views or other people's views have slowed down the process?

**Mr Herbert:** Other people generally. I think it is unfair to blame Doug Solomon. He has strong views on a number of issues, and they are quite legitimate. He has a model that he believes is the solution to the problems. We think it is not effective.

**Hon GREG SMITH:** I imagine it would need to stand up in court as well.

**Mr Herbert:** It would. He is the major opponent to our scheme.

**The CHAIRMAN:** He is only representing his clients, who obviously feel that your scheme disadvantages them by comparison with Mr Solomon's.

**Mr Herbert:** Correct.

**The CHAIRMAN:** I think we need to keep personalities out of this.

**Hon G.T. GIFFARD:** He has no choice - he needs to run it his own way.

**The CHAIRMAN:** Mr Solomon obviously believes he has a strong legal argument that will benefit his clients. You believe, based on your legal advice, that your scheme is the appropriate way to go.

**Mr Herbert:** We have tried to come up with a scheme that will help everybody and cut across a lot of problems. One can only drive it as fast as one can, given all the countervailing submissions and different points of view. With conflicts of this sort, it takes time.

**The CHAIRMAN:** What is causing the delay? Is it getting access to the courts or getting legal opinions prepared? Where are the logjams?

**Mr Herbert:** We had documents prepared in January this year. They were distributed to lawyers representing other groups of people, including Doug Solomon. They were complex matters and it took a while for people to come back with submissions and outlines of their positions and arguments. What has caused most of the delay has been an argument about the effect of accounts going into overdraft. I would like to digress there for a moment and explain how that happened. Margaria kept in the trust accounts a number of credit accounts in which moneys to which Global was ostensibly entitled were transferred; at various times the balances in these accounts added up to hundreds of thousands of dollars. As a matter of practice, to avoid particular investors taking losses, he also allowed payments to be made out of accounts in the trust ledger in excess of the funds available there, which created overdrawn accounts. There could have been a project, for example, worth \$5 000, with a final interest payment owed to investors of \$25 000, and a cheque would have been drawn on the trust account for \$25 000, leaving that particular account in overdraft - in debit - to the extent of \$20 000.

What is the effect of that? Does that have the effect of mixing the moneys in such a way that you then cannot unravel things, and have to throw the cards away, and say that you have to pro rata everybody's claim, or does it not? Margaria's rationale for allowing these sorts of transactions to occur was that he always had them covered out of the aggregate credit balances he had in Global's income accounts in the trust ledger. For example, he may have had \$250 000 in credit accounts, and there may have been accounts in overdraft or in debit of, say, \$174 000. He would say, "Sure, I may have allowed some accounts to go into overdraft", but in effect the moneys which created those overdrafts were coming out of the GFG credit accounts, not out of moneys owed to other people. However, for the GFG credit accounts the question would be, "Where did those moneys come from?" If the answer was that they came out of everybody else's money, the result is probably that there has been an inextricable



mixing of moneys such that we then cannot use the cards to determine who should get moneys back. That has been a major point of contention.

**The CHAIRMAN:** There is also this question of whether Margaria was paying the interest. Whether they were entitled to the interest payments would also add to the complexities of the mixing, too, would it not?

**Mr Herbert:** Absolutely. Returning to the timing problems, Margaria had a rationale for the payment of moneys which created overdrawn balances. Every month, from the inception of his business right up until the date when we were appointed, at the end of each month he produced a trial balance of all the balances in the trust account. He ruled them off, got a total, and reconciled the total to the bank account, and the trust account was never in overdraft in total; it always had funds. When we were appointed there was about \$1.8m in the trust account.

**The CHAIRMAN:** Which again is different with Grubb?

**Mr Herbert:** Yes, fundamentally different.

**The CHAIRMAN:** The trust account at the bank was never overdrawn?

**Mr Herbert:** Never overdrawn, and usually substantially in funds, with balances of between \$1.8m and \$3m or \$4m. One of the sections in the trial balance was called "GFG credit accounts", which set out all of the income accounts with a credit balance. This was income he derived from brokerage, payment of interest and all the other activities for which he charged fees. There was also a section on the trial balance headed "Overdrawn balances". The trial balance was constructed in such a way that overdrawn balances were deducted from credit balances so that there was a check that in fact he was never allowing other investors' moneys to be used to fund payments to people in overdrawn accounts. One of the first things we did was to check every trial balance to make sure that the total of the GFG credit accounts always exceeded the overdrawn accounts, and that was always the case. However, Doug Solomon said, "It is not good enough to look at every month end; you have to look at every single point on every single day from the commencement of transactions, because if ever on any day any accounts go into overdraft in excess of the total of GFG balances, you have a problem and my approach is the one that should be taken." So we had to go back.

**The CHAIRMAN:** Did it become more complicated for those who had Global Investments as one of the mortgagees? If the surplus funds were coming out of Global Investments to balance the trust account, and they also had Global Investments on the mortgage, I would have thought that would also provide a linkage for those people with an interest in the money to which Global Investments potentially have a right through the mixing of that trust account.

**Mr Herbert:** Absolutely. Doug Solomon said that if the trust account becomes mixed up at a certain time, moneys which come in after that come into a mixed fund, and payments that go out to acquired mortgage interests, including GMI, have to be realised for the benefit of all claimants on the trust account and not the people who ostensibly put the money in to fund the borrowers. That is also a point of contention.

**The CHAIRMAN:** Surely, the creditors whom Simon is looking after as liquidator of Global may or may not have an interest in a number of those accounts. You as a liquidator would have to look at what assets are available in that trust account for the creditors of the two companies, Global and Global Finance.

**Mr Read:** We are liquidators of both companies.

**Mr Herbert:** When Doug raised this particular point at the end of March, we had to go back and recreate balances in a manual ledger on a daily basis, because through his submission he

required that exercise to be undertaken. We had to do it on a daily basis from the commencement of operations right through to the date of appointment. That took a couple of months. We then had to rewrite our submission to cover complications which had arisen, and we had to reformulate our submissions.

**The CHAIRMAN:** Those complications were that there had been mixing?

**Mr Herbert:** There had.

**The CHAIRMAN:** And when you balanced it on a daily basis, certain trust ledgers had been overdrawn?

**Mr Herbert:** Correct. We do not think that fundamentally changed our position, but it adds another layer of complication, and that is one of the things that is dealt with in this submission if you really want to get into the nitty gritty. For the benefit of the court and for the benefit of all parties, including Doug Solomon, we have written a detailed submission giving all the background facts and the outcome of all the tests carried out by us, including the recent tests in relation to daily balances. We set all that out in this report to which we referred earlier. We had a motion meeting in court on Wednesday. A preliminary hearing is set down for 17 October, and at that hearing Judge Owen will set dates for the substantive issues to be heard in court. I do not know what will be the timetable and the time required for all that.

**The CHAIRMAN:** Do you have a ballpark idea? Do you think it will be 12 months or two, three or four years? It seems to me, knowing the way the court system operates, that it could be the longer term rather than the shorter.

**Mr Herbert:** I think everybody is conscious of the fact that there is a need here to try to expedite matters, so everybody would be looking for shortcuts. Having said that, it has undeniably taken a long time to get here. There are a number of steps: First, how long the proceedings will take is in the hands of other people. We do not know; it depends how the argument develops with lawyers representing other parties; it could take some time. Secondly, even when the matter gets to court the judge will have to try to make sense of all this and then hand down a judgment. These are very complex matters and they are numerous.

**The CHAIRMAN:** Will you as supervisor be presenting that scheme to the court, or will investors be required to present those arguments?

**Mr Herbert:** A question about standing has arisen recently in the Grubb proceedings, as you may know.

**The CHAIRMAN:** No, I was not aware of that.

**Mr Herbert:** Justice Owen has been looking at that in the Grubb case. If it arises in the case of Global, I think it is just a technical issue. A way around that is to get representatives from the various categories of investors to stand in the proceedings -

**The CHAIRMAN:** The point of my question is that your legal advice is being funded by the State Government -

**Hon GREG SMITH:** Is the Federal Government contributing as well?

**Mr Herbert:** No.

**The CHAIRMAN:** One of the issues we are looking at is the avenue for legal redress. Obviously you are representing your position, but that is of benefit to one group of investors, so they are effectively being represented by the State?

**Mr Herbert:** Yes.

**The CHAIRMAN:** The others, who are disadvantaged by that scheme, who wish to have their own views put to the court, are not having their legal position represented and funded by the State.

**Mr Herbert:** Correct.

**The CHAIRMAN:** That was the point of asking the question.

**Mr Herbert:** This gets complicated. There is not much that is simple.

**The CHAIRMAN:** So we have discovered.

**Mr Herbert:** The first thing to say is that we have obviously tried to take an even-handed approach.

**The CHAIRMAN:** I am not criticising your motives; it is more an equity issue from the point of view of the investors.

**Mr Herbert:** We have tried to come up with a scheme that is equitable to everyone. However, some people may feel that this approach is prejudicial to them relative to the approaches by other parties, including Doug Solomon. To ensure that all parties were represented in these proceedings, the ministry originally decided to provide some funding for different categories of investors so that all parties could be heard during the proceedings. That decision was made some time ago when we all had a more simple view of how these matters would proceed. Since then they have become more complicated than anybody envisaged.

**The CHAIRMAN:** Does that mean there are categories not getting representation?

**Mr Herbert:** The ministry will have to make a decision about that.

**The CHAIRMAN:** Are they funding the legal advice for some categories?

**Mr Herbert:** The ministry has decided to make some funding available to the categories of investors involved in these proceedings. If that funding is not sufficient to cover the costs of the legal representatives for each of these categories of people, my view is that the surplus costs involved will have to be taken out of the trust fund. That is not a popular view. The investors believe, almost unanimously as far as I have been able to ascertain, that the costs should not come out of the trust fund and that the Government should come up with the moneys.

**The CHAIRMAN:** Are you saying that there are numerous categories of investors?

**Mr Herbert:** Yes. We came up with four broad categories of people for the purposes of these proceedings: The first were the borrowers, the second were the people with money in the money market account; and there were two categories of people in project accounts.

**The CHAIRMAN:** Those with registered title and those without registered title?

**Mr Herbert:** Yes, broadly.

**Hon GREG SMITH:** Mr Read, as the liquidator how is this affecting your role? There has been some comment about the role played by the liquidator.

**Mr Read:** I do not think the two roles are similar. I am trying to recover funds for future claims by investors when they suffer losses. I am looking at a totally different series of actions. My work tends to be looking back at the past operations of Global and trying to identify individuals and related entities where money has flowed over time and looking to recover those moneys. The legal issues faced by Mr Herbert certainly are not affecting me as part of the liquidation. The essential factor that really affects me in terms of timing has been one of funding. This liquidation has been without any funds whatsoever, and as you can

appreciate, commencing legal action is an expensive exercise. If to any extent my liquidation has been slow, that is the reason. One of the unfortunate problems is that legal matters take time. That is a simple fact of life. Unfortunately, at the moment, all of my actions involve legal issues.

**Hon GREG SMITH:** Is the Commonwealth Government funding your activities?

**Mr Read:** I have funding from a number of sources.

I do not know whether the committee wants Mr Herbert to complete his explanation of the supervisor's role and then to have me talk about the liquidator's role.

**The CHAIRMAN:** It would be best to finish one.

**Hon GREG SMITH:** I thought they were inextricably linked.

**Mr Read:** Not in the day-to-day work; there is no involvement between us.

**Hon G.T. GIFFARD:** How much funding have you received?

**Mr Herbert:** The original amount discussed was \$15 000.

**Hon G.T. GIFFARD:** Is that in total?

**Mr Herbert:** Yes, that is the total for the representatives of the various groups.

**Hon G.T. GIFFARD:** That was put on the table.

**The CHAIRMAN:** That would cover the first day in court.

**Hon G.T. GIFFARD:** That would finance the lodging of papers.

**Mr Herbert:** That is true. When we first met, we thought a day in court might settle it. In hindsight, that was optimistic.

**Hon G.T. GIFFARD:** Was that considered reasonable when it was put on the table?

**Mr Herbert:** Yes. It was expected to cover the costs of a person in court for a day.

**Hon G.T. GIFFARD:** Have there been further requests, or is that off in the ether?

**Mr Herbert:** I am not directly involved in those discussions. However, it is fair to say that investors strongly believe that they should be funded -

**Hon G.T. GIFFARD:** I am aware of that.

**Mr Herbert:** They believe that the full cost of the lawyers representing them should be covered.

**Hon G.T. GIFFARD:** Is that without taking it out of the trust fund?

**Mr Herbert:** Yes.

**Hon GREG SMITH:** Was that funding from Fair Trading?

**Mr Herbert:** Yes.

**The CHAIRMAN:** I assume that the funding for your advice is not coming from the trust fund at the moment.

**Mr Herbert:** That is correct. There is an issue about the liquidator's fees predating our appointment as supervisors. I will go through that briefly. We have come up with what we believe is a solution that will eliminate the impact on investors of the liquidator's fees. However, there is a strong view that, irrespective of whether the liquidator performs work that benefits people with money in the trust accounts, the fees should not be paid from those accounts. We have had a number of heated discussions with investors about this issue. We have always said that we will abide by the court's decision on, firstly, whether fees for

services that benefit those with moneys in the trust accounts should be deducted from the trust account moneys; and, secondly, if it is deducted, what amount should be approved. We have always said that we will leave that in the hands of the court. Fees can be deducted only to the extent that they are approved by the creditors. We expect that the creditors - the investors in this case - will refuse to approve the payment of any fees and that the matter will have to go to court.

**The CHAIRMAN:** Are the investors the creditors? Surely they become creditors only if they can establish that they have a claim against Global Finance Group Pty Ltd for negligence or some other -

**Mr Herbert:** That is correct, but they are all contingent creditors.

**The CHAIRMAN:** But they must still go through a process to get to that point. It may be reasonable to assume that that will be successful, but they must still go down that path.

**Mr Herbert:** That is correct.

**Hon GREG SMITH:** What sort of support have you had from the ministry and its staff?

**Mr Herbert:** We have been provided with funding and with legal assistance when required. There has been strong support.

**The CHAIRMAN:** One of the issues I am trying to clarify follows on from the last question about support from the ministry. Are you acting as its agent or are you acting independently?

**Mr Herbert:** I am appointed under the Finance Brokers Control Act as supervisor; I am not an agent of the ministry. I am an independent party appointed under a statute.

**Hon GREG SMITH:** Are you appointed or employed?

**Mr Herbert:** I am appointed.

**The CHAIRMAN:** Can you make any decision you see fit, or do you have to get approval from the board?

**Mr Herbert:** We act independently. Obviously we have communicated.

**The CHAIRMAN:** I understand that you consult. I am trying to clarify whether you operate independently in seeking legal advice and so on. It appears that you make your own decisions and the board or the ministry has no scope to direct in that regard.

**Mr Herbert:** No pressure has been applied by the ministry; nor has it tried to second guess the decisions we have made with Michael Hawkins and Jim O'Donovan. All the decisions made and steps taken have been based on discussions with lawyers, and we have gone from there.

**Hon GREG SMITH:** Have you had any communications with the Minister for Fair Trading about tracking down unscrupulous people and how to help people get their money back?

**Mr Herbert:** Simon Read can talk about his actions as liquidator. The ministry is funding him to try to recover moneys from Margaria for the benefit of the creditors. I have had discussions with Mr Shave that amount to information sharing. Again, he has not in any way tried to influence what we are doing.

**The CHAIRMAN:** When you say "information sharing", do you mean arranging for the sharing of information or you and him sharing information?

**Mr Herbert:** It has involved our telling him what we have been doing.

**The CHAIRMAN:** It was similar to what we are doing today.

**Mr Herbert:** That is correct, but in much less detail.

**Mr Read:** I will start by giving the committee an update of my progress as liquidator. As I said, most of my actions have involved trying to recover funds for the potential creditors of Global Finance Group Pty Ltd. That has taken me in a couple of directions. My first line of attack has been against the directors - Mr Margaria and his wife - and their private companies. Those individuals and their entities received approximately \$1.3m over the years prior to our appointment as liquidators. In that respect, I am currently conducting public examinations of Mr and Mrs Margaria. That will commence in October and further hearings will be held in November dealing with both of those individuals. I am also examining Mr Margaria in his capacity as director of some of his private companies that have benefited from their relationship with him and Global Finance. I have public examinations scheduled for the Global Finance accountant, who is also the accountant for Mr and Mrs Margaria and their public companies. Again, those public examinations are scheduled for October and November. Writs were issued last week against Mr and Mrs Margaria and their private companies. Claims have been mounted in an attempt to recover the proceeds that have flowed through to them over the past four years - that is, about \$1.3m.

Members may also have read in the newspaper that I have obtained Mareva injunctions over Mr and Mrs Margaria's assets and the assets of their private companies. That injunction is a very powerful tool. In effect, it has frozen all their private assets and the assets of their private companies. That injunction remains in place today, and we anticipate that it will remain in place until our action has been heard. That is a summary of the actions I have against Margaria and his private companies.

I also intend to publicly examine the Global Finance lawyers and Global's primary valuer, Mr Ron O'Connor. Those examinations will also be conducted in October and November this year. Once again, my investigations lead me to believe that there may be actions. I have received preliminary legal advice about both the lawyers and the valuers.

My other area of concern is an action that is to commence against the Global Finance auditors. Members may have also read that public examinations have been conducted of the partner who performed the audit. That public examination provided further evidence supporting my claim, and that claim will be brought shortly. That summarises the status of my examinations.

As I said, the investigations have been completed and the issue is now in the hands of the lawyers representing me in respect of those actions. It will take some time to conclude. It is very difficult for me to put a time frame on it.

**Hon GREG SMITH:** Has the minister made any efforts through you to try to get back as much money as possible?

**Mr Read:** It is safe to say that most of those actions would not have been commenced had it not been for the funding I have received through the ministry. The actions against the directors and their private companies and the potential actions against the lawyers and the valuers would not have commenced had it not been for that funding.

I will step back in time and go through the commencement of the liquidation and what I have done since appointment. Unfortunately, this liquidation is without any funds, therefore I have not been able to obtain appropriate legal advice without the help of some legal firms that have provided preliminary advice free of charge. My early investigations indicated that I had two clear areas of concern: First, the directors and their related entities and the moneys they had received; and, secondly, potential actions against the auditors. These days it is open to a liquidator to try to obtain third-party litigation funding, usually from insurance-type companies. I made applications to various litigation funding parties in respect of both the actions against Margaria and his related entities and the auditors. I was successful in

obtaining funding from a private company for action against the auditors. However, I was unsuccessful in obtaining funding to take action against Margaria and the related entities, simply because I did not have enough evidence and legal advice to encourage someone to do so. Therefore, I have had financial support to complete the actions against the auditors. If it is successful, there will be sufficient funds to conduct the rest of the litigation, which would be to look at attacking the Margarias, their related entities and any other party. That is not an unusual process for a liquidator when no funds are available. A liquidator will find the easiest and quickest action that is likely to lead to a successful conclusion. With those funds and the support of the creditors, he will then chase other avenues. That is the scope and direction that the liquidation was taking.

During that time, along with trying to obtain funding from independent parties, I also sought the support of the Australian Securities and Investments Commission. It provided limited support, but not sufficient for me to be able to take the actions that I have taken over the past months. The funding that has enabled me to take the actions against the directors and to improve my investigations into the lawyers and the valuers has come from the Ministry of Fair Trading. Without that support these actions would not have commenced.

**Hon GREG SMITH:** Who would best be able to give the estimated total losses that might be incurred by the investors in Global?

**Mr Herbert:** We have a schedule that estimates that.

**Mr Read:** It is one of the issues that we are looking at in our actions. In bringing any claim against any party we have to establish the losses that have been incurred. One of the projects we have embarked upon is to try to estimate the losses that will be suffered by the investors. If members would like to look at the information that has been circulated -

**Hon GREG SMITH:** I was thinking more of the cents in the dollar that the investors are likely to get back.

**Mr Read:** In terms of the liquidation? I will go through this schedule, because it is useful. If we take ballpark figures and say there was \$60m of funds under Global's control at the date we were appointed, to date approximately \$20m of those funds has been recovered by the investors through the sale of their properties and the sale of their security; and of the \$20m that has been recovered, losses of approximately \$1m have been sustained, which represents 5 per cent of the \$20m that has been recovered. In other words, we started with \$60m, and we now have \$40m. An amount of \$20m has been returned to investors, and those investors have sustained losses of approximately \$1m, which is a 5 per cent loss.

**Hon GREG SMITH:** They are out of pocket 5¢ in the dollar?

**The CHAIRMAN:** That is on capital.

**Mr Read:** That is right. We anticipate that the bulk of the losses remaining in the \$40m to be recovered will be substantially more than 5 per cent. We have written to the syndicate or project leaders of each of the projects whose funds are still outstanding and have asked them to estimate what their losses will be. That estimate is based on valuations that they may have obtained and their estimate of the potential losses. Members will see from the bottom of that document that the suggested losses approximate \$17m inclusive of interest. We are still to receive details on the further \$17m-worth of funds under investment. This is an issue in progress.

**The CHAIRMAN:** That is just under half of the losses.

**Mr Read:** Just over half, and we are waiting for the rest of the information to become available.

**Hon GREG SMITH:** Are the investors who have received 95¢ in the dollar still involved in some of the other actions?

**Mr Read:** The nature of this beast is that the investors may have been encouraged to invest small amounts over a number of different projects. Members will find that individual investors are likely to be exposed to a number of these projects. They may have received 95¢ in the dollar for project A but may receive only 20¢ in the dollar for project B. They still have an interest in resolving these issues. There were around 479 investors, spread over 170 projects. That gives us some indication of the likely losses. We are looking at this point at a loss of around \$17m, inclusive of interest that has not been paid. We are waiting on slightly less than 50 per cent of the responses from the syndicate leaders. It is very difficult for me to estimate what the likely cents in the dollar return will be. If my actions are successful across the board I will have substantial funds to make a distribution back to the unsecured creditors. What that will be in terms of the cents in the dollar will be determined by the quantum of the claim that the creditors will have against Global.

**Hon GREG SMITH:** Does that \$17m shortfall take into account whether you can take action against Mr Casella and his wife against the assets in other companies that they own?

**Mr Read:** Whether I or the mortgagees take action?

**Hon GREG SMITH:** Whether action is taken to receive the money from them. You have managed to freeze their assets.

**Mr Read:** Yes.

**Hon GREG SMITH:** Will the other companies and interests that he and his wife own come off that \$17m figure in the liquidation process?

**Mr Read:** If I recover any funds, those funds will come under my control and I will call for proofs of debt that have been suffered by individuals. Yes, those funds will be pooled, and depending on the proofs of debt that I receive from creditors, that will be paid out in equal proportion to the unsecured creditors.

**Mr Herbert:** Any recovery that they make will reduce the loss of \$17m.

**Hon GREG SMITH:** Are there any estimates of what Mr Casella and his wife have in other companies?

**Mr Read:** Do you mean Mr Margaria?

**Hon GREG SMITH:** Sorry, Mr Margaria.

**Mr Read:** As part of the Mareva injunction I have obtained a statement of the Margaria's assets, and I am prepared to give that information in closed session.

**The CHAIRMAN:** We will do that later. The schedule that you have provided to the committee today is of the estimated losses. Does that relate only to the outstanding matters, not those that have already been settled?

**Mr Read:** That provides details of all loan accounts that existed at the date of our appointment. One of those columns is a realisation column, the first of which reads \$170 000. In that case it means that that property has been sold and that the mortgagees have received the full extent of their loan of \$170 000. The three right-hand columns show a zero, which means that the mortgagees have received all that they were due to receive: They received their principal, and the mortgage that was outstanding. Members of that syndicate have received 100¢ in the dollar.

**Hon GREG SMITH:** Plus interest?



**Mr Read:** Plus interest.

**The CHAIRMAN:** In the case of Garon Pty Ltd, where the loan was for \$80 000 and the property was sold for \$80 000 and the investors clearly received back all of their money, could those people still suffer potential losses if it was found that it had been part of related entity trading in the past, or are they safe now that they have the money in their pockets?

**Mr Herbert:** If there were mixing issues, we would have subtracted an amount at settlement and put it into a trust account.

**The CHAIRMAN:** Is there any likelihood that action will be taken to pursue those moneys if it had happened six months prior to the appointment of a liquidator?

**Mr Read:** I cannot see that there would be grounds for the liquidator to recover the moneys, but perhaps there would be grounds under the supervisor's role.

**Mr Herbert:** We are not putting any restrictions on the ability of people to take actions against others where there has been mixing. In cases where some of the beneficiaries of that mixing have sold their properties and have got their money, prejudiced investors might have an action for recovery of some part of that money from people who have received their money. However, that is unlikely; and if the court upholds the principle of indefeasibility, it will not happen.

**Hon G.T. GIFFARD:** Mr Read, you are talking about the disbursement of these moneys after these properties are sold.

**Mr Read:** Yes.

**Hon G.T. GIFFARD:** Mr Herbert, you are talking about whether mixing is occurring. Who disperses the money? Is it the liquidator? Mr Read is talking to the committee about these properties being sold -

**Mr Read:** Yes, I am, but with regard to the use of the proceeds of those sales, as Mr Herbert has pointed out, there may be a requirement that some of those funds be held in trust, and that is a matter that he is dealing with. I do not deal in any way with the mortgagees' actions or the sale of any of these properties. My involvement has been purely to estimate what losses will be sustained by the investors so that I can mount claims in respect of the losses that Global is likely to suffer in the future, because as these investors suffer losses, they in turn are likely to claim against Global. Therefore, it is important for my legal actions that I have an understanding of what losses Global is likely to suffer.

**Mr Herbert:** All of these realisations have taken place by the actions of the mortgagees themselves. Global had an agency function in the past and did a number of things, but that agency arrangement was terminated when we were appointed. All of these sales have taken place as a result of the mortgagees in possession of these properties putting them on market and selling them; or the borrowers concerned selling the properties and paying out the investors. That has all taken place independently of us.

**Hon G.T. GIFFARD:** I was confused about the figure of just under \$60m. Is that the \$57m -

**Mr Read:** I was talking in round terms.

**Hon G.T. GIFFARD:** You said \$57m, and then you said there was about \$20m in that first round and about a \$1m loss out of that top \$20m. Is that right?

**Mr Read:** Yes, that is right.

**Hon G.T. GIFFARD:** You then come to the bottom figure, which is a \$17m loss on paper.

**Mr Read:** That is right.

**Hon G.T. GIFFARD:** Is that another \$17m that you have not been able to calculate?

**Mr Read:** Perhaps I should rephrase that. The last line in the left-hand column on that last page is a figure of \$57m, which is the funds under management. The realisation value in the next column is the amount that has been realised by mortgagees or borrowers acting to sell their properties; so those funds have been received by investors. The realisation value column is the estimate made by the syndicates of the value of their existing security; that is, the properties have not been sold - they may be on the market - and that \$8m is the estimate of their value. The next column is estimated principal losses; that is, the estimate of losses on principal investment. Again, we have an interest column there, with an estimated outstanding interest of \$8m. If we add the total estimated principal loss and the estimated interest loss, we arrive at \$17m-worth of estimated losses. The next column, which is headed "No Details", is the book value of the syndicates from which we are yet to receive a response.

**Hon G.T. GIFFARD:** Essentially, we are looking at a book value loss of \$17m?

**Mr Read:** That is right; and that is including interest.

**Hon GREG SMITH:** As a hard capital loss, the figure we are looking at is \$8.8m at this stage; and when interest is added to that, we get the figure of \$17m?

**Mr Read:** That is correct, yes.

**Hon GREG SMITH:** What interest rate is used to get to that figure of \$8m of outstanding interest?

**Mr Read:** That varies according to the terms of the different arrangements, but generally we have been calculating it on penalty interest. The syndicates have been advising us that they are calculating it. In some cases, penalty interest of up to 14 per cent could be charged.

**Hon GREG SMITH:** I do not mean to sound cruel, but if the interest that they have received on the loan were amortised over four years and if, for example, at the end of four years they got their capital back with no interest, they would still have averaged a reasonable interest rate.

**Mr Read:** They would be extremely lucky if they got all their principal back over that time. It is a slight furphy to look at the interest calculation, because it is extremely unlikely that the investors who remain there will ever get their interest back in any shape or form - certainly not from the recovery of the security.

**Mr Read:** We are looking at a situation here, of approximately \$8.8 million of losses in principal. These investors will be extraordinarily lucky to recover their principal. Calculating interest, whether at 14, 10 or 20 per cent, is somewhat irrelevant. It will not be recovered, but it will certainly be used in their claim against the company.

**Hon G.T. GIFFARD:** Because it is money they would otherwise be entitled to?

**Mr Read:** It is.

**Hon G.T. GIFFARD:** When they went into this investment, was it money that was committed to them?

**Mr Herbert:** It was money to which they were contractually entitled.

**Hon GREG SMITH:** Realistically, is it a furphy because there is no money left?

**Mr Read:** That is right.

**Hon GREG SMITH:** Is it not a fanciful claim?

**Mr Read:** Not at all. That is why, in seeking the response from the syndicate leaders, the question has been raised of the interest rate and how it was to be supported. All this information is going to be required when they eventually lodge a claim in the liquidation. If you like, we are preparing ourselves for that as well. We are still to receive responses from at least half, and we may find significant difficulties there as well.

**Hon GREG SMITH:** I was asking the question because we have seen reports in the media of \$150m of pensioners' money lost. The reality in Global is that the figure is more like \$8.8m.

**The CHAIRMAN:** It is actually closer to \$17m.

**Hon GREG SMITH:** In hard cash, I mean.

**The CHAIRMAN:** In capital terms, it will be closer to \$17m. Maybe Mr Herbert can provide an answer.

**Mr Herbert:** Maybe I can add something. The interest loss is the loss at the rate provided for under the contract, including penalty provisions. From the investors' point of view, what they have lost is what they otherwise might have invested that money for. If they put that money on deposit in a bank, as distinct from Global, they may have got one-half to one-third of the interest.

**The CHAIRMAN:** Maybe if I take it back it might help explain what members are getting at with their questioning. One of the views that has been put to the committee is that people were getting paid high interest through these loans. Investors have put it to the committee that what they saw as the risk was that they would not suffer a capital loss, but on some deals they might not get their interest paid. That is why you get an interest rate of 10 per cent, rather than 4 per cent, as at a bank. The risk is contained within the interest rate. Without saying whether the committee supports that, that is certainly a view that has been put to us. Putting interest to one side - that is an arguable claim they have against different people - just about everyone who has come before this committee as an investor has said that they always thought their capital would be secured by a mortgage, with a 70 per cent or better loan to valuation ratio. What is your best estimate of what the capital loss will be at the completion of the realisation of the assets?

**Mr Herbert:** That is \$8.8m.

**The CHAIRMAN:** That is only half of it, though, is it not? If you have half of it in, and another half to go, is it reasonable to assume that the other half will be recoverable?

**Mr Herbert:** No. I think there is really going to be a problem with the remaining portion. Most of the realisations that have taken place so far have occurred with respect to properties that were completed, as at the date we were appointed as voluntary administrator. There was a range of degrees of completion. At the date that we were appointed, some properties were complete, and Global was holding the certificates of title and performing some of the agency functions, such as collecting interest from the borrowers and paying it to the investors. In other cases people had put in substantial sums of money pending the development of a property, and nothing had happened; the money was frittered away. Those are the people who are in most danger. There are some extreme cases where losses could well be above 50 per cent, maybe even 75 per cent, of the principal invested. The losses documented here will increase proportionately as more instances come to light.

**The CHAIRMAN:** The cases that have not been reported are the harder ones for which to determine the value, therefore the ones most likely to incur a greater loss. It would not be unreasonable to estimate that the losses out of Global will be close to \$20m or thereabouts.

**Mr Read:** The estimate to date is \$8.8m. We are yet to receive responses in respect of \$17m. In a worst case scenario, with losses of 100 per cent of that amount, the figure is around \$25m. It would be safe to say that the figure lies between \$20m and \$25m.

**Mr Herbert:** Without bringing Margaria's personal assets into it.

**Mr Read:** Yes, without looking at any recovery.

**Hon G.T. GIFFARD:** Is there any calculation of loss of interest?

**Mr Read:** That is just straight capital.

**Mr Herbert:** More realistically, if it is assumed that 50 per cent of the remaining \$20m will be recovered, you might have total losses of \$18-19m, of a total of about \$60m, making losses less than a third.

**Hon GREG SMITH:** How long is it likely to take before you have wound it all up?

**Mr Read:** The issue with winding up is that much is dependent on the mortgagees' action. Some of the properties they have invested in are unlikely to be sold in the foreseeable future. I inspected some properties in Collie only last week. It is extremely difficult to imagine that some of those properties will be sold.

**The CHAIRMAN:** Especially if you read today's article about the Collie land sales.

**Mr Read:** They are giving away free land in Collie, and that is not the land our mortgagees are trying to sell. That is going to be a big factor, and the conclusion may take many years. I do not think that will necessarily affect our roles. We can conclude, and ask investors to estimate their likely losses so that they can participate in the liquidation, but many investors will take many years to solve their problems.

**Mr Herbert:** When we talk about the time it is going to take to conclude, we are talking about a number of different things. The sale of properties by the mortgagees is taking place independently of us, under the direct mortgagees' supervision. Some properties may take years to sell, and some may not be saleable, as we have just discussed. As supervisor, we are managing the distribution of the cash in the trust account and the mortgage interest that we still hold there, to people who are not registered on titles, but who put money in. Hopefully we can get that resolved in a matter of months. Whether that is three months or six months, I cannot say. It would depend on how complicated the legal proceedings become.

**The CHAIRMAN:** People are of the view that the claims against the auditors will be successful, and I imagine the auditors or their insurers may seek to join that action when it gets into court, but that is something for them and not for you to comment on. Would such an action seek to recover any outstanding losses that are not picked up anywhere else?

**Mr Read:** I do not fully understand that question.

**The CHAIRMAN:** Is there a set amount that you can claim against the auditors, or would you claim the full amount of any losses that have been incurred as a result of their audits?

**Mr Read:** That is something I would prefer to discuss in closed session, if that is all right.

**The CHAIRMAN:** Very well. We can come back to that. I have some other follow-on questions, but I will leave them until we go into closed session.

**Hon RAY HALLIGAN:** I would like to ask a question of Mr Herbert. Some of the documentation the committee has seen, between investors and finance brokers, includes a breakdown of how the money they are providing is to be spent. In some instances we have seen figures in that breakdown that include interest payment. In that same documentation, in some instances we have seen statements made to the effect that interest payments would be

guaranteed, as they are being made from the finance brokers' trust account. Did you see any instances of this practice in the Global documentation?

**Mr Herbert:** What commonly happened with investments supervised by Global was that the documents that were exchanged between the investors and Global provided for some part of the proceeds put forward by investors being used to pay interest to them, commonly 12 months' interest. It was not an uncommon provision, in a case where a property development is taking place, given that, in the case of developments, no money really flows from the property for some period.

**Hon RAY HALLIGAN:** So no income is being generated?

**Mr Herbert:** Correct. The interest must come from somewhere, so it can be provided, and certainly was often provided in Global's case, that 12 months' interest can come out of the money that these people put in. Most of the investors were probably unaware of that fact, because they had not read the documents properly, but it was happening. In a lot of cases involving Global, investors received interest from their own cash for periods beyond 12 months. One investor made an appeal to the Taxation Review Tribunal recently, to try to get a refund on the tax she paid on what she argued was essentially her principal, and not income at all. That is in process at the moment, and is a very difficult argument to run properly.

**Hon RAY HALLIGAN:** Is it also correct to state that finance brokers - Global in this case - also claimed a commission on the payment of that interest back to the investor?

**Mr Herbert:** Yes, it is.

**Hon RAY HALLIGAN:** Does that not make one wonder why someone should pay money out of his own pocket, to place in the hands of a finance broker for a determinate time, only to receive a lesser percentage of that back?

**Mr Herbert:** There are many questions of that sort.

**Hon RAY HALLIGAN:** I cannot understand why investors would go down that path, when all they are doing is handing a percentage of their money over to Global for absolutely nothing.

**Mr Herbert:** In theory, Global was providing a range of services. One such service was collecting money from investors and remitting it back. As you quite rightly say, if payments of interest were simply returning money they had put in originally, which they agreed could be paid back as interest, it is perhaps questionable whether Global should have charged its fee for the payment of that interest. But it did, and perhaps it would have argued that this was an administration charge for the payment of that interest.

**Hon RAY HALLIGAN:** The administrative cost, no doubt, even in inverted commas. I am not trying to denigrate the investors for one moment here, but it seems odd that so many of them have spoken up on their concerns about the interest payments. While the interest payments continued to flow, they were happy with the situation.

**Mr Herbert:** Again, they were only getting their own money back.

**Hon RAY HALLIGAN:** They could have held on to it and said, "You have my money for 12 months, repay the principal in 12 months, and I'll deposit my interest in the bank, for that proportion of the money I would have given you, and earn interest on it myself."

**Mr Herbert:** Exactly right. A lot of the investors were relatively unsophisticated, and believed that, while they were receiving interest regularly, and not receiving reports from Global that indicated that there were problems, nothing was going wrong. There are horrendous cases, as we have described, where they received interest over number of years out of the money they had put forward, and not from the borrower at all.

**Hon GREG SMITH:** Have you spoken to many investors who had no concept of the higher interest, higher risk factor?

**Mr Herbert:** At the first meeting of investors with contingent claims, Mr Ogilvie from the Australian Securities and Investments Commission made a statement to the effect that there is a connection between risk and reward in all investments and that people should perhaps be more cautious. If there had been an exposed beam in the room and a piece of rope he would probably have been hung. It was a very unpopular view. However, it is undeniably true that risk and reward are linked.

**Hon GREG SMITH:** How have you found ASIC to work with? Have the staff been helpful, or has help been non-existent?

**Mr Herbert:** From a funding point of view it has kept a very low profile.

**Mr Read:** I have had much more to do with ASIC than has Mr Herbert in his role as supervisor. Initially, I reported regularly to ASIC. It was my only source of assistance in some actions in obtaining books and records of Margaria and his related entities. ASIC took action to secure those assets and books and records. Unfortunately, at the end of the day support from ASIC has been less than I had hoped for. My support accordingly has now moved from the Federal Government to the State Government through the Ministry of Fair Trading.

**Hon G.T. GIFFARD:** Is that due to unwillingness or lack of resources?

**Mr Read:** I think ASIC has an inability to act in certain circumstances. For example, books, records and information that I requested ASIC to seize and recover from related entities was done. However, due to ASIC's interpretation of the law it is not entitled to now provide those books and records to me. Those types of frustrations were annoying early when I would dearly have loved to have had those related party books and records but could not obtain them.

**Hon GREG SMITH:** Is there any way of obtaining them?

**Mr Read:** ASIC is not obstructing the situation, but it is interpreting the law in such a way that it means it cannot provide the information to me. I can now obtain it through the process of public examination. ASIC will provide those records because it has been joined in the action. It is more true to say that ASIC has attempted to assist, where it can, within the limits of its ability.

**Hon G.T. GIFFARD:** Do you think ASIC has greater powers than it is saying to you it has?

**Mr Read:** I do not think so. I am frustrated because I can see what I want; but it is in ASIC's hands and I cannot obtain it. To me that does not make much sense.

**Hon G.T. GIFFARD:** It should have the power to hand it over to you.

**Mr Read:** It should have the power, but it refers to natural justice, which determines that ASIC must ask the owner of the property whether the owner is prepared to hand it over. In the case of Margaria, it would be asking him for permission to hand me documents that would assist me in my action against Mr Margaria and his related entities. Clearly, he will not provide that.

**Hon G.T. GIFFARD:** Do you dissent from that view of natural justice?

**Mr Read:** In a general sense I may, but under these circumstances I can only agree with ASIC. It is hamstrung.

**Hon G.T. GIFFARD:** Is it a matter of ASIC's being hamstrung by the need to be correct in its dealings that makes it difficult for you?

**Mr Read:** Absolutely.

**Hon G.T. GIFFARD:** It is not a lack of will?

**Mr Read:** It is certainly not a lack of will on the part of ASIC. It is frustrating because I can see the material, but I cannot touch it, and having it would help me. I understand that situation and, although it is frustrating, I do not have any complaints. From the investigatory side of things, we have been working with ASIC as well as the fraud squad. It has been a combined effort.

**Hon GREG SMITH:** You referred earlier to the fact that your first action would be against the auditors, because that would most likely be successful. Are there obvious examples of the auditors not doing their job properly in the case of Global Finance?

**Mr Read:** That will certainly be our claim. The public examinations and public record of the auditors identified numerous occasions on which I believe the auditors have been deficient in their duties.

**The CHAIRMAN:** Can you give us a brief outline of the cause that put Global Finance into liquidation?

**Mr Read:** The essential cause that led to our appointment was the involvement of ASIC early on. I understood its investigations and discussions with the director, John Margaria, indicated that unless he did something quickly, ASIC would be forced to act. Accordingly he appointed Jeff and me as voluntary administrators, which he was entitled to do as a director. All that required was that the directors of Global Finance form the opinion that Global was or was likely to become insolvent. Accordingly Jeff and I were appointed. That led to the creditors appointing us as liquidators at the second meeting of creditors. In specific terms, that is how our appointment occurred.

**The CHAIRMAN:** What were the causes of the insolvency?

**Mr Read:** This is an interesting question and one we have examined. Global may not have been insolvent when we were actually appointed. We refer to insolvency generally as the inability of an entity to pay its debts when they are due. Global had the ability to pay its debts when they were due; albeit Global relied on funds it was said to have earned from the trust account. It could be argued that Global was a solvent company; albeit a raft of contingent claims is likely to be made against it due to losses the investors will suffer. That has been a difficult aspect of the liquidation. Some actions I could take as liquidator arise only when a company has been demonstrated to be insolvent and the directors and other parties are knowledgeable of that insolvency. It is not an easy argument to mount.

**The CHAIRMAN:** From your background as a liquidator, rather than specifically in relation to Global, if we are talking about contingent liabilities, at what point is it incumbent on a director to seek voluntary administration or go into liquidation? At what point would it be reasonable for a company to decide it needs to take some action because it is insolvent?

**Mr Read:** It is very difficult. A director's duty is to ensure that the entity that he is controlling is not trading while it is insolvent. In other words, it must have sufficient funds to meet its liabilities. In this situation it would have been difficult to determine that. In effect, our appointment has caused a line to be drawn in the sand. The failure of Global to continue to manage many of those investments may have also affected those investments and the ability for the investors to recover moneys. It would have been very difficult for anyone to say at a point in time, "I believe there are losses on those loan facilities of \$X." Certainly a director who was well aware of or participating in misappropriation of funds and who was involved in a juggling act to maintain investors' confidence when he knew that borrowers could not repay funds must have had cause to consider whether he should continue trading.

Having looked at similar examples of mortgage and finance brokers involved in this industry, it is common for them to be literally juggling the balls in the air. When any director in that position becomes aware that a borrower cannot pay back to investors interest, let alone principal, he must seriously consider the ability of the business to continue to trade.

**The CHAIRMAN:** At that point does that mean the company can cease trading rather than go into either voluntary administration or liquidation? If the potential claims - albeit contingent claims - were significantly greater than the company's ability to meet them; would that company then need to go into liquidation or would it only need to cease trading and try to arrange its affairs?

**Mr Read:** One avenue open to a director is to cease trading or slow it down and try to dig the company out of the problem. However, that action may come at a cost of potential personal liability. Therefore, directors will inevitably appoint a voluntary administrator, because if they appoint an administrator when they first become aware of a financial problem, they will not be exposing themselves to any more personal action if they continue to trade. When he realises his business can no longer meet its debts, a responsible director should consult an insolvency practitioner. If the company can be saved, voluntary administration may be proposed. Certainly the control of an ailing business should be handed to someone who is independent.

**The CHAIRMAN:** It obviously goes to some of the other finance brokers who have not had supervisors or liquidators placed in control. Does it surprise you that none of the others have had supervisors or liquidators placed in control?

**Mr Read:** It is difficult for me to comment without knowing the details of those entities. It is always difficult to understand how these entities can continue when they have agreed not to broker any further moneys. I do not understand that aspect. However, the issue of whether they should be under independent control is worthy of consideration. I am not in a position to comment on it because I do not know the facts surrounding those companies.

**The CHAIRMAN:** I understand you conducted an examination of the books of a number of Mr Casella's companies some time ago, and as a result an inquiry was held by the Finance Brokers Supervisory Board, of which you may not be aware, that led to a finding being made against the director. Is the situation you are seeing now very similar to what you identified during the examination, which I understand caused you some concern at that time?

**Mr Read:** I will explain the situation with Amelia Developments and my original involvement. I think in 1994 my partner, Mel Ashton, was appointed as liquidator to a company called Amelia Developments. I was not a partner then, but I conducted most of the work on that administration. Amelia Developments was a development company that involved Mr Casella, who was an owner-builder and who employed Amelia Developments to do much of his construction work. At that stage, he was financing his activities through Blackburne and Dixon. My investigations indicated clearly that transactions involving Mr Casella, Mr Owen Blackburne and Amelia Developments were unusual to say the very least. They involved allegations of overstatement of loan applications with the knowledge of Blackburne and Dixon, and so on. As a result we publicly examined Domenic Casella and he volunteered the information. Although it was not relevant to us in my partner's capacity as liquidator of Amelia Developments, I thought it was worthwhile bringing it to the attention of the Finance Brokers Supervisory Board and did so over a period. It is all a bit hazy now, but I recently read the Gunning inquiry report that refers to this period.

I understand it was subsequently investigated by Gary Trevor of Ferrier Hodgson. As a result, the board acted in whatever way it did. I am not sure exactly what happened. I was out of the loop and did not hear much more about it. I think I have seen that same type of



transaction and those same events occurring in Global Finance. We must remember that immediately prior to commencing with Global Finance, Mr Margaria worked for Blackburne and Dixon and was involved with Mr Casella at Blackburne and Dixon. Similar occurrences continue in Global Finance.

**The CHAIRMAN:** You may not remember it, but you said that when you undertook the examination of Amelia Developments, some unusual behaviour was occurring. Did that include Mr Blackburne's having an undisclosed interest in some of those developments?

**Mr Read:** It did. From memory, the main sources of concern were instances of Mr Casella's borrowing \$1m from Blackburne and Dixon. Blackburne and Dixon were well aware that the project for which Casella needed the funding may have required only \$800 000 and a further \$200 000 was required for a completely unrelated exercise; in this case I believe for the establishment of a lingerie shop by Mr Casella. Mr Blackburne was aware of that. My understanding, and certainly the statement from Mr Casella, was that he had suggested it as an appropriate way of dealing with things; in other words, overvalue the property and overstate the amount of the loan that you need, with all parties being fully aware that \$800 000 would go to acquire a block of dirt and \$200 000 would go to start a lingerie business.

**Hon GREG SMITH:** Except for the people who were lending them the money.

**Mr Read:** Except for the people who were lending the money, who thought they were lending \$1m to acquire a \$1m property to secure the advances.

**The CHAIRMAN:** In fact, it was probably to buy a \$1.4m property to secure their funds at 70 per cent?

**Mr Read:** Perhaps. There were other occasions that we are well aware of involving Mr Blackburne and property that has recently been sold by Mr Casella. Those properties were all owned by the three parties at times in the past.

**The CHAIRMAN:** Did Mr Casella volunteer the information during your examination of what had been going on?

**Mr Read:** He did.

**The CHAIRMAN:** Were you able to pass on that information in detail to the Finance Brokers Supervisory Board or were you able only to talk about it generally in your role as liquidator?

**Mr Read:** My recollection is we provided to the board a copy of the transcript of the public examination. My understanding is that an investigator was appointed because I recall meeting with the investigator to discuss these issues.

**Hon GREG SMITH:** Did any action flow on from that?

**Mr Read:** That is where I dropped out of the loop. However, I understand Ferrier Hodgson was appointed to investigate the matter. I had one meeting with one of Ferrier's managers, which lasted a couple of hours, and that was it. I heard no more from Ferrier until I read the Gunning inquiry report.

**Hon GREG SMITH:** What is your opinion of the Gunning report as a document? It has been denigrated by some people.

**Mr Read:** I must confess that I have read portions of the Gunning inquiry report inasmuch as it will assist me in my actions against individuals. I have not read the document in total. However, one of the issues we were to discuss today from Mr Herbert's point of view is the recommendations made by the Gunning inquiry.

**The CHAIRMAN:** I want to return to the Casella and Blackburne and Dixon matter. Basically the modus operandi you identified in 1994-95 was similar to what you identified in the Global books?

**Mr Read:** That is correct.

**Hon GREG SMITH:** I have a “for interest’s sake” question. I was looking through your schedule of expected realisation values for properties. I have often said there are three sorts of people who sell things: People who will sell, people who want to sell and people who need to sell. In a mortgagee or fire sale, compared with an orderly sale of a property, is there a general expectation of the devaluation that is likely to occur in the realisable price?

**Mr Read:** Speaking generally it is almost impossible to predict the result of a fire sale. I have conducted fire sales of assets for which I have received more for those assets than if they had been sold at retail in a shop. It is very difficult to work out where a valuation on a property will sit. We have asked for a realistic assessment of the values of the properties that remain and what will be received for them by selling them in the short term, keeping in mind that some of those properties have not been developed or are partially developed and may need to be completed. That aspect therefore must be brought into it as well. However, it is extremely difficult to try to guesstimate what these individuals will receive and whether a fire sale will make a difference.

**Hon GREG SMITH:** I have heard stories of, for example, a hotel contract being signed for \$2.2m which then went into liquidation and the same person bought it six months later for \$1.2m.

**Mr Herbert:** That can and has happened. However, it does not necessarily follow that because it has gone into liquidation the liquidator is selling. It is often a function of the market. We sold a number of hotels some time ago in Broome, for example, just after the pilots’ strike when the market for property in Broome was depressed, and the prices that we achieved were depressed prices. Had the people who appointed us been prepared to hang on a bit longer, they might have got more money. However, it is not a general rule. We have sold properties at auction, as receivers and liquidators, and five or six bidders have bid for them and the prices achieved have been more than expected. Therefore, the mortgagees in these current matters do not necessarily face the prospect of losing a lot of their investment as a result of a fire sale of the property. There will be a fire sale only if they rush through the sale and make a botch of it. However, if they put it together properly and the property has a reasonable value, they should get the market value for it.

**The CHAIRMAN:** In your examinations of Mr Margaria, did you identify anything along the lines of a secret commission or a silent interest in any of the projects with Mr Casella?

**Mr Read:** We have not conducted our examinations of Mr Margaria; they are due in October and November. That is certainly one aspect we will be looking at.

**The CHAIRMAN:** Those are the sorts of matters that could be picked up at that stage?

**Mr Read:** Yes; that will be the direction of some of our questioning.

**Hon RAY HALLIGAN:** I note that you made a presentation to the Gunning inquiry and made recommendations, the majority of which are particularly good. I may query a couple of those recommendations, but I will not do that right now. Have you been asked that question about the recommendations? I think Mr Read was alluding to that.

**Mr Read:** That is right. I would like to take credit for those recommendations. However, Mr Herbert drafted them and it is probably better that he respond to that question.

**Mr Herbert:** We were asked by the minister whether the recommendations were adopted and whether there were others we wanted to put forward. These recommendations were given to the Gunning inquiry and some are reflected in the Gunning inquiry's report. That is not to take credit for that part of its work; however, these are points that a number of people have thought through. A few of them were not picked up, and we pointed that out to the minister. We believe some of them have merit; for example, that there should be a panel of auditors and valuers. As the committee knows, anyone who is registered currently as an auditor can audit. It is like everything else: Not all auditors are equal. Some have more experience in auditing than others and some have more experience specifically in auditing trust accounts. We believe that a panel comprising people with experience and with the resources necessary to do that kind of work would be useful, and that it should be a requirement that mortgage brokers use both valuers and auditors from the panel.

**Hon RAY HALLIGAN:** I was thinking about those two areas. Although I accept that you are talking about the positive side of that, I wonder about the downside; namely, anyone who may not be appointed to that panel - I was about to say excluded - may be regarded as second rate. Should we use the professional bodies of their two organisations as another step in the chain, with their providing the names of a number of people?

**Mr Herbert:** Yes; that is a good point.

**Hon RAY HALLIGAN:** They would, therefore, accept some of that responsibility as well.

**Mr Herbert:** Yes; you are right. That is an exclusive process. If a selection is made of people on a panel and people are excluded, those excluded may feel peeved. However it is done, it has value. Many firms do audit work without - I must be careful how I say this. Are these statements privileged?

**The CHAIRMAN:** Yes.

**Hon RAY HALLIGAN:** Yes, subject to parliamentary privilege.

**Mr Herbert:** Some firms that do audit work do not do a lot of it and some of their results are less than satisfactory in some cases.

**Hon RAY HALLIGAN:** I accept what you say. It comes down to experience; not qualifications, but experience in using those qualifications.

**Mr Herbert:** Exactly.

**The CHAIRMAN:** Surely that is not a problem only for the finance broking industry. The ability for fraud and for other items to go undetected exists right across auditors in financial management in Western Australia, whether they be auditors of a local sporting club, or whatever.

**Mr Herbert:** That is true. We put these recommendations forward in this context, because it is a critical matter. I venture to say that if the auditors of the Global trust fund had been one of the big five firms, the shortcomings in the audit would not have occurred, the problems with the trust account would have been pointed out, and perhaps - this is based on our contention in the action against the auditors - the losses would have been avoided. It is critical in this area, because losses have been incurred, and we say that is the result of some of the work that the auditors did and did not do.

**The CHAIRMAN:** In the past, legal action around Australia has been taken even against the big five firms' auditing work.

**Mr Herbert:** Absolutely.

**Hon RAY HALLIGAN:** It goes back many years to the Custom Credit matter and so many other large companies.

**Mr Herbert:** Yes. It is a difficult and onerous area.

**The CHAIRMAN:** It has troubled my mind, and probably also the mind of other committee members, that when one considers the history of Western Australia, unfortunately, frauds appear to occur on a fairly regular basis; and by the time these frauds are detected, often significant losses have occurred. One thing that concerns us is whether it is possible to predict when in the noughties - for want of a better term - fraud will occur. When frauds are tracked back, often it is a failing on the part of auditors to pick up items at an appropriate time. That may be an area we should examine in great detail.

**Mr Herbert:** To continue with your general theme, unfortunately vigilance will always be necessary because of the nature of the beast - people. Mortgage broking has been an area in which people have been able to generate significant incomes. There are inherent conflicts in mortgage broking in that the more loans they process the more money they make. There is an inevitable temptation for standards to drop on aspects such as valuations and to put a gloss on the information given to investors so that the deal happens and the income is derived. That will always be a problem in this industry. One thing we said - to be honest, I am not sure to what extent it has been taken up - is that very onerous requirements should be placed on mortgage brokers with regard to the information they provide to investors in connection with prospective investments. A person who is found to have been party to the careless issue of false and misleading information in a prospectus faces the prospect of criminal sanction and may go to jail. Similar provisions should apply to finance brokers.

**Hon RAY HALLIGAN:** I agree.

**The CHAIRMAN:** To clarify what I believe I heard you say earlier, is it your view that if the auditor had done his job properly, he would have picked up what was occurring in Global Finance?

**Mr Herbert:** Definitely.

**Hon RAY HALLIGAN:** You mentioned valuers, who are included in your recommendations. In your schedule of estimated losses it would have been interesting to know the so-called valuations of those properties. During your investigations, have you found a prevalence of overvaluation of properties?

**Mr Read:** I should probably answer that, because I have conducted investigations of a large number of valuations which were predominantly performed by one valuer, Mr O'Connor. The results of those investigations indicate that valuations were consistently above the realised values for properties. We looked not only at valuations of properties currently outstanding, but also at properties that have settled in the period of Global's existence. We found consistently that the valuations obtained were higher than the eventual sale price of the property; in some cases significantly so. We found evidence of selective use of sales histories to provide valuations and, generally, we question the values and the valuations that were obtained and the methods that the valuers used to value the properties. There are questionable valuation techniques.

**The CHAIRMAN:** Is Mr O'Connor the only valuer you have identified?

**Mr Read:** Mr O'Connor was not the only valuer. A number of valuers were used. Mr O'Connor represents a significant proportion, however, of the valuations that were conducted by those types of individuals where we found most problems with their borrowings, especially Mr Casella, Mr Sadek and Mr Johnson. In some cases he was the only valuer used by those

individuals. There have been other valuers. Nine times out of 10 those valuations were accurate or reasonably accurate.

**Hon RAY HALLIGAN:** The valuer was not chosen at random. There was a specific appointment to provide a valuation.

**Mr Read:** There was a specific appointment, ordinarily by Global. One valuer was particularly used by Casella and Sadek.

**The CHAIRMAN:** I just want to go through some of your recommendations to clarify something. In your presentation and recommendations to the Gunning Inquiry, item 4.2(ii) states -

FBCA should require appointment of an Approved Auditor by all brokers.

Are you suggesting that is not already the case?

**Mr Herbert:** There is an appointment of an auditor but the operative word is “approved”, under 4.2(ii).

**The CHAIRMAN:** This goes back to the appointment of a panel.

**Mr Herbert:** Yes.

**The CHAIRMAN:** I understand that. Are you suggesting that the Finance Brokers Supervisory Board does not already have that power under section 4.3? If it saw fit to appoint an accountant, could it not already do that under the Act? It is my view that it can. It started to go down that path following the Blackburne and Dixon matter, which I have already raised with Mr Read.

**Mr Herbert:** Yes. That was put in the recommendations to be specific. Coming back to the point about the need for vigilance, this is trying to make the point that random tests of brokers would be a good idea and that if that power is not specifically provided for, then it should be. The other point about who pays the cost of these tests has always been a problem for investigations. We suggest that brokers should be charged an annual fee to cover the cost of random tests. That whole scheme of things should somehow be incorporated into the legislation, if it is not covered by the general provisions.

**The CHAIRMAN:** I do not disagree with the idea you have suggested. It was more a case of trying to clarify whether you believed that that was provided under the existing Act; that it was not something the Finance Brokers Supervisory Board could do.

**Mr Herbert:** Yes. I think you can get there, but it would be good to make it specific.

**The CHAIRMAN:** Yes. Do you know whether your terms of appointment as supervisor are the same as or similar to those for the appointment of the supervisor of Rowena Nominees and Grubb Finance?

**Mr Herbert:** I do not know the exact terms of Mark Conlan’s appointment. I believe they are similar but I do not know.

**The CHAIRMAN:** If the witnesses do not want to raise any other issues at this stage then I suggest we adjourn to go into a private session.

**[The Committee took evidence in private]**

**Sitting suspended from 12.50 pm to 2.30 pm.**