

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 24TH SEPTEMBER 2003

2 AT 12 NOON:

3  
4 JUDGE MAHON: Good morning. This ruling of the Tribunal and any findings  
5 expressed therein relates solely to evidence concerning the issue of compliance  
6 by Mr. Liam Lawlor with an Order of this Tribunal made on the 12th March 2003  
7 and is particularly concerned with the close and detailed examination of the  
8 steps taken by him in purported compliance with that Order.

9  
10 The Order of 12th March 2003 required Mr. Lawlor to make discovery on oath and  
11 produce all documentation in his possession or within his power and procurement  
12 concerning the sale by him, jointly with Mrs. Hazel Lawlor, of approximately  
13 one acre at Somerton, Lucan, County Dublin in or about November 2001 and  
14 including, but not limited to, the receipt of application of the proceeds of  
15 sale of the said transaction. The Order further provided that the Affidavit of  
16 Discovery be made in the form provided for in Form 10, Appendix C of the Rules  
17 of the Superior Courts 1986 (as amended). Mr. Lawlor had been notified on the  
18 14th February 2003 that the Tribunal had intended making an Order in these  
19 terms and was advised as to his entitlement to make submissions to the Tribunal  
20 before any such Order was made. No submissions were, in fact, made by  
21 Mr. Lawlor.

22  
23 In purported compliance with the Order of the Tribunal of the 12th March 2003,  
24 Mr. Lawlor swore a number of affidavits commencing with an affidavit sworn on  
25 31st March 2003. This affidavit was clearly deficient in both form and  
26 substance. An extension of time was granted to Mr. Lawlor for the swearing of  
27 further affidavits in the correct form. On 7th April 2003 Mr. Lawlor was  
28 informed that as he failed to comply with the Discovery and Production Order,  
29 the Tribunal would consider applying to the High Court pursuant to Section 4 of  
30 the Tribunal of Inquiry (Evidence) (Amendments) Act 1997 for an order

1 compelling Mr. Lawlor to comply with the Tribunal Order.

2  
3 A further warning letter was sent by the Tribunal to Mr. Lawlor on the 15th May  
4 2003, once again elaborating on the deficiencies in his purported discovery to  
5 date. Mr. Lawlor was advised on 19th June 2003 that the Tribunal had decided  
6 to summon him to give oral evidence on the compliance issue not before the 8th  
7 July 2003.

8  
9 Oral evidence has been taken from Mr. Lawlor between 8th July 2003 and the 31st  
10 July 2003 and again between 16th September and 23rd September 2003 with  
11 evidence from Mr. Tony Seddon, solicitor, on 17th and 18th September. During  
12 these periods, and with the leave of the Tribunal, Mr. Lawlor has discovered  
13 and delivered some 17,000 additional pages of documentation pursuant to the  
14 order of the 12th March 2003. The most recent delivery of a substantial amount  
15 of documentation by Mr. Lawlor occurred as late of 12th September 2003, some  
16 six months or so after the making of the initial Order.

17  
18 Prior to the Order of 12th March 2003, Orders for discovery and production were  
19 made by the Tribunal to Mr. Lawlor, relating to other matters relevant to the  
20 Tribunal's Terms of Reference, the first one being made on the 8th June 2000.  
21 Arising from same, Mr. Lawlor was subsequently referred by this Tribunal to the  
22 High Court pursuant to Section 4 of the Tribunal of Inquiry (Evidence)  
23 (Amendment) Act 1997. On three occasions the High Court has found Mr. Lawlor  
24 not to have complied with the Tribunal discovery and production Orders  
25 resulting with in Mr. Lawlor serving three terms of imprisonment.

26  
27 Notwithstanding the fact that Mr. Lawlor is not on this occasion legally  
28 represented, the Tribunal is satisfied that, because of Mr. Lawlor's previous  
29 dealings with the Tribunal on the question of discovery and consequent upon his  
30 appearance in the High and Supreme Court over the past three years, he has a

1 detailed and thorough knowledge of the discovery process including the  
2 necessity to use the form of affidavit provided for in the Rules of the  
3 Superior Courts, and he is well aware as to what is required to comply with the  
4 Order of 12th March 2003.

5  
6 Furthermore, the contention made by Mr. Lawlor that he has been unable to  
7 secure any legal advice relating to the discovery Order because of lack of  
8 funds is totally rejected by the Tribunal. The Tribunal is satisfied that  
9 Mr. Lawlor has access to sufficient funds to pay for legal advice, if it was  
10 his wish so to do.

11  
12 Having considered the documentation discovered and produced by Mr. Lawlor in  
13 purported compliance with the Order of 12th March 2003, and with the benefit of  
14 oral evidence of Mr. Lawlor together with that of Mr. Michael Whelan, Mr. John  
15 Barrett and Mr. Tony Seddon, solicitor, the Tribunal now makes the following  
16 findings and conclusions, solely in relation to this compliance issue:

17  
18 1. Prior to the commencement of Mr. Lawlor's oral testimony on 8th July 2003,  
19 Mr. Lawlor had failed to comply with the order of 12th March 2003 to a degree  
20 that was very significant and which amounted to obstruction of the Tribunal in  
21 its work, and he persisted in doing so in spite of generous extensions of time  
22 granted by the Tribunal to enable him to comply. This failure to comply not  
23 only related to the persistent failure by Mr. Lawlor to use a format of  
24 Affidavit provided for in the Rules of the Superior Courts as he was directed  
25 to use, but also as to the substance and content of the affidavits actually  
26 sworn by him.

27  
28 2. Mr. Lawlor's non-compliance not only related to relevant documentation in  
29 his possession but also documentation within his power and procurement,  
30 including documentation physically held by Seddons solicitors in London and

1 Prague. Much of this documentation was only identified and made available by

2 Mr. Lawlor in September 2003, by which time the Tribunal had secured the  
3 agreement by Mr. Tony Seddon, solicitor, to attend and give evidence, which he  
4 did at considerable expense to the Tribunal and resulting in further additional  
5 delay to the Tribunal;

6  
7 3. Mr. Lawlor's non-compliance with the order of 12th March 2003 continued  
8 after the 8th July 2003 and throughout his oral testimony.

9  
10 4. The contention of Mr. Lawlor that he was unable to access or was in some  
11 way fettered in his access to certain relevant documentation held by his  
12 foreign solicitors because of lack of funds is rejected as being totally false  
13 and grossly exaggerated by him. The Tribunal takes this view only after close  
14 examination and consideration of the evidence given by Mr. Lawlor on this  
15 particular subject.

16  
17 5. The Tribunal is, at this belated stage, reasonably satisfied that  
18 Mr. Lawlor has now complied with the Order of 12th March 2003 insofar as he may  
19 be able so to do at present. In arriving at this conclusion the Tribunal  
20 accepts that Mr. Lawlor's failure to procure documentation in the possession of  
21 Haynes & Trias, solicitors, Gibraltar, Nicholas Morgan, solicitor, Jersey and  
22 David Morgan, Whitehead & Company, solicitors, Jersey may, on its face be as a  
23 result of the refusal of all or some of these parties, (who are outside the  
24 jurisdiction), to permit access to and production of such documentation to the  
25 Tribunal for reasons of solicitor/client confidentiality involving third  
26 parties or on the grounds of relevance. However, the Tribunal remains anxious  
27 to examine this documentation and will continue to seek its production by other  
28 means, including, if possible, securing the attendance of Nicholas Morgan,  
29 solicitor, to give evidence to this Tribunal. Therefore the Tribunal expressly  
30 reserves the right to revisit the question of Mr. Lawlor's compliance with the

2 in the future should it be appropriate so to do.

3  
4 6. The Tribunal is satisfied that apart from the other documentation referred  
5 to in paragraph 5 above, all other documentation furnished by Mr. Lawlor since  
6 commencement of this compliance module was within the possession, power and  
7 procurement of Mr. Lawlor at the time he swore his first Affidavit of  
8 Discovery. Having heard evidence from Mr. Lawlor the Tribunal is satisfied  
9 that the withholding of this documentation was a deliberate act on his part,  
10 and amounted to non-cooperation with the Tribunal.

11  
12 7. Mr. Lawlor, over the course of his oral examination commencing on 8th July  
13 2003, repeatedly lied to this Tribunal, was evasive, dismissive,  
14 unco-operative, obstructive and lacking in cooperation to a degree which can  
15 only amount to a very serious attempt to knowingly mislead, obstruct and hinder  
16 the Tribunal in its work and, more particularly, in its lawful pursuit of the  
17 documentation sought in the Order of 12th March 2003.

18  
19 Section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1997 is the  
20 statutory provision enabling the Tribunal to refer a person to the High Court  
21 in the face of that person's failure to comply with or his disobedience of an  
22 Order of Tribunal whereupon the High Court is empowered to make such orders as  
23 it deems appropriate to give effect to such Order.

24  
25 It is this section of the Act of 1997 which has been utilised by this Tribunal  
26 on previous occasions to compel Mr. Lawlor to comply with the Tribunal's Orders  
27 for Discovery and which has resulted in the imprisonment of Mr. Lawlor for  
28 contempt of Court arising from his failure to comply with discovery orders made  
29 by the Courts.

1 There is, however, no statutory provision enabling a Tribunal to refer a person  
2 to the High Court purely for punitive purposes where that person has complied

3 with the relevant Tribunal order, however belated, as has occurred on this  
4 occasion.

5  
6 The Tribunal could have chosen to stand down Mr. Lawlor on 8th July 2003 or  
7 soon afterwards, and to have then referred him to the High Court pursuant to  
8 Section 4 of the Act of 1977, but the Tribunal chose instead to attempt to  
9 exact the relevant documentation from him under examination on oath and with  
10 the aid of information obtained in the course thereof. In so doing, the  
11 Tribunal believes that the relevant documentation that has been now obtained by  
12 the Tribunal has been secured much earlier than would have been the case had it  
13 stood Mr. Lawlor down in July 2003 and referred the matter to the High Court.

14  
15 In proceeding in this manner, the Tribunal was particularly mindful of its  
16 remit to conduct its areas of investigation in as an efficient and cost  
17 effective manner as possible.

18  
19 In the course of its work this Tribunal has frequently to contend with evidence  
20 which, on its face appears less than truthful, but on many such occasions an  
21 actual finding that such evidence is in fact untruthful must await later  
22 evidence from others or evidence gleaned from a close perusal of documentation.  
23 It is for this reason that the Tribunal will only occasionally make a finding  
24 that particular evidence was given by a witness knowing it to be untrue until  
25 such time as all related evidence has been considered. On this occasion,  
26 however, and as the Tribunal concludes this compliance hearing, which is  
27 effectively a module in its own right, we deem it appropriate to express our  
28 deep concern at the evidence given by Mr. Lawlor in such circumstances where he  
29 knew that such evidence was false and untrue. There are a number of instances  
30 where the Tribunal is satisfied that untruthful evidence was knowingly given by

1 Mr. Lawlor over this period. However, in respect of two particular instances  
2 given Mr. Lawlor's blatant disregard for the truth, the Tribunal hereby directs

3 that the relevant transcripts of evidence together with the relevant  
4 documentation be referred to the Director of Public Prosecutions to enable him  
5 to decide if any further action was appropriate.

6  
7 These two instances are:

8  
9 (1) Evidence given by Mr. Lawlor on 8th July 2003 and following days relating  
10 to an explanation for a payment for 100,000 pounds and 17,500 pounds by  
11 Mr. Michael Whelan/Maplewood Holdings/Lunar Sea Developments for himself or for  
12 his benefit; and

13 (2) Evidence given by Mr. Lawlor on the 8th July 2003 and following days  
14 relating to the source, preparation and delivery of an invoice of 100,000  
15 pounds plus VAT of 17,500 pounds on a bill heading purporting to be from  
16 Seddons Solicitors, London and Prague.

17  
18 In both these instances the Tribunal is satisfied that Mr. Lawlor gave evidence  
19 under oath which he knew to be false and he did so for the purposes of  
20 obstructing or hindering the work of the Tribunal.

21  
22 This referral of course in no way inhibits the Director of Public Prosecutions  
23 from examining other evidence given by Mr. Lawlor and others should he wish to  
24 do so.

25  
26 That concludes the ruling of the Tribunal.

27  
28 Finally, Mr. Lawlor, I want to say the following: Pursuant to Section 3 of the  
29 Tribunal's of Inquiry (Evidence) (Amendment) Act 1997 I, as Chairperson of the  
30 Tribunal, propose to consider whether orders for costs should be made solely in

1 relation to this compliance module based on the findings of the Tribunal as  
2 have just been stated, part of this process should include consideration as to  
3 whether you, Mr. Lawlor, should be ordered to pay the costs of this module

4 incurred by this Tribunal and other parties. If you wish to make submissions  
5 on the issue of costs, and in particular submissions as to why an order should  
6 not be made directing you to pay all or some of these costs you may do so  
7 orally at 10.30 a.m. on Tuesday week, 7th October, or if you wish in writing  
8 prior to that date, if you propose making written submissions you might inform  
9 the Tribunal of your intention to do so within the next seven days. To date  
10 you are entitled to seek your own legal advice and you may be legally  
11 represented if you wish on this date in October. The Tribunal will write to  
12 you this afternoon in relation to the -- those costs matters which I have just  
13 set out.

14  
15 So, that concludes the business for the moment.

16  
17 Mr. Lawlor, you are required to return at 2 o'clock in relation to the  
18 resumption of the Carrickmines.

19  
20 THE TRIBUNAL THEN ADJOURNED UNTIL 2 O'CLOCK  
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