

ONTARIO
SUPERIOR COURT OF JUSTICE

MD/vk

B E T W E E N:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES, a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD. AND COMMONWEALTH CONSTRUCTION, INC.

Defendants

This is the Cross-Examination of MARCUS ANDREW HATCH, on his Affidavit sworn on the 18th day of May, 2007, taken at the Hilton Barbados, Needham's Point, St. Michael, Barbados, on the 30th day of October, 2008.

A P P E A R A N C E S:

K. WILLIAM MCKENZIE	}	---	for the Plaintiff
MARC LEMIEUX	}		
(Student-at-Law)	}		
GERALD L.R. RANKING		---	for the Defendant, PricewaterhouseCoopers East Caribbean Firm
PAUL SCHABAS		---	for the Defendants, David Simmons, Peter Simmons, Philip Greaves, David Shorey, David C. Shorey and Company, David Carmichael Shorey and S.B.G. Development Corporation
LAWRENCE HANSEN		---	for the Defendant, Glyne Bannister

A L S O P R E S E N T:

Michael Edwards	}		videographers
Ronnie Carrington	}		

INDEX OF PROCEEDINGS

	PAGE NUMBER
MARCUS ANDREW HATCH, sworn	
Cross-Examination by:	
Mr. McKenzie 1 - 160
Re-Examination by:	
Mr. Ranking 160 - 178
Index of Exhibits 173
Index of Undertakings 174
Index of Refusals 175 - 177

1 MARCUS ANDREW HATCH, sworn

2 CROSS-EXAMINATION BY MR. MCKENZIE:

3 1. Q. Mr. Hatch, just looking at your
4 affidavit, I guess we have both looked at it lately.
5 Is there anything you want to change in it that
6 might have been an error, or something you would
7 like to fix?

8 A. Probably two things I should
9 mention. One is, I swore it as a managing partner
10 of the Barbados office. From January 1 this year I
11 am the senior partner of the East Caribbean firm,
12 the Barbados office being part of the East Caribbean
13 firm.

14 And there was one error on page 3,
15 paragraph 9. It refers to the audit of Kingsland
16 financial statements being conducted at the
17 company's office. It is at the firm's office. I
18 wasn't sure if there might be some confusion over
19 whose office that was.

20 2. Q. Well, I was going to ask you, so
21 thanks for clearing that up, but when you say your
22 office, in Bridgetown, Barbados is what we are
23 talking about?

24 A. Yes, right. Correct.

25 3. Q. Just a technicality to work out;

1 words sometimes can get us into trouble. Do you
2 have some stuff for me there? Okay. Just leave it.
3 Now, I am just going to, sort of, go over, because
4 to get the names of the firms right, see I started
5 off with a firm name, and then your affidavit
6 corrected it, apparently.

7 A. Right.

8 4. Q. But still the technicality of what
9 this means, I just need to be clear on it. Okay.
10 So that I want to, first, ask you, the engagement
11 letter is in here. And just there is a pile of
12 documents over here that are not as intimidating as
13 they look.

14 We printed some of the audited statements
15 to make sure...and you can look at them any time you
16 want, but what I want to just suggest to you as a
17 global consideration is I haven't been able to find
18 a document engaged in anything to do with Kingsland
19 that actually says that you...I will read the full
20 thing:

21 "...PricewaterhouseCoopers East Caribbean
22 Firm..."

23 Okay. They seem to all...and I started with the
24 engagement letter. Okay. And I just...it says,
25 "PricewaterhouseCoopers", and all the way through

1 the letter, and, again, I am not as adept at knowing
2 what is in your letter as you.

3 And then right at the end it is signed,
4 "PricewaterhouseCoopers". Okay. So the question,
5 there is no tricks here, I am just saying how, if I
6 get a letter like this, do I know that the name of
7 the firm is different than PricewaterhouseCoopers,
8 or can I know that in any way?

9 MR. RANKING: I don't know that that is
10 a proper question, because you are asking
11 Mr. Hatch to speculate as to what you
12 should know or not know. If you would like
13 to ask him about the legal entity of
14 PricewaterhouseCoopers that is a proper
15 question.

16

17 BY MR. McKENZIE:

18 5. Q. Well, maybe we could take a look at
19 the Affidavit and try it that way:

20 "...I am the managing partner of Barbados
21 office of PricewaterhouseCoopers East
22 Caribbean Firm..."

23 Is what your affidavit says. And yet I have a
24 letter that doesn't have that name on it; would you
25 agree with that?

1 A. The engagement letter would have the
2 address of the Barbados office of the East Caribbean
3 firm in the top right-hand corner of page 1. The
4 Financial Services Centre, Bishop's Court Hill, P.O.
5 Box 111, St. Michael, Barbados.

6 6. Q. I think we can agree that that is
7 the address there, but you would also agree that it
8 doesn't say PricewaterhouseCoopers East Caribbean
9 Firm there either. It actually says,
10 "PricewaterhouseCoopers".

11 So, again, I am saying, okay, I see an
12 engagement letter that says,
13 "PricewaterhouseCoopers", and I don't see in this
14 document, or, frankly, anything I have been able to
15 find on the Kingsland file...and I printed out all
16 the audited statements and that in case you wanted
17 to look.

18 I can't find any indication that...can we
19 shorten it to "firm" and...how do you want me to
20 describe PricewaterhouseCoopers East Caribbean Firm
21 in shorthand or would you prefer that I just keep
22 saying...

23 A. I think we better be specific, yes.

24 7. Q. Well, we will get the spelling
25 after. PricewaterhouseCoopers is one word with the

1 C capitalized, but the W not, one word. Okay. That
2 is what I am saying, I don't...I suggest to you that
3 there is nothing in the engagement letter that says
4 PricewaterhouseCoopers East Caribbean Firm; would
5 you agree with that?

6 A. I could read it, but I don't think
7 there is anything in here that uses the full legal
8 name of the firm.

9 8. Q. May I suggest to you that the same
10 prevails to the audits that have been done of late?
11 You will not find a reference to
12 PricewaterhouseCoopers East Caribbean Firm anywhere
13 in those audits?

14 A. I don't know what you mean by,
15 "Anywhere in those audits".

16 9. Q. Well, I brought a sample for you.
17 This is your work here. What I mean by "audits",
18 okay, and I am maybe not using proper terminology,
19 so you will have to help me here. When your firm
20 does things it creates a document that would be
21 called an audited financial statement? Can we use
22 that as a...

23 A. They are financial statements, yes.

24 10. Q. So as an example, and I am...again,
25 your counsel will assist me on how the best way to

1 do this, is to say I dug out the Kingsland Estates
2 Limited financial statements for June 30th, 2005,
3 and everywhere I see "PricewaterhouseCoopers", that
4 is what it says. Now, if you would like to look,
5 and disagree with me...

6 MR. RANKING: We will accept that. That
7 is fine.

8 11. MR. MCKENZIE: That is fine. I am just
9 saying, just right across the board, and I
10 don't want to say it is, but I have got...I
11 went through this at lunchtime, because I
12 was looking to see if I had made a mistake,
13 and I...

14 MR. RANKING: What turns on this?

15 12. MR. MCKENZIE: I am sorry?

16 MR. RANKING: What turns on that? I
17 think that my client has said that the
18 document, the engagement letter, does not
19 use the full legal name of the partnership,
20 but it may well be that other
21 correspondence or documents don't do so
22 either.

23 13. MR. MCKENZIE: Well, that is what I was
24 saying. I am saying, if you are prepared
25 to accept it, no document that has gone to

1 Kingsland, that has been prepared by this
2 gentleman's firm, says
3 PricewaterhouseCoopers East Caribbean Firm.

4 MR. RANKING: I am not prepared to
5 accept that.

6 14. MR. McKENZIE: Okay.

7 MR. RANKING: I am prepared to accept
8 that there are documents that may not
9 include the full legal name of the
10 partnership.

11 15. MR. McKENZIE: Let's do them one at a
12 time.

13 MR. RANKING: Well, can you help me as
14 to what turns on this?

15 16. MR. McKENZIE: I am cross-examining on
16 an affidavit where the gentleman is saying
17 something that doesn't appear to be right.

18 MR. RANKING: Well, can you tell me
19 where the inconsistency is, because I
20 haven't heard anything yet that is in your
21 question that has elicited an
22 inconsistency. Let me make myself clear,
23 Mr. Hatch has indicated in his affidavit
24 the proper legal name of the Barbadian
25 partnership.

1 question. You have asked me...

2 19. MR. McKENZIE: Take the document...

3 MR. RANKING: Excuse me. I am entitled
4 to put my answer on the record...

5 20. MR. McKENZIE: Of course you are.

6 MR. RANKING: ...without being
7 interrupted.

8 21. MR. McKENZIE: Put it on the record.

9 MR. RANKING: Your question was, "Will
10 you agree with me that there is not one
11 document that has been given to Kingsland
12 from [my] client that doesn't have the
13 legal name", and I am not prepared to agree
14 to that.

15

16 BY MR. McKENZIE:

17 22. Q. Take a look at the first document in
18 the pile, Mr. Hatch.

19 MR. RANKING: If might suggest, Mr.
20 McKenzie, we can spend a lot of time
21 arguing over how it is that
22 PricewaterhouseCoopers markets itself, and
23 whether or not the full legal name of the
24 partnership is on their correspondence or
25 other documents, but perhaps the proper

1 question for you to ask is not to give me a
2 pile of documents and ask irrelevant
3 questions as to whether it contains the
4 full legal name, but rather, ask Mr. Hatch
5 if the partnership in Barbados signs under
6 the trade name, PricewaterhouseCoopers.

7

8 BY MR. McKENZIE:

9 23. Q. Well, would you like to answer that
10 question?

11 A. You might want to repeat it for me.

12 24. Q. I have forgotten it already.

13 MR. RANKING: Can you explain to Mr.
14 McKenzie why it is that if I turn to the
15 engagement letter, Mr. Hatch, we see that
16 it is under the letterhead of
17 PricewaterhouseCoopers, and it is signed
18 PricewaterhouseCoopers, and why it is that
19 you don't have...if you know, that why it
20 is that you don't have the full legal name
21 of the Barbadian firm?

22 THE DEPONENT: This is entirely standard
23 practice. If you look at any of our
24 marketing materials they will explain that
25 the PricewaterhouseCoopers East Caribbean

1 Firm, you know, is a separate legal entity,
2 but you will not see on our letterhead the
3 full legal name, because that was our
4 brand.

5

6 BY MR. McKENZIE:

7 25. Q. Do you have any of this marketing
8 material with you today that we could look at?

9 A. No, but there is plenty of it
10 available.

11 26. Q. Would you have a look at the first
12 document on the pile, please?

13 MR. RANKING: You produced to Mr. Hatch
14 what appear to be the financial statements
15 for Kingsland Estates Limited for the year
16 ending June 30th, 2005.

17 27. MR. McKENZIE: It appeared to me to be
18 the audited statements, because there is a
19 Pricewaterhouse...

20 MR. RANKING: I think I have identified
21 it sufficiently for the record. Those are
22 before Mr. Hatch?

23 28. MR. McKENZIE: Right.

24 MR. RANKING: Your question.

25

1 BY MR. MCKENZIE:

2 29. Q. Well, there is only one question,
3 anywhere in here does it say PricewaterhouseCoopers
4 East Caribbean Firm.

5 A. The only reference in here to
6 PricewaterhouseCoopers...well, there are two. One
7 where it refers to PricewaterhouseCoopers chartered
8 accountants as the auditors and one on the
9 letterhead of the Barbados office of the East
10 Caribbean Firm of PricewaterhouseCoopers.

11 30. Q. So the answer is, no?

12 A. I don't believe there are any other
13 references to PricewaterhouseCoopers in this
14 document.

15 31. Q. I think the question which I asked,
16 or I will put it again just to be sure, is there
17 anywhere that it says PricewaterhouseCoopers East
18 Caribbean Firm?

19 A. No. The full legal name of the firm
20 does not appear in these financial statements.

21 32. MR. MCKENZIE: What do you want to do;
22 mark it?

23 MR. RANKING: I don't see any reason to
24 mark it.

25 33. MR. MCKENZIE: Well, then I will mark

1 it. Hand it back, please, witness, and I
2 will mark it as the audited financial
3 statements of...excuse me. Let me say that
4 again...

5 MR. RANKING: PricewaterhouseCoopers
6 East Caribbean Firm.

7 34. MR. MCKENZIE: The audited financial
8 statements of Kingsland Estates Limited,
9 that is what we will call it.

10 THE DEPONENT: Correct.

11 35. MR. MCKENZIE: You know what, we
12 probably should staple this so it will not
13 fall apart. Could we just have...can you
14 go and see if they have got a stapler here,
15 please, and mark it? Thank you. Just so
16 we can keep rolling. Exhibit 1. We know
17 what it is. It is the audited financial
18 statements. The question was...

19

20 --- EXHIBIT NO. 1: Audited Financial Statements of
21 Kingsland Estates Limited, dated
22 June 30, 2005

23

24 BY MR. MCKENZIE:

25 36. Q. Now, there is a letter to a lawyer,

1 "Re: Kingsland Estates Limited" from somebody.
2 Again, "PricewaterhouseCoopers" is across the top.
3 Appears to be a signature of Philip Atkinson. Do
4 you see anywhere...if you would like to take a look
5 at it.

6 MR. RANKING: We don't need to. I mean,
7 I think that you heard Mr. Hatch's evidence
8 that is not typical for the firm to put the
9 legal entity on the correspondence.

10 If I have misstated it, Mr. Hatch
11 can correct me, but I am not going to have
12 you start to put all these documents to us
13 for the purposes of marking them as an
14 exhibit simply under the premise that you
15 are trying to establish something with
16 respect to the name PricewaterhouseCoopers.

17 37. MR. MCKENZIE: Would you like to mark
18 this as an exhibit for further
19 identification or that you acknowledge it
20 is a letter from Pricewaterhouse and we
21 will mark it as an exhibit?

22 MR. RANKING: I am not going to
23 acknowledge it is a letter from
24 PricewaterhouseCoopers because I haven't
25 spoken to Mr. Atkinson about it. It may or

1 it may not be but I am not going to
2 acknowledge what it is.

3 38. MR. McKENZIE: I just thought Mr. Hatch
4 might recognize his signature, or recognize
5 the letter, but we will get there in a
6 minute.

7

8 --- EXHIBIT A: Letter from Philip Atkinson
9 dated October 5, 2006 (for
10 identification)

11

12 BY MR. McKENZIE:

13 39. Q. Which leads me to the question, Mr.
14 Atkinson is the person who is in charge of the
15 audit, actually conducting the audit work for
16 Kingsland Estates Limited.

17 A. He is the engagement partner on the
18 audit for 2005 which you just had shown me the
19 financial statements, yes.

20 40. Q. I am not sure what engagement
21 partner...I am not familiar with that term, so could
22 I get back to simpler words and say as an engagement
23 partner that Mr. Atkinson is the person who is in
24 charge of actually doing the audit?

25 A. Yes, that is fair.

1 41. Q. Okay. Fair. And you are his
2 superior? Well, I guess, maybe things have changed,
3 but at the time you swore this affidavit...

4 MR. RANKING: Mr. Hatch was the managing
5 partner. It is in paragraph 1.

6

7 BY MR. McKENZIE:

8 42. Q. Is there a chain of command here?
9 You are his superior or parallel partner? How would
10 you describe yourself?

11 A. At the time I was the managing
12 partner of the Barbados office, so I would have
13 authority within the Barbados office, which would
14 include the various lines of service, including the
15 assurance line of service of which Philip Atkinson
16 is one of the partners.

17 43. Q. So he is your partner?

18 A. Yes.

19 44. Q. And you discussed what is in this
20 affidavit with him?

21 A. Yes, I did.

22 45. Q. He would have more knowledge than
23 you about the actual audit and what was done, the
24 actual work of the audit?

25 A. As the engagement partner he would

1 have been very closely involved in the day-to-day
2 work, yes.

3 46. Q. Were you engaged in the day-to-day
4 work yourself?

5 A. Not at the time of the audit work,
6 no.

7 47. Q. In other words, not at the time of
8 the audit work, so at some other time?

9 A. Well, to the extent that I am the
10 managing partner of the office, and I was aware that
11 there was litigation being brought in connection
12 with Kingsland, I made it my business to talk to him
13 about it, yes.

14 48. Q. This litigation?

15 A. Yes.

16 49. Q. So that was when you took it upon
17 yourself to inform yourself of what was put in the
18 affidavit?

19 A. Or he would have kept me informed as
20 issues arose so that he would have felt a...it is
21 quite normal within the office that he would have
22 consulted with me and kept me informed if there were
23 concerns he had over ongoing litigation.

24 50. Q. Yes, but it makes sense to have
25 somebody to talk to, but I am just saying...I am

1 just trying to get in time, so really you got
2 involved with it once the litigation started, the
3 audit and knowledge about the audit?

4 A. I can't tell you that he never
5 consulted with me on any matter to do with the audit
6 before a certain date, because within our office it
7 is a very conservative environment. And if there
8 were questions, issues, he would talk to me
9 frequently about professional issues on audits. We
10 do it all the time.

11 51. Q. Sure. Which makes sense. I mean,
12 it is the same in our business. Nobody is perfect.
13 So is there some kind of a, what do you call it, a
14 set of standards that apply to audits in Barbados?
15 I am thinking lawyers have rules and regulations and
16 things like that. Do auditors have the same?

17 A. The two main standards that would
18 apply to the conduct of an audit in Barbados would
19 be the International Standards on Auditing which...

20 52. Q. Stop.

21 A. Sure.

22 53. Q. I am just saying that is a lot of
23 words. International?

24 A. Standards on Auditing.

25 54. Q. Sorry to stop you. Sorry, go ahead.

1 A. So those standards would set out
2 what is expected in the performance of an audit to
3 meet the ISA standards. And those are adopted in
4 Barbados as Barbadian auditing standards.

5 55. Q. You said something. You used some
6 letters in there.

7 A. ISA, International Standards on
8 Auditing.

9 56. Q. Okay. Right. So those are
10 interchangeable...

11 A. Yes.

12 57. Q. ...the acronym ISA and...

13 A. Yes.

14 58. Q. So let me just make sure I
15 understand. International standards apply all over
16 the world. Well, let's take that back, because I am
17 sure they don't apply all over the world, but in...

18 MR. RANKING: I think you can ask if
19 they apply in Barbados, that is really what
20 is relevant.

21 59. MR. McKENZIE: Well, "international" is
22 the word I get. I imagine they don't just
23 apply in Barbados.

24

25 BY MR. McKENZIE:

1 60. Q. Is there like, a head office of
2 PricewaterhouseCoopers that has international
3 standards or is this an international standards for
4 all auditors in the world?

5 A. These are not promulgated by
6 PricewaterhouseCoopers. These are promulgated by
7 the International Accounting Standards Board. And
8 the other relevant body, the International
9 Federation of Accountants, IFAC, being the
10 International Federation of Accountants, and the
11 IASB, being an International Accounting Standards
12 Board, so between them they would issue these
13 International Standards on Auditing and on
14 accounting.

15 61. Q. Presumably if somebody knew what
16 they were doing could find these, even online, but
17 could get them from these two organizations.

18 A. Yes.

19 62. Q. Where are they located?

20 A. The organizations themselves?

21 63. Q. Yes, if you know. I mean...

22 A. I believe London, England.

23 64. Q. I don't want to put you in a
24 position where you wake up tomorrow morning and you
25 say, "Oh, I just realized they are in Geneva", or

1 something, so I will just ask the undertaking if it
2 comes to your attention that you made a mistake,
3 let's fix it, and not have me tell somebody you
4 didn't know what you were talking about; would that
5 be fair?

6 MR. RANKING: Well, do you have any
7 issue, Mr. Hatch, today as to whether what
8 you have given under oath is accurate or
9 not?

10 THE DEPONENT: I must admit that I
11 haven't looked up the address of either the
12 IASB or IFAC. I am sure it is very easily
13 done, but I have not done so.

14

15 BY MR. McKENZIE:

16 65. Q. Well, that is why I said I don't
17 want to pin you down to something and then find
18 out...

19 A. To be honest you can look on the
20 internet, and in two seconds I am sure you will find
21 out...

22 66. Q. Just to be safe, because I am not as
23 adept as you in knowing what to look for, I could
24 look on the internet and find International...

25 MR. RANKING: Why don't we do this way:

1 If Mr. Hatch's evidence is incorrect we
2 will make sure that it is corrected.

3 67. MR. McKENZIE: Could I just finish the
4 question? Thank you.

5

6 BY MR. McKENZIE:

7 68. Q. International Federation of
8 Accountants?

9 A. Yes.

10 69. Q. If I went on the internet and
11 Googled that, up would pop a website, and that is
12 where it would tell me where they are?

13 A. I would be very surprised if they
14 didn't have a website.

15 70. Q. That is my problem. I don't want to
16 be surprised, I am saying. And the standards would
17 be...how do you get them, in a book, e-mail?

18 A. They are available in a book. And I
19 am sure they are available from numerous on line
20 sources.

21 71. Q. And that is the same thing for
22 International Standards Accounting Board?

23 A. The IASB, the International
24 Accounting Standards Board issue the IFRS, which are
25 International Financial Reporting Standards.

1 72. Q. Sorry, International?

2 A. Financial Reporting Standards, IFRS.

3 73. Q. And if I did a Google of

4 International Financial Reporting Standards, you
5 think I would find where the head office was of the
6 International Standards Accounting Board, and also
7 would find the standards themselves?

8 A. I would be surprised if you could
9 not find them fairly readily, yes.

10 74. Q. You have them in a book somewhere?

11 A. Oh, yes.

12 75. Q. So can we make a deal, don't answer
13 this until your lawyer...if I can't find them will
14 you copy the book and send it to me?

15 MR. RANKING: No.
/R

16 76. MR. MCKENZIE: Then I would like an
17 undertaking to have them both...all the
18 books of the standards that are used right
19 now, because I have got to find out where
20 the head office is.

21 I mean, we are going around in a
22 circle. I probably can find it online, but
23 I don't want to find out that I can't find
24 it online and say, "I should have asked Mr.
25 Hatch".

1 MR. RANKING: No, we are not going to do
2 that, and I will tell you why. First of
3 all, the International Accounting Standards
4 are readily available in the public domain,
5 number one.

6 Number two, the specific standards
7 have nothing to do with the motion that is
8 currently outstanding before Mr. Justice
9 Shaughnessy with respect to jurisdiction,
10 so we will not provide the undertaking.
/R

11 77. MR. MCKENZIE: It is your undertaking to
12 me that they are all available in the
13 public domain, Counsel?

14 MR. RANKING: Whether they are or they
15 are not, you may have to join an
16 organization to get them, but that is not
17 relevant because we are not getting into
18 the standard of the practices that were
19 used or not used. That is just not
20 relevant for the purposes of jurisdiction.

21 78. MR. MCKENZIE: I want to know where to
22 find them. We are back to...

23 MR. RANKING: I told you...

24 79. MR. MCKENZIE: ...if they are in a
25 dungeon in Transylvania, and that is the

1 only place they are, we need to know that.
2 And I am saying for you to say...well, I am
3 just saying...

4 MR. RANKING: We are an affiant here in
5 an Ontario action that is being brought by
6 you, and we have contested jurisdiction.
7 In response to that we filed an affidavit.
8 That does not make us responsible for
9 trying to find the International Accounting
10 Standards which were the subject matter of
11 the audit.

12 They are the International
13 Accounting Standards. They are not
14 Canadian GAAP or GAAS and are not U.S. GAAP
15 or GAAS. And if you have a problem, I
16 suggest, with the greatest of respect, that
17 that is your obligation to go and find
18 them. It is not ours.

19 80. MR. McKENZIE: Just to make sure, GAAP,
20 how do you spell that?

21 MR. RANKING: Generally Accepted
22 Accounting Principles.

23 81. MR. McKENZIE: And GAAS?

24 MR. RANKING: Generally Accepted
25 Auditing Standards.

1 BY MR. McKENZIE:

2 82. Q. So I am going to go back to the
3 question which, I think, was refused, but I will
4 just move on, which is the standards that you use in
5 Barbados are in a book that is in your office in
6 Barbados, or more books? I mean more than one.

7 A. This is auditing standards or
8 accounting standards you are interested in?

9 83. Q. Any standards you use. I need to
10 know where they are.

11 A. Certainly any standards that
12 are...any accounting standards, any auditing
13 standards that we comply with, we would have
14 available in our office.

15 84. Q. In what format?

16 A. In numerous formats.

17 85. Q. You said "books", so that would...

18 A. Books, electronic.

19 86. Q. So we have got paper type.

20 A. Yes.

21 87. Q. And electronic by which you mean
22 something you can read on a computer?

23 A. Yes.

24 88. Q. Where did the books come from?

25 A. From the IASB and from IFAC.

1 A. We would decide what is the most
2 efficient way to acquire them. And I believe in
3 recent years it has been through the local
4 institute, yes.

5 94. Q. "Recent years" being less than five,
6 say, three?

7 A. I can't say. I don't buy them
8 myself, but they are made available, and I believe
9 they come through the local institute.

10 95. Q. The other alternatives are an office
11 that you think might be in London, England, the
12 International Federation of Accountants.

13 A. I believe that is where they would
14 come from ultimately, yes. And I am sure they would
15 also make them available through various websites.

16 96. Q. I don't suppose we could just get an
17 undertaking to put me out of my misery and have him
18 go and find out and let us know?

19 MR. RANKING: Again, Mr. McKenzie, I
20 just don't see that this goes to the
21 jurisdiction motion. If it went to the
22 jurisdiction motion, I would accommodate
23 you, and I would actually give an
24 undertaking, but with the greatest of
25 respect I can't see A, that the source of

1 the standards is relevant, or the means by
2 which they are transmitted to
3 PricewaterhouseCoopers in Barbados, so I
4 won't provide the undertaking.
/R

5 97. MR. MCKENZIE: I am starting to get the
6 impression that they don't have them here
7 in Barbados.

8 MR. RANKING: No, I think that is
9 absolutely contrary...I think that, with
10 the greatest of respect...

11 98. MR. MCKENZIE: I will withdraw that,
12 because I am saying I am just going to keep
13 going until I figure out...

14 MR. RANKING: There is something on the
15 record that I need to respond to, and that
16 is the sworn evidence today of Mr. Hatch is
17 that they are in Barbados, that they are in
18 the Barbados office and they are the
19 standards by which PricewaterhouseCoopers
20 East Caribbean Firm carries out its audits.

21 99. MR. MCKENZIE: We have, sort of, got a
22 bit of shopping list here, at least I do,
23 which is there seem to be a set of
24 standards for audits and a different set of
25 standards for accounting...

1 MR. RANKING: That is correct.

2 100. MR. McKENZIE: ...GAAS and GAAP; right?

3 MR. RANKING: Yes.

4 101. MR. McKENZIE: So let's break that down.

5 MR. RANKING: Well, that is true.

6

7 BY MR. McKENZIE:

8 102. Q. Well, I was not aware that, correct
9 me if I am wrong, sir, that do you do the accounting
10 function for this company, Kingsland, or just the
11 audit function or is there...have I got the words
12 wrong?

13 MR. RANKING: How is that relevant to
14 the jurisdiction motion?

15 103. MR. McKENZIE: I am trying to set some
16 groundwork. I mean, you know what, I am at
17 the moment, awash in acronyms and details.
18 It is very hard to formulate a question
19 until I actually know what this man does
20 for a living. And I don't mean that
21 disrespectfully, but do you understand it
22 is, like...

23 MR. RANKING: This man runs the
24 Caribbean practice for
25 PricewaterhouseCoopers.

1 organizations who promulgate those
2 standards, and also the organization that
3 distributes the standards, so he has been
4 very...

5 107. MR. MCKENZIE: No, he hasn't.

6 MR. RANKING: Yes, he has. He told you
7 that to the best of his recollection the
8 standards are distributed by the local
9 institute called the Institute of Chartered
10 Accountants of Barbados.

11 108. MR. MCKENZIE: The problem with best
12 recollection is next week he goes, "I was
13 wrong", I am stuck with an answer that is
14 wrong. And I am arguing a motion. And you
15 are standing up and saying, "You know,
16 actually, it is something else".

17 We need some certainty here. So I
18 am going to try to do this the best way I
19 can with what I am absorbing here, okay, so
20 let me just ask questions. You decide
21 whether you are going to answer them or
22 not. Fine.

23 MR. RANKING: Very good.

24 109. MR. MCKENZIE: I am just saying I think
25 you know where I am going which is...

1 MR. RANKING: I have no idea where you
2 are going.

3

4 BY MR. McKENZIE:

5 110. Q. Well, I am saying, okay, we have, I
6 think, International Standards on Auditing that you
7 have told me about. Stop me if I am wrong. Number
8 two, International Financial Reporting Standards,
9 GAAS, short form, and GAAP. That is four things
10 that, I think, I have heard today that guide you in
11 performing audits. Am I correct so far?

12 A. Yes. If it would be helpful I can
13 clarify.

14 111. Q. It would be very helpful, because we
15 could probably get this finished an hour earlier
16 than we are going to the way I am trying to do it.

17 A. GAAS and GAAP are the general terms
18 referring to Generally Accepted Accounting
19 Principles and Generally Accepted Auditing
20 Standards. GAAS and GAAP do vary around the world.
21 There is an effort by IFAC to internationalize the
22 application of GAAS and GAAP to ensure that people
23 are using consistent standards around the world.

24 However, at present you still have Canadian
25 GAAS and GAAP, U.K. GAAS and GAAP, Venezuelan GAAS

1 and GAAP, U.S. GAAS and GAAP, Australian GAAS and
2 GAAP, but the effort is to have everyone around the
3 world adopt the standard, which is the international
4 standard, which is really what IFAC and the IASB are
5 seeking to do, and they are making progress on that.

6 In Barbados, the local Institute of
7 Chartered Accountants adopted the International
8 Standards on Auditing and International Financial
9 Reporting Standards, which were originally
10 International Accounting Standards, or IAS, many
11 years ago. So in the Barbados environment auditors
12 work with ISAs and the IFRSs, previously known as
13 IASs, as our standards typically.

14 112. Q. Well put. Saved a lot of questions.
15 Now, just to be clear with the standards and as you
16 just stated...what you work with in Barbados, right,
17 that is what we are trying to establish.

18 A. Yes.

19 113. Q. I am saying go back to this generic
20 question is, okay, so where can I find that? In
21 other words, if you have a book, simple, or you can
22 give me a website, simple, but there is so many
23 variations here I might go look for something and
24 find the one that is not applying in Barbados.

25 A. I don't think you need to worry

1 about that. These are enormous, enormous
2 international organizations with influence around
3 the world. These standards are familiar with
4 practitioners all around the world, and finding them
5 will not be a problem.

6 114. Q. So if I went to the organizations
7 and say, "Send me the standards that apply to
8 Barbados", and they do that...

9 A. You would have to ask a different
10 question. You would have to ask them to send you a
11 copy of the International Standards on Auditing and
12 a copy of the International Financial Reporting
13 Standards. I am telling you that those are the
14 standards that apply in Barbados.

15 115. Q. Sorry. I got the first,
16 International Standards on Accounting?

17 A. International Standards on Auditing
18 and...

19 116. Q. Just to be clear, if I write them
20 and say, "I am doing a case about Barbados, would
21 you send me whatever applies in Barbados", whatever
22 I get will be the rules that you are bound by?

23 A. I would be surprised if they sit in
24 London and worry about what accounting standards we
25 apply in Barbados. I have no doubt that somewhere

1 in their records they are aware of the fact that the
2 local institute adopted the international standards
3 some years ago, but I would certainly not phrase my
4 request to them like that.

5 I would phrase my request to them, "Send me
6 a copy of the International Standards on Auditing,
7 and send me a copy of the International Financial
8 Reporting Standards". If you want to know what
9 standards apply in Barbados, and you don't take my
10 word for it, I would suggest you contact the
11 Institute of Chartered Accountants of Barbados and
12 ask them.

13 117. Q. I am prepared to take your word for
14 it. I just want to make sure I understand what your
15 word is, by the way. I am just saying that is what
16 we are trying to establish here.

17 A. I have said it a few times now.

18 118. Q. So can you just slow down? You went
19 very fast. Send me the International Standards on
20 Auditing I should say; is that correct? That is the
21 first thing I should ask for?

22 A. I don't know what you want, sir,
23 so...

24 MR. RANKING: I think that the
25 transcript will speak for itself. He has

1 answered your question two or three times
2 now.

3

4 BY MR. MCKENZIE:

5 119. Q. I need to know for certain, when I
6 argue before the judge, that everybody is clear
7 exactly where we will find the standards. Now, it
8 would have been easy if you brought them and put on
9 the table; unfortunately that didn't happen.

10 You didn't put them in your affidavit, so
11 here we are, the three of us trying to figure out
12 how I am going to say to the judge, "There is no
13 doubt whatsoever in everybody's mind that the
14 standards are known, written down some place, ma'am.
15 There will no changes and no misunderstandings
16 later". That is all I am trying to do, you see.

17 In other words, I don't want to get some
18 standards and then somebody here says, "Yes, but we
19 don't follow number three. There is a little note
20 in our book that came from the local institute".

21 You see that is my problem, so I am saying
22 the easiest way, it sounds to me like if you got a
23 copy of the standards that you use, then send them
24 to me. Now, don't answer that, by the way.

25 120. MR. MCKENZIE: I am just saying would

1 you give me that undertaking, Counsel, and
2 make this simple?

3 MR. RANKING: No, I won't. I have told
4 you, again, there is no issue. And my
5 client has been quite clear that the
6 standards are in the International
7 Financial Reporting Standards, the IFRS,
8 and the International Standards on
9 Accounting.
/R

10 THE DEPONENT: On Auditing.

11 MR. RANKING: On Auditing.

12

13 BY MR. McKENZIE:

14 121. Q. But there is no version of that that
15 applies to Barbados exclusively?

16 MR. RANKING: No. That is exactly what
17 he said. And, in fact, his evidence, Mr.
18 McKenzie, was that the local Institute of
19 Chartered Accountants of Barbados adopted
20 the international standards. That is why
21 they are international, and that is why you
22 don't have a specific standard for Barbados
23 or a different standard for another
24 country.

25 122. MR. McKENZIE: Right.

1 MR. RANKING: The international
2 standards apply internationally in those
3 jurisdictions in which the standards have
4 been adopted by the local body.

5 123. MR. MCKENZIE: Right. Okay. We will go
6 there in a minute, but that is why I was
7 saying so, to make my life simple, I would
8 write to the international body and say, "I
9 have just been told your standards apply to
10 Barbados, send them to me"...

11 MR. RANKING: I...

12 124. MR. MCKENZIE: Just let me finish.

13 MR. RANKING: Yes, I apologize.

14 125. MR. MCKENZIE: So if I wrote and said,
15 "Send me the standards", that you just
16 named, "because I have been told they apply
17 to Barbados", and when I get them there
18 would be no doubt they are the standards
19 that Mr. Hatch's operation, or business
20 operates under. There would be no doubt,
21 no quibbling, no misunderstandings; is that
22 fair?

23 MR. RANKING: I think two points:
24 Provided you ask the right question there
25 would be no doubt, number one, but number

1 two, and the reason why I am not giving you
2 an undertaking is because whatever the
3 standards say or don't say, I respectfully
4 submit, are not relevant to the
5 jurisdiction motion.

6 What is relevant is that the
7 standards that apply, and did apply to the
8 Kingsland audit, were the International
9 Financial Reporting Standards and the
10 International Accounting Standards.
11 International Accounting Standards, they
12 were not a Canadian standards of Generally
13 Accepted Accounting Principles or Canadian
14 Generally Accepting Auditing Standards.

15 126. MR. McKENZIE: You should not be giving
16 evidence. I will call that a refusal.
17 Now, just to be clear, and I want to make
18 this quite clear, is the standards, if we
19 ever get to trial, right, somebody is going
20 to have to go get them.

21 MR. RANKING: Yes.

22 127. MR. McKENZIE: And they are available
23 from these bodies.

24

25 BY MR. McKENZIE:

1 128. Q. That is really what you have told me
2 about, Mr. Hatch, in a nutshell?

3 MR. RANKING: Yes.

4 THE DEPONENT: Absolutely.

5

6 BY MR. McKENZIE:

7 129. Q. Wherever those bodies might be, you
8 are not sure yet, but you think they are in London,
9 England; is that fair?

10 A. Yes, it is.

11 130. Q. Do you know what standards are used
12 in Ontario to do auditing and accounting? Are they
13 the same standards that apply to Barbados, or do you
14 know?

15 A. The standards at the Bank of Canada
16 are Canadian GAAS and GAAP. My understanding is
17 that the Canadian Institute of Chartered Accountants
18 is seeking to move towards the adoption of
19 international standards over the next few years.

20 131. Q. So, in effect, the Canadian
21 standards, as far as you understand, are different
22 than the ones in Barbados?

23 A. They are presently, yes.

24 132. Q. But the ones that apply in Barbados
25 are standards that are used in other countries?

1 A. Many other countries, yes.

2 133. MR. McKENZIE: Super. I don't know how
3 we go off on that tangent, but let's go
4 back to...I want to not lose track of the
5 documents. Mr. Lemieux, did you manage to
6 track down a stapler? Okay.

7 Would you mind, because I don't want
8 this falling off here. There was Exhibit
9 1. Right there. Would you mind stapling
10 that, or did you already? Okay. This
11 doesn't need a staple. We will put it in
12 the pile. We are up to...take that out of
13 the pile.

14

15 BY MR. McKENZIE:

16 134. Q. On the naming issue, or back to the
17 PricewaterhouseCoopers discussion, or questions I
18 was asking, is it accurate to say that the
19 PricewaterhouseCoopers firm, whatever its name is,
20 that performs the audit in Barbados, is a member of
21 PricewaterhouseCoopers International Limited?

22 A. PricewaterhouseCoopers East
23 Caribbean Firm is a member of PricewaterhouseCoopers
24 International Limited, yes.

25 135. Q. What does "member" mean? Is that a

1 partnership?

2 A. No, it is not a partnership.

3 136. Q. Do you know what a "member" means
4 then?

5 A. In order for any firm around the
6 world to be a member of PricewaterhouseCoopers
7 International Limited it is really an effort to
8 ensure that our work around the world is
9 coordinated.

10 We work to common standards. We have
11 access to the brand. And that is all ruled through
12 membership of PricewaterhouseCoopers International
13 Limited, but each member firm around the world is a
14 completely separate legal entity.

15 137. Q. Legal entity?

16 A. Yes.

17 138. Q. I am reading from somebody at
18 the...you know, PricewaterhouseCoopers International
19 Limited legal counsel wrote, so I am just saying so
20 PricewaterhouseCoopers International Limited is a
21 company that, what is the word you use, coordinates
22 or...try it this way, it doesn't have clients of its
23 own. It is just, sort of, an umbrella organization,
24 of which your firm is a member; have I got that
25 right?

1 A. I would not necessarily describe it
2 as an umbrella organization. It doesn't provide any
3 services of its own. It does act as a coordinating
4 entity.

5 139. Q. Coordinating entity, right.

6 A. I think that is a good description.

7 140. Q. Yes. Okay. Sure. And the
8 coordinating entity cannot impose its will on your
9 firm; is that correct?

10 A. The access to the
11 PricewaterhouseCoopers brand is, obviously,
12 something that one has to adopt and maintain certain
13 standards.

14 141. Q. Sure.

15 A. And presumably if one did not
16 maintain those standards one would no longer be a
17 member of PricewaterhouseCoopers International.

18 142. Q. That is a good way to describe it,
19 actually. I see your point. So your firm,
20 PricewaterhouseCoopers East Caribbean Firm, is it a
21 partnership?

22 A. It is.

23 143. Q. And is there a place where it would
24 be registered as a partnership? I mean, we are
25 talking about Barbados, not the whole planet here.

1 A. The East Caribbean firm is a
2 partnership. It is practising in several islands of
3 the East Caribbean, and it would be registered to do
4 business in each of those islands.

5 144. Q. We will dispense with that letter.
6 What I did is I just dug out a bunch of letters that
7 I had been given that were written by Mr. Atkinson
8 on the PricewaterhouseCoopers letterhead, and I
9 could not find the name PricewaterhouseCoopers East
10 Caribbean Firm, but I am not giving evidence.

11 If there is any evidence that you would
12 like to give me, or send me later, that will show
13 that the work done for Kingsland, any of the papers
14 prepared for Kingsland, or letters written to people
15 about Kingsland, said, "PricewaterhouseCoopers East
16 Caribbean Firm", please do so, would you give me
17 that undertaking?

18 MR. RANKING: No, we are not going to do
19 that. And you have Mr. Hatch's evidence
20 that the firm, the East Caribbean firm,
21 does not use the legal name on its
22 letterhead or on its financial statements,
23 but that does not mean that you can in any
24 way draw the inference that the work was
25 not done by the firm.

/R

1 you wish to disagree with me, I would like
2 to show it to the witness to refresh his
3 memory, in any event, because...

4 MR. RANKING: Well, ask the question.
5 You haven't asked a question so you can't
6 refresh memory until Mr. Hatch has
7 indicated either, A, that he knows of the
8 lawsuit, B, that he knows of the affidavit,
9 and, C, if you have asked him a question
10 which would require him to look at an
11 affidavit to refresh his memory. So if you
12 do any of those three then we might get to
13 this affidavit, but until then I am
14 objecting.

15 147. MR. McKENZIE: I will try to be simpler
16 if I have complicated things.

17
18 BY MR. McKENZIE:

19 148. Q. PricewaterhouseCoopers, being the
20 respondent in a lawsuit in Barbados, you are
21 familiar with the fact that it was named in a
22 lawsuit?

23 MR. RANKING: Well, what lawsuit? Just,
24 I mean, let's be fair to the witness.

25

1 BY MR. MCKENZIE:

2 149. Q. I am just showing you a document
3 here which I just put before you that hopefully will
4 refresh your memory, and...

5 MR. RANKING: If you can put it on the
6 record and identify the lawsuit, because it
7 should be on the record.

8 150. MR. MCKENZIE: If you would like to hold
9 that, I have a copy. I was going to read
10 it out loud if you wish.

11 MR. RANKING: All right.

12 151. MR. MCKENZIE: Or I thought you could
13 read it out loud. It doesn't matter:
14 "...Barbados, in the High Court of Justice
15 Action Number 21412006..."
16 The last defendant is Pricewaterhouse.

17 MR. RANKING: Let's be fair. You know,
18 you don't just look at the last defendant.
19 You know, this is the managing partner, or
20 was the managing partner. Let's just
21 identify it. It is an application by
22 Marjorie Knox for relief pursuant to
23 certain sections of the Companies Act, and
24 it names Eric Deane, Richard Cox, Gerard
25 Cox, Gerard Cox, Alan Cox, Kingsland

1 Estates and the Attorney General and
2 PricewaterhouseCoopers as respondents. All
3 right. I have identified that.

4

5 BY MR. McKENZIE:

6 152. Q. So does it refresh your memory, sir,
7 that...

8 MR. RANKING: No, we are not getting
9 into refreshing memory yet. Perhaps I
10 didn't make myself clear. Just ask the
11 question.

12 153. MR. McKENZIE: I will ask it this way...

13 MR. RANKING: Were you, Mr. Hatch, aware
14 of this lawsuit in the Court of Barbados?
15 That is the proper question to ask this
16 affiant.

17

18 BY MR. McKENZIE:

19 154. Q. Would you like to answer that, sir,
20 please?

21 A. I have to assume this is all part of
22 the litigation that we are dealing with today. I
23 can't tell you that I remember the specific
24 document.

25 155. Q. I am not worried about the document.

1 I am just saying did it not come to your knowledge
2 that PricewaterhouseCoopers was named as a defendant
3 in this lawsuit? Forget about the document. You
4 are the managing partner, and I thought it might
5 have come to your attention when
6 PricewaterhouseCoopers gets sued in Barbados. That
7 is all.

8 A. Any legal action against the firm I
9 would be aware of. I would have to read this
10 document to give you my sense and recollection of
11 exactly what it is.

12 156. Q. Well, I am going to just tell you,
13 in other words, what I am after here, okay, which
14 is...again, we are just talking about the name. I
15 am not really worried about the lawsuit itself, you
16 know, the substance of the lawsuit, but...just by
17 way of assistance, I notice that...or I guess I
18 should say what I was saying before, all I am doing
19 here is to say you got sued as
20 PricewaterhouseCoopers.

21 Mr. Atkinson put in an affidavit and never
22 said in that affidavit this firm is actually called
23 PricewaterhouseCoopers East Caribbean Firm. That is
24 really what I am after. If you can make it real
25 simple and say, "I agree with you", take your time,

1 but then we could move on, because that is all...

2 MR. RANKING: Well, let me just make
3 this clear for the record, because, again,
4 I don't think you are being fair to the
5 witness. PricewaterhouseCoopers was sued
6 in the name of PricewaterhouseCoopers. All
7 right? That is what the title of
8 proceeding says.

9 157. MR. MCKENZIE: I agree.

10 MR. RANKING: It is not the fault of
11 PricewaterhouseCoopers that the proper
12 legal name was not used by the plaintiff in
13 this action when it was named as a
14 defendant.

15 Mr. Atkinson, by the affidavit that
16 you have passed across, sworn December 11,
17 2006, responded by saying, and I don't
18 know, do you have this first page, because
19 it seems as though the first portion of the
20 paragraph is missing. And so I have the
21 first page, and then I have the second
22 page, and I have got the very operative
23 paragraph upon which you are intending to
24 put to this witness is missing lines.

25 158. MR. MCKENZIE: We have it

1 electronically. I will just have a check.
2 I think I have it in another place. No, I
3 don't. Do you have the memory stick?

4 MR. RANKING: But, in any event, Mr.
5 McKenzie, the reality is Mr. Atkinson was
6 responding using the name of the respondent
7 as named in the title of proceeding, and he
8 goes on to make clear that
9 PricewaterhouseCoopers is a member of PwC
10 International Limited.

11 159. MR. MCKENZIE: Which is what Mr. Hatch
12 just told us.

13 MR. RANKING: Yes.

14 160. MR. MCKENZIE: I mean, what you just
15 read is...but he doesn't say
16 PricewaterhouseCoopers East Caribbean Firm
17 is a member of whatever...

18 MR. RANKING: That is fair. He does not
19 say that in his affidavit.

20 161. MR. MCKENZIE And I am just double
21 checking. He does not say, this is not the
22 name...it is actually
23 PricewaterhouseCoopers East Caribbean Firm.
24 That is what I am after. That is all I am
25 saying. I read the affidavit at lunch

1 time.

2 MR. RANKING: Do you have any basis upon
3 which to cross-examine my client with
4 respect to the veracity of his affidavit
5 and his statement that PwC East Caribbean
6 Firm is the legal entity through which and
7 by which PwC in Barbados carries on its
8 practice of accounting and auditing,
9 because that is the real question? How it
10 came to pass that Mr. Atkinson may have
11 sworn this affidavit, I don't know.

12 162. MR. MCKENZIE: Just to expedite things,
13 would it help...I see what has happened.
14 It was on long paper. I have it
15 electronically. And when it got printed
16 out I got printed on short paper. Would
17 you like to come and look, or we could take
18 a break and have it printed?

19 MR. RANKING: I would like a copy of it,
20 of course.

21 163. MR. MCKENZIE: Why don't you come over
22 and I will read it on the record?

23 MR. RANKING: I don't need to have it
24 read to me on the record. I consider this
25 entire line of questioning to be

1 irrelevant.

2 164. MR. MCKENZIE: Well, I am going to read
3 it on the record anyway, and then I am
4 going to...at the break I am going to get a
5 full copy just so we won't have a quibble
6 about unCanadian...what I do, I feel, that
7 is very important to be totally fair to the
8 witness, so I am going to read it, and if
9 it doesn't work that way I will get a
10 printout, but I have it electronically
11 here. It is just technology doesn't always
12 keep up:

13 "...I [Mr. Atkinson] am a partner at
14 PricewaterhouseCoopers (Barbados), the
15 above named seventh respondent, and have
16 been duly authorized to swear this
17 affidavit on behalf of the said seventh
18 respondent..."

19 You can read the rest because I am over the
20 second page:

21 "...The firm PricewaterhouseCoopers
22 (Barbados) is a member in
23 PricewaterhouseCoopers International
24 Limited (PricewaterhouseCoopers
25 International) a membership based company

1 organized in the United Kingdom..."

2 Now, I did read it at lunchtime. You are

3 free...I will do whatever you want to be

4 fair to the witness, okay, because I don't

5 want to get into more...convert things from

6 electronic to paper sometimes doesn't work

7 out very well, so I am saying the question,

8 and I am back to the start.

9

10 BY MR. McKENZIE:

11 165. Q. Can we all agree that Mr. Atkinson

12 did not say in the affidavit that the seventh

13 respondent is actually called PricewaterhouseCoopers

14 East Caribbean Firm?

15 MR. RANKING: He did not say that.

16 166. MR. McKENZIE: All right. So...

17 MR. RANKING: But now I would like you

18 to...again, I will put the position back on

19 the record, which is instead of picking up

20 a self-serving affidavit that may have been

21 sworn under circumstances, the particulars

22 of which I have no knowledge, information

23 or belief, would you please ask Mr. Hatch

24 if he has any knowledge, information or

25 belief to contradict the sworn testimony

1 that is before this honourable court,
2 namely, that PricewaterhouseCoopers East
3 Caribbean Firm is the distinct legal entity
4 that carries on business of auditing and
5 accounting in Barbados and the other firms
6 that comprise the East Caribbean
7 partnership, because that, with the
8 greatest of respect, is what is relevant.

9 167. MR. MCKENZIE: I think the better
10 procedure would be I will ask questions,
11 and then when we are finished, and this is
12 the way we do it in Canada, your counsel
13 can ask, what do they call it, rebuttal
14 or...

15 MR. RANKING: It is called
16 re-examination.

17 168. MR. MCKENZIE: Re-exam. I am sorry.

18 MR. SCHABAS: Actually, in Canada we ask
19 relevant questions.

20 169. MR. MCKENZIE: Sorry, was that a
21 sarcastic remark that I missed over there?

22 MR. SCHABAS: Sorry if I am displaying a
23 little impatience, Mr. McKenzie.

24 170. MR. MCKENZIE: It is perfectly all
25 right...

1 MR. SCHABAS: We have spent an hour on
2 this so far.

3 171. MR. MCKENZIE: It is perfectly all right
4 for you to express your impatience, but
5 probably should not do it on the record,
6 Counsel, but if it makes you...I am an easy
7 to get along with guy.

8 Now, back to just...Mr. Ranking, I
9 asked for your guidance. I want to mark
10 this as an exhibit. Obviously it got
11 truncated. Is it okay if we wait until the
12 break, which won't be too far from now, and
13 print it out on long paper, and then stamp
14 it so we won't be having a problem with the
15 judge going into pieces missing? I don't
16 mean we would be having a problem with the
17 judge. It might be a problem with each
18 other where the judge is going, "How hard
19 is this?"

20 MR. RANKING: I think we can do it this
21 way: I think if you get me a full copy of
22 the affidavit, Mr. McKenzie, I think, you
23 can probably...I am probably content to
24 have it marked.

25 172. MR. MCKENZIE: We will do that at the

1 break. Just in the spirit of cooperation
2 for which I am most appreciative trying to
3 get out of here today. We are all familiar
4 with electronics. If you have any type of
5 electronic...or we could e-mail it to you
6 as well. In other words, it is...we bring
7 our documents on a...

8 MR. RANKING: I am content to have it
9 marked as an exhibit if we can get a copy
10 here today that I can see it, I can read
11 it, and we can put it...if we can't get it
12 today then I am not going to agree to have
13 it marked.

14 We have been preparing for these
15 cross-examinations, with the greatest of
16 respect, Mr. McKenzie. You know, it is...
17 and I am not agreeing to any further cross-
18 examination on documents that you happen to
19 pull out of your briefcase and put to this
20 witness.

21 I have asked for these documents for
22 the last three days. They weren't
23 produced. And all of a sudden now we are
24 getting documents. And even at this late
25 hour the documents are not complete, so if

1 I sound exasperated, I am. And the fault
2 and the problem that you have is of your
3 own making.

4 So I renew what I said. If you can
5 get me a complete copy of the document, I
6 am content to review it, and I will
7 consider it and most likely agree to have
8 it marked as an exhibit. If you cannot,
9 then I will not agree to have it marked as
10 an exhibit.

11 173. MR. MCKENZIE: I would prefer to operate
12 that when opposing counsel has a technical
13 problem everybody helps them, but I
14 appreciate your comments.

15 MR. RANKING: Well, this is not the
16 usual case. And you know, as well I do,
17 the number of times I have asked you to
18 produce documents, and it was your choice
19 not to do so. Because had you done so
20 this, what you call a technical problem,
21 would have been detected more than two days
22 ago, and we could have dealt with it. So I
23 don't have a great deal of sympathy for the
24 position that you are now putting forward.

25 174. MR. MCKENZIE: Before Mr. Hatch leaves

1 today I will deliver a full copy marked as
2 an exhibit. No matter how long it takes I
3 will get it done, promise. And I thank you
4 for your cooperation, sir. Now, give me a
5 second, please?

6 And just to be clear, Counsel, I am
7 only producing the affidavit, not the
8 myriad of exhibits which don't add
9 anything, but, again, I don't want to be
10 unfair to the witness. If you want to look
11 at them, be my guest.

12 MR. RANKING: Well, as I say one of the
13 reasons that I haven't agreed to have it
14 marked as an exhibit, I want to read the
15 affidavit, and I want to see if I consider
16 the exhibits be relevant to the matters
17 that are in issue, then we are not going to
18 mark it unless the entire document...

19 175. MR. MCKENZIE: I will leave on the table
20 here the printout of the rest of the
21 documents that...they have a way in
22 Barbados, they call them PSA1 and PSA2, I
23 guess, just like Exhibit A and Exhibit B,
24 and they are here. Again, I want to...in
25 order to be perfectly fair, say, if you

1 would like to go through anything, if I
2 have missed anything...

3 MR. RANKING: Why don't we do this, and
4 then we will move on, we will look at it at
5 the break and then we will...

6 176. MR. McKENZIE: Sure. And if it changes
7 your answer, you know, please...

8 MR. RANKING: Fine.

9 177. MR. McKENZIE: ...let's not have any
10 misunderstandings about us being fair to
11 the witness in trying to get the story
12 straight, so...

13 MR. RANKING: Well, I think, it would
14 have been a great deal more fair to the
15 witness if you had given me the documents
16 two days ago when I had asked for them. So
17 I have crossed that bridge. You know my
18 position. We will look at this at the
19 break and we will move on for now.

20 178. MR. McKENZIE: Yes. At the break.
21 Okay. That is fine.

22

23 BY MR. McKENZIE:

24 179. Q. In paragraph 7, sir, just take a
25 moment to read that, please? Okay. You have read

1 it? Thank you. What does "dormant" meant?

2 MR. RANKING: You have to say yes or no.

3 THE DEPONENT: Yes, I have.

4 180. MR. McKENZIE: Good point. Thank you,

5 Counsel.

6 THE DEPONENT: I am sorry, was there a

7 question I missed?

8

9 BY MR. McKENZIE:

10 181. Q. I asked you what does "dormant"

11 mean, please?

12 A. In the context of Kingsland?

13 182. Q. Well, in the context of what did you

14 mean, or what did Mr...I don't know who used the

15 word, but I am saying he told you it was dormant or

16 it is your word, he told you something else? Just

17 try to...

18 A. It was his wording. I can give you

19 the background to that though. The sugar industry

20 in Barbados went through some fairly tough times.

21 And on or about 1992 there was a...I suppose one

22 could regard it as a collapse in the industry, where

23 a number of highly indebted sugar plantations

24 effectively went out of business because of their

25 inability to sell sugar on the world market at a

1 price that would allow them to make a profit.

2 And as a result of that for some years the
3 company of Kingsland Estates Limited was really
4 inactive. They were not really continuing to plant
5 and reap sugar cane, and they really didn't have
6 cash available to them.

7 So from the perspective of our office, I
8 think, what Mr. Atkinson was trying to say was the
9 audit had effectively been in abeyance for several
10 years because the company had no funds and was
11 unable to bring its accounts, its audit accounts
12 up-to-date.

13 183. Q. I think I understood the second
14 part, that they could not pay the auditor, or did
15 not pay the auditor. You said they did not have
16 cash available to them. That is what Mr. Atkinson
17 told you?

18 A. There were times when the company
19 was cash constrained, yes.

20 184. Q. Again, just to make sure we are...
21 sometimes words mean different things in a different
22 country. "Cash constrained", what does that mean?

23 A. There was a time, I think it was
24 about 1992, when Kingsland was part of the group of
25 sugar estates, who found themselves in financial

1 difficulty. So for some years after 1992 their
2 financial statements were not produced on an annual
3 basis, were not audited on an annual basis, because
4 there was a shortage of funds available to continue
5 running the business as one would have...as no doubt
6 management would have wished at that time. And the
7 audit would have been part of that, that it would
8 not have been business as usual.

9 185. Q. Just to make sure I have got it
10 clear, financial statements are produced by
11 management.

12 A. Yes.

13 186. Q. Auditors check them.

14 A. Yes.

15 187. Q. I know that is simplistic, but for
16 the purpose of my question, Mr. Atkinson told you
17 that management did not produce financial statements
18 because they had not enough money to produce
19 financial statements?

20 A. I am not saying that he said that.
21 I am saying that the audit of Kingsland Estates
22 Limited was not done for several years, and I
23 understand that that was because they really were
24 not in funds to pay our fees, or presumably to pay
25 other expenses that they were faced with at that

1 time.

2 188. Q. To prepare financial statements...
3 forget about paying auditors for a minute, because I
4 want to break that down to what you are telling me.
5 Mr. Atkinson told you that they did not prepare
6 financial statements after 1992 for a period?

7 A. That is not what I have said in this
8 affidavit; is it? I have said here PwC East
9 Caribbean did not audit the company's financial
10 statements annually.

11 189. Q. No...

12 MR. RANKING: I don't think there is any
13 evidence.

14

15 BY MR. McKENZIE:

16 190. Q. In explaining what that meant you
17 did say certain things. And I am just trying to
18 clarify what you said.

19 A. Yes.

20 191. Q. To make sure I understand and the
21 record is clear what you said.

22 A. Sure.

23 192. Q. That is all. Okay. So I am
24 saying...

25 MR. RANKING: What he said, he said it

1 twice...

2 193. MR. McKENZIE: Counsel...

3 MR. RANKING: No, I will put my position
4 on because he said it twice.

5 194. MR. McKENZIE: Counsel, Counsel...

6 MR. RANKING: No, you don't need to
7 "counsel" me. I am going to put my
8 position on the record.

9 195. MR. McKENZIE: I think you are coaching.

10 MR. RANKING: Well, you can say whatever
11 you want, because the record is going to be
12 clear. What he said, and he said it twice,
13 is that it is his evidence that there was
14 not sufficient money to conduct an audit,
15 or, in his recollection, to pay others.

16 There is no evidence as to whether
17 or not the company made or didn't make the
18 financial statements that would have been
19 the subject of the audit had they the cash
20 to pay for the auditor. If you want to ask
21 that question, ask the question, but you
22 have asked a number of times, he has given
23 the answer a number of times.

24

25 BY MR. McKENZIE:

1 196. Q. I guess I might have been mistaken
2 here, but correct me if I am wrong, that the
3 information that you are giving me is information
4 that Mr. Atkinson gave you; is that correct?

5 A. Exactly what information are you
6 referring to?

7 197. Q. What you are telling us in paragraph
8 7, and everything your...

9 A. There is no question that between my
10 own knowledge and between what Mr. Atkinson told me
11 that that is the knowledge I have, and that is what
12 I have in my affidavit.

13 198. Q. Your affidavit says, "I am informed
14 by Mr. Atkinson", so I am just sticking with that
15 one sentence for the moment, and I will ask you what
16 your own knowledge is shortly. Okay.

17 MR. RANKING: Before you ask the
18 question, just so I don't get criticized
19 for interrupting in mid sentence, I am
20 having a real problem with how this is
21 going to the jurisdiction motion. I will
22 let it keep going for a while, but, you
23 know, what we are doing here is we are
24 explaining in this affidavit the reason why
25 audited financial statements were prepared.

1 If you are going to start finding
2 out as to what the company did or didn't
3 do, I think that is a subject matter of
4 discovery, and I don't think it is
5 relevant.

6 I put my position on the record. I
7 am not objecting yet, but I just want you
8 to know that I think this is very
9 tangential to the issues relevant to the
10 jurisdiction motion.

11 199. MR. MCKENZIE: I am just trying to
12 understand what this sentence means,
13 period. It is his affidavit...

14 MR. RANKING: Well, why don't you ask
15 that question? Why don't you ask the
16 question that you are having difficulty
17 with, because I don't think there is any
18 ambiguity whatsoever. So if you are having
19 a problem that is fair, put the question to
20 the witness. I won't object.

21
22 BY MR. MCKENZIE:

23 200. Q. All right. Let's stick just with
24 what Mr. Atkinson told you for starters.

25 A. The question?

1 201. Q. Because that is what we are talking
2 about. This sentence, would you agree with me, is
3 what Mr. Atkinson told you?

4 A. Right.

5 202. Q. And then somehow you got me
6 confused, and you said, "I also know things",
7 namely, you, Mr. Hatch, and I am saying I would like
8 to separate those out for the moment to keep it
9 simple.

10 A. Sure.

11 203. Q. I am saying Mr. Atkinson told you
12 that the company did not produce financial
13 statements after 1992; is that correct?

14 A. That is not what I said. I said in
15 my affidavit I am informed by Mr. Atkinson, the
16 engagement partner responsible for the audit, that
17 Kingsland has been dormant for some time.

18 204. Q. Well, it is the word "dormant" that
19 is causing the issue, so I am trying to break it
20 down into what...

21 A. But you asked me what I meant by
22 "dormant", and I explained that in this situation
23 "dormant" meant, as I understood it, that the
24 business was no longer producing sugar because of
25 the collapse of the industry.

1 205. Q. Right.

2 A. And the fact that the business was
3 not in a position to pay its bills and to keep on in
4 the business of planting and reaping sugar.

5 206. Q. But where I lost you, and that is
6 what...so far Mr. Atkinson told you that or that is
7 your own knowledge?

8 A. In terms of whether or not they were
9 dormant. What I said here is that they were
10 dormant, and you asked me what I thought it meant.
11 And I am saying to you what I thought it meant.

12 207. Q. I am going to break this down even
13 in smaller pieces, because...let's try to get this
14 finished. Okay. Mr. Atkinson told you things. Did
15 he tell you that all of these business problems you
16 have just told us about were the reason that
17 financial statements were not prepared in the years
18 after 1992?

19 MR. RANKING: Can I just stop, because I
20 think you are being unfair. And it may be
21 an oversight on your part, and I want to
22 start...are you talking about financial
23 statements being prepared by the company or
24 company financial statements being audited
25 by PwC?

1 208. MR. McKENZIE: Do you misunderstand...

2 MR. RANKING: No, but you are saying
3 it...because I will tell you the reason I
4 find your question objectionable is because
5 your question assumes a fact that is not
6 yet in evidence. What you are assuming is
7 that financial statements were not prepared
8 by the company. That we have not...we have
9 not heard any evidence on that point.

10 So if you want to ask the specific
11 question, then ask a specific question, get
12 an answer, and then follow up, but don't
13 assume a fact in your question and be
14 unfair to the witness, because that is not
15 fair.

16 This affidavit does not speak to
17 whether financial statements were prepared
18 by management, so don't assume that they
19 were or they were not. If you want to make
20 that assumption, be fair to the witness,
21 put it to him, get the evidence, then move
22 forward and ask about the audit. That is
23 the fair way to go.

24 209. MR. McKENZIE: That is a refusal?

25 MR. RANKING: No, it is not a refusal.

1 because this is discovery. You know, the
2 reality is whether they did or they didn't
3 has nothing to do with Pricewaterhouse's
4 role. What is relevant is when
5 PricewaterhouseCoopers was engaged to
6 conduct the audit. What the company did or
7 didn't do is properly the subject matter of
8 discovery, and I am objecting to this
9 question.
/R

10 213. MR. MCKENZIE: Sure, let the record
11 speak, but...and you can object. Okay.
12 Now we are getting some place. I will ask
13 a question, got the speeches down on both
14 sides, not you, the lawyers, and have
15 objections or answers and then we will get
16 out of here, hopefully, some reasonable
17 time today.
18

19 BY MR. MCKENZIE:

20 214. Q. So did Mr. Atkinson tell you that
21 there were financial statements, but the company did
22 not have the funds to pay auditors to audit them in
23 each fiscal year after 1992?

24 MR. RANKING: That question is being
25 refused.
/R

1 BY MR. McKENZIE:

2 215. Q. Did Mr. Atkinson tell you that the
3 company, as a result of its business difficulties,
4 after...commencing in 1992, which you have told us
5 about, were the cause, the reason I should say, the
6 reason why PricewaterhouseCoopers had not been
7 engaged to audit financial statements for each
8 fiscal year after 1992?

9 MR. RANKING: That question has been
10 asked and answered.

11 216. MR. McKENZIE: That is a refusal?

12 MR. RANKING: It has been asked and
13 answered.

14 217. MR. McKENZIE: I will call that a
15 refusal, because I don't think you are
16 right, but the record will speak for
17 itself.

18

19 BY MR. McKENZIE:

20 218. Q. Next question, back to paragraph 7,
21 in the course of your answer, and you can correct me
22 if I am wrong, sir, you gave me the impression...and
23 I suggest to you that you also have knowledge from
24 sources other than Mr. Atkinson about the financial
25 status of this company after 1992; is that correct?

1 MR. RANKING: Whether he does or
2 doesn't, you can help me...this is going on
3 to a discovery. How does Mr. Hatch's
4 knowledge of the financial affairs of
5 Kingsland have anything to do with the
6 audited financial statements, which are the
7 actual subject matter of the affidavit, and
8 the fact that you named PwC as a defendant
9 in the Ontario action?

10 219. MR. MCKENZIE: That is a refusal?

11 MR. RANKING: It is.
/R

12

13 BY MR. MCKENZIE:

14 220. Q. Just to be clear, specifically with
15 respect to the engagement of PricewaterhouseCoopers
16 to perform the audit in each fiscal year, for each
17 fiscal year after 1992, do you have knowledge,
18 independent from what Mr. Atkinson told you, that
19 the company did not have money to engage
20 PricewaterhouseCoopers to perform the audit?

21 A. My only knowledge of the financial
22 situation of Kingsland Estates Limited would have
23 come from my position within the firm, so I am not
24 sure that I really understand your question.

25 221. Q. Within the firm there is information

1 given to the firm by the company; is that correct?

2 A. Information for audit, you mean?

3 222. Q. Well, okay, if you want to do it
4 that way, because we were talking about
5 impecuniosity, not audit the last time I asked the
6 question, in my opinion, so try it another way,
7 because I think I understand. It is your evidence
8 that as partner of PricewaterhouseCoopers you came
9 to know some information about this company; is that
10 correct?

11 A. Certainly, yes.

12 223. Q. And not for any other reason, in
13 other words, you weren't in any other way associated
14 with the company; correct?

15 A. No, I wasn't.

16 224. Q. That makes it simple. So any
17 information that came to you, either came from your
18 work on the file, from information that had been
19 provided, or Mr. Atkinson telling you about work on
20 the file, or employees telling you about work on the
21 file, that would be the only sources of your
22 information; correct?

23 A. I mean, that is a very broad
24 question. I think any information I have on the
25 company itself, and anything to do with the audit,

1 obviously, would have come to me through my position
2 within the firm, but it is not entirely unknown in
3 Barbados that the company has been in dispute within
4 the family for a number of years, so I would have
5 been aware of that as well. If that is what you are
6 asking me.

7 225. Q. So that is information that came to
8 you through outside sources? I mean, it is not
9 something that would concern PricewaterhouseCoopers,
10 what the affairs of the company were. All they want
11 to know if they are going to get paid to do an audit
12 or not; correct?

13 A. You are asking me whether
14 PricewaterhouseCoopers is concerned about the
15 affairs of the companies it is auditing?

16 226. Q. It wasn't auditing.

17 MR. RANKING: That is a temporal
18 question, Mr. McKenzie.

19

20 BY MR. McKENZIE:

21 227. Q. Pick 1993, you didn't do an audit;
22 correct? At the time, the financial statements...

23 MR. RANKING: We know that.

24

25 BY MR. McKENZIE:

1 228. Q. ...were not prepared for 1993...

2 MR. RANKING: We know that.

3 229. MR. McKENZIE: Sorry, you finished, Mr.

4 Ranking? Okay. It is a lot easier if we

5 talk one at a time.

6 MR. RANKING: Well, it is a lot easier

7 if you don't keep asking questions for

8 which there is no controversy. The

9 affidavit makes clear that there wasn't an

10 audit conducted at the time for 1993. You

11 have got Mr. Hatch's evidence that it

12 wasn't done because they didn't have the

13 financial wherewithal to pay for an audit.

14 230. MR. McKENZIE: Maybe I can summarize and

15 see if we can make this easier.

16

17 BY MR. McKENZIE:

18 231. Q. What you know from your business

19 audit is the information that comes to the firm.

20 Also, there is...out in the community there is

21 gossip, knowledge and the kind of things that the

22 family are squabbling, the family that owned the

23 company; correct? Is that yes or no?

24 A. Yes, it is.

25 232. Q. So your own information is,

1 forgetting about the...auditor is the family are
2 squabbling, it is possible that is the reason they
3 are not getting audited statements, or ordering
4 audited statements from you.

5 A. You are talking about 1993.

6 233. Q. Well, I was just picking a year at
7 random because there is a period in there...to try
8 to help you.

9 A. I would not have made it my business
10 to understand the situation to do with this
11 particular company until it became an issue, so I
12 certainly don't think in 1993 that there was any
13 issue from the firm's perspective that I would have
14 been aware of.

15 234. Q. Is it more recently than 1993 that
16 you became aware that there was squabbling going on?

17 A. I got involved in it only when I was
18 made aware by Mr. Atkinson that there was litigation
19 being brought. And it was at that stage I made it
20 my business to get involved as a managing partner.
21 Before that, whether a company can afford to have
22 its audit done or not, is really not something that
23 I would get directly involved in.

24 235. Q. So is it of interest or concern to
25 an auditor, when they are doing an audit, to know

1 something about litigation that is going on with
2 respect to the company?

3 A. I think it would be unwise of us to
4 be doing an audit of a company, and not seek to
5 understand what actions the company may be involved
6 in or exposed to, because there are certain
7 disclosures that may be required.

8 236. Q. Right. Because we are spending
9 quite a large time period here, when did it come to
10 your attention that there were legal actions going
11 on involving the company?

12 MR. RANKING: How is that relevant?
13 Like, how is it possibly relevant? We
14 heard from Mr. Hatch that there was
15 information in the public domain that the
16 family was squabbling, and that is, I
17 think, now probably common knowledge, and
18 probably something at which Justice
19 Shaughnessy can take judicial notice even
20 though he is in Ontario and we are in
21 Barbados. But how on earth, Mr. McKenzie,
22 is that relevant to the matters that are
23 before this court?

24 237. MR. MCKENZIE: What the problem seems to
25 be here is we are trying to get the

1 grounding so I can ask some questions, and
2 it is like we are...it is like trying to
3 grasp something, and I am saying there is a
4 lengthy period of time, and this may be the
5 problem, from 1992, and Mr. Hatch told us
6 about the sugar...

7 MR. RANKING: The downfall in the sugar
8 industry.

9 238. MR. MCKENZIE: Well, the problem that
10 Kingsland was having.

11 MR. RANKING: Well, no, it was a
12 downfall in the sugar industry which
13 included Kingsland.

14 239. MR. MCKENZIE: Okay. So I am saying
15 1992, and then we have this span of time,
16 and so I am trying to just get a chronology
17 going so that we can...because I think
18 Mr...

19 MR. RANKING: We have got a chronology.
20 What you are asking is when Mr. Hatch first
21 became aware of it, and his personal
22 knowledge. If you want to go back to the
23 chronology I am happy to allow you to ask
24 those questions.

25 What I am not happy about is that we

1 are now devolving into what Mr. Hatch's
2 personal knowledge was versus Mr.
3 Atkinson's. What is more important is what
4 was the information that was known to PwC
5 that may touch upon the audit. If you want
6 to ask those questions I am not going to
7 object.

8 240. MR. McKENZIE: Actually, he brought it
9 up, so I am just trying to separate it out
10 exactly and get on with it, so I am saying,
11 qua auditor, as auditor, at a certain point
12 it comes to the auditor's knowledge that
13 there are legal disputes involving the
14 company that are being audited. Okay.

15

16 BY MR. McKENZIE:

17 241. Q. I am saying what I want to ask you
18 is when did you, as auditor, come to know that legal
19 proceedings had commenced?

20 A. You say when did I as auditor. I
21 was not the engagement partner. I was a managing
22 partner, so my only interest in this particular
23 audit would have arisen when I became aware that
24 there was litigation involving the firm. Prior to
25 that it was just the engagement partner would have

1 been dealing with audit issues.

2 242. Q. Right. And when you say,
3 "Litigation involving the firm", you are referring
4 to this lawsuit we were talking about earlier, that
5 your firm got sued? So we could just check the date
6 and we would know?

7 A. I haven't read that myself, you
8 know, and I can't tell you I am familiar with
9 exactly what the details of that are. I am talking
10 about the current litigation with...

11 MR. RANKING: The litigation in Ontario?

12 THE DEPONENT: Yes.

13

14 BY MR. McKENZIE:

15 243. Q. Well, we know when that came to your
16 attention. So that would have been a time when you
17 became aware that the company was involved in
18 litigation, not to mention the firm, your firm?

19 A. Sorry, what is your question?

20 244. Q. The time that you first received
21 notice of the Ontario action against
22 PricewaterhouseCoopers was the first time you became
23 aware that Kingsland Estates Limited was involved in
24 any litigation; is that correct?

25 A. I don't think that is the case. I

1 am sure that I would have taken a direct interest
2 when I became aware that PricewaterhouseCoopers were
3 involved in litigation, but I don't think I can
4 honestly say that I would have been completely
5 unaware, prior to that date, that there was any
6 litigation involving Kingsland.

7 MR. RANKING: Would this be a convenient
8 time to break?

9 245. MR. McKENZIE: I don't need a break, but
10 that would be fine. Just in the interest
11 of trying to get out of here as early as
12 possible, but, sure, why don't we take...

13 MR. RANKING: I just want to look at...

14 246. MR. McKENZIE: How long...

15 MR. RANKING: But you tell us.

16 247. MR. McKENZIE: Okay. Five/ten?

17 MR. RANKING: That is fine.

18 248. MR. McKENZIE: Ten minutes?

19

20 --- A BRIEF RECESS

21

22 MARCUS ANDREW HATCH, resumed

23 CONTINUED CROSS-EXAMINATION BY MR. McKENZIE :

24 MR. RANKING: Over the afternoon break

25 Mr. McKenzie produced to me a copy of the

1 affidavit of Philip Atkinson, sworn
2 December 11th, 2006. The exhibits were out
3 of order, but I put them in order, and I am
4 content to have this affidavit marked as an
5 exhibit, but I would also like to have the
6 first affidavit without exhibits, that was
7 put to the witness, also marked. So what I
8 am proposing is that we mark the first
9 affidavit, without exhibits, with the
10 incomplete first paragraph, as the next
11 exhibit, Exhibit 2.

12 249. MR. MCKENZIE: Let's make that Exhibit
13 B, because it is not accurate. We know it
14 is not accurate, in other words, I know
15 what you want to do, which is have it in
16 the record, but...

17 MR. RANKING: The basis upon which
18 you...

19 250. MR. MCKENZIE: It is not authentic.

20 MR. RANKING: I am sorry, the basis upon
21 which I am agreeing to put in the full
22 affidavit is on the condition that you were
23 going to be fair to the witness and mark
24 the affidavit that is not complete as an
25 exhibit as well, so if you are not prepared

1 to put both in then I am not prepared to
2 have either.

3 So you can look at it, and we have
4 got to be fair to the witness, which
5 means...being fair to the witness means the
6 record is going to complete.

7 251. MR. MCKENZIE: So just for the record
8 what will be the next exhibit number is
9 Exhibit 2. Exhibit 2 is what I first
10 handed to the witness, which is the exhibit
11 to the affidavit itself, except that the
12 first page we discussed has been...it is
13 supposed to be long and it got cut off in
14 the printing, so that is Exhibit 2.

15
16 --- EXHIBIT NO. 2: Affidavit of Philip Atkinson,
17 sworn December 11, 2006, without
18 exhibits, and an incomplete
19 paragraph 1

20
21 252. MR. MCKENZIE: And then Exhibit 3 is the
22 full and complete affidavit. What we did
23 is to get the full legal sized page onto a
24 letter sized document, the first page,
25 which was the problem in the last one, we

1 shrunk it, in other words, compressed it a
2 little bit so that it fit on...

3 MR. RANKING: That is fine.

4 253. MR. McKENZIE: ...legal paper, but I
5 think the way they do court forms here is
6 everything is legal size.

7

8 --- EXHIBIT NO. 3: Complete affidavit of Philip
9 Atkinson, sworn December 11,
10 2006

11

12 254. MR. McKENZIE: Thank you. Moving right
13 along...

14 MR. RANKING: Just before we leave that,
15 I take it you will give me copies of the
16 exhibits that are being marked, Mr.
17 McKenzie?

18 255. MR. McKENZIE: Mr. Schabas was
19 successful the other day in getting copies
20 made, and...

21 MR. RANKING: This is your
22 cross-examination. They are your exhibits.
23 It is your obligation to provide me with
24 copies. I know that you know the Rules,
25 but I am just making sure on the record

1 that you will provide me with copies of the
2 exhibits.

3 256. MR. MCKENZIE: You will get copies,
4 sure.

5 MR. RANKING: Thank you. In a timely
6 fashion, by the end of the day we are going
7 to get this. I don't want...

8 257. MR. MCKENZIE: I am not guaranteeing by
9 the end of the day. I don't know when the
10 staff leaves, so it is already quarter to
11 four so...

12 MR. RANKING: But certainly within a
13 week of the cross-examination; is that
14 fair?

15 258. MR. MCKENZIE: When is that? What date
16 is today?

17 MR. RANKING: It is the next Thursday.

18 259. MR. MCKENZIE: If you put it in writing,
19 my staff takes care of these things. I
20 have a bad memory, so...

21 MR. RANKING: Well, I have made the
22 request.

23 260. MR. MCKENZIE: As you know, you have met
24 Stacey, you ask her, she takes care of
25 documents, so I am...

1 MR. RANKING: Mr. Lemieux and I will
2 deal with it at the end of the day.

3 261. MR. McKENZIE: I am very bad at it.

4 MR. RANKING: All right. Thank you.

5

6 BY MR. McKENZIE:

7 262. Q. Paragraph 9, the engagement letter,
8 as it is, relates to audits for the years 1998 to
9 2005. As a matter of updating things to more
10 currently, would we be able to update that by the
11 year that they were also done for the following
12 year?

13 A. Sorry?

14 MR. RANKING: I don't understand the
15 question.

16

17 BY MR. McKENZIE:

18 263. Q. Well, you swore this affidavit a
19 year ago and said, "We have done the audits from
20 June 30, 1998 to June 30th, 2005".

21 A. Right.

22 264. Q. I mean, the audit for the fiscal
23 year ending in those dates.

24 A. Right.

25 265. Q. So I am saying have you subsequently

1 done the audit for the fiscal year terminating June
2 30th, 2006?

3 A. Yes, we have.

4 266. Q. How about 2007?

5 A. That was done as well.

6 267. Q. Great. And 2008 would not be due
7 yet; am I right?

8 A. We have not commenced that audit,
9 no.

10 268. Q. When I said "due", in other words,
11 the year end would have been June 30th, 2008. Do
12 you know if they have even produced financial
13 statements and given them to you yet? You have
14 started the audit?

15 A. I don't know, but I do know the
16 audit has not commenced.

17 269. Q. Yes. Has the auditor been engaged
18 to commence it...

19 MR. RANKING: Don't answer the question.
/R

20

21 BY MR. McKENZIE:

22 270. Q. ...for the year ending 2008?

23 MR. RANKING: Don't answer the question.
24 How is that relevant?

25 271. MR. McKENZIE: Well, just to bring the

1 affidavit, the evidence up-to-date.

2 MR. RANKING: Right. And I have got to
3 tell you, Mr. McKenzie, I am concerned, not
4 only by the questions that have been asked
5 today, but by many of the questions that
6 have been asked this entire week, that the
7 cross-examinations have bordered on
8 abusive, if not been abusive, because you
9 are turning this into a discovery.

10 Whether or not there are updated
11 financial statements is irrelevant to the
12 purposes of jurisdiction. What is relevant
13 is where the audits were conducted, who
14 conducted the audit, whether the audit
15 partner changed, whether the audit team
16 changed. Those are relevant questions.

17 So if you want to find out if there
18 was a further audit, you have asked that
19 question, you have got the answer, but to
20 ask for production of that material is
21 clearly a discovery question, and I am
22 objecting to it.

23 272. MR. MCKENZIE: Refusal?

24 MR. RANKING: You have my position on
25 the record. I am not going to say it

1 twice.

2 273. MR. MCKENZIE: And just to be clear, I
3 will accept that you asked a question I
4 didn't ask, and you are refusing it anyway,
5 which is I never asked for production of
6 it. I just wanted to see if they were the
7 still the auditors or not, but you said
8 that I had asked for production of
9 something...

10 MR. RANKING: You asked...

11 274. MR. MCKENZIE: Mr. Ranking, it doesn't
12 work when we both talk, please. I just
13 said, "Have you been engaged to do the
14 audit for the 2008 fiscal year, June 30th",
15 and you interpreted that differently. I
16 will move on. I got it. It is a refusal.
17 It is all refused. Fine. Okay.

18

19 BY MR. MCKENZIE:

20 275. Q. Paragraph 9, Mr. Atkinson and
21 Stephen Sayers completed the audits. Now, all of
22 the audit work just...I am going to very simply as
23 we can, audit work comprises, may I suggest,
24 receiving information and the financial statements
25 from the company, and performing the audit function.

1 Is that what audit work is or is there more?

2 A. You want me to explain what an audit
3 involves this afternoon?

4 276. Q. In this lifetime. No, in...you
5 might explain it to somebody like me who doesn't
6 really get it anyway, in, say, 25 words or less what
7 is audit work?

8 MR. RANKING: Don't answer the question.
/R

9

10 BY MR. McKENZIE:

11 277. Q. Well, here we go because what we are
12 trying to do is to say, okay, I think it is clear
13 that what you are saying, and correct me if I am
14 wrong, that you have files in your office that will
15 record all the work you did; is that fair?

16 A. Absolutely, yes, we do.

17 278. Q. There, that is the way to do it.
18 And then you use the word "examination". Would you
19 explain what that is?

20 A. It is an audit examination.

21 279. Q. I understand, but just, again, short
22 story, going over the financial statements?

23 A. One could replace the word
24 "examination" with "audit". It would be
25 interchangeable, if that is the question you are

1 asking.

2 280. Q. It is like using a word to define
3 itself, so I am saying...

4 A. Well, you asked me what the
5 examination was. I am saying it was the audit.

6 281. Q. But isn't it the case here that you
7 have got a two-stage job in an audit, an examination
8 and a review?

9 A. No, absolutely not. The audit
10 encompasses a level of ongoing involvement by the
11 engagement partner. I think what we are saying here
12 is that the...Philip Atkinson was the engagement
13 partner responsible for the work, and would have
14 reviewed all of the work that was performed by Mr.
15 Sayers.

16 282. Q. Neither one of those persons ever
17 left the...now, I know they go home to their
18 families and sleep, but when you said it was all
19 performed in the office in Bridgetown, they never
20 went outside the office to do any part of the
21 examination or review; correct?

22 A. We have an office, and they work in
23 that office. I am not going to stand here and say
24 to you whether they left or didn't leave, because I
25 am not sure what you mean by that, but all of the

1 work to do with the audit was performed at our
2 office, yes.

3 283. Q. Well, "leave" means I am working on
4 a file, and I opened the door, and I go outside of
5 the office, and I go somewhere to do work on the
6 file. "Stay in the office" means I don't have to
7 open the door and go somewhere, so I want to be
8 clear, because you said you didn't know or
9 understand what I mean by "leave"...

10 A. It is okay.

11 284. Q. You know, it might be we use
12 different words when we are in different countries
13 when I say it, so I don't want to...

14 MR. RANKING: Mr. Hatch understood, and
15 you have his answer. It is in his
16 affidavit and you have his answer.

17 285. MR. MCKENZIE: Well, he said he didn't
18 understand, Mr. Ranking.

19 MR. RANKING: You have his answer.

20 286. MR. MCKENZIE: A refusal. Okay. So
21 let's try this...

22 MR. RANKING: You have his answer.
23 Having his answer is quite different than a
24 refusal.

25 287. MR. MCKENZIE: No, you are directing him

1 not to answer my question, all said and
2 done, but I am saying, anyway, let's try
3 this again.

4

5 BY MR. MCKENZIE:

6 288. Q. There was no work done on this
7 audit, to perform this audit, except in the office;
8 correct?

9 MR. RANKING: Refusal. You know what,
10 answer the question. You have already
11 answered it twice, so answer it a third
12 time.

13 THE DEPONENT: We have an office where
14 both of these gentlemen work. An audit
15 involves a number of functions in terms of
16 gathering information. I have no reason to
17 believe that any work was done anywhere
18 other than in the office, but I really am
19 not sure what you are getting at.

20 There was no office, as I understand
21 it, where they went to Kingsland Estates
22 Limited's office to do audit work. The
23 point of this statement here was that the
24 work was performed in our office as opposed
25 to in our client's office, which is usually

1 the case.

2

3 BY MR. McKENZIE:

4 289. Q. Right, but whether it is done in the
5 client's office, or in your own office, it is the
6 same type of work.

7 A. It is a matter of convenience.

8 290. Q. Great. And that would mean, may I
9 suggest, that all of the records, what do you call
10 them? The records that are examined and your work
11 product are available in your office, are in your
12 office, for all of the audits you have done?

13 A. If the work is being managed and
14 performed in our office then certainly we would have
15 to obtain records to audit, but it would still
16 involve obtaining information from third parties,
17 whether they be advisors, attorneys, valuers. So it
18 is a process of gathering, reviewing and auditing
19 information, but all of the information would not
20 necessarily be in the office at the beginning of the
21 process. It is a matter of gathering information.

22 291. Q. Let's say at the end of the process
23 you finish...there is a file with all the
24 information that you went over, and you keep it.

25 A. Yes.

1 292. Q. It is kept in, I don't want to get
2 fancy here, paper format, or in a electronic format;
3 is that correct?

4 A. One or the other, yes, or both.

5 293. Q. And with respect to electronic data,
6 it is also backed up, so just in case the computer
7 crashes?

8 A. Yes.

9 294. Q. Is the backup also in your office?

10 A. We would have backup procedures
11 which would involve off-site storage I am sure.

12 295. Q. I take it in Barbados?

13 A. Yes.

14 296. Q. Now, in terms of the...let's just
15 pick a year at random, trying to get a concept of
16 the volume of documentation. If we had to package
17 it up and take it to a court and say, you see, so I
18 am saying for one year's audit for this corporation,
19 on paper, would it fill more than a Banker's Box?

20 A. One year's audit?

21 297. Q. Yes.

22 A. The audit file or the underlying
23 information? The audit file...

24 298. Q. Everything.

25 A. The audit file would not be more

1 than perhaps an inch thick, but the underlying
2 information, of which extracts would exist in the
3 audit file, would reside in attorney's offices in
4 Barbados, in valuer's offices in Barbados. Anyone
5 who works with the company that we need to get
6 information from, all of whom are in Barbados, I may
7 add.

8 299. Q. So attorney offices might send you
9 an extract of something, not the whole...I am not
10 sure what you meant.

11 A. Yes.

12 300. Q. I am not worried about what is in
13 other places at the moment. I am just saying what
14 do you have?

15 A. We have our audit files, which is
16 all we are required to maintain.

17 301. Q. So all the paper that you have for
18 an audit for a given year, would it fill a Banker's
19 Box?

20 A. For this company, no, it would not.

21 302. Q. And all of the electronic data that
22 you stored for one year of audit, could we fit it on
23 a 1 gig memory stick?

24 A. These were paper files. There were
25 no electronic files.

1 303. Q. I am sorry, I understood you to say
2 there were some electronic files.

3 MR. RANKING: No, you asked questions...

4 THE DEPONENT: You asked a different
5 question. You asked whether we use
6 electronic or paper files; I said we use
7 both or a combination. In this particular
8 audit it was paper.

9

10 BY MR. McKENZIE:

11 304. Q. That would include your work
12 product, gets printed out on to paper and put in the
13 file?

14 A. Correct.

15 305. Q. It went like this, a couple of
16 inches thick file per year.

17 A. Yes.

18 306. Q. Ballpark. Roughly, I meant.

19 A. Yes.

20 307. Q. I don't know if they have ballparks
21 in Barbados. The next paragraph I would like you to
22 refer to is paragraph 12, which speaks of the
23 engagement letter and the governing law as between
24 PricewaterhouseCoopers and Kingsland.

25 Is there any similar contract with any of

1 the other defendants, I guess, specifically Classic,
2 for instance? I don't even know if you do the
3 audit. Do you do the audit for Classic?

4 MR. RANKING: Don't answer the question.
/R

5

6 BY MR. McKENZIE:

7 308. Q. Is there any governing law,
8 contractual arrangement with any defendant except
9 Kingsland Estates Limited?

10 A. You would have to give me a list of
11 the defendants, and I would have to confirm that.

12 309. Q. Sure.

13 A. I am not prepared to answer that.

14 310. Q. I think it is right on the front of
15 your affidavit. The reason I was picking is...I
16 went through the list, and I can't imagine your
17 auditing a lot of things. I was trying to be
18 helpful, but if you...

19 A. I would not want to sit here today
20 and say that there is nothing in this extraordinary
21 list that we don't audit. I think that would be
22 unwise. We audit several thousand companies.

23 311. Q. I would focus and say in Barbados,
24 because the governing law clause that you have
25 quoted here says:

1 "...This will be governed by the Law of
2 Barbados, and shall be deemed in all
3 respect to be a Barbados contract..."

4 And you agreed to the exclusive jurisdiction of the
5 court, so that would be in any dispute between
6 Kingsland and PricewaterhouseCoopers. I got that.
7 I am saying we have narrowed the list down probably
8 to only corporations that are in Barbados that are
9 being audited by PricewaterhouseCoopers in Barbados
10 with that type of governing law contract; see what I
11 mean?

12 A. I am not sure what your question is.

13 312. Q. The question is the governing law
14 contract that you have quoted in your affidavit,
15 does it apply to any other corporation that is
16 audited by PricewaterhouseCoopers that happens to be
17 a defendant, or is it just Kingsland?

18 A. I have already said to you that you
19 have got a long list of defendants here, and I don't
20 know whether any others of them are audit clients of
21 Barbados, but I can tell you that our audit
22 engagement letters will include the fact that all of
23 our engagements are governed by the laws of
24 Barbados. We do not do audits governed by the laws
25 of any country other than Barbados, for any client.

1 A. Well, you are really asking me to
2 tell you which of these companies are our clients.
3 I am not even sure that that is appropriate.

4 MR. RANKING: Why don't we do it this
5 way: I understand the question. If
6 PricewaterhouseCoopers East Caribbean Firm
7 is going to rely on any other audit letters
8 or governing clauses, for any client other
9 than Kingsland, we will let you know.

10 317. MR. MCKENZIE: I will accept that
11 undertaking, but say it is a refusal of my
12 question at the same time because that is
13 not the question I asked, but it may be
14 helpful and may solve the problem, but I
15 don't think I want to agree to that at the
16 moment, so...

17 MR. RANKING: Well, why don't we do
18 this, why don't we take as a refusal? I
19 will withdraw what I just offered to give
20 you.

21 318. MR. MCKENZIE: So both are refused now?

22 MR. RANKING: Both are refused now.

/R

23

24 BY MR. MCKENZIE:

25 319. Q. Now, next question, in paragraph 13,

1 the second sentence, I better make sure the second
2 sentence says:

3 "...Neither Kingsland, nor any of its
4 officers or directors have raised any
5 concerns with respect to the audits..."

6 See that?

7 A. Yes, I do.

8 320. Q. Has anybody else? Not counting this
9 lawsuit.

10 A. Has anybody else what?

11 321. Q. Raised concerns with respect to the
12 audits, of Kingsland that is.

13 A. I would need to check with Mr.
14 Atkinson, but I don't believe that any part of this
15 discussion has queried the audits themselves.

16 322. Q. I would like you to check with Mr.
17 Atkinson and let me know...

18 MR. RANKING: We will undertake to do
19 that.

U/T

20 THE DEPONENT: Sure.

21 323. MR. MCKENZIE: If the answer is, yes, I
22 don't necessarily need to know the person,
23 but what is the relationship with the
24 company, for instance, is it shareholder or
25 something else? It is, like...rather than

1 have to come back and tell me who is
2 complaining. You don't even have to tell
3 me who it is. You can just give me a
4 generic description...

5 MR. RANKING: This is the undertaking
6 that I am prepared to give: We are
7 prepared to make inquiries of Mr. Atkinson
8 to determine whether or not anyone has made
9 any complaint of PwC with respect to the
10 audit of Kingsland.

U/T

11 324. MR. MCKENZIE: Great. That would be
12 audits.

13 MR. RANKING: Correct.

14 325. MR. MCKENZIE: Plural.

15 MR. RANKING: Yes, the audit that is
16 being referred to here are the audits from
17 1998 to 2005.

18 326. MR. MCKENZIE: I will accept that
19 undertaking, but I would like to say right
20 up to date so we don't lose one by mistake.

21 MR. RANKING: Well, the reason I am
22 prepared to raise it is because, God forbid
23 there is somebody out there that might be
24 out in Canada that somehow has some
25 relation or is touching on this somewhere,

1 A. Yes.

2 331. Q. I am looking at Exhibit 1, do you
3 have a copy of that? See that company there, Carter
4 Housing?

5 MR. RANKING: The company you have
6 identified as Carter Housing & Development
7 Co. Limited?

8 332. MR. McKENZIE: Yes.

9 MR. RANKING: Yes.

10

11 BY MR. McKENZIE:

12 333. Q. Do you see that there?

13 A. Yes, I do.

14 334. Q. Isn't that your father-in-law's
15 company?

16 MR. RANKING: Don't answer that
17 question.

/R

18 335. MR. McKENZIE: Just hang on a second. I
19 had to do a search.

20

21 BY MR. McKENZIE:

22 336. Q. Your father-in-law is Douglas
23 Carter?

24 MR. RANKING: Don't answer the question.
25 Where are we going, Mr. McKenzie?

/R

1 into evidence in this court when this
2 motion is returned to substantiate those
3 allegations, because I consider it to be
4 absolutely outrageous. This is a
5 jurisdiction motion. And whether or not
6 there is a conflict has nothing to do with
7 this matter right now. So if you have any
8 other questions I can tell you right now
9 they are being refused.

10 339. MR. MCKENZIE: I will just put some
11 questions, and you can...

12 MR. RANKING: Fine. Put your questions.

13 340. MR. MCKENZIE: Would you like a few
14 minutes to compose yourself?

15 MR. RANKING: I am totally composed. I
16 am just very upset. Being upset and being
17 composed are two totally different things.

18 341. MR. MCKENZIE: Okay. But...

19 MR. RANKING: I am totally composed, and
20 I am totally fed up, to be honest, but ask
21 your questions and you will get my refusal.

22

23 BY MR. MCKENZIE:

24 342. Q. I just want to be clear on
25 something. When I said "conflict", which has jumped

1 out as a possibility, in a situation where an
2 accounting firm is doing an audit, are there
3 conflict of interest rules where an accounting firm
4 will have to turn down a retainer because there is a
5 conflict, or potential conflict?

6 MR. RANKING: Can you tell me how that
7 touches upon jurisdiction?

8 343. MR. McKENZIE: Is that a refusal?

9 MR. RANKING: It is a refusal.
/R

10 344. MR. McKENZIE: We are working on an
11 affidavit from this gentleman. And I am...

12 MR. RANKING: We are, but we are so far
13 away from that affidavit right now, Mr.
14 McKenzie.

15 345. MR. McKENZIE: If he has a conflict I
16 think we should explore it right now. I
17 mean...

18 MR. RANKING: Well, I will just tell
19 you, anything you want...ask the questions.

20 346. MR. McKENZIE: I am going to.

21 MR. RANKING: Good. Put them on the
22 record.

23 347. MR. McKENZIE: Let's just maybe go
24 through this, and maybe what I will do,
25 just trying to calm things down a little

1 bit.

2 MR. RANKING: Everything is totally
3 calm. What is not calm is the manner in
4 which you are putting your questions and
5 the subject area of your inquiry. This is
6 outrageous.

7 348. MR. MCKENZIE: I am going to put some
8 questions on the record. And, sorry, I
9 will just wait until...you can't talk to
10 your...

11 MR. RANKING: What is your question?

12 349. MR. MCKENZIE: Whatever you want to
13 do...

14 MR. RANKING: Put your questions on the
15 record.

16 350. MR. MCKENZIE: Everybody is ready to
17 listen to my question now? Okay. I just
18 want to put them on the record. I
19 understand you are going to refuse.

20

21 BY MR. MCKENZIE:

22 351. Q. So, Mr. Hatch, the way this works I
23 will ask a question...

24 MR. RANKING: No, you don't need to
25 explain it to Mr. Hatch. He is well

1 represented. Just put the questions on the
2 record.

3

4 BY MR. McKENZIE:

5 352. Q. Well, do the Standards of Auditing
6 have standards that describe what a conflict or
7 possible conflict of interest might be between the
8 auditor and the audited company?

9 MR. RANKING: Don't answer the question.
10 That didn't even make any sense.
/R

11

12 BY MR. McKENZIE:

13 353. Q. And is that is the case I would like
14 to have them produced to me so I can go through them
15 to understand whether the rest of the questions even
16 need to be asked. But I am not going to be able to
17 come back by the sounds of it, so I am going to have
18 to put all the questions on here at once, okay,
19 which is I had a record here that earlier there was
20 a gentleman by the name of Douglas Carter who I
21 don't know whether he owned all or part of Carter
22 Housing & Development Co. Limited, so I would like
23 to know if you know. And that is a refusal;
24 correct?

25 MR. RANKING: I haven't heard a question

1 yet.

2 354. MR. MCKENZIE: I don't want to have it
3 read back. You are not going to answer the
4 question I have just asked?

5 MR. RANKING: I am not playing games
6 with you, Mr. McKenzie. I didn't hear a
7 question. I thought you were in mid
8 sentence. So if you asked a question, and
9 I missed it, then, you know, it is late in
10 the day, but if you want to ask it again...

11 355. MR. MCKENZIE: Sure. I don't mean to be
12 unfair to you. Let's make sure we
13 understand what I am asking, in other
14 words, that it will be on the record.

15 MR. RANKING: Before you do, can we deal
16 with one thing? I think you asked for an
17 undertaking, and then you moved to another
18 one. So the first thing you asked for was
19 an undertaking, or production of whatever
20 the standards were in Barbados with respect
21 to possible conflicts of interest.

22 That is being refused for two
23 reasons. Firstly, it is totally
24 irrelevant. And in addition to that, and
25 in furtherance of the irrelevance, you

1 never asked for it in your Notice of
2 Examination, that is number one.

3 And, number two, it is not our duty
4 at a cross-examination to start producing
5 documents with respect to standards or
6 anything else that have nothing to do with
7 the subject matter of this motion, that is
8 the jurisdiction of the Ontario Court.

9 And that deals with the issue of
10 standards and conflict. If you have
11 another question now you can put it to him.
/R

12 356. MR. MCKENZIE: I was only concerned that
13 this standard of conflict, or appearance of
14 conflict, the definition of it might not be
15 in the International Standards on Auditing,
16 and all those standards we talked about
17 earlier. If it in there then, I guess, I
18 will find it there, but I am saying if it
19 is not, I would like you to produce it,
20 that is all.

21 MR. RANKING: I am not producing
22 anything.

23 357. MR. MCKENZIE: Or then if you won't
24 produce it...I understand that is a
25 refusal, but if you won't produce to it

1 point to it.

2 MR. RANKING: No.

3 358. MR. McKENZIE: The one that applies for

4 Barbados, because there seems to be a

5 lot...

6 MR. RANKING: We are refusing.

/R

7

8 BY MR. McKENZIE:

9 359. Q. I understand. Now, where was I.

10 Douglas Carter is your father-in-law; correct?

11 MR. RANKING: Don't answer the question.

12 That is the second time that has been asked

13 and it is the second time it has been

14 refused.

/R

15

16 BY MR. McKENZIE:

17 360. Q. Douglas Carter was, I will just go

18 through the list, a shareholder of Carter Housing &

19 Development Co. Limited; refusal?

20 MR. RANKING: Yes.

/R

21

22 BY MR. McKENZIE:

23 361. Q. A director of that same company;

24 refusal?

25 MR. RANKING: We have no idea.

1 362. MR. McKENZIE: Well, refusal?

2 MR. RANKING: Yes. This is totally
3 irrelevant, totally irrelevant, and abusive
4 too.
/R

5 363. MR. McKENZIE: Sorry, are you finished,
6 Mr. Ranking, before I put the next
7 question?

8 MR. RANKING: Put the question.
9

10 BY MR. McKENZIE:

11 364. Q. Thank you. The next question was I
12 mentioned, if I have got this right, shareholder,
13 director, employee?

14 MR. RANKING: Refusal.
/R

15

16 BY MR. McKENZIE:

17 365. Q. Refusal. Controlling mind of Carter
18 Housing & Development Co. Limited, refusal; right?

19 MR. RANKING: Yes.
/R

20

21 BY MR. McKENZIE:

22 366. Q. Is it not the case that Carter
23 Housing & Development Co. Limited gave 12,500
24 ordinary shares of that company in exchange for
25 Kingsland land? That is a refusal?

1 MR. RANKING: It is all refused. You
2 can assume it is refused.
/R

3

4 BY MR. McKENZIE:

5 367. Q. And that land was used beneficially
6 or profitably or to build a house or in some way by
7 Douglas Carter or his family? That is a refusal?

8 MR. RANKING: I refuse. And I have got
9 to say that I am very concerned at this
10 questions. And I have already told you I
11 have refused the entire line of inquiry.
12 You can make whatever argument you wish.

13 And if you were doing this for the
14 purposes of making a record, so that this
15 could be filed with Justice Shaughnessy at
16 some point in the future, so it can find
17 its way onto a website or onto a blog, I
18 will hold you accountable, because I find
19 this to be offensive.

20 At this hour, now that it is 4:30,
21 Mr. Hatch has made himself available. If
22 you have a relevant question, put it to
23 him. Henceforth I have no more time for
24 questions with respect to Mr. Carter or
25 with respect to Carter Housing &

1 Development. I will put an end to this,
2 and it will end now.
/R

3 368. MR. MCKENZIE: Next question. And thank
4 you...

5 MR. RANKING: No, I am objecting. And I
6 want it clear. And it is over. You can
7 move to the next area. If there is a
8 relevant line of inquiry move to it. I am
9 shutting it down.

10 369. MR. MCKENZIE: I think the appropriate
11 thing in a cross-examination is to ask the
12 question and have a refusal.

13 MR. RANKING: There are two ways of
14 dealing with this.

15 370. MR. MCKENZIE: Shutting down is not....

16 MR. RANKING: There are two ways of
17 dealing with this. I told you I will
18 object any more because I think this is
19 being done for an improper purpose.

20 371. MR. MCKENZIE: I understand that. And I
21 just want to put the questions...

22 MR. RANKING: You can argue. And what I
23 will tell you right now, Mr. McKenzie, just
24 so there is no issue, you can say to
25 Justice Shaughnessy that if I am wrong, you

1 can bring me back down to Barbados, and you
2 can ask every question you want, even if it
3 is not on the record.

4 You have my undertaking that I will
5 not take issue with that. What I am taking
6 issue with is that I don't think this is a
7 proper line of inquiry. I think it is
8 abusive. And I think it is also taking up
9 time.

10 And if we are going to move forward,
11 let's move forward. If we are going to
12 conclude, let's conclude. But if there is
13 no reason, when I have now told you that I
14 will not take any exception if you haven't
15 identified each and every one of your
16 questions. You are entitled to come back
17 down. And if I am wrong the entire line of
18 inquiry is open, and you are entitled to
19 get into it.

20 372. MR. MCKENZIE: Just to be clear what my
21 intentions are, I am just going to put the
22 questions on the record. I know you are
23 going to refuse, but it might save us a
24 trip. It might save us a lot of things.
25 And I...

1 MR. RANKING: Just so it is clear...

2 373. MR. McKENZIE: Look...

3 MR. RANKING: Go ahead.

4 374. MR. McKENZIE: That is what I am going
5 to do because it is an examination that I
6 have come here to conduct, a
7 cross-examination.

8 MR. RANKING: Fine.

9 375. MR. McKENZIE: And I understand that you
10 have your views about whether these are
11 proper questions or relevant questions, or
12 whatever they are, but I am going to put
13 them on the record and you can refuse.

14 MR. RANKING: That is fine. With
15 respect to this entire line of inquiry, if
16 you insist, from the time that you started
17 asking questions, and my first refusal with
18 respect to the identity of Mr. Carter, and
19 whether he was the father-in-law or is the
20 current father-in-law, if he is still
21 living, of Mr. Hatch, I am taking the
22 position that from that point forward the
23 transcript ought not to be filed without
24 leave of Justice Shaughnessy. So ask the
25 questions, but I am telling you that I do

1 not expect a transcript to be filed.

2 376. MR. McKENZIE: We can agree to disagree.
3 And I will ask the question...

4 MR. RANKING: If it is filed, again...
5 you know, it is really regrettable, but if
6 it is filed in light of that then, again, I
7 will hold you accountable, because I have
8 told you I think this for an improper
9 purpose.

10 And if you persist in asking these
11 questions, in light of the undertaking that
12 I have given you, if you persist in asking
13 the questions, and insist on filing this,
14 then I can assure you I will hold you
15 accountable. So you are on notice, Mr.
16 McKenzie.

17 377. MR. McKENZIE: And the impropriety of
18 which you are accusing me is the one you
19 already have put on the record, so we can
20 move on now?

21 MR. RANKING: It is.

22 378. MR. McKENZIE: Super. Now, let me
23 finish the questions. All right.

24

25 BY MR. McKENZIE:

1 379. Q. The shares that are shown in this
2 financial statement are stated that they have been
3 written down, the 12,500 ordinary shares, written
4 down to the value of \$1. Can we agree that that is
5 what the audited statement says?

6 MR. RANKING: Don't answer the question.
/R

7

8 BY MR. McKENZIE:

9 380. Q. Which I would suggest to you means
10 that at an earlier time the company valued them at a
11 higher amount.

12 MR. RANKING: Don't answer the question.
/R

13

14 BY MR. McKENZIE:

15 381. Q. And had it on its books at a higher
16 amount before it wrote them down.

17 MR. RANKING: Don't answer the question.
/R

18

19 BY MR. McKENZIE:

20 382. Q. I would like to know if you have a
21 record of what that amount was?

22 MR. RANKING: Don't answer the question.
/R

23

24 BY MR. McKENZIE:

Q. Not that I want it. I just want to

1 know if you have a record of it?

2 MR. RANKING: Don't answer the question.
/R

3

4 BY MR. McKENZIE:

5 384. Q. But it may be necessary to ask for
6 it in the future by the sounds of it, so I will
7 reserve that right. What I wish...

8 MR. RANKING: What you should do is ask
9 us to produce the document...

10 385. MR. McKENZIE: I am not going to keep
11 talking and have you interrupt me, Mr.
12 Ranking. It is not fair. I let you talk.
13 And when you finished then I talked. That
14 is really probably the best way to do this.
15 I know you want to say things, and I will
16 give you all the time you need to, but I
17 really would ask you to respect the fact
18 that it is impossible for me to talk and
19 listen at the same time. And I can't even
20 imagine how the reporter could possibly
21 cope with you at the level, or the volume
22 that you are talking.

23 MR. RANKING: Be fair to me. I wasn't
24 yelling, and you can hear me. And the
25 reason that I objected to you, sir, is

1 because you say you are going to reserve
2 your rights. Well, you can't do both.

3 If you are going to elect to put the
4 questions on the record, put the questions
5 on the record, but don't then say there
6 might be documents and you are going to
7 reserve your rights. I interrupted to say
8 if you want the document, ask for it, I
9 will refuse it.

10 386. MR. MCKENZIE: I think this started at
11 around 4:15, and it is now 4:30. I have
12 got about five minutes' more questions,
13 which I am going to try to get on the
14 record in five minutes.

15 MR. RANKING: He can stay here until
16 seven.

17 387. MR. MCKENZIE: It is up to you.

18 MR. RANKING: We are ready. We are
19 here. And if you want your questions you
20 put them on the record, Mr. McKenzie.

21 388. MR. MCKENZIE: Thank you. That is what
22 I am trying to do, so...

23 MR. RANKING: Let's go, but just to be
24 fair to him, I am not going to have you not
25 put a question on the record and say you

1 are going to reserve your rights, because
2 that is not fair.

3 I offered that to you about five
4 minutes ago. You declined to do that. So
5 if you have questions, you put every one of
6 them on the record right now, and you are
7 not reserving your rights, because you have
8 an option, one or the other, but not both.

9

10 BY MR. McKENZIE:

11 389. Q. I would like to know what the value
12 was that the shares were on the books before they
13 were written down to \$1?

14 MR. RANKING: Refusal.
/R

15

16 BY MR. McKENZIE:

17 390. Q. And I would like to know which
18 fiscal period the write-down occurred. Refusal?

19 MR. RANKING: Refusal.
/R

20

21 BY MR. McKENZIE:

22 391. Q. If more than one fiscal period,
23 obviously, I would like to know all of them?

24 MR. RANKING: Refusal.
/R

25

1 BY MR. McKENZIE:

2 392. Q. That is a refusal. And then is
3 there a note somewhere that the...or in the
4 financial statement to explain why they were written
5 down?

6 MR. RANKING: Refusal.
/R

7 393. MR. McKENZIE: And the...

8 MR. RANKING: This is a complete
9 discovery. I have got to tell you, again,
10 it is just ridiculous.

11 394. MR. McKENZIE: I am just trying to find
12 the records because this all recorded. It
13 is...I am sorry, audited financial
14 statements. I am just saying I am just
15 trying to locate them.

16 MR. RANKING: Ask a question about the
17 documents. You haven't done that.

18 395. MR. McKENZIE: I don't seem to have them
19 at hand, and I thought the auditor might
20 have them.

21 THE DEPONENT: Sorry, you thought I
22 might have something?

23

24 BY MR. McKENZIE:

25 396. Q. Point me to them. Well, you

1 have...wasn't the audit done for this company for
2 the last 30 years by...well, PricewaterhouseCoopers,
3 and before that, the predecessor to
4 PricewaterhouseCoopers?

5 MR. RANKING: The audit of what company?

6 397. MR. McKENZIE: Kingsland.

7 THE DEPONENT: PricewaterhouseCoopers
8 and the predecessor firm have been involved
9 for a number of years. I don't know
10 whether it is 30 years or not, but it is a
11 substantial period of time.

12

13 BY MR. McKENZIE:

14 398. Q. I may have a record, so I will hold
15 that thought for a second. What was the book value
16 of the property, in other words, show me the
17 document, or tell me whether there is a document?
18 Let me put that in...it is too many questions in one
19 question, so I will try it again.

20 The value we will find in the original
21 treatment of the shares, in other words, how they
22 were valued when they were first valued and put in
23 the financial statements, would be the...and I am
24 asking you this, would they not be the equivalent of
25 the value of the real estate that was transferred in

1 exchange for the shares?

2 MR. RANKING: Don't answer the question.
/R

3

4 BY MR. McKENZIE:

5 399. Q. Did the auditor ascertain the value
6 of the property had been evaluated by an independent
7 valuator before it was transferred in return for the
8 shares?

9 A. That is a question?

10 400. Q. I said "did" at the start.

11 MR. RANKING: Don't answer the question.
/R

12

13 BY MR. McKENZIE:

14 401. Q. Well, if it sounded like I didn't do
15 a question I don't want to be unclear on the record,
16 so before the property that was exchanged for the
17 shares was transferred, was it independently valued?

18 MR. RANKING: Don't answer the question.
/R

19 402. MR. McKENZIE: Just give me a moment.

20 THE DEPONENT: I would just like to
21 state for the record, if I am allowed, that
22 I find the whole process objectionable, Mr.
23 McKenzie. Your questions are
24 inappropriate.
25

1 BY MR. McKENZIE:

2 403. Q. I am only concerned in ascertaining
3 whether there is any conflict, or possible conflict,
4 inherent in your affidavit. In other words, you are
5 giving, possibly...and if I had these answers we
6 could resolve this quickly, which would be is it...

7 MR. RANKING: We don't need speeches.

8 404. MR. McKENZIE: Well, I am putting it on
9 the record because I don't want the witness
10 to think I am unfair. It would be my
11 expectation that at a certain point...and I
12 don't know what the standard of conflicts
13 is, because you won't let me ask...a
14 transaction might be a conflict, and that
15 the court would then take that into
16 consideration in valuing the evidence of
17 the witness that is sworn in an affidavit.

18 THE DEPONENT: I find your question...

19 405. MR. McKENZIE: Sorry, just let me
20 finish. I don't know what the
21 repercussions of that would be, but it is
22 certainly something that has now caused me
23 concern if the questions that I am asking
24 turn out to be answered in a certain way.
25 It would be very simple to resolve this by

1 saying...giving answers that don't invoke
2 any possible conflicts and we move on, you
3 see, so...

4 MR. RANKING: With the greatest of
5 respect, Mr. McKenzie, these questions do
6 not relate to the jurisdiction motion. So
7 you may well want answers to these
8 questions in some other lawsuit in some
9 other jurisdiction, other than Ontario, but
10 they don't relate to the jurisdiction
11 motion. That is my problem.

12 406. MR. MCKENZIE: Just so you are clear, as
13 a result of what is happening, and what
14 appears to me to be a conflict, there may
15 be a motion to strike the affidavit because
16 Mr. Hatch has a conflict...

17 MR. RANKING: You are a little late on
18 that, my friend.

19 407. MR. MCKENZIE: Well, it just came to my
20 attention.

21 MR. RANKING: Well, you are a little
22 late, just so you know.

23 408. MR. MCKENZIE: Well, I am late today.
24 It is 4:30, but...

25 MR. RANKING: You are late in the

1 proceeding. You served a Notice to
2 Examine. You have examined, and it is a
3 little late to now come up to us and
4 suggest for some spurious reason that you
5 are going to move to strike.

6 409. MR. MCKENZIE: I guess the question is a
7 legal one and the matter of what a conflict
8 is for an auditor, or a conflict...

9 MR. RANKING: And I sure don't know of
10 any law that says that that should be a
11 ground to strike a motion on a
12 jurisdiction...

13 410. MR. MCKENZIE: Well, that is what I
14 said. I don't really want to argue...

15 MR. RANKING: ...or an affidavit in a
16 jurisdiction.

17 411. MR. MCKENZIE: I don't want to argue it.
18 We really probably should not be debating
19 the legal issues out loud. I am just
20 saying what is going through my mind right
21 now is, I am very concerned that this
22 affidavit can stand. I will have to think
23 about it.

24 Anyway, we will move on. I suppose
25 the next question is...sorry, you gentlemen

1 are talking. I will start the question
2 again.

3

4 BY MR. McKENZIE:

5 412. Q. The next question is did PwC do an
6 audit for...did PricewaterhouseCoopers audit Carter
7 Housing & Development Co. Limited during the period
8 that these shares were being transferred to
9 Kingsland Estates Limited?

10 MR. RANKING: Don't answer the question.
/R

11

12 BY MR. McKENZIE:

13 413. Q. There is another employee, Andrew
14 Marryshow of PwC; does that ring a bell?

15 A. Andrew Marryshow is a retired senior
16 partner of the firm.

17 414. Q. Okay. He retired just recently?

18 A. He retired at the end of December
19 2007.

20 415. Q. Was he ever on the audit team for
21 this company, Kingsland?

22 A. Not that I am aware of.

23 416. MR. McKENZIE: I am, kind of, near the
24 end. If I just had five minutes to go
25 through my checklist to make sure I haven't

1 forgotten anything.

2 MR. RANKING: I am happy to give you
3 five minutes on the understanding that Mr.
4 Lemieux and I can make arrangements for
5 these exhibits. Perhaps that would be a
6 useful time.

7 417. MR. MCKENZIE: Excellent idea.

8

9 --- A BRIEF RECESS

10

11 MARCUS ANDREW HATCH, resumed

12 CONTINUED CROSS-EXAMINATION BY MR. MCKENZIE :

13 418. Q. I just dug out something. I am
14 pretty well finished, except a topic that got raised
15 that I would like to close down, but I just dug out
16 a report that...and just help me out here. The
17 company, PricewaterhouseCoopers, used to be called
18 Coopers & Lybrand?

19 MR. RANKING: PricewaterhouseCoopers is
20 not a company. It is a...I am sorry, take
21 that back.

22

23 BY MR. MCKENZIE:

24 419. Q. PricewaterhouseCoopers, I suggest to
25 you, used to be called...

1 MR. RANKING: I am sorry, what company?
2 Sorry, what partnership;
3 PricewaterhouseCoopers East Caribbean Firm?

4 420. MR. McKENZIE: I am asking a question
5 based on a retainer letter that is affixed
6 to my friend's affidavit, or Mr. Hatch's
7 affidavit. It says,
8 "PricewaterhouseCoopers" across the top,
9 and has a Barbados address on it.

10 MR. RANKING: Yes.

11

12 BY MR. McKENZIE:

13 421. Q. And I am just saying is it not the
14 case that it used to be called Coopers & Lybrand
15 Barbados; is that fair?

16 A. No.

17 422. Q. No. Okay. Well, to refresh your
18 memory, and maybe this is wrong, but there is a case
19 where you and the firm were sued in Texas, and that
20 is what they called it, which is where I got the
21 idea. Does that refresh your memory that it is
22 right or wrong?

23 A. It is not a question of memory. You
24 asked a question and I said no.

25 423. Q. So you said no. What did it used to

1 be called if...

2 A. PricewaterhouseCoopers is a firm.
3 There were two legacy firms, Coopers & Lybrand and
4 Pricewaterhouse, that merged to form
5 PricewaterhouseCoopers. If you had asked me that
6 question I would have responded in that manner.

7 424. Q. Thank you.

8 A. No problem.

9 425. Q. When was the merger?

10 A. 1998.

11 426. Q. So don't worry about this. I
12 thought it just might help your memory because...

13 A. Help my memory with what?

14 MR. RANKING: Mr. Hatch has been very
15 clear; his answers are clear and
16 unequivocal.

17 427. MR. McKENZIE: Now, we would be finished
18 right now, except for Mr. Ranking accused
19 me in an indirect way, I feel, of plotting
20 or doing something, and putting things on
21 blogs. Okay.

22

23 BY MR. McKENZIE:

24 428. Q. And I am saying, so I am going to
25 put you some letters here that have gone back and

1 forth, which I presume you will have seen, because
2 the question I want to ask is, you tell me right now
3 what evidence you have, and knowledge, information
4 or belief that me, my law firm, my staff, or my
5 client put anything on a blog that had anything to
6 do with your firm or you, sir?

7 MR. RANKING: That is not relevant. It
8 is refused.

/R

9 429. MR. McKENZIE: What an accusation to
10 make on the record and not wish to answer
11 questions. I am going to ask a few
12 questions just to make sure they are on the
13 record; okay? I am just saying let's just
14 get all the refusals here. Okay.

15

16 BY MR. McKENZIE:

17 430. Q. Now, I am showing to you a letter
18 written by your lawyer, Mr. Ranking, on September
19 24th, 2008. Okay. So I will put it before you.
20 And I would just say presumably you have seen it.

21 MR. RANKING: I would not presume.

22

23 BY MR. McKENZIE:

24 431. Q. Have you seen it?

25 A. I presume you will give me a minute

1 to read it.

2 432. Q. Take as much time as you want, sir.
3 I have about five letters. If you would like them
4 all you can read them all together. Doesn't matter.

5 MR. RANKING: Pass them across.

6 433. MR. McKENZIE: I am sorry?

7 MR. RANKING: Pass them across, please?

8 434. MR. McKENZIE: Just give me a moment. I
9 want to make sure they are just in the
10 right order. They are not in order
11 datewise. I can pass them over, but I am
12 presuming that won't be a problem. Okay.
13 There you go. They are a bit out of order,
14 but you can assist your client while I do
15 sort mine out.

16 MR. RANKING: Again, Mr. McKenzie, I am
17 objecting to this. And I have the same
18 concern that I expressed earlier. And all
19 of these letters, and the entire
20 transcript, from the time that I stated my
21 initial objection with respect to your
22 cross-examination of Mr. Hatch on Mr.
23 Carter, I take exception to it.

24 And I am taking the same position
25 with respect to these exhibits and the

1 balance of the transcript thereafter,
2 namely from when Mr. Carter's name was
3 first raised by you, that none of this
4 should find its way into the court file
5 until there is an order granting leave for
6 that to occur.

7 And until that date, I expect us to
8 agree that it will be sealed and not
9 otherwise given to the judge. And the
10 appropriate protocol to be followed, that
11 the transcript and the exhibits to which I
12 take issue should be filed with the court
13 on the day that we attend.

14 They should be sealed, and they
15 should only be opened by the judge in the
16 presence of counsel or the judge in his
17 chambers to prepare for the hearing.

18 435. MR. McKENZIE: We will agree to
19 disagree. Now...

20 MR. RANKING: You are on notice.

21 436. MR. McKENZIE: ...on the letters...

22 MR. RANKING: Which letter are you
23 asking these questions on.

24 437. MR. McKENZIE: I just want to make sure
25 I am wired for sound here. Sorry, I forgot

1 to put that on. I am good to go? Thank
2 you. All right. The first letter we
3 should look at, just to keep it
4 chronological, there is one September 19th.

5 MR. RANKING: So that wasn't the letter
6 that Mr. Hatch has had an opportunity to
7 read?

8 438. MR. MCKENZIE: Rather than hand them to
9 him one at a time...

10 MR. RANKING: Right. What section of
11 that letter do you want to ask questions
12 on?

13 439. MR. MCKENZIE: Okay. We are on
14 September 19th.

15 MR. RANKING: We are.

16 440. MR. MCKENZIE: There is a question on
17 page 2, and right near the bottom there is
18 a heading "E. General" which says, "Once
19 again I note your"...

20 MR. RANKING: We can read it.

21 441. MR. MCKENZIE: I am going to read it
22 into the record. And I am just going to
23 ask you, again, don't, please, talk when I
24 am talking. It is hard for me to listen
25 and talk at the same time.

1 BY MR. McKENZIE:

2 442. Q. It says:

3 "...Once again, I note your attempted
4 inclusion of blogs/websites into the
5 discussion. Why is that? Please explain
6 how any of that is relevant or worrisome
7 and to whom..."

8 Now, Mr. Hatch, this is a letter that I wrote to
9 your lawyer. Would you tell me that you have seen
10 this letter before? Specifically you can read the
11 whole thing, but I am pointing to the one section...

12 MR. RANKING: Don't answer that
13 question.
14 /R

14

15 BY MR. McKENZIE:

16 443. Q. Now, my next question is did your
17 lawyer ever respond to that question that I just...
18 actually, there is a number of questions, two
19 questions, perhaps three built into that one
20 paragraph that I read. Did your lawyer ever
21 respond...

22 A. Sorry, I have no idea what you just
23 asked me.

24 444. Q. I will try to say it again.

25 MR. RANKING: Perhaps we could do it

1 this way: I am going to refuse all the
2 questions. Just put your questions on the
3 record, because that is what you want to
4 do, but just go ahead and just put them on
5 the record, and I will just refuse. Or you
6 can take the global refusal and just put
7 the questions on.

8 445. MR. MCKENZIE: Well, between counsel can
9 we agree that these letters went back and
10 forth between us, so I don't have to...

11 MR. RANKING: Well, I put affidavit
12 evidence before Justice Shaughnessy that
13 they did, so you can be assured that I am
14 not going to contest that.

15 446. MR. MCKENZIE: Excellent. Okay. So...

16 MR. RANKING: And that is why I am
17 finding it highly irregular that you are
18 trying to put these now back into this
19 record.

20 447. MR. MCKENZIE: Why don't we just mark
21 this as one exhibit then?

22 MR. RANKING: I am not agreeing to have
23 them marked at all.

24 448. MR. MCKENZIE: Well, I am going to mark
25 them as the next exhibit.

1 MR. RANKING: If you are going to mark
2 them as an exhibit, let's at least do it
3 properly. You should identify the letters
4 that are going to be part of a global
5 exhibit. Tell me what the letters are.
6 Identify them for the record, and then I
7 will object to them being marked at all.

8 And you will go ahead and mark them
9 under the same proviso that I have already
10 stated, the subject matter of the earlier
11 exhibits in the transcript.

12 449. MR. MCKENZIE: The letter of September
13 19th from Crawford, McKenzie to Mr.
14 Ranking, which I just read a paragraph
15 from, will be the next exhibit.

16 MR. RANKING: I thought we were going to
17 mark them as a bundle. That is what you
18 just said.

19 450. MR. MCKENZIE: Okay. That works for me.

20 MR. RANKING: All right.

21 451. MR. MCKENZIE: Save us some stamping
22 time. The next letter in the pile is a
23 letter from Mr. Ranking September 24th,
24 2008.

25

1 BY MR. McKENZIE:

2 452. Q. And I would ask you whether there
3 are any answers to the question which was posed, and
4 which I just read in that letter? And I will put
5 that in the pile. And then September 25th, 2008
6 Crawford, McKenzie to Mr. Ranking. The paragraph to
7 which I wish to highlight is the second one, which
8 says:

9 "...Please remember that it is not counsel
10 who are being cross-examined. I have to
11 assume that all of the information upon
12 which you are relying comes from
13 defendants, yet you have not particularized
14 it sufficiently for me to digest and take
15 instructions. The answers to those
16 questions, which I can answer, are
17 summarized below..."

18 Now, full stop. Did Mr. Ranking...well, why don't I
19 read them all, but I am saying on that one I would
20 ask whether Mr. Ranking ever sent a letter that
21 particularized the information sufficiently to be
22 digested and take instructions?

23 MR. RANKING: Don't answer the question.
24 And let it be clear, Mr. McKenzie, the
25 concerns that we have raised with respect

1 to the blogs have been particularized. We
2 have indicated that our...we don't know how
3 all this information from this action,
4 affidavits, correspondence from your
5 office, and other materials, exhibits of
6 all sundry nature, are finding their way
7 onto the blog.

8 We don't know who is putting it on.
9 We are concerned. We are concerned as
10 responsible counsel to ensure that the
11 clients and the parties in this action are
12 not embarrassed, not embarrassed in a
13 public website, whether it is the
14 keltruthblog, whether it is the
15 barbadosunderground or whether it is
16 something else.

17 So our concern stems from the fact
18 that information is finding its way onto
19 the blog. We don't know how. We don't
20 know why, but we are concerned. Next
21 letter.

/R

22 453. MR. MCKENZIE: Not next letter, next
23 page of the September 25th letter with the
24 paragraph in the middle that begins:
25 "...With respect to webs and blog sites..."

1 MR. RANKING: Yes.

2 454. MR. McKENZIE: I will just read the last
3 sentence:

4 "...If you have a complaint you wish to
5 level at me please do so right now,
6 otherwise the subject matter is closed..."

7 MR. RANKING: Yes.

8

9 BY MR. McKENZIE:

10 455. Q. You received a copy of that letter,
11 Mr. Hatch?

12 MR. RANKING: Don't answer the question.
/R

13

14 BY MR. McKENZIE:

15 456. Q. And the previous letter?

16 MR. RANKING: Don't answer the question.
/R

17

18 BY MR. McKENZIE:

19 457. Q. The next letter I have referred here
20 is September 30th. I am looking at the bottom
21 paragraph on the page. This is from Mr. Ranking to
22 Mr. McKenzie:

23 "...Third, and turning to the keltruthblog,
24 I have not accused you of conducting
25 yourself in an unprofessional manner.

1 And that is all I wanted to read from that letter.

2 And the last one is October 8th, 2008:

3 "...Thank you for your letter of September
4 30th, which simply repeats earlier matters
5 which are either answered or matters for
6 argument in court. However, your client's
7 interest in the blogs continue to puzzle
8 me. Can you explain why, and why only
9 keltruthblog, when I am advised that a
10 number of blogs have published facts and
11 opinions about this case, including
12 derogatory comments about me..."

13 Did you receive a copy of that letter, Mr. Hatch?

14 MR. RANKING: Don't answer the question.
/R

15

16 BY MR. McKENZIE:

17 460. Q. Did you receive a copy of all the
18 letters that I have just read to you, Mr. Hatch?

19 MR. RANKING: Asked and answered.

20

21 BY MR. McKENZIE:

22 461. Q. Did your lawyer write back answering
23 the question, the first one in this letter?

24 MR. RANKING: Don't answer the question.
/R

25

1 BY MR. McKENZIE:

2 462. Q. "...What is your client's interest
3 in the blogs? It continues to puzzle me,
4 so can you explain why..."

5 So I am asking you now that I have got you here,
6 because we never got an answer, what is your
7 client's interest in the blogs, that is
8 PricewaterhouseCoopers? What is
9 PricewaterhouseCoopers' interest in the blogs?

10 MR. RANKING: Don't answer the question.
/R

11

12 BY MR. McKENZIE:

13 463. Q. Why is it a concern?

14 MR. RANKING: It is not only a concern
15 to PricewaterhouseCoopers. It is a concern
16 to all of the defendants with whom I have
17 had association, most particularly the
18 defendants that are the Barbadian
19 defendants that were the subject matter of
20 cross-examinations in the last week.

21 464. MR. McKENZIE: So that is a refusal?

22 MR. RANKING: It is, but I just want you
23 to be clear that your letter suggests it is
24 only mine, but my letters are written on
25 behalf of more than one defendant.

/R

1 465. MR. MCKENZIE: Can you point to me where
2 it says that?

3 MR. RANKING: I am expanding on it to
4 let you know, because your letter happens
5 to be incorrect when you make an assumption
6 that simply because it was written by me
7 that it is only reflecting the position of
8 PricewaterhouseCoopers East Caribbean Firm.

9 MR. SCHABAS: And, for the record, Mr.
10 McKenzie, I share exactly the same concerns
11 as Mr. Ranking does on behalf of all of my
12 clients, as you well know. And what is
13 most perplexing to me, one might ask,
14 although I am not going to because I know
15 you won't answer, is why you don't find it
16 puzzling, and why you would continue to
17 find it puzzling...what is of most concern
18 is that you can write a letter to say you
19 find it puzzling that we are concerned.

20 What an astonishing statement to
21 make. This is an astonishing abuse. There
22 could be more abuse in this week. This is
23 another low point for Canadian justice in a
24 foreign country, what is going on right
25 now.

1 466. MR. McKENZIE: The next question...

2 MR. HANSEN: I would say, as well, Mr.
3 McKenzie, I share the sentiments of my
4 friends on this side of the table. And I
5 have found, since my arrival here on
6 Wednesday, the conduct of these
7 cross-examinations improper and abusive.

8

9 BY MR. McKENZIE:

10 467. Q. And the next question is why is
11 PricewaterhouseCoopers only focusing on the
12 keltruthblog?

13 MR. RANKING: It isn't. We are
14 concerned about information getting out
15 onto the keltruthblog...look, Mr. McKenzie,
16 I want to make it clear here, I haven't
17 spent, you know, any amount of time
18 focusing on all of the internet sites that
19 may, in fact, have information on this
20 lawsuit.

21 It is broader than the keltruthblog,
22 but, quite frankly, I wanted to be fair to
23 you, and not go back and start indicating
24 all the different sites. Indeed, sir, in
25 your responding material to our directions

1 motion that was heard by Justice
2 Shaughnessy last Friday you put in a blog I
3 have never heard about called the
4 "barbadosunderground", so there is another
5 one.

6 And I am sure there are others. I
7 don't happen to know all of the blogs. I
8 don't have an interest in knowing them
9 because I don't have any...neither my
10 client nor I are posting anything, but all
11 this stuff is getting out there.

12 And there are reputations,
13 professional reputations at stake here, and
14 I am concerned by that. And I am
15 particularly concerned because Barbados is
16 a small community, and, I think, that these
17 postings, and the information that is being
18 put on the blog, is derogatory of people's
19 reputations and their professional standing
20 in a small community. That is a concern to
21 me. And with the greatest of respect, I
22 think it ought to be of concern to all of
23 us.

24

25 BY MR. MCKENZIE:

1 468. Q. Is there anything that you found on
2 the keltruthblog which was either...which was not
3 accurate?

4 MR. RANKING: Don't answer the question.
/R

5

6 BY MR. McKENZIE:

7 469. Q. Is there anything on the
8 keltruthblog which may not have been accurate, but
9 was clearly somebody's opinion?

10 MR. RANKING: Don't answer the question.
/R

11

12 BY MR. McKENZIE:

13 470. Q. Specifically, does keltruthblog even
14 mention PricewaterhouseCoopers?

15 MR. RANKING: Don't answer the question.
16 I have told you it is not limited to the
17 keltruthblog.
/R

18 471. MR. McKENZIE: No, I understand. I am
19 asking him one at a time.

20

21 BY MR. McKENZIE:

22 472. Q. And same questions with respect to
23 any other blog on the planet?

24 MR. RANKING: Don't answer the question.
/R

1 BY MR. McKENZIE:

2 473. Q. May I suggest to you that blogs are
3 opinions, trivial and irrelevant to this action?

4 MR. RANKING: Don't answer the question.
/R

5

6 BY MR. McKENZIE:

7 474. Q. And may I ask you why your counsel
8 keeps bringing it up and making statements such as
9 he did earlier in his examination that caused this
10 last 15 minutes of...

11 MR. RANKING: I will answer that
12 question.

13

14 BY MR. McKENZIE:

15 475. Q.questions which...

16 MR. RANKING: I will answer that
17 question.

18

19 BY MR. McKENZIE:

20 476. Q. Just let me finish the question,
21 which I would not have had to do if he had not
22 raised the statements? So go ahead.

23 MR. RANKING: I, in my capacity as
24 counsel, and PricewaterhouseCoopers, in its
25 capacity as a professional accountancy and

1 auditing firm, did not put the blogs in
2 issue.

3 You know full well, Mr. McKenzie,
4 that your firm, or your client, was the one
5 that put blogs in issue. And because we
6 respond with concern, as I have previously
7 expressed, does not mean that we put it in
8 issue.

9 We are responding and expressing
10 concern. We continue to express concern as
11 recently as this past motion before Justice
12 Shaughnessy and indeed why Justice
13 Shaughnessy shared that concern, and found
14 it appropriate to have these very
15 videotapes sealed and not filed, and not
16 released to the parties, without a further
17 court order.

18 So if there is any issue with
19 respect to the concern it is a concern of
20 the defendants collectively by reason of
21 you or your client or someone of whom we
22 have no knowledge putting information on
23 the website.

24 MR. SCHABAS: What are you calling that
25 collection of correspondence?

1 477. MR. McKENZIE: Four.

2 MR. SCHABAS: Exhibit 4?

3 MR. RANKING: It should be Exhibit B,

4 not four.

5 478. MR. McKENZIE: Well, they are authentic

6 letters. I mean, we are not arguing that

7 these are letters that were exchanged; are

8 we?

9 MR. RANKING: No, I think that is fair.

10 Can I be grateful enough to ask you to

11 stamp that as well? No, that is fair, Mr.

12 McKenzie. I am content to have it marked

13 as Exhibit 4 on the same terms that we...

14 479. MR. McKENZIE: I am not comfortable with

15 putting an exhibit stamp on this unless it

16 is a copied...

17 MR. RANKING: Well, no, we can...

18 480. MR. McKENZIE: I invite you to write

19 Exhibit 4 on there for yourself and keep

20 it.

21 MR. RANKING: I will deal with Mr.

22 Lemieux.

23 481. MR. McKENZIE: Thank you.

24

25

1 485. Q. I think you also gave evidence, sir,
2 that he would have more direct firsthand knowledge
3 with respect to the Kingsland audit?

4 A. Yes, he would.

5 486. Q. Right. And with that by way of
6 background, sir, can you explain why is it that you
7 swore the affidavit and not Mr. Atkinson?

8 A. I think it is fair to say that as a
9 professional firm in Barbados we are not accustomed
10 to being brought into litigation, and we take it
11 extremely seriously within the firm.

12 And as a managing partner of the firm, I
13 thought it was entirely appropriate that I should be
14 the one to understand the issues and to sign the
15 affidavit on behalf of the issues that were in
16 question at the time.

17 MR. MCKENZIE: Excuse me, I consider
18 that to be an improper question.

19 487. MR. RANKING: That is fine.

20 MR. MCKENZIE: Carry on. I am going to
21 object to it.

22

23 BY MR. RANKING:

24 488. Q. I can't imagine how it is improper,
25 but in any event, and when you indicate that you

1 were the managing partner, how does that position
2 relate to the other partners within the
3 PricewaterhouseCoopers East Caribbean Firm?

4 MR. McKENZIE: I object to that one too.

5 THE DEPONENT: Well, I would have
6 overall responsibility for the operations
7 of the firm in Barbados. And at the time
8 would have worked closely with the managing
9 partners in the other islands, and with the
10 line of service leaders in Barbados, and
11 with the senior partner of the firm who was
12 resident in Barbados.

13

14 BY MR. RANKING:

15 489. Q. Thank you. If I could also ask you
16 to turn to paragraph 3 of your affidavit? Within
17 that paragraph you indicate that the entity, the
18 correct legal entity of PricewaterhouseCoopers in
19 Barbados is PricewaterhouseCoopers East Caribbean
20 Firm; do you see that?

21 A. Yes, I do.

22 490. Q. Mr. McKenzie, in his
23 cross-examination of you, put to you various
24 letters, and concluded, by putting to you Exhibit 3,
25 being an affidavit of Philip Atkinson; do you recall

1 those documents being put to you?

2 A. Yes, I do.

3 491. Q. Having now had an opportunity to see
4 those documents, and having reviewed the affidavit
5 of Mr. Atkinson, does that in any way affect the
6 evidence and the content of paragraph 3 of your
7 affidavit sworn May 18th, 2007?

8 MR. MCKENZIE: That is improper. It is
9 bootstrapping.

10 THE DEPONENT: No, it does not.

11 492. MR. RANKING: Thank you. Those are all
12 my questions.

13 MR. MCKENZIE: Thank you.

14 MR. SCHABAS: Before we go off the
15 record then, I have been in touch with Mr.
16 Silver, and I gather...

17 493. MR. RANKING: I am sorry, I have one
18 more question, I apologize.

19 MR. SCHABAS: Sorry?

20 494. MR. RANKING: I have one more question,
21 I apologize.

22 MR. MCKENZIE: Go ahead.

23

24 BY MR. RANKING:

25 495. Q. I believe that Mr. Hatch was cut off

1 in answer, I think. You wanted to express a view,
2 and I think either you were cut off by Mr. McKenzie
3 or by reason of exhibits being presented. Although
4 somewhat unorthodox, if you were cut off do you have
5 anything further that you wanted to say to Mr.
6 McKenzie?

7 MR. MCKENZIE: Sorry, before you answer,
8 Mr. Hatch, if you have to be...I am
9 suggesting to you that to do a
10 re-examination you have to say...to talk
11 about something...

12 496. MR. RANKING: I don't need you to tell
13 me about the laws of re-examination.

14 MR. MCKENZIE: ...that was raised during
15 my examination. You are now suggesting to
16 him that he was asked a question, and felt
17 I cut him off. I think you should...

18 497. MR. RANKING: No, I am not suggesting
19 that. He was volunteering an answer and he
20 was cut off, to something he was
21 volunteering.

22 MR. MCKENZIE: Be specific, please,
23 about the answer that you think he was cut
24 off...

25 498. MR. RANKING: I will be very specific,

1 Mr. McKenzie.

2 MR. MCKENZIE: Right. Okay. That is
3 fine.

4

5 BY MR. RANKING:

6 499. Q. Do you recall, Mr. Hatch, that you
7 wished to comment upon the manner in which the
8 cross-examination had been conducted by Mr.
9 McKenzie? Do you recall that you wanted to make
10 such a comment?

11 A. I did, yes.

12 MR. MCKENZIE: Just...

13 500. MR. RANKING: No, wait, you can't have
14 it both ways.

15 MR. MCKENZIE: No, hear my comment. I
16 object to that question because it is not a
17 question which I asked. Mr. Hatch made a
18 statement, and I did not stop him in any
19 way...

20 501. MR. RANKING: Yes...

21 MR. MCKENZIE: Just let me finish, Mr.
22 Ranking. It is a lot easier if we only
23 talk at once, once at a time. Okay. You
24 have to point out to me and to the record
25 where you think that he was stopped.

1 are incorrect. He was never stopped from
2 answering a question. He was never...

3 504. MR. RANKING: This is argument.

4 MR. MCKENZIE: No, I am saying to you I
5 would like you to be very specific as to
6 where in the...because we will have to find
7 it in the transcript, where you think he
8 was cut off, because you said, Mr.
9 Ranking...okay.

10 You said, Mr. Ranking, as a fact, or
11 as your opinion, in asking the question
12 saying, "You were cut off". Now, he
13 wasn't. And I am saying, just a moment,
14 let me finish, if he was cut off, name the
15 question. You made notes for the whole
16 examination. We have a transcriber here.
17 I am going to have it read back, because I
18 am going to tell you...

19 505. MR. RANKING: Are you finished?

20 MR. MCKENZIE: I am not.

21 506. MR. RANKING: All right. Finish. Let
22 me know when you are finished.

23 MR. MCKENZIE: I can't finish while you
24 are talking, so hold it.

25 507. MR. RANKING: You seem to make speeches,

1 and I am not used to speeches. And you
2 lower voice, I think you are finished, so
3 then I would like to move on.

4 MR. MCKENZIE: Okay. I will put my hand
5 up when I am finished, just so there is no
6 misunderstanding of when I am finished;
7 okay? You are not entitled to say this to
8 a client, "You were cut off. Would you
9 like to say more".

10 If you want to say that is true then
11 I am going to stop the proceeding. We are
12 going to identify just where you said that.
13 You will identify it. We will have the
14 reporter find the question, and it will be
15 read back, and the answer so that it is
16 clear what you are saying, because right
17 now what I think you are doing is coaching
18 your witness to say, "Do you want to put a
19 whole bunch more evidence in", and it is
20 not appropriate. Okay. That is my
21 position now. I will stop. I am finished.
22 Thank you.

23 508. MR. RANKING: I completely and
24 categorically reject your position. I was
25 not coaching the witness. Rather, and as I

1 am entitled to do, I took the witness back
2 to the series of questions, and reminded
3 him that based on my recollection he was
4 cut off. I didn't suggest what the
5 question involved.

6

7 BY MR. RANKING:

8 509. Q. I was simply going to say that with
9 respect to when you were cut off, if you were cut
10 off, was there anything you wished to add?

11 A. And I would like to respond to that
12 if I may.

13 MR. MCKENZIE: Just a moment. You have
14 to tell... please, put on the record,
15 specifically, what question, what answer he
16 was cut off by me as counsel.

17 510. MR. RANKING: I don't recall because I
18 only recall the answer, and he was cut off.

19

20 BY MR. RANKING:

21 511. Q. If I haven't been fair, Mr. Hatch,
22 then you tell me that I haven't be fair, and I will
23 withdraw the question, but if there was an
24 opportunity where you wanted to say something, and
25 you felt that you were cut off, then now is the

1 opportunity for you to allow it.

2 A. What I would like to say...

3 MR. McKENZIE: Identify when you thought
4 you were cut off, because Mr. Ranking has
5 already told you when you were cut off, and
6 I don't agree, but...

7 THE DEPONENT: Do you object to me
8 saying something, because I would like to
9 say...

10 MR. McKENZIE: Just a moment.

11 THE DEPONENT: ...not being familiar
12 with rules of conduct in the Canadian
13 courts, but I would like to say that I have
14 found you objectionable, offensive.

15 MR. McKENZIE: Is that all you want...

16 THE DEPONENT: I think could have been
17 done in a manner that was far less
18 objectionable.

19 MR. McKENZIE: That is your statement?

20 THE DEPONENT: That is my statement.

21 MR. McKENZIE: Well, then thank you for
22 coming, and thank you for your
23 consideration and for staying late so that
24 we could get finished today. I appreciate
25 it. All right. Thank you. Gentlemen,

1 that is it?

2 MR. SCHABAS: No. Sorry, before you
3 turn off, just for Mr. Silver's benefit,
4 because I am going to be seeing him
5 shortly, I understand that there has been
6 an agreement that Mr. Bannister will start
7 tomorrow morning at 9:30, and that I am to
8 tell Mr. Silver to have Mr. Turney ready to
9 go at 11:30 tomorrow morning; is that
10 correct, Mr. McKenzie?

11 MR. MCKENZIE: That would be fine.

12 MR. SCHABAS: That is what we just
13 discussed off the record.

14 MR. MCKENZIE: I thought we had said 11,
15 but 11:30 is fair, because we could take a
16 break and fill in up to 11:30. Mr.
17 Hansen...

18 MR. SCHABAS: It is up to you. You tell
19 me. If you think he should be here at 11,
20 and I will tell Mr. Silver that.

21 MR. MCKENZIE: He won't start before
22 11:30.

23 MR. SCHABAS: Okay. He won't start
24 before 11:30.

25 MR. MCKENZIE: Mr. Hansen, only a

1 request, I am here usually quarter to nine.
2 If your witness arrives 15 minutes early,
3 and we could get started, it might help in
4 not running out of time, given that we lost
5 some time today. You know, we are all in
6 this together, and the sooner we get
7 finished the better.

8 MR. HANSEN: As long as my friends are
9 here that is...

10 MR. SCHABAS: We will all be here. You
11 tell us, that is fine.

12 MR. MCKENZIE: It is okay if it doesn't
13 happen, but I am just saying every little
14 minute counts, as we are finding out, and
15 to get out of here, you know, on time...

16 MR. SCHABAS: The reporter and
17 videographer, can they be here at 9:15?

18 MR. MCKENZIE: He is here...

19 MR. SCHABAS: Sorry, quarter to nine?

20 MR. MCKENZIE: No, 9:15.

21 MR. SCHABAS: 9:15, fine. Thank you.
22

INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
1	Audited Financial Statements of Kingsland Estates Limited, dated June 30, 2005	16
A	Letter from Philip Atkinson dated October 5, 2006 (for identification)	18
2	Affidavit of Philip Atkinson, sworn December 11, 2006, without exhibits, and an incomplete paragraph 1	89
3	Complete affidavit of Philip Atkinson, sworn December 11, 2006	90
4	Series of correspondence between Crawford, McKenzie and Mr. Ranking, dated September 19, 24, 25 and 30, 2008 and October 8, 2008	160

INDEX OF UNDERTAKINGS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	108	322
2	109	323

INDEX OF REFUSALS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	26	75
2	27	76
3	32	96
4	41	120
5	48	144
6	76	212
7	76	214
8	78	219
9	93	269
10	96	276
11	104	307
12	107	318
13	110	326
14	111	334
15	111	336
16	114	343
17	116	352
18	118	355
19	119	358
20	119	359
21	119	360

INDEX OF REFUSALS (Cont'd)

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
22	120	362
23	120	364
24	120	365
25	121	366
26	122	367
27	126	379
28	126	380
29	126	381
30	126	382
31	127	383
32	129	389
33	129	390
34	129	391
35	130	392
36	132	398
37	132	400
38	132	401
39	136	412
40	140	428
41	144	442
42	148	452

INDEX OF REFUSALS (Cont'd)

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
43	149	455
44	149	456
45	150	457
46	150	458
47	151	459
48	151	461
49	152	462
50	152	464
51	156	468
52	156	469
53	156	470
54	156	472
55	157	473

REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the 30th DAY OF OCTOBER, 2008 and taken to the best of my skill, ability and understanding.

}
} Certified Correct:
}
}
}
}
}
} _____
} Matthew Dixon
} Certified Verbatim
} Reporter
}

