

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 27 SEPTEMBER 2000**

SESSION 3 OF 3

Members

Hon Ken Travers (Chairman)

Hon G.T. Giffard

Hon Ray Halligan

Hon Greg Smith

Hon Norm Kelly

CONLAN, MR MARK,
Partner, RSM Bird Cameron,
8 St Georges Terrace,
Perth, examined:

The CHAIRMAN: Welcome to today's meeting. In what capacity do you appear before the committee?

Mr Conlan: I have been appointed by the Finance Brokers Supervisory Board as supervisor of the finance broking business known as Graeme Grubb Finance Broker. The business was formerly operated by a company called Rowena Nominees Pty Ltd. I am also the official liquidator of that company.

The CHAIRMAN: You have signed a document headed "Information for Witnesses". Have you read and did you understand that document?

Mr Conlan: Yes.

The CHAIRMAN: This hearing is being reported by Hansard. To assist the committee and Hansard, can you please quote the full title of any document to which you refer during the course of this hearing so that the record is clear. A transcript of your evidence will be provided to you, and that transcript will become public. If for some reason you want to make a confidential statement during today's proceedings, you should ask that the evidence be taken in private before speaking about the matter. The committee may also decide that your evidence should be taken in private. This may happen where the committee believes that your evidence may breach term of reference (3) of our inquiry; that is, that the committee in its proceedings is required to avoid interfering with or obstructing any inquiry being conducted into related matters, in particular inquiries by the police, any liquidator or supervisor of any company, the Gunning inquiry, ASIC or any prosecution. I point out to you that even if your evidence is taken in private, the evidence will become public when the committee reports to the Legislative Council. If you would like your evidence to remain private, the committee may apply to the Legislative Council for a suppression order when the final report is presented to the Council. Obviously as a liquidator and supervisor, if we ask you questions about matters that you want to have taken in private, you should indicate that to us so that we can have a private session at the end of this hearing. If you believe that we may be interfering in any way with what you are doing, please indicate that before you answer.

We have invited you to this hearing because we have had a range of evidence from people who have raised concerns about what is taking place, and we believe it is appropriate to have a conversation with you about where things are going. I do not know whether you are aware of all the matters that have been raised with the committee, but would you like to make an opening statement or would you prefer us to start with the questions?

Mr Conlan: I am not aware of the various matters that have been put before the committee, and I do not think I need to make an opening statement.

The CHAIRMAN: A document has been provided to you about some concerns with regard to the Karri Oak development.

Mr Conlan: Yes. I have a letter dated 26 September from Denmoore Holdings Pty Ltd.

The CHAIRMAN: Do you have any comments about that letter?

Mr Conlan: Some parts of the information contained in that letter are factually incorrect, understandably so, because the person who wrote the letter does not have a full understanding of the arrangements associated with that matter.

The CHAIRMAN: Can you outline those matters?

Mr Conlan: I am aware that the person who wrote the letter, or the company, is not associated with that particular investment so far as the records show, and therein may lie one of the reasons that that party is not completely conversant with the facts surrounding that investment. The letter suggests that a group of people known as lenders loaned money to another group called growers, and that those lenders can be linked to those growers. From all the information we have seen, that is not possible. The document which is attached to the letter is an extract of trust account information which is contained in the Graeme Grubb Finance Broker records. The Graeme Grubb Finance Broker records are inaccurate, and in some cases they have just been created probably to suit some person's idea of what that person thought had happened with regard to that transaction.

The CHAIRMAN: That is somebody within what was Graeme Grubb Finance Broker?

Mr Conlan: The records do not, in our opinion, reflect the transaction as it took place, whereas this party suggests that a specified lender loaned money to a specified grower. While we are aware that there are people out there called growers who may have a commitment to repay money, we do not know to whom they have that commitment. To put it another way, we cannot find any documentation that says a person who is named as a lender instructed Graeme Grubb Finance Broker to lend money to a grower. There is no record of a specified lender taking his money to Graeme Grubb Finance Broker and saying, "Lend this money to this specified grower."

The CHAIRMAN: Is it more the case that they have said, "Lend it to this operation"? Obviously people have given money to Graeme Grubb Finance Broker, and that money has gone to the growers. Is the issue that you cannot specify to which grower it has gone?

Mr Conlan: Most of the so-called lenders who are linked by the records to a grower gave their money to Graeme Grubb Finance Broker on the basis that he was to advance that money to a company called Sandgate Corporation Pty Ltd, and that those lenders were to receive security, being the first mortgage over a property in Mt Barker. They agreed to lend their money to Sandgate Corporation. Sandgate Corporation is not a grower.

The CHAIRMAN: So Sandgate Corporation Pty Ltd has had the arrangement with the growers?

Mr Conlan: The growers are also borrowers, like Sandgate.

Hon G.T. GIFFARD: But the growers have borrowed from Sandgate.

Mr Conlan: No, not that I am aware of.

Hon G.T. GIFFARD: Not necessarily?

Mr Conlan: No.

Hon G.T. GIFFARD: The documents here do not link a particular lender with a particular mortgage.

Mr Conlan: The documents attached to the letter of the 26th?

Hon G.T. GIFFARD: Yes.

Mr Conlan: At face value, they do, but there is no supporting evidence.

Hon G.T. GIFFARD: Is this the only place it appears?

Mr Conlan: That is correct.

The CHAIRMAN: Are you still trying to identify where the money they gave to Sandgate has gone? Is that the issue, or do you know where that money has gone?

Mr Conlan: Sandgate Corporation is in liquidation, and the liquidator who was appointed to that company has an obligation to report on how Sandgate applied moneys that it received. That liquidator has an obligation to report to the Australian Securities and Investments Commission. I do not have access to Sandgate's records. I have been able to ascertain that something in the order of \$13m has been paid by Graeme Grubb Finance Broker to Sandgate.

The CHAIRMAN: You are still waiting for the liquidator of Sandgate to identify to you where that money has gone?

Mr Conlan: It is up to the liquidator of Sandgate to provide me with information, or the Australian Securities and Investments Commission may provide me with information. If that information does not come forward, it may be necessary for me, as liquidator, to look for funding from some party so that I can conduct my own inquiries, probably by way of public examinations.

The CHAIRMAN: Dealing with the belief that the people who were lending the money were lending it to a grower and that they had an agreement, was that a reasonable belief when they lent the money, or has that come about since that time?

Mr Conlan: The people - again, in the terms of this letter, we are talking about the lenders - have in most instances signed a document, which says that they agreed to lend their money to Sandgate Corporation. In all the various loans that have taken place through Graeme Grubb, that is the basic document which provides us with knowledge of to whom the lenders, being the mortgage investors, agreed to lend their money, and we have sighted no agreements whereby a lender has agreed to lend his money to a grower under the Karri Oak scheme.

The CHAIRMAN: That is why you refute these documents completely?

Mr Conlan: I just say that the document is inaccurate in some situations. It reflects that the person writing the letter is not fully conversant with all the facts surrounding this matter, and that has probably led that person to draw conclusions which may have been different conclusions, if that person had had all the facts.

The CHAIRMAN: Concerns have been expressed about some people being registered on the titles and others not being registered on the titles. Could you outline to the committee what you are doing to try to identify and resolve those issues?

Mr Conlan: We have conducted a review of all the loan folios - they total approximately 680 - and have ascertained which investors are registered and which investors are not registered, what those investors agreed to take as security for their money and whether they achieved that security. In most instances, there is something in the loan folio file that brings a legal question to mind, and it has been necessary to make an application to the court to have the court direct me on how I should deal with the proceeds that are realised on the settlement of that mortgage. Therefore, we are looking to the court to direct me on how to go forward in a number of matters.

The CHAIRMAN: Has that been the way you have operated from day one, or has it changed as new events have arisen?

Mr Conlan: Our first principal court proceeding commenced on 30 September 1999, and there have been a number of court applications since that date.

The CHAIRMAN: When do you expect that the court cases will be resolved? I realise it is often difficult to say, but do you have a view about how long it will take to resolve them?

Mr Conlan: Which matter?

The CHAIRMAN: To generally sort out the issue of who is entitled to what in respect of people with registered or unregistered interests on the titles.

Mr Conlan: There are 16 matters before the Supreme Court of Western Australia which have been adjourned, and a date has not yet been fixed for those matters to come back on for hearing. One matter was heard in the Supreme Court last week. It took all week and it did not conclude. It has also been adjourned to a date to be fixed. It is possible that that matter may be concluded some time prior to Christmas. Those 17 matters relate primarily to disbursement of moneys on the settlement of mortgages. Other court proceedings are under way which have also not been finalised. They are Corporations Law matters, again in some way relating to assets that are secured by mortgages. I can recall two principal matters that have not been concluded. The majority of the applications relate to the disbursement of settlements or proceeds on the settlement of mortgages. In those instances, we are looking for the court to direct how that money should be disbursed, with a view that those directions may give us a plan or a strategy to deal with other mortgage settlement matters. As for when they will be concluded, the matter that has been part heard may not be heard until some time between now and Christmas. It is likely that the judge will reserve his decision. Then he may hand down his decision some time in 2001. It may not be until February, March, April or May - whenever. The number of applications is reflective of the complex legal issues that we have recognised exist since the date of my appointment as liquidator and supervisor.

The CHAIRMAN: Once you get a legal decision of the court, will that apply to all the cases, or will each case need to be determined separately in the court because the circumstances in each case are different?

Mr Conlan: From discussions with my legal advisers, my understanding is that the decision applies only to that particular matter. It may be persuasive because other mortgage settlements have similar factual information, but it would be persuasive only in those situations. Therefore, the decision will apply only to the case before the court and to the parties that are joined to participate in that proceeding.

The CHAIRMAN: At the moment, as I understand it, when there are problems, if all the people who have an interest agree, you will allow the property to be sold and the proceeds to be put into a trust fund.

Mr Conlan: In an interlocutory decision earlier this year, the Supreme Court of Western Australia directed any investor who had an interest in a mortgage to give me notice of any pending settlement on that mortgage, and I am allowed 14 days to make an application to the Supreme Court if during that period I am of the view that it would possibly be inequitable for the investors with an interest in the mortgage to receive the settlement proceeds. Therefore, I become involved at the stage at which a mortgage is up for settlement, and, again after taking advice, I look at whether the registered mortgagees' interest should be challenged and whether in fact the registered mortgagees are entitled to those proceeds.

The CHAIRMAN: Are you doing that as supervisor or liquidator?

Mr Conlan: It is done in my capacity as supervisor. The application was commenced in my capacity as supervisor and as liquidator. There are five applicants in these proceedings. I am the applicant as supervisor; I am the applicant as liquidator of Rowena Nominees Pty Ltd and Oakleigh; and Rowena and Oakleigh are also an applicant in those proceedings.

Hon G.T. GIFFARD: That is one application. Is there only that one application?

Mr Conlan: That is the principal proceeding - it is an injunction proceeding. It goes by the name of CIV 2076 of 1999, Conlan v The Registrar of Titles, and it is presently before the Supreme Court of Western Australia.

The CHAIRMAN: The final determination is still being argued in the courts.

Mr Conlan: Yes, it is still being heard.

The CHAIRMAN: The order that you have is only an interim order?

Mr Conlan: Yes, it is an interim order.

The CHAIRMAN: Is that the court case that you referred to as being heard last week?

Mr Conlan: I do not profess to know how the court operates, but all the applications regarding the disbursement of settlement proceeds are given the number CIV 2076 of 1999. Then they generally become individually named. The matter that was before the court last week was in respect of a borrower called Hardie Developments Pty Ltd.

The CHAIRMAN: Dealing with the mortgages that were brokered through Graeme Grubb or Rowena Nominees, must the people on the mortgage notify you if they want to sell the property? Is that what you were saying earlier?

Mr Conlan: In accordance with the orders issued by the Supreme Court, if they wish to settle their mortgage, they must notify me.

The CHAIRMAN: So far, approximately how many cases have come before you under that order?

Mr Conlan: I could not give you a number, but it is a considerable number.

The CHAIRMAN: In the main, are you allowing them to be sold? To put it another way, how many of them are you not interested in versus how many are you interested in and believe an equity issue is involved?

Mr Conlan: A small proportion.

The CHAIRMAN: A small proportion which way?

Mr Conlan: We have allowed a small proportion to proceed to a settlement and the proceeds to be distributed to the registered mortgagees.

The CHAIRMAN: What is a small proportion? Could you give us a rough, ballpark figure?

Mr Conlan: Less than 25 per cent by dollar value.

The CHAIRMAN: What would be the total dollar value?

Mr Conlan: We have probably been approached to form a view with regard to settlements that might approximate \$25m.

Hon G.T. GIFFARD: Are the 16 or 17 matters before the Supreme Court all related to disposing of properties?

Mr Conlan: They relate to the disbursement of settlement proceeds.

Hon G.T. GIFFARD: Are they related to 16 or 17 different properties?

Mr Conlan: Yes, generally; there might be a couple of mortgages involved in one.

Hon G.T. GIFFARD: Have you objected to about 15 disbursements?

Mr Conlan: No. Those that have gone to the court are the only cases on which we have been pressured to go to court. A number of mortgages have been settled by agreement between me and the investors. Those funds have been placed in trust. Alternatively,

mortgages have been settled pursuant to court orders and the moneys have been paid into the court or they are presently held by a particular party.

The CHAIRMAN: How much money are we talking about being tied up in trust accounts awaiting resolution?

Mr Conlan: Currently, \$17 564 490 is held solely by me as trustee, jointly with other parties or in the court.

The CHAIRMAN: What is the earliest date by which that can be resolved? Obviously the committee must work out how to avoid losses. Do you have an idea of when that will be resolved?

Mr Conlan: It is unlikely that any of those funds will be released by agreement until a decision is passed down in the Hardie Developments trial of preliminary issues, which was commenced last week. As I said, that is still only partly heard. I also indicated that a decision might not be passed down until early next year.

The CHAIRMAN: You referred to "preliminary issues". Is that a sign there is more to come after the initial hearing?

Mr Conlan: It is the nature of the proceedings. It is called a "trial of preliminary issues". I am not a lawyer, so I cannot explain the meaning. Essentially, we are asking the court for directions about how money should be disbursed from the settlement of a mortgage granted by a company called Hardie Developments.

The CHAIRMAN: Although each must be settled individually, surely once the court has indicated how it will proceed, the rest will be reasonably quickly resolved.

Mr Conlan: The court chose to proceed with the Hardie Developments loan because it felt that that loan arrangement was representative of the contentious issues that run across a large proportion of the remaining loan folios. The court felt that the answers to all the questions that arise in the Hardie Developments matters might be applied across the other loan folios.

The CHAIRMAN: Is there anything you can see that would assist the process, either by way of legislative action or other actions by the Government? It is obviously causing everyone a lot of heartache.

Mr Conlan: Certain rules of law apply under the Transfer of Land Act - registrations of interests in mortgages, registration of ownership of properties and so on. That has been set down over many years in common law. It simply provides that if a person is registered as an investor on the title or as an owner of a property, that person is entitled to retain that interest except in a few cases. One of the principal exceptions is fraud. The properties that are provided as security must be looked at on a case-by-case basis. It is a very complex area of law. A number of matters have arisen from our review of the loan folios. Some people might have an opinion about what is the equitable solution, but that may not be right under the law or for certain individual investors.

The CHAIRMAN: What might be good for one investor might be bad for another.

Mr Conlan: There might be a mixing of funds - investors having been offered interests in mortgages and not received them, registration is in some cases more by chance rather than proper process and so on. I do not know how it is done, but perhaps there should be a general pooling of all the investors' funds. That might be the most equitable solution, but it might not be the solution available at law.

The CHAIRMAN: Those who have their name on the title of a property that can be sold at the original valuation would obviously argue against a pool situation.

Mr Conlan: That is correct and the law is in their favour. There are arguments for either way, but, on balance, the law is probably in their favour. How does that help the person whose name is not on the title, who was offered an interest in the title and who, like the person whose name is on the title, believed he would have an investment in a first mortgage?

The CHAIRMAN: You said earlier that the law indicates that those with their name on the title are entitled to the distribution. The application you took earlier requires people, even if they are on the title, to notify you and for that money to be held in trust. How do you reconcile that if you take the view that, on balance, they probably have the right under law to that property?

Mr Conlan: The law in favour of a person retaining his interest in a title is very strong. However, there are exceptions to that law, and one of those exceptions is fraud. It is possible that the investor's agent - being Graeme Grubb - has committed fraud on behalf of that investor. Therefore, there may be an exception available to that person's entitlement to retain his registered interest in the mortgage. That is one of the difficult and key questions presently before the Supreme Court.

The CHAIRMAN: Do you have any idea of Graeme Grubb's total investment portfolio at the time of the collapse?

Mr Conlan: Approximately \$63m.

The CHAIRMAN: Do you have any idea what the recoverable amount will be?

Mr Conlan: Approximately \$41m.

The CHAIRMAN: Will there be losses within other companies associated with him?

Mr Conlan: I need some clarification.

The CHAIRMAN: I refer to Oakleigh and Rowena Nominees Pty Ltd. Are they incurring any losses? Obviously they are also in liquidation. I am trying to identify the total losses from the finance broking industry saga.

Mr Conlan: The total value of the mortgages under management was \$63m. We estimate that \$41m will be recoverable from those mortgages, which will mean a loss of approximately \$22m across the mortgages. If you are looking at mortgages and Graeme Grubb, finance broker, the probable loss is \$22m.

The CHAIRMAN: Will people lose money through any other companies associated with Graeme Grubb?

Mr Conlan: The records suggest that some investors have lent money to Rowena Nominees, Oakleigh and other companies controlled by Graeme Grubb. Those loans are a mortgage or a loan folio. If a loss is associated with that loan, that is included in the \$22m loss.

Hon RAY HALLIGAN: Can you outline the difference between your role as a supervisor and your role as a liquidator?

Mr Conlan: My duties or obligations as a supervisor are contained in the Finance Brokers Control Act, and my duties and powers as a liquidator are contained in the Corporations Law. They are two different appointments and two different Acts.

Hon RAY HALLIGAN: How many investors are affected by the collapse of Graeme Grubb's business?

Mr Conlan: It affects 650 investors.

Hon RAY HALLIGAN: Have you been able to ascertain, at least in your mind, what you believe are the major causes of the losses associated with Grubb's business?

Mr Conlan: There are sizeable losses arising from loans to companies which Graeme Grubb controlled or in which he had a financial interest. The property that provided security for those loans was unlikely, on realisation, to satisfy those loans. A large proportion of the \$22m losses arises from loans to companies associated with Graeme Grubb.

Hon RAY HALLIGAN: Was Grubb not only the broker, but also the borrower?

Mr Conlan: That is correct.

Hon RAY HALLIGAN: Have you encountered any difficulty in obtaining documents from the Australian Securities and Investments Commission?

Mr Conlan: It has not been difficult. ASIC operates under the Australian Securities and Investments Commission Act and must go through certain procedures. Although those procedures may be frustrating, in that they could cause delays, I have generally found ASIC to be helpful.

Hon RAY HALLIGAN: I understand that Grubb's trust account was maintained with the St George Bank and was overdrawn on numerous occasions. What actions are you pursuing with the St George Bank?

Mr Conlan: The Government has provided funding to me in my capacity as liquidator to investigate and ascertain the merits of pursuing an action against the St George Bank. Presently, that process is under way. We hope to be able to report back to the Ministry of Fair Trading around November or December on the merits of commencing proceedings against the St George Bank.

Hon RAY HALLIGAN: Have you determined any prospects of success at this point?

Mr Conlan: Preliminary discussions with lawyers suggest that there are sound arguments in favour of commencing proceedings. Rather than prepare a statement of claim or file a writ to the court without knowing all of the information, it has been decided to examine documents we have and to speak to individuals from the St George Bank some time in October. At the conclusion of that process we hope to be able to prepare a statement of claim that will outline the nature of the claim against the St George Bank.

The CHAIRMAN: Are you doing that in your capacity as the liquidator or as the supervisor?

Mr Conlan: I am funded in my capacity as liquidator.

The CHAIRMAN: Would that then provide assets back to Rowena Nominees Pty Ltd that could be claimed against by people who have paid losses on loans?

Mr Conlan: I will clarify the inquiry about my capacity as liquidator. Powers are available to me as liquidator to obtain information and examine people, which is not available to me as supervisor. If there is a successful action against the St George Bank, funds will be paid to me in my capacity as liquidator. There is still a question of law as to whether that money is available for investors only or investors and Rowena's creditors. That matter has been there from day one. It is not a matter -

The CHAIRMAN: Who determines for whom the money is available?

Mr Conlan: The court will issue orders.

The CHAIRMAN: Will you be involved in that? Is it correct to say that as the liquidator you will need to decide where the money should go and then defend actions in the court if you believe that to be necessary?

Mr Conlan: The liquidator will run the proceedings because of the powers available to the liquidator. As an office of the court, the liquidator then presents to the court a case seeking the court's directions on where that money should be directed. If the liquidator feels there is uncertainty, as an officer of the court, he goes back to the court to seek the court's direction regarding the disbursement of moneys.

The CHAIRMAN: As the liquidator, would you not provide any view about where the money should go? Would you inform the court of the money that is available and ask for a direction?

Mr Conlan: I present to the court the information I have and the court makes a decision.

The CHAIRMAN: As a liquidator would you provide an indication of where the money should go?

Mr Conlan: No, it means providing to the court the facts surrounding how the money came to me, why the money came to me and who might be the claimants against the money. The court then issues me with directions about where the money is to be disbursed.

Hon RAY HALLIGAN: From your examination of Grubb's records, did Grubb's auditors have the skill and competence to carry out the audit of his business?

Mr Conlan: They did not.

Hon RAY HALLIGAN: Do you believe there is any possibility of an action against the auditors?

Mr Conlan: Yes, I do. I am also funded by the State Government to undertake a similar process, which I am doing with regard to the St George Bank. That process is under way and we are hopeful of concluding our inquiries in that area and reporting back again around November or December on the merits and likely success of the claim against the auditor of the trust account.

Hon RAY HALLIGAN: Will the likely success and the amount at least to be claimed, if not received, be known in November?

Mr Conlan: I hope that the statement of claim will be prepared. Assuming that beyond that process funding is available from a source to commence an action, a writ will be filed with the court. Sometimes it is not possible to ascertain what the losses or damages are on what has been claimed. It becomes a matter of who is negligent or who has caused the wrong. Once that is determined damages may be determined at a later date.

Hon RAY HALLIGAN: Some of the documentation the committee has seen between the investor and the finance broker includes a breakdown of where the investors' funds will be spent. In some instances a figure for interest payments has been included in the breakdown and sometimes a statement is made within the documentation that the interest payments will be guaranteed because they are being paid from the finance brokers trust account. Was this prevalent in the documentation within the Grubb agreements?

Mr Conlan: I am aware that documentation between Graeme Grubb and the investors indicates that their interest would also be paid and that he referred to that commitment as a cash-flow guarantee. At face value it could be taken that if the borrower of the moneys was not repaying the money due under the loan, Graeme Grubb or Rowena Nominees would individually fund that interest commitment. However, in reality, based on our inquiries and review of the trust account, those interest payments to investors were funded by other investors' moneys put into the trust account.

Hon RAY HALLIGAN: Certainly it was a return of capital. It may not have been their own money because it was from other investors.

Mr Conlan: It was other investors' capital paid in breach of trust under the guise that it was interest payments.

Hon G.T. GIFFARD: Is it correct that on the basis of two separate funding arrangements you will consider whether action can be taken against the St George Bank and against the auditors?

Mr Conlan: Yes.

Hon G.T. GIFFARD: How long has that funding been available to you?

Mr Conlan: Since May.

Hon G.T. GIFFARD: Was the funding for both made at the same time?

Mr Conlan: Yes.

Hon G.T. GIFFARD: Is the estimate that the inquiries will conclude around October or November your own timetable?

Mr Conlan: Our timetable is dictated by available court time to examine individuals. It also relates to inquiries to be conducted by ASIC; again, not through its fault. It was appropriate for us to delay some of our inquiries until ASIC had undertaken some inquiries and then assisted us.

Hon G.T. GIFFARD: Will you be in a position to know around October or November whether what you consider to be reasonable courses of action will be available to you?

Mr Conlan: The final key element of the inquiries that we are undertaking in those two areas is the public examination of the auditor and the examination of the St George Bank officers; they are scheduled to occur in late October. Once we have had an opportunity of reviewing the transcripts of those proceedings my lawyers will be in a position to advise on the merits of an action against those parties.

Hon G.T. GIFFARD: What is the process? Who will you then advise?

Mr Conlan: I will report back to the Ministry of Fair Trading or the Finance Brokers Supervisory Board. The next step will be to advise on the merits of the claim and then to seek further funding either through a government process or through a private funding process to commence and run those proceedings from that date forward.

Hon G.T. GIFFARD: Has the board or the ministry asked you to report back by a date?

Mr Conlan: They are aware of the timetable that we have set. We meet regularly with them and report progress on a monthly basis.

Hon G.T. GIFFARD: They are aware of it, but have they indicated at any stage that they want it by a particular date?

Mr Conlan: No, that is just the way it has happened.

The CHAIRMAN: What is the total amount of funding that has been provided by the State Government?

Mr Conlan: In what area?

The CHAIRMAN: As a liquidator and supervisor, what has been the total amount of funding that has been provided to you, or indicated that you will receive?

Mr Conlan: In regard to the St George Bank and the auditor?

The CHAIRMAN: I want an idea of the total cost to the State Government so far and the cost of any future actions that you are being funded for in your role as liquidator and supervisor concerning the St George Bank and the auditor.

Mr Conlan: I would have to refer to documentation which I do not have with me to find out the amount that has been funded.

The CHAIRMAN: If you can provide that to us at a future time it would be appreciated.

Mr Conlan: Yes, I can do that. With regard to funding of matters, issues arise from time to time, which we determine should be moved forward. As liquidator I approach the Ministry of Fair Trading and seek funding for those matters. There is the issue of the St George auditor, and there is another that has recently been commenced with regard to the determination of a debt. Other matters continually arise, for which we prepare submissions to the Ministry of Fair Trading on the outcomes we are trying to achieve, and seek funding to take it to various stages. That is the process we have undertaken with the St George Bank auditor – we take it to a certain stage. The next principal milestone is the preparation of a statement of claim.

The CHAIRMAN: Have there been any creditors' meetings, or do you expect to hold any creditors' meeting?

Mr Conlan: There have been no creditors' meetings. As liquidator, I do not have an obligation to convene creditors' meetings. My primary duty is to report to the regulatory authorities. It is not uncommon in some administrations for creditors' meetings not to be held. The work of the liquidator is dictated by funding being made available from either the assets of the company or a funding agency. There are no funds available to me as liquidator to convene a creditors' meeting, and go through the process of reporting. We provide information to creditors, but a meeting of the creditors of Rowena Nominees Pty Ltd has not been held, outside of the investors.

The CHAIRMAN: You mentioned a number of people against whom you are investigating claims. Do you think there is potential for claims against anyone else, for instance, financial planners or accountants who referred their clients to the finance brokers, in this case specifically Graeme Grubb or Rowena Nominees Pty Ltd?

Mr Conlan: I have not sighted any opportunity for claims against people who referred clients to Graeme Grubb.

The CHAIRMAN: I am also asking generally, from your knowledge as an accountant, would a claim be warranted in those circumstances?

Mr Conlan: I cannot recall seeing any situation in which a client has been referred to Graeme Grubb, in which, as liquidator, I can see an avenue of claim. As liquidator, my job is to look for avenues of recovery. Avenues of recovery are now under way, and avenues are anticipated. As further inquiries are made, other avenues of recovery may become apparent to us. The most obvious one is the auditor at the St George Bank.

The CHAIRMAN: Hon Ray Halligan asked you a question about the roles of liquidator and supervisor about which you previously spoke to the committee. We are continually having people raise with us the issue of the conflict between the two roles. Do you have any comments you would like to make on that issue?

Mr Conlan: I do not see a conflict of interest. If you wish to cite a particular instance or matter in which conflict may exist, I am happy to comment, but I do not see any situation in which a conflict would arise. Conflicts of interest come and go; they relate to specific issues which may result in conflict. I do not see at this point that a conflict of interest exists between the role of liquidator and that of supervisor.

The CHAIRMAN: As a liquidator, you are obviously appointed by the court, but whose interests are you primarily meant to look after?

Mr Conlan: My role is to report to the creditors of Rowena Nominees Pty Ltd. Those creditors comprise people who have lent money to Rowena. They may also be Graeme Grubb Finance Broker investors. There may also be people who have asked Graeme Grubb to broker a loan on their behalf, and the broker has made misrepresentations or provided inaccurate information. Those people may have an entitlement to claim as creditors in the Rowena liquidation. There are also former employees of Rowena, stationery suppliers and the like. There are a number of different types of creditors, all of whom may have the same ranking. I do not see a conflict at this point.

The CHAIRMAN: For the record, will you outline in a similar way what you see as your role as supervisor? Whose interests are you required to look after in that capacity?

Mr Conlan: In my capacity as supervisor, I believe that my primary role is to act in the interests of all the investors as one class, and not in the interest of an individual investor. The individual investors can take their own legal advice, and take their own action; or take action under a mortgage if they are registered mortgagees. In proceedings before the courts last week, I was involved in a role, referred to as amicus curiae, to provide the court with balanced, factual evidence surrounding those proceedings. I was there as representative neither of the registered nor of the unregistered mortgagees. I take actions that interfere with the interests on individual investors, but I take those actions because I believe they are potentially in the interests of all creditors as one class. In a number of instances I am not aware of what legally should be the right action to take; I have advice on both sides. Therefore the actions that I take in applying to the court are aimed at having the court direct me in what is the fair, legal and correct process in matters.

The CHAIRMAN: Are there any comments you would like to make, or issues you would like to raise with the committee?

Mr Conlan: No.

The CHAIRMAN: Thank you very much for speaking to us this afternoon.

Committee adjourned at 3.54 pm